

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 5th day of October, two thousand and four.

Present:

Hon. Jon O. Newman  
Hon. Richard J. Cardamone,  
Hon. Robert A. Katzmann,

Circuit Judges.

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UNITED STATES OF AMERICA,

Appellee,

v.

Docket Nos.

01-1215

01-1240

01-1242

01-1374

01-1577

RASHEEN LEWIS, also known as Rasheed Lewis, also known as "Noriega", also known as Francis G. Sheen, KENNETH RICHARDSON aka "Prino", aka "Tyree", aka "Ricco", AARON HARRIS, aka "Dog", aka "Toast", aka "DMX", aka "Hit Man Sosa", JOHN FOSTER, also known as "D.C.", also known as Troy Kelly, also known as Anthony Johnson, also known as John Billups, also known as David Nunley, LUKE JONES, aka "Mega",

Defendants-Appellants.

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APPEARING FOR APPELLEE:

ALEX V. HERNANDEZ, Assistant United States Attorney for the District of Connecticut, Bridgeport, CT, for United States of America.

APPEARING FOR APPELLANTS: DAVID L. LEWIS, Lewis & Fiore, New York, NY, for Rasheen Lewis; BARRY M. FALLICK, Rochman Platzer Fallick & Sternheim, LLP, New York, NY, for Kenneth Richardson; LAURA J. LEFKOWITZ, Stavis & Kornfeld, LLP, New York, NY, for John Foster; EDWARD T. MURNANE, Jr., Law Firm of Gary A. Mastronardi, Bridgeport, CT, for Luke Jones; DAWN E. CARADONNA, Law Office of Dawn E. Caradonna, Peterborough, NH, for Aaron Harris.

1 Appeal from the United States District Court for the District of  
2 Connecticut (Nevas, Judge).  
3

4 **ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND**  
5 **DECREED** that the judgment of the District Court be and is hereby  
6 **AFFIRMED**.  
7

8 Five defendants: John Foster, Aaron Harris, Rasheen Lewis,  
9 Kenneth Richardson, and Luke Jones, appeal from the judgments of  
10 conviction and their sentences entered in the United States District  
11 Court for the District of Connecticut (Nevas, J.) on June 21, 2001,  
12 April 6, 2001, March 26, 2001, April 4, 2001, and October 29, 2001,  
13 respectively. A jury convicted Foster, Harris, Lewis and Richardson  
14 of conspiracy to distribute cocaine and heroin in violation of 21  
15 U.S.C. § 846 in December 2000 and Jones pled guilty to unlawful  
16 possession of a firearm in violation of 18 U.S.C. § 922(g)(1) in  
17 September 2000.  
18

19 The parties' familiarity with the facts and procedural history  
20 of the case, as well as with the rulings of the district court and  
21 issues on appeal, is here assumed. We address the following  
22 challenges of defendant Harris and defendant Lewis to these judgments  
23 in a separate opinion filed today: (1) whether it was error for the  
24 district court to increase Harris' sentence for use of a minor  
25 pursuant to U.S.S.G. § 3B1.4; and (2) whether it was error for the  
26 district court to deny Lewis' motion to suppress evidence seized from  
27 his bedroom. The remaining issues raised on appeal are discussed in  
28 this summary order. For the reasons that follow, we affirm the  
29 judgments of conviction and sentences of the district court.  
30

31 (1) With respect to defendant John Foster, the district court  
32 committed no error in disqualifying juror number 152 because a  
33 defendant's acceptance into Connecticut's accelerated pretrial  
34 rehabilitation program, Conn. Gen. Stat. § 54-56e (1999), does not  
35 suspend the charges "pending" against the defendant for purposes of  
36 28 U.S.C. § 1865(b)(5) (2000), but only suspends the adjudication of  
37 those charges. The charges therefore remain pending against the

1 defendant until the rehabilitation term is complete. See United  
2 States v. Bishop, 264 F.3d 535, 556 (5th Cir. 2001) ("Until  
3 supervision is complete . . . the deferred adjudication is treated as  
4 a pending charge.").

