

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA))	CR. NO. 7:00CR00074
v.))	<u>MEMORANDUM OPINION</u>
WILLIAM LEWIS HELMS, ET AL.))	By: Samuel G. Wilson
)	Chief United States District Judge
)	

On July, 18, 2000, the government charged the defendants, William Lewis Helms, Leroy Marshall, William Curtis Mosley, Ralph Dwayne Hale, Sr., Judy Rakes Hale, Ralph Dwayne Hale, Jr., Shirley Hale Whitlow, Barbara Ellen Hale and Autrey Lee Cooper, in a multi-count indictment alleging money laundering, racketeering, possession of an unregistered still, failure to give bond, removal and receipt of untaxed liquor, perjury, obstruction of justice, and conspiracy. This matter is before the court on motions raised by the United States and William Lewis Helms (“Helms”). The court will address each motion in turn.

I.

At a pre-trial hearing, counsel for Williams Helms indicated that he may seek to introduce a statement by Ramsey Helms made to his attorney, two days before his death, in which he exonerated William Helms and took the blame for the charges William Helms is now facing. The government moved to exclude this statement as hearsay. William Helms’s counsel argued that this hearsay statement could be introduced as a dying declaration under Federal Rule of Evidence 804(b)(2). However, this exception is only available in a prosecution for homicide or in a civil action or proceeding. Since this case is neither a prosecution for homicide nor a civil action or

proceeding, Ramsey Helms's statement does not fall within the 804(b)(2) exception.

Furthermore, the court finds that Ramsey Helms's statement is hearsay and does not fall within any of the hearsay exceptions.¹ Therefore, the government's motion to exclude Ramsey Helms's statement is granted.

II.

The government moved to compel discovery or to exclude the testimony of defendant William Helms's expert witnesses, James Jefferson and Jerry Rowe. The government claims that the summaries of these witnesses' testimony do not meet the requirements of Federal Rule of Criminal Procedure 16(b)(1)(C). This rule requires the defendant, upon request, to disclose to the government a written summary of the testimony of any experts it intends to use, including a description of the bases and reasons for their opinions, and the witnesses' qualifications. The court finds that the summaries provided by Helms are sufficient to give the government notice of the testimony of Helms's expert witnesses, the bases and reasons for their opinions, and their qualifications. Therefore, the court will not completely exclude the testimony of Helms's expert witnesses.

The government also complains that many of the opinions of Helms's expert witnesses are improper because they are legal conclusions. The court reminds the parties that while Rule 704(a) allows expert opinions on ultimate *factual* issues, it "was not intended to allow experts to offer opinions embodying *legal* conclusions." United States v. Scop, 846 F.2d 135, 139 (2nd Cir.

¹Counsel for William Helms also suggested that the statement was an admission against interest, a statement of a co-conspirator during the course and in furtherance of the conspiracy, and otherwise trustworthy because it was made to an attorney. The court, however, finds that Ramsey Helms's statement does not fall within any of these exceptions to the hearsay rule.

1988) (emphasis added), modified upon rehearing on other grounds, 856 F.2d 5 (2nd Cir. 1988).

In an earlier opinion in this case, the court warned that the government's experts may not offer statements that make legal conclusions or statements that ascribe criminal intent to defendants in violation of Federal Rule of Evidence 704(b). Likewise, the court will not allow Helms's expert to offer an opinion embodying a legal conclusion. Consequently, the court will grant in part and deny in part the government's motion to exclude the testimony of Helms's expert witness.

III.

Helms's filed a motion to sever his trial from that of co-defendant, Ralph Dwayne Hale, Sr. ("Hale, Sr."). Helms bases this motion on the asserted need for Hale, Sr.'s testimony. Generally, defendants who are charged in the same conspiracy should be tried together, absent a showing that actual prejudice would result from joint trials. See United States v. Reavis, 48 F.3d 763, 767 (4th Cir. 1995). A defendant who moves for severance based on the asserted need for a co-defendant's testimony must establish four things: "(1) a bona fide need for the testimony of his co-defendant; (2) the likelihood that the co-defendant would testify at a second trial and waive his Fifth Amendment privilege; (3) the substance of his co-defendant's testimony; and (4) the exculpatory nature and effect of such testimony." Id.; see also United States v. Parodi, 703 F.2d 768, 779 (4th Cir. 1983).

