

United States Court of Appeals for the Fifth Circuit

No. 21-20558
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 21, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

AKALAKACHINYEM Nwoko,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:16-CR-258-3

Before WIENER, DENNIS, and HAYNES, *Circuit Judges.*

PER CURIAM:*

A jury convicted Defendant-Appellant Akalakachinyem Nwoko of one count of conspiracy to commit healthcare fraud and three counts of aiding and abetting healthcare fraud. The district court sentenced her to 45

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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months of imprisonment, three years of supervised release, and payment of restitution.

Nwoko contends on appeal that the district court abused its discretion in permitting the Government to present video evidence at trial in violation of Federal Rule of Evidence 403. She explains that the evidence was of scant probative value because it depicted events which occurred after the time period alleged in the indictment and does not show her engaging in criminal conduct. Nwoko also contends that the video evidence was cumulative of other evidence and did nothing but confuse the issues and mislead the jury. Because Nwoko's contentions fail under both the clear abuse of discretion and plain error standards of review, we need not determine which standard applies. *See United States v. Rodriguez*, 523 F.3d 519, 525 (5th Cir. 2008); *see also United States v. Dillon*, 532 F.3d 379, 387 (5th Cir. 2008) (setting forth the standard of review for a properly preserved objection to a district court's evidentiary ruling).

The video evidence served the probative value of providing context regarding the operation of the conspiracy and Nwoko's role in that conspiracy. *See United States v. El-Mezain*, 664 F.3d 467, 508 (5th Cir. 2011). Nwoko fails to explain how the video, or any inference drawn from it was misleading, confused the issues, or was otherwise improper. More importantly, she fails to explain how any potential danger of misleading the jury or confusing the issues *substantially* outweighed the probative value of the evidence to warrant exclusion, and the record does not support such a conclusion. *See id.*

AFFIRMED.