

**VIRGINIA :**

**IN THE CIRCUIT COURT OF LOUDOUN COUNTY**

**COMMONWEALTH OF VIRGINIA**

**v.**

**CR \_\_\_\_\_**

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*Defendant*

**DISCOVERY, INSPECTION, AND PROTECTIVE ORDER**

This Order is entered upon the Motion of the Defendant, made pursuant to Rule 3A:11(e), by and through counsel, and with the agreement of the Commonwealth, by and through her counsel.

**General Provisions**

1. This Order shall apply to any prosecution for a felony in Circuit Court and to any misdemeanor brought on direct indictment.
2. The constitutional and statutory duties of the Commonwealth's attorney to provide exculpatory and/or impeachment evidence to an accused supersede any limitation or restriction on discovery provided by this Order.
3. A party may satisfy the requirement to permit the opposing party to inspect and copy or photograph a document, recorded statement or recorded confession by providing an actual duplicate, facsimile or copy of the document, recorded statement or recorded confession to the opposing party in compliance with the applicable time limits and redaction standards set forth in this Order.
4. Any material evidence disclosed or discovered pursuant to this Order and filed with

the clerk of the court shall be placed under seal until it is either admitted as an exhibit at a trial or hearing or the court enters an order unsealing specified material or evidence.

**Discovery by the Defendant**

It is hereby ORDERED pursuant to Rule 3A:11, that no later than \_\_\_\_\_ calendar days before trial, unless for good cause shown:

1. Law Enforcement Reports. Subject to the provisions of “Redaction and Restricted Dissemination Material” outlined herein, the Commonwealth 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, that are known to the Commonwealth’s Attorney to be in the possession, custody, or control of the Commonwealth. The Commonwealth is not required to provide the Defendant with copies of the relevant law enforcement reports but may do so in its discretion.

2. Statements. The Commonwealth shall permit the Defendant to inspect, review and copy or photograph any relevant:

(A) written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the Defendant to any law enforcement officer, that are known to the Commonwealth’s attorney to be within the possession, custody or control of the Commonwealth;

(B) written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the Defendant to any person other than a law enforcement officer, that the Commonwealth intends to introduce into evidence against the Defendant at trial;

(C) 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.

3. Reports of Examinations. The Commonwealth shall permit the Defendant to inspect, review and copy or photograph any relevant: written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath tests, other scientific reports, and written reports of a physical or mental examination of the Defendant or the alleged victim made in connection with this case, that are known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth.

4. Physical Items. The Commonwealth shall permit the Defendant to inspect, review and copy or photograph designated books, papers, documents, tangible objects, recordings, buildings or places, or copies or portions thereof, that are known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth, upon a showing that the items sought may be material to the preparation of the defense and that the request is reasonable.

5. Designation of Expert Witnesses. The Commonwealth shall notify the Defendant in writing of the Commonwealth's intent to introduce expert opinion testimony at trial or sentencing and to provide the accused with:

(A) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions, and

(B) the witness's qualifications and contact information.

Nothing in paragraphs 5(A) and (B) of this section shall render inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases and reasons disclosed, or the expert witness's qualifications, just because the further explanatory language was not included in the notice and disclosure provided pursuant to this order.

Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code Section 19.2-187, signed by hand or electronic means by the person performing the analysis or examination, shall satisfy the requirements of 5(A) and (B) of this section.

6. Witness List. The Commonwealth shall provide to the defendant a written list of names and, if known, the addresses of all persons who are expected to testify on behalf of the Commonwealth at trial or sentencing.

7. Work Product. This Order does not authorize the discovery or inspection of the work product of the Commonwealth's attorney, including internal reports, witness statements, memoranda, correspondence, legal research or other internal documents prepared by the office of the Commonwealth's attorney or its agents in anticipation of trial.

8. Confidential Informants. This Order does not authorize the discovery of the names and/or personal identifying information of confidential informants whom the Commonwealth does not intend to call at trial and with regard to whose identity the Commonwealth asserts it holds a privilege.

#### **Redaction and Restricted Dissemination Material**

The redaction or the designation of restricted dissemination material shall apply to any material or evidence provided under this Order.

1. Redaction.

(A) The Commonwealth may redact the residential address, telephone number, e-mail address and place of employment of any witness or victim, or any member of a witnesses or victim's family, who satisfies the conditions outlined in Virginia Code Section 19.2-11.2. The Commonwealth may redact the date of birth and Social Security Number of any person whose information is contained in material or evidence provided pursuant to this Order.

(B) If the Commonwealth redacts personal identifying information pursuant to this Order the defendant may file a motion seeking disclosure of the redacted information. Should the court find good cause for disclosure, it may order the Commonwealth to provide the redacted information. In its discretion, the court ordering the provision of redacted personal identifying information may order that the information be identified as "Restricted Dissemination Material" pursuant to paragraph 2 of this section.

