



July 22, 2010

VIA FACSIMILE AND US MAIL

CRIMIANL FILING—Second District
Court Administrator
15 W. Kellogg Blvd.
St. Paul, MN 55102

Re: State v. Drljic (62-CR-10-1464)
State v. Suttles (62-CR-10-1465)

Dear Court Administrator:

Enclosed please find for filing in State v. Suttles: Defendant's Notice of Motions and Motions, Witness List, Notice of Defenses, Jury Demand & Demand for Disclosures (Amended July 22, 2010).

Enclosed please find for filing in State v. Drljic - Defendant's Joinder in Suttles' motions (noted above).

Sincerely,

Jill Clark

JEC/PMK
Enclosure
C: Prosecutor

JILL CLARK, P.A. ATTORNEY AT LAW

2005 AQUILA AVENUE NO. • GOLDEN VALLEY, MINNESOTA 55427 • PHONE: 763-417-9102 • FAX: 763-417-9112 • E-MAIL: JILL@JILLCLARKPA.COM

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota,

Court File No. 62-CR-10-1464

Plaintiff,

vs.

Daniel Drljic,

Defendant.

**DEFENDANT'S NOTICE
OF MOTIONS AND MOTIONS,
WITNESS LIST, NOTICE OF
DEFENSES, JURY DEMAND &
DEMAND FOR DISCLOSURES
(Updated July 22, 2010)**

TO: State of Minnesota c/o Prosecutor of Record.

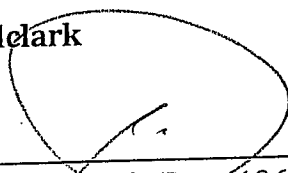
Defendant Daniel Drljic joins in the motions made by co-defendant Tamika Suttles,
and the remaining portions of her pleading dated July 22, 2010.

ATTORNEYS FOR DEFENDANT DRLJIC

s/jilleclark

Dated: July 22, 2010

by


Jill Clark, Esq. (196988)
Jill Clark, P.A.
2005 Aquila Av. N.
Golden Valley, MN 55427
(Tel.) 763 417-9102
(Fax) 763 417-9112

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota,

Court File No. 62-CR-10-1465

Plaintiff,

vs.

Tamika Suttles,

Defendant.

**DEFENDANT'S NOTICE
OF MOTIONS AND MOTIONS,
WITNESS LIST, NOTICE OF
DEFENSES, JURY DEMAND &
DEMAND FOR DISCLOSURES
(Amended July 22, 2010)**

INTRODUCTION

This case involves a Police Investigator who was doing his job investigating. He formed the opinion that these Defendants (Tamika Suttles and Daniel Drljic) were *not* involved in this burglary. Yet that information was not disclosed to the Defense. Further, that Investigator was *told to stop investigating* when he was on the trail of these defendants' innocence.

One of the real burglars, Jermaine English, came into the police station of his free will, and Sgt. Strickland recorded in his police report the highly exculpatory confession by English – that Suttles and Drljic were not involved.

But when English plead guilty (in order to prevent further charges being filed against him), the Prosecutor asking him *leading questions*, getting him to recant his earlier statement. That is not about the truth or justice.

The government's conduct in this case was outrageous.

SUMMARY LIST 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.
2. Motion re Brady/Trombetta violations.
3. Motion to dismiss for lack of probable cause due to lack of neutral investigation.
4. Motion to exclude English's purported "recantation."
5. Motion for disclosure of CRI. Must disclose CRI's who will testify at trial.

MOTIONS

1. TO DISMISS FOR LACK OF EVIDENCE UNDER STATE v. FLORENCE.

Defendant seeks an evidentiary hearing under State v. Florence, 239 N.W.2d 892 (Minn. 1976).

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**).

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).

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**, p. 7);¹
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).

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).

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.

¹ 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 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.

Further, #4, the street camera footage from that area was not preserved² (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).

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 Defense should also be provided Sgt. Strickland's notes of the interview of Jermaine English, as that would be impeachment evidence (#5).

² 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 entire contents of the deal with English must be disclosed. There was obviously a deal with English, and 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.

Also, it appears that was *another* statement of English (Att. B, p. 8-9). That has not been produced to the defense (#7). It is, at a minimum, impeachment evidence.

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.³ Someone told the police sergeant-investigator to stop investigating the theory that these defendants were innocent. For that reason alone, 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.

³ 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)).

4. **ENGLISH'S GUILTY PLEA PROFFER SHOULD BE EXCLUDED.**

The proffer of English made at his guilty plea hearing (Att. C) should be excluded from trial. Note the entirely leading question,

Q: "Is it true that when you gave that statement to the police, that was not true?"

