

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

WARRANT NO(S): 2021A2330210207-08
2023A2330208126-27

Plaintiff,)

vs.)

ZACHARY HUGHES)

Defendant.)

**MOTION FOR EX PARTE
SUBMISSION AND EX PARTE
HEARING PURSUANT TO
S.C.R.CRIM.P. 5(d)(1)**

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Brice Garrett COC 60L SC

COMES NOW, the Defendant, Zachary Hughes, who moves this Court, in anticipation of his forthcoming motion to compel the State to produce material and exculpatory information within its possession, and pursuant to S.C.R.Crim.P. 5(d)(1), for permission to submit to the Court, *ex parte*, a written statement and for the holding of an *ex parte* hearing.

FACTS

On at least five separate occasions over three years both in writing and orally, Mr. Hughes has requested access to the contents of eight devices owned by Bradley Post and seized by the Greenville County Sheriff's Office in October of 2021. On August 27, 2024, for the first time, the State finally indicated that it would not produce these contents or provide the defense with access to these devices, despite having said only minutes earlier that it would provide access. Even though it already produced the contents of one of Post's devices, which contained child pornography, the State now refuses to produce the contents of the remaining Post devices, in part, because the devices contain child pornography.

The State's hopelessly inconsistent positions now require Mr. Hughes, unfortunately, to seek an order from the Court compelling the State either to produce the contents of Post's devices or to provide access to them.

THE LAW

Under South Carolina law, a defendant who seeks access to discovery the State is improperly withholding must first make a showing to obtain the evidence. See *State v. Bryant*, 307 S.C. 458, 461–62, 415 S.E.2d 806, 808–09 (1992) (requiring the State to produce undisclosed evidence “once a defendant has established a basis for his claim that it contains material exculpatory or impeachment evidence.”). S.C.R.Crim.P. 5(d)(1) recognizes a procedure that allows a defendant to make such a showing without having to divulge his or her defenses.

Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. (Emphasis added).

By providing the Court with flexibility to determine under what parameters the moving party can make the showing, the Rule envisions that some cases may require something more, like a hearing, in addition to a written statement. Finally, the Rule mandates that the judge seal the written statement should the party’s motion to compel be granted following the *ex parte* hearing.

THE REQUEST FOR RELIEF

Consistent with the dictates of Rule 5(d)(1), Mr. Hughes asks the Court to order the following:

- That he be permitted to submit to the Court, *ex parte* and in conjunction with his forthcoming motion to compel, a written statement that explains why the contents of Post’s eight devices are “material to the preparation of his defense” pursuant to S.C.R.Crim.P. 5 and/or exculpatory pursuant to *Brady* and its progeny;
- That he be granted an *ex parte* hearing before the Court on his forthcoming motion to compel to more fully explain the arguments contained in his written statement; and
- That neither the contents of his written statement nor a transcript of the *ex parte* hearing be disclosed until the Court rules on the forthcoming motion to compel, and, should the

Court grant his forthcoming motion to compel, both the written statement and the transcript of the *ex parte* hearing be sealed according to the dictates of Rule 5(d)(1).

Because this Motion merely tracks the language of S.C.R.Crim.P. 5(d)(1), Mr. Hughes asks the Court to grant this Motion without a hearing and on the Motion itself.

CONCLUSION

Rule 5(d)(1) governs the process by which a defendant can interface with the Court for the purpose of raising deficiencies in the State's discovery productions. Mr. Hughes asks this Court to order that this process be applied to his case, and he humbly requests that it do so without delay and without a hearing.

Respectfully submitted,

s/ Andrew B. Moorman

s/ L. Mark Moyer

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