

IN THE CRIMINAL COURT OF BRADLEY COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

MIRANDA CHEATHAM

)
)
)
)
)

No. 2017-CR-206

JUDGE FREIBERG

FILED

2020 JUL 31 PM 2:13

GAYLA H. MILLER
CRIMINAL COURT

MOTION FOR CONTINUANCE

Comes now the Defendant, Miranda Cheatham (hereafter "Defendant" or "Mrs. Cheatham"), by and through counsel, and moves this Honorable Court for a continuance of the hearing scheduled for August 14, 2020. In support thereof, Defendant would state as follows:

1. Mrs. Cheatham filed her Motion for Judgment of Acquittal or in the Alternative, Motion For New Trial, on or about July 9, 2020. In said Motion, she has specifically argued that the State committed a number of acts that constitute prosecutorial misconduct both prior to, and during the trial in this matter. Said misconduct continues to this day. On July 16, 2020, counsel for Mrs. Cheatham finally obtained a recording that casts serious doubts on the validity and honesty of the prosecution in this case. Counsel for Mrs. Cheatham has spent months attempting to obtain the recording after first learning of its possible existence some time ago. Upon ~~information and belief, said recording was in the possession of police investigators and the~~ recording was known, or should have been known by prosecutors before the trial that took place in 2018. Nonetheless, the recording was never produced to defense counsel during discovery. Defense counsel, after filing a Freedom of Information Request obtained this recording on or about July 16, 2020.

2. The recording at issue involves a conversation between John Loach (half-brother of Decedent), and Danna Cheatham (sister of Decedent). The conversation took place after the

death of Decedent, but before the indictment and conviction of Mrs. Cheatham. The recording outlines an affair between Danna Cheatham and D.A. Steve Crump and that Danna Cheatham was effectively threatening/blackmailing D.A. Crump to prosecute the case at issue and to obtain a conviction.

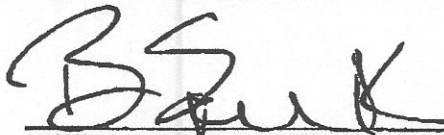
3. The recording indicates not only a clear conflict of interest within the District Attorney's Office but also casts a significant shadow on the legitimacy of the actual prosecution of the case. If D.A. Crump was being blackmailed to prosecute the case, then it is safe to say that justice and truth played no part in the process. Had the recording been produced before trial, Mrs. Cheatham's defense team would have been able to investigate the claims therein and determined the impact they may have had on the prosecution's handling of the case. Naturally, the State's suppression of this recording raises serious questions as to what other evidence they may have kept hidden and failed to produce before or during the trial. If the D.A. was being blackmailed to prosecute the case and to obtain a conviction, then it is highly likely that exculpatory evidence was kept from defense counsel. Further troubling to the matter, is the fact that D.A. Crump himself is the one who presented the evidence to the Grand Jury. With such a clear conflict of interest, not only should D.A. Crump not have had no part in choosing and presenting the evidence to the Grand Jury, their office should have had no part at all in the prosecution's strategy, the determination of what evidence was to be produced to Defendant, nor should they have exerted any influence into the investigation itself. In an abundance of caution, D.A. Crump should have recused himself from any participation in the case as there now exists a clear perception of impropriety.

4. As a result of the recording, Defendant needs additional time to investigate the claims as stated in the recording, to obtain certain items of evidence referenced in the recording,

and to pursue avenues of discovery that are likely to produce new relevant and clear Rule 16 discoverable evidence.

WHEREFORE, Defendant requests a continuance of the hearing on her Motion for Acquittal or in the Alternative a New Trial to allow further discovery into the facts and issues stated above.

Respectfully submitted,

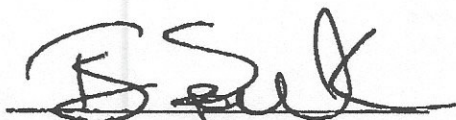

William M. Speck, BPR# 020533
Attorney for Defendant
631 Cherry Street
Chattanooga, TN 37402
(423) 531-2800

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 this pleading to the offices of such parties or by placing a true and exact copy of this pleading in the United States Mail, addressed to such party at his or her office and with sufficient postage thereon to carry the same to its destination.

