

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF BUNCOMBE

2015 JUN -1 AM 9:08

SUPERIOR COURT DIVISION

CASE NOS. 15 CRS 432-433

STATE OF NORTH CAROLINA,

BUNCOMBE CO., C.S.C.

Plaintiff,

v.

MICHAEL MAYO MACKE,

Defendant.

**DEFENDANT'S REQUEST FOR, OR,
ALTERNATIVELY, MOTION FOR
DISCOVERY AND DISCLOSURE
OF BRADY MATERIAL**

NOW COMES the above-named defendant, MICHAEL MAYO MACKE, pursuant to N.C. Gen. Stat. § 15A-902, 903, 904, the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 19 and 23 of the Constitution of North Carolina, to request that the Office of the District Attorney voluntarily provide the following discovery and, in the alternative, to move that this Court order the Office of the District Attorney to provide the following discovery at the earliest possible time so that counsel may be able to adequately prepare for trial, and so that the Court may timely rule on any subsequent pre-trial motions of either party which may be occasioned by the discovery sought herein. The discovery requested of the State is as follows:

I. MATERIALS

- (1) All relevant written or recorded statements made by any defendant.
- (2) All oral statements by any defendant which the State intends to offer in evidence at trial, whether made before or after arrest in response to interrogation by any person then known to the defendant to be a government agent.
- (3) The criminal record of any defendant, including any misdemeanor record.
- (4) All books, papers, documents, photographs, tangible objects, places, or copies or portions thereof which are material to the preparation of the defense or intended for use by the State as evidence at trial, or were obtained from or belonged to defendant, MICHAEL MAYO MACKE.
- (5) Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof which are material to the preparation of the defense or are intended for use by the State at trial.

II. WITNESSES & NON-WITNESSES

(6) The names, addresses, current telephone numbers and criminal records of all witnesses upon whom the State intends to rely to establish defendant, MICHAEL MAYO MACKE's, presence at the scene of the alleged offenses for which he is charged; and the names, addresses and current telephone numbers, and criminal records of all witnesses who the State intends to call at trial for any purpose.

(7) The names, addresses, current telephone numbers, and criminal records of all persons who were interviewed by the State in connection with this case but who will not testify as witnesses for the State at trial; and all statements, writings or recordings of any kind made from the State's interview of such persons.

(8) All statements, writings or recordings of any kind in the possession of the State made by any person, or obtained from any person by the State, which contain information relevant to the trial of defendant, MICHAEL MAYO MACKE.

III. CODEFENDANT AND COCONSPIRATOR'S STATEMENTS

(9) All written or recorded statements made by any codefendant and/or claimed coconspirator, regardless of whether they are indicted or unindicted.

(10) The substance of all oral statements which the State intends to offer in evidence at trial, made by any codefendant and/or claimed coconspirator, regardless of whether they are indicted or unindicted.

(11) The substance of all statements of codefendants and/or claimed coconspirators, regardless of whether they are indicted or unindicted, which the State intends to offer in evidence at trial under the coconspirator exception to the hearsay rule.

IV. INFORMANTS

(12) The names, addresses, current telephone numbers and criminal records of any informants, special employees or special investigators used in the investigation of this case, or person hired, directed, requested and/or paid by the State to investigate or obtain information in any manner whatsoever in the investigation of this case.

(13) All investigative agencies' departmental rules or regulations to which any informant or special employee was hired, employed or requested to participate in the investigation of this case.

(14) All recorded or written memoranda or conversations, discussions with, or statements by informants or special employees of the State.

(15) The names and classifications of all investigative agents, District Attorneys or other State employees, who met with, talked to or who were present at any meeting or discussion

held with any informant and/or special employees of the State during the investigation of the offenses for which defendant, MICHAEL MAYO MACKE, is charged.

(16) Whether any State or local agent or anyone acting at the direction or behest of the State (be he or she designated as an "informant", "individual" or otherwise) has talked with or communicated with any defendant pertaining to this case; if so, the name of such agent, informant, or special employee together with all other facts and circumstances pertaining thereto.

