

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

UNITED STATES OF AMERICA

VS.

CASE NO: 6:21-cr-141-RBD-EJK

EMMET BOWENS

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**CRIMINAL SCHEDULING ORDER**

The defendant has been arraigned. To initiate a simple self-executing discovery procedure; to reduce expense and delay by eliminating routine or standard discovery motions for which established rulings and precedent exist; to encourage voluntary disclosure by the prosecution and by the defense; to facilitate the effective assistance of counsel; and to secure a just determination, this scheduling order will control the subsequent course of this criminal proceeding. *See* Fed. R. Crim. P. 2; Local Rule 1.01(b). The parties shall comply with the following discovery and scheduling requirements without the need for further discovery motions or demands:

**I. OPTING OUT**

- A. Defendant's Election Not to Request Disclosure — This Order deems each party to have requested disclosure to the full extent allowed by Fed. R. Crim. P. 16. Within seven (7) days of the date of this order, however, a defendant may file and serve by hand delivery a written notice electing not to request disclosure under Fed. R. Crim. P. 16(a)(1)(E), (F), and (G). To be effective, the written notice must specify the precise subsection or subsections of Fed. R. Crim. P.

16(a)(1) under which the defendant elects not to request disclosure. Where a defendant has served timely written notice electing not to request disclosure under one or more specific subsections of Rule 16(a)(1), the government has no obligation to provide disclosure to the extent specified in the defendant's notice.

- B. Reciprocal Disclosure of Documents, Objects, Reports — A defendant who has filed and served timely written notice electing not to request disclosure under Fed. R. Crim. P. 16(a)(1)(E) (relating to documents and objects), Rule 16(a)(1)(F) (relating to reports of examinations and tests), and Rule 16(a)(1)(G) (relating to expert witnesses) has no obligation to provide reciprocal discovery to the government pursuant to Rule 16(b)(1)(A), (B), and (C).
- C. Disclosure regarding Experts — A defendant who has filed and served timely written notice electing not to request disclosure under Rule 16(a)(1)(G) (relating to expert witnesses), and who has not filed and does not intend to file a notice pursuant to Rule 12.2(b) (relating to expert evidence of a mental condition), has no obligation to provide reciprocal discovery to the government pursuant to Rule 16(b)(1)(C)(i).
- D. Order of Compliance Unchanged — This order imposes no obligation on a defendant to provide reciprocal discovery under a subsection of Fed. R. Crim. P. 16(b)(1) until the government has complied with its obligations pursuant to Rule 16(a)(1)(E), (F), and (G).
- E. Other Requirements — The filing and service of an opt-out notice under this paragraph relieves the government of its obligations under ¶¶ I (E) - (G) of this Order, and relieves the defendant of obligations under ¶¶ I (Q) - (S) of this Order, only to the limited extent specified above. The filing and service of a notice under this paragraph does not otherwise relieve a party of any obligation to comply with the requirements of this Order.

## II. DISCOVERY AND INSPECTION

- A. **Enforcement of Deadlines** – The parties are cautioned that failure to comply with the deadlines set forth in this Order may result in untimely motions being denied without further notice.
- B. **Oral Statements of the Defendant** – Within fourteen (14) days from the date of this Order, the government shall disclose to the defendant, to the extent required by Fed. R. Crim. P. 16(a)(1)(A), and make available for inspection, copying, or photographing, that portion of any written record containing the substance of any relevant oral statement made by the defendant, whether before or after arrest, in response to interrogation by any person then known to the defendant to be a government agent, as well as the substance of any such oral statement that the government intends to use trial. Similarly, the government shall disclose to an organizational defendant the information required by Fed. R. Crim. P. 16(a)(1)(C).
- C. **Written or Recorded Statements of the Defendant** – Within **fourteen (14)** days from the date of this Order, the government shall disclose to the defendant, to the extent required by Fed. R. Crim. P. 16(a)(1)(B), and make available for inspection, copying, or photographing, any relevant written or recorded statements made by the defendant, or copies of the statements, within the government's possession, custody or control, the existence of which is known or through the exercise of due diligence may become known to the attorney for the government, including recorded testimony of the defendant before a grand jury which relates to the offense charged. Similarly, the government shall disclose to an organizational defendant the information required by Fed. R. Crim. P. 16(a)(1)(C).
- D. **Prior Record** – Within **fourteen (14)** days of the date from this Order, the government shall furnish to the defendant, to the extent required by Fed. R. Crim. P. 16(a)(1)(D), a copy of the defendant's prior criminal record, if any.

