



THE SENATE OF STATE OF TEXAS
COURT OF IMPEACHMENT

AUG 05 2023

CLERK OF THE COURT

IN THE MATTER OF WARREN
KENNETH PAXTON JR.

**ATTORNEY GENERAL PAXTON'S MOTION FOR NOTICE
OF BRADY MATERIAL AND NOTICE OF TRIAL EXHIBITS**

TO LIEUTENANT GOVERNOR PATRICK, JUDGE OF SAID COURT

Warren Kenneth Paxton, Jr. moves this Court to Order the Texas House of Board Managers, hereafter referred to as Managers, to designate, by written notice, 1) all *Brady* material in the Manager's possession and 2) a list of exhibits the Managers intend to use during trial.

The United States' Supreme Court has held that suppression of evidence favorable to an accused violates due process irrespective of the good faith or bad faith of the prosecution. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). To further prevent wrongful convictions of those falsely accused, Texas enacted the Michael Morton Act, which is codified under Texas Code of Criminal Procedure, Article 39.14. Under Article 39.14, the prosecution is required to turn over all evidence that is material to the proceeding against the accused person. TEX. CODE. CRIM. PRO. ANN. Indeed, this Court recognized the importance of these constitutional and statutory protections and applied them through this Court's Discovery order issued on July 12, 2023. As a result, the House Managers are required to turn over to General Paxton all evidence that is "expected to be introduced" at the trial, as well as all evidence that is potentially "mitigating and exculpatory." See Discovery Order, Court of Impeachment.

In response to this Court's Discovery Order, the House Managers disclosed over one hundred and fifty thousand pages of discovery, which contain documents both unrelated to Mr. Paxton and unrelated to the allegations made in the Articles of Impeachment. For example, the

discovery provided includes contract agreements regarding Nate Paul's entities that have nothing whatsoever to do with General Paxton, and also produced personal financial statements of General Paxton dating back to the year 2000--well before General Paxton began his service to the State of Texas as Attorney General.

Under Texas law and the Texas Rules of Evidence, which apply to this impeachment, a trial court has the power and obligation to control the courtroom for the purpose of ascertaining the truth. *Allen v. State*, 232 S.W.3d 776, 780 (Tex. App.—Texarkana 2007, no pet.); TEX. R. EVID. 611(a). Additionally, in Texas, discovery rulings are discretionary. *In re Hartman*, 429 S.W.3d 680 (Tex. App.—Beaumont 2014, no pet.). Following this precedent, a Texas appellate court upheld a trial court's ruling that required the prosecutors to designate, in a written notice, specific evidence they had in their possession and designate, in a written notice, all exhibits that they intended to use in trial. *In re State ex. Rel. Skurka*, 512 S.W.3d 444, 456 (Tex. App.—Corpus Christ-Edinburg 2016, no pet.).

In *Skurka*, the prosecution provided the defense with one thousand recorded phone calls made by the defendant from jail. *Id.* The Judge in *Skurka*, recognized that “given the large number of jail calls at issue in the case and the likelihood that the prosecution will utilize only a minor portion of those calls at trial, a pretrial designation of the jail calls best serves the defendant's right to a fair trial and is likely to aid in the orderly presentation of the defendant and the prosecution's respective cases at trial.” *Id.* at 456. Further the court in *Skurka* knew that the designation of the jail calls would aid the quick and efficient identification of any objectionable matters that could be resolved pretrial regarding the admissibility of specific jail calls. *Id.*

Even more so than in *Skurka*, in this impeachment, the House Managers have dumped 150,000 pages of documents onto Mr. Paxton, within weeks of the September trial setting. It is fair and just for the Court to assume that the House Managers do not intend to enter even a single percent of these documents which would amount to one thousand five hundred exhibits.

During a press conference, Dick DeGuerin, attorney for the House Managers, made several statements regarding fairness in this proceeding. Specifically, Mr. DeGuerin stated, “you cannot trust the outcome of trials unless there is a full and fair hearing of the accusations.”, “We want to bring fairness, which us lawyers call due process to this procedure.” and “We want Kenneth Paxton to have lawyers and we want them to be able to cross examine our witnesses.” Press Conference, House Board of Managers (June 1, 2023). Despite Mr. DeGuerin’s claims, General Paxton is in the position of having to find needles in the haystack. Under the current Discovery order, it is nearly impossible for General Paxton and his counsel to adequately prepare to cross-examine and object during the House Manager’s presentation of evidence. Inevitably, without the order sought herein, this will preclude the parties from developing the true facts and will violate General Paxton’s due process right.

The purpose of this impeachment is to develop and present the most accurate facts so that the jury can make an informed and just decision. As stated above, it is in this Court’s power to control the proceeding to not only ensure that the trial is fair but to also ascertain the truth. TEX. R. EVID. 611(a). Even more, this Court is obligated to do so. *Id.* To ensure that this proceeding is efficient and that the truth with regard to the Member’s allegations is discovered, General Paxton needs to *know* exactly what the House Managers have in their possession that tends to negate his guilt and which evidence, specifically, the House Managers intend to offer for admission during trial.

Accordingly, General Paxton requests that this Court order the House Managers to designate, by written notice, all *Brady* material the House Managers have in their possession and a list of exhibits the Members intend to use during trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This motion was served via email on the House Board of Managers' counsel, to wit: Rusty Hardin, rhardin@rustyhardin.com, and Dick DeGuerin, dduegerin@aol.com, on August 5, 2023.

/s/ Dan Cogdell
Dan Cogdell

/s/ Anthony Osso
Anthony Osso

THE SENATE OF STATE OF TEXAS
COURT OF IMPEACHMENT

IN THE MATTER OF WARREN
KENNETH PAXTON JR.

**ORDER ON ATTORNEY GENERAL PAXTON'S MOTION FOR NOTICE OF BRADY
MATERIAL AND NOTICE OF TRIAL EXHIBITS**

Upon the foregoing Mr. Paxton's Motion for Notice of Brady Material and Notice of Trial Exhibits;

It is hereby **ORDERED** that the Motion for Notice of Brady Materials is **GRANTED**.

It is further **ORDERED** that the attorney for the Members furnish counsel for Mr. Paxton with Notice of Brady Materials 20 days prior to the start of trial

SIGNED this _____ day of _____, 2023.

It is hereby **ORDERED** that the Motion for Notice of Trial Exhibits is **GRANTED**.

It is further **ORDERED** that the attorney for the Members furnish counsel for Mr. Paxton with Notice of Trial Exhibits ____ days prior to the start of trial.

SIGNED this _____ day of _____, 2023.

DAN PATRICK, JUDGE PRESIDING