

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-150114-001 DT

11/12/2025

HONORABLE MONICA EDELSTEIN

CLERK OF THE COURT
K. Mysliwski
Deputy

STATE OF ARIZONA

KRISTIN LARISH
HEATHER LYNN LIVINGSTONE

v.

FRANKLIN ARNETT CLIFTON (001)

VICTORIA ELISABETH WASHINGTON
KELLIE SANFORD

CAPITAL CASE MANAGER
JUDGE EDELSTEIN

RANDALL S UDELMAN

UNDER ADVISEMENT RULING

The Court has received and reviewed State's *Motion to Reconsider State's Motion to Strike Juror 54 for Cause* ("Motion") filed 10/09/2025, State's *Notice of Filing Newly Discovered Exhibits & Additional Exhibits Supporting the States' Motion to Reconsider* ("Notice") filed 10/13/25, Defense's *Response* filed 10/20/2025, and State's *Reply* filed 10/24/2025. Oral argument was held on October 30th. The Court notes that although the pleadings and discussion raised issues pertaining to Juror 42, this ruling does not address that matter.

The following limited facts are necessary for purposes of this ruling. An electronic questionnaire ("EQ") was used in jury selection. The EQ was distributed remotely to prospective jurors on or about 09/05/2025. The Court and Parties first obtained access to written responses, through the Jury Portal, on the evening of 09/11/2025. Additional prospective jurors were summonsed to the courthouse to complete the EQ on two additional dates. Each EQ submitted through the Jury Portal was assigned an "A number" beginning with A1 based on the order in which the EQ was submitted/received. Over the next two weeks, two hearings, and the submission of written stipulations to strike, a smaller pool of prospective jurors was identified to participate in Small Panel Voir Dire. The Small Panel Voir Dire schedule was first made

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available to the Parties on 09/24/2025 and finalized with no significant change on 09/26/2025. Prior to Small Panel Voir Dire, during a hearing on 09/23/2025, the Court issued an order notifying the Parties “if either party intend to use any information during small panel voir dire obtained from a source independent of the EQ, like social media posts, it is required to disclose this information to the Court and opposing counsel prior to use during voir dire.” (Minute Entry “ME” dated 9/23/2025 at 2, Dkt. 995).

A total of approximately 80 jurors were scheduled to participate in Small Panel Voir Dire beginning on 09/29/2025. Juror 54 (A39) was scheduled for the afternoon of 09/30/2025.¹ Each Party was allotted 45 minutes to question the panel. The State elected to utilize approximately 20 of its 45 minutes to question Juror 54. At no time did the State request to examine Juror 54 privately despite demonstrating frustration with the Juror’s answers during the prolonged examination. (Motion, Exh. 2). Following questioning, the State moved to strike Juror 54 for cause asserting that despite no overtly objectionable responses in the EQ or during oral examination, Juror 54’s physical gestures, demeanor, and manner of responding to the State’s questions were a sufficient basis to strike for cause. (Motion, Exh. 2, pgs. 11-15). Following the hearing, the Court issued its order denying the Motion:

THE COURT FINDS that all jurisprudence in this arena **requires** consideration of a juror’s behavior and demeanor in evaluating the totality of circumstances to determine whether the juror can impartially perform their duty. The Court declines to provide an endless string cite documenting this point. The Court did, however, inquire of the parties whether any caselaw supported a strike for cause based **only** on demeanor and behavior. The State requested the opportunity to provide additional briefing which the Court denied on the basis that it was already aware that it should consider behavior and demeanor. As articulated by the Defense, an assessment of whether behavior and conduct is hostile or problematic is extremely subjective. Adding an additional standard requiring the assessment of the manner in which statements are made or determining what is appropriate body language, tone, and affect-in the absence of substantively problematic statements-is untenable. It is not required by the law.

(ME dated 09/30/2025, at 5, Dkt. 1000) (emphasis original).

During oral argument, the following timeline was established. Following the denial of the Motion to Strike Juror 54, the State initiated an investigation that consisted of a criminal background check conducted by MCAO Detectives, public information searches through search

¹ Based on the assigned A number, Juror 54 was one of the first prospective Jurors to submit the remote EQ and was scheduled for a panel early in the selection process. As discussed on the record, the Court intended to identify 23 total prospective jurors and ultimately seat 18 sworn jurors to hear the case. Based on the placement, if not struck, Juror 54 was “in the box” so to speak.

