USA v. Jose Lara Doc. 6013122037 Att. 1

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File Name: 17a0390n.06

Case No. 15-5874

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 03, 2017
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY
	)	
v.	)	
	)	
JOSE ALBERTO LARA,	)	
	)	
Defendant-Appellant.	)	

BEFORE: ROGERS, SUTTON, and COOK, Circuit Judges.

COOK, Circuit Judge. In a previous opinion, we held in abeyance the issue of whether defendant Jose Alberto Lara could be found jointly and severally liable for the proceeds of a drug conspiracy in which he had participated. *United States v. Lara*, No. 15-5874, 2017 WL 527912, at *4 (6th Cir. Feb. 8, 2017). We did so because the Supreme Court had recently granted certiorari in a separate case to address "whether, under [21 U.S.C.] § 853, a defendant may be held jointly and severally liable for property that his co-conspirator derived from the crime but that the defendant himself did not acquire." *Honeycutt v. United States*, --- S. Ct. ---, No. 16-142, 2017 WL 2407468, at *3 (June 5, 2017).

The Court now has resolved that question, holding that "[Congress] authorized the Government to confiscate assets only from the defendant who initially acquired the property and who bears responsibility for its dissipation." *Id.* at *8; *see also id.* at *7–9 (rejecting the

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application of *Pinkerton v. United States*, 328 U.S. 640 (1946), (i.e., conspiracy liability) to § 853). Because the district court held Lara liable under § 853 for $162,211—the sum of the drug proceeds attributed to the conspiracy as a whole—without making factual findings about what portion (if any) Lara "actually acquired" or whether he received "substitute property" derived from the proceeds, *see id.* at *7–9, we VACATE the district court's sentence with respect to Lara's money-forfeiture judgment and REMAND for further proceedings consistent with this opinion. The judgment of the district court is otherwise AFFIRMED for the reasons given in our prior opinion.