

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: WATTS COORDINATED
PRETRIAL PROCEEDINGS)
) Master Docket Case No. 19-cv-01717
)
) Judge Franklin U. Valderrama
)
) Magistrate Judge Sheila M. Finnegan
)
)

This document relates to all cases.

JOINT STATUS REPORT REGARDING IN CAMERA REVIEW OF FBI RECORDINGS

Pursuant to the Court's order of July 20, 2023, the parties provide the following Joint Status Report to address "the types of information that may exist within the withheld evidence and the significance of such information to the claims and defenses in this action." Dkt. 540.

The parties provide their positions separately. The parties note that they do not necessarily agree with any other party's position about the significance of the potential evidence described in this status report, but they do not believe that providing responses to any other party's positions would aid the Court's in camera review.

PLAINTIFF'S POSITION

Confidential Informants not identified in earlier briefing

At the July 20, 2023 status, there was a discussion about whether the parties were aware of the identities of any confidential informants beyond those mentioned in the Court's Order regarding the production of the FBI and DEA recordings. Dkt. 546. Following that status conference, Plaintiff again reviewed the relevant documents. Based on that review, Plaintiffs

have identified two additional individuals who they believed were involved in making recordings and who are relevant to the Court's in camera review.

First, Plaintiff Dwayne Holmes appears to have made at least one recording for the FBI.

This is confirmed in an affidavit from Mr. Holmes, and it was further confirmed [REDACTED]

[REDACTED].¹ In their briefing on the government's motion to withhold FBI and DEA recordings, Plaintiffs discussed confidential informants whose identities they were able to confirm directly through information already provided to the parties by the FBI rather than a potentially broader group of informants who Plaintiffs were able to identify in other ways. Dkt. 466 at 18-21.² Although Dwayne Holmes does not appear to be identified by name in documents produced by the FBI, Plaintiffs are nonetheless comfortable identifying him as a confidential informant who appears to have made at least one recording based on his own affidavit and [REDACTED]

[REDACTED]. Ex. A (PL JOINT 052326-PL JOINT 052330).

Second, an individual named [REDACTED] also appears to have been a confidential source. [REDACTED] is deceased. Ex. B ([REDACTED] criminal history at DO-JOINT 048331). It is not clear based on the records available to Plaintiffs whether [REDACTED] made consensually recorded telephone calls. It is clear, however, that in July of 2008, a residence where he lived was used as

[REDACTED]
[REDACTED]
[REDACTED] Ex. C (FBI 139). Defendant Alvin Jones of the Watts team secured a search warrant to search that residence in July 2008. Before the search was carried out, CPD and the

¹ Plaintiffs mistakenly referred to [REDACTED] as a "former" officer in the sealed version of this joint status report. This version removes the word "former" from this sentence.

² Pin cites are to the ECF pagination.

FBI planted [REDACTED]. *See* Ex. D (FBI 166-167) ([REDACTED]); Ex. E (DEF BAKER 122-137) (search packet for raid, procured by Defendant Alvin Jones, and showing that [REDACTED] lived at the address in question); Ex. F (T. Skahill Dep. at 39-42) ([REDACTED]
[REDACTED]
[REDACTED]); Ex. G CITY-BG-024101 (City of Chicago summary of the event).
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]. Plaintiffs submit that any available recordings of this event should be produced for at least two reasons. First, [REDACTED] is deceased, and so he faces no risk in being identified as a cooperating informant, if he did indeed cooperate. Second, regardless of whether [REDACTED] was a confidential informant, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Ex. F (T. Skahill Dep. at 39-42)
([REDACTED]).

Recordings made by CPD

Based on the FBI's document production, [REDACTED]

[REDACTED] *See* Ex. H (FBI 334) ([REDACTED])

[REDACTED]; *see also* Ex. I (FBI 1254) ([REDACTED])
[REDACTED]

[REDACTED]); *see also* Ex. I FBI 1254 ([REDACTED]
[REDACTED]).³

Production of the recordings labelled as 1D will not reveal the identity of confidential informants because the City already knew the identity of whoever made those calls back in 2004.

