



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-17-00244-CV**

IN RE THE STATE OF TEXAS EX  
REL. JOHN WARREN

RELATOR

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ORIGINAL PROCEEDING  
TRIAL COURT NOS. CR16-00511 & CR16-00512

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**MEMORANDUM OPINION<sup>1</sup>**

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Relator, the State of Texas through Cooke County District Attorney John Warren and First Assistant District Attorney Eric Erlandson, filed this original proceeding requesting that we issue a petition for writ of mandamus directing Respondent, the Honorable Jerry Woodlock, to vacate the pretrial discovery order he signed that requires the two alleged child victims to undergo a

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<sup>1</sup>See Tex. R. App. P. 47.4.

psychological evaluation with Real Party in Interest Christy Agresti's expert. Because the order is void, we will conditionally grant the petition for writ of mandamus.

RPI has been indicted for two counts of injury to a child: one count involves his ten-year-old daughter, and the other count involves his eleven-year-old daughter. RPI filed a "Motion For Defendant's Access To Witnesses" requesting that his expert be allowed, under article 39.14 of the Texas Code of Criminal Procedure, to conduct psychological evaluations of the alleged victims. Respondent signed an order on July 20, 2017, ordering the alleged child victims in both cases to undergo a psychological evaluation with RPI's expert. Relator then filed this petition for writ of mandamus, contending that Respondent's July 20, 2017 order exceeds the scope of discovery provided by Texas Code of Criminal Procedure article 39.14.<sup>2</sup>

To establish a right to mandamus relief in a criminal case, the relator must show that the trial court violated a ministerial duty and that there is no adequate remedy at law. *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex. Crim. App. 2013) (orig. proceeding). The ministerial act requirement is satisfied if the relator can show a clear right to the relief sought. *Id.* "A clear right to relief is shown when the facts and circumstances dictate but one rational decision 'under

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<sup>2</sup>The prosecutor's affidavit, which is attached to the petition for writ of mandamus, states that Respondent granted a stay in the underlying cases until this original proceeding is resolved.

unequivocal, well-settled (i.e., from extant statutory, constitutional, or case law sources), and clearly controlling legal principles.” *Id.* (citing *Bowen v. Carnes*, 343 S.W.3d 805, 810 (Tex. Crim. App. 2011) (orig. proceeding)). When a trial court acts beyond the scope of its lawful authority, a clear right to relief exists. *See, e.g., In re State ex rel. Robinson*, 116 S.W.3d 115, 119 (Tex. App.—Houston [14th Dist.] 2002, orig. proceeding) (holding State entitled to mandamus relief because trial court’s pretrial discovery order exceeded scope of discovery allowed by statute).

Texas Code of Criminal Procedure article 39.14 sets out the scope of discovery available to a criminal defendant. Tex. Code Crim. Proc. Ann. art. 39.14(a) (West Supp. 2016). Subject to restrictions that are inapplicable here, article 39.14(a) requires that

as soon as practicable after receiving a timely request from the defendant the state shall produce and permit the inspection and the electronic duplication, copying, and photographing, by or on behalf of the defendant, of any offense reports, any designated documents, papers, written or recorded statements of the defendant or a witness, including witness statements of law enforcement officers but not including the work product of counsel for the state in the case and their investigators and their notes or report, or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the state or any person under contract with the state.

*Id.*

Courts have held that “the Texas Legislature intended article 39.14 to constitute a comprehensive pretrial discovery statute[] and that criminal discovery

orders must fall within the confines of that article's limited authorization." See *State ex rel. Wade v. Stephens*, 724 S.W.2d 141, 144 (Tex. App.—Dallas 1987, orig. proceeding). A corollary is that trial courts lack inherent authority to order pretrial discovery any greater than that authorized by article 39.14. *Id.* This court has previously analyzed this statute and concluded that the explicit language of the statute limits a defendant's discovery to evidence "in the possession, custody, or control of the State or any of its agencies." *Vanwinkle v. State*, No. 02-09-00200-CR, 2010 WL 4261603, at \*7 (Tex. App.—Fort Worth Oct. 28, 2010, pet. ref'd) (mem. op., not designated for publication).

Here, article 39.14 required Relator to turn over the written or recorded statements of the complainants that are within the possession, custody, or control of Relator or its agencies. See Tex. Code Crim. Proc. Ann. art. 39.14(a). According to the prosecutor's affidavit, which is attached to the petition for writ of mandamus, "the children have consistently seen a Licensed Professional Counselor. All of the notes from the counseling sessions in my possession have been provided to the defense. I have continued to provide additional notes to the defense as they become available." Relator has therefore complied with the requirements of article 39.14(a). See *id.*

Despite Relator's compliance with article 39.14(a), Respondent issued the July 20, 2017 order requiring the two alleged child victims to undergo psychological evaluations—specifically with RPI's expert. Relator has no ability to comply with such order because the State, like Respondent, has no authority

to force a complaining witness to submit to such an invasion of her right to privacy. See *State ex rel. Holmes v. Lanford*, 764 S.W.2d 593, 594 (Tex. App.—Houston [14th Dist.] 1989, orig. proceeding). Such discovery is clearly outside the scope of discovery authorized by the statute. Because Respondent had no authority to issue the July 20, 2017 order, Relator has established a clear right to the relief sought and has thus satisfied the ministerial-act requirement necessary for mandamus relief. See *Weeks*, 391 S.W.3d at 122.

RPI argues in his response that “an evaluation of the alleged victims named in the indictments is necessary for, among other things, the right to confront the witnesses against him.” But even in the absence of such evaluations, RPI has the right to subpoena witnesses to testify at trial. A psychological evaluation of each of the alleged child victims is not necessary to preserve RPI’s right to confront and cross-examine the witnesses against him. See *Lanford*, 764 S.W.2d at 594.

RPI further argues in his response that courts have recognized circumstances may arise under which a court could properly order discovery beyond that outlined in article 39.14. The cases RPI relies on for this proposition do not support the pretrial discovery order he requested; instead, the courts that have reviewed pretrial discovery orders like the one here—ordering an examination of the alleged victims—have held them to be void. See *Robinson*, 116 S.W.3d at 119 (holding trial court’s order, which required two child witnesses to undergo psychological examinations to deduce their credibility, was void and

conditionally granting writ of mandamus); *Lanford*, 764 S.W.2d at 594 (same); *cf. Stephens*, 724 S.W.2d at 144–45 (holding that article 39.14 did not authorize trial court to order complainant to submit to a physical exam and instructing trial court to set aside order). Accordingly, because Respondent’s July 20, 2017 order exceeds the scope of discovery provided by Texas Code of Criminal Procedure article 39.14, the order is void. See *Robinson*, 116 S.W.3d at 119; *Lanford*, 764 S.W.2d at 594; *cf. Stephens*, 724 S.W.2d at 144–45.

Having determined that Respondent’s order dated July 20, 2017, is void, we hold that Relator is entitled to mandamus relief. We therefore conditionally grant Relator’s petition for writ of mandamus and direct Respondent to set aside his July 20, 2017 order requiring the two alleged child victims to undergo psychological evaluations by RPI’s expert. See Tex. R. App. P. 52.8(c). We are confident that Respondent will promptly comply; the writ will issue only if Respondent does not.

/s/ Sue Walker  
SUE WALKER  
JUSTICE

PANEL: WALKER, GABRIEL, and SUDDERTH, JJ.

DELIVERED: August 9, 2017