

CARL L. EPSTEIN

ATTORNEY AT LAW
FIRST INDIANA PLAZA, SUITE 1150
135 NORTH PENNSYLVANIA STREET
INDIANAPOLIS, INDIANA 46204
TELEPHONE (317) 684-5660
FAX (317) 231-1106

Also Admitted
in District of Columbia
and Pennsylvania

November 18, 1997

Mr. Gary M. Gaertner, Jr.
Assistant United States Attorney
United States Attorneys Office
U.S. Court and Custom House
Room Number 401
St. Louis, Missouri 63101

RE: United States of America vs. Willie E. Boyd
United States District Court
Eastern District of Missouri, Eastern Division
Cause No. 4:97CR301 SNL/MLM

Dear Mr. Gaertner:

This letter is to formally, but informally, request that you make available to me all discovery in the above styled cause. This request includes all information the Government is required to disclose pursuant to the Federal Rules of Criminal Procedure and Evidence and case law.

A. Rule 16. Federal Rules of Criminal Procedure

1. Statements of the Defendant (FRCrP 16(a)(1)(A))

Written or Recorded statements: Any written or recorded statements made by the Defendant within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become know to you.

Oral Statements: That portion of any written record, including original notes, containing the substance of any relevant oral statements made by the Defendant whether before or after arrest in response to interrogation by any person then known to the Defendant to be a government agent or other law enforcement officer regardless of whether the government intends to use the statements at trial. The substance of any oral statements made by the Defendant whether before or after interrogation by any person then known by the Defendant to be a government agent or law enforcement officer that the government

intends to use in any manner at trial regardless of whether any written record of the statement exists. In the event the government intends to use such an oral statement at trial, I request that it be reduced to writing and produced.

This request includes the substance of the Defendant's response to Miranda warnings.

I request that, in responding to this request for Defendant's statements, you ask each law enforcement agency involved in investigating or prosecuting this case to search its files for responsive information.

2. Defendant's Criminal Record

A copy of Defendant's criminal record within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known to you.

This request includes the Defendant's entire criminal record, including all arrests and offenses regardless of severity. FRCrP 16(a)(1)(B). It includes discovery of all matters known to the government, or that may become known with due diligence, that may affect the defendant's criminal history score pursuant U.S.S.G. Chapter 4.

3. Documents and Tangible Objects

The inspection, copying or photographing of books, papers, documents, tangible objects, buildings or places or copies or portions thereof, that are within the possession, custody or control of the government and are material to the preparation of the defense, are intended for use by the government of the defense, are intended for use by the government as evidence-in-chief at trial, or were obtained from or belong to the Defendant regardless of the manner in which such material came into the possession of the government. See FRCrP 16(a)(1)(C). Separately identify any materials the government intends to use at trial-in-chief.

4. Reports of Scientific Tests and Other Examinations

All results or reports of physical or mental examinations, and scientific tests or experiments within the possession, custody or control of the government or by the exercise of due diligence may become known to you, material to the preparation of the defense or are intended for use by the government as evidence-in-chief at trial. See FRCrP 16(1)(D).

In the event that results of any scientific tests were reported orally to you or to any government official or law enforcement officer, I request that you cause a written report of the results to be made and produced.

In complying with their request, please contact any law enforcement agency involved in the investigation or prosecution of this case to determine whether relevant examinations or tests were conducted, and, if so, produce the results or reports.

5. Summaries of Expert Witness Testimony

In the event you intend to offer any expert testimony under the Federal Rules of Evidence through any witness, including a government agent or other law enforcement officer, I request that you prepare and produce a summary of the witness's opinion testimony, the grounds or basis for any such opinion testimony and the qualification of the expert witness. See FRCrP 16(a)(1)(E).

B. Rule 12(d)(2). Federal Rules of Criminal Procedure

I request notice of all evidence the government intends to use in its case-in-chief discoverable under FRCrP 16 that may be subject to a motion to suppress.

C. Rule 404(b). Federal Rules of Evidence

I request notice of any "other offense" evidence you intend to introduce in your case-in-chief pursuant to FRE 404(b). In addition, at the time you identify any "other offense" evidence you intend to offer in rebuttal, please produce and identify such evidence separately.

D. Rule 1006. Federal Rules of Evidence

In the event you intend to call a summary witness at trial or present evidence in the form of a chart, I request production a reasonable time prior to trial of the original documents or tape recordings on which such testimony or chart is based. See FRE 1006.

E. Brady Material

Pursuant to Brady v. Maryland, 373 U.S. 83 (1963), I request any exculpatory evidence material to guilt or punishment. Should you have a question with regard to whether certain information constitutes Brady material, or when it must be produced, I request that you present the information to the court for review in camera to resolve these issues. In the event you believe that any Brady material is also Jencks Act material I request that you present it to the court for in camera review and advise me of the general nature of the evidence. However, I request that you produce prior to the trial all Brady material that is not covered by the Jencks Act.

F. Jencks Act Material

I request pretrial production of Jencks Act Material within a reasonable time prior to the day of a witness's direct examination. If you produce pretrial Jencks Act material, the Defendant will reciprocate in kind.

G. Miscellaneous

1. Contact with Client

Please advise all investigating officers in this case that they should not initiate any contact with my client, and that any communication intended for my client be made through me.

2. Continuing Discovery Obligation

This discovery request is a continuing request. See FRCP 16(c). Please notify me immediately as additional material becomes available.

3. Sentencing Information

The Sentencing Commission has encouraged prosecutors prior to the entry of a plea of guilty to disclose to a Defendant the facts and circumstances of the offense and offender characteristics, then known to the prosecuting attorney, that are relevant to the application of the sentencing guidelines. U.S.S.G. §6B1.2, p.s. comment. To insure that my client can make an informed and intelligent decision regarding the possible or probable consequences of pleading guilty or requesting a trial, I request that you advise me of any facts and circumstances presently known to the government or reasonably discoverable, that relate to sentencing issues under the sentencing guidelines, or to calculation of the applicable sentencing guideline range, should my client be convicted of any one or more of the charges in the indictment.

More specifically, I request that as soon as possible you provide me with the following information as to this case:

- What guidelines does the government contend are applicable?
- What aggravated offense characteristics, if any, does the government contend are applicable?
- Upon what grounds, if any, will the government seek a departure from the guidelines?
- What criminal history category does the government contend is applicable?

I am requesting any information that would bear upon computation of the following sentencing guideline factors:

- Base of the offense level
- Specific offense characteristics
- Relevant conduct
- Adjustments or criminal history

This discovery request should be complied with no later than Friday, November 22, 1997, or more formal motions will be submitted to the court.

Sincerely,

Carl Epstein

Carl Epstein

CLE/at

cc: Honorable Stephen Limbaugh
Mr. Frank R. Fabbri III
Mr. Willie E. Boyd



U.S. Department of Justice

RECEIVED

United States Attorney

Eastern District of Missouri

NOV 25 1997

Gary M. Goermer, Jr.
Assistant United States Attorney

U.S. Court and Custom House
1114 Market Street, Room 401
St. Louis, Missouri 63101

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS
Direct Line (314)-539-
Office (314) 539-
Fax (314)-539-

November 25, 1997

FILED

JUN 4 2003

Mr. Carl L. Epstein
Attorney At Law
First Indiana Plaza, Ste 1150
135 N. Pennsylvania Street
Indianapolis, Indiana 46204

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

RE: Willie Boyd

Dear Mr. Epstein:

I am writing in response to your letter dated November 18, 1997. The Government has voluntarily complied with all discovery in this case without any formal or informal request from defendant's counsel. I will go through for your satisfaction each point in your letter.

