APPENDIX

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4520

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SAMANTHA WINTER,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, District Judge. (1:18-cr-00007-LO-1)

Submitted: April 25, 2019 Decided: May 3, 2019

Before NIEMEYER and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Melinda VanLowe, LAW OFFICE OF MELINDA L. VANLOWE, Fairfax, Virginia, for Appellant. G. Zachary Terwilliger, United States Attorney, Colleen E. Garcia, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Following a jury trial, Samantha Winter was convicted of possession of a firearm by a prohibited person, making a false statement in connection with the purchase of a firearm, and making a false statement to a licensed firearm dealer. The district court sentenced Winter to 2 years' probation on each count to run concurrently, with the condition that she serve 15 days of intermittent incarceration, complete 80 hours of community service, participate in substance abuse and mental health treatment, and pay the $300 special assessment. On appeal, Winter contends that the district court erred by denying her motions to suppress statements she made and to exclude evidence recovered during a traffic stop of her vehicle while it was being driven by Devon Byrd, and she challenges the admission of this evidence during her trial.

We review the factual findings underlying the denial of a motion to suppress for clear error and the court's legal conclusions de novo. *United States v. Bullette*, 854 F.3d 261, 265 (4th Cir. 2017). Additionally, we review the district court's admission of evidence for an abuse of discretion. *United States v. Lighty*, 616 F.3d 321, 351 (4th Cir. 2010)

With these standards in mind, we have considered carefully the arguments raised by Winter on appeal and conclude for the reasons stated by the district court that the court properly denied the motions to suppress and to exclude evidence. *United States v. Winter*, No. 1:18-cr-00007-LO-1 (E.D. Va. Mar. 20, 2018). Additionally, we find no abuse of discretion by the trial court in admitting the challenged evidence. Accordingly, we affirm the judgment of the district court entered on July 20, 2018. We dispense with

oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 1:18-cr-00007
	)	
SAMANTHA WINTER,	)	Hon. Liam O'Grady
	)	
Defendant.	)	

MEMORANDUM OPINION & ORDER

This matter came before the Court on multiple pretrial motions by Defendant Samantha Winter. Ms. Winter filed three Motions to Suppress (Dkt. 30; Dkt. 32; Dkt. 40) and a Motion to Exclude 404(b) Evidence (Dkt. 34). Defendant also filed a Motion to Dismiss Counts II and III of the Superseding Indictment as Violations of the Double Jeopardy Clause (Dkt. 60). The Court heard arguments and denied the motions orally, and instructed the parties that a written order and memorandum opinion would follow.

During trial, Defendant filed a Motion for Proposed Chat Submission (Dkt. 56) and a revised Motion for Proposed Chat Submission (Dkt. 58), seeking redaction of certain text messages in one of the Government's proposed exhibits. The revised motion (Dkt. 58) was **GRANTED** for the reasons stated from the bench. The initial motion (Dkt. 56) is **DENIED AS MOOT.**

I. Suppression of Interview Statements

In her motions, Defendant sought suppression of statements she made to law enforcement officers during an interview conducted on May 8, 2017, alleging she was in custody and should have been Mirandized. The interview was recorded by video, and the Court reviewed the recording.

In order to protect the Fifth Amendment right that no person "shall be compelled in any criminal case to be a witness against himself," U.S. Const. amend. V., the Supreme Court has adopted certain procedural rules that must be followed during interrogations. *See Miranda v. Arizona*, 384 U.S. 436 (1966). The Court held that a suspect in custody must be warned that he has a right to remain silent, that any statement he makes may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. *See Burket v. Angelone*, 208 F.3d 172, 196 (4th Cir. 2000) (citing *Miranda*, 384 U.S. at 444). Generally, statements elicited from a suspect in violation of these rules are inadmissible in the prosecution's case-in-chief. *Id.*

A person is "in custody" for purposes of *Miranda* if the person has been arrested or if her freedom of action has been curtailed to a degree associated with arrest. *Id.* The Court must consider whether a reasonable person in the suspect's position would have understood her situation as the functional equivalent of a formal arrest. *Id.* To determine whether an individual was in custody, a court must objectively view the totality of the circumstances surrounding the interrogation. *See United States v. Freeman*, 61 F. Supp. 3d 534, 536 (E.D. Va. 2014). Facts relevant to this inquiry include, but are not limited to, the time, place, and purpose of the encounter, the words used by the officers, the officers' tone of voice and general demeanor, the presence of multiple officers, the potential display of a weapon by the officers, and whether there was physical contact between the officers and the defendant. *Id.* at 536-37.

