

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No.

Hon. Brandy R. McMillion

v.

,

Defendant.

---

**CRIMINAL TRIAL NOTICE AND SCHEDULING ORDER**

The purpose of this Order is to (1) establish a motion cut-off date; (2) establish a plea cut-off date; (3) set guidelines for other pretrial matters; and (4) set a trial date and final pretrial conference.

This order also is intended to eliminate unnecessary discovery motions and to expedite the presentation of evidence and the examination of witnesses. To the extent it is in conflict with any administrative order in this District, this Order shall govern.

<b>YOU WILL RECEIVE NO FURTHER NOTICE OF THESE DATES</b>	
Pretrial Motions (except for motions <i>in limine</i> ) due:	
Plea Cut-Off <sup>1</sup> :	
Witness Lists, Proposed Voir Dire, Proposed Jury Instructions and Proposed Verdict Form (submitted directly to chambers) due:	
Final Pretrial Conference:	
Trial Date:	

**1. RECUSAL**

The government shall immediately determine whether any portion of this criminal case or its previous investigation was opened in the United States Attorney’s office for the Eastern District of Michigan during the period from February 8, 2015, until November 13, 2023, and if it was, shall immediately inform the Court and defense counsel of both that fact and the date of the opening. Upon its own initiative or by motion of any party, the Court shall recuse itself from any matter over which Judge McMillion managed as Chief of the General Crimes Unit in the United States

---

<sup>1</sup> Parties are directed to contact chambers to schedule a plea hearing once a plea agreement has been executed, if necessary.

Attorney's Office for the Eastern District of Michigan, or in which she represented the United States as an Assistant United States Attorney.

**2. PLEA CUT-OFF DATE**

If the parties intend to resolve this case by a plea agreement pursuant to Federal Rule of Criminal Procedure 11, the parties must submit a signed plea agreement to chambers on or before the deadline set forth above.

**3. ATTORNEY CONFERENCE AND DISCLOSURE**

Within ten (10) days of the date of arraignment, government and defense counsel shall meet and confer for the purpose of resolving or minimizing the issues in controversy. Upon the request of defense counsel, government counsel shall:

- A. provide defense counsel with the information described in Federal Rule of Criminal Procedure 16(a)(1); and
- B. 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). A list of such evidence shall be prepared and signed by all counsel. Copies of the items which have been disclosed shall be initialed or otherwise marked.

Nothing in this Order shall be construed to require the disclosure of *Jencks* Act material prior to the time that its disclosure is required by law.

**4. DISCLOSURE DECLINED**

If, in the judgment of government counsel, it would be detrimental to the government's interests to make any of the disclosures set forth in the paragraph

above, the government shall file a motion within the ten-day period seeking relief from this Order and setting forth the specific reasons therefore.

**5. CONTINUING DUTY**

The duty to disclose is continuing, even throughout trial.

**6. DISCOVERY BY GOVERNMENT**

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 Rule 16(b).

**7. PRETRIAL MOTIONS**

All pretrial motions, except for motions *in limine*, are to be filed on or before the date above. If motions are filed, the government or defendant may file a response within the time allowed by the Local Rules. Motions *in limine* may be filed up to one week before the commencement of trial.

Before any pretrial motion is filed, compliance with Local Criminal Rule 12.1 must be observed.

Attorneys shall furnish to chambers courtesy copies of all motions and briefs. Courtesy copies must be sent to the chambers via First-Class Mail the same day the document is e-filed, or hand-delivered not later than the next business day after the document is e-filed. The courtesy copy should consist of the actual e-filed document and contain the electronic file stamp on the top of each page. Motion papers may be

bound in any manner other than a prong fastener, or 3-hole punched and provided in an appropriate 3-ring binder. The Court will not accept documents loosely secured with a rubber band or binder clip. Exhibits must be labeled and may be printed on both sides of the paper. Relevant portions of exhibits must be highlighted.

Along with the courtesy copy, the filing party must include copies of the main cases and other authority that support its legal position(s). The filing party must highlight the relevant portion(s) of these authorities.

**8. EXHIBITS**

A. Marking of Exhibits. Counsel are required to mark all proposed exhibits in advance of trial. The Government's exhibits shall use numbers and Defendant's exhibits shall use letters. A consecutive numbering and lettering system should be used by each party.

B. List of Exhibits and Agreement as to Admissibility. A list of proposed exhibits shall be submitted directly to Judge McMillion's chambers by each of the parties by the deadline established at the final pretrial conference. However, no later than one (1) week before the final pretrial conference, each party shall make available for inspection all exhibits that party will introduce at trial. This provision shall not extend the time for disclosure and inspection of material previously ordered herein.