- E. **Document and Objects** — Within **fourteen (14)** days from the date of this Order, the government shall permit the defendant, to the extent required by Fed. R. Crim. P. 16(a)(1)(E), to inspect and copy or photograph books, papers, documents, data, photographs, tangible objects, vehicles, vessels, aircraft, buildings or places which are within the possession, custody or control of the government, and which are material to the preparation of the defendant's defense, or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.
- F. **Reports of Examination and Tests** — Within **fourteen (14)** days from the date of this Order, the government shall permit the defendant, to the extent required by Fed. R. Crim. P. 16(a)(1)(F), to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, which are within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defendant's defense, or are intended for use by the government as evidence in chief at the trial. The government shall provide to the defendant, for independent expert examination, copies of all latent fingerprints or palmprints which have been identified by a government expert as those of the defendant.
- G. **Expert Witnesses** — Within **fourteen (14)** days from the date of this Order, the government shall disclose to the defendant, to the extent required by Fed. R. Crim. P. 16(a)(1)(G), a written summary of any testimony that the government intends to use under Fed. R. Evid. 702, 703, or 705 during its case-in-chief at trial. This summary must describe the witnesses' opinions, the bases and the reasons for the opinions, and the witnesses' qualifications. Within **seven (7)** days of service on the government of the defendant's summary of testimony pursuant to Fed. R. Crim. P. 16(b)(1)(C) (relating to expert testimony on the defendant's mental condition after notice under Rule 12.2 (b))

(see Section II.S below), the government shall disclose to the defendant a written summary of testimony on the issue of the defendant's mental condition pursuant to the second sentence of Rule 16(a)(1)(G).

- H. **Electronic Surveillance** — Within **fourteen (14)** days from the date of this Order, the government shall disclose to the defendant the nature and extent of the use of electronic surveillance (including wiretapping, consensual monitoring, body wires, tape recordings, transmission devices, videotape recordings, bank surveillance recordings, pen registers) or mail covers conducted by law enforcement officers or witnesses in investigating this case, and also disclose the existence of all recordings obtained and final transcripts made during the investigation, regardless of whether the government intends to use the recordings and transcripts in its case-in-chief.<sup>1</sup>
- I. **Confidential Informants** — Within **fourteen (14)** days from the date of this Order, the government shall disclose to the defendant whether it has used a confidential informant in investigating this case.
- J. **Conflict of Interest** — Within **fourteen (14)** days from the date of this Order, and in any event as soon as possible to permit the prompt filing of an appropriate motion, the government shall alert counsel for the defendant if the government is aware of a potential conflict of interest in the representation of the defendant by such attorney in this case. All parties shall inquire of their witnesses about matters that may give rise to a conflict of interest, including whether any attorney in the case has previously represented the witness.
- K. **Photo Identification** — Within **fourteen (14)** days from the date of this Order, the government shall disclose to the defendant whether any person has identified the defendant in any lineup, show up,

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<sup>1</sup> Electronic surveillance pursuant to a FISA warrant and evidence derived therefrom is not required to be automatically disclosed pursuant to this subsection or Section II.M ("Evidence Seized by Warrant"); instead, such surveillance and evidence is subject to the strictures applicable to FISA. See *United States v. Osmakac*, 868 F.3d 937, 952 (11th Cir. 2017); *United States v. Badia*, 827 F.2d 1458, 1464 (11th Cir. 1987).

photo spread or similar identification proceeding, and permit the defendant to inspect, copy, and photograph any pictures utilized in or resulting from the identification.

