

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF OKLAHOMA**

<b>UNITED STATES OF AMERICA,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. CR-14-20-JHP</b>
	)	
	)	
<b>JASON BRETT MERIDA,</b>	)	
<b>Defendant.</b>	)	

**DEFENDANT’S RESPONSE OPPOSING THE GOVERNMENT’S  
MOTION IN LIMINE TO RESTRICT DEFENSE  
CLOSING ARGUMENT**

Comes now the Defendant, Jason Brett Merida, by and through his attorneys Rex Earl Starr and J. Lance Hopkins, and for his Response opposing the Government’s Motion in Limine to restrict defense closing argument (Doc. No. 78), states the following:

There is overwhelming evidence that former Choctaw Assistant Chief Gary Batton, former Choctaw Chief Greg Pyle, and other listed Government witnesses are unindicted co-conspirators. Government witnesses on direct examination by the Assistant U.S. Attorneys have testified that Assistant Chief Batton accepted expensive gifts and trips, including accepting a free hunting trip (valued at thousands of dollars) to New Mexico completely paid for Choctaw subcontractor Builders Steel (which was owned and operated by indicted co-conspirators Lauri Parsons and Brent Parsons), as well as a free trip on a private jet from Durant to Ft.

Worth, where Brent Parsons bought thousands of dollars of hunting gear and equipment for Batton. And as to Chief Pyle, witness after witness has testified about the auctions held at the Chief's trail-rides and golf tournaments, where contractors doing business with the Choctaw Nation were effectively shaken down for astronomical campaign contributions for Pyle's reelection.

The most egregious example of misconduct on the part of Pyle is the repeated testimony regarding the Parsons (of Builders Steel) paying the Pyle Campaign \$50,000 for the opportunity to take Pyle and Batton out to dinner. And the \$50,000 was not all that was paid by Builders Steel in connection with the dinner. In an interview with the IRS Agent and two Assistant U.S. Attorneys involved in the case at bar, held on March 25, 2013, Brent Parsons told those Federal officials that he delivered three "Made in Oklahoma baskets" to Pyle and Batton, one basket for Pyle, one for Gifford, and another for Janie Dillard, Executive Director of Gaming for the Choctaw Nation. Parsons further stated that he put \$20,000 in three separate envelopes, and put all three of the envelopes in Batton's basket, and that the three envelopes containing \$20,000 each were for Batton, Pyle, and Dillard. Parsons told the Federal officials that he did not know if Batton gave the other two envelopes to Pyle and Dillard. Parsons said Batton just told him thanks the next time he saw him. As he is currently on the witness stand,

Parsons will certainly testify about those envelopes containing \$20,000 each during direct and/or cross-examination.

Other evidence of Pyle and Batton's conspiratorial activity already has been admitted into evidence without objection as Defendant's Exhibit No. 1, which is email correspondence and attachments from Michael Burrage, an attorney whom has long represented the Pyle Administration, addressed to U.S. Attorney Mark Green and Assistant U.S. Attorney Doug Horn. Others who received the email "Cc" included Pyle and Batton and a number of Choctaw Nation attorneys. Attachments to the correspondence include photocopies of checks written to various charities out of Assistant Chief Batton's personal bank account and Chief Pyle's campaign bank account. In said correspondence, Pyle and Batton through their attorney each acknowledge receiving large amounts of gifts and/or political contributions from Builders Steel and Flintco, the companies which employed most of the indicted co-conspirators, and informed the U.S. Attorney that they were making charitable contributions in the exact equal amounts of what they received from Builders Steel and Flintco. Batton admitted to receiving gifts valued at \$27,500 from Builders Steel, and Pyle admitted to receiving \$234,825 in campaign contributions from Builders Steel and Flintco. A photocopy of the email correspondence (without the attachments) is attached hereto as Exhibit A.

The gifts from Builders Steel to Assistant Chief Batton are of particular import, in that Batton was the most influential member of the Choctaw Nation Business Committee, which approved the \$10.5 million purchase of steel from Builders Steel, which has been, will continue to be, the subject of much trial testimony. The Defendant, Jason Merida, was not a member of that committee which approved the purchase.

Despite the overwhelming evidence that former Chief Pyle and former Assistant Chief Batton were involved in the conspiracy involving employees of Flintco, Builders Steel, and the Choctaw Nation, those two men have not been indicted. Both Pyle and Batton are listed on the Government's witness list and listed on the Defendant's witness list, and both men have been served subpoenas to appear as witnesses at trial. The fact that those two men have not been indicted is a major factor for the jury to consider in evaluating the credibility of their testimony.