The interview in this case was not custodial. Defendant voluntarily went to the police station after being informed that the police had possession of her car. *Cf. Burket*, 208 F.3d at 197 ("[Defendant] voluntarily went to the police station upon request."). Throughout the interview, the officers talked in a calm, professional manner. They told Defendant several times that she

was not under arrest, and that she was free to leave at any time. *See id.* (noting that the defendant was advised that he was not under arrest and that he was free to leave). Indeed, Defendant did leave after she realized that her car would not be returned to her that evening. Defendant's demeanor also indicates a level of comfort throughout the interview. She understands the questions and appears calm, even periodically joking with the agents. Indeed, Defendant volunteered the information regarding her misstatement on the Form 4473. She said, "Yes, I did lie on the form, I should not have, it was wrong. I'll give up my firearms rights if that's what needs to be done."

Defendant's reliance on *United States v. Giddins*, 858 F.3d 870 (4th Cir. 2017), is misplaced. In contrast to Giddins' interview, the door to the interview room in this case was unlocked, and an officer enters and exits the room several times. Unlike Giddins, Defendant's cell phone was never taken from her, nor was she subject to an arrest warrant at the time of the interview. Defendant's claims of economic coercion are unavailing; there is no evidence to support her claim that she was dependent on her car. She was not, at that time, living in the car, and she frequently permitted her boyfriend to use the car during the day. Defendant had a ride waiting for her throughout the interview, and that ride ultimately took her home.

In short, having considered the totality of the circumstances, the Court found that there was nothing to suggest that the interview was custodial, that Defendant's will was overborn, or that her statement was otherwise compelled.

II. Suppression of Evidence Seized Following the Arrest of Devon Byrd

Defendant also sought to suppress any and all evidence obtained during the traffic stop of Devon Byrd, claiming that the stop was unconstitutional and that the evidence arising from the stop was inadmissible against Defendant under Federal Rules of Evidence 403 and 404(b). The

Court found that nothing about the stop or seizure of the car gave rise to any constitutional issues, and that the evidence was admissible under Rules 403 and 404(b).

Defendant argues that the traffic stop was unconstitutional because no exigent circumstances justified a warrantless search of Defendant's car (which, at the time of the stop, was being driven by Devon Byrd). This ignores the fact that the officers who arrested Byrd had ample probable cause to justify the stop and search of the car. Earlier in the day, the Postal Service had identified two suspicious packages destined for the same address. The King George County Police K9 unit conducted a sniff test on one of the packages, and alerted on the package. The Postal Service obtained a search warrant for the package, which was found to contain THC gummies. Law enforcement conducted a controlled delivery of the similar package suspected to contain controlled substances.

Later that day, Byrd was seen entering the location where the package was delivered. Byrd entered the location with an empty backpack, and emerged with a full backpack. Law enforcement followed Byrd from that location, and conducted a traffic stop after Byrd began speeding. As law enforcement officers approached the car, law enforcement observed a gun near the center console. Law enforcement also smelled marijuana. After securing the gun and removing Byrd from the vehicle, the law enforcement K9 unit conducted a sniff test outside the vehicle. The K9 unit alerted to the presence of controlled substances, at which point law enforcement searched the vehicle. Within, they found 50 bags of THC gummies, along with Defendant's purse, driver's license, and other personal items. Law enforcement later learned that the gun in the vehicle was the one purchased by Defendant on December 10, 2016.

Nothing in this series of events leads the Court to believe that the stop and search were unconstitutional. Courts have held that law enforcement can conduct a warrantless search of a

vehicle when they have probable cause to believe the vehicle contains contraband. *See California v. Carney*, 471 U.S. 386, 394-95 (1985); *United States v. Humphries*, 372 F.3d 653, 658 (4th Cir. 2004) ("We have repeatedly held that the odor of marijuana alone can provide probable cause to believe that marijuana is present in a particular place."); *United States v. Baker*, 719 F.3d 313, 317 (4th Cir. 2013). Under the totality of the circumstances, the officers had probable cause to search the vehicle.

As to Federal Rule of Evidence 404(b), the rule prohibits evidence of a crime, wrong, or other act to prove a person's character in order to show that on a particular occasion the person acted in accordance with that character. However, the Rule 404(b) inquiry applies only to evidence of other acts that are extrinsic to the one charged. *United States v. Redding*, 422 F. App'x 192, 194 (4th Cir. 2011). Evidence is intrinsic if it is necessary to provide context relevant to the criminal charges. *Id.* In this case, the evidence and circumstances surrounding the evidence of Byrd's traffic stop provide necessary context to Defendant's charges.

Defendant was charged with one count of possession of a firearm by a prohibited person as an unlawful user of any controlled substance, in violation of 18 U.S.C. § 922(g)(3), one count of making a false statement in connection with the purchase of a firearm, in violation of 18 U.S.C. §§ 922(a)(6) and 924(a)(2), and one count of making a false statement to a licensed firearms dealer, in violation of 18 U.S.C. § 924(a)(1)(A). The Government was required to prove multiple uses of controlled substances as part of the elements of the charged offenses.

