

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

[DEFENDANT NAME(S)],

[D singular / plural].

Case No. [##-#####]

Honorable Robert J. White

CRIMINAL SCHEDULING ORDER AND TRIAL NOTICE

This Order provides for discovery and inspection of documents; sets plea and motion cut-off dates and dates for the final pretrial conference and trial; and sets guidelines for other pretrial matters. It is also meant to avert unnecessary discovery motions and expedite the presentation of evidence and the examination of witnesses. To the extent it conflicts with an administrative order in this District, this Order governs.

EVENT / FILING	DATE / TIMEFRAME
Requests for an interpreter	≥ 7 days before any court appearance
Pretrial motions (except motions <i>in limine</i>)	[date]
Rule 11 plea agreement (signed & submitted)	[date]
Witness lists, proposed voir dire, proposed jury instructions, and proposed verdict form (submitted directly to chambers)	[date]
Motions <i>in limine</i>	[date]
Final pretrial conference	[date]
Trial	[date]

I. Recusal

A. The government shall immediately determine whether any portion of this criminal case or its previous investigation is one in which Judge White represented the United States as an Assistant United States Attorney for the U.S. Attorney's Office for the Eastern District of Michigan or the U.S. Attorney's Office for the Western District of Texas.

B. If it is, (1) the government shall immediately inform the Court and defense counsel of this fact, and (2) upon its own initiative or by motion of any party, the Court may recuse itself from this matter. *See* 28 U.S.C. § 455; *see also Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (holding that "there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case").

II. Attorney conference, disclosures, and discovery

A. Within ten (10) days of the arraignment, government and defense counsel shall meet and confer for the purpose of resolving or minimizing the issues in controversy, or government counsel shall file the Discovery Notice attached to E.D. Mich. Administrative Order No. 03-AO-027.

B. Upon the request of defense counsel, government counsel shall: (1) provide defense counsel with the information described in Federal Rule of Criminal Procedure 16(a)(1); and (2) permit defense counsel to inspect and copy or photograph any exculpatory/impeachment evidence within the meaning of *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), and *Giglio v. United States*, 405 U.S. 150 (1972).

C. The foregoing notwithstanding, the government shall disclose to the defense all exculpatory evidence that is material to the defense under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, including impeachment evidence under *Giglio v. United States*, 405 U.S. 150 (1972) and its progeny. *Cf.* Fed. R. Crim. P. 5(f)(1). Failure to do so in a timely manner may result in consequences, including dismissal of the indictment or information, exclusion of government evidence or witnesses, adverse jury instructions, dismissal of charges, contempt proceedings, sanctions by the Court, or any other remedy that is just under the circumstances.

D. The duty of disclosure and discovery is continuing, even throughout trial.

E. The Court urges the government to disclose Jencks Act (18 U.S.C. § 3500) materials in advance of trial. In the event Jencks Act materials are not disclosed far enough ahead of a government witness's testimony, during trial the Court will allow the defense a reasonable amount of additional time to prepare before proceeding.

F. If government counsel believes it would be detrimental to the government's interests to make any of the disclosures set forth above, the government shall file a motion seeking relief from this Order and setting forth the specific reasons.

G. Nothing in this Order is designed to preclude discovery by the government under the Federal Rules of Criminal Procedure, nor to alter the Defendant's obligation, if any, under Federal Rule of Criminal Procedure 16.

III. Pre-trial motions and motions *in limine*

A. Pre-trial motions must comply with Local Criminal Rule 12.1.

B. Motions *in limine* from each party must be filed as a single omnibus motion. Those motions—along with any notices of intent to contest foundation, chain of custody, or scientific analysis—shall be filed by the deadline set in this Order. Unless the items or exhibits are unusually voluminous, any notice of intent to contest foundation, chain of custody, or scientific analysis shall provide a brief item-by-item or exhibit-by-exhibit description of the good faith basis for any objection. The Court will also entertain motions to pre-admit exhibits as they relate to issues of foundation and authenticity to which the parties cannot reach an agreement. *See* Fed. R. Evid. 611 (requiring the Court to “exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to ... avoid wasting time”). The Court will work to resolve the motions *in limine* promptly so that counsel has sufficient time to modify witness and exhibits lists based on the Court's rulings. However, the Court may take certain aspects of the motions under advisement and rule after some evidence has been presented at trial.

C. No later than one business day after any motion is filed, attorneys shall furnish to chambers (not the Clerk's Office) courtesy copies of supporting appendices if

(1) they contain materials that are difficult to understand in copied form (e.g., color photographs, electronic exhibits); (2) any document exceeds 50 pages; or (3) there are more than three exhibits. They must be e-file-stamped, tabbed, and bound in any manner except a prong fastener, and have the relevant portions highlighted. The court will receive electronic exhibits in any manner consistent with the parties' agreement (e.g., video located on a flash drive or CD).

IV. Exhibits

A. *List and stipulation to admissibility.* Each party must submit to chambers a list of proposed exhibits by the deadline set at the final pretrial conference. No later than seven (7) days before the final pretrial conference, each party shall make available for inspection all exhibits that party will introduce at trial. Counsel must make reasonable efforts to reach agreement concerning the admissibility of each intended physical exhibit prior to trial. If an agreement is reached, government counsel shall prepare a list of the stipulated exhibits for entry at the opening of trial, and the Court will admit them at the outset.

B. *Foundation.* When a party has inspected an exhibit that the opposing party intends to introduce in evidence, the authentication of that will be deemed established unless the objecting party files a notice with the Court at or before the final pretrial conference that the foundation for admission into evidence of the exhibit will be contested.

