

**IN THE DISTRICT COURT OF TETON COUNTY, WYOMING
NINTH JUDICIAL DISTRICT**

THE STATE OF WYOMING,)	
Plaintiff,)	
)	
vs.)	Criminal Action No. **
)	
**,)	
Defendant.)	

SCHEDULING ORDER

Counsel are advised that this Scheduling Order is not the Court’s standard Scheduling Order. This Order includes additional protocols and deadlines related to the Covid-19 pandemic. Some of those deadlies precede the pretrial conference.

IT IS ORDERED:

1. TRIAL. That trial of the within matter be and the same is hereby scheduled in the District Courtroom of the Teton County Courthouse, Jackson, Wyoming, on **[Date] at 9:00 a.m.** This case is stacked **number [*]** for trial on that date.
2. *** (**) days have been set aside for the trial of this matter. One full day is estimated for jury selection due to the Covid-19 jury trial protocols. Counsel are reminded that the last day of trial is not a full trial day for purposes of presenting evidence. The Court will manage the trial with the objective of concluding the evidence by mid-morning on the last day of trial, therefore allowing time for closing instructions and arguments and submitting the case to the jury for their deliberations at or near the lunch hour.
3. If the trial of this matter requires more than *** (*) days to try including time for jury selection, jury instructions, and arguments of counsel, counsel shall notify the Court as soon as possible.

4. All trials are subject to being vacated in response to community conditions regarding the COVID-19 virus such as upticks in positive COVID-19 cases, a shift in Teton County’s Phased Response Plan to a more restrictive phase, or other events; due to conditions in the courthouse, staffing shortages, or supply shortages; national, State, local, or judicial branch mandates; or other reasons.¹
5. PRETRIAL CONFERENCE. A pretrial conference shall be held in the District Courtroom of the Teton County Courthouse, Jackson, Wyoming, on the **[Date] at [Time] .m.** Any and all motions filed shall be heard at the time of the pretrial conference. One (1) hour is set aside for the pretrial conference. If more than one hour is required for the conference, counsel shall notify the Court as soon as possible. Counsel and the Defendant shall personally appear at the pretrial conference and at such times as the pretrial conference may be continued.
6. The pretrial conference shall occur by videoconference, although either party may file a request the hearing to occur in person. The Court’s Judicial Assistant shall circulate the video conference invitation prior to the hearing.
7. MOTIONS.
 - A. Motion to Suppress. Any motions to suppress that can reasonably be anticipated shall be filed by **[a date that would allow reasonable times for a response and reply before the pretrial]**. Any responses shall be filed by **[a date between the motion and the reply]**. Any replies shall be filed by **[a date five days before Pretrial]**. The motion will be heard at the pretrial conference. One hour will be set aside for the pretrial. If

¹ See Wyo. Supreme Court, Sixth Order Amending March 18, 2020 Temporary Plan to Address Health Risks Posed by the COVID-19 Pandemic, at ¶ 1.b (permitting jury trials if “the conditions of the courthouse and the current health of that community permit the safe conduct of the jury trial.”).

*State v. ****

Criminal Action No. **

SCHEDULING ORDER

Page 2 of 13

more than one hour is needed for the motions hearing, counsel shall inform the Court as soon as possible and request additional time.

B. Motions and Objections Related to Trial Protocols. Any motions or objections regarding the Court's jury trial protocols that apply to any trial conducted during the Covid-19 pandemic shall be filed not later than **[same date as motions deadline]**. Any responses shall be filed by **[a same as for the motions deadline]**. Any replies shall be filed by **[same as for the motions deadline/five days before Pretrial]**.

