

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8766
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONALD EUGENE MOODY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-CR-93-175
- - - - -

(July 21, 1994)

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

PER CURIAM:*

Donald Eugene Moody contends that there was insufficient evidence to support his conviction because the Government did not introduce any proof he was attempting to enter the United States. See United States v. Cardenas-Alvarez, 987 F.2d. 1129, 1131-32 (5th Cir. 1993). The standard for evaluating the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the Government, any rational trier-of-fact could have found the essential elements of the offense beyond a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

reasonable doubt. United States v. Bell, 678 F.2d 547, 549 (5th Cir. Unit B 1982) (en banc), aff'd, 462 U.S. 356 (1983). In making this determination, all inferences and credibility choices are resolved in favor of the verdict. United States v. Santisteban, 833 F.2d 513, 516 (5th Cir. 1987).

Moody argues that declaring himself to be a citizen of the United States was mere preparation and not an actual attempted entry into the United States. In Cardenas-Alvarez, the Court stated that "[t]he precise question for our determination is whether an alien who approaches a port of entry and who makes a false claim of citizenship or non-resident alien status has attempted to enter the United States." 987 F.2d at 1133. The Court went on to conclude that the defendant "attempted to enter by attempting to convince the border inspectors that he was entitled to pass." Id.

In this case, Moody twice declared that he was a United States citizen and told Inspector Soto that he had been born in Los Angeles in an attempt to gain entry into the United States. That Moody subsequently changed his mind when Officer Soto asked him what schools he had attended in Los Angeles did not alter his previous actions in giving false information to the inspector. The undisputed evidence presented at trial is sufficient to show that Moody attempted to enter the United States.

Moody argues that the district court should have ordered a hearing to determine if he was competent to stand trial in accordance with 18 U.S.C. § 4241(A). In United States v. Williams, 998 F.2d. 258, 266 (5th Cir. 1993), cert. denied, 114

S.Ct. 940 (1994), this Court interpreted the language of § 4241, holding that "establishing a reasonable suspicion of incompetence for trial requires showing reason to suspect major mental disability, as opposed to minor neurosis or slight retardation."

Moody argues that an entry in his criminal and immigration record that he had a diagnostic commitment while in the Department of Corrections in Chino, California, on October 7, 1983, raised the issue of his competence. In the presentence investigation report (PSR), this diagnostic evaluation was investigated and it was reported that Moody did not have any mental or emotional problems other than an antisocial personality.

Moody also argues that statements made by defense counsel at the time of trial raised the issue of competence. At no time did counsel question Moody's competence to stand trial, but twice characterized his behavior as obstinate. There is nothing in the record to show that Moody "might be so mentally compromised as to be unable to understand trial proceedings or to assist in his own defense." Williams, 998 F.2d at 267. The district court did not abuse its discretion by not ordering a competency hearing sua sponte.

AFFIRMED.