

UNREPORTED/NOT

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-4153

UNITED STATES OF AMERICA

v.

RUSSELL ROBINSON,
Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE VIRGIN ISLANDS
D.C. Crim. No. 99-cr-00021-1
District Judge: Honorable Thomas K. Moore

Argued: May 18, 2001

Before: McKEE, RENDELL, BARRY, Circuit Judges

(Opinion Filed: June 27, 2001)

OPINION OF THE COURT

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Attorney for Appellee

OPINION OF THE COURT

BARRY, Circuit Judge

On July 14, 1999, Russell Robinson was convicted following a trial of knowingly transporting aliens into the United States in violation of 8 U.S.C. § 1324(a)(1)(A)(i). Thereafter, he was sentenced within the applicable guideline range to 18 months imprisonment and a three year term of supervised release. He now appeals. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). After a careful review of the record and after considering each of the issues raised by Robinson, we reject all of his challenges save one. For the reasons discussed below, we will affirm the judgment of conviction and sentence, but will remand this matter to the District Court to consider Robinson's claim that prejudicial, extraneous information was erroneously brought to the

jury's attention.

The parties are fully aware of the relevant facts and, thus, we need not recite them here. Instead, we turn immediately to the two issues that warrant some discussion.¹ We first reject Robinson's challenge to the sufficiency of the evidence. Viewing the evidence in the light most favorable to the Government, a reviewing court must determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in the original). If we find substantial evidence to support the jury's determination, we will "not disturb the verdict although on that evidence we might not have made the same decision." United States

¹The remaining issues have been raised by Robinson mostly in passing and do not require much, if any, discussion. We will not consider Robinson's ineffective assistance of counsel claim on this direct appeal. Robinson, of course, may raise this claim in a petition pursuant to 28 U.S.C. § 2255. United States v. Tobin, 155 F.3d 636, 643 (3d Cir.1998). Next, we find no merit to Robinson's complaint of a "non-verbal communication" between the District Court's summer intern and a juror. Because Robinson did not make anything of this complaint before the District Court, that Court did not abuse its discretion in not exploring it, and we find no merit to the claim now. Robinson's claims that the FBI intimidated two of his witnesses and that the Government withheld Brady/Giglio material are bereft of factual support. As for his challenge, without case citation or legal discussion, to the admissibility of certain evidence concerning the alienage of the women involved, most, if not all, of the contested evidence was admissible under Rules 804(b)(4)(A), 803(6), and perhaps 801(d)(2)(E). Any part of that evidence admitted in error would be harmless in light of the admissible evidence on this point. Robinson also challenges the District Court's decision not to adjourn the trial to allow him to secure Saldana's testimony. Again, we find that even if the District Court erred, the error was harmless because Saldana's testimony would have been cumulative, at best, and inculpatory, at worst. Finally, Robinson complains that the District Court improperly denied his request for a three-level downward adjustment under U.S.S.G. § 2L1.1(b)(1). Because Robinson did not bear his burden of showing that he committed the instant offense for a reason other than for profit, we find no error.

v. Cooper, 121 F.3d 130, 133 (3d Cir. 1997).

Robinson claims the Government failed to prove the elements of the offense of which he was convicted -- that the women were aliens, that he knew of their status, and that he knowingly brought them into the United States at a place other than a port of entry. With respect to the women's alienage, there is simply no legal support for Robinson's contention that the Government had to disprove every conceivable way in which the women could have been citizens. There was also more than sufficient evidence that at least two of the women were aliens. The Government proved that the women were traveling under Colombian passports, the women affirmed that they were each born in Colombia and were Colombians, they did not claim dual nationality, and two of the women were not on record with the Immigration and Naturalization Service documenting a legal relationship with the United States.

It is, however, a closer question whether the Government presented sufficient evidence that Robinson knew the women were aliens. After carefully reviewing the evidence in the light most favorable to the Government, we find sufficient evidence, albeit circumstantial, of Robinson's knowledge. "Inferences from established facts are accepted methods of proof when no direct evidence is available so long as there exists a logical and convincing connection between the facts established and the conclusion inferred." United States v. Navarro, 145 F.3d 580, 593 (3d Cir.1998) (jury may draw any reasonable inferential conclusion which, based on common sense and experience, reasonably flows from the evidence). A reasonable juror could well have inferred the requisite knowledge from the fact

that, and the manner by which, Robinson arranged for the women to be flown to Anegada (and not directly to St. John) on July 3, 1998; that Robinson's agent had to find the women a hotel on Anegada; that Robinson was then found bringing the women (and their luggage) from the British Virgin Islands to the United States on the evening of July 4, 1998 after the women told British Customs that they were staying on Anegada for three days; that Robinson's vessel proceeded towards St. John with its lights off; that the vessel intentionally docked at a place other than the Customs pier; and that the women never passed through United States Customs. Based on this evidence, we conclude the jury could reasonably have inferred that Robinson knew the women were aliens.

Finally, with respect to the last element -- that Robinson entered the United States at a place other than a port of entry -- the evidence was more than sufficient to prove beyond a reasonable doubt that the vessel was in Robinson's control on the evening of July 4th and that it docked near but not at the Customs dock on St. John. In sum, we find the evidence sufficient to support the jury's verdict.

Next, Robinson argues that a new trial or hearing is required because defense Exhibit D, which was admitted into evidence subject to the redaction of inadmissible, prejudicial information, erroneously found its way to the jury room along with the other exhibits without the necessary redaction. For its part, the Government has conceded that the unredacted Exhibit D was erroneously sent to the jury room but concludes, without discussion, that the error was harmless. We note, in this regard, that given the highly prejudicial information in Exhibit D, the Government's conclusion would be far from certain, if, and only if, jurors had

seen Exhibit D.

Because, however, Robinson's counsel apparently only recently discovered that the exhibit had gone to the jury room, this issue has not been presented to the District Court and, thus, we do not have the benefit of a well-developed record regarding, for example, how the exhibit got to the jury room, whether the jurors looked at any of the exhibits, and, most importantly, whether any juror read Exhibit D or at least the prejudicial portion of Exhibit D. We, therefore, believe it advisable to remand this matter to the District Court. On remand, the District Court should hold a hearing on this issue keeping in mind the strictures of Federal Rule of Evidence 606(b). If the District Court determines that Exhibit D was not read by any juror, Robinson's claim will necessarily fail. If, however, the District Court finds to the contrary, that Court is in the best position to initially consider whether the error warrants a new trial, and, if so, notwithstanding our affirmance on the record before us, the District Court would then vacate the judgment of conviction and order a new trial.

For the foregoing reasons, we will affirm the judgment of conviction and sentence and remand this matter to the District Court for further proceedings consistent with this Opinion.

TO THE CLERK OF THE COURT:

Kindly file the foregoing Opinion.

/s/ Maryanne Trump Barry
Circuit Judge

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JUDGMENT

This cause came to be heard on the record from the United States District Court for the Virgin Islands and argued on May 18, 2001.

After consideration of all contentions raised by the appellant, it is

ADJUDGED and ORDERED that the judgment of conviction and sentence of the District Court be and is hereby affirmed and the case remanded for further proceedings.

ATTEST:

Marcia M. Waldron, Clerk

Dated: 27 June 2001