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IN COMMON PLEAS COURT

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**IN THE COURT OF COMMON PLEAS**

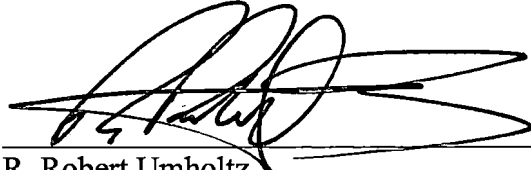
**GEAUGA COUNTY, OHIO**

STATE OF OHIO,	)	CASE NO: 15 C 000116A
	)	
Plaintiff	)	
	)	
-vs-	)	JUDGE: FORREST W. BURT
	)	
CHAD SOUTH,	)	
	)	
Defendant	)	<b>MOTION TO DISMISS FOR</b>
	)	<b>GOVERNMENT MISCONDUCT</b>
	)	

Now comes the Defendant, Chad South, by and through R. Robert Umholtz, Geauga County Public Defender and Court appointed counsel herein, and moves this Honorable Court for an Order Dismissing the Indictment herein.

Defendant's reasons herefore being the State of Ohio has engaged in a pattern of interfering with defense witnesses/witness intimidation, evidence obstruction, and making false or misleading statements to the Court, all of which have worked to impede or frustrate Chad South's ability to prepare and present his defense. Each of these reasons are set forth more fully in the Memorandum attached hereto and incorporated herein.

Respectfully submitted,



R. Robert Umholtz  
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Gauga County Public Defender Office  
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(440) 279-1890  
Registration No. 0020585

**MEMORANDUM**  
**PROCEDURAL HISTORY**  
**INDICTMENT**

On Jun 1<sup>st</sup>, 2015, Chad South was arrested on a R. 4 Complaint alleging 1 count of Aggravated Murder, an unclassified felony. Bond was set at \$3,000,000 cash or surety. Mr. South was thereafter indicted on Jun 10<sup>th</sup>, 2015. The Indictment contained five counts.

The first count alleged a Conspiracy to commit murder for hire in retaliation for testimony in a prior criminal case.

The second and third counts each alleged Aggravated Murder under R.C. § 2903.01 (A) & (B), respectively. Both counts also contained, what are commonly known as a “firearm” specification and “death penalty” specifications.

Counts four and five each alleged Kidnapping and, both counts, also contained a “firearm” specification.

The death penalty specifications were subsequently dismissed following the State’s Motion to Amend.

In response to Defendant South’s Request for Discovery, the State delivered 8 large three ring binders and 32 CD/DVDS to the Public Defender Office on or about Jun 29<sup>th</sup>, 2015 in conjunction with an e-mail which also made reference to “**a cart of ‘elimination investigation’** that is available to each defense counsel for inspection ... at the Geauga County Sheriff’s Office.” (Exhibit “A”)(Emphasis added)

The State of Ohio filed its formal response on Jul 10<sup>th</sup>, 2015. Therein, at Paragraph (C), the State noted:

“EVERYTHING WAS PROVIDED TO DEFENSE COUNSEL VIA 8 BINDERS AND 32 CD/DVDS. ATTACHED ARE THE INDEXES OF THOSE ITEMS. **COUNSEL ONLY.**”

Under paragraph (F) **Disclosure of evidence favorable to defendant**, the State noted:

“The following is all the evidence, known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment.

PURSUANT TO CRIM. R. 16 (B), THE STATE OF OHIO NOTIFIES DEFENDANT'S COUNSEL THAT HE IS ABLE TO COPY OR PHOTOGRAPH ANY AND ALL INFORMATION CONTAINED AT THE GEAUGA COUNTY SHERIFF'S OFFICE IN CONNECTION WITH THIS CASE **FOR COUNSEL ONLY**" (Exhibit "B")

Mindie Mock Stanifer and Alva Jacobs were both presented with proffers granting them immunity from prosecution; but, when they did not agree to testify in accordance with the State's narrative, they were subsequently indicted.

It is the State's theory that an inmate at the London Correctional Institution in May 2006, Joe Rosebrook, had hired Chad South, who had also been an inmate at the London Correctional Institution until March 2006, to kill Daniel C. Ott in retaliation for Ott's role in convicting Joe Rosebrook of attempted murder for hire.

Under the State's theory, Chad South, Alva Jacobs and Mindie Mock Stanifer drove from Dayton, Ohio on May 25<sup>th</sup>, 2006 to Burton, Ohio; spent the night at a friend of Chad South's and drove to Daniel E. Ott's house the following morning. Chad South is then supposed to have entered the house and confronted Dan E. Ott. The State speculates Chad South decided he had found the wrong Dan Ott; bound him with duct tape and proceeded to leave. At that point, the State suggests Dan Ott freed himself and chased after Chad South. A scuffle ensued and Dan E. Ott was shot in the chest. Chad South, Alva Jacobs and Mindie Mock Stanifer then were supposed to have driven back to Dayton while Dan Ott was transported to the hospital where he was pronounced dead.

It is important to note, at this point, the State of Ohio has absolutely no physical evidence (DNA, blood, fingerprints or any tangible item) linking Chad South, Alva Jacobs or Mindie Mock Stanifer to the murder of Daniel E. Ott on May 26<sup>th</sup>, 2006.

The only evidence on which the State will proceed is circumstantial and based on statements of "informants", primary of which is Richard Carter, a career criminal who was housed at London Correctional Institution during the 7 ½ months Chad South was also housed there in 2010, four years after the murder.

**INTERFERING WITH DEFENSE WITNESSES/WITNESS INTIMIDATION  
FACTS AND LAW**

In a brainstorming session with special agents from the FBI's National Center for the Analysis of Violent Crime (Date of session unknown – recording of conference call does not indicate the date, Marked as "Exhibit "C"), a number of suggestions were made, including:

The detectives would like to use potential indictment on family as a lever (13:14):  
Telling people "today we're prepared to offer a deal" and,  
whoever screwed up has reason to fear Rosebrook (24:00);  
Telling people that when Rosebrook gets out "he's going to see you as a huge liability"  
and he is the kind of guy who is going to do something about that (30:40);  
"You take what you like and pitch what you don't like."(34:15); and finally,  
Talk about being liability in the food chain to put on pressure. (50:00)

The detectives took these suggestions and implemented them to the extreme.

Throughout the course of the investigation, Detectives Vetter and Lombardo have inartfully practiced those interview techniques based on fear, veiled threats and intimidation to steer information into a form compatible with their narrative.

Virtually every witness who provided information which did not fit the detectives' narrative was dismissed in the detectives' summaries with "it became immediately apparent" that the witness was either "covering" or being "uncooperative".

The State of Ohio continually speaks of witnesses being threatened, yet it is consistently the State advising witnesses, suspects and innocents that their lives and/or the lives of loved ones are in danger.

In December 2014, Detectives Vetter and Lombardo interviewed Ms. Stanifer over a two day period and repeatedly asked if she was afraid then told her she needed to be afraid of him and other people associated with him, first for herself, then, asking if she would be afraid something might happen to someone she loved, maybe Paul (her child's father), her son in Dayton –"where Chad is". They told her she had no idea how violent these people are; "we're talking about people who go out and kill other people for a living"; they told her they were worried about her safety and the safety of her family. (Exhibit "D", Interview CD dated Dec. 9<sup>th</sup>, 2014 -42:25, 2:33:00; Exhibit "E", Interview CD marked Dec. 10<sup>th</sup>, 2014 – 7:00, 8:20+, 32:50, 33:40, 35:15) Ms. Stanifer repeatedly denied being afraid or having reason to be. ("Exhibit "D" 1:02:40,

1:50:45, 1:58:20; Exhibit "E" – 08:45) and that the only thing she is afraid of is the police getting p---d off because she won't admit to something she knows nothing about and then trying to pin something on her.( Exhibit "D" - 2:35:50)

After leaving Florida, the detectives continued to threaten Ms. Stanifer; telling her through text messages she was going to Marysville. They even went so far as to visit her mentally ill and fragile mother, laying out crime scene photos for her to see. They also called her brother to influence Ms. Stanifer.

In September 2010, the detectives met with Chad South at London Correctional. They told him his life and his family's lives were in danger.

The detectives visited Alva Jacobs in Alabama at least twice. The first time they had told him Chad South was coming down to kill him. (Exhibit "F", Interview CD Marked "Alva Jacobs", date unknown – 30:20)

February 26<sup>th</sup>, 2015, Detectives Lombardo and Vetter met with Jacob Hoffman who had been a teenager living at the South home in 2006. Once again, they utilized the fear card and advised him they were the only ones who could help Mindie and that she was in serious trouble. (Exhibit "G", CD Marked Jacob Hoffman telephone call dated February 26<sup>th</sup>, 2015) 26:42, 28:44)

They told him Chad had made it known that if Mindie is ever found, he would get rid of her; and, if Chad didn't kill her, the other people involved in this case would find her and they will kill her.(29:47) Det. Lombardo said he couldn't stress that enough. (39:00).

The most egregious example of intimidation and witness interference invokes the Constitution and involves Due Process violations.

On February 19<sup>th</sup>, 2016, a Trial Management Conference was conducted in Mr. South's case. During the discussions, the Public Defender indicated he may be filing a Notice of Alibi once Mr. South's investigator had the opportunity to meet with Mr. South's former employer, Jason Harvey in Dayton and one of his employees who was also a coworker of Mr. South's, Chad Malay.

Investigator Kelly Heiby of the State Public Defender Office had spoken via telephone with Mr. Harvey and Chad Malay briefly and needed to meet with them to ascertain specific details of what they could testify to regarding Chad South's whereabouts on May 25<sup>th</sup> and 26<sup>th</sup>,

2006. Investigator Heiby also had been appointed as a process server upon application by the Public Defender for the purpose of serving them with summons to appear at Mr. South's trial.

The State of Ohio had provided the Public Defender with additional discovery in late January or early February, 2016 indicating Mr. South had been arrested in Springfield, Ohio on May 25<sup>th</sup>, 2006. Having a date and place as reference, the Public Defenders met with Mr. South who then remembered the incident and circumstances of his arrest on that date because of an unusual twist regarding his arrest.

Investigator Heiby then established telephone contact with Jason Harvey, Mr. South's employer at the time of his arrest on May 25<sup>th</sup>, 2006, on February 3<sup>rd</sup>, 2016, to ascertain if he had retained any wage or employment records from 2006.

When contacted by phone, Mr. Harvey was with Chad Malay, a longtime employee who had also been employed by Mr. Harvey on May 25<sup>th</sup>, 2006.

Understandably, neither Mr. Harvey nor Mr. Malay had any independent recollection of where they, let alone Chad South, had been on a random date nearly ten years ago. It was not until Investigator Heiby referenced the specific date of May 26<sup>th</sup> 2006 that Jason Harvey was able to recall that date for a very special reason. It was the day his son was born.

He then was able to recall May 26<sup>th</sup>, 2006 as a Friday going into Memorial Day weekend. He clearly remembered both Chad Malay and Chad South had been working for him. He also remembered that Chad Malay came to the hospital from the worksite that day to see the baby.

He knew that Chad South did not come with Chad Malay but was confident Chad Malay, who doesn't particularly care for Chad South, would have told him if Chad South had not been at the work site. He also knows that he would have fired Chad South if he had not been at work that day.