A: "Yes, it was not true."

Att. C p. 18.

A. State Cannot Use Transcript Without Producing English.

First, the State cannot admit the transcript of the guilty plea proffer, and not produce English to be cross-examined by defendants. Crawford v. Washington.⁴

B. Recantation Should Be Excluded As Untrustworthy.

English's recantation was to leading questions, at the time of his guilty plea, should be excluded for lack of trustworthiness. Trial Court properly excluded recantation letter Hardemon v. City of Boston, 144 F.3d 24 (1st Cir. 1998). See also

⁴ In March 2004, the U.S. Supreme Court decided Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) which discussed that the important constitutional right to confront one's accusers requires that the finder of fact consider the actual witness testimony, and not a government official's summary of that testimony, and that the witness be available for cross-examination. Stated another way, *Crawford* prohibits a ruling by a trial court that certain documents are "reliable hearsay" and therefore admissible at trial under that exception to the hearsay rule. Documents prohibited as "reliable hearsay" include police reports.

- "Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with a jury trial because a defendant is obviously guilty" (124 S. Ct. at 1371);
- "the principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused" (124 S. Ct. at 1363);
- "interrogations by law enforcement officers fall squarely within" the category of "testimonial hearsay" prohibited by *Crawford* (124 S. Ct. at 1365).

Stallings v. Benson, 26 F.3d 817 (8th Cir. 1994) (recantation evidence properly excluded because untrustworthy); and United States v. Wilkerson, 656 F. Supp. 2d 22 (D.D.C. 2009) (recantation properly excluded because untrustworthy). *See also*, State v. Shabazzi, 1991 Minn. App. LEXIS 1158 (Minn. Ct. App. 1991) (evidence properly excluded as untrustworthy). The trial court can consider numerous factors in determining trustworthiness. *See* State v. Hansen, 312 N.W.2d 96 (Minn. 1981). The mere fact that a statement is under oath does not make it trustworthy.

This case was charged out because someone pressured the City and County. Then, the most vital evidence of innocence (that the police investigator believed they were not involved) was suppressed and not produced.

Then, the exculpatory statement of Jermaine English (which fit the statements by these defendants) was somehow turned into inculpatory evidence by the State. (Yet all of the statements of this individual were not produced, see above). And, English was improperly asked *leading questions* during his guilty plea proffer. State v. Hoaglund, 240 N.W.2d 4, 6 (Minn. 1976); Shorter v. State, 511 N.W.2d 743 (Minn. 1994); State v. Trott, 338 N.W.2d 248, 251 (Minn. 1983); State v. Ecker, 524 N.W.2d 712, 716 (Minn. 1994); State v. Raleigh, 778 N.W.2d 90, 95 (Minn. 2010) ("Hoaglund, Trott, Shorter, and Ecker Together, the cases make clear that we generally discourage the practice of establishing a guilty plea's factual basis by permitting counsel to ask leading questions of a defendant, with the court remaining silent.

Here, we discourage that practice yet again and encourage district courts to take an active role in asking direct questions of defendants during plea hearings.”)

C. **Fairness Requires Different Treatment of English Proffer.**

Due process requires treating defendants with fundamental fairness.

“[E]very criminal defendant has the right to be treated with fundamental fairness and afforded a meaningful opportunity to present a complete defense.” State v. Richards, 495 N.W.2d 187, 191 (Minn. 1992) (quoting California v. Trombetta, 476 U.S. 479, 485 (1984)). The Minnesota Supreme Court has considered “it fundamental that criminal defendants have a due process right to explain their conduct to a jury.” State v. Brechon, 352 N.W.2d 745, 751 (Minn. 1984).

It was fundamentally unfair to allow the prosecutor to question English at a guilty plea proffer (about topics that were *not* relevant to *his* guilt), memorializing them in transcript form, based on leading questions, without the Defense even being present. Defendants assert that that they had a right to be informed to this under-oath questioning of a co-defendant, to be present, and to ask questions. Note the *Ecker* Court’s criticism of a guilty plea in which defense counsel and the prosecutor asked extensive questions, but the court did not. See also State v. Brusven, 327 N.W.2d 591 (Minn. 1982), in which the Supreme Court criticized a trial court’s order that a defendant respond to questions from the prosecutor.

The Defense has had no opportunity to question this witness in advance of trial. It provides an unfair advantage to allow the very prosecutor who will try the case against these defendants, and "advance" questioning of a co-defendant-witness.

