

Russell M. Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

V.

*

Indictment:

*

CR 2000433

*

TRAVIS MCMICHAEL

*

GREG MCMICHAEL

*

WILLIAM R BRYAN

*

2.2 AND 2.4

STATE'S RESPONSE TO DEFENDANT'S BRADY MOTION

The State is well aware of its duty under *Brady v. Maryland*, 373 U. S. 83 (1963) and the criteria for *Brady* set out in *Biggins v. State*, 322 Ga. App. 286 (2013) to provide the Defendant with evidence favorable to the defendant, and material to his guilt or punishment, including impeaching evidence.

"*Brady* requires information to be revealed only when it is 'possessed by the prosecutor or anyone over whom the prosecutor has authority.' [Cit.]" *Zant v. Moon*, 264 Ga. 93, 100 (440 S.E.2d 657) (1994); *Owen*, supra at 69, n. 2. Although in *Kyles v. Whitley*, 514 U.S. 419 (115 S. Ct. 1555, 131 L. Ed. 2d 490, 508) (1995), the Supreme Court stated that "the individual prosecutor has a duty [under *Brady*] to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police," it is reasonable to surmise that persons "acting on the government's behalf in the case" refers to those over whom the prosecutor has authority. Whether a person is on the prosecution team and subject to the authority of the prosecutor depends in each case on the extent of interaction, cooperation, and dependence of the agents working on the case. *Zant*, supra at 100." *Ferguson v. State*, 226 Ga. App. 681, 684 (1997).

The prosecution does not have an obligation to seek evidence of which it has no knowledge or which is not in its possession. *United States v. Luis-Gonzalez*, 719 F.2d 1539, 1548 (11th Cir. 1983). In other words, the State can't provide something

it has no knowledge of, nor can it compel other entities, not under its authority, to go on fishing expeditions, to satisfy the suspicions of the defendants that an entity might have some exculpatory information. This is especially true in this case, where the crime is captured on video and many of the facts are not in dispute.

Specifically addressing defendants ten areas of inquiry:

- (a) All videos that relate to 220 Satilla Drive – Completed.
- (b) All Body cam or patrol car video from Feb. 11, 2020 – Completed.
- (c) All communication between Governor Kemp and Vic Reynolds, Director of the GBI, about this case – the State has no knowledge of this and has no authority over Governor Kemp or Vic Reynolds.
- (d) All records maintained by the Civil Rights Division of the Department of Justice relating to this case – none of this is in the possession of the District Attorney Pro Tempore and the State has no authority to compel the U.S. Department of Justice to disclose any information about its ongoing investigation.
- (e) All materials relating to FBI Case Number 343 ATA3264500 - none of this is in the possession of the District Attorney Pro Tempore and the State has no authority to compel the FBI to disclose any information about its ongoing investigation.
- (f) All records maintained by the United States Attorney for the Southern District of Georgia about this case - none of this is in the possession of the District Attorney Pro Tempore and the State has no authority to compel the United States Attorney for the Southern District of Georgia to disclose any information about his offices' ongoing investigation.
- (g) The State has provided all information in its possession about the victim in this case. It should be noted that the defense has served the State with several documents about the victim, thus demonstrating that the defense is capable of obtaining all the information listed in this section.
- (h) Copies of citizen complaints, internal affairs investigations or correspondence relating to potential lawsuits against any officer from the Glynn County Sheriff's Office or any prosecutor ever involved in any way in this case - the

State has no knowledge of this and has no authority over the other preceding District Attorney's Offices, nor the Glynn County Sheriff's Office.

(i) Copies of any lawsuit or ante litem notice filed on behalf of the Arbery family are either public record or unknown to the State at this time.

(j) Telephone records and social media accounts of Ahmaud Arbery – Mr. Arbery did not have a cellphone nor any social media presence at the time of the murder.

The State is well aware of its duty under *Brady* to provide the Defendant with evidence favorable to the defendant, and material to his guilt or punishment, including impeaching evidence. The State will continue to provide such information with the understanding that the State has no authority over many of the entities and personnel listed in defendant's motion. The Cobb County District Attorney's office, acting as District Attorney Pro Tempore, may be purposefully and intentionally excluded from other investigations and prosecutions. And the State may be unable to compel other law enforcement entities to engage in fishing expeditions.

This the 29th day of January, 2021.

/S/ Linda J. Dunikoski

Linda J. Dunikoski

State Bar # 233887

Senior Assistant District Attorney

District Attorney Pro Tempore

Cobb Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served opposing counsel with a true and correct copy of the above 2.2 and 2.4 State's Response to Defendant's Brady Motion via the Odyssey E-File System to:

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This the 29th day of January, 2021.

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