

APPENDIX

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United States v. Crosby

United States Court of Appeals for the Ninth Circuit

August 27, 2018, Argued and Submitted, Seattle, Washington; September 6, 2018, Filed

No. 17-30119

Reporter

2018 U.S. App. LEXIS 25343 *; __ Fed. Appx. __; 2018 WL 4233053

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. DAVID CROSBY, Defendant-Appellant.

Notice: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [*1] Appeal from the United States District Court for the District of Montana. D.C. No. 1:16-cr-00009-SPW-1. Susan P. Watters, District Judge, Presiding.

Disposition: AFFIRMED.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Leif Johnson, Assistant U.S. Attorney, Tim Tatarka, Assistant U.S. Attorney, Office of the US Attorney, Billings, MT.

For DAVID CROSBY, Defendant - Appellant: Joslyn Michelle Hunt, FDMT-Federal Defenders of Montana (Helena), Helena, MT.

Judges: Before: HAWKINS, McKEOWN, and W. FLETCHER, Circuit Judges.

Opinion

MEMORANDUM*

David Crosby appeals his jury trial conviction for failure to register as a sex-offender, in violation of 18 U.S.C. § 2250. We have jurisdiction under 28

U.S.C. § 1291, and affirm.

Crosby contends that the prosecutor engaged in improper witness vouching during closing and rebuttal arguments. Because Crosby did not object to the prosecutor's statements during the trial, "we review under the more deferential plain error standard." *See United States v. Ruiz*, 710 F.3d 1077, 1082 (9th Cir. 2013) (quoting *United States v. Wright*, 625 F.3d 583, 610 (9th Cir. 2010)).

The prosecutor's statement that the government's witness, Stephanie Harman, had no "dog in the fight" and submission that it was reasonable to believe Ms. Harman testified truthfully did not cross the line. We have previously held that statements, analogous to the prosecutor's [*2] statement here, regarding a witness' motive to lie did not amount to vouching. *See United States v. Wilkes*, 662 F.3d 524, 540 (9th Cir. 2011); *United States v. Nash*, 115 F.3d 1431, 1439 (9th Cir. 1997).

The prosecutor's submission that it was reasonable to believe Ms. Harman testified truthfully, viewed in context, was an argument of "inference from evidence in the record" rather than vouching. *United States v. Necochea*, 986 F.2d 1273, 1279 (9th Cir. 1993). A prosecutor has "considerable leeway" to argue reasonable inferences from the evidence, *United States v. Tucker*, 641 F.3d 1110, 1120 (9th Cir. 2011) (citation omitted), and the statements here did not place "[the government's] own prestige behind the witness" or "indicat[e] that extrinsic information not presented in court support[ed] the witness' testimony," *United States v. Simtob*, 901 F.2d 799, 805 (9th Cir. 1990).

*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Even if vouching did occur, Crosby has not "demonstrate[d] a reasonable probability that he wouldn't have been found guilty had the error not occurred." See *United States v. Rangel-Guzman*, 752 F.3d 1222, 1225-26 (9th Cir. 2014). The record demonstrates that (1) the government offered sufficient evidence aside from Ms. Harman's testimony; (2) the prosecutor's statements followed the defense's attack on Ms. Harman's testimony; and (3) the jury was properly instructed on its duty to evaluate witness credibility and the appropriate considerations for doing so.

AFFIRMED.

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