U.S. Department of Justice

United States Attorney
Southern District of New York

United States Courthouse
300 Quarropas Street
White Plains, New York 10601

January 8, 2020

BY ECF
The Honorable Kenneth M. Karas
United States District Judge
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: *United States v. Nicholas Tartaglione*, S4 16 Cr. 832 (KMK)

Dear Judge Karas:

The Government respectfully submits this letter to provide a further update to the Court regarding the defense's request for video footage from outside the defendant's cell at the Metropolitan Correctional Center ("MCC") on July 22 – July 23, 2019 (the "Requested Video"). On or about December 19, 2019, the Government informed the Court and defense counsel that it had confirmed with MCC staff that the Requested Video had been preserved, and that the Government was working to obtain a copy from MCC. As set forth in greater detail below, the Government has learned that the MCC inadvertently preserved video from the wrong tier within the MCC, and, as a result, video from outside the defendant's cell on July 22 – 23, 2019 no longer exists.

On or about July 23, 2019, at approximately 1:27 a.m., MCC corrections officers responded to the cell ("Cell-1") that the defendant shared with Jeffrey Epstein. On or about July 25, 2019, defense counsel requested that MCC preserve video footage from outside the defendant's cell from July 22, 2019 at 11:00 p.m. through July 23, 2019 at 4:00 a.m. From speaking with MCC legal counsel, the Government understands that in response to this request, MCC legal counsel looked up the defendant's cell in the MCC computer system and thereafter requested that MCC staff preserve video from outside of the cell for the requested time period. An MCC staff member confirmed that the video had been preserved.

On or about January 3, 2020, the Government obtained a copy of the Requested Video from the MCC, and converted it into a playable format. After reviewing the video, it appeared to the Government that the footage contained on the Requested Video was for the correct date and time, but captured a different tier than the one where Cell-1 was located because the Requested Video did not show corrections officers responding to any of the cells seen on the video. After speaking with MCC legal counsel, the Government understands that the MCC computer system incorrectly listed the defendant's cell for the time period in question ("Cell-2"). Therefore, when

MCC legal counsel asked that the video outside of the defendant's cell be preserved, the MCC preserved video outside of Cell-2 instead of Cell-1.

The Government understands from speaking with MCC legal counsel that the only other source of video from outside of Cell-1 would be on the DVR system that housed all video for the Special Housing Unit (the "SHU"). Following the death of Jeffrey Epstein at the MCC on or about August 10, 2019, the Federal Bureau of Investigation ("FBI") seized the DVR. The Government understands from speaking with an FBI agent that the FBI seized two DVR systems: one that captured video from the common area of the SHU, and one that captured the SHU tiers (the "Tier DVR"), including the tier where Cell-1 is located. The Government further understands that the FBI has determined that, on or about July 29, 2019, the Tier DVR suffered a system failure. As a result, the FBI been unable to recover any footage from the Tier DVR, and is unlikely to recover any video.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney

By: /s/
[redacted]
Assistant United States Attorneys

Cc: Counsel of record (by ECF)