IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR WALTON COUNTY, FLORIDA

CASE NO.: 25CF123
FELONY

STATE OF FLORIDA,
Plaintiff,

v.

JOSEPH JAMES TURNER,
Defendant,

_____/

MOTION TO DISMISS FOR VINDICTIVE PROSECUTION

COMES NOW the Defendant, JOSEPH TURNER, by and through undersigned Counsel and moves this Honorable Court to dismiss the pending thirty-four (34) charges because the State's actions in the above-styled case, in filing thirty-two (32) additional counts, some of which relate to the texting of a single emoji or "liking" a message, after the defendants simply exercised their fundamental right to be informed as to the charges against them, as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and would show for Cause as follows:

APPLICABLE LAW ON VINDICTIVE PROSECUTION

The United States Supreme Court has developed two (2) standards of proof for prosecutorial vindictiveness. In the first, objective evidence may establish that a prosecutor acted with "actual vindictiveness" to punish him for exercising his constitutional rights. United States v. Goodwin, 457 U.S. 368 (1982). Under the second standard of proof, a defendant may present proof which establishes that there is a reasonable

likelihood of vindictiveness. Blackledge v. Perry, 417 U.S. 21 (1974). Upon there being proven that there is a reasonable likelihood of vindictiveness, the burden then shifts to the State to prove via objective evidence that the prosecutorial act was justified. Id.

Goodwin stood for the fact that sometimes prosecutors might forego charges they could have filed in favor of filing charges that are more likely to resolve a case without a trial. Id. Simply increasing charges after a plea bargain goes awry will not be found to be vindictive prosecution alone—indeed, this happens every day in most courthouses in America, both state and federal. Id. Goodwin even addresses the fact that a vindictive prosecution finding is far more likely to occur wherein an original trial is had, a case is reversed on appeal, and the State, vindictively, increases the charges as punishment for the defendant exercising his fundamental right to appeal a conviction.

Blackledge, on the other hand, held a scenario wherein a defendant, convicted of a misdemeanor at the district court level, and then had his charge increased to a felony when he exercised his right to be tried before a superior court. Id. It is the successful attack of the conviction, a fundamental right, being punished that causes the problem for due process, however. Id. In the above-styled case, it is the successful Motion for Statement of Particulars that is being punished and, before the new charges were even filed, explicitly linked to the filing of thirty-two (32) new counts.

FACTS

1. Joseph Turner and Quinn Robertson were charged with one (1) Count of Wiretapping and one (1) Count of Offenses against Users of Computers by a direct file Information on February 20, 2025, issued by Joshua Mitchell, the Chief Assistant State Attorney of Walton County.

2. Over the timeframe this case was pending, the undersigned made the ASA aware of multiple issues with the case to include the following:
    a. The State's inability to prove that there was either a subjective or objective expectation of privacy.
    b. That the victim released the messages himself by taping a thumb drive to the door of Suzanne Harris.
    c. The employee handbook states that no employee should have any expectation of privacy in any county devices and Galloway signed for the handbook.
    d. Jason Cook testified that he instructs people using Apple products that they should create a new work iCloud account so that their personal messages aren't commingled with their work messages.
    e. Galloway was warned three (3) separate times by Jason Cook, the director of IT, that his messages were being transmitted to the iPad and that Galloway needed to log out in May of 2024. Galloway acknowledged the messages, stated he would come to the office to log out, and then did nothing to protect his privacy.
    f. Galloway specifically stated in his deposition, "I don't protect my privacy as much as I should." (Galloway deposition 26:20-26:21).
    g. The messages that were contained in the iPad involved a former employee (Galloway) plotting with a current employee (Lowery) to get Quinn Robertson, the County Administrator, fired, so Jason Cook brought the

County-owned iPad which was, like all other county-owned property, in the care and custody of Robertson.[1]

h. Skipping forward in time, when FDLE decided to perform a full cellebrite on the iPad, the then-acting County Administrator, Stan Sunday, signed the consent to search form for the iPad, permitting every single item in that iPad capable of being extracted to be removed.

i. When the FDLE investigator was confronted with the logical fallacy wherein an acting County Administrator could consent to extract every piece of data in a county-owned iPad via a cellebrite but that an actual County Administrator would not have the authority to read through all of that data

j. In his deposition, Inv. Riddick informed the undersigned and Counsel for Robertson that he had told Mitchell that, "the case wasn't going anywhere," and stated that he knew which cases were worthy of being prosecuted over his history of forty-three (43) years.

k. The Walton County Sheriff's Office's undersheriff Donnie Clark described their investigation of Quinn Robertson and Joe Turner as "cursory" in a letter to FDLE asking them to take over the investigation of Robertson and Turner.

l. Inv. Keith Riddick stated that he received a phone call regarding the subject of the investigation[2] instructing him to only investigate Donna Johns and not

---

[1] See F.S. §125.74(1)(g) wherein the County Administrator is named as the caretaker and supervisor of all County property.

