

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

-----X
 :
 UNITED STATES OF AMERICA :
 :
 versus : Criminal Action Number
 :
 [REDACTED] : [REDACTED]
 :
 Defendant. :
 -----X

Washington, D.C.
 Thursday, [REDACTED]

The above-entitled action came on for a jury trial before the Honorable [REDACTED], Associate Judge, in courtroom number 313, commencing approximately 9:59 a.m.

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APPEARANCES:

On behalf of the Government:

[REDACTED], Esquire
 [REDACTED] Esquire
 [REDACTED] States Attorney

On behalf of the Defendant:

[REDACTED], Esquire
 [REDACTED] Esquire
 [REDACTED] C.

[REDACTED], CSR
 [REDACTED] t Reporter [REDACTED]

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2
3 THE DEPUTY CLERK: On Your Honor's trial
4 calendar, United States versus [REDACTED] [REDACTED]
5 2015-CF2-2619.

6 MR. [REDACTED]: Good morning, Your Honor. [REDACTED]
7 [REDACTED] for the United States.

8 MS. [REDACTED]: And, Your Honor, [REDACTED]
9 [REDACTED] for the United States solely on the disclosure
10 issue relating to Officer [REDACTED].

11 THE COURT: Very good.

12 MR. [REDACTED]: Good morning, Your Honor. [REDACTED]
13 on behalf of Mr. [REDACTED]

14 MS. [REDACTED]: Good morning, Your Honor. [REDACTED]
15 [REDACTED] on behalf of Mr. [REDACTED] who is present.

16 THE COURT: Nice to see you all. Give me just
17 one second.

18 (Pause.)

19 THE COURT: So an interesting case continues to
20 get interesting. Who said that CF2 cases weren't
21 interesting?

22 I've had an opportunity to look at all of the
23 materials that you all have filed and sent in the late
24 nights that you all had last night, given the time to
25 e-mails, and disclosures, and things like that. And it

1 wouldn't be accurate for me to say that I lost sleep over
2 these matters. But I did think about them a fair amount, I
3 have to admit, and talked to some of my colleagues, and did
4 some research. And it seems to me that the following
5 about -- and just for the purposes of the record, what
6 we're talking about is the -- in fact, you all can sit down
7 if you'd like. You can stand or sit, whatever you're
8 comfortable doing.

9 What's pending before me is Officer [REDACTED] is
10 on -- ready to begin cross. And before [REDACTED] did his
11 direct yesterday, the defense -- I'm a little bit
12 disorganized -- fronted these court papers that purported
13 to be from U.S. District Court from a judgment in which
14 [REDACTED] had been -- and another officer were accused of,
15 among other things, battery and excessive use of force in a
16 1983 action in U.S. District Court. Judge [REDACTED], I
17 believe, was presiding over it. And they were found to
18 have -- by the civil jury, found to have committed those
19 acts.

20 As I assumed, there had been -- apparently by
21 Ms. [REDACTED]'s e-mail, there had been a -- a MPD
22 investigation into those allegations. And there was a --
23 and MPD found no wrong doing on those facts. And because
24 there was a shooting involved, I suppose, it was -- the
25 matter was, nonetheless, referred to the U.S. Attorney's

1 Office who, per Ms. [REDACTED], declined to prosecute
2 relating to those facts. And so what -- and I'm satisfied
3 that the judgment ultimately is a final judgment, which was
4 one of my concerns yesterday.

5 My law clerk quickly went onto Lexis or Westlaw
6 and was able to determine that, indeed, it was, having
7 Shepardized it. And so what we're left with is an
8 interesting situation where the standard Giglio/Lewis
9 questionnaire that the United States uses as a question
10 number two, which in permanent part, and I say it that way
11 because it's got a bunch of dependent clauses and other
12 things. But for our purposes, what question two asks is
13 have any findings ever been made during a civil proceeding
14 concerning your official misconduct? That's the question
15 at issue on your Giglio form. And it's clear to me that a
16 plain reading of that would yield a yes answer in light of
17 the 1983 action in U.S. District Court of the District of
18 Columbia finding battery and excessive use of force. It's
19 a civil proceeding. It's got to be the civil proceeding as
20 it's used in that Giglio form.

21 And what about the finding of battery and
22 excessive use of force in the context of an officer's
23 conduct of their official -- in their official capacity?
24 It's got to be official misconduct, in my mind. The answer
25 has to be yes. I don't see any -- I don't see any

1 ambiguity in that. So what do I do with that?

2 Well, the defense makes a lot of the government's
3 Brady allegations. And I, to some extent, preclude that,
4 not that that's the legal term of art. I, to some extent,
5 downplayed that line of argument yesterday. But I -- you
6 know, in looking at the cases, I think that the defense is
7 within solid case law to be calling it Brady.

8 The circumstances of this incident were clearly
9 known to both the United States Attorney's Office and to
10 MPD. We know that the -- it was known because MPD had
11 investigated it, found no wrong doing. That's not a
12 problem. United States Attorney's Office had declined to
13 prosecute. That's not a problem. But both knew or should
14 have known that it had gone to a civil trial and that there
15 was a finding against the two officers. And D.C., in the
16 process of it, conceded liability of some sort, limited
17 aspect. But the -- both the Metropolitan Police Department
18 and the U.S. Attorney's Office knew or should have known
19 about the civil trial verdict. I find it impossible to
20 believe that they didn't know.

21 The result of that civil jury verdict answers in
22 the affirmative question number two on the Giglio form that
23 the United States Attorney's Office uses. In my mind, it
24 is a clear Brady violation and that it should have been --
25 the information of the civil judgment should have been

1 turned over to the defense. And the officer's knowing
2 false answer to the Giglio form should have been pointed
3 out to the defense.

4 Now, I say all that having said yesterday and
5 believing firmly that the Assistant U.S. Attorney
6 Mr. [REDACTED], who's the prosecutor in this case, best I can
7 tell, has been bending over backwards to be fully loyal to
8 his Brady duties in this case. And I understand that line,
9 AUSAs look to their supervisors for Lewis information and
10 things like that.

11 It is troubling that, in my mind, what -- the
12 nature of this judgment against [REDACTED] it would seem to
13 me would be readily ascertainable by any lawyer or anyone
14 who's able to use Lexis or Westlaw and, perhaps, even those
15 of us who still use books instead of computers. But so I
16 don't fault the AUSA who's in front of me because, best I
17 can tell, he's been doing everything he could to satisfy
18 the government's obligations in this regard and not hiding
19 the ball or hiding any aspect of it. But as far as I'm
20 concerned, the office, as a whole, has engaged in a Brady
21 violation because this information should have been turned
22 over. And what's the Brady sanction in this? Is there a
23 sanction at all?

24 It seems to me that the sanction -- the
25 appropriate sanction is for me to instruct the jury that

1 the fact of this matter was known to the U.S. Attorney's
2 Office and should have been disclosed.

3 With regard to -- and I'll let you all briefly
4 tell me where I'm wrong about all of this after I finish
5 ruling. But it took me awhile putting my thoughts down, so
6 you're going to have to listen to it first and then you can
7 tell me where I'm wrong in a few minutes. But you can't
8 take a long time telling me where I'm wrong.

9 So there's essentially two types of bias that are
10 at issue here, it seems to me. One is the more traditional
11 bias and a motive to curry favor. And it seems to me that
12 what this civil money judgment establishes is that there
13 was a jury finding of official misconduct on the part of
14 ██████████ in use of battery and excessive use of force while
15 on MPD business. Whether or not MPD found misconduct or
16 the U.S. Attorney's Office decided to prosecute, this
17 finding, this judgment, public judgment has to be a
18 significant strike against ██████████, the officer, in his
19 future conduct, in his official capacity. It's got to be a
20 career-threatening adjudication. I can't imagine it being
21 anything but that. And as a result of that, he has or
22 could be construed to have a current motive to curry favor
23 with the government in light of the significant damage to
24 his career that's been done by this jury verdict.

25 The other type of bias -- and the DCCA has paved

1 some -- somewhat new ground in what they call corruption
2 bias, based on the Coates case and Longus. And Coates is
3 C-O-A-T-E-S from this year, I believe -- yeah, from -- it's
4 113 A.3d 564. I'm sure everybody's got it in front of
5 them. And it states in part on Longus, L-O-N-G-U-S, which
6 is 52 A.3d 836, Coates talks about corruption and bias in
7 trying to influence the proceeding.

8 In looking at -- carefully at what I've got
9 before me, I don't see in the matter -- in the papers
10 before me evidence which rises to the level of corruption
11 and bias in trying to influence the proceeding in the civil
12 action.

13 With regard to this proceeding, I think that
14 there is a good argument, a winning argument, that filling
15 out the Giglio form and saying, no, to question number two
16 is evidence in this proceeding of trying to influence the
17 proceeding by not telling the truth. And so in those two
18 areas of bias, it seems to me the defense has made
19 significant points.

20 What's all of that mean? In my judgment, the
21 allowable cross-examination, based on these materials, is
22 as follows. There's a false statement on the Giglio form.
23 As far as I'm concerned, [REDACTED] knew it was false and he
24 attempted to influence this proceeding by answering it
25 falsely. And he can be cross-examined on those two points

1 with regard to the Giglio form. He knew his answer should
2 have been yes, and he can be examined on that.

3 I'm not saying he did know his answer should have
4 been yes. I have no idea what he knows or doesn't know.
5 I'm saying that you can cross him on that, that he knew the
6 answer should have been yes, and so his response was false,
7 and that his giving a false response was an attempt to
8 influence this proceeding. You can cross him on those two
9 aspects relating to the Giglio form.

10 With regard to the more traditional
11 harm-to-career bias, motive-to-curry-favor bias, it seems
12 to me that you can ask him whether he was accused of -- in
13 2008 of battery and excessive use of force or use of
14 excessive force, however it is, that you can't use the
15 facts that were pled, just the allegations themselves, that
16 they're allegations of battery and excessive use of force.

17 The defense can bring out that MPD investigated
18 and found no misconduct and that the matter was referred to
19 the U.S. Attorney's Office who declined to prosecute. And
20 if the defense doesn't bring that out, the U.S. Attorney's
21 Office can certainly bring that out. The defense isn't
22 required to, in my judgment.

23 They can say you were accused in 2008 of battery
24 and use of excessive force. They can say there was a civil
25 action in U.S. District Court which resulted in a finding

1 that you engaged in battery and excessive use of force and
2 that there was a monetary award for the plaintiff as a
3 result of those findings. And you can ask him, if you
4 choose to, or argue that that significant harm to his
5 career creates a bias in the form of a motive to curry
6 favor with the government.

7 Now, the defense would likely point out to me
8 that corruption bias differs from traditional bias in that
9 use of extrinsic evidence can be used to prove corruption
10 bias per Coates and Longus. And that's right. I have to
11 make certain judgments about that, for instance, a
12 prejudice probative analysis.

13 Certainly, the extrinsic proof of the District
14 Court judgment is the judgment itself. And the extrinsic
15 proof of the response to the Giglio question is the Giglio
16 form itself.

17 With regard to a prejudice probative analysis, it
18 seems to me there is nothing overly prejudicial about the
19 Giglio form itself. With regard to the U.S. District Court
20 judgment, this witness is a bit player in this case. And
21 injecting the facts of the U.S. District Court action,
22 specifically, shooting somebody who he was in the process
23 of arresting, it seems to me is overly prejudicial and that
24 it outweighs the probative value of that judgment with
25 regard to his potential bias. And so either the U.S.

1 Attorney's Office can stipulate that the judgment was
2 entered by the jury in the civil case or I'll instruct that
3 there was a jury finding in the civil case that found
4 battery and use of excessive force. But it seems to me
5 that using the facts of the civil action would be overly
6 prejudicial and it would outweigh the probative value that
7 this adjudication has in this case.

8 So that's -- those are my findings and
9 conclusions based on the hard work that both sides did at
10 2:45 in the morning or leading up to that and soon
11 thereafter. So I'll hear you all in where I'm wrong.

12 Who wants to start?

13 MS. [REDACTED] Your Honor, if I could.

14 THE COURT: Sure.

15 MS. [REDACTED] I understand the Court to have
16 made a Brady finding against the U.S. Attorney's Office and
17 against Mr. [REDACTED] As the Court --

18 THE COURT: I didn't make it against Mr. [REDACTED]
19 I don't understand that -- my understanding of
20 Mr. [REDACTED]'s position is that he gets his information from
21 superiors at U.S. Attorney's Office.

22 MS. [REDACTED] He gets his information from me.
23 So I want to provide the Court some additional facts and
24 get as much clarity as I can in the Court's Brady finding.
25 Because as the Court knows, that's an automatic referral to

1 OPR for me. So to clarify --

2 THE COURT: Right.

3 MS. [REDACTED] -- in this case, we conducted a
4 check of the Metropolitan Police Department's personnel
5 management system, which is the database that they use to
6 track all personnel matters. That database -- and I can
7 show the Court my results of the check of that database --
8 includes that there is a use of force allegation from the
9 April 23rd, 2008 shooting and includes information that it
10 was found judged within department policy or justified
11 within department policy. It does not include any
12 information concerning the civil lawsuit.

