

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

MELODY STEELE SMITH,

Defendant.

Crim. Action No. 21-77-1 (RDM)

**DEFENDANT’S MOTION TO COMPEL DISCOVERY UNDER RULE 16
AND *BRADY V. MARYLAND***

Defendant Melody Steele Smith through undersigned counsel, respectfully moves this Court to compel the government to disclose material evidence. Specifically, Ms. Steele Smith requests the names and agencies of any and all law enforcement officers that Ms. Steele Smith interacted with on January 6, 2021.¹

Undersigned counsel appreciates that there is a significant volume of January 6 discovery that the government is working hard to assess, organize, and deliver to the relevant defendants; however, this volume of general discovery—of undetermined relevance to particular defendants—does not in any way bear upon government’s capacity to deliver discovery that is relevant to a particular defendant. Here, the subject matter of Ms. Steele Smith’s discovery request is of known relevance to Ms.

¹¹ The government has provided surveillance videos from inside the capitol. It is not clear whether the videos provided represent all of the relevant surveillance video. The government has not provided any body worn camera footage that is specific to Ms. Steele Smith’s case.

Smith. Even so, the government has failed to produce this critical discovery for fifteen months.

Ms. Steele Smith is a 58-year-old Navy veteran. Prior to her arrest for her alleged activities on January 6, she had never been arrested. She is not alleged to have committed any acts of violence or destruction of property on January 6th. She is a mother, a grandmother, and a respected member of her Gloucester, VA community. As anticipated, she has been in perfect compliance with conditions of pre-trial release since January 22, 2021. Ms. Steele Smith should not have to bear the burden of sustained uncertainty about the serious charges that she faces while the government is unable to provide timely discovery and *Brady* material.

FACTUAL AND PROCEDURAL BACKGROUND

Ms. Steele Smith is before the Court charged with offenses related to the events of January 6. As she later recounted to law enforcement, on that day, she traveled to Washington, D.C. from her home in Gloucester, Virginia with a couple friends because she wanted to hear the president speak. To her dismay, by the time she and her friends arrived, they had missed the president's speech. She and her friends joined the crowds at the capitol and became separated. Ms. Steele Smith got caught in the crowd and moved with a group of people into the Capitol building. She walked in through the Senate Wing doors. Once inside, she moved about peacefully. Surveillance video from inside the capitol depicts Ms. Steele Smith passing by several police officers who appear to have no reaction to her. Ms. Steele Smith later told law enforcement that she was not aware that she was not permitted to enter the building.

Ms. Steele Smith was arrested in connection with her January 6 activities on January 20, 2021. She was ordered released with conditions on January 22, 2021. On February 3, 2021, an Indictment was filed charging Ms. Steele Smith with aiding and abetting the obstruction of an official proceeding in violation of 18 U.S.C. §§ 1512(c)(2), 2; entering and remaining in a restricted building or grounds in violation of 18 U.S.C. § 1752(a)(1); disorderly and disruptive conduct in a restricted building or grounds in violation of 18 U.S.C. § 1752(a)(2); entering and remaining in certain rooms in the Capitol building in violation of 40 U.S.C. § 5104(e)(2)(C); and disorderly conduct in a Capitol building in violation of 40 U.S.C. § 5104(e)(2)(D). Indictment, ECF. No. 8.

On August 13, 2021, Ms. Steele Smith filed a motion to compel Rule 16 and *Brady* Material, including the body-worn cameras of the law enforcement officers. *See* ECF No. 19. Despite the fact that almost nine months have elapsed since undersigned counsel filed that motion and a trial date of November 14, 2022, has been set, the government has yet to produce the identity of a single officer who came into contact with Ms. Steele Smith on January 6, 2022. This stands in sharp contrast to other January 6 cases to which undersigned counsel is assigned. In other cases, the government has provided the names and body worn cameras of those officers who encountered the defendant that day. And while the government may maintain that the pertinent officers' body worn cameras may be uploaded to the platform evidence.com through the production of global discovery, undersigned counsel have no way of knowing where to begin looking for the body worn cameras of those officers that came into contact with Ms. Steele Smith because the government has not

responded to counsel's repeated requests for identifying information. Such evidence would no doubt be material to Ms. Steele Smith's defense.

ARGUMENT

A. Rule 16 requires the production of the requested material.

Federal Rule of Criminal Procedure 16(a)(1)(E) provides defendants with broad discovery rights. The rule requires the production, upon defendant's request, of documents and objects within the government's possession, custody, or control that are "material to preparing the defense." Fed. R. Crim. P. 16(a)(1)(E). Materiality "is not a heavy burden." *United States v. Lloyd*, 992 F.2d 348, 351 (D.C. Cir. 1993). Evidence is material—whether exculpatory or inculpatory—"as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal." *United States v. Marshall*, 132 F.3d 63, 68 (D.C. Cir. 1998) (quoting *Lloyd*, 992 F.2d at 351). A defendant makes an adequate showing of materiality where they "present[s] any facts which would tend to show that the government was in possession of information that would be helpful to the defense." *United States v. Cadet*, 727 F.2d 1453, 1466 (9th Cir. 1984).

