

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0287

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CODY WAYNE JOHNSTON,

Defendant and Appellant.

APPENDIX

Motion for a new trial with incorporated Brief,
Richland County Cause No. DC-15-92, dated March 22, 2024 App. 1

APPENDIX 1

April 3, 2024

State of Montana,
Plaintiff
v.
Cody Wayne Johnston
Defendant

Cause# DC-2015-92
Motion for a vew trial with
incorporated Brief

Janice Klempel
CLERK
Richland County District Court
STATE OF MONTANA
By: Laurel Molden
DC-42-2015-0000092-IN
Best, Elizabeth A
194.00

Comes now, Cody Wayne Johnston, Pro Se, hereby respectfully moves the Court to grant defendant's request for a New Trial, 46-16-702, M.C.A. "in the interest of justice.", due to newly discovered evidence of jury selection and Richland County Clerk of Court and Sheriff's Department, that were not complying with Statutes to impanel proper jury selection 3-15-405, M.C.A., at the time of Johnston's trial, October, 2016. These failures to comply constitute Structural Error: "Examples of structural errors include...errors in selecting the jury...." State v. Hardy, 2023 MT 110, 57, 412 Mont. 383, 530 P.3d 814. "Errors involving jury selection are structural because they precede the trial and affect the fundamental, constitutional right to an impartial jury." State v. Deveraux, 2022 MT 13 25,409 Mont. 177 512 P. 3d 1198. Structural errors are "presumptively prejudicial and automatically reversible." State V. Hardy, 2023. "...a material failure to substantially comply with Montana Statutes governing the procurement of a trial jury cannot be treated as harmless error..." State V. Lamere 2000MT. 45, 50, 298 mont. 358 2 P.3d 204.

CLAIM: Johnston's Constitutional right to due process and his Sixth Amendment right to a fair and impartial jury were violated because the Richland Co. Clerk of Court and Sheriff Failed to substantially comply with 3-15-405, M.C.A. Also 3-15-301, 3-15-303, and 3-15-312 M.C.A. See Trial Day One Doc page 37-38.

Legal Authority

A criminal defendant has a constitutional right to a trial "by an impartial jury of the State and district where in the crime shall have been committed." U.S. Constitutional Amendment VI and Article II, section 24, which contains identical language to the Sixth Amendment, however Montana's Constitution goes further: "The right to a trial by jury is secured to all and shall remain inviolate.", Montana Constitution Article II, 26.

State V. Grimshaw, 2023 Lexis 1032, DA 22-0473, "Counsel had a right to rely on the Judge and Clerk of Court to follow their statutory duties. "Solberg V. County of Yellowstone 203 mont. 79, 84, 659p. 2d, 291-92(1983) (if Counsel does not have

knowledge, or means of knowledge, of the irregularity in the drawing of jury or the panel which it is selected until after the verdict, the question may be raised for the first time on a motion for a new trial.") Dvorak V. Huntley Project Irrigation District, 196 Mont. 167.171-72639 P.2d 62, 64(1981). See Hinkle 9-25-23.

The individual right to trial by jury is a prized shield against oppression and approaches of arbitrary power dating back to the time of Magna Carta, State V. Lamere, 2000 MT.45.28.298 Mont. 358 2P.3d 204. The American tradition of trial by jury necessarily contemplates on impartial jury draw from a cross-section of the community. Theil V. Southern Pacific Co. 328 U.S. 217, 220 (1946). The purpose of jury selection statutes is to provide a random selection of jurors from the entire panel or array, thus securing a fair and impartial jury. Tribbby V. Northwestern Bank of Great Falls, 217 Mont. 196, 207, 704 P.2d 409, 416 (1985).

"Recognition must be given to the fact that those eligible for jury selection service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. The fact lies at the very heart of the jury system. To disregard and discriminations which are abhorrent to the democratic ideals of jury by trial. "Theil at 220.

The objective standards established by the Montana Legislature for the random selection of jurors are intended to protect a criminal defendants' fundamental right to a fair and impartial jury. Lamere, 35. Relevant to Johnston's Brief, 3-15-405. M.C.A. sets forth the process the Montana Legislature designed to achieve a fair and impartial jury.

"The Clerk of Court shall serve notice by mail on the persons drawn as jurors and require the persons to respond by mail as to their qualifications to serve notice by mail on the persons drawn as jurors and require the persons to respond by mail as to their qualifications to serve a jurors. The Clerk of Court may attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse from service provided for 3-15-313, M.C.A. If a person fails to respond to the notice, the Clerk shall certify the failure to the Sheriff, who shall serve the notice personally on the persons to respond to the notice."

