

2014.

Many of the documents and items left at Washington Boulevard were simply abandoned. The government and defense counsel were left to sort through the rooms of boxes and identify documents that were potentially responsive to the HIPAA subpoenas and that would ultimately be stored at either the FBI, Aberdeen Proving Ground or the United States Attorney's Office. On the several occasions that counsel for all three defendants conducted their own review of the documents at Washington Boulevard, the Government made copies of documents for the defendant at defense counsel's request. Trial counsel and Defendant reviewed documents at Washington Boulevard in January 2014 and were invited to review documents at Washington Boulevard and other locations as they desired. Defendant used his own copier at Washington Boulevard to make copies of documents, and while the Government does not know what documents Defendant copied, it does know that all of these documents were available for copying if Defendant or his trial counsel thought them relevant and "exculpatory." At no time did trial counsel ask the Government to make a copy of any of the records that were destroyed.

Ultimately, the bank foreclosed on the Washington Boulevard property and in the last two weeks of March, the government removed more than 50 boxes or crates of documents. *See* Exhibit A, March 18, 2014 email from Bonsib reporting that:

Please be advised that Mr. Annappareddy has been advised by his business lawyer (James Greenan) that the Washington Blvd property is being foreclosed. Anything the government wants should be removed by the end of the month – any remaining property will be disposed as the lienholder or Mr. Annappareddy deems appropriate. With this notice, the government needs to either take action now regarding any contents or by any inaction will be considered to have abandoned any interest in the contents that location.

Three of those boxes from Washington Blvd were destroyed on March 11, 2015, after the trial ended, after notice was provided to trial counsel of the government's intention to destroy the

non-trial documents, and before current counsel entered their appearance. Two of the three boxes (1B141 and 1B163) are the focus of Defendant's motion.

The Documents at Issue

The paper trail of the documents at issue in Defendant's motion begins on March 28, 2014 when the FBI logged in as FBI evidence the following item numbers:

1. 1B141, described as "Box #13 Signature Logs 2011 and 2012",¹
2. 1B132, described as "Box 4 Policies and Procedures Manual"
3. 1B163, described as "Box # 35-Plumtree Rx's transferred to DC-Folder; Fax Journal Report-7-26-13; E-Scripts; Sign Sheets Binder; Request Files; HIPAA Training Log; Numerous other Binders; Medication Transfer Log; Medication Log Books".

As stated above, these items were left in the basement at Washington Boulevard by Pharmicare in "response" to the HIPAA subpoenas and ultimately transferred to the FBI when Washington Boulevard was getting foreclosed upon. *See* Exhibit A.

The fourth item, 1B87, was identified as "Item #6-one (1) Medication Transfer Log Book; Two (2) ABC Order Binders; One (1) Suboxine [sic] Invoice Binder; One (1) Generic Drug Invoice Binder; One (1) Composition Notebook." These documents were seized from the Park Heights Pharmicare location on July 25, 2013. Trial counsel reviewed 1B87 at the FBI on January 9, 2014 and did not ask for copies or use the items from 1B87 at trial. (See Document 485-3, Evidence Chain of Custody)

The Destroyed Documents are not "Exculpatory"

Without context and despite the fact that trial counsel reviewed the destroyed documents

¹ Defendant describes this item as "delivery signature logs, delivery master logs, clinic delivery logs and UPS delivery logs" and suggests that these items were targeted for destruction. (ECF 485 at 5). As one can see from above, this is not how the Evidence Control form documents the same items. Moreover, these items were not deliberately targeted for destruction but part of a general cleanup of boxes of paper that trial counsel and government counsel all saw and did not use at trial. All trial exhibits were maintained.

on more than one occasion, Defendant concludes that the destroyed documents are “apparently exculpatory”. The best evidence that these documents are not exculpatory is the fact that trial counsel had no interest in these documents, either prior to trial to have them copied, or after trial to ask that they be preserved. Defendant and trial counsel reviewed the boxes on multiple occasions, and had the opportunity to copy and photograph the documents on multiple occasions. Yet not a single document from the destroyed items was introduced by Defendant at his trial nor apparently copied by Defendant prior to trial. These documents were not part of the trial record because trial counsel concluded that they held no value. New counsel now summarily claim that the boxes hold “apparently exculpatory” documents that Defendant and his trial counsel missed during their reviews of the items.

