

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

UNITED STATES OF AMERICA     )  
  )  
                  v.                    )     1:14-cr-00088-JAW  
  )  
JEFFREY PAUL BARNARD         )

**ORDER ON GOVERNMENT’S MOTION IN LIMINE**

With trial scheduled to begin on June 7, 2016, the Government filed a motion in limine to clarify the admissibility of certain evidence. *Mot. In Limine Re: Other Crimes Evid. and the Def.’s Statements During the Standoff* (ECF No. 203) (*Gov’t’s Mot.*). Mr. Barnard, who is representing himself, has not responded to the motion.

The Government has raised two issues. The first is whether Mr. Barnard’s statements to law enforcement during the alleged standoff on May 31 and June 1, 2014 will be admissible and the second is whether the Government will be allowed to impeach Mr. Barnard, should he take the stand, concerning a prior police standoff on August 23, 1995 in Joshua Tree, California. *Id.* at 5-7.

**I. STATEMENTS BY THE DEFENDANT**

Turning to the first set of statements, the Government says that Mr. Barnard told law enforcement the following:

- (1) That he was not going back to prison;
- (2) That he had already told Judge Woodcock that he was not going back to prison; and

(3) That his California standoff would be “nothing compared” to the 2014 standoff.

*Id.* at 5. The Government correctly states that these statements are admissible as statements of an opposing party under Federal Rule of Evidence 801(d)(2). *Id.* at 1.

The only question is whether the probative value of these statements would be substantially outweighed by the danger of unfair prejudice. FED. R. EVID. 403. As regards the first two statements, there is little danger of prejudice because Mr. Barnard and the Government have stipulated that he had previously been convicted of a felony in state or federal court. *See Gov't Mot.* at 5 n.1. The statement that he was not going back to prison would have little, if any, prejudicial impact because jurors would likely assume that a person who has been convicted of a felony has spent some time in jail. The only additional information conveyed to the jury in the second statement would be that Mr. Barnard's prior felony was for a federal crime and that the same judge presiding over this trial also presided over his prior sentencing. The Court does not view this evidence as creating a risk of unfair prejudice.

The third statement, which referenced the California standoff, is highly probative of Mr. Barnard's state of mind and the intentionality of his later conduct. There would be some prejudice from the jury hearing about a prior standoff; however, they would, at least at that point, have no information about the nature of the standoff, only that one occurred. The Court concludes that that probative value of the statement exceeds the danger of any unfair prejudice.

All three statements are admissible in the Government's case-in-chief.

## II. THE JOSHUA TREE STANDOFF

The Government seeks to introduce evidence of the facts underlying a standoff in Joshua Tree, California on August 23, 1995 involving Mr. Barnard. *Id.* at 2-4. The Government wishes to introduce this evidence only if Mr. Barnard takes the stand and only for impeachment. *Id.* The Government contends that this evidence would be admissible under Rule of Evidence 404(b) to prove absence of mistake and intent. *Id.*

Although the Court appreciates the Government bringing this potential issue to its attention, the Court defers ruling until trial. At this point it is unclear whether Mr. Barnard is going to take the stand and what, if he elects to testify, he is going to say. Before the Government questions Mr. Barnard about the facts underlying the 1995 standoff, the Court will require the Government to approach the bench, and the Court will hold a hearing outside the presence of the jury to determine what, if anything, may be raised on cross-examination concerning the 1995 standoff.

## III. CONCLUSION

The Court GRANTS in part and DEFERS in part the Government's Motion *In Limine* Re: Other Crimes Evidence and the Defendant's Statements During the Standoff (ECF No. 203).

SO ORDERED.

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

Dated this 20th day of May, 2016