

HAMILTON COUNTY, OHIO

State of Ohio	:	CASE NO.:
PLAINTIFF	:	JUDGE:
-vs-	:	
DEFENDANT	:	<u>DEFENDANT’S MOTION FOR</u>
	:	<u>SEQUESTRATION OF JURORS FOR</u>
	:	<u>DURATION OF TRIAL</u>

Defendant, through counsel, respectfully requests that this Court (1) order the sequestration of the jury panel throughout the proceedings in the above-styled case; (2) order that the jury shall not be allowed to communicate with anyone except the Court or the bailiff, or with family members in conditions carefully controlled by this Court and monitored by a bailiff; and (3) order that any contact outside the scope of these conditions shall be promptly reported to counsel for both parties to this case.

MEMORANDUM IN SUPPORT

The Supreme Court of the United States has recognized that where there is a reasonable likelihood that prejudicial news prior to and during the trial will prevent a fair trial, sequestration of the jury is an effective manner to assure that publicity during the trial does not impinge upon the fair trial of the defendant. Sheppard v. Maxwell, 384 U.S. 333 (1966). Sequestration also “enhances the likelihood of dissipating the impact of pretrial publicity and emphasizes the elements of the jurors’ oaths.” Nebraska Press Assn. v. Stuart, 427 U.S. 539, 564 (1976). Defendant submits that the circumstances of his case require that the trial court implement the measure of sequestration of the jury throughout the culpability phase of this trial; and, if a mitigation phase becomes necessary, then between the two phases and throughout the mitigation phase of the trial.

The extensive publicity attendant to the facts underlying this case and every stage of the legal proceedings to date will only increase once trial is underway. The danger of intentional or inadvertent tainting of a juror is too great to allow separation of the jury. Given the intense public interest in this trial, admonitions to the jury not to expose themselves to media coverage or permit other persons to speak to them about this case will be inadequate to insulate the jurors from being tainted. Because of the notoriety of this case within this county, many people will have preconceived notions as to whether Defendant is not guilty or guilty which they will attempt to pass on to the jurors. Sequestration is the single, sensible means of protecting Defendant's constitutional rights in this capital case.

Before submission of a case to the jury, the Court, upon its own motion or the motion of a party may sequester the jury. Ohio R. Crim. P. 24(G)(1); Ohio Rev. Code Ann. § 2945.31. It is well-established that the decision to sequester a jury is clearly within the sound discretion of the trial court. Parker v. State, 18 Ohio St. 88, 1868 WL 10 (1868); State v. Osborne, 49 Ohio St. 2d 135, 359 N.E.2d 78 (1976); judgment vacated on other grounds, Osborne v. Ohio, 438 U.S. 911 (1978), State v. Jenkins, 15 Ohio St. 3d 164, 234, 473 N.E.2d 264. 322 (1984). The discretion of the court with respect to allowing separation of the jury should, especially in trials for capital offenses, be exercised with the utmost caution. Any doubt as to the propriety of permitting the jury to separate should be resolved against granting such permission.

Defendant is entitled to have the jury sequestered to protect his State and Federal constitutional rights to effective assistance of counsel, due process of law, equal protection of the law, confrontation of the state's evidence against him, and freedom from cruel and unusual punishment. U.S. Const. amends. V, VI, VIII, IX and XIV; Ohio Const. art. I, §§ 1, 2, 5, 9, 10, 16 and 20. Ohio's statutory, procedural, and case law jurisprudence governing sequestration effectuates these constitutional rights

and requires this Court to exercise its discretion to protect Defendant’s constitutional rights by sequestering the jury if in fact a jury can be impaneled in this County. Assuming, arguendo, that Ohio’s jurisprudence governing jury sequestration does not emanate directly from clear constitutional provisions, nevertheless, “when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution – and, in particular, in accord with the Due Process Clause.” Evitts v. Lucey, 469 U.S. 387, 401 (1985). This is all the more so when a petitioner’s “life” interest (protected by the “life, liberty and property” language in the Due Process Clause) is at stake in the proceeding. Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998) (five Justices recognized a distinct “life” interest protected by the Due Process Clause in capital cases above and beyond liberty and property interests). Death is different; for that reason more process is due, not less. See Lockett v. Ohio, 438 U.S. 586 (1978); Woodson v. North Carolina, 428 U.S. 280 (1976). Even if discretionary, this Court’s decision whether to sequester Defendant’s jury must comport with the constitutional requirements that apply to capital cases.

Respectfully Submitted,

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was delivered to the office of the Prosecutor on

Attorney for Defendant