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Attorney Press Release

FOR IMMEDIATE RELEASE

September 2, 2024

By: BRETT PRITCHARD,

This year marks the ten year anniversary of the Michael Morton Act, which took effect on January 1, 2014. Last week, the Bell County District Attorney's office commemorated the anniversary of this milestone in its own shameful way. A district judge acting on his initiative was compelled to declare a mistrial in a felony case due to a violation of the Michael Morton Act committed by the Bell County District Attorney's Office, marking the first time a mistrial on such grounds has occurred in this county.

The act that forms the basis for the judge's ruling is a landmark piece of legislation was passed in response to the wrongful conviction and nearly 25 year incarceration of the eponymous victim of this miscarriage of justice. After subsequent DNA testing proved that another individual was responsible for the murder of Mr. Morton's wife, a court of inquiry found Williamson County District Attorney, Ken Anderson, to be in contempt of court for hiding exculpatory evidence from Mr. Morton's defense team despite a discovery order from the trial judge to hand over all relevant police reports and witness statements. Mr. Anderson was ordered to confinement in the county jail, thus giving the Lone Star State the dubious distinction of having the only prosecutor who ever spent time in custody for misconduct that resulted in a wrongful conviction.

However, Mr. Anderson was only sentenced to ten days in jail, which is less than ten hours for every year that Mr. Morton spent wrongfully incarcerated as a result of Mr. Anderson's wrongdoing. Adding insult to injury, Mr. Anderson was released after five days on account of "good behavior."

The resulting fallout led the Texas Legislature to draft new laws imposing an almost absolute obligation onto prosecutors to disclose and produce any reports by law enforcement officers and witness statements obtained as part of the investigation. Under the banner of "Never Again," this legislation passed unanimously and was signed into law by Governor Perry.

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A mere thirty miles up I-35 from where Ken Anderson notoriously condemned an innocent man to life in prison, the Bell County District Attorney has now attempted to transform "Never Again" into "Michael Morton Redux." In doing so, serious troubling problems were exposed in both the law itself and in the operations of the District Attorney's Office in Bell County.

Last week's trial of Demeterious Woods for injury to a child was beset from the start with issues involving the prosecutor's office handling of their discovery responsibilities. Even before a jury was empaneled, the defense brought a motion to dismiss the case on the grounds of a violation of Supreme Court precedent that obligates a prosecutor to turn over requested material in a timely fashion so that the defense can make use of it at trial.

At issue was a request by the defense for an un-redacted copy of the records on Demeterious Woods from the Department of Family and Protective Services. The defense originally made a request of this file back in May, however our office only finally received a working electronic copy of the file on the Thursday before a trial scheduled to begin the following Tuesday. The file consisted of hundreds of pages of documents in addition to diagrams, photographs, audio recordings, witness statements, and a copy of a never-before-seen offense report from the Nolanville Police Department. This last item would prove before long to hold special significance.

The response of Assistant District Attorney, Brendan Guy, who is the lead counsel on the case for the prosecution, was to argue to the court the following: 1) his office worked as diligently as possible to get a copy of the CPS file, 2) three business days is sufficient time for the defense to work through and prepare all of the above mentioned material, 3) his office has, before the start of trial, turned over all discovery material in the state's possession to the defense, and 4) his office had never previously been made aware of or received a copy of the Nolanville police report contained within the file.

Already, within a matter of hours, these assertions began to collapse like a pricked balloon. At the very moment that Mr. Guy was arguing to the judge that his office had now turned everything over to the defense, his legal assistant was emailing our office additional photographs that had never been shown to us or mentioned previously. Because jury selection went until the end of the day on Tuesday, the defense had to wait until the following morning to re-urge our dismissal motion in light of the demonstrably false statement made about there being no new discovery.

At this second hearing for dismissal, a visibly upset Judge Falkner demanded to know whether the state intended to use these newly disclosed photographs as evidence against the defendant. In response, Mr. Guy affirmed that he personally could and should be held in contempt of court for his statements and actions but that he should nevertheless be allowed to use this photographic evidence against the defendant despite the fact that the defense has had no time to review or prepare to rebut this evidence. In the end the trial was still allowed to proceed under these conditions, with the defense motion to dismiss having been denied. Although Judge Falkner declined to hold Mr. Guy in contempt, the late provided photographs were ultimately excluded from evidence.

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Later that afternoon the Nolanville police officer who prepared the report that was the subject of the pre-trial hearing was called to testify. This officer, named Oeller, was on the state's witness list and was announced as the next state's witness right before breaking for lunch. It strains credulity to believe that the topic of the missing police report did not come up between Officer Oeller and Assistant District Attorney Guy in any discussion that might have taken place between the two of them before Oeller took the stand to testify. Regardless, it was only under defense cross-examination that Officer Oeller was compelled to admit that he submitted the report in question to the District Attorney's office in May of 2023 and further, that there is a paper trail that would substantiate this.

