



MICHAEL J. SATZ
STATE ATTORNEY
SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA
BROWARD COUNTY COURTHOUSE

201 SE SIXTH STREET, WEST WING SUITE 7130, FORT LAUDERDALE, FL 33301-3360

PUBLIC RECORDS REQUEST

Contact Mrs. Seltzer at (954) 831-7228 / SSeltzer@sao17.state.fl.us

email

Requestor: BILL GELIN

Company:

Address:

City, State, Zip, -

Email: GELINDISCOVERY@GMAIL.COM

Request Reference #: 14461

Phone: (954) 605-6413

Fax:

Date: 2/3/2020

Media

Pursuant to Chapter 119, Florida Statutes, request is made for:

Request Type: COPIES

Record Type: Public Records Request

Defendant:

Description: Copy of the close out memo and the Memo of termination from the county for Nadra Nash-Montgomery.

YOU ARE ADVISED that the State Attorney's Office is not the custodian of the official court records. The records you have requested are only those in the custody of the State Attorney, subject to all legal exceptions and/or redactions. For a copy of the complete and official record and/certified copies, contact the office of Brenda Forman, Clerk of the Court, 17th Judicial Circuit of Florida, at (954) 831-6565

(For SAO use only)

Table with 2 columns: Action (Letter acknowledging request sent by, Active Discovery provided by, Reviewed/Redacted by, Approved/Disapproved by, File unable to be located by Unit) and Date. Includes handwritten initials and date 2/4/2020.

See Notes/Exemptions/Redactions indicated below

Request Withdrawn--Date

SAO record was destroyed per §119.021(2)(d),

SAO has no record as requested

no fee under 33 pages - no redactions

Notes/Exemptions from Public Record Disclosure (For Reviewing ASA use only)

- Active internal affairs investigation => exempt, §112.533, FS; §655.057(1)(a), FS
Attorney notes are not Public Record and are never subject to disclosure confidential and exempt, Lopez v. State 696 So. 2d 725 (Fla. 1997); Valle v. Sate, 705 So.2d 1331(Fla. 1997); Arbelaez v. State, 775 So. 2d 909 (Fla.2000)
Confession by Defendant on active cases=> exempt, §119.071(2)(e), FS
Bank account numbers, debit, charge and credit account numbers and social security numbers=> exempt, §215.322(6)1, FS; §119.071(5)(a)(b), FS; §655.057, FS; §655.059, FS
Biometric ID Information=>exempt, §119.071(5)(g), FS
information revealing id of Confidential Informant or confidential source> exempt, §119.071(2)(f), FS
Defendant not entitled to free copy of file.> Roesch v. State, 633 So. 2d 1 (Fla. 1993)
Criminal History Data=> exempt, §943.0525, FS
Department of Corrections Records & Investigations=> exempt, §945.10, FS
Autopsy Photographs=> exempt, §406.135(1), FS
E.M.S. Reports=> exempt, §395.51, FS
Home Addresses, etc., of current or former prosecutors, law enforcement personnel, firefighters, judges and code inspectors=> exempt, §119.071(4)(d)2, FS
Traffic Crash Report exempt for 60 days after report is filed=>exempt, §316.066(5)(a), FS
Videotaped statement of minor victim of sexual battery=>exempt, §119.071(j)2.a., FS
DL and DMV records=>exempt, §119.071(2), FS
Photo/video/audio recording that depicts or records the killing of a human being=>exempt, F.S. 406.136
Pharmacy Records=>exempt, §465.017(2)
Security video/surveillance=>exempt 281.301, F.S and/or F.S. 119.071(3)(a)
Mental Health records => exempt, §394.4615(1), FS; §456.057, FS
On active, pending cases, information not disclosed to defense in discovery=> exempt, Satz v. Blankenship, 407 So. 2d 396 (Fla. 4DCA 1981); Tribune Co. v. Public Records, 493 So. 2d 480 (Fla. 2nd DCA_1986)
Personal assets of crime victim=> exempt, §119.071(2)(i), FS
Personal victim information in cases of sexual offense, child abuse, lewd & lascivious offense=> exempt, §119.071(2)(h), FS; §794.024
Medical Records=> exempt, §395.3025(4), FS; §395.3025(8), FS; §456.057, FS
PSI, PTI, pre-plea, post-sentence investigative records=> exempt, §945.10(1)(b), FS
Reports of abuse of vulnerable adult=> exempt, §415.107, FS
Department of Children & Families Reports of child abuse=> exempt, §39.0132(4)(a), FS; §39.202, FS
School records=> exempt, §1002.221, FS
Photograph of victim of sexual offense=> exempt, §119.071(2)(h)
Active criminal intelligence and investigative information=> exempt, §119.071(2)(c), FS
Identity of caller requesting or reporting "911" emergency=>exempt, §365.171(15), FS
Juvenile Records=>exempt, §985.04, FS
Drivers License digital imaging=> exempt, §322.142(4), FS
Telecommunications records=>exempt, §119.071(5)(d)
Other exemptions=>
Federal Tax Information=>exempt- 26 USC 6103
Witness to a murder- personal information ==>exempt §119. 071(2)(m), FS



