

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 v. : Criminal Action No. 07-56-GMS
 :
 OMAR BROWN, :
 :
 Defendant. :

DEFENDANT BROWN'S MEMORANDUM OF LAW -
APPLICATION OF U.S.S.G. SECTION 6A1.3(a)

At the time of sentencing in this matter, the government intends to offer proof to support a 4-level enhancement under U.S.S.G. § 2K2.1(b)(6) (possession of a firearm in connection with another felony offense). It is alleged by the government that Mr. Brown committed an assault and robbery with the firearm he possessed. By letter dated January 7, 2008¹, the government disclosed to defense counsel that the victim's name of the alleged robbery and assault is "Rasheed Pernell," and that the government "does not intend to call this individual at the sentencing hearing" (see attachment "A"). Defense counsel believes that the law enforcement officers interviewed Mr. Pernell, and that the government intends to introduce evidence regarding this interview in support of the government's request for a 4-level

¹The letter was received by Defense Counsel in the late afternoon on January 7, 2008.

enhancement under U.S.S.G. § 2K2.1(b)(6). The purpose of this memorandum is to discuss the legal standard applied when the government seeks a guideline enhancement based upon hearsay evidence.

A guideline enhancement may rest upon hearsay only if the information produced by the government “has sufficient indicia of reliability to support its probable accuracy.” U.S.S.G. § 6A1.3(a). Our court of appeals has emphasized the importance of rigorously applying this standard. United States v. Miele, 989 F.2d 659, 664 (3d Cir. 1993) (sentence vacated and case remanded where evidence did not meet “indicia of reliability” standard; panel states that “[w]e think this standard should be applied rigorously”). Consistent with the Third Circuit’s decision in Miele, the reliability of the government’s hearsay declarant will be a subject of cross-examination and argument at sentencing.

/s/

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Date: January 8, 2008

ATTACHMENT “A”



U.S. Department of Justice

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January 07, 2008

Eleni Kousoulis, Esquire
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Federal Public Defender, District of Delaware
704 King Street, Suite 110
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Re: United States v. Omar Brown Criminal Action No. 07-56-GMS

Dear Ms. Kousoulis:

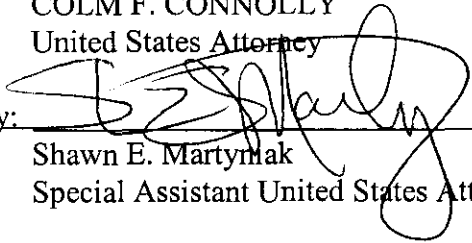
Regarding your earlier discovery request, as noted by Assistant U.S. Attorney Robert J. Prettyman in his letter dated January 3, 2008, the Government previously provided you with copies of the redacted police reports relating to the robbery and the assault. You were also provided with criminal information related to the individuals involved in the incident.

As supplemental discovery, I am disclosing that the victim's name is Rasheed Pernell. Although the Government is enclosing the name of the victim, it does not intend to call this individual at the sentencing hearing. The government intends to limit any witnesses to law enforcement personnel.

Very truly yours,

COLM F. CONNOLLY
United States Attorney

By: _____


Shawn E. Martynak
Special Assistant United States Attorney