Memo

To: Readers of the Resources section of my web site

From: Michael A. Catalano, P.A.
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Re: Sandra Veiga Investigation

This is memo number 9. This PDF consists of 9 pages total.

This is what the Miami and Broward SAO are doing about this problem.

Note: Broward SAO said in the motion that this is not *Brady* material.

Handed to me in ct 11/17/08

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

☐ CRIMES DIVISION
☒ TRAFFIC DIVISION

STATE OF FLORIDA,

Case No. [redacted]
Judge Fernandez

Plaintiff,

v.

[redacted],

Defendant(s).

AMENDED DISCOVERY RESPONSE UNDER FLORIDA CRIMINAL PROCEDURE RULE 3.220

COMES NOW KATHERINE FERNANDEZ RUNDLE, State Attorney of the Eleventh Judicial Circuit of Florida, by and through the undersigned Assistant State Attorney, and files this Amended Discovery Response under Florida Rules of Criminal Procedure 3.220, as follows:

The State strikes and removes the following witness:

9A. SANDRA VIEGA
1030 NW 111 AVE
MIAMI, FL 33172

Respectfully submitted,

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

By: _____

Garrett Riley
Assistant State Attorney
Florida Bar # 52821
Civic Park Plaza
1469 N.W. 13th Terrace
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IN THE COUNTY OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

: CASE NO: 08[redacted]
: JUDGE PEGGY GEHL (A)

STATE OF FLORIDA :
Plaintiff :
Vs :
[redacted] :
Defendant :

: STATE'S SUPPLEMENTAL DISCOVERY

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and pursuant to the provisions of Rule 3.220(b)(1)(A) of the Florida Rules of Criminal Procedure, as supplement to the State's previous submission(s) of discovery herein, submits the following amendment(s) or additions(s):

Additional Information: Sandra Veiga Investigation Information as of 10-17-2008, copy of such found on World Wide Web at http://www.sao17.state.fl.us

For additional breath testing information, in addition to the above website, please visit the Florida Department of Law Enforcement Alcohol Testing Program Public Records Website at http://www.fdle.state.fl.us/atp/PublicRecords.htm.

Additional Witness: FDLE Department Inspector Dwite Hackney – Florida Department of Law Enforcement

Deleted Witness (if listed): Sandra Veiga

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand/Fax delivery this 17th day of November, 2008, to: Michael A. Catalano, 1531 NW 13th Court, Miami, Florida, 33125, ESQ.

DEFENSE ATTY: MICHAEL CATALANO 1531 NW 13TH COURT MIAMi, FL 33125

MICHAEL J SATZ
State Attorney

By: [signature]
MS ELIZABETH RIGAUD
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IN THE COUNTY COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 08-01[redacted]

JUDGE: GEHL

STATE OF FLORIDA, :

Plaintiff, :

vs. :

[redacted], :

Defendant. :

STATE'S OBJECTION TO DEFENDANT'S MOTION TO COMPEL DISCOVERY AND TO TAKE DEPOSITIONS (SANDRA VEIGA ISSUE)

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this Objection and to the defendant's Motion to Compel Discovery and to take Depositions (Sandra Veiga Issue), and alleges as follows:

1. The defendant in the instant matter has filed the above Motion requesting that this Honorable Court compel the State to provide "additional discovery" concerning the investigation resulting in the termination of Former Florida Department of Law Enforcement (F.D.L.E.) Inspector Sandra Veiga. The defense also requests to take the depositions of several Assistant State Attorneys in the Miami-Dade and Broward County Offices of the State Attorney concerning the investigation of this person.

2. First and foremost, the defendant claims that the

defendant is entitled to said information pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). The State takes issue with such. The Court should note that Ms. Veiga was the F.D.L.E. Department Inspector conducting annual inspections of the intoxilyzer in this county pursuant to Florida Administrative Code, section 11D-8.004(2). She has since been terminated by F.D.L.E. It is the State's understanding that besides herself, there are other witnesses who would testify that her annual inspections were performed in compliance with the F.D.L.E. Rules. Additionally, all instruments in Broward County have been reinspected by another inspector from F.D.L.E. and have been found to be in compliance with said rules.

