

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

**ORDER AMENDING RULE 16
OF THE
SUPERIOR COURT RULES OF CRIMINAL PROCEDURE**

This 17th day of May, 2023, **IT IS ORDERED** that:

(1) Superior Court Criminal Rule 16 is hereby amended by striking the current wording of that rule in its entirety and substituting in lieu thereof a new Criminal Rule 16 that is attached here as Exhibit A.

(2) This amendment shall take effect on September 1, 2023, and shall apply to all cases initiated in this Court by filing of a Criminal Information or return of an Indictment on or after that date.

(3) An original of this Order shall be filed with the Prothonotary for each county.

/s/ Jan R. Jurden
President Judge Jan R. Jurden

SUPERIOR COURT CRIMINAL RULE 16.
DISCOVERY AND INSPECTION

(a) GENERAL PROVISIONS

- (1) A party may satisfy the requirement to permit the opposing party to inspect, copy, or photograph any item designated herein by providing a duplicate, facsimile, or copy of the item in compliance with applicable time limits and redaction standards under this Rule.
- (2) Any material or evidence disclosed pursuant to this Rule and filed with the prothonotary, including any inventory of materials provided, shall be placed under seal until it is either admitted as an exhibit at trial or hearing or the court enters an order unsealing the specified material as evidence.
- (3) Notwithstanding any limitation or restriction on discovery under this Rule, the State shall disclose as soon as is practicable any and all evidence favorable to the defendant in the determination of either guilt or punishment, including, but not limited to, all facts of an exculpatory nature, disclosure of all promises or inducements made to witnesses that the State intends to present at trial, and the existence of criminal convictions of any witness that the State intends to present at trial, when such conviction could be used to impeach the witness.

(b) DISCLOSURE OF EVIDENCE BY THE STATE

(1) Information Subject to Disclosure

- (A) *Statement of Defendant.* Upon request of a defendant, the state shall disclose to the defendant and make available for inspection, copying, or photographing: any relevant written, recorded or oral statements made by the defendant or a codefendant (whether or not charged as a principal, accomplice or accessory in the same or in a separate proceeding), or copies thereof, within the possession, custody, or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the state; that portion of any written record containing the substance of any relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a state agent; and recorded testimony of the defendant before a

grand jury that relates to the offense charged. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon its motion, discovery of relevant recorded testimony of any witness before a grand jury who (1) was, at the time of that testimony, so situated as a director, officer, employee, or agent as to have been able legally to bind the defendant as to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as a director, officer, employee, or agent as to have been able legally to bind the defendant in respect to that alleged conduct in which the witness was involved.

- (B) ***Investigative Reports and Search Warrants.*** Upon request of a defendant, the state shall permit the defendant to inspect and review any relevant reports prepared by law enforcement officers and made in connection with the particular case, including any written witness statements or written summaries of oral statements contained within such reports, and search warrants that are known to be in the possession, custody or control of the state. This obligation to provide for inspection and review of these reports shall be subject to the provisions of paragraph (c) of this Rule regarding redaction and restrictions on dissemination of designated material.
- (C) ***Names and Statements of Witnesses.*** Upon request of the defendant and subject to the provisions of paragraphs (c), (f), and (i) of this Rule, the state shall disclose to the defendant the names of all persons other than law enforcement personnel whom the state knows to have evidence or information relevant to any offense charged. The state shall make available for inspection, copying, or photographing any relevant written or recorded statements of said witnesses, within the possession, custody, or control of the state, the existence of which is known or, by the exercise of due diligence, may become known, to the state. The term “statement” as used in this Rule includes a written statement made by the person and signed or otherwise adopted or approved by the person and any statement of any kind or manner made by the person and written or recorded or summarized by law enforcement or the state in any writing or recording. The term “statement” is specifically intended to include all police and investigative reports of any kind prepared for or in connection with the case but shall not include the notes from which those

reports are compiled unless the substance of those notes is otherwise discoverable under this Rule or under any other statute, rule, or principles governing the proceeding.

