**Golden Gate University Law Review**

Volume 46
Issue 1 *Ninth Circuit Survey*

Article 9

March 2016

# United States v. Rodriguez: Fresno Laser Pointer, A "Knucklehead" But Not A "Bin Laden"

Rosalyn A. Jamili
*Golden Gate University School of Law*

# CASE SUMMARY

# *UNITED STATES V. RODRIGUEZ:* FRESNO LASER POINTER, A "KNUCKLEHEAD" BUT NOT A "BIN LADEN."

*ROSALYN A. JAMILI**

## INTRODUCTION

In *United States v. Rodriguez,*[1] the Ninth Circuit overturned a harsh conviction sentencing Sergio Patrick Rodriguez to five years in prison for aiming a laser pointer at a Fresno Police helicopter, in violation of 18 U.S.C. § 39A,[2] and an additional fourteen years in prison for attempting to interfere with its operation, in violation of 18 U.S.C. §§ 32(a)(5) and (8).[3] The panel reversed the conviction, finding that Rodriguez did not act with reckless disregard for the safety of human life by shining the laser pointer at the helicopter, and remanded his conviction for aiming the pointer itself for resentencing.[4]

## I. FACTS

On a clear summer night in 2012, Mr. Rodriguez, his girlfriend, and their children pointed a high-powered green laser pointer towards the

* J.D. Candidate, May 2016, Golden Gate University School of Law.

[1] United States v. Rodriguez, 790 F.3d 951 (9th Cir. 2015).

[2] 18 U.S.C.A. § 39A (West 2015). (stating that, "[w]hoever knowingly aims the beam of a laser pointer at an aircraft in the special aircraft jurisdiction of the United States, or at the flight path of such an aircraft, shall be fined under this title or imprisoned not more than 5 years, or both").

[3] 18 U.S.C.A. § 32(a) (West 2015). (stating in pertinent part, "[w]hoever willfully . . . (5) interferes with or disables, with the intent to endanger the safety of any person or with reckless disregard for the safety of human life, anyone engaged in the authorized operation of such aircraft or any air navigation facility aiding in the navigation of any such aircraft; . . . or . . . (8) attempts or conspires to do anything prohibited under paragraphs (1) through (7) of this subsection; shall be fined under this title or imprisoned not more than twenty years or both.").

[4] *Rodriguez,* 790 F.3d at 961.

open night sky from the courtyard of their apartment complex.[5] While determining how far the laser pointer would reach, a medical transport helicopter and a police helicopter were flashed multiple times.[6] One pilot described the intensity of the flashes as "brighter than the high beams of a car light by far" and compared it to putting a "high-intensity flashlight up to your face and turning it on."[7] Ground units at the police department were directed to the origin of the laser pointer where Mr. Rodriguez, his girlfriend, several children and adults were gathering outside of their apartment complex.[8] Mr. Rodriguez initially fled but was quickly apprehended and the laser was retrieved from his pocket.[9]

At trial, experts testified that Mr. Rodriguez's laser had approximately sixty-five milliwatts of power; however, federal regulations prohibit the sale of lasers stronger than five milliwatts.[10] In spite of this, the laser had an attached disclaimer stating that the output power did not exceed five milliwatts and the product complied with federal regulations.[11] Experts further testified that 90 percent of green lasers purchased within the United States are not in compliance with federal regulations; nevertheless, the general public lacked such awareness and would not appreciate the power of such lasers by merely observing.[12]

Moreover, experts testified that a laser of that specific magnitude could cause "after-image, flash blindness, glare, and distraction"[13] and "permanent injury to the eye up to around 180 feet."[14] Although one pilot experienced disorientation and an after-image upon exposure to the flashes, neither pilot sustained any lasting physical injury.[15] Furthermore, the medical transport helicopter was flown approximately 1,100 feet above the ground and the police helicopter was flown approximately 500 feet above the ground.[16]

Mr. Rodriguez's girlfriend, Jennifer Coleman, testified that she purchased the laser for seven dollars as a toy on Amazon.com for her children.[17] Ms. Coleman further testified that she was not aware of the risks

