

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

Estate of ROBERT E. WONE, by
KATHERINE E. WONE,
as Personal Representative,

Plaintiff,

v.

JOSEPH R. PRICE, VICTOR J.
ZABORSKY,
and DYLAN M. WARD,

Defendants.

Civil Action No. 008315-08

The Honorable Brook Hedge

Next Court Event: February 14, 2011
Deadline for Discovery Requests

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' JOINT MOTION TO DISMISS
COUNTS ONE, THREE, AND FOUR OF PLAINTIFF'S COMPLAINT
OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT
AS TO COUNTS ONE, THREE, AND FOUR**

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INTRODUCTION

More than four years after Robert Wone’s August 2, 2006 stabbing death, nobody has been charged with his murder. The press calls Mr. Wone’s killing a murder “mystery.”¹ In the criminal obstruction of justice proceedings that concluded just a few months ago, the government repeatedly stated that it did not know who murdered Robert Wone.² And yet, audaciously, Defendants have moved to dismiss Mrs. Wone’s wrongful death claim on the theory that she should have accused Defendants more than three years ago of causing her husband’s death. In other words, Defendants argue, Mrs. Wone should have solved this case faster—more than three years faster—than the Metropolitan Police Department (“MPD”), the FBI, and the U.S. Attorney’s Office. Not surprisingly, the law requires no such thing.

Instead, the law could not be clearer that where—as here—a defendant fraudulently conceals his involvement in wrongdoing, the statute of limitations is tolled until the fraudulent concealment ends. This “well-established” doctrine is rooted in the “ancient maxim that no one should profit by his own conscious wrong.”³ *Emmett v. E. Dispensary & Cas. Hosp.*, 396 F.2d 931, 937 (D.C. Cir. 1967). This is the textbook fraudulent concealment case. Mrs. Wone’s wrongful death claim—filed closely on the heels of the first evidence of Defendants’ involvement in wrongdoing and two years and counting before anyone has been charged with

¹ See, e.g., Mike Scarcella, *Murder Mystery Heads to Trial*, National Law Journal, May 10, 2010.

² See, e.g., *United States v. Price, et al.*, No. 08-CF1 27068, June 24, 2010 Trial Transcript, at 52.

³ Throughout this brief, any emphasis in quotations is added, and any internal quotation marks or citations are omitted, unless otherwise indicated.

Robert Wone's murder—was filed timely. The Court should reject Defendants' effort to hide behind the statute of limitations.

Defendants' other arguments similarly lack merit. The First Amended Complaint amply states claims for spoliation of evidence and conspiracy. These claims would have been available to Robert Wone had he survived his injuries. Because he died, under the Survival Act, D.C. Code § 12-101, "all such c[la]ims survive[] in favor of . . . the legal representative of the deceased"—Mrs. Wone.

For these reasons and all the other reasons set forth below, Defendants' motion should be denied in its entirety.

BACKGROUND

A. The Murder of Robert Wone

Robert Wone was murdered on August 2, 2006, while he was an overnight guest at Defendants' home, located at 1509 Swann Street, NW, in Washington, D.C. First Am. Compl. ¶ 2. Robert had previously made plans with Defendant Price, whom he had known since college, to spend the night as a guest at Defendants' home, and he arrived at the Swann Street residence at approximately 10:30 PM. *Id.* ¶¶ 8, 12. At 11:49 PM, Defendant Zaborsky called 9-1-1 to report that Robert Wone had been stabbed. *Id.* ¶ 12. Emergency personnel arrived minutes later, and found Robert lying on the pull-out couch in the second-floor guestroom, with three knife stab wounds in his chest and abdomen. *Id.* ¶ 13.

On the night of Robert's murder, Defendants told EMS personnel and detectives from the MPD that an intruder entered the house and assaulted and killed Robert Wone, and that none of the three Defendants knew the identity of the intruder. *Id.* ¶ 13.

Days after the murder, Robert's wife, Kathy, and a group of family and friends gathered at the Wones' Oakton, Virginia home to mourn the death of Robert. Defendants Price,

Zaborsky, and Ward attended this gathering. In response to Mrs. Wone's questions about how her husband was killed, Defendant Price said that he and Defendants Zaborsky and Ward did not know how Robert was murdered, but that they believed an unknown intruder had entered the house and committed the crime. *Id.* ¶ 16.

B. The Criminal Proceedings

For over two years following Robert Wone's murder, there were no arrests or charges in the case. *Id.* ¶ 18. Then, on October 27, 2008, the MPD obtained a warrant for Defendant Ward's arrest. *Id.* ¶ 19. The affidavit filed in support of the arrest warrant (the "MPD Affidavit") contained a wealth of new information that Mrs. Wone had not previously known about the events of August 2, 2006, particularly as to Defendants' conduct and their cover-up of Robert Wone's murder. *Id.* ¶ 20. The MPD Affidavit stated that

Robert Wone was restrained, incapacitated, . . . and murdered inside 1509 Swann Street, N.W., on the evening of August 2, 2006. Moreover, there exists overwhelming evidence, far in excess of probable cause, that . . . Price, Zaborsky, and Ward . . . obstructed justice by altering and orchestrating the crime scene, . . . delaying the reporting of the murder to the authorities, and lying to the police about the true circumstances of the murder when interviewed. *Id.*

Two days after the release of the MPD Affidavit, Defendant Ward was arrested for obstruction of justice. *Id.* ¶ 19. Three weeks later, on November 17, 2008, Defendants Price and Zaborsky were also charged with obstruction. *Id.* ¶ 21. Two months later, on January 15, 2009, the grand jury returned a three-count superseding indictment, charging all three Defendants with conspiracy, obstruction, and tampering with evidence. *Id.* ¶ 22.

On June 29, 2010, after a six-week bench trial, Defendants were acquitted. However, in finding that Defendants' guilt had not been proven beyond a reasonable doubt—the highest standard of proof known to the law—the court noted that "[t]he government has . . .

presented powerful evidence to support its claim that Robert Wone's murderer was either one of the defendants, or someone known to them who was able to enter without breaking." *Id.* ¶ 23 (quoting *United States v. Price, et al.*, No. 08-CF1 27068, Slip Op. at 21 (D.C. Sup. Ct. June 29, 2010)). The court then concluded "[i]t is very probable that the government's theory is correct, that even if the defendants did not participate in the murder some or all of them knew enough about the circumstances of it to provide helpful information to law enforcement and have chosen to withhold that information for reasons of their own." *Id.*

C. Mrs. Wone's Civil Complaint

On November 25, 2008, only one month after the release of the MPD Affidavit, Mrs. Wone filed this civil action against Defendants for wrongful death, negligence, spoliation of evidence, and conspiracy. The Court then stayed the case in its entirety on February 26, 2009 "through the criminal trial court proceedings." Order Granting Joint Motion to Stay Civil Proceedings Pending Criminal Prosecution at 2 (Feb. 26, 2009). After resolution of the criminal trial, the Court lifted the stay on July 7, 2010. Order Lifting Stay and Requesting Proposed Schedule (July 7, 2010). On September 29, 2010, Mrs. Wone filed a First Amended Complaint, asserting the same four claims against Defendants as the original complaint.

Mrs. Wone's wrongful death claim alleges that Defendants' wrongful acts and/or negligence proximately caused her husband's death, as evidenced by: the fact that Defendants were the only known occupants of 1509 Swann Street, NW, at the time that Robert Wone was assaulted and killed, First Am. Compl. ¶ 48; the fact that the knife used to stab Robert Wone was in the custody and control of Defendants at all relevant times, *id.* ¶ 48; the utter lack of evidence of an intruder, *id.* ¶¶ 24-26, 48; the fact that Robert Wone was incapacitated at the time of the stabbing, which is inconsistent with Defendants' intruder theory, *id.* ¶¶ 27-30, 48; and the evidence indicating that Defendants altered and staged the crime scene after Robert Wone was

murdered, *id.* ¶¶ 35-42. Mrs. Wone further alleged that Defendants fraudulently concealed the existence of, and the facts forming the basis of, her claim by altering and orchestrating the crime scene, *id.* ¶¶ 35-42, 50; by destroying evidence, *id.*; by delaying the call to 9-1-1, *id.* ¶ 31-34, 50; and by lying to the police, Mrs. Wone, and others about the true circumstances surrounding her husband's murder, *id.* ¶ 50.

D. Mrs. Wone's Diligent Pursuit of Her Civil Claims

Mrs. Wone has diligently pursued her claims.⁴ At the time of Robert's murder, Mrs. Wone had every reason to believe Defendants' explanation that they had nothing to do with her husband's death. Defendants, and Defendant Price in particular, had been close friends with Robert and Kathy Wone. Robert had known Joseph Price since the early 1990s, when they were students at William & Mary. First Am. Compl. ¶ 8. Their relationship continued long after college. In 2003, Defendants Price and Zaborsky attended the Wones' wedding in Illinois. A year later, Defendants hosted Robert's 30th birthday party. As a result, Defendant Price soon became Kathy Wone's friend as well, along with Defendant Zaborsky and, to a lesser extent, Defendant Ward. So, when Defendants came to her home only days after her husband's murder, and Defendant Price told her that none of the Defendants knew how Robert was murdered, Mrs. Wone believed them. First Am. Compl. ¶ 16.

⁴ In their motion, Defendants rely on select press reports and other materials outside of the First Amended Complaint. *See* Def. Mot. at 5-8. To the extent the Court treats Defendants' motion as one for summary judgment under Rule 56, this section sets forth additional facts relevant to Defendants' argument that Mrs. Wone did not exercise reasonable diligence in pursuing her claims against them. However, as discussed *infra* at pages 19-20, the record to date is far from complete on Defendants' acts of fraudulent concealment, which bear directly on Mrs. Wone's diligence in pursuing her claims.

As time passed, and the police investigation was ongoing, Mrs. Wone continued to monitor the case closely. However, grand jury secrecy prevented Mrs. Wone from learning much about the events of August 2, 2006.

