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D.C. Superior Court

CRIMINAL LAW AND PROCEDURE

JENCKS MATERIALS / LOST DOCUMENTATION / SANCTIONS IMPOSED / ARRESTING OFFICER'S TESTIMONY STRICKEN

Précis: The Government and collateral agencies in the criminal justice process have an obligation to preserve documents that might be relevant to trial, including those which might be helpful to the defendant. These "Jencks Materials" include any document containing a substantially verbatim written statement made by or adopted by a witness reasonably contemporaneous with the events at issue, usable for cross-examination of that witness. If such have been lost or destroyed, the Court must make an additional inquiry as to the circumstances involved and then determine whether a defendant is prejudiced by the lack of access thereto. The issue is enhanced if the Court has already ordered the Government to produce such materials because any sanctions involved may become more stringent. In addition to the foregoing factors, the Court must then analyze the policy in place, if any, designed to ensure the preservation of such documents, the degree of negligence or bad faith involved, the importance of the lost documents and the magnitude of the impact that the loss has on the evidence, and the competing evidence of guilt adduced. A traffic Notice of Infraction (NOI) and all MPD booking forms are potential Jencks materials. Failure to produce them may subject the Government to the imposition of sanctions at trial, such as the striking of the testimony of the pertinent witness.

Abstract: In a textbook primer on Jencks materials and lost documents, the Trial Court imposed sanctions on the Government by striking the testimony of the arresting officer in this case. While in a high crime area, an MPD Officer noticed a vehicle in which the Defendant was a passenger enter traffic without signaling and conducted a traffic stop. The Officer noticed that the Defendant was acting suspiciously and asked him to step out of the car, whereupon he surrendered one small ziplock envelope containing a white powdered substance, for which he was immediately placed under arrest (although the opinion makes no mention of a field test or any other indication as to whether it was a controlled substance). At the same time, the Officer gave the driver of the vehicle a "warning" Notice of Infraction (NOI) which carried no fine. Because of its seeming lack of consequences, the Officer did not keep a copy. The Officer also filled out a PD-256 Quick Booking form which contained the standard information regarding the Defendant and a brief description of the offense and arrest. There is no uniform MPD policy for the retention or preservation of either of these documents and in this case, despite a timely discovery request, neither could be produced. The Defendant then filed a Motion for Sanctions for failure to preserve Jencks materials, invoking his Fifth and Sixth Amendment rights. As a threshold matter, the Court was required to determine whether either document fell under the rubric of Jencks materials, which are defined as a substantially verbatim written statement made by or adopted by a witness reasonably contemporaneous with the events at issue, usable for cross-examination of that witness in the criminal proceedings. If the materials have been lost or destroyed, the Court must make an additional inquiry as to the circumstances involved and then determine whether a defendant is prejudiced by the lack of access thereto. The issue is enhanced if the Court has already ordered the Government to produce such materials because any sanctions involved may become more stringent. In addition to the foregoing factors, the Court must then analyze the policy in place, if any, designed to ensure the preservation of such documents, the degree of negligence or bad faith involved, the importance of the lost documents and the magnitude of the impact that the loss has on the evidence, and the competing evidence of guilt adduced. (A) Starting with the NOI, the Court credited the testimony of the Officer that it did not contain any notes by him and contained only identification information by the driver. While the Court ruled that an NOI is a discoverable document and that the Government, therefore should have preserved same, it found that this one did not contain anything that would lead it to conclude that it was producible as Jencks, mainly because there was no evidence of any prejudice to the Defendant stemming from its loss, and, finally, there was no indication of any bad faith involved. (B) The Court arrived at a different conclusion as to the PD-256 form. The fact that the Officer could not recall whether he had made

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any notes on this document increased the propensity for its disclosure, particularly inasmuch as the Court indicated that it did not credit as much of this aspect of the Officer's testimony as it had with regard to the NOI. Under these circumstances the Court concluded that it "must assume the worst," specifically inferring that the PD-256 form did include notes by the Officer which contained Jencks information constituting "serious impeachment material." While the Court did not go so far as to ascribe bad faith to the Government it emphasized that the lack of any MPD policy to preserve these documents and the absence of evidence of any extensive efforts to locate copies, justified the sanction of striking the Officer's testimony.