C. Motions in Limine. By **[same date as motions deadline]**, counsel shall file all reasonably anticipated motions, including motions in limine. Any responses shall be filed by Any responses shall be filed by **[a same as for the motions deadline]**. Any replies shall be filed by **[same as for the motions deadline/five days before Pretrial]**. Because motions in limine ask the court to rule on evidence without the benefit of the larger factual picture that develops at trial, the court may reserve ruling until trial subject to a renewed motion at trial. If the court grants a motion in limine, the Court may reconsider the ruling upon a proper motion at trial, made outside the presence of the jury. Pretrial motions in limine, in order for the Court to consider them, shall meet the following requirements:

- i. The party seeking to exclude certain evidence shall identify that evidence with some specificity, i.e., certain documentary exhibits or certain testimony. Motions that seek to exclude broad but unspecific categories of evidence or evidence that has not been identified in discovery may not be considered by the Court.
- ii. The movant shall briefly but specifically state the ground on which the evidence is inadmissible, by citing a rule or evidence and/or applicable case law. Motions that are devoid of legal authority and citations may not be considered by the Court.

- D. Deadlines for Responses and Replies. Notwithstanding W.R.C.P. 6(c), any reply briefs, supplemental memoranda or rebuttal affidavits shall be filed later than **[date five days before the pretrial conference]**. Late submissions may not be considered by the Court.
- E. Reply Briefs. If a reply brief is filed, counsel are directed to Wyo. R. App. P. 7.03, which the Court finds to be useful and appropriate for trial briefs. A reply brief shall be narrowly tailored and be limited to new issues and arguments raised in the response brief. Counsel should not use the reply brief to repeat arguments and analysis appearing in their opening brief. Failure to comply with this requirement may result in the Court disregarding the reply brief.
- F. Hearing. Pretrial motions will be addressed at the initial pretrial conference unless separately scheduled. However, the Court may rule on any motion without a hearing as permitted by W.R.C.P. 6. Therefore, the parties are reminded that they should take full advantage of the opportunity to fully brief the issues in their motions, responses, and replies. If, due to the number or complexity of motions that will be argued at the initial pretrial conference, counsel anticipate a separate motions hearing or a longer hearing is required, they shall move the Court as soon as possible and at least thirty (30) days before the initial pretrial conference, stating good cause and suggesting the time required for the hearing.
8. EXHIBIT LISTS. Not later than **five (5) business days before the pretrial conference**, the parties shall file and serve an appropriate pleading listing any exhibits intended for use in the case on the form prescribed by the Court and furnish copies of the same exhibits to opposing counsel, or if not feasible, to make the same available for inspection. Unless written objection is filed and served not later than **ten (10) business days from the date of filing of same**

exhibit lists, all exhibits which have been noticed will be admissible if relevant. Large numbers of exhibits are not to be lumped under one number or letter. If the exhibits are to be introduced individually at the trial, they are to be listed individually on the exhibit form. The failure to mark exhibits and furnish copies to opposing counsel before the pretrial conference may result in any such exhibits being inadmissible at the trial.

9. WITNESS LISTS. Not later than **five (5) business days before the pretrial conference**, the parties shall file and serve an appropriate pleading listing any witnesses they intend to use at the trial, by name and address, along with a summary of the testimony of each. **The parties shall mark in bold font and note which witnesses will require the services of a Court Interpreter during their testimony.**

10. JURY INSTRUCTIONS. Proposed jury instructions shall be filed **seven (7) business days prior to the pretrial conference** and in accordance with Rule 403 of the Uniform Rules for the District Courts of the State of Wyoming provided, however, that “clean copy” instructions without citation need not be submitted. The submission of proposed instructions shall be as follows:

a. Each party shall file with the Clerk of Court a set of proposed instructions, Plaintiff’s numbered and Defendant’s lettered, as appropriate, with citation. The parties shall include a cover sheet which contains an index of the instructions by letter or number and the pattern jury instruction number if applicable or other authority, as well as a brief title for each instruction. Each party may submit a proposed instruction setting forth a brief (not more than 3 or 4 sentences) instruction of the parties’ contentions in a non-argumentative manner for the Court to consider reading to the entire jury panel before beginning the voir dire examination. The Court reserves the right to decide whether such contention instructions

will be given at that time. Each party shall submit a proposed instruction setting forth the burdens of proof of each of the parties, and a proposed verdict form with any special interrogatories. Each party shall provide a copy of the requested instructions to the Court at P.O. Box 1036, Jackson, WY 83001.

b. Counsel shall email to the Court at mdearing@courts.state.wy.us, their jury instructions in a Word format.

