

## KNIGHT, SPRY AND RECIPROCAL DISCOVERY

Case in Chief vs. Rebuttal Witnesses  
Disclosing Witness Investigator Reports  
Disclosing Evidence  
Disclosing Client's Statements

*State v. Knight*, 734 P.2d 913 (1987). Held: Prosecutor's failure to comply with discovery agreement by omitting correct address and telephone numbers of witnesses was prejudicial error. Dicta: If the prosecution agrees to produce certain specified material and it later comes into possession of the same, it must produce the material. Consequently, the state attempts to assert its production of discovery is limited and conditional.

*State v. Spry*, 2001 UT App 75, 21 P.3d 675. State was entitled to discover the names and testimony of defense witnesses, expert witness reports, and exhibits and investigative reports that would be used in trial.

*State v. Carter*, 707 P.2d 656 (1985) Where defendant fails to assert a particular ground for suppressing unlawfully obtained evidence it will not be considered on appeal.

*Taylor v. Illinois*, 484 U.S. 400, 108 S.Ct. 646, 98 L.Ed.2d 789 (1988). Compulsory process clause does not create an absolute bar to preclusion of testimony of defense witness as a sanction for violating discovery rule. Witness who was not disclosed by the defense pretrial could be precluded.

*United States v. Nobels*, 422 U.S. 225, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975). The qualified privilege derived from attorney work-product doctrine was waived with respect to matters covered in investigator's testimony, and it is within the court's discretion to assure that the jury would hear the full testimony of the investigator rather than the truncated portion favorable to the defendant.

*United States v. Nixon*, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974). Where Tapes sought with a subpoena duces tecum were only available from the president, and were shown as evidentiary, relevant and not otherwise reasonably available in advance of trial by due diligence, and the prosecution could not otherwise properly prepare for trial without production and inspection, they were subject to an order requiring production.

## DUE PROCESS

*State v. Bakalov*, 1999 UT 45, ¶ 30-33, 979 P.2d 799, 811. Suppression of evidence favorable to the defense violates due process where the evidence is material either to guilt or to punishment, irrespective of whether prosecution has acted in good or bad faith, whether defense requests the favorable evidence, or whether the evidence is substantively exculpatory or solely for impeachment value. Brady, Bagly, Giglo & Kyles; Butt, Smith

Brady      Duty of a prosecutor to disclose exculpatory evidence as it arises regardless of whether the defense request the evidence.

*Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Bagley Prosecutor's duty to disclose substantively exculpatory evidence which may be used to impeach a witness.

The failure to disclose exculpatory evidence violates due process irrespective of the good faith of the prosecution.

*United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985)

Agurs - Duty of prosecutor to disclose exculpatory evidence which is unknown and unrequested by the defendant. *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2329, 49 L.Ed.2d 342 (1976)

Giglio Duty to disclose witness's prior false statements under oath for impeachment. Duty to disclose promises made to witnesses. *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).

Kyles Prosecutor is imputed with producing all discoverable materials in a criminal case pursuant to both state and federal constitutional law. *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed. 490 (1995)

Butt *United States v. Butt*, 955 F.2d 77, 84 (1<sup>st</sup> Cir. 1992). Evidence showing a witness's inability to accurately perceive, recall or relate events at issue in a trial may be a crucial to establishing the truth. *Bakalov*, 1999 UT 45 at ¶ 32 The evidence must be disclosed for impeachment. *Id.*

Smith *United States v. Smith*, 77 F.3d 511, 516 (D.C.Cir 1996). Evidence of mental illness is material when it "may reasonably cast doubt on the ability or willingness of a witness to tell the truth. *Bakalov*, 1999 UT 45 at ¶ 32. The evidence must be disclosed for impeachment. *Id.*

*State v. Bisner*, 201 UT 99, 37 P.3d 1073, 1082-1083 cites Brady, Bagley, Agurs and Giglio.

Deprives of Fair Trial  
Evidence is Material  
Undermines Confidence

Available, Knew or Should Have Known.

The government's failure to disclose potentially exculpatory information does not violate Brady where a defendant knew or should have known the essential facts permitting him to take advantage of any exculpatory information, or where the evidence is available to the defendant from another source. *Bisner*, 201 UT at ¶ 33.

Menagerie: A collection of wild animals kept in captivity for exhibition,  
A strange or diverse collection of people or things.

Entry of Appearance &

Request for Discovery

Request for Notice of Experts

Request for Notice of 404(b) Evidence

Request for Notice of Giglio Materials

Request for Jencks Act Materials

Request for Notice of Trial Exhibits