

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA           :       CRIMINAL ACTION  
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DOUGLAS EDWARDS                    :       NO. 02-662

MEMORANDUM AND ORDER

McLaughlin, J.

November 12, 2004

Douglas Edwards was convicted by a jury of possession of a firearm after conviction of a crime punishable by more than one year in prison. The government evidence showed that on March 23, 1999, the defendant assaulted his former girlfriend, Dawn Matthews (also known as Dawn Robinson), while Ms. Matthews was assaulting the defendant's current girlfriend.<sup>1</sup> As Ms. Matthews was coming out of the police station after reporting the assault by the defendant, she saw the defendant drive by. She flagged down a police officer and after a high speed chase involving several police cars, the police recovered a gun from under the dashboard of the car the defendant was driving. The defense was that Ms. Matthews planted the gun under the dashboard in order to get the defendant into trouble with the police in retaliation for his prior assault of her.

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<sup>1</sup> Dawn Matthews sometimes used the name Dawn Robinson. She is referred to as Robinson in some of the quotations in this memorandum.

After the trial and before sentencing, the government produced to the defendant additional discovery consisting of statements from an Internal Affairs Division ("IAD") investigation arising out of Ms. Matthews' report to the police that on the night in question the defendant was warned by a police officer friend of his that the police were looking for him. Ms. Matthews also told police that the police officer friend gave the defendant a gun.

The defendant has moved to dismiss the indictment or for a new trial on the ground that this material constituted Brady material. The Court concludes that two of the three Brady factors are met here: the evidence at issue is impeaching; and it was suppressed inadvertently by the government. The Court will deny the motion, however, because there is not a reasonable probability that the result would have been different if the material had been produced before trial.

In closing argument, the government argued to the jury, among other things, that it should reject the defense that Ms. Matthews planted the gun because had Ms. Matthews done so, she would have told the police that there was a gun under the dashboard of the car earlier than she did. The evidence in question tends to show that Ms. Matthews mentioned the fact that the police officer friend of the defendant gave the defendant a gun earlier than the discovery produced before trial. The Court

concludes that this new evidence would not have significantly undermined the government's argument. In addition, use by the defendant of the evidence about the corrupt police officer would have opened the door to the government's admission of highly prejudicial and inflammatory evidence about the defendant's relationship with the police officer. Finally, there were substantial areas of impeachment of Ms. Matthews available to the defendant that his counsel used very effectively. The evidence in question would have been cumulative.

## I. Trial Evidence

### A. Government's Case

#### 1. Testimony of Police Officers

At approximately 12:54 A.M., on March 24, 1999, Officer Lawrence Flagler came into contact with Ms. Matthews in front of the 39th Police District located at 5960 North Broad Street. Ms. Matthews told Officer Flagler that she just saw a white Ford Thunderbird with the defendant inside. She explained that she had recently spoken to a detective. Ms. Matthews got into Officer Flagler's car and pointed him in the direction she had last seen the defendant. Officer Flagler called in the report and went in the direction of the defendant's car. The officer heard something over the radio and proceeded west on Nedroe from Broad Street looking for the white Ford Thunderbird. He observed

a Philadelphia police car with its lights and sirens going proceeding north on 11th Street. He was behind the police car.

In response to a flash report, Officer Thomas Kelliher went to the area of Broad and Champlost. He observed a white Ford Thunderbird traveling north on Broad Street and he got behind the Thunderbird. He was in a marked car. The car was traveling at a normal rate of speed. He stopped the car. The vehicle pulled over. Officer Kelliher left the patrol car and approached the passenger's side of the white Thunderbird and Officer Kelliher's partner approached the driver's side. The defendant was in the driver's seat and was the only occupant. As the police approached the car, the vehicle took off at a high rate of speed eastbound on Spencer Street, went through a stop sign and continued northbound on 11th Street at a high rate of speed. The defendant's car was going at least 70 miles an hour. Officer Kelliher could not keep up with the vehicle and lost sight of it.

Officer Flagler found the vehicle on 9th Street after being directed there by Ms. Matthews. At 9th & Oak Lane, he observed the defendant running south on 9th Street from behind some bushes. He was crossing over Oak Lane and then proceeded to a house that was at the intersection of 9th & Oak Lane. The defendant was running southbound toward the house in an attempt

to hop over the fence. Officer Flagler and his partner got out of their patrol vehicle and apprehended the defendant. They looked up 9th Street and observed the white Ford Thunderbird facing northbound on 9th Street. The vehicle was parked in an illegal manner; 9th Street is one way southbound. There was plenty of parking available on Oak Lane that night.

