

FILED

MAY 25 2011

Rhonda G. Payne, Clerk  
Superior & State Court  
Douglas County, GA

**ORIGINAL**

IN THE STATE COURT OF DOUGLAS COUNTY  
STATE OF GEORGIA

IN RE: PRE-TRIAL MOTIONS ]  
AND DISCOVERY REQUESTS ]  
IN CRIMINAL CASES ]

AMENDED STANDING ORDER

It appears that Defendants will frequently file the following motions in connection with all MISDEMEANOR criminal cases pursuant to their obligations concerning such representation:

1. Notice of Defendant's Intention to Proceed Under O.C.G.A. § 17-16-20, et seq.
2. Defendant's Request for Information Described in O.C.G.A. § 17-16-21
3. Motion for Discovery of Statements of the Defendant
4. Demand for the Inspection, Analysis and Testing of Scientific Evidence
5. Demand for Inspection, Analysis and Copies of Other Tangible Evidence, including but not limited to, Photographs and Documents.
6. Discovery Motion and Motion to Require the Prosecution to Disclose Evidence Favorable to the Defendant under *Brady v. Maryland*
7. Notice to Produce
8. Motion for Disclosure of Similar or Extrinsic Act Evidence and for Pretrial Hearing to Determine Admissibility of any Acts Alleged by the State to be Similar Transactions
9. Motion to Require the State to Reveal any Agreement Entered into between the State and any Prosecution Witness that could Conceivably Influence Testimony

RECORDED IN BOOK 47, PAGE 271  
DATE 6/7/2011

It appears further that O.C.G.A. § 17-16-20, et seq. imposes certain obligations upon the prosecuting attorney and counsel for the Defendant in a criminal case where the Defendant intends to proceed under that statute. In order to assist the Court and the Parties in the expeditious handling of criminal matters, reduce costs and unnecessary paperwork, the Court enters this **STANDING ORDER** for criminal cases as follows:

In all cases in which counsel for the Defendant files an Entry of Appearance, he or she may file a single pleading invoking the motions listed herein and attached as Exhibits 1, 2, 3, 4, 5, 6, 7, and 8 in all **MISDEMEANOR** cases (including DUI and traffic offenses). That pleading may incorporate the Motions in the Exhibits by express reference thereto without the need to file those Exhibits in each case file. The pleading shall be called the **MOTION TO INVOKE THE STANDING ORDER IN CRIMINAL CASES** and shall refer to the Minute Book and Page in which the Motions are entered in the records of this court.

Upon the filing of the pleading invoking this Order, the Clerk shall note on the docket that the "Standing Motions" have been filed.

This order does not include any motions required by law to state grounds with particularity, provided however, the Defendant may file a preliminary motion to suppress, which he or she may amend, to fully apprise the State's counsel of the grounds asserted for suppression as well as the matters allegedly subject to suppression not less than twenty (20) days prior to the hearing of any such motion or trial of the cases or five (5) calendar days after the date of service of discovery by the State, whichever date occurs last.

In the event of an appeal from the disposition of any criminal case in which the Defendant has invoked the Standing Motions, the Clerk shall supplement the case file with a copy of the Standing Motions upon preparation of the Record.

SO ORDERED this 23 day of May, 2011.

  
\_\_\_\_\_  
W. O'NEAL DETTMERING, Jr.  
Chief Judge, Douglas County State Court  
Douglas Judicial Circuit

  
\_\_\_\_\_  
J. EDDIE BARKER,  
Judge, Douglas County State Court  
Douglas Judicial Circuit

**EXHIBIT 1**

**IN THE STATE COURT OF DOUGLAS COUNTY  
STATE OF GEORGIA**

**STATE OF GEORGIA**

**vs.**

**DEFENDANT**

]  
]  
]  
]  
]

**CASE NO.**

**NOTICE OF DEFENDANT'S INTENTION TO  
PROCEED UNDER O.C.G.A. § 17-16-20, ET SEQ.**

DEFENDANT hereby provides written notice that the provisions of O.C.G.A.,  
§ 17-16-20, et seq. apply to this case.

Respectfully submitted,

\_\_\_\_\_  
Counsel for Defendant

RECORDED IN BOOK 47, PAGE 274  
DATE 6/7/2011



EXHIBIT 3

IN THE STATE COURT OF DOUGLAS COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA

vs.

DEFENDANT

]  
]  
]  
]  
]

CASE NO.

