UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	No. 07 CR 524
	)	Judge John Darrah
DEWANZEL SINGLETON	)	

GOVERNMENT'S MOTION IN LIMINE
REGARDING THE ADMISSION OF COCONSPIRATOR STATEMENTS

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, respectfully submits this memorandum of law and proffer of the government's evidence supporting the admission of (a very few) coconspirator statements, pursuant to Rule 801(d)(2)(E) of the Federal Rules of Evidence and *United States v. Santiago*, 582 F.2d 1128 (7th Cir. 1978).

INTRODUCTION

Defendant was charged with LaKeith Cross, among others, in a multi-count indictment. Count One of the indictment charges that the defendant conspired with Cross, Martin Caldwell, and with others until October 2003, to possess with intent to distribute over five kilograms of cocaine. Count Three of the indictment charges defendant with use of a telephone to further the drug conspiracy.

The government will introduce evidence at trial to demonstrate that defendant conspired with Martin Caldwell, LaKeith Cross, and with others to distribute wholesale quantities of cocaine. The government's theory is that Martin Caldwell distributed

narcotics to defendant and Lakeith Cross. The government further believes that defendant used others, including Holly Loepker and, at times, Damon Shields, to transport cocaine from Chicago to East St. Louis on behalf of defendant. The government expects that Martin Caldwell, Holly Loepker, and Damon Shields will all testify at trial.

In this motion, the government describes the applicable law, outlines its evidence establishing the conspiracy, and sets forth coconspirator statements that are admissible against the defendant in accordance with Rule 801(d)(2)(E).

ARGUMENT

I. Legal Principles Governing Rule 801(d)(2)(E) Admissibility

Rule 801(d)(2)(E) provides that a "statement" is not hearsay if it "is offered against a party" and is "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy." The admission of a coconspirator statement against a defendant is proper where the government establishes by a preponderance of evidence that a conspiracy or joint venture existed and that the statement was made by a coconspirator during the course and in furtherance of the conspiracy or joint venture. *See Bourjaily v. United States*, 483 U.S. 171, 175 (1987); *United States v. Lindemann*, 85 F.3d 1232, 1238 (7th Cir. 1996); *United States v. Stephenson*, 53 F.3d 836, 842 (7th Cir. 1995).

A. Membership in, and Existence of, the Conspiracy

A court may consider the proffered coconspirator statements themselves in determining both the existence of a conspiracy and a defendant's participation therein.

See Bourjaily, 483 U.S. at 180; *see also id.* at 178 ("Rule 104, on its face, appears to allow the court to make the preliminary factual determinations relevant to Rule 801(d)(2)(E) by considering any evidence it wishes, unhindered by considerations of admissibility. . . . Congress has decided that courts may consider hearsay in making these factual determinations. Out-of-court statements made by anyone, including putative co-conspirators, are often hearsay. Even if they are, they may be considered . . .").

Once the conspiracy or joint venture is established, "only slight evidence is required to link a defendant to it." *United States v. Shoffner*, 826 F.2d 619, 627 (7th Cir. 1987). The evidence may be either direct or circumstantial. *See United States v. Redwine*, 715 F.2d 315, 319 (7th Cir. 1983) ("Because of the secretive character of conspiracies, direct evidence is elusive, and hence the existence and the defendants' participation can usually be established only by circumstantial evidence.").

A defendant joins a conspiracy if he or she agrees with a conspirator to commit one or more of the common criminal objectives set forth in the indictment; it is immaterial whether the defendant knows, has met, or has agreed with every coconspirator. *United States v. Boucher*, 796 F.2d 972, 975 (7th Cir. 1986); *United States v. Balistrieri*, 779 F.2d 1191, 1225 (7th Cir. 1985). "When a defendant is charged with conspiracy to commit a particular crime, the government need only establish that the defendant and at least one other person intended their future conduct to include all of the elements of the substantive offense." *United States v. Zizzo*, 120 F.3d 1338, 1356 (7th Cir. 1997).

