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FILED

11-2-15
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY Becky Stewart
DEPUTY

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF STANISLAUS

12	PEOPLE OF THE STATE OF)	CASE NO.: 1490969
13	CALIFORNIA,)	Dept.:
14	Plaintiff,)	
15)	NOTICE OF MOTION AND MOTION
16	vs.)	FOR DISMISSAL FOR PROSECUTORIAL
17	FRANK CARSON,)	MISCONDUCT
18	Defendant.)	DATE:
19)	TIME: 9:30 am
)	DEPT.: 26
)	

20 On the heels of Defendant Christina Defilipo's Memorandum Re: Discovery, Witness and
21 Prosecutorial Misconduct, comes now Defendant Georgia Defilipo who hereby seeks recusal of
22 the entire Stanislaus District Attorney's office and dismissal of the present case based on
23 egregious prosecutorial misconduct.

25 Incorporating by reference prior instances of misconduct set forth in briefs filed by co-
26 counsel and stated on the record throughout the proceedings in this matter, the defense adds to
27 the list of grounds for recusal and dismissal the following recent set of circumstances:
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1 The District Attorney has known the identity of their key witnesses in this case for years.
2 They have interviewed and re-interviewed each of them many times. These witnesses, having
3 criminal histories predating the investigation of this case, seem to have continued in their
4 criminal ways during the investigation.
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6 However, it appears that their involvement as witnesses in the present case has shielded
7 them from any penalties in their criminal acts during the prosecution. The defense has asked
8 each of the witnesses and the prosecution directly whether any incentives were provided by the
9 prosecution for the witnesses' cooperation.
10

11 Each of the witnesses, during their testimonies under oath, has denied being offered any
12 incentive to cooperate with the district attorney in this case.

13 The government has stated, on the record on Thursday, October 29th, 2015 in open court,
14 that they had not made any of the witnesses any promises in return for their cooperation.
15

16 We know now that was a lie. On Friday, October 30th, 2015, the prosecution
17 acknowledged to the court and counsel that, in fact, significant consideration had been given to
18 two key witnesses, Michael Cooley and Eula Keyes) in exchange for their participation in the
19 prosecution of this case.

20 In addition to those witnesses, the defense has reason to believe that another witness,
21 Sabrina Romero has currently pending embezzlement case for which she is receiving special
22 treatment because of her cooperation with the prosecution in the matter of Frank Carson, et al.
23

24 The defense believes that cooperation agreements are in place with many of the
25 prosecution witnesses. None have been disclosed. As noted above, the prosecution has stated
26 that no promises were made to any witness. However, during their admission to the
27 consideration given to Mr. Cooley and Ms. Keyes, the prosecution essentially stated that their
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1 office would not disclose any other agreements with their witnesses, unless that agreement had
2 been reduced to writing.

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4
5 BRADY, RECUSAL, AND DISMISSAL

6 Refusing to disclose agreements made with prosecution witnesses (even without denying
7 they exist) is a violation of the defendant's due process rights under Brady v. Maryland, 373 U.S.
8 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). A prosecutor's duty to disclose evidence favorable
9 to the accused extends to evidence reflecting on the credibility of a material witness. (People v.
10 Ruthford (1975) 14 Cal.3d 399, 406, 121 Cal.Rptr. 261, 534 P.2d 1341, overruled on another
11 ground in In re Sassounian, *supra*, 9 Cal.4th at pp. 545–546, fn. 7; see also Giglio v. United
12 States (1972) 405 U.S. 150, 154) This includes “*any inducements* made to prosecution witnesses
13 for favorable testimony...” (People v. Westmoreland (1976) 58 Cal.App.3d 32, 43, *emphasis*
14 added, quoted in People v. Kasim, 56 Cal. App. 4th 1360, 1380, 66 Cal. Rptr. 2d 494, 507 (1997)

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16 Per People v. Ruthford, *supra*, 14 Cal.3d at page 406, it does not matter whether such “a
17 prosecutorial failure” is “intentional, negligent or inadvertent.” (See also Brady, *supra*, 373 U.S.
18 at p. 87 [due process violation “irrespective of the good faith or bad faith of the prosecution”].)
19 Thus, it does not matter if the prosecution actually believes that they do not have to disclose
20 witness agreements unless in writing. Failing to do so is a violation all the same.

