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ROBINSON v. RUNYON 149 F.3d 507 (6th Cir. 1998)

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FACTS AND PROCEDURAL HISTORY

Aleia Robinson worked for the United States Postal Service ("Postal Service") at the Cincinnati, Ohio Bulk Mail Center ("CBMC") from 1986 until January 1992 as a keyer clerk.[1] During that time, Robinson was never disciplined and was considered an excellent employee.[2] On January 26, 1992, as Robinson drove her car into the icy CBMC driveway, the car slid out of control and struck a utility pole.[3] Although Robinson was traveling at the posted speed limit of 25 mph when the accident occurred, the police officer who examined the scene of the accident estimated Robinson's speed at 55 mph.[4] The officer also noted abnormal road conditions.[5]

The Postal Service Labor Relations Manual requires managers and supervisors to investigate all accidents promptly to determine their cause.[6] In the investigation, supervisors are required to inspect the accident site and interview witnesses and employees.[7] Discipline is imposed only after the supervisor conducts a thorough investigation, giving consideration to the past work record of the employee, allowing the employee an opportunity to explain his version of the incident, and finding just cause.[8]

Two Postal Service safety officers preliminarily concluded from their examination of Robinson's car that the accident resulted from excessive speed.[9] After reading the police report, the safety officers again concluded that the accident resulted from excessive speed.[10] The safety officers recommended Robinson's termination to both her immediate supervisor and her second line supervisor.[11] Both supervisors agreed with the recommendation and forwarded a termination request to the General Supervisor, who also agreed that Robinson should be terminated.[12] None of the supervisors conducted the required investigation of the incident.[13] On February 10, 1992, Robinson received notification that she was being terminated for the incident.[14]

Robinson challenged her discharge through her union.[15] A subsequent investigation revealed that the police officer had incorrectly calculated Robinson's speed and that she had been traveling at a speed far less than 55 mph.[16] It also revealed that the police officer had noted road conditions as "other" on the

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[1] Robinson v. Runyon, 149 F.3d 507, 509 (6th Cir. 1998).
[2] *Id.*
[3] *Id.*
[4] *Id.* at 509-10.
[5] *Id.* at 510.
[6] *Id.* at 510 n.1.
[7] *Id.*
[8] *Id.*
[9] *Id.* at 510.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*

police report because of ice and water on the driveway.[17] Pursuant to a settlement agreement between the Postal Service and the union, Robinson returned to her job and received back pay for the ten weeks after her termination.[18] Robinson exhausted her administrative remedies under Title VII[19] and filed suit against the Postal Service seeking damages of $750,000.[20] She alleged $250,000 in compensatory damages for emotional distress, mental distress, anguish and humiliation.[21] She alleged $500,000 in punitive damages due to racist, disparate treatment from the Postal Service's management.[22]

Prior to the trial, the magistrate judge held that as a governmental agency the Postal Service could not be found liable for punitive damages under Title VII.[23] Additionally, the Postal Service filed a motion in limine requesting that two items be excluded from evidence under Federal Rule of Evidence 403.[24] The first was a N_____ Employment Application.[25] This was an offensive parody of normal applications. Typical of its content was the proffered responses for place of birth: "zoo, cotton field, back alley and animal hospital."[26] It had been circulated throughout the office and brought to the attention of supervisors.[27] The second was a picture of a hangman's noose that a white employee had drawn and displayed to an African-American employee.[28] Granting the motion in limine, the magistrate judge decided that the pieces of evidence were irrelevant and without sufficient probative value to outweigh the danger of unfair prejudice posed by their introduction into evidence.[29]

An all-white jury found for the Postal Service.[30] Thereafter, Robinson appealed to the United States Court of Appeals for the Sixth Circuit.[31]

HOLDING

The Sixth Circuit reversed the district court's decision and remanded the case for a new trial.[32] The court found that the district court erred by not admitting the parody application as tending to show that supervisors tolerated a racially hostile atmosphere at the CBMC prior to the incident in issue, and its exclusion was an abuse of discretion.[33]

ANALYSIS

Robinson appealed on three

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[17] *Id.*

[18] *Id.*

[19] Civil Rights Act, 42 U.S.C. § 2000e (West 1998).