A. Rule 16 I have provided copies of and have requested that you inspect all Rule 16 material as of November 10, 1997. As you are aware, the Government continues to investigate Mr. Boyd and will turn over any further Rule 16 material when and if it is discovered.

1. All statements of the defendant have been turned over to you prior to the motion to suppress evidence held October 6, 1997.

2. The defendant's criminal record which was contained in the ATF Report was turned over on August 19, 1997 to the prior counsel. This discovery was given by counsel to you upon your entry into this case.

3. I indicated in my letter of November 10, 1997 that you could inspect the evidence that the Government seized in this case and which will be presented as evidence. Copies of items seized were turned over on August 19, 1997.

4. All scientific examinations and reports that are in the United States custody were turned over to you on August 19, 1997 and on November 10, 1997.

Appendix-E

5. Summaries of expert witnesses were provided to you prior to and on November 10, 1997. The Government is also calling Srgt. Brian Gilmore of the St. Louis City Police who has 18 years of experience with the Department. He will testify that the 33 grams of cocaine were for distribution sake. He previously spent time in the City Narcotics Unit.

B. Rule 12(d)(2) All suppressible evidence was turned over to you prior to the October 6, 1997 suppression hearing.

C. The Government has complied with and will continue to comply with Rule 404(b).

D. Rule 1006 will be complied with, but at this time the Government does not plan on calling such a witness.

E. The Government has complied with Brady, and will continue to comply with this Rule. The Government turned over the Grand Jury material of Troupe and Mateen on November 10, 1997.

F. As indicated in my November 10, 1997 letter, Jencks material will be turned over the Friday prior to trial which will be Friday, January 16, 1997.

G. 1. The Government has had no contact with your client as alleged in your letter.

2. All Rule 16 discovery will be turned over immediately upon discovery.

3. The Indictment indicates that your client is subject to Title 18, U.S.C. § 924(E) which mandates a 15 year.

In light of the fact that I received your letter dated November 18, 1997 on November 24, 1997, the Government could not answer it by the 22nd.

Further, I assume that you will abide by Rule 16 discovery and Jencks. As of today I have received no Rule 16 discovery. I would also want to inspect any evidence that you intend to present at trial by January 10, 1997.

Respectfully submitted,

EDWARD L. DOWD, JR.
United States Attorney

GARY M. GAERTNER, JR.
Assistant United States Attorney



U.S. Department of Justice

United States Attorney
Eastern District of Missouri

Gary M. Gaertner, Jr.
Assistant United States Attorney

U.S. Court and Custom House
1114 Market Street, Room 401
St. Louis, Missouri 63101

Direct Line (314)-539-681
Office (314) 539-226
Fax (314)-539-236

December 8, 1997

HAND-DELIVERED

Mr. Frank Fabbri
Attorney At Law
4235 Lindell Blvd.
St. Louis, Missouri 63108

RE: Willie Boyd

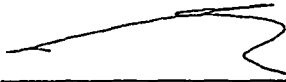
Dear Frank:

Please find enclosed a copy of police report 95164930, lab report sheet 511125, the registration sheet for Mr. Jackson, and a copy of the LID photo of Billy Jackson form 11-7-95. I am also enclosing the property receipts and vouchers for the guns from this incident. Also, a gun lab report for the shotgun will be forthcoming and a fingerprint report showing that the fingerprints of Billy Jackson were Willie Boyd's. A fingerprint expert from the St. Louis Metropolitan Police Department LID section will testify to this. Also, Stubits will testify that the weapons discovered were transported in interstate commerce.

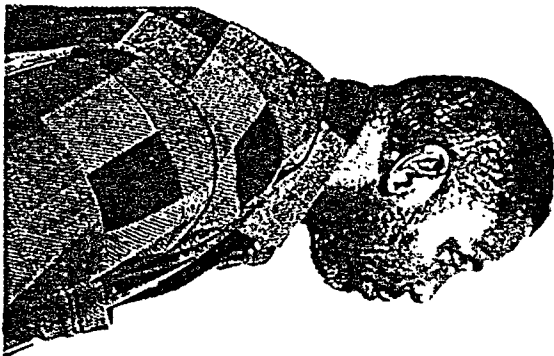
I also plan on using the crack discovered on the floor and the money in Boyd's pocket as 404(b) evidence. I am also enclosing medical records of Boyd from Franklin County Jail.

Respectfully submitted,

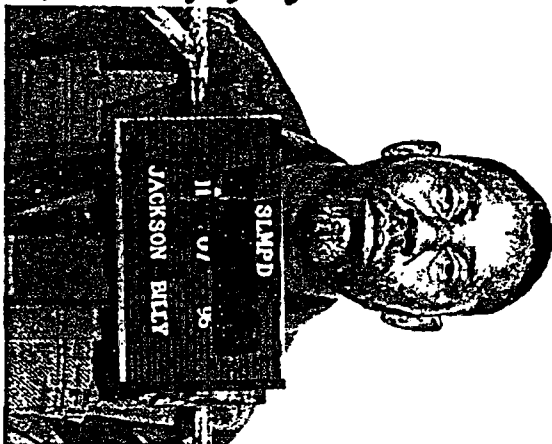
EDWARD L. DOWD, JR.
United States Attorney


GARY M. GAERTNER, JR.
Assistant United States Attorney

Appendix-F



105979



Distribution:

White - Laboratory Division
Green - Warrant Information
Canary - Computer Section
Pink - Dist./Div. of Occurrence
Goldenrod - Submitting Officer

METROPOLITAN POLICE DEPARTMENT - CITY OF ST. LOUIS

LABORATORY DIVISION - NARCOTICS ANALYSIS REPORT

LAB. NO. 511125

C.N. 164930

A.R. 6-3334

SUBJECT JACKSON
(Last Name)

BILLY

(First Name)

M.

(Middle Name)

ADDRESS 1403 DESOTO AVE.

CHARGE VMCSL

DELIVERED BY GARRETT

DSN 2917

DIST/DIV 306/331

RECEIVED BY TURNER

DSN 1098

DATE REC'D 11-7-95

Specimen No.

Q-1

Description

one individually wrapped off-white chunk

Analysis

Cocaine base

wt 0.25 grams

Controlled Substance Schedule 1 2 3 4 5



FAILED TO DISCLOSE A CONTROLLED SUBSTANCE

Specimen No.

Description

Analysis

Controlled Substance Schedule 1 2 3 4 5



FAILED TO DISCLOSE A CONTROLLED SUBSTANCE

Specimen No.

Description

Analysis

Controlled Substance Schedule 1 2 3 4 5



FAILED TO DISCLOSE A CONTROLLED SUBSTANCE

Specimen No.

Description

Analysis

M.S.C.S.L. SCHEDULE 1 2 3 4 5



FAILED TO DISCLOSE A CONTROLLED SUBSTANCE

Specimen No.

