

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch

UNITED STATES OF AMERICA

v.

EDGAR WELCH

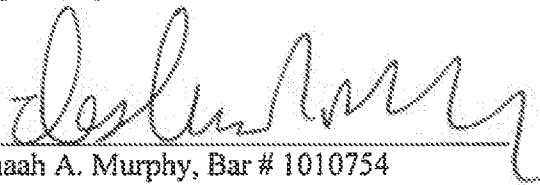
:
:
:
:
:
:
:
:
:
:

Case No. 2016 CF3 019909
Honorable Judge Anita Josey-Herring
Magistrate Judge Sherry Trafford
Preliminary Hearing: December 8, 2016

NOTICE OF FILING

For the record, appended hereto as Exhibit A is Mr. Edgar Welch's discovery letter, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), dated December 7, 2016.

Respectfully submitted,



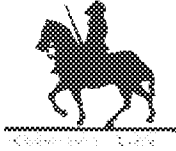
Ieshaah A. Murphy, Bar # 1010754
On Behalf of Edgar Welch
Public Defender Service
633 Indiana Avenue, NW
Washington, DC 20004
(202) 824-2453

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Filing and attachments has been electronically served to Channing Phillips at the Office of the United States Attorney, 555 Fourth Street, NW, Washington, D.C. 20530. A copy has also been emailed to Assigned Assistant United States Attorney (AUSA) Sonali Patel, this 7th day of December, 2016.


Ishaah A. Murphy

THE
PUBLIC
DEFENDER
SERVICE
Department of Justice



Avis E. Buchanan
Director

Rudolph Acree, Jr.
Deputy Director

December 7, 2016

Sonali Patel
Assistant United States Attorney
Office of the United States Attorney
555 4th St., N.W.
Washington, DC 20530

Re: United States v. Edgar Welch
Case #: 2016 CF3 19909
Judge: Honorable Josey-Herring

Dear Counsel:

I am writing again to reiterate my request for the disclosure of all information to which I am entitled under *Brady v. Maryland*, 373 U.S. 83 (1963) in the above captioned case. The requested information includes all information material to guilt, punishment,¹ and the credibility of government witness,² including potential impeachment material for all government witnesses.³ Failure to disclose impeachment information is the same, under *Brady*, as the failure to disclose exculpatory information.⁴ This request includes impeachment material that may also fall under the Jencks Act.⁵

The requested information includes all information that you or any part of the prosecution team “know or reasonably should know tends to negate the guilt of the accused or to mitigate the offense.”⁶ Under *Brady* and its progeny, this request extends to all information known by all law

¹ See *Brady v. Maryland*, 373 U.S. 83, 87(1963).

² See *Giglio v. United States*, 405 U.S. 150, 154 (1972) (“When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this rule.”) (citations and internal quotation marks omitted).

³ See *United States v. Bagley*, 473 U.S. 667, 676 (1985) (“Impeachment evidence ... as well as exculpatory evidence falls within the *Brady* rule.”).

⁴ See *Bagley*, 473 U.S. at 676.; *Sykes v. United States*, 897 A.2d 769, 778 (D.C. 2006) (“[T]he grand jury testimony of Mr. Parrott and Mr. Sellers should have been disclosed to the defense at an earlier point in time, whether it was considered to be potentially exculpatory information or favorable impeaching evidence.”).

⁵ See *Boone v. United States*, 769 A.2d 811, 821 (D.C. 2001) (Although the coverage of *Brady* and the Jencks Act sometimes overlap, especially with respect to bias and impeachment material of potential government witnesses, when this overlap occurs the *Brady* rule must control and compels pre-trial disclosure.)

⁶ See D.C. Rules of Professional Conduct, Rule 3.8. Special Responsibilities of a Prosecutor (2000).

enforcement or other government agencies involved in this case, whether or not personally known to the individual prosecutor.⁷

In addition to the general requests noted above, I have reason to believe that the government is in possession of the information listed below. Please provide the following information immediately:

- 1) It is our belief that several of the witnesses inside the restaurant at the time the alleged incident took place told police that S-1 never pointed any weapon at anyone, never said anything upon entering the restaurant, and that S-1 walked straight to the back of the restaurant, away from all of the people inside. **Please provide me with the substance of these witness interviews and contact information for these witnesses. This information would go directly to S-1's lack of intent to harm the employees and patrons of the restaurant.**

Sincerely,



Ishaah Murphy, Bar # 1010754
Counsel for Edgar Welch
Phone: (202) 824-2453

The prosecutor in a criminal case shall not . . . (e) Intentionally fail to disclose to the defense, upon request and at a time when use by the defense is reasonably feasible, any evidence or information that the prosecutor knows or reasonably should know tends to negate the guilt of the accused or to mitigate the offense, or, in connection with sentencing, intentionally fail to disclose to the defense upon request any unprivileged mitigating information known to the prosecutor and not reasonably available to the defense, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

⁷ See *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995) (The duty of disclosure is not limited to evidence in the actual possession of the prosecutor. Rather, it extends to evidence in the possession of the entire prosecution team, which includes investigative and other government agencies.); *see also Strickler v. Greene*, 527 U.S. 263 275, n. 12 (1999) (Prosecutor has constructive knowledge of all favorable evidence known to those acting on the government's behalf, even if no actual knowledge of materials, and even if materials are in the file of another jurisdiction's prosecutor); *United States v. Safavian*, 233 F.R.D. 205, 207 (D.D.C. 2006) (Prosecutor has a duty to search and disclose Brady evidence, within reason, in the possession of all Executive Branch agencies and departments, rather than solely the agencies "closely aligned" with the prosecution).