

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK**

**COMMONWEALTH OF VIRGINIA**

v.

Docket No.: CR\_\_\_\_\_

\_\_\_\_\_  
**Defendant**

**Waived Indictment:** \_\_\_\_\_

**SCHEDULING AND DISCOVERY ORDER**

The Court hereby **ORDERS** the following concerning the scheduling of trial, discovery, and certain incidents thereto:

1. The Defendant was arrested on \_\_\_\_\_, 20\_\_\_\_, and was indicted at the \_\_\_\_\_ 20\_\_\_\_ Grand Jury term.
2. This case will be tried at 9:30 am on \_\_\_\_\_, 20\_\_\_\_. The parties will be prepared to try the case on this date. Counsel may excuse witnesses only after the defendant unequivocally indicates an intention to plead guilty.
3. At this time, the Defendant anticipates that he/she: ☐ will plead guilty / ☐ will plead not guilty.
4. The Defendant requests trial: ☐ by jury / ☐ by the Court without a jury.

**\*\*IF TRIAL BY JURY IS SCHEDULED, DEFENSE COUNSEL, THE COMMONWEALTH'S ATTORNEY, AND THE DEFENDANT WILL APPEAR IN CIRCUIT COURT BY 9:00 A.M., ON THE TRIAL DATE.**

5. Counsel estimate that the trial will require \_\_\_\_\_ days / hours / minutes.
6. If a continuance is requested, an appropriate motion will be made as far in advance of the trial date as practicable.
7. If trial by jury is requested, counsel must appear before the Court on \_\_\_\_\_, 20\_\_\_\_, for a pretrial conference.
8. Except as otherwise provided by statute or Rule of the Supreme Court of Virginia, all motions will be filed on or before **10 days** prior to trial, and any unresolved motion(s) will be set for hearing no later than **3 business days** before the trial date. Absent good cause, any motion not heard 3 business days before trial will be deemed waived. A trial date will not be changed to a motions hearing without an order of the Court.

☐ The Defendant does not request discovery at this time.

☐ The Defendant does request discovery, and the following is hereby ordered:

9. The Commonwealth's Attorney will provide, promptly upon entry of this Order, but ***in no event later than 21 days*** prior to trial, all discovery detailed below and any proposed Plea Agreement to defense counsel.
10. Defense Counsel will provide, promptly upon the receipt of discovery material from the Commonwealth's Attorney, but ***in no event later than 14 days*** prior to trial, all reciprocal discovery detailed below to the Commonwealth.
11. Any discoverable material (including witnesses not timely identified on a witness list) not provided in accordance with the deadlines established in this Order normally will not be received in evidence, except in rebuttal or for impeachment, or unless the admission of such material would cause no surprise or prejudice to the opposing party and the failure to turn over such material was through inadvertence.
12. This Scheduling and Discovery Order will apply to the charges pending and/or presented as of the date of the Defendant's preliminary hearing and to any additional charges that may arise from the same act(s), occurrence(s), and/or transaction(s) presented to the Grand Jury.

#### **Discovery by the Defendant**

Pursuant to Supreme Court of Virginia Rule 3A:11, **promptly upon entry of this Order but in no event later than 21 days before trial** the Commonwealth's Attorney is required to do the following:

- A. Reports: The Commonwealth will provide to the Defendant any relevant reports prepared by law enforcement officers made in connection with this case, including any written witness statements or summaries of oral witness statements contained within such reports, that are known to the Commonwealth's Attorney to be in the possession, custody, or control of the Commonwealth.
- B. Statements: The Commonwealth will provide to the Defendant any written or recorded statements, or the substance of any oral statements, made by the Defendant to any law enforcement officer, or copies thereof, that are known to be within the possession, custody, or control of the Commonwealth. The Commonwealth will also provide any written or recorded statements, or the substance of any oral statements, made by the Defendant to any other person other than a law enforcement officer that the Commonwealth intends to introduce into evidence against the Defendant at trial; and any written or recorded statements, or the substance of any oral statements, made by a co-defendant or co-conspirator that the Commonwealth intends to introduce into evidence against the Defendant at trial.
- C. Body Worn Camera/Dashboard Video: The Commonwealth will direct the police department to preserve all body camera/dashboard video recordings of any police encounters with the Defendant known to the Commonwealth until further order of the Court. These recordings will be provided to defense counsel by means of DVD recording or other electronic means.

