

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

OCT 02 2015

IN AND FOR THE COUNTY OF MOHAVE

VIRLYNN TINNELL  
CLERK SUPERIOR COURT  
BY: psg DEPUTY  
\*DL

HONORABLE LEE F. JANTZEN  
DIVISION 4  
DATE: OCTOBER 2, 2015

COURT ORDER/NOTICE/RULING

STATE OF ARIZONA,  
Plaintiff,

NO. CR-2014-01193

vs.

JUSTIN JAMES RECTOR,  
Defendant.

The Court has received and considered the pending Motions, Responses, if any, Replies, if any, and the argument of the parties, if any. The Court makes rulings on the following pending motions.

1. *Defense Motion for Individually Voir Dire of Prospective Jury Members Outside the Presence of Other Potential Prospective Jury Members*

The Defendant requests that prospective jurors be individually examined in sequestration from other members of the venire panel in order to best insure that the jury be composed of fair and unbiased individuals. However, the Court does not believe that conducting *voir dire* in groups will preclude prospective jurors from candidly responding to the Court's and Counsel's questioning. If it becomes necessary to question any juror individually during the course of *voir dire*, either for privacy reasons or to avoid tainting the other prospective jurors, the Court will do so. See, *State v. Lynch*, 225 Ariz. 27, 234 P.3d 595 (2010) (upholding Trial Court's denial of Defendant's request to conduct sequestered *voir dire*).

**IT IS ORDERED** denying the Defense Motion for Individually Voir Dire of Prospective Jury Members Outside the Presence of Other Potential Prospective Jury Members.

2. *Defendant's Motion for Change of Venue*

The Defendant seeks a change of venue, claiming that pretrial publicity generated in this matter "has, and will continue, to saturate this relatively tiny locale regarding his case, making the task of obtaining a jury not tainted by coverage of the alleged details of



the crime, and detailed accounts of the pretrial legal activities, nearly impossible.”

A criminal Defendant is entitled to a change of venue if there is a probability the dissemination of prejudicial information will deprive the Defendant of a fair and impartial trial. Rule 10.3(b), Ariz.R.Crim.P. The Court must determine whether, under the totality of the circumstances, the publicity attendant to Defendant’s trial was so pervasive that it caused the proceedings to be fundamentally unfair. *State v. Davolt*, 207 Ariz. 191, 206, 84 P.3d 456 (2004); *State v. Bigger*, 227 Ariz. 196, 254 P.3d 1142 (App. 2011). Prejudice may be presumed or actual. *State v. Blakley*, 204 Ariz. 429, 434, 65 P.3d 77 (2003). “The analysis of pretrial publicity involves two inquiries: ‘(1) Did the publicity pervade the Court proceedings to the extent that prejudice can be presumed? If not, then (2) did Defendant show actual prejudice among members of the jury?’” *State v. Cruz*, 218 Ariz. 149, 181 P.3d 196, 203 (2008), quoting *State v. Murray*, 184 Ariz. 9, 26, 906 P.2d 542, 559 (1995).

To show presumed prejudice, a Defendant must show that the publicity “was so extensive or outrageous that it permeated the proceedings or created a carnival-like atmosphere.” *State v. Blakley*, 204 Ariz. 429 (internal quotation marks omitted) (quoting *State v. Atwood*, 171 Ariz. 576, 631, 832 P.2d 593, 648 (1992)). The publicity must be so prejudicial that the jurors could not decide the case fairly. *State v. Payne*, 233 Ariz. 484, 314 P.3d 1239 (2013). The mere exposure of jurors to publicity resulting in knowledge of the case will not create a presumption of prejudice when jurors can set aside acquired information and render a verdict based on the evidence. *Cruz*, 218 Ariz. 149. “Even knowledge of the case or an opinion concerning the Defendant’s guilt will not disqualify a juror if the juror can set aside such knowledge or opinion in evaluating the evidence presented at trial.” *Id.*

This is a high standard and it is rarely met by the Defendant. The Arizona Supreme Court repeatedly has stated the quantity of publicity alone will not justify a presumption of prejudice. *Id.* (“We consider the effect of pretrial publicity, not merely its quantity.”); *State v. Nordstrom*, 200 Ariz. 229, 25 P.3d 717 (2001) (“In considering a motion for change of venue, the Court is concerned with the effect of pretrial publicity, rather than its quantity.”). The Supreme Court also has been reluctant to presume prejudice when the publicity was primarily factual and non-inflammatory or if the publicity did not occur close in time to the trial. *Payne*, 233 Ariz. 484.

