IN THE CIRCUIT COURT OF [*county*] COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. [*case number*]

Hon. [*name*]

[*name-all caps*],

Defendant.

**OMNIBUS DISCOVERY MOTION**

On this date came Defendant, [*name*], by Counsel, [ *counsel’s name* ], and moves this Honorable Court, pursuant to Rule 32 of the West Virginia Trial Court Rules and other pertinent provisions, for an Order directing the State of West Virginia to comply with the following discovery requests:

**1. Written or Recorded Statements Made by Defendant:**

Defendant requests that the State provide to defense counsel, prior to trial, copies of any relevant written or recorded statements made by Defendant, within the possession, custody or control of the State, the existence of which is known, or by some exercise of due diligence may become known, to the attorney for the State. W. Va. R. Cr. P. 16(a)(1)(A); W. Va. Code § 62-1B-2. This request includes any relevant written or recorded statement made by Defendant to any person, and is not limited to statements made to law enforcement officers. *State v. Lambert*, 175 W. Va. 141, 331 S.E.2d 873 (1985); *State v. Miller*, 178 W. Va. 618, 363 S.E.2d 504 (1987). This request should include any notes or preliminary statements taken by law enforcement officials while questioning Defendant.

**2. Oral Statements Made by Defendant:**

Defendant requests that the State provide to defense counsel, prior to trial and in writing, the substance of any oral statement which the State intends to offer in evidence at the trial made by Defendant, whether before or after arrest, including notes of preliminary statements. W. Va. Code § 62-1B-2; W. Va. R. Cr. P. 16(a)(1)(A). This request includes any oral statement made by Defendant to any person, and is not limited to statements made to law enforcement officers. *State v. Lambert*, 175 W. Va. 141, 331 S.E.2d 873 (1985); Syl. Pt. 3, *State v. Miller*, 178 W. Va. 618, 363 S.E.2d 504 (1987).

**3. Defendant’s Grand Jury Testimony:**

Defendant requests that the State provide to defense counsel, prior to trial, true and complete copies of all recorded testimony of Defendant before a grand jury which relates to the offense charged. W. Va. R. Cr. P. 16 (a)(1)(A).

**4. Defendant’s Criminal Record:**

Defendant requests that the State furnish to defense counsel, prior to trial, such copy of Defendant’s prior criminal record, if any, as is within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the State. W. Va. R. Cr. P. 16 (a)(1)(B).

**5. Documents and Tangible Objects:**

Defendant requests that the State provide to defense counsel, prior to trial, a **written list** of all books, papers, documents, photographs, tangible objects, maps or drawings of buildings or places, or copies or portions thereof, which are within the possession, custody and control of the State, and which are material to the preparation of his/her defense or are intended for use by the State as evidence in chief at the trial, or were obtained from or belonged to Defendant. Defendant further requests permission to inspect and copy or photograph the same. Also, Defendant asks that the State provide defense counsel with copies of any and all photographs. W. Va. Code § 62-1B-2; W. Va. R. Cr. P. 16(a)(1)(c).

**6. Reports of Examinations and Tests:**

Defendant requests that the State furnish to defense counsel, prior to trial, copies of all results or reports of physical or mental examinations, and of scientific tests or experiments, which are within the possession, custody or control of the State, the existence of which is known or by the exercise of due diligence may become known, to the attorney for the State, and which are material to the preparation of the defense or are intended for use by the State as evidence in chief at trial. W. Va. R. Cr. P. 16(a)(1)(d); W. Va. Code § 62-1B-2; Syl. Pt. 1, *State v. Roy*, 194 W. Va. 276, 460 S.E.2d 277 (1995).

**7. Specific Information Relating to Hearsay:**

Defendant requests that the State furnish to defense counsel, prior to trial, the substance of all hearsay evidence the State intends to introduce pursuant to Rule 807 of the West Virginia Rules of Evidence. *State v. Walker*, 188 W. Va. 661, 425 S.E.2d 616 (1992) (referring to the old rules 803(24) and 803(b)(5), which have since been combined into the new Rule 807).

**8. State Witness list:**

Defendant requests that the State furnish to defense counsel, prior to trial, a written list of the names and addresses of all witnesses whom the State intends to call in its case in chief. W. Va. R. Cr. P. 16(a)(1)(f).

