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

UNITED STATES OF AMERICA	:	
v.	:	Criminal No. 14-80
SONIA PANELL		

DEFENDANT SONIA PANELL'S MOTION
TO
WITHDRAW GUILTY PLEA

Sonia Panell, by and through her counsel, Hope C. Lefeber, Esquire, hereby motions this Honorable Court to withdraw her guilty plea, based upon the outrageous government misconduct in withholding critical *Brady* and *Giglio* evidence and the government's lack of candor to the Court, pursuant to Fed. R. Crim. P. 11(d)(2)(B) and, in support thereof, states as follows.

1. On or about February 18, 2014, the defendant was indicted by a grand jury, in a three count indictment, charging solicitation to use interstate commerce facilities in the commission of murder-for-hire and use of interstate commerce facilities in the commission of

murder-for-hire and aiding and abetting. On or about July 22, 2014, the government filed a Superseding Indictment to correct a typographical error. The charges remained the same.

2. The Superseding Indictment alleges in Count One, that the defendant, Sonia Panell, "…solicited, commanded, induced and endeavored to persuade Person #1 to engage in such conduct, that is a violation of Title 18 United States Code, Section 1958 (use of interstate commerce facilities with the intent that a murder be committed in violation of the laws of any state), in violation of Title 18, United States Code, Section 373." Count Two alleges that Ms. Panell used a facility of interstate commerce on December 20. 2013. Count Three alleges that Ms. Panell used a facility of interstate commerce on January 18, 2013.

3. The charges arise out of the following set of facts. Person #1 is a government confidential informant, who reported to the government that the defendant, Ms. Panell, initiated a conversation in mid-November, 2013, with him about killing witnesses in a pending murder case against her fiancé, Rene Figueroa. Person #1 was immediately reactivated as an informant and proceeded to wear body wires and record conversations with Ms. Panell. His initial conversations with the defendant wherein she allegedly solicited him, were not recorded. No one was ever harmed, no attempt was made to harm anyone and no money or payment of any kind was ever exchanged or tendered by the defendant or anyone else.

4. At all times material hereto, the government maintained that the plan did not originate with Person #1 and that he did not induce Ms. Panell to engage in the plan in exchange for any benefit from the government. The government advised that both Person #1 and his girlfriend (also a confidential informant), Person #2, would testify that the defendant approached

Person #1 with the plan and then followed up with a telephone call to Person #2 (girlfriend), wherein the defendant stated that she needed to speak to Person #1 about the plan.

5. The defendant, Sonia Panell, suffers from severe psychiatric illness that has spanned decades. She has multiple hospitalizations for suicidal ideation, multiple suicide attempts, and has been diagnosed as bipolar, schizophrenic, depressive and manic. In 1997, she lost her two children and her sister in a house fire. In December, 2012, her fiancé was incarcerated and charged with murder. Since then, she has had to care for her other children and cope with her illness and life without her fiancé who was extremely supportive of her in all respects. Person #1 has known the defendant for at least seven years, as his girlfriend, Person #2 has children with the defendant's brother. As such, both Person #1 and #2 were aware of the diminished and vulnerable mental state of the defendant.

6. The government has committed outrageous misconduct by hiding the fact and failing to disclose that Person #1 (1) has a history of fabrication and deception; (2) has failed polygraph examinations in the past; (3) has obtained in excess of $275,000.00 in cash and benefits from the government for his cooperation in this and previous cases; (4) was under suspicion by the FBI agents for fabrication of evidence at the time of the defendant's guilty plea, and numerous other reasons as is more fully set forth below.

