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JAY T. ARMBRISTER
SHERIFF

STACY SIMMONS
UNDERSHERIFF

To: Mackenzie Clark @ Lawrence Times
From: Sheriff Jay Armbrister
Date: 04.21.2022
Re: Response to questions about Brady-Giglio

Ms. Clark: Please find my answers to all your questions you posed. Please feel free to reach back out for any clarification or further discussion. The format will be to list your question as asked and our answers will be shown in **bold**. Thanks -Sheriff Armbrister

1. The legal standard is whether evidence is “material” to innocence or guilt. To someone without a law degree, that sounds like a fairly subjective standard. How should law enforcement assess whether evidence is material? Under this policy, if materiality of certain evidence is questionable, should officers err on the side of disclosure or nondisclosure?

I believe the third definition in Black’s Law Dictionary of “material” that “of such a nature that knowledge of the item would affect a person’s decision making” is most germane in this case. I think you are right in that the term can be ambiguous and subjective, so I will err on the side of caution when deciding what needs to be disclosed and what does not.

My own personal situation and experience plays deeply into this. A well-publicized allegation was made against me and my truthfulness during a criminal investigation. Based on that allegation, an independent investigation was completed by an outside agency. The findings were clear that I had acted in good faith but in poor practice and violated department policies in that I unintentionally failed to move a recorded interview to the proper server to be preserved as part of an investigation. There was absolutely no information showing I acted maliciously or nefariously, nor with intent. In fact, it showed that I had, at **NO POINT**, tried to hide my mistakes or obscure them from both the defense and courts. I did not know that the recorded interview had not been uploaded or saved to the system until the case proceeded to trial.

And to that end, I received administrative punishment for the policy violations, and the District Attorney at the time reviewed the investigation and found there was no criminal conduct or intent to obscure information on my part. *(Note: One sentence here was removed from the initial response. The Sheriff's memo dated 5.06.2022 is below to provide more information and clarification.)*

My case is an excellent example: There is an allegation of untruthfulness; however, after the system has looked at it from a Brady-Giglio standard, it remains an allegation and not “material” information “of such a nature that knowledge of the item would affect a person’s decision making.” So, if I had a deputy in my agency with these exact set of facts presented to me, I would retain all information in the personnel file, but I would not state he or she has any material Brady-Giglio findings that should be disclosed as that is the standard the law requires. Honest mistakes and intentional deceit are two entirely different things and will be handled as such.

2. Please forgive the long-winded question, but I think the context is important to be clear what I’m asking and for me to apply all of this to circumstances that the public will understand in an article:

Your new policy clearly states that law enforcement agencies must report to the prosecution “*sustained* findings of misconduct related to truthfulness.”

I previously covered a case (State v. Duc Tran) in which an officer had been accused of perjury on the witness stand in a separate case, but LPD cleared him after investigating. The judge in Tran’s case later reviewed the circumstances and [dismissed the case](#), which depended on that officer’s testimony, despite the fact that LPD did not sustain the allegation of misconduct related to truthfulness.

That case was only dropped because the defense attorney happened to know about the allegation of untruthfulness and was able to bring it to the court’s attention. That information had not been disclosed to the defense. Still, despite that the department did not sustain a finding of untruthfulness, it was enough for the judge to dismiss that case.

The DA’s office policy also states that allegations that have not been sustained “are generally not considered to be potential impeachment information. However, the law in this area is constantly evolving, so any such allegations should still be provided in conjunction with the Law Enforcement Checklist.”

a. What does this policy do, and what will your department do, to protect against circumstances like those in Tran’s case from repeating?

I cannot speak to the internal affairs investigation by another agency nor can I speak to why the court dismissed the case. But what we do as an agency is hold our deputies and employees to the highest standards possible.

Lastly, based on this article you are preparing to write, I now have an extra layer of accountability in that I have told you and the public how I intend to handle these situations, and if I stray from my promise, you and the community will hold me accountable. I want to avoid letting the community down as I’m trying to maintain community trust, rather than tear it down.

b. If an accusation of untruthfulness is sustained, might your department retain that officer? If so, why? If not, what actions will your department take to see that the officer does not continue their law enforcement career at another agency?

That officer would no longer work for us.

