

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 3:99 CR 271 (CFD)
	:	
KIMBERLY GRAHAM	:	

RULING ON MOTION TO PRECLUDE

The defendant, Kimberly Graham, has filed a motion to preclude the government from introducing at trial certain statements allegedly made by her, which were intercepted and recorded during electronic surveillance by the Drug Enforcement Administration in New York City. The motion to preclude [Document #82] is GRANTED IN PART and DENIED IN PART.

Federal Rule of Criminal Procedure 16(a)(1)(A) provides, in relevant part, that “the government must disclose to the defendant . . . any relevant written or recorded statements made by the defendant . . . within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.” See also Standing Order on Pretrial Discovery, D. Conn. L. Cr. R. The purpose of this provision is to protect a defendant’s right to a fair trial, see United States v. Noe, 821 F.2d 604, 607 (11th Cir. 1987), that is, to ensure “the fair and efficient administration of criminal justice by providing the defendant with sufficient information upon which to base an intelligent plea; by minimizing the undesirable effect of surprise at trial; and by contributing to the accuracy of the fact-finding process.” United States v. Alvarez, 987 F.2d 77, 85 (1st Cir.), cert. denied, 510 U.S. 849 (1993). In addition, a district court has broad discretion to remedy a violation of this provision, including by granting a continuance or by prohibiting a party from introducing certain evidence at trial. See Fed. R. Crim. P. 16(d)(2); United States v. Bentley, 875 F.2d 1114,

1118 (5th Cir. 1989).

The defendant in this case was originally indicted on November 30, 1999, and was arraigned before Magistrate Judge Garfinkel on a superseding indictment on December 6, 2000. She contends that the government violated its discovery obligations by failing, until December 11, 2000, to identify certain statements that she allegedly made, which were intercepted and recorded by the DEA in New York City pursuant to judicially authorized wiretaps. As a result of the government's failure to provide earlier notice of these statements, the defendant seeks an order precluding the government from introducing the statements at trial. Alternatively, she requests that the Court grant a continuance of the trial in order to permit her to review the relevant wiretap materials and, if necessary, file a motion to suppress or other motions concerning the use of the statements at trial.

Having considered the defendant's motion to preclude, the government's response, and the remarks of counsel at the hearing on December 18, 2000, the defendant's motion is DENIED to the extent that it seeks to preclude the government from introducing at trial her alleged statements, which were intercepted and recorded by the DEA in New York. This ruling is without prejudice to the defendant filing a motion to suppress or other motions concerning the use of the statements at trial. In addition, the defendant's motion is GRANTED to the extent that it seeks a continuance of the trial.

In reaching this conclusion, the Court finds that the government conducted an extensive investigation of the alleged conspiracy, which involved wiretaps of approximately seven telephones over a period of six months in Connecticut and New York. In December 1999, the government provided the defendant access to all wiretap materials from Connecticut and New

York. The wiretap evidence from Connecticut specifically identified statements allegedly made by the defendant as part of the conspiracy. However, the wiretap evidence from New York did not identify any statements allegedly made by the defendant at the time of its disclosure in December 1999.

While preparing for trial, which is currently scheduled to begin on December 21, 2000, the government first determined the defendant had made statements that were included in the wiretap evidence from New York.¹ A day or two later, on December 11, 2000, counsel for the government notified counsel for the defendant of the existence of the statements and the government's intention to offer them as evidence at trial. The government also again provided the relevant wiretap materials to the defendant.

The Court concludes in light of these findings that the government did not act in bad faith in failing to notify the defendant of the statements and its intention to use them at trial until December 11, 2000, shortly after counsel for the government realized that the defendant was the person who made the statements. The New York wiretap information was provided to the defendant earlier, in a timely fashion, even though the defendant had not been specifically identified in it. The government also did not act unreasonably in failing to determine earlier that the defendant was the person who made the statements, particularly given the breadth of the investigation. In addition, although the Court concludes that the statements and other relevant wiretap information may be important to Ms. Graham's defense, preclusion of the statements is not warranted in this case. It likely that any prejudice to the defendant would be cured by

¹The wiretap logbooks from New York, which were disclosed to the defendant, had previously identified the declarant only as an "unidentified female."

granting her request for a continuance of the trial in order to allow her to review the statements and, if necessary, file a motion to suppress or other motions. A continuance is the least severe remedy necessary to preserve the defendant's right to a fair trial, promote the fair and efficient administration of justice, and ensure full compliance with Rule 16(a). See United States v. Ivy, 83 F.3d 1266, 1280-81 (10th Cir. 1996); Alvarez, 987 F.2d at 85; Bentley, 875 F.2d at 1118; United States v. Bartle, 835 F.2d 646, 650 (6th Cir. 1987), cert. denied, 485 U.S. 969 (1988).

Accordingly, jury selection in this case is continued until January 17, 2001 at 10:00 a.m. The parties shall file any pretrial motions, including any motions in limine, motions to suppress, or other motions, by January 3, 2001. Responses to any such motions shall be filed by January 5, 2001. The Court will hear argument on pending motions on January 9, 2001 at 10:00 a.m. This ruling is without prejudice to the government objecting to the timeliness of any motions to suppress filed by the defendant.

SO ORDERED this _____ day of December 2000, at Hartford, Connecticut.

Christopher F. Droney
United States District Judge