

STATE OF VERMONT
RUTLAND COUNTY
OFFICE OF THE STATE'S ATTORNEY

Rosemary M. Kennedy
STATE'S ATTORNEY

Ian C. Sullivan
CHIEF DEPUTY ATTORNEY

Daron L. Raleigh
Karen K. Reynolds
Victoria Santry
L. Ray Sun
Travis W. Weaver
DEPUTY ATTORNEYS



Shea McGee
Jackie Proulx
VICTIM ADVOCATES

Rachael Ellison
Anna Peer
Erin O'Grady
ADMINISTRATIVE ASSISTANTS

TO: Rutland County Criminal Defense Bar
FROM: Rosemary M. Kennedy
DATE: 09/01/2020
RE: *Giglio* Disclosure/Detective Emilio Rosario, RCPD

Dear Defense Counsel,

This notice is provided pursuant to the State's discovery obligation under V.R.Cr.P. 16, *Brady v. Maryland*, 363 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972).

- In *State v. Daniel Batease*, 201-2-18 RdcR, then, Officer Rosario responded to a domestic violence situation. While at the scene and during a recorded interview with the alleged victim, Officer Rosario obtained a sworn, written statement from her. This statement has an added section that discusses the victim's pain on a pain scale, in relation to the assault. At no point, while on the scene and while recorded did Officer Rosario ask this pain scale question of the victim. Under oath on August 11, 2020, in *State v. Javon Wright*, 927-8-19 RdcR, now, Detective Rosario testified that he altered this sworn, written statement to include the victim's pain scale response. Detective Rosario testified that he had a subsequent conversation with the victim, asked her that question, swore her to her answer and added her response to her sworn, written statement. Detective Rosario explained while testifying, that he did so knowing that the statement had already been notarized and with the understanding that his actions in altering her statement could be potentially criminal. When questioned by DSA Daron Raleigh on October 16, 2019 about this addition to the sworn, written statement, Detective Rosario did not mention a subsequent conversation with the victim, but rather indicated that he could not remember speaking to her again and was unaware of where the pain scale information came from. The first time the State heard about a subsequent conversation with the *Batease* victim was after Detective Rosario was subject to an Internal Investigation into this matter, requested by me. In his *Batease* affidavit of probable cause, Officer Rosario makes no mention of a subsequent conversation with the victim or his altering of her sworn, written statement. Instead, paragraph 7 of the affidavit reads as if the question regarding the pain scale occurred while Officer Rosario was still on scene, talking in person with the victim.

- In *State v. Malcolm Campbell*, 62-1-19 Rdcr, in an affidavit for an application of a search warrant, Detective Rosario wrote that the truck to be searched was seized by him. It was later discovered, however, that the truck had been towed to an independent impound and was outside police custody for a period of time before seizure.
- In *State v. Javon Wright*, 927-8-19 Rdcr, in an affidavit for an application of a search warrant, Detective Rosario wrote that he seized three phones from the defendant's person, incident to arrest. However, at least one of these phones was found in the console of defendant's car. Additionally, the evidence tag indicates that Sgt. Lorman recovered the phones. However, Sgt. Lorman indicated that he has no recollection of that and neither officer could testify to who wrote on the evidence tag.

Kindly contact me directly if you have any questions or concerns about any of this information. Please note, however, that my office does not employ Detective Rosario and consequently does not maintain a personnel file on him. The RCSAO is committed to fulfilling our discovery obligations regarding credible allegations of police misconduct. Should you become aware of such misconduct, I ask that you promptly inform me in writing so that my office may act.

Thank you,

Rosemary M. Kennedy
State's Attorney