

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

UNITED STATES OF AMERICA : CRIMINAL ACTION
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MATTHEW MORTIMER : NO. 97-293-01

MEMORANDUM AND ORDER

HUTTON, J.

May 17, 1999

Presently before the Court is Defendant's Motion in Limine (Docket No. 43) and the Government's Response. For the reasons stated below, the Defendant's motion is **DENIED**.

I. BACKGROUND

The Defendant, Matthew Mortimer, was arrested on January 10, 1997, and charged with knowing and intentional possession of two firearms. The Defendant was convicted by a jury on August 20, 1997. The Defendant appealed his conviction, claiming error by the trial court in allowing police officers to testify about his signature on property receipts for weapons recovered in the arrest. On November 30, 1998, a new trial was granted for unrelated reasons. On December 24, 1998, this case was reassigned to this Court from the calendar of the Honorable Charles R. Weiner.

Trial is scheduled in this case for May 17, 1999. The Defendant has been charged in a one count indictment with violations of 18 United States Code §§ 922(g)(1) (Felon in

Possession of a Firearm). On May 12, 1999, the Defendant filed the instant motion in limine seeking to preclude testimony regarding property receipts for weapons recovered. On May 14, 1999, the Government responded to the Defendant's motion.

II. DISCUSSION

A. Defendant's Motion

On appeal, the Defendant raised several issues including that his signature on the property receipt constituted an admission which should not be introduced into evidence because he had not yet received Miranda warnings. At the request of the panel during the appellate argument, the Government and the defense agreed to stipulate that the Defendant's signature on the property receipt would be redacted and that no testimony would be offered regarding the signature. Nonetheless, the Defendant contends that the Government will seek to elicit testimony that property receipts were issued for weapons recovered in this case.

In this motion, the Defendant seeks to bar any testimony regarding property receipts. The Defendant argues that even though the Defendant's signature will be redacted from these receipts, allowing testimony of their existence will result in the inference that the Defendant owned the items displayed. Such an inference, the Defendant contends, will totally contradict the purpose of the agreement reached between opposing counsel to avoid the hearsay implications which result from eliciting testimony about property

receipts. The Defendant also claims that the probative value of such evidence would be substantially outweighed by the extreme prejudice of disclosing the receipts and their hearsay implications to the jury.

B. Analysis

1. Hearsay

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Fed. R. Evid. 801(c); United States v. Reynolds, 715 F.2d 99, 101 (3d Cir. 1983). A "statement" can be either a written or oral assertion or any nonverbal conduct intended as an assertion. Fed. R. Evid. 801(a). Whether documents are hearsay is an issue of law. See Reynolds, 715 F.2d at 101-05.

In the present matter, the property receipts are not being offered to prove the truth of the matter asserted, but rather to establish chain of custody. The property receipts do not constitute hearsay as the Government intends to call police officers who will testify as competent eyewitnesses regarding the Defendant's possession of the guns. The two cases relied on by the Defendant, Mitchell v. Hoke, 745 F. Supp 874 (E.D. N.Y. 1990), aff'd, 930 F.2d 1 (1991) and United States v. Sallins, 993 F.2d 344 (3d Cir. 1993) are distinguishable from this case.

In Hoke, an officer testified to an out of court declarant's identification in a line-up. Hoke, 745 F. Supp. at 875. In Sallins, the Court held that a CAD report was inadmissible hearsay because the government's purpose in admitting the report was to establish the identity of the defendant, i.e., to prove the truth of the matter asserted. Sallins, 993 F.2d at 347. In this case, however, the Government is not offering the property receipts to prove that the Defendant possessed the guns; the Government informs the Court that eyewitnesses are prepared to testify to that directly. Rather, the property receipts are to be used to establish chain of custody.

Moreover, even if the property receipts were introduced to prove that the Defendant possessed the weapons recovered in this case, the signature on the property receipts is not hearsay, and notwithstanding an Agreement with the Government, is admissible against Mr. Mortimer. If the Defendant signed property receipts for weapons recovered in his arrest, they are admissible against him as admissions by party opponent. Fed. R. Evid. 801(d)(2)(A); see United States v. McGlory, 968 F.2d 309, 335 n.17 (3d Cir. 1992) ("If the evidence establishes that [defendant] is the author of the exhibits, they are admissible against him as admissions by a party opponent under Rule 801(d)(2)(A)"). See also United States v. Mortimer, 161 F.3d 240, 241 (3d Cir. 1998) (Noonan, J.) (stating that "Mortimer's appeal would be without merit except for ... the

judge's absence from the bench"). Thus, no improper "hearsay implications" may arise by allowing testimony from police officers regarding the existence of property receipts for the firearms recovered in this case.

2. Relevance

Under Federal Rule of Evidence 401, "'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." "'The standard of relevance established by [Rule 401] is not high,' Carter v. Hewitt, 617 F.2d 961, 966 (3d Cir. 1980), and once the threshold of logical relevancy is satisfied the matter is largely within the discretion of the trial court, see Hamling v. United States, 418 U.S. 87, 124-25, 94 S. Ct. 2887, 2911, 41 L.Ed.2d 590 (1974)." United States v. Steele, 685 F.2d 793, 808 (3d Cir.), cert. denied, Mothon v. United States, 459 U.S. 908 (1982).

Under Federal Rule of Evidence 403, 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." "Rule 403 does not act to exclude any evidence that may be prejudicial, but only evidence the prejudice from which substantively outweighs its probative value. Prejudice within the meaning of Rule 403 involves identifying a special damage which the law finds impermissible." Charles E. Wagner,

Federal Rules of Evidence Case Law Commentary, 145 (1996-97) (footnotes omitted). For the reasons stated above, the Court finds that the property receipts are highly probative to establishing chain of custody of the two guns in this case. Thus, any prejudicial effect is substantially outweighed by the probative value of the evidence.

An appropriate Order follows.