UNITED STATES v. HARRIS

D.C. Super. Ct. Crim. No. 2008-CMD-16425. Decided Oct. 29, 2008. (Christian, Kaye K., J.) United States Attorney's Office for the United States. *Justin A. Okezie*, Esq. for the Defendant.

ORDER

CHRISTIAN, *Judge*: This matter comes before the Court on the Defendant's Motion to Strike and Exclude Testimony of Officer Dominique Tyson ("Motion") filed on October 15, 2008 and the Government's Opposition to Defendant's Motion to Strike and Exclude Testimony of Officer Dominique Tyson ("Opposition") filed on October 16, 2008. A hearing on the Defendant's Motion to Suppress and Exclude Tangible Evidence and Statement commenced on October 14, 2008. During the hearing, it was revealed that two documents, a Notice of Infraction issued for the initial traffic stop associated with this matter and a Metropolitan Police Department for PD-256 also associated with this matter, were apparently missing. As a result of these revelations, the Defendant filed the Motion at bar. The Court subsequently, on October 21, 2008, commenced a Jencks hearing on the Defendant's Motion to determine what sanctions, if any, were appropriate.

During the October 14, 2008 and October 21, 2008 hearings, the government presented one witness—Metropolitan Police Officer Dominique Tyson. The Defendant did not present any witnesses. The Court found Officer Tyson's testimony as to some facts credible and less credible with respect to other facts. In addition to witness testimony, three exhibits were admitted into evidence: Government's Exhibit 3, Officer Tyson's drawing of a general PD-256 form; Defendant's Exhibit 1, Metropolitan Police General Order titled Preservation of Potentially Discoverable Material; and Defendant's Exhibit 2, a Google map of where the traffic stop occurred.

Based on the evidence presented, as well as the record of this case, the Court makes the following:

FINDINGS OF FACT

1. Dominique Tyson is an officer with the Metropolitan Police Department ("MPD"). Officer Tyson has been working as a Metropolitan Police Officer for approximately two and a half years.

2. On July 17, 2008, Officer Tyson witnessed a vehicle enter traffic without using the proper mechanical signal and conducted a traffic stop. The Defendant, Jerome Harris, was a passenger in the vehicle.

3. Officer Tyson observed the Defendant looking nervous; moving around a lot and acting as if something was wrong. As a result of this behavior, Officer Tyson approached the Defendant and asked him to exit the vehicle.

4. According to Officer Tyson, he frequently requests individuals to step out of a vehicle during traffic stops if he felt something was wrong.

5. After the Defendant exited the vehicle, Officer Tyson informed the Defendant that the area was a "high crime area" and asked the Defendant whether he had any contraband on his person.

6. In response to Officer Tyson's questions, the Defendant answered in the affirmative and pulled out of his pants a clear "zip" with a Batman logo on it and a white powered substance inside.

7. The Defendant was subsequently placed under arrest. While placing the Defendant under arrest, the Defendant requested that Officer Tyson not inform the driver of the reason for his arrest. According to Officer Tyson, the Defendant acknowledged that he knew the driver of the vehicle and may have mentioned that they were friends. In addition, the Defendant spontaneously informed Officer Tyson that the "zip" was for his girl.

8. Officer Tyson then proceeded to issue a warning ticket for the driver of the vehicle. In addition, Officer Tyson completed a PD-256 Quick Booking Form ("PD-256") for the Defendant.

9. Information contained in the warning ticket, or Notice of Infraction ("NOI"), included the driver's name, address, sex, date of birth, the location of the stop, the license plate number of the vehicle, a description of the vehicle, the type of traffic infraction (whether "moving" or "parking"), the police officer's name, the traffic code for the infraction, check boxes for either a fine or warning, and a section on the back of officer's copy of the NOI for notes.

10. Officer Tyson testified that the NOI issued to the driver of the vehicle did not include the driver's signature. Nor did Officer Tyson write any notes on the NOI because it represented only a warning without fines assessed.

11. According to Officer Tyson, the copy of the NOI was given to the driver while the original NOI was turned over to the individual at the police station in charge of collecting paperwork generated by officers that day.

12. Additionally, Officer Tyson also testified that in cases where he issues traffic citations with a fine, he would make a copy of the citation for his own records. In this case, however, because only a warning was issued, Officer Tyson did not make a copy of the NOI for his own records. Officers are not required, as a part of MPD's standard operating procedure, to make copies of citations for personal records.