Description

Analysis

Controlled Substance Schedule 1 2 3 4 5



FAILED TO DISCLOSE A CONTROLLED SUBSTANCE

DISPOSITION OF EVIDENCE:

Retained in Laboratory Division ☐Destroyed ☒

EXAMINED BY

G. J. [Signature]

CRIMINALIST

Date

11/7/95

Time

0909

Use separate form for each arrested subject.
If more space is needed use additional forms.

RPIR1000
11/07/95

ST. LOUIS METROPOLITAN POLICE DEPARTMENT
POLICE INCIDENT REPORTING SYSTEM
INCIDENT REPORT

CMPLT # 9516493

I N C I D E N T

Incident Type: 182999 VMCSL-GENERAL POSSESSION
Complaint # Status: CLEARED/ARREST
Orig./Supplement: ORIGINAL
Dist/Precinct/Beat: 06 612 6262
Origination Desc: RADIO
Day of Week: MON
Date of Occurrence: 11/06/95 to 11/06/95
Time of Occurrence: 22:00 to 22:00
Location Name: COLE'S MOTOR LODGE Ngh: PENROSE
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
Type of Premises: HOTEL/MOTEL
Invst Followup(Y/N): N
Assignment:
Date: 11/07/95
Time: 22:00
Asgmt. Code: 331 Car No: 6344
DSN/Officer: 6144 ROBERT FROEHLICH
Assisted by: 2917 BOBBY GARRETT

ANY WEAPONS DISCHARGED BY AN OFFICER(Y/N)? N

Summary: THE HEREIN NAMED DETECTIVES WHO ARE
MEMBERS OF THE AREA III SPECIAL OPERATIONS TASK FORCE
FOLLOWING A SHORT INVESTIGATION ARRESTED TWO INDIVIDUALS AND
SEIZED A QUANTITY OF SUBSTANCE, BELIEVED TO BE CRACK
COCAINE, THREE FIREARMS, AND \$775 IN U.S. CURRENCY.

V I C T I M

NAME: LAST STATE OF MISSOURI
DOMESTIC INCIDENT: NO
REL. TO SUSPECT: RELATIONSHIP UNKNOWN
BIAS INCIDENT: NO

P R O P E R T Y

Property Status: EVIDENCE
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 1
Property Type: CONSUMABLE GOODS
Characteristics: ONE PLASTIC BAG CONTAINING
AN OFF WHITE ROCK LIKE

Estimated Value: SUBSTANCE \$ 0
Property Disp: TAKEN TO LABORATORY
Recovery:
Loc. Recovered: FLOOR
Date: 11/07/95
Address:
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
DSN/Officer: 2917 GARRETT
Assignment Code: 331
Owner:
Name: J (SUSPECT)
BILLY

P R O P E R T Y

Property Status: OTHER
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 1
Property Type: CURRENCY/NOTES
Characteristics: \$775 U.S. CURRENCY IN
VARIOUS DENOMINATIONS
Estimated Value: \$ 775
Property Disp: ASSET FORFEITURE
Recovery:
Loc. Recovered: PERSON OF SUSPECT
Date: 11/07/95
Address:
Street: 4014 N UNION
City/State: ST. LOUIS MO
DSN/Officer: 2917 GARRETT
Assignment Code: 331
Owner:
Name: J (SUSPECT)
BILLY

P R O P E R T Y

Property Status: EVIDENCE
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 7
Property Type: FIREARM
Brand: RUGER
Model: SECURITY 6
Characteristics: .357 MAGNUM BLUE STEEL
REVOLVER WITH 3" BARRELL
LOADED W/6 LIVE ROUNDS

Estimated Value: \$ 0
Property Disp: TAKEN TO LABORATORY
Recovery:
Loc. Recovered: FLOOR
Date: 11/07/95
Address:
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
DSN/Officer: 2917 GARRETT
Assignment Code: 331
Owner:
Name: J (SUSPECT)
BILLY

P R O P E R T Y

Property Status: EVIDENCE
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 5
Property Type: FIREARM
Brand: SMITH & WESSON
Serial Number: 58645
Characteristics: .45 CALIBER BLUE STEEL
REVOLVER WITH 6" BARRELL WITH
4 LIVE ROUNDS SHP951106-231241
Estimated Value: \$ 0
Property Disp: TAKEN TO LABORATORY
Reference Number: G694126578
Recovery:
Loc. Recovered: FLOOR
Date: 11/07/95
Address:
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
DSN/Officer: 2917 GARRETT
Assignment Code: 331
Owner:
Name: H (SUSPECT)
LARRY

P R O P E R T Y

Property Status: EVIDENCE
Damaged (Y/N): N
Held as Evidence: Y
Quantity: 1
Property Type: FIREARM
Brand: ACIER VICKERS
Model: ITALIAN

Serial Number: 4478
Characteristics: .20 GAUGE DOUBLE
BARRELL BLUE STEEL SHOTGUN
W/2 RNDS SHP951106-231715
Estimated Value: \$ 0
Property Disp: TAKEN TO LABORATORY
Reference Number: G694127173
Recovery:
Loc. Recovered: IN CORNER IN SOUTHEAST CORNER
Date: 11/07/95
Address:
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
DSN/Officer: 2917 GARRETT
Assignment Code: 331
Owner:
Name: J (SUSPECT)
BILLY

S U S P E C T

NAME: LAST JACKSON
FIRST BILLY M
AGE 044 TO 044
WEIGHT 195 TO 195
HEIGHT 508 TO 508
RACE BLACK
SEX MALE
BUILD MEDIUM
COMPLEXION MEDIUM
EYE COLOR BROWN
HAIR COLOR BLACK
HAIR STYLE AFRO/NATURAL
HAIR LENGTH MEDIUM
FACIAL HAIR COMBINATION BEARD/MUSTACHE
CLOTHING BLUE SWEATER
CLOTHING BLACK SHIRT/BLOUSE

Birth:

Date: 08/19/51
Location: MO
Social Security No: 493-62-5241
Marital Status: SINGLE
Suspect Status: ADULT ARREST
Injury:

Description: NOT APPARENT

RESIDENCE ADDRESS:

Street: 1403 E DESOTO
City/State: ST. LOUIS MO 63107
Telephone:(Res) (314) 652-0222 Ext. 9000

Arrest:

Date: 11/07/95
Time: 22:00
Officer/Asgmt: 2917 GARRETT ASGMT # 331
Assisted by: 4271 BEYERSDORFER
Local ID Number: 122414

Miranda:

Yes/No: Y
Officer: 6144 FROEHLICH

Charge:

Charge Descr: 1) VMCSL POSSESSION
OF COCAINE

Crime Catgry: FELON Date: 11/07/95

Document No: CN 95-164930

Charge Descr: 2) UUW/CCW

Crime Catgry: FELON Date: 11/06/95

Document No: CN 95-164930

S U S P E C T

NAME: LAST HASSELL
FIRST LARRY
AGE 045 TO 045
WEIGHT 145 TO 145
HEIGHT 503 TO 503
RACE BLACK
SEX MALE
BUILD MEDIUM
COMPLEXION DARK
EYE COLOR BROWN
HAIR COLOR BLACK
HAIR STYLE AFRO/NATURAL
HAIR LENGTH SHORT
FACIAL HAIR COMBINATION BEARD/MUSTACHE
CLOTHING GREEN SHIRT/BLOUSE
CLOTHING BLUE JEANS

Birth:

Date: 06/21/50
Location: MO
Social Security No: 488-52-8974
Marital Status: DIVORCED
Suspect Status: ADULT ARREST
Injury:

Description: NOT APPARENT

RESIDENCE ADDRESS:

Street: 4957 LILBURN
City/State: ST. LOUIS MO 63115
Telephone:(Res) (314) 389-5610 Ext.

