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N. KEITH WILLIAMS
DISTRICT JUDGE
216TH JUDICIAL DISTRICT COURT
KERR COUNTY COURTHOUSE
700 MAIN STREET
KERRVILLE, TEXAS 78028

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TO: **216TH DISTRICT ATTORNEY**
ROBBIN BURLEW, Kerr County District Clerk
KAY PUGH, Kendall County District Clerk
JAN DAVIS, Gillespie County District Clerk

FROM: **JUDGE KEITH WILLIAMS**

DATE: **MARCH 10, 2014**

RE: **REVISED STANDING DISCOVERY CONTROL ORDER**

Attached is the Revised Discovery Control Order which includes Art. 39.14.

FILED 3-10 2014
@ 3:20 P M
ROBBIN BURLEW
District Clerk, Kerr County, TX
By Deputy

IN THE 216TH JUDICIAL DISTRICT COURT
OF GILLESPIE, KENDALL & KERR COUNTIES, TEXAS

STANDING DISCOVERY CONTROL ORDER

The District Court enter the following Standing Discovery Control Order which shall apply to all felony cases filed in the subject counties, both those presently pending on the effective date of this Standing Order and those filed hereafter. This Order expressly supersedes and replaces in its entirety any similar order previously filed in individual cases pending on the date this Order is adopted. The Standing Order is effective **MARCH 15, 2014** and shall be filed in the office of the District Clerk of each county and 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 filed in the individual case.

DEFENSE OBTAINING DISCOVERY PRODUCTS

It is the intent of this Discovery Order (in conjunction with the State's open-file policy and CCP 39.14) that the DEFENSE ATTORNEY IS RESPONSIBLE for physically obtaining the discovery from the State by arranging a mutually convenient date for inspection in obtaining a "discovery packet" or otherwise making arrangements for access to or inspection of discovery matters.

ORDER REGARDING MOTIONS

In addition to any local or other rules concerning motions, 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. Additionally, a certificate of service must appear thereon which indicates the specific addressee and the full address, manner and means of service.

ONLY A BONAFIDE MOTION FOR DISCOVERY MAY BE FILED. THE COURT WILL NOT CONSIDER MOTIONS WHICH ARE MERELY REPETITIVE OF LOCAL RULES OR OF THIS ORDER.

The District Attorney's office has an open-file policy, and a Discovery Motion may be filed only **after** the Defense has obtained discovery from the State and believes that there is something not yet received or if the State has failed to furnish discovery to the Defense pursuant to CCP 39.14. This Standing Order will be honored by the Court just as if a motion covering each of the items referenced below had been filed and granted. Should there be items to which the local rule is not responsive and for which the Defense needs to ascertain discovery, a motion may be filed when Defense counsel believes in good faith that such matter is not covered by this order.

Further, the following Discovery Order is hereby made which is cumulative of and not in place of the Local Rules.

THE STATE IS ORDERED:

1. To comply with CCP Article 39.14 incorporated herein.

2. To file with the Clerk of the Court a list of all witnesses the State intends to call on its case in chief (for either guilt or punishment phases) at least one (1) day prior to the trial, and furnish a copy of 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 abrogate the attorney work-product privilege as to statements made to the State's attorney which qualify for that privilege.

4. To furnish all written or recorded statements of the defendant, along with all confessions or statements, whether verbal or otherwise, including all portions of offense reports containing either a verbatim account or a summary of any portion of the same.

