

IN
12:11 pm, Nov 21, 2016
ANNETTE SHAW
CLERK OF COURTS
ASHLAND COUNTY, OHIO

**IN THE COURT OF COMMON PLEAS, ASHLAND COUNTY, OHIO
GENERAL DIVISION**

STATE OF OHIO,

Plaintiff,

CASE NO. 16-CRI-187

vs.

SHAWN M. GRATE,

Defendant.

JUDGMENT ENTRY (JE10)

This case is before the Court on the Defendant's October 28, 2016 Ex Parte Motion for Funds (Def. Mot. 1), Motion for Unrestricted Contact with Defendant (Def. Mot. 2), Motion for Competency Evaluation (Def. Mot. 3), and Motion for Appointment of Mitigation Specialist (Def. Mot. 4), as well as the responses filed to all four motions by the State of Ohio.

Defendant Motion One

Upon consideration of Defendant's Motion One and the response of the State of Ohio, the Court finds that R.C. 2945.371(A) and (C) do not require that the Defendant be afforded an independent evaluation for the purpose of determining competency. The Defendant has not yet filed a written plea of Not Guilty by Reason of Insanity, and an evaluation for that purpose is premature. The Court therefore finds Defendant Motion One not well taken and denies the same. The Court, however, will order that a competency evaluation and assessment be performed by the District V Forensic Diagnostic Center.

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Defendant Motion Two

The State does not object to the request set forth in Defendant Motion Two. The Court finds the same well taken and grants Defendant Motion Two. Subject to the Court's ruling on Defendant Motion One, Dr. John M. Fabian and/or an associate from his office (properly identified) may have unrestricted contact with Defendant at any time, subject to the general policies and procedures of the Ashland County Jail, and further subject to any specific policies established to maintain the security and safety of this Defendant and jail staff.

Defendant Motion Three

Defendant Motion Three, for the most part, raises the same issues as previously addressed in the Court's determination of Defendant Motion One. The Court therefore finds Defendant Motion Three well taken, to the extent the Court is ordering a competency evaluation to be performed by the District V Forensic Diagnostic Center. Defendant Motion Three is granted as set forth herein.

Defendant Motion Four

Defendant Motion Four requests that the Court authorize the appointment of a mitigation specialist. In reality, the Defendant Motion Four is requesting an appropriation of funds pursuant to R.C. 2929.024. The State objects to this request, asserting that counsel for Defendant has failed to properly identify a specific need or benefit. The Court understands the position of the State, and somewhat agrees that Defendant's request is somewhat of a fishing expedition at this point. The Court

recognizes, however, that until some preliminary assessment is conducted by a qualified expert, there may very well be an inability to determine whether there are meritorious defenses or mitigation information available to pursue. The Court also recognizes that R.C. 2929.024 allows for additional appropriations for such expenditures both before and after services have been rendered. The Court, in order to afford the defense counsel an opportunity to ascertain what defenses are available, and to ascertain what, if any, additional expert services may be necessary, grants Defendant Motion Four, in part. The Court authorizes Orders an expenditure of no more than \$5,000.00 at this time for the retention of services authorized by R.C. 2929.024. The Court further Orders that payment of the fees and expenses for the necessary services shall be made in the same manner that payment for appointed counsel is made pursuant to Chapter 120 of the Revised Code.

Pursuant to the forgoing findings and orders, it is further ORDERED as follows:

1. A Forensic Evaluation shall be conducted by The District V Forensic Diagnostic Center in Mansfield, Ohio as follows:

a. PERSON TO BE EXAMINED:

Name: **SHAWN M GRATE**

DOB: **08/08/1976** SSN: **XXX-XX-4636**

Residence Address: c/o Ashland County Jail, 1205 E. Main Street, Ashland, Ohio 44805

Phone: N/A Email: N/A

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b. ATTORNEYS OF RECORD:

Name: ROBERT HARRY WHITNEY, Esq. & R. ROLF WHITNEY, ESQ.

Address: 13 PARK AVENUE WEST, MANSFIELD, OH, 44902

Phone: (419)524-4742

c. CHARGES PENDING:

AGGRAVATED MURDER, RC 2903.01(A) and RC 2903.01(B), multiple counts, and with death penalty specification, and others less serious.

d. TYPE OF EVALUATION ORDERED:

- 2951.041 Drug Treatment in Lieu of Conviction
- 2945.371 Not Guilty by Reason of Insanity
- 2945.40 NGRI DISPOSITION EXAMINATION
- 2945.39 Competency to Stand Trial**
- 2951.03 Probation Investigation in Felony Cases
- 2967.22 Diagnosis and Treatment of Mentally Ill Parolees
- 2947.06 Mitigation of Penalty After Verdict
- 2929.03 Imposing Sentence for a Capital Offense
- 2951.04 Conditional Probation for Drug Dependency Program
- Other

e. DATE, TIME, NAME OF EXAMINER AND LOCATION OF EXAMINATION:

Date: TUESDAY, NOVEMBER 29, 2016

Time: 9:00 a.m.

Examiner: Dr. Brian O'Reilly

**Location: The Center for Individual and Family Services, 741
Scholl Road, Mansfield, Ohio, 44907**

Phone: 419-774-5970.

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2. REPORTS TO THE FOLLOWING PERSONS AND TIME LIMIT FOR REPORT:

- | | | | | |
|-------------------------------------|---|-----------|-------------------------------------|---------|
| <input checked="" type="checkbox"/> | Judge | Date Due: | <input checked="" type="checkbox"/> | 30 Days |
| <input type="checkbox"/> | Clerk of Courts | | <input type="checkbox"/> | 60 Days |
| <input checked="" type="checkbox"/> | Adult Parole Authority (Ashland County) | | <input type="checkbox"/> | Other |
| <input checked="" type="checkbox"/> | Counsel | | | |

3. A further hearing in this matter shall be conducted by Skype for Business Video on **Friday, January 6, 2017 at 11:00 a.m.**

The Court further Orders based upon the reported availability of 401 grant funds, that the prerequisite \$650.00 deposit normally required shall be waived in this case.

It is so ordered.



Ronald P. Forsthoefel, Judge