

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

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Case No. 1:00CR00104

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v.

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OPINION AND ORDER

SAMUEL STEPHEN EALY,

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By: James P. Jones

United States District Judge

Defendant.

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Thomas J. Bondurant, Jr. and Anthony P. Giorno, Office of the United States Attorney, Roanoke, Virginia, for United States of America; Thomas R. Scott, Jr., Street Law Firm, Grundy, Virginia, and Thomas M. Blaylock, Roanoke, Virginia, for Defendant Samuel Stephen Ealy.

In this ongoing capital criminal trial, the defendant Ealy has filed a motion in limine to admit evidence regarding the alleged murders of Ronald Call and Trampis Sheppard. As previously announced to the parties, I will deny the motion, and this opinion sets forth the reasons for my decision.

I

The defendant has proffered with his motion a copy of the police investigation report of the death of Ronald Call. That report shows that Detective D.B. Bailey of the Mercer County, West Virginia, police department was assigned to investigate the

murder of Call in 1991. During this investigation, he took statements from Melissa Murray and Michael Byrd, who were friends of Call.

Byrd provided a written statement to Detective Bailey in which he stated that Call had shown Byrd where he wanted to be buried and that Call had “gotten drunk a couple times and mentioned the Pocohantas murders, he didn’t say who done the murders, but I believe he knew.”

Murray also gave a statement to Detective Bailey in which she stated that Call had told Byrd in her presence that:

Michael you know that the Pocohantas murders [trial] is about to start and Michael said “Yeh, Ronnie, I know I read it in the paper” . . . and [Call] said Ealy didn’t do it and another didn’t do it was Pete Church. He said . . . I know who done it, ‘cause I’d seen who done it . . . but he didn’t mention . . . how he had seen it . . . He said that it was Melvin Lambert and Kenny Hall.

She also stated that Call acted frightened during the period before his death and had stated that someone was going to come in and “shoot up the place.”

Thereafter, Detective Bailey completed a report of the investigation, including seven enumerated suspects in Call’s murder and their possible motives. Bailey named Pete Church as a suspect and deduced that his motive to kill Call was that Call had information that linked Church to the murders of the Davis family—the victims in the

present case. The defendant proposes to call Detective Bailey as a witness to relate Murray's and Byrd's statements to him.

“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). Such statements are inadmissible unless they satisfy an exception to the exclusion of hearsay. *See* Fed. R. Evid. 802. Hearsay within hearsay—also known as double hearsay—is admissible if each statement conforms to an exception to the hearsay rule. *See* Fed. R. Evid. 805. The statements from Call to Murray and Byrd that were then conveyed to Bailey constitute double hearsay. As such, the statements must be analyzed separately to determine whether they fall under an exception to the hearsay rule.

The defendant argues that Call's statements meet the criteria for the statement against interest exception to the hearsay rule. This exception requires that the declarant be unavailable and that

the statement which was at the time of its making . . . so far tended to subject the declarant to . . . criminal liability . . . that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Fed. R. Evid. 804(b)(3).

Call is deceased and therefore unavailable. *See* Fed. R. Evid. (a)(4). The question then is whether his statements are self-inculpatory. This question can only be answered “in light of all the surrounding circumstances.” *Williamson v. United States*, 512 U.S. 594, 604 (1994).

In light of the circumstances, Call’s statements to Byrd and Murray are self-inculpatory. At most, the statement that “he had seen who done it” indicates that Call was directly involved in the murders, and at the least the statement indicates that Call had information about the murders that he withheld from the authorities, subjecting him to criminal liability for misprision of a felony. Therefore, Call’s statement meets the criteria of Rule 804(b)(3).

The defendant seeks to introduce Call’s statements through Detective Bailey’s report and attached witness statements, and not through testimony of Murray or Byrd, claiming that this evidence falls under the public record exception to the hearsay rule.

“Records, reports, statements . . . in any form of public offices or agencies, setting forth . . . in . . . proceedings against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness” are admissible even if the declarant is available. Fed. R. Evid. 803(8). Statements that are admissible under the rule do not include “raw interview

transcripts,” but contemplate some “factual finding” or conclusion by the public officer. *See United States v. D’Anjou*, 16 F.3d 604, 610 (4th Cir. 1994.)

