

NORTH CAROLINA
_____ COUNTY

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

STATE OF NORTH CAROLINA

**MOTION FOR BRADY MATERIAL &
DISCOVERY, AND REQUEST FOR
PRESERVATION OF
EVIDENCE (CRIMINAL)**

_____,
Defendant.

NOW COMES the Defendant in the above captioned action and, by and through Marcus E. Hill, his counsel of record, pursuant to N.C.G.S. 15A-903 and Brady v. Maryland, et seq., and moves the court for an order that the District Attorney for the Judicial District provide the following discovery:

1. The substance of a copy of any and all written statements made by the defendant which are within the possession, custody or control of the State, the existence of which is known or by the exercise of due diligence may become known to the District Attorney or any law enforcement agency, as provided for by N.C.G.S. 15A-903 (a) (1);
2. A copy of any and all written or recorded statements made by any alleged co-defendant, accomplice, or co-participant in the crime as provided for by N.C.G.S. 15A-903 (b) (1);
3. The substance, in written or recorded form, of any oral statement made by any alleged co-defendant, accomplice, or co-participant in the crime as provided for by N.C.G.S. 15A-903 (b) (4);
4. A complete copy of the defendant's prior criminal record, if any, as provided for by N.C.G.S. 15A-903, including but not necessarily limited to:
 - a. All juvenile and adult detention, jail, prison, parole, probation, and pre-

- sentence investigation and reports;
- b. All arrest, conviction, and adult and juvenile criminal offense records and reports;
 - c. All records and reports of any law enforcement authority as that term is defined in 5(b), above;
 - d. All records and reports of any detention or court authority;
 - e. All records and reports of any prosecuting authority as that term is defined in 5(b) above;
6. An opportunity to inspect and copy or photograph any and all books, papers, documents, photographs, motion pictures, videotapes, mechanical or electronic recordings, or tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the State and which are material to the preparation of the defense, or are intended for use by the State as evidence at the trial or were obtained from or allegedly belonged to the Defendant, as provided for by N.C.G.S. 15A-903 (d). This request includes, but is not necessarily limited to:
- a. Any call, message, dispatch, bulletin, or communication to any law enforcement authority, prosecuting authority, professional personnel, or medical or rescue facility or service of any kind, relating to the events surrounding:
 1. The alleged crime;
 2. The whereabouts or movements of the Defendant on the dates of these offenses and any other pertinent dates.
 3. The arrest of the Defendant or any contact between the Defendant and any representative of any law enforcement authority, on or about the date of his/her arrest;

- b. Any other police, medical, or rescue call, message, dispatch, bulletin, or communication relating to the events described in 6(a) (1) through (3), above;
- c. All clothing and possessions that were taken from, or examined or observed in or upon the person or presence of the Defendant by any person described in 6(a), above;
- d. All objects, substances, or materials that were taken from, or examined or observed in or upon the person or presence of the Defendant by any person described in 6(a), above, at or subsequent to the time he was taken into custody;
- e. All objects, substances, or materials that, before, at, or, subsequent to the time the Defendant was taken into custody, were taken from, or examined or observed in or upon any premise, vehicle, or thing purportedly owned, occupied, or possessed by the Defendant or by any person described in 6(a) above;
- f. All objects, substances, or materials that were taken from, or examined or observed in the presence, person, or any premise, vehicle, or thing purportedly owned, occupied, or possessed by any alleged co-defendant, accomplice, or co-participant in the crimes alleged;
- g. All objects, substances, or materials that:
 - 1. The District Attorney intends to offer in evidence at any trial or hearing of this case;
 - 2. The District Attorney is retaining for potential use in evidence at any trial or hearing of this case;
 - 3. The District Attorney has submitted to any professional personnel for examination or analysis in connection with this case;

4. In preparation for trial, any evidence that has been submitted to any professional personnel for examination or analysis in connection with this case; or any evidence that is retained for potential use in evidence or in any hearing of this case.
5. Any evidence that the District Attorney has had in his or her possession in connection with the investigation and preparation of this case, including but not limited to:
 - a. All incident diagrams, maps, charts, drawings, sketches, and other graphic or pictorial representations of any sort which:
 1. Purport to depict the scene of the alleged crimes or any part thereof;
 2. Were made by any person in connection with the investigation or preparation of this case;
7. An opportunity to inspect and copy or photograph results or reports of physical or mental examinations, or of tests, measurements, or experiments made in connection with the case, or copies thereof, which are within the possession, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the District Attorney or any law enforcement agency, as provided by N.C.G.S. 15A-903 (e), including but not limited to:
 - a. All examinations, investigations, and analyses conducted or undertaken upon any of the objects, substances, or materials including, but not necessarily limited to, fingerprints, handwriting, ballistics, chemical or other scientific tests or analyses;
 - b. All medical, pathological, toxicological, chemical, biochemical, criminalistic, laboratory, or scientific examinations, investigations, and analyses conducted

