

ORIGINAL

FILED

01/24/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0367

IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT No. DA 21-0367

MATTHEW RYAN AILER,

Defendant and Appellant,

v.

STATE OF MONTANA,

Plaintiff and Appellee,

FILED

JAN 24 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPELLANT'S OPPOSED MOTION FOR THE STATE TO PROVIDE THIS COURT WITH THE 154 PIECES OF BRADY EVIDENCE WHICH IS CITED IN THE DISTRICT COURT RECORD

COMES NOW, Matthew Ryan Ailer, Appellant, respectfully moves this Court for an Order for the State to provide this Court with the 154 pieces of Brady Evidence which is cited in the District Court Record.

The grounds and reasons for this Motion are discussed below:

1. In the Brief In Support Of The Motion For Reconsideration, the 154 pieces of Brady Evidence were cited and discussed. (Page 14, L.16 – Page 19, L. 25).
2. The reason the Application For The Release Of Confidential Criminal Justice Information was filed in DV-21-480 because the State has continued to disregard the Montana Rules of Professional Conduct, Montana and Federal Statutes, Article II,

Section 9 of the Montana Constitution, and Montana Public Records Act 2-6-1001 ET SEQ and without oversight or consequences, the State and Montana State Fund (MSF) has continued to withhold Brady evidence in the State's file from Matthew in CDV-2019-514 and WCC No. 2013-3275 as they did in CDC-2014-98. The Honorable Judge Alex Kozinski (United States v. Olsen, 9th Cir. 2013) explains why the State disregarded the Brady Rule: *"When a public official behaves with such casual disregard for his constitutional obligations and the rights of the accused, it erodes the public's trust in our criminal justice system, and chips away at the foundational premises of the rule of the law. When such transgressions are acknowledged yet forgiven by the courts, we endorse and invite their repetition" . . . "Some prosecutors don't care about Brady because the courts don't make them care" . . . "There is an epidemic of Brady violations abroad in the land. Only judges can put a stop to it"*. Attached as (Ex. A) is 154 pieces of Brady Evidence and the following below are examples the State admits they have and gave to MSF but continues to withhold it from Matthew and the public.

A. Miller's interview with Russell:


On April 2, 2012, Former Garden City Janitorial Owner Cory Miller told Missoula County Detective James Meier that Miller recorded an interview with Jeff Russell: *"Miller: So Jeff came to me and I recorded a statement from him and it was regarding a workman's comp case that or not case, a workman's comp injury that happened to Matt Ailer"* (Ex. B). On February 12, 2013, Miller informed Agent Huesby on what Miller

was told by Russell during the interview: “**Miller:** *him and Chelsea held it over the top of Matt while he laid on the ground and dropped the machine on him*” (Ex. C). Which contradicted trial testimony of Russell and Chafee. On July 6, 2012, Miller’s GM Jinnat Cornman provided a document to Montana Department of Labor & Industry (Case No. 712-2013) confirming that Miller recorded (2) interviews with Russell (Ex. D). During trial, AAG Cochenour confirmed the second recording during her direct examination with Russell: (Tr. at 447:11-18): “**Q.** *Those two stories. And when you have all the statements that you gave to law enforcement, to State Fund Investigator, to Cory Miller, and to the investigator at State Fund, to Mr. Judnich. A. Yes. Q. All those statements that you gave were recorded, every single word. A. Yes, ma’am.* (Ex. E) Because of the Final Order obtained by AAG Broch she was able to provide the Honorable Judge Kathy Seeley an improper and inaccurate statement that the recording does not exist. (Ex. F).