Additionally, as Sheriff, I am required to complete a form for KS-CPOST (Kansas Commission on Peace Officers' Standards and Training) regarding the findings of the internal affairs investigation and provide them any information requested regarding that person's commission. For an employee separation, the form includes providing a description and answering questions about the reasons for termination or separation, including:

- **Whether there was an internal investigation on the officer in the past six months.**
- **If we are aware of an external investigation or law enforcement-related civil action or lawsuit on the officer in the past six months.**
- **If we are aware of a criminal investigation or criminal charges against the officer.**

3. The policy states that agencies will disclose to the prosecution "Any criminal *convictions*, including juvenile convictions, involving acts of dishonesty" of department personnel.

a. What is your department's stance on hiring (or retaining) an employee, sworn or non-sworn, with such a conviction in their background?

As provided in the first answer above, such a conviction would likely mean the candidate would not be able to fill the position requisite of being able to testify in court, so we likely would start with erring on the side they could not be employed. However, I do believe in looking at the totality of the circumstances of the incident and whether it was a pattern of behavior and character or an isolated incident.

If it was a juvenile conviction for shoplifting as a teenager, where someone completed a diversion to learn from their mistake and never did it again, that would be different than someone who committed an act of dishonesty where the person lied, hid, obstructed and hindered the truth being exposed.

b. A Baldwin City officer had once been charged with theft and official misconduct but was acquitted after a bench trial; he was later charged in Douglas County with false impersonation, but his case was dismissed. (Background [here](#).) A Douglas County judge recently ruled that the officer could have his case expunged; however, the judge ruled that despite not being convicted, the officer's records would be available to any agency determining his eligibility for law enforcement certification, and that the sealed information would be accessible in any trial where he is called as a witness.

Essentially, neither case became a conviction, but the Douglas County judge ruled that the information must be provided anyway. This policy only addresses convictions. Under the standard a judge has recently set, is that enough? Why or why not?

We cannot speak to the circumstances involving another agency or a Judge's decision.

4. If the DA's office and/or municipal prosecutors determine that they will not accept testimony from an officer, in what capacities might an officer remain employed with your department?

In the past, such an officer has not remained employed, because most, if not all, Sheriff's Office employees have the potential of being called to testify in a criminal case. If an employee is found to be impaired by Brady-Giglio, their future employment would be in jeopardy.

5. Do these standards apply to both sworn and non-sworn employees of your department? (Meaning does this policy apply to any records custodians, scene investigators, victim/witness liaisons, public information officers, etc.?)

Yes, as stated above, from our perspective the policy states it applies to any department personnel who are likely to be a witness in a criminal case so that would include all Sheriff's Office employees.

6. Which attorneys did you consult to create this policy?

The Douglas County Sheriff's Office utilizes Stevens & Brand, LLP.

Follow Up Questions from Ms. Clark received 04.19.2022

After hearing from the DA's office yesterday, I had a few more follow-up questions that I wanted to send along to everyone:

1. I was told the DA's office was not consulted for the formation of this policy. Is that accurate, and if so, why not? To add more context, the DA's office told me: "The District Attorney convened a working group to develop this policy in a collaborative manner with our local law enforcement agencies, beginning in late 2020, prior to being sworn in. Representatives from each of those law enforcement agencies, as well as their legal counsel, were involved. No one voiced opposition, nor were any alternative policies ever presented."

While we do agree there were meetings to discuss various topics including a Brady-Giglio policy from the DA's Office, I would dispute the use of the term "working group." It was more of a listening session for us as law enforcement partners to listen to what their policy would be and how they had vetted their policy. When issues or questions were brought up, they were dismissed out of hand. We were told this will be the policy and that it would not change. And while there were some attorneys present at some of these listening sessions, it is my recollection that no counsel for the Sheriff's Office was present at any of these meetings. The DA may have a record of those present, but I do not believe any counsel representing this agency was present as claimed.

After the DA's policy was put in place, we, as the Sheriff's Office, had not complied with the DA's internal policy due to our concerns and were seeking advice of counsel for our concerns with the policy and checklist we were being told we had to follow. When I re-approached the DA weeks ago, I informed her I would like to revisit the policy and checklist and was told there would be NO discussion or changes to the current system the DA imposed. And in fact, during this meeting, the District Attorney stated she would not be filing ANY cases forwarded to her by the Sheriff's Office if we did not comply with her internal department policy.

