

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

UNITED STATES OF AMERICA :
v.

: 2:17-cr-00197-GEKP-1

RICHARD BOYLE :

**DEFENDANT RICHARD BOYLE'S
SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF
MOTIONS PURSUANT TO FED. R. CRIM. P. 29 AND 33**

TO THE HONORABLE GENE E.K. PRATTER, JUDGE OF THE SAID
COURT:

Defendant, Richard Boyle, by and through his attorney, [REDACTED]

[REDACTED], Esquire, hereby submits this Supplemental Memorandum of Law in support of the Motion for a Judgment of Acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure and a New Trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure. See FED. R. CRIM. P. 29; FED. R. CRIM. P. 33. For the following reasons, this Honorable Court should grant the motions.

I. PROCEDURAL HISTORY

On January 26, 2018, the government filed a Motion in Limine to Introduce Evidence of Other Acts Pursuant to Fed. R. Evid. 404(b). Document 22. The government sought to introduce evidence of Richard Boyle's convictions in 2008 in Montgomery County, Pennsylvania, for eight counts of bank robbery. Id. This Honorable Court conducted hearings on March 22, 2018, and May 1, 2018. On March 4, 2019, the Court granted the government's Motion. Document 83.

On March 15, 2019, after a two-week trial, a jury found Richard Boyle Guilty on each of the counts charged in the indictment, including ten counts of Money Laundering (18:1956(a)(1), (B)(i)). On March 22, 2019, below-signed Counsel filed a Motion for Judgment of Acquittal Pursuant to Fed. R. Crim. P. 29 and for New Trial Pursuant to Fed. R. Crim. P. 33. Document 100.

II. ARGUMENT

A. Motion for a New Trial Pursuant to Fed. R. Crim. P. 33

The interest of justice should compel this Honorable Court to order a new trial in the above-captioned case. Pursuant to Federal Rule of Criminal Procedure 33, "The court may grant a new trial to a defendant if required in the interest of justice." United States v. Smith, 331 U.S. 469, 472 (1947). The Court should analyze Richard Boyle's Motion for a New Trial by first revisiting the Court's decision to grant the government's Motion in Limine.

See Document 83; see also Document 22.

The Court erred when it granted the government's Motion and admitted the 404(b) evidence. The Court failed to conduct the required balancing test, which would have shown that the probative value of the evidence of the prior convictions was substantially outweighed by the danger of unfair prejudice. See FED. R. EVID. 403.

A district court must conduct four distinct steps before evidence is admissible for a non-propensity purpose under Rule 404(b)(2): (1) the evidence must be offered for a proper purpose under Rule 404(b); (2) the

evidence must be relevant; (3) the probative value of the evidence must not be substantially outweighed by its prejudicial effect under Rule 403; and (4) the court must, upon request, instruct the jury to consider the evidence only for the limited purposes for which it is admitted. United States v. Caldwell, 760 F.3d 267, 276 (3d Cir. 2014); see also Huddleston v. United States, 485 U.S. 681, 691 (1988).

This Honorable Court should order a new trial because the Court erred when it failed to conduct the third step of the Huddleston analysis. See id. “[T]he district court’s job is not complete once it finds the proponent has shown that the evidence is relevant for a proper, non-propensity purpose.” Caldwell, 760 F.3d at 277. The third step of the analysis requires the Court to evaluate whether the government’s evidence was sufficiently probative, such that its probative value was not outweighed “by the inherently prejudicial nature of prior bad act evidence.” Id. (citing United States v. Sampson, 980 F.2d 883, 889 (3d Cir. 1992) (reversing because Rule 403 balancing not apparent from the record); United States v. Smith, 725 F.3d 340, 349 (3d Cir. 2013) (same)). “This balancing requires great care on

the part of the district court, ‘because few categories of evidence bring greater risk of prejudice to the accused under Rule 403.’” Caldwell, 760 F.3d at 277 (citing Mueller, Federal Evidence § 4:28, at 731).

In United States v. Caldwell, the United States Court of Appeals for the Third Circuit vacated the defendant’s judgment of conviction and sentence. Id. at 290. The Court determined, “[T]he District Court’s Rule 403 analysis did not provide the meaningful balancing required by our precedent. . . . We will reverse where the Court’s reasoning ‘is not apparent from the record.’” Id. at 283 (citation omitted). The Court noted, “[I]t is beyond cavil that the evidence of [the defendant] ’s prior . . . convictions was highly prejudicial.” Id. at 284.

The Caldwell Court emphasized the prejudice associated with 404(b) evidence. Id. The Court cited the Advisory Committee’s Note to Rule 404(a), which explains

Character evidence is of slight probative value and may be very prejudicial. It tends to distract the trier of fact from the main question of what actually happened on the particular occasion. It subtly permits the trier of fact to reward the good man and to punish the bad man because of their respective characters despite what the evidence in the case shows actually happened.

FED. R. EVID. 404(a) Advisory Committee's Note.

Furthermore, the Court ruled that the evidence's prejudicial impact is "only heightened when character evidence is admitted in the form of a prior criminal conviction, especially a prior conviction for the same crime as that being tried." Caldwell, 760 F.3d at 284. In Richard Boyle's case, the government introduced character evidence in the form of prior criminal convictions for the same crime as that which he was on trial.

