

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO'  
WESTERN DIVISION

United States of America, : Case No. 3:05CR716  
v. :  
Michael A. Page, et al., : ORDER

This is a criminal case in which pretrial matters have been referred to the undersigned for initial hearing and determination and the filing of a report and recommendation or other appropriate action. Pending are Defendants' Motions to Produce Discovery and to Require Notice of Intent to use 404 (b) Evidence (Docket Nos. 17, 38, 39, 49 and 50). The government filed an omnibus response to defendants' motions (Docket No. 62). The magistrate's rulings follow:

1. **Motion for Discovery (Docket Nos. 17, 38 and 50)**

Defendants Killen, Arnett and Page filed discovery requests seeking copies of materials set forth in Rule 16 of the Federal Rules of Criminal Procedure. In its response, the government asserts that it has provided open file discovery and lists the materials which it has provided to defendants in compliance with Rule 16. The government contends that in light of its full compliance, the motions for discovery should be denied as moot. The magistrate agrees. Accordingly, such motions are denied as moot.

In its response, the government asserts that Defendant Killen requested, by letter, disclosure of *Brady* material, public records, names, identities and statements of indicted and unindicted co-conspirators. Defendant

failed to file or provide a copy of such letter request to the Court; consequently those requests are not pending before the Court. To the extent to which Defendant seeks Brady material and co-conspirator's statements as pretrial discovery, such requests are denied based upon *United States v. Presser*, 844 F2d 1275, 1285 (6<sup>th</sup> Cir. 1988) (pre-trial disclosure of *Brady* material and discovery of co-conspirator statements not required by Rule 16). Similarly, the request for public records is denied as such request has not been filed with the Court.

**2. Requests for Notice of Government's Intent to use 404(b) Evidence (Docket Nos. 17, 39 and 49)**

Defendants request an order requiring the government to provide notice of its intention to use evidence of "other crimes, wrong or acts" of the Defendants pursuant to Fed.R.Evid. 404(b). In its response, the government asserts that it has no intention, at this time, of offering any evidence subject to Rule 404 (b). The government represents, however, that it will provide the required notice in the event it identifies such evidence. Consequently, the defendants motions are denied as moot.

**3. Government's Request for Reciprocal Discovery (Docket No. 62)**

The government's request for reciprocal discovery is unopposed. Accordingly, such request is granted.

For the foregoing reasons, the motions for discovery and notice of intent to use evidence are denied as moot and the request for government's request for reciprocal discovery is granted.

So ordered.

/s/ Vernelis K. Armstrong  
Vernelis K. Armstrong  
United States Magistrate Judge