

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

UNITED STATES OF AMERICA            )  
  )  
v.    )       No. 6:06CR50064-001  
  )  
HOLLIS WAYNE FINCHER                )

RESPONSE TO MOTION FOR DISCOVERY

Comes now the United States of America, by and through Wendy L. Johnson, Assistant U.S. Attorney, and for its Response to Motion for Discovery, states:

1.     a.     The United States opposes discovery of a list of witnesses or proposed witnesses which the government plans to have testify at the trial. Defendant is not entitled to such list of witnesses, their addresses or telephone number. United States v. Hutchings, 751 F.2d 230, 236 (8th Cir. 1984); United States v. Little, 562 F.2d 578, 581 (8th Cir. 1977).

      b.     The United States will make available statements made by this defendant for inspection, copying or photographing.

      c.     The United States will permit the defendant to inspect, copy or photograph any results or reports of physical or mental examinations, and/or scientific tests or experiments which are within the possession, custody or control of the government.

      d.     The United States will permit the defendant to inspect, copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies thereof which are within the possession, custody or control of the government and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

e. The United States resists defendant's motion to disclose the prior criminal record of witnesses. The defendant is not entitled to the criminal records of government witnesses prior to trial. Hemphill v. United States, 392 F.2d 45 (8th Cir. 1968); United States v. Taylor, 542 F.2d 1023 (8th Cir. 1976).

f. The United States will permit the defendant to inspect and/or copy any and all tapes, video and audio, of electronic surveillance of conversations to which the defendant was a party which are within the possession, custody or control of the government and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant at a mutually agreeable time and place.

g. The rule established in the Eighth Circuit is that grand jury transcripts are generally not available before a witness has testified. United States v. Bruton, 647 F.2d 818 (8th Cir. 1981). Rule 16(a)(3) states that, ". . . except as provided in Rule 6 and subdivision (a)(1)(A) of this rule, these rules do not relate to discovery or inspection of the recorded proceedings of a grand jury." Thus, recorded statements of a witness made before a grand jury are not subject to pretrial discovery by a defendant.

2. a. A copy of the Affidavit for Search Warrant, Search Warrant and Return will be provided to the defendant.

b. The United States will make available statements made by this defendant for inspection, copying or photographing.

c. Written case reports of government agents are not statements for purposes of the Jencks Act. United States v. Larson, *supra* at 677; United States v. Dark, 597 F.2d 1097, 1099 (6th Cir. 1979); United States v. Nickell, 552 F.2d 684, 689 (6th Cir. 1977).

d. The United States will permit the defendant to inspect, copy or photograph

books, papers, documents, photographs, tangible objects, buildings or places, or copies thereof which are within the possession, custody or control of the government and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

3. The United States is not aware of any interviews or statements made by potential witnesses which would tend to exculpate the defendant of the charges filed herein. Further, statements of government witnesses are discoverable only within the terms outlined in the Jencks Act. 18 U.S.C. § 3500.

4. The defendant seeks disclosure of any informant in the above-captioned case. The defendant has failed to show any materiality of the need for disclosure of any informant's identity. Mere speculation that the testimony of the informant may be helpful to the defense is insufficient. United States v. Curtis, 965 F.2d 610, 614 (8th Cir. 1972).

5. Under the doctrine of Brady v. Maryland, the defendant is entitled to promises of immunity or leniency made to witnesses. However, this is not discoverable prior to trial since this would amount to the Government being required to reveal its witness list. The defendant is entitled to this information for use on cross-examination and the same will be furnished to the defendant prior to cross-examination of the witness. United States v. Campagnuolo, 592 F.2d 852 (5th Cir. 1979); United States v. Reeves, 730 F.2d 1189 (1984).

The United States will continue to disclose material which is subject to discovery under Rule 16 which may come into its possession.

ROBERT C. BALFE  
UNITED STATES ATTORNEY

By: **/s/ Wendy L. Johnson**  
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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

David Dunagin  
Attorney at Law

**/s/ Wendy L. Johnson**  
Wendy L. Johnson