

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action No.
	)	09-00112-01-CR-W-ODS
CLIFTON D. TAYLOR,	)	
	)	
Defendant.	)	

ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANT'S MOTION IN LIMINE

Pending is Defendant's motion in limine (Doc. 67). The motion is granted in part and denied in part.

I. BACKGROUND

Defendant's trial for bank robbery is set for January 19, 2010. The United States has indicated its intent to present evidence that during a police interview Defendant ate some of an interviewing officer's notes when the officer left to the room to retrieve a cup of water. According to the United States, the officer's notes contained a record of inconsistent and inculpatory statements Defendant made during the interview regarding the bank robbery. The United States also has indicated that it might present evidence that the officer returned to the interview room, handed Defendant a Styrofoam cup of water, and that Defendant ate part of the cup.

Defendant filed the instant motion in limine claiming the evidence he ate the notes and the cup should be excluded from trial because it is irrelevant and unduly prejudicial. In addition, Defendant seeks to exclude evidence of his prior convictions and outstanding warrants. The United States has stipulated that it will not introduce evidence of Defendant's prior criminal history during its case-in-chief. However, the

United States contends Defendant's consumption of the interviewing officer's notes and the Styrofoam cup is admissible.

## II. DISCUSSION

Relevant evidence is that which has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." FRE 401. The United States contends proof that Defendant ate the interviewing officer's notes constitutes relevant spoliation evidence. Spoliation evidence is relevant because it tends to show consciousness of guilt. *U.S. v. Blackwell*, 459 F.3d 739, 768 (6th Cir. 2006); see *U.S. v. Chauncey*, 420 F.3d 864, 875 (8th Cir. 2005) (holding that evidence defendant threatened witness was admissible to show consciousness of guilt). The Court holds that the evidence Defendant ate the interviewing officer's notes constitutes relevant evidence because it shows consciousness of guilt.

Relevant evidence is admissible, but it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. FRE 402 & 403. Here, the evidence that Defendant ate the interviewing officer's notes is highly probative of Defendant's consciousness of guilt because it directly establishes Defendant's destruction of incriminating evidence. As for the danger of unfair prejudice, Defendant's act of eating paper seems unusual and strange, but there is little to no likelihood that this aspect of Defendant's conduct would prejudice the jury against him. The balancing test in Rule 403 does not render this evidence inadmissible. The Court declines to exclude this evidence from trial.

Turning to Defendant's destruction of the Styrofoam cup, the Court holds that this evidence is inadmissible. The United States asserts that this evidence is "inextricably intertwined" with the destruction of the officer's notes, but the fact that Defendant ate the Styrofoam cup is irrelevant—it does not tend to prove that Defendant committed the bank robbery. Since the evidence lacks probative value, it is excluded from trial. FRE 402. Moreover, the United States shall admonish its witnesses not to mention during their

testimony that Defendant ate the Styrofoam cup.

Finally, pursuant to its stipulation, the United States is prohibited from presenting evidence of Defendant's prior criminal activity during its case-in-chief. However, Defendant's request that *all* evidence of his criminal history be excluded is unwarranted. Defendant offers no valid reason why the United States should be prohibited from impeaching Defendant with his criminal history as provided under FRE 609. The Court declines to exclude Defendant's criminal history that may be used for impeachment purposes.

### III. CONCLUSION

Defendant's motion in limine is granted in part and denied in part.

IT IS SO ORDERED.

DATE: January 15, 2010

/s/ Ortrie D. Smith  
ORTRIE D. SMITH, JUDGE  
UNITED STATES DISTRICT COURT