In this case, there was a substantial amount of pretrial publicity at the time of the Defendant’s arrest in September 2014 and at initial court appearances. Recently, media attention in this matter has been confined to reporting what has occurred in court proceedings and occasional stories about the motions being filed. All in all, the media attention in this matter has been focused on advising the public of the defendant’s arrest, what charges have been brought against him, and what has occurred at court proceedings that are open to the public. The media attention thus far has not been “outrageous” and has not created a “carnival-like atmosphere.” Based upon the totality of the circumstances, prejudice cannot be presumed. *Id.*; *State v. Bible*, 175 Ariz. 549, 563-64, 858 P.2d 1152 (1993); *State v. Bedford*, 157 Ariz. 37, 39, 754 P.2d 1141 (1988).

In the absence of presumed prejudice, the Defendant must demonstrate that the pretrial publicity was actually prejudicial and likely deprived him of a fair trial. *Cruz*, 218 Ariz. 149; *Davolt*, 207 Ariz. 191; *State v. Chaney*, 141 Ariz. 295, 302, 686 P.2d 1265 (1984). "The relevant inquiry for actual prejudice is the effect of the publicity on the objectivity of the jurors" actually seated. *Murray*, 184 Ariz. at 26, 906 P.2d at 559 (citing *Bible*, 175 Ariz. at 566, 858 P.2d at 1169). The Defendant must show that "the jurors have formed preconceived notions concerning the Defendant's guilt and that they cannot leave those notions aside." *Chaney*, 141 Ariz. at 302. In this case, trial is not scheduled to commence until October 17, 2016. "An examination of the jurors, through voir dire process, is an effective means by which to determine the effects or influence of pretrial publicity on the jurors." *Greenawalt*, 128 Ariz. at 163, 624 P.2d at 841 (1981).

There are many procedures that the Court can utilize to ensure that the Defendant has his case heard by a fair and impartial jury. These procedures include the use of a large panel of jurors and juror questionnaires. The Court finds that the Defendant has failed to establish that he is entitled to a change of venue based upon pretrial publicity at this time.

**IT IS ORDERED** denying the defendant's Motion for Change of Venue.

3. *Defense Motion for Special Procedures to Insulate the Venire and the Empaneled Jury*

The Defendant seeks the following orders regarding individuals summoned for jury duty in this case:

- 1) Any summons contain no reference to this specific case;
- 2) That all employees of the Sheriff's Department, Clerk's Office, or Jury Commission make no reference to this case when contacting prospective jurors in this matter; and
- 3) That the names, addresses, and telephone numbers of the prospective jurors not be subject to publication in the media.

The Court finds Defendant's motion to be premature because his trial is not scheduled to occur until October 2016. As noted in its ruling on Defendant's Motion for Change of Venue, the Court intends to utilize procedures to ensure that Defendant has his case heard by a fair and impartial jury, and will address those with counsel at the appropriate time closer to trial. In addition, by law the Jury Commissioner and other Court personnel are prohibited from releasing the names, addresses and telephone numbers of individuals summoned for jury duty. See, A.R.S. §21-312; Rule 123(e)(10), Rules of the Supreme Court.

**IT IS ORDERED** denying the Defense Motion for Special Procedures to Insulate the Venire and the Empaneled Jury.

*4. Defense Motion to Allow Defendant Access to Laptop in Jail to Review Discovery and Assist Case Preparation*

The Court has reviewed the Defense Motion to Allow Defendant Access to Laptop in Jail to Review Discovery and Assist Case Preparation, the State's response to this motion and the State's Motion to Request an Accelerated Date (re laptop motion), the Defense's response to the State's request for an accelerated request, and the Mohave County Sheriff's Office's response to the Defense motion for laptop and its reply to the Defense response to State's request for an accelerated date. The Court finds a hearing is not necessary and rules as follows:

The Defendant seeks an order requiring the Mohave County Sheriff's Office (MCSO) to allow him to have a laptop computer in his jail cell at all times so that he may personally review the digital discovery in his case. In its response, MCSO states that jail policy prohibits inmates from possessing CD/DVDs in their cells or housing pods because such items are considered contraband that can be modified into dangerous instruments and weapons. MCSO also states that once it receives Defendant's CD/DVDs from his defense team, the Defendant can request time to view them. The Defendant then will be taken from his cell or pod to a private viewing office where he will be seated at a computer with headphones and note-taking material.