V. ELECTRONIC RECORDINGS AND SURVEILLANCE

(17) All recorded conversations or transcripts thereof or other electronically obtained information made in connection with this case.

(18) Whether any conversation entered into by any defendant or attorney for any defendant has been electronically recorded, and if so, disclose:

- (a) A copy of such tape or recording;
- (b) The authority for making such interceptional recording;
- (c) The date the recording was made and the identity of all the speakers therein.

(19) If conversations of defendant or any of their attorneys were subject to surveillance, but were not electronically recorded, provide all handwritten notes or memoranda, stating the date of the conversation, the parties to the conversation, and the nature of the conversation.

(20) All taped or electronically recorded conversations in the possession of the State which may have been made between any defendant and any third party, together with the times, places and any authorization for making the same.

(21) All taped or electronic recordings intended to be introduced at the trial of this case.

(22) The make, kind or model and serial number of any electronic recording device utilized by government agents to record conversations of the defendants, or anyone else named as a coconspirator.

(23) Whether there have been any "beeper" transmitters or any other type of listening, or "homing" devices used to overhear or monitor conversations between any defendant and any other parties since their arrest, or used to assist in the surveillance, "tailing" or stakeout of any defendant, or any vehicle prior to their arrest.

(24) With regard to any kind of surveillance, state whether it was consensual; and, if so, if it was a result of any promise or inducement on the part of the State or any local agency.

(25) If no electronic recordings exist of the conversations referred to in paragraphs (13) and (16) above, provide all notes and memoranda with regard to said conversations,

including the date of said conversations, the nature of them and the names of all parties to them.

(26) All taped or electronically recorded conversations in the possession of the State which were made between the Alcohol Law Enforcement agency and any branch of any State or local Governmental law enforcement agency.

(27) If no electronic recordings were made of the conversations referred to in paragraph (19) above, provide memoranda and notes of said conversations, including the date of said conversations, the nature of them and the parties to them.

VI. SEARCHES AND SEIZURES

(28) All searches and seizures made (with or without a search warrant) and detailed information regarding the times, dates and places thereof, together with the authority for such search and seizure, copies of any search warrants and affidavits in support thereof, and a listing of the items seized.

(29) All evidence concerning any searches and/or seizures made by the State or its agents which would tend to taint or make illegal such searches and/or seizures.

(30) Whether any U.S., foreign or private mail or other correspondence sent to or by defendant, MICHAEL MAYO MACKER, or any co-defendant, or any alleged co-conspirator whether indicted or not, or any of defendant's attorneys was intercepted or otherwise inspected.

(31) If any "mail cover" did exist, as referred to in paragraph (30) above, detail:

- (a) The circumstances under which it was instituted including the names and positions of all persons who authorized it;
- (b) The procedure under which it was instituted, including the names and positions of all persons involved therein;
- (c) The purported justification for its institution;
- (d) The information it produced;
- (e) The names and positions of all persons to whom such information was transmitted and the dates of such transmission; and
- (f) The use of such information.

VII. BRADY & GIGLIO MATERIAL

(32) All evidence favorable to defendant on the issues of guilt, innocence, or punishment, without regard to materiality.

(33) All writings, recordings and photographs relating to offers, threats or inducements made to any persons in an effort, whether successful or not, to obtain testimony in this case.

(34) The name, address and current telephone number of any person who has given information exculpatory to defendant, MICHAEL MAYO MACKE, and any writings, recordings and photographs relating thereto.

(35) All statements made by coconspirators which are exculpatory to defendant, MICHAEL MAYO MACKE, whether made "in furtherance of the conspiracy" or after its termination.

(36) All writings, recordings and photographs relating to offered "bargains", whether consummated or not, with alleged coconspirators in this case.

(37) The criminal records of all witnesses who the State intends to call at trial or at any hearing in connection with this case.

(38) All correspondence from representatives of the State on behalf of any of the witnesses in this case seeking special considerations or favors for said witnesses.

(39) Production by the State of a record of all funds paid to, or allowed to be retained by, confidential informants or witnesses in this case.