21
22 In this case, however, it is unthinkable that the Stanislaus District Attorney's office and the
23 veteran prosecutor that they have assigned to the present case would be so woefully ignorant of
24 their basic responsibilities regarding disclosure. Moreover, given the pattern of gamesmanship
25 and outright deceit exhibited thus far by the prosecution, their suppression of evidence of
26 agreement made with their witnesses must be seen as bad faith.
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1 Assembly Bill 1328, newly signed into law by Governor Brown on October 3rd, 2015
2 requires the court to inform the State Bar of California of a Brady violation finding, if the
3 prosecuting attorney acted in bad faith and the impact of withholding evidence seriously limited
4 the ability of a defendant to present a defense. The bill authorizes a court to disqualify an
5 individual prosecuting attorney from a case if the court finds that a violation occurred in bad
6 faith. The bill further authorizes, upon a determination by a court to disqualify an individual
7 prosecuting attorney from a case, the defendant or his or her counsel to file and serve a notice of
8 a motion to disqualify the prosecuting attorney's office if there is sufficient evidence that other
9 employees of the prosecuting attorney's office knowingly and in bad faith participated in or
10 sanctioned the intentional withholding of the relevant or material exculpatory evidence or
11 information and that withholding is part of a pattern and practice of violations.
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13

14 In People v. Uribe (2011) 199 C.A.4th 836, 132 C.R.3d 102, defendant's convictions for
15 sex offenses were reversed for the failure of a sexual assault response team to disclose to the
16 defense a videotape of the medical examination of the alleged victim. After remand, defendant
17 moved to dismiss the information for outrageous prosecutorial misconduct in violation of his due
18 process rights. The trial court found that the deputy district attorney who prosecuted the first trial
19 had testified untruthfully in the hearing on defendant's motion, and it granted defendant's motion
20 to dismiss. The Appellate Court reversed the dismissal but laid out the appropriate standards for
21 dismissing a prosecution for governmental misconduct which this court should adopt.
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23

24 (1) Substantial Evidence of Prosecutorial Misconduct. Here, substantial evidence supports this
25 court's determination that the prosecution has engaged in "egregious prosecutorial misconduct"
26 by suppressing material evidence of agreements or inducements with key witnesses, misleading
27 the judge and counsel, and testifying falsely.
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1 (2) Due Process. See Above.

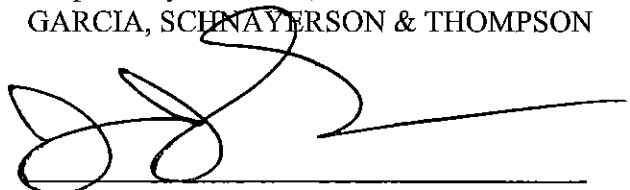
2 (3) Prejudice. Only in the absence of the deprivation of a fundamental right is the defense
3 required to make showing of prejudice for a dismissal. Here, the defendant's have been deprived
4 Due Process. Additionally, though, the prosecution's actions have prejudiced the defendants.
5

6 CONCLUSION

7 For the reasons stated above and on the grounds set forth in previous defense briefs
8 regarding the pattern of egregious prosecutorial misconduct in this case, the defense respectfully
9 requests this court recuse the office of the Stanislaus District Attorney and dismiss the present
10 case.
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12 Dated: OCTOBER 31ST, 2015

13 Respectfully submitted,
14 GARCIA, SCHNAYERSON & THOMPSON

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16 JESSE J. GARCIA
17 Counsel for GEORGIA DEFILIPO
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