The rules of statutory construction require the language of statute to be construed according to it's plain meaning. If the language is clear and unambiguaus, no further interpretation is required." Ravalli County V. Erickson, 2004 MT. 35, 11, 320 Mont. 31,85 P.3d 772. The language of 3-15-405, M.C.A. is clear and unambiguous.

On August 21, 2023, Honorable Judge Elizabeth Best, of the Eighth Judicial District Court held a hearing regarding jury issues in State V. Hinkle, cause #BDC-22-

242(EXHIBIT-A). At the hearing, Cascade County Clerk of Court Tina Henry and Sheriff Jesse Slaughter testified as to their respective roles in filling the jury panel. The Clerk and Sheriff both testified that a large proportion of persons who were sent summons and questionnaires did not respond. The Sheriff's staff had previously complained to the Clerk's staff that they were too busy to personally notify nonresponding jurors. "Based on Ms. Henry's testimony, it is likely that the faulty method currently in this County is also being used elsewhere in Montana."

On August 22, 2023, Judge Best issued an Order Vacating Trial and All Trials in the EIGHTH Judicial District through September 25th, 2023 (EXHIBIT-A). This Court found "it was undisputed that several serious errors in providing notice to jurors and therefore, in impaneling the jurors have occurred in Cascade Co.." They were not complying with 3-15-405, M.C.A.. Both the defendant and the State agreed with Court that failures constituted Structural Error, (Hinkle at 4-5). Trial error is subject to harmless error review, while Structural Error is not. "Structural defects is an error that affects the framework within the trial proceeds, rather than simply an error in the trial itself." Statute mandating mailing or personal service of written jury summons error affected fairness to trial and required reversal." State V. Lamere 2000MT4s, 298 Mont 358.2P.3d 20,57.

Flathead County, as well as Cascade had to make amends to continue also, as they were not complying with statutes 3-15-405, M.C.A., State V. Hendrick OP-23-0561, Hendrick V. Mont. Eleventh Judicial Dist. Court, 2023 Mont. LEXIS 1084. Flathead County # DC-12-052(A), with Honorable Judge Amy Eddy presiding Judge Eddy issued an Order finding that "Flathead County failed to substantially comply with 3-15-405, M.C.A. by not following with prospective jurors who failed to respond to the jury notice, thereby committing STRUCTURAL ERROR in the jury selection process." Judge Eddy ORDERED Flathead Co. Clerk of Court and Sheriff to now comply with Statute 3-15-405, M.C.A., as should all Montana Clerk of Courts and Sheriffs.

In Order Vacating Trial and All Trials in the Eighth Judicial District, September 25th, 2023 (EXHIBIT-A) has clear instructions that "this procedure must be changed immediately"., Ordering instructions to the Clerk of Court and Sheriff, 1-6 to specifically procede.

"Specifically procede" were Orders not for Richland Counties Clerk of Court and Sheriff prior to Johnston's jury being impaneled at the time of Johnston's trial, as it is very clear that many (not just of few, but at least 1/3 of available jurors) did not comply, as per evidence in (EXHIBIT-B), October 2016. That is 24 no shows prior to "voir dire" and 20 plus that showed up who had not yet filled out Questionnaires and

submitted (7) days prior to trial and as the transcripts show (EXHIBIT-B, pg 5) and the bailiffs assisting with prospective jurors at the Court and in violation with the Statute 3-15-405, M.C.A., as well as instructions on Questionnaire (top of the page)(EXHIBIT-B, pg.6). Finally, "Order to Show Cause" (EXHIBIT-B pg 1-2) was unfortunately a month past the trial. All this clear evidence being presented, as well as how non-compliant Richland Co. Clerk of Court and Sheriff were to comply with Statute 3-15-405, M.C.A., at the time of Johnston's jury trial, Oct., 2016.

