

Getting Police Personnel Records
Motions and Orders

- I. **Motion for Production & Disclosure of Personnel Records of Henderson County Sheriff's Department Officers & Personnel**
- II. **Order on Motion for Production & Disclosure of Personnel Records of Henderson County Sheriff's Department Officers & Personnel**
- III. **Motion for Production of All Manuals, Policies, & Procedures for the Documentation & Preservation of Evidence by the Henderson County Sheriff's Dept.**
- IV. **Order on Motion for Production of All Manuals Policies & Procedures for the Documentation & Preservation of Evidence**
- V. **Motion for Production & Disclosure of Any and All Documentation of Meetings with _____ by Asheville Law Enforcement**
- VI. **Order on Motion for Production & Disclosure of Any and All Documentation of Meetings with _____ by Asheville Law Enforcement**
- VII. **Motion for Production & Inspection of Internal Affairs Documents of the Anson County Sheriff's Department**
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- IX. **Motion for Production & Inspection of Personnel Records of Office of Professional Standards & Training Records of Special Agents [REDACTED]**
- X. **Supplemental Order on Motion for Production & Inspection of Personnel Records of Office of Professional Standards & Training Records of Special Agents [REDACTED]**
- XI. **Motion for Production of All Manuals, Policies and Procedures for the Documentation & Preservation of Evidence by the Dunn Police Department**

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA,)
vs.) **MOTION FOR PRODUCTION**
) **& DISCLOSURE OF PERSONNEL**
) **RECORDS OF HENDERSON**
 Defendant.) **OFFICERS AND PERSONNEL**

NOW COMES the Defendant, , by and through his undersigned counsel, Maitri “Mike” Klinkosum, Assistant Capital Defender, and David G. Belser, Attorney at Law and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I §§ 19 and 23 of the North Carolina Constitution, *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny, and N.C.Gen.Stat. § 15A-903, for an Order commanding the Sheriff of Henderson County to provide to the defense copies of any and all personnel records, including but not limited to training and disciplinary records of the following officers:

[REDACTED]

In support of the foregoing Motion, the Defendant would show unto the Court as follows:

Procedural Background

1. The Defendant is an indigent charged with two counts of first degree murder and one count of Robbery with a Dangerous Weapon.
2. The State is pursuing the death penalty in the charges of first degree murder. A Rule 24 Hearing has been held in these matters and the Defendant faces the possibility of death by lethal injection or life in prison without the possibility of parole.
3. On September 9, 2004, the Honorable [REDACTED] Jr. entered an Order requiring “*that all state and local law enforcement officers, employees and agents involved in the investigation of the above-captioned matters shall preserve and retain any and all handwritten or typed notes, reports, memoranda, tape recordings, data compilations, and/or any and all written and/or recorded information, which reflect or contain communications with, or investigative reports of potential witnesses, victims, or other*”

related individuals, regardless of whether or not those notes, tapes, or compilations have been incorporated into official records or memoranda.”

4. The Order of [REDACTED] was entered with the consent of Assistant District Attorney [REDACTED]
5. Based upon the discovery provided to the defense, thus far, the defense has identified an individual named _____ (hereinafter ___) whose testimony is potentially exculpatory as that term is defined by *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny.
6. The testimony of _____ is Brady material in that such testimony provides a basis for the defenses that the Defendant plans to present at the trial of these matters and because such testimony is crucial to mitigation in the penalty phase of the trial should the jury convict the Defendant of first degree murder.
7. Based upon the discovery provided to the defense, thus far, by the prosecution, the defense has determined that _____ was with the Defendant consuming crack cocaine during a period of time immediately preceding the crimes with which the Defendant is charged and, as such, [REDACTED] _____ has knowledge concerning the Defendant’s state of mind, which is Brady material for the reasons set forth in the preceding paragraphs.
8. As a result of _____ interaction with the Defendant during the time preceding the alleged offenses, _____ is a material witness for the defense and any statements made by him to any law enforcement officers or other individuals are critical to the Defendant’s ability to present a defense and are critical to defense counsels’ ability to render effective assistance of counsel to the Defendant.
9. To date, the defense has not been provided with any written or recorded documentation concerning any law enforcement interviews with witness _____.
10. The defense has been provided with several packets of discovery, by the Office of the District Attorney on December 30, 2003, November 22, 2004, and December 22, 2004. None of these packets contained any statements, interviews, or documentation concerning any law
11. On January 24, 2005, undersigned counsel, attorney David G. Belser, while providing reciprocal discovery to the State, went to speak with Assistant District Attorney _____ concerning law enforcement interviews with _____, which occurred in and around December, 2002.
12. Before Attorney Belser was able to question ADA _____ regarding the whereabouts of said interviews, ADA _____ disclosed to Attorney Belser that, in fact, such interviews of witness _____ had been conducted, that such interviews of had been recorded by audio tape and later transcribed into type written form.
13. However, ADA _____ further disclosed to Attorney Belser that both the audio tapes and the transcribed interviews of _____ have been lost by law enforcement and cannot be located.

Factual Background of Law Enforcement Contact with

Witness _____ & His Statements Regarding His
Knowledge of the Facts in the Case

14. Based upon the defense's review of the discovery provided by the State thus far, the defense has been able to reconstruct law enforcement contact with _____.
15. The first contact by law enforcement with _____ occurred around 2:30 a.m. on December 11, 2002, prior to the murders alleged to have been committed by the Defendant. _____ was stopped at Wal-Mart on Tunnel Road in Asheville, along with the Defendant, by Asheville Police Officer _____ who was working a secondary job at Wal-Mart. _____ and the Defendant were stopped because the Defendant was attempting to purchase merchandise with a credit card owned by _____.
16. After conducting a brief investigation, Officer _____ allowed _____ to leave the Wal-Mart. Prior to allowing _____ to leave, _____ (according to the report of Detective Chris Denny) questioned _____ as to why he and the Defendant were purchasing merchandise. Officer _____ determined that _____ and the Defendant were attempting to trade the merchandise for crack cocaine.
17. Sometime during the early morning hours of December 11, 2002, _____ were killed. The Defendant was developed as a suspect in the case and information concerning the Defendant was transmitted through BOLOs and through the media.
18. Around 11:30 p.m. on December 11, 2002, Officer _____ contacted Detective _____ of the Henderson County Sheriff's Department and informed him of his prior contact with the Defendant and witness _____. Upon information and belief, it was this contact that caused investigating officers to develop _____ as a witness in these matters.

Law Enforcement's First Contact with _____

19. Upon information and belief, the first contact with _____ by law enforcement occurred on December 12, 2002 at approximately midnight at _____ mobile home park. According to a report written by _____, of the Henderson County Sheriff's Office, he, along with Corporal _____ Deputy _____ and Asheville Police Detectives _____ and _____ located _____ in _____ mobile home park as _____ was walking a dog. The report that references this contact was written by _____ on February 21, 2003.
20. In the report, _____ states that Deputy _____ "continued to question _____." Further, _____'s report indicates that _____ interviewed _____ girlfriend, _____.
21. In the 2/21/03 report, _____ goes on to state that "I concluded my interview with _____ before _____ concluded with _____. Once _____'s interview concluded all of us cleared the area without anyone being taken into custody. I turned the statement over to C.I.D."
22. Of interest is the fact that the defense has been provided with a copy of the statement of _____ girlfriend, _____, a statement taken contemporaneously with that

of _____, but has never received any documentation concerning the 12/12/02 midnight statement of _____.

23. This contact with _____ is corroborated by the December 30, 2002, 13 page report of lead Detective [REDACTED]. In said report, Detective [REDACTED] writes, "On 12-12/02 at approx. 20:30 hrs., the undersigned was contacted by Lt. [REDACTED] [REDACTED] proceed to Asheville, NC and attempt to locate and interview _____."

Law Enforcement's Second Contact with _____

24. According to the December 16, 2002 report of Detective [REDACTED] on the morning of 12/13/02, Lt. [REDACTED] were en route to the Asheville Police Department to interview _____ when they were advised that the Defendant had been arrested in Greenville, South Carolina. Detective [REDACTED] was required to travel to the Greenville County Sheriff's Office in South Carolina and, as a result, Detective [REDACTED] reports states "see transcription of this interview for further."

25. The second contact with _____ is corroborated by a portion of the December 30, 2002, 13 page report of lead Detective [REDACTED] which states on pages 11 and 12:

[REDACTED] then advised the undersigned that "he had just been advised by the Buncombe County Sheriff's Office in Asheville, NC that _____ was in the Buncombe County Court House at this time awaiting a hearing on an unrelated case and that they would hold _____ for questioning if a Detective could be enroute." The undersigned then contacted [REDACTED] [REDACTED] (no relation to _____) and requested the same be enroute to Buncombe County to interview _____ while the undersigned, Lt. [REDACTED] proceeded to Greenville, S.C.

26. Oddly, Detective [REDACTED]'s report makes no further reference to the sum and substance of either the first interview with _____ or the second interview with _____, although his report does make reference to activities that occurred up to 12/23/02.
27. It is crucial to note that if the statements of witness _____ have been "lost" by law enforcement as ADA [REDACTED] has indicated to Attorney Belser, that would mean that at least two different statements, taken on two different occasions, by two different groups of law enforcement officers have been "lost" by law enforcement.

Statements of _____ to the Defense

28. The defense has spoken to _____ on three different occasions, once on March 3, 2004, and again on two occasions during December, 2004. On each occasion, _____ indicated that both he and the Defendant had been doing crack cocaine during the time preceding their eventual separation at Wal-Mart during the early morning hours of December 11, 2004.
29. On March 3, 2004, _____ indicated to the defense investigator that Defendant _____ was anxious to get more crack cocaine and that Defendant _____ was “smoking crack while walking down the aisles in Wal-Mart.” He further stated that Defendant _____ had a bad drug problem.
30. In December 2004, witness _____ spoke with Attorney Belser on two occasions at the Buncombe County Courthouse. _____ indicated to Attorney Belser that _____ and Defendant _____ had smoked crack together and tried to purchase a Play Station at Wal-Mart to trade for more crack. _____ further stated to Attorney Belser that Defendant _____ was “really high” and “blitzed” on crack cocaine and even smoked crack in the aisles of Wal-Mart.
31. It is important to note that on January 7, 2005, the defense gave notice to the State of the defenses the Defendant intended to assert in these matters. The defenses included mental infirmity, diminished capacity, and voluntary intoxication.

