



Perrye K. Turner Named Special Agent in Charge of the Louisville Division

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Secret evidence at issue in South Seattle terrorism plot

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“Abu Khalid Abdul-Latif, aka Joseph
Anthony Davis, 33, of Seattle.

Photo: State Department Of Corrections”
SeattlePI.com on February 26, 2012
released the following:

“Classified surveillance conducted prior to
arrest

By LEVI PULKKINEN

Federal authorities with a secret warrant
were intercepting phone calls related to a
planned terrorist attack on a South Seattle
military induction center well before the
alleged plotters were arrested.

While details remain sparse, court filings
in the case against Abu Khalid Abdul-
Latif – a SeaTac man accused of plotting
to kill dozens of Department of Defense
employees at the East Marginal Way
South center – show federal agents had
been conducting electronic surveillance of
Abdul-Latif in the weeks or months before
his arrest.

Jailed since June and facing a potential
life sentence if convicted of terrorism-
related charges, Abdul-Latif is accused of
preparing to storm the Military Entrance
Processing Station with two other men
and open fire there with automatic
weapons and grenades. One of his alleged
conspirators was actually a government
informant who purportedly turned to
Seattle police after Abdul-Latif came to
him searching for weapons.

U.S. Attorney Jenny Durkan and others
were quick to praise the informant in the
days after Abdul-Latif and Los Angeles
resident Walli Mujahidh were arrested.
Mujahidh has since pleaded guilty and is
awaiting sentencing.

The informant’s actions – going to police,
then working, in essence, as an
undercover agent – were presented
publicly as the essential break in the case.

Now, though, court documents indicate
Abdul-Latif had been under investigation



for months before the informant came
forward in May.

Abdul-Latif appears to have himself been
the target of a wiretap warrant obtained
through a secret federal court operating
under the Federal Intelligence
Surveillance Act, better known as FISA.

Prosecutors have filed notice that they
intend to use “information obtained and
derived from electronic surveillance”
conducted with a warrant issued by the
FISA court. What evidence prompted that
warrant to be issued remains classified,
and almost certainly will not be provided
to Abdul-Latif’s defense attorneys or the
public.

Created in the late 1970s in an attempt to
curtail unjustified surveillance of
Americans, the FISA system is a
classified forum through which law
enforcement agents – chiefly the FBI –
can obtain search warrants that will never
be fully disclosed to their targets or the
public.

Under the FISA process, agents present
the closed court with statements asserting
they have probable cause to believe their
target is an agent of a foreign government
or terrorist organization, and receive a
warrant to tap the target’s phone or search

their property. That probable cause
statement remains classified, though it
must be provided to the U.S. District
Court judge hearing the criminal case if
prosecutors hope to present evidence
obtained through the FISA warrant at trial.

Some aspects of the FISA system have
drawn criticism in recent years, largely
because the number of FISA warrants has
increased dramatically since the Sept. 11
attacks. Congress has repeatedly expanded
the wiretapping authority available
through FISA – notably through the FISA
Amendments Act in 2008 – but the
warrant acquired against Abdul-Latif was
most likely a traditional FISA action in
line with those initially considered under
the law.

Neither the Justice Department nor Abdul-
Latif’s attorneys would speak about the
case with regard to the secret evidence
apparently now in play. Still, there’s
reason to believe transcripts of Abdul-
Latif’s tapped phone calls may be
declassified if the case proceeds to trial.

It also remains unclear whether
information obtained through a secret
warrant may be introduced in the state
criminal case against Michael McCright –
a Lynnwood man accused of running two
Marines off of Interstate 5 in North
Seattle. McCright, a convicted felon also
known as Mikhial Jihad, is alleged to have
spoken with Abdul-Latif by phone at least
three times; prosecutors have not divulged
how or when those phone calls were
intercepted.

Extent of surveillance unclear

Abdul-Latif and Mujahidh were arrested
Jan. 24, less than a month after the
informant went to Seattle police and
claimed Abdul-Latif was scheming to kill
Western Washington soldiers.

The man who would become key to the
government’s case against Abdul-Latif
met Abdul-Latif several years before.



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Abdul-Latif, a failed janitor and ex-con who adopted a Muslim name in 2007, had come to believe the man shared his views and willingness to turn to violence, according to charging documents.

“Abdul-Latif said that ‘jihad’ in America should be a ‘physical jihad,’ and not just ‘media jihad,’ expressing his view that it was necessary to take action rather than just talk,” an FBI agent told the court.

