

FILED

STATE OF MINNESOTA

APR 09 2010

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CRIMINAL COURT DIVISION

COUNTY OF RAMSEY

RAMSEY DISTRICT COURT

State of Minnesota,

Plaintiff,

ORDER

v.

Monica Rachel Bicking,	62-CR-08-10515
Robert Joseph Czernik,	62-CR-08-10338
Garrett Scott Fitzgerald,	62-CR-08-10335
Luce GuillenGivins,	62-CR-08-10342
Erik Charles Oseland,	62-CR-08-10345
Nathanael David Secor,	62-CR-08-10365
Max Jacob Specktor,	62-CR-08-10336
Erin Chase Trimmer,	62-CR-08-10370

Defendants.

The above-entitled matters came on for a hearing on February 2, 2010, before the Honorable Teresa R. Warner, District Court Judge, 1070 Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102.

Heidi Westby, Esq. and Derek Fitch, Esq., Assistant Ramsey County Attorneys, 50 West Kellogg Blvd., Suite 315, St. Paul, MN 55102, appeared on behalf of the State.

Bruce Nestor, Esq., 3547 Cedar Avenue South, Minneapolis, MN 55407, appeared on behalf of Defendant, Monica Bicking, who was present.

Robert Travis Snider, Esq., Snider Law Firm, 1005 W. Franklin Avenue, Suite 3, Minneapolis, MN 55405, appeared on behalf of Defendant, Robert Czernik, who was present.

John C. Bachman, Esq., John Bachman Law Office, P.O. Box 477, Eau Claire, WI 54702, and Rachel E.B. Lang, Esq., 940 Charles Avenue, St. Paul, MN 55104, appeared on behalf of Defendant, Garrett Fitzgerald, who was present.

Jordan Kushner, Esq., Suite 2446, 431 South Seventh Street, Minneapolis, MN 55415, appeared on behalf of Defendant, Luce GuillenGivins, who was present.

Ted Dooley, Esq., Ted Dooley Law Office, Suite 100 Park Building, 1595 Selby Avenue, St. Paul, MN 55104, and Peter Nickitas, Esq., 431 South Seventh Street, Suite 2446, P.O. Box 15221, Minneapolis, MN 55415, appeared on behalf of Defendant, Erik Oseland, who was present.

Robert Kolstad, Esq., 1005 W. Franklin Avenue, Suite 3, Minneapolis, MN 55405, appeared on behalf of Defendant, Nathanael Secor, who was present.

Larry Leventhal, Esq., 319 Ramsey Street, St. Paul, MN 55102, appeared on behalf of Defendant, Max Specktor, who was present.

Barbara Nimis, Esq., 350 River Road, P.O. Box 50812, Mendota, MN 55150, appeared on behalf of Defendant, Erin Trimmer, who was present.

At the February 2, 2010 hearing, this Court heard a number of motions. This order addresses Defendants' Motion to Compel Disclosure of exhibits and witnesses that the state will present at trial, and Defendants' Supplemental Motion to Compel Discovery of payment information to FBI informants.

Based upon the files, records, and proceedings herein:

IT IS HEREBY ORDERED that:

1. Counsel for all parties shall indicate on the witness lists those witnesses likely to testify at trial. Counsel for all parties shall indicate on the exhibit lists those exhibits likely to be introduced at trial. The parties must file and serve exhibit and witness lists by August 20, 2010;
2. The State must obtain and provide to Defendants the dates of any payments made by the FBI to Andrew Darst and Brandon Darby. The State must disclose any written

Motion to Compel Disclosure of Exhibits and Witnesses

Defendants seek an order requiring the state to specifically identify the documents and evidence that will be introduced at trial, and to provide a list of witnesses who will actually be called to testify at trial. Defendants seek this information within 60 days of this order. Rule 9, subd. 1(1) of the Minnesota Rules of Criminal Procedure requires both the prosecution and defense to disclose the names and addresses of witnesses who may be called at trial and the names and addresses of anyone else with information relating to the case. The attorneys in these matters are experienced trial lawyers who know that under this rule, the witness lists could contain thousands of names. The rule requires disclosure of anyone who may be called to testify. In reality, the attorneys know that every disclosed witness will not be called at trial, and counsel shall indicate on the witness list those witnesses likely to testify at trial. Counsel shall indicate on the exhibit list those exhibits likely to be introduced at trial. To ensure that the parties have enough time to prepare for the October 25, 2010 trial, witness and exhibit lists must be disclosed by August 20, 2010.

Supplemental Motion to Compel Discovery of Payment Information

The State has previously disclosed information regarding payments made to witnesses.

Defendants filed this supplemental motion seeking the following additional information:

- A. Copies of all letters, correspondence, or email sent to the Office of the FBI General Counsel prior to August 3, 2009, which request information responsive to the demands for disclosure made by the Defendants.
- B. Any Memorandum of Understandings, written contracts or agreements, or other documents between the FBI or the Ramsey County Sheriff's Office, and any witness that the State of Minnesota intends to call at trial of this matter, setting forth the terms of compensation to be paid to any witness, including but not limited to Brandon Darby, Andrew Darst, and Christopher Dugger.
- C. The date of any payments made by the FBI to Andrew Darst and Brandon Darby.

