

IN THE STATE COURT OF PAULDING COUNTY

STATE OF GEORGIA



FILED IN DEPT. OF
CORRECTIONS
PAULDING COUNTY
GA
DEC 14 PM 3:35
SHERIFF

**STANDING ORDER REGARDING PRETRIAL MOTIONS AND DISCOVERY
REQUESTS ON ALL CRIMINAL MISDEMEANOR CASES**

It appears that defense counsel will file the following notices and motions (hereinafter referred to as Exhibits 1-16) in connection with all criminal cases, pursuant to their obligations concerning such representation:

1. Notice of Defendant's Election to Proceed under O.C.G.A. 17-16-20;
2. Motion for Discovery of Statements of the Defendant;
3. Motion to Obtain Discovery of Statements Made by Witness for the State;
4. Demand for Inspection, Analysis, and Testing of Scientific Evidence;
5. Demand for Copies of all Scientific Reports;
6. Demand for Copies or Disclosure of all Circumstances Surrounding Child Hearsay
7. Motion to Require Prosecutor to Disclose Evidence Favorable to the Defendant under *Brady v. Maryland*, 373 U.S. 83 (1963);
8. Motion to Require the State to Reveal Any Agreement between the State and Any Prosecution Witnesses that Could Conceivably Influence Testimony;
9. Preliminary Motion to Suppress;
10. Motion for Disclosure of Similar or Extrinsic Act Evidence and for Pretrial Hearing to Determine the Admissibility of Any Acts Alleged by the State to be Similar Transactions;
11. Motion to Suppress Defendant's Statements;
12. Motion for Severance of Defendant's for Trial;
13. Motion to Suppress Electronic Surveillance;
14. Complete Recordation;
15. General Demurrers;
16. Right to File Additional Motions;

In all cases in which counsel for the defendant files an entry of appearance, he/she may file a single pleading invoking the motions listed herein and attached hereto as Exhibits 1 through 16. That pleading may incorporate the Motions in the Exhibits by express reference thereto without the need to file those exhibits in each case file. The pleading shall be called "MOTION TO INVOKE THE STANDING ORDER IN CRIMINAL CASES" and shall refer to the minute

book and page in which the motions are entered in the record of this Court. A motion in substantial compliance with the attached Exhibit, shall be deemed sufficient to invoke the Standing Order.

For any motions requiring a hearing the a Rule Nisi must be presented to the Judge's office for motions to be heard prior to the trial date.

This motion mirrors the Paulding County Superior Court Standing Order "2.4, Standing Order Regarding Pretrial Motions and Discovery Request in Criminal Cases", with specificity to the uniform State Court Rules and applicable laws regarding misdemeanor cases.

These motions are in accordance with Georgia law, the U.S. Const. amends. VI, VIII, and XIV, and Ga. Const. Article I, § 1, ¶¶ I, ii, xiv, xvii.

SO ORDERED, this 13 day of December, 2022



Angela R. O'Connor, Judge
State Court of Paulding County

1. MOTION TO INVOKE O.C.G.A. §§ 17-16-20, 17-16-21, 17-16-22, & 17-16-23

The Defendant hereby invokes the provisions of O.C.G.A. § 17-16-20, et. Seq., including but not limited to the Demand for Copy of Accusation or Citation and List of Witnesses, pursuant to O.C.G.A. § 17-16-21, Copy of Statement While in Police Custody pursuant to O.C.G.A. § 17-16-22, and Demand for Copy of Written Scientific Reports pursuant to O.C.G.A. § 17-16-23.

Defendant moves the Court for an Order to require the prosecutor to make a pretrial production of the information hereafter specified.

