

FILED

MAY 31 2011

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

BRENDA A. WISTATTD  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

STATE OF MISSOURI, )  
Plaintiff )  
v. )  
ALYSSA D BUSTAMANTE, )  
Defendant )

Cause No. 09AC-CR03516-01F

Division No. 4

**ACCUSED'S MOTION TO COMPEL A FORMAL, WRITTEN  
RESPONSE TO REQUESTS FOR DISCOVERY**

COMES NOW the Accused, Alyssa Bustamante, by and through counsel, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 10, 18(a), 19, and 21 of the Missouri Constitution and Supreme Court Rule 25, and respectfully requests this Court to enter its Order directing the State to respond to the defendant's Request for Discovery as required by Rule and case law. In support of this motion, counsel states the following:

1. On November 19, 2009, Alyssa's predecessor counsel filed a *Request for Discovery* pursuant to Supreme Court Rule 25.03. On December 17, 2009, Alyssa's present counsel filed a *Supplemental Request for Discovery* pursuant to Missouri Supreme Court Rules and constitutional provisions of both the United States and the State of Missouri.

2. To date, the State has not provided to the defense a formal, written response to either of Alyssa's requests for discovery. Rather, at some point, the State provided

Alyssa's predecessor counsel with a binder containing 781 pages of documents, and provided Alyssa's predecessor counsel with digital media. Thereafter, the State filed with the Court and supplied to Alyssa's counsel a number of *Supplemental Answer(s) to Defendant's Request for Discovery*, along with accompanying documents -- 1214 pages at last count -- and/or digital media. The State has disclosed at least some of the information it is obliged to disclose to Alyssa's counsel. It is, however, far from clear that all the investigative reports have been disclosed. Moreover, the State's responses still fall far short in the following respects:

A. Although there are hundreds of names within the many pages of documents provided to date, the State has not provided the names and last known addresses of persons *whom the State intends to call as witnesses* at hearings or trial (11/19/09 Request, paragraph 1; and 12/17/09 Request, paragraph 1).

B. The State has not provided those portions of any existing transcript of grand jury proceedings which relate to the offense with which Alyssa is charged (11/19/09 Request, paragraph 3; and 12/17/09 Request, paragraph 3).

C. The State has not provided all reports or indicated they have provided all reports of experts made in connection with the case, including results of any type of physical, mental or scientific testing conducted regarding this case or the defendant and all underlying data, notes, correspondence and reports of such experts (11/19/09 Request, paragraph 5; and 12/17/09 Request, paragraph 3).

D. Although hundreds of photos and documents are within the police reports provided, the State has yet to disclose any books, papers, documents, photographs or objects which the State intends to introduce into evidence at any time or which were obtained from or belong to Alyssa (11/19/09 Request, paragraph 6; and 12/17/09 Request, paragraph 6).

E. The State has not provided the record of any prior criminal convictions of persons the State intends to call as witnesses at any hearing or trial (11/19/09 Request, paragraph 7; and 12/17/09 Request, paragraphs 7 and 26).

F. Counsel for the State has not provided a written statement setting forth all facts relating to the time, place and persons conducting any type of photographic or electronic surveillance relating to this charged offense (11/19/09 Request, paragraph 8; and 12/17/09 Request, paragraph 8).

G. Although documents and digital media previously provided by the State includes information and material which tend to negate Alyssa's guilt as charged, mitigates the degree of the offense charged or reduces punishment (11/19/09 Request, paragraph 9; and 12/17/09 Request, paragraphs 9, 27 and 28), the defense reasonably believes that the State and/or its agents, possess additional such information. The defense requests full and complete disclosure.

H. The State has not provided the memoranda, notes or summaries of any oral statements made to agents of the State or to non-agents, by any persons in connection with the subject matter of this cause, whether or not the statement was in writing, was

signed or approved by the witness (12/17/09 Request, paragraphs 12 and 13).

I. The State has not provided or indicated they have provided all memoranda, documents, notes and statements used by the State during the investigation of this case (12/17/09 Request, paragraph 14).

J. The State has not provided or indicated they have provided the names and addresses of all persons who may have some knowledge of the facts of the present case (12/17/09 Request, paragraph 15).

K. The State has not provided or indicated they have provided all notes, memoranda, and documents prepared on behalf of the State or otherwise used in connection with the investigation of this case (12/17/09 Request, paragraph 16).

L. The State has not provided or indicated they have provided all reports, notes, documents, memoranda and all other data in the hands of the State and its agents in connection with the subject matter of this case (12/17/09 Request, paragraph 17).

M. The State has not provided the current or most recent addresses and telephone numbers known to law enforcement agencies of all the persons interviewed in the course of the investigation of this case (12/17/09 Request, paragraph 19).

N. The State has not provided the booking slips of Alyssa prepared pursuant to her arrest (12/17/09 Request, paragraph 20).

O. The State has not provided or indicated they have provided all press releases prepared by all law enforcement agencies relating to Alyssa, this case, and the investigation (12/17/09 Request, paragraph 21).

P. The State has not provided copies of all 911 tapes, and other police radio calls or dispatches reflecting the initial call for assistance to and through those reflecting Alyssa's arrest (12/17/09 Request, paragraph 22).

Q. The State has not provided notice of its intent to use DNA evidence (12/17/09 Request, paragraph 23).

R. The State has not provided or indicated they have provided all memoranda, notes, documents, e-mails and reports to, from and between law enforcement officers connected with the subject matter of this case (12/17/09 Request, paragraph 24).