Arrest:

Date: 11/06/95
Time: 22:00
Officer/Asgmt: 6144 FROEHLICH ASGMT # 331
Assisted by: 2917 GARRETT
Local ID Number: 111262

Miranda:

Yes/No: Y
Officer: 6144 FROEHLICH
Charge Descr: 1) VMCSL POSSESSION
COCAINE

Crime Catgry: FELON Date: 11/07/95
Document No: CN 95-164930
Charge Descr: 2) UUW CARRYING
Crime Catgry: FELON Date: 11/06/95
Document No: CN 95-164930

Following are the circumstances and events that led up to and surrounded the arrest of the herein named individuals.

At approximately 6:30 p.m. this date, Detectives Bobby Garrett, DSN 2917, Charles Byersdorfer, DSN 4271, and I (Detective Robert Froehlich, DSN 6144) met with a confidential source who advised that individuals operating out of Cole's Motor Lodge, 4531 Natural Bridge, were engaged in the sale of Crack/Cocaine.

It should be noted that this source has been proven reliable in the past as information received from this source resulted in the arrest and conviction of more than twenty individuals who, at the time of their arrest, were found in possession of quantities of various controlled substances, as well as firearms and other contraband.

Continuing with this investigation, at approximately 9:10 p.m., the herein named detectives set up and maintained a surveillance on the aforementioned motel. During this surveillance, we observed seven individuals approach the front door of the motel and being allowed entry, approached a door leading to a room situated on the west side of the premises. These individuals would knock on the door leading to this room, at which time a short transaction involving currency and other unknown items would take place. These individuals would leave the motel and walk from the area.

At approximately 10:00 p.m., myself, along with Detectives Garrett and Byersdorfer, entered the motel, which was open for business, and approached the aforementioned door, leading to what was later found to be an office. Upon knocking on this door, same was opened by an individual, later identified as Billy J. Upon seeing the officers, this subject attempted to close the door, pushing same towards the officers.

During this struggle to enter the premises, we could hear a toilet flushing inside this room.

At this point, the officers were allowed entry to the premises and almost immediately located the herein mentioned firearms and a plastic bag containing suspected Crack/Cocaine. During this incident, subject Larry H. exited a restroom, which was located on the north side of the room.

Both subjects were placed under arrest and advised relative to their Constitutional Rights, as outlined in MPD Form GEN-19.

Subject Billy J. secured the premises by locking both doors, afterwhich time the arrested subjects were conveyed to the Area III Command Station where they were booked and charged as indicated herein.

While at the Area III Station, the investigating officers seized \$775 from arrested subject Billy J. This currency was believed to be proceeds from the illegal sale of Crack/Cocaine. The currency was counted in the presence of the arrested subject and recorded on MPD Form GEN-74 (Property Receipt), which was signed by the arrested subject and hereto attached.

Both of the arrested subjects were reminded of their Constitutional Rights, and questioned relative to this incident. Subject Billy J. stated that he is friend's with the owner of the aforementioned hotel and that he was on the premises waiting for his friend, adding that he did not take part in any illegal activity. In response to questioning, this individual stated that he kept a firearm for his own protection.

Arrested subject Larry H. also waived his Constitutional Rights and stated that he was merely visiting subject Billy J. and that he did not have a firearm or any type of controlled substance, concluding in stating that he is on parole and feared that his parole would be violated.

A record and wanted search via REJIS computer revealed that both of the arrested subjects have extensive police records indicated with this department, with no active wanted on file.

Criminal Information Sheets and a Warrant Disposition Report were prepared, as warrants will be applied for in the a.m. of 11/7/95 by the herein named arresting officers.

ATTACHMENT:

PROPERTY RECEIPT

EVIDENCE RECEIPT

METROPOLITAN POLICE DEPARTMENT

City of St. Louis

Laboratory

Date Rec'd. 57/125

Laboratory No. 25 NOV 1:16

Victim Stetson

Address _____

Suspect Jackson, Billy

District 306/331

Address 1403 Rusk

Officer Harrett 2917

Offense Wm c 12

Date Occurred 11-6-95

Arrest Register No. WR

Complaint No. 164930

Article Smith & Wesson

Make

Caliber 455

Style Rev 58605

No.

Delivered By Det. [Signature]

Received By Sumner 1091

Returned To 011112

Date DEC 4 1995

MPD FORM LAB-13 (R-2)

EVIDENCE RECEIPT

METROPOLITAN POLICE DEPARTMENT

City of St. Louis

Laboratory

Date Rec'd. 4/27/95

Laboratory No. 511125

Victim Stetson

Address _____

Suspect Billy Jackson

District 306/331

Address 1403 Rusk

Officer Harrett 2917

Offense Wm c 12

Date Occurred 11-6-95

Arrest Register No. WR

Complaint No. 164930

Article Ruger

Make

Caliber 357 MD&R

Style DEPRAG

No.

Delivered By Det. [Signature]

Received By Sumner 1091

Returned To 011112

Date DEC 4 1995

MPD FORM LAB-13 (R-2)

EVIDENCE RECEIPT

METROPOLITAN POLICE DEPARTMENT

230

City of St. Louis

22nd St

Laboratory

Date Rec'd. 11/7/95 511125

Laboratory No. 25 NOV 7 1:17

Victim State 4 min

Address

Suspect Billy M. Jones

Dist. 306/331

Address 1403 Alameda Ave.

Officer Harvett 2917

Offense N.M.C.L.

DEC - 6 1995

Date Occurred 11-8-95

Arrest Register No.

Complaint No. 164930

Article 1 Glock 22

Style 4478

ITALY ACTER VIKERS

No.

RICHLAND

Delivered By [Signature]

Received By [Signature]

Returned To

011099

Date

DEC 4 1995

MPD FORM LAB-13 (R-2)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

WILLIE E. BOYD

)
)
)
)
) Cause No. 4-97CR-301-SNL
)
)
)
)

DEFENDANT'S MOTION TO COMPEL INSPECTION AND DISCOVERY

Comes now Defendant, Willie E. Boyd, through counsel, and respectfully moves the court for an order directing the United States of America, its attorneys, agents, and any and all other officials, having knowledge of facts pertaining to this case, to produce and permit Defendant's counsel to inspect and copy each of the following:

1. Rule 16. Federal Rules of Criminal Procedure

(a) Statements of the Defendant (FRCrP 16(a)(1)(A))

Written or Recorded statements: Any written or recorded statements made by the Defendant within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known to you.

Oral Statements: That portion of any written record, including original notes, containing the substance of any relevant oral statements made by the Defendant whether before or after arrest in response to

interrogation by any person then known to the Defendant to be a government agent or other law enforcement officer regardless of whether the government intends to use the statements at trial. The substance of any oral statements made by the Defendant whether before or after interrogation by any person then known by the Defendant to be a government agent or law enforcement officer that the government intends to use in any manner at trial regardless of whether any written record of the statement exists. In the event the government intends to use such an oral statement at trial, I request that it be reduced to writing and produced.

