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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MOHAVE**

9 STATE OF ARIZONA,
10 Plaintiff,

No. CR-2014-1193

11 vs.

12 **JUSTIN JAMES RECTOR,**
13 Defendant.

**RESPONSE TO DEFENSE MOTION
FOR INDIVIDUALLY VOIR DIRE OF
PROSPECTIVE JURY MEMBERS
OUTSIDE THE PRESENCE OF
OTHER POTENTIAL PROSPECTIVE
JURY MEMBERS**

14 COMES NOW, the State of Arizona, by the Mohave County Attorney and through
15 the undersigned deputy, Gregory A. McPhillips, respectfully responds to defendant's
16 motion for individually voir dire of prospective jury members outside the presence of other
17 potential prospective jury members.

18 Issue

19 Should the court permit the defense and prosecution to undertake individual voir
20 dire of prospective members of the jury outside the presence of other members of the
21 panel?

Law and Argument

As the Court knows, undersigned counsel is invested in the process of voir-dire in
all trials. Individual voir-dire may be necessary when jury members request to speak
privately about an issue; but it is not the best way to proceed with all questioning.

While undersigned counsel shares the concern of the defense that there may be
an inhibiting effect of a large audience, the defense is ignoring how inhibited jurors will



1 feel sitting alone in a room, peppered with an hour of questions, surrounded with four
2 lawyers, two investigators, one judge and court personnel. As such, individual voir-dire
3 will garner little benefit to the voir-dire process in exchange for a strain on limited court
4 time.

5 Undersigned counsel has engaged in individual voir-dire of prospective members
6 in previous cases, and individual voir-dire proved ineffective at eliciting honest juror
7 responses. In that case, the juror was asked specifically if he or a family member suffered
8 from any mental health issue or schizophrenia. The juror answered in the negative. After
9 the trial started, the juror revealed that his sister suffered from schizophrenia and the
10 personal experience made him unable to be fair. It was not until the trial began that the
11 juror decided to share his personal bias with the parties and the court. Individual voir-dire
12 can be quite intimidating and can cause jurors not to answer questions.

13 While defense is worried that jurors will "parrot" the answer of others, undersigned
14 counsel believes that a group discussion enhances the prospect of honestly discussing
15 juror bias. In undersigned counsel's experience, some jurors do not express personally
16 held prejudice until other jurors first step forward. Often, jurors do not understand what
17 counsel are requesting until another juror answers and provides depth of understanding
18 to the question. As such, individual voir-dire will reduce the chance that the parties will
19 uncover juror bias.

20 Therefore, the court should not permit the defense and prosecution to undertake
21 individual voir dire of prospective members of the jury outside the presence of other
22 members of the panel.

23 • **How the State suggests we shall proceed with Voir Dire**

24 First, undersigned counsel expects that we will start with a questionnaire. This
25 questionnaire will present many of our more concerning questions without the potential of
prejudicing the entire panel. From that questionnaire jurors may be struck for cause,

1 either through stipulation of the parties or court order. This will narrow the number of
2 people who will appear for personal questioning.

3 Second, questioning by defense and prosecution may be done in panels of six or
4 eight. With this panel, the jurors will not feel intimidated by the large crowd of strangers
5 and they will not feel outnumbered by the parties and court staff. Further, panels strike
6 the right balance between productive voir-dire and preserving the efficiency of limited
7 court time. Many jurors do not express prejudice until other jurors step forward first.
8 Panels of six or eight will allow for a comfortable discussion between the panel and
9 counsel. From this questioning, further jurors may be struck for cause. This will narrow
10 the number of people who will appear for court questioning.

11 Third, we will do court questioning with the entire group. At the very least, we will
12 start randomly seating jurors at this point.

13 CONCLUSION

14 Individual voir-dire of prospective members of the jury outside the presence of
15 other members of the panel is best reserved for occasions where jury members request to
16 speak privately about an issue. The State would not be opposed to questioning small
17 panels of jurors after the use of a questionnaire.

18 RESPECTFULLY SUBMITTED THIS 26TH DAY OF AUGUST, 2015.

19 MOHAVE COUNTY ATTORNEY
20 MATTHEW J. SMITH

21 By 
22 DEPUTY COUNTY ATTORNEY
23 GREGORY A. MCPHILLIPS
24
25

1 A copy of the foregoing
sent this same day to:

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