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IN THE SUPERIOR COURT OF CHATHAM COUNTY FILED IN OFFICE
STATE OF GEORGIA

2015 JUL 28 PM 4:14

~~STATE OF GEORGIA,~~

2015 JUL 28 PM 4:20

Plaintiff,

INDICTMENT NO.: CR13-2673-J-4
SUPERIOR COURT
CHATHAM COUNTY GA

v.

FABIAN KEITH NOTTO

Defendant.

**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 Kevin Fikes and disciplinary actions taken against him as a result of SCMPD Internal Affairs investigations concerning purposefully violating Use of Force policy, failure to notify a supervisor of an incident and making postings on the Savannah Morning News website.

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 Fikes and other officers involved in the instant matter. On or about July 2nd, 2015, Defendant was provided with reports pertinent to Internal Affairs investigations.

8. That Defendant is not aware whether there are additional documents that address Officer Fikes. For example, there was a document which related to improper posting on the Savannah Morning News website, by Officer Fikes which were removed, but those postings were not provided, no any reports associated with this investigation.

WHEREFORE, Defendant prays 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 Kevin Fikes pursuant to *Brady v. Maryland*.

This 29th day of July, 2015.

Respectfully submitted,



LARRY CHISOLM
Attorney for Defendant
State Bar No.: 124924

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**IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA**


STATE OF GEORGIA,)	
)	
Plaintiff,)	INDICTMENT NO.: CR13-2673-J-4
)	
v.)	
)	
FABIAN KEITH NOTTO)	
)	
Defendant.)	

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:

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

This 28th day of July, 2015.


LARRY CHISOLM
Attorney for Defendant
State Bar No.: 124925

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