

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 3:13-CR-141-J-32MCR

SHELTON THOMAS BELL

**UNOPPOSED MOTION FOR PROTECTIVE ORDER  
PERTAINING TO DISCOVERY**

The United States of America, by A. Lee Bentley, III, Acting United States Attorney for the Middle District of Florida, by and through the undersigned Assistant United States Attorney, hereby requests this Court to enter a protective order pursuant to Rule 16(d)(1) of the Federal Rules of Criminal Procedure that prevents the dissemination of discovery materials derived from electronic surveillance and searches conducted pursuant to the authority of the Foreign Intelligence Surveillance Act of 1978, as amended, 50 U.S.C. §§ 1801-1811 ("FISA") and other discovery materials provided in this case to persons not a party to, or otherwise involved in, this case. A proposed protective order accompanies this motion as exhibit A.

Counsel of record for the defendant, Lisa A. Call, Esq., has advised the undersigned that she does not object to the Court entering the accompanying proposed protective order.

## **I. INTRODUCTION**

On August 9, 2013, the government filed a notice of Intent to Use Foreign Intelligence Act Surveillance Act Information (Doc. No. 7), stating that it intends to enter into evidence or otherwise use or disclose at pre-trial hearings, the trial, and other proceedings in this case information obtained or derived from electronic surveillance and searches conducted pursuant to the authority of FISA. The government intends to disclose declassified material collected pursuant to FISA to the defendant during discovery and will continue to disclose additional declassified materials collected pursuant to FISA. These materials, while declassified, are still sensitive, and their further dissemination should be governed by a protective order pursuant to Fed. R. Crim. Pro. 16(d)(1).

Further, some of the discovery materials will identify various juveniles. Under 18 U.S.C. § 3509(d), disclosure of these materials may not be disseminated when the juveniles are not charged with being a juvenile delinquent. These materials also may not be disseminated when the juvenile is charged with juvenile delinquency pursuant to 18 U.S.C. § 5038.

## **II. REQUESTED PROTECTIVE ORDER**

It is requested that this Court order that the discovery material provided in this case not be reproduced or disseminated to persons not a party to, or involved in, this case, and that defense counsel be prohibited from allowing defendant unsupervised access to certain designated materials, as set forth in the attached, proposed order. It is further requested that the Court order that

copies only be provided to those persons employed by defense counsel who are necessary to assist counsel in preparation for trial, and to such persons as the defense deems necessary to further legitimate investigation and preparation of this case.

It is further requested that the protective order restrict any person who receives a copy of any document subject to this protective order from defense counsel from using the document in any way except to assist counsel for defendant in the investigation or preparation of this case, and from reproducing or disseminating the document in any way to any other person or entity except as provided for in the order.

If defense counsel believes an exception should be made to the proposed protective order, the parties will confer and then seek guidance from this Court as necessary. The parties will advise the Court by letter of any agreed-upon exceptions made to the protective order.

The proposed protective order does not in any manner limit the right of defense counsel to reproduce or disseminate any document obtained from sources other than the government, even if it is within the material provided to the defense by the government in the discovery process.

This protective order will not apply to FISA information that remains classified. All classified information will be governed by all applicable laws and rules applying to the disclosure and handling of classified information, the

Classified Information Procedures Act, 18 U.S.C. App. 3 § 1 et seq., and any Order of this Court.

### III. ARGUMENT

It has been recognized by the Eleventh Circuit that discovery in criminal matters is meant to be a private process between the litigants and that discovery materials should generally not be disclosed outside of those individuals who are necessary for preparation for trial. United States v. Anderson, 799 F.2d 1438, 1441 (11<sup>th</sup> Cir. 1986) (“Discovery, whether civil or criminal, is essentially a private process because the litigants and the courts assume that the sole purpose of discovery is to assist trial preparation. That is why parties regularly agree, and courts often order, that discovery information will remain private.”). Protective orders limiting the dissemination of discovery have been upheld in a number of situations. See, e.g., United States v. Fischer, 137 F.3d 1158, 1165 (9<sup>th</sup> Cir. 1998) (finding that the district court did not abuse its discretion where it limited a defendant’s access to discovery material provided by the government); United States v. Salemme, 978 F. Supp. 386, 389-90 (D. Mass. 1997) (protective order limiting the dissemination of discovery to anyone who was not necessary to assist counsel in a RICO conspiracy case).