District Attorney General
P.O. Box 1351
Cleveland, Tennessee 37364-1351

This the 30 day of July, 2020.

By: 
BILL SPECK

IN THE CRIMINAL COURT OF BRADLEY COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

MIRANDA CHEATHAM

)
)
)
)
)

No. 2017-CR-206

JUDGE FREIBERG

2020 JUL 31 PM 2:14

GAYLA H. MILLER
CRIMINAL COURT

FILED

SUPPLEMENT TO MOTION FOR JUDGMENT OF ACQUITTAL
OR IN THE ALTERNATIVE, MOTION FOR NEW TRIAL

Comes now the Defendant, Miranda Cheatham (hereafter "Defendant" or "Mrs. Cheatham"), by and through counsel, would file her Supplement to her Motion for Judgment of Acquittal or in the Alternative, Motion For New Trial, and in support would state as follows:

INTRODUCTION

Mrs. Cheatham filed her Motion for Judgment of Acquittal or in the Alternative, Motion For New Trial, on or about July 9, 2020. In said Motion, she has specifically argued that the State committed a number of acts that constitute prosecutorial misconduct both prior to, and during the trial in this matter. Said misconduct continues to this day. On July 16, 2020, counsel for Mrs. Cheatham finally obtained a recording that casts serious doubts on the validity and honesty of the prosecution in this case. Counsel for Mrs. Cheatham has spent months attempting to obtain the recording after first learning of its existence some time ago. Upon information and belief, said recording was in the possession of police investigators and was known, or should have been know by prosecutors before the trial that took place in 2018. Nonetheless, the recording was never produced to defense counsel during discovery and its very existence appears to have been kept a closely guarded secret.

NEWLY OBTAINED EVIDENCE

The recording at issue involves a conversation between John Loach (half-brother of Decedent), and Danna Cheatham (sister of Decedent). The conversation took place after the death of Decedent, but before the conviction of Mrs. Cheatham. A brief summary of the conversation between Mr. Loach and Ms. Dana Cheatham is as follows:

The conversation begins with Mr. Loach asking Dana Cheatham whether she had heard that a woman named Karen Hodges¹ was having an affair with D.A. Steve Crump. Dana Cheatham states that D.A. Crump had been her personal attorney for three years and that she did not believe that he would "do anything to mess up the trial." (2:40).

Mr. Loach then confronts Dana Cheatham with the fact that he had heard that she herself was having an affair with D.A. Crump. She denies the claim initially until Mr. Loach informs her that he has photographs showing the two together. (2:53-3:23). D. Cheatham subsequently admits that she had an affair with D.A. Crump when he represented her as her attorney. (3:26). Dana Cheatham then states that she had made it be known that if D.A. Crump did not go forward with the murder trial, that she would make public the fact that they had "slept together" and that she would "fuck his whole life up." (3:38).

Dana Cheatham went on to admit that she had actually threatened D.A. Crump and that she would do whatever it took to let everyone know that the two had an affair. D.A. Crump responded to her threats assuring her that justice would be served and that "it would be done." (5:19-5:56).

She went on to state that she would get D.A. Crump "into trouble" and that she did not care because she was single and did not have a marriage to consider. (7:00, 15:20). D. Cheatham

¹ Karen Hodges is a close personal friend of Defendant.

stated that she knew D.A. Crump's wife Teresa and that she would tell her about the affair and that she also knew his children and even his daughter's boyfriend. (6:12). She further stated that D.A. Crump knew that she had a short temper and that she would tell on him if he didn't get the murder case going. (24:00). Dana Cheatham stated that she had threatened D.A. Crump in the last six months. (7:40).

Mr. Loach goes on to reiterate that he has two pictures of D.A. Crump and Dana

Cheatham as evidence of the affair. Dana Cheatham asks him to keep the photos so that she can use them against D.A. Crump if needed. (9:00).

