IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JEIK D. ROMERO,

Defendant.

ORDER

04-CR-164-C-1

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On August 12, 2005, defendant Jeik D. Romero filed three more late motions: to disclose grand jury proceedings, to dismiss count 4 of the indictment and to suppress evidence seized from a minivan during execution of a state search warrant. Defendant filed these motions notwithstanding my August 10, 2005 order advising him that it is too late to file such motions and that summary dismissal of such motions is appropriate under Fed. R. Crim. P. 12. Apart from this, defendant's motions are meritless.

First, defendant seeks disclosure of the grand jury testimony of Agents Morgan and Grywalski, claiming that they perjured themselves and therefore tainted the indictment. Dkt. #254. Grand jury proceedings are cloaked in secrecy; before a defendant may obtain grand jury materials he must show a "*compelling* need" for the material. United States v. Campbell, 294 F.3d 824, 826 (7th Cir. 2002) (emphasis in original). This standard is deliberately stringent: disclosure is appropriate only where the requestor demonstrates that his need for

the information outweighs the public's strong interest in grand jury secrecy. Id. at 827 & n.1.

If the government knowingly were to have presented perjured testimony to the grand jury for the purpose of unfairly obtaining a true bill, then the validity of this indictment would be suspect. See United States v. Williams, 504 U.S. 36, 63 (1992)(Stevens, Blackmun, O'Connor, and Thomas, JJ., dissenting). Dismissal, however, is an extreme sanction reserved for extreme malfeasance by the government. United States v. Geisler, 143 F.3d 1070, 1072 (7th Cir. 1998)(dismissal appropriate only if violation substantially influenced grand jury's decision or there is grave doubt whether decision free from substantial influence of violations). No such malfeasance occurred here. I already have accepted guilty pleas from four co-defendants and then sentenced them; a fifth co-defendant was found guilty following a jury trial over which I presided. I have seen and heard nothing to suggest that the government has suborned perjury or manufactured evidence. Against this backdrop, defendant's most recent accusation of fabricated evidence is weightless, unworthy of further investigation. Cf. United States v. Morgan, 384 F.3d 439, 443 (7th Cir. 2004) (lack of support for claim of grand jury perjury is one reason to deny motion to dismiss).

In the same vein, defendant moves to dismiss count 4 of the indictment on the ground that the government intends to prove this charge of drug trafficking by means of an audiotape on which someone other than defendant speaks. Dkt. #255. As I noted in my August 10 order, challenging the government's ability to prove its case cannot lead to pretrial dismissal of charges because the vehicle of summary judgment does not exist in criminal

cases. United States v. Thomas, 150 F.3d 743, 747 (7th Cir. 1998). At best, defendant's claim raises is an in limine issue under Rule 901, but if the government lays a sufficient foundation, then it will be up to the jury to determine whose voice actually is heard on the tape. Defendant is not entitled to pretrial dismissal of count 4.

Finally, defendant challenges the execution of a search warrant for his minivan. Dkt. #256. Defendant asks this court to suppress evidence of drug dealing found in the van because the warrant authorized seizure only of evidence related to the beating of Ramon Cruz-Del Valle. An officer executing a search warrant may seize evidence that, although not described in the warrant, fits within the plain view doctrine. That doctrine allows seizure of any object if the officer has a legal right to be in the place from where he sees the object; the officer has a lawful right of access to the object itself; and the object's incriminating nature is immediately apparent. Russell v. Harms, 397 F.3d 458, 465 (7th Cir. 2005).

Defendant's motion reveals merely that the police obtained and executed a search warrant for his minivan during which they seized unspecified evidence of drug crimes. Clearly the first two prongs of the plain view test are met because the police had a right to be in the van and had lawful access to any object they found therein. Actual seizure of objects not fitting within the terms of the warrant then depended on the contraband nature of those objects being immediately apparent; because defendant has not claimed otherwise, I will assume that this third prong of the test has been met. United States v. Toro, 359 F.3d 879, 885 (7th Cir. 2004) (defendant seeking to suppress bears initial burden to provide

nonconjectural factual basis establishing prima facie entitlement to relief). Therefore, defendant is not entitled to suppression of any evidence seized from the minivan.

This is the second set of late, spurious motions filed by defendant within the past week. The court will not entertain any more such motions from defendant.

ORDER

For the reasons stated above, IT IS ORDERED that defendant Jeik Romero's motion for disclosure of grand jury proceedings, motion to dismiss count 4 of the indictment, and motion to suppress evidence are DENIED.

Entered this 17th day of August, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge