

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

STATE OF NORTH CAROLINA

v.

IN THE GENERAL COURT OF JUSTICE  
\_\_\_\_\_ COURT DIVISION  
\_\_\_\_ Cr\_ \_\_\_\_

\* EX PARTE MOTION FOR FUNDS TO EMPLOY  
\* PRIVATE INVESTIGATOR  
\* **UNDER SEAL**  
\*

**NOW COMES** the Defendant, ex-parte through counsel, respectfully moving the Court to enter an ORDER requiring the Administrative Office of the Courts of the State of North Carolina to provide funds with which the Defendant may employ a private investigator.

1. The Defendant is currently charged with \_\_\_\_\_ and the Defendant is indigent.

2. The authority for making this motion *ex parte* is *Ake vs. Oklahoma*, 470 U.S. 68 (1985) and *State vs. Moore*, 321 N.C.321 (1988).

Furthermore, Mr. Matteson is entitled to an *ex parte* hearing to determine the need for expert assistance when to hold such a hearing with the State present would impinge upon his right to effective assistance of counsel or upon his privilege against self-incrimination. Such violation occurs when the court pries into confidential communications between lawyer and client and into defense strategy. *State vs. Ballard* 333 NC 515, 428 SE 2<sup>nd</sup> 178 (1993). This particular motion involves the confidential communication between lawyer and client which the court would unconstitutionally violate by failing to hold the hearing *ex parte* and would further deprive the Defendant of effective assistance of counsel should it allow the State to be present and thus discover the defense strategy.

3. These cases state that the Defendant is entitled to the services of an expert, a private investigator in this case, upon meeting either of the following two tests:

1. Showing that a material likelihood exists that a private investigator will assist the defense preparation for or presentation at trial; OR

2. Showing that without such assistance it is probable that the Defendant will not receive a fair trial.

4. The services of a private investigator will materially assist in the preparation of this Defendant's defense.

5. Counsel cannot physically devote the time to find and interview the witnesses counsel has been informed by the Defendant are material witnesses in this matter. Furthermore, the Defendant suffers from Post-Traumatic Stress Disorder and the investigation of the Defendant's personal background will require an investigator that has expertise in the investigation of social histories of individuals. The Defendant has retained a psychologist to determine if the Defendant [insert defense being raised] [lacked the capacity to form the specific intent to commit the alleged offense]. Material to the psychologist's opinion in this matter is a review of the relevant sociological records, such as mental health records and witness interviews regarding this Defendant. This investigation requires an individual with the training and experience in the social worker field.

6. If this Defendant had the funds, counsel would employ a

specialized investigator to interview the relevant witnesses and to conduct the relevant sociological history of this Defendant.

7. This defense will receive material assistance therefore by having an experienced person who can devote full attention to finding and interviewing the relevant social history witnesses and locating the relevant social documentation. An experienced investigator can find and interview witnesses and locate and obtain relevant social history records more effectively than can counsel for the defense.

8. The services of such a private investigator, at the rate of \$50.00 per hour, would cost the State less money in expenses than if counsel were burdened with the investigatory task. Counsel does not have the time or opportunity to track down each witness and record a statement from each. Such a process requires a person dedicated full time to the collection of this evidence.

9. An investigator also materially assists in the preparation of the defense in that he provides an independent witness who can testify at trial for impeachment purposes if any witness makes a statement contradicting his or her interview. Counsel would be ethically obliged to withdraw from representing the Defendant should he have to be called to offer contradictory testimony.

10. If the Defendant is not provided with this expert assistance, the Defendant will be deprived of due process of law, the equal protection of the laws, the effective assistance of counsel, his right to confront the witnesses against him, his right to a fair trial, and his right to present evidence on his own behalf. Under these

circumstances, the Constitution of the United States and North Carolina require that funds for expert assistance be provided. Based upon the facts alleged a material likelihood exists that an investigator will assist the defense preparation for trial and that without such assistance it is probable that the Defendant will not receive a fair trial.

11. Counsel has determined that an initial amount of \$2,000.00, plus expenses, would be necessary in this case to retain an investigator.

ACCORDINGLY, the Defendant requests in this court order that he be allowed to expend up to \$2,000.00, plus expenses, to retain private detective to investigate the above referenced matters without prejudice to the Defendant to renew application for funds if this amount is exhausted, and that the Clerk of Court seal this motion and any order of this Court.

Respectfully submitted, April 11<sup>th</sup>, 2013.

W. JAMES PAYNE LAW FIRM

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VERIFICATION

W. James Payne, first being duly sworn, deposes and states: That he is counsel for the Defendant in this action; that he has read the foregoing pleading and knows the contents thereof; that the same are true of his own knowledge except as to those matters and things therein stated on information and belief, and as to those he believes them to be true.

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W. James Payne

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

I certify that the following person personally appeared before me this day, and

I have personal knowledge of the identity of the Principal;

I have seen satisfactory evidence of the principal's identity by current state or  federal identification with the principal's photograph in the form of a \_\_\_\_\_;

A credible witness has sworn to the identity of the principal;

acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Name of Principal: \_\_\_\_\_

Date: \_\_\_\_\_, 2013.

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Notary Public  
My commission expires:  
\_\_\_\_\_