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IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

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STATE OF GEORGIA,

Plaintiff,

v.

FABIAN KEITH NOTTO

Defendant.

} Max Kap

INDICTMENT NO.: CR13-2673-J-4

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DEPUTY SUPERIOR CT.
CHATHAM COUNTY GA

**MOTION TO COMPEL
THE STATE TO PROVIDE COMPLETE DISCOVERY**

COMES NOW, Fabian Keith Notto, Defendant, by and through undersigned counsel, and respectfully moves this Court to Compel the State to provide complete discovery. This motion is predicated upon Brady v. Maryland, and the Fourth and Fourteenth Amendments to the United States Constitution, Article I, §I, ¶¶ I, II, IV, V, VII, IX, X, XI, X, XII XIII, XIV, XVI, XVII, XVIII, XXIV and XXV of the Constitution of the State of Georgia.

In support counsel states:

1. Defendant has previously elected to have the reciprocal discovery provisions of O.C.G.A. §§ 17-16-1 through 17-16-9 apply to this case and has notified the State of such Election.
2. That the State failed to produce documents in its possession and control that related to the untruthfulness of Officer Glenn Castro and to disciplinary actions taken against him as a result of SCMPD Internal Affairs investigations concerning purposefully withholding evidence from his police reports, violation of Use of Force policy and allegations of unprofessional conduct involving arrests and searches and seizures..

3. That, the State has an obligation to release any statement of any witness, which relates to the subject matter concerning the testimony of the witness that is in its possession, custody, or control. *See O.C.G.A. § 17-16-7.*

4. That it is well settled that the prosecution has an obligation to disclose *Brady* material regardless of whether the defendant has specifically requested the evidence. *United States v. Agurs*, 427 U.S. 97, 110 (1976). In fact, under the Model Rules of Professional Conduct, prosecutors have a broad ethical obligation to disclose evidence favorable to the defense. *Cone v. Bell*, 129 S. Ct. 1769, 1783 n.15 (2009); Model Rules of Prof'l Conduct R. 3.8 (d) (“A prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.”).

5. That the Court has further expanded on this affirmative duty to require the prosecution to learn of any government actors, such as the police, who may have knowledge of favorable evidence material to the defendant. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). Since it is the prosecutors who determine what evidence is exculpatory, any questionable evidence should be disclosed to the defendant. *Agurs*, 427 U.S. at 108.

6. That *Brady* holds that the suppression by the prosecution of evidence favorable to a defendant is a violation of due process. *Brady*, 373 U.S. at 87. “There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” *Nelson v. State*, 279

Ga.App. 859, 864, 632 S.E.2d 749 (2006); *See Nikitin v. State*, 257 Ga.App. 852, 854, 572 S.E.2d 377 (2007).

7. That on or about June 19, 2015, Defendant made an Open Records Request for personnel information regarding Officer Castro and other officers involved in the instant matter. On or about July 2nd, 2015, Defendant was provided with reports pertinent to Internal Affairs investigations numbers 2131013, 270405 and 2101017.

8. That Defendant is not aware whether there are additional documents that address Officer Castro. For example, there was a review of the Internal Affairs Section of SCMPD that partially led to the prosecution of other officers for untruthfulness and no documents were provided to defendant concerning Office Castro and whether there was a finding in connection with his cases.

9. That defendant has not been provided the name of the alleged informant that gave information to the police and ultimately to Agent Cogswell that lead to “vehicle follow” of Defendant on the day of his arrest nor any reports from the officers who were a part of the follow and investigation ancillary to the immediate arrest of Defendant. It appears from the incident report that Crime Suppression officers are given a briefing during tactical and support operations and Defendant has not been provided any reports pertinent to any briefing of a supervisor by Agent Cogswell in engaging the support of SCMPD officers or tapes or radio traffic with the specific instructions given.

WHEREFORE, Defendant prays for the following relief:


a. That This Honorable Court issue an Order requiring that the State be compelled to provide him with a copy of all documents pertinent to disciplinary actions and hearings regarding Officer Glenn Castro pursuant to *Brady v. Maryland*.

b. That this Honorable Court issue an Order requiring the State to disclose the name of the confidential informant so that the circumstances of the "vehicle follow" and the information leading thereto can be examined by Defendant prior to trial.

c. That the Court issue an order requiring the State produce any reports pertinent to briefings by Agent Cogswell of CNT to SCMPD concerning the "vehicle follow" and any recordings that were made or that are available pertinent to radio instructions given to SCMPD during the "vehicle follow" of Defendant.

This 16th day of July, 2015.

Respectfully submitted,


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State Bar No.: 124924

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the State of Georgia in the foregoing matter by hand delivery or by placing same in the United States Mail with proper postage affixed addressed to the following:

Office of the District Attorney
Chatham County Courthouse
133 Montgomery Street, 6th Floor
Savannah, Georgia 31401

This 16th day of July, 2015.



LARRY CHISOLM
Attorney for Defendant
State Bar No.: 124925

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