

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

THE STATE OF OREGON,

No. 19CR53042

Plaintiff,

v.

STATE'S RESPONSE TO DEFENDANT'S MOTION
FOR INDIVIDUAL VOIR DIRE

JOSEPH GIBSON,

Defendants.

Comes now Mike Schmidt, by and through Brad Kalbaugh, Deputy District Attorney, and respectfully moves the court for an order denying Defendant's motion for individual voir dire because the proposed process would be unduly cumbersome in that it would extend the estimated length far beyond the time period currently allotted for this trial. Additionally, the proposed remedy does not identify a problem.

The fact that a juror has preconceived ideas about a matter relevant to a criminal case does not per se mean that a juror cannot be fair impartial. *State v. Evans*, 344 Or 358, 362 (2008). The touchstone of impartiality is the juror's ability to set aside any preexisting opinions or impressions and to decide the case impartially. *Id.* The examination of a juror during voir dire serves two purposes: 1) to ascertain whether a cause for challenge exists, and 2) to ascertain whether the parties desire to exercise their legal right of peremptory challenge. *State v. Nefstad*, 309 Or 523, 526 (1990).

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1 Here, Defendant Gibson fails to explain why the extraordinary measure of conducting voir dire
2 one person at a time for more than 200 jurors is necessary to satisfy Article I, section 11 and ORS
3 136.001, as opposed to employing the tactic on a case by case basis only as necessary to avoid tainting the
4 larger panel. Because Defendant has not identified an obstacle to accomplishing the purposes of voir dire
5 that would require the proposed remedy, and because the proposed remedy would extend the length of
6 this trial without accomplishing anything to further the interests of justice, the state objects to Defendant
7 Gibson's motion for individual voir dire for every juror on the entire panel. Should the occasional
8 situation arise in which an individualized voir dire is necessary to mitigate the risk of tainting the entire
9 panel, the state would not object to an individualized voir dire for that specific juror as is common
10 practice in Multnomah County.

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12 Respectfully submitted this 8th day of July 2022.

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14 Respectfully Submitted,

15 MIKE SCHMIDT
16 District Attorney
Multnomah County, Oregon

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18 By /s/ Brad Kalbaugh
19 Brad Kalbaugh, 074335
20 Deputy District Attorney
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Certificate of Service

I certify that on July 8, 2022, I caused the foregoing motion to join cases to be served upon the parties hereto by the method indicated below, and addressed as follows:

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