

IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY,  
STATE OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
_____	)	Case No. CF-
	)	Judge
Defendants.	)	
	)	

**DEFENDANT'S COMBINED MOTION FOR DISCOVERY AND  
PRODUCTION OF EXCULPATORY EVIDENCE  
AND MATERIALS AND BRIEF IN SUPPORT**

COMES NOW \_\_\_\_\_, the Defendant in the above-styled case, by and through her attorney of record, and moves this Court, pursuant to 22 O.S. §§ 2001 *et seq.* (the "Oklahoma Criminal Discovery Code"); *Allen v. District Court of Washington County*, 803 P.2d 1164 (Okla.Cr.1990); *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the Fifth, Sixth and Fourteenth Amendments to the United States Constitution; Article II, §§ 7, 17, 18, 19, 20, 21 and 30 of the Oklahoma Constitution; and Titles 12, 21 and 22 of the Oklahoma Statutes, for an order directing the State to produce for inspection and copying the following, which are known to, or in the possession of, the State or any of its agents, or which through due diligence would become known from the investigating officers or witnesses or persons having knowledge of any aspect of this case.

**DEFINITIONS**

By reference to the "State of Oklahoma" herein, this motion seeks the production of material and information in the possession or control of members of the prosecutor's staff, any information in the possession of law enforcement agencies that regularly report to the prosecutor of which the prosecutor should reasonably know, and any information in the possession of law enforcement agencies who have reported to the prosecutor with reference to the particular case of which the prosecutor should reasonably know. *See* 22 O.S. §§ 2001 *et seq.*

**DISCOVERY REQUESTS**

The Defendant respectfully requests the State to disclose the following information:

1. WITNESS INFORMATION:

- (a) The names and addresses of witnesses which the State intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement. *See* 22 O.S. §§ 2001 *et seq.*;
- (b) The names, addresses and telephone numbers for persons having knowledge of the facts or relevant information concerning this case. *See Allen, supra*;
- (c) The names and addresses of any and all persons having knowledge of the circumstances of this case, or who were interviewed by the Government or its agents in connection with this case. *See Allen, supra*;
- (d) The identity, all known aliases, and the whereabouts of any person who supplied the State with confidential information which was based on his or her participation in any alleged conspiracy, and/or which led to the arrest of Defendant;

- (e) The names and addresses of all identification witnesses in this case;
- (f) The time and place of any photographic and/or corporal identification by identification witnesses; and
- (g) Any and all written notes of any statements made by any identification witness who viewed an alleged co-defendant or co-conspirator (whether charged or not) in a line-up, show up, or photographic show-up.

## 2. DEFENDANT'S STATEMENTS AND DOCUMENTS:

- (a) Any and all written and/or recorded statements made by or purported to be made by the Defendant, either before or after the Defendant's arrest, either to State agents or to third parties, whether or not the State intends to introduce such statements at trial, and the substance of any oral statements made by the accused or made by co-defendants. *See Watts v. State*, 487 P.2d 981 (Okl.Cr.1971); *Clewis v. Texas*, 386 U.S. 707, 87 S.Ct. 1338, 18 L.Ed.2d 423 (1967); 22 O.S. §§ 2001 *et seq.*;
- (b) The substance of any oral statement attributed to the Defendant, whether made before or after the Defendant's arrest, whether or not the State intends to introduce evidence of such statement at trial. 22 O.S. §§ 2001 *et seq.*;
- (c) The substance of any and all statements which the State alleges are admissible as statements of any co-conspirator, made during the course of and in furtherance of an alleged conspiracy which are intended to be offered in evidence at trial;
- (d) Any and all tape recordings of telephone conversations including transcripts, to which the Defendant or any alleged co-conspirators are purported to be a party;
- (e) Any and all documents, instruments or forms of any kind signed or purported to have been signed by the Defendant. *See Application of Killion*, 338 P.2d 168 (Okl.Cr.1959);
- (f) Any and all documents, instruments or forms of any kind signed or purported to have been signed by any alleged co-conspirator;
- (g) The original of any and all tape recordings of conversations (telephonic, live, radio transmitted or by other means) between the Defendant and any law enforcement agent investigating the Defendant in this matter or any other matter. *See Application of Killion*, 338 P.2d 168 (Okl.Cr.1959);
- (h) Copies of all "documents" (defined in 12 O.S. § 3234) signed by the Defendant which the State may claim are part of an alleged conspiracy. *See Application of Killion*, 338 P.2d 168 (Okl.Cr.1959);
- (i) Copies of any "documents" (as defined in 12 O.S. § 3234), whether or not signed by the Defendant, which the State may claim as part of an alleged conspiracy. *See Application of Killion*, 338 P.2d 168 (Okl.Cr.1959); and
- (j) All unsworn statements of the Defendant, recorded or written, pursuant to *White v. State*, 498 P.2d 421 (Okl.Cr.1972); *Allen, supra*; *Doakes v. District Court*, 447 P.2d 461 (Okl.Cr.1968).