This request includes the substance of the Defendant's response to Miranda warnings.

I request that, in responding to this request for Defendant's statements, you ask each law enforcement agency involved in investigating or prosecuting this case to search its files for responsive information.

(b) Defendant's Criminal Record

A copy of Defendant's criminal record within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known to you.

This request includes the Defendant's entire criminal record, including all arrests and offenses regardless of severity. FRCrP 16(a)(1)(B). It includes discovery of

all matters known to the government, or that may become known with due diligence, that may affect the defendant's criminal history score pursuant U.S.S.G. Chapter 4.

(c) Documents and Tangible Objects

The inspection, copying or photographing of books, papers, documents, tangible objects, buildings or places or copies or portions thereof, that are within the possession, custody or control of the government and are material to the preparation of the defense, are intended for use by the government of the defense, are intended for use by the government as evidence-in-chief at trial, or were obtained from or belong to the Defendant regardless of the manner in which such material came into the possession of the government. See FRCrP 16(a)(1)(C). Separately identify any materials the government intends to use at trial-in-chief.

(d) Reports of Scientific Tests and Other Examinations

All results or reports of physical or mental examinations, and scientific tests or experiments within the possession, custody or control of the government or by the existence of due diligence may become known to you, material to the preparation of the defense or are intended for use by the government as evidence-in-chief at trial. See FRCrP 16(1)(D).

In the event that results of any scientific tests were reported orally to you or to any government official

or law enforcement officer, I request that you cause a written report of the results to be made and produced.

In complying with their request, please contact any law enforcement agency involved in the investigation or prosecution of this case to determine whether relevant examinations or tests were conducted, and, if so, produce the results or reports.

(e) Summaries of Expert Witness Testimony

In the event you intend to offer any expert testimony under the Federal Rules of Evidence through any witness, including a government agent or other law enforcement officer, I request that you prepare and produce a summary of the witness's opinion testimony, the grounds or basis for any such opinion testimony and the qualification of the expert witness. See FRCrP 16(a)(1)(E).

2. Rule 12(d)(2). Federal Rules of Criminal Procedure

I request notice of all evidence the government intends to use in its case-in-chief discoverable under FRCrP 16 that may be subject to a motion to suppress.

3. Rule 404(b). Federal Rules of Evidence

I request notice of any "other offense" evidence you intend to introduce in your case-in-chief pursuant to FRE 404(b). In addition, at the time you identify any "other offense" evidence you intend to offer in rebuttal, please produce and identify such evidence separately.

4. Rule 1006. Federal Rules of Evidence

In the event you intend to call a summary witness at trial or present evidence in the form of a chart, I request production a reasonable time prior to trial of the original documents or tape recordings on which such testimony or chart is based. See FRE 1006.

5. Brady Material

Pursuant to Brady v. Maryland, 373 U.S. 83 (1963), I request any exculpatory evidence material to guilt or punishment. Should you have a question with regard to whether certain information constitutes Brady material, or when it must be produced, I request that you present the information to the court for review in camera to resolve these issues. In the event you believe that any Brady material is also Jencks Act material I request that you present it to the court for in camera review and advise me of the general nature of the evidence. However, I request that you produce prior to the trial all Brady material that is not covered by the Jencks Act.

6. Jencks Act Material

I request pretrial production of Jencks Act Material within a reasonable time prior to the day of a witness's direct examination. If you produce pretrial Jencks Act material, the Defendant will reciprocate in kind.

7. Miscellaneous

(a) Contact with Client

Please advise all investigating officers in this case that they should not initiate any contact with my client, and that any communication intended for my client be made through me.

(b) Continuing Discovery Obligation

This discovery request is a continuing request. See FRCP 16(c). Please notify me immediately as additional material becomes available.

(c) Sentencing Information

The Sentencing Commission has encouraged prosecutors prior to the entry of a plea of guilty to disclose to a Defendant the facts and circumstances of the offense and offender characteristics, then known to the prosecuting attorney, that are relevant to the application of the sentencing guidelines. U.S.S.G. §6B1.2, p.s. comment. To insure that my client can make an informed and intelligent decision regarding the possible or probable consequences of pleading guilty or requesting a trial, I request that you advise me of any facts and circumstances presently known to the government or reasonably discoverable, that relate to sentencing issues under the sentencing guidelines, or to calculation of the applicable sentencing guideline range, should my client be convicted of any one or more of the charges in the indictment.

More specifically, I request that as soon as possible you provide me with the following information as to this case:

- What guidelines does the government contend are applicable?
- What aggravated offense characteristics, if any, does the government contend are applicable?
- Upon what grounds, if any, will the government seek a departure from the guidelines?
- What criminal history category does the government contend is applicable?

I am requesting any information that would bear upon computation of the following sentencing guideline factors:

- Base of the offense level
- Specific offense characteristics
- Relevant conduct
- Adjustments or criminal history

8. All impeachment evidence, including, but not limited to, any and all information that is favorable to defendant, Willie E. Boyd, or which may lead to favorable information or which may be used for impeachment of government witnesses.

9. Disclosure of any and all statements of any and all individuals which may be inconsistent in whole or in part with any statements made by the same individuals.

10. The names and current addresses of all witnesses appearing before the respective Grand Juries that returned the Original and Superseding Indictments in this case.

11. State whether any witness before the respective Grand Juries summarized all of the testimony or events given before the particular Grand Jury in connection with this indictment. If the answer is in the affirmative, state whether the Grand Jury was specifically and clearly advised that it was receiving summarized testimony.

12. Copies of all documents and exhibits presented to the respective Grand Juries.

13. Summaries and copies of the statements of witnesses not presented or conveyed to the respective Grand Juries.

14. A list of the names and titles of each Government employee who was present in the respective Grand Jury rooms during the taking of any testimony (other than his own) in the course of the investigations of this case, or who was present during any other portion of the respective Grand Juries' proceedings herein.

15. A list of the names and titles of each Government employee who, prior to the return of the indictment herein, examined, outside of the respective Grand Juries' presence, any document or other item obtained by means of any Grand Jury subpoena issued in the course of the investigation of this case.

16. A copy of any letter or other document authorizing the examination of Grand Jury materials by each of the Government employees.

17. A list of all Grand Jury subpoenas issued for documents and/or testimony in this case.

18. State whether the respective Grand Juries were empaneled.

19. State the date the respective Grand Juries were empaneled.

20. State the date the respective Grand Juries returned indictments or concluded investigation.

21. If the respective Grand Juries were regular Grand Juries, state whether they heard evidence with regard to matters involving other defendants. If yes, how many additional matters did the Grand Juries hear?

22. State the manner in which the Grand Jurors were selected.

23. State whether the indictments in their final form were drafted by the prosecutor before the respective Grand Juries voted to return the indictments.

24. Furnish the Defendant or his counsel with a copy of the attendance record of each Grand Juror who voted those indictments.

25. State whether any Grand Juror who voted to return any indictment was not continuously present when all the evidence underlying the respective indictments were presented to the Grand Jury if such is not disclosed by an examination of the attendance records as herein above requested.

