

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 04 1992

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
KEVIN JOSEPH ZINK,
Defendant-Appellant.

No. 91-7033
(D.C. No. 90-65-S
(E.D. Okla.)

ORDER AND JUDGMENT*

Before SEYMOUR and BRORBY, Circuit Judges and BROWN, Senior
District Judge.**

The parties have stipulated that we may decide this case on the briefs. After examining the briefs and appellate record, we have determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Defendant Kevin Joseph Zink has appealed his conviction as well as the denial of his motion for new trial. We have reviewed

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

** The Honorable Wesley E. Brown, Senior United States District Judge for the District of Kansas, sitting by designation.

the record and have fully considered his arguments. We are persuaded that the evidence was sufficient to establish beyond a reasonable doubt that defendant knowingly participated in a conspiracy to obtain a false passport for his fugitive brother. We are also convinced that the government did not commit a violation of Brady v. Maryland, 373 U.S. 83 (1963), when it inadvertently failed to find and deliver the grand jury testimony of certain people until after the trial. In this connection, we have concluded that the grand jury material does not meet the test of United States v. Bagley, 473 U.S. 667, 682 (1984), which holds that in order for evidence to be material under Brady, there must be "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."

Accordingly, we AFFIRM the denial of the motion for new trial and the judgment of conviction.

Entered for the Court

Stephanie K. Seymour
Circuit Judge