A year after the murder, when the police investigation still had not resulted in any arrests, Mrs. Wone and her attorneys held a press conference to make a public appeal for information relevant to the crime and to urge the government to continue focusing on the investigation. As Mrs. Wone explained at the press conference, “I ask that the police, the FBI, and the U.S. Attorney’s Office not let this case languish.”⁵

Far from accusing Defendants or any specific person of involvement with her husband’s murder, Mrs. Wone expressed a plea that whoever was responsible step forward:

Last but not least, I have a few words for the individual who took Robert’s life. Countless numbers of friends and family from across the country have been shaken to the core by the senseless loss of such a young and promising life. While dealing with my own share of paralyzing sadness, I realize that I also grieve deeply for the loss of your own life. Having a murder on your conscience is no small load to carry as you try to live, I imagine, as normal a life as possible. Confessing will be the hardest thing that you ever do in your life . . . but it will also be the most freeing thing that you can do for yourself. A secret like the one you are hiding from the world will only grow heavier with time.⁶

Similarly, Mrs. Wone’s then-lead counsel, Eric Holder, asked that anyone with information relating to Robert Wone’s murder step forward:

We are here today to ask everyone in this city, including ourselves, to do more. When we leave today each of us needs to look at ourselves in the mirror and ask, ‘is there more that I can to do

⁵ Robert Wone Press Conference Pt 2 of 4 (Aug. 6, 2007), *available at* <http://www.youtube.com/watch?v=RSMuOFiYTk0>.

⁶ *Id.*

bring Robert's killer or killers to justice, to bring some measure of closure to Robert's family?''⁷

Mrs. Wone and her attorneys asked these questions and held the press conference because so little was known about the circumstances surrounding Robert Wone's murder. Up to and throughout 2007, Mrs. Wone and her attorneys knew that some members of the police department felt that Defendants had not shared everything they knew, and that police suspected that the crime scene had been altered by unknown persons. Mrs. Wone, however, had no evidence to justify those conclusions. Moreover, the police had not arrested Defendants or anyone else in connection with Robert's murder.

Despite Mrs. Wone's diligence in seeking information related to the murder of her husband, including her public appeals for those with information to come forward, the release of the MPD Affidavit in October 2008 was the first time that Mrs. Wone learned much of the information it contained. With that new information in hand, she filed this action against the Defendants less than one month later.

E. Discovery to Date Relevant to Defendants' Motion

Discovery in this matter is in its early stages and is ongoing. A key focus of Mrs. Wone's discovery efforts has been and continues to be Defendants' fraudulent concealment of their responsibility for Robert Wone's death. For instance, Mrs. Wone's initial interrogatories sought answers to a series of questions regarding Defendants' conduct on the day and night of Robert's murder and thereafter, and specifically sought information regarding Defendants' fraudulent concealment. *See, e.g.*, Defendant Price's Answers to Interrogatories 4, 5, 11, 12, and

⁷ *Id.*

13, attached as Exhibit 1 the accompanying Certificate Regarding Discovery.⁸ Defendants refused to answer any of these questions, citing their right against self-incrimination. *See id.* and Exs. 2 and 3.

Defendants' depositions are scheduled to be conducted in mid-November 2010. At these depositions, Defendants will be questioned in detail about the fraudulent concealment issues in this case.

STANDARD OF REVIEW

"In deciding a motion to dismiss," under Rule 12(b)(6), "the [c]ourt accepts as true all allegations in the Complaint and views them in a light most favorable to the nonmoving party." *Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co.*, 870 A.2d 58, 62 (D.C. 2005). Dismissal is proper only if a court "finds that the plaintiffs have failed to allege all of the material elements of their cause of action." *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007).

Summary judgment pursuant to Rule 56 is proper if "there are no disputed issues of material fact and a party is entitled to judgment as a matter of law." *Gilbert v. Miodovnik*, 990 A.2d 983, 1003 (D.C. 2010). In reviewing a motion for summary judgment, a court "must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences from the evidence in her favor." *Id.* "The moving party has the burden of demonstrating the absence of any genuine issue of material fact," and "[t]o defeat a motion for summary judgment, the opposing party need only show that there is sufficient evidence supporting the claimed factual dispute to require a jury or judge to resolve the parties' differing

⁸ The interrogatory responses of Defendants Zaborsky and Ward also refuse to provide responsive information based on self-incrimination concerns. *See* Exhibits 2 and 3 to the accompanying Certificate Regarding Discovery.

versions of the truth at trial.” *Allen v. Yates*, 870 A.2d 39, 44 (D.C. 2005). To that end, “the moving party’s papers are closely scrutinized, [while] the opponent’s are to be treated indulgently.” *Id.*

Defendants’ central argument is that Mrs. Wone’s wrongful death claim is time-barred. However, when a plaintiff is put on inquiry notice that a cause of action has accrued is a highly fact-intensive inquiry generally left for the trier of fact. *New Media Strategies, Inc. v. Pulpfree, Inc.*, 941 A.2d 420, 426 (D.C. 2008); *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1204 (D.C. 1984); *Burns v. Bell*, 409 A.2d 614, 617 (D.C. 1979). “Summary judgment is not appropriate . . . if there is a genuine issue of material fact as to when, through the exercise of due diligence, the plaintiff knew or should have known of her injury.” *Byers v. Burlason*, 713 F.2d 856, 861 (D.C. Cir. 1983); *see also Goldman v. Bequai*, 19 F.3d 666, 672 (D.C. Cir. 1994) (“As a general matter, what a plaintiff knew and when [she] knew it, in the context of a statute of limitations defense, are questions of fact for the jury.”)

ARGUMENT

I. MRS. WONE’S WRONGFUL DEATH CLAIM WAS FILED LONG BEFORE THE STATUTE OF LIMITATIONS WILL EXPIRE.

A. Defendants Fraudulently Concealed Mrs. Wone’s Wrongful Death Claim, Tolling the Statute of Limitations.

Although wrongful death actions in the District of Columbia must normally be commenced within one year following death, *see* D.C. Code § 16-2702, the limitations period is tolled by “fraudulent concealment of the existence of a cause of action.” *Emmett*, 396 F.2d at 936. Indeed, “[i]t is well established that affirmative acts employed by a party to fraudulently conceal either the existence of a claim or facts forming the basis of a cause of action toll the running of limitations periods.” *Estate of Chappelle v. Sanders*, 442 A.2d 157, 158 (D.C. 1982). Fraudulent concealment may be found where a defendant conceals “information regarding the

circumstances of” a death, including relevant facts and “the wrongful acts of the defendants.” *Emmett*, 396 F.2d at 933. If such concealment prevents the plaintiff from timely filing suit, then the statute of limitations will be tolled for as long as the concealment endures. *Id.* at 938.

Here, Defendants fraudulently concealed the existence of Mrs. Wone’s wrongful death claim against them, as well as crucial facts forming the basis of that claim, through a series of affirmative acts. *See, e.g., Cevenini v. Archbishop of Wash.*, 707 A.2d 768, 773-74 (D.C. 1998) (citing *William J. Davis, Inc. v. Young*, 412 A.2d 1187, 1191-92 (D.C. 1980) (fraudulent concealment requires “something of an affirmative nature designed to prevent discovery of [a] cause of action”)). Defendants concocted a bogus theory that an unknown intruder entered their home and murdered Robert Wone. First Am. Compl. ¶¶ 24-26. They then spent the crucial minutes after Mr. Wone’s stabbing coordinating their stories, altering and orchestrating the crime scene, and destroying evidence. *Id.* ¶¶ 35-42. To facilitate their cover-up, Defendants delayed calling 9-1-1 to report Robert Wone’s murder. *Id.* ¶¶ 31-34. Finally, following the initial cover-up, Defendants lied to the police, Mrs. Wone, and others about the circumstances surrounding Robert Wone’s murder. *Id.* ¶¶ 15-16, 43-44. These acts, individually and collectively, prevented Mrs. Wone from discovering the true circumstances of her husband’s death, and that Defendants had directly and proximately caused Robert’s death through their own wrongful acts and/or negligence. As a result, the one-year statute of limitations was tolled by Defendants’ fraudulent concealment of Mrs. Wone’s wrongful death claim.

Defendants argue that Mrs. Wone had “actual notice” of her wrongful death claim “within hours” of her husband’s death because she knew that Robert had been stabbed and that “the stabbing was an illegal, wrongful act.” Def. Mem. at 12. This argument fails on multiple levels. To begin with, Defendants conveniently ignore the various acts—detailed above—

through which they concealed facts regarding the circumstances of Robert's death and that form the basis of Mrs. Wone's cause of action. Moreover, Defendants simply misstate the law, which requires that a potential plaintiff have "some evidence of wrongdoing" by the Defendants in order to be on notice of a claim. *See, e.g., Bussineau v. Pres. and Dir. of Georgetown College*, 518 A.2d 423, 435 (D.C. 1986). Because, on the night of Robert's murder, Mrs. Wone did not have "evidence of wrongdoing" by the Defendants, she was not on notice of any claim against them.

Taken to its logical conclusion, Defendants' argument would mean that no cause of action for wrongful death could ever be fraudulently concealed in a murder case, because the fact of the death is known immediately. This is not the law—either in the District of Columbia or elsewhere. *See, e.g., Collins v. Sotka*, 692 N.E.2d 581, 583 (Ohio 1998) ("Death, in and of itself, does not trigger the running of the statute of limitations in a wrongful death case stemming from a murder."); *Emmett*, 396 F.2d at 936 ("fraudulent concealment of the existence of a cause of action" tolls statute of limitations).

At its core, Defendants' position is that Mrs. Wone was required to file a wrongful death suit against "John Doe" defendants within one year of her husband's murder even though no arrests had been made and his murder remained unsolved. Requiring plaintiffs to bring wrongful death claims under such circumstances is both impractical and an inefficient use of judicial resources. For this reason and others, Defendants' argument has been soundly rejected in courts around the country. *See Collins*, 692 N.E.2d at 585 ("In a wrongful death action that stems from a murder, the statute of limitations begins to run when the victim's survivors discover, or through the exercise of reasonable diligence, should have discovered, that the defendant has been convicted and sentenced for the murder."); *Bernson v. Browning-Ferris*

Indus. of Cal., Inc., 873 P.2d 613, 618 (Cal. 1994) (“[W]here the [statute of limitations] bar becomes a sword rather than a shield, wielded by a party that has intentionally cloaked its identity, factors of fairness and unjust enrichment come into play, which courts are bound to consider in equity and good conscience.”); *Foil v. Ballinger*, 601 P.2d 144, 148 (Utah 1979) (“[T]o adopt a construction of [a statute] that encourages a person who experiences an injury . . . , and has no knowledge of its cause, to file a lawsuit . . . to prevent a statute of limitations from running is not consistent with the unarguably sound proposition that unfounded claims should be strongly discouraged.”).

