

- In their collective experience, defense counsel are unaware of any case in which access to autopsy photographs has been conditioned on advance agreement not to review them with their client. Nor has the government cited any case in which a court restricted a defendant from viewing autopsy photographs.² The existing protective order already imposes stringent protections for materials identified as sensitive. Decisions about what discovery materials must be shown to the defendant in order to prepare the defense should be left to the sound discretion of defense counsel.

For the foregoing reasons, the government's motion should be denied.

Respectfully submitted,

DZHOKHAR TSARNAEV
By his attorneys

/s/ Timothy G. Watkins

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²The government's child-pornography analogy, while attention-grabbing, is misplaced because such images are, themselves, illegal contraband. In such cases, unlike here, the defendant's possession of the photographs is itself the very crime of which he stands accused.

CERTIFICATE OF SERVICE

I, Timothy G. Watkins, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on March 28, 2014.

/s/ Timothy G. Watkins

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February 13, 2014

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Via email

Re: United States v. Dzhokhar Tsarnaev
Criminal No. 13-10200- GAO

Dear Counsel:

We received your cover letter of February 12, 2014 which indicates that one encrypted disk with bates number range DT-0030962 through DT-0031950 containing the autopsy reports for Krystle Marie Campbell, Lingzi Lu, Martin Richard and Sean Collier was enclosed. Your letter also indicated we would receive a password separately via email. As you know, we were able to figure out the password from earlier passwords we have received, but would appreciate in the future if you would send the correct password by email contemporaneously with the disks when delivered.

You note that these discovery documents are considered “sensitive” under the protective order. At the same time you decline production of copies of the autopsy photographs due to their “sensitive nature.” In a conversation with me this morning, Nadine Pellegrini both confirmed the likelihood of the government’s desire to introduce some of these photographs at trial, and your resistance to providing copies to us if we planned to show them to our client.

The protective order addresses the handling of “sensitive” discovery and, appropriately, does not preclude our client’s access to it. Rule 16(a)(1)(E) and (F) are clear that the defense is entitled to both inspect and copy photographs and the results of any physical or mental examination. We do not believe that making the photos available

only for inspection satisfies Rule 16. Given the shortened time frame under which we are working and a targeted November 2014 trial date, please consider this letter our continuing request for immediate production of color copies of the photographs.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Conrad', with a long horizontal flourish extending to the right.

Miriam Conrad
Timothy Watkins
William Fick
Judy Clarke

Counsel for Dzhokhar Tsarnaev