

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

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

**ORDER DENYING DEFENDANT'S MOTION TO RECUSE STATE ATTORNEY'S
OFFICE OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

THIS CAUSE came before the Court on Defendant's Motion to Recuse State Attorney's Office of the Seventeenth Judicial Circuit in and for Broward County, Florida¹, filed on September 29, 2023. The State filed a response on October 6, 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:

Defendant intends to call Assistant State Attorney Michelle Boutros, and lead prosecutor Assistant State Attorney Kristine Bradley in his case in chief to impeach the testimony of the lead detective in this case, Detective Mark Moretti.

At the hearing on the motion, Ms. Boutros testified that she was present when Detective Moretti executed a search warrant for Defendant's mother's cellular phone on

¹ Defendant is also moving to disqualify the lead prosecutor, Assistant State Attorney Kristine Bradley, from prosecuting this case. The Court shall address his arguments in a separate order.

October 12, 2022. Although the search warrant was executed at the State Attorney's Office in the Broward County Judicial Complex Building, no Broward Sheriff's Office deputy was present during the execution of the search warrant. Ms. Boutros also testified that when BSO Deputy Adam Gorel later entered the room, Detective Moretti instructed him to say he was present when the search warrant was executed, even though he was not. Ms. Boutros did not believe that Detective Moretti was joking and was perturbed by what took place. On October 18, 2022, Ms. Boutros met with State Attorney Harold Pryor, Chief Assistant State Attorney Regina Faulk, and Assistant State Attorney Christopher Killoran, who is her immediate supervisor, to discuss the incident. Shortly thereafter, State Attorney's Office administrators met with Ms. Bradley about the incident. However, this information was not disclosed to the defense until after Defendant's first trial resulted in a mistrial. Additionally, there were conflicting *Brady*² notices that were filed as to whether Detective Moretti admitted to making that statement to Deputy Gorel.

On August 30, 2023, a *Brady* notice was filed by Ms. Bradley in which she disclosed only that there was an Internal Affairs complaint lodged by Jamie Demons-King with the Miramar Police Department in relation to the execution of the search warrant. This *Brady* notice makes no mention of Ms. Boutros's statement that Detective Moretti instructed Deputy Gorel to say he was in the room when the search warrant was executed even though he was not present, nor did it mention Ms. Boutros's complaint to Internal Affairs regarding the search warrant incident. Ms. King was not present in the room when

² *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 1197, 10 L.Ed.2d 215 (1963) (the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution).

Detective Moretti made the statement to Deputy Gorel, so there was no possibility that it would have been included in her complaint.

In September of 2023, Ms. Boutros discovered that no *Brady* notice had been filed in this case disclosing what she overheard Detective Moretti tell Deputy Gorel. She immediately brought this to the attention of State Attorney's Office administrators in a meeting held on September 18, 2023. Everyone involved agreed that a *Brady* notice had to be filed. Administrators then followed up with Ms. Bradley in at least two meetings. On September 20, 2023, Mr. Killoran drafted a *Brady* notice and sent it to Ms. Bradley to file. However, she did not file that notice.

On September 22, 2023, Ms. Boutros was contacted by counsel for Defendant. State Attorney's Office administrators authorized her to speak openly and honestly with counsel about the incident. The first *Brady* notice concerning Detective Moretti's statement to Deputy Gorel was filed the next day.

In September of 2023, the State filed the following *Brady* notices regarding Detective Moretti's statement to Deputy Gorel after the execution of the search warrant of Jamie King's cellular phone:

- 1) September 23, 2023 - According to Assistant State Attorney Boutros, Detective Moretti executed a search warrant during an interview with Jamie King while no BSO deputy was present in the room. Shortly thereafter, BSO Deputy Gorel entered the room and was told by Detective Moretti to say he was present when Detective Moretti executed the search warrant seizing Ms. King's cellular phone. The undersigned (Ms. Bradley) spoke to Detective Moretti who said that he asked Deputy Gorel if he was present when the search warrant was executed, to which

Deputy Gorel responded, "I can be if you needed me to be." This *Brady* notice was signed by Ms. Bradley.