In fact, nearly every court that has considered the issue has held that the statute of limitations for wrongful death is tolled where the defendant conceals his involvement in the victim’s murder and/or its cover-up. *See, e.g., Gomez v. City of Torrance*, 311 Fed. Appx. 967, 969 (9th Cir. 2009) (trier of fact could find plaintiffs’ wrongful death claim was tolled because they presented evidence that police-defendants filed a false and misleading police report on which plaintiffs relied in deciding not to file suit); *Bennett v. F.B.I.*, 278 F. Supp. 2d 104, 117-20 (D. Mass. 2003) (statute of limitations for wrongful death was tolled until FBI’s involvement with the victim’s murder was discovered decades later); *DiGiuro v. Ragland*, No. 2003-CA-001555-MR, 2004 Ky. App. LEXIS 188, at *20-21 (Ky. Ct. App. 2004) (wrongful death claim not time-barred where complaint was filed after defendant’s murder conviction, which came 8 years after the murder and 2 years after defendant’s arrest); *Friedland v. Gales*, 509 S.E.2d 793, 797-98 (N.C. Ct. App. 1998) (defendant who concealed his involvement in victim’s murder was equitably estopped from asserting the statute of limitations); *Collins*, 692 N.E.2d at 585 (Ohio 1998); *Brookshire v. Burkhardt*, 283 P. 571, 578 (Okla. 1929) (defendant cannot plead the statute

of limitations in defense to a wrongful death claim where he fraudulently concealed his involvement in a conspiracy to cause the victim's death).

The reasoning of these courts is instructive. In *DiGiuro*, the court explained that “the primary concern of the courts is that a criminal defendant should not be permitted to hide behind the protection of a statute of limitations defense when his actions resulted in an insurmountable obstacle in the victim's estate timely pursuing civil remedies.” 2004 Ky. App. LEXIS 188, at *16. Because murder is a “horrendous” crime that may remain unresolved until well after the victim's death, it would be “illogical to penalize the victim's survivors, who have already suffered a great loss, by shortening or extinguishing the time in which they may bring a wrongful death lawsuit.” *Collins*, 692 N.E.2d at 584. The “ancient maxim that no one should profit by his own conscious wrong” is thus all the more compelling in this case. *Emmett*, 396 F.2d at 937.

B. Defendants Concealed Their Wrongdoing, Not Their Identities.

Relying on *Estate of Chappelle v. Sanders*, Def. Memo. at 14-15, Defendants argue that the fraudulent concealment exception to the statute of limitations does not apply here because “concealment of the identity of liable parties, unlike the concealment of the existence of a claim, is insufficient to toll the statute of limitations.” 442 A.2d at 159. However, unlike the defendants in *Chappelle*, Defendants Price, Zaborsky, and Ward did not conceal their identities from Mrs. Wone, who had known all three Defendants for years, but rather their wrongdoing. *See Diamond v. Davis*, 680 A.2d 364, 380 n.14 (D.C. 1996) (explaining that a defendant's concealment of his “participation in the wrongdoing” tolls the statute of limitations, whereas “a defendant's concealment merely of his identity,” as in *Chappelle*, does not).

In *Chappelle*, the defendants told lies that went to “identity” in a narrow sense. After a deadly car crash, one of the defendants gave a false name, address, and telephone number

to the driver of the decedent's car. *Chappelle*, 442 A.2d at 157-58. This defendant then fled the scene and failed to file an accident report. *Id.* The other defendant, who owned the car involved in the crash, but who was not riding in the car at the time, later denied that her car had been in the accident. *Id.* Thus, the only concealment at issue in *Chappelle* concerned the identity of the driver and owner of the car that killed the decedent.

In contrast, Defendants Price, Zaborsky, and Ward took steps to conceal their wrongdoing, which prevented Mrs. Wone from learning the true circumstances of her husband's murder which, in turn, prevented Mrs. Wone from filing a wrongful death claim. Defendants altered and staged the crime scene. First Am. Compl. ¶¶ 35-42. They destroyed evidence. *Id.* ¶¶ 35, 37-40. They delayed calling 9-1-1. *Id.* ¶¶ 31-43. And they fabricated a story that an unknown intruder killed Robert Wone. *Id.* ¶¶ 24-26. Thus, Defendants concealed the existence of Mrs. Wone's wrongful death claim by concealing their wrongdoing—not their identities.⁹

C. Mrs. Wone Exercised Due Diligence in Pursuing Her Wrongful Death Claim Against Defendants.

“[A] claim of fraudulent concealment is available only to a plaintiff who has exercised due diligence in the pursuit of his cause.” *Cevenini*, 707 A.2d at 774. Determining whether a plaintiff exercised due diligence “is a highly factual analysis, which takes into account the conduct and misrepresentations of the defendant . . . and the reasonableness of the plaintiff's

⁹ It also bears mentioning that the instant case involves far more egregious conduct than the car accident at issue in *Chappelle*. As the court in *DiGiuro* explained, “a case involving an unsolved murder has different policy considerations than other wrongful death actions.” 2004 Ky. App. LEXIS 188, at *21. In a murder case, the state has less interest in forcing the plaintiff to discover the tortfeasor and gather evidence independently, but a significant interest in providing a remedy to the victim's family. *Id.* at *17. Moreover, “in the strata of the criminal code, [homicide is] the highest crime there is, . . . an act of purpose, of deliberateness and intent [] that separates it from most of the other cases which involve acts of negligence but not deliberateness.” *Bernoskie v. Zarinsky*, 781 A.2d 52, 54 (N.J. Super. Ct. App. Div. 2001).

reliance on the defendant's conduct and misrepresentations." *Drake v. McNair*, 993 A.2d 607, 617 (D.C. 2010). In this case, Mrs. Wone could not reasonably have been expected to file a wrongful death claim against Defendants prior to learning of the information in the MPD Affidavit in 2008. Until that time, she had no credible information on Defendants' acts of concealment, wrongdoing, and/or negligence concerning the murder of her husband. When such information came to light in 2008, Mrs. Wone promptly filed her wrongful death claim against Defendants.

Less than one week after her husband was murdered, Mrs. Wone hired Covington & Burling LLP to represent her interests in the government's criminal investigation into Robert's murder. This stands in stark contrast to the plaintiffs in *Cevenini*, a case relied on by Defendants, who "undertook no investigation whatever [sic] for almost twelve years after they first realized that they might have a cause of action." 707 A.2d at 774. Unlike the plaintiffs in *Cevenini*, Mrs. Wone did not sit on her claims. Rather, she undertook to investigate those claims immediately after her husband's murder, although her ability to do so was severely hampered by the then-ongoing and confidential grand jury investigation. Mrs. Wone filed suit very shortly after obtaining credible facts implicating the Defendants. This course of action was entirely appropriate under the circumstances, and nothing cited by Defendants undermines the conclusion that Mrs. Wone acted with reasonable diligence in pursuing her claims.

Defendants rely on a handful of press reports from 2006 and 2007, as well as statements made by Mrs. Wone's then-lead counsel in August 2007 in an attempt to show that Mrs. Wone had notice of her wrongful death claim long before she filed her complaint in November 2008. Def. Mem. at 5-8, 12-13. These arguments do not withstand even minimal scrutiny. First, the press reports cited by Defendants are too vague, ambiguous, and lacking in

factual support to have reasonably prompted Mrs. Wone to file a wrongful death claim. Def. Mem. at 5-8. These articles contain little more than rumor and speculation, and they do not accuse Defendants of anything, let alone implicate them in Robert Wone's murder. These rumors also stand in stark contrast to the actions of the police, who have never arrested anyone for Robert Wone's murder and who did not arrest any of the Defendants for any crime until October 2008.

Castucci v. United States explains why speculative newspaper articles such as those cited by Defendants should not be deemed to give a plaintiff notice of a legal claim. 311 F. Supp. 2d 184, 188-189 (D. Mass. 2004). In *Castucci*, the district court found that a newspaper article discussing the murder of a government informant did not provide the plaintiff notice of a claim that the murder was caused by FBI agents divulging the informant's identity to members of organized crime. *Id.* at 188. The *Castucci* court reasoned that the article was "rife with speculative propositions requiring Holmesian deductive reasoning to reach the state of awareness that the defendants claim the plaintiffs should have had." *Id.* at 189. In this circumstance, it was reasonable for the plaintiff not to infer a connection between the murder and the civil rights claims he ultimately brought against the FBI. *Id.*

The same holds true here: Given that the police had not made any arrests, it was entirely reasonable for Mrs. Wone not to presume a connection between Defendants and her husband's murder. *See, e.g., Moore v. Franklin County*, 638 F. Supp. 2d 703, 709 (S.D. Miss. 2009) ("[I]t cannot reasonably be concluded that any investigation undertaken by . . . plaintiffs into the kidnapping and murder of [the victims] would have generated any more information as to the perpetrators of the crimes than the FBI itself was able to discover."); *Bernoskie v. Zarinsky*, 781 A.2d 52, 57 (N.J. Super Ct. App. Div. 2001) (wrongful death plaintiff "was not in

a position to identify the perpetrators of a crime that law enforcement officials were unable to solve despite intensive efforts”); *Collins*, 692 N.E.2d at 584-85 (recognizing that a murder victim’s survivors may not be able to bring a wrongful death claim until the murder is solved by the authorities). Defendants, on the other hand, would require plaintiffs to file lawsuits on the basis of little more than innuendo, flooding the courts with lawsuits unripe for adjudication and having no basis in fact.