The Government Did Not Act in Bad Faith and Did Provide Notice to Defendant of its Intention to Destroy all “non-exhibit pills and items”

Defendant’s assertion that the destruction of the documents was “done covertly” and accomplished “without giving him notice or an opportunity to be heard” (ECF 485 at 1, 3) is simply not true. Defendant was provided notice of the government’s intention to destroy “all non-exhibit pills and items from the search warrants” as early as January 2015. The destruction of the four boxes came about like this:

On January 6, 2015, the Government advised trial counsel via email:

Hope you both enjoyed the holidays. I know we all welcomed the break from our grueling schedule last fall. I believe we mentioned this to you last month [December] but, we would like to “destroy” all non-exhibit pills and items from the search warrants. Can we have your client’s formal consent to do so? Otherwise, to the extent there is “non-contraband” (i.e. items other than pills that were seized and stored at APG [Aberdeen Proving Ground]), he can come pick them up by provided he does so within seven (7) days. Please advise. Sandy

On January 7, a second email was sent to trial counsel: “Bob/Megan: Just confirming you got this – and wondering what your position is. There is some time sensitivity and we would appreciate a

response when you can. Thanks! Sandy.” Ms. Coleman responded:

Hi Sandy and Gang,

I received your email and I reached out to Mr. Annappareddy. I am awaiting a response from him regarding what he would like to do with the items. Bob and I started a murder trial on Monday so it is hard for us to make phone calls during the day. I will try to get back you as soon as possible. Megan.

See Exhibit B. The “time sensitivity” was the lack of space at the U.S. Attorney’s Office and Aberdeen Proving Ground where non-exhibit items were being stored.

The next day (January 8) Ms. Coleman reported: “Good morning, my client wants to know if you can store the items until January 27th. He has a friend that can assist him in picking everything up but he is not available until right before the 27th.” See Exhibit B.

The government did not hear from trial counsel concerning this issue after January 8, on January 27, or anytime thereafter. Accordingly, a final email was sent on February 5, 2015:

Re: Destruction of non-evidence pills/items from search warrant

Counsel: Army CID just notified us that the building we are using for pill storage must be vacated by February 17, 2015. We understand from our communications with you on his behalf that your client (Reddy V. Annappareddy) does not object to this process. Hence, absent a written objection from you before 5 p.m. tomorrow (February 6, 2015), said non-evidence pills/items from the search warrant stored at APG will be destroyed soon thereafter. Thank you.

See Exhibit C.

Again, the government did not receive a response. The government interpreted the lack of response from defense counsel to mean there was no objection to the process suggested for items that were not trial exhibits. This position was based in part on the government’s knowledge and absolutely certainty that counsel and Defendant had reviewed and had the opportunity to copy every single document stored from Washington Blvd and that none of the boxes slated for cleanup on March 11, 2015 after the trial were material or useful to either side.

On February 23, 2015, and given the unique issues that accompany the destruction of drugs, the Government moved for an order authorizing the FBI and DCIS to destroy the prescription drugs seized. The motion states that “The attorneys for Annappareddy have been made aware of the Government’s desire to destroy these drugs on several occasions. The defendant, through counsel, is not contesting their destruction.” ECF 200. Again, defendant did not respond and the Court signed the Order on February 23, 2015. ECF 201. The drugs were destroyed a month later, (still without objection from Defendant) in or about March 24, 2015. The government did not feel it necessary to discuss the non-exhibit items other than drugs because it is not “contraband”. Nevertheless, the understanding of the Defendant’s position (no objection) was the same.

Undersigned counsel began the process of destroying the non-exhibit items on March 11, 2015. FBI agent Maura Lating, who was the responsible custodian for the items was not present. She called during the cleanup and asked that the non-exhibit paper items not be destroyed, advised she believed it was against FBI policy, and she would come pick them up. Counsel believed trial counsel had consented to the process but nonetheless, the process underway was stopped but not before the above described boxes had been discarded.

New counsel entered their appearance on March 31, 2015. At a subsequent hearing, new counsel expressed disbelief and lack of knowledge that the drugs had been destroyed. Defendant clearly had knowledge in January 2015, *see* Exhibit B. Moreover, the destruction order for the drugs was in the public record.

The government did not act in bad faith and did notify the Defendant of its intention to destroy “non-exhibit pills and items”, items which the Defendant reviewed and saw on many occasions.

Wilkinson, Sandra (USAMD)

From: Robert C. Bonsib <robertbonsib@marcusbonsib.com>
Sent: Tuesday, March 18, 2014 8:24 PM
To: Wilkinson, Sandra (USAMD)
Cc: Liz Oyer; Tonya Kelly; Arnold, Pam; Cathy Pascale (cpascale@oag.state.md.us); james.ryan@dodig.mil; Lating, Maura J. (FBI); Mosley, Robert (OIG/OI); Pascale, Catherine
Subject: RE: Discovery

Please be advised that Mr. Annappareddy has been advised by his business lawyer (James Greenan) that the Washington Blvd property is being foreclosed. Anything the government wants should be removed by the end of the month- any remaining property will be disposed as the lienholder or Mr. Annappareddy deems appropriate.

With this notice, the government needs to either take action now regarding any contents or by any inaction will be considered to have abandoned any interest in the contents at that location

Thanks

Bob

See below email

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Dear Jim:

I received a call today from Paul Cohen who represents La Sra Investments LLC who allegedly holds a deed of trust lien against the real Property where Pharmacare previously operated, 2701 Washington Boulevard ("Property"). According to Paul, the lien holder intends to foreclose on the Property in April and wants Pharamacare to clean out any items that it may have at the Property.

Can you provide me with a list of assets that Pharmacare has at the Property?

