

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

IN THE COURT OF GENERAL SESSIONS
 FOR THE NINTH JUDICIAL CIRCUIT
 INDICTMENT NO.: 2016-GS-08-02603
 WARRANT NO.: 2016A0810400692

**FIFTH SUPPLEMENTAL MOTION FOR
 THE PRODUCTION, INSPECTION AND
 COPYING OF DOCUMENTS**

FILED

2018 OCT -5 PM 2:55

MARY B. ...
 CLERK OF SUPERIOR COURT
 BERKELEY, CALIFORNIA

MICHAEL COLUCCI (Colucci), respectfully requests an ORDER OF THE COURT:

To require that the Solicitor make available to the defense all information in the custody, possession, control or knowledge of the State, private parties acting as agents or employed on behalf of the State or its subdivisions, State Administrative Agencies, or any State or Federal Law Enforcement Agency or prosecutors involved in the investigation of the above-captioned matter, particularly that material and potential sources specifically identified, in accordance with the requirements of: the Due Process requirements of S.C. Const. Art. I, § 3, and U.S. Const. amends. V & XIV, Rule 5, SCRCrimP; Appellate Court Rule 407, Rules of Professional Conduct, Rule 3.8(d); Model Rule 3.8(d) of the American Bar Association's Standards for Criminal Justice; *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.E.2nd 215 (1963); *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985);

cc: Savage

10/5/16

Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995); *Strickler v. Green*, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999); *United States v. Acosta*, D. Nev., No. CR-S-03-0542 JCM (PAL), (2005); *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999); *In the Matter of Larry F. Grant*, 343 S.C. 528, 541 S.E.2d 540 (2001); *Leka v. Portuondo*, 257 F.3d 89 (2001); *State v. Proctor*, 348 S.C. 322, 559 S.E.2d 318 (2001), *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006), and their progeny.

Colucci filed a Discovery Motions on May 12, 2016, April 2, 2018, August 2, 2018, August 15, 2018, and September 19, 2018 and served them on the Solicitor on or about May 12, 2016, April 2, 2018, August 2, 2018, August 15, 2018, and September 19, 2018.

In the Discovery Motions filed April 2, 2017, August 2, 2018, and August 15, 2018, Colucci made a specific request for the following:

“A copy of the DVD containing FARO raw data referenced on the SLED Laboratory Forensic Services Request, Submission 4 dated April 13, 2016, as well as any reports, drawings or other items produced using the FARO data. “

After receiving a “production” of the FARO data - not the raw data that had been requested - Colucci filed another Discovery Motion on September 19, 2018 requesting the following:

1. Any and all original/raw scan files as they were recorded by the scanner in .fls format;
2. A copy of the project file with all revisions made to the project (.lsproj file and all supporting folders and directories);
3. **Any and all media added to the project such as photographs, videos or other documentation;**

4. Make, model and a copy of the calibration certificate of the laser scanner; and
5. Software and revision used to process the data and deliver results.

On October 1, 2018, Colucci was provided with an updated SLED Chain of Custody document. Listed on that document on pages 36 and 37 is the following:

“Item 33: One (1) sealed plastic sleeve containing Digital Media described as One (1) DVD-R containing follow-up photographs of the scene taken 7/30/2018.”

According to this document, the item was submitted by Haley Quam (Crime Scene Investigation Unit) and was also used by James B. Tallon, III, the SLED FARO specialist.

Colucci has not been provided the photographs referenced as Item 33 and therefore is unable to do the necessary preparation of this evidence for trial including providing to his FARO expert “any and all media added to the project such as **photographs**, videos or other documentation.”

Colucci requests that he be provided all photographs contained in Item 33 as referenced above.

Colucci again moves this Court to suppress the State’s FARO evidence as previously requested in his Motion to Restrict Discovery Not Produced in Advance of Trial which was filed on July 20, 2018, or to postpone the trial of his case to give adequate time for the State to produce the requested evidence so that Colucci may retain his own expert to evaluate the State’s expert’s work product and prepare for a meaningful examination of the State witness and present rebuttal testimony if warranted.

Respectfully submitted,

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BY:



ANDREW J. SAVAGE, III
ATTORNEY FOR DEFENDANT

Charleston, South Carolina

October 2, 2018.

COURTESY OF
LUNA SHARK MEDIA