

Gayelon Spencer #2022008916
5301 Russell st.
Detroit, MI 48211

Hon. Judge, Paul J. Cusick
Wayne County Criminal Justice Center
5301 Russell st., court room 702
Detroit, Michigan 48211

RE: Law Enforcement's Destruction of Evidence on case
no. 23-000765-01-FC

December 8, 2024

Dear Judge Cusick,

On November 11, 2024, the state's attorney, Krystal Murphy, admitted to this court that Law Enforcement Destroyed the video and audio recorded statements of Allante Mosley and Kreeanna Mapp before the completion of the ongoing legal proceeding.

Pursuant to MCR 6.431 (B), "A trial court may grant a new trial to a criminal defendant on the basis of any ground that would support reversal on appeal or because it believes that the verdict has resulted in a miscarriage of justice."

As the Michigan Supreme Court explained in People v. Chenault, 495 Mich. 142, 149 (2014), the United States Supreme Court held in Brady v. Maryland, 373 U.S. 83, 87 (1963), "that the suppression by the prosecution of evidence favorable to an accused upon request 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."

The essential components of a Brady Violation are as follows: "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the state, either willfully or inadvertently; and prejudice must have ensued." Chenault, 495 Mich. at 149-150, quoting Strickler v. Greene, 527 U.S. 263, 281-282 (1999).

In this case, Law enforcement destroyed the video and audio recorded statement of an important witness. The non-verbatim statement of Allante Mosley reveals that what the witness said in the interview differed from the testimony he provided at trial. Because the destroyed evidence undermines the prosecution's witness's testimony - testimony which was the thread that ties together the rest of the evidence - it meets the materiality threshold.

Stare decisis holds, "[S]uppression of material evidence justifies a new trial irrespective of the good faith or bad faith of the prosecution. When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule." Griglio v. United States, 405 U.S. 150, 153-154 (1972).

Please note, A.P.A., Krystal Murphy, admitted that the Detroit Police destroyed the video and audio recorded statements of Allante Mosley and Kreamna Mapp.

Stare Decisis holds, "The government is held responsible for evidence within its control, even evidence unknown to the prosecution, Kyles v. Whitley, 514 U.S. 419, 437 (1995) without regard to the prosecution's good or bad faith, United States v. Agrus, 427 U.S. 97, 110 (1976) ("If the suppression of evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor.") [Chenault, 495 Mich 142, 150 (2014)]

Binding precedent states, "the individual prosecutor [does have] a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Kyles, 514 U.S. at 437.

The United States Supreme court said so long ago in Brady v. Maryland, 373 U.S. 83 (1963), "but you don't have to go to law school to understand that fundamental fairness requires the government to disclose evidence that calls an individual's guilt into question when it charges them with a crime.

A court must be able to make rulings that promote fairness and justice when a party destroys or loses evidence while the evidence is in the possession of that party. In some instances, those rulings are based on a presumption by the court that the evidence would operate against the party who destroyed or lost the evidence.

Binding precedent states, "The rule is well established that where there is a deliberate destruction of or failure to produce evidence in one's control a presumption arises that if the evidence were produced it would operate against the party who deliberately destroyed or failed to produce it." Johnson v. Secretary of State, 406 Mich 420, [440] (1979) — this honorable court should follow this holding.

Stare decisis holds, "The policy reasons for creating such a presumption are more compelling where the evidence is withheld in violation of a statutory duty to produce it."

Id. at 440

For the record, MCL 780.316 (2) state's:

"A Law enforcement agency shall retain audio and video recordings that are the subject of an ongoing criminal or internal investigation, or an ongoing criminal prosecution or civil action, until the completion of the ongoing investigation or legal proceeding."

Also note, MCR 6.201 (2) state's:

"Mandatory Disclosure. In addition to disclosures required by provisions of law other than MCL 767.94a, a party upon request must provide all other parties: (2) any written or recorded statement, including electronically recorded statements, pertaining to the case by a lay witness whom the party may call at trial, except that a defendant is not obliged to provide the defendant's own statement;"

This court is well aware that Mr. Spencer requested the state's attorney to provide him with the destroyed audio and video recorded statements in question.

Stare decisis holds, "IF a "failure to preserve potentially useful evidence" is traceable to "bad faith on the part of the police," a defendant is denied due process of law." Arizona v. Youngblood, 488 U.S. 51, 58 (1988).

It's 100% clear that the evidence Law enforcement destroyed could have been used as impeachment evidence.

I'm requesting that you order a new trial, and suppress the witness's testimony on retrial.

Respectfully,
151 Spencer Jr 12/8/24
Gaydon Spencer

CC: Gaydon Spencer, A.P.A Krystal Murphy, Judge Cusick,
and Voice of Detroit (V.O.D)