

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 5:20cr28-MW/MJF

MARGO DEAL ANDERSON, et al.,

Defendants.

_____ /

**GOVERNMENT'S RESPONSE TO DEFENDANT FINCH'S
MOTION TO COMPEL**

Defendant James Finch moves to compel production of two categories of information. ECF 200. This Court ordered an expedited response. ECF 201. Defendant Margo Anderson recently moved to adopt and join Mr. Finch's motion. ECF 207. This Court should deny the motions.

The first category is sealed motions to continue sentencing of defendants in a related case. Counsel for Mr. Finch asked for copies and asked why they were filed under seal. The government informed defense counsel that, pursuant to the Court's practice of requiring documents that referenced a defendant's cooperation to be filed under seal, these documents were filed under seal. See Fed. R. Crim. P. 11(c)(2). This

Court, another District Judge, has repeatedly accepted those motions and granted them, implicitly approving that they are properly under seal, and the public court orders note that the government moved for the continuances. See Fed. R. Crim. P. 49.1 adv comm. notes (2007) (providing that “sealed documents (*e.g.*, motions for downward departure for substantial assistance, plea agreements indicating cooperation)” “shall not be included in the public case file and should not be made available to the public at the courthouse or via remote electronic access.”). But, during the conference on the issue, the government informed defense counsel of the substance of the motions, substance of which learned defendant counsel surely knew without being told. After defense filed the motion to compel, the government provided the defense with the substance of the motions in writing.

When the government inquired how and why the motions, as opposed to those facts that the defense was already aware of, would be favorable to the defense of the case, defense counsel had no answer. Defense counsel insisted that was not the issue; that the defense was entitled to the documents whether there was a conceivable use for them at trial or not.¹

If the Court determines that the defense is entitled to these Court documents, then the government is of course willing to facilitate production of them. But the government respectfully suggests that the defense ought to articulate why these documents should be unsealed (apart from the defense already disclosing facts contained in other sealed documents) and why such motions are necessary to the defense. The government has searched for authority for the proposition that the actual motion to continue a cooperator's sentencing constitutes *Brady/Giglio*. It has found none. Nor has the defense provided any.

¹ It is unclear to the government why defense counsel is focused on getting these documents unsealed, which were quite properly maintained under seal according to the Court's requirement for cooperation documents to be filed under seal. And, unfortunately, Mr. Finch's motion to compel irrevocably undermined the spirit of the Court's practice of requiring cooperation documents to be filed under seal by naming persons believed to be cooperating (apparently derived from the government's production of sealed documents) in a public filing. See ECF 200 at 6. Local media reported on the motion approximately two hours later. Defense counsel stated at the recent hearing that the government had made "some very sharp pointed comments about counsel for Mr. Finch" in an email regarding this motion. The government does not agree with that characterization. Regarding this issue, the government again informed defense counsel in the October 25 email (as it had already during the October 5 phone conference) that the Court requires cooperation supplements to be filed under seal, that the fact of such cooperation should not have been disclosed in a public filing, and the government needed assurances this would not happen again or it would seek a protective order regarding further discovery productions of a similar kind.

The second category is portions of FBI FD-302 interview reports. Apart from voluminous documentary evidence provided to each

defendant soon after they were charged, the government produced approximately 300 pages of such reports pertaining to the case, even if they do not contain *Brady/Giglio*, after reviewing them carefully to ensure there was not sensitive information which should not be disclosed. A small portion have redactions.

While it is natural for a defendant to want to know what has been redacted, such redactions are common in federal discovery disclosures. This is particularly true regarding witness statements where cooperators may have knowledge about several criminal matters not directly related to the charged offenses. And when there is a wide-ranging investigation, especially in a small town, discovery in a criminal case presents certain concerns. One approach for the government in discovery is to produce everything immediately and risk that doing so might prejudice other aspects of the investigation through premature disclosure. Such concerns are magnified when defendants fail to follow court orders to refrain from contacting specific persons, see, *e.g.*, ECF 115,² or defense counsel file sealed information on public dockets. See, *e.g.*, ECF 200 at 6.

The appropriate course, which the government has tried to take in this case, is to review material and produce if it is arguably favorable to

the defense. That process works best when the government and the defense engage in a meaningful conference. When the defense has raised these discovery issues and others, the government has repeatedly tried to do so.¹

² On March 18, 2021, Judge Fitzpatrick ordered Mr. Finch not to have “direct or personal contact with City of Lynn Haven officials, including departments heads, City Manager, and Chief of Police.” ECF 87. One such contact was discovered when Mr. Finch sought elimination of the restriction; an email to several City officials demanding payment on a project that is a subject of the indictment. Defense counsel then stated to the probation officer that Mr. Finch’s employee innocently sent the email, that Mr. Finch “understands that he cannot communicate directly with the city,” and that Mr. Finch “has not spoken with or attempted to speak to any City official directly via telephone or in person.” But it turns out that was not accurate; there were at least eight separate instances of Mr. Finch directly contacting City officials in violation of the release order prior to that inaccurate presentation to the probation officer.

