STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 08 CRS 85094 10 CRS 652
STATE OF NORTH CAROLINA, v. AADIL SHAHID KHAN, *Defendant*	)))))) ORDER

THIS MATTER comes before the undersigned upon the State's Motion to Withdraw the Plea of Aadil Shahid Khan (hereinafter "Defendant"). The Court, following an evidentiary hearing in this matter, and having considered all of the evidence of record and the arguments of counsel, finds as follows:.

1. The State seeks to withdraw the plea arrangement previously accepted by the Court (the Honorable William R. Pittman, presiding) on August 25, 2010 wherein the Defendant pleaded guilty to one count of attempted murder, one count of second degree murder and two counts of conspiracy to commit murder.

2. As part of the plea arrangement, the State and Defendant agreed that judgment would be continued until the State prayed judgment. The Defendant agreed that he would "cooperate with Wake County investigators and testify truthfully and consistently with any statement made to investigators if called upon to do so."

3. The plea arrangement further provided that at sentencing, the Defendant's four offenses would be consolidated into two judgments and that two consecutive Class-B2 felony sentences would be imposed.

4. The Defendant was not called upon to testify in the recently concluded trial of co-defendant Ryan Patrick Hare. Thus, the sole term of the plea agreement at

issue in this Motion is the term requiring the Defendant to "cooperate with Wake County investigators."

5. The State contends that in trial preparation interviews occurring on September 2 and September 10, 2010, Defendant failed to cooperate with Wake County investigators because Defendant professed a lack of memory of events that he had previously recalled and that he made inconsistent statements. The trial preparation interviews were not recorded.

6. Defendant contends that he attempted to cooperate fully with investigators, that his statements in the trial preparation interviews were substantially similar to his prior recorded statements, and that any deviations were due to the passage of time or Defendant's desire to state only those things personally known to him without speculation.

7. A plea agreement is a contract and the State and the Defendant are bound by its terms. When a breach of a plea agreement is alleged by the State, as in this case, the State must prove by a preponderance of evidence that the Defendant breached a material term of the agreement.

8. However, unlike commercial contracts, a plea agreement implicates many fundamental constitutional rights of the accused. Thus, our appellate courts have recognized that, in considering whether a plea agreement has been breached, the State is held to a greater degree of responsibility than the Defendant for imprecisions or ambiguities.

9. The Court, after considering the totality of the evidence before it, and the subjective and imprecise nature of the word "cooperate," concludes that the State has

failed to establish by a preponderance of evidence that the Defendant's conduct amounted to a material breach the term of his plea agreement.

10. The Court therefore concludes, for the reasons set forth above, that the Motion of the State to Withdraw Defendant's Plea Arrangement must be DENIED, and it is so ORDERED.

This the 5th day of October, 2010.

Paul C. Ridgeway
Superior Court Judge