STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Tamika Suttles,

Defendant.

Court File No. 62-CR-10-1465

DEFENDANT'S OMNIBUS CLOSING ARGUMENT

INTRODUCTION

This matter was heard upon Defendants' motions at the Omnibus hearing.

Evidence was taken from: Sgt. Strickland, Tamika Suttles, and Daniel Drljic.

STATUS OF OMNIBUS MOTIONS:

1. Motion to dismiss under State v. Florence, due to "exonerating" evidence, and that State lacks "significant" evidence/probable cause to advance to trial in face of such evidence. **This motion was submitted to the Court.**

2. Motion re Brady/Trombetta violations. **This motion was submitted to the Court**.

3. Motion to dismiss for lack of probable cause due to lack of neutral investigation. **This motion was submitted to the Court.**

4. Motion to exclude English's purported "recantation." **This motion relates to trial (not Omnibus).** The "recantation" is in the Record for the Omnibus. The Prosecution agreed that English must testify in person at trial, and that the guilty plea transcript cannot be presented to the jury in lieu of live testimony (that can be cross examined).

5. Motion for disclosure of CRI. Must disclose CRI's who will testify at trial. **The Prosecution agreed to determine whether Nolan is a CRI for Minneapolis.**

CLOSING ARGUMENT ON MOTIONS SUBMITTED TO THE COURT

FACTS ELICITED AT THE OMNIBUS HEARING

The following facts (many of which are "exonerating" under *State v. Florence*) were elicited at the Omnibus hearing:

Tamika Suttles testimony:

1. Suttles testified that she had been called in the early morning hours by Jermaine English, a client at the tattoo parlor, and came thinking she was going to give someone a "ride." She heard a white male in the background, and a female who freaking out. The story from Jermaine was that his friend needed to move his things right away because his woman was freaking out.

2. She traveled down City streets that would have been captured on video, and she specifically told the police to secure that video (that would prove when she traveled, what time, etc.).

3. She did *not* arrive in a car with Jermaine and/or with Drljic. (This directly counters the "guilty plea proffer" of English).

4. She arrived at a spot she could not tell if it was correct.

5. A white male ("Joe") emerged from the building and put some things in the back of her car's trunk. That was consistent with someone wanting to move their personal belongings. She could see a woman in the upstairs window, and assumed this was the girlfriend who had been freaking out.

6. Suttles' description of "Joe" was pretty detailed, white male, brown jacket, looks like "Jason Priestly."

7. She had to urinate, and looked for a spot. When police cars entered the area, she had just been pulling her pants down and felt embarrassed and froze.

8. She tried to tell police about Joe. Joe was there, talking to police, trying to blame her.

9. Suttles knows the background of Drljic and assisted by taking a cell phone call and letting police know that Drljic and English wanted to come out of the building.

10. On her own, Suttles decided to tape-record a conversation with Sgt. Strickland.

Evidence from Sgt. Strickland:

Live testimony of Sgt. Stickland is in plain text or bolded. Portions of the tape-recorded interview of Sgt. Strickland by defense counsel are <u>underlined</u>:

1. He began investigating the burglary on December 6, 2009. He went to the LEC where he successfully interviewed Tamika Suttles and Daniel Drljic. Jermaine English began to speak to him, but then declined and asked for a lawyer.

2. Suttles had described a white male who had put items into the trunk of her car.

3. Strickland then indicated he "presented the case for charging," but it is unclear what that means.

4. He next went over to the businesses that had been burgled, to determine what was missing and what the value was.

5. On December 15, 2009, Jermaine English came to the Western District to talk to Strickland and to exculpate Suttles and Drljic, and told Strickland that it was his (English's) idea. Strickland had determined that English had an extensive history with burglaries. English had stated he had wanted to get money for his cantina at the Hennepin County workhouse where he had to report <u>for burglary, and which he did serve</u> (Tr. p. 2-3). English did not want the session tape-recorded, and Strickland admitted that that could be because English wanted to be able to change his story later: it gave him something to "bargain" with with the Prosecutor. English further told Strickland:

- He had met a white male that lives above the stores known as "Joe."
- That English would smoke crack with "Joe."
- That English would be going to jail and wanted money for his cantina.
- That English decided to call Drljic for "muscle" (Strickland admitted the police report notes of what English said say *nothing* about Drljic being an "enforcer" – just "muscle").
- That Drljic had done some tattoos for English.
- That "Joe" had said he had no money for would give him some items that he had in his storage locker in the basement.

- That English called Suttles and Drljic because there was too much to carry and he needed a ride.

