

FULTON COUNTY SUPERIOR COURT
STATE OF GEORGIA

STATE OF GEORGIA,

V.

KENNETH CHESEBRO *ET AL.*,

DEFENDANTS.

CASE No. 23SC188947

JUDGE MCAFEE

**CONSOLIDATED MOTIONS AND DEMANDS
FOR DISCOVERY; IN-CAMERA INSPECTION;
PRESERVATION OF EVIDENCE; COMPLETE RECORDATION
OF ALL PROCEEDINGS AND RESERVATION OF RIGHT
TO FILE ADDITIONAL MOTIONS**

COMES NOW the Defendant in the above-styled case and hereby moves this honorable Court to grant Defendant's motions and demands as set forth herein.

Respectfully submitted, this the 23rd day of August, 2023.

/s/ Scott R. Grubman
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NOTICE OF DEFENDANT'S ELECTION TO PROCEED
UNDER O.C.G.A. § 17-16-1 ET SEQ.

COMES NOW the Defendant named in the above-styled case and hereby provides written notice, pursuant to O.C.G.A. § 17-16-2(a) and elects to have the provisions of O.C.G.A. § 17-16-1 et seq. apply to Defendant's case.

REQUESTS BY DEFENDANT FOR PRODUCTION
OF DISCOVERABLE MATERIAL PURSUANT TO O.C.G.A. §
17-16-1 ET SEQ.

COMES NOW the Defendant in the above-styled case, having elected to have the provisions of O.C.G.A. § 17-16-1 et seq. apply to Defendant's case, and hereby formally requests in writing that the State disclose to the Defense or produce to the Defense for inspection, copying, photographing, examination, testing or analysis the following:

1. Prior to arraignment, a true and correct copy of the indictment and list of witnesses applicable in Defendant's case pursuant to O.C.G.A. § 17-16-3.
2. A complete and accurate list of witnesses including but not limited to any and all names and aliases, current locations, dates of birth, social security numbers and telephone numbers pursuant to O.C.G.A. § 17-16-8.
3. Any and all statements required to be produced pursuant to O.C.G.A. § 17-16-4(a)(1).
4. A true and correct copy of Defendant's Georgia Crime Information Center criminal history pursuant to O.C.G.A. § 17-16-4(a)(2).
5. Any and all books, papers, documents, photographs, tangible objects, audio and video tapes or films, recordings, buildings and other places controlled by the State and any other items as

described or contemplated in O.C.G.A. § 17-16-4(a)(3).

6. Any and all results and/or reports of physical and/or mental exams and of any and all scientific tests including, but not limited to any summaries indicating the basis for any expert opinion rendered in said reports pursuant to O.C.G.A. § 17-16-4(a)(4).

7. Any and all statements of any and all witnesses intended to be called at trial or any pre-trial or post-trial hearing pursuant to O.C.G.A. § 17-16-7.

MOTION FOR DISCOVERY, INSPECTION, PRODUCTION
AND COPYING OF EVIDENCE FAVORABLE TO THE
ACCUSED PURSUANT TO BRADY v. MARYLAND

COMES NOW the Defendant in the above-styled case and respectfully moves this Court, pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Section I, Paragraphs I, II and XIV of the Georgia Constitution, as construed and applied in the case of Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, including Giles v. Maryland, 386 U.S. 66 (1967); Giglio v. United States, 405 U.S. 105 (1972); and Hicks v. State, 232 Ga. 393, 207 S.E. 2d 30 (1974), to order the prosecution to permit defense counsel to inspect and copy all evidence in the possession and control of the State which may be favorable to the Defendant and material to the issues of guilt or punishment or could reasonably weaken or affect any evidence proposed to be introduced against the Defendant at trial or at sentencing.

The evidence sought is to include, but not be limited to:

1. All evidence, including statements of individuals, physical evidence or test results indicating or tending to indicate that the Defendant is not guilty of the offense charged or mitigating on the issue of sentence.

2. All statements of any witness which contradict in any way the statements of other

witnesses or which contradict other statements made by that witness.

3. All reports, memoranda or other information in possession of the State which contain information exculpatory, helpful, favorable or arguably favorable to the Defendant on guilt or innocence or as to sentence.

4. A complete and detailed list of the arrests and convictions of all State witnesses whether the State will actually call these witnesses at the trial or not, including any and all charges currently pending against said witnesses which have not yet been officially disposed of by plea, trial or otherwise. See Strong v. State, 232 Ga. 294, 299-300, 206 S. E. 2d 461 (1974), citing Brady v. Maryland, 373 U.S. 83 (1968).

5. Memoranda, documents or reports of any scientific tests or experiments or studies made in connection with the above-styled case, including any polygraph examinations of any witness, which may be arguably favorable to the defense.