Ms. Steele Smith can clearly make a showing of materiality in the requested discovery. The interactions that Ms. Steele Smith had with these law enforcement officers will bear directly on the elements of the charged offenses. Consequently, their body-worn cameras and reports will almost certainly be material evidence. It is true that through global discovery, the government has made thousands of hours of body-

worn camera footage available; however, little of this is relevant to Ms. Steele Smith. The names of the officers, potential witnesses for or against her, are critical information that she must have in order to prepare her defense. The government has not provided body-worn camera footage of any of the officers that may have encountered Ms. Steele Smith. This footage is material to each charge, as it contextualizes her specific conduct and mens rea on January 6.

In determining what to disclose under Rule 16, “the government cannot take a narrow reading of the term ‘material’ . . . [n]or may it put itself in the shoes of defense counsel in attempting to predict the nature of what the defense may be or what may be material to its preparation.” *United States v. Safavian*, 233 F.R.D. 12, 15 (D.D.C. 2005). Rather, “[t]he language and the spirit of the Rule are designed to provide to a criminal defendant, in the interest of fairness, the widest possible opportunity to inspect and receive such materials in the possession of the government as may aid him in presenting his side of the case.” *United States v. Libby*, 429 F. Supp. 2d 1, 5 (D.D.C. 2006) (quoting *United States v. Poindexter*, 727 F. Supp. 1470, 1473 (D.D.C. 1989); see also Fed. R. Crim. P. 16, advisory committee note (amend. 1974) (explaining how “broad discovery contributes to the fair and efficient administration of criminal justice” and that Rule 16 provides “the minimum amount of discovery to which the parties are entitled. It is not intended to limit the judge’s discretion to order broader discovery in appropriate cases”) (emphasis added). Because it is in the interest of fairness that criminal defendants have “the widest possible opportunity to inspect and receive” material in the government’s possession that may aid in the defense,

disputes regarding the discoverability of information under Rule 16 “should be resolved in the defendants’ favor.” *United States v. Karake*, 281 F. Supp. 2d 302, 306 (D.D.C. 2003).

B. *Brady v. Maryland* mandates the production of the requested material.

The government has additional disclosure obligations under *Brady v. Maryland* and its progeny that serve as an alternative, constitutional basis for disclosure. 373 U.S. 83 (1963). In the pretrial setting, *Brady* requires disclosure of any information that is “favorable” to the defense, “without regard to whether the failure to disclose it likely would affect the outcome of the upcoming trial.” *United States v. Safavian*, 233 F.R.D. 12, 16 (D.D.C. 2005). Favorable information includes any information “that tends to help the defense by either bolstering the defense case or impeaching potential prosecution witnesses.” *Id.*

The government’s broad disclosure obligations arise out of the “special role played by the American prosecutor in the search for truth in criminal trials.” *Strickler v. Greene*, 527 U.S. 263, 280 (1999). The prosecutor’s interest “is not that [she] shall win a case, but that justice shall be done.” *Berger v. United States*, 295 U.S. 78, 99 (1935). And in her pursuit of justice, “the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in th[e] case,” including from the Metropolitan Police Department, the FBI, the Department of Homeland Security, and to disclose that information to the defendant. *See Strickler*, 527 U.S. at 281 (quoting *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)); *In Re Sealed Case*, 185 F.3d 887, 896 (D.C. Cir. 1999)

(discussing that prosecutors have a duty to learn of and disclose files in the possession of the Drug Enforcement Agency). Because of the prosecutor's special role, courts "look with disfavor on narrow readings by prosecutors of the government's obligations under Brady." *United States v. Singhal*, 876 F. Supp. 2d 82, 104 (D.D.C. 2012). "Where doubt exists as to the usefulness of the evidence to the defendant, the government must resolve all such doubts in favor of full disclosure." *Safavian*, 233 F.R.D. at 17; *see also* U.S. Attorney's Manual § 9-5.001.C.1 (requiring disclosure of "information that is inconsistent with any element of any crime charged . . . regardless of whether the prosecutor believes such information will make the difference between conviction and acquittal of the defendant for a charged crime."). As the Supreme Court explained, "a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence. This is as it should be." *Kyles*, 514 U.S. at 439.

The identities of the law enforcement officers whom Ms. Steele Smith encountered on January 6 will likely lead to exculpatory evidence for Ms. Steele Smith. Indeed, defense counsel has a good faith basis that the officers' body worn camera footage will have information that is favorable to her defense. For example, footage from the body worn cameras will likely show that she did not use violence, destroy property, that she did not engage in disruptive or disorderly conduct, and that she was not provided affirmative notice about the restricted areas.

CONCLUSION

For the reasons set forth above, and for such other reasons as this Court may determine, Ms. Steele Smith respectfully requests that the Court order the government to provide defense counsel with the identities of any and all law enforcement officers that Ms. Steele Smith interacted with on the date of the allegations no later than May 4, 2022.

Respectfully Submitted,

A. J. KRAMER
FEDERAL PUBLIC DEFENDER

_____/s/_____
ELIZABETH A. MULLIN
Assistant Federal Public Defender
625 Indiana Avenue, N.W., Suite 550
Washington, D.C. 20004
(202) 208-7500

_____/s/_____
NATHANIEL WENSTRUP
Assistant Federal Public Defender
1650 King Street, Suite 500
Alexandria, Virginia 22314
703-600-0825
703-600-0880 (fax)
Nate_Wenstrup@fd.org