

8.4 SAMPLE CRIMINAL DISCOVERY MOTION

**SUPERIOR COURT, THE STATE OF MAJOR
JAMNER COUNTY**

STATE OF MAJOR,)	No. CR 76-0106 ESE
Plaintiff,)	
)	
vs.)	Motion for Discovery and Inspection
)	(with Memorandum of Authorities)
ALAN HENRY KRUB)	
a/k/a MART FIRS,)	
Defendant.)	
_____)	

TO THE HONORABLE EDWARD S. ELLIS, Judge of the Superior Court of Major, in Jamner County:

The defendant, by counsel, requests this Court to order the District Attorney pursuant to case law and the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the State of Major to produce and permit the defendant to inspect, copy, or photograph all of the following that are now in the possession of the government or any of its agents or which through due diligence would become known from the investigating officer, or witnesses or persons having knowledge of this case:

1. Tangible objects obtained during the investigation of this case, including:
 - a. All tangible objects obtained from defendant’s person or effects.
 - b. Tangible objects obtained from the person, effects or vehicle driven by defendant, or any home, apartment, or motel room rented by defendant.
2. Books, paper, documents, or tangible objects the government plans to offer in evidence in this case.
3. Books, paper, documents, or tangible objects upon which the government relied in returning the indictment against the defendant, or which the government plans to offer in evidence in this case.
4. Property in the possession of the government or its agents or seized by the government or its agents belonging to or alleged by the government to belong to defendant.
5. Fingerprint impressions, blood samples, clothing, hair, fiber, or other materials obtained by whatever means or process from the scene of the offense and whether such fingerprint impressions, blood samples, clothing, hair, fiber or other materials were those of defendant, or were those of some other person or persons known or unknown.

6. Comparisons of blood, fingerprints, clothing, hair, fiber, or other materials made in connection with this case, particularly including:
 - a. Original photographs of any latent fingerprints obtained in the investigation of this case, together with the time, place, and manner in which the latent fingerprint was developed and photographed.
 - b. Copies of all enlarged photographs or other reproductions of the latent fingerprint used for purposes of comparison, including both marked and unmarked copies of any enlargement or reproduction from which unique identification was accomplished.
 - c. Complete report of the identification procedure employed, including notation of all points of identification that were isolated and used for comparison.
 - d. Copies of all original and/or enlarged photographs of inked fingerprints used for comparison with latent fingerprint pictures.
7. The written report of any chemical analysis of the alleged plant material seized, prepared by the government or any of its agents or anyone at its direction, together with descriptions, test results, test dates, and determinations as to the nature or weight of the substance.
8. Results or reports of physical or mental examinations (handwriting, fingerprints, drug analyses).
9. Statements, confessions, or admissions made by defendant, whether written or oral, subsequently reduced to writing, or summarized in officers' reports, or copies thereof, within the possession, custody, or control of the government, the existence of which is known or, by the exercise of due diligence may become known to the attorneys for the government. This request includes statements made to witnesses other than police officers at any time prior to or subsequent to defendant's arrest, including the precise words attributed to defendant that caused government agents to conclude the defendant was "associated" with other co-defendants.
10. Documents, instruments, forms, or statements of any kind signed or purported to have been signed by the defendant.
11. Statements of co-conspirators, whether written or oral, subsequently reduced to writing, or summarized in officers' reports, or copies within the possession, custody, or control of the government, the existence of which is known or by the exercise of due diligence may become known to the attorneys for the government.
12. Names and addresses of persons who have knowledge pertaining to this case, or who have been interviewed by the government or their agents in connection with this case.
13. FBI and local arrest and conviction records of all persons in Paragraph 12 the government plans to call as witnesses.
14. Written statements of all persons in Paragraph 12 whom the government does not plan to call as witnesses.
15. The transcript of testimony of all persons who testified before the Grand Jury in this case.
16. The name, identity, and whereabouts of all informers who gave information leading to the arrest of defendant, and whether the informant was paid by the government for the information.

17. Materials now known to the government, or that may become known, or which through due diligence may be learned from the investigating officers or the witnesses or persons having knowledge of this case, which is exculpatory in nature or favorable material or which might serve to mitigate punishment, and including any evidence impeaching or contradicting testimony of government witnesses or instructions to government witnesses not to speak with or discuss the facts of the case with defense counsel.
18. Any information pertaining to misconduct or bad acts attributable to the informant or any government witness.
19. Information pertaining to consideration or promises of consideration given to any witnesses.
20. Information pertaining to the number of times that any witness who is not an agent of the State of Major has testified for the government before a tribunal, or any other body.
21. Information pertaining to any current or potential prosecution of any witness to be called by the government.
22. All information pertaining to personnel files on any witness to be called by the government, including whether or not such files exist, where they are, and how they are identified.
23. Provide the same records and information set out in items 18 to 22 with respect to each non-witness declarant whose statements are to be offered in evidence.
24. State whether the government obtained any information or evidence relating to this case by means of electronic listening devices, wire taps, or any form of electronic surveillance. State the circumstances under which such surveillance or eavesdropping was conducted. Provide a copy of any written transcript prepared from the eavesdropping, and an opportunity to listen to and copy electronically all recordings.
25. State whether the government obtained any information or evidence relating to this case, or the defendant, by means of searches or seizures. For each search and seizure:
 - a. List the names of the law enforcement agencies and officers participating in the search or seizure, or contributing information leading to the search and seizure.
 - b. List the places searched or seized, the dates, and the items or information obtained.
 - c. Provide the name of any informant used to establish probable cause who might reasonably provide information bearing on the guilt or innocence, or sentencing.
 - d. List the names of any law enforcement agencies or officers to whom the results of any search or seizure were forwarded, disclosed, or made available.
26. Provide defense counsel with a statement describing in detail the methods and procedures used to identify the defendant and/or co-participants as the perpetrators of the offenses alleged in the indictment, including:
 - a. The names and addresses of all persons to whom photographs were exhibited for the purpose of identification, and when and where these displays took place.
 - b. Copies of all photographs exhibited for the purpose of identification in connection with this case.

- c. The names and addresses of those persons who identified the defendant and/or any known co-participant from these photographs as a perpetrator of this offense, and those who were unable to identify these persons.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR DISCOVERY AND INSPECTION

In our adversary system for determining guilt or innocence, it is rarely justifiable for the prosecution to have exclusive access to the storehouse of relevant facts. . . . [I]t is especially important that the defense, the judge and the jury should have the assurance that the doors that may lead to truth have been unlocked.” *State v. Darby*, 205 Maj. 2d 274, 281 (20XX-43).

Courts of this state have consistently exercised their discretionary powers to provide defense-discovery in criminal cases broadly, consistently ordering discovery of the tangible evidence and information in possession of the government and police which could “reasonably be used in, or lead to the development of, a defense at trial,” *State v. Karne*, 100 Maj. App. 3d 420, 422 (20XX-35).” *Kincade v. Superior Court*, 169 Maj. App. 3d 333, 337 (20XX-36).

Under *State v. Darby, supra*, and *Kincade v. Superior Court, supra*, all the requested information is properly discoverable.

Respectfully submitted,

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