

IN
12:52 pm, Oct 31, 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,

**JUDGMENT ENTRY (JE-9)
SCHEDULING ORDER**

Defendant.

This matter came before the Court for a case scheduling conference by video on October 31, 2016. Counsel for Defendant, R. Rolf Whitney and Ashland County Prosecuting Attorney Christopher Tunnell participated in the video conference. Pursuant to the discussion with counsel, the court herein sets the following scheduling order for the preparation and trial of this matter. All parties shall comply with this scheduling order and this order shall be enforced subject to modification for good cause. The following dates are hereby scheduled for this matter:

1. Trial date: **Monday, November 6, 2017 at 9:00 a.m.** Counsel to appear and be prepared to proceed at least 30 minutes prior to the trial time.
2. Final Pretrial: Friday, September 29, 2017 at 1:00 p.m.
3. Suggested long-form jury questionnaire from counsel to the court by Monday, August 28, 2017.
4. Approximate date for clerk of courts to mail initial jury summons and short-form questionnaire: Friday, September 1, 2017.

JM# 66

5. Approximate date for clerk of courts to send long-form jury questionnaire:
Wednesday, September 20, 2017.
6. Discovery deadline: Friday, September 1, 2017.
7. Dispositive motion deadline: Tuesday, August 1, 2017.
8. Motion to suppress evidence deadline: July 1, 2017.
9. First round jury excuses: Monday, September 11, 2017 at 9:00 a.m. All counsel and Defendant shall be present and participate by Skype for Business video.
10. Second round jury excuses: Friday, September 15, 2017 at 10:00 a.m. All counsel present in open court.
11. Request for jury view to be filed by Friday, September 22, 2017.
12. Requested jury instructions to be filed by October 2, 2017.

Interim pretrials shall be set by the court by separate entries as needed or as requested by counsel.

All motions to be filed by the prosecution or by defense counsel shall be numbered in a sequential order and each motion shall have a caption indicating briefly the nature of the motion. By way of example, the prosecution would file an appropriate motion with the following heading:

MOTION FOR DISCOVERY - PROSECUTION MOTION NO. 2

Defense counsel would file appropriate motions such as:

MOTION FOR BILL OF PARTICULARS - DEFENDANT MOTION NO. 5

All motions shall be in chronological order starting with Prosecution 2 and Defendant 5 and continuing in a sequential order thereafter.

When possible, motions shall contain appropriate references to any legal authority cited with web-citations provided, with other related matters attached to the motion as an appropriate appendix. It is required by the court that any case law and statutes cited from outside of the State of Ohio, and any case citations within the State of Ohio that do not possess at least a LEXIS web-citation, must physically accompany any motion. Motions not supported as requested herein will be subject to being summarily denied.

Counsel, upon filing any motion, shall indicate on the caption of said motion whether an oral hearing is requested or whether the court may rule on the motion without a specific oral hearing. All motions filed shall have an appropriate response by the opposing party within fourteen (14) days of the filing date of the original motion unless leave of court has been sought and granted for good cause.

Potential long-form jury questionnaires shall be submitted by counsel for the prosecution and counsel for the defense on or before the due date indicated by the court in this scheduling order. The court shall provide sample copies of long-form questionnaires, if requested by counsel, and it is requested that counsel attempt to follow the court's suggested format for the long-form questionnaires. Counsel may provide any additional requests or deletions from the suggested forms. The suggested forms have been used in other courts, and have proved very workable with juries in the past.

Copies of all motions, pleadings or other related matters shall be filed with the clerk of courts along with courtesy copies forwarded directly to the judge's chambers by email utilizing the email address directed by the court.

The jury Clerk of Courts shall send the initial jury summons and short-form jury questionnaire to prospective jurors as indicated earlier in this order. The jury commissioner shall herein be ordered to follow-up on all non-returned or non-completed short-form jury questionnaires in an attempt to locate jurors and to seek compliance with the jury summons.

