

STEVEN A. WUTHRICH (6055)  
Assistant Attorney General  
SEAN D. REYES (7969)  
Utah Attorney General  
5272 South College Drive, Suite 200  
Murray, Utah 84123  
Telephone: (801) 281-1200  
Email: [swuthrich@agutah.gov](mailto:swuthrich@agutah.gov)

*Attorney for the Plaintiff*

| 3RD DISTRICT COURT<br>SALT LAKE COUNTY, STATE OF UTAH                                       |                                                                                                                                                            |
|---------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| STATE OF UTAH,<br><br>Plaintiff,<br><br>v.<br><br>JASON CHRISTOPHER HALL,<br><br>Defendant. | <b>REPLY MEMORANDUM IN SUPPORT<br/>OF GOOD CAUSE DISCLOSURE ORDER</b><br>(Oral Argument requested)<br><br>Case No.: 221906445<br><br>Judge: PAUL B. PARKER |

STATE OF UTAH, through Steven A. Wuthrich, Assistant Attorney General, hereby files the State's Reply to its Motion for Good Cause Discovery Order from the defense.

The defendant objects to the State's Request for and Order of Good Cause Disclosures citing *State v Spry*, arguing that good cause is required for the State's Motion for Good Cause Discovery Order. The reasoning of *Spry* was that since the rule provided for basic discovery for both sides, any discovery over and above that should require a showing of materiality.

Rule 16 employs essentially the same phraseology for both the prosecution and the defense, requiring disclosures from both sides of "any other item of evidence which the court determines on good cause shown should be made available to [the

other side] in order for [the other side] to adequately prepare [its case].” Utah R. Crim. P. 16(a)(5), (c). These discovery requirements parallel each other and it is only logical that the standard of good cause required of one is the standard of good cause required of the other.<sup>6</sup> The reasoning behind the adoption of the *Mickelson* standard of “good cause” applies equally as well in protecting a defendant from “irrelevant and vexing discovery requests” from the prosecution, as it does in protecting the prosecution from such requests from the defense.

¶ 24 Applying the *Mickelson* standard of “good cause” to the instant case, we cannot say the trial court abused its discretion in granting the State's motion for discovery. All of the State's requested disclosures were material, as they involved information on witnesses and documents which Defendant intended to use at trial.<sup>7</sup>

*State v. Spry*, 2001 UT App 75, 21 P.3d 675, 679. However, *Spry* was decided in 2001.

Utah amended Rule 16 effective October, 2022. Under the amended Rule the State is obliged to provide discovery without any request by the defendant<sup>1</sup> and the defendant is not obliged to provide anything except for alibi disclosures prior to 14 days before trial or “as soon as practicable before trial.” The latter phrase is undefined and entirely open ended. For example, in this case defense counsel asserted there were witnesses to the assault on the councilman at the “Old West Days” event at the Bluffdale City Park that would controvert Mr. Gaston’s version of events. Originally defendant’s counsel agreed to provide those witnesses but later declined.

The State interviewed “Old West Day” witness, Wayne Mortimer and provided a recording thereof to defense. Within a week Mr. Mortimer was confronted by one Linda Crane who stated that there were witnesses that controverted his statements, and challenged his accuracy. Upon questioning by the State’s investigator, she too refused to disclose the names of the alleged witnesses and said she would only tell the defense. This all occurred well more than

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<sup>1</sup> The Rule has subsequently been amended yet again, effective May 2, 2023, to change the requirements of the State to mandatory disclosure of all evidence relevant to the Information and additional disclosure requires a request by defendant.

three months ago. If there are such witnesses, While the defense may argue it is not obligated to disclose any witness until it has formulated a concrete “intent” to use said witnesses at trial, this perpetuates a problematic procedure whereby trial is set, defense witnesses disclosed, followed by an immediate motion to continue by the State to interview witnesses. The defense may then assert the witnesses won’t talk to the State, but that is a matter for the State to pursue and discover on its own, not be left at the mercy of the defense to represent.

In this case the State provided its original disclosures on 7-19-22 (Certificate of Service of State of Utah’s Mandatory Disclosures, ECF No. 9) and supplemented discovery 11 times thereafter (ECF Nos. 11, 16, 18, 26, 29, 33, 47, 75, 79, 89 and 122). As witnesses were interviewed and 1102’s signed the State provided same to defendant. The defense was unhappy with the quality of the pictures of the threat letter, so the State provided defendant an opportunity to take pictures of the evidence himself.

The defense provided a copy of the transcript it had made of the Hall apology to Gaston at the Old West Days Park but did so only at 7:40 am the morning of Preliminary Hearing, (February 14, 2023) despite having obtained the transcript on or about January 26, 2023. No witnesses, no exhibit, and no experts have been disclosed by the defense. Without a disclosure order in place the State gets no notice of witnesses, exhibits, or potential experts at a meaningful time, i.e., at a time when the State can subpoena rebuttal witnesses, interview the defense witnesses, or file a motion with respect to any such disclosure. The absence of meaningful expert witness disclosure poses problems for any Daubert objection or evidentiary hearing.

The *Spry* Court observed that “good cause” in the criminal discovery context meant:

This court reasoned that this standard of “good cause” optimally balances the rights and obligations of parties in criminal litigation and ... allows a defendant ample

access to evidence in the State's possession, by requiring, as the only prerequisite to discovery, that the court be apprised of the information's materiality to the case.

Nonetheless, by requiring defendants to make this preliminary showing of materiality, *Cannon* also effectively protects the State and the court from irrelevant and vexing discovery requests. Thus, the trial can be conducted with a minimum of unnecessary delay, while still *allowing both parties a maximum of necessary preparation*.

[emphasis added]

The request of the State seeks to balance the equities of the parties by requiring basic disclosure of witnesses, exhibits, and experts that the defense intends or may use at trial or any other hearing. The State has already made disclosures months ago, so parity is not what is sought. Rather reasonableness is the heart of the request. From experience in the case, the city officials will not cooperate and likely will object to any subpoena.

The State cannot even subpoena rebuttal witnesses with only a 14-day disclosure. U.R.C.P. Rule 45 (a)(1)(E).

To avoid motions for continuance and or to strike, the court should set a deadline for disclosure of witnesses well in advance of a reciprocal discovery deadline that assures meaningful disclosure by the defense and a schedule of deadlines that will keep the trial setting without unnecessary disruptions.

Finally, while the defense has accused the State of withholding discovery they do not specify, and such non-disclosure and the State is unaware of any. The State has been both forthcoming but also timely in disclosing all materials in their possession. If the defense believes anything has not been provided, they have not requested same to the State's counsel.

The Court should grant the State’s request and set guidelines for defense disclosure to meet the “as soon as practicable” standard of disclosure and preserve orderly process in preparing for trial. Oral argument is requested.

DATED: March 21<sup>st</sup>, 2023

SEAN D. REYES  
Utah Attorney General

/s/ Steven A. Wuthrich  
STEVEN A. WUTHRICH  
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing to defense counsel through the court’s E-filing system.

D. LOREN WASHBURN  
lwashburn@atllp.com  
TRINITY JORDAN  
tjordan@atllp.com  
AARON CLARK  
aclark@atllp.com  
JACOB LEE  
jrlee@atllp.com  
*Attorneys for Defendant*

DATED: March 21<sup>st</sup>, 2023

/s/ Martina Hinojosa  
MARTINA HINOJOSA  
Paralegal