

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

CASE NO. 24-CR-80103-CANNON

UNITED STATES OF AMERICA

v.

DUSTIN SEAN McCABE,

Defendant.

**UNOPPOSED MOTION FOR A PROTECTIVE ORDER AUTHORIZING
THE DISCLOSURE OF PII AND SENSITIVE VICTIM INFORMATION**

The United States of America moves this Court unopposed to enter a protective order regarding discovery to be provided to DUSTIN SEAN McCABE (the “Defendant”). This discovery contains personal identification information (“PII”) of the victim in this case, M.C.G.F., as well as other sensitive information such as incident photos depicting M.C.G.F.’s physical condition, that merit this Court entering the attached Proposed Order in this matter. The United States certifies that the parties have discussed this matter in good faith as required by Local Rule 88.9. The Defendant does not oppose this motion or the requested relief. In support of this motion, the United States submits the following:

1. On August 22, 2024, a grand jury sitting in the Southern District of Florida returned an Indictment charging the Defendant with one count of seaman’s manslaughter, in violation of Title 18, United States Code, Section 1115, one count of making a false statement or representation to a federal agency, in violation of Title 18, United States Code, Section 1001(a)(2), and three counts of wire fraud, in violation of Title 18, United States Code, Section 1343. DE 3.

2. The Defendant was arraigned on the charges on September 20, 2024, DE6, and United States Magistrate Judge William Matthewman issued the paperless Standing Discovery Order (“SDO”) that same day, requiring the United States to disclose to the Defendant materials

covered by the SDO. (*Id.*). In particular, the SDO requires the United States to provide the Defendant with documents and other items material to the preparation of the defense case, a requirement that is largely identical to the disclosure obligations imposed on the United States by Federal Rule of Criminal Procedure 16(a)(1)(E).

3. This case involves an incident aboard a vessel that the Defendant owned and operated which led to the vessel's propeller killing the victim M.C.G.F. The evidence to prove that crime primarily consists of witness interviews that include family members and other eyewitnesses, as well as autopsy records for the deceased. These materials include not only PII of the victim and other eyewitnesses but also sensitive and graphic photographs of the deceased immediately after she was killed.

6. Pursuant to the SDO and the United States' discovery obligations, the United States seeks to disclose to defense counsel records and documents that contain PII and other sensitive information. Though some of the documents and files could be redacted, the full redaction of the sensitive material in the discovery would be impracticable in this case, as it would not provide the defense sufficient information about the facts without necessitating their physically appearing to review unredacted copies of the reports relating to this matter. This Motion and its accompanied Proposed Order seek to achieve the purpose of prompt disclosure of discovery by the government to the Defendant while simultaneously protecting the privacy rights of the victim and their family members.

7. Accordingly, in order to ensure the protection of the above-described information and to prevent the disclosure of this information to other individuals, the United States requests that the Court enter the attached proposed protective order regulating disclosure of discovery as follows:

a. Counsel of record for the Defendant shall hold the discovery materials in strict confidence, disclosing such materials to counsel's client, staff, investigators, and witnesses only to the extent counsel believes is necessary to assist in the defense of this matter;

b. Counsel of record for the Defendant shall advise any person to whom the discovery materials are disclosed that, pursuant to the attached Proposed Protective Order, the information must be held in strict confidence and the recipient may not further disclose or disseminate the information without defense counsel's express consent;

c. Counsel of record for the Defendant shall obtain a written certification from each person to whom the discovery is disclosed, in which the recipient (1) acknowledges these restrictions as set forth in the Protective Order of the Court, and (2) agrees that he or she will not disclose or disseminate the information without express consent of defense counsel. Counsel shall keep a copy of each certification to identify the individuals who received the discovery and the date on which such information was first disclosed; and

d. Counsel of record agrees that, upon conclusion of the above-captioned case¹, copies of the discovery disclosed by the United States shall be destroyed or returned to the United States.

ANALYSIS AND MEMORANDUM OF LAW

A trial court "can and should, where appropriate, place a defendant and his counsel under enforceable orders against unwarranted disclosure of the material which they may be entitled to inspect." *Alderman v. United States*, 394 U.S. 165, 185 (1969); *see generally United States v. Anderson*, 799 F.2d 1438, 1441 (11th Cir. 1986) (noting "courts often order[] that discovery information will remain private."). Federal Rule of Criminal Procedure 16(d)(1) authorizes the

¹ "Conclusion of the above-captioned case" means the period at the conclusion of any appellate and Section 2255 proceedings; if any, or upon expiration of the deadline for filing appellate or Section 2255 proceedings.

Court to issue the proposed protective order by permitting courts to deny, restrict, or defer pre-trial discovery when a party can demonstrate the need for these types of actions. *See* Fed R. Crim. P. 16(d)(1). The United States does not seek to deny, restrict, or defer the disclosure of information required by Rule 16 or the SDO. Instead, the United States only seeks to facilitate discovery, while protecting against the improper disclosure or use of any individual's personal identification information and other sensitive material. The proposed protective order would have no effect on the Defendant's ability to prepare his defense and would protect the personal identification information of other individuals, including witnesses. *See, e.g., United States v. Fischel*, 686 F.2d 1082, 1090 (5th Cir. 1982) (stating that "[d]iscovery in criminal cases is narrowly limited [and] makes no provision for the production of the names and addresses of witnesses").

WHEREFORE, the United States respectfully requests that this Court, pursuant to the SDO and Rule 16(d)(1) of the Federal Rules of Criminal Procedure, enter the attached proposed protective order concerning the disclosure of personal identification information and other sensitive material in connection with this case.

Respectfully submitted,

MARKENZY LAPOINTE
UNITED STATES ATTORNEY

Date: October 1, 2024

By: /s/ Tanner P. Stiehl
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CERTIFICATE OF CONFERENCE

I HEREBY CERTIFY that between September 28 October 30, 2024, I conferred with Calisha Angeline Francis, counsel for the Defendant, who indicated that the defense does not oppose this motion.

/s/ Tanner P. Stiehl
TANNER P. STIEHL
Special Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 1, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Tanner P. Stiehl
Tanner P. Stiehl
Special Assistant United States Attorney