

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANGELO DIPIETRO,

Petitioner,

10-cc-00199 (RJH)

-Against-

UNITED STATES OF AMERICA,

Respondent.

-----X

ANGELO DIPIETRO'S SUPPLEMENTAL EXHIBIT AND LETTER IN
SUPPORT OF HIS 28 U.S.C. § 2255 PETITION

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June 17, 2010

Hon. Richard J. Holwell
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, N.Y. 10007

Re: Pizzuti v. United States, 10-cv-00199 (RJH)

Dear Judge Holwell:

Petitioner Angelo DiPietro respectfully submits the attached supplemental report of Investigator Bill Clutter (Exhibit A), detailing additional suppressed *Brady* evidence that supports DiPietro's innocence on the June 29, 2001 "extortion" of John Perazzo and the § 924(c) firearm count that arose from that evening. Investigator Clutter's new findings, when added to the list of undeniably suppressed *Brady* material set forth in Mr. DiPietro's initial 28 U.S.C. § 2255 petition, require that DiPietro's conviction be vacated.

In short, Clutter's newest findings include that an individual named Richard "Ricky" Wieland was interviewed telephonically by an FBI Special Agent, regarding the alleged "kidnapping" of John Perazzo on June 29, 2001. Before DiPietro's trial, Wieland had a "7 to 15" minute conversation with the agent, in which he denied that there was ever a kidnapping or extortion of Perazzo. Despite these exculpatory declarations, no notes, reports, or even notice of this *Brady* evidence was ever disclosed to the defense.

Mr. Wieland was actually present on the evening of June 29, 2001. He has informed that, "Two innocent men are in prison for something that never happened. There were absolutely no weapons or fireworks of any kind." Wieland's account of June 29, 2001 corroborated key facts, including that there were two separate vehicles at Applebee's; that

DiPietro's son Anthony was not present in DiPietro's basement that evening, and; that the only "threat" uttered on this occasion was Angelo Capalbo's threatening to have Perazzo arrested for defrauding him.

The prosecution was aware of Wieland's version of events, yet it adduced Maurizio Sanginiti's testimony without having disclosed this favorable *and* exculpatory evidence that undercut Sanginiti completely. It is indisputable that *Brady* material must be disclosed sufficiently in advance of trial to allow the defendant to effectively use it. *See, e.g., United States v. Coppa*, 267 F.3d 132, 142 (2d Cir. 2001). Mr. DiPietro submits that the prosecution's *Brady* withholdings undermine confidence in the verdict, and violated his trial rights, including the right to present a defense, to call favorable witnesses, and to effectively confront and cross-examine his accusers. Accordingly, for the reasons set forth herein and in Mr. DiPietro's principal memorandum of law, his conviction must be vacated.

Thank you for consideration of these materials.

Respectfully submitted,

_____/S/_____
Joseph A. Bondy

cc: AUSA Hadassa Waxman

Certificate of Service

Joseph A. Bondy, Esq., being over eighteen and not a party to this action, hereby affirms under penalties of perjury and pursuant to 18 U.S.C. 1746, that, on June 17, 2010, I uploaded by ECF and then mailed the attached supplemental exhibit and letter to:

AUSA Hadassa Waxman
Office of the U.S. Attorney
Southern District of New York
One Saint Andrews' Plaza
New York, New York 10007

Hon. Richard J. Holwell, U.S.D.J.
Southern District of New York
500 Pearl Street
New York, New York 10007

Dated: New York, N.Y.
June 17, 2010

 /S
Joseph A. Bondy

EXHIBIT

A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)	
)	
V.)	02-CR-01237
)	
ANGELO DIPIETRO)	
)	

AFFIDAVIT OF WILLIAM R. CLUTTER

1. The following affidavit provides additional information that supplements my initial affidavit filed in this matter, dated March 16, 2010. Since the filing of that affidavit, I have interviewed additional witnesses and identified more evidence that support Angelo DiPietro's claim of innocence under these post-conviction proceedings.

