

HAMILTON COUNTY, OHIO

State of Ohio : CASE NO.:  
PLAINTIFF : JUDGE:  
-vs- :  
 :  
DEFENDANT :  
 :

**DEFENDANT’S MOTION TO SUBMIT A JURY QUESTIONNAIRE**

Defendant, through counsel, respectfully requests that this Court (1) order all prospective jurors to complete the an extensive written questionnaire under oath; and (2) then distribute the completed questionnaires to counsel for the parties well enough in advance of voir dire to allow counsel to effectively and efficiently attempt to seat a jury in this case. Defendant will supplement this Motion with a proposed Jury Questionnaire.

**MEMORANDUM IN SUPPORT**

Defendant is charged with capital murder in a highly publicized case. An exhaustive inquiry into the venirepersons’ qualifications is Defendant’s only hope for seating a fair and impartial jury.

Ohio R. Crim. P. 24(A) requires that “[a]ny person called as a juror for the trial of any cause shall be examined under oath . . . as to his qualifications.” By granting this motion and requiring each venireperson to complete the proposed questionnaire, this Court can take a significant step towards ensuring that the specific rights guaranteed a capital defendant are exercised in an informed, meaningful fashion. See Morgan v. Illinois, 504 U.S. 729, 734-35 (1992) (generalized questions regarding the juror’s ability to “follow the law” are inadequate to expose bias). See also Wainright v. Witt, 469 U.S. 412, 424 (1985) (“[D]eterminations of juror bias cannot be reduced to question-and-answer sessions which obtain results in the manner of a catechism.”) There is no

doubt that a questionnaire alone cannot ensure compliance with the constitutional command that a fair and impartial jury be seated. Likewise, in a case of this magnitude – measured by both the capital specifications and the extensive publicity – the standard voir dire process applied in other cases cannot alone protect Defendant’s constitutional rights. Only by coupling an extensive questionnaire with an extensive individual voir dire of each venireperson can this Court achieve even the possibility of maybe seating a fair and impartial jury to sit in judgment in this case.

The information derived from a searching questionnaire should expedite voir dire, ensure proper excusal for cause, promote the judicious use of peremptory challenges, and reduce the likelihood of prejudicial error. The questionnaire as such will not only benefit both the defense and the State in ensuring that a qualified jury is chosen, it is a prerequisite for preserving any possibility that a fair and impartial jury can be seated in this County for this capital case.

All capital cases demand the utmost care when seating a jury in order to ferret out those who cannot follow the law regarding the death penalty. Coupling this axiom with the saturation publicity visited upon this case requires at minimum the employment of a thorough examination of the prospective jurors. In turn, an expansive jury questionnaire is a requisite component of the type of searching jury selection process constitutionally required in this case.

Defendant is entitled to a thorough jury questionnaire to vindicate 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. His life is at stake; therefore, he is entitled to more due process protections than any other criminal defendant. See 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).

As additional authority in support of this Motion, and in an effort to reduce redundant arguments while still preserving the record, Defendant incorporates by reference as if fully rewritten herein the authority set forth in support of the following motions he has filed in this case: Defendant’s Motion for Comprehensive Voir Dire, Defendant's Motion to Exclude Venire Persons Who Cannot Fairly Consider Mitigating Evidence and/or Who Would Automatically Vote for Death Upon a Finding of Guilt in the Culpability Phase, and Defendant’s Motion to Allow Defense Counsel to Thoroughly Examine Venire Persons During Voir Dire.

For these reasons, Defendant moves this Court to grant this motion and require those chosen to serve on the venire to complete an extensive questionnaire under oath and to provide counsel with copies of the completed questionnaires well in advance of trial.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

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

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Attorney for Defendant