**9. Rebuttal Witness List:**

Defendant requests that the State furnish to defense counsel, prior to trial, a written list of the names and addresses of all rebuttal witnesses whom the State reasonably anticipates will be used during trial. W. Va. R. Cr. P. 16(a)(1)(F); *State v. Roy*, 194 W. Va. 276, 460 S.E.2d 277 (1995); *State v. Smith*, 220 W. Va. 565, 468 S.E.2d 71 (2007).

**10. Criminal Convictions of State Witnesses:**

Defendant requests that the State furnish to defense counsel, prior to trial and in writing, the record of prior convictions for each witness whom the attorney for the State intends to call in its case-in-chief, which is within the knowledge of the State or by the exercise of due diligence may become known to the State. W. Va. R. Cr. P. 16(a)(1)(F).

**11. Expert Witnesses:**

Defendant requests that the State disclose to defense counsel, prior to trial, a written summary of testimony the State intends to use under Rules 702, 703, or 705 of the West Virginia Rules of Evidence during its case at trial. The summary must describe each witness’s opinions, the bases and reasons therefor, and the witness’s qualifications. W. Va. R. Cr. P. 16(a)(1)(E).

**12. Identity of Witnesses Before the Grand Jury:**

Defendant requests that the State provide to defense counsel, prior to trial and in writing, the names of all persons who testified before the grand jury regarding this case. W. Va. Code § 52-2-8.

**13. Statements of Co-Defendant[s]:**

Defendant requests that the State provide to defense counsel, prior to trial, copies of any written or recorded statement made by each and every co-defendant, and also, in writing, the substance of any oral statement made by a co-defendant, which the State intends to introduce at trial. *State v. McCormick*, 166 W. Va. 800, 803, 277 S.E.2d 629, 632 (1981) (the admissibility of statements of a co-conspirator should be settled out of the jury’s presence).

**14. Notice of State’s Intention to Use Discoverable Evidence:**

Defendant requests, pursuant to W. Va. R. Cr. P. 12(d)(2), that the State notify defense counsel, in writing, of its intention to use, in its case-in-chief, any evidence which the defendant may be entitled to discover and/or move to suppress pursuant to, respectively, W. Va. R. Cr. P. 16 and 41. This request includes, but is not limited to the following:

(a) Any evidence or information seized or otherwise obtained during a search, or seized or otherwise obtained as a result of a search, executed by government officials or state agents, including the fruit of such search[es]; and

(b) Any pre-trial identification procedure including, but not limited to, line-ups, photo spreads, one-on-one show-ups, and displays of one or more photographs to one or more witnesses or potential witnesses.

**15. State’s Intent to Use Collateral Crimes/Other Wrongs Evidence:**

Defendant requests that the State provide defense counsel, prior to trial and in writing, notice of its intention to use at trial collateral crime evidence and evidence of other crimes, wrongs or acts, and, as well, a statement of the State’s theory of admissibility with respect to each item of such Rule 404(b) evidence. W. Va. R. Evid. 404(b); *State v. McGinnis*, 193 W. Va. 147, 455 S.E.2d 516 (1994); *State v. Larock*, 196 W. Va. 294, 470 S.E.2d 613 (1996).

**16. Notice of State’s Intention to Use Flight Evidence:**

Defendant requests that the State furnish written notice of its intention to use evidence of flight at trial and also the particulars as to the time, date, place and persons relevant thereto. *State v. Payne*, 167 W. Va. 252, 280 S.E. 2d 72 (1981); *see also* *Acord v. Hedrick*, 176 W. Va. 154, 342 S.E.2d 120 (1986).

**17. Pre-Trial Production of Statements of State Witness:**

Defendant requests, pursuant to W. Va. R. Cr. P. 26.2 and W. Va. Const. Art. III, § 14, that the State produce, in advance of trial, any statement, as defined by W. Va. R. Cr. P. 26.2(f), made by a witness who will be called to testify in the State’s case-in-chief at trial. *State v. Gale*, 177 W.Va. 337, 352 S.E.2d 87 (1986); *State v. Watson*, 173 W.Va. 553, 318 S.E.2d 603 (1984); *State v. Miller,* 184 W.Va. 492, 401 S.E.2d 237 (1990). This request includes, but is not limited to:

(a) Statement[s], however taken or recorded or a transcription thereof, made by the witness to a grand jury. W. Va. R. Cr. P. 26.2(f)(3); *State v. Watson*, 173 W.Va. 553, 318 S.E.2d 603 (1984);

(b) Written statement[s] made by a witness that is signed or otherwise adopted or approved by the witness. W. Va. R. Cr. P. 26.2(f)(1);

(c) A substantially verbatim recital of an oral statement made by the witnesses that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical or other recording, or a transcription thereof. W. Va. R. Cr. P. 26.2(f)(2); and

(d) Reports of police officers. *State v. Miller*, 184 W.Va. 492, 401 S.E.2d 237 (1990).