The Court should exclude any evidence of English's purported "recantation," order English to sit for an interview by Defense.

A prosecutor may not seek a conviction at any price. See State v. Salitros, 499 N.W.2d 815, 817 (Minn.1993). "Rather, the prosecutor is a 'minister of justice' whose obligation is 'to guard the rights of the accused as well as to enforce the rights of the public.'" *Id.* (citation omitted).

E. State Cannot Put On Perjured Testimony.

It is axiomatic that the prosecution cannot suborn perjury. "The Due Process Clause of the Fourteenth Amendment forbids the State from knowingly using perjured testimony." Knox v. Johnson, 224 F.3d 470, 477 (5th Cir. 2000) (citing Giglio, 405 U.S. at 153, 92 S. Ct. at 766). Elaborating on this principle, the Fifth Circuit has written:

In Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173, 3 L.Ed. 2d 1217 (1959), the Supreme Court made clear in no uncertain terms that due process is violated when the prosecutor obtains a conviction with the aid of false evidence which it knows to be false and allows to go uncorrected. It is immaterial whether or not the prosecution consciously solicited the false evidence. It is also immaterial whether the false testimony directly concerns an essential element of the Government's proof or whether it bears only upon the credibility of the witness. As the Court explained in Napue, "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." 360 U.S. at 269, 79 S. Ct. at 1177.

The State is on notice that Defendants intend to prove that English' recantation is false. The State should, of course, produce all statements of English to the Defense prior to July 27, 2010.

F. English Cannot Testify As To Legal Conclusions.

During his proffer, English said, in response to leading questions, that Defendants had lacked consent (he has no foundation for that), and that they committed "burglary" (a legal conclusion). It is axiomatic that the prosecutor should not be allowed to ask leading questions at trial. And, English should not be asked for legal conclusions - particularly those that are the province of the jury (whether defendants are guilty of burglary).

5. MOTION FOR DISCLOSURE OF CRI.

Defendant moves for disclosure of the identity of any and all CRI's or CI's, that are witnesses in the trial. The Defense contends that the State cannot avoid this motion by electing not to call a particular CRI or CI to the witness stand; if the witness has information about this case, disclosure is mandated, as the defense should also be allowed to call the witness(es).

6. MOTION TO COMPEL EVIDENCE.

To the extent evidence exists and was not destroyed, or not produced, Defendants move now to compel production pursuant to Rule 9.

NOTICE OF DEFENSES:

Pursuant to Minn.R.Crim.P. 9.02, subd. 1(3)(a), the Defendant intends to or reserves the right to rely upon the following Defense(s) at Trial:

- Self Defense
- Mental Illness or Deficiency
- Duress
- Alibi: following is the specific place or places where the Defendant contends she was when the alleged offense occurred: not riding in the car with English and Drljic (the 3 of them, as claimed by English in "recantation")
- Double Jeopardy
- Statute of Limitations
- Collateral Estoppel
- Defense under Minnesota Statutes Section 609.035
- Intoxication
- Entrapment and/or due process "outrageous government conduct" defense
- Others (specify):

JURY DEMAND:

Defendant elects:

- Trial by Jury⁵
- Trial by the Court at the Omnibus Hearing.

WITNESSES:

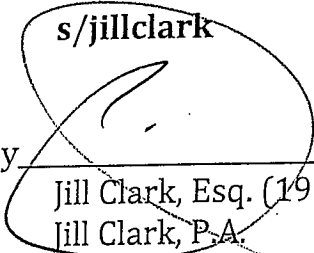
1. All eye-witnesses to the incident, including but not limited to Jermaine English and Thomas Nolan (see police report).
2. All police who were involved in the incident, investigated or made decision to refer for charging.
3. All property/store owners who claim their businesses were broken into/stolen from on December 6, 2010, including but not limited to Dana and Jim of Sharrett's liquors, the owner of the building, or the art store, etc.
4. Defendants (but this listing does not require defense to call them to testify).
5. Crime lab personnel, whether or not sworn officers.
6. Property and evidence personnel, whether or not sworn officers.
7. Foundation and rebuttal witnesses.

⁵ And such other evidentiary hearings as may be appropriate to effectuate defendant's rights/motions.

