

COUNTY COURT, EL PASO COUNTY, COLORADO  
270 South Tejon  
Colorado Springs, CO 80903  
719-452-5207

**THE PEOPLE OF THE STATE OF COLORADO,**

v.

**DEFENDANT**

**▲ COURT USE ONLY ▲**

Case Number: ALL M, T AND CR CASES

Division B  
Courtroom S201

**CASE MANAGEMENT ORDER- CRIMINAL**

This Order governs all T, M and CR cases pending in Division B.

**SCHEDULING:**

- All criminal jury trials are scheduled to begin on the scheduled trial date at 8:30 a.m.
- If a trial is expected to take more than two days for the presentation of evidence, counsel shall alert the Court of that issue at the time the case sets for trial.
- Each Defendant is entitled to two (2) pre trial conferences. At the second pretrial conference, the Defendant must make a decision whether to accept a plea bargain or set the case for trial.

**DISCOVERY:**

- Motions requesting discovery required by C.R.Crim P. Rule 16(V)(a) are NOT to be filed. Any Motion filed contrary to this Order will be summarily DENIED. Unless otherwise agreed upon by the parties and approved by the Court, discovery shall be strictly controlled by Crim. P. 16. Pursuant to Chief Judge Directive 2006-1, the Prosecution is ordered to provide the NCIC and CCIC information available on all of its lay witnesses. The Court expects the Prosecution to provide discovery not only of the information in its possession, but also of any information relevant to the case in possession of the various investigative personnel and law enforcement agencies, pursuant to Crim. P. Rule 16(I)(b)(4).
- The Court finds that the interests of justice would be served by ordering disclosure no later than thirty-five (35) days prior to trial of:
  - The matters enumerated in Crim.P. 16 (I)(d)(3) and (II)(b)(2) regarding experts so that Counsel will have meaningful information to conduct effective cross-examination. If no report is made by the expert then a written summary describing the expert's opinions and reasons therefore must be disclosed. The matters to be disclosed include any learned treatises or studies relied upon by the expert regarding any subject at issue in the trial;
  - Good faith list of witnesses; theory of defense; any affirmative defense(s) and alibi pursuant to Crim.P.16(II)(c) and (d);
  - The Prosecution must provide written notice to defendant of any benefit or promises given to a civilian witness in exchange for their testimony;
  - The Prosecution must provide to the defendant and file with the Court a written notice of any C.R.E. 404(b) materials that the Prosecution intends to introduce including any underlying police or investigative reports.
- All discovery issues actually known, or which should have been known, at the time of the pretrial readiness conference are waived if not raised by objection at the pretrial readiness conference.

**MOTIONS:**

- Dates for motions hearings will not be provided absent a written motion having been filed with the Court.
- All motions shall be written to advise the Court of the specific relief sought and the specific factual basis for the issue presented to the Court for determination. "Boiler plate" motions are not permitted. Each motion shall include the applicable law as applied to the specific facts of the case at issue. With the exception of newly released appellate opinions, the Parties are dissuaded from citing legal authority for the first time at the hearing. Copies of newly released caselaw upon which counsel intends to rely should be provided to opposing counsel and the Court prior to the commencement of the hearing.
- Unless otherwise ordered, all substantive motions shall be filed no later than twenty one (21) days following arraignment. To the extent a Party wishes to respond to a Motion, they must do so within fourteen (14) days and include legal authority. Counsel shall inform the Court no later than seven (7) days prior to the motions hearing of any hearings that will take an extended period of time. It is the moving party's obligation to set all motions for hearing by contacting Court Staff via email within seven (7) days of following the filing of the motion at: [D04\\_Courts\\_DivB@judicial.state.co.us](mailto:D04_Courts_DivB@judicial.state.co.us). Opposing counsel

must be included on all correspondence to the court using their direct email address(es). Failure on the part of the moving party to schedule a motions hearing will result in the motion being deemed abandoned.

- The Court considers the motions hearing to be a summons/bond return date. Absent a specific order from the court to the contrary, the Defendant shall appear at all motions hearings scheduled in this matter. Failure of the defendant to appear will result in the motion being deemed abandoned and denied and will result in a warrant being issued.
- Motions *in Limine* and Motions to Amend or Add Charges shall be in writing and shall be filed no later than seven (7) days prior to the Pre-Trial Readiness Conference at which time they will be heard by the Court. Late filed Motions *in Limine* or Motions to Amend will be addressed only with good cause shown.

