

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

STATE OF FLORIDA,

Plaintiff,

vs.

JAMELL DEMONS,

Defendant.

Case Number: 19-001872CF10A

Judge John J. Murphy, III

**MOTION TO DISMISS FOR GOVERNMENT
AND PROSECUTORIAL MISCONDUCT IN VIOLATION
OF THE DEFENDANT'S DUE PROCESS RIGHTS**

COMES NOW the Defendant, Jamell Demons, by and through undersigned counsel, and moves this Honorable Court pursuant to Rule 3.190, Florida Rules of Criminal Procedure, to issue an Order, dismissing the Indictment in the above-styled cause and states as follows:

1. The Defendant was tried in the above-styled cause from April 10, 2023, to July 22, 2023. The results of that trial, as this Court is well aware, was a hung jury.
2. The lead investigator in this case is Detective Mark Moretti of the Miramar Police Department.
3. As such, his credibility is not only germane to this case, but has a direct bearing on the outcome of the case. "The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors

as the possible interest of the witness in testifying falsely, that a defendant's life or liberty may depend." (*Napue v. People of State of Illinois*, 360 U.S. 264, 269 (1969)).

4. In *Napue*, the Court cited a New York Court of Appeals case, *People v. Savvides*, "It is of no consequence that the falsehood bore upon the witness' credibility, rather than directly upon the defendant's guilt".

5. Therefore, under *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763 (1972) and *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), information within the State's possession that would have impeached the credibility of Detective Moretti, known to the State, should have been presented to the defense prior to trial. Unfortunately, that did not occur. In fact, the opposite occurred. (*United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985)).

6. For the Defendant to establish a *Brady* violation, the Defendant must show: (1) the evidence was favorable to the Defendant either because it was exculpatory or because it was impeaching; (2) it was suppressed by the State either willfully or inadvertently; (3) it was material, thereby causing prejudice to the Defendant. (*Rhodes v. State*, 986 So.2d 501 (2008)).

7. Although the State has an obligation to provide *Brady* material, nonetheless, on July 25, 2022, the defense filed a *Brady* request.

8. The defense has been requesting of Assistant State Attorney Kristine Bradley, information in regards to the investigation as to what occurred when the phone of Jamie King

(the Defendant's mother) was seized. The responses have been, simply, there are certain named witnesses under investigation.

9. On August 23, 2023, the defense served another *Brady* request. This was for information in regards to the investigation of Detective Moretti, for the use of excessive force against Jamie King.

10. On August 30, 2023, Ms. Bradley responded that Internal Affairs has it in Miramar.

11. In fact, on the date of this Court's last calendar call, on September 22, 2023, outside of the courtroom, Mr. Adelstein asked the prosecutor what was going on as to any internal investigation with Detective Moretti, based upon seizing Ms. King's phone.

12. In essence, Ms. Bradley stated that the investigation was closed and no wrong doing was determined. Ms. Bradley was also asked what the best procedure would be in order to take the deposition of Assistant State Attorney Michelle Boutros, who was present when the phone was seized.

13. Ms. Bradley responded that the office required a Subpoena and then interjected that however, Michelle Boutros was very ill and at home, certainly giving the impression that she was too ill and infirm to be a part of this matter.

14. Ms. Bradley was also asked if we can get Ms. Boutros' sworn statement. Ms. Bradley responded she does not have the file.

15. Subsequent to that conversation, counsel for the defense learned that in fact Ms.

Boutros has been working and is available to go into the State Attorney's Office. The defense has set Ms. Boutros for deposition on Friday, September 29, 2023. Counsel for the defense also learned that day, again after conversation outside of the courtroom with Ms. Bradley, that Ms. Bradley, in contravention to statements made to the defense, was actually quite involved in the matter, including having conversations with the head State Attorney and the Assistant to the Chief in regards to Detective Moretti.

16. Later that day Mr. Adelstein, by letter, (attached hereto) confronted Ms. Bradley with her less than candor. In response, the attached "Notice Pursuant to Rule 3.220(b)(4)" was filed.

17. Counsel for the Defendant, as noted above, expects to be taking the deposition of Assistant State Attorney Michelle Boutros, who was present during the altercation, and enlighten not only the defense, but ultimately the Court, on exactly what transpired, as opposed to Ms. Bradley's second-hand hearsay rendition.

