2000

State of Utah v. Sandra Spry aka Sandra Chlopitsky : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff Appellee,	:	Case No. 20000244-CA
v.	:	
SANDRA SPRY, aka SANDRA CHLOPITSKY,	:	Priority No. 10
Defendant Appellant.	:	

BRIEF OF APPELLEE

INTERLOCUTORY APPEAL FROM AN ORDER OF THE THIRD DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE MICHAEL K. BURTON, PRESIDING

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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This is an interlocutory appeal from an order of the district court denying, as irrelevant to the instant case, defendant's request for her internal affairs complaint and subsequent tape recorded statement, and granting the State's limited discovery motion. This Court has jurisdiction of the appeal under Utah Code Ann. § 78-2a-3(2)(d) (1996).

STATEMENT OF ISSUES PRESENTED ON APPEAL AND STANDARDS OF APPELLATE REVIEW

Issue No. 1: Is the record on appeal adequate to permit a determination that the trial court abused its broad discretion in its discovery order?

Standard of Review: On appeal, the appellant bears the burden of providing the reviewing court with an adequate record to prove his allegations. *See State v. Penman*, 964 P.2d 1157, 1162 (Utah App. 1998); *State v. Wulffenstein*, 657 P.2d 289, 293 (Utah

1982). "Absent that record, defendant's assignment of error stands as a unilateral allegation which the review[ing] court has no power to determine. [An appellate court] simply cannot rule on a question which depends for its existence upon alleged facts unsupported by the record." *Wulffenstein*, 657 P.2d at 293. When faced with an "'an [in]adequate record on appeal, [an appellate court] must assume the regularity of the proceedings below.'" *Penman*, 964 P.2d at 1162 (citing *State v. Miller*, 718 P.2d 403, 405 (Utah 1986) (per curiam)).

Issue No. 2: Did the trial court abuse its broad discretion when it denied defendant's motion to compel discovery of records unknown to the prosecutor, consisting of defendant's South Salt Lake City internal affairs complaint and subsequent tape recorded statement, and in granting the State's limited discovery motion?

Standard of Review: "In general, a trial court is allowed broad discretion in granting or denying discovery[.]" *State v. Lairby*, 699 P.2d 1187, 1194 (Utah 1984). "'[D]eterminations on this subject will not be overturned on appeal unless the court has abused its discretion.'" *Id.* (citing *State v. Knill*, 656 P.2d 1026, 1027 (Utah 1982)).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following statutes and rules are reproduced in **Addendum A**.

Utah Code Ann. § 63-2-206 (2000)
Rule 16, Utah Rules of Criminal Procedure (2000)
Rule 33, Utah Rules of Criminal Procedure (2000)
Rule 401, Utah Rules of Evidence (2000)
Rule 402, Utah Rules of Evidence (2000)

STATEMENT OF THE CASE

Defendant was charged by information with two counts of unlawful possession of a controlled substance, a third degree felony, in violation of Utah Code Ann. § 58-37-8(2)(a)(i) (1999), and one count of unlawful possession of drug paraphernalia, a class B misdemeanor, in violation of Utah Code Ann. § 58-37a-5 (1981). R. 1-3. Both parties requested discovery. R. 11-12; 43-45. Defendant filed a motion to compel discovery of her internal affairs complaint against South Salt Lake City police and her tape recorded statement made during the subsequent internal affairs hearing. R. 30-33. At hearing, the trial judge denied defendant's motion to compel and granted the State's limited motion for discovery. R. 70-73. Defendant timely petitioned for interlocutory appeal. R. 75-76. This Court granted that petition. R. 95-96.

STATEMENT OF THE FACTS

On August 5, 1999, at approximately 1:30 in the morning, police observed defendant and a male behaving suspiciously near a bank automated teller machine. R. 1-3. Attempting to investigate defendant's behavior, police approached defendant and noticed an open container of alcoholic beverage within her convertible car. *Id.* Upon questioning by the police, defendant became angry, abusive, and uncooperative. *Id.* Defendant was placed under arrest and her car was searched. *Id.* The search revealed controlled substances and drug paraphernalia. *Id.* The car was impounded and

inadvertently destroyed by fire.[1] R. 52-60.

