

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. _____

STATE OF NORTH CAROLINA

vs.

**DEFENDANT'S MOTION FOR
DISCOVERY PURSUANT TO
CONSTITUTIONAL GUARANTEES**

_____,
Defendant.

NOW COMES defendant, pursuant to N.C.G.S. 15A-1054(c) and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and moves the Court as follows:

1. Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Kyles v. Whitley*, 514 U.S. 419 (1995), defendant requests the State to divulge any evidence known by the State, and any of its officers and agents, which is favorable to the defendant in that it would tend to exculpate the defendant, reduce the penalty toward the defendant, or otherwise mitigate the alleged offense, either of a direct or impeaching nature; information that could in any way have affected the judgment of the jury. For the defendant to receive a fair trial with a verdict worthy of confidence; irrespective of the good faith or the bad faith of the prosecution, this material must be presented in a timely fashion to the defendant.
2. Pursuant to *Giles v. Maryland*, 386 U.S. 66 (1967) and *Kyles v. Whitley*, 514 U.S. 419 (1995), defendant moves the Court to order that the State produce any information known to the State, and any of its agents and officers, that reflects on the credibility of any witness to be called by the State. Such information could include, but not be limited to the following:
 - * any statements made by a witness who is expected to testify at trial Including those that might differ from other statements made by the same witness;
 - * statements made by a witness who is expected to testify at trial that differ from the expected testimony of the same witness;
 - * Statements from any persons at any alleged crime scene, including those that could tend to conflict with or which do not support the prosecution's theory of guilt in this cause; and the criminal record of any witness;
 - * psychiatric or psychological afflictions of a witness;
 - * examination and/or treatment of the witness for the abuse of alcohol or controlled substances;
 - * evidence that a witness had consumed alcohol or a controlled substance within twelve hours before the time of any relevant events which the witness claims to have observed;

 - * evidence that a witness's ability to observe events generally is restricted or limited (e. g. the witness's vision or hearing is impaired or that from the vantage point claimed sight or hearing would have been compromised);

- * evidence that a witness's ability to observe relevant events was restricted or limited at the time of the observation (e.g. it was dark, the witness was far away, etc);
 - * evidence that a witness's memory is impaired or limited;
 - * evidence that a witness's cognitive ability is impaired or limited; the witness harbored a bias or prejudice against the defendant; and any other information relating to a witness's bias, credibility or ability to observe or recall events.
3. Defendant respectfully moves the Court to order the prosecution to inquire of it's agents, including, but not limited to, law enforcement officers, whether the State intends to call them as witnesses or not, with regard to the information and evidence that is the subject of this motion. Kyles v. Whitley, 514 U.S. 419 (1995).
 4. Defendant moves the Court to order the State to produce any other evidence or information which would guarantee that the defendant enjoys his rights under the Fifth, Sixth and Fourteenth Amendment to a fair trial, due process, assistance of the counsel, and effective opportunity for cross-examination of witnesses, and any information and evidence which “would tend to exculpate the defendant or reduce the penalty,” Brady v. State of Maryland, 373 U.S. 83, 88 (1963), and
 5. Defendant moves the Court to order the State to disclose evidence that is not apparently exculpatory, N.C. Constitution, Article 1, 319, State v. Cunningham, 108 N.C. App. 185 (1992)..

WHEREFORE, the defendant moves the Court to order that the State provide all information required under applicable statutory and constitutional law.

This is the _____ day of _____, 2009.

Marcus E. Hill
Attorney for Defendant
311 E. Main Street
Durham, North Carolina 27701
(919) 688-1941

