

**IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO**

STATE OF OHIO)	CASE NO. 18CR000266
)	
Plaintiff)	JUDGE EUGENE A. LUCCI
)	
vs.)	<u>ORDER DENYING DEFENDANT'S</u>
)	<u>PROPOSED WRITTEN QUESTIONNAIRE</u>
MICHAEL B. DAVIS)	<u>AND STRIKING THE FILING OF</u>
)	<u>OCTOBER 29, 2019</u>
Defendant)	

The defendant filed Proposed Written Jury Questionnaire on October 29, 2019. The certificate of service was defective, as the date of service was not stated. In addition, the proposed jury questionnaire, although claimed in the proposal to be attached, was not. The court will strike that filing.

The court held a telephone conference with counsel on October 30, 2019. The defense e-mailed the proposed jury questionnaire to the court during the conference and assured the court it would file another identical motion with a valid certificate of service and the attachment forthwith. In anticipation that this will be done, the court discussed with counsel, considered the motion, and hereby overrules the request for the following reasons.

The defendant requests that the court provide the following explanatory material with the supplemental jury questionnaire:

“The information contained within the questionnaire will become part of the Court's permanent record, but it will not be distributed to anyone except the attorneys in the case and the judge. During the questioning by the attorneys, you will be given an opportunity to explain or expand any answers, if necessary. If for any reason you do not want to answer any of the questions asked, please write the word, 'PRIVATE', next to the question and we will take this matter up with you in private.”

The court will not give this explanatory instruction to the prospective jurors because it is inaccurate. Instead, the court has already given the following explanation to prospective jurors on the court's on-line questionnaire:

The responses to these questions may be subject to public disclosure. You have the right to request a private hearing on the record with counsel for the parties present regarding any question to be answered on this form in order for the court to determine whether you have a legitimate privacy interest to warrant non-disclosure of any answer. If you do not wish to answer any particular question, you may check the box marked, "I prefer not to answer this question now, but wish to answer it in court on the record." Failure to complete this questionnaire will not relieve you of jury duty, but will result in you automatically being summoned for service and be required to answer the questions in open court, which likely will take much longer than 30 minutes per juror.

In addition, the defendant requests that the court provide the following explanatory material with the supplemental jury questionnaire:

"You are instructed not to seek out, read or research about the parties in this case. Specifically, you must not do any research using any internet search engine (e.g., Google, Yahoo!, Bing, etc.), message boards, chat rooms, blogs, social media (e.g., Facebook, Twitter, Google+, Foursquare, etc.). Do not read any articles in the newspaper or online, and do not listen to any news reports on the radio or on television. You must not discuss this case with anyone, either in person or online, unless specifically instructed to do so by the Judge. If any juror does such research, this would be jury misconduct, all of our time and effort will be wasted and it will be necessary to start this process all over. Furthermore, if a juror violates this Order from the Court, the juror will be subjected to Contempt of Court charges, punishable by a fine and/or jail time."

At the appropriate time, the court will give a similar instruction but in an expanded form.

The defendant has called this supplemental written questionnaire a “Confidential Juror Questionnaire.” It is not confidential and may be subject to public disclosure, pursuant to *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, 781 N.E.2d 180 (2002).

The defendant requests the following written question of the prospective jurors:

1. What jobs have you held in the past? In what area(s) do you have special training or expertise?

The court has asked the following questions (among the 140 or so) on the on-line questionnaire and secured the prospective jurors’ responses thereto:

33. Employer's name and/or place of employment or, if none, state unemployed, disabled, in school, retired, or other reason for not being employed.
34. Current occupation or job title
35. If unemployed, disabled, or retired, what were your previous occupations?
36. Do you now supervise, or have you ever supervised, employees or personnel? If yes, state the approximate number or range of number of employees or personnel you supervised.
37. Are you currently a student?
38. If yes, where (school, college, or institution and location)?
39. If yes, in what year of schooling are you currently engaged?
40. If yes, what is your declared/intended major or other area of study?
41. What is your highest level of formal education? Circle the years of schooling (high school = 12, BS/BA = 16, Professional/Doctorate = 20)
42. If you attended any schools or colleges after high school, including vocational schools, please name the schools and/or colleges you attended, your major areas of study, and your degrees or certifications earned.

43. If you are currently married or living as a domestic partner or with a significant other person, state your spouse's, partner's, or person's employer or place of employment.
44. If you are currently married or living as a domestic partner or with a significant other person, state your spouse's, partner's, or person's occupation.
45. If you are currently married or living as a domestic partner or with a significant other person, state that person's highest level of education and any degrees or certifications that person has earned.

Accordingly, the court believes the defendant's proposed additional question is unnecessary, or the information can be obtained by direct questioning of the jurors during voir dire. The court declines to ask this question in a written supplemental jury questionnaire.

The defendant requests the following written question of the prospective jurors:

2. Do you have any training, education, or experience in any of the following fields? Select all that apply: Health care/Medicine; Law enforcement; Pharmaceuticals/Pharmacology; Psychology/Mental health. Please explain any selected.

