

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF GUILFORD

SUPERIOR COURT DIVISION

21CRS 876543

STATE OF NORTH CAROLINA )

)

V. )

)

REQUEST FOR VOLUNTARY DISCOVERY

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CHARLES LLOYD SUMMERS )

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)

ADA NAME

Assistant District Attorney  
Office of the District Attorney, 18<sup>th</sup> District  
Guilford County Courthouse  
Greensboro, North Carolina

Dear Mr./Madam ADA,

1. I represent the Defendant in the above entitled cases. Pursuant to *NCGS* §15A-901 *et seq* and the additional citations herein, the defense requests copies of the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. This request includes all evidence whether it concerns matters proper for the case-in-chief, or only in extenuation or mitigation. If you or any other Government representative, State or Federal, has such evidence or information, or has reason to know of the means by which it may be obtained, however difficult, expensive, or unlikely of success that it might be, you are requested to advise the defense of that evidence or information which may be discovered before, during or after trial of the case. *Kyles v. Whitley*, 131 L.Ed. 2d 490, 505 (1996); *Moore v. Illinois*, 403 U.S. 953 (1971); *Brady v. Maryland*, 373 U.S. 83 (1963).

2. This request includes, but is not limited to, information concerning the following:

- a. The text of any statements or confessions, whether oral or written, made by the accused which are in control of the State. *NCGS* § 15A-903(a)(1).
- b. Any handwritten, typed or recorded statements by the accused, given to representatives of the State, which have not been previously provided. *Id.*
- c. Any statement, written or recorded, of any alleged co-defendant, accomplice or co-participant which the State intends to offer in evidence at trial. *NCGS* § 15A-903(a)(1).

d. Any and all documents, reports, facts, statements or other information that would tend to exculpate the Accused, mitigate the degree of the offense or the appropriate punishment, weaken or overcome testimony adverse to the Accused given by a State's witness, impeach the credibility of a State's witness or would otherwise tend to be favorable to the Accused in any way, including by not limited to:

i. Statements of the Accused that are exculpatory;

ii. Statements of any witness, written, oral, recorded or otherwise known that are exculpatory to the Accused or that name someone other than the accused as the perpetrator of the offense;

iii. Any notes or reports, in whatever form, that were prepared by any law enforcement officer, official or agent and that would tend to refute, impeach or contradict any of the evidence the State intends to introduce at trial, or that tends to show or indicate in any manner that the Accused did not commit the crimes charged in the indictment or that the Accused may have a legal defense to such crimes;

iv. 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 Accused or identified someone other than the Accused;

v. The names and addresses of any witness who may have knowledge of facts that may be favorable to the Accused or who were interviewed by any law enforcement officer, official or agent and failed to provide inculpatory information concerning the Accused;

vi. Any statement previously made by any prospective witness for the State, whether written or oral and whether made under oath or otherwise, that is inconsistent or at a variance in any way with what the witness is anticipated to testified to at trial;

vii. The complete prior criminal and juvenile records of all witnesses who may testify for the State, the nature of any criminal charges under investigation or pending against such witness in any jurisdiction, and a description of any prior bad acts engaged in by any such witness whether or not it resulted in a criminal charge;

viii. The details of any promise or indication of possible leniency, favorable treatment, immunity or any other consideration whatsoever, or of any inducement or threat made or suggested by any State or Federal employee, agent or law enforcement agent to any person who has provided information or who will testify for the State in this case or to anyone related to or friends with that person where such concession was made in exchange for such cooperation or information;

- ix. Any information that shows bias, hostility or motive by any prospective witness for the State against the Accused or in favor of the witness that tends to bear on the credibility of any prospective witness;
  - x. Any information that any witness suffers from drug or alcohol dependency or that the witness uses drugs or alcohol and that such witness was under the influence of such drug or alcohol at the time the witness made the observations that are pertinent to the case;
  - xi. Any physical evidence undercutting the State's case. *Miller v. Pate*, 386 U.S. 1 (1967).
  - xii. Any other evidence of an exculpatory nature or which tends to negate or mitigate the alleged guilt of the accused. *Kyles v. Whitley*, 131 L.Ed. 2d 490, 505 (1996); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Brady v. Maryland*, 373 U.S. 83 (1963); North Carolina State Bar Rules of Professional Conduct, Rule 7.3(4).
- e. Any evidence which would lessen the punishment of the accused should they be found guilty of any offenses. *Id. See also, Goldberg v. United States*, 425 U.S. 94 (1976).
- f. Any evidence which would tend to mitigate the degree of the alleged offense. *Id. See also, United States v. Carrasco*, 537 F.2d 372 (9th Cirri 1976).
- g. Any known evidence tending to diminish credibility of witness, both State and Defense, including, but not limited to, prior convictions under North Carolina Rule of Evidence 609 and evidence of other character traits, conduct, or bias. *U.S. v. Agurs*, 427 U.S. 97 (1976).
- h. Inspection and copies, at the appropriate time, of all personal and business notes, memoranda and records, including all internal agency documents and data, kept by all agents, investigators, or witness, not previously provided. In addition to other uses, said papers are to be used prior to cross-examinations of said persons, as provided by NCGS § 15A-903(a). The defense further requests that all such notes and those made in the future be preserved and not destroyed and that the appropriate parties are directed to preserve the same. NCGS § 15A-903(a).
- i. Any records of prior conviction(s) of the accused.
- j. The name of any expert witness that the State expects to call at trial. NCGS § 15A-903(a)(2). The text of any reports or statements or conclusions of experts made in connection with this case, including, but not limited to, the results of corporeal, physical, scientific, forensic and mental health examinations or tests including polygraph or comparisons which the State intends to offer into evidence or which may contain exculpatory or mitigating evidence. NCGS § 15A-903(a); *Goldberg v. United States*, 425 U.S. 94 (1976). The expert's curriculum vitae, expert's opinion, and the underlying basis for the opinion. § 15A-903(a)(2).
- k. Any relevant Grand Jury testimony, or other testimony which has not been transcribed or previously provided.

l. Notification of whether the defendant's conversations or premises have been subject to electronic or other surveillance. If so, copies of any warrants issued -- used or unused -- and access to any relevant information gathered as a result of said surveillance. Arkansas v. Sanders, 442 U.S. 753, 759 (1979); NCGS § 15A-971 *et seq.*

m. Notification of whether the State intends to conduct scientific tests, experiments or comparisons which may consume or destroy evidence relevant to this case, or intends to dispose of relevant physical objects.

n. A descriptive list of all nontestimonial evidence the State intends to offer at trial, sentencing or any hearing in this case, particularly any evidence owned or seized from the defendant, together with any search warrants obtained, supporting affidavits and non-testimonial identification orders issued in connection with this case, as well as any supporting affidavits, sufficient to allow the Accused to determine whether to proceed under NCGS §15A-971 *et. seq.* If photographs, videotapes or films of this evidence are available, the defense requests copies of said photographs, videotapes and/or films. NCGS §15A-903(a).

o. Copies of any photographs or videotapes taken of the alleged crime scene or any other photographs or videotapes relevant to this case which the State intends to introduce at trial. NCGS §15A-903(a).

p. The text or other evidence of any promises of immunity or leniency made to a State witness. U.S. v. Giglio, 405 U.S. 150 (1972); Napue v. Illinois, 360 U.S. 264 (1959); North Carolina v. Hodges, 51 N.C. App. 229 (1981).

q. A description of any and all property or contraband seized from the accused, the accused's home, or any area under the control of the accused that the State intends to offer as evidence at trial, or that led to any other evidence the State intends to use at trial, and the time, place and manner of any seizure, sufficient to allow the accused to determine whether to proceed under NCGS § 15A-971 *et seq.*

r. A description of any and all pretrial identification procedures conducted by the State and any of its agents in connection with the alleged crimes, the date, time and place or said procedure, and the persons present at such procedure, sufficient to allow the Accused to determine whether to proceed under NCGS §15A-971, *et. seq.*

s. If fingerprint evidence was used in the investigation of this case, defendant requests a copy of all AFIS computer prints that were given as possible matches to the latent crime scene print; a copy of the alleged latent print of defendant recovered from the crime scene; a copy of the AFIS print of defendant that was used in making the match; the name, educational, training and certification background (including any tests which the examiner flunked) of the print examiner who made the alleged match tying defendant to the crime scene.

