

Summary Report

In late June 2011, our office learned that Police Officer Don Schismenos had amassed digital and media information over his years at the Akron Police Department. As a member of the "gang unit," Schismenos was very active in bringing cases to the Summit County Grand Jury. Our immediate concern was whether he provided our office with recorded information. It is the practice of our office to provide attorneys access to all evidence we have against those we prosecute. If our files contained any digital or other media information available it would have been shared with defense counsel. BCI was asked to review the volumes of digital information that had been found on the city's server and in Schismenos' home. In the weeks that followed, BCI provided us with information connected to a few of our cases. If it had not been previously made available to the defense, we provided it to defense counsel.

Last week, for the first time, we learned that a few more cases were connected to the information possessed by Don Schismenos. We asked BCI to provide us with a summary of what they found in their review, regardless of whether that information connected to any of our cases. On Thursday, May 8, BCI gave our office summaries of the 241 file folders found on the city's server and the recordings found at Schismenos' home. Many of the summary sheets documented information unconnected to any criminal case or defendant. The breakdown of these review sheets was:

- 50 contained personal videos of Don Schismenos and his family
- 56 contained information pertaining to routine police work unrelated to a criminal prosecution
- 8 were related to Schismenos' personal legal matters
- 7 contained footage of news shows
- 2 contained nude/pornographic images not related to any case
- 3 were unplayable or empty
- 1 contained a video of a courtroom proceeding in the Federal Court Building in Akron, which has been referred to the US Attorneys' Office
- 114 sheets identified individuals who might have been prosecuted. Our office conducted a further review to determine whether there was any connection to a felony case handled by our office.

Of those:

- 72 were not associated with any felony or misdemeanor case. Under Ohio law, those identities must be redacted.
- 18 are believed to be municipal court cases and have been referred to the Akron City Prosecutor's Office
- 1 case involved a juvenile and is included in the review below*
- 1 contains video of an unidentified court proceeding
- 1 was a form with two typed pages attached with 31 entries and included in the review below*
- 2 contained the Cash Money Moore videos that were previously provided to his attorney
- 19 contained adults who had felony cases with us where Schismenos' video may be relevant*

Four prosecutors individually reviewed the 114 summary sheets on Friday, May 9. Twenty-one of those were identified as potentially being connected to cases handled by the Summit County Prosecutor's Office. On Saturday, May 10, Prosecutor John Galonski emailed Lt. Melissa Schnee at APD Internal Affairs requesting those recordings, as well as one video identified by BCI as "Bad Conduct by Schismenos." On Monday, May 12, Lt. Schnee provided the requested videos to Chief Counsel Brad Gessner. That same day, Prosecutor Margaret Scott requested that the 21 criminal case files associated with those recordings be pulled from storage.

Immediately, 13 prosecutors conducted a file-by-file review of the police reports and evidence in each file. Twelve files were reviewed with no need for any further action. Of those 12, the video or recordings were previously provided to defense counsel in the discovery process in five of those cases. In the remaining 7, the recordings were not related to the crimes charged. Therefore, no further action needs to be taken.

We are sending the recordings to the defense counsel for the remaining 10 cases (which includes 11 defendants). In 5 of those cases, the police reports accurately stated what was in the videos possessed by Schismenos. Recordings in two of these 10 cases were of the defendant but not related to the case. Recordings in the remaining eight cases would have bolstered the prosecutor's case.

The 12 cases that needed no additional follow-up are summarized as follows:

One BCI summary sheet had audio, video and pictures noted for review. Margaret Scott reviewed this form, which had multiple entries, and found only one that had a defendant of concern. He was identified as [REDACTED]. The police reports multiple mentions of video statements and video taken in the car and station. Evidence reports make note of the videos. However, any CDs in evidence were destroyed by APD property per their retention policy. Our file did not contain any recordings. [REDACTED] attorney filed a motion for discovery that included recorded statements, then entered a guilty plea two months later. There is nothing to provide to defense counsel.