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engines such as Google, and a search of social media accounts.² The State asserts that its investigation of Jurors 54 occurred only after the denial of the strike for cause.³ Based on the investigation, the State avowed that it provided a “preview” of disclosure to Defense by 10/06/2025 and produced all disclosure by 10/09/2025. The *Motion to Reconsider* and relevant attachments were also filed on 10/09/2025. All Parties were aware of the information about Juror 54 prior to 10/16/2025 when the panel was sworn.

The State filed its *Motion to Reconsider* and *Notice of Filing Newly Discovered Exhibits & Additional Exhibits* asserting that reconsideration is warranted. See *State v. Cook*, 170 Ariz. 40, 53 (1991) (cause strikes allowed at any time if reasonable grounds exist to believe juror cannot render fair and impartial verdict); Ariz. R. Crim. P. 18.4(b) (“A challenge for cause may be made at any time[.]”). The State renews its argument that Juror 54’s demeanor and behavior justify a strike for cause but expands the argument with additional “evidence” discovered during a post-ruling investigation to argue that Juror 54 lacked candor and was dishonest when responding to questions in the written EQ. The State further alleges that Juror 54 was intentionally misleading, evasive, and vague during oral examination by the State. Specifically, the State alleges that its further investigation into Juror 54’s social media account(s) and other online sites establishes that Juror 54 is impaired and harbors bias against the “State and the police department, as well as bias against all three branches of government.” (Motion, pg. 1).

Having considered the pleadings, exhibits, and arguments of the Parties, the Court finds as follows:

Preliminarily on 10/16/2025, the Court addressed the prospective jurors about newly-discovered hardships and invited the jurors to feel free to notify the Court and Parties if there was any matter they wished to discuss. At no time, despite the presence of Juror 54 and the repeated invitation to speak outside the presence of other jurors, did any juror OR the Parties avail themselves of the opportunity. Just before swearing the Jury, the State requested “one final question...to the entire panel as to whether there is anything else that any juror has not disclosed relating to their jury service.” (Oral Argument “OA”, Exh. 3, pg. 3, Ins. 11-24). The Court declined this request finding that the questioning of the panel had been thorough and it was unlikely that any prospective juror would suddenly now avail themselves of an opportunity to add to their written or oral answers if asked yet again. (OA, Exh. 3, pgs. 4-7). Despite having

² Defense avowed that it had conducted public records searches on prospective jurors prior to Small Panel Voir Dire but elected not to utilize any gathered information during questioning. As noted, the Parties had more than a week to prepare for Small Panel Voir Dire. EQ responses were available as early as 09/11/2025 and scheduling was confirmed on 09/24/2025 more than a week before the 09/30/2025 Small Panel.

³ State’s Counsel implied that the State had additional information from its investigation on 09/30/2025. (OA, Exh. 3, pg. 13, ln 1).

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briefed the issue and raised its concerns regarding Juror 54, the State did not request additional individual questioning of Juror 54 in its *Motion* or at any time on 10/16/2025.

Despite having the opportunity to further question Juror 54, the State argues for reconsideration based only on the State's interpretation of the additional information discovered through its investigation. The State's failure to request or ask follow-up questions of Juror 54, despite having the opportunity to do so, "mitigates any deficiency" in asking another general open ended question to the full panel. *See State v. Riley*, 248 Ariz. 154, 173 ¶44 (2020) (counsel declined to follow up despite invitation mitigates any deficiency in court's questioning); *see also, State v. Lucas*, No. 1 CA-CR 24-0199, 2025 WL 2618247, at *8, ¶ 52 (Ariz. App. Sept. 11, 2025), as amended (Oct. 1, 2025) (Kiley, J. specially concurring) ("We will never know what answers any [juror] might have given in response to oral questioning, or what the judge or the parties may have gleaned from a particular juror's tone or demeanor while answering questions.").

