



United States of America v. 1) Ismael Vazquez-Larrauri

2012 | Cited 0 times | D. Puerto Rico | June 1, 2012

ORDER

During the June 14, 2012 morning session of the trial, A.U.S.A. George Massucco requested that the Court allow testimony of government witness Wilfredo Lopez-Martinez, on direct, having to do with sales of eight firearms made by the witness at the request of co-conspirator Hiram Torres. This was proffered as evidence in support of Count Six of the Indictment, the weapons conspiracy. A proffer of such testimony was made outside the presence of the jury.

Count Six of the Indictment charges that from on or about the year 2003 and continuing until the return of the indictment in August 2008, defendant Ismael Vazquez-Larrauri (1) and nineteen other defendants named in that Count conspired to knowingly and intentionally possess firearms during and in relation to a drug trafficking offense, as charged in Counts One, Two, Three, Four and Five. The proffered testimony of Lopez-Martinez is made under Fed. R. Evid. 801(d)(2)(E) which provides that a statement made by a co-conspirator of a party during the course and in furtherance of the conspiracy is admissible. Translated to the text of the Indictment, specifically Count Six which runs in tandem with Count One, for the co-conspirator statements proffered to be admissible they would have to be made during and in furtherance of the drug conspiracy charged in Count One of the Indictment. The fact that statements made by a co-conspirator declarant to a third party are admissible under Rule 801(d)(2)(E), regardless of whether the third party is a tipster, an informant, an undercover officer or a mere acquaintance, does not eliminate the foundational requirements of the Rule. *United States v. Colon-Diaz*, 521 F3d 29, 36, n. 3 (1st Cir. 2008).

The Court has given careful consideration to the proffer with respect to the statements of co-conspirator Hiram Torres to witness Lopez-Martinez. Hiram's statements to the witness on the sale of eight firearms, in support of Count Six, would not meet the Rule 801(d)(2)(E) requirement that his statements were made in furtherance of the conspiracy charged in Count One, to wit: a drug trafficking conspiracy. The proffered testimony reflects that the sale as to the eight firearms were private dealings between the witness and the declarant, and, therefore, Hiram's statements to Lopez-Martinez with respect to the sale of the weapons did not further the conspiracy in which Hiram allegedly participated as a member of the drug organization of defendant Vazquez-Larrauri. The proffered testimony divides the weapons into two sets. A first set of weapons stashed by one "Bebe" and "Cheo" at Salinas, at or near the cockfighting arena, and a second set of four other firearms stashed at "El Farallon" in Cayey. The first set was linked by the witness as having been later made available to some people who ran a drug point at Santa Isabel by defendant Vazquez-Larrauri. These are the ones described by the witness as a carbine, an AK 47 rifle, a



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shotgun and an R-15 rifle.

The following proffered testimony is relevant to the Court's determination that co-conspirator Hiram's statements on the sale of firearms by the witness were not made in furtherance of the conspiracy: Referring to the four weapons stashed in Salinas and later located and sold in Santa Isabel, the witness' testimony was that he sold them between November 2006 through October 2, 2007 for a total of \$9,000.00, of which he kept around \$3,500.00 and gave Hiram \$5,000.00; that Hiram told him that after he got himself a case in 2006 defendant Vazquez-Larrauri and Hiram gave them for lost; and that "Bebe" and "Cheo" subsequently recovered them. Hiram further said to the witness that Vazquez-Larrauri did not know anything about the weapons having been recovered and that he (Hiram) and the witness could made some money out of it.

Regarding the sale of the second set of weapons stashed at "El Farallon" in Cayey, Hiram told the witness that these weapons belonged to defendant Vazquez-Larrauri but not to tell anyone so that nobody would know that those weapons had disappeared because of him, that Hiram had introduced him to a friend known as "Diego" for the witness to sell the weapons to such friend; that Hiram gave him the weapons in Cayey, that the firearms at "El Farallon" belonged to Vazquez-Larrauri, that since Hiram needed money he told the witness that he would take the weapons out from where they were stashed to sell to "Diego" and for the witness to keep part of the money and give Hiram the rest.

The several statements made by Hiram to the witness regarding weapons ownership by defendant Vazquez-Larrauri would qualify as information exchanged between co-conspirators during the course of a conspiracy if Hiram and the witness Lopez-Martinez were co-conspirators at the time that they were made. Such, however, is not the case. More significant yet to the Court's determination is the fact that the statements themselves of declarant co-conspirator Hiram Torres to the witness clearly point to transactions, of which defendant Vazquez-Larrauri was not made privy, meant to advance their own personal economic interests. These private dealings did not further the illegal objectives of the drug conspiracy for the weapons were sold solely for the financial benefit of Hiram, not of the drug trafficking organization or its members. The testimony points to a sale of weapons, behind Vazquez-Larrauri's back. This is manifested both by Hiram's statement to the witness not to tell anyone about the sale of the weapons stashed at Cayey so they would not know that those weapons had disappeared because of him and by his other statement, regarding Salinas/Santa Isabel weapons, that it was precisely because Vazquez-Larrauri did not know anything about the recovery of those weapons that Hiram and the witness could make some profit from their sale.

In sum, the statements of Hiram to the witness, as co-conspirator of the defendant, were made, not in furtherance of any conspiracy charged, but instead in furtherance of their own illegal agreement to sell weapons for their own personal gain.

For the reasons stated, the testimony proffered by Wilfredo Lopez-Martinez outside the presence of



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the jury today related to the sale of eight weapons is disallowed. The government counsel is admonished that he is not to make any reference, direct or indirect, to the sale of any of those weapons by Mr. Lopez-Martinez at the request of Hiram Torres.

SO ORDERED.

