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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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THE STATE OF UTAH,  
  
Plaintiff,  
-vs-  
  
CESAR ANGEL PEREZ,  
  
Defendant.

**MEMORANDUM IN SUPPORT OF  
STATE'S MOTION TO DISCOVER**

Case No. 131905133

Judge ANN BOYDEN

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The State of Utah, by and through its counsel of record, SIM GILL, District Attorney, and ANDREW K. DEESING, Deputy District Attorney, hereby submits this memorandum in support of its Motion to Discover.

**ARGUMENT**

**I. THE DEFENDANT IS REQUIRED TO PROVIDE EVIDENCE TO THE PROSECUTION.**

The United States Supreme Court has made it clear that in our adversary system of criminal justice, “the need to develop all relevant facts . . . is both fundamental and comprehensive.” *U.S. v. Nixon*, 418 U.S. 683, 709 (1974). The Court further explained:

The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense.’

*Id.*

Moreover, the Utah Supreme Court has long recognized that procedural rules dealing with discovery are meant to promote the objective of finding the truth in criminal proceedings. “A criminal proceeding is more than an adversarial contest between two competing sides. It is a search for the truth upon which a just judgment may be predicated. Procedural rules are designed to promote that objective, not to frustrate it.” *State v. Carter*, 707 P.2d 656, 662 (Utah, 1985).

In criminal cases, Utah law specifically requires the defense to “disclose to the prosecutor such information as required by statute relating to alibi or insanity and any other item of evidence which the court determines on good cause shown should be made available to the prosecutor in order for the prosecutor to adequately prepare his case.” Utah Rules of Criminal Procedure, Rule 16. More specifically,

[U]pon compliance with such request by the government, the defendant . . . shall permit the government to inspect or copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

*United States v. Countryside Farms, Inc.*, 428 F.Supp. 1150, 1156 (Utah District 1977).

The State’s current request for discovery is in accordance with Rule 16 and does not violate any privileges or rights of the defendant. As such, the defendant should be ordered to comply with the State’s request in a timely manner.

## **II. THE EVIDENCE REQUESTED IS MATERIAL TO THE ISSUES THAT WILL BE RAISED AT TRIAL.**

The Utah Court of Appeals examined the meaning of “good cause” as used in Rule 16(c) of the Utah Rules of Criminal Procedure in *State v. Spry*. Utah Courts had not yet defined good cause as applied to prosecutors, but had considered the phrase as applied to the defendant in rule

16(a) (5). “Utah appellate courts have not defined the good cause requirement for prosecutors under Rule 16(c). However, ‘good cause’ has been defined as used in Rule 16(a) (5) which requires the defendant to show good cause for the court to order discovery of evidence from the prosecution.” *State v. Spry*, 2001 UT App 75, ¶ 18, 21 P.3d 675. The court concluded that because the two provisions of Rule 16 were parallel to each other, it was “only logical that the standard of good cause required of one is the standard of good cause required of the other.” *Id.* at ¶ 23. The court ultimately held that “good cause under Rule 16(c) requires the prosecution to establish *only the materiality of the information* requested from the defense before the defense is required to make such information available to the prosecution.” *Id.* at ¶ 25 (emphasis added).

This rule has become well established as Utah courts have consistently interpreted Rule 16 to mean that “when requesting discovery from the defense, the prosecution need only demonstrate the materiality of the evidence to the issues to be raised at trial.” *State v. McNearney*, 2005 UT App 133, ¶ 11, 110 P.3d 183 (citing *State v. Spry*, 2001 UT App 75, 21 P.3d 675). In *Spry*, the court was satisfied that the prosecution had demonstrated the materiality of the evidence because the materials requested “involved witnesses and documents which Defendant intended to use at trial.” *Spry*, 2001 UT App at ¶ 24. The requirement to show good cause was satisfied when the State was able to show materiality of the evidence.

The State’s current request is simple and minimal, but it goes to the very heart of case preparation: the ascertainment of who will testify and give evidence; the ascertainment of what that evidence will be; the ascertainment of the veracity of the witnesses and the reliability of their testimony; the ascertainment of impeachment evidence; and the ascertainment of witnesses or evidence that will be necessary to meet the contentions of the proposed defense witnesses.

Utah law further requires the defendant to “make all disclosures at least ten days before trial or as soon as practicable.” Utah Rules of Criminal Procedure Rule 16(d). Additionally, the defendant has a continuing duty to make disclosure. *Id.* Therefore, the State requests that defense counsel make disclosure as requested above within a reasonable time and that the Court order a continuing duty to make disclosure.

### **CONCLUSION**

Based on the foregoing, the State requests that an Order be granted requiring the Defendant to produce all information and documents which the State has properly requested.

RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of September, 2014.

SIM GILL  
District Attorney

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ANDREW K. DEESING  
Deputy District Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Memorandum in Support of State's Motion to Discover was sent on the 15<sup>th</sup> day of September, 2014, via the Court's electronic filing system, to the following:

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/S/ Emily Gaitin

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