

rec'd
Jag Burtles
Chambers on
SEP 21 1999

STATE OF MARYLAND

v.

ADNAN MASUD SYED

Defendant

* IN THE
* CIRCUIT COURT
* OF MARYLAND
* FOR BALTIMORE CITY
* Indictment #199103042-46

* * * * *

**EX PARTE MOTION FOR THE ISSUANCE OF A SUBPOENA FOR TANGIBLE EVIDENCE
BEFORE TRIAL AND OTHER APPROPRIATE RELIEF**

Adnan Masud Syed, defendant, by and through his attorney, M. Cristina Gutierrez, Esquire pursuant to Maryland Rule 4-264, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and pursuant to Due Process of Law, hereby moves for the *ex parte* issuance of a subpoena to:

Carolyn Tunnel
General Manager
Lenscrafters
825 Dulaney Valley Road
Suite 302
Towson, MD 21204

requesting the production to the defense, M. Cristina Gutierrez, no later than October 6, 1999, at the offices of Redmond, Burgin & Gutierrez, P.A., 1301 The Fidelity Building, 210 N. Charles Street, Baltimore, Maryland 21201, of the following: any and all records including, but not limited to,

- (1) as to the employment records of Hae Min Lee, [REDACTED], Baltimore, Maryland 21207:
 - 1. Ms. Lee's work schedule(s) for the period of her employment with Lenscrafters
 - 2. any and all disciplinary records or incidents reports concerning or involving Ms. Lee
 - 3. any and all records of customer complaints concerning or involving Ms. Lee
 - 4. any performance evaluations of Hae Min Lee

- (2) as to the employment records of [REDACTED], [REDACTED], Bel Air, Maryland 21015:

1. Mr. [REDACTED] work schedule(s) for the period of his employment with Lenscrafters
2. any and all disciplinary records or incidents reports concerning or involving Mr. [REDACTED]
3. any and all records of customer complaints concerning or involving Mr. [REDACTED]
4. any performance evaluations of Don [REDACTED]

The grounds for this Motion are as follows:

1. The defendant, Adnan Masud Syed, is charged with first degree murder.
2. The victim, Hae Min Lee was an employee of the Hunt Valley Lenscrafters store.
3. According to the State's discovery, Ms. Lee was killed on January 13, 1999.
4. Ms. Lee was scheduled to work on January 13, 1999.
5. Ascertaining Ms. Lee's whereabouts and schedule prior to her death is critical to the defense's investigation.
6. Knowledge of any relationships or conflicts in the workplace is critical to the defense's investigation.
7. Don [REDACTED] was an employee of the Hunt Valley Lenscrafters store.
8. According to the State's disclosures, Mr. [REDACTED] had a personal relationship with Ms. Lee and was questioned by the police during the course of their investigation.
9. The information sought herein can be obtained only through subpoena.
10. The Maryland Rules do not address the issuance of *ex parte* subpoenas.
11. Investigation into the background and whereabouts of Hae Min lee and Don [REDACTED] and the credibility of [REDACTED] [REDACTED] chronicle of the events surrounding January 13th are essential to the defense investigation and is attorney-client protected and privileged work product. The material sought in this request is specifically related to its investigation. More important, the confidentiality of the investigation results should be maintained and can be maintained only if the

requested subpoena is issued *ex parte*. In *United States v. Nobles*, 422 U.S. 225, 239-40 (1975), the Supreme Court stated:

At its core, the work product shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case. But the doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that the attorneys often must rely on the assistance of investigators and other agents in the compilation of materials in preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.

6. Furthermore, Justice Jackson emphasized, the defense must be free to investigate without alerting the State to the results of its investigation or to the thinking behind its investigation:

[I]t is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper presentation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. *Hickman v. Taylor*, 329 U.S. 495 at 514-15 (Jackson, J., concurring).

If the State had disclosed in a timely manner the recently disclosed evidence, the names of the witnesses, and its investigation of the witnesses, pursuant to its duty under Maryland Rule 4-263 and *Brady*, the defense would have had the adequate time to conduct its own investigation without alerting the State to its investigation.


7. Information sought would be admissible at trial as impeachment material. The defense also has reason to believe that the subpoena will reveal further exculpatory information.

WHEREFORE, the defendant moves:

a. for an *ex parte* Order directing the issuance of a subpoena for the production of tangible evidence prior to trial to the individual in the attached subpoena;

b. for any and all further relief which justice and Defendant's cause may require.

