IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3180

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

JERRY BEDFORD and KIM R. HOGAN,

Defendants-Appellees.

Appeals from the United States District Court
for the Eastern District of Louisiana
(CR-92-294-K)

(November 12, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Jerry Bedford and Kim R. Hogan were convicted by a jury of distribution of cocaine and conspiracy to distribute cocaine. Bedford and Hogan allege various procedural deficiencies in their trial. We affirm.

I

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Bedford and Hogan argue that the government violated Batson v. Kentucky, 476 U.S. 79 (1986), by using five of its six peremptory challenges against prospective black jurors. The magistrate judge conducting the voir dire found no violation. On appeal, Bedford and Hogan confine the Batson challenge to the government's rejection of one prospective juror, Leonetta Gordon, who worked as a nursing assistant at the Veterans Administration Center.

As an initial matter, the Batson argument loses some force as one black person was included on the jury. As we stated in United States v. Mixon, 977 F.2d 921 (5th Cir. 1992), "[t]he one black accepted by the government weakens the argument that the government was accepting jurors solely on a racial basis." Id. Further, the government proffered a reason for striking Mrs. Gordon grounded in objective fact, so that her elimination stands a greater chance of avoiding Batson problems. United States v. Bentley-Smith, No. 91-3427, slip op., at 91-93 (5th Cir. Sept. 20, 1993).

Proof of a Batson violation entails a three-step process. First, a defendant must make a prima facie showing that the prosecutor struck a potential juror on the basis of the juror's racial background. Second, the burden shifts to the prosecutor to demonstrate a race-neutral reason for the challenge. Third, the trial court must decide whether the defendant proved purposeful discrimination. Hernandez v. New York, 111 S.Ct. 1859, 1866 (1991).

We consider a prosecutor's reasons for excluding a juror to be race-neutral unless a discriminatory intent is inherent in his

explanation. Mixon, 977 F.2d at 922. In this case, Mrs. Gordon's employment as a nursing assistant at a VA hospital, coupled with her statements during voir dire, suggested that she worried about budgetary cutbacks, a worry that could translate into an anti-government bias. We have held that a prospective juror's employment could provide grounds for a permissible challenge. United States v. Moreno, 878 F.2d 817, 820-21 (5th Cir.), cert. denied, 493 U.S. 979 (1989).

To be sure, the government did not exclude another juror who worked at the Medical Center of Louisiana, but this juror worked for the state, not the federal government, and the prosecutor gave other reasons for his selection that the district court was in a better position to evaluate. As we have stated, "[a]lthough the prosecutor may have accepted a white juror with some characteristics similar to the black persons he rejected, the prosecutor also gave reasons for his selection that we are unable to evaluate, such as eye contact and demeanor." United States v. Lance, 853 F.2d 1177, 1181 (5th Cir. 1988).

II

Bedford argues that the government proffered insufficient evidence to support his conviction. Though individual facts and circumstances offered by the government might be inconclusive if considered alone, they "'may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof.'" United States v. Lechuga, 888 F.2d 1472, 1476 (5th Cir. 1989) (quoting Coggeshall v. United

States (The Slavers, REINDEER), 69 U.S. (2 Wall.) 383, 401 (1865)).

Under 21 U.S.C. § 841(a), the government must show knowing possession with intent to distribute. United States v. Munoz, 957 F.2d 171, 174 (5th Cir.), cert. denied, 113 S.Ct. 332 (1992). On the conspiracy charge, the government must show an agreement to possess with intent to distribute and the defendant's knowledge of and voluntary participation in the conspiracy. United States v. Sparks, No. 92-4302, slip op. (5th Cir. Sept. 14, 1993).

Bedford alleges that the evidence, at most, demonstrates that he "gave something to the undercover officer," and that the evidence does not demonstrate that he knew that he handed the officer illicit drugs. Contrary to Bedford's assertion, however, the government produced ample evidence that Bedford knowingly entered into a drug transaction. Sergeant Mornay testified that he and Hogan negotiated a price for the drugs, and then Hogan "nodded to" Bedford, who then placed the cocaine in his hand.

Bedford also argues that Sergeant Mornay's testimony and Agent Willis' testimony conflicted because Mornay testified that he did not have a conversation with Bedford, but Willis testified that he observed a conversation between the two. Neither Mornay's nor Willis' statement, however, excludes the possibility that Mornay and Bedford talked or did not talk. The testimony indicated that Bedford stood near Hogan and Mornay while the two talked to each other, that Hogan signalled Bedford, and that Bedford placed drugs in Mornay's hand. Taking the appropriately deferential posture toward the verdict, we find sufficient evidence to support the convictions.

III

Hogan and Bedford argue that the district court abused its discretion in denying motions for mistrials on two separate occasions based on a statement made by a government witness on direct examination and a comment made by an Assistant U.S. Attorney during cross-examination of a defense witness.

During the direct examination of a police officer, the officer stated, "Mr. Hogan was known for carrying firearms." At that point, Hogan's defense counsel approached the bench and asked for a mistrial, arguing that the comment supplied impermissible and prejudicial evidence of other crimes. The court issued a curative instruction. Given the nature of the comment, the strength of the government's case, and the curative instruction, we find that the comment was not so prejudicial as to have a substantial impact on the verdict. United States v. Gollott, 939 F.2d 255, 259 (5th Cir. 1991).

Similarly, during direct examination of a defense witness, an Assistant U.S. Attorney stated, "You say that drug activity in your neighborhood slacked down. That's because of Kim Hogan's arrest?" The district court sustained defense counsel's immediate objection, but instead of issuing a curative instruction, the court directed the jury to "disregard that remark." Again, given the context in which the Assistant U.S. Attorney made the comment, the comment was not reversible error. United States v. Carter, 953 F.2d 1449, 1457 (5th Cir.), cert. denied, 112 S.Ct. 2980 (1992).

AFFIRMED.