

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

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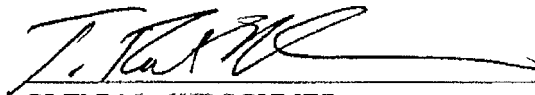
UNITED STATES OF AMERICA)	CRIMINAL NOS. 2008-CF1-27068
)	2008-CF1-26997
v.)	2008-CF1-26996
)	
JOSEPH PRICE)	JUDGE FREDERICK H. WEISBERG
VICTOR ZABORSKY)	
DYLAN WARD)	STATUS HEARING DATE: 9/11/09

NOTICE OF FILING

The government requests that the attached discovery letter (without attachments), dated July 13, 2009, be made part of the record in this case.

JEFFERY A. TAYLOR
United States Attorney

By:



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 (with attachments) to be served by first class mail on July 13, 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.



T. PATRICK MARTIN
Assistant United States Attorney



U.S. Department of Justice

United States Attorney

District of Columbia

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

July 13, 2009

BY FIRST CLASS MAIL

Bernie S. Grimm, Esq.
Cozen O'Connor
The Army and Navy Building
1627 I Street, N.W., Suite 1100
Washington, DC 20006

Thomas G. Connolly, Esq.
Harris, Wiltshire & Grannis, LLP
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David Schertler, Esq.
Schertler & Onorato, LLP
601 Pennsylvania Avenue NW
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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 and respond to 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. Documents

The following additional documentation (Bates Nos. 1624-1694) is included:

- T-mobile billing records for Mr. Wone's work cellular telephone from July 7, 2006 through August 4, 2006
- "Vendor history report" for Mr. Wone
- RFA voucher, dated July 31, 2006
- RFA travel and expense claim
- DC Annual Registration statement for Mr. Wone
- Copy of RFA check issued to Mr. Wone for bar dues reimbursement
- CD, containing a copy of Mr. Wone's RFA e-mail address account and calendar on Outlook, including e-mails sent to and received from that e-mail address, from July 29, 2006, through August 3, 2006
- Redacted copy of Mr. Wone's personnel file from Radio Free Asia
- Curriculum vitae of various FBI expert witnesses, previously identified

II. Discovery Items Referenced in Motion to Compel

In your Renewed Motion to Compel, you specifically referenced certain requests for information that you claim are discoverable pursuant to Rule 16 and other legal authority. Our response to each of those specific requests for information follows.

A. FBI Laboratory "Case Files"

Sometime after the May 22, 2009 motions hearing, you orally and later, in writing, requested the FBI Laboratory "Case File," including examiner bench notes and "all communications between the United States Attorney's Office ("USAO") and FBI Laboratory." We later agreed to produce the discoverable portions of the FBI Laboratory case file, which does not include protected work product, such as communications between the USAO and the FBI regarding forensic testing other than the FBI's final reports. *Cf. Waldron v. United States*, App. D.C., 370 A.2d 1372 (1977) (finding that "bench notes" relating to forensic testing need not be produced). On July 7, 2009, we specifically addressed the status of this discovery request in writing by advising you that we anticipated producing discoverable materials related to your request toward the end of July.

B. Other Discovery Requests

1. **Redacted police officers' notes.** As previously represented, we have gathered the redacted police officers' notes previously produced, as well as an unredacted copy of those notes, and are prepared to produce them to the Court for its *in camera* inspection at the Court's direction.

2. **Mr. Wone's personal and work e-mails (Req. Nos. 25-28)** You have

requested all of Mr. Wone's personal and work e-mail, regardless of the e-mail account used, from July 27 through August 3, 2006. We have produced numerous e-mails during this time frame, and where even arguably relevant, e-mails beyond that time frame (see P386-P587, P1411-P1418, and P1522-1533). In addition, as referenced above, we recently received an electronic copy of e-mails sent to and received from Mr. Wone's work e-mail address at RFA (i.e., woner@rfa.org), a copy of which is enclosed. We are in the process of confirming with the United States Secret Service that the government is not in possession of any other e-mails from Mr. Wone's personal e-mail accounts from July 27 through August 3, 2006. Once confirmed, we will advise you accordingly.

3. **PD 119s of EMS responders (Req. Nos. 7-9).** None exist.

4. **Complete copies of documents that were partially produced (Req. Nos. 12-13).** We produced the complete copies of the documents you requested on May 15, 2009 (see P1574-1612).

5. **Subpoena issued to various cell phone/e-mail providers, to the extent not already produced (Req. Nos. 14-15).** In contrast to documents obtained in response to government-issued subpoenas, we do not believe that the government-issued subpoenas themselves are discoverable under Rule 16 (and are arguably precluded from disclosure pursuant to Rule 6e). Notwithstanding this position, we have produced copies of certain subpoenas in response to your specific requests (see P1579-1581, P1600-1605). To the extent the government has issued other subpoenas relating to the government's ongoing investigation into the murder of Mr. Wone, the government does not intend to produce copies of those subpoenas or any responsive documentation at this time.

