

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA, Plaintiff, vs. WILLIAM BEEMAN, Defendant.	No. FECR000000 RESISTANCE TO HEARING ON MOTION FOR NEW TRIAL - REQUEST FOR SCHEDULING CONFERENCE – MOTION TO PRODUCE
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COMES NOW the State of Iowa by and through Muscatine County Attorney James P. Barry and Special Assistant Alan Ostergren and in support of their Resistance to Motion for New Trial Hearing, Scheduling Conference, and Motion to Produce, states as follows:

I. Motion for DNA Testing

The Defendant has requested that the Court enter an order for DNA testing in this case and the State of Iowa has filed a Resistance, the Defendant has filed their Reply and the State has filed a Supplemental Answer. On August 6, 2019, the Court entered an order and granted in part the Defendant's request to "search for relevant evidence in the record" and then for the parties to submit proposed order to the Court that was in compliance with the Court's order.

Subsequent to the order from August 6, 2019, the Court entered an order for discovery on August 8, 2019 that listed the items that the Defendant and State agreed upon. Subsequent to that order there were additional hearings before the Court on October 24, 2019 and December 19, 2019. During this same timeframe, the State produced most of the evidence that was requested, and which they had in their custody, but not everything to which the Defendant feels they are entitled, which has subsequently requested by the Defendant and/or which is not mentioned in the Court's Discovery Order of August 8, 2020.

On February 5, 2020 the Defendant filed their Motion to Compel and that matter was then joined by the Attorney General's Office, on behalf of the Department of Criminal Investigation, and who therein resisted the request for the Defendant's investigator to inspect certain evidence contained in a box and then evidence rooms at several State locations.

On the other hand, if the Defendant is now withdrawing their Motion for DNA Testing, then they need to state so to the Court. If not, then the resolution of the Motion to Compel needs to first be determined by the Court. Thereafter the Motion for DNA Testing can be addressed with a full

understanding of the evidence that actually exists and then as may be limited or restricted by law.

II. Motion to Compel

The hearing set earlier on the Defendant's Motion to Compel was continued from April 28, 2020, by Order dated April 16, 2020, due to the pandemic. As the court can see from the filings, there are matters that are not yet fully resolved and that must be addressed by the Court in advance of ruling on the Motion for DNA Testing or the most recently filed Defendant's Motion for New Trial. These include, but are not limited to the Attorney General's Reply to Motion to Compel and then the effort by the Defendant to expand the parameters of the discovery order previously issued by the Court to include subpoenas for depositions etc. which were not previously ordered or agreed upon by the parties. Due to the Attorney General's filing, they should also be permitted herein to participate as they deem necessary and if their interests conflict with the County Attorney's Office.

By way of clarification, the State is preparing to send copies of any photos it has in its possession and will submit these in the coming days so that it will have provided the Defendant with all requested evidence and/or evidence it has in its possession.

III. Motion for New Trial

The Defendant filed their Motion for New Trial on June 9, 2020 and has now requested the matter be set for hearing on August 3, 2020 and then along with their Motion to Compel. The Muscatine County Attorney and the Attorney General's Office did not agree to that date, when requested by Defendant's counsel this week and as is implied in the proposed order, and the Court has already signed the Order for Hearing on EDMS system with the apparent belief that the State had agreed. For purposes of clarification, the State has not agreed to the Court hearing the actual motion and/or the hearing date of August 3, 2020 and must be given an opportunity to respond to and/or resist the Motion.

Iowa Rule of Criminal Procedure 2.24(2) (e) requires such a motion to be heard within thirty (30) days, unless good cause is shown. Aside from whether the motion was timely or appropriately filed, the Defendant has not alleged "good cause" in its Motion or even addressed this timeframe under the rules associated with the timely hearing of such a motion.

Iowa Rule of Criminal Procedure 2.24(2) (b) (8) also requires a showing of 'good cause' for the late filing of the Motion for New Trial and then based upon the discovery of new evidence. As for the other subsections listed, the

timeframe to respond has passed and/or these matters have been previously addressed by the Court in post-conviction cases already filed by the Defendant.

