

Records: Before linking alleged shooting plot to Dogwood Dell, Richmond chief was told location was unknown

[Richmond Police Chief Gerald Smith sounded authoritative on July 6](#) when he said police had intercepted two men planning to commit a random mass shooting at a city fireworks show.

"We do know that they were coming to do a mass shooting at the Dogwood Dell at our Fourth of July celebration," he [told CNN](#) that day.

A tipster who had overheard a conversation and called police said there was a plot for a shooting at a large July Fourth event in Richmond. Smith erroneously claimed in a July 6 news conference that the tipster specified Dogwood Dell amphitheater in Byrd Park as the target.

[But not only had the tipster not specified a location](#), Smith's own department had provided him information in writing before his news conference that the location of any potential incident was "unknown," according to new records the Richmond Times-Dispatch obtained under the Virginia Freedom of Information Act.

A police official emailed those records to Smith and an assistant seven minutes before Smith's 2 p.m. July 6 news conference. The records also show that Richmond police shared with the FBI that a location was unknown. That information was vetted by a detective.

Police are trained to draw conclusions based on facts and evidence, and it remains murky why the chief would opt to provide a specific location for the alleged attack when the information he received from his department was that a

location was unknown. In an interview last week with the Richmond Times-Dispatch, Smith [said his "experience" was part of how he concluded that Dogwood Dell must have been the intended target.](#)

Meanwhile, the two men he accused of planning the attack are in federal custody — one on a gun charge and one on an immigration charge — but neither has been charged with anything related to a planned shooting. Smith said last week that Richmond detectives could not corroborate the tipster's allegation of a shooting plot.

Police talking points said detectives deemed the threat credible. Federal authorities are investigating.

Smith, meanwhile, issued a statement for this story acknowledging his problematic communications and saying he'll hold community conversations. "I stand ready to answer questions and to rebuild confidence."

'The location was unknown'

Richmond police provided the records in response to a request from the newspaper for records of two police public affairs officers. Police charged the newspaper \$397.23 for staff time in assembling records, which isn't required but allowed under the law.

Smith's news conference, kicked off by Mayor Levar Stoney and attended by several city council members, was national news and came two days after seven people were killed in an [Independence Day parade shooting in Highland Park, Illinois.](#)

Here's some of what Richmond police did know on July 6: A tipster, speaking in Spanish, had called police on July 1 to report that a man had weapons. The tipster said he had overheard a conversation about planning a mass shooting on July Fourth at a large event, according to police. (Police arrested one suspect on July 1, seizing guns and ammunition in a residence, and arrested the second, who was under surveillance, after July Fourth.)

Statements by Stoney and Smith conjured images of random mass shootings in which someone targets a crowd.

"This is where these cowards go," Smith said at the news conference. "Wherever we gather, that's where they want to be."

"Whether you're at home in your cul-de-sac, or in your neighborhood, or in a park, or at a parade, out dining — you have to keep your head on a swivel," Stoney said at the news conference.

Neither suspect has any known criminal record, and police did not immediately find any suspicious social media activity, the records show.

In response to the FOIA request, police released drafts of talking points and a news release. None of them mentioned Dogwood Dell amphitheater, where thousands gathered to watch fireworks on the Fourth.

Other large celebrations in the area on July Fourth included fireworks after a minor-league baseball game at The Diamond, fireworks at the Chesterfield County Fairgrounds and an event at Henrico County's Crump Park.

[\(Richmond actually had a shooting on July Fourth weekend, outside a club downtown on Broad Street, where six people were shot.\)](#)

Records show that a police detective helped the department's public affairs division prepare public talking points about the alleged shooting plot ahead of the news conference on July 6, which was called by police.

In describing the tip from the caller, the talking points said, in bold, of the planned attack: "the location was unknown."

About two hours before the news conference, Richmond police emailed the "location unknown" talking points to a public affairs specialist with the FBI in Virginia. The head of police public affairs sent Smith and another person an email seven minutes before his news conference with the "location unknown" talking points and the subject line "Print for Chief."

