

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

STATE OF OREGON, ) Case No. 17CR81497  
)  
)  
Plaintiff, )  
) DEFENDANT'S REQUEST FOR  
vs. ) DISCOVERY, BRADY MATERIAL,  
) PRESERVATION OF EVIDENCE, AND  
Tusitala J. Toese, ) SPEEDY TRIAL; NOTICE OF INTENT TO  
) CHALLENGE CRIMINAL HISTORY;  
Defendant ) NOTICE REGARDING CONTROLLED  
) SUBSTANCE TESTING

REQUEST FOR DISCOVERY

COMES NOW Defendant, by and through counsel, Joseph Westover of Multnomah Defenders, Inc., and requests that the Multnomah County District Attorney's Office comply with the requirements of ORS 135.805-135.873, Article I sections 1, 9, 10, 11, and 20 of the Oregon Constitution, and the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution. Defendant specifically requests the following from the State:

1. A record of all of Defendant's prior criminal convictions, including but not limited to LEDS records, which could affect Defendant's sentencing or which the State could use to impeach Defendant.
2. A record of all prior criminal convictions which the State intends to introduce, including, but not limited to, FBI "rap sheets" and LEDS records.
3. A record of all prior criminal convictions of any person the State intends to call as a witness at trial **and** a good faith effort to determine whether such convictions exist.

4. The names and addresses of every person the State intends to call as a witness at any stage of trial, together with all relevant written or recorded statements or memorandum of any oral statements of such person, including but not limited to police officers' notebook entries and statements made to representatives of the Multnomah County Victim's Assistance Office.
5. Any statement that the State intends to introduce as hearsay evidence together with the means by which the statement would be introduced.
6. Any written or recorded statements or memoranda of any oral statements made by the Defendant, or made by a co-defendant if the trial is to be a joint one.
7. Any inconsistent statements of witnesses.
8. Any reports of statements made by any expert witness in connection with the above-captioned case, including results of any physical or mental examinations and of scientific tests, experiments, or comparisons which the State intends to offer as evidence at trial.
9. Any documents, statements, or audio recordings pertaining to Defendant's appearance in court or the conditions of Defendant's release from custody and which the State intends to introduce at trial.
10. Any books, papers, documents, photographs or tangible objects which: (a) the State intends to offer into evidence at trial or at any other hearing associated with this case; (b) have been provided to the court to justify any charges or release decisions; (c) were obtained from or belong to Defendant; and/or (d) were introduced as evidence before the grand jury in this case.
11. Any and all contracts or cooperation agreements entered into between law enforcement and any and all informants, including but not limited to "Testifying

1 Reliable Informants,” whom the State intends to call as witnesses at any stage in the  
2 above-captioned case.

3 12. Copies of any applications or affidavits in support of any search warrant related to the  
4 above-captioned case.

5 13. Copies of any search warrants and any other relevant material or information obtained  
6 by search or seizure relating to the above-captioned case, including the circumstances  
7 of the search or seizure and the circumstances of the acquisition of any statements  
8 allegedly made by Defendant.

9 14. Copies of any audio or video recordings made by any law enforcement officer in  
10 connection with the above-captioned case.

11 15. Any evidence concerning other crimes, wrongs, or acts (“prior bad acts”) attributable  
12 to the Defendant and which the State intends to introduce at trial.

13 16. Any notes, documents, statements, or other relevant material or information  
14 concerning potential restitution.

15 17. Any information or material described above and pertaining to criminal charges that  
16 the State anticipates: (a) filing in this case; or (b) joining with this case.

17  
18 REQUEST FOR BRADY MATERIAL

19 Defendant requests that the State make a specific and detailed effort to determine whether  
20 any government agency has information that must be revealed pursuant to *Brady v. Maryland*,  
21 373 US 83 (1963), including but not limited to:

22 1. Information that would tend to impeach the credibility of any person whom the State  
23 intends to call as a witness or any individual upon whom the State has relied in the  
24 investigation and prosecution of this case. *See Kyles v. Whitley*, 115 SCt 155, 131 L  
25  
26

1 Ed2 490 (1995) (The *Brady* obligation to disclose impeachment evidence extends to  
2 non-witnesses as well as witnesses).