The Government sought to present evidence of the THC gummies and a bottle containing a substance that smelled of marijuana found in Defendant's car, as well as evidence of text messages between Defendant and Byrd found during a search of Byrd's phone. The presence of drugs in Defendant's car, alongside her gun, purse, and driver's license, were relevant to show

that Defendant had an awareness of drug use. Similarly, the text messages reveal multiple instances from April 16, 2017 to May 8, 2017 when Defendant stated that she was "high," and were thus highly relevant to the Government's showing that Defendant had a pattern of drug use at the time she purchased the gun. The Court therefore found that the Government was entitled to present the above evidence as intrinsic to the charged offenses.

Moreover, even if the evidence were not intrinsic, the evidence is relevant to show Defendant's motive, intent, knowledge, and absence of mistake when she lied about her drug use on Form 4473, and subsequently possessed the firearm while using controlled substances. *See United States v. Basham*, 561 F.3d 302, 326 (4th Cir. 2009) (explaining that evidence may be admitted under Rule 404(b) when it is relevant to an issue other than character, is necessary, and is reliable). Defendant has made no argument that the evidence is unreliable. *See United States v. Siegel*, 536 F.3d 306, 319 (4th Cir. 2008) ("Evidence is reliable for purposes of Rule 404(b) unless it is so preposterous that it could not be believed by a rational and properly instructed juror.") (internal citations omitted).

Finally, the evidence passed the Rule 403 balancing test, which instructs that evidence may only be excluded when its probative value is substantially outweighed by a risk of unfair prejudice, confusion, or inefficiency. *See United States v. Williams*, 445 F.3d 724 (4th Cir. 2006). Although the evidence was certainly prejudicial to Defendant's case, that kind of general prejudice is not enough to warrant exclusion of otherwise relevant, admissible evidence. *Siegel*, 536 F.3d at 319 ("Evidence may be excluded under Rule 403 only if the evidence is *unfairly* prejudicial, and even then, only if the unfair prejudice *substantially* outweighs the probative value of the evidence."). Additionally, the evidence was so intertwined with the crimes with which Defendant was charged that it was necessary to allow its admission. *See United States v.*

Byers, 649 F.3d 197, 210 (4th Cir. 2011). Moreover, the jury instructions limited the use that the jury could make of this evidence. *See* Jury Instructions as to Samantha Winter, Dkt. 72. For these reasons, and for good cause shown, the Court held that suppression was inappropriate.

III. Double Jeopardy

In her motion to dismiss, Defendant argues that Counts II and III of the superseding indictment unconstitutionally place her twice in jeopardy for the same offense, namely making a false statement on Form 4473. Defendant fundamentally misunderstands the Double Jeopardy Clause, which has no application to her case. The double jeopardy protection against cumulative punishments is designed to ensure that the sentencing discretion of courts is confined to the limits established by the legislature, and to prevent prosecutorial overreach. *See Ohio v. Johnson*, 467 U.S. 493, 501-02 (1984).

The question of congressional intent is resolved by application of the test first set forth by the Supreme Court in *Blockburger v. United States*, 284 U.S. 299 (1932). Where the same act constitutes a violation of two distinct statutory provisions, the Court determines whether there are two offenses or only one by considering whether each provision requires proof of an additional fact which the other does not. *Id.* at 304. This test "focuses on the proof necessary to prove the statutory elements of each offense, rather than on the actual evidence to be presented at trial." *Illinois v. Vitale*, 447 U.S. 410, 416 (1980).

Here, to prove a violation of 18 U.S.C. § 922(a)(6), the Government must prove that Defendant made a false statement material to the lawfulness of the sale of firearms. *See United States v. Hawkins*, 794 F.2d 589, 590-91 (11th Cir. 1986). 18 U.S.C. § 924(a) does not require the Government to prove this element. To prove a violation of Section 924(a), the Government must prove that Defendant made a false statement related to information required by law to be

kept in the records of a federally licensed firearms dealer. *Id.* This information need not necessarily be material to the lawfulness of the sale, and therefore Section 922(a)(6) does not require proof of this element. Thus, there is no double jeopardy violation in the Government's charging of Defendant with Counts II and III of the superseding indictment. *See United States v. Kennedy*, No. 07-cr-131, 2007 WL 2156611, at *3 (E.D. Va. 2007).

IV. Conclusion

For these reasons, and for good cause shown, Defendant's motions (Dkt. 30; Dkt. 32; Dkt. 34; Dkt. 40; Dkt. 60) were **DENIED**. Defendant's motion (Dkt. 58), requesting redaction of certain text messages, was **GRANTED**. Defendant's motion (Dkt. 56) is **DENIED AS MOOT**. The Clerk of Court is instructed to update the docket sheet accordingly.

It is **SO ORDERED.**

March 20 2018
Alexandria, Virginia

Liam O'Grady
United States District Judge