Mrs. Wone’s relationship with Defendants made her decision to believe them, and not the rumors being floated in the press, all the more reasonable. Defendants were friends with Robert and Kathy Wone. Defendant Price had known Robert since college and the two remained close nearly fifteen years later. The three Defendants hosted the Wones’ wedding party in 2003. Defendant Price even served as a pallbearer at Robert’s funeral. In a face-to-face conversation following Robert’s murder, Defendant Price told Mrs. Wone that Defendants did not know how her husband was murdered.¹⁰ First Am. Compl. ¶ 16. Defendants’ representations must inform the “fact-laden inquiry” into whether Mrs. Wone exercised reasonable diligence. *Fred Ezra Co. v. Psychiatric Inst. of Wash.*, 687 A.2d 587, 593 (D.C. 1996). In this sense, this case resembles *Ezra*, which also involved fraudulent concealment. The defendants in *Ezra* were charged with

¹⁰ At the same time, lawyers for the three Defendants were vocally proclaiming Defendants’ innocence in the press. *See, e.g.*, Allison Klein & Henri E. Cauvin, *Police Say Crime Scene Was Altered in NW Killing*, Washington Post, August 16, 2006, at B1 (“David Schertler, who is representing Ward, said that . . . Ward had nothing to do with Wone’s slaying. Schertler said Ward told police that neither of the other two men was involved, either.”); Allan Lengel, *Slain Lawyer’s Wife Testifies in District*, Washington Post, August 24, 2006, at B3 (“Kathleen E. Voelker, an attorney for one of the townhouse residents, said the three men have told police ‘unequivocally that none of them were involved’ in the slaying.”); Allison Klein, *Lawyer’s Slaying Remains a Mystery -- A Year Later, Widow Hopes for Witnesses*, Washington Post, August 5, 2007, at C1 (“Price, Zaborsky and Ward have retained attorneys. The attorneys -- Kathleen Voelker, Thomas Connolly, and David Schertler -- released a joint statement last week saying that the men . . . ‘still hold out hope that the police will apprehend the intruder who murdered their friend.’”).

violating an exclusive brokerage agreement. When questioned by the plaintiff, the defendants stated, untruthfully, that the property in question had not been referred to them during the term of the agreement. *Id.* The court found the defendants' "alleged assurances" to be "highly significant and material," and explained that the plaintiff could not "be faulted for believing that these two men had made truthful statements." *Id.* Likewise, Mrs. Wone reasonably believed the Defendants' assurances that they had no role in her husband's murder.

Finally, Mr. Holder's statements at the press conference marking the one-year anniversary of Robert Wone's death did not "expressly accuse" Defendants of being involved in the murder or its cover-up. Defendants' assertions to the contrary are pure fabrication. Def. Mem. at 6, 13. As the statements themselves make clear, Mr. Holder was simply expressing his frustration with the fact that more progress had not been made in the criminal investigation into Robert's murder. Moreover, at the time Mr. Holder made these statements, Mrs. Wone had no credible information that Defendants had engaged in any wrongdoing that would reasonably prompt her to file a wrongful death claim against them.

Upon release of the MPD Affidavit in October 2008, Mrs. Wone learned a wealth of new information about her husband's murder, particularly with respect to Defendants' conduct and their cover-up of the murder. First Am. Compl. ¶ 20. Two days after the release of the MPD Affidavit, Defendant Ward was arrested for obstruction of justice in connection with the Robert Wone murder investigation. *Id.* ¶ 19. Three weeks later, Defendants Price and Zaborsky were likewise charged with obstruction of justice. *Id.* ¶ 21. A little more than a week later, and less than one month after the release of the MPD Affidavit, Mrs. Wone filed this lawsuit. The filing of her wrongful death claim on the heels of the criminal indictments plainly illustrates that Mrs. Wone exercised reasonable diligence in pursuing her wrongful death claim against Defendants.

D. Disputed Issues of Material Fact Regarding Defendants' Fraudulent Concealment Preclude Summary Judgment.

In cases involving allegations of fraudulent concealment, “what constitutes notice of a cause of action for accrual purposes . . . is [a] highly fact bound [inquiry] and requires an evaluation of all of the plaintiff's circumstances.” *Diamond*, 680 A.2d at 372. Here, the selective and incomplete “summary judgment record” that Defendants attached to their brief provides no basis for the Court to make this “highly fact-bound” inquiry.

Mrs. Wone has only just begun discovery into the full extent of Defendants' acts of fraudulent concealment. She has served interrogatories seeking, among other things, information regarding Defendants' activities on the night of August 2, 2006 and the fraudulent concealment issues. *See* Certificate Regarding Discovery ¶ 4 and Exs. 1-3. In response, Defendants have refused to answer Mrs. Wone's interrogatories, invoking their Fifth Amendment right not to incriminate themselves. *See id.* Mrs. Wone has also noticed Defendants' depositions for mid-November, which may lead to the discovery of new information relevant to Defendants' fraudulent concealment. Under these circumstances, summary resolution of the inquiry notice issue is plainly unwarranted. *See, e.g., In re Ahead by a Length, Inc. (Eisenberg v. Feiner)*, 100 B.R. 156, 163 (Bankr. S.D.N.Y. 1989) (refusal to answer questions by invoking Fifth Amendment privilege was sufficient to overcome that party's statute of limitations defense, which the court considered tolled due to that party's fraudulent concealment); *see also, e.g., Frederick Road Ltd. P'ship v. Brown & Sturm*, 756 A.2d 963, 974 (Md. 1998) (“Whether the plaintiff's failure to discover the cause of action was due to a failure to exercise due diligence or to the defendant's concealment of his or her wrongdoing, ordinarily is a question for the jury.”).

II. MRS. WONE’S SPOILIATION OF EVIDENCE CLAIM IS PROPERLY PLED.

A. The First Amended Complaint States a Claim for “Third Party” Spoliation.

Defendants argue that Mrs. Wone’s spoliation of evidence claim should be dismissed because, they contend, only “third party” spoliation is actionable, and in their view Mrs. Wone has pled only “first party” spoliation. Def. Mem. at 15-16. Defendants have misread the First Amended Complaint. Mrs. Wone’s spoliation of evidence claim is not confined to the allegation that Defendants have spoliated evidence that would only tend to implicate themselves. Instead, the First Amended Complaint alleges that the evidence Defendants destroyed, altered, rearranged, or hid has prevented Mrs. Wone from “identifying Robert Wone’s killer(s) and discovering all of the circumstances of the murder.” First Am. Compl. ¶ 63. These allegations unquestionably state a claim under applicable law.

In *Holmes v. Amerex Rent-A-Car*, 710 A.2d 846 (D.C. 1998), the Court of Appeals recognized an independent spoliation of evidence tort. As set forth in *Holmes*, to state a spoliation claim a plaintiff must allege that:

- (1) the underlying claim was significantly impaired due to the spoliation of evidence;
- (2) a proximate relationship exists between the projected failure of success in the underlying action and the unavailability of the destroyed evidence; and
- (3) the underlying lawsuit would enjoy a significant possibility of success if the spoliated evidence were still in existence.

Id. at 852. The First Amended Complaint pleads each of these elements. *See* First Am. Compl. ¶¶ 59-64. Even if only so-called “third party” spoliation is a cause of action in the District of Columbia, Mrs. Wone has adequately stated a claim under the tort of spoliation articulated in *Holmes*. The First Amended Complaint plainly allows for the possibility that a third party had some involvement with Robert Wone’s murder and alleges that evidence spoliated by

Defendants would have allowed Mrs. Wone to bring an action against that person. Thus, Mrs. Wone's spoliation claim is one for third-party spoliation and for this reason alone Defendants' motion to dismiss the claim should be denied.

B. Mrs. Wone, as Representative of the Estate of Robert Wone, Has Standing to Bring the Spoliation Claim.

Defendants also argue that Mrs. Wone lacks standing to bring the spoliation claim, because, according to Defendants, the "cause[] of action . . . could not have accrued prior to [Robert Wone's] death." Def. Mem. at 16-17. Because Robert Wone died of his injuries, in other words, Defendants contend that his estate should not be able to pursue a claim that Defendants spoliated evidence related to those very injuries. This argument is based on another misreading of the First Amended Complaint and an unduly restrictive view of the Survival Act.

Under the Survival Act, D.C. Code § 12-101, "[o]n the death of a person in whose favor . . . a right of action has accrued for any cause prior to his death, the right of action, for all such cases, survives in favor of or against the legal representative of the deceased." The Survival Act is a "remedial statute" enacted "to ensure that death d[oes] not relieve a tortfeasor of liability to the deceased or to the deceased's family." *Greater Se. Cmty. Hosp. v. Williams*, 482 A.2d 394, 396 (D.C. 1984). The Court of Appeals has made clear that the statute is "to be interpreted liberally to effectuate [its] purpose." *Id.*

Here, the First Amended Complaint alleges -- in no uncertain terms -- that Defendants destroyed evidence, altered the crime scene, and coordinated their stories prior to (as well as after) Robert Wone's death. *See* First Am. Compl. ¶¶ 35, 59-62. Accepting these well-pled allegations as true -- as the Court must at this stage -- Defendants' spoliation of evidence began, and thus the cause of action accrued to Mr. Wone, while he was still alive. Defendants argue, in essence, that because they continued to spoliolate evidence after Mr. Wone was deceased,

there is no spoliation claim here. That most certainly is not the law. The Survival Act “place[s] the decedent’s estate in the same position it would have occupied if the decedent’s life had not been terminated prematurely.” *Lewis v. Lewis*, 708 A.2d 249, 252 (D.C. 1998). If Robert Wone were alive today, he would have a spoliation cause of action arising from Defendants’ efforts to destroy evidence relating to the tortious conduct that gave rise to Mr. Wone’s injuries. Nothing more is needed to confer standing under the Survival Act.

III. THE FIRST AMENDED COMPLAINT STATES A CLAIM FOR CONSPIRACY.

Defendants argue that Mrs. Wone cannot sustain her claim for conspiracy because (1) the underlying wrongful death claim is supposedly time-barred; (2) it is “illogical to conclude that persons can conspire to commit negligence,” Def. Mem. at 17, and (3) the Estate of Robert Wone purportedly lacks standing. Defendants are wrong on all three points.

First, as explained in detail in Part I above, Mrs. Wone’s wrongful death claim was filed timely. Accordingly, the related conspiracy claim is also unaffected by Defendants’ statute of limitations arguments.