**18. Pre-Trial Production of Grand Jury Transcripts**

Defendant requests, pursuant to W. Va. R. Cr. P. 6, and W. Va. Const. Art. III, § 14, that the State provide to defense counsel, prior to trial, transcripts of the proceedings before the grand jury which returned the indictment in this case, and as well, any other minutes and notes required to be kept, including the number of grand jurors concurring in the finding of the indictment in this case. In support hereof, defense counsel states:

(a) That the disclosure to defense counsel of matters occurring before the grand jury may show that grounds exist for a motion to dismiss;

(b) That the record required to be kept by W. Va. R. Cr. P. 6(c) may reveal the failure of a requisite number of grand jurors to have concurred;

(c) That disclosure to the defense counsel of matters occurring before the grand jury will reveal evidence which tends to exculpate Defendant by indicating his/her innocence and impeaching the credibility of potential State witnesses, which disclosure is compelled under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny.

**19. Electronic Surveillance:**

Defendant requests that the State provide to defense counsel written notice of any mail cover, wire cover, electronic surveillance, and/or surveillance by any mechanical or physical means used in connection with this case. Defendant further requests that the State provide to defense counsel a copy of the Court order authorizing such surveillance, as well as copies of all other materials provided to the Court issuing said order, in support of the application for said surveillance. W. Va. Code § 62-1D-11(j-k).

**20. Exculpatory and Impeachment Material:**

Defendant requests that the State provide to defense counsel, in writing and prior to trial, all exculpatory materials favorable to the accused and which may negate or tend to negate guilt for the offense alleged or which may mitigate punishment, and all evidence which could reasonably weaken or impeach any evidence proposed by the State to be introduced against Defendant. W. Va. Const. art. 3, § 10 and § 14, U. S. Const. amends 5, 6 and 14; *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); and *State v. Youngblood*, 220 W. Va. 20, 650 S.E.2d 119 (2007).

**21. Witness’s Failure to Inculpate the Defendant:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, (1) any statement made by an informed witness which failed to mention Defendant, *Jones v. Jago*, 575 F.2d 1164 (6th Cir. 1978); and (2) any failure by an eyewitness to identify Defendant as an actor in a transaction in which the State contends Defendant personally participated. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); and *State v. Youngblood*, 220 W. Va. 20, 650 S.E.2d 119 (2007).

**22. Offers of Leniency to State Witnesses:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, the terms of any plea bargain, offer of leniency or immunity, or other inducement or agreement, whether oral or written, offered or actually given to any witness whom the State intends to call at trial. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); and *State v. Youngblood*, 220 W. Va. 20, 650 S.E.2d 119 (2007).

**23. Juvenile & Criminal Records of State Witnesses:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, the prior juvenile and criminal records or other prior material acts of misconduct of any witness whom the State intends to call at trial. *United States v. Strifler*, 851 F.2d 1197 (9th Cir. 1988); *United States v. Perdomo*, 929 F.2d 967 (3rd Cir. 1991). This includes all declarants whose out-of-court statements the State will seek to introduce as an exception to the hearsay rule. W. Va. R. Evid. 806; *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995).

**24. Probation Reports of State Witnesses:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, a copy of any federal or state probation or presentence report of each prospective State witness. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *see also United States v. Figurski*, 545 F.2d 389 (4th Cir. 1976); *United States v. Anderson*, 724 F.2d 596 (7th Cir. 1984) (presentence report contents that impeach witness’s credibility are discoverable; interpreting *Figurski*); *United States v. Strifler*, 851 F.2d 1197 (9th Cir. 1988).

**25. Complaining Witness’s Efforts to Dismiss Charge:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial,all oral or written requests by a complaining witness or victim to withdraw a complaint or to otherwise cause the dismissal of the charges alleged herein. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); and *State v. Youngblood*, 220 W. Va. 20, 650 S.E.2d 119 (2007).

**26. Polygraph Tests:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, the oral and written results of any polygraph test administered to a prospective State witness. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Carter v. Rafferty*, 826 F.2d 1299 (3rd Cir. 1987).

