

IN THE CRIMINAL COURT OF BRADLEY COUNTY, TENNESSEE

2010 OCT 19 AM 8:48

STATE OF TENNESSEE,

V.

MICHAEL YOUNGER
Defendant

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)

FILED
Case No. 08-457

MOTION TO ENTER NOLLE PROSEQUI

Comes now the State of Tennessee, by and through R. Steven Bebb, District Attorney General, and moves this Honorable Court to grant the State's motion of *nolle prosequi* as to the above matter. In support hereof, the State would say and show that:

1. The prosecuting officer in this case, Duff Brumley, is currently under investigation for actions taken in his official capacity as a Cleveland Police Department officer. Mr. Brumley has been terminated from his employment by the Cleveland Police Department.
2. In the course of the current investigation of Mr. Brumley, three prior instances have been found which call into serious question Mr. Brumley's credibility as a witness.
3. The first instance involved a prior homicide investigation wherein Mr. Brumley testified under oath that he turned over recorded statements of a suspect directly to an Assistant District Attorney General. However, in subsequent interviews, Mr. Brumley gave inconsistent answers about who received the recorded statements. Ultimately it was determined that Mr. Brumley did not give the recorded statements directly to an Assistant District Attorney General as he claimed under

oath.

4. The second instance involved a federal court case, United States v. Tiffany Little, wherein Magistrate Judge Carter in a written opinion detailed numerous inconsistent statements made by Mr. Brumley in his sworn testimony. These inconsistent statements included material facts that were important to a fair determination of the issues in the case and ultimately resulted in Magistrate Carter finding that he could place no confidence in the accuracy of Mr. Brumley's memory. The case was subsequently dismissed
5. In the current case, Anita Wilson, a key witness, has given a statement to counsel for the defense that Mr. Brumley coerced her into claiming that Michael Younger confessed to the murders. Counsel for the defendant brought this to the State's attention along with the fact that Ms. Wilson was held on a fugitive from justice warrant at Mr. Brumley's direction. Subsequent investigation has found that Ms. Wilson was in fact held on a fugitive from justice warrant even though she was not wanted in another state. Her detention on a fugitive from justice charge was illegal. It certainly could be inferred that the illegal detention was intentional to give Mr. Brumley additional leverage in taking the coercive actions that Ms. Wilson now maintains happened.
6. Ms. Wilson had given a prior statement in 2004 to Lieutenant Mark Gibson of the Cleveland Police Department. In that statement, Ms. Wilson makes no mention whatsoever of Michael Younger confessing to the crimes in question. The presence of this prior inconsistent statement lends credence to Ms. Wilson's claims that she was coerced to give her latest statement incriminating Michael

Cite trials
& defendants

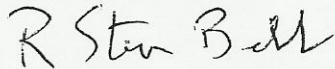
Younger.

7. Following the previous trial of Defendant Younger which ended in a mistrial, Mr. Brumley returned several pieces of evidence to the Cleveland Police Department. Rather than return the items to the evidence room as he should have done, Mr. Brumley left the items in his office which was not locked. As such, the chain of custody is irrevocably broken as to those items.
8. The State of Tennessee cannot in good faith call Mr. Brumley to the stand to testify in this matter as his credibility as a witness has been severely compromised.
9. Finally, and most disturbing, is approximately one hundred and seventy-one (171) telephone calls between Mr. Brumley and Judge Amy Reedy, the presiding judge, during the time this case was progressing through the court system. A summary of the telephone calls has been attached as **EXHIBIT 1**.
10. While the State believes firmly that Defendant Younger is responsible for the deaths of the victims in this case, Mr. Younger is entitled to due process and a fair trial. No matter what reasons are given for the telephone calls between the prosecuting officer and the presiding judge, it does not absolve the State of its responsibility to see that Mr. Younger receives the due process afforded to him by law. The absolute appearance of impropriety in these telephone calls is such that the State cannot in good faith subject Mr. Younger to further criminal prosecution in this matter. There is no remedy in the law that will remove the taint that has been placed on this case as a result of these telephone calls. Any verdict, for or against conviction, would be viewed with suspicion.

Wherefore, premises considered, the State moves this Honorable Court to grant the State's motion to enter a *nolle prosequi* on all charges against the Defendant.

Dated at Cleveland, Tennessee this 19th of October, 2010.

