



UNITED STATES ATTORNEY
EASTERN DISTRICT OF MISSOURI,

1114 Market • Room 401 • St. Louis, MO 63101 • 539-2200 • 539-2309 (FAX)

FAX TRANSMITTAL

DATE: 12-22-99

TO: Albert L. Green

FROM: Gary Gaertner

PAGES: 2 (Excluding Cover)

MESSAGE: Here's another
interview of Albert L. Green

622-4956

PLEASE DELIVER IMMEDIATELY

745519 97 0012

REPORT OF INTERVIEW

With Albert Lee Greer, 1435 East DeSoto, St. Louis, Missouri, made on June 6, 1997, by Special Agent James Green, Bureau of Alcohol, Tobacco & Firearms (ATF).

On June 6, 1997, at 4:31 p.m., Special Agent (SA) Randy Bodenschatz and SA James Green contacted Albert Lee Greer at his residence, 1435 East DeSoto, St. Louis, Missouri, relative to the ongoing federal investigation of Willie E. BOYD for the violation of federal firearms and narcotics laws.

SA Bodenschatz and SA Green responded to the address on DeSoto to serve a federal Grand Jury subpoena for Greer relative to the investigation. SA Green had been advised by the Deputy U.S. Marshal (DUSM) Luke J. Adler that he had just spoken with Greer and that Greer indicated that he was going to leave town for Kansas City. DUSM Adler stated that Greer advised him that Sharon Troupe (Willie Boyd's fiancée) had contacted Greer relative to the recovery of a firearm from the residence on DeSoto by St. Louis Metropolitan Police Department Mobile Reserve Officers.

Subsequent to the recovery of the firearms by the officers, Greer made an allegation to the Internal Affairs Division (IAD) of the St. Louis Metropolitan Police Department concerning the loss of \$3,500 in U.S. currency during the search warrant execution by the Mobile Reserve Officers.

Upon arrival at 1435 East DeSoto, SA Green handed Greer his copy of the federal Grand Jury subpoena requiring his testimony on June 11, 1997, at 11:00 a.m. at the United States Court and Custom House, 1114 Market Street, St. Louis, Missouri. SA Green advised Greer that he was under federal subpoena and his appearance would be required on that date and time. SA Green advised Greer that any questions regarding the subpoena could be directed to Assistant United States Attorney (AUSA) Gary M. Gaertner, Jr. who is handling the prosecution of the BOYD case. Greer indicated that he understood the subpoena and would be at the courthouse on that date.

SA Green advised Greer that the subpoena was in reference to the recovery of the firearm at 1435 East DeSoto. Greer stated that a neighbor had contacted him at the shop (3780 W. Florissant) and told him that the police were at his house. Greer stated that he came to the house and talked to the police on the front porch. Greer stated that he told the police that if there is something in the house, I don't know nothing about it. Greer stated that the firearm recovered by the police was not his gun. Greer stated that he told the police to check it for fingerprints, my prints aren't on it. Greer stated that he does not recall telling the police that the gun belonged to Willie (BOYD).

Greer stated that he had maybe \$1,200 to \$1,500 in cash in the house, but was not sure. Greer stated that the house was owned by Mary DaArmond. Greer stated that he was trying to find out if his cousin, Stanley Boyd, took the money. Greer stated that, "I don't believe the police took the money." Greer further stated that the cousin (Stanley Boyd) "might have taken the money to smoke some crack." Greer stated that Stanley is a crack cocaine user and that he had been up and down the street to see if his cousin had been buying any crack cocaine.

Greer stated that he and Sharon Troupe went to the Police Department IAD together. Greer stated that Sharon Troupe picked him up from work to take him to IAD. Greer stated that Troupe told him to "ride with me" and she asked about what was missing from the house. Greer stated that he told her that baseball cards were missing from the house. At that point of the interview, Greer stated, "I am scared to death." Greer stated that Willie (BOYD) didn't tell him to search the money was missing. Greer stated that Sharon had told him to ride with her and that she estimated that \$3,500 was missing and told him that the police probably took it since he couldn't find it. Greer again stated regarding the missing money, "I don't think the police had anything to do with it, since I dug into it." Greer stated that he had last saw the money a week or so prior to the search warrant execution.

Greer stated that this is the second incident regarding missing money. Greer stated, "I bet Stanley took it." Greer stated that on a prior occasion, another brother had taken money from his wallet. Greer stated that he found the baseball cards and StarWars cards that he thought were missing from the residence.

The foregoing report of interview was reduced to writing following the interview by the undersigned agent.


SA James Green, ATF

1 A. No, I don't -- I don't specifically recall when
2 I went there. I don't believe it was June. It was
3 a short time after we had taken Mr. Boyd into
4 custody, and he was taken into custody as I recall
5 February 1st of 1997.

6 Q. Deputy Adler, I want to remind you now that
7 you're under oath.

8 A. Yes, I understand that.

9 Q. And may be witnesses who indicate that --

10 MR. GAERTNER: Your Honor, I would object
11 to the form of the question.

12 THE COURT: All right. The objection will
13 be sustained.

14 He understands he's under oath, counsel.

15 Q. Okay. It's your testimony then that you don't
16 recall going to that property in June of 1997?

17 A. No, sir.

18 THE COURT: Excuse me. Let me have the
19 specific description again of the property.

20 MR. EPSTEIN: Property is 1435 East Desoto.

21 Q. You didn't go there in June of 1997. That's
22 your testimony?

23 A. I don't recall ever going there in the summer of
24 1997, no, sir.

25 Q. Did any of your deputy marshals go there at your

1 direction in June of 19978?

2 A. No, sir. I never directed anyone to go to those
3 properties.

4 Q. When you tried the keys at 4212 Shaw, when would
5 that have been?

6 A. I tested those keys all in the same day.

7 Q. What day?

8 A. Specifically which date that is, I don't recall.

9 Q. Would it have been in early February of 1997?

10 A. Yes, sir, I believe so.

11 Q. And you went to one of those properties there,
12 was an auto mechanic shop; is that correct?

13 A. Yes, sir, it would appear to be, the address at
14 3780 West Florissant, I believe.

15 Q. Okay. And who did you encounter there?

16 A. Well, there was several guys standing outside
17 the property.

18 As I said before, I asked them all collectively
19 where the owner was and was told he wasn't there.

20 Q. Okay. Did they indicate to you who the owner
21 was?

22 A. Subsequently, yes, sir.

23 Q. And you say subsequently. Did you go back there
24 another time?

25 A. No, sir. Later on that same visit.

1 Q. Okay. And who did they say the owner was?

2 A. Well, there's a gentleman that was doing most of
3 the talking. I don't recall his name, but he
4 identified himself to me later on after I tested the
5 keys as Willie Boyd's brother.

6 Q. And did you ask that person for consent to
7 search the property?

8 A. No, sir, I never searched the property.

9 Q. Did you ask him for consent to try the keys?

10 A. No, sir. When I first asked them who the owner
11 was, who the manager was, who was in charge, they
12 said no, the owner wasn't there, the manager was not
13 there and no one was in charge, so I went up there
14 and tested the keys. After that time, he told me
15 that he was Willie Boyd's brother.

16 Q. Did he say his name?

17 A. He may have told me his name. I don't recall.

18 Q. Can you describe the individual?

19 A. He's a black male, probably late 40s,
20 approximately six foot, two ten.

21 Q. And again that was the property that you
22 believed to be owned by Willie Boyd --

23 A. Yes, sir.

24 Q. -- to be associated with his drug usage or
25 involvement?

1 A. Yes, sir. I know his brother told me that
2 Willie owned it.

3 Q. Did you go and confirm with Mr. Boyd before
4 testing the keys in the lock of the property?

5 A. No, sir. As I stated before, I never asked
6 Willie Boyd anything about any of those properties
7 or if I could have permission to test them.