8. Jermaine English.
9. "Joe"
10. Robert J. McDowell (defense PI)

ATTORNEYS FOR DEFENDANTS

Dated: July 22, 2010

s/jillclark
by 

Jill Clark, Esq. (196988)
Jill Clark, P.A.
2005 Aquila Av. N.
Golden Valley, MN 55427
(Tel.) 763 417-9102
(Fax) 763 417-9112

Saint Paul Police Department
SUPPLEMENTAL OFFENSE / INCIDENT REPORT

Date and Time of Report

01/15/2010 10:24:00

Complaint Number Reference CN

09258604

Primary offense:

BURGLARY FORCED ENTRY, NIGHT, COMMERCIAL

Primary Reporting Officer: Strickland, Tyrone T

Primary squad:

Name of location/business:

Location of incident: 2389 UNIVERSITY AV W
ST PAUL, MN 55118

Secondary reporting officer:

Approver:

District: Western

Date & time of occurrence: 12/06/2009 04:18:00 to
12/06/2009 04:18:00

Site:

Arrest made:

Secondary offense:

Police Officer Assaulted or Injured:
Crime Scene Processed:

Police Officer Assisted Suicide:

NARRATIVE

On 12/15/09, I met with one of the suspects, English, Jermain Guy, 1/5/1981 arrested for burglary at this address. The suspect, English was brought to the SPPD Western district office by the other two suspects, Drljic, Daniel and Suttles, Tamika arrested with English. English said that he was told by his lawyer not to talk to me because he would be arrested. I told English that I only wanted to interview him to find out his part in the burglary and the part of the other two persons that were arrested with him. I told English whether he talked to me or not he would be free to go. English said that he would talk to me because he wanted to clear the other two suspects. English said that he didn't want a recording but would sign the Miranda right's form.

I read English his Miranda rights from form, PM 247.1-95R. I had English give a verbal yes and initial after each right was read to him to show he understood his rights. The interview wasn't recorded. English was given a copy of the right's from he signed. English said that he had met a w/m that lives above the stores at the corner of Raymond and University. English said that he and the w/m, that he only knows as , "Joe" would have drinks at the bar on University across from the liquor store. English said that he and Joe would smoke crack together. English said that he had fronted Joe some crack and wanted his money for the crack.

English said that he who go to the back alley and whistle and Joe would look out the window then come down. English said that Joe was larger than him and would pay him his money. English said that he would going to jail and wanted the money for his cantina while in jail. English said that he decided to call Drljic, Daniel for muscle, because he was bigger. English said that he knew Daniel because he had did some tattaos for English. English said that he directed Daniel over to Raymond and University and that met with Joe about the money he owned English.

English said that Joe told him he didn't have any money but would give him some items that he had in his storage locker in the basement. English said that when he saw the liquor and other items that he said that he could party before he went to jail. English said that he then called Suttles, Tamika because that had to much to carry and needed a ride. English said that after Tamika came that when the police showed up. English said that he was trying to get out and not be caught.

English said that they spoke to the police and were arrested.

ATT. **A**

Transcript of Sgt. Strickland

Key:

SS = Sgt. Strickland

TS = Tamika Suttles

SS Yeah what's up?

TS I'm finna lose my housing 'cause of all of this & I don't know all what's going on.

SS The County Attorney office (those guys at the office) decided they want to follow through so they called the Mayor's office, the City Council office, the County Attorney's office, complaining about a case wasn't charged. So the County Attorney charged it.

TS But I don't get it 'cause...

SS Did you get anyone to talk to the County Attorney yet?

TS No, they withholding evidence and not giving them everything. First, they say they got this, first they say they have the 911 call, now they're sayin' that they don't, then I mean it just so flakey! I don't know what to do. Then they talkin' about Jermaine talking about 'cause he's in trouble, he'd just rather say whatever just to get his own butt off. I'm scared, and I mean I cooperated. I believed in everything...

SS I know what you saying, ok, I don't know what Jermaine said.

SS I haven't seen or talked to him since he got out. I haven't talk to him since he went to the work house for a while. I haven't talked to him since then, so, uh, I think you need to

talk to your lawyer, see if they can meet with the County Attorney, or what they're gonna do. I don't know what they are going to do. It's not my decision if you get charged or not.

TS I mean, I mean, just the whole thing is crazy! I mean for one, I cooperated, for two, I had my own money! It's no reason, no way, no how, I didn't need that. Now all my money had to go to the lawyers for this, now!

SS It's not up to me getting charged; It's up to, you gotta talk to the County Attorney.

TS But, huh!

SS Yeah, I know! It's a bad deal just getting worse. Cause...

TS But then it's like, I don't get it, 'cause the white boy, the one, the same one that brung the stuff from the third window...

SS But you got to produce that guy!