Chad Malay specifically remembered working with Chad South on the morning of May 26<sup>th</sup>, 2006 before he went to the hospital to see Jason Harvey's new baby.

On March 15<sup>th</sup>, 2016, Investigator Heiby again made contact with Jason Harvey to schedule a time to meet with him and Chad Malay. Mr. Harvey sent a text message to Investigator Heiby stating verbatim:

"Detectives have been harassing everyone around. went to baby moms told her murder case involving our child my ol lady. 14 yr old child.

Im out.

im not going.told detectives charge me with contempt. They threatened to arrest me for.  
Lying

Why you send cops to my kids mom” (Exhibit “I”)

Investigator Heiby informed Mr. Harvey she did not send the detectives to his children’s mother and expressed sympathy that the detectives were harassing him. She also asked if he would be willing to talk to Chad South’s attorneys about what the detectives were saying to him.

Mr. Harvey responded: “No” and texted the detectives had “pretty much convinced [him] of [Chad’s] guilt” and that he (Mr. Harvey) “was gonna to end up w some purgery or something.they say they got 5 people in custody already.”(Exhibit “I”)

Investigator Heiby asked about Chad Malay. Mr. Harvey responded that Chad (Malay) had “dipped out.meaning gone” and that he quit work and can’t be reached. (Exhibit “I”)

Later that day, Mr. Harvey agreed to meet the following day with Chad South’s attorneys if they would travel to his worksite.

On March 16<sup>th</sup>, Chief Assistant Public Defender Dawn Gargiulo, accompanied by Investigator Heiby, drove to Brookville, Montgomery County, Ohio and met with Mr. Harvey.

Mr. Harvey told Attorney Gargiulo that on or about March 7<sup>th</sup>, Detectives Juanita Vetter and Tom Lombardo met with him and talked about Chad South. He said they not only threatened him with prosecution and jail time for lying, they also went to his children’s mother’s home and, after talking to her and telling her Mr. Harvey was involved in a murder, his son is now afraid to talk to him. (See Affidavit attached hereto – Exhibit “J”)

It is well settled that a criminal defendant’s right to present witnesses in his own defense is a fundamental element of due process and is protected by the Compulsory Process Clause of the Sixth Amendment to the Constitution. *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S.Ct. 1038, 1049, 35 L.Ed.2d 297 (1973); *Webb v. Texas*, 409 U.S. 95, 97-98, 93 S. Ct. 351, 34 L.Ed.2d 330 (1972); *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct.1920, 18 L.Ed.2d 1019 (1967);

The Public Defender had been reluctant to disclose the possible alibi information prior to further investigation due to the detectives conduct throughout the investigation of this case as is detailed throughout the balance of this motion. Obviously, those concerns were well founded. Detectives Vetter and Lombardo have now intimidated the two people whose combined testimony could have placed Chad South four hours away from the murder of Dan Ott.

One, Jason Harvey not only fears indictment (a fear not unfounded given the circumstances of Mindie Mock Stanifer and Alva Jacobs); but, his already strained relationship with the mother of his child has now been compounded by the detectives meeting with her and disclosing information about a murder Mr. Harvey has absolutely no connection with.

Consequently, his relationship with his son has been heartlessly interfered with by the actions of these detectives. The detectives certainly had no reason to seek out his child's mother other than to further intimidate and dissuade his testimony.

The second, Chad Malay, a witness who specifically recalled working with Mr. South before he went to the hospital to see Mr. Harvey's newborn child, has now apparently left the area.

The question now is whether Chad South has been prejudiced of sufficient magnitude to justify dismissing the indictment.

Prejudice is of sufficient magnitude to dismiss an indictment when it has, or threatens to have, "some adverse effect upon the effectiveness of counsel's representation or [produce (sic)] some other prejudice to the defense." *United States v. Smith*, 577 F. Supp.1232, 1237 (1983)

In the instant case, within days of notifying the State of potential alibi witnesses, Detectives Lombardo and Vetter drove to the Dayton area and not only met with at least one of the potential alibi witnesses, Mr. Harvey, but visited the mother of his child. Mr. Harvey was threatened with criminal charges, intimidated and harassed to the point he had decided he didn't want anything to do with the trial and was not going to testify. The mother of his child was visited also and apparently provided with information leading her to believe Mr. Harvey was involved in a murder.

The other potential alibi witness, Mr. Malay, is now whereabouts unknown and Chad South's ability to present an alibi defense has been severely prejudiced.

This pattern of witness intimidation is so pernicious to Mr. South's alibi defense that no remedy exists which will re-instill the free will of the witnesses to testify with confidence.

Chad South is therefore asking this Court to find he has suffered prejudice of sufficient magnitude, by the misconduct of the government, to warrant dismissal of the indictment against him.

Counsel is aware that "courts should make 'sparing use of supervisory powers' in dismissing criminal indictments" and that "Indictments can only be dismissed upon a showing of

'demonstrated and longstanding prosecutorial misconduct' as well as a showing of prejudice to the defendant." *Smith* at 1235 (Citations omitted)

In *Smith*, the defendant had been indicted in both state and federal courts. One trial resulted in a hung jury. Certain Dayton police officers were particularly interested in the testimony of two witnesses who had testified in his federal trial, Crystal Higdon and William Looney, which, they felt, contradicted the court testimony of a particular police officer.

While the Federal trial was ongoing, members of the Dayton Police Department contacted Higdon and Looney, after their testimony for the purported purpose of conducting a perjury investigation and to convince them to "tell the truth." The officers also contacted and questioned Looney's ex-wife, ex-mother-in-law and a neighbor concerning his testimony.

A third witness, C.J. Perry, lived in Florida and was called by one of the Dayton Officers before the trial. The officer told him he could be arrested on an outstanding traffic warrant if he came to Ohio for the trial. Mr. Perry did not appear.

The *Smith* Court noted that the state appellate court characterized this conduct as "intimidation" and "harassment" of Looney and Higdon designed to "change their testimony, to recant and to support the state's case in the coming [state] trial" *Smith* at 1236.

The court therein concluded that the police officers had engaged in a pattern of misconduct which, intentionally or not, resulted in intimidation and harassment of witnesses and that the defendant had demonstrated that there had been both, police misconduct, and, the misconduct had prejudiced his ability to present a defense. Consequently, the Court found the "sparing use" of dismissal of the indictment to be appropriate because the adverse impact of the police misconduct cannot be removed by any remedy short of dismissal. *Smith* 1237, 1240

For the foregoing reasons demonstrating witness intimidation, as well as the following which demonstrates a continuing pattern of intimidation, misconduct, evidence obstruction and presentation of false/misleading representations to the Court, all of which have resulted in prejudice of sufficient magnitude to justify dismissal, Chad South is requesting the Indictment against him be Dismissed.

## NOTICE OF DEPOSITION AND EVIDENCE OBSTRUCTION

On Jul 28<sup>th</sup>, 2015, the State of Ohio filed a Notice of Deposition claiming Richard Carter, a material witness, was terminally ill and it was necessary to depose him on Aug 17<sup>th</sup>, 2015 to prevent a failure of justice. That deposition date was later continued to Aug 19<sup>th</sup>.

On Aug 10, 2015, after reviewing detectives' summaries of interviews which had been conducted of the State's material witness, Richard Carter, the Public Defender sent an email to Assistant Prosecutor Jennifer Driscoll requesting copies of the actual recordings of those interviews to prepare for Mr. Carter's forthcoming deposition. Counsel specifically referred to the dates of the interviews, who conducted each interview and which interviews were noted in the detectives' summaries to have been recorded. (See Exhibit "K")

Apparently, Mr. Friedman, counsel for Co-defendant Jeff Rosebrook, notified the State he was unable to attend the deposition set for the 17<sup>th</sup> and the deposition date was changed to August 19<sup>th</sup> at 9:00 a.m.

The State's response to the Public Defender's August 10<sup>th</sup> email requesting copies of the actual recordings on the delineated dates was to file a Supplemental Discovery which stated: "pursuant to your attached request, I am providing everything the State has in their possession at this time." The attachments consisted of a recording of the Sep 20<sup>th</sup>, 2010 interview conducted by Det. Keith Levan on 1 CD and the transcript of that interview. Also attached were the detectives' summaries, already in counsel's possession, of Richard Carter's interviews conducted on:

Sep 29<sup>th</sup>, 2010;  
Oct 4<sup>th</sup>, 2010;  
Oct 12<sup>th</sup>, 2010;  
Jan 27<sup>th</sup>, 2011;  
Feb 15<sup>th</sup> 2011; and,  
Sep 5<sup>th</sup>, 2011. (Exhibit "L")

Later the same day, the Public Defender received an additional Supplemental Discovery response. That second Supplemental Response included an additional CD. The CD was indicated as containing two interviews of Richard Carter occurring on Jul 5<sup>th</sup>, 2011 and Oct 20<sup>th</sup>, 2010. (The Jul 5<sup>th</sup> interview was actually the Sep 5<sup>th</sup> interview and the Oct 20<sup>th</sup> was the Sep 20<sup>th</sup>

interview which had already been provided.) It also contained four Terry Current interviews. (Exhibit "M")

On Aug 12<sup>th</sup>, 2015, having not received the requested recordings of Richard Carter's interviews, the Public Defender sent Ms. Driscoll an email advising it was his intent to file an objection to the deposition because he had not received the requested interview copies and was therefore unable to adequately prepare. (Exhibit "N")

The Public Defender followed up on that email the next morning with another email to Ms. Driscoll noting the Sep 29<sup>th</sup>, 2010; Oct 4<sup>th</sup>, 2010; Oct 12<sup>th</sup>, 2010; Jan 27<sup>th</sup>, 2011 and Feb 15<sup>th</sup>, 2011 interviews were still needed. (Exhibit "O")

The State then filed a third Supplemental Discovery response which listed: "2 CDs containing Richard Carter audio which were previously provided on 8/11/15 on a CD with several other interviews." (Exhibit "P") Less than 2 hours later, Ms. Driscoll directed Detectives Vetter and Lombardo to locate the interviews of the State's material witness, Richard Carter. (Exhibit "Q")

Nineteen minutes later, Ms. Driscoll emailed the Public Defender: "There is no indication there are recordings from Feb 15, 2011 or Sep 29, 2010." Ms. Driscoll explained the previously provided summary of the Sep 29<sup>th</sup>, 2010 interview "appears to be a summary of a call Vetter received from Levan re: an interview recorded with Carter and Levan i.e. Sept. 20, 2010; which a recording and transcript were provided. – Vetter put the wrong date. There are recordings from:

Sept. 5, 2011

Sept. 20, 2010

We are checking into your other *alleged* dates of missing recordings..." (Emphasis added) (Exhibit "R")

A review of the "summaries" from the Sep 20<sup>th</sup> and 29<sup>th</sup> interviews and the Sep 20<sup>th</sup> transcript, render it readily apparent that Det. Vetter had **not** simply "put the wrong date." The subject matter in the Sept. 29<sup>th</sup> summary is entirely different than the subject matter contained in the transcript and summary of the Sept. 20<sup>th</sup> interview.

Moreover, the "other" dates are not "alleged." They are specific dates referred to in the State's Discovery material; and, at least four of those summaries (Sep 20, 2010; Sep 29, 2010; Jan 27<sup>th</sup>, 2011 and Sep 5<sup>th</sup>, 2011), specifically reference the interviews as having been recorded.