This motion is made under the authority of *Brady v. Maryland*, 373 U.S. 83 (1963), as well as the *U.S. Const. amend. XIV*, and *Ga. Const. Article I, § 1, ¶¶ 1*; If this material is not produced, the Defendant's counsel will not be able to effectively represent the Defendant in this case, and thus, the Defendant will be denied the right to counsel and the right to confront witnesses, both of which are guaranteed under the provisions of *Ga. Const. art. I, § 1, ¶ xiv*, and *U.S. Const. amend. VI*, made applicable to the States through the *U.S. Const. amend. XIV*.

2. MOTION FOR DISCOVERY OF STATEMENTS OF THE DEFENDANT

COMES NOW, the Defendant in the above captioned matter, and pursuant to *U.S. Const. amends. IV, V, VI, VII, & XIV; Ga. Const. art. I, § 1, ¶ I, ii, xi, xii, xiv, xvi, xvii*;

Copies or disclosures of any statements made by the Defendant, either pre-arrest or custody, or post arrest;

Disclosure of whether any agent of the prosecution, informer, or anyone else at the direction of the prosecution, has talked with or communicated with the Defendant since the filing of the accusation or while the Defendant was in custody. If so, identify each individual and the circumstances surrounding the contact. *Maine v. Mouton*, 474 U.S. 159 (1985)(where informed placed in indicted subject's jail cell to elicit information, incriminating statements made to the informer after the right to counsel had attached should have been ruled inadmissible at trial).

3. MOTION TO OBTAIN DISCOVERY OF STATEMENTS MADE BY WITNESS FOR THE STATE

Copies of any statements made by any witness in the case, that may be deemed exculpatory. *Brady v. Maryland*, 373 U.S. 83 (1963)(right to discovery of exculpatory material); *Napue v. Illinois*, 360 U.S. 264 (1959); and *Giglio v. United States*, 405 U.S. 150 (1972)(convictions reversed where witness testified falsely and defense was not provided with prior inconsistent statement); *Giles v. Maryland*, 386 U.S. 66 (case remanded to determine if witness committed perjury); *Rini v. State*, 235 Ga. 60 (1975)(trial court erred in overruling defendant's Motion for Production at trial of statements of witnesses).

The Disclosure of any line-up, photographic array, or other identification or identification related procedure that involved any witness or prospective witness, and if such disclosure is in the affirmative, all documents, sketches, pictures, or photographic arrays which have been made by, or shown to, any witness or prospective witness in this or any companion case. *U.S. Const. amends. IV, V, and VI; Ga. Const. art. 1, § 1, ¶¶ I, xii, xiv, and xvi; Manson v. Brathwaite*, 432 U.S. 98, 114 (1977)(once defendant establishes "suggestivity" in the identification process, court weighs "corrupting effect of suggestive identification" against likelihood that witness nonetheless made reliable identification, and where suggestivity is weak, court should still inquire into reliability, as it is a linchpin in determining admissibility of identification testimony).

Any report(s) prepared by any law enforcement officer(s) in accordance with O.C.G.A. § 17-4-20.1(c)(Family Violence Act). The Defendant is entitled to these reports pursuant to O.C.G.A. § 17-4-20.1(d) and § 19-13-1.

The description of all item(s) of physical evidence or photographic evidence, which the prosecution anticipates using at trial of the Defendant. Disclosure of the existence of such items is necessary so that counsel can determine whether a motion for pretrial access is necessary to guarantee the Defendant's right to a fair trial. *Park v. State*, 254 Ga. 403 (1985)(where disclosure of a witness statement occurred at trial, "the appropriate standard to be applied... is whether the disclosure came so late as to prevent the Defendant from receiving a fair trial).

Disclosure of whether any physical, documentary, photographic or scientific evidence has been destroyed. *Jordan v. State*, 247 Ga. 328 (1981); *Arizona v. Youngblood*, 488 U.S. 51 (1988) (bad faith in preserving evidence is a denial of due process).

