

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES OF AMERICA	:		
	:		
v.	:	Crim. Nos.	2008-CF1-027068
	:		2008-CF1-026996
JOSEPH PRICE	:		2008-CF1-026997
DYLAN WARD	:		
VICTOR ZABORSKY	:		

PROPOSED ORDER

This matter is before the court on Defendants' Motion for Discovery, Inspection and Testing pursuant to Super. Ct. R. Crim. P. 16(a)(1)(C). The government consents to the motion.

The government has an interest in the integrity of the evidence and its chain of custody. *See* Super. Ct. R. Crim. P. 16(d). Furthermore, to the extent that the testing proposed by the defense could exhaust the biological material available for such testing, the government has an interest in appropriate precautions to ensure that the available biological material is not entirely consumed and is preserved to the maximum extent possible. Accordingly, it is this ____ day of _____, 2009,

ORDERED that the United States, through the Metropolitan Police Department, shall release the following evidence (collectively the "Items") to an agent designated by the defense:

Item Numbers

- Item 14 – Fitted bed sheet (PD-668 CCN#06-105-033, P88)
- Item 15 – Pillowcase, white (PD-668 CCN#06-105-033, P88)
- Item 20 – Two clear plastic patient belongings bags (PD-668 CCN#06-105-033, P88)
- Item 47 – Comforter (this is actually a mattress pad) (PD-698 CCN#06-105-033, P93)
- Item 48 – Flat sheet (PD-698 CCN#06-105-033, P93)

Item 49 – Mattress Pad (this is actually a comforter) (PD-698 CCN#06-105-033, P93)

Item 50 – Pillow (PD-698 CCN#06-105-033, P93)

Item 189 – Foam pad (PD-698 CCN#06-105-033, P105)

Item 202 – Couch/ sofa fabric (PD-698 CCN#06-105-033, P107)

Non-Numbered Items

- All the fibers recovered from Item 13, a knife.
- All bags and/or other packaging used, at any time, to store Items 14, 15, 16, 17, 18, 19, 47, 48, 49, 50, 189 and 202.
- Any bag, sheet or other item used by EMS responders to transport Mr. Wone from inside 1509 Swann Street to George Washington University Hospital.
- The postmortem bag used to transport Mr. Wone's body from George Washington University Hospital to the District of Columbia morgue.

The agent shall take custody of the Items for the sole purpose of transporting it to a reputable independent forensic laboratory for forensic analysis; and it is further

ORDERED that defendants' counsel shall instruct the laboratory assigned to conduct the forensic analysis to make every effort not to consume the entirety of biological material or trace evidence, if any, and shall further instruct the laboratory not to conduct any analysis that will consume the entire sample of any such biological material or trace evidence without first informing defense counsel, who shall in turn inform counsel for the government before any such testing is conducted; and it is further

ORDERED that the laboratory shall retain all notes and recordings made during the analysis of the Items, including handwritten materials, diagrams, charts, graphs, audiotapes, videotapes, draft reports, and computer-generated data, which shall be provided to the United

States, upon request, if, but only if, the defense intends to introduce at trial evidence derived from the analysis; and it is further

ORDERED that the laboratory designated by the defendants shall conduct the requested forensic analysis on or before twelve weeks from the receipt of any Item by Defendants' agent, and at the conclusion of the analysis, the laboratory shall properly preserve and seal the Items, including any unused sample of biological or trace evidence, in appropriate packaging consistent with best forensic scientific practices and shall deliver the Items to the authorized agent of Defendants, who shall transport the Items in their sealed condition directly to the Metropolitan Police Department, acting as agent for the United States Attorney; and it is further

ORDERED that at the trial or any subsequent evidentiary hearing in this matter, Defendants shall be precluded from raising any claim that there was a break in the chain of custody of the Items, from the time they were delivered by the Metropolitan Police Department to Defendants' agent to the time it was delivered by Defendants' agent back to the Metropolitan Police Department pursuant to this order; and if any Defendant intends to use the results of any testing, analysis or examination in his case in chief, counsel shall make the appropriate disclosures required by Rule 16(b)(1)(C); and it is further

ORDERED that nothing in this Order prevents Defendants from making additional requests for testing of evidence should the need arise;

JUDGE FREDERICK H. WEISBERG