

19HF0550
Buggs

FEB 17 2022

DAVID H. YAMASAKI, Clerk of the Court

BY: ^{SC} S. CISNEROS, DEPUTY

MEMO

OFFICE OF THE DISTRICT ATTORNEY
AND PUBLIC ADMINISTRATOR
TODD SPITZER



December 3, 2021

TO: Attorneys for Defendant Jamon Rayon Buggs

FROM: Ebrahim Baytieh, Sr. ADA *E. Baytieh*

SUBJECT: People v. Buggs - 19HF0550 / 19F03119
Discovery

On October 1, 2021, the Orange County District Attorney's Office's (OCDA) Special Circumstances Committee (SCC) had a meeting regarding the case of *People v. Buggs* (Orange County Superior Court case Number 19HF0550). Present during the first part of this meeting were the following OCDA personnel: DA Todd Spitzer, Chief Assistant DA Shawn Nelson, Special Counsel Pat Dixon, Sr. ADA Ebrahim Baytieh, Sr. ADA Keith Bogardus, ADA Steve McGreevy, ADA Troy Pino, ADA Jason Baez, and Sr. DDA Eric Scarbrough. The purpose behind the meeting was to discuss the *Buggs* case and for the SCC members to make recommendations to DA Spitzer regarding the appropriate punishment that DA Spitzer should seek in the case: LWOP or the Death Penalty.

During the first part of the meeting, and while the group was discussing the aggravating factors under Penal Code section 190.3 (b), specifically, prior incidents of domestic violence committed by the defendant, DA Spitzer specifically and expressly asked about the race of the defendant's prior female girlfriends/victims. I did not know the answer, but before any answer was provided by the assigned prosecutor Eric Scarbrough other than saying that he does not consider or take race into account, I stated that the race of the victims is completely irrelevant and it will be inappropriate for the OCDA to consider or give any weight to the race of the victims. DA Spitzer stated that he disagreed and he knows many black people who get themselves out of their bad circumstances and bad situations by only dating "white women." I then specifically stated that we should not under any circumstances give any weight or even discuss the race of the victims when we are deciding about the appropriate punishment to seek because, among other legal and ethical reasons, doing so implicates the recently signed Racial Justice Act (AB 2542). DA Spitzer then stated that while he was a student in college, he knew as a matter of fact that one of his fellow black students who lived in the same location as DA Spitzer only dated "white women," and that DA Spitzer knew for sure that this black student did so on purpose to get himself out of his bad circumstances and situations.

Jayasekera, Narah

From: Baytieh, Ebrahim
Sent: Wednesday, December 22, 2021 4:13 PM
To: Spitzer, Todd
Cc: Jayasekera, Narah; Dixon, Patrick; Nelson, Shawn
Subject: Buggs - Discovery Obligation
Attachments: Buggs - Memo to TS and SN re 2542 Discovery from SCC Meeting - Dec 22 2021.pdf

Attached please find a memo relating to discovery obligations in the Buggs case. I discussed this matter with Pat and based on my discussion with him, there may be additional potential options for you to consider that include potential referral of the case to the AG's office for the AG's office to handle both the discovery matter as well as the case itself. Hopefully we can meet as soon as reasonably possible to discuss this matter and make sure we are satisfying all our discovery obligations. I will send a hard copy in the packet.

Take Care.

Brahim

EBRAHIM BAYTIEH

Orange County District Attorney's Office
Senior Assistant District Attorney – Operations IV
714-347-8404
ebrahim.baytieh@da.ocgov.com



MEMORANDUM

Work Product – Deliberative

To: District Attorney Todd Spitzer
cc Chief ADA Shawn Nelson

From: Brahim Baytieh, Senior Assistant District Attorney *Baytieh*

Date: December 22, 2021

RE: People v. Buggs 19HF0550 – 19F03119
Discovery Obligation – AB 2542 / PC 745

In connection with the above listed case, and after reviewing and analyzing AB 2542, it is my legal conclusion that our office has a discovery obligation relating to the information in the attached memo documenting part of a discussion that took place on October 1, 2021 during a Special Circumstances Committee (SCC) meeting.

The prosecutor assigned on the case, Sr. DDA Eric Scarbrough, is of the legal opinion that:

“Given the expanded discovery obligations required by the racial justice act and specifically the language set forth in PC 745 (d), the information listed in the attached memo is potentially discoverable. Also, as discussed, the process as set forth by the California Supreme Court in *People v. Superior Court (Johnson)* (i.e. *in camera* review by the court) is an advisable approach. The frustration I have is, given that PC 745 is so new, there is virtually no legal guidance on how to deal with such scenarios. As such, I have relied heavily on the language of the act itself, traditional *Brady* analysis cases, as well as, Judge Couzens AB 2542 bench guide.”