13 We also ran a check of our internal Lewis
14 database, which tracks information that we are aware of
15 concerning officers. And there is no information in that
16 database concerning the civil lawsuit.

17 Now, I understand the Court to be saying, but, of
18 course, the government should have known about this because
19 it's a public proceeding. We are not the people who
20 defended this. We're not the Office of the Attorney
21 General, and we're not linked to them. And we are not the
22 District of Columbia who paid out the monetary damages, and
23 we're not linked to them. Ethically, I think the furthest
24 the prosecution team extends here is to the Metropolitan
25 Police Department. And at least in none of the information

1 that we have available to us or that I had available to me
2 is there evidence of the civil lawsuit. Otherwise, we
3 certainly would have counselled Officer [REDACTED] concerning
4 his incorrect no answer on the Giglio sheet and made
5 appropriate disclosures to defense counsel. And I think we
6 have been -- both Mr. [REDACTED] and I have been very -- have
7 tried very hard to fully comply with our ethical
8 obligations, and I want the record to reflect that.

9 THE COURT: I have no question about that. No
10 question in my mind about that. I just think that somebody
11 in your office needed to -- if it's put it in your
12 database, if it's -- I mean, I don't --

13 MS. [REDACTED] And we certainly will. I mean,
14 I understand what -- I understand what the Court is saying.

15 THE COURT: It's a product of you all, the Lewis
16 database. That's something you all maintain, not me, not
17 some other entity, right?

18 MS. [REDACTED] Of course.

19 THE COURT: And how this wouldn't be in there is
20 somewhat beyond me.

21 MS. [REDACTED] Unfortunately, and, you know,
22 we're constantly trying to make it better. But we rely in
23 large part on -- in many respects on responses from
24 officers on runs that our criminal history analysts do of
25 state law enforcement databases. I don't believe that a

1 regular run of pacer is completed, which based on this --
2 based on this incident may be something we need to do in
3 the future. But there was no information in our system
4 that the civil -- that this civil lawsuit existed. And
5 Officer --

6 THE COURT: I'm sure that's accurate.

7 MS. [REDACTED] -- [REDACTED] did not disclose it
8 to us. The Giglio sheet is kind of our backstop to make
9 sure we've got everything.

10 THE COURT: Right.

11 MS. [REDACTED] And, you know, the question is
12 not well-worded in this sheet. It is confusing to
13 officers. It includes a parenthetical that officers
14 routinely read as limiting as opposed to a lessertive.

15 THE COURT: Even though it says but not limited
16 to?

17 MS. [REDACTED] I -- we've had several problems
18 with the form. And, in fact, I spent the week working with
19 our Lewis committee to make the form better. But, yes, for
20 whatever reason, he did not view his conduct as a yes
21 answer on this. And so we were left without the
22 opportunity to know that and to make what we would have
23 made -- to make the appropriate disclosures, which we would
24 have made.

25 THE COURT: Right. Do you have any argument as

1 to why this wouldn't be a yes answer to that question?

2 MS. [REDACTED] I can understand subjectively
3 why the officer might think it's not. He's in a confusing
4 position because he's been found civilly liable but has
5 been cleared in his official capacity by both the
6 Metropolitan Police Department and the U.S. Attorney's
7 Office. But, no, I mean, it is -- I agree with the Court,
8 yes, he has -- despite the badly worded question, that
9 question when read by you or I would trigger a yes answer.

10 You and I have both had significantly greater
11 levels of education and we are much better at reading than
12 your average police officer is. But it's incumbent upon
13 our office to create a form that officers can accurately
14 answer. And to the extent that we haven't, that's --
15 that's on our Lewis committee and something we're trying to
16 address, but, yes, I agree.

17 THE COURT: So I make no finding of a Brady
18 violation on your part, on your part. There is a violation
19 on the officer's part though, it seems to me. This is very
20 clear information that he didn't tell the truth on that
21 form, it seems to me. And so that's why -- I see -- I
22 don't see anyone trying to hide the ball here. But this is
23 important information that a few key strokes gets out of
24 Lexis or Westlaw. All of a sudden, [REDACTED] is right
25 there.

1 MS. [REDACTED] I understand.

2 THE COURT: Okay.

3 MS. [REDACTED] Your Honor, I'm not challenging
4 the Court's ruling. I'm simply asking for as much
5 amplification that I can get so that as it makes its way
6 over to OPR, we have the best record of what occurred and
7 of what the Court's ruling is as possible.

8 THE COURT: Absolutely. Absolutely. No. You
9 have all have been turning over more than you needed to
10 turn over, as best I can tell in these matters. This is
11 a -- there is a tiny bit of frustration on my part because,
12 I have to say, [REDACTED] has testified in front of me, I
13 don't know, a dozen, maybe -- maybe two-dozen times and
14 it's never come up. And it's all since these adjudications
15 in U.S. District Court, so it's a little troubling to me
16 that this was out there.

17 Most of you are too young to remember [REDACTED]
18 [REDACTED], but he was the guy who didn't tell the
19 truth in a bunch of different cases. And it went on for a
20 long, long time. It's certainly a different matter. But
21 all of a sudden, this comes to light. It's apparently been
22 extant for a number of years. It's very troubling to a
23 judge.

24 MS. [REDACTED] Your Honor, it's very troubling
25 to a prosecutor.

1 THE COURT: Right.

2 MS. [REDACTED] We share that frustration. We
3 are trying to do -- we're trying to do it better, and
4 better, and better.

5 I would point out -- and I understand that it's
6 certainly not incumbent upon defense to do our job for us.
7 But defense has certainly been aware of this incident
8 throughout -- from since 2008. Because the Public Defender
9 Service represented the victim in this incident and
10 declined to -- declined to cooperate with MPD's
11 investigation at the IAD level. And I would point out that
12 it is clear that Mr. [REDACTED] was aware that -- since Thursday,
13 when he stole the Giglio from Mr. [REDACTED] So to the
14 extent that --

15 THE COURT: The way that Mr. [REDACTED]
16 characterized it wasn't that Mr. [REDACTED] had stolen the Giglio
17 form. I -- that may be an after the fact.

18 MS. [REDACTED] Mr. [REDACTED] is nicer than I am.

19 THE COURT: Okay. In any case, the fact that it
20 had been turned over is sufficient or that it had been seen
21 by the defense is sufficient, in my mind.

