UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

ORDER
Crim. No. 11-228

Gerald Joseph Durand (02),

Defendant.

David J. MacLaughlin and Tracy L. Perzel, Assistant United States Attorneys, Counsel for Plaintiff.

Brian N. Toder, Chestnut Cambronne P.A., Counsel for Defendant Gerald Durand.

This matter is before the Court on the motion of the Government to exclude an undercover recording initiated by the FBI involving cooperating witness Christopher Pettengill and Defendant Durand. (Doc. No. 264) The Government argues any statements made by Durand in this recording are hearsay, as such statements are exculpatory and therefore do not fall within the exception to hearsay set forth in Fed. R. Evid. 801(d) (2) (A). In response, Durand argues that the undercover recording is not offered to prove the truth of the matter asserted, instead, the recording would be offered to impeach Pettengill.

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The Court finds that any statements made by Pettengill in the recording may be used for impeachment purposes, and those statements may be presented to the jury. Any statements made by Durand, however, are exculpatory and are therefore inadmissible hearsay. United States v. Edwards, 159 F.3d 1117, 1127 (8th Cir. 1998). Durand's statements will not be presented to the jury.

IT IS HEREBY ORDERED that the Government's Motion to Exclude Self-Serving Hearsay by Defendant Durand [Doc. No. 264] is GRANTED as to any statements made by Defendant Durand.

Date: May 11, 2012

s/Michael J. Davis
Michael J. Davis
Chief Judge
United States District Court