Law Enforcement’s Third Contact with _____

32. On January 10, 2005, Detective [REDACTED] of the Violent Crimes Unit of the Henderson County Sheriff’s Office spoke with _____ while _____ was incarcerated at the Buncombe County Detention Center. In his report of January 10, 2005, [REDACTED] states that he served a subpoena on _____ and “asked him about the incident he and _____ were in at Wal-Mart on Tunnel Road shortly before the double homicide of _____.”
33. _____ then told [REDACTED] that Defendant _____ was “acting like he was smoking crack” and that he (_____) “knew that it was all gone.”
34. The January 10, 2005 statement is in direct contravention to the statements made by _____ to both the defense investigator and Attorney Belser.
35. Interestingly, the Henderson County Sheriff’s Office has turned over copies of the January 10, 2005 statement to the prosecution and the same have been disclosed

to the defense. Yet, the whereabouts of the original statements of _____ from December 2002 remain a mystery.

First Appointed Counsel Never Received Statements of _____

36. It is important to note that undersigned counsel are not the Defendant's original counsel appointed to represent him in these matters.
37. After Defendant's arrest and extradition in December 2002, attorney Roy Patton was appointed to represent the Defendant on December 16, 2002 and attorney Reid G. Brown was appointed as second trial counsel on December 20, 2002.
38. Attorneys Patton and Brown remained on the case until around November, 2003, at which time, undersigned counsel, Mike Klinkosum, was appointed to represent the Defendant and later undersigned counsel, David G. Belser, was appointed to represent the Defendant as well.
39. During the 11 months preceding their withdrawal from the case, Attorneys Patton and Brown received discovery from the prosecutor in this case, _____. ADA _____ indicated to both attorneys Klinkosum and Belser that there would be an open-file policy in these matters and, upon information and belief had indicated the same to attorneys Patton and Brown (the Defendant was indicted on the charges prior to the October 1, 2004 enactment of the new open-file discovery statute under N.C.Gen.Stat. § 15A-903).
40. In late November, 2003, Attorney Klinkosum received a copy of the Defendant's file from Attorney Reid G. Brown. The Defendant's file received from Attorney Reid G. Brown has remained in its original packaging since its receipt by Attorney Klinkosum. On several occasions, Attorney Klinkosum has reviewed the file maintained by Attorney Brown and has not located any written or otherwise recorded statements of witness _____.

Argument

41. The prosecution's affirmative duty to disclose evidence favorable to a defendant can be traced to early 20th century prohibitions against misrepresentation to the courts. *Mooney v. Holohan*, 294 U.S. 103, 112, 79 L.Ed. 791, 55 S.Ct. 340 (1935).

42. In 1963, the US Supreme Court found that the Due Process Clause of the 14th Amendment to the US Constitution requires disclosure of exculpatory evidence. The Court held in **Brady v. Maryland**, “that the suppression of evidence favorable to an accused upon request violates due process when the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” In rendering this decision, the Court relied upon legal precedent dating back as far as 1935. See **Mooney v. Holohan**, 294 U.S. 103, 112, 79 L.Ed. 791, 55 S.Ct. 340 (1935); also, **Pyle v. Kansas**, 317 U.S. 213, 215-216, 87 L.Ed. 214, 63 S.Ct. 177 (1942); **Napue v. Illinois**, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).
43. In 1995, the US Supreme Court took **Brady** further by stating that prosecutors have an affirmative duty to learn of exculpatory evidence which may be in the possession of anyone acting on behalf of the State, including the police. In other words, prosecutors cannot rely on the fact that law enforcement officers failed to provide evidence in defending against a charge of a Brady violation. **Kyles v. Whitley**, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).
44. The undersigned counselors have no reason to believe that the prosecutors in this matter have been anything other than completely forthcoming with discovery in this case. However, based upon the alleged disappearance of at least two different statements of witness _____, taken on two different occasions by two different groups of law enforcement officers, the defense believes that law enforcement in these matters have been much less than forthcoming in their constitutionally mandated duties to turn over materials to the prosecution.
45. The facts in the preceding paragraphs are of crucial importance because they indicate that if the interviews of _____ were recorded, transcribed, or otherwise documented, as indicated by Assistant District Attorney _____ to Attorney Belser on January 24, 2005, the documentation of those interviews were never disclosed to the prosecution by law enforcement.
46. If the recordings/documentation of the interviews with _____ had been properly delivered to the prosecution at some point by law enforcement, then logic would dictate that at least one set of Defendant’s attorneys would have been given copies of the statements of _____.
47. Based upon the fact that at least two different statements, taken by two different groups of law enforcement personnel, on two different occasions, of a material witness whose testimony is potentially exculpatory under **Brady**, have been lost,

the defense would assert that it would stretch credibility for the Henderson County Sheriff's Department to use the excuse of coincidence.

48. Based upon the fact that the defense disclosed its defenses to the State on January 7, 2005 (defenses involving the mental capacity and state of mind of the Defendant at the time of the crime) the defense would assert that it would stretch credibility for the Henderson County Sheriff's Department to use the excuse of coincidence in explaining that Detective [REDACTED] was serving a subpoena on _____ and then just asked about the incident at the Wal-Mart on Tunnel Road involving witness _____ and the Defendant on December 11, 2002.
49. The December, 2002 statements of witness _____ are Brady material on three separate but equally important levels:
 - a. The statements are exculpatory because they almost certainly address the state of mind and mental condition of the Defendant immediately preceding the murders for which he is charged and, therefore, may be used to establish a defense in the guilt/innocence phase of this trial and/or provide the jury with evidence to convict the defendant of a lesser-included offense;
 - b. The statements are exculpatory because they almost certainly address the state of mind and mental condition of the Defendant immediately preceding the murders for which he is charged and, therefore, may be used as mitigation evidence should the jury convict the Defendant of first-degree murder and may be used as mitigation before the court should the jury convict the Defendant of a lesser-included offense; and
 - c. The statements are exculpatory because they can provide evidence for impeachment of Defendant _____ should he testify in these matters as impeachment evidence has been determined to be the same as exculpatory evidence by the US Supreme Court (see *United States v. Bagley*, 473 U.S. 667, 87 L.Ed.2d 481, 105 S.Ct. 3375 (1985)).
50. Additionally, based upon the fact that the December 2002 statements of a material witness have been "lost," that fact bears upon the credibility of the investigating officers in this matter and the integrity of the investigation of the deaths of _____.
51. For that reason, the personnel records of the law enforcement personnel listed in on the first page of this motion are of critical importance to the defense. The defense should be allowed to inspect and copy the personnel records of the law enforcement officers in this matter to see if any of them have been disciplined for

“losing” the December 2002 statements in this case or if any of them have been disciplined for similar acts in the past.

52. Further, the personnel records of the law enforcement officers in this matter should be disclosed to the defense for the defense to determine if the officers have been properly trained in the documentation and preservation of testimonial evidence.
53. If the personnel records of the law enforcement officers indicate that they have been disciplined for “losing” the statements of witness _____, that fact is Brady material in that it would be grounds for impeachment of the law enforcement officers should they testify in this case.
54. If the personnel records of the law enforcement officers indicate that they have not been disciplined for “losing” the statements of witness _____, that fact is Brady material in that it would be grounds for impeachment of the overall investigation into the deaths of _____.

WHEREFORE, the Defendant, _____, respectfully prays unto this Honorable Court for the following relief:

1. That the Court enter an Order commanding the Sheriff of Henderson County to provide to the defense copies of any and all personnel records, including but not limited to training and disciplinary records, of the officers listed on the first page of this motion; and
2. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

This the _____ day of January, 2005.

By: _____
Maitri “Mike” Klinkosum, by David G. Belser
Attorney for Defendant
P.O. Box 20308
Winston-Salem, NC 27120-0308
Telephone: (336) 761-2503

Facsimile: (336) 761-2515
Email: Maitri.Klinkosum@nccourts.org

By: _____

David G. Belser
Attorney at Law
Post Office Box 1076
Asheville, NC 28801-1076
Telephone: (828) 258-1500
Facsimile: (828) 258-1510
Email: davidbelser@aol.com

Certificate of Service

This shall certify that a copy of the foregoing *Motion for Production & Disclosure of Personnel Records of Henderson County Sheriff's Department Officers and Personnel* was this day served upon the District Attorney for Henderson County, via Hand Delivery, at the address set forth below:

Office of the District Attorney – Henderson County
Henderson County Courthouse
200 North Grove Street
Hendersonville, NC 28792

This the _____ day of January, 2005.

By: _____

David G. Belser
Attorney at Law
Post Office Box 1076
Asheville, NC 28801-1076
Telephone: (828) 258-1500
Facsimile: (828) 258-1510
Email: davidbelser@aol.com

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA,
vs.
,
Defendant.

)
)
) **ORDER ON MOTION FOR**
) **PRODUCTION & DISCLOSURE OF**
) **PERSONNEL RECORDS OF**
) **HENDERSON COUNTY SHERIFF'S**
) **DEPARTMENT OFFICERS**
) **& PERSONNEL**

THIS MATTER having come on to be heard by the undersigned Superior Court Judge, presiding at the July 11, 2005 session of Criminal Superior Court for the County of Henderson, upon the Defendant's *Motion for Production & Disclosure Personnel Records of Henderson County Sheriff's Department Officers and Personnel*; and

IT APPEARING to the Court, that at the time these matters were called for hearing, the Defendant was present and represented by Maitri "Mike" Klinkosum, Assistant Capital Defender, and Attorney Vincent F. Rabil, and that the State was present and represented by Assistant District Attorney [REDACTED] and

IT APPEARING to the Court, that the aforementioned motion was properly filed and that the Court has jurisdiction over the subject matter and the parties to these proceedings; and

IT FURTHER APPEARING to the Court, after reviewing the Motion of the Defendant, after hearing the evidence presented by both the Defense and the State in an evidentiary hearing, and after hearing the arguments of counsel for both sides, that the Court finds that the Defense has shown a basis for the relief requested in the aforementioned Motion and that the Court should enter an Order granting the relief requested in Defendant's Motion;

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED that the Sheriff of Henderson County shall tender to the Court the complete personnel files, including any separate disciplinary files, of Officers [REDACTED] [REDACTED] for an *in camera* inspection, pursuant to **State v. Hardy**, 293 N.C. 105, 235 S.E.2d 828 (1977), within 48 hours of being served with a copy of this Order.

