First Circuit: Defendant waived public trial claim when lawyer failed to object

By Sheri Qualters Contact All Articles
The National Law Journal | June 20, 2012

Retired Supreme Court Justice David Souter *Diego M. Radzinschi/NLJ*

Attorney David Lewis

A lawyer's failure to object to a judge's locking of courtroom doors during jury instructions waived his client's Sixth Amendment claim, the U.S. Court of Appeals for the First Circuit has ruled.

In an opinion by retired U.S. Supreme Court Justice David Souter, a unanimous panel on June 19 affirmed Lenard Christi's convictions for bank fraud, wire fraud, conspiracy and money laundering following a February 2009 jury verdict.

Christi and co-defendant Robert Felleman were charged with depositing five fake checks in three bank accounts and writing checks against the balances from 2000 to 2002. Felleman later negotiated guilty pleas.

Christi claimed on appeal that his Sixth Amendment right to a public jury trial was violated because Judge Douglas Woodlock of the District of Massachusetts ordered the courtroom doors locked during jury instructions. He also claimed that he was an innocent bystander, and that the evidence "failed to support a finding that he committed the offenses even by aiding and abetting Felleman in his crimes."

Souter, who sat by designation on the case, was joined in the ruling in *U.S. v. Christi* by judges Michael Boudin and Juan Toruella.

Souter wrote that Christi waived the claim that trial judge ered by limiting public access to the courtroom during much of the jury instructions. He noted that the judge started the jury charge with the courtroom doors open but took a short break to address a clerical matter. After the break, the judge notified spectators who he believed were waiting for the next case that they would have to remain until the instructions were over if they stayed because he was going to lock the door. Souter observed that Christi's lawyer didn't objection then or when the lawyers were later invited to raise any objection to the charge.

At the end of the afternoon and before any verdict, the prosecutor approached the judge "to mention the locked courtroom door and the structural character of a defendant's Sixth Amendment right to public trial," Souter wrote.

According to the opinion, the prosecutor stated twice that no one had been adversely

Christi's lawyer made no comment on the record except for ending the discussion by stated that she needed to leave, Souter noted.

Souter determined that the circumstances show that defense counsel's silence went beyond passivity to the point of waiver: "Although the trial judge did not in so many words request an affirmative declaration of position from defense counsel in response to the Government's statement for the record, the exchange between the court and the prosecutor placed the subject matter unmistakably on the table, and the defense's silence is reasonably understood only as signifying agreement that there was nothing objectionable."

Souter also rejected Christi's argument that the evidence was insufficient to show he committed the crimes. Souter found that Christi failed to raise the claim at trial; Christi does not contest that Felleman committed the offenses; and there's too much evidence to form a conclusion that it was unreasonable for the jury to infer that he was involved in the fraudulent scheme.

"To begin with, of course, he could hardly claim with a straight face that he just happened to be accompanying Felleman in his bank appearances, in light of the evidence associating him with four other efforts involving phony checks and claims from non- existent funds," Souter wrote. He also observed that Christi "nailed down the Government's case" by lying about the circumstances of one of the transactions.

David Lewis, a Cambridge, Mass. solo practitioner who represented Christi at the First Circuit, said the ruling is disappointing, but the Sixth Amendment claim is there for many trials because the transcripts indicate a court closure for jury charge is a regular practice at the court. "I think the claim is there for someone that wants to raise it," Lewis said.

Christi's trial lawyer, Leslie Feldman-Rumpler of Boston, declined to comment.

The U.S. Attorney's Office for the District of Massachusetts is pleased with the decision, said spokeswoman Christina Dilorio Sterling.

Wendy Sibbison, a Greenfield, Mass., appellate law specialist who isn't involved in the case, said the decision stands for the idea that an important part of a criminal defense lawyer's job is to raise issues and make objections during the trial. "The primary benefit is that the trial judge might rule in the accused's favor on the spot and possibly improve his chance of acquittal," she said. "The secondary benefit is that, if unfavorable, the ruling can be pressed on appeal, unburdened by the heavy chains of forfeiture, waiver and plain eror review."

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