Other talking points the police public affairs division prepared said: "We received information that a person was boasting about executing a shooting. RPD acted quickly, collaborating with our federal partners."

"The complaint or tip did not include specifics on location, time or intended targets. Even after debriefs there is no information that has become clear."

The chief's claim that Dogwood Dell amphitheater was known to be the intended target caused alarm and is still reverberating.

The day after the news conference, Paige Quilter, the president of the Carillon Civic Association, emailed police and city parks and recreation officials with concerns from

neighbors. Could there be copycats? What about security at an upcoming gospel fest and Latino celebration at Dogwood Dell?

A police official referred her questions to the Department of Parks and Recreation, but no one ever responded to her.

In an interview for this story, Quilter expressed serious concerns about how Stoney and Smith handled the information they had.

She said she went into "extremely anxiety overload" when she watched the news conference. Her daughter called from Texas to check on her.

When she saw the police chief making the Dogwood Dell claim to national media, she said, she started thinking "something's not smelling right."

She said she's gone to weekend events at Dogwood Dell since the Fourth, "but I still sit there and I look around. We still are looking around."

"I think the level of anxiety that they caused the neighbors that live here was ridiculous," she said. If the police were simply fearful that Dogwood Dell might have been a target, why wouldn't they just say that, she asked.

"They intentionally drove the fear factor up in this neighborhood to alarming levels," she said. "I cannot imagine why we would be lied to like that."

In his interview with The Times-Dispatch last week, Smith would barely acknowledge that he was wrong when he said a tipster had specified Dogwood Dell, and expressed no regret for the error.

"If I misspoke in that situation, I misspoke in that situation," he said.

Earlier this month in court, under questioning from a judge, an assistant commonwealth's attorney in Richmond said [police had turned over no evidence](#) that either of the two suspects were planning to target Dogwood Dell.

Smith issued responses for this story through a city spokeswoman. He said he didn't have time to review or approve the talking points sent to him seven minutes before his scheduled news conference.

He said his goal was to be transparent and not cause alarm.

"For any confusion or anxiety that my stating Dogwood Dell was the most likely target, I am deeply sorry," Smith said in the statement.

In response to Quilter's concerns, Smith said, "I hate that any resident feels this way. It was never my intent to drive fear within the community. Looking back, I can understand why some feel this way."

And Smith also expressed regret in the statement that his desire to communicate had "derailed the good work that my officers did leading up to July 4th and the good work that they continue to do."

The Richmond police chief serves at the pleasure of the mayor, and [Stoney hired Smith in June 2020](#). A city spokeswoman said Stoney was unavailable for an interview.

In a statement, Lincoln Saunders, the city's chief administrative officer, said that Smith concluded that the

most likely target for a mass shooting was Dogwood Dell after reviewing all of the evidence he had available. He said neither he nor the mayor suggested to the chief that Dogwood Dell could have been the location.

"As the Chief Administrative Officer, I expect our Police Chief and our officers to use their deductive reasoning skills throughout the course of any investigation," he said. "I believe the public understands that investigations are fluid and that officers rely on various buckets of information, including evidence, tips, eyewitness accounts, and their own experience conducting investigations, to assist in arriving at a determination."

Saunders' statement raises a question: If the police chief believed Dogwood Dell was the target of a planned mass shooting - with one suspect in custody and a second under surveillance on July Fourth - why didn't police cancel the event? The department [even posted a tweet July 4 encouraging people to attend](#).

John Dixon, a retired Petersburg police chief and retired Richmond police major, said it would be difficult for detectives to be sure — if there actually was a plot — that the man they had arrested and the one they were surveilling were the only people involved.

"If it was a credible threat I would have canceled the event because I wouldn't have wanted to take a chance on people's lives, especially in today's time and what's going on in the country," Dixon said.

'A logical conclusion had to be made'

When asked why the city chose to still hold the event at Dogwood Dell, Saunders reiterated that Smith determined that the threat had been "neutralized" beforehand but

nonetheless increased security measures there and at other locations that night after mass shootings in May in Uvalde, Texas, and Buffalo, New York.