13. Neither the original NOI nor a copy of the NOI was provided to the Defendant during discovery. Officer Tyson spoke to an officer at the police station where the original NOI was turned in to determine if it was possible to obtain the NOI. The officer informed

Officer Tyson that they most likely did not keep warning citations. Officer Tyson is not familiar with MPD's official policy with regards to retaining warning citations.

14. The only information from the NOI transferred to another document, the PD-163, was the NOI number and the traffic infraction of "failure to use a mechanical signal."

15. Officer Tyson does not remember the name of the driver of the vehicle. Moreover, Officer Tyson only wrote the driver's name and address on the NOI.

16. In addition to the NOI, Officer Tyson also testified that he filled out a standard PD-256 Quick Booking Form related to the Defendant's arrest.

17. Officer Tyson testified that the PD-256 is used to obtain basic information from an arrestee to initiate booking process. The PD-256 form used for the Defendant included the following information: the Defendant's first, last and middle name; social security number; address; date of birth; the location, date and time of the illegal activity; the location, date and time of the arrest; the charges against the Defendant; and arrest number.

18. After an arrestee is transported to a police station, PD-256 forms are generally given to an officer in charge of logging in the information contained on the form. The officer logging information would also conduct a Wales NCIC check for the arrestee as well as a background check. Finally, the logging officer will also generate an official arrest number for the arrestee. Such arrest numbers are typically handwritten by officers onto the side of PD-256 forms.

19. According to Officer Tyson, the individual who logged the information contained in the Defendant's PD-256 form is Officer Richardson, who is identified on the PD-163 form.

20. Generally, information contained in the PD-256 forms is used to complete other police forms such as the PD-163. However, there is a blank space on the PD-256 form that is sometimes used by officers to take notes in lieu of a notebook.

21. According to Officer Tyson, most officers do not turn in their PD-256 forms for preservation.

22. Officer Tyson talked to an unknown individual at the police station where the Defendant was transported to for booking after his arrest to ascertain whether the Defendant's PD-256 could be acquired. The unknown individual informed Officer Tyson that PD-256 forms are generally kept for two to three weeks. There is no procedure, according to the individual, for preserving the forms. Finally, the unknown individual informed Officer Tyson that some of the PD-256 forms could just be "laying around" somewhere.

23. In addition, Officer Tyson testified that there were multiple photocopies of the Defendant's PD-256 form made at the police station and distributed to various individuals who needed the identifying information. Officer Tyson turned in the original but kept a photocopy of the PD-256, which he later destroyed. To the best of Officer Tyson's knowledge, the other photocopies of the Defendant's PD-256 are unaccounted for.

24. Finally, Officer Tyson does not recall whether he wrote notes or statements on the Defendant's PD-256 form.

25. Officer Tyson can confirm, however, that not all information contained in the PD-256 forms is transferred to other police documents such as the PD-163.

CONCLUSIONS OF LAW

The Defendant now requests that the Court sanction the government for its failure to produce the NOI and PD-256. In support of this request, the Defendant states, in his Motion, that the NOI and PD-256 constitute Jencks material and discoverable material pursuant to Rule 16 of the Superior Court Rules of Criminal Procedure (2008). As a sanction, the Defendant requests, in his Motion, that Officer Tyson's entire testimony be stricken. While giving closing arguments during the hearing on October 21, 2008, defense counsel added that as a minimum sanction, "all inferences [should] be read against [Officer Tyson]."[1] In addition, the Defendant declares in his Motion that it would constitute a violation of his Sixth and Fifth Amendment right to confront and cross-examine is violated if Officer Tyson's testimony is allowed. In response to the Defendant's Motion, the government asserts that the missing NOI and PD-256 does not warrant sanctions under Jencks or Rule 16. Moreover, the government also states that the Defendant's Fifth and Sixth Amendment rights to cross-examine is not violated if Officer Tyson is allowed to testify because he will be available for defense counsel to cross-examine.

