

STATE OF NORTH CAROLINA  
COUNTY OF ROBESON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
Court File Numbers: 93 CRS 15291-15293

STATE OF NORTH CAROLINA

v.

DANIEL ANDRE GREEN

SECOND SUPPLEMENT TO  
FIRST AMENDED  
MOTION FOR APPROPRIATE RELIEF

NOW COMES THE DEFENDANT, Daniel Green, by and through undersigned counsel, who files this SECOND SUPPLEMENT to Defendant's First Amended Motion for Appropriate Relief:

In its recent Discovery Order, this Court found that "any statements implicating Sheriff Stone in trying to intervene or cover up drug activity may be relevant to this case . . . ." *See* Discovery Order, Nov. 30, 2016. Recently disclosed documents, obtained by the Defense earlier this week and produced by the State pursuant to that same Order, show that Sheriff Stone and at least one other member of the Sheriff's department actively protected Hubert Deese's drug trafficking activities. These statements provide Defendant further grounds for relief.

**I. Law Enforcement Acted in "Bad Faith" and Actively Concealed Information That Could Have Been Used at Trial to Impeach the Entire Police Investigation, Violating Defendant's Due Process Rights.**

The bad faith concealment of potentially useful information violates due process. *See Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). In *Youngblood*, the U.S. Supreme Court held that the police's "failure to preserve potentially useful evidence" constitutes a due process violation if the defendant "can show bad faith on the part of the police." *Id.* at 57-58.

“Whenever potentially exculpatory evidence is permanently lost, courts face the treacherous task of divining the import of materials whose contents are unknown and, very often, disputed.” *Id.* (quoting California v. Trombetta, 467 U.S. 479, 486 (1984)).

Here, newly-discovered documents, produced by the State to Defendant pursuant to this Court’s November 30, 2016 Order, reveal that **state law enforcement officers were aware of Hubert Larry Deese’s cocaine trafficking activities in 1993 and actively participated in a criminal conspiracy to facilitate his drug trafficking and to help him evade federal authorities.** According to these documents, Jerry Woods, a Robeson County deputy and member of the Hoke-Robeson Drug Task Force, provided Deese, who Woods knew to be a drug trafficker, with “information regarding the investigations and activities of the Drug Task Force in Robeson County.” *See* Exhibit 112, SBI interview of Jerry Woods, Nov. 25, 1997 (SBI Case No. 1997-02726). Both Woods and Deese admitted to this in interviews with the State Bureau of Investigation and acknowledged that money exchanged hands. *See id.*; Exhibit 113, SBI & ATF interview of Hubert Deese, Aug. 28, 1997 (Investigation No. 741505-97-0037). Woods was indicted and subsequently convicted on bribery charges. *See* Exhibit 112. Defendant has previously produced evidence that Hubert Deese was Sheriff Stone’s son. *See generally* Def.’s First Amended M.A.R. These newly-disclosed SBI, RCSD, and DEA reports indicate that Sheriff Stone was aware of his son’s cocaine trafficking activities. The documents suggest that Stone actively warned his son in 1993—the same year as the James Jordan murder—that “the Feds” were onto him. *See* Exhibit 114, SBI interview of Marion Dale Locklear, Feb. 16, 2006 (SBI Case No. illegible); Exhibit 115, Robeson Co. Sheriff’s Dept. and DEA debriefing of Marion Dale Locklear, April 20, 1998. Separate documents disclosed pursuant to this Court’s recent Order reveal that **during Defendant’s trial, the prosecutor was informed by the SBI**

**that “Deese talked about receiving protection from Jerry Woods in exchange for money” and that Woods acted “to help Larry Deese’s drug business.”** See Exhibit 116, SBI interview of Leslie Gene Carter, sent to District Attorney L. J. Britt III, Jan. 22, 1996. The prosecutor, Mr. Britt, did not provide a copy of these documents to trial counsel.

***Potentially Useful Information***

This information would have certainly been “potentially useful” to trial counsel to support their defense that the murder of James Jordan arose as a result of co-Defendant Demery’s drug dealing activity with Hubert Larry Deese. See Arizona v. Youngblood, 488 U.S. 51, 57–58 (1988). Trial counsel could have used evidence of Sheriff Stone and Jerry Woods’ corruption to potentially devastating effect. If the jury had been made aware of evidence that the Sheriff and those under his command had been actively conspiring with a drug trafficker who had connections to Larry Demery, they would have had ample reason to question the integrity of the entire investigation that identified Daniel Green as the killer. If the jury had known that the Sheriff’s Office had a strong motive to conceal evidence of a drug motive, for which there was already some evidence in the record, they would have been less likely to conclude that the murder transpired in the course of a carjacking.

