

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2008-031021-001 DT

11/14/2013

HON. SHERRY K. STEPHENS

CLERK OF THE COURT
C. Harrington
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JODI ANN ARIAS (001)

KIRK NURMI
JENNIFER L WILLMOTT

MINUTE ENTRY

The Court has considered Ms. Arias' Renewed Request For Individualized Voir Dire By Counsel filed August 21, 2013, the State's Objection to Ms. Arias' Renewed Request For Individualized Voir Dire By Counsel filed September 12, 2013, the Defendant's Reply to Objection to Ms. Arias' Renewed Request for Individualized Voir Dire by Counsel filed September 25, 2013, and the oral argument conducted on November 1, 2013. In the motion, Defendant requests the court authorize individual voir dire of all potential jurors.

Rule 18.5, Ariz. R. Crim. Pro., guides the process for selecting a jury.

Rule 18.5. Procedure for Selecting a Jury

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c. Inquiry by the Court; Brief Opening Statements. The court shall initiate the examination of jurors by identifying the parties and their counsel, briefly outlining the nature of the case, and explaining the purposes of the examination. It shall ask any questions which it thinks necessary touching the prospective jurors' qualifications to serve in the case on trial. The parties may, with the court's consent, present brief opening

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statements to the entire jury panel, prior to voir dire. On its own motion, the Court may require counsel to do so.

d. Voir Dire Examination. The court shall control the voir dire examination and shall conduct a thorough oral examination of prospective jurors. In courts of record, voir dire shall be conducted on the record. Upon the request of any party, the court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. The court may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors, giving due regard to the purpose of such examination. In addition, the court may terminate or limit voir dire on grounds of abuse. Nothing in this Rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination.

e. Scope of Examination. The court shall ensure the privacy of prospective jurors is reasonably protected. The examination of prospective jurors shall be limited to inquiries directed to bases for challenge for cause or to information to enable the parties to exercise intelligently their peremptory challenges.

The manner in which *voir dire* is carried out lies in the discretion of the Court. See *State v. Bible*, 175 Ariz. 549, 570 (1993).

A new trial on the penalty phase is pending. In the experience of this Court, the procedure followed at the first trial affords the Court and counsel an ample opportunity to explore relevant areas of inquiry and to evaluate "cause" and "preemptory challenges". During jury selection for the first trial of this case, there were very few requests by the prosecutor or defense counsel for individual voir dire of prospective jurors. For the retrial, the jury questionnaire can be comprehensive enough to cover subjects that would otherwise be the topic of individual voir dire. While the Court acknowledges there are unique concerns that have arisen because of the substantial publicity surrounding the case, the revised jury questionnaire may be expanded to address these issues. Since jurors will be questioned in small groups, the defendant's concern that one juror's statement might color an entire jury panel's outlook is minimized. The Court acknowledges that it may be necessary to question some jurors individually. The Court's procedures will allow for that to occur as deemed necessary by the Court.

The Court finds it is not in the interest of justice to permit individual voir dire of all potential jurors. The procedures used to select the jury in the first trial will be followed in the second trial, with minor revisions, as described below.

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1. The Court will order a total of 400 jurors for this case. On the first day, 300 jurors will be ordered: 100 jurors appearing at 10:00 a.m.; 100 jurors appearing at 1:30 p.m.; and 100 jurors appearing at 3:00 p.m. On the second day, 100 jurors will be ordered for 1:30 p.m. If the court determines there are sufficient jurors after the first day, the last panel of 100 jurors will not be called.
2. At the first meeting, the Court will conduct a preliminary inquiry of the prospective jurors. Jurors will be advised about the nature of the case and the trial schedule. Specifically, prospective juror will be informed about the purpose of the trial and questioned about their knowledge of the parties and the case and their availability to serve as jurors for the length of the trial. A full admonition will be given to the jury panel.
3. The jurors who are not excused for cause or hardship will be given the court-approved juror questionnaire to complete in the jury assembly room.
4. Once the questionnaire is completed, a prospective juror will be dismissed for the day with instructions to report back to court at a specified date and time.
5. The Court will make photocopies of the juror questionnaires for counsel. Two copies will be provided to the defense; one copy will be provided to the State.
6. Attorneys will meet with the court at a designated time to discuss the juror questionnaires.
7. If both parties agree a particular juror should be excused for hardship or cause, that juror will be released without any further examination. Court staff will notify excused jurors they do not need to report to court as previously directed.
8. If there is no agreement on excusing a particular juror for hardship or cause, that juror will be report to the court as previously directed by court staff. Jurors will be questioned in groups no more than ten (depending on the number of jurors excused for hardship or cause) of every 45 minutes. If additional time is requested, the Court will determine whether more time is necessary and appropriate to question each group. The Court will consider a request to question a particular juror individually at the conclusion of each 45 minute period.

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For the reasons stated herein,

IT IS ORDERED denying Ms. Arias' Renewed Request For Individualized Voir Dire By Counsel filed August 21, 2013.