This the _____ day of July, 2005

The Honorable
Presiding Superior Court Judge

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA,
vs.
,
Defendant.

) MOTION FOR PRODUCTION OF ALL
) MANUALS, POLICIES, &
) PROCEDURES FOR THE
) DOCUMENTATION & PRESERVATION
) OF EVIDENCE BY THE HENDERSON
) COUNTY SHERIFF'S DEPT.

NOW COMES the Defendant, _____, by and through his undersigned counsel, Maitri "Mike" Klinkosum, Assistant Capital Defender, and David G. Belser, Attorney at Law and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I §§ 19 and 23 of the North Carolina Constitution, Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny, and N.C.Gen.Stat. § 15A-903, for an Order commanding the Sheriff of Henderson County to provide to the defense copies of any and all current manuals, policies, and procedures for the documentation and preservation of evidence by the Henderson County Sheriff's Department. In support of the foregoing Motion, the Defendant would show unto the Court as follows:

Procedural Background

43. The Defendant is an indigent charged with two counts of first degree murder and one count of Robbery with a Dangerous Weapon.
44. The State is pursuing the death penalty in the charges of first degree murder. A Rule 24 Hearing has been held in these matters and the Defendant faces the possibility of death by lethal injection or life in prison without the possibility of parole.
45. On September 9, 2004, the Honorable _____, Jr. entered an Order requiring "*that all state and local law enforcement officers, employees and agents involved in the investigation of the above-captioned matters shall preserve and retain any and all handwritten or typed notes, reports, memoranda, tape recordings, data compilations, and/or any and all written and/or recorded information, which reflect or contain communications with, or investigative reports of potential witnesses, victims, or other related individuals, regardless of whether or not those notes, tapes, or compilations have been incorporated into official records or memoranda.*"
46. The Order of Judge _____, was entered with the consent of Assistant District Attorney _____.
47. Based upon the discovery provided to the defense, thus far, the defense has identified an individual named _____ whose testimony is potentially exculpatory as that term is defined by Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny.

48. The testimony of _____ is Brady material in that such testimony provides a basis for the defenses that the Defendant plans to present at the trial of these matters and because such testimony is crucial to mitigation in the penalty phase of the trial should the jury convict the Defendant of first degree murder.
49. Based upon the discovery provided to the defense, thus far, by the prosecution, the defense has determined that _____ was with the Defendant consuming crack cocaine during a period of time immediately preceding the crimes with which the Defendant is charged and, as such, _____ has knowledge concerning the Defendant's state of mind, which is Brady material for the reasons set forth in the preceding paragraphs.
50. As a result of _____ interaction with the Defendant during the time preceding the alleged offenses, _____ is a material witness for the defense and any statements made by him to any law enforcement officers or other individuals are critical to the Defendant's ability to present a defense and are critical to defense counsels' ability to render effective assistance of counsel to the Defendant.
51. To date, the defense has not been provided with any written or recorded documentation concerning any law enforcement interviews with witness _____.
52. The defense has been provided with several packets of discovery, by the Office of the District Attorney on December 30, 2003, November 22, 2004, and December 22, 2004. None of these packets contained any statements, interviews, or documentation concerning any law
53. On January 24, 2005, undersigned counsel, attorney David G. Belser, while providing reciprocal discovery to the State, went to speak with Assistant District Attorney _____ concerning law enforcement interviews with _____, which occurred in and around December, 2002.
54. Before Attorney Belser was able to question ADA _____ regarding the whereabouts of said interviews, ADA _____ disclosed to Attorney Belser that, in fact, such interviews of witness _____ had been conducted, that such interviews of had been recorded by audio tape and later transcribed into type written form.
55. However, ADA _____ further disclosed to Attorney Belser that both the audio tapes and the transcribed interviews of _____ have been lost by law enforcement and cannot be located.

**Factual Background of Law Enforcement Contact with
Witness _____ & His Statements Regarding His
Knowledge of the Facts in the Case**

56. Based upon the defense's review of the discovery provided by the State thus far, the defense has been able to reconstruct law enforcement contact with _____
57. The first contact by law enforcement with _____ occurred around 2:30 a.m. on December 11, 2002, prior to the murders alleged to have been committed by the Defendant. _____ was stopped at Wal-Mart on Tunnel Road in Asheville, along with the Defendant, by Asheville Police Officer _____ who was working a secondary job at Wal-Mart. _____ and the Defendant were stopped because the

Defendant was attempting to purchase merchandise with a credit card owned by _____

58. After conducting a brief investigation, Officer [REDACTED] allowed _____ to leave the Wal-Mart. Prior to allowing Mr. _____ to leave, [REDACTED] questioned _____ as to why he and the Defendant were purchasing merchandise. Officer [REDACTED] determined that _____ and the Defendant were attempting to trade the merchandise for crack cocaine.
59. Sometime during the early morning hours of December 11, 2002, _____ were killed. The Defendant was developed as a suspect in the case and information concerning the Defendant was transmitted through BOLOs and through the media.
60. Around 11:30 p.m. on December 11, 2002, Officer [REDACTED] of the Henderson County Sheriff's Department and informed him of his prior contact with the Defendant and witness _____. Upon information and belief, it was this contact that caused investigating officers to develop _____ as a witness in these matters.

Law Enforcement's First Contact with _____

61. Upon information and belief, the first contact with _____ by law enforcement occurred on December 12, 2002 at approximately midnight at _____ mobile home park. According to a report written by [REDACTED] of the Henderson County Sheriff's Office, he, along with [REDACTED], located _____ in _____ mobile home park as _____ was walking a dog. The report that references this contact was written by [REDACTED] on February 21, 2003.
62. In the report, [REDACTED] states that [REDACTED] "continued to question _____." Further, [REDACTED] report indicates that [REDACTED] interviewed _____ girlfriend, _____.
63. In the 2/21/03 report, [REDACTED] goes on to state that "I concluded my interview with _____ before [REDACTED] concluded with _____. Once [REDACTED] interview concluded all of us cleared the area without anyone being taken into custody. I turned the statement over to C.I.D."
64. Of interest is the fact that the defense has been provided with a copy of the statement of _____ girlfriend, _____, a statement taken contemporaneously with that of _____, but has never received any documentation concerning the 12/12/02 midnight statement of _____.
65. This contact with _____ is corroborated by the December 30, 2002, 13 page report of lead Detective [REDACTED]. In said report, Detective [REDACTED] writes, "On 12-12/02 at approx. 20:30 hrs., the undersigned was contacted by [REDACTED] who advised...that [REDACTED] were going to proceed to Asheville, NC and attempt to locate and interview _____."

Law Enforcement's Second Contact with _____

66. According to the December 16, 2002 report of [REDACTED] [REDACTED] were en route to the Asheville Police Department to interview _____ when they were advised that the Defendant had been arrested in Greenville, South Carolina. Detective [REDACTED] was required to travel to the Greenville County Sheriff's Office in South Carolina and, as a result, [REDACTED] [REDACTED] and _____ to meet and interview _____. Detective [REDACTED]'s reports states "see transcription of this interview for further."

67. The second contact with _____ is corroborated by a portion of the December 30, 2002, 13 page report of lead Detective [REDACTED] which states on pages 11 and 12:

[REDACTED] then advised the undersigned that "he had just been advised by the Buncombe County Sheriff's Office in Asheville, NC that _____ was in the Buncombe County Court House at this time awaiting a hearing on an unrelated case and that they would hold _____ for questioning if a Detective could be enroute." The undersigned then contacted [REDACTED] [REDACTED] (no relation to _____) and requested the same be enroute to Buncombe County to interview _____ while the undersigned, Lt. [REDACTED] proceeded to Greenville, S.C.

68. Oddly, [REDACTED] report makes no further reference to the sum and substance of either the first interview with _____ or the second interview with _____, although his report does make reference to activities that occurred up to 12/23/02.

69. It is crucial to note that if the statements of witness _____ have been "lost" by law enforcement as ADA [REDACTED] has indicated to Attorney Belser, that would mean that at least two different statements, taken on two different occasions, by two different groups of law enforcement officers have been "lost" by law enforcement.

First Appointed Counsel Never Received Statements of _____

70. It is important to note that undersigned counsel are not the Defendant's original counsel appointed to represent him in these matters.

71. After Defendant's arrest and extradition in December 2002, attorney Roy Patton was appointed to represent the Defendant on December 16, 2002 and attorney Reid G. Brown was appointed as second trial counsel on December 20, 2002.

72. Attorneys Patton and Brown remained on the case until around November, 2003, at which time, undersigned counsel, Mike Klinkosum, was appointed to represent the Defendant and later undersigned counsel, David G. Belser, was appointed to represent the Defendant as well.
73. During the 11 months preceding their withdrawal from the case, Attorneys Patton and Brown received discovery from the prosecutor in this case, ██████████. ADA ██████████ indicated to both attorneys Klinkosum and Belser that there would be an open-file policy in these matters and, upon information and belief had indicated the same to attorneys Patton and Brown (the Defendant was indicted on the charges prior to the October 1, 2004 enactment of the new open-file discovery statute under N.C.Gen.Stat. § 15A-903).
74. In late November, 2003, Attorney Klinkosum received a copy of the Defendant's file from Attorney Reid G. Brown. The Defendant's file received from Attorney Reid G. Brown has remained in its original packaging since its receipt by Attorney Klinkosum. On several occasions, Attorney Klinkosum has reviewed the file maintained by Attorney Brown and has not located any written or otherwise recorded statements of witness _____.