I. Legal Standards

To consider sanctions under the Jencks Act, the Court must, as a threshold matter, decide whether lost or destroyed material constitutes Jencks materials within the meaning of the statute. Johnson v. United States, 800 A.2d 696, 700 (D.C. 2002). The Jencks Act is codified under Rule 26.2 of the Superior Court Rules of Criminal Procedure (2008). Rule 26.2(a) states:

> After a witness other than the defendant has testified on direct examination, the Court, on motion of a party who did not call the witness, shall order the prosecutor or the defendant and the defendant's attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

Pursuant to Rule 26.2(f)(1) and (2), a "statement" under this rule refers to "a written statement made by the witness that is signed or otherwise adopted or approved by the witness" and "a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof." If the Court finds that lost materials fall under the Jencks Act, then it must determine the nature and potential importance of the missing Jencks material and the circumstances surrounding its loss or destruction. See Johnson, 800 A.2d at 700. Finally, to determine what sanctions are necessary, the Court must consider "the degree of negligence or bad faith involved in the loss of the [Jencks material], whether the [Jencks material] could have been produced at the time of trial, and the extent to which [a party] was prejudiced by his [or her] inability to use the [Jencks material] to cross-examine the [] witness." Id.

For lost or destroyed evidence to warrant sanctions pursuant to Rule 16 of the Superior Court Rules of Criminal Procedure, the material must first be discoverable under Rule 16(a) or (b). Once it is determined that the evidence is discoverable under Rule 16, the Court may exercise judicial discretion to impose sanctions for the loss or destruction of the evidence. Rodriguez v. United States, 915 A.2d 380, 389 (D.C. 2007) (citing Davis v. United States, 641 A.2d 484, 494 (D.C. 1994), cert. denied, 514 U.S. 1028, 131 L. Ed. 2d 237, 115 S. Ct. 1384 (1995)). Specifically, Rule 16(d)(2) provides:

> If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this Rule, the Court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other orders as it deems just under the circumstances. The Court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

To determine whether sanctions must be imposed for the loss of evidence, the Court should evaluate "'1) the circumstances occasioning the loss; 2) systematic steps taken toward preservation; and 3) the magnitude of demonstrated evidentiary materiality.'" Robinson v. United States, 825 A.2d 318, 331 (D.C. 2003) (citing Brown v. United States, 372 A.2d 557, 560-61 (D.C. 1977)). Lastly, in fashioning an appropriate sanction, when necessary, the Court must consider 1) the degree of negligence or bad faith involved, 2) the importance of the lost evidence, and 3) the evidence of guilt adduced at trial in order to come to a determination that will serve the ends of justice. Rodriguez, A.2d at 389; Robinson, 825 A.2d at 331; Cotton v. United States, 388 A.2d 865, 869 (D.C. 1978).

II. The Notice of Infraction ("NOI")

According to Officer Tyson's testimony, the NOI contained the following information: driver's name, address, sex, date of birth, the location of the stop, the license plate number

of the vehicle, a description of the vehicle, the type of traffic infraction (whether "moving" or "parking"), the police officer's name, the traffic code for the infraction, check boxes for either a fine or warning, and a section on the back of officer's copy of the NOI for notes. In addition, Officer Tyson testified that he did not write any notes on the NOI because only a warning was issued to the driver of the vehicle. The Court now finds Officer Tyson's testimony credible with respect to the content of the NOI and the absence of notes. In particular, the Court found the testimony credible because of the consistency of Officer Tyson's answers on this subject.

In light of Officer Tyson's description, the Court finds that two types of statements are present on the missing NOI. First, the NOI included oral statements made by the driver of the vehicle to Officer Tyson with respect to his name, address, date of birth and so forth. In addition, the NOI also included possible written and approved statements made by Officer Tyson himself, such as a description of the location of the traffic stop, a description of the vehicle, and a description of the traffic violation associated with the stop. With respect to the oral statements from the driver, the Court finds that they are not producible pursuant to Jencks. The law in this jurisdiction clearly states that "'merely random notations of background material such as age, address, place of employment, and the like are not statements within the meaning of Jencks." Hilliard v. United States, 638 A.2d 698, 704 (D.C. 1994) (citing Brown v. United States, 359 A.2d 600, 601 (D.C. 1976)). The driver's name, address and date of birth clearly fall into the background information category described in Hilliard and, therefore, are not statements within the meaning of Jencks. Contrarily, Officer Tyson's written and approved statements describing the location of the traffic stop, the vehicle associated with the traffic stop, and the traffic violation cited for the stop does appear to constitute Jencks material. Specifically, such descriptions resemble narratives, albeit short ones, of what Officer Tyson observed at the scene of the traffic stop.