26. State whether any witness before the respective Grand Juries testified with regard to circumstances or transactions about which he had no personal knowledge and if so, whether the respective Grand Juries were clearly and specifically advised that

they were receiving hearsay testimony. This question is supplemental and not repetitive of question 11 supra.

27. State whether the respective indictments, Original and Superseding, in their final forms were exhibited or read verbatim to each Grand Juror before she/he voted the particular indictment.

28. Summaries and copies of all statements of witness, Bryant Troupe, not presented to the respective Grand Juries in this case and in all other cases wherein said witness testified on behalf of the Government.

29. All minutes and transcriptions of said Bryant Troupe's testimony before the respective Grand Juries returning the Original and Superseding Indictments in this case.

30. Copies of the minutes of the respective Grand Juries, which returned the Original and Superseding Indictments against Defendant, Willie E. Boyd, in this case, including, but not limited to, complete transcriptions of the testimony of all witnesses who testified before the respective Grand Juries.

31. Defendant asserts that the above discovery requests represent demands which are continuing in nature and which require the Government to turn over such items as may come into their possession at a later date.

32. Defendant hereby demands that the Government comply with the above requests by forwarding the items within its possession to counsel for the defendant no later than sixty (60) days before the next scheduled Jury Trial Date.

Respectfully Submitted,

Carl L. Epstein
Carl L. Epstein, #8083-49
Attorney for Defendant

Frank R. Fabbri, III
Frank R. Fabbri, III
Local Counsel

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing has been served upon Gary M. Gaertner, Jr., Assistant United States Attorney, U.S. Court and Custom House, 1114 Market Street, Room 401, St. Louis, Missouri 63101 by depositing same in the United States Mail, First Class, postage prepaid, this 22nd day of December, 1997.

Carl L. Epstein
Carl L. Epstein, #8083-49
Attorney for Defendant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RECEIVED

JAN 13 1998

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIE E. BOYD,

Defendant.

No. S1-4:97CR301 SNL

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL INSPECTION
AND DISCOVERY

COMES NOW the United States of America, by and through the United States Attorney for the Eastern District of Missouri, Edward L. Dowd, Jr. and Gary M. Gaertner, Jr., Assistant United States Attorney for said District, and files its response to defendant's pretrial motion.

1. The Government has complied with Rule 16 discovery and will continue to do so.

2. The Government has provided all discoverable evidence that could be subject to a motion to suppress.

3. The Government has provided you with Rule 404(b) notice and the Government will be unaware of any rebuttal evidence until after the defense has put forth their case.

4. The Government will abide by Rule 1006.

5. The Government is aware of its obligations under Brady and has complied with Brady and will continue to do so.

6. Jencks material will be produced the Friday prior to trial which is contingent on the defense turning over their Jencks material.

Appendix-H

7. A. The Government is aware of its obligations regarding represented parties.

B. The Government will abide by Rule 16.

C. Pursuant to the Indictment, the defendant is subject to punishment pursuant to Title 18, U.S.C. §924(e).

8 and 9. The Government is aware of its obligation to turn over impeachment material and inconsistent statements.

10-30. Defendant has no basis for his assertion that the evidence before the grand jury included improper or illegally obtained evidence. However, even if these wholly unsupported allegations were true, this would not be a basis to dismiss the indictment. There is a strong presumption of regularity attached to the grand jury. United States v. Boykin, 679 F.2d 1240, 1246 (8th Cir. 1982); United States v. West, 549 F.2d 545, 554 (8th Cir.), cert. denied, 430 U.S. 956 (1977). The defendant bears a heavy burden in seeking to over turn the presumption that an indictment has been returned by a legally constituted body acting on competent evidence before it.

Since the indictment is legally sufficient on its face, there is no basis for further inquiry into the manner in which the indictment was obtained. United States v. Calandra, 414 U.S. 338, 349-52 (1974); Costello v. United States, 350 U. S. 359, 363-64 (1956).


Defendant's vague, unsupported allegations of grand jury irregularities do not rise to the level of particularized need set forth in United States v. John Doe, Inc. 481 U.S. 102, 112 n.8 (1987) and United States v. Sells Engineering, 463 U.S. 418, 419

(1983). Consequently, defendant's motion contained in requests 10-30 should be denied.

31. The Government will abide by Rule 16.

Respectfully submitted,

EDWARD L. DOWD, JR.
United States Attorney




GARY M. GAERTNER, JR., #3167
Assistant United States Attorney
1114 Market Street, Room 401
St. Louis, Missouri 63101
(314) 539-2200

CERTIFICATE OF SERVICE

A copy of the forgoing was faxed this 31st day of January, 1998,
to:

Mr. Carl Epstein
Attorney At Law
317-231-1106



GARY M. GAERTNER, JR.
Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

WILLIE E. BOYD

Cause No. 4-97CR-301-SNL

DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF IDENTITY
OF ALL INFORMANTS AND TO PRODUCE SAID
INFORMANTS AND EACH OF THEM

Comes now Defendant, Willie E. Boyd, by counsel, and in support of this motion, the Defendant states:

1. That at the evidentiary hearing of October 6, 1997 Deputy United States Marshall Adler testified that he had received evidence that Defendant, Willie E. Boyd, was residing at 2091 Victory Way Lane, and that the information was "Confidential Informant Information". (Transcript of Evidentiary Hearing, October 6, 1997, page 33, line 23.)

2. That the aforesaid testimony recites that said law enforcement officer's information was related by an undisclosed informant(s).

3. That the informant must be reliable and the information that he relays must be detailed and specific as opposed to general allegations. Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969).

4. That Adler's testimony and all other documentation made available through discovery, without more, fails in both respects

Appendix-I

inasmuch as it does not indicate that the informant(s) had given information in the past which lead to the arrest or conviction of other individuals. See Commonwealth v. Rojas, 403 Mass. 483, 531 N.E.2d 255 (1988).

5. That the information allegedly conveyed by the informant(s) to Adler also falls short of the requirements of Spinelli and Aguilar in that neither affidavits nor testimony state whether the informant(s) ever visited the premises identified as 2091 Victory Way, observed the residence, or that the informant(s) knew Willie E. Boyd, the Defendant.

6. That the Government must disclose the identity of the so-called informant(s) or this Court will have no way of knowing how the informant(s) obtained the information given to the Government.

7. That the Government must disclose the identity of all informants in this case, and such disclosure is required when the contents of said informant's information is relevant and helpful to the defense. Roviaro v. United States, 353 U.S. 53, 1 L.Ed.2d 639, 775 S.Ct. 623 (1957).


WHEREFORE, Defendant, Willie E. Boyd, by counsel prays that the Court will order the Government to disclose the identity of all informants in this case, and to produce them, and for all other relief just and proper in the premises.

Carl L. Epstein
Carl L. Epstein, #8083-49
Attorney for Defendant

Frank R. Fabbri III
Frank R. Fabbri, III
Local Counsel

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing has been served upon Gary M. Gaertner, Jr., Assistant United States Attorney, U.S. Court and Custom House, 1114 Market Street, Room 401, St. Louis, Missouri 63101 by depositing same in the United States Mail, First Class, postage prepaid, this 13th day of January, 1998.



