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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA.

CRIMINAL DIVISION

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 :  
 UNITED STATES OF AMERICA :  
 :  
 vs. : Criminal Action No.  
 :  
 [REDACTED] : [REDACTED]  
 :  
 Defendant. : Volume 1 of 1  
 -----x

Washington,  
Wednesday, [REDACTED]

The above-mentioned [REDACTED] came on for a hearing before the Honorable [REDACTED], Associate Judge, in Courtroom No. [REDACTED], commencing at approximately 9:52 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

[REDACTED] Attorney

On behalf of the Defendant:

[REDACTED] [REDACTED]

[REDACTED] Reporter  
For [REDACTED]

(202) 879-1072

1 PROCEEDINGS

2 (Whereupon, all parties are present, and the  
3 hearing convened at 9:52 a.m.)

4 THE DEPUTY CLERK: Now calling from Your Honor's  
5 trial calendar, United States versus [REDACTED],  
6 [REDACTED]; codefendant with, from Your Honor's motion  
7 hearing calender, [REDACTED], [REDACTED].

8 MR. [REDACTED] Good morning, Your Honor. [REDACTED]  
9 [REDACTED] on behalf of [REDACTED] [REDACTED], who --

10 THE COURT: All right.

11 MR. [REDACTED] -- is present.

12 THE COURT: Good morning.

13 THE DEFENDANT: Good morning, Your Honor.  
14 [REDACTED].

15 MS. [REDACTED] Good morning, Your Honor. [REDACTED]  
16 [REDACTED] on behalf of Mr. [REDACTED].

17 THE COURT: All right.

18 MS. [REDACTED] [REDACTED] for the United  
19 States.

20 THE COURT: Good morning. All right. This matter  
21 is here for trial in the [REDACTED] case. I had  
22 scheduled -- [REDACTED] case has been severed, but I was  
23 going to proceed or have the motions in the case done  
24 together, the suppression motion.

25 Do you have any representations as to where he is?

1 MS. [REDACTED] Your Honor, my only representation is  
2 he's made it to every other hearing, so I'd ask to -- if we  
3 could waive his presence for the time being right now, and I  
4 have every expectation that he'll be here soon.

5 THE COURT: All right. Well, I'm going to waive  
6 his presence now. If he's not here soon and this case goes  
7 on the cert list, then the notion of doing the motions  
8 together just might go by the wayside.

9 MS. [REDACTED] I understand.

10 THE COURT: Is the government ready for trial?

11 MS. [REDACTED] We are, Your Honor.

12 THE COURT: All right. Mr. [REDACTED] are you ready  
13 for trial?

14 MR. [REDACTED] We are, Your Honor.

15 THE COURT: All right. I know that there's this  
16 motion that I received on -- I believe yesterday morning  
17 relating to police officer impeachment and the request for  
18 additional materials. Has this been worked out between the  
19 parties or is there still -- you announced ready. Is there  
20 information you're still waiting for?

21 MR. [REDACTED] And, I apologize, Your Honor. I  
22 probably should have brought that up. A couple things.  
23 One, we don't have all of the source documents that were  
24 said that we were going to be provided. The only thing we  
25 have so far is Officer [REDACTED]'s transcript. The other two

1 disclosures from the other two officers, we don't have the  
2 source documents on those.

3 Also, as far as the de minimus information, that's  
4 something that we don't have and we have not been provided  
5 with.

6 THE COURT: All right. So really, all of the  
7 information that you requested here is still not in --

8 MR. [REDACTED] Yes, Your Honor.

9 THE COURT: -- your possession?

10 All right. Ms, [REDACTED]

11 MS. [REDACTED] Your Honor, I do have the source  
12 documents for the disclosures that we do -- that we did  
13 already make. Defense counsel and I have been talking about  
14 a nondisclosure agreement, but it wasn't signed. So I have  
15 a protective order for the Court, and I'd be willing to --  
16 or, I would disclose them under the protective order.

