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10 Attorney for Defendant

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13 **IN THE JUSTICE COURT OF THE STATE OF ARIZONA**
14
15 **IN AND FOR THE COUNTY OF PIMA**

16 STATE OF ARIZONA,) Case No. CR17-706020-MI
17)
18 Plaintiff,)
19) **MOTION FOR DISCLOSURE**
20 vs.)
21)
22 TERRENCE HARRY BRESSI,)
23)
24 Defendant.)
Hon. Maria Felix

TERRENCE HARRY BRESSI, through Counsel, Adam N. Bleier and Steven P. Sherick, SHERICK & BLEIER, PLLC, respectfully requests this Court, pursuant to Rule 15.1 of the Arizona Rules of Criminal Procedure, the principles set forth in *Brady v. Maryland*, 373 U.S. 83 (1963), and the due process, confrontation, and effective assistance of counsel clauses of the Arizona and United States Constitutions to order the State of Arizona and federal Customs and Border Protection (CBP) to disclose to the Defendant information critical to the legal and the factual defense of his case.

I. Factual Background

Mr. Bressi works for the University of Arizona at Kitt Peak and is in charge of telescope operations there. Since 2008, when the SR 86 federal checkpoint began, he has been stopped

1 more than 600 times. Mr. Bressi stops his vehicle as directed and regularly exercises his 1st, 4th
2 and 5th Amendment rights during these encounters with federal officers by lawfully refusing to
3 answer any questions posed to him by agents at the checkpoint. Most of the agents know who
4 he is and waive him through. Over the years, however, a number of agents have engaged in a
5 pattern of harassment against Mr. Bressi. Since 2013, this harassment has expanded to include
6 deputies with the Pima County Sheriff's Department who work in collaboration with the Border
7 Patrol and are paid overtime through a federal grant program named Operation Stonegarden
8 (OSG). Sheriff's deputies working in this capacity are frequently stationed at the SR 86 road
9 block.

10 On April 10, 2017, Defendant arrived at the CBP roadblock on SR-86. Mr. Bressi was
11 stopped by a CBP Agent. Mr. Bressi lawfully declined to answer any of the questions posed by
12 the federal agent and asked the agent when he would be free to leave. The agent asked Mr.
13 Bressi to "pull in over there" (referring to secondary). Mr. Bressi asked whether he was free to
14 leave again and the agent said he would be free to go only after he answered his questions, which
15 Mr. Bressi had a right not to answer. Shortly thereafter, the agent called over to Deputy Roher,
16 a PCSD officer – not a federal agent – who told Mr. Bressi to either move to secondary
17 inspection or answer the agent's questions. When Mr. Bressi inquired as to the grounds on
18 which he was being told to go to secondary (reasonable suspicion is required), Deputy Roher
19 declined to provide any grounds. When Mr. Bressi asked Deputy Roher if he was enforcing
20 federal immigration law, Deputy Roher threatened Mr. Bressi with arrest. Mr. Bressi then asked
21 Deputy Roher who was detaining him. Deputy Roher indicated that he was detaining him. When
22 Defendant asked Deputy Roher what law he was violating, Deputy Roher said, "Go ahead sir, I'll
23 let you go". As Mr. Bressi began to pull away from the roadblock, he looked in his rear view

1 mirror only to see Deputy Roher running towards his patrol car. Anticipating a traffic stop,
2 Defendant pulled his vehicle over to the south side of the road to await the deputy. Deputy Roher
3 pulled in behind Defendant a short time later. Deputy Roher approached the driver side of the
4 vehicle and ordered Defendant to get out. Mr. Bressi was forcibly arrested and eventually cited
5 by Deputy Roher for obstruction of a highway. The amount of time Mr. Bressi was *detained* at
6 the checkpoint he is alleged to have obstructed was 2 to 3 minutes.

7 II. *Legal Argument*

8 There are a number of complex legal issues in this case. One of the central issues is
9 whether Mr. Bressi can be charged, let alone convicted, of the state crime of obstructing a
10 highway on which he was the one being stopped by federal agents and had simply chosen to
11 exercise a lawful right. In addition, and just as critical, are a number of legal issues including
12 the reasonableness of the checkpoint under the Fourth Amendment¹ and the Arizona
13 Constitution, the constitutional right to refuse to answer law enforcement questions under the
14 Fifth Amendment, and the question of the jurisdiction of this Court over a federal border patrol
15 checkpoint.

16 With the purpose of investigating and presenting these issues to the Court, the Defendant
17 has sent two disclosure letters to the Pima County Attorney's Office requesting information
18 material to the legal and factual defense of this case. *See Exhibits A and B.* To date, the State
19 has disclosed some video without sound from the checkpoint stop along with written reports

20 1 Per the United States Supreme Court, immigration checkpoints which are limited in scope have
21 been found to be legal. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). However, these
22 checkpoints have been limited by the courts under the Fourth Amendment to brief detentions for
23 immigration related purposes. A checkpoint is not legal if it is being used for general law
24 enforcement purposes. *Indianapolis v. Edmund*, 531 US 32 (2000). One of the central issues
which this Court must address is whether the checkpoint is being used for a proper purpose
(immigration) or as a means to investigate and cite drivers for state crimes, which is prohibited.
U.S. v. Soto-Zuniga, 837 F.3d 992 (9th Cir. 2016).