As such,

THE COURT FINDS any request for additional questioning is deemed waived pursuant to Rule 18.4(b). *See* Ariz. R. Crim. P. 18.4(b) ("the court may deny a challenge if the party was not diligent in making it."); Ariz. R. Crim. P. 18.5(f) ("[T]he court retains the discretion to manage voir dire, including to preclude improper, excessive, or abusive questioning."); *State v. Bravo*, 131 Ariz. 168, 171 (App. 1981) (noting lack of diligence under Rule 18.4(b) can constitute waiver). The Supreme Court noted the importance of both confronting and questioning a juror with the allegedly objectionable material in order to establish objective evidence of bias. *See State v. Cheatham*, CR2013-004824, Arizona Supreme Court Decision Order filed May 8, 2024 (available at docket # 1126) (*Cheatham* DO). On 10/16/2025, with the matter still open, this Court was bound by the directive to permit additional questioning if requested and would have done so. The State elected to rest on the record without additional inquiry. It cannot now argue procedural deficiency having knowingly waived the opportunity to question Juror 54 further. Accordingly, the Court confines its analysis to evaluating Juror 54's written EQ and oral responses during Small Panel Voir Dire on 09/30/2025.

Next, even with additional time, the State provides no caselaw in support of the argument that a juror's demeanor, behavior, or manner of responding to questions alone, is sufficient to support a strike for cause. Although the Court previously declined to evaluate whether Juror 54's body-language, tone, and affect were problematic, in light of the State's continued allegations that Juror 54 used a "hostile tone," and exhibited physical behavior such as "repeated eye rolling," and "guffaw[ed] or scoff[ed]," it is relevant here. Although the State disputes the total length, it acknowledges that it spent a considerable amount of its allotted time questioning Juror 54. The State at times did extend the questions to the whole panel but received no response

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during its examination of Juror 54. (OA, Exh. 2). Even a cursory glance of the transcript supports the observation that the State's questions were long and potentially confusing. (OA, Exh 2). Without speculating on the Juror's perception, the Court notes at times it was unable to clearly discern what the State was asking.⁴ At one point, Counsel acknowledges that "you've already answered" pertaining to whether the Juror could "keep an open mind" but proceeds to ask again. (OA, Exh. 2, pg. 10, ln 4-7). It is not surprising, therefore, that Juror 54 responded with confusion or statements like "I'm not sure what you want me to say;" "[y]ou want to know what the definition of 'truly heinous crimes' is;" or repeated back a portion of the question for clarification.⁵ (OA Exh. 2, pg. 8, ln. 13-14; pg.16, ln. 9-10; pg. 16-17, ln 22-25, 1-3). In ruling on the Motion, the Court observed "as the State pointed out, [there was] some back-and-forth with the State in terms of questions that were posed by the juror, however, from the Court's perspective that was... in an attempt to answer the question, not necessarily...an indication of hostility." (OA, Exh. 2, pg., 24, ln 20-25).

During the examination, Counsel for the State paced about, moved closer to the jury box, appeared visibly frustrated, and changed tone as the examination proceeded.⁶ (OA, Exh. 1). At times the questioning from State's Counsel was almost argumentative and included statements like "well if you're struggling, let us ask you this;" "[d]o you want it to be included in the Court's instructions;" "I don't understand what's your requirement, what are you thinking the attorneys must do;" and "I don't want you to say anything, [b]ut I'm confused by your answer." (OA, Exh. 2 pg. 8, lns. 21-22; pg. 9, lns. 6-7; pg. 16, lns. 1-2; 11-13). To borrow the words of Defense Counsel, the back and forth between State's Counsel and Juror 54 was a match of "energy for energy." The Court did not see Juror 54 "eye roll" and would not characterize the responses to include "scoffing" or "guffawing." Juror 54 did smile throughout the questioning, but the Court does not interpret this expression as an attempt to make "fun of [State Counsel's] questioning" as argued by the State in oral argument. Nothing about the responses related to Juror 54's prior jury service can be construed as "hesitan[t]" or perceived to have become "like pulling teeth." (Motion, pg. 4). Nor does the Court consider any of Juror 54's one word or brief answers to be evasive; the lengthy questions called for brief responses. In addition, Juror 54's tone and volume did not change at any time. If anything, Juror 54 sounded confused as to what

⁴ For example, with respect to the questioning of Juror 42 during the morning session on 09/30/2025, at side-bar, the Court indicated that it believed the State was repeating the same questions in a different form such that the questions were "asked and answered." Counsel advised the need to proceed as deemed appropriate whereby the Court stated it would permit the State to utilize its time as it deemed appropriate but believed it was unlikely that the juror would respond differently to the same or similar questions. (FTR, 09/30/2025 @ approx. 11:15am to 11:16am).