- D. Criminal Record: The Commonwealth will make available to defense counsel, pursuant to Va. Code § 19.2-389, Defendant's prior criminal record, if any, as is within the possession, custody, or control of the Commonwealth.
- E. Reports of Examinations: The Commonwealth will provide to the Defendant any written reports of autopsy examinations; ballistic tests; fingerprint analyses; handwriting analyses; blood, urine, and breath tests; other scientific reports, and written reports; or physical or mental examinations of the Defendant or the alleged victim(s) made in connection with this case that are known by the Commonwealth to be in its possession, custody, or control.
- F. Physical Items: The Commonwealth will permit the Defendant to inspect, review, copy, and/or photograph designated books, papers, documents, data, recordings, photographs, tangible objects, buildings or places, or copies or portions thereof, which are known to be within the possession, custody, or control of the Commonwealth, and which upon a showing that the items sought may be material to the preparation of the accused's defense, that the request is reasonable, or that the items were obtained from or belong to the Defendant. If counsel desires to inspect the physical evidence prior to the date of trial, counsel for the Defendant is advised to contact the Commonwealth's Attorney to set a mutually agreeable date and time for the inspection of physical evidence in the possession of the Commonwealth.
- G. Designation of Expert Witnesses: The Commonwealth will notify the Defendant in writing that the Commonwealth intends to introduce expert testimony at trial or sentencing and provide to the Defendant any written report of the expert, or if no such report exists, a written summary of the expected expert opinion testimony the Commonwealth intends to use at trial, unless the expert testimony is to be offered in response to a previously noticed expert of the Defendant. This summary will describe the witnesses' opinions, the bases and reasons therefor, the witnesses' qualifications, and the witnesses' contact information. Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Va. Code § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination will satisfy the requirements of this paragraph. Providing a report of autopsy issued by the Office of the Chief Medical Examiner, signed by hand or by electronic means, by the person performing the examination will satisfy the requirements of this paragraph.
- H. Other Witnesses: The Commonwealth will disclose to the Defendant a written list of witnesses, including names and addresses unless otherwise redacted as "Restricted Dissemination Material" ("RDM"), expected to testify for the Commonwealth at trial or sentencing, EXCEPT that identification of confidential informants whom the Commonwealth does not intend to call at trial need not be disclosed.
- I. Redactions: The Commonwealth will redact the date of birth and social security number of any witness as described in this Order pursuant to Rule 3A:11(c)(1)(A).
- J. Restricted Dissemination Material: The Commonwealth may make such redactions as are identified in Rule 3A:11(c)(1).
  - i. Pursuant to Rule 3A:11(c)(2), the Commonwealth may designate disclosed materials as RDM by prominently stamping or otherwise marking items as such. In the absence of an agreement, the Commonwealth will provide a certification in writing, upon information and belief, that (1) the designated material relates to the statement of a child victim or witness; (2) disclosure of the designated material may result in danger to the safety or security of a

witness or victim, danger of a victim or witness being intimidated or tampered with, a risk of compromising an ongoing criminal investigation, or confidential law enforcement technique; (3) autopsy photographs, unless intended to be used as evidence; or (4) photos from SANE reports that show a victim's intimate parts as defined in Va. Code § 18.2-67.01, unless intended to be used as evidence.

- ii. Pursuant to Rule 3A:11, RDM may include residential addresses, telephone numbers, email addresses, schools, place of employment, social security numbers, date of birth, or other identifying information related to a victim, witness, or their family members.
  - iii. The Commonwealth may designate in writing any other evidence or material subject to disclosure pursuant to Rule 3A:11(c)(2) as RDM without supporting documentation if the Defendant's attorney agrees to the designation.
  - iv. RDM may only be disclosed to the attorney for the Defendant, employees or agents of that attorney, or an expert witness. The attorney for the Defendant may orally communicate the content of the RDM to the Defendant or allow the Defendant to view the content of the RDM but will **not** provide the Defendant with copies of or permit the Defendant to reproduce, copy, or disseminate the RDM in any manner.
  - v. In accordance with Rule 3A:11(c)(2)(E), within 21 days of the entry of a final order by this Court, or upon the termination of the representation of the Defendant, the Defendant's attorney will return to the Court all originals and copies of any RDM disclosed pursuant to this Rule. The Court will maintain such returned RDM under seal. Any material sealed pursuant to this subpart will remain available for inspection by counsel of record. For good cause shown, the Court may enter an order allowing additional access to the sealed material as the Court in its discretion deems appropriate.
  - vi. If the Defendant is not represented by an attorney, the Commonwealth may file a motion seeking to limit the scope of discovery pursuant to this Rule.
- K. Work Product: The Commonwealth is not required to disclose work product of the Commonwealth's Attorney, including internal memoranda, reports, witness statements, correspondence, legal research, or other internal documents prepared by the Office of the Commonwealth's Attorney, or its agents, in anticipation of trial.