Johnston's jury trial held in Richland Co. in Oct., 2016, based on these clear examples of Cascade and Flathead Counties and Orders Vacating trials to now comply with 3-15-405, M.C.A., because they were having substantial non-compliance and STRUCTURAL ERROR in impaneling jury panels, as well as the clear evidence presented, it is undisputed Richland Co. Clerk of Court and Sheriff were equally unaware of the Statute mandates set forth in 3-15-405, M.C.A.. As per Mr. Henry's testimony in (EXHIBIT-A, pg.2) "it is likely that faulty method currently employed in this County is also being elsewhere in Montana." Henry's professional analysis and assessment of what she believes is going on in Richland Co. also and what evidently occurred in Johnston's jury trial as well. If the State opposes this, a hearing would be appropriate, to determine compliance with this Court of 3-15-405, M.C.A., at the time of Johnston's 2016 jury trial.

A material failure to substantially comply with Montana Statutes governing the procurement of a trial jury is Structural Error State V. Lamere, 2000 Mt.45.33.298 Mont. 358 2P.3d 204, 50. A structural error in a case is one that is "typically of constitutional dimensions precedes the trial, and undermines the fairness of the entire trial proceeding...(and)is presumptively prejudicial and is not subject to harmless error review..." Suzor V. Int'l Paper Co., 2016 MT 344, 30,386 Mont.54,386P.3d584.

State v. Lamere 2000 MT, "In clarifying the substantial compliance standard the Supreme Court took guidance from federal case law developed under the federal jury selection act of 1968 28 USC 1861."

United States v. Okiyama the case was reversed and remanded with petitioner contending that the district court erred in denying his pretrial motion to dismiss the indictment on the ground that the grand and petit juries had not been selected in substantial compliance with applicable statutory provisions (28 U.S.C. 1864, 1865, 1866, 1867).

"Examples of Structural Errors include...errors in selecting the jury..." State V. Hardy, 2023 MT 110,d57,412Mont.383,530 P.3d814. "Errors involving jury selection

are structural because they precede the trial and affect the fundamental constitutional right to an impartial jury." State V. Deveraux, 2022 MT 130, 25.409.Mont.177.512P3d1198. Structural errors are "presumptively prejudicial and automatically reversible." Hardy, 57.

In Hinkle, the Court vacated the trial and all other prospective jury trials in the Eighth Judicial District until Sept. 25th, 2023. The Court ordered the Clerk of Court and Sheriff to come into compliance with 3-15-405, C.C.A., which would cure the structural error that occurred in Hinkle's jury selection process. The Montana Supreme Court has recognized these concerns also in "Staying Appeal" in State V. Grimshaw, 2023 Lexis, D4-22-0473, as Grimshaw filed Motion for a new Trial during his direct appeal process after trial and "newly discovered evidenced", as stated in Grimshaw. Judge Eddy, of Flathead County also Vacated jury selection and ordered Clerk of Court and Sheriff to come into compliance to proceed, which they have.

In Johnston's presentation of evidence (EXHIBIT-B) and further non-Compliance of 3-15-405, M.C.A., found additionally of Richland County Clerk of Court and Sheriff at the time of Johnston's trial, in Oct. of 2016, based on analysis of many other-Montana Co. Courts and their assessment in Cascade Co. (EXHIBIT-A) and particularly Ms. Henry's professional testimony, it is evident Richland County Clerk of Court and Sheriff were absolutely not complying Montana Statute 3-15-405, M.C.A. at the time of Johnston's jury trial. It is undeniable that structural error occurred and prejudiced fair and impartial jury selection and reversal is required of his conviction and a new trial is constitutionally required under both VI Amendment to the U.S. Constitution and Article II, sections 26 and 24, of Montana Constitution.

Johnston requests the Court to Vacate his conviction and Order a New Trial. Should the Court need additional information concerning Johnston's Jury Selection Process, Johnston requests the Court to Order Summons from Richland Co. Clerk of court and Sheriff for sworn Affidavits as to their compliance with 3-15-405, M.C.A. and an evidentiary hearing and appointment of Counsel to question the Clerk of Court and Sheriff about their compliance at the time of Johnston's jury was impaneled, Oct. 2016.

With "newly discovered evidence" Johnston is filing Motion for a New Trial as a Pro Se defendant filing in this Court, respectfully.

