

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

UNITED STATES

vs.

KEVIN RANKIN,

Defendant.

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CRIMINAL NO. 05-615

RUFE, J.

April 18, 2007

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the Government's Motion in Limine [Doc. # 57], seeking to introduce two items of evidence at the first trial in this case: First, the Government seeks to admit a gun found at Rankin's nightclub; second, the Government seeks to introduce evidence of Rankin's prior convictions to impeach his credibility as a witness. Rankin has filed a Memorandum in Opposition [Doc. # 59], and the Court heard oral argument on April 12, 2007. The Motion is now ripe for disposition.

BACKGROUND

The facts of this case are simple and have been described in previous written decisions of this Court. Again, briefly, the facts are as follows:

During the course of an investigation into Defendant Rankin's activities, Government agents executed search warrants at three different places on October 6, 2005: (1) Rankin's business, Dangerous Curves, located at 5921 Tacony Street in Philadelphia; (2) Rankin's residence, a condominium at 304 North Columbus Boulevard in Philadelphia; and (3) the Ashburner Inn, located

at 8400 Torresdale Avenue in Philadelphia. At Dangerous Curves, a gentlemen's club, the agents recovered a handgun in a desk drawer in the basement office. At Rankin's condominium, the agents recovered two handguns from a safe in a hallway closet.

These three handguns became the subject of the instant Indictment [Doc. # 10], which charges Rankin with two counts of being a felon in possession of a weapon, in violation of 18 U.S.C. § 922(g)(1). Through an earlier motion, Rankin challenged the legality of the search warrant that the agents relied on to search Rankin's condominium. This Court, in a Memorandum Opinion dated August 4, 2006 [Doc. # 47], upheld the validity of the warrant. Rankin then asked the Court to sever counts in the Indictment into two separate trials. The Court granted this Motion, designating the charges arising out of the guns found in Rankin's condominium to be tried first.¹

The government has now filed the instant motion, seeking two preliminary evidentiary rulings. First, the government seeks to introduce at the first trial the gun found in the nightclub, as a "prior bad act" under Fed. R. Evid. 404(b). Second, the government seeks to introduce Rankin's prior convictions, which arose from false statements that he made in an affidavit, to impeach his credibility as a witness.

¹ The law of this Circuit requires a showing of "clear and substantial prejudice" in order to sever counts joined in a single indictment. United States v. Davis, 397 F.3d 173, 182 (3d Cir. 2005). The substantial prejudice would arise based on Rankin's expressed intent to testify in his own defense for the charged guns found in the condominium, but not to testify for the charged gun found in the nightclub. Rankin submitted an Offer of Proof to the Court in camera, in which he describes the reasons why he does not wish to testify about the events surrounding the nightclub. The Court was satisfied with those reasons, and was persuaded that at a joint trial, Rankin's testimony on Count 2, in conjunction with his silence on Count 1, would invite the jury to draw an unduly adverse inference about the gun in the nightclub based on his silence.

DISCUSSION

1. Admissibility of the Gun Found at the Club

Under 18 U.S.C. § 922(g)(1), it is unlawful for any convicted felon to “possess in or affecting interstate commerce, any firearm.” In this case, the government must prove that Rankin constructively possessed the firearms, since none of the weapons charged in the indictment were found on or near his person. The government must therefore prove at trial that Rankin had “both dominion and control over [the guns] and knowledge of [their] existence.”² This will necessitate that the government prove that Rankin knew about the existence of the guns inside the safe in his condominium.

To that end, the government seeks to introduce the gun found in the desk drawer at the club to prove that Rankin knew about the guns in the safe in the condominium. Because Federal Rule of Evidence 404(b) recognizes that evidence of “other bad acts” may be admissible to prove knowledge, or absence of mistake,³ the Court may admit it if it satisfies the guidelines set out by the U.S. Supreme Court for the admission of such prior bad acts.

In Huddleston v. United States,⁴ The Supreme Court recognized the dangers associated with prior-bad-act evidence, and set forth a set of requirements for a trial court to consider when faced with the issue of whether to admit such evidence. First, the evidence must be brought for a proper purpose under Rule 404(b); second, the evidence must be relevant under Rule 402; third, under Rule 403, the danger of unfair prejudice caused by the evidence cannot substantially outweigh

² United States v. Iafelice, 978 F.2d 92, 96 (3d Cir. 1992).

