

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 19-342(2) (ECT/LIB)

UNITED STATES OF AMERICA,

Plaintiff,

v.

**GOVERNMENT’S RESPONSE TO  
DEFENDANT’S PRETRIAL MOTIONS**

SHALAINA STAR STATELY,

Defendant.

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.

**1. Motion for Disclosure of 404(b) Evidence  
[Dkt. No. 41]**

In her 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 as noted in response to the co-defendant’s motion for disclosure of 404(b) evidence (Dkt. No. 50), the government 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 *Brady* and *Giglio* Evidence**  
**[Dkt. No. 42]**

In her 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 to Suppress  
[Dkt. No. 43]**

In her motion, the defendant moves to suppress evidence of her guilty plea in the Red Lake Nation Tribal Court on October 31, 2019. However, 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 her 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 her 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.

**4. Motion to Retain Agents' Notes**

**[Dkt. No. 44]**

In her motion, the defendant moves for an order requiring any law enforcement agent, including any confidential informant, involved in the investigation in the above-entitled matter to retain and preserve their rough notes generated in the course of the investigation. The government does not object to requiring the law enforcement officials involved in the investigation of this case to retain and preserve their rough notes and the government agrees to direct its agents to retain their rough notes.

However, the United States objects to any order concerning the disclosure of rough notes. Rough notes are not considered statements within the meaning of the Jencks Act, 18 U.S.C. § 3500. *United States v. Redding*, 16 F.3d 298, 301 (8th Cir. 1994) (concluding that rough notes are not a statement of witness as there was no evidence witness signed, adopted or approved of notes); *United States v. Shyres*, 898 F.2d 647, 657 (8th Cir. 1990) (defendant not entitled to discover government agents' general notes from witness interviews). Nor are agent rough notes generally discoverable as a "statement" of the agent. *See United States v. Simtab*, 901 F.2d 799, 808-09 (9th Cir. 1990) (defendant not entitled to discover testifying agents' destroyed rough notes of investigations because Jencks Act

material when merely represented pieces of information put in writing to refresh memory); *United States v. Williams*, 875 F.2d 846, 853 (11th Cir. 1989) (defendant not entitled to discover agents' personal notes, contact sheets, witness lists, summaries of non-testifying witnesses' statements when bulk of material not relevant to subject matter of agents' testimony).

**5. Motion For Discovery Pursuant to Federal Rule of Criminal Procedure 16  
[Dkt. No. 45]**

In her 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.

Dated: February 19, 2020

Respectfully Submitted,

ERICA H. MacDONALD  
United States Attorney

*s/Gina L. Allery*

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