3. WITNESSES' STATEMENTS AND DOCUMENTS: Any and all written statements of (1) any witnesses concerning the subject matter of this case, the transaction in question, the Defendant, any co-conspirator (charged or uncharged), or any co-defendant and/or (2) the condition and situation existing at the scene of the alleged offense. *See Coleman v. Maxwell*, 14 Ohio Misc. 200, 273 F.Supp. 275 (S.D.Ohio 1967); *United States v. Rutkin*, 212 F.2d 641 (3d Cir.1954).

#### 4. LAW ENFORCEMENT REPORTS & DOCUMENTS:

- (a) Any and all investigative and/or offense reports. 22 O.S. §§ 2001 *et seq.*;
- (b) Any reports or statements made by experts in connection with the particular case, including the results of physical or mental examinations and of scientific tests, experiments, or comparisons, and any and all memoranda, reports, summaries, records or documents reflecting the results of laboratory tests performed, whether or not the State intends to utilize the results of same at trial, where the foregoing results are in the possession, custody or under the control of the State. *See Stevenson v. State*, 486 P.2d 646 (Okla.Cr.1971); 22 O.S. §§ 2001 *et seq.*; *Stafford v. District Court of Oklahoma County*, 595 P.2d 797 (Okla.Cr.1979);
- (c) Any results of fingerprint and palm print tests conducted which relate to the subject matter of the instant case, whether or not the State intends to utilize the test results at the time of trial, where the foregoing results are in the possession, custody or under the control of the State. Such information or results should include any reports or statements made by experts in connection with the particular case, including the results of physical examinations and of scientific tests, experiments, or comparisons, and any and all memoranda, reports, summaries, records or documents reflecting the results of laboratory tests performed, whether or not the State intends to utilize the results of same at trial, where the foregoing results are in the possession, custody or under the control of the State. *See Stevenson v. State*, 486 P.2d 646 (Okla.Cr.1971);
- (d) A copy of each search warrant and each affidavit in support thereof, each arrest warrant and each affidavit in support thereof, and/or other process utilized in the present case. Also, any returns, inventories and/or transcripts of testimony. *See* 22 O.S. § 749;
- (e) Any and all oral statements or memoranda, summaries, recordings, stenographic recordings, telephonic recordings *and transcriptions* of the foregoing of any witnesses or persons, whether or not the oral statements (in whatever form) are admissible at trial and/or relate to the testimony of the witnesses at trial (if called to testify). *See Coleman v. Maxwell, supra.* and *U.S. v. Rutlin, supra*;
- (f) An inventory of all items seized in relation to the investigation of this matter. This request shall include but not be limited to all original inventories, drafts of inventories, and notes taken by all law enforcement officers during *each* and *every* search of the Defendant's automobile(s), person, residence(s), shop(s), garage(s), or at the scene(s) of arrest or curtilage(s) of residences, shops, garages, or scenes of arrest;
- (g) Any and all waivers signed by Defendant, including but not limited to a waiver to search the residences, shops, garages, or curtilages; or automobiles; or for questioning pursuant to *Miranda*;
- (h) All items seized during *any* search of Defendant's automobiles; person; residences, shops, garages, or curtilages; or scenes of arrest. Such items shall include but not be limited to all items noted on the inventory and any other items seized by law enforcement agents and/or any other person on the scene during the various searches of the Defendant's person; automobiles; residences, shops, garages, or curtilages; and scenes of arrest;
- (i) Any and all contraband (including but not limited to controlled dangerous substances, chemicals, drug paraphernalia, glassware, and any other contraband) and all containers seized from the Defendant's person; automobiles; residences, shops, garages, or on the curtilages; or at the scenes of arrest in regard to this investigation. *See Application of Killion, supra*;
- (j) All law enforcement radio logs, reports, charts, diagrams, photographs, or other written documents (including computer tapes, graphic information, and other electronically stored or recorded information) booking and/or arrest records made pursuant to this investigation to which attorney work product is not claimed;
- (k) All notes or reports to be used by law enforcement officers to refresh their memories;
- (l) All records, reports, and photographs reflecting the manner and the mode in which the State conducted any and

all pre-trial identification proceedings. This request includes, but is not limited to, any "live" line-ups, show-ups, or photographic show-ups, or any other proceeding or investigation during which a State's witness was given the opportunity to view the accused or a photograph of the accused for the purpose or with the result of making an identification of a suspect, whether an identification was or was not made. *Thompson v. State*, 438 P.2d 287 (Okl.Cr.1968); *Wade v. United States*, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967); *Allen v. District Court*, 803 P.2d 1164; and

(m) All material and real evidence including copies of fingerprints, instruments, clothing, or paraphernalia relating to the charge(s) filed against this Defendant. *Layman v. State*, 355 P.2d 444 (Okl.Cr.1960).

#### 5. DOCUMENTS:

(a) Any and all books, papers, documents, written statements, accounts, letters, photographs, tapes (including but not limited to audio and video), films, weapons, bullets, or any tangible object or thing, building or places, whether exculpatory or inculpatory for the Defendant, that were solicited, obtained or seized by any person or agency *from the Defendant or belonged to Defendant*, whether or not said tangibles are utilized by the State during any aspect of the investigation of this case, where said tangible objects or things are in the possession, custody or control of the State. *See Allen, supra*; 22 O.S. §§ 2001 *et seq.*;

(b) Any and all books, papers, documents, written statements, accounts, letters, photographs, tapes (including but not limited to video and audio), films, or any other tangible object or thing, whether exculpatory or inculpatory for the Defendant, that were solicited, obtained or seized by any person or agency *from any complainant or witness* to this case or belonged to witness, whether or not said tangibles are utilized by the State during any aspect of the investigation of this case, where said tangible objects and things are in the possession, custody or control of the State. *See Allen, supra*; and

(c) Any and all books, documents, written statements, accounts, letters, photographs, tapes (including but not limited to video and audio), films, weapons, bullets, or any other tangible object or thing, whether exculpatory or inculpatory to the Defendant, that were solicited or seized by any person or agency *from the scene of the alleged offense*, whether or not said tangibles are used by the State during any aspect of the investigation of this case where said tangibles and things are in the possession, custody or control of the State. *See Allen, supra*.

6. PHOTOGRAPHS & FILMS: A copy of pictures, photographs, snapshots, mug shots, movies, films, video tapes or any other replicas or likenesses of the Defendant made at the time of arrest or any time subsequent to the arrest of Defendant.

7. CRIME SCENE PHOTOGRAPHS: Copies of any and all photographs or video tapes, or any other reproduction, made at or near the scene of the alleged crime by any photographer or police officer, highway patrolman, District or Assistant District Attorney, or any other person acting under the supervision and control of the State and for its benefit. *Layman v. State*, 355 P.2d 444 (Okl.Cr.1960).

