| File No. | Law Enforcement Case No. | LID No. | SID No. | FBI No. |
|---|---|---|---|---|
| 20CR 054375 | GRAHAM POLICE DEPARTMENT | | | |

# MAGISTRATE'S ORDER

**STATE OF NORTH CAROLINA**

ALAMANCE County

In The General Court Of Justice
District Court Division

Offense
I M-RESISTING PUBLIC OFFICER

**THE STATE OF NORTH CAROLINA VS.**

Name And Address Of Defendant
CAREY KIRK GRIFFIN

2117 E MAIN ST

DURHAM NC 27703
DURHAM COUNTY (312) 714-6112

| Race | Sex | Date Of Birth | Age |
|---|---|---|---|
| W | F | 06/29/1982 | |

Social Security No.: [redacted]

Drivers License No. & State: 36089371 NC

Name Of Defendant's Employer:

Offense Code(s): I 5310

Offense In Violation Of G.S.: I 14-223

Date Of Offense: 09/26/2020 through 09/26/2020

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card): 09/26/2020

Arresting Officer (Name, Address Or Department)
N SCOGGINS
GRAHAM POLICE DEPARTMENT
216 S MAPLE ST
GRAHAM NC 27253
ALAMANCE COUNTY (336) 570-6711

Names & Addresses Of Witnesses (Including Counties & Telephone Nos.)
C CROSS
GRAHAM POLICE DEPARTMENT
216 S MAPLE ST
GRAHAM NC 27253
ALAMANCE COUNTY (336) 570-6711

I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant's detention is justified because there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully and willfully did resist, delay and obstruct CORPORAL CROSS, a public officer holding the office of GRAHAM POLICE DEPARTMENT, by ATTEMPTED TO INTERFERE WITH ONGOING ARREST BY PUSHING PAST MULTIPLE TIMES. At the time, the officer was discharging and attempting to discharge a duty of his office by ARRESTING ANOTHER INDIVIDUAL WHILE AT A PROTEST.

This act was in violation of the law referred to in this Magistrate's Order. This Magistrate's Order is issued upon information furnished under oath by the arresting officer(s) shown. A copy of this Order has been delivered to the defendant.

☐ Misdemeanor Offense Which Requires Fingerprinting Per Fingerprint Plan

Date Issued: 09/26/2020

Signature: BERTRAM F. HEATHCOTE III

☒ Magistrate ☐ Deputy CSC
☐ Assistant CSC ☐ Clerk Of Superior Court

Location Of Court: Alamance County Courthouse; CRMB
212 W ELM ST
GRAHAM,NC 27253

Court Date: 10/20/2020

Court Time: 09:00 ☒ AM ☐ PM

(over)

**ORIGINAL COPY**

| District Attorney | ☐ Waived ☐ Not Indigent ☐ Denied | Attorney For Defendant | ☐ Appointed ☐ Retained | PRIOR CONVICTIONS: No./Level: 0 ☐ I (0) ___ ☐ II (1-4) ___ ☐ III (5+) |
|---|---|---|---|---|

**PLEA:** ☐ guilty ☐ no contest _____ **VERDICT:** ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3
☐ guilty ☐ no contest _____ ☐ guilty _____ M.CL. ☐ A1 ☐ 1 ☐ 2 ☐ 3
☐ not guilty _____ ☐ not guilty _____

**JUDGMENT:** The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict, it is **ORDERED** that the defendant: ☐ pay costs and a fine of $ _____.
☐ be imprisoned for a term of _____ days in the custody of the ☐ sheriff. ☐ MCP. ☐ DAC.* Pretrial credit _____ days served.
☐ Work release ☐ is recommended. ☐ is not recommended. [☐ is ordered. *(use form AOC-CR-602)*]
☐ The Court finds that a ☐ longer ☐ shorter period of probation, than that which is specified in G.S. 15A-1343.2(d), is necessary.
☐ Execution of the sentence is suspended and the defendant is placed on unsupervised probation* for _____ months, subject to the following conditions: 1. commit no criminal offense in any jurisdiction. 2. possess no firearm, explosive or other deadly weapon listed in G.S. 14-269. 3. remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. 4. satisfy child support and family obligations, as required by the Court. 5. pay to the Clerk the costs of court and any additional sums shown below.

