AT THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES, PLAINTIFF,	§ §	
v.	§	CASE NO. [3:16-CR-00051-BR-05]
RYAN BUNDY, DEFENDANT NAMED IN ERROR.	§ §	AFFIDAVIT VERIFIED

MOTION FOR MISTRIAL FOR LACK OF BRADY MATERIAL BEING PROVIDED TO DEFENDANT(S) BEFORE TRIAL.
[FED. R. CRIM. P. 47].

Defendant, *RYAN BUNDY*, moves the court for an order declaring a mistrial in this case and discharging the jury, on the grounds of a Brady violation, and prejudicial remarks in the presence of the jury that have made it impossible for the defendant to receive a fair and impartial trial by said jury, and in support of this motion states as follows:

1. The Plain Language to the Fifth Amendment to the Constitution states as follows:

> "**No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury**, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled **in any criminal case** to be a witness against himself, nor be **deprived of** life, **liberty**, or property, **without due process of law**; nor shall private property be taken for public use, without just compensation."

2. Take note the Fifth and Amendment protection states in **absolute terms**, such as "**[n]o person shall**" and "[i]n **any criminal case** to be a witness against himself, nor be **deprived of** life, **liberty**, or property, **without due process of law;**"Id. at 813. In finding a Fifth Amendment

violation, the Ninth Circuit emphasized the district court's conclusion that the government's actions "shock the conscience of the Court." Id.

3. Under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); The suppression by the prosecution of evidence favorable to an accused upon request for disclosure **violates due process.** Also See. U.S.C.A.Const. Amend. 14. Suppression by prosecution of evidence favorable to an accused upon request **violates due process** where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution.

4. Where the evidence is material either to guilt or to punishment irrespective of the good faith or bad faith of the prosecution to establish a ***Brady* violation**, the defendant must demonstrate that;

(1) the prosecutor suppressed evidence,

(2) the evidence was favorable to defendant as exculpatory or impeachment evidence, and

(3) the evidence was material.

5. The holding in ***Brady*** requires disclosure only of evidence that is both favorable to the accused and material either to guilt or to punishment.

A. The defense requested for information presenting a substantial basis for the claim of materiality, the prosecutor must respond either by furnishing the information or by submitting the issue to the trial judge.

B. The disclosure requirement is limited to information unknown to the defendant and then generally only upon request.

FACTUAL HISTORY.

6. Throughout the course of the trial, the prosecution has repeatedly revealed evidence in the presence of the jury not given to the defendants in discovery as indicated by the government at the September 6th, 2016, hearing, where the government again represented; "it has complied with its discovery obligations.

7. At the time of the hearing, it was believed to be true without question, but now being in trial the facts come to light that the prosecution did not provided a full discovery nor did they provide the Brady material requested to prepare a defense.

8. The government certified multiple times under oath at numerous stages of these proceedings with fast responses either showing prejudice or lack of candor in conduct for the defendant requests,

9. The governments remarks that they "complied with its discovery obligations" (#1226) is a willful suppression of evidence favorable to the accused equating to intentional tampering with material evidence meeting the criteria of **prosecutorial misconduct for** deceiving the court and now the jury with speculative hearsay by "sheriff ward" not found or provided in evidence as identified in docket (#1280).

10. As a direct and proximate result The defendant's "Brady request" (#1185) was DENIED as "MOOT" (#1226).

11. The record (as the record reflects transcript in docket #1280) the defense made repeated objections to the above remarks by the government, comments, intonations, and gestures of moot and untimely by the court, and on numerous occasions concerning all discovery being provided. (See Exhibit 1)

12. The defendant also requested and that such objections be argued outside the presence of the jury; but the court on all occasions has refused to hear such argument outside the presence of the jury and has repeatedly made light of the objections in the presence of the jury.

13. This motion is based on factual history, and legal authorities and all the records and files in the case.

Respectfully submitted,

/s/ryan c bundy

ryan c of the bundy society

Dated: 9/18/16

VERIFICATION

I certify the foregoing is true and correct under the penalty of perjury pursuant to 28 USC § 1746 that I am over the age of 18 years, that I have personal knowledge of the facts stated herein, and that I am fully competent to testify to those facts.

/s/ryan c bundy

ryan c of the bundy society

CERTIFICATE OF SERVICE

This the 18th day of September 2016 a true and correct copy of the foregoing was served to the court, and opposing counsel by first-class mail or better.