A court may consider the conduct, knowledge, and statements of a defendant and others in establishing participation in a conspiracy. A single act or conversation, for example, can "suffice to connect the defendant to the conspiracy if that act leads to the reasonable inference of intent to participate in an unlawful enterprise." *United States v. Baskes*, 687 F.2d 165, 169 (7th Cir. 1981).

The coconspirator-statement rule is not implicated where the verbal declaration at issue does not constitute a "statement" – that is, an "assertion" subject to verification. *See* Fed. R. Evid. 801(a); *United States v. Tuchow*, 768 F.2d 855, 868 n.18 (7th Cir. 1985). Nor is the rule implicated where a statement is not offered to prove the truth of the matter asserted – that is, where the statement does not constitute "hearsay" within the meaning of Rule 801(c). Accordingly, statements by alleged coconspirators may be admitted against a defendant, without establishing the *Bourjaily* factual predicates but with corresponding limiting instructions, where such statements are offered simply to show, for instance, the existence, the illegality, or the nature or scope of the charged conspiracy. *United States v. Herrera-Medina*, 853 F.2d 564, 565-66 (7th Cir. 1988); *United States v. Van Daal Wyk*, 840 F.2d 494, 497-98 (7th Cir. 1988); *Tuchow*, 768 F.2d at 867-69; *United States v. Macnus*, 743 F.2d 517, 521-23 (7th Cir. 1984). Of course, in many cases, extended statements by alleged coconspirators will include both declarations offered for the truth of the matters asserted and declarations offered for other purposes that might make it advisable for a defendant to offer limiting instructions. *See Tuchow*,768 F.2d at 868 n.17, 869.

B. Statements Made in Furtherance of the Conspiracy

In determining whether a statement was made "in furtherance" of a conspiracy or joint venture, courts look for a reasonable basis upon which to conclude that the statement furthered the conspiracy's goals. *Stephenson*, 53 F.3d at 845; *United States v. Stephens*, 46 F.3d 587, 597 (7th Cir. 1995) (a statement is in furtherance so long as there is some reasonable basis for concluding that it furthered the conspiracy). Under this "reasonable basis" standard, a statement may be susceptible to alternative interpretations and still be "in furtherance" of the conspiracy – that is, the statement need not have been exclusively, or even primarily, made to further the conspiracy in order to be admissible under the coconspirator exception. *Shoffner*, 826 F.2d at 628; *United States v. Powers*, 75 F.3d 335, 340 (7th Cir. 1996); *United States v. Doerr*, 886 F.2d 944, 952 (7th Cir. 1989).

Given the government's "relatively low burden of proof" on the issue, *Shoffner*, 826 F.2d at 628, it should hardly be surprising that the Seventh Circuit has upheld the admission of a wide variety of coconspirator statements, such as the following: "[s]tatements made to keep coconspirators informed about the progress of the conspiracy, to recruit others, or to control damage to the conspiracy," *Stephenson*, 53 F.3d at 845; statements "describing the purpose, method, or criminality of the conspiracy," *Ashman*, 979 F.2d 469, 489 (7th Cir. 1992); and statements concerning planning or review of coconspirators' exploits, *United States v. Molt*, 772 F.2d 366, 368-69 (7th Cir. 1985).

In general, therefore, statements that are "part of the information flow between

conspirators intended to help each perform his role" are statements "in furtherance." *Van Daal Wyk*, 840 F.2d at 499. Indeed,

> [t]he exchange of information is the lifeblood of a conspiracy, as it is of any cooperative activity, legal or illegal. Even commenting on a failed operation is in furtherance of the conspiracy, because people learn from their mistakes. Even identification of a coconspirator by an informative nickname . . . is in furtherance of the conspiracy, because it helps to establish, communicate, and thus confirm the lines of command in the organization. Such statements are "part of the information flow between conspirators intended to help each perform his role," and no more is required to make them admissible.

United States v. Pallais, 921 F.2d 684, 688 (7th Cir. 1990).

