STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 666 By: Smith of the Senate

and

Bass of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; creating the Oklahoma Criminal Discovery Code; providing short title and scope of code; providing for construction of code; granting defendant certain rights; requiring the state to make certain disclosures; requiring the defense to make certain disclosures; empowering the court to order sanctions for noncompliance; amending 22 O.S. 1991, Sections 258, 259, 761, 763, 764, 765, 766 and 767, which relate to preliminary examination, order of witnesses, notice, order and examination, affidavit and when examination not allowed; limiting certain evidence at preliminary hearing; limiting defendant's ability to call witnesses at preliminary hearing; authorizing bind-over order; allowing certain evidence in preliminary hearing; providing procedure for preliminary examination; providing for certain examination under certain conditions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2001 of Title 22, unless there is created a duplication in numbering, reads as follows:

Sections 1 and 2 of this act shall be known and may be cited as the "Oklahoma Criminal Discovery Code". The Oklahoma Criminal Discovery Code shall govern the procedure for discovery in all criminal cases in all courts in this state.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2002 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Disclosure of Evidence by the State.

1. Upon request of the defense, the state shall be required to disclose the following:

a. the names and addresses of witnesses which the state intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement;

b. law enforcement reports made in connection with the particular case;

c. any written or recorded statements and the substance of any oral statements made by the accused or made by a codefendant;

d. any reports or statements made by experts in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

e. any books, papers, documents, photographs, tangible objects, buildings or places which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused;

f. any record of prior criminal convictions of the defendant, or of any codefendant; and

g. OSBI rap sheet/records check on any witness listed by the state or the defense as a witness who will testify at trial, as well as any convictions of any witness revealed through additional record checks if the defense has furnished social security numbers or date of birth for their witnesses.

2. The state shall provide the defendant any evidence favorable to the defendant if such evidence is material to either guilt or punishment;

3. The prosecuting attorney's obligations under this standard extend to:

a. material and information in the possession or control of members of the prosecutor's staff,

b. any information in the possession of law enforcement agencies that regularly report to the prosecutor of which the prosecutor should reasonably know, and

c. any information in the possession of law enforcement agencies who have reported to the prosecutor with reference to the particular case of which the prosecutor should reasonably know.

B. Disclosure of Evidence by the Defendant.

1. Upon request of the state, the defense shall be required to disclose the following:

a. the names and addresses of witnesses which the defense intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement;

b. the name and address of any witness, other than the defendant, who will be called to show that the defendant was not present at the time and place specified in the information or indictment, together with the witness' statement to that fact;

c. the names and addresses of any witness the defendant will call, other than himself, for testimony relating to any mental disease, mental defect, or other condition bearing upon his mental state at the time the offense was allegedly committed, together with the witness' statement of that fact, if the statement is redacted by the court to preclude disclosure of privileged communication.

2. A statement filed under subparagraph a, b or c of paragraph 1 of subsection A or B of this section is not admissible in evidence at trial. Information obtained as a result of a statement filed under subsection A or B of this section is not admissible in evidence at trial except to refute the testimony of a witness whose identity subsection A of this section requires to be disclosed.

3. Upon the prosecuting attorney's request after the time set by the court, the defendant shall allow him access at any reasonable times and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made upon any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which:

a. the defendant intends to offer in evidence, except to the extent that it contains any communication of the defendant; or

b. is a report or statement as to a physical or mental examination or scientific test or experiment made in connection with the particular case prepared by and relating to the anticipated testimony of a person whom the defendant intends to call as a witness, provided the report or statement is redacted by the court to preclude disclosure of privileged communication.

C. Continuing Duty to Disclose.

If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under the Oklahoma Criminal Discovery Code, such party shall promptly notify the other party, the attorney of the other party, or the court of the existence of the additional evidence or material.

D. Time of Discovery.

Motions for discovery may be made at the time of the district court arraignment or thereafter; provided that requests for police reports may be made subject to the provisions of Section 258 of this title. All issues relating to discovery, except as otherwise provided, will be completed at least ten (10) days prior to trial. The court may specify the time, place and manner of making the discovery and may prescribe such terms and conditions as are just.

E. Regulation of Discovery.

1. Protective and Modifying Orders. Upon motion of the state or defendant, the court may at any time order that specified disclosures be restricted, or make any other protective order. If

the court enters an order restricting specified disclosures, the entire text of the material restricted 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.

2. Failure to Comply with a Request. 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 continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

3. The discovery order shall not include discovery of legal work product of either attorney which is deemed to include legal research or those portions of records, correspondence, reports, or memoranda which are only the opinions, theories, or conclusions of the attorney or the attorney's legal staff.

F. Reasonable cost of copying, duplicating, videotaping, developing or any other cost associated with this Code for items requested shall be paid by the party so requesting; however, any item which was obtained from the defendant by the state of which copies are requested by the defendant shall be paid by the state. Provided, if the court determines the defendant is indigent and without funds to pay the cost of reproduction of the required items, the cost shall be paid by the Indigent Defender System, unless otherwise provided by law.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 258, is amended to read as follows:

Section 258. First: The witnesses must be examined in the presence of the defendant, and may be cross-examined by him. On the request of the district attorney, or the defendant, all the testimony must be reduced to writing in the form of questions and answers and signed by the witnesses, or the same may be taken in shorthand and transcribed without signing, and in both cases filed with the clerk of the district court, by the examining magistrate, and may be used as provided in 22 O.S. 1951, Section 333. In no case shall the county be liable for the expense in reducing such

testimony to writing, unless ordered by the judge of a court of record.