⁵ There are multiple instances when jurors articulated that they did not understand the question being posed to them including a juror questioned during the morning session on 09/29/2025 and Juror 42 questioned on 10/30/2025. (FTR, 09/29/2025 @ approx. 10:30am; 09/30/2025 @ approx. 11:12 to 11:17 am).

⁶ At times, Counsel was so close to the jury box that Counsel was not captured in the FTR camera feed, which is positioned to avoid recording the jurors seated in the box.

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Counsel was asking and attempted to repeat questions back or paused to read written answers from the EQ before attempting to answer. The Court does not interpret any of the Juror's responses or follow-up questions to be mocking or intentionally flip.

As such,

THE COURT FINDS that although Juror 54's demeanor and behavior are perceived as hostile by the State, the Court does not perceive the Juror's demeanor the same way. Further, the situation is more akin to invited error. However, in the context of the current *Motion* this is of lesser consequence because the State now alleges that newly discovered information establishes that Juror 54 was dishonest or lacked candor during both written and oral Voir Dire such that Juror 54 is both guilty and death penalty impaired.

In support of its assertion that Juror 54 cannot be fair and impartial based on lack of candor or dishonesty, the State points to several EQ questions including questions concerning occupation, knowledge of individuals with ties to the MCAO, participation in legal reform groups, prior jury service, law enforcement bias, and views pertaining to the death penalty or related advocacy groups.⁷ Following the ruling, the State investigated Juror 54's social media account(s) including pages that Juror 54 "followed" or "liked", YouTube, and public information sites including Ballotpedia. (Motion, Exh. 3-4, Notice, Exh. 5-8). Notably, because the information contained in the exhibits was not known at the time of oral Voir Dire nor was Juror 54 questioned about it, there is no way to authenticate whether the social media accounts are genuine or whether Juror 54 would affirm affiliation with the materials cited. For purposes of this order, however, the Court will assume the exhibited content is genuine and attributable to Juror 54.

The State's argument that Juror 54 lacks candor or was dishonest is largely based on its position that Juror 54 intentionally failed to disclose information regarding Juror 54's political affiliation and involvement/support of organizations that the State considers anti-government or specifically anti-prosecution. The argument is based on Juror 54's alleged omissions rather than affirmations in the written responses. Specifically, the State argues that Juror 54 did not disclose a campaign (now suspended) for political office against a former MCAO prosecutor and therefore, was not candid about profession or work background in response to EQ Questions 12, 18, 51 (professional life, current/former occupation, work related to criminal justice system). (Motion, Exh. 3). The State argues that in failing to disclose a campaign against a former prosecutor, Juror 54 also lacked candor in response to EQ Questions 39-46 (concerning contact with the MCAO, law enforcement organizations). Additionally, the State points to social media

⁷ The Court previously rejected the State's request to include questions about political affiliation or viewpoint in the EQ as these questions generally do not elicit information that factors into a cause determination. These types of questions are a hangover from the days of peremptory challenges.

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posts or postings associated with groups such as Arizona Term Limits and Voice of Democracy-Arizona in support of its assertion that Juror 54 failed to disclose membership “of any group, organization, or association that advocated a particular position or encourages the adoption of a particular agenda related to the criminal justice system” as requested in EQ Question 53.⁸ (Motion, Exhibits 1, 4; Notice, Exh. 7, 8). Lastly, the State provides media clips/songs purportedly posted by Juror 54 in support of its claim that the political sentiment expressed demonstrates that Juror 54 is anti-government, anti-law enforcement, anti-prosecution, and against the Executive branch. (Notice, Exh. 5, 6).