The same reasoning dictates that discussions concerning a conspiracy's successes are admissible as statements in furtherance of the conspiracy. *See id.; Van Daal Wyck*, 840 F.2d at 499. Similarly, assurances that a coconspirator can be trusted or relied upon to perform his role are considered as furthering the conspiracy. *United States v. Buishas*, 791 F.2d 1310, 1315 (7th Cir. 1986). And statements designed to conceal a conspiracy also are deemed to be "in furtherance" where – as here – ongoing concealment is one of the conspiracy's purposes. *United States v. Mackey*, 571 F.2d at 383.

II. The Evidence Will Prove the Existence of the Conspiracy and that the Statements at Issue Were in Furtherance of the Conspiracy.

As outlined below, in order to prove the charged conspiracy and the defendant's participation therein, the government will present, among other things, testimony of co-conspirators including Martin Caldwell, Holly Loepker, and Damon Shields, among others; wiretap evidence of calls between the defendant and Martin Caldwell in which

defendant orders cocaine from Caldwell and then, after it is delivered, complains about the quality of it; evidence of a traffic stop of defendant in which 70 grams of cocaine were found; pen register and subpoenaed information showing numerous conversations between Martin Caldwell and phones tied to defendant; evidence of significant amounts of unexplained wealth of defendant; and testimony of police officers who will provide expert testimony on the operation of drug organizations such as defendant's.

The government's view of the evidence is that Singleton was a significant dealer of narcotics for several years. Singleton employed other individuals to assist him in his drug organization, including Holly Loepker, Willie Roberts, and Damon Shields, all of whom assisted defendant by acting as couriers to bring cocaine from Chicago to East St. Louis.

A. Overview of the Conspiracy

Martin Caldwell will testify at trial that he supplied cocaine to defendant and Lakeith Cross on multiple occasions for years, until October 2003 – when Caldwell was arrested by federal agents in Chicago. Caldwell will explain that Singleton and Cross came to Chicago periodically – and Caldwell would supply them with narcotics. Caldwell would sometimes "front" some or all of what he supplied to Singleton and Cross.

Mr. Caldwell will also testify about the significance of a series of phone calls between him and Dewanzel Singleton (and, in a few instances, LaKeith Cross and another acquaintance, a man named "Eddie Joe") which were intercepted on Title III intercepted

calls. For instance, on September 16, 2002, at approximately 7:24 p.m., defendant and Caldwell talked about a meeting with a lawyer in Chicago that Caldwell wanted defendant to attend (Caldwell will explain that the meeting concerned a restaurant that Caldwell and Singleton hoped to open in East St. Louis at a future date). Singleton then said, "Man, I'm trying to stick around wait for Cuz [LaKeith Cross]. See if he's gonna make it to the crib. I ain't for sure that he got the motherfucker at the crib or not neither though. That's the only thing. . . Might have it put up in a little safety deposit box or something." Caldwell then responded, "Yeah, shit, if not, man, we'll get it did, we got to get that shit taken care of too. We just need you to come sign some papers though." Defendant then said, "So you want me to come regardless, or what?" Caldwell then said, "Yeah, even if we don't, man. We just have to get that shit out of the though." Caldwell will explain that he wanted defendant to come to Chicago "regardless" of whether they did a drug deal because he needed defendant to sign some paperwork for the restaurant.

On September 20, 2002, Caldwell and defendant spoke at 11:51 a.m. Defendant asked, ""'Shit, ah, so you gonna make it happen for me or do I need to get to you, or what?" Caldwell responded, "I'm fittin to see . . . it's ah, late tonight or later on the afternoon. I'm gonna see something right quick." Caldwell will explain that defendant was asking whether Caldwell was going to be able to supply defendant with cocaine ("you gonna make it happen for me . . . "), and Caldwell responded that he was going to get drugs from his supplier later that night or in the afternoon.

On September 21, 2002, Caldwell and defendant again spoke at approximately 11:04 a.m. Again, defendant sought an update on the drugs, "[Caldwell], what's goin on, man?" Caldwell answered, "Man, just setting back." Defendant answered, "Just sitting back, huh?" Caldwell then said, "Man, you know I'm trying, babe."

