

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7547
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RITA MARIE LAMPTON JONES,

Defendant-Appellant.

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Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. S92-00031(G)(R)

- - - - -
(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Rita Marie Lampton Jones argues that the district court abused its discretion by admitting expert testimony regarding cocaine trafficking, methods of operation, and tools of the trade at her jury trial on federal narcotics charges.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

thereto in the form of an opinion or otherwise." Fed. R. Evid. 702. Testimony in the form of an opinion "is not objectionable because it embraces an ultimate issue to be decided by a trier of fact," unless it is an opinion regarding whether the defendant had the "mental state or condition constituting an element of the crime charged or of a defense thereto." Fed. R. Evid. 704. "An expert's testimony may take the form of an opinion if it serves to inform the jury about affairs not within the understanding of the average man." United States v. Moore, 997 F.2d 55, 57 (5th Cir. 1993) (internal quotations and citations omitted). Emile's testimony met these requirements because it helped the jury to understand how crack is usually distributed and he offered no opinion on the defendant's intent to commit the crimes charged.

In United States v. Speer, 30 F.3d 605, 609 (5th Cir. 1994), this Court considered whether the district court abused its discretion in admitting expert opinion testimony of a DEA agent that possession of 30 grams of cocaine is consistent with narcotics trafficking. Citing the benchmark case of United States v. Dotson, 817 F.2d 1127, on reh'g, 821 F.2d 1034 (5th Cir. 1987), the Court described the "borderline between a forbidden opinion on the ultimate legal issue and a mere explanation of the expert's analysis of facts which would tend to support a jury finding on the ultimate issue." Speer at 610 (internal quotations and citations omitted). The Court concluded that the agent's statements did not cross the borderline defined in Dotson but could be more accurately characterized as an analysis of the evidence in light of his special knowledge of

narcotics trafficking. Id.

Similarly, in the instant case, Officer Emile testified that in his expert opinion, possession of 2.5 grams of cocaine (16 rocks total) in two separate containers is consistent with trafficking and not possession for personal use. The court accepted him as an expert based on his five years of experience as a narcotics investigator and 200 investigations. He also testified regarding hierarchies of drug operations, stating that there are usually people who manufacture crack, mid-level distributors, and street dealers. He testified that, in his opinion, Jones was a "street level dealer" and possessed a firearm for trafficking purposes.

On cross-examination, Emile conceded that he had no factual evidence that Jones was involved in a hierarchy of drug dealers or that she was involved in a conspiracy or that she possessed the gun in conjunction with drug-trafficking activity or that she had any knowledge that other people were involved in the manufacture and processing of drugs. The judge instructed the jurors that in accepting Emile as an expert, it merely meant he was entitled to state his opinion but that it was solely within their province to accept or reject it.

Emile's testimony, like the DEA agent's in Speer, did not cross the borderline into a forbidden opinion on the ultimate legal issue. See Speer at 610. Rather, it was an explanation focused on the evidence and an analysis of that evidence based on his specialized narcotics training. See id. Emile used his expertise to opine that Jones' possession of 16 rocks of cocaine

was consistent with trafficking and that she probably did not manufacture it herself. He did not testify regarding the defendant's intent to commit the crime as prohibited by Rule 704(b). See also, Moore at 57-58 (holding that expert opinion is not inadmissible because it addresses an ultimate issue to be decided by the jury so long as it meets the requirements of the Federal Rules of Evidence that no testimony be permitted regarding the defendant's intent to commit the crime and that the specialized knowledge will assist the trier of fact). Emile's testimony admitted was consistent with the requirements of Rule 704. Thus, it was not an abuse of discretion for the district court judge to allow it.

AFFIRMED.