The following day, Aug 14<sup>th</sup>, 2015, the State filed its 6<sup>th</sup> Supplemental Discovery response and attached four CD's indicated as being Richard Carter interviews from 9/22/10, 9/29/10, 10/13/10 and 11/22/10. (Exhibit "S")(The 9/22/10 was actually the previously received 9/20/10 interview.)

The August 14<sup>th</sup> Supplemental Discovery confirmed the Sept. 29<sup>th</sup>, 2010 Summary was not a summary of a phone call Det. Vetter had received from Det. Levan regarding the Sept. 20<sup>th</sup> interview. It also confirmed Det. Vetter had not "put the wrong date."

The Supplemental Discovery received on the 14<sup>th</sup> also revealed the 11/22/10 interview/recording which had previously been unknown to defense counsel and had not been referenced in any form in the discovery prior thereto, even though the State had continued to make claims it had provided the defense with everything.

Upon receipt of the new interview CD's, the Public Defender advised the State he would be unable to adequately prepare for the deposition scheduled for Aug 19<sup>th</sup>. (Exhibit "T")

The State's response, sent on the morning of Aug 18<sup>th</sup>, expressed it was the opinion of the State that the interviews were short, to the point and summaries had been previously provided; therefore, defense counsel should have been able to get caught up on the interviews. (Exhibit "U")

That sentiment, demonstrates a callous disregard for the concept of fundamental fairness, the Constitution and established case law. The inconsistencies between the various recordings, the still unaccounted for recordings at the time of the scheduled deposition and the perspective from which the summaries were written were each serious and legitimate factors which needed to be fully reviewed in preparation for the cross examination of a material witness, particularly since the witness is a career criminal, and prison informant whose credibility is suspect; and, the information he discloses during the interviews is derived solely from his purported conversations with Chad South.

Given the need to assess the newly received recordings and the continuing dilemma of not having received suspected recordings of other interviews, counsel for Mr. South and Jeff Rosebrook, respectively, filed a Joint Objection to the State's Notice of Deposition on August 18<sup>th</sup>, 2015. The Joint Objection was opposed by the State.

In its Response Brief, the State rationalized its reasoning and stated: "Defense counsel readily admits that he had summaries of said recorded interviews well prior to the 14<sup>th</sup> of August,

2015.” That rationalization is alarming. The State knows, or should know, that a detective’s perspective of what was significant and what was said in an interview, then reduced to a summary, is neither complete, nor is it a witness’ statement. Therefore, a detective’s summary cannot be used to impeach the witness.

The State also reiterated its argument that a deposition of Mr. Carter was necessary due to his failing health which “will either result in his death, making him unavailable for trial, or the degradation of his mental capacities due to sepsis.” Those arguments are actually justifications for delaying the deposition until all recordings of the witness prior statements had been located and provided to the defense. To proceed without benefit of his prior recorded statements when counsel may not have another opportunity due to his failing health would deprive Mr. South of his right to confront the witness; and, may well have constituted ineffective assistance of counsel.

Reluctance to proceed, until satisfied the State had made every effort to provide what Mr. South was entitled to, cannot be construed as a delaying tactic in that the State had already denied the existence of recordings which had, in fact, later been located and provided.

Additional recordings had also been indicated in the State’s Discovery Response. The Public Defender had asked for those recordings by specific date and at least one recording had still not been accounted for while another had been produced which had not previously been known to exist. Objecting to a continuance of the deposition under those circumstances raises concerns that the State wished to proceed while the Defense was unaware of the inconsistencies in Mr. Carter’s various interviews and was representing his health issues as a means of doing so.

The Court, after reviewing the respective filings of the State and Defendants, issued an Order staying the deposition until it was satisfied the Defendants “have had full and best opportunity to review the evidence, the actual CD’s, and not the summaries as provided by the State.”

The State was not satisfied with the Court’s decision and filed a Motion to Reconsider. In its Motion the State sets forth the following arguments, which are each addressed in turn:

**The witness’ failing health makes time a significant factor and the unnecessary passing of time “may well contravene justice.”**

As was noted above, the failing health of the material witness justified continuing the deposition until all of the witness’ statements had been located and provided to defense counsel. What if the witness, being terminally ill as was represented by the State, had died after being

deposed but before defense counsel had received the recordings necessary to impeach the witness with his own words. The Defendant would then have been denied the right to confront the witness against him armed with the knowledge the State clearly had in its possession but had failed to provide to the defense.

The rush to depose Mr. Carter prior to providing recordings which clearly did exist and were, in fact, in the possession of the State of Ohio is particularly troubling in that the terminally ill witness has now made a remarkable recovery during the ensuing 7 months.

**“Counsel for neither Defendant has shown how proceeding with the deposition as scheduled will result in a substantial hardship.”**

That thought is worthy of little more than a “what?” The ability to cross examine and impeach is limited by what is known about the witness and the witness’ prior statements. The content of his statements, the stammering, hesitations, the manner in which the interview was conducted, inflection of his voice and emphasis on certain words are all crucial when recordings exist. It would have been ineffective assistance if counsel had consented to proceed and attempt to depose and cross examine Mr. Carter prior to having received and reviewed the recorded interviews.

**“All parties, including the State of Ohio, are in exactly the same place with respect to the information included on the relevant four (4) CD’s.”**

The State’s argument is essentially “if we don’t give you something we choose not to look at, we are on a level playing field.” The State was not in exactly the same place with respect to the information included on the relevant four CD’s. The State had the benefit of having the four “relevant CD’s” in its possession for over four years. The State had the opportunity to discuss the content of the four “relevant CD’s” with the detectives for over four years; and, the State had the opportunity to review the four “relevant CD’s” and prepare its direct examination, as well as prepare for Defense Counsel’s anticipated cross examination for over 4 years.

Moreover, it appeared the State was vesting in itself the authority to determine which CD’s were “relevant” to the defense. That attitude may explain the State’s refusal to even acknowledge the existence of the October 4<sup>th</sup>, 2010 interview recording until Defense Counsel brought it to the Court’s attention on October 8<sup>th</sup>, 2015.

**“The State of Ohio, in addition to all Defendants, have (sic) had the same written summaries of the audio recordings for over one month.”**

Once again, the State tried to justify its conduct by misstating reality and trying to create the appearance that the scales are balanced while keeping a finger on the scale. The State completely ignored the concept that a detective’s “summary” of an interview conducted of a

witness is **not** the witness' statement and cannot be used to impeach or effectively cross examine the witness.

**“The State had not received nor heard the audio recordings until Friday, August 14, 2015.”**

That argument is simply not true. The State had been in possession of the audio recordings since they were recorded in 2010 and 2011. The State fails to recognize that possession of information obtained in the course of an investigation into the murder of Daniel E. Ott is imputed to the State even if actual physical possession of that information/evidence is with a law enforcement agency and not in the Prosecutor's Office.

**“The State asserts that the content of the audio records is completely consistent with the summaries that were provided through discovery long ago”: and, “As such, there is no new information included on the discs that could have altered the course of preparation for the instant deposition”**

Clearly, the State's point is mere verbiage without substance or accuracy. Each recorded interview contained either inconsistencies with earlier recordings and the detectives' summaries or information which could be used for impeachment. However, to compare the consistency and accuracy of a recording to a summary of the recording, one would need to listen to the recording, not just review the summary.

The persistent and prevailing issue with the State's position as to the recorded interviews of Richard Carter can be attributed to an apparent lack of appreciation for the concept that the Mr. South's insistence on receiving the actual recordings of Richard Carter is based not simply on Crim R 16 governing discovery in Ohio. Rather, Mr. South's insistence on receiving copies of the actual recordings prior to trial is based on the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States which mandate: prior to trial, the prosecution must turn over to the defense all exculpatory evidence in its actual or constructive possession. *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Strickler v. Greene*, 527 U.S. 263 (1999)

The State has continuously relied on the *mantras* that: it has provided everything it has in its possession; and, has made everything at the Sheriff's Office available to counsel. While that cooperation is appreciated, it simply is not enough to meet the due process standard. A reading of *Kyles* explains why due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to

impeach the credibility of the state's witnesses or to bolster the defense against prosecutorial attacks.

While the State appears to have relied on material and information formally provided to the Prosecutor's Office by the various detectives in Geauga and Logan Counties in fulfilling its discovery obligations, that reliance is misplaced. Individual prosecutors have a duty to learn of any favorable evidence known to others acting on the government's behalf, including police; and, it is the prosecutor who remains responsible under *Brady* to disclose favorable evidence to a defendant, regardless of whether police investigators failed to inform the prosecutor of the evidence. *Kyles* at 437-38

In the instant case, the State's resistance to releasing, inquiring about or searching for the Richard Carter interviews recordings is particularly egregious because they were specifically referenced in the summaries provided in the State's Discovery Response and, later, specifically requested by Defendant South. The conduct of the State increasingly appeared to be aimed at impeding discovery of the truly relevant evidence, to wit:

The designation of all evidence provided in discovery as "COUNSEL ONLY"

The continued denial that specific recordings of interviews even existed;

The rush to have its material witness deposed without providing Mr. South with the opportunity to review the recordings of those interviews in preparation for the deposition; and,

The transfer of Mr. South to Cuyahoga County in what appeared to be a ruse designed to either impede the ability of the Public Defender to work with Mr. South; or, place him in a psychological state of confusion and isolation.

#### **FALSE/MISLEADING STATEMENTS**

The deposition of Richard Carter finally commenced at 12:00 noon on August 25, 2015, with Assistant Attorney General Paul Scarcella conducting direct examination.

Following direct examination, the cross examination of Mr. Carter was initiated by the Public Defender. At some point a 15 minute break was taken for Mr. Carter's benefit. The deposition was adjourned at 2:15 p.m. and scheduled to reconvene on September 23<sup>rd</sup> at 11:00 a.m.

On Sep 19th, the Public Defender emailed Mr. Scarcella and suggested a status conference with the Judge to determine how to deal with transcript preparation; and, further advised many CD's either did not have titles or did not indicate who was being interviewed, who was conducting the interview or when the interview was being conducted. (Exhibit "V")

On Sep 21<sup>st</sup>, Assistant Prosecutor Driscoll sent an e-mail to all counsel advising counsel for Jeff Rosebrook needed to change the date for the continuation of the deposition. Ms. Driscoll requested all counsel to respond with possible dates. (Exhibit "W")

The Public Defender responded to Ms. Driscoll and Mr. Scarcella with suggested dates of Oct 1<sup>st</sup> and 2<sup>nd</sup>. (Exhibit "X")

On Sep 23<sup>rd</sup>, the Public Defender filed a formal request for a Status Conference to discuss the ongoing concerns related to discovery, including the lack of identification/labels on certain CD's, the lack of introductions on certain witness interviews which would identify the dates and/or participants and the lack of meaningful indexes which would indicate the significance of certain items, i.e. pictures.

The Status Conference was set for Oct 8, 2015.

Two days prior to the hearing, two attorneys from the Public Defender Office, Mrs. Del Balso and Mrs. Dicenso, in an effort to assure nothing was being overlooked in the preparation of Mr. South's defense, went to the Geauga County Safety Center to review what had been referred to by the State as "a cart of elimination investigation."