ARGUMENT SUMMARY

Point I: By neglecting to include a transcript of the February 22, 1999 discovery hearing, defendant has failed to meet its burden of providing a complete record on appeal. As the basis for appeal, defendant relies only upon the judge's order resulting from the discovery hearing. Defendant argues that the trial court's legal reasoning is flawed. However, without a transcript of the hearing, this Court has no means of determining whether the trial court abused its discretion in denying defendant's motion to compel discovery and granting the State's limited discovery motion. Accordingly this court must presume the regularity of the discovery hearing.

Point II: Assuming *arguendo* the adequacy of the record on appeal, the trial court acted within its broad discretion in denying defendant's discovery request for her internal affairs complaint and subsequent tape recorded statement, and in limiting and granting the State's discovery motion.

Pursuant to rule 16(a)(1), Utah Rules of Criminal Procedure, the trial court

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[1]Defendant claims to have filed an internal affairs complaint against the officers with the South Salt Lake City. R. 30-33. However, the record is void of any factual support for this claim. Defendant contends she filed the complaint because she was "roughed up" by police and her car was "wrongfully destroyed." Br. of Aplt. at 4. Apparently, South Salt Lake City conducted a tape recorded internal affairs hearing regarding defendant's complaint, and defendant testified at that hearing. *Id.* Defendant concedes the city determined that defendant's complaint warranted no further action. *Id.* Defendant allegedly requested a copy of her complaint and tape recorded statement from South Salt Lake City. R. 30-33. For reasons not apparent on the record, this request was denied. *Id.*

correctly determined that the internal affairs records are not relevant to the instant case. In any event, because the prosecutor had neither possession nor knowledge of the internal affairs records, she had no duty or opportunity to disclose or release those materials.

Upon a showing of "good cause" by the State, the trial court acted within its broad discretion by limiting the State's discovery motion and requiring defendant to disclose a witness list, proposed testimony, and advance copies of exhibits. The prosecutor's need to be prepared at trial and the inherent materiality of the discovery documents constituted the requisite good cause under rule 16(c), Utah Rules of Criminal Procedure. Further, the trial judge's statements regarding prosecutorial preparedness evinces the court's justified trial management concerns.

ARGUMENT

POINT I

THE RECORD ON APPEAL IS INADEQUATE TO PERMIT A DETERMINATION AS TO WHETHER THE TRIAL COURT ABUSED ITS BROAD DISCRETION

Defendant appeals the trial judge's disposition of discovery motions after a motion hearing. Specifically, defendant contends that the trial court's order denying access to defendant's statements is without legal foundation. Br. of Aplt. at 9. In addition, defendant accuses the trial court of modifying rules through its order granting the State's limited discovery motion. Br. of Aplt. at 13. However, appellant has not included a record of the motion hearing in her brief. As a result, the record on appeal is inadequate.

"Appellants bear the burden of proof with respect to their appeals, including the burdens attending the preservation and presentation of the record." *State v. Litherland*, 2000 UT 76, ¶ 17; *accord Penman*, 964 P.2d at 1162 (defendant is ultimately responsible for ensuring that the Court of Appeals receives all portions of the record necessary to his arguments on appeal). Where that record is absent from an appeal, "defendant's assignment of error stands as a unilateral allegation which the review[ing] court has no power to determine." *Wulffenstein*, 657 P.2d at 293. "Consequently, in the face of 'an [in]adequate record on appeal, [an appellate court] must assume the regularity of the proceedings below.'" *Penman*, 964 P.2d at 1162 (citing *State v. Miller*, 718 P.2d 403, 405 (Utah 1986) (per curiam)). *See State v. Blubaugh*, 904 P.2d 688, 699 (Utah Ct. App. 1995) (assuming regularity of proceedings below because appellant failed to include transcript), cert. denied, 913 P.2d 749 (Utah 1996).

