

[CAPTION]

VERIFIED MOTION TO COMPEL PRODUCTION OF EXCULPATORY EVIDENCE

The Defendant, by counsel, respectfully requests this Court to compel the production of exculpatory evidence. In support of the Motion, the Defendant states the following:

1. The Defendant's Motion to Produce Discovery was granted by this Court and the State of Indiana was ordered to comply with the production of discovery within thirty (30) days of [insert date].

2. Although the State did provide a number of the items requested, certain items specifically requested have not yet been disclosed or provided to the defense. [LIST UNDISCLOSED REQUESTED ITEMS]

3. In filing this Motion to Compel, the Defendant does not wish to waive his right to file a subsequent motion to compel on items not yet furnished and/or disclosed, but at this time he is still attempting to work with the State to secure most of those items.

4. However, the Defendant has learned of the apparent existence of exculpatory information that has not been provided to the defense, despite several specific requests for such information. [SPECIFICALLY EXPLAIN THE POSSIBLY EXCULPATORY EVIDENCE].

5. The Defendant has made requests for this specific evidence on numerous previous occasions, but has never been furnished with it.

6. The Supreme Court in Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995), makes it clear that even in the absence of a request for this information, and even if the prosecutor had not been aware of its existence, there is an absolute duty to provide such information to the defense.

7. Immediate provision of this evidence to the defense is critical to its ongoing investigation and preparation for trial of this matter.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to issue an Order compelling the State of Indiana to provide the above-referenced information to the defense immediately, and for all other relief just and proper in the premises.

(Signature)

VERIFICATION

The undersigned affirms under penalties of perjury that the foregoing representations are true to the best of her knowledge and belief.

(Signature)

CASE LAW

CASEBANK M.1.a

IN GENERAL

Badelle v. State, 754 N.E.2d 510 (Ind.Ct.App. 2001) (on appeal or post-conviction relief, the defendant must establish that the withheld evidence was favorable to the defendant, that evidence was suppressed by the State, and that evidence was material to issue at trial).

Youngblood v. West Virginia, 547 U.S. 867, 126 S. Ct. 2188 (2006) (Brady suppression occurs when the government fails to turn over evidence known only to police investigator and not to the prosecutor; Brady evidence was a trooper's notes indicating that he had been shown evidence that the sexual encounter at issue was consensual).

MATERIAL EVIDENCE

Goudy v. Basinger, 604 F.3d 394 (7th Cir. 2010) (standard of determining materiality is not that the evidence shows the defendant's innocence, but rather that creates a reasonable probability of a different result; inconsistent statements by eye-witnesses identifying co-Defendant rather than Defendant as the shooter were material).

Smith v. Cain, 132 S.Ct. 627 (2012) (suppression of notes taken by the lead detective that indicated that witness originally could not identify shooter required reversal).

Bunch v. State, 964 N.E.2d 274 (Ind.Ct.App. 2012) (State had obligation to disclose material evidence in ATF expert's file; preliminary report which was inconsistent with final report constituted Brady evidence and required the granting of post-conviction relief).

Banks v. Dretke, 540 U.S. 668, 124 S.Ct 1256, 157 L.Ed.2d 1166 (2004) (State should have disclosed that one of the witnesses was a paid police informant; the other was extensively coached by the police and prosecutors).

Prewitt v. State, 819 N.E.2d 393 (Ind.Ct.App. 2004) (holding that State improperly suppressed the following evidence: evidence that the Defendant's son, Hunter, had blood on him the night victim died; that Hunter had communicated an intent to flee to California "if something happened;" other statements Hunter made to a number of witnesses suggesting that victim's death was not result of suicide; evidence that Hunter and another person had moved victim's body; and evidence that Hunter had previously offered money and drugs to another individual to beat up the victim).

State v. Nelson, 715 A.2d 281 (N.J. 1998) (civil suit of a police officer involved in a shoot out alleging that he had improper training should have been disclosed in case where defendant was charged with murder from a shoot out involving officer who was sued).

Kyles v. Whitley, 514 U.S. 419, 433-34, 115 S.Ct. 1555 (1995) (impeachment evidence is material evidence that must be disclosed pursuant to Brady). See Rowe v. State, 704 N.E.2d 1104 (Ind.Ct.App. 1999); Bowens v. State, 722 N.E.2d 368 (Ind.Ct.App. 2000); see also *MOTION TO REVEAL AGREEMENTS ENTERED INTO BETWEEN THE STATE AND PROSECUTION WITNESSES*.

Bennett v. U.S., 797 A.2d 1251 (D.C. 2002) (fact that important eyewitness for the State lied to grand jury about other, unrelated murder should have been disclosed pursuant to Brady since fact was both material and impeaching).

Crivens v. Roth, 172 F.3d 991 (7th Cir. 1999) (fact that State's key witness used aliases does not excuse failure to disclose witness's criminal history in violation of Brady obligation).

Silva v. Brown, 416 F.3d 980 (9th Cir. 2005) (fact that testifying accomplice had, as a condition of a plea agreement, agreed not to undergo mental health exam until after testifying at Defendant's trial should have been disclosed to defense under Brady).

State v. Hollin, 970 N.E.2d 147 (Ind. 2012) (in conspiracy to commit burglary prosecution, State's failure to disclose pending criminal matters against alleged accomplice and fact that accomplice had changed his pretrial account of alleged burglary only after being charged with a new felony was a Brady violation; the withheld impeachment evidence showed a motivating factor for accomplice to cooperate with the State that would have affected jury's assessment of his credibility).

United States v. Lawson, 810 F.3d 1032 (7th Cir. 2016) (detective's personnel record, which revealed that detective had been reprimanded for improper conduct and for involvement in preventable accident with police vehicle, was not "material" to issue in prosecution for aiding and abetting firearm use during attempted robbery; detective's only testimony was that he dusted for fingerprints, lifted the prints, and placed them on card, Defendant was not implicated until independent examination was conducted by fingerprint examiner, and nothing in personnel file at time of trial suggested that detective mishandled evidence).

REASONABLE DILIGENCE

Boss v. Pierce, 263 F.3d 734 (7th Cir. 2001) (statement to police from defense alibi witness that third party had confessed to crime to her was not available to defense through reasonable diligence, even when witness was defendant's sister-in-law; witness was an alibi witness; Counsel cannot be expected to read minds of witnesses in order to obtain information outside the scope of witness' role).

Williams v. State, 714 N.E.2d 644 (Ind. 1999) (it is wholly unreasonable to expect the Defendant to conduct repeated, periodic depositions or inquiries to ensure that agreement has not been made with every witness; rather, prosecutor's nondisclosure of "deal" with witness is tantamount to its suppression).

Watkins v. Miller, 92 F.Supp.2d 824 (S.D.Ind. 2000) (petitioner was entitled to a federal writ of habeas corpus setting aside murder conviction because the prosecution failed to disclose exculpatory material tending to show petitioner's innocence, and petitioner came forward with compelling DNA evidence that he was actually innocent of the murder; the State Court opinions denying post-conviction relief reflect a clear misunderstanding of DNA evidence).

Bunch v. State, 964 N.E.2d 274 (Ind.Ct.App. 2012) ("the availability of information is not measured in terms of whether the information is easy or difficult to obtain but by whether the information is in the possession of some arm of the state" (quoting Crivens v. Roth, 172 F.3d 991 (7th Cir. 1999))).

United States v. Walker, 746 F.3d 300 (7th Cir. 2014) (Defendant charged with wire fraud did not exercise reasonable diligence in obtaining evidence held by local police department where Defendant did not even ask police department to provide him with that evidence).