Second, although Defendants claim that, in certain “[j]urisdictions across the country,” a conspiracy to act negligently is not actionable, the law in the District of Columbia is to the contrary. *See, e.g., Okusami v. Psychiatric Inst. of Wash., Inc.*, 959 F.2d 1062, 1066 (D.C. Cir. 1992) (“The complaint alleges that the defendants engaged in a civil conspiracy to act negligently. . . . [I]n order to state a cause of action [under District of Columbia law], the plaintiff need only allege, in addition to negligence, an agreement to take part in the negligent conduct.”).¹¹

¹¹ *See also* Prosser, Keeton, Dobbs, et al., *Prosser and Keeton on Torts* § 46, at 323-24 (5th ed. 1984) (“All those who, in pursuance of a common plan or design to commit a tortious act, (continued...)”)

In the District, to establish a claim for civil conspiracy, a party must show “(1) an agreement between two or more persons (2) to participate in an unlawful act, and (3) injury caused by an unlawful overt act performed by one of the parties to the agreement, and in furtherance of the common scheme.” *Hill v. Medlantic Health Care Group*, 933 A.2d 314, 334 (D.C. 2007). Here, Mrs. Wone has alleged that “Defendants . . . were negligent in failing reasonably to render aid upon discovering Robert Wone in his injured and helpless condition— or, alternatively, upon undertaking to render such aid, by failing immediately to summon emergency medical personnel and instead taking time to clean up and stage the crime scene, and construct and coordinate the fabricated story about an ‘intruder’ committing the murder.” First Am. Compl. ¶ 55. And, she has alleged that they agreed on this negligent and unlawful course of conduct, resulting in injury. *See, e.g., id.* ¶ 70 (“The concerted actions of one or more Defendants prevented the Defendants from reasonably aiding Robert Wone after the stabbing, contributing in substantial part to his death.”). Accordingly, the First Amended Complaint states a claim for conspiracy to act negligently.

Finally, Defendants’ standing argument again misses the mark. The complaint alleges a conspiracy that began while Robert Wone was still alive, and thus accrued to him before his death. *See* First Am. Compl. ¶ 66 (“Defendants are parties to an ongoing conspiracy that was conceived no later than the night of Robert Wone’s murder . . .”). To be sure, The First Amended Complaint describes the conspiracy as ongoing, but that does not mean that the claim was not actionable at an earlier time. In fact, “a plaintiff [can] bring suit for civil conspiracy . . .

actively take part in it, or further it by cooperation or request, or who lend aid or encouragement to the wrongdoer, or ratify and adopt his acts done for their benefit, are equally liable. . . . It is, furthermore, essential that each particular defendant who is to be charged with responsibility shall be proceeding tortiously, which is to say with the intent requisite to committing a tort, or with negligence.”).

if he ha[s] been injured by an act that was itself tortious.” *Beck v. Prupis*, 529 U.S. 494, 501 (2000). At the time of his death, Robert Wone had been injured by Defendants’ tortious conduct, so he could have brought a claim for civil conspiracy even though other acts of the conspiracy continued after his death. And, “stand[ing] in the shoes of the deceased,” *Perry v. Criss Bros. Iron Works, Inc.*, 741 F. Supp. 985, 987 (D.D.C. 1990), Robert Wone’s estate now has standing to assert this claim under the Survival Act.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants’ motion in its entirety.

Respectfully submitted,

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October 22, 2010

Counsel for Plaintiff

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

Estate of ROBERT E. WONE, by
KATHERINE E. WONE,
as Personal Representative,

Plaintiff,

v.

JOSEPH R. PRICE, VICTOR J.
ZABORSKY,
and DYLAN M. WARD,

Defendants.

Civil Action No. 008315-08

The Honorable Brook Hedge

Next Court Event: February 14, 2011
Deadline for Discovery Requests

ORDER

Upon consideration of Defendants' Joint Motion to Dismiss Counts One, Three, and Four of Plaintiff's Complaint or, in the Alternative, for Summary Judgment as to Counts One, Three, and Four of Plaintiff's Complaint ("Defendants' Motion"), the Plaintiff's opposition thereto, and the arguments of counsel, and for good cause shown, it is by the Court this ___ day of _____ 2010, hereby:

ORDERED that Defendants' Motion is DENIED.

BROOK HEDGE
JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2010, I caused a copy of Plaintiff's Opposition to Defendants' Joint Motion to Dismiss Counts One, Three, and Four of Plaintiff's Complaint or, in the Alternative, for Summary Judgment as to Counts One, Three, and Four to be served via CaseFileXpress on the following counsel:

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

Estate of ROBERT E. WONE, by
KATHERINE E. WONE,
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Plaintiff,

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Defendants.

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The Honorable Brook Hedge

Next Court Event: February 14, 2011
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CERTIFICATE REGARDING DISCOVERY

Because Plaintiff's Opposition to Defendants' Motion is, in part, "an opposition to a dispositive motion based on the need for discovery," D.C. Super Ct. R. Civ. P. 5(d), *see* Pl. Opp. at Section I.D, Plaintiff hereby submits this Certificate Regarding Discovery summarizing the "discovery that has occurred to date":

1. Plaintiff has issued multiple third-party subpoenas since the initiation of this action on November 25, 2008. Defendants have issued at least one third-party document subpoena.
2. On December 15, 2008, Plaintiff served its First Set of Requests for Production and First Set of Interrogatories on Defendants.
3. On January 2, 2009, Plaintiff served Defendants with notices of their depositions. Those depositions did not occur because the case was stayed pending resolution of the criminal case.

4. On August 18 and 20, 2010, Defendants served Plaintiff with their responses to Plaintiff's First Set of Interrogatories. Defendant Price's responses are attached hereto as Exhibit 1; Defendant Zaborsky's responses are attached hereto as Exhibit 2; and Defendant Ward's responses are attached hereto as Exhibit 3.

5. On August 18 and 20, 2010, Defendants served their written responses to Plaintiff's First Set of Requests for Production of Documents. Although the Defendants produced copies of certain documents exchanged with the United States Attorney's Office in the criminal case, they refused to produce numerous other categories of documents, purportedly on the grounds of the "act of production" doctrine under the Fifth Amendment.

6. On September 23, 2010, Defendant Price served Plaintiff with his Requests for Production of Documents and Interrogatories.

7. On September 28, 2010, Defendant Zaborsky served Plaintiff with his Requests for Production of Documents and Interrogatories.

8. On October 5, 2010, Plaintiff served Defendant Ward with a notice of his deposition, and on October 15, 2010, Plaintiff served Defendants Price and Zaborsky notices of their depositions, all reflecting deposition dates in November 2010 agreed upon by counsel.

Respectfully submitted,

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October 22, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2010, I caused a copy of the foregoing Certificate Regarding Discovery to be served via CaseFileXpress on the following counsel:

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Exhibit 1

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

**Estate of ROBERT E. WONE, by
KATHERINE E. WONE,**

Plaintiff,

v.

JOSEPH R. PRICE,

VICTOR ZABORSKY,

and

DYLAN WARD,

Defendants

**Civil Action No. 0008315-08
The Honorable Brook Hedge
Next Event: Status Hearing
September 10, 2010**

ANSWERS TO INTERROGATORIES

TO: Estate of Robert E. Wone, by Katherine E. Wone, as Personal Representatives,
Plaintiff

FROM: Joseph R. Price, Defendant

Joseph R. Price, Defendant, with the assistance of undersigned counsel, in answer to Plaintiff's Interrogatories states as follows:

A. The information supplied in these answers is not based solely on the knowledge of the executing party, but includes knowledge of the party, its agents, representatives and attorneys, unless privileged.

B. The word usage and sentence structure may be that of the attorney assisting in the preparation of these answers and, thus, does not necessarily purport to be the precise language of the executing party.

C. The information contained in these answers is being provided in accordance with the provisions and intent of District of Columbia Rules of Civil Procedure which required the disclosure of the facts which may be relevant or which may lead to the discovery of relevant information. Accordingly, the party answering these interrogatories, by providing the information requested, does not waive objections to its admission in evidence on the grounds of materiality or relevancy or other proper grounds for objection.

D. These interrogatories have been interpreted and answered in accordance with the Rules of Procedure and plain English usage. To the extent the definitions and instructions included with the interrogatories are inconsistent therewith, this party disavows any intention to abide by them.

Answers

INTERROGATORY NO. 1: State your current name, occupation, place of employment, telephone number(s), e-mail address(es), and physical address(es).

ANSWER: Joseph R. Price, attorney. Defendant will provide the Plaintiff with his physical address and telephone number upon the entry of a protective order or execution of a confidentiality agreement protecting that information from third party disclosure.

INTERROGATORY NO. 2: Identify all persons who have knowledge of facts relevant to Plaintiff's claims or your defense(s) in this action and the nature, extent, and basis for their knowledge.

ANSWER: Upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 3: Identify all persons present at the 1509 Swann Street residence at any time on August 2, 2006. For each person present, state, in addition to personal identifying information, the time period during which they were in the residence on that day and their reason for being there.

ANSWER: Upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 4: Describe in detail the circumstances and events surrounding the murder of Robert Wone on the night of August 2, 2006, including but not limited to:

- (a) when Wone arrived at the 1509 Swann Street residence;
- (b) by what means of transportation he traveled to the 1509 Swann Street residence;
- (c) your interactions and discussions with Wone on the night of August 2, 2006;
- (d) how and when Wone was injured;
- (e) how and when you came to know that Wone was injured;
- (f) the specific location of Wone within the house, and the position of his body, when you first saw him in an injured condition; and
- (g) the actions you took upon finding Wone in an injured condition, including, without limitation, any steps that you took to assist him or summon help.

ANSWER: Upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 5: Describe in detail any and all bases for your contention that an “intruder” murdered Robert Wone.

ANSWER: Upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 6: Describe in detail your activities on the night of August 2, 2006, including, without limitation, when you first saw Robert Wone and what you were doing from the time that you first saw Wone on that night until the time that 9-1-1 was called at 11:49 p.m.

ANSWER: Upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 7: State whether you attempted to stanch Robert Wone's bleeding by using towel(s), cloth(s), or other item(s) to apply pressure to his wounds. If so, describe why no blood-soaked towel(s), cloth(s), or other item(s) were found by police at the 1509 Swann Street residence following the murder.

ANSWER: Upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 8: State whether you made any telephone calls between the time on August 2, 2006 when you first discovered Robert Wone in an injured condition or learned that Wone was injured and the time that EMS technicians arrived at the 1509 Swann Street residence. If so, identify each and every person with whom you spoke by telephone during this period and describe the sum and substance of the conversation(s).