It needs to be noted, again, that the State had made numerous representations it had provided everything in its possession save the "cart of elimination investigation" which had been represented as being nothing more than information gathered during the course of the 9 year investigation which turned out not to be relevant. Consequently, no pressing need had appeared to review that material while preparing for Mr. Carter's deposition.

Upon arrival at the Sheriff's Office, Mrs. Del Balso and Mrs. Dicenso were escorted to the evidence room by the evidence custodian and were provided with the evidence log. The evidence log showed the existence of a Richard Carter interview recorded on a CD which had been conducted by Logan County Det. Keith Levan dated Oct 4, 2010. The same recorded interview the Public Defender had first, specifically, requested a copy of on Aug 11, 2015.

Multiple subsequent requests had been made for the Richard Carter interviews listed on the email sent to the State on Aug 11, 2015 which also included the Oct 4<sup>th</sup>, 2010 recording. The

requests had been met with the same responses that everything the State had in its possession had either been provided, or, it didn't exist. Obviously, the Oct 4, 2010 interview did exist and had been in the State's possession at the Geauga County Safety Center for years.

The Status Conference was held on Oct 8, 2015 in the Courtroom of Judge David L. Fuhry. Defense counsel was afforded the opportunity to state his discovery concerns. Primary of those concerns were the ongoing issue of Mr. Carter's interview CD's. Defense counsel noted the recently discovered Oct 4, 2010 interview CD listed in the evidence log, the past denials that CD's existed and the difficulty reviewing evidence on other CD's which had been provided but did not contain any index, labels or identifying information as to who or when.

The Public Defender further stated, for those reasons, it would be necessary to ask for a continuance. (Oct. 8th, 2015 Status Conference -T.p. 9)

The State re-asserted its position that "All of these materials have been available to the Public Defender's Office since July." but, also informed the Court they (Prosecutors) hadn't been in possession of their Mr. Carter's interview CD's, they were in the possession of Logan County. (Oct 8<sup>th</sup> T.p.15, 17)

The State, through Ms. Driscoll, did acknowledge discovery hadn't been provided in "the ideal fashion" and that "I said to Mr. Umholtz, I have given everything I have" (Oct. 8<sup>th</sup> T.p. 26)

The Oct 4, 2010 Richard Carter interview CD was finally turned over to Defense counsel later that afternoon on Oct 8<sup>th</sup>, 2015.

After reviewing the CD the Court was notified on Oct. 9th that a continuance of the deposition would be requested.

The State of Ohio, also on Oct 9<sup>th</sup>, filed a Brief in Response to Mr. South's Objection to the Notice of Deposition on Oct 13, 2015. Therein, the State asserted:

The information sought by Defense counsel "has been available to him since July 10, 2015"; and,

The "Defense reiterates alleged issues that have been resolved prior to the commencement of the August 25, 2015 deposition of Richard Carter..."

Obviously, the information sought by the Public Defender had not been available to him since July 10<sup>th</sup>.

The State also wrote in its Response Brief that on August 25<sup>th</sup>, defense counsel began cross examination "of the ailing witness and did so for over three and one-half hours"; and,

“The defense, after having over three and a half hours of cross examination with the witness, jointly moved to continue the deposition.”

The State’s Brief is incorrect and misleading. The Defense did not cross examine the “ailing witness” for over three and a half hours nor did the Defense jointly move to continue the deposition. The deposition commenced at noon and ceased at 2:15 p.m. (See Richard Carter deposition T.p. 1 and 87)

Mr. Scarcella conducted direct examination before the Public Defender began cross examination. At some point a 15 minute break was granted at the State’s suggestion to give Mr. Carter a few minutes. The balance of the time, perhaps 1 hour and 20 minutes was utilized by the Public Defender for cross-examination, hardly the “over three and one half hours” overstated by the State.

Shortly before 2:15 p.m., Mr. Scarcella noted for the record that due to some scheduling issues (Mr. Friedman needed to be elsewhere) and Mr. Carter’s health, “we are going to stop the deposition at this point and have agreed to reconvene ...”(Carter deposition T.p. 86) Although a minor point, the Defense did not jointly move to continue the deposition after cross examining the witness for over three and a half hours. The Public Defender agreed to accommodate Mr. Friedman’s schedule and the State’s assertion that Mr. Carter was feeling ill after conducting cross examination for approximately one and a half hours.

The date set for the deposition to continue was September 23<sup>rd</sup> at 11:00 a.m. T.P. 86

The State’s Brief continued with:

“There was an agreed date and time of September 23, 2015, that then needed to be moved due to a holiday. An email was sent to all parties requesting dates and times for the new date and that all possible dates and times be sent to the State’s co-counsel, Paul Scarcella because Attorney Driscoll was engaged in trial. Mr. Umholtz failed to respond to Mr. Scarcella.”

Once again, the State has failed to accurately portray the facts.

After the agreement to continue the deposition of Mr. Carter on Sept. 23<sup>rd</sup>, Mr. Friedman requested a new date due to his observance of Rosh Hashanah. In response to his request, an e-mail was sent by Ms. Driscoll on Sept. 21<sup>st</sup> at 7:47 a.m. (2 days before the deposition was scheduled to resume). The email advised all counsel Mr. Friedman had a problem with the 23<sup>rd</sup> and asked everyone to respond with possible dates “as we need to do this depo as soon as possible.”(Exhibit “W”)

Mr. Friedman responded to Ms. Driscoll at 7:53 a.m. with “Thanks Jen – date forthcoming” (Exhibit “W”)

The Public Defender responded to Ms. Driscoll at 9:14 a.m. and indicated October 1<sup>st</sup> and 2<sup>nd</sup> were open. (Exhibit “X”)

Mr. Scarcella then sent an email at 11:00 a.m. requesting that everyone include him in the emails so he could handle the scheduling as Ms. Driscoll was in trial.(Exhibit “Y”)

The Public Defender complied at 11:05 a.m. and advised Mr. Scarcella he was available on Oct 1<sup>st</sup> and 2<sup>nd</sup>. In the same email, the Public Defender requested Mr. Scarcella confirm receipt of an email sent on Saturday, September 19<sup>th</sup>. Wherein, the Public Defender had notified him of problems with discovery CD’s having no titles or labels and not being able to determine the identities of people being interviewed. (Exhibits “Y” and “Z”)

Mr. Scarcella responded at 11:20 a.m. in an email acknowledging receipt of both emails. He also indicated he was working on a solution but wanted to run it by Ms. Driscoll first. (“Exhibit “Z”)

Clearly, Mr. Umholtz did respond.

The State’s Brief also claims the Public Defender filed the motion for a status conference and requested an oral hearing in an effort to further delay the deposition of the witness being aware that the witness was very ill; and the request for an oral hearing was an attempt to personally attack the prosecution.

The State’s assertion, again, demonstrates a failure to comprehend the Constitutional issues previously set forth herein. Delaying the deposition of the State’s witness was not the objective of the defense; rather, it was a collateral consequence of the State’s refusal to recognize the relevance and significance of the recorded interviews to preparation and effective representation.

The State concluded its Brief with the following:

Mr. Umholtz fails to acknowledge that all the items have been fully available to him since July 10, 2015. And it was not until October 6, 2015 that he sent two assistant public defenders to inspect all of the items that have been at his disposal.

The State of Ohio is entitled to a fair trial.

Defense counsel is intentionally and disingenuously attempting to sabotage the ability of the State of Ohio to move forward. Defense counsel would have been better served availing himself to the evidence that has been available to him since July 10, 2015 in order to prepare for the deposition as opposed to continuing his personal attacks on Attorney Driscoll.

Mr. Umholtz at no time indicated to Ms. Driscoll, Mr. Scarcella or Prosecutor Flaiz that he was having issues with playing CDs or retrieving evidence that has been available to him at the Geauga County Sheriff's Office. Instead he has filed motions that must not be further entertained.

Accusing the Public Defender of being disingenuous and advising him his time would be better served by limiting his preparation to the materials the State directs him to are words spoken in frustration because no reasonable basis exist upon which the State can explain or justify its conduct regarding its resistance to securing the Richard Carter recordings for Mr. South or the false information contained in the brief. The statement that the Public Defender at no time indicated to any member of the Prosecution that CD or evidence problems existed is refuted by the emails attached hereto as exhibits.

Most disconcerting however, is the comment that the *State* is entitled to a fair trial. While the Public Defender does not disagree that a fair and impartial trial is always the objective, the Constitution concerns itself with protecting our citizens from the overreaching power of the State. The rights of the accused are the focus of the Sixth Amendment, not the rights of the State. The accused, not the State, is guaranteed due process and the rights: to a speedy and public trial by an impartial jury, to compulsory process, to confront the witnesses against him and to have the assistance of counsel.

In its Order of Oct. 9th, 2015, the Court recognized what the State did not, that:

[T]he State should have provided the October 4, 2010 recording to the Defense along with all the other records of interviews and phone calls set forth on Exhibit A. This is particularly so when the subject interview was specifically requested by the defense along with the four other interviews which were provided on August 14, 2015....While the State's offer relating to evidence availability at the Sheriff's Office is good practice, it cannot be relied upon in a way which is unreasonable and which amounts to surprise.

The deposition was then continued to October 20<sup>th</sup> at 9:00 a.m. On the 20<sup>th</sup>, the deposition did not commence until 10:40 a.m.

At 2:15 p.m. on the 20<sup>th</sup>, a Motion to Continue Deposition was filed by the State. The Motion reads, in pertinent part:

The deposition began on October 20, 2015 at approximately 10:40 am, which was one hour and forty minutes later than it was scheduled to begin. Chad South's counsel resumed cross examination... His counsel then asked for a break after approximately one

hour. The parties then took an hour break. He has indicated that he still has several more hours of cross examination to conduct, but counsel for Jeffrey Rosebrook has to leave the deposition at 2:30 pm.

The State is requesting the deposition end at 2:30 pm on October 20, 2015 and resume in the morning on October 21, 2015. Counsel for Joseph and for Carl Jeffrey Rosebrook have indicated that they are available on the 21<sup>st</sup>. Counsel for Chad South stated he is busy on that day.

... Mr. Carter has information relevant to the case, and he should be allowed to complete his portion of this case as quickly as possible so that he can spend the remaining time he has left with his loved ones....

While Chad South's counsel has stated he is busy on the 21<sup>st</sup>, it should be noted that there are other attorneys in the public defender's office (sic). This request is not being made for the purposes of delay or to prejudice Chad South's case. It is being made so as to preserve relevant testimony and to assist a terminally ill individual.

Once again, the State has selectively edited the facts and chosen language intended to create an impression the Public Defender is utilizing every opportunity to impede the completion of the deposition in contrast to the conduct of counsel for Joseph and Jeffrey Rosebrook and the State.

What the State fails to explain in its Motion are:

**The reason for the delay on the morning of the 20<sup>th</sup>.**

The deposition was scheduled to begin at 9:00 A.M. Counsel for Mr. South, and Mr. Scarcella were present. Counsel for Jeffrey Rosebrook arrived shortly thereafter.

Joe Rosebrook's counsel, Mr. Hilow, did not appear. Mr. Scarcella apparently checked with Mr. Hilow, then announced the deposition may need to be continued as Mr. Hilow was attending to another matter but was checking with his office on the possibility of sending other counsel.

