

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

TIMOTHY D. NAEGELE,

Defendant.

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) Criminal No. 05-0151 (PLF)
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MEMORANDUM OPINION AND ORDER

This matter came before the Court for argument on defendant Timothy D. Naegele's motion in limine to limit the testimony of the government's summary witness [143], and the government's opposition thereto.

During the course of the hearing, the government made clear that Agent Kendra McLamb would testify as a summary witness with respect to voluminous bank records and certain e-mails between the defendant and his lawyer, Jeffrey Sherman, pursuant to Rule 1006 of the Federal Rules of Evidence, not Rule 611, similar to the way in which the use of summary testimony was approved by the D.C. Circuit in United States v. Weaver, 281 F.3d 228 (D.C. Cir. 2002). Compare United States v. Casas, 356 F. 3d 104, 117-21 (1st Cir. 2004). In Weaver, the defendants objected to the trial court's admission of evidence of a government summary exhibit that compared payroll attendance dates of various employees, the summary exhibit having been offered as a substitute for the actual records at issue. The court of appeals held that it was not error to admit the summary exhibit so long as defense counsel had an opportunity to review the underlying documents. See id. at 232-33.

Putting aside for the moment the question of the relevance of the bank records and other evidence with respect to certain years following the defendant's bankruptcy filings (a question at issue in another motion in limine), the Court finds that the purpose for which Agent McLamb is offered and the summary testimony she will offer are appropriate. See generally 6 SALTZBURG, ET AL., FEDERAL RULES OF EVIDENCE MANUAL § 10-5(B) (9th ed. 2006). According to the government's representation, Agent McLamb would testify about her review and analysis of bank records and e-mails in this case. The Court, however, will review all summary charts intended to be offered through Agent McLamb or intended to be used in opening statement at trial *before* the charts and exhibits are actually used or offered. Furthermore, objections to any specific questions posed to Agent McLamb which the defense believes go beyond the bounds appropriate for a summary witness may be made at trial. With these understandings, defendant Timothy Naegele's motion in limine to limit testimony of the government's summary witness is hereby DENIED.

SO ORDERED.

/s/ _____
PAUL L. FRIEDMAN
United States District Judge

DATE: January 23, 2007