Faced with this bombshell, a notably concerned Judge Falkner stayed the proceedings and dismissed the jury for the rest of the day. The state was given until three p.m. to investigate this claim and return to court to place an explanation on the record. This missing report is of particular material significance because it tends to exonerate Mr. Woods as a perpetrator. Notably, it contains statements by the biological mother that are against her own penal interest that she is solely responsible for disciplining the children and that the children have been coached by their grandmother to make accusations against Mr. Woods.

Responding to Judge Falkner's demand for an explanation, the state first called a staffer from their office who works in I.T. He put forward somewhat convoluted and contradictory testimony about the District Attorney's office having multiple storage drives and sub-folders that files can be placed into, but ultimately claimed this document was received by his office and stored in a way that the assistant district attorney assigned to the Demeterious Woods prosecution would not have likely seen.

More disturbingly, he testified that his office had destroyed or erased their only copy of this report either ten or thirty days after receiving it on the grounds that their office policy is to do so if the document does not get attached to a case their agency is actively prosecuting. He could provide no plausible explanation as to why a document filed by Nolanville Police purporting to conduct an investigation against Mr. Woods and that mentions him by name almost two dozen times would not get attached to the Demeterious Woods file. This is especially baffling considering that Mr. Woods was indicted in March of 2023 by the Bell County District Attorney, and their office received this report two months after presenting Mr. Woods' case to a grand jury. In other words, Mr. Woods was more than just on the D.A.'s radar screen; he was an active case by this time.

Next, Officer Oeller was recalled to the witness stand. He testified that he submitted three filing orders to the district attorney in conjunction with his investigation. These filing orders warrant further explanation that is beyond the scope of this press release, but it will suffice to point out that these documents are indicative of a practice – that as far as our office is aware is unique to Bell County – whereby law enforcement agencies can effectively dictate to the Bell County District Attorney's office how they are to organize and categorize their intake of new cases that are referred to them for possible prosecution. Further testimony would establish that if the Bell County D.A.'s office disagreed with how

law enforcement was characterizing a particular criminal incident in their filing order submission, whether it relates to the nature of the offense; when it occurred; or who the perpetrator was, they would ask the submitting agency to revise the filing order form Bell County keeps on record rather than make the appropriate changes on their own authority.

No legitimate purpose for this rather unusual practice was ever provided. It does however work to serve one end in particular, whether this was its intention or not. It provides grounds for the Bell County District Attorney to establish a pretext for plausible deniability acknowledging receipt in the event law enforcement submits a supplementary report on a case or opens up an investigation against someone who might be materially tied as a witness or co-defendant to a case the District Attorney is prosecuting. If exculpatory information is contained within any of these reports, Bell County can destroy their copy and deny ever having any knowledge of what was contained therein.

Indeed, this is precisely what occurred last week. Officer Oeller submitted three filing orders to the Bell County District Attorney, one for each alleged victim listing Mr. Woods as the perpetrator, and one listing the biological mother as the perpetrator. Though the filing orders have the same alleged victim, the same type of offense – injury to a child – and purport to be reporting the same criminal incident, the police report containing all of the exculpatory evidence for Mr. Woods was contained in the filing order for the biological mother, which the Bell County District Attorney promptly suppressed on the grounds that they were not going to pursue prosecution against the mother.

There is some evidence that this was done intentionally. While the three filing orders claim to be describing the same criminal episode, Mr. Woods' offense date is listed as March 1, 2023 on both orders while the biological mother's offense date is moved back exactly one year and listed as March 1, 2022. Officer Oeller was asked about this discrepancy on cross-examination and could not put forward a plausible explanation why the same incident would be given two distinct dates exactly one year apart. Also, Officer Oeller's report itself indicates that he would be submitting it under *both* filing numbers, meaning it would be filed with the district attorney under the biological mother *and* under Mr. Woods. Again, Officer Oeller could not explain why his report states one thing but the evidence indicates otherwise. Either the officer is misrepresenting the facts in his police report or the District Attorney's office is misrepresenting the facts in their testimony before the court, but they cannot both be correct.

Asked point blank, officer Oeller denied doing this on purpose so that the District Attorney's office could hide the exculpatory report in a different file. He also denied acting in consultation or under the advice from anyone in the D.A.'s office. Whether direct collusion was involved or not the net effect was the same, as the last witness to testify would confirm.