17 THE COURT: All right. Mr. [REDACTED] what's your  
18 position as to that?

19 MR. [REDACTED] Your Honor, the protective order is  
20 fine as far as the disclosure the government was going to  
21 originally give us, but we still have the problems with the  
22 de minimus information that they're not going to turn over.

23 THE COURT: All right. So I'll -- if there's no  
24 objection to it, I'll sign the protective order.

25 With regard to the de minimus --

1 I'll be dealing with that in a minute,

2 Ms. [REDACTED]

3 The de minimus complaints. Or what you've  
4 described as the de minimus complaints -- first of all,  
5 who -- which officer are we talking about with regard to  
6 those complaints?

7 MS. [REDACTED] Your Honor, we would oppose  
8 disclosing any information about the de minimus findings  
9 because --

10 THE COURT: My -- I'm asking you which officer  
11 that applies to? is my first question.

12 MS. [REDACTED] I'm sorry, I don't under --

13 THE COURT: Right. So there are certain  
14 complaints that you all have decided not to disclose because  
15 they're de minimus. They relate to officer -- and then  
16 what's the end of that? [REDACTED]? [REDACTED]? Which one?

17 MS. [REDACTED] I actually -- I don't have that  
18 information because I was only given the information for the  
19 disclosures that we felt necessary to make to defense  
20 counsel. So I don't have the --

21 THE COURT: So basically, you made a discovery  
22 objection and granted it is basically what happened here?  
23 That's what you all did? You all decided it wasn't  
24 discoverable, didn't turn it over and are not prepared to  
25 talk about what it is?

1 MS. [REDACTED] Your Honor, we just don't believe  
2 that the de minimus findings that don't have to do with  
3 veracity --

4 THE COURT: I understand you don't believe that,  
5 but you don't also believe that you even have to tell me  
6 what they are?

7 MS. [REDACTED] I don't have that information.

8 THE COURT: Who does have that information?

9 MS. [REDACTED] One of the supervisors. So I can  
10 ask for her to run the -- to find the de minimus findings,  
11 but our position was that the de minimus findings are not  
12 relevant so we did not --

13 THE COURT: Oh, I understand that. But, you know,  
14 there's some role in the adversary process for you taking a  
15 position; and then the second part of that is it get's ruled  
16 on by the judge. I don't like this. I don't like you  
17 saying: We don't think this is discoverable so we're not  
18 only not going to disclose it, but we're not prepared to  
19 even tell you what it is. How are we supposed to evaluate  
20 this, Ms. [REDACTED]

21 MS. [REDACTED] I understand, Your Honor. And if  
22 Your Honor does rule that the de minimus findings --

23 THE COURT: How can I -- how could I rule anything  
24 on the de minimus findings? You're not telling me what they  
25 are.

1 MS. [REDACTED] I --

2 THE COURT: You've defined them as de minimus. I  
3 have no idea what they are.

4 MS. [REDACTED] I understand. I guess our general  
5 policy is that we don't get the de minimus findings until  
6 we're required to turn them over or to make those  
7 disclosures because there are -- you know, the de minimus  
8 findings include things like not showing up to a witness  
9 conference or --

10 THE COURT: Is that what it is in this case?

11 MS. [REDACTED] I guess --

12 THE COURT: Right. So the problem is you're  
13 saying we do these things under some circumstances. I don't  
14 know what -- I don't know what the circumstances are. So  
15 basically, you're telling me that the position seems to be:  
16 Take our word for it, this is irrelevant. Right?

17 MS. [REDACTED] Well, Your Honor, if I can -- we can  
18 provide the Court with the de minimus findings if the Court  
19 requires us to so. And I can get those findings and then  
20 provide them to the Court.

21 THE COURT: How long will that take?

22 MS. [REDACTED] It should not take more than, I  
23 would assume, half an hour.

24 THE COURT: All right. I'll give you all till

25 10:15 --

1 MS. [REDACTED] Okay.

2 THE COURT: -- to make further representations  
3 because I'm in trial. If this case is going anywhere today,  
4 it's on the cert list. And I don't -- who's in charge of  
5 this now?

