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Melissa Hurst
Circuit Clerk
Coles County, Illinois

IN THE CIRCUIT COURT
FOR THE FIFTH JUDICIAL CIRCUIT OF ILLINOIS
COLES COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
-vs-	)	No. 19-DT-76
	)	19-DT-100
KARA CHUMBLEY,	)	
	)	
Defendant.	)	

RESPONSE TO DEFENDANT'S DECEMBER 17, 2020 AMENDED MOTION TO DISMISS

NOW COME the People of the State of Illinois by Jennifer Mudge, of the Office of the State's Attorneys Appellate Prosecutor, and for Response to the defendant's December 17, 2020 Amended Motion to Dismiss, represents unto this Honorable Court as follows, noting – with reluctance and with much deference to this Honorable Court – that defense counsel's claims and accusations are (1) tied to a misreading of the law and outright ignorance of the facts, (2) premised on reckless, defamatory speculation and (3) motivated by political animus directed at the Coles County State's Attorney, against whom defense counsel was running for political office during these proceedings:

1. That the defendant is charged with two separate occasions of Driving Under the Influence of Alcohol. The first being charged June 13, 2019, and the second being charged August 7, 2019.

2. That on August 21, 2020, the defendant, through counsel Todd Reardon Sr., filed her Motion to Dismiss Based on Prosecutorial Misconduct alleging her constitutional rights were violated by the State's Attorney's Office based upon the violation of Illinois Rules of Professional

Conduct by the sexual-in-nature communications between Kara Chumbley and former assistant state's attorney, Brady Allen.

3. That Brady Allen is no longer employed with the Coles County State's Attorney's Office.

4. That the Coles County State's Attorney's Office has requested a Special Prosecutor in these pending DUI cases.

5. That the Court granted the Coles County State's Attorney's request for Special Prosecutor on August 25, 2020. (EX: A – Judicial order of ILSAAP appointment (19-DT-100, 76).)

6. That the charges were brought against the defendant by way of Complaint of the Coles County Sheriff's Department in Cause 2019-DT-76 and by way of Complaint of the Mattoon Police Department in Cause 2019-DT-100.

7. That no legal grounds exist to dismiss the pending charges against the defendant under 725 ILCS 5/114-1 (West 2018).

8. Beyond section 114-1, this Court does retain inherent authority to dismiss an indictment in a criminal case where "there has been a clear denial of due process" because this Court has an obligation to "insure a fair trial." *People v. Lawson*, 67 Ill. 2d 449, 455-56 (1977).

9. Because this is such an extraordinary remedy, it is the defendant's burden to demonstrate that there "has been an *unequivocally clear* denial of due process." *Lawson*, 67 Ill. 2d at 456 (emphasis added.).

10. As outlined in the State's previous response, far from demonstrating an "unequivocally clear" denial of due process, the defendant has not articulated any cognizable claim of a denial at all, asserting only that an "illegal communication" has "irreparably harmed" her. See

Lawson, 67 Ill. 2d at 459 (holding that even for a specific claim of subjective prejudice based upon delay, such a claim of the "possibility of prejudice" was simply not sufficient).

11. It should also not be lost on this Court that even the extraordinary remedy under the high standard from *Lawson* should presumptively result merely in a dismissal *without* prejudice. *People v. Murray*, 306 Ill. App. 3d 280 (1999) (affirming dismissal for want of prosecution).

12. Despite the defendant's claims, the State has not violated any of her constitutional rights; at best, an assistant state's attorney has violated the Illinois Rules of Professional Conduct. See Rule 4.2 (committee comment 1: "This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounseled disclosure of information relating to the representation").

13. Despite amending her motion, the defendant has presented no actual facts (or argument for that matter) to demonstrate that the communications she had with the assistant state's attorney deprived her of her constitutional right to counsel.

14. The defendant's amended motion is replete with the following phrase: "That based on information and belief . . ." (See, for example, Par. 8, 9, 10, 13, 17, 43, 52) and contains, by her own admission, statements from a prosecutor in a completely "unrelated matter" (Par. 60). Rank speculation and "belief" are not a substitute in a criminal case for actual evidence. No material in support of these claims is attached to the defendant's motion. This is most assuredly due to the fact that all that follows the "information and belief" is complete speculation and/or outright fiction. Either way, it is unsuitable in support of the amended motion. See *Lawson*, 67 Ill. 2d at 459.

15. As previously outlined, despite the amended motion, the bottom line here is that no basis exists to dismiss this case. The defendant has presented no claim (let alone evidence) that her substantive or procedural due process rights have been violated and that such a violation resulted in "irreparable harm."