Finally called to the stand was Assistant District Attorney, Debbie Garrett. She testified in her capacity as an assistant district attorney with the Bell County D.A.'s office, who also has some supervisory authority over the office's intake of new cases. Of note is the fact that Mrs. Garett is also the unopposed nominee in the upcoming election for District Judge of the 27th Judicial District.

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Garrett's testimony served to confirm what had already been established: 1) her office did in fact receive a copy of the exculpatory police report around May 30, 2023, 2) her office's intake attorneys read and reviewed this report, 3) her office did not place this report in the Demeterious Woods file, nor place any type of cross-referencing document into the Woods file that would refer to this other report, 4) her office had already indicted Mr. Woods and had an affirmative duty to supplement his defense with any new information as it comes in, and 5) rather than turn over this report to Mr. Woods' defense her office permanently deleted the only copy of the report they had. The sole ambiguity in her testimony was what direct role Mrs. Garrett herself played in any of this. However, as it relates to her office committing a flagrant violation of the Michael Morton Act: *Quod Erat Demonstrandum*.

Far more revealing was Mrs. Garrett's attempt to explain away or justify the actions of her office. When confronted directly with what should be at a minimum an embarrassing if not scandalous failure of her office to maintain the most basic procedural safeguards of a defendant's constitutional rights, Garrett deflected and blamed everyone from Nolanville Police to the defense team for Mr. Woods(!). When asked bluntly whether she has a duty or failed in her duty to preserve exculpatory evidence on a defendant her office is prosecuting, Mrs. Garrett demurred.

None of this should be surprising. Even taken at face value, Mrs. Garett's explanation only makes the whole matter that much worse. We are being asked to accept that when provided with an official police report, thoroughly reviewed by intake attorneys and other staff, and that is replete from beginning to end with the name of an individual who is actively being prosecuted by the District Attorney's office, *and contains the names of alleged victims who would already be listed in their office's computer system as such*, that their office finds nothing of significance and buries it behind a Chinese wall until such time as it can be quietly erased.

By way of comparison, our firm keeps and maintains thorough records of every client and potential client that we may have had a conversation with, what their legal issue was, what other parties might be involved in that matter so as to avoid even a potential conflict of interest on any future case we might be retained on. All of this is cross-referenced anytime our firm is contacted by a potential new client to make sure we are not violating any duties to former or existing clients. We could tell you today if someone so much as called our office 10 years ago to make an appointment and then cancelled it, and that was the extent of our contact. Our only reason for taking these measures is to avoid being conflicted off of a case, which would cause us to waste client resources; nobody's freedom is at stake. Yet we are to believe and accept that the Bell County District Attorney can't perform the most basic checks to make sure they are not destroying or concealing exculpatory evidence. The entire affair beggars belief.

In any event, this incident highlights a more fundamental flaw in all of the measures that have been enacted post *Brady v. Maryland* that are intended to remedy the problem of prosecutorial misconduct when it comes to providing full and complete disclosure. None of these laws carry with them any serious

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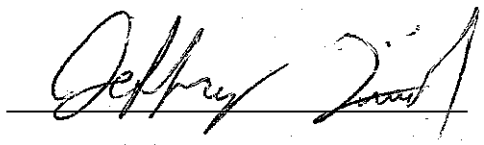
enforcement mechanism. In the Woods case last week, when Judge Falkner was confronted with not one, not two, but three distinct motions by the defense to dismiss the case for various discovery violations, in the end he could only bring himself to declare a mistrial. This is hardly any skin off the back of the prosecution. Their misconduct is rewarded with a dress rehearsal and then a second bite at the apple.

Neither is this matter an isolated incident. In the last felony case our firm tried in Bell County in front of Judge Steve Duskie just a few months ago, we had a previously requested but never provided CPS file delivered to us for the first time three days into trial. In general, Bell County's compliance with discovery rules has been more often honored in the breach than in the observance. Just as now, the last failure to comply was supposedly based on a half-baked technical excuse. It is worth recalling the old maxim, "once is happenstance but twice is a tendency." To which we would add three times is enemy action.

We would be satisfied to put the matter behind us if we could have any confidence that Henry Garza would handle the matter seriously and take whatever remedial steps are necessary. However, in his initial statement to the press following the declaration of a mistrial, he described the matter simply as discovery material being attached to the wrong file as if he were describing something as mundane as misplacing his car keys. The full story, unfortunately for Mr. Garza, goes far deeper than this.

Therefore our firm intends to obtain a transcript of the proceedings of this matter and make them available. Based on our own conversations with other attorneys practicing in the area, we know that we have only scratched the surface regarding this ongoing issue, and that a similar story could be told by many others. We would encourage honest and objective members of the Fourth Estate to pick up and pursue this line of inquiry.

Respectfully,



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