

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50216
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NOREEN VENISE ALEXIUS,

Defendant-Appellant.

Appeal from the United States District Court for the
Western District of Texas
(EP-93-CR-326-2)

(January 11, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.*

GARWOOD, Circuit Judge:

Defendant-appellant Noreen Venise Alexis (Alexius) was convicted, following a jury trial, of one count of harboring an escapee in violation of 18 U.S.C. § 1072 and one count of using a false social security number in violation of 42 U.S.C. § 408(a)(7)(B). Her sole complaint on appeal is that the evidence is

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

insufficient to support her conviction for using a false social security number. We affirm.

Facts and Proceedings Below

Alexius was a federal correctional officer stationed at the Federal Prison Camp in El Paso, Texas (FPC El Paso) from August 1989 to April 29, 1993. While employed at FPC El Paso, Alexius met Patrick Whiting (Whiting), an inmate serving a 120-month sentence for possession with intent to distribute cocaine base. Whiting escaped from FPC El Paso on March 28, 1993, and remained at large until July 1, 1993, when he and Alexius were arrested while in a vehicle together outside of her Chicago, Illinois residence.¹ A federal grand jury handed down a four-count indictment against Whiting and Alexius for crimes related to Whiting's escape from FPC El Paso. The first count charged Whiting with escaping from federal custody in violation of 18 U.S.C. § 751(a).² The remaining three counts charged Alexius with: (1) aiding and assisting escape in violation of 18 U.S.C. § 752(a) (Count Two); (2) harboring and concealing an escaped inmate in violation of 18 U.S.C. § 1072 (Count Three); and (3) using a false social security number in violation of 42 U.S.C. § 408(a)(7)(B) (Count Four). Alexius moved for a judgment of acquittal at the close of the government's case and again at the close of all the evidence. The district court denied both motions. The jury found Alexius guilty of Counts Three and Four but acquitted her of Count Two. On March 31, 1994, the

¹ Alexius resigned from her job at FPC El Paso on April 29, 1993, and moved to her aunt's home in Chicago in May 1993.

² Whiting's case was severed for trial.

district court sentenced Alexius to concurrent eight-month terms of imprisonment and three year terms of supervised release on Counts Three and Four.

At trial, a former FPC El Paso inmate testified that he observed Alexius and Whiting having sexual intercourse in an empty room in a prison dormitory building. Another former FPC El Paso inmate testified that, when he first met Whiting upon arriving at the prison, Whiting told him: "The cop down at the office, she's mine. You know, you keep your hands off of her. I don't even want you talking to her." Other witnesses testified that they heard rumors that Whiting and Alexius had a sexual relationship. Alexius testified that by early March 1993, she was aware that FPC El Paso officials were investigating allegations that she was having a sexual relationship with Whiting. In addition, telephone records showed over four hundred collect telephone calls from FPC El Paso telephones to Alexius's home. Alexius admitted giving Whiting her home telephone number but insisted that she only spoke to him fifteen or twenty times.³ Alexius also admitted accepting a collect call from Whiting at 3:19 a.m. on March 28, 1993, shortly before he escaped.

On March 24, 1993, four days before Whiting escaped from FPC El Paso, Alexius rented an apartment at the Desert Arrow Apartments in El Paso. She applied for the apartment in her own name and paid

³ Alexius stated that Whiting was the only inmate to whom she gave her unlisted home telephone number. She testified that Carolyn Davis, a friend staying with her at the time of these calls, became friendly with Whiting and accepted collect calls from him.

the deposit and application fee with a personal check. The lease listed a move-in date of March 28, 1993. Several witnesses identified Whiting as a person they had seen at the apartment complex, and an apartment security guard testified that he saw Whiting enter the apartment rented by Alexius. Alexius denied that Whiting was ever in the apartment and denied ever having seen him in the area. Telephone company records showed that fifty long-distance calls were placed from the telephone in the apartment to friends and relatives of Whiting in April 1993 while Alexius was at work.

The records of El Paso Electric Company reflect that utility service was established at the Desert Arrow apartment on March 29, 1993, in the name of Noreen Alexius with a social security number of 322-64-0532.⁴ The account number assigned to this account was 1838-2405-03. Electric company records show that, on the same day, a second account was established for the same apartment and was assigned an account number of 1838-2405-04. However, this account was established under the name Allison Wheeler with a social security number of 359-41-2170. Social Security Administration records show that number 359-41-2170 was never issued to anyone. It is the establishment of this electric company account in the name of Allison Wheeler and with this false social security number that forms the basis of the charge in Count Four.