5  
6 In light of Blakely v. Washington, 124 S. Ct. 2531 (2004), we do  
7 not address or decide whether Foster's sentence was imposed in  
8 violation of Apprendi v. New Jersey, 530 U.S. 466 (2000). Rather,  
9 for the reasons stated in the opinion accompanying this order, the  
10 mandate of this Court shall be held pending the Supreme Court's  
11 decision in United States v. Booker, No. 04-104, and United States v.  
12 Fanfan, No. 04-105.

13  
14 (2) With respect to defendant Aaron Harris, the district court  
15 committed no error in disqualifying juror number 152 for the reasons  
16 just stated with respect to defendant Foster. The district court did  
17 not err under Federal Rule of Evidence 608(b) when it permitted the  
18 government to call Carolyn Jackson, Demetrius Brown, and George  
19 Jascewsky as part of its rebuttal case. It was within the discretion  
20 of the district court to conclude that the testimony of these  
21 witnesses refuted specific misstatements made by Harris on direct  
22 examination. See United States v. Beverly, 5 F.3d 633, 639 (2d Cir.  
23 1993) ("Once a defendant has put certain activity in issue by  
24 offering innocent explanations for or denying wrongdoing, the  
25 government is entitled to rebut by showing [through extrinsic  
26 evidence] that the defendant has lied."). The district court did not  
27 violate Harris' Sixth Amendment right to confront the witnesses  
28 against him by limiting the scope of Harris' cross-examination of  
29 Eugene Rhodes and Demetrius Brown, because the limits imposed did not  
30 deny the jury exposure to facts sufficient "to make a discriminating  
31 appraisal of the . . . witness's credibility," United States v.  
32 Laljie, 184 F.3d 180, 192 (2d Cir. 1999), and were reasonably  
33 calculated to avoid harassment, prejudice, confusion of the issues,  
34 and irrelevant interrogation. See Delaware v. Van Arsdall, 475 U.S.  
35 673, 679 (1986).

36  
37 It was not an abuse of the district court's discretion to admit  
38 Exhibits 56 and 56-A into evidence because the government introduced  
39 proof sufficient to allow a reasonable juror to find them authentic.  
40 See United States v. Ruggiero, 928 F.2d 1289, 1303-04 (2d Cir. 1991).  
41 Nor did the district court err in instructing the jury regarding  
42 Harris' interest in the outcome of the trial because even compared  
43 with the significant interests of the cooperating witnesses, Harris'  
44 interest was singular. See Reagan v. United States, 157 U.S. 301,  
45 304-05 (1895). Further, the district court properly denied Harris'  
46 motion to suppress the evidence seized in connection with the stop of  
47 the vehicle he was driving and his subsequent arrest on October 8,  
48 1998, because the police had probable cause to believe the vehicle  
49 contained evidence of a crime (i.e., cash to purchase drugs) and that  
50 Harris was committing an offense. The search was therefore lawful

1 pursuant to the automobile exception, as well as incident to Harris'  
2 arrest.  
3

4 Moreover, it was not an abuse of discretion for the district  
5 court to enhance Harris' offense level based on his leadership role  
6 because the evidence established that Harris, who served as the drug  
7 network's main source of supply, exercised a high degree of  
8 discretion in participating in the conspiracy, was involved at the  
9 highest level in planning and organizing the offense, and had  
10 authority and control over other members of the conspiracy. See  
11 United States v. Beaulieu, 959 F.2d 375, 379-80 (2d Cir. 1992)  
12 (finding that the district court properly applied the leadership-role  
13 enhancement to a defendant who acted as the conspiracy's main source  
14 of supply).  
15

16 As with Foster's sentence, in light of Blakely, we do not  
17 address or decide whether Harris' sentence was imposed in violation  
18 of Apprendi. Rather, for the reasons stated in the opinion  
19 accompanying this order, the mandate of this Court shall be held  
20 pending the Supreme Court's decision in Booker and Fanfan.  
21

22 All of Harris' other challenges, aside from his challenge to the  
23 district court's increase of his sentence under U.S.S.G. § 3B1.4,  
24 which is addressed in the opinion filed concurrently with this order,  
25 are without merit.  
26

