

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**UNITED STATES OF AMERICA**

**v.**

**PETER ENZINGER,**

**DEFENDANT**

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**No. 2:11-CR-62-DBH**

**DECISION AND ORDER ON DEFENDANT’S MOTION FOR NEW TRIAL**

On July 11, 2011, the jury found the defendant guilty, under 15 U.S.C. § 645(a), of making a false statement. The defendant’s pending motion for a new trial on evidentiary and procedural grounds is **DENIED** for the reasons stated on the record before and during trial.

I make the following additional observations on the defendant’s two primary challenges:

**1. The Excluded Evidence.** This was a proposed stipulation that the defendant offered, stating that the SBA associate general counsel for litigation, if called, would testify that the defendant likely would have received the SBA loan in question even if he had answered the questions truthfully. But whether the defendant’s false statement affected his ability to obtain the loan is irrelevant. Conviction under 15 U.S.C. § 645(a) requires only that the

defendant (1) make a false statement; (2) know, at that time, that the statement is false; and (3) make the false statement for one of various purposes, including obtaining a loan from the Small Business Administration. Materiality is not an element of the crime. United States v. Condon, 132 F.3d 653, 656 (11th Cir. 1998) (concluding that “[b]ecause of the similarities among 15 U.S.C. § 645(a) and 18 U.S.C. §§ 1010 and 1040, and in the light of Wells and DeCastro, we conclude that section 645(a) does not include the element of materiality.”); United States v. Carter, 526 F.2d 1276, 1278 (5th Cir. 1976) (stating that “645(a) . . . does not require the government to show that the particular statement would have, in fact, affected the action of the S.B.A.”); United States v. Wells, 519 U.S. 482, 509, n.10 (1997) (Stevens, J., dissenting) (citing United States statutes, including 15 U.S.C. § 645(a), whose language do not include materiality). Moreover, in my ruling at the outset of trial, I reserved ruling on whether I would reconsider the matter if the defendant testified or if his testimony indicated that, at the time he made the false statement, he believed it would not affect the outcome of his loan application. The defendant did testify, but he did not renew his offer of the stipulated testimony.

**2. The Admitted Evidence.** This was SBA Form 912, the form in which the defendant gave false answers. It was retrieved from Granite State Development’s database. Granite State packaged the defendant’s loan for SBA approval. The defendant objected to use of a “copy,” rather than the “original,” of the completed Form 912. Evidence Rules 1001(3), 1001(4), 1002, 1003, and

1004 all bear upon the dispute. The Granite State loan underwriter testified that the defendant entered information on the original Form 912 and then delivered the form to her. Afterward, she entered additional information. However, neither she nor the defendant remembers how the form first arrived in her possession: the defendant may have emailed or faxed it to her. In this case, she would have never possessed an “original” that revealed whether printer toner or a pen filled the boxes on the form. However, the paper would have shown whether she added information with a pen whose ink color matched the color in the boxes. Alternatively, the defendant may have hand-delivered or mailed the form to the loan underwriter, in which case she would have at least temporarily possessed all of the information listed above. Regardless, she testified that her company practice was to scan the document she possessed into the Granite State Development database and then forward the paper document to the SBA in Sacramento. No trial testimony addressed what happened to the paper document after it arrived at the SBA. However, the Government stated at sidebar that the SBA no longer possessed the paper document and made a proffer of unavailability of the original, which would allow evidence other than the original under Rule 1004. I accepted the proffer, which referred to an affidavit. However, no affidavit was actually offered and admitted as an exhibit. Now the defendant’s memorandum in support of his motion challenges the contents of the affidavit as insufficient. But I do not have the affidavit, and he did not make his arguments of deficiency at the time

I accepted the proffer. Ultimately, however, I do not need to rule whether the document retrieved from Granite State Development's database and admitted at trial is an original<sup>1</sup> or a duplicate.<sup>2</sup> Rule 1003 permits the admissibility of a duplicate as an original "unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Neither condition is satisfied here. To the extent that there was any issue whether someone other than the defendant completed certain portions of the form, the defendant was able to explore that question thoroughly at trial, and there was neither unfairness in admission of the scanned document, nor a genuine question of authenticity. See also United States v. Carroll, 860 F.2d 500 (1st Cir. 1988).

For these reasons, the motion is **DENIED**.

**SO ORDERED.**

**DATED THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2011**

/s/D. BROCK HORNBY

**D. BROCK HORNBY**

**UNITED STATES DISTRICT JUDGE**

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<sup>1</sup> Federal Rule of Evidence 1001(3) reads, "An 'original' of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An 'original' of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an 'original.'"

<sup>2</sup> Federal Rule of Evidence 1001(4) reads, "A 'duplicate' is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original."

**U.S. DISTRICT COURT  
DISTRICT OF MAINE (PORTLAND)  
CRIMINAL DOCKET No. 2:11CR62 (DBH)**

**United States of America**

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