

THE STATE OF TEXAS	§	IN THE 6th DISTRICT COURT
	§	
V.	§	OF
	§	
STANLEY WAYNE MAGGARD	§	LAMAR COUNTY, TEXAS

DEFENDANT’S FIRST BAGLEY MOTION

TO THE JUDGE OF THIS HONORABLE COURT:

COMES NOW the Defendant herein and moves the Court for its Order that the State produce all evidence relating to the allegation of rape by the State’s witness Whitney Renee Maggard [“Maggard”] and shows the following:

1. That the Defendant’s counsel viewed recently produced 2009 and 2011 CAC DVD’s of Maggard on Tuesday, September 3, 2013 in the Lamar County District Attorney’s office with Dr. Mike Gottlieb. Neither DVD would generate video and counsel and Gottlieb were resigned to listen to the audio portion only; the audio in the 2001 DVD is so bad as to be almost unintelligible
2. That the 2011 video focused on the investigation into the then 14-year –old Maggard’s allegation of rape by an adult man, one identified only as a 20-year-old “Robert”.
3. That the State has produced no discovery of this allegation to date .

ARGUMENT

Maggard’s allegation of rape is *Brady* material. The allegation is either true or untrue. If true, the State should have prosecuted it but there is no evidence this has happened; if it is untrue, then it is evidence of a false allegation of a sex crime by Maggard. In either case, the allegation is evidence that is more or less materially favorable to the accused herein, depending on the circumstances involved. In particular, it is exceedingly relevant if untrue.

The failure of the State to produce all evidence of the rape allegation is a *Brady* violation.

A *Brady* violation occurs when the government fails to disclose evidence materially favorable to the accused. *See* 373 U. S. 83 [1963], at 87. This Court has held that the *Brady* duty extends to impeachment evidence as well as exculpatory evidence, *United States v. Bagley*, 473 U. S. 667, 676 (1985), and *Brady* suppression occurs when the government fails to turn over even evidence that is "known only to police investigators and not to the prosecutor," *Kyles v. Whitley*, 514 U. S., at 438 [1995]. *See id.*, at 437 ("[T]he

individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police").

Youngblood v. West Virginia, 547 U.S 867 [2006]

The 2009 and 2011 CAC DVD's were not revealed to the Defendant until August 14, 2013 under extraordinary circumstances. Counsel and his forensic interviewing expert, Gottlieb, were viewing the CAC DVD's that *had* been timely revealed to the Defendant when they viewed an oblique reference by the CAC interviewer, Rebecca Peevy, to an earlier but as yet unrevealed interview. Counsel inquired and the Lamar County DA's office staff determined that *two more unrevealed* interviews of Whitney Maggard existed. The DVD's were rounded up and Gottlieb returned from Dallas – at Court Fund expense – to view the newly disclosed DVD's. On attempting to view them it was determined the video portion of both was absent so they attempted to listen to the audio of each, and learned of the rape allegation by Maggard.

This allegation is important. The State is attempting offer allegations by Whitney Maggard that the Defendant sexually assaulted her many years ago. This attempt is raised by two motions - each filed after late July 2013 - and the State is attempting to persuade the Court that the allegations are admissible in its case-in-chief under CCP Art. 38.37 and 37.07. As a result, the defense has been assessing the integrity of Whitney's allegations in earnest only since late July – the center of gravity of this case to date has been the allegation of Whitney's sister, Emily, of sexual assault. Now, the character and honesty of Whitney are squarely at issue, and her 2011 rape allegation is one that is riven with impeachment problems.

The Defendant urges the Court that the State is obligated under the authorities *supra* to not only produce this evidence but to have been aware of it. The Defendant does not now allege bad faith failure to produce by the State, *notwithstanding* the suspicious failure to produce impeachment evidence of a witness whose credibility only became really relevant so late in the litigation by virtue of its very late filing of the 37.07 and 38.37 motions. What is important now is the State produce all evidence relating to the allegation immediately.

WHEREFORE, the Defendant moves the Court for its order that the State immediately produce all evidence relating to Maggard's allegation of rape *supra*, inquire of the State on the record its basis for failing to produce timely, conduct a hearing to determine if the Defendant's prejudice by this untimely disclosure warrants exclusion of testimony by Whitney Maggard herein, and such other relief as the Court finds just fair and equitable.

Respectfully submitted,

By:

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FIAT

IT IS HEREBY ORDERED that the above Motion be heard on the _____ day of _____, 201____ at _____ : _____:0 o'clock _____ .m.

CERTIFICATE OF SERVICE

The undersigned certifies that on September 04, 2013 a true and exact copy of the foregoing was delivered to the office of the Lamar County District Attorney.

G. Donald Haslam, Jr.

ORDER

On this _____ day of _____, 201____, came to be heard the foregoing Motion and it appears to the Court that the same should be GRANTED/DENIED.

JUDGE PRESIDING