The trial judge regarded the allegations about Sheriff Stone and Hubert Deese as unsupported and requiring a “logical leap that is not apparent to me.” Tr. 5752. After noting defense objections, he remarked, “The appellate courts can decide whether I’m right or wrong, and that’s the way it is.” Tr. 5759. Twenty years later, it is clear that the State actively concealed information that would have “put the whole case in such a different light.” State v. Williams, 362 N.C. 628, 637, 669 S.E.2d 290, 297 (2008) (quoting Kyles v. Whitley, 514 U.S. 419, 435 (1995)). The activities of Sheriff Hubert Stone and Deputy Jerry Woods, as described in these

newly-disclosed SBI documents, are *criminal*. Given that Deese and Larry Demery both worked at Crestline Mobile Homes, had the trial judge known (1) that Sheriff Stone was Hubert Deese's father, and (2) that he and another member of the Robeson County Sheriff's Office *actively facilitated* Deese's drug trafficking activities, it is highly doubtful that he would have interpreted the call from James Jordan's cell phone to Deese as a misdial to the "wrong number." Tr. 5751. It is also likely that it would have had a significant impact on the jury to learn that the co-Defendant, Demery, worked with Deese at Crestline; that Deese trafficked "the majority" of his drugs at Crestline; and that Deese trafficked drugs with the protection of the sheriff's department. This information was "potentially useful" to the defense. The active bad faith concealment of this information violated due process and requires a new trial.

### ***Bad Faith***

If words have meaning, law enforcement officers who conspire to assist a drug trafficker are acting in "bad faith." And where "a criminal defendant can show bad faith on the part of police" he establishes a "denial of due process of law." See Arizona v. Youngblood, 488 U.S. 51, 58 (1988). It is admittedly a rare case where a court will find "bad faith" on the part of police officers. However, this case and these documents present this Court with a truly extraordinary set of facts: The father of the NBA's biggest star player is murdered. The world's eyes are fixed on Robeson County. The victim's cellular phone reflects a call shortly after his death to the son of the Sheriff who's in charge of solving the crime. At the time, this son is actively trafficking millions of dollars of cocaine through his father's county, often in the vicinity of the murder scene, with his father's knowledge, and with the active assistance of a deputy assigned to the sheriff's drug task force. Defendant does not need to rely on his attorney's affidavits to demonstrate these facts; he is relying on *the state's own documents*—cellular phone records;

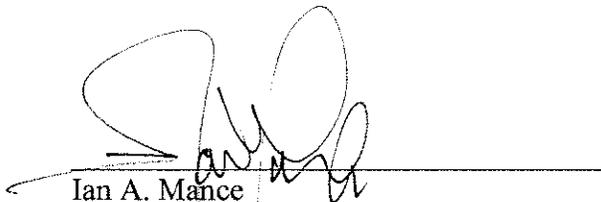
documents relating to the federal prosecution of Hubert Deese; and various SBI, ATF, and DEA interviews.

### CONCLUSION

When police act in a manner contrary to what is “reasonably to be expected of law enforcement officers . . . there is a showing of objective bad faith sufficient to establish the bad faith requirement of the *Trombetta/Youngblood* test.” United States v. Elliott, 83 F. Supp. 2d 637, 647-48 (E.D. Va. 1999). The Robeson County Sheriff’s Department’s conduct with respect to Hubert Larry Deese at the time of the James Jordan murder is a paradigmatic case of bad faith. This conduct actively prejudiced Daniel Green’s right to due process of law, as it more than meets the threshold for “potentially useful” information. *Youngblood*, 488 U.S. at 57–58. The additional information described above also meets the criteria under *Brady v. Maryland*, which also provides this Court with a separate and independent basis for finding a violation of due process. *See generally* Brady v. Maryland, 373 U.S. 83 (1963).

This additional claim is hereby incorporated by reference to Defendant’s First Amended M.A.R. For the above stated reasons, as well as those presented in Defendant’s M.A.R., and his First Supplement, this Court should grant Defendant a new trial. In the alternative, this Court should order an evidentiary hearing so that Defendant may present evidence of his innocence and deficiencies in his trial that rendered it unfair.

Respectfully submitted this date 16<sup>th</sup> December 2016.



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