

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,	§	No. 5:22-CR-50053-001
Plaintiff,	§	
vs.	§	
	§	
ROBERT F. CESSARIO	§	
Defendant,	§	
	§	
vs.	§	
	§	
JONATHAN WOODS	§	
Intervenor.	§	

INTERVENOR JONATHAN WOODS’ SUGGESTIONS IN SUPPORT

Pursuant to Local Rule 7.2 of the United States District Court for the Western District of Arkansas, Intervenor Jonathan Woods hereby states as following in support of his Motion to Intervene:

1. Jonathan Woods was the Defendant in Cause No. 5:17-CR-50010, *United States v. Jonathan Woods, et al* which is the underlying case at issue wherein Defendant Robert Cessario destroyed relevant evidence causing the case in chief. The purposeful destruction of evidence was a significant and material issue in the trial and subsequent appeal.
2. Jonathan Woods remains in prison and has always maintained his innocence. His current scheduled release date is October 21, 2033.
3. The destruction of evidence by Defendant Cessario was a significant issue appealed by Intervenor Woods in his appeals to the 8th Circuit.

4. Defendant Cessario has plead guilty to a single charge of “corruptly destroying an object with the intent to impair its integrity and availability for use in an official proceeding” under 18 USC 73(a)(1)(B) in the present case.

5. Defendant is being offered this plea agreement by the Department he worked for to a single count of obstruction even though, by his own admission, he twice destroyed the data and hard drive image on the device on two separate days while he knew it was to be produced pursuant to a court order; to wit:

“4. On or about December 4, 2017, before taking the computer for the forensic examination, I took the computer to a commercial computer business and paid that business to “wipe” the computer, that is, to completely erase the contents of the hard drive that contained the recordings. Thereafter, on or about December 6, 2017, I personally performed another procedure to “wipe” the computer.”

Para. 4, Page 8, *Cessario Plea Agreement*, Docket #6.

6. As part of his plea, Cessario is finally admitting after multiple, repeated, contradictory and conflicting statements to the contrary, that he destroyed evidence that was ordered by the Court to be turned over to the defense in the *United States v. Jonathan Woods*.

7. Prior to this moment, Defendant Cessario has not told the truth before any tribunal about what actions he took, why he took those actions, and outlining the substantive content on the files that were destroyed.

8. An adverse inference exists that the substantive materials on the destroyed audio files contained damaging personal or professional information relevant to the case in *United States v. Woods* because there was an obligation to preserve it, and notice that it was relevant in a pending case. *Kronisch v. United States*, 150 F.3d 112 (2d Cir. 1998). This information has never been released.

9. In the plea agreement, Defendant Cessario makes clear that the destruction was intentional. The state of mind demonstrating the intentionality in the act is both in having paid for the professional private service to destroy the evidence, but also in the subsequent act of doing it a second time personally.

10. There has been no other way for Intervenor Jonathan Woods to get information from Defendant Cessario as to what was on the files.

11. No reasonable explanation exists as to why this evidence was not turned over completely and thoroughly, and Intervenor's concern is that this proceeding will serve to permanently suppress this information relevant and vital to his liberty interests.

12. Defendant Cessario has given multiple conflicting and contradictory answers as to why he concealed destroying this evidence. Defendant Cessario has never explained why he didn't turn this evidence over in the first place.

13. The Government continues to solely rely upon and accept Defendant's statements at face value that the contents of the destroyed files were innocuous, immaterial, and merely personal medical records.

“However, the government has no evidence suggesting that (a) the defendant had any reason for wiping the computer other than his expressed one, which was to remove sensitive personal and family information on the computer, or (b) the defendant had any motive to impede the public corruption prosecution grander than making one piece of evidence, the computer, unavailable for use in the prosecution.”

(Dkt #15) USA Sentencing Memo, at p. 2.

