

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

UNITED STATES OF AMERICA

Case No. 4:18cr76-RH/CAS

v.

SCOTT CHARLES MADDOX *et al.*

Defendants.

_____ /

**GOVERNMENT’S MOTION TO APPLY PREVIOUSLY ENTERED
PROTECTIVE ORDER TO DEFENDANT BURNETTE AND COUNSEL**

To facilitate early and comprehensive discovery, the Government previously moved for a protective order regarding voluminous discovery to be provided to Defendants Scott Maddox and Paige Carter-Smith. ECF No. 42. By rough count, there are about 890,442 pages of reports and records and about 70 recordings, several of which are many hours long. As grounds, the Government explained that it intended to provide Defendants Maddox and Carter-Smith with documents including law enforcement agency interview reports which may contain personal identifying information or other confidential information. Much of that material—including material that exceeds the Government’s discovery obligations—consists of sensitive

information regarding witnesses or other uncharged parties, such as personal identifiers, addresses, and phone numbers; private financial information; and confidential and sensitive information developed through investigations of law enforcement and the use of the grand jury. In addition to those justifications, the discovery materials may relate to ongoing investigations. As noted in the Government's previous motion, the purpose of early and thorough disclosures to the defense (beyond Rule 16 and *Brady/Giglio* obligations) is to further the just determination of the case in the most efficient manner possible.

The Court found that a protective order was necessary and appropriate and granted that unopposed motion. The protective order entered provides that all discovery material the United States has produced or will produce to Defendants Maddox and Carter-Smith in discovery shall be reviewed by only (i) the Defendants; (ii) the Defendants' attorney or attorneys of record in this case; (iii) employees or agents of those attorneys; (iv) a photocopying or data processing service to whom it is necessary that the Defendants provide the materials for the purposes of preparation, trial, direct appeal (if any); and collateral attack (if any) of this case; (v) witnesses or potential witnesses; and (vi) experts or investigators assisting in the preparation, trial, direct appeal (if any), and collateral attack (if any) of this case. The protective order further provides that no discovery material, copies of any

discovery material, or the contents thereof shall be provided to any individual or entity or otherwise disclosed except as authorized by the order, as agreed to by the parties, or as further ordered by the Court. ECF No. 47.

On May 8, 2019, a federal grand jury returned a superseding indictment charging Defendant John Thomas Burnette with various offenses, including RICO conspiracy, extortion, honest-services fraud, and false statements to federal officers. ECF No. 54. During Defendant Burnette's initial appearance and arraignment on May 9, 2019, defense counsel requested a June 17, 2019,¹ trial date and requested that the Government provide discovery. Shortly after the hearing, the Government received a written discovery request from Defendant Burnette.

Accordingly, the Government respectfully requests that the Court order that the protective order governing discovery in this matter under Federal Rule of Criminal Procedure 16(d)(1) entered in this case on March 29, 2019, ECF No. 47, apply equally to Defendant Burnette and his counsel, and a hearing on this motion at the Court's earliest convenience.²

¹ The trial of Defendants Maddox and Carter-Smith is scheduled to begin on November 4, 2019.

² Defendant Burnette recently filed a motion to compel discovery; discovery the Government has not refused to produce. Resolution of this motion to extend the previously entered protective order may moot Defendant Burnette's premature motion to compel.

Respectfully submitted on May 14, 2019,

LAWRENCE KEEFE
United States Attorney

ANNALOU TIROL
Acting Chief, Public Integrity Section

/s/s Stephen M. Kunz
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CERTIFICATE OF CONFERENCE

In accordance with the local rules, the undersigned conferred with counsel for Defendant Burnette regarding the relief sought in this motion. Counsel for Defendant Burnette objects to the relief sought in this motion.

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

LOCAL RULE 7.1(F) CERTIFICATE

I certify that this paper contains 517 words, per Microsoft Word's word count, which complies with the word limit requirements set forth in Local Rule 7.1(F).

/s/Stephen M. Kunz

STEPHEN M. KUNZ

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA,

vs.

4:18CR-76-RH

SCOTT CHARLES MADDOX,
JANICE PAIGE CARTER-SMITH,
and
JOHN THOMAS BURNETTE.

MOTION TO COMPEL DISCOVERY

COMES NOW, the Defendant, JOHN THOMAS BURNETTE, by and through his undersigned counsel, R. TIMOTHY JANSEN and GREGORY KEHOE and hereby files this Motion to Compel Discovery under Federal Rule of Criminal Procedure 16(a), and further states:

1. The Defendant, JOHN THOMAS BURNETTE, was indicted in the above case and had his arraignment on May 9, 2019 before the Honorable Magistrate Judge Charles A. Stampelos.
2. On May 9, 2019, the Court set trial for June 17, 2019 and ordered other pretrial matters including but not limited to discovery under Federal Rule of Criminal Procedure 16(a). Such discovery was ordered to be produced to the Defendant within seven (7) days of a request from the Defendant. (See Docket Entry 70.)
3. On May 9, 2019, the undersigned made a formal written request of discovery on behalf of the Defendant from the Government. (See Ex. 1.)

