

FILED
AT... 3:35... O'CLOCK... M

MAY 07 1984

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR ~~CLATSOP~~ ^{CLATSOP} COUNTY ^{Court Administrator}
BY: M. J. Jagger ^{Deputy}

THE STATE OF OREGON,) Case No. 10-84-01377 (27) DEPUTY
)
Plaintiff,) MOTION
)
vs.)
)
ELIZABETH DIANE DOWNS,)
)
Defendant.)

COMES NOW the Defendant, Elizabeth Diane Downs, by and through her attorney, James C. Jagger, and moves this Court for an order directing the State of Oregon to disclose to the Defendant all exculpatory material, including but not limited to all reports generated by the Lane County Sheriff's Department or other agencies or the District Attorney's Office relating to the individual who the Defendant has described and indicated was the perpetrator of the assaults upon her children and herself and reports and documents and other material relating to a certain yellow vehicle that was observed by the Defendant prior to the assault and was missing from the area subsequent to the assault.

In the opinion of counsel, this Motion is well founded in law and in fact and is not filed for the purpose of delay. This motion is further based upon the Fifth Amendment of the United States Constitution which guarantees that no person shall be deprived of liberty without due process of law. This Motion is further based upon the Affidavit of counsel attached hereto and by this reference incorporated herein and the Points and Authorities cited hereafter.

JAGGER & HOLLAND
Attorneys for Defendant

By: James C. Jagger, OSB 70-070

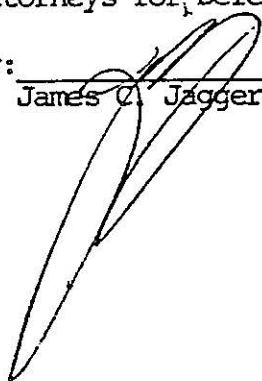
POINTS AND AUTHORITIES

It is clear that Oregon has enacted certain disclosure statutes does not mean that the Oregon Legislature was retreating from the broader pretrial disclosure of exculpatory material required by recent decisions of the United States Supreme Court, the Oregon Supreme Court and the Oregon Court of Appeals. Brady v. Maryland, 373 US 83, 83 Sup Ct 1194, 10 Lawyers Ed., 2nd 215 (1963); State, ex rel Dooley v. Connal, 257 Or 94, 475 P2d 582 (1970); Hanson v. Cupp, 5 Or App 312, 484 P2d 847 (1971). Therefore, the prosecution in Oregon is required as a matter of due process to disclose voluntarily, at such time as will allow the Defendant to use it effectively in his or her own defense, all evidence

of substantial significance which, if believed, would be seriously considered by the trier of fact in determining guilt or innocence, or would affect sentencing.

It appears clear, based upon the Affidavit of counsel filed herewith, that the State of Oregon, by and through their respective agencies, has acquired information concerning various citings of persons matching the description of the perpetrator of these offenses as set forth by the Defendant and also citings of the particular vehicle that was described by the Defendant. None of this has been disclosed to the Defendant.

JAGGER & HOLLAND
Attorneys for Defendant

By: 
James C. Jagger, OSB 70-070

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

THE STATE OF OREGON,) Case No. 10-84-01377
)
Plaintiff,) AFFIDAVIT
)
vs.)
)
ELIZABETH DIANE DOWNS,)
)
Defendant.)

STATE OF OREGON)
) ss.
County of Lane)

I, James C. Jagger, being first duly sworn on oath, hereby depose and say:

I am the attorney of record for the Defendant in the above-entitled matter. I have received a certain disclosure from the State of Oregon, a great portion of that discovery having been generated basically by the Defendant and by certain hospital records from the McKenzie Willamette Hospital. I have received some investigative reports from the Lane County Sheriff's Department and other agencies. For the most part, none of those reports deal with any follow-up or contact with persons who may have contacted the various agencies or about which the agencies may have contacted other parties and obtained information concerning citings of potential suspects generally matching the description of the person as described by the Defendant or citings concerning the yellow vehicle described by the Defendant.