TS That's the dude upstairs in the window, the one that's the same one that talked to the police. But now they are withholding saying that "that 911 call is something different." They rearranged the whole story, even the lawyer said that they are lying. But I don't know what to do. 'Cause she's like, Tamika, you just got shafted, basically and whoever did it, did it good! First, I'm like, okay, the white boy set up Jermaine, you know, 'cause just how the whole thing played out. You know, maybe Jermaine didn't know. But now he's talking about they say he talking, my lawyer talk, said he is sayin' something different. So maybe he knew he was setting up Dado which is who I'm with. I'm in the mixt of all this and I'm so scared I don't know what to do.

SS Okay, I don't know that! You know I followed up on this guy up there. I couldn't find that guy.

TS The same guy is the one, was the one outside the night that they came...

SS Ok, I got to talk to him on the phone; I met with him. He said that he's the one that called, and he didn't see any other white guys there, upstairs. (Why wasn't this produced?)

TS He was the one who came from upstairs.

SS Okay, you guys, your attorney got to do they work on it. I mean I went and found and tried to prove that you guys said it was another guy! I couldn't prove that.

TS So he said the same guy that they're saying called 911 is the same guy now that they're saying, um...

SS I don't know what they're saying down there. I'm just, all I did was I took my reports, I gotta go and get some more recordings so I can turn 'em in, but all I sent down there was recordings, uh, reports I took from you guys. That's all I sent down there & the fact that I went out there and talked to the business owners and I tried to find the guy you said was upstairs and then we took a stop up there....

TS That was the one who called 911.

SS Okay, but I can't prove that, I can, I can prove that he said, all he said was this, he said he didn't see no other white guys down there other than your boyfriend and he didn't see anybody else.

TS So that one that went up, called, 'cause he the one who dropped it in and then that's the one, I was pointing to the cops saying, that's him, that's him, that's him

SS I wasn't there though. I don't know that. I'm going by what the cop wrote in the report- going by the facts of what I read and found out about when I went out there and talked to the people, that's all I'm going by - I can't add no more than that - you know, and I thought even when I was talking to the guy who owned that art studio, and all that stuff in the d... he owns the whole building; he was getting pissed at me 'cause I was trying to prove or disprove whether there was another guy.

TS Uh huh...

SS An' I told him, he got pissed, he called the County Attorney on me...

TS Oh my goodness, but the same guy that called is the same one that put the stuff in the car.

SS Exactly (very quiet)

TS He had on a Dickie Jacket

SS yes (very quiet)

TS that night, if they

SS Yeah (very quiet)

TS check their cop car cameras,

SS That's right (very quiet)

TS He the one the same exact one, and that was what I was trying to tell them then...

SS But that's what you gotta tell your lawyer

TS I was trying, now everybody's playing durr.... Even the lawyer, even my lawyer saying they, the cops are good, covering this one up!

SS I don't know about that...

TS and, uh, either he's an informant or I don't know what going on something is wrong...

SS Sounds like every man for himself.

TS So, basically, screw us.

SS I'm just sayin' he might be lookin' out for himself, I don't know, that might be it, I don't know...

TS And, then it's like now she was talking 'bout cause the stuff they talkin' 'bout in evidence, that's the stuff I took out the trunk and showed you what he put in there.

SS We covered that, yes.

TS But, my finger prints are on it now.

SS Yeah, it was on there when you took it out and give it to them; yeah.

TS Yeah, but my finger print wasn't on it before, y'all would've got his prints.

You...that's what I was trying to tell you.

SS They got, a lot of that stuff had a lot of dust on it.

TS I know, that's what I'm saying still!

SS All right, so that stuff don't have fingerprints on it, won't hold fingerprints to it.

They check 'em and (inaudible) when they took it out of there.

TS So basically what if they try and say prints, and now my prints, and I was the one who took it out, just taking it out from what you told me!

SS That's, that's all the stuff your lawyer supposed to be takin' care of.

TS I know, but I'm just saying, I'm scared, cause ...

SS [talking at same time]

SS I understand, I understand that I can't do nothing about it.

TS Look at how I'm looking at it - I took you as a friend wanting the truth which I'm the type of person...

SS All I was doing was turning in what I got from you guys.

TS Right. And, and I touched it.

SS And what your boyfriend told you and what Daniel told me & what he told what Jermaine told that was attorney was saying.

TS Right. She said but I shouldn't of touched it. That was what my lawyer was saying 'cause they can try to, now the evidence that I touched...

SS It was in your trunk so we knew you had it.

TS Right, but my prints wasn't on it, ya'll could had his I could of showed ya'll who did it.

SS Okay, all right, but that's up to the prosecutor...