2. On April 24, 2010, I conducted an interview of Richard "Ricky" Wieland. Mr. Wieland is another occurrence witness to the events that transpired on June 29, 2001, regarding the alleged extortion of John Perazzo. Wieland confirmed that he was a witness to the events that occurred at Applebee's and at the home of Angelo DiPietro. Wieland adamantly stated that John Perazzo was never kidnapped at Applebee's Restaurant in the Cross County Shopping Center. Mr. Wieland stated that Maurizio Sanginiti's testimony that Perazzo was pulled into a white van never happened. He stated that Angelo DiPietro owned a white van that he used for his painting business, but Angelo DiPietro was not at Applebee's parking lot on the evening of June 29, 2001. He stated that Angelo DiPietro was visiting his wife and was trying to reconcile his marriage when the meeting at Applebee's took place. Mr. Wieland stated that John Perazzo got into Maurizio Sanginiti's vehicle at Applebee's Restaurant. Wieland stated that once they arrived at Angelo DiPietro's home, they went into the garage and talked. Wieland stated that the encounter with Perazzo was not intimidating or threatening. At one point, he, Angelo DiPietro and Joe Genua left to buy beer and pizza, which they brought back to the garage. When they got back, Angelo Capalbo was there. According to Wieland, Capalbo was the only one who made any statements that could be construed as a threat. Capalbo raised his voice and stated that Perazzo had taken the money he was planning to use for his daughter's college. Capalbo stated if he didn't get his money back he would turn Perazzo into the District Attorney's office and have him arrested. According to Wieland, Angelo DiPietro told Capalbo to lower his voice, because he had tenants upstairs. DiPietro stated that his wife Anna was planning to visit him and he suggested they all leave and go finish up their business at Capalbo's restaurant. Sanginiti and Perazzo left together. Mr. Wieland stated that no one ever threatened Perazzo with a gun or

fireworks while at DiPietro's house. Wieland stated that Perazzo was neither stripped nor tied up to a chair. Wieland also stated that Angelo DiPietro's son, Anthony, was never present that night. (See Exhibit A- Memorandum of Interview of Richard Wieland, April 24, 2010).

3. Richard Wieland also explained that several years after 2001, an FBI agent, who asked him questions about the alleged kidnapping of John Perazzo at Applebee's Restaurant on June 29, 2001, telephonically interviewed him. Wieland believed that the agent's name was Eric Reese. Wieland recalled that he told the FBI agent that the allegation was "nonsense." He stated that he told the agent that John Perazzo was not kidnapped nor threatened by anyone. Wieland said he told the FBI agent that there are security cameras in the parking lot at the Cross County Mall Shopping Mall. He asked the agent, "Did anyone go get the video cameras to see if Perazzo was lying." Wieland stated, "I told them from day one, that was a fabricated story by a psycho. He lied. They are innocent of this. That didn't happen." (See Exhibit A- Memorandum of Interview of Richard Wieland, April 24, 2010).

4. I asked Richard Wieland if he would write out a statement detailing what he had told me over the telephone. Shortly thereafter, I received a sworn statement written by Richard Wieland. Under the penalties of perjury, Wieland again declared that Perazzo was never threatened or taken against his will on June 29, 2001. Wieland swore that Angelo DiPietro did not brandish a firearm nor did he use any type of force against Perazzo. Notably, Wieland also explained that he had nothing to gain in coming forward and that he feared retaliation from the government for doing so. Despite such fears; however, Wieland stated that he had decided to speak because Angelo DiPietro "did not do any of these things." (See Exhibit B- Sworn Declaration of Richard Wieland.)

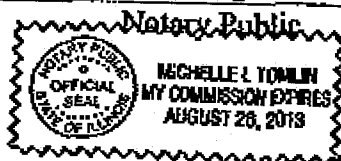
5. My investigation in this matter is ongoing. I will apprise the Court of any other material developments.



William R. Clutter

Signed and sworn to before me on this 9th day of June, 2010

Michelle L Tomlin



Bill Clutter Investigations Inc.

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P.O. Box 5359
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Memorandum of Interview

Date: April 24, 2010
Person interviewed: Richard Wieland
Reporting agent: Bill Clutter
Re: *USA v Angelo DiPietro*

Richard "Ricky" Wieland called and left a message for Reporting Agent to call him. When Reporting Agent made contact with Wieland, he stated that he had happened to run into Anthony DiPietro today. Wieland explained that he use to work for the painting company that Anthony's father, Angelo DiPietro, owned years ago.

Wieland stated that he had read a portion of Maurizio Sanginiti's trial testimony regarding John Perazzo. "When I seen that paperwork it really disturbed me," said Wieland. Wieland stated that none of Sanginiti's testimony against Angelo DiPietro was true. Wieland stated that John Perazzo was never kidnapped at Applebee's Restaurant in the Cross County Shopping Center on June 29, 2001. He stated that Sanginiti's testimony that Perazzo was pulled into a white van also never happened. Wieland stated that Angelo DiPietro owned a white van that he used for his painting business, but Angelo DiPietro was not at Applebee's parking lot on the evening of June 29, 2001. He stated that Angelo DiPietro was visiting his wife and was trying to reconcile his marriage when the parties gathered at Applebee's.

Wieland stated that on June 29, 2001 he had been dropped off at his home by Frank Taddeo after they had worked all day. Taddeo later called him and wanted to know if he would want to go with him to meet Maurizio Sanginiti and John Perazzo at Applebee's. Joe Genua, who worked with them as a painter, was with Frank Taddeo.