The court has asked the following questions on the on-line questionnaire and secured the prospective jurors' responses thereto:

58. Do you have any medical training or experience?
93. Do you have any family members or close friends who are medical professionals?
94. If yes, who, their relationship to you, and what area(s) of medicine does this person practice?
63. Do you have any law enforcement or security training or experience?
97. Do you have any family members or close friends who are in law enforcement or security?
98. If yes, who, their relationship with you, and where are they employed?
99. What are your general feelings about police officers?

100. Do you tend to believe law enforcement officers more than other witnesses simply because they are in law enforcement? Please explain.
105. Do you have any very strong feelings (negative or positive) about law enforcement officers? If yes, please explain.
91. Do you have any family members or close friends who are mental health professionals, such as a psychiatrist, psychologist, social worker, counselor, etc.?
92. If yes, who, their relationship to you, and what areas of mental health care does this person practice.

Accordingly, the court believes the defendant's proposed additional question is unnecessary, or the information can be obtained by direct questioning of the jurors during voir dire. The court declines to ask this question in a written supplemental jury questionnaire.

The defendant requests the following written question of the prospective jurors:

3. Please list the gender, age, and occupation for each of your children and/or step-children.

The court has asked the following questions on the on-line questionnaire and secured the prospective jurors' responses thereto:

29. Number of children/step-children
30. Name(s), age(s), and occupation(s) of children/step-children

Accordingly, the court believes the defendant's proposed additional question is unnecessary, or the information can be obtained by direct questioning of the jurors during voir dire. The court declines to ask this question in a written supplemental jury questionnaire.

The defendant requests the following written question of the prospective jurors:

4. Do you currently take any prescription medications? If YES, please explain.

The court has asked the following question on the on-line questionnaire and secured the prospective jurors' responses thereto:

86. Do you require medication/meals/snacks at specific times of the day?

The court has reservations about the violation of the prospective jurors' right to privacy in their medical information, and the jurors may object to the proposed question. Accordingly, the court believes the defendant's proposed additional question is unnecessary, or the information can be obtained by direct questioning of the jurors during voir dire, subject to the jurors' objections. The court declines to ask this question in a written supplemental jury questionnaire.

The defendant requests the following written question of the prospective jurors:

5. Do you know anyone who has been seriously injured or died in an automobile accident, or have you otherwise experienced the sudden or unexpected loss of a loved one? If YES, please explain.

The court has asked the following questions on the on-line questionnaire and secured the prospective jurors' responses thereto:

72. Have you or a member of your immediate family ever been involved in a motor vehicle collision?
73. If yes, was a lawsuit filed or a claim presented?
74. Please explain.
75. Have you or a member of your immediate family ever been injured at work?
76. If yes, was a workers' compensation claim filed?
77. Are you or a member of your immediate family now involved, or in the past been involved, in any capacity in a lawsuit (such as a plaintiff, defendant, or witness)?
78. If yes, please explain.
79. Have you ever been represented by legal counsel?
80. If yes, please explain in very general terms (no specifics or details are necessary).

Accordingly, the court believes the defendant's proposed additional question is unnecessary, or the information can be obtained by direct questioning of the jurors during

voir dire. The court declines to ask this question in a written supplemental jury questionnaire.

The defendant requests the following written question of the prospective jurors:

6. WITHOUT MENTIONING ANY NAMES, do you know anyone who suffers from any type of mental illness or disorder? If YES, please explain.

The court has asked the following questions on the on-line questionnaire and secured the prospective jurors' responses thereto:

127. Do you know, or have you had experience with, someone who has a mental health issue?

128. Have you, or anyone close to you, ever been mentally, physically, or emotionally abused as an adult or child? If yes, please describe the person by relationship to you, explain the situation to the best of your ability, and the impact you felt the abuse has on the abused person.

Accordingly, the court believes the defendant's proposed additional question is unnecessary, or the information can be obtained by direct questioning of the jurors during voir dire. The court declines to ask this question in a written supplemental jury questionnaire.

The defendant requests the following written question of the prospective jurors:

7. WITHOUT MENTIONING ANY NAMES, do you know anyone who suffers from thoughts of suicide, has attempted suicide, or has committed suicide? If YES, please explain.

The court has not asked any questions on the on-line juror qualification questionnaire about suicide, as this is not an issue that arises in a significant number of criminal or civil cases before this court. This can be addressed in voir dire without having a special written supplemental questionnaire.

The defendant requests the following written question of the prospective jurors:

8. Have you or anyone close to you ever been: Charged with, arrested for, pled Guilty to, or convicted of a crime; Victim of a crime; Witness to a crime. Please explain any selected.

The court has asked the following questions on the on-line questionnaire and secured the prospective jurors' responses thereto:

109. Have you or a close family member ever been accused or convicted of a crime, not including any minor traffic offenses?
110. If yes, please explain, including whether it was a felony, the type of crime involved, the court, and the year, and whether it resulted in a conviction.
111. Have you or a close family member ever been the victim of a serious crime (for example, homicide, assault, kidnapping, robbery, burglary, sex offense, arson, or vehicle theft)?
112. If yes, what type(s) of crime, providing the county/state, year, and a brief explanation?
81. Have you ever testified in court or in any court-connected proceeding, such as a trial, hearing, or deposition?
82. If yes, please explain where, when, and what for.

