w/o

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

4:13 FILED O'Clock P.M.

SEP 21 2011

SANDRA K. MARK By: B. Chamberlain

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Robin Gearhart
Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: September 20, 2011

TITLE:	COUNSEL:
STATE OF ARIZONA	Sheila Sullivan Polk Yavapai County Attorney Bill Hughes, Esq. Deputy Yavapai County Attorneys
(Plaintiff)	(For Plaintiff)
vs.	
JAMES ARTHUR RAY	Thomas K. Kelly, Esq. (e) 425 E. Gurley Prescott, AZ 86301 Luis Li, Esq. Brad Brian, Esq. Truc Do, Attorney at Law Miriam Seifter, Attorney at Law MUNGER TOLLES & OLSON LLP (e) 355 S. Grand Avenue, 35th Fl. Los Angeles, CA 90071
(Defendant)	(For Defendant)

ORDER RESETTING PRESENTENCE HEARING AND SENTENCING

The Court has considered the information and positions conveyed by the attorneys at the conference held this morning. At that conference, the Court invited the parties to submit any additional factual information relating to the medical condition of Mr. Kelly and any pertinent legal authority. As this Court prepares this order late in the afternoon, no additional factual information or legal authority has been provided.

As the Court indicated at the conference, the determination of this question requires the Court to attempt to balance all of the important factors presented by the parties. The Court agrees with the Defendant, of course, that attorneys are not "fungible." The defense had made clear to the Court and opposing counsel prior to the recent manifestation of Mr. Kelly's illness, that Mr. Kelly would be the attorney primarily responsible for conducting sentencing proceedings; deference should be accorded to the Defendant's and the defense team's preferences in determining the specific trial-level assignments of various counsel. This is true regardless of the number of attorneys who work on a case. As was also noted by the Defendant, Mr. Kelly is local counsel, and that status, in itself, is an important consideration.

The Court also acknowledges, of course, the State's and victim representative's interest in the completion of the trial and sentencing process, an interest which, the Court would imagine, is shared by the Defendant as well. However, the Court notes that it does not believe that, given the nature and length of this case, the additional time required to complete the sentencing proceedings is in any way in derogation of the Defendant's constitutional rights, the procedural rules, or the rights of victims. Furthermore, although the Court has stated its ruling on the motion for new trial in a conclusory manner, at least at this point, the pleadings and arguments were extensive and required days of attention by the Court and the parties.

Based on the information provided at this time, this Court can only conclude that to proceed with the hearing next week would neither create a risk to Mr. Kelly's health nor detract from Mr. Ray's defense. However, in light of the very general medical information provided by the defense, some additional delay appears to be warranted. Therefore,

IT IS ORDERED resetting the presentence hearing and sentencing before Judge Warren R. Darrow, Division Pro Tem B, Yavapai County Courthouse, 120 S. Cortez Street, Prescott, Arizona, as follows:

Week of September 26, 2011 (defense)
(1) Wednesday, September 28, 2011 (9:00 a.m. to 5:00 p.m.)
(2) Thursday, September 29, 2011 (9:00 a.m. to 5:00 p.m.)
(3) Friday, September 30, 2011 (9:00 a.m. to 5:00 p.m.)

Week of October 3, 2011 (prosecution)
(1) Tuesday, October 4, 2011 (9:00 a.m. to 5:00 p.m.)
(2) Wednesday, October 5, 2011 (9:00 a.m. to 5:00 p.m.)

Thursday, October 6, 2011
(1) Sentencing set for 2:30p.m. to 5:00 p.m.

Time for sentencing has been waived.

DATED this 20th day of September, 2011.

Warren R. Darrow
HON. WARREN R. DARROW
Judge of the Superior Court

Attorneys/parties have been notified by phone/fax PG

Date: 9.20.11 @ 4:45 pm.

By: PG

cc: Victim Services Division