³ Under Fed. R. Evid. 404(b), evidence of other bad acts may be admissible to prove “knowledge, . . . or absence of mistake or accident.”

⁴ 485 U.S. 681 (1988).

its probative value; and fourth, if the Court admits the evidence, it must charge the jury with a proper limiting instruction.⁵

The Third Circuit has stated that to offer evidence under Rule 404(b), the proponent “must clearly articulate how the [prior-bad-act] evidence fits into a chain of logical inferences, no link of which can be the inference that because the defendant committed [similar] offenses before, he therefore is more likely to have committed this one.”⁶ As the Court understands it, the government’s proffered chain of inferences is as follows: The agents recovered a gun from a desk drawer in an office to which Rankin purportedly had exclusive control; and this fact increases the likelihood that the presence of handguns in Rankin’s apartment is not an accident or coincidence, but rather that he knew that the guns were present there, too. Thus, the Court agrees that the government has offered the gun at the club for a proper 404(b) purpose.⁷

Second, because the Court agrees with the government that the presence of the gun in the desk drawer tends to show that the guns in the condo belonged to Rankin, and that he therefore knew about them, the gun is clearly relevant to proving that Rankin possessed the guns in violation of 18 U.S.C. § 922(g)(1).

The Court is troubled, however, by the third Huddleston requirement: the danger of unfair prejudice to Rankin that may result if the government is permitted to introduce the gun found at the nightclub. As mentioned above, the Court has already severed this case into two trials, based

⁵ Id. at 691.

⁶ United States v. Sampson, 980 F.2d 883, 887 (3d Cir. 1992).

⁷ See, e.g., United States v. Brown, 961 F.2d 1039, 1042 (2d Cir. 1992) (approving, in dicta, the trial court’s decision in a weapons case to admit other handguns in defendant’s apartment and pick-up truck under Rule 404(b), to show that it was more likely that the illicit weapon charged in the Indictment belonged to the defendant).

on the conclusion that Rankin faced substantial prejudice in the form of a single trial on both counts in the Indictment.⁸

This same danger of unfair prejudice will arise if the Court permits the government to introduce the gun from the club under Rule 404(b). If Rankin testifies, and confines his testimony to the circumstances surrounding the guns in the condominium, then a strong suggestion will arise that he is hiding something from the jury about the gun found in the club. This will have the same unfairly prejudicial effect as a joint trial would, and could chill Rankin's willingness to take the stand in his own defense. "Courts have recognized that 'prejudice may develop when an accused wishes to testify on one but not the other of two joined offenses which are clearly distinct in time, place and evidence.'"⁹ Therefore, because the Court has found that a joint trial "would compromise a specific trial right" of the Defendant,¹⁰ the Court likewise finds here that under Rule 403, the danger of unfair prejudice that evidence of the gun from the club creates outweighs its probative value.

Therefore, applying the Huddleston guidelines, this Court concludes that the gun from the club should not be admitted pursuant to Rule 404(b). The Court will, therefore, deny the Government's motion.

2. Evidence of Rankin's Prior Convictions

The Government also seeks to introduce evidence of Rankin's 1989 convictions for

⁸ See United States v. Davis, 397 F.3d 173, 182 (3d Cir. 2005) (claim of improper joinder under Fed. R. Crim. P. 14 must "demonstrate clear and substantial prejudice") (internal quotation omitted).

⁹ United States v. Sampson, 385 F.3d 183, 190-91 (2d Cir. 2004) (internal quotation omitted).

¹⁰ Zafiro v. United States, 506 U.S. 534, 539 (1993) (holding that compromise of specific trial right is only appropriate ground for separate trials).

violations of 18 U.S.C. § 1001 (making a false statement to a federal agency) and 18 U.S.C. § 1503 (endeavoring to obstruct justice). The Government seeks to use these convictions to impeach Rankin’s credibility as a witness. Under Fed. R. Evid. 609(a)(2), “evidence that any witness has been convicted of a crime shall be admitted . . . if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.” Because these convictions stem from acts of dishonesty, the convictions are admissible, regardless of the punishment that was imposed. The Rules of Evidence do, however, impose a qualified time limit for such convictions. Under Fed. R. Evid. 609(b), such crimen falsi convictions that are more than 10 years old are admissible only if “the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.”

