

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,

*Plaintiff,*

vs.

ARTERRIUS ALLEN, ET AL.

*Defendants.*

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

SECOND DIVISION

NO(s). 305636 - 305690

FILED IN OFFICE  
2018 SEP 26 AM 9:19  
VINCE DEBIALECKI

**CASE MANAGEMENT ORDER**

This cause came before the Court on September 26, 2018, upon arraignment of a majority of the individual cases above. On August 14, 2018, the Hamilton County Grand Jury returned a superseding presentment in each of these cases (collectively “*Allen Cases*”).<sup>1</sup> Upon the filing of this superseding presentment, the Court ordered that the previously-entered April 27, 2018 Case Management Order would continue to govern proceedings in the *Allen Cases* until further order of the Court. The Court now intends that this September 26, 2018 Case Management Order shall govern *all* proceedings with respect to the *Allen Cases*.

Pursuant to Tenn. R. Crim. P. 8, the *Allen Cases* are presently consolidated for all purposes, including for purposes of discovery, motion litigation, and trial. The complexity of the consolidated case, both substantively and procedurally, requires that specific measures be established to ensure the timely and efficient resolution of issues arising in this individual case, as well as with respect to the overall larger proceedings.

The Court respectfully requests the patience and understanding of the parties for the additional procedures and information required by this Order that may not be necessary in other, more typical cases.

Accordingly, for the efficient management of the Court’s dockets and of the *Allen Cases*, 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:

---

<sup>1</sup> Where arraignment has not yet taken place in individual cases, this Case Management Order shall be effective in those cases immediately upon arraignment. The Clerk is respectfully requested to file this Order in each of the cases identified above, irrespective of whether arraignment has yet occurred.

## TABLE OF CONTENTS

<b>I.</b>	<b>Status Conference Dates.....</b>	<b>3</b>
	A. Interim Status Conference.....	3
	B. Appearances and Written Waivers of Appearance .....	3
	C. Main Status Conference .....	3
	1. Date .....	3
	2. Proceedings.....	3
<b>II.</b>	<b>Discovery.....</b>	<b>4</b>
	A. State’s Discovery Obligations.....	4
	B. Defendant’s Discovery Obligations.....	5
	C. Filing of Notice of Provision of Discovery.....	5
	1. Need for Special Discovery Filings .....	5
	2. Contents of Notice of Provision of Discovery .....	5
<b>III.</b>	<b>Motions.....</b>	<b>6</b>
	A. Filing of Pre-Trial Motions.....	6
	B. Identification of Motions and Responses.....	6
	1. Need For Special Captioning of Motions .....	6
	2. Requirements for Captioning of Motions .....	6
	3. Examples.....	6
	C. Docketing of Motions .....	7
	1. Generally.....	7
	2. Joinder in Motions Filed By Other Parties .....	8
	3. Responses to Motions .....	9
	4. Party’s Presence (or Waiver Thereof) at Motion Hearings .....	9
	D. Discovery Motions.....	9
	E. Compliance with Tenn. R. Crim. P. 47.....	10
	1. Generally.....	10
	2. Non-Compliance with Rule 47 .....	10
<b>IV.</b>	<b>Service of Motions and Other Documents Filed with the Criminal Court Clerk.....</b>	<b>11</b>
	A. Need for Special Procedures for the Consolidated Case .....	11
	B. Service of Filed Documents Through the Court and the Criminal Court Clerk .....	11
	1. Generally.....	11
	2. Electronic Scanning and Service .....	11
	3. Subject Line of Served Papers .....	12
	C. Counsel’s Duty to Maintain Current Contact Information .....	12
	D. Invalid Email Addresses .....	12
	1. Notice of Invalid Email Address.....	12
	2. Counsel’s Updating of Information .....	12
	3. Counsel’s Examination of the Record .....	12
	4. Neglect.....	13
	E. Effect of Severance of Cases .....	13

V.	<b>Filing of Special Notices.....</b>	<b>13</b>
	A. Notice of Enhanced Punishment.....	13
	B. Notice of Affirmative Defenses.....	13
VI.	<b>Modification of Case Management Order.....</b>	<b>14</b>

**I. STATUS CONFERENCE DATES**

**A. INTERIM STATUS CONFERENCE**

Apart from the other dates established in this Case Management Order, the parties shall appear personally in open court on **November 26, 2018 at 10:30 a.m.**

The purpose of this interim status date is to permit the Court to ascertain the status of the individual cases and of the overall consolidated case.