2. Restricted Dissemination Material. The Commonwealth may designate evidence or material disclosed pursuant to this rule as "Restricted Dissemination Material" (hereinafter "RDM") by prominently stamping or otherwise marking any items as such.

(A) The Commonwealth may designate any evidence or material subject to disclosure pursuant to this Order as RDM, without supporting certification, if the defendant's attorney agrees to the designation.

(B) In the absence of an agreement by the attorney for the defendant, the attorney for the Commonwealth may designate any evidence or material as RDM 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) disclosure of the designated material may result in danger to the safety or security of a witness or victim, danger of a witness being intimidated or tampered with, or a risk of compromising an ongoing criminal investigation or confidential law enforcement technique.

(C) RDM may only be disclosed to the defendant's attorney, or to an expert witness. The defendant's attorney may orally communicate the content of RDM 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. RDM may not otherwise be reproduced, copied or disseminated in any way.

(D) If the Commonwealth designates evidence or material as RDM pursuant to paragraph 2(B) of this section, 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 may order that the evidence or material no longer be designated as RDM.

(E) Within twenty-one (21) days of the entry of a final order by the trial court, or upon the termination of the representation of the defendant, the defendant's attorney shall return to the court all originals and copies of any RDM disclosed pursuant to this order. The court shall maintain such returned RDM under seal. Any material sealed pursuant to this section shall 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.

(F) In any case in which a defendant is not represented by an attorney, the Commonwealth may file a motion seeking to limit the scope of discovery pursuant to this Order. 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.

### **Discovery by the Commonwealth**

It is further ORDERED that, unless otherwise provided by statute, no later than \_\_\_\_\_ calendar days before trial:

1. Reports of Examinations. The defendant shall permit the Commonwealth to inspect and copy or photograph any written reports of autopsy examinations, ballistics tests, fingerprint analyses, handwriting analyses, blood, urine and breath analyses, and other scientific testing within the defendant's possession, custody, or control that the defense intends to proffer or introduce into evidence at trial or sentencing.

2. Notice of Alibi. The defendant shall disclose to the Commonwealth whether the defendant intends to introduce evidence to establish an alibi, and, if so, disclose the place at which the defendant claims to have been at the time the alleged offense was committed.

3. Physical or Mental Examinations. The defendant shall permit the Commonwealth to inspect, copy or photograph any written reports of physical or mental examination of the defendant made in connection with this 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 shall be used by the Commonwealth in its

case-in-chief, whether the examination was conducted with or without the consent of the defendant.

4. Designation of Expert Witnesses. The defendant shall notify the Commonwealth in writing of the defendant's intent to introduce expert opinion testimony at trial or sentencing and to provide the Commonwealth with:

(A) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and the reasons for those opinions, and

(B) the witness's qualifications and contact information.

(C) Nothing in paragraphs 4(A) and (B) of this section shall render inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases and reasons disclosed, or the expert witness's qualifications, just because the further explanatory language was not included in the notice and disclosure provided pursuant to this order.

(D) Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code 19.2-187, signed by hand or electronic means by the person performing the analysis or examination, shall satisfy the requirements of paragraphs 4(A) and (B) of this section.

5. Witness List. The defendant shall provide to the Commonwealth a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the defendant at trial or sentencing. The defendant's attorney may redact the personal identifying information of any witness if so authorized by a protective order entered pursuant



to the provisions on protective orders contained herein.

### **Protective Orders**

Upon Motion of either party and for good cause, the court may enter a protective order with regard to the discovery or inspection required under this order. 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.

Should either party believe in good faith that the terms of a protective order entered by the court have been violated, such party may meet the court to enforce the order and to impose any necessary and appropriate sanction authorized by Virginia law.

### **Brady Material**

The Commonwealth acknowledges its obligations to promptly produce exculpatory material as required by *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Agurs*, 427 U.S. 97 (1976).

### **Giglio Material**

It is further ORDERED that, no later than five (5) calendar days before trial, the Commonwealth shall produce to the defendant the Giglio materials (*Giglio v. United States*, 405 U.S. 150 (1972)) for the witnesses who will testify in the Commonwealth's case in chief.

Counsel for the defendant may disclose the contents of said *Giglio* materials to his/her client but may not provide his/her client with said documents or reproductions thereof.

At the request of the Commonwealth and consistent with the ethical responsibilities of defense counsel, all *Giglio* materials and reproductions thereof shall be returned to the Commonwealth's Attorney's Office forthwith at the conclusion of the litigation of the case.

**Failure to Comply**

The duty of the parties to comply with this Order as well as the remedy for failing to comply are identified under Rule 3A:11(h).

**Additional Provisions**

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ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Judge, Circuit Court

We ask for this:

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Counsel for Defendant  
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\_\_\_\_\_  
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By: \_\_\_\_\_  
Commonwealth's Attorney's Office  
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(rev. 7/2022)