

CAUSE NO. 1540469R
CAUSE NO. 1397099D

STATE OF TEXAS § IN THE 396TH DISTRICT COURT
§
V. § OF
§
ROBERT STOVER § TARRANT COUNTY, TEXAS

MOTION FOR DISCOVERY ORDER REQUIRING DISCLOSURE OF EVIDENCE LEADING TO MICHAEL ANDERSON’S CLAIM OF PRIVILEGE

COMES NOW Defendant in this cause and moves the Court for an order requiring the Tarrant County District Attorney’s Office to disclose evidence surrounding complainant/witness Michael Anderson’s claim of privilege in a related, federal prosecution and shows as follows:

FACTUAL BACKGROUND

Both the state and federal governments have undertaken to prosecute members of the Bandidos Motorcycle Club. Currently, former Bandidos National President, Jeff Pike, is on trial in the Western District of Texas – San Antonio Division. On Friday, May 4, 2018, Pike’s defense attorney, Dick DeGuerin, called Michael Anderson as a witness for the defense.

As the Court may recall, Anderson is a listed as a complainant/victim in the cases against Defendant, and co-Defendant Howard Baker. Anderson appears to have been interviewed by the Tarrant County District Attorney’s Office and the Fort Worth Police Department several times during the course of these prosecutions.

Shortly before Baker’s trial, on May 25, 2017, Assistant District Attorney Pamela Boggess filed a motion disclosing exculpatory statements made by Anderson to Ms. Boggess. Although he was never actually called as a witness at Baker’s trial, he was formally sworn as a witness on June 1, 2017. As recently as April 20, 2018, Anderson was still on the State’s witness list in Defendant’s case.

When DeGuerin called Anderson as a witness in San Antonio, Anderson invoked his privilege against self-incrimination and refused to testify. Anderson's claim of privilege was based on representations made by Assistant District Attorney Pamela Boggess and her supervising attorney that Mr. Anderson is currently a target of a state investigation in Tarrant County.

In the discussions about Anderson claiming privilege, the following exchanges occurred between Mr. DeGuerin and Senior U.S. District Judge David Ezra:

[JUDGE EZRA]: "They have been looking at Mr. Anderson for quite sometime and along with others. They haven't made any decision as yet as to whether they're going to charge Mr. Anderson. He remains a person of serious interest. I asked [Ms. Boggess] whether in her view and her boss answered this question unequivocally I think she and her boss, I don't know whether he was -- I think he's a section head of that I don't know what his name was but he's pretty high up in the prosecutor's office, whether -- I said the real question I need to know is whether Mr. Anderson is realistically in jeopardy and the answer was unequivocally yes."

* * *

[MR. DEGUERIN] "I'm concerned that this is collusion between the Fort Worth District Attorney's Office and the prosecution in this case to deprive us of a witness and I want to say that on the record."

[JUDGE EZRA]: "We don't have any evidence of that. If I had evidence of that, if I thought that that had happened, believe me when I tell you there would be hell to pay."

LEGAL STANDARD

Article 39.14 of the Texas Code of Criminal Procedure governs discovery in Texas. Although Article 39.14 requires on a request for discovery, this Court has the authority to order production of discovery as well. This includes the authority to order production of notes taken during prosecution and law enforcement witness meetings because those are also statements of a

witness, and not work product. *See Deamus v. State*, 05-15-01182-CR, 2017 WL 3599771, at *8 (Tex. App.—Dallas Aug. 22, 2017, no pet.) (mem. op., not designated for publication)(reversing conviction for violation of a discovery order for oral statements made to prosecutor during pretrial eyewitness interview).

DISCOVERY REQUESTED

Defendant moves the Court to enter an order requiring production of the following:

1. Identify every member of the Tarrant County District Attorney's Office that participated in the conversation with the Hon. Judge David Ezra, the Assistant U.S. Attorney's Office for the Western District and Defense Counsel on May 4, 2018.
2. Produce any offers of consideration or benefits conferred to Michael Anderson in exchange for his testimony in the instant case and in the *State of Texas v. Howard Baker*.¹
3. Identify the date, time, and location, if applicable, of Assistant District Attorney Pam Boggess's conversation with Michael Anderson described in State's Eighth Disclosure filed on May 25, 2017.
4. Describe the circumstances that compelled Michael Anderson to appear in Court on June 1, 2017, where he was sworn in as a witness in the *State of Texas v. Howard Baker*.
5. Produce a complete record of all contact and/or communication, whether written oral or electronic, with Michael Anderson and the Tarrant County District Attorney's Office and/or agents acting on behalf of the TCDA. Include in your response the date, time, location, identity of all parties present and purpose of interview. Include in

¹ The withholding from the defense of any promise of leniency to a prosecution witness constitutes a denial of Due Process. *Giglio v. United States*, 405 U.S. 150 (1972); *DeMarco v. United States*, 415 US 149 (1971) [hearing required]; *Napue v. Illinois*, 193 S.W.2d at p. 218 [attempt by State to "cleverly circumvent" due process requirements of *Giglio* by making their deal with "the witness's lawyer and then instructing him not to communicate any offer to his client, thereby depriving the Defendant of the opportunity to adequately test the witness' credibility in the presence of the jury."]; *See Burkhalter v. State*, 493 S.W.2d 214 (Tex. Crim. App. 1973), *cert. denied*, 414 U.S. 1000 (evidence that a witness for the state, or his attorney, has been told that testifying will help the witness' own case is required to be disclosed).

your response every occasion on which Mr. Anderson was given his Miranda Warnings.

6. Identify dates, times, names of the parties and where applicable, physical location of any meetings between the Tarrant County District Attorney's Office and/or agents thereof and the U.S. Attorney's Office for the Western District of Texas and/or agents thereof.
7. Identify the point at which the TCDAO office began looking at Mr. Anderson as 'a person of serious interest.'
8. Identify all other individuals identified to the Hon. Judge Ezra by the TCDAO as persons of 'serious interest.'
9. Identify and produce any evidence discovered by or known to the TCDAO starting on June 1, 2017 and the present that supports the State's contention that Mr. Anderson is a person of serious interest.
10. All internal communication within the district attorney's office and any communication with outside law enforcement and prosecuting agencies regarding the investigation of Michael Anderson and the Tarrant County District Attorney's Office decision making as to charge him (or not).

CONCLUSION & PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays this Court:

1. Set the matter for a hearing;
2. Order the Tarrant County District Attorney's Office to provide the requested discovery;
3. Review any objectionable items *in camera*, and include (under seal) all items the Court sustains objection to for the appellate record.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 7, 2018, a copy of the foregoing was served upon Assistant District Attorney Pamela Boggess by efileing it with the State's efileing system.

 /s/ Casie Gotro
Casie L. Gotro