TS That's all, I'm not arguing with you, right now I'm just scared. They talking about puttin' a felony on me, and all I did was give a ride and it's like a nightmare that won't go away! And you seen, who would wanna do that with the amount of money that, you know what I'm sayin', I had.

SS Oh, I understand, that's why I gave it back to you! I didn't think you were really involved in it. And I couldn't prove you got it anywhere else, you know.

TS That's, I got, I got the 401k, I showed you all the tattoo stuff. You know (SS talking over) I just looked at that stuff.

SS Yeah, I understand that, that why I gave you the money back.

TS But now it like, I'm so scared, first and what happened to the ...when Jermaine came in and excluded us! What happened with that?

SS I wrote it up!

TS They said that, that's not in the report.

SS Yeah it is, they got the report.

TS They said him excluding us is not in there!

SS Okay, I'm writing what he said, he said that you guys gave him a ride, he said you just gave him a ride.

TS Right, and I...

SS He called you, 'cause you can tell on the phone call he just made, that he was just calling you to try and get a ride, because he had, uh, remember he had talked to the cops outside.

TS Right, that what I said, remember we brought him here, and he came in you know and said hey, I'm excluding them one was muscle and one was a ride!

SS Yup.

TS So now they're saying they don't have him on tape no more! And that they don't have the tape! This is what ...talk about..

SS He, he said a lawyer was out of (inaudible); he said I'll talk to you but I won't record it. That's what he said. So I wrote down what he said, I wrote a report based on what he said, I read his Miranda rights, he signed the Miranda right form. And then I, he said my lawyer told me not to talk to you, I'll talk to you, but I won't record it. That what he said - and that's what's written in the report. That he signed a Miranda. But he said he will not talk if the conversation was recorded. That's what it was.

TS Wow.

SS So I didn't record it. He said he wouldn't talk if it was recorded and then I was in a situation 'cause I brought him back here...

TS Uh huh...

SS We made him come back.

TS Uh huh!

SS So it's kind of hard to make him come back and then say he's speaking freely you know.

TS And, so he recanted then, or he didn't say nothing?

SS Oh, no, he didn't recant, he talked to me right then, and he said I'll talk to you, but I won't, uh, won't record it.

TS And what did he say?

SS He said, he said that you guys, he called you to get a ride and the other guy came along with and your boyfriend came along with them to help. So what made it look bad was on that video, the two of them was running around inside the store.

TS That was when the gun, the cops had the gun to their face soon as they came out, the guns, I would of ran too.

SS Yeah, but they didn't come out the liquor store, they didn't come out, they was in the liquor store.

TS No, they came out the back, when they came, 'cause...

SS But, I'm saying they were in the liquor store.

TS Yeah, they was trying, I found out later that they was trying to run and get out that what Dado said, he was like, I was scared, 'cause you know this boy been through war, so first thing he do he see some snipers he gonna react the way he know how.

SS I understand that.

TS ...and I told him he was stupid, and now I'm mixed in this and now this boy, the attorney, even the prosecutor said, oh no, he got 11 points, he's now finna say whatever to get, you know.

SS Yeah, he probably will, cause you know he'll, he'll go in for a long time, he know that.

TS So know we just gotta wait and stick with the hard route.

SS I think you need to deal with your lawyer. Tell your lawyer, see what your lawyer gonna do for you.

TS And, far as with that report like with, with the stuff, you'll let them know with the stuff, like, oh yeah I did have her take it out so then they'll know, 'cause I don't want them to say, her prints, and they trying to scrape up stuff right now!

SS The cops should say that, when your attorney (inaudible) them, they are cops, she should tell, they should say that. They should say, we had her take it out, that's got prints on it. You know?

TS Right, right!

SS But they're also gonna say that they didn't see any other guy but the guy who lived upstairs...

TS But I'm saying, remember we went to the, uh, what's its name, the, um, the impound. It was there, and that's when I took it out and sat in the garage on the floor, that stuff...

SS Okay, I got you

TS that stuff, that little stuff, that was the only thing I had, that's why I gave it to you, right ...

SS Okay, yeah

TS and you said take it out and I took out what wasn't, what I thought, hey, this what he set in there, this what I saw that boy set in there and now I'm looking at this. I'm sorry 'cause now my public housing is like, I'm scared.

SS Okay, I understand, you know, I understand that, and I understand, look I got to go, sorry.

TS I'm sorry, so what would you suggest I do?

SS Just talk to your lawyer. Best thing for right now. I got to go do this report 'cause I have to interview but I wish I can help, they decided to charge the case 'cause the guy kept pushing at it.

TS Right

SS ... kept complaining about it.

