

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7765

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

CARL E. DIXON, WILLIAM N. DIXON,
and MICHAEL E. DIXON,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(CR J92-00066-L-C)

(November 1, 1993)

Before POLITZ, Chief Judge, and HIGGINBOTHAM, Circuit Judges, and
PICKERING,* District Judge.

PER CURIAM:**

On June 3, 1992, the government charged Michael, Carl, and
William Dixon with conspiring to intimidate and interfere forcibly
with federal law enforcement officers in violation of 18 U.S.C.
§ 371, and with aiding and abetting the forcible intimidation and

*Charles W. Pickering, Sr., U.S. District Judge for the
Southern District of Mississippi, sitting by designation.

**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that this opinion should not be published.

interference with federal law enforcement officers in violation of 18 U.S.C. § 111.

The indictment relates to the events of March 27 and 28, 1992, when Special Agent Wayne Smith of the U.S. Forest Service received word of apparent acts of hunter harassment in the Homochitto National Forest near Forest Service Road 133 ("F.S. 133").

Smith initiated an investigation. Posing as turkey hunters, Smith, Tommy Tyrone, Richard Cooley, and David Lindsey, all Forest Service agents, set up camp inside the national forest to survey the situation.

The agents encountered Carl, Michael, and William Dixon on a number of occasions. The agents claim that the Dixons harassed them, threatening to prosecute them for trespassing; driving a truck and an all terrain vehicle in a rowdy manner on F.S. 133 near the camp; firing shotguns, high powered rifles, and pistols into the camp; running a chainsaw near the camp; stalking the camp with a pistol; and making owl and turkey calls to mock the agents.

The Dixons reply that though they warned the agents not to trespass on private property, they spent the weekend hunting turkeys; cutting timber for firewood; conducting target practice; shooting at a buzzard, a coyote, and a pine tree; travelling on F.S. 133 at various times to visit a relative, retrieve a stray dog, look for a lost cow, and visit a remote food plot; strolling near the campsite looking for "turkey signs;" and making "hoot owl" noises to "draw the turkeys out."

The jury convicted Michael, Carl, and William Dixon for violating Section 371, and convicted Carl Dixon for violating Section 111. The Dixons argue that the jury did not hear sufficient evidence to convict on both counts, and that the district court should not have admitted testimony of private hunters who had similar encounters with them. We affirm.

I

To prove a violation of Section 371, the government must prove an agreement between two or more persons to commit a crime against the United States, and an overt act committed by one of the conspirators in furtherance of the agreement. United States v. Schmick, 904 F.2d 936, 941 (5th Cir. 1990), cert. denied, 111 S.Ct. 782 (1991). Viewing the evidence in the light most favorable to the government, we conclude that a reasonable jury could have found a violation of Section 371 beyond a reasonable doubt.

The government proved that the Dixons, by concerted action, conspired to intimidate and interfere with the agents. In addition, the agents testified to a number of overt acts. Moreover, private hunters provided corroborating testimony about similar encounters with the Dixons.

William Dixon argues that the jury found the allegation that he displayed a pistol in a threatening manner to be insufficient to support a conviction on count 2, implying that the government cannot use this incident to support a conviction on count 1. The government, however, can prove a conspiracy with only one overt act. United States v. Dearden, 546 F.2d 622 (5th Cir. 1977), cert.

denied, 434 U.S. 902 (1977). The government proved a number of overt acts, and did not need to prove that William Dixon displayed his gun in a threatening manner to get a conviction on count 1.

In addition, William Dixon argues that he could not have known about the conspiracy because he arrived after his relatives had already encountered the agents. A conspiracy, however, can be inferred from a collection of circumstances, and William Dixon's late arrival does not erase his involvement in the harassment. In fact, each member of the conspiracy does not have to be involved throughout the entire conspiracy. United States v. Wilson, 500 F.2d 715, 724 (5th Cir. 1974), cert. denied, 420 U.S. 977 (1975).

To get a conviction under Section 111, the government had to prove that the Dixons forcibly intimidated and interfered with the agents, who were federal officers engaged in the performance of their official duties, and that the Dixons acted intentionally and used a deadly weapon. 18 U.S.C. § 111(a)(1) and (b). Again, viewing the evidence in the light most favorable to the government, we conclude that a reasonable jury could have found that Carl Dixon violated Section 111 beyond a reasonable doubt.

At trial, an agent testified that he saw Carl Dixon fire a shotgun in his direction. As well, the evidence indicates that Carl Dixon fired shots intentionally in the direction of the agents after he saw their jeep parked on F.S. 133. Other agents testified that they had to seek cover for protection against the gun shots. Given the deferential evidentiary standard, the government has demonstrated sufficient evidence on this count.

II

The district court properly introduced the similar acts evidence through testimony of private hunters who had encountered the Dixons under Rule 404(b) of the Federal Rules of Evidence, as the court conducted an inquiry under United States v. Beechum, 528 F.2d 898 (5th Cir. 1978), determining that the testimony was proximate in time and that it met the preponderance of the evidence test. In addition, the district court balanced the probative value of the evidence against its prejudicial effect, concluding that the former substantially outweighed the latter.

The prior bad acts evidence established intent, plan, and motive. It showed that the Dixons considered the federal land to be their own, and wanted to exclude others from the property through intimidation tactics. The recurrence of these tactics, demonstrated by the testimonial evidence of private hunters who had encountered the Dixons, establishes that the Dixons knew about hunters on federal land, and planned to exclude them from it.

AFFIRMED.