

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-3081

September Term, 2000

United States of America,
Appellee

Filed On: October 12, 2000 [549604]

v.

Anthony L. Hunter,
Appellant

Appeal from the United States District Court
for the District of Columbia
(No. 98cr00172-01)

Before: WILLIAMS, RANDOLPH and TATEL, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and oral argument of counsel. After full review of the case, the court is satisfied that appropriate disposition of the appeal does not warrant an opinion. *See* D.C. Cir. Rule 36(b). It is therefore

ORDERED and ADJUDGED that appellant's conviction pursuant to 18 U.S.C. § 922(g)(1) for the possession of a firearm by a convicted felon be affirmed.

Appellant argues that his statement, elicited by police questioning, that he lived in the room in which police discovered a shotgun and a nine millimeter pistol was obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). We need not reach the question of whether the appellant was in custody for the purposes of *Miranda*, however, because we find that the admission of the statement was harmless error. *See Chapman v. California*, 386 U.S. 18, 24 (1967). The appellant's fingerprints were found on the shotgun and on the magazine of the pistol. The pistol was found inside a briefcase that contained appellant's personal papers. Other documents bearing the appellant's name were found in the room, as were the appellant's personal photographs.

Appellant challenges the government's failure to disclose a statement made to an Assistant U.S. Attorney ("AUSA") by Joanne Kinard that she was the true owner of the guns. We find that the government's failure to inform the appellant of Kinard's statement more than two days before trial, while a breach of the government's duty to disclose exculpatory information under *Brady v. Maryland*, 373 U.S. 83 (1963), is not a "true" *Brady* violation because it did not cause prejudice,

given that appellant had already acquired the information through his own investigation. *See Strickler v. Greene*, 527 U.S. 263, 280 (1999) (holding that in order for a *Brady* claim to be successful, “evidence must have been suppressed by the [government], either willfully or inadvertently; and prejudice must have ensued”).

Appellant also argues that Kinard’s statement to the AUSA should have been admitted under Federal Rule of Evidence 804(b)(3)’s statement against interest exception to the rule against hearsay. We find that the district court did not abuse its discretion in excluding the evidence based on its conclusion that no “corroborating circumstances” existed to “clearly indicate the trustworthiness” of Kinard’s statement. *See* Rule 804(b)(3).

Appellant argues that the trial court erred in not admitting Kinard’s grand jury testimony that appellant did not live in the room in which the guns were found. We find that the trial court did not abuse its discretion in not admitting the evidence under Federal Rule of Evidence 804(b)(1), the former testimony exception to hearsay, based on its conclusion that the prosecution did not have an opportunity to develop Kinard’s testimony before the grand jury due to the fact that Kinard invoked the Fifth Amendment.

Appellant challenges the admission into evidence of a Movado watch, \$6,756 in cash, testimony concerning a videotape of the appellant in the room, and testimony concerning personal photos of the appellant. Applying a highly deferential standard of review, we find that the trial court did not commit a “grave abuse” of discretion in admitting the evidence after balancing its probative value against its prejudicial effect pursuant to Federal Rule of Evidence 403. *See United States v. Manner*, 887 F.2d 317, 322 (D.C. Cir. 1989). Even if the district court had abused its discretion, the admission of this evidence would have been harmless in view of the overwhelming evidence of the appellant’s guilt.

Appellant challenges the trial court’s denial of his motion for a mistrial based on the government’s imputation of homosexuality to the appellant during closing argument. We find that the district court did not abuse its discretion in concluding that the government did not inject allegations of homosexuality into the trial. In any event, because the district court gave the jury a curative instruction and because a single misstatement, when viewed against the substantial evidence of appellant’s guilt, is not enough to cause prejudice, the district court did not abuse its discretion in not granting the appellant’s motion for a mistrial. *See United States v. Gartmon*, 146 F.3d 1015, 1026 (D.C. Cir. 1998).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41 (a)(1).

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Deputy Clerk