

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Galitsa

No. 18-798, United States Court of Appeals for the Second Circuit (March 22, 2019)

SUMMARY

Defendant convicted of illegal reentry and false statements challenged evidentiary rulings admitting prior acts, charges, and convictions, and the language used in cross-examination. The Second Circuit affirmed, holding that even if the district court erred in admitting certain evidence, any error was harmless given the overwhelming evidence of guilt, including testimony, records, and bank data confirming removal. The court also found that a curative instruction cured any prejudice from an inadvertent reference to prior arrests, as juries are presumed to follow limiting instructions.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Dennis Jacobs; Gerard E. Lynch; Lawrence J. Vilaro
JURISDICTION	Federal
DECIDED	March 22, 2019
DOCKET	18-798
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the United States District Court for the Southern District of New York (Caproni, J.) convicting him of illegal reentry and making false statements following a jury trial.
STANDARD OF REVIEW	abuse of discretion for evidentiary rulings; harmless error for preserved objections
PRECEDENTIAL VALUE	unpublished
PARTIES	Thiodore Igrovich Galitsa v. United States of America

TOPICS

[criminal procedure](#) [evidence](#) [harmless error](#) [appellate procedure](#) [impeachment](#)

PRACTICE AREAS

[Criminal Law](#) [Appellate Practice](#)

QUESTIONS PRESENTED

1. Whether the district court erred in admitting evidence of Galitsa's prior arrests, charges, and convictions
2. Whether the district court erred in allowing cross-examination about those incidents

HOLDINGS

1. Any purported evidentiary errors were harmless because the government presented overwhelming evidence of guilt, and the challenged evidence was cumulative of other impeachment evidence.

KEY QUOTATIONS

“the government introduced what the district court aptly characterized as “a veritable avalanche of evidence” against Galitsa that rendered any error harmless.” (3)

“discredit the testimony of ICE agents who testified to the procedures followed in removing Mr. Galitsa, contemporaneous notes taken by the ICE agents, and ICE records bearing Mr. Galitsa's fingerprints that confirmed his removal, passenger manifests and Ukrainian border records confirming that Mr. Galitsa was on the plane to Ukraine and arrived in Kiev, and bank records showing that Mr. Galitsa's bank card was used in Kiev on the day his flight arrived in Ukraine and that appeared to track Mr. Galitsa's movements as he moved around Eastern Europe before returning to the United States.” (3)

FACTUAL BACKGROUND

Galitsa was charged with illegal reentry and making false statements. His defense was that federal officers freed him at the airport instead of ensuring he boarded a plane to Ukraine. The government presented extensive evidence including ICE records, passenger manifests, and bank records showing his travel.

PROCEDURAL HISTORY

Galitsa was convicted after a jury trial. He appeals the conviction, challenging evidentiary rulings and cross-examination.

DISPOSITION

affirmed

CASES CITED

- United States v. Khalil, 214 F.3d 111 (2d Cir. 2000)
- United States v. Gomez, 617 F.3d 88 (2d Cir. 2010)
- United States v. Kaplan, 490 F.3d 110 (2d Cir. 2007)
- United States v. Rigas, 490 F.3d 208 (2d Cir. 2007)
- United States v. Becker, 502 F.3d 122 (2d Cir. 2007)

OPINION

PER CURIAM.

18-798 United States v. Galitsa UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT SUMMARY ORDER RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT=S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION ASUMMARY ORDER@).

A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL. At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of March, two thousand nineteen. PRESENT: DENNIS JACOBS, GERARD E. LYNCH, Circuit Judges, LAWRENCE J. VILARDO,* District Judge. - - -
- - - - -X UNITED STATES OF AMERICA, Appellee, -v.- 18-798 THIODORE IGOROVICH GALITSA, AKA KRES KORNIK, AKA FYODOR GALITSA-IGOROVICH, AKA TIODORE GALITSA, AKA Judge Lawrence J. Vilardo, United States District Court for the Western District of New York, sitting by * designation.

