

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:04-CR-211-BO(1)

FILED
NOV 12 2004
FRED L. WOODS, CLERK U.S. DISTRICT COURT, EDNC BY: <i>[Signature]</i> DEP. CLK

UNITED STATES OF AMERICA

MOTION TO COMPEL DISCOVERY

v.

DAVID A. PASSARO

(u) DAVID A. PASSARO, defendant in the above-captioned case, hereby moves this Court for an order directing the government to immediately provide Mr. Passaro with all information discoverable pursuant to Rule 16 of the Federal Rules of Criminal Procedure and all documents in its possession containing exculpatory evidence, or which could lead to exculpatory evidence, in accordance with *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny.

(u) Mr. Passaro further moves this Court for an order directing the government to immediately disclose its witness list, and for early disclosure of all *Jencks* Act material.

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(u) As demonstrated on page 7 of the supporting memorandum, Defendant has complied with Local Criminal Rule 12.2, EDNC. Pursuant to that rule, the undersigned asserts that (a) government counsel provided discovery in lieu of a discovery conference, and (b) agreement could not be reached concerning discovery or inspection that is the subject of this motion, because government counsel has declined to provide further discovery without stating reasons for withholding discovery.

(u) Defendant respectfully requests an order granting the specific relief requested and any other form of relief this Court determines is reasonable and prudent.

(u) Respectfully requested this ___ day of November, 2004.

(u) THOMAS P. McNAMARA
 Federal Public Defender
 N.C. State Bar No. 5099

M. GERALD BEAVER
P. THOMAS (HOLT III)
MARK A. STERNLICHT
DAVID T. COURIE
ALSO ADMITTED IN PA

BEAVER HOLT
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COPY

JANET H. DOWNING
OF COUNSEL

May 7, 2004



RE: David P

Dear [Redacted]

(u) In preparation of the matter of David P there is certain information which I am informed and believe is in the exclusive control of your HQ, which it is necessary that I have access to in order to provide my client with constitutionally required effective counsel. I request that I be given access to the following information:

- (u) 1. Client's handwritten notes containing his recollection and reconstruction of events in Asadabad regarding Abdul W. These are contained in a steno book containing approximately one dozen pages which was obtained from my client by an individual identified as "Nip" for transportation to HQ, the receipt of which was hand-receipted to my client.

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(u)4. Any correspondence, reports or message traffic between the Department of Defense, United States Army, Department of Justice, the Government of Afghanistan or any other US agency concerning Abdul Wali or my client David P (a/k/a Charles K).

(u)6. We would also ask HQ to give us assistance in locating and interviewing all of these people;

(u)7. Any and all photographs, videotapes, audio tapes or written reports concerning same in possession of HQ regarding Abdul Wali and David P, aka Charles K.

(u)8. Full contents of any investigation concerning Abdul Wali, David P, aka Charles K conducted by or in the possession of HQ;

(u)9. All information in the possession of HQ regarding SFRE (Survival, Evade, Resist and Escape) School and training.

(u)9. All photographs, interviews or reports concerning post-mortem examination of Abdul Wali.

With kindest regards I remain,

Very truly yours,


H. Gerald Beaver