8 Q. You didn't think his consent would be necessary
9 or that a warrant would be necessary; is that right?

10 A. Not to test keys, no, sir.

11 Q. Did you ever ask Mr. Gaertner whether you needed
12 the consent of individuals to search the property
13 who were owners of the property, whether you needed
14 consent to test the keys?

15 MR. GAERTNER: Your Honor, I would object.
16 It's been asked and answered and it's irrelevant
17 with regard to this trial.

18 THE COURT: Well, it has something to do
19 with the credibility, but let's move on, counsel.
20 We have pretty well gone over this --

21 MR. EPSTEIN: Okay.

22 THE COURT: -- unless you have something
23 new to ask.

24 Q. Do you have a property on West Florissant that
25 you went to?

1 A. That's the property that we've been talking
2 about.

3 Q. Okay.

4 MR. EPSTEIN: I have nothing further for
5 this witness, Your Honor.

6 THE COURT: Counsel, what -- I'm sorry.

7 Marshal, you have identified five properties,
8 two on Desoto, Shaw, and what is it, Flad?

9 THE WITNESS: Flad, yes, sir.

10 THE COURT: F-L-A-G-

11 THE WITNESS: D, Judge.

12 THE COURT: F-L-A-D?

13 And West Florissant.

14 THE WITNESS: Yes, sir.

15 THE COURT: You tested keys on those five
16 properties. Which one of those properties, if any,
17 did the keys work?

18 THE WITNESS: As I recall, Judge, we had
19 keys that fit 3780 West Florissant and 4212 Shaw.

20 THE COURT: So neither of the Desoto
21 properties or the Flad properties -- the keys didn't
22 work at any one of those three?

23 THE WITNESS: That's correct, Judge.

24 Also, I believe I did go back to 2091 Victory
25 Way and test those keys and none of them fit there.

1 A. Yes, sir, I did.

2 Q. Was there a response?

3 A. Yes, sir, there was.

4 Q. Okay. What was the response?

5 MR. GAERTNER: It calls for hearsay, Your
6 Honor.

7 THE COURT: Be sustained.

8 Q. Did you observe that property -- either of the
9 properties on Desoto had been broken into when you
10 went there?

11 A. No, sir.

12 Q. You have any information that other officers had
13 been there prior to you and endeavored to search
14 those properties?

15 A. What the individual told me who was changing the
16 locks --

17 MR. GAERTNER: Your Honor, I -- I would
18 object. It calls for hearsay on the part --

19 THE COURT: All right. Be sustained.

20 Q. When you went to these different premises, did
21 you ask any of the individuals to sign a consent to
22 search form much like you did with Sharron Troupe?

23 A. No, sir.

24 Q. Why not?

25 A. I never searched those properties.

RPIR1500
06/24/97ST. LOUIS METROPOLITAN POLICE DEPARTMENT
POLICE INCIDENT REPORTING SYSTEM
INCIDENT REPORT

CDPT 1 97072666

I N C I D E N T

Incident Type: 998500 EXECUTION OF A SEARCH WARRANT
Complaint / Status: ACTIVE
Orig./Supplement: ORIGINAL
Dist./Precinct/Beat: 05 511 5212
Origination Desc: ON VIEW
Day of Week: TUE
Date of Occurrence: 06/03/97 to 06/03/97
Time of Occurrence: 14:00 to 14:00
Location Name: Ngh: COLLEGE HILL.
Street: 1415 DESOTO
City/State: ST. LOUIS MO
Type of Premises: SINGLE FAMILY
Invst Followup(Y/N): Y
Assignment:
Date: 06/03/97
Time: 14:00
Asgmt. Code: 580 Car No: 7140
DSN/Officer: 2713 GARRETT BURGESS
Assisted by: 4019 JAMES JOYNER

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

Summary: OFFICER JOYNER AND I, ALONG WITH OTHER MEMBERS OF THE MOBILE RESERVE UNIT, EXECUTED THE HEREIN MENTIONED SEARCH WARRANT AT 1435 DESOTO. A WEAPON WAS SEIZED AS EVIDENCE, BELIEVED TO BELONG TO SUSPECT WILLIE B. THE WEAPON WAS CONVEYED TO THE ST. LOUIS POLICE LAB TO BE PROCESSED FOR LATENT PRINTS. SEARCH WARRANT WAS EXECUTED WITHOUT INCIDENT.

V I C T I M

NAME: LAST STATE OF MISSOURI

DOMESTIC INCIDENT: NO
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: FIREARM
Brand: COLT

Model: LAWMAN MK3
Serial Number: 92945L
Characteristics: BLUE STEEL .357 REM-UMC
SHP970607-105105
Estimated Value: \$ 0
Property Disp: TAKEN TO LABORATORY
Reference Number: G716484079
Recovery:
Loc. recovered: 2ND FLOOR BEDROOM
Date: 06/03/97
Address:
Street: 1435 DESOTO
City/State: ST. LOUIS MO
DSN/Officer: 2713 BURGESS
Assignment Code: 580
Owner:
Name: B (SUSPECT)
WILLIE

W I T N E S S

Reporting Party: WITNESS
NAME: LAST GREER
FIRST ALBERT
Race: BLACK
Sex: MALE
Birth:
Date: 06/01/54
Location: MO
RESIDENCE ADDRESS:
Street: 1435 DESOTO
City/State: ST. LOUIS MO
Business Address:
Street: 3780 W FLORISSANT
City/State: ST. LOUIS MO
Telephone: (Bus) (314) 531-8771 Ext.
Social Security No: 499-60-8003
Rel. to Suspect: BROTHER
Marital Status: SINGLE

6 4 6 0 0 1 0 1 4

S U S P E N D

NAME: LAST	BOYD
F1 ST	WILLIE
AGE	047 TO 047
WEIGHT	205 TO 205
HEIGHT	509 TO 509
RACE	BLACK
SEX	MALE
BUILD	MEDIUM
COMPLEXION	DARK
EYE COLOR	BROWN
HAIR COLOR	BLACK

Birth:
Date: 07/11/49
Location: MO
Social Security No: 490-52-6605
Marital Status: SINGLE
Occupation: UNEMPLOYED
Injury:

Description: UNKNOWN
RESIDENCE ADDRESS:
Street: 1435 DESOTO
City/State: ST. LOUIS
Telephone: (Res) (314) 531-8771 Ex1.

Charge:
Charge Descr: FELON IN POSSESSION OF
A FIREARM
Crime Catgry: FELON Date: 06/01/77
Document No: CN/97-72665

Herein reflects the circumstances of events concerning the Execution of a State level Search Warrant at 1435 Desoto, signed by Judge Michael Calvin.

At approximately 13:30 hours, the following officers met at the St. Louis Police Central Patrol Division Station for a briefi. j:

- Sgt. Joseph Spiess, DSN 3132
- P.O. Clarence Hines, DSN 3880
- P.O. Steven Burle, DSN 3390
- P.O. Joseph Crews, DSN 3679
- P.O. William Noonan, DSN 3086
- P.O. Thomas Whyte, DSN 4116
- P.O. Edward Smoote, DSN 3330
- P.O. Troy Eaton, DSN 3438 (Canine Dog Miko)

At 14:00 hours, the above mentioned officers responded to 1435 Desoto. I knocked on the door and announced in a loud voice, "Police, Search Warrant" with no answer. It is to be noted that I announced "Search Warrant" three times in a loud voice, which met with negative results. Forced entry was obtained with the use of a battering ram. No injuries were sustained during the execution of the warrant to any of the officers involved.