Second: The district attorney may, on approval of the county judge or the district judge, issue subpoenas in felony cases and call witnesses before him and have them sworn and their testimony reduced to writing and signed by the witnesses at the cost of the county. Such examination must be confined to some felony committed against the statutes of the state and triable in that county, and the evidence so taken shall not be receivable in any civil proceeding. A refusal to obey such subpoena or to be sworn or to testify may be punished as a contempt on complaint and showing to the county court, or district court, or the judges thereof that proper cause exists therefor.

Third: No preliminary information shall be filed without the consent or endorsement of the district attorney, unless the defendant be taken in the commission of a felony, or the offense be of such character that the accused is liable to escape before the district attorney can be consulted. If the defendant is discharged and the information is filed without authority from or endorsement of the district attorney, the costs must be taxed to the prosecuting witness, and the county shall not be liable therefor.

Fourth: The convening and session of a grand jury does not dispense with the right of the district attorney to file complaints and informations, conduct preliminary hearings and other routine matters, unless otherwise specifically ordered, by a written order of the court convening the grand jury; made on the court's own motion, or at the request of the grand jury.

Fifth: There shall be no preliminary examinations in misdemeanor cases.

Sixth: A preliminary magistrate shall have the authority to limit the evidence presented at the preliminary hearing to that which is relevant to the issues of: (1) whether the crime was committed, and (2) whether there is probable cause to believe the defendant committed the crime. Once a showing of probable cause is made the magistrate shall terminate the preliminary hearing and

enter a bindover order; provided, however, that the preliminary hearing shall be terminated only if the state made available for inspection law enforcement reports within the prosecuting attorney's knowledge or possession at the time to the defendant five (5) working days prior to the date of the preliminary hearing. In the alternative, upon agreement of the state and the defendant, the court may terminate the preliminary hearing once a showing of probable cause is made.

Seventh: The purpose of the preliminary hearing is to establish probable cause that a crime was committed and probable cause that the defendant committed the crime.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 259, is amended to read as follows:

Section 259. When the examination of the witnesses on the part of the state is closed, any witnesses the defendant may produce ~~must~~ may be sworn and examined upon proper offer of proof made by defendant and if such offer of proof shows that additional testimony is relevant to the issues of a preliminary examination.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 761, is amended to read as follows:

Section 761. When a defendant has been held to answer a charge for a public offense, ~~he~~ the defendant or the State of Oklahoma may either before or after indictment or information, have witnesses examined conditionally on his behalf as prescribed in this article, and not otherwise.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 762.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

Where the magistrate terminated the preliminary hearing pursuant to Section 258 of Title 21 of the Oklahoma Statutes and a witness subsequently refuses an interview with counsel for the opposing party, the defendant or the State of Oklahoma may apply for an order that the witness be examined conditionally.

SECTION 7. AMENDATORY 22 O.S. 1991, Section 763, is amended to read as follows:

Section 763. The application must be made upon affidavit stating:

First. The nature of the offense charged.

Second. The state of the proceedings in the action.

Third. The name and residence of the witness, and that his testimony is material to the defense of the action.

Fourth. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial, or that the magistrate terminated the preliminary hearing pursuant to Section 258 of this title and that the witness refuses to grant an interview to counsel regarding the material issues for trial.

SECTION 8. AMENDATORY 22 O.S. 1991, Section 764, is amended to read as follows:

Section 764. The application may be made to the court or to a judge thereof, and must be made upon five (5) days notice to the ~~district attorney~~ counsel for the opposing party, if any.

SECTION 9. AMENDATORY 22 O.S. 1991, Section 765, is amended to read as follows:

Section 765. If the court or judge is satisfied that the examination of the witness is necessary an order must be made that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on ~~the district attorney~~ counsel for the opposing party within a specified time before that fixed for the examination.

SECTION 10. AMENDATORY 22 O.S. 1991, Section 766, is amended to read as follows:

Section 766. The order must direct that the examination be taken before a magistrate named therein~~; and on proof being furnished to such magistrate, of service upon the district attorney of a copy of the order, if no counsel appear on the part of the people, examination must proceed~~ or upon agreement of both the state and defendant before a certified court reporter. The defendant must be present for the examination to proceed, unless the presence of the defendant is waived by both parties.

SECTION 11. AMENDATORY 22 O.S. 1991, Section 767, is amended to read as follows:

Section 767. If the district attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate by affidavit or other proof, or on examination of the witness, that he is not about to leave the state, or is not sick or infirm, or that the application was made to avoid the examination of the witness on trial, or that the preliminary hearing was not terminated pursuant to Section 258 of this title and that the witness is not refusing to grant an interview to counsel, the examination cannot take place; otherwise, it must proceed.

SECTION 12. This act shall become effective September 1, 1994.

44-2-2735 NP