Moreover, the Court notes that the NOI as a whole constitutes a discoverable document pursuant to Rule 16(a)(1)(C), which states:

> Upon request of the defendant the prosecutor shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

There is no dispute that the Defendant filed a timely discovery request for materials included in Rule 16(a)(1)(C). Nor is there any doubt that the document was turned over by Officer Tyson to the police station; therefore, the document was in the possession of the government. Finally, according to the Defendant, information contained in the document, specifically the traffic code for the infraction is material to his defense. In light of all the above, the government should have preserved the NOI for discovery purposes.

Since the NOI included statements written by Officer Tyson that are producible under Jencks and the document as a whole is discoverable pursuant to Rule16(a)(1)(C), the Court will now consider sanctions. In determining the importance of the lost NOI, the Court must note that the Defendant does not suffer any prejudice from the government's failure to preserve the NOI and the statements contained therein written by Officer Tyson. Throughout the October 14, 2008 and October 21, 2008 hearings, defense counsel focused almost exclusively on forwarding the argument that the initial traffic stop was illegal and therefore, all evidence gathered as a result of the stop is inadmissible. Based on this argument, the government's inability to produce the NOI supports the Defendant's case by calling into question the legality of the initial traffic stop. Indeed, the government's case would probably benefit if a valid NOI was produced. See McGriff v. United States, 705 A.2d 282, 287 (D.C. 1997). Since the Defendant benefits from the government's inability to produce the NOI and there is no evidence of bad faith on the part of the government for its failure to preserve the NOI, the Court does not believe Jencks sanctions are warranted.

Furthermore, defense counsel argues that knowing the name and address of the driver is essential to proving that the initial traffic stop was illegal; therefore, the NOI is a crucial piece of discoverable evidence under Rule 16. In making this argument, defense counsel does not suggest what testimony he anticipates the driver of the vehicle will give in support of the Defendant's case. However, even assuming that the driver's testimony is relevant, the Court finds it strange that defense counsel cannot solicit the name of the driver from his own client—the Defendant. After all, the Defendant was a passenger in the driver's vehicle when the initial traffic stop was made. It is somewhat suspect that the Defendant will not reveal the driver's name to his own attorney. This calls into question the materiality of the driver's possible testimony on behalf of the Defendant. Moreover, the Court again notes that the loss of the NOI, though negligent, is not an act of bad faith on the part of the MPD. In light of the uncertain value of the driver's testimony and the lack of bad faith surrounding the loss of the NOI, the Court does not believe Rule 16 discovery sanctions are appropriate.

III. The PD-253 Quick Booking Form

In comparison to the missing NOI, the failure of the government to produce the PD-256 form is much more troubling to the Court. To begin, the Court finds that Officer Tyson's testimony indicates that the PD-256 includes information such as the Defendant's first, last and middle name; social security number; address; date of birth; the location, date and time of the illegal activity; the location, date and time of the arrest; the charges against the Defendant; and arrest number. Unlike the NOI, Officer Tyson was unable to state with certainty that he did not take notes on the PD-256 form. Rather, Officer Tyson could not recall whether he wrote notes on the Defendant's PD-256 form. While testifying under oath, Officer Tyson tried to assert that if he did write any notes, said notes would only describe the Defendant's clothing and possibly a telephone number.[2] This assertion is suspect because the Court cannot credit Officer Tyson's ability to remember statements that he "might" have included on the Defendant's PD-256 when he cannot even recall whether he wrote any such statements to begin with. Therefore, based on the evidence that was presented during the October 14, 2008 and October 21, 2008 hearings, the Court can only conclude that notes and or statements may have been written on the missing PD-256 form.

