

§ IN THE 121ST DISTRICT COURT
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§ TERRY COUNTY, TEXAS

NOVEMBER 7, 2022 JURY TRIAL PRE-TRIAL DISCOVERY ORDER

This is a limited standing order and applies to those cases set for Jury Trial on November 7, 2022 per the docket dated August 1, 2022.

Nothing in this order authorizes the removal of the documents, items, or information from the possession of the State, and any inspection shall be in the presence of a representative of the State. The State may comply with this order by delivering a copy to the Defendant's attorney or making available the discovery to the Defendant's attorney at the office of the prosecuting attorney or appropriate law enforcement agency within this county in accordance with Tex. Code Crim. Proc. Art. 39.14

Nothing in this order permits a Defendant or his or her attorney to copy, photograph, duplicate, or otherwise reproduce any property material described in Tex.Code.Crim.Proc.Art.39.15, restricted pursuant to Section 264.408 Tex.Fam.Code, or any other material prohibited by statute.

The State through the office of the prosecuting attorney, is ORDERED to produce and make available (collectively "produce") to the Defendant's attorney, for inspection and the electronic duplication, copying and/or photographing of the information, evidence, and materials, except the work product of the County Attorney and other matters that are privilege, as follows:

1. All statements by the Defendant as defined in Tex.Code.Crim.Proc.Art.38.22 and all evidence presently in tangible form, which the State will rely on to show compliance with requirements of admissibility.
2. All offense reports, written or recorded statements of the Defendant or witness, including witness statements of law enforcement officers;
3. All evidence known to the prosecuting attorney which tends to indicate whether the Defendant was insane at the time of the offense, is incompetent to stand trial or not legally responsible as those terms are defined in Tex.Code.Crim.Proc, and Texas Penal Code.
4. A list of all non-expert witnesses who will be called to testify by the State as witnesses on its case in chief at the guilt, not guilty phase and at the punishment phase, if known by the prosecuting attorney in advance. A copy of the State's subpoena application is sufficient for this purpose.
5. The results of any chemical or scientific identification or comparison performed by the State in connection with the alleged offense including a description of items and substances tested, and the conclusions, if any, drawn by the person conducting the test;

6. Tangible things (except the work product of the prosecuting attorney's office, law enforcement agencies, or persons or entities assisting in the investigation of the case as the request of the law enforcement agencies or the prosecuting attorney's office; or written communications between the State or any of its agents or representatives or employees), including:
 - a. Photographs, diagrams, drawings, plats, maps, electronic recordings or digital recordings—(1) of the scene or events of the alleged offense, (2) of the Defendant while under custody or control of law enforcement or any other State agency, (3) shown to any witness with regard to the offense in question, and (4) those made in reference to this case by law enforcement or any other state agency from whatever source that the State intends to offer at any stage of the case;
 - b. Impressions of any fingerprints, palm prints, footprints, or tire tracks which were obtained from the scene of or any object involved in the alleged offense;
 - c. Weapons or instruments believed to have been used by the Defendant in the commission of the alleged offense;
 - d. Contraband substances alleged to be in possession of the Defendant;
 - e. Electronic recordings of the victim of the alleged offense which the prosecution will offer under 38.071 Tex.Code.Crim.Proc, and Texas Rules of Evidence 801(e)(1)(D), shall be made available but not duplicated;
 - f. Any line-up sheet, photographs of physical line-up, and other documentation of any physical line-ups or photographic line-ups shown to any witness in this cause, regardless of whether said line-up contains Defendant, or any other suspect in the case, together with the results of said line-up and the names, addresses and phone numbers of all persons present at such line-up.
 - g. Any and all papers, objects, letters, tangible things or evidence in the possession of any agents of the State of Texas, seized by an agent of the State of Texas which belongs to or is alleged by the State to belong to the Defendant, or gathered at the time of the arrest or during the investigation relative to the offense;
 - h. Video recordings of the alleged victim of the alleged offense which prosecution will offer under art 38.071 Tex. Code Crim. Proc., and Tex. R. Evid. 801(e)(1)(D), shall be made available but not duplicated.
 - i. Any demonstrative exhibit or physical items the State has prepared as jury aid, if the State intends to offer or use in any manner during the trial of the case;
 - j. Copies of any and all written transcripts prepared from any recording (video, digital or otherwise) by that State that were made in connection with the investigation of this case or in preparation for trial of this case, if the State intends to use such transcripts during the trial of the case.

