

“THE FEDERAL CORNER”

Venue Shopping/Venue Entrapment

Buck Files

On February 24, 2017, a panel of the United States Court of Appeals for the First Circuit affirmed the judgment and sentence of the district court, holding that government agents may influence where a federal crime occurs, and that there is no such thing as *manufactured venue* or *venue entrapment*. *United States v. Valenzuela*, ___F.3d___, 2017 WL 727553 (1st Cir., February 24, 2017) [The Panel: Chief Judge Howard, Associate Justice Souter (retired, sitting by designation) and Circuit Judge Stahl. (Opinion by Stahl)]

Being taken for a ride by someone who does not have your best interest at heart is never a good thing. Movie audiences learned this lesson some eighty years ago as they watched Edward G. Robinson and James Cagney in the very popular gangster movies of that era. Rafael Humberto Celaya Valenzuela (“Celaya”) probably learned this lesson as he listened, during his trial, to the testimony about one of his co-conspirators (“Guzman”) being *taken for a ride* – by an FBI agent.

[The History of the Case]

Celaya was a financial planner and lawyer for the Sinaloa Drug Cartel. He was indicted in the District of New Hampshire for conspiracy to distribute and possess controlled substances in violation of 21 U.S.C. § 846. After a five-day jury trial, Celaya was convicted and sentenced by United States District Judge Joseph N. LaPlanteto 210 months of imprisonment. In the district court, Celaya’s lawyer had timely filed a motion for judgment of acquittal which Judge LaPlante denied. Later, a post-verdict motion for re-consideration of the denial of his motion for judgment of acquittal was filed. This was also denied; thereafter, Celaya gave notice of appeal.

[A Very Abbreviated Synopsis of the Facts]

In May, 2009, the FBI began Operation Dark Water, a sting operation that targeted the Sinaloa Cartel -- whose leader was the notorious El Chapo. Celaya was a financial planner and lawyer who had close personal ties to El Chapo. He first came to the attention of the government in August, 2010, when he accompanied Jesus Manuel Gutierrez-Guzman (“Guzman”), El Chapo’s cousin and close confidant, and other co-conspirators to a meeting with undercover FBI agents in Hallandale, Florida. The agents presented themselves as members of an organized crime family that had an Italian mafia boss who went by the name of El Viejo (“the Old Man”).

At the meeting, the agents and the representatives of the Sinaloa Cartel discussed how the two organizations could work together. At this time, the Sinaloa Cartel was shipping cocaine directly from South America to Europe. The agents recommended that using seaports on the east coast of the United States to receive the shipments from South America and then re-send them to their European destinations would raise fewer suspicions and lessen the likelihood that they would be detected and seized. These would include the ports at Philadelphia, Newark,

Providence and Portsmouth, New Hampshire. The agents represented that they had contacts in the longshoremen's union that could ensure that the cocaine could be brought in and out of the ports without being detected by U. S. Customs authorities.

Celaya stated that the Sinaloa Cartel did not have a preference as to which port was to be used, but would prefer whatever port that the agents thought would be the safest. When Guzman expressed concerns, Celaya sought to allay his fears by supporting what the agents were saying. The next day, there were discussions about methods for laundering the proceeds from these drug sales. Because of his legal and financial expertise, Celaya participated actively in these discussions.

On April 21, 2011, Guzman met with El Viejo at a hotel near Portsmouth, New Hampshire, to discuss the first shipment of cocaine. An FBI agent had *taken Guzman for a ride* as he provided transportation for him from Logan Airport in Boston to this meeting. There, Guzman told El Viejo that Celaya was a trusted member of the Cartel and that it was Celaya who had explained everything about this new venture to El Chapo. Other meetings followed, including one in Boston in August, 2011, where Guzman and El Viejo discussed having the Sinaloa Cartel provide cocaine to the FBI organization for distribution in New Hampshire.

In July, 2012, the Sinaloa Cartel sent 346 kilograms of cocaine directly from Brazil to Algeciras, Spain. In August, Guzman traveled to Spain to meet with El Viejo. They agreed that one of the destinations for future shipments of cocaine would be to the United States. Shortly after this meeting, Spanish authorities arrested Celaya. When interviewed by FBI agents, he admitted that he had been part of a conspiracy to distribute cocaine; that he had traveled to Mexico to meet with El Chapo; that he told El Chapo that he believed the FBI organization was a drug cartel; and, that El Chapo should proceed with the plan to supply it with cocaine.

