

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,

v.

SHANNA LEE GARDNER,

Defendant.

CASE NO.: 16-2023-CF-2862B

JUDGE LONDON M. KITE

MEMORANDUM IN SUPPORT OF DISMISSAL
FOR PROSECUTORIAL MISCONDUCT

COMES NOW, the Defendant, SHANNA LEE GARDNER, by and through her undersigned Attorney pursuant to the Constitution of the State of Florida, the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution, hereby renews all arguments of the Defense Motion to Release the Defendant on Bond, to Prohibit the State from Using Certain Evidence at Trial Based on the State's Failure to Disclose Favorable Evidence and Other Relief as filed on June 19, 2024, and the argument before the Court on August 16, 2024. This memorandum in support the request for authority to dismiss and states as follows:

1. On Friday, August 16, 2024, this Honorable Court sua sponte raised the sanction of dismissal for a discovery violation and queried what authority allowed the Court to dismiss the charges against Shanna Gardner.
2. In response to a discovery violation, the Court has the authority under Fla. R. Crim. Pro 3.220(n), "to enter such order as it deems just under the circumstances", including dismissal. The Defense renews all arguments for the previously requested sanctions but seeks to fully consider the authority on the specific sanction of dismissal.
3. The Defendant stands before this Honorable Court charged by Indictment for one count of First Degree Murder in violation of Florida Statute §782.04(1)(a) and §775.087(1); one count of Conspiracy to Commit Murder, §782.04(1)(a) and §777.04(3); and one count of Solicitation to Commit a Capital Felony §782.04(1)(a) and §777.04(2); and one count of Child Abuse, Fla. Stat. §827.03(1)(b).
4. The Defense does not deny the tragic shooting death of the decedent by Henry Tenon. However, there is no evidence in support of Shanna Gardner's alleged participation in the fatal shooting on February 16, 2022.
5. Furthermore, the Defense remains steadfast that Shanna Gardner had no participation in any conspiracy to solicit the shooting death of the decedent.

6. On August 16, 2024, the defense fully revealed that the State had fabricated the evidence of conspiracy to mislead the Court of Shanna Gardner's knowledge of the decedent's death.
7. Based on discovery violations the Defense previously requested that the Court enter an order granting the following relief:
 - i. A special jury instruction to draw an inference in favor of Shanna Gardner that the jury may view that after being placed under oath Detective Christopher Johns of the Jacksonville Beach Police Department made false statements before this court regarding the investigation of Shanna Gardner.
 - ii. Excluding all text messages between Ms. Jensen and Ms. Lee.
 - iii. Excluding all alleged statements made by Ms. Gardner as alleged to have been relayed to the State by Ms. Jensen during the July 2023 interrogation.
 - iv. Granting Ms. Gardner a bond upon consideration of the State's conduct and statements of Ms. Jensen and Ms. Lee.
 - v. Disqualify the Fourth Circuit State Attorney's Office to ensure Ms. Gardner has a conflict free and ethical prosecution of her pending charges.
8. The Court, upon finding a discovery violation by the prosecution, may dismiss the charges on the authority of the Fla. R. Crim. P. 3.220, the United States Constitution via Brady v. Maryland (373 U.S. 83) (1963) and Giglio v. United States, 405 U.S. 150, 153-54, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) and its progeny.
9. The United States Supreme Court in Giglio v. United States, 405 U.S. 150, 153-54, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), held that a prosecutor cannot knowingly use false testimony against a defendant. To establish a Giglio violation, a defendant must show the following: (1) the prosecutor presented false testimony; (2) the prosecutor knew the testimony was false; and (3) the false evidence was material.
10. The Florida Supreme Court explained "material" for the third prong of Giglio violation, a trial court must determine "whether there is any reasonable likelihood that the false testimony could have affected the court's judgment as the factfinder." Guzman v. State, 868 So.2d 498, 507 (Fla. 2003)
11. The Defense filed a Motion to Release the Defendant on Bond, to Prohibit the State from Using Certain Evidence at Trial Based on the State's Failure to Disclose Favorable Evidence and Other Relief, the pleading included sworn affidavits. Then on Friday, August 16, 2024, the motion was argued to the Court, with competent and substantial evidence that the prosecutors intentionally misled this Court with false testimony as follows:
 - a. False presentation of bank statements in a murder for hire allegation. The Trust funds presented by the prosecution and relied upon by the Court were funds tied to the legitimate payments in 2021 and independent of any illegitimate purpose.
 - b. Misrepresentation of "hitman" text messages from 7 years prior to the homicide. The prosecutors and Detective Johns failed to inform the Court that witnesses explained the "hitman" messages were a 20-year old standing joke.