Wieland stated that Sanginiti was a stone cutter and was building a big house. He and his brother, Jimmy, frequently met with Sanginiti during this period of time, as he was skilled in hanging wallpaper and was going to assist Sanginiti in the construction of his home. Wieland stated that they often met Sanginiti after work and socialized. Wieland also stated that it was a regular thing for them to go out to dinner with John Perazzo. Wieland stated that JP always wanted to hang out with them.

By the time they got to Applebee's, "Mo" told Frank Taddeo that they were finished eating and were walking out of the restaurant. After briefly talking in the parking lot, they all decided to go to Angelo DiPietro's house. Wieland stated, however, that when they called Angelo DiPietro he told them that it was a bad time for him to meet, because he was with his wife. He told them to go ahead and go to the "shop" and that he would meet them there later. The "shop" was the basement of Angelo DiPietro's house where he also stored ladders and painting supplies.

Wieland stated that JP got into Mo's car and Frank Taddeo followed behind in his vehicle. Wieland stated that after leaving Applebee's they drove around for awhile, since DiPietro was not going to be home until later. Wieland stated that they ended up parking and hanging out at a baseball field. Wieland stated that he remembered conversing with JP about Donald Trump, while at the field. JP said if he bought stock in Trump's casino, which the stock price had fallen to \$2 a share, that he would be a rich man in 15 years.

When they finally got to the "shop," no one had a key to get in. They called Angelo DiPietro, who had not arrived yet. DiPietro told Frank Taddeo to see if his tenant Roberto or his brother would let them into the garage. Wieland stated that either Roberto or his brother opened the garage door. Wieland stated that Angelo DiPietro showed up shortly after the parties had already entered the basement.

Wieland stated that after a short while he, Angelo DiPietro and Joe Genua left to buy beer and pizza. When they got back, Angelo Capalbo was also there. Wieland stated that Capalbo was the only one who made any statements that could be construed as a threat. In particular, Wieland stated that Capalbo raised his voice and told Perazzo that he had taken the money that he was planning to use for his daughter's college. Wieland recalled Capalbo specifically stating that if he didn't get his money back he would turn Perazzo into the District Attorney's office and have him arrested. Wieland stated that Angelo DiPietro told Capalbo to lower his voice, because he had tenants upstairs. DiPietro stated that his wife Anna was planning to visit him and he suggested they all leave and go finish up their business at Capalbo's restaurant. Wieland stated that Sanginitti and Perazzo left DiPietro's house together.

Wieland adamantly stated that no one, including Angelo DiPietro, ever threatened Perazzo with a gun or fireworks. Wieland stated that Perazzo was neither strip searched nor was he ever tied up to a chair. Wieland also stated that Angelo DiPietro's son, Anthony, was never present that night. Wieland stated that he read Sanginitti's testimony that Anthony DiPietro came down the stairs into the basement where they were meeting. Wieland stated that the stairs led up to the tenant's apartment and did not lead up to the apartment where Angelo DiPietro and his son Anthony lived. Wieland stated that there was also never any discussion that he heard about Perazzo having money in the trunk of his car.

Wieland stated that several years after this occurred; he got a phone call from Frank Taddeo, who stated that the FBI wanted to talk to him. He spoke to an FBI agent by telephone who asked him questions about the alleged kidnapping of John Perazzo. He believes that the agent's name was Eric Reese. The FBI agent told him that John Perazzo was claiming that he was kidnapped at the Cross County Shopping Center. "I said its nonsense." He told the FBI agent that there are security cameras at the mall of the parking lot. He asked the agent, did anyone go

get the video cameras to see if Perazzo was lying. Wieland stated that he told the agent the same thing he is telling me. Wieland stated that he told the agent that Perazzo was never kidnapped and that nobody threatened Perazzo with any weapons or fireworks. "I told them from day one, that was a fabricated story by a psycho." Wieland declared, "He lied. They are innocent of this. That didn't happen."

I found out from my friend Frank Tadder, that the FBI went to his house wanting to talk to Frank and myself. I called and spoke to a agent Luke Reese. I was sure it was a death issue by the time I hung the phone up. I heard that a man named John or what we called him JT, claimed he was kidnapped. The problem is he said Angelo Joe. Frank + myself were the guys that did it. I told everyone that this man was going to cause a problem sooner or later. All anybody has to do is look and talk to him for 1 hour. I had not spoken to Angelo for 1 1/2 years when agent Reese called. MORITZO MD was a master stone cutter, he was building a million dollar home. I loved this guy like a brother. I know that sounds crazy, but you had to know this man, he had the best of every thing and he would treat you, as if you had what he had. I had nothing. I did not even drive. Frank would always pick me up and drop me off. I cannot even remember buying a beer or dinner. MD would just say give me the bill. I got it, and it was like that with all of us. That is why I could not believe what I heard he said in a court room about me. MD said that I stamped MD's to his genital (JP) while, Frank pointed a gun at JT. That I first thought what horrible traumatic event took place in his life. He went of hugging me like a brother to making me out to be a ruthless as Jeffrey Sommer.