ANSWER: Upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 9: Identify by telephone number, service provider, and account number any cellular telephones, blackberries, pagers, or other electronic communication devices used by you on or about August 2, 2006.

ANSWER: Upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 10: Identify each and every person with whom you have discussed Robert Wone's murder or any of the events or activities involving Wone that occurred on August 2, 2006. For each person identified, state the approximate date of your discussion and describe the sum and substance of the conversation.

ANSWER: Objection. This Interrogatory, at least in part, seeks identification of privileged attorney work product, communications made in anticipation of litigation, and communications protected by the attorney-client, joint defense and spousal communication privileges. This Interrogatory is additionally over broad and unduly burdensome in purporting to call for the production of information on a vast number of communications.

Without waiving and limited by said objection, upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 11: Describe in detail all physical contacts you or any other person(s) had with Robert Wone's body, either directly or indirectly, on the night of August 2, 2006, including, without limitation:

(a) whether and how you or any other person(s) injected any drugs, medications, or foreign substance into, or in any way caused the introduction of drugs, medications, or foreign substances into Wone's body;

(b) whether and how you or any other person(s) physically or sexually assaulted Wone;

(c) whether and how you or any other person(s) stabbed Wone.

ANSWER: Objection. This Interrogatory, specifically subsections (a) and (b), seeks information that is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and is meant to serve no other purpose than to embarrass, humiliate, and disparage Defendant. Specifically, there is no evidentiary basis upon which Plaintiff can, in good faith and with substantial justification, make such an assertion that Robert Wone was either injected with a foreign substance or sexually assaulted.

Without waiving and limited by said objection, upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 12: Describe in detail any actions taken by you or any other individual(s) to clean-up, shower, bathe, or wash Robert Wone's body after he was found in an injured condition on the night of August 2, 2006.

ANSWER: Objection. This Interrogatory seeks information that is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and is meant to serve no other purpose than to embarrass, humiliate, and disparage Defendant. Specifically, there is no

evidentiary basis upon which Plaintiff can, in good faith and with substantial justification, make such an assertion that Robert Wone's body was cleaned up, showered, bathed, or washed after he was stabbed.

Without waiving and limited by said objection, upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 13: Describe in detail any actions taken by you or any other individual(s) to clean-up or re-arrange the 1509 Swann Street residence after Robert Wone was found in an injured condition on the night of August 2, 2006, including, without limitation, any efforts to move Wone's body; to wash clothing, bedding, your body or anyone else's body or other items; and/or to dispose of or discard a knife, clothing, or any other items.

ANSWER: Objection. This Interrogatory seeks information that is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and is meant to serve no other purpose than to embarrass, humiliate, and disparage Defendant. Specifically, there is no evidentiary basis upon which Plaintiff can, in good faith and with substantial justification, make an assertion that to there was any effort to clean-up or re-arrange the 1509 Swan Street residence after Robert Wone was found in an injured condition, or that any efforts were undertaken to move Wone's body, to wash clothing, bedding, or any other person, and/or to dispose of or discard a knife, clothing, or any other items.

Without waiving and limited by said objection, upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 14: Describe in detail any and all communications, whether in person, by telephone, electronic mail, text message, or otherwise, between you and Michael Price at any time from March 2006 through December 2006. For each such communication, provide at least the date of the communication, the identity of all persons party to the communication, and the sum and substance of the communication.

ANSWER: Objection. This Interrogatory seeks information that is irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence. This Interrogatory is further objectionable in that it is overbroad and unduly burdensome in scope and time, in that it calls for detailed information on each and every communication between two brothers over a period of ten months. This Interrogatory lacks appropriate subject-matter limitations and temporal limitations.

Without waiving and limited by said objection, upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 15: Identify the vendor or service provider responsible for the automated alarm system available for use at the 1509 Swann Street residence on the night of August 2, 2006.

ANSWER: Upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 16: State whether, from the time that you moved into the 1509 Swann Street residence until August 2, 2006, an intruder, burglar, or other unauthorized person had ever entered the residence. If so, identify the intruder(s), burglar(s), or unauthorized entrant(s) and describe the circumstances surrounding each such incident.

ANSWER: Objection. This Interrogatory seeks information that is irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving and limited by said objection, upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 17: State whether you consumed alcohol, illegal drugs, prescriptions medications (whether you had a valid prescription or not), within 48 hours before or after Robert Wone's murder the night of August 2, 2006. If so, identify the name of the substance consumed, the amount consumed, and your reason for consuming it.

ANSWER: Objection. This Interrogatory seeks information that is irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence. This Interrogatory is further objectionable in that it does not have reasonable temporal limitations.

Without waiving and limited by said objection, upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 18: State whether you have ever injected any medication, drugs, or foreign substances into another person. If so, for each such instance, state the name of the person whom you injected, the name of the medication, drug, or substance that was injected, and the reason for doing so.

ANSWER: Objection. This Interrogatory, specifically subsections (a) and (b), seeks information that is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and is meant to serve no other purpose than to embarrass, humiliate, and disparage Defendant. Specifically, there is no evidentiary basis upon which Plaintiff can, in good faith and with substantial justification, make such an assertion that Robert Wone was injected with a foreign substance.

Without waiving and limited by said objection, upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 19: Describe in detail your relationship with Robert Wone, including, without limitation, when you first met Wone and the nature of the relationship, if any, between the two of you.

ANSWER: Upon advice of counsel, at this time Defendant exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 20: Describe and identify all of your assets or liabilities valued in excess of \$5,000, including, without limitation, real property, personal property, securities, mutual funds, cash, and/or insurance policies.

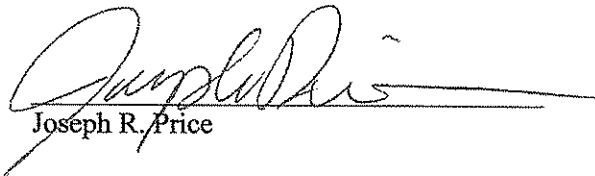
ANSWER: Objection. This Interrogatory seeks information that is irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Defendant's assets and liabilities have no bearing on the issues in the litigation, and discovery of such items is improper at this stage of the litigation.

Without waiving and limited by said objection, and to the limited extent that this Interrogatory requests information regarding insurance policies, Defendant Price had in effect on August 2, 2006 a homeowners insurance policy with State Farm Fire and Casualty Company, a copy of which is produced in response to Plaintiff's Requests for Production of Documents.

INTERROGATORY NO. 21: Describe in detail any sales, gifts, or transfers of assets valued in excess of \$5,000 made by you to any other person or entity since August 2, 2006. For each such transaction, identify the asset, the buyer, recipient, or transferee, the consideration provided, and the reason you entered into the transaction.

ANSWER: Objection. This Interrogatory seeks information that is irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Defendant's assets and liabilities have no bearing on the issues in the litigation, and discovery of such items is improper at this stage of the litigation.

I HEREBY CERTIFY UNDER THE PENALTIES OF PERJURY, THAT
THE INFORMATION CONTAINED IN THE FOREGOING ANSWERS TO
INTERROGATORIES IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE,
INFORMATION AND BELIEF.


Joseph R. Price

DISTRICT OF COLUMBIA: §§

This document was acknowledged before me on August 19, 2010, by Joseph R. Price.

[Notary Seal, if any]:



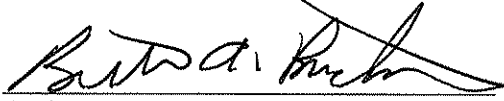

Notary Public

Notary Public for the District of Columbia

My commission expires: 10/31/2013

Melanie L. Radcliff
Notary Public, District of Columbia
My Commission Expires 10/31/2013

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Brett A. Buckwalter", written over a horizontal line.

Craig D. Roswell (DC Bar # 433406)
Brett A. Buckwalter (DC Bar # 478382)
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cdroswell@nilesbarton.com
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Attorneys for Defendant Joseph Price

4851-2698-6503, v. 1

Exhibit 2

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

**Estate of ROBERT E. WONE, by
KATHERINE E. WONE,**

Plaintiff,

v.

**JOSEPH R. PRICE,
VICTOR ZABORSKY, and
DYLAN WARD,**

Defendants.

Civil Action No. 0008315-08

The Honorable Brook Hedge

Status Hearing: September 10, 2010

**DEFENDANT, VICTOR ZABORSKY'S, ANSWERS
TO PLAINTIFF'S INTERROGATORIES**

Victor Zaborsky, Defendant, with the assistance of undersigned counsel, in answer to Plaintiff's Interrogatories states as follows:

A. The information supplied in these answers is not based solely on the knowledge of the executing party, but includes knowledge of the party, its agents, representatives and attorneys, unless privileged.

B. The word usage and sentence structure may be that of the attorney assisting in the preparation of these answers and, thus, does not necessarily purport to be the precise language of the executing party.

C. The information contained in these answers is being provided in accordance with the provisions and intent of District of Columbia Rules of Civil Procedure which require the disclosure of the facts which may be relevant or which may lead to the discovery of relevant information. Accordingly, the party answering these interrogatories, by providing the information requested, does not waive objections to its admission in evidence on the grounds of materiality or relevancy or other proper grounds for objection.

D. These interrogatories have been interpreted and answered in accordance with the Rules of Procedure and plain English usage. To the extent the definitions and instructions included with the interrogatories are inconsistent therewith, this party disavows any intention to abide by them.

PRELIMINARY OBJECTION

The U.S. Attorney has openly stated its intent to continue pursuing its criminal investigation against this Defendant, which could result in additional criminal charges being filed against Defendant Zaborsky. In light of this fact, Defendant Zaborsky must exercise his right under the Fifth Amendment to the Constitution of the United States to decline to answer these Interrogatories, as any substantive answer to these Interrogatories may jeopardize his right to assert his Fifth Amendment rights in the future.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1: State your current name, occupation, place of employment, telephone number(s), e-mail address(es), and physical address(es).

ANSWER NO. 1: Victor Zaborsky, Self-Employed Consultant. Defendant Zaborsky will provide the Plaintiff with his physical address and telephone number upon the entry of a protective order or execution of a confidentiality agreement protecting that information from third party disclosure.

INTERROGATORY NO. 2: Identify all persons who have knowledge of facts relevant to Plaintiff's claims or your defense(s) in this action and the nature, extent, and basis for their knowledge.

