

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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Criminal No. 92-10369-Z

UNITED STATES OF AMERICA

v.

THOMAS A. SHAY
ALFRED W. TRENKLER

MEMORANDUM AND ORDER ON PRETRIAL MOTIONS

January 26, 1993

BOWLER, U.S.M.J.

Pursuant to Rules 7.1 (d) and (e) of the Local Rules of this court, and upon review of the relevant pleadings, this court determined on January 26, 1993, that a hearing on the discovery and discovery-related motions was not warranted. Based on the pleadings filed to date, this court takes the following action, to wit:

ALFRED W. TRENKLER

I. MOTION FOR LIST OF GOVERNMENT WITNESSES (DOCKET ENTRY # 27)

DENIED as to names and addresses of witnesses. See United States v. Reis, 788 F.2d 54, 58 (1st Cir. 1986); United States v. Pelton, 578 F.2d 701, 708 (8th Cir. 1978) ("Discovery of prospective witnesses is not required under Fed. R. Crim. P. 16(a)"). To the extent the request concerns prospective trial witnesses, that information is governed by the Jencks Act and

shall be produced in accordance therewith. In addition, the government is not obligated to disclose names and addresses of persons that have knowledge of the case without a showing of materiality and reasonableness. United States v. Leta, 60 F.R.D. 127, 130-31 (M.D. Pa. 1973). However, to the extent that the defendant seeks names and addresses of individuals who, to the knowledge of the government, possess relevant knowledge which may be exculpatory under controlling law, the motion is **ALLOWED**. See generally, Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agurs, 427 U.S. 97 (1976); and Giglio v. United States, 405 U.S. 150 (1972); see also Ouimette v. Moran, 942 F.2d 1 (1st Cir. 1991) and LR. 116.1. In the alternative, the government may make the person available for an interview rather than providing the address.

To the extent the request concerns expert witnesses, it is **ALLOWED** but only to the extent it concerns expert reports pursuant to Fed. R. Crim. P. 16(a)(1)(D). The request is otherwise **DENIED**.

II. MOTION FOR PRODUCTION OF JENCKS ACT STATEMENTS (DOCKET ENTRY # 30)

DENIED except to the extent of the government's response. It is well established that the provisions of the Jencks Act are mandatory and there is no discretion for early production. See, e.g., United States v. Grandmount, 680 F.2d 867 (1st Cir. 1982); United States v. Algie, 667 F.2d 569 (6th Cir. 1982).

III. MOTION FOR THE PRODUCTION OF GOVERNMENT INTERVIEW REPORTS AND GRAND JURY TESTIMONY OF INDIVIDUALS WHO WILL NOT BE WITNESSES AT TRIAL (DOCKET ENTRY # 35)

DENIED except to the extent provided in Fed. R. Crim. P. 16(a)(1)(C) and to the extent that the information requested is exculpatory in nature pursuant to LR. 116.1 and the cases cited therein.

IV. MOTION FOR DISCLOSURE OF MEANS OF IDENTIFICATION (DOCKET ENTRY # 33)

ALLOWED to the extent required pursuant to Fed. R. Crim. P. 16(a)(1)(C) and to the extent of the government's response.

V. MOTION OF DEFENDANT FOR PRESERVATION OF TAPES AND NOTES (DOCKET ENTRY # 34)

ALLOWED to the extent that the government is ordered to preserve all "statements" as that term is defined in 18 U.S.C. § 3500 as interpreted in Goldberg v. United States, 425 U.S. 94 (1976) which are within its possession, custody and/or control and which are subject to production at trial in this case pursuant to 18 U.S.C. § 3500(b); otherwise **DENIED** without prejudice.

VI. MOTION OF DEFENDANT FOR DISCLOSURE OF BAD ACTS, "SPECIFIC CONDUCT" AND CRIMINAL CONVICTIONS, IF ANY (DOCKET ENTRY # 32)

ALLOWED. To the extent that the government intends to offer

evidence of other crimes, wrongs, or acts of the defendant otherwise admissible under the provisions of Fed. R. Evid. 404(b), in its case-in-chief, the government shall provide the defendant with a generic description of the other crime or wrong, its date, and its place at the time the Jencks Act material is provided. The request is otherwise DENIED except as further provided by 18 U.S.C. § 3500.

VII. MOTION OF DEFENDANT, ALFRED W. TRENKLER, FOR NOTICE OF INTENTION TO USE EVIDENCE (DOCKET ENTRY # 29)

ALLOWED to the extent of the government's response and as required by Fed. R. Crim. P. 12. The request is otherwise DENIED. In addition, the government represents that, in accordance with the Local Rule concerning automatic discovery, it has made "many" of the documents and tangible objects which it intends to use at trial available for inspection and copying and will provide the balance of these materials in a short period of time.

VIII. DEFENDANT ALFRED TRENKLER'S MOTION TO COMPEL ALL GOVERNMENT EXPERTS TO FILE WRITTEN REPORTS PRIOR TO TRIAL (DOCKET ENTRY # 28)

DENIED except to the extent that the defendant shall be permitted to inspect and copy or photograph results or reports of scientific or mental examinations or experiments as required by Fed. R. Crim. P. 16(a)(1)(D). The government has no obligation

to furnish the identity of its expert witnesses prior to the trial of a non-capital case. See United States v. Murphy, 480 F.2d 256, 259 (1st Cir. 1973). To the extent that the requested information is governed by the Jencks Act, it shall be produced in accordance therewith.