Discovery responsive to 1-6, above, is to be produced as soon as practicable pursuant to Article 39.14 of Tex.Code Crim.Proc, but in no event less than 30 days from date of trial; except items 6.i. and 6.j.

shall be produced prior to voir dire, and item 4 shall be produced on the date subpoena is issued; subject to supplementation as provided below

7. Copies of computerized criminal history, if any, of the Defendant, the victim, and any witnesses who will testify for the State in this cause, with the exception of, law enforcement personnel, which shall be made available for inspection by the State, and any medical records custodian
8. Agreements, if any known to the prosecuting attorney, between the State or other governmental agency and any witness, not to prosecute the witness for criminal acts or to only prosecute the witness for a lesser offense, or to abandon possible enhancement paragraphs or not to seek special findings such as an affirmative deadly weapon finding, or to recommend a particular punishment in the disposition of a criminal case.

Discovery responsive to 7 and 8 above is to be produced as soon as practical, but in no event later seven (7) days before trial.

Pursuant to Article 39.14(h) of the Tex.Code Crim.Proc., notwithstanding any other provision of this Order, the State shall produce, notify and permit inspection to the Defendant, of any evidence, document, item, or other information in the possession, custody or control of the State, that tends to negate the guilt of the Defendant, or would tend to reduce the punishment for the offense charged; and, all exculpatory, impeachment and mitigating evidence that is material and favorable to guilt, or lack thereof, or punishment. This would include all such evidence in the possession, custody, control of the State as defined in *Kyles v. Whitley*. If the information is not in the possession, custody or control of the State, but the State knows of such information, then the State shall notify the Defendant of the *Brady* information and where it may be obtained. Such information shall be provided to the Defendant's attorney as soon as practicable pursuant to Article 39.14 of Tex.Code Crim.Proc, but in no event less than 30 days from date of trial, subject to supplementation as provided below.

Prosecuting attorney shall give notice of their intent to introduce evidence under the authority of Article 37.07 Tex.Code.Crim.Proc., Rule 404b Texas Rules of Evidence, Article 38.37 Texas Rules of Criminal Procedure and Rule 609f, Texas Rules of Evidence at the trial of the Defendant. Such information shall be provided to the Defendant's attorney no later than 20 days prior to the date of trial.

The State, not less than 20 days prior to trial, and Defense, not less than 20 days prior to trial, shall each give notice of all testifying expert witnesses (those witnesses being called by the State or Defense to present evidence under Rules 702, 703, and 705 Texas Rules of Evidence) at any stage of the trial of this cause, and at the punishment phase, if known in advance by the State or Defense and provide to opposing counsel the name and address of the expert and the subject matter of the expert's testimony.

Any party that seeks to challenge an expert or testimony of an expert or otherwise determine the admissibility of the expert testimony must file a pretrial motion and bring it to the attention of the court, not less than 20 days after the expert is designated or not less than 10 days before trial, whichever is earlier.

If any evidentiary hearing will require the Court to a view video or listen to an audio tape in excess of 15 minutes or that either side reasonably anticipates will take more than thirty (30) minutes will be conducted prior to the date of trial.

This discovery order imposes a continuing duty to discover, disclose, and make available the materials and information which are the subject of this order. The prosecuting attorney shall advise the Defendant's

attorney of any new evidence coming into his or her possession or knowledge, which would be subject to discovery under this order, and to then permit appropriate inspection of the same. The prosecuting attorney shall exercise reasonable diligence in complying with this order.

IT IS ORDERED that the Defendant, the attorney representing the Defendant, or their agents, may not disclose to a third party any documents, evidence, materials, or witness statements received under this order unless

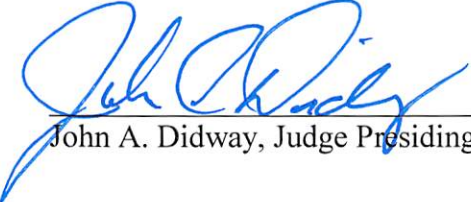
- a. The court orders the disclosure, or
- b. The material produced pursuant to this order has already been publicly disclosed.

An attorney representing the Defendant or their agents may allow a Defendant, witness, or prospective witness to view the evidence produced pursuant to this order if the evidence is redacted to remove a person's address, telephone number, driver's license number, social security number, date of birth, any bank account or other identifying numbers contained in the document.

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.

An attorney representing the Defendant or their agents may not allow a Defendant, witness, or perspective witness to make copies of the information provided under this discovery order, unless it is a copy of the witness's own statement.

Dated: August 1, 2022.



John A. Didway, Judge Presiding