

NONPRECEDENTIAL

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,)
)
Plaintiff)
)
v.)
)
CRAIG M. HENDRICKS,)
RUSSELL ROBINSON, aka "Don,")
ELROY DOWE,)
DANIEL FLEMING,)
RANNEY LARONDE, aka "Ronnie,")
ANDY ANTOINE,)
RUDOLPH CLARKE,)
RAFAEL CINTRON,)
JACQUELYN CARR,)
)
Defendants)

CRIM. NO. 2004-05 F/R

MEMORANDUM OPINION

Finch, Chief Judge

This matter comes before the Court on the motion of the United States to rule, prior to trial, on the admissibility of various pieces of evidence. Defendant Cintron has filed an opposition to this motion. For the reasons expressed herein, the Government's motion will be denied in part, granted in part.

I. Background

This matter is scheduled to begin trial on May 10, 2004. The Indictment contains twelve

(12) counts of drug, conspiracy, and money laundering charges. The Government brings forth this motion to seek pretrial evidentiary rulings. This Court has already addressed some of the issues raised in the instant motion in deciding Defendant Elroy Dowe's Motion to Suppress Wiretap Evidence for Violation of Title III (Evidentiary Hearing Requested), Defendant Rudolph Clarke's Motion to Suppress Evidence Derived from Illegal Electronic Surveillance, and Defendant Craig M. Hendricks' Motion for Suppression of Defendant's Statements.

II. Analysis

A. Statements (and Recordings) of Confidential Informant Hector Rivera

Hector Rivera was a confidential agent who provided information to the Government in this matter and who was murdered after his identity had been revealed to Defendants during discovery. (Government's Motion at 1.)

Pursuant to the residual hearsay exception and the hearsay exception for co-conspirator statements, the Government seeks to introduce recordings N-32, 33, 34, 35, 38, 39, 42, 43, 46, 47, 48, 49, 68, 71, 72, 75, and 77 between Hector Rivera and co-conspirators. (Government's Motion at 2.) Mr. Rivera is obviously unavailable and the Government affirms that Mr. Rivera signed a cooperation agreement including consensual recording of conversations. (Government's Motion at 2.)

Pursuant to Fed. R. Evid. 804(b)(3), the Government also intends to introduce recorded conversation N-5 between Hector Rivera and another confidential informant who Mr. Rivera did not know was working with the government, as a statement against interest. (Government's

Motion at 2.) The Government contends that even though this conversation inculcates Defendant Hendricks, the statements are admissible. (Government's Motion at 2 - 3.)

Pursuant to Fed. R. Evid. 804(b)(6), the Government plans to introduce unrecorded statements of Hector Rivera on the basis that they forfeited their Confrontation Clause rights by wrongdoing. (Government's Motion at 9.) The Government contends that Defendants were responsible for the murder of Hector Rivera and thereby caused his unavailability to testify against them at trial. (Government's Motion at 9.)

Defendant Cintron correctly asserts that the U.S. Supreme Court's decision in Crawford v. Washington, 124 S.Ct. 1354, WL 413301 (U.S. Wash.) (2004), has superseded the Federal Rules of Evidence in barring all out-of-court statements made by an unavailable witness whom a defendant has not had the chance to cross-examine, with exceptions only for dying declarations and forfeiture by wrongdoing. (Defendant's Opposition at 3 - 5.)

Reviewing its own precedents, the U.S. Supreme Court commented in Crawford that "[t]estimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine." Crawford v. Washington, 124 S.Ct. 1354, 1369, WL 413301 (U.S. Wash.) (2004). It is uncontested that Hector Rivera is unavailable to testify at trial. Furthermore, Defendants have not had an opportunity to cross-examine Hector Rivera. Therefore, statements of Hector Rivera can only be introduced at trial if the dying declaration exception or the forfeiture by wrongdoing exception applies. The dying declaration exception is inapplicable to the instant case because this matter is not a homicide case nor a civil action. See Fed. R. Evid. 804(b)(2). At the hearing regarding Defendant Robinson's Notice of Appeal from the Order of the United States

Magistrate Judge issued on 06/24/03 held on January 15, 2004, this Court determined that the Government was unable to establish a conclusive link between this matter and the murder of Hector Rivera. Therefore, it would be inappropriate for the Court to allow the Government to introduce statements of Hector Rivera on a theory of forfeiture by wrongdoing. Similarly, as Defendant Cintron advocates, it would be inappropriate to allow the Government to insinuate, at trial, any connection between any defendant(s) and the death of Hector Rivera. (Defendant's Opposition at 15.) Accordingly, the Government will not be allowed to introduce any statements at trial that were made by Hector Rivera nor will the Government be permitted to make any reference to the death of Hector Rivera that would imply the involvement of any defendant(s).

