

ANN MARIE TALIAFERRO (#8776)  
BROWN, BRADSHAW & MOFFAT, LLP  
422 North 300 West  
Salt Lake City, Utah 84103  
Telephone: 801-532-5297  
Facsimile: 801-532-5298

IN THE SALT LAKE CITY JUSTICE COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

<p>SALT LAKE CITY,  Plaintiff,  v.  xxxxxx,  Defendant.</p>	<p><b>DEFENDANT’S OBJECTIONS AND RESPONSES TO CITY’S REQUEST FOR DISCOVERY</b></p> <p>Case No. xxxxxx (Judge [REDACTED])</p>
---	--

Salt Lake City has requested discovery from Defendant.

Ms. xxxxxxxx responds as follows.

**GENERAL OBJECTION TO ANY DEFENSE PRODUCTION**

Initially, the defendant generally objects to providing information to the prosecution pursuant to Utah Rule of Criminal Procedure 16(c) in that the defendant is not setting forth any alibi, entrapment or insanity defense, and the Court has not made a determination “on good cause shown” that the requested information should be made available to the prosecutor. *See* Utah R. Crim P. 16(c).

More importantly, disclosures required from defendants are subjected to constitutional limitations. *See, e.g.*, Utah R. Crim P. 16(h). While not suggesting that Utah allows such, but if reciprocal discovery is routinely allowed, a defense attorney would be compelled to provide

information against his or her client and to produce privileged and protected work product.<sup>1</sup> For example, the Fifth Amendment declares in part that “No person ...shall be compelled in any criminal case to be a witness against himself.” U.S. Const, Amend V. The Utah constitution provides similarly and protects a person from being “compelled to give evidence against himself.” Utah Const, Art. I Section 12. These privileges, and the Fifth Amendment in particular, extend to protect a witness from answering questions **and disclosing evidence** that not only directly support a criminal conviction, **but also embraces those disclosures which would furnish a link in the chain of evidence needed to prosecute.** See, e.g., *Hoffman v. United States*, 341 U.S. 479, 486 (1951).<sup>2</sup> As such, a defendant's constitutional protections,

---

<sup>1</sup> The work-product doctrine was first recognized by the Supreme Court in *Hickman v. Taylor*, 329 U.S. 495, 509-11 (1947) and “shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client’s case.” *United States v. Ary*, 518 F.3d 775, 782-83 (10th Cir. 2008) (quoting cases). “In performing his various duties. . . it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.” *Id.* at 783 (quoting *Hickman*, 329 U.S. at 510). “Work-product protection extends to the production of material assembled by an attorney in preparation for impending litigation.” *Id.* (quoting case) (quotation omitted), “The protection also applies to materials prepared by an attorney’s agent, if that agent acts at the attorney’s direction in creating the documents.” *Id.* As noted by the Utah Courts, to be considered work-product, the material must be (1) “documents and tangible things otherwise discoverable, (2) prepared in anticipation of litigation or for trial, (3) by or for another party or by or for that party’s representative.” *State v. McNearney*, 110 P.3d 183, 186 (Utah App. 2005) (quoting *Gold Standard, Inc. v. American Barrick Res. Corp.*, 805 P.2d 164, 168 (Utah 1990)).

<sup>2</sup> The Fifth Amendment privilege “can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory **and it protects against any disclosures which the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used.**” *Kastigar v. United States*, 406 U.S. 441, 444-45 (1972) (emphasis added). See also *United States v. Jones*, 703 F.2d 473, 475-76 (10th Cir. 1983) (privilege against self-incrimination protects person from being compelled to give “answers that would in themselves support a conviction” or that “would furnish a link in the chain of evidence needed to prosecute crime); *United States v. Schmidt*, 816 F.2d 1477, 1481 (10th Cir. 1987) (same); *In re Lindsey*, 229 B.R. 797, 801-02 (B.A.P. 10th Cir. 1999) (same).

especially the protection against self-incrimination, **prevents extensive prosecution discovery and is paramount to the rule of criminal procedure governing discovery by the prosecution.**

*See State v. Spry*, 2001 UT App 75, n.6.

Indeed, it must be remembered that it is the City that has the burden in this matter to prove its allegations beyond a reasonable doubt. The defendant is presumed innocent unless and until the State has done this.<sup>3</sup> A defendant cannot be compelled to testify, nor present any evidence whatsoever at his trial, but the burden of proof beyond a reasonable doubt and the presumption of innocence remains the same.

