

**DOCKET NUMBER 14-DB-060**

HEARING COMMITTEE NO. 06

**IN RE: RONALD SEASTRUNK****FINDINGS AND RECOMMENDATIONS**

The Respondent, Ronald Seastrunk, is accused in one count of violating Code of Professional Conduct Rule 3.8(d) by failing to disclose exculpatory evidence to the defendant in a criminal case. For the reasons that follow, we find that the Office of Disciplinary Counsel demonstrated a breach of Rule 3.8(d) by clear and convincing evidence.

**UNDERLYING FACTS**

The facts of this matter are largely stated in *State v. Sizemore*, 13-529, pp. 1-2 (La.App. 3 Cir. 12/18/13), 129 So.3d 860, 863, *writ denied*, 14-167 (La. 8/25/14), 147 So.3d 699 (footnote omitted):

On the morning of June 14, 2010, a passerby found the body of Christopher Hoffpauir in a ditch on the side of Garwood Busby Road. According to the State, the defendant, Justin Robert Sizemore, along with Kristyn Hoffpauir, conspired to murder Christopher, who was Kristyn's estranged husband.

The defendant was charged with second degree murder, a violation of La.R.S. 14:30.1, and conspiracy to commit second degree murder, a violation of La.R.S. 14:26 and La.R.S. 14:30.1. The defendant's first trial ended in a hung jury. During the defendant's second trial, the defense made a motion for a mistrial on the basis that the State failed to provide the defense with *Brady* material. Although it is unclear from the record to what extent the State agreed with the defense on that issue, the record indicates that, at minimum, the State did not object to a mistrial. The trial court granted the motion for a

mistrial. After the defendant's third trial, the jury returned guilty verdicts as to both charges.

Thereafter, for the defendant's conviction for second degree murder, the trial court imposed a sentence of life imprisonment at hard labor, without benefit of probation, parole, or suspension of sentence. For the defendant's conviction for conspiracy to commit second degree murder, the trial court imposed a sentence of twenty-five years at hard labor, to be served consecutively to any other sentence.

The third circuit opinion does not contain information pertinent to the charges against Respondent. Following the discovery of her ex-husband's body, Kristyn Hoffpauir (Kristyn) gave two recorded statements to detectives of the Vernon Parish Sheriff's Office. In the first, ODC Exhibit 9a, taken on June 15, 2010, Kristyn denied any involvement in the homicide.

The next day, Kristyn gave another statement, ODC Exhibit 9b, in which she related that on the day of the murder she picked Sizemore up and placed a call to her ex-husband. She left a message asking him to meet her to assist her in a roadside emergency. Sizemore then got into the trunk of the car Kristyn had driven, she explained, because she did not want Christopher to see her with another man. Sizemore wanted to talk to Christopher about his ongoing relationship with Kristyn; thus the ruse to lure him to the spot. When Christopher Hoffpauir (Christopher) arrived at the scene, Sizemore exited the trunk through the passenger compartment, alighted from the car, and killed Christopher. Kristyn still denied that she knew Sizemore was going to kill Christopher. Sizemore picked up the

spent shell casings ejected by his gun, and he and Kristyn then drove to Alexandria, Louisiana, where she claimed they purchased two soft drinks from a Taco Bell restaurant. After leaving Taco Bell, Sizemore stopped the car on a bridge near Lecompte, Louisiana, from which he threw the gun and spent casings.

On June 17, Kristyn participated in a video reenactment of the murder at the scene. ODC Exhibit 9c, transcribed in ODC Exhibit 9d. Kristyn again related that Sizemore was hiding in the trunk, got out, and shot Christopher.

When the homicide case reached District Attorney Asa Skinner's office, he assigned Respondent, along with Assistant District Attorney Scott Westerchil, to prosecute the case. Mr. Skinner, Respondent, and Mr. Westerchil agreed that there was no prosecutor who was "first chair," or primarily responsible, for the case. Respondent and Mr. Westerchil simply agreed upon a division of labor between them, particularly with regard to which witnesses' testimonies each would take responsibility for.

Sizemore and Kristyn were indicted in Christopher's homicide. Approximately three months before Sizemore's trial, Kristyn accepted a plea agreement offered by Mr. Skinner. She pleaded guilty to manslaughter and conspiracy to commit manslaughter, and obstruction of justice, with the State making no recommendation regarding sentencing. Sentencing was deferred pending Kristyn's testimony against Sizemore.