B. CD-Roms of Electronic Surveillance

The Government seeks to introduce evidence of telephone conversations derived from wiretap intercepts. (Government's Motion at 5.) The Government claims that it will be able to provide proper authentication at trial for these CD-Roms, which contain an identical copy of the wiretap recorded calls. (Government's Motion at 5 - 6.) The Court has determined that the wiretap intercepts are legally sufficient in terms of authority, probable cause, necessity, and minimization. (Memorandum Opinion and Order entered by Chief Judge Finch on April 23, 2004.) However, the Court notes that pursuant to Crawford, the Government may not introduce any statements intercepted by wiretap except those statements made by an unavailable declarant who has previously been subject to cross-examination by Defendants, or statements made by a witness who testifies at trial. The Government has not shown that any statement recorded on the wiretap was made by a person who is no longer available and whom Defendants have had an

opportunity to cross-examine. Accordingly, the Government will only be permitted to introduce wiretap statements made by a witness who testifies at trial.

C. Videotape of Defendant Craig Hendricks' Statements

As an admission by a party opponent, the Government intends to introduce a videotape of Defendant Hendricks giving a post-arrest statement. (Government's Motion at 6.) The Government agrees to redact the videotape so that it will not implicate other defendants and to provide this redacted version of the videotape to defense counsel before seeking to introduce it at trial. (Government's Motion at 6 - 7.)

The Court has already considered the admissibility of these statements and granted Defendant Hendricks' Motion for Suppression of Defendant's Statements for the reason that Defendant Hendricks never waived his right to have counsel present during the interview by law enforcement officials that took place while Defendant Hendricks was in custody. (Memorandum Opinion and Order entered by Chief Judge Finch on April 26, 2004.) Therefore, the Government will not be allowed to introduce these statements at trial.

D. Summary Evidence

Regarding the money laundering conspiracy charge of Count Twelve, the Government plans to introduce summary evidence including charts and calculations, in its case-in-chief. (Government's Motion at 7.) The Government asserts that all of the requirements of Fed. R. Evid. 1006 have been satisfied. (Government's Motion at 7 - 8.) Specifically, the Government contends that the original documents would be admissible, the original documents are voluminous, the original documents were made available to Defendants before trial, and the

agent who prepared or reviewed the summary evidence will testify and authenticate the summary evidence. (Government's Motion at 7 - 8.)

Defendant Cintron objects to being referred to in any manner in the Government's summary evidence on the money laundering charge, Count 12. (Defendant's Opposition at 13.) Defendant Cintron has not been indicted for Count 12 (Defendant's Opposition at 13.) Only Defendants Hendricks, Robinson, and Fleming have been indicted for Count 12. (Grand Jury Indictment at 13.) Although the Court will permit the Government to present summary evidence regarding Count 12, the Court will not allow the Government to reference any defendant who has not been named in Count 12 in such summary evidence.

III. Conclusion

In accordance with the foregoing analysis, United States Motion in Limine for Pretrial Ruling Regarding Admissibility of Evidence will be denied in part, granted in part. An appropriate Order is attached.

ENTER:

Dated: April 27, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:

Wilfredo F. Morales
Clerk of the Court

By:

Deputy Clerk

cc: Hon. George W. Cannon
Patricia M. Sulzbach, Esq.
Eric Chancellor, Esq.
Andrew Capdeville, Esq.
Stephen Bruschi, Esq.
Leonard B. Francis, Esq.
Anna Paiewonsky, Esq.
Kevin Weatherbee, Esq.
Clive Rivers, Esq.
Treston E. Moore, Esq.
Jomo Meade, Esq.

NOT FOR PUBLICATION

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JACQUELYN CARR,)	
)	
Defendants)	
_____)	

ORDER

THIS MATTER is before the Court on United States Motion in Limine for Pretrial Ruling Regarding Admissibility of Evidence, docket item # 327. In accordance with the attached Memorandum Opinion, it is hereby

ORDERED that the Government's motion is **DENIED in part, GRANTED in part**. It is further

ORDERED that at trial, the Government will not be allowed to introduce any statements made by Hector Rivera. It is further

ORDERED that at trial, the Government will not imply that there is any connection between any defendant(s) and the death of Hector Rivera. It is further

ORDERED that at trial, the Government will not be allowed to introduce wiretap statement(s) of any person who does not testify at trial. It is further

ORDERED that at trial, the Government will not be allowed to introduce statements made by Defendant Hendricks while he was in the custody of law enforcement officials. It is further

ORDERED that at trial, the Government will be allowed to introduce summary evidence regarding Count 12, provided that the summary evidence does not refer to any defendant other than Defendants Craig M. Hendricks, Russell Robinson, and Daniel Fleming, and that the summary evidence is in compliance with the Federal Rules of Evidence.

ENTER:

Dated: April 27, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:
Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: Hon. George W. Cannon
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