5. To Permit Inspection 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 introduced as part of the State's case;
   - 5.4 All documents, photographs, investigative charts or diagrams to be introduced as part of the State's case;
   - 5.5 All contraband, weapons, implements of criminal activity seized or acquired by the State or its agents in the investigation (this order shall constitute sufficient authority to any law enforcement or other agency of the State to permit inspection of such items);
   - 5.6 All tangible items of physical evidence collected by the State or its agents concerning the alleged offense; such as (by way of example and not intended to be inclusive) latent fingerprints, voiceprints, hairs, fibers, trace metal detections, weapons, fingernail scrapings, body fluids, handwriting exemplars, ballistics, tire tracks, paint scrapings, photographs, analytical results of intoxilyzer tests, patrol car audio or video tapes, and DWI video tapes;
   - 5.7 All psychiatric reports concerning the defendant in the District Attorney's possession;
   - 5.8 All business reports or governmental records to be introduced as part of the State's case;

5.9 All audio or video tape recordings which contain the defendant's image or voice as same relates to the case on trial;

5.10 Any and all lab reports including but not limited to autopsy reports in the District Attorney's possession (other than reports produced by or at the request of expert witnesses for the State, except if the report is to be introduced as part of the State's case, then it shall be produced as provided in paragraph 4.4 hereof).

6. Upon request, 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 images or the voice of a person under the age of 17 who is alleged to be the victim of sexual assault.

6.1 At a minimum, the State shall afford the viewing opportunity at least the day/evening prior to the day the State expects to offer the tape. The State is encouraged to afford that opportunity in the week prior to commencement of the trial so that jury time is not needlessly wasted.

7. Extraneous Offense Notice:
Upon timely written request by the Defense and in the form of a letter addressed to the attorney for the State, a copy of which shall be filed with the district clerk and provided to the State, the State is hereby ORDERED, to give written notice to defense counsel regarding extraneous offenses or bad acts the State intends to introduce during the State's case in chief as required by Rule 404(b) of the Texas Rules of Evidence. Said notice shall be deemed reasonable if given 10 days before trial except for good cause shown.

8. To inform the Defense, at least one day before trial, of all promises of benefit or leniency 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 the alleged offense.

9. Impeachment Evidence:
Upon timely written request by the Defense and in the form of a letter addressed to the attorney for the State, a copy of which shall be filed with the district clerk and provided to the State, the State is hereby ORDERED, to give written notice to defense counsel regarding any impeachment evidence by prior conviction 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 before trial, except for good cause shown.

10. To make available copies of any search warrants and related affidavits.

11. To provide defense counsel, pursuant to Brady v. Maryland and other current applicable case law, with any evidence favorable to the defendant.

EXPERT WITNESSES:

1. Order on Expert Witness Disclosure, Voir Dire and Challenge. Upon written request by either side, (letter or e-mail is adequate, no motion is necessary) and in accordance with Art. 39.14(b), Texas Code of Criminal Procedure, each side shall disclose to the other each person a party may use at trial to present expert testimony under Rules 702, 703 or 705, Texas Rules of Evidence.

   Such disclosure shall be in writing and include at a minimum the name and address of such person. Disclosures shall be served upon the opposing party by each party, no later than 20 days prior to trial.

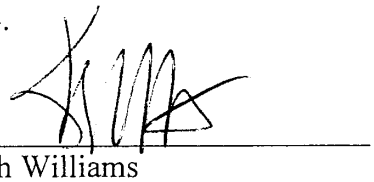
2. Any motion under T.R.E. 705(b) for voir dire of an expert prior to testimony will ordinarily be taken up at the time of trial in such manner as to not unduly waste jury time. However, if either party anticipates that an extensive Rule 705(b) examination will be required, such shall be made known to the Court so that an additional pretrial hearing for this purpose and for possible challenge to the expert or the testimony to be given may be scheduled prior to the date of trial.

3. This Order will dispose of all pretrial discovery and specified request motions heretofore filed. In the event that further particularized discovery is considered necessary, the Defense may file a written Motion for Discovery addressing only matters not covered in this Order, and such Motion will be presented to the Court at the earliest practical opportunity before trial, but in any event no later than the occasion of the Art.28.01pretrial hearing.

PRO SE DEFENDANTS

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

SIGNED this 10 day of March, 2014.