With this in mind, then, **prosecution discovery must be denied if the trial court determines that the matters to be disclosed will conceivably “lighten the burden” which the**

---

<sup>3</sup>“A fundamental precept of our criminal law is that the prosecution must prove all elements of a crime beyond a reasonable doubt.” *State v. Starks*, 627 P.2d 88, 92 (Utah 1981) (citing *State v. Torres*, 619 P.2d 694 (Utah 1980)). “The defendant’s evidence, whether it simply controverts the State’s case or asserts an affirmative defense, need only raise a reasonable doubt as to any element of the crime to justify an acquittal.” *Id.* This right is guaranteed by the due process clauses of both the Utah and the United States Constitutions. *See* U.S. Const. Amends V, XIV; Utah Const. Art. 1, § 7; *State v. Mora*, 2003 UT App 117, ¶22, *overruled on other grounds* (citing *State v. Lopes*, 1999 UT 24, ¶13).

Proof beyond a reasonable doubt is a concept unique to the criminal law. *See State v. Ireland*, 773 P.2d 1375, 1382 (Utah 1989) (Stewart J., dissenting). The notion that a defendant is presumed innocent and may not be convicted unless or until this substantial burden is met is a fundamental precept of both state and federal constitutional law. *See Lopes*, 1999 UT 24, ¶ 13 (“as both a state and federal constitutional matter, we conclude that due process requires that the prosecution prove every element of the charged crimes beyond a reasonable doubt”); *Mora*, 2003 UT App. 117, ¶ 22 (Utah App. 2003) (the right to proof beyond a reasonable doubt is guaranteed by the due process clauses of the Utah and the United States Constitutions). The requirement has been further codified by Utah statute as a necessity in all criminal cases. *See* UTAH CODE ANN. § 76-1-501 (“A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In absence of such proof, the defendant shall be acquitted”).

**prosecution bears in bringing about a conviction of the accused, meaning, turning over evidence that may be used to convict the defendant.** *See, e.g., Posner v. Superior Court*, 107 Cal.App.3d 928 , 932-933 (Cal. App. 1980). This is so because:

In criminal prosecutions, it is controlling that the accused has the always present right to remain silent. Further, the defendant is protected and given sanctuary by the presumption of innocence, until the prosecution, at the trial, has made a prima facie case against him. This prosecutorial burden is basic to our system. The blanket disclosure of names and addresses of witnesses may, albeit ever so slightly, tend to lighten this burden of the People.

*Id.*

Indeed, “the [prosecution’s] information gathering advantage belies the contention that discovery rights between the prosecution and defendant should be co-extensive. [Instead] It would be a mockery of due process if the [prosecution] could, in addition to relying on its infinitely more effective position as an investigating body and its superior resources, compel the defendant to lighten the prosecution’s burden of proving its case through the discovery process.” *Commonwealth v. Brinkley*, 480 A.2d 980, 990 (Pa. 1984) (Nix, C.J., concurring).

Thus, the defendant initially, and respectfully, objects to providing **any** discovery to the prosecution in this case.

#### **SPECIFIC RESPONSES**

Alternatively, and without waiving defendant’s general objection to being required to provide any discovery to the prosecution, the defendant now responds to the City’s specific requests.

This “court must analyze a prosecutorial discovery request in light of any specific privileges asserted by a defendant and make findings, if necessary, to explain its rationale for the discovery ruling.” *State v. McNearney*, 110 P.3d 183, 186 (Utah App. 2005). Importantly, and as noted previously, “a defendant’s protection against self-incrimination prevents extensive prosecution discovery and is paramount to Rule 16(c) of the Utah Rules of Criminal Procedure.” *Id.* at 185 (quoting *State v. Spry*, 2001 UT App 75). “In fact, the rule itself only allows prosecutorial discovery ‘[e]xcept as otherwise provided or as privileged.’” *Id.* (quoting Utah R.Crim. P. 16(c)).

\*\*\*\*\*

For the foregoing and following reasons, then, the Defendant specifically objects to the requested disclosures of the prosecution.

**Request 1. A list of all the witnesses that the defense intends to call for trial, including their addresses, telephone numbers, and dates of birth.**

Objections:

1. The Prosecution has not provided the defendant with its final list of witnesses it intends to call in the trial of this matter. The defendant cannot know who she is going to call as a witness at the trial in defense until the prosecution has confirmed its own witnesses, exhibits, and theories of the case. As such, any disclosure cannot be made at this time.