“Abdul-Latif referred to the 2009 Fort Hood massacre, when a single gunman killed 13 people ... (and) said that if one person could kill so many people, three attackers could kill many more.”

Writing the court, the agent said Abdul-Latif was recorded expressing his anger about United States activities in Afghanistan, Iraq and Yemen, and saying that he believed killing American soldiers was justified.

The men had initially aimed at attacking Joint Base Lewis-McChord, but later changed their target to the South Seattle intake center. The facility is next to a day care.

The informant met with Seattle detectives on June 3 and said he’d met with Abdul-Latif four days prior. He then began to divulge details of the purported plot, including that Abdul-Latif had intended to attack the Tacoma base.

In early June, Abdul-Latif and Mujahidh spoke with the informant, offering details on the planned attack, according to charging documents. They met outside the recruiting station and conducted reconnaissance inside the center.

Despite a short stint in the Navy, Abdul-Latif knew little about firearms but believed the informant could assist him in acquiring automatic weapons, according to charging documents.

“Abdul-Latif told the source that he wanted to acquire, for use in the attack, AK-47 assault rifles, a rocket-propelled grenade, grenades, and bulletproof vests,” the FBI agent told the court.

According to charging documents, Abdul-Latif told Mujahidh and the informant their objective was to “take out anybody wearing green or a badge.”

Law enforcement provided the informant with weapons – a Heckler & Koch submachine gun, an M-16-style rifle and a fragmentation grenade – prior to a June 14 meeting. All had been rendered inoperable before the meeting.

Abdul-Latif examined the weapons later that day, according to charging documents. The men then reviewed a map of the center, and Abdul-Latif suggested a plan of attack.

In the days that followed, Abdul-Latif provided the informant with money to buy the weapons, the FBI agent continued.

Mujahidh arrived in Seattle on two days before his arrest.

Planning continued through the evening of June 22, when the guns were delivered and the plotters were arrested at a Seattle warehouse, the FBI agent alleged.

Mujahidh pleaded guilty in December and may testify against Abdul-Latif if the case goes to trial, which is scheduled to start in early May.

Defense faults prosecutors for secrecy Following the arrests, the informant drew praise from Durkan and Seattle Police Chief John Diaz. Then as now, authorities contended the informant’s tip to police sparked the sting operation.

“This attack was foiled because of the trust and relationships the men and women of the Seattle Police Department enjoy with our community,” Diaz said at the time. The informant, he continued, “ended the plot intended to take innocent lives.”

Speaking shortly after the arrests, Durkan declined to answer when asked whether Abdul-Latif was being investigated before the informant came to police.

Now, though, attorneys for Abdul-Latif contend investigators were already at work for some time before the informant contacted authorities. They noted that the investigation appears to have begun “months” before the informant became involved.

Contacted for comment, Abdul-Latif’s attorneys declined to expand on the allegation or say whether their client’s phone had been tapped.

Abdul-Latif had for some time been posting videos to Youtube discussing his views on his adopted faith. He praised Anwar al-Awaki – a New Mexico-born recruiter for al-Qaida killed in Yemen by a U.S. missile strike in September – in one of several rambling speeches recorded in his apartment.

In October, federal prosecutors in Seattle filed a single-paragraph notice stating they would be using evidence obtained through electronic monitoring conducted under a FISA warrant. Going forward, it will likely fall to U.S. District Court Judge James Robart to determine what classified material, if any, will be made available to Abdul-Latif’s attorneys.

Without arguing that the government’s claims should be made public, Abdul-Latif’s attorneys have asked that the sealed pleadings be routed to Seattle defense attorney Jeff Robinson, who has been cleared by the Department of Defense to review top secret material.

Prosecutors on the case have endeavored to have their legal arguments heard by Robart privately. Abdul-Latif’s attorneys argue the move violates federal law and,

ultimately, endangers their client’s constitutional rights.

“Barring the security-cleared member of the defense team from participating in discovery determinations cripples the adversary process without any commensurate benefit to national security,” Abdul-Latif’s attorneys told the court, noting that Robinson previously reviewed “extremely sensitive” classified information while involved in a military commission trial in Guantanamo Bay. “Moreover, defense counsel are not clairvoyant,” they continued. “Without access to either the classified evidence or the government’s arguments for non-production, Mr. Abdul-Latif will be deprived of his right to counsel at this stage, and of the other fair trial rights to which he is constitutionally entitled.”