FEDOR GALITSA, AKA FYODOR HALISTA, Defendant-Appellant. - - - - -
- - -X FOR APPELLEE: MICHAEL K. KROUSE, Assistant United States Attorney (Daniel B. Tehrani, Assistant United States Attorney, on the brief), for Geoffrey S. Berman, United States Attorney for the Southern District of New York, New York, NY. FOR DEFENDANT-APPELLANT: ALLEGRA GLASHAUSSE, Federal Defenders of New York, Inc., New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Caproni, J.). UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is AFFIRMED. Thiodore Galitsa appeals from a judgment from the Southern District of New York (Caproni, J.) convicting him of illegal reentry and making false statements following a jury trial.

On appeal, he challenges [i] several evidentiary rulings admitting his prior acts, criminal charges, and convictions, as well as [ii] the language used to cross-examine him about those incidents. We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal. Courts have broad discretion over the admissibility of evidence and the scope of cross-examination, and such decisions are reviewed for abuse of discretion.

United States v. Khalil, 214 F.3d 111, 122 (2d Cir. 2000). If an objection is preserved, we review for harmless error, considering “(1) the overall strength of the prosecutor’s case; (2) the prosecutor’s conduct with respect to the improperly admitted evidence; (3) the importance of the wrongly admitted testimony; and (4) whether such evidence was cumulative of other properly admitted evidence.” United States v. Gomez, 617 F.3d 88, 95 (2d Cir.

2010) (quoting United States v. Kaplan, 490 F.3d 110, 123 (2d Cir. 2007)). “Where the erroneously admitted evidence goes to the heart of the case against the defendant, and the other evidence against the defendant is weak, we cannot conclude that the evidence was unimportant or was not a substantial factor in the jury’s verdict.” Id. (quoting United States v. Rigas, 490 F.3d 208, 222 (2d Cir.

2007)). We will reverse only if an error affected “substantial rights.” Fed.R.Crim.P. 52(a). Galitsa contends that the government’s inadvertent reference to Galitsa’s prior arrests, rather than to his prior conduct, was error not rectified by the court’s curative instruction and in fact compounded by the decision to allow inquiry into Galitsa’s prior charges and convictions.

However, unless there is an “overwhelming probability that the jury will be unable to follow the court’s instructions and the evidence is devastating to the defense,” we generally “presume that juries follow limiting instructions.” Gomez, 617 F.3d at 96 (quoting United States v. Becker, 502 F.3d 122, 130 (2d Cir. 2007)).

The jury was instructed that an arrest is not evidence of conduct, references to Galitsa’s arrests should be disregarded, and no inferences should be drawn against him based on those arrests. We have no reason to believe the jury was unable to follow the court’s instruction. Galitsa also contests the district court’s decision to allow testimony concerning a 2014 forgery charge that was ultimately dismissed, a 2015 conviction for petit larceny, and a 1997 conviction for burglary.

The district court’s evidentiary rulings may well have been error. But the government introduced what the district court aptly characterized as “a veritable avalanche of evidence” against Galitsa that rendered any error harmless. App’x 125. Galitsa’s defense was that the federal officers responsible for deporting him freed him at the airport instead of ensuring he boarded a plane bound for Ukraine.

The district court summarized what the jury would have been required to do to accept this story: discredit the testimony of ICE agents who testified to the procedures followed in removing Mr. Galitsa, contemporaneous notes taken by the ICE agents, and ICE records bearing Mr. Galitsa’s fingerprints³ that confirmed his removal, passenger manifests and Ukrainian border records confirming that Mr. Galitsa was on the plane to Ukraine and arrived in Kiev, and bank records showing that Mr. Galitsa’s bank card was used in Kiev on the day his flight arrived in Ukraine and

that appeared to track Mr. Galitsa's movements as he moved around Eastern Europe before returning to the United States.

Id. So although the purported errors arguably go to the lynchpin of Galitsa's defense—his credibility—the evidence supporting guilt is compelling. In any event, the evidence Galitsa challenges is cumulative of other evidence impeaching his character for truthfulness, including false tax returns he allegedly created to corroborate his claim that he lived in the United States in 2011 and 2012.

Even in combination, the purported evidentiary errors were harmless and do not require vacatur of the conviction. We have considered the Appellant's remaining arguments and find them to be without merit. The judgment of the district court is AFFIRMED. FOR THE COURT: CATHERINE O'HAGAN WOLFE, CLERK 4