Later that day, at approximately 4:41 p.m., defendant and Caldwell talked again. Caldwell advised defendant that he know had the drugs. Defendant asked, "Straight up?" Caldwell said, "Yup." Defendant then talked about the quality of the drugs, "Was it lovely?" Caldwell responded, "Yeah, I told you." Singleton then asked, "you ah, remember what I had ah, what I had told you?" Caldwell said, "About you?" Defendant said, "I'm ah, try to go an extra one, too." Caldwell responded, "alright." Caldwell will explain that defendant was ordering an extra quantity of cocaine when he said he wanted to "try to go an extra one."

On September 23, 2002, at 12:05 p.m., defendant called Caldwell to complain about the cocaine that Caldwell had supplied defendant: "Let your folks know they shook us a lil bit, too . . . they shook us a lil bit . . . looks like it could have been a mixed deal or something." When Caldwell asked, "yeah," defendant replied, "It's more good than bad though."

The next day, on September 24, at 4:30 p.m., defendant again called Caldwell, who complained that he wasn't "feelin' too good." As Caldwell explained later in the call, one of his drug employees had been stopped the night before with "a gun" and "283 grams." Before discussing Caldwell's employee's arrest, defendant again complained to

Caldwell that "a couple weren't right." Caldwell asked, "They all they all they all don't look the same?" Defendant responded, "Naw, that's what I was telling ya when I when I first called you, and they what it is look like they, umm, had done the same thing right but by bein' by bein' a different kind or whatever I guess it, it's a little shaky." Caldwell reassured defendant, "Alright, shit we'll figure somethin' out, man."

A few hours later, defendant called Caldwell again about the quality of the drugs Caldwell supplied defendant. Caldwell asked, "What you want me to holler at them about?" Defendant responded, "I know they know, shit, they know what's up with that lick man." Caldwell explained that all of the drugs looked alike: "Man, shit, all those damn girls looking alike man, shit, don't you know, you can't just tell all of them look alike. One of them, you know, ain't like one of them had a blue outfit and one of them had a red outfit on and all of them had the same clothes on." Defendant replied, "Hey you so ah you ain't heard nothing else? Your end was tight, huh?" Caldwell added, "Hey I mean . . . we ain't found no new girls yet." He will explain that when he said he hadn't found no new girls, he meant he had not found any new drugs.

On October 2, 2002, at 5:19 p.m., Caldwell called one of defendant's acquaintances, a man named "Eddie Joe." After some small talk, Caldwell told "Eddie Joe" to "tell them [Cross and defendant] to change their phone numbers man." Caldwell continued, "Tell them as soon as possible they need to change them numbers. . . . tell them to change their numbers and their id numbers." Caldwell then warned, "tell th em don't call me from them old numbers, man."

On October 2, 2002, at 7:08 p.m., Caldwell received a call from Cross, and they again discussed changing phone numbers as a result of the arrest of Caldwell's worker. Caldwell asked, "Eddie Joe tell you what I said?" Cross responded, "Yeah, I kicked it with him. I got dude [Singleton] on the side of me too." Caldwell warned, "Yup, just change the numbers man, y'all can keep the names, just change the numbers man." He continued, "Change the numbers, shit. That's what I had to do man." Cross said, "Yeah, we always was gonna do that anyway, you know." Caldwell responded, "Yeah, I should have been did mine. I don't know what I was on. Should have been changed it." Defendant then got on the phone and they discussed potentially meeting.

On October 4, 2002, at 2:06 p.m., Cross called Caldwell. Ultimately, defendant got on the phone. He asked Caldwell, "You think you gonna be able to have lunch with me though?" Caldwell – who will testify that defendant was asking whether Caldwell could supply him drugs – responded, "Yeah, you just gotta uh, come around, come in early, cause I gotta, you know, go in, shit." Defendant replied, "Okay, you remember uh, you, you, know the last time we had lunch, though, that one restaurant we went to, them steaks was uh, medium rare, like a motherfucker, right. Mine was anyway. . . . The ones that I had ordered." Caldwell then asked, "What happened to it, though? Did you put any heat on it [the drugs] or what?" Defendant responded, "Uh, damn near, but I, I still got a bite [meaning he still had some cocaine left]."

