STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT
- CRIMINAL DIVISION -

THE PEOPLE OF THE STATE OF MICHIGAN,

v.

Case No. 10-001495-01-FC
Hon. Kiefer Cox

DERRICO DEVON SEARCY,
Defendant.

The People of the State of Michigan
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OMNIBUS PLEADING JOINING MOTIONS OF DARRELL EWING AND ADDITIONAL POINTS OF AUTHORITY

The defense asks this Court—pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, Art. 1, § 17 of the Michigan Constitution, MCR 6.201(J), as well as MRE 402, 403, 613, 701, and 801, to grant the relief requested herein:

1. Mr. Searcy is charged with, *inter alia*, Murder in the Second Degree.
2. Mr. Darrell Ewing is the co-defendant of Mr. Searcy. Mr. Ewing is proceeding *pro se* in his trial. Mr. Ewing filed motions regarding the upcoming trial in this matter. *See* Docket, 10-001495-92-FC.
3. Mr. Searcy wishes to join the following motions of Mr. Ewing, and supplies additional authority where appropriate, as well as reserving the right to supplement this summary filing with additional authority upon a full hearing on these motions.

4. Regarding Mr. Ewing's Motion for Separate Trials, Mr. Searcy joins this motion.

   a. First, Mr. Ewing correctly points out that the first trial created a second prosecutor problem that was prejudicial for Mr. Ewing.

   b. Second, Mr. Ewing also disclosed a record of his outbursts regarding his ongoing wrongful incarceration and what he views as serious prosecutorial misconduct. When combined with his *pro se* status at the upcoming trial, and his lack of training or experience as a trial lawyer, these two factors converge into a compelling risk that Mr. Searcy may be prejudiced. Mr. Ewing also provides significant authority regarding severing the trials of a *pro se* litigants and those represented by counsel.

   c. Third, for reasons elaborated upon *infra*, evidence regarding gang affiliation between Derrico Searcy and the Hustle Boys is non-existent. It is highly prejudicial for the prosecution to argue the murder of Mr. Watson was motivated by a gang feud without any evidence that Mr. Searcy was involved with the Hustle Boys, or their beef, whatsoever. That is, if the Court were to permit the 'gang feud' theory as to Mr. Ewing but not against Mr. Searcy, the highly prejudicial nature of gang-related testimony necessitates severance. This is underscored by the retellings of the jurors at the *Remmer* hearing, who clearly conflated the gang affiliation and guilt of Derrico Searcy and Darrell Ewing together, despite it being pure argument, unsupported by evidence, against Mr. Searcy.

5. Regarding Mr. Ewing's Motion to Compel Disclosure of Personnel Records of Andrew Guntzviller and Theopolis Williams, Mr. Searcy joins this motion.

a. The legal authority cited by the prosecution does not stand for the propositions for which the prosecution cites it. The prosecution claims that *Ostain v Waterford Township Police Dep't* stands for the proposition that police disciplinary records are privileged employment records. 189 Mich App 334, 337 (1991). This is not correct. *Ostain* was a civil case in which police personnel records *were* disclosed in discovery, and the plaintiffs pressed for documents regarding the police departments arbitration documentation. *Id.* The case did not concern whether or not personnel files were privileged, but rather the agency's deliberative process privilege. It is inapposite to a criminal case where the prosecution has a constitutional obligation to produce information in the police department's possession that could impeach a police officer witness. *Baskin* stands for the opposite proposition for which the prosecution cites it—*Baskin* states that it is an abuse of discretion for the court to deny discovery of a personnel file wihtout conducting an *in camera* review for information material to trial. *People v Baskin*, 145 Mich App 526, 538 (1985).

b. The prosecution's argument in ¶ 6 of their response is incorrect. The prosecution argues "PO Guntzviller's conclusions following a review of the Washington statement, based on discrepancies that the jury similarly rejected, do not by themself challenge his credibility warranting a review of his personnel file." The versions of Tyree Washington's confession presented during the 2010 trial was starkly different than the 2017 confession in ways that made it powerfully exculpatory and makes PO Guntzviller's statements

claiming otherwise misleading at best, and mendacious at worst. This is elaborated upon in Mr. Searcy's *Motion for Evidentiary Hearing*, pp 12-13, and its *Motion to Compel Brady Information*, pp. 2-3. The Court should reject this argument.

