

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3177  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee.

versus

ABED ALABED,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. CR 92 530 L  
- - - - -  
(November 1, 1993)

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

PER CURIAM:\*

Abed Alabed complains that a video recording of tape duplication equipment seized in California should not have been shown to the jury because his only connection with the operation in California was to receive shipments. This Court applies a highly deferential standard to the trial court's evidentiary rulings and will reverse only for an abuse of discretion. United States v. Anderson, 933 F.2d 1261, 1267-68 (5th Cir. 1991). When

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

we find that the district court abused its discretion, we review any such error for harmless error. United States v. Capote-Capote, 946 F.2d 1100, 1105 (5th Cir. 1991), cert. denied, 112 S.Ct. 2278 (1992).

Given the district court's curative instructions and the Government's prefacing remarks, the video recording's probative value was not outweighed by unfair prejudice. See Fed. R. Evid. 403; United States v. McRae, 593 F.2d 700, 707 (5th Cir.), cert. denied, 444 U.S. 862 (1979). Even if the court abused its discretion in allowing the evidence, its curative instruction rendered the error harmless.

Alabed argues that the court improperly increased his base offense level by two for obstruction of justice because the information relied on by the court was unreliable. The obstruction of justice enhancement applies to conduct which includes "threatening, intimidating, or otherwise unlawfully influencing a co-defendant, witness, or juror, directly or indirectly, or attempting to do so. . . ." U.S.S.G. § 3C1.1, comment. (n.3(a)). For sentencing purposes, the district court may consider any relevant evidence "without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy." § 6A1.3(a), p.s. The "sufficient indicia of reliability" language has been interpreted by this Court to require that the facts used by the district court for sentencing purposes be "reasonably reliable." United States v. Shacklett, 921 F.2d 580, 585 (5th Cir. 1991).

"[T]he defendant bears the burden of demonstrating that the information cannot be relied upon because it is materially untrue, inaccurate or unreliable." United States v. Angulo, 927 F.2d 202, 205 (5th Cir. 1991).

Alabed mistakenly characterizes Agent Brechtel's testimony as hearsay, arguing that Brechtel had no personal knowledge of Alabed's statements. Agent Brechtel testified at the sentencing hearing that Alabed called him and gave instructions which included threats to the Customs employee and agent. Brechtel's testimony alone supplied reliable information on which the court could base its finding that Alabed attempted to obstruct justice.

The judgment is AFFIRMED.