Officer Lee Datts saw the defendant's car stream across the intersection of 11th & Godfrey. The car was going 60 to 70 miles per hour. He gave chase. The vehicle turned its lights off and he lost sight of it. Officer Datts then found the defendant's vehicle parked on 9th Street. He had a conversation with Ms. Matthews. As a result of that conversation, he searched in the area of the driver's seat and in the front area of the vehicle. He found a gun inside the dashboard on the driver's side.

## 2. Testimony of Dawn Matthews

### a. Direct

Ms. Matthews started living with Mr. Edwards in 1996. She lived with him until December 25, 1998. On March 23, 1999, Mr. Edwards' birthday, Ms. Matthews went to see if he was home to drop him off his birthday gift. She was in her car with her daughter. She saw Mr. Edwards parked on Bouvier Street. There

was a female in the car. She then had words with Mr. Edwards such as: "Well, what's this, what's going on? I was just with you last night." Ms. Matthews then went around to the passenger side and pulled out the woman named "Sharon." Ms. Matthews started beating up Sharon who was on the ground hollering.

Mr. Edwards then pulled Ms. Matthews off of Sharon and punched Ms. Matthews in the eye. Mr. Edwards went over to Ms. Matthews' car and said things like, "Oh, bitch, you going to call the cops on me?" Ms. Matthews said: "Yeah, cause you should have never punched me in my eye."

Ms. Matthews then left, went to the Amoco station and called 911. A police officer arrived at the scene. Ms. Matthews and the officer went down to 7321 Bouvier Street where Sharon and her father were standing on the step. The officer had a conversation with them. Ms. Matthews then went down to the 39th Police District and filed a complaint against the defendant that he had punched her in her eye.

Ms. Matthews corroborated the testimony of the police officers about the seizure of the gun. She also said that Mr. Edwards' Uncle Doggie's house is located at 9th & Oak Lane where Mr. Edwards was arrested. The gun that the police found under the dashboard was silver with a brown handle. Ms. Matthews identified the gun as a gun that she had seen Mr. Edwards

carrying before that evening. She saw him with it every day for about a year and a half. She saw it at their house, under his mattress, on the driver's side underneath the dashboard of Mr. Edwards' car, and on his person. Ms. Matthews never possessed the gun.

On the night of March 23, 1999, Ms. Matthews had been using powder cocaine. She had been using cocaine every other day for about a year and a half. She first started using drugs when she was 15. She was using \$80 to \$150 a day. She does not recall how much she used on March 23, 1999.

Ms. Matthews testified that she was not high on the day of the trial. The last time she used any narcotics was the end of 1999. She went to an eight hour program for drug treatment. Using cocaine relieved her body of all the stress it was going through. It makes you move at a fast pace. She never missed work because of her drug use. She drove and never was involved in an accident. It did not impair her ability to remember things or to think about what she was doing.

Ms. Matthews attended school to the ninth grade. She has a recent arrest for kidnapping. The kidnapping charge involved her granddaughter.

Ms. Matthews never had any set of keys to Mr. Edwards' car in 1998 or 1999. She drove the Ford Thunderbird in 1996, but

Mr. Edwards bought Ms. Matthews her own car in 1997. He used to keep the car parked on Bouvier Street.

After March 1999, Ms. Matthews continued to see Mr. Edwards every day. She continued to have sex with him. They went to a hotel together. She testified that he generally kept the door of the car locked. She identified a group of letters that she said that she received from Mr. Edwards. They were from 2001, 2002 and 2003. The defendant still wanted a relationship with her.

b. Cross Examination

Ms. Matthews used the name "Robinson" when she got locked up. The name on her driver's license is "Dawn Matthews." She used the name "Dawn Robinson" the night of March 23 when she talked to the police. Ms. Matthews' daughter joined in on the beating of Sharon. Ms. Matthews denied ever talking to Phil Carroll, Mr. Edwards' parole officer, within a couple of weeks or months of March 23, 1999. There was extensive cross-examination about the kidnapping charge.

Ms. Matthews said nothing to the officer who came to the Amoco station about a gun. She did not tell Detective Mayer or the police supervisor about a gun. The first officer to whom she said something about the gun was the officer who picked her

up when she came out of the station. The first time she mentioned the gun being under the dashboard was at 9th Street and Oak Lane.

B. Defense Case

Phil Carroll testified. He is a parole agent for the Pennsylvania Board of Probation and Parole. In March of 1999, he was the parole officer for Douglas Edwards. He visited Mr. Edwards in prison within thirty days of March 23 or 24, 1999. Thereafter, he received a telephone call from a person identifying herself as Dawn Matthews. The caller told him that the gun found on March 23 or 24, 1999, in Mr. Edwards' car was hers and that she had put it in his car.