4. On May 10, 2019, the undersigned sent an email to Assistant United States Attorney Stephen Kunz requesting expedited discovery and volunteered that the undersigned would travel to his office to get discovery. Assistant United States Attorney Stephen Kunz did not respond the email.
5. On May 10, 2019, the undersigned received an email from Government Prosecutor Peter Nothstein in which he requested the Defendant sign a broad blanket **Protective Order on all discovery**. (See Ex. 2.) In fact, Mr. Nothstein preconditioned our discovery request to the signing of the blanket Protective Order.
6. The undersigned and co-counsel Greg Kehoe have exchanged emails with the Government concerning the wide and overbroad Protective Order requested by the Government. The Defense is concerned such a broad and blanket Protective Order would hamper the Defense or its team and could result in an inadvertent violation of such a broad and encompassing order. In an effort to reach a compromise, the undersigned and Mr. Kehoe and the Government Lawyers had a conference call to attempt to resolve the impasse.
7. On May 14, 2019, the undersigned and co-counsel, Greg Kehoe, had a conference call with Government Lawyers Peter Nothstein, Simon Cataldo and Rosaleen Tobin O’Gara. During the call, the Government refused to limit or rescind portions of the broad blanket Protective Order. The Defense agreed to protect certain areas, namely social security numbers, bank account numbers and any other identifiers to protect such information regarding third parties. The Government acknowledged that portions of discovery could be overnighted if we acquiesced to the blanket Protective Order.

8. While the Defense has attempted to resolve the controversy, the Defense believes the Government needs to give specific identifiable reasons for such a broad blanket **Protective Order on all discovery**. Such broad Protective Orders are not the normal procedure in federal court. The Defendant believes such a blanket and broad ranging Protective Order will hinder the Defense and its team from preparing and locating witnesses/evidence for an expedited trial scheduled for June 17, 2019.
9. The Defendant is entitled to discovery under Rule 16(a) of the Federal Rules of Criminal Procedure. The Government is forcing the Defendant and his counsel to agree to an overly broad and unnecessary Protective Order in order to receive such discovery in the above case.

WHEREFORE, the Defendant, JOHN THOMAS BURNETTE, by and through his undersigned attorney respectfully request this Honorable Court grant the above motion and issue an Order directing the Government to comply with its Rule 16(a) Discovery Requests. Alternatively, the Defendant requests an expedited hearing on the above motion.

Respectfully submitted,

/s/ R. Timothy Jansen
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Attorney for Defendant John Thomas Burnette

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to:

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EX. 1

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May 9, 2019

VIA EMAIL ONLY TO: STEPHEN.KUNZ@USDOJ.GOV

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United States Courthouse
111 North Adams Street, 4th Floor
Tallahassee, Florida 32301

Re: United States of America v. John Thomas Burnette
Case No.: 4:18-cr-00076-RH-CAS-3
Request for Discovery by Defendant

Dear Mr. Kunz:

The Defendant, by and through the undersigned counsel and pursuant to the provisions of Rule 16, Federal Rules of Criminal Procedure, and Rule 26.3, United States District Court Rules, Northern District of Florida, requests the government to permit the Defendant to inspect and copy or photograph, as follows:

1. **Defendant's Statements Under Fed. R. Crim. P. 16(a)(1)(A).** Any written or recorded statements made by the Defendant, or copies thereof, within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the government; that portion of any written record containing the substance of any oral statement made by the Defendant whether before or after arrest in response to interrogation by any person then known to the Defendant to be a government agent which the government intends to offer in evidence at trial; and recorded testimony of the Defendant before a grand jury which relates to the offense charged. The Defendant requests disclosure of the substance of any other relevant oral statement made by the Defendant whether before or after arrest in response to interrogation by any person then known by the Defendant to be a government agent if the government intends to use that statement at trial.

Mr. Stephen Kunz
May 9, 2019
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2. **Defendant's Prior Record Under Fed. R. Crim. P. 16(a)(1)(B).** The Defendant further requests the government to provide such copy of the Defendant's prior record as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

3. **Documents and Tangible Objects Under Fed. R. Crim. P. 16(a)(1)(C).** The Defendant further requests the government to permit the Defendant to inspect and copy or photograph; books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody, or control of the government, and which are material to the preparation of the Defendant's defense or are intended for use by the government as evidence-in-chief at the trial, or were obtained from or belonging to the Defendant.