MOTION FOR DISCOVERY OF STATEMENTS OF THE DEFENDANT

COMES NOW the Defendant in the above-captioned matter and, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution; Article I, Section I, Paragraphs 1, 2, 11, 12, 14, 16 and 17 of the Georgia Constitution; O.C.G.A. § 17-16-22 (1994); and other applicable law, hereby moves this Court to ORDER the State to provide the defense, within TEN (10) days, with copies of any and all statements made by DEFENDANT, including but not limited to: (1) written versions of any and all oral statements; (2) other accounts, reports, notes or summaries of any and all oral statements; (3) any and all written statements; (4) audio cassette copies of any and all audio-taped statements; and (5) video cassette copies of any and all videotaped statements. Additionally, Defendant moves the Court to BAR the State from using any such statements at trial for any purpose in the event that said statements are not revealed to the defense within ten (10) days.

Page 1

RECORDED IN BOOK 47, PAGE 276  
DATE 6/7/2011

In support of this motion, DEFENDANT states the following:

1.

DEFENDANT is charged in the above-styled case.

2.

Under O.C.G.A. § 17-16-22 (1994), a criminal defendant is entitled to: (a) copies of any statement made by him while in police custody; and (b) that portion of any oral statement or partial oral statement which is relevant and material.

3.

Additionally, a criminal defendant is entitled to any other statements made by him while in custody, including statements made to inmates or other non-law enforcement personnel. Bell v. State, 179 Ga. App. 491, 347 S.E.2d 321 (1986).

4.

The prosecutor's duty to disclose extends to all statements within the "possession, custody, or control" of either his office or any law enforcement agency or other state agency. O.C.G.A. § 17-16-4(a)(1). The prosecutor also has a duty to investigate whether the Defendant made any statements and, if so, to reveal those statements to the defense. See, Gilbert v. State, 193 Ga. App. 283, 38 S.E.2d 18 (1989).

5.

The State is barred from using at trial any custodial statement that has not been provided upon a timely request. See, McKenny v. State, 204 Ga. App. 411, 419 S.E.2d 82 (1992) (conviction reversed where prosecution used statement of defendant not furnished in compliance with written demand); Byars v. State, 198 Ga. App. 793, 403 S.E.2d 82 (1991) (same); Davis v. State, 198 Ga. App. 375, 401 S.E.2d 581 (1991).

6.

This motion is made under the authority of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); Naupe v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959); Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); Giles v. Maryland, 386 U.S. 66, 87 S.Ct. 793, 17 L.Ed.2d 737 (1967); and United States v. Noe, 821 F.2d 604 (11th Cir. 1987), as well as the constitutional and statutory authority cited above.

WHEREFORE, DEFENDANT requests that this Court:

1.

Order the State to provide to the defense written versions of any and all oral statements by DEFENDANT; copies of any accounts, reports, notes or summaries containing statements by DEFENDANT or references to statements by DEFENDANT; any and all written statements by DEFENDANT; audio cassette tape

Page 3

RECORDED IN BOOK 47, PAGE 278  
DATE 6/7/2011

copies of any and all audio-taped statements by DEFENDANT; and videotape  
copies of any and all videotaped statements by DEFENDANT;

2.

Order that such statements be provided within ten (10) days;

3.

Order that any statement not produced pursuant to this order be barred from  
use for any purpose by the State at trial;

4.

Schedule this motion for a hearing, if necessary; and

5.

Grant such other relief as is just and proper.

Respectfully submitted,

---

Counsel for Defendant

**EXHIBIT 4**

**IN THE STATE COURT OF DOUGLAS COUNTY  
STATE OF GEORGIA**

**STATE OF GEORGIA**

**vs.**

**DEFENDANT**

|  
|  
|  
|  
|

**CASE NO.**

**DEMAND FOR THE INSPECTION, ANALYSIS AND TESTING OF  
SCIENTIFIC EVIDENCE**

DEFENDANT, under the provisions of O.C.G.A. § 17-16-20, et seq.,  
respectfully demands the following:

(1) Copies of any written scientific reports in the possession of the prosecution which will be introduced in whole or in part against the Defendant by the prosecution in its case-in-chief or in rebuttal or were obtained from or belonged to DEFENDANT. O.C.G.A. § 17-16-23. *DEFENDANT gives notice of intent to invoke the exclusionary provision of O.C.G.A. § 17-16-23(c) in the event that there is a failure to timely comply with this demand. See, Alexander v. State, 203 Ga. App. 375, 416 S.E.2d 762 (1992) (Prosecution provided a handwritten statement indicating that a trace of cocaine was found at site but did not furnish lab report though lab report was available, and case was reversed).*

(2) The results of all scientific tests or experiments or studies made in connection with the above-styled case and copies of any reports, whether or not the State intends to introduce said items into evidence upon the trial of this case. See

O.C.G.A. § 24-9-64; the Fifth and Sixth Amendments to the Constitution of the United States; Article I, Section I, Paragraphs I, II, VI, XII and XIV of the Constitution of the State of Georgia.

