

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

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. :
 :
 ABRAHAM RIOS, :
 a/k/a "Junior" :
 a/k/a "June" : NO. 96-0540-06

MEMORANDUM AND ORDER

HUTTON, J.

June 20, 1997

Presently before the Court is Abraham Rios' Motion in Limine to Limit Evidence of Prior Convictions, and Exclude Evidence of and References to Prior Arrests, Other Crimes, Wrongs or Acts and the Alleged Use of Aliases, and the Government's Response thereto.

I. BACKGROUND

Defendant Abraham Rios contends that evidence of prior arrests, other crimes, wrongs or acts and the alleged uses of aliases in this case should be excluded because they relate to character trait under Rule 404, and would be unfairly prejudicial under Rule 403 of the Federal Rules of Evidence. The government states that the defendant's motion to preclude the admission of evidence under Rule 404(b) is moot because the government does not intend to introduce any evidence in its case-in-chief regarding prior arrests by defendant Rios. Additionally, with respect to any other potential 404(b) evidence, the government states that it will

provide the defendant with notice of its intent to use such evidence at least one week before the commencement of trial.

II. DISCUSSION

A. Federal Rule of Evidence 404 Issue

Rule 404(a) states: "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion"

Fed. R. Evid. 404(a). Rule 404(b) states:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Fed. R. Evid. 404(b). The government states that this part of the defendant's motion is moot because the government does not intend to introduce any evidence of the defendant's prior arrests. Additionally, the government states that with respect to any other potential Rule 404(b) evidence, it would provide the defendant notice of its intent to use such evidence at least one week prior to trial.

This Court finds that the defendant's motion is moot to the extent he seeks to exclude evidence of his prior arrests as the government states that it will not use such evidence. Moreover,

the Court, at this time, denies the motion as it relates to any other potential Rule 404(b) evidence because it would be more appropriate to address this issue when the government informs the defendant on its intent to use specific evidence that may fall under Rule 404(b). At that time, the defendant may file a motion addressing his objections, if any, to any evidence the government seeks to introduce at trial.

B. Reference to Defendant's Aliases

The defendant next seeks to exclude any references to his alleged aliases, specifically "Junior" and "June" pursuant to Rule 403 of the Federal Rules of Evidence. Although the defendant concedes he used these names as nicknames, he states that he never used them in an effort to conceal his prior criminal history or his true identity. Therefore, the defendant contends that the probative value of the references to his alleged aliases are outweighed by the danger of unfair prejudice.

The government argues that such references are needed in order to identify the defendant. At trial, the government states that its evidence will establish that defendant Rios was known and referred to as "Junior" and "June" by himself and other members of the conspiracy. Furthermore, the government states that evidence of these aliases will identify him as the individual who engaged in various acts charged in the in the indictment. Also, these names are used in taped conversations referring to the defendant Rios.

In United States v. Clark, 541 F.2d 1016 (4th Cir. 1976), the court stated that if the government "intends to introduce evidence of an alias and the use of that alias is necessary to identify the defendant in connection with the acts charged in the indictment, the inclusion of the alias in the indictment is both relevant and permissible, and a pretrial motion to strike should not be granted." Id. at 1018.

In this case, the government states that at trial it will establish that the defendant was known by the names "Junior" and "June", and these names were extensively use in the intercepted conversations. Consequently, this Court finds that the defendant's motion to exclude references to any aliases is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 20th day of June, 1997, upon consideration of Defendant Abraham Rios' Motion in Limine to Limit Evidence of Prior Convictions and Exclude Evidence of and References to Prior Arrests, Other Crimes, Wrongs or Acts and the Alleged Use of Aliases (No. 89), and the Government's Response thereto, IT IS HEREBY ORDERED that the Defendant's Motion is **DENIED** in part and **DENIED** as moot in part.

IT IS FURTHER ORDERED that the Defendant's Motion to:

(1) exclude evidence of and references to Defendant's prior arrests is **DENIED** as moot;

(2) exclude other potential Rule 404(b) evidence is **DENIED** with leave to renew at the appropriate time; and

(3) exclude evidence of and references to Defendant's alleged use of aliases is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.