7. In summary, the following information was revealed to the defense, by correspondence from the government, dated August 29. 2014, (attached hereto as Exhibit "A"), after the guilty plea, despite the defense's continual written and oral requests for Brady and Giglio evidence:

a. On July 14, 2014, Person #1 telephoned the agents that he worked with on this case and claimed that he had "sensitive information relating to national security concerns." He offered this information seeking to receive immediate additional cash payments from the FBI because he "needed money to support his family" and "his girlfriend, Person #2, had threatened to leave." (See Exhibit "A," Government's letter of August 29, 2014).

b. Person #1 has now admitted to the FBI agents that he fabricated his entire claim of "sensitive information relating to national security concerns" in order to obtain immediate cash from the FBI and that "he assumed that upon making his false report he would get a cash payment from the FBI.". The sole reason that Person #1 admitted to the fabrication of evidence was that the FBI administered two separate polygraph examinations, on two separate days, and both results proved deception. The defense concludes that Person #1 initially and corruptly insisted upon the truthfulness of his statements, thereby causing the FBI to re-administer the polygraph. It was not until after the second failed polygraph that Person #1 admitted to the fabrication of evidence.

c. Person #1 had received excess of $275,000.00 in cash and benefits from the FBI for the information that he provided in the instant case and two other investigations prior to making his most recent false and fabricated report to the FBI.

d. Person #1 has failed additional polygraph examinations in the past, but that fact was no deterrent to the FBI agents in using Person #1as an informant in this case, despite the fact that he had been deactivated as a result of his lies.

e. On April 2, 2012, Person #1 contacted the FBI to report a "potential threat to his safety" The agents administered a polygraph examination and the results proved deception. Therefore, he was deactivated as an informant on August 14 , 2012. Nonetheless, the FBI paid him amount in excess of $3,500 for three weeks "daily living expenses," plus three weeks lodging in a hotel and a fully paid for move to Ohio, despite the fact that his information was false and fabricated.

f. In November, 2013, slightly over one year after his last fabrication of evidence, Person #1 again telephoned the FBI to advise that he had information on matters of "national security[1]." He was immediately reactivated as an informant and commenced his work on the instant case.

g. The government has not disclosed whether he was administered a polygraph examination prior to the reactivation in November, 2013, when he

[1] The defense believes that the term "national security" is a guise by the government and that Person #1 actually called the FBI with his plan in the instant case to see whether his criminal plan could gain some traction with the FBI and get him reactivated because he needed money. In Section II of the government's correspondence of August 29, 2014, it states; "**As a result of his involvement in this case, after he called the FBI he was 'reactivated' as an informant**." Thus, by the government's admission, Person #1 called the FBI with information in the instant case and was immediately reactivated.

commenced work on this case. It is simply incredible that the government would immediately sign up, or reactivate, an informant who had proven to be deceptive in his last encounter (one year previously) with the FBI. If, indeed, no polygraph was administered, the government is guilty of a reckless disregard for the truth.

h. For his cooperation in the instant case, Person #1 has already been paid and given direct benefits in excess of $54,000.00. He simply made one short appearance before the grand jury. Presumably, he would have received far greater compensation had this case gone to trial.

i. On August 16, 2014, Person #1 admitted to the FBI Special Agent that "he fabricated his most recent story regarding "sensitive information relating to national security concerns" because "he was experiencing financial difficulties; and that he decided to get money by lying rather than by committing a bank robbery." See Exhibit "A" Correspondence of August 29, 2014, p. 3). Person #1 has two prior federal convictions for armed bank robbery.

8. The defense repeatedly requested all Brady and Giglio evidence from the government with regard to Person #1. These requests were in writing, by discovery letter dated April 16, 2014 (paragraphs 16 – 19)(attached hereto and marked Exhibit "B"), by email, orally and by motion (D.E. #21).