(3) The disclosure of any fingerprint, DNA or fiber sample analysis and, if such analysis was performed;

(a) the results of all tests (including fingerprint and ballistics), experiments or comparisons performed on any and all materials, objects, or property seized from the Defendant, or from other persons places or objects searched and/or seized during the course of the investigation. Also, the complete report made by any scientist or expert who either performed or was responsible for performing these tests, comparisons or experiments, including such information as the [1] description of the object tested, [2] exemplars or standards which the item was compared to, [3] tests performed, [4] procedures followed for each test, [5] work sheets, [6] chain of custody for each item, and [7] a summary of the basis for the expert opinion rendered in the report. O.C.G.A. §24-9-64; the Sixth Amendment to the Constitution of the United States of America; Article I, Section I, Paragraph XIV of the Constitution of the State of Georgia; Eason v. State, 260 Ga. 445, 396 S.E.2d 492 (1990) (a basic principle of scientific testing is that careful records of test

Page 2

RECORDED IN BOOK 47, PAGE 281  
DATE 6/7/2011

procedures and results be scrupulously maintained); Box v. State, 187 Ga. App. 260, 370 S.E.2d 28 (1988) (case reversed where state failed to provide exact numerical quantity of drug tested); Durden v. State, 187 Ga. App. 154, 369 S.E.2d 764 (1988) (any evidence of a scientific test offered by the state in its case-in-chief or in rebuttal is subject to discovery).

(b) Any documentation regarding *the attempt* to perform any scientific test (fingerprint, ballistics, etc.), or procedure (identification, etc.) that may not have been completed or where the attempt to perform the test or procedure failed for some technical or other reason. O.C.G.A. §24-9-64; the Sixth Amendment to the Constitution of the United States of America; Article I, Section I, Paragraph XIV of the Constitution of the State of Georgia; Eason v. State, 260 Ga. 445, 396 S.E.2d 492 (1990) (right to subpoena all the work product of a chemist); Foster v. California, 394 U.S. 440, 442 (1969) (case reversed where prosecution failed to disclose that witness failed to identify defendant the first time he confronted him and defendant was identified only after a second and third lineup).

(4) The disclosure of any polygraph examination(s), and if such disclosure is affirmative, the results of such tests performed on any witness or potential witness which may be beneficial and useful to the Defendant to establish reasonable doubt

or for purposes of impeachment. Defendant also requests the name, address and phone number of the polygraph operator or operators. O.C.G.A. §§ 17-16-4(a)(3) [former § 17-7-211] and 24-9-64; the Sixth Amendment to the Constitution of the United States of America; Article I, Section I, Paragraph XIV of the Constitution of the State of Georgia; and Taylor v. State, 172 Ga. App. 408, 323 S.E.2d 212 (1984) (reversible error where written report of polygraph examination not timely provided to defense after O.C.G.A. § 17-7-211 request).

(5) The disclosure of any results or reports of physical or mental evaluations as set forth in O.C.G.A. § 17-16-23(a).

(6) A summary of the basis for any expert opinion rendered in a report which the State intends to introduce in evidence in its case-in-chief or rebuttal.

(7) The Defendant reserves the right to:

(a) seek further discovery regarding the nature, extent and procedures utilized in any laboratory testing and the qualifications of any entity or individual performing such tests; and,

b) challenge the procedure or technique utilized in any scientific procedure pursuant to Harper v. State, 249 Ga. 519, 292 S.E.2d 389 (1982) (trial court may make a determination whether a scientific procedure or technique has reached a scientific stage of verifiable certainty from evidence presented to it); Caldwell v. State, 260 Ga. 278, 393 S.E.2d 436 (1990)

(allows trial court during a Harper review to also determine whether the scientific procedures were performed in an acceptable manner).

