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**IN THE COMMON PLEAS COURT OF SCIOTO COUNTY
PORTSMOUTH, OHIO**

STATE OF OHIO, :
 :
 PLAINTIFF, : CASE NUMBER: 09-GR-001
 :
 - VS - : JUDGE HOWARD HARCHA
 :
 KARA GARVIN, : DEFENDANT'S MOTION NO. 87
 :
 DEFENDANT. :

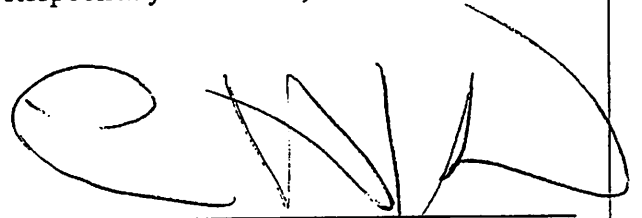
MOTION TO EXCLUDE TESTIMONY OF WITNESSES

Now comes Kara Garvin, through her counsel Charles H. Knight and William N. Eachus, who moves this Court to exclude certain witnesses to-wit: Anthony Stapleton and James Damron from testimony in trial of this proceeding on the basis that the State of Ohio has disclosed the written summary of each crucial witness by mail on October 22, 2009, although having said summary in its possession since December 22, 2008. Said summary discloses statements of both "eyewitnesses" which are both relevant to the defendant and not provided under open discovery promised by the State and ordered by this Court for over nine months in violation of Ohio Crim. R. 16 as well as being exculpatory evidence required to be disclosed under the same rule as well as by the Constitutions of the United States and Ohio guaranteeing due process, effective assistance of counsel, and the right of confrontation. Additionally, this statement is required to be disclosed under Brady v. Maryland, 373 U.S. 83 (1963).

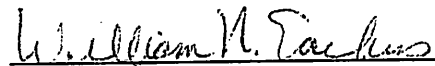
Additionally, the above referenced statement was only disclosed after the defendant filed the pending motions for determination of competency of witness Stapleton and the Motion to Suppress Eyewitness Testimony of both witnesses and after the most recent hearing where the trial date herein was continued from November 2, 2009.

A statement of facts and memorandum of law is attached hereto and made a part hereof.

Respectfully submitted,



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STATEMENT OF FACTS AND MEMORANDUM OF LAW

The incident which is the subject matter of this criminal case occurred in the evening hours of December 22, 2009, at 6:15 PM.

Defendant Garvin voluntarily reported to the Scioto County Sheriff's Office at approximately 11:00 PM in the presence of counsel.

Witness Stapleton, a 6 year old relative of the decedents, was interviewed by Paul Blaine of the Scioto County Sheriff's Office on Snook Road (street of the shooting) within 2 hours of the incident and, at that interview, purportedly related a description of the assailant, including height, weight, clothing, handgun, and shoes.

Witness Damron was interviewed at the same general location and time and purportedly stated a description of the vehicle involved and described a "dark haired female" as the driver. At a later time but still that evening, Blaine spoke with witness Damron by telephone who responded that he "could not identify the driver except she had long dark hair".

On an undisclosed date subsequent but reasonably interpreted as the next day, Blaine, and a Captain Hall showed "the" lineup to witness Damron who "immediately picked Garvin out" and denied "watching television".

On October 16, 2009, the defendant and all counsel appeared in court and the defendant filed her motions to suppress identification based upon the evidence disclosed over the prior nine months of discovery as well as upon the review by counsel of the "entire file" of the Sheriff and the duplication of that file provided by the State of Ohio for which counsel for the defendant appeared at the Office of the Prosecutor to personally review and then obtain.

On October 21, 2009, the State of Ohio certified that he "personally handed to counsel for the defendant, Charles Knight" the Blaine statement.

On October 22, 2009, the State of Ohio or its agent mailed to Attorney Knight the statement

at issue and said statement was received by U.S. Mail on Saturday October 24, 2009, at counsel's Pomeroy, Ohio office.

Counsel Knight immediately reviewed that statement, again reviewed the Sheriff's file disclosed and discovered the statement was not contained within the previously disclosed file.

On Monday, October 24, 2009, counsel Knight forwarded by facsimile the statement to co-counsel Eachus and his review confirmed the previously undisclosed nature of this written summary of two crucial "eyewitnesses" who are the only links of Garvin to the scene of this incident.