Applying this balancing test, the Court concludes that the convictions are admissible to impeach Rankin’s credibility. Despite their age, the probative value of the convictions is exceedingly high. Rankin was convicted for making false statements in an affidavit seeking the recusal of a federal judge from presiding over his trial for narcotics violations,¹¹ an act that could not be more relevant to the issue of Rankin’s credibility.

¹¹ According to the Court of Appeals,

Prior to the commencement of the second trial, Rankin filed a motion pursuant to 28 U.S.C. §§ 144 & 455(a) requesting that Judge Hannum be recused from presiding over the second trial. In support of this motion, Rankin and appellees John Rankin, and Maureen Farrell, Kevin Rankin’s brother and sister respectively, filed affidavits. These affidavits stated, inter alia, that during the first trial Judge Hannum chased Kevin Rankin around parts of the courtroom, as well as poked, shoved, and struck him, and interrupted, belittled, and humiliated defense witnesses.

United States v. Rankin, 870 F.2d 109, 110 (3d Cir. 1989).

Moreover, the Court takes judicial notice of the fact that Rankin was a licensed attorney at the time that he made his false statements in the affidavit.¹² Such facts heighten the probative value of the convictions—it demonstrates not only that Rankin was willing to make false statements under oath, but that he was willing to do so as an officer of the court. His willingness to abuse the justice system for personal gain, to violate the criminal law through lying, and to breach his ethical obligations as an attorney, is highly probative of his character for truthfulness today, notwithstanding the lapse of time.

Rankin relies heavily on United States v. D'Agata¹³ as persuasive authority for the Court to follow in this case. In D'Agata, the government sought to impeach the defendant with a 16-year-old perjury conviction. The court, admitting that it was a “close and difficult decision,”¹⁴ ultimately concluded that the defendant would be denied “a fair opportunity to defend himself by testifying”¹⁵ if the perjury conviction were admitted. In D'Agata, however, the Government was prepared to offer testimony of a witness who claimed that he and the defendant had discussed committing the charged crime. Here, on the other hand, the Government has no such direct evidence to contradict Rankin’s expected defense that he did not know that the guns were in the safe. Accordingly, Rankin’s credibility is likely to be the pivotal issue for the jury to decide, thus

¹² See United States v. Rankin, 1 F. Supp. 2d 445, 452 (E.D. Pa. 1998) (noting that Rankin claimed that his convictions under 18 U.S.C. §§ 1001 and 1503 led to his disbarment on August 11, 1994).

¹³ 646 F. Supp. 390 (E.D. Pa. 1986).

¹⁴ Id. at 392.

¹⁵ Id. at 393.

heightening the probative value of his past conduct.¹⁶

Moreover, because the nature of the false-statement crimes is so different from the instant charges under § 922(g)(1), there is no danger that the jury might infer that Rankin has the propensity to commit the crime of being a felon in possession of a firearm. Clearly, Rankin will not be precluded from asking the jury to place minimal weight on the 18-year-old convictions. Thus, because the Court finds that the probative value of the convictions substantially outweighs their potential prejudicial impact, the Court concludes that they are admissible under Rule 609(b).

CONCLUSION

For all the foregoing reasons, the Court will deny the government's motion with respect to the gun found in the desk drawer at Dangerous Curves, and grant the government's motion with respect to Rankin's prior convictions. An appropriate Order follows.

¹⁶ See Gov't of V.I. v. Bedford, 671 F.2d 758, 761 n.4 (3d Cir. 1982) (listing "the importance of the credibility of the defendant" as a key factor in weighing probative value of convictions against their prejudicial effect under Rule 609).

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ORDER

AND NOW, this 18th day of April 2007, upon consideration of the government's Motion in Limine [Doc. # 57], the Defendant's Opposition thereto [Doc. # 59], and after hearing oral argument from the parties, it is hereby

ORDERED, that the Motion in Limine is **GRANTED IN PART** and **DENIED IN PART**, in accordance with the foregoing Memorandum Opinion.

BY THE COURT:

CYNTHIA M. RUFÉ, J.