

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
vs.	:	
	:	
JUAN C. COLON	:	NO. 05-563-01
DESHIN LOVE	:	-02
JAVIER SALGADO	:	-03

ORDER AND MEMORANDUM

ORDER

AND NOW, this 30th day of January, 2006, upon consideration of defendant Javier Salgado's Motion for Disclosure of Exculpatory Evidence (Document No. 64, filed January 13, 2006), and the Government's Response to Defendant's Motion for Disclosure of Exculpatory Evidence (Document No. 83, filed January 23, 2006), following brief argument on the Motion on January 27, 2006, **IT IS ORDERED** that defendant Javier Salgado's Motion for Disclosure of Exculpatory Evidence is **GRANTED IN PART AND DENIED IN PART**, as follows:

1. On or before February 20, 2006, the Government shall either (a) arrange for the custodian of the personnel files of law enforcement personnel involved in this case to personally review the files and notify Government counsel about the existence of any possible exculpatory evidence; or, (b) submit the personnel files to the Court for an *in-camera* inspection for exculpatory evidence;
2. The Government having reported that it is unaware of any criminal activity on the part of any witnesses it now intends to call at trial, the Government shall promptly notify defendants of any such criminal activity of witnesses the Government decides to call at trial in the future;
3. To the extent it has not yet done so, the Government shall promptly search its files and

provide defendants with any possible exculpatory evidence under *Brady v. Maryland*, 373 U.S. 87 (1963). The Government shall also provide defendants with any exculpatory evidence it discovers in the future promptly upon such discovery; and,

4. Defendant Javier Salgado's Motion for Disclosure of Exculpatory Evidence is **DENIED** in all other respects.

MEMORANDUM

I. BACKGROUND

The indictment charges in Count One that defendants participated in a conspiracy to interfere with interstate commerce by robbery from March 9, 2005, through April 2, 2005. That count charges that five businesses were robbed by members of the conspiracy but moving defendant, Javier Salgado, is only identified as participating in one of those robberies.

Defendant Salgado requested the following categories of documents:

1. Files of all law enforcement personnel;
2. Details of criminal activity of witnesses called by the prosecution;
3. Details of monies paid to confidential informants;
4. Details of the expertise and knowledge of law enforcement personnel who specialize in the investigation of firearms;
5. Criminal records of Government witnesses;
6. Any information favorable to defendant; and,
7. Information pertaining to the special personnel needs of any Government witness.

The Court will address each such request in turn.

1. Files of All Law Enforcement Personnel

Defendant requests “the files of law enforcement personnel involved in the instant prosecution, city, state and federal, which contain information regarding any government witness and prior criminal behavior and misconduct.”

Under *Brady v. Maryland*, 373 U.S. 87 (1963), the Government is required to provide defendants with exculpatory evidence known to be contained in the personnel files of law enforcement officers who are to appear as witnesses at trial. See *United States v. Herring*, 83 F.3d 1120, 1121 (9th Cir. 1996). However, although the Government must review the personnel files of such officers for exculpatory evidence, defendant is not entitled to the personnel files.

The Government has not stated in its response to the Motion whether it has reviewed the personnel files of law enforcement officers who are to appear as witnesses in order to determine whether they contain any exculpatory evidence. For that reasons, the Court directs the Government to do so by either: (a) arranging for the custodian of the personnel files to personally review the files and notify Government counsel about the existence of any possible exculpatory evidence; or, (b) submit the personnel file to the Court for an *in-camera* inspection for exculpatory evidence, on or before February 20, 2006.

2. Details of Criminal Activity of Witnesses Called by the Prosecution

The Government stated in its Response that it is not aware of any criminal activity on the part of any witnesses it now intends to call at trial. Continuing, the Government reported that if it learns of such activity, or decides to call witnesses with a criminal history, it will notify defendants consistent with its obligations pursuant to *Brady and Giglio v. United States*, 405

U.S. 150 (1972). The Court directs that the Government to do so promptly upon learning of any such criminal activity of witnesses the Government now intends to call or decides to call in the future.

3. Details of Monies Paid to Confidential Informants

The Government stated in its Response to the Motion that it is not aware of any money paid to any witness it intends to call at trial, and that the case does not involve any confidential informants. Thus, this request is denied as moot.

4. Details of the Expertise and Knowledge of Law Enforcement Personnel Who Specialize in Investigation of Firearms

Defendant's request for "the expertise and knowledge of law enforcement personnel who specialize in investigation of firearms" is too vague to require a response. If defendants believe they are entitled to any such information, the request must be more specific.

5. Criminal Records of Government Witnesses

The Government stated in its Response that it is unaware of any criminal records for any witnesses it currently intends to call at trial. Thus, this request is denied as moot.

6. Any Information Favorable to Defendant

The Government, in its Response, acknowledges its duty to comply with *Brady* and stated that it has provided all such material of which it is aware to defendants. The Government went on to state that it will promptly produce any evidence it might discover which it is required to produce. Any such later-discovered *Brady* material must be produced by the Government promptly upon discovery by the Government.

**7. Information Pertaining to the Special Personnel
of Any Government Witness**

The Government, in its Response, said it was unaware of any such needs. Thus, this request is denied as moot.

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.