

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION**

UNITED STATES OF AMERICA

v.

████████████████████
Defendant

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Case ██████████
Judge ██████████
Trial Date: ██████████

ORDER

Following consideration of the Defendant’s Motion to Compel Discovery, the Government’s Opposition to Defendant’s Request for Information about Prior and Pending Complaints and Investigations into Officers Involved in this Case, the Government’s Revised Opposition to Defendant’s Request for Information about Prior and Pending Complaints and Investigations into Officers Involved in this Case, and *ex parte* filing, the Defendant’s reply to Government’s Opposition to Motion to Compel Brady, Lewis and Giglio Material, and following a hearing on ██████████, at which time the Court heard further representations and argument from both parties, on ██████████ this Court issued an order requiring the Government to disclose to the Defense information concerning the existence of any investigation that was pending at any time during the pendency of this case against an officer who will be testifying at trial in the Government’s case in chief, or upon whose written reports a testifying officer will be relying. Notwithstanding the initial opportunity to extensively brief and argue the issue, the United States Attorney’s Office filed a Motion to Clarify and Reconsider; the Defense subsequently filed a Reply to the Government’s Motion, which was in turn followed by the United States’ Reply.

The Government argues that this Court’s ██████████ order is overbroad, both in terms of requiring disclosure of investigations of any officer who is testifying or who wrote a report upon which other officers will be relying, and in terms of requiring the Government to disclose investigations pending at any time during the pendency of this case. For the reasons set forth below, and for the reasons previously stated, this Court orders the Government to comply with the order of ██████████ consistent with any further clarification set forth herein.

First, the cases relied upon by the Government in support of its opposition all pertain to whether information already in the possession of the Defense can be used on cross examination, rather than whether that information should be turned over to the Defense during pre-trial discovery as an initial matter. *See Burgess v. United States*, 608 A.2d 733, 736 (D.C. 1991)(trial court did not abuse its discretion in limiting cross examination of government witness where defense failed to proffer facts to establish that witness had a motive to lie, and where, to the extent that the proffered testimony was relevant to bias, it was more prejudicial than probative); *Cunningham v. United States*, 974 A.2d 240 (D.C. 2008)(finding that “knowledge [of a pending investigation] arguably would provide a motive for [officer] to curry favor with the Government” and remanding case for further inquiry about the officer’s knowledge).

At present, this Court’s order is limited to defining the information that must be turned over to the Defense as part of pre-trial discovery and does not address whether this information would then appropriately be the subject of cross-examination. This Court continues to find that that the existence of an investigation pending at any time during the pendency of this case against officers 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 to the Defense in response to a specific request for information. *See Lewis v. United States*, 10 A.3d 646(D.C. 2010)(“defense counsel is entitled to cross-examine a government witness to show his bias based upon a motive to curry favor with the government not only if the government witness had a relationship with the court at the time of trial but also if he had such a relationship when the government was in touch with him during the investigation of the crime” (internal quotations omitted)).

As the appellate court noted in *Cunningham* “before pursuing a line of questioning suggesting that a witness is biased, a defendant must lay a foundation sufficient to permit the trial judge to evaluate whether the proposed question is probative of bias.” *Id.* at 245. Without prejudging any future issues that may arise, if it were established that the officer was not aware of the existence of an investigation, or that the investigation was not pending at any relevant juncture during the pendency of this case such that it potentially could have impacted upon the officer’s investigation, involvement or testimony at either an earlier stage in these proceedings or at trial in this case, cross-examination of the officer about a prior investigation may be restricted or disallowed at the time of trial.

With regards to the Government's concerns that complying with this Court's order will be overly burdensome, this Court finds that, with regards to the specific facts in this case, that concern is unsupported. The Court's order is limited strictly to this case, in which the investigation took place over two days and in which only two Metropolitan Police Department Officers are referenced in the Affidavit in Support of an Arrest Warrant. If the investigation in this case had taken place over several months and involved multiple governmental investigative agencies, the weighing of interests might be different. Here however, presumably the Government has interviewed its witnesses, knows which witnesses it intends to call at trial, what testimony it intends to elicit, and where the information it intends to elicit comes from.¹ If the Government intends to call officers whose testimony will be based on their first hand involvement with the case, rather than on reports prepared by other officers (arguably constituting hearsay testimony in any event), then the Government is simply under a directive to disclose investigations pertaining to those officers testifying at trial.

For clarification purposes, the investigations which must be disclosed to the Defense would include internal Metropolitan Police Department ["MPD"] investigations contained in MPD's Personnel Performance Management System ["PPMS"] database, investigations filed by civilians with the Office of Police Complaints ["OPC"] in which OPC has identified the officer who is the subject of the complaint and entered that information into the PPMS system, and criminal investigations by the US Attorney's Office for the District of Columbia for potential violations of criminal law. When this Court refers to whether sustained investigations had any factual relevance to the allegations in this case, this refers to investigations in which prior sustained investigations involved situations which were substantially similar to the circumstances in this case.²

¹ This matter was originally set for trial in ██████████ and was continued until ██████████ for a variety of reasons.

² For example, the arrest affidavit in this case refers to a photo array identification procedure that was conducted by Investigator ██████████. If there had been a sustained finding that Investigator ██████████ improperly handled a photo array identification procedure in connection with another case, this would have factual relevance to the issues in this case and should be disclosed. If there is a sustained finding that an officer failed to appear in court to testify, that would not have factual relevance to the allegations in this case and need not be disclosed, unless it was pending during the life of this case.

It is therefore, on this 15th day of [REDACTED] hereby

ORDERED, that the Government shall provide the Defense with the information previously ordered to be produced on [REDACTED], consistent with the clarifications set forth herein.

SO ORDERED.

[REDACTED]
Judge [REDACTED]
SIGNED IN CHAMBERS

Copies to:

[REDACTED]
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Washington, DC

[REDACTED]
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