The Court finds MCSO's policy to be reasonable and will not chill the Defendant's right to Counsel or to assist in his defense. The Defendant has not shown that MCSO's private viewing area will deny him the ability to privately view the digital discovery material in his case.

**IT IS ORDERED** denying the Defense Motion to Allow Defendant Access to Laptop in Jail to Review Discovery and Assist Case Preparation.

*5. Defendant Justin James Rector's Notice of Objections to Arizona's Death Penalty Sentencing Scheme [A.R.S. §13-703, et seq.]*

The Court has reviewed the Defendant Justin James Rector's Notice of Objections to Arizona's Death Penalty Sentencing Scheme [A.R.S. §13-703, et seq.], and rules as follows:

The Defendant has raised eighteen challenges to the constitutionality of Arizona's death penalty scheme. He acknowledges that the United States Supreme Court and/or the Arizona Supreme Court have rejected his claims. This Court is bound to follow appellate precedent.

**IT IS ORDERED** denying Defendant Justin James Rector's Notice of Objections

to Arizona's Death Penalty Sentencing Scheme [A.R.S. §13-703, et seq.].

*6. Defendant's Motion to Delay Any Mental Health, I.Q., or Related Testing until Mr. Rector's Medical, Mental Health and Treatment Records Can Be Gathered/Objection to Any Such Testing at This Time*

The Court has reviewed Defendant's Motion to Delay Any Mental Health, I.Q., or Related Testing *until* Mr. Rector's Medical, Mental Health and Treatment Records Can Be Gathered/Objection to Any Such Testing at This Time and rules as follows:

Pursuant to A.R.S. §§13-753 and 13-754, the Court ordered the Defendant to undergo competency and IQ prescreening evaluations if no objections to the testing were filed within ten business days. No objections were filed by the Defendant's former Counsel. The Defendant was evaluated for competency and found to be competent to proceed. Due to the change in Defense Counsel, the Court has held the IQ prescreening and insanity evaluations in abeyance.

As stated in his motion, Defendant now objects to these evaluations at this time, but will not at a later date. Both statutes provide that the evaluations shall not go forward if the Defendant objects. The Defense has also made it clear that they are only objecting to this testing until the Defendant's records can be obtained, and that the mitigation expert is diligently pursuing the relevant records.

**IT IS ORDERED** granting Defendant's Motion to Delay Any Mental Health, I.Q., or Related Testing *until* Mr. Rector's Medical, Mental Health and Treatment Records Can Be Gathered/Objection to Any Such Testing at This Time. Pursuant to A.R.S. §13-753(B), until relevant records can be obtained. This waiver does not preclude the Defendant from offering evidence of his intellectual disability in the penalty phase.

*7. Defendant's Motion for Disclosure of Identity of Any/All Informants/Motion for Disclosure of Information Regarding Informants*

The Defendant seeks an order compelling the State to disclose the identity of all informants involved in this case, and specifically any jail house snitches. The State responds that it has not employed or entered into an agreement with a jail house snitch.

Based on the State's response, the Court finds that the Defendant's request is moot. The Court expects that both parties understand their obligation to comply with the discovery rules, and will confer with each other and attempt to resolve any disputes before filing motions pursuant to Rule 15, Ariz.R.Crim.P., as required by Mohave County Superior Court Local Rule CR-8.

**IT IS ORDERED** denying Defendant's Motion for Disclosure of Identity of Any/All

Informants/Motion for Disclosure of Information Regarding Informants.

8. *Defendant's Motion to Preclude Law Enforcement Officers From Wearing Uniforms or Displaying Guns/and or/Other Weapons in Courtroom*

The Defendant seeks an order from the Court excluding all uniformed police officers from the courtroom during trial and requiring that any armed security officers be unobtrusively placed so that the jury cannot see their badges or weapons.