- L. **Evidence Seized by Warrant** – Within **fourteen (14)** days from the date of this Order, the government shall specify all items seized from a defendant and all the seized evidence, if any, that the government intends to introduce in its case in chief at trial and permit the defendant to inspect and copy any search warrant and affidavit, together with the inventory of any search pursuant to Fed. R. Crim. P. 41, pursuant to which the evidence was seized.
- M. **Rough Notes** – The government shall advise all law enforcement agents and officers involved in this case to retain any rough notes, recordings, reports, and statements pertaining to this case which now exist.
- N. **Destruction of Evidence** – The government shall not destroy any evidence in this case without giving **fourteen (14)** days written notice to all defense counsel. If there is any objection filed to the proposed destruction, the government shall not destroy the evidence without first having obtained the Court's approval.
- O. **Speedy Trial** – The government shall have responsibility for informing the Court of any delay in the prompt disposition of this criminal case pursuant to the Speedy Trial Act of 1974, 18 U.S.C. § 3165 and the Middle District of Florida's Speedy Trial Plan, Fed. R. Crim. P. 50.
- P. **Reciprocal Discovery of Documents and Objects** – Within **Fourteen (14)** days from the date of receipt of the government's discovery, the defendant shall permit the government, to the extent required by Fed. R. Crim. P. 16(b)(1)(A), to inspect and copy or photograph books, papers, documents, data, photographs, tangible objects, and buildings or places which are within the possession, custody or control of the defendant, and which the defendant intends to

introduce as evidence in chief at trial, provided that the government has done the same.

- Q. **Reciprocal Discovery of Reports of Examinations and Tests** – Within **fourteen (14)** days from the date of receipt of the government's discovery, the defendant shall permit the government, to the extent required by Fed. R. Crim. P. 16(b)(1)(B), to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, which are within the possession, custody or control of the defendant, which the defendant intends to introduce as evidence in chief at trial, or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony, provided that the government has done the same or has disclosed that no such reports exist.
- R. **Reciprocal Discovery of Expert Witnesses** – Within **fourteen (14)** days from the date of receipt of the government's discovery, the defendant shall disclose to the government, under the circumstances and to the extent required by Fed. R. Crim. P. 16(b)(1)(C), a written summary of testimony that the defendant intends to use under Fed. R. Evid. 702, 703, or 705 as evidence at trial. This summary must describe the witnesses' opinions, the bases and the reasons for the opinions, and the witnesses' qualifications. Within **seven (7)** days of the filing and service of notice under Fed. R. Crim. P. 12.2(b) of an intent to present expert testimony on the defendant's mental condition (*see* Section III.CC below), a defendant shall disclose to the government a written summary of testimony to the extent required by Fed. R. Crim. P. 16(b)(1)(C).
- S. **Brady Material** – Pursuant to the Due Process Protections Act, the Court confirms the United States' obligation to produce all exculpatory evidence to the defendant pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny and orders the United States to do so no later than **fourteen (14) days** before the first day of the trial term in which this case is set for trial (*see* Section IV.B below). Failing to do

so in a timely manner may result in consequences, including exclusion of evidence, adverse jury instructions, dismissal of charges, contempt proceedings, and sanctions.

- T. **Giglio Material** — No later than **fourteen (14)** days before the first day of the trial term in which this case is set for trial (*see* Section IV.B below], the government shall disclose to the defendant the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective government witnesses to the extent required by *Giglio v. United States*, 405 U.S. 150 (1972) and *Napue v. Illinois*, 360 U.S. 264 (1959). For each witness (under every name used by the witness) who will testify for the government at trial, the government shall supply the defendant with a record of all prior convictions of the type that may be used to impeach a witness pursuant to Fed. R. Evid. 609. The government shall make available any application to the Court for immunity of a witness, as well as any order issued in response to the application.
- U. **Jencks Act Material** — All parties shall be prepared to comply with the Jencks Act, 18 U.S.C. § 3500 and Fed. R. Crim. P. 26.2 relating to the production of witness statements on demand after the witness has testified on direct examination. The parties may agree on — but the Court does not order — an earlier time for the exchange or production of Jencks Act and Rule 26.2 material. *See* Fed. R. Crim. P. 16(a)(2).
- V. **Continuing Duty to Disclose** — No later than **seven (7) days** after it comes into the possession of counsel, all parties shall disclose to opposing counsel or the Court additional newly-discovered evidence or material which is subject to discovery, as required by Fed. R. Crim. P. 16(c).
- W. **Agreed Extensions** — The Court recognizes and encourages the tradition of agreement and cooperation among counsel in discovery and inspection without Court involvement. Without the need for a Court order, the parties may agree in writing to extend or modify the times allowed above in ¶ I of this order for discovery and inspection.

