

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,)	
)	
<i>Plaintiff,</i>)	SECOND DIVISION
)	
vs.)	
)	
_____,)	NO(s).
)	
<i>Defendant.</i>)	

INITIAL SCHEDULING ORDER

This cause came before the Court upon the initial status conference relating to the Defendant in the above causes(s). For the efficient management of the Court’s dockets and of this case, and for other good cause shown, the Court hereby orders as follows pursuant to the Tennessee Rules of Criminal Procedure, as well as Local Rule of Criminal Procedure 1:

I. MAIN STATUS CONFERENCE:

The Main Status Conference in this case shall be held on **[date]**.

At that time, the Court will schedule an evidentiary hearing to resolve any contested Rule 12 motions. If no such motions have been filed, the Court anticipates setting the case for plea or for trial.

If the parties wish to schedule an earlier conference for status or resolution, the Court will certainly accommodate any request.

II. MOTIONS:

1. FILING OF RULE 12 MOTIONS:

On or before **[date]**, the parties shall file all motions required to be filed prior to trial pursuant to Tenn. R. Crim. P. 12(b)(2), as well as all motions relating to discovery.

2. Compliance with Tenn. R. Crim. P. 47:

The Court respectfully requests that any motions filed comply with the particularity requirement established by Tenn. R. Crim. P. 47. The Court believes that, pursuant to Rule 47, a motion should identify:

- factual allegations that are sufficiently definite to enable the Court “to determine whether a substantial claim has been presented”;¹
- the legal grounds that justify the relief requested in terms apart from legal conclusions,² and a statement as to *why* the legal grounds would result in the requested relief being granted;³ and
- if the motion is one seeking to suppress evidence, the particular items that are sought to be suppressed.⁴

The Court certainly does not anticipate any issues with respect to motions filed. However, the parties are respectfully placed on notice that motions which do not comply with Rule 47 may be struck by the Court and not scheduled for hearing.⁵

¹ See *State v. Wooden*, 478 S.W.3d 585, 594 (Tenn. 2015) (concluding that Rule 47 requires motions, “at a minimum,” to “state with particularity the factual allegations on which the claim for relief” is based); *State v. Jefferson*, 938 S.W.2d 1, 9 (Tenn. Crim. App. 1996) (“The motion in this case contains bare allegations of law. It does not contain any factual allegations. Thus, it would be impossible for a trial court to review the motion and determine if a substantial issue existed and an evidentiary hearing was warranted.”); *State v. Bell*, 832 S.W.2d 583, 588 (Tenn. Crim. App. 1991) (recognizing that, “in order to receive a hearing upon such a motion, the motion must be sufficiently definite to enable the trial court to determine whether a substantial claim has been presented.”).

² See *State v. Lynch*, No. C.C.A. 1153, 1988 WL 53334, at *2 (Tenn. Crim. App. May 26, 1988) (recognizing, with respect to motion alleging “the “out-of-court identification procedure was so suggestive as to give rise to a very substantial likelihood of irreparable misidentification,” that “[t]he conclusory allegation contained in the defendant’s motion to suppress does not comport with Rule 47.”); *State v. Lord*, No. 03C01-9312-CR-00391, 1995 WL 491015, at *6 (Tenn. Crim. App. Aug. 17, 1995) (finding non-compliance with Rule 47 when motion alleged that “[t]he argument of the state was improper”); *State v. Gauldin*, 737 S.W.2d 795, 797-98 (Tenn. Crim. App. 1987) (finding a violation of Rule 47’s particularity requirement when the grounds for relief were identified as being, “[t]he instructions given by the court to the jury were unclear and confusing.”).

³ See *Willis v. Tennessee Dep’t of Correction*, 113 S.W.3d 706, 709 (Tenn. 2003) (“For the purposes of a Tennessee Rule of Civil Procedure 12.02(6) motion, the moving party must state in its motion *why* the plaintiff has failed to state a claim for which relief can be granted.” (emphasis added)). Although *Willis* relies upon Tenn. R. Civ. P. 7.02, the Supreme Court’s analysis in this case is persuasive given that the Rules of Criminal Procedure expressly adopt the particularity requirement set forth in Tenn. R. Civ. P. 7.02. See Tenn. R. Crim. P. 47, Adv. Comm’n Cmt. (“Rule 47(c)(1) therefore adds the word ‘particularity’ to the required content of any motion. This is essentially the requirement of motions in civil practice.” (citing Tenn. R. Civ. P. 7.02(1))).

⁴ See *State v. Bell*, 832 S.W.2d 583, 588 (Tenn. Crim. App. 1991) (“That document did not inform the court which items appellant sought to suppress.” (citing *State v. Johnson*, 705 S.W.2d 681 (Tenn. Crim. App. 1985))).

⁵ See *State v. Bell*, 832 S.W.2d 583, 588 (Tenn. Crim. App. 1991) (recognizing that, “in order to receive a hearing upon such a motion, the motion must be sufficiently definite to enable the trial court to determine whether a substantial claim has been presented.”); *State v. Davidson*, 606 S.W.2d 293, 296 (Tenn. Crim. App. 1980) (“[T]he trial court is not required to conduct an out-of-jury-hearing during trial unless counsel can show by specificity in his motion to suppress the identification a substantial likelihood of a constitutional violation. In other words, a general objection would require no hearing.”); see also *State v. Marine*, No. 163, 1991 WL 6410, at *4 (Tenn. Crim. App. Jan. 28, 1991) (“The motions filed by the defendants in the case sub judice do not comport with the standards enunciated in Rule 47 and our decision in [*State v. Davidson*, 606 S.W.2d 293, 296 (Tenn. Crim. App. 1980)]; and the defendants were not entitled, as a matter of law, to an evidentiary hearing.”); *State v. Fuqua*, No. 01-C-019003-CC-00076, 1991 WL 63685, at *2 (Tenn. Crim. App. Apr. 26, 1991) (“Thus, before an accused is entitled to an evidentiary hearing, the motion “must be sufficiently definite, specific, detailed and non-conjectural, to enable the court to conclude a substantial claim . . . [is] presented.” (quoting *State v. Davidson*, 606 S.W.2d 293, 297 (Tenn.

3. SETTING OF MOTIONS:

Except for motions to withdraw from a representation, all motions filed in this case shall be placed on the docket for the Main Status Conference, and no motion will otherwise appear on the docket prior to that time. However, if a party requests a hearing date on any motion prior to the Main Status Conference, the Court will certainly accommodate the request.

4. MOTIONS RELATING TO DISCOVERY:

All motions seeking sanctions, including dismissal or exclusion of evidence, based upon a failure to provide discovery⁶ must certify that the party seeking the sanction has undertaken efforts in good faith (i) to identify the requested discovery for the producing party; and (ii) to resolve the dispute prior to the filing of the motion.⁷ Please note that the absence of such a certification may result in a denial of the motion.

III. DISCOVERY:

1. STATE'S DISCOVERY OBLIGATIONS:

On or before **[date]**, the State shall furnish the Defendant with the following:

- a. all information or material discoverable by the Defendant pursuant to Tenn. R. Crim. P. 16;
- b. a copy of the arrest and/or incident report of any law enforcement agency involved in the investigations or prosecution of the above-captioned matter(s);
- c. a list of all witnesses the State intends to use in the above captioned matter(s); and
- d. any information otherwise favorable to the accused, irrespective of its potential admissibility at trial, including both evidence deemed to be exculpatory in nature and evidence that could be used to impeach the State's witnesses, including the details of any agreement entered into between the State and any prosecution witness that could conceivably influence the witness's testimony.

Crim. App. 1980)); *State v. Stube*, No. 01-C-019104-CR-00123, 1992 WL 18385, at *5 (Tenn. Crim. App. Feb. 6, 1992) (citing Rule 47 and observing that “[w]hen, as here, the issue does not advise the trial court or opposing counsel of the basis of the error or irregularity, the issue should not have been considered by the trial court . . .”).

⁶ Because allegations relating to the loss of evidence may unduly lengthen a case if not identified early, one significant purpose of this Order is to identify *Ferguson* issues, in particular, by the motion-filing deadline. *See, e.g., State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999); *State v. Merriman*, 410 S.W.3d 779 (Tenn. 2013).

⁷ *See* Local Rule 6 (“Before filing a motion to compel discovery, counsel shall seek to resolve each discovery dispute with adverse counsel.”).

2. DEFENDANT’S DISCOVERY OBLIGATIONS:

- a. On or before **[date]**, the Defendant shall furnish the District Attorney General’s office with all material discoverable by the State pursuant to Rules 16 and 12.1 of the Tennessee Rules of Criminal Procedure; as well as any notice(s) required by Tenn. Code Ann. § 39-11-505 or Tenn. Code Ann. § 39-11-204(c).
- b. On or before **[date]**, the Defendant shall make all disclosures properly requested or otherwise subject to disclosure pursuant to Tenn. R. Crim. P. 12.2.

IV. MODIFICATION OF SCHEDULING ORDER:

1. BY THE COURT:

The Court may modify this Order upon its own motion or that of a party showing good cause for the modification. Please note that a failure to take action due to inattention or neglect shall not constitute good cause for modification of this Order.

2. BY THE PARTIES:

The parties may, by mutual agreement and without formal approval of the Court, modify the established schedule regarding the filing of Rule 12(b)(2) motions and the provision of discovery, so long as:

- a. the parties have filed any motions required to be filed by this Order no later than the Friday before to the Status Conference; and
- b. the Parties have met all discovery obligations set forth by this Order no later than the Friday before to the Status Conference; provided that, an agreed extension of the discovery deadline shall not relieve a party of the duty to file any Rule 12(b)(2) motions either by the date set forth in this Order or by the date otherwise mutually agreed to by the parties.

Absent any mutual agreement, however, the schedule otherwise established by the Court in this Order shall govern the proceedings.

It is so ordered.

Enter, this the ____ day of _____, 20 ____.

TOM GREENHOLTZ, Judge