

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

Cr. 21-CR-367 (RDM)

MARK MIDDLETON

NOTICE OF FILING

THE CLERK OF THE COURT will please file the attached discovery letter dated May 14, 2023

Respectfully submitted,

_____/s/_____
Steven R. Kiersh#323329
5335 Wisconsin Avenue, N.W.
Suite 440
Washington D.C. 20015
(202) 347-0200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served, via the COURT'S ELECTRONIC FILING SYSTEM, upon all counsel of record on this the ____14__th day of May, 2023.

_____/s/_____
Steven R. Kiersh

STEVEN R. KIERSH
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May 14, 2023

Via electronic mail (brendan.ballou-kelley@usdoj.gov) and regular mail

Brendan Ballou, Esquire,
Assistant U.S. Attorney
601 Indiana Avenue, N.W.
Washington, D.C. 20530

Re: United States v. Mark Middleton
21-CR-367(RDM)

Dear Mr. Ballou:

I am writing to memorialize discovery requests pursuant to Federal Rule of Criminal Procedure 16 and established precedent from this jurisdiction and the United States Supreme Court. If I do not hear back from you by May 30, 2023, I will assume all representations made in this letter are accurate and that any requested materials that have not been provided do not exist, and I will prepare for trial accordingly.

If the requested materials exist but the government declines to provide them based on a theory that they are not discoverable, please let me know immediately so I may file appropriate motions in a timely manner. In connection with the following requests, I additionally request the government take steps immediately to preserve and all evidence to which Mr. Middleton and I are entitled access to under Rule 16, *Brady*, or any other applicable law.

Eyewitness to the Incident

I request the names and contact information of all eyewitnesses to the particular allegations related to the charges against Mr. Middleton in the indictment. The primary basis for this request is my client's well-settled constitutional guarantees to due process, a fair trial, confrontation of government witnesses, and effective assistance of counsel. In *Gregory v. United States*, 369 F. 2d 185, 188 (D.C. 1966), it was held that "Witnesses, particularly eye witnesses, to a crime are property of neither the prosecution nor the defense. Both sides have an equal right and should have an equal opportunity, to interview witnesses" to an alleged

crime. Moreover, interviews of such witnesses are likely to produce evidence that comes within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). In other words, such witnesses will likely have some information that is either directly exculpatory for my client or diminishes the witnesses' own credibility and reliability. Defense attempts to interview these witnesses are also germane to constitutional issues that may arise with regard to their participation in identification procedures. As counsel for Mr. Middleton, I cannot adequately confront the testimony of these witnesses without the opportunity to interview them and use the information from the interviews to fully investigate the case.

If you believe that identification of government witnesses raises legitimate safety and security concerns, please advise me of such so we can craft a protective order to address these concerns. If you are not willing to disclose the names of witnesses, please advise and provide your reasons for denying this request so that this matter may be litigated in a timely fashion.

Rule 16 Discovery Requests

1. Statements, Rule 16(a)(1)(A) and (B)

I request the entirety of any and all statements made by Mark Middleton to law enforcement agents, state or federal prosecutors, the media or to others, as well as information about where, and to whom these statements were given and where these statements were given. If I do not receive any notice of such statements, I will prepare for trial with the understanding that none exist.

2. Prior Record, Rule 16 (a)(1)(D)

I request notice of all prior adjudications and convictions for Mark Middleton, including the particular dates and offenses involved. If I do not receive notice of prior adjudications or convictions for Mr. Middleton, other than those listed in his Pretrial Service Agency Report, I will prepare for trial with the understanding that none exist.

3. Documents, Rule 16(a)(1)(E)

I request a copy of all police reports, witness statements and other documents that have been generated by any agent of law enforcement. This request includes any MPD and FBI and other agencies who executed reports in this case, including but not limited to any and all PD-47s, PD-58s, PD-119s, PD-122As, Cobalt records, and other reports and documents produced by police in relation to this case. I also request copies of any photos or photo arrays that were used for any and all identifications of Mark Middleton, and copies of any notes made by police officers or detectives in this case.

To the extent that these documents are not yet discoverable because they are statements made by prospective government witnesses, pursuant to the Rule of Criminal