B. The agreement between DOJ, Cochenour, Huesby and Miller:

On 7/19/2011 - 9/17/2011, Miller UNOFFICIALLY hired Russell to work for GCJ. (Ex. G). Russell confirmed he was hired by GCJ in the summer of 2011, “*Cederberg: Did you start with Garden City Janitorial sometime in summer in 2011? Russell: Yes.*” (CD 3 Track;1:00 to 1:07). Agent Poppler’s investigation revealed that Russell’s employment records proved that he did not report his income while working for GCJ and did not pay taxes for the employment quarter 3 in 2011 (Ex. H). Chafee confirmed Russell was working for GCJ and it was authorized by Miller, “*Chafee: Mr.*

Russell wasn't officially hired but Cory allowed him to work with us. What time period was Mr. Russell working there? Chafee: June of July [2011]..” Buley: You said he wasn't officially an employee what do you mean by that? Chafee: Cory paid Russell in cash for helping us and Cory's remodel of his house that fall. Buley: Do you know what day Mr. Russell officially hired him? Chafee: I believe it was when I went to jail for the case than now I am being charged with the arson and I went to jail October 7 and I was released on October 11 [2011] on bail so something in between is when Cory officially hired him because Matt could not do all the jobs himself. Buley: I want to refer you to document 58 which is a submission by Miller to the unemployment division and that states, “Ms. Chaffee's Response, Page 2, Paragraph 3. This paragraph statement has many inaccuracies and outright lies from Ms. Chafee. Jeff Russell was hired by Garden City Janitorial on October 9th 2011. So that would be the day to your knowledge that Russell was officially hired? Chafee: Yes. Buley: So when Mr. Russell testified here today that he had actually being working since the summer, late summer 2011 that would be the work you talked about earlier? Chafee: Yes.”(CD 3 Track 5; 1:30 to 5:00). Miller confirmed that he hired Russell unofficially to work for GCJ in the summer of 2011, “Buley: Now going back to Mr. Russell, when did he begin his employment with you? Miller: I'm not positive on the date but I believe it was sometime it was mid to late summer of 2011.” (CD 2 Track 2; 9:32 to 9:50). On 7/10/2012, Miller officially hired Russell reporting him to MDOLAI and MSF as an employee of GCJ, “...Jeff Russell was

hired by Garden City Janitorial on October 9th 2011.” (Ex. I). On 2/5/2013, Miller falsely reported to Agent Huesby, *“Ah, I didn’t know Jeff until a week before we brought him on ah, when Chelsea went to jail [October 7, 2011].* (Ex. J). On 7/23/2014, Chafee informed Huesby how Miller paid Russell while working for GCJ, *“I don't know. Just, I guess, because when we first started, Matt and I worked together. So then before Corey had hired Jeff, that was how he had said that he would pay him....And he had started just working with us under the table. And then he did a lot of work for Corey on his house and stuff and Corey liked the work that he did. Because Corey would put, we would make out a list for the hours that we did, the hours that Jeff did, the hours that I did and the hours that Jeff did would be put on my paycheck. And then it was my responsibility to pay him for those hours.”* (Huesby’s Recorded July 23, 2014 Interview of Chafee.). Convicted felon Sydni Adair Sticht unofficially worked for GCJ and was not reported as an employee to MSF and Chafee stated that her hours would go through her check as instructed by Miller. (Ex. K). Huesby reviewed the information and realized that he had a case of, *“45-7-501.Employer misconduct. (1)(a)(b)(c)(2)* so an agreement was made between DOJ, Cochenour, Huesby and Miller. This Brady Evidence was never disclosed to defense or appellate counsel. Opposing Counsel **does object.** Respectfully submitted this 21st day of January, 2022. By: 

Matthew Ryan Ailer

Defendant and Appellant

CERTIFICATE OF SERVICE

I, Matthew, hereby certify that I have served true and accurate copy of the foregoing **APPELLANT'S OPPOSED MOTION FOR THE STATE TO PROVIDE THIS COURT WITH THE 154 PIECES OF BRADY EVIDENCE** with the clerk of the Montana Supreme Court and that I have served true and accurate copies of the **OPPOSED MOTION** to each party by the following means:

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DATED this 21st day of January, 2022.

By: 

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