11. PLEA BARGAIN. Counsel shall advise the Court no later than the pretrial conference of any plea bargain agreements. If a plea agreement is reached, it shall be reduced to writing and presented to the Court prior to or at the pretrial conference. The pretrial conference will then be converted to a change-of-plea hearing and will remain as scheduled. Following the pretrial conference, no plea bargain agreements shall be accepted and the Defendant shall be tried as charged.

Trial Management Provisions

12. Jury Trial Plan & Protocols. This Court's jury trial plan is available on the Wyoming Supreme Court's Covid-19 resources page. <https://www.courts.state.wy.us/coronavirus-covid-19-updates/>. It is long and detailed. The Court directs counsel to read that plan prior to the pretrial conference so that the conference may be used to answer any questions.

13. The conference will also be used to hear any suggestions or objections regarding a juror questionnaire the Court will be using. That questionnaire will be provided to counsel to review before the conference.

14. This Trial Management Order highlights several components of the jury trial plan and provides counsel with deadlines as appropriate for certain components.

15. Juror Questionnaire. A supplemental juror questionnaire shall be sent to each prospective juror

in advance of trial, with sufficient time for it to be returned and reviewed prior to jury selection. This questionnaire has three components: an optional health screening questionnaire; a case specific questionnaire; and a remote availability questionnaire. The Court will provide the questionnaire to counsel prior to the pretrial conference for review. Any suggestions or objections shall be raised **at the pretrial conference**.

16. Remote and Hybrid Trials. As counsel will see in the jury trial plan, this Court is amenable to remote jury selection if the parties agree. Some courts in Washington have conducted all jury selection remotely since August 2020 in civil and criminal cases. *See* <https://www.kingcounty.gov/courts/superior-court/juror-information/Remote.aspx>. Courts in Texas, Michigan, and Florida have already conducted civil jury trials remotely and one criminal trial has occurred in its entirety remotely. Pilot programs are underway in Arizona and in other courts around the country. While some attorneys and courts have expressed reticence to expand the use of technology in court proceedings, jurors report they are better able to see and hear testimony and exhibits remotely than during in-person trials. Jurors have also reported less down time or wasted time, particularly during jury selection. As remote trials occur in both a real-time and pilot basis in various courts, juror feedback may be made more available to the bar.

17. Courts are also using other hybrid options with remote jury selection, along with some witnesses testifying by video in order to accommodate high-risk individuals who are needed for trial or to otherwise limit the number of participants in a courtroom.

18. If counsel is interested in pursuing a remote or hybrid option (for jury selection or for certain witnesses), counsel should notify the Court **not later than the pretrial conference**.

19. Exhibit Pre-Filing Requirements. Trial exhibits shall be prefiled and shall be provided to the

Court in two ways prior to trial.

20. First, all trial exhibits and the final exhibit lists shall be filed electronically to Court staff. All exhibits shall be premarked. If there are a limited number of exhibits, they may be emailed. If the exhibits are voluminous, counsel may use Dropbox or a similar document delivery service. Counsel may also use separate emails to send the exhibits. Those documents shall be sent to the Court's Judicial Assistant and to the Court's Staff Attorney at mdearing@courts.state.wy.us and mfredrickson@courts.state.wy.us. Or, counsel may deliver a thumb drive to the Court's Judicial Assistant at the Teton County Courthouse. Regardless of which electronic delivery is used by counsel, the trial exhibits shall be delivered not later than **Thursday, [date the Thursday before trial begins] at 12:00 noon.**
21. Second, all trial exhibits and exhibit lists shall also be printed and provided to the Court in binders. Each binder shall not exceed three inches in depth. Multiple binders may be used. All exhibits shall be premarked, identical to the electronic exhibits, and delivered to the Court not later than **Thursday, [date the Thursday before trial begins] at 12:00 noon.**
22. Third, the paper exhibits in the binders that were provided to the Court, if admitted into evidence, shall be considered the original exhibits, unless a substitution is required and approved by the Court such as for certified copies, maps, high quality photographs, or similar documents where an electronic copy is not appropriate.
23. Trial exhibits shall also be furnished prior to trial to (1) the witness to be used for that evidence, and (2) opposing counsel. Failure to so provide any such exhibits may result in the preclusion of the exhibits. This includes rebuttal and impeachment exhibits, except, on a case-by-case basis, for true rebuttal or impeachment evidence if a party shows good cause for not disclosing in advance.