| Fine | Restitution** | Attorney's Fee | Community Service Fee | Other |
|---|---|---|---|---|
| $ | $ | $ | $ | $ |

**Name(s), address(es), and amount(s) for aggrieved party(ies) to receive restitution: **NOTE TO CLERK:** *Record SSN or Tax ID No. of aggrieved party(ies) on AOC-CR-382, "Certification Of Identity (Victims' Restitution)/Certification Of Identity (Witness Attendance)."*

☐ 6. complete _____ hours of community service during the first _____ days of probation, as directed by the judicial services coordinator, and pay the fee prescribed by G.S. 143B-708 within _____ days.
☐ 7. not be found in or on the premises of the complainant or _____.
☐ 8. not assault, communicate with or be in the presence of the complainant or _____.
☐ 9. provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319)
☐ 10. Other: _____

It is **ORDERED** that this: ☐ Judgment is continued upon payment of costs.
☐ case be consolidated for judgment with _____.
☐ sentence is to run at the expiration of the sentence in _____.

☐ **COMMITMENT:** It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

**PROBABLE CAUSE:** ☐ Probable cause is found as to all Counts except _____, and the defendant is bound over to Superior Court for action by the grand jury. ☐ No probable cause is found as to Count(s) _____ of this Magistrate's Order and the Count(s) is dismissed.

| Date | Name Of District Court Judge Or Magistrate (Type Or Print) | Signature Of District Court Judge Or Magistrate |
|---|---|---|
| | | |

## APPEAL ENTRIES

☐ The defendant, in open court, gives notice of appeal to the ☐ District ☐ Superior Court.
☐ The current pretrial release order is modified as follows:

| Date | Signature Of District Court Judge Or Magistrate |
|---|---|
| | |

## WAIVER OF PROBABLE CAUSE HEARING

The undersigned defendant, with the consent of his/her attorney, waives the right to a probable cause hearing.

| Date Waived | Signature Of Defendant |
|---|---|
| | Signature Of Attorney |

## CERTIFICATION

I certify that this Judgment is a true and complete copy of the original which is on file in this case.

| Date | Date Delivered To Sheriff | Signature | ☐ Dep. CSC ☐ Asst. CSC ☐ CSC |
|---|---|---|---|
| | | | |

*NOTE: *If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DAC, use AOC-CR-602. If supervised probation, use AOC-CR-604.*

# STATE OF NORTH CAROLINA

ALAMANCE County

File No. 20CR 054375

In The General Court Of Justice
[X] District [ ] Superior Court Division

**STATE VERSUS**

Name And Address Of Defendant
CAREY KIRK GRIFFIN
2117 E MAIN ST

DURHAM NC 27703

## CONDITIONS OF RELEASE AND RELEASE ORDER

# 20RO918212

G.S. Chapter 15A, Art. 25, 26

Amount Of Bond
$

Offenses And Additional File Numbers
20CR54375 MAG ORDR; M-RESISTING PUBLIC OFFICER

[ ] See Attachment

| Location Of Court | | Date | Time |
|---|---|---|---|
| Alamance County Courthouse; CRMB | [X] District [ ] Superior | 10/20/2020 | 09:00 [X] AM [ ] PM |

**To The Defendant Named Above**, you are ORDERED to appear before the Court as provided above and at all subsequent continued dates. If you fail to appear, you will be arrested and you may be charged with the crime of willful failure to appear. You also may be arrested without a warrant if you violate any condition of release in this Order or in any document incorporated by reference.

The defendant has been advised of charge(s) against him/her and his/her right to communicate with counsel and friends.

[X] Your release is authorized upon execution of your: [X] WRITTEN PROMISE to appear [ ] UNSECURED BOND in the amount shown above
[ ] CUSTODY RELEASE [ ] SECURED BOND in the amount shown above (**NOTE:** *Give a copy of this order to any surety who posts bond.*)
[ ] HOUSE ARREST with ELECTRONIC MONITORING administered by *(agency)* _____ and the SECURED BOND above. You may leave your residence for the purpose(s) of [ ] employment [ ] counseling [ ] course of study [ ] vocational training