2. The defendant objects to disclosure to the prosecution on the basis of due process in that a defendant must not be required to turn over evidence that may serve to “lighten the burden” of the prosecution in this criminal prosecution. The defendant also asserts that any reciprocal discovery violates her due process rights and rights against compelling an accused to

give evidence against herself under the federal and state constitutions. *See* U.S. Const. amends. V and XIV; Utah Const. Art I, §§7 and 12.

3. Further, the defendant generally objects to disclosure on the basis of the work-product privilege, the defendant's right against self-incrimination, the attorney-client privilege, and the defendant's right to full and effective assistance of counsel. *Accord* U.S. Const. amends. V, VI and XIV; Utah Const. Art I, §§7 and 12; Utah Rule of Evidence 504; UTAH CODE ANN. § 78B-1-137.

4. The defendant further objects to the disclosure at this time of anticipated rebuttal witnesses and/or evidence intended to rebut and/or impeach the testimony of the prosecution witnesses. As noted, the defendant cannot know what rebuttal evidence or testimony she will seek to present until trial and after the prosecution witnesses' testimony.

5. The defendant also objects to the disclosure of such requested evidence that may be used for rebuttal or impeachment purposes of any witness' trial testimony. Such disclosure will taint the trial testimony of witnesses, and disclosure will violate the defendant's right to effective assistance of counsel, full and effective cross-examination and confrontation, and the due process right to a fair trial.

Partial Response:

Without waiving the objections previously set forth, the defendant asserts that she may seek to call any person or witness listed in police reports as provided by the prosecution in discovery. A list of other possible witnesses and contact information will be provided when it is decided who will be called.

**Request 2. An opportunity for the prosecutor to inspect physical evidence, copies of documents, and photographs that defendant intends to introduce at trial.**

Objections:

1. The defendant cannot know what physical evidence and exhibits she will seek to introduce at trial in her defense until the City has confirmed its own witnesses, exhibits, and theories of the case.

2. The defendant also asserts that any reciprocal discovery violates her due process rights and rights against compelling an accused to give evidence against himself under the federal and state constitutions. *See* U.S. Const. amends. V and XIV; Utah Const. Art I, §§7 and 12.

3. The defendant generally objects to disclosure on the basis of the work-product privilege, the defendant's right against self-incrimination, the attorney-client privilege, and the defendant's right to full and effective assistance of counsel. *Accord* U.S. Const. amends. V, VI and XIV; Utah Const. Art I, §§7 and 12; Utah Rule of Evidence 504; UTAH CODE ANN. § 78B-1-137.

4. Relatedly, and insofar as this request seeks disclosure of investigative reports, summaries, diagrams, analyses, photographs, and/or any other information resulting from the investigation conducted by the defense, Defendant adamantly and specifically objects on the basis of the work-product privilege, the defendant's right against self-incrimination, the attorney-client privilege, and the defendant's right to full and effective assistance of counsel. *Accord* U.S. Const. amends. V, VI and XIV; Utah Const. Art I, §§7 and 12; Utah Rule of Evidence 504; UTAH CODE ANN. § 78B-1-137.

5. The defendant further objects to the disclosure at this time of any anticipated evidence intended to rebut and/or impeach the testimony of the prosecution witnesses. As noted, the defendant cannot know what evidence or testimony she will seek to present until trial and after the witnesses' testimony.

6. The defendant also objects to the disclosure of such requested evidence that may be used for rebuttal or impeachment purposes of any witness' trial testimony. Such disclosure will taint the trial testimony of witnesses, and disclosure will violate the defendant's right to effective assistance of counsel, full and effective cross-examination and confrontation, and the due process right to a fair trial.

7. Finally, the requested evidence depends on the actual testimony adduced at trial and disclosure cannot be made at this time.

Partial Response:

Without waiving the objections previously set forth, the defendant asserts that she may offer the following exhibits: (1) Any records, reports, statements, documents, photographs, diagrams or other depictions either already provided by the City in discovery, located in the Police/Prosecution Team's own files, or information to which any member of the Police/Prosecution Team or the prosecution witness himself or herself has knowledge and/or access; (b) any portions of recorded and/or transcribed testimony including any statements or testimony made by any witness under oath in previous hearings or in recorded police statements of witnesses; this information is already in possession or known to the police/ prosecution team.