6. **Mr. Wone's cell phone records and cell phone (Req. No. 22).** We previously produced cell phone records responsive to your request on April 23, 2009 (see P1317-1340). In addition, as referenced above, we recently received a copy of other documentation relating to Mr. Wone's blackberry usage, a copy of which is enclosed. We are not in possession of any other cell phone records responsive to your request. The government is no longer in possession of Mr. Wone's cell phone from August 2, 2006.

7. **Image of Mr. Wone's work computer hard drive (Req. No. 24).** As previously indicated to you, we do not believe that the contents of Mr. Wone's work computer are discoverable. Notwithstanding, as referenced above, we recently received a copy of certain electronic information contained on Mr. Wone's work computer, a CD copy of which is enclosed.

8. **Mr. Wone's personnel file from Radio Free Asia (Req. Nos. 31, 41).** As referenced above, please find enclosed a redacted copy of the portion of Mr. Wone's personnel file in the government's possession. In addition, as referenced above, we recently received certain documentation from Radio Free Asia, a copy of which is enclosed.

9. **Katherine Wone's e-mails from July 3, 2006, through August 3, 2006 (Req. No. 36).** As previously indicated to you, we generally do not believe that Mrs. Wone's e-mails are discoverable. Notwithstanding, we have previously disclosed to you various e-mails between

Mr. and Mrs. Wone (see P1579-1581, P1600-1605). In addition, it is our understanding that when the United States Secret Service searched the Wones' home computer, it was unable to find any evidence that Mrs. Wone received an e-mail from Mr. Wone's work e-mail address after 11:00 P.M. on August 2, 2006.

10. All forensic test results not already produced (Req. No. 62). As previously indicated, we have produced the final forensic testing reports for all testing that has been completed to date. The FBI is, however, engaged in some additional, albeit limited, testing regarding certain pieces of evidence. As represented to you on July 7, 2009, the FBI anticipates that it will be able to finish this limited testing very soon, at which time we will forward the final reports for any such testing, as well as any related discoverable file materials.

11. Copy of the FBI Laboratory complete "case file," including correspondence between USAO and expert witnesses (referenced as Req. Nos. 62-64, 75). See response above.

12. Rule 16(a)(1)(E) expert disclosures (Req. Nos. 69-70, 73-75). On and before March 26, 2009, we provided notice of various expert witnesses that the government may call to testify at trial. Included in that notice was the name of the expert, his or her field of expertise, and a reference to written expert reports previously disclosed and known to you, where applicable. In certain instances, where an expert report did not completely identify the expert's proffered opinions and basis for those opinions, we further identified and explained the expert's proffered opinions and basis for those opinions in the disclosure narrative. As indicated above, please also find enclosed the curriculum vitae of the government's various FBI expert witnesses. We will update the expert disclosures already provided, as necessary, in advance of trial.

13. Certifications for cadaver dog(s) used at 1509 Swann Street (Req. No. 73). Although this office is not currently in possession of any such records, we are requesting them from MPD. Upon receipt, we will forward them to you under separate cover.

14. Exact location of the palm print found in the second floor office of 1509 Swann Street (Req. No. 71). Latent fingerprints that were "of value" were discovered and lifted in the second floor office (also described as the "south bedroom"), as indicated in the description provided in the MCL Evidence Report, dated August 3, 2006, for MCL item numbers 8-11. Defendant Victor Zaborsky could not be excluded as the person who left the fingerprints.

15. 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.). According to the police paperwork, MPD Mobile Crime Lab technicians took photographs of the crime scene at 1509 Swann Street, NW, on several different dates. Per your request, we are endeavoring to determine what photographs were taken on what dates. We will be providing you with this information within a week of this writing. In addition, on August 10, 2006, at or around 8:45 A.M., members 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)."

We hope that the above responses are helpful in your continued analysis of the state of ongoing discovery. As previously offered and in an effort to avoid involving the Court unnecessarily, we would be happy to sit down with you collectively again to discuss any of the outstanding discovery concerns you may have. If you are amenable to this, please contact us at your earliest convenience for the purpose of scheduling another discovery conference.