3. It should further be noted that the pertinent annual inspections performed by the Department Inspector are <u>not</u> required to be proven by the State unless said inspection was the most recent one (which is very rarely the case); it is only the monthly agency inspections, performed by the local law enforcement agencies, which are required to be proven. *See State v. Buttolph*, 969 So.2d 1209 (Fla. 4th DCA 2007). Furthermore, if the State chooses to prove said annual inspection, said report, which "contains an inspector's technical review of the Intoxilyzer 5000 pursuant to the applicable administrative requirements," can be admitted without calling the person who completed said report. *See Pfleiger v. State*, 952 So.2d 1251

(Fla. 4th DCA 2007). Additionally, the Intoxilyzer 8000 that the defendant gave the breath test on has a control test feature that actually validates the accuracy of the instrument during the breath testing itself. Thus, based on the foregoing, as indicated in the court file in the instant matter, Sandra Veiga's name either does not appear on the State's witness list or has been withdrawn from such. If the court file does not reflect such, the State indicates so at this time. Therefore, based on such, particularly the fact that the monthly agency inspections supplant the yearly department inspections, the information sought, even if in existence, could not implicate *Brady v. Maryland* in that "the favorable evidence could reasonably be taken to put the whole case in such a different light" *See Strickler v. Greene*, 527 U.S. 263, 290, 119 S.Ct. 1936, 1952 (U.S.Va. 1999).

4. Furthermore, this office did not participate in any investigation about Ms. Veiga's activities and all documentation concerning such in this office's possession has been provided by F.D.L.E. and is listed in the State's Supplemental Discovery and on its website.

5. The defense also requests to take the depositions of several Assistant State Attorneys in the Miami-Dade and Broward County Offices of the State Attorney concerning the investigation of this witness not listed by the State. First,

based on the grounds set forth in the defendant's Motion and the documentation attached thereto, the defendant has failed to show "good cause" pursuant to Florida Rule of Criminal Procedure 3.220(h)(1)(D).

6. Second, although the Assistants in this Office are unable to assert any immunity on behalf of the Office of the State Attorney in Miami-Dade County, and the pleadings provided by the defense do not indicate that that the Assistants in that office have been served with such or noticed for such, as this Honorable Court is aware, a prosecutor whose knowledge came primarily from his or her role as a prosecutor cannot be compelled to testify. Additionally, the reasons regarding prosecution are not subject to question by the Courts, private litigants or private citizens. In *State v. Donaldson*, 763 So.2d 1251 (Fla 3d DCA 2000), the Third District held:

> Taking the deposition of opposing counsel in a pending case is an extraordinary step which will rarely be justified. See *Eagan v. De Manio, 294 So. 2d 639, 640-41 (Fla. 1974);* see also *Olson v. State, 705 So. 2d 687, 690-91 (Fla. 5th DCA 1998).* See generally *West Peninsular Title Co. v. Palm Beach County, 132 F.R.D. 301, 302-03 (S.D. Fla. 1990); Shelton v. American Motors Corp., 805 F.2d 1323, 1327 (8th Cir. 1986);* 14A Fla. Jur. 2d Criminal Law § 1486 (1993). Under the logic of Eagan, Donaldson's reasons for wanting to take the prosecutor's deposition should have been presented with particularity in open court, not ex parte. See *294 So. 2d at 640-41.* In the rare case in which the defense believes it has a basis for taking the prosecutor's deposition, the defense must first exhaust less intrusive discovery methods, and then make a showing of necessity and materiality, and that the interests of justice require this extraordinary step. See *Eagan, 294*

> *So. 2d at 640-41.* Under Eagan, such a showing must be made openly, not ex parte, so there is a fair opportunity for the state to respond.

State v. Donaldson, 763 So.2d 1251, 1254-55 (Fla 3d DCA 2000). As the Florida Supreme Court noted in *Eagan v. DeManio*, 294 So.2d 639, 640 (Fla. 1974):

> Since prosecutors must necessarily perform investigatory functions incident to their primary duty to prosecute in almost all felony cases, it is unnecessarily burdensome to subject them summarily to discovery by oral deposition on the ground that they have acted in an investigatory as opposed to a prosecutorial capacity. Subjecting prosecutors to this type of discovery of their investigations would require disclosure of their work product and seriously impede criminal prosecutions.

Again, the undersigned asserts such without acknowledging whether any investigation other than the one done by F.D.L.E. did, did not, does, or does not exist.

7. Therefore, based on the above, if this Honorable Court does not see fit to deny the defendant's Motion summarily in chambers, the State would request a hearing where further legal authority and argument can be provided to the Court.

WHEREFORE, based on the foregoing, the State submits that the defendant's Motion to Compel Discovery and to take Depositions should be Summarily Denied in chambers or set for a hearing for further argument.

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail/hand/FAX delivery this 19th day of

November, 2008, to: Michael Catalano, Esq., 1531 NW 13th Court, Miami, FL 33125, fax: 305-325-8759.

MICHAEL J. SATZ
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By: _____
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