Cody W Johnston
Cody W Johnston
March 22, 2024

EXHIBIT-A

FILED
08/22/23
Tina Henry
CLERK
Cascade County
STATE OF MONTANA
By: Elizabeth S. Best, Elizabeth
81.00

MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY

| | |
|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>STATE OF MONTANA, Plaintiff, vs. FELICIA MARIE HINKLE, Defendant.</p> | <p>Cause No. BDC-22-242 ORDER VACATING TRIAL AND ALL TRIALS IN THE EIGHTH JUDICIAL DISTRICT THROUGH SEPTEMBER 25, 2023</p> |
|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|

The Court held a hearing in this case on August 21, 2023. Present were the Defendant, Felicia Hinkle (Hinkle),¹ her lawyers, Claire Lettow and Lauren Ellis, County Attorney Joshua Racki, and Deputy Cascade County Attorney Stephanie Fuller. The Court called the hearing one day before the scheduled jury trial date for Hinkle on charges of Criminal Possession of Dangerous Drugs and Criminal Possession of Drug Paraphernalia because of jury issues which had developed in preceding days. Cascade County Sheriff Jesse Slaughter and Cascade County Clerk of Court Tina Henry testified.

On August 11, 2023, Hon. John Kutzman held a hearing in another case,

¹ Ms. Hinkle appeared to the Court to be under the influence of an unknown substance, but she denies that she was.

State v. Brown, Cascade County Cause No. ADC-22-302(c), to consider a speedy trial motion. At that hearing, Brown's defense counsel raised issues concerning how the Clerk was calling the jury and, largely because of concerns raised at that time, Judge Kutzman was forced to delay the trial.

At the hearing in the instant case, it was undisputed that several serious errors in providing notice to jurors and, therefore, in empaneling the jurors have occurred in Cascade County. Based on Ms. Henry's testimony, it is likely that the faulty method currently employed in this County is also being used elsewhere in Montana.

Before 2022, the Clerk's practice in this County was to pull a panel of citizens for the entire year in January and to send potential jurors notices, by mail, that they had been drawn, together with questionnaires, and a requirement that they mail back to the Clerk affidavits claiming excuses and completed questionnaires. This practice comported with § 3-15-405, MCA.

Apparently, sometime in 2022, most of the district court clerks in Montana attended an annual district court clerks' convention. At that convention, the Missoula County Clerk (now retired) advocated a new method for notifying jurors which she had been using. This method involved sending post cards to jurors early in the year notifying them that they were selected for the year's panel, but requesting no immediate action from the recipient.² Later, for scheduled trial dates,

² These cards might be likened to a "save the date" card for a wedding.

approximately four weeks in advance, individual summonses and questionnaires were mailed to the specific jurors needed on specific trial dates (in Cascade County, for example, these were sent to 200 persons for Hinkle's trial).

Ms. Henry testified that a large proportion of persons who were sent summonses and questionnaires did not return the questionnaires. Her staff then sent the names of persons who did not respond to the Sheriff. Clerk's staff did not, as required by §3-15-405, MCA, "certify the failure to the sheriff." Even if they had, the Sheriff testified that no one "brought" the statute to his attention before Judge Kutzman's hearing in *Brown* in which he directed the Sheriff to personally serve jurors, finding that that 3-4 efforts at service were "reasonable" as required by the statute. Ms. Henry testified that, in instances before *Brown*, the Sheriff's clerical staff complained to her staff about being too busy to personally notify the nonresponding jurors. Thereafter, Clerk's staff stopped asking the Sheriff to personally serve jurors. Before the hearing in *Hinkle*, neither the Sheriff nor the Clerk was aware of §3-15-405, MCA.

The Court recognizes the difficulty and frustration in complying with this statutory scheme for calling jury panels, which is, at best, Jurassic. It was apparently enacted in 1999, more than two decades ago, just as the internet age was gaining steam. Currently, the federal court system, which has magnitudes of resources

greater than does the Montana court system³, has been able to evolve. Now, potential jurors called across a wide geographical federal district swath respond to notifications by completing online forms, which, for most citizens, is faster and easier than the “snail mail” mandate of §3-15-405, MCA. Nevertheless, until the Legislature changes this system, the courts must be careful not to “legislate from the bench.”

Section 3-15-405, MCA, requires mail through the postal service, between the Clerk and potential jurors, requires the Clerk to certify to the Sheriff when jurors do not respond, and requires the Sheriff to make “reasonable efforts” (undefined) to personally serve jurors who have not responded. Judge Kutzman has concluded that 3-4 attempts at personal service is reasonable, and this Court does not disagree.