TS And that's crazy cause that guy is the same one helped put it0 in the car.

SS But, originally, they wasn't gonna charge it. All right, good luck.

TS All right, thank you.

SS All right.

TS So what's up!

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

State of Minnesota, File No. 62-CR-10-1463

Plaintiff,

vs. GUILTY PLEA

Jermaine G. English,

Defendant.

The above-entitled matter came duly on for hearing before the Honorable Joanne M. Smith, Judge of the District Court, on the 30th day of June 2010, at the Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota.

A P P E A R A N C E S

Richard Dusterhoft, Esq., Assistant Ramsey County Attorney, appeared for and on behalf of the State of Minnesota.

Thomas Handley, Esq., Assistant Ramsey County Public Defender, appeared for and on behalf of the Defendant, who was present in court.

Kathleen M. Conlee - Court Reporter

ATT. C
RAMSEY COUNTY DISTRICT COURT

1 THE CLERK: This is the matter on page
2 1, line 1, Jermaine English.

3 THE COURT: Good afternoon.

4 THE DEFENDANT: Good afternoon.

5 MR. DUSTERHOFT: Richard Dusterhoft on
6 behalf of the state.

7 MR. HANDLEY: Tom Handley appearing
8 with Mr. English who is present.

9 THE DEFENDANT: Jermaine English.

10 MR. HANDLEY: Sorry, Jermaine English.

11 THE COURT: In conversations through
12 my law clerk, I understand that perhaps there's
13 been a resolution here.

14 MR. HANDLEY: Yes, Your Honor. In
15 essence, Mr. English will be pleading guilty as
16 charged to third degree burglary, level-four
17 felony. There would be a guideline sentence
18 imposed. And that sentencing would be up to
19 the court.

20 THE COURT: All right.
21 Mr. Dusterhoft?

22 MR. DUSTERHOFT: That is correct, Your
23 Honor. There is no offer from the state.

24 MR. HANDLEY: Your Honor, in essence,
25 the benefit to Mr. English here is that there

1 will be no filing of any additional charges.
2 There was the possibility of as many as three
3 counts of burglary. There was also the
4 possibility that the severity level of those
5 burglaries could be level five or even a level
6 six. That's now not going to happen as a
7 result of Mr. English's plea in this matter.

8 THE COURT: All right.

9 MR. DUSTERHOFT: That's correct, Your
10 Honor.

11 THE COURT: So Mr. English, you've
12 heard what's been stated here, and is that your
13 understanding?

14 THE DEFENDANT: Yes.

15 THE COURT: And is that how you intend
16 to proceed today?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Would you
19 please then state your full name for the
20 record?

21 THE DEFENDANT: Jermaine Guy English.

22 THE COURT: And would you spell your
23 last name?

24 THE DEFENDANT: English,
25 E-N-G-L-I-S-H.

1 THE DEFENDANT: Okay.

2 THE COURT: Mr. Dusterhoft?

3 MR. DUSTERHOFT: Thank you.

4 EXAMINATION

5 BY MR. DUSTERHOFT:

6 Q Mr. English, I want to direct your attention to
7 the early morning hours of December 6th, 2009.
8 Did you go to a building at 2389 University
9 Avenue?

10 A Yes.

11 Q And that's located in the city of St. Paul and
12 in Ramsey County, correct?

13 A Correct.

14 Q Why did you go to that building that night?

15 A I was brought to that building that night.

16 Q Okay. Who brought you to that building?

17 A Daniel Drljic and Tamika Suttles.

18 Q So Drljic, according to the complaint, is
19 spelled D-R-L-J-I-C. Does that sound correct?

20 A Yeah, but I don't know him by his last name.

21 Q You know him as Daniel?

22 A Yes.

23 Q He was the individual that was inside the
24 liquor store when you were arrested, is that
25 correct?

1 A Yes.

2 Q And you said Tamika Suttles was with Mr. Drljic
3 when you were brought to the liquor store, is
4 that right?

5 A Yes.

6 Q How did you get to the liquor store?

7 A They came to my address in Minneapolis and
8 picked me up and drove me with them.

9 Q Okay. Did you know where you were going?

10 A No, actually, I didn't.

11 Q At some point you arrived outside of this
12 building, is that correct?

13 A Yes.

14 Q What happened next?

15 A Drljic wanted to go in and look around, and he
16 asked if I would stay outside for a minute, and
17 I did. And then I heard him making noises, so
18 I went inside to let him know he's making too
19 much noise, and then when I came back out the
20 police was there.