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PHONE (954) 831-6955

CLOSEOUT MEMORANDUM

To: File
From: Michael Horowitz *MH*
Assistant State Attorney
Re: Nadra Nash-Montgomery
Date: January 13, 2020

The State Attorney's Office learned that Senior Toxicologist Nadra Nash-Montgomery was terminated from employment from the Broward County Office of Medical Examiner and Trauma Services. A subpoena duces tecum was issued to the Broward County Medical Examiner's Office of Trauma Services regarding the circumstances of her termination. The documentation stated that Nash-Montgomery was terminated based on her violations of Directives/Work Rule Compliance; Falsification of Document; Judgment; and Performance of Duties. The State Attorney's Office provided a *Brady Notice* on any pending cases and any cases that were resolved after the date of incident of September 20, 2018. Attached to the *Brady Notice* was the Employee Notice, Prior Notice or Warnings, Description of Incident, and Action Taken related to Nash-Montgomery's termination.

An investigation was conducted into Nash-Montgomery's termination from employment. Sworn statements were taken from Dr. Gary Kunsman, Chief Toxicologist; Jacquelyn Baldwin, Toxicology Lab Manager; Dr. Craig Malick Chief Medical Examiner; and Nadra Nash-Montgomery.

Nash-Montgomery was employed as a senior toxicologist at the Broward County Medical Examiner's Office. During her 12 years of employment, Nash-Montgomery held various positions in the toxicology laboratory. On September 20, 2018, Nadra Nash-Montgomery ran a quality control test mix for cannabinoids. This is part of the calibration and quality control of the instrument before any analysis of samples for cannabinoids are performed by the toxicology laboratory. Multiple pieces of standardized information are part of the sequence table used when analyzing the test mix. It is a common practice to call up the prior standardized sequence table, perform the analysis of the test mix, and save the new data to file that is named using the date of the analysis. The instrument generates a printout of the data and the date it was performed. The print out of the data and date cannot be altered. This data from the test mix is then saved to a file that is named with the date the analysis was performed. The name of the file for the test mix for September 20, 2018 would be "20180920TM". If the instrument is operating correctly, analysis

of specimen samples is performed. If there are any irregularities in the data, no testing of specimen samples is performed until the issue is corrected. The data produced on September 20, 2018, for the cannabinoids test mix indicated that the instrument was working properly.

On September 20, 2018, Nash-Montgomery ran an analysis of the cannabinoid test mix. She called up the August 2018 file to use the standardized sequence list for running the cannabinoids test mix. The instrument performed the analysis of the test mix, which indicated that the instrument was operating properly and analysis of samples could begin. The instrument printed out the data and date of September 20, 2018. This data and the date are generated by the instrument and cannot be changed or altered. When Nash-Montgomery saved the current data back to the computer she failed to rename the August file she called up for the sequence list to the current date of September 20, 2018. As part of the lab procedures, Lab Supervisor Jacquelyn Baldwin reviewed the test mix data before any analysis of samples was performed. The data indicated the instrument was working properly and Nash-Montgomery could begin testing samples. In reviewing the data for the test mix Baldwin noticed the file name/date was saved under the prior name/date used when Nash-Montgomery called up the sequence list and not September 20, 2018. Baldwin pointed out the incorrect file name/date to Nash-Montgomery. Nash-Montgomery said she would change the name of the file in order to correct this mistake. Baldwin told her she cannot do that and she should put a single cross out through it, put her initials, and handwrite the correct name/date.

