

NORTH CAROLINA
GASTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILED
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2017 MAR 9

GASTON CO, NC

STATE OF NORTH CAROLINA

BY _____

VS

CERTIFICATE OF SERVICE

MARK BRADLEY CARVER

I CERTIFY that on this date I served counsel for the defendant with a copy of the State's Answer to the defendant's Motion for Appropriate Relief and the State's Response pursuant to Rule 15A 1419 et al. by depositing a copy with the United States Postal Service addressed to:

Christine C. Mumma

Attorney at Law

PO Box 52446

Durham, NC 27717

This the 9th day of March, 2017



Locke Bell

**STATE OF NORTH CAROLINA
GASTON COUNTY**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CRS 68290**

STATE OF NORTH CAROLINA

VS

**STATE'S
RESPONSE TO DEFENDANT'S
MOTION FOR APPROPRIATE RELIEF**

15A-1420

MARK BRADLEY CARVER

NOW COMES the State of North Carolina by and through District Attorney Locke Bell saying:

1. Pursuant to 15A-1419 (2)(3) the Movant is barred from filing this claim in that the allegations were or could have been raised in the Appellate Courts.
2. While not waiving its allegation that the defendant is barred from filing this MAR the undersigned proceeds pursuant to NCGS 15A-1415(e) alleging the defendant has waived his attorney/client privilege with respect to both oral and written communication between counsel and the defendant as they might relate to the allegation of ineffective assistance of counsel. The waiver includes work product, notes, documents, communications, or work product touching directly or indirectly on the allegations of ineffective assistance of counsel enumerated in defendant's motion for appropriate relief.
3. The defendant's allegation of ineffective assistance contends in part that the defendant's trial was carried out without counsel being adequately prepared to challenge the state's case or to present his own. In order to properly respond to the allegations of the defendant and in the interest of the fair administration of justice the State has a right to see, and must see, the defense trial counsel's complete files to determine what if anything the trial counsel did in preparation for the defense of the movant which would refute the allegations now made.
4. The State is entitled to and is in need of the underlying facts and data which were used by any and all experts consulted by counsel for the movant in preparation for the filing of his motion.
5. The State is entitled to and is in need of the underlying facts and data which were the basis for any assertion in the motion whether or not based on expert opinion.


6. The State has the right to take the deposition of any and all persons with information related to the assertions made by the defendant including the defense trial counsel; the defendant; current counsel for the movant any witness which the movant intends to call or who was used in the preparation of the motion. The State reserves that right to be asserted once it has reviewed the documentation requested herein.

7. The State reserves the right to file a supplement to this response as discovery progresses.

Therefore, the undersigned prays the Court enter an Order:

1. Dismissing the defendant's Motion.
2. Direct counsel for the Movant to provide that discovery sought herein.
3. Provide for depositions as might be requested.
4. Such other and further relief as might be just and proper.

Respectfully submitted this March 9, 2017



Locke Bell
District Attorney

**STATE OF NORTH CAROLINA
GASTON COUNTY**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CRS 68290**

STATE OF NORTH CAROLINA

VS

**STATE'S
ANSWER TO DEFENDANT'S
MOTION FOR APPROPRIATE RELIEF**

MARK BRADLEY CARVER

NOW COMES the State of North Carolina by and through District Attorney Locke Bell saying in response to the allegations of the defendant as follows:

1. Allegation one is admitted.
2. Allegation two is admitted as to the defendant's DNA being found on the victim's vehicle. By way of further answer it is shown that there was much additional evidence connecting the defendant to the crime, including but not limited to, the defendant knowing that the victim was short enough that she came up to his nose. He was at the scene when the police arrived; he stated he had been fishing nearby and stated that the reason his DNA was found was that if was in the river from spitting or flipping a cigarette in the water. He therefore knew that the victim had also been in the river.
3. It is admitted that the defendant's DNA was not found on the body of the victim, however her body having been in the river after the murder was easily washed off any skin cells belonging to her attacker.
4. Allegation four is admitted. By way of further answer it is shown that the three ligatures around her neck came from three different sources which were previously exposed to the public.
5. Allegation five is admitted with the additional information that there was no evidence that Ms. Yarmolenko had scratched anyone. DNA scrapings are taken from finger nails as a standard practice.
6. Allegation six is denied.
7. Allegations seven is admitted.
8. Allegation eight is admitted.

