

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

UNITED STATES OF AMERICA) CRIMINAL NOS. 2008-CF1-27068
) 2008-CF1-26997
 v.) 2008-CF1-26996
)
JOSEPH PRICE) JUDGE LEIBOVITZ
VICTOR ZABORSKY)
DYLAN WARD) CONT. TRIAL DATE: 6/1/10

**GOVERNMENT'S NOTICE OF INTENT TO INTRODUCE CERTAIN STATEMENTS
MADE BY DEFENDANTS TO CIVILIAN WITNESSES "FOR THEIR TRUTH"**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully provides this notice of intent to introduce certain statements made by the defendants to civilian witnesses "for their truth." As the Court is aware, the government maintains that because the defendants' statements to civilian witnesses, who will testify at trial, are not testimonial, Crawford v. Washington, 541 U.S. 36 (2004), is not implicated. In addition, because this is a bench trial, and the Court can appropriately admit and consider the statements only against the declarant, Bruton v. United States, 291 U.S. 123 (1968), and its progeny are similarly inapplicable. Notwithstanding, this notice is being provided in response to the Court's request for a delineation of those statements made by the defendants to civilian witnesses that the government will seek to introduce into evidence for their truth against the declarant.¹

¹ Consistent with the Court's guidance on May 28, 2010, the government is not providing notice of each and every statement made by the defendants to a civilian witness the government expects to call to testify at trial; rather, the government is only delineating those statements that it will seek to introduce for their truth against the declarant.



1. Joseph Price's statements to W1:

- In numerous conversations over the period of several years, Joseph Price has spoken to W-1 generally about his relationship with his brother Michael Price and how Joseph Price had to take care of Michael Price and fix his problems (e.g., substance abuse problems, health problems, employment problems). Joseph Price has also told W-1 that Michael Price has been a financial burden on him in that Joseph Price had to pay Joseph Price's law school loans while also provide financially for Michael Price. On occasion, Joseph Price would express exasperation, stating "here we go again" when Michael Price would "fall off the wagon."
- At various times over the years, Joseph Price has talked to W-1 about his relationship with Mr. Zaborsky, stating that they were committed partners.
- Sometime after the murder, W1 spoke to Joseph Price about the night Mr. Wone was killed. Among other things, Joseph Price said the following: Joseph Price was home when Mr. Wone arrived at their home and when he was later stabbed. When W-1 asked Joseph Price if the scene had been cleaned up, Joseph Price responded with words to the effect of, "there's a difference between a clean-up and wiping something away while waiting for the ambulance because you're freaked out by all the blood."
- Joseph Price also complained to W-1 about his perception that the police were not processing the scene correctly because they were touching doorknobs and they had not fingerprinted Mr. Wone's water glass.

2. Defendants' statements to W-2 about the murder.

- Based on W-2's observations and some conversations with Joseph Price, W-2 knew that Joseph Price and his younger brother, Michael Price, were very close. W-2 also learned that Joseph Price cared for Michael Price and always took care of him financially, as well as provided him with a place to live. W-2 has also witnessed and overheard telephone calls between Joseph Price and Michael Price—sometimes several calls in a single day. Although W-2 does not recall the exact details of these calls, they further informed W-2's observations and conclusions concerning the close nature of the relationship between Joseph and Michael Price.
- W-2 is aware that Michael Price has substance abuse problems based on conversations W-2 has had with Joseph Price, Zaborsky, or Ward, or a combination of the three defendants.

- Prior to the homicide, W-2 had never heard Joseph Price, Zaborsky, or Ward mention Robert Wone's name.
- On the morning of 8/3/06, W-2 received a call from Joseph Price around 6:00 a.m. Joseph Price told W-2, "I had the worst night of my life. Would you do us a huge favor and pick us up. We're at the police station." Joseph Price told W-2 the address for the police station. W-2 went to the police station, saw J. Price and Zaborsky standing on the curb, and both men got into W-2's car. Once inside, Joseph Price and Zaborsky both said they had been "questioned all night" and "were waiting on Dylan to come out." Both men asked W-2 if he would wait with them. Among other things, Joseph Price then stated the following: Mr. Wone had come to his home to spend the night. As part of recounting his version of the events occurring after Mr. Wone's arrival but before the police were summoned to the scene, Joseph Price stated, "I had to pull the knife out of my friend." While recounting a version of the events to W-2, J. Price did most of the talking. Zaborsky was crying and did not disagree with or correct Joseph Price's version of what occurred.
- At some point while waiting in the parking lot of the Violent Crimes Branch, W-2 advised Joseph Price and Zaborsky that W-2 had to leave. Joseph Price told W-2 it was okay because Michael Price was coming to pick them up.

