

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

April 15, 2014

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT G. LUSTYIK, JR.,

Defendant - Appellant.

No. 14-4033
(D.C. No. 2:12-CR-00645-TC-DBP-1)

ORDER

Before **BRISCOE**, Chief Judge, **HARTZ**, and **GORSUCH**, Circuit Judges.

Defendant Robert Lustyik filed a notice of appeal from the district court’s order denying his motion to suppress evidence. This matter is before us on the government’s motion to dismiss the appeal for lack of jurisdiction. The government argues that the district court’s order is not a final decision under 28 U.S.C. § 1291 or immediately appealable under the collateral order doctrine. In response, Mr. Lustyik argues that he substantially meets the requirements of the collateral order doctrine. In the alternative, he appears to ask us to invoke the Rules Enabling Act, 28 U.S.C. § 2071 *et seq.*, to adopt a rule allowing an interlocutory appeal in this case.

Ordinarily, our jurisdiction is limited to review of final judgments of the district court. 28 U.S.C. § 1291. Although the Supreme Court carved out a narrow exception to the final judgment rule in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541

(1949), the so-called collateral order doctrine is limited and interpreted “with the utmost strictness in criminal cases.” *Flanagan v. United States*, 464 U.S. 259, 265 (1984); *see also United States v. Wampler*, 624 F.3d 1330, 1334 (10th Cir. 2010) (noting the Supreme Court’s increasingly emphatic statements regarding the limited applicability of the collateral order doctrine in the criminal context). Evidentiary rulings are not appealable collateral orders. *United States v. Schneider*, 594 F.3d 1219, 1230 (10th Cir. 2010) (dismissing cross-appeal from the denial of a motion to exclude expert testimony for lack of jurisdiction); *see also United States v. Williams*, 413 F.3d 347, 355 (3d Cir. 2005) (holding the denial of a motion to suppress is not an appealable collateral order). Accordingly, we lack jurisdiction over this appeal and we have no authority under the Rules Enabling Act to adopt a rule to the contrary. *See* 28 U.S.C. § 1292(e) (authorizing the Supreme Court to prescribe rules to provide for interlocutory appeals in accordance with the Rules Enabling Act); *see also Mohawk Indus. v. Carpenter*, 558 U.S. 100, 114 (2009) (acknowledging the Court’s authority under the Rules Enabling Act, but noting that Congress has designated “rulemaking, not expansion by court decision, as the preferred means for determining whether and when prejudgment orders should be immediately appealable” (internal citation and quotation omitted)).

The government’s motion to dismiss is granted. Appeal dismissed.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Jane K. Castro
Counsel to the Clerk