

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
HECTOR POLENDO, JR.,)
)
 Defendant.)

No. 04-20384DV

ORDER DENYING DEFENDANT'S MOTION IN LIMINE EXTRANEIOUS OFFENSES

Before the court is the September 30, 2004 motion of the defendant, Hector Polendo, Jr., titled "motion in limine extraneous offenses." In his motion, Polendo "requests the Court to instruct the Government not to mention, allude or refer to in any manner any prior convictions, alleged violations of the law, or extraneous acts allegedly done by the Defendant . . . in the presence of the jury until a hearing has been held outside the presence of the jury" to determine the admissibility of such evidence. (Motion in Limine Extraneous Offenses, Doc. No. 23, September 30, 2004.) The motion was referred to the United States Magistrate Judge for determination.

Although Polendo styles his motion as a motion in limine relating to extraneous offenses, his motion actually seeks the government's compliance with Rules 404(b) and 609 of the Federal

Rules of Evidence. Rule 404(b) requires the prosecution in a criminal case, upon request of counsel, to provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any evidence of prior convictions and prior bad acts.

In its response to the motion, the government affirmatively states that it will abide by the terms of Rules 409(b) and 609. In addition, the government agrees to not mention said evidence until a hearing has been held outside the presence of the jury to determine the admissibility of said evidence.

In light of the government's agreement, the defendant's motion in limine is moot and is denied as such.

IT IS SO ORDERED this 3rd day of November, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE