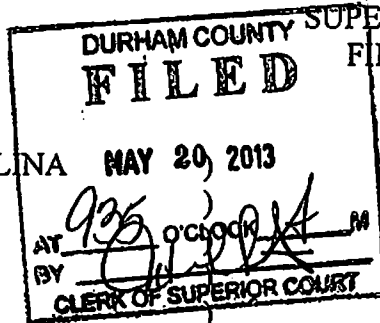


NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 10 CRS 1087



STATE OF NORTH CAROLINA

VS.

RAVEN S. ABAROA

MOTION TO DISMISS FOR DISCOVERY VIOLATIONS

NOW COMES Raven S. Abaroa, through counsel, who moves this court pursuant to the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, Article I, Sections 19, 23 & 24 of the North Carolina Constitution, *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988), and N.C. Gen. Stat. §15A-910(A)(3b) to dismiss the case against Mr. Abaroa. In support of this motion, Mr. Abaroa shows the following:

1. The state produced to the defense on Thursday, 17 May 2013, a forensic image of a hard drive from Ms. Abaroa's work computer that has been locked away in the Durham Police Department (DPD) for eight years.

2. Jason McCullough, a digital forensics examiner, examined the hard drive and carved numerous emails and fragments of emails between Ms. Abaroa and her former boyfriend, Scott Hall. Excerpts from the messages follow:

a. On 31 March 2005 at 11:09 a.m., Janet tells Scott, "You just wait, If your lucky, then you'll get to see it. In the mean time aks Jeff he's seen me since I've had a kid. If you get the chance sned me some pictures of those supposidly hot girls and i'll let you know if you are right cause I'm pretty honest with judging people. I don't give credit when credit isn't due."

b. On 31 March 2005 at 11:16 a.m., Scott says to Janet, "Well I'll wait and see for myself. I might be a little more critical because I remember when you could bounce a quarter off that as-s. Probably would eat the quarter now ;-)"

c. On 31 March 2005 at 11:20 a.m., Janet writes to Scott, "Just because you have started to sag doesn't mean I have trust me I am still hot. If your not going to appreciate the hotness then I don't think I should bother. Jeff likes it so maybe i'll just show him. You'll be losing out"

d. On 6 April 2005 at 1:41 p.m., Scott tells Janet, "So how have you been? Probably missing me like crrazy but that can all be fixed if you just come up to NOVA for a day or two. I actually have a job for you when you get up here. I need my back massaged."

e. On 6 April 2005 at 1:41 p.m., Scott tells Janet, "Would you be willing to meet me in Norfolk if I went down there for a day/night? Cenk's sister owns a house there and I have a key. She lives in Turkey so I would have the place to myself. Let me know what you think."

f. On 6 April 2005 at 2:03 p.m., Janet tells Scott, "It is really nice outside, I'm wearing a really cute shirt and skirt with no underwear and so far my day sucks!"

g. On 6 April 2005 at 2:34 p.m., Janet says to Scott, "I guess I wouldn't have to have a reason to go to Norfolk other then seeing you. If I was honest with Raven then he wouldn't care. I think that he would think it is weird that I was going just to see you. He may were having an affair or carring on something serious. I doubt he would beleive that it is nothing serious probably because of our past. If you were someother guy who I didn't date in the past then It would be different."

h. On 6 April 2005 at 2:34 p.m., Scott tells Janet, "As for your outfit today... sounds cute! So what's up with you not wearing any underwear? While that sounds pretty cool don't you think sweating might be a little funky? Or are you hoping to give some guys a peak? Oh,

and don't get depressed sweetie... too many things to be happy about ;-)"

i. On 6 April 2005 at 2:46 p.m., Janet tells Scott, "Well the reason for no underwear is that I put on my skirt first and then kinda forgot about the underwear but when I realized I figured I would go without cause Raven likes that type of thing so he got a lot of peaks at lunch."

j. On 6 April 2005 at 2:46 p.m., Janet tells Scott, "I doubt I could make it to Norfolk I don't really have a reason to tell Raven that I'm going I have a friend in Richmond so it would be no big deal about me going there."

k. On 7 April 2005 at 10:09 a.m., Scott tells Janet, "Hmmm, I usually put on my underwear before the outer clothes are put on. Kind of like the natural order of things. I'm glad Raven got something out of your mistake ;-)"

l. On 7 April 2005 at 10:09 a.m., Scott to Janet, "Hmmm, so Richmond is good because you would have an excuse huh? Raven wouldn't like you visiting me in Norfolk ;-)"

m. On 7 April 2005 at 10:23 a.m., Janet tells Scott, "okay I'll admit it, I like hearing from you, in fact my day is a lot better for those few seconds that it takes me to read you emails."