22 MS. [REDACTED] Of course. But I would say at
23 that point that to wait until Officer [REDACTED] is on the
24 stand to alert anybody to the fact that there's an
25 issue that defense --

1 THE COURT: So I chatted with them about that
2 yesterday. And I think, you know, the only thing that I
3 think they needed to have done differently was they needed
4 to front the issue me ex parte with me ahead of time so
5 that I wasn't caught completely off base and had to send
6 the jury home lest I make an error in the way I was dealing
7 with it. I don't know that they had to tell you anything
8 about it. Again, I think you guys needed to know about it.

9 MS. [REDACTED] I have not disagreed once with
10 the Court's assertion that we did. But I do find, as
11 officers of the court and as -- I'm troubled by the fact
12 that defense would sit on this and not assist us in doing
13 our job because it seems to imply a lack of faith in our
14 efforts to do this right. And they have a different role.
15 I understand that.

16 THE COURT: It's not like this came out last
17 week.

18 MS. [REDACTED] Well, I think it was known last
19 week. Otherwise --

20 THE COURT: No. I mean, it's not like the
21 judgment came out last week.

22 MS. [REDACTED] I understand. I understand.
23 And, clearly -- I mean, clearly, if we had known about
24 this, we would have been disclosing it. Clearly, the
25 officer has not been disclosing it to us and we do not know

1 about it. I think that's -- I think the Court has agreed
2 that we do not know about it, though, of course, we should.

3 THE COURT: Right. It's...

4 MR. [REDACTED]: May I respond with --

5 THE COURT: I don't need a response from you.
6 I'm not asking for a response from you.

7 Anything else?

8 MS. [REDACTED] Only that I would ask for a
9 brief pass so that Mr. [REDACTED] and I can speak. I want to
10 make sure, as his supervisor, that he's very clear on what
11 -- on the steps he needs to take in his redirect of Officer
12 [REDACTED] under the Court's -- under the Court's ruling.

13 THE COURT: I would never not give you time to do
14 that as long as you're not talking about more than, like,
15 ten minutes.

16 MS. [REDACTED] No. Oh, no.

17 THE COURT: Good.

18 MS. [REDACTED] He's a quick study. I think we
19 only need five.

20 THE COURT: Very good. That's fine. We'll take
21 a break for five minutes.

22 (Recess.)

23 THE COURT: We're back in Mr. [REDACTED]'s matter.
24 We've got Mr. [REDACTED] Mr. [REDACTED] Ms. [REDACTED] and
25 Mr. [REDACTED]

1 Mr. [REDACTED] was just talking quickly about a
2 matter he had to raise quickly with me. Yes, sir.

3 MR. [REDACTED] Yes, Your Honor. The government --
4 Officer [REDACTED] is now going to be starting cross. I
5 would like to move Government's Exhibit 11 into evidence,
6 which is the currency in this case. And as Your Honor has
7 heard, there is testimony from Officer [REDACTED] who filled
8 out the PD-95 here and put this on the books. She
9 testified she received it from Officer [REDACTED].

10 Officer [REDACTED] testified that he was there
11 present when the currency was taken off the defendant's
12 person by Officer [REDACTED]. So the government would argue
13 that there's enough of a foundation here that we can submit
14 this into evidence at this stage.

15 MR. [REDACTED]: We object, Your Honor, for a couple
16 reasons. One, the officer that testified, [REDACTED] was not
17 able to identify the money as the money that was found on
18 Mr. [REDACTED]. And in this hour, it is my -- the way I
19 remember the facts being presented from Officer [REDACTED] is
20 that he actually did not see the money being taken off of
21 Mr. [REDACTED] either. So although he may have seen it, he
22 can't say that it is, in fact, the actual money that was
23 taken from Mr. [REDACTED] neither officer can.

24 THE COURT: So if -- what are we talking -- we're
25 talking about Government's 11, right?

1 MR. [REDACTED] Correct, Your Honor, the currency.

2 THE COURT: And what I have [REDACTED] saying is, I
3 believe it was \$219. That's the evidence bag I filled out
4 containing Mr. [REDACTED]'s money, the property form, the
5 property bag. I filled out the PD-81 and I put it as
6 evidence at 6-D. When we take property from a defendant,
7 we have to notate it.

8 And are you saying that she identified it as the
9 money that was taken from Mr. [REDACTED]

10 MR. [REDACTED] I'm saying she identified the PD-95
11 that was filled out on this bag --

12 THE COURT: Right.

13 MR. [REDACTED] -- as being something that was
14 recovered and given to her on the date in question by
15 Officer [REDACTED] of \$219.

16 THE COURT: Right.

17 MR. [REDACTED] And then Officer --

18 THE COURT: And Officer [REDACTED] took it off of
19 Mr. [REDACTED]

20 MR. [REDACTED] Exactly. To which Officer [REDACTED]
21 testified yesterday that \$219 or so were taken off the
22 defendant. He was present during the seizure of that -- of
23 those monies. So, obviously, the link in the chain that's
24 not here is Officer [REDACTED] But the government would submit
25 that's enough of a -- of a foundation to put this in

1 evidence; and, two, it would -- the fact that there's one
2 person in this case, [REDACTED] which I'm not hiding from is
3 not testifying in this case, that it would just go to the
4 weight of the evidence and not its admissibility under
5 prevailing law.

6 MR. [REDACTED] What I believe the facts to have been
7 represented are that [REDACTED] did not see the money being
8 taken -- excuse me, not [REDACTED] My apologies.

9 THE COURT: [REDACTED]

10 MR. [REDACTED] [REDACTED] nor did [REDACTED] and -- so
11 their testimony was not that they actually saw the money
12 being taken from him. What they were basically saying -- I
13 think I may have objected a few times to this as well -- is
14 based on what they were told or some link in the
15 communication, they found that to be the money that was
16 found on Mr. [REDACTED]

17 THE COURT: Yeah. I'm going to have to go back
18 and look at the transcript from yesterday because my notes
19 aren't specific enough on what [REDACTED] said about it, if
20 that's what you're relying on. My notes are specific on
21 [REDACTED] But -- and I had more than one thing going on
22 yesterday, appointing lawyers, et cetera. So my notes,
23 with regard to this aspect of [REDACTED] tail off, um...

24 MR. [REDACTED] So if I may inquire, how would the
25 Court like to deal with it? Would you like to look at your

1 notes and --

2 THE COURT: I'd like to look at the transcript,
3 which is the official record of the Court, and I'll reserve
4 a ruling. I think -- I think we all agree on what [REDACTED]
5 said. So if you're relying on both [REDACTED] and [REDACTED]
6 I'll take a look at the transcript for what [REDACTED] said
7 with regard to it and then I'll rule.

