UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-1607
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

IRWIN I. ("Ira") GROSSMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:92-CR-250-H(01))

(April 8, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant Grossman appeals his conviction for bank fraud, conspiracy to commit bank fraud, and for making false statements to a federally insured banking institution. He complains that the evidence was insufficient and that his cross-examination of a co-defendant who entered a plea and testified for the Government was improperly restricted. We disagree and affirm.

Appellant's claims of insufficient evidence center around

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

several documents submitted to the lender bank in connection with a loan to develop condominiums. We examine the sufficiency of the evidence under the well-known standard of Jackson v. Virginia, 443 U.S. 307 (1979).

To convict for false statements, the Government was required to prove that Appellant knowingly made a false statement of a material fact to a federally insured financial institution for the purpose of influencing the institution's action. 18 U.S.C. § 1014; United States v. Williams, 12 F.3d 452, 456 (5th Cir. 1994). A conviction for aiding and abetting requires proof that the Defendant "associated with a criminal venture, participated in the venture, and sought by his action to make the venture succeed." United States v. Parekh, 926 F.2d 402, 406 (5th Cir. 1991) (quotations and citations omitted); see 18 U.S.C. § 2. Appellant challenges the sufficiency of the evidence as to certain specific documents submitted in connection with the loan transaction.

The borrower was unable to provide a $1.6 million dollar performance bond at the closing and substituted therefore a "comfort letter" which was prepared at Appellant's direction. The letter grossly overstated Appellant's ability to obtain a bond, and was relied upon by the bank as evidence of Appellant's bondability. The land survey submitted with the loan documents showed the borrower as owner of one of the tracts used to collateralize the loan. In fact, the borrower did not own the property at closing and did not acquire it until after the closing. This was known to Appellant. The lender testified that, had it known that the

property was not owned when the loan was closed, it would have had considerable additional questions concerning the transaction, and may have imposed additional requirements. Borrower statements were submitted by the borrower in connection with both the loan closing and the subsequent release of funds. These statements were materially incorrect in a number of respects. They stated that the mortgage broker had received a one-point fee when in fact it had received a two-point fee; provided that surveys had been paid for when they had not; falsely indicated that a $60,000 payment had been made to another bank and that a $7,800 mechanic's lien had been paid; and showed that an expenditure of $44,000 for a performance bond had been made when in fact it had not. The false financial data in the borrower's statements was provided by Appellant. The bank relied upon these statements to represent the manner in which the loan proceeds had been, and would be, disbursed. Appellant also knowingly allowed a totally bogus insurance binder to be submitted to the lender in order to bond a lien which had been filed against the project. Likewise, Appellant participated in the submission of a worthless letter of credit to the lender in support of a bond to indemnify against other liens. All of this conduct was more than sufficient to permit a rational jury to conclude beyond a reasonable doubt that Appellant committed, or aided and abetted the commission of, each of the false statement counts.

To convict for conspiracy, the Government was required to prove beyond a reasonable doubt 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. 18 U.S.C. § 371. The Government was also required to prove that Defendant knew of the conspiracy and voluntarily joined it. United States v. Yamin, 868 F.2d 130, 133 (5th Cir.), cert. denied, 492 U.S. 924 (1989). A bank fraud conviction requires proof that defendants knowingly executed or attempted to execute a scheme to defraud a federally charted or insured financial institution, or that he obtained funds or credits from such an institution by means of false and fraudulent pretenses. 18 U.S.C. § 1344(1) and (2). The evidence discussed above more than adequately supports the jury's finding beyond a reasonable doubt that Appellant knowingly used false representations to obtain the funds from the lender and that he conspired with others to do so.

In determining the validity of Appellant's suggestion that his cross-examination was unduly limited by the trial court we bear in mind that the district court, once Confrontation Clause concerns have been satisfied, has wide discretion in limiting cross-examination. United States v. Restivo, 8 F.3d 274, 278 (5th Cir. 1993). Codefendant Milam testified on direct examination that he had pleaded guilty to conspiracy in the same case and that, as a part of the plea agreement, he had agreed to cooperate with the Government. He repeated that testimony on cross-examination. When asked by Appellant's counsel whether or not he was originally facing a potential forty-five year prison term, Milam responded that he had not added up the years involved. The court would not

permit questioning on the term of incarceration that may have resulted had there been no plea agreement and had the witness been convicted. He did allow, however, the fact of the making the plea agreement, and that the terms thereof could be made available to the jury. This was sufficient to make the jury aware that the witness was testifying against Appellant pursuant to a plea agreement which significantly limited his exposure to potential criminal charges. Additionally, the limitation of questions concerning the term of sentence which may or may not have been imposed was well within the trial court's discretion. Finally, the jury was instructed that it should consider whether each and every witness had any particular reason not to tell the truth, and the court reminded the jury that several prosecution witnesses had entered into plea agreements which provided for dismissal of some charges or a plea to a lesser charge. The court specifically instructed that the jurors should consider whether such agreements may have affected the testimony given by the witnesses. We find no abuse of discretion.

AFFIRMED.