



Motion for New Trial.<sup>1</sup> Coleman argues that he is entitled to a new trial because: (1) he was denied his Constitutional right to confront witnesses due to the admission of hearsay statements at trial; (2) expert testimony concerning his mental state was incorrectly admitted at trial; and (3) the Court erred in admitting improper 404(b) evidence and in denying Coleman's motion to exclude this evidence based on lack of notice.

#### **A. Admission of Hearsay Evidence**

The Defendant was not denied his Constitutional right to confront witnesses due to the admission of hearsay statements. Federal Rule of Evidence 803(2) provides an exception to the hearsay rule for any statement that qualifies as an excited utterance. For a hearsay statement to be admitted under this exception, four conditions must be met: (1) a startling event must have occurred; (2) the declarant must have made the statement while under the stress of the excitement caused by the event; (3) the statement must relate to the startling event; (4) the statement must be made before there has been time to reflect and fabricate. United States v. Mitchell, 145 F.3d 572,

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<sup>1</sup> Not considered by this Court are points referenced by Defendant's counsel in the instant motion and raised in Defendant's pro se motion which was stricken on March 18, 2002.

576 (3d Cir. 1998).

The statements at issue, made by Avery Coleman, qualify as excited utterances under the exception and were therefore admissible. The violent domestic dispute between Randy Coleman and Avery Coleman was a startling event. Avery Coleman was still under the stress of this event when police officers arrived on the scene. The statements directly relate to the startling event. Avery Coleman told the officers that Randy Coleman had ordered her not to open the door for the police, Randy Coleman had threatened her life with the shotgun and that she wanted the shotgun out of the house. Avery Coleman made these statements soon after the officers arrived, before there was time to reflect and fabricate. Avery Coleman's statements meet the criteria for excited utterances. These statements were properly admitted.

**B. Expert Witness Testimony on Intent to Distribute**

As the government notes in its response, the Defendant did not object at trial to the specific testimony to which he now raises an objection. Consequently, the Defendant may not object to this testimony now. Presumably, Defendant did not object to this testimony at trial because other courts have found that such testimony is permissible.

United States v. Martin, 2002 WL 188726 (E.D.Pa.

2002)(Detective McDonald's testimony on possession with intent to distribute based on surrounding evidence is permissible). As was the case in Martin, the testimony offered here did not pertain to the Defendant's state of mind, but rather, to inferences which could be made regarding the defendant's intent based on the surrounding facts of the case.

**C. Rule 404(b) Evidence**

The Court did not err by admitting improper 404(b) evidence, nor in denying Defendant's Motion to Exclude based on lack of notice. The evidence in question is testimony concerning Coleman's prior possession of a shotgun visibly similar to the gun found in his apartment, as well as Coleman's prior possession of "red apple" baggies like those seized from his apartment. Contrary to Defendant's claims, this evidence is not a "prior bad act" as regulated by 404(b). Rather, this evidence is admissible to prove Defendant's possession of both the shotgun and the baggies, essential elements of the crimes with which he was charged.

Since the evidence in question is not subject to Rule 404(b), that Rule's notice requirements do not apply here. Therefore, the Court did not err in denying Defendant's

Motion to Exclude based on lack of notice.

AN APPROPRIATE ORDER SHALL FOLLOW.

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Clarence C. Newcomer, S.J.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 01-0038
	:	
RANDY COLEMAN	:	

**O R D E R**

AND NOW, this           day of June, 2002, upon consideration of Defendant Randy Coleman's Motion for New Trial and the Government's response, it is hereby ORDERED that defendant's motion is DENIED with prejudice.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, S.J.