- 2) September 26, 2023 - The State filed an amended *Brady* notice stating that the lead ASA assigned to the case told administrators of the State Attorney's Office that she spoke with Detective Moretti in regards to his statement to Deputy Gorel, and Detective Moretti explained that his statement to Deputy Gorel was a joke. Subsequently, the lead ASA filed a *Brady* notice with the Court on September 23, 2023, stating that Detective Moretti asked Deputy Gorel if he was present when the search warrant was executed, to which Deputy Gorel responded, "I can be if you needed me to be." The lead ASA relayed to a State Attorney's Office administrator that "the Deputy was the one trying to be funny." This *Brady* notice was signed and filed by Assistant State Attorney Killoran.
- 3) September 28, 2023 - The State filed a second amended *Brady* notice stating that the undersigned (Ms. Bradley) inaccurately relayed to State Attorney's Office administrators that Detective Moretti told her that his statement was a joke. This *Brady* notice was filed and signed by Ms. Bradley.

At the October 6, 2023, hearing, contrary to what was contained in her September 28, 2023, *Brady* notice, Ms. Bradley testified that she never told State Attorney's Office administrators that Detective Moretti told her that his statement to Deputy Gorel was a joke. Rather, she told administrators that when Detective Moretti asked Deputy Gorel if he was present during the execution of the search warrant, he responded, "I can be if you needed me to be," and she told administrators that "the Deputy was the one trying to be funny." She testified that the administrators must have misinterpreted her statement to

them and that the information contained in Mr. Killoran's *Brady* notice was not an accurate representation of what she told them.

Defendant argues that the Court should order the disqualification of the entire State Attorney's Office for the Seventeenth Judicial Circuit because Ms. Boutros and Ms. Bradley will be called by the defense to testify at trial. More importantly, Defendant alleges that the decision not to disclose the *Brady* material to the defense was made at the highest level by State Attorney Harold Pryor and the administrators of the State Attorney's Office in order to cover up Detective Moretti's alleged misconduct. Defendant also alleges that the administrators of the State Attorney's Office did not investigate Detective Moretti or pursue charges against him for allegedly inducing Deputy Gorel to lie in order to cover up Deputy Moretti's suspected misconduct. Defendant argues that consequently, he will suffer from institutionalized prejudice should the State Attorney's Office continue to prosecute his case.

To disqualify the State Attorney's Office, a defendant must show substantial misconduct or actual prejudice. *Downs v. Moore*, 801 So. 2d 906, 914 (Fla. 2001). Actual prejudice is something more than the mere appearance of impropriety. *Id.* (citations omitted).

In order to prevail on a motion to disqualify all members of the State Attorney's Office from prosecuting a case, "the defendant must point to some prejudice to him which results from the office's participation in the prosecution." *State v. Clausell*, 474 So. 2d 1189, 1190 (Fla. 1985). "[A]lthough we have stated that the appearance of impropriety created by certain situations may demand disqualification, we have evaluated such situations on a case-by-case basis." *Bogle v. State*, 655 So. 2d 1103, 1106 (Fla. 1995).

Rogers v. State, 783 So. 2d 980, 991 (Fla. 2001). “[D]isqualification is a prophylactic remedy for likely future prejudice, not a punishment for past wrongdoing.” *Blake v. State*, 180 So. 3d 89, 101 (Fla. 2014), *as corrected on denial of reh'g* (Sept. 17, 2015).

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, and/or Mr. Killoran engaged in a cover-up of Detective Moretti’s statement to Deputy Gorel or that they engaged in any other misconduct. To the contrary, Mr. Pryor and Ms. Faulk held meetings with Ms. Boutros and Mr. Killoran shortly after the incident was brought to their attention in October of 2022. Shortly after that meeting, they addressed the incident with the lead prosecutor, Ms. Bradley. It is understandable that the administrators would not have been directly involved in pleadings that Ms. Bradley, as the lead prosecutor and as a seasoned homicide prosecutor, should have filed in this case. All of the evidence presented points to the conclusion that Ms. Bradley was solely responsible for the decision not to timely disclose Detective Moretti’s statement to Deputy Gorel.