The order alone is insufficient to determine an abuse of discretion. *See Miller*, 718 P.2d at 405 (failure to provide the transcript of an arraignment hearing resulted in an inadequate record on appeal). While the order does state the discovery ruling of the court, it does not offer the court's reasoning. R. 70-73. Therefore, defendant's allegations regarding any errors in the trial court's legal reasoning are conjecture. "[An appellate court] simply cannot rule on a question which depends for its existence upon alleged facts unsupported by the record." *Wulffenstein*, 657 P.2d at 293. Furthermore, the court's order alone fails to illustrate misapplication or modification of procedural rules. Consequently, defendant's claims have no foundation in the record.

By failing to preserve and present a complete record on appeal, appellant has not met her burden. The regularity of the discovery hearing must therefore be presumed. *See Bluhaugh*, 904 P.2d at 699.

POINT II

ASSUMING *ARGUENDO* THAT THE RECORD ON APPEAL IS SUFFICIENT, THE TRIAL JUDGE ACTED WITHIN HIS BROAD DISCRETION IN DENYING DEFENDANT'S REQUEST FOR HER INTERNAL AFFAIRS COMPLAINT AND TAPE RECORDED STATEMENT AND IN LIMITING AND GRANTING THE STATE'S MOTION FOR DISCOVERY

Defendant claims that the trial court erred in denying defendant's discovery request for her written complaint filed with South Salt Lake City, against South Salt Lake City police, and her tape recorded statement subsequently made during a South Salt Lake City internal affairs hearing. Br. of Aplt. at 5-9. Additionally, defendant alleges that the trial court erroneously granted the State's discovery request. Br. of Aplt. at 9-14.

"In general, a trial court is allowed broad discretion in granting or denying discovery[.]" *State v. Lairby*, 699 P.2d 1187, 1194 (Utah 1984). "'[D]eterminations on this subject will not be overturned on appeal unless the court has abused its discretion.'" *Id.* (citing *State v. Knill*, 656 P.2d 1026, 1027 (Utah 1982)).

A. The Order Denying Defendant's Discovery Request For Her Internal Affairs Complaint and Subsequent Tape Recorded Statement Was Within the Trial Court's Broad Discretion to Decide the Relevancy of Discovery Requests. In Any Event, the Prosecutor Had Neither Possession nor Knowledge of the Requested Records.

In its order, the trial court cited the State's argument that the internal affairs records are "protected" under the Government Records Access Management Act (GRAMA), and ruled that "[t]he [i]nternal [a]ffairs complaint was not in conjunction with [defendant's] arrest or this event. [The internal affairs matter] is a whole separate event. It is not part of the investigation or a product of the investigation." R. 70-73. Defendant challenges the court's ruling on the contention that the requested materials are relevant to the instant case, and are not protected records under GRAMA. Br. of Aplt. at 6-8. Defendant concedes the records are in the custody of South Salt Lake City. Br. of Aplt. at 6. However, defendant asserts that the prosecutor may unfairly obtain these materials from South Salt Lake City and use them in preparation of her case against defendant. Br. of Aplt. at 8-9. Defendant's claims are misplaced.

Determining Relevancy. Rule 16(a)(1) of the Utah Rule of Criminal Procedure requires a prosecutor to disclose to the defense, "*relevant* written or recorded statements of the defendant[.]" Utah R. Crim. P. 16(a)(1) (emphasis added). Relevant evidence tends to make the existence of a fact of consequence to the action, more or less probable than it would absent the evidence. *See* Utah R. Evid. 401. Evidence which is not relevant is not admissible at trial. *See* Utah R. Evid. 402. Deciding whether evidence is relevant

requires a balancing of the factors by the trial court. *State v. Wetzel*, 868 P.2d 64, 67 (Utah 1993) *reh'g denied* (citations omitted). A determination of relevancy will not be overturned on appeal unless the trial court abused its discretion. *Id.*

The trial court did not abuse its discretion in determining that the internal affairs complaint and tape recorded statement are irrelevant to the instant case. They did result from the same police encounter, as defendant asserts. *See* Br. of Aplt. at 6. However, all other factors weigh in favor of the court's ruling.