MEMORANDUM OF LAW

Ohio Rule of Criminal Procedure 16 governs the discovery requirements herein:

(f) Disclosure of evidence favorable to defendant. Upon motion of the defendant before trial the court shall order the prosecuting attorney to disclose to counsel for the defendant all evidence, known or which may become known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment. The certification and the perpetuation provisions of subsection (B)(1)(e) apply to this subsection.

(D) Continuing duty to disclose. If, subsequent to compliance with a request or order pursuant to this rule, and prior to or during trial, a party discovers additional matter which would have been subject to discovery or inspection under the original request or order, he shall promptly make such matter available for discovery or inspection, or notify the other party or his attorney or the court of the existence of the additional matter, in order to allow the court to modify its previous order, or to allow the other party to make an appropriate request for additional discovery or inspection.

Further, the defendant has the constitutional right to effective assistance of counsel, due process of law, and the right to fully confront the witness against her under Amendment VI of the United States Constitution which are effective against the State of Ohio under Amendment XIV of the United States Constitution. These same rights are protected for the defendant under the Ohio Constitution Article I, Section 10.

Additionally, the contents of this dramatically late provided summary are exculpatory to the defendant and said disclosure is mandated under penalty of reversal under Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

Defendant asserts that all testimony of these witnesses must be excluded as violative of defendant's right to a fair trial and effective assistance of counsel as well as the denial of defendant's right to confront the witnesses against her.

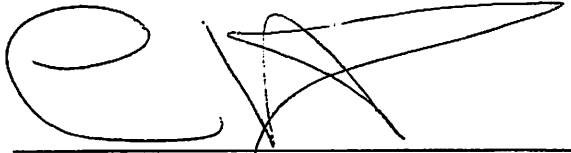
Due process requires that the government not suppress evidence favorable to the Accused or discrediting to its own case and, upon request, that it disclose to the defense all such information. Brady v. Maryland, 373 U.S. 83 (1963). See also Mooney v. Holohan, 294 U.S. 103 (1935); Plye v. Kansas, 317 U.S. 213 (1942); Banks v. State, 218 S.E.2d 851 (Ga. 1975). This requirement of candor by the State encompasses information which bears upon the credibility of its witnesses as well as matters more directly material to guilt or innocence. Napue v. Illinois, 360 U.S. 264 (1959); Giglio v. United States, 405 U.S. 150 (1972). The prosecution has an affirmative duty to produce requested impeachment evidence that is favorable to the accused. United States v. Chitty, 760 F.2d 425 (2nd Cir. 1985). "[D]ue process can be denied by failure to disclose alone." United States v. Hibler, 463 F.2d 455, 459 (9th Cir. 1972) (collecting cases). Since the prosecution is more likely than the defense to be aware of information impeaching as to its own witnesses, it is only fitting that it have the duty to disclose.

In United States v. Bagley, 473 U.S. 667 (1985), the Court reiterated that the failure to disclose material evidence that is favorable to the defense is a constitutional violation. Further, the Court noted that "[i]mpeachment evidence . . . as well as exculpatory evidence, falls within the Brady rule." Bagley, at 676. The government's duty to disclose impeaching information, of course, extends to the full range of permissible inquiry by defense counsel upon cross-examination. United States v. Agurs, 427 U.S. 97, 106 (1977).

The United States Supreme Court, speaking through Chief Justice Burger, has underscored the importance of the Accused's right to exact a searching cross-examination of this accusers and the legitimacy of searching out possible biases, prejudices, and ulterior motives of the witness:

A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices, or ulterior motives of the witness as they relate directly to issues of personalities in the case at hand. The partiality of a witness is subject to exploration at trial, and is 'always relevant as discrediting the witness and affecting the weight of his testimony'. 3A J. Wigmore, Evidence Section 940, p. 775 (Chadbourn rev. 1970). We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. Green v. McClory, 360 U.S. 474, 496 (1959).


Davis v. Alaska, 415 U.S. 308, 316 (1974) (footnote omitted). Thus, the defense must be given wide latitude in discovery of matters related to impeachment, especially when a defendant's life is on the line.



Charles H. Knight

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION TO EXCLUDE TESTIMONY OF WITNESSES, was served upon the the office of the Scioto County Prosecutor's Office, 602 Seventh Street, Room 310, Portsmouth, Ohio 45662, by regular U.S. Mail this _____ day of October, 2009.



Charles H. Knight