



With regard to D-26, Motion for Discovery related to Prospective Jurors, the People note that *Losavio v. Mayher*, 496 P.2d 1032, 1034 (1972) relates specifically to investigation done by an outside law enforcement agency; it does not relate to any internal work of the District Attorney's Office. That work is protected as work product and not subject to disclosure. As such, his ultimate request is too broad and unsupported by any legal authority on point. The People filed a separate response to this Motion.

With regard to D-27, Motion to be Heard on Jury Service Excusals or Postponements, the People do not necessarily object, but defer to the Court's normal procedure in handling these issues. Nothing specific about this case warrants a deviation from the Court's normal handling of this issue.

With regard to D-28, Defendant's Motion for Individual Voir Dire, the People agree that this could be a helpful procedure for the specific circumstances of this case. It is the People's position that the individual voir dire should be limited only to issues that could prejudice the panel, such as whether a prospective juror has read or heard anything about the case.

If the Court provides a short questionnaire, these types of issues could be identified through that process, and any jurors whose answers require individual voir dire could likely be accommodated with five minutes per side. It is the People's position that all other topics not unique to this case can be addressed as they are in jury selection in every other case.

Therefore, the People do not object to a brief questionnaire and brief individual voir dire on topics that require the questioning be done in private. The People defer to the Court on this procedure, but suggest a 1-2 page questionnaire and approximately 5 minutes per side when individual voir dire is deemed necessary by the Court.

With regard to D-29, Defendant's Motion for Jury Procedures Conference, the People defer to the Court as to whether this is necessary depending on the Court's rulings on the other motions and the complexity of the process. Given that individual voir dire and a questionnaire may be outside of ordinary practices, the People are open to such a conference if procedures need to be finalized.

With regard to D-30, Defendant's Motion to Order the Court staff to preserve materials, the People defer to the Court's normal procedures on this issue. Nothing specific about this case warrants a deviation from the Court's normal handling of this issue.

With regard to D-31, Defendant's Motion to Preserve Jury Materials Beyond the Statutory Period, the People defer to the Court's normal procedures on this issue. Nothing specific about this case warrants a deviation from the Court's normal handling of this issue.

With regard to D-32, Defendant's Motion for Additional Preemptory Challenges, the People object. The Defendant attempts to reference the previously dismissed case and publicity as a justification to gain an unfair advantage. But, individual voir dire and a questionnaire are the appropriate mechanisms to determine if a juror has been exposed to publicity that renders them incapable of giving the Defendant or the People a fair trial. Those jurors will be addressed through "for cause" challenges.

It should be noted that both the previous prosecutors and defense attorneys in this case have made public statements. Further, the Defendant himself has made public statements. In any of these instances, prejudice could result. Notably, the negative press related to the previous prosecutors on the other case could just as easily prejudice the People in this case. In other words, any publicity in the case could be unfairly prejudicial to either side, and must be dealt with thoroughly at the "for cause" stage of jury selection. Consideration of any of these statements or news articles by jurors would be improper.

Without having gone through the process of determining the actual impact of publicity on the specific jury pool in Alamosa and working through “for cause challenges” during individual voir dire, a request for more peremptory challenges is based merely on speculation. Here, the Defendant argues no legitimate connection between the pretrial publicity and the need for more peremptory challenges. Such a request should not be granted if it is sought in furtherance of securing an unfair advantage.

Finally, the Defendant cites no case law supporting such a request. He merely cites the possibility under his reading of the rule, which as far as the People know, would be unprecedented.

With regard to D-33, the People defer to the Court’s normal procedures on this issue. Nothing specific about this case warrants a deviation from the Court’s normal handling of this issue.

In summary, it is the People’s position that to take the approach that this singular Defendant is entitled to special procedures not narrowly tailored to specific circumstances of this case runs afoul of consistency and fairness to all Defendants standing trial in the San Luis Valley. The People trust that the Court’s standard procedures are both appropriate and fair.

To the extent that this case has received additional statewide media coverage, the People agree that short questionnaires and individual voir dire focused on this issue can alleviate any potential prejudice. Regarding the other special procedures this specific Defendant is asking for, they are unwarranted, unnecessary and unfair.

Wherefore, the People object to D-32 and D26, do not object to some amount of individual voir dire as requested in D-28, and defer to the Court in ensuring jury selection practices consistent with those afforded fairly to other Defendants charged with similar crimes in the San Luis Valley.

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