

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-3068

September Term, 2006

FILED ON: MARCH 7, 2007 [1026707]

UNITED STATES OF AMERICA,
APPELLEE

v.

MODOU CAMARA,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 02cr00157-01)

Before: ROGERS, GARLAND, and KAVANAUGH, *Circuit Judges*.

J U D G M E N T

This appeal from a judgment of the United States District Court for the District of Columbia was presented to the court, and briefed and argued by counsel. The court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. Rule 36(b). For the reasons set forth in the attached memorandum, it is

ORDERED and **ADJUDGED** that the judgment of the district court be affirmed.

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

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Michael C. McGrail
Deputy Clerk

MEMORANDUM

A federal jury in the District of Columbia convicted defendant Modou Camara of one count of conspiracy to defraud the United States, five counts of wire fraud, two counts of money laundering, and one count of interstate transportation of money and securities obtained by fraud. All of the charges were based on Camara's participation in an elaborate series of real estate frauds involving sixteen residential properties in Washington, D.C. The district court ordered him to pay \$1,116,440.90 in restitution and sentenced him to sixty months in prison followed by three years of supervised release. Camara now appeals his conviction.

Camara initially argued that the district court should have granted his motion to suppress the results of a search of his home because the searching officers violated the knock-and-announce statute, 18 U.S.C. § 3109. Camara abandoned this claim at oral argument in light of the Supreme Court's intervening decision in *Hudson v. Michigan*, 126 S. Ct. 2159 (2006), which held that the exclusionary rule does not apply to a violation of the Fourth Amendment's knock-and-announce requirement. Oral Arg. Tape at 1:05. This court has since held that, after *Hudson*, a violation of § 3109 does not justify suppression of the fruits of an otherwise valid search. *See United States v. Southerland*, 466 F.3d 1083, 1086 (D.C. Cir. 2006).

Camara's only remaining argument is that the district court should not have allowed Special Agent Lisa Gore of the Department of Housing and Urban Development to testify as a summary witness at trial. Agent Gore took the stand at the conclusion of the government's case-in-chief to give a summary of hundreds of financial records and other exhibits that had already been admitted into evidence. Camara argues that the court should have excluded her testimony because it was "lengthy and pervasively conclusory." Appellant's Br. 16.

We review a district court's evidentiary rulings, including the admission of summary testimony, for abuse of discretion. *See United States v. Lemire*, 720 F.2d 1327, 1348 (D.C. Cir. 1983); *see also United States v. Abel*, 469 U.S. 45, 54-55 (1984). The government argues that Camara's claim should be reviewed only for plain error because he failed to preserve his objection to Agent Gore's summary testimony at trial. *See Fed. R. Crim. P. 52(b)*. We need not decide this issue because we conclude that there was no error even under the more stringent abuse of discretion standard.

Testimony summarizing voluminous or complex documents already in evidence is relevant and therefore admissible under Rules 402 and 403 of the Federal Rules of Evidence, unless "the dangers of unfair prejudice it creates outweigh its probative value." *Lemire*, 720 F.2d at 1348. In *Lemire*, we held that the district court did not abuse its discretion by admitting summary testimony because four factors minimized any risk of unfair prejudice. First, the district court gave instructions cautioning the jurors that the summary testimony was presented only for their convenience and was not itself proof of any facts. *Id.* Second, the defendant had access to the underlying records and full opportunity to cross-examine the summary witness. *See id.* at 1349. Third, the summary testimony was based solely on documents that were already in evidence and thus did not reveal any inadmissible material to the jury. *See id.* Finally, the summary testimony was limited to "routine computations and culling through of documents to

eliminate confusing and extraneous evidence” and thus did not stray into improper argument. *Id.* at 1349-50.

A review of the record in this case reveals that the same four factors were present here. First, the district court gave a limiting instruction virtually identical to the one we approved in *Lemire*. Compare Trial Tr. 54-55 (Nov. 3, 2003), with *Lemire*, 720 F.2d at 1348 n.32. Second, Agent Gore was available for cross examination and Camara’s counsel in fact questioned her about the basis for her calculations and the limitations of her knowledge. See Trial Tr. 90-99 (Oct. 30, 2003). Third, Camara concedes that Agent Gore’s testimony was based on documents already in evidence and does not claim that she distorted or otherwise misrepresented the underlying exhibits. Finally, Agent Gore’s testimony consisted of the same type of “routine computations and culling through of documents” that we approved in *Lemire* -- for example, she reviewed a summary chart showing the amount of money Camara received from each of the sixteen transactions at issue.

As in *Lemire*, these factors suggest that the risk of unfair prejudice was slight. We conclude that the district court acted well within its discretion when it determined that the possibility of such prejudice did not outweigh the considerable probative value of Agent Gore’s summary testimony, and we therefore affirm the judgment below.