A “structural error” in a trial is one that is “typically of constitutional dimensions, precedes the trial, and undermines the fairness of the entire trial proceeding...[and] is presumptively prejudicial and is not subject to harmless error review.....” *Suzor v. Int’l Paper Co.*, 2016 MT 344, ¶30, 386 Mont. 54, 386 P. 3d 584. (citations omitted). In criminal cases, if a district court fails to “substantially comply with jury selection statutes” it commits structural error. *Id.*, ¶31. Testimony was undisputed that the panel of jurors called in 2023 were not called in accordance

³ Despite this enormous disproportion, one judge in any busy Montana district court oversees more cases than all federal judges in Montana combined.

with §3-15-405, MCA. At the hearing, the parties agreed with the Court's conclusion that these failures constitute structural error. Thus, the procedure must be changed immediately.

For the foregoing reasons, and for the reasons stated at the hearing,

- (1) The Court VACATES the *Hinkle* trial and all other jury trials in this District in all departments until dates after September 25, 2023.
- (2) The Clerk shall serve notice to prospective jurors for future trials, beginning immediately, in compliance with §3-15-405, MCA.
- (3) The Clerk shall thereafter set short specific deadlines for jurors to respond by mail as set forth in §3-15-405, MCA.
- (4) The Clerk shall immediately certify to the Sheriff thereafter any juror who fails to respond.
- (5) The Clerk shall ensure that any juror seeking excusal file an affidavit as required in §§3-15-313 and 405, MCA, and that only jurors who properly submit a notarized affidavit stating specific statutory bases for excusal be considered for excusal.
- (6) The Sheriff shall, as provided in §3-15-405, MCA, immediately make reasonable efforts (3-4 attempts) to personally serve such jurors with the requirement to respond to the notice.

ELECTRONICALLY SIGNED AND DATED BELOW

cc: Joshua Racki
Stephanie Fuller
Claire Lettow
Lauren Ellis
Hon. John Kutzman
Hon. David Grubich
Hon. John Parker
Standing Master Charlotte Beatty
Cascade County Sheriff Jesse Slaughter
Clerk of Court Tina Henry → FAYE McWilliams -

EXHIBIT-B

Richland County District Court

Roa Listing

All Locations

DC-42-2015-000092-IN

For Defendant: Cody Wayne Johnston

| Date | Filing # | Action |
|-------------------------------------------------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| State of Montana vs. Cody Wayne Johnston | | |
| 10/13/2016 | 158.00 | State's Twelfth Notice of Compliance with Discovery |
| 10/14/2016 | 159.00 | State's Thirteenth Notice of Compliance with Discovery |
| 10/20/2016 | 160.00 | Verdict |
| 10/20/2016 | 161.00 | Order of Incarceraton |
| 10/20/2016 | 162.00 | Order for PSI - Light/Thompson/Olson/Mathews/Moore/P&P |
| 10/21/2016 | 163.00 | Jury List - from Jury Voir Dire 10/17/2016 |
| 10/21/2016 | 164.00 | Jury; Plaintiff's Witnesses and Defendant's Witnesses List |
| 10/21/2016 | 165.00 | Record of Exhibits |
| 10/21/2016 | 166.00 | Trial Exhibits 1, 3, 101, 4-17, 103, 103A, 103B, 100, 19-28, 30, 32-36A, 38-39, 54, 41, 98, 47, 50, 45-46, 49, 99, 48, 58, 44, 51, 52, 55-57, 59, 60-63, 42-43, 104-114, 78-80, 82, 2, 83-85, 87-90, 102, 91-93, 95-96, 65-77, 31, 97 |
| 10/21/2016 | 167.00 | Jury Instructions Given by the Court |
| 10/21/2016 | 168.00 | Jury Instruction 1-24 with Citations - not signed |
| 11/22/2016 | 169.00 | Order Setting Sentencing After Jury Trial |
| 11/22/2016 | 170.00 | ORTSC Issued - Jurors who failed to appear |
| 12/07/2016 | 171.00 | Pre-Sentence Investigation |
| 12/29/2016 | 172.00 | Order to Show Cause (#170); Jurors Successfully Served |
| 12/29/2016 | 173.00 | Order to Show Cause Issued (#170); Jurors Not Successfully Served |
| 12/29/2016 | 174.00 | Subpoena Issued (C.K.); |
| 12/29/2016 | 175.00 | Subpoena Issued (R.W.); Filed 2/1/17 w/s |
| 12/29/2016 | 176.00 | Subpoena Issued (A.R.); Filed 2/1/17 w/s |
| 12/29/2016 | 177.00 | Subpoena Issued (T.Z.); |
| 01/06/2017 | 178.00 | Notice of Thrid Party Communication |
| 01/11/2017 | 179.00 | Subpoena Filed (Charlotte Dore) |
| 01/17/2017 | 180.00 | Sentencing Order and Judgment (Light/Thomp/Ols/Web/Moore/Math/Zody/JCor/J. Mad) |
| 01/18/2017 | 181.00 | Notice of Right to Apply for Review of Sentence |
| 01/20/2017 | 182.00 | Notice of Substitution of Counsel/Appellate Defender Office |
| 02/10/2017 | 183.00 | Acknowledgement of Receipt of Sentence Review Forms |
| 02/10/2017 | 184.00 | Application For Review of Sentence |
| 03/17/2017 | 185.00 | Notice of Filing (of Appeal) |
| 03/21/2017 | 186.00 | Request For Production of Transcripts |
| 04/18/2017 | 187.00 | Affidavit |
| 04/18/2017 | 188.00 | Order (Wright/Light/Thom/Ols/Sup. Court) |
| 04/25/2017 | 189.00 | Notice of Filing (of Appeal) Receipt of Electronic District Court Record, Documents 1-188 |
| 04/26/2017 | 190.00 | Notice of Filing of Receipt of Exhibits Filed w/ the District Court (1 Lg. 3-ring binder; cert. case register/Minutes) |
| 06/29/2017 | 191.00 | Notice Of Service of Appeal Transcripts |
| 10/17/2018 | 192.00 | Supreme Court Decision DA-17-0153 |
| 11/05/2018 | 193.00 | Remittitur (Affirmed) |

