

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
MICHAEL ARTHUR GIRON, )  
a/k/a MICHAEL GERON, )  
)  
Defendant. )  
)

No. 1:17-CR-00031-DLH

**DEFENDANT GIRON’S OBJECTIONS TO UNITED STATES MAGISTRATE JUDGE  
CHARLES S. MILLER’S ORDER RE DEFENDANT GIRON’S MOTION FOR THE  
SEARCH AND THE DISCLOSURE OF PARTICULARIZED BRADY EXCULPATORY  
EVIDENCE (DOCKET NO. 81)**

COMES NOW Defendant Michael Arthur Giron, by and through counsel Peter Schoenburg of Rothstein Donatelli LLP and Timothy Lohraff of the Law Offices of Timothy R. Lohraff pursuant to Federal Rule of Criminal Procedure 59(a) and submits the following objections to the Order entered by United States Magistrate Judge Charles S. Miller denying Defendant Giron’s Motion for the Search and the Disclosure of Particularized Brady Exculpatory Evidence Revealing Entrapment or Factual Innocence and Related Giglio Impeachment Evidence. See Docket No. 93.

- I. Defendant Giron Reasserts and Thus Preserves the Arguments Made in His Original Motion That The “Prosecution Team” For Brady/Giglio Purposes Should Be Interpreted Broadly to Include Members of All Law Enforcement Agencies and Any Private Security Firms Who Were Involved in The Coordinated Response to The DAPL Protests.**

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Defendant Giron reasserts his argument that the Government has a duty to obtain and disclose the materials requested in paragraphs A-F of its original motion, see Docket No. 81, because the law enforcement agencies and private security personnel named therein are a part of the “prosecution team,” and thus the Government has a duty to learn of the requested information pursuant to Kyles v. Whitley, 514 U.S. 419, 438 (1995) (the prosecution has a “duty to learn of any favorable evidence known to the others acting on the government's behalf in the case....”).

The law enforcement operation and subsequent investigation of individual water protectors who participated in the Dakota Access Pipeline (DAPL) protests demonstrates a coordinated effort between various law enforcement agencies and private security personnel throughout the Government’s response to the DAPL protests. As established in the briefing of this issue, see generally Docket Nos. 81 and 91, the law enforcement response to the DAPL protests was heavily intertwined with other law enforcement agencies including: collaboration between Morton County Sheriff’s Office, BCI, the U.S. Attorney’s Office, and other law enforcement with private security company TigerSwan and other contractors to: 1) access their surveillance live feeds. See Docket No. 91-1; 2) jointly arrest protesters on October 27. See Docket No. 91-2; 3) engage in mutual information-sharing<sup>1</sup>; 4) participate in meetings to gather “evidence collected for prosecution” and coordinate for “ongoing operations” See Docket No. 81-4, at 4; and 5) apparently, obtain military-grade equipment for use in the October 27 operation<sup>2</sup>. Moreover, Stutsman County Sheriff Chad

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<sup>1</sup> See Docket No. 91-3, p. 2 (“Met with Sheriff Denzinger [sic]. Agreed to sharing of information”); Docket No. 91-4 (detailing coordination and information sharing between TigerSwan and law enforcement including Mercer County Sheriff Dean Danzeisen); See Docket No. 81-1, p. 3 (indicating TigerSwan’s advance knowledge of October 27 operation).

<sup>2</sup> See Docket No. 91, Exhibit E, p. 5 (stating “2 Computers 1 for LE and 1 for OP have been shipped”; “2 LRADS have arrived”; “Body Armor ships tonight”; and Still awaiting FLIR”).

Kaiser (DAPL Operations Local Deputy Unified Commander) was directly employed by TigerSwan. See Docket No. 81-3.

The order denying Defendant Giron's motion errs in construing the definition of "prosecution team" too narrowly. See Docket No. 93 ("the government's obligation to search for Brady/Giglio material...is limited to the information in its possession as well as those who may have acted, or can be said to have acted on its behalf, if there was a joint effort with other law enforcement agencies to investigate and prosecute the defendant for the acts he is charged with committed on October 27, 2016."). The various partnerships and coordinated efforts between law enforcement and private security agencies, as established above, demonstrate that the agencies and private security firms were acting on behalf of the Government in conducting some of the most basic law enforcement tasks throughout the DAPL protests. They engaged in substantial amounts of information sharing, collected evidence for subsequent prosecution, shared personnel and physical resources, and even allowed private security personnel to assist in the arrest of citizens. As such, their participation in this large-scale law enforcement operation renders them a part of the prosecution team for all cases arising out of the DAPL incidents and subjects their materials to disclosure by the Government pursuant to Brady v. Maryland, 373 U.S. 83 (1963).

**WHEREFORE**, pursuant to Federal Rule of Criminal Procedure 59(a), Defendant Giron sets out his objections to the order of United States Magistrate Judge Charles S. Miller for the above stated reasons as well as all other grounds raised in the original motion. See Docket No. 93. Consequently, Defendant Giron respectfully requests this Court to overrule the order in Docket No. 93 and require the Government to make the disclosures originally requested by Defendant Giron in his original motion. See Docket No. 81.

Respectfully submitted,

**ROTHSTEIN DONATELLI LLP**

By: /s/ Peter Schoenburg

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*-and-*

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF filing system which will send notification of such filing to all parties associated with this case.

/s/ Peter Schoenburg

Peter Schoenburg, Esq.