

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

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|-------------------|---|---------------------------|
| STATE OF FLORIDA, |) | CASE NO.: 19-1872CF10A |
| |) | |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| JAMELL DEMONS, |) | |
| |) | |
| Defendant. |) | JUDGE: JOHN J. MURPHY III |
| _____ |) | |

**ORDER GRANTING STATE ATTORNEY'S MOTION TO QUASH SUBPOENAS
AND/OR FOR PROTECTIVE ORDERS**

THIS CAUSE came before the Court on the State Attorney's Motion to Quash Subpoenas and/or for Protective Orders, filed on October 3, 2023. Defendant filed a response on October 4, 2023. The Court held hearings on the motion on October 6, 2023, and October 11, 2023. Having considered the State's motion, Defendant's response, the State's memorandum of law, Defendant's memorandum of law, the evidence presented, arguments of counsel, the court file, applicable law, and otherwise being fully advised, this Court finds as follows:

On October 3, 2023, Defendant attempted to serve State Attorney Harold Pryor, Deputy Chief Assistant State Attorney Regina Faulk, and Assistant State Attorneys Christopher Killoran and Michelle Boutros with witness subpoenas for the October 6, 2023, hearing on Defendant's Motion to Recuse State Attorney's Office of the Seventeenth Judicial Circuit in and for Broward County, Florida.¹ The State moves the Court to quash the subpoenas for Mr. Pryor, Ms. Faulk, and Mr. Killoran and to issue a

¹ At the October 11, 2023, hearing, the State objected to Assistant State Attorney Kristine Bradley testifying at trial and on October 10, 2023, the State filed a motion to strike Ms. Bradley from Defendant's supplemental witness list for trial. This argument is not contained in the instant motion, and the motion to strike was not noticed for hearing on October 11, 2023. As such, the Court shall address Defendant's motion to strike in a separate order.

protective order exempting them from future subpoenas because their testimony would be protected from disclosure pursuant to the work product privilege.²

The Court finds that any relevant testimony from Mr. Pryor, Ms. Faulk, and Mr. Killoran would be protected from disclosure pursuant to the work product privilege.

Fact work product traditionally protects that information which relates to the case and is gathered in anticipation of litigation. Opinion work product consists primarily of the attorney's mental impressions, conclusions, opinions, and theories. Whereas fact work product is subject to discovery upon a showing of "need" and "undue hardship," opinion work product generally remains protected from disclosure.

Gen. Motors Corp. v. McGee, 837 So. 2d 1010, 1032 (Fla. 4th DCA 2002), as modified on clarification (Mar. 5, 2003) (quoting *S. Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d 1377, 1384 (Fla. 1994)). If the moving party fails to show that the substantial equivalent of the material cannot be obtained by other means, the request for disclosure will be denied. *Millard Mall Services, Inc. v. Bolda*, 155 So. 3d 1272, 1275 (Fla. 4th DCA 2015).

Prosecutors' pre-decisional communications and analysis are privileged. See *N. L. R. B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 151, 95 S.Ct. 1504, 44 L.Ed.2d 29 (1975).

In the rare case in which the defense believes it has a basis for compelling a prosecutor's testimony, the defense must first exhaust less intrusive methods, and then make a showing of necessity and materiality, and that the interests of justice require this extraordinary step. *State v. Donaldson*, 763 So. 2d 1252, 1255 (Fla. 3d DCA 2000).

The Court finds that any testimony that Mr. Pryor, Ms. Faulk, and Mr. Killoran could provide would constitute opinion work product which is protected from disclosure.

² The State also moved to quash the subpoena for Assistant State Attorney Michelle Boutros due to improper service of process. However, this issue is moot because Ms. Boutros appeared and testified at the October 6, 2023, hearing.

Likewise, any testimony concerning an investigation into allegations that Detective Moretti asked Deputy Gorel to say he was present when the search warrant was executed would constitute protected pre-decisional communication and analysis. Even if Mr. Pryor, Ms. Faulk, and Mr. Killoran would testify as to fact work product, Defendant has failed to make the requisite showing to warrant disclosure.

Defendant has failed to show that he has a reasonable belief, based on evidence presented to the Court in the form of Ms. Boutros and Ms. Bradley's testimony at the October 6, 2023, hearing, that Mr. Pryor, Ms. Faulk, or Mr. Killoran engaged in a cover-up of Detective Moretti's statement to Deputy Gorel as reported by Ms. Boutros or any other misconduct.

Likewise, Defendant has not shown that Mr. Pryor, Ms. Faulk, or Mr. Killoran's testimony would negate Defendant's guilt at trial or provide impeachment material. In any event, should it become necessary for Defendant to impeach Detective Moretti's trial testimony, he has access to Ms. Boutros and, potentially, Ms. Bradley's testimony, obviating the need for cumulative impeachment testimony from other witnesses.

Based on the above, it is

ORDERED AND ADJUDGED that the State Attorney's Motion to Quash Subpoenas and/or for Protective Orders is **GRANTED**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Broward County, Florida, this 12th day of October, 2023.



JOHN J. MURPHY III
CIRCUIT COURT JUDGE

Copies furnished to:

Service List

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