Karen Cheatam testified. Ms. Cheatam resides at 7314 North Bouvier Street. Mr. Edwards is her neighbor. He lives on her block with his parents. She does not socialize with Mr. Edwards' parents. Ms. Cheatam recalls the night in question. It was between 11 and 12 because she walks her dog every night. She saw a car driving with two females in it. It was going slowly. She had seen the driver before and knew her as "Dawn."

When Ms. Cheatam came back from walking her dog, she saw the same car with two passengers parked under a street light with the lights out. The car was running. She then heard a lot

of music from another car. It was Mr. Edwards' car. By this time Ms. Cheatam was inside the house. Mr. Edwards parked his car. She heard a lot of cursing and she saw a bit of the altercation between Ms. Matthews and Sharon, Mr. Edwards' current girlfriend.

Ms. Cheatam later heard a car alarm going off, opened the door, and saw the flashing lights of a car she recognized as Mr. Edwards' car. She saw the driver's side door open and saw Ms. Matthews bent over in the front seat of the car. Ms. Cheatam stood there for a moment and then saw Mr. Edwards coming out of his house. Dawn jumped back in her car and started yelling at him. The car then sped off fast.

Ms. Cheatam was cross-examined on whether she had regular telephone contact with the defendant while he was in prison. She said that he sometimes called to check on her and her children. He called to give her sympathy when her fiancé died. Her son was friendly with the defendant's son. She did not know anything about being put on a calling list by the defendant in the year 2002 which permits him to make telephone calls to her. She did not know about being on a visitor list. She did visit Mr. Edwards in prison but did not go in. She is not able to say how often there were calls in 2002 between her telephone number and the defendant. It is a possibility that

from February 4, 2002 to August 14, 2002, there were 24 calls made from the defendant in prison to her home number.

## II. Ms. Matthews' Allegations Concerning Officer "Gee"

On the night of March 23, 1999, Ms. Matthews made a Citizen's Complaint Against Police concerning an Officer "Gee." She alleged that this officer had tipped off the defendant that the police were looking for him. She described Officer "Gee," but she did not know his real name.

After the police arrested the defendant, Detective Timothy Mayer interviewed him. Mr. Edwards gave a signed statement concerning this incident in which he denied that he carried the gun and denied hitting Ms. Matthews. While Detective Mayer was questioning Mr. Edwards, Detective Mayer commented that Ms. Matthews had filed a complaint against a police officer. Mr. Edwards replied, "Who [name redacted]?" and acknowledged that this officer had told him not to go home. Detective Mayer did not include this information in Mr. Edwards' signed statement, but instead prepared a separate handwritten memo to the file, which was later forwarded to Police Internal Affairs Division of the Philadelphia Police Department(IAD).

In the ensuing months, IAD conducted an investigation into Ms. Matthews' allegations against Officer "Gee," using the

identity of Officer "Gee" supplied by Mr. Edwards to Detective Mayer. The investigation into Officer "Gee" ultimately was closed without findings. After the close of the investigation, the government learned that Officer "Gee" was Officer George Thompson who died after the trial. Officer Thompson was not the subject of the IAD investigation.

### III. Government's Ex Parte Motion

In December, 2002, by ex parte motion, the government sought to withhold evidence in the IAD file concerning the allegations against Officer "Gee." The government provided to the Court both the unredacted IAD statements and the statements with the government's proposed redactions.

The government proposed redacting those portions of the statements that concerned Ms. Matthews' allegations and Mr. Edwards' statement about Officer "Gee," arguing that they had nothing to do with Mr. Edwards' guilt or innocence on the gun possession charge. The government argued that revealing this information would improperly "smear" the officer, as to whom IAD had not made a conclusive finding, while also compromising any future IAD investigation of him. The government also argued that if Mr. Edwards were to decide to proffer, the government would be in a better position to judge the veracity of his proffer and the

extent of his cooperation, if it had not already revealed the extent of its knowledge concerning Officer "Gee."

The Court granted the government's motion to withhold this evidence. Consistent with the Court's order, the government provided to Mr. Edwards copies of the IAD statements of the police officers who came into contact with Mr. Edwards on the night in question, but redacted all references to Officer "Gee" and the allegations against him. Similarly, the government withheld Detective Mayer's handwritten note to the file concerning Mr. Edwards' identification of Officer "Gee," and other material in the file concerning Officer "Gee."

On the morning of sentencing, the government realized that it had not provided certain redacted statements that it had agreed to produce in its ex parte motion. It produced them to the defendant at that time and the defendant moved for additional discovery. The Court granted the motion. The government, thereafter, provided all documents from the IAD file unredacted, except for the name of the officer who was investigated.

#### IV. Statements in Question

The Court will describe in this section all statements given by Dawn Matthews to police that related to Officer "Gee" - both those produced prior to trial and those produced to the

defendant after trial. The Court will describe each statement in the chronological order in which Ms. Matthews encountered the particular officer.