Colleen Sims reviewed a summary sheet on Efram Johnson, who was a defendant in a murder case. This had a recording of the defendant being arrested by Schismenos on unrelated charges. A copy was provided at trial to defense attorney Tom DiCaudo for possible use on cross examination of the defendant due to racist comments defendant made during the arrest. The disk was in our file.

Colleen Sims reviewed a summary sheet on Joe Jackson and Darin Wright. The disk only had photo images of the defendants, which had already been provided and noted in the Report of Investigation prior to trial.

Peter Daly reviewed DeShawn Singleton video that was provided in discovery and in Schismenos;' Report of Investigation.

Greg Peacock reviewed a video called "Seth Smith," a fight that appears to be more of a "mutual combat." The Grand Jury remanded the assault as a misdemeanor, and a copy of our review was given to the Akron Law Department on May 14, 2014.

Greg Peacock reviewed a summary sheet called [REDACTED] it contains photo images of a person and persons in gang-related activities. From a review of the photos we have of [REDACTED] none of the images on the disk appear to be [REDACTED]

Jennie Shuki reviewed a summary regarding Tashae Perry and Dashawn Whitlow. We have no file on Tashae Perry. The only case we have related to Whitlow was a case out of Copley Police that has no relationship or connection to this video or Don Schismenos.

Ryan Stickel reviewed a video with multiple individuals. The video shows in excess of 12 different traffic stops. The only audio is from inside the cruiser, not what is going on during the stop. There is nothing to link this video with any felony offense we prosecuted other than the name of Garrick Feaster, a known felon we prosecuted who is now deceased.

Daniel Sallerson reviewed a summary on Rodney Williams. This file contains three videos on one CD. Two of the videos are clearly not related to this matter or defendant. The only information in the video is Rodney Williams stating his name and identifying his tattoos. Schismenos is not listed as an officer in Williams' criminal case.

Peter Daly reviewed a second report related to Deshawn Singleton. The video reviewed was provided in Singleton's discovery for case #2003-09-2651A.

Greg Peacock also reviewed another file related to Deshawn Singleton and Marcus Jones. This video had seven segments. Only two segments related to either of these defendants. Both segments were logged into evidence at APD and were provided in discovery.

In addition to the identified videos, Teri Burnside reviewed a DVD that BCI identified as "bad conduct" and provided to APD. This video did not have an accompanying summary. However, she reviewed the video, which does not appear to have any links to any case we prosecuted.

The 10 cases (involving 11 individuals) for which we are forwarding recordings to the defense are summarized as follows:

Brad Gessner reviewed two recordings relating to Walter Matthews and Melvin Jones from a 1998 drug arrest. One video was a home video found at the residence of the two defendants during a search warrant. It was logged into evidence and accurately portrayed in the police reports. A second video shows more detail of one of the defendants packaging marijuana in the presence of a toddler. The file does not note if the video was provided. This would have been beneficial evidence to the prosecutor had there been charges of trafficking in drugs. These two videos were sent to both defense attorneys since it does not appear they were previously provided to counsel.

Dustin Roth reviewed a video related to a traffic stop of Edward Williams in 1996. The video depicts unprofessional conduct of the officer and also shows the defendant being non-compliant. Since this video was not provided to the prosecutor in 1996, it would not have been in any discovery provided to Edward Williams' legal counsel at the time. Since that legal counsel has passed away and we have no attorney of record, the materials were mailed to Edward Williams with a suggestion he review the matter with an attorney.

Jon Baumoel reviewed records relating to [REDACTED]. The 2002 record was a 15-minute interview between Don Schismenos and [REDACTED] after [REDACTED] a juvenile at the time, was arrested for fleeing and gang-related charges. [REDACTED] advised he did not want to speak without a counsel, yet the officer ignored that request and continued to ask [REDACTED] questions about the charges and other investigations. While the existing police reports accurately summarize the content of the interview and notes that it was taped, due to its age and the nature of juvenile court records not being retained, it is not clear if [REDACTED] attorney was provided with the video. This video may have permitted the defendant to argue that his statement should have been suppressed and is therefore being forwarded to his legal counsel.

