

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS W. HIRD,

Defendant.

4:19CR3038

GOVERNMENT RESPONSE TO  
DEFENDANT'S MOTION  
TO COMPEL DISCOVERY

COMES NOW the United States of America and provides this response to the Defendant's motion for Rule 16 discovery. (Filing No. 48). The Government respectfully requests that Mr. Hird's motion be denied because as outlined below, the Government has provided Mr. Hird the discovery in compliance with Federal Rule of criminal procedure 16 on multiple occasions and there is no additional discovery to be provided at this time. Further, the Government requests that Mr. Paul John Hansen, who is listed as Mr. Hird's retained 6th Amendment Counsel on numerous of the Defendant's filings, be required to file his entry of appearance.

In his eight-page motion, Mr. Hird demands the Government provide different types of evidence which he indicates are required to be provided to him pursuant to Federal Rule of Criminal Procedure 16. Since the time that attorney Robert Creager withdrew as counsel for the Defendant and the Defendant has continued to litigate this case pro se, the Government has made numerous efforts to provide Mr. Hird the discovery in this case in compliance with Rule 16 of the Federal Rules of Criminal Procedure. On November 22, 2019, the undersigned Assistant United States Attorney mailed a copy of the discovery in this matter to pro se defendant Thomas Hird at his address of record. However, on December 24, 2019, Mr. Hird called the undersigned and left a voicemail requesting the password for the discovery disk pursuant to the November 22, 2019 letter. The undersigned was out of the office for the Holidays at the time of Mr. Hird's phone call.

Nevertheless, on December 27, 2019, the undersigned returned Mr. Hird's phone call and conferred with him, providing him the password to the discovery disk and requesting that he call back if he had any additional issues. On or about January 8, 2020, counsel for the Government had a phone conversation with the Defendant regarding the upcoming trial and the discovery disk. The Defendant indicated to undersigned counsel that the disk provided to him was blank and he requested that the Government provide him the discovery on a thumb drive.

Later on January 8, 2020, undersigned counsel and the Defendant participated in a telephonic conference with the Honorable Magistrate Judge Cheryl Zwart regarding the continuance of trial and discovery. During the conference, it was determined that the Government would save the discovery to a thumb drive which would then be provided to Judge Zwart with the password. Judge Zwart would then utilize the password and make certain the thumb drive was working and contained all approximately 13,000 pages of discovery, subsequently the Court would personally mail the thumb drive to the Defendant. As the undersigned understands it, these procedures were followed and Judge Zwart mailed the thumb drive, which she had assured was working, to the Defendant at his address of record on or about January 9, 2020. On January 10, 2020, the counsel for the Government sent an email to the Defendant confirming that the procedure had been followed and again providing the Defendant the password for the discovery thumb drive.<sup>1</sup> In the email, the undersigned requested that the Defendant notify undersigned counsel if he needed further assistance. Since the January 10, 2020 email, counsel for the Government has received no communication from the Defendant indicating that he had not received the thumb drive or that he was unable to access the files contained therein.

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<sup>1</sup> Pursuant to the US Attorney's Office policies, the discovery password for a case remains the same throughout the entirety of a case. So in this case, the Defendant would have been provided this password on at least three different occasions.

Based upon the above information, the Defendant's motion to compel Rule 16 discovery should be denied. The Defendant is in receipt of all of the Rule 16 discovery in the Government's possession.

At this time, the Government additionally requests that the Defendant's "retained 6th Amendment Counsel," Paul John Hansen who is providing Mr. Hird assistance and whose name appears on most of Mr. Hird's filings, be required to enter his appearance on the case. (*See, e.g.*, Filing Nos. 48, 45, 41, 37). Mr. Hird should not be allowed the benefit of having his filings liberally construed if he is proceeding with the advice and help of counsel.

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all registered participants. I also hereby certify that a copy of the same was served by regular mail, postage prepaid, to the following non-CM/ECF participants: Thomas Hird

s/ Tessie Smith  
Assistant U.S. Attorney