Sgt. Spiess ordered Canine Officer Troy Eaton and his dog Miko to do a cursory search of the residence for suspect(s) prior to the entry of the search warrant team, for Officer safety. After approximately ten minutes, Officer Eaton gave the all clear sign, stating that the residence was empty.

Before the aforementioned officers entered the residence, the targets brother, Albert Greer, arrived at the scene and stated that the building belonged to his brother, suspect Willie B. and that Willie B. was in jail for a narcotics violation. I asked Albert Greer if Willie B. had lived in the house prior to his arrest, to which Albert Greer stated the following.

"This is Albert's house for the last several years, he's paying me to stay here for him, while he's in jail, I'm fixing it up for the rent money."

I was designated as the seizing officer, with the responsibility to seize any evidence and have it photographed in place by Sgt. Spiess. The aforementioned officers entered the residence and made a systematic search of same.

6 P / : B : : /

While searching the second floor bedroom, I found the herein mentioned .357 revolver in a dresser drawer and immediately seized it as evidence.

I showed the revolver to Albert Greer, who stated the following.

"That's Willie B.'s gun, he bought that gun two years ago, he keeps it for protection. I thought he took it with him."

A computer check of the revolver revealed no theft, subsequently the revolver was entered into the Recovered Gun File by TPC Gaht, DSN 3370. It is to be noted that I also requested the gun to be printed by the Lab for latent prints.

As the seizing officer, I also seized the two front door locks from the outer barred door and the inside entrance door as evidence and properly marked and packaged them and placed them in the Mobile Reserve Property Room.

I again interviewed Albert Greer and asked him if there was any money or illegal narcotics or other weapons in the residence, to which he stated the following.

"Like I said, I thought Willie took his gun with him, there's no money here and no drugs that I know of."

Due to the front door being damaged by the battering ram, Albert Greer was left with the responsibility to secure the front door.

It is to be noted that the only damage done to the residence by the involved officers was to the two front doors as mentioned.

A computer check on Albert Greer revealed prior record, no wanteds indicated.

Due to suspect Willie B. being in Federal custody, I will contact the ATF Agents involved and coordinate this investigation with theirs, involving the seizure of the weapon.

Police Officer Paul James, DSN 6445, on duty at the Command Post, was advised of the execution of this search warrant.

Any further information pertinent to this investigation will follow in Supplemental form.

6 1 1 1 1 1 1 1 1 1

20. Kenneth Bergen 22713/580
SUBMITTED BY

Sgt. Joseph Spies 3132/580
Supervisor

Watch Commander

/PIRS6084

Secret-File
BATF Case
File #02-1078

Pages 1-387

745519 97 0012

REPORT OF INTERVIEW

With
made on June 6, 1997, by Special Agent Bureau of
Alcohol, Tobacco & Firearms (ATF).

On June 6, 1997. at 4:31 p.m., Special Agent (SA)
and SA contacted at his residence,
relative to the ongoing
federal investigation of Willie E. BOYD for the violation of
federal firearms and narcotics laws.

SA and SA responded to the address on
relative to the
investigation. had been advised by the Deputy U.S.
Marshal (DUSM) that he had just spoken with and
that indicated that he was going to leave town;
stated that advised him that
had contacted relative to the
recovery of a firearm from the residence or by St. Louis
Metropolitan Police Department Mobile Reserve Officers.

Subsequent to the recovery of the firearms by the officers,
made an allegation to the Internal Affairs Division (IAD) of the
St. Louis Metropolitan Police Department concerning the loss of
\$3,500 in U.S. currency during the search warrant execution by the
Mobile Reserve Officers.

Upon arrival at SA handed

Assistant
United States Attorney (AUSA) Gary M. Gaertner, Jr. who is handling
the prosecution of the BOYD case.

SA

neighbor had contacted him and
told him that the police were at his house. stated that he
came to the house and talked to the police
stated that he told the police that if there is something in
the house, I don't know nothing about it. stated that the
firearm recovered by the police was not his gun. stated that
he told the police to check it for fingerprints, my prints aren't
on it. does not recall telling the police
that the gun belonged to Willie (BOYD).

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745519 97 0012

-2-

stated that he had maybe \$1,200 to \$1,500 in cash in the house. but was not sure. stated that the house was owned by stated that he was trying to find out if took the money.

stated that he and went to the Police Department IAD together. stated that picked him up to take him to IAD. stated that she asked about what was missing from the house. stated that he told her that baseball cards were missing from the house.

stated that Willie (phonetic) missing. stated that she estimated that \$3,500 was missing and told him that the police probably took it since he couldn't find it.

stated that this is the second incident regarding missing money.

stated that he found the baseball cards and StarWars cards that he thought were missing from the residence.

The foregoing report of interview was reduced to writing following the interview by the undersigned agent.

Atf

347

**Secret-File
BATF Case
File #02-1078**

Pages 1-387

REQ: INPUT:

04/98 14:50 [REDACTED] MOI - ADMINISTRATIVE INQUIRY [REDACTED] PAGE 4

95/3334 DCA: [REDACTED] ARR:2200 11/06/95 OFF [REDACTED]
[REDACTED] 11/07/95 BOOK-OFF: [REDACTED] AUTH [REDACTED] SL-CTY-PD 6
LEASED ON BOND - [REDACTED] 1/07/95 RBY: [REDACTED] (P)

RESTED 4531 NATURAL BRIDGE ST LOUIS MO GEO [REDACTED]
[REDACTED] VERIFY STATUS OF CHARGES WITHOUT COURT DISPOSITIONS BEFORE **
[REDACTED] RELEASING INFORMATION FOR NON CRIMINAL JUSTICE PURPOSES **

IG-01 SUSPECT POSS CONTROLLED SUBSTANCE (F) STA:195.202,PAR 2 NC [REDACTED] CD [REDACTED]
OFF DATE:11/06/95
CHG-REL WARRANT REFUSED-OTHER EVIDENCE PROBLEMS CT:CIR25 BND:\$5000.00 11
DISP:11/07/95 DOCUMENT:CN 95-164931
PROFESSIONAL- SURETY: [REDACTED]

-02 SUSPECT UNLAWFUL USE WEAP FEL (F) STA:571.030 NC [REDACTED] CD [REDACTED]
OFF DATE:11/06/95
CHG-REL WARRANT REFUSED-OTHER EVIDENCE PROBLEMS CT:CIR25 BND: INCL 11/14
DISP:11/07/95 DOCUMENT:CN 95-164931
PROFESSIONAL- SURETY: [REDACTED]

IRG-CT: [REDACTED] ()

[REDACTED] CH: [REDACTED] L [REDACTED]

REQ: INPUT:

*** END OF MESSAGE ***

[REDACTED] RESPONSE FROM CORRECTIONS TRACKING SYSTEM 02-04-98 14:48:59

** CONFIDENTIAL INFORMATION RESTRICTED TO CRIMINAL JUSTICE AGENCIES ****
PUT: JACKSON, BILLY B/M 08/09/51

ME: JACKSON, BILLY M (S) REF: [REDACTED]
CE: B SEX: M DOB: 08/19/51 AGE: 046 JUV: [REDACTED] PUB: MO LANG:
GT: 5-07 WGT: 135 HAIR: EYES: SKIN:
SN: 493-62-5241