8 MR. [REDACTED] And, you know, to the extent it
9 helps the Court, I know we're about to start his
10 cross-examination. If you would permit me to open up his
11 direct to finish it -- that out, you can flush it out. I
12 can do that as well.

13 THE COURT: That's fine.

14 MR. [REDACTED] Okay. And the final thing I will
15 note is I would like to move Government's Exhibit 12 into
16 evidence, which Officer [REDACTED] reviewed and was using to
17 refresh her recollection as the PD-81 she filled out in
18 connection with this case.

19 MR. [REDACTED] Object, Your Honor.

20 THE COURT: Why isn't that just a prior
21 consistent statement of Deoleo's? Why does it come in?

22 MR. [REDACTED] I think it would just come in
23 because she described it as what she filled out in realtime
24 following the arrest of the defendant.

25 THE COURT: Prior consistent statement.

1 MR. [REDACTED] Okay. That's fine.

2 THE COURT: Just because she said it once on the
3 stand and once on paper doesn't mean that the paper comes
4 in.

5 MR. [REDACTED] Right.

6 THE COURT: It would just be --

7 MR. [REDACTED] Okay. That's fine. It's marked
8 though, obviously, so I just wanted to make sure that those
9 outstanding things were addressed.

10 THE COURT: It's marked. Many things are marked,
11 few are chosen for admission. Yes?

12 MR. [REDACTED] Couple of very brief reviews. I know
13 we have a jury waiting. I must -- I know, Your Honor, but
14 I was instructed to, so I will do as I'm told and to go on
15 the record. If anything --

16 THE COURT: Yes.

17 MR. [REDACTED] -- I didn't take anything from the
18 government regarding the Giglio form.

19 My memory of what happened is Mr. [REDACTED] gave me
20 two Giglio's, and I returned those and he gave me another.
21 And he didn't -- he asked for them and I gave them back.
22 And he didn't ask for the last one, and, therefore, it
23 remained with me. He's been kind enough to also e-mail me
24 some Giglio -- a Giglio form. So I thought -- didn't see
25 this as something that had to go back to the government.

1 Also, we'd like to ask that after [REDACTED] -- we
2 understand the Judge is going to give an instruction to the
3 jury. We have to ask that the Judge give a verbal
4 instruction after he testifies. And with regards to
5 Officer [REDACTED] testimony of the picture of the car he
6 was looking at, his testimony was that the picture did
7 not appear -- the car did not appear to have tinted
8 windows.

9 We'd like to have one of our investigators
10 impeach that testimony by looking at the same picture. We
11 won't argue if that's the same car or not. But we feel
12 like the witness was being evasive purposefully and --

13 THE COURT: If you want a photograph in evidence,
14 you've got to lay a foundation to get the photograph in
15 evidence. And then the jury can make decisions about the
16 facts. But the photograph's not in evidence now.

17 MR. [REDACTED] Correct. I'm not trying to admit it
18 for the purposes of that being the actual car. But when he
19 was looking at the picture, when Ms. [REDACTED] was showing
20 him, his exact words were, that window is not tinted. And
21 he didn't see any tinted, so -- any tinted windows. So
22 it's clear from the picture that the windows are tinted.
23 We want to have his testimony impeached by allowing the
24 person who took the picture to look at the pictures and say
25 the fact that the windows are tinted.

1 THE COURT: I don't know that the person who took
2 the picture can look at the picture and say that. They
3 might give firsthand -- I mean, you can try to lay a
4 foundation for the admission of the picture. Knock
5 yourself out. That's fine. If you get a foundation, it
6 comes into evidence. And if you don't have a foundation,
7 it doesn't come in.

8 MR. [REDACTED] Well, can I at least ask him, without
9 admitting the picture, to impeach the testimony of the
10 officer if the window was, in fact, tinted, in his opinion?

11 THE COURT: You start asking him questions and
12 I'll rule on objections.

13 MR. [REDACTED] All right. And I guess I'll save the
14 other preliminary issue for the witnesses when they come so
15 we don't have to wait.

16 THE COURT: Wonderful.

17 Madame clerk, can we get the jury, please.

18 MR. [REDACTED] Should I call the witness?

19 THE COURT: That'll be wonderful. Thank you so
20 much.

21 Good morning, Officer.

22 THE WITNESS: Good morning, sir.

23 THE COURT: You're welcome to sit or stand,
24 whichever you'd like until the jury gets here.

25 THE WITNESS: Are you going to re-swear me?

1 THE COURT: I'm not going to. I'm going to wait
2 for the clerk to do it. It's division of authority up
3 here.

4 (Pause.)

5 THE COURT: And you're going to briefly reopen
6 direct, Mr. [REDACTED]

7 MR. [REDACTED] Yes, Your Honor.

8 THE COURT: Very good.

9 MR. [REDACTED] Thank you.

10 THE COURT: Yep.

11 (Jury present at 10:46 a.m.)

12 THE COURT: Good morning, ladies and gentlemen.
13 Thank you so much for being punctual and being patient. We
14 have been working on the case, and that's why you've been
15 sitting back there and we've been out here. I apologize
16 for the delay, but we're ready to get going.

17 Thereupon,

18 **OFFICER** [REDACTED] [REDACTED]

19 having been called as a witness on behalf of the Government
20 and having been first duly sworn by the Deputy Clerk, was
21 examined and testified as follows:

22 THE COURT: Good morning, sir.

23 THE WITNESS: Good morning.

24 THE COURT: You may proceed, Counsel.

25 MR. [REDACTED] Thank you, Your Honor.

1 DIRECT EXAMINATION (Continued)

2 BY MR. [REDACTED]

3 Q. Good morning, Officer [REDACTED]

4 A. Good morning.

5 Q. Officer [REDACTED] we finished off yesterday with
6 you talking about the arrest of the defendant, do you
7 recall that?