The next day as part of the laboratory procedure Baldwin reviewed the analysis of samples tested on September 20, 2018, including the test mix quality control. Baldwin saw that Nash-Montgomery had corrected the name/date of the cannabinoid test mix file to reflect the correct date of September 20, 2018. The manner Nash-Montgomery corrected the name of the file was not consistent with the lab procedure to correct an error. The proper lab procedure to correct an error is to place a single line striking through the error, correcting the error, and then initial and date the correction. Nash-Montgomery did not follow this procedure and simply corrected the file name from the incorrect date to the correct date. This issue dealt with the cannabinoid test mix only and did not involve any other drugs, alcohol, or specimen samples from individuals. This issue had no impact on the data produced. The error was simply in the procedure of how she corrected the name/date of the file.

The failure to follow the procedure to correct the name of the file was immediately known. As part of the standard toxicology laboratory procedure all data is triple-checked before any toxicology report is finalized and signed. The data produced is first reviewed by the individual toxicologist who performed the test, then reviewed by a supervisor, and again reviewed a third time by the Chief Toxicologist before the results are finalized and reported. There was no issue as to the accuracy of the test performed on the samples tested on September 20, 2018.

For a short period while employed at the Toxicology lab Nash-Montgomery was authorized to sign off on final lab reports. Dr. Kunsman reviewed all of these lab reports prior to authorizing Nash-Montgomery to finalize the reports and sign them. After this incident, Dr. Kunsman randomly picked 20 percent of the cases to review. Even though all of the lab reports had previously been triple-checked before the reports were finalized, Dr. Kunsman and Baldwin,

the lab manager, performed another quality control review. Baldwin performed her review and then provided the files to Dr. Kunsman for him to review as well. All of the final reports were consistent with data from the analysis. All of the reports issued accurately reflected that data that was identified in the specimens. Dr. Kunsman reported the incident to the American Board of Forensic Toxicology Certification Board and based upon the random sampling of Nash-Montgomery's work and there being no problems identified, the ABFT was satisfied.

Nadra Nash-Montgomery's correction of the file name/date of the cannabinoid test mix on September 20, 2018, had no impact on the toxicology results of any analysis performed by Broward County Office of Medical Examiner and Trauma Services. The failure of Nadra Nash-Montgomery to follow the lab procedure for correcting the date/name of the file violated the laboratory procedure but did not affect the analysis performed on any toxicology samples tested or the final lab reports issued.

Board of County Commissioners, Broward County, Florida
 Finance and Administrative Services Department
HUMAN RESOURCES DIVISION

HR Code

EMPLOYEE NOTICE

Employee Name (Last, First, Middle) Nash-Montgomery, Nadra	Class Title Senior Toxicologist	Division Office of Medical Examiner & Trauma Services
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This notice is to advise you of a situation or action regarding your employment.

NATURE OF INFRACTION: (Check all that apply.)

- | | | | |
|--|---|---|-------------------------|
| Attendance/Punctuality | <input checked="" type="checkbox"/> Directives/Work Rules | <input checked="" type="checkbox"/> Judgment | Safety Violation |
| AWOL | Compliance | Loss of Job Requirement | Transit Vehicle |
| Communications | Equipment/Work Area | Misuse of County Property | Accident |
| Co-worker Contact | Maintenance | <input checked="" type="checkbox"/> Performance of Duties | Other – please specify: |
| Consumption or Under Influence-Drugs/Alcohol | <input checked="" type="checkbox"/> Falsification of Document | Planning | |
| | Insubordination | Public Contact | |

PRIOR NOTICES OR WARNINGS: (Include date and title)
 ATTACHMENT

DESCRIPTION OF INCIDENT: Date of occurrence:
 ATTACHMENT

ACTION TAKEN:
 ATTACHMENT

APPROVALS

[Signature] _____ 26 Nov 2018
 Signature (Supervisor) Date

 Signature (Division Director) Date

[Signature] _____ 27 Nov 2018
 Signature (Department Director) Date

Employee's Signature is required as acknowledging receipt of a copy of this document and does not indicate agreement with or attest to the accuracy of this notice form. The employee may contest statements and incidents referred to herein through the appropriate Grievance Procedure. Employees, whose job classifications are covered by a collective bargaining agreement, should consult the applicable agreement. Refusal by the employee to sign this form (acknowledging receipt) may result in a one (1) day suspension without pay in accordance with Administrative Order 400.