"It is evident that the media cannot perceive that two things can be true simultaneously – that a target can be perceived as unknown while also deducing the most logical target," said Saunders, who was [Stoney's chief of staff and a personal friend of](#) his before the mayor put him in charge of city government. "In the case of July 4th, a logical conclusion had to be made, and the Chief made it."

In an interview, Saunders said the chief briefed him, the mayor and other city leaders about Dogwood Dell the morning of July 6. Saunders acknowledged communications "missteps," saying police should have taken more time to review and approve the chief's planned remarks before sending out notification of a news conference.

Saunders said the chief has his support.

"Removing this threat from our community should be celebrated, not diminished, because the Chief made a reasonable determination about a location," Saunders said in his statement.

However, no one has tried to diminish the work the police officers did. What's being questioned is why the chief presented his own conclusion as fact to the public, without evidence and despite being given contrary information from his department.

"I do not question the actions to remove firearms from the two individuals in this case. That is a part of regular work our police department does every day to curtail gun violence,"

Councilwoman Stephanie Lynch, whose district includes Byrd Park, said in a statement.

"What I think myself and other members of the community are questioning is why a press conference and interviews were given on national TV appearing to state as fact that a mass shooting had been planned for the Dogwood Dell."

Lynch attended the fireworks show with her children and said the news conference, with a backdrop of national mass shootings, "rocked me to my core."

"The public deserves nothing less than transparency, honesty and open dialogue from their public safety leaders and I look forward to forthcoming community conversations with the chief around the decisions and actions that were taken around this incident," she said.

She said the city council wants a full briefing at its Sept. 6 meeting on the situation as well as how the city handles potential threats in public spaces.

Jim Coleman of Duke University is the John S. Bradway Professor of the Practice of Law, director of the Center for Criminal Justice and Professional Responsibility, and co-director of the Wrongful Convictions Clinic.

He said the type of conclusion Smith drew is potentially dangerous because if police focus on one theory or target they could miss evidence.

"Police are supposed to follow clues. And the clues are supposed to inform their conclusions about what's going on, about the criminal activity, about the nature of the criminal activity," Coleman said.

"When you start to guess – make up what the crime or potential crime is about – it has two effects. It leads to wrongful convictions or no convictions, and it also, I think, endangers the public, because it means that you are not following the clues – you're not even looking for clues anymore. You're simply trying to confirm what you've concluded, which means that you ignore evidence that might point in a different direction."

It's natural that the police would want to identify potential targets based on their tip, he said.

But "you would never basically say that based on my experience this is the only thing they could have had in mind and therefore we broke it up."

"The worst thing for the police is for the public to think that they're just guessing."

Lyndon German and Colleen Curran contributed to this story.

After praising police work on July Fourth tip, Richmond chief blocked lead detective from prestigious post

Richmond police Chief Gerald Smith publicly [praised the work of officers who investigated a tip](#) that led to the seizure of weapons and ammunition from a South Side home on July 1.

"Our officers did great work," Smith said in mid-August, about six weeks after he publicly said the investigation stopped a mass shooting from happening at an Independence Day celebration at Byrd Park's Dogwood Dell.

Detective Michael Kiniry was the lead detective on the case, and no one has questioned the work done by investigators.

Kiniry was later approved to join the FBI's [Richmond Area Violent Enterprise Task Force](#), known by the acronym RAVE, a prestigious role.

According to an Aug. 19 letter the newspaper obtained through the Virginia Freedom of Information Act, a police supervisor signed the letter to Stanley Meador, the special agent in charge of the Richmond FBI office.

"The Richmond Police Department is aware of and approves Detective Michael Kiniry's participation on the FBI RAVE task force," the letter said.

Behind the scenes, though, Smith on Sept. 2 blocked Kiniry from joining the task force, according to two sources who spoke on condition of anonymity because of concerns about potential retaliation. It happened while the chief continued to face scrutiny for claiming that police had foiled a planned mass shooting without any corroborating evidence that they had.

Smith declined several chances to be interviewed for this story about why he canceled the approval for Kiniry.