9. At all times, the government has asserted that NONE EXISTS and that it has honored all of its obligations:

a. On May 20, 2014, Joseph LaBar, Assistant United States Attorney, advised by email that **"[y]ou are entitled to any Giglio arising from any prior cases, and per the agent there is none. 3. As to Brady, I am mindful of my obligations and have withheld nothing. I will remain alert for any."** (Government's email of May 20, 2014 attached hereto and marked Exhibit "C");

b. In its Omnibus Response to Defendant's Pretrial Discovery Motions, D. E. #28, the government wrote:

> **The government is aware of its obligations under Brady and cognate cases. It has complied with Brady in this case, and will continue to do so. …Here, the government has produced Jencks and Giglio material of its witnesses four months in advance of trial.**

10. That was a bold-faced lie for all of the reasons set forth below. The government has committed outrageous misconduct in withholding information that is directly relevant to the innocence of the defendant and the integrity of the government's case and its informant, Person #1.

11. The government committed additional egregious misconduct by its lack of candor to the Court in direct response to this Court's questions regarding the entrapment defense and Brady. At the guilty plea hearing, on August 4, 2014, this Honorable Court appropriately queried counsel on the viability of an entrapment defense. Defense counsel explained to the Court that since there was no evidence to contradict or impeach the testimony of Person #1, who, according to the government, would testify that the defendant solicited him, counsel believed that she could not prove government inducement and lack of predisposition of the defendant, the essential elements of an entrapment defense.

12. The government stood mute before this Court at the plea hearing on August 4, 2014 and failed to disclose to the Court or the defense significant evidence in the government's possession relating to Person #1's history of deception and fabrication of evidence and the fact that he had collected in excess of $275,000.00 in payments and living expenses from the government. The government further failed to advise the Court or the defense that less than three weeks previously, on or about July 14, 2014, Person #1 again attempted to provide information in another case in exchange for cash, but that the government doubted his credibility and scheduled a polygraph for August 13, 2014, conveniently just days after Ms. Panell's guilty plea. The government further failed to advise the Court that, in addition, Person #1 had a history of deception and the creation of false reports to the FBI in exchange for cash and other benefits. The government failed to disclose that Person #1 had reported a threat to his safety to the FBI in April, 2012 in an attempt to receive cash and payment for living expense and relocation and that the government had administered a polygraph, at that time, which indicated deception and that he was deactivated as an informant. The government further failed to disclose that, nonetheless, Person #1 received $3,500 in cash, three weeks lodging in a hotel and a fully paid move to Ohio, totaling thousands of dollars.

13. The government stood MUTE in response to the Court's questions and defense counsel's assertions at the guilty plea hearing. That is simply incredible, unethical misconduct and highly contemptuous of this Court.

14. Having received no Brady or Giglio materials from the government, the defendant pled guilty on August 4, 2014. Defense counsel further advised the Court at the Guilty Plea Hearing that she continues to seek the production of all Brady and Giglio materials relating

to Person #1 as Person #1's motivation to be an informant in this case was suspect and was directly relevant to the pressure brought to bear upon the defendant, a severely compromised and mentally ill individual. This Honorable Court agreed and advised the government that the Court considers the government's these obligations to continue at all stages of the proceedings.

15. Of course, on August 13, 2014, nine (9) days after Ms. Panell's guilty plea, Person #1 was polygraphed and the result indicated deception. He was polygraphed again on August 15, 2014 and, again, the result again indicted deception. Person #1 then admitted to the FBI Special Agent that:

> [H]is July 14, 2014, report concerning potential national security matters had been false, and that he had **fabricated the story to get money from the FBI.** The witness told the examiner that he did so because he needed money to support his family; that he and his family were then living in substandard conditions; that as a result of these conditions his girlfriend had threatened to leave the witness and return to the home of her mother; and that he assumed that upon making his false report he would get a cash payment from the FBI.
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> See Correspondence of Joseph LaBar, Assistant United States Attorney, dated August 29, 2014, ("III The witness's recent misconduct:,") (Emphasis added), attached hereto as Exhibit "A."