See also Att. A to the initial moving papers of Defendants.

6. Strickland requested a list of tenants in the building that also included the businesses, and got a list of 3 tenants that fit the description and age of the "Joe" that Suttles had described. (See also Interview Tr. p. 6-13 (p. 13 *this is the first that the Defense heard of the "letter" that was clearly in the Prosecutor's file*). Sergeant Strickland admitted on cross that he names of these potential suspects were not included in the police report. Strickland admitted in the audiotaped Interview that he had gotten rid of these notes. (Tr. p. 10).

Q. And that list includes this Thomas Nolan?

A. Yes.

Q. All right. Do you have that?

A. No, that was part of the same thing. That as the list that the owner gave me. And I actually got rid of the copy. I didn't want it laying around.

7. Sergeant Strickland admitted that the business owners got "pissed off" that he was investigating Suttles' story and trying to locate "Joe."

8. Strickland admitted that Thomas Nolan, a tenant in the building, fit the description of "Joe." He admitted that some people do use their middle names and that Nolan's middle name was consistent with "Joe." (And that that is in the police report.) In the interview, Strickland admitted that the only one who fit the

description of "Joe" was the one who went out and talked to the cops. (Tr. p. 6-7). Strickland admitted in the Omnibus and also in the Interview that sometimes those who commit the crime call 911.

9. Strickland also admitted that he had been called by his Commander named in the letter that Mr. Brown wrote to the County Attorney. He also admitted that he did not do any further investigation to locate "Joe" following those occurrences.

9. Strickland did admit, on vigorous cross, that he did say to Tamika Suttles, thought it was just a couple of weeks ago. He did tell her that he returned the money to her, because "I didn't think you were involved." (See also transcript submitted with Defendants' initial moving papers.)

10. Sergeant Strickland testified that the computers, printers, and other property allegedly stolen from the building was *returned* (meaning not retained) to the property owners in December 2009. That is consistent with Ramsey County deciding not to charge out this case. At any rate, the physical evidence no longer exists, Sgt. Strickland admitted that "chain of custody" had been lost. Further, the items were not fingerprinted before they were "returned."

11. Sergeant Strickland's testimony makes it clear that all of the ways to prove that Thomas "Joe" Nolan touched the physical evidence – are gone.

12. Strickland also admitted that the liquor that was stacked in the hallway (apparently outside the actual rented space of the liquor store, but still inside the

building) was never removed from the building. It was never fingerprinted by police. And it is not now in evidence in the police property room. It is a logical inference that the liquor was returned to the liquor store and the liquor store had no actual loss. Strickland stated that nothing from the liquor store had been found in Suttles' trunk or on Drljic's person. (Tr. p. 21).

13. Strickland admitted that the computer had never been found – it was *not* in the trunk of Suttles' car. And that that means that there could have been another person involved.

14. Strickland never tried to get a search warrant for Thomas Nolan's apartment. (See also Interview Tr. p. 18).

15. Strickland admitted that no street video had been retained. But that it would show what cars were passing by and when.

16. The property taken from the art store was old computer parts, and the police department never valued them. (See Tr. p. 22).

17. Strickland checked, and none of the monies missing from the art store were found on Suttles. Her cash was returned to her.

18. Although latex-type gloves were found in Suttles' car, Strickland understood that she and Drljic worked in a tattoo parlor and used those gloves in their work. (See also Tr. p. 24).

Drljic testimony:

Daniel Drljic also testified, explaining what may appear at first blush to be strange behavior, but upon learning how Drljic got called by English, how English took him into a dusty spot that looked like storage, and that it was only upon seeing the stacked liquor that Drljic caught on – the testimony was exonerating.

Drljic also explained his fear of guns having been shot at during ethnic cleansing in Bosnia, and how he retreated into the building when he saw police because he did not want to be shot.

1. <u>TO DISMISS FOR LACK OF EVIDENCE UNDER STATE v. FLORENCE</u>.

Defendants submit that the Omnibus evidence shows that there are not substantial grounds for this prosecution. And, that the prosecution, apparently abandoned at one point, was "re-constituted" when the owner of the building wrote to the County Attorney, copy to the City Council member, and Chief of Police. The evidence is consistent with a prosecution that was abandoned, and the property returned to its owners, only later to be "reconstituted" upon receiving the letter that is Exhibit 1. Note that the very charge that the building owner suggests in his letter (Minn. Stat. §609.582, subd. 2), *was charged in this case.*

Sergeant Strickland admitted that the people associated with the Art Store (and owning the building) got "pissed off" when he tried to determine the identity of "Joe." And the timeline is consistent with Strickland thereafter abandoning that

investigation, and destroying evidence that would have assisted the defense in locating the "alternate perpetrator."