Respectfully submitted

---

Counsel for Defendant

Page 5

RECORDED IN BOOK 47, PAGE 284  
DATE 6/7/2011



Further, if this material is not produced, the Defendant's counsel will not be able to effectively represent the Defendant in this case, and thus the Defendant will be denied the right to counsel and the right to confront witnesses, both of which are guaranteed under the provisions of Article I, Section I, Paragraph XIV of the Constitution of the State of Georgia and the provisions of the Sixth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment to the Constitution of the United States of America.

Additional authority for specific requests is noted where appropriate.

#### I. Prefatory Statement

This motion addresses numerous items that may or may not be applicable to this case because Georgia provides no comprehensive discovery in criminal cases. Since there is no discovery, counsel will not know whether certain requested items even exist without a preliminary response to this motion. Therefore, the Defendant may file additional motions depending upon the State's response to the various requests for disclosure of preliminary information.

Specifically, the Defendant requests:

#### II. Discovery Requests

(1) The addresses and telephone numbers for all persons interviewed during the investigation whose statements could be deemed exculpatory to the Defendant - whether or not they are to be called as a witness for the State. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (right to discovery

of exculpatory material); Hicks v. State, 232 Ga. 393, 207 S.E.2d 30 (1974) (recognizing the applicability of Brady to state prosecutions).

(2) Copies of any statements made by any witness in this case. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (right to discovery of exculpatory material); Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217; and Giglio v. Unites States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (convictions reversed where witness testified falsely and defense not provided with prior inconsistent statement); Giles v. Maryland, 386 U.S. 66, 87 S.Ct. 793, 17 L.Ed.2d 737 (case remanded to determine if witness committed perjury in a rape case); Rini v. State, 235 Ga. 60, 218 S.E.2d 811 (1975) (trial court erred in overruling defendant's motion for production at trial of the statements of witnesses).

(3) The disclosure of any line-up, photographic array or other identification or identification related procedure that involved any witness or prospective witness, and, if such disclosure is in the affirmative, all documents, sketches, pictures or photographic arrays that have been made by, or shown to, any witness or prospective witness in this or any companion case. Fourth, Fifth and Sixth Amendments to the Constitution of the United States of America; Article I, Section I, Paragraphs I, XII, XIV and XVI of the Constitution of the State of Georgia; Manson v. Brathwaite, 432 U.S. 98, 114 (1977) (once the defendant establishes some sort of suggestivity in the identification process, court weighs the "corrupting effect of the suggestive identification" against the likelihood that the witness nonetheless made a reliable identification) (even where suggestivity is weak, court should still inquire

into reliability - the linchpin in determining the admissibility of identification testimony). See also, Neil v. Biggers, 409 U.S. 188 (1972) (each case must be considered on its own facts).

(4) Any report or reports prepared by any law enforcement officer(s) in accordance with O.C.G.A. § 17-4-20.1(c) (Family Violence Act). The Defendant is entitled to these reports pursuant to O.C.G.A. §§ 17-4-20.1(d) and 19-13-1.

(5) The description of all item(s) of physical evidence that the prosecution anticipates using in the trial of the Defendant. Disclosure of the existence of such items is necessary so that counsel can determine whether a motion for pretrial access is necessary to guarantee the Defendant's right to a fair trial. Parks v. State, 254 Ga. 403, 330 S.E.2d 686 (1985) (disclosure of a witness' statement occurred at trial. ["The appropriate standard to be applied...is whether the disclosure came so late as to prevent the defendant from receiving a fair trial." [Cit.] United States v. Sweeney, 688 F.2d 1131, 1141 (7th Cir. 1982)]).

(6) The make, serial number, sales and ownership history of any firearm that the prosecution may attempt to link to the Defendant or otherwise relate to this case. Fifth and Sixth Amendments to the Constitution of the United States of America; Article I, Section I, Paragraphs I, XII, and XIV of the Constitution of the State of Georgia.

(7) The disclosure of any photographic evidence and, if the State intends to seek the admission of any such evidence, that counsel be allowed an opportunity to review the same in advance of trial to determine whether a pretrial hearing is

necessary to decide whether they are unnecessarily prejudicial or inflammatory. Fifth and Sixth Amendments to the Constitution of the United States of America; Article I, Section I, Paragraph I of the Constitution of the State of Georgia; Ramey v. State, 250 Ga. 455, 298 S.E.2d 503 (1983) (n.1, the use of photographs should be limited to only those which are relevant and illustrative of the issues); Brown v. State, 250 Ga. 862, 302 S.E.2d 347 (1983) (standard for admitting autopsy photographs); Osborne v. Wainwright, 720 F.2d 1237 (11th Cir. 1983) (claim of fundamental unfairness is a federal constitutional issue and not a state evidentiary issue).

