

STATE OF MICHIGAN  
In the third Circuit Court

State of Michigan  
Plaintiff,

v.

Guydon Spencer  
Defendant./

Hon. Judge, Paul Cusick  
Case No. 23-000765-01-FC

Motion for New Trial Based on  
Law Enforcement's Destruction  
of Evidence

Now Comes the Defendant, Guydon Spencer, herein ("Mr. Spencer"), in pro-se, moving this Honorable Court to set aside the verdict and/or order a new trial, pursuant to MCR 6.431 (B), MCR 2.611, MCL 770.1, MCR 6.201 (J), The Due process clause of the United States Constitution's Fourteenth Amendment, the authority of Arizona v. Youngblood, 488 U.S. 51, (1988), the authority of Brady v. Maryland, 373 U.S. 83, (1963), and the Sixth Amendment of the United States Constitution's guarantee of a Defendant's right to a fair and impartial trial. Mr. Spencer pleads with this court to consider the following:

1. Mr. Spencer is charged in the information with count one: Second-degree Murder; count two: Weapons-carrying concealed; count three:

Weapon-firearm-- possession by felon; Count four: Weapon-felony firearm-Second offense; and Count five: Weapon-felony firearm-Second offense.

2. Against the great weight of the evidence, Mr. Spencer was found guilty on all counts.
3. Mr. Spencer's trial Counsel requested disclosure of each oral statement and copy of each written or recorded statement made by witnesses to any State agent from the State's attorney to no avail.
4. By motion, Mr. Spencer also requested disclosure of each oral statement and copy of each written or recorded statement made by witnesses to any State agent from the State's attorney.
5. The State's Attorney failed to furnish the Defense counsel and Mr. Spencer with both, Allante Mosley's and Kheanna Mapp's audio and or video recorded statement, contrary to MCR 6.201(2). see (Mr. Spencer's Affidavit)
6. Stare Decisis holds, "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." Brady v. Maryland, 373 U.S. 83, 87 (1963)

7. Do note, Allante Mosley and Kheanna Mapp testified at Mr. Spencer's trial about their own recollection of events surrounding Ariel Harris being shot by Mr. Spencer, which is definitely material. see (Mr. Spencer's Affidavit)
8. Please Note, On November 11, 2024, the State's Attorney, Krystal Murphy, admitted to this Just Court that Law enforcement Destroyed the video and audio recorded statements of Allante Mosley and Kheanna Mapp before the completion of the ongoing legal proceeding, which is a direct violation of MCL 780.316 (2), which states:  
  
"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."  
  
9. Note Worthy, When a police officer intentionally destroys information "useful" to the defense to gain a tactical advantage, the officer's conduct

Vaults to the forefront on the analysis of Bad Faith.

10. 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).
11. In this instant case, Law enforcement destroyed evidence favorable to the defense during an ongoing criminal investigation, as well as a criminal prosecution. See (Mr. Spencer's Affidavit)
12. Its obvious Law enforcement acted in bad faith due to the fact that two (2) of Seven (7) recorded statements made by witnesses were destroyed during an ongoing investigation and Criminal prosecution.
13. 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." Giglio v. United States, 405 U.S. 150, 153-154 (1972).

14. The United States Supreme Court held, "... 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." Brady v. Maryland, 373 U.S. at 87. We have since held that the duty to disclose such evidence is applicable even though there has been no request by the accused, United States v. Agurs, 427 U.S. 97, 107 (1976), and that the duty encompasses impeachment evidence as well as exculpatory evidence, United States v. Bagley, 473 U.S. 667, 676 (1985). Such evidence is material "if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id. at 682; see also Kyles v. Whitley, 514 U.S. 419, 433-434 (1995). Moreover, the rule encompasses evidence "known only to police investigators and not to the prosecutor." Id. at 438. In order to comply with Brady, therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police." Kyles, 514 U.S. at 437.

15. A criminal defendant has a right to a fair and impartial trial.

16. Stare decisis holds, "...it is the prosecutor's duty to ensure defendant receives a fair trial." People v Ullah, 216 Mich App 669, 678 (1996). "Given that a prosecutor's role and responsibility is to seek justice and not merely convict, the test for prosecutorial misconduct is whether a defendant was denied a fair and impartial trial." People v Dobek, 274 Mich App 58, 63 (2007)
17. In this case at Bar, exculpatory evidence and impeachment evidence was destroyed by law enforcement, and made unavailable to the defense to gain a tactical advantage during trial, which denied Mr. Spencer a fair and impartial trial.
18. Due to Allante Mosley's non-verbatim statement written by Det. Youssef Berro, Mr. Spencer has knowledge of the destroyed audio recording of Allante Mosley to be exculpatory in nature, and impeachment evidence as well.
19. According to MRE 1002, "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute."
20. Without the occurrence of these egregious and despicable violations, the outcome at trial

would have been different because, (1) Mr. Spencer's trial counsel would have used those recorded statements for impeachment evidence; (2) The jurors would not have given Allante Mosley's and Kreaanna Mapp's testimony the credibility they gave it; (3) Allante Mosley and Kreaanna Mapp's testimony would have been suppressed, due to the destruction of their recorded statements, and the jury wouldn't ever heard from them; (4) Upon request, this Court may have given a direct verdict of Acquittal; and (5) Mr. Spencer's trial counsel would have been able to present exculpatory evidence from within Allante Mosley's recorded statement, which would've definitely lead to Mr. Spencer's acquitted.

21. If this court, in some sick way, decided to overlook the destruction of evidence by law enforcement, it would not only place the integrity and public reputation of judicial proceedings under a microscope for corruption it would be an abuse of discretion and reversible error.

22. Also note, this destruction of evidence also triggers an ineffective assistance of counsel claim, due to the fact that trial counsel failed

to suppress and object to the testimonies of Allante Mosley and Kreaanna Mapp.

### Relief Requested

Wherefore the Defendant, Graydon Spencer, herein ("Mr. Spencer"), pleads with this Fair Court to set aside the verdict and or order a new trial, pursuant to MCR 6.431 (B), MCR 2.611, MCL 770.1, MCR 6.201 (J), The Due process clause of the United States Constitution's Fourteenth Amendment, the authority of Arizona v Youngblood, 488 U.S. 51, (1988), the authority of Brady v. Maryland, 373 U.S. 83, (1963), and the Sixth Amendment of the United States Constitution's guarantee of a Defendant's right to a fair and impartial trial. A hearing is requested concerning this flagrant destruction of evidence.

Respectfully Submitted,  
151 Spencer Jr  
Graydon Spencer  
5301 Russell St.  
Detroit, MI 48211



## Proof of Service

I, Gayelon Spencer, hereby certify that a copy of the attached document was served on all parties via United States mail on the said date.

151 Spencer Jr

Date: \_\_\_\_\_

28 USC § 1746

Graydon Spencer  
5301 Russell St.  
Detroit, MI 48211

Case NO. 23-000765-01-FC

## Affidavit

I, Graydon Spencer, being an adult of sound mind, knowingly and intelligently, hereby affirms the following under the penalties of perjury:

1. I am defendant in the captioned action, and as such am fully familiar with the facts and circumstances surrounding these cases.
2. This Affirmation is submitted in support of defendant's 'Motion for New Trial Based on Law Enforcement's Destruction of Evidence', case number 23-000765-01-FC, upon the grounds that A.P.A, Krystal Murphy, admitted that Law Enforcement Destroyed video and audio recorded statements of witnesses Allante Mosley and Kreaanna Mapp.
3. During pre-trial phase, myself and several attorneys on my behalf requested disclosure of each oral statement and copy of each written or recorded statement made by witnesses to any state agent from the state's attorney. The state's attorney failed to furnish the Defense with both, Allante Mosley and Kreaanna Mapp's audio and or video recorded statement. I filed a motion requesting that this court order the state's attorney to furnish the Defense