

DA ADMONISHES CHIEF WARNOCK

TO: Chief Scott Warnock, Willits Police Department, 125 East Commercial Street, Suite 150, Willits, CA 95490

Re: Willits police officer Jacob Jones

September 6, 2019 – Dear Chief Warnock:

Words cannot adequately express how disappointed I am that you failed to notify me or, for that matter, anybody in my office of the peace officer hiring of Jacob Jones despite Mr. Jones obvious Brady background. Having personally reviewed the Brady materials provided to you by the Eureka Police Department (EPD), you surprisingly overlooked what was important therein and approved the hiring of this badly tainted former EPD officer as a Willits police officer.

First, I would never have thought in a million years that it would be necessary for me to remind you that honesty and credibility have always been essential traits for a police officer. Under the United States Supreme Court's Brady decision, an officer's credibility can determine whether he or she may face testimonial impeachment during court proceedings or even be subject to termination of employment.

As background, the US Supreme Court held in 1963 in the case of Brady v. Maryland that the prosecution in criminal proceedings has a duty to disclose to the defense — upon request — material information that is exculpatory of a defendant. The court ruled in Brady that the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment “irrespective of the good faith or bad faith of the prosecution.”

In a subsequent case, United States v. Agurs, the Supreme Court held that Brady disclosures are required even if the defense has not specifically made an inquiry whether such information exists, and later in 1995 in Kyles v. Whitley, the Supreme Court further held that the prosecution has an affirmative duty to learn of and disclose any favorable evidence known to “others acting on the government's behalf in the case including the police.” Further, the prosecution disclosure obligations include not only evidence directly related to the crime alleged, but also to information that would affect the credibility of a prosecution witness in the case. Thus, the prosecution is required not only to disclose what is already known to prosecutors, but also to learn of any such information that is known to law enforcement, including matters related to witness credibility — particularly the credibility of a police officer witness in our immediate context — and make that information available to the defense. Under Brady, there is no distinction between evidence that could serve to impeach a government witness (in the context of this letter, read “police officer” in place of government witness) and evidence that could be material to the guilt or punishment of a defendant.

Although the original Brady case referred only to the duty of the prosecution to disclose evidence that could serve to impeach a government witness, subsequent cases which have flowed from the 1963 Brady decision have held that law enforcement agencies are

required to inform the prosecution of any evidence known to them that could require the prosecution to make Brady disclosures to a defendant. This places a necessary burden of disclosure on officers and their departments due to the risk that a criminal conviction will be dismissed or reversed if a Brady violation by the police is found. There is also the risk of civil liability associated with a failure to disclose, not to mention the difficulty in determining the scope of what must be disclosed.

So that there is no ambiguity in this letter, I intend to be very blunt. You as the Chief of Willits Police Department withheld and failed to inform the District Attorney, the chief law enforcement official in Mendocino County, of Mr. Jones's Brady background.



Likewise, you withheld and failed to inform any of my deputy prosecutors or my peace officer investigators of this necessary and required information. Neither the Willits Police Department (as a law-enforcement agency) nor you as the managing law enforcement chief (and hiring authority) complied with long-standing departmental Brady obligations. Again for emphasis, Mr. Jones was sworn in as a Willits police officer on June 12, 2019 and you have literally sat silent about Mr. Jones's Brady background since then. We likely still would not have known about Mr. Jones's Brady background had my staff not inadvertently discovered same which caused us to start asking questions. So how is it, you may ask, that your secret slipped out and I became aware of the problem? One of my employees came across troubling information regarding Mr. Jones on the morning of August 29, the same day he had been subpoenaed to testify in a criminal matter and was in my office on that felony case, a case I was personally

prosecuting. The defendant in that case admitted criminal liability in lieu of an evidentiary hearing so it was unnecessary to call Mr. Jones to the witness stand that morning, thank goodness. When I returned to my office, I was handed a North Coast Journal (NCJ) article that had become available on the Internet that very morning, an article relating to Mr. Jones and his troubles in Eureka. I have attached that article for your records.

After reading the NCJ August 29 article entitled "Light into Dark Places," I immediately assigned chief investigator Bailey to investigate and obtain original source information for my personal legal review. Chief Bailey spoke with you and arranged to obtain the documentation that you had reviewed before making your hiring decision. Candidly, I was not surprised to learn that you left your office and you were not present at the police department to personally provide this information to Chief Bailey when he arrived as scheduled. Chief Bailey also spoke with officials at the Eureka Police Department and obtained documents from their end. He then spoke with Humboldt County District Attorney Chief Investigator Wayne Cox. I, in turn, spoke with Humboldt County District Attorney Maggie Fleming.

With the above background outlined and summarized here, here is what I have legally and factually determined in my role as Mendocino County's District Attorney:

The Eureka Police Department did a thorough investigation of allegations raised against Jacob Jones. Without going into specific detail, the EPD investigators made the following recommendations (relevant to any Brady inquiry) to EPD Chief Watson:

Allegation #1 — EPD policy number 339.5.8 Standards of Conduct, Performance. The allegation of knowingly being untruthful in providing a false statement against Officer Jacob Jones to be sustained.

Allegation #2 — EPD policy number 339.5 7 Standards of Conduct, Efficiency. The allegation of attempting to conceal defective or incompetent work against Officer Jacob Jones to be sustained.

Allegation #6 — EPD policy number 300.5 Reporting Use of Force. The allegation of failing to accurately document a use of force against Officer Jacob Jones to be sustained.