[When approached at an Oct. 5 public relations event the department held at a Starbucks](#), more than a week after he didn't respond to an interview request by email, Smith declined to answer any questions about Kiniry and the FBI task force.

"Let's talk about it later. We're here for Coffee with a Cop," he said. "[This] is kind of like an ambush."

A department spokeswoman then asked for any questions on the subject to be sent by email.

In a statement Tuesday, Petula Burks, director of the city's Office of Strategic Communications and Civic Engagement, said the approval was not completed in accordance with a department policy that requires all detail assignments to be approved by the chief or a designee — which a lieutenant who signed the letter was not, Burks said.

"When the letter was brought to the Chief's attention, he halted the process because he wanted the department process to be followed," Burks said. "The point of having a department-wide process is to ensure fairness and equity across the agency."

She said the policy also requires that the position be announced department-wide, and that it was not. Burks said the chief's decision was not retaliatory.

Seizure captured national attention

[The weapons seizure on Columbia Street gained national attention](#), and Smith remains under scrutiny after providing false information about what detectives had found. A caller speaking Spanish on July 1 told police about the weapons and — in a tip officers initially had difficulty understanding — said there was a plan for a mass shooting on July 4 in Richmond, according to police.

Detectives found the weapons but did not corroborate a plan for a mass shooting, and knew of no known location nor if there was indeed a plot.

Smith's chief of staff told him officers had "maybe" prevented a mass shooting. Smith, in a news conference and in national media interviews July 6, stated as fact that police had broken up a plot to kill countless people at Richmond's July Fourth fireworks show at the Dogwood Dell amphitheater in Byrd

Park. Smith's boss, Mayor Levar Stoney, also repeated that claim.

Richmond police and Virginia State Police have refused to release the investigative report on the case. Federal authorities are now prosecuting the two men Smith and Stoney accused of planning a mass shooting, but neither man has been charged with any such plan. One faces an immigration charge and the second faces a weapons charge.

Steve Neal is a retired Chesterfield police captain and nearly 30-year police officer who wrote a book titled "Toxic Boss Blues" about nine types of toxic behavior from police management nationally.

Speaking generally and not specifically about Richmond, Neal said many police officers face a threat not just from the street but internally.

"Unfortunately in the law enforcement business, there are a fair number of people in leadership positions who are toxic. And often times they're bullies," Neal said. "If you talk to any police officer just about anywhere in this country, they're going to tell you that toxic leadership and bad management behavior is an issue, and it's unusual if they say that it's not."

The problem nationally stems from how police chiefs get into place — they serve at the pleasure of a politician, he said.

"Their focus is more on pleasing the politician than it is on looking after the public or looking after their officers," he said. "When pleasing a politician becomes the top focus in your workplace, ethical corruption takes center stage."

Concerns about morale on city's police force

Stoney handpicked Smith from the Charlotte-Mecklenburg Police Department in North Carolina in 2020, shortly after he fired former Chief William Smith amid social justice protests that roiled the city that summer. [In choosing a new chief so quickly, Stoney broke a promise for a national search and sidestepped his own administration's vetting process.](#)

In December, the Richmond Coalition of Police, an organization that represents about half of the city department's officers, publicly called for Smith's resignation following a membership vote that saw 96% of respondents say they had lost confidence in the chief. The group also called on the mayor's administration to fire him if he does not quit, but Chief Administrative Officer Lincoln Saunders has said he stands by him.

Brendan Leavy, president of RCOP, could not be reached for comment.

Several members of City Council have acknowledged that there's a police morale issue and lack of trust in the chief, particularly after the July 6 news conference. But they said there's little they can do as they have no power to fire or discipline the chief.

Ninth District Councilman Michael Jones said he has not heard anything about the situation with Kiniry, but said one of his priorities in the coming year is helping recruit and retain officers as the department has about 150 vacant officer positions.

"We have to find a way to get our enforcement numbers back up. We have to get more boots on the ground," Jones said. "We have to put together a plan to see how we can do that."