Relevant information likely to be on the FBI recordings subject to the *in camera* review

Direct or Indirect Discussions related to criminal conduct

Although Plaintiffs have incomplete information, based on their review of the DEA recordings, the FBI document production, and the overall document production in the Coordinated Proceedings, they believe that the FBI recordings may contain the following types of conversations, all of which would be appropriate to tender to the parties:

- Discussions of Watts, Mohammed, or other members of their team framing or putting cases on people. These discussions might be direct, with clear references to framing people, [REDACTED]. They might also be oblique, with discussions or implied threats of what might happen if individuals did not pay Watts, Mohammed, or other members of the team.
- Attempts to bribe or otherwise pay off Watts, Mohammed, or other members of the team. It is undisputed that by March of 2008, [REDACTED]

Ex. J (FBI 218-219)

[REDACTED]; Ex. K (FBI 228-229) ([REDACTED]); Ex. L (CITY-BG-056533) ([REDACTED])

); Ex. M (FBI

184) ([REDACTED]).

Plaintiffs believe it is likely that many of the recordings that are subject to the Court's *in camera* review will address potential bribe payments to Watts or Mohammed.

- Conversations aimed at setting up meetings for the payment of bribes.
- Conversations about robbing or stealing from suspected drug dealers.

³ [REDACTED] are current or former CPD officers.

- Conversations about when Watts and his team would be in the housing projects and any occasions when Watts would be on vacation or away from work. ([REDACTED])
- Conversations about drug dealers who were killed (such as [REDACTED] [REDACTED]).

Any recordings that fall in any of these categories are relevant to Plaintiffs' *Monell* claims and likely their claims against Mohammed and Watts as well. These recordings will help the jury decide whether the City deliberately allowed its officers to continue on active duty—for years—while those officers framed people and took bribes.⁴ The recordings may show that the City knew of many witnesses who could corroborate the bribe-taking, fabrication of evidence, and other misconduct of Watts, Mohammed, and their team, but chose to passively wait instead of proactively investigating that misconduct despite [REDACTED]

[REDACTED] Ex. N (City BG

062266 (paragraph 23)). The recordings may help establish that the City's deficient practices caused Plaintiffs' wrongful convictions, in that officers were empowered to continue their misconduct by the City's failure to act. The recordings would also be relevant to Plaintiffs' allegations that the City of Chicago suffered from a code of silence. At a minimum, Watts (himself a supervisor) and Mohammed each knew that the other was involved in wrongdoing but failed to report that wrongdoing. Such recordings would also be relevant and admissible as party admissions against Watts and Mohammed at trial.

⁴ On the notice point, although the City may not have had access to the FBI's 302 reports, it held monthly meetings with the FBI to discuss joint investigations, including the investigation into Watts and Mohammed. Ex. F (T. Skahill Dep. at 72:20-73:6; 78:12-79:6). No one at CPD has testified that the FBI withheld information that CPD asked for. Ex. E (T. Skahill Dep. at 42:19-43:20) (former head of internal affairs testifying that FBI never refused to provide her with information). [REDACTED]

Other Potentially Relevant Recordings

Watts has recently started taking the position that if his name does not appear as an arresting officer (or assisting arresting officer) on a police report, it means that he was not present for the arrest. This is a new tact for Watts, and it directly conflicts with the testimony of essentially every Plaintiff in the Coordinated Proceedings. It seems likely that Watts has started taking this position because he is typically listed as the supervisor on the arrest reports rather than as an arresting officer. If there are recordings discussing Watts being on the scene when individuals were arrested, those recordings could directly rebut Watts's new position that he was not involved in many arrests and that he could not have been involved in an arrest if he is not listed in the report as the arresting officer or assisting arresting officer.

