

“INFORMATION”

“Information is the oxygen of the modern age”
Ronald Reagan

§15A-903

- What does this statute allow:
 - Make available the complete files of all Law Enforcement...involved in investigation.
 - Make available the complete files of all prosecutorial agencies involved in investigation.
 - “File” defined.
 - “prosecutorial agency” is defined.
 - Oral statements shall be in written form.
 - Defendant has “the right to inspect and copy”

Original Files

- Don’t let the DA argue that the copy they give you is sufficient.
- Defendants are entitled to look at the **original files**.
- “Make available” and “right to inspect and copy or photograph any materials contained therein.
- §15A-903(c): What does this mean?

Advantages to Looking at Original Files

- Often the copy provided by the DA is not complete (missing back pages, unreadable)
- The file itself often contains notes.
- Sticky notes aren't copied.
- Ability to judge yourself how organized the officer and DA's are and the progression and order of the investigation. What is the order of the file?
- Often the DA's let you look at more than entitled.
- Opportunity to see the inside and back halls of police department. (interview rooms, etc).
- Opportunity to talk to the Officer about the case without the DA!

Timing of viewing the original files

- When should you look at the files?
- DA often gives you an initial copy.
- Look at the LEO's file first.
- Look at the DA's file last and close to trial.

"File"

- Defendant's statements, co-defendant's statements, witness statements, officer's notes, results of tests and examinations and
- "any other matter or evidence"
- This means everything:
 - Handwritten notes
 - E-mails (ask the officer about e-mails)
 - Letters and correspondence

§15A-501(6)

- A law-enforcement officer must make available to the state on a timely basis all materials and information acquired in the course of all felony investigations. This responsibility is a continuing affirmative duty.
- §15A-903(c): upon request by the State, law enforcement shall make available to the State a complete copy of the complete files related to the investigation...for compliance... and disclosure under §15A-902(a). (December 1, 2007).

Prosecutorial Agency

- “includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes or prosecution of defendant.”
- Department of Social Services
- Pathologist
- Fire Marshal’s office/Fire Departments
- SBI Laboratory
- Look at the original files!

Oral Statements:

- “Oral statements shall be in written or recorded form.”
- *State vs. Shannon*, 182 NC App 350 (2007): We next conclude that a writing or recording evidencing a witness’ assertions to a state prosecutor can qualify as “witness statements” under 15A-903(a)(1).
- The plain, unambiguous meaning of this requirement is that “statements” need not be signed or adopted by a witness before being *subject to discovery*.
- Exception: oral statements to prosecutor **outside the presence of law enforcement or investigatorial assistant**.
- Unless the statement includes significantly new or different information from a prior statement.
- Defendant’s statements have to be recorded (motion in limine to exclude all unrecorded statements).

State vs. Tuck, 191 NC App 768 (2008)

- The requirement to disclose the "file" to a defendant applies to all law enforcement and prosecutorial agencies. 15A-903(a)(1)(2007). Thus, for the purposes of the discovery statute, the State is both the law enforcement agency and the prosecuting agency. Accordingly, the State will be in violation of the discovery statute if: (1) the law enforcement agency or prosecuting agency was aware of the statement or through due diligence should have been aware of it; and (2) while aware of the statement, the law enforcement agency or prosecuting agency should have reasonably known that the statement related to the charges against the defendant yet failed to disclose it.

What is excluded?

- §15A-904: Things not discoverable
 - Written materials drafted by the DA's office for their own use at trial.
 - Including witness examinations (the questions)
 - Voir dire questions
 - Opening statements & closing arguments
 - Legal research
 - Records, correspondence, reports, memoranda, trial preparation interview notes of DA's office **to the extent they contain opinions, theories, strategies or conclusions of the DA's office!**

Criminal Records of Jurors

- Are criminal records of jurors discoverable?
- Not work product
- State will argue their prohibited from disclosing b/c of state regulations
- Case: *State vs. Smith*, 352 N.C. 531, p. 539 (2000).
 - Court has inherent authority to order disclosure; and
 - Juror criminal records are discoverable.

E-mails of DA and Law Enforcement

- E-mails of DA to Law Enforcement
- E-mails of DA to pathologist
- E-mails of DA to experts
- Excluded “only to the extent they contain the opinions, theories, strategies, or conclusions” of DA’s office.
- E-mails of Law Enforcement
- There is no “work product exclusion” for Law Enforcement under the new discovery statute.

SBI Laboratory Reports and Beyond

- *State vs. Dunn*, 154 NC App 1 (2002): Defendant entitled to more than just bare results of lab reports.
- Entitled to:
 - Laboratory protocols and procedures
 - Incidences of false positive results
 - Quality control and quality assurance
 - Proficiency tests of lab workers
 - Credentials of lab employees
 - All findings, scientific or technical data upon which reports based

Other Relevant Case Law

- *State vs. Fair*, 164 NC App 770 (2004): New trial granted after state failed to provide laboratory protocols and procedures.
- *State vs. Edwards*, 621 S.E.2d 333 (2005): Trial court erred in not allowing access to the DNA testing protocols.
- *State vs. Cunningham*, 108 NC App 185 (1992): entitled to more than just conclusory lab reports under 15A and Art. I, Section 19 of the NC constitution.

Other Discovery Required

- Give notice of any expert that State reasonably expects to call as witness, a reasonable time prior to trial.
- Each expert shall prepare a report of:
 - Results of tests
 - Expert's opinion
 - Underlying basis for that opinion
 - CV
- Has to be prepared by the expert.
- Must include detailed basis for the opinion not just conclusions.

Must be report of the expert

- DA cannot summarize what the expert will testify about.
- Defense cannot cross-examine the expert about information the DA provides. (gives them an easy out).
- Make sure the report is complete!
- Consider motion in limine to preclude expert from testifying to opinions not contained in the report.

Case Law

- *State vs. Blankenship*, 178 NC App 351, 2006: trial court abused its discretion in permitting expert to testify when state failed to comply with discovery statute by providing prior notice of expert.
- *State vs. Cook*, 362 NC 28D5, (2008): 2nd degree murder case, state failed to provide expert report until Friday before trial. S.Ct. held that it was a discovery violation. Harmless error b/c of overwhelming evidence of guilt. Good language about discovery violations and State's obligations.
- *State vs. Barber*, 147 NC App 69 (2001): new trial due to prosecutor's failure to turn over phone records which bolstered credibility of witness. *Brady* violation.
