

No. ###

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
VS.	§	OF HARRIS COUNTY, TEXAS
	§	
XXX	§	###TH JUDICIAL DISTRICT

MOTION TO OPEN AND CLOSE ARGUMENT

Judge YYY,

This is not a jury trial, so the State does not have a statutory “right” to open and close the argument. *See* Tex. Code Crim. Proc. Art. 36.07.

This is, rather, a hearing on a motion filed by Mr. XXX (that is, his motion for probation), so the order of argument is governed by Texas Code of Criminal Procedure Article 28.02. That statute states that the defendant may open and close the argument on motions he has filed.

Where no statute applies, the order of argument is within the discretion of the trial court. *See Cherry v. State*, 488 S.W.2d 744 (Tex. Crim. App. 1973). Even if Article 28.02 did not apply, Mr. XXX should be permitted to open and close the argument for the sake of due process and due course of law. Allowing Mr. XXX to respond to the State’s arguments is a simple matter of procedural due process

- he should have *notice* of the arguments that the State is going to make, *and an opportunity to be heard* in response.

When the State lies behind the log, saving its entire argument (or the bulk thereof) for after the Defendant has no more opportunity to respond, it reduces trial advocacy to gamesmanship.

Please allow me, on Mr. XXX's behalf, to open and close the argument. Alternatively, please allow the parties to argue until neither has anything to add – while Article 28.02 gives me the last word, I am not afraid to allow the State to respond to my arguments as long as I can respond to hers.

Thank you,
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