[2] At the time Inv. Riddick's deposition was taken, Sheriff Adkinson was listed as an "A" fact witness by the State. The undersigned made an assumption based on the organization chart of the Sheriff's Office that the only people Riddick would have taking this "change in assignment" from would be the person who wrote the letter, who was Undersheriff Clark, or the only person who outranked Clark at the Sheriff's Office at that time, the Sheriff himself. Both the Sheriff and the undersheriff were listed as "A" witnesses at the time and were being scheduled for depositions in the future. After the undersigned subpoenaed both, motions for

Turner or Robertson, despite the labels on his report. (Doc. No. 43, 18:4-19:20)

m. The "victim," Charles Galloway admitted at the end of his deposition that he "I guess I should not have expected to have privacy" in his messages.[3] (Doc. No. 42, 90:15-17)

3. Despite the Walton County Sheriff's Office conducting a "cursory" investigation of the defendants and only developing reasonable suspicion prior to handing the case to FDLE, and despite no further investigation of the defendants by FDLE per the sworn testimony of Keith Riddick, Mitchell filed formal charges against both defendants. (Doc. 2, Direct file information)
4. The capias issued for Joseph Turner was never signed by a judge, only signed by Mitchell. (Doc. 3, Direct file Capias issued)
5. The undersigned started doing public records requests for emails in the State Attorney's Office when the case wasn't dropped after the Riddick and Galloway depositions, curious as to what she would find.
6. The undersigned found emails where ASA Mitchell believed he had been filing misdemeanors instead of felonies and was corrected by Riddick after the Information was filed, which may explain why he never had a judge sign a warrant or set a courtesy bond (email available upon request).

---

protective orders flew and the ASA assigned to the case inexplicably reduced the Sheriff to a category "B" witness.

[3] In order to prove their case, the State must show that Galloway/Lowery had both an objective and a subjective expectation of privacy in the messages. Stating that he "probably didn't" have an expectation of privacy should have resulted in a *nolle prosequi* as this would relate to whether Galloway himself felt he had an expectation of privacy (subjective expectation of privacy).

7. In January, the undersigned covered a hearing for Counsel for Robertson and at the hearing one of the other ASAs stated something to the effect that Mitchell wanted the Defendants present in court "in case the charges changed."
8. The undersigned deposed Deputy Donnie Clark (deposition filed) and asked him whether there were any pending investigations of either Defendant.
9. Mitchell responded that "***If the judge orders the statement of particulars***, there may be—instead of having one all-encompassing count, ***it may be multiple counts for each message they looked at***." (Doc. 102, Deposition of Donald Clark, 54:11-15).
10. The undersigned, realizing this was vindictive and against the law, assumed Mitchell was was having a bad day, and responded dismissively, "Great."
11. Mitchell's stated intent to punish the Defendants for exercising a fundamental right to be on notice of the charges against them is unconstitutional, but the undersigned assumed that someone above him in the chain of command would stop him if he ever really tried to do it.
12. The undersigned was, apparently, incorrect.
13. To leave no doubt in the mind of anyone as to his intent, Mitchell again stated it was his intent to punish the Defendants for seeking the Statement of Particulars and this Honorable Court pushed back telling him (Mitchell) that this was a right the Defendants had (*See* 4-7-26 transcript of Court Proceedings, that will be filed after this motion is filed, page 20-21)

> [(31:58)] MR. MITCHELL: They had access to a county on iPad that had somehow been linked, not somehow had been linked to Charles Galloway's iCloud accounting and then iMessages, uh, text messages are being reviewed. The state filed one charge

> encompassing all that. And I have no issue with the court saying that we need to, uh, or granting the statement of particulars but that's gonna result in numerous other charges potentially. And I need the defendants to understand that and be in agreement.
>
> [(32:43)] THE COURT: Well, I'm not gonna get involved in the plea negotiations. And that's, that's the discussion y'all can have. ***But again, I think they're entitled to be put on notice with what specifically you are charging them...*** [emphasis added]
>
> [(32:52)] MR. MITCHELL: Okay.
>
> [(32:53)] THE COURT: ...for intercepting.
>
> [(32:54)] MR. MITCHELL: Yes.
>
> [(32:56)] THE COURT: And again, I'm not saying that you've gotta give the most detailed statement but I think you do need to give them something and maybe y'all can work on that together and come to something you could agree on. But if not, then I, I'm happy to weigh in further. But I do think they're entitled to some detail so they can prepare their defense and, and, um, you know, we've heard some of their defenses but ***I think they're entitled to know what was intercepted and not just the bland statement of text messages or messages and/or the like belonging to Charles Galloway. So maybe a, a, a date range would help of the date range of these messages. Um, I don't know what other details that y'all are asking for.***

14. Mitchell did not get the hint the Court may have been trying to give him regarding the right that criminal defendants have to be informed of the nature of the charges against him.

15. Two weeks after this Court granted the Motion for Statement of Particulars, ASA Joshua Mitchell filed thirty-two (32) new felonies against each defendant for an additional exposure of one hundred and sixty (160) years in prison, an act he had explicitly linked to this Court's granting of the Motion for Statement of Particulars during the deposition of Donald Clark ***and*** in open court on April 7, 2021.

16. Further, despite "interception" commonly being described as requiring contemporaneous or live reception of the messages, Mitchell admitted on the record that there was no evidence of this on April 7, 2026, in open court.

> [(34:04)] THE COURT: And, and Mr. Mitchell, if you're not wanting to give this up, just tell me, I'm not willing to give that up. But were they, is the allegation that they were observing or intercepting texts as they occurred live?
>
> [(34:14)] MR. MITCHELL: No.
>
> [(34:15)] THE COURT: Or these were past text messages?
>
> [(34:19)] MR. MITCHELL: There, there is no indication. We don't have any indication at this time that they were actively.
>
> [(34:28)] THE COURT: Intercepting live text messages.
>
> [(34:30)] MR. MITCHELL: I don't, I don't have any evidence to show that it was getting a notification and they were going and looking at it right then.
>
> [(34:37)] THE COURT: So what you believe is they get into the Apple iPad, um, get into the iPad and then get into Mr. Galloway's or obtain access to his personal Apple account and look at his personal text messages within that personal account.
>
> [(34:50)] MR. MITCHELL: Correct.

17. There is no case law the undersigned can find that supports a scenario wherein messages that were not intercepted contemporaneously as they were sent has ***ever*** been held to be wiretapping.

18. Not only is this a stunning show of prosecutorial overreach and overcharging, but Mr. Mitchell had already admitted on the record that he had no information that any of the messages were read in real time, indicating that he filed thirty-two (32) counts that he knew were not provable, in violation of the oath he took as a prosecutor.

Vindictive Prosecution

Prosecutorial vindictiveness may be established by objective evidence that prosecutor acted with actual vindictiveness to punish defendant for exercising constitutional rights, ***such as ASA Mitchell explicitly stating on a deposition recording that if the judge granted the motion for statement of particulars, he would be filing numerous new charges. Lest Mitchell attempt to make an argument that he misspoke or was misquoted he repeated that intention in front of this Honorable Court on the record on April 7, 2026*** (Doc. 107). It is truly stunning to have such an explicit statement recorded twice by the same prosecutor in the leadup to this "change in charges."

There should be no argument as to whether two statements by the same prosecutor that he would be punishing both defendants if the statement of particulars were granted is objective evidence of vindictive prosecution; but should this court find there are only facts present which establish a presumption that there is a realistic likelihood of vindictiveness, shifting the burden to the State to overcome that presumption with objective evidence justifying prosecutorial action, the undersigned requests to be able to depose ASA Mitchell prior to his testimony regarding his intent and to amend this motion to include other circumstantial evidence.

The test for prosecutorial vindictiveness is neatly discussed in U.S. v. Suarez, 263 F.3d 468 at 479 (6th Cir. 2001). 1) The exercise of a protected right; 2) a prosecutorial stake in the exercise of that right; 3) unreasonableness of the prosecutor's conduct; 4) the intent to punish the defendant for exercise of the protected right. In all categories, this case meets that standard, which will be discussed in the argument section.

The Sixth Amendment to the United States Constitution guarantees that a criminal defendant "shall enjoy the right…to be informed of the nature and cause of the accusation," and such information is necessary to allow a defendant to prepare a defense. *U.S. v. Strauss*, 285 F.2d 953, 955 (5th Cir. Fla. 1960)(citing *U.S. v. Cruikshank*, 92 U.S. 542, 544 (1876)). This is a fundamental right afforded to each criminal defendant, that they should be on notice of the nature of the charges against them. Id. As the Supreme Court has long recognized "[t]o punish a person because he has done what the law plainly allows him to do is a due process violation 'of the most basic sort.'" *Id.* at 372 (citing *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978)).