/s/ryan c bundy

ryan c of the bundy society

AT THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
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UNITED STATES, PLAINTIFF,	§ §	
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RYAN BUNDY'S AFFIDAVIT IN SUPPORT OF MOTION FOR MISTRIAL BASED ON JURORS' UNAUTHORIZED ACCESS TO MATTERS NOT GIVEN TO THE DEFENDANT BEFORE TRIAL

I, RYAN BUNDY in the above matter, Depose(s) and state(s) in support of the within motion pursuant to Federal Rule of Criminal Procedure 26.3 for an order granting a **mistrial** based on jurors unauthorized access to matters not in evidence that have irrevocably tainted the jury panel and the fairness of the trial, hereby swears to the truth of the following:

1. During Sheriff Ward's testimony he referred to rough notes that were not provided to the defendant in discovery as requested before trial.

2. Sheriff Ward made testimony about a Officer field notes, and intended testimony was not disclosed.

3. His testimony in docket (#1280) regarding Bunkerville Nevada and the Bundy Stand-Off was not disclosed a reflecting written report in correlation to Fed. R. Evid. 1005. As It was not prepared by public officers or employees in response to a statutory duty.

4. These prejudicial remarks and senseless as it is a private report of an incident that does not amount to a factual finding resulting from an official investigation (Fed. R. Evid. 803(8)(c))

5. The Sheriff ward made testimony on record his search was a random internet search on "Bunkerville", and it wasn't authenticated, and mislead the jury to the defendant(s) being wrongfully accused of horrendous crimes which go beyond the scope of evidence presented at trial .

6. I believe the lack of evidence being provided to the defendant and this prejudice will mislead the jury's ultimate decision.

7. Based on the foregoing, this affiant respectfully requests that this court issue an Order granting a **mistrial** based on jurors unauthorized access to matters not in evidence that have now irrevocably tainted the jury panel and the fairness of the trial, along with whatever other and further relief that the court deems proper.

Respectfully submitted,

/s/ryan c bundy

ryan c of the bundy society

Dated: 9/18/16

VERIFICATION

I certify the foregoing is true and correct under the penalty of perjury pursuant to 28 USC § 1746 that I am over the age of 18 years, that I have personal knowledge of the facts stated herein, and that I am fully competent to testify to those facts.

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MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR MISTRIAL IN REGARDS TO "JAMES" HEARING AND FOR DISCLOSURE OF COCONSPIRATORS' STATEMENTS

COMES NOW Defendant RYAN BUNDY, and makes and files this Memorandum in Support of its Motion declaring a mistrial in this case and discharging the jury, and the seating of a new jury if need be on the grounds of a Brady violation for "James" Hearing and for Disclosure of CoConspirators' Statements, as follows:

ARGUMENT AND CITATION OF AUTHORITIES

This motion is timely in that the Defendant is informed and with the belief that Government in Jason Blomberg a.k.a. "Joker J" is an undisclosed informant that is undisclosed to the defendants and required under Brady to be disclosed as a witness and include the substance of his intended testimony. Defendant anticipates that the government may seek to introduce alleged coconspirators' statements into evidence under the provisions of Federal Rule of Evidence 801(d)(2)(E). In the interest of making an accurate determination of admissibility, and prejudice and **mistrial** caused by inadmissible evidence coming before the jury, Defendant submits that this court should conduct a hearing to determine the admissibility of any such statements.

The importance of such hearing was firmly established in U.S. v. James, 590 F.2d 575, 582, 3 Fed. R. Evid. Serv. 785 (5th Cir. 1979), wherein the court found that "[t]he district court should, whenever reasonably practicable, require the showing of a conspiracy and of the connection of the defendant with it *before* admitting declarations of a coconspirator." James, 590 F.2d 575, 582 (emphasis added). Courts in this circuit repeatedly have emphasized "the preferability of an *in camera* or pretrial hearing" as a means of making this determination. U.S. v. Hewes, 729 F.2d 1302, 1312, 15 Fed. R. Evid. Serv. 1075 (11th Cir. 1984); see also U.S. v. Miller, 664 F.2d 826, 827, 9 Fed. R. Evid. Serv. 985 (11th Cir. 1981) (a James hearing "generally will, most efficiently and with least chance of prejudice to the defendant assist the judge in his ultimate determination of whether defendant was involved in a conspiracy"); U.S. v. Ricks, 639 F.2d 1305, 1309, 7 Fed. R. Evid. Serv. 1760 (5th Cir. 1981) ("A full hearing of all the evidence by the judge alone touching upon the issue which the judge alone is to decide is the best assurance that prejudicial hearsay will not be taken, inadvertently, before the jury").

The purpose of a James hearing is "to establish the existence, or nonexistence, of the predicates for the admission of a coconspirator's extrajudicial declaration *before* the declaration is made known to the jury." U.S. v. Grassi, 616 F.2d 1295, 1300, 6 Fed. R. Evid. Serv. 196 (5th Cir. 1980); see also U.S. v. Perry, 624 F.2d 29, 31, 6 Fed. R. Evid. Serv. 1284 (5th Cir. 1980). This "protect[s] the defendant from the admission of prejudicial hearsay on the basis of threadbare evidence of conspiracy." U.S. v. Grassi, 616 F.2d 1295, 6 Fed. R. Evid. Serv. 196 (5th Cir. 1980).

