

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

UNITED STATES OF AMERICA)	
)	
)	
v.)	No. 3:05-00185
)	Judge Trauger
)	
TIMOTHY RYAN RICHARDS)	

**NOTICE OF DEFENDANT RICHARDS' POSITION
REGARDING THE GOVERNMENT'S *IN CAMERA, EX PARTE*
FILING AND POTENTIAL *BRADY* ISSUES**

COMES NOW the Defendant, **Timothy Ryan Richards**, by and through his undersigned counsel, and hereby files this Notice of Defendant Richards' Position Regarding the Government's *In Camera, Ex Parte* Filing and Potential *Brady* Issues which may exist based upon the information contained in the filing. For the reasons anticipated in this Notice and others that may arise from contents of the filings themselves, Defendant Richards respectfully suggests that the Court Order the immediate disclosure of the *in camera, ex parte* filing to the defense.

Introduction

The government has advised the defense and the Court that the former case agent in this case, FBI SA Monique Winkis, was terminated from her employment with the FBI due to reasons relating to the performance of her duties. The government has disclosed to the defense and the Court that the termination related to Ms. Winkis' conduct in the investigation of cases related to Defendant Richards' prosecution. Presumably, the misconduct occurred in relation to Ms. Winkis' investigation of Justin Berry, Greg Mitchel or Aaron Brown.

While the defense knows neither the contents of the filing nor the specific grounds for termination, the mere fact that the termination involves Ms. Winkis' conduct or misconduct in clearly related and inextricably intertwined cases leads to the inescapable conclusion that the information and documents must be produced to the defense for further investigation and assessment as to the impact on Defendant Richards' prosecution. The grounds for Ms. Winkis' firing and the specifics of her misconduct as it relates to these connected cases constitutes *Brady* material.

Winkis' Involvement in Defendant Richards' Case

The government may take the position that, because Ms. Winkis did not appear as a trial witness, the defense's legitimate interest in the disclosure of this information is in some way eroded. Defendant Richards submits that Ms. Winkis had a significant and lasting impact on his case necessitating the production. Specifically, Ms. Winkis played the following known roles in Defendant Richards' case:

1. Winkis was the original case agent in Defendant Richards' case and all related cases. As such, she conducted multiple Justin Berry proffers and was involved in recommending his immunity agreement. She was the case agent who investigated and interviewed Greg Mitchel. She interviewed alleged victims of the alleged offenses (Taylor, Chris Billings (a.k.a. "Tory"), and Pat Lombardi (a.k.a. "Kyle")) which Defendant Richards was later charged with perpetrating.
2. As the case agent during the primary investigatory stage of Defendant Richards' case, she collected and handled vast amounts of evidence (including computer evidence) which was later admitted into evidence in the

trial of the case.

3. The Criminal Complaint in support of the Defendant Richards' Arrest Warrant relies almost exclusively on the investigatory information provided by then FBI SA Monique Winkis with the Cyber Division, Innocent Images Unit. (Docket Entry 3). The information provided by Winkis and incorporated into the Criminal Complaint is designed to show the interconnectedness of the investigations relating to Defendant Richards, Justin Berry ("Justin"), Greg Mitchel ("CW1") and Aaron Brown ("UM1").
4. Winkis was the Affiant in support of the Search Warrants for the Hurricane Electric (or NEOVA) and Blacksun Computer Servers. (*See Exhibits A & B to Docket Entry 87*).
5. The Search Warrants for Defendant Richards' two (2) residential properties (Milner Drive and Raywood Lane) refer in large part to investigatory information about Defendant Richards that was gathered by Winkis via her investigation of and contact with Berry and Mitchel. (*See Exhibits C & D to Docket Entry 87*).
6. Winkis testified at Defendant Richards' Detention Hearing before the Magistrate Judge.
7. The defense was recently advised that Winkis testified before the Grand Jury. In addition, the defense knows that at least one (1) other agent (specifically FBI TFO Charles Warner) testified before the Grand Jury and reported the investigatory work and conclusions drawn by Winkis.

8. On January 13, 2006, Winkis testified before this Court at a Hearing on Defendant Richards' Detention Appeal. Winkis' summary of the investigation she conducted and her flatly inaccurate representation of the evidence was among the Court's considerations in denying Defendant Richards' Motion. (*See* Docket Entries 39, 40 & 41).
9. On July 24, 2006, Winkis testified at the Suppression Hearing in this case. The Court's denial of the suppression motions was based in part on her testimony. In addition, Winkis' testimony highlighted the government's position that all of the investigations of Berry, Mitchel and Richards were interconnected. In the testimony, Winkis recounted much of her investigatory work in all of the cases. Moreover, she led the Court and the defense to believe that her recent lack of involvement in Defendant Richards' case and the substitution of a new case agent was prompted by her being promoted to a supervisory position. Given the fact of her firing, it is now unclear whether any of this testimony is true. *See Exhibit A* (Suppression Hearing Transcript).

Clearly, regardless of Winkis' direct involvement in the trial of this case, the fact of her termination from the FBI and the specifics of how that termination relates to Defendant Richards' case or the related cases of Berry, Mitchel or Brown must be produced to the defense as *Brady* material. These matters will require further defense investigation.

Conclusion

Based upon the fact that Winkis' termination relates to her conduct and/or performance of

duties in clearly related cases and because of Winkis' significant involvement in the prosecution of Defendant Richards as highlighted above, the government's *in camera*, *ex parte* filing should be disclosed to the defense.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via the Court's electronic filing system, *or*, if not registered, sent via U.S. Mail, postage prepaid, to:

S. Carran Daughtrey
Assistant United States Attorney
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this 8th day of August, 2008.

s/ Kimberly S. Hodde
KIMBERLY S. HODDE