443RD JUDICIAL DISTRICT COURT
JUDGE CINDY ERMATINGER

Ellis County Courthouse
109 S. Jackson
Waxahachie, TX 75165
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MELANIE REED
DISTRICT CLERK
ELLIS COUNTY, TX

STANDING DISCOVERY ORDER FOR CRIMINAL CASES

The District Judge presiding over criminal cases in Ellis County, Texas hereby adopts this Standing Discovery Order for Criminal Cases, which shall apply in every criminal case unless otherwise ordered by the presiding judge, effective **January 1, 2023**.

This Order applies to all items in the possession, custody, or control of the state's attorney, the investigating officers, other state agents, and any person under contract with the state.

Electronic duplicates of documents, physical evidence and photographs may be substituted for paper or physical copies.

PRODUCTION BY THE STATE

No later than the second announcement setting, the state is **ORDERED** to provide to the defense the following items *which are in the possession of the state's attorney*:

1. Copies, or an opportunity for the defense to inspect and copy, all police reports, witness statements, photographs, audio and video recordings, and any other non-privileged information that constitutes or contains evidence material to any matter related to the case.
2. All written or recorded statements of the defendant, along with all confessions or statements, whether verbal or otherwise, made pursuant to Code of Criminal Procedure Art. 38.22.
3. Copies, or disclosure of the existence, of any and all public records, including search and arrest warrants (with accompanying affidavits).
4. Copies of any expert reports, including autopsy reports and laboratory reports of any examinations of contraband, substances, fluids, hairs, fingerprints, blood samples, ballistics, soil, fibers and paints.
5. Copies of all business, medical, or governmental records expected to be introduced by the state.
6. All exculpatory, impeachment, or mitigating documents, items, or information that tends to negate the guilt of the defendant or that would tend to reduce the punishment for the offense charged.

The state is **ORDERED** to provide to the defense:

1. Written notice of the state's intent to use evidence of the defendant's prior bad acts and extraneous offenses at trial (Rule 404(b) and Rule 609, T.R.E., and Code of Criminal Procedure Art. 38.37) no later than ten days prior to trial. If evidence of prior bad acts or extraneous offenses are discovered within the ten days prior to trial, the defense should be provided written notice of such as soon as possible within a reasonable time.
2. A list of all State's witnesses expected to be called in the state's case-in-chief for guilt/innocence and punishment, to be delivered to the defense on the day of jury selection.
3. All non-privileged audio recordings of a jailed defendant's telephone calls, within the state's attorney's possession, within a reasonable time.
4. An opportunity for the inspection of following evidence within a reasonable time:
   a. All items seized from the defendant;
   b. All items seized from any codefendant or accomplice;
   c. All physical objects to be introduced at trial;
   d. All documents and photographs and investigative charts or diagrams to be introduced at trial;
   e. All contraband, weapons, and implements of criminal activity seized or acquired by the state or its agents in the investigation of the alleged offense;
   f. All records of conviction which may be admissible in evidence or used for impeachment of the defendant; and
   g. All tangible items of physical evidence collected by the state or its agents concerning the alleged offense, including but not limited to, latent fingerprints, footprints, hairs, fibers, fingernail scrapings, body fluids, biological material, tire tracts, and paint scrapings.
5. All promises of benefit or lenience afforded to any accomplice or prospective witness in connection with his or her proposed testimony or cooperation no later than ten days before trial.
6. All convictions and pending charges which may be admissible to impeach the testimony of a named state's witness before the witness testifies.

The state is **ORDERED** to provide to the defense the name and address of each person the prosecution may use at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence, along with the witness's area of expertise. Said disclosure shall be in writing and given no later than the 20th day before jury selection.