Disclose whether any evidence which the State will seek to introduce at trial was created, evaluated, generated, or enhanced by the use of computers, and if so, disclose if the State will make available to the Defendant software of computer program(s) used to evaluate, generate or enhance such evidence. *U.S. Const. amends. V & VI; Ga. Const. art. 1 § 1, ¶¶ I, xii & xiv.*

Disclosure of the full names and addresses of all persons who have been given information to the prosecuting attorney or law enforcement officers relating to the arrest of the Defendant and the charges against him/her. *U.S. Const. amends. V & VI; Ga. Const. art. 1 § 1, ¶¶ I, xii & xiv.*

Disclosure of the names and address of all un-accused co-conspirators. *U.S. Const. amends. V & VI; Ga. Const. art. 1 § 1, ¶¶ I, xii & xiv.*

4. MOTION FOR INSPECTION OF ALL SCIENTIFIC EVIDENCE

Defendant hereby requests and demands that all scientific evidence, intended to be used against him/her in court, be made available for inspection and review by his/her own expert for independent analysis and review. In conformity with Section 5 of this Order, the Defendant shall be given notice from the State of any scientific evidence prior to his/her request for independent inspection.

5. MOTION FOR COPIES OF ALL SCIENTIFIC REPORTS

Copies of any and all reports of scientific tests that were performed upon any person or evidence relative to this case including the name of the person conducting the test, the typed of test performed, and upon what evidence said test was performed, including but not limited to all blood, breath, or urine samples.

**6. MOTION FOR DISCLOSURE AND COPIES OF ALL CIRCUMSTANCES
SURROUNDING CHILD HEARSAY**

Disclosure of any information that would effect the admissibility of child hearsay including, but not limited to: (a) the atmosphere and circumstances under which the statement was made, including the time, place and the people present; (b) the spontaneity of the child's statement to the persons present; (c) the child's age; (the child's demeanor; (e) the child's condition, physical or emotional; (f) the presence or absence of threats or promise of benefits; (g) the presence or absence of any coaching by parents or other third parties before or at the time of the child's statement, the type of coaching and circumstances surrounding the same, and the nature of the child's statement and type of language used therein; and (j) the consistency between repeated out-of-court statements by the child, including all inconsistent statements by the child and all videotaped interviews with the alleged victim and all child abuse reports. *Weathersby v. State*, 262 Ga. 126 (1992).

Copies of all contact sheets, Form 452 notes, transcripts of interviews, notes of interview, and records concerning an alleged victim, whether involving Defendant or any other person in any file maintained by the Department of Family and Children Services. *Strickland v. State*, 205 Ga. App. 473 (1992); *Smith v. State*, 259 Ga. 135 (1989); *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987); *Aguilar v. State*, 202 Ga. App. (1991).

**7. MOTION TO REQUIRE PROSECUTOR TO DISCLOSE EVIDENCE
FAVORABLE TO THE DEFENDANT UNDER BRADY v. MARYLAND, 373 U.S. 83
(1963)**

DEFENDANT moves the Court for an Order to require the prosecutor to make a pretrial production of the information hereafter specified.

This information is sought pursuant to the Due Process Clause of GA. Const. art. I I § 1, ¶ i, and the U.S. Const. amends. V, made applicable to the State through U.S. Const. amend. XIV, as well as Ga. Const. art I § 1, ¶¶ I, xii (guaranteeing indigent defendants the appointment of counsel and opportunity to prepare a defense). See *Coates v. Lawrence*, 465 F. Supp. 414 (S.D. Ga.) aff'd, 131 F.2d 110 (5th Cir. 1972), cert. denied, 318 U.S. 759, 63 S. Ct. 532, 87 L. Ed. 2d 1132 (1943).