For the statement of an alleged coconspirator to be admissible, the prosecution must lay a foundation showing: (1) the existence of a conspiracy; (2) the statements were made during the

course and in furtherance of the conspiracy; and (3) the declarations were made by one who conspired with the party against whom the statements are offered. Fed. R. Evid. 801(d)(2)(E); Bourjaily v. U.S., 483 U.S. 171, 175–176, 107 S. Ct. 2775, 2778–2779, 97 L. Ed. 2d 144, 22 Fed. R. Evid. Serv. 1105 (1987); U.S. v. Thompson, 976 F.2d 666, 670, 37 Fed. R. Evid. Serv. 205 (11th Cir. 1992); U.S. v. Dynalectric Co., 859 F.2d 1559, 1581, 27 Fed. R. Evid. Serv. 1057, 109 A.L.R. Fed. 575 (11th Cir. 1988); U.S. v. Santiago, 837 F.2d 1545, 1549, 24 Fed. R. Evid. Serv. 1037 (11th Cir. 1988); U.S. v. Noe, 821 F.2d 604, 609 (11th Cir. 1987); U.S. v. Anderson, 782 F. 2d 908, 913 (11th Cir. 1986); U.S. v. Ricks, 639 F.2d 1305, 1308, 7 Fed. R. Evid. Serv. 1760 (5th Cir. 1981); Grassi, 616 F.2d at 1300; James, 590 F.2d at 579–80. The trial judge, not the jury, must determine the admissibility of coconspirator statements. James, 599 F.2d at 580.

At the conclusion of the James hearing, the judge must decide whether the evidence linking the defendant to the conspiracy is substantial. Caldwell, 771 F.2d at 1487; U.S. v. Kopituk, 690 F.2d 1289, 1324, 11 Fed. R. Evid. Serv. 1679 (11th Cir. 1982); U.S. v. Perry, 624 F. 2d 29, 30, 6 Fed. R. Evid. Serv. 1284 (5th Cir. 1980); Grassi, 616 F.2d at 1300; James, 590 F.2d at 580–81; U.S. v. Mulherin, 521 F. Supp. 819, 821, 8 Fed. R. Evid. Serv. 1599 (S.D. Ga. 1981). In deciding questions of admissibility, the court may consider the statements themselves as well as independent evidence. See Bourjaily, 483 U.S. at 178 (disapproving the aspect of James that held that the coconspirator statement itself could not be considered when deciding whether the government has met the conditions of admissibility); Dynalectric Co., 859 F.2d at 1581 (11th Cir. 1988). “To reveal to the jury what someone has said, out of court, incriminating the defendant is strong medicine.” U.S. v. Ricks, 639 F.2d 1305, 1308, 7 Fed. R. Evid. Serv. 1760 (5th Cir. 1981). Trial judges have been cautioned to be “mindful of the teaching of James that the improper

admission of hearsay to the prejudice of the defendant can rarely be eliminated by curative or cautionary instructions." Ricks, 639 F.2d at 1309. The substantial likelihood of an error resulting in **mistrial**, and the associated waste of judicial resources, militates strongly in favor of conducting a hearing on the issue.

Obviously, a separate hearing out of the presence of the jury, in which the parties develop all pertinent evidence of the conspiracy and defendant's involvement, would be the optimum method for avoiding inadvertent introduction of hearsay and resulting reversible error. U.S. v. Whitley, 670 F.2d 617, 620, 10 Fed. R. Evid. Serv. 90 (5th Cir. 1982). A James hearing is necessary "because of the 'danger' to the defendant if the statement is inevitable to be a serious waste of time, energy and efficiency when a **mistrial** is required in order to obviate such danger." James, 590 F.2d at 582. The "potential for waste of judicial resources should encourage courts to avoid the risks that attend failure to hold a James hearing." Hewes, 729 F.2d at 1312 n. 6.

The procedure requested herein is particularly appropriate in the case at bar for three reasons. First, the complexity and potential length of trial in this case and the exposure to unintelligible information . Second, the danger of inappropriately attributing the statements of conspirators to Defendant is significant. And third, the prosecution's ability to bear its burden of establishing the alleged conspiracy is doubtful.

