

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 could be favorable to the defendant in that it could tend to exculpate the defendant, reduce the penalty assessed the defendant, or otherwise mitigate the alleged offense. This evidence can be of either a direct or impeaching nature. Defendant also requests the State to divulge information that could in any way effect the judgment of the Court, to ensure the defendant receives 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, no later than the court setting in which motions are heard or a trial is held.
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 including, but not limited to, those that might differ from other statements made by the same witness;

- * statements made by a witness who is expected to testify, including, but not limited to, those that differ from the expected testimony of the same witness;
 - * statements from any persons at any alleged crime scene, including, but not limited to, those that could tend to conflict with or which do not support the prosecution's theory of guilt in this cause;
 - * 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 his or her 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;
 - * evidence that 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. Pursuant to Brady v. Maryland et seq., the defendant moves the Court to order the prosecutor to affirmatively seek all materials and evidence available in this case from all officers, witnesses, investigators, and from any source, and to review all such materials and determine if

any may be exculpatory either directly or indirectly. If such material exists the Court should order it disclosed to the defendant at a time and in a manner so as to allow its use at any motion hearing or trial in this case, and to allow the defendant to review those materials at any reasonable time prior to any hearing in this matter.

4. Pursuant to Brady v. Maryland et seq., the defendant moves the Court to order the State to provide any recordings be they video, audio, photos, or mixed, that may prove to be exculpatory or may provide material for cross-examination of the States witnesses or may inform the defendant of a defense that is available, or in any way may be useful in the defense of the charges pending against the defendant.

5. Defendant respectfully moves the Court to order the prosecution to inquire of its 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).

6. 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 an 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. Maryland, 373 U.S. 83, 88 (1963) and

7. 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).

8. The defendant moves that the Court suppress any certificate affidavit, forensic laboratory report or anything resembling the foregoing in any way under the ruling of the United States Supreme Court in Melendez-Diaz, unless the analyst, the person who prepared the report, and person who wrote the report are available to testify at trial.

9. The defendant moves that the Court suppress any evidence unless the State presents each

person involved in the chain of custody, and that the witnesses testify to that chain of custody and as to the handling of the sample.

10. The defendant moves that the Court suppress any analysis or the report thereof unless the court rules that the handling of said sample and the chain of custody is proven to the State's standards and is without gaps and the sample was tested by a method and with devices approved by the National Laboratory Standards.

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

This the _____ day of _____, 20____.

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