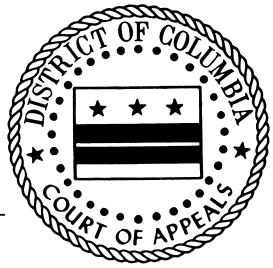
CASE No. 23-CF-723
Oral Argument April 8, 2025



In The

District of Columbia

Court Of Appeals

STEFAN FARMER,
Appellant

v.

UNITED STATES of AMERICA,
Appellee

ON APPEAL FROM THE
SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

BRIEF OF APPELLANT

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I. Because Farmer Complied with D.C. Superior Court Rule of Criminal Procedure 16(b)(1)(C), The Trial Court Erred in Excluding the Testimony of His Sole NGRI Defense Witness

As explained in his opening brief, Mr. Farmer satisfied his expert notice obligations when he supplied the government with a "written summary" which described Dr. Lally's "opinions, the bases and reasons for those opinions, and [his] qualifications." D.C. Super. Ct. Crim. R. 16(b)(1)(C). The trial court erred in finding that his expert notice was insufficient. In addition, the trial court abused its discretion in imposing the extreme sanction of excluding Mr. Farmer from presenting testimony from Dr. Lally, which gutted his insanity defense, instead of permitting Mr. Farmer additional time to adjust any potential notice deficiencies in light of the late conclusion change by Dr. Grant. Further, the trial court's unreasonable sanction violated Mr. Farmer's Sixth Amendment right to present a defense. Accordingly, reversal is required.

A. The Government's Claim that Farmer Failed to Comply with Rule 16's Expert Notice Requirement Lacks Support.

Appellee's opposition urges this Court to find its logic in *Miller v. United States,* 115 A.3d 564 (D.C. 2015) instructive on its review of Mr. Farmer's claim that he complied with D.C. Superior Court Rule of Criminal Procedure 16(b)(1)(C)'s expert notice requirements. (Opp.[1] at 25). We agree. The *Miller* Court established the test for when a defendant's notice of a trial expert would be considered noncompliant warranting sanctions. *Id.* That test is satisfied only when defendant's notice actually "'hindered the government's ability to prepare for trial or cross-examin[ation].'" *Id.* at 568, quoting *Murphy-Bey v. United States,* 982 A.2d 682, 689 (D.C. 2009). This the test is not satisfied here.

Applying *Miller's* test on a *de novo* review of the record here should compel this Court's conclusion that the government's preparation was not hindered. Notably, Mr. Farmer's timely January 17 Notice identifying mental health experts Drs. Teresa Grant and Stephen Lally, and his February 2, 2023 Supplement, provided sufficient content under the Rule. In addition, by providing the

[1] The abbreviation "(Opp. at __)" refers to the page referenced in the Brief for Appellee.

government with a copy of Dr. Grant's August 4, 2022 report, as well as Mr. Farmer's medical, mental health records, and clinical evaluations in discovery, defendant actually *helped* the government secure its own expert report in preparation for trial.

By focusing on the language in defendant's Rule 16 Notice alone, the government urges a myopic review by this Court which lacks precedent. In *Ferguson v. United States,* 66 A.2d 54 (D.C. 2005), at the government's urging this Court looked at the entire record in its review of defendant's claim that the government failed to adequately comply with Rule 16. *Id.* at 64. There, as Mr. Farmer urges here, the Court considered whether documents the government supplied in discovery provided sufficient information which could have assisted the defendant in its trial preparation for the government's untimely noticed expert's testimony. *Id.* Applying the same logic here, it is compelling that Mr. Farmer provided the government with the following documents relevant documents in aid of its preparation for opposing Farmer's not guilty by reason of insanity (NGRI) defense:

- *August 4, 2022* Department of Behavioral Health, Criminal Responsibility Evaluation (CRE) by Dr. Grant (R. Sealed 30 PDF[2])

- *October 11, 2022* Order granting the government's motion to Permit Government Expert To Examine Defendant And Review All Medical And Psychological Testimony By Defendant's Treatment Providers And Reports, Notes, And Data Of Any Defense Expert Concerning The Defendant. (R. 209 PDF)

-*January 5, 2023* CRE Report issued by government expert Dr. Travis Flower. Government files Rule 16 Notice with Report on January 14, 2023. (R. Sealed 11-27 PDF)

- *January 17, 2023* Defense Rule 16 Notice identifying experts Drs Grant and Lally. Attaches Dr. Grant's Report
(R. Sealed 29-45 PDF);

-*February 2, 2023* Defense Supplement to Rule 16 Notice relating to Dr. Lally's posed testimony. (R. 274-280 PDF).