---

[5] *Id.*
[6] *Id.* at 954.
[7] *Id.*
[8] *Id.*
[9] *Id.* at 954-55.
[10] *Id.* at 955.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.* at 956.

or legality of pointing a laser beam towards aircraft.[18] The jury found Mr. Rodriguez guilty of violating 18 U.S.C. § 39, for "aiming a laser pointer at Air-1," and 18 U.S.C. §§ 32(a)(5), (a)(8), for "willfully attempting to interfere with the safe operations of Air-1 in reckless disregard for human safety" and as a result he was sentenced to a total of nineteen years in prison.[19]

## II. COURT'S ANALYSIS

### A. WHETHER THE GOVERNMENT MET ITS BURDEN TO PROVE THAT MR. RODRIGUEZ HAD THE REQUISITE MENS RE TO SUPPORT HIS CONVICTION UNDER 18 U.S.C. §§ 32(A)(5), (A)(8)

The Ninth Circuit was presented with the question of whether the government met its burden to prove that Mr. Rodriguez had the requisite mens rea to support his conviction under 18 U.S.C. §§ 32(a)(5), (a)(8). The court noted that a ruling on a defendant's motion for judgment of acquittal is reviewable *de novo*.[20]18 U.S.C. §§ 32(a)(5), (a)(8) requires proof that,

> 1) the defendant willfully attempted to interfere with or disable a person engaged in the authorized operation of an aircraft or any air navigation facility aiding in the navigation of an aircraft; 2) the defendant intended to endanger the safety of a person or acted with a reckless disregard for the safety of human life; 3) the aircraft was in the special jurisdiction of the United States or was a civil aircraft used, operated, or employed in interstate commerce; and 4) the defendant took a substantial step toward committing the crime.[21]

Reckless disregard for the safety of human life could have been established by evidence that Mr. Rodriguez 1) was aware that "the laser had the ability to blind or distract a pilot enough to cause a crash,"[22] and 2) "deliberately disregard[ed] a substantial and unjustifiable risk . . . of which [he was] aware."[23]

Mr. Rodriguez did not appeal or dispute his conviction under 18 U.S.C. § 39A and admitted to intentionally pointing a laser at the A-1

---

[18] *Id.*

[19] *Id.* at 953, 956.

[20] *Id.* at 957.

[21] *Id.* at 957.

[22] *Id.* at 958.

[23] *Id.* (citing United States v. Albers, 226 F.3d 989, 994-95 (9th Cir. 2000), *cert. denied*, 531 U.S. 114 (2001)).

aircraft.[24] However, the government contended that this admission allowed for a rational inference that when Mr. Rodriguez intentionally pointed the dangerously bright laser at the A-1, he knew the risk posed to the aircraft and therefore "acted with reckless disregard for the safety of human life and must have intended to interfere with the pilot's operation of the aircraft."[25]

The Ninth Circuit relied heavily on *United States v. Gardenhire*,[26] in which the court held that a finding of recklessness could not be substantiated by the defendant's bare admission that he intentionally aimed a laser at an aircraft knowing the dangers of shining the laser in someone's eyes.[27] The court noted that the government's arguments made in *Gardenhire* were identical to the government's arguments presented at Mr. Rodriguez's trial.[28] Like Mr. Rodriguez, Mr. Gardenhire admitted to the FBI that he intentionally directed a laser pointer at a Cessna jet and a police helicopter.[29] The government adduced that Mr. Gardenhire knew the laser could be dangerous if shined directly into someone's eyes and, furthermore, knew that the laser could reach the aircraft.[30] On the contrary, the Ninth Circuit held that these facts did not establish clear and convincing evidence that Mr. Gardenhire was aware of the risk of his conduct.[31] The court in *Gardenhire* rationalized that although

> one knows that the laser is dangerous when pointed directly in a person's eyes does not mean that one knows about the beam's ability to expand and refract rendering it particularly hazardous for pilots in an aircraft miles away, or that the danger is heightened at nighttime because the pilot's eyes have adjusted to the dark.[32]

The court cited *United States v. Nahani*[33] and *United States v. Gonzalez*,[34] in which the Ninth Circuit held that the defendants' conducts

---

[24] *Rodriguez,* 790 F.3d at 958.