1. Statement of Officer Latorre to IAD

Officer Latorre responded to the Amoco station where Ms. Matthews made the 911 call. The government did not disclose his statement pre-trial. He did not recall anything about a gun, however:

Q. Did Ms. Robinson tell you that P/O [name redacted] gave her boyfriend, Douglas Edwards, a gun?

A. No, I don't know who Officer [name redacted] is.

Q. To your knowledge did Ms. Robinson, the complainant, tell anyone else that P/O [name redacted] or "Gee" gave Douglas Edwards a gun?

A. No, I don't recall her saying that.

2. Statement of Officer Edward Fidler to IAD

IAD also interviewed Officer Latorre's partner, Officer Fidler. Officer Fidler made the following statements, that the government did not disclose pre-trial, when asked whether Ms. Matthews said anything about Officer "Gee's" giving Mr. Edwards a gun:

Q. Please tell me in your own words what you recall regarding this incident.

- A. I remember seeing a female complainant, I don't recall her name, with a swollen left eye. She was on the highway and she flagged us down. She explained the situation that she was assaulted by her boyfriend, who lived on Bouvier Street.

She told us that 7321 Bouvier Street was her boyfriend's address. We went to the house and his father said he was not home. The female complainant said, "Of course he is not there, he [sic] friend told him that police were coming. He's (friend) a cop too.

I believe we put flash over the air on the complainant's boyfriend.

I attempted to get the name of the officer from the complainant. I don't recall if she said any name. Her pager kept going off and she said her boyfriend was trying to call her.

I told the complainant to tell him while she was speaking with her boyfriend on the phone to meet her at the Amoco located at Bouvier and Cheltenham Avenue. He never came to that location.

I got her ice for her eye and asked her if she wanted to go to the hospital. She wanted to go directly to North Detectives. Myself and my partner took her to North Detectives.

- Q. Did Ms. Robinson tell you that P/O [name redacted] gave her boyfriend, Douglas Edwards, a gun?
- A. She said "a cop" friend of his tipped him off to the telephone call involving police at his house. I do recall the complainant mentioning something about the gun, but I don't recall any specifics.
- Q. To your knowledge did Ms. Robinson, the complainant, tell anyone else that P/O [name redacted] or "Gee" gave Douglas Edwards a gun?
- A. I told Sgt. Costello what the complainant told us about the "officer" that tipped the offender off

and possibly gave him a gun. I believe he spoke to the complainant. I went off duty.

Q. Did Ms. Robinson tell you that P/O [name redacted] "Gee" told Douglas Edwards not to return home because the police were looking for him?

A. She definitely said that the "officer" told her boyfriend that police were looking for him. I don't recall the nickname of the officer.

3. Detective Mayer's Unredacted Statement to IAD

Detective Mayer was interviewed by IAD concerning his knowledge of Ms. Matthews' allegations against Officer "Gee" and Mr. Edwards' identification of Officer "Gee." Asked what he knew about the incident, Detective Mayer responded with a narrative about Ms. Matthews' assault allegation, the police chase later that evening, and the recovery of the gun from the car. The government provided this statement to defense counsel prior to trial, but redacted the following statement about what Ms. Matthews said concerning Officer "Gee":

A. She mentioned that a cop known as "Gee" or "Twin" had informed Douglas Edwards that police were looking for him. She said that Edwards beeped her and bragged because he had an "in" with this officer. She said she has known this officer known as "Gee" for a good three years and he lives in West Oak Lane. This officer comes to Edwards' assistance every time he gets locked up in the 35<sup>th</sup> District. She thought this officer worked in the 35<sup>th</sup> District.

The government also redacted the following from Detective Mayer's IAD statement:

Q. Did [Matthews] tell you anything else relating to Officer [name redacted]?

A. No.

Q. Did she tell this to anyone else?

A. She went down to Corporal Sidebotham and then Corporal Sidebotham came up to me. I believe she told the Corporal that I told her to file a complaint against the officer known as "Gee" or "Twin." I don't know specifically what was said. Sgt. Goldenberg #8806 was consulted in how to handle this situation.

Q. To your knowledge did Ms. Robinson mention any involvement of Officer [name redacted] in this incident to anyone else?

A. I have no idea.

Q. To your knowledge did Ms. Robinson tell anyone else that P/O [name redacted] gave Douglas Edwards a gun?

A. I don't know. She didn't tell me that.

4. Detective Mayer's Handwritten Memorandum to File Concerning the Identity of "Gee"

On the night of this incident, Detective Mayer interviewed Mr. Edwards after first advising him of his Miranda rights. Mr. Edwards gave a signed statement concerning this incident in which he denied that he carried the gun and denied hitting Ms. Matthews. While Detective Mayer was questioning Mr.