- (D) ***Defendant's Prior Record.*** Upon request of the defendant, the state shall furnish to the defendant such copy of the defendant's prior criminal record, if any, as is within the possession, custody, or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the state.
 - (E) ***Documents and Tangible Objects.*** Upon request of the defendant, the state shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, that are within the possession, custody or control of the state and that are material to the preparation of the defendant's defense or are intended for use by the state as evidence in chief at the trial, or were obtained from or belong to the defendant.
 - (F) ***Reports of Examinations and Tests.*** Upon request of a defendant, the state shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the state that are material to the preparation of the defense or are intended for use by the state as evidence in chief at the trial.
 - (G) ***Expert Witnesses.*** Upon request of a defendant, the state shall disclose to the defendant any evidence which the state may present at trial under Rules 702, 703, or 705 of the Delaware Uniform Rules of Evidence. This disclosure shall be in the form of a written response that includes the identity of the witness and the substance of the opinions to be expressed.
- (2) Information Not Subject to Disclosure**
- (A) Except as provided by subpart (b)(1)(B), this Rule does not authorize the discovery or inspection of reports, memoranda, or other internal state documents prepared by the state or its agents in connection with the investigation or prosecution of a case that may reasonably be considered confidential, privileged, or subject to the attorney work-product doctrine. To the extent a witness is interviewed by the state in anticipation of trial and the witness reveals material items in addition to or different from the

substance of that witness's previous interview(s), there remains a duty to disclose those material additions or inconsistencies to the defendant before trial, notwithstanding the provisions of this subpart.

(B) Except as provided by subpart (b)(1)(C), or by order entered under this Rule, this Rule does not require the disclosure of any personal identifying information of any witness.

(C) **Grand Jury Transcripts.** Except as provided in Rules 6 and 26.2, and subdivision (b)(1)(A) of this Rule, this Rule does not require the disclosure, discovery, or inspection of recorded proceedings of a grand jury.

(c) **REDACTION AND RESTRICTED DISSEMINATION MATERIAL**

(1) **Redaction.** As to any material or evidence provided under this Rule, the state may redact personal identifying information, including the name, date of birth, residential address, telephone number, email address and place of employment of any witness or victim, or any member of a witness's or victim's family. If the state redacts personal identifying information under this subparagraph of the Rule, the defendant may file a motion seeking disclosure of the redacted information. Should the court find good cause for disclosure, it shall order the state to provide the redacted information subject to any condition that it deems necessary to the orderly adjudication of the case or to the fair administration of justice. In its discretion, the court ordering the provision of redacted personal identifying information may order that the information be identified as "Restricted Dissemination Material" under subparagraph (c)(2) of this Rule.

(2) **Restricted Dissemination Material.** The state may designate, and the court may order, evidence or material disclosed under this Rule as "Restricted Dissemination Material" by prominently stamping or otherwise marking such items as "Restricted Dissemination Material."

(A) **Designation.** The state may designate any evidence or material subject to disclosure pursuant to this Rule as "Restricted Dissemination Material," without supporting certification, if the defendant agrees to the designation. In the absence of an agreement by the defendant, the state may designate any evidence or material as "Restricted Dissemination Material" by stamping or otherwise marking it as such and providing a

certification in writing, upon information and belief, that: (i) the designated material relates to the statement of a child victim or witness; or (ii) there is a reasonable probability that disclosure of the designated material will result in (a) danger to the safety or security of a witness or victim, (b) danger of a witness being intimidated or tampered with, or (c) compromising an ongoing criminal investigation or confidential law enforcement technique.

