

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 SOUTHERN DIVISION

3 UNITED STATES OF AMERICA Criminal No. RWT-15-00378
4 v. Greenbelt, Maryland
5 TERRANCE D. HAMLIN, April 25, 2016
6 Defendant. 2:30 p.m.

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8 TRANSCRIPT OF CHARGE CONFERENCE
9 BEFORE THE HONORABLE ROGER W. TITUS
10 UNITED STATES DISTRICT JUDGE

10 APPEARANCES:

11 For the Government: United States Attorney's Office
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22 Proceedings recorded by mechanical stenography,
23 transcript produced by notereading.
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1 appropriate?

2 MR. BALDWIN: Yes, Your Honor. We are going to
3 put forth 404(b) evidence that's been referred to earlier
4 in the motions of the prior convictions in 2013 and 2007.

5 THE COURT: Any objection to that, Mr.
6 Citaramanis or Ms. Richman?

7 MS. RICHMAN: Your Honor, good afternoon. Yes.
8 We would object to the introduction of the 404(b)
9 evidence, specifically the 2013 conviction of simple
10 possession. The facts of that case included a handgun.
11 And the eight-year-old 2007 conviction of possession with
12 intent to distribute. On, you know, at least three of the
13 four Queen prongs, the most obvious of which I think are
14 necessity, the government articulates a couple of bases
15 for the evidence in its response to the defendant's motion
16 which are, you know, his knowledge of cocaine base and
17 firearms. His intent to distribute the cocaine base and
18 I'm reading from page 11 of ECF Number 123, his intent to
19 possess a gun in furtherance of drug trafficking, his
20 motive for having cocaine base, small ziplock packets and
21 scales in the apartment where he lived.

22 Respectfully, Your Honor, I think as is apparent
23 both from the testimony the Court has heard thus far and
24 defense' opening, the real core of this case is that it's,
25 one, about constructive possession and that the defense is

1 not launching any meaningful attack on the issue of intent
2 to distribute, the connection between the gun and the drug
3 trafficking or what possible motive there might be for
4 having cocaine base which leaves as the core issue in this
5 case Mr. Hamlin's specific intent to possess the firearms
6 and drugs in question and here this issue was addressed
7 very thoughtfully by the Sixth Circuit in a case called
8 United States versus Jenkins, 593 F.3rd 480 and again the
9 battleground at trial in that case was constructive
10 possession. And the court found that as a practical
11 matter under the circumstances, the issue of knowledge is
12 subsumed by that of possession there as is true here. The
13 drugs were in plain view. There is not really a question
14 of knowledge. There's going to be -- the facts will speak
15 for themselves. The issue will be about whether
16 Mr. Hamlin had the intent to possess those drugs. In
17 terms of the intent to distribute the packaging of the
18 materials speaks for itself. Again, we have not presented
19 a meaningful challenge to that.

20 And then again with the firearms, the issue will
21 be, you know, really whether he had knowledge of those
22 firearms in that home and whether he had the intent to
23 possess those specific firearms and less about whether he
24 has the knowledge of how to use firearms in connection
25 with drug trafficking or knowledge of what a firearm is.

1 So the necessity of these prior convictions
2 seems to be minimal and it does appear to be piling on.
3 There is little probative value of an eight-year old and a
4 three-year old conviction which is not alleged to be part
5 of the same conduct of drug distribution or to be related
6 to the present crime for which Mr. Hamlin is on trial.

7 And next to the minimal necessity, the minimal
8 relevance, we have an enormous amount of prejudice.
9 Courts have acknowledged what's called the Kong-like
10 prejudicial effect of prior convictions and the obvious
11 danger that the jury will treat it as propensity evidence
12 and again here you have the age of the convictions, you
13 have the minimal relevance and minimal necessity and also
14 the circumstances of each case is distinguishable. Both
15 cases involve actual possession. It was not a
16 constructive possession case. In both cases, Mr. Hamlin
17 was stopped on the street. In the 2007 case, an actual
18 hand to hand was observed. The drugs were found on his
19 person. In the 2013 case, again the drugs were found on
20 his person. The firearm was tucked in his waistband. So,
21 you know, in terms of even looking at the similarity,
22 there's also differences there.