(8) Disclosure of the identity of any informant utilized by the State in this case. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); Thornton v. State, 238 Ga. 160, 231 S.E.2d 729 (1977) (trial court erred in failing to conduct a hearing to determine informant's status); Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957) (state's interest in protecting informant must be weighed against the right of the defendant to a full and fair opportunity to defend himself); Sowers v. State, 194 Ga. App. 205, 390 S.E.2d 110 (1990) (trial court erred in failing to conduct a hearing where the informant was the only person in a position to refute officer's version of occurrence).

(9) Disclose whether any physical, documentary, photographic, scientific, electronic or other potential evidence has been destroyed. Jordan v. State, 247 Ga. 328, 276 S.E.2d 224 (1981) ["Only if evidence is carefully preserved during the

early stages of investigation will disclosure be possible later," citing United States v. Bryant, 439 F.2d 642 (D.C. Cir. 1971)]; Arizona v. Youngblood, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988) (failure to preserve evidence - bad faith test).

(10) Disclose whether any agent of the prosecution, informer, or anyone else at the direction of the prosecution has talked with or communicated with the Defendant since the return of this indictment or while the Defendant was in custody. If so, identify each individual and the circumstances surrounding the contact. Maine v. Moulton, 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed.2d 481 (1985) (informer placed in indicted subject's jail cell to elicit information - incriminating statements made to informer after right to counsel had attached should have been ruled inadmissible at trial).

(11) Disclose whether any evidence which the State will seek to introduce at trial was created, evaluated, generated or enhanced by the use of computers and, if so, disclose if the State will make available to the Defendant the software or computer program(s) utilized to create, evaluate, generate or enhance such evidence. Fifth and Sixth Amendment to the Constitution of the United States of America; Article I, Section I, Paragraphs I, XII, and XIV of the Constitution of the State of Georgia.

(12) The full names and addresses of all persons who have given information to the prosecuting attorney or law enforcement officers relating to the arrest of the Defendant and the charges against him/her. Fifth and Sixth

Amendments to the Constitution of the United States of America; and Article I, Section I, Paragraphs I, II, VI, XII and XIV of the Constitution of the State of Georgia.

(13) The names and addresses of all unindicted co-conspirators. Fifth and Sixth Amendments to the Constitution of the United States of America; and Article I, Section I, Paragraphs I, II, VI, XII and XIV of the Constitution of the State of Georgia.

(14) There may be other items and matters of evidence, information and data in existence that are not enumerated aforesaid and of which DEFENDANT is unaware. DEFENDANT now requests and demands that he/she be afforded with any and all evidence and information, whether specifically delineated and listed herein or not, that is known or may become known or which, through due diligence, may be learned from the investigating officers or the witnesses or persons having knowledge of this case, which is exculpatory in nature or favorable to the accused, or which may lead to exculpatory or favorable material, or which might serve to mitigate punishment. This includes any evidence impeaching or contradicting the testimony of prosecution witnesses, or instructions to prosecution witnesses not to speak with or disclose the facts of the case with defense counsel. See, Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1968); United States v. Giglio, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed. 2d 104 (1972); Holbrook v. State, 162 Ga. App. 400, 401, 291 S.E.2d 729 (1982) (exculpatory witness statements are

subject to disclosure under Brady); Sellers v. Estelle, 651 F.2d 1074, 1077, n.6 (5th Cir. 1981) (withholding of such reports constitute reversible error).

### III. Request for In Camera Inspection

DEFENDANT requests that the Court make an *in camera* inspection of the prosecution's entire file to determine whether or not the Defendant is entitled to listen to, inspect, copy or read, prior to trial, all or any portion of the State's file. Williams v. Dutton, 400 F.2d 797 (5th Cir. 1968)\*\* (trial court ordered to make *in camera* inspection of file subsequent to denial of Brady motion); Tribble v. State, 248 Ga. 274, 280 S.E.2d 352 (1981) (trial court required to conduct an *in camera* inspection of the state's file if the defense makes a request after the state responds to a Brady motion).