Argument

75. The prosecution's affirmative duty to disclose evidence favorable to a defendant can be traced to early 20th century prohibitions against misrepresentation to the courts. *Mooney v. Holohan*, 294 U.S. 103, 112, 79 L.Ed. 791, 55 S.Ct. 340 (1935).
76. In 1963, the US Supreme Court found that the Due Process Clause of the 14th Amendment to the US Constitution requires disclosure of exculpatory evidence. The Court held in *Brady v. Maryland*, "that the suppression of evidence favorable to an accused upon request violates due process when the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." In rendering this decision, the Court relied upon legal precedent dating back as far as 1935. See *Mooney v. Holohan*, 294 U.S. 103, 112, 79 L.Ed. 791, 55 S.Ct. 340 (1935); also, *Pyle v. Kansas*, 317 U.S. 213, 215-216, 87 L.Ed. 214, 63 S.Ct. 177 (1942); *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).
35. In 1995, the US Supreme Court took *Brady* further by stating that prosecutors have an affirmative duty to learn of exculpatory evidence which may be in the possession of anyone acting on behalf of the State, including the police. In other words, prosecutors cannot rely on the fact that law enforcement officers failed to

provide evidence in defending against a charge of a Brady violation. *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

36. The undersigned counselors have no reason to believe that the prosecutors in this matter have been anything other than completely forthcoming with discovery in this case. *However, based upon the alleged disappearance of at least two different statements of witness _____, taken on two different occasions by two different groups of law enforcement officers, the defense believes that law enforcement in these matters have been much less than forthcoming in their constitutionally mandated duties to turn over materials to the prosecution.*
37. The facts in the preceding paragraphs are of crucial importance because they indicate that if the interviews of _____ were recorded, transcribed, or otherwise documented, as indicated by Assistant District Attorney _____ to Attorney Belser on January 24, 2005, the documentation of those interviews were never disclosed to the prosecution by law enforcement.
38. If the recordings/documentation of the interviews with _____ had been properly delivered to the prosecution at some point by law enforcement, then logic would dictate that at least one set of Defendant's attorneys would have been given copies of the statements of _____.
39. Based upon the fact that at least two different statements, taken by two different groups of law enforcement personnel, on two different occasions, of a material witness whose testimony is potentially exculpatory under ***Brady***, have been lost, the defense would assert that it would stretch credibility for the Henderson County Sheriff's Department to use the excuse of coincidence.
40. Based upon the fact that the December 2002 statements of a material witness have been "lost," that fact bears upon the credibility of the investigating officers and the Henderson County Sheriff's Department in this matter and the integrity of the investigation of the deaths of _____.
41. For that reason, the manuals, policies, and procedures of the documentation and preservation of evidence of the Henderson County Sheriff's Department are of critical importance to the defense in that such materials bear directly on the integrity of the investigation in this matter and, based upon the "loss" of ***Brady*** material in this case, will likely be a source of cross-examination and impeachment for the defense at the trial of this matter.

42. The Henderson County Sheriff's Department should provide the Defendant with copies of its most current manuals, policies, and procedures for the defense to further investigate the collection and preservation of evidence in this case.

WHEREFORE, the Defendant, [REDACTED], respectfully prays unto this Honorable Court for the following relief:

3. That the Court enter an Order commanding the Sheriff of Henderson County to provide to the defense with copies of any and all manuals, policies and procedures for the documentation and preservation of evidence by the Henderson County Sheriff's Department ; and
4. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

This the _____ day of January, 2005.

By: _____
Maitri "Mike" Klinkosum
Attorney for Defendant
P.O. Box 20308
Winston-Salem, NC 27120-0308
Telephone: (336) 761-2503
Facsimile: (336) 761-2515
Email: Maitri.Klinkosum@nccourts.org

By: _____
David G. Belser
Attorney at Law
Post Office Box 1076
Asheville, NC 28801-1076
Telephone: (828) 258-1500
Facsimile: (828) 258-1510
Email: davidbelser@aol.com

Certificate of Service

This shall certify that a copy of the foregoing ***Motion for Production of All Manuals, Policies, & Procedures for the Documentation & Preservation of Evidence By the Henderson County Sheriff's Dept.*** was this day served upon the District Attorney for Henderson County, via Hand Delivery, at the address set forth below:

Office of the District Attorney – Henderson County

Henderson County Courthouse
200 North Grove Street
Hendersonville, NC 28792

This the _____ day of January, 2005.

By: _____

David G. Belser

Attorney at Law

Post Office Box 1076

Asheville, NC 28801-1076

Telephone: (828) 258-1500

Facsimile: (828) 258-1510

Email: davidbelser@aol.com

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA,

vs.

,

Defendant.

)

)

)

)

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)

**MOTION FOR PRODUCTION
& DISCLOSURE OF ANY AND ALL
DOCUMENTATION OF
MEETINGS WITH _____ BY
ASHEVILLE LAW ENFORCEMENT**

NOW COMES the Defendant, _____, by and through his undersigned counsel, Maitri “Mike” Klinkosum, Assistant Capital Defender, and David G. Belser, Attorney at Law and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I §§ 19 and 23 of the North Carolina Constitution, *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny, and N.C.Gen.Stat. § 15A-903, for an Order commanding the Sheriff of Buncombe County and the head of the Asheville Police Department to provide to the defense copies of any and all documentation of meetings and/or interviews with _____ in connection with the above referenced matters.

FURTHER, the Defendant would respectfully request that if none of the aforementioned documentation exists, that the Court enter an Order commanding any law enforcement officer of the Sheriff’s Office of Buncombe County and/or the Asheville Police Department, who have any knowledge of meetings and/or interviews with _____ to reduce that knowledge to writing and provide the same to the District Attorney of Henderson County for disclosure to the defense.

FURTHER, the Defendant requests that once the knowledge of the meetings and/or interviews with _____ are reduced to writing, that the Court hold an evidentiary hearing to allow the defense to examine the law enforcement officers involved in said meetings and/or interviews regarding the same. In support of the foregoing Motion, the Defendant would show unto the Court as follows:

Procedural Background

77. The Defendant is an indigent charged with two counts of first-degree murder and one count of Robbery with a Dangerous Weapon.
78. The State is pursuing the death penalty in the charges of first-degree murder. A Rule 24 Hearing has been held in these matters and the Defendant faces the possibility of death by lethal injection or life in prison without the possibility of parole.
79. On September 9, 2004, the Honorable _____ Jr. entered an Order requiring “*that all state and local law enforcement officers, employees and agents involved in the investigation of the above-captioned matters shall preserve and retain any and all handwritten or typed notes, reports, memoranda, tape recordings, data compilations, and/or any and all written and/or recorded information, which reflect or contain communications with, or investigative reports of potential witnesses, victims, or other related individuals, regardless of whether or not those notes, tapes, or compilations have been incorporated into official records or memoranda.*”

80. The Order of Judge ██████ was entered with the consent of Assistant District Attorney ██████.
81. Based upon the discovery provided to the defense, thus far, the defense has identified an individual named _____ whose testimony is potentially exculpatory as that term is defined by *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny.
82. The testimony of _____ is *Brady* material in that such testimony provides a basis for the defenses that the Defendant plans to present at the trial of these matters and because such testimony is crucial to mitigation in the penalty phase of the trial should the jury convict the Defendant of first-degree murder.
83. Based upon the discovery provided to the defense, thus far, by the prosecution, the defense has determined that _____ was with the Defendant consuming crack cocaine during a period of time immediately preceding the crimes with which the Defendant is charged and, as such, _____ has knowledge concerning the Defendant's state of mind, which is Brady material for the reasons set forth in the preceding paragraphs.
84. As a result of _____ interaction with the Defendant during the time preceding the alleged offenses, _____ is a material witness for the defense and any statements made by him to any law enforcement officers or other individuals are critical to the Defendant's ability to present a defense and are critical to defense counsels' ability to render effective assistance of counsel to the Defendant.
85. To date, the defense has not been provided with any written or recorded documentation concerning any law enforcement interviews with witness _____.
86. The defense has been provided with several packets of discovery, from the Office of the District Attorney, on December 30, 2003, November 22, 2004, and December 22, 2004. None of these packets contained any statements, interviews, or documentation concerning any law
87. On January 24, 2005, undersigned counsel, attorney David G. Belser, while providing reciprocal discovery to the State, went to speak with Assistant District Attorney ██████ concerning law enforcement interviews with _____, which occurred in and around December 2002.
88. Before Attorney Belser was able to question ADA ██████ regarding the whereabouts of said interviews, ADA ██████ disclosed to Attorney Belser that, in fact, such interviews of witness _____ had been conducted, that such interviews of had been recorded by audio tape and later transcribed into type written form.
89. However, ADA ██████r further disclosed to Attorney Belser that both the audio-tapes and the transcribed interviews of _____ have been lost by law enforcement and cannot be located.

**Factual Background of Asheville Law Enforcement's Contact with
Witness _____ & His Statements Regarding His
Knowledge of the Facts in the Case**

90. Based upon the defense's review of the discovery provided by the State thus far, the defense has been able to reconstruct Asheville law enforcement's contact with _____
91. The first contact by law enforcement with _____ occurred around 2:30 a.m. on December 11, 2002, prior to the murders alleged to have been committed by the Defendant. _____, along with the Defendant, was detained at Wal-Mart on Tunnel Road in Asheville, NC, by Asheville Police Officer _____ was working a secondary job at Wal-Mart. _____ and the Defendant were stopped because the Defendant was attempting to purchase merchandise with a credit card owned by _____
92. After conducting a brief investigation, Officer _____ allowed _____ to leave the Wal-Mart. Prior to allowing _____ to leave, Officer _____ (according to the report of Detective _____) questioned _____ as to why he and the Defendant were purchasing merchandise. Officer _____ determined that _____ and the Defendant were attempting to trade the merchandise for crack cocaine.
93. Sometime during the early morning hours of December 11, 2002, _____ were killed. The Defendant was developed as a suspect in the case and information concerning the Defendant was transmitted through BOLOs and through the media.
94. Around 11:30 p.m. on December 11, 2002, Officer _____ contacted Detective _____ of the Henderson County Sheriff's Department and informed him of his prior contact with the Defendant and witness _____. Upon information and belief, it was this contact that caused Henderson County Sheriff's Department investigating officers to develop _____ as a witness in these matters.

