

aw

SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA
IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

2009 JUL 14 P 10 13

UNITED STATES,

v.

DYLAN M. WARD,

JOSEPH R. PRICE,

and

VICTOR J. ZABORSKY,

Defendants.

Criminal Nos. 2008 CF1 026996
2008 CF1 028068
2008 CF1 026997

Judge Frederick H. Weisberg

Status Hearing – September 11, 2009

DEFENDANTS' MOTION FOR *IN CAMERA* REVIEW OF DOCUMENTS

Defendants Dylan M. Ward, Joseph R. Price and Victor J. Zaborsky, respectfully request that this Court review, *in camera*, certain documents, produced by the government to the defendants in redacted form. At the May 22, 2009 hearing on Defendants' March 26, 2009 Joint Motion to Compel, the government stated that it would submit to the Court for *in camera* inspection, discoverable documents that were produced to the defense in redacted form. Since the May 22, 2009 hearing, the government has produced additional redacted documents. As discussed below, these relatively few documents contain some information clearly discoverable under Rule 16 of the Superior Court Rules of Criminal Procedure. Because the government's determination that the redacted portions are not discoverable appears inconsistent with the remainder of the document, Defendants request that the Court briefly review the redacted portions to independently determine whether they should be produced in an unredacted form.

Defendants do not request a hearing on this motion.



ARGUMENT

In conjunction with the government's negotiations regarding Defendants' Joint Motion to Compel, the government agreed that it would submit to the Court for *in camera* inspection the following documents: (1) redacted notes from the interrogations of Defendants, produced at P344-P352, *see* Exhibit A, attached hereto; (2) a warrant attachment, produced at P51, *see* Exhibit B, attached hereto; and (3) a report prepared by Officer Diane Durham, produced at P355- P356, attached hereto at Exhibit C.

Regarding the notes from Defendants' interrogations, while interrogating Defendants for—collectively—more than twenty-five hours, the various MPD interrogators took notes on small note pads. The government produced nine pages from the note pads and stated these are all the notes that the government can find. Of these nine pages, the government has redacted numerous pages, some almost in their entirety. Given that these notes were taken during Defendants' interrogation, it is possible that the notes could include statements by the Defendants that are discoverable under Rule 16(a)(1)(A). Accordingly, Defendants have asked and the government has agreed to submit the notes to the Court so that it can inspect the redacted portions and ensure that all Defendants' statements are disclosed.

Regarding the redacted attachment to the search warrant, the attachment lists terms that were to be searched for in emails and files seized from Mr. Price's office computer. One or more of the terms is redacted, although other search terms are disclosed. Like any other search warrant, the attachment should presumptively be turned over to the Defendants in its entirety.

The report prepared by Off. Durham contains a variety of alleged statements made by Defendants to her on Aug. 2, 2006. Portions of the report are inexplicably redacted. If the redacted portions reflect statements made by Defendants, they should be disclosed.

Subsequent to the filing of Defendants' Joint Motion to Compel, the government produced a variety of additional redacted documents, including: (1) emails between Detective Bryan Waid and others regarding Mr. Robert Wone's missing Blackberry (included in a May 8, 2009 production which has no production page numbers but which constitute the first fifteen pages of the May 8 production); (2) emails between Robert Wone and the individuals with whom he had lunch plans on Aug. 3, 2006, and to whom he typed an email at 11:07 pm on Aug. 2, 2006, on his missing Blackberry (the twenty-second and twenty-third pages of the May 8, 2009 production); and (3) notes taken by government interviewers of statements made by Defendants Dylan Ward and Victor Zaborsky, produced at P1476 - P1491.

On June 4, 2009, Defendants wrote to the government requesting that these redacted documents also be submitted to the Court for *in camera* inspection. Defendants received no response. Defendants believe these documents should be inspected *in camera* because Defendants again may be entitled to the redacted portions of the documents pursuant to Rule 16(a)(1)(C) or *Brady*. Specifically, the emails between Detective Waid and others relate to Detective Waid's claim that he provided Mr. Wone's now missing Blackberry to the United States Secret Service for imaging. The Secret Service has no record of receiving, imaging or returning the Blackberry. All Detective Waid's emails regarding the missing Blackberry—and possibly other potential evidence lost by the government—are material to the defense, discoverable under Rule 16, and should be produced.