9. Allegation nine is admitted.
10. Allegation ten is admitted.
11. Allegation eleven is admitted as to the defense not putting on evidence, but it is noted that the defense presented much evidence by way of cross examination.
12. Allegation twelve is admitted.
13. Allegation thirteen is admitted as to the Court of Appeals upholding the conviction in a split decision. Except as expressly admitted the allegation is denied.
14. Allegation fourteen is admitted.
15. Allegation fifteen is admitted
16. Allegation sixteen is admitted as to Pierce and Lovelace going to call 911 and where they went. It is denied that the construction site was nearby.
17. Allegation seventeen is admitted.
18. Allegation eighteen is admitted.
19. Allegation nineteen is admitted.
20. Allegation twenty is admitted.
21. Allegation twenty-one is admitted.
22. Allegation twenty-two is admitted.
23. Allegation twenty-three is admitted.
24. Allegation twenty-four is admitted.
25. Allegation twenty-five is admitted.
26. Allegation twenty-six is admitted.
27. Allegation twenty-seven is admitted.
28. Allegation twenty-eight is admitted.
29. Allegation twenty-nine is admitted.

30. Allegation thirty is admitted as to the victim entering the parking lot and driving past the security camera at the time stated on the camera. As to what the video showed or did not show, the jury was able to watch it and observe for themselves.
31. Allegation thirty-one is denied. There is a large area between the two.
32. Allegation thirty-two is admitted.
33. Allegation thirty-three is denied. Ms. Yarmolenko was taking a photography course, had seen photos of the Catawba River in that area and had expressed an interest in the area. The victim had a camera in her car.
34. Allegation thirty-four is admitted.
35. Allegation thirty-five is admitted as to no DNA testing was done of construction workers. It is denied that the construction site was nearby. There was no connection between the construction site and the location of the murder. Additionally, the taking of swabs from construction workers or anyone else would not cancel out the defendants' DNA found on the car.
36. Allegation thirty-six is denied as to it ever being established that the victim was a vegetarian. There was one hand written note in the thousand plus pages which made reference to it.
37. Allegation thirty-seven is admitted.
38. Allegation thirty-eight is admitted.
39. Allegation thirty-nine is admitted.
40. Allegation forty is admitted.
41. Allegation forty-one is admitted.
42. Allegation forty-two is admitted.
43. Allegation forty-three is admitted as to the assertion of that person. Except as expressly admitted the allegation is denied. By way of further answer it is shown that the video from the security camera does not show a second person in her car thus there is no evidence of a hitch-hiker.
44. Allegation forty-four is admitted.
45. Allegation forty-five is admitted.
46. Allegation forty-six is admitted.

47. Allegation forty-seven is admitted.
48. Allegation forty-eight is admitted.
49. Allegation forty-nine is admitted.
50. Allegation fifty is admitted.
51. Allegation fifty-one is admitted.
52. Allegation fifty-two is admitted.
53. Allegation fifty-three is admitted.
54. Allegation fifty-four is admitted as to the examination. It is denied as to any evidence that any officer had touched the vehicle where the DNA was found.
55. Allegation fifty-five is admitted.
56. Allegation fifty-six is admitted.
57. Allegation fifty-seven is admitted.
58. Allegation fifty-eight cannot be admitted for lack of knowledge and therefore is denied.
59. Allegation fifty-nine cannot be admitted for lack of knowledge and therefore is denied.
60. Allegation sixty is admitted as to the defendant and his cousin (co-defendant) Cassada went to the river to fish. The defendant had sufficient strength to lift the salt block and do many other things. Had the defendant picked up a salt block for Mr. Cassada he would not have required Mr. Cassada to come to the river to get it. Except as expressly admitted the allegation is denied.
61. Allegation sixty-one is denied as never having been asserted to the undersigned before now. By way of further answer, the construction site was not close enough to hear scraping by a dozer.
62. It is admitted that the police saw the defendant in the area and spoke to him. By way of further answer it is shown that the police recognized the defendant from a recent domestic shooting where he shot a family member. Except as expressly admitted the allegation is denied.
63. Allegation sixty-three is admitted as to the two speaking and defendant telling the police that Cassada had been there earlier. Except as expressly admitted the allegation is denied. There was no evidence of the two ever touching much less shaking hands.