(40) The existence and substance, and the manner of execution or fulfillment, of any promises, agreements, understandings or arrangements, either verbal or written between the State and any prosecution witnesses, or their attorneys or representatives, wherein the State has agreed:

- (a) Not to prosecute the witnesses for any crime or crimes;
- (b) To provide a formal grant of statutory immunity in connection with any testimony given by him or her;
- (c) To recommend leniency in sentencing for any crime or crimes for which he or she may be convicted;
- (d) To recommend a particular sentence for any crime or crimes for which he or she may be convicted;
- (e) To make any other recommendations or benefit or to give any other consideration to him or her.

(41) Whether any person interviewed in connection with the State's investigation of this case has been given a psychological or psychiatric examination; and, if so, list such person, the date of examination, the examiner, and provide the results of such examination.

VIII. EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS

(42) All evidence of other crimes, wrongs, or acts within the ambit of N.C.G.S. 8C-1, Rule 404(b) which the State intends to introduce into evidence at trial against defendant, MICHAEL MAYO MACKIE.

IX. GRAND JURY MATERIALS

(43) The names of all witnesses appearing before the grand jury in connection with the return of the indictment in this case.

(44) All documents and exhibits presented to the grand jury.

(45) Grand jury transcripts of the testimony of all witnesses appearing before the grand jury.

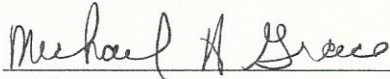
(46) All evidence obtained and presented to the grand jury which was directly or indirectly derived from wiretap or surveillance activity, including, but not limited to, tape recordings, "night scopes", radar tracking, EPIC or other computer date satellite photos, beepers, transmitters, photographs, motion picture film, video tapes, sketchings or other such surveillance.

WHEREFORE, the Defendant requests that the State voluntarily provide the forgoing items of discovery and if the office of the District Attorney fails or refuses to provide the requested voluntary discovery herein, then Defendant respectfully prays that the Court treat this Request for Voluntary Discovery as a Motion for the Court to issue an Order compelling the State to provide the foregoing items of discovery pursuant to N.C. Gen. Stat. § 15A-902, and further prays of the Court:

- (a) That such matters and items of discovery as the Government may assert are privileged or otherwise not subject to discovery be reviewed by this Honorable Court in camera, and that any such discovery determined by this Court to be exempt from discovery be deposited with the Court for preservation in order to facilitate any necessary appellate review;
- (b) That the accused be allowed to supplement and amend this discovery request as the disclosure of information provides basis for relief;
- (c) That the accused be permitted to file such other motions as may become necessary based on the further disclosure of other information not presently available to him; and
- (d) That the accused be granted such other and further relief as the Court deems just and proper.

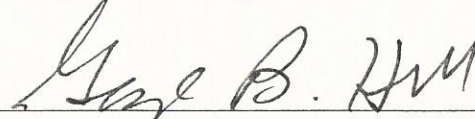
THIS the 15th day of June, 2015.

GRACE, TISDALE, CLIFTON, P.A.



Michael A. Grace
Attorney for Defendant
200 West First Street
Winston-Salem, NC 27101
(336) 725-9428
(336) 721-1176 - fax

HYLER & LOPEZ, P.A.



George B. Hyler, Jr.
Attorney for Defendant
38 Orange Street
Asheville, NC 28801
(828) 254-1070
(828) 254-1071 - fax

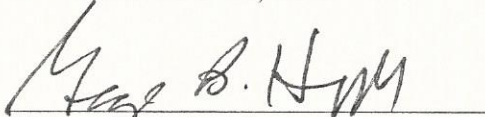
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned has on this date served a copy of the foregoing **DEFENDANT'S REQUEST FOR, OR, ALTERNATIVELY, MOTION FOR DISCOVERY AND DISCLOSURE OF BRADY MATERIAL** on counsel for the State of North Carolina by hand delivery to:

Alex Bass
Assistant District Attorney
28th Prosecutorial District
P.O. Box 7158
Asheville, NC 28802
(828) 259-3411 - fax

THIS the 15th day of June, 2015.

HYLER & LOPEZ, P.A.



George B. Hyler, Jr.