6. Copies of any and all arrest warrants relating to this case pursuant to O.C.G.A. § 17-4-41.

7. Copies of any and all search warrants and warrant returns relating to this case pursuant to O.C.G.A. § 17-5-25.

8. Copies of any and all police or sheriff's reports relating to this case pursuant to O.C.G.A. § 24-10-26; Henderson v. State, 255 Ga. 687, 690, 341 S.E. 2d 439 (1986); O.C.G.A. §§ 50-18-70, 50-18-72; Cox Enterprises, Inc. v. Harris, 256 Ga. 299, 348 S.E. 2d 448 (1986).

9. All material now known to the State or which may become known which is exculpatory in nature or favorable to the accused or which may lead to exculpatory

material. This request includes reports of any investigations conducted by the State, or its agents, of individuals other than the Defendant.

10. The State is required to reveal to the defense not only information "in its file," but should also be ordered to make inquiry of all law enforcement or other agencies involved in this prosecution and to require those agencies to review their files and to provide to the prosecution any information arguably favorable to the defendant, including information specifically described above. At a minimum, inquiry should be made of the police investigatory files. See, e.g., Pennsylvania v. Ritchie, 480 U.S. 54, 57-61 (1987) (In child molestation case Brady required disclosure of favorable information in the files of the Pennsylvania Children and Youth Services Agency); Freeman v. Georgia, 599 F.2d 64, 69 (5th Cir. 1975) (State held accountable for information known only to investigating police detective); Brown v. State, 261 Ga. 66, 401 S.E. 2d 492 (1992); Issacs v. State, 259 Ga. 717, 386 S.E. 2d 316 (1989).

11. There may be other items and matters of evidence, information and data in existence that are not enumerated aforesaid and of which Defendant is unaware. Defendant now requests and demands Defendant be afforded with any and all evidence and information, whether specifically delineated and listed herein or not, which is known or may become known, or which through due diligence may be learned from the investigating officers of the witnesses or persons having knowledge of this case, which is exculpatory in nature or favorable to the accused or which may lead to exculpatory or favorable material, or which might serve to mitigate punishment. This includes any evidence impeaching or contradicting the testimony of prosecution witnesses, or instructions to prosecution witnesses not to speak with or disclose the facts of the case to defense counsel. See Agurs v. United States, 427 U.S. 97 (1976); Brady v. Maryland, 373 U.S. 83 (1963); United States v. Giglio,

405 U.S. 150 (1972); Sellers v. Estelle, 651 F.2d 1074, 1077, n. 6 (5th Cir. 1981); Banks v. State, 235 Ga. 121 (1975); Rini v. State, 235 Ga. 60, 218 S.E. 2d 811 (1975); Holbrook v. State, 162 Ga. App. 400, 401, 291 S. E. 2d 811 (1982).

WHEREFORE, the Defendant prays as follows:

(a) That a hearing be held on this motion in order that the proper foundation may be laid as to what evidence, information and data is in the possession of the State and prosecution and that the State be directed to make such disclosures immediately;

(b) That if any part of said documentary evidence is not made available to the Defendant prior to trial, he respectfully moves the Court for an order directing the District Attorney to produce all such documents and evidence and to submit the same to his counsel at the close of the State's evidence;

(c) Without waiving the foregoing, the Defendant requests that an exact copy be made of each item which is not presented to defense counsel and that the same be sealed and included in the record of this case for the purpose of insuring effective review of the Court's denial of the Defendant's previous request for disclosure;

(d) That the duty of the District Attorney to disclose pursuant to this motion be considered as continuing up until and through the trial and post-judgment proceedings.

MOTION FOR PRE-TRIAL DISCLOSURE OF EVIDENCE
OF INDEPENDENT AND SEPARATE OFFENSES, WRONGS OR ACTS

COMES NOW the Defendant named in the above-styled case and hereby moves this Court to order the prosecution to disclose immediately all evidence of independent and separate offenses, wrongs or acts which the prosecution may attempt to introduce at trial to show motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident regarding the

Defendant's actions or conduct, including any evidence to be offered as alleged "prior difficulties" between the Defendant and the alleged victim. See Uniform Superior Court Rules 31.1 and 31.3; Maxwell v. State, 262 Ga. 73(2), 414 S. E. 2d 470 (1992).

MOTION TO REQUIRE THE STATE TO REVEAL ANY
AGREEMENT ENTERED INTO BETWEEN THE STATE
AND ANY PROSECUTION WITNESS THAT COULD
CONCEIVABLY INFLUENCE HIS OR HER TESTIMONY

COMES NOW the Defendant in the above-styled case, by and through his undersigned counsel, and respectfully moves the Court for an Order requiring the State to reveal any agreement entered into between the District Attorney's office or any other law enforcement agency and any prosecution witness that could conceivably influence said witness' testimony.