8. RECORDINGS & TAPES: Any and all evidence in the form of tapes (including but not limited to video and audio) and or wire recordings or transcriptions of conversations to which the Defendant, complaining witness or any other witness was a party, which recordings were obtained as a result of bugging, electronic eavesdropping or wire tapping, including conversations overheard or evidence secured as a result of such conversations. *See Coleman v. Maxwell, supra*.

9. DEFENDANT'S RAP SHEETS: Any record of prior criminal convictions of the Defendant, or any co-defendant, including but not limited to OSBI or FBI rap sheets/records check. *See Allen, supra*; *Stafford v. State*, 595 P.2d 797 (Okl.Cr.1979); 22 O.S. §§ 2001 *et seq.*

10. WITNESSES' RAP SHEETS: OSBI or FBI rap sheets/records check on any witnesses listed by the State or the defense as possible witnesses who will testify at trial, including confidential informants. *See Allen and Stafford, supra*; 22 O.S. §§ 2001 *et seq.*

11. EXCULPATORY MATERIAL: Any material or information within the State's possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment of the accused. 22 O.S. §§ 2001 *et seq.* The Defendant hereby requests all favorable information or exculpatory information in the possession or control of the State. *See Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); *Allen, supra*; *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). This request for favorable information and/or exculpatory information (whether or not admissible) includes but is not limited to:

(a) *Inconsistencies*. Distinctions between testimony at the preliminary hearing or material points and statements given to police or other law enforcement officers or the District Attorney's Office;

(b) *Inconsistencies*. Differences in identification given to law enforcement and testified to at preliminary hearing;

(c) *Favorable documents*. Any and all books, papers, documents, statements, results of scientific or forensic tests, photographs, video or audio tapes, films or movies, sketches or drawings, or tangible objects, which are in the possession, custody or control of the State which are material to the preparation of the Defendant's defense, including but not limited to all currency, documents, instruments or other writing obtained from the Defendant or others;

(d) *Suspects*. Any evidence that someone else may have been involved or perpetrated the alleged criminal act;

(e) *Statements and/or confessions*. Any and all exculpatory or inculpatory written and/or oral confessions or statements or admissions (whether or not reduced to writing or recording (audio or video)) presently in the possession, custody or under the control of the State, its agents or agencies, made by the Defendant to an agent of the federal government and/or any state, county or municipal government, said statements, confessions or admissions being made at any time;

(f) *Defendant's statements*. Any and all statements of Defendant, including State's witnesses, including statements which are in conflict with each other and in conflict with other information known to State prosecutors and/or investigative agents, or which are exculpatory as to the moving Defendant;

(g) *Warrants*. All warrants which have been executed in this case and all papers accompanying the warrants including affidavits, returns, inventories, and transcripts of testimony. *See Allen and Stafford, supra*;

(h) *Impeachment material*. All information which may impeach any of the State's witnesses or the State's theory of the case;

(i) *Evidence helpful or favorable to the defense*. All information which may be helpful or favorable in the preparation of the defense;

(j) *Identity and location*. Names and addresses of persons with possible favorable testimony, including but not limited to alibi information, information that sources other than the Defendant may have been involved, information that the Defendant is not guilty of the crime charged, information that the Defendant may have committed a lesser offense, etc.;

(k) *Witnesses' prior bad acts or conduct*. All information, including but not limited to RAP sheets that would reveal or evidence witnesses' or informants' bad reputation, bad acts, misconduct, allegations of false statements, etc., which may reflect on the witness' credibility or vulnerability to cross-examination and/or to prosecution, including prior perjurious statements or involvements in other crimes. *See Allen and Stafford, supra*;

(l) *Leads*. All physical evidence, information, documents, statements or notes which may lead to evidence which is exculpatory;

(m) *Waivers by the Defendant.* The Defendant requests the State to reveal any and all waivers of constitutional rights executed by the Defendant, including but not limited to any "Miranda card," search warrant waiver, arrest warrant waiver, or other waivers;