14. The Government's lack of curiosity about what might substantively be on those files suspiciously parallels its own obvious interest to preserve the integrity of the conviction they received against Intervenor Woods. By the Government's own admission in its sentencing memo

Dkt #15, page 2, Defendant Cessario's criminal actions, "threatened to derail a significant prosecution..."

15. An important reason that prosecution was not "derailed" was because the United States sought to preclude any mention of FBI Agent Cessario's suppression of evidence before the jury at the trial of former Senator Jon Woods. The United States received this limitation.

16. An estimated 600 megabytes of data were purposefully, repeatedly, destroyed by Defendant Cessario, as sworn by a statement made by Shun Turner to the Office of Inspector General, page 7. Oren Paris case filing.

17. According to Defendant Cessario's colleague FBI Agent Shaun Turner, Cessario wanted to hide and conceal the formatting of the computer from the U.S. Attorney's Office from the start. "He really doesn't want me to basically send the US Attorney's office the fact that it had been formatted. He just wanted me to let them know that the computer didn't have any, you know, drop files or whatever on there." TURNER OIG STATEMENT, lines 3-7, page 8.

18. Defendant Cessario was not forthcoming with the Government at this point and was asking a fellow agent to lie to him, to enlist him in making a material false statement to the United States government as well as to engage in a conspiracy to hide his crime of suppressing evidence to be tendered pursuant to a court order.

19. Cessario was not allowed to testify at the trial of Jon Woods over the objection of Woods' trial counsel.

20. It strains credibility that Defendant deleted an estimated 600 **megabytes** of merely personal medical files. The current practice of the United States of America is rarely to believe a criminal defendant's self-stated motives on their face with no significant skepticism of such self-serving statements.

21. Defendant Woods made an appeal to the 8th Circuit that was denied in large part because the Appellant could not provide evidence as to what was on the destroyed files, and could not show how these files could have been relevant to his defense.

22. These files are recordings of undercover codefendants of Jonathan Woods used by prosecutors to collect inculpatory statements against Jonathan Woods.

23. There has never been an accounting or detailed description as to what was on the destroyed files. Intervenor Jon Woods has never been able to obtain an accounting of what was potentially on the deleted files.

24. Intervenor Woods has a serious and significant liberty interest and constitutional and civil rights interest in determining what was on those files, whether the evidence was responsive under *Brady v. Maryland*, the degree to which they were material to his defense, and whether statements contained therein were exculpatory to the accusations against him or inculpatory as to the credibility of one or several witnesses against him, including the Defendant.

25. The inability of the government to provide these potentially exculpatory files, as well as files that might indict the credibility of the investigation or specific witnesses against Intervenor Woods, also constitutes an ongoing due process violation under the 14th Amendment to the U.S. Constitution.

26. The scope of the missing files has been substantially minimized by the United States of America. The original recordings were made on a recording device, allegedly at the sole direction of former Rep. Micah Neal. These recordings were then transferred to the laptop of Neal's attorney Shane Wilkinson. The files then on Wilkinson's laptop were transferred to FBI Agent Cessario. Cessario then made physical copies on compact discs of the files and distributed them to the U.S. Attorney.

27. Cessario never copied the full set of original files on his laptop, only selectively doing so. This is the red flag that caused Intervenor's trial counsel to ask the U.S. Attorney to instead tender the full set of files.

28. Cessario then 'wiped' his laptop while under a court order and destroyed all the files on or around December 2017.

29. Then, Shane Wilkinson's laptop was similarly formatted and destroyed, causing any backup to these specific files to go missing a few days later in December 2017.

30. Then the original audio recording equipment went missing. Rep. Micah Neal's cell phone also went missing. The prosecution was based on undercover recordings yet the full set of original recordings kept disappearing whenever they were due to be tendered to the defense.

31. Intervenor's interests cannot be fully represented or protected by the United States of America, and this interest will be impaired if Jonathan Woods is not permitted to intervene in this case.

