

Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF CRIMINAL PROCEDURE (RCr)

2014-22

The following rules' amendments shall become effective January 1, 2015.

RULES OF CRIMINAL PROCEDURE (RCr)

I. RCr 3.22 Transmission of papers

RCr 3.22 shall read:

If at the conclusion, or upon waiver, of the preliminary hearing the defendant is held to answer, the clerk shall transmit all papers in the proceedings to the clerk of the court to which the defendant has been held, and shall transmit a copy of all such papers to the Commonwealth's Attorney.

II. RCr 5.22 Procedure upon failure to indict

RCr 5.22 shall read:

(1) If the defendant has been held to answer pursuant to RCr 3.14(1) and the votes of the grand jurors are insufficient in number to find an indictment as to any one or more charges or counts presented to the grand jury, the foreperson shall forthwith so report in writing to the circuit court. The circuit court shall thereupon make an order dismissing any such charges or counts without prejudice, discharging the defendant from custody as to any such charges or counts, exonerating the defendant's bail and any conditions thereon as to any such charges or counts or directing a refund of any money or bonds deposited as bail as to any such charges or counts, as the case may be.

(2) If the defendant has been held to answer pursuant to RCr 3.14(1), and the grand jury finally adjourns without having either indicted such defendant or referred the matter to the next grand jury by a writing filed with the circuit court, the circuit court shall thereupon make an order dismissing all charges or counts against such defendant without prejudice, discharging such defendant from custody as to any such charges or counts; or, if such defendant is free on bail that has not been forfeited,

exonerating such defendant's bail and any conditions thereon as to any such charges or counts or directing a refund of any money or bonds deposited as bail as to any such charges or counts, as the case may be.

(3) In any event, if a defendant has been held to answer, without being indicted, for longer than 60 days from the finding of probable cause pursuant to RCr 3.14(1), the circuit court shall, upon motion, thereupon make an order discharging such defendant from custody; or, if such defendant is free on bail that has not been forfeited, exonerating such defendant's bail and any conditions thereon or directing a refund of any money or bonds deposited as bail, as the case may be.

(4) Failure of the grand jury to return an indictment against a defendant does not prevent any charge against such defendant from being submitted to another grand jury.

III. RCr 8.18 Defenses, Objections and Requests that must be made before trial; Waiver of a Motion, Defense, Objection, or Request; Relief from Waiver

RCr 8.18 shall read:

(1) Defenses, Objections and Requests That Must Be Made Before Trial

Except for good cause shown, the following shall be raised before trial:

(a) a motion alleging a defect in instituting the prosecution;

(b) a motion alleging a defect in the indictment or information—but at any time while the case is pending, the court may hear a claim that the indictment or information fails to invoke the court's jurisdiction or to state an offense;

(c) a Rule 7.24 request or motion for discovery or inspection;

(d) a Rule 8.07(1)(A) notice of insanity defense;

(e) a Rule 8.07(2)(A) notice of intention to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on—

(i) the issue of guilt;

(ii) the issue of punishment; or

(iii) the issue of guilt and the issue of punishment;

(f) a Rule 8.27 motion to suppress evidence;

(g) a Rule 8.29 motion to sever charges or defendants; and

(h) a Rule 8.31 motion for separate trials.

(2) Waiver of a Motion, Defense, Objection, or Request; Relief from Waiver

A party waives any Rule 8.18(1) defense, objection, or request not raised by the deadline the court sets under Rule 8.20 or by any extension the court provides. Upon a finding of good cause, the court shall grant relief from the waiver.

IV. RCr 8.20 Deadlines for Motions, Defenses, Objections and Requests; Ruling on Motions, Defenses, Objections and Requests.

RCr 8.20 shall read:

(1) Deadlines for Motions, Defenses, Objections and Requests

The court may, at the arraignment or as soon afterward as practicable, set deadlines for the parties to make or assert pretrial motions, defenses, objections and requests and may also schedule hearings on such motions, defenses, objections and requests.

(2) Ruling on Motions, Defenses, Objections and Requests

The court shall decide every pretrial motion, defense, objection and request within a reasonable time before the date of trial unless it finds good cause to defer a ruling. When factual issues are involved in deciding a motion, the court shall state its essential findings on the record.

V. RCr 8.27 Suppression of evidence

New rule RCr 8.27 shall read:

(1) Motion. A motion to suppress evidence shall be filed by the deadline set by the court pursuant to Rule 8.20 for the filing of such motion. If the court has set no deadline under Rule 8.20, the motion shall be filed within a reasonable time before trial.

(2) Hearing. The court shall conduct a hearing on the record and before trial on issues raised by a motion to suppress evidence. No jury and no prospective juror shall be present at any such hearing.

(3) Witness's statements.

(a) Production of witness's statements. Except for good cause shown, not later than forty-eight (48) hours before a suppression hearing, a party who reasonably anticipates calling a person to testify as a witness at the suppression hearing shall furnish every other party with a copy of all statements of such person (other than the

defendant) that relate to the subject matter of that person's anticipated testimony at the suppression hearing.

