

STATE OF NORTH CAROLINA  
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILED

FILE NO: 11 CRS 55057  
FILE NO: 11 CRS 55058

11 DEC 28 PM 2:58

DURHAM COUNTY, E.S.C.


STATE OF NORTH CAROLINA

vs.

SHELIA MOSES,  
DEFENDANT

and

SHEILDA HARRIS,  
DEFENDANT

BY 

MOTION TO OBTAIN  
MENTAL HEALTH AND OTHER  
RECORDS

Now come the Accused, Sheila Moses and Sheilda Harris, by and through respective Counsel, and respectfully move the Court for an order releasing the mental health, DSS, and other related records of Zayna Thomas, who will be a critical prosecution witness. The Accused are entitled to such information pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 19, 23, and 27 of the North Carolina Constitution, as well as *United States v. Bagley*, 473 U.S. 667 (1985), *Brady v. Maryland*, 373 U.S. 83 (1963) and *Chavis v. North Carolina*, 637 F.2d. 213 (4th Cir. 1980).

Ms. Thomas has provided much of the information the State is relying on to prove the cases against Ms. Moses and Ms. Harris. Ms. Thomas' first communications with the Durham Police Department in February, 2011, were facilitated by her social worker, Zola Daniels, who worked for an agency called Prodigious Health Care in Henderson, North Carolina. Prodigious Health Care provides mental health and substance abuse counseling. When Ms. Thomas was interviewed for several hours by the Durham Police Department on February 28, 2011, Ms. Daniels was present for the entire interview. Ms. Thomas revealed that she was raised in foster care from the age of two, that her older sister has schizophrenia, and that she had experienced

periods of depression. When the interviewers asked if she was taking any medication, Ms. Thomas responded that she was taking “something for, like, stress.”

Ms. Thomas’ apparent need for mental health and/or substance abuse treatment is highly relevant to her ability to recall events and to provide accurate details in the cases against the defendants. By North Carolina statute, this Court “may... compel disclosure [of a psychologist’s otherwise confidential records], either at the trial or prior thereto, if in [the Court’s] opinion disclosure is necessary to a proper administration of justice.” N.C. Gen. Stat. §8-53.3 (2010); *State v. Williams*, 510 S.E.2d 626 (N.C. 1999) (“Assuming arguendo that defendant’s communications with Dr. Rollins and Mr. Meachum were privileged, the trial court had authority to compel disclosure of such privileged communications if it was ‘necessary to the proper administration of justice.’ N.C.G.S. § 8-53.3 (1997)”; N.C. Gen. Stat. §§8-53.7 (same with respect to social workers); 8-53.8 (same with respect to counselors); 8-53 (same with respect to physicians).

Disclosure of Zayna Thomas’ mental health and/or substance abuse records is necessary to the proper administration of justice. As the State will rely heavily on Ms. Thomas’ testimony, Ms. Moses and Ms. Harris are entitled to any information that relates to Ms. Thomas’ credibility and reliability as a witness. North Carolina Rule of Evidence 806; *State v. Canady*, 355 NC 242, 251 (2002). Evidence that a witness suffers from psychiatric problems or has other mental problems is relevant to a witness’s credibility. *State v. Williams*, 330 N.C. 711 (1992).

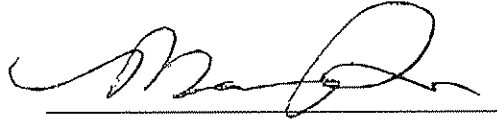
The United States Supreme Court has recognized the importance that mental health records can play in determining a witness’s credibility and therefore established that a defendant is entitled to such records after judicial review of the witness’s mental health records. *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987). The Fourth Circuit has held that a defendant is entitled to receive mental health records of a witness “not only when it tends substantively to negate guilt but also when it tends to impeach the credibility of a key witness for the

prosecution.” *Love v. Johnson*, 57 F.3d 1305, 1313 (4th Cir. 1995). Additionally, a Defendant need not “make a particular showing of the exact information sought and how it is material and favorable.” *Id.*

Finally, the Accused are entitled to any evidence in the State’s possession impeaching Ms. Thomas’s credibility, including mental health evidence. The prosecution is constitutionally required to divulge evidence that impeaches a witness’s credibility. *United States v. Bagley*, 473 U.S. 667 (1985) (extending *Brady* to require disclosure of impeachment evidence). Included within the rule of *Brady* is evidence of the witness’ prior psychiatric evaluation or treatment, *Chavis*, 637 F.2d. at 213, and evidence of use or addiction to narcotics or controlled substances, *United States v. Fowler*, 465 F.2d. 664 (D.C. Cir. 1972). Mental problems or defects are admissible to impeach a witness, *State v. Newman*, 308 N.C. 231, 254 (1983) and *Williams*, 330 N.C. at 723, as is substance use or abuse, *State v. Fields*, 315 N.C. 191 (1985), and such information must be provided to defense counsel, *United States v. Society of Independent Gasoline Marketers of America*, 624 F.2d. 461 (4th Cir. 1980) (failure to provide evidence of prior history of mental or emotional disorders of government witness required reversal of conviction).

Therefore, Ms. Moses and Ms. Harris respectfully request that this Court issue an order to release any mental health, DSS, and other related records of Zayna Thomas.

Respectfully submitted this 27<sup>th</sup> day of December, 2011.



Mani Dexter  
Attorney for Shelia Moses

Amos Granger Tyndall, P.A.  
312 West Franklin Street  
Chapel Hill, NC 27516  
(919) 967-0504  
mani@amostyndall.com



Elizabeth Hambourger Koch  
Attorney for Sheilda Harris

Center for Death Penalty Litigation  
201 West Main Street, Suite 301  
Durham, NC 27701  
(919) 956-9545  
elizabeth@cdpl.org

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned attorney served a copy of the foregoing Motion on the State of North Carolina by emailing the same to: Tracey Cline, District Attorney, Office of the District Attorney, Durham, North Carolina and Dale Morrill, Assistant District Attorney, Office of the District Attorney, Durham, North Carolina.



Mani Dexter