Edwards, Detective Mayer commented that Ms. Matthews had filed a Complaint Against Police. Mr. Edwards replied "Who [name redacted]?" and then acknowledged that this officer had told him not to go home. Detective Mayer did not include this information in Mr. Edwards' signed statement, but instead prepared a separate handwritten memo to the file:

Upon asking the deft his address, I informed him that a P/O was possibly in trouble due to the compl's stmt and her going downstairs and filing a complaint #11638 [the pre-printed CAP number].

The deft. blurted "Who [name redacted]?"  
I ask, is he the cop who told you not to go home tonight?

A - Yea

Q - Is he in the 35<sup>th</sup>?

A: No. The 14<sup>th</sup>.

Detective Mayer advised police supervisory personnel of Mr. Edwards' statement, and Detective Mayer's handwritten memo to the file was forwarded to IAD.

The government had provided pre-trial Detective Mayer's Investigation Report (form 75-49), in which Detective Mayer noted Ms. Matthews' Complaint Against Police alleging that Officer "Gee" had tipped off the defendant that police were looking for him:

INVESTIGATOR'S NOTE: Compl stated to this investigator that a police officer who's [sic] nick name is "Gee"

and "Twin" who was on duty at this time, 4 x 12 shift, saw Douglas Edwards and warned the deft not to go home because the police are looking for him. The compl stated that she knows this officer and that he always shows up at the 35<sup>th</sup> District whenever Douglas Edwards gets locked up. The compl had filed a complaint against police immediately after she gave her statement to this investigator. Compl. #11638. Cpl. Sidebotham #8176, ORS - 35<sup>th</sup> District, informed me of this and a copy is in the file. Sgt. Goldenberg #8806, NWDD, also informed of incident.

5. Officer Flagler's Statement to IAD

Prior to trial, the government provided the defendant a copy of Officer Flagler's statement to IAD, from which the government had redacted (with the Court's permission) all references to Officer "Gee." Among the redacted portions is a statement by Officer Flagler that after Mr. Edwards had been arrested and the gun had been recovered, Ms. Matthews stated that Mr. Edwards had gotten the gun from Officer "Gee." The entire portion of Officer Flagler's statement that was redacted by the government is as follows:

Q. Did Mrs. Robinson tell you anything else relating to [name redacted]

A. Inside Headquarters she stated that Edwards had a friend who was a police officer in the [district redacted]. She didn't know his name, but that Edwards referred to him as "Gee." She said that whenever Edwards was arrested "Gee" would come down and visit him at the district, while he was in custody. She said she had received a page from

Edwards and he told her that "Gee" gave him the low down and he knew that the cops were after him.

Q. What did Mrs. Robinson tell you regarding "Gee" telling Douglas Edwards not to return home because police were looking for him?

A. She said that she heard from Edwards that "Gee" had told him not to go home because the police were looking for him.

Q. Did Mrs. Robinson tell you that "Gee" gave Edwards a gun?

A. She said that Edwards had gotten the gun from "Gee." That's all she said. She said this at North District.

Q. Were there other witnesses present?

A. Possibly Detective Mayer, but I don't recall anyone else.

Q. To your knowledge did Mrs. Robinson tell anyone else that "Gee" gave Douglas Edwards a gun?

A. No, not to my knowledge, I don't recall.

6. The Statements of Officers Harris, Kelliher and Kelly to IAD

Prior to trial, the government provided to defense counsel copies of the IAD statements of Officers Harris, Kelliher, and Kelly, from which the government had redacted (with the Court's permission) all references to Officer "Gee." Mr. Edwards now complains that the government improperly withheld the

following identical questions and answers from each of these statements:

Q. Did Ms. Robinson tell you that [name redacted] gave Edwards a gun?

A. No.

Q. To your knowledge did Ms. Robinson tell anyone else that [name redacted] or "Gee" gave Douglas Edwards a gun?

A. No.

7. Officer Datts' Statement to IAD

Prior to trial, the government provided to defense counsel a copy of Officer Datts' statement to IAD, from which the government had redacted (with the Court's permission) all references to Officer "Gee." Specifically, the government redacted the following, of which Mr. Edwards now complains that he should have been given the portion in bold-face type:

Q. Did Ms. Robinson tell you that P/O [name redacted] gave Edwards a gun?

A. No.

Q. **To your knowledge did Ms. Robinson tell anyone else that P/O [name redacted] or "Gee" gave Douglas Edwards a gun?**

A. **I don't know. I know she was trying to insinuate something about an off-duty officer being involved, but I didn't get involved in that.**

Q. Did Ms. Robinson tell you that P/O [name redacted] "Gee" told Douglas Edwards not to return home because police were looking for him?