The prosecutors were skeptical about Kristyn's version of the events, and specifically regarding Sizemore's location before the shooting. The vehicle driven to the scene was Sizemore's sister's Mitsubishi Eclipse convertible. There was scant room in the trunk to begin with, and a metal bulkhead separated the passenger compartment from the trunk.

Mr. Westerchil, who assumed responsibility for Kristyn's testimony, arranged a series of meetings with Kristyn and her attorney following entry of her guilty plea. He advised her that he did not believe her statements that Sizemore was hidden in the trunk. During the first meeting, though, Kristyn maintained this version of the events. At the second meeting, though, Mr. Skinner and Respondent were present for part, and Mr. Skinner "read Kristyn the riot act," reminding her that she had agreed to testify truthfully. Mr. Skinner and Respondent exited this meeting, and Kristyn relented, admitting that Sizemore had exited the vehicle and hidden in brush along the side of the road. It was from this brush Sizemore ambushed Christopher. This meeting was memorialized by Mr. Westerchil in handwritten notes, ODC Exhibit 7. Mr. Westerchil did not disclose this meeting or his notes, as he did not consider them to be exculpatory.

At what would be the first of Sizemore's three trials, in mid-November 2011, Mr. Westerchil advised the jury in his opening statement, ODC Exhibit 10, that Kristyn would testify that Sizemore lay in wait along the road for her and

Christopher to return to the scene. Sizemore's attorney had no inkling until then that Kristyn's testimony would differ from her statements to the authorities. However, he waited until the second day of trial to lodge an objection. He noted that in each of the statements he had been provided, Kristyn gave "substantially conflicting statements." ODC Exhibit 12. Judge James R. Mitchell, who presided over Sizemore's trials, ordered Mr. Westerchil to give Mr. Tillman a copy of the notes he took of his interviews with Kristyn, ODC Exhibit 7, which Mr. Westerchil did.

After reviewing the notes, Mr. Tillman conferred with his client, who opted to proceed with the trial. After deliberating, the jury was unable to reach a verdict, and Judge Mitchell declared a mistrial.

At the first trial, Mr. Tillman had called to the witness stand Mr. Jody Thibeaux, Kristyn's ex-brother-in-law. Mr. Thibeaux testified that Kristyn had told him that she was the beneficiary of Christopher's \$400,000 life insurance policy and that she had killed Christopher. After the trial, Mr. Skinner asked Detective Ray Ortiz of the Vernon Parish Sheriff's Office to visit Mr. Thibeaux in order to obtain information that would impeach his testimony at the second trial. Detective Ortiz indeed interviewed Mr. Thibeaux and learned that, according to Thibeaux, his ex-wife had been told by his ex-mother-in-law that she had found a .22 caliber revolver in Kristyn's closet. Mr. Thibeaux also related that during that

same period, Kristyn had threatened to kill her mother for having sent her to the Youth Challenge Program.

Detective Ortiz, while driving back to Leesville, called Respondent and related what Mr. Thibeaux had told him about the revolver, and asked Respondent if that would be considered hearsay. Respondent testified that he told Detective Ortiz that it probably was, but he would have to look at it more closely.

A few days later, Mr. Westerchil and Respondent were meeting in Mr. Skinner's office to discuss trial strategy. Detective Ortiz arrived and was admitted. He presented his written report of his conversation with Mr. Thibeaux to either Mr. Skinner or Mr. Westerchil. ODC Exhibit 19. Detective Ortiz, though, had omitted the information regarding the revolver from his written report, and advised the prosecutors of that. He did not advise them at all of Kristyn's threat to kill her mother. He testified at the hearing on this matter that he omitted it because he intended to follow up with Kristyn's sister and mother to obtain this information first-hand. Mr. Skinner advised that it was not necessary to put the information about the gun in the report, because owning or possessing a gun is not a crime, the event occurred more than three years before the murder and was too remote in time to be relevant, and Mr. Thibeaux was a defense witness. Mr. Westerchil, who had taken responsibility for cross-examining Mr. Thibeaux, was going to supplement

the State's discovery responses to disclose the report to Mr. Tillman, but was instructed not to by Mr. Skinner because the information was hearsay.