OBJECTION: This Interrogatory seeks in part information that may be protected by the attorney client privilege, the work product doctrine, and/or the spousal privilege.

ANSWER NO. 2: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 3: Identify all persons present at the 1509 Swann Street residence at any time on August 2, 2006. For each person present, state, in addition to personal identifying information, the time period during which they were in the residence on that day and their reason for being there.

ANSWER NO. 3: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 4: Describe in detail the circumstances and events surrounding the murder of Robert Wone on the night of August 2, 2006, including but not limited to:

- (a) when Wone arrived at the 1509 Swann Street residence;
- (b) by what means of transportation he traveled to the 1509 Swann Street residence;
- (c) your interactions and discussions with Wone on the night of August 2, 2006;
- (d) how and when Wone was injured;
- (e) how and when you came to know that Wone was injured;
- (f) the specific location of Wone within the house, and the position of his body, when you first saw him in an injured condition; and
- (g) the actions you took upon finding Wone in an injured condition, including, without limitation, any steps that you took to assist him or summon help.

ANSWER NO. 4: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 5: Describe in detail any and all bases for your contention that an "intruder" murdered Robert Wone.

ANSWER NO. 5: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 6: Describe in detail your activities on the night of August 2, 2006, including, without limitation, when you first saw Robert Wone and what you were doing from the time that you first saw Wone on that night until the time that 9-1-1 was called at 11:49 PM.

ANSWER NO. 6: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 7: State whether you attempted to stanch Robert Wone's bleeding by using towel(s), cloth(s), or other item(s) to apply pressure to his wounds. If so, describe why no blood-soaked towel(s), cloth(s), or other item(s) were found by police at the 1509 Swann Street residence following the murder.

ANSWER NO. 7: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 8: State whether you made any telephone calls between the time on August 2, 2006 when you first discovered Robert Wone in an injured condition or learned that Wone was injured and the time that EMS technicians arrived at the 1509 Swann Street residence. If so, identify each and every person with whom you spoke by telephone during this period and describe the sum and substance of the conversation(s).

ANSWER NO. 8: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 9: Identify by telephone number, service provider, and account number any cellular telephones, blackberries, pagers, or other electronic communication devices used by you on or about August 2, 2006.

ANSWER NO. 9: Upon advice of counsel, at this time Defendant Zaborsky exercises

his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 10: Identify each and every person with whom you have discussed Robert Wone's murder or any of the events or activities involving Wone that occurred on August 2, 2006. For each person identified, state the approximate date of your discussion and describe the sum and substance of the conversation.

OBJECTION: This Interrogatory, at least in part, seeks identification of privileged attorney work product, communications made in anticipation of litigation, and communications protected by the attorney-client, and joint defense communication privileges. This Interrogatory is additionally over broad and unduly burdensome in purporting to call for the production of information on a vast number of communications over a period of more than four years.

ANSWER NO. 10: Without waiving his objection, and upon advice of counsel Defendant Zaborsky at this time exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 11: Describe in detail all physical contacts you or any other person(s) had with Robert Wone's body, either directly or indirectly, on the night of August 2, 2006, including, without limitation:

- (a) whether and how you or any other person(s) injected any drugs, medications, or foreign substance into, or in any way caused the introduction of drugs, medications, or foreign substances into Wone's body;
- (b) whether and how you or any other person(s) physically or sexually assaulted Wone;
- (c) whether and how you or any other person(s) stabbed Wone.

OBJECTION: This Interrogatory, specifically subsections (a) and (b), seeks information that is neither relevant, nor reasonably calculated to lead to the discovery of relevant

or admissible evidence, and is meant to serve no other purpose than to embarrass, humiliate, and disparage Defendant. Specifically, there is no evidentiary basis upon which Plaintiff can, in good faith and with substantial justification, make such an assertion that Robert Wone was either injected with a foreign substance or sexually assaulted.

ANSWER NO. 11: Without waiving his objection, and upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 12: Describe in detail any actions taken by you or any other individual(s) to clean-up, shower, bathe, or wash Robert Wone's body after he was found in an injured condition on the night of August 2, 2006.

OBJECTION: This Interrogatory seeks information that is neither relevant, nor reasonably calculated to lead to the discovery of relevant or admissible evidence, and is meant to serve no other purpose than to embarrass, humiliate, and disparage Defendant. Specifically, there is no evidentiary basis upon which Plaintiff can, in good faith and with substantial justification, make such an assertion that Robert Wone's body was cleaned up, showered, bathed, or washed after he was stabbed.

ANSWER NO. 12: Without waiving his objection, and upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 13: Describe in detail any actions taken by you or any other individual(s) to clean-up or re-arrange the 1509 Swan Street residence after Robert Wone was found in an injured condition on the night of August 2, 2006, including, without limitation, any efforts to move Wone's body; to wash clothing, bedding, your body or anyone else's body or other items; and/or to dispose of or discard a knife, clothing, or any other items.

OBJECTION: This Interrogatory seeks information that is neither relevant, nor reasonably calculated to lead to the discovery of relevant or admissible evidence, and is meant to serve no other purpose than to embarrass, humiliate, and disparage Defendant. Specifically, there is no evidentiary basis upon which Plaintiff can, in good faith and with substantial justification, make an assertion that to there was any effort to clean-up or re-arrange the 1509 Swan Street residence after Robert Wone was found in an injured condition, or that any efforts were undertaken to move Wone's body, to wash clothing, bedding, or any other person, and/or to dispose of or discard a knife, clothing, or any other items.

ANSWER NO. 13: Without waiving his objection, and upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 14: Describe in detail any and all communications, whether in person, by telephone, electronic mail, text message, otherwise, between you and Michael Price at any time from March 2006 through December 2006. For each such communication, provide at least the date of the communication, the identity of all persons party to the communication, and the sum and substance of the communication.

ANSWER NO. 14: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 15: Identify the vendor or service provider responsible for the automated alarm system available for use at the 1509 Swann Street residence on the night of August 2, 2006.

ANSWER NO. 15: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 16: State whether, from the time that you moved into the 1509 Swann Street residence until August 2, 2006, an intruder, burglar, or other unauthorized person had ever entered the residence. If so, identify the intruder(s), burglar(s), or unauthorized entrant(s) and describe the circumstances surrounding each such incident.

ANSWER NO. 16: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 17: State whether you consumed alcohol, illegal drugs, prescriptions medications (whether you had a valid prescription or not), within 48 hours before or after Robert Wone's murder the night of August 2, 2006. If so, identify the name of the substance consumed, the amount consumed, and your reason for consuming it.

ANSWER NO. 17: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 18: State whether you have ever injected any medication, drugs, or foreign substances into another person. If so, for each such instance, state the name of the person whom you injected, the name of the medication, drug, or substance that was injected, and the reason for doing so.

OBJECTION: This Interrogatory seeks information that is neither relevant, nor reasonably calculated to lead to the discovery of relevant or admissible evidence, and is meant to serve no other purpose than to embarrass, humiliate, and disparage Defendant. Specifically, there is no evidentiary basis upon which Plaintiff can, in good faith and with substantial justification, make such an assertion that Robert Wone was injected with a foreign substance.

ANSWER NO. 18: Without waiving his objection, and upon advice of counsel, at this

time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

INTERROGATORY NO. 19: Describe in detail your relationship with Robert Wone, including, without limitation, when you first met Wone and the nature of the relationship, if any, between the two of you.

ANSWER NO. 19: Upon advice of counsel, at this time Defendant Zaborsky exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this Interrogatory.

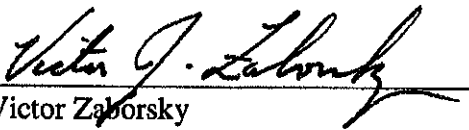
INTERROGATORY NO. 20: Describe and identify all of your assets or liabilities valued in excess of \$5,000, including, without limitation, real property, personal property, securities, mutual funds, cash, and/or insurance policies.

ANSWER NO. 20: This Interrogatory seeks information that is irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Defendant's assets and liabilities have not bearing on the issues at litigation, and discovery of such items is improper at this stage of the litigation. Without waiving and limited by said objection, and to the limited extent that this Interrogatory requests information regarding insurance policies, Defendant Zaborsky states that he had in effect on August 2, 2006 a homeowners insurance policy with State Farm Fire and Casualty Company, a copy of which is being produced by Defendant Price in response to Plaintiff's Requests for Production of Documents.

INTERROGATORY NO. 21: Describe in detail any sales, gifts, or transfers of assets valued in excess of \$5,000 made by you to any other person or entity since August 2, 2006. For each such transaction, identify the asset, the buyer, recipient, or transferee, the consideration provided, and the reason you entered into the transaction.

ANSWER NO. 21: Objection. This Interrogatory seeks information that is irrelevant

I DO SOLEMNLY declare and affirm under the penalties of perjury that the contents of the foregoing Answers to Interrogatories are true and correct to the best of my knowledge, information, and belief.


Victor Zaborsky

Respectfully submitted,



Larissa N. Byers (D.C. Bar # 472431)
Frank F. Daily (*pro hac*)
Sean P. Edwards (*pro hac*)
The Law Offices of Frank F. Daily, P.A.
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Counsel for Defendant Victor Zaborsky

CERTIFICATE OF SERVICE

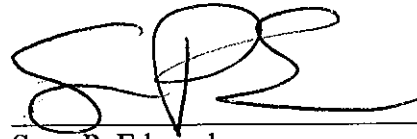
I HEREBY CERTIFY that on this 20th day of August, the following document was sent via First Class Mail, postage prepaid, and electronic transmission, to the following:

Benjamin J. Razi (brazi@cov.com)
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Robert Spagnoletti (rspagnoletti@schertlerlaw.com)
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601 Pennsylvania Avenue, NW
Washington, D.C. 20004
Attorneys for Defendant, Dylan Ward

A handwritten signature in black ink, appearing to read 'S.P. Edwards', written over a horizontal line.

Sean P. Edwards

Exhibit 3

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

**Estate of ROBERT E. WONE, by
KATHERINE E. WONE,**

Plaintiff,

v.

**JOSEPH R. PRICE,
VICTOR ZABORSKY, and
DYLAN WARD,**

Defendants.

