

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10944
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERROL LINZY,

Defendant-Appellant.

Appeal from the United States District Court for
the Northern District of Texas
(3:94 CR 081 T)

August 23, 1995

Before REAVLEY, SMITH and PARKER, Circuit Judges.

PER CURIAM:*

Errol Linzy was convicted in federal court for bank robbery in violation of 18 U.S.C. § 2113(a), the use of a firearm in relation to a crime of violence in violation of 18 U.S.C. § 924(c), and being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Linzy appeals his conviction, claiming that the district court abused its discretion in refusing to

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

strike a venireman for cause who Linzy claims was biased, and that his right to be free of double jeopardy was violated because his convictions for armed robbery and for carrying a weapon during and in relation to a federal crime of violence constituted double punishment for the same offense. We affirm.

First, Linzy contends that the district court abused its discretion by refusing to strike for cause a venireman, Ben Schranil. During voir dire Schranil stated that as a victim of a violent crime, it might be "hard [for him]. . . to sit and be an impartial and fair juror." Linzy's attorney moved to strike Schranil for cause. The court refused, and as a result, defense counsel used one of his peremptory strikes to strike Schranil.

Linzy contends that the court's refusal to strike for cause was an abuse of discretion, because Schranil's statement was an express admission of bias. We disagree. As the district court noted, Schranil stated only that he might not be able to be impartial, not that he would be impartial. Defense counsel failed to pursue the issue in order to clarify this ambiguous statement. See Wilson v. Johns-Manville Sales Corp., 810 F.2d 1358, 1361 (5th Cir.) (commenting on counsel's failure to pursue issue of uncertain bias), cert. denied, 484 U.S. 828 (1987). "We grant broad discretion to the trial judge in making determinations of impartiality and will not interfere with such decisions absent a clear abuse of discretion." United States v. Hinojosa, 958 F.2d 624, 631 (5th Cir. 1992). The district court has not committed a clear abuse of discretion in this case.

Second, Linzy contends that convictions for armed robbery and for using a gun in relation to a crime of violence violates the double jeopardy clause because the elements of the crime of carrying a gun in relation to a crime of violence includes all the elements of the crime of bank robbery. Linzy admits that this issue has already been decided by this court in United States v. Martinez, 28 F.3d 444, 445-46 (5th Cir. 1994)(holding that convictions for obstruction of commerce by robbery and carrying a firearm during a crime of violence do not violate the double jeopardy clause because cumulative punishments may be imposed pursuant to specific Congressional authorization). As Linzy also concedes, we are bound by this decision. United States v. Taylor, 933 F.2d 307, 313 (5th Cir.), cert. denied, 112 S.Ct. 235 (1991).

AFFIRMED.