There may be other items and matters of evidence, information and data in existence that are not enumerated aforesaid, and of which Defendant is unaware. Defendant now requests and demands that he/she be afforded with any and all evidence and information, whether specifically delineated and listed herein or not, which is known or may become known, or which through due diligence may be learned from the investigating officers or the witnesses or persons having knowledge of this case, which is exculpatory or favorable material, or which might serve to mitigate punishment. This includes any evidence impeaching or contradicting the testimony of prosecution witnesses, or instructions to prosecution witnesses not to speak or disclose the facts of the case with defense counsel. *Brady v. Maryland*, 373 U.S. 83 (1968); *Giglio v. United States*, 405 U.S. 150 (1972); *Holbrook v. State*, 162 Ga. App. 400 (1982); *Sellers v. Estelle*, 651 F.2d 1074(5th Cir. 1981)(withholding of such reports constitutes reversible error).

8. MOTION TO REQUIRE THE STATE TO REVEAL ANY AGREEMENT ENTERED INTO BETWEEN THE STATE AND ANY PROSECUTION WITNESSES THAT COULD CONCEIVABLY INFLUENCE HIS OR HER TESTIMONY

Defendant moves the Court for an Order requiring the State to reveal any agreement entered into between the Solicitor General's Office or any other law enforcement agency and any prosecution witness that could conceivably influence the witness' testimony. The credibility of prosecution witness(es) will be an important issue in this case. The evidence of any understanding or agreement as to future prosecution or any other consideration is relevant to that issue.

Defendant specifically requests that the prosecution disclose whether any witness, co-defendant, or co-conspirator, in return for any consideration from the State in any form whatsoever, has agreed to testify, provide evidence or information leading to evidence, or in any other manner agreed to assist the State in the prosecution of this action. See, *Giglio v. United States*, 405 U.S. 150 (1972). The refusal of the prosecution to reveal any such agreement constitutes a violation of *U.S. Const. amends V & VI* and *Ga. Const. art. 1 § 1, ¶¶ I, ii, xii, & xiv*.

9. PRELIMINARY MOTION TO SUPPRESS

By virtue of invoking his right to this Court's Standing Orders, the above named defendant moves the Court to suppress all evidence illegally seized by law enforcement agents during the investigation of this case, including post-arrest statements of the Defendant. As the Defendant has not been furnished with full discovery at this time, he requests the opportunity to particularize this Motion within a reasonable time of receiving such information.

WHEREFORE, the Defendant requests a hearing on this matter, once particularized, where the Court can inquire into this matter before trial and outside of the presence of the jury and issue an Order suppressing all evidence illegal obtained.

**10. MOTION FOR DISCLOSURE OF SIMILAR OR EXTRINSIC ACT
EVIDENCE AND PRE-TRIAL HEARING TO DETERMINE ADMISSIBILITY OF ANY
ACTS ALLEGED BY THE STATE TO BE SIMILAR TRANSACTIONS WITH
AUTHORITY**

Defendant moves this Court for an order compelling the State to produce any similar or extrinsic act generally bad character or prior conviction evidence that the State anticipates attempting to introduce against Defendant as proof of intent, motive, plan, scheme, bent of mind, and/or course of conduct, or in cross-examination of the Defendant, should the Defendant testify at trial, as provided by O.C.G.A. § 24-4-404.

Specifically, Defendant seeks information pertaining to the identity of individuals and the dates and transactions alleged to be extrinsic act evidence or evidence of general bad character or prior convictions of the Defendant.

The Defendant submits that disclosure of the evidence described by this motion is required by Due Process Clause of *U.S. Constr. Amends V & XIV*, as well as *Ga. Const. art. I § 1, ¶¶ i, xii & xiv*. Prompt pretrial production of this type of evidence is in accordance with Uniform Superior Court Rule 31.1, which is adopted by the Uniform State Court Rules as the same, and will enable Defendant to prepare appropriate legal objections to the admissibility of such evidence, such as an objection establishing insufficient similarity or connection the independent crime or misconduct and the offense for which the Defendant is presently on trial. The Defendant respectfully submits that there is no valid jurisdiction for non-disclosure at this junction.