Prior to the granting of this Motion for Statement of Particulars, ASA Mitchell explicitly stated during a deposition which was recorded (and the transcript of which has been filed (Doc. No. 102) that he would file one charge for each text message if the Court granted the motion for the defendants to be on notice of the actual charges against them. It is difficult to imagine a more "spot on" series of events than that described *supra* to form the basis for a vindictive prosecution dismissal. This is explicit, objective evidence that the prosecutor was tying punishment to the exercise of a fundamental right. Lest Mitchell claim he misspoke, he said it again on April 7, 2026, on video camera in front of this Honorable Court as a witness.

For the State to acquiesce on the record when asked about whether there was contemporaneous access to the messages is to admit that they knew that they could not prove the charges against the defendants; and then to add thirty-two additional counts that also could not be proven surely meets the standard for unreasonable conduct on the part of the prosecution. In fact, it meets the standard for prosecutorial misconduct, which

will likely be the grounds for another motion to dismiss. The undersigned is unaware of any cases, state or federal, wherein the courts did not find that contemporaneity was an essential element of a wiretapping offense. When pushed on the record about whether the messages were accessed at the same time they were sent, the prosecutor had to respond to this Court with the fact that the State "did not have any evidence of that." In U.S. v. Steiger, 318 F.3d 1039, 1047 (11th Cir. 2003), the 11th Circuit held that, "The Circuits which have interpreted this definition (intercept) as applied to electronic communications have held that it encompasses only acquisitions contemporaneous with transmission."

The State may try to argue that they "warned" the defense that they planned to do this—and they did. This "warning" only confirms and underscores the retaliatory nature of filing additional charges. It was expressly tied to this Court ruling on the Statement of Particulars and not to any ongoing plea talks or newly discovered evidence of criminal conduct on the part of the defendant(s). This is a textbook case of a prosecutor causing the defendants to choose between exercising a fundamental right and not staring down quite literally the possibility of spending the rest of their lives in prison based on nonviolent third degree felonies.

Luckily, this recednt statement relating to this case[4] to come from the mouth of not just a prosecutor but the Chief Assistant of Walton County was on film and recorded both

[4] The Court may recall the defense recounting the prosecutor stating that he had no choice but to file the case because FDLE told him there was probable cause (that, of course, is not the standard for filing a case for a prosecutor and FDLE did no such thing), the prosecutor telling both counsel that "we are just trying to figure out if a crime was committed here," after taking the deposition of Charles Galloway, then the only listed victim, who stated that upon reflection he "probably didn't" have any expectation of privacy, the prosecutor telling the undersigned "not to work too hard on this case" after Inv. Riddick testified that he had essentially told Mitchell not to file the case, and then Mitchell filed a new information instead of dropping it. The deposition of Keith Riddick is filed. By way of encouraging the Court to read it, the undersigned includes here that midway through, when Counsel for Robertson began questioning the witness, the undersigned started looking up the elements of the tort of malicious prosecution, as she had not seriously thought of it since law school, nearly two (2) decades ago.

in a deposition and then again in front of this Honorable Court so there can be no accusations that the prosecutor was misheard, misspoke, or was just having a bad day and did not explain himself fully. The fact that he would make such a statement on tape (twice), however, only underscores the fact that Mitchell believed there was nothing wrong with making a defendant choose between a fundamental right to be on notice of the charges against him (as determined by this Honorable Court) and being loaded down with charges that were sixteen (16) times the prison exposure of the original charges. "I will punish you if the judge grants the motion," is what Mitchell meant by the statement during Donald Clark's deposition, and then he repeated it in open court.

First, it should be an undisputed point that a defendant being on notice of the charges against him is a fundamental right guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. For the sake of some brevity in this motion, the undersigned will assume that the State will not be challenging this assertion. Should the State challenge this assertion in a responsive pleading, the undersigned will go into more detail in a response.

The second prong of the test is a prosecutorial stake in the exercise of that right. Being forced to explain the charges against Turner and Robertson was for some reason abhorrent to Mitchell. Whether this action was extra work he did not want to do, he realized that he was unable to explain the charges, or this kind of arm-twisting had gotten some other defense attorney to withdraw a similar motion matters not.

This is a relatively high profile case for Walton County. It has been discussed on Facebook regarding the political motivations of those involved, and as an example of

corruption running below the surface of this county's politics by those both for Turner and Robertson and against them.

