

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10427
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD MALLARD, JR.
a/k/a Red,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Texas
(3:93-CR-277-H)

(June 26, 1995)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Richard Mallard, Jr., was indicted for aiding and abetting the obstruction of commerce by robbery and carrying a firearm during a crime of violence. Mallard was alleged to be the "getaway driver" in a smash-and-grab robbery at a jewelry store. Mallard also was implicated, but not charged, in a second similar robbery. Much of the evidence incriminating Mallard was given by his cohorts.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

The jury found Mallard guilty and the district court sentenced him to a total of 185 months of imprisonment.

Prior to trial, Mallard filed a motion to suppress evidence seized in connection with his arrest. The evidence seized included a shotgun and ammunition, 9 millimeter shells, a "Malcolm X" baseball cap, two pawn tickets, and a diamond ring.¹ After a hearing, the district court determined that it would allow introduction of all of the evidence except the shotgun. As each item of evidence was introduced at trial, Mallard timely objected.

As his sole point of error on appeal, Mallard argues that the district court abused its discretion by allowing the evidence at trial. He argues that the evidence was unrelated to the offense charged and that the only rationale for its introduction was that it was in plain view during his arrest.

We apply a highly deferential standard to a 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). Nevertheless, review in criminal trials is necessarily heightened and the evidence must be "strictly relevant" to the offense charged. Id. at 1268 (internal quotations and citation omitted).

It was established at trial that the Malcolm X baseball cap was worn by one of the robbers, though not Mallard, during the

¹ The diamond ring was discovered to be "fake;" it was not introduced into evidence. R. 5, 64; see R. 3, 28; R. 4, 250.

offense for which Mallard was convicted. One of the pawn tickets described a man's diamond ring and the other a woman's diamond ring. Neither ring was recovered; therefore, the police were not able to confirm that the pawned rings were the stolen from the jewelry store. However, the rings stolen during the offense of conviction were men's diamond rings and the rings stolen during the similar robbery were ladies' diamond rings. Further, both pawn tickets corresponded to rings stolen during the robberies. Regarding the 9 millimeter ammunition, the testimony established that the firearm used in the robbery was a 9 millimeter pistol.

Although the evidence was not linked conclusively to the offense of conviction, it was relevant. See Fed. R. Evid. 401. Moreover, insofar as he challenges the prejudicial effect of the evidence, Mallard has not shown that the probative value of the evidence was substantially outweighed by its prejudicial effect. See Fed. R. Evid. 403. Thus, Mallard has not shown that the district court abused its discretion by admitting the evidence. See Anderson, 933 F.2d at 1267-68. The judgment of the district court is

A F F I R M E D.