32. Intervenor has exhausted his appeals on this specific matter and has been frustrated because he cannot attest to the contents of files he illegally never received. Intervenor's ability to argue his case properly to the Court has been frustrated by the criminal actions of Defendant Cessario. This hearing is the last chance for Intervenor to receive statements clarifying what was on the substantive files that Cessario criminally destroyed.

33. Without notice as to the proceedings in this case, proposed Intervenor has also lost the ability to be heard, provide statements, and discover evidence that may have been vital to his post-conviction relief. Intervenor Woods was a clear and obvious interested party in this case who should have been notified by the United States of America, and the failure to do so constitutes a due process violation.

34. Intervenor Woods has a unique interest in this criminal case distinguishable from a true third-party intervenor because his conviction involves the same subject matter and evidence at issue in the current prosecution, which involves a government official who is otherwise typically entitled to broad governmental immunity, and who is now being prosecuted by the same agency that oversaw his conduct.

35. The potential for a real or perceived conflict of interest within the government and involving the government's use of prosecutorial powers and its incarceration powers is high.

36. The potential for a real or perceived conflict of interest for prosecutors to cover misconduct and the potential conviction of innocent defendants through the use of that misconduct, is also high.

37. The Court has an obligation and duty in this unique circumstance to avoid the potential suppression of exculpatory evidence because of the recognized governmental duty under *Brady*. In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or punishment, irrespective of the good faith or bad faith of the prosecution.” Evidence is material under *Brady* if “there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” *Cone v. Bell*, 556 U.S. 449, 469-70 (2009); see also *United States v. Ryan*, 153 F.3d 708, 712 (8th Cir.1998) (citing *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995)). A “prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.” *Kyles*, 514 U.S. at 437.

38. There is a reasonable presumption that this evidence was material in the case, and not, as the Government alleges, merely medical records. First, the use by Defendant Cessario of

concealing his act and actions creates an adverse inference, and second, the quantity of data deleted suggests there was much more evidence than merely personal files.

39. Interventions in criminal matters “have been granted in limited circumstances where ‘a third party’s constitutional or other federal rights are implicated by the resolution of a particular motion, request, or other issue during the course of a criminal case.’” *United States v. Collyard*, case no. 12cr0058, 2013 WL 1346202 at *2 (D. Minn. April 3, 2013)(quoting *United States v. Carmichael*, 342 F. Supp. 2d 1070, 1072 (M.D. Ala. 2004)).

40. Only Intervenor can adequately protect the justice interest if Defendant Cessario allocates to his crimes because of the conflict of interest held by the United States of America.

CONCLUSION

For the foregoing reasons, Intervenor Jon Woods respectfully requests that the Court grant the Intervenor’s Motion to Intervene, specifically granting:

- (1) Detailed Allocution – For the first time, Mr. Cessario will not be able to hide his former credentials as an agent of the FBI, nor his 5th Amendment rights. Because of this, Intervenor requests that as a condition of entering his manifestly lenient sentence, Cessario be forced to disclose the contents of all of the information he feloniously deleted from the hard drive, with specificity and complete candor;
- (2) Intervenor seeks all evidence exchanged in this criminal suit;
- (3) Intervenor seeks all sealed evidence in this criminal suit; and
- (4) Intervenor asks that Mr. Cessario’s sentencing be stayed pending Intervenor’s opportunity to be heard on his motion. Intervenor notes that the United States, the tough prosecutors they are, are only seeking one (1) year of unsupervised probation. Accordingly, no party to this suit, let alone *the public* (who are closely viewing this

case to see how the machinery of government treats one its own, who has admitted to committing felonies), will be prejudiced, should the Court stay Mr. Cessario's sentencing pending a hearing on Mr. Woods' Motion to Intervene.

Respectfully submitted,

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**Attorney for Intervenor Jonathan Woods,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Intervenor's Motion to Intervene was served on counsel of record for Defendant and for the Government via the court's CM/ECF on January 4, 2023.

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