



JOHNNY GARDNER LAW GROUP, P.A.

DUI • PERSONAL INJURY • CRIMINAL • FAMILY • BUSINESS

JOHNNY GARDNER
JARRETT BOUCHETTE

January 14, 2019

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AUG 01 2022

SC Court of Appeals

The Honorable Renee Elvis
Government and Justice Center
1301 Second Avenue
Conway, South Carolina 29526

Re: State of South Carolina vs Mazar Sturdivant
Ticket No.: 2018A2620604284 (Armed robbery), 2018A2620604285 (Armed robbery), 2018A2620604289 (Armed robbery), 2018A2620604290 (Poss. of Weapon during violent crime, if not also sentenced to life without parole or death)

Dear Madam/Sir:

Please be advised that I have been retained to represent Mazar Sturdivant in the above-referenced case. Enclosed for filing, please find the original and a copy of the both the Brady Motion and a certificate of mailing. Please file the originals and return the clocked copies in the self-addressed, stamped envelope provided for your convenience.

With kindest regards, I remain,

Sincerely,
Johnny Gardner
Johnny Gardner

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

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JG/amh

Enclosures: Motion for Discovery and Inspection as well as Brady and Kyles v. Whitley Materials and objection under Rule 6 and Certificate of Mailing

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

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State of South Carolina,

AUG 01 2022

SC Court of Appeals

Mazar Sturdivant,

Plaintiff

Defendant.

) IN THE GENERAL SESSIONS COURT
) FIFTEENTH JUDICIAL CIRCUIT

) **MOTION FOR DISCOVERY AND**
) **INSPECTION AS WELL AS BRADY**
) **AND KYLES v. WHITLEY MATERIALS**
) **AND OBJECTION UNDER RULE 6**

) Warrant No.: 2018A2620604284 (Armed
) robbery), 2018A2620604285 (Armed robbery),
) 2018A2620604289 (Armed robbery),
) 2018A2620604290 (Poss. of Weapon during
) violent crime, if not also sentenced to life
) without parole or death)

NOW COMES the Defendant, by and through his undersigned counsel of record, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, and pursuant to Brady v. Maryland and Kyles v. Whitley, and moves the prosecution to permit the Defendant to inspect and copy or photograph, including, but not limited to, the following, with the express provision that the duty of disclosure be a continuing one in the event that any such materials come into existence or become available after the initial disclosures:

- (1) Any written or recorded statements made by the Defendant, or copies thereof, within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;
- (2) The substance of any oral statement which the prosecution intends to offer into evidence at the trial made by the Defendant, whether before or after arrest, in response to interrogation by any person then known to the Defendant to be a prosecution agent;
- (3) A copy of the Defendant's prior criminal record, if any, as is within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;
- (4) All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the defense, or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant;
- (5) All results or reports of physical or mental examinations, and of scientific tests, experiments, or copies thereof, which are within the possession, custody, control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which

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are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial; and

- (6) The statement of any witness or prospective prosecution witness, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;
- (7) AND ALSO the Defendant, by and through undersigned counsel, files this Motion for Brady and other favorable material and incorporated Memorandum of Law and, as grounds therefore, this undersigned would show as follows:
- (8) Under the United States Supreme Court decision in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), the Solicitor has an obligation to produce all Brady material for the Defendant well in advance of the scheduled trial date.
- (9) Defendant claims under Brady, and its progeny, as well as the language and spirit of Kyles v. Whitley, 514 U.S. 419 (1995); Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763 (1972); United States v. Tashman, 478 F.2d 129 (5th Cir., 1973); and Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959); that he/she is entitled to any and all records, memoranda and documents, as well as a statement of the Solicitor and all appropriate state, federal and local law enforcement agencies as to:
 - (a) Any and all promises, rewards and inducements made to all witnesses herein, whether or not they have testified before any state or federal Grand Jury, or other investigative agency, and regardless of whether they will testify at the trial herein.
 - (b) Any offers or grants of immunity in this case to any witness from loss of property, fine, forfeiture, prosecution, or punishment in this or any other case, related or otherwise.
 - (c) Whether any witness called before the Grand Jury or who has or will give testimony to any investigative agency or at trial has ever been psychiatrically hospitalized or undergone psychiatric examination, treatment, mental status examination or care, and, if so, a list of names and addresses of the psychiatrists, hospitals and copies of any and all relevant records and reports.
 - (d) Any "inconsistent" statements of a particular witness or between witnesses.
 - (e) Any and all "rap" sheets or histories of arrests or convictions of any unindicted co-conspirator or State witness.
- (10) In addition, Defendant requests copies of any and all memoranda, reports and correspondence to and from the various law enforcement agencies of the United States and all state, county, municipal and local law enforcement agencies regarding the investigation herein.
- (11) Defendant also contends that he is entitled to any statement or admissions by a witness for or on behalf of the State with respect to the witness' memory of loss thereof.