ADA Steve McGreevy, the direct supervisor of Sr. DDA Eric Scarbrough, is of the legal opinion that:

“Based upon the broad language of the Racial Justice Act, I agree the information is “potentially” discoverable and with procedure of submitting this to the court under seal on an ex parte basis.”

In my opinion and in my legal judgment, the most prudent course of action, and the right thing to do, is for our office to discover to the defense attorneys the attached memo documenting the discussion in question. By doing so, our office will be in full compliance with our discovery obligations under the Racial Justice Act as well as other statutory and constitutional mandates.

The reference in Eric's and Steve's opinions regarding an *in camera* / *ex parte* review by the court is premised on the notion that a prosecutor satisfies *Brady* related discovery obligations by submitting the information in question to the court for review on an *ex parte* basis.

My legal conclusion that we are obligated to discover the information in the attached memo to the defense attorneys is based on the totality of all the information, guided by the very broad language of the Racial Justice Act and the teachings of the United States Supreme Court: **"the prudent prosecutor will resolve doubtful questions in favor of disclosure."** (*United States v. Agurs* (1976) 427 US 97, 108.)

Please let me know if you have a preference regarding what procedure to follow in providing the discovery.

Jayasekera, Narah

From: Baytieh, Ebrahim
Sent: Friday, January 21, 2022 3:23 PM
To: Spitzer, Todd
Cc: Nelson, Shawn; Dixon, Patrick; Jayasekera, Narah
Subject: RE: Buggs - Discovery Obligation

Hi Todd:

Per our previous discussion and at your request yesterday, it is my opinion that in my December 3, 2021 memo, changing sentences 1 and 3 below with sentences 2 and 4 below, respectively, will allow the memo (in my opinion) to continue to be accurate and in compliance with the obligation pursuant to the Racial Justice Act. In my opinion, sentences 1, 2, 3, and 4 below convey the same relevant information as mandated by the Racial Justice Act.

1. ... who get themselves out of their bad circumstances and bad situations by ...
2. ... who enhance their status by

-
3. to get himself out of his bad circumstances and situations.
 4. ... to enhance his status.

Take Care.


Brahim

EBRAHIM BAYTIEH

Orange County District Attorney's Office
Senior Assistant District Attorney – Operations IV
714-347-8404
ebrahim.baytieh@da.ocgov.com

From: Baytieh, Ebrahim
Sent: Wednesday, December 22, 2021 4:13 PM
To: Spitzer, Todd <Todd.Spitzer@da.ocgov.com>
Cc: Jayasekera, Narah <Narah.Jayasekera@da.ocgov.com>; Dixon, Patrick <Patrick.Dixon@da.ocgov.com>; Nelson, Shawn <Shawn.Nelson@da.ocgov.com>
Subject: Buggs - Discovery Obligation

WORK PRODUCT AND DELIBERATIVE PROCESS

TO: BUGGS FILE ASSERTING WORK PRODUCT PRIVILEGE
FROM: TODD SPITZER, DISTRICT ATTORNEY 
SUBJECT: BUGGS—RESPONSE TO BAYTIEH MEMO RE: DISCOVERY OBLIGATIONS AND THE RACIAL JUSTICE ACT
DATE: JANUARY 30TH, 2022

On or about December 22, 2022, I was made aware for the first time that Senior Assistant District Attorney Baytieh constructed a memo purporting to characterize a discussion that occurred during a Special Circumstances meeting in the matter of the Buggs murder case on October 1, 2021. The fact that nearly 90 days had passed, not one person of the Special Circumstances committee asked to reconvene, or asked me for clarification of my statements, or in any way beforehand communicated any potential issues with my statements was literally mind-blowing.

After reading his memo, I was completely and utterly disgusted by his characterization of a conversation regarding the race of Buggs (African American) that occurred during an October 1, 2021 meeting of the Special Circs committee. Not only was it inaccurate, but it attempted to show my statements in the worst possible light, without explanation or context. There was no attempt to work within the strictures of the Special Circumstances committee, respect its mission and purpose, or to properly record any issues and address them. Instead, Mr. Baytieh went behind my back and the back of the entire committee, attempted to “age” his concerns in order to make it difficult for anyone else to challenge his recollection, and then lobbied other members to agree with his version of statements attributed to me. Worse than that, this committee is sanctioned to make the most difficult and measured decision we make as an office, whether to seek death. His working outside the process of the committee jeopardized and challenged the sanctity of that process and, hence, the ability whether to seek the ultimate punishment of death.