UNLESS YOU LIVE OR WORK IN THE CITY OF GRAHAM, YOU ARE ORDERED TO LEAVE FOR 72 HOURS UPON RELEASE FROM DETENTION

[ ] Your release is not authorized.
[ ] The defendant is required to provide *(check all that apply)* [ ] fingerprints under G.S. 15A-502. [ ] a DNA sample under G.S. 15A-266.3A.
Prior to release, the defendant shall provide his/her *(check all that apply)* [ ] fingerprints. [ ] DNA sample.
[ ] The defendant has been [ ] (i) charged with a felony while on probation *(complete AOC-CR-272, Side One)*. [ ] (ii) arrested for violation of probation with a pending felony charge or prior conviction requiring registration under G.S. 14, Article 27A *(complete AOC-CR-272, Side Two)*.
[ ] This Order is entered upon defendant's warrantless arrest for violation of conditions of release entered previously for the above-captioned case in the Order dated _____.
[ ] The defendant was arrested or surrendered after failing to appear as required under a prior release order.
[ ] This was the defendant's second or subsequent failure to appear in this case.
[ ] Your release is subject to the conditions as shown on the attached [ ] AOC-CR-270. [ ] Other: _____.

Additional Information

| Date | Signature Of Judicial Official | |
|---|---|---|
| 09/26/2020 | BERTRAM F. HEATHCOTE III | [X] Magistrate [ ] Deputy CSC [ ] Assistant CSC [ ] Clerk Of Superior Court [ ] District Court Judge [ ] Superior Court Judge |

## ORDER OF COMMITMENT

**To The Custodian Of The Detention Facility Named Below**, you are ORDERED to receive in your custody the defendant named above who may be released if authorized above. If the defendant is not sooner released, you are ORDERED to: [X] produce him/her in Court as provided above.
[ ] hold him/her [ ] as provided on the attached AOC-CR-272. [ ] for the following purpose: _____.

[ ] *[for charges covered by G.S. 15A-534.1 (domestic violence) or 15A-534.7 (threat of mass violence)]* produce him/her at the first session of District or Superior Court held in this county after the entry of this Order or, if no session is held before *(enter date and time 48 hours after time of arrest)* _____, _____ [ ] AM [ ] PM produce him/her before a magistrate of this county at that time to determine conditions of pretrial release.

| Name Of Detention Facility | Date | Signature Of Judicial Official |
|---|---|---|
| | | BERTRAM F. HEATHCOTE III |

## WRITTEN PROMISE TO APPEAR OR CUSTODY RELEASE

I, the undersigned, promise to appear at all hearings, trials or otherwise as the Court may require and to abide by any restrictions set out above. I understand and agree that this promise is effective until the entry of judgment in the District Court from which no appeal is taken or until the entry of judgment in Superior Court. If I am released to the custody of another person, I agree to be placed in that person's custody, and that person agrees by his/her signature to supervise me.

| Date | Signature Of Defendant | Signature Of Person Agreeing To Supervise Defendant |
|---|---|---|
| 09/26/20 | | |

| Name Of Person Agreeing to Supervise Defendant (type or print) | Address Of Person Agreeing To Supervise Defendant |
|---|---|
| | |

## DEFENDANT RELEASED ON BAIL

| Date | Time | Signature Of Jailer |
|---|---|---|
| | [ ] AM [ ] PM | |




**ORIGINAL COPY**

## CONDITIONS OF RELEASE MODIFICATIONS

The Conditions of Release on the reverse are modified as follows:

| Modification | Date | Signature Of Judicial Official |
|---|---|---|
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## SUPPLEMENTAL ORDERS FOR COMMITMENT

The defendant is next Ordered produced in Court as follows:

| Date | Time | Place | Purpose | Signature Of Judicial Official |
|---|---|---|---|---|
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## DEFENDANT RECEIVED BY DETENTION FACILITY

| Date | Time | Signature Of Jailer |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

## DEFENDANT RELEASED FOR COURT APPEARANCE

| Date | Time | Signature Of Jailer |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

**NOTE TO CUSTODIAN:** *This form shall accompany the defendant to court for all appearances.*

3|3

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|---|---|
| **STATE OF NORTH CAROLINA** | **IN THE GENERAL COURT OF JUSTICE** |
| | **DISTRICT COURT DIVISION** |
| **COUNTY OF ALAMANCE** | **FILE NO.: 20CR054375** |