#### **PLEA and/or SENTENCING:**

- The Court requires plea paperwork for all plea agreements. Because the Court's dockets are generally high volume, it is inefficient for the Court to have to review plea paperwork repeatedly during the course of proceedings. Therefore, the Court prefers that fully executed Plea paperwork be filed at least forty-eight (48) hours in advance of an appearance for sentencing so that matters can proceed efficiently. Counsel must be ready at the time of sentencing with a calculation of any pre-sentence confinement that may be awarded.
- If, following a plea or guilty verdict, a sentencing hearing is to be scheduled for a later date, a written consent of surety in which the bondsperson agrees to remain on bond following conviction **MUST** be filed prior to the return of the jury verdict or entry of the plea. If the Defendant is at liberty on a surety bond and the Court is not in possession of the consent of surety at the time the plea is entered or the jury returns a verdict and the Defendant is convicted, the Defendant will be remanded into custody. The Consent of surety must include the Power of Attorney number. **THERE ARE NO EXCEPTIONS.**
- The Court is acutely aware of the impact a jury trial has on the members of our court staff and community. Potential jurors, witnesses, alleged victim and community members have adjusted their schedules to be a part of this Constitutionally mandated process. In addition, the attorneys for both sides have spent weeks and months preparing, negotiating, researching, litigating and investigating to prepare for a potential trial. For these reasons, absent an extraordinary circumstance, the Court will not accept plea agreements after the scheduled Pretrial Readiness Conference.

#### **TRIALS:**

- Division B conducts Jury Trials on Mondays and Wednesdays. Parties must be present in Court no later than 8:15 a.m. unless otherwise advised.
- The Court will not accept pleas on the date of trial.
- Jurors are summoned to appear at 8:30 a.m. on the trial date. As such, the Court will not hear Motions *in Limine* on the morning of trial. Any pretrial issues not raised are deemed to have been waived.
- There will be no argument on the day of trial regarding any matters that should have been raised on or before the pretrial readiness conference, including issues related to body-worn camera or 911 tapes.
- The Court orders that jury instructions be prepared and provided prior to the day of trial. All proposed jury instructions from the Prosecution and defense including case specific instruction, the joint list of witnesses exhibits (subject to the Supreme Court's holding in People v. Kilgore, 455 P.3d 746 (Colo. 2020) and definitions, and an agreed upon statement of the case must be delivered to opposing Counsel and to the Court no later than 1:30 p.m., the Thursday before the jury trial date. The Court requires proposed jury instructions be e-filed in an editable format.
- All exhibits must be marked prior to the start of trial. Pursuant to Chief Judge's Order 2016-02 Paragraph (II)(D), all photographs, audio, and video exhibits should be placed on a CD and deposited with the Court Judicial Assistant following trial for appellate purposes. All documentary Exhibits shall be marked and uploaded into the Court Filing System as a single submission (to the extent) possible with the filing Party's designation.
- Witnesses must appear for their subpoenas no later than 10:00 a.m. for trials scheduled to occur at 8:30 a.m.
- An order of sequestration of witnesses shall be in effect during the trial (VRA exception) C.R.E. 615, C.R.S. Section 24-4.1-302.5 and Colo. Const, Article II , Sec 16a. Because the Court normally has no way to identify witnesses, Counsel, or the Defendant if *pro se*, shall advise their witnesses of the sequestration order. Any violation of this Order will result in the exclusion of the witness testimony.

