

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1815
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAUL LOPEZ SAENZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CR-083-D(01)

- - - - -
(July 21, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Raul Lopez Saenz appeals from his conviction for distributing cocaine in violation of 21 U.S.C. § 841(a)(1). Saenz contends that the district court abused its discretion by disallowing testimony concerning prior acts of misconduct committed by prosecution witness Pete Castillo, a confidential informant for the Drug Enforcement Administration (DEA) who purchased four ounces of cocaine from Saenz while wearing an electronic transmitter and recording device for the DEA.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The district court disallowed the evidence based on FED. R. EVID. 608(b). A district court's evidentiary rulings are reviewed on appeal for an abuse of discretion. United States v. Martinez, 962 F.2d 1161, 1164 (5th Cir. 1992). Under FED. R. EVID. 608(b), cross-examination is permitted "to inquire into specific instances of conduct concerning the witness's character for truthfulness or untruthfulness as long as the questioning is probative of credibility," United States v. Lopez, 979 F.2d 1024, 1033 (5th Cir. 1992), cert. denied, 113 S.Ct. 2349 (1993), but prohibits the introduction of extrinsic evidence to attack a witness's credibility. Id.

Saenz argues, however, that this rule does not bar extrinsic evidence offered to contradict a witness's testimony about a material issue in the case. See, e.g., United States v. Blake, 941 F.2d 334, 338 (5th Cir. 1991), cert. denied, 113 S.Ct. 596 (1992). He contends that the evidence was admissible in response to Castillo's testimony that he began to work for the DEA because his sister had died in a crack house and that the involvement of other members of his family with drugs had devastated his family.

Castillo's testimony in the instant case does not fall under the exception to Rule 608(b) cited by Saenz. Castillo's testimony concerning his motives for assisting the DEA was not direct evidence of Saenz' guilt of the crimes charged; rather, it was probative of his credibility, which Saenz sought to attack through extrinsic, direct evidence of prior bad acts. As such, it was inadmissible under Rule 608(b). See Lopez, 979 F.2d at 1033; FED. R. EVID. 608(b).

Moreover, Saenz was able to introduce ample evidence concerning Castillo's motives for cooperating with the DEA. The district court did not abuse its discretion by disallowing the additional evidence.

AFFIRMED.