16. The improper communication here appears to be a violation of the Illinois Rules of Professional Conduct; this cannot – as a matter of law – be viewed as "prosecutorial misconduct" given that the communication here was not directed at the court or a jury. See *People v. Williams*, 2020 IL App (4th) 180554 (slip. op.) ("Defendant describes the State's alleged errors as 'misconduct' on multiple occasions, and we now wish to delineate misconduct from mere error. Black's Law Dictionary defines 'misconduct' as 'dereliction of duty; unlawful, dishonest, or improper behavior, esp. by someone in a position of authority or trust,' and, 'An attorney's dishonesty or attempt to persuade *a court or jury* by using deceptive or reprehensible methods.' Black's Law Dictionary (11th ed. 2019). This court considers actions, such as *Brady* violations or *Batson* violations, to be misconduct." (emphasis added.).

17. Despite the defendant's claims throughout the amended motion that the State's Attorneys Appellate Prosecutor ("ILSAAP") advised State's Attorney Danley on how to "handle" the "false allegations" against Brady Allen (Par. 8), the reality is that no such advice was rendered by ILSAAP. ILSAAP was contacted regarding whether a conflict existed in reviewing Mr. Allen's situation for prosecution-review, given that ILSAAP would be handling the underlying DUI as ordered by this Honorable Court. ILSAAP declined any involvement in any potential prosecution.

18. Nor is there any basis – and the defendant has provided no evidence of – an "improper legal opinion" rendered by ILSAAP that the State's Attorney and "others" should try to "disprove the allegations of misconduct" by Brady Allen as "false" or as a "political stunt."

(Par. 10, 16, 29). Clearly the allegations against Mr. Allen here are not a political stunt. The political stunt here, without question, is – as counsel Reardon represented to ILSAAP Chief Deputy Director David J. Robinson by phone regarding a fake subpoena for ILSAAP Director Patrick J. Delfino in a case involving another client (who also happens to now represent Brianna Lee) – was to embarrass and harass the State's Attorney, using this client's case as the vehicle.[1] (EX: B – excerpt from transcript of 11/30/2020 hearing outlining representations made by Mr. Reardon to ILSAAP.)

19. The State would be remiss if it did not point out, too, that the defendant's claims regarding *Brady* and/or *Kyles* (Par. 32) violations are meaningless. The case has not gone to trial, the defendant has the material at issue, and to imply that somehow her not receiving it on her timeline requires her case to be dismissed with prejudice is nonsensical. The defendant does not even indicate how that supposed *Brady* violation prejudiced her ability to prepare a defense (or even prepare a motion to dismiss). Indeed, we are here on an amended motion to dismiss and she has said material.

20. One example of the outright ignorance of facts, premised on reckless, defamatory speculation is the defendant's claim that ILSAAP – in particular, Special Prosecutor Mudge – had a "duty" to not "create a conflict by adopting the work product, strategy, and instructions of how to proceed in prosecuting [the defendant] from the Coles County State's Attorney's Office." (Par. 58). Said duty was violated when – according to the defendant – Special Prosecutor Mudge adopted a response motion to the defendant's motion to dismiss that was "in fact" – ***"in fact"*** according to the defendant – drafted by Ronda Parker from the State's Attorney's Office. (Par.

[1] The State fully appreciates the seriousness of this statement. However, in light of counsel's reckless accusations of misconduct, perjury, and impropriety, a straightforward, unvarnished response is appropriate.

59). As such, the defendant speculatively and most assuredly, concludes, "because [Special Prosecutor] Jennifer Mudge adopted the work product, strategy, and instructions of a conflicted Officer as her own . . . [ILSAAP] became conflicted as well . . ." (Par. 61).

21. In point of ***actual fact***, the motion received from Ms. Parker was used as a filing template. The draft – which was later adopted – and tweaked – by Special Prosecutor Mudge was drafted from scratch by ILSAAP Chief Deputy Director Robinson, who is chief of the Agency's appellate division and serves as a special prosecutor. (See EX: C – Special Prosecutor Mudge's 11/04/2020 e-mail to Chief Deputy Director Robinson asking for assistance in preparation of response motion and the 11/06/2020 response – with draft motion – from Chief Deputy Director Robinson.)

22. In sum, nothing has changed since the filing of the defendant's last motion to dismiss. None of the fanciful and reckless allegations in this amended motion change the fact that an independent special prosecutor has been appointed to prosecute the defendant in 19-DT-76 and 19-DT-100. The defendant has not presented any argument under section 114-1 to justify the dismissal of her criminal case (and acknowledges as much (Par. 70)). Again, absent a section 114-1 showing, it is the defendant's burden to demonstrate that there "has been an *unequivocally clear* denial of due process." *Lawson*, 67 Ill. 2d at 456 (emphasis added.). Not a speculative, hopeful, or imaginary, denial of due process, but an "unequivocally clear" denial of due process. The defendant's motion is utterly bereft of any evidence to meet that burden.

23. Accordingly, it is just and appropriate this Court deny the Amended Motion to Dismiss.

WHEREFORE, the People of the State of Illinois pray this Honorable Court deny the Amended Motion to Dismiss and for such other, further, and different relief as this Court deems just and proper.

Dated this 18th day of December __, 2020.

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,

By: _____
JENNIFER MUDGE, Special Prosecutor

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