Dana Cheatham then recounted how the affair began, how D.A. Crump had mishandled her personal lawsuit, how he had forced her to give professional massage services to his wife and children as a form of payment, etc. (10:00-11:00). Furthermore, Dana Cheatham recalled how D.A. Crump had been one of her massage clients for years. (22:50).

Mr. Loach and Dana Cheatham subsequently vent to each other their grievances against D.A. Crump, claiming in relevant part that the only reason that Decedent's case had not moved forward was because of D.A. Crump. (11:00-12:34). Mr. Loach claimed that he had a conversation with Detective Gibbs who informed him that D.A. Crump was the person not moving forward with the case. (12:50).

Dana Cheatham then claims that she would have D.A. Crump pulled off the case if required. (13:20). Dana Cheatham then asked that Mr. Loach send her one of the pictures so that she in turn could send it to D.A. Crump when he was at work along with the threat that if "something didn't happen soon" that everyone would learn of the affair. (14:45).

Dana Cheatham then states that "Mandy² is going to get her shit regardless." (18:30). She then effectively reiterates that she is willing to use the affair if required to get Mrs. Cheatham convicted for the death of Decedent. (19:00).

Dana Cheatham went on to recount when she had actually threatened D.A. Crump to his face about his handling of the present matter. She stated that he assured her that nothing in his personal life would affect his handling of Decedent's case. She further claims that she directly told him that she would not hesitate to call him out. (27:19).

LEGAL ARGUMENT

I. THE STATE HAS VIOLATED RULE 16.

Rule 16 requires the State to produce certain materials upon receiving a discovery request from the defense:

Documents and Objects. Upon a defendant's request, the state shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, if the item is within the state's possession, custody, or control and:

- (i) the item is material to preparing the defense;
- (ii) the government intends to use the item in its case-in-chief at trial; or
- (iii) the item was obtained from or belongs to the defendant.

Tenn. R. Crim. P. 16(a)(1)(F) (emphasis added).

The definition of materiality is not restricted to exculpatory evidence because the discovery of inculpatory evidence may enable the defendant to " 'alter the quantum of proof in his favor' in several ways: by preparing a strategy to confront the damaging evidence at trial; by conducting an investigation to attempt to discredit that evidence; or by not presenting a defense which is undercut by such evidence." *United States v. Marshall*, 132 F.3d 63, 68 (D.C.Cir.1998).

² "Mandy" is a reference to Defendant Miranda Cheatham.

In order to be material, the discoverable item must "significantly help[] in 'uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment and rebuttal.'" *United States v. Gaddis*, 877 F.2d 605, 611 (7th Cir.1989) (quoting *United States v. Felt*, 491 F.Supp. 179, 186 (D.D.C.1979)); *Lloyd*, 992 F.2d at 350 (relying upon *Felt's* definition of materiality). The Tennessee Court of Appeals has previously defined the phrase "material to the preparation of the defendant's defense" using this definition: a tangible

object under Rule 16(a)(1)(C) is material " 'if there is a strong indication that [the evidence] will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony or assisting impeachment and rebuttal.' " *State v. Hershel Clark*, No. 02C01-9112-CR-00273, Shelby County, slip op. at 12 (Tenn.Crim.App. June 2, 1993) (quoting *Felt*, 491 F.Supp. at 186).

Rule 16(c) goes on to explain that:

A party who discovers additional evidence or material before or during trial shall promptly disclose its existence to the other party, the other party's attorney, or the court if:

- (1) the evidence is subject to discovery or inspection under this rule, and
- (2) the other party previously requested, or the court ordered, its production.

In the present matter, the State was in possession of a recording that casts serious doubts

on the legitimacy of the prosecution and ultimately the State's choice of theories. Upon information and belief, the recording at issue was produced to Detective Gibbs before the trial. Items were "within the state's possession, custody, or control" when they were in the officer's file. *State v. Goodman*, 643 S.W.2d 375, 379 (Tenn.1982). The recording appears to have been carefully guarded before, during and after the trial, as it took Mrs. Cheatham's current counsel months to obtain it after first becoming aware of its existence.

