

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 24-CR-80103-CANNON

UNITED STATES OF AMERICA

v.

DUSTIN SEAN McCABE,

Defendant.

GOVERNMENT'S FIRST RESPONSE TO STANDING DISCOVERY ORDER

The United States hereby files this response to the Standing Discovery Order, having produced records marked with Bates ranges MCCABE_000001 to MCCABE_003149 via USAfx and physical flash drive on October 3, 2024, after conferring with the defense regarding the manner and timing of discovery pursuant to Federal Rule of Criminal Procedure 16.1. Counsel for the Defendant may contact the undersigned Assistant United States Attorney if any portions are missing. This response also complies with Local Rule 88.10 and Federal Rule of Criminal Procedure 16.

- A. 1. Though there are no custodial interviews, recorded interviews and statements made by the defendant related to the subject matter of this case are available (1) at filename "Interview of Dustin McCabe 20210339.WMA" in the folder titled "Audio Interviews," (2) at filename "McCabe followup.WMA" and "McCabe Statement" in the folder titled "Interviews," and (3) at Bates ranges MCCABE_000950 through 000951, MCCABE_001326 through 001332, and MCCABE_001393 through 001396.
2. The government is unaware of any relevant oral statements made by the defendant before or after arrest in response to interrogation by any person then known to the defendant to be a government agent that the government intends to use at trial. That said, the statements listed in Item A.1 above are non-custodial statements given to the United States Coast Guard in connection with an administrative investigation that the government intends to use at trial.

3. No defendant testified before the Grand Jury.
4. The defendant's prior criminal history, if any, will be disclosed upon receipt.
5. Books, papers, documents, data, photographs, tangible objects, buildings or places, within the government's possession, custody or control, which are material to the preparation of the defendant's defense, or which the government intends to use as evidence at trial to prove its case in chief, or which were obtained from or belong to the defendant, may be inspected at a mutually convenient time at: the Office of the United States Attorney, 99 Northeast 4th Street, Miami, Florida, Suite 600. Please call the undersigned to set up a date and time that is convenient to both parties.

The attachments to this discovery response are not necessarily copies of all the books, papers, documents, data, etc., that the government may intend to introduce at trial.

6. There were no physical or mental examinations or scientific tests or experiments performed in connection with this case. To the extent any further analysis, such as DNA analysis, is conducted, the Government will produce the results of such analysis upon receipt.
- B. DEMAND FOR RECIPROCAL DISCOVERY: The United States requests the disclosure and production of materials listed in Section (b) of Local Rule 88.10. This request is also made pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure.
- C. The government will disclose any information or material which may be favorable on the issues of guilt or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963), and *United States v. Agurs*, 427 U.S. 97 (1976).
- D. The government will disclose any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective government witnesses, within the scope of *Giglio v. United States*, 405 U.S. 150 (1972), or *Napue v. Illinois*, 360 U.S. 264 (1959).
- E. The government will disclose any prior convictions of any alleged co-conspirator, accomplice or informant who will testify for the government at trial.
- F. No defendant was identified in a lineup, show up, photo array, or similar identification proceedings other than at the incident location.
- G. The government has advised its agents and officers involved in this case to

preserve all rough notes.

- H. You are hereby on notice that all evidence made available to you for inspection, as well as all statements disclosed herein or in any future discovery letter, may be offered in the trial of this cause, under F.R.E. 404(b) or otherwise (including the inextricably-intertwined doctrine).
- I. The defendant is not an aggrieved person, as defined in Title 18, United States Code, Section 2510(11), of any relevant electronic surveillance that was authorized pursuant to 18 U.S.C. §2516 and 18 U.S.C §2518 and that has been unsealed in accordance with 18 U.S.C §2518.
- J. The government has ordered transcriptions of the Grand Jury testimony of all witnesses who will testify for the government at the trial of this cause.
- K. No contraband is involved in this indictment.
- L. The government does not know of any automobile, vessel, or aircraft allegedly used in the commission of this offense that is in the government's possession.
- M. The government is not aware of any latent fingerprints or palm prints which have been identified by a government expert as those of the defendant.
- N. To date, the government has not received a request for disclosure of the subject matter of expert testimony that the government reasonably expects to offer at trial.
- O. The government will make every possible effort in good faith to stipulate to all facts or points of law the truth and existence of which is not contested and the early resolution of which will expedite trial. These stipulations will be discussed at the discovery conference. The government is available for a pretrial discovery conference as required by Rule 16.1 of the Federal Rules of Criminal Procedure and Local Rule 88.10(o).

[Remainder of Page Intentionally Left Blank]

The government is aware of its continuing duty to disclose such newly discovered additional information required by the Standing Discovery Order, Rule 16(c) of the Federal Rules of Criminal Procedure, *Brady*, *Giglio*, *Napue*, and the obligation to assure a fair trial.

Respectfully submitted,

MARKENZY LAPOINTE
UNITED STATES ATTORNEY

Date: October 6, 2024

By: /s/ Zachary A. Keller
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 6, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document and the referenced discovery has been served on counsel of record in the manner described herein.

/s/ Zachary A. Keller
ZACHARY A. KELLER
Assistant United States Attorney