

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)
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) 1:11-cr-00185-JAW
)
JAMES STILE)

ORDER ON GOVERNMENT’S MOTION IN LIMINE

Although evidence of the Defendant’s marijuana grow operation inside the house where he was living is relevant to the charges of pharmacy robbery, use of a firearm in furtherance of the robbery, and being a felon in possession of a firearm, the Court concludes that the relevance is outweighed by the risk of unfair prejudice but cautions the defense that such evidence may become admissible if the Defendant opens the door.

I. BACKGROUND

James Stile stands charged of pharmacy robbery, use of a firearm in furtherance of a federal crime of violence, being a felon in possession of a firearm, and manufacturing more than 100 marijuana plants. *Indictment* (ECF No. 8). On July 17, 2014, the Court granted Mr. Stile’s motion to reconsider an earlier order that had denied his motion for relief from prejudicial joinder. *Order on Def.’s Mot. for Recons. of Mot. for Relief From Prejudicial Joinder* (ECF No. 434) (*Order*). The Court severed the trial of the marijuana charge from the remaining three counts. *Id.*

With this case heading for trial in November, the Government filed a motion in limine to obtain a court ruling as to the admissibility of evidence related to the

marijuana grow operation during the trial on the pharmacy robbery and firearms charges. *Gov't's Mot. in Limine to Admit Intrinsic Evid.* (ECF No. 464) (*Gov't's Mot.*). Specifically, the Government seeks to introduce evidence of zip ties that were found in the Stile residence, and were the same type of zip ties the robber used to tie up the hands and feet of the pharmacy owner, three pharmacy employees, and a customer. *Id.* at 1. In addition, the Government seeks to introduce evidence of the large marijuana grow operation that law enforcement discovered when they searched the house where Mr. Stile's apartment was located. *Id.* Mr. Stile objects. *Opp'n to Mot. in Limine to Admit Intrinsic Evid.* (ECF No. 477) (*Def.'s Opp'n*).

II. THE FACTS ACCORDING TO THE GOVERNMENT

In its motion, the Government incorporated by reference the facts in its earlier opposition to Mr. Stile's motion for relief from prejudicial joinder. *Gov't's Mot.* at 1 (citing *Gov't's Resp. in Opp'n to Def.'s Mots. for Relief from Improper Joinder and to Sever* (ECF No. 188) (*Gov't's Opp'n*)). In its opposition, the Government set forth the facts underlying the crimes charged in the indictment. *Gov't's Opp'n* at 1-4.

The Government claims that on September 12, 2011, just before closing at approximately 5:14 p.m., a tall, thin, white male entered E.W. Moore Pharmacy in Bingham, Maine with his head and face covered by a baseball type cap, sunglasses, and a dust mask. The handle of a handgun was visible from his jeans pocket and he took out from his pants what appeared to be a very small sawed-off shotgun. He brandished the shotgun at the owner and the employees and, when a customer entered, he brandished the shotgun at him, too, ordering him behind the counter.

The robber ordered the owner to fill a black bag with narcotics and he tied the hands and feet of the customer and three employees. Once the bag was full of drugs, the robber tied the owner as well. All five people in the store were tied with grey and/or white zip ties. The robber fled in a Ford Windstar minivan.

On September 13, 2011, law enforcement obtained a search warrant to search the Defendant's residence for evidence of the robbery. They found evidence consistent with items of clothing the robber had worn. They also found a large marijuana grow operation in the upstairs part of the residence and they obtained a second search warrant to search the residence for evidence of illegal marijuana production. Law enforcement discovered white and/or grey zip ties in the marijuana grow area of the residence. In its current motion, the Government further explains that the zip ties were holding up marijuana grow lights. *Gov't's Mot.* at 2. Finally, the Government reveals that several days later, pursuant to a third search warrant, law enforcement found a handgun with one round in a briar patch near the Stile house. *Id.* at 3. The Government acknowledges that the ball cap, sunglasses, sawed-off shotgun, and black bag with the prescriptive drugs were never found. *Id.*

III. THE PARTIES' POSITIONS

A. The Government's Motion

The Government maintains that evidence of the marijuana grow operation is intrinsic to the crimes charged in counts one through three of the indictment. *Gov't's Mot.* at 1. The Government says that evidence of the zip ties and the marijuana grow "comprise[] part and parcel of the core events undergirding the crime for which [the

defendant] was charged.” *Id.* (quoting *United States v. Roszkowski*, 700 F.3d 50, 56 (1st Cir. 2012)). It argues that the justification for the severance motion “is unrelated to the issues raised in the present motion.” *Id.* at 3. In terms of the Rules of Evidence, the Government contends that the evidence is admissible under Federal Rule of Evidence 403. *Id.* at 3. Observing that this evidence is “extremely probative[,]” the Government contends that even though the evidence would be prejudicial to Mr. Stile, it is not unfairly prejudicial. *Id.* at 3-4.