A few days later, on October 6, 2002, at 4:10 p.m., Caldwell called Cross asking for defendant's new number. A few hours later, defendant called Caldwell on a new phone.

In addition, Holly Loepker and/or Willie Roberts will testify that they took trips to Chicago with Singleton for approximately one year. They would generally all ride up together, and then Singleton would drop Loepker and her boyfriend, Roberts, at a local hotel and take the vehicle they had come up in. Singleton would return with the vehicle later in the day or the next day, and Loepker and Roberts would drive the vehicle back to East St. Louis. Singleton would travel back separately. Once, they were stopped in a vehicle with a concealed compartment in it. During that trip, Singleton met with Caldwell, but Caldwell didn't supply Singleton on that trip.

Damon Shields will testify that he took a trip to Chicago with Cross and Singleton when they met in suburban Chicago with an individual (Caldwell lived at the time in Hillside). Cross and Singleton got out of the car and entered the house with a backpack and then returned to the vehicle with what appeared to be at least one kilogram of cocaine in the backpack.

Carlos Darough will testify that, during the conspiracy, he and a friend of his met defendant at a liquor store. Darough stayed in the car while his friend met with defendant. His friend returned to the car with 9 ounces of crack cocaine, and he told Darough he had paid defendant $6,500 for it. He will also testify that he regularly saw

defendant with large bundles of cash in excess of $1,000, and he never knew defendant to have a legitimate job.

In addition to the testimony of co-conspirators, the government will introduce evidence of various events throughout the time period of the conspiracy. For instance, the United States will introduce evidence that in December 1999, defendant was stopped in Springfield, Illinois in his vehicle with approximately 70 grams of cocaine. In October 2002, defendant was seen outside a motel in Caseyville, Illinois (right next to East St. Louis) and subsequently agreed to a search of his motel room where agents found a scale and a mixing bowl – tools of the drug trade. In 2003, defendant was involved in a traffic stop in a rented Lincoln Navigator which had over $188,000 in a concealed compartment of the Navigator.

DEA Task Force Officer Robert Coleman will also testify as a drug organization expert. Coleman will explain, among other things, the tools of the trade of a drug dealer (such as scales, guns, and cars with concealed compartments) and distribution quantities versus user quantities of cocaine.

B. Co-Conspirator Statements are Admissible Against Defendant

The government's intentions at trial are modest – it intends simply to introduce a few co-conspirator statements involving Caldwell's discussions with LaKeith Cross and "Eddie Joe" concerning the need to change telephone numbers. Moreover, while they are not co-conspirator statements, Caldwell will discuss briefly the involvement of Cross – as a colleague of defendant's – in the drug conspiracy.

The Title III intercepted conversations concerning the need to change phones are clearly admissible as co-conspirator statements. Through its proffer, the government has established the requisite showing of a conspiracy of which defendant was a member. The conspiracy involved defendant, Martin Caldwell, Lakeith Cross, and others (including "Eddie Joe"). The conspiracy was to possess with intent to distribute significant quantities of various narcotics for several years through October 2003. The statements themselves are made throughout the conspiracy. The conversations are in furtherance of the conspiracy – as they relate directly to the conspirators' need to take care to conceal their actions by changing telephones. Accordingly, the co-conspirator statements should be admitted.

CONCLUSION

As shown above, sufficient evidence demonstrates the existence of the conspiracy as referenced in Count One of the indictment and the defendant's membership and role in that conspiracy. As such, there can be little dispute that the statements at issue were made in furtherance of the conspiracy. Accordingly, the government respectfully requests that this evidence be admissible at trial pursuant to Evidence Rule 801(d)(2)(E).

Respectfully submitted,

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Certificate of Service

The undersigned Assistant United States Attorney hereby certifies that in accordance with Fed. R. Crim. P. 49, Fed. R. Civ. P. 5, LR 5.5 and the General Order on Electric Case Filing (ECF), that the Government's Motion in Limine Regarding the Admission of Co-Conspirator Statements was served on Lorilee Gates, pursuant to the district court's ECF system, on April 9, 2008.

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