⁴ Alexius's true social security number is 322-64-0132. This one digit discrepancy between Alexius's social security number and the records of the utility company may have been the result of an innocent error and does not form the basis of her conviction on Count Four, as that count alleges the false number given was 359-41-2170.

Joseph Garibay (Garibay), an El Paso Electric Company employee, testified that electrical service can be requested by telephone and can be turned on by telephone after a deposit is made. The government introduced a register receipt showing that a \$70 deposit by check was made at 8:45 a.m. on March 30, 1993, for account number 1838-2405-03, the account in Alexius's name. However, the records of El Paso Electric Company showed that this deposit was applied to account number 1838-2405-04, the Allison Wheeler account. The government introduced a March 30, 1993, deposit card recording a \$70 deposit in Allison Wheeler's name for account number 1838-2405-03. Garibay described a deposit card as the receipt issued upon collection of a deposit. In addition, an El Paso Electric Company document indicated that a security deposit of \$70 had been paid on March 30, 1993, for Allison Wheeler. Although the account number on this document was originally 1838-2405-03, someone changed the last digit from a three to a four.

Jennifer Webster (Webster), a hair dresser at Berlin Hair Design in El Paso, was a friend of Alexius's as well as her hair dresser. Webster testified that she provided Alexius with the name Wheeler and a social security number to help her establish telephone service.⁵ Webster also stated that she told Alexius to list Berlin Hair Design as a place of employment. Telephone service was established at the Desert Arrow apartment rented by

⁵ Webster obtained telephone service for herself by the same means. She admitted that she established telephone service under the name Kindrick Wheeler, social security number 326-31-1243, and a spouse named Allison whose social security number was listed as 359-41-2170.

Alexius under the name Allison Wheeler with Berlin Hair Design listed as the place of employment and Alexius herself listed as a reference. On cross-examination, defense counsel asked Webster whether it was "possible" that she actually called up the telephone company and utility company and set up the services for Alexius. Webster responded: "I might have. I don't remember." On redirect, Webster testified "I remember giving her [Alexius] the information and that's all." Webster also testified that Alexius confided in her that she was having an affair with an inmate and that Alexius asked her "to visit [this] prisoner because she was under investigation, and so that they wouldn't think she was doing whatever she was doing." Webster testified that she visited the inmate at FPC El Paso and that Whiting was the inmate.

On direct examination, Alexius testified that she went to see Webster to have her hair and nails done and mentioned that she was having trouble getting through to either the electric company or the telephone company. Alexius stated that Webster volunteered to have both services set up for her. Alexius said that she gave Webster the necessary information and that Webster arranged to have the services set up for her "and she [Webster] took care of it for me." Alexius testified that she did not herself call the electric company to set up service. She further testified that she first realized that the telephone service was not in her name when she received the calling cards in the first week of April, but she stated that she did not take any action to correct the situation. On cross-examination, Alexius stated that she called the electric company herself and had service established in her own name and

with her own social security number.⁶ She then stated that she asked Webster to drop off her deposit check at the electric company because she was too busy to do it herself. Alexis denied asking Webster to set up electric service under a false name and stated that Webster "must have misunderstood the conversation we had."

Alexis testified that she rented the Desert Arrow apartment in anticipation of the arrival of Kellie James (James), a man she met in Illinois in January 1992. Alexis explained that she started dating James in January 1992 and that he planned to come stay in El Paso for a period of time beginning on April 1, 1993. On the Desert Arrow apartment application, Alexis listed Terry Jones as an additional occupant. Initially, Alexis told investigators that she rented the apartment for her boyfriend Terry Jones, a United States Army sergeant assigned to Fort Bliss. When investigators learned that no such person existed, Alexis then stated that James was actually Terry Jones. Alexis said that she did not use James's name on the rental application because she feared that the officials investigating her relationship with Whiting would question him.

At trial, James testified that he used the alias Terry Jones because of problems with previous girlfriends: "I've had relationships with two individuals at one time . . . and I used the same name so that I wouldn't get caught up." James testified

⁶ When asked if this statement contradicted her testimony on direct examination that Webster volunteered to set up both telephone and electric service, Alexis stated: "Well, I had asked her about the phone. Now that my memory has been jolted, since that was a year ago, I remember that I did call the Electric Company, and I did have service set up in my name."

that he originally planned to fly to El Paso on March 28, 1993, but decided to drive because of financial difficulties, thus postponing his arrival until April 2, 1993. James testified that he returned to Chicago after one week because he did not like El Paso and did not see Alexis again until June 1993 when she returned to Chicago.⁷

Alexis testified that she called Whiting's family several times after his escape to learn if they had heard from him. She also admitted receiving several calls from him after his escape but insisted that she urged him to turn himself in during these conversations. Alexis testified that she never told Whiting where she was living in Chicago and that she first saw Whiting when he arrived at her Chicago residence some fifteen minutes before their arrest on June 1, 1993.