3. Defendants' statements to W-2 about the burglary in late October, 2006.

- On October 30, 2006, Ward called W-2 and said that Michael Price was "missing." W-2 learned through Ward that Michael Price had been involved in a fight with Michael Price's domestic partner and could not be found. Ward told W-2 that Ward believed that Michael Price may have "fallen off the wagon" or "gone on a binge." Ward also told W-2 that Michael Price had a key to 1509 Swann Street and Ward intended to check the home to see if Michael Price was inside. Ward told W-2 that he did not want to go inside alone and asked W-2 to accompany him. Once inside, W-2 said, "Let's take a look to see, you know, if there's any signs of, of Michael being here." As the two walked through the home, Ward commented that there were various items of personal property missing and said, "All of it's gone. It looks like Michael's been here."
- W-2 witnessed and overheard Ward call J. Price after discovering the missing property.
- W-2 witnessed and overheard Ward call Zaborsky as well.

- W-2 observed Zaborsky arrive at 1509 Swann Street some time later. W-2 witnessed Ward and Zaborsky call a locksmith so that “Michael could not come back into the house.” W-2 understood that Ward and Zaborsky called a locksmith for this purpose based on overhearing Ward and Zaborsky discuss the situation.
 - W-2 overheard Ward and Zaborsky discussing the circumstances of the burglary and Michael Price’s apparent involvement in the burglary. W-2 overheard them both independently say words to the effect of, “What do we do?” W-2 overheard both men independently generally state that because he suspected Michael Price was involved in the burglary, and because Michael Price was a family member, each man wanted to discuss the situation with Joseph Price and determine whether to “press charges.”
 - W-2 understood from his interactions with Ward and Zaborsky on October 30, 2006, that both believed that Michael Price was responsible for the burglary.
4. Defendants’ statements to W-2 about the nature of the defendants’ relationship.
- Through observation and statements made to him by Joseph Price and Zaborsky, W-2 understood that Joseph Price and Zaborsky had a committed relationship.
 - Joseph Price told W-2 (in substance) that Joseph Price and Ward had a personal, intimate relationship.
 - W-2 also learned from either J. Price or Ward, or both, that the police confiscated a number of J. Price and Ward’s personal items as part of their search of the home.
5. Joseph Price’s statements to W-3.
- After the police interviewed Kathy Wone, Joseph Price called W-3 and told W-3 that Joseph Price’s attorney would be calling W-3 to see if Ms. Wone would waive any attorney-client privilege she might have so that Joseph Price’s lawyer could ask Ms. Wone what the police had asked her about.
6. Joseph Price’s statements to W-4 about the burglary.
- On the morning of October 30, 2006, W-4 called Joseph Price to see if he had heard from Michael Price. Joseph Price stated, “no,” and W-4 and Joseph

Price discussed a domestic dispute that had occurred between W-4 and Michael Price the night before. W-4 told Joseph Price that W-4 had given Michael Price the keys to W-4's car but had not heard from Michael Price since their domestic dispute the night before. Joseph Price and W-4 generally discussed where Michael Price could be (e.g., in one of Joseph Price's properties or in the car itself). Joseph Price told W-4 that Joseph Price was going to ask Ward to check on the home at 1509 Swann Street to see if Michael Price was there. Joseph Price called W-4 back later that day and told W-4, "Michael's probably been to [1509 Swann Street]" and "had used the door key and reset the alarm." W-4 and Joseph Price discussed the fact that they both wanted to "get [Michael Price] off the street." W-4 told Joseph Price that W-4 would report the car as stolen.

7. Joseph Price's statements to W-5.

- Defendant Price told W-5 that Robert Wone would be spending the night at the Swann Street house because he was meeting the night shift at work. At about 5:50 a.m. on August 3, 2006, Price called W-5 and said, "don't go back to the house, I'm OK, Dylan's OK, Victor's OK, I can't explain." When W-5 arrived at VCB, defendant Price said, "the police had made anti-gay comments to him, called Victor his wife, and asked if he was trying to gay Robert up and trying to have sex with Robert and Robert wouldn't so they killed him." Price added that Det. Waid was very nice, nicer than the other detectives." W-5 asked Price if she should go speak with Waid. Price told W-5 that he had given Waid her information and that when the police wanted to speak with W-5 they would contact her. Later that morning, when Price arrived at Cosi, Price told W-5 that Ward was too upset to get out of the car and join the group in Cosi.
- Concerning the subsequent burglary, Price told W-5 that Michael did it and that it wasn't a break-in because Michael had a key.

8. Zaborsky's statements to W-5.

- Defendant Zaborsky told W-5 that he had been home earlier in the evening and that they had been grilling out back. Zaborsky said that he heard screams but he didn't know if the screams were coming from inside or outside the house. He said that when he got to the top of the stairs he realized the screams were coming from inside the house. Zaborsky said that he went downstairs and he [Zaborsky] screamed when he saw Robert and all the blood.

- Concerning the subsequent burglary, Zaborsky told W-5 that there had been a break in/burglary but it's a long story.

9. Ward's statements to W-5.


- Upon moving to Washington, defendant Ward told W-5 that he was going to replace Victor (vis-a-vis Zaborsky's relationship with Price). Ward later referred to the relationship among the three defendants as a poly-amorous relationship.

WHEREFORE the government submits this notice of intent to introduce certain statements made by the defendants to civilian witnesses "for their truth" and submits that all such statements should be admitted against the declarant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of this motion to be served by facsimile on May 31, 2010, 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.



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