The jury commissioner shall retain notes on all unlocated jurors and the attempts to locate same for further placement on the court record. This shall also apply to any long-form questionnaires not returned to the court. The jury commissioner shall attempt to locate any such jurors and to seek compliance and provide the court with appropriate information at the jury excuse hearings that have been set by the court.

The long form jury questionnaire shall be mailed by the Clerk of Courts as previously indicated in this order.

Copies of the completed short-form jury questionnaires and completed long-form questionnaires shall be provided to the court with copies to all counsel of record upon their receipt and as received by the jury commissioner.

Short-form or long-form jury questionnaires provided to counsel shall not be distributed or provided to any person other than members of the prosecutor's office, the defendant, or other individuals working on behalf of the prosecutor or defense counsel, unless further permitted by the court. Persons with such access shall not in any way

attempt, either directly or indirectly, to contact said prospective jurors in any manner whatsoever. All jury questionnaires will be collected at the conclusion of the case and shall be collectively sealed for filing with the Clerk of Courts, subject to further order of the court. No further copying of the jury questionnaires shall be permitted for any purpose without the express written approval of the court.

All parties are to comply with all requests for discovery and all orders regarding discovery in a timely fashion. Parties shall proceed with discovery forthwith and with all due diligence. Any problems or disputes regarding discovery should be brought to the trial court's attention immediately through the filing of an appropriate specific motion concerning the discovery requested or any discovery denied.

The court will set two rounds of jury excuses prior to the seating of the general jury venire. The first round of jury excuses will be to handle those jurors with potential excuses from jury service for age, sickness, etc. The date for the first round of jury excuses has been provided at the beginning of this Scheduling Order, and shall be conducted utilizing Skype for Video. The second round of jury excuses will take place as scheduled herein and will involve individual jurors who wish to be excused from jury service. During this second round, the jurors will appear in person to provide the court and counsel with the reason why the juror believes that they should be excused from being a part of the potential jury venire in the within matter.

All experts retained by either the prosecution or by defense counsel shall be advised immediately of discovery deadlines and of the trial dates set by the court in this particular matter. Counsel shall confirm with all experts their availability for trial and

shall provide notification to the court that the experts have been advised of their availability and of their willingness to work within the time periods set herein.

Counsel for the prosecution and defense counsel shall issue appropriate subpoenas for witnesses, and counsel shall schedule witnesses so as not to cause unnecessary delays during the trial proceedings. Counsel will be expected to have witnesses available during all normal trial times or at such other times as the court may order that court will be in session so as not to cause unnecessary inconvenience to the trial jurors. During trial, counsel for the prosecution and counsel for the defendant shall maintain vigilance on any respective witness to be called by each side so as not to violate any order regarding a separation of witnesses. Any counsel not complying with this order may have the respective witness potentially excluded from testifying unless good cause is shown for the violation of the court's separation of witness order.

Counsel for the prosecution and counsel for defense shall provide the court, no later than the final pretrial in this matter, with potential expected witness lists for the court's use in seating the jury. Should any updates occur in potential witness names after the final pretrial, they shall be provided to the court prior to the seating of the jury.

Defense counsel shall be responsible for securing appropriate street clothing for the defendant, and should funds be necessary, for the appropriation of street clothing, defense counsel shall request same well in advance of trial. Defense counsel shall be responsible for seeing that any street clothing is purchased and provided to the appropriate authorities at the jail for processing prior to trial.

Requests for a jury view shall be provided with particularity, including the specific address to be viewed and any special instructions to be provided to the jury. The party requesting the view shall normally be responsible for making the necessary arrangements concerning transportation subject to final approval by the court. These items shall be discussed by counsel with the court at an appropriate pretrial conference.

