UNITED STATES of America, Plaintiff-Appellee,

v.

Jerry BUCHANAN and Frank Anthony Fiorini, a/k/a Frank Sturgis, Defendants-Appellants.

No. 73-3951
Summary Calendar.*

United States Court of Appeals, Fifth Circuit.

Sept. 12, 1974.

Defendants were convicted in the United States District Court for the Southern District of Florida, at Miami, C. Clyde Atkins, J., of transportation of stolen motor vehicles in interstate commerce. Certain of the defendants appealed. The Court of Appeals held that one defendant's right to confrontation was not denied by the court's ruling that questions by defense on cross-examination of a Federal Bureau of Investigation agent were beyond the scope of direct examination, where the direct testimony of such agent dealt exclusively with another defendant except for information which had already been established by other witnesses, and where defendant could have called the agent as his own witness or could have taken the stand himself on such point.

Affirmed.

1. Automobiles ⇐355(12)

Evidence in prosecution for transportation of stolen motor vehicles in interstate commerce warranted conviction notwithstanding contention of defendants that they were training members of International Anti-Communist Brigade for invasion of Cuba. 18 U.S.C.A. §§ 2, 2312, 2313.

2. Criminal Law ⇐662(1)

Defendant's right to confrontation was not denied by court's ruling that questions by defense on cross-examination of Federal Bureau of Investigation agent were beyond scope of direct examination, where direct testimony of such agent dealt exclusively with another defendant except for information which had already been established by other witnesses, and where defendant could have called agent as his own witness or could have taken stand himself on such point. U.S.C.A.Const. Amend. 6.

Aram P. Goshgarian, Miami Beach, Fla. (Court-appointed), for Buchanan.

Ellis S. Rubin, Miami Beach, Fla. (Court-appointed), for Fiorini.

Robert W. Rust, U. S. Atty., William R. Northcutt, Asst. U. S. Atty., Miami, Fla., for plaintiff-appellee.

Before BROWN, Chief Judge, and THORNBERRY and AINSWORTH, Circuit Judges.

PER CURIAM:

In this appeal from their convictions for transportation of stolen motor vehicles in interstate commerce, 18 U.S.C. §§ 2312, 2313, § 2, appellants allege that the evidence against them was insufficient and that their Sixth Amendment rights to confrontation of witnesses against them were denied. We find these contentions to be without merit and affirm the convictions.

[1] Appellants allege they were training members of the International Anti-Communist Brigade for an invasion of Cuba. The government's theory was that this was just a guise to hide a conspiracy to transport stolen motor vehicles into Mexico. Taking the view most favorable to the government, a reasonably minded jury could accept the relevant evidence as sufficient to support appellants' guilt beyond a reasonable doubt. United States v. Warner, 5 Cir., 1971, 441 F.2d 821.

[2] Appellants' other contentions deal with the cross-examination of the

* Rule 18, 5th Cir.; see Isbell Enterprises, Inc., v. Citizens Casualty Co. of N. Y. et al., 5th Cir. 1970, 431 F.2d 409, Part I.

final witness at trial, Agent Gibbons of the FBI. Gibbons' direct testimony dealt exclusively with another defendant, Max Gonzales, except for a reference to appellant Sturgis as the leader of the brigade. On cross-examination, appellant's counsel sought to elicite testimony about a statement given to Gibbons by Sturgis. This question was ruled beyond the scope of direct examination.

The fact that Sturgis was the leader of the brigade had already been established by other witnesses. Appellant's contentions that he was denied the right to confrontation are without merit. He could have called the agent as his own witness, or taken the stand himself on this point. Any prejudice that might have resulted was harmless. *See* United States v. Resnick, 5 Cir., 1974, 488 F.2d 1165 at 1168 quoting from Kotteakos v. United States, 1946, 328 U.S. 750, 66 S. Ct. 1239, 10 L.Ed. 1557.

Affirmed.

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

NELLO PISTORESI & SON, INC. (S & D Trucking Co., Inc.), Respondent.

No. 73-2253.

United States Court of Appeals, Ninth Circuit.

July 1, 1974.

Proceeding on application for enforcement of order of the National Labor Relations Board which found that Christmas bonuses paid by employer were wages, hours or other terms and conditions of employment which employer could not unilaterally discontinue. The Court of Appeals, Alfred T. Goodwin, Circuit Judge, held that finding that Christmas bonuses paid by employer for the first time in 1969 and in 1970 and which ranged from $25 to $150 constituted wages was not supported by substantial evidence.

Enforcement denied.

1. Labor Relations ⇐393

Employer commits unfair labor practice when he unilaterally alters wages, hours and other terms and conditions of employment without first consulting and negotiating with the bargaining representative of his employees. National Labor Relations Act, § 8(a)(1, 5), (d) as amended 29 U.S.C.A. § 158 (a)(1, 5), (d).

2. Labor Relations ⇐393

Bonuses paid employees are considered "wages" which employer cannot unilaterally discontinue if they are of such a fixed nature and have been paid over a sufficient length of time to have become a reasonable expectation of the employees and, therefore, part of their anticipated remuneration. National Labor Relations Act, § 8(a)(1, 5), (d) as amended 29 U.S.C.A. § 158(a)(1, 5), (d).

See publication Words and Phrases for other judicial constructions and definitions.

3. Labor Relations ⇐725

Court in enforcement proceeding is bound to accept National Labor Relations Board's finding unless they are not supported by substantial evidence in the record taken as a whole.

4. Labor Relations ⇐576

Finding of National Labor Relations Board that Christmas bonuses paid by employer in 1969 and 1970 and ranging from $25 to $150 constituted "wages," which employer could not unilaterally discontinue in 1971 without consulting and negotiating with union, was