64. Allegation sixty-four is admitted.
65. Allegation sixty-five cannot be admitted for lack of knowledge and is therefore denied as is the footnote.
66. Allegation sixty-six cannot be admitted for lack of knowledge and is therefore denied. Footnote nine is denied.
67. Allegation sixty-seven is admitted. Here the Movant says Cassada met him at the river to fish which contradicts allegation sixty above.
68. It is admitted that the defendants provided buccal swabs. Except as expressly admitted the allegation is denied.
69. The video will speak for itself and thus except as expressly admitted the allegation is denied.
70. Allegation seventy is answered as stated previously.
71. Allegation seventy-one is denied.
72. Allegation seventy-two is admitted without admission as to its accuracy.
73. Allegation seventy-three is admitted without admission as to its accuracy.
74. Allegation seventy-four is admitted as to the assertions being made without admitted that the assertions are true.
75. Allegation seventy-five is admitted as to the assertions being made without admitted that the assertions are true.
76. Allegation seventy-six is admitted as to the assertions being made without admitted that the assertions are true. By way of further answer to allegations seventy-one through seventy-six it is shown that the report by the Psychiatrist who was treating the defendant just prior to trial showed no concerns about his understanding the charges and his ability to assist in his defense.
77. Allegation seventy-seven is admitted as to the assertion being made, but it is denied as to the truth due to a lack of information to determine the accuracy of the statement. He was able to wrestle with his son (before shooting him); kick in his wife's door in a fit of rage; fish including removing the fish from the line, drive, carry a salt block, carry a gun, fix windows and strangle a young woman who came up to his nose.
78. Allegation seventy-eight is denied.

79. Allegation seventy-nine is denied.
80. Allegation eighty is denied.
81. Allegation eighty-one is denied.
82. Allegation eighty-two is denied.
83. Allegation eighty-three is denied.
84. Allegation eight-four is admitted.
85. Allegation eight-five is admitted.
86. Allegation eighty-six is admitted as to when the swabs were submitted. Except as expressly admitted the allegation is denied.
87. Allegation eighty-seven is admitted.
88. Allegation eight-eight is admitted.
89. Allegation eight-nine is admitted although there was no evidence that she used her fingernails on her assailants.
90. Allegation ninety is admitted.
91. Allegation ninety-one is admitted as to the later processing. Except as expressly admitted the allegation is denied.
92. Allegation ninety-two is admitted.
93. Allegation ninety-three is admitted as to no conclusion by denied as to the assertion made. Allegation ninety-three is admitted.
94. Allegation ninety-four is admitted.
95. Allegation ninety-five is admitted.
96. Allegation ninety-six is admitted.
97. Allegation ninety-seven is admitted.
98. Allegation ninety-eight is admitted.
99. Allegation ninety-nine is admitted.