4. **Reports of Examinations and Tests Under Fed. R. Crim. P. 16(a)(1)(D).** The Defendant further requests to be permitted to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence-in-chief at the trial.

5. **Expert Witnesses Under Fed. R. Crim. P. 16(a)(1)(E).** The Defendant further requests to be permitted to inspect and copy any written summary of testimony the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence. This summary must describe the witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications.

Sincerely,



R. Timothy Jansen

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v.

**SCOTT CHARLES MADDOX
and
JANICE PAIGE CARTER SMITH**

_____/

PROTECTIVE ORDER

This Court has considered, including at the hearing on March 29, 2019, the Government's Unopposed Motion for a Protective Order concerning the disclosure of discovery material to Defendants. In light of the confidential and law-enforcement-sensitive information that has been or may be disclosed to the Defendants, the Court finds that entry of a protective order is necessary and appropriate. Accordingly,

IT IS ORDERED:

1. The Government's unopposed motion, ECF No. 42, is **GRANTED**.
2. Any and all discovery material the United States has produced or will produce to the Defendants in discovery shall be reviewed by only (i) the Defendants; (ii) the Defendants' attorney or attorneys of record in this case; (iii) employees or agents of those attorneys; (iv) a photocopying or data processing service to whom it

is necessary that the Defendants provide the materials for the purposes of preparation, trial, direct appeal (if any); and collateral attack (if any) of this case; (v) witnesses or potential witnesses; and (vi) experts or investigators assisting in the preparation, trial, direct appeal (if any), and collateral attack (if any) of this case. No discovery material or copies of any discovery material shall be provided to any individual or entity except as provided herein, as agreed to by the parties, or as further ordered by the Court. Nor shall the contents of any discovery material be disclosed, in any other manner, to any individual or entity except as provided in this Order, as has been agreed by the parties, or as further ordered by the Court.

3. Defendants shall use discovery material and its contents solely for the preparation, trial, direct appeal (if any), and collateral attack (if any) of this case and for no other purpose whatsoever. No additional copies of any discovery material shall be made except as necessary for those purposes. Before first disclosing discovery material or its contents to any of the individuals or entities listed above, the Defendants or their attorneys of record must give to the individual or entity a copy of this Order and maintain a copy signed and dated by the individual or a representative of the entity until such time as all appeals in this matter (if any) are concluded.

4. The parties shall comply with Federal Rule of Criminal Procedure 49.1 with respect to the public filing or use of any discovery material containing

personally identifiable or sensitive information, including: (1) Social Security numbers, (2) names of minor children, (3) dates of birth, and (4) financial account numbers. *See* Fed. R. Crim. P. 49.1. The parties shall also apply the requirements of Rule 49.1 when showing any discovery material containing personally identifiable or sensitive information to any third-party.

5. Should the Defendants, their attorneys of record, or any of the other individuals or entities listed above find any material inadvertently produced by the United States that is marked as classified, they shall immediately double-seal the material and all copies of the material, inform the United States of such inadvertent disclosure, and make arrangements for the secure return of such material to the United States.

6. At the request of the Government, the Defendants shall return all copies of material that were inadvertently produced in discovery.

7. Within 60 days following the conclusion of these proceedings, or any direct appeal (if any) from or collateral attack (if any) upon these proceedings, the discovery material disclosed by the United States and any duplicates made for the preparation, trial, direct appeal (if any), or collateral attack (if any) of this case shall be returned to the United States or destroyed by the Defendants, unless the Court (or Government) gives specific written permission for an exception to this requirement.

8. This Order also applies to any and all individuals to whom the Defendants, pursuant to this Order, show or disclose the contents or substance of any material produced to them by the United States. By signing and dating a copy of this Order, any person or entity that receives copies of any material produced, or to whom the contents of such material is otherwise disclosed, submits himself, herself, or itself to the jurisdiction of this Court for all purposes, including sanctions or contempt for violation of this Order.

SO ORDERED on March 29, 2019.

s/Robert L. Hinkle

United States District Judge

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UNITED STATES OF AMERICA

Case No. 4:18cr76-RH/CAS

v.

SCOTT CHARLES MADDOX *et al.*

Defendants.

_____ /

ORDER

This Court has considered, without hearing, the Government's motion to apply a previously entered protective order to Defendant John Thomas Burnette. In light of the confidential and law-enforcement-sensitive information that has been or may be disclosed to Defendant John Thomas Burnette and counsel, the Court finds that extension of the protective order is necessary and appropriate. Accordingly,

IT IS ORDERED:

1. The Government's motion, ECF No. 76, is GRANTED.
2. Any and all discovery material the United States has produced or will produce to Defendant John Thomas Burnette and counsel shall be governed by the protective order entered in this matter on March 29, 2019, ECF No. 47.