The Prosecuting Attorney is **ORDERED** not to allude to, refer to, or in any way bring before the jury, whether as a panel or a jury selected to try the case, without first obtaining a ruling from the Court, outside the presence and hearing of the jury, of the following:

1. Any reference concerning the possible fact that the defendant has been accused, charged with or convicted of any offenses not charged in the indictment on the Prosecution's case-in-chief, unless notice was provided in accordance with the Rules of Evidence or Code of Criminal Procedure;

2. Any request that the Defendant or his attorney stipulate to any testimony, whether it be qualification of an expert or otherwise;

3. Any reputation evidence concerning the defendant until it is first determined that the witness testifying has had adequate basis available to him to testify;

4. Any mention by the prosecutor during the guilt phase of trial concerning the punishment which should be assessed in the case;

5. Any failure of the Defendant to protest his innocence to any law enforcement agency, including the prosecution, after his arrest;

6. Any questioning of any witness as to the existence of any evidence of the innocence of the Defendant;

7. Any comment about the prosecution's personal belief as to the guilt of the Defendant or the veracity of any witness;

8. Any comment that the prosecutor knows about other evidence that cannot be brought before the jury;

9. Any comment about what any absent state's witness would have testified to, had he or she been called as a witness;

10. Any comment as to what the people of the community expect, require, desire or wish as to the finding of the jury;

11. Display to the jury any prejudicial notations on the Prosecution's case material, including but not limited to notations such as Pen Packet; Career Criminal, Repeat Offender, Voluntary Statement, Impact Case, Habitual Offender.

PRODUCTION BY DEFENSE

Counsel for the defendant is **ORDERED** to provide to the state, without written request, the name and address of each person the defense will use at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence, along with the witness area of expertise. Said disclosure shall be in writing and not given later than the 20th day

before jury selection begins.

The Defense is **ORDERED** by the Court to pay the discovery fees set by the District Attorney's Office in accordance with Texas Code of Criminal Procedure Article 39.14. The discovery fees may not exceed the charges prescribed by Subchapter F, Chapter 552 Government Code.

The Defense Attorney is **ORDERED** not to allude to, refer to, or in any way bring before the jury, whether as a panel or a jury selected to try this case, without first obtaining a ruling from the Court, outside the presence and hearing of the jury, any of the following:

1. The personal opinion or belief of Defense Attorney concerning the guilt or innocence of the Defendant or credibility of any evidence in this case;

2. Whether the Defendant or any co-defendant took, or offered to take, a polygraph examination concerning his alleged involvement in the offense charged in the indictment;

3. The proposed terms of any plea bargain in this case or whether the Defendant was offered immunity for testimony in a related case;

4. Whether the attorney for Defendant is appointed or retained, or the amount of such attorney's compensation;

5. The general character or reputation of any witness or defendant until it is first determined that the witness testifying has had adequate basis available to him to so testify. This includes the personal habits of state's witnesses such as arrest, accusation of criminal conduct, drinking, use of drugs, or sexual activity;

6. Any comment about suppressed or excluded evidence, and how it was not presented to the jury; any comment concerning facts to which an absent defense witness would have testified;

7. Any testimony of witnesses, other than Defendant, regarding exculpatory statements or expression of contrition made by Defendant;

8. Any testimony from any witness, as to what type and degree of punishment should be assessed; or what punishment may have been assessed against other defendants for similar or different offenses;

9. Testimony as to conditions in confinement facilities, to include references to violence among inmates, living or working conditions, or facilities available for inmate rehabilitation.

TRIAL DOCKET GUIDELINE

Attire: Attorneys should be appropriately attired becoming officers of the Court. Male attorneys are expected to wear a coat and tie. Female attorneys are expected to wear suitable dress or suit.

Announcement and Trial Settings: Criminal cases are set for their first announcement following a Grand Jury indictment. A Pretrial Order and Standard Bond Conditions will be entered by the Court at the time the indictment is filed with the District Clerk. Both will be sent to the defendant and his counsel. Defendants and attorneys are required to be present at all Court settings. Prosecution attorneys will be present to facilitate settlement.

Each case will have three formal announcement settings. Additional settings will be permitted with the agreement of both parties.