[20] *Robinson,* 149 F.3d at 510-11.

[21] *Id.* at 510.

[22] *Id.* at 510-11.

[23] *Id.* at 516.

[24] FED. R. EVID. 403 states:
Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. *See Robinson,* 149 F.3d at 511.

[25] *Robinson,* 149 F.3d at 511.

[26] *Id.* at 511 n.5.

[27] *Id.* at 511.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 512.

[31] *Id.*

[32] *Id.* at 517.

[33] *Id.* at 515.

grounds. First, Robinson took exception to the pretrial exclusion of the application and the picture.[34] Second, Robinson took exception to the district court's refusal to instruct the jury to consider punitive damages because of the Postal Service's sovereign immunity.[35] Third, Robinson claimed that bias was involved in the selection of the all-white jury that considered her case.[36]

The court began its examination of the excluded evidence by setting out the standards with which the Sixth Circuit reviews the evidentiary decisions of a district court.[37] Proffered evidence is reviewed on the grounds of its relevancy.[38] The district court also balances the probative value of the evidence against any potentially unfair prejudicial impact the evidence might have.[39] The Sixth Circuit reviews evidence in a manner which most favors the proponent of that evidence.[40] The evidence is given its maximum probative value and its least reasonable prejudicial force.[41] A district court has abused its discretion only when the Sixth Circuit is firmly convinced that the lower court judge has made a mistake.[42]

Next, the court explained the standard for the admission of evidence.[43] Evidence which tends to make the existence of a fact more or less probable than it would be without the evidence is relevant.[44] A court may not "consider the weight or sufficiency of the evidence" and "may not exclude the evidence if it has even the slightest probative worth."[45] The fact that a piece of evidence may not prove a case alone and may require the jury to draw inferences does not make it any less relevant.[46]

Relying on holdings from the First, Fifth and Eighth Circuits, the court held that circumstantial evidence which reveals an employer's unflattering history in employment practices is admissible to show a racially hostile atmosphere even if it may otherwise be unfairly prejudicial.[47] Such evidence is critical for a jury's assessment of whether the employer's action was undertaken because of an unlawful motive.[48] The court recognized that intentional discrimination is often difficult to prove without relying significantly on circumstantial evidence because defendants are not likely to openly proclaim their racial animus.[49]

In reversing the district court's decision regarding the admissibility of the

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[34] *Id.* at 511.

[35] *Id.* at 515-16.

[36] The court declined to address this issue because it was not raised in the district court. *Id.* at 517.

[37] *Id.* at 512.

[38] FED. R. EVID. 401 states:
"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

[39] *Robinson*, 149 F.3d at 512.

[40] *Id.* (citing United States v. Thomas, 74 F.3d 701, 714 (6th Cir. 1996)).

[41] *Id.*

[42] *Id.* (citing Schrand v. Federal Pac. Elec. Co., 851 F.2d 152, 157 (6th Cir.1988)).

[43] *Id.* at 512.

[44] *Id.* (citing FED. R. EVID. 401).

[45] *Id.* (quoting Douglass v. Eaton Corp., 956 F.2d 1339, 1344 (6th Cir. 1992)).

[46] *Robinson,* 149 F.3d at 514.

[47] *Id.* at 512.

[48] *Id.* at 513 (citing Estes v. Dick Smith, Ford Inc., 856 F.2d 1097, 1103 (8th Cir.1988)).

[49] *Robinson,* 149 F.3d at 513.

parody application, the Sixth Circuit found two factors probative.[50] First, at least one of the supervisors involved in the decision to terminate Robinson may have been aware of the parody application and done nothing to thwart its dissemination.[51] The court rejected the Postal Service's argument that the application should be excluded because Robinson failed to show that all the supervisors involved in her firing knew of the parody application. [52] Second, the parody application was specifically present at the office in which Robinson worked.[53] In considering this factor the court distinguished *Schrand v. Federal Pacific Electric Company*,[54] in which evidence was excluded because the circumstantial evidence arose at a separate office and involved a manager who was not involved in terminating the plaintiff/employee.[55] The *Robinson* court concluded that at least one supervisor's knowledge and activity at Robinson's actual office tended to show that Robinson's termination was racially motivated.[56]