In the Buggs matter, Buggs killed two people in a bed of a bedroom in an apartment. It was my understanding of the facts at that time that Buggs believed his former girlfriend (who is White and had blonde hair) was now dating a new male subject. Buggs broke into the condo and killed both the male and the female who were in a bed at the time.

I had met with the Special Circumstances committee and with Buggs’ defense team at their request to discuss with me not pursuing the death penalty in this case on October 1, 2021. They made arguments about his history of football playing, evidence of CTE head trauma from playing football, showed us film highlights of his running on the field during games, discussed his criminal history involving acts of violence, dealing with racism by going to an all White high school and playing football with all White players, being called names because of his race, his attempts at business endeavors when his dreams of playing professional football failed, his

relationship with his mother and father who had divorced, his relationship with his step-father and his attempts at success in business and putting on a certain success and lifestyle that was not commensurate with his actual financial success and that he lived in Orange County to show he had gained fame and fortune when his mother and step-father had to move to the Inland Empire.

The defense team raised serious questions about his capacity, his life and his motives to engage in criminal activity. All of these ideas about race had been introduced by the defense team to our committee.

After the defense team left, the committee reconvened. We spent a lot of time discussing their defense of CTE and how it would impact the case. Although CTE cannot be determined until an autopsy is performed and the brain examined after the subject passes, we believed that experts would be hired and called by the defense both during the trial and, if necessary, at the penalty phase. We knew such evidence was coming in for the trier of fact.

At some point during the conversation, there was an issue for me whether Buggs, entering a darkened room, killed the female subject believing that it was his former girlfriend or simply executed her because she was a witness to his, Buggs', killing of the male subject. Both the female shooting victim and Buggs' former girlfriend were both blond haired White females. In my mind, if he killed the female thinking she was the former girlfriend, there was an argument that it was heat of passion murder versus an execution of a witness. In any case, my questions were directly related to the entire question of identification or mis-identification by Buggs. There was literally no other reason to bring race into the conversation except the facts of this case were that Buggs wanted to kill the man he believed was dating/sleeping with his former girlfriend—a White, blonde hair, woman.

My questions about Buggs and what the race of former girlfriends was simply to address the issue of cross racial identification, the single biggest reason for murder convictions to be overturned. I simply was exploring Bugg's ability to identify, properly or not, the race of the female victim in that moment before he executed two victims. I have prosecuted thousands of cases and personally tried over 100 trials. Cross racial ID is often an issue. I have had to examine witnesses and experts on the subject.

That issue, in that moment, was on my mind. I am also familiar with the Innocence Project findings that the number one reason for convictions to be reversed is because of misidentification. ([https://innocenceproject.org/causes-wrongful-conviction./](https://innocenceproject.org/causes-wrongful-conviction/)) So whether that misidentification is regarding the defendant or is an issue whether the "correct" person was murdered who may be a target, I raised the issue for my own edification and to help me continue to gather information to determine whether the Death Penalty was the appropriate charge.

One can only imagine reading Mr. Baytieh's memo that he had already addressed in draft to Defense Counsel in Buggs that was not only inaccurate, but made wild and ill informed conclusions about my simple and relevant question (albeit, a relevancy that he had no idea at the time because 1) he did not ask and 2) he had already "ruled" that my question was improper).

My statements articulated in Baytieh's memo did not happen with respect to the point that African American men sometimes date White women "in order to get out of trouble." In fact, on January 7, 2022 I personally met with Baytieh and when I asked him to repeat what he believed I stated, his recitation of what I said did not match what he wrote. When I challenged him that his memorialization was inaccurate, he argued with me that there is no difference between the two statements. The only thing I stated was that I have seen Black men date White women in certain



circles in order to have others around them be more accepting. That was only after I asked my question about Buggs' and his dating relationships and Eric Scarborough told me that he never considers race in his assessment of his cases. Since they didn't know why I asked my question that I did, I gave that statement as an example. I even stated on October 1, 2021, that Larry Elder is a potential example of such societal behavior where he has been very accepted into the mainstream conservative White political community. Baytieh literally told me how he did me a huge favor by *intentionally omitting* that observation in his memo. I really could not believe my ears. He wrote up an inaccurate statement and then had the wherewithal to express how much he did me a favor by purposefully excluding information that would paint me in a bad light!

