

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR

Plaintiff,

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION TO
COMPEL PRODUCTION OF
NEVADA DISCOVERY

v.

AMMON BUNDY, JON RITZHEIMER,
JOSEPH O'SHAUGHNESSY, RYAN
PAYNE, RYAN BUNDY, BRIAN
CAVALIER, SHAWNA COX, PETER
SANTILLI, JASON PATRICK,
DUANE LEO EHMER, DYLAN
ANDERSON, SEAN ANDERSON,
DAVID LEE FRY, JEFF WAYNE
BANTA, SANDRA LYNN ANDERSON,
KENNETH MEDENBACH, BLAINE
COOPER, WESLEY KJAR, COREY
LEQUIEU, NEIL WAMPLER, JASON
CHARLES BLOMGREN, DARRYL
WILLIAM THORN, GEOFFREY
STANEK, TRAVIS COX, ERIC LEE
FLORES, and JAKE RYAN,

Defendants.

BROWN, Judge.

This matter comes before the Court on the Motion (#823) to
Compel Production of Nevada Discovery filed by Defendant Dylan

1 - ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION
TO COMPEL PRODUCTION OF NEVADA DISCOVERY

Anderson and on behalf of Defendants Jon Ritzheimer, Shawna Cox, Jason Patrick, Duane Leo Ehmer, Sean Anderson, David Lee Fry, Jeff Wayne Banta, Sandra Lynn Anderson, Kenneth Medenbach, Neil Wampler, Darryl William Thorn, and Jake Ryan (collectively referred to herein as the non-Nevada Defendants).

In their Motion, the non-Nevada Defendants contend they are entitled to the discovery in *United States v. Cliven Bundy, et al.*, No. 2:16-CR-00046-GMN-PAL, in the United States District Court for the District of Nevada in which Defendants Ammon Bundy, Ryan Bundy, Joseph O'Shaugnessy, and Peter Santilli (collectively referred to herein as the Nevada Defendants) are also indicted.¹

The case in the District of Nevada relates to a confrontation in Bunkerville, Nevada, in March and April 2014 between a large group of individuals that included the Nevada Defendants and Bureau of Land Management law-enforcement officers. Discovery in the Nevada case has been made available to the Nevada Defendants. Only the Nevada discovery that the government has determined is relevant to this case has been produced to the non-Nevada Defendants.

"Federal Rule of Criminal Procedure 16 grants criminal defendants a broad right to discovery." *United States v. Stever*,

¹ Blaine Cooper, Brian Cavalier, and Ryan Payne are also indicted in the Nevada case, but they have since entered guilty pleas in this case.

603 F.3d 747, 752 (9th Cir. 2010). To be entitled to discovery of certain information, however, the “defendant must make a threshold showing of materiality, which requires a presentation of facts which would tend to show that the Government is in possession of information helpful to the defense.” *Stever*, 603 F.3d at 752 (quoting *United States v. Santiago*, 46 F.3d 885, 893 (9th Cir. 1995)). “Rule 16 permits discovery that is relevant to the development of a possible defense.” *United States v. Muniz-Jaquez*, 718 F.3d 1180, 1184-85 (9th Cir. 2013)(quoting *United States v. Mandel*, 914 F.2d 1215, 1219 (9th Cir. 1990)).

The non-Nevada Defendants contend they are entitled to all of the discovery generated in the Nevada case because it could lead to the discovery of exculpatory or impeachment evidence that demonstrates the non-Nevada Defendants were not part of the same conspiracy as the Nevada Defendants; it may be relevant to witness interest, bias, or impeachment; and it may constitute material, exculpatory evidence that the government is required to disclose under *Brady v. Maryland*, 373 U.S. 83 (1963). The non-Nevada Defendants agree they will handle that information in compliance with Protective Orders in place in both the District of Oregon and the District of Nevada.

The government, on the other hand, contends the conspiracy alleged in this case that relates to the events at the Malheur National Wildlife Refuge (MNWR) in January and February 2016 is

distinct from the conspiracy alleged in the District of Nevada that relates to the April 2014 events in Bunkerville. The government also contends Defendants' arguments regarding witness bias or impeachment are speculative, and, in any event, the full, voluminous discovery from the Nevada case is not material to the non-Nevada Defendants because the government intends to offer only "extremely limited" evidence regarding the April 2014 events in Bunkerville in order to provide jurors with a coherent and comprehensible story regarding the events at the MNWR. Accordingly, the government contends the non-Nevada Defendants are not entitled to any further discovery from the Nevada case beyond that which the government has already produced.

Assuming only limited evidence regarding the 2014 incident in Bunkerville will be admissible at this trial for the purpose of providing context for particular statements and events that are directly relevant to this trial, the Court concludes the discovery in its entirety as to all of the events in Bunkerville is neither material to nor discoverable by the non-Nevada Defendants in this matter.

Moreover, the non-Nevada Defendants' assertion that the Nevada discovery is material for purposes of witness impeachment or to demonstrate bias is speculative on this record. Defendants have not identified any witness or any aspect of the Nevada discovery that is likely to contain information material to the

defense beyond the general statement that the discovery may implicate government bias against the Bundy family and/or their supporters. In any event, even if that speculative assertion has merit, the Nevada Defendants already have access to that information and presumably would seek to introduce it at trial if relevant in a way that collectively benefits all trial Defendants. Accordingly, the Court concludes Defendants have failed to demonstrate that the Nevada discovery is material to the issue of witness impeachment or bias for the benefit of the non-Nevada Defendants.

To the extent that the Nevada discovery contains *Brady* material pertinent to this case, the government is under a preexisting and continuing obligation to provide that material to the relevant Defendant(s). The non-Nevada Defendants, however, have not made any showing that such material exists and that the government has not produced such material.

The Court notes, nevertheless, that the non-Nevada Defendants are entitled to reasonable discovery of material that is relevant to the limited evidence that the government does intend to introduce regarding the events in Bunkerville. The government, therefore, must provide to the non-Nevada Defendants sufficient discovery for them to determine whether the limited evidence that the government intends to introduce regarding the events in Bunkerville is accurate and materially complete. The

Court, however, cannot determine on this record whether the government has already met this standard through its production of some Nevada discovery to non-Nevada Defendants.

Accordingly, the Court directs the government to review the Nevada discovery to ensure the non-Nevada Defendants have been provided discovery sufficient to permit them to meaningfully assess and, if necessary, to respond to the limited evidence that the government intends to introduce at trial regarding the events in Bunkerville. To the extent that the government determines it must make additional disclosures of Nevada discovery to the non-Nevada Defendants, the Court directs the government to make those disclosures **no later than August 3, 2016**.

CONCLUSION

For these reasons, the Court **GRANTS in part** and **DENIES in part** Defendant Dylan Anderson's Motion (#823) to Compel Production of Nevada Discovery.

IT IS SO ORDERED.

DATED this 22nd day of July, 2016.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge