

HON. HEATHER PERRY
DISTRICT COURT JUDGE
TENTH JUDICIAL DISTRICT COURT
712 W. MAIN STREET, STE. 303
LEWISTOWN, MONTANA 59457
(406)535-8028

MONTANA _____ JUDICIAL DISTRICT COURT
_____ COUNTY

STATE OF MONTANA, Plaintiff, -vs- _____, Defendant.	Cause No. DC _____ OMNIBUS MEMORANDUM AND ORDER
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A Formal Omnibus Hearing was held in open court for the above-captioned matter on
_____ /the parties previously submitted Omnibus disclosures to the Judicial Assistant.

The State was represented by _____.

The Defendant was represented by counsel, _____.

The Defendant [was] [was not] present. Defendant [has] [has not] waived presence at hearing.

Defendant hereby requests, proof shall be made: ____ [to the Jury] ____ [to the Court]

1. GENERAL DISCOVERY FROM THE STATE

On a continuing basis, and as otherwise mandated under Montana law, the State shall provide the information, documents, and items within the prosecutor's possession or control in conformance with § 46-15-322, MCA, and as otherwise required by law.

_____ The State has made disclosure of all information, witnesses, and evidence in State possession or control as required by Montana law.

_____ The State has adopted an **open file policy** whereby the Defense is invited to arrange to review and photocopy the State's file, except attorney work product and information that is confidential as a matter of law.

_____ The State's policy is to produce discovery as it is received and to also produce supplemental discovery.

2. SPECIFIC DISCLOSURES BY THE STATE (§ 46-15-322(2) & § 44-15-107 MCA)

There [has] [has not] been any **electronic surveillance** of Defendant's communications.

There [has] [has not] been an **investigative subpoena** executed in this case.

There [has] [has not] been any **facial recognition technology** used in this case.

There [has] [has not] been an **unidentified informant** involved in the case.

If so, the informant [will] [will not] be called as a witness at trial.

If so, the Defendant [will] [will not] be provided the name and address of the informant.

The State [will] [will not] claim privilege of non-disclosure under Mont.R.Evid. 502.

If applicable, hearing on a Motion for Disclosure **must** be set.

3. STATE'S SPECIFIC DISCOVERY REQUESTED FROM DEFENDANT (§ 46-15-323, MCA)

Reserved or Applicable	Waived	
<input type="checkbox"/>	<input type="checkbox"/>	Appear in a Line-up
<input type="checkbox"/>	<input type="checkbox"/>	Speak for voice identification by witnesses
<input type="checkbox"/>	<input type="checkbox"/>	Be finger, palm, foot, or voice printed
<input type="checkbox"/>	<input type="checkbox"/>	Pose for photographs (not crime enactment)
<input type="checkbox"/>	<input type="checkbox"/>	Try on articles of clothing
<input type="checkbox"/>	<input type="checkbox"/>	Permit samples of blood, hair, saliva, urine, or other specified body materials
<input type="checkbox"/>	<input type="checkbox"/>	Provide handwriting samples
<input type="checkbox"/>	<input type="checkbox"/>	Reasonable physical or medical inspection not including psychiatric or psychological examination

4. STATE'S USE OF DEFENDANT'S PRIOR CRIMES, WRONGS, ACTS, AND CONVICTIONS

_____ The State's disclosure includes evidence of the Defendant's other crimes, wrongs, acts, and/or Montana Rules of Evidence Rule 404(b) evidence. The Defense is placed on notice that the State intends to utilize this evidence during the State's case in chief prosecution of this Cause, or in rebuttal. *State v. District Court of the Eighteenth Judicial District*, 2010 MT 263 ("Salvagni").

State [will] [will not] seek disposition of the accused as a **persistent felony offender**. Notice as required by statute to be filed within **30** calendar days of this order.

State [will] [will not] utilize prior convictions for establishing **jurisdiction**.

5. STATE’S USE OF FACT AND EXPERT WITNESSES (§ 46-15-322, MCA)

In addition to those witnesses already identified in the charging documents and discovery:

State **[will]** **[will not]** **[may]** utilize expert witnesses at trial.

In addition to discovery already provided, the State anticipates the following disclosures:

6. DEFENDANT’S USE OF EXPERT WITNESSES AT TRIAL (§ 46-15-323, MCA)

Defense **[will]** **[will not]** **[may]** utilize expert witnesses at trial.

7. DEFENSES OF CHARACTER EVIDENCE AND AFFIRMATIVE DEFENSES (§ 46-15-323(2), MCA)

Defendant **[will]** **[will not]** **[may]** introduce **character evidence**.

Defendant **[will]** **[will not]** **[may]** rely on a defense of **alibi**.

Defendant **[will]** **[will not]** **[may]** rely on a defense of **compulsion**.

Defendant **[will]** **[will not]** **[may]** rely on a defense of **entrapment**.

Defendant **[will]** **[will not]** **[may]** rely on defense of **justifiable use of force**.

Defendant **[will]** **[will not]** **[may]** rely on a defense of **mistaken identity**.

Defendant **[will]** **[will not]** **[may]** rely on a defense of **consent**.

Defendant **[will]** **[will not]** **[may]** rely on a defense that because of a **developmental disability, or mental disease or disorder**, the Defendant did not have a particular state of mind that is an essential element of the offense charged. Defense must comply with the statutory notice requirements.

Defendant **[will]** **[will not]** **[may]** assert a **lesser-included-offense** defense at trial.

8. DEFENDANT’S DISCLOSURE OF MOTIONS (§ 46-13-110, MCA)

8.1 MOTION TO SUPPRESS EVIDENCE ON GROUNDS OF:

Reserved or Applicable	Waived	
<input type="checkbox"/>	<input type="checkbox"/>	Illegal search and/or Illegal seizure
<input type="checkbox"/>	<input type="checkbox"/>	Illegal arrest
<input type="checkbox"/>	<input type="checkbox"/>	Improper use of a line-up/line-up photograph
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

8.2 MOTION TO SUPPRESS DEFENDANT’S ADMISSIONS OR CONFESSIONS ON GROUNDS OF:

Reserved or Applicable	Waived	
<input type="checkbox"/>	<input type="checkbox"/>	Confession obtained through delayed arraignment
<input type="checkbox"/>	<input type="checkbox"/>	Coercion or unlawful inducement/Involuntary
<input type="checkbox"/>	<input type="checkbox"/>	Violation of Miranda
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

8.3 MOTION FOR THE FOLLOWING RELIEF:

Reserved or Applicable	Waived	
<input type="checkbox"/>	<input type="checkbox"/>	Dismiss Information for failure to state an offense or Lack of probable cause
<input type="checkbox"/>	<input type="checkbox"/>	Dismiss Count(s) _____ of the Information on grounds of duplicity or double jeopardy
<input type="checkbox"/>	<input type="checkbox"/>	Dismiss for delay in prosecution
<input type="checkbox"/>	<input type="checkbox"/>	Sever Defendant for separate trial from Co-Defendants
<input type="checkbox"/>	<input type="checkbox"/>	Sever Count(s) _____ for separate trial
<input type="checkbox"/>	<input type="checkbox"/>	Take deposition(s) for testimonial purposes and not for discovery
<input type="checkbox"/>	<input type="checkbox"/>	Seek Change of Venue
<input type="checkbox"/>	<input type="checkbox"/>	Require the State to secure the appearance of individuals subject to State direction:
<input type="checkbox"/>	<input type="checkbox"/>	Inquire into reasonableness of Bail/Bail Hearing
<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

9. INITIAL WITNESS AND EXHIBIT DISCLOSURE DEADLINES

Witnesses in support of AFFIRMATIVE DEFENSES, including witnesses as to CHARACTER, shall be disclosed as to specific identification of all witnesses and to the Character of each identified individual, and identification of all witnesses specific to an identified affirmative defense.

The parties’ initial witness and exhibit disclosure deadline: _____

The parties’ expert witness disclosure deadline _____

The parties’ rebuttal expert witness disclosure deadline: _____

All expert disclosure(s) shall include name, contact information, and all written reports or statements together with the results of physical examinations, scientific tests, experiments, or comparisons, shall be provided to the opposing party as required by statute.

10. HEARING DEADLINE AND MOTION SCHEDULE

☒ All Motions must be filed with a supporting brief by the deadline established here **or the issue is waived.** § 46-13-101, MCA. In the event the trial date is rescheduled for any reason, the briefing schedule and hearing on pre-trial motions will not change without a Court Order.

☒ **Deadline to File Motion(s) and Supporting Brief.**

Motions & Briefs: _____

Response: _____

Reply: _____

☐ **Hearing on Motions to be scheduled at the** request of either party or if required by statute.

☐ **Hearing Date Set.**

A hearing on filed pre-trial motions will be held on _____

at _____ .m. The Hearing is docketed for no more than _____ hours. **If a Motion**

is not filed by the deadline for filing Motions, this hearing will automatically be vacated from the Court calendar.

10. TRIAL MATTERS

The jury panel, Jury Instructions, Trial Briefs, and Pretrial Motions will be determined following confirmation of the jury.

Other: _____

This Order is not a complete statement of disclosures required by statute.

ELECTRONICALLY SIGNED AND DATED BELOW.

Cc: Attorney _____

Attorney _____