[Signature] _____ 11.27.18
 Employee Acknowledging Receipt Date

DIVISION USE

Employee Number _____

Date 102-111 issued (mm/dd/yy) _____

Number of days suspended _____

Date suspension began _____

Date returned from suspension _____

Remarks _____

 Division Approval Date

HUMAN RESOURCES USE ONLY

BLK 153 _____ DATE _____
 code days

Transaction code _____ DATE _____

Transaction code _____ DATE _____

Remarks _____

 Human Resources Approval Date

EMPLOYEE AGENCY HUMAN RESOURCES PAYROLL

Note: Employee receives original signed Employee Notice and attachment(s). Retain a copy of completed Employee Notice (BC-102-111) and attachment(s) for Agency file, and send a copy to Human Resources for processing.

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Nature of Infraction:

Principle Infraction- Falsification of Data

Additional – Failure to follow Laboratory Procedures, Failure to follow Directives,
Repeated Poor Judgment and Decision Making in the Performance of
Duties

Prior Notice:

October 24, 2018 – Pre-Disciplinary Meeting

Description of Incident: Falsification of Data

Date of Occurrence: September 20, 2018

Ms. Nadra Nash-Montgomery is currently employed as a Senior Toxicologist in the Broward County Office of Medical Examiner and Trauma Services (OMETS), Toxicology Section. Ms. Nash-Montgomery's duties and responsibilities are detailed in the Senior Toxicologist Job Description and JAQ forms attached to this document.

Context:

Prior to analysis of all forensic case specimens, a battery of verified test drug control samples in a range of known, fixed concentrations must be performed for comparison to case specimens. This critical and essential testing step in the process of laboratory analysis determines whether the data generated by the instrument in use is true and accurate. Test drug control samples are essential to the scientific process of vetting the analysis when compared to findings in actual case specimens. These control test measures are as critical to specimen analysis as the case specimens themselves.

Discrepancies and errors associated with the test drug control sample process require corrective action as specified by the detailed laboratory procedures which are described and monitored by the accrediting agencies that govern Forensic Toxicology practice (note that OMETS Toxicology Laboratory is accredited by the American Board of Forensic Toxicology [ABFT]). All such discrepancies, corrective actions, and ongoing follow up procedures are also documented and tracked by the laboratory quality control program.

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The quality and accuracy of data generated by the laboratory either stands or falls on this detailed quality program of data monitoring. These legal quality test records drive the process by which the profession monitors individual laboratory's quality and compliance. Litigators also request these quality program documents in litigation packets to evaluate whether the individual case specimens of their clients were properly handled, evaluated, and reported.

Description:

The incident of falsifying data is described briefly below and is detailed in the attached *Control of Nonconforming Testing and Calibration Incident Report*.

On September 20, 2018, Ms. Nash-Montgomery conveyed to the Laboratory Operations Manager* that she failed to save Cannabinoid specific control test analysis data from the GC/MS instrument as per the quality control procedure for a set of DUI specimens that had screened positive but required confirmation. When directed to follow the proper procedure for documenting and correcting the error per written policy by the Operations Manager, Ms Nash-Montgomery responded with the suggestion that she could simply correct the error by altering the file name on the instrument data storage drive, thus altering the record of this forensic aspect of quality control.

The Operations Manager, Mrs. Jacquelyn Baldwin informed Ms. Nash-Montgomery that she could not do this as it constituted data manipulation and that the laboratory procedure for correcting errors should be employed. Ms. Nash-Montgomery proceeded against the instruction of the Operations Manager, failed to correct the error according to procedure (SOP 4.6-1) and altered the file name on the computer drive utilized for data storage. This failure to apprehend the very serious ramifications associated with this most basic aspect of laboratory procedure reveals a fundamental lack of comprehension of the critical nature of forensic data preservation, data integrity in forensic science, and an unacceptable disregard for the ethical duty that all forensic scientists bear. A casual disregard for data integrity reveals an unacceptable lack of commitment to the truth of the science as well as reasonable duty to the citizens of and the legal agencies within Broward County. Adding to the disturbing nature of the first error, though she received specific instruction regarding corrective measures, Ms. Nash-Montgomery chose to deviate from the guidance of the Operations Manager.

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***Operations Manager-Toxicology Program Specialist - this position was created in response to the initial ABFT Accreditation Inspection Evaluation/Report and upon recommendation of the ABFT Laboratory Accreditation Program Committee to facilitate the laboratory's ability to cope with the ever-increasing quality assurance/quality control demands placed upon forensic laboratories.**

A number of documents (attached) which had been provided to Ms. Nash-Montgomery over a period of several days prior to the announcement of the pre-disciplinary meeting represent her failure to grasp essential aspects of forensic toxicology, pharmacology, analytical chemistry, data review, data interpretation, data evaluation, and data reporting.