The government also redacted an email between Robert Wone and the individuals with whom he had lunch plans on Aug. 3, 2006, and to whom he typed an email on Aug. 2, 2006, at 11:07 pm on his now missing Blackberry. No explanation has been provided as to why this email was redacted. Plainly, the information concerning and surrounding the government's loss

Thomas Connolly / VKJ

Thomas G. Connolly, Esq. (DC Bar # 420416)

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Bernard Grimm / VKJ

Bernard S. Grimm (DC Bar # 378171)

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Email: bgrimm@cozen.com

Counsel for Defendant Joseph R. Price

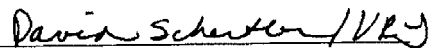
of this critical evidence—evidence that directly contradicts the government’s theory and timeline in this case—is material to the preparation of Defendant’s case, is discoverable under Rule 16(a)(1)(C) and should be fully disclosed to Defendants.

Finally, regarding the notes taken by government personnel during interviews of Defendants Ward and Zaborsky prior to their 2007 grand jury appearances, any statements by Defendants are plainly discoverable pursuant to Rule 16(a)(1)(A). Accordingly, any redacted portions that reflect statements by Defendants Ward and Zaborsky should be produced.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that Defendants’ Motion for *In Camera* Review of Documents, be granted. A proposed order is attached herewith and is being forwarded to the Court’s clerk in electronic format.

Respectfully Submitted,



David Schertler (DC Bar # 367203)

Danny C. Onorato (DC Bar # 480043)

Robert Spagnoletti (DC Bar # 446462)

SCHERTLER & ONORATO LLP

601 Pennsylvania Ave., N.W.

North Building, 9th Floor

Washington, D.C. 20004

Telephone: 202-628-4199

Facsimile: 202-628-4177

Email: dschertler@schertlerlaw.com

Counsel for Defendant Dylan M. Ward

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendants' Motion for *In Camera* Review of Documents, was served, via facsimile and hand, this 13th day of July, 2009, upon:

Glenn Kirschner, Esq.
Assistant United States Attorney
Office of the United States Attorney
for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20001

David Schertler/VRS
David Schertler

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES,

v.

DYLAN M. WARD,

JOSEPH R. PRICE,

and

VICTOR J. ZABORSKY,

Defendants.

Criminal No. 08-CF1-26996

Criminal No. 08-CF1-27068

Criminal No. 08-CF1-26997

Judge Frederick H. Weisberg

ORDER

After consideration of Defendants' Motion for *In Camera* Review of Documents, it is hereby ORDERED this _____ day of _____, that Defendants' Motion for *In Camera* Inspection of Documents, is GRANTED; and it is hereby

FURTHER ORDERED that no later than _____, 2009, the government shall submit to the Court for *in camera* inspection the following documents previously produced to the defense in redacted form, indicating any redactions, to include: (1) redacted notes from the interrogations of Defendants, produced at P344-P352; (2) a warrant attachment, produced at P51; (3) a report prepared by Office Diane Durham, produced at P355- P356; (4) emails between Detective Bryan Waid and others regarding Mr. Wone's missing Blackberry (included in a May 8, 2009 production which has no production page numbers, but which constitutes the first fifteen pages of the May 8 production); (5) emails between Robert Wone and individuals with whom he had lunch plans on Aug. 3, 2006 (pages twenty-two and twenty-three of the May 8, 2009

production to the defense); and (6) notes taken by government interviewers of statements made by Defendants Dylan Ward and Victor Zaborsky produced at P1476 - P1491.

Entered this: _____ day of _____, 2009

Judge Frederick H. Weisberg
Superior Court for the District of Columbia

EXHIBIT A

Durham
Radio run (stabbing)
Ambulance crew was bringing
Vic out, once inside w/m.
No shirt, underwear, 2 others
standing, w/m in underwear
Told officer there was a burglary
This is the way they came
in pointing at back door.

[REDACTED]

METROPOLITAN POLICE DEPARTMENT
HOMICIDE SQUAD
WASHINGTON, DC



BRYAN WAID
DETECTIVE, DII-0017

(202) 645-0013
(202) 206-1399
BRYAN.WAID@DC.GOV

OFFICE/VOICE MAIL:
ALPHA-NUMERIC PAGER:
E-MAIL ADDRESS:

Joe told Victor to go
call 911. I + Hampton
asked where knife was +
he said up stairs, next
to the bed. I put it next
to the bed. Durham came
in. Durham + Joe + Hampton
went to the back door.
Hampton in Dining Area.
While there Joe called
Victims wife + said her
I hate to be the one to
tell you this but Robert
been stabbed. Told her
more but OFFIC. didn't
hear.
Joseph brought OFFIC. up
+ showed the knife.
OFFIC. asked if he could
have stabbed himself.
Joe said NO!

