1	IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2	IN AND FOR THE COUNTY OF COCHISE
3	DIVISION I
4	STATE OF ARIZONA, Court of Appeals No. 2 CA-SA 2021-0019
5	Plaintiff, Department B Cochise County Cause
6	vs. No. CR201800156
7	LONNEY McCOY,
8	Defendant.
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15	COURT REPORTER'S TRANSCRIPT OF PROCEEDINGS JURY TRIAL - DAY ONE (EXCERPT)
16	BEFORE THE HONORABLE LAURA CARDINAL APRIL 6, 2021
17	BISBEE, ARIZONA
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23	AARON SCHLESINGER CERTIFIED COURT REPORTER #50095
24	COCHISE COUNTY SUPERIOR COURT, DIVISION I BISBEE, ARIZONA 85603
25	(520) 266-9923
26	

T	APPEARANCES:
2	Mr. Michael Powell, Esq. Deputy County Attorney
3	Attorney for the State
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5	Mr. Peter Kelly, Esq. Attorney for the Defendant
6	Accorney for the belendant
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1	(Whereupon the trial having commenced,
2	the following proceedings were had:)
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4	THE COURT: This is State of Arizona vs.
5	Lonney McCoy, CR201800156. The record should reflect
6	the defendant is present in person, good morning, with
7	his attorney, Peter Kelly. The State's attorney
8	Michael Powell is present, Cochise County Attorney's
9	Office.
10	This is the time set for trial in this
11	matter, but we have a few items, I think, that we need
12	to take up in advance of trial. I have turned on the
13	Meet Me line for purposes of permitting the presence of
14	members of the First Amendment Clinic Public Interest
15	Law Firm, attorneys for interveners David Morgan and
16	Terri Jo Neff to appear, should they call in.
17	We have a motion to intervene filed by
18	that law firm, a response filed by this Cochise County
19	Attorney's Office, and a reply to that motion filed by
20	the Public Interest Law Firm as well.
21	And I don't know if anyone is present
22	from the Sandra Day O'Connor First Amendment Clinic.
23	have read and reviewed their motion to intervene.
24	Mr. Powell, do you want to be heard in
25	response to that motion?

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MR. POWELL: Yes, Your Honor. I guess
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- 2 the first inquiry is, I assume that the Court, through
- 3 the staff, has advised the clinic now?
- THE COURT: We have not.
- 5 MR. POWELL: Then I would prefer not to
- 6 make an oral record since they haven't received notice
- 7 and ask the Court to rule.
- 8 THE COURT: Thank you. I reviewed the
- 9 response filed by the State.
- Mr. Kelly, do you have any response that
- 11 you filed or take any position with respect to the
- motion to intervene for the limited purposes of
- 13 ensuring attendance at juror and imposing secrecy
- 14 regarding jurors, do you take any position with regard
- 15 to that motion?
- MR. KELLY: I have a question before I --
- I have not had time to read that, but I am just curious
- overall, but what sort of rights they would get by
- 19 intervening?
- 20 THE COURT: Okay. So, you are not taking
- 21 any position?
- MR. KELLY: I am opposing it, but I would
- 23 like to get a brief synopsis of what rights they would
- 24 gain.
- THE COURT: What's requested specifically

- 1 by First Amendment Law Firm are four items; one, that
- 2 there be at least one reporter present in the courtroom
- 3 during the proceedings, that the court make public the
- 4 names of prospective jurors rather than using the
- 5 numbering system, that if there is a numbering system
- 6 utilized during the trial, then at the end of the
- 7 trial, the names of the jurors be released, and four,
- 8 that the Court not promise jurors that their names will
- 9 be kept confidential after the trial.
- Those are the specific requests that are
- 11 being made. We want to make a fuller record of this.
- 12 Jeff, I am going to ask you to go ask Stephanie to
- 13 place a call to this outfit to see if they want to make
- 14 an appearance.
- MR. KELLY: I have no position, Your
- 16 Honor.
- 17 THE COURT: The Meet Me line is open.
- 18 Those are the specific requests that they
- 19 are -- that they enumerated in their motion which have
- 20 been addressed by the State.
- In addition to that motion, there was a
- 22 motion filed by Mr. Morgan to stay the trial
- 23 proceedings. That was filed yesterday afternoon. I
- don't know if either counsel has received a copy of
- 25 that.