2021 JUN 12 A 11:42
ALAMANCE CO., C.S.C.
BY

| | | |
|---|---|---|
| **STATE OF NORTH CAROLINA** | ) | |
| **V.** | ) | **MOTION FOR PRODUCTION OF *BRADY* MATERIAL** |
| **CAREY KIRK GRIFFIN,** | ) | |
| **Defendant.** | ) | |

THE DEFENDANT, by and through counsel and pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitutions as interpreted in Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, hereby requests that this Honorable Court direct the State to furnish to the Court any evidence, material, or information within the possession, custody, or control of the State, or that by the exercise of reasonable diligence may be obtained by the State, that is favorable to or exculpates in any way the Defendant or tends to establish a defense in whole or in part to the allegations in the charge or may help the Defendant avoid conviction or mitigate punishment or relates to the credibility of any of the State's witnesses. In support of this motion the Defendant respectfully shows the Court the following:

1. Defendant is charged with misdemeanor Resisting Public Officer with an alleged offense date of 09/26/2020. The specific allegations against Defendant are that she "attempted to interfere with ongoing arrest by pushing past [Corporal Cross of the Graham Police Department] multiple times." Officer N. Scoggins of the Graham Police Department was the arresting officer.

2. The Defendant believes there are investigative reports, communications by and between law enforcement officers, including but not limited to the Graham Police Department, the Burlington Police Department, and the Alamance County Sherriff's Office ("LEOs"), communications between LEOs and the District Attorney's Office, and bodycam or dashcam

video that would show the events leading to the charges against the Defendant and would provide impeachment or exculpatory information. These items specifically include:

a. Emails concerning Defendant and the incidents related to her arrest;

b. Text messages and instant messages to and from officers regarding the events surrounding Defendant's arrest;

c. Two-way dispatch messages;

d. 911 calls;

e. Audio and/or videotapes (including those captured via body cameras or cell phone cameras);

f. Any records stored, sent, or received via Dropbox or similar cloud computing or FTP (file transfer protocol) websites;

g. All electronic devices including but not limited to computers, laptops, iPads, cellular phones, and smart phones that may contain discoverable material relative to the above investigation and prosecution;

h. All social media accounts that may bear upon the above prosecution including but not limited to Facebook, Google, AOL, Yahoo, Twitter, Instagram, SnapChat, TikTok, and any online cloud backups which may contain information related to this prosecution and related investigation;

i. All handwritten notes of LEOs;

j. All handwritten or memorialized notes of the prosecutor concerning witness interviews of law enforcement officers, experts, and lay witnesses involved in the above prosecution where questionable Brady material may be located as

determined by the Court after *in camera* review. Such notes are intended to include but are not limited to investigations and trial preparation of witnesses;

k. Any and all electronic devices including cell phones and computers belonging to witnesses listed by the State, which may contain Brady material;

l. The name and address of any witness known to the prosecution that has given a statement to the prosecution or LEOs that is contrary to the prosecution's theory of the case as well as any witness or evidence that would support a valid defense;

m. Any favorable treatment of any kind given or offered to any government witness in return for cooperation as well as any favorable treatment, money or anything of value requested by a state witness in return for cooperation;

n. All contents of investigative files (to include all agencies that contributed to the prosecution) that include notes, memorandum, and reports. This also applies to the notes of any witness coordinator.

3. Decisions interpreting Brady have held that "Brady" information includes the following items:

a. Exculpatory statements or statements of an exculpatory nature the Defendant made to LEOs at any time;

b. Evidence that is inconsistent with the State's theory of prosecution;

c. Names and addresses of eyewitnesses whom the prosecution does not intend to call at trial; and

d. Impeachment material regarding the State's witnesses. United States v. Bagley, 473 U.S. 667 (1985); Giglio v. United States, 405 U.S. 150 (1972). Impeachment materials include, among other things:

i. prior convictions of witnesses;

ii. prior material acts of misconduct of a witness;

iii. pending criminal charges against a witness;

iv. evidence that a witness has a character trait for dishonesty;

v. evidence that a witness has a motive to fabricate testimony;

vi. that a witness is suffering from, or has suffered from any type of mental health problem; and

vii. any prior inconsistent statements of a witness.