- D. The manner of any payments made to any witness, including but not limited to Brandon Darby, Andrew Darst, and Christopher Dugger, stating whether such payment was made in cash or by check, setting forth any tax deductions, and including copies of any checks or other documents evidencing such payments.
- E. Any information pertaining to any payments made on or after October 13, 2009, through and including trial of this matter, to be paid to any witness, including but not limited to Brandon Darby, Andrew Darst, and Christopher Dugger. This request specifically seeks information pertaining to any lump sum payment that may be promised to any witness at a future date, including but not limited to Brandon Darby, Andrew Darst, and Christopher Dugger, and the terms under which such payment shall be made.
- F. Any and all documents submitted to the Special Agent in Charge (“SAC”) of the FBI who was responsible for authorizing payments to Brandon Darby and/or Andrew Darst, pursuant to the FBI Manual of Investigative Operations (MIOG) and FBI Manual of Administrative Operations and Procedures (MAOP).

Rule 9.01 of the Minnesota Rules of Criminal Procedure requires the prosecution to disclose, on request of defense counsel, all information related to the case that is in the prosecution’s possession or control. *Minn.R.Crim.P. 9.01, subd. 1*. The prosecuting attorney’s obligations under this rule extend to material and information in the possession or control of members of the prosecution staff or any others who have participated in the investigation and reported to the prosecuting attorney’s office. *Minn.R.Crim.P. 9.01, subd. 1(7)*. The trial court has broad discretion in rulings on discovery and evidence. *State v. Bakken*, 604 N.W.2d 106, 110 (Minn.App.2000). In a criminal case, the trial court must recognize that the defendant has a constitutional right to be afforded a meaningful opportunity to present a complete defense. *Id.* The trial court may exercise its discretion and require the prosecution to disclose relevant material and information if the defendant shows that the information may relate to the guilt or innocence of the defendant or negate the guilt or reduce the culpability of the defendant as to the offense charged. *Minn.R.Crim.P. 9.01, subd. 2(3)*.

A. Defendants seek copies of all communications sent by the State to the Office of the FBI General Counsel prior to August 3, 2009 that are responsive to Defendants’ demands for

disclosure. Defendants want this information because they believe the State has not been timely in seeking disclosure of information from the FBI. The State denies Defendants assertion that the State has not been aggressively seeking disclosure of information from the FBI and objects to the request on the grounds that the information sought is irrelevant. Defendants have made no showing that the State has been less than diligent in seeking discovery from the FBI. The information sought is not relevant to the proceedings and Defendants' request is denied.

B. Defendants seek any written contracts or agreements between law enforcement agencies and trial witnesses regarding witness compensation. The State agrees that this information would be discoverable, but asserts that it does not exist. The State is under a continuing duty to disclose evidence. If the State determines that any written contracts or agreements regarding witness compensation exist, the State must disclose this information.

C. Defendants seek disclosure of the dates of any payments made by the FBI to Andrew Darst and Brandon Darby. The State agrees that this information is discoverable. The State must obtain and provide to Defendants the dates of any payments made by the FBI to Andrew Darst and Brandon Darby.

D. Defendants seek disclosure of the manner of any payments made to any witnesses, including tax information and any documents containing this information. Defendants argue that this information is relevant to determine whether all income was reported and whether any witnesses committed additional acts of deceit, fraud, and/or perjury. The State has disclosed the amounts paid to witnesses and, with the exception of Andrew Darst and Brandon Darby (addressed in section C above), the dates those payments were made. The State argues that the manner of payment and tax information is personal, not relevant, and not discoverable.

Discovery requests must call for relevant material and must be reasonably specific. *State v. Lynch*, 443 N.W.2d 848, 852 (Minn.App.1989). Discovery rules are not meant to be used for

fishing expeditions. *State v. Hunter*, 349 N.W.2d 865, 866 (Minn.App.1984). Rule 9.01, subd. 1 of the Minnesota Rules of Criminal Procedure sets forth the categories of information the prosecution is required to disclose. The manner of payment and tax information sought by Defendants do not fall into any of these categories. Subdivision 2, section 3, of Rule 9.01 allows this Court to order disclosure of other relevant information if Defendants show it may relate to their guilt or innocence or reduce their culpability as to the offense charged. Defendants have made no showing that the manner of payment and tax information may be related to their guilt or innocence. This information is not relevant and Defendants' request is denied.

E. Defendants seek disclosure of any information pertaining to any lump sum payments that may be promised to any witness at a future date. The State agrees that this information would be discoverable, but asserts that it does not exist. The State is under a continuing duty to disclose evidence. If the State determines that information pertaining to future lump sum payments for witnesses exists, the State must disclose this information.

F. Defendants seek disclosure of any documents submitted, pursuant to FBI manuals, to the Special Agent in Charge of the FBI who was responsible for authorizing payments to Brandon Darby and Andrew Darst. Defendants contend that the potential witnesses in this matter had a strong financial incentive to dramatize and exaggerate the "anarchist threat" in order to keep the flow of money coming. The State argues that this information is not relevant. Defendants have made no showing that any witnesses were dramatizing or exaggerating information in order to keep receiving payments. This information is not relevant and Defendants' request is denied.

TRW