IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

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| STATE OF FLORIDA, | : | CASE NO: 18-12713CF10A |
| | : | JUDGE DUFFY |
| v. | : | DIVISION FD |
| | : | |
| KEIVONNE Q. JORDAN, | : | |
| | : | |
| Defendant. | : | |

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCOVERY**

The State objects to the defendant's motion to compel discovery pursuant to Florida Rule of Criminal Procedure 3.220 and Brady v. Maryland, 373 U.S. 83 (1963), and responds as follows:

Florida Rule of Criminal Procedure 3.220 governs pre-trial discovery.

1. The State's discovery obligations under Rule 3.220 are satisfied by filing a discovery exhibit that lists the witnesses that the State may call and the evidence that is in the State's possession and making it available for copying or inspection. The State is required to do no further. Potts v. State, 399 So.2d 505 (4th DCA,1981)
2. It is a departure from the essential requirements of law to require the State to expend money copying discovery for the defendant or to require the State to disclose as discovery work product in the form of trial strategy or intentions. See State v. Williams, 678 So.2d 1356 (3rd DCA, 1996).
3. The State is under no obligation to find alleged discovery on the behalf of the defense pursuant to any Florida evidence statute or case law, including *Brady* and its progeny. The mere possibility that information may be helpful to the defense in its own investigation does not establish materiality for purposes of entitlement to discovery. See Demings v. Brendmoen, 158 So.3d 622 (Fla. 2014).
4. "The State has no duty to do for the defense work which the defense can do for itself." State v. Counce, 392 So.2d 1029 (4th DCA, 1981). The prosecuting attorney should not be required to actively assist defendant's attorney in the investigation of the case. See Hansbrough v. State, 509 So.2d 1081 (Fla. 1987).

5. "[W]hen a pretrial motion for discovery ... is presented to the trial court for a ruling, a determination should first be made as to whether all or any part of the information sought by defendant is readily available to him by the exercise of due diligence through deposition, subpoena, or other means. If so, the motion should be denied; if not, the court should then proceed to a determination as to whether the information sought may reasonably be considered admissible and useful to the defense in the sense that it is probably material and exculpatory. If this determination is resolved in the affirmative, the motion should be granted; otherwise, denied." State v. Coney, 294 So.2d 82 (Fla. 1974).
6. "There is no *Brady* violation where the information is equally accessible to the defense and the prosecution, or where the defense either had the information or could have obtained it through the exercise of reasonable diligence." Provenzano v. State, 616 So.2d 428 (Fla. 1993). Because Florida has a comprehensive public records law, the defendant has the ability to obtain the information that he seeks directly from the law enforcement agency or city government. *See* Chapter 119, Florida Statutes.
7. The Defendant already knows of the claimed *Brady* material through the public disclosure of the issue in the news media. Therefore, it is not a *Brady* violation as he knows of this information. See Provenzano v. State and James v. State, 453 So.2d 786 (Fla. 1984). The State does not possess a separate governmental entity's personnel records. The State is only required to disclose information in our exclusive possession, known to be relevant.
8. *Brady* evidence must be materially relevant and favorable to the defendant because it is either exculpatory or impeachment. See Strickler v. Greene, 527 U.S. 263, 281-82 (1999).
9. Detective Moretti's alleged conduct in a completely separate criminal investigation in 2022 is unrelated to this defendant's case that occurred in 2018. General acts of misconduct are inadmissible as impeachment evidence. See Bain v. State, 691 So.2d 508 (5th DCA, 1997).
10. Generally, Florida law precludes the use of specific acts of misconduct by police officers as a method of impeachment. F.S. 90.610. See Jackson v. State, 545 So.2d 260 (Fla. 1989). In Jackson, investigations of witness tampering and

obtaining a search warrant after the fact that did result in reprimands and demotions to the officer were held to be inadmissible in a trial because they were specific acts of misconduct which are not admissible to impeach witness credibility. The Supreme Court of Florida has held that an internal reprimand is not sufficient for impeachment purposes under F.S. § 90.610(1), which requires a conviction for a crime of dishonesty or false statement. Eaglin v. State, 19 So.3d 935 (Fla. 2009).

11. Evidence of an internal affairs investigation must be for conduct that occurred during the investigation of the case being tried. See State v. Bullard, 858 So.2d 1189 (2d DCA, 2003) (holding that an internal affairs investigation finding that an officer made false statements to the public and was suspended for 3 days is not admissible or relevant because the conduct was "completely unrelated to the defendant's case" and therefore not material, relevant or admissible).
12. Even if a state witness is currently under investigation, the investigation must not be too remote in time and must still be related to the case at hand to be relevant. See Breedlove v. State, 580 So.2d 605 (Fla. 1991). In Breedlove, testifying officers were under internal affairs investigations for misconduct, including possible crimes, unrelated to the actual case in trial. The Florida Supreme Court held that "such evidence is not relevant, however, when the conduct and investigations are totally unrelated to the case at bar." A prior investigation that is remote in time is not relevant. See A.McD. v. State, 422 So.2d 336 (3d DCA, 1982).
13. The information demanded is not relevant per F.S. 90.403, 90.404, 90.405, 90.608 and 90.609. An inquiry regarding internal investigations is not relevant unless it is "sufficiently related." This means it must demonstrate a "reason to present false testimony in a specific case" as opposed to a general bias. Reed v. State, 875 So. 2d 415 (Fla. 2004) and Ferguson v. Sec. Dep't of Corr., 580 F.3d 1183 (11th Circuit, 2009) (holding that Florida law does not permit admission of other investigations unless they reveal a specific bias to testify falsely in the specific case at bar).
14. "The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish materiality in the constitutional sense." United States v. Agurs, 427 U.S. 97 (1976). "The prospect of bias does not open the door to every question that might possibly develop the subject." Hernandez v. State, 360 So. 2d 39 (3d DCA, 1978).

15. Detective Moretti is not under investigation by the State Attorney's Office for any alleged misconduct in 2022 related to a separate homicide trial and the Miramar Police Department internal affairs investigation apparently did not find any misconduct occurred.
16. The Defendant cites no legal authority for the argument that the Court has the authority to grant this motion or for the conclusion that the information is *Brady*, material, relevant or admissible.
17. Because the information demanded by the Defendant is legally inadmissible and irrelevant based on case law and statutes, as noted above, there is no legal basis to re-depose the witness either. See Fla. R. Crim. Pro. 3.220(l).

THEREFORE, the State moves the Court to deny the defendant's motion to compel the State to act further in complying with Rule 3.220 because the State has fully complied with the requirements of the Rule, the information is not relevant to the case at bar, and the defendant has other avenues that he could pursue to obtain the desired additional information – namely a public records request. The requested order to compel specific further discovery action by the State would be a departure from the essential requirements of law.

I HEREBY CERTIFY that a true copy hereof has been furnished via electronic delivery this 10th day of October, 2023, to the Office of the Public Defender, Attorney for Defendant.

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