- c. The “funeral potatoes” text messages were misrepresented as code for the killing of the decedent. The prosecution failed to inform the Court that church members prepared funeral meals for members of the LDS church family/community.
 - d. The statements “I’ll take care of it” or “Missed opportunities” were known as catch phrases often repeated by Mario Fernandez and were made independent of the charged homicide.
 - e. Detective Johns falsely testified concerning his interactions with Linda Luchetti and Chris Thomas in Utah. Linda Luchetti did not hide from Detective Johns.
 - f. The exculpatory interviews between the prosecutors and Kim Jensen were not recorded.
12. Once the first two prongs of a Giglio violation are established, the State bears the burden of showing that the false evidence was immaterial by showing that its use was harmless beyond a reasonable doubt. Guzman v. State, 941 So.2d 1045, 1050 (Fla. 2006).
13. Here, the Court order denied bond in reliance on the false evidence; this material harm of denied bond satisfied the third prong of a Giglio violation.
14. After the hearing on August 16, 2024, the defense satisfied all three prongs of a Giglio violation with competent and substantial evidence.
15. Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959) “[I]t is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment.”
16. “The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction [is] implicit in any concept of ordered liberty.” Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).
17. Guzman v. State, 868 So.2d 498, 507 (Fla. 2003). “The knowing use of perjured testimony involves prosecutorial misconduct and `a corruption of the truth-seeking function of the trial process.’” citing, United States v. Bagley, 473 U.S. 667, 682 (1985).
18. Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 340, 79 L.Ed. 791 (1935). “[I]f a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured[,] [s]uch a contrivance by a State to procure the conviction and imprisonment of a defendant is . . . inconsistent with the rudimentary demands of justice.”
19. The sanction of dismissal is available for the due process violation of knowingly using false evidence, on the authority of Giglio v. United States, and cases cited above.
20. The Court has the legal authority to dismiss the charges against Shanna Gardner based on the violation of her due process rights and her right to a fair trial. See State v. Alfonso, 478

So.2d 1119 (Fla. 4th DCA 1985) where dismissal was an appropriate sanction for repeated discovery violations.

21. United States v. Campagnuolo, 592 F.2d 852, 865 (5th Cir. 1979) "The supervisory powers of a district judge, however, allow him to impose the extreme sanction of dismissal of an indictment with prejudice only in extraordinary situations."
22. On Friday, August 16, 2024, after several hours of testimony and over one hour of argument by the Defense, the prosecution argued to the Court that the defense failed to impeach Detective Johns when he testified on May 17, 2024. The prosecution presented no evidence to refute the Defense. The prosecution did not deny that they *knowingly* put Detective Johns on the stand to make several false statements of fact to the Court. Moreover, to this day the prosecution fails to correct the multitude of false statements and material facts relied upon by the Court.
23. But for the independent witnesses (Susan Lee, Kim Jensen, and Linda Luchetti) review of the Arthur hearing on YouTube, and their individual efforts to notify the defense counsel, there would be no ability to raise these issues to the Court in a timely manner.
24. It cannot be overlooked that the prosecution was aware of these issues and failed to notify the Court immediately, contrary to Rules Regulating Florida Bar Rule 4-3.3. ⁱ
25. Shanna Gardner, through no fault of her own, was substantially and materially prejudiced in her ability to prepare her defense in the Arthur hearing due to the multitude of false statements that were relied upon in the Court's Order denying bond.
26. Under Fl R Cr. P 3.220(b)(4), the prosecutor shall disclose to the defendant any material information within the state's control that tends to negate the guilt of the defendant.
27. The duty to disclose includes an Arthur hearing because it is a critical stage of a criminal case. A "critical stage" is an event that has "significant consequences for the accused." Bell v. Cone, 535 U.S. 685, 695-96, 122 S. Ct. 1843, 152 L. Ed. 2d 914 (2002). ⁱⁱ
28. In Florida, the rules for discovery violations authorizing the sanction of dismissal were "never intended to furnish a defendant with a procedural device to escape justice," Richardson v. State, 246 So.2d 771, 774 (Fla. 1971). In this case, jeopardy has not attached, is an argument against dismissal for Brady discovery violation.
29. State v. Hilliard, 409 So.2d 211 (Fla. 4th DCA 1982) held the trial court did not abuse its discretion in dismissing the information for numerous discovery violations prior to trial.
30. In the instant case, the on-going pattern of prosecutorial misconduct is overwhelming and without any recognition of wrong-doing or any signal toward change; here alternative sanctions would only bolster the prosecution to continue their misconduct. ⁱⁱⁱ

31. The Defense has demonstrated more than a Brady violation, but an egregious series of Giglio violations.
32. This is not a case of overzealous advocacy, but rather the prosecution deliberately misleading the Court in a successful effort to deny Shanna Gardner's Constitutional Right to due process under the law; here all three prongs of a Giglio violation are established, the Court can and should sanction the prosecutorial pattern of misconduct of due process violations with dismissal.

WHEREFORE, Shanna Gardner respectfully responds to the Court's request for authority on dismissal and moves the Court to find that the prosecution knowingly presented false evidence that was material to the Court's denial of bond at the Arthur hearing such that the Shanna Gardner's Constitutional Due Process Rights were denied and impose the sanction of dismissal to the filed indictment, or such remedy as the Court deems just and appropriate under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Memorandum was provided via Florida Courts E-filing Portal to the State Attorney's Office, the Clerk of Court and mailed to the Defendant, on August 27, 2024.

/s/ Rosemarie Peoples
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ⁱ All Florida lawyers are bound by the Rules Regulating Florida Bar Rule 4-3.3 Candor Toward the Tribunal, which states "[a] lawyer shall not knowingly: (a) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

ⁱⁱ One of the most critical steps in the criminal process is the judicial determination of pretrial release and its conditions, absent which the accused remains incarcerated pending trial, losing his freedom and often his job, family relationships, and the ability to work effectively with his lawyer. Yeary v. Chief Judge of the Sec. Judicial Cir., No. 1D21-2583, 2023 Fla. App. LEXIS 605, at *18-19 (1st DCA Jan. 11, 2023)

ⁱⁱⁱ Defense renews all arguments in the written Defense Motions to Disqualify the Fourth Judicial Circuit Office State Attorney Office filed on March 1, 2024, and the related oral arguments.