B. The Defendant’s Opposition

Mr. Stile objects to the admission of such evidence. First, he contends that evidence of the grow operation would not be probative of his commission of the robbery because with respect to the case being tried in November, Mr. Stile is not going to be tried for growing marijuana. *Def.’s Opp’n* at 1. Next, he worries that the jury will view evidence of his marijuana operation as establishing that he is a criminal or has criminal propensities, inadmissible under Federal Rule of Evidence 404(b). *Id.* Finally, Mr. Stile contends that the Government has other evidence that it may use at trial to prove its case and evidence of the marijuana grow operation would be “merely cumulative.” *Id.*

IV. DISCUSSION

A. The Marijuana Grow Operation

Evidence of the marijuana grow operation meets the standard of relevancy because it tends to establish why Mr. Stile might have possessed a firearm, namely to protect his marijuana crop, and this is a fact of consequence in the three charges

scheduled for trial in November. FED. R. EVID. 401. Evidence of the marijuana grow is also prejudicial to Mr. Stile. FED. R. EVID. 403. The first danger is that the jury will view Mr. Stile as a bad person and its view of his criminal character will color its objective view of the evidence that he committed the charged crimes. FED. R. EVID. 404(b). The Court doubts that this risk, standing alone, would necessitate exclusion, especially with a limiting instruction.

The real problem is the one that led to the severance of the marijuana charge from the other three charges. Mr. Stile has represented that he wishes to testify on the marijuana charge but not on the other three charges. *Mot. for Recons. of Mot. for Relief from Prejudicial Joinder* at 2 (ECF No. 405) (“In this case, Defendant is likely to testify with respect to Count IV, but not with respect to Counts I-III.”). If the Government places evidence of the marijuana grow operation before the jury in the trial of the pharmacy robbery and firearms charges, Mr. Stile will face the same dilemma about his testimony that led the Court to sever the trials in the first place. *Order* at 9-14. According to his own account, he has “important testimony to give” about the marijuana grow operation, which he claims was located in a part of the residence that he did not lease and could not access. *Id.* at 10-12.

Once the Government introduced evidence of a large marijuana grow operation, Mr. Stile would have to take the stand to rebut the logical inference that the marijuana was his. In fact, this is precisely why the Government seeks to introduce it—namely that the marijuana grow operation explains why Mr. Stile possessed a firearm. But once he testified about the marijuana grow operation, the

Government would have the right to question him about his involvement in the pharmacy robbery and firearms charges. Thus, although the marijuana charge would not be before the jury, the jury would still hear the evidence underlying the charge and Mr. Stile would be presented with the untenable situation that the First Circuit described in *United States v. Jordan*, 112 F.3d 14 (1st Cir. 1987): “[A] defendant may wish to testify in his own behalf on one of the offenses but not another, forcing him to choose the unwanted alternative of testifying as to both or testifying as to neither.” *Id.* at 16 (quoting *United States v. Scivola*, 766 F.2d 37, 42 (1st Cir. 1985)).

B. The Zip Ties

Evidence of zip ties at the Defendant’s house similar to the zip ties the robber used to tie up people in the pharmacy easily fits within the definition of relevant evidence: it has a “tendency to make a fact more . . . probable than it would be without the evidence” and the fact “is of consequence in determining the action.” FED. R. EVID. 401. If the zip ties in the residence are the same type and color of the zip ties used by the robber, this evidence is more probative than the generalized evidence of a marijuana grow operation and its relationship to gun possession. Furthermore, unlike a marijuana grow operation, there is nothing inherently prejudicial about zip ties evidence.

There is a potential for prejudice in that the location of the zip ties may open up Fifth Amendment issues about the marijuana grow operation, namely, that Mr. Stile might still wish to testify about the inaccessibility of the second floor of the

apartment house. However, there may be a way that the parties can agree to put evidence of the zip ties before the jury and avoid the untenable choice that Mr. Stile would face on evidence of the marijuana grow operation. The Court will reserve ruling on this issue until it has had an opportunity to consult with counsel. If the parties are unable to arrive at a suitable stipulation, the Court will reach the merits of the motion.

V. CONCLUSION

The Court DENIES in part and DEFERS ruling in part the Government's Motion *in Limine* to Admit Intrinsic Evidence (ECF No. 464). The Court DENIES the motion to the extent it seeks to introduce evidence of the marijuana grow operation in the trial of the pharmacy robbery and firearms counts and DEFERS ruling on the motion to the extent it seeks to introduce evidence of zip ties found both at the scene of the robbery and at the Stile residence.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 7th day of October, 2014

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