

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 05-56</b>
	:	
<b>TEDDY YOUNG</b>	:	

**MEMORANDUM**

**STENGEL, J.**

**March 7, 2007**

Teddy Young is awaiting trial on an indictment charging him with various drug and weapon offenses. He has filed a motion to compel discovery seeking the production of every document relied upon in composing the affidavit associated with the government's application for several search warrants; and to extend the deadline for the filing of pretrial motions. The government has responded. After oral argument on the motion, I granted the defendant leave to supplement his brief. For the following reasons, I will deny the motion in its entirety.

This case involves an FBI wiretap on Young's cellular telephone which lasted from September 7, 2001 to June 8, 2002. All defendants named in this case were intercepted in the wiretap and charged in the indictment. In support of the application for a search warrant, the government provided the court with a 73-page affidavit sworn to by FBI Special Agent Robert M. Parks. A search warrant was executed by federal and state police officers at Young's residence on June 6, 2002. The evidence recovered during the search included approximately 400 grams of heroin, \$30,000, several handguns, and various other items. During the search, Young was handcuffed and informed of his

Miranda rights. As contraband was being discovered throughout the house, Young told the officers that some of the items were heroin, that the heroin belonged to him, and that the two handguns belonged to him. Young was un-handcuffed at the conclusion of the search and the police officers left the residence without arresting Young.

The government conducted a three-year investigation in this case during which it received information from several confidential sources, conducted surveillance activities, intercepted wire communications, and executed search warrants. I permitted over eleven months of discovery after granting at least one extension, conducted scheduling conferences, and held hearings on various motions. The government produced thousands of pages of documents as discovery. The discovery is mainly comprised of tape recorded conversations among the defendants and the confidential witnesses, surveillance photographs, assorted lab reports, FBI reports detailing certain undercover narcotics purchases and surveillances, as well as statements from some of the conspirators.

In his motion to compel, Young claims that despite his repeated requests, the government has refused to produce the documents which were used in composing the affidavit of probable cause. Under Federal Rule of Criminal Procedure 16 (a)(1), upon a defendant's request, the government must produce the following information: (1) defendant's oral statements made in response to interrogation by a person defendant knew was a government agent, as well as defendant's written and recorded statements; (2) defendant's prior record; (3) documents and objects that are material to the defense, that

the government intends to use in its case-in-chief at trial, or that were obtained from the defendant; (4) reports of physical or mental examinations and any scientific tests or experiments; and (5) a summary of expert testimony the government intends to use, including the witness's opinions, the basis and reasons for those opinions and the witness's qualifications.

However, pursuant to Rule 16(a)(2), some documents and materials are protected and not discoverable. Rule 16 does not authorize the discovery of internal government documents made by counsel for the government or other government agents in connection with investigating or prosecuting the case, nor does the rule authorize discovery of statements made by prospective government witnesses except as provided in the Jencks Act. See United States v. Godson, 2006 U.S. Dist. LEXIS 84346, \*1 (W.D. Pa. 2006). Criminal defendants may not embark on a broad or blind fishing expedition among documents possessed by the government on the chance that something impeaching might turn up. See Jencks v. United States, 353 U.S. 657, 667 (1957).

The Third Circuit has recognized that discovery in criminal cases is limited to those areas listed in Rule 16(a)(1), “with some additional material being discoverable in accordance with statutory pronouncements and the due process clause of the Constitution.” United States v. Ramos, 27 F.3d 65, 68 (3d Cir. 1994). Generally, these other areas are limited to the Jencks Act and materials available pursuant to the Brady doctrine. Id.

Here, Young insists that the requested documents are material to preparing his defense because they would allow him to challenge: 1) the issuance of the warrant on the grounds that probable cause did not exist; and 2) the credibility of Agent Parks at trial.

Materiality to the preparation of the defense, within the meaning of Rule 16(a)(1)(E)(i), means “more than that the evidence in question bears some abstract logical relationship to the issues in the case. There must be some indication that the pretrial disclosure of the disputed evidence would . . . enable the defendant significantly to alter the quantum of proof in his favor.” United States v. Maniktala, 934 F.2d 25, 29 (2d Cir. 1991). The Supreme Court has held that the phrase “material to the preparation of the defendant’s defense” as used in Rule 16(a)(1)(E)(i), means material to the defendant’s direct response to the government’s case-in-chief. In other words, “the defendant’s defense” encompasses only that part of the defendant’s defense which refutes the government’s arguments that the defendant committed the crime charged. United States v. Armstrong, 517 U.S. 456, 462 (1996).