Given the contents or lack thereof of the New Trial Motion, current pandemic, lack of final rulings on the two (2) previously filed motions, need for an in-person hearing, need for discovery by the State of records in the Defendant's possession and the time needed by the State to resist the new filing once these matters are all completed, the State believes good cause exists and hereby requests that the Court move the hearing on the Motion for New Trial to a later date and then outside thirty (30) days.

Further, that the parties establish, with the Court's assistance in a scheduling conference, a timeline for responding to the Motion, any related hearings required prior to a final hearing and a final hearing, if necessary, once the previous two (2) motions filed by the Defendant are fully resolved and the related matters and discovery are completed.

By way of clarification, if the Defendant is withdrawing the previous two (2) motions and wants to proceed directly to the Motion for New Trial then they should so state on the record and the parties can meet with the Court

and establish the requested schedule relating to the New Trial Motion once discovery is completed.

IV. State's Motion to Produce.

As a result of the recent filing by the Defendant herein, the State hereby requests that the Court enter an order for production of all documents, not otherwise subject to non-disclosure, by the Defendant herein and to aid the State in its review of the previously filed defense motions and the New Trial Motion and to allow and prepare relating filings. As the State is not fully aware of what the Defendant has secured, the State requests that the complete set of records be provided.

As set forth in the Motion for New Trial, the defendant has previously filed an application for postconviction relief. He has therefore waived the attorney-client privilege with his trial attorneys David Newell and Douglas Johnston. In addition, the defendant's motion puts at issue what his attorneys knew or did not know before trial. He cannot therefore resist investigation and discovery into their conduct of his defense. See, *State v. Tate*, 710 N.W.2d 237 (Iowa 2006), *Johnson v. State*, 860 N.W.2d 913 (Iowa Ct. App. 2014), Restatement (Third) of the Law Governing Lawyers § 80 (2000).

If the Defendant believes that any records are confidential or not subject to disclosure, the State requests that the documents be identified by name or otherwise and that the Court conduct an in camera review of any documents and either order their release or that they are deemed protected or confidential to assure a full and complete disclosure.

V. Protection of Parties Rights and Remedies.

The State submits to the Court that the aforementioned process and development of the case are necessary in order to protect the parties' respective rights to discovery, responsive pleadings, any related hearings and to allow the parties the opportunity to fully and fairly address all related matters and court rulings as the matter progresses and prior to a final ruling on the Defendant's Motion for New Trial.

WHEREFORE, the State of Iowa respectfully requests the following:

1. The hearing date of August 3, 2020, as it relates to the Motion for New Trial, be reset and then for "good cause" as allowed by rule and beyond thirty (30) days (which the Defendant has already requested);
2. That the Court hear and make final or appropriate rulings on the Defendant's Motion for DNA testing and the Motion to Compel and once the motions are resolved and evidence exchanged, as requested

herein, that the State be allowed to prepare and file a resistance to the Motion for New Trial before final hearing and such resistance determined by the Court.

3. That the Iowa Attorney General's Office be allowed to participate in-person herein as may be required or necessary to protect their interests and given the fact that they have filed their own responsive pleading.
4. Subsequent to the ruling on the first two (2) motions that the Defendant make an appropriate showing of "good cause" to support their untimely filing of their New Trial Motion and as is required by rule;
5. Subsequent to the ruling on the first two (2) motions, the Defendant's showing of good cause and the filing of the State's resistance, that a scheduling conference, if necessary, be set-up for the Motion for New Trial.
6. That after these matters have been completed and if required, that a final hearing be set on the Motion for New Trial.
7. The State further requests copies of all records in the possession of the Defendant relating to this matter and for purposes of responding to the several motions filed herein by the Defendant. The Defendant has

gained access to records that are not in the possession of the State of Iowa and included some of them in their several filings. A complete copy of these records and any related matters not mentioned or otherwise used by the Defendant should be considered by the parties and ultimately the Court to assure a full and fair opportunity to prepare for any hearings and for the Court to consider the motions filed herein and at any final hearing.

8. Any such other matters as are just an necessary herein as may be ordered by the court

/s/ James P. Barry

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