Carl L. Epstein, #8083-49
Attorney for Defendant

Carl L. Epstein
Attorney at Law
First Indiana Plaza
135 N. Pennsylvania Street
Suite 1150
Indianapolis, Indiana 46204

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

WILLIE E. BOYD

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) Cause No. 4-97CR-301-SNL
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DEFENDANT'S COMBINED MOTION FOR FURTHER SUPPRESSION OF EVIDENCE
AND FOR FULL DISCLOSURE OF INFORMANT'S IDENTITY WITH
RESPECT TO INCIDENT OF NOVEMBER 7, 1995

Comes now Defendant, Willie E. Boyd, by counsel, and in support of this motion, states and alleges the following:

1. That it is alleged Metropolitan Police Detectives Bobby Garrett, Charles Byersdorfer, and Robert Fraelich met with a confidential informant on November 7, 1995, and that they were then advised that individuals were engaged in the sale of crack cocaine at Cole's Motor Lodge at 4531 Natural Bridge, St. Louis, Missouri.

2. That while the detectives indicate that the informant provided past information resulting in the conviction of others, the detectives evidently did not obtain detailed and specific information from said informant, as opposed to general allegations. Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969).

3. That the information allegedly conveyed to said detectives, without more, falls short of the requirements of the foregoing case law in that neither affidavits nor testimony state whether the informant ever visited Cole's Motor Lodge at 4531

Appendix-J

Natural Bridge or whether said informant ever visited the particular room or location within said establishment wherein the subject then identified as Billy Jackson was found. See Governments Memorandum and Response to Defendant's Pretrial Motions pages 1 through 7 annexed hereto and made a part hereof.

4. That the Government must disclose the identity of the so-called informant or this Court will have no way of knowing how the informant obtained the information given to said detectives.

5. That the Government's failure to properly establish the reliability of said informant necessitates that said informant's unreliable information and all fruits of said information be suppressed. Roviaro v. United States, 353 U.S. 53, 1 L.Ed.2d 639, 775 S.Ct. 623 (1957).

WHEREFORE, Defendant, Willie E. Boyd, by counsel, prays that the Court will review this motion at the evidentiary hearing of January 30, 1998; that the Court will thereupon order the Government to disclose the identity of the Confidential Informant referred to in its Memorandum and Response to Defendant's Pre-Trial Motions, and that the Court will grant Defendant's request for suppression of all evidence pertaining to the November 7, 1995 incident, and all other relief just and proper in the premises.

Carl L. Epstein
Carl L. Epstein, #8083-49
Attorney for Defendant

Frank R. Fabbri, III
Frank R. Fabbri, III
Local Counsel

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing has been served upon Gary M. Gaertner, Jr., Assistant United States Attorney, U.S. Court and Custom House, 1114 Market Street, Room 401, St. Louis, Missouri 63101 by depositing same in the United States Mail, First Class, postage prepaid, this 13th day of January, 1998.

Carl L. Epstein
Carl L. Epstein, #8083-49
Attorney for Defendant

Carl L. Epstein
Attorney at Law
First Indiana Plaza
135 N. Pennsylvania Street
Suite 1150
Indianapolis, Indiana 46204

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

St. Louis, Missouri
January 30, 1998
11:42 a.m.

vs.

Cause No. 4:97CR301 (SNL)

WILLIE E. BOYD;
aka Michael Francis Young;
aka Billy M. Jackson,

Defendant.

TRANSCRIPT OF THE EVIDENTIARY HEARING
BEFORE THE HONORABLE MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

TRANSCRIPT ORDERED BY: Gary M. Gaertner, Jr.

APPEARANCES:

For the Plaintiff:

Gary M. Gaertner, Jr.
Asst. U.S. Attorney
1114 Market Street
St. Louis, Missouri 63101
(314) 539-2200

For the Defendant:

Frank R. Fabbri
4235 Lindell
St. Louis, Missouri 63108
(314) 534-1797

Carl L. Epstein
135 N. Pennsylvania Street
Suite 1150
Indianapolis, Indiana 46204
(317) 684-5660

Recorded By:

Katie Stamm, Court Reporter

Transcribed By:

Carter Transcription
& Reporting Company

Appendix-K

1 MR. EPSTEIN: Your Honor, I had filed a motion
2 asking for statements from those particular witnesses, that's
3 among the motions that are filed here today. And I hadn't
4 received those statements and there hadn't been any delibera-
5 tion on that motion. I wanted to find out, you know, through
6 those statements specifically what areas I would go into, and
7 that's why I didn't subpoena the officers.

8 THE COURT: Well, I guess I'm not clear. If you
9 filed a motion, -- a discovery motion, that is in contravent-
10 ion of the Court's order. Discovery is to be handled by
11 requests, informally, before the parties. If you have a good
12 faith belief that a piece of evidence exists, and that you
13 have a legal basis for believing you are entitled it, and you
14 have discussed it with the prosecutor and the prosecutor
15 fails to turn it over, you may certainly file a Motion to
16 Compel. But, Motions for Discovery are not to be filed with
17 the Court.

18 MR. EPSTEIN: We had used discovery letters and
19 the particular information that I was seeking, you know, in
20 that respect, hadn't come forth from the prosecuting attor-
21 ney.

22 THE COURT: And, I mean, did Detective Garrett
23 write a report in this case?

24 MR. GAERTNER: Your Honor, I don't understand,
25 Mr., -- because I've turned over all the Police Reports with

1 regard to this case several months ago to him. There's
2 nothing, -- there's no statements of Mr., -- Officer Garrett
3 or Officer Byersdorfer besides what's contained in the Police
4 Reports. I've given him all the Weapons Reports. I've
5 satisfied all Rule 16, and I've gone beyond giving any infor-
6 mation. Mr. Epstein has filed Motions to Compel Evidence and
7 there's nothing that I am aware of that I physically have
8 that I haven't given him. You know, I have documentation of
9 all that. Mr. Epstein has had those reports and has had
10 everything with regard to this case herein. So, I don't
11 understand what Mr. Epstein's problem is with regard to the
12 evidence or discovery.

13 MR. EPSTEIN: Your Honor, what I do have is a, --
14 two narratives. One narrative that, apparently, was part of
15 a Police Report pertaining to the incident of November 6,
16 1995. Another one is called a Response to Defense's Motion,
17 which is sort of a verbatim of that narrative that was pre-
18 pared by Mr. Gaertner. If he tells me that there are no
19 other documents in that regard, and there are no other re-
20 ports in that regard, and that there are no other investiga-
21 tive memorandums pertaining to any of these other officers'
22 participation in the arrest or search on November 6, 1995,
23 and represents that to the Court, I'll be satisfied with
24 that, or there's nothing beyond the scope of what's been
25 provided in that regard already, I'll be satisfied with that.

1 As long as he's precluded from making use of anything beyond
2 the perimeters of those documents that he's provided to me.

3 MR. GAERTNER: Mr. Epstein has received the Police
4 Report in this case and, also, my motion that I filed con-
5 cerning this case. It's filed with the Court. And Mr.
6 Epstein has received everything with regard to the case. The
7 Government is unaware of any reports besides what has been
8 given to Mr. Epstein from Officer Froehlich, Officer Garrett
9 or Officer Byersdorfer. And I'll rest upon that in open
10 Court. There's no further reports that the Government is
11 aware of. If the Government becomes aware of anything, I'll
12 turn it over, but I can't imagine the Government becoming
13 aware of anything.