Finally, there are a myriad of other reasons that specific recordings could be relevant. In an attempt to illustrate, Plaintiffs note that in almost all of the cases Plaintiffs allege Defendant officers fabricated reports and did not witness what they claimed to witness or document in the reports. In short, the entire documented police narrative is false, including at times who was even present for the arrest. To highlight one clear example, Plaintiff Ben Baker has specifically alleged that Defendant Gonzalez was not present and did not detain him during his March 2005 arrest, even though Gonzalez testified at his criminal trial that he did. Rather, Plaintiff Ben Baker maintained it was Defendant Leano who detained him. Ex. O (Baker testimony from criminal trial). Recordings may demonstrate the location of certain officers at certain times, which have the potential to contradict police reports that document those officers at other locations.

To assist in this analysis, Plaintiff provides a list of Plaintiffs, nicknames they sometimes used, and the dates of their arrest. Ex. P. Plaintiffs request, at minimum, any recordings that occur on an arrest date at issue or otherwise reference a listed arrest date on the recording. This is

irrespective of the time of the specific arrest, as there has been testimony that demonstrates that the times listed on arrest reports is not always accurately or consistently documented. Further, Plaintiff requests any recording that references a Plaintiffs' name or nickname.

DEFENDANTS' POSITION

POSITION OF DEFENDANT OFFICERS REPRESENTED BY HALE & MONICO

Defendant Officers represented by Hale & Monico ("Defendant Officers") seek all FBI recordings in the litigation. The Defendant Officers believe that any FBI recordings that do not implicate them in wrongdoing are exculpatory and should be produced in the litigation. As the court is aware, the FBI investigation was conducted over an almost eight-year period and resulted in charges of theft of government funds against Defendants Watts and Mohammed. The 2012 arrests were made for conduct that occurred while both Watts and Mohammed were off duty and not at Ida B Wells. In fact, during 2011, Ida B Wells was in the final phase of closing down. Following the investigation, the United States did not charge any other individual Defendant Officer.

In addition, the arrests of Watts and Mohammed were not related to framing, planting evidence, or putting a case on an arrestee as is now alleged by the Plaintiffs in the Watts Coordinated Pretrial Proceedings. Moreover, upon the arrests and charges being brought against Watts and Mohammed in 2012, then Chicago Police Department ("CPD") Superintendent Garry McCarthy was informed by Special Agent in charge of the FBI's Chicago Office, Robert Grant, that it was just those two officers (Watts and Mohammed) who engaged in criminal conduct. In addition, when the first group of individuals (and now Plaintiffs) had their convictions vacated in the so called "mass exoneration" that drew extensive media coverage during November 2017, then CPD Superintendent Eddie Johnson spoke directly with the United States's Attorney for the

Northern District of Illinois and the Special Agent in charge of the FBI's Chicago Office, who both informed Superintendent Johnson that there was no evidence of criminal activity against any other Chicago Police Department members who worked on Watts' tactical team or the need for Superintendent Johnson to take further action against those members. In addition, earlier this year, FBI Special Agent Craig Henderson (one of the case agents in Operation Brass Tax), declared under penalty of perjury that in his review of electronic information collected by the FBI in its investigation, he did not perceive anything that indicated the subjects of the investigation were engaged in falsification of criminal charges against any individual. Ex. Q (3.15.2023 Declaration of Craig Henderson).

Defendant Officers therefore believe that based upon the results of the criminal investigation, the FBI recordings would likely be exculpatory to the Defendant Officers. Given Plaintiffs' allegations in the Watts Coordinated Proceedings, any exculpatory evidence related to the Defendant Officers contained in those FBI recordings should be disclosed.

In this case, the need for continued secrecy (beyond the Confidentiality Order already in place) is minimal given that the grand jury concluded its investigation over a decade ago and Defendants Watts and Mohammed were charged with theft of government funds, convicted, and completed their sentences years ago. *See Mitchell v. City of Chicago*, 2019 WL 3287844, *3 (finding need for continued secrecy minimal after grand jury concluded investigation, charges filed, finding of guilt, and criminal defendant was deceased). Moreover, the scope of the civil litigation now pending before this Court is based on individuals who claim that Watts and his team "team" preyed upon them. The Defendant Officers should not be hindered in their defense in this litigation and there should be no secrets as to information related to informants, witnesses or Plaintiffs and their claims arising out of these alleged events, including whether or not the federal

government ultimately credited them.