Accordingly, under the whole record review utilized by this Court in *Ferguson,* the government was more helped than hindered by defendant's disclosure of discovery documents related to its NGRI defense and inclusions with its Rule 16 Notices.

The government also misreads this Court's *holding* in *Ferguson as* supporting affirming the trial court's holding here. In *Ferguson* this

[2] The abbreviation "(R. _ PDF)" refers to the PDF record number of the document as identified in the D.C. Superior Court's Index/Certification and in compliance with Rule 28(e) of this Court's Amended Rules.

Court held that the trial judge *erred* in failing to find that the government violated D.C. Superior Court Rule 16(a)(1)(E). *Ferguson, supra.* at 54. *Ferguson* found that the government's terse letter, sent "on the eve of trial," and identifying Dr. Anderson as its medical expert for the first time, did not comply[3] with the Rule. *Id.* at 64. But even after finding the government did not comply, the *Ferguson* court declined to find that the trial court abused its discretion in denying defendant's request for sanctions. Accordingly, neither a finding of noncompliance nor sanctions is warranted here.

The government's reliance on this Court's *holding* in *Miller* is also misplaced. Although the *Miller* court affirmed exclusion under Rule 16, it did so on notably distinguishable facts. First, the record in *Miller* did not include evidence that the defendant had provided the government

[3] The Court found that "not only did the government not comply with D.C. Superior Court Rule of Criminal Procedure 16(a)(1)(E) prior to trial, but it also failed to comply with the rule in a timely manner during trial when it became obvious to the government that Dr. Anderson's testimony would not be consistent with what he related to defense counsel during a pre-trial interview." *Ferguson,* 866 A.2d at 64. Further that its "oral conveyance [during trial] of Dr. Anderson's changed views did not comply with the requirement of a written summary of his testimony." *Id.*

with documents identifying its expert prior to its Rule 16 Notice. *Miller,* 115 A.3d at 567-68. Second, the Notice only identified Miller's expert a week before trial[4]. Third, Miller's short Notice only stated that Dr. Anderson would testify to generalities (i.e., to the likelihood of injury to an *unspecified child* of the complainant's general age). *Id.* 567. Finally, Dr. Anderson's testimony would be supplemental since the defendant had other witnesses that would testify on the question of injury. *Id.*

Farmer's initial and supplemental Notices stand in sharp contrast to Miller's in timing, language and breadth. In language, the language in Farmer's timely January 17, 2023 Notice was nearly identical to that of the government's. *See* side-by-side comparison (Appellant's Br. at 19-20). In addition, the Notice informed that "Dr. Lally will testify consistently with the [attached] report generated by Dr. Teresa Grant." (Notice at R. Sealed at 29 PDF). In breadth, defendant's February 2, 2023 Supplemental Notice addressed perceived deficiencies the government complained of in its motion to exclude Dr. Lally's testimony, attached his resume, and identified the materials Dr. Lally

[4] The *Miller* trial court excluded defendant's Notice primarily because it was submitted as late as a week before trial. *Miller,* 115 A.3d 569 n. 4.

reviewed and the bases/reasonings for his expected conclusion the Mr. Farmer's behaviors likely were significantly compromised by the presence of a mental disease or defect (R. 274-80 PDF). The main difference between Farmer's and the government's notices was the absence of a report by Dr. Lally, which court and counsel acknowledged the Rule did not require. (Tr. 02/16/23 at 7-8). Thus, this Court should not find Mr. Farmer's Notice deficient for want of one now.