In a follow-up meeting with the DA, she told me there would be no collaboration or changes to the policy. Additionally, it was pointed out again if I did not comply with the internal policy of the DA's Office, the DA would not prosecute ANY cases put forth by my agency. With this information in hand, it was clear the Sheriff's Office needed to make necessary changes in the best interest of the law as well as our personnel on our own and without any assistance from the District Attorney's Office. Accordingly, we adapted the policy used by the Sedgwick County Sheriff's Office and the Wichita Police Department. The DA was informed of this shortly before the media release was sent on April 15, 2022. We have had no correspondence since then with the DA.

2. In my first round of questions, I mentioned the circumstances in the State v. Tran case and the allegations of untruthfulness that were found to be unsubstantiated by LPD. The DA's office told me this: "While the District Attorney's Brady/Giglio Policy was specifically tailored to secure such material, the law enforcement policy simply codifies the philosophy that has repeatedly failed and continues to fail. Under the law enforcement policy, the agencies would not disclose the conduct associated with those matters to the District Attorney's Office" ... Can you address that?

Again, I will not speak to another agency's case, but I challenge the statement that the system "continues to fail." This is an opinion, and I disagree with it. Please see my next answer for context to this statement and what I believe shows the system is currently working as it should be.

3. The DA's office said that "conservatively," they would estimate that they have dismissed more than 50 cases for Giglio-related reasons, and also declined to prosecute at least one alleged sexual assault case because of Giglio issues. Would law enforcement leadership like to comment on that?

I cannot speak to the overall number given the DA's office handles charging decisions. The number could be indicative of a small number of officers who become Brady-Giglio-impaired and therefore affect a large number of cases based on the number of cases and calls to which an officer responds. Obviously, it's mostly critical in high-profile cases involving serious crimes. Many of the police chiefs are relatively new, and the District Attorney and I took office in 2021. We all have inherited a previous administration and are working to improve the system. From the law enforcement standpoint, this policy helps continue to foster accountability and is uniform among agencies across the county so we believe this is a big deal. In other words, law enforcement agencies rarely all agree on a uniform policy, yet we have all agreed and adopted the same uniform policy.

And in opposition to the statement that the system "continues to fail," I would ask a question. Since taking office the DA claims to have "dismissed" 50ish cases. My question would be: How did the DA's Office learn of this Brady-Giglio information that led to the dismissal of these cases? It's because Law Enforcement has VOLUNTARILY provided her information that was possibly "material" Brady-Giglio information. Based on the information provided by Law Enforcement, these cases were dismissed. And in the reverse, if the DA has dismissed cases for Brady-Giglio issues because of an officer that we do not know about, that is a dereliction of duty to inform us so we can take necessary steps to rectify that situation immediately. Which is it?

4. The DA's office said they have not received any information about complaints such as the ones Chief Lockhart shared with the Community Police Review Board on April 14, but that under the DA's Brady/Giglio policy, those allegations should have been disclosed.

Is it law enforcement's understanding that these types of complaints need to be disclosed to the DA's office, and/or do you feel that this crosses a line into officers' personnel information?

Again, I have no facts of the complaints mentioned above, and if I did, I would not and could not comment on another agency's process. What I can say is an allegation of misconduct is far distinct from a FINDING of misconduct. An allegation can be made by anyone, at any time, for anything even if it is completely fictitious. We have a robust system to vet these allegations and if there is a substantiated finding or even a finding short of a full exoneration, we would agree that information would be "material" information that would need to be provided to the DA.

5. Finally, I failed to ask in my first email if there's anything else that you would like the community to know about these issues. I'd always welcome any additional thoughts you'd like to share (and I hope you'll please let me know if I'm missing something important in my questions).

I want to start by thanking the DA. Her input on this topic has made this a continuing priority for all involved. The Sheriff's Office did not have a written policy for this and it was much needed, so at her urging, we now have a well-vetted policy that conforms to best practices as well as the law. As stated before, our law enforcement partners have worked since day one (of our administrations) to seek out officers or deputies who do not reach the highest standards of ethics and truthfulness that our community demands, and we have been successful in exposing those officers or deputies and having them removed from our ranks while also disclosing the appropriate "material" information to the DA's Office.

Has the question been asked or has any information been found that shows ANY other DA in the state that has a policy such as the one our DA has implemented? Why was the DA unwilling to even discuss changes to the policy or checklist? Is threatening to not prosecute ANY cases from an agency who complies with state law but does not comply with another office's internal policy appropriate?

If I said I was not going to forward ANY cases to the DA because they are not following my internal policy, that would be contrary to my elected position, and the victims and community would be the ones it affects most. If I did do this, I would expect this community to rise up and challenge me, and if I do not meet their expectations, I would expect them to work towards a solution that would bring sanity and security back to our criminal justice system.