6 MS. [REDACTED] Who's in -- of the --

7 THE COURT: Over at your office.

8 MS. [REDACTED] The findings, it's all of the  
9 supervisors.

10 THE COURT: All right. This -- I mean, I find  
11 this -- this is the first time I've dealt with this response  
12 being -- I mean, I've certainly had many cases in which the  
13 government says we don't think we should turn this over  
14 because this was a finding that the officer had lunch  
15 outside of his PSA and it is -- it's de minimus; and  
16 therefore, it's not relevant. And I can make a ruling as to  
17 whether or not it's relevant. This is the first time ever  
18 the government has said there -- because these findings are  
19 de minimus, we are not even going to talk about what the  
20 nature of them are or what the nature of them is, we're just  
21 going to say to the judge: These are de minimus findings;  
22 therefore, we're not turning them over, take our word for  
23 it, there's no relevance here. This is the first time that  
24 position has been taken and it's going to be the last time  
25 that it's taken without a more significant result for the



1 government.

2 MS. [REDACTED] I understand, Your Honor.

3 THE COURT: All right. We'll recall the matter at  
4 10:15.

5 MS. [REDACTED] Thank you.

6 (Matter passed.)

7 THE DEPUTY CLERK: Now recalling from Your Honor's  
8 trial calendar, United States versus [REDACTED],  
9 [REDACTED]; codefendant with [REDACTED], [REDACTED].

10 MS. [REDACTED] Amanda [REDACTED] on behalf of [REDACTED]  
11 [REDACTED], who is present.

12 THE COURT: All right. Good morning. Your name,  
13 sir?

14 THE DEFENDANT: [REDACTED].

15 MR. [REDACTED] Brook [REDACTED] on behalf of [REDACTED]  
16 [REDACTED], who is also present.

17 THE COURT: All right. Good morning, again, sir.

18 THE DEFENDANT: Good morning, again, Your Honor

19 [REDACTED].

20 MS. [REDACTED] [REDACTED] for the United  
21 States.

22 THE COURT: All right. So --

23 MS. [REDACTED] Your Honor, if I can put one thing on  
24 the record. I have not been provided any of the sources  
25 that were just discussed about a half an hour ago. I was a

1 bit shell-shocked when I found that out. And then I  
2 inquired of the government immediately after to make sure I  
3 maybe missed an e-mail or anything, and I was told they were  
4 not providing the *Brady* information to me until my -- closer  
5 to my trial date. Based on that, Your Honor, I would ask to  
6 dismiss based on this.

7 As Your Honor knows, Viles -- which I don't have  
8 with me now, I didn't know this issue was going to come  
9 up -- states that *Brady* material is impeachment.

10 THE COURT: You'll provide it to both counsel.

11 MS. [REDACTED] I will.

12 THE COURT: Thank you.

13 MS. [REDACTED] But --

14 THE COURT: Yes.

15 MS. [REDACTED] I still think we should dismiss, Your  
16 Honor. They didn't provide any of it and they chose not to  
17 it. And Your Honor gave a *Brady* order to them stating that  
18 they should provide this information. The specific order  
19 states that any material that they think -- within the *Brady*  
20 order that you gave on November [REDACTED], that they think that  
21 it is not material *Brady*, then they should provide it to the  
22 Court for in camera review. They chose -- not only did they  
23 not give it to you, Your Honor, they consciously chose --  
24 they thought this was impeachment material. They  
25 consciously chose not to give it to me --

1 MS. [REDACTED] And, Your Honor --

2 MS. [REDACTED] -- because they think they don't need  
3 to.

4 MS. [REDACTED] If I may respond? The government  
5 will turn over the impeachment material; however, that trial  
6 is not -- it's not going yet. And the officers that the  
7 government intends to put on that trial may be different.  
8 And so the government does intend to turn over the -- any  
9 impeachment information prior to the trial; however, the  
10 trial date for that case is not today.