Brian Stano reviewed a 2005 audio relating to Andrew Burnette. The recording is not about Burnette's charges, but about information he had on another matter. The police report notes his desire to offer this information for leniency. This information does not affect the allegations against him, but may have been something that could have affected his eventual sentence. The recording will be sent to his legal counsel since the file does not reflect a copy of the tape being previously provided.

Greg Peacock reviewed a short video in which an officer makes unwarranted comments and the defendant says he has "weed" or marijuana on him. The video would have served as evidence of an admission by the defendant, who was listed as Tramane Smart. Since the file does not show his attorney was provided with this recording, one will be sent.

Teri Burnside reviewed recordings relating to Eddie Smith. Smith had a 2005 and a 2009 felony case. A review was not able to determine if the video was related to either case. However, neither file reflected a copy being provided to counsel. The recording does not prove nor disprove anything. A copy will be provided to both counsels of record.

Jon Baumoel reviewed recordings related to Brandon Whiteside in 2007. The file contains three disks with 73 jail calls between Whiteside and his family and friends. The file notes that a CD of jail calls was provided to his attorney. It is not known if the disks the officer had on his computer were the same as the ones provided by the prosecutor. While the calls appear to have been provided, the CDs will be sent to his counsel.

Dustin Roth reviewed videos linked to Darian Wright. One video was tagged as evidence with the Akron Police Department. It shows a large amount of various drugs found in defendant's trunk following a traffic stop. Another disk had photographs that were contained in the officer's Report of Investigation. Since the video was logged into evidence, counsel would have had access. Wright pleaded guilty to the charges. Since there was not an actual copy in the prosecutor's file, it will be sent to Wright's counsel of record.

Margaret Scott and Tom Kroll reviewed video and audio relating to Shaun Foster. The video is of a 1996 traffic stop depicting evidence of Foster's fleeing from the police, leaving a child in a car seat. The video also records inappropriate comments by the officer. The audio file appears to have been of the same incident. While Foster gives officers a false name, he indicates that he was beaten by the officer. If this video and audio would have been provided to the prosecutor, it would have been provided in discovery and used as evidence against Foster. As a result, it will be sent to his counsel.

Colleen Sims reviewed matters relating to Antonio Mapp. In 2010 Mapp was charged for Participating in Criminal Gang Activity. The video shows Mapp receiving his Miranda rights against self-incrimination and Mapp explaining that his tattoos indicate his gang membership. The officer Report of investigation summarizes the contents of the video. The video would have been beneficial evidence of gang activity. Mapp entered a guilty plea to a drug charge. Since the record does not show that a copy of the video was provided to his counsel, one will be sent.

No further action was taken on Cash Money Moore, as his videos were provided in 2011 when the prosecutor was made aware of their existence.

No further action was taken with regard to Rashid Fitzgerald. In 2011, the recording of his stop was reviewed as potential evidence of criminal conduct by Donald Schismenos and was submitted for further investigation by other authorities. The recording was not deemed indicative of evidence proving Fitzgerald did not commit the crime for which he was charged.

This review was completed on Wednesday, May 14. Copies of the recordings pertaining to the 10 cases in which recordings were not previously provided were sent to defense counsel (and one defendant) on Friday, May 16.

Of the 241 file folders and recordings reviewed, only 21 had a connection to a felony or juvenile charge handled by the Summit County Prosecutor's Office. One additional video of "bad conduct" was reviewed, but was not connected to any felony or juvenile case.

The formal review by the Summit County Prosecutor's Office is concluded with the mailing of these recordings.



BRAD GESSNER
Chief Counsel

5-16-15

Date