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1 MR. POWELL: I did receive it through
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- 2 email and through the E-filing yesterday, Your Honor.
- 3 The State does object to a stay of the proceedings.
- 4 This is an in-custody defendant who, as the Court
- 5 knows, this case has been going on for quite some time,
- 6 and now David Morgan wants to continue the trial so he
- 7 can go fight a battle at the Court of Appeals on it.
- 8 So, the State does not believe that it's
- 9 in the interest of justice. It does tie back in to the
- 10 request for cameras, and I request that we make a
- 11 record on.
- 12 THE COURT: Okay.
- MR. POWELL: And if the Court wants me to
- 14 do that now or --
- THE COURT: Go ahead.
- MR. POWELL: Okay. So, I know that we
- 17 received late last week a motion from Mr. Morgan to
- have cameras in the courtroom so that he can be
- 19 recording the proceedings. Rule 122 of the Rules of
- 20 Supreme Court controls and --
- THE BAILIFF: No answer.
- 22 THE COURT: The record should reflect
- that the First Amendment Law Firm was contacted to call
- 24 in today. There is no answer at that office.
- All right. Go ahead, Mr. Powell.

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MR. POWELL: Thank you.
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                   So, as far as Rule 122 is concerned, I
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     will pull up the rule with permission here. So, the
     request must be made under certain provisions according
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 5
     to Rule 122, and the Court, under Rule 122(D), may deny
     or limit the request. And the Court may, on their own
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     or upon objection, deny such a request after making
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     specific on the record findings that are outlined in
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     122(D)(1).
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10
                   I know that, given the very short
     timeframe that Mr. Morgan filed his motion, there
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     wasn't really time for either side to file written
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     responses. I know that the Court, through the judicial
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     assistant, sent an email inquiring as to the State and
     defense's position.
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                   I know that both the State and defense
     object, and I did file follow-up this weekend, just to
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     put that in writing.
                   However, the more specific objection that
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     the State would be making here is really, a lot of
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     these issues under (D)(1)(a), impact coverage upon
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23 and then likelihood coverage would distract participants, coverage would disrupt or distract from 24 the dignity of the proceeding. 25

right of any party to appear, fair hearing or trial,

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So, in particular, we have a request for
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     cameras, and I have to say, it's been deja vu since I
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     got burned in this courtroom specifically three years
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     ago with that exact same request. I know that the
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     Court is familiar with the circumstance of that where
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     there was a promise, just like there was in this
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     request from Mr. Morgan, not to show any of the jurors.
7
                   And that request was not -- that order
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     was not followed. He did show the jurors. He
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     published the images of the jurors during the trial,
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     and as a result, that caused us to have to do that
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     trial a second time, and that resulted in a minor
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     victim having to testify twice about being sexually
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14
     assaulted.
                   So, the State believes that, particularly
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     Mr. Morgan has demonstrated, that he is unable to
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     follow that order, despite his claim of doing so.
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                   I would also note, and this ties in to
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     the other motion, there is a concern that the press
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     will not be press available or able to be present in
     the courtroom. It's 8:41 this morning, no one is here.
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     So, they have the opportunity, and they are waiving
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     that opportunity.
                   But the courtroom is open in this case.
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It is a public trial, but the State does believe that

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- 1 coverage in this case would deny a fair hearing or
- 2 trial to both sides. And this is not just for the
- 3 State. This also goes for Mr. McCoy.
- In that case where Mr. Morgan published
- 5 the jurors, that resulted in, as the Court of Appeals
- 6 found, denial of a fair trial for that defendant. This
- 7 is an instance where the press and the defendant have
- 8 somewhat competing interests.
- 9 So, the State does believe that the Court
- 10 should make an on the record finding that coverage of
- 11 this case, as requested, would impact the ability that
- 12 the Court hold a fair hearing of the trial for both
- 13 sides, and coverage would distract and disrupt the
- 14 dignity of the proceedings.
- 15 THE COURT: Okay. Mr. Kelly, do you want
- to make any record with respect to the motion to stay
- trial proceedings as well as the previous request by
- 18 the Cochise County Record to permit -- for the Court to
- 19 permit videoing or photography in the courtroom during
- 20 the trial?
- MR. KELLY: Yes, I do. I object to the
- 22 motion to stay, of course.
- 23 Insofar as the other motions, I have no
- objections to print. I don't think -- I think they
- 25 have a right to that, but I am concerned about video