**B. APPEARANCES AND WRITTEN WAIVERS OF APPEARANCE**

In lieu of appearing personally at an interim status date, a party may execute a written Waiver of Appearance to be filed by legal counsel on or before that interim status date.

Unless a Waiver of Appearance has been submitted as permitted herein, a party's non-appearance at an interim status date may result in the issuance of a bench warrant for the party's arrest.

**C. MAIN STATUS CONFERENCE**

**1. Date**

This case shall be scheduled for a Main Status Conference, along with all other cases as part of the overall consolidated case, on **January 28, 2019 at 10:30 a.m.**

**2. Proceedings**

During the Main Status Conference, the Court will schedule a hearing to determine contested Rule 12 motions that have not been previously set or

resolved. If no outstanding Rule 12 issues remain, the Court anticipates setting the case for resolution by dismissal, plea, or trial.

## II. DISCOVERY

Pursuant to Tenn. R. Crim. P. 16(d), the following provisions shall govern discovery and exchange of information in these consolidated cases except as otherwise provided expressly herein.

### A. STATE'S DISCOVERY OBLIGATIONS

1. On or before **October 31, 2018**, the State shall furnish the Defendant in this case with the following:
  - a. all information or material discoverable by the Defendant pursuant to Tenn. R. Crim. P. 16;<sup>2</sup>
  - 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 at trial in the above captioned matter(s); and
  - d. any information otherwise favorable to the accused, irrespective of its potential admissibility at trial, including
    - i. evidence deemed to be exculpatory in nature; and
    - ii. 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.

---

<sup>2</sup> On or before the last day of September 2018 and every second subsequent month, the State shall furnish the Defendant with recordings of any jail calls to which the Defendant was a party that it has yet to provide the Defendant. This order does not require the State to investigate calls made by a defendant using a phone pass or unauthorized SPN to place calls. In addition, nothing in this order shall relieve any party from conducting their own investigation with respect to equally available information. *See, e.g., State v. Stanley*, No. M2016-02546-CCA-R3-CD, 2018 WL 1391628, \*10 (Tenn. Crim. App. Mar. 20, 2018) (citing *State v. Marshall*, 845 S.W.2d 228, 233 (Tenn. Crim. App. 1992)).

**B. DEFENDANT’S DISCOVERY OBLIGATIONS**

1. On or before **November 30, 2018**, the Defendant shall furnish the District Attorney General’s office with the following:
  - a. all material discoverable by the State pursuant to Rules 16 and 12.1 of the Tennessee Rules of Criminal Procedure; and
  - b. all disclosures properly requested or otherwise subject to disclosure pursuant to Tenn. R. Crim. P. 12.2.

**C. FILING OF NOTICE OF PROVISION OF DISCOVERY**

**1. *Need for Special Discovery Filings***

Because of the number of parties and possible discovery issues involved in the overall consolidated action, the Court anticipates possible disputes as to whether, and when, discovery has been provided.

**2. *Contents of Notice of Provision of Discovery***

To that end, and as a proactive measure, the parties are respectfully requested, and ordered, to file with the Criminal Court Clerk a “**Notice of Provision of Discovery**” whenever a party provides initial *or* supplemental discovery.

This Notice shall generally identify the following information:

- a general description of the item(s) of discovery provided;<sup>3</sup>
- the party to whom the discovery was provided; and
- the date on which the discovery was provided.

---

<sup>3</sup> Because one purpose of this Notice is to eliminate claims that certain items of discovery have not been provided, the description of discovery provided should be such that the Court can identify, from the Notice itself, the accuracy of a claimed deficiency. If any such evidence is especially sensitive, the Court will consider allowing such notice(s) to be filed under seal upon request.

### III. MOTIONS

#### A. FILING OF PRE-TRIAL MOTIONS

Pursuant to Tenn. R. Crim. P. 12(c), the Court orders that 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, on or before **January 3, 2019**, except as otherwise provided expressly herein.