Pretrial conferences will take place in open court or by through the use of Skype for Business video with counsel present. All substantive matters will be placed on the record, will be discussed on the record, and shall make appropriate accommodations for media and/or public access. The court will handle purely procedural matters in chambers or by Skype for Business video; provided, however, that after all in-chambers pretrial conferences, the court will provide an opportunity to place all procedural matters also on the court record, if not already done so through video recording. Any party may request the right to put any item on the record after a pretrial conference as may be deemed necessary by counsel. Following the journalization of this Scheduling Order, the defendant will be present during all matters which are placed on the court record, including matters placed on the court record through recorded video conference.

All counsel are expected to attend all pretrial conferences unless they are excused by the trial court. Counsel shall be prepared to discuss all respective issues necessary at any pretrial conference.

This court shall reserve the right to make further orders concerning any necessary court security for the protection of the defendant, parties, counsel and others.

Should counsel need any particular items of technological equipment including video equipment, tape or digital recorders, x-ray boxes, overhead projectors, etc., counsel shall advise the court no later than the final pretrial so that these matters may be secured prior to the date of trial.

The court reserves the right to make further orders concerning the proper handling and accommodations for family or friends of the deceased and of the accused.

The court has issued a specific order regarding media coverage, if requested. For future proceedings, the Court will be providing live-streaming audio and video of in-court proceedings over the internet. A link to that video stream shall be posted on the Court's website. The Court shall generally provide as well, a location within the Courthouse for viewing streaming video of in-court proceedings.

Any firearms to be utilized as exhibits shall be provided with appropriate gun locks prior to being utilized within the courtroom.

Proposed jury instructions shall be filed and shall be set out with headings and all instructions shall be typed in their entirety. Each instruction shall include the appropriate O.J.I. citation or an appropriate case law citation. Any jury instructions that do not comply with this format may well not be considered for presentation by the court. This court deems jury instructions to also include proposed jury verdict forms that may be requested by either the prosecution or the defense. Digital copies of all proposed jury instructions shall be provided directly to the court, attached to an appropriate email, and shall be formatted in either MS Word format, Adobe Acrobat *Searchable* PDF format, or WordPerfect format.

All counsel are herein ordered to supplement discovery answers at the earliest time that supplemental information becomes known. If supplementation is not made in a timely fashion, the court will prohibit either witness testimony or the introduction of evidence on the issues that were not timely supplemented, absent a showing of good cause.

All documents and exhibits shall be marked for identification purposes prior to trial. All parties shall also prepare an index listing all exhibits to be potentially admitted by the respective party, and both exhibits and indexes shall be exchanged by counsel as may be required pursuant to Crim.R. 16 and Local R. 10. The state shall mark exhibits using numbers and the defendant shall mark exhibits using letters or numbers. All exhibits shall clearly identify the exhibit as a "State" or "Defendant" exhibit, and shall also include the case number on the identifying label. At any time the defendant has more than 26 exhibits and if letters are utilized by defense counsel; double letters will be utilized, such as "Exhibit AA." The court requests that web-citations for any cited authorities be provided in any briefs, motions, jury instructions or other related matters. Any cited authorities beyond citations found in the Ohio Revised Code, Ohio Official Reports, and the Ohio Court Rules, *unless* readily available through a website URL address or citation (which should be provided), must be supplied in their entirety. As an example, any case law from outside the State of Ohio must be provided in opinion form. Foreign statutes outside the State of Ohio must also be provided by copy. Further, all unreported appellate decisions shall include a LEXIS web-citation, or an official

electronic database citation consistent with the Supreme Court of Ohio Writing Manual/Manual of Citations.

Any unique forms of evidence that are expected to be used at trial shall be raised at pretrial conferences and no later than the final pretrial conference, along with appropriate citations of authority.

Counsel should be advised that the court will conduct limited initial voir dire and counsel will be permitted to supplement the court's questioning during group voir dire. The court shall also schedule individual voir dire with an emphasis on pretrial publicity, death penalty qualification, and any specific private matters requested by the juror to be discussed in the individual voir dire. The court will provide further instructions to counsel concerning the voir dire prior to the commencement of trial. *Jurors will be addressed at all times by juror number only.*

It is so ordered.



Ronald P. Forsthoefel, Judge