ID: [REDACTED]
ACT - CUSTODY - MEDIUM SECURITY INST
CUSTODY NAME: JACKSON, BILLY M (S)
START: 02/05/80 IN-ACTION: POLICE DEPARTMENT
END : 02/07/80 OUT-ACTION: BONDED
***CHG: 32040990 (F) VIO MO LAW POS MAR
***CHG: 32040990 (F) VIO MO SUB LAW POS

140

***** END OF MESSAGE *****

ht: [REDACTED]

2/04/98 14:50:58 MULES SYSTEM [REDACTED] PAGE 1

* THIS RESPONSE IS NOT TO BE CONSIDERED A POSITIVE *HIT* SINCE THE *
* INQUIRY DOES NOT PERMIT A UNIQUE IDENTIFIER AND IS TO BE USED *
* ONLY TO ASSIST IN MAKING A DIRECT [REDACTED] *

ID NO. LNM FNM MI JSR S R DOB SSN/MNU CAU

05-336-35

[REDACTED] JACKSON [REDACTED] BILLY [REDACTED] M [REDACTED] M B 081951 493625241 2
2
2
2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

MAR 31 1998

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

UNITED STATES OF AMERICA

v.

WILLIE E. BOYD

Cause No. 4-97CR-301-SNL

DEFENDANT'S RESPONSE TO GOVERNMENT'S
MOTION IN LIMINE TO EXCLUDE EVIDENCE

In the present case, the government charged the defendant with the offense of "Knowingly Possessing a Firearm which has Previously Been Transported in Interstate Commerce" in violation of 18 U.S.C. §922(g) and 924(e), offenses alleged to have occurred on November 6, 1995.

The foregoing charge appearing in Count VIII of the Superseding Indictment, came about in conjunction with the drug related arrest of the defendant and another individual at Cole's Motor Lodge on that date by members of the St. Louis Police Department.

In conferring with Boyd's alleged co-defendant, Mr. Larry Hassell, during a recent telephone conversation, the defense is advised that the arresting officers, members of the St. Louis Police Department, may have perjured themselves during the most recent evidentiary hearings concerning motions to suppress evidence in this case.

Consequently, there is a substantial issue regarding the credibility of those officers. The disposition of the state

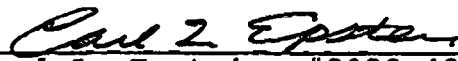
charges is entirely relevant to the resolution of that credibility issue.

Furthermore, without having access to that disposition, neither this court nor the prospective jurors in this case will have the benefit of knowing whether the charges were withdrawn as a legitimate exercise of prosecutorial discretion or whether another prosecutorial entity had serious misgivings as to the credibility of the law enforcement witnesses.

The government cites United States v. Jackson, 67 F.3d 1359, 1366 (8th Cir. 1995) as the basis for its requested exclusion of the proposed evidence regarding the November 6, 1995 State court case. The courts rationale for granting the government's motion to quash the subpoena in that case was premised upon distinguishable facts.

In that case there was a legitimate exercise in prosecutorial discretion in dismissing the State charges so that they could be pursued in Federal Court after the Federal Grand Jury handed down an indictment pertaining to the same. United States v. Jackson, 67 F.3d 1359 at 1367.

In this case it appears likely that the charges were withdrawn for other reasons that can only be determined by this court and by prospective jurors through presentation of the proposed evidence.


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


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 30th day of March, 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

Secret-File
BATF Case
File #02-1078

Pages 1-387

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

At approximately 8:30 p.m., Detectives
DSN and I
Detective met rating
out of the Motor Lodge, 4531 Natural Bridge, were engaged
in the sale of Crack/Cocaine

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 J 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 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.

43

Subject Billy J. secured the premises by locking both doors, after which 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

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

44

11/07/95

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

CMPLT / 95164930

I N C I D E N T

Incident Type: 182999 VMCSL-GENERAL POSSESSION
Complaint / Status: CLEARED/ARREST
Orig./Supplement: ORIGINAL
Dist./Precinct/Beat:
Origination Desc: RAJ
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:
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
Type of Premises: HOTEL/MOTEL
Invt Followup(Y/N):N
Assignment:
Date: 11/07/95
Time: 22:00
Asgmt. Code:
DSN/Officer:
Assisted by: Car No:

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

45

5 2 1 0 0 1 2 0 0 0

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:
Assignment Code:
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:
Assignment Code:
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

46

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:
Assignment Code:
Owner:
Name: J (SUSPECT)
BILLY

PROPERTY

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:
Recovery:
Loc. Recovered: FLOOR
Date: 11/07/95
Address:
Street: 4531 NATURAL BRIDGE
City/State: ST. LOUIS MO
DSN/officer:
Assignment Code:
Owner:
Name: (SUSPECT)

PROPERTY

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:
Assignment Code:
Owner:
Name: J (SUSPECT)
BILLY

49

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: ASGMT #
Assisted by:
Local ID Number:
Miranda:
Yes/No: Y
Officer:
Charge:
Charge Descr: 1) VMCSL POSSESSION
OF COCAINE
Crime Catgr: FELON Date: 11/07/95
Document No: CN 95-164930
Charge Descr: 2) UUW/CCW
Crime Catgr: FELON Date: 11/06/95
Document No: CN 95-164930

(50)

S U S P E C T

NAME: LAST
FIRST

AGE
WEIGHT 145 TO 145
HEIGHT 503 TO 503
RACE
SEX
BUILD
COMPLEXION
EYE COLOR
HAIR COLOR
HAIR STYLE
HAIR LENGTH
FACIAL HAIR
CLOTHING
CLOTHING

Birth:

Date:

Location:

MO

Social Security No:

Marital Status:

Suspect Status:

ADULT ARREST

Injury:

Description:

NOT APPARENT

RESIDENCE ADDRESS:

Street:

City/State:

Telephone:(Res)

Ext.

Arrest:

Date:

11/06/95

Time:

22:00

Officer/Asgmt:

ASGMT #

Assisted by:

Local ID Number:

Miranda:

Yes/No:

Y

Officer:

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

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LAST PAGE


SUBMITTED BY


Supervisor

Watch Commander

Best Copy Available

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S E I C C Z O G O

METROPOLITAN POLICE DEPARTMENT - CITY OF ST. LOUIS
PROPERTY RECEIPT

ORIGINAL REPORT ☒ SUPPLEMENTARY REPORT ☐
(INDICATE 'X' IN APPROPRIATE BOX)

FILE NO. FOR RECORDS DIV.

COMPLAINT NO. 15-16773

1. TYPE OF INCIDENT <u>V.P.C.S. Loss - COPIER</u>		2. ORIGINAL C.N. <u>95-16493</u>	3. DIST. REPORTING	4. DATE OF THIS REPORT <u>11-6-92</u>
5. DATE AND TIME OF OCCURRENCE <u>11-6-92 2:00</u>		6. LOCATION OF OCCURRENCE <u>4531 Natural Bridge, Phila.</u>		7. DISTRICT
9. VICTIM <u>State of Missouri</u>		10. HOME ADDRESS		
		11. BUSINESS ADDRESS		
12. DATE RECEIVED <u>11-6-92</u>		13. TIME RECEIVED		
14. RECEIVED FROM <u>Billy Jackson</u>		NAME (print)	DSN	ASSIGNMENT
15. RECEIVED BY <u>Det.</u>		NAME (print)	ADDRESS	
16. OWNED BY <u>Unknown</u>		ADDRESS		
17. QUANTITY	DESCRIPTION			
	<u>\$775.00 U.S. CURRENCY</u>			
<div style="border: 1px solid black; border-radius: 50%; width: 80px; height: 80px; margin: 0 auto; display: flex; align-items: center; justify-content: center;"> 53 </div>				
18. REC'D BY <u>[Signature]</u>	SIGNATURE	DSN	19. RECEIVED BY <u>[Signature]</u>	SIGNATURE
20. OFFICER <u>[Signature]</u>	OFFICER	DSN	ASSIGNMENT	(SIGNATURE)
			PROPERTY ONLY	
23. TELETYPE NO.			24. REFERENCE NUMBER	

METROPOLITAN POLICE DEPARTMENT - CITY OF ST. LOUIS
PROPERTY RECEIPT

ORIGINAL REPORT ☒ SUPPLEMENTARY REPORT ☐
(INDICATE 'X' IN APPROPRIATE BOX)

FILE NO. FOR RECORDS DIV.

