UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 19-342(1) (ECT/LIB)

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIONDRE MAURICE OTTO STATELY,

Defendant.

GOVERNMENT'S RESPONSE TO DEFENDANT'S PRETRIAL MOTIONS

The United States of America, by and through its attorneys, Erica H. MacDonald, United States Attorney for the District of Minnesota, and Gina L. Allery, Special Assistant United States Attorney, hereby submits its response to the defendant's various pretrial motions. For the reasons set forth in its response to the defendant's suppression motion (Dkt. No. 40), the government intends to offer the testimony of Special Agent Kyle Gregory, Federal Bureau of Investigation, at the Motions Hearing scheduled on February 28, 2019, if the defendant persists in his motions. In accordance with the Local Rules, a notice of intent to call witnesses is filed separately.

1. Motion for Disclosure of 404(b) "Bad Acts" Evidence [Dkt. No. 35]

In his motion, the defendant has moved the Court for an order requiring the government immediately to disclose any "bad act" or "similar course of conduct" evidence it intends to offer at trial pursuant to Rule 404 of the Federal Rules of Evidence. Previously, on January 22, 2020, the provided disclosures in compliance with Rule 16 and provided

further disclosures not required by law. Additionally, the government has already made certain Rule 404(b) disclosures and agrees to make any additional disclosures three weeks before trial. The government also agrees to identify what specific conduct it intends to offer at trial as 404(b) evidence. The government does not object to providing notification of any evidence that the government intends to offer pursuant to Rule 404(b) of the Federal Rules of Evidence **three weeks** prior to the scheduled trial.

2. Motion to Compel Disclosure of Evidence Favorable to the Defendant [Dkt. No. 36]

In his motion, the defendant moves for an order compelling disclosure of evidence favorable to the defendant. The government is aware of its obligations under *Giglio v. United States*, 405 U.S. 150 (1972), *Giglio v. United States*, 405 U.S. 150 (1972) and their progeny. Thus, to the extent that evidence exists which is favorable to the defendant and material to either guilt or punishment or is relevant for impeachment purposes, the government will disclose the evidence to the defendant. The government has previously disclosed some evidence favorable to the defendant within its possession. Further, the government will continue to provide evidence favorable to the defendant promptly and on an on-going basis as the government discovers it. Finally, the government objects to the extent, if any, that this motion goes beyond the requirements of *Brady*, *Giglio,* or their progeny.

With regard to promises or agreements between the government and its witnesses and information regarding prior convictions of prospective witnesses. The government will agree to provide such records **fourteen (14) days** prior to trial. However, the

government declines to provide any such information with respect to persons that the government will not call as witnesses because such request is beyond the scope of *Brady*, *Giglio,* and the rules of discovery.

3. Motion for Discovery and Inspection
[Dkt. No. 37]

In his motion, the defendant moves for an order compelling the government to disclose materials pursuant to Federal Rules of Criminal Procedure. As noted above, on January 22, 2020, the government provided disclosures in compliance with Rule 16 and provided further disclosures not required by law. The government understands its continuing obligations with respect to discovery. Notwithstanding the above-recognized obligations, the government objects to any of the defendant's requests for discovery that exceed any constitutional or statutory rule.

4. Motion for Early Disclosure of Jencks Act Material
[Dkt. No. 38]

In his motion, the defendant moves for an order requiring the government to submit Jencks Act materials to the defendant at least one week prior to the commencement of the trial. The government objects to the defendant's motion for early disclosure of Jencks Act materials in advance of trial. While the government has already disclosed numerous Jencks statements, and may choose to continue to disclose Jencks materials well in advance of trial, the government objects to any Court-ordered disclosure of "early" Jencks evidence. It has been consistently held in this Circuit and District that the United States may not be required to make pretrial disclosures of Jencks material. *Finn v. United States*, 919 F.Supp. 1305, 1315 (D. Minn. 1995); *see also United States v. Ben M. Hogan, Co.*, 769 F.2d 1293,

1300 (8th Cir. 1985); *United States v. White*, 750 F.2d 726 (8th Cir. 1984). Accordingly, the government objects to any court-ordered disclosure of such statements prior to witnesses' testimony.

