

DOCKET NO. L18W-CT19-0181768S : SUPERIOR COURT
State of Connecticut : G. A. # 18
vs. : AT TORRINGTON
Kent Johnson : January 31, 2021

DISCOVERY MOTION- "BRADY" INCONSISTENT EVIDENCE

PART A, CASELAW AND PRECEDENT

Comes now Kent Johnson, hereinafter “Defendant” and “accused” and “Defense”, under the authority of the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States of America, and the doctrine of Brady vs. Maryland, 373 U.S. 83 and Means vs State, 429 S.W.2d 490, and makes this motion for discovery and moves the Court to order the State of Connecticut, by and through her prosecuting attorney Sarah Fallon to produce the material and information designated below, and permit the Defendant to inspect, copy, video record and / or photograph such items,

The suppression and destruction of evidence requested by and favorable to the accused by the prosecutor Sarah Fallon and through her efforts members the Torrington Police Department and individuals in the City of Torrington Municipal Government violates due process. The evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecutor or those with whom she colluded, conspired and influenced, or with whom they colluded, conspired and influenced. Brady vs. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97, 10 L.Ed.2d 215, (1963); Means vs State, 429 S.W.2d 490, 495, (Tex. Crim. App 1968).

The duty to disclose exculpatory evidence includes information that would tend to impeach prosecution witnesses. *Giglio v United States*, 405 U.S. 150, 154, 92 S.Ct 763, 766, 31 L.Ed.2d 104 (1972).

Section 3.11 of the American Bar Association Standards Relating to the Prosecuting Function provides:

"(a) It is unprofessional conduct for a prosecutor to fail to make timely disclosure to the defense of the existence of evidence, known to him, supporting the innocence of the Defendant. He should disclose evidence that would tend to negate the guilt of the accused or mitigate the degree of the offense or reduce the punishment at the earliest feasible opportunity...

"(c) It is the unprofessional conduct for a prosecutor intentionally to avoid pursuit of evidence because he believes it will damage the prosecution's case or aid the defense."

UNCOVERING LEADS OR DISCREDITING INVESTIGATION

If the evidence could be used to cast doubt upon the Defendant's guilt, to uncover other leads or defense theories, or to discredit the police investigation, it is exculpatory and should be disclosed. *Bowen v. Maynard*, 799 F.2d 593, 612 (10th Cir.), cert. denied, 107 S.Ct 458, (1986); *Lindsey v. Kong*, 769 F.2d 1034, 1042-43 (5th Cir. 1985).

IMPUTED KNOWLEDGE

"The prosecuting attorney's obligations under this standard extend to material and information in the possession or control of members of the prosecutor's staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report or, with reference to the particular case, have reported to the prosecutor's

office." II American Bar Association, Standards for Criminal Justice Standard 11-2.1(d) (2d Ed. 1980).

When an investigating police officer willfully and intentionally conceals material information, regardless of his motivation and otherwise proper conduct of the state attorney, the policeman's conduct must be imputed to the State as a part of the prosecution team. *Freemen v. State of Georgia*, 599 F.2d 65, 69 (5th Cir. 1979).

Knowledge of the police should be imputed to the prosecution. *Cramer v. Fahner*, 683 F.2d 1376, 1382 (7th Cir.), cert. denied, 459 U.S. 1016, 103 S.Ct. 376, 74 L.Ed.2d 509 (1982).

"GOOD FAITH" IS COMPLETELY IRRELEVANT

Prosecutor's "good or bad faith" is irrelevant when determining whether a constitutional violation occurred. *Brady v. Maryland*, supra, 429 S.W.2d at 495.

The constitutional obligation to disclose material information is not "measured by the moral culpability, or the willfulness, of the prosecutor," but rather is measured by the character of evidence suppressed. *United States v. Agurs*, supra 427 U.S. at 110, 96 S.Ct. at 2400. "If evidence probative of innocence is in the prosecutor's file, he should be presumed to recognize its significance even if he has actually overlooked it." *Id.*

Even if there is no defense request, or a general request, the prosecutor still has a duty to disclose if the evidence is clearly supportive of a claim of innocence. 427 U.S. at 107, 96 S.Ct at 2399.

INSPECTIONS REQUIRED--NOT ON BENEVOLENCE OF PROSECUTOR

In camera inspections may be deemed necessary since "alternative procedures for safeguarding the rights of criminal Defendants are desirable. The right of the accused to have

evidence material to his defense cannot depend on the benevolence of the prosecutor."

United States ex rel. Williams v. Dutton, 431 F.2d 70, 72 (5th Cir. 1970), vacated on other grounds, 408 U.S. 938, 92 S.Ct. 2867, 33 L.Ed.2d 758 (1972) (adopting in camera procedure in Fifth Circuit Brady cases).