51

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STEVEN P WUNDER
35463 COUNTY ROAD 128
SIDNEY, MT 59270

(B4)

1 THE DEFENDANT: Yeah. Yeah.

2 MR. LIGHT: Okay. And it's your decision that
3 you don't want to accept that?

4 THE DEFENDANT: No.

5 MR. LIGHT: Okay. And you want to go to trial?

6 THE DEFENDANT: Yes.

7 THE COURT: Thank you. Is there anything
8 further, Mr. Light, that you'd like to detail?

9 MR. LIGHT: No.

10 THE COURT: All right. Thank you,
11 Mr. Johnston.

12 So you folks have probably already checked
13 this, checked the terrain. What we're going to do is
14 we're going over to the fairgrounds, and there's a
15 special events hall over there. The sheriff can correct
16 me if I'm wrong, because I'm sort of doing this by
17 memory after he's described this to me, but I looked at
18 the event hall last night. And as you face it, there
19 are two public doors. Those are not the doors we're
20 going to go in. We're going to go around to the left,
21 and there is a man door on the left side where there
22 will be deputies and security set up. So that is
23 where -- and the jury will already have been processed
24 through there. So that's where we're entering this
25 morning.

Phoebe S. Moorhead, RPR, Court Reporter, 480-265-0404

1 And everyone knows where the fairgrounds is, I
2 assume.

3 UNKNOWN SPEAKER: We don't know.

4 THE COURT: Okay. You go -- it's really easy.

5 UNKNOWN SPEAKER: We're going to follow you,
6 your Honor.

7 THE COURT: It's really easy. You just -- you
8 just go out and get on -- I believe it's Holly, and turn
9 right. And you go just a couple hundred yards and
10 you'll see it immediately. It's on your left. And I
11 believe it's the second turnoff into the fairgrounds
12 that we take? All right.

13 And you'll see a -- you'll see a metal
14 building. I believe it's a metal building that's beyond
15 the -- there's a racetrack, I think. Or is it a rodeo
16 grounds? But it's on the opposing side of the rodeo
17 grounds, and it's a relatively new building with a large
18 parking lot. It's pretty easy -- I found it, so it's
19 pretty easy to find.

20 Anything further from any of the parties?

21 MR. MOORE: I did have one thing, your Honor.
22 And I spoke to Mr. Thompson about this. Some of the
23 jurors didn't fill out questionnaires or didn't return
24 questionnaires. So I didn't know if we wanted to have
25 them complete a questionnaire before we started the voir

Phoebe S. Moorhead, RPR, Court Reporter, 480-265-0404

1 dire or what might be the best practice there. But we
2 didn't get questionnaires from everybody.

3 THE COURT: How many do you think there were
4 that didn't complete questionnaires, ballpark? 10 or
5 20?

6 THE CLERK: It's probably more than that. But
7 the bailiffs out there are having them fill them out
8 when they check in. (Inaudible.)

