

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

UNITED STATES

v.

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Case No. ██████████

Judge ██████████

ORDER

This matter comes before the Court upon Defendant’s Motion to Compel Information Related to Involved Law Enforcement Officers and the Government’s Opposition to Defendant’s Motion to Compel.

Pursuant to the 5th Amendment to the Constitution of the United States, “the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The District of Columbia Court of Appeals has characterized the *Brady* requirement not as a discovery rule, but as a fundamental “rule of fairness and minimum prosecutorial obligation” governing all criminal proceedings. *Curry v. United States*, 658 A.2d 193, 197 (D.C. 1995) (quoting *United States v. Beasley*, 576 F.2d 626, 630 (5th Cir. 1978), *cert. denied*, 440 U.S. 947 (1979)).

Brady and its progeny have broadly defined the range of materials that the government must disclose in order to satisfy its due process obligations. The *Brady* doctrine does not apply only to evidence that clearly and unequivocally demonstrates that the defendant did not commit the charged act, but to all information that “tend[s] to exculpate” the accused. *Brady*, 373 U.S. at 88. Put simply, due process requires disclosure of all information and materials “that would suggest to any prosecutor that the defense would want to know about it because it helps the defense.”

Vaughn v. United States, 93 A.3d 1237, 1254 (D.C. 2014) (internal quotations and citations omitted). In assessing whether information or materials are exculpatory, “[t]he defense perspective controls,” *id.*; the prosecutor cannot evaluate the nature and strength of the government’s case and “decide not to disclose information that is on its face exculpatory based on an assessment of how that evidence might be explained away or discredited at trial, or ultimately rejected by the fact finder.” *Zanders v. United States*, 999 A.2d 149, 164 (D.C. 2010). Impeaching information squarely falls within the ambit of the *Brady* disclosure requirement. *See Giglio v. United States*, 405 U.S. 150, 153-54 (1972); *Vaughn*, 93 A.3d at 1254.

A witness may be impeached through a showing of bias or interest, which falls within the *Brady* rule. *United States v. Bagley*, 473 U.S. 667, 676 (D.C. 1985). “Bias refers both to a witness’ personal bias for or against a party and to his or her motive to lie.” *Longus v. United States*, 52 A.3d 836, 850 (D.C. 2012). The existence of an investigation pending at any time during the pendency of this case against an officer who will be testifying at trial, or who prepared reports upon which other officers will be relying, is relevant as a potential source of bias and shall be disclosed in response to a specific request for information. *See Lewis v. United States*, 10 A.3d 646 (D.C. 2010). The focus is on the “witness’ subjective belief of the potentially beneficial effects that his testimony may have upon his own situation.” *Lewis*, 10 A.3d at 653.

The applicable case law also provides the government with clear direction as to how to comply with its *Brady* obligations. The assessment of materiality by the prosecutor at the pre-trial stage should be made “with a view to the need of defense counsel to explore a range of alternatives in developing and shaping a defense.” *Boyd v. United States*, 908 A.2d 39, 60 (D.C. 2006). The prosecuting authority has a duty not only to search its own files, but also to learn of any favorable evidence known to others acting on the government’s behalf, including other law enforcement

agencies. *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995). The required search, inquiry, and disclosure must occur even when there has been no request for the material from defense counsel. *United States v. Agurs*, 427 U.S. 97, 107 (1976). A strong preference exists for the disclosure of original source materials rather than summaries of such materials. “Even if it is theoretically possible for the government to fulfill its disclosure obligations under *Brady* by means of summaries of preexisting documents, such summaries must be ‘sufficiently specific and complete.’ . . . [T]he government withholds source documents at its peril.” *Vaughn*, 93 A.3d at 1259 (quoting *United States v. Rodriguez*, 496 F.3d 221, 226 (2d Cir. 2007)). All doubts regarding the exculpatory nature of materials should be resolved in favor of disclosure. *Agurs*, 427 U.S. at 108.

In order to assure that the timing of *Brady* disclosures does not develop into a point of controversy in this case, the Court notes the emphatic statements that the Court of Appeals has made regarding the pretrial disclosure of exculpatory information and materials. The disclosure of information constituting *Brady* must occur “as soon as practicable,” *Vaughn*, 93 A.3d at 1257 (quoting *Miller v. United States*, 14 A.3d 1094, 1108 (D.C. 2011)), and “well before the scheduled trial date.” *Zanders*, 999 A.2d at 164. The Court of Appeals has repeatedly recognized that exculpatory evidence must be disclosed early enough that a defendant can make full and effective use of it in investigating the case and otherwise preparing for trial. *Miller*, 14 A.3d at 1111; *see also Perez v. United States*, 968 A.2d 39, 66 (D.C. 2009), *abrogated on other grounds by Ibrahim v. United States*, 661 F.3d 1141, 1146 (D.C. Cir. 2011); *Lindsey v. United States*, 911 A.2d 824, 838 (D.C. 2006); *Curry*, 658 A.2d at 197; *Edelen v. United States*, 627 A.2d 968, 970 (D.C. 1993). Compliance with *Brady* “is not achieved by last-minute information dumps.” *Vaughn*, 93 A.3d at 1257.

Accordingly, the Court directs the government to produce to the Defendant in a timely manner any and all documents, evidence, information, and other materials that are favorable to the Defendant and material either to the Defendant's guilt or punishment. Specifically, the government must disclose to the defense information about any complaints, lawsuits, or findings of misconduct sustained against the officers and information about any complaints, lawsuits, or investigations of misconduct that were pending at any point during the arrest or prosecution of Mr. [REDACTED], even if they were not ultimately sustained. To the extent that the government identifies any information that appears favorable to the Defendant but the government believes not to be material, or believes should not be disclosed to the defense for any other reason, the government shall submit such information to the Court for *in camera* review.

[REDACTED]

[REDACTED]
Associate Judge

Copies to:

[REDACTED]
Counsel to Defendant

[REDACTED]
Assistant United States Attorney