[REDACTED]

METROPOLITAN POLICE DEPARTMENT
HOMICIDE SQUAD
WASHINGTON, DC

BRYAN WAID
DETECTIVE, D11-0017

1202-645-0013
1202-206-1339
BRYAN.WAID@DC.GOV

OFFICE VOICE MAIL
ALPHA-NUMERIC PAGER
E-MAIL ADDRESS:

RECEIVED

PARA MEDIC ^{Det} BAKER
BAKER SAID WHAT HAPPENED
JOE SAID I HEARD A
SCREAM.

[REDACTED]

METROPOLITAN POLICE DEPARTMENT
HOMICIDE SQUAD
WASHINGTON, DC



BRYAN WAID
DETECTIVE, DJ-0017

OFFICE/VOICE MAIL: 12021-645-0013
ALPHA-NUMERIC PAGER: 12021-206-1339
E-MAIL ADDRESS: BRYAN.WAID@DC.GOV

FOLTS, JEFF DII-21

8/2-8/3/06 SWANN ST.

TRANSPORTED TO VCB IN WHT. CROWN VIE
STOPPED AT 7-11 14th & R.F. AVE. NW
GOT TO VCB AT 2145

W-1 SAID HIS FATHER & MOTHER WERE
IN NAVY, ASK HOW MANY YEARS ON
MPD. SAID HE LIVED AT 11TH & CONST.
AVE. WORKED OUT "RESULTS" 6Xm,
BOUGHT SWANN ST. HOUSE AT TOP
ROOF-MARKET WE SPOKE ABOUT BASEMENT
TENANT, ASK IF FRIEND WAS DEAD, THEY
MET IN COLLAGE IN VA, SAID ~~HE~~ HIS
CAR WAS BROKEN INTO BUT HE WAS
NEVER A VICTIM, HE SAID "I CAN'T
BELIEVE SOMEONE WOULD WALK INTO
THE HOUSE." ASKED IF WE WERE GOING
TO HEAD QUARTER & SAID YES, ~~W-1~~
~~SAID~~ SAID "HOMICIDE?", F SAID YES. W-1
SAID HE WAS A DEFENSE ATTOR. FOR
WHITE COLLAR, I ASKED IF HE KNEW
BENNEY GRIM, HE SAID YES HE DID SO WORK
WITH THE PAINTBALL ~~FOR~~ TERRORIST
CASE IN VA. ASK WHAT WAS GOING ON WITH
HOUSE, F SAID SEARCH WARRANT
W-1 WAS WALKED TO INTERVIEW
ROOM, THEN USE BATHROOM

EXHIBIT B

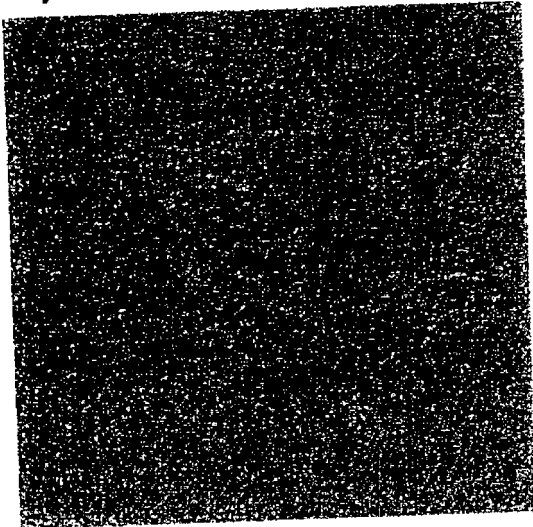
Attachment "A"

Robert Wone

Kathy Wone

Victor Zaborsky

Dylan Ward



Durham, D
#596

Price, Joe

10:30 END of last week
watching project run way.

Alarm
Door lock

Dillon

EXHIBIT C

AMPAD

WireLock®

METROPOLITAN POLICE DEPARTMENT
Violent Crimes Branch



Milton L. Norris

Homicide
3244 Pennsylvania Ave., SE
Washington, D.C. 20020

Main: 202-645-9600
Desk: 202-645-6359
Pager: 202-996-7216
Fax: 202-645-9608



MILTON L. NORRIS
DETECTIVE

METROPOLITAN POLICE DEPARTMENT
HOMICIDE
WASHINGTON, D.C.