C. Foundation/Authentication of Exhibits. When a party has inspected an exhibit that the opposing party intends to introduce in evidence, the authentication of that exhibit will be deemed established unless the objecting party files a notice with the Court at or before the final pretrial conference that it contests the foundation, chain of custody, or scientific analysis. Unless the exhibits are unusually voluminous, any notice to contest foundation, chain of custody, or scientific analysis shall provide a brief description of the exhibit contested, and the good faith basis for any objection.

D. Objections to Exhibits. 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.

E. 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.

F. Publication 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.

G. Preparing Exhibits for Jury Deliberation. 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.

H. 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 on the record within five (5) business days of the verdict.

I. 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.

J. 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.

## **9. WITNESS LIST**

By the deadline established by this Order, and to enable the Court to better estimate the length of trial, each party shall submit directly to Chambers a list of witnesses by name and agency (if appropriate), whom it reasonably anticipates it

will call to testify at trial, noting the approximate amount of time the party anticipates will be needed for examination of each such witness. The list must be served on opposing counsel; however, the list should NOT be filed electronically or otherwise submitted to the Clerk's Office.

## **10. JURY INSTRUCTIONS**

The parties must meet and confer prior to the Final Pretrial Conference to discuss jury instructions. The parties should make a concerted, good faith effort to narrow the areas of dispute and to discuss each instruction with a view to reaching agreement on a single stipulated set of final instructions.

By the deadline established in the Scheduling Order, the parties must submit directly to chambers the following under separate tabs:

- a. A complete, single set of the proposed final jury instructions on which the parties have reached agreement. The Court expects the parties to use the Sixth Circuit's pattern instructions where applicable; and
- b. Any proposed instructions on which there is a disagreement. For each such instruction, the party proposing the instruction should include the instruction and the authority supporting the instruction. The party opposing the instruction should include (1) an alternate instruction and/or (2) a concise statement explaining its objection to the proposed instruction, and the authority upon which it relies.



All instructions are to be submitted in typewritten form (double spaced) and on a thumb drive compatible with Microsoft Word; each instruction shall contain references to authority (e.g., “Devitt and Blackmar, Section 11.08”); and each instruction shall be on a separate page.

**11. VOIR DIRE**

The Court will conduct voir dire. The court may allow the attorneys to present follow up questions at a sidebar conference, and when appropriate, the court will also ask the requested follow up questions.

The Court uses the “Strike Method” for jury selection. In most cases, the government will be allowed six (6) peremptory challenges and the defendant will be allowed ten (10) peremptory challenges. The Court will select twelve (12) regular jurors and two (2) alternate jurors, unless specific circumstances warrant a different number of alternates. Alternate jurors are not told they are alternates; and the alternate jurors will be dismissed by random draw at the conclusion of the Court’s final jury instructions.

**12. JUROR NOTE TAKING**

Jurors will be allowed to take notes. The Court specifically instructs the jury in advance on this issue. Jurors who choose to take notes will be instructed that such notes are not themselves evidence but are merely aids to the juror’s memory of the evidence presented at trial. The Court will consider, on a case-by-case basis, whether

jurors will be permitted to question witnesses, generally through submission of questions to be asked by the Court.

**13. CONTINUANCES**

Continuances of trial dates or continuances during trial 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.

**14. 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.

**15. BENCH TRIAL**

In bench trials, proposed findings of fact and conclusions of law must be submitted one week before the commencement of trial.

**16. FINAL PRETRIAL CONFERENCE**

At the final pretrial conference, counsel must be prepared to discuss all matters that will promote a fair and expeditious trial, including but not limited to:

- A. Summary of charges to be read to jury;
- B. Anticipated evidentiary issues;
- C. Length of trial;

- D. Stipulations that may obviate the need for foundation witnesses;
- E. Stipulations that may obviate the need to prove facts that are uncontested;
- F. Stipulations that may obviate the need for certain exhibits;
- G. Peremptory challenges; and
- H. Special arrangements for the presentation of witnesses and other evidence (handicapped parties/witnesses, A/V needs, interpreters, etc.).

Defendants must be present during the Final Pretrial Conference.

\_\_\_\_\_  
BRANDY R. MCMILLION  
UNITED STATES DISTRICT JUDGE

Dated:

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record by electronic means and/or ordinary mail.

\_\_\_\_\_  
Case Manager