Further evidence shows that the lead investigator said to Tamika Suttles (while she rolled an audiotape) that he would not have returned the money to them ($16,000) if he "thought you were involved." (See transcript of that conversation, submitted with Defense initial motion papers). Sergeant Strickland admitted during the Omnibus hearing that he had said that to Ms. Suttles in a conversation that he believed had occurred only a couple of weeks prior, that he would not have returned their money if he thought "you were involved."

The investigation purposely diverted away from exculpatory evidence (and exculpatory evidence of alternative perpetrators was destroyed). Then there was a hasty "investigation" that resulted in charges against Suttles and Drljic.

> The object or purpose of the preliminary investigation is to prevent the hasty, malicious, improvident and oppressive prosecutions, to protect the person charged from open and public accusations of crime, to avoid both for the defendant and the public the expense of a public trial, and to save the defendant from the humiliation and anxiety involved in a public prosecution, and to discover whether or not there are substantial grounds upon which a prosecution may be based.

State v. Florence, 239 N.W.2d 892 (Minn. 1976).

The State has known since before this case was charged out, of exonerating evidence in the form of a statement to police by Jermaine English, that Defendants were *not* involved in the burglaries. (See police report of Sgt. Strickland, lead investigator at **Att. A**). The State clearly knew of the alternative perpetrator

evidence, and clearly destroyed it, and failed ever to disclose it to the Defense. Even the letter, which was clearly in the file of the Prosecutors, was not provided until the Defense learned *itself* of the letter from Sgt. Strickland.

Under State v. Florence, if Defendant offers exonerating evidence, the State must come forward with substantial evidence to be able to advance to trial. State v. Florence, *supra* at 894. The State lacks such evidence in this case. As discussed further below, even the Police Sgt. Investigator believes that these defendants were not involved.

Indeed, it appears that these defendants were charged because of pressure of the building owner (this is further discussed below). The State lacks "substantial" evidence to advance to trial and the case should be dismissed by the Court.

2. TO DISMISS OR SANCTIONS BECAUSE BRADY EVIDENCE NOT PRODUCED.

A. Basic Brady Requirements.

Both the Minnesota and U.S. Constitutions require the State to retain and to disclose evidence to criminal defendants. Due process requires that criminal defendants have the right to present a jury with evidence that might influence the verdict. State v. Hummel, 483 N.W.2d 68, 71 (Minn.1992). The state must disclose any evidence within its **possession** or **control** that "tends to negate or reduce the guilt of the accused as to the offense charged." Minn.R.Crim.P. 9.01, subd. 1(6). The State must disclose all exculpatory evidence, including **impeachment** evidence. State v. Pederson, 692 N.W.2d 452, 459 (Minn. 2005); U.S. v. Bagley, 473 U.S.

667(1985). Also, evidence of all deals with co-defendants must be disclosed. Giglio v. United States, 405 U.S. 150 (1972).

A "*Brady"* violation occurs when evidence that is favorable to the accused is suppressed, either willfully or inadvertently by the State, resulting in prejudice to the accused. *Id*. *Brady* does not require that the suppressed evidence be within the prosecuting attorney's actual knowledge. State v. Williams, 593 N.W.2d 227, 235 (Minn. 1999) ("a prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.").

B. State Violated Brady In This Case.

The State violated Brady in this case. The Sgt. Investigator in this case:

1. Believed that Defendants Suttles and Drljic were not involved (**Att. B**,[1] p. 7);[2] and
2. Was trying to investigate their side of the story, when the owner of the Art Store/building telephoned the Count Attorney's Office, and *the Sergeant Investigator was asked to stop investigating!* (**Att. B**, 4). The names of tenants obtained from the owner of the building was destroyed by Sgt. Strickland, and the information was *not* put into the police reports.

None of this was disclosed to the Defense, even though **#1** is exculpatory, and **#2** is impeachment evidence, as well as evidence of non-neutral investigation (see below).

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[1] To Defense initial moving papers.

[2] Att. B is a transcript of a conversation between Defendant Suttles and Sgt. Strickland. It was not done or taped at the behest of Defense counsel – but something that Suttles did on her own

Further, there is evidence that someone called the Mayor's Office, the County Attorney, etc., and pressured the case to be charged out. (**Att. B**, 1). This Brady evidence **#3** was not produced. That person's identity has not been disclosed, let alone who they talked to in government. Yet this had a major impact on why this was case charged out: it is impeachment evidence at a minimum.