These issues of race and religion may seem taboo, but they are as real today as they have always been in society.

On January 21, 2022, now almost 120 days after the fact, Baytieh issued a correction memo acknowledging that his December 3, 2021 memo used words attributed to me that he could no longer stand behind. He didn't even bother to address other words which were consistent with his first mischaracterization and are as consistently damning and false.

In reading the Racial Justice Act, for that statute to be applicable to the present situation, there would need to be a finding that my inquiry under Penal Code section 745 (a) (2) "exhibited bias or animus towards the defendant...."

It is literally absurd to believe and such an overreach in interpretation to believe in any way whatsoever that such an inquiry was not asked with innocent inquiry simply to explore the issue of cross racial identification as to the murder of the female victim who was the same race and had the same hair color as the former girlfriend for whom he may have been still "hunting".

Baytieh's memo is a grossly amplified version that he wrote on December 3, 2021, three months after the fact and without even the simplest of professional courtesies to seek clarification of my statements within the confines of our committee at the very least.

In fact, in the January 7th, 2022 discussion, Baytieh told me that we can only discuss race in the context of a case analysis if the crime charged is motivated by hate or, for special circumstances analysis, we have charged a murder with a hate crime enhancement.

I not only disagree, I find that argument troubling, short-sighted and a ridiculously narrow reading of the Racial Justice Act. The advice to seek judicial review of my statement is based on a real concern I have that anytime the issue of race is discussed in a case (which is corroborated by Baytieh's strident interpretation that race is never relevant unless a hate crime is charged) we must disclose such discussion externally through discovery.

I adamantly deny any violation of the Racial Justice Act, and find that Mr. Baytieh went behind my back—and the committee's back—to construct his memo; did not bring any issues subsequent to the Special Circs meeting to my attention before he wrote his December 22, 2021 memo. He admitted that he conducted his own inquiry and directed Steve McGreevy and Eric Scarborough to conduct legal research, then wrote the memo, then lobbied for its meaning with an unknown number of members of the Special Circs committee. I find what he did offensive, reprehensible and professionally irresponsible. I absolutely question the sincerity of his motives.

I believe that irrespective of any disagreements over what was said on October 1, 2021, that any and all cures in this matter have been implemented.


A handwritten signature in black ink, appearing to be the initials 'JM' with a circled 'B' below it.

The case has been assigned to a new homicide prosecutor with extensive homicide experience. That prosecutor has no knowledge or information about these proceedings involving the Special Circumstances Committee. All the members present during any and all discussions in this matter—during the Special Circumstances meeting and during orchestrated ex parte meetings where the Baytieh memo was constructed—have all been walled off, including myself. The only subsequent decision that I made after October 1, 2021 was that I would be seeking LWOP in this matter and not death. While unrelated, that remedy is expressly delineated in PC section 745 (e) (1) (3) “When the Court finds there has been a violation of subdivision (a), the defendant shall not be eligible for the death penalty.”

These actions have been taken out of an abundance of caution to cure any issues that may have been created. All of this could have been avoided if Mr. Baytieh had simply asked the committee to immediately reconvene so that any issues could have been addressed as a committee.

As the elected District Attorney, I feel that I have been advised and do agree that this Court needs to review my memo and Mr. Baytieh’s memo and determine whether both memos need to be discovered. It is my belief that both memos are work product and that the remedies implemented by me have cured any issues that may have been raised during this most unfortunate breach of protocol and unprofessional conduct by Baytieh.

On January 28, 2022 I re-convened the Special Circumstances committee to address my reasons for asking the question about race of former girlfriends. It was blatantly obvious that had the committee been given the opportunity to hear my reasoning that no issue would have been even necessary to address. When I asked the Assistant District Attorney for the Homicide Unit, Steve McGreevy why he didn’t insist that we reconvene immediately after October 1, 2021 if there was an issue and he instead worked with Baytieh outside of the process, he indicated that now that he had heard my explanation for my questions about cross racial identification that it was a non-issue for him and that the process was, in retrospect, “flawed” (his word). Indeed, Mr. Baytieh’s approach has caused so much unnecessary drama that it is critical that I submit this to his honorable court under the circumstances for a ruling on discoverability in light of what was said by me, the Racial Justice Act, and the actions on the case that have already been implemented.

1/31/2022 


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