First, the matters associated with the internal affairs complaint were not a part of the drug-related investigation, nor even a product of that investigation. R. 70-73. The complaint apparently concerned separate issues of harassment and property destruction. Br. of Aplt. at 4. Therefore, the requested records fail to make the drug related charges more or less probable. *See* Utah R. Evid. 401. Second, the alleged harassment and property destruction do not provide any justification, excuse, or defense for possession of drugs and drug paraphernalia. Third, the subject matter of the complaint and hearing are apparently related to allegations regarding previous incidents between the defendant and South Salt Lake City police.[2] R. 52-60. Finally, defendant's complaint was determined to lack merit. Br. of Aplt. at 4.

In addition, the trial judge may have considered defendant's purpose in requesting the records (in preparation of her defense) as unpersuasive. R. 30-33; Br. of Aplt. at 8.

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[2]According to the record, defendant's alleged "history of problems" with South Salt Lake police, escalated to the point of complaint. R. 52-60.

As defendant submitted the complaint and was present at the internal affairs hearing, she knows the content of her statements and may use that information for her defense.

Faced with the above factors, the trial judge correctly determined the internal affairs records were not related to the issues before the court. R. 70-73.

Possession and Knowledge. In any event, regardless of the relevancy of the requested records or their status under GRAMA, a prosecutor is not required to produce records held by any other governmental entity, where the prosecutor, staff, and investigating officers do not possess the records and do not have knowledge of the records or the evidence contained in the records. *See State v. Pliego*, 1999 UT 8, ¶¶ 9, 11-13, 18, 974 P.2d 279. Apparently, South Salt Lake City has sole custody of the disputed records. *See* Br. of Aplt. at 6. The record contains no indication that the prosecutor, the prosecutor's staff, or the investigating officers have seen or know the content of the requested records. To the contrary, according to the State's response to defendant's Request for Discovery, the prosecutor affirmatively asserted a lack of knowledge of the existence or whereabouts of "other" records. R. 17-18. Defendant was properly given all documents known to the prosecutor. *Id.*

Thus, even if the trial court abused its broad discretion in determining the relevancy of the defendant's requests or if the records are not protected under GRAMA, under *Pliego*, the State has no obligation to produce the requested materials.

Defendant further argues that the State may easily obtain the internal affairs

records under GRAMA. Br. of Aplt. at 8-9. Utah Code Ann. § 63-2-206 allows record sharing between governmental entities if the requesting agency "enforces, litigates, or investigates civil, criminal, or administrative law, *and the record is necessary to a proceeding or investigation*[.]" Utah Code Ann. § 63-2-206(1)(b) (2000) (emphasis added). In declaring that the internal affairs records are "not a part of the investigation [of the instant case] [n]or a product of the investigation [of the instant case,]" the trial judge effectively prevented any record sharing under section 63-2-206. R. 71. Despite the records' status under GRAMA, even if the prosecutor desires to obtain the internal affairs records, in light of the order, she is prevented from doing so.

B. The Order Requiring the Production of Defendant's Witness List, Proposed Testimony, and Advance Copies of Exhibits Was Within the Trial Court's Broad Discretion to Grant Discovery and Manage the Trial Proceedings.

Defendant next challenges the trial court's discovery order granting the State's request for production of a witness list, proposed testimony, and copies in advance of exhibits. Br. of Aplt. at 9-10.

Relying on rule 16, Utah Rules of Criminal Procedure, the trial court concluded that prosecutorial preparation was good cause to allow limited discovery, suggesting the necessity of judicial efficiency at trial. R. 70-71. Defendant challenges the ruling on the assertion that the trial court misinterpreted and misapplied the "good cause" provision of rule 16. *See* Br. of Aplt. at 1-2, 13 (claiming the trial court "modified" the rule). Defendant's claims lack merit.