However, any agreed extension or modification may not alter, disrupt, or delay the status conference, the trial, or the timely filing and resolution of Pretrial Motions. **Counsel are cautioned that the deadlines established in this Order are purposeful and not advisory.** While the parties are encouraged to be cooperative, agreed extensions will not constitute good cause to continue the trial or extend the Pretrial Motions Deadline, nor are the parties permitted to agree to extend the Pretrial Motions Deadline unilaterally without Court approval. Should a party seek continuance of the trial or an extension of the Pretrial Motions Deadline, the party must file an motion setting forth good cause for the extension, including a consideration of the impact of the request on the Court's speedy trial obligations.

- X. **Discovery Complete Notice with the Court** – At such time as the government has provided all discovery material to defense counsel, the government shall file a “discovery complete” notice with the Court, which notice shall state: 1) the date the discovery was furnished and 2) the contents of such discovery (if confidential, under seal) to include what information mandated in this Section has been provided.<sup>2</sup> **Such notice must be filed no later than three (3) days prior to the status conference.** If discovery is not complete at that time, the government must set forth good cause for the lack of completion, the status of discovery, and an estimated time by which discovery will be completed.

### III. MOTIONS AND NOTICES

- A. **Notice Regarding Recusal** – Within **fourteen (14)** days from the date of this order, the government shall file and serve a notice listing each person or non-governmental entity of which it is aware who now has, or in the future may have, a financial interest in the subject matter in controversy, or in a party to this proceeding. The notice shall include

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<sup>2</sup> *Brady, Giglio, and Jencks* material is excepted from the requirements of the Discovery Complete Notice, and shall be disclosed pursuant to the timing stated in Sections II.S-U above.

1) each victim of the charged conduct who may be entitled to restitution; 2) each person or non-governmental entity who may claim an interest in forfeitable assets; 3) each corporation, partnership, or association that is controlled by a defendant; and 4) each publicly-traded corporation that is a parent, subsidiary, or affiliate of a victim or otherwise interested corporation. Each party has a continuing obligation to file and serve a notice regarding recusal on learning of *any* ground for recusal or disqualification of a judicial officer or counsel.

- B. **Notice of Estimated Length of Trial** – Within **fourteen (14)** days from the date of this Order, the government shall file and serve a notice of the estimated length of trial.
- C. **Pretrial Notices Deadline** – Within **thirty-five (35)** days from the date of this Order, the parties shall file and serve all notices required by law, including those required by Fed. R. Evid. 404(b) and Fed. R. Crim. P. 12(b)(4), 12.1, 12.2, and 12.3.
- D. **Pretrial Motions Deadline** – Within **thirty-five (35)** days from the date of this Order, the parties shall file and serve **the following pretrial motions** (with memoranda and certificate):
1. All motions identified in Fed. R. Crim. P. 12(b)(3);
  2. Motions for a bill of particulars;
  3. Motions for a *James, Bruton*, or *Franks* hearing; and
  4. All other discovery motions, if any, not specifically covered by this order.

The parties shall refrain from filing unnecessary discovery motions concerning matters covered in this order; any such motions will be denied.

Any pretrial motions (as defined by this subsection) that are filed past the deadline may be summarily denied as untimely. Any untimely

motions must set forth good cause for the delay. See Fed. R. Crim. P. 12(c)(3).

- E. **Types of Motions Not Covered by This Order's Pretrial Motions Deadline** – The filing deadline in Section III.D above does not apply to motions in limine, including motions to exclude or limit the admissibility of evidence under Fed. R. Evid. 402, 403, and 404(b)), and *Daubert* motions. **A separate deadline for motions in limine and *Daubert* motions (“Motion in Limine Deadline”) will be set forth in the Pretrial Order following the status conference.** The Motion in Limine Deadline does not reset the Pretrial Motions Deadline set forth in this Order for the motions described in Section II.D above.
  
