

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1702  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

IVORY GIBSON, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:92-CR-055-C  
- - - - -

May 7, 1993

Before REAVLEY, KING, and DAVIS, Circuit Judges.

PER CURIAM:\*

Ivory Gibson, Jr.'s sole contention on appeal is that the district court erred by not allowing the introduction of hearsay evidence regarding the statements of Edward Earl Kelley. Kelley was not a named codefendant in the indictment against Gibson; however, he was arrested along with Gibson on April 17, 1992. Kelley was called as a defense witness at Gibson's trial. He declined to answer all questions based on his Fifth Amendment privilege. Defense counsel then argued that police officer

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Dewayne Proctor should be to allowed testify as to statements made by Kelley regarding his ownership of a .22 caliber revolver and his residence at 2201 East Sixth Street.

Federal Rule of Evidence 804(b)(3) provides an exception to the hearsay rule for statements made against a declarant's interest with the proviso that "[a] statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." (emphasis supplied). A district court's determination as to the trustworthiness of an out-of-court statement will be upheld unless it is clearly erroneous. United States v. Briscoe, 742 F.2d 842, 846 (5th Cir. 1984).

While Gibson has presented some record support for the trustworthiness of Kelley's statement that he resided in Gibson's house, he has not concretely rebutted the arguments made by the prosecution at trial for questioning the reliability of Kelley's statement. Specifically, Kelley did not know the street address, 2201 East Sixth Street, of Gibson's residence, and Gibson had reported to his parole officer that he lived alone at 2201 East Sixth Street. The parole officer testified that as late as April 7, 1992, Gibson had asserted that he lived alone. Gibson has failed to show that the district court was clearly erroneous in determining that Kelley's out-of-court statements were not trustworthy.

AFFIRMED.