IX. DEFENDANT ALFRED TRENKLER'S RULE 7(f) MOTION FOR BILL OF PARTICULARS (DOCKET ENTRY # 42)

For the reasons elaborated below, the defendant's motion is DENIED. "The function of a bill of particulars is to provide the defendant with the necessary details of the charges against him to enable him to prepare his defense, to avoid surprise against trial, and to protect against double jeopardy." United States v. Abreu, 952 F.2d 1458, 1469 (1st Cir. 1992); accord, United States v. Leach, 427 F.2d 1107, 1110 (1st Cir. 1970), cert. denied, 400 U.S. 829 (1970); see also Wong Tai v. United States, 273 U.S. 77 (1927); United States v. Haas, 583 F.2d 216 (5th Cir. 1978), reh'g denied, 588 F.2d 829 (1978), cert. denied, 440 U.S. 981 (1979). A bill should only be granted, however, when the indictment is so vague that it does not comply with these purposes. United States v. Bloom, 78 F.R.D. 591, 599 (E.D. Pa. 1977); see United States v. Andrus, 775 F.2d 825, 843 (7th Cir. 1985) (bill required when indictment so general that fails to advise defendant of specific acts accused).

Further, a bill of particulars is not a matter of right, and the decision to grant or deny such a request rests with the sound

discretion of the trial court. United States v. Paiva, 892 F.2d 148, 154 (1st Cir. 1989). A defendant is not entitled to recover evidentiary matters by filing a motion for a bill of particulars. See United States v. Johnson, 504 F.2d 622, 628 (7th Cir. 1974); Overton v. United States, 403 F.2d 444 (5th Cir. 1986); Hemphill v. United States, 392 F.2d 45 (8th Cir. 1968), cert. denied, 393 U.S. 877 (1968); United States v. Sandler, 462 F.2d 122 (6th Cir. 1972); United States v. Wolfson, 413 F.2d 804, 808 (2d Cir. 1969) (identity of persons present at time of offense).

Moreover, the government represents that the information requested by the defendant with respect to the time, place, manner, and means of the conspiracy, to the extent not specified in the indictment, has been provided in supplementary discovery material, including detailed search warrants and affidavits filed in connection thereto.

Thus, while the bill requested by the defendant may be helpful in preparing a defense, it is not necessary. The defendant has failed to adequately demonstrate that his own investigation based on the evidence available to him would not be sufficient to prepare an adequate defense or to protect him from prejudicial surprise at trial. The government is not required to provide the defendant with the details of the evidence it intends to introduce or the purposes for which it intends to introduce the evidence. United States v. Finley, 705 F. Supp. 1272, 1278 (N.D. Ill. 1988).

X. DEFENDANT ALFRED TRENKLER'S MOTION FOR SPECIFIC EXCULPATORY EVIDENCE AND/OR EVIDENCE "MATERIAL TO THE PREPARATION OF THE DEFENSE" PURSUANT TO RULES 16(a)(1)(C) AND 16(a)(1)(D)

1-2, 4, 7, 9, 11, 14-16, 23 & 29. **DENIED** inasmuch as the government represents that it has provided the requested material.

3 & 5-6, 12. **DENIED** except to the extent provided in Fed. R. Crim. P. 16(a)(1)(C) and to the extent that the information requested is exculpatory in nature pursuant to LR. 116.1 and the cases cited therein.

8. **DENIED** except to the extent provided in the preceding paragraph and to the extent of the government's response.

10. **ALLOWED** to the extent of the government's response and to the extent the requested information as to whether a potential witness was subjected to a polygraph test is exculpatory in nature pursuant to LR. 116.1 and the cases cited therein, it shall be produced as required therein. See United States v. MacEntee, 713 F.2d 829, 831 (E.D.Pa. 1989) (discussing duty to disclose polygraph test of government witness).

13. **DENIED** except to the extent of the government's response.

17, 25 & 34. **DENIED** inasmuch as the government represents that the requested information does not exist.

18-22, 24 & 36-38. **DENIED** except to the extent that the government is directed to disclose all exculpatory evidence as required under LR. 116.1(A)(5) and the cases cited therein.

26. **DENIED** as to names and addresses of witnesses. See United States v. Reis, 788 F.2d 54, 58 (1st Cir. 1986); United States v. Pelton, 578 F.2d 701, 708 (8th Cir. 1978) ("Discovery of prospective witnesses is not required under Fed. R. Crim. P. 16(a)"). To the extent the request concerns prospective trial witnesses, that information is governed by the Jencks Act and shall be produced in accordance therewith. In addition, the government is not obligated to disclose names and addresses of persons that have knowledge of the case without a showing of materiality and reasonableness. United States v. Leta, 60 F.R.D. 127, 130-31 (M.D. Pa. 1973). However, to the extent that the defendant seeks names and addresses of individuals who, to the knowledge of the government, possess relevant knowledge which may be exculpatory under controlling law, the motion is **ALLOWED**. See generally, Brady v. Maryland, 373 U.S. 83 (1963); United States v. Agurs, 427 U.S. 97 (1976); and Giglio v. United States, 405 U.S. 150 (1972); see also Ouimette v. Moran, 942 F.2d 1 (1st Cir. 1991) and LR. 116.1. In the alternative, the government may make the person available for an interview rather than providing the address.

To the extent the request concerns expert witnesses, it is **ALLOWED** but only to the extent it concerns expert reports pursuant to Fed. R. Crim. P. 16(a)(1)(D). The request is otherwise **DENIED**.

27. **ALLOWED** to the extent required pursuant to Fed. R. Crim. P. 16(a)(1)(C). The government shall provide the defendant