

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

2010 JUN -11 A 10:27

UNITED STATES,

v.

DYLAN M. WARD,

JOSEPH R. PRICE,

and

VICTOR J. ZABORSKY,

Defendants.

Criminal No. 08-CFI-26997

Judge Lynn Leibovitz

**DEFENDANTS' JOINT MOTION IN LIMINE TO EXCLUDE  
EVIDENCE AND ARGUMENT REGARDING MICHAEL PRICE**

Defendants Dylan M. Ward, Joseph R. Price and Victor J. Zaborsky, by and through undersigned counsel, respectfully submit this Joint Motion in Limine to Exclude Evidence and Argument Regarding Michael Price.

Prior to and during trial, the government has repeatedly speculated that Michael Price, the brother of Defendant Joseph Price, was somehow involved in the August 2, 2006 stabbing of Mr. Wone.<sup>1</sup> There is, however, no evidence that Michael Price had anything to do with Mr. Wone's August 2, 2006 death, nor has the government proffered any such evidence. Because any evidence the government seeks to admit concerning Michael Price is based upon mere speculation, is irrelevant and unduly prejudicial, it should be excluded.

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<sup>1</sup> See Government's Notice of Uncharged Conduct I, 8-9 (Feb. 5, 2010) ("Notice I"); Government's Notice of Uncharged Conduct II, 4-6 (Apr. 2, 2010) ("Notice II").

## **I. FACTUAL BACKGROUND**

On August 2, 2006, Michael Price (“Michael”) lived in Silver Spring, Maryland, with his roommate, Louis Hinton. The afternoon of August 2, 2006, Michael went to the home of his nephews (Messrs. Price and Zaborsky’s children) and their mother, Kim, at their home, also in Maryland. One of Michael’s nephews had lost his first tooth and was excited about the impending visit of the “tooth fairy.” During the visit, Michael helped one of his nephews remove the training wheels from his bike and his nephew rode his bike for the first time without the training wheels. At 4:50 p.m., using Kim’s home phone, Michael and Kim called Joseph Price on his cell phone to share these domestic developments. Having stayed later than planned Michael would have missed the beginning of a phlebotomy class in which he was enrolled at Montgomery County Community College, and consequently decided to skip the class, which started at 5:00 p.m. and went until 9:15 p.m.

Michael left his nephews and their mother and returned home. When he arrived home, Mr. Hinton was already home from work. That evening they had dinner together and watched television. Michael went to bed first and was later joined by Mr. Hinton. They slept together that night. The government expressly acknowledged that Michael Price was at his own home during the relevant time period on August 2, 2006, in its February 5, 2010 Notice of Uncharged Conduct I, stating: “[i]t should be noted that Michael Price’s partner, Louis Hinton, provided an alibi for Michael Price at the time of the murder.”<sup>2</sup>

## **II. ARGUMENT**

It has long been established that before permitting the government to introduce evidence at trial, the Court must determine whether it has some “connection” with the crime and “should

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<sup>2</sup> Notice I at 8 n. 6.

not be admitted if the connection is too remote or conjectural.” *Ali v. United States*, 581 A.2d 368, 374-75 (D.C.1990) (quoting *Burleson v. United States*, *supra*, 306 A.2d at 661), *cert. denied*, 502 U.S. 893, 112 S.Ct. 259, 116 L.Ed.2d 213 (1991). See *Swinson v. United States*, 483 A.2d 1160, 1163-64 (D.C.1984); *Lee v. United States*, 471 A.2d 683, 685 (D.C.1984); *Adams v. United States*, 379 A.2d 961, 964 (D.C.1977); *Coleman v. United States*, 379 A.2d 710, 712 (D.C.1977).

Addressing the admissibility, specifically, of “evidence of third-party perpetration,” our Court of Appeals has held that, for it to be admissible, there must be a “link, connection or nexus between the proffered evidence and the crime at issue.” *Winfield v. United States*, 676 A.2d 1, 4-5 (D.C. 1996). As the *Winfield* court explained, “[i]n the roughly reverse situation where the government seeks to introduce proof of other criminal acts by the defendant . . . the test remains that of relevance. . . . That standard insures the exclusion of evidence that ‘is too remote in time and place, completely unrelated or irrelevant to the offense charged, or too speculative with respect to the third party’s guilt.’” 676 A.2d at 5 (quoting *Johnson v. United States*, 552 A.2d 513, 516 (D.C.1989)) (emphasis added); see also *Hager v. United States*, 791 A.2d 911, (913) (D.C. 2002) (“Despite this minimal inclusive relevance standard, the trial court should still exclude evidence that is too speculative with respect to the third party’s guilt.”); *Resper v. United States*, 793 A.2d 450, 460 (D.C. 2002) (“[T]rial courts should still exclude evidence that is too remote in time and place, completely unrelated or irrelevant to the offense charged, or too speculative with respect to the third party’s guilt.”). Absent actual proof that a third-party “had a practical opportunity to commit the crime,” such evidence should be excluded. *Resper*, 793 A.2d at 460; see also *Bruce v. United States*, 820 A.2d 540, 546 (D.C. 2003) (excluding evidence