- 1 coverage or any sort of photographs, especially having
- 2 occurred in the past. That privilege has been abused.
- 3 THE COURT: Okay. All right. With
- 4 respect to the motion to stay the trial proceedings
- 5 filed by David Morgan on April 5th, 2021, yesterday at
- 6 1:47 p.m., the motion to stay the trial proceedings is
- 7 denied.
- I have previously entered an order with
- 9 respect to the request from the -- from Mr. Morgan and
- 10 Terri Jo Neff, the Cochise County Record, to engage in
- videotaping and/or photography or reporting in the
- 12 courtroom or courthouse during the trial in this case.
- I will make a finding that the -- I
- 14 previously denied that in a rather brief order to get
- 15 that out the door.
- I will make specific findings pursuant to
- Rule 122(D), that the likelihood of harm arising from
- the videotaping or photography by the press in the
- 19 courtroom, or in the courthouse during the trial in
- 20 this matter, could have an impact on the right of
- 21 privacy of jurors, Mr. McCoy.
- It could have an impact on the safety and
- 23 well-being of jurors attending or participating in the
- 24 trial, and it would have a strong likelihood of
- 25 distracting from the -- distracting participants or

- 1 distracting the dignity of the court proceeding.
- 2 It is the further concern of the Court
- 3 that there has been a previous abuse of that grant of
- 4 right to photograph during trial of previous
- 5 proceedings in this courthouse by the same requester,
- 6 Mr. Morgan, that resulted in a mistrial, declare of a
- 7 mistrial at the Court of Appeals level, and the retrial
- 8 of that case.
- 9 I do find that the harm outweighs any
- 10 benefit that coverage would have to the public, and the
- 11 rights, the First Amendment rights of the requestors,
- 12 David Morgan and Terri Jo Neff, do not outweigh the
- 13 rights to a fair trial that is held by Mr. McCoy
- 14 through his counsel, have objected to that request.
- 15 Finally, with respect to the motion to
- 16 intervene for the limited purpose of assuring
- 17 attendance of trial and imposing secrecy regarding
- jurors filed by the First Amendment Clinic, I will
- 19 notify counsel that I was not aware that the motion to
- 20 intervene was filed until this morning.
- There was no courtesy copy provided to
- the Court. The copy that I have received is not
- 23 file-stamped. I am not sure when this was filed, but
- 24 it is dated the 31st of March, 2021.
- 25 So, at some point in the recent -- very

- 1 recent past, this may have been filed with the Court.
- 2 I don't know if it shows up in AJACS as a filed
- 3 document. It appears to be filed in this, or the
- 4 intent was for it to be filed in this case, but I
- 5 didn't learn about it until this morning.
- I have taken an opportunity this morning
- 7 to review the motion to intervene as well as the
- 8 response filed by the State, a review of the pleadings
- 9 attached to the State's response, and the reply from
- 10 the requested interveners. These are attorneys
- intervening on behalf of David Morgan and Terri Jo
- 12 Neff.
- They have specifically requested the
- 14 following relief: The first request is that at least
- one reporter be allowed to be present in the courtroom
- 16 during the proceedings when the jury is present to the
- 17 extent possible.
- I find no objection to their -- the
- 19 permission of one reporter or even two reporters being
- 20 present in the courtroom during the proceedings,
- 21 assuming all other safety precautions are taken with
- 22 respect to the health concerns of the pandemic. I
- 23 think that we have authorization to have up to 50
- 24 people in the courtroom at this time.
- 25 Assuming that all other safety

- 1 precautions are met, to wit; masks and social
- 2 distancing, that request is not unreasonable, and it is
- 3 not objected to by the State.
- Therefore, with respect to the motion to
- 5 intervene, I am permitting the intervention to address
- 6 the request sought by the First Amendment Law Firm, and
- 7 I am granting the first request, to wit; that reporter
- 8 -- a reporter or two reporters may be present, all
- 9 other health considerations under phase two of the
- 10 pandemic guidelines, which I believe we are still under
- 11 are met.
- 12 With respect to the second request of the
- interveners, that the Court make public the name of the
- 14 prospective jurors during voir dire, this matter will
- 15 be denied.
- 16 Consistent with the previous request not
- 17 to permit televising or photography of the jury or the
- 18 trial during its proceeding, the Court has undertaken a
- 19 system of not making public the names of prospective
- 20 jurors or final jurors to a jury trial in Cochise
- 21 County.
- The names of jurors are made known to the
- 23 parties, to the defense as well as to the State, for
- 24 the purpose of permitting the attorneys and the
- defendant to know who precisely is prospectively going