18. Regardless, the information provided by Ms. Bradley indicates that Detective Moretti executed a search warrant outside of his jurisdiction and therefore, illegally; it would have allowed the defense to question him as whether he committed a robbery or battery on Jamie King when he unlawfully took her phone; it would have shown that Detective Moretti was willing to lie as to who served the search warrant, an official court order, and it would have shown that Detective Moretti was willing to conspire with Deputy Gorel, to obstruct justice and to create false filings. This was impeachment evidence favorable to the

Defendant. The first prong of *Brady* is met.

19. Rather than presenting this to the defense, so that the defense could have used it during the first trial, the State withheld this information. In fact, it is believed the highest levels of the State Attorney's Office made determinations to not provide it to the defense, and secondly, not to pursue the internal affairs investigation. This was the institutional policy of the State Attorney's Office, not just one prosecutor. (Compare *Izquierdo v. State*, 746 So.2d 1220 (3DCA 1999)), affirming the denial of the Defendant's Motion to Dismiss as there was no showing of institutional policies of the State Attorney's Office). This evidence was suppressed by the State. The second prong of *Brady* is met.

20. The unfortunate stark reality is that the State intentionally withheld this information that would impeach Detective Moretti, in order to gain a tactical advantage and to violate Mr. Demons' due process rights as guaranteed by both the Fourteenth Amendment to the United States Constitution and the parallel provisions of the Florida Constitution.

21. Because this withholding of evidence was not only institutional, but deliberate prosecutorial misconduct, double jeopardy principles apply and the case must be dismissed. *Oregon v. Kennedy*, 456 US 678 (1985).

22. As noted above, this was a hung jury. Normally, the remedy for *Brady* or a *Giglio* violation is a new trial. However, the remedy for prosecutorial and government misconduct is dismissal. As the United States Supreme Court noted in *Pyle v. State of Kansas*, 317 U.S. 213, 215 (1942), "Petitioner's papers are inexpertly drawn, but they do set forth allegations

that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and if proven, would entitle petitioner to release from his present custody”.

23. Here, certainly the withholding of favorable evidence, whether illegal criminal activity or unethical behavior, requires a dismissal.

24. As the Court noted in *Cruz v. State*, 358 So.3d 1167, 1183-84 (Fla. 2022). “In analyzing this issue . . . Courts must focus on whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict”. (Quoting *White v. State*, 729 So.2d 909, 913 (Fla. 1998)).

25. No one knows the proverbial “what if”. However, given the hung jury and the inability to cross examine the lead detective in this case, as to his role and desire to skirt or break the law in the furtherance of this investigation, it would have changed the outcome.

26. As the Court noted in *Sheppard v. State*, 338 So.3d 803, 940 (2022), “Moreover, prosecutorial misconduct can constitute fundamental error”. See *Greer v. Miller*, 483 U.S. 756, 765, 107 S.Ct. 3102 (1987), ‘Prosecutorial misconduct may so infect the trial with unfairness as to make the resulting conviction a denial of due process’”. (Quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868 (1974)).

27. The State has been sitting on this information since October 12, 2022. It allowed

one trial to go by while concealing this evidence. Obviously, they were planning on allowing another trial to go by without revealing this information. Only after the defense started to uncover what happened on that date between Detective Moretti, BSO Deputies and Jamie King, in the presence of Assistant State Attorney Michelle Boutros, was the State forced to reveal what it had been hiding.

28. The defense has shown, through this motion, that the State willfully withheld impeaching evidence against Detective Moretti, in order to gain a tactical advantage. However, it is also believed that the State has basically shelved an internal affairs investigation and a possible criminal investigation of Detective Moretti as to this matter, so that it could not be used against Detective Moretti at trial.

29. In essence, the State has intentionally done whatever it could to sanitize Detective Moretti's actions, so they would not be fodder for cross examination during trial. Although the defense has only uncovered the tip of the iceberg in this matter, this tip is sufficient for this Court to determine the Defendant's Due Process Rights, as guaranteed by the United States Constitution through the Fourteenth Amendment, and the parallel provisions of the Florida Constitution, that his fundamental rights have been violated and that the only remedy is dismissal and to let him free. See *State v. Glosson*, 462 So.2d 1082, 1085 (1985):

Based upon the Due Process provision of Article 1, Section 9 of the Florida Constitution, we agree with *Hohensee* and *Issacson* that governmental misconduct which violates the Constitutional due process right of the Defendant, regardless of the Defendant's predisposition, requires dismissal of criminal charges.