The credibility of prosecution witnesses will be an important issue in this case. The evidence of any understanding or agreement as to future prosecution or any other consideration is relevant to that issue. See Giglio v. United States, 405 U.S. 150 (1972). This would include any and all consideration given to or made on behalf of co-conspirators, whether indicted or unindicted, and any other government witness. By "consideration," the Defendant refers to absolutely anything of value or use, including but not limited to immunity grants, witness fees, release on bail, release on bail without security, special witness fees, transportation assistance, assistance to members of witness' families or associates of witnesses, assistance or favorable treatment with respect to any criminal, tax, civil, forfeiture, or administrative disputes or potential dispute with the State or the United States (including any possible probationary, parole or deferred prosecution situation), placement in a "witness protection program," and anything else which could arguably create an interest or bias of the witness in favor of the State or against the defense or act as an inducement to testify or to color testimony.

The refusal of the prosecution to reveal any said agreement constitutes a violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

MOTION FOR IN-CAMERA INSPECTION OF STATE FILES

COMES NOW the Defendant in the above-styled case, by and through undersigned counsel, and moves this honorable Court, pursuant to the authority of the Supreme Court of Georgia as set forth in Tribble v. State, 248 Ga. 274, 280 S. E. 2d 352 (1981), and Wilson v. State, 246 Ga. 62 (1980), do the following:

1. Make an in-camera inspection of any files and/or documents in possession, custody or control of the State, including but not limited to any documents in the possession of any law enforcement agency pursuant to O.C.G.A. § 17-16-1. That said inspection be for the purpose of determining whether the Defendant is entitled to listen to, inspect, copy or read, prior to trial, all or any portion of the State's file pursuant to Defendant's separately filed Discovery Motions.

2. That said in-camera inspection of the entire State's file be conducted prior to trial and that this Court separately review any statements made by any and all State witnesses after the testimony of said witnesses at trial.

WHEREFORE, Defendant prays:

(a) That this honorable Court make an in-camera inspection of the State's file and in regard to those items not voluntarily disclosed by the prosecution, that the Court turn over to defense counsel all such material which the Court finds to be favorable to the Defendant as to innocence or sentencing;

(b) Without waiving the foregoing, the Defendant requests that an exact copy be made of each item present in the prosecution files which is not presented to defense counsel and that the same

be sealed, filed with the clerk of this Court and included in the record of this case for the purpose of insuring effective review of the Court's denial of the Defendant's previous request for disclosure.

MOTION TO PRESERVE THE EVIDENCE

COMES NOW the Defendant in the above-styled case, by and through the undersigned counsel and moves this honorable Court for the entry of an Order directing the prosecution and all law enforcement agencies involved in the investigation and prosecution of the above-styled case to preserve and keep intact any and all investigative reports (including rough drafts), law enforcement officer's notes, witness statements, documents, papers, rough notes (interview, surveillance or otherwise), tapes (both audio and/or video), objects, contraband, controlled substances or any other physical evidence in their possession, custody, control or which through the exercise of due diligence could be so possessed or controlled. This includes any and all material(s) which could conceivably be viewed as being exculpatory in nature to the Defendant and discoverable under O.C.G.A. § 17-16-1 et seq.

The Defendant further requests, pursuant to O.C.G.A. § 17-16-4 that his counsel be allowed to examine, inspect and test said items at a specific time and place to be fixed by the Court and that the time and place of said inspection and testing be set at a reasonable time in advance of Defendant's trial.

This request for preservation and inspection of the evidence is essential to insure the Defendant's right to a fair trial, right to confront any adverse witnesses, right to prepare a complete and adequate defense, right to the effective assistance of counsel and the right to due process of law as guaranteed by the Constitutions of both the United States of America and the State of Georgia. See also Sable v. State, 248 Ga. 10, 282 S.E. 2d 61 (1981); Patterson v. State, 238 Ga. 204, 232 S. E. 2d

233 (1977); Barnard v. Henderson, 514 F. 2d 744 (5th Cir. 1975).

GENERAL DEMURRER

The Defendant in the above-styled case hereby demurs to the indictment in the above-styled case and shows as follows:

1. The Defendant demurs generally to said indictment on the grounds that the same fails adequately to charge this Defendant with any offense against the law of the State of Georgia.
2. The Defendant demurs generally to said indictment on the grounds that it fails to sufficiently set out the charge or any violation of the law.
3. Defendant demurs generally to said indictment on the grounds that it fails to specifically give the date of the offense.

WHEREFORE, Defendant requests that the demurrer be sustained and the indictment dismissed.

