

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

STATE OF OREGON,

Plaintiff,

v.

MILES DOUGLAS FURROW,

Defendant.

No. 21CR61216

**DEFENDANT'S REQUEST FOR
DISCOVERY, PRESERVATION OF
EVIDENCE, SPEEDY TRIAL,
CHALLENGE TO CRIMINAL HISTORY,
AND ORS 475.234(5) NOTICE**

I. DEMAND FOR DISCOVERY

COMES NOW the defendant, by and through counsel, and respectfully requests that the prosecutor 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 4th, 5th, 6th, and 14th Amendments to the United States Constitution. In addition, the defendant specifically demands discovery of the following information and material:

- (1) The names and addresses of persons whom you intend to call as witnesses at any stage of the trial, together with their relevant written or recorded statements or memoranda of any oral statements of such persons, including but not limited to police officers' notebook entries.¹

¹ *State v. Johnson*, 210 Or App 733, 742, 743, 152 P3d 962 (2007) (Without evidence of what is contained in a police officer's notes, it is impossible to determine whether discovery statutes require production of the notes; a mere statement by a prosecutor that the officer memorialized what was in the notes into a report is insufficient in the absence of the notes themselves to exempt the notes from disclosure). To avoid a recess during trial for defense counsel to look at the notes, as required by *State v. Johnson*, we request that the prosecutor obtain the notes from the police as part of the normal routine of discovery compliance in order to avoid mid-trial disruptions that could lead to mistrials with potential double jeopardy repercussions.

- 1 a. Simply relying on the general statement that "the state reserves the right to call as
2 a witness any person named...in any report" does not satisfy the State's discovery
3 obligations under ORS 135.815(1)(A).² The defendant specifically requests a
4 complete list of witnesses whom the state "intends" to call at trial. This list should
5 be disclosed as soon as practicable following the filing of an indictment or
6 information. Refusal to provide this information will result in the defendant moving
7 for exclusion of any applicable witnesses.
- 8 b. "Written or recorded statements or memoranda of any oral statements" includes
9 statements made to representatives of victim's assistance offices.
- 10 (2) Any written or recorded statements or memoranda of any oral statements made by the
11 defendant, or made by a co-defendant if the trial is to be a joint one.
- 12 (3) Any reports or statements of experts, made in connection with the particular case, including
13 results of physical or mental examinations and of scientific tests, experiments, or
14 comparisons which the State intends to offer in evidence at trial.
- 15 (4) Any prior convictions of the defendant which the State plans to introduce, should the
16 defendant testify, and any "prior bad acts" of the defendant that the prosecutor intends to
17 use at trial.
- 18 (5) Any books, papers, documents, photographs, or tangible objects: (a) which the State
19 intends to offer in evidence at the trial; or (b) which were obtained from or belong to the
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22 ² This is supported by a recent case from the Oregon Court of Appeals that- while addressing a different statute -
23 provides guidance regarding the state's responsibilities. In *State v. Chase*, 240 Or App 541 (2011), the court reversed a
24 conviction based on the state's failure to comply with OEC 803(18)(a)(b). That provision requires notice of the child hearsay
25 statements that the prosecutor intends to offer at trial. The Chase court noted that: "the state notified the defendant of its intent to
26 offer the statement: '2. [T]he foregoing and subsequent reports contain particulars of statements made by [the victim] that the
State intends to offer[.]'" *Chase* at 544-45. The defendant objected to the use of the child hearsay on the grounds that "*the notice
had merely referred to the discovery and had not identified particular statements.*" [Emphasis added]. *Id.* The Court of Appeals
agreed with the defendant, "We conclude that the rule's requirement that the proponent identify the particulars of the statement
requires at a minimum that the state identify in its notice the substance of the statement sought to be introduced and also identify
the witness or the means by which the statement would be introduced." *Chase* at 546-47.

1 defendant.