A. I have no recollection of her mentioning that at all.

8. Sergeant Costello's IAD Interview

At trial, Sergeant Costello testified that he encountered Ms. Matthews twice that evening, first in the police station, and later that evening at 9th and Oak Lane, immediately after Mr. Edwards' arrest.

Prior to trial, the government provided defense counsel with a copy of Sergeant Costello's statement to IAD. The government redacted from this statement the questions and answers about whether Officer "Gee" had tipped off Mr. Edwards that the police were looking for him - but the government did not redact Sergeant Costello's statements concerning whether and when Ms. Matthews mentioned the gun. Specifically, the government redacted the following questions and answers:

Q. Did Ms. Robinson tell you anything else relating to Officer [name redacted]?

A. No at that point he stated that she only knew him as "Gee."

Q. Did she tell this to anyone else?

A. She told Corporal Sidebotham #8176, who was standing next to me.

Q. What did Ms. [Matthews] tell you regarding [name redacted] "Gee" telling Douglas Edwards not to return home because police were looking for him?

A. She said she was speaking with Edwards on the phone and that Gee came up to him and heard over the radio (I assume Police Radio) that they were looking to arrest him for prior earlier.

Q. Did she tell this to anyone?

A. Just Corporal Sidebotham.

Q. To your knowledge did Ms. Robinson tell anyone else that P/O [name redacted] gave Douglas Edwards a gun?

Although the government redacted the question, which referenced the allegation against Officer "Gee," the government did not redact Ms. Matthews' answer:

A. At the window no. She never mentioned the gun at the window on 3-23-99.

As Sergeant Costello further explained in this statement, he spoke with Ms. Matthews again later in the evening at 9th and Oak Lane after Mr. Edwards' arrest, and at that time she made a statement about the gun: "Mrs. Robinson approached me and said that he always has a gun hidden in the car that Gee gave him." In the redacted copy of Sergeant Costello's statement that the government provided to defense counsel, the government redacted only the reference to Officer "Gee" (the words "that Gee gave him"):

- A. Mrs. Robinson approached me and said that he always has the gun hidden in the car [redacted].

Finally, the government also redacted the following two sentences - and it is only this redaction about which Mr. Edwards complains:

- A. I then instructed Corporal Sidenbotham to complete a memo to Internal Affairs indicating that "Gee" gave Mr. Edwards a gun according to Mrs. Robinson. This complaint was then referred to Internal Affairs.

9. Corporal Sidebotham's Memorandum to IAD

At Sergeant Costello's instruction, Corporal Sidebotham prepared a memo. The memorandum, dated 3/24/99, states as follows:

To: IAB Investigator 99-149  
From: Cpl Sidebotham 8176  
Subject: Complaint Against Police

1. The NDD Det. Timothy Mayer #896 did an investigation following the arrest of Douglas Edwards on D.C. #99-35-30354.
2. The defendant stated that "Gee" is [identity redacted].
3. Sgt. Costello stated that the Comp told him that [identity redacted] gave the def a gun which turned out to be stolen.

With the Court's permission, the government withheld this statement from the police.

10. Corporal Sidebotham's Statements to IAD

IAD also interviewed Corporal Sidebotham. The government withheld this statement pre-trial. After trial, in his IAD interview conducted on 1/4/00, Corporal Sidebotham said the following:

- Q. Please tell me in your own words what you recall regarding this incident and any involvement that your [sic] aware of concerning Officer [name redacted].
- A. Dawn Robinson, the complainant, came to the window in the 35<sup>th</sup> District to file a complaint against an officer named "Gee." She did not know where he worked but knew his physical description. She said that he was a black male, 5'8", 195 lbs., 34 years. She told me that her boyfriend, Edwards, had beat her and she called police to make a report. While police were looking for Edwards, he paged her and when she called him back he told her that this officer "Gee" had pulled him over in his car and said that police were looking for him for beating Robinson. "Gee" also told Edwards not to go home.

Ms. Robinson added that "Gee" had given Edwards a gun that she thought was stolen. I told Sgt. Leo Costello about the incident and the gun. Later that night (3-24-99) Sgt. Costello told me that there was a pursuit and Edwards was arrested. He said that a gun was recovered. At that time he did not know that it was stolen. I had spoke[n] with Detective Mayer during that night and he told me that "Gee" was [name redacted], assigned to the [number] District.

- Q. Did Ms. Robinson ever mention the name of [name redacted]?
- A. No, she only knew him as "Gee."

Q. Did you tell Ms. Robinson to file a complaint against the officer known as "Gee" or "Twin"?

A. No, she came into the district to make the complaint.

Q. To your knowledge did Ms. Robinson mention any involvement of [name redacted] or "Gee" in this incident to anyone else?

