

[CAPTION]

**MOTION TO DISCLOSE IMPEACHMENT EVIDENCE OF STATE'S
WITNESSES IN POSSESSION OF THE STATE**

The Defendant, by counsel, respectfully requests this Court to order the State to disclose impeachment evidence in possession of the State, including any police agency, of all State's witnesses. In support of the Motion, the Defendant states the following:

1. On [insert date], the State charged the Defendant with [insert offenses)].
2. The State intends on calling multiple witness in the Defendant's jury trial.
3. "A prosecutor has a duty to volunteer material evidence to the defense in order that 'justice shall be done.'" Penley v. State, 734 N.E.2d 287, 290 (Ind.Ct.App. 2000) (quoting Denman v. State, 432 N.E.2d 426, 430 (Ind.Ct.App. 1982)). Material evidence includes impeachment evidence of the State's witnesses. See Kyles v. Whitley, 514 U.S. 419, 433-34 (1995).
4. The State is charged with information held by other prosecutors and the police. Giglio v. United States, 405 U.S. 150 (1972) (prosecutor is responsible to disclose any information held by those within the prosecutor's office); Penley v. State, 734 N.E.2d 287 (Ind.Ct.App. 2000) (the State was responsible to disclose potentially exculpatory evidence which was in possession of the police, regardless of whether the prosecutor was aware of the evidence).
5. Impeachment evidence, includes, but is not limited to, criminal histories, inconsistent statements made by the State's witnesses or witnesses not being used by the State, any motive to lie, any bias against the Defendant, any favors conferred upon the State's witnesses by the State, and any prior false accusations.

WHEREFORE, the Defendant, by counsel, specifically requests this Court to order the State to disclose impeachment evidence in possession of the State, including any police agency, of all State's witnesses, and for all other relief just and proper in the premises.

(Signature)

CASE LAW

CASEBANK M.1.a & O.6.c.

Banks v. Dretke, 540 U.S. 668, 124 S.Ct 1256, 157 L.Ed.2d 1166 (2004) (State should have disclosed that one of the witnesses was a paid police informant; the other was extensively coached by the police and prosecutors).

Turney v. State, 759 N.E.2d 671 (Ind.Ct.App. 2001) (in child molesting prosecution, State committed Brady violation where it did not disclose complaining witness's prior sexual misconduct after introducing evidence of child sexual abuse accommodation syndrome, which made disclosure mandatory; the Defendant should have been made aware of the complaining witness' prior sexual misconduct because it could have been used for impeachment purposes and went to the credibility of the victim).

Rowe v. State, 704 N.E.2d 1104 (Ind.Ct.App. 1999) (reversing because State failed to disclose that one of its star witnesses had been convicted of burglary and theft and was still on probation at time of his testimony).

Bowens v. State, 722 N.E.2d 368 (Ind.Ct.App. 2000) (post-conviction relief was properly granted where prosecution suppressed evidence of agreement between prosecution and the State's key witness).

Boss v. Pierce, 263 F.3d 734 (7th Cir. 2001) (statement to police from defense alibi witness that third party had confessed to crime to her was not available to defense through reasonable diligence, even when witness was defendant's sister-in-law; Counsel cannot be expected to read minds of witnesses in order to obtain information outside the scope of witness' role).

Williams v. State, 714 N.E.2d 644 (Ind. 1999) (it is wholly unreasonable to expect the Defendant to conduct repeated, periodic depositions or inquiries to ensure that agreement has not been made with every witness; rather, prosecutor's nondisclosure of "deal" with witness is tantamount to its suppression.).

Prewitt v. State, 819 N.E.2d 393 (Ind.Ct.App. 2004) (in murder prosecution, State improperly withheld certain material exculpatory evidence from Defendant prior to trial in violation of Brady; State clearly misled Defendant under oath in early stages of investigation, Defendant justifiably relied upon these affirmative misrepresentations and the misfeasance was never corrected).

Bunch v. State, 964 N.E.2d 274 (Ind.Ct.App. 2012) (the State has an affirmative duty to turn over exculpatory evidence even in the absence of a specific request by Defendant; however, if the State determines not all evidence available to it is required to be turned over and it does not know for a fact that Defendant already has the evidence, the State runs the risk that a court reviewing a subsequent Brady claim may disagree with its assessment).

State v. Hollin, 970 N.E.2d 147 (Ind. 2012) (in conspiracy to commit burglary prosecution, State's failure to disclose pending criminal matters against alleged accomplice and fact that accomplice had changed his pretrial account of alleged burglary only after being charged with a new felony was a Brady violation; the withheld impeachment evidence showed a motivating factor for accomplice to cooperate with the State that would have affected jury's assessment of his credibility).

Dickens v. State, 997 N.E.2d 56 (Ind.Ct.App. 2013) (even if questions among national experts about reliability of forensic bullet analysis used at trial constituted potentially exculpatory Brady material, State's failure to disclose this information did not violate Brady because there was overwhelming evidence of Defendant's guilt).