Asheville Law Enforcement's Second Contact with _____

95. Upon information and belief, the next contact with _____ by law enforcement from Asheville occurred on December 12, 2002 at approximately midnight at _____ mobile home park. According to a report written by _____ located _____ in _____ mobile home park as _____ was walking a dog. The report that refers to this contact was written by _____ on February 21, 2003.
96. In the report, _____ "continued to question _____." Further, _____ girlfriend, _____.
97. In the 2/21/03 report, _____ goes on to state that "I concluded my interview with _____ before _____ concluded with _____ Once _____ interview concluded all of us cleared the area without anyone being taken into custody. I turned the statement over to C.I.D."

98. Of interest is the fact that the defense has been provided with a copy of the statement of [REDACTED] girlfriend, [REDACTED] a statement taken contemporaneously with that of [REDACTED] but has never received any documentation concerning the 12/12/02 midnight statement of [REDACTED] [REDACTED]

99. This contact with [REDACTED] is corroborated by the December 30, 2002, 13 page report of lead Detective [REDACTED] writes, "On 12-12/02 at approx. 20:30 hrs., the undersigned was contacted by [REDACTED] who advised...that [REDACTED] [REDACTED] were going to proceed to Asheville, NC and attempt to locate and interview [REDACTED] [REDACTED]"

100. In Officer [REDACTED] report of 2/21/03 report, he specifically names Asheville Police Detectives [REDACTED] as being present with the other investigating officers from Henderson County during the contact with [REDACTED] [REDACTED] [REDACTED] [REDACTED].

Asheville Law Enforcement's Third Contact with [REDACTED] [REDACTED]

101. According to the December 16, 2002 report of Detective [REDACTED] [REDACTED] were en route to the Asheville Police Department to interview [REDACTED] [REDACTED] when the were advised that the Defendant had been arrested in Greenville, South Carolina. Detective [REDACTED] was required to travel to the Greenville County Sheriff's Office in South Carolina and, as a result, Detective [REDACTED] contacted Sergeants [REDACTED] [REDACTED] [REDACTED] reports states "see transcription of this interview for further."

102. The second contact with [REDACTED] [REDACTED] is corroborated by a portion of the December 30, 2002, 13 page report of lead Detective [REDACTED], which states on pages 11 and 12:

[REDACTED] then advised the undersigned that "he had just been advised by the Buncombe County Sheriff's Office in Asheville, NC that [REDACTED] [REDACTED] was in the Buncombe County Court House at this time awaiting a hearing on an unrelated case and that they would hold [REDACTED] for questioning if a Detective could be enroute." The undersigned then contacted [REDACTED] [REDACTED] (no relation to [REDACTED] [REDACTED] and requested the same be enroute to Buncombe County to interview [REDACTED] [REDACTED] while the undersigned, [REDACTED] [REDACTED] proceeded to Greenville, S.C.

103. Oddly, Detective [REDACTED] report makes no further reference to the sum and substance of either the first interview with [REDACTED] [REDACTED] or the second interview with [REDACTED] [REDACTED] although his report does make reference to activities that occurred up to 12/23/02.

104. It is crucial to note that if the statements of witness [REDACTED] have been “lost” by law enforcement as ADA [REDACTED] has indicated to Attorney Belser, that would mean that at least two different statements, taken on two different occasions, by two different groups of law enforcement officers have been “lost” by law enforcement.
105. Further, on both occasions, the investigating officers’ reports indicate involvement in the interviews with [REDACTED] [REDACTED] on the part of Asheville Police Department and the Buncombe County Sheriff’s Department.

Argument

106. The prosecution’s affirmative duty to disclose evidence favorable to a defendant can be traced to early 20th century prohibitions against misrepresentation to the courts. *Mooney v. Holohan*, 294 U.S. 103, 112, 79 L.Ed. 791, 55 S.Ct. 340 (1935).
107. In 1963, the US Supreme Court found that the Due Process Clause of the 14th Amendment to the US Constitution requires disclosure of exculpatory evidence. The Court held in *Brady v. Maryland*, “that the suppression of evidence favorable to an accused upon request violates due process when the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” In rendering this decision, the Court relied upon legal precedent dating back as far as 1935. See *Mooney v. Holohan*, 294 U.S. 103, 112, 79 L.Ed. 791, 55 S.Ct. 340 (1935); also, *Pyle v. Kansas*, 317 U.S. 213, 215-216, 87 L.Ed. 214, 63 S.Ct. 177 (1942); *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).
32. In 1995, the US Supreme Court took *Brady* further by stating that prosecutors have an affirmative duty to learn of exculpatory evidence which may be in the possession of anyone acting on behalf of the State, including the police. In other words, prosecutors cannot rely on the fact that law enforcement officers failed to provide evidence in defending against a charge of a Brady violation. *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).
33. The statements of [REDACTED] [REDACTED] taken during the aforementioned meetings in the presence of officers from one of two law enforcement agencies in Buncombe County, North Carolina are exculpatory material.
34. Further, the Order of The Honorable [REDACTED], Jr., of September 9, 2004, provides:

That all law enforcement officers connected with these cases, in any manner whatsoever, shall turn over to the prosecutors all notes, evidence and materials relating to this investigation and this case as soon as such information is available for delivery to the prosecution.

35. Further, N.C.Gen.Stat. § 15A-501(6), which is applicable to this case, provides that all law enforcement officers:

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.

36. The undersigned counselors have no reason to believe that the prosecutors in this matter have been anything other than completely forthcoming with discovery in this case. *However, based upon the alleged disappearance of at least two different statements of witness [REDACTED] taken on two different occasions by two different groups of law enforcement officers, the defense believes that law enforcement in these matters have been much less than forthcoming in their constitutionally mandated duties to turn over materials to the prosecution.*

36. The facts in the preceding paragraphs are of crucial importance because they indicate that if the interviews of [REDACTED] [REDACTED] were recorded, transcribed, or otherwise documented, as indicated by Assistant District Attorney [REDACTED] to Attorney Belser on January 24, 2005, the documentation of those interviews were never disclosed to the prosecution by law enforcement.

37. Further, the information contained within the reports of Henderson County law enforcement officers indicates that on at least two occasions when Henderson County law enforcement interviewed [REDACTED] [REDACTED] officers from either the Asheville Police Department, the Buncombe County Sheriff, or from both agencies.

38. Given the fact that officers from either the Asheville Police Department and/or the Buncombe County Sheriff's Department were present during the interviews with [REDACTED] [REDACTED] it is logical to infer that those officers documented the events and conversations during said meetings and/or remember the events and conversations during said meetings.

39. Based upon the fact that law enforcement officers from either the Asheville Police Department and/or the Buncombe County Sheriff's Department were present during the interviews of [REDACTED] [REDACTED] [REDACTED] under N.C.Gen.Stat. § 15A-903(a) as "*any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant.*"
40. Based upon the fact that law enforcement officers from either the Asheville Police Department and/or the Buncombe County Sheriff's Department were present during the interviews of [REDACTED] [REDACTED] and based upon the fact that said the information obtained during the interviews of [REDACTED] [REDACTED] are *Brady* material, the information either documented or observed by said officers is discoverable pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny.

WHEREFORE, the Defendant, [REDACTED] [REDACTED], respectfully prays unto this Honorable Court for the following relief:

5. That the Court enter an Order commanding the Sheriff of Buncombe County and the head of the Asheville Police Department to provide to the defense copies of any and all documentation of meetings and/or interviews with [REDACTED] [REDACTED] in connection with the above referenced matters;
6. That if none of the aforementioned documentation exists, that the Court enter an Order commanding any law enforcement officer of the Sheriff's Office of Buncombe County and/or the Asheville Police Department, who have any knowledge of meetings and/or interviews with [REDACTED] [REDACTED] to reduce that knowledge to writing and provide the same to the District Attorney of Henderson County for disclosure to the defense;
7. That the Court hold an evidentiary hearing to allow the defense to examine the law enforcement officers involved in said meetings and/or interviews regarding the same, that said evidentiary hearing be recorded, and that a transcript of said evidentiary hearing be produced with copies for the defense and the State and that the State bear the expense of producing such transcripts; and
8. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

This the _____ day of January, 2005.

By: _____

Maitri "Mike" Klinkosum

Attorney for Defendant

P.O. Box 20308

Winston-Salem, NC 27120-0308

Telephone: (336) 761-2503

Facsimile: (336) 761-2515

Email: Maitri.Klinkosum@nccourts.org

By: _____

David G. Belser

Attorney at Law

Post Office Box 1076

Asheville, NC 28801-1076

Telephone: (828) 258-1500

Facsimile: (828) 258-1510

Email: davidbelser@aol.com

Certificate of Service

This shall certify that a copy of the foregoing *Motion for Production & Disclosure of Personnel Records of Henderson County Sheriff's Department Officers and Personnel* was this day served upon the District Attorney for Henderson County, via Hand Delivery, at the address set forth below:

Office of the District Attorney – Henderson County
Henderson County Courthouse
200 North Grove Street
Hendersonville, NC 28792

This the _____ day of January, 2005.

By: _____
David G. Belser
Attorney at Law
Post Office Box 1076
Asheville, NC 28801-1076
Telephone: (828) 258-1500
Facsimile: (828) 258-1510
Email: davidbelser@aol.com

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

████████████████████

STATE OF NORTH CAROLINA,

vs.

████████████████████ ██████████,

Defendant.

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**ORDER ON MOTION FOR
PRODUCTION & DISCLOSURE OF
ANY AND ALL DOCUMENTATION OF
MEETINGS WITH ██████████ ██████████ BY
ASHEVILLE LAW ENFORCEMENT**

THIS MATTER having come on to be heard by the undersigned Superior Court Judge, presiding at the July 11, 2005 session of Criminal Superior Court for the County of Henderson, upon the Defendant's *Motion for Production & Disclosure of Any and All Documentation of Meetings with ██████████ ██████████ by Asheville Law Enforcement*; and

IT APPEARING to the Court, that at the time these matters were called for hearing, the Defendant was present and represented by Maitri "Mike" Klinkosum, Assistant Capital Defender, and Attorney Vincent F. Rabil, and that the State was present and represented by Assistant District Attorney ██████████ and Assistant District Attorney ██████████; and

IT APPEARING to the Court, that the aforementioned motion was properly filed and that the Court has jurisdiction over the subject matter and the parties to these proceedings; and

IT APPEARING to the Court that, based upon the testimony of Asheville Police ██████████ ██████████ of the Asheville Police Department and witness ██████████ ██████████ and

IT FURTHER APPEARING to the Court, after reviewing the Motion of the Defendant, after hearing the evidence presented by both the Defense and the State in an evidentiary hearing, and after hearing the arguments of counsel for both sides, that the Court should enter an Order granting the relief requested in Defendant's Motion;

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED that the Asheville Police Department shall provide to the defense and the prosecution copies of any and all documentation of meetings and/or interviews with ██████████ ██████████ in connection with the above referenced matters. If no such documentation exists, the Asheville Police Department shall execute a letter to that effect to be sent to both the defense and the prosecution.

