

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
vs.) No. 16-03024-01-CR-S-MDH
)
SAFYA ROE YASSIN,)
)
 Defendant.)

DEFENDANT’S MOTION TO COMPEL

Comes now, Safya R. Yassin, by undersigned counsel, and submits this Motion, asking the Court to compel the government to comply with the order of discovery that was issued on February 23, 2016.

On February 23, 2016, the parties were present for a scheduling conference with the Court, and at that hearing, Ms. Yassin requested all discovery to which she may be entitled pursuant to the Federal Rules of Criminal Procedure.

On this same date, this Court issued a Scheduling and Trial Order (Docket Entry 24), which ordered:

“Within ten days from the date of this Order, the government shall disclose or make available for inspection, copying or photographing to defense counsel, the following information within the possession, custody and control of the government or the existence of which is known or by the exercise of due diligence may become known to the attorney for the government.”

The order then lists what is to be handed over to the defense: copies of any prior criminal record of the defendant within the possession or control of the government; copies of any written or recorded statement made by defendant which is in the possession or control of the government, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement made by the defendant, whether before or after arrest, to an attorney for the government, a Federal agent, or any other law enforcement officer; any books, papers, documents, photographs, tangible objects, building or places, or copies or portions thereof, which are within the possession, custody or control of the government and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant; any results or reports of physical or mental examination, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

The Order continues by including as discoverable all evidence that is arguable subject to suppression. The manner of this discovery laid out in great detail in the Court's Order.

At the time of the filing of this Motion to Compel, it has been over 30 days since the Court has issued this order and no discovery has been given to Ms. Yassin or undersigned counsel. This lack of disclosure is ostensibly based on the Classified Information Procedures Act (hereinafter referred to as “CIPA,” codified at 18 U.S.C. App. III), and the government’s representations that discovery in this case may have to be handled under CIPA rules.

CIPA can alter the rules of discovery when the discovery involves material that has been deemed “classified,” which is defined by CIPA (18 U.S.C. App. III § 1) as “any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.” However, it has become clear in the filings in this case since Docket Entry 28 that this case no longer deals with classified information.

In a proposed order sent to the Court *ex parte*, the government has informed the Court that the discovery has been declassified, but they consider some of the discovery to be better termed as “Sensitive Discovery Materials” and some discovery termed “General Discovery Materials.” (Docket Entry 31). These terms appear to be the creation of the government and are not recognized by any controlling legal authority.

From this language alone, CIPA is no longer an issue in this case. Since all discovery has been declassified, CIPA is no longer controlling legal authority as to the

government's discovery obligations and duties as to Ms. Yassin.

That being so, the government is now in violation of the Court's Scheduling and Trial order. It is clear from Docket Entry 31 that the government has been in possession of discoverable material pursuant to Rule 16 of the Federal Rules of Criminal Procedure for some time, and has failed to disclose that material to undersigned counsel and Ms. Yassin.

WHEREFORE, Ms. Yassin moves that this Court Compel the attorney for the government to immediately disclose all discovery materials outlined in the Court's Scheduling and Trial Order, and for any other remedy the Court deems proper.

Respectfully submitted,

/s/ Ian A. Lewis

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March 24, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent e-mail notification of such filing to all CM/ECF participants in this case, and a copy was mailed, via the United States Postal Service, to all non-CM/ECF participants.

/s/ Ian A. Lewis

IAN A. LEWIS