Consequently, the deposition was delayed for 1 hour and forty minutes until substitute counsel appeared. Counsel for Chad South had nothing to do with the delay.

**The reason for "the break"**

At 11:50 A.M., Mr. Friedman had a question for Chad South's counsel who asked for a brief break. Mr. Scarcella asked: "How long do you need? Do you want to give them an opportunity to grab lunch? It's ten of 12:00. Let me ask you this, Mr. Umholtz, how much longer do you think you're going to be?"

"Mr. Umholtz: a couple hours.

Mr. Scarcella: Why don't you go grab something to eat, and (referring to Mr. Friedman) you have to be out of here 2:15/2:30. Why don't we plan on being back here at 12:30. Does that give you enough time, half hour?

Mr. Friedman: Yes" (Carter deposition T.p. 146-147

**The Public Defender did not cavalierly state he was "busy"**

The Public Defender, when presented with the need to continue the deposition, stated he knew he had a hearing scheduled the following morning but didn't know the time. Prior to leaving for lunch, it was determined the hearing was a sentencing at 11:00A.M. in the courtroom of Judge Fuhry.

The Public Defender then informed Mr. Scarcella he was confident he could get it covered or continued.

The Deposition recommenced at 12:45, not an hour later, nor did the Public Defender indicate he still had "several more hours of cross examination to conduct." (Carter deposition T.p. 146 and 148)

In addition to the aforementioned false and misleading Statements, Detective Vetter has made false and misleading statements, under oath, to the Courts when necessary to justify or support what she seeks to achieve.

On December 30<sup>th</sup>, 2015, at a hearing on a motion filed by Mr. South's Co-Defendant, Mindie Mock Stanifer, Ms. Stanifer's attorney, John Bosco, asked Det. Vetter, while under oath, if she had interviewed Ms. Stanifer on December 9<sup>th</sup>, 2014. Det. Vetter acknowledged she had.

Attorney Bosco then questioned Det. Vetter :

Q All right. So you asked her about the murder, didn't you?

A Yes.

Q And she denied all involvement for three hours during that interview, she denied it, didn't she?

A She acknowledged that she was with Chad South, and she also acknowledges that Chad came out of the house covered in blood

Q Well-

A He was bloody.

Q Okay. That's your recollection from that day; is that correct?

A Yes. She thought it was a drug deal gone bad.

Q And then what did you do after—well, on the next day, I believe

December 10<sup>th</sup>, you also met with Mindie Mock, didn't you?

A That's correct. (Mindie Mock Stanifer hearing, Dec. 30<sup>th</sup>, 2015 - T.p. 36,)

A review of the December 9<sup>th</sup> interview reveals Mr. Bosco was absolutely correct in stating Ms. Stanifer had not only denied any involvement for the entire three hour interview on December 9<sup>th</sup>, 2014, but, had continued to deny any involvement the next day, December 10<sup>th</sup>. The Detectives left Florida in 2014 with Ms. Stanifer stalwart in her denial of any involvement or knowledge of the murder. Det. Vetter's testimony is utterly false.

Later in the same hearing Attorney Bosco asked Det. Vetter what specific evidence she had that Mindie Mock (Stanifer) was involved in a murder.

Det. Vetter's response included the statement: "[C]had South's statements telling us that he was, you know, part of this murder..." ( Stanifer, Dec. 30<sup>th</sup>, 2015-T.p. 52-53)

Again, Det. Vetter has patently fabricated a fact which does not exist. If Chad South has ever made a statement to the detectives that "he was, you know, part of this murder", it has yet to be turned over to the defense.

#### **HARRASSMENT**

On Aug 28<sup>th</sup>, the Public Defender Office was informed Mr. South was being transferred to the Cuyahoga County Jail, purportedly, to separate him from Co-defendant Joe Rosebrook. Co-counsel for Mr. South immediately filed a Motion to Prevent Transfer. The State's response claimed Chad South "has been involved in several altercations and incidents with other prisoners at the Safety Center in his short stay" and that he was being transferred for his safety and the safety of other prisoners.

This Court inquired of the Geauga County Sheriff and was advised that "Sheriff's Department personnel are of the opinion that security and prisoners' safety require that Chad South be housed in the Cuyahoga County Jail..." While this Court noted it is not the Court's role or practice to interfere with the Sheriff's legitimate security concerns, this Court also determined it was impractical to expect Mr. South's attorney, the Geauga County Public Defender, be required to travel to the Cuyahoga County Jail to meet with him.

This Court further ordered that:

**No officers, agents, employees, attorneys for the State of Ohio, Geauga County, Cuyahoga County, or any persons acting under the direction of said officers, agents, employees, or attorneys shall contact, discuss, communicate with, or attempt to elicit**

**information from Chad South regarding any facts, issues, or matters related to the within action without prior approval of such contact or discussion by Chad South's counsel.**

On February 25<sup>th</sup>, 2016, Det. Vetter prepared an Affidavit for a Search Warrant. The Affidavit averred that:

4. [C]had South and Joe Rosebrook, though housed in separate housing units while at the Safety Center, "have continued to maintain communication between each other. The investigation has developed information from a cell mate/informant that Chad South and Joe Rosebrook have passed notes under the doors of the cells in addition to communicating during church services. This activity resulted in Chad South being moved to an adjacent county jail, being Lake County, Fall (sic) 2015. Chad South is currently being housed in cell #4D07.

5. Currently incarcerated with Joe Rosebrook is another inmate/informant who told this Detective in mid-February, 2016 that Joe Rosebrook continues to communicate with Chad South and believes it to be through the U.S. Mail.

6. The investigation has led to an additional interview of a prison inmate/informant of the Southeast Correctional Facility who advised in Mid-February, 2016 that Chad South and said inmate have been corresponding via the U.S. mail service using alias names about the case.

Nowhere in the affidavit does Det. Vetter identify any inmate or informant, nor does she attest to the credibility or reliability of the "inmate/informant". The affidavit and application were then presented to the Honorable Richard L. Collins, and a Judgment Entry was signed granted the application.

A similar situation was presented to the court in *U.S. v. Clark*, 6<sup>th</sup> Circuit – Nos.05-3620, 05-3622 April 2, 2009

Therein, Clark moved the Court to dismiss the indictment, or "for other appropriate sanctions, 2contending that his Fourth and Sixth Amendment rights had been violated by the government's seizure and inspection of papers bearing notes of his trial preparations and defense strategy."

The District Court agreed that the government had acted improperly and in violation of Clark's rights, but denied relief for lack of a showing of actual prejudice after the court conducted an in camera inspection and determined the notes simply reflected Clark's theory he was "an innocent man being held in jail without bond because of lies of so-called informants, East Dayton crackheads and federal and state law enforcement officers."

On Appeal, Court noted: "Defendants correctly observe that notes prepared by a defendant at his attorney's request in preparation for trial may be confidential information protected by the Sixth Amendment even though the notes were not communicated to the attorney. *Bishop v. Rose*, 701 F.2d 1150, 1157 (6<sup>th</sup> Cir. 1983) However, the Appellate Court also agreed the defendants were entitled to relief in connection with the prosecution's improper use of such protected attorney-client information only if prejudice were shown. See *id.* At 1156-57, *United States v. Steele*, 727 F.2d 580, 586 (6<sup>th</sup> Cir. 1984) ("Even where there is an intentional intrusion by the government into the attorney-client relationship, prejudice to the defendant must be shown before any remedy is granted."); *United States v. Jones*, 766 F.2d 994, 1001 (6<sup>th</sup> Cir. 1985)

The search of Mr. South's cell and personal papers was conducted out of his presence. Although nothing sought in the search was found to support the information in the affidavit, Mr. South's personal notes on trial strategy, thoughts on trial procedure (including reasons for and against choosing between a jury trial and a bench trial), and list of questions for his attorneys were examined.

While the State claims the notes were not reviewed, it is Mr. South's belief that the search of his belongings in his cell was nothing more than a ruse to harass him and afford the detectives an opportunity to review his personal trial preparation notes as well as to discover the names of people he might want his attorneys to contact.

This belief is based partly on Det. Vetter's wording in Paragraph 4 of the Affidavit which seems to imply that activity alleged to have occurred while Mr. South was housed in Geauga County continues, even though he has been out of the Geauga County Safety Center since August of 2015 and no verification of that former alleged activity is presented.

Moreover, the inmate/informants are suspected to be Adam Cupp, Frank Massingil and Shannon Badalamenti, none of whom have a reputation for credibility.

## CONCLUSION

Chad South has been indicted for alleged offenses which carry among the most extreme penalties under our laws. The evidence the State will present at trial is circumstantial. No physical or scientific evidence exists to connect Chad South to the murder of Dan Ott. No

physical evidence exists to place Chad South at the scene of the murder of Dan Ott. The State's evidence is limited to jailhouse snitches whose credibility are suspect at best.

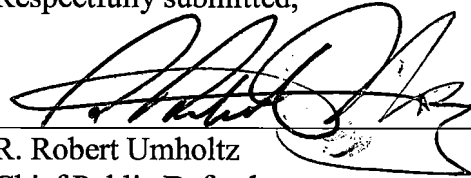
Throughout the investigation of this case; and, particularly since Chad South's arrest along with his co-defendants, the State of Ohio has engaged in a pattern of harassment, evidence obstruction, presenting false, misleading or reckless statements to the Court; and, finally, has engaged in the intimidation of witnesses. The conduct of the State with respect to interfering with and intimidating Mr. South's alibi witnesses is particularly heinous.

The State has flaunted its disdain for Chad South's Constitutional rights to due process. It has made a mockery of the right to a fair and impartial trial; impeded his right to effective assistance of counsel; interfered with his right to confront witnesses against him and to present witnesses on his own behalf. The State seems to forgotten "it is as much [its] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S. 78, 88, (1935)

As in *Berger*, the misconduct of the state is neither slight nor confined to a single circumstance. It is a case where the misconduct is pronounced and persistent, with a cumulative effect which cannot be disregarded as inconsequential.

Having demonstrated the longstanding misconduct of the State, as well as a showing of prejudice to the defendant, as required in *Smith* at 1235, Chad South moves this Honorable Court for an Order dismissing the Indictment against him.

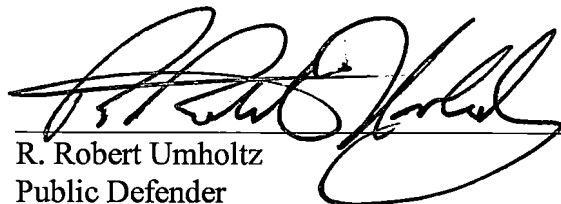
Respectfully submitted,



R. Robert Umholtz  
Chief Public Defender  
Geauga County Public Defender Office  
211 Main Street  
Chardon, Ohio 44024  
(440) 279-1890  
Registration No. 0020585

**SERVICE**

A copy of the foregoing Motion was hand-delivered to the Geauga County Prosecutor's correspondence box located at the Geauga County Common Pleas Court, Chardon, Ohio, for routine pick-up by Geauga County Prosecutor James R. Flaiz, or a member of his staff, on this 25th day of Mar 2016.