This the _____ day of July, 2005

The Honorable ██████████
Presiding Superior Court Judge

STATE OF NORTH CAROLINA
COUNTY OF ANSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

[REDACTED]

STATE OF NORTH CAROLINA,)
)
vs.)
)
[REDACTED])
)
Defendant.)

MOTION FOR PRODUCTION
& INSPECTION OF INTERNAL AFFAIRS
DOCUMENTS OF THE ANSON COUNTY
SHERIFF'S DEPARTMENT

NOW COMES the Defendant, by and through the undersigned counsel, Maitri "Mike" Klinkosum, Assistant Capital Defender, and S. Mark Rabil, Assistant Capital Defender and pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article 1 §§ 19 and 23 of the North Carolina Constitution, hereby moves this Honorable Court to enter an Order commanding the Office of the Sheriff of Anson County, to release to the defense any files, records, notes, memoranda, and/or any and all other documentation concerning any internal affairs or interdepartmental investigations of former Detectives [REDACTED]

IN THE ALTERNATIVE, THE DEFENDANT moves this Honorable Court to conduct an *in camera* inspection of the aforementioned file(s) and/or material(s), pursuant to *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987), *State v. McGill*, 141 N.C.App. 98, 539 S.E.2d 351 (2000), and *State v. Hardy*, 293 N.C. 105, 235 S.E.2d 828 (1977), to determine if said file(s) and/or material(s) contain any information which might be favorable and material to the Defendant in the defense of the charges pending against the Defendant; and

THE DEFENDANT further moves this Honorable Court to allow the defense attorneys to be present during said *in camera* inspection of the aforementioned file(s) and material(s) and that the Court seal the file(s) and material(s) in the court file of these matters for potential appellate review. In support of the foregoing Motion, the Defendant would state unto the Court as follows:

1. The defendant is an indigent charged with First Degree Murder and Robbery with a Dangerous Weapon.
2. The State has filed its notice of intent to seek the death penalty in the charge of first-degree murder and, as such, the Defendant faces the possibility of death by lethal injection or life without the possibility of parole.
3. On April 16, 2003, counsel for the defense filed a *Request For, or Alternative Motion for, Discovery and for Brady/Agurs Material* in these matters. Said Motion was filed within the time limits set forth in N.C.G.S. §15A-903. Said Motion was filed no later than the tenth working day after an indictment was returned in the above mentioned cases.
4. The Defendant was arrested for the aforementioned charges on July 16, 1993.

5. The offenses with which the Defendant is charged are alleged to have occurred on July 9, 1993. At the time of the investigation and the subsequent arrest of the Defendant the North Carolina State Bureau of Investigation and the Anson County Sheriff's Department were cooperating in the investigation of the alleged crimes.
6. Detectives [REDACTED] were the lead detectives in the investigation along with special agents [REDACTED] of the North Carolina State Bureau of Investigation
7. On January 8, 1997, Detectives [REDACTED] were indicted in the US District Court for the Western District of North Carolina on nine (9) counts of Racketeering and one count of RICO Conspiracy.
8. Among the charges leveled in the indictment, both detectives were accused of:
 - a) providing false, misleading, and incomplete information to the Anson County, North Carolina District Attorney's Office; and
 - b) creating false, misleading, and incomplete reports, records, and other documentation.
9. Both detectives pled guilty pursuant to plea agreements and on July 9, 1998, Detective [REDACTED] was convicted of one count of Racketeering and Conspiracy to Racketeer. Detective [REDACTED] was convicted of one count of Racketeering.
10. Given the facts that both detectives were involved in the investigation of the above-referenced matters and that they pled guilty to the federal charges, any investigation by the Anson County Sheriff's Department into these, or any other improprieties by the aforementioned individuals, would be potentially exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed. 2d 215 (1963); *United States v. Agurs*, 427 U.S. 97, 96 S. Ct. 2392, 49 L.Ed. 2d 342 (1976); *United States v. Bagley*, 473 U.S. 667, 105 S. Ct. 3375, 87 L.Ed. 2d 481 (1985); and *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L.Ed. 2d 490 (1995)
11. *Brady v. Maryland*, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963) and its progeny have held that exculpatory material can include information which would impeach the State's case, therefore due process requires that this Court order the Anson County Sheriff's Department to turn over to the defense any files, records, notes, memoranda, and/or any and all other documentation concerning any internal affairs or interdepartmental investigations of former Detectives [REDACTED] whether related to the aforementioned federal convictions or other improprieties.
12. In the alternative, the defense would request that the Court order the Anson County Sheriff's Department to turn over any of the aforementioned information to the Court for an *in camera* inspection. Pursuan to *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987); *State v. McGill*, 141 N.C.App. 98, 539 S.E.2d 351 (2000), and *State v. Hardy*, 293 N.C. 105, 235 S.E.2d 828 (1977), to determine if said file(s) and/or material(s) contain any information which might be favorable and material to the Defendant in the defense of the charges pending against the Defendant

WHEREFORE, the defendant respectfully prays unto this Honorable Court for the

following relief:

1. That the Court enter an Order commanding the Office of the Sheriff of Anson County to release to the defense any files, records, notes, memoranda, and/or any and all other documentation concerning any internal affairs or interdepartmental investigations of former Detectives [REDACTED] whether related to the aforementioned federal convictions or other improprieties;
2. That, in the alternative, the Court conduct an *in camera* inspection of the aforementioned file(s) and/or material(s), pursuant to *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987), *State v. McGill*, 141 N.C.App. 98, 539 S.E.2d 351 (2000), and *State v. Hardy*, 293 N.C. 105, 235 S.E.2d 828 (1977), to determine if said file(s) and/or material(s) contain any information which might be favorable and material to the Defendant in the defense of the charges pending against the Defendant;
3. That should the Court choose to have an *in camera* inspection that the Court also allow the defense attorneys to be present during said *in camera* inspection of the aforementioned file(s) and material(s) and that the Court seal the file(s) and material(s) in the court file of these matters for potential appellate review; and
4. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

This the 3rd day of February, 2004.

By: _____

Maitri "Mike" Klinkosum

Assistant Capital Defender

8 West Third Street, Suite 440

Post Office Box 20308

Winston-Salem, NC 27120-0308

Telephone: (336) 761-2503

Facsimile: (336) 761-2515

Email: Maitri.Klinkosum@nccourts.org

By: _____

S. Mark Rabil

By Maitri "Mike" Klinkosum

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Certificate of Service

This shall certify that a copy of the foregoing *Motion to For Production and Inspection of Internal Affairs Documents of the Anson County Sheriff's Department* was this day served upon the District Attorney for Anson County, via First Class Mail, at the address set forth below:

Office of the District Attorney for Anson County
114 North Greene Street
Wadesboro, NC 28170

This the 3rd day of February, 2004.

Maitri "Mike" Klinkosum
Assistant Capital Defender

By: _____
Maitri "Mike" Klinkosum
Assistant Capital Defender
8 West Third Street, Suite 440
Post Office Box 20308
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STATE OF NORTH CAROLINA
COUNTY OF ANSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

[REDACTED]

STATE OF NORTH CAROLINA,)
vs.)
[REDACTED],)
Defendant.)

ORDER ON MOTION FOR PRODUCTION
& INSPECTION OF INTERNAL AFFAIRS
DOCUMENTS OF THE ANSON COUNTY
SHERIFF'S DEPARTMENT

THIS MATTER, having come on to be heard before the undersigned Superior Court Judge, The Honorable [REDACTED], presiding at the March 23, 2004 session of Criminal Superior Court for the County of Anson pursuant to the Defendant's *Motion for Production & Inspection of Internal Affairs Documents of the Anson County Sheriff's Department*; and

IT APPEARING TO THE COURT that at the time the aforementioned Motion was called for hearing, the Defendant was present in Court and represented by Maitri "Mike" Klinkosum, Assistant Capital Defender, and S. Mark Rabil, Assistant Capital Defender, the State was represented by Assistant District Attorney [REDACTED] and the Anson County Sheriff's Department and the County of Anson were represented by Attorney [REDACTED]; and

IT APPEARING TO THE COURT that the Court has jurisdiction over the subject matter and the parties to this action; and

IT APPEARING TO THE COURT that the Defendant's *Motion for Production & Inspection of Internal Affairs Documents of the Anson County Sheriff's Department* was properly filed and properly served upon the Office of the District Attorney for Anson County; and

IT FURTHER APPEARING TO THE COURT, after the Court conducted an *ex parte* hearing on the Defendant's *Motion for Production & Inspection of Personnel Records of Office of Professional Standards & Training Records of Special Agents* [REDACTED], that grounds existed to warrant an *in camera* inspection of the personnel and training files of the NC SBI Office of Professional Standards concerning Special Agents [REDACTED] and [REDACTED]

IT FURTHER APPEARING TO THE COURT that the same grounds existed to warrant an *in camera* inspection of the internal affairs records of the Anson County Sheriff's Department;

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED as follows:

1. The Sheriff's Department of Anson County, by and through the Attorney for Anson County, [REDACTED], shall remand to this Court its complete internal affairs files of former detectives [REDACTED];
2. Pursuant to the terms discussed in the *ex parte* hearing, the Court shall review the aforementioned internal affairs files *in camera* to determine if any information contained therein should be disclosed to the defense;
3. At the conclusion of the *in camera* review of the aforementioned materials, the Clerk of Superior Court of Anson County shall seal all of the materials remanded to this Court and place the same in the court file of this matter, under seal, for possible appellate review;
4. Once said materials have been placed in the court file under seal, they shall not be opened except by Order of this or another Court; and
5. Pursuant to the request of the defense, Special Deputy Attorney General [REDACTED] is hereby ordered to refrain from disclosing any of the information or statements made during the *ex parte* hearing concerning the Defendant's motion.

