

PRETRIAL ORDER

Team members, advisors, coaches, and any other representatives of the competing teams must not observe the proceedings in any courtroom other than the courtroom in which their team is competing.

There must be no communication whatsoever between the participants and their advisors and coaches during the trial. Team members, i.e., advocates and witnesses, may confer among themselves without violating this rule.

A team's coaches and advisors are admonished not to talk or confer among themselves or with any guests or visitors in the courtrooms while the trials are in progress. Observers should try to enter and leave the courtroom unobtrusively. If there are abuses of this rule, the director may issue a rule requiring all coaches and advisors to stay outside the courtrooms during the remaining preliminary rounds.

Each team (prosecution and defense) has a total of 90 minutes within which to present its opening statement and its two witnesses, cross-examine the two witnesses for the other side, read into the record any relevant stipulations, and give closing argument. Each team is responsible for allocating its 90 minutes. A team need not use all of its allotted time. The time for the reading of the stipulations by the Court, as indicated in the pre-trial order, shall NOT be assessed against either side's time

The cross-examination of a witness is not restricted to the matters which the witness testified to during that witness's direct testimony. Assuming the cross-examiner makes an appropriate objection, the redirect examination cannot go beyond the scope of the cross-examination.

Objections during the direct and cross-examination of a witness must be made only by the advocate who is responsible for the direct or cross-examinations of that particular witness. Objections during the opening statement and closing argument must be made only by the advocate who is responsible for handling his or her team's opening or closing. This rule does not prohibit advocates from the same team from conferring with each other regarding any matter during the course of the trial. (As a matter of courtesy, counsel should request permission to approach the bench for side-bar conferences with the judge. The evaluators, although sitting as mock jurors, should be able to hear the side-bar discussions.)

During the course of the trial the arguments of motions and objections are strictly a matter for the judge to rule on. Timekeepers are instructed to stop the clock for such matters and for side-bar conferences.

Each side may present no more than two pre-trial motions, and has five minutes to argue such motions. These motions may be in writing and no longer than one page, double-spaced, exclusive of caption and signatures.

A motion to exclude witnesses may also be made by the participants, and the court shall grant such motion: whether a witness may remain in the courtroom before he or she has testified will be determined at the advisors' meeting on March 27, 2008, at 3:30 p.m. in the courtroom on Floor 3E of the John Marshall Law School.

Counsel may use laptop computers at counsel table during the trial.

Exhibits may be enlarged but not changed except for the size and style of lettering on the exhibits, up to but no greater than 30 inches by 44 inches. Bench books may not be submitted to the judge or jury.

The exhibits in the file are reasonably accurate representations of the matters they purport to represent. If asked, the witnesses must admit that the exhibits in the case file are fair and accurate representations of that which they purport to represent on the relevant dates, and, where appropriate, satisfy the best evidence rule. The parties further stipulate to the chain of custody of those exhibits. The parties further stipulate as to the admissibility of the exhibits consistent with this pre-trial order, and the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

Quotes found within the newspaper articles contained in this problem may form the good faith basis for the asking of a question concerning the quoted statement. The witness may NOT deny making the quoted statement, but may try to “explain it away.”

Where a statement contains a signature line with the signer's name printed below the line, it is to be assumed that the named person signed that document.

The parties stipulate that a breathalyzer is generally accepted in the scientific community as a proper means to determine one's blood alcohol level.

The parties stipulate that the breathalyzer used by Officer Davis on the night of October 31, 2008 was in good working condition, had been calibrated within the previous 48 hours, and was accurate to within 0.01 in reading blood alcohol level.

The parties stipulate that the breathalyzer receipt is a true and accurate copy of the original breathalyzer receipt and that it accurately portrays Chris Dunkirk's blood alcohol level at the time the breathalyzer test was taken.

The parties stipulate that Officer Pat Davis is a certified Breath Technician for operating breathalyzers in the State of Marshall.

The parties stipulate that the criminal history summary contained in the trial material files are true and correct, and the convictions listed therein may be used in lieu of certified copies of conviction, if otherwise admissible.

The parties stipulate that the transcripts found in the materials are true and accurate transcriptions of what was said.

The parties stipulate that the police reports and citations in the trial problem are authentic copies of the original police reports and citations.

The parties stipulate that the statements in the trial problem are authentic copies of the original statements.

The order previously denying the defense motion to suppress all physical evidence is reaffirmed, and the defense is barred from rearguing that motion.

The order previously denying the defense motion to suppress all statements of the defendant is reaffirmed, and the defense is barred from rearguing that motion.

The defendant's motion to dismiss the charges is denied and may not be reargued at trial.

The parties may not bring in additional physical evidence or “newly discovered evidence.”

The witnesses shall, as best as possible, testify in a manner consistent with the trial materials. If a witness makes a statement inconsistent with a statement the witness has made in court or has subscribed to, the witness must admit that the statement or transcript in the case file is authentic, and that he or she made the remarks contained in the transcript or statement. The witness must admit, if questioned, to fabricating a statement of material fact that is not in the file. Where the trial materials are inconsistent, the witness must make a choice as to which scenario to follow. In some instances this choice will expose the witness to the possibility of being impeached. Otherwise, the witness is free to make reasonable assumptions about the background and personality of the character the witness is portraying.

The attorneys may in their opening statements and summations refer to the Court's instructions to the jury as well as the charges and verdict forms.

Copies of the Court's instructions to the jury will be provided to the evaluators, but will not be read aloud in court. The participants may not refer to any other instructions unless such instructions have in fact been given by the judge during the trial itself. The participants should not refer to an instruction if the evidence is not sufficient to permit the jury to receive such an instruction (for example, there should be no reference to impeachment if an impeachment is not in evidence). The participants cannot request or refer to any verdict forms or charges other than those appearing in the file.

s/
Charles J. Aron
Chief Judge