---

R. Robert Umholtz  
Public Defender  
Gauga County Public Defender Office  
211 Main Street  
Chardon, Ohio 44024  
(440) 279-1890  
Registration No: 0020585

## Umholtz, Robert

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**From:** Driscoll, Jennifer  
**Sent:** Monday, June 29, 2015 11:59 AM  
**To:** 'Paul L. Scarsella'; Umholtz, Robert; 'kws@mccarthylebit.com'; 'hhilow@mgslaw.com'  
**Cc:** Vetter, Juanita M.; Lombardo, Thomas F.  
**Subject:** The Murder of Daniel Ott

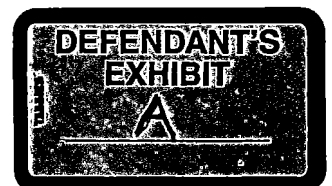
Dear Counsel,

I am in receipt of requests for discovery for State v. Carl Jeffrey Rosebrook and State v. Chad South; I anticipate a request for discovery for State v. Joseph Rosebrook is imminent. We have prepared for each defense attorney 8 binders and 32 CDs/DVDs. There is also a cart of "elimination investigation" that is available to each defense counsel for inspection pursuant to Criminal Rule 16(B) at the Geauga County Sheriff's Office. Please contact Detective Vetter and/or Lombardo for arrangements. All items are COUNSEL ONLY. I can provide the initial discovery binders/CDs/DVDs at the pretrial 6/30/15 to counsel for Jeff Rosebrook and Joseph Rosebrook (if he files) and deliver items for Chad South if that is preferable.

Please advise.

Thank you,

Jennifer A. Driscoll  
Supervisor, Criminal Division  
Gauga County Prosecutor's Office  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, Ohio 44024



Pub Def

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2015 JUL 10 PM 3:23  
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CLERK OF COURTS  
GEAUGA COUNTY

IN THE COURT OF COMMON PLEAS  
GEAUGA COUNTY, OHIO

STATE OF OHIO,	:	CASE NO. 15C000116A
	:	
Plaintiff,	:	JUDGE DAVID L. FUHRY
	:	
-vs-	:	
	:	<b><u>DISCOVERY RESPONSE OF</u></b>
CHAD SOUTH,	:	<b><u>THE STATE OF OHIO</u></b>
	:	
Defendant.	:	

Pursuant to Crim. R. 16(B) and Crim. R. 12(E), the State of Ohio, by and through the Prosecuting Attorney of Geauga County, Ohio, hereby provides the following discovery to the defendant.

(A) **Statement of defendant or co-defendant**

The following checked items are available to or within the possession, custody, or control of the State, the existence of which is known or by exercise of due diligence may become known to the prosecuting attorney, and the defendant will be permitted to inspect and copy or photograph:

Relevant written or recorded statements made by the defendant or co-defendant, or copies thereof.

Date Copy Attached

See attached indexes.

Written summaries of any oral statements made by the defendant or co-defendant to a prosecuting attorney or any law enforcement officer.

Date Copy Attached

See attached indexes.



RECEIVED  
JUL 14 2015  
Gauga County Public Defender

Recorded testimony of the defendant or co-defendant before a grand jury.

(B) **Defendant's prior record**

See attached indexes.

(C) **Documents and tangible objects**

EVERYTHING WAS PROVIDED TO DEFENSE COUNSEL VIA 8 BINDERS AND 32 CD/DVDS. ATTACHED ARE THE INDEXES OF THOSE ITEMS. COUNSEL ONLY.

papers: See attached indexes.

documents: See attached indexes.

photographs: See attached indexes.

tangible objects: See attached indexes.

(D) **Reports of examination and tests**

The following checked items, made in connection with this particular case or copies thereof, available to or within the possession, custody or control of the State, the existence of which is known to the prosecuting attorney:

Results or reports of physical or mental examinations.

**Description**

**Copy Attached**

See attached indexes.

Results of laboratory reports and tests.

**Description**

**Copy Attached**

See attached indexes.

Results or reports of scientific tests or experiments.

**Description**

**Copy Attached**

See attached indexes.

**(E) Witness names and addresses; record**

The prosecuting attorney hereby furnishes to the defendant a written list of the names and addresses of all witnesses whom the prosecuting attorney intends to call at trial, together with any record of prior felony convictions of any such witness, which record is within the knowledge of the prosecuting attorney.

1. All outlined on attached indexes.

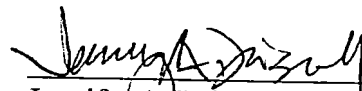
Any and all other law enforcement personnel involved in this matter.

**(F) Disclosure of evidence favorable to defendant**

The following is all evidence, known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment.

PURSUANT TO CRIM.R. 16(B), THE STATE OF OHIO NOTIFIES DEFENDANT'S COUNSEL THAT HE IS ABLE TO COPY OR PHOTOGRAPH ANY AND ALL INFORMATION CONTAINED AT THE GEAUGA COUNTY SHERIFF'S OFFICE IN CONNECTION WITH THIS CASE **FOR COUNSEL ONLY**.

Respectfully submitted,



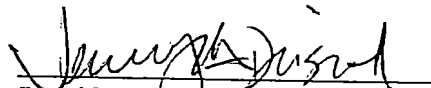
Jennifer A. Driscoll (#0073472)  
Assistant Prosecuting Attorney  
Geauga County Prosecutor's Office  
Courthouse Annex  
231 Main Street - Third Floor  
Chardon, OH 44024  
(440) 279-2122

**CERTIFICATE OF SERVICE**

A copy of the foregoing DISCOVERY RESPONSE was sent by regular U.S. mail, postage prepaid, or hand delivered to the correspondence box located at the Geauga County Court of Common Pleas, Chardon, Ohio, for routine personal pick-up by:

R. Robert Umholtz, Esq.  
Gauga County Public Defender's Office  
211 Main Street  
Chardon, OH 44024  
*Attorney for Defendant*

on this 18<sup>th</sup> day of July, 2015.

  
Jennifer A. Driscoll (#0073472)  
Assistant Prosecuting Attorney

**Defendant's Exhibit C**

**FBI Session**

**(DVD provided to court)**

**Defendant's Exhibit D**

**Mindie Mock Stanifer Interview**

**12/09/2014**

**(DVD provided to court)**

**Defendant's Exhibit E**

**Mindie Mock Stanifer Interview**

**12/09/2014 (12/10/2014)**

**(DVD provided to court)**

**Defendant's Exhibit F**

**Alva Jacobs Video**

**(DVD provided to court)**

**Defendant's Exhibit G**

**Jacob Hoffman Interview**

**2/26/2015**

**(DVD provided to court)**

Detectives have been harrasing everyone around .went to baby moms told her murder case involving our child my ol lady. 14 yr old child.im out.im not goin

g.told detectives charge me with contempt.they threatened to arrest me for. Lying

Why you send cops to my kids mom

DEFENDANT'S  
EXHIBIT

I

Jason, I did not send kids to your kids mother. I'm very sorry that the detectives are harassing

me with contempt.they  
threatened to arrest me  
for. Lying

Why you send cops to  
my kids mom

Jason, I did not send kids  
to your kids mother. I'm  
very sorry that the  
detectives are harassing  
you. Would you be willing  
to talk to Chad's  
attorneys about what the  
detectives have been  
saying to you??

I meant to say I didn't  
send detectives

you. Would you be willing  
to talk to Chad's  
attorneys about what the  
detectives have been  
saying to you??

I meant to say I didn't  
send detectives

No im good.thanx.

They pretty well  
convienced me of his  
guilt.and im gonna end  
up w some purgery or  
something.they say they  
got 5 people in custody  
already.

Is there anyway you have  
time to talk? I would

send detectives

● No im good.thanx.

● They pretty well convinced me of his guilt.and im gonna end up w some purgery or something.they say they got 5 people in custody already.

Is there anyway you have time to talk? I would rather not txt about this.

● Im in court

● Ok. Sorry. If you can call me after it would be

rather not txt about this.

Im in court

Ok. Sorry. If you can call me after it would be much appreciated.

Have they also been harassing Chad Malay?

Chad dipped out.meaning gone

He moved away?

Idk he quite me.cant be reached.

STATE OF OHIO,

)

SS: AFFIDAVIT

COUNTY OF GEAUGA

)

STATE OF OHIO VS. CHAD SOUTH

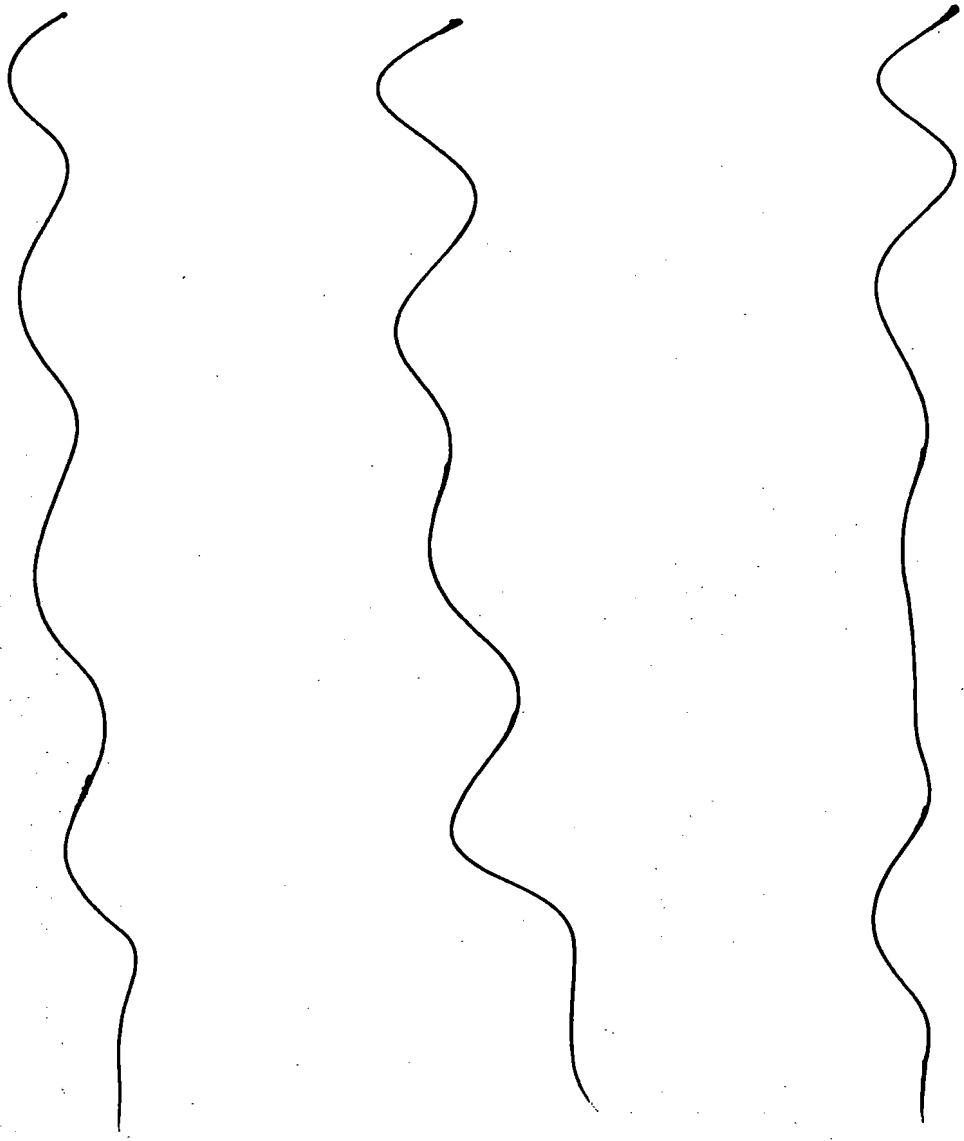
)

