

**IN THE CONSTITUTIONAL COUNTY COURT
BANDERA COUNTY, TEXAS**

STANDING DISCOVERY CONTROL ORDER

The County Court enters the following Standing Discovery Control Order, which shall apply to all cases filed in the Bandera County Court, 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 **APRIL 1, 2010** and shall be filed in the office of the County Clerk of Bandera County and posted in a conspicuous place therein.

This Standing Order shall govern each misdemeanor 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) 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 County 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 as set forth below, discovery to the Defense after proper request. 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 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.
2. To furnish, in accordance with *Gaskin v. State*, 353 S.W.2d 467 (Tex.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 (Tex.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.
3. 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.
4. To permit inspection of:
 - a. All items seized from the defendant;
 - b. All items seized from any co-defendant or accomplice;
 - c. All physical objects to be introduced as part of the State's case;
 - d. All documents, photographs, investigative charges or diagrams to be introduced as part of the State's case;
 - e. 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);
 - f. 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;

- g. All psychiatric reports concerning the defendant in the County Attorney's possession;
 - h. All business reports or governmental records to be introduced as part of the State's case;
 - i. All video or video tape recordings which contain the defendant's image or voice as same relates to the case on trial;
 - j. Any and all lab reports including, but not limited to, autopsy reports in the County 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.d hereof).
5. 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 County 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 ten (10) days before trial except for good cause shown.
6. To inform the Defense, at least one (1) 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 to the alleged offense.
7. 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 County 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 ten (10) days before trial, except for good cause shown.
8. To make available copies of any search warrants and related affidavits.

9. 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 twenty (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 to the Court so that an additional pre-trial 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 pre-trial 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. Said motion shall identify, specifically, the document(s) and/or material(s) sought, provide the good cause reason for the need by defendant for the document(s) and/or material(s) sought, describe the materiality of the document(s) and/or material(s) sought, and provide verification that the document(s) and/or material(s) sought is in the possession of the State. The defendant shall not seek discovery through the State of document(s) and/or material(s) which is equally available to the defendant from other sources or that are available as public records. Texas Code of Criminal Procedure, Article 39.14(a); *Turpin v. State*, 606 S.W.2d 907 (Tex.Crim.App. 1980); *Jackson v. State*, 504 S.W.2d 488 (Tex.Crim.App. 1974); *Massey v. State*, 933 S.W.2d 141 (Tex.Crim.App. 1996); *Smith v. State*, 468 S.W.2d 828 (Tex.Crim.App. 1971). 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. 28.01 pre-trial hearing.

SIGNED this 12th day of March, 2010, to be effective **APRIL 1, 2010**.



Richard A. Evans
Bandera County Judge

FILED
AT 4:30 O'CLOCK 9 M. CM

MAR 12 2010
CANDY WHEELER, COUNTY CLERK
BANDERA COUNTY, TEXAS
BY CW