

Appendix A

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. BILLY J. SEABOLT, Defendant - Appellant.UNITED STATES OF AMERICA, Plaintiff - Appellee, v. DARYL G. BANK, Defendant - Appellant.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

2023 U.S. App. LEXIS 12518

No. 21-4499, No. 21-4515

May 22, 2023, Decided

April 27, 2023, Submitted

Notice:

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Subsequent History

Rehearing denied by, En banc, Rehearing denied by United States v. Daryl G. Bank, 2023 U.S. App. LEXIS 15411 (4th Cir., June 20, 2023)

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}Appeals from the United States District Court for the Eastern District of Virginia, at Norfolk. (2:17-cr-00126-RAJ-LRL-3; 2:17-cr-00126-RAJ-LRL-1). Raymond A. Jackson, Senior District Judge. United States v. Bank, 2018 U.S. Dist. LEXIS 71004 (E.D. Va., Apr. 26, 2018)

Disposition:

AFFIRMED.

Counsel

ON BRIEF: Juval O. Scott, Federal Public Defender, Charlottesville, Virginia, Arin Melissa Brenner, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Roanoke, Virginia, for Appellant Daryl G. Bank.

Lawrence H. Woodward, Jr., RULOFF, SWAIN, HADDAD, MORECOCK, TALBERT & WOODWARD, P.C., Virginia Beach, Virginia, for Appellant Billy Seabolt.

Jessica D. Aber, United States Attorney, Richmond, Virginia, Elizabeth M. Yusi, Assistant United States Attorney, Melissa E. O'Boyle, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee.

Judges: Before RUSHING and BENJAMIN, Circuit Judges, and KEENAN, Senior Circuit Judge.

Opinion

PER CURIAM:

After a five-week trial, a jury convicted Daryl Bank and his attorney, Billy Seabolt, on numerous charges related to a fraud scheme that involved selling unregistered securities to individuals looking to save for retirement. Both defendants appeal their convictions. We affirm.

Seabolt contests the sufficiency of the evidence on the six counts of which{2023 U.S. App. LEXIS 2} he was convicted. In the district court, Seabolt challenged the sufficiency of the evidence on specific

counts but not on any of the counts of which he was ultimately convicted. Thus, Seabolt forfeited his sufficiency challenges on the counts before us on appeal, and we may overturn the verdict only if "a 'manifest miscarriage of justice' has occurred." *United States v. Miller*, 41 F.4th 302, 315 (4th Cir. 2022) (quoting *United States v. Duroseau*, 26 F.4th 674, 678 (4th Cir. 2022)). Seabolt has not shown a manifest miscarriage of justice, so we affirm his convictions.

Bank challenges the admission of three related documents into evidence at trial. Over Bank's objection, the district court admitted the complaint, consent order, and judgment from a civil suit by the Securities and Exchange Commission (SEC) against Bank and some of his companies. The SEC complaint alleged securities violations related to Bank's cellular spectrum licensing scheme, including that the offerings were unregistered securities, that Bank's representations about the value of the licenses were untrue, and that Bank had misappropriated investor funds. Without admitting or denying the allegations of the complaint, Bank consented to entry of the judgment which, among other things, permanently restrained and enjoined him from violating{2023 U.S. App. LEXIS 3} securities laws and regulations. Bank also agreed to disgorgement and civil penalties based on the allegations of the complaint. Some of the acts alleged in that complaint overlap with conduct for which Bank was on trial in this case. "We review the district court's admission of this evidence over Appellant's objection for abuse of discretion." *United States v. Ivey*, 60 F.4th 99, 113 (4th Cir. 2023).

The district court concluded that the documents were highly relevant to prove Bank's knowledge and intent and that the documents' probative value was not substantially outweighed by a danger of unfair prejudice, confusing the issues, or misleading the jury. See Fed. R. Evid. 403; see also *United States v. Aramony*, 88 F.3d 1369, 1378 (4th Cir. 1996) (explaining that when, as here, evidence "is concededly probative, the balance under Rule 403 should be struck in favor of admissibility, and evidence should be excluded only sparingly"). Bank's appellate arguments are premised on an assumption that the government or the jury misused these documents to suggest that the SEC's allegations and the subsequent judgment were evidence proving Bank's criminal liability for those acts. But nothing in the record supports that contention, and Bank does not identify any place where the government employed the evidence that way. Moreover, the{2023 U.S. App. LEXIS 4} district court gave limiting instructions setting boundaries on how the jury was permitted to use this evidence. We conclude the district court did not abuse its discretion in admitting these documents.*

AFFIRMED

* **Footnotes**

Bank also asserted a Confrontation Clause challenge in his opening brief based on witnesses wearing masks while testifying at trial. But Bank later acknowledged that the masks were clear, defeating his Confrontation Clause argument on its own terms.

Appendix B

UNITED STATES OF AMERICA, Plaintiff, v. DARYL BANK, et. al., Defendant.UNITED STATES OF AMERICA, Plaintiff, v. KENT MAERKI, et. al., Defendant.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION

2020 U.S. Dist. LEXIS 185504

CRIMINAL ACTION NO. 2:17-cr-126 Lead Case,CRIMINAL ACTION NO. 2:19-cr-47 Consolidated Action

October 5, 2020, Decided

October 6, 2020, Filed

Unpublished

Decision as presented by Government prosecutors
in their brief to Court of appeals.

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No. 21-4499

UNITED STATES OF AMERICA,
Appellee,

v.

BILLY J. SEABOLT,
Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia
at Norfolk
The Honorable Raymond A. Jackson, District Judge

BRIEF OF THE UNITED STATES

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