On the other hand, the Sixth Circuit affirmed the district court's decision to exclude the noose drawing.[57] The court found that the connection between the incident and Robinson's termination was tenuous for two reasons.[58] First, the noose incident occurred a year after Robinson's termination.[59] Second, the noose incident was not connected to any of the supervisors involved in the decision to terminate Robinson.[60]

After concluding its discussion of relevancy, the court turned to prejudice as a factor in determining whether evidence should be admitted.[61] The court stated that evidence must not be merely prejudicial but unfairly prejudicial before it can be excluded.[62] Evidence pertaining to racially discriminatory motives is not excludable because it is racially inflammatory.[63] The court stated that "[i]t is axiomatic that the available evidence provided to establish racial animus may be racially inflammatory."[64] The court specifically rejected the claim that admitting such evidence would inject an emotional element into the case which was otherwise lacking, causing a decision on an improper basis.[65] Instead, it stated that "vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking such evidence."[66]

The Sixth Circuit found that the district court's exclusion of the parody application was too restrictive and denied Robinson the ability to present her case

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[50] *Id.* at 513-14.
[51] *Id.* at 513.
[52] *Id.* at 514.
[53] *Id.*
[54] 851 F.2d 152 (6th Cir. 1988).
[55] *Robinson,* 149 F.3d at 514 (discussing *Schrand,* 851 F.2d at 156).
[56] *Robinson,* 149 F.3d at 514.
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.* at 514-15.
[63] *Id.* at 515.
[64] *Id.*
[65] *Id.*
[66] *Id.* (quoting Doe v. Claiborne County, Tennessee, 103 F.3d 495, 515 (6th Cir. 1996)).

before the jury.[67] Robinson's case relied heavily upon circumstantial evidence. [68] The court held that as a result the exclusion of this key piece of evidence might have made a difference in the juror's minds.[69] Therefore, the district court's error was not harmless and Robinson was entitled to another trial.[70]

The Sixth Circuit dealt next with Robinson's argument that the district court erred in refusing to instruct the jury to consider punitive damages. Robinson argued that the Postal Service is a commercial enterprise not a governmental agency.[71] Robinson also argued that Congress' designation of the Postal Service as a "sue and be sued" agency overrode the exemption from punitive damages.[72]

The Postal Service's status as a governmental agency is important because such agencies are exempt from punitive damages under Title VII.[73] The court found that while the Postal Service has a commercial-like operation, it functions as an agency of the federal government.[74] The court relied on judicial precedent from the Ninth Circuit, Seventh Circuit, Second Circuit, and the United States District Court for the District of Columbia.[75] It also relied upon Congress' treatment of the Postal Service as a government agency in chapter 39 and chapter 5 of the United States Code.[76]

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[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.* at 516.
[72] *Id.* at 516-17.
[73] 42 U.S.C. § 1981a(b)(1) states:

> A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual. (emphasis added).

[74] *Robinson,* 149 F.3d at 516.
[75] *Id.*
[76] *Id.* The court explained:

> The Postal Service Reorganization Act states that it "shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people." 39 U.S.C. § 101(a). Postal Service employees are treated as federal employees for purposes of civil service, 39 U.S.C. § 1001(b), federal criminal laws, 39 U.S.C. § 410(b)(2), veteran's preference requirements, 5 U.S.C. § 2108, and standards of suitability, security, and conduct of federal employees, 39 U.S.C. § 410(b)(1). It has uniquely governmental powers such as the authority to borrow money backed by the full faith and credit of the United States Government, 39 U.S.C. § 2006(c), the right of eminent domain, 39 U.S.C. § 401(9), and the right to negotiate international postal treaties and conventions, 39 U.S.C. § 407.