Judge Stahl's opinion reads, in part, as follows:

[Celaya's Argument and the Court's Response]

Celaya's fallback argument is that *because it was a government agent who drove Guzman from Boston's Logan Airport to the Portsmouth meeting, the government 'manufactured' venue in New Hampshire*, and therefore this fails as a matter of law. However, the First Circuit has never accepted the existence of a 'manufactured venue' doctrine, and most circuits have rejected the concept of manufactured venue or 'venue entrapment.' See, e.g., [United States v. Rodriguez-Rodriguez](#), 453 F.3d 458, 462 (7th Cir. 2006) ('[Government] agents may influence where the federal crime occurs, and thus where venue lies, as well as whether the crime comes under federal rather than state law. The entrapment doctrine protects the defendant against manufactured offenses (unless the defendant is predisposed); it does not limit venue.');

see also [United States v. Al-Talib](#), 55 F.3d 923, 929 (4th Cir. 1995) ('There is no such thing as "manufactured venue" or "venue entrapment."'); [United States v. Spriggs](#), 102 F.3d 1245, 1250 (D.C. Cir. 1996) ('[W]e are uncertain whether there is such a thing as "venue

entrapment.” It is a little hard to conceive of a person predisposed to commit a federal crime—but not in some specific district.’)(emphasis added)

[A Proper Response to Prosecutorial Venue Shopping]

The better rule appears to be that to the extent that prosecutorial forum shopping ‘is a concern in a given case, it is more appropriately handled at the trial level by a transfer to a more reasonable forum’ under [Federal Rule of Criminal Procedure 21](#). [Andrews v. United States](#), 817 F.2d 1277, 1279–80 (7th Cir. 1987). Indeed, it is hard to understand what the underlying logic for ‘venue entrapment’ would be, since entrapment in criminal law is designed to avoid punishment for ‘an “otherwise innocent” person whose “alleged offense” is “the product of the creative activity” of government officials,’ [United States v. Gendron](#), 18 F.3d 955, 961 (1st Cir. 1994) (quoting [Sorrells v. United States](#), 287 U.S. 435, 451, 53 S.Ct. 210, 77 L.Ed. 413 (1932)), not to avoid punishment for a defendant involved in a wide-ranging global narcotics conspiracy because government agents drove one of his co-conspirators an hour from Boston to Portsmouth, NH, for a meeting to discuss a planned drug distribution network.

[Facts That Support Venue in New Hampshire]

The high-level meeting in New Hampshire involving Guzman, a co-conspirator and close confidant of El Chapo—the Sinaloa Cartel’s chief—suggests an even stronger argument for venue than previous acts found sufficient for venue in federal courts, including telephone conversations. *See, e.g.,* [United States v. Cordero](#), 668 F.2d 32, 44 (1st Cir. 1981) (noting that phone calls from defendants outside of Puerto Rico to a coconspirator in Puerto Rico was likely sufficient for venue to lie in Puerto Rico because the offense ‘continued’ in that forum, but finding the appellants’ argument waived in any event).

[The Court’s Conclusion on the Venue Issue]

We therefore join the other circuits in rejecting the manufactured venue doctrine. However, even if such a doctrine were to be available in extreme cases of government misconduct, that would simply not be the case here. The undercover agent drove Guzman from Boston’s Logan Airport to a Portsmouth, NH-area hotel for a meeting (a drive of roughly an hour). We see no reason why the government could not bring its case in an adjacent jurisdiction, when it could have arranged the meeting just a few miles south in Massachusetts and secured venue there without any possible objection.

[My Thoughts]

- Did you notice that retired Supreme Court Associate Justice David A. Souter was a member of the First Circuit’s panel? I think this is the first case that I have reviewed that had a retired Supreme Court Justice on the panel.

- This was a sting operation like I had never seen before. The agent who played the role of El Viejo obviously had a sense of humor. During their meeting on April 21, 2011, El Viejo told Guzman that ‘everybody thinks I’m a legitimate businessman,’ adding that ‘*I’m like the American Donald Trump ... except I don’t have the hair*’ and ‘there is going to be an explosion of business’ once El Viejo could obtain El Chapo’s ‘high quality product.’ (emphasis added)
- I will confess that I had never before seen anything about venue shopping/venue entrapment until I read *Valenzuela*. Celaya’s lawyer gave it a good try, but the result was not surprising.