potentially linking the defendant's brother to the crime because there was "absolutely no proffer that [the brother] was in any way connected to the robbery.").

Here, there is simply no evidence whatsoever that Michael Price was involved in Mr. Wone's death or its alleged cover-up. Moreover, the evidence concerning Michael Price that the government has proffered and/or attempted to introduce is plainly speculative and irrelevant. Specifically, the fact that Michael Price missed his August 2, 2006 phlebotomy class, which took place from 5:00 p.m. - 9:15 p.m.,<sup>3</sup> is—on its face—not probative of any circumstances surrounding Mr. Wone's death, given that it is undisputed that Mr. Wone did not arrive at the Defendants' home until after 10:30 p.m.

On May 28, 2010, the government also suggested to the Court that Michael Price's appearance at the Violent Crimes Branch the morning of August 3, 2006, was somehow suspicious. The government ignores the fact that Michael Price was only one of numerous people contacted by Joseph Price that morning, and one of several people who went to Violent Crimes to provide support and transportation for Messrs. Price, Ward and Zaborsky. That a family member would drive to a police station to pick up his brother is neither notable nor probative.<sup>4</sup>

Finally, the government seeks to call an MPD officer who attended Mr. Wone's funeral to testify concerning Michael Price's alleged demeanor at Mr. Wone's funeral. Such testimony is purely speculative and not probative of any of the issues in this case.

In short, despite acknowledging Michael Price's alibi on the evening of August 2, 2006 and the fact that there is no evidence connecting Michael Price in any way to Mr. Wone's death

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<sup>3</sup> See Montgomery County Community College Phlebotomy Class Attendance Records attached at Exhibit A, produced at P1535.

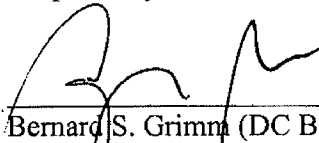
<sup>4</sup> It is, however, notable—particularly given the government's apparent theories in this case—that the government has never attempted to interview Michael Price. In comparison, the other four friends who went to the Violent Crimes Branch the morning of August 2, 2006, were each interviewed by the government multiple times and subpoenaed to testify in the grand jury.

or its alleged cover-up, the government continues to seek to introduce evidence concerning Michael Price. The introduction of such evidence can only serve to invite speculation and innuendo. Because the evidence the government seeks to admit concerning Michael Price is based upon mere speculation, is irrelevant and unduly prejudicial, the government should be precluded from introducing any further evidence regarding Michael Price.

**CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court grant the Defendants' Joint Motion In Limine To Exclude Evidence And Argument Regarding Michael Price. A proposed order is submitted herewith.

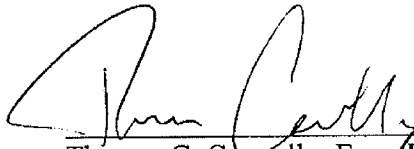
Respectfully Submitted,



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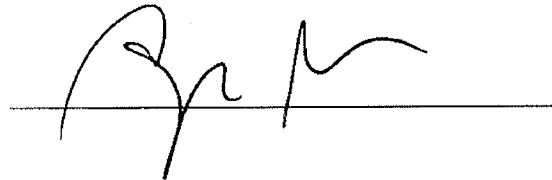
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*Counsel for Defendant Victor J. Zaborsky*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendants' Joint Motion In Limine to Exclude Evidence and Argument Regarding Michael Price, was served, electronically and by hand, this 1<sup>st</sup> day of June, 2010, upon:

Glenn Kirschner, Esq.  
T. Patrick Martin, Esq.  
Rachel Lieber, 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

A handwritten signature in black ink, appearing to be 'R. Lieber', is written over a horizontal line.