

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 5:07CR00048
)
 ALBERT C. TAYLOR)
 CHARLES LEO KINGREA)

GOVERNMENT'S MOTION IN LIMINIE FOR ADMISSION OF EVIDENCE
UNDER FEDERAL RULES OF EVIDENCE 801(d)(2)(E) & 803(3)
AND
NOTICE PURSUANT TO FEDERAL RULE OF EVIDENCE 404(b)

The core of this Indictment centers upon the long term operation of a cockfighting and gambling operation at a location known as “Little Boxwood Cockpit” in Page County, Virginia. It is the government’s position that the charged cockfighting/gambling conspiracy involved an unindicted Page County Law Enforcement County Official whose role in the conspiracy was to “look the other way”; to refuse to enforce applicable laws; and, to warn members of the illegal enterprise of any possible interference by other law enforcement entities.

In order to infiltrate the illegal enterprise, a Special Agent with the United States Department of Agriculture was introduced to the organization as a Puerto Rican cockfighter who ran an operation in New York. The Undercover Agent (hereinafter “UC”) told the owner of Boxwood (Luis Martinez) and operator of Boxwood (Dale Moreland) that he was considering purchasing the cockpit and was concerned about interference by local law enforcement officers. Martinez and Moreland have signed Plea Agreements and it is anticipated they will plead guilty on March 17, 2008.

In order to allay any fears of the UC, Moreland elicited the help of defendant Albert C.

Taylor – a longtime cockfighter at Boxwood and other cockpits who was the Chairman of a local Republican Party and a confidant and political supporter of the elected County Official. In agent interviews and Grand Jury testimony, Taylor stated that he was a “close personal friend” with the County Official and said they talked several times through the years about Taylor being involved in cockfighting. In an agent interview, the County Official described Taylor as a “good friend.”

On or about April 4, 2007, the UC met at Little Boxwood with Moreland, Martinez, Taylor and Terry Alger, for the purpose of discussing the purchase of Little Boxwood and to make payments of monies to the County Official to insure that the cockpit would be free of local law enforcement harassment. The UC was repeatedly assured that the County Official knew about the cockfighting and had assured everyone that he would not interfere with the illegal activity unless somehow forced to do so. This conversation was covertly recorded. During this meeting, Taylor stated in part: “[T]he only thing [the County Official] told me is his position hasn’t changed . . . we don’t have to worry about [the County Official]. As long as he don’t get pressure to . . . I’m sure if he gets any pressure we’ll know unless somebody hangs on his goddamn elbow.” In Grand Jury, Taylor testified as follows:

Taylor: . . . I did tell them [the UC] that if there was a raid coming, not to worry, that I would be informed of it.

Question: That the [County Official] would inform you?

Taylor: Well, that was my belief, yes.

* * * * *

Question: Okay. So you told [UC] that if the [County Official] found out a raid was gonna happen, the [County Official] would tip you off?

Taylor: That was my belief.

* * * * *

Question: And then would you tip off Dale Moreland?

Taylor: I would, yes.

When the UC offered to pay money to the County Official to continue his “non-interference policy,” Taylor and Moreland discussed how to prevent the money from appearing as a bribe. Taylor stated: “I’ll make a donation to [the County Official] and he can put that into his coffers.” As a result of this conversation, the UC paid Taylor \$500 to be paid to the County Official. Taylor later paid the \$500 to the County Official and it was deposited into a political campaign checking account associated with the County Official. On May 5, 2008, the UC gave Taylor another \$500 to be paid to the County Official.

In order to support its theory of the case, the government intends to offer the following evidence at trial:

- a. Some time between the 1999 and 2003 Page County elections, the County Official went to Naked Creek Cockpit owner Wilton Meadows and told him he would not shut down the cockpits. The County Official told Meadows as long as there was no trouble, “I’m not going to bother you at all.” In addition to Meadows, former Page County Deputy Sheriff James Moomaw can testify as to this meeting and that the County Official told Moomaw “not to harass the cockfighters.”
- b. In or about 2003, the County Official instructed Page County Deputy Sheriff Dwight Farmer “not to harass the cockfighters.”
- c. By check dated October 28, 2003, the Virginia Game Fowl Breeders Association (VGBA) made a \$500 campaign donation to the County Official. The source of this donation was disguised by using the account of an individual VGBA member with reimbursement from the VGBA. The major function of the VGBA is to promote cockfighting.
- d. Between 2003 and 2007, the County Official told former Page County Deputy Sheriff James Roy on several occasions that “cockfighting is not a priority

of my administration.”