VIOLENT CRIMES BRANCH
3244 PENNSYLVANIA AVE., SE
WASHINGTON, DC 20020

WORK: (202) 645-9600
CELL: (240) 417-1622
PAGER: (202) 996-7216

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METROPOLITAN POLICE

P.D. 119 Rev.

DEPARTMENT

WASHINGTON, D.C.

1. COMPLAINT NO.	
3. UNIT FILE NO. HO06-	
5. DOB ADULT	6. SEX female
8. HOME PHONE	
10. BUSINESS PHONE	
13. DATE / TIME STARTED 8/3/06-0607HRS.	

2. NATURE OF INVESTIGATION

Homicide Investigation

4. STATEMENT OF: (Last, First, Middle)

Durham, Diane

7. HOME ADDRESS

9. EMPLOYMENT (Occupation and Location)

Police Office/3rd District

11. LOCATION STATEMENT TAKEN

VIOLENT CRIMES UNIT

12. NAME OF OFFICER TAKING STATEMENT (if other than block 18 include signature)

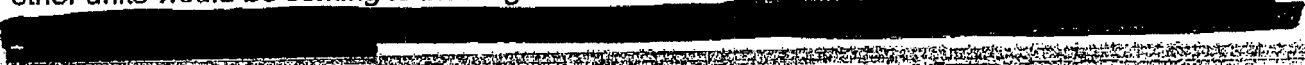
G. RUSSELL BROWN

14. STATEMENT

On August 2, 2006 at approximately 2354 hours, an assignment for a stabbing was broadcast to units in the 3rd District. The following is a statement from a responding officer to the scene located at 1509 Swann Street, N. W.,.

Q. Officer Durham, please tell me exactly what you encountered upon your arrival at 1509 Swann Street, N. W. for the stabbing.

A. Once I arrived on the scene, I saw the medic unit taking the victim out of the house and place him into the ambulance. Then I went into the house (1509) and I was met by the white men dressed in white robes. One was dressed only in a pair of white speedo underwear. One male was standing by the steps, the other was sitting in the chair, the male in the underwear did all the talking. I asked him what happened, he said we were burglarized, the person came through the patio door, see the door is still open. I walked over to the kitchen with the male in the white underwear to look at the door. He said it was open. The door was all but 1/4 of an inch closed, it just touched the door rim. As I flipped on the light to see if anything had been disturbed, the underwear guy said, the victim came through the patio doors. He said they heard someone scream and ran downstairs to see. Underwear guy said the victim was at the patio door bleeding, they opened the door, took him upstairs and laid him on the bed. Then myself and underwear guy walked back into the livingroom area. Underwear guy said something to the guy in the chair, that guy just busted out crying and placed his face in his hands. I told underwear guy I was going to leave and go to the hospital with his friend. I advised him to put on a robe or clothes because other units would be coming to investigate the scene.



~~I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION.~~

Diane Durham
Signature of Person Giving Statement

16. DATE / TIME ENDED CONTINUED.....
17. PAGE 1 OF 2 PAGE

18. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15:
G. Russell Brown

19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15:

P355

JA

ORIGINAL

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - FELONY BRANCH**

2009 JUL 16 P 3:35

UNITED STATES OF AMERICA)	CRIMINAL NOS. 2008-CF1-27068
)	2008-CF1-26997
)	2008-CF1-26996
v.)	
)	
JOSEPH PRICE)	JUDGE FREDERICK H. WEISBERG
VICTOR ZABORSKY)	
DYLAN WARD)	STATUS HEARING DATE: 9/11/09

NOTICE OF FILING

The government requests that the attached discovery letter, dated July 16, 2009, be made part of the record in this case.

JEFFERY A. TAYLOR
United States Attorney

By:

[Signature]

GLENN L. KIRSCHNER
T. PATRICK MARTIN
Assistant United States Attorney
555 4th Street, N.W.
Washington, DC 20530
(202) 514-7425 (GLK)
(202) 514-7504 (TPM)

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the attached discovery letter to be served by facsimile on July 16, 2009, upon Bernard Grimm, Esq., The Army and Navy Building, 1627 I Street, NW, Suite 1100, Washington, DC 20006, counsel for defendant Price, Thomas G. Connolly, Esq., Harris, Wiltshire & Grannis, LLP, 1200 Eighteenth Street, N.W., 12th Floor, Washington, DC 20036-2506, counsel for defendant Zaborsky, and David Schertler, Esq., Schertler & Onorato, LLP, 601 Pennsylvania Avenue NW, North Building, 9th Floor, Washington, DC 20004-2601, counsel for defendant Ward.

