

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

*

1.15

STATE'S RESPONSE TO DEFENDANTS MOTION TO REVEAL ALL DEALS
MADE WITH STATE WITNESSES

Under *Brady v. Maryland*, 373 U. S. 83 (1963) and *Giglio v. United States*, 405 U. S. 150 (1972), the state is under a duty to reveal any agreement, even an informal one, with a witness concerning criminal charges pending against that witness, and a failure to disclose such an agreement constitutes a violation of the due process requirements of *Brady* and *Giglio*.

The State is well aware of its duty under *Brady* 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. This includes revealing any "deal" made with any State's witness. See also *Colbert v. State*, 345 Ga. App. 554 (2018).

"Brady does not impose an affirmative obligation on the prosecution to seek out information for the defense, even if such information is more accessible to the prosecution than to the defense." *Lariscey v. State*, 254 Ga. 241, 243 (1985) (citing *Hines v. State*, 249 Ga. 257, 258 (1982)); See also *Bacon v. State*, 207 Ga. App. 39, 40 (1993).

"*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 State is well aware of its duty under *Brady* and *Giglio* and will provide such information as it becomes available, 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. In addition, the State may be unable to compel other law enforcement entities to engage in fishing expeditions.

This the 29th day of January, 2021.

/S/ Jesse Evans

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District Attorney Pro Tempore
Cobb Judicial Circuit

/S/ Linda J. Dunikoski

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Senior Assistant District Attorney
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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 1.15 STATE'S RESPONSE TO DEFENDANTS MOTION TO REVEAL ALL DEALS MADE WITH STATE WITNESSES via the Odyssey E-File System to:

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This the 29th day of January, 2021.

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