COMPLAINT NO. 6-164730

1. TYPE OF INCIDENT <u>V.M.C.S.L. Pers. COCAINE</u>		2. ORIGINAL C.N. <u>95-164930</u>		3. DIST. REPORTING <u>331</u>		4. DATE OF THIS REPORT <u>11-6-95</u>	
5. DATE AND TIME OF OCCURRENCE <u>11-6-95 22:00</u>		6. LOCATION OF OCCURRENCE <u>4531 NATURAL BRIDGE BLVD.</u>		7. DISTRICT <u>612</u>		8. LOCATION CODE	
9. VICTIM <u>STATE of Missouri</u>				10. HOME ADDRESS <u>1/A</u>			
				11. BUSINESS ADDRESS <u>1/A</u>			
12. DATE RECEIVED <u>11-6-95</u>				13. TIME RECEIVED <u>22:00</u>			
14. RECEIVED FROM <u>Billy Jackson</u>		NAME (print)		DSN <u>1403</u>		ASSIGNMENT <u>Desoto Ave St. Louis, Mo.</u>	
15. RECEIVED BY <u>DET. R. B. BAY</u>		NAME (print)		ADDRESS <u>331</u>			
16. OWNED BY <u>Unknown</u>		NAME (print)		ADDRESS <u>331</u>			
17. QUANTITY <u>-</u>		DESCRIPTION <u>\$775.00 U.S. CURRENCY</u>					
<div style="position: absolute; bottom: 0; right: 0; width: 100%; height: 100%; border: 1px solid black; transform: rotate(-45deg); opacity: 0.5;"></div>							
18. RECEIVED FROM <u>[Signature]</u>		SIGNATURE		DSN		19. RECEIVED BY <u>[Signature]</u>	
20. SUBMITTED BY <u>Det. Robert Face/Hal 604</u>		OFFICER		DSN		ASSIGNMENT <u>331</u>	
21. SERGEANT'S INITIALS <u>B. G. 124</u>		22. REVIEWING OFFICER <u>[Signature]</u>		SIGNATURE		DSN	
				23. TELETYPE NO.		24. REFERENCE NUMBER	

Corrupt former St. Louis cop gets prison time

A corrupt former St. Louis police officer who stole drug money, planted evidence and made a false arrest was sentenced Tuesday to 28 months in federal prison.

Bobby Lee Garrett, 49, pleaded guilty in U.S. District Court in St. Louis Aug. 28 to six felonies: theft of government property, two counts of conspiracy to commit wire fraud, two counts of making false statements and one count of misapplication of government funds.

Garrett admitted his role in the theft of drug money on three occasions in 2007 and 2008 and admitted planting evidence, arresting an innocent man to cover up the theft of money and involvement in falsifying court documents, lab forms and police reports.

Garrett apologized Tuesday, saying "I'm not a bad person but a good person who made a bad decision."

Garrett said that he had let the community, the police department, his family and friends down, and said that his actions should not cast a "shadow over the police department."

Both Garrett and his lawyer, Chet Pleban, pointed out Garrett's two decades as an officer.

Pleban said that Garrett should be remembered for his "entire career" battling criminals "terrorizing the citizens of the St. Louis metro area," not his "missteps."

But many of those cases have been thrown into doubt by Garrett's criminal troubles. The indictment of Garrett and his former partner, Vincent T. Carr, last December triggered a review of over 1,000 criminal cases by the St. Louis Circuit Attorney's office and U.S. Attorney's office. Dozens of pending cases have been dismissed.

Before sentencing Garrett, U.S. District Judge E. Richard Webber said that the court system would be dealing with the "fallout" from Garrett's activities "for a long time."

Carr, 47, was sentenced to a year in prison last month.

Another of Garrett's former partners, Leo Liston, 35, was sentenced to three months in prison in September.

Appendix A-31

Garrett, Carr and Liston were on the city's Crime Suppression Unit, where officers often wore plainclothes, drove unmarked cars and were given more freedom to aggressively pursue chronic criminals.

Webber, Pleban and Assistant U.S. Attorney Hal Goldsmith all said that the 28-month sentence, which was part of a plea deal, was appropriate.

In court, Goldsmith took pains to praise the 99.9 percent of officers who “everyday do the right thing,” and those who witnessed Garrett's activities and cooperated after being approached by investigators.

Goldsmith said that it was “extremely important” to send a message “to keep doing the right thing.”

METRO

http://www.stltoday.com/news/local/metro/after-police-discredited-drug-charges-against-st-louis-man-are/article_4d178e22-30eb-11e1-b0bb-0019bb30f31a.html

After police discredited, drug charges against St. Louis man are dropped

BY ROBERT PATRICK • rpatrick@post-dispatch.com > 314-621-5154 Dec 27, 2011



St. Louis police officer Bobby Lee Garrett, 49, (left) leaves court with attorney Chet Pleban on Aug. 28, 2009. Garrett pleaded guilty to federal crimes on Aug. 28, 2009, and admitted stealing money, planting evidence and lying to cover up his crimes. Robert Cohen rcohen@post-dispatch.com

Appendix A-32

ST. LOUIS • Charges against a St. Louis man who was serving a 25-year prison sentence were formally dismissed Tuesday because his conviction hung on the word of discredited police officers.

U.S. District Judge Carol E. Jackson approved a Nov. 30 motion by prosecutors to dismiss the case against Michael James Holmes, 52.

The case against Holmes was spiked by Bobby Lee Garrett and Shell Sharp, two former St. Louis police officers who hit the news in late 2008 and 2009.

Garrett is finishing a 28-month prison sentence for theft of government property, conspiracy to commit wire fraud, making false statements and misapplication of government funds. Garrett stole money, planted drugs and made a false arrest to cover his crimes.

Prosecutors began dropping cases involving Sharp after a federal public defender accused him of lying to obtain search warrants. In an interview with *the Post-Dispatch* last year, Sharp denied those claims and said he was the victim of a departmental "witch hunt."

At Holmes' 2006 trial, Sharp testified that he saw Holmes drop a bag while fleeing from police searching a house in the 5800 block of Cates Avenue in 2003. He also spoke about watching Holmes after an informant had tipped him about Holmes' alleged drug activity.

Garrett testified about a 1995 search and arrest of Holmes that doubled the mandatory minimum that he faced on the 2003 case from ten to 20 years.

In 1995, Holmes filed a complaint accusing Garrett of planting the drugs and entered an Alford plea, maintaining his innocence but conceding that authorities had enough evidence to convict.

And he always said he was innocent in the 2003 case, telling Jackson at sentencing, "Before God and before this court, I am innocent. I have done nothing," according to a transcript.