B. The Trial Court Erred in Weighing Consideration of Miller's Requisite Three Factors to Grant the Government's Motion to Exclude Dr. Lally's Testimony as a Sanction.

Appellee and appellant also agree that *Miller* supplies the test for whether the trial court abused its discretion in wholly excluding Dr. Lally's testimony (Opp. at 28). Under *Miller's* test, a trial court *must* consider and weigh the following factors before imposing sanctions:

> 1) the reasons for the nondisclosure;
> 2) the impact of the nondisclosure on the trial of the particular case; and
> 3) the impact of a particular sanction on the proper administration of justice in general.

Miller, 115 A.3d at 468, quoting *Ferguson,* 866 A.2d at 59 (internal quotation marks omitted). Consideration of all three factors weigh against exclusion.

1. The Reasons for The Nondisclosure Do Not Support Exclusion.

There was no "nondisclosure" as the government argues (Opp. at 27-28). On January 17, 2023, Farmer timely disclosed his Rule 16 Notice of experts in compliance with the court's trial readiness order (Notice at R. Sealed at 29 PDF). At the time Farmer filed his January 17 Notice and, his February 2, 2023 Supplement, both were sufficient and correct in their reliance on Dr. Grant's attached report. At the time, neither court nor counsel had been notified by Dr. Grant that her Report's conclusion was incorrect. Not until February 8, after the newly assigned trial judge emailed Dr. Grant asking her to testify at the parties' February 16 trial readiness conference, did she do so. (Tr. 02/16/23 at 3-4). Not until six months after her report, did Dr. Grant recant its critical finding and state "LOL" . . . [w]hat I meant to state in my statement is it appears highly unlikely that Mr. Farmer's behaviors

were significantly compromised by the presence of a mental disease or defect" (Tr. 02/16/23 at 5) (emphasis added).

Faulting Farmer for Dr. Grant's late disclosure, the government and trial court falsely claim "that the defense 'offered *no good reason* for its failure to provide reasonable detail about the specifics of Dr. Lally's opinion.'" (Opp. at 28) (emphasis added)). Their claim ignores the important fact that during the parties' February 3 status conference, Farmer's counsel stated she had emailed Dr. Grant for clarification on her Report but the doctor never responded. (Tr. 02/03/23 at 7). At the time they were written, Farmer's January 17 Notice and February 2 Supplement correctly assumed that Dr. Lally would testify consistently with Dr. Grant's report; thus attaching Dr. Grant's report was sufficient as to Dr. Lally's testimony when viewing the record as a whole.

2. The Impact of The Nondisclosure on The Trial of the Particular Case Did Not Support Exclusion

By arguing only about its own trial readiness, the government misreads the required consideration under *Miller's* second factor. (Opp. at 29). This second factor expressly requires the trial court to consider the impact "*on the trial of the particular case*"—not one a particular

party. *Miller,* 115 A.3d at 568 (emphasis). In *Miller,* this required consideration as to whether a continuance was appropriate. *Id.* Here, the trial court noted that *this* trial had only been postponed once, but did not state why it could not be postponed a second time. (Tr. 02/16/23 at 14-15). By instead discussing the *general scarcity* of Felony One trial slots in D.C. Superior Court, the trial judge failed to properly consider *Miller's* second factor. *Id.*

3. The Impact of the Sanction of Exclusion on the Proper Administration of Justice Weighs Against Its Imposition

Finally, the government misreads *Miller's* third test for imposing sanctions, which requires consideration of "the impact *of a particular sanction* on the proper administration of justice in general." *Miller,* 115 A.3d 568 (emphasis added). Instead of considering the impact of the court's wholly excluding Dr. Lally's testimony on the administration of justice in Farmer's trial, the government argues the impact a continuance "would have on the already strained docket of the Superior Court." (Opp. at 30). The government's argument hits wide of the mark.

Analyzing the impact of excluding Dr. Lally's testimony in Farmer's particular case reveals what a weighty injustice it imposed.

