

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**UNITED STATES OF AMERICA**

v.

**CRIMINAL NO. 3:08cr107**

**FRANK E. MELTON  
MICHAEL RECIO  
MARCUS WRIGHT**

**GOVERNMENT'S OPPOSITION TO DEFENDANT MARCUS WRIGHT'S  
MOTION FOR ADDITIONAL DISCOVERY**

The United States, by its undersigned counsel, opposes defendant Marcus Wright's Motion for Additional Discovery because defendant Wright's requests are either 1) overly broad and seek information that is outside of the requirements imposed by Rule 16 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3500; or 2) premature and seek immediate production of information that is governed by the time frames contained in the Court's discovery order. In support of its opposition, the government states the following:

**I. Background**

On July 9, 2008, a Grand Jury in the Southern District of Mississippi returned a three-count indictment against Frank E. Melton, Michael Recio, and Marcus Wright, charging each of them with civil rights and weapons offenses related to the unlawful destruction of a home at 1305 Ridgeway Street in Jackson, Mississippi, on August 26, 2006. They are accused of, among other things, willfully violating the Fourth Amendment to the United States Constitution.

On August 15, 2008, the government provided the defendants with discovery materials in accordance with Rule 16 and the Court's discovery order, including some police training records

for Marcus Wright and Michael Recio. On September 12, 2008, the government provided the defendants with additional discovery materials, including additional police training records for Marcus Wright and Michael Recio. The government also notified the defendants of its intention to call several witnesses at trial to testify about the training Wright and Recio received as police officers that would be relevant to the constitutional violations alleged in the indictment.

**II. Wright's Request for Employment Files of Government Witnesses Should be Denied Because It Seeks Information Beyond the Scope of Applicable Rules and Caselaw.**

In paragraphs 2(A) through 2(D) of his motion, defendant Wright requested the employment files of instructors or individuals who conducted police training evaluations of Marcus Wright, "including any/all training, courses of study, certification, etc." Although Wright states that this material is "required to be produced by the government under the rules herein," Wright does not provide a basis for this assertion.

Discovery in this case is governed by Rule 16 of the Federal Rules of Criminal Procedure and the Court's discovery order, which was filed on July 16, 2008, without objection from the defendants. See Order Regarding Discovery. The government is aware of its obligations under both the procedural rules and the Court's discovery order, including its continuing obligation to supplement discovery as necessary. Neither the Federal Rules of Criminal Procedure nor the Court's discovery order in this case require the government to disclose the requested information to the defendants.

The government does not intend to offer opinion testimony from any instructor witness. Rather, the government may offer witnesses to provide factual information concerning the training received by Wright and Recio on relevant topics, including, among other things, the

prohibitions of the Fourth Amendment. Therefore, nothing in Rule 16 mandates disclosure of their employment files, and Wright's request for these files should be denied.

The government recognizes its obligations under Brady v. Maryland, 373 U.S. 83 (1963), and the Court's discovery order to disclose exculpatory evidence "as soon as possible or as soon as discovered." See Order Regarding Discovery, para. 1(a). When and if any exculpatory evidence concerning these witnesses becomes known, the government will comply with its Brady disclosure obligations in a timely manner. The government is also aware of its obligations under Giglio v. United States, 405 U.S. 150 (1972), to disclose impeachment evidence concerning the government's witnesses. In accordance with the Court's discovery order, the government will provide any impeachment evidence concerning the government's witnesses five days before trial. See Order Regarding Discovery, para. 1(b).

**III. Wright's Requests for Reports from any Person Associated with the Training of Wright or from any Person Associated with this Case Should be Denied Because They Are Premature.**

In paragraphs 2(E) and 2(F) of his motion, defendant Wright requested any and all reports from "any agent, officer, patrolman or part-time/full-time deputies who had anything to do with the training of Marcus Wright" and from "any agent, officer, patrolman or part-time/full-time deputies who had anything to do with this case," respectively. These requests are premature. The government would not be required to produce such reports until the relevant witness has testified at trial and such reports fell within the ambit of 18 U.S.C. § 3500 (hereafter "Jencks Act"). Pursuant to the Court's discovery order, however, the government would provide any report governed by the Jencks Act to the defendants five days before trial. See Order Regarding Discovery, para. 1(b). Absent the obligations imposed by Rule 16, Brady, or Giglio,

reports by people who will not be government witnesses at trial do not have to be produced at all. Because defendant's Wright's requests are premature, this Court should deny these requests.

**IV. Wright's Request for Internal Affairs Files for Government Witnesses Should be Denied Because It Seeks Information Beyond the Scope of Applicable Rules and Caselaw.**

In paragraph 2(G) of his motion, defendant Wright requested "any/all I.A.D. files" for government witnesses.<sup>1</sup> Wright does not provide a basis for his assertion that the government is required to produce these records. Neither the Federal Rules of Criminal Procedure nor the Court's discovery order in this case require the government to disclose internal affairs division files concerning witnesses who work in law enforcement. To the extent that any internal affairs files contain impeachment evidence concerning any government witness, the government will disclose that information five days before trial in accordance with the Court's discovery order.

See Order Regarding Discovery, para. 1(b).

**V. Wright's Request for "RAP" Sheets on Any Government Witness Should be Denied Because It Is Premature.**

In paragraph 2(H) of his motion, defendant Wright requested "any/all 'RAP' sheets" for government witnesses. This request also should be denied because it is premature. The government is aware of its obligations under Giglio to provide impeachment evidence concerning the government's witnesses. In accordance with the Court's discovery order, the government will provide any impeachment evidence concerning the government's witnesses five days before trial. See Order Regarding Discovery, para. 1(b).

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<sup>1</sup> Although Wright does not specify what is meant by "I.A.D. files," the government assumes it is a reference to police internal affairs division files concerning witnesses who are employed as police officers or otherwise employed in law enforcement.

**VI. Conclusion**

For the foregoing reasons, the government respectfully requests that the Court deny defendant Wright's Motion for Additional Discovery.

Respectfully submitted,

GRACE CHUNG BECKER  
Acting Assistant Attorney General

By: /s/ Mark Blumberg  
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By: /s/ Patricia A. Sumner  
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**CERTIFICATE OF SERVICE**

I, the undersigned counsel for the United States, hereby certify that on the 6th day of August, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

John Reeves, Attorney for Frank E. Melton

John M. Colette and Matt Baldrige, Attorneys for Defendant Marcus Wright; and

Cynthia Stewart, Attorney for Michael Recio.

/s/ Mark Blumberg