11 THE COURT: And so when do you view your  
12 obligation kicking in?

13 MS. [REDACTED] Your Honor, we generally make the  
14 PPMS request three weeks prior to trial, and then we try to  
15 turn it over to defense counsel two weeks prior to trial.

16 THE COURT: But you have information now that  
17 relates to the case that Ms. [REDACTED] is defending, right?

18 MS. [REDACTED] Some of them. Although, the  
19 officers -- because of the way -- which officers did what  
20 during the case, the officers that we put on during that  
21 trial may be different than the officers that are put on in  
22 [REDACTED] trial. So once we determine which  
23 officers will be put on as the government witnesses; in that  
24 trial, the government will turn over the impeachment  
25 information for those officers.

1 THE COURT: All right. I'll come back to this in  
2 a moment.

3 With regard to what we had passed the matter for,  
4 have you -- where are we with that?

5 MS. [REDACTED] So, Your Honor, I did reach out to a  
6 supervisor; however, our -- I guess our understanding was  
7 that the Court had previously ruled that de minimus findings  
8 were not required to be turned over. And our office was  
9 not --

10 THE COURT: When was that?

11 MS. [REDACTED] Your Honor, I don't know. And I --

12 THE COURT: I mean, I -- sure, in a particular  
13 case I've made rulings that because a particular finding is  
14 not relevant to credibility, bias or anything else, it  
15 doesn't need to be disclosed. But I've made that ruling not  
16 by saying if you all say that it's de minimus, then don't  
17 even worry about figuring out what it is. That's the end of  
18 the discussion. I brought up the example of the officer who  
19 had lunch two blocks outside of his PSA -- and his  
20 supervisor didn't seem to like him anyway -- gave him a  
21 sanction for that. I ruled that that didn't need to be  
22 disclosed. But that was after I considered what it was.  
23 And then I made that ruling that because it was -- I don't  
24 think I ever used the word "de minimus." I think that's  
25 y'all's word; not mine.

1           So can you even tell me right now what these --  
2           what these things are?

3           MS. [REDACTED] I can make the representations for  
4           one of the officers. And then the supervisor is still  
5           running the de minimus findings on the other officers. I  
6           guess our office just didn't know that you wanted to know  
7           all of the de minimus findings as well.

8           THE COURT: Okay. Don't say "de minimus findings"  
9           anymore.

10          MS. [REDACTED] Or all --

11          THE COURT: Okay. Don't say that. Okay. Whether  
12          it's de minimus or not is something I can only determine  
13          once I've heard what it is. That's not for you to say. And  
14          it dovetails with which -- what happened with regard to the  
15          other defendant, which is the -- you've made a decision as  
16          to how your disclosures are going to be doled out that has  
17          nothing to do with -- again, it's as if you're making a  
18          ruling on your own discovery request.

19          So as of right now, 10:20, you cannot tell me what  
20          the misconduct information is in relation to at least two of  
21          the officers; is that correct?

22          MS. [REDACTED] Three.

23          THE COURT: At least three of the officers.

24          Mr. [REDACTED]

25          MR. [REDACTED] At this time, were asking for a

1 dismissal of this case given the fact that we don't have  
2 that information.

3 THE COURT: Ms. [REDACTED]

4 MS. [REDACTED] I'm moving to dismiss as well since  
5 I've been given nothing, Your Honor.

6 THE COURT: I'm going to dismiss this case for  
7 want of prosecution. The government is not ready.

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

9 MS. [REDACTED] Thank you, Your Honor.

10 (Whereupon, the proceedings concluded at 10:20 a.m.)

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CERTIFICATION OF DESIGNEE REPORTER

I, [REDACTED], an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that [REDACTED], an Official Court Reporter, reported, by machine shorthand, the proceedings had and testimony adduced upon the jury trial in the case of **THE UNITED STATES OF AMERICA vs. [REDACTED] and [REDACTED]**, Criminal Action Nos. [REDACTED] and [REDACTED], in said court on the [REDACTED] day of [REDACTED].

I further certify that the foregoing 14 pages constitute the official transcript of said proceedings, as taken from the 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] Reporter

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