The second trial was held in February 2012. Kristyn was asked during direct examination whether she had any experience with firearms, whether she hunted, whether she owned a weapon, or shot a pistol. She responded in the negative to each of these questions. ODC Exhibit 14c. During cross-examination of Mr. Thibeaux by Mr. Westerchil, Mr. Tillman learned of the meeting between Mr. Thibeaux and Detective Ortiz. ODC Exhibit 14a. He immediately objected to any testimony regarding the undisclosed meeting between Mr. Thibeaux and Detective Ortiz. Judge Mitchell excused the jury and arguments were held in which Mr. Westerchil argued that the State was not required to disclose the report because it contained no exculpatory material. This argument was joined by Mr. Skinner and Respondent. Judge Mitchell reviewed the report and found an example in it of exculpatory material, which was not identified by the judge on the record. The report was given to Mr. Tillman, but Judge Mitchell overruled Mr. Tillman's objection to the testimony.

Later that day, Mr. Tillman learned of the information about a gun being found in Kristyn's room and of Mr. Thibeaux's statement about Kristyn threatening to kill her mother. He moved for a mistrial based upon the State's failure to disclose the information Detective Ortiz learned from his conversation

with Mr. Thibeaux. ODC Exhibit 14b. Mr. Westerchil, fearing that proceeding with trial would or could result in a conviction being overturned on appeal, agreed to the motion. However, Judge Mitchell wanted to hear Detective Ortiz's version of how the information was excluded from the report. Detective Ortiz testified that the information was excluded because it was hearsay. Thereafter, Judge Mitchell declared a mistrial.

Both Judge Mitchell and Mr. Tillman lodged complaints against Mr. Westerchil, Mr. Skinner, and Respondent arising from the failure to disclose the information that was omitted from Detective Ortiz's report.

Before the third trial, Detective Ortiz prepared a supplemental report that included the information about the revolver and Kristyn's threat to kill her mother. That third trial, which was held in May 2012, resulted in Sizemore's conviction of Christopher's murder. Sizemore is currently serving a life sentence in Angola.

Sizemore appealed the conviction and argued that the third trial subjected him to double jeopardy. The third circuit rejected this argument, finding that the prosecution did not bait him into moving for a mistrial. *Sizemore*, 129 So.3d 860.

Mr. Seastrunk is charged with violating Rule of Professional Conduct 3.8(d), which states:

The prosecutor in a criminal case shall:

....



(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows, or reasonably should know, either tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal

The information related by Detective Ortiz represents a troublesome issue.

Mr. Westerchil questioned Kristyn at each trial, including the third, about her familiarity with firearms. At the first two trials, he did not ask her whether she “possessed” a firearm; at the third trial, he effectively disarmed Mr. Tillman by asking about the gun found in her room. This information was pertinent, as Sizemore’s version of the events placed him stranded along the side of the road; after he hit the ice chest, he pulled over and got out to check on the car. Kristyn jumped into the driver’s seat and left him to go murder her husband. While each of the witnesses at the hearing apparently found this defense laughable— based upon their reactions— that theory would *tend* to be supported by Detective Ortiz’s information, in that it would demonstrate that Kristyn was more familiar with firearms than she admitted in the first two trials.

The seminal Louisiana case on this issue is *In Re Jordan*, 04-2397 (La. 6/29/05), 913 So.2d 775. In *Jordan*, a prosecutor withheld a statement to police by an eyewitness to a homicide that she was not wearing her contact lenses or glasses and could only distinguish shapes. Because there is no constitutional distinction

between exculpatory and impeachment evidence, the supreme court found that the statement should have been disclosed to the defense. Accordingly, the statement was clearly exculpatory and should have been disclosed. However, the case and its holding are limited to its facts, and the facts demonstrated a violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963) and its progeny, particularly *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985) and *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555 (1995).

One point of contention in this matter is whether the standards requiring a prosecutor to disclose information under Rule 3.8(d) is broader than the constitutional requirement under the *Brady* line of cases. In *Kyles*, Justice Souter, writing for the U.S. Supreme Court, stated(emphasis added):

We have never held that the Constitution demands an open file policy (however such a policy might work out in practice), *and the rule in Bagley (and, hence, in Brady ) requires less of the prosecution than the ABA Standards for Criminal Justice, which call generally for prosecutorial disclosures of any evidence tending to exculpate or mitigate.* See ABA Standards for Criminal Justice, Prosecution Function and Defense Function 3–3.11(a) (3d ed. 1993) (“A prosecutor should not intentionally fail to make timely disclosure to the defense, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused”); ABA Model Rule of Professional Conduct 3.8(d) (1984) (“The prosecutor in a criminal case shall ... make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense”).

