

VALERIE WYANT, CLERK

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FILED

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO

Dan R. Slayton, Judge  
Division 2  
Date: March 7, 2017

Valerie Wyant, Clerk  
Marie Jones, Deputy Clerk  
Steve Garwood, Court Reporter

MINUTE ENTRY

THE STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. CR 2015-00862
	)	
STEVEN EDWARD JONES,	)	
	)	
Defendant.	)	

**ACTION:** Case Management Conference

**APPEARANCES:** Ammon Barker and Bryan Shea, Deputy County Attorneys, are present and appearing on behalf of the State. The Defendant is appearing telephonically and out of custody with Counsel, Joshua Davidson, who is appearing telephonically as well. Debra Fresquez is present and appearing on behalf of Victim Witness.

4:05 p.m. Court is in session.

The Court notes that this hearing was originally set to discuss a couple of motions pertaining to this case; however, due to some unforeseen health issues, Counsel Davidson is unable to argue any motions at this time. As time is approaching for the Jury Trial and Jury Selection, the Court will utilize this time to go over some issues with Counsel.

**Jury Questionnaire:**

The Court has reviewed the Jury Questionnaire that was proposed by the State. The Court did not see anything initially that was worrisome or problematic.

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Upon Court inquiry, Counsel Davidson advises that Counsel McCowan worked on a few modifications to the questionnaire that the Defense is going to request. This will be filed as a Response, prior to the Response deadline next week.

The Court encourages Defense Counsel to discuss the modifications with the State and, if there is no disagreement, the modifications can be made; this would save filing time.

**Memorandum/Schedule of Lengthy Trial:**

As to other lengthy Jury Trials, the Court has sent out with the Memorandum a schedule to the Prospective Jurors indicating the length of the Jury Trial. This gives them a better idea as to what they may be looking at in this case. The Court is now proposing that this be done for this case.

**Jury Questionnaire/Opening Written Statement:**

The Court notes that in one case, along with the Questionnaire, an opening written statement was prepared. The Court feels that this is a good way of bringing to mind certain issues in the case that the Prospective Jurors need to be aware of. Also, there has been a lot of pre-trial publicity in this case and this may assist the Prospective Jurors in determining whether or not they can still be fair and impartial. The Court will leave this up to Counsel. The Court wants Counsel to discuss and to determine whether or not they should proceed in this manner; the written statement should be not more than ten (10) sentences as to each side.

Counsel Barker asks for clarification. In the past, there has been a mini-opening presented to the Prospective Jurors or the "pool."

The Court verifies that the mini-opening is an option as well.

Counsel Barker advises that the State will touch base with Defense Counsel and work something out.

The Court advises that if Counsel wishes to proceed with the mini-opening statements it could be done in the following way:

Two Hundred and Forty (240) Prospective Jurors will be called and they will meet in the Jury Assembly Room. The Court, Counsel and the Court Reporter will report there as well. The Prospective Jurors are administered the Oath. Counsel could then proceed to make their mini-opening statements. Court, Counsel and the Court Reporter would then leave the room and the Prospective Jurors would proceed to fill out their questionnaires.

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The Court will leave this to Counsel to discuss and to determine how they want to proceed.

Upon the request for clarification by Counsel Davidson, the Court advises that a written statement will either be sent along with the questionnaire or Counsel will make their mini-opening statements in person. It will be either one or the other.

**Media's Involvement in this Case/Victims' Rights:**

The Court does not know how much media involvement there will be. The Court is very conscious about protecting those individuals who will be appearing for jury service. If there is any media present during Jury Selection, the Court is contemplating that there be an Order that the names of the Prospective Jurors not be broadcast and their identities will be kept private. The Court details its concerns. In the past, the Court has Ordered the Media not to broadcast or photograph the faces of the Jurors in order to protect them.

The Court asks Counsel to get together and see if they can come up with a mutually agreeable way to protect the privacy of the Jurors.

Under the constitution, Mr. Brough has the right to have a Victim Representative present and the other three (3) Victims have the right to be present. The Court does not know if the Victims want to be present during Jury Selection. If it becomes necessary, the Court will make sure there is enough room for the Prospective Jurors and that Victims' rights are complied with. The Court will ask friends and family and other community members of both sides to leave the courtroom in order to make sure there is enough room to seat all the Prospective Jurors. The Court wants to make sure that everyone is aware of this.

**Logistics:**

The Court advises it will probably institute the rule that Jurors are allowed to leave first and then those in the courtroom will be allowed to leave thereafter. The Court will work with Court Security to try and make sure that the hallways are clear as the Jurors exit and enter the courtroom, as well as going to their Jury Room. The Court wants to minimize any inadvertent contact that may happen in this case.

Again, the Court proposes that the Jurors leave first and then the courtroom can be excused after that.