6. Regarding Mr. Ewing's Motion for Production of LEIN Information, Mr. Searcy joins this motion. In it response, the prosecution indicated it would disclose any convictions of which it was aware, as required by Court Rule, on October 10, 2023. No disclosures were made. If the prosecution has possession potential impeachment or bias information, it is constitutionally required to disclose it. *Giglio v. United States*, 405 U.S. 150 (1972). The prosecution "cannot shield itself from its *Brady* obligations by willful ignorance or failure to investigate" and it cannot turn "a blind eye to the evidence, or at the very least, ma[ke] a conscious decision that the information need not be pursued further or disclosed" *United States v Quinn*, 537 F Supp 2d 99, 110 (DDC, 2008).

7. Regarding Mr. Ewing's Motion for a Special Jury Instruction relating to identification, Mr. Searcy joins that motion. To this motion, Mr. Searcy adds that in the event the Court does not adopt the New Jersey instruction, as requested by Mr. Ewing, Michigan does have a non-standard instruction for more specific instruction related to identification, attached as Exhibit A.

8. Regarding Mr. Ewing's Motion to Prohibit Shackling in the Courtroom, Mr. Searcy joins this motion. People are entitled to the presumption of innocence, and treating them indistinguishably from convicted persons blurs the already fuzzy practical line between pretrial detainee and convicted person. While the Supreme Court of the

United States reversed the 9th Circuit *en banc* opinion in *United States v Sanchez-Gomez*, 859 F3d 649 (CA 9, 2017), vacated and remanded 138 S Ct 1532; 200 L Ed 2d 792 (2018), it did so on mootness and other procedural grounds. *Sanchez-Gomez*, cited by Mr. Ewing, is still strong persuasive authority.

9. Regarding Mr. Ewing's Motions to Compel and for In Camera Review; Motion to Dismiss Due to Brady, and Motion to Dismiss under MCR 6.201(J), Mr. Searcy joins these motions.

   a. Mr. Searcy believes the prior judge was incorrect in denying discovery of *Brady* information, denying an evidentiary hearing, and denying a hearing to evaluate discovery sanctions under MCR 6.201. Those positions are set out *ad nauseum* in other filings. The prosecution has never been required to answer any of the questions proposed by the defense in those pleadings.

   b. However, one additional fact is worth highlighting. In the 2022 discovery, a LEIN search of a green Saturn Aura belonging to Tyree Washington's girlfriend was included and was represented as component of the complete prosecution trial file from the 2010 trial. This new and significant, as the issue has not been presented to this Court. This LEIN is powerful exculpatory evidence because it corroborates Tyree Washington as the killer. Raymond Love, the eyewitness, describes the vehicle he sees as a "turquoise sedan" that is a GM product (Saturn was a GM company). The prosecution's theory was that Mr. Searcy was driving a blue BMW. However, the fact that Tyree Washington's girlfriend owned a green Saturn sedan, consistent with Mr. Love's description, is *Brady* material that was not disclosed to the defense

during the 2010 trial. The circumstances of the prosecution's failure, and an evaluation of what was lost as a consequence of it, demands an evidentiary hearing.

10. Regarding Mr. Ewing's Motions to Exclude Gang Tattoo Evidence and Motion to Exclude Theory of Gang Feud, Mr. Searcy joins these motions.

    a. The prosecution and Mr. Ewing have significant factual disagreements about the record of trial. Mr. Ewing argues that no evidence of a gang feud or gang tattoos exist, and the prosecution either seeks to dismiss or limit these claims as inaccurate or only applying to Mr. Searcy.

    b. The prosecution straw-man's Mr. Ewing's argument, reducing it to an assertion that because there were no Hustle Boys in the gallery, a gang feud theory must not be admissible. This is not a fair characterization of the trial transcript of Willie Williams' testimony or Mr. Ewing's arguments.

    c. Willie Williams testified during the 2010 trial. He identified himself as a member of the Knock Out Boys gang. Trial Tr. 10/27/10, pp. 127-128. Mr. Williams identified J.B. Watson, the decedent, as another member of the gang. *Id.* at 128. He testified that the Knock Out Boys started "beefing" with "Hustle Boys." *Id.* at 129. He testified the beef got "real hectic" in the "summer" of 2010 and unidentified previous summers. *Id.* at 129-130.