MOTION TO SUPPRESS

COMES NOW the Defendant in the above-styled case, by and through undersigned counsel, and moves this honorable Court to suppress the following:

1. Any and all evidence illegally obtained and/or seized by the State.
2. Any and all evidence of pre-trial and in-court identification of the Defendant.
3. Any and all statements made by the Defendant.

In support of said Motion, Defendant asserts that the above-referenced evidence was obtained in violation of the laws of the United States and the State of Georgia.

Defendant expressly reserves the right to amend and supplement this motion as new facts and information become available.

WHEREFORE, Defendant respectfully requests that this honorable Court conduct a full and complete hearing regarding this Motion to Suppress and order the suppression of any evidence seized, obtained or acquired in violation of the laws of the United States and the State of Georgia.

MOTION FOR COMPLETE RECORDATION OF ALL PROCEEDINGS

COMES NOW the Defendant in the above-styled case by and through undersigned counsel and moves this honorable Court for an Order directing that a Certified Court Reporter take down and record any and all hearings including the arraignment, all motions, voir dire, all objections, all bench conferences, all testimony and each and every proceeding involved in pre-trial and trial in the above-stated case and also any and all conferences held between the prosecutor and any Superior Court Judge concerning the above-entitled case when the Defendant and defense counsel are not present. "Further, Defendant demands that the court reporter transcribe audio and videotaped conversations that may be tendered at any court proceeding." See United States v. Charles, 313 F.3d 1278 (11th Cir. 2002).

MOTION RESERVING THE RIGHT TO
FILE ADDITIONAL MOTIONS

COMES NOW the Defendant in the above-styled case, by and through his undersigned counsel, and requests an Order of this honorable Court, reserving his right to file such additional motions as the future progression of this case may merit. As grounds for this motion, Defendant states as follows:

1. Formal discovery is ongoing and incomplete. Problems of availability, as well as propriety of revealing certain information in the possession of the State, may arise upon which Defendant may be compelled to file formal motions with this honorable Court.
2. The inordinate complexity of the charges brought by the State against the Defendant

compel continuing analysis of materials discovered and in the process of discovery may well lead to the necessity of additional substantive motions.

3. The defense would also ask for additional time to file particularized motions based on the fact that discovery may be incomplete (within 10 days of arraignment).

MOTION PRESERVING THE RIGHT OF DEFENDANT’S COUNSEL TO BE PRESENT
DURING ANY IDENTIFICATIONS OR LINE-UPS OF DEFENDANT

The Defendant’s counsel has a right to present at any kind of identification of the Defendant at or after the initiation of the adversary proceeding. Moore v. Illinois, 434 U.S. 220, 98 S. Ct. 458 (1977); Coleman v. State, 160 Ga. App. 158 (1981).

FULTON COUNTY SUPERIOR COURT
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STATE OF GEORGIA,

v.

KENNETH CHESEBRO *ET AL.*,

DEFENDANTS.

CASE No. 23SC188947

JUDGE MCAFEE

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the following CONSOLIDATED MOTIONS AND DEMANDS:

1. NOTICE OF DEFENDANT'S ELECTION TO PROCEED UNDER O.C.G.A. § 17-16-1 ET SEQ.
2. REQUESTS BY DEFENDANT FOR PRODUCTION OF DISCOVERABLE MATERIAL PURSUANT TO O.C.G.A. § 17-16-1 ET SEQ.
3. MOTION FOR DISCOVERY, INSPECTION, PRODUCTION AND COPYING OF EVIDENCE FAVORABLE TO THE ACCUSED PURSUANT TO BRADY v. MARYLAND
4. MOTION FOR PRE-TRIAL DISCLOSURE OF EVIDENCE OF INDEPENDENT AND SEPARATE OFFENSES, WRONGS OR ACTS
5. MOTION TO REQUIRE THE STATE TO REVEAL ANY AGREEMENT ENTERED INTO BETWEEN THE STATE AND ANY PROSECUTION WITNESS THAT COULD CONCEIVABLY INFLUENCE HIS OR HER TESTIMONY
6. MOTION FOR IN-CAMERA INSPECTION OF STATE FILES
7. MOTION TO PRESERVE THE EVIDENCE
8. GENERAL DEMURRER

9. MOTION TO SUPPRESS
10. MOTION FOR COMPLETE RECORDATION OF ALL PROCEEDINGS
11. MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS
12. MOTION PRESERVING THE RIGHT OF DEFENDANT'S COUNSEL TO BE PRESENT DURING ANY IDENTIFICATIONS OR LINE-UPS OF DEFENDANT

These documents have been served, this day, upon the following, by the Fulton County electronic filing system upon all parties.

This the 23rd day of August, 2023.

/s/ Scott R. Grubman
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Counsel for Defendant

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