IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7555

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES TAYLOR,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
(4:93-CR-66-S)

(May 26, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

James Taylor appeals his judgment of conviction rendered by the district court. Finding no error, we affirm.

I.

James Taylor, a former prison guard at the Mississippi State Penitentiary at Parchman, Mississippi (Parchman), was convicted

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

by a jury of conspiring to commit mail and money order fraud, in violation of 18 U.S.C. §§ 500 and 1341 (Count I), and of aiding and abetting mail fraud, in violation of 18 U.S.C. §§ 2 and 1341 (Count II).

Taylor was found to be a participant in a money-order scheme conducted at Parchman. In this scheme, an inmate developed a pen-pal relationship with a potential victim and convinced that potential victim that the inmate was wrongly imprisoned and would be released if he paid a fine. The inmate then used a third party to purchase $1 money orders and had these money orders smuggled to him at Parchman. After receiving these money orders, the inmate (1) altered them to reflect a greater face value than for what they were issued and (2) arranged for these altered money orders to be sent to the victim to be cashed at the victim's bank, instructing the victim to send the cash to a different third party, who allegedly was to ensure that the inmate's "fine" would be paid and that the inmate would be released. This cash was then smuggled to the inmate at Parchman.

Pearl Daugherty, a victim, testified at Taylor's trial. She stated that she began corresponding with a Parchman inmate named Calvin Russell, who told her that she would be receiving money orders in the mail. She then received eight money orders, payable to her, that had been issued with a face value of $1 each but that had been altered to have a face value of $700 each. Russell instructed Daugherty to cash the money orders and to mail $5000 of the $5600 to his "attorney, James Taylor" so that

Russell's fine could be paid. Daugherty sent the money to Taylor by cashier's check. However, the cashier's check was returned to her, and she then received a telephone call and a letter from Taylor advising her to send the money in cash.

In response to Daugherty's testimony, Taylor testified that he did receive the $5000 check from Daugherty and that he did send it back to her with a letter stating that he needed cash. He did not report receiving the check to his superior officers or to Parchman investigators, and he did not submit an incident report. He also testified that upon receiving the check, he questioned several inmates about the check, including Russell and Dennis Hicks, but decided to keep the money for himself because "it was a gift to me . . . . [W]hoever it was that was foolish enough to . . . send me a check was foolish enough to lose their money."

Norma Dulaney, who pleaded guilty to conspiracy in this money order scheme and who agreed to cooperate with United States Postal Service Inspectors, also testified at Taylor's trial. She testified that she knew Taylor as "Mr. T" and that Taylor would call her and arrange meetings during which she would give him $1 money orders for delivery to Hicks. She said that she delivered ten money orders to Taylor at least twice.

Dulaney also arranged for her and Sam Aldridge, an officer of the Mississippi Highway Patrol, to meet with Taylor after Taylor had contacted her regarding a $360 delivery she was to make to him. Postal inspectors and Aldridge prepared a package

for controlled delivery to Taylor containing eighteen $20 bills. Taylor then met Aldridge, posing as Dulaney's brother, and Dulaney, who was equipped with a hidden recording device, at a restaurant, where the prepared package was delivered to Taylor. At this meeting, Taylor confirmed that he would deliver money orders to Hicks. When Aldridge asked, "Will you get them in . . . we won't get in no trouble?" Taylor responded, "If you get in trouble, I'll get in trouble . . . naw uh huh. I ain't ready to get into none." Aldridge also testified at Taylor's trial that Taylor had instructed him to give money orders to Dulaney, who in turn was to give them back to Taylor for delivery to Hicks. After Taylor left the restaurant, postal inspectors stopped him and, with his consent, searched his car. They found $1 MAPCO money orders along with the eighteen $20 bills given to Taylor by Dulaney. When confronted by the inspectors, Taylor denied knowledge of the scheme, contending that he was picking up jewelry boxes from Dulaney for Hicks. Further, he said that he was picking up money for Hicks so that Hicks could pay off a gambling debt.

At trial, Taylor testified that he was not involved in the scheme. He also testified (1) that he was angry when Aldridge asked to be allowed to deliver the money orders to him and (2) that during the discussion at the restaurant, he thought Aldridge was referring to ordering furniture from Hicks and not to money orders.

After the jury found Taylor guilty of conspiring to commit mail and money order fraud and of aiding and abetting mail fraud, Taylor was sentenced to twenty-one months imprisonment on each count to run concurrently and to a three-year term of supervised release on each count to run concurrently; he was also ordered to pay a special assessment of $100. He now appeals.

II.

Taylor first argues that the evidence was insufficient to support his conviction and thus the district court erred in not granting his judgment for acquittal. We disagree.

This court reviews the district court's denial of a motion for judgment of acquittal de novo. United States v. Restrepo, 994 F.2d 173, 182 (5th Cir. 1993). On a sufficiency of the evidence challenge, we consider the evidence in the light most favorable to the government, including all reasonable inferences that can be drawn from the evidence. United States v. Pigrum, 922 F.2d 249, 253 (5th Cir.), cert. denied, 111 S. Ct. 2064 (1991). The test is not whether the evidence excludes every reasonable hypothesis of innocence or is wholly inconsistent with every conclusion except that of guilt, but whether a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt. Id. The jury is the final arbiter of the weight of the evidence and the credibility of the witnesses. Restrepo, 994 F.2d at 182.

To prove mail fraud, the government must show that Taylor "engaged in a scheme to defraud and used the mails to further this scheme." See United States v. Green, 964 F.2d 365, 369 (5th Cir. 1992), cert. denied, 113 S. Ct. 984 (1993) (citation omitted). To establish a conspiracy, the government must prove "that two or more persons agreed to commit a crime and that at least one of them committed an overt act in furtherance of that agreement." United States v. Tansley, 986 F.2d 880, 885 (5th Cir. 1993).