N. Keith Williams
216th District Judge

Art. 39.14. Discovery

1. Currentness

(a) Subject to the restrictions provided by Section 264.408, Family Code, and Article 39.15 of this code, as soon as practicable after receiving a timely request from the defendant the state shall produce and permit the inspection and the electronic duplication, copying, and photographing, by or on behalf of the defendant, of any offense reports, any designated documents, papers, written or recorded statements of the defendant or a witness, including witness statements of law enforcement officers but not including the work product of counsel for the state in the case and their investigators and their notes or report, or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the state or any person under contract with the state . The state may provide to the defendant electronic duplicates of any documents or other information described by this article. The rights granted to the defendant under this article do not extend to written communications between the state and an agent, representative, or employee of the state. This article does not authorize 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 .

(b) On motion of a party and on notice to the other parties, the court in which an action is pending may order one or more of the other parties to disclose to the party making the motion the name and address of each person the other party may use at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence. The court shall specify in the order the time and manner in which the other party must make the disclosure to the moving party, but in specifying the time in which the other party shall make disclosure the court shall require the other party to make the disclosure not later than the 20th day before the date the trial begins.

(c) If only a portion of the applicable document, item, or information is subject to discovery under this article, the state is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and may withhold or redact that portion. The state shall inform the defendant that a portion of the document, item, or information has been withheld or redacted. On request of the defendant, the court shall conduct a hearing to determine whether withholding or redaction is justified under this article or other law.

(d) In the case of a pro se defendant, if the court orders the state to produce and permit the inspection of a document, item, or information under this subsection, the state shall permit the pro se defendant to inspect and review the document, item, or information but is not required to allow electronic duplication as described by Subsection (a).

(e) Except as provided by Subsection (f), the defendant, the attorney representing the defendant, or an investigator, expert, consulting legal counsel, or other agent of the attorney representing the defendant may not disclose to a third party any documents, evidence, materials, or witness statements received from the state under this article unless:

(1) a court orders the disclosure upon a showing of good cause after notice and hearing after considering the security and privacy interests of any victim or witness; or

(2) the documents, evidence, materials, or witness statements have already been publicly disclosed.

(f) The attorney representing the defendant, or an investigator, expert, consulting legal counsel, or agent for the attorney representing the defendant, may allow a defendant, witness, or prospective witness to view the information provided under this article, but may not allow that person to have copies of the information provided, other than a copy of the witness's own statement. Before allowing that person to view a document or the witness statement of another under this subsection, the person possessing the information shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document or witness statement. For purposes of this section, the defendant may not be the agent for the attorney representing the defendant.

(g) Nothing in this section shall be interpreted to limit an attorney's ability to communicate regarding his or her case within the Texas Disciplinary Rules of Professional Conduct, except for the communication of information identifying any victim or witness, including name, except as provided in Subsections (e) and (f), address, telephone number, driver's license number, social security number, date of birth, and bank account information or any information that by reference would make it possible to identify a victim or a witness. Nothing in this subsection shall prohibit the disclosure of identifying information to an administrative, law enforcement, regulatory, or licensing agency for the purposes of making a good faith complaint.

(h) Notwithstanding any other provision of this article, the state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or 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.

(i) The state shall electronically record or otherwise document any document, item, or other information provided to the defendant under this article.

(j) Before accepting a plea of guilty or nolo contendere, or before trial, each party shall acknowledge in writing or on the record in open court the disclosure, receipt, and list of all documents, items, and information provided to the defendant under this article.

(k) If at any time before, during, or after trial the state discovers any additional document, item, or information required to be disclosed under Subsection (h), the state shall promptly disclose the existence of the document, item, or information to the defendant or the court.

(l) A court may order the defendant to pay costs related to discovery under this article, provided that costs may not exceed the charges prescribed by Subchapter F, Chapter 552, Government Code.

(m) To the extent of any conflict, this article prevails over Chapter 552, Government Code.

(n) This article does not prohibit the parties from agreeing to discovery and documentation requirements equal to or greater than those required under this article.

Tex. Crim. Proc. Code Ann. art. 39.14 (Vernon)