This the _____ day of April, 2004

The Honorable [REDACTED]
Presiding Superior Court Judge

STATE OF NORTH CAROLINA
COUNTY OF ANSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

[REDACTED]

STATE OF NORTH CAROLINA,)
)
vs.)
[REDACTED])
)
Defendant.)

MOTION FOR PRODUCTION
& INSPECTION OF PERSONNEL RECORDS
OF OFFICE OF PROFESSIONAL STANDARDS
& TRAINING RECORDS OF
SPECIAL AGENTS [REDACTED]
& [REDACTED]

NOW COMES the Defendant, by and through the undersigned counsel, Maitri “Mike” Klinkosum, Assistant Capital Defender, and S. Mark Rabil, Assistant Capital Defender and pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article 1 §§ 19 and 23 of the North Carolina Constitution, hereby moves this Honorable Court to enter an Order commanding the **Office of Professional Standards of the North Carolina State Bureau of Investigation**, to release to the defense any files, records, notes, memoranda, internal affairs records, and/or any and all other documentation concerning Special Agents [REDACTED];

THE DEFENDANT further moves this Honorable Court for an Order commanding the North Carolina State Bureau of Investigation to release to the defense the complete training records of Special Agent [REDACTED];

THE DEFENDANT further moves this Honorable Court to hold an *ex parte* hearing in this matter, should the Court require any further detailed information concerning this motion or the facts surrounding it;

THE DEFENDANT further moves this Honorable Court to conduct an *in camera* inspection of the aforementioned file(s) and/or material(s), pursuant to *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987), *State v. McGill*, 141 N.C.App. 98, 539 S.E.2d 351 (2000), and *State v. Hardy*, 293 N.C. 105, 235 S.E.2d 828 (1977), to determine if said file(s) and/or material(s) contain any information which might be favorable and material to the Defendant in the defense of the charges pending against the Defendant. The Defendant requests this specific relief only in the event that the Court determines the requested information should not be released directly to the defense; and

THE DEFENDANT further moves this Honorable Court to allow the defense attorneys to be present during any *in camera* inspection of the aforementioned file(s) and material(s), should the Court opt for an *in camera* inspection of said file(s), and that the Court seal the file(s) and material(s) in the court file of these matters for potential appellate review.

In support of the foregoing Motion, the Defendant would state unto the Court as follows:

13. The defendant is an indigent charged with First Degree Murder and Robbery with a Dangerous Weapon.
14. The State has filed its notice of intent to seek the death penalty in the charge of first-degree murder and, as such, the Defendant faces the possibility of death by lethal injection or life without the possibility of parole.

15. On April 16, 2003, counsel for the defense filed a *Request For, or Alternative Motion for, Discovery and for Brady/Agurs Material* in these matters. Said Motion was filed within the time limits set forth in N.C.G.S. §15A-903. Said Motion was filed no later than the tenth working day after an indictment was returned in the above mentioned cases.
16. The Defendant was arrested for the aforementioned charges on July 16, 1993.
17. The offenses with which the Defendant is charged are alleged to have occurred on July 9, 1993. At the time of the investigation and the subsequent arrest of the Defendant the North Carolina State Bureau of Investigation and the Anson County Sheriff's Department were cooperating in the investigation of the alleged crimes.
18. Detectives [REDACTED] were the lead detectives in the investigation along with special agents [REDACTED] of the North Carolina State Bureau of Investigation
19. On January 8, 1997, Detectives [REDACTED] were indicted in the US District Court for the Western District of North Carolina on nine (9) counts of Racketeering and one count of RICO Conspiracy.
20. Among the charges leveled in the indictment, both detectives were accused of:
 - a) providing false, misleading, and incomplete information to the Anson County, North Carolina District Attorney's Office; and
 - b) creating false, misleading, and incomplete reports, records, and other documentation.
21. Both detectives, [REDACTED], pled guilty pursuant to plea agreements and on July 9, 1998, Detective [REDACTED] was convicted of one count of Racketeering and Conspiracy to Racketeer. Detective [REDACTED] was convicted of one count of Racketeering.
22. The defense has been allowed to view the prosecutorial files held in the Office of the United States Attorney for the Western District of North Carolina, which relate directly to the prosecution of detectives [REDACTED]. During the review of said files, it was discovered that the name of Special Agent [REDACTED] figured into some of the taped telephone conversations of detectives [REDACTED], which were used during the prosecution of the two detectives.
23. During the review of said files, it was discovered that Special Agent [REDACTED] worked closely with detectives [REDACTED] and that SA [REDACTED] office was located within the Anson County Sheriff's Department. Upon information and belief, SA [REDACTED] and detectives [REDACTED] had a close working relationship as well as a social relationship.
24. SA [REDACTED] and SA [REDACTED] were the agents who extracted, what they have purported to be, a confession from the Defendant.

25. Upon information and belief, SA [REDACTED] and SA [REDACTED] knew, or knew of, the Defendant, [REDACTED] prior to the Defendant's arrest and, further, both agents, as well as detectives [REDACTED], knew or should have known that the Defendant is mentally retarded.
26. Upon information and belief, SA [REDACTED] employed coercive and antagonistic tactics during the purported "confession" of the Defendant, such that the Defendant was placed in fear of his physical well being.
27. Any prior improprieties concerning other cases, witnesses, or defendants by the aforementioned special agents, would be potentially exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed. 2d 215 (1963); *United States v. Agurs*, 427 U.S. 97, 96 S. Ct. 2392, 49 L.Ed. 2d 342 (1976); *United States v. Bagley*, 473 U.S. 667, 105 S. Ct. 3375, 87 L.Ed. 2d 481 (1985); and *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L.Ed. 2d 490 (1995)
28. *Brady v. Maryland*, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963) and its progeny have held that exculpatory material can include information which would impeach the State's case, therefore due process requires that this Court order the Office of Professional Standards of the North Carolina State Bureau of Investigation to turn over to the defense any files, records, notes, memoranda, and/or any and all other documentation concerning any internal affairs/ interdepartmental investigations, or any other investigations of Special Agent [REDACTED]
29. Due to the fact that the integrity of the investigation of the above-mentioned case and the alleged "confession" of the Defendant are in doubt, this Court should order the North Carolina State Bureau of Investigation to turn over to the defense any and all training records for Special Agent [REDACTED].
30. Should the Court determine that the requested information should not be released directly to the Defendant, the defense would request that the Court order the Office of Professional Standards of the NC State Bureau of Investigation and the NC State Bureau of Investigation to turn over any and all of the aforementioned information to the Court for an *in camera* inspection. Pursuant to *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987); *State v. McGill*, 141 N.C.App. 98, 539 S.E.2d 351 (2000), and *State v. Hardy*, 293 N.C. 105, 235 S.E.2d 828 (1977), to determine if said file(s) and/or material(s) contain any information which might be favorable and material to the Defendant in the defense of the charges pending against the Defendant.
31. Should the Court require further information from the defense regarding this motion, the defense would request that any further information be given to the Court during an *ex parte* hearing. The State would be unfairly advantaged in anticipating defense strategies were it permitted access to the hearing of this Motion. *State v. Ballard*, 333 N.C. 515, 428 S.E.2d 178 (1993); *State v. Bates*, 333 N.C. 523, 428 S.E.2d 693 (1993). See also *State v. King*, 75 N.C.App. 618, 331 S.E.2d, writ allowed, 334 S.E.2d 229, cert. den., 314 N.C. 545, 335 S.E.2d 24, appeal dismissed, 335 S.E.2d 900 (1985). Therefore, this Court should hear any further information concerning this motion, *ex parte*, and should have any resulting orders sealed in the court file of these actions.

WHEREFORE, the defendant respectfully prays unto this Honorable Court for the

following relief:

5. That the Court enter an Order commanding the **Office of Professional Standards of the North Carolina State Bureau of Investigation**, to release to the defense any files, records, notes, memoranda, internal affairs records, and/or any and all other documentation concerning Special Agents [REDACTED]
2. That this Honorable Court enter an Order commanding the North Carolina State Bureau of Investigation to release to the defense the complete training records of Special Agents [REDACTED];
3. That, in the alternative, the Court conduct an *in camera* inspection of the aforementioned file(s) and/or material(s), pursuant to *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987), *State v. McGill*, 141 N.C.App. 98, 539 S.E.2d 351 (2000), and *State v. Hardy*, 293 N.C. 105, 235 S.E.2d 828 (1977), to determine if said file(s) and/or material(s) contain any information which might be favorable and material to the Defendant in the defense of the charges pending against the Defendant;
4. That should the Court choose to have an *in camera* inspection that the Court also allow the defense attorneys to be present during said *in camera* inspection of the aforementioned file(s) and material(s) and that the Court seal the file(s) and material(s) in the court file of these matters for potential appellate review;
5. That should the Court require further information from the defense regarding this motion, that any further information be given by the defense subject to the Court during an *ex parte* hearing as the State would be unfairly advantaged in anticipating defense strategies were it permitted access to any further information related to this Motion; and
6. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

This the 5th day of February, 2004.

By: _____
Maitri "Mike" Klinkosum
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8 West Third Street, Suite 440
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Telephone: (336) 761-2503
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Email: Maitri.Klinkosum@nccourts.org

By: _____

S. Mark Rabil

By Maitri "Mike" Klinkosum
Assistant Capital Defender
8 West Third Street, Suite 440
Post Office Box 20308
Winston-Salem, NC 27120-0308
Telephone: (336) 761-2503
Facsimile: (336) 761-2515
Email: S.Mark.Rabil@nccourts.org

Certificate of Service

This shall certify that a copy of the foregoing ***Motion for Production & Inspection of Personnel Records of Office of Professional Standards & Training Records of Special Agents*** [REDACTED] was this day served upon the District Attorney for Anson County, via First Class Mail, at the address set forth below:

Office of the District Attorney for Anson County
114 North Greene Street
Wadesboro, NC 28170

This the 5th day of January, 2004.