Robinson also claimed that Congress' designation of the Postal Service as a "sue and be sued" entity made it liable for punitive damages under Title VII.[77] The court discussed two tests to be applied in this situation. First, the court must determine whether Congress waived sovereign immunity for the agency.[78] The Sixth Circuit rejected Robinson's arguments and held that the Postal Service is a governmental entity, and Congress had not waived the Postal Service's sovereign immunity.[79] Second, the substantive law upon which the claim is based must provide the relief sought.[80] Because the court had already determined that the substantive law under Title VII does not allow punitive damages, Robinson's argument failed the second test.[81] The court explained that "simply because Congress has provided that an entity may generally be sued for damages, does not equate with the presumption that the particular law under which a plaintiff brings a suit will permit such damage rewards."[82]

CONCLUSION

The Sixth Circuit articulated a two-part test for the admission of evidence tending to show that a termination was racially motivated. First, the court must consider relevancy under Federal Rule of Evidence 401.[83] In so doing, it must apply a three-part analysis considering locale, date, and supervisory knowledge.[84] The evidence must originate at the employee's particular office.[85] The evidence must exist at a date prior to the date of termination.[86] Finally, a supervisor involved in the termination must have been aware of what is being offered as evidence.[87] Second, a court must consider the possibility of unfair prejudice under Federal Rule of Evidence 403.[88]

The relevancy section of this test is tailored solely for the evidence in this case. Certainly, in other situations the exceptions in Federal Rule of Evidence 404(b)[89] would override the Sixth Circuit's first two points in its relevancy analysis. Proof that such incident occurred previously at another location of the same organization could clearly establish that there was an opportunity for this to occur throughout the organization. It could also establish the organization's knowledge that such incidents were occurring. Both occurrence at another location and at a date after the termination could be offered

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Id.

[77] *Robinson,* 149 F.3d at 516-17.

[78] *Id.* at 517.

[79] *Id.* at 516-17.

[80] *Id.*

[81] *Id.* at 517.

[82] *Id.*

[83] *Id.* at 512-14.

[84] *Id.* at 513-14.

[85] *Id.* at 514.

[86] *Id.*

[87] *Id.* at 513-14.

[88] *Id.* at 514-15.

[89] FED. R. EVID. 404(b) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

to prove that there was an absence of mistake. The Sixth Circuit's failure to address Federal Rule of Evidence 404(b) leaves a gaping hole in its analysis. Many of the opinions upon which the Sixth Circuit relied for precedent into ruling concerning the Postal Service's status in a governmental agency have allowed plaintiffs in civil rights cases to use Federal Rule of Evidence 404(b).[90] This seems to indicate that the Sixth Circuit would allow this use, also, if a case was properly presented.

Requiring the terminating supervisor to have actual knowledge of the prior act being entered into evidence is not a sound universal principle. In practice, it provides an incentive for supervisors to be as ignorant as possible of the work atmosphere. From a public policy perspective it would be better to impute knowledge to supervisors. This would force supervisors to be proactive. They would have an incentive to monitor the work atmosphere and take steps to improve any problems related to prejudice that might be occurring.

The Sixth Circuit's analysis was result oriented. Dissatisfied with the district court's exclusion of the parody application, the Sixth Circuit fashioned a test which mandates the inclusion of the parody application on remand. Because of its result oriented handling of the evidentiary issues, lack of discussion of possible effects of Federal Rule of Evidence 404, and lack of consideration of public policy issues concerning the admission of evidence, this case is of limited precedential use for evidentiary matters. The only strong precedent which this case stands for is the Postal Service's continued enjoyment of sovereign immunity.

Summary and Analysis prepared by:

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[90] *See, e.g.,* Miller v. Poretesky, 595 F.2d 780 (D. D.C. 1978) (under 404(b) evidence is admissible to prove a racist motive or intent); Harris v. Harvey, 605 F.2d 330 (7th Cir. 1979) (under 404(b) the defendant's judicial acts were clearly admissible as proof of his racially discriminatory motive); Dosier v. Miami Valley Broadcasting Corp., 656 F.2d 1295 (9th Cir. 1980) (under 404(b) pre-settlement incidents can be used as evidence of a continuing pattern of discrimination); and Wyatt v. Security Inn Food and Beverage, Inc., 819 F.2d 69 (4th Cir. 1987) (evidence is allowed under 404(b) for the purpose of showing discriminatory intent or motive).