- or undertaken in connection with the investigation or preparation of this case;
8. An opportunity to inspect, examine, and test, subject to appropriate safeguards, any physical evidence, or a sample thereof, which is in the possession, custody, or control of the State, as provided by N.C.G.S. 15A-903 (e);
 9. A copy of any and all search warrants, arrest warrants, and non-testimonial identification orders issued in connection with this case, as well as any supporting affidavits, sufficient to allow the defendant to determine whether to proceed under N.C.G.S. 15A-971, et. seq.;
 10. A description of any and all pre-trial identification procedures conducted by the State or any of its agents in connection with the alleged crimes, and the date, time, place, and persons present at such procedure, sufficient to allow the defendant to determine whether to proceed under N.C.G.S. 15A-971, et. seq.,
 11. A description of any conversation between the defendant and any law enforcement officer, official or agent, and the date, time, place, and persons present at such time, sufficient to allow the defendant to determine whether to proceed under N.C.G.S. 15A-971, et. seq.;
 12. A description of any and all property allegedly seized from the defendant, his home, or any area allegedly under his control, that the State intends to offer as evidence at trial, or which led to any other evidence the State intends to use at trial, and the time, place, and manner of any such seizure, sufficient to allow the defendant to determine whether to proceed under N.C.G.S. 15A-971, et. seq.;
 13. A description of any and all electronic, mechanical, visual, or photographic

surveillance of the defendant conducted by State or federal law-enforcement officers, officials, or agents, and the date, time, place, and persons at such surveillance, sufficient to allow the defendant to determine whether to proceed under N.C.G.S. 15A-971, et. seq.;

14. A description of any electronic, mechanical, visual, or photographic surveillance of other persons, places, or organizations conducted by State or federal law enforcement officers, officials, or agents which resulted in the interception and/or recording of any of the defendant's conversations, photographs of the defendant, or other information relating to the defendant, and the date, time, location, and manner of any such surveillance, sufficient to allow the defendant to determine whether to proceed under N.C.G.S. 15A-971, et. seq.;
15. The nature of any other criminal acts allegedly committed by the defendant which the State intends to introduce as evidence, and the particulars of those acts, including, but not limited to the time and place the acts, including but not limited to the time and place the acts were allegedly committed, whether the acts were the subject or any court proceedings, and the results of any such proceedings, in the interests of justice as provided for by N.C.G.S. 15A-904 (b);
16. Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Agurs*, 427 U.S. 97 (1976), any and all documents, reports, facts, or other information in whatever form which would tend to exculpate the defendant, mitigate the degree of the offense or the appropriate punishment, weaken or overcome testimony adverse to the defendant given by a State's witness, impeach the credibility of a State's witness, or would otherwise tend to be

favorable to the defendant in any way, including, but not limited to:

- a. Any notes or reports, in whatever form, which were prepared by any law enforcement officer, official, or agent and which would tend to refute, impeach, or contradict any of the evidence the State intends to introduce at trial, or which tends to show or indicate in any way that the defendant did not commit the crimes charged in the indictment or that he may have a legal defense to such crimes;
- b. Any evidence or information which would tend to indicate in any way that someone other than the defendant committed the crimes charged, including but not limited to any reports concerning any investigation of suspects other than the defendant carried out in connection with this case or containing a description of the alleged perpetrator that is inconsistent with the physical characteristics of the defendant;
- c. The facts and circumstances surrounding any pretrial identification procedure conducted by any law-enforcement officer, official, or agent in connection with this case in which any alleged witness failed to identify the defendant or identified someone other than the defendant;
- d. Any written, recorded, or oral statements made by any person which would tend to exculpate the defendant or indicate in any way he may not have committed the alleged crimes or that he may have a legal defense to such crimes;
- e. The contact information for any witnesses who may have knowledge of facts which might be favorable to the defendant, or who were interviewed by an law-enforcement officer, official, or agent and