21 Q Okay. And you saw the police?

22 A Yeah.

23 Q And then you ran back in, is that right?

24 A Yeah.

25 Q Now, you said Mr. Drljic was making a lot of

1 noise, is that correct?

2 A Yes.

3 Q You told him not to make so much noise?

4 A I told him he's making too much noise.

5 Q Too much noise for what?

6 A For what he was in there doing.

7 Q What did you think --

8 A He was in there after hours, so I'm thinking he
9 was breaking walls or something to get in.

10 Q Okay. So you knew that Drljic did not have
11 consent to be in the building, is that correct?

12 A Correct.

13 Q And you knew that he was in there committing a
14 burglary, is that right?

15 A Yes.

16 Q So you knew that he was inside with the intent
17 to steal or commit some other crime while he
18 was in the building?

19 A Yes.

20 Q You said he was breaking a wall, is that right?

21 A Yeah. Actually, I really don't know. I went
22 to the top of the stairs and, you know, called
23 his name and he came back up. I'm like: Man,
24 you're making too much noise; I hear you
25 outside.

1 Q You knew he was committing a burglary?

2 A Yeah.

3 Q So by warning him that he was making too much
4 noise, you agree that you were aiding and
5 abetting him in committing the burglary?

6 A Yes.

7 Q What about Ms. Suttles, what was she doing?

8 A At the point, at that point I don't know what
9 she was doing. I know she was in the facility
10 playing the same position that I was playing on
11 lookout.

12 Q There was an individual who lives upstairs in
13 that building who told the police that she,
14 that the witness saw Ms. Suttles carry
15 something out of the building. Did that
16 happen?

17 A Yeah, yes.

18 Q And there were items that were taken from the
19 building that were in a vehicle that was parked
20 outside the building. Whose vehicle was that?

21 A That would be Tamika Suttles and Daniel Drljic.

22 Q That was their vehicle?

23 A Yeah.

24 Q And how did those items from inside the
25 building end up in the trunk of that car?

1 A Tamika placed them.

2 Q She went inside the building?

3 A Yeah.

4 Q And she took things from inside the building?

5 A Right.

6 Q And she put them in the vehicle?

7 A Correct.

8 Q And you know that Tamika Suttles didn't have
9 any consent to be in the building?

10 A Yes.

11 Q And you know that she didn't have anyone's
12 consent to take that property from inside the
13 building?

14 A Yes.

15 Q And so you agree that she was committing a
16 burglary at that building that night?

17 A Correct.

18 Q You went back inside the building and then you
19 ended up in the liquor store, is that correct?

20 A Yes.

21 Q Why were you and Mr. Drljic inside the liquor
22 store upstairs?

23 A Because when I came in the -- I don't know what
24 that shop, that store was -- but when I came in
25 there and I went to the top of the stairs to

1 tell him after I went back out and seen the
2 police and went back in, I told him that the
3 police was there, so he said: Follow me this
4 way, so we ran around and ended up in the
5 liquor store.

6 Q Just to be clear, Mr. English, the day after
7 you were arrested you went back to the St. Paul
8 Police Department, is that correct?

9 A I believe it was a couple of days after.

10 Q Okay. You went back there to talk to the
11 investigator in this case, is that correct?

12 A Yes.

13 Q You told him something about someone named Joe
14 who lived in the building?

15 A Yes.

16 Q And that that individual owed you money or
17 something?

18 A Yes.

19 Q Is it true that when you gave that statement to
20 the police, that was not true?

21 A Yes, it was not true. That statement -- Tamika
22 gave me that statement so her and Drljic can
23 receive their money.

24 Q They drove you to the police department when
25 you gave that statement, is that correct?

1 A Yes, it is.

2 Q And did they tell you what to say?

3 A Yes.

4 Q And that's what you did?

5 A That's what I did.

6 Q Thank you, Mr. English.

7 MR. DUSTERHOFT: Nothing further, Your
8 Honor.

9 THE COURT: Anything further to add to
10 the factual basis then, Mr. Handley?

11 MR. HANDLEY: No, Your Honor.

12 THE COURT: Okay. Mr. English, based
13 on the facts as stated then, your plea will be
14 accepted and we will, as Mr. Handley has
15 already indicated, continue this matter for
16 sentencing. I'm just going to ask that you
17 cooperate with whomever it is that you speak to
18 in our probation department so the information
19 they provide for us will be ready when you come
20 back to court, and I guess that date then will
21 be September 14th, is the date we've secured.

22 MR. HANDLEY: Yes, Your Honor.

23 THE COURT: Okay. And that will be at
24 nine in the morning. That will be a Tuesday
25 morning back here.