

CONFIDENTIAL INFORMANT

- (1) All documents and/or information regarding the confidential informant that is discoverable under *Kyles v. Whitley* and *Giglio* (including but not limited to impeachment evidence and any contracts with law enforcement and/or the Solicitor's Office).
- (2) All documents and/or evidence supporting the reliability of the confidential informant.
- (3) The confidential informant's prior criminal record and impeachable convictions.

In *Giglio v. United States*, 405 U.S. 150, 153-154 (1972), the Supreme Court of the United States held that *Brady* encompasses impeachment evidence. Notably, the Court found in *Kyles v. Whitley* that due process requires disclosure of any evidence that provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks. *Id.* 514 U.S. 419, 442 n. 134, 445-451 (1995).

REVEAL IDENTITY OF CONFIDENTIAL INFORMANT

- (4) The Defendant requests to reveal the identity of the confidential informant who conducted the alleged transaction. See Attachment A.

In *State v. Diamond*, 280 S.C. 296, 312 S.E.2d 550 (1984), our Supreme Court noted that the leading case on the "informant's privilege" is *Roviaro v. United States*, 353 U.S. 53 (1957). The Supreme Court of the United States explained in *Rovario* that "[t]he scope of the privilege is limited by its underlying purpose" and that "where the disclosure of the contents of a communication will not tend to reveal the identity of an informer, the contents are not privileged." *Id.*, 353 U.S. at 60. The *Roviaro* Court also found that "[a] further

limitation on the applicability of the privilege arises from the fundamental requirements of fairness.” *Id.*

As to the issue of balancing the “public interest in protection the flow of information against the individual’s right to prepare his defense[,]” the *Roviaro* Court explained, “Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charge, the possible defense, and the possible significance of the informer’s testimony, and other relevant factors.” *Id.* The *Roviaro* Court held that non-disclosure of the informant’s identity was unfair because: (1) the informant was “the sole participant, other than the accused, in the transaction charged[;]” (2) the informant was a “material witness;” and (3) and the informant’s testimony “was highly relevant and might have been helpful to the defense.” *Id.*, 353 U.S. at 63-64.

Notably, the *Rovario* Court held:

Where the disclosure of an informer’s identity, or the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, *the privilege must give way*. In these situations the trial court may require disclosure and, *if the Government withholds the information, dismiss the action*.

Roviaro v. United States, 353 U.S. at 59-61 (emphasis added). *Rovario* specifically held that the “informer’s privilege” is limited by due process. Rule 5 of the South Carolina Rules of Criminal Procedure is this State’s mechanism for complying with the due process requirement.

The identity of the informant is essential for ensuring the Defendant’s due process right to investigate the allegations against him and to present a defense. Disclosure of the informant’s identity is essentially meaningless unless the Defendant has a reasonable

opportunity to investigate, locate, and interview the informant. *See State v. Burns*, 294 S.C. 338, 364 S.E.2d 465 (1988). Without disclosure of these specific requests for evidence, the Defendant is unable to adequately prepare for cross-examination and is denied his right to confrontation of witnesses. U.S. Const. amends. VI, XIV; S.C. Const. art. I, § and 14.

REVEAL NEGOTIATIONS, PROMISES, OR DEALS WITH WITNESSES

- (5) Reveal any such negotiations, promises, or deals with any witnesses within an adequate amount of time to conduct a reasonable investigation.

The reliability and credibility of the State's witnesses may well be determinative on the issue of guilt or innocence in this case. Disclosure of this requested information is imperative for the purposes of showing any bias, prejudice, or interest in the outcome of the case that the Defendant know of the existence of such negotiations and/or deals between the State of South Carolina and the State's witnesses prior to trial. Therefore, the prosecution must provide the defense with information necessary to investigate the allegations and prepare for a defense. *See State v. Hinson*, 293 S.C. 406, 361 S.E.2d 120 (1987).