

STATE OF MICHIGAN
In the third Circuit Court

State of Michigan
Plaintiff,

v.

Gayelon Spencer
Defendant.

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

Emergency Evidentiary Hearing
Due to Law Enforcements
Destruction of Evidence

Now Comes the Defendant, Gayelon Spencer, herein ("Mr. Spencer"), in pro-se, moving this Honorable Court to schedule and conduct an Evidentiary Hearing, pursuant to MCR 6.508, for the unlawful Destruction of Evidence, contrary to MCL 780.316(2), the authority of Arizona v. Youngblood, 488 U.S. 51 (1988), the authority of Brady v. Maryland, 373 U.S. 83 (1963), The Due process clause of the United States Constitution's Fourteenth Amendment, and the Sixth Amendment of the United States Constitution's guarantee of a Defendant's right to a fair and impartial trial. Mr. Spencer asks this court to consider the following:

1. 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.

2. 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.
3. The State's attorney failed to furnish the Defense Counsel and Mr. Spencer with both, Allante Mosley and Kireanna Mapp's audio and or video recorded statement, contrary to MCR 6.201(2).
4. Please note, Allante Mosley and Kireanna 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.
5. 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).

6. In this instant case, On November 11, 2024, the State's attorney, Krystal Murphy, admitted to this Honorable Court that Law enforcement Destroyed the video and audio recorded statements of Allante Mosley and Kreanna Mapp before the completion of the ongoing legal proceeding, which is a direct violation of MCL 780.31(6)(2).
7. 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.
3. 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)
9. The North Dakota Supreme Court explained that: "Bad faith, as used in cases involving destroyed evidence or statements, means that the state deliberately destroyed the evidence with the intent to deprive the defense of information; that is, that the evidence was destroyed by, or at the direction of, a state agent who intended to thwart the defense." [Estate v. Baldwin, 224 Conn 347, 364 (1993)]

10. In this case, the significance of this destroyed evidence is that Mr. Spencer was deprived of a powerful tool in cross-examining and impeaching two key prosecution witnesses.
11. Stare Decisis holds, "In our judicial system the right of cross-examination is more than a desirable rule of trial procedure. it is implicit in the constitutional right of confrontation, and helps assure the "accuracy of the truth-determining process."
People v. Albert, 89 Mich App 350, [354] (1979), quoting Chambers v. Mississippi, 410 U.S. 284, 295 (1973) — this Court ordered the suppression of the witness's testimony on retrial. — this court should as well!
12. An Evidentiary Hearing is requested to further investigate the substance of A.P.A. Murphy's admission that Law Enforcement Destroyed evidence and to expand the record to develop the Destruction of evidence issue.
13. Mr. Spencer is asking that this fair Court Display its application of the highest standards of ethical conduct by ordering a new trial, and ordering the suppression of Allante Mosley and Kreamna Mapp's testimony on retrial.

14. Stare Decisis holds, "... there should be no doubt about Youngblood's cardinal instruction: When the police destroy potentially useful evidence in "bad faith," the defendant is constitutionally prejudiced regardless of whether the defendant can show that the evidence was exculpatory." People v Vagovsky, 2023 Mich App Lexis 2901, [8]

Relief Requested

Wherefore the Defendant, Gayelon Spencer, herein ("Mr. Spencer"), pleads with this Fair Court to grant his motion, and schedule and conduct an Evidentiary Hearing, pursuant to MCR 6.508, for the unlawful Destruction of Evidence by law enforcement.

Respectfully Requested,

151 Spencer Jr

Gayelon Spencer

5301 Russell

Detroit, MI 48211

Proof of Service

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

By G. Spencer Jr

Date: _____

28 USC § 1746