- F. **Certificate Required in Motions** – Before filing *any* motion in a criminal case that is not an *ex parte* motion, the moving party shall confer with counsel for the opposing party in person or by telephone (but not solely by letter, email or facsimile) in a good faith effort to resolve the issues raised by the motion, and shall include in the motion a statement certifying 1.) that the moving counsel has conferred with opposing counsel; 2.) that counsel have been unable to resolve the motion by agreement; and 3.) that the motion concerns matters which are not covered by the scheduling order. **The Court will immediately deny without prejudice any motions filed without the required conferral certificate.** Except where the certificate specifies timely calls or visits comprising a significant good faith effort by the movant to confer, the Court will also deny without prejudice motions that merely certify an “attempt” to confer. Subject to the constraints specified in this Order, a lawyer should respond promptly to inquiries and communications from opposing counsel. Board of Governors of the Florida Bar, *Ideals and Goals of Professionalism* (adopted May 16, 1990), 70 Florida Bar Journal 686, 687 ¶ 6.10 and *Creed of Professionalism* ¶ 8.
  
- G. **Waiver** – Failure to raise defenses or objections by timely motion shall constitute waiver. Relief from waiver may be granted for cause on a showing of excusable neglect.

- H. **Memoranda in Opposition** — Each party opposing any written motion shall file and serve, within **fourteen (14)** days after being served with such motion, a memorandum with citation of authorities in opposition to the relief requested. An unopposed motion is subject to being granted as unopposed unless covered by this order, in which case the motion will be denied as moot.
- I. **Jury Instructions, Verdict Form, Voir Dire Questions and Witness Lists** — Unless requested earlier by the Court, no later than **fourteen (14) days** before the first day of the trial date in which this case is set for trial (*see* Section IV.B below), counsel shall file and serve a single set of jointly proposed questions for the Court to ask the venire during voir dire, a single set of proposed jury instructions, a single proposed verdict form and the parties' respective witness lists. Jury instructions shall be based on the Eleventh Circuit Pattern Jury Instructions. **At the time of filing the voir dire questions, jury instructions and verdict form, the parties shall provide an electronic copy of same to chambers via e-mail in Microsoft Word 2007 (or later) format.**<sup>3</sup>
- J. **Demonstrative Exhibits** — The Court requires demonstrative exhibits that parties intend to use in opening statements and closing arguments be given to opposing counsel no later than one full work day (24 hours) prior to the commencement of trial.

#### IV. SCHEDULING

- A. **Status Conference** — This case is set for a status conference before the Honorable Roy B. Dalton, Jr. on **January 13, 2022, at 10:00 AM**, in Courtroom 4A, Fourth Floor, U.S. Courthouse 401 West Central Boulevard, Orlando, Florida. **The district court may reject as untimely any plea agreements filed after the status conference. The deadline for completing a change of plea is seven (7) days after the status conference. After the plea deadline the Court will only accept a straight guilty plea to the indictment or information, as charged.**

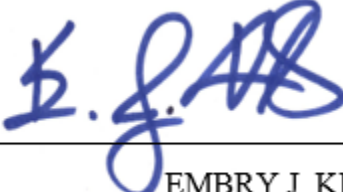
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<sup>3</sup> E-Mail should be sent to the chambers e-mail address of the presiding judge, which can be found on CM/ECF.

**Counsel should contact the Magistrate Judge sufficiently in advance of the plea deadline to ensure the plea will be received timely.** Defendant's presence is not required at the status conference. *See Fed. R. Crim. P. 43(c)(3).*

- B. **Trial** — This case is set for trial before the Honorable Roy B. Dalton, Jr., United States District Judge, on the trial term commencing **February 7, 2022, at 9:00 AM.** *After the first day of the trial term, all counsel shall be available and ready for trial on twenty-four (24) hours notice.*

**DONE and ORDERED** in Orlando, Florida, 15th day of December 2021.

  
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EMBRY J. KIDD  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
United States Marshal  
United States Attorney  
Counsel of Record