Description:

Ms. Nash-Montgomery has been employed by Broward County since 2007 when she was hired as the laboratory technician. In 2008 she was moved into a block-budgeted position as a Toxicologist I (currently the Toxicologist position) and in 2012 moved into the Toxicologist II (currently the Senior Toxicologist) position. Since my arrival as the Chief Toxicologist in May 2013 I have returned Ms. Nash-Montgomery to duties consistent with the Toxicologist position on at least three (3) occasions and submitted her to "re-training" on those advanced procedures performed by the Senior Toxicologists. Her eventual return to Senior Toxicologist duties was always based on workload demands, the fact that she had been retrained on three (3) separate occasions and she is still unable to demonstrate proficiency to indicate that she had mastered the necessary skills to return to the duties of the Senior Toxicologist Position.

With the addition of DUI Cases final case review (i.e., "signing out") responsibilities in May 2018 the deficiencies in Ms. Nash-Montgomery's education and training have become increasingly evident by the number of reporting and documentation errors, such as: · misidentification of drugs; · failure to recognize analytical problems; · failure to clearly and accurately document analytical problems; · failure to understand the necessity for reporting toxicological results in a manner which can be explained to attorneys, judges or juries especially with respect to the effects of drugs on driving performance.

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On October 24, 2018, a pre-disciplinary hearing was held to afford Ms. Nash-Montgomery an opportunity to provide information with respect to the allegations regarding the failure to follow laboratory procedures, failure to follow directives, and repeated poor judgment and decision making in the performance of duties. In attendance were Dr. Kunsman, Chief Toxicologist, OMETS; Jorge Castellares, Human Resources Generalist, Human Resources Division; Richard Cutshaw, Labor Union representative and Nadra Nash-Montgomery, Senior Toxicologist, OMETS.

During the meeting Ms. Nash-Montgomery was provided with the documentation which demonstrated and detailed the data file which she altered including a description of the circumstances surrounding that event as well as with other documents which are representative of the data and Final Toxicology Reports she had produced and were subsequently returned with annotations, teaching points, and corrections made by Dr. Kunsman. When questioned concerning why she changed the file name she explained that since the software allowed her to change the name she thought that it was alright to change the name. Dr. Kunsman tried to explain that it was common knowledge that it is physically possible to change stored information using ChemStation software and that it should be obvious to any scientists or any person with laboratory experience that such changes must not be made, i.e., it is not that it was not physically possible as opposed to not allowed, but Ms. Nash-Montgomery did not accept and did not appear to understand that distinction. Dr. Kunsman further explained to her that in the Forensic Toxicologist world, you cannot change or alter data because that is nothing less than falsification of data. Ms. Nash-Montgomery, along with the Union representative, stated that she was willing to accept being removed from those duties specific to a Senior Toxicologist, receive re-training on those laboratory procedures with respect to theory, practice, data review and data reporting, and to perform only that work normally assigned to staff in the Toxicologist position. In response to this, Dr. Kunsman stated that, in his opinion, Ms. Nash-Montgomery lacked the education and training in the fundamentals of chemistry, and that she had not demonstrated through her performance that she possesses an understanding of pharmacology or analytical instrumentation to meet the performance expectations of a Senior Toxicologist or to have the responsibility to review and sign out DUI and Drug Facilitated Sexual Assault cases.

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Action Recommended:

Ms. Nash-Montgomery has been a County employee for approximately eleven (11) years. In this instant case, Ms. Nash-Montgomery has engaged in severe misconduct that has placed not only OMETS but the County in a serious position of liability. Ms. Nash-Montgomery holds a position of significant trust and responsibility and her actions have caused here management to lose confidence in her ability to perform her duties and responsibilities in a trustworthy and professional manner. In consideration of the Professional, Ethical, and Scientific demands placed upon the Forensic Toxicology practitioner, the scrutiny brought to bear on all aspects of the work, training, education, and character of forensic scientists, and the profound implications associated with the reported results and opinions (e.g., defendant's loss of property and liberty, etc.) of individuals engaged in any forensic science field in addition to the documented falsification of data, the County has no alternative but to immediately terminate Ms. Nash-Montgomery from employment with Broward County.