Contested Hearings—Contested hearings include any motions, non-evidentiary or evidentiary, where both parties do not reach an agreement. Contested hearings will not be set unless a written motion or notice is filed including a certificate of conference and service. The party requesting the hearing must serve the opposing party with notice of the hearing date. If timely notice is not given, the hearing will be reset. Evidentiary contested hearings will be set before jury selection begins.

Plea dates will be agreed on by both the state and defense, and will be selected from the Court's open calendar.

Cases will be placed on the jury trial docket after the defendant has rejected the State's plea offer. The defendant will announce on the record that his or her counsel has relayed the state's plea offer to he or she, and the defendant has chosen to reject the offer. Defense Counsel and Prosecuting Attorneys will select a trial date from the Court's calendar. Once a date is selected, the case will have a trial confirmation date before jury selection begins. If the case is not reached on the assigned jury trial week, counsel for both parties will select a new date for trial.

Jury Selection: The State and Defense voir dire power point/paper presentations are to be exchanged the morning of voir dire. The parties will return the power point/paper presentations to perspective parties at the end of jury selection.

No attorney may announce recess or breaks to the venire panel without first obtaining permission of the Court.

Attorneys are prohibited from attempting to define the term "beyond a reasonable doubt" or expanding the legal definitions of "preponderance of the evidence" or "clear and convincing evidence." Attorneys may not substitute their own definition or interpretation for that definition prescribed by law.

Attorneys are ordered not to commit potential jurors by relating facts of a case. Attorneys are ordered not to present the jury panel with facts or circumstances the attorney expects to be presented in the instant case during trial.

Attorney biographical information is not relevant to the facts of any case, and is therefore not permitted during jury selection.

All juror strike lists must be surrendered to the District Clerk. Attorneys and those with whom the attorney has shared juror information cards shall not at any time disclose the personal information contained in the cards in accordance with the Code of Criminal Procedure Article 35.26.

Expert Witnesses: Voir dire examination of an expert witness will generally be held at the time of trial in such a manner that is respectful of the jury's time. However, if either side anticipates that an examination will exceed one hour, such shall be made known to the Court so that an additional pre-trial hearing can be scheduled for this purpose.

Additional Discovery: Attorneys shall refrain from filing any motion that duplicates any provision of this Standing Order. Conflicting motions may be overruled without a hearing. In the event that additional, particularized discovery is necessary, the defense may file a written motion for discovery concerning a matter not addressed in this Order, and any such motion shall be presented to the Court at the earliest opportunity before trial.

However, no attorney shall file a discovery motion without first conferring with opposing counsel, and no motion will be considered by the Court or set for a hearing unless it is accompanied by a certificate of conference, which shall include a statement that the moving party has made a good faith effort to resolve the matter by agreement. Nothing herein precludes a party from filing a motion for a protective order, to compel compliance, or to modify this Order.

Supplementation: It shall be the duty of the state's attorney to immediately disclose to the defense all newly discovered information, evidence, or other material within the scope of this Order, and the state's attorney has a continuing duty to make any such disclosure expeditiously. If the state later discovers or learns of any additional information subject to disclosure under this Order, the state shall notify the defense and furnish the same for inspection and copying as soon as practicable. Counsel for both sides shall exercise reasonable diligence in arranging a mutually convenient time to supplement discovery.

Discovery Log: Prior to the start of trial, the state and defense shall submit to the Court a written discovery log, acknowledging the disclosure and receipt of all documents, items, and information provided to the defense in accordance with the Code of Criminal Procedure Article 39.14.

Bench Conferences: If requests to approach the bench during jury are granted, the Court Reporter is generally not in a position to record the conference, unless a request to record is made and the Court is given the opportunity to make accommodation.

EFFECT OF OTHER RULES

Nothing in this Order should be construed to relieve an attorney of any other legal or ethical obligation required by law or other rule, including but not limited to, the requirements set forth in Code of Criminal Procedure Art. 39.14 and the Texas Disciplinary Rules of Professional Conduct.

This Standing Pretrial Order supersedes any prior "Trial Guidelines" entered by the Court.

Judge Cindy Ermatinger

12.29.2022
Date