Amid scrutiny, Richmond police Chief Gerald Smith resigns

Richmond police Chief Gerald Smith resigned Tuesday after a two-year tenure that included calls for his resignation from some of the department's rank and file and [an ongoing controversy over his comments regarding an alleged mass shooting plot at Dogwood Dell](#).

The city announced the departure in a brief statement Tuesday night. Acting Maj. Richard Edwards has been appointed interim chief.

"We would like to thank Chief Smith for his service in law enforcement and wish him well in all his future endeavors," the statement said.

No cause for Smith's departure was given, and he was not immediately available to comment on the announcement.

Mayor Levar Stoney in a statement thanked Smith for "his leadership during the height of civil unrest and the global pandemic."

"As we look around the nation, the challenges faced by police departments have changed since 2020 and we, like so many of our counterparts, are pivoting to ensure we have the infrastructure, including leadership, in place to meet the needs of the current landscape and for the future," the statement said.

Brendan Leavy, president of Richmond's Coalition of Police, said the organization is "embracing moving forward with the new interim chief and eager to have an open dialogue with all stakeholders."

The 300-member group, which represents about half of the city's sworn officers, in December asked for Smith's resignation. A survey found that about half of members said they had "no confidence" in Smith's leadership.

"We look forward to working with the administration, City Council and its citizens on the future success, and we would like to thank all of them for listening to the men and women of the Richmond Police Department," he said.

Smith has been under scrutiny since a July 6 news conference and national media interviews he conducted in which he provided false information about what detectives found regarding a tip to police about weapons and a threat of a shooting. A caller speaking Spanish on July 1 told police about the weapons and — in a tip officers initially had difficulty understanding — said there was a plan for a mass shooting on July 4 in Richmond, according to police.

Detectives found the weapons in a residence on Columbia Street but did not corroborate a plan for a mass shooting and knew of no known location, nor whether there was indeed a plot.

Smith's chief of staff told him officers had "maybe" prevented a mass shooting. Smith stated as fact that police had broken up a plot to kill countless people at Richmond's July Fourth fireworks show at the Dogwood Dell amphitheater in Byrd Park. Smith later said his "experience" is part of how he reached that conclusion. Smith's boss, Stoney, also repeated the claim.

[Smith's statements about the alleged Dogwood Dell plot also heightened focus on the department.](#)

Although Smith had praised the police work done on the case, he later blocked the lead detective from a prestigious post on an FBI task force, claiming the proper process had not been followed within the police department for the assignment.

Federal authorities are prosecuting the two men Smith and Stoney accused of planning a mass shooting, but neither man has been charged with any such plan. One faces an immigration charge, and the second faces a weapons charge.

While Smith faced pressure from some city council members, he appeared to have the continued backing of Stoney and Chief Administrative Officer Lincoln Saunders, who maintained that he, too, believed police had stopped a mass killing in Byrd Park on July Fourth.

Phil Wilayto, a founder of the group Defenders for Freedom, Justice & Equality, said Smith "has been a problem since he arrived."

"The Dogwood Dell mass shooting story and the way he [was] clinging to it long after it was shown false is just the latest," he said.

"He really wasn't open to the community ... it is time for Stoney to really listen to the community and its concerns not only about public safety, but also about police conduct."

Councilman Andreas Addison said it's time for change.

"I think we're seeing challenges from crime. We're hearing from police and the union and the community at large about concerns with leadership at the department," he said.

Smith was Richmond's third police chief in as many weeks when he took the helm of the police department on July 1,

2020, after weeks of nightly protests following the murder of George Floyd by a Minneapolis police officer.

Smith, [who had been with the Charlotte-Mecklenburg Police Department in North Carolina](#), succeeded former Richmond Police Maj. William "Jody" Blackwell, who had served as interim chief for 11 days at the height of the unrest.

In June 2020, Blackwell had replaced former police Chief William Smith. Stoney asked William Smith to resign the same day he elevated Blackwell to the post following what appeared to be escalating clashes between protesters and police.