100. This allegation is denied.
101. This is admitted.
102. This allegation is denied.
103. This allegation is denied.
104. This allegation is denied. There was much more that connected the defendant to the murder and showed his guilt.
105. This allegation is denied. In addition to finding the defendant near the scene of the murder were among other things: his knowledge that the victim had been in the river after her death; his DNA on the vehicle she was driving; his denial of having been around the car; his knowledge of her height and weight; his unbelievable story about not hearing the car crash into the stump as it rolled down the bank toward the river; his not being seen by the jet skiers fishing were he said had been at the time of the murder (even as they passed by that spot twice and he said he never left).
106. The statement by Judge Hunter which was rejected by the Supreme Court in affirming the conviction. Except as expressly admitted the allegation is denied.
107. This allegation is denied.
108. This allegation is admitted. By way of further answer, while the defendant contends that he could not hear the crashing of the victim's car he admitted that he could hear the conversation of the jet skiers and a black man on a boat.
109. This allegation is denied.
110. This allegation is denied.
111. This allegation is admitted in that there was no evidence to elicit that a person standing where the defendant claimed to be fishing would not hear conversation at the scene of the murder.
112. The defendant knew the victim came up to his nose. As to the number of inches that was he may not have known. Except as expressly admitted the allegation is denied.
113. It is admitted that the defendant knew her height in spite of his claims to have never been in her presence.
114. The trial transcript speaks for itself. Except as expressly admitted the allegation is denied.

115. It is admitted that this was evidence of the guilt of the defendant. There was nothing the defense counsel could do to dispute that he had said it. Except as expressly admitted the allegation is denied.
116. The video speaks for itself and would have been very damaging to the defense in many ways if offered as evidence. The defense made a tactical decision not to introduce the video. It would have done nothing to overcome the fact that the defendant knew her weight and height. It would have shown the defendant acting out the display of how she came up to his nose. When asked in the video what he would have done if he had met the victim Mr. Carver's response was, "I would have asked her out". That did not come into evidence, because the video did not. It would also have waived last closing. Except as expressly admitted the allegation is denied.
117. The video speaks for itself. Except as expressly admitted the allegation is denied.
118. This allegation is denied.
119. This allegation is denied.
120. This allegation is denied. The photos of the victim in the paper would not have revealed her height or weight. Further, the defendant never claimed to have made any determination based on the media. Except as expressly admitted the allegation is denied.
121. This allegation is denied. By way of further answer it is shown that the defense used an expert in DNA who confirmed the findings of the State Lab. The defense also used their expert to prepare for and cross examine the state's witnesses in great detail. They could not call an expert to confirm the findings of the state.
122. This allegation is admitted.
123. The trial transcript speaks for itself. Except as expressly admitted the allegation is denied.
124. The trial transcript speaks for itself. Except as expressly admitted the allegation is denied.
125. The trial transcript speaks for itself. Except as expressly admitted the allegation is denied.
126. The trial transcript speaks for itself. Except as expressly admitted the allegation is denied.
127. The trial transcript speaks for itself. Except as expressly admitted the allegation is denied.
128. This allegation is denied.

129. This allegation is denied.
130. The state complied with its ongoing duty to seek out exculpatory evidence if any exists. It did that. Except as expressly admitted the allegation is denied.
131. This allegation is denied. By way of further answer it is shown that Mr. Cassada's DNA was also found on the victim's car. All parties agree that Mr. Cassada had left before the police arrived and did not return. The defendant Carver stated that neither he nor Mr. Cassada touched the vehicle or even went near it.
132. This allegation is denied.
133. The trial transcript speaks for itself. Except as expressly admitted the allegation is denied.
134. The transcript speaks for itself. Except as expressly admitted the allegation is denied.
135. The allegation is denied.
136. This allegation is denied.
137. This allegation is admitted as to the group publishing its document. Except as expressly admitted the allegation is denied.
138. This allegation is denied.
139. This allegation is denied.
140. The transcript speaks for itself. By way of further answer it is shown that there was no evidence that the victim had scraped anyone. Except as expressly admitted the allegation is denied.
141. The allegation is denied. There was no contradiction in the state's testimony. Further, the defense experts has stated that the testing and report were correct.
142. This allegation is denied. It must be added that any motion to dismiss is done outside the presence of the jury and thus not relevant to the issue of the jury verdict.
143. The case law speaks for itself. Except as expressly admitted the allegation is denied.
144. This allegation is denied as being incomplete.
145. This allegation is denied as being incomplete.