When it was brought to Mr. Pryor, Ms. Faulk, and Mr. Killoran’s attention in September of 2023 that Ms. Bradley had not disclosed the conversation between Detective Moretti and Deputy Gorel to the defense, the administrators again held meetings with Ms. Boutros and Ms. Bradley to address the situation. Ms. Bradley testified that she was told to file a *Brady* notice at that point, which she did. Additionally, Mr. Killoran filed a separate *Brady* notice disclosing, presumably, conversations State Attorney’s Office administrators had with Ms. Bradley in which she stated that Detective Moretti admitted to telling Deputy Gorel to say he was present when the search warrant

was executed, but it was a joke. Mr. Pryor and Ms. Faulk authorized Ms. Boutros to openly discuss the incident, including what occurred during their meetings, with counsel for Defendant. Furthermore, they authorized Ms. Boutros to attend her deposition and did not object to any questioning by the defense. They encouraged Ms. Boutros to be completely open and truthful. While the State moved to quash Ms. Boutros's subpoena for the October 6, 2023, hearing on the basis of improper service of the subpoena, they did not assert any other objections to the defense calling her as a witness.

Defendant alleges, without any support in the evidence provided to the Court or adduced at the hearings on the motion, that Ms. Bradley's failure to file the *Brady* notice disclosing Detective Moretti's statement to Deputy Gorel in a timely manner is indicative of large-scale misconduct by the administrators of the State Attorney's Office. A conflict or misconduct involving one prosecutor does not necessarily extend beyond that prosecutor. *See United States v. Williams*, 68 F.4th 564, 574 (9th Cir. 2023) (without any evidence of office wide involvement, it was pure speculation to conclude that any conflict or misconduct pervaded the entire U.S. Attorney's Office). Even if the State Attorney himself was aware of the allegations of misconduct by the lead prosecutor, that alone does not automatically justify disqualifying the whole office. *See id.* (citations omitted). Rather, consistent with separation of powers concerns, the appropriate remedy in general is to disqualify the specific prosecutor, not the entire State Attorney's Office. *See id.* In the instant case, there is no clear violation of law or ethics by the administrators of the State Attorney's Office which would support an office wide disqualification. *See id.*

In any event, a *Brady* violation alone is insufficient to require the disqualification of the entire State Attorney's Office in the absence of actual prejudice to the defendant. *See*

Huggins v. State, 889 So. 2d 743, 768 (Fla. 2004) (defendant failed to allege facts indicating that disqualification would have prevented prejudice that he otherwise would not bear when the failure to disclose the *Brady* material was remedied by the trial court's order of a new trial in which the defendant had access to the *Brady* material, and disqualification would not have provided any further remedy). Pursuant to the three *Brady* notices filed in September of 2023, and pursuant to Ms. Boutros's depositions, Defendant now has access to material necessary to impeach Detective Moretti's testimony at trial. Disqualifying the State Attorney's Office would not provide any further remedy as to the *Brady* violation.

The Court need not disqualify the entire State Attorney's Office merely because Defendant will be calling Ms. Boutros and Ms. Bradley to testify at trial to impeach Detective Moretti. There is no inherent prejudice in allowing an assistant state attorney who is not prosecuting the case³ to testify on behalf of the State⁴ and the State Attorney's Office need not be disqualified unless specific prejudice can be demonstrated. *State v. Clausell*, 474 So. 2d 1189, 1190 (Fla. 1985). Defendant has failed to demonstrate how he will be prejudiced by the State Attorney's Office prosecuting this case notwithstanding Ms. Boutros and Ms. Bradley's testifying at trial, particularly in light of the State's representation that they do not plan to attack the credibility of Ms. Boutros at trial.

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³ Any prejudice can be cured by disqualifying the current lead prosecutor, Ms. Bradley, from prosecuting this case since she is likely to be called as an impeachment witness in Defendant's case in chief.

⁴ The Court is cognizant that Ms. Boutros and Ms. Bradley will be testifying on behalf of Defendant, not the State.

Based on the above, it is

ORDERED AND ADJUDGED that the Defendant's Motion to Recuse State Attorney's Office of the Seventeenth Judicial Circuit in and for Broward County, Florida is **DENIED**.

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

Kristine Bradley, Esq.
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Stuart Adelstein, Esq.
Daniel R. Aaronson, Esq.
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