

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-123572-001 DT

08/20/2010

THE HONORABLE BARBARA L. SPENCER

CLERK OF THE COURT
J. Bower
Deputy

STATE OF ARIZONA

HEATHER L WICHT

v.

GARY THOMAS KELLEY (001)

ROBERT SHAWN DITSWORTH

VICTIM SERVICES DIV-CA-CCC

COMPREHENSIVE PRETRIAL CONFERENCE/TRIAL ORDERS

9:15 a.m.

Courtroom 1004 - Central Court Building

State's Attorney: the above-named counsel
Defendant's Attorney: the above-named counsel
Defendant: Present

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

LET THE RECORD REFLECT victim and victim's next of kin are present.

This is the time set for Comprehensive Pretrial Conference.

Status of the case is discussed.

Comprehensive Pretrial Statement:

A. Status of Case: A plea offer was not made.

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B. Status of Disclosure: Disclosure is not completed. The following disclosure is required to be completed: Results of forensics testing by .

C. The number of days for trial is expected to be two (2) weeks.

D. The number of witnesses (combined for both sides) is expected to be forty (40). The number of out of state witnesses is expected to be 0. The number of expert witnesses is expected to be five (5).

E. Status of the interviews: The number of interviews completed is two (2). The number of interviews left to complete is thirty-eight (38). The number of depositions required is none.

F. An interpreter is required for this trial.

An interpreter is required to assist the Defendant. The language requiring interpretation is Spanish.

G. The number of jurors required for this trial is twelve (12). The number of requested alternates is three (3).

H. The State is requesting an aggravating factors trial to the jury.

I. Counsel has submitted special jury instructions.

J. Counsel has requested a lesser-included offense.

K. A substantive motion is anticipated by one or more of the parties.

L. A motion in limine is anticipated by one or more of the parties.

IT IS ORDERED affirming the Oral Argument regarding the Motion in Limine set 08/20/2010 at 10:00 a.m. before Judge Brnovich.

IT IS FURTHER ORDERED affirming Final Trial Management Conference (FTMC) on 09/10/2010 at 8:30 a.m. before Judge Whitten.

IT IS FURTHER ORDERED affirming the Firm Trial Date of 09/22/2010 at 8:00 a.m. before the Master Calendar Assignment Judge in Courtroom 703 in the Central Court Building.

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All subpoenaed witnesses are to report to Courtroom 703 in the Central Court Building for trial and will be directed to the trial court from there.

IT IS FURTHER ORDERED that the Joint Pretrial Statement (JPTS) is due in this division by 5:00 p.m., five (5) judicial days before the FTMC.

IT IS FURTHER ORDERED with the JPTS, Counsel shall deliver to this division, copies of the following:

A. A jointly-completed time and witness estimate list. The Court will use the list to predict the length of the trial for the jurors and to direct Counsel to follow the trial time limits established. Any time limitation set will be reasonable presumptive limits subject to modification upon a showing of good cause.

B. A joint set of agreed upon preliminary and final jury instructions, including Preliminary Criminal RAJI or standard RAJI.

C. Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993).

D. Proposed Voir Dire questions which the Court will give. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of voir dire.

E. Any juror notebooks. The Court encourages use of juror notebooks in appropriate cases. Stipulating the contents into evidence is necessary. Key exhibits may be included, along with diagrams, photographs, and timelines.

IT IS FURTHER ORDERED that any disclosure and/or discovery shall be completed no later than seven (7) days prior to trial. Any party seeking further disclosure and/or discovery after the discovery deadline shall seek leave of the Court by motion supported by affidavit to extend the time for disclosure and/or discovery. Parties may extend the deadline by written stipulation which waives any objections to the late disclosure and/or discovery.

MOTIONS IN LIMINE

Any motions in limine shall be filed thirty (30) days before the FTMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972): "The primary purpose of a motion in limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." See also, Ariz. Rules of Evidence, Rule 103(c). A written response to a

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motion in limine may be filed no later than ten (10) days thereafter. The Court will rule on the motions in limine without oral argument. If the Court wishes to hear argument, the argument will be heard at the morning of the FTMC.

PRETRIAL MOTIONS

All pretrial motions must be filed in writing twenty (20) days before the FTMC. All motions must comply with Rule 35.1 including setting forth a sufficient factual basis for the motion. Failure to file a sufficient motion may result in the motion being denied without evidentiary hearing. See: Rule 16.1[c] Rule 16.2 [b]; State v. Anaya 170 Ariz. 436, 443 (1992); State v. Wilson 164 Ariz. 406, 407 (1990) and State v. Alvarado 121 Ariz. 485 (1979).

All pretrial motions shall be filed with this division.

MARKING EXHIBITS

On the day of trial, immediately after receiving notification of the assigned trial judge, the trial lawyers or their knowledgeable assistants shall appear in the assigned trial division to present all exhibits. The exhibits shall be marked serially as they are listed in the LIST OF EXHIBITS which will be prepared by counsel and downloaded onto a disk which should be given to the clerk.

The parties shall advise the division, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. All exhibits shall be clearly marked to correspond with the list provided. Counsel is directed to meet in person to exchange the exhibits before coming to court. Counsel will make sure that they do not bring to the clerk a set of exhibits that include duplicate exhibits. Written stipulations to admit specified exhibits in evidence are encouraged.

The Court assigned for trial will hear and rule upon objections at the time of trial. The rulings will be stated on the record, using exhibit numbers. All objections to known exhibits and witnesses must be made before or during the conference with the trial judge or will be deemed to have been waived.

The Court will hear and rule upon objections at the FTMC. The rulings will be stated on the record, using exhibit numbers. All objections to known exhibits and witnesses must be made before or during the FTMC or will be deemed to have been waived.

IT IS FURTHER ORDERED that counsel, at the FTMC, shall be prepared to discuss:

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A. Time limits in voir dire, opening statements, examination of witnesses and closing arguments.

B. Stipulations for the foundation and authenticity of exhibits.

C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the conference), mini-opening statements and voir dire.

D. Any special scheduling or equipment issues.

E. Status of settlement of the case.

EXPEDITED DISCOVERY

If there are any issues as to the disclosure required under Rule 15, the parties shall attempt to resolve the issue under Rule 15.7 (b). After personal consultation, the party seeking relief shall file a written motion setting forth the issue and requested relief. This motion, the opposing parties' response, and any reply shall be filed with this division.

All parties shall comply with Rule 15 disclosure orders. Failure to comply could result in sanctions which could include preclusion of witnesses, monetary fines, or any other sanction which is deemed appropriate.

FAILURE TO APPEAR

A defendant's failure to appear at any final trial management conference, trial, evidentiary hearing, or any hearing set before the court may result in a bench warrant being issued for his or her arrest and the FTMC, trial, evidentiary hearing or any hearing set before the court may be conducted in the defendant's absence.

CONTINUANCE OF TRIAL

The trial date shall not be continued unless a written motion to continue is filed at least five days before trial. A continuance will not be granted unless the motion shows that extraordinary circumstances exist. (Rule 8.5, Rules of Criminal Procedure and guidelines thereto).

INTERPRETER

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It is the responsibility of counsel to notify the court before which a hearing will be held 48 hours in advance of any hearing needing an interpreter for a victim or witness (10 business days for any language other than Spanish).

IT IS FURTHER ORDERED affirming prior custody orders.

LAST DAY: 10/21/2010.

9:16 a.m. Matter concludes.