Defendant Officers' need for all of the FBI recordings is substantial. The allegations made against the Defendant Officers in this case are generalized in nature, and rely heavily on allegations against "teams" or groups of individuals. Fairness mandates that each individual defendant be able to discover what he or she is actually alleged to have done and by whom. Fairness also mandates that evidence that an individual *did not* engage in misconduct also sees the light of day.

Defendant Officers expect the FBI recordings to be potentially exculpatory in a number of respects. First, the FBI recordings may be exculpatory by the *lack* of evidence against a Defendant Officer. For example, if surveillance does not identify a Defendant Officer as a participant in misconduct, that fact may be exculpatory. It is simply not enough for Plaintiffs to say that a Defendant Officer was on Watts's "team" to prove liability. Second, to the extent that a Plaintiff or an alleged Rule 404(b) witness made an allegation of misconduct against a Defendant Officer, investigatory materials relating to that witness's credibility—or lack thereof—may be crucial. Third, if one or more Plaintiffs or an alleged Rule 404(b) witness in this case were witnesses in the investigation, the specific content of those claims, the extent to which they match or conflict with the claims now being made, and any credibility problems with those claims, would be highly relevant in the cases pending here. It is also possible that third parties have made statements that exculpate Defendant Officers from wrongdoing.

Further, the lack of references to the Defendant Officers in alleged inculpatory discussions could be exculpatory, as could a Defendant Officer's failure to make inculpatory statements. FBI recorded statements by Plaintiffs, informants or other witnesses concerning the alleged events could also provide impeachment material, both as to their credibility and as to the substance of their allegations in these cases.

Lastly, the FBI recordings may provide inculpatory evidence that Plaintiffs or their witnesses were engaging in criminal activity. For example, Plaintiff Ben Baker readily admits he sold narcotics out of the building he lived in with Plaintiff Clarissa Glenn and their children. FBI recordings may shed further light on the vast narcotics operations of Plaintiff Ben Baker and other Plaintiffs in the Watts Coordinated Pretrial Proceedings.

POSITION OF DEFENDANT OFFICERS REPRESENTED BY LEINENWEBER BARONI & DAFFADA LLC

Defendant Officers Spaargaren and Cadman represented by Leinenweber Baroni & Daffada LLC (“LBD Officers”) concur with the position of the Defendant Officers represented by Hale & Monico regarding the need to access all of the recordings. The LBD Officers concur that the joint investigation established evidence of wrongdoing only against Watts and Mohammed and not against the other officers. The LBD Officers believe the probable exculpatory nature of the recordings would be significant to their defense arguments in this case.

CITY’S POSITION

The City concurs that all the recordings are relevant for discovery purposes to this litigation and proportional to the needs of the case. As the Defendant Officers describe above, federal Government officials involved in the joint FBI/IAD confidential criminal investigation informed CPD officials that Watts and Mohammed were the officers against whom evidence of wrongdoing was established, and not the other officers on Watts’ team. [REDACTED]

[REDACTED] . (Ex. R, 9/25/14 FBI memo Bates-stamped FBI 1279-81, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] This evidence is important because it refutes plaintiffs’ allegations, outlined

above, that the CPD knew that other officers were involved yet failed to act. The City expects the recordings may further refute plaintiffs' allegations that there was evidence of framing innocent people and planting evidence. While some of the plaintiffs and/or informants (such as Ben Baker) claimed they were framed, the evidence developed during the joint FBI/IAD criminal investigation showed they were drug dealers who were paying or being solicited by Watts and/or Mohammed to pay to allow them to continue to sell narcotics at Ida B. Wells. (See Ex. S, FBI 000250-52; Ex. T, PL Joint 010947-48; see also Ex. Q at para. 14, affidavit of Agent Henderson).