The recording indicates not only a clear conflict of interest within the District Attorney's Office but also casts a significant shadow on the legitimacy of the actual prosecution of the case. If D.A. Crump was being blackmailed to prosecute the case, then it is safe to say that justice and truth played no part in the process. Had the recording been produced before trial, Mrs. Cheatham's defense team would have been able to investigate the claims therein and determined the impact they may have had on the prosecution's handling of the case. Naturally, the State's suppression of this recording raises serious questions as to what other evidence they may have kept hidden and failed to produce before or during the trial. If the D.A. was being blackmailed to prosecute the case and to obtain a conviction, then it is highly likely that exculpatory evidence was kept from defense counsel. Further troubling to the matter, is the fact that D.A. Crump himself is the one who presented the evidence to the Grand Jury. With such a clear conflict of interest, not only should D.A. Crump and his office not have had a part in choosing and presenting the evidence to the Grand Jury, he and his office should not have had a part at all in the prosecution's strategy, the determination of what evidence was to be produced to Defendant, nor should he have exerted any influence into the investigation itself. In an abundance of caution, D.A. Crump should have recused himself from any participation in the case as there now exists a clear perception of impropriety.

II · REMEDY FOR DISCOVERY VIOLATIONS

Under Tennessee Rule of Criminal Procedure 16(d)(2):

(2) *Failure to Comply with a Request.* If a party fails to comply with this rule, the court may:

(A) order that party to permit the discovery or inspection; specify its time, place, and manner; and prescribe other just terms or conditions;

(B) grant a continuance;

(C) prohibit the party from introducing the undisclosed evidence; or

(D) enter such other order as it deems just under the circumstances.

Tenn. R. Crim. P. 16(d)(2).

A trial court has "wide discretion in fashioning a remedy for non-compliance with a discovery order." *State v. Downey*, 259 S.W.3d 723, 737 (Tenn. 2008). In sanctioning a failure to comply with discovery, the court should consider the individual circumstances of the case and fashion a remedy which is effective and appropriate. *Collins*, 35 S.W.3d at 585. A trial court can decide to dismiss an indictment. *State v. Merriman*, 410 S.W.3d 779, 791 (Tenn. 2013); *State v. Harris*, 33 S.W.3d 767, 769 (Tenn. 2000).

"Although Rule 16 does not explicitly provide as one of the sanctions the dismissal of the indictment after failure to comply with a discovery request or order, the rule does provide that the court may enter such sanction 'as it deems just under the circumstances.'" *Downey*, 259 S.W.3d at 737 (quoting Tenn. R. Crim. P. 16(d)(2)(D)); see *Collins*, 35 S.W.3d at 585 (concluding that authority to dismiss "is apparent" under the Rule); *Street*, 768 S.W.2d at 710 (noting that the sanction of dismissal is not explicit but present by implication). Dismissal is appropriate in circumstances where the court has "no effective sanction for failure to comply with its order" other than dismissal. *Collins*, 35 S.W.3d at 585. Accordingly, while the trial court is certainly vested with the power to dismiss based on a discovery violation, "that power should be used sparingly and only when necessary to avoid irremediable prejudice to Defendant from discovery violations." *Rélicka Dajuan Allen*, 2009 WL 348555, at *7. "[A]chieving the underlying principles of fair and efficient discovery must be the goal of a trial judge in fashioning a remedy for noncompliance." *State v. Michael D. Street*, No. M2004-00299-CCA-R9-CO, 2005 WL 1692948, at *3 (Tenn. Crim. App. July 20, 2005).

More frequently, however, the Courts of Appeal have determined that less extreme sanctions are adequate to remedy any prejudice suffered from a violation of the rules of discovery. In the present matter, less extreme sanctions simply cannot remedy the prejudice suffered by Mrs. Cheatham. Therefore, dismissal is required.

