

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

**UNITED STATES
of AMERICA**

v.

ANTWAUN EVANS

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CRIMINAL ACTION

No. 12-616-9

MEMORANDUM

PRATTER, J.

MARCH 11, 2015

Defendant Antwaun Evans has filed an omnibus motion¹ seeking a variety of forms of relief, including dismissal of the indictment, suppression of certain evidence, production of other evidence, severance of certain counts against him, and production of a bill of particulars. The Government has responded to each argument, and this Court held evidentiary hearings and argument on December 11, 2013, December 19, 2013, and November 18, 2014. For the reasons set out below, the Court will deny Mr. Evans's motion in all respects, except that the Government is ordered to produce any *Jencks* materials not already produced no later than one full week prior to trial.

BACKGROUND

Antwaun Evans is charged with (a) conspiring, between December 2011 and November 28, 2012, with Defendant Joseph Adens, to possess with intent to distribute more than 5 kilograms of cocaine, as well as marijuana (Count 5 of the Second Superseding Indictment, Doc. No. 200), (b) possession with intent to distribute, and aiding and abetting possession with intent to distribute, more than 500 grams of cocaine (Count 6, *id.*), (c) possessing a magazine containing six rounds of .45 caliber ammunition, having been convicted in a court of the

¹ Mr. Evans also filed two supplemental motions seeking suppression of various evidence. Those motions are addressed in the Court's opinion of March 10, 2015. *See* Doc. No. 495.

Commonwealth of Pennsylvania of a crime punishable by imprisonment for a term exceeding one year (Count 7, *id.*), and conspiring, between March 2012 and November 2012 with Defendants Joseph Adens and Shanice Jenkins to launder money used to further illegal drug transactions (Count 8, *id.*). Because each facet of Mr. Evans's omnibus pretrial motion hinges on different facts, the Court will leave a more specific factual recitation to the sections that warrant the particular discussion.

DISCUSSION

A. Motion to Dismiss Superseding Indictment

Mr. Evans moves to dismiss Counts 6, 7, and 8 of the Superseding Indictment. After that motion was filed, the Government filed a Second Superseding Indictment, in which those counts are now numbered Counts 5, 6, and 7, and in which Mr. Evans also was charged with an additional count of conspiracy to launder money (Count 8). Because of this new filing, Mr. Evans's Motion to Dismiss the Superseding Indictment is deemed moot.

B. Motion to Suppress

To the extent Mr. Evans seeks the suppression of evidence, his arguments are addressed in the Court's opinion of March 10, 2015. *See* Doc. No. 495. For the reasons discussed in that opinion, Mr. Evans's motion to suppress is denied.

C. Motion to Sever Charges and Co-Defendants

To the extent Mr. Evans seeks severance of various charges and co-defendants, his arguments are addressed in the Court's opinion of February 27, 2015. *See* Doc. No. 486. For the reasons discussed in that opinion, Mr. Evans's motion to sever is denied.

D. Motion for a Bill of Particulars

Under Federal Rule of Criminal Procedure 7(f), “[t]he court may direct the government to file a bill of particulars. The defendant may move for a bill of particulars before or within 14 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars subject to such conditions as justice requires.” Mr. Evans, without citing any case law, moves for a bill of particulars to specify details such as a statement of individuals who were involved in, but not charged with, the crimes at issue in this case, the nature of uncharged overt acts attributable to Mr. Evans, the “specific circumstances” of Mr. Evans’s participation in the conspiracy, and the particular date on which Mr. Evans was alleged to have participated. The Government counters that the Superseding Indictment (and now the Second Superseding Indictment) provides sufficient detail to make a bill of particulars unnecessary. The Government also asserts that it has produced a good deal of material already that provides Mr. Evans with detailed information about the pending charges.

