

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2007

(Argued: June 16, 2008

Decided: July 9, 2008)

Docket No. 07-0224-cr

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UNITED STATES OF AMERICA,

Appellee,

- v.-

SHAHAWAR MATIN SIRAJ,

Defendant-Appellant.

- - - - -x

Before: JACOBS, Chief Judge, Straub, Circuit Judge, and Jones, District Judge.*

Appeal from a judgment of conviction entered on January 18, 2007 in the United States District Court for the Eastern District of New York (Gershon, J.). Among other challenges to his conviction, the appellant contends that he was entitled, under Federal Rule of Criminal Procedure

* The Honorable Barbara S. Jones, of the United States District Court for the Southern District of New York, sitting by designation.

1 16(a) (1) (B) (i), to discover police reports containing the
2 substance of statements he made to an undercover police
3 officer. For the following reasons, and for those reasons
4 discussed in an accompanying summary order, we affirm.

5
6 MARSHALL L. MILLER (David C.
7 James and Todd Harrison, on the
8 brief), Assistant United States
9 Attorneys for Benton J.
10 Campbell, United States
11 Attorney, Eastern District of
12 New York, Brooklyn, NY for
13 Appellee.

14
15 ROBERT J. BOYLE, New York, NY
16 for Appellant.

17
18 DENNIS JACOBS, Chief Judge:

19
20 Shahawar Matin Siraj ("Matin") appeals from a judgment
21 entered January 18, 2007 in the Eastern District of New York
22 (Gershon, J.) convicting him of various offenses arising out
23 of a conspiracy to bomb the Herald Square subway station in
24 midtown Manhattan. Because most of Matin's arguments are
25 defeated by well settled law, we consider them in an
26 accompanying summary order. We write to resolve a single
27 issue of first impression: whether written police reports
28 that memorialize oral statements made by a defendant to an
29 undercover officer must be produced upon demand under

1 Federal Rule of Criminal Procedure 16(a)(1)(B)(i). We hold
2 that they do not.

3
4 **BACKGROUND**

5 Between November, 2002 and April, 2004, Matin spoke
6 many times with an undercover New York City Police ("NYPD")
7 officer who operated under the assumed name of Kamil Pasha.
8 After speaking with Matin, Pasha would relay Matin's
9 statements to his NYPD handler; and the handler would create
10 a written report containing the substance of Matin's
11 statements. The government concedes that it did not give
12 the NYPD reports to Matin in response to his pre-trial
13 discovery request under Federal Rule of Criminal Procedure
14 16.

15 Matin argues that he was entitled to get the reports
16 under subsection (a)(1)(B)(i) of Rule 16, and that he was
17 prejudiced by the government's failure to produce them.

18
19 **DISCUSSION**

20 **I**

21 In determining whether the prosecutor was required to
22 disclose the NYPD reports under Federal Rule of Criminal

1 Procedure 16, we begin with the relevant portion of the
2 text:

3 **(A) Defendant's Oral Statement.**

4 Upon a defendant's request, the
5 government must disclose to the defendant
6 the substance of any relevant oral
7 statement made by the defendant, before
8 or after arrest, in response to
9 interrogation by a person the defendant
10 knew was a government agent if the
11 government intends to use the statement
12 at trial.

13
14 **(B) Defendant's Written or Recorded
15 Statement.** Upon a defendant's request,
16 the government must disclose to the
17 defendant, and make available for
18 inspection, copying, or photographing,
19 all of the following:

20
21 **(i) any relevant written or recorded**
22 **statement by the defendant if:**

- 23 • the statement is within the
24 government's possession,
25 custody, or control; and
- 26 • the attorney for the government
27 knows--or through due diligence
28 could know--that the statement
29 exists;
30
31

32
33 **(ii)** the portion of any written
34 record containing the substance of any
35 relevant oral statement made before or
36 after arrest if the defendant made the
37 statement in response to interrogation by
38 a person the defendant knew was a
39 government agent
40

41 Fed. R. Crim. P. 16(a)(1) (emphases added). Martin was

1 (concededly) unaware that Pasha was a government agent, and
2 does not contend on appeal that he was entitled to the
3 reports under subsections 16(a)(1)(A) or (a)(1)(B)(ii).
4 Rather, he characterizes his statements--as embodied in the
5 NYPD reports--as "written or recorded statement[s] by the
6 defendant," and argues that they were therefore discoverable
7 under Rule 16(a)(1)(B)(i).

8 Rule 16(a)(1)(B) distinguishes between two types of
9 "Written or Recorded" statements. Subsection (i) makes
10 discoverable all "relevant written or recorded statement[s]
11 by the defendant" that the prosecutor could reasonably know
12 are within the "government's possession, custody, or
13 control." Subsection (ii) makes discoverable certain
14 portions of "written record[s] containing the substance of
15 any relevant oral statement" made by the defendant--"if the
16 defendant made the statement in response to interrogation by
17 a person the defendant knew was a government agent."

18 Martin argues that he was entitled to his statements
19 under subsection (i) because the "substance of [his]
20 relevant oral statement[s]," Fed. R. Crim. P.
21 16(a)(1)(B)(ii), became "written or recorded statement[s]
22 [of] the defendant" for purposes of subsection (i), when

1 they were reduced to writing in the NYPD reports.

2 We decline to adopt Matin's proposed reading of Rule
3 16. Accord United States v. McClure, 734 F.2d 484, 493
4 (10th Cir. 1984). Two closely related rationales inform our
5 holding.

6 First, Matin's reading creates redundancy in the
7 statute. If the substance of a defendant's oral statements
8 could be discovered under subsection (i) as soon as it is
9 embodied in a written record, then every statement
10 discoverable under subsection (ii) would also be
11 discoverable under subsection (i). Matin's proposed
12 construction would therefore violate the "'well-settled'
13 principle 'that courts should avoid statutory
14 interpretations that render provisions superfluous,'" In re
15 Nassau County Strip Search Cases, 461 F.3d 219, 227 (2d Cir.
16 2006) (quoting State St. Bank & Trust Co. v. Salovaara, 326
17 F.3d 130, 139 (2d Cir. 2003)).

18 Second, by explicitly designating as discoverable only
19 those written memorializations of oral statements made in
20 response to interrogation by a known government agent under
21 subsection (a) (2) (B) (ii), Rule 16 implicitly excludes from
22 its scope written memorializations of other oral statements

1 such as those at issue here. Adopting Matin's reading of
2 the term "written or recorded statement" would undermine
3 that purpose by rendering discoverable any oral statement
4 later embodied in a written report within the government's
5 "possession, custody, or control."

6
7 **II**

8 Our holding is not inconsistent with United States v.
9 Johnson, 525 F.2d 999, 1003-04 (2d Cir. 1975), which held
10 that a government agent's written summary of a defendant's
11 oral statement was discoverable as a "written or recorded
12 statement" under the 1966 version of Federal Rule of
13 Criminal Procedure 16. Johnson does not control this case
14 because the 1966 version of Rule 16 differs from today's
15 version in a crucial respect: it contained no analog to
16 subsection (a)(1)(B)(ii). And it is upon subsection
17 (a)(1)(B)(ii) that our holding rests.

18
19 **CONCLUSION**

20 For the foregoing reasons, and for those stated in the
21 accompanying summary order, we affirm.