4. Although there is limited statutory authority for the production of discovery in District Court in North Carolina, the United States Constitution applies in District Court and mandates the disclosure of Brady material by prosecutors a reasonable time prior to trial pursuant to the Due Process clause of the Fourteenth Amendment. State v. Cornett, 177 N.C. App. 452, 629 S.E.2d 857 (2006); State v. Marino, 747 S.E.2d 633 (2013).

5. The Defendant requests that the Court order the production of the complete investigation of this incident, including investigative reports, communications by and between LEOs, communications between LEOs and the District Attorney's Office, and bodycam or dashcam video.

6. The defendant will be denied the opportunity for a fair trial in the event that she is unable to have access to the information referenced in this motion. Such denial would constitute a violation of Defendant's constitutional rights under the United States and North Carolina constitutions.

WHEREFORE, the Defendant requests that the Honorable Court grant the following relief:

1. Grant this Motion for disclosure of Brady materials, and issue an Order requiring the State to turn over the requested materials,
2. Dismiss the charges against Defendant if the State fails to produce the requested materials, and
3. For any other relief the Court deems just and necessary

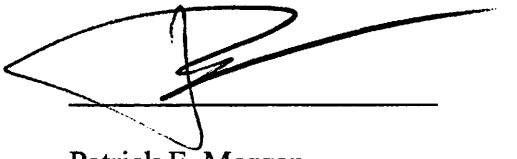
Respectfully submitted, this the 11 day of January, 2021.

Patrick E. Morgan
Attorney for Defendant
N. C. State Bar # 38379
Morgan & Cesanelli Law, PLLC
209 Lloyd St., Suite 120
Carrboro, N.C. 27510
Tel: 919-923-1577
Fax: 919-928-5149
patrick@morgancesanelli.com

## CERTIFICATE OF SERVICE

I, Patrick E. Morgan, hereby certify that I did serve a true copy of this motion upon the office of the District Attorney in and for Alamance County by emailing a copy to the District Attorney or an agent of the same.

This the 11 day of January, 2021,



Patrick E. Morgan
Attorney for Defendant
N. C. State Bar # 38379
Morgan & Cesanelli Law, PLLC
209 Lloyd St., Suite 120
Carrboro, N.C. 27510
Tel: 919-923-1577
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patrick@morgancesanelli.com

| | |
|---|---|
| **STATE OF NORTH CAROLINA**<br><br>**COUNTY OF ALAMANCE** | **IN THE GENERAL COURT OF JUSTICE**<br>**DISTRICT COURT DIVISION**<br>**FILE NO.: 20CR054375** |

| | | |
|---|---|---|
| **STATE OF NORTH CAROLINA**<br>**V.**<br>**CAREY KIRK GRIFFIN,**<br>**Defendant.** | )<br>)<br>)<br>)<br>)<br>) | **ORDER FOR PRODUCTION OF *BRADY* MATERIAL** |

THIS MATTER HAVING come before the undersigned Presiding District Court Judge on the Defendant's motion pursuant to Brady v. Maryland, 373 U.S. 83 (1963); United States v. Bagley, 473 U.S. 667, 676-77 (1985); and Pennsylvania v. Ritchie, 480 U.S. 39 (1987), it is hereby ORDERED AND DECREED that the Graham Police Department, the Burlington Police Department, the Alamance County Sheriff's Office, and the Alamance County District Attorney's Office shall produce all investigative materials related to the incident giving rise to this criminal prosecution, including all internal affairs investigative material, to Counsel for the Defense Patrick E. Morgan at **209 Lloyd St., Suite 120, Carrboro, NC 27510** on or before _____. Any disputed Records shall be reviewed for exculpatory impeachment material relevant to the Defense by the Court. Any material that is disclosed to the Defense shall be disclosed to the State. All material that is not disclosed shall be sealed, marked, and made part of the record in this case for appeal.

So Ordered this _____ day of _____, 2021.

_____
District Court Judge Presiding

## CERTIFICATE OF SERVICE

I, Patrick E. Morgan, hereby certify that I did serve a true copy of this Order upon the office of the District Attorney in and for Alamance County by emailing a copy to the District Attorney or an agent of the same.

This the __ day of January, 2021.

_____

Patrick E. Morgan
Attorney for Defendant
N. C. State Bar # 38379
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Carrboro, N.C. 27510
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