A. No.

Q. To your knowledge did Ms. Robinson tell anyone else that [name redacted] gave Douglas Edwards a gun?

A. I don't know.

11. Matthew's Statement to IMPACT on December 19, 2002

After a Philadelphia detective located Ms. Matthews in late 2002, Sergeant Joseph Nadolski of IMPACT questioned her about Officer "Gee" and prepared a "white paper" summarizing the interview.<sup>2</sup> In pertinent part, Sergeant Nadolski's paper noted as follows:

Matthews stated that while in the company of Edwards, she came in contact with a person whom she believes is a Philadelphia Police Officer (Matthews stated she knows this Police Officer as "G"). Matthews stated that she has seen this male numerous times in January 2002 at "Walt's" ("Walt's" is a bar located at 22<sup>nd</sup> Street and Hunting Park Avenue). Matthews also stated that "G" has a twin brother and Matthews believes that

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<sup>2</sup> IMPACT is a specialized unit within IAD which engaged in pro-active investigations of matters of particular concern to the Police Department.

he is also a Police Officer. In addition, Matthews related that "G's" girlfriend was a Police Officer because when they were having domestic problems, "G" could not do anything to her because as "G" stated, "That bitch is a cop."

Matthews described this male Officer as a brown skin black male, well built, 5'8", close cropped hair. Matthews also stated that "G" is originally from the area of 72<sup>nd</sup> Avenue and 19<sup>th</sup> Street or 74<sup>th</sup> Avenue and Andrews Street because Edwards and "G" were boyhood friends from East Oak Lane. Matthews also stated that he wore a gold badge #3599 or #3529 around his neck.

Matthews stated that Edwards and "G" would talk about the "thing" (Matthews believed that when Edwards and "G" would talk about the "thing," it would pertain to guns) and Matthews believed that "G" would procure guns for Edwards. Matthews also stated that she never saw "G" give any weapons to Edwards. Edwards has always bragged that "G" was a good friend and that he would call "G" if Edwards were ever arrested.

Matthews also believed that "G" would supply Edwards with information on witnesses who were involved in any arrest that Edwards was involved. Matthews also stated that Edwards was involved in drug activity and would talk openly about drugs while "G" was with him. While at the bar, Matthews stated that she never saw "G" use or be involved in drug related activity.

Matthews related that she only saw "G" once while he was in uniform. That occurrence was at 11:00 p.m. a few days after Edwards assaulted Matthews in March 1999. "G" stopped Matthews in a gold Ford Probe at 15<sup>th</sup> Street and Chelton Avenue. "G" approached Matthews during the vehicle investigation and questioned her about Matthews going to the Police after Edwards assaulted her.

The government did not disclose this statement to the defendant pre-trial.

V. Discussion

Brady v. Maryland requires the government to disclose evidence that is favorable to the accused and material either to guilt or to punishment. Brady v. Maryland, 373 U.S. 83, 87 (1963). Both impeachment evidence and exculpatory evidence fall within the Brady rule. Gigliio v. United States, 405 U.S. 150, 154-55 (1972). The Third Circuit has recently set out the familiar elements of a Brady claim: (1) "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching"; (2) "that evidence must have been suppressed by the state, either willfully or inadvertently"; and, (3) "prejudice must have ensued." United States v. Mitchell, 365 F.3d 215, 254 (3d Cir. 2004) (quoting Banks v. Dretke, 124 S. Ct. 1256, 1272 (2004) (internal quotations and citations omitted)).

The Court has assumed for purposes of this motion, and the government does not dispute, that factors (1) and (2) are met here. With respect to the second factor, the Court concludes that the failure to disclose the evidence was inadvertent and not willful. The government in the first instance presented the Court with an ex parte motion not to disclose the discovery. The fact that the government did not then give over all the discovery that it agreed to give in the motion was inadvertent. In making

this conclusion, the Court takes into account that the government was going to try this case initially as a constructive possession case without any testimony from Dawn Matthews. At that time, the government was unable to find Ms. Matthews. When the trial actually took place, seven months after the Court's decision on the ex parte motion, the government had found Ms. Matthews and forgot to consider whether any of the withheld material should be produced.

In order to fulfill factor (3), a defendant must show that there is a "reasonable probability" of a different result had the withheld evidence been available. Id. (citing Kyles v. Whitley, 514 U.S. 419, 434 (1995)). The Court starts its analysis with the proposition that the only relevance of the evidence was to impeach Ms. Matthews' testimony that she did not plant the gun. It was not helpful to the defendant as substantive evidence. It shows a corrupt relationship between the defendant and a police officer. Had the government tried to admit this evidence, the Court would have refused to allow it to do so. It is highly prejudicial and inflammatory.

