

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**Case 2:10-cr-20310-SHM-cgc**

**ABDULLAH RAFIZ SHAHEED ASHANTI,**

**Defendant.**

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**ORDER DENYING DEFENDANT’S MOTION FOR BILL OF PARTICULARS,  
MOTION FOR *GIGLIO* MATERIAL, MOTION FOR DISCLOSURE OF ANY  
AGREEMENTS ENTERED INTO BETWEEN THE GOVERNMENT AND  
PROSECUTION WITNESSES, AND MOTION FOR PRE-TRIAL PRODUCTION OF  
RULE 404(b) EVIDENCE**

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Before the Court is Defendant Abdullah Rafiz Shaheed Ashanti’s Motion for Bill of Particulars (Docket Entry “D.E.” #73), Motion for *Giglio* Material (D.E. #75), Motion for Disclosure of Any Agreements Entered Into Between the Government and Prosecution Witnesses (D.E. #76)<sup>1</sup>, and Motion for Pre-Trial Production of Rule 404(b) Evidence (D.E. #81). The instant motions were referred for determination to United States Magistrate Judge Charmiane G. Claxton (D.E. #107), and

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<sup>1</sup> Defense counsel had previously advised the Magistrate Judge at the June 27, 2011 Status Conference that he wished to withdraw the Motion for Disclosure of Any Agreements Entered Into Between the Government and Prosecution Witnesses (D.E. #76). However, at the July 13, 2011 hearing, defense counsel advised that he wished to renew this motion. As counsel for the Defendant and United States stated that they were prepared to argue this additional motion at the hearing, the Court considered this renewed motion.

a hearing was held on the instant motions on July 13, 2011.<sup>2</sup>

As to Defendant's Motion for Bill of Particulars, the Court finds that the indictment in this case sets forth the charges in considerable detail, see United States v. Mahar, 801, F.2d 1477, 1503 (6th Cir. 1986), and that, by Defendant's own admission, the United States has provided voluminous discovery regarding the conduct alleged in the indictment. Under such circumstances, a bill of particulars may not be used to obtain further disclosure of evidence before trial. See United States v. Phibbs, 999 F.2d 1053, 1086 (6th Cir. 1993). Accordingly, for these reasons and the reasons stated in open court, Defendant's Motion for Bill of Particulars is hereby DENIED.

As to Defendant's Motion for *Giglio* Material and Motion for Disclosure of Any Agreements Entered Into Between the Government and Prosecution Witnesses, Giglio v. United States, 405 U.S. 150, (1972), does not give the defense the right to a "general pre-trial discovery of evidence impeaching defense witnesses." United States v. Presser, 844 F.2d 1274, 1283-84 (6th Cir. 1988). Instead, such information is not required to be disclosed by the United States until the witness has testified on direct examination in the trial of the case. Presser, 844 F.2d at 1283. The United States has advised that it is aware of its obligations under Giglio and its progeny and will provide such information at the appropriate time. Accordingly, for these reasons and the reasons stated in open court, Defendant's Motion for *Giglio* Material and Motion for Disclosure of Any Agreements Entered Into Between the Government and Prosecution Witnesses are DENIED.

As to Defendant's Motion for Pre-Trial Production of Rule 404(b) Evidence, the United

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<sup>2</sup> At the hearing, the Magistrate Judge initially advised that she would enter a Report and Recommendation as to these motions. However, upon review of the District Court's Order of Reference, which explicitly refers these motions for determination, the Magistrate Judge will enter an Order on these motions.

States advises that it does not currently intend to offer any evidence pursuant to Rule 404(b); however, should its intentions change, the United States has affirmed that it is aware of its obligations under Rule 404(b) and that it would provide pre-trial notice of the general nature of the evidence as required. Additionally, the United States argues that Defendant apparently desires to present an entrapment defense in this case and that, under such circumstances, Rule 404(b) does not apply to “other acts” evidence used to rebut an entrapment defense. See United States v. Roper, 135 F.3d 430, 433 (6th Cir. 1998). The United States has advised Defendant that, should he raise an entrapment defense, it would intend to introduce any conviction, acquired before the beginning of the conspiracy charged in the indictment in this case, for robbery, attempted robbery, theft, and assault. The United States has further provided Defendant with his criminal history report compiled by Pretrial Services. Thus, the United States has satisfied its present obligations under Rule 404(b) and has further affirmed that it will satisfy any future obligations. Accordingly, for these reasons and the reasons stated in open court, Defendant’s Motion for Pre-Trial Production of Rule 404(b) Evidence is DENIED.

**IT IS SO ORDERED** this 13th day of July, 2011.

s/ Charmiane G. Claxton  
CHARMIANE G. CLAXTON  
UNITED STATES MAGISTRATE JUDGE