

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

Case No. 5:20-CR-28-MW/MJF

UNITED STATES OF AMERICA

v.

JAMES D. FINCH, et al.

Defendants.

**DEFENDANT FINCH'S MOTION TO COMPEL UNREDACTED
DISCOVERY AND COPIES OF SEALED PLEADINGS**

Defendant Finch respectfully moves for an order directing the government to provide (1) unredacted copies of the FD-302 forms and (2) copies of sealed motions covered by the Court's Discovery Order, stating:

Procedural and Factual Background

On August 18, 2020, the Federal Grand Jury in Tallahassee returned the original, 64-count Indictment, charging Margo Anderson and Adam Albritton with wire fraud conspiracy to violate honest services and with substantive counts of honest services wire fraud. ECF No. 1.

On December 31, 2020, Anderson's and Albritton's respective counsel challenged much of the language in the Indictment, arguing multiplicity, confusion, and inaccuracy. ECF Nos. 48, 49, and 50. Following a hearing, the Court ordered the government to "clean up" this initial Indictment, requiring amendments to factual

allegations and corrections to multiplicitous counts. The Court further dismissed two counts as insufficiently pled. ECF No. 60.

On March 16, 2021, the Grand Jury returned a 43-count Superseding Indictment adding James Finch and former Lynn Haven City Commissioner Antonius Barnes. ECF No. 64. On March 18, 2021, the Court entered a Discovery Order confirming the government's obligations to disclose all exculpatory evidence as required by *Brady v Maryland*, 373 U.S. 83 (1963), and its progeny. [ECF No. 86].¹

Defendant Finch has repeatedly sought legally required discovery as required by the Court's Order, the Local Rules, and established case law. We have attempted to resolve these matters without Court intervention. Unfortunately, we have reached the point where we must seek judicial participation.

¹ On August 19, 2021, the Court dismissed the conspiracy count of the indictment as fatally flawed, allowing the government to return to the Grand Jury. [ECF No. 185]. To date, no superseding indictment has been returned. In the interim, Defendants Albritton and Barnes have reached a plea agreement with the government. On September 24, 2021, counsel for Finch has requested discovery as it relates to Defendant Albritton. While not a part of this Motion currently, no discovery has been provided despite promises to do so.

DISCOVERY

On March 24, Defendant Finch requested general and specific discovery pursuant to the March 18, 2021 Discovery Order, Rule 16, and Local Rule 26.2, including all information or material within the scope of *Brady v. Maryland*, 373

U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360 U.S. 264 (1959).

In its initial discovery response on April 1, 2021, government took the position that “[o]ther than what has been produced in the discovery provided, the United States does not have information or material at this time which may be favorable to the defendants on the issues of guilt or punishment. *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Augurs*, 427 U.S. 97 (1976).” The government also took the position that our discovery requests may include information to which we are not entitled and information that may or may not exist. Specifically, the government’s discovery letter states:

Finally, if your discovery letter includes requests for information to which you are not entitled pursuant to Fed R. Cr. Pr. 16, Local Rule 26.2, or the pre-trial order of the court, please be advised that the failure of the United States to respond directly to those specific requests not encompassed by the federal discovery rules should not be construed as any representation as to the non-existence of any requested information.

On May 14, 2021, Defendant Finch responded seeking specific clarification as to the information that may or may not exist.

On March 24, we submitted the email below requesting general and specific discovery. On April 1, 2021, we received the attached letter wherein the government indicated: "if your discovery letter includes requests for information to which you are not entitled pursuant to Fed R. Cr. Pr. 16, Local Rule 26.2, or the pre-trial order of the court, please be advised that the failure of the United States to respond directly to those specific requests not encompassed by the federal discovery rules should not be construed as any representation as to the non-existence of any requested information." At this time, we respectfully request that you identify with specificity which categories of information in our March 24, 2021, email that the government is taking the position that the defense is not entitled to and/or whether the requested information exists.

