

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA

v.

DANIEL ERIC JAY,

Defendant.

CRIMINAL ACTION FILE

NO. 1:20-CR-228-MHC-JKL-2

ORDER

This matter is before the Court on Defendant’s Motion for Production of Pre-Sentence Reports of Government Witnesses [Doc. 271].

“Presentence reports are not public records but rather confidential reports to the trial judge for use in his [or her] efforts to arrive at a fair sentence.” United States v. Martinello, 556 F.2d 1215, 1216 (5th Cir. 1977)¹ (citation omitted).

Although the presumptive confidentiality of presentence reports (“PSRs”) militates against their disclosure, the Due Process Clause requires the disclosure of evidence that is material to the impeachment of a prosecution witness. Giglio v. United

¹ In Bonner v. City of Pritchard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

States, 405 U.S. 150, 154 (1972). Moreover, the Due Process Clause mandates the disclosure of evidence favorable to the accused. Brady v. Maryland, 373 U.S. 83, 97 (1963). Consequently, it has been held that presentence reports may be discoverable from the Government if, after conducting an *in camera* inspection, the court concludes that a presentence report contains exculpatory or impeachment material that should be disclosed to meet the ends of justice. See, e.g., United States v. Jackson, 978 F.2d 903, 909 (5th Cir. 1992) (“Because presentence reports are necessarily confidential, the district court should examine the report *in camera* and release any exculpatory or impeachment material to the defendant while protecting the confidentiality of the rest of the report.”).

In accordance with the Government’s *ex parte* request, the Court has reviewed *in camera* the PSRs of co-Defendants Maurice Fayne (“Fayne”) and Michael Sargent (“Sargent”). The Government represents that it intends to call only Fayne to testify at Defendant Daniel Eric Jay’s trial. Gov’t’s Resp. to Def.’s Mot. for Production of PSRs of Gov’t Witnesses (“Gov’t’s Resp.”) [Doc. 273] at 6. The Court has ordered the disclosure of excerpts from Fayne’s PSR of material

arguably subject to disclosure as Brady/Giglio or Jencks Act² material to Defendant Jay's counsel with appropriate restrictions.

With respect to Sargent's PSR in this case,³ as the Government does not intend to call Sargent as a witness in Jay's trial, there is no additional information in Sargent's PSR that is required to be disclosed under Giglio. The Court has reviewed Sargent's PSR for additional Brady material and finds none. The Court notes that the summary of victim interviews is identical in both the Fayne and Sargent PSRs.

Accordingly, Defendant's Motion for Production of Pre-Sentence Reports of Government Witnesses [Doc. 271] is **GRANTED IN PART** as provided in the Court's Order granting the Government's *ex parte* motion for in camera review.

IT IS SO ORDERED this 5th day of July, 2022.



MARK H. COHEN
United States District Judge

² 18 U.S.C. § 3500.

³ The Government represents it has never had access to Sargent's PSR that relates to a 2003 case in the Northern District of Texas. Gov't's Resp. at 6-7.