USA v. Vory Copeland Doc. 1109455137

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 15-12105

D.C. No. 1:14-cr-20330-JAL-3

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VORY V. COPELAND,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(March 23, 2017)

Before ED CARNES, Chief Judge, ANDERSON and PARKER,* Circuit Judges.

PER CURIAM:

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* Honorable Barrington D. Parker, Jr., United States Circuit Judge for the Second Circuit, sitting by designation.

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We have had the benefit of oral argument and have carefully reviewed the briefs and record. For the reasons discussed at oral argument, and summarized briefly below, we conclude that the judgment of the district court should be affirmed. Because this opinion merely applies established law in a predictable manner the opinion is written for the parties only, who are well familiar with the facts and relevant legal principles.

I. SUFFICIENCY OF THE EVIDENCE

The defendant's challenge to the sufficiency of the evidence with respect to the several counts focuses on his argument that there was insufficient evidence that the defendant had knowledge of, and voluntarily participated in, the scheme to file fraudulent tax returns. We conclude that there was ample evidence to support the jury's finding of guilt. The defendant established and owned the tax return preparation business, Tax Express. He procured the EFIN number, which allowed the business to file electronically. He procured the PTIN number in his own name and allowed Tax Express employees to use it, thus identifying the defendant personally as the preparer of each tax return filed by Tax Express. The defendant also established the relationship with Santa Barbara Bank's Tax Products Group. Under this arrangement, the tax refunds would be mailed directly to the Bank from the IRS and the Bank would automatically deduct the tax preparer's fee, which the defendant arranged to be deposited by the Santa Barbara Bank into the defendant's

own account (with only his wife) at Wachovia Bank (Acct. No. 8922). Significantly, this arrangement with the Tax Products Group provided for the tax refund check to the taxpayer to be actually printed out in Tax Express' office, thus placing the defendant on notice that Tax Express employees would be responsible for safely delivering the checks to the taxpayers. The defendant also established another Wachovia account (Acct. No. 0301). With the defendant's brother, Marlan, and Rudd present with him at Wachovia Bank, Acct. No. 0301 was opened with the defendant listed as manager and with all three authorized to withdraw funds. It was represented to Wachovia Bank officials at the time that the three were partners in a new tax preparation business.

It was undisputed at trial that the fraudulent scheme actually existed. The defendant's only defense was that he had no knowledge thereof. However, we conclude that there was ample evidence from which the jury could find that he did have knowledge of the fraudulent scheme.[1] The jury could reasonably have inferred such knowledge on the basis of the following (among other) evidence.

Although the defendant testified that he had no such knowledge,[2] established law provides that, when a defendant testifies, the jury may disbelieve the

[1] Assuming such knowledge, the acts described above constitute ample evidence of his voluntary participation in the fraudulent scheme.

[2] The defendant testified that he was present at the Tax Express office only 15% to 20% of the time, that he personally prepared only 15 to 25 of the 391 returns filed, and that he was

testimony, thus providing substantive evidence that the defendant did in fact have knowledge. United States v. Williams, 390 F.3d 1319 (11th Cir. 2004). This is true at least where there is corroborating evidence. Id. at 1326. We conclude that there is in this case ample other corroborating evidence from which the jury could find that the defendant did in fact have knowledge of the fraudulent scheme.

In his testimony, the defendant admitted that he personally prepared between 15 and 25 of the tax returns. The fact that one of the returns that the defendant himself prepared was one of the ones determined to be fraudulent is evidence of the defendant's knowledge of the fraud which the jury might find to be corroborating.[3]

In addition, at the same time the instant scheme was launched,[4] the defendant filed his personal tax return for the year 2009.[5] On that return, the defendant claimed approximately $24,000 in federal income tax withheld. He attached a false W-2 reflecting that his employer, Tax Express, had withheld such

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merely innocently assisting his brother, Marlan, who needed a job and wanted to enter the tax preparation business.

[3] Of course, the jury could believe that the defendant personally prepared many more returns. The defendant's testimony reveals that he merely estimated 15 to 25 by saying that those were the ones with names of taxpayers that he remembered.

[4] The defendant filed his personal tax return for the year 2009 on the same day, January 20, 2010, that the defendant, Marlan, and Rudd opened Acct. No. 0301.

[5] See below for discussion explaining why the district court correctly allowed the government to question the defendant about his false 2009 tax return.

taxes. In fact, there were actually no tax withholdings by Tax Express on account of the defendant, and Tax Express paid over to the IRS no such withholdings. The jury could reasonably find that the defendant knew his return was false.