The third prong is the unreasonableness of the prosecutor's conduct. This horse has been beaten to death, revived, and beaten again. It cannot be overstated the misconduct inherent in filing the added charges for a prosecutor whose job is to seek justice, not a conviction, has an ethical obligation not to bring cases that are not supported by facts or law, and swore on his first day in the office to uphold the Constitution of the United States and the Constitution of the State of Florida.

To this end, the undersigned invites the Court to carefully read the new information. Mitchell has added five years of exposure per individual text message, not for a video, not for naked pictures, not for anything other than words, except for the ***fifty years of exposure for emojis alone***. Two "smiling emojis" were worth five (5) years of exposure in the newly-minted Count Six (6). Emphasizing (!) a previously sent message was worth another five (5) year felony in Count Ten (10). A thumbs up emoji was worth an additional five (5) year felony in Count Twelve (12), a five (5) year felony in Count Fourteen (14), a five (5) year felony in Count Seventeen (17), a five (5) year felony in Count Twenty-two (22), and a five (5) year felony in Count Twenty-Four (24).

ASA Joshua Mitchell has charged both defendants with offenses that could send them to ***prison for twenty-five (25) years just in in "thumbs up" emojis***. Regarding Count 31, which appears to be the only image shared, which is a meme of a little girl in a black and white photo with ringlets in her hair wrinkling her nose (and appearing fully clothed to the extent her body was shown), this tacked on another five (5) year felony. Two laughing emojis in Count thirty-two (32) were also worth another five (5) year felony.

Again, the prosecutor on this case filed charges punishable by up to ***fifty*** years in prison for emojis; ***if that is not outrageously unreasonable considering that this prosecutor originally intended to file only misdemeanors and thereafter offered diversion and continued offering it until it was officially rejected for the second time April 7, 2021, then nothing is.***

The fourth and final prong of the test is whether the prosecutor intended to punish a defendant for exercising a fundamental right. Unfortunately for the State, taking this prosecutor at his word unlike so many other vindictive prosecution cases where there is only circumstantial evidence of intent, requires finding in the affirmative and dismissing the case. The prosecutor told the undersigned, Undersheriff Clark, and a court reporter who was typing, plus a zoom video camera, that he planned to file additional charges in retaliation for the Motion for Statement of Particulars if it was granted. Then he repeated that position in open court, which was also recorded. There is no cleaner description of vindictiveness than that and the undersigned submits that there may never be another fact pattern as clear cut as this.

The uniqueness of this case is that a prosecutor would admit that he couldn't prove contemporaneous interception in a previous hearing and then file thirty-two (32) more counts that require contemporaneous interception. A second motion to dismiss will follow this one related to this act of prosecutorial misconduct and more neatly flesh this out in both state and federal cases, as Florida's wiretapping law mirrors the federal law.

CONCLUSION

The undersigned is convinced that this is vindictive prosecution with a bow on it—surely ***there can be no example of another prosecutor acting as flagrantly as***

Mitchell. Who would announce during a recorded deposition his plan to punish two defendants for exercising a fundamental right, state it again in front of the circuit judge hearing the case, casually add that he couldn't prove a charge he had filed previously in open court, and then vindictively follow through on the two prior threats, adding thirty-two (32) additional counts of the charge he had already admitted that he could not prove?! Should this court not find that there is objective evidence of actual vindictiveness--and it is the undersigned's position that there can be no other conclusion when the Court considers the explicit words and then acts of this prosecutor--but that there is only a reasonable likelihood of it, the undersigned asks to depose ASA Mitchell prior to his testimony regarding every act he has taken in this case, starting with whether he even read or researched the statutes he filed.

It is often difficult to prove intent. Jury instructions exist explaining to jurors that they can look to the circumstantial evidence to try to prove an actor's intent. Thanks to the recorded words of ASA Mitchell, this court does not need to interpret anything—it can simply take what he said at face value. He had the intent to punish the defendants if the Statement of Particulars if it were to be granted, and then he did just that. This is as simple as it is disturbing; as easy of a decision based on the facts present in this case as it is difficult.

WHEREFORE, the Defendant respectfully requests that this Honorable Court find that the transcripts filed in this case and the Information filed by the prosecutor on April 21, 2026, form the basis for a finding of objective evidence of vindictive prosecution and

as a sanction against the State dismiss all thirty-four (34) charges against Joseph Turner with prejudice.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail service to all parties listed in the Florida Courts E-filing Portal this 29th day of May, 2026.

KATHLEEN M. BOGENSCHUTZ
Fla. Bar No.: 75318
BOGENSCHUTZ PLLC
521 N. Adams Street
Tallahassee, Florida 32301
Telephone No.: 850-273-8327