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February 12, 2024

Hon Bernard E. DeLury, P.J.Cr.
Atlantic County Criminal Courthouse
4997 Unami Blvd
Mays Landing, NJ 08330

Re: State v Peter Byron et al
Ind. 23-07-109-S

Dear Judge DeLury:

Kindly accept this letter brief in lieu of a more formal brief in support of Defendant's motion to require prosecution to reveal any agreement between any government agent and any state witness.

Defendant moves for an Order compelling the prosecution to disclose the existence and substance of any agreements between any witness or other person in this case and any officer or agent of the Federal or State Government. Defendant's request includes, but is not limited to, the following:

(1) All writings, recordings and photographs which relate in any way to offers, inducements or consideration made to any persons in an effort, whether successful or not, to obtain testimony in this case.

- (2) All writings recordings and photographs relating to offered "bargains," whether consummated or not, with person connected directly or indirectly with this case.
- (3) All writings, recordings and photographs relating to an offer of immunity or other special consideration made to persons directly or indirectly connected with this case.
- (4) Without limiting the generality of the foregoing, defendant specifically requests that the prosecution disclose any bargains reached with any witness or prospective witness in this case, including but not limited to:
- a. The substance of any "deal" or understanding reached between agents or officers of the Federal or State Government and potential witnesses in this case;
 - b. The date that the bargains were reached;
 - c. The date on which the negotiation of such "deals" were undertaken;
 - d. The proffer, if any, made by the witness as to information he could provide the Government, including the date that the proffer was made;
 - e. Any debriefing notes and summaries obtained by the Government as a result of such negotiations; and
 - f. The results of any polygraph examination given to witnesses, pursuant to such agreements.
- (5) Defendant further requests all of the same information as requested in the above paragraph regarding any deal which was discussed with, or offered, to any individual by the Government, but for whatever reason not consummated.
- (6) Defendant further requests the same information as requested in paragraph 4 above with regard to any bargain reached between the Government and any person connected with this case but for some reason ultimately voided prior to this date.

MEMORANDUM IN SUPPORT

In Brady v. Maryland, 373 U.S. 83 (1963), the Supreme Court of the United States interpreted the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States as establishing that the defendant in a criminal case has a right to obtain evidence favorable to the accused. The United States Supreme Court has further held that the Government may not suppress favorable evidence that is material to the credibility of one of its witnesses. Giglio v. United States, 405 U.S. 150 (1972). The prosecutorial suppression of an agreement with or promise to a material witness in exchange for that witness' testimony violates a criminal defendant's due process rights.

The law is well settled in the Giglio context: "[C]ross-examination of a witness in matters pertinent to his credibility ought to be given the largest possible scope." United States v. Partin, 493 F.2d 750, 763 (5th Cir. 1974), quoting McConnell v. United States, 393 F.2d 404, 406 (5th Cir. 1968). This is especially true where a prosecution witness has had prior dealings with the prosecution or with other law enforcement officials, so that the possibility exists that his testimony was motivated by a desire to please the prosecution in exchange for the prosecutor's actions in having some or all of the charges against this witness dropped. United States v. Myer, 556 F.2d 245, 248-249 (5th Cir. 1977). Thus, in addition to the basic questions regarding the bargain, the defendant seeks to have the prosecution disclose discussions with the state witnesses concerning deals, whether or not all of the potential benefits to those witnesses were ultimately agreed upon and reduced in a bargain. It is also requested that the prosecution reveal any prior deal that a witness has had with a Government agency, whether local, state or federal, in any other case. These matters are particularly relevant to the witness' bias as it reflects his willingness, desire and experience in cooperating with the Government.

The right of the defendant to cross-examine with regard to the witness' credibility was broadly enforced in United States v. Onori, 535 F.2d 938 (5th Cir. 1976). Correspondingly, the obligation of the Government to disclose any previous deal, any present deal or any prospective deal, whether reduced to the traditional plea agreement or not, should also be broadly viewed:

Indeed, it is so important that the defendant is allowed to "search" for a deal between the Government and the witness, even if there is no hard evidence that such a deal exists ... what tell, of course, is not the actual existence of a deal but the witness' belief or disbelief that a deal exists. United States v. Onori, 535 F.2d at 945.

In the present case, the prosecutor has provided multiple statements from various witnesses, who, under the State's own factual contentions, engaged in acts that the State now

allege amount to elements of criminal offenses. Due to the expansive nature of the factual allegations contained in the Indictment and the number of persons involved in this case, it is vitally important that the defendant's due process rights be protected through the complete disclosure of all deals, understandings and arrangements between the Government and persons connected with this case.

For these reasons, this Court should issue an order compelling the prosecution to reveal any agreement between any government agent and any state witness.

Respectfully,



Eric R. Shenkus
Deputy Public Defender