Taylor argues that Dulaney's testimony did not prove his involvement in the conspiracy because she testified that she never discussed with Taylor the fact that the packages she gave to him to give to Hicks contained $1 money orders and that she merely had assumed that Taylor knew about the money orders. He also points out that Dulaney testified that the $360 delivery she was to make to him on the day of his arrest was money that was to be given to Hicks to pay off Hicks' gambling debt. He further argues that Daugherty's testimony was extensively based only on what Daugherty had been told by Russell and that there was no testimony supporting the existence of an agreement between himself and Russell to perpetrate mail fraud.

Despite Taylor's argument concerning Dulaney's testimony, Dulaney did testify that Taylor, whom she knew as "Mr. T," would call her and arrange meetings during which she would give him "packages" for Hicks containing money orders. The tape recording of the conversation between Aldridge and Taylor at the restaurant

established that when Aldridge told Taylor that Hicks had said something to him about Aldridge's bringing some money orders over and then asked Taylor, "Could I just give them to you, will you be the one I'll meet?," Taylor replied, "Yeah." Aldridge also testified that during this conversation when Aldridge asked about getting money orders to Hicks, Taylor responded, "Well, just drop them off. Give them to her [Dulaney] and she'll give them to me." After this conversation, ten money orders were found in Taylor's vehicle.

Further, the evidence indicates that Taylor admitted to receiving the cashier's check from Daugherty and to writing the letter to Daugherty saying that he needed the cash.[1] Taylor also admitted to not reporting the check to Parchman officials, not submitting an incident report, and deciding to keep the money for himself.

"Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof." United States v. Roberts, 913 F.2d 211, 218 (5th Cir. 1990), cert. denied, 111 S. Ct. 2264 (1991) (citation and internal quotations omitted). Moreover, the jury

[1] Daugherty also testified that the check was to be sent to Russell's "attorney, James Taylor." The letter Taylor sent to Daugherty after receiving the check read in part: "I have received your check for $5,000. Like I mentioned to you while I was at Parchman to see Calvin Russell, I am willing to help him be released but I cannot allow to have any record showing where I paid off anyone. . . . So this dealing can only be done in cash."

may infer the existence of an agreement from a defendant's concert of action with others, United States v. Magee, 821 F.2d 234, 239 (5th Cir. 1987), and the elements of conspiracy "may be inferred from the development and collocation of circumstances," United States v. Gallo, 927 F.2d 815, 920 (5th Cir. 1991) (citations and internal quotations omitted).

Viewing the evidence in the light most favorable to the government and drawing all reasonable inferences in favor of the verdict, the evidence is sufficient to support Taylor's conviction. The district court did not err in denying Taylor's motion for judgment of acquittal.

III.

Taylor also contends that the district court erred in allowing government witnesses to testify as to what unindicted co-conspirators Hicks and Russell stated to them. However, he neither supplies us with references to the record to pinpoint the statements about which he complains, nor even paraphrases the statements he asserts should not have been admitted. In fact, he also fails to identify specifically which of the government's witnesses actually testified as to what Hicks and Russell said to them, save for mentioning "Daugherty's testimony as the statements allegedly made to her by Calvin Russell" in asserting generally that the government's case against him for conspiracy fails.

Inadequately briefed issues need not be addressed. See United States v. Ballard, 779 F.2d 287, 295 (5th Cir.) (determining that a party who offers only a listing of alleged errors without citing supporting authorities or references to the record abandons those claims on appeal), cert. denied, 475 U.S. 1109 (1986); cf. Moore v. FDIC, 993 F.2d 106, 107 (5th Cir. 1993) (explaining that an appeal may be dismissed for failure to provide specific citations to the record when such citations are required by Federal Rule of Appellate Procedure 28(a)(4) and Local Rule 28.2.3). We can only glean from Taylor's brief that he complains of Daugherty's testimony concerning Russell's statements to her, and we thus only discuss his contention regarding such testimony.

We review the district court's rulings on the admissibility of evidence for abuse of discretion. United States v. McAfee, 8 F.3d 1010, 1017 (5th Cir. 1993); United States v. Jardina, 747 F.2d 945, 950 (5th Cir. 1984), cert. denied, 470 U.s. 1058 (1985). In determining whether an erroneous admission of evidence is harmless error, we must decide whether the inadmissible evidence actually contributed to the jury's verdict; we will not reverse unless the evidence had a substantial impact on the verdict. United States v. Gadison, 8 F.3d 186, 192 (5th Cir. 1993).

Even if we assume arguendo that the district court erred in admitting Daugherty's testimony regarding statements Russell made to her, we cannot say that this evidence had a substantial impact

on the jury's verdict. Daugherty also testified that she sent a cashier's check for $5000 to Taylor and that she later received a phone call and a letter from him telling her the deal could be done only in cash. Taylor himself admitted to phoning her, to sending her this letter, and to keeping the money for himself. Moreover, Dulaney testified that she would arrange to meet Taylor and give him "packages" of money orders to be delivered to Hicks on different occasions. Taylor confirmed that he would deliver money orders to Hicks in the recorded conversation between him and Aldridge. Aldridge also testified that Taylor had instructed him to give money orders to Dulaney, who in turn was to give them back to Taylor for delivery to Hicks. Moreover, postal inspectors discovered $1 MAPCO money orders in Taylor's car shortly after he met with Aldridge. Hence, Taylor's argument on appeal is unavailing.

IV.

For the foregoing reasons, we AFFIRM the judgment of the district court.