### IV. Relief Requested

WHEREFORE, DEFENDANT respectfully requests:

(a) That a hearing be held on this motion in order that the proper foundation may be laid as to what evidence, information and data is in the possession of the State and prosecution, and that the State be directed to make such disclosures immediately;

(b) That the Court make an *in camera* inspection of the State's file and, with regard to those items not voluntarily disclosed by the prosecution, that all items not disclosed be properly identified and examined *in camera* by the Court, and that the

---

\*\* See *infra* note 1.

Court turn over to defense counsel all such material which the Court finds to be favorable to the Defendant as to innocence or sentencing;

(c) That, unless the parties can agree to a mutually convenient time and place for the examination of any physical evidence, the Court order the State to make available for inspection and examination to counsel for the Defendant, all physical evidence that is subject to disclosure pursuant to this motion;

(d) That counsel for the Defendant, in addition to being allowed to examine any documents subject to disclosure, be provided with copies of the same or, in the event that the State will not agree to the same,

(e) That the Court allow the Defendant ten (10) days from the date of the hearing on this motion within which to file additional pretrial motions addressing those issues which cannot be resolved by consent; and

(f) That the duty of the State to disclose pursuant to this motion, or any order of this Court, be continuing up and until and through the trial.

Respectfully submitted,

\_\_\_\_\_  
Counsel for Defendant

**EXHIBIT 6**

**IN THE STATE COURT OF DOUGLAS COUNTY  
STATE OF GEORGIA**

**STATE OF GEORGIA,**

**vs.**

**DEFENDANT**

]  
]  
]  
]  
]

**Case No.**

**NOTICE TO PRODUCE**

TO: Douglas County Solicitor-General's Office  
Douglas County Courthouse  
8700 Hospital Drive  
Douglasville, Georgia 30134

You are hereby notified to produce and have upon the trial of the above-styled case, and at all hearings on said case, and from time to time, and term to term, hereafter until this case is finally concluded, the following items, documents, records and papers:

1. Copies of any written waiver of any rights or judicial process executed or alleged to be executed by DEFENDANT.
2. Copies of all reports of any scientific tests or experiments or studies made in connection with the above styled case.
3. All fingerprint documents and reports related to the case.
4. The criminal records of all persons whom the State intends to call as a witness in the trial of DEFENDANT.

Page 1

RECORDED IN BOOK 47, PAGE 294  
DATE 6/7/2011

5. All written and recorded statements and all summaries or memoranda of any oral or written statements made by DEFENDANT.

6. All diagrams, sketches, and pictures that have been made by or shown to any witness or prospective witness in this case so that they may be used as evidence on behalf of the Defendant. Sims v. State, 251 Ga. 877, 311 S.E.2d 161 (1984).

7. The arrest warrant for DEFENDANT, if applicable.

8. Copy or copies of any search warrant(s), affidavits supporting the same and returns relating to this case.

9. Copies of all inventory documents which catalog items seized from the Defendant, including property and currency, obtained by the prosecution voluntarily, by seizure, or by process pursuant to the Defendant's arrest or during the investigation of this case.

10. Copy or copies of any statement of co-conspirator(s) or co-defendant(s) exculpatory or mitigating to DEFENDANT.

11. Copy or copies of any statements made by any witness in this case.

12. Copy or copies of any grant(s) or promise(s) of immunity to witnesses for the state.

13. Copy or copies of any testimony known to be false.

14. Copy of the arrest or incident report(s) relating to DEFENDANT and this case.

15. Copy or copies of any exculpatory statements of witnesses or non-witnesses known to the prosecution. Holbrook v. State, 162 Ga. App. 400, 291 S.E.2d 729 (1982).

16. Any photo array displayed to any witness or potential witness.

17. Any report or reports prepared by any law enforcement officer(s) in accordance with O.C.G.A. § 17-4-20.1(c) (Family Violence Act). O.C.G.A. §§ 17-4-20.1(d) and 19-13-1.

This notice to produce is brought pursuant to O.C.G.A. § 24-10-26, made applicable to criminal cases by O.C.G.A. § 24-10-29; Brown v. State, 238 Ga. 98, 231 S.E.2d 65 (1976); the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America; Article I, Section I, Paragraphs I, II, XII, XIII and XIV of the Constitution of the State of Georgia; and O.C.G.A. § 24-9-64.

The Defendant is absolutely entitled to any of the above items that are exculpatory in nature or which "create a reasonable doubt as to the Defendant's guilt." See, Wilson v. State, 246 Ga. 62, 268 S.E.2d 895 (1980); Smith v. State, 248 Ga. 507, 284 S.E.2d 406 (1981).