9 THE COURT: Okay. Thank you. Did everyone
10 hear that? Okay.

11 Okay. And that's why we met early, for this
12 kind of thing. So does that satisfy you, Mr. Moore, on
13 that question?

14 MR. MOORE: It does. I just want to -- you
15 know, I just want to make sure we're doing everything
16 right.

17 THE COURT: And I appreciate that. And I will
18 appreciate that kind of thing from both parties. I want
19 to keep this record as clean as we can.

20 One issue -- maybe it won't come up, but it
21 probably will, is if anyone believes that there is a
22 reason to individually voir dire a particular person or
23 persons, the logistics there are a little bit difficult
24 because we have to have our recording equipment
25 somewhere where the -- where the questioning can be

Phoebe S. Moorhead, RPR, Court Reporter, 480-265-0404

1 heard. And we do not have the capacity to move the
2 recording equipment to a smaller room. So what it will
3 require, probably, is to remove all of the other jurors
4 from the building or the room while we're individually
5 questioning jurors.

6 So -- so logistically speaking, it may be
7 worth considering trying to keep a running list of those
8 people that the parties desire to examine individually,
9 and then remove all the remaining jurors at once so that
10 we don't have a -- you know, have to herd people in and
11 out multiple times.

12 So does that work for everybody?

13 UNKNOWN SPEAKER: I think that makes sense.

14 THE COURT: Okay. Thank you, Mr. Mathews.

15 Thank you, Mr. Thompson.

16 All right. Is there anything else that I'm
17 missing? Thanks for meeting early. I appreciate it. I
18 think for -- if we start every morning at 8:30 -- and I
19 want to make sure that works for everybody. I would
20 like to plan on being in the courtroom early with the
21 lawyers so that if there are housekeeping matters or
22 issues that have come up, we can sort those out without
23 wasting the jury's time. And, obviously, that's not the
24 most important thing, but I think it's important to all
25 the parties that the jury not believe we're wasting

Phoebe S. Moorhead, RPR, Court Reporter, 480-265-0404

B5

PLEASE FILL OUT AND RETURN THE FOLLOWING WITHIN SEVEN (7) DAYS TO

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

ADDRESS: _____

_____, MONTANA _____

PHONE: _____

QUESTIONNAIRE AS TO QUALIFICATION FOR JURY SERVICE

(PLEASE PRINT OR TYPE)

1. Name: _____ Juror Number: JurorNumber _____
2. Address _____ City _____ Zip Code _____
3. Please state the round trip mileage from your home to the court _____
4. Telephone: Home _____ Work _____ Cellular _____ Email _____
5. How long have you resided there? _____ Number of years in Montana? _____
6. Married Single Age _____ Gender: Male Female
7. Do you have children? Yes No Ages _____ Gender _____
8. What education have you had? _____
9. Are you employed at present? Yes No Occupation _____
10. Employer's name _____ Employer's Address _____
11. a. If you are married, name of spouse _____
b. If married, occupation of spouse _____
c. If retired, or not working, give last occupation _____
d. If married, give spouse's employer _____
12. Have you ever served as a juror? Yes No If so, in what court? _____
13. Have you or any member of your immediate family ever been injured in an accident? Yes No
If so, what type? _____
14. Are you or any member of your immediate family involved in law enforcement in any official capacity? Yes No
If so, briefly explain _____
15. Have you or any member of your immediate family ever been a plaintiff or defendant in a lawsuit? Yes No
What type of lawsuit? _____
16. Are you or your spouse related to an attorney? Yes No If so, his/her name and address _____
17. Are you or your spouse presently being represented by an attorney? Yes No If so, his/her name and address _____
18. Do you have any disability which you feel would make it difficult to serve on a jury? Yes No If so, briefly explain the disability and the accommodations we need to provide to enable you to serve on a jury. _____
19. In order to be eligible to serve as a trial juror, you must be 18 years of age or older, a resident for at least 30 days of the state and of the city, town or county in which you are called for jury duty, a citizen of the United States and not convicted of malfeasance in office or any felony or other high crime, the sentence of which has not yet expired or the fine not yet paid.

20. Do you feel you should be excused from serving as a juror because of undue hardship or because you do not meet the eligibility requirements for jury service? Yes No If you answered "yes", please complete the "Affidavit For Excusal" on the reverse side and have your signature notarized and return to the address above.

I certify that the foregoing statements are true to the best of my knowledge and belief.

SIGNATURE _____

DATE _____

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