

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 4:04CR70083
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
LANNY BENJAMIN BODKINS)	By: Hon. Glen E. Conrad
ANTOINE PLUNKETT)	United States District Judge
DAREL KEITH TAYLOR)	
)	
Defendants.)	

The parties have filed the following motions in this case: (1) motion for discovery and inspection filed by defendant Lanny Benjamin Bodkins (“Bodkins”); (2) motion for discovery and inspection filed by defendant Antoine Plunkett (“Plunkett”); (3) motion to continue filed by the Government; (4) motions for pre-authorization disclosure filed by defendants Bodkins and Plunkett; (5) motion to quash subpoena filed by the Government. For the reasons set forth below, the motions for discovery and inspection are granted in part, the motion to continue is granted, the motions for pre-authorization disclosure are denied and the motion to quash is granted in part and denied in part.

BACKGROUND

On July 15, 2004, a grand jury indicted these defendants in a two count indictment charging the defendants with conspiracy to travel and traveling in interstate commerce with the intent to kill, injure, harass, and intimidate another person, and as a result of such travel, placing that other person in reasonable fear of death or serious bodily injury in violation of 18 U.S.C. §§ 371 and 2261A(1). The government has indicated that it intends to seek a superseding indictment against all three defendants for

additional charges stemming from the same incident and that those charges would carry the possibility of the death penalty. The Capital Case Unit of the Department of Justice will meet in Washington, D.C. on November 22, 2004 to decide what recommendations it will make to the Attorney General as to whether the United States will seek the death penalty for any or all of these defendants. A trial is currently scheduled on the existing charges for November 15, 2004.

DISCUSSION

I. Motions for Discovery and Inspection

Bodkins has filed a comprehensive motion for discovery and inspection. Plunkett's motion for discovery and inspection adopts the requests included in Bodkins's motion and adds several additional specific requests. The United States has made no specific objections to the motions at this time, however Bodkins and the United States have entered into a standard Joint Discovery and Inspection Order which this court approved on October 28, 2004. This order appears to address the discovery permitted by Federal Rule of Criminal Procedure 16. Bodkins's motion for discovery and inspection is granted to the extent that the parties must comply with the Joint Discovery and Inspection Order.

At the motions hearing, the attorney for the Government stated that he had also provided Darel Keith Taylor ("Taylor") and Plunkett with a copy of the same standard Joint Discovery and Inspection order. Plunkett's attorney has objected to this discovery order stating that it is incomplete and identifying several specific objections to the standard provisions. Upon request by the court at the hearing, Plunkett's attorney agreed to draft a revised discovery order and submit it to the Government for review. Plunkett's motion is denied at this time with the court's expectation that a joint discovery and inspection order will soon be in place to govern all future discovery. If Plunkett and the

Government are unable to agree upon a joint discovery and inspection order, either party may apply to the court to have the court structure an appropriate discovery order.

II. Motion to Continue

The government has filed a motion to continue the trial currently set for November 15, 2004. The Speedy Trial Act permits a court to grant a motion for continuance if the court finds that the “ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(8)(A). In making such a determination, a court may consider whether a case is so unusual and complex that it would be unreasonable to expect adequate preparation for both pretrial and trial proceedings within the established time limits. 18 U.S.C. § 3161(h)(8)(B)(ii). A court may also consider whether the failure to grant a continuance would deny counsel for either side “the reasonable time necessary for effective preparation.” 18 U.S.C. § 3161(h)(8)(B)(iv).

It is true that a court may generally not continue a case solely to permit the government to file a timely Death Notice. See United States v. Le, 311 F. Supp. 2d 527, 533 (E.D. Va. 2004); United States v. Breeden, 2003 WL 22019060, *2 (W.D. Va. 2003). In this case, however, the Government has not requested a continuance solely for that purpose. Any potential capital case is, by definition, complex. At this time, any related capital charges have yet to be made, and there has been no discovery regarding the existing charges. Furthermore, defendant Taylor has executed a waiver of his speedy trial rights and states that he joins in the Government’s motion because he has had inadequate time to adequately prepare his defense. Because the ends of justice served by granting the continuance outweigh the best interests of the public and the defendants in a speedy trial, the court grants the motion

for continuance.

III. Motion for Pre-Authorization Disclosure

Both Bodkins and Plunkett have filed motions for pre-authorization disclosure. In particular, Bodkins and Plunkett are requesting the court to order the government to disclose, prior to the meeting with the Capital Case Unit, the capital offense or offenses with which it intends to charge them and a statement of the reasons upon which the government will rely in seeking death authorization.