Defendant further moves for a pretrial hearing, pursuant to Rule 31.3 of the Uniform Rules for Superior Courts to determine the admissibility of any alleged similar transaction(s) which the State will seek to introduce at trial against the Defendant. Rule 31.3 provides, in pertinent part, that the Court “shall hold a hearing at such time as may be appropriate, and may receive evidence on any issue of fact necessary to determine the request, out of the presence of the jury.” Additionally, In *Poole v. State*, 201 Ga. App. 554(1991), the Georgia Court of Appeals noted in dicta that it “is preferable that the 31.3 hearing be held before trial”.

While Rule 31.3 does not mandate a pretrial hearing, it does require that the Court make its determination outside the presence of the jury. Counsel submits that a hearing will be in the interest of judicial economy in that the jury will not be inconvenienced by any extended presentation of evidence or argument. In addition, if the hearing is held pretrial, counsel will be able to provide the Court with briefs on an issue of law which may develop. Finally, the pretrial determination of admissibility will assist both the State and Defendant in the organization and presentation of their respective cases.

WHEREFORE, the Defendant requests that his motion for pretrial hearing on this matter be granted.

11. MOTION TO SUPPRESS STATEMENTS MADE BY THE DEFENDANT

The Defendant in the above-styled action and prior to trial moves this Court to suppress any and all statements made by him to law enforcement officers after his/her arrest. Defendant prays for a *Jackson v. Denno*, 378 U.S. 368 (1964), hearing to determine whether the statements were voluntary in the totality of the circumstances and to determine the validity of any waiver of counsel prior to the interrogation. Defendant also prays that he/she be granted a hearing prior to trial to determine whether the statements were knowingly and voluntarily given.

WHEREFORE, the Defendant requests that his motion for pretrial hearing on this matter be granted.

12. MOTION FOR SEVERENCE OF DEFENDANTS FOR TRIAL

Defendant moves for a grant of severance of Defendants for separate trials should he be joined in the above styled action for a joint trial with any alleged accomplice or co-defendant. Defendant requests that this Court consider the legal and factual showing as this Defendant shall make at a hearing hereon in support of this request for severance. Defendant would show this Court that severance of the Defendant is necessary to prevent evidence admissible only against one Defendant from being considered against the other, for the reason of extreme prejudice from antagonistic defenses, and to enable this Defendant to call the co-defendant as a witness.

WHEREFORE, the Defendant requests that his motion for pretrial hearing on this matter be granted.

13. MOTION TO SUPPRESS ELECTRONIC SURVEILLANCE

Defendant brings this motion to suppress any electronic eavesdropping which may have been conducted in the above-styled case and to furnish the substance of such evidence if reduced to writing. Defendant prays for an Order from this Court directing the Prosecuting Attorney to comply immediately with the provisions of the Georgia and Federal wiretap laws.

WHEREFORE, the Defendant requests that his motion for pretrial hearing on this matter be granted.

14. COMPLETE RECORDATION

Defendant moves this Court to enter an Order in the above styled case that the Court Reporter shall record all proceedings and shall omit nothing unless specifically waived on the record by the Defendant.

15. GENERAL DEMURRERS

COMES NOW, Defendant, at or prior to arraignment and without waiving formal arraignment or any other rights to which he is entitled, and files these his General Demurrers to the above styled action as follows:

- (1) Defendant demurs generally to said indictment, accusation or citation on the grounds that the same fails to adequately to charge this Defendant with any offense against the laws of the State of Georgia;
- (2) Defendant demurs generally to said indictment, accusation or citation on the grounds that the same fails adequately to charge this Defendant;
- (3) Defendant demurs generally to said indictment, accusation or citations on the grounds that it fails to specifically set out the date of the offense.

WHEREFORE, Defendant prays that these demurrers be inquired into and that they be sustained and that the above styled indictment, accusation or citation be dismissed or quashed.

16. RIGHT TO FILE ADDITIONAL MOTIONS

The Defendant moves this Court for an order reserving the right to file, for good cause shown, such additional motions as the future progress of the case may merit.