Discussion

The sole point of error Alexis raises in this appeal is the sufficiency of the evidence supporting her conviction for using a false social security number in violation of 42 U.S.C. § 408(a)(7)(B). In reviewing challenges to the sufficiency of the evidence, we review the evidence, whether direct or circumstantial, in the light most favorable to the jury verdict. *United States v. Nguyen*, 28 F.3d 477, 480 (5th Cir. 1994). All credibility determinations and reasonable inferences are to be resolved in favor of the verdict. *Id.* We hold the evidence sufficient if we conclude that a rational trier of fact could have found therefrom

⁷ Alexis and James were married on December 3, 1993, six weeks before her trial.

the essential elements of the crime beyond a reasonable doubt. *United States v. Villasenor*, 894 F.2d 1422, 1425 (5th Cir. 1990). In making such a determination, "[i]t is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt." *United States v. Bell*, 678 F.2d 547, 549 (5th Cir. 1982)(en banc), *aff'd on other grounds*, 103 S.Ct. 2398 (1983).

In order to obtain a conviction for using a false social security number in violation of 42 U.S.C. § 408(a)(7)(B), "the government must prove `that defendant (1) for any purpose, (2) with intent to deceive, (3) represented a particular social security account number to be his or another person's, (4) which representation was false.'" *United States v. Shively*, 927 F.2d 804, 809 (5th Cir.), *cert. denied*, 111 S.Ct. 2806 (1991)(quoting *United States v. Darrell*, 828 F.2d 644, 647 (10th Cir. 1987)). On appeal, Alexius argues that the government failed to prove both that she was the person who falsely represented the social security number to El Paso Electric Company and that she intended to deceive anyone.

Alexius does not dispute that someone established utility service for her Desert Arrow apartment under the name of Allison Wheeler with a false social security number; rather, she maintains that the government failed to prove that she personally set up the account. The government's case against Alexius was based largely on circumstantial evidence, much of which indicated that Alexius had hidden Whiting in the Desert Arrow apartment after his escape from FPC El Paso. Based on this evidence, the jury found Alexius

guilty of Count Three, a finding Alexius does not contest in this appeal.

At trial, the jury heard Webster's testimony that she provided Alexius with the Wheeler name and a false social security number for her to use in setting up telephone service. Webster herself had previously used false social security number 359-41-2170, the number given for Alexius's electric company account established in the name Wheeler. On cross-examination, Webster stated that she did not remember whether it was possible she called the utility company and set up service for Alexius. However, on redirect, Webster testified that she did not know the address of Alexius's apartment and that all she remembered was giving Alexius the information. The jury also heard Alexius testify on direct examination that she never called the utility company to set up service and that it was Webster who set up both the utility service and telephone service for her apartment. On cross-examination, however, Alexius stated that she had called the electric company and set up service in her own name. Having heard all this testimony, the jury could reasonably infer that it was Alexius who established service using the false social security number. See, e.g., *United States v. Zuniga*, 18 F.3d 1254, 1260 (5th Cir.), cert. denied, 115 S.Ct. 214 (1994) ("Although both versions may be plausible, it is within the sole province of the jury as the fact finder to decide the credibility of the witnesses and to choose among reasonable constructions of evidence.") (citation omitted). Accordingly, we hold that the government presented sufficient (though perhaps barely sufficient) evidence to prove that Alexius

was the person who established the account using the false social security number.

Alexius also argues that the government failed to prove that she intended to deceive anyone given that she openly rented the apartment in her own name. Considering that Alexius knew prison officials were investigating her relationship with Whiting at the time of his escape, the jury could reasonably infer that Alexius suspected she might come under scrutiny in the effort to recapture Whiting and thus had a reason to hide as many details about the Desert Arrow apartment as possible. The government argued that Alexius had to give her true name and social security number in the application for the apartment because this information was subject to verification. In other words, she would not be able to rent the apartment unless her application was approved. However, an El Paso Electric Company official testified that a customer could establish utility service without providing identification. Therefore, the government asserted that Alexius concealed the location of the apartment to the extent possible. The jury heard evidence from which it could reasonably infer that Alexius sought to hide her whereabouts. We find that the government produced sufficient evidence to prove that Alexius intended to deceive someone in knowingly using a false social security number to obtain a new utility service account in the name Wheeler at the Desert Arrow apartment.

Conclusion

For the reasons stated above, Alexius's conviction is

AFFIRMED.