24. Do **not** file the trial exhibits with the Clerk of District Court. As with exhibits at in-person trials, the Clerk does not file proposed exhibits in the Court's files. Exhibits that are admitted will be part of the trial record. Exhibits that are not admitted will be discarded.
25. Counsel should be prepared to review the exhibits that were admitted into evidence with the Court Reporter at the end of the trial.
26. Witnesses shall not alter or amend exhibits during their testimony without Court permission.
27. *Stipulated Exhibit List*. Not later than **Thursday, [date the Thursday before trial begins]** at **12:00 noon**, counsel shall submit a list of stipulated exhibits, signed by counsel for all parties, to be admitted at trial.
28. Weekly Conferences. Due to the novelty of the protocols for jury trials conducted during the pandemic, counsel can anticipate weekly conferences with the Court preceding trial regarding various matters related to calling the jury and trial preparations.
29. Initial Jury Instructions Conference. The Court generally provides a set of opening instructions to counsel for review prior to start of trial and reviews those in chambers with counsel, on the record, and hears any objections prior to the start of trial. The initial instructions conference in this matter shall occur by videoconference on **Friday, [date the Friday before trial begins]** at a time to be determined.
30. Arrival at the Courthouse. For each day of trial, Counsel and Defendant will be provided a specific arrival time to allow for the additional screening at the courthouse. All participants will be subject to the health screening requirements currently in effect, including counsel who may have previously been able to waive security screening. Physical distancing and face coverings are required during screening, as directed by courthouse security.
31. Counsel and Litigant Space. Counsel and the litigants may set up at their designated locations

in the District Courtroom upon arrival. They will be directed to use what was previously used as the District Court Jury Room for bathrooms, access to water, and other services. Counsel shall be prepared to conference with the court in the District Courtroom before the jury arrives, as needed. The District Court Jury Room may also be used for bench conferences prior to and during trial.

32. Panels for Jury Selection. In-person jury selection shall occur in panels. If jury selection occurs in the courthouse, a panel will have at least twelve people and may have as many as nineteen. The total number of panels would be between three and four. If jury selection is conducted at a separate venue, such as the Center for the Arts, the panels would be larger and two panels may possibly be used. Time will be used between panels for courtroom sanitation. Counsel can anticipate having 20 to 30 minutes per side for voir dire per panel.
33. Remote jury selection may also occur in panels and the Court continues to evaluate the number of panels needed as the available technology is updated. Advantages of remote jury selection include: the ability to see jurors without face coverings and the ability of jurors to see counsel without face coverings. Remote jury selection may also allow more time for voir dire because the time needed for screening all jurors and sanitizing the courtroom between panels would be alleviated. Remote jury selection would occur with counsel and litigants in their own offices or locations.
34. Peremptory Strikes. Whether jury selection is remote or in-person the peremptory strike process will occur with no jurors present. Counsel will need to craft their notes appropriately during voir dire since the visual aid of seeing jurors during the peremptory strike process will be unavailable. Jurors would then be contacted by the Clerk of District Court and notified of they are or are not on the jury.

