

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	1:20-CR-228-2 (MHC) (JKL)
	)	
	)	
DANIEL ERIC JAY	)	
_____	)	

**MOTION FOR PRODUCTION OF PRE-SENTENCE
REPORTS OF GOVERNMENT WITNESSES**

COMES NOW the Defendant, **DANIEL ERIC JAY**, by and through counsel, and hereby moves this Honorable Court to Order the disclosure and production of the pre-sentence reports (PSRs) of all Government witnesses expected to testify at trial. In the alternatively Defendant asks this Court to conduct an *in camera* hearing to determine the contents of the pre-sentence reports. As grounds therefore, the Defendant states as follows:

1.

It is the Defendant's belief that the Government will seek to elicit testimony at trial from several codefendant witnesses who have been convicted and sentenced by this Court.

2.

Specifically, Defendant respectfully shows that in this case the Government has entered into plea agreements with various individuals, including but not limited to MAURICE FAYNE, MICHAEL SARGENT¹ and others.

3.

Once the pleas of guilty were entered, as a matter of procedure, pre-sentence investigation reports, “PSR’s”, were generated. Defendant respectfully submits that information contained in the Pre-sentence Investigation Reports will or has the potential to be favorable to this Defendant and should therefore be produced in relevant part to defense counsel. At a minimum, this Honorable Court should review the reports in camera and provide those portions to the Defendant which the Court finds to be exculpatory or impeachment material, *Giglio* material or producible under the Jencks Act.

4.

As this Court is well aware, pre-sentence investigation reports are prepared by the probation service of each Federal District to assist the Court in sentencing defendants. *See*, Federal Rules of Criminal Procedure - Rule 32(c). The reports

¹Michael Sargent also has a prior federal conviction from the Northern District of Texas, Criminal No: 3:02-cr-00212. Mr. Jay requests production of this PSR as well.

contain information on the circumstances surrounding the offender's crime, the offender's background, criminal history, mental health, drug abuse or addiction history, and the offender's version of the offense. See generally, Fennell and Hall, *Due Process at Sentencing: An Empirical and Legal Analysis of the Disclosure of Pre-sentence Reports in Federal Courts*, 93 Harv.L.Rev. 1613, 1621-1630 (1980). Additionally, in this case the PSR's contain statements and findings relating to loss amount and restitution which likely will be contested by the Defendant at his trial.

5.

Rule 32(c) is silent as to disclosure of pre-sentence reports to a third party. However, in *United States v. Figurski*, 545 F.2d 389, 391 (4th Cir. 1976), the Fourth Circuit held that disclosure of a pre-sentence report to a third party should be made where the lifting of confidentiality is required to meet the ends of justice. The *Figurski* Court went on to conclude that if the report contains exculpatory material, that portion of the report must be disclosed. In addition, if the report contains material which could be used to impeach the witness, disclosure is required where there is a reasonable likelihood that such information would affect the trier of fact. The Seventh Circuit in *United States v. Anderson*, 724 F.2d 596, 598 (7th Cir. 1984), stated that when a defendant suspects that a witness' s

presentence report contains impeachment material, he should request the trial court to make an *in camera* examination of the report. The Court in *Anderson* held that if it is found that there is any impeachment material in the report, this information should be revealed to the Defendant as well.

6.

The Government should state whether or not they will call witnesses during the trial who are now incarcerated or who have been convicted of federal criminal offenses. Defendant further contends that pre-sentence reports were filed with regard to these individuals. The information in these reports is not only exculpatory in nature, but also vital for impeachment purposes. As such, this information should be made available to the Defendant as required by *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), and its progeny.

7.

The pre-sentence report will usually contain the Defendant's version of the offense. Furthermore, any offense conduct paragraphs which were not objected to, are deemed to be adopted by the Defendant as a statement of fact. As such, such information should be disclosed pursuant to the *Jencks Act*, Title 18, United States Code Section 3500.

WHEREFORE, Defendant DANIEL ERIC JAY respectfully prays this Honorable Court enter an Order requiring the Government to disclose the existence of and produce any and all pre-sentence reports of all Government witnesses or, alternatively, that the Court examine these reports in camera and disclose those portions to the Defendant which this Court finds to be exculpatory or impeachment material.

Dated: This 23rd day of June, 2022.

Respectfully submitted,

s/ L. Burton Finlayson

L. BURTON FINLAYSON

Attorney For DANIEL JAY

Georgia Bar Number: 261460

LAW OFFICES OF
L. BURTON FINLAYSON, LLC
931 Ponce de Leon Avenue, NE
Atlanta, Georgia 30306
(404) 872-0560
lbfcourts@aol.com

CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing Motion for Production of PSRs with the Clerk of Court using the CM/ECF system which will automatically send email notifications of such filing to all counsel of record including the following:

Mr. Russell Phillips .
Assistant United States Attorney
600 U.S. Courthouse
75 Ted Turner Drive, S. W.
Atlanta, Georgia 30303

DATED: This 23rd day of June, 2022.

s/ L. Burton Finlayson

L. BURTON FINLAYSON
ATTORNEY FOR DANIEL JAY
State Bar Number: 261460