- failed to provide inculpatory information concerning the defendant;
- f. Any statements previously made by a prospective witness for the State, whether written or oral and whether made under oath or otherwise, which are inconsistent or a variance in any way with what the witness is anticipated to testify at trial;
 - g. The complete prior criminal and juvenile records of all witnesses who may testify for the State, the nature or any criminal charges under investigation or pending against such witnesses in any jurisdiction, and a description of any prior bad acts engaged in by any such witnesses;
 - h. The details of any promises or indications of actual or possible immunity, leniency, favorable treatment or any other consideration whatsoever, or of any inducements or threats, made or suggested by any state or federal employee or agent to any person who has provided information to or will testify for the State in this case, or anyone representing such a person;
 - I. Any information suggesting any bias or hostility by any prospective witness for the State toward the defendant, or any other factor bearing on the credibility of any prospective witness for the State, including, but not limited to any mental illness or condition, dependence on or use of alcohol or drugs of any kind, whether or not received legally;
16. If applicable, all photographs of the wrecked vehicle and the scene of the accident, including photos of the defendant and his clothing and shoes, and of any items or injuries to the defendant that would tend to support the State's conclusion that the defendant was the driver of the vehicle.

17. On behalf of the defendant provide the undersigned with access to and a copy of all the following from any lab reports generated by the State or any hospital or laboratory that may be used in the defendant's trial.
- a. Scientific conclusions from the Laboratory results that the State is or can become aware of.
 - b. The basis for scientific conclusions.
 - c. The procedures used to reach the conclusions.
 - d. The tests performed and the data obtained from those tests.
 - e. Procedures the chemist should have used to reach the conclusion, and the protocols for each scientific test.
 - f. Information regarding how the samples and evidence were collected and handled.
 - g. Information regarding how the transfers of evidence and samples were completed.
 - h. Laboratory receiving records documenting the date, time and condition of the evidence and samples in question.
 - I. Information regarding storage location of the evidence and samples.
 - j. Information regarding the procedures for sub-sampling and contamination control.
 - k. Copies of technical procedures in effect at the time the test was performed during sample screening and confirmation, including sample preparation, sample analysis, data reporting, and instrument operation.
 - l. Proficiency results for each analyst and technician responsible

- for preparation or analysis of subject specimens, including:
raw data and reported results, target values and acceptance
ranges, performance scores, and all related correspondence.
- m. Copies of traceability documentation for standards and reference materials used during analysis, including unique identifications, origins, dates of preparation and use, composition and concentration of prepared materials, certification or traceability records from suppliers, assigned shelf lives and storage conditions.
 - n. Sample preparation records, including dates and conditions of preparation, responsible analyst, procedural reference, purity, concentration and origins of solvents, reagents, and control materials prepared and used, samples processed concurrently, and extract volume.
 - o. Copies of bench notes, log books, and any other records pertaining to case samples or instruments; records documenting observations, notations, or measurements regarding case testing.
 - p. Instrument run logs with identification of all standards, reference materials, sample blanks, rinses, and controls analyzed during the day/shift with subject samples (as appropriate: run sequence, origins, times of analysis and aborted run sequences).
 - q. Instrument operating conditions and criteria for variables, including as appropriate: GC column, instrument file

- identification, tuning criteria, instrument performance check, initial calibration, continuing calibration checks, calibration verification.
- r. Records of instrument maintenance status and activities for instruments used in subject testing, documenting routine as-needed maintenance activities in the weeks surrounding subject testing.
 - s. Raw data for the complete measurement sequence (opening and closing quality control included) that includes the subject samples. For GC-MS analysis, this would include: areas and retention times, injection volumes, dilution factors, chromatograms and mass spectrometer as prepared and as determined values for all quality control samples.
 - t. A description of the library used for spectral matches for the purpose of qualitative identification of controlled substances, including source(s) and number of reference spectra.
 - u. A copy of records documenting computation of the laboratory's theoretical production yield, including the basis for the computation and the algorithm used, as appropriate.
 - v. Procedure(s) for operation and calibration checks of analytical balance used to weigh controlled substances.
 - w. Results of calibration checks and documentation of mass traceability for gravimetric determinations.
 - x. Results of contamination control surveys for trace level analytes relevant to test methods at the time of analysis,

- including sampling design and analytical procedures.
- y. Records and results of interval review of subject data.
 - z. Method validation records documenting the laboratory's performance characteristics for qualitative identification and quantitative determinations of the controlled substances, to include data documenting specificity, accuracy, precision, linearity, and method detection limits.
 - aa. The Laboratory's Quality Manual in effect at the time the subject samples were tested as well as the laboratory's most recent Quality Manual (however named; the document that describes the laboratory's quality control and policies.)
 - bb. The Laboratory's technical or operational procedures in effect at the time of the subject samples were tested (often termed Standard Operating Procedures, for analytical laboratory operations) as well as the laboratory's most recent technical or operational procedures for analytes detected in subject samples.
 - cc. The Laboratory's ASCLD-LAB on-site inspection report, as appropriate, as well as any reports of on-site inspections by any other testing laboratory audit organization.
 - dd. A copy of internal audit reports generated during the period subject samples were tested.
 - ee. A list of instrumentation in the laboratory at the time subject testing was performed, including manufacturer, model number, and major accessories.