- (B) Except as otherwise provided by order of the court or these Rules, “Restricted Dissemination Material” may only be disclosed to the defendant’s attorney, the agents, or employees of the defendant’s attorney, or to an expert witness who shall be advised of the designation associated with the material. The defendant’s attorney may orally communicate the content of “Restricted Dissemination Material” to the defendant or allow the defendant to view the content of such material but shall not provide the defendant with copies of material so designated. If the defendant’s attorney chooses to communicate or show the content of “Restricted Dissemination Material” to the defendant, the defense attorney shall not communicate or show the name of any victim or witness, date of birth, the residential address, telephone number, email address and place of employment of any witness or victim, or any other identifying information pertaining to the witness or victim or member of a witness’s or victim’s family. “Restricted Dissemination Material” may not otherwise be reproduced, copied, or disseminated in any way.
- (C) ***Relief from Restriction.*** If the state designates evidence or material as “Restricted Dissemination Material” under subpart (c)(2)(A) of this Rule, the defendant may at any time file a motion seeking to remove that designation from such evidence or material. Should the court find good cause to remove the designation, it shall order that the evidence or material no longer be designated as “Restricted Dissemination Material,” subject to any condition that it deems necessary to the orderly adjudication of the case or to the fair administration of justice.
- (D) ***Defendants not represented by Counsel.*** In any case in which the defendant is not represented by counsel, the state may file a motion seeking to limit the scope of discovery under this Rule. For good cause shown, the court may order any limitation or restriction on the provision of discovery to a defendant who is unrepresented by an attorney as the court in its discretion deems appropriate.

(d) **DISCLOSURE OF EVIDENCE BY THE DEFENDANT**

(1) **Information Subject to Disclosure**

- (A) ***Documents and Tangible Objects.*** If the defendant requests disclosure under subparts (b)(1)(B) or (E) of this Rule, upon compliance with such request by the state, the defendant, on request of the state, shall permit the state to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, that are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.
- (B) ***Reports of Examination and Tests.*** If the defendant requests disclosure under subparts (b)(1)(F) or (G) of this Rule, upon compliance with such request by the state, the defendant, on request of the state, shall permit the state to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, that the defendant intends to introduce as evidence in chief at the trial or that were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness's testimony.
- (C) ***Expert Witnesses.*** If the defendant requests disclosure under subpart (b)(1)(G) of this Rule, upon compliance with the request by the state, the defendant, on request of the state, shall disclose to the state any evidence the defendant may present at trial under Rules 702, 703, or 705 of the Delaware Uniform Rules of Evidence. This disclosure shall be in the form of a written response that includes the identity of the witness and the substance of the opinions to be expressed.
- (D) ***Witness List.*** If the defendant requests disclosure under subpart (b)(1)(C) of this Rule, upon compliance with such request by the state, the defendant, on request of the state, shall furnish to the state a written list of the names of all witnesses whom the defendant expects to call as witnesses at the trial or hearing.
- (E) ***Witness Statements.*** When the state discloses the names of witnesses under subpart (b)(1)(C) of this Rule, upon request by the state the defendant shall furnish to the state the statement of any person listed. The term "statement" is defined in (b)(1)(C) of this Rule.

- (F) ***Notice of Defenses.*** If the defendant requests disclosure under subparts (b)(1)(A), (B), (C), (D), (E), (F) or (G) of this Rule, upon compliance with such request by the state, the defendant, on request of the state, shall provide written notice to the state specifying the following defenses if the defendant intends to assert such at trial: alibi; insanity; any defense alleging mental illness, defect, psychiatric disorder or any other mental or emotional condition of the defendant bearing upon the issue of guilt or punishment; any defense based upon public authority; or, entrapment.
- (2) **Information Not Subject to Disclosure.** Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or prepared by the defendant's attorneys or its agents in connection with the investigation or defense of the case that may reasonably be considered confidential, privileged, or subject to the attorney work-product doctrine, or of statements made by the defendant.
- (e) **CONTINUING DUTY TO DISCLOSE.** If, before or during trial, a party discovers additional evidence or material previously requested or ordered that is subject to discovery or inspection under this Rule or that an additional notice must be made, such party shall promptly notify the other party or that other party's attorney or the court of the existence of the additional evidence or material and/or make such notice.
- (f) **PROTECTIVE AND DISCLOSURE ORDER**
- (1) Upon the motion of either party and for good cause, the court may enter a protective or disclosure order as to the discovery or inspection required by this Rule. The court in its discretion may order any condition that it deems necessary to the orderly adjudication of the case or to the fair administration of justice. These conditions may include:
- (A) a requirement that the parties not disclose the contents of any material or evidence disclosed or discovered under this Rule in any public forum, including any website;
- (B) a requirement that the parties not disclose the contents of any material or evidence disclosed or discovered pursuant to this Rule to any third-party who is not an agent or employee of the parties or an expert witness;