Here, Helms has not established the second element of this test. Helms has not established the likelihood that Ralph Hale, Sr. would testify at Helms's trial and waive his Fifth Amendment privilege. In fact, in oral arguments, counsel for Ralph Hale, Sr. indicated that his client would assert his Fifth Amendment privilege and refuse to testify even in a separate trial. Accordingly, the court denies Helms's motion for severance.

IV.

Helms moves the court to release life insurance proceeds from a policy on which Helms was the designated beneficiary and against which the government has filed a forfeiture notice. Helms claims that he needs these assets to pay his attorney's fees and the cost of his expert witnesses.

The Supreme Court has held that there is no constitutional right to the use of seized forfeitable assets to pay for a defense. See Caplin & Drysdale Chartered v. United States, 491 U.S. 617 (1989); United States v. Monsanto, 491 U.S. 600 (1989) (“[p]ermitting a defendant to use assets for private purposes that, under [21 U.S.C. § 853(c)], will become the property of the United States if a conviction occurs, cannot be sanctioned”). Furthermore, the Fourth Circuit held that the pretrial restraint of substitute assets violates neither the defendant's Sixth Amendment right to counsel nor the Due Process Clause of the Constitution. In re Billman, 915 F.2d 916, 920-22 (4th Cir. 1990).

Since Helms has not yet advanced a reason why the life insurance proceeds are not properly forfeitable under 18 U.S.C. § 982, the court denies Helms's motion to release the life insurance proceeds to pay for his defense.

V.

Finally, Helms moves the court to exclude certain charts which the government plans to admit at trial. Helms complains that the labels on these charts contain improper legal conclusions. Since some of these charts may be appropriate in one stage of the trial, yet not be appropriate in another stage of the trial, the court will take Helms's motion under advisement and rule on these

exhibits at trial.

VI.

Helms moves the court to exclude all hearsay statements the government plans to introduce as statements of a co-conspirator under Federal Rule of Evidence 801(d)(2)(E). In Bourjaily v. United States, the Supreme Court stated that before admitting a co-conspirator's statement under Rule 801(d)(2)(E), the offering party must prove by a preponderance of the evidence that a conspiracy existed, that the defendant and the declarant were members of the conspiracy, and that the statement was made during the course and in furtherance of the conspiracy. 483 U.S. 171, 175-76; see also United States v. Bell 573 F.2d 1040, 1043 (8th Cir. 1978). Although the statement sought to be admitted can be considered in determining its admissibility, there must be "substantial evidence of the conspiracy other than the statement itself." United States v. Hines, 717 F.2d 1481, 1488 (4th Cir. 1983). The court does not have to hold a hearing to determine the existence of a conspiracy before the statement can be admitted. Id. Instead, the court has the option to conditionally admit a co-conspirator's statement subject to the subsequent satisfaction of the requirements for its admission. Id.

Here, Helms has not demonstrated that the government will be unable to prove, by a preponderance of the evidence, the necessary requirements for the admission of a co-conspirator's statement under Rule 801(d)(2)(E). Accordingly, the court denies Helms's motion to exclude all hearsay statements sought to be admitted under 801(d)(2)(E).

VII.

For the reasons stated above, the court will (1) grant the government's motion to exclude Ramsey Helms's statement as hearsay; (2) grant in part and deny in part the government's motion

to exclude the testimony of Helms's expert witnesses; (3) deny Helms's motion for separate trials; (4) deny Helms's motion for the release of funds; (5) take Helms's motion to exclude the government's charts under advisement; and (6) deny Helms's motion to exclude hearsay statements sought to be admitted under Rule 801(d)(2)(E). An appropriate order will be entered on this day.

ENTER: This ____ day of September, 2001.

CHIEF UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA))	CR. NO. 7:00CR00074
v.))	<u>ORDER</u>
WILLIAM LEWIS HELMS, ET AL.))	By: Samuel G. Wilson
))	Chief United States District Judge
))	

In accordance with the court’s Memorandum Opinion entered this day, it is **ORDERED** and **ADJUDGED** that (1) the government’s motion to exclude Ramsey Helms’s statement as hearsay is granted; (2) the government’s motion to exclude the testimony of William Lewis Helms’s expert witness is granted in part and denied in part; (3) William Lewis Helms’s motion for separate trials is denied; (4) William Lewis Helms’s motion for the release of funds is denied; (5) William Lewis Helms’s motion to exclude the government’s charts is taken under advisement; and (6) William Lewis Helm’s motion to exclude hearsay statements sought to be admitted under Rule 801(d)(2)(E) is denied.

ENTER: This ___ day of September, 20001.

CHIEF UNITED STATES DISTRICT JUDGE