

United States of America v. Jose Pablo Jimenez-Chaidez
2024 DJDAR 2652

District court's decision to admit federal agent's cellphone testimony as lay rather than expert witness was proper given that the information provided did not require specialized knowledge.

FACTS/PROCEDURE

In September 2019, Jose Pablo Jimenez-Chaidez was living in Tecate, Mexico and had been working at a bakery in Southern California. He crossed the United States / Mexico border five to six days a week. On September 10, Jimenez entered the United States through the Tecate Port of Entry. In the post-primary screening area, a border patrol canine indicated that drugs were present in Jimenez's car. Officers found cocaine and methamphetamine hidden in the truck and the modified gas tank. Jimenez was charged with knowingly importing cocaine and methamphetamine. At trial, he argued that he did not know the drugs were in his car and that he was just a "blind mule."

The government moved in limine to admit testimony of prisoner Alejandro Ramos who stated that he worked as a scout in the same organization as Jimenez, and, on several occasions, including multiple times in May 2019, had met Jimenez in the United States to unload drugs from Jimenez's car. They also moved to admit border crossing records and evidence from Ramo's phone to demonstrate Jimenez's knowledge and intent to import drugs on the day he was arrested. The Court granted the motion. All of this evidence was then submitted at trial. To corroborate Ramos's testimony, the government called FBI agent Edasi to testify about location data extracted from Ramos's cellphone. The government had failed to disclose Edasi as an expert witness and thus Jimenez objected. In response the government explained that it was offering Edasi as a lay witness. Agent Edasi testified that he extracted data from Ramos's phone using a software tool called Cellebrite. He explained that Cellebrite is used for performing data extraction, and it also has tools for analyzing and parsing data. The government also called Agent Lewenthal who they also failed to disclose as an expert witness to testify regarding drug value. Over the objections of Jimenez, he was also allowed to testify. The jury found Jimenez guilty.

Jimenez appealed, arguing that the evidence of his prior drug transports in May 2019 was improper propensity evidence. He further argued that the district court abused its discretion by allowing Agent Edasi to testify as a lay witness about extracting and parsing location data from Ramos's cellphone. Lastly, he argued that the district court erred by not making an explicit reliability finding related to Agent Lewenthal's expert testimony about the value of drugs.

HOLDING/DISCUSSION

The Ninth Circuit Court of Appeals affirmed Jimenez's conviction but vacated his sentence and remanded for resentencing. The court held that while evidence of a defendant's prior acts may not be admitted to suggest that the defendant is more likely guilty of the charged crime because of his past behavior, the same evidence may be admissible for other purposes, including to prove knowledge and intent. Prior acts evidence must satisfy four requirements to be admissible under Rule 404(b)(2): (1) it must tend to prove a material issue; (2) the prior acts must not be too remote in time; (3) there must be sufficient evidence for a reasonable jury to

conclude that the defendant committed the prior acts; and (4) when used to show knowledge and intent, the prior acts must be sufficiently similar to the charged offense. Here, the court found that the acts had occurred within five months of Jimenez's arrest and thus were not too remote in time. Further, the government introduced sufficient evidence to reasonably conclude Jimenez smuggled drugs in May 2019. The court further held that the evidence was relevant because Jimenez's prior smuggling made his knowledge that he was smuggling on the day of his arrest more probable. His prior acts were also sufficiently similar to his charged conduct to satisfy the fourth requirement.

However, even if prior acts evidence is admissible under Rule 404(b), it is subject to a Rule 403 prejudice analysis. Here, the court found that the district court did not abuse its discretion by concluding that evidence of Jimenez's prior smuggling was more probative than prejudicial and admitting the evidence. They found that the government's evidence of Jimenez's prior smuggling had substantial probative value, and that a proper limiting instruction sufficiently narrowed the jury's focus.

Next, the court found that the district court did not abuse its discretion by allowing the testimony of Agent Edasi as a lay witness. The court found that a lay witness may testify to the information extracted from a phone so long as the testimony does not require specialized knowledge. Here, Agent Edasi testified that he connected Ramos's phone to a Cellebrite device, used the program to extract and parse the data, reviewed the GPS coordinates, and put those coordinates into Google Maps to identify where the cell phone had been. Importantly, Edasi did not opine on Cellebrite's technical methodology or reliability, nor did Jimenez raise a challenge related to those issues. Thus, the district court did not abuse its discretion.

Lastly, the court agreed with Jimenez that the district court erred by not making an explicit reliability finding related to Agent Lewenthal's expert testimony about the value of drugs found in Jimenez's car. However, they found that the error was harmless because his testimony did not materially impact the jury's verdict. Thus, the Court affirmed the conviction but remanded for resentencing based upon new holdings related to minor-role sentencing reduction.