

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :
 :
 v. : 1:
 :
 :

MOTION IN LIMINE TO EXCLUDE EVIDENCE OF
PRIOR STATEMENTS BY CODEFENDANTS

The defendant, name, by and through undersigned counsel, hereby moves, in limine, to exclude any and all evidence of prior statements by any non-testifying codefendants which either directly or indirectly name the defendant as a participant in the crimes charged in the indictment. In support thereof, undersigned counsel states as follows:

1. The government alleges that, shortly after his arrest on date, [REDACTED] told [REDACTED] of the Sanford, North Carolina, Police Department that Defendant and a fourth, unknown black male went into the bank in question, and came out with a black backpack. It is further alleged that codefendant A told [REDACTED] that, after the two men left the bank, but before codefendants [REDACTED] were arrested, they dropped the fourth, unknown black male off at an apartment complex in Sanford, North Carolina, after making arrangements to meet later that evening.

2. The government also alleges that, shortly thereafter, [REDACTED] was interviewed by [REDACTED] [REDACTED] [REDACTED]

██████████ and reiterated the first portion of his prior statement before declining to answer further questions.

3. The law is well settled that "[t]he Confrontation Clause of the Sixth Amendment is violated - and severance is required - when a non-testifying co-defendant's confession naming the defendant as a participant in a crime is admitted, even if the jury is instructed to consider the confession only against the confessing co-defendant. Bruton v. United States, 391 U.S. 123, 135-36 (1968). Even if the moving defendant's name is redacted, severance is required 'if . . . it is clear that a particular defendant is implicated' United States s. Akinkoye, 185 F.3d 192, 197 (4th Cir. 1999), cert. denied, 528 U.S. 117 (2000), citing Gray v. Maryland, 523 U.S. 185, 195 (1998)." Carl Horn III, Fourth Circuit Criminal Handbook, § 47 (2002). Any admission of codefendant ██████████ alleged statements, even if redacted, would violate Bruton and Akinkoye.

4. Government counsel has indicated that he does not intend to offer the alleged prior statements by codefendant A during the prosecution's case-in-chief. Nevertheless, in order to preserve his objection for the record, and facilitate the resolution of any such issues which may arise, the defendant hereby moves, in limine, to exclude any evidence of, or reference to, codefendant ██████████ alleged prior statements, or any other such statements by either co-defendant, unless and until

the declarant testifies under oath, subject to cross examination.

Respectfully submitted this the _____ day of January, 2003.

LOUIS C. ALLEN III
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served upon the following by facsimile and/or hand delivery:

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This the _____ day of January, 2003.

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