

21-1-00676-34
NTARD 25
Notice of Appearance and Request for Discover
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E-FILED
THURSTON COUNTY, WA
SUPERIOR COURT
07/28/2021 8:40:00 AM
Linda Myhre Enlow
Thurston County Clerk

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| SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY | |
| STATE OF WASHINGTON, Plaintiff, vs. SELENA SMITH, Defendant. | NO. 21-1-00676-34 NOTICE OF APPEARANCE, DEMAND FOR DISCOVERY AND EVIDENCE PRESERVATION |

SKYE FRISON, #53651, Defense Attorney, Thurston County Public Defense, hereby appears in the above-captioned case as attorney of record for the accused. All further papers and pleadings herein, except original process, should be served upon the undersigned attorney at the address stated below.

DEMAND FOR DISCOVERY

1. Pursuant to CrR 4.7, the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; and Article 1, Sections 3, 7, 29, and 30, and the Tenth Amendment to the Washington State Constitution, the Defense respectfully requests that the Prosecuting Attorney provide the following discovery by the date of the first scheduled omnibus so that a timely decision may be made regarding selection of a trial date or change of plea:

- a. The names and addresses of persons whom the Prosecuting Attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of an oral statement of such witnesses.
- b. Any written or recorded statements and the substance of any oral statements made by the accused.

- c. Any reports or statements of experts made in connection with this case, including results of physical or mental examination and scientific tests, experiments, or comparisons.
- d. Any books, papers, documents, photographs, or tangible objects which the Prosecuting Attorney intends to use in the hearing or trial, or which were obtained from or belonged to the accused.
- e. Any record of prior criminal convictions of the accused and of persons whom the Prosecuting Attorney intends to call as witnesses at the hearing or trial.
- f. Any and all material, information and/or documentation available to the State regarding the interception and/or recording of any jail phone calls made or received by the accused from any other person including but not limited to his lawyers, relatives, friends, or any other individuals. This includes providing: the date and time of phone call intercepted, accessed, or listened to by a state agent; the phone number called; the call length; which state agent accessed, intercepted, or listened to the jail phone call; the amount of call listened to; and the date and time the call was intercepted, accessed or listened to.
- g. Any and all exculpatory information pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). **This requires the State to reveal any information it actually or constructively possesses and which information is favorable to the accused and material to the issue of guilt or punishment, or in any way discredits the State's case.** *Brady v. Maryland*, 373 U.S. 83, 87 (1963); CrR 4.7. Although the *Brady* rule often is phrased in terms of information "known to the prosecution," the prosecution's "knowledge" for this purpose clearly extends beyond the personal knowledge of the Prosecuting Attorney representing the State at trial. *Giglio v. United States*, 405 U.S. 150, 154 (1972). "The individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police," *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). A prosecutor must resolve doubts regarding disclosure in *favor* of sharing the evidence with the defense. *Id.*

DEMAND TO PRESERVE EVIDENCE

1. Washington recognizes a constitutional duty of the State to preserve material evidence. *State v. Wright*, 87 Wn.2d 783 (1976); *State v. Spurgeon*, 63 Wn.App. 503 (1991). Any failure to preserve evidence violates the accused's constitutional right to due process and a fair trial. *State v. Blackwell*, 120 Wn.2d 822 (1993). The duty to preserve evidence applies not only to prosecution, but also to its agents acting under prosecutorial authority. *State v. Vaster*, 99 Wn.2d 44 (1983).

2. The accused requests that the Prosecuting Attorney, its agents and employees, as well as any city, county, or state employees or contractors involved in this case preserve all material evidence relating to this case. This request to preserve evidence includes:

- a. All physical evidence;
- b. Witness statements;
- c. Rough notes of any police officers, investigators, or any other persons making notes or presorts of any kind in connection with this case;
- d. Preservation of any audio or video recordings; and
- e. Any radio or computer transmissions—to include emails--made or received in relation to this case.

OBJECTION TO RESTRAINTS

Pursuant to *State v. Lundstrom*, 429 P.3d 1116 (2018), the defense hereby objects to use personal restraint of the defendant herein when brought into the presence of the court absent an individualized determination of the necessity of restraints.

DATED: July 27, 2021