Dismissal with prejudice represents an extreme sanction rarely employed to remedy delayed discovery. *State v. Giles*, 493 S.W.3d 504, 521 (Tenn. Crim. App. 2016). Therefore, when the prosecution has failed to disclose discoverable evidence, the burden of proving “the degree to which the impediments to discovery hindered trial preparation and defense at trial” falls on the defendant. *State v. Brown*, 836 S.W.2d 530, 548 (Tenn. 1992). The trial court should consider what prejudice, if any, the defendant may suffer when determining whether to grant a continuance, suppress evidence, dismiss the charges, or grant some other relief. A court should consider whether any prejudice can be removed by lesser means when imposing a sanction. *State v. Briley*, 619 S.W.2d 149, 152 (Tenn. Crim. App. 1981).

The Court of Appeals has enumerated the following factors to be considered in determining prejudice:

the proximity to trial; the degree to which an aggrieved party was otherwise aware of the undisclosed evidence or should have reasonably been aware in time to have investigated and prepared for the undisclosed evidence’s introduction; the importance of the evidence and of its disclosure; the degree to which the evidence is merely cumulative of other evidence bearing on the same or a similar point; the availability and likely effectiveness of less drastic sanctions; the failure of an aggrieved party to seek an alternate remedy; the length of delay in complying with the required disclosures; and whether the failure to comply with discovery rules was willful or inadvertent so as to gain a prejudicial or tactical advantage.

Michael D. Street, 2005 WL 1692948, at *4; see also *State v. Danny Jerome Jones*, No. 01-C-01-9307-CR00233, 1994 WL 369728, at *4 (Tenn. Crim. App. July 14, 1994) (noting that the trial court should consider the reason for the failure to comply, the time between production of

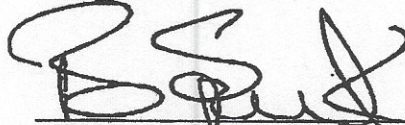
the evidence and trial, the prejudice resulting from untimely disclosure, and any additional circumstances).

Here, the prosecution failed to produce the recording before or during the trial, and Defendant did not first discover that the State had it in its possession until months after the trial. The recording was produced by the State after Defendant was forced to file a Freedom of Information Request.

Evaluating the factors in *Street*, the disclosure of the recording did not take place until well after trial. The defense was not aware of the recording before trial and thus was not able to fully investigate it as part of the overall defense strategy. Had Defendant been aware of the recording and the clear potential prosecutorial misconduct on the part of D.A. Crump, it would have requested a complete recusal on his part. It is inconceivable that Mrs. Cheatham received a fair trial if the prosecuting D.A. was being blackmailed/threatened to secure a conviction. The failure to produce the recording was not inadvertent, but was most likely calculated to not only avoid casting genuine and well-founded doubt on the prosecution and ultimate conviction, but also to shield D.A. Crump of any embarrassment the recording may produce.

Dismissal is appropriate "only when necessary to avoid irreparable prejudice to Defendant from discovery violations." *Rélicka Dajuan Allen*, 2009 WL 348555, at *7. The current matter is a textbook example of when a discovery violation should result in acquittal. The withholding of the recording by the State has resulted in irreparable harm to Mrs. Cheatham's defense. As such, Mrs. Cheatham's conviction should be overturned and the indictment against her dismissed.

Respectfully submitted,



William M. Speek, BPR# 020533
Attorney for Defendant
631 Cherry Street
Chattanooga, TN 37402
(423) 531-2800

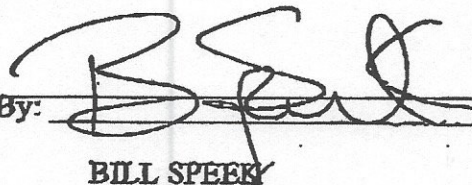
CERTIFICATE OF SERVICE

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 this pleading to the offices of such parties or by placing a true and exact copy of this pleading in the United States Mail, addressed to such party at his or her office and with sufficient postage thereon to carry the same to its destination.

District Attorney General
P.O. Box 1351
Cleveland, Tennessee 37364-1351

This the 30 day of July, 2020.

By:



BILL SPEEK