The Caldwell Court concluded, "The reasoning underlying the [District] Court's Rule 403 balancing was not apparent from the record. This omission provides an independent ground for reversal." Id. (quotation omitted); see also Sampson, 980 F.2d 883 (The district court improperly admitted defendant's two prior convictions into evidence. The district court failed to apply the proper balancing test as to whether the probative value of defendant's prior convictions outweighed the prejudicial effect.); Smith, 725 F.3d 340 (The district court did not properly balance the prejudicial nature of the evidence against its probative effect under Fed. R. Evid. 403.).

Accordingly, Richard Boyle respectfully asserts that this Honorable Court's failure to conduct the balancing test under Fed. R. Evid. 403 warrants the grant of a new trial. See FED. R. EVID. 403.

B. Motion for a Judgment of Acquittal pursuant to Fed. R. Crim. P. 29

The evidence was insufficient to sustain the verdict. In reviewing a Fed. R. Crim. P. 29 post-verdict motion for judgment of acquittal, this Honorable Court should "review the record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the available evidence." United States v. Wolfe, 245 F.3d 257, 262 (3d Cir. 2001). The Court is required to "draw all reasonable inferences in favor of the jury's verdict." United States v. Anderskow, 88 F.3d 245, 251 (3d Cir. 1996). Thus, a finding of insufficiency should "be confined to cases where the prosecution's failure is clear." United States v. Leon, 739 F.2d 885, 891 (3d Cir. 1984).

The government's innocuous direct and circumstantial evidence rendered the evidence insufficient to convict Richard Boyle of Money

Laundering (18:1956(a)(1), (B)(i)). The relevant portions of 18 U.S.C. § 1956 define Money Laundering,

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or . . .

(B) knowing that the transaction is designed in whole or in part --

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity.

18 U.S.C. § 1956.

To prove Money Laundering, the government primarily introduced evidence through 2 witnesses—Megan Brady and Eric Hiser. The testimony of the witnesses was not sufficient to prove the charge beyond a reasonable doubt.

The testimony of Megan Brady revealed nothing more than innocuous conduct by Richard Boyle. Ms. Brady is a fraud investigator for Square, Inc., which offers “a variety of merchant services, including credit card services.” (Notes of Testimony, “N.T.” March 6, 2019, at 93, 94).

Square provided to the government, and Ms. Brady reviewed account records for Richard Boyle and his company Sky Eye View. Id. at 95. In summary, Ms. Brady testified that Richard Boyle used Square to deposit funds from a credit card to his bank account. Id. at 101-103.

Though she is employed as a fraud investigator for Square, Ms. Brady did not testify that Richard Boyle's activity was suspicious. See id. at 93. Ms. Brady did not testify that Square had alerted law enforcement about potential illegal activity concerning Richard Boyle's account. Lastly, the activity, which involved Richard Boyle's account, occurred during a limited timeframe, merely during 2015 and 2016, though the robberies for which Richard was tried occurred over five years. Id. at 104.

Likewise, as to Money Laundering, Eric Hiser's testimony was scant and insufficient to prove the charge. Mr. Hiser works as a forensic accountant for the Federal Bureau of Investigation. (N.T., March 12, 2019, at 141). Mr. Hiser summarized Richard Boyle's financial records and then compared those records to the dates of the bank robberies, which the government attributed to Richard. Id. at 142-143. Mr. Hiser's testimony

about the Square transactions, which the government utilized to prove Money Laundering, was relatively brief. The witness reviewed Page 11 of his report and stated, “\$17,000 . . . [represents] the total credit card charges that Richard Boyle incurred on his credit cards to Square. \$16,532.50 . . . [represents] the amount of funds that Richard Boyle received from Square.” *Id.* at 157. Mr. Hiser did not expound upon the raw data, which he presented for the Square transactions.

In its closing argument, by failing to mention the witnesses or their testimony, the government essentially conceded that the testimonies of Ms. Brady and Mr. Hiser were insufficient to prove Money Laundering. During the summation, the prosecutor offered the government’s theory of the Money Laundering charge. (N.T., March 13, 2019, at 131). But, conspicuously, the government did not attempt to support its theory by citing the testimony of either witness.

After a review of the testimony above, it is apparent that the government’s evidence was insufficient to prove Money Laundering. The verdict was based on conjecture and speculation, and this Honorable Court

cannot “uphold a jury verdict based on speculation alone.” United States v. Thomas, 114 F.3d 403, 404 (3d Cir. 1997). The Court should grant Richard Boyle’s Motion for Judgment of Acquittal because “the prosecution’s failure [to prove] beyond a reasonable doubt that Richard Boyle committed the crimes charged] is clear.” Smith, 294 F.3d at 477.

III. CONCLUSION

Based on the foregoing, Richard Boyle respectfully requests this Honorable Court grant the post-verdict motions.

Respectfully Submitted,

/s/ _____
[REDACTED], Esq.
Attorney for Richard Boyle

Date: August 2, 2019

CERTIFICATE OF SERVICE

I, [REDACTED], Esquire, hereby certify that a copy of the foregoing was served upon the following via ECF Filing:

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