

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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UNITED STATES *v.* RODRIGUEZ-MORENOCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

No. 97–1139. Argued December 7, 1998– Decided March 30, 1999

A drug distributor hired respondent and others to find a New York drug dealer who stole cocaine from him during a Texas drug transaction and to hold captive the middleman in the transaction, Ephrain Avendano, during the search. The group drove from Texas to New Jersey to New York to Maryland, taking Avendano with them. Respondent took possession of a revolver in Maryland and threatened to kill Avendano. Avendano eventually escaped and called police, who arrested respondent and the others. Respondent was charged in a New Jersey District Court with, *inter alia*, using and carrying a firearm in relation to Avendano's kidnaping, in violation of 18 U. S. C. §924(c)(1). He moved to dismiss that count, arguing that venue was proper only in Maryland, the only place where the Government had proved he had actually used a gun. The court denied the motion, and respondent was convicted of the §924(c)(1) offense. The Third Circuit reversed. After applying what it called the "verb test," it determined that venue was proper only in the district where a defendant actually uses or carries a firearm.

Held: Venue in a prosecution for using or carrying a firearm "during and in relation to any crime of violence" in violation of §924(c)(1) is proper in any district where the crime of violence was committed. Under the *locus delicti* test, a court must initially identify the conduct constituting the offense (the nature of the offense) and then discern where the criminal acts occurred. See *United States v. Cabrales*, 524 U. S. 1, 6–7. Although the Third Circuit relied on the statute's verbs to determine the nature of the offense, this Court has never held that verbs are the sole consideration, to the exclusion of other relevant statutory language. A defendant's violent acts are essential conduct elements of the §924(c)(1) offense despite being embedded in

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the prepositional phrase, “during and in relation to any crime of violence.” Thus, the statute contains two distinct conduct elements— as is relevant to this case, using and carrying a gun and committing a kidnaping. Where a crime consists of distinct parts which have different localities, venue is proper for the whole charge where any part can be proved to have been committed. See *United States v. Lombardo*, 241 U. S. 73. Respondent’s argument that §924(c)(1) is a “point-in-time” offense that only is committed in the place where the kidnaping and use of a gun coincide is unpersuasive. Kidnaping is a unitary crime, which, once begun, does not end until the victim is free. It does not matter that respondent used the gun only in Maryland because he did so “during and in relation to” a kidnaping that began in Texas and continued in New York, New Jersey, and Maryland. The kidnaping, to which the §924(c)(1) offense is attached, was committed in all of the places that any part of it took place, and venue for the kidnaping charge was appropriate in any of them. Where venue is appropriate for the underlying crime of violence, so too it is for the §924(c)(1) offense. Pp. 3–7.

121 F. 3d 841, reversed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O’CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which STEVENS, J., joined.