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We also identified several individuals who were interviewed by State and Federal Agents working on this case. We have reason to believe that several of these individuals indicated to the State and Federal Agents that they were **unaware of any corruption or impropriety by Finch, or anyone associated with Finch or his businesses.** Many of these witnesses were involved in the Lynn Haven contracting process and participated in City government. Without question, this is classic *Brady* evidence. It was not provided by the government in its initial discovery response.² Even after it was identified and confirmed to exist by the government, the *Brady* material was not willingly turned over. Instead, the government suggested the need for an all-encompassing protective order, on the basis that the defendants were improperly disclosing discovery material. When challenged to support this

² The government's April 1, 2021 production was voluminous, but only included witness statements from Defendants Anderson, Albritton, Finch, and Barnes. The July 19, 2021 production included 53 reports of witness statements, nearly all of which were prepared and available ***before*** the Superseding Indictment.

allegation, the government altered its argument, attempting to control the review of discovery instead, requesting the Court enter an overly restrictive protective order without precedent or justifiable cause. The Court rejected the government's overreach summarily denying the government's attempt to wrongly restrict our review of discovery. [ECF No. 174] (rejecting the government's request to "retroactively impose restrictions on documents it has already produced" and

holding "that the provision limiting Defendants to reviewing witness material at their counsel's office is overly restrictive").

After repeated requests by the defense, on July 19, 2021, the government's second wave of discovery was produced (well after the discovery deadlines had passed). This production confirmed that the government's April 1, 2021 statement that it was **not** in possession of additional *Brady* material was simply untrue. For example, a current Lynn Haven City Commissioner provided testimony to the FBI on September 1, 2020 that "all Finch wanted him to do was make decisions that were best for the City." We believe there is substantially more information like this that is clearly covered by the Court's order. That information, and more, has not been produced.

Unfortunately, we are now in the position of seeking Court intervention in the production of Court-ordered discovery.

The government is simply not complying with the Court's order to produced discovery consistent with *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360 U.S. 264 (1959). Indeed, *Brady v. Maryland* and its progeny require the government to produce all evidence “material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. 83, 87 (1963). Because the government is supposed to pursue justice—not merely convictions—its

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responsibility to produce *Brady* material is a grave one, its scope wide-ranging, and its duration ongoing.

There are two areas that we seek immediate Court assistance:

THE REDACTED 302s

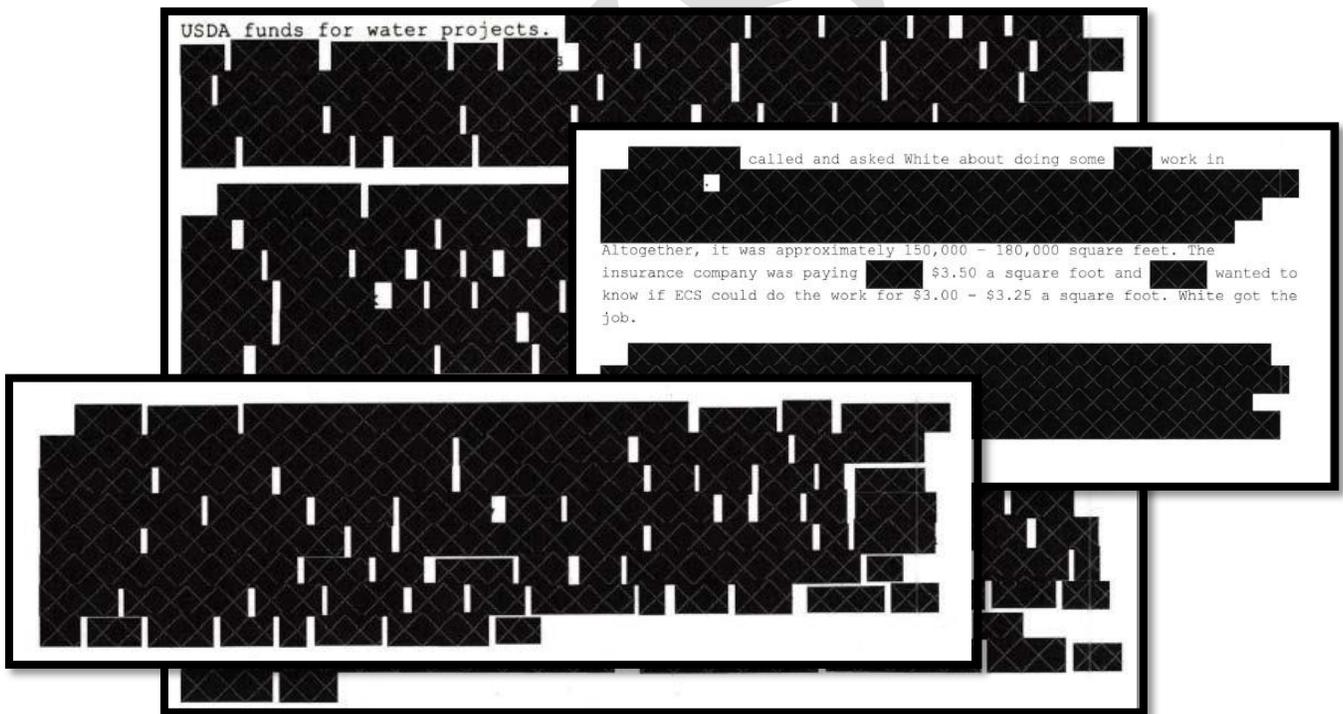
In a letter dated July 19, 2021, the government indicated that it was producing 302s regarding interviews of “cooperating defendants” Michael White, David (“Mickey”) White, Joshua Anderson, David Horton, and Shannon Rodriguez. Without demonstrating good cause, or seeking Court permission, the government indicated that the 302s for Michael White and David White contained multiple substantive redactions.