Without Dr. Lally's testimony (given Dr. Grant's change two weeks before trial) Mr. Farmer was precluded from presenting his NGRI defense to the jury. (Tr. 02/16/23 at 15-16). "'Under the Sixth Amendment, a criminal defendant is guaranteed the right to offer testimony of witnesses in his favor.'" *Miller,* 115 A.3d at 569, quoting, *Feaster v. United States,* 631 A.2d 400, 405 (D.C. 1993). As the United States Supreme Court established in *Washington v. Texas,* 388 U.S. 14, 23 (1967), "[t]he Framers of the Constitution did not intend to commit the futile act of giving to a defendant the right to secure the attendance of witnesses whose testimony he had no right to use."

Here, the exclusion of defense evidence was certainly "disproportionate to the ends that [Rule 16 is] asserted to promote." *Miller*, 115 A.3d at 569 (quoting *Holmes v. South Carolina,* 547 U.S. 319, 325-26 (2006). The advisory notes evidence that Rule 16 was never intended to serve as a procedural bar. The complete removal of Mr. Farmer's NGRI defense in this case, created a far greater deprivation of justice than benefit of judicial efficiency by not granting a continuance to perfect notice. Unlike in *Miller,* the exclusion of Farmer's only NGRI expert deprived him of his "constitutional right to a meaningful

opportunity to present a complete defense" in a manner disproportionate to the purpose Rule 16 is intended to serve. Thus, the exclusion's impact was of constitutional dimension.

Quoting the trial court, the government's claims "'the record d[id] not establish that Dr. Lally's testimony would have been sufficient to carry Mr. Farmer's burden of proof on the insanity defense ([Tr. 02/16/23] at 14) (Opp. at 30)." Court and counsel err in this claim. Notably, to make a *prima facie* case for an insanity defense to go to the jury all defendant needs to do is to:

> [P]resent sufficient evidence to show that, at the time of the criminal conduct, as a result of a mental illness or defect, he lacked substantial capacity to recognize the wrongfulness of his act or to conform his conduct to the requirements of the law."

McNeil v. United States, 933 A.2d 354, 364–65 (D.C. 2007) quoting *Pegues v. United States,* 415 A.2d 1374, 1378 (D.C. 1980). Mr. Farmer's Notice and Supplemental Notice of Dr. Lally's testimony meet this low bar by stating that Dr. Lally would testify that the Mr. Farmer's behaviors likely were significantly compromised by the presence of a mental disease or defect, and by identifying a list of materials Dr. Lally reviewed, and bases/reasonings, for this testimony.

Such bases included confirming Mr. Farmer's history and diagnosis of Bipolar Disorder, Schizoaffective Disorder, and Major Depression. (R. 274-80 PDF). Thus, the trial court's erroneous exclusion of Dr. Lally was an abuse of discretion under Rule 16 and deprived Mr. Farmer of his constitutional right to a meaningful opportunity for a complete defense under the Sixth Amendment.

II. Viewed In the Light Most Favorable to Defendant Farmer, The Trial Court Erred in Denying His Requested Self-Defense Instruction in a Manner That Was Not Harmless

As both parties acknowledge, this Court reviews the trial court's denial of Famer's requested self-defense instruction by examining the evidence in the light most favorable to the defendant. (Opp. at 37; Appellant's Br. at 28): *see also Hernandez v. United States,* 853 A.2d 202, 205 (D.C. 2004). Viewed in such a favorable light, this Court should find that the trial court erred in summarily concluding "[t]here [wa]s no direct or circumstantial evidence that Mr. Strurdivant had a gun" (R. 340 PDF). Contrary to the government's assertion, the fact that the trial court admitted the Ring video was "grainy" and that "Strurdivant's [the victim's] arm movements were 'ambiguous' at best,

and 'simply appear[ed] to be gesticulation during an argument'" was sufficient. (Opp. at 39 n. 20 quoting trial judge at R. 340-41 PDF). The vagueness and ambiguity the trial judge admitted, provided sufficient circumstantial evidence to warrant giving defendant's requested self-defense instruction to the jury. As this Court stated in *Guillard v. United States,* 596 A.2d 60 (D.C. 1991), trial courts "should give self-defense instruction if there is *any* evidentiary basis in the record to support it"; *see also, Wheeler v. United States,* 930 A.2d 232, 235 (D.C. 2007).

