

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

United States v. Mohammed Ibrahim Kandiel, a/k/a Jeff Howard

865 F.2d 967 (8th Cir. 1989) · No. No. 87-5385 · Decided January 23, 1989

SUMMARY

The Eighth Circuit affirmed Mohammed Ibrahim Kandiel's convictions on thirteen federal firearms, false statement, passport, citizenship, and licensing offenses. The court rejected challenges to the admission of genetic-marker statistical evidence, other-crimes evidence, audio cassette recordings, and alleged judicial partiality, concluding that the claims were waived, harmless, or without merit.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Ross, Senior Circuit Judge; Gerald W. Heaney, Circuit Judge; Irving Hill, Senior United States District Judge, sitting by designation
JURISDICTION	Federal
DECIDED	January 23, 1989
DOCKET	No. 87-5385
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his jury convictions on thirteen federal firearms, false-statement, and false-citizenship counts, challenging the admission of expert genetic-testing testimony, other-crimes evidence, judicial questioning, and audio recordings.
STANDARD OF REVIEW	Unpreserved claims were reviewed for plain error. Admission of expert testimony was reviewed for manifest error or abuse of discretion; admission of prior-bad-acts evidence and authentication of recordings were also reviewed for abuse of discretion, with any evidentiary error additionally assessed for harmlessness.
PRECEDENTIAL VALUE	Published precedential federal appellate opinion
PARTIES	Mohammed Ibrahim Kandiel, a/k/a Jeff Howard v. United States of America

TOPICS

- criminal procedure
- expert testimony
- authentication
- character evidence
- appellate procedure

PRACTICE AREAS

criminal procedure

evidence

firearms offenses

immigration and citizenship offenses

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion or committed plain error by admitting genetic-marker expert testimony when the defense received the testing information shortly before testimony.
2. Whether statistical probability testimony based on scientifically controlled population frequency tables was sufficiently reliable and admissible.
3. Whether evidence concerning a falsified receipt and other prior conduct was admissible under Federal Rule of Evidence 404(b), or whether its admission constituted reversible error.
4. Whether the trial judge's questioning of witnesses deprived Kandiel of a fair and impartial trial.
5. Whether audio cassette tapes seized from Kandiel's residence were adequately authenticated under Federal Rule of Evidence 901.

HOLDINGS

1. The claim that the genetic-testing evidence was untimely was not preserved because defense counsel did not request a continuance or additional preparation time, and the record did not show plain error or an abuse of discretion.
2. Statistical expert testimony concerning the probability of a familial relationship is not inadmissible per se when it is based on scientifically controlled population studies and frequency tables rather than merely the expert's personal experience.
3. Evidence that Kandiel falsified a receipt to conceal his ownership and possession of a converted automatic firearm was relevant to possession and admissible under Rule 404(b); in any event, any error was harmless in light of the substantial evidence of guilt.
4. The trial judge's questioning of witnesses did not deprive Kandiel of a fair trial because the questions clarified ambiguous testimony without abandoning neutrality or improperly emphasizing the prosecution's case.
5. The government sufficiently authenticated the Arabic cassette recordings because they were found in Kandiel's home, Ahmed Kandiel testified regarding their origin and speakers, and their contents corroborated other evidence; strict application of the McMillan foundational requirements was unnecessary.

KEY QUOTATIONS

"Statistical evidence is not inadmissible per se." (969)

"Rule 404(b) is a rule of inclusion permitting admission of 'other crimes' evidence unless it tends to prove only the defendant's criminal disposition." (970)

*"We do not believe * * * that under such circumstances mechanical or wooden application of the McMillan requirements is necessary."* (971)

FACTUAL BACKGROUND

The government contended that Kandiel was Mohammed Ibrahim Kandiel, an Egyptian national, rather than American-born Jeff S. Howard. Evidence included inconsistent identities and birth dates, ties to Egyptian relatives, photographs and Arabic recordings seized from his home, and blood-testing evidence indicating that he was substantially more likely to be the brother of Ahmed Kandiel than a randomly selected person. He was convicted of firearms and identity-related offenses and sentenced to concurrent forty-two-month terms.

PROCEDURAL HISTORY

A jury convicted Kandiel on thirteen counts involving firearms violations, false statements in passport and firearms-license applications, and false representation of citizenship. The district court imposed concurrent forty-two-month prison terms. Kandiel appealed, and the Eighth Circuit affirmed the judgment of conviction.

DISPOSITION

affirmed

CASES CITED

- United States v. Steffen, 641 F.2d 591, 595 (8th Cir.), cert. denied, 452 U.S. 943 (1981)
- United States v. Massey, 594 F.2d 676, 680-81 (8th Cir. 1979)
- United States v. Gwaltney, 790 F.2d 1378, 1382 (9th Cir. 1986), cert. denied, 479 U.S. 1104 (1987)
- United States v. Tovar, 687 F.2d 1210, 1215 (8th Cir. 1982)
- United States v. Robertson, 706 F.2d 253, 255 n. 2 (8th Cir. 1983)
- United States v. Mothershed, 859 F.2d 585, 588-89 (8th Cir. 1988)
- United States v. Marshall, 683 F.2d 1212, 1215 (8th Cir. 1982)
- United States v. Conley, 523 F.2d 650, 654 (8th Cir. 1975), cert. denied, 424 U.S. 920 (1976)
- Huddleston v. United States, 108 S. Ct. 1496, 1501 (1988)
- United States v. Mays, 822 F.2d 793, 798 (8th Cir. 1987)
- United States v. Gleason, 766 F.2d 1239, 1243 (8th Cir. 1985), cert. denied, 474 U.S. 1058 (1986)
- Llach v. United States, 739 F.2d 1322, 1329-30 (8th Cir. 1984)
- United States v. Bland, 697 F.2d 262, 265-66 (8th Cir. 1983)
- United States v. O'Connell, 841 F.2d 1408, 1420 (8th Cir.), cert. denied, 108 S. Ct. 2857 (1988)
- United States v. McMillan, 508 F.2d 101, 104 (8th Cir. 1974), cert. denied, 421 U.S. 916 (1975)
- United States v. Kirk, 534 F.2d 1262, 1277 (8th Cir. 1976), cert. denied, 433 U.S. 907 (1977)
- United States v. Johnson, 767 F.2d 1259, 1271 (8th Cir. 1985)