UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIM. NO. 3:04CR172(AWT)
	:	
MICHAEL S. CIARCIA	:	

RULING ON MOTION IN LIMINE

At the hearing on March 23, 2005, the court reserved ruling on the defendant's Motion in Limine dated February 25, 2005 (Doc. No. 60). On April 7, 2005 the government filed an application for an order pursuant to 18 U.S.C. § 6003 (Doc. No. 75) requiring Luis Santiago to testify before the petit jury at the trial in this case, which was granted on April 8, 2005. The jury was selected on April 8, 2005. On April 12, 2005, the government filed a trial memorandum addressing the admissibility of various out-of-court statements made by Luis Santiago. (See Gov't Trial Mem. (Doc. No. 80).) On April 13, 2005, the defendant submitted a memorandum on the same issue. (See Deft.'s Mem. (Doc. No. 81).)

On April 18, 2005, the court held a hearing at which it informed Luis Santiago that it had issued an order (Doc. No. 79) requiring him to testify at the trial in this case or provide other information as to all of the matters about which he may be asked before the petit jury in the trial in this case. Santiago refused to comply with the court's order that he testify, and the court found Santiago in criminal contempt.

By virtue of Santiago's refusal to testify despite the court's order that he do so, Santiago became an unavailable witness within the meaning of the Federal Rule of Evidence 804(a)(2). The government had stated that should Santiago refuse to testify, it would seek to offer several of his prior out-of-court statements as statements against penal interest under Federal Rule of Evidence 804(b)(3), specifically Call No. 1171, Call No. 556, Call No. 440 and Call No. 954. In addition the government would seek to offer testimony of Angel Gonzalez, a former friend and drug associate of Santiago, to the effect that Santiago had confided in him about paying a lump sum of cash in exchange for regular pay checks.

Although the Confrontation Clause bars the admission of testimonial statements against a defendant where the defendant has not had the opportunity to cross-examine the witness, see Crawford v. Washington, 541 U.S. 36, 68 (2004), the admission of non-testimonial statements will not violate the Confrontation Clause if those statements "fall within a firmly rooted hearsay exception or demonstrate particularized guarantees of trustworthiness." United States v. Saget, 377 F.3d 223, 227 (2d Cir. 2004). "[T]he types of statements cited by the Court [in Crawford] as testimonial share certain characteristics; all involve a declarant's knowing responses to structured questioning in an investigative environment or a courtroom setting where the

declarant would reasonably expect that his or her responses might be used in future judicial proceedings." Saget, 377 F.3d at 228 (holding that statements to a confidential informant, whose true identity was unknown to the declarant, did not constitute "testimony" under Crawford).

The Second Circuit has not yet determined whether statements against penal interest fall within a firmly rooted hearsay exception. See United States v. Matthews, 20 F.3d 538, 545-46 (2d Cir. 1994). Thus, to be admissible under the Confrontation Clause, the statements against penal interest must "bear adequate guarantees of trustworthiness." Saget, 377 F.3d at 230. In general, statements made to friends or confidants in a private, non-coercive setting will be held to bear sufficient indicia of reliability to be admissible under Rule 804(3). See, e.g., United States v. Latine, 25 F.3d 1162, 1166-67 (2d Cir. 1994) (holding that accomplice's statement to third-party about accomplice and defendant's involvement in police shooting was sufficiently reliable); Matthews, 20 F.3d at 546 (holding that statements to declarant's girlfriend were sufficiently reliable because of the nature of their relationship and the unofficial setting in which the statements were made). "[A] 'statement incriminating both the declarant and the defendant may possess adequate reliability if . . . the statement was made to a person whom the declarant believes is an ally,' and the circumstances

indicate that those portions of the statement that inculpate the defendant are no less reliable than the self-inculpatory parts of the statement." Saget, 377 F.3d at 230 (quoting United States v. Sasso, 59 F.3d 341, 349).

All of the four calls, i.e., Call Nos. 1171, 556, 440 and 954 and the statements to Gonzalez are statements that were made to friends or confidants in private, non-coercive settings. None involved Santiago's knowing response to structured questioning in an investigative environment or a courtroom setting where Santiago would reasonably expect that his responses might be used in future judicial proceedings. In addition, the portions of the statements that inculpate the defendant are no less reliable than those portions that inculpate Santiago. Accordingly, the court concluded that each of these statements against penal interest bears adequate guarantees of trustworthiness.

In addition, a reasonable person would have perceived the statements being offered by the government as being against his penal interest. The statements either implicate Santiago in a money laundering scheme or in the shooting of another person. (The court notes that the test is not whether Santiago did in fact view the statements as being against his penal interest, but whether a reasonable person would.)

The court also notes that at one point during the case, the defense was considering offering a statement submitted by

Santiago to the defendant's investigator on April 19, 2005. Even if such a statement would have been admissible under Federal Rule of Evidence 806, it would have been precluded under Federal Rule of Evidence 403. The probative value of the proffered written statement by Santiago was substantially outweighed by the danger of misleading the jury. Santiago prepared his statement for use in the very judicial proceeding in which he had been ordered by the court to testify but refused to testify and was continuing to refuse to testify notwithstanding the fact that the court found him to be in criminal contempt. That statement contradicts statements given by Santiago under oath at the time he entered his plea to Count One of the indictment in this case. Thus, the probative value of Santiago's April 19, 2005 statement is low, and the introduction of Santiago's statement would have been seriously misleading to the jury.

For the reasons set forth above, the defendant's Motion in Limine (Doc. No. 60) was DENIED by the court immediately prior to the commencement of trial.

It is so ordered.

Dated at Hartford, Connecticut on this 26th day of April 2005.

/s/
Alvin W. Thompson
United States District Judge