

UNITED STATES OF AMERICA, Appellee, - v. - COVER-IT, INC., and JAMES HAWLEY,  
Defendants, MICHAEL KNAPP, Defendant-Appellant.

99-1789

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

2000 U.S. App. LEXIS 27910

**November 7, 2000, Decided**

**NOTICE:** [\*1] RULES OF THE SECOND CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

**PRIOR HISTORY:** Appeal from the United States District Court for the District of Connecticut (Squatrito, J.).

**DISPOSITION:** AFFIRMED.

**COUNSEL:** APPEARING FOR APPELLANT: JON L. SCHOENHORN, ESQ., Jon L. Schoenhorn & Associates (Tracey M. Lane, Esq., on the brief), Hartford, Connecticut.

APPEARING FOR APPELLEE: JEFFREY A. MEYER, Assistant United States Attorney (Stephen C. Robinson, United States Attorney, District of Connecticut, on the brief), New Haven, Connecticut.

**JUDGES:** PRESENT: Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes, Hon. Pierre N. Leval, Circuit Judges.

**OPINION: SUMMARY ORDER**

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the judgment of said district court be and it hereby is **AFFIRMED**.

Defendant-appellant Michael Knapp appeals from a December 14, 1999 judgment of the district court convicting him, after a jury trial, of violations of 18 U.S.C. § 371, and the Resource Conservation and Recovery Act (**RCRA**), specifically 42 U.S.C. § 6928 [\*2] (d)(2)(A) and 42 U.S.C. § 6928(d)(5). Knapp's prosecution arises from the March 10 and 11, 1997 discovery of several abandoned barrels of **RCRA**-regulated hazardous waste at two separate sites in Connecticut. Obscured but still-legible labeling on the barrels allowed them to be traced to defendant Cover-It, Inc.

Knapp was an independent contractor with Cover-It and performed a variety of tasks involving the maintenance and operation of machinery. On March 7, 1997, he prepared drums of waste for transport, including scraping off and painting over the labels on the barrels. He claims that the following day he delivered \$ 3,000 cash to the driver of a truck that had come to remove the barrels. These were the same barrels found abandoned several days later.

After the federal Environmental Protection Agency (EPA) began its investigation, an agent

interviewed Knapp about his involvement in the incident. Knapp reported that the truck that picked up the barrels had a sign on its side that read "Energy something." This was consistent with statements made by defendant James Hawley and Cover-It owner Brian Goldwitz that the truck came from an Ohio firm called Energy Trucking, [\*3] and a "post-it" note, in Knapp's handwriting, to that effect. On the basis of this information, EPA engaged in an intensive search for what turned out to be a nonexistent company.

After a jury trial, Knapp was convicted on all three counts on May 21, 1999. At trial, Knapp moved for a mistrial, arguing that a statement made by Lisa Bartolini was unduly prejudicial. Bartolini had described a conversation she had with Knapp and Hawley during which the latter two were trying to decide who would sign a waste "profile" sheet. Bartolini testified that they had "made a joke saying Who wants to go to jail?" The following day, the district court directed the jury to ignore Bartolini's statement and denied Knapp's motion for mistrial.

At a sentencing hearing, the district court sentenced Knapp to five months' imprisonment (to be served at a halfway house), three years of supervised release (five months' of which to be served as supervised home detention), and a \$ 300 assessment. In imposing the sentence, the court made a two-level upward adjustment under U.S.S.G. § 3C1.1 for obstruction of justice. Knapp appealed both his conviction and his sentence.

Knapp first argues that the district [\*4] court's jury instruction on the **RCRA** counts reflects an improper standard of scienter. We disagree. *United States v. Laughlin*, 10 F.3d 961, 965 (2d Cir. 1993), which holds that the government need prove only that the defendant had a "general awareness that he [was] performing acts proscribed by" **RCRA**, controls this case. Contrary to Knapp's contention, the district court was not obligated to instruct the jury that it could convict Knapp only if he knew of the regulatory strictures governing the waste and its management. See *id.* Here, in voting to convict, the jury had to find that "the defendant knew that the waste material had a substantial potential to be harmful to others or to the environment." The jury could reasonably have made that finding.

Knapp next contends that the district court's failure to grant Knapp's motion for mistrial was error. Knapp argues that the district court's instruction was inadequate to cure the prejudicial effect of Bartolini's comment. We cannot conclude that the district court abused its discretion in denying Knapp's motion. See *United States v. Carson*, 52 F.3d 1173, 1188-89 (2d Cir. 1995). This was proper, relevant [\*5] evidence at least of Knapp's knowledge that he was working with regulated waste, and perhaps even evidence of his awareness of guilt. But even if we were to accept that Bartolini's comment was unfairly prejudicial, this case does not fall outside the mainstream of cases in which evidence improperly submitted to a jury can be corrected by a curative instruction. See, e.g., *United States v. Nixon*, 779 F.2d 126, 133 (2d Cir. 1985).

Finally, Knapp argues that the district court erred in augmenting his sentence for willful obstruction of justice, pursuant to U.S.S.G. § 3C1.1. We find no error in the court's conclusion that the defendants provided false information to the EPA agents (describing a fictitious truck identified as coming from "Energy Trucking"), that this false story obstructed the agents' investigation, and that it constituted obstruction of justice.

But even if we were to conclude that the court failed to make adequate findings, the point would nonetheless be moot. Knapp has served his prison sentence. The only portion of Knapp's sentence that remains to be served is the period of supervised release, the duration of which was not affected by the finding [\*6] of obstruction of justice. See *United States v. Mercurris*, 192 F.3d 290, 293 (2d Cir. 1999).

Upon due consideration, we find the remainder of Knapp's contentions to be without merit.

Accordingly, the judgment of the district court is hereby **AFFIRMED**.