Respectfully submitted,



R. STEVEN BEBB
District Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon counsel for all parties at interest in this case by delivering a true and exact copy of said pleading to the offices of said counsel or by placing a true and exact copy of said pleading in the US mail addressed to said counsel at his office with sufficient postage thereupon to carry the same to its destination.

October 19, 2010
DATE

Lisha Myers
SIGNATURE

TELEPHONE CALLS BETWEEN (423) 650-2790 AND (423) 593-1280

2008

1. 10/6 Outgoing call 7:27 pm, Call duration 2 min.
2. 10/6 Outgoing call 8:30 pm, Call duration 1 min.
3. 10/6 Incoming call 8:31 pm, Call duration 1 min.
4. 10/7 Incoming call 7:37 am, Call duration 3 min.
5. 10/10 Outgoing call 9:46 am, Call duration 1 min.
6. 10/13 Incoming call 8:10 am, Call duration 7 min.
7. 10/13 Outgoing call 6:37 pm, Call duration 2 min.
8. 10/13 Incoming call 6:47 pm, Call duration 2 min.
9. 10/15 Outgoing call 7:18 pm, Call duration 1 min.
10. 10/17 Outgoing call 12:36 pm, Call duration 1 min.
11. 10/19 Outgoing call 10:28 am, Call duration 2 min.
12. 10/20 Outgoing call 12:49 pm, Call duration 2 min.
13. 10/20 Outgoing call 1:22 pm, Call duration 1 min.
14. 10/20 Incoming call 1:26 pm, Call duration 5 min.
15. 10/22 Incoming call 2:25 pm, Call duration 2 min.
16. 10/25 Incoming call 1:57 pm, Call duration 2 min.
17. 10/26 Outgoing call 1:16 pm, Call duration 1 min.
18. 10/26 Outgoing call 1:18 pm, Call duration 1 min.
19. 10/29 Incoming call 11:42 am, Call duration 2 min.
20. 11/2 Outgoing call 12:14 pm, Call duration 1 min.
21. 11/17 Outgoing call 8:54 am, Call duration 1 min.
22. 11/18 Outgoing call 12:13 pm, Call duration 1 min.
23. 11/19 Incoming call 8:01 am, Call duration 2 min.
24. 11/21 Outgoing call 4:44 pm, Call duration 4 min.
25. 11/24 Outgoing call 10:12 am, Call duration 1 min.
26. 11/24 Incoming call 1:10 pm, Call duration 2 min.
27. 11/24 Outgoing call 1:12 pm, Call duration 1 min.
28. 12/6 Outgoing call 2:11 pm, Call duration 2 min.
29. 12/6 Incoming call 2:43 pm, Call duration 2 min.
30. 12/11 Outgoing call 8:20 am, Call duration 1 min.
31. 12/11 Outgoing call 8:23 am, Call duration 1 min.
32. 12/11 Incoming call 8:53 am, Call duration 6 min.
33. 12/15 Outgoing call 7:38 am, Call duration 2 min.
34. 12/23 Outgoing call 11:21 am, Call duration 9 min.

EXHIBIT 1

2009

1. 1/18/2009 Outgoing call 12:55 pm, Call duration 2 min.