Blackwell, who served as interim chief for 11 days in 2020, is suing Stoney and Gerald Smith individually in a wrongful termination complaint, saying they violated state law and policy when, according to his complaint, he was fired in retaliation "because he refused an order of Stoney that Blackwell have his officers stand guard over the emergency removal of Richmond's city-owned Confederate monuments in 2020."

Blackwell said that he told Stoney at the time that it was illegal to "disturb or interfere with any monuments or memorials for any war or conflict." The General Assembly amended that law as of July 1, 2020, after Blackwell alleges Stoney issued the order.

On June 26, 2020, Stoney asked Blackwell to step down. Stoney then installed Gerald Smith as chief effective July 1, 2020, the same day the city removed the statue of Stonewall Jackson from its pedestal.

Blackwell returned to his former rank of major. Blackwell's suit claims that Smith fired him in February 2021 at Stoney's direction.

Gerald Smith was paid \$185,000 annually, \$25,000 more than the previous permanent chief.

Edwards, the new acting chief, has been with the department since 1999. The city statement said Stoney has asked Saunders to conduct a national search for Smith's replacement.

"We are confident that RPD will move forward positively during this transition," the statement said.

Richmond police emails describe tip about potential July 4 mass shooting

Federal prosecutors this week filed exhibits of internal Richmond police emails that for the first time publicly describe the precise nature of the tip authorities received about a potential July 4 mass shooting, and they confirm that police received no specifics on the time or location of the purported event.

The first report indicated that one of the Guatemalan men arrested in connection with the alleged plot intended to "shoot up schools, events." The tip was soon refined after a Spanish-speaking officer contacted the tipster, who advised the suspect "was planning on shooting up a large gathering event on July 4th," according to copies of the emails filed in U.S. District Court in Richmond.

The chain of emails — introduced Monday during an evidentiary hearing for Julio Alvarado Dubon, who is charged

with possessing several firearms the tipster feared would be used in the shooting — further undercuts former Richmond police Chief Gerald Smith's claim during a July 6 news conference that Dogwood Dell had been targeted for the violence. The news conference was held days after seven people were killed in a shooting at an Independence Day parade in suburban Chicago.

Smith resigned from the force last week amid growing scrutiny about the Dogwood Dell investigation. An official cause was not given.

In August, the Richmond Times-Dispatch reported that Smith's own department had provided him information in writing before his news conference that the location of any potential mass shooting incident was "unknown," according to records the newspaper obtained under the Virginia Freedom of Information Act.

A police official emailed those records to Smith and an assistant seven minutes before Smith's 2 p.m. July 6 news conference. The records also show that Richmond police shared with the FBI that a location was unknown.

Richmond police Sgt. Brian Rogers with the department's strategic violence interdiction unit, who assessed the tip, and Spanish-speaking Master Patrol Officer Bryan Ferrerias, who interviewed the tipster, testified about the tip police received and how they responded to it during Monday's hearing.

The proceeding was devoted to whether Rogers, Ferrerias and Detective Michael Kiniry legally entered the house where Dubon and co-defendant Rolman Balcarcel-Bavagas were staying in the 3100 block of Columbia Street after police acted on the tip and seized three firearms from Dubon's bedroom. The tipster identified Balcarcel-Bavagas, a co-

worker he knew as "Chapin," as the person planning the shooting.

The tipster first called police communications using the department's language line, which assists non-English speaking callers.

According to an email sent by Richmond Officer Sheryl Austin-Summerville to Sgt. Wesley Partin III at 1:59 p.m. July 1, the tipster reported that "Chapin" had told him that he "had an AR-15 and other big weapons, and his intentions are to shoot up schools, events, etc." The tipster further said that Chapin "used to work for the drug cartel."

The tipster said "he is trying to be a good citizen and report this to police." He advised that Chapin is from Guatemala and resided at the house on Columbia Street.

'Shooting up a large gathering' on July 4th

Partin then emailed Lt. Cynthia Hayes at 3:44 p.m. about the tipster, noting that the call was "difficult to take as we were using the language line [and] no Spanish speaking officers [were] at 2nd [precinct] at that time."