8 A. Yes, sir.

9 Q. And you were there during the arrest, correct?

10 A. Yes, I was.

11 Q. And was a search conducted of the defendant on
12 the scene at the arrest location?

13 A. Yes.

14 Q. And what, if anything, was found on his person?

15 A. U.S. currency.

16 Q. Do you know how much U.S. currency?

17 A. I believe it was \$219.

18 MR. [REDACTED] Your Honor, may I approach the
19 witness?

20 THE COURT: You may.

21 BY MR. [REDACTED]

22 Q. Officer [REDACTED] I'm showing you what's been
23 marked as Government's Exhibit 11. Do you recognize that?

24 A. (No response.)

25 Q. What is that you're looking at?

1 A. The envelope is a PD-14, evidence envelope.

2 Q. And what is -- do you recognize that PD-14?

3 A. The inner envelope, yes.

4 Q. And what do you recognize about the inner
5 envelope?

6 A. It contains currency recovered from the defendant
7 on the day of his arrest.

8 Q. Okay. And who did you observe -- did you take
9 this currency off the defendant?

10 A. No. Officer [REDACTED] did.

11 Q. And were you there and present when he took the
12 currency off the defendant's person?

13 A. Yes, I was.

14 MR. [REDACTED] At this point, Your Honor, the
15 government would move Government's Exhibit 11 into
16 evidence.

17 THE COURT: Defense?

18 MR. [REDACTED] No objection.

19 THE COURT: 11's admitted without objection.

20 (Government's Exhibit Number 11
21 admitted into evidence.)

22 MR. [REDACTED] Thank you, Your Honor. I have no
23 further questions for Officer [REDACTED]

24 THE COURT: Cross.

25 CROSS-EXAMINATION

1 BY MR. [REDACTED]

2 Q. Good morning, Officer.

3 A. Good morning.

4 Q. On February 21st, you and Officer [REDACTED] stopped
5 the Chevy Malibu, correct?

6 A. Yes.

7 Q. And you stopped it because of the lookout you
8 heard for the Chevy Malibu, correct?

9 A. Yes.

10 Q. And that's the only reason you stopped the car,
11 right?

12 A. Yes.

13 Q. Because you weren't on 54th Street and Clay
14 Street, correct?

15 A. Correct.

16 Q. You didn't observe anything that you thought may
17 be a transaction of any kind on 54th Street and Clay
18 Street?

19 A. Correct.

20 Q. And you were a part of this operation in that
21 area that day, right, the Vice operation?

22 A. Yes, sir.

23 Q. And you know [REDACTED] correct?

24 A. Yes, I do.

25 Q. And [REDACTED] is a part of Vice as well, right, or at

1 least he was on that day?

2 A. Yes.

3 Q. And for you, he's what you -- he's the eyes of
4 this operation that you are a part of, right?

5 A. Yes.

6 Q. So he told you he thought he saw a drug deal and
7 you believed him, right?

8 A. Yes.

9 Q. All right. And he told you that the person that
10 he thought was a -- was a seller was inside of this car,
11 correct?

12 A. In?

13 Q. The Malibu.

14 A. The individual that was out -- involved in the
15 transaction was inside the vehicle and the vehicle was
16 leaving the scene, yes.

17 Q. Okay. But it wasn't until you stopped the car
18 that you saw the person who you thought matched the
19 description of the seller, right?

20 A. That's correct.

21 Q. Now, let's talk about the stop. You said you and
22 Officer [REDACTED] stopped the car. And Mr. [REDACTED] is in the
23 passenger's seat of the car, correct?

24 A. Yes, sir.

25 Q. And you approached his car, right?

1 A. Yes, I did.

2 Q. And he was asked to step out of the car, correct?

3 A. Yes.

4 Q. And when he was asked to step out of the car,
5 obviously, he was patted down, right?

6 A. Yes.

7 Q. For officer's safety, he's patted down, correct?

8 A. Yes.

9 Q. And you testified yesterday he was searched,
10 right?

11 A. Yes.

12 Q. You said that -- well, let's talk about the
13 search. When you patted him down, you patted the areas of
14 his arms, chest, waist -- well, strike that. When he was
15 patted down, his arms, chest, waist, and the rest of his
16 body was patted down, correct?

17 A. I don't believe I testified to that yesterday.

18 Q. You testified that he was searched, right?

19 A. Yes.

20 Q. So it's your testimony that -- and you testified
21 he was checked for officer's safety, right?

22 A. I just stated that, yes.

23 Q. So it's your testimony that when checking
24 Mr. [REDACTED] for officer's safety, those parts of his body
25 weren't touched?

1 A. I didn't say that either.

2 Q. So then he was searched on his body, correct?

3 A. He was searched after he was arrested, yes.

4 Q. Okay.

5 A. There is a difference between a search and a pat
6 down or what is commonly referred to as -- both as a frisk.

7 Q. Well, then let me be clear with my question. His
8 body was searched at some point in time, right?

9 A. After he was arrested, yes, sir.

10 Q. After he was arrested. And the shirt -- you said
11 he had on a hoodie, right?

12 A. Yes.

13 Q. The hoodie was searched as well, right?

14 A. After he was arrested --

15 Q. After he was arrested, the hoodie was searched?

16 A. He was searched thoroughly, yes, sir.

17 Q. The coat that he had on was searched as well
18 after he was arrested, right?

19 A. Yes.

20 Q. And the pants he had on were searched as well
21 after he was arrested, right?

22 A. Yes.

23 Q. The pockets of those pants were searched after he
24 was arrested, correct?

25 A. Certainly.

1 Q. At no point in time did you or -- excuse me.
2 Let's talk about what you did. At no point in time did
3 Mr. [REDACTED] -- at no point in time was there any drugs
4 found in those areas on Mr. [REDACTED] right?

5 A. Mr. [REDACTED] was found to be free of contraband.

6 Q. And you said that he was inside of the car, the
7 Malibu. He's in the passenger's seat. The passenger's
8 side of that car was searched, right?

9 A. Yes.

10 Q. The back of the passenger's seat in that car was
11 searched, right?

12 A. Yes, the entire passenger compartment was
13 searched.

14 Q. And the same thing applies for the left side of
15 the car, correct?

16 A. The entire vehicle.

17 Q. And nowhere in that car did you find any purple
18 zips, right?

19 A. No, I didn't.

20 Q. Nowhere in that car did you find any cocaine or
21 crack cocaine, right?

22 A. That's correct.

23 Q. Nowhere in that car did you find any glass pipes,
24 right?

25 A. Also correct.

1 Q. Nowhere in that car did you find anything used to
2 cut or manufacture cocaine or crack cocaine, right?

3 A. Correct.

4 MR. [REDACTED] Court's indulgence.

5 THE COURT: Yes, sir.

6 BY MR. [REDACTED]

7 Q. And you also testified yesterday that the driver
8 of the car was searched, isn't that a fact?

9 A. Yes, sir.

10 Q. And the same type of exhaustive search I just
11 discussed about Mr. [REDACTED] was conducted on that person,
12 right?