146. . This allegation is denied as being incomplete.
147. The case law speaks for itself. Except as expressly admitted the allegation is denied.
148. This allegation is denied.
149. This allegation is denied
150. This allegation is denied.
151. This allegation is denied.
152. This allegation is denied.
153. This allegation is denied.
154. The state offered the evidence to confront the defendant's statement that he heard neither the attack nor the car crashing into the stump which did great damage to the vehicle and would have created a loud noise which would be heard by the defendant if he had been fishing where he claimed to be. Except as expressly admitted the allegation is denied.
155. This allegation is denied.
156. This allegation is denied.
157. This allegation is denied. Defense counsel made several trips to the crime scene.
158. This allegation is denied.
159. This allegation is denied.
160. This allegation is denied.
161. This allegation is denied.
162. This allegation is denied.
163. The case law speaks for itself. Except as expressly admitted the allegation is denied.
164. This allegation is denied. By way of further answer it is shown that the defendant's DNA was found in two locations on the car. Additionally, the DNA of the co-defendant was also found on the car. The two men both say they were out at the river

that day at the location near the victim. The co-defendant had left the area before the police arrived, so his DNA had to have been placed on the vehicle before he left. The unfounded allegations of counsel for the movant that he shook hands with the police officer would not explain his co-defendant's DNA being on the car.

165. This allegation is denied.

166. This allegation is denied.

167. This allegation is denied.

168. This allegation is denied.

169. This allegation is denied.

170. This allegation is denied.

171. This allegation is denied.

172. This allegation is denied.

173. This allegation is denied.

174. This allegation is denied. By way of further answer it is shown that in the video the defendant corrected the officer's statement about height of the victim and compared it to his own body.

175. This allegation is denied.

176. This allegation is denied.

177. The State lacks sufficient knowledge as to what might have been said or the context in which it was said or what was told to him about the video or by who. Therefore, the allegation is denied.

178. This allegation is denied.

179. This allegation is denied.

180. This allegation is denied.

181. This allegation is denied.

182. This allegation is denied.

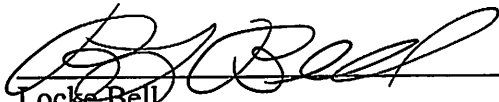
183. This allegation is denied.

184. This allegation is denied.
185. This allegation is denied.
186. This allegation is denied.
187. This allegation is denied. By way of further answer the introduction of the defendant's medical records would have opened the door for the state to show the violent history of the defendant where he used force and strength to commit crimes. It would also have shown his ability to have worked at jobs and think and reason enough to function as a husband and father and maintain a household (granted he was violent with both his wife and son).
188. The case law speaks for itself. Except as expressly admitted the allegation is denied.
189. This allegation is denied.
190. The case law speaks for itself. Except as expressly admitted the allegation is denied.
191. This allegation is denied.
192. This allegation is denied.
193. This allegation is denied.
194. This allegation is denied.
195. It is admitted that the defendant is serving a life sentence which was upheld by the North Carolina Supreme Court. Except as expressly admitted the allegation is denied.
196. This allegation is denied.
197. The case law speaks for itself. Except as expressly admitted the allegation is denied.
198. It is admitted that the defendant has maintained his innocence. Except as expressly admitted the allegation is denied.
199. It is admitted that a plea offer was made. Except as expressly admitted the allegation is denied. By way of further answer the prisons are full of people who rejected the plea and were convicted. It is more an indication of foolishness than innocence.
200. This allegation has been denied.

201. This allegation is denied.
202. This allegation is denied.
203. This allegation is denied.
204. This allegation is denied.
205. This allegation is denied.
206. This allegation is denied.
207. This allegation is denied.
208. The state lacks sufficient knowledge as to the assertion herein, but does state that he had been accused of numerous violent crimes in the past in which family members refused to cooperate in his prosecution. Except as expressly admitted the allegation is denied.

Therefore, the State prays the Movant's prayer for relief be denied.

Respectfully submitted this the 9 day of March, 2017



Locke Bell
District Attorney