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 (w/o attachments)

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

2009 JUL 14 A 8:01

JUL 13 8:17

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

**GOVERNMENT'S OMNIBUS RESPONSE TO DEFENDANTS' RENEWED MOTION
TO COMPEL DISCOVERY AND REQUEST FOR EXPEDITED ORDER AND
DEFENDANTS' MOTION TO ENFORCE THIS COURT'S MAY 26, 2009 ORDER**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, files this omnibus response to Defendants' Renewed Motion to Compel Discovery and Request for Expedited Order and Defendants' Motion to Enforce this Court's May 26, 2009 Order (the "Motions"). For its response, the United States respectfully refers the Court to the government's July 7, 2009 and July 13, 2009 letters to defense counsel (copies of which (without attachments) are attached here as Attachments A and B, respectively). In addition, the government advises the Court that, consistent with the defendants' own representations in the Motions, the vast majority of the evidentiary items that the Court ordered be transferred to the defendants for their independent testing have, in fact, been transferred to the defendants. With respect to those few items of evidence that remain in the government's possession (i.e., Q223 (a combination of specimens obtained from Items 29, 30, and 31), Q203-2 and Q203-3 (both taken from specimen Q203), and K1 (Mr. Wone's dried blood sample), the government intends to produce those items, along with the discoverable FBI "case file," toward the end of July.¹


¹ Defendants are correct in noting that Mr. Wone's palm and fingerprints, as well as Items 86-95 (certain latent fingerprints), will be made available to defense counsel and designated defense

Case: 2008 CF1 026997
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WHEREFORE, the United States of America, by its counsel, the United States Attorney for the District of Columbia, respectfully requests that the Court deny Defendants' Renewed Motion to Compel Discovery and Request for Expedited Order and Defendants' Motion to Enforce this Court's May 26, 2009 Order.

Respectfully submitted,
CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY

By:


GLENN L. KIRSCHNER
T. PATRICK MARTIN
Assistant United States Attorneys
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 foregoing to be served by facsimile on July 13, 2009, upon Bernard Grimm, Esq., Cozen O'Connor, 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.


T. PATRICK MARTIN
Assistant United States Attorney

experts upon request at the MPD's Latent Fingerprint Examination Section at a mutually convenient date and time. In this regard, we await defense counsel's requested dates and times to view and inspect the fingerprint evidence.

ATTACHMENT A



U.S. Department of Justice

United States Attorney

District of Columbia

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

July 7, 2009

BY FACSIMILE

Bernie S. Grimm, Esq.
Cozen O'Connor
The Army and Navy Building
1627 I Street, N.W., Suite 1100
Washington, DC 20006

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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:

This is in response to your requests for the FBI Laboratory testing "Case Files" in these cases. As you know, Ms. Tamyra Moretti, an FBI forensic examiner, is coordinating the FBI's remaining forensic testing and the release of discoverable FBI records, including examiner "bench notes" and DNA profiles, related to the FBI's testing. Due in large part to the sheer breath and scope of the forensic testing conducted by the FBI, including the various personnel involved in that testing, the records you have requested are voluminous. In early June, not long after your initial request for this

information, we advised you that Ms. Moretti was going to be out of the office from June 8-26, 2009, and the production of the requested information would not occur until after her return. Once she returned, we were able to meet with Ms. Moretti. She advised us at that time that over the next few weeks, the FBI intends to finish the remaining testing, provide final reports, gather the discoverable information you seek, and provide us with those records. We will forward the records immediately upon receipt, which we anticipate will be toward the end of July.

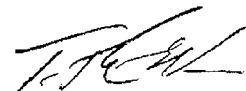
We also understand, based on your previous representations, that your experts claim that they need the FBI "bench notes" and DNA profiles, in particular, before they will even commence their testing on your behalf. As previously agreed, we will have no objection whatsoever to a reasonable extension of time to conclude defense testing should such an extension become necessary.

Should you have any additional questions regarding the above, please do not hesitate to contact us.

Sincerely,

CHANNING D. PHILLIPS
Acting United States Attorney

By:



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

cc: Superior Court Case File

ATTACHMENT B



U.S. Department of Justice

United States Attorney

District of Columbia

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

July 13, 2009

BY FIRST CLASS MAIL

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Sincerely,

CHANNING D. PHILLIPS
Acting United States Attorney

By:



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

cc: Superior Court Case File (w/o attachments)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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JOSEPH PRICE)	JUDGE FREDERICK H. WEISBERG
VICTOR ZABORSKY)	
DYLAN WARD)	STATUS HEARING DATE: 9/11/09

ORDER

Upon consideration of Defendants' Renewed Motion to Compel Discovery and Request for Expedited Order and Defendants' Motion to Enforce this Court's May 26, 2009 Order, the Government's Omnibus Response to said motions, it is this _____ day of _____, 2009, hereby

ORDERED, that Defendants' Renewed Motion to Compel Discovery and Request for Expedited Order is **DENIED**; and it is

FURTHER ORDERED, that Defendants' Motion to Enforce this Court's May 26, 2009 Order is **DENIED**.

JUDGE FREDERICK H. WEISBERG

cc: Glenn L. Kirschner, Esq.
T. Patrick Martin, Esq.
Assistant United States Attorneys
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Washington, D.C. 20530

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Cozen O'Connor
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