13 A. Yes, sir.

14 Q. And, excuse me, that person was found to be free
15 of contraband as well?

16 A. That is correct.

17 Q. The area around the car was found to be free of
18 contraband, correct? I'll make the question better. You
19 didn't see any drug or drug paraphernalia anywhere around
20 that car?

21 A. No, I didn't.

22 Q. All right. All right. Officer [REDACTED] [sic], I
23 want to talk just very briefly about officer misconduct.
24 All right? Findings of officer misconduct can affect your
25 job, right?

1 A. Yes.

2 Q. You can be demoted, correct?

3 A. Yes.

4 Q. Suspended?

5 A. Yes.

6 Q. Or fired?

7 A. Yes.

8 Q. And you would agree that arresting someone for
9 something they didn't do could be seen as officer
10 misconduct, right?

11 A. Yes.

12 Q. And you don't want to have a finding against you
13 for officer misconduct, right?

14 A. No, I don't.

15 Q. Or a lawsuit for officer misconduct, right?

16 A. I'm sorry?

17 Q. You do not want to have a lawsuit filed against
18 you for officer misconduct?

19 A. No, I wouldn't.

20 Q. And the truth is that you concealed misconduct
21 from the government in this case, right?

22 A. No, that's inaccurate.

23 Q. All right. Well, let's talk about this for a
24 second. You were sued, right?

25 A. Yes, I was sued civilly.

1 Q. All right. And the reason -- the act you were
2 sued for was committed while you were acting in your
3 capacity as an officer, right?

4 A. That is correct.

5 Q. And before this trial, you filled out a Giglio
6 form, right?

7 A. Yes, I did.

8 Q. And that's a form that asks you questions about
9 whether or not you had any findings against you for
10 misconduct, right?

11 A. Official misconduct, I believe, it reads.

12 Q. All right. And I just asked you if you were sued
13 in your official capacity as an officer, and you answered
14 yes, right?

15 A. I was sued civilly, yes.

16 Q. While you were acting in your capacity as an MPD
17 officer, correct?

18 A. Yes, I was with MPD.

19 Q. Okay. And you were asked to circle yes or no on
20 this document, right?

21 A. Yes.

22 MR. [REDACTED] Your Honor, I want to mark this as
23 Defense Exhibit 10.

24 THE COURT: Very good.

25 MR. [REDACTED] I'm going to show opposing counsel.

1 BY MR. [REDACTED]

2 Q. And on this document -- strike that. The reason
3 why you were asked about these questions is so that the
4 government can know whether or not you've had any findings
5 against you for misconduct, right?

6 A. Yes.

7 Q. All right. And on this document, you were
8 asked, Are there any allegations currently under
9 investigation or have any findings ever been made during a
10 criminal or civil or administrative proceeding concerning
11 your official misconduct, correct?

12 A. Yes.

13 Q. And you had the option of circling yes or no?

14 A. Yes.

15 Q. And you circled no?

16 A. I did.

17 Q. And that's not true, is it?

18 A. No.

19 Q. And the truth is, excuse me.

20 MR. [REDACTED] Strike that, Your Honor. I'm sorry.

21 BY MR. [REDACTED]

22 Q. When you were sued in your capacity as a police
23 officer, when you filled out this document, you knew about
24 this form -- about the civil suit, right?

25 A. I did.

1 Q. All right. And, in fact, I asked you if you knew
2 about it, right?

3 A. You did.

4 Q. And you said yes?

5 A. Yes, sir.

6 Q. All right. And you were sued in federal court,
7 right?

8 A. That's correct.

9 Q. For violating someone's civil rights?

10 MR. [REDACTED] Objection, Your Honor.

11 THE COURT: Why don't y'all approach.

12 (Bench conference.)

13 MR. [REDACTED] Your Honor, the defendant doesn't
14 have his headset in. I just wanted to let you know.

15 THE COURT: Oh, is that on? Very good.

16 MR. [REDACTED] In 1983, Your Honor?

17 THE COURT: It's a 1983 action suing and the
18 battery and excessive force are in violation of Mr. [REDACTED]'s
19 civil rights.

20 MR. [REDACTED] And my understanding of the Court's
21 ruling was that allegations involving, and the Court
22 specifically said, excessive force or battery. But I think
23 going to this idea of civil rights, which I think is just
24 overly prejudicial and it's not relevant, I think what's
25 relevant are the allegations. It's not --

1 THE COURT: Well, the basis for the violation was
2 the civil rights. And that's specifically what's listed in
3 the Court's memorandum opinion. I don't think that's
4 beyond the scope of what I allowed. Overruled.

5 (End of bench conference.)

6 THE COURT: You may proceed.

7 BY MR. [REDACTED]

8 Q. I'm going to ask you the question again. You
9 were sued in civil court -- excuse me, in federal court for
10 violating someone's civil rights, correct?

11 A. Yes.

12 Q. And, specifically, for using excessive force,
13 right?

14 A. Yes.

15 Q. And there was a trial?

16 A. Yes.

17 Q. And you lost that trial?

18 A. Yes.

19 Q. And not only did you lose that trial but you were
20 ordered to pay money?

21 A. The plaintiff was awarded monetary compensation.

22 Q. That's a yes. You were a party to this suit,
23 correct?

24 A. I was.

25 Q. You and the District of Columbia, correct?

1 A. Yes.

2 Q. Because you were acting in your capacity as an
3 officer, right?

4 A. That's correct.

5 Q. So if someone sues you in federal court and they
6 are a party and you are a party, and they win, and they're
7 awarded monetary damages, your understanding is that you
8 were ordered to pay money, correct?

9 A. Yes.

10 Q. Okay. Now, not only were you ordered to pay
11 money but so was the District of Columbia?

12 A. Yes.

13 Q. And you know if you're sued again for doing
14 something illegal or -- if you do something illegal or
15 inappropriate, it could result in another suit, right?

16 A. If I do something illegal?

17 Q. Yes.

18 A. I would assume it wouldn't be a civil suit, it
19 would be criminal.

20 Q. You could definitely lose your job, right?

21 A. I would assume so, yes.

22 Q. All right. And --

23 MR. [REDACTED] Your Honor, can we approach?

24 THE COURT: Yes, sir.

25 (Bench conference.)

1 MR. [REDACTED] I just want to make sure I don't push
2 the issue -- if the Court -- I mean, I don't want to -- I
3 want to -- with the Court -- I want to ask if he was ever
4 charged as a result of that incident and just make sure he
5 says no. But I don't want the Court to think I'm trying to
6 get into the facts.