23 So in light of the minimal necessity, the
24 minimal relevance and the potentially huge prejudice, we
25 would argue that these should not be admitted.

1 THE COURT: Mr. Baldwin?

2 MR. BALDWIN: Your Honor, I take with a grain of
3 salt the defense argument that somehow this is a sort of
4 minimally relevant evidence here. I mean from what I
5 understand, the theory is is that there was somebody else
6 in a place who stuff this was. And the evidence that we
7 intend to show here is not -- the conviction certainly,
8 but the conduct underlying the conviction.

9 Here, you have two instances where the
10 defendant, one of which in the 2007 conduct occurred less
11 than half mile away at the corner of Rail Street and
12 Southern Avenue in Maryland which is right in the same
13 area and then the second -- the second arrest and action
14 where the defendant was arrested with a loaded gun in his
15 waistband and packages of cocaine base in his underwear,
16 that took place a couple of hundred yards away from the
17 Highland Ridge Apartments. So this shows a nexus to the
18 defendant with this area, a sort of distribution beat for
19 where he would be distributing cocaine base. And so in
20 that respect, it's very tightly connected to this arrest
21 that occurred also in the Highland Ridge Apartment
22 complex.

23 With respect to the necessity, Your Honor,
24 certainly, the jury could think to itself, well, so there
25 were these things in the residence, who did they belong to

1 and did the defendant even have any idea of how to use
2 these things or what could be done with them.

3 Certainly, the flip side of constructive
4 possession is that you have to show someone had that
5 intent and they also had the knowledge of what they were
6 going to do with those things. And the knowledge of what
7 you're going to do with them, the motive and the plan,
8 the, you know, sort of formal call for what we have here
9 is the fact that in his apartment, he had little packets
10 for the packaging of cocaine base as well as a gun near
11 cash and also a gun near marijuana.

12 I think that the certainly the 2013 conviction
13 where you have a gun collocated with these packets of
14 drugs and to which the defendant pled possession of
15 cocaine, but in fact he would not have even gone down to
16 the station and the search that occurred was at the
17 station. He would not have been searched at the station
18 but for the fact that he had a gun and he was chased and
19 the gun was recovered.

20 So the fact that he has previously been
21 convicted and shown a idea, a knowledge of what to do with
22 packets and guns and in the specific context of
23 distribution of drugs is really highly relevant and very
24 necessary here because we need to show that the defendant
25 had that particular intent and knowledge of what to do

1 with these things.

2 Now I will agree that, you know, certainly the
3 fact that these things are in the apartment where the
4 defendant lived and had access to and had the key is all
5 very probative certainly. But that additional piece is
6 very necessary to the government's case.

7 And fundamentally important to his intent and
8 knowledge of what to do with drugs and the fact that he
9 had them, the very fact that those drugs were there and
10 the fact that he knew what drugs were and had been
11 arrested with them in the past.

12 So certainly, they are relevant. I think that
13 the issue of necessity given that this is a constructive
14 possession case and we are looking to establish that the
15 defendant's, not only his possession of the items, his
16 ability and intent to control the residence, but the fact
17 that he knew, had the knowledge and intent of what to do
18 with them, the 404(b) evidence that we intend to put in
19 which includes the conduct surrounding his previous arrest
20 goes to his knowledge of drug distribution and the motive
21 for what he was doing in the apartment that day is
22 followed through with his previous arrests.

23 Certainly, the evidence is reliable, Your Honor.
24 There's previous convictions. We plan to call officers
25 who are involved in the arrests that's been previously

1 found to be reliable. I think there's a case cited in our
2 materials for that. And the fact is is that the probative
3 force here is not outweighed by any sort of risk of unfair
4 prejudice. Here the prejudice is to the defendant is the
5 fact that he had been engaged in very similar behavior in
6 the same neighborhood and it demonstrates his knowledge
7 and intent, his motive and plan for doing with the drugs
8 that were found in the apartment what one would expect
9 would be done with those things. And that is really the
10 prejudice, but it's the same sort of prejudice that runs
11 in any trial where you have particularly good evidence,
12 Your Honor. It's not an unfair prejudice in this case.

