

UNITED STATES v. WILLIAMS
739 F.2d 297 (7th Cir. 1984)

FLAUM, CIRCUIT JUDGE.

This is an appeal from a conviction following a jury trial in which the defendant was found guilty on four counts of transporting stolen motor vehicles in interstate commerce in violation of the Dyer Act, 18 U.S.C. § 2312 (1982) and of aiding and abetting the commission of Dyer Act violations, 18 U.S.C. § 2 (1982). The defendant alleges several trial errors that he says deprived him of a fair trial. For the reasons stated below, we agree that the defendant did not receive a fair trial, and we vacate the defendant's conviction and remand for a new trial.

1.

Several years ago, the Federal Bureau of Investigation (FBI) established an undercover business in southern Missouri. This business purchased salvaged wrecked automobiles from insurance companies and sold the public Vehicle Identification Number (VIN) tags to persons who then used them to retag stolen automobiles and sell them. The purpose of the FBI operation was to investigate and identify persons involved in the retagging of stolen automobiles in the St. Louis, Missouri, area. As a result of this FBI investigation, the defendant was implicated in a scheme involving the theft, retagging, and resale of four automobiles.

At the defendant's trial, four witnesses testified that they had purchased an automobile from the defendant and had taken delivery from him in Illinois some time in 1981 or early 1982. Evidence then was introduced to show that each of these automobiles delivered by the defendant had been stolen a short time earlier from individuals living in St. Louis. Each of these stolen automobiles contained a VIN tag sold by the FBI's undercover business to two suspected dealers of stolen automobiles, L.C. Kirkwood and Lee Morgan. The prosecution's theory was that the defendant had acted as a middleman between Kirkwood and Morgan and the purchasers of the stolen automobiles. The defendant admitted to working as a delivery man for Kirkwood and Morgan, but claimed that he did not know that the vehicles that he was delivering were stolen. Thus, the defendant's state of mind was the key issue in the case.

After a three-day jury trial, the defendant was found guilty on all four counts charged in his indictment. His post-trial motions were denied and he was sentenced to a total of six years in prison. He then brought this appeal.

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Although the defendant makes several arguments on appeal, we find two sufficiently persuasive in this factual context to warrant reversal.... The second error alleged by the defendant occurred during the testimony of one of the prosecution's witnesses, a detective with the St. Louis Police Department. The prosecutor asked the detective whether the defendant was known by any aliases. The defense counsel objected, but the trial court permitted the detective to state that he knew the defendant as "Fast Eddie." The defendant contends that this testimony caused him undue prejudice and should not have been permitted.

We now turn to the other error alleged by the defendant, the police "detective's" testimony. The defendant argues not only that "Fast Eddie" is a nickname suggesting a bad character, but also that the fact that a police detective stated that he knew the defendant as "Fast Eddie" intimated to the jury that the defendant was known to be involved in criminal activity. Thus, the defendant argues, the detective's statement should have been excluded from evidence as more prejudicial than probative under Rule 403 of the Federal Rules of Evidence. The government responds by contending that "Fast Eddie" is a "neutral" name that did not suggest that the defendant had a criminal reputation or background, and that even if it did suggest this, its introduction into evidence does not constitute reversible error.

We find it self-evident that the testimony of a police detective stating that he knew the defendant as "Fast Eddie" might suggest to the jury that the defendant had some sort of history of or reputation for unsavory activity. We also agree with the defendant that the detective's testimony should have been excluded from evidence as more prejudicial than probative. As many courts have recognized, a prosecutor may introduce evidence of a defendant's alias or nickname if this evidence aids in the identification of the defendant or in some other way directly relates to the proof of the acts charged in the indictment. See, e.g., *United States v. Kalish*, 690 F.2d 1144, 1155 (5th Cir. 1982), cert. denied, 459 U.S. 1108, 103 S. Ct. 735, 74 L. Ed. 2d 958 (1983) (defendant's alias admissible where it was used to conceal identity from arresting officer).... In the instant case, however, the detective's testimony about the defendant's nickname was completely unrelated to any of the other proof against the defendant. The prosecution's only possible purpose in eliciting the testimony was to create an impression in the minds of the jurors that the defendant was known by the police to be an unsavory character or even a criminal. Thus, the detective's statement was tantamount to testimony about a defendant's character that is proffered to show the probability that the defendant acted in conformity with that character in a particular case. This type of evidence, of course, is not permitted in the prosecution's case-in-chief, on the theory that it causes defendants undue prejudice and denies defendants the opportunity to defend against the particular charges against them. Fed. R. Evid. 404(a). Therefore, it was improper for the

prosecutor to elicit the gratuitous testimony about the defendant's nickname, and the testimony should not have been permitted.

Having found error in the defendant's trial, we must consider the question of prejudice. We hold that on the facts of this case the testimony concerning "Fast Eddie" was unduly prejudicial to the defendant's defense, particularly when viewed in combination with the prosecutor's improper comment on the defendant's failure to call L.C. Kirkwood as a witness. Whenever the prosecution improperly introduces evidence relating to a defendant's bad character, there is always a danger that the evidence will cause the defendant undue prejudice. In this case, the detective's statement seems particularly prejudicial, since the defendant's only defense was that he did not know that the vehicles that he were transporting were stolen. It is quite possible that this would be viewed as an unlikely story when told by someone known to the police as "Fast Eddie." The testimony also was particularly prejudicial because no other evidence relating to the defendant's character, reputation, or criminal past was introduced at trial. The court had ruled prior to trial that evidence of an earlier criminal conviction would be admissible to impeach the defendant's credibility as a witness. However, the defendant elected not to take the stand, and this evidence never was introduced. Thus, by the time the case was submitted to the jury, the detective's testimony about "Fast Eddie" had gained significance as the only evidence relating to the defendant's character, reputation, or background.

If the properly admitted evidence of the defendant's guilt had been very strong, we might find the errors in this case to be harmless.... However, that was not the case here. The prosecution presented only slight evidence that the defendant actually knew he was transporting stolen vehicles.... The prosecution was relying not on evidence of the defendant's guilty knowledge, but on a well-established legal rule that possession by a defendant of a motor vehicle recently stolen creates a presumption or inference that the defendant knew that the vehicle was stolen.... Without this presumption, according to the trial court's own assessment, the prosecution's case "falls flat on its face." Even with the presumption, the prosecution's case was not overwhelming. The presumption of course is rebuttable, and the defendant attempted to rebut it by offering evidence that, in delivering motor vehicles from buyers to sellers, he was engaged in a practice that is perfectly legal and not uncommon. This defense apparently was plausible enough, and the prosecution's case weak enough, to cause the district court to remark, in considering the defendant's post-trial motions, that "this case is very, very close on the facts." Under such circumstances, the errors discussed herein cannot be considered harmless. Accordingly, we vacate the defendant's conviction and remand for a new trial.