2. 2/11 Outgoing call 12:19 pm, Call duration 3 min.
3. 2/11 Outgoing call 12:22 pm, Call duration 5 min.
4. 2/20 Outgoing call 3:05 pm, Call duration 10 min.
5. 2/23 Outgoing call 7:52 am, Call duration 1 min.
6. 3/10 Outgoing call 8:10 am, Call duration 2 min.
7. 3/11 Incoming call 2:09 pm, Call duration 4 min.
8. 3/26 Outgoing call 5:38 pm, Call duration 2 min.
9. 3/28 Outgoing call 10:18 am, Call duration 2 min.
10. 3/29 Outgoing call 3:01 pm, Call duration 2 min.
11. 3/30 Incoming call 8:21 am, Call duration 5 min.
12. 3/30 Incoming call 8:27 am, Call duration 2 min.
13. 3/31 Outgoing call 2:23 pm, Call duration 1 min.
14. 3/31 Incoming call 2:33 pm, Call duration 15 min.
15. 4/7 Outgoing call 2:42 pm, Call duration 2 min.
16. 4/14 Outgoing call 4:51 pm, Call duration 10 min.
17. 4/24 Outgoing call 8:58 am, Call duration 1 min.
18. 5/7 Outgoing call 7:49 am, Call duration 1 min.
19. 5/7 Outgoing call 9:41 am, Call duration 2 min.
20. 5/8 Incoming call 5:22 pm, Call duration 2 min.
21. 5/9 Incoming call 9:54 am, Call duration 4 min.
22. 5/9 Incoming call 10:09 am, Call duration 1 min.
23. 5/13 Incoming call 12:25 pm, Call duration 9 min.
24. 5/18 Outgoing call 9:29 am, Call duration 1 min.
25. 5/18 Outgoing call 1:03 pm, Call duration 1 min.
26. 5/21 Outgoing call 5:14 pm, Call duration 2 min.
27. 5/21 Incoming call 5:42 pm, Call duration 2 min.
28. 6/5 Incoming call 9:12 am, Call duration 3 min.
29. 6/10 Outgoing call 9:48 am, Call duration 2 min.
30. 6/10 Incoming call 10:03 am, Call duration 2 min.
31. 6/18 Outgoing call 10:57 am, Call duration 2 min.
32. 6/20 Outgoing call 1:14 pm, Call duration 2 min.
33. 7/1 Outgoing call 11:06 am, Call duration 11 min.
34. 7/5 Outgoing call 2:15 pm, Call duration 1 min.
35. 7/16 Outgoing call 8:58 pm, Call duration 3 min.
36. 7/21 Outgoing call 8:59 am, Call duration 2 min.
37. 7/21 Outgoing call 2:03 pm, Call duration 2 min.
38. 7/21 Incoming call 2:40 pm, Call duration 3 min.
39. 7/22 Incoming call 9:06 am, Call duration 3 min.
40. 7/29 Outgoing call 11:14 am, Call duration 4 min.
41. 8/8 Incoming call 11:30 am, Call duration 3 min.
42. 8/8 Incoming call 11:41 am, Call duration 1 min.
43. 8/8 Incoming call 11:51 am, Call duration 8 min.

44. 8/16 Outgoing call 12:25 pm, Call duration 1 min.
45. 9/10 Outgoing call 1:03 pm, Call duration 1 min.
46. 9/10 Incoming call 1:04 pm, Call duration 6 min.
47. 9/10 Incoming call 1:11 pm, Call duration 3 min.
48. 9/16 Incoming call 1:08 pm, Call duration 7 min.
49. 9/23 Outgoing call 6:55 pm, Call duration 1 min.
50. 9/23 Outgoing call 7:41 pm, Call duration 2 min.
51. 9/24 Outgoing call 6:59 am, Call duration 3 min.
52. 9/24 Outgoing call 1:15 pm, Call duration 1 min.
53. 9/24 Outgoing call 5:05 pm, Call duration 1 min.
54. 9/28 Outgoing call 11:16 am, Call duration 1 min.
55. 10/10 Outgoing call 6:37 pm, call duration 10 min.
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60. 12/10 Outgoing call 8:49 am, Call duration 4 min.
61. 12/14 Incoming call 1:58 pm, Call duration 14 min.
62. 12/29 Outgoing call 5:04 pm, Call duration 2 min.
63. 12/29 Outgoing call 5:18 pm, Call duration 14 min.
64. 12/30 Outgoing call 6:46 pm, Call duration 24 min.

2010

1. 1/5 Outgoing call 5:32 pm, Call duration 25 min.
2. 1/6 Outgoing call 4:12 pm, Call duration 1 min.
3. 1/6 Incoming call 4:29 pm, Call duration 3 min.
4. 1/13 Outgoing call 5:37 pm, Call duration 28 min.
5. 1/15 Outgoing call 10:47 am, Call duration 1 min.
6. 1/15 Outgoing call 5:36 pm, Call duration 1 min.
7. 1/19 Incoming call 4:34 pm, Call duration 4 min.
8. 1/22 Outgoing call 4:57 pm, Call duration 2 min.
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12. 1/26 Incoming call 6:39 pm, Call duration 2 min.
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15. 1/28 Outgoing call 6:54 pm, Call duration 1 min.
16. 1/29 Outgoing call 7:50 am, call duration 27 min.
17. 2/1 Incoming call 5:07 pm, call duration 3 min.
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