

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

FILED

APP. BOOKLET NO. _____

2005 MAY -4 P 4: 19

CLERK OF DISTRICT COURT
18TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KANSAS

BY _____

THE STATE OF KANSAS,)
Plaintiff,)
v.)
DENNIS L. RADER,)
Defendant.)

CASE NO. 05 CR 498

MOTION FOR DISCOVERY AND INSPECTION

COMES NOW the defendant, Dennis L. Rader, by and through his attorneys, Chief Public Defender Steve Osburn, Jama Mitchell, Deputy Public Defender and Sarah McKinnon, Assistant Public Defender for Sedgwick County, Kansas, and respectfully moves this Court to order the State to identify and produce all the discovery requested, and otherwise comply with the requirements of state and ethical provisions relating to discovery.

I. **AUTHORITY**

Regardless of any specific request by the defense or ruling by the Court, the prosecution has an affirmative duty to timely disclose any exculpatory evidence to the defense. Brady v. Maryland, 371 U.S. 812 (1962); Kyles v. Whitley, 115 S.Ct. 1555 (1995). The duty to disclose this evidence increases when the Defendant makes specific requests. U.S. v. Agurs, 427 U.S. 97 (1976).

The duty under Brady and Kyles is *on-going* and not limited by any scheduling or deadlines set by the Court, by trial, or even by conviction. Mooney v. Holohan, 294 U.S. 103 (1935).

The prosecution is responsible for any evidence or knowledge held by any agent of the State of Kansas; that knowledge is imputed to the individual prosecutor in this case, and it is that prosecutor's duty to see that all evidence covered by Brady, Kyles, or by any Order of this Court is identified and produced. Giglio v. U.S., 405 U.S. 150 (1972).

II. DEFINITIONS

As used and intended in this and other discovery requests by Mr. Rader:

1. "Government" shall include:

A. The office of the Sedgwick County Attorney and the Office of the Attorney General of the State of Kansas, including all present and former assistants, investigators, and employees;

B. Any person presently or formerly working as an agent, on contract, or on the authority of the prosecuting authority;

C. Every law enforcement personnel presently or formerly employed by the federal, state, county or municipal governments, including without limitation, the Wichita Police Department, Sedgwick County Sheriff's Department, the Kansas Bureau of Investigation, or any and all other law enforcement agencies;

D. Every person presently or formerly working as an agent, employee, informant, or on behalf of, or subject to the control of any law enforcement personnel, including without limitation all civilian employees, private citizens working at the

governments direction, security guards, persons in training, and/or members of law enforcement auxiliaries, Fraternal Order of Police, and organized citizens' anti-crime groups.

2. "Identify" shall mean:

A. With regard to a document, the author, date of creation, respective revisions or addendums, and the current location and custodian of the original documents;

B. With regard to a photograph, the photographer, date exposed, date developed, all witnesses to the photographs being taken, and current location and custodian of the original negative;

C. With regard to an audio or visual recording, the persons present, date recorded, all unedited tape and any edited versions, date transcribed, the current location and custodian of the original, unedited tapes;

D. With regard to computer created data, the operating system, the application program, all data produced, the current location and custodian of the original;

E. With regard to a statement or conversation, every person present, the dates, and all documents and/or other records reflecting contents, and the current location and custodian of the original;

F. With regard to property or contraband, a detailed description of the item, and its present location and custodian;

G. With regard to persons or witnesses, the name, home and work addresses, home and work telephone numbers, and any other locating and identifying information available.

3. "Produce" shall mean:

A. With regard to a document, provide a complete and *legible* photocopy of both sides of each page, or make the original available for inspection and copying;

B. With regard to a photograph, make the negative available for printing; provide a positive copy, or make the original positive available for copying;

C. With regard to an audio or video recording, provide a copy [standard audio, micro cassette audio, compact disc audio, or VHS video, BETA video, or DVD video, format], or make the originals available for copying; any and every complete or partial transcript prepared, the name of the transcriber, date transcribed.

D. With regard to computer created data, provide a disk copy of the operating system, application program and data, or make the originals available for inspection and copying;

E. With regard to a statement or conversation, provide the contents of the communication, identify the time, place, persons present, and method of recording;

F. With regard to property, make it available for preliminary inspection, recording and examination, and arrangements for necessary later testing and inspection;

4. "Report" shall include:

- A. All documents, whether in the form of rough notes or field notes, typed summaries, or prepared forms, which record the activities of government personnel and statements of witnesses;
- B. All video and audio records prepared or made in connection with this case;
- C. Any recorded information reflecting the transfer or receipt of evidence.

5. "Statement" shall include:

- A. Spontaneous or voluntary utterances;
- B. Questions and respective answers;
- C. Conversations or discussions;
- D. Actions, which are declaratory or communicative;

6. "Contents" shall include:

- A. When referring to a statement, the gist, summary, paraphrase or transcript of the statement, conversation or discussion;
- B. When referring to a document, the complete text of the document and all other documents referred to within the text of the primary document.

