

**United States District Court, Northern District of Illinois**

<b>Name of Assigned Judge or Magistrate Judge</b>	Joan H. Lefkow	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	08 CR 846	<b>DATE</b>	6/15/2010
<b>CASE TITLE</b>	USA vs. Burge		

**DOCKET ENTRY TEXT**

Defendant’s motion to admit prior testimony of Fred Hill [254] is denied.

■ [ For further details see text below.]

Docketing to mail notices.

**STATEMENT**

Burge moves under Federal Rule of Evidence 807 to introduce the prior testimony of Fred Hill, a former Chicago Police Department Officer stationed at Area Two when Andrew Wilson was interrogated. Hill previously testified at Wilson’s second civil rights trial in July 1989. He denied participating in or knowing about any wrongdoing in connection with Andrew Wilson’s allegations that he was physically abused and tortured at Area Two during his interrogation. Hill is currently suffering from dementia and unavailable to testify. As this court has previously stated in ruling on Burge’s motion to admit the prior testimony of Officers John Yucaitis and Patrick O’Hara, “[t]he criterion primarily in dispute is trustworthiness, that is, ‘whether the proffered hearsay possesses indicia of reliability ‘equivalent’ to the indicia of reliability supporting the traditional exceptions. . . .” Mar. 9, 2010 Op. & Order at 3 (quoting *Doe v. United States*, 976 F.2d 1071, 1075 (7th Cir. 1992)). In the Rule 807 analysis, trustworthiness is the most crucial element, *see United States v. Guinan*, 836 F.2d 350, 355 (7th Cir. 1988), and the court is obligated to consider the circumstances under which the unavailable witness’s statements were made, including their motives, when assessing the trustworthiness of the proffered evidence. *See United States v. Hooks*, 848 F.2d 785 (7th Cir. 1988) (affirming district court’s exclusion of exculpatory evidence that defendant sought to admit under Rule 804(b)(5) as untrustworthy where the proposed transcribed statements were made by unindicted coconspirators and were suspiciously self-serving); *accord United States v. Marcy*, No. 90 CR 1045, 1992 U.S. Dist. LEXIS 2912, at \*7-8 (N.D. Ill. Feb. 6, 1992) (excluding exculpatory evidence that defendant sought to admit under Rule 804(b)(5) as untrustworthy where the proposed statement, although made under oath and subject to the penalties of perjury, was made by an unindicted coconspirator who had a strong incentive to deny involvement in the criminal activity charged). The trustworthiness element is not satisfied in regard to Hill’s prior testimony because, as this court has previously ruled in regard to Yucaitis and O’Hara, officers who worked under Burge’s command at Area Two had a strong motive to deny that they or Burge had tortured or abused Wilson or that they knew of such conduct by other officers. *See* Mar. 9, 2010 Op. & Order at 5. Hill was one of the main detectives assigned to Wilson’s case and conducted the

**STATEMENT**

line-up of Wilson which took place at Area One after Area Two officers had obtained a confession. *See* Docket No. 254, Ex. A at SP 018922-23, 018969 (July 26, 1989 Transcript, *Wilson v. City of Chicago*, No. 86 C 2360 (N. D. Ill.)). Furthermore, although Hill was not named as a defendant in Wilson's second civil rights trial and claimed that he did not arrive at Area Two until after Wilson's confession had been obtained, the transcript of his testimony from that case reveals that Wilson alleged that Hill was present and assisted Burge in electrocuting him in order to obtain a confession. *See id.* at SP 018951-54, 018967. Thus, Hill was similarly motivated to deny the allegations in order to secure Wilson's successful criminal prosecution and to prevent Wilson's conviction from being overturned, as well as to avoid his own and his fellow officers' possible criminal prosecution or the payment of civil damages. Accordingly, Burge's motion is denied.