S. The State has not provided all memoranda, notes, documents, e-mails and reports to, from and between the investigative staff of the prosecution, excluding those portions, if any, which contain the opinions, theories, or conclusions of the prosecuting attorney or members of his legal staff, unless such opinions, theories or conclusions are otherwise discoverable (12/17/09 Request, paragraph 25).

T. The State has not provided or indicated they have provided all diagrams, sketches and photographs which have been made by or shown to any witnesses or prospective witnesses in this case, as well as the identity of each witness to whom this material was shown (12/17/09 Request, paragraph 29).

U. The State has not provided all records and reports relating to any witnesses that concern potential sources of bias (12/17/09 Request, paragraph 31).

V. The State has not provided a list of all expert witnesses the prosecution intends to call at trial and those whom the State does not intend to call who did any work

in connection with this case, along with each expert's qualifications, the subject and description of his/her work in connection with this case, the subject and description of his/her contemplated testimony, his/her notes, memoranda, documents and recordings in connection with this case, his/her data created and/or used in connection with this case, his/her testing done or reviewed in connection with this case along with all raw test data, all information and materials reviewed by the expert in connection with this case and his/her report (12/17/09 Request, paragraph 33).

W. The State has not provided notice of any pending charges and/or deals made with any potential State's witness (12/17/09 Request, paragraph 37).

3. The notion that providing police reports is sufficient to meet the State's obligations to disclose pursuant to Supreme Court Rule 25 is belied by any number of judicial decisions. For example, in *State v. Whitfield*, 837 S.W.2d 503 (Mo. banc 1992), the issue was whether the trial court erred in allowing the testimony of police officers who were "endorsed" as State's witnesses on the morning of trial. The Court rejected the State's excuse that the officer's report had previously been disclosed.

The fact that George's report had previously been disclosed does not prevent prejudice to the defense from the surprise testimony. As George was not listed as a witness, the defense attorney testified that she was not prepared to cross examine him and was surprised by his testimony. . . . The State ignores the fact that the defense was not alerted to depose George before trial, as was done with

many of the properly-disclosed witnesses. See Rule 25.12. The State also ignores that, while the defense did make preliminary plans for the possibility of George testifying, it apparently did not follow through on those plans when the State failed to endorse him.

*Whitfield*, at 507.

Likewise, though *Whitfield's* defense counsel certainly knew of the existence of a coat that was being held in evidence, the State's *failure to give timely notice of its intent to use the coat in evidence* at trial resulted in prejudicial reversible error.

When the State made the last-minute decision to use the coat, the defense made two alternative requests: exclude the coat or grant a continuance. The trial court allowed the defense only a cursory inspection of the coat. . . . The surprise introduction of this evidence evidence probably prejudiced defendant.

*Whitfield*, at 507-508.

Merely providing volumes of police reports without limitation or particular reference to matters the State intends to offer into evidence or specifying the persons the State intends to call as witnesses is not responsive to a discovery request. See, *State v. Lingar*, 726 S.W.2d 728, 738 (MO Banc 1987).

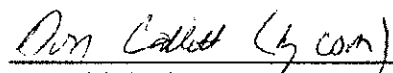
The rules of criminal discovery are not "mere etiquette" nor is compliance discretionary." *State v. Luton*, 795 S.w.2d 468, 477 (Mo. App. 1990). . . . The rules on pretrial discovery aid the truth-finding aspect of our legal system. Cf. *State v. Perkins*, 710 S.W.2d 899, 893 (Mo. App. 1986). The main concern for

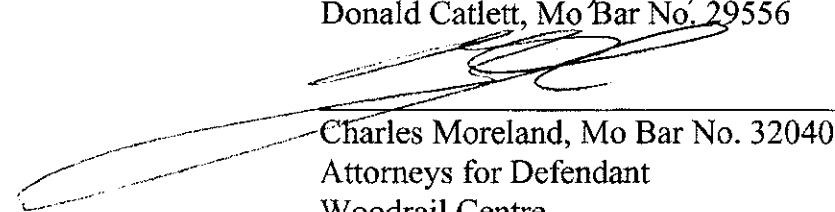
the trial court is the fundamentally fair response to last-minute evidence. Cf. [*State v.*] *Kilgore*, 771 S.W.2d [57] at 66 [(Mo banc 1989)]. Rules 25.03 and 25.05 clearly intend to allow both sides to know the witnesses and evidence to be introduced at trial. . . . Taken together, these rules are designed to prevent surprises. *State v. Sykes*, 628 S.W.2d 653, 656 (Mo. 1982). . . . In this case, the evidence was not newly discovered. Instead, the State made a last-minute decision to use the evidence before the start of the presentation of evidence.

*Whitfield*, at 508.

WHEREFORE, in order to protect her state and federal constitutional rights to due process, effective assistance of counsel, a fundamentally fair trial and to protect against the imposition of cruel and unusual punishment, Alyssa Bustamante respectfully requests that this Court order the State to provide a formal, written response to her Requests for Discovery.

Respectfully submitted,

  
\_\_\_\_\_  
Donald Catlett, Mo Bar No. 29556

  
\_\_\_\_\_  
Charles Moreland, Mo Bar No. 32040  
Attorneys for Defendant  
Woodrail Centre  
1000 W. Nifong, Building 7, Suite 100  
Columbia, MO 65203  
Phone 573-882-9855  
Fax 573-884-4921

**Certificate of Service**

I certify that a true copy of the above and foregoing was served to all parties by fax transmission to Mr. Mark Richardson at 573-634-7797 on this 26th day of May, 2011.



---

Charles Moreland