

STATE OF LOUISIANA

THIRD JUDICIAL DISTRICT COURT

V. NO. 60,600

PARISH OF UNION

JOHN CLARY

STATE OF LOUISIANA

FILED July 31, 2023

DEPUTY CLERK [Signature]

**MOTION FOR DISCOVERY OF GRAND JURY TRANSCRIPT  
PURSUANT TO LA. CODE OF CRIMINAL PROCEDURE ARTICLE  
434.1(B) AND BRADY V. MARYLAND, 83 S.Ct. 1149 (1963)**

NOW INTO COURT, through undersigned counsel, comes Defendant, John Clary, who respectfully moves this Honorable Court to order the District Attorney to disclose and produce to Defendant a transcript of grand jury testimony discoverable pursuant to La. C.Cr.P. Art. 434.1(B) and *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), based on the following, to wit:

-1-

The United States Supreme Court held in *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), that upon request the State must produce evidence that is favorable to the accused where it is material to guilt or punishment. The *Brady* rule has been expanded to include evidence which impeaches the testimony of a witness where the reliability or credibility of that witness may be determinative of guilt or innocence. *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 63, 31 L.Ed.2d 104 (1972); *State v. Davenport*, 399 So.2d 201 (La. 1981).

-2-

Although state law generally protects the secrecy of grand jury proceedings, the protection is not absolute. La. C.Cr.P. art. 434.1 provides exceptions to the secrecy requirement. Section B states that, "The district attorney shall also disclose to the defendant material evidence favorable to the defendant that was presented to the grand jury." La. Code Crim. Proc. Ann. Art. 434.1(B). Additionally, in an effort to balance the competing interests of *Brady* and the secrecy of grand jury proceedings, the Louisiana Supreme Court has judicially created a limited exception to grand jury secrecy. An in-camera inspection by the trial judge is a proper means of accommodating the secrecy of the grand jury and at the same time protecting

Defendant's constitutional rights of confrontation and due process. *State v. Peters*, 406 So2d 189, 191 (La. 1981).

-3-

In the instant case, Defendant is accused of one count of Obstruction of Justice by failing to provide a video to investigators. The issue of Defendant's act of uploading the video to Axon is material in this case, as is the act of downloading the video from Axon by investigators with the Louisiana State Police. The Axon Audit Trail provided in discovery by the State shows that the Defendant properly labeled and timely uploaded his video to a server or other repository maintained by Louisiana State Police before the end of his shift on May 10, 2019. The discovery also shows that the video was accessed by Louisiana State Police by downloading the video before the end of Defendant's shift.

-4-

"An accused's constitutional rights cannot be thwarted by state law." *State v. Peters*, 406 So.2d 189, 191 (La. 1981). Statements of witnesses, especially those that conflict with the Defendant being charged with Obstruction of Justice, are therefore needed for impeachment purposes at trial and cannot be rejected solely on the ground that it conflicts with state law protecting the secrecy of the grand jury proceedings. Statements of witnesses that support that the Defendant downloaded the video, properly labeled the video, or timely downloaded the video are crucial to the defense in this matter. Likewise, statements of witnesses that are to the effect that the Defendant did not download the video, did not properly label the video, or did not timely download the video are needed for impeachment purposes.

-5-

Defendant is entitled to evidence of any statements of witnesses that were presented to the grand jury and are inconsistent with other witness statements presented to the grand jury and thereby exculpatory under *Brady v. Maryland* material, and asks that this Court conduct an in-camera inspection of the grand jury record to determine the existence of and scope of said evidence.

WHEREFORE, CONSIDERING THE ABOVE, Defendant, John Clary, requests an order from this Court directing the State to produce exculpatory grand jury testimony pursuant to *Brady v. Maryland*, La. C.Cr.P. art. 434.1(B), et. seq., or, alternatively, to conduct an in-camera inspection of the grand jury transcript to determine whether there exists therein

discoverable, exculpatory evidence that the State must provide to the Defendant, all as set forth in paragraphs 4 and 5 above.

Respectfully submitted,



---


W. Kyle Green, Bar Roll No. 25401  
Rebekah H. Wade, Bar Roll No. 34384  
Law Office of W. Kyle Green, L.L.C.  
Post Office Box 640  
111 Killgore Road  
Ruston, Louisiana 71273-0640  
Telephone: (318) 513-9001  
Facsimile: (318) 202-2322  
Email: [kyle.green@wkglawfirm.com](mailto:kyle.green@wkglawfirm.com)  
Email: [rebekah.wade@wkglawfirm.com](mailto:rebekah.wade@wkglawfirm.com)

*Attorneys for Defendant, John Clary*

CERTIFICATE

This is to certify that a copy of the above and foregoing Motion for Discovery of Grand Jury Transcript Pursuant to La. Code of Criminal Procedure Article 434.1(B) and *Brady v. Maryland*, 83 S.Ct. 1194 (1963) was emailed this day to John F. K. Belton, District Attorney, and Hugo Holland, Special Assistant District Attorney, and all defense counsel of record.

Ruston, Lincoln Parish, Louisiana, this 31<sup>st</sup> day of July, 2023.



---

W. Kyle Green