- (C) authorization to either party to withhold the residential address, telephone number, email address or place of employment of any witness not otherwise covered by the terms of paragraphs (b), (c), or (d) of this Rule;
 - (D) a requirement that either party disclose specified personal identifying information, including the name, date of birth, residential address, telephone number, email address and place of employment of any witness; or
 - (E) authorization for either party in appropriate circumstances to withhold from disclosure or place additional restrictions on dissemination of information otherwise discoverable but not exculpatory.
- (2) A party who believes in good faith that the terms of a protective order entered by the court have been violated may move the court to enforce the order and to impose any necessary and appropriate sanction authorized by Delaware law.
- (g) **WITNESS INTERVIEW AS ALTERNATIVE.** If the state withholds a witness's name and/or contact information under paragraph (b) or (c) of this Rule, upon request of counsel for the defendant, it shall take reasonable steps to make that witness available to counsel for the defendant for a timely interview. In such case, disclosure of the witness's name or contact information to the defendant shall not be required.
- (h) **FAILURE TO COMPLY WITH A REQUEST.** If at any time during the course of the proceedings the court determines that a party has failed to comply with this Rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. In determining an appropriate remedy, the court shall consider whether the party seeking a remedy moved to compel compliance with this Rule.
- (i) **PROCEDURE**
- (1) **Request.** The defendant may serve a request under paragraph (b) of this Rule after preliminary hearing. The state may serve a request under paragraph (d) of this Rule after service on the attorney general of such request by the defendant or such other time as ordered by the court. The request of either party shall set forth the items sought

with reasonable particularity and shall specify a reasonable time, place, and manner of compliance with the request.

(2) Response.

(A) *Initial Response by the State.* Except in those cases where the court has entered an order setting dates for responses under this Rule, the state shall serve an initial response within 45 days of the request. An initial response shall include statements by the defendant and co-defendant, investigative reports, and search warrants.

(B) *Supplemental Responses by the State.* The state shall file a supplemental response, or specify any objection to any request, as soon as practicable. The response may specify a reasonable alternative time, place, and manner of compliance without undue delay. Any response shall address specifically and accurately each of the defendant's discovery requests.

(C) *Responses by the Defendant.* The defendant shall serve an initial response within 60 days of the state's request and any supplemental response shall be provided without undue delay. Any response shall address specifically and accurately each of the state's discovery requests.

(3) Motion to Compel. If a party fails to comply with a request the opposing party may move for an order compelling compliance with the request. A motion to compel shall be filed within ten days after the time for response or at such other time as ordered by the court.

(4) Service and Filing.

(A) All requests for discovery under this Rule and responses thereto shall be served on other counsel or parties but shall not be filed with the court. In lieu thereof, the party requesting discovery and the party responding shall file with the court a "Notice of Service" certifying that a request or response was served and the date and manner of service. The party responsible for service shall retain custody of the original. In cases involving out-of-state counsel, Delaware counsel shall be the custodian. When a party uses any part of a request or response at trial or in proceedings on a motion, that party shall file it with the court. When a discovery request or anything produced in response to such a request is needed for any reason, the court, on its own motion, on motion by any party, or by stipulation of counsel, shall order the custodian to deliver it to the court. When a party

files discovery material with the court other than during trial, the party shall file a notice stating, in no more than one page, the reason for filing the material and setting forth an itemized list thereof.

- (B) Service of requests and responses upon the defendant and the state may, in addition to the manner authorized by these rules, be made by electronic mail delivered to counsel of record.
- (5) **Disclosure of Personal Identifying Information.** Any disclosure of any personal identifying information of any victim or witness shall be minimized to include only that information consistent with the person's specific contact with the particular criminal matter and shall be provided in a manner demonstrating respect for the victim or witness's safety, dignity and privacy.