- 1 to serve on the jury, as well as who they might finally
- 2 select to serve on the jury.
- 3 That is to ensure that the defendant has
- 4 a fair trial, and that will be made known and is made
- 5 known the defendant for the purpose of ensuring that
- 6 the defendant's trial rights are ensured.
- 7 That same right does not extend in any
- 8 similar capacity to the press. They have not got the
- 9 interest that the defendant does, and certainly it is
- 10 not superior to the right of the -- the defendant's
- 11 right to a fair trial.
- The concerns that the jurors may feel
- pressured if their names are known, if they are
- 14 particularly made known to the press and particularly
- under pressure, particularly I agree with the State in
- 16 a small community that they may feel that their privacy
- is compromised in some way, or that they feel under
- 18 pressure to make particular decisions one way or the
- other is a compelling reason why their identities
- 20 should not be made known to persons whose particular
- 21 constitutional rights are affected by this trial, such
- 22 as the defendant's.
- Therefore, the names of prospective
- jurors, as well as the names of jurors who are selected
- to serve on the jury, will not be made public, and

- 1 their request number two is denied.
- 2 Their third request is that the names of
- 3 jurors, if they are made, if they are maintained
- 4 privacy during the trial, that they be released at the
- 5 conclusion of the trial. The same concern is -- the
- 6 Court shares the same concern with request No. 3 as
- 7 with request No. 2, that jurors would have the right to
- 8 maintain their privacy, or not, at their request, at
- 9 their own decision, but certainly not the Court's
- decision, nor the press' decision whether those names
- 11 should be made public. The third request made by the
- 12 interveners that the names of jurors be disclosed at
- the conclusion of the trial is therefore denied.
- 14 Finally, request No. 4 that the Court not
- 15 promise jurors that their name will be held
- 16 confidential at the conclusion of the trial is a
- different sort of a request, and it is consistent with
- 18 prior practices of the Court in my experience which is
- 19 to inform prospective jurors that in the event that the
- 20 press wishes to interview them, they may approach the
- 21 jurors individually.
- It will be entirely within the discretion
- of the individual juror to speak with the press or not
- 24 speak with the press to disclose their names, if they
- 25 wish to or not.

- I will -- I will agree with their request
- No. 4, there will be no promise made that jurors' names
- 3 will be kept confidential after trial, but I will
- 4 advise them that it will be within their authority to
- 5 disclose their own names or not. It certainly will not
- 6 be a disclosure made, however, by the State or by the
- 7 Court.
- So, therefore, the request to intervene
- 9 is granted. Their request No. 1 to be present during
- 10 the trial is granted. Their request No. 2 to make
- 11 public the names of the jurors during or after trial is
- denied. However, their request No. 4 that jurors will
- 13 be advised that they may speak and disclose their
- 14 identity to the press will be -- will be -- the Court
- will inform the jurors of that right.
- 16 Anything further?
- 17 MR. POWELL: Not on those issues, Your
- 18 Honor.
- 19 THE COURT: All right. Anything further,
- 20 Mr. Kelly, with respect to these issues?
- MR. KELLY: No, Your Honor.
- THE COURT: There was a further request,
- 23 I will notify counsel, that from public offices, that
- 24 the Court make available to the public offices polycom
- 25 access for purposes of viewing the trial while it is in

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     progress.
                   That request will be denied. I have no
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     ability to control who is on the receiving end of the
 3
     polycom system. So, that will be -- that will not be
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     permitted.
                   And in fact, at this time, I am going to
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 7
     terminate the Meet Me line, that is the Court's
     conference line will now be closed, and I am hanging
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 9
     up.
                   All right. Do we have any further
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     preliminary matters that need to be attended to, Mr.
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     Powell?
                   MR. POWELL: No, Your Honor. I know that
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     the Court did receive my motion concerning the
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     modification to that one instruction.
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                  (Whereupon the trial continues.)
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1	CERTIFICATE
2	
3	STATE OF ARIZONA)
4	COUNTY OF COCHISE)
5	
6	
7	I, Aaron Schlesinger, hereby certify that as
8	the Certified Court Reporter, Certificate No. 50095, I
9	was present at the proceedings of the foregoing matter;
10	that I took down in shorthand the proceedings had and
11	oral testimony adduced. The same has been transcribed
12	by me this 13th day of April, 2021. The foregoing
13	pages contain a full, true and accurate record of the
1 4	proceeding.
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16	
17	
18	
19	
20	Aaron Schlesinger
21	Certified Court Reporter
22	for Division V
23	
2 4	
25	