*Kyles*, 514 U.S. at 437, 115 S. Ct. at 1567. As noted, the ABA Standards for Criminal Justice track the language of the ABA Model Rule of Professional Conduct, from which our Rule 3.8(d) was substantially derived.

In the first two trials, Kristyn was questioned about her familiarity with firearms. She denied any familiarity on both occasions. Not only would this information have been useful for purposes of impeaching her testimony, it might also tend to have negated Sizemore's guilt by demonstrating that Kristyn could possibly have been the shooter.

Mr. Westerchil was ordered by Skinner to not disclose this information. Respondent argues that he should be shielded from discipline by virtue of Rule 5.2(b), which reads:

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

We disagree. A subordinate lawyer is only insulated by Rule 5.2(b) when the supervisory lawyer is faced with a *reasonable* resolution of an *arguable* question of professional duty. Here, we find that the supervising lawyer's resolution was neither reasonable nor arguable. His decision that such information should not be given to the defense does not logically follow from the premise that the information was hearsay. The defense could have called as witnesses the people identified by Mr. Thibeaux as possessing firsthand knowledge of the events in

question, but not if it does not possess the information in the first place. Kristyn's gun familiarity was questioned in the first two trials, and one of those occasions was after the prosecutors learned that Kristyn not only may have had a gun, but may have threatened to kill her own mother.

We are not persuaded by the fact that this issue did not arise in the third trial. The issue is not what happened in the third trial, but before and during the second. We find that the Office of Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rule 3.8(d) in failing to disclose the information procured by Detective Ortiz. Respondent has substantial experience as a prosecutor, and neither he nor Mr. Westerchil was principally responsible for the case.

We turn to consider what sanction is appropriate for violating Rule 3.8(b). Any analysis of the appropriate sanction begins with Supreme Court Rule XIX, § 10(C), which mandates the following considerations in imposing discipline:

- (1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the lawyer acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

The ABA Standards for Imposing Lawyer Sanctions, 5.2, provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official:

5.21 Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a part or to the integrity of the legal process.

5.22 Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.

5.23 Reprimand is generally appropriate when a lawyer in an official or governmental position negligently fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.

5.24 Admonition is generally appropriate when a lawyer in an official or governmental position engages in an isolated instance of negligence in not following proper procedures or rules, and causes little or no actual or potential injury to a party or to the integrity of the legal process.

We find that Standard 5.21 does not apply to this situation. There is no indication whatsoever that Respondent was motivated by intent to benefit himself or another in any way. Similarly, Standard 5.22 seems similarly inapplicable, as

principal responsibility to matters relating to Kristyn and Mr. Thibeaux fell upon Mr. Westerchil.

It bears remembering that Mr. Thibeaux was a witness identified by the defense. However, when notified of Detective Ortiz's findings, Mr. Westerchil's first reaction was to dictate a supplemental discovery response. In other words, he knew this information should be shared with the defense. We are also forced to conclude—as Judge Mitchell did—that this action caused potential injury to the defense. Accordingly, we find that, at most, Respondent was negligent in failing to seek disclosure of Detective Ortiz's findings. Respondent, who was directly involved in the prosecution, had a duty to disclose this information to the defense. That Mr. Thibeaux was not “his witness” does not absolve him of such a duty.

The only reported case involving such misconduct is *In re Jordan*, 04-2397 (La. 6/29/05), 913 So.2d 775. *Jordan* involved the withholding of evidence that clearly discredited the testimony of an eyewitness. The sanction imposed in *Jordan* was a three-month suspension, fully deferred, subject to the condition that the respondent's suspension would become executory for any misconduct during a one-year period following the supreme court's judgment.

In the present matter, we find that Respondent's misconduct was of far less potential injury to the defense or the legal system than found in *Jordan*; indeed, the misconduct in *Jordan* resulted in the defendant's conviction being reversed, as

opposed to a mistrial in this matter to which Respondent and Mr. Westerchil acquiesced. And while we find that Respondent's position regarding Mr. Thibeaux's testimony does not absolve him of responsibility, we do find that it substantially attenuates any harm from Respondent's failure to act.

We find no aggravating factors in the present matter. In mitigation, we find that Respondent was cooperative in the disciplinary process, had no dishonest motive, and possesses a good reputation in the legal community and the community at large.

We therefore recommend that Respondent be reprimanded.

Thus done and signed on this, the 22d day of December, 2015, in

Alexandria, Rapides Parish, Louisiana.

Michael D. Hislop, Chair  
Rebecca Broussard  
Andrew E. Schaffer

  
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For the Committee