Rule 16 of the Utah Rules of Criminal Procedure requires both the prosecution and defendant to make certain pretrial disclosures. The prosecutor is required to disclose any written or recorded statements of the defendant or a codefendant, the defendant's criminal history, physical evidence seized from the defendant or codefendant, and any exculpatory or mitigating evidence. *See* Utah R. Crim. P. 16(a). Likewise, the rule requires the defense to disclose any information relating to alibi or insanity. *See* Utah R. Crim. P. 16(c).

In addition to these enumerated disclosures, the rule authorizes the trial court to order *either party* to provide additional discovery upon a showing of "good cause." Utah R. Crim. P. 16(a)(5), (c). Under the rule, the defendant *shall* disclose "any other item of evidence *which the court determines* on good cause shown should be made available to the prosecutor in order for the prosecutor to adequately prepare his case." Utah R. Crim. P. 16(c) (emphasis added). The trial court's order requiring the production of a witness list, proposed testimony and copies of exhibits was well within the broad discretion afforded trial courts in granting or denying discovery. *See Lairby*, 699 P.2d at 1194. To the extent defendant claims the trial court misinterpreted the rule (Br. of Aplt. at 1-2, 13), his claim on appeal fails.

Good Cause Finding. Defendant's challenge to the trial court's finding of good cause lacks merit. The good cause provision for defense disclosures is identical in all material respects to the good cause provision for State disclosures. *Compare* Utah R.

Crim. P. 16(a)(5) *with* Utah R. Crim. P. 16(c). Although Utah appellate courts have not addressed the good cause standard in connection with defense disclosures, they have addressed that standard in connection with State disclosures.

In *State v. Mickelson*, this Court concluded that good cause "only requires that the defendant establish the materiality of the requested records to the case." *State v. Mickelson*, 848 P.2d 677, 690 (Utah Ct. App. 1992) (citing *Cannon v. Keller*, 692 P.2d 740 (Utah 1984)). The Court should treat "good cause" defense disclosures similarly. Indeed, the materiality requirement is implicit in the language of both good cause provisions—evidence that "should be made available to the [defendant/prosecutor] in order for the [defendant/prosecutor] to adequately prepare his [defense/case]." Utah R. Crim. P. 16(a)(5), (c). A finding of materiality is, therefore, the touchstone in any good cause determination.

Pursuant to rule 16(a)(5), only upon a showing of good cause, may a defendant request the State's witness list, proposed testimony, and exhibit list. *See State v. Knight*, 734 P.2d 913, 916 (Utah 1987). Yet, the State frequently provides such information to defense counsel without question. *See, e.g., State v. Tennyson*, 850 P.2d 461, 472 (Utah App. 1993); *Salt Lake City v. Reynolds*, 849 P.2d 582, 584 (Utah App. 1993). In the instant case, defendant has made such a discovery request of the State. R. 11-12. The fact that witness lists, proposed testimony and exhibit lists are frequently exchanged between parties in criminal matters, and defendant's similar discovery requests (R. 11-12), is implicit recognition that such discovery information is material to this case.

That the identity of a proposed trial witnesses meets this "good cause" or materiality requirement is self-evident. The very fact that they will be called as witnesses makes their identity and anticipated testimony material. *See, e.g.*, *Cannon*, 692 P.2d at 743 (good cause existed to require disclosure of the identity of the confidential informant when the State represented that it needed to retain certain evidence implicating the informant for use at trial); *Mickelson*, 848 P.2d at 690-91 (finding materiality for the disclosure of a list of prior criminal convictions of the witnesses the State intended to call). Likewise, the materiality of exhibits to be presented at trial is apparent.

Given the above points, the trial court acted within its discretion by ordering the production of a witness list, proposed testimony and copies in advance of trial exhibits. *See Knill*, 656 P.2d at 1027.