30. The third prong of *Brady* has been met.

WHEREFORE, the Defendant requests this Honorable Court grant this motion and dismiss the Indictment in the above-styled cause.

I HEREBY CERTIFY that the foregoing was electronically filed with the Florida Courts E-Filing Portal and a copy was furnished to all parties of record this 26th day of September, 2023.

**BENJAMIN, AARONSON EDINGER
& PATANZO, PA**
1700 East Las Olas Blvd., Suite 202
Fort Lauderdale FL 33301
(954) 779-1700

JAMES S. BENJAMIN, Esquire
Jamie@BenjaminAaronson.com
Florida Bar #293245

BY: Daniel R. Aaronson
DANIEL R. AARONSON, Esquire
Daaronson@BenjaminAaronson.com
Florida Bar #314579

LAW OFFICE OF STUART ADELSTEIN, PA
2929 SW Third Avenue, Suite 412
Miami FL 33129
(305) 358-9222
adelsteinslaw@aol.com
Fla. Bar #234540

State v Demons

From: Stuart Adelstein (adelsteinslaw@aol.com)

To: kbradley@sao17.state.fl.us

Cc: rlibertyesq@gmail.com; sexlaw@bellsouth.net; daaronson@benjaminaaronson.com;
miamidadeinvestigator@gmail.com

Date: Friday, September 22, 2023 at 05:54 PM EDT

Good afternoon,

This morning before Court, I requested a copy of Assistant State Attorney Michelle Boutros' statement to Internal Affairs re Detective Mark Moretti since, as per your Brady Response, the investigation is closed. You

represented to me that you do not have it. After Court, I then received information that not only do you have a copy of that statement, but you have a copy of the complete Internal Affairs Investigation.

Please advise me if you still stand by your original representation before we file any additional motions related to this subject.

Thank you,

Stuart Adelstein

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JUDGE JOHN MURPHY

STATE OF FLORIDA

Plaintiff

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JAMELL M DEMONS

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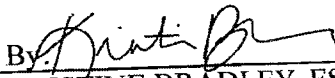
NOTICE PURSUANT TO RULE 3.220(b)(4)

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to Rule 3.220(b)(4), Florida Rules of Criminal Procedure, submits the following information which is in the State's possession or control which may fall within the purview of Brady v. Maryland and/or Rule 3.220(b)(4):

On October 12, 2022, on the 7th floor of the West Wing of the Broward County Courthouse, Ms. Jamie Demons-King's statement was taken by Miramar Detective Mark Moretti and ASA Michelle Boutros. Also present was Mr. Robert Trachman, in his capacity as Ms. Demon-King's counsel, and BSO Sergeant Jason Hendrick. During the statement, Sergeant Hendrick left the room. Shortly thereafter, during the statement, while no BSO Deputy was present, Detective Moretti executed a search warrant on Ms. Demons-King's phone. Detective Moretti seized said phone. Ms. Demons-King and Mr. Trachman then left the room. Shortly thereafter, BSO Deputy Adam Gorel arrived at the conference room. According to ASA Boutros, it was at this time that Detective Mark Moretti stated to BSO Deputy Gorel, in front of ASA Boutros, that Deputy Gorel should say that Deputy Gorel was present when Detective Moretti executed the search warrant seizing Ms. Demons-King's phone. According to information from ASA Boutros, Deputy Gorel, nor any other BSO Deputy, was present in the conference room where Ms. King's statement was taking place when the search warrant was executed and the phone was seized by Detective Moretti. The Undersigned spoke with Detective Moretti in regards to this incident and Detective Moretti said he asked Deputy Gorel if Deputy Gorel was there when the phone was seized. Deputy Gorel responded something to the effect of, "I can be if you needed me to be."

I HEREBY CERTIFY that a true copy hereof has been furnished Electronically/U.S. Mail/Hand-Delivery/Fax this 23rd day of September, 2023 to counsel for the defense:

HAROLD F. PRYOR
State Attorney

By: 

KRISTINE BRADLEY, ESQUIRE

Assistant State Attorney
FL Bar 0084041
201 S.E. 6th Street
Unit HTU
Ft Lauderdale, FL 33301
(954) 831-8496
Email: courtdocs@sao17.state.fl.us