CASE NO: 15 C 000116A

Now comes CHARLE JASON HARVEY who, being duly sworn or affirmed, hereby deposes and says:

1. ON APPROXIMATELY, MONDAY, MARCH 7, 2016 DETECTIVES JUANITA VETTER AND TOM LOMBARDO CAME AND TALKED TO ME REGARDING CHAD SOUTH. THEY THREATENED ME, SAID THEY WOULD PUT ME IN JAIL OR PROSECUTE ME FOR LYING.
2. I LEARNED FROM MISTY SWEAT THAT THE DETECTIVES WENT TO HER HOUSE AND MADE A STATEMENT THEY WERE INVESTIGATING A MURDER CASE INVOLVING ~~THE~~ OUR SON. MISTY PANICKED BECAUSE OF THIS STATEMENT AND IT CAUSED STRESS IN AN ALREADY STRESSFUL RELATIONSHIP.
3. THIS AFFECTED MY SON. HE IS AFRAID TO TALK TO ME BECAUSE OF WHAT THE DETECTIVES TOLD MISTY.

~~~~~



**FURTHER AFFIANT SAYETH NAUGHT.**

C. Huang



Sworn to or affirmed before me and subscribed in my presence on this 16th day of March,  
2016 at BROOKVILLE in Montgomery County, Ohio.

Kell Hulse  
Notary Public

PAGE 2 OF 2

MY COMMISSION EXPIRES:  
11-5-2018

## Umholtz, Robert

---

**From:** Umholtz, Robert  
**Sent:** Monday, August 10, 2015 6:08 PM  
**To:** Driscoll, Jennifer  
**Subject:** Chad South

Ms. Driscoll:

Upon reviewing the Discovery in Mr. South's case in preparation for the Deposition of Richard Carter, I am unable to locate copies of the following recorded interviews:

20 Sep 10, Det. Levan contacted Det. Vetter regarding "a taped interview he had recorded of an inmate named Richard Carter"

29 Sep 10, Det. Vetter received PHONE CALL FROM Det. Levan. He was just leaving London Correctional after interviewing Richard Carter. The interview was recorded and a copy made for the Geauga County Sheriff's Office

4 Oct 10, Det. Levan contacted Det. Vetter indicating he had met with inmate Richard Carter. No indication as to whether interview was recorded.

12 Oct 10, Det. Levan again interviewed inmate Richard Carter and notified Det. Vetter. No indication as to whether Interview was recorded.

27 Jan 11, Det. Levan met with inmate Richard at Det. Vetter's request. Det. Levan supplied a copy of the interview on CD.

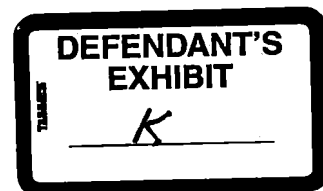
15 Feb 11, Det. Levan met with Richard Carter and Terry Current at London Correctional. No indication as to whether The interview was recorded.

5 Sep 11, Dets. Vetter and Graley interviewed inmate Carter prior to his release from London Correctional. The interview Was audio recorded with Richard Carter's knowledge.

Please review the index you provided and advise me if I have missed those interviews or if they were mislabeled on a disc provided. If they are not in the material provided, I am requesting copies be provided immediately to allow me to prepare for the upcoming deposition of Mr. Carter.

Thank you for your assistance,

R. Robert Umholtz  
Gauga County Public Defender



Pub Def

FILED  
IN COMMON PLEAS COURT

2015 AUG 11 PM 3:37

DENISE M. KAMINSKI  
CLERK OF COURTS  
GEAUGA COUNTY

IN THE COURT OF COMMON PLEAS  
GEAUGA COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

v.

CHAD SOUTH,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

CASE NO. 15C000116A

JUDGE DAVID L. FURHY

SUPPLEMENTAL DISCOVERY

Pursuant to Crim. R. 16(B) and Crim. R. 12(E), the State of Ohio, by and through the Prosecuting Attorney of Geauga County, Ohio, hereby provides the following supplemental discovery to the Defendant:

Pursuant to your attached request, I am providing everything the State has in their possession at this time.

Respectfully submitted,

Jennifer A. Driscoll (#0073472)  
Assistant Prosecuting Attorney  
Gauga County Prosecutor's Office  
Courthouse Annex  
231 Main Street - Third Floor  
Chardon, OH 44024  
(440) 279-2122

DEFENDANT'S  
EXHIBIT  
L

1 Pub Def

FILED  
IN COMMON PLEAS COURT  
2015 AUG 11 PM 4:00  
DENISE M. KAMINSKI  
CLERK OF COURTS  
GEAUGA COUNTY

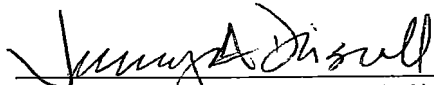
IN THE COURT OF COMMON PLEAS  
GEAUGA COUNTY, OHIO

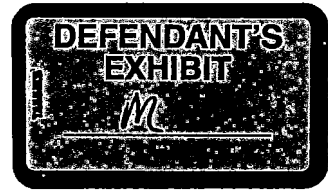
|                |   |                               |
|----------------|---|-------------------------------|
| STATE OF OHIO, | ) | CASE NO. 15C000116A           |
|                | ) |                               |
| Plaintiff,     | ) | JUDGE DAVID L. FURHY          |
|                | ) |                               |
| v.             | ) | <u>SUPPLEMENTAL DISCOVERY</u> |
|                | ) |                               |
| CHAD SOUTH,    | ) |                               |
|                | ) |                               |
| Defendant.     | ) |                               |

Pursuant to Crim. R. 16(B) and Crim. R. 12(E), the State of Ohio, by and through the Prosecuting Attorney of Geauga County, Ohio, hereby provides the following supplemental discovery to the Defendant:

1. CD containing:
  - Richard Carter 7/5/11
  - T. Current Ford Bronco interview
  - T. Current Tri-County interview (1&2)
  - T. Current with Det. Levan
  - T. Current 1/31/08
  - Richard Carter 10/20/10

Respectfully submitted,

  
 Jennifer A. Driscoll (#0073472)  
 Assistant Prosecuting Attorney  
 Geauga County Prosecutor's Office  
 Courthouse Annex  
 231 Main Street – Third Floor  
 Chardon, OH 44024  
 (440) 279-2122



**Umholtz, Robert**

---

**From:** Umholtz, Robert  
**Sent:** Wednesday, August 12, 2015 6:55 PM  
**To:** Driscoll, Jennifer  
**Subject:** RE: Depo

Jennifer,

I will be filing an objection to the Notice of Deposition and hearing tomorrow morning. My reasons being primarily that I have not received copies of the recorded interviews of Richard Carter. If I receive those copies in sufficient time to prepare for the deposition, I believe I can have my other matters covered on the 19<sup>th</sup>.

Bob



**Umholtz, Robert**

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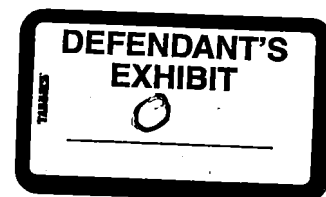
**From:** Umholtz, Robert  
**Sent:** Thursday, August 13, 2015 9:06 AM  
**To:** Driscoll, Jennifer  
**Subject:** RE: Depo

Jennifer,

The interviews delivered the day before yesterday re: Richard Carter were from 5 Sep 11 and 20 Sep 10. No recordings labeled "Richard Carter" from interviews conducted on 29 Sep 10, 4 Oct 10, 12 Oct 10, 27 Jan 11, or 15 Feb 11 were received.

Bob

---



1 hrs

FILED  
IN COMMON PLEAS COURT  
2015 AUG 13 AM 9:38  
BENJAMIN H. HANBUSHKI  
CLERK OF COURTS  
GEAUGA COUNTY

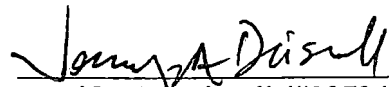
IN THE COURT OF COMMON PLEAS  
GEAUGA COUNTY, OHIO

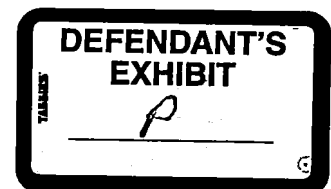
|                |   |                                      |
|----------------|---|--------------------------------------|
| STATE OF OHIO, | ) | CASE NO. 15C000116A                  |
|                | ) |                                      |
| Plaintiff,     | ) | JUDGE DAVID L. FURHY                 |
|                | ) |                                      |
| v.             | ) | <b><u>SUPPLEMENTAL DISCOVERY</u></b> |
|                | ) |                                      |
| CHAD SOUTH,    | ) |                                      |
|                | ) |                                      |
| Defendant.     | ) |                                      |

Pursuant to Crim. R. 16(B) and Crim. R. 12(E), the State of Ohio, by and through the Prosecuting Attorney of Geauga County, Ohio, hereby provides the following supplemental discovery to the Defendant:

1. 2 CDs containing Richard Carter audio which were previously provided on 8/11/15 on a CD with several other interviews.

Respectfully submitted,

  
 \_\_\_\_\_  
 Jennifer A. Driscoll (#0073472)  
 Assistant Prosecuting Attorney  
 Geauga County Prosecutor's Office  
 Courthouse Annex  
 231 Main Street - Third Floor  
 Chardon, OH 44024  
 (440) 279-2122



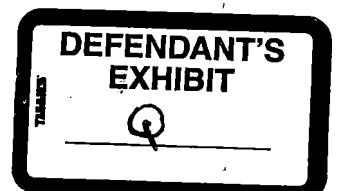
## Umholtz, Robert

---

**From:** Driscoll, Jennifer  
**Sent:** Thursday, August 13, 2015 11:47 AM  
**To:** Vetter, Juanita M.; Lombardo, Thomas F.; Umholtz, Robert; 'Friedman, Ian N.'; 'Henry Hilow'  
**Cc:** DeMarco, Cynthia  
**Subject:** Carter Interviews

We need all of the interviews of Richard Carter – Detective Levan’s. DO you have them? We need them now for the depo on Wednesday.

Jennifer A. Driscoll  
Supervisor, Criminal Division  
Geauga County Prosecutor’s Office  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, Ohio 44024



## Umholtz, Robert

---

**From:** Driscoll, Jennifer  
**Sent:** Thursday, August 13, 2015 12:06 PM  
**To:** Umholtz, Robert; Vetter, Juanita M.; Lombardo, Thomas F.; 'Friedman, Ian N.'; 'Henry Hilow'  
**Cc:** DeMarco, Cynthia; Paul L. Scarsella  
**Subject:** RE: Depo

There is no indication that there are recordings from:

Feb. 15, 2011

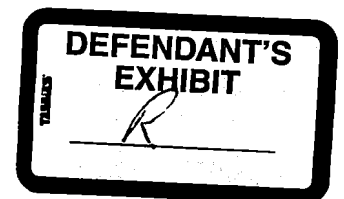
September 29, 2010, as that appears to be a summary of a call Vetter received from Levan re: an interview recorded with Carter and Levan i.e. Sept. 20, 2010; which a recording and transcript were provided. – Vetter put the wrong date.

There are recordings from:

Sept. 5, 2011

Sept. 20, 2010

We are checking into your other alleged dates of missing recordings and will be sure to provide you with everything that exists. Please understand with the great volume of information, it was never our intention to keep anything from defense.





## Umholtz, Robert

---

**From:** Umholtz, Robert  
**Sent:** Monday, August 17, 2015 5:57 PM  
**To:** Driscoll, Jennifer  
**Subject:** Carter Deposition

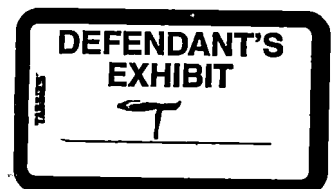