The defendant argues that the admission of this impeachment evidence would have undermined one of the government's key arguments to the jury. The government argued to the jury that if Ms. Matthews had planted the gun to get Mr.

Edwards in trouble, she would have told the police immediately that the gun was under the dashboard of the car, instead of waiting to do so until after the high speed chase and arrest of the defendant.

The critical time, therefore, is before Ms. Matthews flagged down Officer Flagler. The defendant knew before trial that Ms. Matthews had mentioned the gun to Officer Flagler and then to other officers at 9th Street and Oak Lane, after the arrest of the defendant. The defendant had every opportunity to cross-examine on Ms. Matthews' statements to Officer Flagler and to make arguments to the jury concerning them.

The Court, therefore, must compare what discovery the defendant was given before trial concerning Ms. Matthews' statements about the gun before flagging down Officer Flagler with the discovery the defendant received after trial on this topic. Before trial, the defendant was not given any discovery on this topic.

After trial, the defendant was given parts of two statements suggesting that Ms. Matthews mentioned the gun before she got into the car with Officer Flagler.<sup>3</sup> One was a statement

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<sup>3</sup> The defendant argues that a third statement, by Sergeant Costello suggests the same thing. The government disagrees. The Court need not resolve the dispute because Sergeant Costello's statement does not in any way change the

of Officer Fidler, quoted on pages 14-16 of this memorandum. Officer Fidler was the first officer to whom Ms. Matthews reported the assault in person. She called 911 from the Amoco station and Officer Fidler responded. He said that Ms. Matthews told him about the assault. The officer and Ms. Matthews then went to Mr. Edwards' home. He was not there. It was then that Ms. Matthews told Officer Fidler that Mr. Edwards' police officer friend told Mr. Edwards that the police were coming. When asked by IAD if Ms. Matthews told him that the police officer gave Mr. Edwards a gun, Officer Fidler said: "I do recall the complainant mentioning something about the gun, but I don't recall any specifics."

The second was a statement by Corporal Sidebotham. Corporal Sidebotham was working in the window in the District on the night Ms. Matthews reported the assault. She made her "Complaint Against Police" to Corporal Sidebotham after reporting the assault to Detective Mayer. She told Corporal Sidebotham about Mr. Edwards' police officer friend who told him the police were looking for him and who had given Mr. Edwards a gun that she thought was stolen.

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analysis.

The question is whether there is a "reasonable probability" of a different result if the defendant had been able to use these two statements at trial. The Court thinks not. The government would still have had a strong argument that Ms. Matthews would not have acted the way she did on the night of the incident had she planted the gun to get the defendant in trouble. Before telling the officers after the chase that the defendant had a gun under the dashboard, Ms. Matthews had never said to anyone that Mr. Edwards had a gun hidden in the car. The statements produced after trial at most suggest that Ms. Matthews may have told Officer Fidler and Corporal Sidebotham that Officer "Gee" gave Mr. Edwards a gun. This does not significantly undermine the government's argument.

The government could still have argued that had Ms. Matthews wanted to get the defendant in trouble because of the gun, she would have told Officer Fidler that the defendant had a gun under the dashboard of the car. When she then went to report the assault to Detective Mayer at the district, she would have told him something about the gun. She did not. Had Ms. Matthews not by chance seen the defendant drive by, outside the police district, there is no reason to think the defendant would even have been stopped that night.

The Court is also persuaded that going down the road of introducing evidence about Officer "Gee" would have been a very dangerous one for the defendant and probably counterproductive. It would have opened the door to the government being allowed to question Ms. Matthews about the fact that the gun was stolen and that the defendant had a corrupt relationship with a police officer.<sup>4</sup> There is no "reasonable probability" that the admission of this evidence would have resulted in a different verdict.

In addition, the defendant had much evidence with which to impeach Ms. Matthews. She started out the night in question by beating up another woman. She admitted that she was on drugs the night of the incident. She admitted prior arrests when she used a different name. She admitted the fact that she was currently charged with kidnapping. The defendant's parole officer testified that a woman calling herself Dawn Matthews said

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<sup>4</sup> The government also argues that at any new trial, the government would raise again its argument that the Court should admit a certain photograph of Mr. Edwards with a gun on his person. The government argues that it would also seek the admission of the defendant's prior convictions for violation of the gun laws. The Court rejects these arguments. It would not change its ruling on the admissibility of the photograph and would not allow in evidence in the government's case-in-chief the defendant's prior convictions for violations of the gun laws.

the gun was hers and not the defendant's. The evidence at issue was cumulative.

Having carefully considered the defendant's arguments, the Court concludes that the evidence in question could not "reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Banks v. Dretke, 124 S.Ct. 1256, 1276 (2004) (internal quotations and citations omitted).

An appropriate order follows.