- e. On or about May 31, 2005, John Goodwin of the Humane Society called the County Official and gave him specific directions to a cockpit in the Naked Creek section of Page County. The County Official said he was aware of cockfighting and dog fighting in that area, but suggested that Goodwin call other law enforcement agencies. These directions led directly to a cockpit operated by Wilton Meadows.

- f. In or about September or October 2006, Rebecca Conley called the County Official and complained about and gave directions to cockpits in two Page County locations – Boxwood and Naked Creek – and a third location in Rockingham County. Conley told the County Official she had personally attended cockfights at Boxwood and Naked Creek where she observed gambling, alcohol, underage drinking and suspected drug use. Conley had a printed schedule of upcoming cockfights and offered it to the County Official.

In response, the County Official acknowledged that he was aware of cockfighting at Boxwood, but that cockfighting was a “heritage” in Page County and he did not have the manpower to investigate crimes related to it.

- g. On or about April 12, 2007, the County Official told Special Agent James Knorr of the United States Department of Agriculture that there were cockpits in the Boxwood and Naked Creek areas of Page County, but was not aware if they were still operating.

- h. On or about May 5, 2007, the County Official was interviewed by IRS Special Agent Phil Barnett and FBI Special Agent Dan Stiefvater. The County Official stated there was “supposedly” cockfighting at Boxwood and Naked Creek but he had no “independent knowledge” of the activity.

- i. The day after the May 5, 2007, federal raid on the Boxwood Cockpit, the County Official told Page County Commonwealth Attorney Arthur Lee Goff: “I don’t even know any chicken fighters. I don’t know what they are talking about.”

- j. A few days after the May 5, 2007, federal raid on the Boxwood Cockpit, the County Official told Page County Sheriff’s Office Captain Issac Good that he (the County Official) didn’t know anything about cockfighting.

Co-conspirator Statements:

A statement is not hearsay and is admissible if it was made “by a coconspirator of a party

during the course and in furtherance of the conspiracy.” *Federal Rule of Evidence 801(d)(1)(E)*. A coconspirator statement is admissible against a defendant even though the defendant had not yet joined the conspiracy at the time of the statement. *United States v. Harris*, 729 F.2d 441, 448 (7th Cir. 1984).

The government will prove that cockfighting has occurred on a regular basis at Boxwood for approximately three decades and that Taylor fought birds at this location for much of this time.¹ By Taylor’s own admissions, the County Official was aware of Taylor’s activities and would tip him off if he became aware of any cockfighting raids.² When the business was to be sold, Taylor was brought in to assure the prospective buyer that local law enforcement would not interfere with the illegal operation and Taylor received \$500 on behalf of the County Official to insure continued non-interference by local law enforcement.³ It is clear that the County Official was a coconspirator in the cockfighting/gambling conspiracy.

The County Official’s statements to cockpit operators and subservient law enforcement officers to not investigate the cockpits is in furtherance of the conspiracy’s objective to continue the illegal operation (*see* Paragraphs a, b, & d, *supra*). Moreover, the County Official’s statements in which he ignores complaints, refuses to act and makes misleading statements is in furtherance of the

¹The Indictment is artificially cut off at 2003 because that is the date that Luis Martinez purchased the operation – several of the other participants, including Moreland, had managed the business for years prior to 2003. It is clear that a formal conspiracy need not be charged for admission of evidence under the coconspirator hearsay rule. *United States v. Washington*, 434 f.3d 7 (1st Cir. 2006).

²Taylor maintains the County Official would tip him off as a “friend” and not for any nefarious reasons. The government does not understand the distinction.