EXHIBIT B

Let's talk about the facts
the way I remember them, the night
JP in his words was kidnaped. MO
and JP were together on a daily basis. I
never seen JP with any other person
but MO. I lived 5-7 minutes from JP
in White Plains. JP was always around.
I mean here is a guy a caddy in the garage
a Million Dollar home in White Plains,
and I would not let him know where I
lived. It is not that JP was such a terrible
guy, it was that I was afraid I would
not be able to get him out of my house, some
times I would look at him, and think I
have nothing, but even with everything he had
I would never change places with him, I want
to go on the record saying no one would have
to kidnap JP. JP would willingly come to you
any time day or night all you had to do was call
him. We did meet at cross county to have
dinner with MO + JP that night. Frankie
called me earlier and asked if I wanted to
go to dinner. By the time Frank picked
me up maybe 9:00 and half went by.
As we were getting out of Frank's jeep his phone
rang. I heard Frank say we are right out
side. Frank said you believe this, they are
and are coming out. I really wanted a cold beer.
MO was very happy. He asked where my
brother Jimmy was. MO was building a
Million Dollar home and the chandeliers
for the entrance was come in and Jimmy
was going to have all the lighting.

Frankie was in his Jeep, when we could reach Jimmy we bought some beer and went back to Mt. View. Frankie call MO to make a meet place. We told Frankie to meet us at the Little League field. JP and I were leaning against the car, talking about stocks. JP loved being the center of attention. JP told me Donald Trump was a friend of his that his cousin in NJ was in money trouble. JP told us he was an international banker, that is why I asked him if he would teach me how the stock market worked. We were going to do the basket system. In fact, he wanted some painting done in his kitchen and other rooms and so sorry I never listened to him while I was leaning against the car drinking a beer JP said get as much money as you can and just keep buying Trump stock, he said the stock is only 2 dollars a share, and in 10 years you will be a very wealthy man. Most of the story I did not listen and I am still poor.

Frankie pulled in I don't remember for sure but I think I went with MO + JP MO was really excited about getting to work on the house. We drove over to Frank Angelo's house.

He was not home, his wife has left and I think moved back with his parents. Angelo was very upset over this. They decided to meet and talk that night. The problem was we did not have the key to the lock on the garage doors.

Angelo told Frankie by phone to
go and see if Alberto or his brother
had the key. One of these two men rented
the apt on the top floor, and also rented worked
for Angelo as painters. I think Alberto looked
in the vans and we could not find the key.
There were two walls going down the driveway
to the garage. JP JOE FRANKIE MO were all
either sitting on the wall or standing in the
drive I think I am almost sure one of the work
vans were in the driveway. Alberto or his brother
got the door open I think someone climbed through
a window. "but don't hold me to that" once inside
the BS started, we had big plans for the porch
and basement, we were going to frame
sheet rock and put a new bathroom in. I look
and Angelo had walked in, he was happy,
this shit broke up really upset him, he
said hello to everybody and said let go
get some pizza and beer, he did not hope
to ask me typical. My Joe myself went, when
we came back there was a guy named
Angelo Capalbo in a room with JP + MO
Capalbo said I invested money that was
for my dau college and my fathers money.
At one point Capalbo did threaten to have
JP arrested. I remember thinking O SHIT!
what did this guy do. Angelo said enough
everyone has to leave, I wife is coming back
home and I don't want anyone here. I would
like to ad Alberto and brother might remember
that night. also Antonio P. Pedro was not
at the house that night

What I would like to know is if
the most powerful Law-Enforcement Agency
in the world the FBI spoke one time for 7-15-
minutes and I was not arrested, charged, or
convicted and the same with Frank Tadder
and I being to haul on Mr. Tadder was
he just doing his job and believed me,
I really just don't know. What I do
know is that 2 men are in prison for
something that never happened. There
were absolutely no weapons or fire works
of any kind, not only am I talking about
that night, but any night. The only
gun that I ever seen in Angelo's home
or trucks was a CAULKING GUN used
to fill cracks or holes in wood. Mrs Clutter
I just want to thank you for trying
to help my friends. I have nothing to
gain from all of this. At first I did not
want to write this letter in fear of retaliation
against myself or my families. But you know
what, I will have to take that chance.
Angelo & Joe did not do any of these things
For Christ sakes Angelo was with his wife
the whole night and the poor guy get 100
years there is something very wrong

I Richard Wyland to the
best of my knowledge under
penalties of perjury this
statement is true

Thank You very much
Michael P. Teller

ALEXANDRA BUTLER
Notary Public, State of New York
No: 01BU5081931
Qualified in Westchester County
Commission Expires July 14, 2011

Sworn to before me
this 29th day of
April, 2010.
Alexandra Butler