[25] *Id.*

[26] 784 F.3d 1277 (9th Cir. 2015) (holding that the record was devoid of clear and convincing evidence that the defendant was aware of the risk created by his conduct when he aimed his laser beam at a passing airplane just for the fun of it).

[27] *Rodriguez,* 790 F.3d at 958.

[28] *Id.* at 959.

[29] *Id.*

[30] *Id.*

[31] *Id.* at 958 (citing *Gardenhire*, 784 F.3d at 1280).

[32] *Id.* at 959 (citing *Gardenhire*, 784 F.3d at 1282).

[33] 361 F.3d 1255 (9th Cir. 2004) (holding that the "district court properly found that the defendant should have been aware that his smoking, obstreperous behavior and threats 'would divert the flight attendants' attention from their duties and require their presence.").

[34] 492 F.3d 1031 (9th Cir. 2007) (finding that the district court failed to specify the standard of proof and, therefore, did not rule on reckless endangerment when the defendant made references to a bomb on a plane and threatened to blow up other passengers).

alone, which caused chaos onboard their respective commercial flights, were sufficient to support a finding of reckless endangerment.[35] The court distinguished *Naghani* and *Gonzalez*, holding that it was "appropriate to find, based on the intentionality of their conduct and the immediate and visible effects of their behavior, that they were aware of the risk their conduct created."[36] Here, the immediate risk created by the laser was not apparent to Mr. Rodriguez because it is not a commonly held notion that lasers do not operate like normal beams of light.[37] As such, Mr. Rodriguez's action of intentionally shining a laser pointer at aircraft is not clear and convincing evidence that he acted with reckless disregard for the safety of human life.[38]

The court briefly addressed the government's further argument that Mr. Rodriguez's attempt to run from the police and hide the laser established a guilty conscience.[39] Nonetheless, the court explained that such evasive conduct did not shed light as to whether Mr. Rodriguez tried to "willfully interfere with the safe operation of the aircraft with a reckless disregard for the safety of human life."[40]

## CONCLUSION

The Ninth Circuit emphasized that 18 U.S.C. § 39A was designed specifically for "knuckleheads" who do "stupid thing[s]" such as point lasers at aircrafts out of sheer boredom, whereas 18 U.S.C. § 32(a)(5) was intended for the "Osama bin Ladens of the world."[41] A lack of demarcation would lose sight of the Congressional intent to distinguish 18 U.S.C. § 39A from 18 U.S.C. § 32(a)(5) as articulated in the House Report on the Securing Aircraft Cockpits Against Lasers Act of 2011, the Act that created 18 U.S.C. § 39A.[42]

Some perpetrators have been charged under 18 U.S.C. § 32, relating to the destruction of aircraft. However, this provision requires the government to prove willful interference and intent to endanger the pilots. While this burden may be easily established when a person attempts to detonate a bomb onboard an aircraft or attempts to overtake a member of the flight crew, it is difficult to establish this same type of intent for a

---

[35] *Rodriguez,* 790 F.3d at 959.

[36] *Id.*

[37] *Id. See Gardenhire*, 784 F.3d at 1282 (explaining "'the farthest away [a laser beam] gets from the point of origin, the beam spreads out,' thus increasing its hazardousness, a notion that is counterintuitive, especially when one considers that an ordinary light beam would grow fainter.").

[38] *Rodriguez,* 790 F.3d at 960.

[39] *Id.* at 960-61.

[40] *Id.*

[41] *Id.* at 953.

[42] H.R. Rep. No. 112-11, at 2 (2011).

laser incident, even if the effect is actually to endanger the pilots. This bill recognizes the obvious and inherent danger of aiming a laser at an aircraft under any circumstance, as long as the offender knowingly aims the laser at the aircraft. The penalty under 18 U.S.C. § 32, twenty years, coupled with having to prove specific intent to interfere with, disable, or endanger the pilots, seem to be factors in multiple declinations of prosecution under the current statute.[43]

Fundamentally, a court's decision to convict Rodriguez of the more severe crime would have been a failure to recognize that Congress intended to create two distinct crimes for radically different types of offenders.

[43] *Rodriguez,* 790 F.3d at 953.