n. On 7 April 2005 at 10:55 a.m., Scott tells Janet, "I completely understand your reasoning for thinking it would be easier to visit in Richmond. I was just under the impression Raven didn't care about anything. Perhaps with me it would bug him. But if he's completely okay with you hooking up with other dudes then just make it easy on him and tell him we are. That way he doesn't have to think you're lying ;-). I most certainly would not want to tell Emily you and I were kicking it in Norfolk alone. I think she would be pretty weirded as well. So it would be our little secret... shhh :-)"

o. On 7 April 2005 at 11:35 a.m., Janet tells Scott, "I can understand that Emily would not like you hanging out with me alone she would probably give you a

beat down. Does she even know that you have seen me in the last couple years or that you talk to me? Raven knows that we talk and that we have hung out. Last time I saw you at tgi fridays he was out in utah coming home the next day. He was convinced I was cheating on him with you that night cause I did not get home till 4:00am and then I had to pick him up at 6:30 that morning. He could tell I didn't have much sleep so he figured I stayed a little to long with you that night. He's pretty funny but I do like that I can be honest with him and tell him anything."

p. On 7 April 2005, Scott to Janet, "Well I have to admit I don't mind him being a little worried or jealous. I sure went through enough of that awhile back when you and he started dating."

q. On 7 April 2005 at 11:35 a.m., Janet to Scott, "What do you mean you went through enough when I was at school. You were the one who wanted to end things forever before I went there. besides you didn't have much to be jealous of. When I got with Raven, it was purly for physicall reasons. Not many people were willing to get it on at a mormon school. He was so it was convienient. there were no feelings involved until he started wanting more than just hooking up. i was still in love with you but he was around so he kept me entertained. it took forever for me to fall out of love. even when i was officially with him I stilled loved you so I guess I stopped talking to you or else I would have never stopped."

r. On 7 April 2005 at 11:49 a.m., Scott tells Janet, "Actually Emily does know about both us talking and hanging out. I don't tell her we have on going emails every day. Don't want her thinking anything is going on."

s. On 7 April 2005 at 12:49 p.m., Janet tells Scott, "How does Emily not know we hung out. What did you tell her when we saw eachother last time?"

t. On 7 April 2005 at 1:05 p.m., Scott tells Janet, "When I said "what I went through" I was talking about how upset I was and how jealous I was that you were hooking up with Raven. While it was still only physical at that point it hurt a lot and I missed you something awful. I knew it was only a matter of time before things got serious between you and Raven if you were already hooking up.

Probably why I hated it so much. Yeah, I think falling out of Love withyou was probably one of the hardest things I've ever had to do. Weird saying that but love is a tricky thing. Yes, it's so silly and I would never tell anyone, especially Emily, but I think it's fun making Raven jealous. Like my own little revenge that means absolutely nothing at this point. But fun nonetheless ;-)

So feel free to help me anytime."

u. On 7 April 2005 at 2:45 p.m., Janet says to Scott, "go to msn.com and click on the story about David Beckham. They have some pretty good pictures of him. the ones at the end are hot! if you want to know what I like just look at him."

v. On 7 April 2005 at 3:08 p.m., Scott tells Janet, "I definitely will tell Emily is I see you. However, if we met up alone in Norfolk I would probably keep that one to myself. Don't need those doubts running through her head."

w. On 7 April 2005 at 3:57 p.m., Janet tells Scott, "I guess it wouldn't be good if you told emily we were be going to be by ourselves some place. It is different when we are with a group of people. She may start thinking something is up and start snooping and find some real stuff that goes on like your great massages. I would die laughing if she ever found out."

x. On 7 April 2005 at 4:45 p.m., Scott told Janet, "Well we don't have to worry about Emily finding out because I am not going to get caught. So long as you don't say anything, I'm good! I don't really see the humor in my getting caught anyways. You scare me sometimes with your humor."

3. Mr. Abaroa is charged with first-degree murder of his wife, Janet Abaroa.
4. If convicted, Mr. Abaroa will be sentenced to life in prison.
5. Mr. Abaroa incorporates by reference the Motion to Dismiss filed on 22

April 2013.

6. Mr. Abaroa filed a Discovery Request on 3 March 2010.

7. In response to this request, the state produced thousands of pages of discovery, computer hard drives, and numerous audio and video recordings.

8. On 17 October 2012, Mr. Abaroa filed a Motion to Compel Discovery that alleged that the state had failed to disclose all discoverable “information in the possession of the state, *including law enforcement officers*, that tends to undermine the statements of or reflects negatively on the credibility of potential witnesses.” Motion To Compel Discovery, paragraph 6e.

