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February 10, 2021

Honorable Darlene J. Pereksta, J.S.C.
Mercer County Superior Court
New Criminal Courthouse
400 Warren Street, 3rd Floor
Trenton, NJ 08650

Re: State v. Andres Mejia
Indictment No. 20-10-0306
Prosecutor File No. 20-003048

Supplemental Filing to Defendant's Previously Filed Motion to Dismiss

Dear Judge Pereksta:

As has become apparent here, as every week goes by, more and more evidence is "found" by the State. It is quite clear that in their nonsensical rush to indict a non-detained defendant during a global pandemic with limited judicial resources, they have not fully investigated this case. Not only are they not prosecuting other police officers for similar or worse conduct, but they are engaging in the very conduct that they accuse the defendant of and call criminal. Their recent reply dated February 5, 2021 makes that abundantly clear.

The allegations here include that Officer Mejia failed to investigate an allegation of domestic violence. As stated in previous submissions, not only do the allegations not rise

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to the crime official misconduct, but the facts, including the withheld facts, are wanting in this regard as well. Since the writing of the defendant's last submission, additional discovery was turned over that further supports this position.

To recap, our previous submission complains that the State withheld from the grand jurors the fact that the defendant authored an affidavit of probable cause outlining the investigative measures he took in this case, including confirmation from Ewing PD about the content of the 911 call made to Ewing. The State's best effort at rebutting the significance of this critical omission can be found at page 5 of their brief dated February 5, 2021 where Ms. Petrucci states as a fact:

There is **no evidence** that he actually listened to the call himself as defense now suggests. He wrote he confirmed with Ewing Police department that the 911 call was placed, but he does not state that he reviewed the call.

On February 2nd, 3 days **before** Ms. Petrucci authored this brief, dispatch audio transmissions were belatedly turned over to the defendant from Lawrence¹. (Da1). There is a series of calls captured on these recordings where Officer Mejia is in the booking area and calls the dispatcher requesting that he "call over to Ewing and find out what their 911 tape said exactly." Dispatch then calls Ewing and is informed by their dispatcher what was said and what took place on the call. Lawrence dispatcher then calls Officer Mejia who is still in the booking area on speaker, relays to him the contents of the call, how a crazy person was at his house, commotion was heard in the background and the call then went dead. Mejia tells dispatch "that would corroborate her snatching the phone out of his hand." Also recorded on this call is Mr. Hayes in the background stating she

¹ These should not be confused with Ewing's 911 calls that have been purportedly destroyed despite the preservation letter sent personally to Ms. Petrucci's attention.

was pounding her face on his wall, how she is crazy and how she just “was in Crisis,” presumably the Crisis Center for mental health issues.

These newly disclosed audio recordings present several problems for the State. The first is the fact that that they once again did not disclose critical exculpatory evidence to the grand jurors. Here they are presenting a case for indictment against a decorated veteran law enforcement officer, where they are alleging that he failed to do an investigation, somehow rising to the level of criminal activity. Yet, they possessed information that he in fact did an investigation and withheld that from the grand jurors. In fact, Mejia is audibly telling the dispatcher that the information “corroborates” the story he is being told.

Furthermore, they do not tell the grand jurors that Ms. Williams was recently in a mental health crisis facility. This omission is extremely troubling in light of Mr. Hayes’ allegations here that her bloody lip was self-inflicted, consistent with the conduct of an unstable person. In this same vein, today² a bodycam of Ewing Police officer Luis Ruiz was belatedly turned over to the defense. Ruiz is at Ms. Williams last known address in Ewing to do a welfare check, at the request of Officer Mejia. (This request was also recorded and is contained on the recordings attached to this submission, Da1). Ruiz engages the occupants of the home in conversation and they confirm that she has mental health issues. Moreover, the bodycam also confirmed that she does not own a cell phone, giving her a motive to steal Hayes’ phone.

² Despite the Court Rules requiring discovery to be turned over within 7 days of indictment, the State here has been disclosing discovery in a piecemeal fashion, (11-4-20,11-13-20,11-20-20,12-8-20,1-22-21,2-2-21,2-10-21) apparently as they “find” it. See R.3:13-3.