(b) Producing the Entire Statement. If the entire statement relates to the subject matter of such person's anticipated testimony as a witness at the suppression hearing, the court must order that the statement be delivered to the moving party.

(c) Producing a Redacted Statement. If the party who called or anticipates calling such person as a witness at the suppression hearing claims that the statement contains information that is privileged or does not relate to the subject matter of the witness's testimony or anticipated testimony at the suppression hearing, the court must inspect the statement in camera. After excising any privileged or unrelated portions, the court must order delivery of the redacted statement to the other party. If a party objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.

(d) Recess to Examine a Statement. The court may recess the proceedings to allow time for a party to examine the statement and prepare for its use.

(e) Sanction for Failure to Produce or Deliver a Statement. If the party who called the witness willfully disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record.

(f) "Statement" Defined. As used in this rule, a witness's "statement" means: (1) a written statement that the witness makes and signs, or otherwise adopts or approves; (2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or (3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

(4) Briefing. The court shall allow a party to file a brief in support of or in opposition to any such motion or objection, either in advance of the hearing, upon its final adjournment, or both.

(5) Applicability of other rules. Rules 8.14, 8.18 and 8.20 apply to the suppression of evidence of alleged confessions, of the fact or the alleged fruits of a search or seizure and of a purported identification made by an alleged witness.

Comment: New RCr 8.27 is a new version of existing RCr 9.78.

VI. RCr 8.29 Misjoinder of offenses

New rule RCr 8.29 shall read:

If two (2) or more offenses are charged in the same indictment, information, complaint or uniform citation and they cannot be properly joined, the Commonwealth may be required to elect which offense it will prosecute.

Comment: New RCr 8.29 is existing RCr 9.14.

VII. RCr 8.31 Separate trials

New rule RCr 8.31 shall read:

If it appears that a defendant or the Commonwealth is or will be prejudiced by a joinder of offenses or of defendants in an indictment, information, complaint or uniform citation or by joinder for trial, the court shall order separate trials of counts, grant separate trials of defendants or provide whatever other relief justice requires. A motion for such relief must be made before the jury is sworn or, if there is no jury, before any evidence is received. No reference to the motion shall be made during the trial. In ruling on a motion by a defendant for severance the court may order the attorney for the Commonwealth to deliver to the court for inspection in camera any statements or confessions made by the defendants that the Commonwealth intends to introduce in evidence at the trial.

Comment: New RCr 8.31 is existing RCr 9.16.

VIII. [RCr 9.14 Misjoinder of offenses]

Deletion of RCr 9.14:

[If two (2) or more offenses are charged in the same indictment, information, complaint or uniform citation and they cannot be properly joined, the Commonwealth may be required to elect which offense it will prosecute.]

Comment: Existing RCr 9.14 is shifted to RCr 8.29.

IX. [RCr 9.16 Separate trials]

Deletion of RCr 9.16:

[If it appears that a defendant or the Commonwealth is or will be prejudiced by a joinder of offenses or of defendants in an indictment, information, complaint or uniform citation or by joinder for trial, the court shall order separate trials of counts, grant separate trials of defendants or provide whatever other relief justice requires. A motion for such relief must be made before the jury is sworn or, if there is no jury,

before any evidence is received. No reference to the motion shall be made during the trial. In ruling on a motion by a defendant for severance the court may order the attorney for the Commonwealth to deliver to the court for inspection in camera any statements or confessions made by the defendants that the Commonwealth intends to introduce in evidence at the trial.]

Comment: Existing RCr 9.16 is shifted to RCr 8.31.

X. [RCr 9.78 Confessions, searches, and witness identification; suppression of evidence]

Deletion of RCr 9.78:

[If at any time before trial a defendant moves to suppress, or during trial makes timely objection to the admission of evidence consisting of (a) a confession or other incriminating statements alleged to have been made by the defendant to police authorities, (b) the fruits of a search, or (c) witness identification, the trial court shall conduct an evidentiary hearing outside the presence of the jury and at the conclusion thereof shall enter into the record findings resolving the essential issues of fact raised by the motion or objection and necessary to support the ruling. If supported by substantial evidence the factual findings of the trial court shall be conclusive.]

Comment: A new version of existing RCr 9.78 is in RCr 8.27.

XI. RCr 13.12 Exhibits Containing Sexual Conduct Of A Minor

New rule RCr 13.12 shall read:

When evidence of a sexual nature concerning a minor is entered as an exhibit during a hearing or trial, the court shall ensure the material is not recorded onto the video record of the proceedings. Any exhibits containing such material shall be sealed and marked as "Sealed pursuant to RCr 13.12."

XII. [VIII ARRAIGNMENT AND PLEADINGS] VIII ARRAIGNMENT, PLEADINGS, AND MOTIONS

All sitting. All concur, except: Venters, J., dissents on the proposed amendments to RCr 8.18, RCr 8.20 and RCr 8.27.

ENTERED: November 7, 2014.



CHIEF JUSTICE