³Whether the payment is considered a “bribe” or a “donation” is of no consequence to the cockfighting/gambling charges – the effect is the same in that the County Official is being rewarded/encouraged to continue his hands off policies as to cockfighting. Of course, the government must prove the technical definition of a bribe to prevail on the money laundering count.

conspiracy's objective to continue the illegal operation and avoid detection (*see* Paragraphs e, f, g, h, i & j *supra*).⁴

State of Mind:⁵

Federal Rule of Evidence 803(3) makes an exception to the hearsay rule for any “statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, . . .).” The availability of the declarant is immaterial to admissibility under this rule. Courts have overwhelmingly recognized that the “state of mind . . . hearsay exception applies to statements of future intention.”⁶ *United States v. Johnson*, 354 F.Supp.2d 939, 963 (N.D. Iowa 2005). “Whenever one’s intention ‘is of itself a distinct and material fact in a chain of circumstances, it may be proved by contemporaneous oral or written declarations of the party.’” *United States v. Ealy*, 2002 WL 273317 (W.D.Va. Feb. 26, 2002) (Jones, J.) (unpublished), *quoting Mutual Life Ins. Co. v. Hillmon*, 145 U.S. 285, 295 (1892).

Moreover, the state of mind exception includes statements indicative of a declarant’s intent, plan, motive or design. For example, in *United States v. Valentine*, 644 F.Supp. 818 (SDNY 1986), a broker was charged with perjury in relation to illegal campaign contributions. Other brokers who worked with the defendant testified as to statements made by their supervisor who filtered money

⁴If the Court determines the conspiracy terminated with the May 5, 2007 raid, the County Official’s post-conspiracy statements are still admissible to show intent, knowledge, motive, consciousness of guilt and the continuing plan of avoiding detection. *See United States v. Loayza*, 107 F.3d 257, 263 (4th Cir. 1997); *United States v. Chase*, 372 f.2d 453, 460 (4th 1967).

⁵Admissibility of statements under the State of Mind analysis is an independent ground to that of coconspirator statements. *Glasser v. United States*, 315 U.S. 60 (1942).

⁶This line of cases largely involve homicides and the admissibility of the victim’s statements concerning what he/she is going to do prior to the crime (*e.g.* meet the defendant at a bar, file a divorce from the defendant, etc.) is the issue. *See United States v. Lentz*, 282 F.Supp.2d 399 (EDVa 2002), *aff’d*, 58 Fed.Appx 961 (2003).

to them for the contributions. The Court held that “[u]nder Fed.R.Evid 803(3) . . . [the supervisor’s] statements are admissible as an exception to the hearsay rule to show [the supervisor’s] ‘plan’ to loan his employees money to contribute to the Campaign.” *Id.* at 821. So the supervisor’s statements concerning the filtering of money to many different brokers were admissible against the single broker on trial.

In all the statements listed above attributable to the County Official, he has expressed his intent, plan, motive and design to not investigate the cockfighters in Page County and to cover up any cockfighting activity in Page County. This is relevant in the case against Taylor because it substantiates Taylor’s role in the conspiracy of continuing the illegal operation by providing a shield from local law enforcement scrutiny.

Overt Acts:

The government also contends that all of the listed acts by the County Official constitutes overt acts of the conspiracy – that is, to further the cockfighting and gambling operation. Moreover, Taylor’s own recorded statements indicate he was aware of the County Official’s long standing objective and plan to “look the other way”; to not enforce the state cockfighting laws: and, to tip off the illegal operation should other law enforcement agencies become involved. Even assuming Taylor was not a member of the conspiracy at the time of some of the County Official’s acts, they are still admissible against Taylor to show the nature and objectives of the conspiracy he joined. *United States v. Hickey*, 360 F.2d 127, 140 (7th Cir. 1966).

Federal Rule of Evidence 404(b):

It is the government’s position that all the facts surrounding the acts and statements of the County Official are direct evidence of the charged conspiracy. However, much as “a coconspirator

may be convicted of substantive offenses committed by co-conspirators in the course and in furtherance of the conspiracy . . .,” *Pinkerton v. United States*, 328 U.S. 640, 645 (1946), a coconspirator may also be held responsible for bad act evidence under Federal Rule of Evidence 404(b). Out of an abundance of caution, the government notices this evidence for admission under Federal Rule of Evidence 404(b).