The conclusion that possible written statements may have existed on the PD-256 form is not helpful to the Court's Jenck's analysis. Based on Officer Tyson's testimony, the Court simply cannot determine whether Jencks statements were included on the PD-256 form. For example, it is impossible for the Court to determine whether Officer Tyson wrote narratives of his recollection of events on the PD-256. Yet, at the same time, the Court cannot make a finding that no such statements existed because Officer Tyson testified that it was possible he wrote notes on the PD-256 form. In the absence of more evidence or an actual viewing of the PD-256 form, the Court must assume the worst. See Johnson, 800 A.2d 696 at 701, fn.4. Specifically, the Court infers 1) that the PD-256 did include notes written by Officer Tyson that constitute statements under the Jencks Act, 2) that the statements would have provided serious impeachment material, and 3) that the failure of the government to produce the NOI, therefore, requires the striking of Officer Tyson's direct testimony as a sanction. See Id.

The Court does note, however, that any statements made by the Defendant and transcribed onto the PD-256 by Officer Tyson would not fall under the purview of Jencks. Williams v. United States, 641 A.2d 479, 484 (D.C. 1994); SCR-Criminal 26.2(a). Rather, discovery of statements made by defendants are governed solely by Rule 16 (a)(1)(A), which states:

> Upon request of a defendant the attorney for the government must disclose to the defendant and make available for inspection, copying, or photographing: any relevant written or

> recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; that portion of any written record containing the substance of any relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. The government must also disclose to the defendant the substance of any other relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known by the defendant to be a government agent if the government intends to use that statement at trial.

Accordingly, the background information orally provided by the Defendant to Officer Tyson, as well as any unverifiable notes possibly recorded by Officer Tyson on the PD-256 form becomes discoverable under Rule 16(a)(1)(A). Consequently, the government's failure to produce the PD-256 is a Rule 16 violation warranting sanctions under Rule 16(d)(2) as well as Jencks.

IV. Sanctions

In fashioning a sanction under either Jencks or Rule 16, the Court takes into consideration Officer Tyson's inability to deny that notes were written on the PD-256 form. This requires the Court to assume the worst and make inferences favorable to the Defendant as to the materiality of the lost material and the prejudice suffered by the Defendant as a result. Moreover, the Court finds that in this situation, it cannot make a clear determination that the government has acted in good faith to locate the missing PD-256 for discovery purposes. Officer Tyson clearly testified that multiple copies of the PD-256 were made by the police station upon the Defendant's arrival. Although Officer Tyson destroyed his copy, he cannot account for the other copies of the PD-256. Finally, Officer Tyson testified that the unidentified individual he spoke to at the police station stated that PD-256 forms could be "laying around" the station somewhere. Such testimony begs the question of why the government has not made more efforts to locate a copy of the PD-256 that could be lying around a police station. At this time, the Court will not go so far as to conclude that the government is acting in bad faith with the specific intent to destroy or lose the PD-256. However, it is impossible for the Court to find that the government has acted in good faith without further efforts to locate a copy of the PD-256, aside from Officer Tyson's single phone call to an unidentified individual at the police station. In light of the inferences the Court must make in favor of the Defendant, with respect to the prejudice and materiality of the unverifiable PD-256 statements and the government's lacking efforts to locate a copy of the PD-256, the Court shall at this time impose the sanction requested by the Defendant and strike Officer Dominique Tyson's entire testimony from the record.

WHEREFORE, it is by the Court this 29th day of October 2008, hereby

ORDERED, that the Defendant's Motion to Strike and Exclude Testimony of Officer Dominique Tyson is **GRANTED**; and it is further

ORDERED, that the entire testimony of Metropolitan Police Officer Dominique Tyson's testimony shall be stricken from the record.[3]

SO ORDERED.

FOOTNOTES:

[1]The Court notes that the Defendant's Motion, though detailed in its recitation of case law, generally lacks factual analysis. Therefore, the Defendant offers little insight with respect to the merits of this case.

[2]During the hearing on October 21, 2008, Officer Tyson testified that he was in possession of his notebook at the time of the arrest. Yet the Court finds it curious that Officer Tyson chose to write notes related to the Defendant's arrest on the PD-256 form, rather than his notebook. The Court further notes that Officer Tyson testified that MPD systematically preserves notes contained in officers' notebooks but not PD-256 forms.

[3]In light of the Court's ruling to strike Officer Dominique Tyson's entire testimony as a sanction, the Court finds that there is no need to address the Defendant's general Fifth and Sixth Amendment arguments premised upon allowing said testimony.

Cite as *U.S. v. Harris* 137 DWLR 429 (Oct. 29, 2008) (Christian, J.) (Sup. Ct. DC)