Rule 9.3(b), Ariz.R.Crim.P., requires all proceedings to "be open to the public ... unless the Court finds, upon application of the Defendant, that an open proceeding presents a clear and present danger to the Defendant's right to a fair trial by an impartial jury." Here, the Defendant speculates that large numbers of uniformed police officers will attend trial, and that their presence will get the message across to the jury that they should convict him. The Court notes that in *Holbrook v. Flynn*, 475 U.S. 560 (1986), the United States Supreme Court addressed whether seating "four uniformed state troopers" in the row of spectators' seats immediately behind the Defendant during trial denied him his right to a fair trial. The Supreme Court held that the presence of the troopers was not so inherently prejudicial that it denied the Defendant a fair trial. In reaching that holding, the Court stated that "the question must be ... whether an unacceptable risk is presented of impermissible factors coming into play." *Id.* at 570. At this point, it remains to be seen whether uniformed police officers will attend trial en masse. If the Court believes that the actions or presence of any spectators are affecting the jury, the Court will take action at that time.

Concerning the presence of uniformed detention officers, the Court does not believe that the presence of detention officers in the courtroom reflects badly on this, or any Defendant. Particularly in this day and age, the Court believes that jurors will not be surprised by the presence of courtroom security in general, and will not necessarily attribute the presence of a deputy to anything to do with the Defendant. As the United States Supreme Court explained in *Holbrook v. Flynn*, the presence of security personnel at a trial is not necessarily an indication that a defendant is considered to be either dangerous or guilty:

[T]he presence of guards at a Defendant's trial need not be interpreted as a sign that he is particularly dangerous or culpable. Jurors may just as easily believe that the officers are there to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges do not erupt into violence. Indeed it is entirely possible that jurors will not infer anything at all from the presence of the guards.

*Id.* at 569.

**IT IS ORDERED** denying Defendant's Motion to Preclude Law Enforcement

Officers From Wearing Uniforms or Displaying Guns/and or/Other Weapons in Courtroom.

*9. Defense Motion to Preclude Post-Verdict Contact Between the Trial Judge and Jury*

The Defendant requests that the Court not communicate with the jury post-verdict. As he notes, it is usual and customary for most judges to privately meet with the jurors after their discharge to thank them for their service. However, It is NOT the practice of this Court to meet with jurors after they are discharged. If the Court changes its practice and at any time intends to speak personally with the discharged jury following the return of verdict in this case, the Court will do so within the parameters set forth in the Arizona Supreme Court Judicial Ethics Advisory Committee's Advisory Opinion 01-01 (reissued January 22, 2003).

**IT IS ORDERED** denying the Defense Motion to Preclude Post-Verdict Contact Between the Trial Judge and Jury.

*10. Defense Notice: Invocation of Arizona Rule of Evidence 615 for all Proceedings in this Case*

In this pleading, Defendant states that he invokes the rule excluding witnesses from all future court proceedings in this case. The Court finds this invocation overbroad. Rule 9.3(a), Ariz.R.Crim.P., and Rule 615, Ariz.R.Evid., require the exclusion of certain witnesses testifying at Court hearings and/or trial if requested by a party. It does not require exclusion of any witnesses at other court proceedings in which the witness will not be testifying. In addition, statutory victims and each party's investigator are excepted from exclusion and may attend all proceedings, regardless whether or not they will be testifying at that particular proceeding.

Because Defendant's "notice" is overbroad, the Court declines to accept it. The parties are instructed to orally invoke the rule at each proceeding in which testimony will be taken, should they desire prospective witnesses to be excluded until after that witness has testified.

**IT IS ORDERED** denying Defendant's Defense Notice: Invocation of Arizona Rule of Evidence 615 for all Proceedings in this Case.

The Court will continue reviewing motions, ruling on motions, and will set motions for Oral Argument when necessary.

cc:

Mohave County Attorney\*

Gerald T Gavin\*  
Attorney for Defendant

Mohave County Legal Defender\*  
Attorney for Defendant

Mohave County Jail\*

James Schoppmann\*  
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Honorable Lee F Jantzen  
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