

FILED

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STATE OF SOUTH CAROLINA)
)
) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
)
) COUNTY OF BERKELEY) WARRANT NO.: 2016-GS-08-2603
)
) MARY P. BROWN
) CLERK OF COURT
) BERKELEY COUNTY, S.C. INDICTMENT NO: 2016A0810400692

STATE OF SOUTH CAROLINA,)
)
) Plaintiff,)
)
) -versus-)
)
) MICHAEL COLUCCI,)
)
) Defendant.)
)
)

**MOTION TO RESTRICT DISCOVERY NOT
PRODUCED IN ADVANCE OF TRIAL**

Michael Colucci (Colucci) requests that this Court issue an Order to limit the State's introduction of evidence which the State fails to timely produce to Colucci in advance of trial. Colucci makes this motion pursuant to Rule 5, SCRCrimP, as well as his Due Process rights secured by the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution.

STATEMENT OF MATERIAL FACTS

Since his arrest for Murder (Indictment Number 2016-GS-08-2603) on May 4, 2016, Colucci has filed several Motions to inspect and copy any results or reports of physical or mental examinations, of scientific tests or experiments, books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, or known to the prosecution; and which are material to the preparation

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of his defense or are intended for use by the prosecution as evidence in chief at the trial, or which were obtained from or belong to Colucci. Colucci acknowledges the attention the Assistant Attorney General has given to his requests and her diligent effort to provide responses in recognition of his State and Federal Constitutional privileges and her responsibilities dictated by the South Carolina Rules of Criminal Procedure.

This motion is not filed for the purpose of criticizing the Assistant Attorney General or her effort to respond to his discovery requests, but to insure that as the trial date approaches, that additional discovery is timely received by Colucci allowing him to be thoroughly prepared for trial.

STATEMENT OF LAW

***Time for Disclosure.* The prosecution shall respond to the defendant's request for disclosure no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court. Rule 5(a)(3), SCRCrimP.**

ARGUMENT

Rule 5(a)(1)(c) of the South Carolina Rules of Criminal Procedure requires the State, upon request by a defendant, “to permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.”

Similarly, Rule 5(a)(1)(D) also requires the State, upon the request of the defendant, “to permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.”

Since June of 2016, the State has periodically released materials to Colucci in response to his requests and Colucci does not anticipate that the State will intentionally deny or limit his access to materials that the Assistant Attorney General is aware of. Nonetheless, Colucci wants to insure that he is not burdened by an untimely release of discovery during his final days of trial preparation, in the event that discoverable material is not timely provided.

Any failure of the State to do so would be at variance with the command of Rule 5(a)(3), which requires the disclosure of such materials “no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court.” No request for an extension of time has been made by the Assistant Attorney General and the Court has not ordered such. Colucci should not be prejudiced by being left with the dilemma of choosing between being unable to adequately prepare his defense in the event of late disclosures by the State, or having to seek new information simply because the State has failed, whether wittingly or unwittingly, to comply with the Rules of Criminal Procedure and his Due Process right to a fair trial.¹

¹ U.S. Const., Amend. V, VI and XIV; S.C. Const. Art. I, § 3.

CONCLUSION

Therefore, Colucci would request the following:

1. Prohibit the introduction of testimony or other evidence not produced sixty (60) days in advance of jury selection relating to information previously requested in discovery motions filed May 12, 2016 and April 2, 2018; and

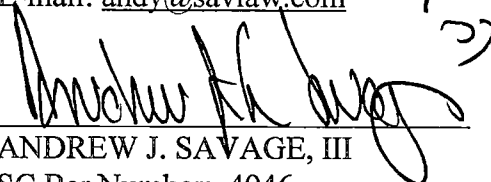
2. Prohibit the testimony of any expert witness not produced ninety (90) days in advance of jury selection for whom Colucci has not received the expert's *curriculum vitae* and any report prepared by said expert or a summary of the expert's proposed testimony including opinions based on their expertise and the basis therefore in accordance with Rule 5, SCRCrimP and the instructions given by the Chief Administrative Judge, Deadra L. Jefferson in a conference call on April 23, 2018.

To allow the introduction of testimony or other evidence based on discovery materials not disclosed in a timely manner in advance of trial would unduly burden the defense by diverting time and limited resources, as well as causing an expensive and lengthy reexamination of the evidence. The defense's evaluation of any belatedly disclosed materials would likely create additional evidentiary issues that would prohibit a thorough and methodical evaluation of the evidence, all to the detriment of Colucci. Therefore, pursuant to Rule 5(d)(2), SCRCrimP., as well as the Constitutions of the United States and South Carolina, Colucci respectfully requests that this Court limit the introduction of any testimony or evidence of any nature which is not produced in accordance with the time frame referenced above.

Respectfully submitted,

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July 17, 2018.

COURTESY OF
LUNA SHARK MEDIA