Given the voluminous evidence of Pyle's and Batton's involvement in the conspiracy, the fact that they have not been indicted evidences that both men have been granted some type of immunity from prosecution by the U.S. Attorney's Office. As evident from above-referenced correspondence to the U.S. Attorney by their attorney Burrage, they have been cooperating with the U.S. Attorney's Office since at least the date of the correspondence, May 9, 2013. And since they are both

on the Government's witness list, it appears that an agreement has been reached whereby they will not be indicted as long as they continue to cooperate and testify at the trial of Mr. Merida. And even if there is no immunity agreement, Pyle and Batton are certainly accomplices and informants.

The Tenth Circuit has a model jury instruction for situations where an unindicted coconspirator testifies at trial whom was an accomplice, informant, and/or under immunity, Tenth Circuit Pattern Jury Instruction 1.14, which states the following:

**1.14**

**ACCOMPLICE—INFORMANT—IMMUNITY**

**[as appropriate]**

**Accomplice**

**An accomplice is someone who joined with another person in committing a crime, voluntarily and with common intent. The testimony of an accomplice may be received in evidence and considered by you, even though it is not supported by other evidence. You may decide how much weight it should have.**

**You are to keep in mind, however, that accomplice testimony should be received with caution and considered with great care. You should not convict a defendant based on the unsupported testimony of an alleged accomplice, unless you believe the unsupported testimony beyond a reasonable doubt.**

**Informant**

**An informant is someone who provides evidence against someone else for a personal reason or advantage. The testimony of an informant alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilt, even though not corroborated or supported by other evidence. You must examine and weigh an informant's testimony with greater care than the testimony of an ordinary witness. You must determine whether the informant's testimony has been affected by self-interest, by an agreement he has with the government, by his own interest in the outcome of the case, or by prejudice against the defendant.**

**You should not convict a defendant based on the unsupported testimony of an informant, unless you believe the unsupported testimony beyond a reasonable doubt.**

### **Immunity**

**A person may testify under a grant of immunity (an agreement with the government). His testimony alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilt even though it is not corroborated or supported by other evidence. You should consider testimony given under a grant of immunity with greater care and caution than the testimony of an ordinary witness. You should consider whether testimony under a grant of immunity has been affected by the witness's own interest, the government's agreement, the witness's interest in the outcome of the case, or by prejudice against the defendant.**

**On the other hand, you should also consider that an immunized witness can be prosecuted for perjury for making a false statement. After considering these things, you may give testimony given under a grant of immunity such weight as you feel it deserves.**

**You should not convict a defendant based on the unsupported testimony of an immunized witness, unless you believe the unsupported testimony beyond a reasonable doubt.**

The circumstances certainly indicate that former Chief Pyle and Assistant Chief Batton are going to be testifying under some type of grant of immunity, be it an oral or written immunity agreement, given the overwhelming evidence of their involvement in the conspiracy and the fact that they have not been indicted. And in the highly unlikely event that they have not been granted immunity, they certainly are either accomplices and/or informants. As clearly stated in Tenth Circuit Pattern Jury Instruction 1.14, “accomplice testimony should be received with caution and considered with great care”; the jury must “examine and weigh an informant’s testimony with greater care than the testimony of an ordinary witness”, and “must determine whether the informant’s testimony has been affected by self-interest, by an agreement he has with the government, by his own interest in the outcome of the case, or by prejudice against the defendant”; and, the jury “should consider testimony given under a grant of immunity with greater care and caution than the testimony of an ordinary witness”, and “consider whether testimony under a grant of immunity has been affected by the witness’s own interest, the government’s agreement, the witness’s interest in the outcome of the case, or by prejudice against the defendant.”

Accordingly, given the overwhelming evidence of former Chief Pyle’s and Assistant Chief Batton’s involvement in the conspiracy involving the Choctaw Nation, Builders Steel, and Fintco, in combination with the facts that they have not

been indicted and are listed as Government witnesses as well as Defense witnesses, they will certainly be testifying as either accomplices, informants, and/or under a grant of immunity. And as witnesses in either or all of those capacities, the fact that they have not been indicted is a fact that the jury must consider in weighing and evaluating the credibility of their testimony. Therefore, the Government's Motion in Limine to prohibit defense counsel from mentioning the fact that those two men, as well as all of the other unindicted coconspirators who will have testified as Government witnesses, have not been indicted during closing argument must be denied in all respects.

Respectfully submitted,

/s/ J. Lance Hopkins  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of November a true and correct copy of the above and foregoing instrument was electronically transmitted to all counsel of record contemporaneously with the filing thereof.

/s/ J. Lance Hopkins  
J. Lance Hopkins