Fortunately, through the media coverage of this particular case, a few of these persons who have contacted the Lane County Sheriff's Department both reporting persons seen within the general area who matched the description of the suspect as given by Ms. Downs or who have seen vehicles in the general area that have generally matched the description as given by the Defendant, have contacted this office or Ms. Downs' parent's residence. These various people that I have contacted have indicated some cursory contact with the Lane County Sheriff's Department or other agency. For the most part, each of them was concerned about the lack of follow-up or care taken by the respective agencies in obtaining their information. I have not received any reports concerning these individuals from the State of Oregon. I became concerned about this and therefore attempted to contact members of the Lane County Sheriff's Department to attempt to find and interview detectives and other persons who would have made contact with these persons. While early on in this matter an investigator was hired by the Fredericksens to do some limited amount of work, because of financial

restrictions, the Fredericksons and the Defendant have not been able to retain an investigator for a considerable period of time. They do not have an investigator at the present time because of financial considerations. It is essential that the Defendant receive and be able to review such exculpatory items of evidence that may be in the possession of the State of Oregon or through its various agencies.

I made a number of appointments and attempts to contact members of the Lane County Sheriff's Department. I have not been able to discuss these matters with the Lane County Sheriff's Department for persons within that Department have indicated their unwillingness to discuss the matter with me. They have indicated either that Sheriff Dave Burks has advised them not to talk to me or that they choose not to discuss the facts of the case with me but will not give a specific reason. I attempted to talk with Doug Welch, who is a detective with the Lane County Sheriff's Department, and attempted to leave a message with Sargeant Louie Hince. Sargeant Hince advised me that he would not leave a message for Doug Welch as he didn't want him to talk to me. My efforts to informally obtain this information have been unsuccessful.

I therefore issued a series of subpoenas for Sheriff Dave Burks and to various persons I believe to believe to be custodians of these various records. I have just this date received a communication from County Counsel that such books and files and reports do exist.

I discussed the matter with the attorney representing the State of Oregon and he has advised me that he will be filing a Motion in Limine to keep from disclosing these matters to the defense. It is my understanding that his position will be potentially to handle the matter by having this Court review these reports and make an independent determination that the same should be disclosed to the defense. It is the position of the Defendant that these matters must all be disclosed to the defense. It is our position that the case is even stronger that the matters should all be disclosed to the defense because of the law enforcement agencies frustration of our attempts to ascertain the facts in this case. State v. Chase, 23 Or App 663, 543 P2d 1104 (1975).

SUBSCRIBED AND SWORN to before me this 7 day of May, 1984.


Notary Public for Oregon

My Commission Expires: 3/10/86

STATE OF OREGON)
County of Lane) ss.

I, _____, swear or affirm I am the
and I believe the foregoing _____ to be true.

(SEAL)

Subscribed on oath or affirmation before me this
_____ day of _____, 19 ____.

Notary Public for the State of Oregon
My Commission Expires: _____

I certify that the foregoing MOTION/AFFIDAVIT
(are) (is) a true, exact and full copy of the original.

Date: May 7, 19 84.

One of Attorneys for Defendant

Due service of the within _____
_____ is hereby accepted in _____ County,
this _____ day of _____, 19 ____, by receiving a copy thereof,
duly certified to as such by _____
of Attorneys for _____.

I certify that on May 7, 19 84, I personally served a true,
exact and full copy of the within MOTION/AFFIDAVIT
on Lane County District Attorney, Attorney of record for
the Plaintiff.

One of Attorneys for Defendant

I certify that I served the foregoing _____ on
_____ by depositing a true, full and exact
copy thereof in the United States Post Office at Eugene, Oregon on _____
19 ____, enclosed in a sealed envelope, with postage paid, addressed to:

Attorney(s) of record for the _____.

JAGGER & HOLLAND
ATTORNEYS AT LAW
540 Oak Street
Oak Court Building
Eugene, Oregon 97401
TELEPHONE: (503) 343-1257

One of Attorneys for _____

PET. EX. 5
3000085