13 THE COURT: All right. Ms. Richman?

14 MS. RICHMAN: Your Honor, just briefly. To the
15 extent that this evidence is being proffered as
16 Mr. Baldwin suggests to show Mr. Hamlin intended to
17 possess the guns and drugs in the apartment, then it seems
18 to run towards straight propensity evidence.

19 With regard to the necessity of the evidence,
20 you know, the government put on a lengthy and exhaustive
21 presentation of expert testimony talking about the
22 inferences that the jury could make from the method and
23 quantities of the packaging and the amounts of drugs found
24 in the apartment. In the same vein, the government also
25 put on expert evidence about the conclusions that the jury

1 would be able to draw from the proximity of the guns in
2 question to both the cash found on the top shelf of the
3 closet and the marijuana found in the laundry bag.
4 They've also, of course, presented the physical evidence
5 of the locations of those items. The jury has had a
6 chance to inspect them to see for themselves the glassine
7 bags, the small packages. And I think in light of that,
8 the necessity for these items is simply low. It really,
9 you know, becomes relevant to the issue of propensity and
10 because Mr. Hamlin sold drugs near here before, he sure,
11 you know, likely was doing it here again. For that
12 reason, we'd object.

13 MR. BALDWIN: Your Honor --

14 THE COURT: Okay.

15 MR. BALDWIN: -- just one last thing, Your
16 Honor. All of that goes -- she's talking about possession
17 and things being collocated. There doesn't go to the
18 intent in his head of what he was planning on doing with
19 it. Granted the packets do. The fact that he was -- he
20 had a gun and packets of cocaine previously just a few
21 years before goes directly to the 924(c) count, the
22 collocation of a weapon and drugs and the use of one with
23 the other and his knowledge and intent for the guns that
24 were found on this occasion and what he had plans to do
25 with them. Thank you, Your Honor.

1 THE COURT: All right. Well, this instruction
2 forecasts the debate that will be taking place when we get
3 to the point where the government offers this evidence.
4 My preliminary conclusion with respect to the
5 admissibility of it when it's offered is that it is
6 admissible under 404(b) and I believe that the instruction
7 that's been tendered by the government is one with which
8 I'm very familiar which is very appropriate for giving to
9 the jury when there's been 404(b) evidence.

10 I will say this, that when I make the decision,
11 if ever, to admit into evidence the convictions that the
12 government has described and any testimony relating
13 thereto, I will give at the time that that testimony is
14 received a cautionary instruction that this is being
15 received for a limited purpose only and it's not being --
16 may not be considered by them as any evidence of a
17 propensity of the defendant to commit the crimes charged
18 in this case. But it seems to me that the convictions are
19 relevant. That they come within the scope of Rule 404(b)
20 in terms of intent, preparation, plan, knowledge, absence
21 of mistake.

22 I mean the theory of the defense as I understand
23 it is that this Carlos Benjamin I think it is -- lay the
24 whole thing off on Carlos Benjamin. That this is all
25 stuff owned by Carlos Benjamin. I didn't know it was

1 there. You know, how could this possibly have happened?
2 And this is certainly germane to show that this is not a
3 question of absence of intent, that he had no knowledge of
4 it was there. That he did have the intent to have it
5 there. So I think that it's not unfairly prejudicial
6 under the balancing requirement that I do in any case
7 under 403. But I find that this is at least my
8 preliminary ruling because I have to make a decision when
9 I see the actual evidence is that it's appropriate.
10 Assuming that I don't change my mind, that I think this is
11 a fair and appropriate instruction, therefore, I will
12 overrule the objections by the defense to the giving of
13 Instruction 29.

14 Now there was some language that the defense
15 also had. I'm not sure that I really need to go into the
16 question of what the specific evidence is, especially if I
17 give an instruction to the jury at the time that the
18 evidence is being considered that it's being -- only may
19 be considered for this limited purpose.

20 MR. CITARAMANIS: Your Honor, just to reiterate
21 with respect to the reason for the italicized language to
22 be added or something similar is the Sand instruction as
23 written kind of gives this broad concept as to why this
24 evidence is being received consistent with language under
25 Rule 404(b). But it doesn't actually isn't tailored to