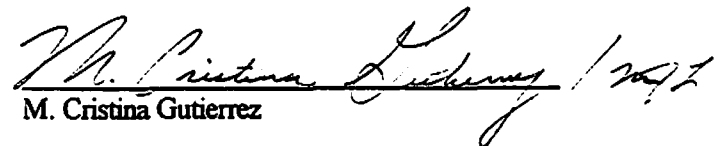
Respectfully submitted,



M. Cristina Gutierrez
Redmond, Burgin & Gutierrez, P.A.
1301 Fidelity Building
210 North Charles Street
Baltimore, Maryland 21201
410-752-1555

REQUEST FOR HEARING

The defendant requests that a hearing on the Defendant's *Ex Parte Motion for the Issuance of a Subpoena for Tangible Evidence Before Trial and Other Appropriate Relief* be set no later than September 30, 1999.



M. Cristina Gutierrez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of September, 1999, a copy of Defendant's *Ex Parte Motion for the Issuance of a Subpoena for Tangible Evidence Before Trial and Other Appropriate Relief*, was not delivered to:

Kevin Urick, Esquire,
Office of the State's Attorney for Baltimore City
Circuit Court for Baltimore City
208 Clarence M. Mitchell, Jr. Courthouse
Baltimore, Maryland 21202.

due to the *ex parte* nature of this request.


M. Cristina Gutierrez

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v.

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Defendant

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* CIRCUIT COURT
* OF MARYLAND
* FOR BALTIMORE CITY
* Indictment #199103042-46

* * * * *

ORDER

To:

Clerk
Criminal Division
Circuit Court for Baltimore City
Court House East
110 N. Calvert Street
Baltimore, Maryland 21202

Kindly issue *ex parte* the attached Subpoena to the following individual:

Carolyn Tunnel
General Manager
Lenscrafters
825 Dulaney Valley Road
Suite 302
Towson, MD 21204

to produce the following documents to M. Cristina Gutierrez, no later than October 6, 1999, at the offices of Redmond, Burgin & Gutierrez, P.A., 1301 The Fidelity Building, 210 N. Charles Street, Baltimore, Maryland 21201.

- (1) as to the employment records of Hae Min Lee, [REDACTED], Baltimore, Maryland 21207:
 - 1. Ms. Lee's work schedule(s) for the period of her employment with Lenscrafters
 - 2. any and all disciplinary records or incidents reports concerning or involving Ms. Lee
 - 3. any and all records of customer complaints concerning or involving Ms. Lee
 - 4. any performance evaluations of Hae Min Lee

- (2) as to the employment records of Don [REDACTED], Bel Air, Maryland 21015:

1. Mr. [REDACTED] work schedule(s) for the period of his employment with Lenscrafters
2. any and all disciplinary records or incidents reports concerning or involving Mr. [REDACTED]
3. any and all records of customer complaints concerning or involving Mr. [REDACTED]
4. any performance evaluations of Don [REDACTED]

JUDGE

STATE OF MARYLAND

v.

ADNAN MASUD SYED

Defendant

* IN THE
* CIRCUIT COURT
* OF MARYLAND
* FOR BALTIMORE CITY
* Indictment #199103042-46

* * * * *

SUBPOENA

To:

Carolyn Tunnel
General Manager
Lenscrafters
825 Dulaney Valley Road
Suite 302
Towson, MD 21204

You are ordered to personally appear and produce documents or objects to M. Cristina Gutierrez, no later than October 6, 1999, at the offices of Redmond, Burgin & Gutierrez, P.A., 1301 The Fidelity Building, 210 N. Charles Street, Baltimore, Maryland 21201,

YOU ARE COMMANDED TO PRODUCE the following documents or objects:

- (1) as to the employment records of Hae Min Lee, [REDACTED], Baltimore, Maryland 21207:
 1. Ms. Lee's work schedule(s) for the period of her employment with Lenscrafters
 2. any and all disciplinary records or incidents reports concerning or involving Ms. Lee
 3. any and all records of customer complaints concerning or involving Ms. Lee
 4. any performance evaluations of Hae Min Lee

- (2) as to the employment records of Don [REDACTED] Bel Air, Maryland 21015:
 1. Mr. [REDACTED] work schedule(s) for the period of his employment with Lenscrafters
 2. any and all disciplinary records or incidents reports concerning or involving Mr. [REDACTED]
 3. any and all records of customer complaints concerning or involving Mr. [REDACTED]

4. any performance evaluations of Donald [REDACTED]

CLERK