9. At the hearing on the motion, Assistant District Attorney Theresa Pressley assured the Court that the state had provided all emails. 19 October 2012 Hearing Transcript, pp. 23-25.

10. In an Order dated 30 October 2012, Honorable Robert H. Hobgood entered an order finding that “the State ... provided to defense a CD that has every e-mail in the case.” Judge Hobgood Order on Motion to Compel Specific Items of Discovery.

11. On 29 April 2013, Mr. Abaroa filed another Motion to Compel Specific Items of Discovery questioning whether all items within the state’s custody had been revealed, including information with exculpatory or impeachment value, and warning the Court that Mr. Abaroa would be unable to prepare an adequate defense without all information in the state’s possession.

12. In response, the state assured the Court that it had complied with its statutory and constitutional obligations to provide discovery, and the Court denied the Motion to Compel with limited exceptions.

13. Prior to trial, Ryan Johnson, formerly a computer forensics examiner with the Durham Police Department (DPD), met with ADA Charlene Coggins-Franks.

14. Ms. Coggins-Franks and Mr. Johnson discussed his participation in the investigation of this case. Among the issues they discussed was Mr. Johnson's failure to image a hard drive.

15. Undersigned counsel interpreted these notes to mean that Mr. Johnson would testify that he had taken custody of a hard drive from Ms. Abaroa's work computer, but never imaged the drive, even though he told Detective Bradley in a message on 4 May 2005 that he had taken an image of the drive.

16. Counsel questioned Detectives Bradley and Sole during their testimony about the hard drive because a copy had never been produced to the defense.

17. On Wednesday, 15 May 2013, Etta Blankenship, a private investigator for Mr. Abaroa, sent a message to Mr. Johnson's employer in an attempt to locate him and schedule his testimony.

18. Later that same evening, Mr. Johnson sent Detective Charles Sole a message asking him to contact Mr. Johnson. After Detective Sole conferred with Mr. Johnson, representatives of the DPD located an image of a hard drive from Ms. Abaroa's work computer that had been locked away in a cabinet for eight years.

19. After counsel secured a copy of the drive around 4:45 p.m. on 17 May 2013, Jason McCullough, a digital forensics examiner, carved numerous portions of emails between Ms. Abaroa and her former boyfriend, Scott Hall, that they exchanged during the weeks immediately preceding Ms. Abaroa's murder.

20. The information discredits and impeaches the testimony of state's witnesses. The emails directly conflict with the dishonest image the state's witnesses presented of Mr. and Ms. Abaroa's personalities and their relationship.

21. The information contained in the emails is exculpatory because the messages contradict the notion, as presented by the state's witnesses, that Ms. Abaroa was terrified of Mr. Abaroa and was subservient to him to the point of having no independent will.

22. The information contained in the email exchanges was never disclosed by the state and was unknown to the defense until Mr. McCullough carved the information from the hard drive of the computer.

23. Mr. Abaroa is denied the full benefit of the information contained in the emails because knowledge of the messages and the information contained in the messages would have changed the nature of the pretrial investigation, influenced jury selection, and drastically altered trial strategy.

24. The information impeaches the testimony of a number of the witnesses who have testified for the state, and Mr. Abaroa was denied the opportunity to cross-examine these witnesses on this issue.

25. Furthermore, this discovery violation is the latest in a series of due process violations undermining counsel's ability to mount an effective defense for Mr. Abaroa, including the violations cited in the pretrial motion to dismiss.

26. The cumulative effect of this process undermines Mr. Abaroa's ability to get a fair trial in this case.

WHEREFORE, Mr. Abaroa requests the following relief:

1. Strike all the state's evidence and dismiss the case at the close of the state's evidence for failure to present substantial evidence of each element of the offense;

2. In the alternative, dismiss the case as a sanction for the discovery violation pursuant to N.C. Gen. Stat. §15A-910(A)(3b).

3. Any further relief the Court deems appropriate.

RESPECTFULLY submitted this 20th day of May, 2013.

AMOS GRANGER TYNDALL, PA



AMOS G. TYNDALL
Attorney for Mr. Abaroa
312 West Franklin Street
Chapel Hill, North Carolina 27516
Telephone: (919) 967-0504
State Bar #19309

CERTIFICATE OF SERVICE

I certify that this Motion has been filed with the Durham County Clerk of Court and served on the following person by hand delivery:

Ms. Charlene Coggins-Frank
Assistant District Attorney
Durham, NC 27701

This is the 20th day of May, 2013.



Amos G. Tyndall