On September 9, 2021, in an attempt to resolve this matter without having to belabor the Court in what seemed like a straightforward discovery requirement,

Finch requested unredacted copies of the 302s based on an indication that the redacted portions contain *Brady* information.

The extent and scope of the redactions vary between the reports. Some of the redactions are merely names were as other portions of the 302 include large blackedout portions.

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After several attempts to obtain a direct, succinct position for the redactions, the government indicated on September 15, 2021, that its “understanding is that the redactions are for that sort of information.” Finch further challenged the

government's "understanding" as a valid legal basis for redacting portions of a cooperating witness's 302 without leave of court. On September 16, 2021, the government provided the additional response: "We told you that we didn't think the information mattered to this case."³

The government's position that it "didn't think the [redacted] information mattered to this case" is belied by its own pleadings. Specifically, the 302 regarding Michael White's interview on December 11, 2019, redacts information relating to work performed at Defendant Barnes's home. Yet, the government determined that the "information mattered" when it included additional identifying details in its June 16, 2021 Response to the Defendants' Motions to Dismiss. *See* ECF No. 159, n.3.

Also, based on contextual clues, and our own independent investigation, Michael White's 302s contain redactions related to deceased individuals and Michael White's involvement in other unindicted bribery schemes and criminal conduct. Michael White's criminal conduct is at the heart of this case. His credibility is fundamentally central. His immunized criminal admissions fall squarely within his plea agreement. It amounts to uncharged conduct for which he

³ The government also insinuated that counsel for Finch was just trying "to pick a fight" and suggested that we "pick it, and [they] will meet [us] there." Finch respectfully suggests that the government's "fight" should be directed to the facts and law and not towards counsel.

received a “pass,” and is therefore subject to discovery and rigorous crossexamination. *See Giglio v. United States*, 405 U.S. 150 (1972) (the government is constitutionally obligated to produce to the defense information that would tend to impeach a government witness)); *Strickler v Greene*, 527 U.S. 263, n.21 (1999) (“*Brady*’s disclosure requirements extend to materials that, whatever their other characteristics, may be used to impeach a witness.”)