The remainder of the State’s argument that Juror 54 must be struck is based on its assertions that Juror 54 is death penalty impaired based on lack of candor/honesty pertaining to Questions 117 and 128 (position on death penalty/death penalty groups). Here, the State does not argue that Juror 54 failed to respond but argues instead that the answers given were not adequate to establish impartiality. The State largely reiterates its demeanor and behavior argument here having failed to argue at the time of the original oral Motion to Strike that any of Juror 54’s written or verbal responses were sufficient to strike for cause. As noted above, the Court finds no merit to the assertion that Juror 54’s demeanor or behavior is of concern.

“[T]he trial court may only strike a juror for cause when the juror’s views would ‘prevent or substantially impair the performance of [the juror’s] duties [in] accordance with [the court’s] instructions and [the juror’s] oath.’” (*Cheatham DO*) (*citing State v. Naranjo*, 234 Ariz. 233, 240 ¶ 17 (2014) (*internal quotations and alterations omitted*)). Prejudice will not be presumed and must be demonstrated by objective evidence. *State v. Canez*, 202 Ariz. 133, 147 ¶32 (2002), *overruled on other grounds by State v. Canez*, 205 Ariz. 620 (2003). The party challenging a juror for cause has the burden of establishing by a preponderance of the record that the juror cannot render a fair and impartial verdict. Ariz. R. Crim. P. 18.5(h). In evaluating a prospective juror, the court should consider whether the jurors views would “prevent or substantially impair” the performance of the juror’s duties. *See Wainwright v. Witt*, 469 U.S. 412, 424 (1985).

As such,

THE COURT FINDS that that the State has presented no credible or objective evidence in support of its two-fold argument that Juror 54 intentionally failed to disclose specific information that establishes bias and that Juror 54’s affirmative responses in either the EQ or

⁸ Question 53 reads in full: “Are you a member or any group, organization, or association that advocates a particular position or encourages the adoption of a particular agenda related to the criminal justice system, or monitoring the criminal justice system (for example: Mother’s Against Drunk Driving; Neighborhood Watch; groups for or against the death penalty; or groups focused on victims’ rights, or stricter or more lenient criminal penalties)?” Groups such as the ACLU or Voice of Democracy-Arizona are not listed as examples.

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responses coupled with demeanor/behavior during oral examination demonstrate partiality in a death-penalty case.

THE COURT FURTHER FINDS that previously campaigning for political office is not an occupation or affiliation inquired of in the EQ and that the failure to raise it does not demonstrate lack of candor or dishonesty. The Court further rejects the broad leap that somehow Juror 54 cannot be fair and impartial to the State or law enforcement based solely on the fact that a former political opponent used to be a prosecutor. Under this logic, running for political office against anyone who is a lawyer would appear to be *per se* disqualifying for any juror who did not disclose that information in a jury questionnaire.

THE COURT FURTHER FINDS that individual political viewpoints, beliefs, or the free expression of speech or association is not objective evidence of inherent bias or prejudice. The State could very well have questioned Juror 54 further to determine if these beliefs did in fact render Juror 54 unable to remain fair and impartial; it declined to do so. What is left is the State's subjective perceptions/interpretations based on outside and unchallenged information that Juror 54 must be impaired. The Court declines to speculate and relies only on Juror 54's express answers and demeanor/behavior.

THE COURT FURTHER FINDS that the State's argument that Juror 54 did not adequately address questions about jury service or police/law enforcement bias are directly refuted by clear and definitive responses in the EQ and during oral questioning. Specifically, Juror 54 responded to Counsel's questions by indicating they would follow the Court's instructions regarding the law.

THE COURT FURTHER FINDS that there is no evidence that Juror 54 is death penalty impaired based on Juror 54's alleged failure to disclose affiliation with organizations that may oppose the death penalty. First, the EQ did not list any of the organizations highlighted by the State nor has the State established that Juror 54 specifically subscribed to any particular viewpoint concerning the death penalty generally. The State conceded as much after oral examination when it argued the strike for cause based only on Juror 54's perceived hostility.

THE COURT FURTHER FINDS that the State has failed to prove by a preponderance of the evidence that Juror 54's written or verbal responses coupled with demeanor and behavior establish that Juror 54 cannot render a fair and impartial verdict.

IT IS ORDERED denying State's *Motion to Reconsider State's Motion to Strike Juror 54 for Cause*.