Respectfully Submitted,

Sheriff Jay T. Armbrister #S203

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Lawrence Times Questions and Responses 04.26.2022

The DA's office told me Steven Drake's vehicular homicide case was dismissed for Giglio-related reasons, and that it involved a now-former employee. Taylor Lister's mother told me that she was told an officer was "fired, because of ethics, basically. I don't know if it was making a false report, or testifying and lying."

Due to pending litigation and what we are limited in disclosing on personnel matters, we cannot address the details regarding this individual.

However, I can disclose that when I took office as Sheriff in 2021 I brought newly-learned information about what I believed could be Brady-Giglio impairment involving this individual to the District Attorney's office, which then set the wheels in motion. I was also personally present to notify Taylor Lister's mother of the situation and the reason why the case was dismissed. This was never the outcome we wanted, especially in a tragic, high-profile case, but my actions in bringing this information to the DA show our commitment to a fair and just system and that the system is working well.

The new Brady-Giglio policy among law enforcement in the county codifies how the system was working, but because it is written in a uniform fashion among all agencies in Douglas County, that makes it even more significant. We will all continue to work together to hold officers and deputies to the highest standards of conduct and prevent a situation from occurring that might deny families justice like it did for Taylor Lister's family.

- Can you confirm that an officer whose testimony was material to that case was terminated?

Due to pending litigation we are unable to comment.

- What specific issues led to the termination/separation of employment, and what was the timeline?

Due to pending litigation we are unable to comment.

- Is the sheriff's office aware of any other cases being dismissed because of that particular officer? If so, do you have an estimate of how many and what types of cases?

Due to pending litigation we are unable to comment.

- Neither the DA's nor the sheriff's office's new Brady-Giglio policy was in effect at the time Drake's case was dismissed. What measures were in place to ensure prosecutors got the information they needed?

The same Brady-Giglio parameters have always been in place. The policy recently codified just puts a uniform policy in writing for law enforcement in our county.

- This has been emotionally difficult for Taylor's family, and obviously this isn't the outcome that law enforcement or prosecutors wanted. What extra steps is the sheriff's office taking to prevent similar circumstances from happening in the future?

I personally am devastated that this was the result, and denial of justice for the family is the same as no justice. However, the reality is, all organizations have issues with employees; law enforcement is not an exception, and it is up to me as Sheriff to make sure my deputies and employees adhere to the highest standards that are demanded of us by this community. This individual did not meet that threshold and I took the necessary steps to contact the District Attorney with my concerns in order to protect the integrity of our justice system as a whole, even at the cost of the Sheriff's Office's reputation.

- For this officer, what was reported on the form for KSCPOST?
Due to pending litigation we are unable to comment.

- What else do you want the public to know?

The Douglas County Sheriff's Office is dedicated to recruiting, hiring, and retaining employees with the highest level of integrity.

–Sheriff Jay Armbrister



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STACY SIMMONS
UNDERSHERIFF

To: Mackenzie Clark @ The Lawrence Times

From: Sheriff Jay Armbrister #S203

Re: State v. Hart In-Camera File Review

Date: 05.06.2022

Ms. Clark:

It has come to my attention that I was either misinformed or simply misunderstood some information from the State v. Hart case and in the name of transparency, I'm here to clear up what I now know to be inaccurate information provided to you for your article. During the course of State v. Hart, the defense, Ms. Keck, requested my personnel files and in particular, the investigation into an allegation made by her and conducted by the Johnson County Sheriff's Office. The findings of that investigation reside in my personnel file, and she was asking the courts to compel me to produce this file.

Here is where I clearly misunderstood what was happening and then assumed an event took place that I have since learned did not. I was told my file or that report would have to be provided to the court, and the judge would conduct an "in-camera review" of the materials and the judge would then decide whether it was material evidence for the case specifically. It was my understanding this did occur, but I now know it did not. While I welcome any review of this information by a court deciding my truthfulness, it did not happen as I wrote in my responses to your questions two weeks ago.

I can only apologize for my misunderstanding and for assuming something was fact when it was not, but I can tell you with 100% certainty when I typed my statements to you, I absolutely believed it to be the truth. Now I know it is not, and I am here to let you know and offer to further help clear up this one point. This is me being open and honest about a mistake and ready to do what I can to help clear this matter up. Thanks...

Respectfully, Sheriff Jay Armbrister #S203