STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY	FOR THE NINTH JUDICIAL CIRCUIT INDICTMENT NO.: 2016-GS-08-2603
STATE OF SOUTH CAROLINA	
Vs.	**MOTION TO DISMISS FOR GOVERNMENT MISCONDUCT PURSUANT TO *BRADY V. MARYLAND*, 373 U.S. 83 (1963)**
MICHAEL COLUCCI, Defendant	

COMES NOW the Defendant, Michael Colucci, by and through undersigned counsel, respectfully requesting the Court exercise its discretion and dismiss the above-referenced indictment on account of extraordinary government misconduct in violation of Michael Colucci's Constitutional rights under the 5th, 6th, and 14th Amendments to the United States Constitution and Article I, section 3 and 14 of the South Carolina Constitution. Two memorandums disclosed by the State to the defense on June 11, 2025, conclusively prove the government has for the past ten years been in possession of exculpatory *Brady* material regarding Sara Colucci's plan to commit suicide by hanging yet never disclosed to the defense direct knowledge of the same until now, just a few days before the retrial of this case. It is hard to imagine a scenario more egregious of a criminal defendant's constitutional rights than what the State admitted day before yesterday. Through its inherent supervisory power and ability to impose sanctions deemed necessary to ensure respect and integrity for the judicial system, the Court should dismiss Indictment No. 2016-GS-08-2603 with prejudice.

In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court held that a criminal defendant has a due process right under the 5th and 14th Amendments to the prosecutor's disclosure of favorable evidence, including impeachment evidence. *See United States v. Bagley*, 473 U.S. 667 (1985) and *Giglio v. United States*, 405 U.S. 150 (1972). The right to *Brady* material is vital to ensuring the accused has a fair trial, and suppression of evidence favorable to the accused as to either guilt or sentencing violates constitutional due process rights regardless of the subjective or objective intentions of a prosecutor. *Id.* at 87. The duty to disclose is so broad, it exists even when the defendant failed to make a specific request for the favorable material. *United States v. Agurs*, 427 U.S. 97, 110 (1978) (holding in some situations evidence is of such

substantial value to a defense that fairness requires its disclosure even without a specific request). The holdings from Brady and its progeny make clear that withholding favorable, exculpatory evidence from a criminal defendant violates their right to due process and a fair trial. *Brady* at 87.

An individual asserting a *Brady* violation must demonstrate the undisclosed evidence satisfies four elements: (1) the evidence must be favorable to the accused; (2) that evidence must have been in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. *Riddle v. Ozmint*, 369 S.C. 39, 44 (2006) (citing *Kyles v. Whitley*, 514 U.S. 419 (1995) and *Gibson v. State*, 334 S.C. 515 (1999)). Suppressed evidence is considered "material" and prejudice results from suppression "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 683 (1985). South Carolina courts have applied these factors within the context of the "trial's outcome" and not just the verdict. *See State v. Durant*, 430 S.C. 98 (2020); *Gibson, supra* (citing *Kyles, supra*); and *State v. Von Dohlen*, 322 S.C. 234, 241 (1996). The burden of disclosure of *Brady* material falls exclusively on the prosecutor. *Riddle*, at 44 (citing *Gibson, supra*). *Brady* and its progeny consider law enforcement part of the prosecution team, and *Brady* violations can be committed without a prosecutor ever being personally aware of exculpatory or impeachment evidence. *Kyles*, at 421 and 437-38. As stated in *Riddle,*

> The overriding theme of the *Brady* cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play. In close cases, "the prudent prosecutor will resolve doubtful questions in favor of disclosure. This is as it should be. Such disclosures will serve to justify trust in the prosecutor as the representative of a sovereignty whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done. And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations.

369 S.C. at 46 (quoting *Gibson*, 334 S.C. 515, 526 (1999) (citing *Kyles v. Whitley,* at 438-40 (quotes omitted) (citing *Berger v. United States*, 295 U.S. 78, 88 (1935))).

