

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:98CR-35-S

BRENNAN JAMES CALLAN

DEFENDANT

ORDER

This matter is before the court on a motion by the defendant, Brennan James Callan, for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure. On February 18, 1999, a jury convicted Callan of acting upon a vessel of the United States with the intent to endanger the safety of the vessel of its cargo in violation of 18 U.S.C. §2275.

FACTS

At approximately midnight on August 24, 1997, a valve was opened in the Belle of Louisville's engine room which allowed water to pour into the boat's hull. This valve was connected to a water intake line that originally fed a potable water tank. In 1985, the tank was removed but the water pipe remained in place. The water pipe's only purpose was as a plumbing system drainage line used during the "winterization" process at the end of the season. Accordingly, the valve was opened only once a year during the winterization process. Otherwise, it was kept closed.

Within seven hours of the opening of this valve, the boat sank at its wharf on the Ohio River in Louisville, Kentucky. Engine room personnel testified that no one had touched the valve during the August 23, 1997 evening cruise and that they had not opened the valve when the cruise ended.

Callan had worked on the Belle during the summer of 1994 but was terminated at the end of the season. Callan reapplied for a job in 1995, 1996, and 1997 but was never rehired. After Callan's last rejection on August 8, 1997, he went to the wharf just after midnight. He spoke with the crew and night watchman and watched as the night watchman began his midnight security rounds.

Callan was again seen by six witnesses at the wharf on August 24, 1997, the day after the Belle sank. Callan told at least two spectators that the Belle had sunk because a valve was opened. Callan never reported this information to the Belle's crew or management. Callan later told investigators that the opening of the valve was intentional and had only involved one person. At that time, no one suspected that the cause of the sinking was an open flood valve.

Callan told investigators that an intruder could gain access to the engine room by opening a door near the engine room, by climbing through a horizontal hatchway parallel to the "Pitman arm" that operated the boat's paddlewheel, or by walking along the Pitman arm directly into the engine room. Callan knew that the Belle's motion detectors were disabled when the night watchman made his hourly rounds. Callan told investigators that the best time to board the Belle was when the night watchman began his rounds because he spent the first few minutes on the upper decks, far from the engine room.

Callan first told investigators that he was at home asleep from 8:00 p.m. August 23 to 8:00 a.m. August 24. Callan then went to Kinko's and told the store manager that he was under investigation and needed to verify his whereabouts. He told two Kinko's employees that he remembered seeing them on August 24. Neither employee, however, had worked that night. Callan then revised his original story and told investigators that he had been at Kinko's from 2:30 a.m. to 5:30 a.m.

Callan had an extensive collection of Belle memorabilia: hundreds of pictures; binders full of brochures, articles and postcards; three-dimensional models; framed pictures; and other

artifacts. Callan, however, preserved no memorabilia about the sinking although he was also interested in searching for sunken steamboats.

DISCUSSION

Despite a conviction by a jury, a court may enter a judgment of acquittal after trial “if the evidence is insufficient to sustain a conviction.” FED. R. CRIM. P. 29(a). Evidence is considered insufficient to sustain a conviction if, after viewing the evidence in the light most favorable to the prosecution, the court determines that no rational jury could have found the essential elements of the crime beyond a reasonable doubt. *United States v. Blakeney*, 942 F.2d 1001, 1010 (6th Cir. 1991).

Callan argues that this court should enter a judgment of acquittal because the jury lacked sufficient evidence to convict him. Callan notes that the government introduced no eyewitnesses or physical evidence. Circumstantial evidence alone, however, is sufficient to sustain a conviction. *United States v. Vincent*, 20 F.3d 229, 232-33 (6th Cir. 1994). Although the government had no direct evidence, they introduced sufficient circumstantial evidence to prove that Callan committed the charged crime. The government proved that Callan knew the location and function of the flood valve and that he knew how and when to enter the boat. The government also introduced evidence that Callan attempted to create a false alibi for the night of the sinking.

Callan argues that his statement that he was at Kinko’s from 2:30 a.m. to 5:30 a.m. on August 24 is irrelevant because the crime was committed between 11:30 p.m and 12:00 midnight. This evidence, however, was relevant to prove Callan’s consciousness of guilt because it proves that Callan attempted to create an alibi. When Callan was first questioned, police had not yet pinpointed the time the sinking began. Therefore, they asked Callan generally where he was on the night of August 24, not specifically where he was at midnight. Callan

responded that he was home asleep all night. Callan then went to Kinko's to verify his whereabouts. He later told investigators: "I could not have committed the crime because I was at Kinko's at 2:30." This indicates that Callan wanted to create an alibi for 2:30 a.m. because Callan thought that the police thought the sinking began at 2:30.

Callan argues that there was no evidence of motive or intent. The government, however, introduced evidence that Callan had a motive to retaliate against the Belle's management and engineering crew. After his termination, Callan reapplied for employment but was denied three years in a row. Furthermore, Callan's personal webpage on the internet was critical of the Belle's management and engineering department.

Callan argues that there was no evidence of his intent to injure the Belle. However, if the government proved circumstantially that Callan opened a valve which he knew would allow water into the hull of the boat, the jury may reasonably infer that he intended the natural and probable consequences of that act knowingly done. *United States v. Johnson*, 756 F.2d 453, 454 (6th Cir. 1985).

Callan argues that the government did not prove that the Belle was "a vessel of United States," as required by 18 U.S.C. §2275. A "vessel of the United States" is defined as "a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof." 18 U.S.C. §9. The government introduced evidence that the Belle was owned by Jefferson County. Jefferson County is a quasi-municipal corporation and a citizen of the United States. *Brown v. Marshall County*, 394 F.2d 498, 500 (6th Cir. 1968). Therefore, the Belle was shown to be a vessel of the United States.

The government introduced evidence at trial sufficient to sustain the jury's conviction. A rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. Accordingly, Callan's motion for a judgment of acquittal is **DENIED**.

IT IS SO ORDERED this _____ day of _____, 1998.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record