In a case similar to the one before me, a defendant sought impeachment documents relating to government witnesses and informants who would not be called as witnesses at trial and who had cooperated with the government. In denying the defendant’s motion, the court stated:

First, the government has acknowledged its obligations under Rule 16 and indicated its intent to comply with those obligations fully. Rule 16 was not designed to provide a defendant with a vehicle to discover the government’s case in

detail or the strategy it intends to pursue at trial. United States v. Fioravanti, 412 F.2d 407, 410 (3d Cir. 1969). Nor is the rule designed to provide a defendant with verification that the use of anticipated evidence at trial by the defense is not vulnerable to attack by evidence within the government's possession. United States v. Randolph, 456 F.2d 132, 136 (3d Cir. 1972). In fact, in sharp contrast with these propositions, the United States Court of Appeals for the Third Circuit has recognized that discovery in criminal cases is limited to those areas delineated in Rule 16, "with some additional material being discoverable in accordance with statutory pronouncements and the due process clause of the Constitution." United States v. Ramos, 27 F.3d 65, 67-68 (3d Cir. 1994). As a general matter these other areas are limited to the Jencks Act and materials available pursuant to the so-called Brady doctrine. Id. at 68.

Second, the government has no obligation to produce an outline of the evidence it will use at trial. A defendant is not entitled to conduct a wholesale review of the government's investigation. See Weatherford v. Bursey, 429 U.S. 545, 559 (1977) (there is no general constitutional right to discovery in a criminal case). Nor is a defendant entitled to obtain a list of the government's witnesses through discovery. See United States v. Di Pasquale, 740 F.2d 1282, 1294 (3d Cir. 1984). Similarly, there is no authority to support a defendant's request for the specifics of each government witness' proposed testimony. See Fioravanti, 412 F.2d at 410 (a defendant has no right to discover the minutia of the government's evidence or the manner in which it will be used). And even assuming arguendo that this court has some residual discretion to order the pretrial disclosure of the government's evidence in appropriate circumstances, the current record falls woefully short of presenting sufficient grounds to justify such an extraordinary measure.

United States v. Mais, 2006 U.S. Dist. LEXIS 81486, \*4-6 (W.D. Pa. 2006).

Young has failed to show how the documents associated with the affidavit would

assist him directly in refuting the government's case against him. He claims only that he has "first hand information" that the affidavit contained false information, and that the documents will contradict Agent Parks's testimony. He appears to want the documents to impeach the affidavit in an effort to show that Agent Parks is generally not credible. Evidence that Agent Parks made inaccurate statements in an affidavit would not be admissible to show, in some general sense, that he is not a credible person. The affidavit can only be used for impeachment if Agent Parks testifies at trial and his testimony is inconsistent with his statements in his affidavit. This disputed evidence would not enable Young significantly to alter the quantity of proof in his favor at trial, and thus is not material to his direct response to the government's case-in-chief.<sup>1</sup> Further, without an explanation of the "first hand information," his request constitutes bald assertion and mere speculation. Mere speculation that disclosure would be helpful is not sufficient to override the government's privilege. United States v. Brenneman, 455 F.2d 809, 811 (3d Cir.1972).

After careful consideration of the motion and its supplemental brief, the government's response, and the arguments presented at the hearing, I find that the requested documents are not material to preparing Young's defense, and are thus not

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<sup>1</sup> Even if Young were successful in uncovering falsehoods in the affidavit after a review of the requested documents, the exclusionary rule would not bar admission of evidence that results from executing a defective search warrant when the police acted in reasonable, good faith reliance on the validity of the warrant. United States v. Leon, 468 U.S. 897, 919-21 (1984).

discoverable.

Because I will deny Young's motion to compel the documents, I will also deny as moot his request for an extension of the deadline to file pretrial motions.

An appropriate Order follows.

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**ORDER**

**STENGEL, J.**

**AND NOW**, this 7th day of March, 2007, upon consideration of the defendant's motion to compel (Document #446), his supplemental letter brief, the government's response, and after a hearing on the motion, it is hereby **ORDERED** that the motion is **DENIED** in its entirety.

**BY THE COURT:**

/s/ Lawrence F. Stengel

**LAWRENCE F. STENGEL, J.**