7. “Document” shall include:

- A. Any writing, recording or data in any form or medium, whether privileged or not;
- B. Any original of the document, and preliminary, final or intermediate drafts;
- C. The original or any copies or edited versions that bear any marks (i.e., stamps, initials, notations) not a part of the original text;
- D. Working papers, correspondence, memos, directives, transcripts, analysis, studies, surveys, reports, charts, notes, meeting minutes or agendas, desk calendars, appointment books, microfilm or microfiche, printouts, and press releases.

8. “Relating to” includes discussing, informing, sharing, instructing, directing, referring to, containing, analyzing, connected to or connected with, studying, reporting on, commenting on, evidencing, constituting, setting forth, considering, concerning, relevant to, bearing on, pertaining to, in whole or in part;

9. “Every”, “any”, “each” and “all” are interchangeable and inclusive of the others;

10. “And” means “and/or”, and “or” means “and/or”;

11. “This case” means Sedgwick County case number 05 CR 498, and Wichita, Kansas Police Department or Sedgwick County Sheriff's department case numbers related to the above cases, all investigation of Mr. Rader relating to, prior to, leading to, during, and subsequent to his arrest.

III. SPECIFIC REQUESTS

The Defendant asks this Court to Order the government to identify and produce the following:

1. Brady and other material

A. Identify and produce all information discoverable pursuant to the law as set out above, and evidence available under the Kansas Open Records Act, KSA 45-215 et seq.

B. Identify and produce any information, which exculpates or inculpates the Defendant's actions, intent, or culpability related to this case.

2. Witnesses:

A. All persons with any knowledge relating to the events leading to or surrounding the alleged crimes at issue;

B. All persons who will or may testify at the preliminary hearing or at trial;

C. All persons who have been contacted by the government relating to this case subsequent to the events leading to or surrounding the alleged crimes at issue;

D. All persons who have contacted the government relating to this case subsequent to the events leading to or surround the alleged crimes at issue;

E. All law enforcement officers who were ever present at any of the scenes at issue;

F. All persons who spoke with or communicated with the Defendant during or after his arrest;

G. Identify and produce any lie detector or polygraph test administered or attempted to any person related to this case;

H. Identify and produce any hypnosis or other memory enhancement or attempts at such administered to any person related to this case;

3. Statements:

A. Identify and produce the contents of all written, recorded, oral, signed or adopted statements, sworn or not, of any person or witness, together with any report or document reflecting the contents of such statement;

B. Identify and produce the contents of all statements made by the government to Mr. Rader, together with any report or document reflecting the contents of each statement.

4. The Defendant:

A. Identify and produce any statement made by Mr. Rader, any evidence taken from his person or his residence, vehicle in which he was the driver or a passenger, whether or not said vehicle belonged to or was registered to Mr. Rader, or any other place where he maintains an expectation of privacy, including any property taken at the time of his arrest or booking;

B. The defendant requests the State to provide, in writing, information regarding any and all prior convictions or juvenile adjudications of the defendant known to the State.

5. Tangible Evidence:

Identify and produce each item of tangible evidence relating to this case and the

contents of each inventory of property or evidence prepared relating to this case.

6. Recordings and Photographs:

A. Identify and produce each audio or video recording related to this case, together with any report or document reflecting the recording, whether or not the recording is admissible as evidence, including any audio or video recording of the defendant;

B. Identify each photograph exposed:

- i. at the scenes of the alleged offenses,
- ii. prior to the alleged offenses related to this case;
- iii. at arrest or booking or depicting the defendant,
- iv. depicting any person, evidence or exhibit related to this case

C. Identify and produce all dispatch, 911, emergency vehicle, car-to-car or other law enforcement or medical or emergency communications regarding this case.

7. Scientific, Technical Investigations and Toxicological Investigations or Testing

A. Identify and produce all evidence gathered that has been, is, or will be subject to further scientific evaluation or testing, together with reports or documents reflecting the gathering, transfer and custody of that evidence, and the request for further testing;

B. Identify and produce any testing, comparison, evaluation of any physical evidence, the process, the processor, any results, opinions, or conclusions, and any reports or documents reflecting same.

C. With respect to any toxicology testing or analysis completed by the Kansas

Bureau of Investigation, the Federal Bureau of Investigation or any other law enforcement facility or private entity hired by or employed by the government or law enforcement, identify and produce the complete case file, including by not limited to:

- i. any bench notes or documentation;
- ii. toxicology work assignment sheets;
- iii. evidence chain of custody documentation;
- iv. screening data (including calibrators and controls);
- v. confirmation data (including calibrators and controls);
- vi. and any all administrative notes and documentation.