#### B. IDENTIFICATION OF MOTIONS AND RESPONSES

##### 1. *Need For Special Captioning of Motions*

Because of the number of parties and possible issues, the Court expects a substantial volume of motions in the consolidated case. Indeed, the Court anticipates that significant confusion in the record could result if motions are not appropriately identified, particularly if several motions are consolidated for argument.

##### 2. *Requirements for Captioning of Motions*

Accordingly, the parties are respectfully requested, and ordered, to include the following information in the caption of any motion and any response filed:

- identification of the party seeking relief by first and last name;<sup>4</sup>
- the *sequential number* of the motion filed on behalf of that party, and
- the general purpose of each motion.

##### 3. *Examples*

As an example, please assume that Defendant Tom Jones's first-filed motion in the case is a motion to compel discovery and that the defendant

---

<sup>4</sup> One may be forgiven for believing that this provision is unnecessarily granular. However, because at least eight of the present parties may share a last name with another party, full identification is preferable under these circumstances.

thereafter next files a motion to suppress a statement. The Court requests that the defendant's motions be captioned as follows:

- *Defendant Tom Jones's Motion No. 1: Motion to Compel Discovery*
- *Defendant Tom Jones's Motion No. 2: Motion to Suppress Statement*

The Court also requests that any response to a motion be captioned as follows:

- *[State's or Other Party's] Response to Defendant Tom Jones's Motion No. 1: Motion to Compel Discovery*
- *[State's or Other Party's] Response to Defendant Tom Jones's Motion No. 2: Motion to Suppress Statement*

## C. DOCKETING OF MOTIONS

### 1. Generally

- a. **Docketing:** Any motion filed on or before the last day of a month will be set on the docket on the last Monday of the *next following month* at 10:30 a.m.<sup>5</sup>
- b. **Hearing:** On the day in which a motion is docketed, the Court anticipates resolving the motion, if resolution does not require an evidentiary hearing.

If the motion requires the holding of an evidentiary hearing, the Court will schedule a separate hearing date for the disposition of the motion.

Alternatively, the Court may defer consideration of the motion to another date with similar motions filed in the overall consolidated case.

---

<sup>5</sup> For example, if a motion is filed on or before September 30, 2018, the motion will be docketed on Monday, October 29, 2018 at 10:30 a.m.

- c. **Out-of-Session Dates:** If the Court is not in session on the last Monday of a month, the motion will be docketed on the next following Monday in which Court is in session.<sup>6</sup>

## 2. *Joinder in Motions Filed By Other Parties*

- a. **Time for Filing:** Any defendant who wishes to join in a motion filed by another party shall file a **Notice of Joinder** by the fifteenth (15th) day of the month in which the motion is docketed.<sup>7</sup>
- b. **Effect of Joinder on Motion-Filing Dates:** The joinder by a party in the motion filed by another party shall be deemed timely, even if an applicable motion filing date has otherwise passed, so long as the Notice of Joinder itself is timely filed in accordance with this Order.
- c. **Filing Requirements:** To prevent confusion as to joinder of motions in the record and on docket entries, the Court respectfully requests, and orders, that a Notice of Joinder comply with the following requirements:
  - i. **Caption:** A Notice of Joinder shall identify the party seeking joinder and the motion to which joinder is sought. As an example, a Notice of Joinder could be captioned as follows:
    - *Notice of Joinder by Defendant Tom Jones to Motion No. 1, Motion to Suppress, Filed by Defendant Jane Doe.*
  - ii. **Attachments:** A Notice of Joinder shall also attach a copy of the motion that the party wishes to join.<sup>8</sup>

---

<sup>6</sup> For example, if a motion is filed on or before November 30, 2018, the motion would normally be docketed for Monday, December 31, 2018. However, the Court anticipates that it will not be in session on that day. As such, the motion would instead be docketed for Monday, January 7, 2019 at 10:30 a.m.

<sup>7</sup> For example, if a motion is filed on or before August 31, 2018, a Notice of Joinder must be filed on or before September 15, 2018. However, because September 15, 2018 falls on a Saturday, the Notice may be filed on the next business day in which the Criminal Court Clerk's office is open, or on September 17, 2018. The motion would be docketed, of course, on Monday, September 24, 2018 at 10:30 a.m.

<sup>8</sup> This attachment is especially important to maintain the record in individual cases. If any individual case is later appealed, the appellate court should be able to determine, from the record in this case alone and without reference to other cases, the substance of the motion sought to be joined. As such, a copy of the joined motion should be attached to any Notice of Joinder.



### 3. *Responses to Motions*

- a. **Time for Filing:** Any party who wishes to file a response to a motion shall do so on or before the twentieth (20th) day of the month in which the motion is docketed.<sup>9</sup>
- b. **Motions without Opposition:** If no party files a response to a motion, the Court may assume that the motion is without opposition and, as such, *may* grant the motion without a hearing, either by written order or by rule-docket entry.

### 4. *Party's Presence (or Waiver Thereof) at Motion Hearings*

Pursuant to Tenn. R. Crim. P. 43, a party may waive his or her right to be present for a hearing on any motion, other than any motion by legal counsel to withdraw from the representation, by executing a written waiver of his or her right to be present.

## D. DISCOVERY MOTIONS

A party seeking an order compelling discovery—or seeking sanctions based upon a failure to provide discovery, including dismissal of the action or exclusion of evidence—must certify in the motion that

- the requesting party has undertaken efforts in good faith to identify the requested discovery for the producing party; and
- prior to filing the motion, the requesting party has met and conferred with the producing party, either in person or by telephone, to determine the points of disagreement and to attempt to resolve the matter without intervention of the Court.<sup>10</sup>

The absence of this certification shall result in the denial of the discovery motion without prejudice; provided that, the refile of a proper motion must be timely made in accordance with the filing dates established by this Order.

---

<sup>9</sup> For example, if a motion is filed on September 30, 2018, any responding party should file a response to the motion on or before October 20, 2018. However, because October 20, 2018 falls on a Saturday, the response may be filed on the next business day in which the Criminal Court Clerk's office is open, or on October 22, 2018. The motion, of course, would be docketed for Monday, October 29, 2018 at 10:30 a.m.

<sup>10</sup> The "certification" contemplated by this order is merely a statement by counsel of these facts. *See* L. R. Crim. P. 6 ("Before filing a motion to compel discovery, counsel shall seek to resolve each discovery dispute with adverse counsel.").

## E. COMPLIANCE WITH TENN. R. CRIM. P. 47

### 1. *Generally*

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

- the basic factual allegations upon which the claim for relief is based and that are necessary for relief to be granted;
- the legal grounds that justify the relief requested in terms apart from legal conclusions, along with a statement as to *why* the legal grounds would result in the requested relief being granted; and
- the specific relief requested by the party.<sup>11</sup>

### 2. *Non-Compliance with Rule 47*

The Court certainly does not anticipate any issues with any party's compliance with Rule 47. However, the parties are respectfully placed on notice that motions which do not comply with Rule 47 may be struck by the Court *sua sponte* and not scheduled for hearing.<sup>12</sup>

The striking of any such motion that fails to comply with Rule 47 shall be without prejudice to the refiling of a proper motion; provided that, the refiling of a proper motion must be timely made in accordance with the filing dates established by this Order.

---

<sup>11</sup> For example, with respect to motions to suppress, the Court requests that the motion identify the specific evidence or items that the party seeks to suppress.

<sup>12</sup> See, e.g., *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.").

#### **IV. SERVICE OF MOTIONS AND OTHER DOCUMENTS FILED WITH THE CRIMINAL COURT CLERK**

##### **A. NEED FOR SPECIAL PROCEDURES FOR THE CONSOLIDATED CASE**

At present, the consolidated cases present challenges to the service of documents by all parties. For example, service of documents upon all other parties by mail may result in significant expense in terms of time and resources. Alternatively, service by electronic mail (“email”) will require all counsel to maintain accurate lists of legal counsel and current email addresses for at least 54 other parties, including the State. For these reasons, the Court believes that the costs and burdens placed upon legal counsel associated with service of filed documents, in this particular case, are significant.

The Court and the Criminal Court Clerk’s office are likely in a superior position to be aware of the current representation of individual parties and to have current contact information for those lawyers. As such, based upon an agreement between the Court, the Criminal Court Clerk’s Office, the Office of the District Attorney, and legal counsel in this case, the following procedures shall govern service of documents in this case.

##### **B. SERVICE OF FILED DOCUMENTS THROUGH THE COURT AND THE CRIMINAL COURT CLERK**

###### **1. *Generally***

For purposes of this Case Management Order, service of all documents filed shall be made by either by the Court or by the Criminal Court Clerk’s Office electronically, through email, to counsel for all other parties.

###### **2. *Electronic Scanning and Service***

Upon receipt of any document filed in this case, *except for documents filed under seal*, the Clerk’s office shall

- scan, or make an electronic copy of, the document;
- send an electronic copy of the document, by email, to both the Court and to counsel for all parties in the consolidated action; or, if directed by the Court, forward the original document to the Court for service upon the parties; and

- place a paper copy of the service email in the file associated with the case in which the documents were originally filed.

**3. *Subject Line of Served Papers***

All documents served by the Court or by the Criminal Court Clerk through email shall bear a subject line in the following format, so as to alert counsel as to the importance of the email:

- **NOTICE: *State v. Allen, et al.* (Hamilton County Criminal Court), Service of Documents Filed**

**C. COUNSEL’S DUTY TO MAINTAIN CURRENT CONTACT INFORMATION**

It shall be the responsibility of legal counsel to ensure that *both* the Court and the Criminal Court Clerk have current contact information, consisting of both a valid email address and a physical office address, to which service of documents may be made.

**D. INVALID EMAIL ADDRESSES**

**1. *Notice of Invalid Email Address***

If the Criminal Court Clerk receives notice that a lawyer’s email address for service of process is not valid—or that attempted email service of documents has been unsuccessful with respect to a party—the Clerk shall notify both the Court and the affected party by written letter mailed to the lawyer’s current office address on file with the Clerk.

**2. *Counsel’s Updating of Information***

Upon receipt of such notice, the affected party shall take immediate steps to ensure that *both* the Court and the Criminal Court Clerk have a current, valid email address to which service of documents may be made.

**3. *Counsel’s Examination of the Record***

In this event, it shall also be the responsibility of the affected party to timely examine the record in the consolidated cases to confirm that it has received all documents filed by other parties. A neglectful failure to timely inspect the record shall not constitute “good cause” to extend any filing dates established by this Order.

**4. Neglect**

The parties are respectfully placed on notice that neglect resulting in a failure to maintain a current, valid email address to which service of documents may be made shall not constitute “good cause” to extend any filing dates established by this Order.

**E. EFFECT OF SEVERANCE OF CASES**

If particular cases are later severed from the larger, consolidated case, then the special procedures established by this Order for service of filed documents shall be readdressed to determine if they are still warranted.

If the Court determines that the special procedures herein are no longer warranted, the applicable provisions of Tenn. R. Crim. P. 49 shall govern service of documents, and the Criminal Court Clerk’s Office shall no longer be responsible for service of any documents filed by a party to the case.

**V. FILING OF SPECIAL NOTICES**

**A. NOTICE OF ENHANCED PUNISHMENT**

On or before **January 3, 2019**, the State shall file any notice of intent to seek sentence enhancement pursuant to Tenn. Code Ann. § 39-13-208 and/or Tenn. R. Crim. P. 12.3(b).

**B. NOTICE OF AFFIRMATIVE DEFENSES**

On or before **November 30, 2018**, the Defendant shall file notice of any affirmative defense, including insanity or entrapment, as required by Tenn. Code Ann. §§ 39-11-204(c) and 39-11-505.

## VI. MODIFICATION OF CASE MANAGEMENT ORDER

The Court may modify the schedule established by this Case Management Order upon its own motion or that of a party showing good cause for the modification. Of course, a failure to take action due to inattention or neglect shall not constitute good cause for modification of the Case Management Order.

It is so ordered.

Enter, this the 26 day of September, 2018.

  
\_\_\_\_\_  
TOM GREENHOLTZ, Judge