If there are records at the Property, I assume Pharamacare will make arrangements to remove any records and any computers that contain records of the Pharamacare entities from the Property prior to the foreclosure sale.

David.

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From: Megan E. Coleman [mailto:megancoleman@marcusbonsib.com]
Sent: Thursday, January 08, 2015 9:42 AM
To: Wilkinson, Sandra (USAMD); Robert C. Bonsib
Cc: Arnold, Pam; Cathy Pascale (cpascale@oag.state.md.us);
'james.ryan@dodig.mil'; Lating, Maura J.; Mosley, Robert (OIG/OI)
Subject: RE: Consent to Destory non-evidence pills/items from search warrant

Good morning,

My client wants to know if you can store the items until January 27th. He has a friend that can assist him in picking everything up but he is not available until right before the 27th.

Megan

From: Wilkinson, Sandra (USAMD) [mailto:Sandra.Wilkinson@usdoj.gov]
Sent: Wednesday, January 07, 2015 9:41 PM
To: Megan E. Coleman; Robert C. Bonsib
Cc: Arnold, Pam; Cathy Pascale (cpascale@oag.state.md.us);
'james.ryan@dodig.mil'; Lating, Maura J. (FBI); Mosley, Robert (OIG/OI)
Subject: RE: Consent to Destory non-evidence pills/items from search warrant

Thank you Megan. Happy New year.

From: Megan E. Coleman [mailto:megancoleman@marcusbonsib.com]
Sent: Wednesday, January 07, 2015 9:41 PM
To: Wilkinson, Sandra (USAMD); Robert C. Bonsib
Cc: Arnold, Pam; Cathy Pascale (cpascale@oag.state.md.us);
'james.ryan@dodig.mil'; Lating, Maura J. (FBI); Mosley, Robert (OIG/OI)
Subject: RE: Consent to Destory non-evidence pills/items from search warrant

Hi Sandy and Gang,

I received your email and I reached out to Mr. Annappareddy. I am awaiting a response from him regarding what he would like to do with the items. Bob and I started a murder trial on Monday so it is hard for us to make phone calls during the day. I will try to get back you as soon as possible.

Megan

From: Wilkinson, Sandra (USAMD) [mailto:Sandra.Wilkinson@usdoj.gov]
Sent: Wednesday, January 07, 2015 6:29 PM
To: Robert C. Bonsib; Megan E. Coleman
Cc: Arnold, Pam; Cathy Pascale (cpascale@oag.state.md.us);
'james.ryan@dodig.mil'; Lating, Maura J. (FBI); Mosley, Robert (OIG/OI)
Subject: RE: Consent to Destory non-evidence pills/items from search warrant

Bob/Megan:

Just confirming you got this - and wondering what your position is. There is some time sensitivity and we would appreciate a response when you can.

Thanks! Sandy

From: Wilkinson, Sandra (USAMD)
Sent: Tuesday, January 06, 2015 11:35 AM
To: robertbonsib@marcusbonsib.com; Megan E. Coleman
(megancoleman@marcusbonsib.com)
Cc: Arnold, Pam; Cathy Pascale (cpascale@oag.state.md.us);
'james.ryan@dodig.mil'; Maura Lating; Mitchell, Berclyn (USAMD); Mosley,
Robert (OIG/OI); Pascale, Catherine
Subject: Consent to Destory non-evidence pills/items from search warrant

Bob/Megan:

Hope you both enjoyed the holidays. I know we all welcomed the break from our grueling schedule last fall.

I believe we mentioned this to you last month but, we would like to "destroy" all non-exhibit pills and items from the search warrants. Can we have your client's formal consent to do so? Otherwise, to the extent there is "non-contraband" (i.e. items other than pills that were seized and stored at APG), he can come pick them up by provided he does so within seven (7) days.

Please advise.

Sandy

From: Wilkinson, Sandra (USAMD) [<mailto:Sandra.Wilkinson@usdoj.gov>]

Sent: Thursday, February 05, 2015 4:22 PM

To: robertbonsib@marcusbonsib.com; Megan E. Coleman (megancoleman@marcusbonsib.com)
<megancoleman@marcusbonsib.com>

Cc: Arnold, Pam <parnold@oag.state.md.us>; Pascale, Catherine <cpascale@oag.state.md.us>; 'james.ryan@dodig.mil' <james.ryan@dodig.mil>; Lating, Maura J. (BA) (FBI) <Maura.Lating@ic.fbi.gov>; Mosley, Robert (OIG/OI) <Robert.Mosley@oig.hhs.gov>

Subject: Destruction of non-evidence pills/items from search warrant

Counsel:

Army CID just notified us that the building we are using for pill storage must be vacated by **February 17, 2015**. We understand from our communications with you on his behalf that your client (Reddy V. Annappareddy) **does not object** to this process. Hence, absent a **written objection** from you before 5 p.m. tomorrow (February 6, 2015), said non-evidence pills/items from the search warrant stored at APG will be destroyed soon thereafter.

Thank you.