The government's argument, like the court's, is based on its interpretation of an admittedly "grainy," barely audible, 20 second residential Ring video of an altercation with victim Strudivant, where "'Strudivant's arm movements were 'ambiguous' at best." (Opp. at 39, n. 20). That interpretation raised a plausible question for the jury about whether, from Mr. Strurdivant's gesticulations, Mr. Farmer thought he was threatening him with a weapon (Appellant's Br. at 28-30, *compare* Opp. at 38-41) *see Wilson v. United States,* 673 A.2d 670 (D.C. 1996).

Focusing this Court's review too narrowly, the government argues evidence of that Strudivant threatened Farmer with "a gun"—

specifically—is required. (Opp. at 38). The D.C. jury instructions for self-defense are less specific, only requiring an evidentiary basis of "imminent danger of death or serious bodily harm" *See* Criminal Jury Instructions for the District of Columbia (Redbook Jury Instructions), Nos. 9.500 (5th ed. 2022). Further, the Instructions do not require a showing of *actual* threat to the defendant. *Id.* It is sufficient that there are facts that "under the circumstances *as they appeared to [Farmer]* at the time of the incident, [he] actually believed[5] he was in imminent danger of death or serious bodily harm." *Id.* emphasis added*; see also,* Redbook Jury Instructions, Comments, citing *Guillard,* 596 A.2d 60 (D.C. 1991) and *Hernandez,* 853 A.2d 202; *see also,* R. 394 PDF.

By denying the defendant's request to instruct the jury on self-defense and imposing its own view of the weight of the evidence (R. 342 PDF), the trial court usurped the role of the jury. *See, Stevenson v. United States,* 162 U.S. 313, 315-16 (1989). The fact that at the start of their deliberations the jury sent two notes seeking a definition of self-

[5] As argued more fully in Section II of Appellant's Reply, because the trial court excluded the testimony of Dr. Lally as Farmer's mental health witness, the jury did not hear evidence of Farmer's mental state in a manner that could have colored their finding of his belief in self-defense.

defense (R. 387 & 388 PDF) supports finding the trial court erred in denying Farmer's initial request for a self-defense instruction. Allowing counsel time *after* the jury's note, and during their deliberations, to argue on self-defense did not cure the error. In *Coleman v. United States,* 779 A.2d 297 (2002) this Court reversed and remanded where the trial court failed to give an immediate corrective instruction after the unexpected introduction of inadmissible testimony. *Id.* The Court there found that providing a corrective instruction at a later point in the trial did not cure the harm caused by the initial prejudicial admission. *Id.* at 303.

The government's reliance upon *Jackson v. United States,* 645 A.2d 1099 (D.C. 1994) in its opposition on this point is misplaced. (Opp. at 45). In *Jackson,* this Court found that since the trial court generally instructed the jury on self-defense, and those instructions "taken as a whole" addressed the "false appearances" instructions (which were neither a separate defense theory nor the heart of defendant's case) the error in failing to instruct on false appearances was harmless. *Id.* at 1105. In contrast, viewing the instructions given in Farmer's case as a whole, none addressed the separate defense theory of self-defense.

Compare, Id., at 1102. Consequently, even under a *Jackson* analysis, this Court should find the trial court's error was not harmless.

CONCLUSION

For the aforementioned reasons, as well as those appearing to this court, appellant requests that it reverse Mr. Farmer's conviction and remand his case for a new trial.

Dated: March 31, 2025.

_____/s/_____
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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on Appellee, the United States, through its assigned counsel by filing with the Court's voluntary e-filing system (EFS), for which the United States' Attorneys of record have registered. See Admin. Order 2-16; EFS R. 9.

This 31st day of March, 2025.

_____/s/_____
Robin M. Earnest

* This Reply was prepared using 14 point, Century Schoolbook font, in compliance with the D.C. App. Rules