14 THE COURT: All right.

15 MR. EPSTEIN: So far as subpoenaing of, you know,
16 other officers, your Honor, also, we are in
17 Indianapolis, and in the Indianapolis Division, usually when
18 the Government is placing witnesses on the stand in response
19 to a Motion to Suppress evidence or any other type of motions
20 proceeding, usually the Government brings those, -- all of
21 their witnesses in that regard. And has them available
22 without me having to subpoena those.

23 THE COURT: Well, this, --

24 MR. GAERTNER: Mr. Epstein is also represented by
25 a, -- I mean, Mr. Boyd is also represented by local counsel,

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

WILLIE E. BOYD

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) Cause No. 4-97CR-301-SNL
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DEFENDANT'S MEMORANDUM IN SUPPORT OF REQUEST FOR
DISCLOSURE OF GRAND JURY MINUTES AND PROCEEDINGS

The defense has requested the government's production of the grand jury minutes and proceedings in this case, particularly the testimony of certain government witnesses who were presented to the grand jury.

The government has opposed the request premised upon the secrecy provisions contained within Rule 6(e) of the Federal Rules of Criminal Procedure.

The defense maintains that grand jury secrecy is not an end in itself. Grand jury secrecy is maintained to serve particular ends. But, when secrecy will not serve those ends or when the advantages gained by secrecy are outweighed by a countervailing interest in disclosure, secrecy may and should be lifted. To do so would further the fair administration of criminal justice. McNaab v. United States, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819.

Grand jury minutes have been made available to a defendant who can show inconsistency between the trial testimony and grand jury testimony of a government witness. United States v. Alper, 2nd

Cir., 156 F.2d 122, Burton v. United States, 5th Cir., 175 F.2d 960, Herzog v. United States, 9th Cir., 226 F.2d 561.

On occasion, the Government has recognized the fairness of permitting the defense access to the grand jury testimony of government witnesses, even though it considered that it was not bound to do so. United States v. Grunewald, D.C. Cir., 162 F.Supp. 621.

Procedure itself recognizes that grand jury testimony is discoverable under appropriate circumstances. In Re Bullock, D.C. Cir., 103 F.Supp. 639.

Essentially four reasons have been advanced as justification for grand jury secrecy: (1) To prevent the accused from escaping before he is indicted and arrested or from tampering with the witnesses against him; (2) To prevent the disclosure of derogatory information presented to the grand jury against an accused who has not been indicted; (3) To encourage complainants and witnesses to come before the grand jury and speak freely without fear that their testimony will be made public thereby subjecting them to possible discomfort or retaliation; (4) To encourage the grand juror to engage in uninhibited investigation and deliberation by barring disclosure of their votes and comments during the proceedings. United States v. Rose, 3rd Cir., 215 F.2d 617, 628-629.

None of the foregoing reasons dictates that the grand jury testimony in the Boyd case, to the limited extent it is sought, should be kept secret.

The government, in its memorandum, while making repeated reference to "a long established policy" of secrecy, makes no showing whatsoever as to how the denial of Bryant Troupe's testimony, or other grand jury testimony, serves any of the purposes justifying secrecy.

Certainly disclosure at this stage of the proceedings would not enable Boyd to escape from custody or to tamper with witnesses who have already testified against him at said grand jury proceedings.

In addition, protection of an innocent accused who has not been indicted has no bearing on this case.

Discovery has been sought only as to the witnesses' grand jury testimony on the same subject matter as their anticipated testimony in this case.

Witnesses before a grand jury necessarily know that once called to testify at trial they cannot remain secret informants quite apart from whether their grand jury testimony is discoverable.

Obviously the impeachment of the Government's key witnesses on the basis of prior or contradictory statements made under oath before a grand jury would have an important effect on a trial. Thus, it has long been held that a defendant may have access to inconsistent grand jury testimony for use in cross-examination if he can somehow show that an inconsistency between the anticipated trial testimony and the grand jury testimony exists, United States v. Alpes, 2nd Cir., 156 F.2d 222.

In an analogous situation, the United States Supreme Court has pointed out the folly of requiring the defense to show inconsistency between the witness's trial testimony and his previous statements on the same subject matter before it can obtain access to those very statements. In Jencks v. United States, 353 U.S. 657, 77 S.Ct. 1007, 1 L.Ed.2d 1103, the Supreme Court said that it offers no protection to permit a defendant to obtain inconsistent statements to impeach the statements to determine if in fact they are inconsistent with the anticipated trial testimony.

The Court said in Jencks:

Requiring the accused first to show conflict between the reports and the testimony is actually to deny the accused evidence relevant and material to the defense. The occasion for determining a conflict cannot arise until after the witness has testified and unless he admits conflict as in Gordon [Gordon v. United States, 344 U.S. 414, 73 S.Ct. 369, 97 L.Ed 2d 447], the accused is helpless to know or discover conflict without inspecting the reports. A requirement of showing of conflict would be clearly incompatible with our standards for the administration of criminal justice in the Federal Courts and must therefore be rejected. Jencks v. United States, 353 U.S. at 667-668, 77 S.Ct. at 1013.

The considerations which moved the Supreme Court to lay down this principle as to prior statements of government witnesses made to government agents obviously apply with equal force to grand jury testimony of a government witness. Pittsburgh Plate Glass Company v. United States, 79 S.Ct. 1237 at 1245. The defense will rarely be able to lay a foundation for obtaining grand jury testimony by showing it is inconsistent with trial testimony unless it can inspect the grand jury testimony.



It is clear that a preliminary showing of inconsistency by the defense should not be necessary in order for it to obtain access to relevant grand jury minutes.

In Jencks the United States Supreme Court held:

the defense is entitled to inspect the reports to decide whether to use them in the defense. Because only the defense is adequately equipped to determine the effective use for the purpose of discrediting the government's witnesses and thereby furthering the accused's defense, the defense must initially be entitled to determine what use may be made of them. Justice requires no less. Jencks, 353 U.S. at 667-669, 77 S.Ct. at 1013.

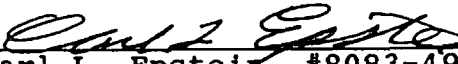
Grand jury testimony is often lengthy and involved and it would be extremely difficult for even the most able and experienced trial judge, under the pressures of conducting a trial, to pick out all of the grand jury testimony that would be useful in impeaching a witness. United States v. Spanglet, 2nd Cir., 258 F.2d 338. His task should be completed when he has satisfied himself which part of the grand jury testimony covers the subject matter of a witness's testimony at trial, and when he has given that part to the defense. Then the defense may utilize the grand jury testimony for impeachment purposes as it may deem advisable in its best interest, subject of course to the applicable rules of evidence. Pittsburgh Plate Glass Company v. United States, 79 S.Ct. 1237 at 1246.

For the foregoing reasons, the District Court should order production of the relevant grand jury testimony of Bryant Troupe and all other government witnesses who will be called to testify at trial.


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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing has been served upon Gary M. Gaertner, Jr., Assistant United States Attorney, U.S. Court and Custom House, 1114 Market Street, Room 401, St. Louis, Missouri 63101 by depositing same in the United States Mail, First Class, postage prepaid, this 17th day of February, 1998.


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