t. A description of any conversation between the Accused and any law enforcement officer, official, agent, and the date, time, place and persons present at such procedure sufficient to allow the Accused to determine whether to proceed under NCGS §15A-971 *et. seq.*

u. A statement indicating whether or not any informants were involved in the investigation or preparation of the case against the Accused, in the interest of justice as provided by Rovario v. United States, 353 U.S. 53 (1957).

v. Notice of any matter the State seeks to have judicially noticed.

w. At the beginning of jury selection, a written list of all of the witnesses that the State reasonably intends to call. NCGS § 15A-903(a)(3).

3. In addition to the materials cited above, the Defense requests evidence which the Government intends to introduce pursuant to NCGS § 8C-1 R. 404(b), uncharged misconduct, whether at findings or in sentencing. This requests includes, but is not limited to:

a. Any evidence the State intends to introduce concerning any allegation which was not charged due to lack of evidence concerning these charges, or “lack of seriousness.” The term “any evidence” includes, but is not limited to, statements, whether oral or written, real or documentary evidence, etc.

b. Any evidence the Government intends to introduce concerning any uncharged misconduct, no matter how minor or tangentially related to the charged offense, which have not been charged for whatever reason. The term “any evidence” includes, but is not limited to, statements, whether oral or written, real or documentary evidence, etc.

4. The Defense requests further that the Government articulate the permissible purpose(s) under NCGS § 8C-1 R. 404(b) which justify consideration of this evidence and how the evidence is more probative than prejudicial under the balancing test of Rule 403, thereby permitting admission into evidence.

5. Should the Government contend that any 404(b) uncharged misconduct evidence is not discoverable because it will only be used as rebuttal evidence, please note that the Defense views rebuttal evidence as evidence offered to rebut evidence proffered during the Defense case-in-chief and not evidence proffered during the prosecutor's case-in-chief. In other words, the Government cannot rebut its own evidence. If the Government contends that the 404(b) evidence is rebuttal evidence, the Defense will make a Motion in Limine to prohibit its use for any other purpose.

**6. The defendant hereby gives NOTICE that it OBJECTS to the introduction of any evidence sought to be introduced, or any chain of custody sought to be established, pursuant to the provisions of NCGS § 90-95(g) or (g1).**

7. The duty to disclose is a continuing duty. NCGS § 15A-907. The duty extends to matters in the possession or control of the prosecution and any others who have participated in the investigation or evaluation of the case. This information should be disclosed in writing as early as possible. Please provide all presently available information as soon as possible and well in advance of the trial and preliminary proceedings in order that the Defense may study the information and have sufficient time to prepare for cross-examination and trial. If any of the requested information will not be provided, please notify the defense, in writing, which information will not be forthcoming and the reasons why the defense will not be provided with the requested information. If any requested item is not currently available, please provide an estimate of when it will become available. Finally, if any of the requested information has been

provided through anticipatory discovery, please state this in your written response to this request. Thank you for your cooperation.

**WHEREFORE**, the Accused respectfully requests that the State provide the foregoing items of discovery voluntarily within seven days of this request, and if the Office of the District Attorney for Judicial District 18 fails or refuses to provide the requested voluntary discovery herein within the said time period, the Accused respectfully prays that the Court will **treat this Voluntary Request for Discovery as a Motion for Discovery** and that the Court will issue an Order compelling the State to provide the foregoing items of discovery pursuant to NCGS § 15A-902, the Constitution of the United States and the North Carolina Constitution.

Respectfully submitted this the \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

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ATTORNEY FOR MR. SUMMERS

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this request was hand delivered to the Office of the District Attorney, Greensboro, NC and filed with the clerk.

Certified submitted this the \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

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ATTORNEY FOR MR. SUMMERS