

VIRGINIA:

IN THE CIRCUIT COURT FOR ROANOKE COUNTY

COMMONWEALTH OF VIRGINIA,	)	
	)	
	)	Case Nos.: CR23000245-00
v.	)	CR23000246-00
	)	CR23000247-00
TYLER KEITH JONES,	)	CR23000342-00
	)	
Defendant,	)	
	)	

**SECOND SUPPLEMENTAL BRIEF AND MOTION FOR DISCOVERY AND
DISCLOSURE**

It has been represented to the Court that Virginia State Police (“VSP”) Special Agent Steve Richardson (“Richardson”) is currently under investigation for forging a public document in connection with payments to Lane Thomas (“Thomas”). After the VSP’s first production on April 29, 2024, it was determined that the March 7, 2024, document which purportedly documented the \$2,500.00 payment to Thomas was a forgery.¹ It is believed that Richardson forged or altered this document to include his supervisor’s signature. If true, Richardson may be guilty of criminal activity.

The blatant misconduct and discovery violations that exist in this case are mind blowing. Currently, there are nearly a dozen discovery and *Brady* violations that have been documented. These violations and the alleged criminal conduct on behalf of Richardson go to the heart of our criminal justice system. Our system is based upon trust in the participants- which includes police officers- and when these actors lie, hide, and violate their oath of office it is the Court’s duty to ensure that order is restored.² If not, the system

¹ This document was attached as Exhibit H to the first Supplemental Brief.

² To be clear, Richardson is presumed innocent of all alleged criminal activity and, for the time being, these are

fails and people like Richardson, who will go to any length to secure a conviction at all costs, get away with their misconduct. This cannot stand.

The Defendant intends to seek dismissal of these indictments due to the egregious misconduct and constitutional violations in this case. Yet, he cannot prosecute his Motion to Dismiss without necessary discovery from the Commonwealth. To date, there are still numerous unanswered questions, the Commonwealth has not produced the requested and agreed upon emails between the Commonwealth's Attorney's office and Richardson, and more discovery is necessary to determine the level of Richardson's misconduct.

THE VSP'S PRODUCTION ON MAY 14, 2024

The VSP's second production in response to Defendant's FOIA request was returned on May 14, 2024. Not surprisingly, that production included *more* undisclosed information concerning Thomas. This is another violation of *Brady*. Specifically, the second production included a previously undisclosed interview between Richardson, ATF agents, and Thomas. This new interview contradicts Thomas' previous statements to law enforcement and could have served as additional impeachment material. During the interview, Richardson and Thomas discuss potential benefits to Thomas and seemingly discuss the exchange of money for Thomas' cooperation. Had this interview been disclosed as required prior to trial, it would have alerted defense counsel to Richardson's planned payments to Thomas, Thomas' desire to be compensated for his testimony, and other valuable information.

The May production also included text messages between Thomas and Richardson, recorded phone calls, and other information which establishes that the relationship between

allegations herein are just that- allegations. Perhaps if Richardson had given Tyler Jones the benefit of the same presumption instead of manipulating the system justice would have been accomplished.

Thomas and Richardson was “cozy.” Richardson went to extreme lengths to ensure Thomas was free of legal trouble and out of jail so he could testify against the Defendant.

Richardson’s relationship with Thomas was not that of a typical “handler” and “snitch.” As noted in the First Supplemental Brief, had the true extent of the relationship between Thomas and Richardson been known before trial it would have provided impeachment material for both witnesses.

RICHARDSON’S ALLEGED CRIMINAL ACTIVITY

The Commonwealth recently disclosed that Richardson is under criminal investigation for purportedly forging the March 7, 2024 receipt and payment record to Thomas. It is believed that Richardson forged his supervisor’s signature and potentially other aspects of the March 7, 2024 document. This conduct is beyond troubling.

To recap, Thomas and Richardson both testified on the first day of trial: March 5, 2024. On March 6, 2024, Chief Deputy Commonwealth’s Attorney Aaron Lavinder advised defense counsel, in the presence of Richardson, that the VSP had been paying for Thomas’ hotel room and living expenses for almost a month. At that time, however, Richardson knew that the forthcoming payment of \$2,500.00 was being approved for Thomas. The payment was approved by Captain Bartlett and Lieutenant Carr on March 6, 2024 for “supplying confidential information and testimony.”

Because Richardson witnessed defense counsel’s outward frustration at the hotel/living expenses disclosure and because he knew he did not disclose the \$2,500 payment on March 6, 2024 to the Commonwealth it appears Richardson panicked and began plotting to disguise the \$2,500.00 payment. Thus, on March 7, 2024 Richardson changed the reason for the payment from “supplying confidential information and testimony” to

“moving expenses.” This change and the payment were purportedly approved by Lieutenant Carr and witnessed by trooper C.S. Boblett. According to the VSP Field Activity Computerized Tracking System, any payment up to \$2,500 requires the approval of BCI Division Commander.