The witness further stated that "he fabricated the story because he was experiencing financial difficulties; and that he decided to get money by lying rather than by committing a bank robbery." *Ibid.*

16. In addition, the government's new admissions regarding Person #1's cooperation over a period of eight (8) years and receipt of in excess of $200,000.00 (during that time), raises the question of whether the government deceived the defense by failing to disclose that Person #1 received reduced sentences for his previous cooperation. The only Giglio evidence ever

produced by the government was a criminal history of Person #1 that indicated that he received two ten (10) year federal sentences upon convictions for bank robbery, use of a firearm and armed robbery. This history indicated that Person #1 was sentenced to ten (10) years imprisonment and five (5) years supervised release, on or about March 13, 2003, upon a conviction of bank robbery and use of a firearm in connection with a crime of violence for which he was arrested on February 2, 2000. If this were true, Person #1 would have been released from prison in approximately 2008, making it impossible for him to cooperate for eight years. However, the information provided by the government also indicates that he was again arrested on June 11, 2003, charged with conspiracy, armed bank robbery and use of a firearm, and received another ten (10) year sentence with five (5) years supervised release. If this were true, Person #1's earliest release date would have been in 2012. Thus, it would have been impossible for him to receive the $200,000.00 over eight years. If Person #1 was released from prison early, receiving a reduction in his sentence, and/or his sentences were run concurrently by reason of his cooperation, this fact was NEVER revealed to the defense.

17. Given these gross inconsistencies, upon further investigation, the defense has just obtained evidence which indicates that Person #1 was, indeed, released from federal prison in 2005. Therefore, Person #1 did, indeed, receive a reduced sentence in exchange for his cooperation in the past.

18. Mysteriously, there are no records in the federal pacer system regarding Person#1. It appears that all dockets relating to these two federal cases have been removed from the system.

Therefore, it is impossible to check the dockets to see what benefit Person #1 received in these two cases.

19. In the alternative, if Person #1 served his full sentence, the government's statement in its correspondence of August 29, 2014, that "[t]he witness was not under a court sentence of any sort during this investigation, and he was not the target of any other investigation," would be false. If Person #1 commenced his sentences in 2000 and 2003, he could not have been released prior to 2012 and would have then begun his five (5) year term of supervised release. Thus, in 2013 when this case commenced, he would have been under a "court sentence" and the government's statement would be false. The fact that Person #1 immediately attempted to provide additional false and fabricated information to the FBI in 2012 and 2014, while on supervised release, would be highly relevant impeachment material for the defendant.

20. Moreover, Person #1's admission of fabrication of evidence and lying to an FBI Special Agent is a violation of 18 U.S.C. Section 1001, a felony punishable by five (5) imprisonment. It is not yet known whether or not the government intends to charge Person #1 with this crime. Certainly, if the government fails to charge him with this crime, that would constitute highly relevant Brady and/or Giglio material for use at Ms. Pannell's trial, as it would be a substantial benefit received by Person #1 for his cooperation against Ms. Panell.

21. The government has committed outrageous, unethical and egregious misconduct in withholding a virtual treasure trove of Brady and Giglio evidence in their possession and for

their lack of candor to this Court. Had the government revealed this evidence, the defendant would never had pled guilty. The enormous evidence of deception and fabrication of evidence by Person #1 is directly relevant to the defendant's defense of entrapment. Had this evidence been revealed to the defense, as the law requires, there would have been no guilty plea.

22. For all of the foregoing reasons, and the reasons set forth in the attached Memorandum of Law, it is respectfully requested the defendant's guilty plea be WITHDRAWN.

WHEREFORE, it is respectfully requested that the defendant's Motion to Withdraw is GRANTED and the defendant's guilty plea, entered on August 4, 2014, be WITHDRAWN.

Respectfully submitted,

HOPE C. LEFEBER, LLC

By: /s/

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Hope C. Lefeber, Esquire

CERTIFICATE OF SERVICE

I hereby certify that a copy of the defendant's Motion to Withdraw Guilty Plea was served upon Joseph LaBar, Assistant United States Attorney, United States Attorney's Office, 615 Chestnut Street, Philadelphia, PA 19106, on September 12, 2014 electronically.

/s/

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HOPE C. LEFEBER