I find that the “motive” section of Detective Bailey’s report includes factual findings likely admissible under the rule, but the mere quoted statements or “raw interview transcripts” of Murray and Byrd are not admissible.

The only motive that has any relevance to this case is the motive of Pete Church to kill Call because of knowledge that Church was involved in the Pocohantas murders. However, the relevancy of this motive is attenuated from the issue of whether Ealy is also guilty of the Pocohantas killings. Moreover, testimony about Call’s alleged murder and its tangential circumstances presents a substantial likelihood of confusion of the issues in this case.

As a result, despite that a part of Detective Bailey’s report arguably satisfies the public record exception to the hearsay rule, it has limited relevancy that is substantially outweighed by the danger of confusion of the issues. *See Fed. R. Evid. 403.*

Alternatively, the defendant argues that the statements should be admitted under Rule 807, the so-called “catch-all” exception to the hearsay rule. That rule requires that a statement have equivalent circumstantial guarantees of trustworthiness and

(A) that the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable

efforts; and (C) the general purpose of these rules and the interests of justice will best be served by admission of the statement into evidence.

Fed. R. Evid. 807. Hearsay not falling within the express exceptions is presumptively unreliable and the party seeking to introduce the evidence has the burden of overcoming that presumption. *See Doe v. United States*, 976 F.2d 1071, 1075 (7th Cir. 1992). The residual hearsay exception is intended to be used rarely and only in exceptional circumstances. *See Brookover v. Mary Hitchcock Mem. Hosp.*, 893 F.2d 411, 420 (1st Cir. 1990).

I do not find the statements have “equivalent circumstantial guarantees of trustworthiness” to meet the initial test of admissibility. *See Fed. R. Evid. 807.* Detective Bailey listed Church as a suspect in Call’s case because Call had information that Church was in fact involved in the Pocohantas murders, which is contrary to what Murray relates. Byrd did not mention anything about Ealy or Church in his statement. In view of all of the circumstances, I find that the trustworthiness of these statements is not established and that they do not qualify for admission under the residual exception to the hearsay rule.

II

The defendant also seeks to introduce evidence surrounding the alleged murder of Trampis Sheppard. As represented in his motion, on May 13, 1989, Sheppard told Cheryl Lockhart Bailey at his uncle's wake and in the presence of Rose Carol Cheeks Harkness and Tammy Sheppard Mitchem that, "I want you to lose that sad face, I'll see your Daddy in a week." The defendant argues that this statement means that Sheppard feared that he would be killed because he had been to the Davis' home in Pocohantas on the night of their murder. He allegedly told these women that he "had picked up something that belonged to Gilmore" and "the company would have him murdered, because of the simple fact that he did go to Davis' house" that night.

From other testimony in this trial, it is apparent that "the company" refers to the drug ring that Charles Wesley Gilmore ran in and around Pocohantas. Sheppard's statements that connect him to this conspiracy fall under the statement against interest exception to the hearsay rule because Sheppard is unavailable and a reasonable person would not implicate himself in an illegal drug conspiracy unless he believed it to be true. *See* Fed. R. Evid. 804(b)(3).

The defendant argues that these statements are relevant to show the similarity of the Call and Sheppard murders and their relation to the Davis murders. In particular, the defendant argues that individuals connected to Gilmore other than Ealy were

involved in Sheppard's death, thereby making Ealy's involvement in the Davis murders less likely.

The connection of these statements to this case is slight. The defendant's arguments of relevancy hinge on a series of convoluted inferences and inject issues collateral to those in this case. Therefore, I will not allow Trampis Sheppard's statements to be introduced because any probative value is substantially outweighed by the danger of confusion of the issues. *See* Fed. R. Evid. 403.

III

For the reasons stated, it is **ORDERED** that the defendant's motion in limine [Doc. No. 467] is denied.

ENTER: June 3, 2002

United States District Judge