7 THE COURT: No. I said that either the defense
8 or the government could bring out the fact that MPD did an
9 investigation and found no wrong doing. And that the U.S.
10 Attorney's Office declined to prosecute based on the same
11 allegations that gave rise to the civil suit.

12 MR. [REDACTED] Okay.

13 THE COURT: It's -- you can bring it out. The
14 government can bring it out. You can bring it out, and the
15 government can still bring it out. I mean, it's --
16 whichever. Okay? Okay.

17 (End of bench conference.)

18 BY MR. [REDACTED]

19 Q. And after you were -- at some point in time,
20 there was an investigation conducted, right?

21 A. Yes.

22 Q. By MPD?

23 A. That's correct.

24 Q. All right. And at the time, you were working
25 with MPD?

1 A. Yes.

2 Q. All right. And MPD then turned the information
3 over to the United States Attorney's Office, right?

4 A. That's correct.

5 Q. And the United States Attorney's Office declined
6 to pursue any charges against you, right?

7 A. Correct.

8 Q. But they can change their mind, right?

9 A. That's not my understanding, no.

10 Q. It's not?

11 A. That's not my understanding, no.

12 MR. [REDACTED] Permission to approach the witness,
13 Your Honor?

14 THE COURT: Granted.

15 BY MR. [REDACTED]

16 Q. I'm going to go back to this form for a second.

17 THE COURT: And let's call it by --

18 MR. [REDACTED] Defense, which has -- have been marked
19 for the purposes of identification as Defense Exhibit 10.

20 THE COURT: Very good. Have the witness identify
21 it, please.

22 BY MR. [REDACTED]

23 Q. Officer, you recognize this document, correct?

24 A. Yes.

25 Q. The document in front of you that's been marked

1 for the purposes of Defense Exhibit 10 is the document we
2 were referring to earlier, right?

3 A. It's a Giglio questionnaire, yes.

4 Q. All right. And the question that I asked you
5 about regarding the civil matter is listed here as number
6 two, right? Correct?

7 A. Yes.

8 Q. And right there is two options for you to circle,
9 a "Y" or an "N", correct?

10 A. Yes.

11 Q. And that stands for yes or no, correct?

12 A. I believe so, yes.

13 Q. And you circled no, correct?

14 A. It's still no.

15 Q. And when it says witness name here, that's your
16 name, right?

17 A. That is my name.

18 MR. [REDACTED] Just a few more questions, Your
19 Honor --

20 THE COURT: Yes, sir.

21 MR. [REDACTED] -- and I'll sit down.

22 BY MR. [REDACTED]

23 Q. Officer, when you arrested Mr. [REDACTED] he
24 didn't try to run, right?

25 A. No, he didn't.

1 Q. He complied?

2 A. Yes, he did.

3 MR. [REDACTED] No further questions.

4 THE COURT: Redirect.

5 MR. [REDACTED] Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. [REDACTED]

8 Q. Officer, the form that defense marked as
9 Exhibit 10, Defense Exhibit 10, why did you answer no to
10 the question counsel asked you about?

11 A. The way I read the question, I believe the answer
12 to be no. There is a small parenthetical, and I believe
13 that I answered correctly. And I was later informed that I
14 did not.

15 Q. Were you being intentionally misleading?

16 A. No, sir.

17 Q. And counsel also asked you about the M -- MPD
18 did an investigation of you; is that correct?

19 A. Yes.

20 Q. And what was the result of that investigation
21 regarding this civil suit?

22 A. I was found to be justified by MPD.

23 Q. And the matter was also referred to the United
24 States Attorney's Office; is that correct?

25 A. Yes.

1 Q. And what did the United States Attorney's Office
2 do, if anything?

3 A. They declined to prosecute.

4 Q. Okay. Now, let's turn to the actual facts of
5 this case. This particular defendant, have you ever been
6 accused of violating his civil rights?

7 A. No.

8 Q. Did you make contact with him besides -- on that
9 particular day, did you have to use force against him?

10 A. I did not.

11 Q. And as counsel asked you on cross-examination, he
12 didn't run, did he?

13 A. No, he didn't.

14 Q. Okay. And you placed him under arrest as being
15 the individual that's on the lookout description; is that
16 correct?

17 A. And subsequently identified by Officer [REDACTED]
18 yes.

19 MR. [REDACTED] I'm sorry to object, Your Honor, but I
20 believe counsel is leading the witness.

21 THE COURT: Don't lead.

22 MR. [REDACTED] Understood, Your Honor.

23 BY MR. [REDACTED]

24 Q. And throughout the course of these proceedings,
25 direct, cross-examination, and now redirect, have you been

1 telling the truth?

2 A. Yes, sir.

3 Q. And do you take your oath seriously?

4 A. I do.

5 Q. Thank you, Officer.

6 MR. [REDACTED] No further questions.

7 THE COURT: Thank you, sir. You may step down.

8 THE WITNESS: Yes, sir.

9 (Witness excused.)

10 THE COURT: Next witness.

11 MR. [REDACTED] Is it the expert?

12 MR. [REDACTED] Yes.

13 MR. [REDACTED] This is what I wanted to talk to you
14 about.

15 THE COURT: Oh, I have a -- and, in fact, I have
16 to tell the jury as follows. Language is very important in
17 all these matters. Give me just a second.

18 (Pause.)

19 THE COURT: Ladies and gentlemen, the matter of
20 this civil judgment against Officer [REDACTED] either was
21 known or should have been known to the United States
22 Attorney's Office and should have been turned over to the
23 defense but it was not.

24 And are you asking, Defense, that the Giglio
25 form, which was identified as Defendant's 10 be admitted?

1 MR. [REDACTED] I may do so before the government
2 closes their case-in-chief.

3 THE COURT: Very good.

4 And you -- in my job as the person who gives you
5 instructions, the word "Giglio" is a -- is related to a
6 matter that -- it's not an acronym or anything like that.
7 It's not -- it's of no concern to you all. It relates to a
8 case. And it's not a case that you can go look up or do
9 any research about it. It's just a -- it's legal term of
10 art that we use, a Giglio form. But I believe the thing
11 itself will be in evidence for you to look at.

12 Very good. Now you may continue.

13 (Whereupon, the excerpt of the proceedings
14 concluded at 11:10 a.m.)

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CERTIFICATION OF REPORTER

I, [REDACTED], an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the jury trial in the case of the UNITED STATES OF AMERICA versus [REDACTED] [REDACTED] Criminal Action Number [REDACTED], in said court on the 22nd day of October, 2015.

I further certify that the foregoing 48 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the [REDACTED] day of [REDACTED].

[REDACTED]
[REDACTED], CSR
[REDACTED] Reporter