Astonishingly, NONE of this was presented to the grand jury. They were not told the State had evidence that Mejia conducted an investigation, they were not told that Ms. Williams was unstable, they were not told that they had proof she did steal his phone. In other words, they did not tell the grand jurors that there existed independent evidence that Officer Mejia did **not** possess probable cause to believe Hayes assaulted Williams.

The second problem this poses for the State highlights why the alleged conduct should not and does not rise to the level of criminal official misconduct. As stated above, Ms. Petrucci, a public official, writes in an official public filing, that there is “no evidence that he actually listened to the call himself.” If this statement is not blatantly false, it is certainly materially misleading. Either way, it certainly appears to be a violation of R.P.C.3.3, Candor toward the tribunal.³ Either Ms. Petrucci knowingly made a false statement to this Court, or knowingly failed to disclose a material fact knowing that the omission is reasonably certain to mislead this Court. While Officer Mejia might not have personally listened to the 911 tape, he arranged for the contents to be relayed to him verbatim, even asking the dispatcher to get a transcript if possible.

Further, since these recordings were turned over 3 days before she authored her brief, there can be no excuse that she was not aware of the contents of same when she told this Court in her brief that there was “no evidence”.

³ It must be emphasized that the undersigned is neither passing judgement on Ms. Petrucci, nor accusing her of intentionally violating any law or rule. Rather, this argument is to emphasize that the State is just as “guilty” of the conduct in which they accuse the defendant, neither of which are criminal, let alone a violation of any rule or law.

As all lawyers have a duty and obligation to follow the Rules of Professional conduct, and as Ms. Petrucci is a public official, does this mean she could be criminally charged for official misconduct because she made a false statement that violated the R.P.C.'s? Certainly, our system of justice has not come to such an absurdity. Ms. Petrucci should not be prosecuted under N.J.S.A. 2C:30-2 for a false statement in her brief any more than Officer Mejia should be prosecuted for a false statement in his report.

Perhaps Ms. Petrucci was so busy that she did not have the time to watch the bodycams and listen to the dispatch communications when she told the Court that there was "no evidence." In essence then it was not a "knowing" false statement when she told this Court there was "no evidence." Rather, she simply failed to fully investigate before she made her brash claim that there was "no evidence". That then begs the question, could she be prosecuted for official misconduct as a public official for her failure to investigate all the facts here before making a false statement to the court?

What if Ms. Petrucci had a detective listen to the tapes and relay to her what he believed was contained on same. When she wrote there was "no evidence" she was relying on the representations made to her. Rather her false statement, while still false, was more akin to a mistake. Just like the mistake in not double checking that Ewing's 911 tapes were preserved before they were destroyed after 100 days. She had a duty to preserve these tapes and violated that duty resulting permanent loss of evidence and injury to the defendant. Does that conduct rise to criminal behavior?

Finally, the irony of the State's excuse for not telling the grand jurors that they had proof that Williams did in fact steal the phone must not be lost. The presentation made it clear to the grand jurors that the State did not believe the phone was stolen. If the phone

wasn't stolen, Hayes was a liar. If Hayes was a liar, Mejia was wrong in believing him about the self-inflicted injury and thus it was criminal in not investigating further. The excuse offered can be found on page 6 where Ms. Petrucci asserts that neither she nor her detective were aware of the contents of the jail calls because they were not working the Hayes murder investigation. Putting aside that this is not a viable excuse under the law as the Prosecutor is charged with the knowledge of the entire case regardless if it's actually in his or her file, this effort to condone this significant omission is an outright concession that they have been doing exactly what they accuse Officer Mejia of. They acknowledge that they failed to investigate all the facts before filing these serious charges against the defendant.

Enough is enough. Making a statement in an unsworn police report in which you were ordered to add by your supervisor is not official misconduct. Similarly, finding that no probable cause exists to charge someone for causing what your investigation believes to be self-inflicted injury by an unstable person is also not official misconduct. The indictment should be dismissed.

Respectfully Submitted,

/s/ Robin Kay Lord
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CC: Assistant Prosecutor Kathleen Petrucci