Managing the Trial Proceedings. The trial court's order is also warranted under its broad authority to govern and manage the proceedings of a trial. *See* Utah R. Crim. P. 33 ("The court may make appropriate orders regulating the conduct of officers, parties, spectators and witnesses prior to and during the conduct of any proceeding."). In exercising its inherent power to control and manage the proceedings, "the trial court is 'responsible for carrying [the trial] forward as efficiently and expeditiously as possible consistent with fairness and thoroughness in administering justice.'" *State v. Parsons*, 781 P.2d 1275, 1282 (Utah 1989) (quoting *Hanks v. Christensen*, 354 P.2d 564, 566 (Utah 1960)). The purpose of the "good cause" requirement is to protect the parties and the court from irrelevant and vexing discovery requests; thus negating unnecessary delay

at trial by allowing both parties to be adequately prepared. *Mickelson*, 848 P.2d at 690.

The trial judge's order evinces an interest in judicial efficiency at trial. Prior to the hearing, defense counsel requested Interstate Rendition of Shauna Martin, a prisoner currently being held in Elko County Jail, awaiting felony sentencing in the State of Nevada. R. 49-51. In her request, defendant stated that Martin may be a material witness in this matter. Id. At hearing, the court granted this request. R. 70-73. Martin was not present at the encounter on May 5, 1999 between police and defendant, and therefore her role in the encounter is unknown to the State. R. 1-3. Appraised of Martin as a possible witness, the court emphasized the prosecution's need for preparedness at trial. R. 70-73.

A possible "surprise witness," such as Martin, compromises judicial efficiency at trial, and also the fairness of the proceeding. *See Vigos v. Mountainland Builders Inc.*, 2000 UT 2, ¶ 22, 993 P.2d 207 (Surprise and ambush are unfair litigation tactics.); *accord People v. Martinez*, 970 P.2d 469, 476 (Colo. 1998) (trial by ambush does not promote accuracy or efficiency in the search for truth); *Commonwealth v. Reynolds*, 708 N.E.2d 658, 666 (Mass. 1999) (failure to share witness information results in trial by ambush); *Brooks v. State*, 748 So.2d 736, 740 (Miss. 1999) (the purpose of discovery is to avoid trial by ambush). If the State were faced with a surprise witness at trial, undoubtably the court would entertain a continuance of the proceeding for the State to effectively meet that witness, thus delaying the trial.

C. The Trial Court's Order Properly Limited The State's Motion to Discover.

Defendant additionally challenges the State's Motion to Discover, alleging that the motion constitutes "blanket discovery" against the defense.[3] Br. of Aplt. at 9, 14. Specifically, defendant alleges that discovery requests for witness addresses, investigator reports, documents, and other items are not allowed under rule 16. Br. of Aplt. at 10.

Defendant's challenge misses the mark. Regardless of the scope of the State's motion, the trial court found that the State showed the requisite "good cause" necessary to receive only the "names of [defense] witnesses, proposed [witness] testimony, and also copies in advance of exhibits," thus limiting the State's request for discovery. R. 70-73. Given the judge's limitations, defendant's objection to the State's other discovery requests is misplaced.

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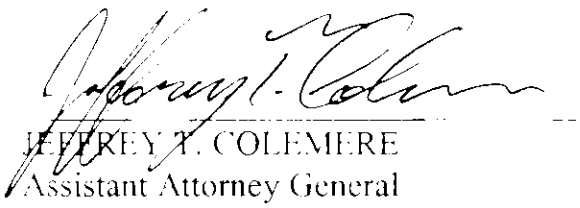
[3]Included in the State's motion are the following additional requests: witness telephone numbers and dates of birth, an opportunity to inspect physical evidence, documents and photographs the defendant intends to introduce at trial, copies of expert reports and conclusions in addition to the expert's qualifications and information concerning remuneration, copies of reports prepared by defense investigators and disclosure of any relationship between the defendant and potential witnesses. R. 43-45.

CONCLUSION

Based upon the foregoing, the State respectfully requests that the Court affirm the regularity of the hearing below or, in the alternative, affirm the trial court's order.

