

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA * CRIMINAL NO. 2:16cr7-KS-MTP
v. *
CHARLES BOLTON *
LINDA BOLTON

* * *

**MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION TO ADMIT
SUMMARY WITNESS TESTIMONY AND SUMMARY EXHIBITS**

Due to voluminous documentary evidence in this matter, the United States requests that this Court admit certain summary exhibits and supporting summary testimony pursuant to Fed. R. Evid. 1006.

I. THE LAW

Rule 1006 provides:

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Rule 1006 is "broadly interpreted." *United States v. Bishop*, 264 F.3d 535, 547 (5th Cir. 2001). "This rule requires only that the underlying records be voluminous and that in-court examination be inconvenient." *United States v. Duncan*, 919 F.2d 981, 988 (5th Cir. 1991). Indeed, the Fifth Circuit has a long history of supporting summary witness testimony in cases where records are voluminous. See *United States v. Morin*, 627 F.3d 985, 997-998 (5th Cir. 2010) (permitting DEA agent to act as summary witness to summarize the contents of video recordings); *United States v. Armstrong*, 619 F.3d 380, 385-86 (5th Cir. 2010) (permitting Postal Inspector to act as summary

witness to summarize the contents of insurance records in insurance conspiracy); *United States v. Gordon*, 438 F.2d 858, 877 (5th Cir. 1971) (“The evidence in this case is complex, intricate and labyrinthine in nature). Of course, summary witness testimony “must have an adequate foundation in evidence that is already admitted,” and the Court may decide to issue a cautionary jury instruction regarding the summary evidence to minimize the risk of prejudice to the defendant. *Bishop*, 264 F. 3d at 547.

As it relates to summary evidence, such as charts, it is well within the discretion of the Court to admit summary charts when the requirements of Rule 1006 are satisfied. *See, e.g., United States v. Tannehill*, 49 F.3d 1049, 1056 (5th Cir. 1995). Summary charts are admissible when “(1) they are based in competent evidence already before the jury, (2) the primary evidence used to construct the charts is available to the other side for comparison so that the correctness of the summary may be tested, (3) the chart preparer is available for cross-examination, and (4) the jury is properly instructed concerning the use of the charts.” *Bishop*, 264 F.3d at 547. “We cannot rationally expect an average jury to compile summaries and to create sophisticated flow charts to reveal patterns that provide important inference about the defendant’s guilt.” *Duncan*, 919 F.2d at 988.

When summary charts are based on disclosed records that fully satisfy the requirements of Rule 1006 they should “accompany the jury to the jury room.” *See Bishop*, 264 F.3d at 547; *United States v. Stephens*, 779 F.2d 232, 239 (5th Cir.1985) (no abuse of discretion in admitting summary charts where all the records on which the charts were based were in evidence); *see also* Fifth Circuit Pattern Jury Instructions (Criminal) §1.44 (2012).¹ It is perfectly acceptable for

¹ Fifth Circuit Pattern Jury Instructions (Criminal) (2012), §1:44 (*Summaries and Charts Received in Evidence*) provides:

“summaries [to] accompany the jury to the jury room.” *Bishop*, 264 F.3d at 547 (5th Cir. 2001). “We cannot rationally expect an average jury to compile summaries and to create sophisticated flow charts to reveal patterns that provide important inferences about the defendant’s guilt.” *Duncan*, 919 F.2d at 988.

II. ANTICIPATED SUMMARY EVIDENCE

As this Court is aware, Charles and Linda Bolton are charged with attempting to evade income taxes and filing false tax returns. The government’s evidence consists, in part, of more than one hundred checks to Sports 22 Restaurant and Bar and Hall Avenue Package Store. To assist the jury in understanding these transactions, who endorsed the checks, how many were deposited in the business accounts, and how many were cashed, the government anticipates calling IRS Special Agent Bradley M. Luker to summarize this voluminous evidence. As part of Agent Luker’s testimony, the government anticipates introducing summary charts that show the financial transactions. These summary exhibits will be provided to the defense prior to trial. The evidence underlying the charts consists of bank records, all of which will be admitted through stipulations or through Federal Rule of Evidence 902(11), which governs self-authenticating documents. All corresponding bank records have been made available to the defense in discovery. Agent Luker will be subject to cross-examination on the summary charts and his testimony. Because all of the elements of Rule 1006 have been satisfied, the charts should also be allowed back with the jury to assist them in their deliberations.

Certain charts and summaries have been received into evidence. You should give them only such weight as you think they deserve.

III. CONCLUSION

Considering the foregoing, the government respectfully requests that this Court admit this necessary summary evidence to aid the jury in understanding the voluminous evidence and financial transactions in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2016, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all defense counsel of record.

s/ Sharan E. Lieberman
SHARAN E. LIEBERMAN
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