

AT FILED

FEB 16 2016

Hayley K...
CLERK, DISTRICT COURT, HUNT CO., TX

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IN THE DISTRICT COURTS

HUNT COUNTY, TEXAS

STANDING DISCOVERY CONTROL ORDER IN FELONY CRIMINAL CASES

Based on the State's "open file" policy, and after due consideration of existing law, the District Courts of Hunt County, Texas enter the following Standing Discovery Control Order which shall apply to all felony cases filed in the 196th Judicial District Court and the 354th Judicial District Courts, both those presently pending and those which may be filed hereafter. This Order expressly supersedes and replaces in its entirety any similar order previously filed in individual cases pending on the date that this Order is adopted, except that it shall not be used to limit any discovery relief previously granted to any defendant. The Standing Order shall take effect on MARCH 1st, 2016 and shall be filed with the office of the District Clerk and shall be posted in a conspicuous place therein.

This Standing Order shall govern each felony case, and all counsel are responsible to be familiar with this Order, which shall be widely published and posted in the office of the Hunt County District Clerk. **The failure to file a copy of this Standing Order in an individual case file shall not affect the applicability of the Standing Order to such case.**

DEFENSE OBTAINING DISCOVERY PRODUCTS

It is the intent of this Discovery Control Order, in conjunction with the State's pre-indictment and post-indictment open file policy and CCP 39.14 and existing law, that the defense attorney is responsible for physically obtaining the discovery from the State by arranging a mutually convenient date and time for inspection to obtain discovery, or otherwise making arrangements for access to or inspection of discovery materials. The State is responsible to notify the defense attorney by e-mail when discovery material is available to be obtained, accessed, or inspected.

Defense counsel is responsible for ensuring compliance with Article 39.14(e), (f) and (g).

VIDEO REDACTIONS

Videos which the State intends to introduce into evidence shall be provided to the defense attorney not later than fifteen (15) business days prior to trial, except upon a showing of good cause. The defense attorney is responsible to identify for the State, at least ten (10) business days prior to jury selection, any portion or portions of an audio or video recording which the defense believes are inadmissible and should be redacted at trial. If an agreement is reached as to the redactions, such redactions shall be made by the State. In the absence of an agreement, the State and defense counsel shall submit the issue to the Court at least five (5) business days prior to jury selection for resolution.

If the defense counsel fails to conference with the State as required herein, the Court reserves the right to order defense counsel to make any necessary redactions in the audio or video recording.

ORDER REGARDING MOTIONS

In addition to any local rules or other rules regarding motion practice, no motion may be filed without first conferring with opposing counsel and attempting to resolve the matter, and including a certificate of conference on the motion which indicates the fact of the conference and the result thereof. In addition, a certificate of service must appear on each motion which indicates the specific addressee and the place, manner and means of service.

The Court will not consider discovery motions which are repetitive of local rules or of this Standing Order, and court appointed counsel will not be compensated for the preparation or presentation of such motion.

The Court will not consider any "Brady violation" or "discovery sanction" motion filed prior to the commencement of trial, and will not compensate any attorney for such motion.

The State has an "open file" policy, and a discovery motion may be filed only *after* the defense has obtained discovery from the state and has a reasonable basis to believe that there are discovery materials not yet received from the State, or if the State has failed to furnish discovery to the defense pursuant to CCP 39.14 within a reasonable time after indictment. In addition, should there be a discovery matter to which defense counsel reasonably believes that the local rules and this Standing Order are not responsive, and for which the defense needs to obtain discovery, defense counsel may file a motion to obtain such discovery.

The State may produce the items described herein by electronic reproduction and transmission, facsimile transmission, or through copying or photocopying and pickup in the State's offices, at the discretion of the State.

If only a portion of the applicable document, item, or information is subject to discovery, the State is not required to produce or to permit inspection of the remaining portion that is not subject to discovery, and the State may redact or withhold that portion. In such an event, if the State determines not to produce or permit inspection, the State shall inform defense counsel that said portion has been redacted or withheld. Upon a written motion by the defendant, the Court will conduct a hearing to determine whether the withholding or redaction is permissible.

FURTHER, the following Discovery Order is hereby made, which is cumulative of the local rules:

THE STATE IS ORDERED:

1. To comply with CCP Article 39.14, which is incorporated herein, with or without a written request from the defense attorney.
2. To file with the Clerk of the Court a list of all witnesses, not previously identified in discovery product, that the State intends to call in its case in chief (for either guilt or punishment phases) at least five (5) business days prior to the commencement of jury selection, and to provide a copy of the same to the defense on or before the same day.
3. To furnish, in accordance with *Gaskin v. State*, 353 S.W.2d 467 (Crim.App. 1961) all reports or statements given by a witness for the State. This shall further include any tape recordings of witness reports or statements which qualify under *Gaskin*. See *Cullen v. State*, 719 S.W.2d 193 (Crim.App. 1986). This provision is not intended to, and does not, abrogate the attorney work-product privilege as to statements made to the State's attorney which qualify under that privilege.
4. To furnish all written or recorded statements of the defendant, along with all confessions or statements, whether written or recorded, including all portions of offense reports which contain either a verbatim account or summary of any portion of a confession or statement.
5. To permit the inspection by the defense of:
 - 5.1 All items seized from the defendant;
 - 5.2 All items seized from any co-defendant or accomplice;
 - 5.3 All physical objects to be offered into evidence as part of the State's case;
 - 5.4 All documents, photographs, investigative charts or diagrams to be offered into evidence as part of the State's case;
 - 5.5 All contraband, weapons, and/or implements of criminal activity seized or acquired by the State in the investigation. This Order shall constitute sufficient authority to any law enforcement agency or other agency of the State to permit inspection of such items at a reasonable place and time.
 - 5.6 All tangible items of physical evidence collected by the State concerning the alleged offense.
 - 5.7 All psychiatric reports concerning the defendant in the State's possession.
 - 5.8 All business records or reports, or governmental records to be offered into evidence as part of the State's case.
 - 5.9 All audio or video tapes which contain the defendant's image or voice as they may related to the case on trial. (This does not include booking photos unless the State intends to offer the same into evidence as part of the State's case. This does not include jail phone calls which have not been reviewed by the State.)
 - 5.10 Any and all laboratory and/or expert reports, including but not limited to autopsy reports, in the possession of the State (other than reports produced by or at the request of expert witnesses for the State, except if the report is

to be offered into evidence as part of the State's case, in which instance it shall be produced as provided in paragraph 5.4 herein.)

- 5.11 The criminal history of the defendant and of any person who is a co-actor as a matter of law.
- 5.12 At the conclusion of their direct testimony, the criminal history of any witness who is not an employee of law enforcement and who is not an expert witness.

No inspection of the materials described herein shall be required by this Order prior to the initial testing of the items, if applicable. The defense may not conduct testing, destructive or otherwise, on any discovery materials in absence of an agreement with the State or a further order of the Court after notice to the State and hearing.

6. Upon request, and at a reasonable time and place agreed to by the parties, to permit defense counsel, the defendant, and/or any expert witness for the defendant who is consulting or who may testify to view any video tape or listen to any audio tape containing the images or voice of any person under the age of 17 who is alleged to be the victim of a sexual assault by the defendant.

The State is required to afford such viewing opportunity to the defense as soon as is practicable, but in no event later than ten (10) business days prior to the date jury selection commences, except upon a showing of good cause, so as to avoid wasting jury time. **Nothing in this Standing Order shall be construed to require the State or any agency to produce a copy of any such video or audio tape to any person.**

7. To give written notice to defense counsel regarding any extraneous offenses or bad acts the State intends to offer into evidence in the State's case in chief as required by Rule 404(b) of the Texas Rules of Evidence. Said notice shall be deemed to be reasonable if given at least five (5) business days before the date on which jury selection commences, except for good cause shown.
8. To inform the defense, at least five (5) business days prior to the date on which jury selection commences, of all promises of benefit or leniency by the State afforded to or for the benefit of any accomplice or prospective witness in connection with the witness's proposed testimony or other cooperation with regard to the alleged offense. If such agreement is reached within five (5) business days prior to the commencement of jury selection, then the State shall so notify defense counsel immediately.
9. To give written notice to defense counsel regarding any impeachment evidence by prior conviction that the State intends to offer to impeach the defendant or a witness during any phase of the trial as required by Rule 609(f) of the Texas Rules of Evidence. Notice shall be deemed reasonable if given 10 days prior to the commencement of jury selection, except for good cause shown.

10. To make available copies of any search warrants and related affidavits.
11. To provide defense counsel with the criminal history of the defendant.
12. To provide defense counsel with any evidence favorable to the defendant, pursuant to *Brady v. Maryland* and other applicable law.

EXPERT WITNESSES:

1. Each side shall disclose to the other each person that a party may use at trial to present expert testimony under Rules 702, 703 or 705 of the Texas Rules of Evidence.

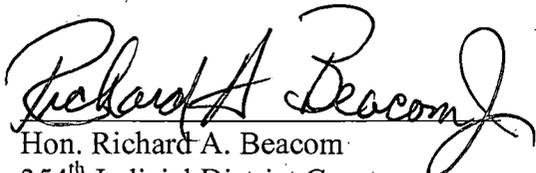
Such disclosure shall be in writing and include at a minimum the name and address of such expert. Disclosures shall be served upon the other party not later than twenty one (21) days prior to the commencement of jury selection, except upon good cause shown.

2. Any motion under T.R.E. 705(b) for voir dire of an expert prior to testimony will generally be taken up at the time of trial in such a manner as to not unduly waste the time of the jury. However, if either party anticipates that an extensive Rule 705(b) examination will be required (more than one hour) such shall be made known to the Court so that an additional pre-trial hearing can be scheduled for this purpose.
3. This Order shall dispose of any pre-trial and/or discovery motions previously filed in which the relief requested is covered by the terms of this Order.

PRO SE DEFENDANTS

In the case of a pro se defendant, if the Court orders the State to produce and permit the inspection of document, item or information under this subsection, the State shall permit the pro se defendant to inspect and review the items but is not required to allow electronic duplication as described in Article 39.14(a) of the Texas Code of Criminal Procedure.

SIGNED on this the 16 day of FEBRUARY, 2016


Hon. Richard A. Beacom
354th Judicial District Court


Hon. J. Andrew Bench
196th Judicial District Court