

NO. 00000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 227TH JUDICIAL DISTRICT
MARY SMITH) BEXAR COUNTY, TEXAS

**MOTION FOR *BRADY* INFORMATION
CONCERNING POTENTIAL WITNESSES**

TO THE HONORABLE JUDGE OF SAID COURT:

Mary Smith moves this Court to order the state to disclose all evidence in its possession and in the possession of its agents which is both favorable to the defendant and material either to guilt or to punishment, including impeachment evidence, concerning potential witnesses Bobbi Ann Finius and Jennifer Berb.

**I.
Pertinent Facts**

A pretrial hearing was held on January 22, 2018 at which time the Court granted Ms. Smith's Motion For Discovery Of Exculpatory And Mitigating Evidence, her Motion To Require The State To Reveal Agreements Entered Into Between The State And Its Witnesses, and her Motion For Discovery Of The Arrest And Conviction Records Of State's Witnesses. Sometime later, the state informed counsel that one person – Bobbi Ann Finius and perhaps another, Jennifer Berb – claimed that Ms. Smith had made incriminating statements about the charged offense. The state has since permitted counsel to watch a recording of Ms. Finius's statement to the police, but has not provided the

defense a copy of this recording. From the limited investigation we have been able to conduct, counsel believe that one or both these potential witnesses have extensive criminal histories in Texas and other states, including Arizona, California, and Washington.

II. Arrest And Conviction Records

Ms. Smith moves that this Court order the state to examine the records of its local law enforcement agencies, the Texas Crime Information Center, and the National Crime Information Center concerning Ms. Finius and Ms. Berb and to disclose to the defense their arrest and conviction records which can be used for cross-examination and impeachment under Rule 609 of the Texas Rules of Evidence; the Sixth and Fourteenth Amendments to the United States Constitution; and, Article I, § 10 of the Texas Constitution, including, but not limited to the following:

1. final felony convictions;
2. felony convictions for which probation has not been satisfactorily completed;
3. final misdemeanor convictions involving moral turpitude;
4. misdemeanor convictions involving moral turpitude for which probation has not been successfully completed;
5. offenses pending between the date of this offense and trial, which might have a bearing on the witness's motive to testify, including juvenile cases, felonies and misdemeanor cases, convictions, probations or deferred adjudications. *See Davis v. Alaska*, 415 U.S. 308 (1974).

III. Deals

Ms. Smith moves the Court to order the state to reveal any inducements offered by the state which might tend to motivate its witnesses to testify. She is entitled to discover any inducement offered by the state which might tend to motivate its witnesses to testify in this case, including, but not limited to, plea bargain agreements, fee, expense, or reward arrangements with witnesses or informants, agreements to dismiss or reduce or not to bring charges, or any other agreement for leniency in exchange for testimony or cooperation. Such information affects the credibility of the state's witnesses, and defendant is entitled to it under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the due course of law clause of Article I §§ 13 and 19 of the Texas Constitution, her right to effective assistance of counsel, confrontation and cross-examination, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, article I, § 10 of the Texas Constitution, and articles 1.05 and 1.25 of the Texas Code of Criminal Procedure. This request includes both formal or express agreements, as well as implied, suggested, insinuated, inferred, or informal agreements. It also includes agreements with the witness, as well as with the witness's spouse, relatives, friends and associations which might tend to motivate the witness to testify for the state in this case. It also includes any agreements made between the state and the witness's lawyers, whether or not the agreement is known to the witness.

IV.
Exculpatory Statements From Berb

Since initially talking with the prosecutor, counsel have heard that potential witness Berb has denied that Ms. Smith made any incriminating statements in her presence. If so, then this is exculpatory, since it impeaches potential witness Finius, who claims that Ms. Berb also heard the statements. We know that the police interviewed and recorded Ms. Finius, and it is reasonable to think that they did the same with Ms. Berb. The defense requests disclosure of any statements, written, electronic, or otherwise, made to the police by Ms. Berb concerning her conversations with Ms. Smith.

V.
Brady v. Maryland, etc.

Disclosure of the information requested in this motion is required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See United States v. Bagley*, 473 U.S. 667, 675-78 (1985); *Giglio v. United States*, 405 U.S. 150 (1972); *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Disclosure is also required under the Due Course of Law provisions of Article I, §§ 13 and 19 of the Texas Constitution. *See also* Rule 309(d) of the Texas Disciplinary Rules of Professional Conduct.

VI.
Copies Of Electronically Recorded Statements

Counsel request that they be provided with copies of any electronically recorded statements made to the police by potential witnesses Finius and Berb. If these witnesses

testify at Ms. Smith's trial, they are subject to being impeached by their prior statements. It will be impossible for the defense to properly prepare to impeach and to effectively impeach these witnesses unless they have their own recorded copies of their statements.

Respectfully submitted:

MARK STEVENS
310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205-3192
(210) 226-1433
(210) 223-8708 fax
mark@markstevenslaw.com
State Bar No. 19184200

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of this motion has been delivered to the Bexar County District Attorney's Office; 101 W. Nueva, San Antonio, Texas on July 12, 2018.

MARK STEVENS

ORDER

On this the _____ day of _____, 2018, came on to be considered defendant's Motion for Exculpatory, Mitigating, and Impeachment Evidence Concerning Potential Witnesses, and said Motion is hereby

(GRANTED) (DENIED).

PRESIDING JUDGE