Regarding the specific protective order requested here, similar protective orders have been approved in other cases involving FISA or national security information. See, e.g., United States v. Lindh, 198 F. Supp. 2d 739, 742 (E.D.

Va. 2002) (issuing a protective order related to national security information and citing additional examples).

A protective order related to dissemination of discovery is appropriate in this case, given the importance and sensitive nature of FISA-derived discovery information. Unrestricted disclosure of the FISA recordings in this matter could adversely impact ongoing investigations to which those recordings pertain. Moreover, the government's disclosure of FISA-derived discovery in this case comes as a result of the Federal Bureau Investigation's ("FBI") decision to declassify that information. One of the factors that influences the FBI's decision to declassify this type of evidence is its concern – shared by its partners in the Intelligence Community – with whether there are adequate protections in place to address the non-disclosure of these materials to those who are not a party to the criminal proceedings or outside what is necessary for the parties adequately to prepare for trial. When such protections are not in place, the ability to obtain declassification in this and other matters is diminished. Thus, information that could otherwise be declassified and provided readily to the defense might only be provided under the protection of the Classified Information Procedure Act framework, with the attendant complications.

A protective order is further justified in this case related to various discovery materials that depict and identify juveniles. When the juveniles are not charged with acts of delinquency, a protective order is warranted pursuant to 18

U.S.C. § 3509(d). When a juvenile is charged with an act or acts of delinquency, a protective order is warranted pursuant to 18 U.S.C. § 5308.

#### IV. CONCLUSION

The United States respectfully requests that the Court enter the accompanying protective order.

Respectfully submitted,

A. LEE BENTLEY, III  
Acting United States Attorney

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 13, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

Lisa A. Call, Esquire

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MAC D. HEAVENER, III  
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**[PROPOSED] PROTECTIVE ORDER**

Upon motion of the United States, the Court being advised as to the nature of this case, and there being no objection by the parties, it is hereby

ORDERED that, pursuant to Rule 16(d)(1) of the Federal Rules of Criminal Procedure, that the discovery material provided by the government in this case not be reproduced or disseminated to persons not a party to, or involved in, this case, except as provided below.

IT IS FURTHER ORDERED that copies of discovery material only be provided to those persons employed by defense counsel who are necessary to assist counsel in preparation for trial, and to such persons as the defense deems necessary to further legitimate investigation and preparation of this case.

IT IS FURTHER ORDERED that any person who receives a copy of any document subject to this protective order from defense counsel is prohibited from using such document in any way except to assist counsel for defendant in the investigation or preparation of this case, and from reproducing or disseminating



any such document in any way to any other person or entity except as provided for in the order.

IT IS FURTHER ORDERED that defense counsel be prohibited from allowing defendant unsupervised access to any audio and visual recordings and to any discovery materials that the Government marks with a Bates stamp marking beginning with the letter "P." In the event that defense counsel disputes the propriety of the Government marking any discovery item with a Bates stamp beginning with the letter "P," the parties will confer, and if the matter cannot be resolved by agreement, the parties will seek guidance from the Court. Pending resolution of any dispute by the Court, defense counsel shall not permit defendant to have unsupervised access to those items.

IT IS FURTHER ORDERED that if any party believes an exception should be made to this protective order, the parties will confer and then seek guidance from this Court as necessary. The parties will advise the Court by letter of any agreed-upon exceptions made to the protective order.

IT IS FURTHER ORDERED that this protective order does not in any manner limit the right of defense counsel to reproduce or disseminate any information or document obtained from sources other than the government even if the same information is within the material provided to the defense by the government in the discovery process.

IT IS FURTHER ORDERED that this protective order does not apply to FISA information that remains classified. All classified information will be

governed by all applicable laws and rules applying to the disclosure and handling of classified information, the Classified Information Procedures Act, 18 U.S.C. App. 3 § 1 et seq., and any Order of this Court.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

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MONTE C. RICHARDSON  
United States Magistrate Judge