Further, in a criminal case, a notice to produce pursuant to O.C.G.A. § 24-10-26 may compel the production of books, documents or tangible things in the State's possession "where such books, etc., would be admissible and are needed for use as evidence on behalf of the defendant." Sweetenburg v. State, 197 Ga. App. 36, 397 S.E.2d 451 (1990).

Where a motion is made and the prosecutor does not make the specified material available to defense counsel, the trial judge should make an in camera inspection of the material sought. On motion by the Defendant the material examined in camera should either be sealed and filed, or an inventory or record of the examined material made, so as to permit appellate review. Id.

The items requested are to be used either as direct evidence by the Defendant during the presentation of the case-in-chief or for purposes of impeachment.

Respectfully submitted,

---

Counsel for Defendant



Prompt pretrial production of this type of evidence is in accordance with Uniform Superior Court Rule 31.1 and will enable the Defendant to prepare appropriate legal objections to the admissibility of such evidence, such as an objection establishing insufficient similarity or connection between the independent crime or misconduct and the offense for which the Defendant is presently on trial. The Defendant respectfully submits that there is no valid justification for non-disclosure at this juncture.

DEFENDANT further moves for a pretrial hearing, pursuant to Rule 31.3 of the Uniform Rules for the State Courts, to determine the admissibility of any alleged similar transaction(s) that the State will seek to introduce at trial against the Defendant.

Rule 31.3 provides, in pertinent part, that the Court

"...shall hold a hearing at such time as may be appropriate, and may receive evidence on any issue of fact necessary to determine the request, out of the presence of the jury."

While Rule 31.3 does not mandate a pretrial hearing, it does require that the Court make its determination outside the presence of the jury. Counsel submits that a pretrial hearing would be in the interest of judicial economy in that the jury would not be inconvenienced by any extended presentation of evidence or argument. In addition, if the hearing is held pretrial, counsel will be able to provide the Court with briefs on any issue of law that may develop.

Page 2

RECORDED IN BOOK 47, PAGE 299  
DATE 6/7/2011

Finally, the pretrial determination of admissibility would assist both the State and the Defendant in the organization and presentation of their respective cases.

The Georgia Court of Appeals in the recent case of Poole v. State, 201 Ga. App. 554, 411 S.E.2d 562 (1991), noted, in dicta, that it "is preferable that the (31.3) hearing be held before trial." In the Poole case, the State's attorney made a reference in his opening statement to a prior drug distribution offense that, as of that time, had not been ruled admissible by the Court.

Although there was no error in that case because it was later determined that the act was admissible as a similar transaction, the possibility for mistrial clearly existed. Counsel suggests that a pretrial hearing would alleviate this type of predicament.

WHEREFORE, the Defendant requests that his motion for a pretrial hearing on this matter be granted.

Respectfully submitted,

---

Counsel for Defendant



anything of value or use, including but not limited to immunity, grants, witness fees, release on bail, release on bail without security, special witness fees, transportation assistance, assistance to members of witness' families or associates of witnesses, assistance or favorable treatment with respect to any criminal, tax, civil, forfeiture, or administrative disputes or potential dispute with the State or the United States (including any possible probationary, parole or deferred prosecution situation), placement in a "witness protection program," and anything else which could arguably create an interest or bias the witness in favor of the State or against the defense or act as an inducement to testify or to color testimony. See, Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (evidence of expected leniency by a prosecution witness who is or could be charged or convicted of a crime is relevant to the question of his credibility); Jolley v. State, 254 Ga. 624, 331 S.E.2d 516 (1985) (state under a duty to reveal any agreement, even an informal one, with a witness concerning criminal charges pending against him); Allen v. State, 128 Ga. App. 361, 196 S.E.2d 660 (1972) (good faith of the prosecutor, in that he did not know offer of leniency conveyed to witness is immaterial).

The refusal of the prosecution to reveal any said agreement constitutes a violation of the Fifth and Sixth Amendments to the Constitution of the United States

Page 2

RECORDED IN BOOK 47, PAGE 302  
DATE 6/7/2011

and Article I, Section I, Paragraphs I, II, XII and XIV of the Constitution of the State of Georgia.

Respectfully submitted,

---

Counsel for Defendant

Page 3

RECORDED IN BOOK 47, PAGE 303  
DATE 6/7/2011