RESPECTFULLY SUBMITTED this 1st day of November, 2000.

JAN GRAHAM
Attorney General



JEFFREY T. COLEMERE
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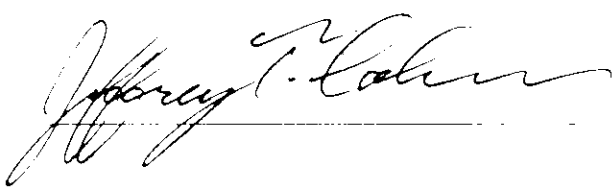
CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Appellee was mailed by first class mail, postage prepaid, to W. Andrew McCullough, 895 West Center Street, Orem, Utah 84057 this 1st day of November, 2000.



ADDENDA

ADDENDUM A

UTAH CODE, 1953
TITLE 63. STATE AFFAIRS IN GENERAL
CHAPTER 2. GOVERNMENT RECORDS ACCESS AND MANAGEMENT
PART 2. ACCESS TO RECORDS

Current through End of 2000 General Session

63-2-206 Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose; or

(d) is one that collects information for presentence, probationary, or parole purposes.

(2) A governmental entity may provide a private or controlled record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(a) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(b) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(c) that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(3) A governmental entity may provide a record or record series that is protected under Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:

(a) the record is necessary to the performance of the requesting entity's duties and functions; or

(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

(4) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a

TEXT
government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection **63-2-206**(1)(a), (b), (c), or (d).

(b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection 63-2-304(4).

(5) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(6) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(7) A governmental entity receiving a record under this section is subject to the same restrictions on disclosure of the material as the originating entity.

(8) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.

(9) The following records may not be shared under this section:

(a) records held by the Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and Mining; and

(b) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

(10) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Rule 16. Discovery.

(a) Except as otherwise provided, the prosecutor shall disclose to the defense upon request the following material or information of which he has knowledge:

(1) relevant written or recorded statements of the defendant or codefendants;

(2) the criminal record of the defendant;

(3) physical evidence seized from the defendant or codefendant;

(4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and

(5) any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare his defense.

(b) The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. The prosecutor has a continuing duty to make disclosure.

(c) Except as otherwise provided or as privileged, the defense shall disclose to the prosecutor such information as required by statute relating to alibi or insanity and any other item of evidence which the court determines on good cause shown should be made available to the prosecutor in order for the prosecutor to adequately prepare his case.

(d) Unless otherwise provided, the defense attorney shall make all disclosures at least ten days before trial or as soon as practicable. He has a continuing duty to make disclosure.

(e) When convenience reasonably requires, the prosecutor or defense may make disclosure by notifying the opposing party that material and information may be inspected, tested or copied at specified reasonable times and places.

(f) Upon a sufficient showing the court may at any time order that discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(g) If at any time during the course of the proceedings it is brought to the attention of the court 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.

(h) Subject to constitutional limitations, the accused may be required to:

(1) appear in a lineup;

(2) speak for identification;

(3) submit to fingerprinting or the making of other bodily impressions;

(4) pose for photographs not involving reenactment of the crime;

(5) try on articles of clothing or other items of disguise;

(6) permit the taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be obtained without unreasonable intrusion;

(7) provide specimens of handwriting;

(8) submit to reasonable physical or medical inspection of his body; and

(9) cut hair or allow hair to grow to approximate appearance at the time of the alleged offense.

Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given to the accused and his counsel. Failure of the accused to appear or to comply with the requirements of this rule, unless relieved by order of the court, without reasonable excuse shall be grounds for revocation of pre-trial release, may be offered as evidence in the prosecutor's case in chief for consideration along with other evidence concerning the guilt of the accused and shall be subject to such further sanctions as the court should deem appropriate.

Rule 33. Regulation of conduct in the courtroom.

The court may make appropriate orders regulating the conduct of officers, parties, spectators and witnesses prior to and during the conduct of any proceeding.