The change to moving expenses and the signature(s) on the March 7, 2024, authorization are suspected forgeries. After this forgery was discovered, VSP launched an internal investigation into Richardson and his conduct. To date, that investigation is ongoing, but the Commonwealth has not provided any substantive updates or requested discovery regarding the investigation into Richardson.³

WAS IT ALL A LIE?

The Court will remember Richardson’s testimony at the hearing to reveal the identity of the confidential informant. Richardson’s sworn testimony painted a picture of a motorcycle gang who was actively pursuing “snitches” and threatening all those that got in its way. Richardson’s unvalidated fear led to increased security during trial for fear that the “gang” would appear at trial to cause havoc. Documents produced by the defense issued FOIA request demonstrate that this testimony was not accurate

First, all of Richardson’s information about threats, gang violence and gang activity came from the proven liar: Thomas. From the documents reviewed to date, it appears Richardson undertook no independent investigation into the motorcycle club’s activities, or the purported threats Thomas was receiving from “gang members.”

Second, the information provided by Thomas and not investigated by Richardson,

³ Last week defense counsel sent an e-mail to the Commonwealth requesting disclosure of the investigation materials associated with Richardson. No written reply was received.

simply does not establish what Richardson claimed. The “threats” that Thomas received while incarcerated for a short period of time in West Virginia were from a local jail “gang.” E-mails between West Virginia prosecutors and Richardson reveal that this “gang” had no established connection to the motorcycle club at issue and the threats Thomas received in jail were never linked to the motorcycle club- except by Thomas’ own claims.

Neither Richardson nor the Commonwealth’s Attorney’s office investigated Thomas’ background or his prior service as a confidential informant. Instead, the Commonwealth blindly accepted Richardson’s representations about Thomas and his credibility. A simple Google search would have revealed Idaho Supreme Court opinions and newspaper articles reflecting Thomas’ lies in other cases. Defense counsel now believes that the threats Thomas purportedly received in jail were because inmates discovered that he previously testified as a snitch. If accurate, the threats Thomas received had *nothing* to do with the motorcycle club at issue and Richardson’s foundational belief about this case was a lie.⁴

SUPPLEMENTAL DISCOVERY

At the last hearing on this issue, the Commonwealth advised the Court that it would run an email search and produce emails between Richardson and the Commonwealth’s Attorney’s office. To date, no emails have been produced nor has the Commonwealth supplemented its discovery production in this case- except for the verbal updates provided during the hearings and conferences in this matter.

⁴ Richardson’s motivations remain a mystery, but it appears that he was driven by the unwavering need for a conviction at all costs. The newly produced audio interview from the May 2024 production reveals another potential parallel motive. During that interview, Richardson had enlisted agents with the ATF to work with Thomas. These unidentified agents questioned Thomas about the motorcycle club’s activities, guns and drugs. This points to a potential motive by Richardson to secure a federal prosecution against the motorcycle club. A federal gang prosecution would have been a significant accomplishment for Richardson.

No explanation has been provided for the \$500.00 Wal-Mart payment, why the multiple interviews with Richardson and Thomas were not disclosed, or why none of the documents obtained by defense counsel were not previously disclosed in discovery.

ARGUMENTS & AUTHORITIES

On July 5, 2023, this Court entered its Discovery and Inspection Order requiring the disclosure and production of all discoverable materials under Rule 3A:11 of the Rules of the Supreme Court of Virginia and *Brady v. Maryland*, 373 U. S. 83, 83 S. Ct. 1194 (1963) and its progeny. This Order has been repeatedly violated and ignored.

The Defendant will be seeking dismissal of the Indictments as a sanction against the Commonwealth for its repeated, flagrant, unexplained, and shocking discovery violations. Before doing so, however, the Commonwealth should be ordered to comply with its obligations and this Court's order. The Commonwealth cannot simply ignore the problem or pretend it does not exist. Nor can the Commonwealth seek to avoid its discovery obligations and claim that the ongoing investigation into Richardson prevents the Commonwealth from complying.

The Defendant seeks the following information and order:

- Any and all interviews with Richardson given relating to Lane Thomas or the purported forged documents;
- All investigatory documents relating to the investigation of Richardson;
- An explanation for the \$500.00 cash payment;
- All emails between Richardson and the Commonwealth's Attorney's office;
- A written update of Richardson's employment status with the VSP (i.e. suspension, administrative leave, etc.);

- Any and all communications between Richardson and Thomas from April 22, 2024 to present;
- That the Court order that the Commonwealth's Attorney review and investigate all files associated with Richardson and Thomas and immediately disclose all *Brady* and *Giglio* information⁵.