[Signature]

T. PATRICK MARTIN
Assistant United States Attorney

Case: 2008 CF1 026997
00035103002
DRt: DSG/REG
BURGESSM 07/17/2009 5:21:07 PM



U.S. Department of Justice

United States Attorney

District of Columbia

*Judiciary Center
555 Fourth St. N.W.
Washington, D.C. 20530*

July 16, 2009

VIA FACSIMILE

Bernie S. Grimm, Esq.
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Washington, D.C. 20004-2601

Re: United States v. Joseph Price
Case No. 2008-CF1-27068

United States v. Victor Zaborsky
Case No. 2008-CF1-26997

United States v. Dylan Ward
Case No. 2008-CF1-26996

Dear Counsel:

We are writing to provide you with additional discovery pursuant to Superior Court Criminal Rule 16, as well as your recent "Renewed Motion to Compel Discovery and Request for Expedited Order" (the "Renewed Motion to Compel"), filed July 2, 2009.

I. Additional Discovery

A. The date and time that each of the crime scene photos was taken that have been produced by the government to the defense (No Req. No.).

On August 3, 2006, at or around 1:00 A.M., MPD Mobile Crime Lab Technician(s) took a total of ten rolls of photographs of the crime scene at 1509 Swann Street, NW. On December 18, 2008, the government produced digital copies of those photographs on CDs, identified as "MPD Photos, Disks 1-4."

On August 4, 2006, at or around 2:20 A.M., MPD Mobile Crime Lab Technician(s) took a total of seven rolls of photographs of the crime scene at 1509 Swann Street, NW. On December 18, 2008, the government produced digital copies of those photographs on CDs, identified as "MPD Photos, Disks 5-7."

On August 5, 2006, at or around 1:50 A.M., MPD Mobile Crime Lab Technician(s) took a total of two rolls of photographs of the crime scene at 1509 Swann Street, NW. On December 18, 2008, the government produced digital copies of those photographs on a CD, identified as "MPD Photos, Disk 8."

On August 6, 2006, at or around 1:07 A.M., MPD Mobile Crime Lab Technician(s) took a total of six rolls of photographs of the crime scene at 1509 Swann Street, NW. On December 18, 2008, the government produced digital copies of those photographs on CDs, identified as "MPD Photos, Disks 9-10."

On August 7, 2006, at or around 1:35 A.M., MPD Mobile Crime Lab Technician(s) took a total of one roll of photographs of the crime scene at 1509 Swann Street, NW. On December 18, 2008, the government produced digital copies of those photographs on a CD, identified as "MPD Photos, Disk 11."

On August 9, 2006, at or around 1:15 A.M., MPD Mobile Crime Lab Technician(s) took a total of one roll of photographs of a black BMW 4-door sedan. On December 18, 2008, the government produced digital copies of those photographs on a CD, identified as "MPD Photos, Disk 12."

On August 10, 2006, at or around 8:45 A.M., member of the Federal Bureau of Investigation took digital images of the crime scene at 1509 Swann Street, NW. On December 18, 2008, the government produced digital copies of those photographs on a CD, identified as "FBI photos (1 CD)."

On August 16, 2006, at or around 11:30 P.M., MPD Mobile Crime Lab Technician(s) took a total of three rolls of photographs of the crime scene at 1509 Swann Street, NW. On December 18, 2008, the government produced digital copies of those photographs on CDs, identified as "MPD Photos, Disks 12-13."

On August 21, 2006, at or around 5:17 P.M., MPD Mobile Crime Lab Technician(s) took a total of two rolls of photographs of the crime scene at 1509 Swann Street, NW. On December 18, 2008, the government produced digital copies of those photographs on a CD. identified as "MPD Photos, Disk 14."

If you have any questions about the information provided above, you may contact me by telephone (202-514-7425) or AUSA Pat Martin by telephone (202-514-7504).

Sincerely,

CHANNING D. PHILLIPS
Acting United States Attorney

By:



Glenn L. Kirschner
T. Patrick Martin
Assistant United States Attorneys

cc: Superior Court Case File