

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division — Felony Branch**

UNITED STATES OF AMERICA : **Case No. 2021 CF2 0965**
:
v. : **Hon. Judge Salerno**
:
CALVIN REID : **Next Hearing: March 22, 2024**

NOTICE OF FILING

The government requests that the attached CADRPTS Disclosure Letter, dated March 12, 2024, be made part of the record in this case.

Respectfully submitted,

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March 12, 2024

Counsel Steve Polin

*Re: United States v. Calvin Reid
Case No. 2021 CF2 0965*

Dear Counsel:

The government hereby provides you with potential impeachment information regarding officers employed by the Metropolitan Police Department (“MPD”). As a general proposition, the government is only required to provide impeachment material for those witnesses it calls at trial. *See Thompson v. United States*, 45 A.3d 688, 693 (D.C. 2012) (because witness did not testify as a government witness at trial, the “government was not obliged to disclose information that could be used to impeach him”); *accord Porter v. United States*, 7 A.3d 1021, 1026 (D.C. 2010). However, this Office has expanded the scope of its disclosures related to material contained in MPD’s Personnel Performance Management System (“PPMS”).¹ The government does not concede that disclosing impeachment information for non-testifying officers is constitutionally or statutorily required, and some PPMS materials may not qualify as impeachment material. However, the government will seek to conduct PPMS checks for officers who meet the following criteria:²

1. All officers the government may call to testify in a suppression hearing or the government’s case-in-chief at trial;
2. All officers the government anticipates that it may call in rebuttal;
3. All chain-of-custody officers for any physical evidence that the government anticipates it may introduce in a suppression hearing or at trial;
4. All officers who personally authored reports that the government intends to introduce at a

¹ Additional information about the PPMS is contained in the government’s motion for a protective order.

² Absent a specific request from the defense, in misdemeanor cases priority will be given to identifying PPMS information for officers who meet criteria one or two.

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suppression hearing or trial, or that its witnesses may rely upon during their testimony at a suppression hearing or trial; and

5. Any other officer who, in the estimation of the prosecutor, played an essential role in the investigation or prosecution of the case. (e.g. a lead detective who may not be called as a government witness at trial).³

Accordingly, the government is providing information from the PPMS to you regarding the following Officers:⁴

Officer Jonathan Gonzalez*
Officer Christian Valdez*
Officer Karen Valentin-Aponte*

The government is disclosing to you information from the PPMS that is in its actual possession related to the disciplinary history of the above-referenced officers. In addition to the disciplinary information from the PPMS, the government has also checked its internal *Lewis* database for potential impeachment information and either has completed, or will complete, a *Giglio* questionnaire with each officer.

For those officers listed above, the government has reviewed the PPMS to identify potentially disclosable information including the following:

1. Any sustained administrative finding of misconduct, even if the administrative investigation involved unintentional conduct such as the loss of MPD owned property or involved a “preventable” motor vehicle accident while on duty.
2. Any discipline imposed by MPD that is identified in the PPMS.
3. Any administrative investigation that was pending during the officer’s assignment to the criminal investigation in this case, regardless of the outcome of that administrative investigation. However, the government notes that any theory of admissibility for such pending matters would hinge on: (1) whether the officer was aware of the administrative investigation;⁵ and (2) whether the officer was aware

³ However, absent a specific and supportable demand, this Office will not review an officer’s disciplinary history or conduct a *Lewis* check on an officer merely because he or she was present at the scene of a crime, arrest or search, or otherwise did not play an essential role in the investigation or prosecution of this case.

⁴ Please note that an “*” following the officer’s name indicates that this Office has not had the opportunity to fully review any available source documentation related to the officer. However, in order to provide prompt disclosure of this information, the government is providing you with electronic information from the PPMS that is in its actual possession, and that meets the disclosure criteria discussed below. Counsel is encouraged to review the information on the attached report, and to prioritize any requests for source documentation.

⁵ *Ifelowo v. United States*, 778 A.2d 285, 295 n.13 (D.C. 2001) (“Impeachment evidence is not material if the witness does not have knowledge of the underlying fact.”) (quoting *Williams v. Scott*, 35 F.3d 159, 162 (5th Cir. 1994) (internal quotation marks and citations omitted)).

of the administrative investigation at a time he or she was *actively involved* in the investigation of this criminal case.⁶

In making the attached disclosures, the government is not agreeing that this information is even disclosable, let alone relevant or admissible at trial. The proponent of a particular piece of evidence bears the burden of demonstrating its admissibility. *Best v. United States*, 66 A.3d 1013, 1017 (D.C. 2013). Even a criminal defendant’s constitutional right to cross-examine adverse witnesses “is not without limits,” *Reed v. United States*, 452 A.2d 1173, 1176 (D.C. 1982), and any proposed line of cross-examination must be relevant to the issues involved in the case. *See Gibson v. United States*, 536 A.2d 78, 82 (D.C. 1987) (“[t]here is no constitutional right to present irrelevant evidence”). Additionally, even where a proposed line of inquiry is relevant, the trial court “retain[s] wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). *See also United States v. McCallum*, 885 F. Supp. 2d 105, 119 (D.D.C. 2012) (finding that officer’s bias to curry favor due to several pending complaints before the Office of Police Complaints was “slight where, as here, the facts alleged in the open complaints do not demonstrate any credible threat of . . . discipline”).