A court should grant a request for a bill of particulars if an indictment is so vague that it “significantly impairs the defendant’s ability to prepare his defense or is likely to lead to prejudicial surprise at trial.” *United States v. Rosa*, 891 F.2d 1063, 1066 (3d Cir. 1989). “A bill of particulars, unlike discovery, is not intended to provide the defendant with the fruits of the government’s investigation. . . . Rather, it is intended to give the defendant only that minimum amount of information necessary to permit the defendant to conduct his *own* investigation.” *U.S. v. Smith*, 776 F.2d 1104, 1111 (3d Cir. 1985) (internal citations omitted). Here, the Court finds that the Government is correct that the Second Superseding Indictment provides sufficient information for Mr. Evans to prepare for trial. In addition, as the Government represents and Mr. Evans does not appear to contest, the Government has produced ample discovery, which

“weakens the case for a bill of particulars here.” *See U.S. v. Urban*, 414 F.3d 754, 772 (3d Cir. 2005). Mr. Evans’s request for a bill of particulars, therefore, is denied.

E. Motion to Preclude Admission of Prior Convictions at Trial

Mr. Evans moves to preclude the admission of evidence of his prior drug convictions at trial, arguing that there is “no legitimate purpose or theory” under which the evidence could be admitted and that its admission would violate Federal Rule of Evidence 404(a)(1). The Government acknowledges that if it seeks to introduce evidence of Mr. Evans’s prior convictions under Federal Rule of Evidence 404(b) or 609, it must provide notice, articulate the relevance of the evidence, and allow Mr. Evans to respond. The Government also notes that because Mr. Evans is charged with being a felon in possession, it must introduce at least one prior felony conviction to prove an element of that offense.²

Because the Government has not yet moved to introduce evidence of Mr. Evans’s prior convictions, the Court will deny Mr. Evans’s motion as premature, without prejudice to his raising specific objections should the Government affirmatively move for the admission of such evidence.³ The Court does note its expectation that any such motion by the Government will not be delayed to the last minute. Given the length of time allowed for trial preparation here it would behoove the Government to make this decision no later than two weeks before trial in the absence of some good faith explanation otherwise.

² The Government notes that Mr. Evans may choose to stipulate to the fact of a predicate conviction, and that if he does so the Government will not seek admission of the underlying judgment.

³ Co-Defendants Joseph Adens and Thomas Mooty filed a similar motion, seeking an order compelling the Government to give timely written notice of intention to present Rule 404(b) evidence, and the Court denied that motion as moot, in light of the Government’s express undertaking to file written motions to admit Rule 404(b) evidence in advance of trial. *See* December 4, 2013 Order, Docket No. 215.

F. Motion for Early Disclosure of *Jencks* Material and for an Order Directing Preservation and Disclosure of Law Enforcement Rough Notes and Investigative Detention Video Recording

Finally, Mr. Evans moves for the early disclosure of *Jencks* material and for an order directing preservation and disclosure of law enforcement rough notes and investigative detention video recording. As to preservation and disclosure of the video recording, the motion is denied, as the Government has represented, and the Court accepts, that no such video exists. As to the other requests, the Court noted at the December 11, 2013 hearing that the Court's rulings on similar motions filed by co-Defendant Joseph Adens apply equally to Mr. Evans's motion. *See* Dec. 11, 2013, 2:00 p.m. Hearing Tr., 6:9-7:8. Thus, the motion for early disclosure is denied as moot, based upon the Government's express representation that such materials have either already been produced or will be produced no later than one calendar week prior to the start of trial, and the motion for preservation and disclosure of law enforcement rough notes is denied, provided that the Government continues to preserve any such notes. *See* Dec. 4, 2013 Order, Docket No. 216.

CONCLUSION

For the foregoing reasons, Mr. Evans's Omnibus Pre-Trial Motion is resolved as set forth above and in the following Order.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

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ORDER

AND NOW, this 11th day of March, 2015, upon consideration of Defendant Antwaun Evans's Omnibus Pre-Trial Motion (Docket No. 154) and the Government's Responses (Docket Nos. 172-178), it is hereby **ORDERED** that Defendant's Motion (Docket No. 154) is **DENIED** as set out in detail in the accompanying Memorandum.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE