

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

UNITED STATES OF AMERICA)
Plaintiff,) Case Nos. 5:17cr00007
v.) 5:17cr00013
BEAM BROS. TRUCKING, INC., et. al.) 5:17cr00014
Defendants.) 5:17cr00015
) 5:17cr00016

DEFENDANTS' MOTION FOR DISCLOSURE

Defendants Beam Bros. Trucking, Inc., Beam Bros. Holding Corporation LLC (“Beam Brothers”), Gerry W. Beam, Garland C. Beam, Shaun C. Beam, and Nickolas Kozel (collectively “the Defendants”), by and through their attorneys, respectfully submit this Motion for Disclosure in order to allow adequate preparation and efficiency for the upcoming two-day sentencing hearing in these cases.

J.

MOTION FOR DISCLOSURE

Following the sentencing status hearing held on October 23, 2017, this Court entered an order scheduling all of the above cases for a joint two-day sentencing hearing scheduled for November 27 and 28, 2017. To ensure the case is resolved within that timeframe, this Court set the following parameters for the evidentiary phase of the hearing:

The government will have four hours of the hearing to present any evidence in support of the U.S.S.G. § 3B1.1 Aggravating Role Adjustment and § 3C1.1 Obstruction Adjustment, followed by an appropriate period of cross-

examination. The defendants will have four hours to present their sentencing evidence, followed by a period of cross-examination. The court will conduct the sentencing at the conclusion of the evidence.

October 24, 2017 Order, p. 1 (Docket No. 128).

The Defendants believe these evidentiary procedures are completely appropriate and just in light of the sentencing issues before the Court. The defense, however, is concerned about being able to properly prepare to efficiently address the salient issues within the established timeframes. These concerns are highlighted by the scope of potential evidence identified by the Government for its four-hour portion of the hearing. At present, the Government has identified **9 witnesses and 92 separate exhibits – including the grand jury transcripts for 10 individuals not identified as witnesses** – that it intends to present at sentencing. The sheer volume of exhibits is staggering:

Type of Exhibits	Number of Separate Exhibits	Total Number of Pages
Grand Jury Transcripts	16	1,272 pages
Driver Logs Summaries	41	10,242 pages
Timesheets	9	1,203 pages

In reality, the Government wishes to try its original case that it plead down to single misdemeanors and is reluctant to whittle down its evidence to address the relevant issues identified by this Court's October 24, 2017 order. To keep the Government on track during its four-hour presentation window and to allow the Defendants a fair opportunity to prepare an efficient and proper response, additional notice is necessary in the interests of justice and judicial

economy. Accordingly, the Defendants respectfully request this Court to order the Government to provide the following information 21 days in advance of the hearing date (November 6):

- A final list of witnesses the Government intends to call.
- A summary of the areas to be covered by each witness's proposed testimony sufficient to allow the defense to fairly prepare for cross examination.
- A final list of exhibits the Government intends to rely upon.
- A summary of the portions of the exhibits the Government intends to rely upon, including the specific pages of Grand Jury testimony that form the basis for the Government's position on the enhancements at issue.
- *Jencks* information for all witnesses.

The Defendants, of course, will abide by the same requirements set by this Court. After receiving the disclosure information ordered by the Court, the Defendants will provide the Government with the same reciprocal information within 10 days (or whatever timeframe is deemed appropriate by the Court). This process will help properly focus the issues for sentencing and allow efficient resolution of the issues that matter within the designated timeframes established by this Court.

The Defendants emailed a description of the above procedures to the counsel for the United States on October 27, 2017, inquiring if the parties could perhaps reach an agreement on the disclosure process. The Defendants asked the government to respond with its position by 1:00 p.m. on October 30, 2017. At the time of this filing, the Defendants have not received a response, requiring submission of this motion for the Court's consideration.

II.

CONCLUSION

The Defendants believe the proposed disclosure process will help focus the issues for all parties and ensure that the government and defense abide by the reasonable time limits established by this Court. Accordingly, the Defendants respectfully request this Court to order disclosure in accordance with the recommended procedures, or as otherwise deemed appropriate by this Court.

Respectfully submitted,

BEAM BROS. TRUCKING, INC., AND
BEAM BROS. HOLDING CORPORATION
LLC

Michael Ronald Gill (VSB No. 85185)
Hancock Daniel Johnson & Nagle PC
P. O. Box 72050
Richmond, VA 23255-2050
804-934-1961
Email: mgill@hdjn.com

Counsel for Defendants Beam Bros. Trucking,
Inc. and Beam Bros. Holding Corporation LLC

By: _____ /s/
Of Counsel

GERALD W. BEAM

Mark D. Obenshain
Justin Manning Wolcott
Obenshain Law Group
420 Neff Avenue, Suite 130
Harrisonburg, VA 22801
540-208-0728 / 540-208-0727
mdo@obenshainlaw.com
jmw@obenshainlaw.com

Counsel for Defendant Gerald C. Beam

GARLAND C. BEAM

Howard Crawford Vick , Jr.
Michael A. Baudinet
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916
804-775-4340 / 804-775-1139
tvick@mcguirewoods.com
mbaudinet@mcguirewoods.com

By: _____ /s/

Counsel for Defendant Garland C. Beam

SHAUN C. BEAM

Thomas J. Bondurant, Jr. (VSB No. 18894)
Justin M. Lugar (VSB No. 77007)
Gentry Locke
10 Franklin Road SE, Suite 900
Roanoke, VA 24011
(t) 540-983-9300
Bondurant@gentrylocke.com
jlugar@gentrylocke.com

By: _____ /s/

Counsel for Defendant Shaun C. Beam

NICKOLAS GENE KOZEL, JR.

Ralph J. Caccia
Brandon J. Moss
Kevin B. Muhlendorf
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
(t) 202-719-7242
rcaccia@wileyrein.com
bmooss@wileyrein.com
kmuhlendorf@wileyrein.com

By: _____ /s/

Counsel for Defendant Nickolas Gene Kozel, Jr.

CERTIFICATE OF SERVICE

I certify that on October 30, 2017, I electronically filed the foregoing Defendants' Motion for Disclosure with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to all counsel of record.

By: _____/s/

Michael R. Gill
Counsel for Defendants