8. Weapons

- A. Identify and produce all efforts to identify any weapon related to this case;
- B. Identify all weapons involved or related to this case;

9. Fingerprints, Shoeprints

Identify and produce any efforts to identify fingerprints, palm prints, shoe prints, or other prints related to this case, together with reports reflecting the gathering, comparison, and results;

10. Hairs, Fibers, and Body Fluids

Identify any efforts to identify hair, fibers, fluids or other physical evidence related to this case, together with any reports or documents reflecting these efforts, any

testing, comparisons or results;

11. Medical Reports

A. Identify and produce all evidence relating to the history of the defendant, including, but not limited to identifying and producing all evidence relating to the medical treatment of the defendant;

B. Identify and produce all evidence relating to the history of any alleged victim, including, but not limited to identifying and producing all evidence relating to the medical treatment of any alleged victim, and any .

12. Autopsy and Coroner's Reports

A. Identify and produce any and evidence relating to the any autopsy report and/or coroner's reports related to this case, including any rough drafts thereof or notes therefrom.

13. Warrants and Notices

A. Identify and produce any testimony, declaration, application or affidavit in support of any arrest, search, seizure or electronic warrant related to this case, including any which were rejected or refused by any court;

B. Identify and produce all returns from any warrant, together with any reports or documents reflecting the issuance, service and execution of any warrant in this case.

C. Identify any arrest, search or seizure in this case, which occurred without a warrant.

D. Identify and produce any mitigating information in this case;

14. Giglio Information

A. Any and all records and information revealing prior convictions or guilty verdicts or juvenile adjudications attributed to each witness to be called by the State, including but not limited to relevant "rap sheets".

B. If any of the aforementioned witness' have ever been or are currently subject to any diversion agreement with any State or Federal entity, ever been or are currently on probation or parole with any State or Federal entity, or have pending charges with any State or Federal Entity.

C. Any arrests or dismissals with or without prejudice or booking and release involving any of the aforementioned witness'.

D. Any and all consideration, financial or otherwise, or promises of consideration given to, including but not limited to any agreements for testimony or full or partial grants of transactional or use immunity, expected by or on behalf of any of the aforementioned witness'.

E. Any and all records and information revealing prior misconduct or bad acts, including but not limited to any facts or allegations concerning criminal conduct or misconduct that is not reflected on each criminal history, attributed to any of the aforementioned witness'.

F. Any and all other records and/or information which arguably could be helpful or useful to the Defendant in impeaching or otherwise exculpatory or detracting from the probative force of the State's evidence or which arguably could lead to such

records or information.

G. Any and all information showing whether any of the aforementioned witness' have worked or received benefit, or is working or receiving benefit, including but not limited to being a paid informant, "working off" a case, or had charges not filed in exchange for information, from any police agency.

H. Any and all information showing a known bias in favor of the State by a witness.

15. Other

A. Identify and produce all charts, graphs, maps, summaries that relate to this case;

B. Identify and produce any evidence, favorable or unfavorable to the defendant which has not been described in other paragraphs of this motion.

IV. APPLICATION

All material and evidence requested by this motion should be preserved and not destroyed, altered, or depleted, whether or not this Court grants the defense request. By this request, the government is on notice that the requested evidence is material, exculpatory and/or potentially useful in his defense against the charges. If any of the requested or otherwise discoverable evidence, including any Brady or Kyles material, has been lost, destroyed, misplaced or is otherwise unavailable, the government should identify that material, provide as accurate and detailed reconstruction as possible, provide the manner and details of how and when it became unavailable and identify who is responsible for the unavailability.^[1]

Should the government refuse to produce any of the requested material, Mr. Rader asks that material be identified and the reasons for withholding be stated on the record in open court, and that

material provided to the Court for review. Should this Court, after in-chambers review, determine the requested material is not to be produced, Mr. Rader asks the Court to seal that material and make it part of the record. This is necessary for meaningful review of this Court's rulings.

Mr. Rader requests the prosecution be expressly Ordered to contact each and every person and agency identified in Section II, paragraph 1 or known to the prosecution, and to require those persons and agencies contacted to produce, identify and deliver to the prosecution all discoverable materials, including discovery ordered by this Court, required by state statute or within the scope of Brady and Kyles, within a reasonable time after being contacted by the prosecution.

Mr. Rader further requests a full and fair hearing on the above captioned motion.

Respectfully Submitted


JAMA D. MITCHELL #16980
Deputy Public Defender

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Defendant's Motion for Discovery and Inspection was hand-delivered to the Office of the Sedgwick County District Attorney this 4th day of May, 2005.


JAMA D. MITCHELL #16980
Deputy Public Defender

NOTICE OF HEARING

Please take notice and be advised that the above and foregoing Motion will be heard on the 6th day of May, 2005 at 9:30 a.m. in Division Five, or at such other date and time as the Court shall direct.