Partin further advised that Ferrerías called the tipster to "get first-hand information" and would then update the report about the tip and re-notify everyone included in the email chain.

At 4:58 p.m., Ferrerías emailed Hayes and Partin and copied seven other high-ranking officers with the information he obtained from the tipster.

"He stated that 'Chapin' showed him two long guns on 6-21-22 in the evening hours," Ferrerías wrote. "The first long gun

was an AR style with 6 metal magazines and was equipped with a red dot sight under the barrel.”

“The second long gun was a higher caliber than the first,” Ferrerías wrote. “The barrel was longer and had several holes on the handguard. It also has a two-leg kickstand.”

The tipster “was told by the subject that he was planning on shooting up a large gathering event on July 4th. No specification on what time or location,” Ferrerías said in his email.

“The subject is associated with a Mexican gang call[ed] ‘Los Zetas (The Zs), and used to be an enforcer within the gang. He also fired the rifles through out the week in his back yard,” Ferrerías added.

After discussing the tip with Kiniry and Ferrerías, Rogers testified Monday that he instructed Kiniry to “do a little investigation” by checking out the Columbia Street residence before they knocked on the door. There was a large, noisy party being held across the street from the home when they first arrived, so they decided to wait until the party died down before approaching the house.

Rogers testified he conducted some background work that included calling a man the tipster advised was Balcarcel-Bavagas’ work boss, who verified that Balcarcel-Bavagas was employed by him. The boss also verified a photo of Balcarcel-Bavagas as the person of interest.

Rogers said he also called Richmond emergency communications to learn whether there were any calls for service at or near the Columbia Street home within the past couple of months.

He learned there was a June 9 call for random gunfire in the 3100 block of Columbia Street, and another on June 24 in the 2500 block of Columbia Street, Rogers said. One of the calls was determined to be exploding fireworks instead of gunfire.

Following those inquiries, Rogers, Ferrerias and Kiniry went to the Columbia Street home after 11 p.m. and Dubon eventually answered the door after several knocks. The party across the street was still ongoing and remained loud.

Fourth Amendment rights questioned

Jose Aponte, Dubon's attorney, said the officers violated his client's Fourth Amendment rights against unreasonable search and seizure. Aponte said police conducted an illegal search of the home, looked around without Dubon's consent and seized the firearms without a search warrant. Dubon further alleges there were no "exigent circumstances" to justify the officers' entry into the house, and their actions did not constitute a valid "protective sweep."

Federal prosecutors responded that Dubon agreed to allow the officers inside and opened the door for them to enter. After entering, the officers soon noticed there were magazines and a rifle round in the front living room.

After some initial conversation about whether Dubon knew the person they were looking for — Balcarcel-Bavagas — the officers told Dubon they were going to check to make sure no one else was in the house. At that point Dubon told them, "go ahead and check," and Kiniry began to make a sweep of the house, prosecutor said. Balcarcel-Bavagas appeared shortly after police entered.

Seconds into the sweep, Kiniry saw what appeared to be one of the guns described by the tipster, and Dubon then accompanied the officer to the bedroom and directed him to the location of two other firearms.

Prosecutors contend Dubon never told the officers to leave, stop checking for other people or otherwise protested their actions. "In sum, the defendant consented to and complied with the officer's attempts to locate others and firearms in the residence," they said, and therefore did not violate Dubon's constitutional rights.

Prosecutors added that even if the officers had not received consent to enter, they would have been justified in conducting a protective sweep because of the "circumstances surrounding the encounter which implicated a potential mass shooting suspect ... and the likely presence of firearms in the residence."

Balcarcel-Bavagas pleaded guilty in August to re-entering the U.S. after having been deported, the only offense for which he has been charged federally. He is scheduled to be sentenced Nov. 10.

Following Monday's three-hour hearing, U.S. District Judge M. Hannah Lauck took the government's evidence under advisement. She directed Aponte to file an amendment to his motion to suppress the evidence against his client, and federal prosecutors will file a response. After those briefs are filed by early December, a hearing date will be set for arguments before Lauck makes a ruling.

