

United States v. Weiland

2005

GOULD, Circuit Judge:

Defendant-Appellant William Weiland appeals his conviction and sentence for one count of possessing two firearms and ammunition as a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and one count of forfeiture, pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c). Weiland argues . . . that records of his four Oklahoma Second Degree Burglary convictions should be excluded under Federal Rules of Evidence 802 and 901(a) . . .

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Weiland contends that the records of four Oklahoma Second Degree Burglary convictions, the fingerprints and the photograph contained in the "penitentiary packet" were inadmissible under Federal Rules of Evidence 901(a), 902, 802 and 803 and that these documents were received into evidence in violation of 28 U.S.C. § 1738 and the Confrontation Clause.

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Weiland argues that the fingerprints, photograph and four records of conviction for Oklahoma Second Degree Burglary were not properly authenticated, as required by Federal Rule of Evidence 901(a). The government counters that the records were self-authenticating under Rules 902(4) and 902(2), governing certified copies of public records, and Rule 902(11), governing certified domestic records of regularly conducted activity. . . . [W]e agree that the records of conviction were self-authenticating under Rules 902(4) and 902(2).

. . . [W]e hold that the records were properly authenticated because the documents in the "penitentiary packet" were self-authenticating public records admissible under Rules 902(2) and 902(4). *Mateo-Mendez*, 215 F.3d at 1044-45; *United States v. Huffhines*, 967 F.2d 314, 320 (9th Cir.1992). Federal Rule of Evidence 902(4) provides for the self-authentication of:

A copy of . . . a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority.

FED. R. EVID. 902(4).

The records of conviction, the photograph of Weiland, and his fingerprints fall within the self-authentication provisions of Rule 902(2). Pursuant to Rule 902(4), the records were certified as correct by Greene, who also stated that he was the legal custodian of the records and that he had compared the certified copies to their originals. Pursuant to Rule 902(2), the Secretary of State of the State of Oklahoma, under seal, certified that Greene was authorized to execute the certificate and that Greene's signature was genuine. This suffices to establish that the records were what they purported to be, fulfilling the purpose of our inquiry into the authentication of the documents in the "penitentiary packet." FED. R. EVID. 901(a).

The facsimile included in the "penitentiary packet," apparently from Greene's office to Paula Menifee in the OSBI, does not change our analysis. The relevant inquiry is whether Greene had the records in his legal custody or was an "other person authorized to make the certification," not whether the records were stored in his personal physical custody. FED. R. EVID. 902(4); *United States v. Combs*, 762 F.2d 1343, 1348 (9th Cir.1985); *see also Yaich v. United States*, 283 F.2d 613, 617 (9th Cir.1960). If Greene had the records in his legal custody and certified that they were accurate in compliance with Rule 902(1), 902(2), or 902(3), they were properly authenticated under Rule 902(4). No provision of the Federal Rules of Evidence requires that Greene also be shown to have kept the records in his physical custody at all times, so long as the records were "actually recorded or filed in a public office." FED. R. EVID. 902(4). Federal Rule of Civil Procedure 44(a)(1), incorporated into Federal Rule of Criminal Procedure 27, accords with our analysis. FED. R. CIV. P. 44(a)(1) ("An official record kept within . . . any state . . . may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record . . . and accompanied by a certificate that such officer has the custody. The certificate . . . may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office."). Moreover, even if Greene were not the official custodian of the records contained in the "penitentiary packet," the affidavit, under seal, provided by the Secretary of State of the State of Oklahoma, establishes that Greene was a "person authorized to make the certification." FED. R. EVID. 902(4). We hold that the records contained in the "penitentiary packet" were self-authenticating public records under Rules 902(4) and 902(2).