**Request 3. Copies of any reports and conclusions of any experts that the defendant intends to call for trial, each expert's qualifications and information concerning any remuneration that the witness may be receiving for such testimony.**

A "Notice of Expert" is not required to be filed in misdemeanor cases pursuant to Utah Code Ann. §77-17-13. However, if the Defendant intends to call an expert to testify in this case, such information will be disclosed as set forth by statute. At this time, the Defendant does not intend to call an independent expert. The Defendant requests the same notification by the City.

**Request 4. Copies of any reports prepared by the defense investigators during the course of the prosecution of this case which the defense intends to use at trial.**

**Request 5. Copies of any reports prepared by defense investigators where the defense intends to call the particular investigator as a witness.**

**Request 6. Copies of that portion of any reports prepared by defense investigators concerning statements made by witnesses the defense intends to call or cross-examine at trial.**

Objections to Requests 4-6 (involving defense investigation):

1. The defendant cannot know who she is going to call as a witness at the trial in her defense until the prosecution has confirmed its own witnesses, exhibits, and theories of the case.

2. The defendant objects to disclosure to the prosecution on the basis of due process in that a defendant must not be required to turn over evidence that may serve to "lighten the burden" of the City in this criminal prosecution. The defendant also asserts that any reciprocal discovery violates her due process rights and rights against compelling an accused to give evidence against herself under the federal and state constitutions. *See* U.S. Const. amends. V and XIV; Utah Const. Art I, §§7 and 12.

3. The defendant generally objects to disclosure to the prosecution on the basis of the work-product privilege, the defendant's right against self-incrimination, the attorney-client privilege, and the defendant's right to full and effective assistance of counsel. *Accord* U.S. Const. amends. V, VI and XIV; Utah Const. Art I, §§7 and 12; Utah Rule of Evidence 504; UTAH CODE ANN. § 78B-1-137.

4. Insofar as the request seeks disclosure of investigative reports and/or interviews conducted by the defense, Defendant adamantly and specifically objects on the basis of the work-product privilege, the defendant's right against self-incrimination, the attorney-client privilege, and the defendant's right to full and effective assistance of counsel. *Accord* U.S. Const. amends. V, VI and XIV; Utah Const. Art I, §§7 and 12; Utah Rule of Evidence 504; UTAH CODE ANN. § 78B-1-137. Notably, the Defendant is not required to investigate the case for the prosecution.

5. The defendant further objects to disclosure at this time of anticipated rebuttal witnesses and/or evidence intended to rebut and/or impeach the testimony of prosecution witnesses. As noted above, the defendant cannot know what rebuttal evidence or testimony she will seek to present until trial and after the prosecution witnesses' testimony.

6. The defendant also objects to the disclosure of such requested evidence that may be used for rebuttal or impeachment purposes of any witness' trial testimony. Such disclosure will taint the trial testimony of witnesses, and disclosure will violate the defendant's right to effective assistance of counsel, full and effective cross-examination and confrontation, and the due process right to a fair trial.

**Request 7. Disclosure of any relationship to the defendant of any witnesses the defense intends to call at trial.**

1. The Defendant objects to disclosure to the prosecution on the basis of Due Process in that a Defendant must not be required to turn over evidence that may serve to “lighten the burden” of the City in this criminal prosecution. The Defendant also asserts that any reciprocal discovery violates his due process rights and rights against compelling an accused to give evidence against himself under the federal and state constitutions. *See* U.S. Const. amends. V and XIV; Utah Const. Art I, §§7 and 12.

2. The Defendant objects to disclosure on the basis of the work-product privilege, the defendant’s right against self-incrimination, the attorney client privilege, and the defendant’s right to full and effective assistance of counsel. *Accord* U.S. Const. amends. V, VI and XIV; Utah Const. Art I, §§7 and 12; Utah Rule of Evidence 504; Utah Code Ann. § 78B-1-137.

3. Moreover, the Prosecution may inquire at trial of any relationship of defense witnesses on cross examination. Of note, the Defendant is not required to investigate the case for the prosecution.

DATED this 8th day of March 2017.

*/s/ Ann Marie Taliaferro*

---

ANN MARIE TALIAFERRO  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of March 2017, a true and correct copy of the foregoing *Defendant's Objections and Responses to City's Request for Discovery* was electronically filed with the Court using the e-filing system which sent notification of such filing to the following:

Salt Lake City Prosecutor  
349 South 200 East, #500  
Salt Lake City, Utah 84114

/s/ Hailey Bird \_\_\_\_\_