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FILED
DISTRICT COURT OF GUAM

MAR 08 2016



JEANNE G. QUINATA
CLERK OF COURT

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

IN RE:)
) GENERAL ORDER 16- 0002
CRIMINAL TRIAL DOCUMENTS)
_____)

The provisions of this general order supersedes the provisions of General Order 15-0004 regarding criminal trial documents. The provision requiring the United States Attorney to provide a signature certification is hereby abrogated at this time.

Based on the court's observation from previous criminal trials¹ and in an effort to streamline the trial process and avoid any unnecessary delays throughout the course of trial, the court hereby **ORDERS** the following:

1. **Trial Brief.** A trial brief shall contain the following information:
 - a. **Table of Contents.**
 - b. **Table of Authorities.**
 - c. **Case Posture:** name(s) of the defendant(s), charge(s) in the indictment, and procedural history of the case.
 - d. **Basic Facts:** factual narration of the case.

¹ See, e.g., *United States v. Arias*, No. CR-14-00009 (parties informed that due to the problems encountered during trial, the court will be issuing an order to promote efficiency and ensure proper trial preparation).

1 e. **Charges and Related Issues:** list of the charge(s), the elements for each charge, and
2 any relevant case law that may be helpful to that particular charge. For example:

3 Conspiracy to Distribute Methamphetamine is a criminal offense under
4 Sections 841(a) and 846 of Title 21, United States Code. The elements of this
5 offense are as follows:

- 6 1. First, beginning on or about XXXX, and ending on or about XXXX,
7 there was an agreement between two or more persons to distribute
8 methamphetamine; and
9
10 2. Second, the defendant joined in the agreement knowing of its purpose
11 and intending to help accomplish that purpose.

12 Ninth Circuit Model Criminal Jury Instructions, Instruction 9.19.

13 "A conspiracy may be proven by circumstantial evidence that the
14 defendants acted together with a common goal." *United States v.*
15 *Williams*, 547 F.3d 1187, 1196 (9th Cir. 2008). *See also United States v.*
16 *Corona-Verbera*, 509 F.3d 1105, 1117 (9th Cir. 2007) (same); *United*
17 *States v. Ching Tang Lo*, 447 F.3d 1212, 1226 (9th Cir. 2006) (same).

18 "The agreement need not be explicit, but may be inferred from
19 circumstantial evidence." *United States v. Kiriki*, 756 F.2d 1449, 1453
20 (9th Cir. 1985). *See also United States v. Melchor-Lopez*, 627 F.2d 886,
21 891 (9th Cir. 1980) (same).

22 "Once the existence of a conspiracy is established, evidence which
23 establishes beyond a reasonable doubt that a defendant is even slightly
24 connected with the conspiracy is sufficient to convict." *Corona-Verbera*,
25 509 F.3d at 1117 (quotation marks omitted). "A defendant may be
26 'slightly connected' even if he did not know all the conspirators, did not
27 know all the details of the conspiracy, did not participate in the
28

1 conspiracy from the outset, and did not participate in all the enterprises
2 of the conspiracy." *Id.*

3 Finally, it does not matter whether the criminal object of the
4 conspiracy was ever attained, so long as the defendant—as a member of
5 the conspiracy—intended to help attain it. *See, e.g., United States v.*
6 *Bosch*, 914 F.2d 1239, 1241 (9th Cir. 1990) (upholding conviction for
7 conspiracy to aid and abet the possession of cocaine with intent to
8 distribute and to aid and abet the distribution of cocaine even though the
9 undercover IRS agent never possessed or distributed cocaine and no
10 crime of possession or distribution occurred).

- 11
12 f. **Anticipated Evidence:** list of witnesses and the offer of proof for each witness.

13 For example:

14 FBI Special Agent M. Terrell Lynch will testify to his surveillance of the deal,
15 and will authenticate the photographs of the seized methamphetamine, the actual
16 seized methamphetamine, the photographs of the handgun, and the actual
17 handgun. Agent Lynch may also offer lay opinion testimony on the accuracy of
18 the transcripts, based on his fluency in both the English and Gaelic languages.

- 19 g. **Evidentiary and Other Trial Issues:** discuss any evidentiary issues that may
20 arise at trial, such as *prima facie* threshold for authentication, foundation for audio
21 recordings, admission of audio recordings, voice identification foundation,
22 playing of recordings for the jury, photographs foundation, admission of
23 photographs, chain of custody, lay witness opinion, expert witness opinion,
24 witness impeachment by prior bad acts, and co-conspirator hearsay statements.

25 For example:

26 Photographs. Copies of photographs may be introduced. Under Rule
27 901 of the Federal Rules of Evidence, a witness familiar with a scene or
28

1 object may provide a sufficient foundation for admission of a photograph
2 by testifying that the photograph fairly and accurately depicts the scene or
3 the object at some relevant time. See *United States v. Brannon*, 616 F.2d
4 413,416 (9th Cir.), cert, denied sub nom. *Cox v. United States*, 447 U.S.
5 908 (1980).

6 Foundation for Audio Recordings. The Ninth Circuit has specifically
7 disapproved of "rigid foundation requirements" for the authentication of
8 audio recordings. *United States v. King*, 587 F.2d 956, 960 (9th Cir. 1978).
9 An audio recording has proper foundation for admission when a law
10 enforcement agent testifies that he was responsible for recording the
11 conversation; that the all or nearly all of the conversation was recorded;
12 that little of the recording is inaudible, and that as a whole it is an accurate
13 and complete recording of the conversation. See *United States v. Mouton*,
14 617 F.2d 1379, 1383-84 (9th Cir. 1980) (citation omitted).

15
16 **h. Conclusion.**

- 17 2. **Witness List.** The Witness List shall include the full name of the witness, his/her title
18 and place of employment (if testifying in that capacity), village of residency, and family
19 name (if any). For example:

20 M. Terrell Lynch
21 Special Agent, Federal Bureau of Investigation
22 Yona
23 Familian Hawks

- 24 3. **Exhibit List.** The Exhibit List shall be organized based on each witness, and it shall
25 include the exhibit number and its description. For example:

26 Witness No. 1: M. Terrell Lynch
27 Special Agent, Federal Bureau of Investigation

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Exhibit No.	Page No.	Description
24	24-1 to 24-12	Application for a Search Warrant, Case No. MJ-XX-XXXXX

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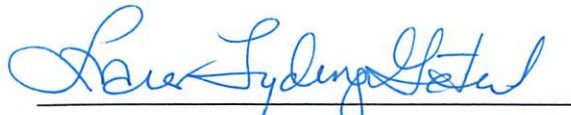
Witness No. 2: R. Kevin Sherman
Special Agent, IRS-Criminal Investigations

Exhibit No.	Page No.	Description
25	25-1 to 25-12	Tax Returns of Defendant

In submitting the exhibit list, the prosecutor shall include a certification page, certifying that he or she has reviewed the exhibit list and that it is accurate to the best of his or her ability. ~~The certification page shall also include the signature of the U.S. Attorney, certifying the same.~~

4. **Trial Preparation.** Trial preparation is critical to ensuring fewer delays at trial. Accordingly, the court reminds all counsel—the prosecutor and defense—to be mindful of the importance of trial preparation, including but not limited to thorough review of the Federal Rules of Evidence.

SO ORDERED this 8th day of March, 2016.



Frances Tydingco-Gatewood
Chief Judge