

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No: 05-3460

UNITED STATES OF AMERICA,
Appellant

v.

GARY BOWLEY

Appeal from the United States District Court
of the Virgin Islands
(Crim. No. 04-cr-00169-1)
District Judge: Hon. Raymond L. Finch, Chief Judge

Argued: December 8, 2005

Before: SCIRICA, Chief Judge, McKEE, Circuit Judge,
and NYGAARD, Senior Circuit Judge

ORDER AMENDING OPINION

IT IS HEREBY ORDERED that the slip opinion filed in this case on January 26, 2006, be amended as follows:

On pages 5 and 6, delete the following paragraph:

However, since the crime the VIPD officers initially arrested Bowley for (illegal reentry in violation of 8 U.S.C. § 1326(a), (b)(2)) is a misdemeanor, the district court held that Bowley's arrest was unlawful. Virgin Islands police can only arrest for a misdemeanor when the crime is committed in their presence. See 5 V.I.C. § 3562. The district court ruled that "[i]llegal reentry is not a continuing violation, but is completed at the time of entry . . . or when an alien has reached a place of repose within the country." App. 7. Accordingly, Bowley had not violated 8 U.S.C. § 1326(a), (b)(2) in the police officers' presence, and the court therefore concluded that the police officers lacked statutory authority to arrest him.

and replace it with

However, since the crime the VIPD officers initially arrested Bowley for (illegal entry in violation of 8 U.S.C. § 1325) is a misdemeanor, the district court held that Bowley's arrest was unlawful. Virgin Islands police can only arrest for a misdemeanor when the crime is committed in their presence. *See* 5 V.I.C. § 3562. The district court ruled that "[i]llegal entry is not a continuing violation, but is completed at the time of entry . . . or when an alien has reached a place of repose within the country." App. 7. Accordingly, Bowley had not violated 8 U.S.C. § 1325 in the police officers' presence, and the court therefore concluded that the police officers lacked statutory authority to arrest him.

BY THE COURT:

/s/ Theodore A. McKee
Circuit Judge

Dated: February 17, 2006