27 (3) With respect to defendant Luke Jones, the district court did  
28 not err by increasing Jones' offense level for possession of a  
29 firearm in connection with another felony offense under U.S.S.G.  
30 § 2K2.1(b)(5). Although Jones may not have been engaged in a  
31 narcotics offense at the time of his arrest on November 6, 1999 the  
32 evidence was sufficient to establish that he must, at that time, have  
33 had "knowledge, intent, or reason to believe" that the firearm would  
34 be used or possessed by him at some point in the future in connection  
35 with the narcotics conspiracy charged in the indictment. U.S.S.G.  
36 § 2K2.1(b)(5). Further, the district court's upward departure  
37 pursuant to U.S.S.G. § 4A1.3 was justified by its finding that Jones  
38 posed an exceptionally high risk of recidivism.  
39

40 (4) With respect to defendant Rasheen Lewis, the evidence was  
41 sufficient to establish Lewis' membership in the conspiracy charged  
42 in the indictment because the evidence at trial showed he ran a drug  
43 distribution network on Park Street, which sold the same brand of  
44 drugs as that sold in P.T. Barnum. Further, Lewis met with Manuel  
45 Hinojosa, Harris' supplier, at least three times in a two year  
46 period, and Lewis was intimately acquainted with Harris and with his  
47 operations in P.T. Barnum, facts from which the jury could infer that  
48 Lewis was a member of the conspiracy that included the P.T. Barnum  
49 operation. Nor did the district court err in declining to declare a  
50 mistrial on the basis of Officer Cosgrove's inadvertent reference to

1 having previously arrested Lewis because any prejudice caused by the  
2 statement could have easily been addressed through a proper curative  
3 instruction, see United States v. Fermin, 32 F.3d 674, 677 (2d Cir.  
4 1994); United States v. DeDominicis, 332 F.2d 207, 210 (2d Cir.  
5 1964), and by declining such an instruction, Lewis waived his right  
6 to appellate review of this issue. See United States v. Grubczak,  
7 793 F.2d 458, 462 (2d Cir. 1986). All of Lewis' other challenges,  
8 other than his challenge to the district court's denial of his motion  
9 to suppress evidence, which is addressed in the opinion filed  
10 concurrently with this order, are without merit.  
11

12 (5) With respect to defendant Kenneth Richardson, the district  
13 court committed no error in disqualifying juror number 152 for the  
14 reasons stated earlier with respect to defendant Foster.  
15 Richardson's sentence of life imprisonment did not violate the Eighth  
16 Amendment because this Circuit has ruled that "sentences of life  
17 imprisonment for narcotics dealers are not 'cruel and unusual' within  
18 the meaning of the Eighth Amendment." United States v. Valdez, 16  
19 F.3d 1324, 1334 (2d Cir. 1994) (holding that sentence of life  
20 imprisonment was not constitutionally disproportionate as applied to  
21 defendants convicted of participating in a large-scale crack and  
22 cocaine distribution organization); see also United States v. Torres,  
23 941 F.2d 124, 127-28 (2d Cir. 1991) (declining to find an Eighth  
24 Amendment violation where defendants, convicted of being principals  
25 of a multimillion dollar street-level heroin operation, were  
26 sentenced to life imprisonment). Further, Richardson's trial counsel  
27 did not render constitutionally ineffective assistance of counsel  
28 because, despite Richardson's claims to the contrary, his counsel did  
29 indeed vigorously challenge the evidence surrounding Richardson's  
30 1998 arrest. The evidence before the jury was sufficient to convict  
31 Richardson.  
32

33 Accordingly, for the foregoing reasons, the judgments of  
34 conviction and sentences of the district court are **AFFIRMED**.  
35

36 As explained in the opinion also filed today, no mandate will  
37 issue at this time.  
38  
39

40 FOR THE COURT:  
41 Roseann B. MacKechnie, Clerk  
42  
43  
44  
45

46 By: \_\_\_\_\_  
47 Lucille Carr, Operations Manager