- 3 2. Any facts or allegations concerning criminal or other misconduct of a witness that is  
4 not reflected in the witness's criminal record, including information from police  
5 reports, probation files, personnel files, pending investigations of the witness, or  
6 business entities with which the witness is connected. *See United States v. Strifler*,  
7 851 F2d 1197 (9<sup>th</sup> Cir. 1988), *cert. denied*, 489 US 1032 (1989).
- 8 3. Information relating to a witness that tends to reflect adversely on the reliability of the  
9 witness, including but not limited to any information about a motive to testify, a bias  
10 against Defendant or a defense witness, or an inability to accurately perceive, recall,  
11 or understand events.
- 12 4. Information that tends to contradict the anticipated testimony of a witness. *See*  
13 *McDowell v. Dixon*, 858 F2d 945 (4<sup>th</sup> Cir. 1988), *cert. Denied*, 489 US 1033 (1989)  
14 (state witness misidentified the defendant before trial and it should have been  
15 revealed).
- 16 5. Information that would render a search or seizure illegal.
- 17 6. Information concerning promises, agreements, deals, rewards, special treatment,  
18 immunity, or other incentives offered by the government to witnesses or others  
19 involved in this case. *Bagley v. United States*, 473 US 667 (1985).
- 20 7. Information concerning a witness requesting, receiving, or being offered a benefit  
21 from the Multnomah County Victim's Assistance Office, the State Department of  
22 Justice Crime Victim's Compensation Fund, or any other unemployment benefit,  
23 priority housing consideration, financial assistance, or immigration assistance (e.g.  
24 eligibility for work permits, lawful permanent residency, and U or T visas).

- 1 8. Information concerning any confession made by Defendant but unknown to defense  
2 counsel. *See Prosecutor of Virgin Islands v. Martinez*, 780 F2d 302 (3<sup>rd</sup> Cir. 1985).  
3  
4 9. Information about any eyewitness for whom the government has a name and/or  
5 address but whom the State does not intend to call as a witness. *Kyles v. Whitley*, 115  
6 SCt 155, 131 L Ed2 490 (1995).  
7  
8 10. Any expert's statement or testimony that would tend to corroborate Defendant's  
9 theory of defense. *People v. Johnson*, 38 Cal App 3d 228, 113 Cal Rptr 303 (1974).  
10  
11 11. Any information which would lessen the impact of the sentencing guidelines of  
12 Defendant in the event of conviction, including but not limited to Defendant's role in  
13 the offense, lesser quantities, ignorance of the scope of a conspiracy, and evidence of  
14 acceptance of responsibility.  
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#### 16 REQUEST TO PRESERVE EVIDENCE

17 Defendant requests that the prosecution, the police, and all agents thereof preserve  
18 evidence in this case for later examination and/or testing by Defendant.  
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#### 20 REQUEST FOR SPEEDY TRIAL

21 Defendant requests a speedy trial pursuant to ORS 135.747, the Oregon Constitution, and  
22 the United States Constitution.  
23

#### 24 NOTICE OF INTENT TO CHALLENGE CRIMINAL HISTORY AND VALIDITY OF PRIOR

##### 25 CONVICTIONS

26 Defendant gives notice of intent to challenge Defendant's criminal history pursuant to  
ORS 137.079(5)(c) and OAR 213-004-0013. Defendant gives notice of intent to challenge the  
validity of prior convictions alleged in any count of felony driving under the influence of  
intoxicants pursuant to ORS 813.328.

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If a presumptive test was used, Defendant requests laboratory analysis pursuant to ORS 475.235(5).

## INSTRUMENTS

CERTIFICATE OF SERVICE

DATED: December 12, 2017.

## AUTHORITIES

United States Constitution, Fourteenth Amendment  
*Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963)  
ORS 135.805 to 135.865  
ORS 132.560