

NORTH CAROLINA

FILE NUMBER: 09-CRS-_____

FILM NUMBER: _____

NASH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA }

}

v. }

}

ORDER

KIRK JAMES DOE, }

Defendant }

}

THIS CAUSE coming on to be heard and being heard by the undersigned Superior Court Judge upon Defendant’s motion for the Court to order all law enforcement officers in any way connected with the investigation or prosecution of the above caption case turn over to the prosecutors all notes, evidence, and materials relating to this investigation of this case, and to certify that all such material has in fact been turned over to the prosecutors.

And it appearing to the Court that such an order is necessary in order to ensure Defendant’s right to due process, pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, §§ 19, 23 and 27 of the North Carolina Constitution.

This Court is aware that the United States and North Carolina constitutions require that the State disclose to the defendant material, exculpatory evidence. In addition *Kyles v. Whitley*, 514 U.S. 419, 131 L.Ed. 2d 490 (1995), *United States v. Agurs*, 427 U.S. 97, 49 L.Ed.2d 342 (1976) and *Brady v. Maryland*, 373 U.S. 83, 10 L.Ed.2d 215 (1963), and N.C. Gen. Stat. 15A-903 require full disclosure of all such material, exculpatory or inculpatory.

This Court is aware that the State has a responsibility to disclose exculpatory evidence even if the prosecuting attorney does not know that information. “[T]he individual prosecutor has a duty to learn of favorable evidence known to others acting on the government’s behalf in the case, including the police.” *Kyles* at 437.

Compelling investigating officers to turn over all the information they have about a case to the prosecuting attorneys is an important step in ensuring that prosecutors can fulfill their constitutional and statutory discovery obligations.

THEREFORE, IT IS HEREBY ORDERED THAT the all law enforcement officers in any way connected with the investigation or prosecution of this case turn over to the prosecutors all notes, evidence, and materials relating to the investigation of this case (or the co-defendant’s case). This includes South Carolina law enforcement agencies (S.L.E.D., etc.). The Prosecutor is directed to promptly take all steps necessary to collect: all notes, evidence, and materials

relating to this investigation from all North Carolina and South Carolina law enforcement agencies in any way associated with the investigation or prosecution of this case (or the co-defendant's case), and to have each and every law enforcement officer and agency certify that all such notes, evidence, and materials relating to the investigation of this case, or the co-defendant's case has in fact been turned over to the prosecutors who will in turn provide the material to the defense.

This the ____ day of August, 2010.

QUENTIN T. SUMNER
SENIOR RESIDENT SUPERIOR COURT JUDGE
PRESIDING

order requiring certification