

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1978

May 23 1978

IN THE MATTER OF AMENDING)
CERTAIN SECTIONS OF THE WYOMING)
RULES OF CRIMINAL PROCEDURE)

O R D E R

The Permanent Rules Advisory Committee and the Advisory Committee on Criminal Rules having conferred and having researched certain amendments to the Wyoming Rules of Criminal Procedure and having presented them to this Court with their recommendation that the Court approve the same; and

It appearing advisable that Rules 5(b), 7, 8(a)(2), 15 and 16 of the Wyoming Rules of Criminal Procedure be amended and adopted by the Court;

IT IS ORDERED:

(1) That Rule 5(b) W.R.Cr.P. be and is hereby amended to read as follows:

"(b) Statement by Commissioner. The commissioner shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel, and of the general circumstances under which he may secure pretrial release. He shall inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall also inform the defendant of his right to a preliminary examination. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules."

(2) That Rule 7 W.R.Cr.P. be and is hereby amended to read as follows:

"Rule 7. PRELIMINARY EXAMINATION.

"(a) Right to a Preliminary Examination. In all cases triable in district court, except upon indictment, the defendant shall be entitled to a preliminary examination. He should not be called upon to plead at the hearing. If the defendant waives preliminary examination, the commissioner shall forthwith hold him to answer in the district court. If the defendant does not waive the preliminary examination, the commissioner shall schedule a preliminary examination. Such examination shall be held

within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if he is not in custody. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subdivision may be extended one or more times by a commissioner. In the absence of such consent by the defendant, time limits may be extended by a judge of the district court only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

"(b) Probable Cause Finding. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the commissioner shall forthwith hold him to answer in district court. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rule 16 and Rule 40(e).

"(c) Discharge of Defendant. If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the commissioner shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.

"(d) Records. After concluding the proceeding the commissioner shall transmit forthwith to the clerk of the district court all papers in the proceeding, including a transcript of docket entries, the tape recording and any bail taken by him.

"(1) On timely application to the commissioner, counsel may be given an opportunity to have the recording of the hearing made available for their information in connection with any further hearing or in connection with their preparation for trial. The court may appoint the time, place and conditions under which such opportunity may be afforded counsel."

(3) That Rule 8(a)(2) W.R.Cr.P. be and is hereby amended to read as follows:

"(2) Upon Review. During the pendency of appeal, a judge or justice of a court having jurisdiction may admit a defendant to bail in such sum as shall be deemed proper in allailable cases. The judge or justice allowing bail may at any time revoke or amend the order admitting the defendant to bail."

(4) That Rule 15 W.R.Cr.P. be and is hereby amended to read as follows:

"Rule 15. PLEAS.

"(a) Alternatives. A defendant may plead not guilty, not guilty by reason of mental illness or deficiency, unfit to proceed by reason of mental illness or deficiency, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

"(b) Nolo Contendere. A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the

views of the parties and the interest of the public in the effective administration of justice.

"(c) Advice to Defendant. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform him of, and determine that he understands, the following:

"(1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

"(2) if the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if necessary, one will be appointed to represent him; and

"(3) that he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself; and

"(4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and

"(5) that if he pleads guilty or nolo contendere, the court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement.

"(d) Insuring That the Plea is Voluntary. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the state and the defendant or his attorney.

"(e) Plea Agreement Procedure.

"(1) In General. The attorney for the state and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the state will do any of the following:

"(i) move for dismissal of other charges; or

"(ii) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

"(iii) agree that a specific sentence is the appropriate disposition of this case.

"The court shall not participate in any such discussions.

"(2) Notice of Such Agreement. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until

there has been an opportunity to consider the presentence report.

"(3) Acceptance of a Plea Agreement. If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

"(4) Rejection of a Plea Agreement. If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

"(5) Time of Plea Agreement Procedure. Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

"(6) Inadmissibility of Pleas, Offers of Pleas, and Related Statements. Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

"(f) Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

"(g) Record of Proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea."

(5) That Rule 16 W.R.Cr.P. be and is hereby supplemented by adding Rule 16.1 to read as follows:

"Rule 16.1 NOTICE OF ALIBI.

"(a) Notice by Defendant. Upon written demand of the attorney for the state stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within ten days, or at such different time as the court may direct, upon the attorney for the state a written notice of his intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

"(b) Disclosure of Information and Witness. Within ten days thereafter, but in no event less than ten days before trial, unless the court otherwise directs, the attorney for the state

shall serve upon the defendant or his attorney a written notice stating the names and addresses of the witnesses upon whom the state intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

"(c) Continuing Duty to Disclose. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b) the party shall promptly notify the other party or his attorney of the existence and identity of such additional witness.

"(d) Failure to Comply. Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in his own behalf.

"(e) Exceptions. For good cause shown, the court may grant an exception to any of the requirements of subdivisions (a) through (d) of this rule.

"(f) Inadmissibility of Withdrawn Alibi. Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention."

IT IS FURTHER ORDERED that the said amendments and supplement be published in the Advance Sheets of the Pacific Reporter and thereafter in the Wyoming Reporter and shall become effective on September 1, 1978, being more than 60 days after publication; and thereupon the amendments and supplement shall be spread at length upon the journal of the court.

Dated at Cheyenne, Wyoming, this 17th day of May, 1978.

BY THE COURT:

/s/

Rodney M. Guthrie, Chief Justice