After being convicted at trial and sentenced to 20 years for crack possession and five years more for possession of a firearm in furtherance of a drug trafficking crime, Holmes appealed but lost in 2007.

He filed another appeal in 2008, and Jackson appointed Welby to represent him.

In an interview earlier this year, U.S. Attorney Richard Callahan said that prosecutors opposed Holmes' motion because they believed that they had enough corroborating evidence without the testimony of Garrett and Sharp. But a September ruling by Jackson that the evidence was unusable because it had not been presented at trial meant they would have to re-try the case.

"We're now back ... as if we're making a fresh charging decision," Callahan said. And in the meantime, the drug evidence had been destroyed and authorities were no longer willing to have Sharp or Garrett testify. Although another officer was present, he didn't see Sharp find and seize the drug evidence.

That's when prosecutors asked for dismissal of the case.

"I think Mr. Holmes is having a good day," said Holmes' lawyer, Steve Welby.

Holmes, who has been out on bond since October, declined an interview request passed through Welby.

Neither federal nor state prosecutors could provide a total number of cases affected by Sharp or Garrett, as well as other former officers whose credibility has been called into question in recent years.

"I think the one thing it shows is that the system does work," said Welby. "The feds went after Garrett and they discredited Sharp and the people who maintained their innocence were able to obtain ... their freedom."



Man tries to grasp his second chance for life



Judge releases inmate because of corrupt ex-cop's testimony

Lawyers say bad cops left on street too long

Corrupt former St. Louis cop gets prison time

Former St. Louis officers allege 'witch hunt'

Court lifts block on investigation into St. Louis police snitches

MICHAEL JAMES HOLMES, Movant, v. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN
DIVISION
2011 U.S. Dist. LEXIS 109425
No. 4:08-CV-1142 (CEJ)
September 26, 2011, Decided
September 26, 2011, Filed

Editorial Information: Prior History

United States v. Holmes, 231 Fed. Appx. 535, 2007 U.S. App. LEXIS 19545 (8th Cir. Mo., 2007)

Counsel For Michael James Holmes, Petitioner: Stephen R. Welby, LEAD
ATTORNEY, WELBY LAW FIRM, St. Louis, MO.

For United States of America, Respondent: Matthew Drake,
Roger A. Keller, Jr., LEAD ATTORNEYS, OFFICE OF U.S. ATTORNEY, St. Louis, MO.

Judges: CAROL E. JACKSON, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: CAROL E. JACKSON

Opinion

MEMORANDUM

This matter is before the Court on the motion and amended motion of Michael James Holmes to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255. The United States has responded, and the issues have been fully briefed.

On June 28, 2006, Holmes was found guilty of possession of more than 50 grams of a substance containing cocaine base with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) (Count I), and possession of firearms in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c). Because of his prior felony drug conviction, Holmes was subject to a mandatory minimum sentence of 20 years' imprisonment for Count I. See 21 U.S.C. § 841(b)(1)(A)(iii). He was sentenced on November 13, 2006, to a 240-month term of imprisonment on Count I and a consecutive 60-month term of imprisonment on Count II. The judgment was affirmed on appeal. United States v. Holmes, 231 Fed. Appx. 535 (8th Cir. 2007).

As grounds for relief in the instant motion, Holmes asserts allegations of ineffective assistance of counsel at trial and on appeal. He also challenges the constitutionality of a search conducted by the police and the admission of certain evidence at trial. Finally, Holmes claims that he is entitled to a new trial based on newly discovered evidence of criminal activity and official misconduct by two police officers who testified against him.

I. Background

A. Evidence Presented at Trial

In December 2003, an informant told St. Louis police officer Shell Sharp that cocaine base was being sold from a house located at 5894 Cates Avenue by a man identified as "Big Mike." The informant described Big Mike as a 270-pound black male, between 40 and 45 years old. According to the informant, Big Mike kept a firearm in the residence. On December 9, 2003, Sharp and St. Louis police officer Alan Ray established surveillance near the residence and saw a man who fit the description given by the informant. At trial, Sharp identified the man as Holmes. During the surveillance, Holmes was seen coming out of the residence carrying a brown bag from which he would remove an item and hand it to another individual. Sharp testified that he observed Holmes engage in three of these "hand-to-hand" exchanges which appeared to be drug transactions.

Sharp and Ray approached the house and knocked on the door. Maetta Griffin, Holmes' grandmother, answered and identified herself as the owner of the residence. After the officers explained what had led them to her home, Ms. Griffin signed a consent to search form. Sharp and Ray entered the house and saw Holmes coming down the stairs from the third floor. After Holmes saw the officers, he turned and dropped a brown paper bag as he ran back up the stairs. Sharp retrieved the bag and found that it contained 239 grams of cocaine base inside a plastic bag. In a third floor bedroom, the police found a loaded shotgun, ammunition, an open safe containing \$4,000 in U.S. currency, six grams of heroin, and paraphernalia (glass measuring cups, a digital scale, a roasting pan, plastic baggies, and a plastic bag of rubber bands) associated with drug distribution. Also in the room was a letter addressed to Holmes at 5894 Cates. As the police were leaving the house, they found a second firearm behind the front door. Holmes was taken into custody and was given the Miranda warnings. According to the testimony, Holmes told the officers that he lived in the bedroom on the third floor.

Sharp testified that Holmes and his grandmother were the only people found inside the house. There were two other black men at the residence, Keith Valentine and Michael Green. Sharp testified that both were found outside the residence. However, in his police report, Sharp wrote that the two men were located during a sweep search of the first floor of the house.

Officer Sharp was the sole witness to testify about the suspected drug transactions observed during the surveillance and about Holmes' possession of the brown bag inside the residence. Officer Ray did not testify because he was on military duty in Iraq at the time of trial.

A single fingerprint belonging to Holmes was found on bag of rubber bands. Officer Sharp and an expert witness testified that rubber bands are commonly used by drug dealers to wrap their currency. The expert witness further acknowledged that there are a "million uses" for rubber bands. United States v. Michael James Holmes, No. 4:05-CR-522 (CEJ) (E.D.Mo.), Doc. # 84, p. 366. There was no evidence that the \$4,000 found in the safe were secured by rubber bands. Also, Holmes's fingerprints were not found on any other item of evidence that was seized. Fingerprint analysis was performed on the paper and plastic bags that contained the cocaine base, the glass measuring cups, the scale and the roasting pan. Some of the fingerprints found on these items were unidentifiable and some belonged to Sharp. There was no fingerprint analysis of the firearms.

Pursuant to Rule 404(b), Fed. R. Evid., the government presented testimony concerning the execution of a search warrant at 1459 Goodfellow on January 5, 1995. According to St. Louis police detective Bobby Garrett, Holmes was arrested at the residence after the police found cocaine base in his possession. Garrett further testified that Holmes made an oral statement admitting that he sold drugs. On the same day of his arrest, Holmes made a complaint to the Internal Affairs Division of the

St. Louis Metropolitan Police Department in which he claimed that Garrett and other officers had planted drugs in his house and that they had physically and verbally abused him. The IAD conducted an investigation, and the charges against the officers were not sustained. Holmes later entered an Alford plea to drug charges stemming from the January 5, 1995 incident. 1

At trial, Holmes testified that he once rented the third floor bedroom at the Cates residence and that others, including Keith Valentine, also rented rooms in the house. He testified that he moved out in February 2002; however, mail addressed to him continued to be delivered there. On December 9, 2003, Holmes was called to the Cates residence. He left work and arrived there around 3:00 p.m. Several of his relatives and Keith Valentine were there. He visited with them in the third floor bedroom which was then occupied by one of his relatives, Dwayne Hollinshead. After awhile, the group decided to leave and all but Holmes went outside. Holmes went downstairs where he stopped to talk to his grandmother. He then returned to the third floor to use the bathroom. Holmes testified that he was in the third floor hallway when a police officer (not Sharp) arrested him. He testified that he did not have a bag in his possession. Holmes denied ownership and possession of the drugs, firearms and other evidence found in the residence.