The City expects the recordings to further refute plaintiffs' argument that the CPD should have compromised the integrity of the federal government's confidential criminal investigation by administratively moving to discipline the officers while it was pending. Plaintiffs articulate their argument as follows:

These recordings will help the jury decide whether the City deliberately allowed its officers to continue on active duty—for years—while those officers framed people and took bribes. The recordings may show that the City knew of many witnesses who could corroborate the bribe-taking, fabrication of evidence, and other misconduct of Watts, Mohammed, and their team, but chose to passively wait instead of proactively investigating that misconduct

Ex. N (City BG 062266 (paragraph 23). The recordings may help establish that the City's deficient practices caused Plaintiffs' wrongful convictions, in that officers were empowered to continue their misconduct by the City's failure to act.

(See page 5, above).

The CPD brought the criminal allegations to the attention of the FBI in September 2004. . (Ex. U, BAKER GLENN 010844). At a September 20, 2004 meeting regarding the matter (attended by the United States Attorney's Office, the FBI, the ATF, a member of HIDTA, and members of the CPD's Internal Affairs Division), the federal government "determined this would be a federally prosecuted investigation" and that "the United States Attorney's office believe they should be in control of everything that results" from the cooperation of the confidential informant

providing information at the time. (Ex. U, BAKER GLENN 010844). Consistent with this meeting, the evidence adduced during discovery has confirmed that the FBI was the lead agency on the joint investigation with IAD, that the FBI controlled the information that was developed during the investigation, that confidentiality of the investigation to prevent Watts, Mohammed, or other subjects learning of the investigation was crucial, that the investigation would not close until the federal government closed the criminal case, and that any attempt by the CPD to move administratively against the officers before then (thereby revealing the investigation) would constitute an illegal interference with the investigation. (Ex. V, City's answers to interrogatories).

An example of what the recordings may disclose illustrates this point. As plaintiffs state, evidence developed during the joint FBI/IAD criminal investigation [REDACTED]

[REDACTED]
(Plaintiff's Exhibits J, K, M). Plaintiffs suggest the CPD should have administratively moved to separate Mohammed at that time based on this evidence and is now liable because it "failed to act" until 2012. However, [REDACTED]

[REDACTED]. (Ex. W, July 13, 2011 FBI memo stating, [REDACTED]

[REDACTED]
[REDACTED]. As a result, the FBI and IAD continued to investigate until the operation's successful conclusion in November 2011, leading to the indictments and convictions of both Watts and Mohammed. (Ex. X) Had the CPD filed administrative charges against Mohammed [REDACTED]

[REDACTED] it necessarily would have had to disclose the basis of those charges to Mohammed, which would have obstructed the federal investigation and prevented the successful prosecution of Watts. The same analysis applies [REDACTED]

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Thus, these recordings will refute, rather than support, plaintiffs' *Monell* claims against the City. The recordings will likely show that the evidence developed during the joint FBI/IAD confidential criminal investigation did not support charging offices other than Watts and Mohammed, that there was not any evidence of false arrests or planting evidence other than the self-serving claims of certain plaintiffs, and that the CPD could not compromise the integrity of the confidential criminal investigation by administratively moving to discharge Watts and Mohammed before the conclusion of the criminal investigation.

POSITION OF DEFENDANT WATTS REPRESENTED BY JOHNSON & BELL, LTD.

Defendant Sgt. Ronald Watts, represented by Johnson & Bell, Ltd., agrees that all the FBI recordings are relevant for discovery purposes to this litigation and proportional to the needs of the case, as such Defendant Watts seeks all FBI recordings in the litigation. Defendant Watts believes that any FBI recordings that do not implicate him in wrongdoing are exculpatory and should be produced in the litigation. Additionally, the FBI recordings may provide inculpatory evidence that Plaintiffs or their witnesses were engaging in criminal activity.

POSITION OF DEFENDANT MOHAMMED.

Defendant Kallatt Mohammed respectfully declines to take a position regarding these issues.

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(Ex. N).

Respectfully submitted,

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