Rule 404(b) permits evidence of a defendant’s crimes, wrongs and other bad acts to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” The reasons justifying the admission of 404(b) evidence are not limited to those explicitly stated in the Rule, but are almost “infinite” in number. *United States v. Watford*, 894 F.2d 665 (4th Cir. 1990). A trial court’s admission of 404(b) evidence is extremely broad and will only be reversed if its decision was “arbitrary or irrational.” *United States v. Haney*, 914 F.2d 602, 607 (4th Cir. 1990). In *United States v. Queen*, 132 F.3d 991, 995 (4th Cir. 1997), *cert. denied*, 523 U.S. 1101 (1998), the Fourth Circuit set forth a combined test for admissibility of evidence under Federal Rules of Evidence 404(b) and 403:

[W]e hold that evidence of prior acts becomes admissible under Rules 404(b) and 403 if it meets the following criteria: (1) The evidence must be relevant to an issue, such as an element of the offense, and must not be offered to establish the general character of the defendant. In this regard, the more similar the prior act is (in terms of physical similarity or mental state) to the act proved, the more relevant it becomes. (2) The act must be necessary in the sense that it is probative of an essential claim or an element of the offense. (3) The evidence must be reliable. And, (4) the evidence’s probative value must not be substantially outweighed by confusion or unfair prejudice in the sense that it tends to subordinate reason to emotion in the factfinding process.

In this case, the County Official engaged in a plan or *modus operandi* to “look the other way”; to not enforce the state cockfighting laws; and, to tip off the illegal operation should other law

enforcement agencies become involved.

Under *Queen* the evidence must first be relevant to an issue and not character evidence. In this case one of the issues is the County Official's role in protecting and furthering the illegal operation. The relevancy of this evidence is discussed *supra*. *Queen* also requires that the evidence be reliable and probative to an essential claim or element of the charged offense. The reliability of the evidence is established by direct testimony of numerous witnesses and the probative nature of the evidence is discussed *supra*.

Finally, the probative value of this evidence is not outweighed by any substantial *unfair* prejudice. In *United States v. Mohr*, 318 F.3d 613 (4th Cir. 2003) (United States District Judge James Jones sitting by designation), the police officer/defendant was charged with a civil rights offense involving the unwarranted release of a police dog on a cooperative detainee. The government offered two incidents of bad acts under Rule 404(b): 1) the defendant released an attack dog on a African-American child sleeping in a hammock – the dog bit the child's leg as the defendant beat him with a baton or flashlight; and 2) the defendant threatened to release the attack dog on a citizen's "black ass" if the citizen lied about the whereabouts of her fugitive brother. The defendant argued that the violence and racism inherent in this evidence rendered it too prejudicial for admission. In upholding the admission of the 404(b) evidence, the Court observed that:

[i]f believed, such evidence would, of course, severely damage [the defendant's] defense, but '[u]nfair prejudice under Rule 403 does not mean the damage to a defendant's case that results from the legitimate probative force of evidence.' Indeed, our adversarial system depends on opposing parties offering evidence that will strengthen their respective positions and damage that of their opponents. . . . Rather, Rule 403 only requires suppression of evidence that results in unfair prejudice – prejudice that damages an opponent for reasons other than its probative value, for instance, an appeal to emotion, and only when that unfair prejudice '*substantially*

outweigh[s] the probative value of the evidence.

Id. at 619-20 (citations omitted).

As argued above, the County Official's actions are relevant and probative. Besides, "a careful limiting instruction significantly ameliorate[s] any possible unfair prejudice . . ." *Id.* at 620.

Conclusion:

It follows that this evidence is admissible at trial.

Respectfully submitted,

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C E R T I F I C A T E

I hereby certify that a true and correct copy of the foregoing Government's Motion has been electronically filed by CM/ECF system which will send notification of such filing to all Counsel of Record, on this 5th day of March, 2008.

s/ Thomas J. Bondurant, Jr.
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VSB Code # 18894