

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-4712  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LORI LEIGH REED,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(6:90 CR 2)

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(December 18, 1992)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Appellant Reed pursues this out-of-time appeal of her conviction for conspiracy to commit arson and aiding and abetting arson in connection with the burning of the Dollar General Store in Palestine, Texas on January 26, 1987. She appeals alleged instances of prosecutorial misconduct and alleged ineffectiveness of her defense counsel for failing to object to the certain actions

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

by the prosecutor and failing to obtain a proper transcript of a taped conversation used against her at trial. We find no merit to these contentions and affirm.

To the extent Reed's appeal concerns an allegedly inaudible copy of the tape or an inadequate transcript of the incriminating conversation, the district court found that Reed's contention was not credible. After this matter was aired in a hearing on motion for new trial, the district court accepted the testimony of assistant U.S. Attorney Hurst and defense counsel Sallas rather than that of Reed, and we find no basis to declare his credibility choice clearly erroneous. Accordingly, there is no basis for this court to hold that any prosecutorial misconduct occurred relative to the tape or the copy of it that was furnished Reed before trial.

Reed also asserts various instances of alleged prosecutorial misconduct, but none of these were objected to at trial. Our standard of review of unobjected-to errors permits reversal only if the misconduct constituted plain error that would seriously affect the fairness, integrity or public reputation of judicial proceedings and result in a miscarriage of justice. United States v. Graves, 669 F.2d 964, 971 (5th Cir. 1982). None of the errors Reed mentions fulfills this exacting standard. Reed contends that prosecutor Hurst intimidated witness Dorothy McGruder with a threat of perjury so that McGruder was prevented from testifying that Reed's stockboy Joe Corpus had threatened to burn down the store. The trial court discussed McGruder's potential

testimony to this effect in its exhaustive order on motion for new trial. As the court noted, Reed testified at trial and was supposedly in the vicinity when Corpus made such a threat and she discussed it with McGruder, yet Reed did not herself testify concerning Corpus's alleged remark that he would burn the store down. Reed did testify to Corpus's having told her that other individuals would burn down the store for \$150. Corpus himself testified that after Reed told some of her employees that the store was going to be burned that night, he also assured them that this would occur. There was abundant evidence linking Reed to the arson. Considering that evidence and the other testimony of Corpus's knowledge of the crime, it is most unlikely that any threats the prosecutor made to McGruder substantially prejudiced her right to a fair trial. United States v. Montemayor, 684 F.2d 1118, 1124 (5th Cir. 1982).

Reed next contends that it was improper for the prosecutor to introduce evidence that she had stolen money and clothing from the Dollar Store. This evidence was, however, admissible because it was inextricably intertwined with the offenses charged, being highly probative of Reed's motive to commit arson. United States v. Supulveda, 710 F.2d 188, 189 (5th Cir. 1983). It was also not unfair for the prosecutor to introduce a love letter she wrote to Corpus while they were having an affair. She had already testified on direct that she had had the affair. Because it was cumulative evidence, the letter cannot have affected the result of the trial.

Reed's objection to the prosecutor's closing argument points out matters that are neither improper nor improperly prejudicial. Certainly there was no plain error in his closing argument.

Reed's contentions of ineffectiveness of counsel fail both the deficiency and prejudice prongs of the Strickland test. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052 (1984). These are so meritless that we need not recite them in detail, but merely list the frivolous contentions that we understand Reed to be making:

- (1) That her counsel did not obtain authentic and complete discovery of the tape recording and transcript of her incriminating recorded conversation with Corpus;
- (2) that her taped and oral volunteered statements should have been suppressed;
- (3) that "improper attacks on her character" by the prosecutor should have been objected to;
- (4) that other remarks of the prosecutor in closing argument, such as the fact that Corpus had returned to his wife and family, should have been objected to.

These challenges may be summed up by saying that Reed's counsel was not called upon to make meritless objections that stood no chance of being sustained by the trial court. Reed's attorney rendered competent service as her counsel in the face of overwhelming evidence against his client.

The judgment of the district court is AFFIRMED.