(n) *Witness statements.* The Defendant requests copies of all witness statements (written, oral or recorded in any way) given to the State and/or any of its agents in relationship to the above-styled case. If no such written or recorded statement is available, a meaningful summary of each is requested;

(o) *Exhibits, scientific and technical reports.* The Defendant requests the State to allow him to inspect and/or copy State's exhibits and technical and scientific reports upon which it will rely for a conviction, including reports of expert's opinions or information upon which the expert will rely. The Defendant also requests copies of such exhibits and reports where feasible;

(p) *Electronic recordings or eavesdropping.* Defendant requests to be informed of *all* electronic recordings or eavesdroppings conducted pursuant to the investigation of this case which includes a list of tape recorded interviews of witnesses. Also, the Defendant requests copies of all such recordings *and transcripts* where available;

(q) *Polygraph information.* The Defendant requests all questions asked, background information given to, or by the subject of the polygraph test, written or oral reports summarizing the examinations, any transcription of the specific questions and answers given and the operator's evaluation of any individual who is given such examination in reference to this case;

(r) *Law enforcement photographs.* The Defendant requests all photographs taken by agents of the Plaintiff pertaining to this case and requests permission to inspect and copy said photographs;

(s) *Bad acts alleged against the Defendant.* Any so-called "bad acts" or "other wrongs" or "other crimes" allegedly committed by this Defendant and her co-defendant or "co-conspirators" which could be used by the State in prosecution of her should be revealed to the Defendant;

(t) *Photocopies of correspondence.* Photocopies of all correspondence to and from the Defendant at the jail, including those to and from her attorney, which may have been opened and photocopied by the State or notes made of those contents;

(u) *Scientific Tests.* The results of all chemical and field tests administered to Defendant whether or not the results have been recorded, together with the name of the person who administered the test and the time, location and circumstances under which the test was given;

(v) *Laboratory examinations.* All laboratory tests, reports and laboratory submittal forms concerning any examination or scientific test used in this case;

(w) *Reports of examinations/tests.* Copies of the results or reports of scientific tests, experiments, demonstrations, models or comparisons made in connection with this particular case which are known to and obtainable by the Plaintiff, State of Oklahoma, and within the possession, custody or control of any agency of the Plaintiff and which are material to the preparation of the defense or are intended for use by the prosecuting attorney as evidence in the trial or which may be exculpatory. Specifically, but without limitation, Defendant requests copies of the material with respect to any scientific reconstruction or attempted reconstruction of the crime scene or the circumstances leading to the crime;

(x) *Inventories.* The complete inventory of all articles or items in possession of the State relating to the charges against the Defendant;

(y) *Fingerprints.* All reports concerning fingerprints and palm prints;

(z) *Press information/releases.* In the event the State and/or any of its agents have released information to the press

concerning this incident, defense counsel requests to be informed of the information, pictures, etc., released and a distribution list of persons to whom such information was revealed;

(aa) A list of all persons interviewed by any law enforcement agency concerning this crime, their addresses and the summaries of their statements; and

(bb) The right to inspect and copy Defendant's initial arrest record, booking record, jail register, and police blotters and radio logs on the date(s) of the alleged crime.

12. SWORN STATEMENTS: Pursuant to 22 O.S. § 749, the Defendant requests that the State produce all sworn statements taken by law enforcement agencies.

13. UNSWORN STATEMENTS: Pursuant to *White v. State*, 498 P.2d 421, the Defendant requests that the State produce all unsworn statements of the Defendant, recorded or written. *See also, Allen, supra; Doakes v. District Court*, 447 P.2d 461 (Okl.Cr.1968).

14. WITNESSES' STATEMENTS: Pursuant to 12 O.S. § 2613, the Defendant respectfully requests all statements of witnesses, including but not limited to unsworn statements by witnesses.