- ff. Data for the drug testing section: numbers of tests performed per month or per year, and the number of full time equivalent personnel in the drug testing section of the laboratory.
 - gg. The Drug Chemistry Section Procedures Manual.
 - hh. The Drug Chemistry Section Training Manual.
18. A list of personnel involved in the laboratory specifically stating which of those personnel have left the employ of the laboratory, and of those who have been terminated for good cause or otherwise since the analysis required in this case.
19. All additional information of the type requested above that comes to the attention of the State or its agents after initial compliance with this court's orders of discovery.

NOTICE TO PRESERVE EVIDENCE

1. Pursuant to *California v. Trombetta*, 467 U.S. 479 (1984), *Arizona v. Youngblood*, 488 U.S. 51 (1988), *State v. Cunningham*, 108 N.C. App. 185, 423 S.E. 2d 802(1992), *State v. Jones*, 85 N.C. App. 56, 354 S.E. 2d 251, *disc. rev. denied*, 320 N.C. 173, 358 S.E. 2d 61 (1987), *State v. Taylor*, 362 N.C. 514, 669 S.E. 2d. 239 (2008) the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article 1, Section 19 and 23 of the North Carolina Constitution, defendant hereby gives notice to and request the state, acting by and through the Office of the District Attorney for the above enumerated Judicial District to preserve and safeguard the evidence of the type referred to in this motion, including specifically photographic, video, electronic or mechanical recordings of the vehicle allegedly operated by the defendant, and of the defendant prior to, during and

subsequent to the alleged operation of any motor vehicle as it relates to defendant's alleged physical and/or mental impairment, and all blood samples.

2. Pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1, Section 19 and 23 of the North Carolina Constitution, defendant is entitled to examine, inspect, and copy the original of all such evidence and any digital, electronic and/or mechanical recordings. To ensure that defendant can exercise these rights in a meaningful and timely fashion, defendant is entitled to an order from the Trial Court directing the state to preserve and safeguard all such evidence seized and electronic, digital and mechanical recordings conducted pursuant to the investigation by law enforcement agencies and law enforcement officers. The evidence will play a significant role in the preparation and presentation of defendant's defenses and is of such a nature that defendant will be unable to obtain comparable evidence by any other reasonable means unless the same is timely preserved and safeguarded.
3. A concomitant part of this evidence are any notes, memorandums, statements or reports made concurrent therewith.
4. The failure to safeguard the evidence identified in this motion would constitute a substantial violation of defendant's rights under the decided case law of the United States Supreme Court, the Supreme Court of North Carolina, the North Carolina Court of Appeals, would constitute a substantial violation of defendant's rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1, Section 19 and 23 of the North Carolina Constitution, and would constitute a substantial violation of defendant's statutory rights under Chapter 20.
5. The preservation and safeguarding of such information would profoundly promote

fairness and the protection of defendant's federal and state constitutional rights, would materially assist defendant and defense counsel in preparing to meet the state's proof, confronting and cross-examining his/her accusers, searching for the truth in this case and in being ready to proceed during the cross-examination of the state's witnesses, or defendant's case in chief with evidence which would contradict and/or refute the state's proof.

WHEREFORE, defendant respectfully prays the Court as follows:

1. If the state fails to voluntarily provide the discovery as requested above, that the Trial Court enter an order directing the state to provide the information requested in a timely manner.
2. If the state fails to comply with the Trial Court's order, that the Trial Court enter an order allowing defendant to make any motion during the course of the trial as may be necessary based upon the facts and evidence that are disclosed or presented during the course of proceedings and the presentation of evidence.
3. The Trial Court enter an order directing the state by acting by and through the District Attorney for the above enumerated Judicial District, including all law enforcement agencies and law enforcement officers acting on its behalf to preserve, maintain and/or protect the information more particularly described in this motion.
4. Should the state fail to preserve and safeguard the evidence more particularly described above, that the Trial Court enter an order dismissing the charge against the defendant, or in the alternative, enter an order prohibiting the introduction of any such testimony.
5. The court enter appropriate orders if the information requested above is not disclosed

in an appropriate and timely manner to the defendant, allowing the defendant a complete argument on sentencing, said orders to include dismissal of the charges or appropriate limitations on the state's ability to present evidence and argue the case to the court.

Respectfully Submitted this the _____ day of _____, 20_____.

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