B. Evidence Discovered after Trial

In 2009, Sharp became the target of an Internal Affairs investigation into police corruption. There were allegations that Sharp had made false statements about informants and surveillance activities in affidavits that were submitted to obtain search warrants. It was also alleged that he gave perjured testimony in court. According to media reports, concerns about Sharp's credibility prompted the prosecuting attorney for St. Louis City to drop cases in which Sharp had been involved.

In 1998, Sharp testified for the government at the trial of Stephen Jones, who was prosecuted for possession of cocaine base with intent to distribute. According to the testimony, Sharp and Detective Vincent Carr saw Jones drop a bag of cocaine base as he was running down the hallway of a house. Jones maintained that the officers lied about his possession of the drugs. In February 2009, Carr pled guilty to wire fraud, making a false statement, and obstruction of justice-charges stemming from conduct he engaged in as a police officer. Jones filed a motion for a new trial based on the newly discovered evidence of Carr's misconduct. The government conceded the motion and joined in Jones's motion for a certificate of actual innocence. In doing so, the government stated that it could not vouch for the credibility of either Carr or Sharp. United States v. Stephen Jones, No. 4:10-CV-1748 (CEJ), 2011 U.S. Dist. LEXIS 51029 (E.D. Mo.) [Doc. # 8 and # 14].

In August 2009, Detective Garrett pled guilty to felony charges of theft of government funds, wire fraud, making a false statement, and misapplication of property under the control of a federally-funded state agency. All of the charges arose from Garrett's misconduct in 2007 and 2008 while acting as police officer. Garrett admitted that he stole money and other property that was seized during searches that he and other officers conducted, and that he and his accomplices made false statements and falsified documents to conceal their actions. Garrett was sentenced to a 28-month term of imprisonment.

In 2010, Matthew Cox filed a § 2255 motion to vacate alleging that in 1997 Garrett submitted a false affidavit in applying for a search warrant. Matthew Cox v. United States, No. 4:10-CV-1572 (CEJ), 2010 U.S. Dist. LEXIS 131437 (E.D. Mo.) [Doc. # 1]. The government initially opposed the motion, arguing that the crimes to which Garrett pled guilty were committed 10 years after Cox's trial and, therefore, Garrett's conviction did not justify a new trial based on newly discovered evidence. Id. [Doc. # 4]. However, the government later stipulated that Cox had made "a substantial preliminary showing, by sworn offer of proof and otherwise, that false statements and omissions may have been made with reckless disregard for the truth by the sole Affiant to the aforesaid search warrant

sufficient to mandate a testimonial hearing pursuant to Franks v. Delaware, 438 U.S. 154, 155-156, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978)." Id. [Doc. # 9]. The government further stipulated that it "would be unable to offer relevant credible evidence in defense of the affidavit in support of the search warrant in the event of a Franks hearing." Id.

II. Discussion

A movant seeking a new trial on the basis of newly discovered evidence must prove that (1) the evidence was unknown or unavailable to him at the time of trial; (2) the failure to discover the evidence was not due to his lack of diligence; (3) the evidence is material and is not merely cumulative or impeaching; and (4) the evidence is such that it would probably result in an acquittal upon retrial. United States v. Winters, 600 F.3d 963, 970 (8th Cir.), cert. denied, ___ U.S. ___, 131 S. Ct. 255, 178 L. Ed. 2d 169 (2010); United States v. Fuller, 557 F.3d 859, 863-864 (8th Cir. 2009). "The standard for a new trial on the basis of newly discovered evidence 'is rigorous because these motions are disfavored.'" United States v. Hollow Horn, 523 F.3d 882, 889 (8th Cir. 2008), quoting, United States v. Baker, 479 F.3d 574, 577 (8th Cir. 2007).

In this case, there is no disagreement between the parties as to whether the evidence was unavailable to the Holmes or whether it could have been discovered through the exercise of due diligence. What is in dispute is whether Holmes has satisfied the remaining criteria for obtaining a new trial based on newly discovered evidence.

Evidence that is merely impeaching does not meet the materiality requirement for a new trial based on newly discovered evidence. See United States v. Coplen, 565 F.3d 1094, 1096 (8th Cir. 2009) (new trial is not warranted when the additional evidence would be merely impeaching). Here, the government argues that the newly discovered evidence could only serve to impeach the police officers' testimony. The government also argues that evidence of official misconduct by Sharp and Garrett is not likely to result in an acquittal if a new trial is granted. In support of this argument, the government cites to English v. United States, 998 F.2d 609, 612 (8th Cir.), cert. denied, 510 U.S. 1001, 114 S. Ct. 573, 126 L. Ed. 2d 472 (1993), for the proposition that the Court must consider "the other witnesses who testified at the trial, including Petitioner, and all of the other evidence that the Government introduced at the trial." *Gov't's Supplemental Response*, p. 9 (Doc. # 33).

There was no witness other than Sharp who testified about the information provided by the informant. There was no witness other than Sharp who testified to seeing Holmes engage in hand-to-hand drug transactions outside the Cates residence. There was no witness other than Sharp who testified to seeing Holmes drop the bag of cocaine base and to the incriminating statements Holmes made upon arrest. Likewise, there was no witness other than Garrett who testified to Holmes 1995 admission of drug trafficking. The fact that the government now has two witnesses-Officer Ray and Officer John Weiter- who could corroborate Sharp's and Garrett's testimony is immaterial. The jury never heard Officer Ray or Officer Weiter, and Holmes did not have the opportunity to cross-examine them. In this important respect, this case differs from those in which newly discovered evidence of a witness's misconduct was deemed not material because of the existence of other, corroborating evidence presented at trial.

For example, in United States v. Antonio Harris, No. 4:07-CR-321 (CEJ) (E.D.Mo), this Court denied the defendant's motion for a new trial that was based on the newly discovered evidence of criminal conduct by a police officer who had testified against him at trial. The defendant had been found guilty of possession with intent to distribute cocaine base. The Court found that the defendant could not establish materiality because the officer's conviction arose from crimes he committed months after the defendant's trial, the convicted officer was not the person who found the cocaine base, and there was no challenge to the credibility of the officer who testified about finding the cocaine base.

Id. [Doc. # 136].