15. PROMISES TO WITNESSES: The Defendant respectfully requests the State to identify any promises of leniency or offers of leniency made to any witnesses, co-defendants, or confidential informants in exchange for their testimony, including the substance of any and all statements or discussions had with any witness, informant, any co-defendant or any alleged co-conspirator in this case or with any such persons' counsel indicating an offer or a promise or suggestion of leniency, compensation, assurance not to prosecute, agreement to proceed only on certain counts of an indictment or information, representations with respect to yet uncharged misconduct, or any benefit whatsoever occurring to said individuals, their relatives, or "significant others" in exchange for their cooperation, assistance or testimony at the trial of this case. Any promises or suggestions relating to tax returns or tax benefits (state or federal) are included in this request. *See Ring v. United States*, 419 U.S. 18, 95 S.Ct. 164, 42 L.Ed.2d 29 (1974); *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972); *Howard v. State*, 738 P.2d 543 (Okl.Cr.1987); *Perry v. State*, 764 P.2d 892 (Okl.Cr.1988). The Defendant requests the State to identify any representations to witnesses made by the State or its agents, even if such representations do not constitute a consummated plea agreement. *See State v. Lindsey*, 621 So.2d 618 (La.App.), *cert. denied* 629 So.2d 417 (La.1993).

16. PAYMENTS TO WITNESSES: Records of any payment or compensation or reimbursement of expenses to any confidential informant or witness, including all information set forth in Paragraph 15 above.

17. BAD ACTS MATERIAL: All records relating to the arrests and/or convictions of confidential informants or witnesses. Such records shall include but are not limited to all records, offense reports, arrest reports, insurance reports or any other record describing or reporting the charges or offense. *See Allen, supra*.

18. NOTICE OF OTHER CRIMES, TESTIFYING WITNESSES, AND EVIDENCE ADMISSIBLE AGAINST THIS DEFENDANT: Under 12 O.S. § 2404(B); *Burks v. State*, 594 P.2d 771 (Okl.Cr.1979).

19. EXPERT RECORDS: Any and all examination reports prepared by any State agency, including but not limited to the Oklahoma State Bureau of Investigation, the Medical Examiner's Office (county and/or state), the McClain County Sheriff's Office, and other experts or agencies (federal or state). *See Stevenson v. State*, 486 P.2d 646 (Okl.Cr.1971); 22 O.S. § 2001.

20. SCOPE OF DISCOVERY: The discovery requests outlined above shall extend to material in the possession or control of the State, members of the prosecutor's staff and any others who regularly report, or with reference to the particular case, have reported to the prosecutor's office. *See Allen*, 802 P.2d at 1168.

21. The Defendant requests the Court to make its order continuing so that if additional information comes to the attention of or to the possession, custody or control of the State, its employees or agents, the State must make a prompt and timely disclosure, in writing, to the Defendant and that the order contain language that the prosecution has a duty and responsibility to make a thorough and diligent inquiry of all appropriate State agencies to insure compliance with the orders entered herein. 22 O.S. §§ 2001 *et seq.*

22. That the notice of compliance and the method of compliance be reduced to writing, filed and made a part of the records herein and a copy of the Discovery Order served upon counsel for the State and Defendant(s).

**PRAYER FOR RELIEF**

WHEREFORE, premises considered, Defendant prays that this Court:

(1) grant this Motion for Discovery and Inspection and order the State, or all agents, associates, and assistants of the aforesaid and any and all such authorities who investigated the alleged offense made the basis of the complaints and/or Information against the Defendant herein to appear;

(2) compel the production of any and all items, documents, material and evidence and to disclose any and all witnesses and their statements material to the defense of the Defendant as set forth in and specified herein at least forty-five (45) days before trial;

(3) to enter any and all orders necessary to effectuate the discovery of the matters requested in this Motion for Discovery and Inspection;

(4) to order the Discovery Order to be continuing in the event new or additional information comes to the Plaintiff's attention; and

(5) for such other and further relief as the Court may deem proper and appropriate.

DATED this    day of \_\_\_\_\_, 200\_.

Respectfully submitted,

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

The undersigned certifies that on \_\_\_\_\_, 200\_ a true and exact copy of the foregoing was delivered to the office of the Tulsa County District Attorney.

\_\_\_\_\_