Further, **#4**, the street camera footage from that area was not preserved[3] (it it was, it was not produced), and that evidence is now vital to Suttles proving that she drove herself to the *situs*, later, and in order to rebut the "recantation" of English. Therefore, the Defense is entitled to the presumption that it was exculpatory. State v. Schmid, 487 N.W.2d 539 (Minn. 1992).

The Defense should have been provided Sgt. Strickland's notes of the interview of Jermaine English, as that would be impeachment evidence (**#5**). Strickland has now testified that he no longer has the notes. They were clearly destroyed, despite police knowledge that they were exculpatory.

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because she felt the system was railroading her. Once it existed, Defense counsel asked that a transcript be prepared, produced it to the State, and cites it herein.

[3] The "*Trombetta*" rule relates to the State's duty to *retain* evidence. The State's intentional or bad-faith destruction of potentially exculpatory evidence implicates this rule and a defendant's constitutional due-process rights. California v. Trombetta, 467 U.S. 479, 485 (1984). "[F]ailure to collect potentially useful evidence is distinctly different than a destruction of evidence that is already extant." U.S. v. Martinez-Martinez, 369 F.3d 1076, 1087 (9th Cir. 2004), *certiorari* denied 543 U.S. 1013. State v. Schmid, 487 N.W.2d 539 (Minn. 1992) articulates the "*Trombetta*" rule in Minnesota: government's duty to preserve evidence on behalf of defendants is subject to the standard of materiality and to meet that standard, evidence must both: i) possess exculpatory value that was apparent before evidence was destroyed, and ii) be of such a nature that defendant would be unable to obtain comparable evidence by other reasonably available means. **If the police destroy evidence that is already in existence, the Defendant is entitled to a presumption that the evidence was exculpatory**. The subjective belief of police that the evidence was not exculpatory does not justify its destruction. *Schmid* at 541-2.

The evidence allegedly stolen from the art studio (**#7**) was initially inventoried, but later given back to the owner, chain of custody was broken, and no fingerprint evidence was retained. This prevents the Defense from testing those objects for fingerprints.

The liquor (**#8**) was *never* taken into evidence and never fingerprinted. Any hope that the Defense has of finding Thomas Nolan's prints on objects – has been interfered with because the State destroyed evidence.

Acquittal is an appropriate remedy. State v. Hill, 287 N.W.2d 918 (Minn. 1980) (negligent destruction by the police of evidence under subpoena by the defense could easily require a reversal and entry of a judgment of acquittal). Sergeant Strickland is to be commended, but the State should not be allowed to interfere with a neutral investigation, and then charge based on inculpatory evidence.

The entire contents of the deal with English must be disclosed. There was obviously a deal with English, and only part of it was disclosed in the guilty plea hearing. (**Att. C**, p. 2-3). However, the State has failed to disclose that English promised to recant his statement to Sgt. Strickland if he could plea to third degree only (**#6**). The Defense needs that information before trial.

If this case is not dismissed by the Court (or the prosecution) prior to trial, then Defendants request a *Brady* hearing before any conviction may be entered.

3. FAILURE OF NEUTRAL INVESTIGATION MEANS NO PROBABLE CAUSE.

Although the police sergeant *tried* to investigate – he was not allowed to do so. This was not a search for the truth. This was not a neutral investigation as required under the Fourth Amendment.[4] Whether directly pressured or not, the reality is that Sgt. Strickland abandoned the search for "Joe" (he was very close, already had his name), so the investigation was not neutral. The letter to the County Attorney pushed police in a certain direction, rather than trusting the skills and instincts of the lead investigator.

For these reasons (and as discussed above), this case should be dismissed. Probable cause is therefore lacking as a matter of law, see Kuehl v. Burtis, 173 F.3d 646, 650 (8th Cir. 1999) – an independent basis for dismissal.

CONCLUSION

There is no need for the Court to spend significant resources trying this case. The case should be dismissed for lack of probable cause to advance to trial.

ATTORNEYS FOR DEFENDANTS

Dated: August 10, 2010

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by_____

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[4] State v. Walker, 584 N.W.2d 763, 769 (Minn. 1998); Police cannot turn a "blind eye" to evidence that exculpates the citizen (BeVier v. Hucal, 609 F.2d 123, 128 (7th Cir. 1986)); an officer must consider all information available, not merely information which supports the arrest (Baptiste v. J.C. Penney Co., 147 F.3d 1252 (10th Cir. 1998)).