From the defendant's testimony, the jury could find that he knew in May 2010 that Marlan and Rudd were taking tax refund checks to the Wachovia Bank and cashing same against the guarantee of Acct. No. 0301 even though the taxpayer (to whom the check was made out) was not present. The defendant testified that he assumed that the taxpayers had given permission and thus assumed that the practice was legitimate. As of May 2010, however, the defendant had the following knowledge: that Marlan and Rudd had access to taxpayer refund checks drawn on Santa Barbara Bank, but printed out in the offices of Tax Express, which left Marlan and Rudd with access to the tax refund checks and the responsibility for delivering them to the appropriate taxpayer; that Acct. No. 0301 had a negative balance of some $28,000, and that the Bank had told the defendant that the balance was negative because the IRS had refused to pay some checks cashed against the guarantee of Acct. No. 0301; that Marlan and Rudd had a practice of cashing the taxpayer refund checks to which they had access against the guarantee of Acct. No. 0301; and that they did this without the taxpayer being present at the Bank, which raised some obvious suspicions (in light of the bouncing IRS checks and the negative $28,000 balance) that Marlan and Rudd might be abusing their check

cashing practice. Notwithstanding all of that knowledge,[6] the defendant did not report his suspicions to the IRS, did not investigate further with the Bank (even though the Bank had frozen all accounts related to Tax Express), and did not investigate further with Tax Express (beyond merely asking Marlan about the negative balance at the Bank and accepting without question Marlan's answer that somebody gave him checks that were stolen). Rather, the defendant waited five months until October 2010 to tell the authorities, and then he did so only when a federal agent interviewed him. A jury could reasonably infer that the defendant was engaging in cover-up, and that he had knowledge of the fraudulent scheme all along.

Thus, we reject the defendant's challenges to the sufficiency of the evidence with respect to his several convictions. On the basis of the foregoing evidence, we conclude that a reasonable jury could find that the defendant did have knowledge of the fraudulent scheme even if it was being carried out primarily by his brother, Marlan, and Rudd. And on the basis of his many acts which did further the scheme, we conclude the jury could find that he voluntarily joined and participated in the conspiracy. Thus, we conclude that there sufficient evidence to support the several challenged convictions.

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[6] The defendant's claim of ignorance is additionally suspicious because he knew from the beginning that his brother, Marlan, had been accused of passing a worthless $67,000 check.

II. THE DEFENDANT'S 2009 TAX RETURN

We turn next to the defendant's challenge to the district court's decision allowing the government to question him about the false statements on his personal tax return for the year 2009. The district court admitted the evidence pursuant to Rule 608(b). That rule provides in relevant part:

> (b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness' conduct in order to attack or support the witness' character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of: (1) the witness; . . .

Fed.R.Evid. 608(b). The defendant did elect to testify. On cross-examination, the government inquired of the defendant about the fact that he claimed approximately $24,000 as having been withheld by Tax Express, but that in fact no taxes were actually withheld, and none paid over to the IRS by Tax Express. The defendant claimed that the $24,000 number was an attempt to anticipate the withholding, but stated that he, acting for Tax Express, had failed to get the paperwork in order to actually make the withholding and pay over the amounts to IRS. The defendant also stated that he had later filed an amended return to correct the misstatement.

The testimony with respect to the defendant's 2009 personal return obviously reveals a statement which the jury could conclude was false. The defendant had employed a readily available method of defrauding the IRS – i.e., merely fabricating the amount of withholdings. We cannot conclude that the

district court abused its discretion in concluding that such evidence of a false statement to the IRS was "probative of the character [of the defendant] for truthfulness or untruthfulness."[7] Thus, the district court did not err in admitting the testimony under Rule 608(b).[8] That is, it is clear that the jury could find that the defendant lied to the IRS—telling the IRS that $24,000 had been withheld from his compensation from Tax Express when that was not true.

III. THE DEFENDANT'S OTHER CHALLENGES

We reject the defendant's challenge to the district court's decision to allow, under Rule 608(b), the government to cross-examine the defendant about his prior misappropriation of funds. In light of the arguments presented by the defendant to the district court, we cannot conclude that the district court abused its discretion.

We also conclude that there was ample evidence to support the district court's giving the deliberate ignorance instruction. We also reject the defendant's challenge to the form of the instruction.

Finally, we cannot conclude that the district court was clearly erroneous in finding that the defendant had committed perjury in his testimony at trial.

For the foregoing reasons, the judgment of the district court is

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[7] The defendant did not request a limiting instruction.

[8] The testimony also may have been admissible under Rule 404(b)(2) for another purpose – proving the defendant's knowledge – but we need not decide that question.

AFFIRMED.