As it relates to the FD 302 reports, the defense motion primarily focuses on the alleged criminal conduct of one defendant. See ECF 200 at 8-9. The defense motion of October 22 omits that the government

¹ For one example, while demanding unredacted FD 302s, counsel for Mr. Finch informed the government that “we have also developed independent evidence that tends to demonstrate the falsity of multiple witnesses’ statement to the authorities.” The government has repeatedly asked the defense to be more specific so the government could consider it as it relates to the FD 302s or to conduct further inquiries. Counsel for Mr. Finch has provided nothing in response. Such vague complaints do nothing to help a prosecutor or case agent find what the defense is looking for or evaluate a request for potentially favorable information.

informed defense counsel on October 5 that the redactions of the FD 302 reports of that person's interviews do not contain information about the fact of that person's criminal conduct (and the government would double check to be sure), and information about that person's criminal conduct has been and would be turned over to the defense. This is argument about a non-issue. The motion seeks production of information which (1) the government has already provided; (2) that the government has already agreed to produce; or (3) that Mr. Finch is already aware of.² The government notified defense counsel as much via email on October 25, 2021 but has not received a response.

The government's understanding of the actual dispute concerns information about the criminal conduct of *another* person who is not a charged defendant in this case (or any other) and who is not going to be witness in this case (or any other). The government offered to discuss this

issue in good faith and asked defense counsel *three times*, via email, why the defense thought the redactions contained *Brady/Giglio* material.

² Lead defense counsel who signed the defense motion was not present for the October 5, 2021, phone conference. So perhaps there was a miscommunication within the defense team about what was agreed to and what was not.

Instead of engaging with such inquiries, defense counsel accused the government of engaging in “a pattern and practice” of “dodg[ing] direct answers to [counsel’s] questions” (an assertion which is demonstrably not accurate). The government repeatedly explained its intent to engage in a meaningful conference and did express, candidly with some frustration, that if the defense wished to manufacture a discovery dispute for the Court to resolve the government would respond in that forum.

The defense then asked for a phone conference, which the government in good faith agreed to. During the October 5 conference the government asked more particularly why the defense believed that such information was favorable to the defense on the issue of Mr. Finch’s guilt on charges that he bribed Ms. Anderson or Mr. Barnes and lied to the FBI. Defense counsel insisted that was not the *Brady* standard, which of course it is. See ECF 200 at 5 (defense motion correctly stating that the government is required to produce evidence “material either to guilt or to punishment”). Defense counsel stated a belief that the uncharged person (who will not possibly be a witness in this case) was orchestrating a massive fraud conspiracy, and the defense believed that the redactions related to this person’s criminal conduct. The government asked how,

assuming that person was orchestrating a massive fraud conspiracy, the information about same tended to negate Mr. Finch's guilt on charges that he bribed Ms. Anderson, Mr. Barnes, or lied to the FBI. Defense counsel had no answer. If the defense can articulate one for the Court in reply, the government would be grateful to learn it.

Further, while the defense may believe redactions relate to certain persons or things, the request, and supporting grounds, have focused on two categories of information; the criminal conduct of cooperating defendants and the criminal conduct of a certain person that the witnesses are aware of. Redactions were not made for the first category. The government has agreed to give the defense anything in the first category. The defense has not shown they are entitled to the second. Even if the defense were entitled to the second, that does not mean the defense is entitled to completely unredacted FD 302 reports. There are reasons for redactions which do not concern either category. The defense has shown no entitlement to that information.

CONCLUSION

Accordingly, this Court should deny Defendant Finch's motion to compel.

Respectfully submitted on October 29, 2021,

JASON R. COODY
Acting United States Attorney

/s/ Stephen M. Kunz
STEPHEN M. KUNZ
ANDREW J. GROGAN
Assistant U.S. Attorneys
Florida Bar No. 322415
Florida Bar No. 85932
111 North Adams St., 4th Floor
Tallahassee, FL 32301

(850) 942-8430

stephen.kunz@usdoj.gov

andrew.grogan@usdoj.gov

LOCAL RULE 7.1 CERTIFICATE

I certify that this paper contains 1,779 words, which complies with the word limit requirement set forth in Local Rule 7.1(F).

/s/ Stephen M. Kunz
STEPHEN M. KUNZ
Assistant United States Attorney