In Thompson v. United States, 2011 U.S. Dist. LEXIS 11159, 2011 WL 553794 (N.D. Ga. Feb. 3, 2011), the movant sought a new trial based on the criminal convictions of two police officers who had been involved in a search of his apartment. In denying the motion, the court pointed to the "substantial evidence" of the movant's role in drug trafficking that existed apart from the officers' misconduct:

When the six officers entered the Oglethorpe Avenue apartment, they found four people inside, as well as over 100 grams of cocaine, 50 grams of crack cocaine, 318 doses of ecstasy, two guns, baggies, and scales. The drugs were found in a safe, in both bedrooms, in a closet, and in the kitchen. Believing that six officers planted all of that evidence and photographed it in the presence of four suspects requires a big stretch of the imagination. And in addition to the drugs, guns, and paraphernalia, the officers found "[d]ocuments that were undisputedly Thompson's," including three traffic citations that Thompson had received less than two miles from the Oglethorpe Avenue address and while driving a car owned by another occupant (who unquestionably was involved in the drug operation). . . . The police also found a Red Cross application filled out by Thompson and dated just one day before the search. . . . Finally, there was a list of phone numbers and nicknames—a drug dealer's address book—that matched Thompson's cell phone records. . . . All of these documents were found in one of the bedrooms, along with more than 100 grams of powder cocaine and 10 grams of crack. In addition to the amount of drugs, the paperwork that undoubtedly belonged to Thompson connected him to the Oglethorpe Avenue address and dispels any reasonable inference that the evidence against him was somehow faked. 2011 U.S. Dist. LEXIS 11159, [WL] at *8 (citations omitted). The court also considered that movant gave inconsistent testimony at trial, and the evidence of his six prior felony convictions, his lies to the police about his identity, and his false testimony at an earlier hearing. 2011 U.S. Dist. LEXIS 11159, [WL] at *9. The court further noted that the movant "does not even argue that the evidence against him was fabricated; instead, he argues essentially that he could impeach the officers in a new trial in light of their later misconduct. But to the extent that is his goal, under Jernigan impeachment evidence alone is not enough to merit a new trial." Id. [citing United States v. Jernigan, 341 F.3d 1273, 1287 (11th Cir. 2003)].

In contrast to Thompson, the evidence apart from Sharp's and Garrett's testimony (*i.e.*, the letter and the fingerprint) can hardly be considered "substantial" evidence of Holmes's involvement in illegal activity. Indeed, such evidence would have been insufficient to establish guilty beyond a reasonable doubt. Also, Holmes did not give conflicting or inconsistent testimony at trial, and there was no evidence that he had made false statements to the police or in any court proceeding. Further, Holmes has consistently maintained that he is innocent and that Sharp and Garrett lied in their testimony. The Thompson court also considered the fact that the police officers' convictions were based on conduct that occurred after movant's trial. That is not the case here. As discussed above, **the government has acknowledged that it cannot vouch for the credibility of testimony given by Sharp and Garrett 1997 and in 1998—some nine years before Holmes's trial.**

III. Conclusion

There has been no claim that the government knowingly presented perjured testimony at Holmes's trial and there is nothing to support such a claim. Indeed, it is the Court's firm belief that at the time of the trial the government had no reason to question the credibility of its witnesses. However, the witnesses have now been discredited, and the government would not have been able to meet its burden of proof with the remaining evidence. Thus, for the reasons discussed above, the Court finds that Holmes has met his burden of establishing his entitlement to a new trial based on newly

discovered. Because Holmes will receive a new trial, it is unnecessary to address his additional claims regarding the admissibility of evidence and ineffective assistance of counsel.

A separate Order granting the movant's request for relief will accompany this Memorandum.

/s/ Carol E. Jackson

CAROL E. JACKSON

UNITED STATES DISTRICT JUDGE

Dated this 26th day of September, 2011.

Footnotes

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North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970)

Prosecutors Walk Out on McCulloch

Written by

DANNY WICENTOWSKI

Ever since the August 7 election, it's been Wesley Bell this and Wesley Bell that — how about we check in with St. Louis County's soon-to-be former Prosecuting Attorney, Bob McCulloch?

McCulloch is just a few months away from concluding a remarkable 27-year career. Yet one of his final public appearances as St. Louis County's top prosecutor will go down as the time he delivered a speech so offensive to his audience that an entire county's worth of Oregon prosecutors walked out and later shunned his subsequent keynote address.

The brutal reception to McCulloch's speech took place August 16 at the Oregon District Attorney Association's summer conference. *Willamette Week* reports that McCulloch had been the conference's keynote speaker.

McCulloch has become a divisive figure nationally due to his handling of the grand jury investigation into the killing of Michael Brown, which left Ferguson police officer Darren Wilson facing no prosecution. Yet McCulloch seems to have approached the Oregon event like he would a police union meeting in St. Louis County, rolling out his usual shtick — according to the *Week*, McCulloch “mocked the American Civil Liberties Union for the role it played in criticizing the local officials who investigated the fatal police shooting that killed Michael Brown” and reserved some jabs for Black Lives Matter and former U.S. Attorney General Eric Holder, who led the DOJ's investigation of Fer-

guson and the Brown shooting.

One audience member, a county prosecutor, told the Portland alt-weekly that McCulloch “showed a photo of four or five young black people standing together and said: ‘This is what we’re dealing with.’”

It did not go over well.

McCulloch's remarks during the plenary session, conducted at the conference opening, shocked some of the audience members into leaving. Some told the *Week* they considered McCulloch's remarks racially insensitive. That included Multnomah County District Attorney Rod Underhill, who criticized McCulloch's speech as “offensive and unprofessional,” according to an email he later sent his staff.

And not only did Underhill walk out, but his whole staff followed. Underhill then boycotted McCulloch's address that evening.

“Mr. McCulloch was the scheduled keynote speaker at the conference dinner that evening. I chose not to attend the conference dinner,” Underhill wrote in the email. “I am proud to say every member of the Multnomah County DA's Office who attended the conference also declined to attend the dinner and chose, by their actions, like me, to repudiate the offensive message to which we had been subjected to

**One attendee
said McCulloch
“showed a photo
of four or five
young black
people standing
together and said:
‘This is what we’re
dealing with.’”**



Bob McCulloch's schtick did not play well in

earlier that day.”

In the weeks before his trip to Oregon, McCulloch also made remarks blasting the ACLU during his campaign and debate appearances. Perhaps, as one prosecutor suggested to the *Week*, the recent election loss made him “a little bit more candid than he would have been otherwise.”

Maybe. Then again, this is definitely the McCulloch we've come to know. In St. Louis County, those “candid” remarks wouldn't just be fodder for a keynote speech; they underlie actual policies promulgated by the prosecutor's office.

And that speech the Oregon prosecutors found so offensive? In past years, it may well have won McCulloch a standing ovation at a conference of Missouri prosecutors. Come January, though, it will be McCulloch leaving the room. ■

Willie E. Boyd
4212 Shaw Blvd
Apt. B
St. Louis, Mo. 63110

August 22, 2018

RE: Failure to Response to Undisclosed
Records that had been Suppressed from
the Requester's Trial.

Jeffrey B. Jensen
United States Attorney
111 S. Tenth Street
Rm. 20.333
St. Louis, Mo. 63102

Dear Mr. Jensen:

This correspondence is a follow up to the request of December 28, 2017, directed to you for the full disclosure of the 1,188-pages of investigative documents, and the records on Bryant Troupe, allegedly hand-delivered to Trial Counsel Carl Epstein, as discovery materials. There was a failure of the government's attorney to turn over the Grand Jury testimony of the government's testifying witnesses. These documents should be turned over now.

Mr. Jensen, it has been over 8-months since the first request was mailed to you by certified mail, with no response from your office. I'm still expecting a response from your office. This is an issue of integrity. Does the United States Attorney's Office under your direction, stand for justice, or is it still business as usual?

The world is aware of the unfair treatment of the poor in the judicial system in county municipalities, not realizing that this culture of judicial corruption has long existed in the federal prosecutor's office in the Eastern District of Missouri, as well.

Mr. Jensen, responding to my complaint is only doing the right thing, and only justice can be served by you for turning over requested discovery materials. This time I hope to hear from you.

Sincerely


Willie E. Boyd

cc: file