It is further requested that all statements alleged by the government to have been made "during the course and in furtherance of the conspiracy" be immediately disclosed to defense. Since the statement of a coconspirator, after the proper foundation is laid, is admissible against

the defendant as if it were the defendant's own utterance, such statements should be discoverable under Federal Rule of Criminal Procedure 16(a)(1)(A). *See* U.S. v. Madeoy, 652 F. Supp. 371, 375 (D.D.C. 1987); U.S. v. Agnello, 367 F. Supp. 444, 448 (E.D. N.Y. 1973). Although the Eleventh Circuit has held that Rule 16(a)(1)(A) does not allow discovery of coconspirators' statements furnished in connection with a plea agreement, U.S. v. Orr, 825 F.2d 1537, 1541, 23 Fed. R. Evid. Serv. 1056 (11th Cir. 1987), the court did not address Federal Rule of Evidence 801(d)(2)(E) statements made in furtherance of a conspiracy because they were not at issue in that case. At a minimum, pursuant to Rule 16(a)(1)(A), non-witness coconspirators' statements should be disclosed to Defendant if the government intends to use such declarations at trial as admissions attributable to Defendant. See, e.g., U.S. v. Gallo, 654 F. Supp. 463, 479 (E.D. N.Y. 1987); Madeoy, 652 F. Supp. at 375.

Even if this court declines to apply Rule 16(a)(1)(A) to statements other than those made by a defendant(s), this court has the inherent authority to order discovery beyond that authorized by Rule 16, including the discovery of coconspirators' statements. See U.S. v. Williams, 792 F. Supp. 1120, 1126 (S.D. Ind. 1992). The exercise of such discretion is warranted to enable Defendant to prepare its defense and to avoid unfair surprise at trial. "[T]he mere fact that a coconspirator's statements may be imputed to the Defendant(s) for purposes of the hearsay rule, Fed. R. Evid. 801(d)(2)(E), indicates both the relevance and importance of such statements to the preparation of the Defendant's defense." Williams, 792 F. Supp. at 1127.

[T]he surprise factor, which weighs so heavily in favor of disclosing defendants' statements, is even more pronounced where the defendant has never been aware of the statement. A defendant does not need merely to recall the co-conspirator's statement in order to rebut it or

put it in context, as is the case with his or her own statements; instead, the defendant may be exposed to it for the very first time at trial, with very little hint of where or how to turn in rebuttal. The danger of false accusation is much greater with a conspirator's statement, for the defendant may be unaware of the statement itself, its exact context, its content, and the events to which it refers. Effective preparation for trial and cross-examination is difficult under those circumstances.

Gallo, 654 F.Supp. at 476. Therefore, coconspirators' statements that will be attributed to Defendant through Rule 801(d)(2)(E) should be discoverable by the defense under Rule 16(a)(1)(A) or pursuant to this court's inherent authority.

CONCLUSION

For the foregoing reasons, Defendant RYAN BUNDY moves the court to order for a mistrial, Staying the trial and discharging the jury and for James hearing set to determine whether or not any alleged coconspirators' statements are admissible in trial and to order disclosure of coconspirators' statements.

Respectfully submitted by,

/s/ryan c bundy

ryan c of the bundy society

Dated: 9/18/16

VERIFICATION

I certify the foregoing is true and correct under the penalty of perjury pursuant to 28 USC § 1746 that I am over the age of 18 years, that I have personal knowledge of the facts stated herein, and that I am fully competent to testify to those facts.

/s/ryan c bundy

ryan c of the bundy society

CERTIFICATE OF SERVICE

This the 18th day of September 2016 a true and correct copy of the foregoing was served to the court, and opposing counsel by first-class mail or better.

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DEFENDANT NAMED IN ERROR.	§	VERIFIED

ORDER

This matter came on for hearing on September 19th 2016 on the motion of the defendant for an order declaring a **mistrial** and discharging the jury in this action, with Billy J. Williams appearing as attorney for plaintiff and RYAN BUNDY appearing as the defendant named in error.

The court has read and considered the motion of *The alleged* and the affidavit submitted in support of the motion, has heard and considered the evidence offered in support of and in opposition to the motion, has considered all the proceedings previously had in the trial of this cause and has heard the arguments of both parties on the motion.

It appears to the court from all of the above that plaintiff has improperly presented inconclusive opinions with jurors, not provided to the defendants in discovery and that has irrevocably tainted the jury panel and the fairness of the trial.

It further appears that as a result of the above-described improper conduct of presenting falsified evidence in front of the jurors in this action, the rights of RYAN BUNDY have been prejudiced

and him and his co-defendant cannot obtain a fair and impartial trial on the merits of this case before the present jury. Accordingly,

IT IS ORDERED that:

1. A stay pending a hearing and declared **mistrial** and the jury is discharged from all further consideration of this matter; and

2. This cause is adjourned and set for pre-trial, and new trial at a later date, to be set in due course if need be, before another jury.

Dated: 9/18/16

_____
Honorable Anna Brown