This information is required to be disclosed by *Kyles v. Whitely*, 514 U.S. 419, 115 S.Ct. 1555, 131 L. Ed. 2d 490 (1995); *United States v. Agurs*, 427 U. S. 97, 96 S. Ct. 2392, 49 L. Ed. 2d (1976); *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972); and *Workman v. Commonwealth*, 272 Va. 633, 636 S.E.2d 368 (2006).

The Due Process Clause of the Constitution requires that the United States disclose to the defendant any evidence that "is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. The Supreme Court of the United States has extended the prosecution's disclosure obligation to include evidence that is useful to the defense in impeaching government witnesses, even if the evidence is not inherently exculpatory. See *Giglio*, 405 U.S. 153; *Douglas v. Workman*, 560 F.3d 1156, 1172-73 (10th Cir. 2009)("[N]o distinction is recognized between evidence that exculpates a defendant and 'evidence that the defense might have used to impeach the [Government's] witnesses by showing bias and interest.'" (quoting *United States v. Bagley*, 473 U.S. 667, 676 (1985))); *United States v. Abello-Silva*, 948 F.2d 1168, 1179 (10th Cir. 1991)("Impeachment evidence merits the same constitutional treatment as exculpatory evidence.").

⁵ This should have already been done as Rule 3A:11(h) places an ongoing duty on prosecutors to investigate and disclose discovery materials ordered by the Court.

The requested information is required to be disclosed whether or not Richardson is ever called to testify in a criminal case again. This case is still pending, and the Commonwealth's disclosure obligation is ongoing. Moreover, the Defendant needs the requested information so that he can properly litigate post-trial motions. Since these motions relate to the ongoing defense, the requested information is material. Finally, there is an important truth-seeking function that investigating and disclosing this information will have on the judicial system. If Richardson forged documents to cover or hide his payments to Thomas, we should know about it. The Commonwealth should not be able to sanitize an over-zealous officer's criminal conduct with procedural arguments or by side stepping its discovery obligations.

CONCLUSION

This is the worst discovery violation imaginable, and the cover up by Richardson only compounds the violation. It is all made worse by the existence of other numerous and equally serious discovery violations- which include securing favorable treatment for Thomas through direct negotiations with West Virginia Prosecutors, and failure to disclose written testimonial agreements between Richardson and Thomas.

The case, however, is not over and the Commonwealth must continue to comply with its inherent and Court ordered discovery obligations. The Defendant needs this information to ensure that justice is done and to prepare his Motion to Dismiss.

Respectfully submitted,

TYLER KEITH JONES

By: _____

Of Counsel

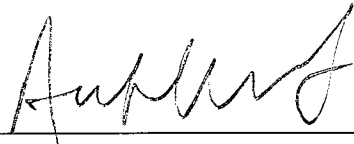
Aaron B. Houchens (VSB#80489)
Aaron B. Houchens, P.C.
111 East Main Street
P.O. Box 1250
Salem, Virginia 24153
540-389-4498 (telephone)
540-339-3903 (facsimile)
aaron@houchenslaw.com

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent to the following Office of the Commonwealth's Attorney for Roanoke County, on this 18th day of June 2024.

Aaron Lavinder, Esquire
Chief Deputy Commonwealth's Attorney
County of Roanoke
Roanoke County Courthouse
305 East Main Street
Salem, VA 24153



AARON B. HOUCHENS, P.C.
ATTORNEY AT LAW

111 E. Main St., P.O. Box 1250, Salem, Virginia 24153
TEL: (540) 389-4498 • FAX: (540) 339-3903
www.houchenslaw.com

Aaron B. Houchens
aaron@houchenslaw.com

June 18, 2024

VIA HAND DELIVERY

Michael Galliher, Clerk
Roanoke County Circuit Court
P.O. Box 1126
Salem VA 24153

RE: Commonwealth v. Tyler Keith Jones
Case Number: CR23000245-00, CR23000246-00, CR23000247-00 &
CR23000342-00

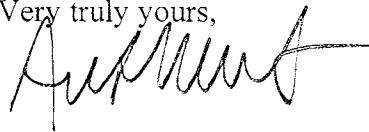
Dear Mr. Galliher:

I hope this letter finds you well.

Enclosed please find a Second Supplemental Brief and Motion for Discovery and Disclosure for filing in the above matters

Should you have any questions, please do not hesitate to contact me. Until then, I remain;

Very truly yours,



Aaron B. Houchens

ABH:mam
Enclosure
cc: Tyler Keith Jones (w/encl.)
Aaron Lavinder, Esq. (w/encl.)