Jennifer,

I don't believe it will be possible to finish preparing for the deposition planned for Wed. 19 Aug 2010. After receiving the CD's Friday, I did not have an opportunity to review them until Saturday. I don't know what Mr. Friedman's and Mr. Hilow's schedules are looking like but the earliest I can be available will be Friday 21 Aug 15. I am available the entire day.

Thank You

R. Robert Umholtz

Geauga County Public Defender



## Umholtz, Robert

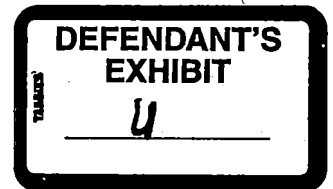
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**From:** Driscoll, Jennifer  
**Sent:** Tuesday, August 18, 2015 7:32 AM  
**To:** Umholtz, Robert  
**Cc:** Paul L. Scarsella  
**Subject:** RE: Carter Deposition

Bob,

There are far too many moving parts to continue this deposition again. The witness is being transported here as I write. I am sorry that you did not receive those CDs until Friday; however, as you are aware after listening to them they are quite short and to the point. There were also summaries provided previously. I hope that having had yesterday scheduled for the deposition and it not going forward that you were able to get caught up on those interviews.

Thanks,  
Jennifer A. Driscoll  
Supervisor, Criminal Division  
Geauga County Prosecutor's Office  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, Ohio 44024



---

**From:** Umholtz, Robert  
**Sent:** Monday, August 17, 2015 5:57 PM  
**To:** Driscoll, Jennifer  
**Subject:** Carter Deposition

Jennifer,  
I don't believe it will be possible to finish preparing for the deposition planned for Wed. 19 Aug 2010. After receiving the CD's Friday, I did not have an opportunity to review them until Saturday. I don't know what Mr. Friedman's and Mr. Hilow's schedules are looking like but the earliest I can be available will be Friday 21 Aug 15. I am available the entire day.

Thank You  
R. Robert Umholtz  
Geauga County Public Defender

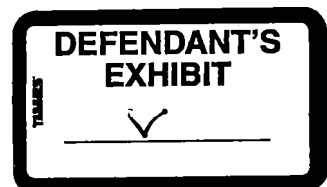
## Umholtz, Robert

---

**From:** Umholtz, Robert  
**Sent:** Saturday, September 19, 2015 1:15 PM  
**To:** 'paul.scarsella@ohioattorneygeneral.gov'  
**Subject:** State v. South 15 C 000116A

Paul,  
I sent an e-mail to Jennifer last week re: transcripts but I received no response. I am assuming she did not respond because she is in trial. I am therefore contacting you to suggest we have a status conference with the Judge to determine how we will be dealing with transcript preparation. In addition to Mr. Carter's interviews, there are 30 plus CD's which have been provided to us in the case. Upon reviewing the first few we have found that many CD's have no title and when they are played we find multiple items which are not labeled. This creates a problem in not knowing which people were interviewed and how many times.  
I think we need to establish some procedure and determine who is responsible for having items transcribed or we will continue to unnecessary problems and delays.

Thanks,  
Bob Umholtz  
Geauga County Public Defender



## Umholtz, Robert

---

**From:** Friedman, Ian N. <inf@mccarthylebit.com>  
**Sent:** Monday, September 21, 2015 7:53 AM  
**To:** Driscoll, Jennifer  
**Cc:** Paul L. Scarsella; Flaiz, James R.; Henry Hilow; Umholtz, Robert; Lombardo, Thomas F.  
**Subject:** Re: Deposition

Thanks Jen! Date forthcoming.

Ian

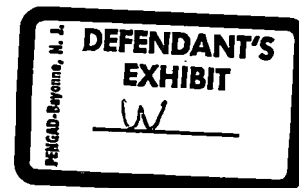
Ian N. Friedman, Principal  
McCarthy, Lebit, Crystal & Liffman, Co., L.P.A.  
101 W. Prospect Ave, Suite 1800  
Cleveland, Ohio 44115  
T: 216.696.1422  
F: 216.696.1210  
E: [inf@mccarthylebit.com](mailto:inf@mccarthylebit.com)  
W: [www.iannfriedman.com](http://www.iannfriedman.com)  
T: @IanNFriedman

On Sep 21, 2015, at 7:47 AM, Driscoll, Jennifer <[Jennifer.Driscoll@gcpao.com](mailto:Jennifer.Driscoll@gcpao.com)> wrote:

After speaking with Ian this weekend it is my understanding that there is an issue with the 23<sup>rd</sup>, as it is a holiday. We need to do this deposition as soon as possible. If everyone could please respond with possible dates in the very near future that would work that would be great. I am in trial, so I will leave it to you all to find an agreeable date.

Many thanks and Happy Monday!

Jennifer A. Driscoll  
Supervisor, Criminal Division  
Geauga County Prosecutor's Office  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, Ohio 44024



## Umholtz, Robert

---

**From:** Umholtz, Robert  
**Sent:** Monday, September 21, 2015 9:14 AM  
**To:** Driscoll, Jennifer  
**Subject:** RE: Deposition

Oct 1<sup>st</sup> and 2<sup>nd</sup> are open for me.  
Bob

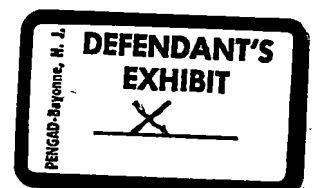
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**From:** Driscoll, Jennifer  
**Sent:** Monday, September 21, 2015 7:47 AM  
**To:** 'Paul L. Scarsella'; Flaiz, James R.; 'Friedman, Ian N.'; 'Henry Hilow'; Umholtz, Robert  
**Cc:** Lombardo, Thomas F.  
**Subject:** Deposition

After speaking with Ian this weekend it is my understanding that there is an issue with the 23<sup>rd</sup>, as it is a holiday. We need to do this deposition as soon as possible. If everyone could please respond with possible dates in the very near future that would work that would be great. I am in trial, so I will leave it to you all to find an agreeable date.

Many thanks and Happy Monday!

Jennifer A. Driscoll  
Supervisor, Criminal Division  
Geauga County Prosecutor's Office  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, Ohio 44024



## Umholtz, Robert

---

**From:** Umholtz, Robert  
**Sent:** Monday, September 21, 2015 11:05 AM  
**To:** 'Paul L. Scarsella'  
**Subject:** RE: Deposition

Paul,  
I am available the 1<sup>st</sup> and 2<sup>nd</sup> of October. Did you receive the e-mail I sent to you on Saturday?  
Thanks,  
Bob

---

**From:** Paul L. Scarsella [<mailto:paul.scarsella@ohioattorneygeneral.gov>]  
**Sent:** Monday, September 21, 2015 11:00 AM  
**To:** Driscoll, Jennifer; Flaiz, James R.; 'Friedman, Ian N.'; 'Henry Hilow'; Umholtz, Robert  
**Cc:** Lombardo, Thomas F.  
**Subject:** RE: Deposition

As Jenn is in trial pleas make sure to include me on the emails so I can get the scheduling done. Thanks

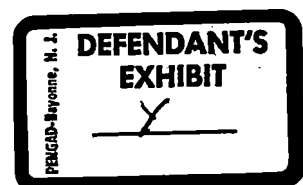
---

**From:** Driscoll, Jennifer [<mailto:Jennifer.Driscoll@gcpao.com>]  
**Sent:** Monday, September 21, 2015 7:47 AM  
**To:** Paul L. Scarsella; Flaiz, James R.; 'Friedman, Ian N.'; 'Henry Hilow'; Umholtz, Robert  
**Cc:** Lombardo, Thomas F.  
**Subject:** Deposition

After speaking with Ian this weekend it is my understanding that there is an issue with the 23<sup>rd</sup>, as it is a holiday. We need to do this deposition as soon as possible. If everyone could please respond with possible dates in the very near future that would work that would be great. I am in trial, so I will leave it to you all to find an agreeable date.

Many thanks and Happy Monday!

Jennifer A. Driscoll  
Supervisor, Criminal Division  
Geauga County Prosecutor's Office  
231 Main Street, 3<sup>rd</sup> Floor  
Chardon, Ohio 44024



## Umholtz, Robert

---

**From:** Paul L. Scarsella <paul.scarsella@ohioattorneygeneral.gov>  
**Sent:** Monday, September 28, 2015 2:13 PM  
**To:** Umholtz, Robert  
**Cc:** Driscoll, Jennifer  
**Subject:** RE: State v. South 15 C 000116A

Mr. Umholtz,

I'm sorry for the delay in getting back to you on this issue with the transcripts. I wanted to have the opportunity to discuss the issue with Ms. Driscoll who has been in trial as I am sure you are aware. In the past I have had staff which would possibly have been able to assist in transcribing the interviews you have concerns with however at this time that is not an option. I would have no objection if you wanted to petition the court for additional funds with which to obtain a court reporter to handle the transcriptions. I have had courts in other jurisdictions allow that in the past.

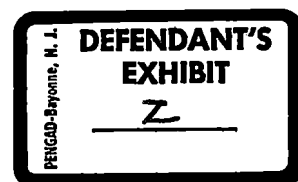
As for the identities of the people being interviewed I have not run into that problem in my reviews but we can work with the investigating detectives to assist if it becomes a problem.

---

**From:** Umholtz, Robert [<mailto:RUmholtz@CO.GEAUGA.OH.US>]  
**Sent:** Saturday, September 19, 2015 1:15 PM  
**To:** Paul L. Scarsella  
**Subject:** State v. South 15 C 000116A

Paul,  
I sent an e-mail to Jennifer last week re: transcripts but I received no response. I am assuming she did not respond because she is in trial. I am therefore contacting you to suggest we have a status conference with the Judge to determine how we will be dealing with transcript preparation. In addition to Mr. Carter's interviews, there are 30 plus CD's which have been provided to us in the case. Upon reviewing the first few we have found that many CD's have no title and when they are played we find multiple items which are not labeled. This creates a problem in not knowing which people were interviewed and how many times.  
I think we need to establish some procedure and determine who is responsible for having items transcribed or we will continue to unnecessary problems and delays.

Thanks,  
Bob Umholtz  
Geauga County Public Defender



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State of Ohio vs. South

15C000116A

Defendant's Exhibits

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