- 2 (6) The occurrence of a search or seizure and any relevant material or information obtained
3 thereby, the circumstances of the search and seizure, and the circumstances of the
4 acquisition of any specified
5 statements from the defendant.
- 6 (7) The identity of a confidential informant when a failure to disclose would infringe on the
7 constitutional rights of the defendant.
- 8 (8) Any information compiled by the state or its agents regarding potential juror voting records
9 or other background information of prospective jurors in this case. The defendant submits
10 that inspection of these materials will assist in selecting an impartial jury and in insuring
11 fundamental fairness.
- 12 (9) That the prosecutor make a specific and detailed effort to determine whether any
13 government agency has any information that must be revealed pursuant to *Brady v.*
14 *Maryland*, 373 US 83 (1963), including but not limited to, the following:
- 15 1. Any evidence, material or information that would tend to impeach the credibility of
16 any person whom the government intends to call as a witness or any individual upon
17 whom the prosecution has relied in the investigation and prosecution of its case.
18 *See Kyles v. Whitley*, 115 SCt 155, 131 K Ed2 490 (1995) (The *Brady* obligation to
19 disclose impeachment evidence extends to non-witnesses as well as witnesses);
20 *US v. Bagley*, 473 US 667 (1985); *Mills v. Scully*, 653 F Supp 885 (SDNY 1987),
21 *rev'd on other grounds*, 826 F 2d 1192 (2d Cir. 1987).
- 22 (a) Any record of the witness's arrest or conviction maintained and prepared by
23 the FBI, DEA, other federal law enforcement agencies, the Oregon State
24 Police, the State Bureau of Investigation, any county sheriffs office, or other
25 national, state or local law enforcement agencies, and the State shall make
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1 a good faith effort to determine if such convictions have occurred. To show
2 a good faith effort was made, the defendant requests a printout indicating
3 that a CRISS/PROMIS/LEDS search was conducted.

4 (b) Any facts or allegations concerning criminal or other misconduct of the
5 witness that is not reflected on his criminal record, including information in
6 prior police reports, and any material information found in his or her
7 probation file, or any pending criminal charge or investigation against the
8 witness, or any business entity with which he is connected. *See United*
9 *States v. Strifler*, 851 F2d 1197 (9th Cir. 1988), *cert. denied*, 489 US 1032
10 (1989).

11 (c) Any information relating to the witness's mental or physical history that tends
12 to impair or reflect adversely on the reliability of the witness, including but not
13 limited to, any information that would tend to affect the witness's motive to
14 testify or ability to perceive, recall, or understand events.

15 (d) Any statements made, written or recorded, by or of the witnesses referred or
16 relating to any of the above-mentioned matters.

17 (e) Any information that tends to contradict the testimony that the prosecutor
18 anticipated will be given by any of its witnesses. *See McDowell v. Dixon*, 858
19 F2d 945 (4th Cir. 1988), *cert. Denied*, 489 US 1033 (1989) (state witness
20 misidentified the defendant before trial and it should have been revealed).

21 (f) Any information showing that the testimony was motivated in any degree by
22 a personal animosity or feelings of revenge toward the defendant. *E.g., State*
23 *v. Brown*, 552 SW 2d 383 (Tenn. 1977).

24 2. Any and all statements, testimony, memoranda, interviews, documents or
25 summaries relating to this case, or any portion thereof, by any person, that
26 contradict, in whole or in part, any statement (by that person or any other person)

1 that the prosecutor intends to use or rely on in any manner in connection with the
2 trial of this cause. *Kyles v. Whitley*, 115 SCt 155, 131 L Ed2 490 (1995).

3 3. All evidence that tends to minimize or negate the probative effect of the prosecutor's
4 evidence of defendant's participation in the allegation set forth in the indictment.
5 See *United States ex rel. Smith v Fairman*, 769 F 2d 386 (7th Cir. 1985) (report
6 revealed gun allegedly used by defendant was inoperable).

7 4. Any evidence, statement, or information in the possession of the prosecutor
8 describing or relating to the conduct of the defendant that in any way refutes or is
9 inconsistent with his participation in the alleged offenses.

10 (a) Any written, recorded, or oral statements or comments made by witnesses
11 or others to any person, including government agents and the grand jury,
12 that are favorable to the defendant.

13 (b) Any written, recorded, or oral statements or comments of persons
14 interviewed by the government in this matter who are not expected to be
15 witnesses for the government at the trial;

16 (c) Any results, reports, and opinions obtained from examinations, tests, and
17 experiments on physical items and evidence that indicate a lack of criminal
18 involvement or otherwise favorable to the defendant;

19 (d) Any evidence, statement, or information that tends to contradict the
20 testimony of the government and anticipates will be given by any one of its
21 witnesses. *United States v. Foster*, 874 F 2d 491 (8th Cir. 1988) (prosecutor
22 failed to correct false testimony which was a violation of due process); *Brown*
23 *v. Wainwright*, 785 F 2d 1457 (11th Cir. 1986);