In this case, the government's memorandums make clear that for nearly ten years they were in possession of *Brady* material that should have been disclosed to the defense long before Michael Colucci's first trial in 2018 and long before now – a mere five days before the retrial in

this case. Not only, however, was the *Brady* material suppressed from the defense and jury that presided over the first trial in 2018, but it was likewise suppressed from the judge who issued the arrest warrant on May 3, 2016; the judge who presided over the preliminary hearing on October 14, 2016; and the Berkeley County Grand Jury that issued its true billed indictment on November 8, 2016. At each one of these moments where Michael Colucci was constitutionally entitled to a fair and independent determination of probable cause, his constitutional right thereto was irreparably denied on account of SLED Agent David Owen's intentional withholding of exculpatory evidence in a case where no South Carolina forensic pathologist that has reviewed this case has said it was a homicide. As stated in *Riddle*, our judicial system relies upon the integrity of its participants. *Riddle* at 46 (citing *State v. Quattlebam,* 338 S.C. 441(2000).

Under extraordinarily rare circumstances such as this where the government has admitted to an egregious *Brady* violation ten years in the making, the Court should conduct a hearing and receive testimony from Barbara Moore, David Owen, Megan Burchstead Burelson, and other witnesses as either side sees fit to determine the true facts and circumstances surrounding the government's misconduct to determine if Michael Colucci's rights have been irreparably harmed in such a way that warrants dismissal. As the caselaw on this issue makes clear, pursuant to its inherent supervisory power, the Court has the authority to manage the proceeding before it and punish conduct that undoubtedly abuses the judicial process. *See United States v. Hasting*, 461 U.S. 499, 505 (1983) (dismissal under the court's inherent supervisory powers appropriate "(1) to implement a remedy for the violation of a recognized statutory or constitutional right … and (3) to deter future illegal conduct."); *McNabb v. United States*, 318 U.S. 332 (1943) (exercise of court's supervisory power protects the integrity of the courts and prevents courts from "making … themselves accomplices in the willful disobedience of the law."); *Chambers v. NASCO, Inc.*, 501 U.S. 31, 44 and 46 (1991) (holding the court has the power under its inherent judicial authority to "fashion an appropriate sanction for conduct which abuses the judicial process" and that "the imposition of sanctions … transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself."); *United States v. Kearns*, 5 F.3d 1251, 1253 (9th Cir. 1993) (dismissal of criminal indictment on account of a due-process violation appropriate where government's conduct is "so grossly shocking and outrageous as to violate the universal sense of justice."); and *United States v. Bundy*, 968 F.3d

1019 (9th Cir. 2020) (dismissal upheld under the court's inherent supervisor power because lesser remedies would not adequately address the damage caused by the government's misconduct).

Since his arrest in 2016, Michael Colucci has been under constant supervision while on bond and has been required to wear an ankle monitor that has cost him over $25,000, both of which have caused him excessive financial hardship, extreme physical and emotional hardship, and prejudice. The ongoing, ten-year *Brady* violation the government has acknowledged should not be taken lightly under a traditional "no harm, no foul" mentality as is often the case when *Brady* violations are discovered after a mistrial and before the retrial of a case. This case is different. In a case where the manner of death has never been deemed a homicide by anyone in South Carolina, and the marks on Sara Colucci's body are consistent with a suicidal hanging and wholly inconsistent with a homicide, proof that SLED Agent David Owen knew Sara Colucci told her mother she was going to commit suicide by hanging days before her death and did everything within his power to intentionally keep that information from the defense is exactly the type of conduct so grossly shocking and outrageous as to violate the universal sense of justice.

Respectfully submitted,

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STATE OF SOUTH CAROLINA)
) IN THE GENERAL SESSIONS COURT
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
) INDICTMENT NUMBER: 2016-GS-08-2603
STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
-versus-) CERTIFICATE OF SERVICE
)
MICHAEL F. COLUCCI,)
)
Defendant.)
)

I, Heather Hill, as paralegal to Andrew J. Savage, III, certify that I have this day emailed a copy of a Motion to Dismiss for Government Misconduct to the following:

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Heather Hill
HEATHER HILL

SWORN to and SUBSCRIBED before me

this 13th day of June, 2025.

Notary Public for South Carolina

My Commission Expires: 01/25/2034