C. *Objections.* This Order shall not affect the right of a party to object at the time of trial to the introduction of an exhibit other than on the basis of authentication and foundation.

D. *Custody and record of admitted exhibits.* Counsel are required to maintain a record of all admitted exhibits during trial. Counsel for each party must keep custody of that party's admitted exhibits during trial. A party who objects to this provision must file a written objection prior to jury selection.

E. *Presentation of exhibits during trial.* The Court encourages parties to use electronic projection to present exhibits during trial in a manner that allows the jury, court, attorneys, and parties to view the exhibit simultaneously. Each party must prepare exhibit books for the Court and the court reporter. Additionally, an exhibit

book should be prepared and made available to any witness who will be questioned about an exhibit, even if counsel intends to present that exhibit via electronic projection.

F. *Preparing exhibits for jury deliberations.* Counsel must confer and purge from one set of binders or files all exhibits not admitted during the course of trial. Originals of all exhibits admitted at trial should be ready to be turned over to the jury foreperson prior to closing jury instructions so that jury deliberations are not delayed.

G. *Filing exhibits.* It is the responsibility of the parties to ensure that the record is complete. All trial exhibits, briefs, and proposed jury instructions are to be filed in the record within five business days of the verdict.

H. *Full disclosure.* Computer-generated visual or animated evidence, together with underlying data, must be disclosed to opposing counsel at least one week before the start of trial.

I. *Penalty.* A party who does not abide by these provisions may be subject to sanctions, including preclusion of the introduction of exhibits at trial by the offending party.

V. Scientific analysis

When a defendant has been made aware of the existence of scientific analysis of an exhibit (which analysis has been determined by an expert in the relevant field of science), the results of the scientific analysis of the exhibit and the opinion of the scientist will be admitted into evidence unless the defendant files a notice with the Court (not less than seven (7) days prior to trial) that the scientific analysis of the exhibit will be contested.

VI. Witness lists and testimony

By the deadline established in this Order, each party shall submit directly to chambers a list of witnesses by name and agency (if appropriate) whom the party reasonably anticipates it will call to testify at trial, noting the approximate amount of time it anticipates will be needed for examination of each such witness. All

witnesses, including law enforcement personnel, are to testify in plain clothes. The list must be served on opposing counsel with proof of service attached (or copied via email in correspondence with the Court). Do **not** file the list and proof of service electronically or with the Clerk's Office.

VII. Jury selection, instructions, note-taking, and alternates

A. *Jury selection.* The Court's practice is to conduct its own voir dire and afford counsel the opportunity to conduct follow-up and supplemental voir dire. While the Court has standard voir dire questions, the parties may submit a list of other inquiries specific to the case. *See* Fed. R. Crim. P. 24(a). The parties must meet and confer prior to submitting the proposed voir dire questions and designate whether each question is stipulated or contested. Counsel must confine themselves to genuine voir dire and not engage in posturing or argument.

B. *Jury instructions.* The parties must meet and confer prior to the final pretrial conference to discuss jury instructions and make a concerted, good faith effort to narrow the areas of dispute and to discuss each instruction with a view to reaching agreement as to an acceptable form. By the deadline established in this Order, the parties must submit directly to chambers a single set of proposed, stipulated jury instructions in Microsoft Word format via the Proposed Orders function in CM/ECF. Each party is responsible for submitting all instructions related to the specific charges or defenses, and special instructions relating to evidence. The Court has its own standard introductory and concluding instructions and will usually instruct the jury using the Sixth Circuit's pattern jury instructions when available. Each instruction shall contain references to authority and each instruction shall be on a separate page. In addition, each party must submit separately to chambers all additional proposed instructions (in the same form) to which any other party objects. Disputes regarding proposed jury instructions are settled at a hearing on the record.

C. *Jury notetaking.* Jurors will be allowed to take notes.

D. *Alternate jurors.* If more than twelve (12) jurors are selected, alternate jurors shall be removed by blind draw at the conclusion of the final jury instructions, unless a party objects to this process at or before the final pretrial conference. If objections are made, the last juror(s) drawn during the selection process shall be deemed the alternate juror(s).

VIII. Multi-defendant trials

The Court does not have a separate procedure for handling multi-defendant trials. Attorneys should work out a procedure for peremptory challenges among themselves. If that fails, the Court will allocate peremptory challenges based on the circumstances of the case.

IX. Trial briefs

The Court encourages, but does not require, the submission of a trial brief. If a trial brief is submitted, it should, among other things, inform the court about the party's proposed resolution of anticipated evidentiary issues.

X. Continuances

Continuances of trial dates or continuances during trial are disfavored and generally will not be granted because of unavailability of witnesses. Please notify the Court if Court intervention is necessary to secure witness attendance. Otherwise, witnesses will be expected to be available when called.

XI. Final pretrial conference

Counsel must be prepared to discuss all matters that will promote a fair and expeditious trial, including but not limited to: (1) A potential summary of charges to be read to the jury; (2) Anticipated evidentiary issues; (3) Length of trial; (4) Stipulations and (5) Special arrangements for the presentation of witnesses and other evidence (*e.g.*, A/V needs, interpreters, etc.). The defendant(s) shall be present.

XII. Sentencing

Sentencing memoranda are required from the government and defendant no later than seven (7) days before the sentencing hearing.

Dated: [insert date]

s/[insert signature]_____
Robert J. White
United States District Judge