        i. The prosecution elicited vague testimony about Mr. Williams being "present" when "beef" was happening, along with Mr. Ewing. *Id.* He initially said he saw Mr. Ewing present, along with the "Twins" during a "beef" between the Hustle Boys and the Knock Out Boys happened

in the summer of 2010, and later stated it happened prior to the homicide.

ii. Mr. Willaims described the incident where they were "all about to fight" but they "didn't end up fighting." *Id.* at 136. Mr. Williams did not identify Mr. Ewing as a Hustle Boys member. At most, Mr. Williams said Mr. Ewing was present "with the Hustle Boys" on one occasion. *Id.* at 137

iii. It was never specified what a "beef" was, as it seemed to be used by the prosecution to refer to a particular event, whereas it is commonly understood to being an ongoing dispute. It was never specified what the "beef" was over, if there was violence as part of the beef.

iv. Mr. Williams was heavily impeached with sworn and unsworn testimony contradicting prior disputes with Mr. Ewing or the Hustle Boys. *Id.* at 172-179. He was also impeached as to whether Mr. Ewing was present on the morning of the homicide at all. *Id.* at 180.

v. Mr. Searcy is not mentioned as being part of, seen with, or associated in any way with the Hustle Boys.

d. Mr. Searcy proposes that the prosecution start from square one—the 'gang feud' evidence presented at the first trial was permitted based on proffers of the prosecution at the time. However, the testimony unfolded differently than the proffers. Here, the prosecution should have to start anew, and argue from the testimony why the admittedly prejudicial theory of a gang feud ought be permitted on this record.

11. Regarding Mr. Ewing's Motion to Exclude Threats Made to the Loves and Motion to Exclude Threats Made to Lanita Jackson and Elmer Allwood, Mr. Searcy joins these motions. The prosecution, to wit, has not filed an opposition to this motion, so would properly be treated as conceded.

12. Regarding Mr. Ewing's Motion to Exclude Evidence From Lasonya Dodson, Mr. Searcy joins this motion. Mr. Searcy notes that Ms. Dodson specifically denied that Mr. Ewing was in the Hustle Boys, and she denied telling Officer Theopolis Williams that things were "getting out of hand" with the Hustle Boys and Knock Out Boys. Trial Tr., 11/8/10, p. 47-49. This testimony was later impeached through the testimony of Officer Theopolis Williams. This testimony is hearsay and can only be used to argue Ms. Dodson's lack of credibility, not to argue the truth of any alleged gang feud motive. *See* MRE 801(d)(1)(A) (in order to be non-hearsay, and thus arguable for the truth of the matter asserted, the prior statement must have been given under oath). That is, because Ms. Dodson's sworn testimony was completely exculpatory for Mr. Ewing, it appears Ms. Dodson was only called by the prosecution in order to impeach her denials of knowledge of the Hustle Boys and Knock Out Boys, to create the legally impermissible impression that there was an escalating feud between the Knock Out Boys and Hustle Boys.

13. Regarding Mr. Ewing's Motion to Exclude Identifications of Officer Lori Dillion, Mr. Searcy joins this motion. Lori Dillion was a police officer who had approximately ten days experience with a homicide, and it is not clear she ever performed any out of court identification. In support of this motion, Mr. Searcy submits the following additional authority:

a. On the issue of identification, when "no published Michigan case addresses this specific issue, we review relevant federal cases" *People v Fomby*, 300 Mich App 46, 50; 831 NW2d 887, 889 (2013). Allowing testimony from a lay witness who was not a percipient witness or has substantial prior contact with the defendant, "ran the risk of invading the province of the" factfinder. *United States v LaPierre*, 998 F2d 1460, 1465 (9th Cir., 1993), as amended (Aug. 19, 1993); *see also United States v Rodriguez-Adorno*, 695 F3d 32, 40 (1st Cir., 2012). This is because by identifying someone with whom you have no prior substantial contact from events of which you were not a percipient witness as a defendant is the role of the jury, and "a witness cannot express an opinion on the defendant's guilt or innocence of the charged offense." *People v Bragdon*, 142 Mich App 197, 199 (1985).

b. Thus, where a police officer's testimony is admitted it is an "abuse of discretion" when that testimony "affirmatively identified" the defendant in surveillance footage, because an investigating police officer "should not have been allowed to identify" the defendant. *People v Perkins*, 314 Mich App at 161, *superseded on other grounds in part sub nom. People v Hyatt*, 316 Mich App 368 (2016), *aff'd in part, rev'd in part on other grounds sub nom. People v Skinner*, 502 Mich 89 (2018). The Ninth Circuit explained the rationale thusly:

> At trial [the defendant's] cousin[] and his parole officer [] testified that the person depicted in bank surveillance photographs taken during the robbery was [the defendant]. Such opinion testimony by lay witnesses is admissible under Fed.R.Evid. 701 if it is "limited to those opinions or inferences which are (a)

> rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue." Such testimony is particularly valuable where, as in the present case, the lay witnesses are able to make the challenged identifications based on their familiarity with characteristics of the defendant not immediately observable by the jury at trial. We conclude that, because [the parole officer] had met with [the defendant] approximately 50 times and [the cousin] had known [the defendant] most of his life, the opinions testified to by [them] were rationally based and helpful to the jury in determining a fact in issue. Fed.R.Evid. 701.

United States v Langford, 802 F2d 1176, 1178–79 (9th Cir, 1986) (quoting *United States v. Young Buffalo*, 591 F.2d 506, 513 (9th Cir.), *cert. denied*, 441 U.S. 950 (1979) (other citations omitted).

c. Every circuit federal circuit court to consider the issue agrees. *See e.g. United States v Pierce*, 136 F3d 770, 774 (11th Cir., 1998) (parole officer and former employer's identification based on surveillance footage permitted, noting "critical to this determination is the witness's level of familiarity with the defendant's appearance"); *United States v Jackman*, 48 F3d 1, 5–6 (1st Cir., 1995) (ex-wife, baseball co-coach, and former neighbor identifying defendant from surveillance footage permissible, because the "witnesses had far more opportunity than the jury to perceive [the defendant] from a variety of angles and distances and under different lighting conditions. Unlike the jury, they were familiar with the defendant's carriage and posture."); *United States v Stormer*, 938 F2d 759, 762 (7th Cir., 1991) (efforts to alter appearance and police officers familiar for years with the defendant sufficient basis for admitting lay opinion

identification testimony); *United States v Wright*, 904 F2d 403, 404 (8th Cir., 1990) (police officers, bail bondsman, parole officers with varying knowledge of the defendant that each spanned years permitted to give lay opinion

NS J. I. § 2:54 - Identification

One of the issues in this case is identification. The prosecution has the burden of proving beyond a reasonable doubt not only that the charged offense was committed but also that the defendant was the person who committed it.

Identification testimony is an expression of a witness' belief or impression which you, as jurors, are not obligated to accept. Its value depends on the witness' opportunity to observe the offender at the time of the offense and to make a reliable identification later.

Factors affecting the witness' opportunity to observe the offender at the time of the offense include:

(1) The length of time available for observation;
(2) The distance between the witness and the offender;
(3) Whether the witness' view of the offender was obstructed in any way;
(4) The light or lack of light at the time;
(5) The witness' state of mind at the time of the observation, including whether the witness was experiencing extreme fear during
(6) the incident; and
(7) Any other circumstances affecting the witness' opportunity to observe the person committing the crime.

Factors affecting the reliability of any identification made after the offense include:

(1) The length of time between the occurrence of the crime and the identification;

(2) The circumstances surrounding the identification;
(3) Whether the offender was a stranger to the witness before the incident;

(4) The witness' certainty or lack of certainty about the identification;
(5) Whether or not the witness has previously expressed an inability to identify the attacker;
(6) The witness' state of mind at the time of the identification; and
(7) Any other circumstances bearing on the reliability of the identification.

You also may consider any occasion on which the witness gave a description of the offender which conflicted with the witness' description or identification at trial. In considering identification testimony, you also may consider whether or not the identification by the witness has been influenced by the circumstances under which the defendant, or his photograph, was presented to the witness. If you find that the identification has been influenced in that manner, you should scrutinize the identification with great care.

Finally, you must consider the credibility of each identification witness in the same way you would consider the credibility of any other witness, including consideration of the witness' truthfulness and whether the witness had the capacity and opportunity to make a reliable observation as to the matter to which [he/she] testified. The burden of proof on the prosecution in a criminal case extends to every element of the crime charged and specifically includes proving beyond a reasonable doubt the identity of the person who committed the charged offense. If, after examining all the testimony, you have a reasonable doubt as to the accuracy of the witness(es)' identification, you must find the defendant not guilty.