

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 01-3391

UNITED STATES OF AMERICA

v.

ARNOLD WHITE,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Criminal No. 00-cr-00221)
District Judge: Honorable Mary Little Cooper

Submitted Under Third Circuit LAR 34.1(a)
on April 22, 2002

Before: SCIRICA, RENDELL and NOONAN*, Circuit Judges,

(Filed: April 30, 2002)

OPINION OF THE COURT

RENDELL, Circuit Judge.

Arnold White appeals from judgment of conviction and sentence entered by the

*The Honorable John T. Noonan, Jr., Senior Circuit Judge for the Ninth Circuit, sitting by designation.

District Court on August 27, 2001. Because we write only for the parties, who are familiar with the facts, we need not set forth the facts and procedural history of the case at length. We exercise jurisdiction pursuant to 28 U.S.C. 1291. Our standard of review is for abuse of discretion.

On April 6, 2000, a federal grand jury sitting in Newark, New Jersey, returned a fifteen-count indictment against Arnold White for fraudulent preparation of income tax returns in violation of 26 U.S.C. 7206(2). After a trial lasting from December 5, 2000 to December 8, 2000, White was found guilty; he was sentenced on August 23, 2001. During the trial, the District Court allowed the Government to cross-examine White, for the purpose of impeachment, by reference to six tax returns that he had prepared, that were not the subject of the indictment against him. White now appeals his conviction, claiming the District Court erred in allowing this line of inquiry.

The District Court allowed the Government to cross examine Arnold White about these six income tax returns. In each instance very large deductions were claimed in the same three categories as in the 15 returns charged under indictment. The District Court considered White's objection, and engaged in a balancing analysis under Federal Rule of Evidence 403 before allowing the Government to cross-examine White. The District Court found that the inquiry, which went to White's credibility, was relevant, supported

by a good-faith basis on the part of the Government, and not outweighed by substantial prejudice. The court reasoned that the Government was not required, indeed was not permitted, to introduce this extrinsic evidence to support these instances of misconduct, but was introducing them only to attack the defendant's credibility. The District Court declined to give a specific instruction to the jury regarding this testimony, but instructed generally that attorneys' questions were not evidence.

We find that while White makes persuasive argument that the reference to these returns may have been improper in that there was no foundation and the jury may have been confused as to the limited purpose for which they were used, nonetheless we find their use to have been harmless. There was overwhelming evidence of White's fraudulent preparation of the tax returns at issue, including specific testimony from nine taxpayers who testified that they had not incurred the exorbitant expenses charged, and never instructed White to claim such deductions.

Accordingly, the District Court's order of August 27, 2001 will be affirmed.

TO THE CLERK OF COURT:

Please file the foregoing Not Precedential Opinion.

/s/ Marjorie O. Rendell
Circuit Judge

Dated: April 30, 200