On October 5, 2021, counsel for Finch had a lengthy discussion with one of the prosecutors in an additional attempt to have a good faith discussion about the requested discovery. We repeated our request for copies of the unredacted witness

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statements on the basis that the material contained *Brady* and *Giglio* information. The prosecutor indicated that our specific request for the unredacted 302s would be discussed internally at the U.S. Attorney’s Office. Unfortunately, to date, we have not received a response despite repeated requests.

SEALED MOTIONS

On September 15, 2021, Finch requested that the government provide copies of the motions to continue sentencing in *United States v. White, et al.*, Case No. 5:19CR-00078 (N.D. Fla.), relating to the defendants that have been identified as cooperating government witnesses in this case. Specifically, requesting copies of ECF Nos. 110, 111, 112, 118, 121, 124, and 129 that were filed under seal in *United States v. White, et al.*, Case No. 5:19-CR-00078. The sentencing pleadings were sealed without leave

of court and without a court order.⁴ The government apparently has been moving to continue sentencing until the cooperating convicted defendant testifies at trial. That delay in and of itself amounts to a “benefit,” allowing the defendant to remain at liberty. Based on a review of the file, it is clear that many of

these cooperating witnesses will be facing lengthy, substantial prison sentences (Michael and David White, for example). We have developed evidence that many have indicated that they expect a minimal sentence or even probation based on their cooperation despite what has to be a serious and substantial Sentencing Guideline range. The motions, and the language contained therein, likely will prove important in cross-examination so that the jury can fully understand their motivation for testifying.⁵

⁴ The only motion requesting leave to seal was filed on May 26, 2020, by counsel for Michael White. Judge Hinkle granted the motion to seal allowing ECF No. 89 to remain sealed, but requiring the clerk to unseal the motion for leave. Upon further review of the docket, defendants’ motions to continue sentencing ECF Nos. 110, 111, and 112, and the Government’s motions to continue sentencing ECF Nos. 118, 121, and 124 were all filed under seal. Counsel for Finch nor the Clerk’s office could locate an order permitting the motions to be filed under seal.

⁵ Four of the five cooperating witnesses have multiple interview reports. The same is true for several of the witnesses disclosed in the government’s July 2021 production. Upon careful review, the reports contain a series of moving targets. The witnesses discuss criminal conduct in later interviews that was not discussed in initial interviews. Incredibly, some of the stories change, some dramatically.

Again, we requested respectfully that the government provide the legal basis for the filing of the motions under seal or kindly direct us to a Court Order permitting the filing of the motions under seal without leave of court, as is required by Local Rule 5.5. To date, nothing has been provided.

During the parties' telephone call as recently as October 5, 2021, we repeated our request for copies of the sealed motions on the basis that the material amounted to *Brady* and *Giglio* information. Again, the prosecutor indicated that our request for a copy of the sealed motions would be discussed internally, but we have not received a response to date.

WHEREFORE, Defendant James D. Finch, respectfully moves for the entry of an order compelling the government to provide the defendants with copies of the unredacted discovery and sealed motions to continue sentencing filed in *United States v. White, et al.*, Case No. 5:19-CR-00078 (N.D. Fla), and such relief as the Court deems just and proper.

LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(B) counsel for Finch attempted in good faith to confer on the discovery matters outlined within this motion. For months, counsel

Indeed, it is a well-spring of criminal admissions that in any other context would be covered in an exhaustive and comprehensive interview report. 10

for Finch was unable to acquire direct, clear answers regarding the government's legal basis for refusing to provide the redacted discovery and sealed motions. On October 5, 2021, Counsel for Finch had a lengthy discussion with the prosecutor, reiterating our request for copies of the sealed motions and redacted witness statements. The government indicated that the requests would be discussed internally, but we have not received a response. Accordingly, based on the government's failure to respond, we assume the government opposes our motion.

Pursuant to Local Rule 7.1(F), the undersigned certifies that this motion contains 2,383 words pursuant to the word count provided by Microsoft Word.

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Respectfully submitted,

/s/ Guy A. Lewis

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 22, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that a true and correct copy of the foregoing has been served electronically via the CM/ECF System on all counsel of record.

/s/ Guy A. Lewis
GUY A. LEWIS