The government’s *Brady* obligations apply only to information in the government’s possession. *See Guest v. United States*, 867 A.2d 208, 211 (D.C. 2005). The government has a “duty to learn of any favorable evidence known to others *acting on the government’s behalf in the case*, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (emphasis added). Critically, this duty extends only to agencies “closely aligned with the prosecution.” *United States v. Brooks*, 966 F.2d 1500, 1503 (D.C. Cir. 1992). Thus, where an independent agency is not involved in the underlying criminal investigation, the government is not deemed to be in possession of their records. *See Myers v. United States*, 15 A.3d 688, 691-92 (D.C. 2011) (finding that where WMATA and Metro police were not involved in criminal investigation, they were not a member of the prosecution team, and the government did not possess WMATA videos pursuant to Rule 16). *Accord O’Brien v. United States*, 962 A.2d 282, 316 (D.C. 2008). As a result, when an outside agency, including the Office of Police Complaints (“OPC”) or the Office of the Attorney General, is involved in the investigation or prosecution of a case, this Office is not in possession

⁶ *Davis v. Alaska*, 415 U.S. 308, 317 (1974) (jury should have learned that at the time a witness made a pretrial identification of the defendant he was under probation in order “to show the existence of possible bias . . . causing him to make a faulty initial identification . . . which in turn could have affected his later in-court identification”). *See also Tabron v. United States*, 444 A.2d 942, 943 (D.C. 1982) (defense was entitled to potential bias information where several government witnesses “had a relationship with the court, such as probation, *at the time the government was in touch with them* during the investigation, prosecution, and trial of the crime” (emphasis added)). *Accord Lewis v. United States*, 10 A.3d 646, 653 (D.C. 2010) (witness had a pending case when he first implicated the defendant and cross-examination was proper to determine how that pending case affected his testimony); *Artis v. United States*, 505 A.2d 52, 54 (D.C. 1986) (because witness was pending sentencing in two matters *when he first implicated the defendant*, bias cross-examination would be proper even though the witness was sentenced before defendant’s trial (citing *Tabron*) (emphasis added)).

of their records and has no duty to search their records.⁷

Consistent with the foregoing guidelines, and subject to the previously authorized protective order in this matter, the government has attached a disclosure chart for each officer listed above. The disclosure chart contains verbatim information from the PPMS, and where known, supplemental information from this Office. The verbatim information from the PPMS includes the following:

- IS No. – The incident number (using the prefix “CS” in older cases).
- Secured – Indicates that the investigation is an Internal Affairs Division (“IAD”) investigation and that the officer may not be aware of the investigation. In certain situations, such as use-of-force investigations or when the officer has already been disciplined, the member should know of the investigation even if it is indicated “secured.”
- Incident Date – The date of the conduct leading to the administrative investigation.
- Disposition Date – Generally, the date that the Assistant Chief of the Internal Affairs Bureau or their designee approved the investigative report.⁸
- DRD Date – Where applicable and entered into the PPMS, the date that the discipline was imposed in cases referred to the Disciplinary Review Division (“DRD”).⁹
- Incident Type – The allegation(s) subject to investigation. The Incident Type is listed first, followed by the Allegation entry. The Allegation entry, when entered into the PPMS, is usually more specific than the Incident Type.
- Incident Disposition – Lists resolution of the incident referenced in PPMS. Where an incident involves multiple allegations or multiple officers the incident disposition may not reflect the actual finding against an individual officer.¹⁰
- Member Disposition – The finding against the individual officer for one or more

⁷ OPC is recognized as an independent agency. *McCallum*, 885 F. Supp. 2d at 110. By design, OPC is an independent agency that conducts investigations into allegations of police misconduct independently of MPD and this Office. *See generally*, D.C. Code §§ 5-1102 – 5114 (describing structure and goals of OPC). If OPC believes that an allegation of misconduct may involve criminal conduct, OPC has the authority to refer the matter to this office, and regains jurisdiction only when this office declines prosecution in writing. *Id.* § 5-1109. Because of OPC’s independence, this office is generally not in possession of OPC’s files, and has limited access to them. In a small number of cases where OPC sustains an allegation against a police officer following an investigation, a copy of their investigative file is sent to MPD. OPC also notifies MPD when they open an investigation, but OPC does not transfer its investigative file to MPD unless there is a sustained finding.

⁸ The IAD factually investigates only certain types of allegations of misconduct. Other factual investigations are carried out at the chain-of-command level. MPD General Order 120.20(B) (Nov. 22, 2022). IAD does not recommend discipline. Sustained allegations are referred to the Disciplinary Review Division (“DRD”) for review and recommendation of discipline. *See* MPD General Order 120.21(II)(B)(6-8), (C). The chain of command may impose discipline up to a certain severity; cases that may result in more serious penalties are referred to the DRD. *See id.*

⁹ References to DRD materials also apply to materials from the Disciplinary Review Board (“DRB”).

¹⁰ The chart does not include cancelled IS cases.

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