

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. 3:03CR329(EBB)

EUGENE COLEMAN :

Omnibus Ruling on Defendant's Pre-trial Motions

INTRODUCTION

Defendant Eugene Coleman (hereinafter "defendant" or "Coleman") moves for pre-trial disclosure of demonstrative evidence [Doc. No. 16], early disclosure of Rule 16(a) and Jencks Act material [Doc. No. 18], disclosure of all Giglio and Brady materials [Doc. Nos. 20 and 24], notice of the government's intent to use the residual hearsay exception under Rule 807 [Doc. No. 22], disclosure of evidence pursuant to FRE 404(b) [Doc. No. 26], the exclusion of evidence of prior misconduct by defendant [Doc. No. 27], and to compel notice from the government as to what evidence they intend to use at trial [Doc. No. 29]. For the reasons set forth below, the defendant's pre-trial motions are denied.

BACKGROUND

On November 20, 2003, a federal grand jury returned a one-count indictment against the defendant for the possession of a

firearm by a previously convicted felon, in violation of 18 U.S.C. §922(g)(1) and 935(e). The following day, defendant was arrested by federal law enforcement officers and presented on this charge before the Honorable Holly B. Fitzsimmons. Defendant pleaded not guilty to the charge in the indictment, and has been detained since his arraignment.

The government asserts that it has fully complied with the District Court's Standing Order on Pretrial Discovery in Criminal Cases. The government sent defendant a discovery letter and packet of materials on November 25, 2003, and two separate supplemental discovery letters on December 16, 2003 and January 27, 2004, providing defendant all information in the government's possession and updating him as additional investigative reports and new information has become available.

LEGAL ANALYSIS

Defendant Coleman requests a court order directing the government to produce specific documents and information, as enumerated in his motions, which are favorable to him on the issue of guilt or punishment. In light of the government's representations that it has been and will continue to comply with the requirements of Brady, Giglio, the Jencks Act, Fed. R. Crim. P. 12(d)(2) and Fed. R. Crim. P. 16, and has provided the

defendant with all available information with respect to such rules, a court order is not necessary.

The government also asserts that it has disclosed any pre- and post-arrest statements made by the defendant that could be used at trial, and at this time has no statements that could fall under the residual hearsay exception pursuant to FRE 807. Further, the government states that while, at the present time, it has not identified the real or demonstrative evidence which it will use at trial, it has provided defendant with the opportunity to view all of the evidence it has obtained thus far and, as trial preparation advances, will provide defendant with notice of its intent to use specific evidence at trial. Thus, the corresponding motions [Docs. No. 16, 20, 22, 24, 29] are denied as moot. Similarly, because the government has stated at this time it does not intend to offer evidence pursuant to FRE 402 or 404(b), and has stated it will notify defendant should it change its plans, defendant's Motion for Disclosure Pursuant to FRE 404(b) [Doc. No. 26] and Motion in Limine Re: Prior Misconduct [Doc. No. 27] are denied as moot.

To the extent that during the course of trial, disputed issues regarding defendant's knowledge, intent, plan or identity become apparent, and the government decides to introduce 404(b) evidence of prior misconduct, defendant may

renew said motions at that time. Further, if the government fails to comply with its discovery obligations, or if the defendant seeks the production of documents or information in the government's possession, he may renew his motions at a later time specifying the documents that have not been provided and authority under which the court can order their production.

Finally, defendant moves for early disclosure of Rule 16(a) and Jencks Act material [Doc. No. 18]. The Jencks Act provides that no prior statement made by a government witness shall be the subject of discovery until that witness has testified on direct examination. 18 U.S.C. § 3500. The Act therefore prohibits a district court from ordering the pretrial disclosure of witness statements. United States v. Coppa (In re United States), 267 F.3d 132, 145 (2d Cir. 2001). See also United States v. Percevault, 490 F.2d 126, 131 (2d Cir. 1974) (reversing order suppressing witnesses' testimony on the grounds that the government did not produce witness statements in advance of trial despite being ordered to do so). Accordingly, defendant's motion for advanced disclosure of Jencks Act material is denied on the merits.

CONCLUSION

For the preceding reasons, defendant's Motion for Disclosure of Rule 16(a) and Jencks Act Material [Doc. No. 18] is DENIED with prejudice, and the remaining motions [Doc. Nos. 16, 20, 22, 24, 26, 27 and 29] are DENIED without prejudice to renewal so that defendant can re-file said motions in the event the government fails to comply with all relevant discovery rules.

SO ORDERED

ELLEN BREE BURNS
SENIOR UNITED STATES DISTRICT

JUDGE

Dated at New Haven, Connecticut this _____ day of February,
2004.