24 (e) Any evidence relating to searches and seizures, electronic or otherwise, that
25 would make any search or seizure illegal.
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- 1 5. Any promises, agreements, or deals offered by the government concerning rewards,
2 special treatment of immunity to witnesses or others involved in this case. *Bagley*
3 *v. United States*, 473 US 667 (1985).
- 4 6. Any written or oral statement or memorandum of any oral statement of any witness
5 requesting and/or receiving any sort of benefit from the Victim's Assistance Office
6 or State Department of Justice Criminal Victim's Compensation Fund. Benefits
7 include, but are not limited to: unemployment benefits, priority housing
8 consideration, financial assistance, and request for immigration assistance
9 (including eligibility for work permits, lawful permanent residence, and U and T
10 visas).
- 11 7. Any written or oral statement and/or confession made by the defendant which is
12 unknown to defense counsel. See *Prosecutor of Virgin Islands v. Martinez*, 780 F2d
13 302 (3d Cir. 1985).
- 14 8. Any information about any eyewitness for whom the district attorney has a name
15 and/or address but whom the district attorney does not intend to call. *Kyles v.*
16 *Whitley*, 115 SCt 155, 131 L Ed2 490 (1995); *United States v. Cadet*, 727 F2d 1453
17 (9th Cir. 1984).
- 18 9. Any statement or testimony by an expert which would tend to corroborate the
19 defendant's theory of defense. *People v. Johnson*, 38 Cal App 3d 228, 113 Cal Rptr
20 303 (1974).
- 21 10. Any information which would tend to lessen the impact of the Sentencing Guidelines
22 on the defendant in the event of a conviction, including but not limited to the role in
23 the offense, lesser quantities, ignorance of the true scope of any conspiracy, and
24 any evidence of acceptance of responsibility.
- 25 11. All records indicating what efforts your office went to in attempts at learning of any
26 favorable evidence to the defense. *Kyles v. Whitley*, 514 US 419, 437 (1995).

II. PRESERVATION OF EVIDENCE

The defendant requests the prosecution, police, and any agency of the prosecution to preserve any and all evidence in this case, including but not limited to, any state agency likely to be involved with any person related to this case in any manner.

III. REQUEST FOR SPEEDY TRIAL

The defendant also requests a speedy trial pursuant to Oregon and Federal Law, unless and until defendant affirmatively waives such right in open court.

IV. CHALLENGE TO CRIMINAL HISTORY

The defendant hereby gives notice of intent to challenge the defendant's criminal history as provided by the State pursuant to ORS 137.079(5)© and OAR 213-004-0013.

V. ORS 475.235(5) NOTICE

The defendant objects, pursuant to ORS 475.235(5), to the use of a certified copy of any analytical report of controlled substances, and requests that the prosecution call and make available to confrontation and cross-examination any criminalist(s) who conducted any tests and produced any reports that the prosecution intends to use at trial before introducing said tests and reports at trial.

DATED this 7th day of February, 2022.

FERDER, CASEBEER, LLP

/s/ PAUL M. FERDER
PAUL M. FERDER, OSB No. 720871
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that the foregoing DEFENDANT'S PRETRIAL NOTICES AND REQUEST FOR DISCOVERY was served upon the following parties:

Nathan Vargas
Deputy District Attorney
Multnomah County Courthouse
1200 Southwest First Avenue, Suite 5200
Portland, OR 97204

by the following indicated method or methods:

- ☒ by e-mailing full, true, and correct copies thereof on the date set forth below.
- ☒ by electronic filing at his or her known email address or mailing full, true, and correct copies thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorneys as shown above, the last-known office address of the attorneys, and deposited with the United States Postal Service at Salem, Oregon, on the date set forth below.
- ☐ by mailing full, true, and correct copies thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorneys as shown above, the last-known office address of the attorneys, and deposited with the United States Postal Service at Salem, Oregon, on the date set forth below.
- ☐ by faxing full, true, and correct copies thereof to the attorneys as shown above, which is the last known fax number for the attorneys' office, on the date set forth below. The receiving fax machine was operating at the time of service and the transmission was properly completed, according to the attached confirmation reports.

DATED this 7th day of February, 2022.

FERDER, CASEBEER, LLP

/s/ PAUL M. FERDER
PAUL M. FERDER, OSB No. 720871
Of Attorneys for Defendant