

Alabama Rules of Criminal Procedure

Rule 16. Discovery.

Rule 16.1. Discovery by the defendant.

(a) STATEMENTS OF DEFENDANT. Upon written request of the defendant, the prosecutor shall, within fourteen (14) days after the request has been filed in court as required by Rule 16.4(c), or within such shorter or longer period as may be ordered by the court, on motion, for good cause shown:

- (1) Permit the defendant to inspect and to copy any written or recorded statements made by the defendant to any law enforcement officer, official, or employee which are within the possession, custody, or control of the state/municipality, the existence of which is known to the prosecutor; and
- (2) Disclose the substance of any oral statements made by the defendant, before or after arrest, to any law enforcement officer, official, or employee which the state/municipality intends to offer in evidence at the trial.

(b) STATEMENTS OF CODEFENDANT OR ACCOMPLICE. Upon written request of the defendant, the prosecutor shall, within fourteen (14) days after the request has been filed in court as required by Rule 16.4(c), or within such shorter or longer period as may be ordered by the court, on motion, for good cause shown:

- (1) Permit the defendant to inspect and to copy any written or recorded statements made by a co-defendant or accomplice to any law enforcement officer, official, or employee, which are within the possession, custody, or control of the state/municipality, the existence of which is known to the prosecutor and which the state/municipality intends to offer in evidence at the trial; and
- (2) Disclose the substance of any oral statements made by any such codefendant or accomplice, before or after arrest, to any law enforcement officer, official, or employee which the state/municipality intends to offer in evidence at the trial.

(c) DOCUMENTS AND TANGIBLE OBJECTS. Upon written request of the defendant, the prosecutor shall, within fourteen (14) days after the request has been filed in court as required by Rule 16.4(c), or within such shorter or longer period as may be ordered by the court, on motion, for good cause shown, permit the defendant to analyze, inspect, and copy or photograph books, papers, documents, photographs, tangible objects, controlled substances, buildings or

places, or portions of any of these things which are within the possession, custody, or control of the state/municipality and:

- (1) Which are material to the preparation of defendant's defense; provided, however, that the defendant shall not be permitted to discover or to inspect reports, memoranda, witness lists, or other internal state/municipality documents made by the prosecutor or the prosecutor's agents, or by law enforcement agents in connection with the investigation or prosecution of the case, or statements made by state/municipality witnesses or prospective state/municipality witnesses;
- (2) Which are intended for use by the state/municipality as evidence at the trial; or
- (3) Which were obtained from or belong to the defendant

Upon motion of the state/municipality, the court shall impose such conditions or qualifications as may be necessary to protect the chain of custody of evidence, or the prosecutor's, law-enforcement officer's, or investigator's work product, or to prevent loss or destruction of such documents or objects.

(d) **REPORTS OF EXAMINATIONS AND TESTS.** Upon written request of the defendant, the prosecutor shall, within fourteen (14) days after the request has been filed in court as required by Rule 16.4(c), or within such shorter or longer period as may be ordered by the court, on motion, for good cause shown permit the defendant to inspect and to copy any results or reports of physical or mental examinations or scientific tests or experiments, if the examinations, tests, or experiments were made in connection with the particular case, and the results or reports are within the possession, custody, or control of the state/municipality, and their existence is known to the prosecutor.

(e) **INFORMATION NOT DISCOVERABLE.** Except as provided in (a), (b), and (d), the discovery or inspection of reports, memoranda, witness lists, or other internal state/municipality documents made by the prosecutor or the prosecutor's agents, or by law enforcement agents, in connection with the investigation or prosecution of the case, or of statements made by state/municipality witnesses or prospective state/municipality witnesses, is not authorized.

(f) **DISCOVERY UNDER OTHER PROVISIONS OF LAW.** Nothing in this Rule 16.1 shall be construed to limit the discovery of exculpatory material or other material to which a defendant is entitled under constitutional provisions or other provisions of law.

Committee Comments

Until the United States Supreme Court decision in *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), Alabama courts had followed the common law tradition and had not favored discovery by the defense in criminal cases. The attitude of the common law courts, as well as the courts in Alabama, is typified by the decision in *King v. Holland*, 100 Eng.Rep. 1248, 1249 (K.B.1792), where the British court stated that to allow a person accused of a criminal offense to inspect government-held documents before the trial “would subvert the whole system of criminal law.” In the same case, a concurring judge noted that “it would be dangerous in the extreme” to allow a criminal defendant to discover evidence held by the government. *Id.* at 1250.

While American courts have generally been in agreement with the rationale of the early common law cases, there has been a trend in the other direction. The federal government and an increasing number of states have provided for rather extensive discovery by those accused of criminal offenses. The movement toward more extensive disclosure is attributable to several factors: the ever increasing caseloads of the courts and the district attorneys' offices; the practical necessity for negotiated pleas in as many as 90% of the cases disposed of by official action; the recognition by judges and district attorneys that discovery has not served to free those accused of crime, but instead often serves to provide a rational basis for negotiated pleas. When the relevant evidence is before the court, the defense attorney, the district attorney, and the defendant, the opportunity exists for reaching a settlement generally approved by all concerned. In addition, the courts, especially the United States Supreme Court, have shown special sensitivity to the role of the district attorney in criminal prosecutions. In *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935), the Court stated: “[The district attorney's] interest ... in a criminal prosecution is not that [he] shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.”

A corollary to the principle that the role of the district attorney is not to get as many convictions as possible but rather to assure that justice is done by the state, is the early recognized rule that the accused is entitled to be notified of the nature of the charges against him and to have an opportunity to prepare a defense. In *United States v. Burr*, 8 U.S. (4 Cranch) 470, 490 (1807), Chief Justice John Marshall stated that one accused of a criminal offense has the right, under the Sixth Amendment, to be informed of the nature of the accusation against him and of such information as would enable him to prepare his defense.

American courts have by no means been unanimous or always sympathetic with attempts by defendants in criminal cases to have access to information held by the state. Judge Learned Hand, in *United States v. Garsson*,

291 F. 646, 649 (S.D.N.Y.1923), opined that a criminal defendant already had too many advantages over the state because the prosecutor could not force the defendant to reveal his defense and could not comment on the defendant's refusal to take the stand in his own defense, and the jury must be of one opinion about the defendant's guilt before the prosecution could secure a conviction.

A conviction obtained through the use of false evidence must fail, *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935); *Pyle v. Kansas*, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214 (1942), even if the state merely allows the false evidence to go uncorrected. *Alcorta v. Texas*, 355 U.S. 28, 78 S.Ct. 103, 2 L.Ed.2d 9 (1957).

Courts recognize that a defendant's right to a fair trial is violated when the state knowingly allows false evidence to be used against the defendant, *Miller v. Pate*, 386 U.S. 1, 87 S.Ct. 785, 17 L.Ed.2d 690 (1967); *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). Similarly, a defendant's rights are violated if the state withholds favorable material evidence which the defendant has requested. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). In *Brady*, the Court held due process was violated where, after the defendant's request, the state failed to reveal evidence that was material either to guilt or punishment. The Court in *Brady* reasoned that if the state were allowed to withhold potentially exculpatory evidence which has been demanded by the defendant, the state would be able to shape the very nature of the trial—a trial already heavily weighted against the defendant. The Court found that such orchestration of a criminal trial does not comport with accepted standards of justice. Limited discovery is therefore necessary to guarantee the accused a fair trial. 373 U.S. at 87-88, 83 S.Ct. at 1196-1197. In *Moore v. Illinois*, 408 U.S. 786, 92 S.Ct. 2562, 33 L.Ed.2d 706 (1972), the Court repeated that three factors are to be weighed in making the determination that the state must disclose:

“The heart of the holding in *Brady* is the prosecution's suppression of evidence, in the face of a defense production request, where the evidence is favorable to the accused and is material either to guilt or to punishment. Important, then, are (a) suppression by the prosecution after a request by the defense, (b) the evidence's favorable character for the defense, and (c) the materiality of the evidence.”

Id. at 794, 92 S.Ct. at 2568.

Disclosure by the State in Alabama has heretofore largely been a matter of discretion left to the trial court. See *Strange v. State*, 43 Ala.App. 599, 197 So.2d 437, cert. denied, 280 Ala. 718, 197 So.2d 447 (1966) (Court of Criminal Appeals cited *Brady*, holding that the trial court did not err in ordering the state to

furnish a statement made by an accomplice to a state agent); *Gillogly v. State*, 55 Ala.App. 230, 314 So.2d 304, cert. denied, 294 Ala. 200, 314 So.2d 306 (1975) (reversed for failure to order disclosure of an accomplice's statement).

Rule 16.1(a) requires the state/municipality to furnish the defendant with a copy of any written or recorded statements made by him and the substance of any oral statements made by him which the state/municipality intends to use. Section (a) is similar to, but not as broad as, Rule 16(a)(1)(A), Fed.R.Crim.P.

Section (b) is new to Alabama procedure and has no counterpart in federal procedure. This section should be helpful in resolving the severance issue before trial. Since the purpose of this section is to avoid any prejudice at trial by the introduction of such statements to the jury, only such statements as the state intends to introduce need be disclosed.

Section (c) is similar to the last sentence of Rule 16(a)(1)(C), Fed.R.Crim.P.

Section (d) is similar to both prior Alabama law and Rule 16(a)(1)(D), Fed.R.Crim.P.

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), requires the state to disclose any information it has which is favorable to the defendant. Requiring the disclosure of evidence in the state's possession which is material to the preparation of a defense is an extension of this requirement of due process.

Since the defendant may not know exactly what evidence the prosecution has, it would be difficult to know whether it would be material to his defense. The state is, therefore, required to disclose exculpatory evidence.

Things taken from the defendant would probably come within the "material to the preparation of his defense" provision but are expressly discoverable. The last paragraph of section (c) ensures protection of the items divulged and prevents the defense from riding on the prosecution's efforts as to those matters equally discoverable.

Section (e) is similar to the corresponding provision of Rule 16(a)(2), Fed.R.Crim.P. and is designed to protect the work product. (See also last sentence, section (c).) This section is not intended to prevent the district attorney from exercising his discretion to allow the defendant to see the documents referred to in this section.