DUTY CONTINUES THROUGH TRIAL

The prosecutor has a continuing duty throughout the trial to produce exculpatory evidence. United States v. Agurs, supra 427 U.S. at 110, 96 S.Ct. at 2399. Juarez v. State, 439 S.W.2d 346, 348 (Tex.Crim.App. 1969). The prosecutor has a duty to correct testimony when it becomes apparent that the testimony is false. Losada v. State, supra, 721 S.W.2d at 311; Luck v State, supra, 588 S.W.2d at 373.

GOOD CAUSE

In order to show good cause, the Defendant maintains that the information hereinafter sought is either in the possession of the Prosecutor's office, its agents, or law enforcement officers, or was in this possession and willfully destroyed, or readily accessible to the department and none of the information is available to the Defendant prior to trial except by order of this Court, and that the information requested is not privileged, and further, Defendant needs to inspect such material prior to trial so that proper objections can be prepared thereto and proper defenses can be prepared for trial on the merits; and that

1. The Defendant cannot safely go to trial without such information and inspection nor can the Defendant adequately prepare the defense to the charges against him; and that
2. Absent such discovery, the Defendant's rights under the above stated doctrines and the Constitutions of the United States and of the State of Connecticut and the laws thereof will be violated to his irreparable injury and thus will deprive the Defendant of a fair trial herein.

MATERIALITY

Good cause exists for these requests in that such witness information should be provided under the decision in *Brady v. Maryland*, 370 U.S. 883, and is material in that withholding such information by the prosecution would be unfair and in violation of the Defendant's rights under the United States and Connecticut Constitutions and each of the previously referenced authorities.

PART B, SPECIFIC REQUESTS

1. Material relevant to the State's duty to disclose exculpatory evidence and including information that would tend to impeach prosecution witnesses (*Giglio v United States*, 405 U.S. 150, 154, 92 S.Ct 763, 766, 31 L.Ed.2d 104,1972, referenced above) was requested in DEFENDANT'S FIRST MOTION TO COMPEL DISCOVERY of April 17, 2020 to wit: "Unedited body cam and dash cam recordings for the incident at 233 East Main Street in the early afternoon of December 17, 2019 in which Officer Quarles responded with another officer."

A. On or before March 10, 2020 prosecutor Sarah Fallon suppressed evidence by colluding, conspiring or influencing the Torrington Corporation Counsel to intervene and deny the accused of Freedom of Information requests to the Torrington Police Department. The Defense received this email from ombudsman for the Connecticut Freedom of Information Commission, MATTHEW D. REED | ATTORNEY Direct: 860-256-3961 | Fax: 860-566-6474 | matthew.reed@ct.gov

EXCERPT FROM EMAIL

3/10/2020 2:09 PM

I have had a couple of conversations with Sgt. Wityak as well as an attorney for the Town. They tell me they have expedited your request and will have records for your shortly..sounded to me like as soon as today or tomorrow.

Let me know if you hear from them. MR

EXCERPT FROM NEXT EMAIL

3/10/2020 4:21 PM

I just talked to the Town Attorney again. Apparently the prosecutor has now asked the town not to release the video. I explained that it is not the prosecutor's decision because it is not their record. The town attorney understands that and said he is going to reach out to the prosecutor personally.

END EXCERPT FROM EMAILS

B. Prosecutor Sara Fallon's suppression of this evidence violates the Bar as unprofessional conduct as stated above (Section 3.11 of the American Bar Association Standards Relating to the Prosecuting Function).

C. Further Prosecutor Fallon stated in this Court on November 16, 2020:

"I did check with the department on that, and they tell me that there are no such body camera recordings. The - - the sergeant with state police stated there is zero body camera footage for the afternoon incident, as no report was required for the incident. And the video retention period for an incident of this type is 13 weeks. So it has been deleted from the system as part of the automation. So that does not exist."

- D. Suppression of evidence by Sarah Fallon on or before March 10, 2020 was well before the 13 week period the State claims is normal for the deletion of evidence.
- E. Further this court heard oral argument on November 16, 2020 that the material deleted was relevant to the case because the accused said to the Court at that time that the “police say that I needed to be beat up because I was a trouble maker ... why hadn’t anybody done anything to him before, were the cop’s words” referring to the accused. Here is a transcript of the exchange between the two arresting officers immediately before entering the accused’s home and cuffing the accused, injuring the accused and arresting the accused.

“Quarles: Why were you here yesterday?”

“Deloy: I don’t know if we were here yesterday but he keeps causing problems with these people too because he blocks the driveway.

“Quarles: Yeah I heard about that with the snow and shit. That was...

“Deloy: That’s two days in a row. The third day he did something with somebody else here.

“Quarles: Well why isn’t nobody doing nothing to this guy?”

“Deloy: We all waiting for you B.

“Quarles: Of course. This place is a joke, man.”

- F. Material to this exchange is some 40 pages of complaints to the Police from Alfred James Lauritano of 237 / 239 East Main Street, Torrington, the accused’s next door neighbor. Despite suppression efforts of the State Prosecutor Sarah Fallon the accused was able to get some copies of police complaints through the Freedom of Information Act. In the

video the State claims was destroyed Mr. Lauritano would have appeared while the officers were present on the afternoon call. He screamed obscenities, threatening and cursing the officers. Mr. Lauritano paid no attention to the accused and the officers instructed the accused not to pay attention to Mr. Lauritano.