The United States Attorney's Manual ("USAM") lays out a protocol for the Government to follow when seeking capital punishment in a particular case. Section 9-10.030 of the USAM requires the Government to provide defense counsel a reasonable opportunity to present facts to the United States Attorney before the government seeks death authorization. The USAM requires the United States Attorney to submit written memoranda to the Department of Justice prior to a review of the case by the Capital Case Unit and permits counsel for the defendants to present mitigating facts during the proceedings. USAM Section 9-10.040 & 9-10.050. Any documents prepared by the United States Attorney for the Department of Justice, however, are not subject to discovery by the defendant. USAM Section 9-10.040. In fact, this internal protocol does not create "any substantive or procedural rights for a defendant." United States v. Le, 306 F. Supp. 2d 589, 592 (E.D. Va. 2004).

At this point in the case, the internal decision making process with regard to death penalty authorization is at an early stage, and the Government has the right to continue that process. Furthermore, the United States Attorney's Manual describes only the internal administrative process concerning whether to seek capital punishment in this case and creates no discovery rights for a defendant or his attorneys. Accordingly, the court denies the defendants' motions for pre-authorization

disclosure.

IV. Motion to Quash Subpoenas

This court previously granted Bodkins's motion to subpoena documents and records for production in advance of trial from the Danville City Police Department and the Roanoke Division of Forensic Science. The Government has filed a motion to quash both of these subpoenas. The defendant has asserted that the Government has no standing to challenge the subpoenas.

A party may move to quash a subpoena, including one addressed to another, if the subpoena "infringes upon the movant's legitimate interests." United States v. Raineri, 670 F.2d 702, 712 (7th Cir. 1982). Legitimate interests may include a claim of privilege, a proprietary interest in the documents requested or some other interest in the requested documents. United States v. Beckford, 964 F. Supp. 1010, 1023 (E.D. Va. 1997).

In this case, the Government has no standing to challenge the subpoena issued to Roanoke's Division of Forensic Science. There has been no allegation that those materials include witness information or that the Government has a proprietary interest in those documents. As a result, the court must deny the Government's motion to quash the subpoena issued to the Division of Forensic Science.

The broad subpoena issued to the Danville City Police Department seeks a copy of the "investigative file" and any related documents, reports, examinations or other records used in the investigation. Some portion of the Danville file is also apparently in the investigative files of the United States Attorney's Office. Furthermore, the Government has represented that there may be witness statements and identifications included in the requested materials. As a result, the Government has standing to move to quash the subpoena on the Danville City Police Department stemming from its

proprietary interest in those portions of the records it also possesses and the Government's legitimate interest in protecting the identity and safety of its witnesses.

Pretrial production of documents pursuant to Federal Rule of Criminal Procedure 17(c) is appropriate only when the moving party can show: (1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general "fishing expedition." United States v. Nixon, 418 U.S. 683, 699 (1974). Thus, the requesting party must make a showing that the information requested is (1) relevant, (2) admissible, and (3) specific. Id. at 700.

The subpoena directed to the Danville City Police Department is overly broad and makes no distinction between those materials that are already in the possession of the United States Attorney, and which will be provided through the standard discovery process, and any materials that would have to be requested directly from the local police department. In addition, the defendant has made no showing that the requested materials will be admissible. Therefore, the court must grant the Government's motion to quash the subpoena directed to the Danville Police Department. The defendant may file another motion for such a subpoena in the future if it becomes necessary after the Government makes its disclosures under Federal Rule of Civil Procedure 16. In that case, the defendant should more specifically identify the documents, or particular categories of documents, requested.

CONCLUSION

For the foregoing reasons, Bodkins's motion for discovery and inspection is granted only to the extent that the parties must comply with their Joint Discovery and Inspection Order. Plunkett's motion for discovery and inspection is denied with the understanding that a Joint Discovery and Inspection Order will soon be in place. The Government's motion to continue trial is granted. The defendants' motions for pre-authorization disclosure are denied. The Government's motion to quash is granted with respect to the subpoena directed to the Division of Forensic Science, but denied at this time with respect to the subpoena directed to the local police department in Danville.

The Clerk of Court is directed to send a copy of this Memorandum Opinion and the accompanying Order to all counsel of record.

ENTER: This 5th day of November, 2004.

/S/ Glen E. Conrad
United States District Judge

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ANTOINE PLUNKETT)	United States District Judge
DAREL KEITH TAYLOR)	
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Defendants.)	

For the reasons stated in the accompanying memorandum opinion, it is hereby

ORDERED

that defendant Bodkins's motion for discovery and inspection is GRANTED to the extent that the parties must comply with their executed Joint Discovery and Inspection Order; defendant Plunkett's motion for discovery and inspection is DENIED; the Government's motion to continue is GRANTED; defendants Bodkins's and Plunkett's motions for pre-authorization disclosure are DENIED; and the Government's motion to quash subpoenas is GRANTED with respect to the subpoena directed to the Danville City Police Department and DENIED with respect to the subpoena directed to the Division of Forensic Science.

The Clerk of Court is directed to send a copy of this Order to all counsel of record.

ENTER: This 5th day of November, 2004.

/S/ Glen E. Conrad
United States District Judge