1 from Deputies Roher and Kunze. Not disclosed by the State but requested include but are not
2 limited to the following items:

- 3 * Incident reports generated by CBP agents stationed at the roadblock during this incident
4 * Contact information for CBP involved in this matter including CBP Agents Frye, Lopez &
5 Fuentes
6 * Any state cross-certification records for CBP Agents Frye, Lopez & Fuentes
7 * Documents Pertaining to Operation Stone Garden including Daily Activity Reports generated
8 from the SR-86 checkpoint
9 * CBP checkpoint guidelines, procedures, policies
10 * Border Patrol Agent Handbook pertaining to checkpoint operations
11 * All records in the possession of PCSD and CBP pertaining to Mr. Bressi
12 * Operational statistics related to the SR-86 checkpoint, including the statistics of non-federal
13 and non-immigration related crimes investigated at the checkpoint

9
10 As of this date, Counsel has not received the requested disclosure. Because this
11 information is critical to the legal and factual defense of this case, and critical to the Court's
12 ability to conduct a review of the reasonableness of the checkpoint detention in this case, this
13 Court should order the disclosure of the requested material by the State and federal Customs and
14 Border Protection.

15 **RESPECTFULLY SUBMITTED** this 11th day of October, 2017.

16 SHERICK & BLEIER, PLLC.

17 

18 Adam N. Bleier
Counsel for Defendant

19 Original of the foregoing
20 filed this date with the Clerk
21 of the Pima County Justice Court.
22 Copies of the foregoing
23 Mailed/delivered this date to:

24 Mr. Parker Stanley
Deputy County Attorney
Pima County Attorney's Office
32 N. Stone Ave., #1400
Tucson, Arizona 85701

EXHIBIT A

Steven P. Sherick

Certified Specialist Criminal Law
Best Lawyers in America®
Arizona's Finest Lawyers
Bar Register of Preeminent Lawyers
Southwest Super Lawyers

Adam N. Bleier

Attorney at Law

July 19, 2017

FILE

Ms. Rachel Gigar
Deputy County Attorney
Pima County Attorney's Office
32 N. Stone Avenue, #1400
Tucson, Arizona 85701

RE: State vs. Terrence Harry Bressi
Case No. CR17-706020-MI

Dear Ms. Gigar,

Pursuant to Rule 15 of the Az. Rules of Criminal Procedure, Defense requests the following disclosure:

- 1) Any and all video or audio in this case taken by the Pima County Sheriff's Department (PCSD);
- 2) Any and all video and audio recordings provided by Customs Border Protection (CBP) to the PCSD (the existence of such is noted in the reports);
- 3) Any and all incident reports pertaining to this incident by agents of Custom Border Protection including CBP Agents Frye, Lopez, and Fuentes;
- 4) Contact information for CBP Agents Frye, Lopez, and Fuentes who were involved in this investigation and detention of Mr. Bressi;
- 5) Cross certification records pursuant to A.R.S. § 13-3875 authorizing CBP Agents Frye, Lopez, and Fuentes to perform state law duties;
- 6) All PCSD or CBP documentation related to any 8 § USC 1357(g) Attorney General agreement/program in effect between the PCSD and DHS/CBP empowering PCSD officer to enforce federal immigration law;
- 7) All 2017 Operation Stonegarden documentation including Daily Activity Reports from deputies on patrol; training materials; quarterly reports documentation

- 8) Deputy Roher's personnel file;
- 9) Current CBP checkpoint guidelines, procedures and policy including the current policy regarding uncooperative motorists;
- 10) Border Patrol Agent Handbook pertinent to the operation of immigration checkpoints;
- 11) All incident reports, emails, notes and other records in the possession of CBP or the PCSD associated with Mr. Bressi dating back to 2002;
- 12) Operational statistics (including all those involving state and local law violation citations/arrest issued by non-federal law enforcement) compiled by State or federal law enforcement with respect to the SR-86 checkpoint;
- 13) All disciplinary records pertaining to and citizen complaints of illegal detention at the SR-86 immigration checkpoint.

I appreciate your assistance with this request.

Respectfully,

A handwritten signature in dark ink, appearing to read 'A. Bleier', with a long horizontal flourish extending to the right.

Adam N. Bleier
Attorney for Mr. Bressi

ANB/mrm

EXHIBIT B

Steven P. Sherick

Certified Specialist Criminal Law
Best Lawyers in America®
Arizona's Finest Lawyers
Bar Register of Preeminent Lawyers
Southwest Super Lawyers

Adam N. Bleier
Attorney at Law

August 14, 2017

FILE

Ms. Rachel Gigar
Deputy County Attorney
Pima County Attorney's Office
32 N. Stone Avenue, #1400
Tucson, Arizona 85701

RE: State vs. Terrence Harry Bressi
Case No. CR17-706020-MI

Dear Ms. Gigar,

I am sending a second letter requesting disclosure in this case. I sent a previous letter dated July 19, 2017, to which we received no response. Pursuant to Rule 15 of the Az. Rules of Criminal Procedure, Defense requests the following disclosure:

- 1) Any and all video or audio in this case taken by the Pima County Sheriff's Department (PCSD);
- 2) Any and all video and audio recordings provided by Customs Border Protection (CBP) to the PCSD (the existence of such is noted in the reports);
- 3) Any and all incident reports pertaining to this incident by agents of Customs Border Protection including CBP Agents Frye, Lopez, and Fuentes;
- 4) Contact information for CBP Agents Frye, Lopez, and Fuentes who were involved in this investigation and detention of Mr. Bressi;
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- 7) All 2017 Operation Stonegarden documentation including Daily Activity Reports from deputies on patrol; training materials; quarterly reports documentation
- 8) Deputy Roher's personnel file;
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- 12) Operational statistics (including all those involving state and local law violation citations/arrest issued by non-federal law enforcement) compiled by State or federal law enforcement with respect to the SR-86 checkpoint;
- 13) All disciplinary records pertaining to and citizen complaints of illegal detention at the SR-86 immigration checkpoint.

I appreciate your assistance with this request.

Respectfully,

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Adam N. Bleier
Attorney for Mr. Bressi

ANB/mrm