#### **JURY SELECTION, OPENING AND CLOSING:**

- Unless modified by the Court upon application of counsel at least 7 days before trial, the following procedures will apply:
  - On all cases, unless otherwise ordered, the parties will be permitted 15 minutes to *voir dire* the seated jury panel. A total of 2 to 3 additional minutes shall be allowed to conduct *voir dire* on each replacement juror. Each party shall exercise three (3) peremptory challenges of the seated twelve-member jury panel, with the remaining six (6) jurors being the selected jury panel. Because of this method of jury selection, if either side waives a peremptory challenge they may not thereafter challenge any potential juror and the first six jurors (by the numbers on the court's seating chart) will constitute the jury.
  - Each side will have a maximum of **10** minutes to make an opening statement and **15** minutes to make a closing argument. The prosecution may elect to reserve a portion of their closing argument for rebuttal.
- The purpose of *voir dire* examination is to determine whether any potential juror has opinions or beliefs that would cause them to be biased in such a manner that would interfere with a party's right to receive a fair and impartial trial. The purpose of *voir dire* is **NOT** to instruct prospective jurors on the law, but to determine whether they could conscientiously apply the law as given by the court in its instructions. People v. Harlan, 8 P.3d 448 (Colo. 2000). Because of the inherent confusion

which occurs when attorneys attempt to debate the law with jurors, the Court therefore orders that *voir dire* examination be limited as follows:

- The Court will read to the jury pool the jury instruction regarding presumption of innocence, burden of proof, and the right to remain silent. Upon request, the Court may read additional instructions, including element instructions. Follow-up questioning by counsel shall be limited to determining whether the jurors in fact understand the law as given by the Court and can apply that law to the facts as they find them. There shall be absolutely NO discussion of the facts of the case during *voir dire*.
- No hypothetical questions, such as asking the juror what he or she would do or vote if the facts were as stated by the attorney, will be permitted. Counsel are prohibited from mentioning or alluding to any potential sentence in this matter or the classification of the crime charged.
- Neither party shall mention that a jury panel member may discuss responses in private. The Court will inform the panel prior to attorney questioning.
- To the extent a potential juror expresses a hardship, the Court will consider that issue at the conclusion of the general *voir dire* process and Counsel will refrain from offering to excuse the juror due to hardship. Peremptory challenges are to be exercised pursuant to Crim. P. 24(d)(4) and shall be made orally. Any challenges made pursuant to Batson v. Kentucky, 476 U.S. 79 (1986), or its progeny shall be made immediately upon the announcement of a questionable strike.

**MISCELLANEOUS:**

- **ABSENT EXTRAORDINARY CIRCUMSTANCES, the Court will not grant continuances at the request of either party on the day of trial.** Any motion seeking a continuance must be handled at the pretrial readiness hearing generally scheduled the week before trial.
- On the morning of trial, if multiple cases remain set for trial, after consultation with counsel the Court will select the case which will be tried. Counsel shall be prepared to try all cases which remain on the trial docket. Witnesses shall not be released without the express permission of the Court. At least one witness must be available to testify prior to noon on the first day of trial.
- Motions made during trial (except for routine evidentiary objections and related motions to strike) must be made at the bench. Routine evidentiary objections should be brief, stating the legal basis therefore, and WITHOUT further argument or commentary unless so directed by the Court.
- Failure to comply with this Order may result in the imposition of sanctions, including evidence and witness preclusion. Continuances caused by failure to comply with this Order will be charged to the offending party.
- In-custody defendants shall be dressed for trial. It is the responsibility of the defense attorney to ensure trial clothes for their client are delivered to Criminal Justice Center in advance of the trial date consistent with the El Paso County Sheriff's Office's policies and procedures. See Estell v. Williams, 426 U.S. 954 (1976).
- Counsel should notify their staff and associates that when entering and exiting the Courtroom during jury trial, to do so as quietly and unobtrusively as possible. Entry and exit from the Courtroom during opening, instructions and closing is strongly discouraged.
- The Court expects that when a party announces "ready for trial" they are in fact ready for trial. Meaning, of course, they have spoken to, endorsed and subpoenaed all witnesses. Gamesmanship will not be tolerated, and the Court will not allow for continuances when a victim or witness appears unexpectedly or fails to appear without having been properly served a subpoena. Such gambits are inconsistent with counsel's obligations of candor.
- The Court recognizes the adversarial nature of these proceedings as well as Counsel's obligations to zealously advocate for their respective positions. However, the Parties are to behave civilly and treat the Court, its staff, the participants and each other with respect at all times during the proceedings. Rudeness, *ad hominem* comments or general disrespect by any participant will not be tolerated.

SO ORDERED THIS 14<sup>th</sup> DAY OF APRIL, 2022.

BY THE COURT:



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YOLANDA M. FENNICK  
County Court Judge