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- (12) Defendant contends that this Court should specifically direct the Government in the spirit of fairness and equity, seek and produce for Defendant the documents, letters, records and other items sought, irrespective of the State's determination of whether a witness' statement or a particular letter or exhibit can "help" the Defendant. The Defendant and his attorney, not the Solicitor, ought to be the judge of his defense and the documents relevant thereto and necessary in support of same.
- (13) To the extent that specificity is required to demonstrate the materiality of the requested information, see United States v. Agurs, 427 U.S. 97 (1976), the Defendant submits that this requirement is satisfied in this motion.
- (14) To disclose to counsel for the defense any and all evidence in the actual or constructive possession of the State which is of a favorable character for the Defendant in this case and material to the issue of guilt or innocence or to punishment in this case, pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution, including, but not limited to, the following materials:
- (a) Any oral, written or recorded statements made by any person to the police, to the Solicitor, or to the Grand Jury which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit or contradict the testimony of any witness whom the Government will call at the trial of the case. Brady v. Maryland, 373 U.S. 83 (1963).
 - (b) Any police investigation report made to the police which tends to establish the Defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the State will call at the trial of the case. Giles v. Maryland, 386 U.S. 66 87 S.Ct. 793 (1967).
 - (c) The names and addresses of witnesses who might establish the Defendant's innocence, mitigate punishment, or impeach, discredit, or contradict the testimony of any witness whom the State will call at the trial of the case.
 - (d) The names of any other person who may have been charged for the same crime that the Defendant is charged with.
 - (e) The results of and report as to the circumstances surrounding any polygraph test that may have been administered to the Defendant or any other witness in the case.
 - (f) The results of, report as to the circumstances surrounding, and the method and guidelines which were followed during any line-up or show-up in the case, photographic or otherwise.
- (15) Furthermore, if the above named charge is DUI or DUI-related the Defendant requests, pursuant to S.C. Code § 56-5-2930 et. seq.:
- (a) A written report by the arresting officer including the time of arrest, the time of any tests, and the results of any tests, pursuant to S.C. Code § 56-

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- (b) The qualifications of any individual who administered tests or took samples, pursuant to S.C. Code § 56-5-2950.
 - (c) A detailed record of malfunctions, repairs, complaints, or other problems regarding breath testing devices, pursuant to S.C. Code § 56-5-2954.
 - (d) Videotape of the Defendant's conduct at the incident site and the breath testing site, pursuant to S.C. Code § 56-5-2953.
 - (e) Documentation that the Defendant was notified of his right to all hearings provided for under S.C. Code § 56-5-2950.
 - (f) The results of the eight one-hundredths of one percent simulator test which is required under S.C. Code § 56-5-2950.
 - (g) Any other materials which the Defendant is entitled to under law.
- (16) Furthermore, if there are any controlled substances or other substances regulated by Title 44, Chapter 53 of the Code of Laws or 61-4 of the Department of Health and Environmental Control, or any evidence requiring chain of custody, the Defendant objects to any chain of custody being proven by written affidavit and insists upon the establishment of the chain of custody by live testimony of all parties concerned, pursuant to Rule 6(b) of the South Carolina Rules of Criminal Procedure.
- (17) The Defendant also objects to any physical evidence of a controlled substance or other substance regulated by Title 44, Chapter 53 of the Code of Laws or 61-4 of the Department of Health and Environmental Control being established by report of a chemist or analyst, and insists upon the establishment of any such physical evidence by live expert testimony, pursuant to Rule 6(a) of the South Carolina Rules of Criminal Procedure.
- (18) This request is a continuing request for all such discoverable information as it becomes known to the Solicitor or any Prosecution agents.
- (19) The Defendant hereby asserts his Fifth Amendment right to remain silent and Sixth Amendment right to counsel, and does not wish to be questioned in the absence of counsel, pursuant to McNeil v. Wisconsin, 111 S. Ct. 220 (1991) and Edwards v. Arizona, 451 U.S. 477 (1981), U.S. 477(1981), U.S. Constitution Amend. V and VI, S.C. Constitution Art. I 3, 12, 14.

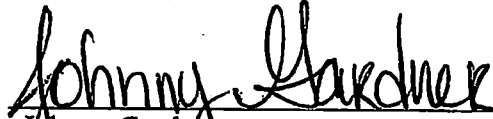
For purposes of this motion, the Defendant asserts that any item requested in the above paragraphs is material to the preparation of the defense in this case.

The Defendant further moves that compliance with the foregoing request be made within thirty (30) days from the service of this motion, and upon failure of the prosecution to so comply, the Defendant will move before the Presiding Judge of this Court, by Notice and Motion, for an Order prohibiting the prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an Order permitting the discovery and inspection requested, or a continuance of the trial, or such Order as the Court in its discretion deems just under the

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circumstances.

The Defendant hereby asserts his right to a speedy trial, under the Sixth and Fourteenth Amendments of the United States Constitution and Article One, Section Fourteen of the South Carolina Constitution.



Johnny Gardner
Attorney for the Defendant
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Conway, SC 29526
Phone: (843) 248-7135
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Conway, South Carolina

Dated: _____

1/14/19

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