Disclosure requirements still demand prosecutors produce any exculpatory information to Abdul-Latif’s defense. But the court – in this case Judge Robart – may allow the government to delete or redact portions that pose a “reasonable danger” to national security.

Robart has also been tasked with reviewing the propriety of the FISA warrant apparently obtained by investigators. Unlike a standard search or wiretap warrant, though, the defense won’t have an opportunity to review the warrant application.

‘There could be boldface lies’

The law that will govern the court’s handling of classified information in Abdul-Latif’s case – the Classified Information Procedures Act – directs that defendants facing secret evidence “should not stand in a worse position, because of the fact that classified information is involved.” But, as a practical matter, the restrictions make a defense team’s work more difficult.

Robart could order that prosecutors release summaries of classified evidence. Were he to order the government to release the investigator’s statements in full, he’d be the first federal judge to do so.

Josh Dratel, a New York defense attorney with a long record of cases involving secret evidence, said there has been an “explosion” in the number of FISA warrants issued since Sept. 11.

Prosecutors benefit from the secrecy, in part because the defense is unable to challenge the claims that prompted the warrant in the first place, Dratel said. “It’s not an adversarial process,” Dratel said. “We never see the warrant. ... “There could be just boldface lies, and we’d never get any of that information.”

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It's not yet clear what defense Abdul-Latif will put if the case proceeds to trial. Abdul-Latif may claim he's innocent of the allegations against him, or that he was entrapped by the government informant. In court documents, the prosecution has also suggested Abdul-Latif may offer a "mental" defense – that he is either less-culpable or not guilty because of a mental illness.

When all is said and done, Abdul-Latif's defense attorneys will likely get to see transcripts of the recorded calls at issue in the prosecution. That's the case in most prosecutions involving warrants issued through the FISA process, said Alex Abdo, a staff attorney with the American Civil Liberties Union's National Security Project.

"What they'll normally get at the end of all this is transcripts of the intercepts," Abdo said. "Those will usually be classified at first. ... Sometimes those transcripts are declassified shortly before trial."

Abdo said the secrecy involved leaves the defense at a disadvantage, chiefly by limiting the opportunities to challenge the prosecution's claims. He also asserted there has been an erosion of the wall between the national security functions envisioned when the FISA process was created and criminal law enforcement.

State defendant also faces life

What impact, if any, the FISA-obtained evidence could have on McCright's prosecution in state court also remains unclear.

McCright is accused of swerving at a government-owned sedan carrying a uniformed Marine sergeant and another noncommissioned officer on July 12. Prosecutors also claim McCright had been in contact with Abdul-Latif, a Des Moines man accused of plotting to attack a South Seattle military processing station.

Writing the court, attorneys for McCright

characterized the connection put forward by King County prosecutors as "tenuous" and said they have not received any evidence backing the claim. They also noted that McCright, unlike Abdul-Latif and a second man, is not accused of terrorism.

Outlining the allegations related to the July 12 incident, FBI Special Agent Len Carver III said the Marine sergeants left the South Seattle Military Entrance Processing Station – Abdul-Latif's alleged target – at 4:45 p.m. While the staff sergeant driving the car remained in uniform, the other man had changed into civilian clothing.

The Marines were headed north on Interstate 5 near Northgate when a small blue car sped toward them, Carver told the court. They saw a bearded man with a skull cap behind the wheel, and subsequently identified him as McCright.

Without warning, McCright swerved at the government car, forcing it into the emergency lane, the FBI agent said in court documents. McCright then allegedly pulled in front of the Marines' vehicle and slammed on his brakes, nearly causing a collision.

The gunnery sergeant riding in the sedan's passenger seat called 911 and reported the Geo Metro's license plate number to the police. McCright was arrested on Sept. 8 in Seattle.

What connection McCright had to Abdul-Latif has not been outlined in court documents. Senior Deputy Prosecutor Gary Ernsdorff has said only that McCright's cell phone was used to call Abdul-Latif prior to Latif's arrest.

"Investigators have confirmed that the cell phone used by the defendant ... was used on at least three occasions to contact Abdul-Latif prior to Latif's arrest by federal authorities," Ernsdorff said in court documents. "The FBI is continuing to investigate defendant McCright's

possible connection to domestic terrorism."

On at least one occasion, FISA-obtained information has been used in state prosecution. No one has suggested it will be in McCright's case.

McCright faces life in prison if convicted on the second-degree assault charge filed against him. His previous convictions make him eligible for the sentence under Washington's "three-strikes" law.

Abdul-Latif remains jailed, as does McCright. Both men have pleaded not guilty."

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