Rule 401. Definition of "relevant evidence."

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or the Constitution of the state of Utah, statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.

ADDENDUM B

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Attorney for Defendant
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Orem, Utah 84057
Telephone: (801) 222-9635

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH, MURRAY DEPARTMENT

---oooOooo---

STATE OF UTAH, Plaintiff, vs. SANDRA M. SPRY aka SANDRA CHLOPITSKY Defendant.	:	ORDER 99120887 Case No. 991919063 Judge Burton

---oooOooo---

THIS MATTER came on regularly for hearing before Hon. Michael K. Burton, Judge of the above entitled Court, pursuant to Plaintiff's Motion for Discovery, Defendant's Motion to Compel Discovery and Defendant's Motion for Rendition of a Prisoner, on the 22nd day of February, 2000. Plaintiff was represented by Angela F. Micklos and Defendant was represented by her attorney, W. Andrew McCullough. Court, being fully advised in the premises, makes and enters the following ORDER:

1. The State has filed a Motion for Discovery, to discover names of witnesses, proposed testimony, and also copies in advance of exhibits. Defendant contends that Section 77-35-16(c) requires a showing of good cause for a grant of discovery due the State. It

is the Court's opinion that it is good cause that Plaintiff's counsel is able to be prepared, to be ready to make a presentation, and get to the truth. No additional showing of good cause is necessary. Therefore, the State's Motion for Discovery is granted.

2. Defendant has requested the State to produce a copy of a tape recorded statement made by Defendant as part of an internal affairs complaint against the arresting officer in this matter. Defendant contends that this is a "recorded statement of Defendant" under the provisions of Rule 16 of the Utah Rules of Criminal Procedure, and that it is discoverable as such. The State maintains that the statement is a protected one under GRAMA and that only the officer and his attorney have access to this tape. If the State obtains a copy from the South Salt Lake City Attorney, they must not, under GRAMA, share it with defense counsel.

The Internal Affairs complaint was not in conjunction with the arrest or this event. It is a whole separate event. It is not part of the investigation or a product of the investigation. Therefore, Defendant's request is denied.

3. The State has expressed no objection to providing Defendant with the video tape of Defendant's burning automobile. That will be produced by March 7, 2000.

4. The State has not yet submitted the alleged controlled substance to the State crime lab for analysis. The State will do

so promptly, and will provide the results to Defendant's counsel by April 4, 2000.

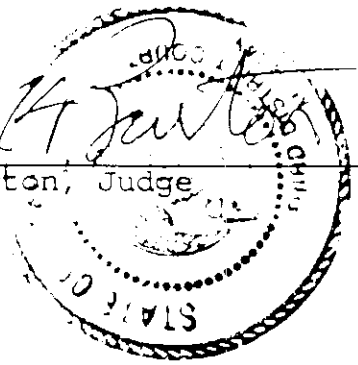
5. The State has not objected to providing any evidence of fingerprints on the syringes allegedly taken from Defendant's possession. That information will be provided as soon as practicable.

6. The State has made no objection to producing a complete inventory of what was taken from Defendant, as well as an inventory (to the best of their ability) of what was destroyed in the fire involving Defendant's vehicle. That information will be provided within two weeks of the date of this Order.

7. Defendant has also moved for the Interstate Rendition of a prisoner being held currently in Elko County Jail, awaiting felony sentencing in the State of Nevada. No objection being made by the State, the Court will issue the certificate to the appropriate authorities in the State of Nevada to commence Interstate Rendition. There being a question, however, of the trial date at this time, the Court will not sign such a certificate until a firm trial date has been set. A determination of who should bear costs, if any, is reserved for further proceedings.

DATED this 22 day of March, 2000.

BY THE COURT:



Michael K. Burton, Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February, 2000, I did mail a true and correct copy of the foregoing Order, postage prepaid to Angela Micklos, Assistant Salt Lake District Attorney, 2001 So. State Street, #S-3700, Salt Lake City, Utah 84190.

criminal\chlopitsky.ord