As this Court knows, in this District the U.S. Attorney's Office has long had a policy of voluntarily disclosing Jencks Act material at least three days before trial—often much earlier. The government also typically discloses interview memorandum and other agent reports as part of its Jencks Act disclosures, even though Eighth Circuit law makes clear that such materials are generally not considered Jencks Act material. It is in the government's interest to provide such early and broad disclosures. In fact, in this case, the government has already disclosed substantial Jencks Act materials and intends to disclose the remaining Jencks materials at least three days before trial, pending a reciprocal agreement to do so by the defendant. However, the government objects to any such Court-ordered disclosures and the Court should deny defendant's motion insofar as the motion goes beyond what the law requires.

5. Motion to Suppress Evidence Obtained as a Result of Search and Seizure [Dkt. No. 39]

In his motion, the defendant seeks suppression of all evidence obtained pursuant to the execution of a search warrant for his Facebook account on October 17, 2019. Law enforcement did not violate defendant's rights and thus suppression of evidence is unwarranted. Defendant does not specify the basis under which he seeks to suppress the search warrants or any legal support in his motion other than a general violation of his Fourth Amendment rights, suggesting the warrants were issued without a sufficient

showing of probable cause in the supporting affidavits and were so deficient that they could not be relied upon in good faith. Regarding the search warrants, the defendant has requested and the United States intends to offer only the search warrant for a four-corner review at the February 28, 2020, motions hearing without witness testimony. After submitting the search warrant, the government will argue with respect to probable cause and seek an opportunity to submit a memorandum of law concerning the defendant's arguments that arise at the time of the hearing.

6. Motion to Suppress Statements, Admissions, and Answers [Dkt. No. 40]

In his motion, the defendant moves to suppress statements provided to law enforcement on September 24, 2019. The defendant claims that his statements were made without compliance with *Miranda v. Arizona*, 384 U.S. 436 (1966).

Presently, the government intends to offer the testimony of Special Agent Kyle Gregory of the Federal Bureau of Investigation if defendant persists with his motion to suppress statements. At the conclusion of the hearing, the government will respectfully request that the Court deny the defendant's motion to suppress statements made to law enforcement on September 24, 2019.

The defendant also seeks to suppress any statements made during tribal court proceedings on similar grounds. However, the only statement the government is aware of at this time is defendant's guilty plea entered in tribal court proceedings on November 18, 2019, and the defendant does not identify any factual issues regarding that plea. Rather, based on the defendant's motion the challenge seems to be whether the use of that plea in

the instant case is legally appropriate. First, "[t]he Indian Civil Rights Act of 1968 (ICRA), which governs tribal court proceedings, accords a range of procedural safeguards to tribal court defendants 'similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment.'" *United States v. Bryant*,---U.S.---, 136 S. Ct. 1954, 1956, 195 L. Ed. 2d 317 (2016) (citations omitted) (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978). "The Bill of Rights, including the Sixth Amendment right to counsel, therefore, does not apply in tribal-court proceedings." *United States v. Bryant* at 1962 (citations omitted). "Therefore, the use of those convictions in a federal prosecution does not violate a defendant's right to due process." *Id.* at 1966. To the extent the defendant is arguing that his Sixth and Fifth Amendment rights under the constitution are triggered as a criminal defendant appearing in tribal court, as thoroughly detailed in *United States v. Bryant*, the Court plainly stated that neither the Sixth Amendment nor Fifth Amendment apply to tribal court proceedings. *Id.* at 1962 (citations omitted).

Therefore, because the government believes this is purely a legal dispute and not a factual issue related to his guilty plea in tribal court, the government does not intend to provide a witness regarding this matter unless directed to do so by the Court.

Dated: February 19, 2020.

Respectfully Submitted,

ERICA H. MacDONALD
United States Attorney

s/Gina L. Allery

BY: GINA L. ALLERY
Special Assistant U.S. Attorney
Attorney ID No. 485903 (D.C.)