

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3646
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EARLE LLOYD JOHNSON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR-92-90-E
- - - - -

June 23, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Earle Lloyd Johnson appeals his conviction for making a false statement on a passport application in violation of 21 U.S.C. § 1542, arguing that the district court improperly admitted extrinsic evidence of his status as an Air Force deserter and of prior court martial proceedings instituted against him.

Under Fed. R. Evid. 404(b), evidence of past crimes may be admitted if, first, it is relevant to an issue such as the defendant's motive, opportunity, intent, preparation, plan,

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

knowledge, identity, or absence of mistake or accident. United States v. Anderson, 933 F.2d 1261, 1268 (5th Cir. 1991). In addition, under Fed. R. Evid. 403, the prejudicial effect of the evidence cannot substantially outweigh its probative value. Id. at 1269. A district court's decision to admit such evidence is reviewed for abuse of discretion. United States v. Moye, 951 F.2d 59, 61 (5th Cir. 1992).

The references to Johnson's court martial proceeding in Mississippi were clearly relevant to the issue of Johnson's identity, as defense counsel questioned how the airport authorities who testified for the government could identify Johnson in court based solely on their brief interaction with Johnson at the Houston airport. These witnesses, however, had also testified against Johnson at a court martial proceeding in Mississippi, thereby giving them a better basis for identifying Johnson at trial in the instant case.

The two references to his status as a deserter were elicited in order to explain why Johnson was routed to secondary inspection by customs officials at the Houston airport, but as Johnson argues on appeal, it was not necessary for the prosecution to reveal the specific content of the computer alert in order to explain that Johnson was singled out at the airport. As the Government suggests, however, these references are relevant to Johnson's motives in acquiring the false passport -- he had deserted from the Air Force and needed "clean" documentation in order to travel freely.

Although the references to Johnson's status as a deserter

and prior court martial were undoubtedly prejudicial, such prejudice did not outweigh the probative value to the extent requiring reversal. See Moyer, 951 F.2d at 62 (citations omitted). Even so, any reversible error in the admission of the evidence was rendered harmless in light of the overwhelming evidence of Johnson's guilt. See United States v. Williams, 957 F.2d 1238, 1244 (5th Cir. 1992) (error in admitting evidence considered harmless unless it "substantially influenced the jury's verdict.") (citation omitted).

The physical evidence found in Johnson's bags, in addition to the testimony of witnesses such as Becky Usie, the deputy clerk of the Terrebone Parish Clerk of Court's Office who processed Johnson's false passport application, establishes that Johnson knew that he falsified information on the passport application when he represented himself to be Alton Johnson, and that he did so with the intent to secure a false passport under the name Alton Johnson. See United States v. Mount, 757 F.2d 1315, 1318 (D.C. Cir. 1985). The conviction is AFFIRMED.