Maitri "Mike" Klinkosum
Assistant Capital Defender

By: _____

Maitri "Mike" Klinkosum

Assistant Capital Defender
8 West Third Street, Suite 440
Post Office Box 20308
Winston-Salem, NC 27120-0308
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STATE OF NORTH CAROLINA
COUNTY OF ANSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

[REDACTED]

STATE OF NORTH CAROLINA)

vs.)

[REDACTED]

Defendant.

) SUPPLEMENTAL ORDER
) ON MOTION FOR PRODUCTION
) & INSPECTION OF PERSONNEL RECORDS
) OF OFFICE OF PROFESSIONAL
) STANDARDS & TRAINING RECORDS OF
) SPECIAL AGENTS [REDACTED]

THIS MATTER, having come on to be heard before the undersigned Superior Court Judge, The Honorable [REDACTED] presiding at the March 23, 2004 session of Criminal Superior Court for the County of Anson pursuant to the Defendant's *Motion for Production & Inspection of Personnel Records of Office of Professional Standards & Training Records of Special Agents* [REDACTED]; and

IT APPEARING TO THE COURT that at the time the aforementioned Motion was called for hearing, the Defendant was present in Court and represented by Maitri "Mike" Klinkosum, Assistant Capital Defender, and S. Mark Rabil, Assistant Capital Defender, the State was represented by Assistant District Attorney [REDACTED] and the North Carolina State Bureau of Investigation was represented by Special Deputy Attorney General [REDACTED] and

IT APPEARING TO THE COURT that the Court has jurisdiction over the subject matter and the parties to this action; and

IT APPEARING TO THE COURT that the Defendant's *Motion for Production & Inspection of Personnel Records of Office of Professional Standards & Training Records of Special Agents* [REDACTED] was properly filed and properly served upon the Office of the District Attorney for Anson County; and

IT APPEARING TO THE COURT that the Court should conduct an *ex parte* hearing to determine if sufficient grounds exist for the inspection of the personnel records of the North Carolina State Bureau of Investigation's Office of Professional Standards concerning Special Agents [REDACTED] and for inspection of the training records of Special Agents [REDACTED]; and

IT FURTHER APPEARING TO THE COURT, after the Court conducted an *ex parte* hearing, which included the counsels for the Defendant and the attorney for the North Carolina State Bureau of Investigation, Special Deputy Attorney General [REDACTED], that the defense has presented sufficient grounds to warrant an *in camera* inspection of the personnel

files of the NC SBI Office of Professional Standards concerning Special Agents [REDACTED] and that the defense has presented sufficient grounds for the Court to conduct an *in camera* inspection of the training records of Special Agents [REDACTED]; and

IT FURTHER APPEARING TO THE COURT, after the Court conducted an *in camera* inspection of the personnel files of the NC SBI Office of Professional Standards, that nothing was found in the personnel files of Special Agents [REDACTED] which appeared favorable to the defense, pursuant to *State v. Johnson*, 145 N.C.App. 51, 549 S.Ed.2d 574 (2001);

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED as follows:

6. The Office of Professional Standards of the North Carolina State Bureau of Investigation has complied with the prior Order of this Court in remanding to this Court the personnel files of Special Agents [REDACTED];
7. Pursuant to the terms discussed in the *ex parte* hearing of March 23, 2004, the Court has reviewed the aforementioned personnel files *in camera* to determine if any information contained therein should be disclosed to the defense;
8. At the conclusion of the *in camera* review of the aforementioned materials, this Court determined that nothing in the personnel files of Special Agents [REDACTED] appeared favorable to the defense;
9. The Clerk of Superior Court of Anson County shall seal all of the materials remanded to this Court and place the same in the court file of this matter, under seal, for possible appellate review; and
10. Once said materials have been placed in the court file under seal, they shall not be opened except by Order of this or another Court; and
11. This Order shall not relate to the training records of Special Agents [REDACTED]. A Supplemental Order shall be prepared once an *in camera* review has been conducted of the training materials recently submitted to this Court by the North Carolina State Bureau of Investigation.

This the _____ day of April, 2004

The Honorable [REDACTED]
Presiding Superior Court Judge

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT [REDACTED]

HARNETT COUNTY

STATE OF NORTH CAROLINA,

Vs.

MOTION FOR PRODUCTION OF ALL
MANUALS, POLICIES, & PROCEDURES
FOR THE DOCUMENTATION &
PRESERVATION OF EVIDENCE BY THE
DUNN POLICE DEPARTMENT.

NOW COMES the Defendant, [REDACTED] by and through his undersigned counsel, David Vernon Hartley, and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1 ' ' 19 and 23 of the North Carolina Constitution, *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny, and N.C. Gen. Stat. ' 15A-903, for an Order commanding the Chief of Police of the Dunn Police Department to provide to the defense copies of any and all current manuals, policies and procedures for the documentation and preservation of evidence by the Dunn Police Department. In support of the foregoing Motion, the Defendant would show unto the Court as follows.

Case Background

1. The Defendant is an indigent charged with one count of Possession of Marijuana, Possession with Intent to Sell and Deliver Marijuana, and Possession of Drug Paraphernalia.
2. The Marihuana was seized by a Dunn Police Officer after he said the Defendant threw it on the ground March 26, 2003.
3. Upon information and belief that evidence was stored in the Dunn Evidence Room.
4. David Hartley was assigned as counsel in the above numbered matter on July 19, 2005.
5. Discovery was provided to Defendant=s counsel, David Hartley, on an unknown date. The date is unknown because upon information and belief another lawyer had been appointed to represent the defendant, and upon information and belief discovery was provided to that lawyer.

Factual Background

6. On March 27, 2006, I was told by a law enforcement official that he had heard the Dunn Chief of Police=s son had been found in the Dunn Evidence Room by Dunn Police Officers.
7. I asked other attorneys if they had any knowledge of the Dunn Police Chief=s son being in the evidence room, and a few stated that they had heard it that day, but most said they had not heard anything about it.
8. I asked Assistant District Attorney [REDACTED] who was in Harnett County representing the State in District Court, if she had heard the story about the Chief=s son, and she stated she had just heard it, but didn=t know anymore about it than she was told he was found in the Dunn Evidence room.
9. I have drug cases pending with the Dunn Police Department, and because of the possibility of evidence that may be used against my clients being contaminated and compromised, I looked into the matter further.
10. I was told that a web site, [www. dunn-forum.com](http://www.dunn-forum.com), had published information about the Chief=s son being found in the Dunn evidence room.
11. I went to that site and found information that stated the Dunn Chief of Police=s son had been caught in the Dunn evidence room by Dunn Police Officers. It appeared that the information was published in February of 2006 on that site.
12. I called and talked to an individual, who upon information and belief, owned the web site. He stated he been told that the Chief=s son had been caught in the evidence room tampering with evidence by a Dunn Police officer, and Lt. [REDACTED] of the Dunn Police Department.
13. He told me that, upon information and belief, that incident occurred during the summer of 2005, and that when the evidence technician, [REDACTED], was confronted by [REDACTED] she told him, Awhat am I suppose to do. He is the Chief=s son@.
14. The defense has not been provided with any written or recorded documentation concerning this incident, or other possible incidents involving unauthorized individuals with unauthorized access to the Dunn Evidence room.

Argument

15. The prosecution=s affirmative duty to disclose evidence favorable to a defendant can be traced to early 20th century prohibitions against misrepresentation to the courts. *Mooney v. Holohan*, 294 U.S. 103, 112, 79 L.Ed. 791, 55 S.Ct. 340

(1935)

16. In 1963, the US Supreme Court found that the Due Process Clause of the 14th Amendment to the US Constitution requires disclosure of exculpatory evidence. The Court held in *Brady v. Maryland*, that the suppression of evidence favorable to an accused upon request violates due process when the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. In rendering this decision, the Court relied upon legal precedent dating back as far as 1935. See *Mooney v. Holohan*, 294 U.S. 103, 112, 79 L.Ed. 791, 55 S.Ct. 340 (1935); also, *Pyle v. Kansas*, 317 U.S. 213, 215-216, 87 L.Ed. 214, 63 S.Ct. 177 (1942); *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).
17. In 1995, the US Supreme Court took *Brady* further by stating that prosecutors have an affirmative duty to learn of exculpatory evidence which may be in the possession of anyone acting on behalf of the State, including the police. In other words, prosecutors cannot rely on the fact that law enforcement officers failed to provide evidence in defending against a charge of a Brady violation. *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).
18. The undersigned counsel has no reason to believe that the present prosecutor in this matter has been anything other than completely forthcoming with discovery in this case.
19. Based upon the fact that there may have been an unauthorized entry into the Dunn Evidence Room, or even more than one unauthorized entry by unauthorized persons the integrity of evidence in the in the Dunn Evidence Room may have been compromised, and evidence in that room tampered with.
20. For that reason, the manuals, policies, and procedures of the documentation and preservation of evidence of the Dunn Police Department are of critical importance to the defense in that such materials bear directly on the integrity of the investigation in this matter and, based upon the reported unauthorized entry into the Dunn Evidence Room by an unauthorized person will likely be a source of cross-examination and impeachment for the defense at the trial of this matter.
21. The Dunn Police Department should provide the Defendant with copies of its most current manuals, policies, and procedures for the defense to further investigate the collection and preservation of evidence in this case.

WHEREFORE, THE Defendant, [REDACTED] respectfully prays unto this Honorable Court for the following relief:

1. That the Court enter an Order commanding the Chief of Police of Dunn, North Carolina, to provide to the defense with copies of any and all manuals, policies and procedures for the documentation and preservation of evidence by the Dunn Police Department; and
2. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

Respectfully submitted this, the 16th day of April, 2006.

DAVID V. HARTLEY
Attorney for Defendant
P. O. Box 966
Lillington, N.C.
Telephone: (919) 814-2000
Telefax: (919) 814-2446
NCSB No. 18241

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion on Senior Assistant District Attorney [REDACTED] by hand delivery.

This, the 17th day of April, 2006.

DAVID V. HARTLEY
Attorney for Defendant