**Security:**

The Court anticipates that there will be two (2) bailiffs present at all times, possibly three (3). At this time, Court Security is working this out.

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**State's Motion for Site Visit:**

The Court advises It has read Counsel Barker's Motion and that a site visit will not happen. Doing a site visit with fourteen (14) or fifteen (15) jurors and everyone else around is a nightmare and fraught with points at which the fairness and the objectivity could be compromised. Site visits are incredibly rare. The Court has not read the Response, but having read the State's Motion to introduce the Leica, the Court feels that there will be enough testimony and exhibits introduced so that the Jurors will be able to get a good feeling of this. The Court feels that there is no way that the public can be kept from that area and no way that the public can be kept from interacting; therefore,

**IT IS ORDERED *denying*** outright the State's Motion for a Site Visit.

Counsel Barker presents statements as to the logistics, the Court's concerns and feels that the Leica scan to be a suitable alternative.

Defense Counsel advises that the Defense will not object to the admission of a Leica scan.

**Pre-Trial Negotiations Oriented Towards a Non-Trial Solution:**

Upon Court inquiry, Counsel Barker advises that the State has had informal discussions with Counsel McCowan and the State informed both Counsel that, if there was going to be a Settlement Conference in this case, it would have to happen before the end of February. The State has not heard a word from the Defense. The State was not offering a Plea but they were certainly willing to have discussions, if there was some middle ground. Just from the informal discussions, Counsel Barker feels that the Parties are too far apart.

Counsel Davidson advises that Counsel McCowan was working to contact Judge Reistein's Office as to logistics and dates. Said Counsel notes that Counsel McCowan and Counsel Barker had spoken and concerns were expressed as to the timing and how far apart the Parties are. The Defense continues to be willing to sit down and discuss, but it does sound like the position of the Parties has quite a bit of daylight between them.

The Court advises that 16.4, 16.5, and 17.4 of the Arizona Rules of Criminal Procedure gives the Court the ability to Order the Parties into a Pre-Trial Conference for settlement negotiation purposes. The Court feels it is never too late to work towards a fair and just non-trial resolution. Therefore,

**IT IS ORDERED** that the Parties shall participate in settlement negotiations.

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**FURTHER ORDERED** that the Parties' participation in settlement negotiations is mandatory.

The Court presents statements as to the participation of Jane Nicoletti-Jones, Chief Deputy County Attorney, and William Ring, County Attorney, in the settlement negotiations.

**IT IS ORDERED** that either Jane Nicoletti-Jones or William Ring participate in the settlement negotiations in this case.

The Court advises It has spoken to Judge Coker and has had intermittent contact with Judge Reistein. They both remain willing to assist the Parties to work out an agreement in this case, if possible. Judge Reistein has indicated, in the past, that he and retired Judge James Keppel have worked well in settlement negotiations. This Court does not know who the judges will be. The Court does know that Judge Reistein and Judge Coker have agreed to work together. If the Parties agree that Judge Keppel should be involved with all his considerable years of experience, then certainly he could be a part of the negotiations.

The Court directs Counsel Davidson and Counsel McCowan to have a discussion with the Defendant as to negotiations. They are to submit in writing, at least a starting point for negotiations, an offer to the State. The Court believes there is no way for the Parties to reach a resolution unless there is a starting point; therefore,

**IT IS ORDERED** that the Defense provide, at least an opening offer, to Counsel Barker and Counsel Shea one (1) week prior to the Settlement Conference.

The settlement negotiations will be coordinated through the Court's Judicial Assistant as she will have to work with Judge Reistein and Judge Coker, decide a location and get the attorneys together. The State will need to make sure the Victims and the Victim Representative are available. Not necessarily physically present but, if there are any discussions or possible resolutions, this can be immediately communicated to them in this case.

The Court notes that this matter is set for two (2) days of oral argument on pending motions for the 23rd and 24<sup>th</sup> of March. The Court would like to see the Parties get together and discuss prior to these dates.

Counsel Barker wants to confirm that, if there is no agreement as a result of the settlement negotiations, Counsel Davidson will be able to proceed to Trial on April 4<sup>th</sup>.

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Counsel Davidson presents statements regarding Counsel Barker's concerns and advises that the Defense will be ready to proceed to Trial on April 4<sup>th</sup>.


The Court presents statements.

4:32 p.m. Court is adjourned.

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**IT IS ORDERED** that the Parties shall submit a Settlement Memorandum under **seal three (3) days** prior to the Settlement Conference.

cc:

  
William Ring, County Attorney  
Jane Nicoletti-Jones, Chief Deputy County Attorney  
Deputy County Attorney (Barker/Shea)  
Burgess N. McCowan, Burgess McCowan, PLC, 1421 E. Thomas Rd., Phoenix, AZ 85014  
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