35. Physical Distancing. This Court will be using physical distancing, with jurors spread out in the gallery which has been modified. Counsel tables have also been rearranged so counsel will be able to see the jury and the witness box. Seating for counsel, litigants, and support staff is limited. Counsel are directed to paragraphs 76-77 of the jury trial plan for more details.
36. Face Coverings. For in-person proceedings, face coverings will be worn by all participants, including during jury selection, attorney questioning, witness testimony, and argument unless otherwise approved by the Court on an ad hoc basis. However, witnesses will be permitted to speak without a face covering from behind a tempered glass enclosure in the Court's modified witness box. Clear or partially-clear face masks may be available during jury selection.
37. Trial Time. The general trial hours will be from 9:00 a.m. to 5:00 p.m. with an hour and thirty minutes for lunch and breaks as the Court deems appropriate in the morning and afternoon. Jury trials during the pandemic may have more frequent breaks than previous trials to allow participants to move and go outside. Additional time may also be required at lunch to accommodate the extra screening at courthouse entry for all jurors and participants. Additional time may be required for sanitizing the witness box and moving witnesses through the courthouse in accordance with the jury trial plan. Without the pandemic jury trial protocols, there were 5.25 hours per day for the presentation of evidence and argument. Counsel may anticipate something closer to 4.25 hours under the new protocols. The Court may choose to begin trial earlier as the case moves along as it may be deemed necessary and appropriate.
38. Presentation of Exhibits. All exhibits shall be presented at trial electronically, using the Microsoft HUB available at counsel table, which projects to a monitor on the north wall of the courtroom. The Elmo will not be used. Copies of exhibits will be provided to jurors during trial or for deliberations via individual i-Pads. Paper is not likely to be shared or passed around.

39. Technical training from the Court is available to counsel on how to present exhibits. Counsel shall contact the Court Reporter to schedule a training, with that training to occur not later than **five (5) business days prior to trial.**
40. Calling Witnesses. Witnesses testifying in-person shall either (1) wait outside of the courthouse until contacted by counsel to enter or (2) may wait in the courthouse lobby or an available anteroom, at the discretion of court security. When the court is ready for the witness to testify, the witness shall be escorted or directed to the designated courtroom access (which is the door closest to the witness box). When not testifying, witnesses may attend trial through the same remote means as the general public unless a sequestration order is entered.
41. Public and Media Access. Public and media access will be through remote attendance, consistent with the Court's current public and media access plan. The Court is unable to simultaneously accommodate members of the public in the courtroom and maintain physical distancing for jurors. Counsel are encouraged to advise any family members or friends of clients who wish to attend that attendance will be remote.
42. Use of the Podium. The current jury trial plan does not permit the podium be used and that all counsel shall present from counsel table. If a podium were used, there would be delays in the presentation of argument and evidence due to the sanitation protocols between speakers. Use of the podium may also impair the space available for counsel tables due to physical distancing limitations.
43. Due to space and physical distancing limitations, counsel shall not move about the courtroom and shall conduct examinations from counsel table.
44. Drinking Water. All water pitchers and cups have been removed and will not be used at trial. All counsel and participants shall bring their own water receptacles. A touchless water filling

station is available on the first floor of the courthouse.

45. Jury Room. The jury room for this trial shall be the Circuit Courtroom.

46. Interpreter. If an interpreter is needed for trial, arrangements shall be made in advance with the Court's Interpreter by contacting the Clerk of District Court's Office. Counsel are encouraged to work together to set a date and time for any witness requiring an interpreter, including taking that witness out of order if needed. Failure to make timely arrangements for the Court's interpreter may result in the testimony being excluded.

47. Opening and Closing Arguments. Each of the parties shall receive up to 20 minutes for opening statements, up to 30 minutes for closing arguments, and Plaintiff shall have up to 10 minutes for rebuttal. The time used for opening and closing arguments and rebuttal is part of the parties' total trial time. If the parties believe they need more time for argument, they must be granted approval by the Court before trial.

DATED this ___ day of *** 2020.

Timothy C. Day
District Judge