Allegation #10 — EPD policy number 339.5 7 Standards of Conduct, Efficiency. The allegation of attempting to conceal defective or incompetent work against Officer Jacob Jones to be sustained.

The EPD followed Skelly hearing protocol thereafter and at the conclusion of said hearing he upheld findings and recommendations of his managers, and imposed employment sanctions on Mr. Jones.

Mr. Jones sought to appeal his adverse outcome but then abandoned that appeal.

Separately, the Humboldt County District Attorney determined that at least some of the information developed in the overall EPD investigation constituted Brady misconduct mandating discoverable Brady disclosures at the very least and requiring the elected

prosecutor to further determine whether Mr. Jones could still be characterized as a reliable and trustworthy witness in pending and future criminal proceedings; and

The Humboldt County District Attorney confirmed to me during a telephone conversation on August 30 that she had affirmatively determined — prior to Mr. Jones being hired by WPD — that there was Brady impeachment materials within the EPD investigation documentation. Humboldt County District Attorney Fleming further confirmed to me that she had affirmatively determined that the adverse findings against Mr. Jones had "rendered him unable to serve as a witness in criminal prosecutions," necessitating the dismissal of cases in Humboldt County that are dependent on Mr. Jones testimony. DA Fleming finally informed me that neither you nor anybody else on behalf of the WPD attempted to speak with her prior to your hiring decision. Since you knew or should have known that the District Attorney determines whether specific conduct creates an actionable Brady situation with at least mandatory disclosures, this failure by you and your agency to interact with District Attorney Fleming before hiring Mr. Jones demonstrates a lack of due diligence in the way the WPD conducts employment background checks as well as manifests multi-step failures thereafter to even attempt to comply with Brady legal obligations required of you and the WPD.

Based on my own personal review of all the EPD materials, I strongly agree with District Attorney Fleming's conclusions. I further find that it is literally impossible for any informed law enforcement manager to read the EPD materials and not conclude that Mr. Jones is a Brady cop. Yet that is precisely what you did which in turn calls your legal judgment into question.

Given your failure to communicate the necessary Brady information since June 12 or before, where does that leave my office and our Brady obligation?

I have begun to reject WPD cases submitted for my charging review that are dependent on Mr. Jones's testimony. As the District Attorney concluded in her Humboldt County jurisdiction, I also conclude Mr. Jones's Brady employment background has rendered him unable to serve as a witness in any criminal prosecution in Mendocino County. Moving forward, I will not approve any WPD cases for criminal prosecution wherein I determine that Mr. Jones is a necessary and material witness.

To that end, I have also begun distributing the North Coast Journal article to defense attorneys who are handling pending criminal cases in which Mr. Jones was the investigating officer or a necessary witness. The NCJ article provides a defense attorney enough information to decide whether or not he or she needs to pursue a Pitchess motion on behalf of his or her client to obtain a court order ordering the WPD to release to the defendant the personnel records in question.

My already busy staff has been asked by me to identify and pull every criminal prosecution case already approved and filed since June 12, 2019 in which Mr. Jones was the investigating officer or a necessary witness.

I am in the process of personally reviewing every one of the cases I just mentioned being pulled for further review. I intend to promptly move to dismiss every pending criminal

case in which I determine that Mr. Jones is a necessary and material prosecution witness. I will do this to protect the integrity of our local criminal justice system and to follow the mandates of the US Supreme Court. In short, it is called being fair and following the law.

If there are victims, family members or others who have been harmed through criminal misconduct and subsequently become upset that a case must be dismissed due to the Brady implications that you ignored, my office will refer them back to the Willits government entities including but not limited to the WPD for you or someone else to explain to them what went wrong and why the dismissal became necessary as soon as the information you withheld came to light.

While I accept as obvious your Thursday telephone admission that you "screwed up," that admission seems to me to be too little too late. You have placed local law enforcement in a compromised position, your actions have diminished the reputation of the WPD, you created potential liability for Willits and its citizens, you have squandered WPD and DA resources, and you have placed the Bar cards of my deputy prosecutors and I at risk. Recognizing multiple errors in judgment is only the beginning of changes that must be undertaken within the Willits Police Department if it is to remain viable and law-abiding. I cannot help but note that such a failure to follow the law never once occurred while Chief Gonzalez was at the helm of the WPD.

I now must wonder what other Brady information you may be aware of and have in your records that you have failed to share with my deputy prosecutors, investigators and with me. So that there remains no residual doubt please update Chief DA Investigator Bailey in writing of any previously undisclosed to the District Attorney any Brady information known to you or anybody in your police agency regarding peace officers still working for the WPD with criminal cases pending in local courts. I need to have your disclosures if any in my office by the close of business September 25, 2019 if not sooner. If there is nothing further to be disclosed, please say so in writing and confirm in writing under penalty of perjury that you have made a diligent search of records available to you and your department. Thereafter, I will expect in the future that you and your agency shall update Chief Bailey immediately upon the discovery of actual or even possible Brady information relating to any one or more of your peace officers. It will not be well received if there is a repeat of my having to learn about problems within your shop through newspaper articles or Internet posts.

Finally, in closing, I call your attention to and to ask that you reflect on the leadership statement made by EPD Chief Watson as quoted in the North Coast Journal article:

"I care very deeply about the members of our agency and I understand their sacrifices and I care about their futures greatly but, as I as a chief, I also care very much about the reputation of the Eureka Police Department and the trust the public holds in the institution of policing. These types of investigations are necessary because we recognize how absolutely vital the public trust is and how easy it can be broken."

Sincerely,

C. David Eyster, District Attorney, Mendocino County