- G. Also in the destroyed video would be the exchange between the original complainant Patricia Brown and the arresting officer Quarles reflected in the afternoon police report by the declaration that Ms. Brown “DOESN’T WANT COP BACK AT RESD”. The exchange lasted some 20 minutes and they were the only ones in the room.
- H. Although this is exculpatory evidence and would tend to impeach prosecution witnesses the Court ruled this information was “not relevant to the pending charges” in an order signed by the Court and dated Nov. 16, 2020, mailed Jan 6 and received Jan 11, 2021.

For all these reasons stated above the Defendant moves the court to compel the State to produce the requested evidence according to the above cited precedents.

Granted _____ Denied _____ to which Defendant objects.

2. All evidence of policy and practice which could effect the due course of law relating to the rights of the Defendant to include but not limited to policies of the arresting agency concerning nature and sufficiency of probable cause prior to any frisk or detention or arrest, scope and substantive content of all documentation prepared by arresting officer and the disposition of said reports. These documents were requested in the DEFENDANT’S SECOND MOTION TO COMPEL DISCOVERY dated August 25, 2020.

Granted _____ Denied _____ to which Defendant objects.

3. All evidence of policy and practice and procedures for securing and maintaining video recordings made at the scene of arrest including support for the State's contention that destruction of evidence is police policy.

Granted _____ Denied _____ to which Defendant objects.

4. All hand written and typed notes made by all law enforcement officials, or agents thereof, prior to, during and after the Defendant was interrogated, previously requested by Defendant.

Granted _____ Denied _____ to which Defendant objects.

5. The Defendant further requests the Court to order the State's Attorney to permit the viewing, transcription and copying of any audio, video-tape (or both) interviews complaining witness, including the one on the early afternoon of December 17, 2020, and including also the morning recording in the Sally Port of the Torrington Police Department at the time of the Defendant's arrest and at the Desk Sergeant's desk at that time. These requests were made previously in a Motion to Compel Discovery.

Granted _____ Denied _____ to which Defendant objects.

6. The prior criminal record and police personnel record of all State's witnesses including pending offenses and complaints as previously requested by the Defendant.

Granted _____ Denied _____ to which Defendant objects.

7. All statements made by any party or witness to this alleged offense, in the possession of or within the knowledge of the Sarah Fallon, her agents, and including any law enforcement agency, whether such statements are written or oral, which might, in any manner, be material to either the guilt or innocence of the Defendant or to the punishment, if any, including all other evidence suppressed by Sarah Fallon, her agents et.al. as outlined above.

Granted _____ Denied _____ to which Defendant objects.

8. The Defendant further requests that prior to trial in this cause the State be ordered to permit the viewing and copying of any statement or statements made by any and all actual or potential witnesses for the prosecuting in this cause so as to effectuate the effective cross-examination and confrontation of the witnesses against the accused at trial.

Granted _____ Denied _____ to which Defendant objects.

9. The Defendant requests the Court order the State to provide the Defendant with the name, address, occupation and telephone number of each and every witness known to the State who may know any fact material to the prosecution of this case or the defense thereof.

Granted _____ Denied _____ to which Defendant objects.

10. The Defendant requests the State provide the Defendant with the name, address, occupation and telephone number of any witnesses which it does not anticipate calling to testify at the time of trial, but which it believes, or has reason to believe, may have material information pertinent to the innocence of the Defendant.

Granted _____ Denied _____ to which Defendant objects.

11. The accused requests the Court order the State herein to reveal any agreements it has made with any actual or potential witnesses and those with whom suppression of evidence was requested in this case. The Accused further requests that the full terms and conditions of said agreement be given to the Defense in advance of the trial of this cause in writing.

Granted _____ Denied _____ to which Defendant objects.

12. The accused requests that the State answer this motion in writing and under oath.

Granted _____ Denied _____ to which Defendant objects.

13. The accused requests that the Court provide a detailed explanation, in writing and under oath on the record, as to why any of the above items should be denied.

Granted _____ Denied _____ to which Defendant objects.

Respectfully Submitted,

Defendant

Kent Johnson
233 East Main Street
Torrington, CT 06790

CERTIFICATE OF SERVICE

I, Kent Johnson, hereby certify that a copy of this motion was faxed (860) 626-2301 and hand delivered to the Torrington Courthouse and a copy was placed on the window to the State’s Attorney’s office addressed to Sarah Fallon and a copy was hand delivered to the Clerk of the Court at the addresses below on January 29, 2021.

Defendant

CC:
Deputy Assistant State’s Attorney Sarah Fallon
50 Field Street
Torrington, CT 06790

Clerk of the Court
50 Field Street

Torrington, CT 06790

ORDER

The Discovery Motion – Brady Inconsistent Evidence is hereby:

GRANTED / GRANTED IN PART / DENIED

Date

Judge/Clerk/Asst. Clerk