Civil Action No. 0008315-08

The Honorable Brook Hedge

Status Hearing: September 10, 2010

**DEFENDANT DYLAN WARD'S ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendant Dylan Ward, with the assistance of undersigned counsel, in answer to Plaintiff's First Set of Interrogatories states as follows:

A. The information supplied in these answers is not based solely on the knowledge of the executing party, but includes knowledge of the party, its agents, representatives and attorneys, unless privileged.

B. The word usage and sentence structure may be that of the attorney assisting in the preparation of these answers and does not purport to be the precise language of the executing party.

C. The information contained in these answers is being provided in accordance with the provisions and intent of District of Columbia Rules of Civil Procedure which require the disclosure of the facts which may be relevant or which may lead to the discovery of relevant

information. Accordingly, the party answering these interrogatories, by providing the information requested, does not waive objections to its admission in evidence on the grounds of materiality or relevancy or other proper grounds for objection.

D. These interrogatories have been interpreted and answered in accordance with the Rules of Civil Procedure and plain English usage. To the extent the definitions and instructions included with the interrogatories are inconsistent therewith, this party disavows any intention to abide by them.

ANSWERS

INTERROGATORY NO. 1: State your current name, occupation, place of employment, telephone number(s), e-mail address(es), and physical address(es).

ANSWER: Dylan M. Ward, unemployed. Defendant Ward will provide the Plaintiff with his physical address, e-mail address, and telephone number upon the entry of a protective order or execution of a confidentiality agreement protecting that information from third party disclosure.

INTERROGATORY NO. 2: Identify all persons who have knowledge of facts relevant to Plaintiff's claims or your defense(s) in this action and the nature, extent, and basis for their knowledge.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 3: Identify all persons present at the 1509 Swann Street residence at any time on August 2, 2006. For each person present, state, in addition to personal identifying information, the time period during which they were in the residence on that day and their reason for being there.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 4: Describe in detail the circumstances and events surrounding the murder of Robert Wone on the night of August 2, 2006, including but not limited to:

- (a) when Wone arrived at the 1509 Swann Street residence;
- (b) by what means of transportation he traveled to the 1509 Swann Street residence;
- (c) your interactions and discussions with Wone on the night of August 2, 2006;
- (d) how and when Wone was injured;
- (e) how and when you came to know that Wone was injured;
- (f) the specific location of Wone within the house, and the position of his body, when you first saw him in an injured condition; and
- (g) the actions you took upon finding Wone in an injured condition, including, without limitation, any steps that you took to assist him or summon help.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 5: Describe in detail any and all bases for your contention that an “intruder” murdered Robert Wone.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 6: Describe in detail your activities on the night of August 2, 2006, including, without limitation, when you first saw Robert Wone and what you were doing from the time that you first saw Wone on that night until the time that 9-1-1 was called at 11:49 p.m.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 7: State whether you attempted to stanch Robert Wone's bleeding by using towel(s), cloth(s), or other item(s) to apply pressure to his wounds. If so, describe why no blood-soaked towel(s), cloth(s), or other item(s) were found by police at the 1509 Swann Street residence following the murder.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 8: State whether, on August 2, 2006, you possessed or owned the cutlery set that is pictured at Tab J of the Affidavit of Detective Bryan Waid, which was filed in D.C. Superior Court on or about October 27, 2008. If you did possess or own said cutlery set on that date, state:

- (a) when and from whom you first obtained the cutlery set;
- (b) the number of items in the cutlery set when you first obtained it;
- (c) why the cutlery set was kept in your bedroom;
- (d) whether the cutlery set or any part of it was used on August 2, 2006 for any purpose, including, without limitation, to stab Robert Wone;
- (e) the whereabouts of the smaller knife in the cutlery set on August 2, 2006;
- (f) the whereabouts of the smaller knife in the cutlery set on August 3, 2006; and
- (g) the whereabouts of the smaller knife in the cutlery set today.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 9: State whether you made any telephone calls between the time on August 2, 2006 when you first discovered Robert Wone in an injured condition or learned that Wone was injured and the time that EMS technicians arrived at the 1509 Swann Street residence. If so, identify each and every person with whom you spoke by telephone during this period and describe the sum and substance of the conversation(s).

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 10: Identify by telephone number, service provider, and account number any cellular telephones, blackberries, pagers, or other electronic communication devices used by you on or about August 2, 2006.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 11: Identify each and every person with whom you have discussed Robert Wone's murder or any of the events or activities involving Wone that occurred on August 2, 2006. For each person identified, state the approximate date of your discussion and describe the sum and substance of the conversation.

ANSWER: Objection. This Interrogatory, at least in part, seeks identification of privileged attorney work product, communications made in anticipation of litigation, and communications protected by the attorney-client, and joint defense communication privileges. This Interrogatory is additionally over broad and unduly burdensome in purporting to call for the

production of information on a vast number of communications over a period of more than four years. Without waiving and limited by said objection, upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 12: Describe in detail all physical contacts you or any other person(s) had with Robert Wone's body, either directly or indirectly, on the night of August 2, 2006, including, without limitation:

- (a) whether and how you or any other person(s) injected any drugs, medications, or foreign substance into, or in any way caused the introduction of drugs, medications, or foreign substances into Wone's body;
- (b) whether and how you or any other person(s) physically or sexually assaulted Wone;
- (c) whether and how you or any other person(s) stabbed Wone.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 13: Describe in detail any actions taken by you or any other individual(s) to clean-up, shower, bathe, or wash Robert Wone's body after he was found in an injured condition on the night of August 2, 2006.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 14: Describe in detail any actions taken by you or any other individual(s) to clean-up or re-arrange the 1509 Swann Street residence after Robert Wone was found in an injured condition on the night of August 2, 2006, including, without limitation, any

efforts to move Wone's body; to wash clothing, bedding, your body or anyone else's body or other items; and/or to dispose of or discard a knife, clothing, or any other items.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 15: Describe in detail any and all communications, whether in person, by telephone, electronic mail, text message, or otherwise, between you and Michael Price at any time from March 2006 through December 2006. For each such communication, provide at least the date of the communication, the identity of all persons party to the communication, and the sum and substance of the communication.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 16: Identify the vendor or service provider responsible for the automated alarm system available for use at the 1509 Swann Street residence on the night of August 2, 2006.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 17: State whether, from the time that you moved into the 1509 Swann Street residence until August 2, 2006, an intruder, burglar, or other unauthorized person had ever entered the residence. If so, identify the intruder(s), burglar(s), or unauthorized entrant(s) and describe the circumstances surrounding each such incident.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 18: State whether you consumed alcohol, illegal drugs, prescriptions medications (whether you had a valid prescription or not), within 48 hours before or after Robert Wone's murder the night of August 2, 2006. If so, identify the name of the substance consumed, the amount consumed, and your reason for consuming it.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 19: State whether you have ever injected any medication, drugs, or foreign substances into another person. If so, for each such instance, state the name of the person whom you injected, the name of the medication, drug, or substance that was injected, and the reason for doing so.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

INTERROGATORY NO. 20: Describe in detail your relationship with Robert Wone, including, without limitation, when you first met Wone and the nature of the relationship, if any, between the two of you.

ANSWER: Upon advice of counsel, at this time Defendant Ward exercises his right under the Fifth Amendment to the Constitution of the United States to decline to answer this interrogatory.

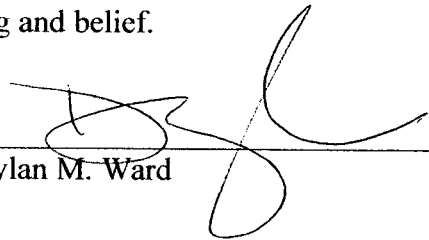
INTERROGATORY NO. 21: Describe and identify all of your assets or liabilities valued in excess of \$5,000, including, without limitation, real property, personal property, securities, mutual funds, cash, and/or insurance policies.

ANSWER: Objection. This Interrogatory seeks information that is irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Defendant's assets and liabilities have no bearing on the issues raised by Plaintiff's Complaint and discovery of such items is improper at this stage of the litigation. Without waiving and limited by said objection, and to the limited extent that this Interrogatory requests information regarding insurance policies, Defendant Ward has no such policy.

INTERROGATORY NO. 22: Describe in detail any sales, gifts, or transfers of assets valued in excess of \$5,000 made by you to any other person or entity since August 2, 2006. For each such transaction, identify the asset, the buyer, recipient, or transferee, the consideration provided, and the reason you entered into the transaction.

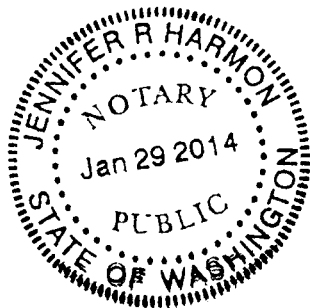
ANSWER: Objection. This Interrogatory seeks information that is irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence. Specifically, Defendant's assets and liabilities have no bearing on the issues raised by Plaintiff's Complaint and discovery of such items is improper at this stage of the litigation.

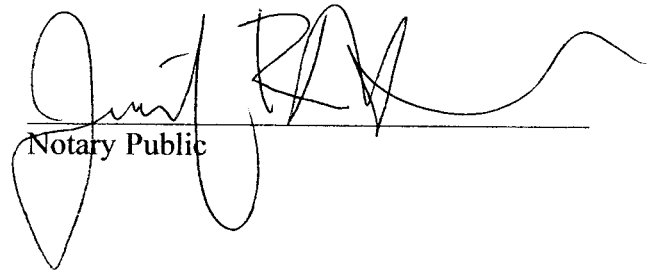
I hereby swear and affirm under the penalty of perjury that the above answers are true and correct to the best of my knowledge, understanding and belief.



Dylan M. Ward

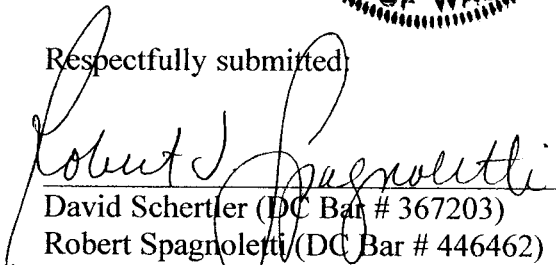
Sworn and subscribed before me on this 18 day of August, 2010.





Notary Public

Respectfully submitted:



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