**27. Investigations of State Witnesses:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial,any evidence that a prospective government witness is or has been under investigation by federal, state or local authorities for any criminal conduct unrelated to the instant case. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Chitty*, 760 F.2d 425 (2nd Cir. 1985) *cert. denied* 474 U.S. 945 (1985); *State v. Youngblood*, 220 W. Va. 20, 650 S.E.2d 119 (2007).

**28. Prior False Statements of State Witnesses:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial,any evidence that any prospective State witness has ever made any false statement to authorities, whether or not under oath or penalty of perjury. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Strifler*, 851 F.2d at 1202 (9th Cir. 1988); *State v. Youngblood*, 220 W. Va. 20, 650 S.E.2d 119 (2007).

**29. Bias/Motive of State Witnesses:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, any evidence that a prospective State witness is biased or prejudiced, or has a motive to be biased or prejudiced, against Defendant for any reason. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Strifler*, 851 F.2d at 1201 (9th Cir. 1988); *United States v. Sperling*, 726 F.2d 69 (2nd Cir. 1984); *State v. Youngblood*, 220 W. Va. 20, 650 S.E.2d 119 (2007)

**30. Inconsistent Statement(s) of State Witnesses:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, any evidence that a prospective State witness has made a contradictory or inconsistent statement with regard to this case, and evidence that the testimony of a prospective State witness is inconsistent with any statement of any other person or prospective witness. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Hudson v. Blackburn*, 601 F.2d 785 (5th Cir. 1979); *United States v. Hibler*, 463 F.2d 455 (9th Cir. 1972); *Mesarosh v. United States*, 353 U.S. 1 (1956); *Johnson v. Brewer*, 521 F.2d 556 (8th Cir. 1975); *State v. Youngblood*, 220 W. Va. 20, 650 S.E.2d 119 (2007).

**31. Medical/Psychiatric Condition of State Witnesses:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, any evidence, including any medical or psychiatric report or evaluation, tending to show that any prospective State witness’s ability to perceive, remember, communicate, or tell the truth is impaired; and any evidence that a witness has ever used narcotics or other controlled substance, or has ever been an alcoholic. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Chavis v. North Carolina*, 637 F.2d 213, 224 (4th Cir. 1980); *United States v. Society of Independent Gasoline Marketers of America*, 624 F.2d 461 (4th Cir. 1980).

**32. Informant’s CI File:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, that the prosecution intends to call an informant in this case, and provide a copy of the informant’s personnel (“CI”) file. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995) *United States v. Garrett*, 542 F.2d 23 (6th Cir. 1973) (concerning an undercover police officer, not a CI); *United States v. Austin*, 492 F.Supp.502 (N.D. Ill. 1980) (employee files of government employees and witnesses are discoverable); *State v. Youngblood*, 220 W. Va. 20, 650 S.E.2d 119 (2007)

**33. Evidence of Other Suspects in This Case:**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, any evidence that someone other than Defendant committed, or was ever suspected of committing, either the crimes charged or of performing the role in the offense which the State intends to prove was performed by Defendant. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Miller v. Angliker*, 848 F.2d 1312 (2nd Cir. 1988); *Bowen v. Maryland*, 799 F.2d 593 (10th Cir. 1986); *James v. Jago*, 575 F.2d 1164 (6th Cir. 1978); *State v. Youngblood*, 220 W. Va. 20, 650 S.E.2d 119 (2007).

**34. Witnesses Not Called by The State**

Defendant requests that the State disclose to defense counsel, in writing and prior to trial, the names and addresses of witnesses to the offenses allegedly committed by Defendant whom the State does not intend to call at trial. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Cadet*, 727 F.2d 1453, 1468-69 (9th Cir. 1984); *State v. Bennett*, 176 W.Va. 1, 339 S.E.2d (1985); *State v. Mansfield*, 175 W.Va. 397, 332 S.E.2d 862 (1985).

**35. Additional Discovery Requests:**

Defendant requests permission to file such additional discovery requests as defense counsel deems necessary as a result of further investigation of this case and the production of the State’s discovery responses.

Therefore**,** Defendant respectfully prays this Honorable Court for the relief requested in the premises herein, as well as any other relief which this Honorable Court deems proper.

[*defendant*],

By Counsel

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

[*counsel name*] [*bar number*]

[*address*]

[*phone number*]

[*email address*]

Counsel for Defendant