Accordingly, the court believes the defendant's proposed additional question is unnecessary, or the information can be obtained by direct questioning of the jurors during voir dire. The court declines to ask this question in a written supplemental jury questionnaire.

The defendant requests the following written question of the prospective jurors:

9. Under certain circumstances, Ohio law allows a criminal defendant to plead Not Guilty by Reason of Insanity. Using the scale below, circle the number below that best describes how strongly you disagree or agree with this law [Circle one number 1-5]. Why do you feel this way?

The court has not asked any questions on the on-line juror qualification questionnaire about "not guilty by reason of insanity," as this is not an issue that arises in a significant number of criminal or civil cases before this court. This can be addressed in voir dire without having a special written supplemental questionnaire.

The defendant requests the following written question of the prospective jurors:

10. What are your feelings and/or opinions about a criminal defendant who pleads Not Guilty by Reason of Insanity to a crime such as Murder or Attempted Murder?

The court has not asked any questions on the on-line juror qualification questionnaire about “not guilty by reason of insanity,” as this is not an issue that arises in a significant number of criminal or civil cases before this court. This can be addressed in voir dire without having a special written supplemental questionnaire.

The defendant requests the following written question of the prospective jurors:

11. If you have ever served as a juror in a Criminal case: a. What kind(s) of criminal case(s)? b. What was the jury’s verdict? c. Were you the foreperson?

The court has asked the following questions on the on-line questionnaire and secured the prospective jurors’ responses thereto:

- 69. Have you ever previously served as a juror? Yes (state the number of times summoned for service in your life)
- 70. In what court(s) and the approximate year(s)?
- 71. On what type(s) of case(s) have you served as a juror (include only those where a jury was seated and the trial commenced)?

Accordingly, the court believes the defendant’s proposed additional question is unnecessary, or the information can be obtained by direct questioning of the jurors during voir dire. The court declines to ask this question in a written supplemental jury questionnaire.

The defendant requests the following written question of the prospective jurors:

12a. Name 3 people that you admire; 12b. Name 3 people that you do not admire; 12c. What three (3) words or adjectives would you use to describe yourself?

The court has asked the following questions on the on-line questionnaire and secured the prospective jurors’ responses thereto:

- 133. On a scale of 0 to 10, with zero being the most liberal and 10 being the most conservative, where on the scale generally do you consider yourself politically?

134. Where do you obtain, or what is your preferred source of, most of the relevant information or news about current events (check all that apply)?
135. Specifically, on what news or media outlets or sites do you rely to obtain the most current, accurate information about transpiring or on-going events?
136. What are three of your favorite television programs or movies?

Accordingly, the court believes the defendant's proposed additional question is unnecessary, or the information can be obtained by direct questioning of the jurors during voir dire. The court declines to ask this question in a written supplemental jury questionnaire.

The defendant requests the following written question of the prospective jurors:

13. Is there any reason why you feel that you could not or should not serve as a juror in this case? If YES, please explain.

The court has asked the following questions on the on-line questionnaire and secured the prospective jurors' responses thereto:

137. Do you claim any exemption from jury service for any reason other than physical?
138. Please explain.
139. Do you have any pressing business or personal matter(s) that might interfere with the time or concentration required to serve as a juror? If yes, please describe it or the matters.
140. Is there any reason you cannot serve as a juror?

Accordingly, the court believes the defendant's proposed additional question is unnecessary, or the information can be obtained by direct questioning of the jurors during voir dire. The court declines to ask this question in a written supplemental jury questionnaire.

In addition to all of the foregoing, the court has asked the following questions on the jury on-line questionnaire:

104. What have you learned from any prior involvement with, the media, the entertainment industry, or any other source about, courts, crime, and the criminal justice system?
107. When you think of prosecutors, what thoughts and feelings come to mind?
108. When you think of criminal defense attorneys who represent persons accused of serious crimes, such as murder, what thoughts and feelings come to mind?
113. What do you think are the major causes of crime in the United States today?
114. What concerns you more: mistakenly convicting an innocent person or mistakenly finding a guilty person "not guilty"? Explain why.

The court believes that the extensive questionnaire that the court distributed on-line and on which the court already secured answers from the jurors is sufficient to provide a basis for voir dire questioning and to enhance the jury selection process in this case. The court has allotted two days for voir dire and jury selection, which should be more than sufficient in this case, the court noting additionally that publicity on this case has been rather minimal.

The court declines to distribute a supplemental written questionnaire in this case, and the defendant's motion, written, filed, or otherwise, is overruled. The defective filing is ordered stricken from the record.

IT IS SO ORDERED.



JUDGE EUGENE A. LUCCI

c: Rocco W. DiPierro Jr., Esq., Assistant Prosecuting Attorney
Jason R. Shachner, Esq., Assistant Prosecuting Attorney
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