

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,

Plaintiff,

Crim. No. 2002/125

v.

ESBOND DeGRASSE, GEORGE OSBORNE,  
JAY WATSON, ANTONIO PETERSEN,

Defendants.

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ORDER REGARDING DEFENDANT ANTONIO PETERSEN'S  
MOTION TO COMPEL

THIS MATTER came for consideration on defendant Antonio Petersen's motion to compel certain discovery. The government has filed a response.

Defendant Petersen's first request is that the government produce information regarding any witness that the government intends to call; any person interviewed by the government, whether or not they will be called; any person assisting the government, regardless of whether the person is to be called as a witness; and any witness to any of the offenses charged herein. The government responds that the "request is contrary to the weight of case law" that such disclosure is not mandatory.

The Court agrees. A criminal defendant does not have the right to full discovery of the government's case. *U.S. v. Casseus*, 282 F.3d 253, 257 (3d Cir. 2002). Also, the government is not required to divulge the identity of witnesses in a non capital case. *U.S. v. Adonizzio*, 451 F.2d 49, 61 (3d Cir. 1971). Indeed, only information falling within the ambit of *Brady* and

*Jencks* need be disclosed at this time. *U.S. v. Nelson*, 931 F.Supp. 194, 202 (W.D.N.Y. 1996).

Next, defendant requests criminal histories, statements made by witnesses, and promises or rewards offered to persons in order to testify, which is in the possession or available to the government. Defendant Petersen further claims that the government has "failed or refused" to produce the written or recorded statements, plea agreements and cooperation agreements of all witnesses including Achille Tyson, Esbond DeGrasse and Junior Alexis.

In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment." It is well established that impeachment evidence can constitute exculpatory evidence under *Brady* and its progeny and evidence of a government witness's prior criminal history is evidence which must be produced to the defense. *Hollman v. Wilson*, 158 F.3d 177, 181 (3d Cir. 1998) citing *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Giglio v. United States*, 405 U.S. 150, 153 (1972).

The government responds that it has provided some discovery, including criminal histories, witness plea and cooperation agreements, and letters of immunity, and that it will continue to

do so as the materials become available. The government also responds that it has provided a copy of the grand jury testimony of Junior Alexis. The government asserts that it knows of no written or recorded statements of Esbond DeGrasse and Achille Tyson.

As the court stated in *United States v. Kusek*, 844 F.2d 942, 948-49 (2d Cir.1988), under Rule 16(a)(1)(A) "the government is not required to provide discovery of a defendant's unrecorded, spontaneous oral statements not made in response to interrogation." The government only has to produce statements which are made in response to interrogation by a person a defendant knows to be a law enforcement officer. *Id.*

The government also claims that it has not identified any evidence which it considers 404(b) evidence but that notice of such will be given if the government's position should change. Rule 404(b) provides in relevant part that: "Evidence of other crimes, wrongs or acts ... may ... be admissible ... for [certain] purposes, such as motive, opportunity, *intent*, preparation, plan, *knowledge*, identity, or *absence of mistake or accident*." (Emphasis added). Under Rule 404(b) evidence of other criminal conduct is "admissible whenever relevant to a case other than [to show] the defendant's criminal propensity." *United States v. Sriyuth*, 98 F.3d 739, 745 (3d Cir.1996). The prime inquiry is whether the evidence is probative of a material issue

other than character. *Huddleston v. United States*, 485 U.S. 681, 687 (1988). The rule requires the government to “. . . provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.”

In response to the request for disclosure of criminal histories, the government does not identify which criminal histories were provided. The case law imposes a duty on the government to disclose such information. Thus, to the extent not previously done, the government must produce the relevant *Brady* and *Jencks* material in its possession by March 28, 2003. The government must also promptly notify defendants of any Rule 404(b) evidence as it becomes known to it but in any event not later than seven (7) days before commencement of trial (unless otherwise allowed by the Court).

Now, therefore, it is hereby ORDERED AS FOLLOWS:

1. that the motion to compel is GRANTED IN PART. The government must produce all available *Brady* and *Jencks* material to the defendant no later than March 28, 2003 and shall notify defendants of all Rule 404(b) evidence as it becomes known to it but in any event not later than seven (7) days before commencement of trial (unless otherwise allowed by the Court).

DATED: March 17, 2003                      E N T E R:

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JEFFREY L. RESNICK  
U.S. MAGISTRATE JUDGE

A T T E S T:  
Wilfredo F. Morales  
Clerk of Court

By: \_\_\_\_\_  
Deputy Clerk

cc: Eric Chancellor, Esq.  
Denise Hinds, Esq.  
Asha Colianni, Esq.  
Stephen Bruschi, Esq.  
D.J. Moore & Law Clerk