### **Discovery by the Commonwealth**

It is further ORDERED, pursuant to Rule 3A:11, that **promptly upon receipt of discovery materials from the Commonwealth but in no event later than 14 days before trial**, unless good cause is shown, the Defendant is required to do the following:

- A. Reports: The Defendant will provide to the Commonwealth any written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine, and breath tests, and/or other scientific testing within the possession, custody, or control of the Defendant that he/she intends to introduce into evidence at trial or sentencing.
- B. Findings of Insanity: Pursuant to Va. Code § 19.2-169.5, the Defendant will provide a copy of any results or reports of physical or mental examinations made in connection with the

particular case if the Defendant intends to rely upon the **defense of insanity**, pursuant to Chapter 11 of Title 19.2 of the *Code of Virginia*; provided, however, that no statement made by the Defendant in the course of such an examination disclosed pursuant to this section will be used by the Commonwealth in its case-in-chief, whether the examination was conducted with or without the consent of the Defendant.

- C. Alibi: The Defendant will disclose to the Commonwealth whether the Defendant intends to offer a **defense of alibi**, and, if so, disclose the place at which the Defendant claims to have been at the time the alleged offense was committed.
- D. Designation of Expert Witnesses: The Defendant will notify the Commonwealth in writing of the intent to introduce expert opinion testimony at trial or sentencing and provide to the Commonwealth a copy of any written report of the expert, or if no such report exists, a written summary of the expected expert opinion testimony the Defendant intends to use at trial, even if the expert testimony is to be offered in response to a previously-noticed expert of the Commonwealth. This summary will describe the witnesses' opinions, the bases and reasons therefor, the witnesses' qualifications, and the witnesses' contact information.
- E. Other Witnesses: The Defendant will disclose to the Commonwealth a written list of all witnesses, including their addresses, expected to testify for the Defendant at trial or sentencing.

#### **Continuing Duty to Disclose**

If, after disposition of a motion under Rule 3A:11, counsel or a party discovers before or during trial additional material previously requested or falling within the scope of this Order or any other discovery order previously entered, that is subject to discovery or inspection under Rule 3A:11 but has not previously been disclosed, the party will promptly notify the other party or their counsel or the Court of the existence of the additional material.

If at any time during the pendency of the case it is brought to the attention of the Court that a party has failed to comply with this Order or another order issued pursuant to Rule 3A:11, the Court will order such party to permit the discovery or inspection of materials not previously disclosed and may grant such other relief authorized by Virginia law as it may in its discretion deem appropriate.

#### **Brady/Giglio Material**

It is further ORDERED that the Commonwealth will comply with its obligations to promptly produce exculpatory material as required by *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), and *Giglio v. United States*, 405 U.S. 150 (1972). The constitutional and statutory duties of the Commonwealth's Attorney to provide exculpatory and/or impeachment evidence to the Defendant supersede any limitation or restriction on discovery provided pursuant to this Order.

Now the Court, finding that the Grand Jury has indicted the Defendant, **ORDERS** that the foregoing agreement be and hereby is adopted by the Court, and the parties are **ORDERED** to comply faithfully with same.

ENTER:

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Judge

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Counsel for the Defendant

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Commonwealth's Attorney

**IF THIS SCHEDULING AND DISCOVERY ORDER IS NOT COMPLETED, THE PROSECUTOR AND DEFENSE COUNSEL MUST APPEAR AT DOCKET CALL. IF NO DEFENSE COUNSEL HAS BEEN APPOINTED OR RETAINED, THE DEFENDANT MUST APPEAR AT DOCKET CALL.**