

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF WASHINGTON TENTH JUDICIAL DISTRICT

3 - - - - -

4 State of Minnesota Jury Trial
5 Plaintiff, Voir Dire - Day 1
6 vs. Court File No 82-CR-17-242

7

8 Stephen Carl Allwine,
9 Defendant.

10 - - - - -

11 The above-entitled matter came duly on for
12 hearing before the Honorable B. William Ekstrum, one
13 of the Judges of the above-named Court, on the 12th
14 day of January, 2017, at the Washington County
15 Judicial Center, City of Stillwater, County of
16 Washington, State of Minnesota.

17 * * *

18 A P P E A R A N C E S

19 Fred Fink and Jamie Kreuser, Assistant
20 Washington County Attorneys, appeared as counsel for
21 and on behalf of the state.

22 Kevin DeVore, Esq., appeared as counsel
23 for and on behalf of the defendant, who was
24 personally present.

25

1 (Whereupon, the following proceedings were
2 Duly had of record:)

3 (Prospective jurors enter the courtroom.)

4 THE COURT: Thank you for being here.
5 Folks, you have been summoned to the District Court
6 here in Washington County for the purpose of
7 selecting a jury to try a criminal case.

8 My name is Bill Ekstrum. I am the judge,
9 or a judge, of District Court here in Washington
10 County and will be presiding over this case that you
11 and I are going to be handling together. Testimony
12 you are going to be STKPWHR-FRPLTS and.

13 Q Length STKPWHREFRPBLG ifs TPOPBLGS that?

14 A You will be given instructions as to when
15 to call in at specific times during the process of
16 Voir Dire, which will involve individual questioning
17 of particular and perspective jurors.

18 Q Less SKP-FRPLTS rules of law HAOERPBGs to
19 speak the truth. It's important that you give
20 truthful and full answers both on the questionnaire
21 and when you are called in for further questioning.

22 Some questions may be personal. That is
23 not an attempt to pry unnecessarily into your lives,
24 but to seek information to help us select a fair and
25 impartial jury.

1 There is a rule that if sensitive or
2 embarrassing questions are included on the
3 questionnaire instead of answering that particular
4 question in writing, you may request an opportunity
5 to request to speak to the court incamera with
6 counsel and defendant present to -GS will -FRPBL
7 your answers not be public. So remember that. Is
8 it's helpful if you answer all of the questions.
9 But you do have that a right. The reason for
10 lengthy is the is reason for the individual
11 questioning that will occur in the coming days is
12 the nature and complexity of this case.

13 Now, an indictment has been filed by the
14 office of Washington County Attorney charging
15 Stephen Allwine with Premeditated Murder in the
16 First Degree.

17 The charge reads as follows: On
18 November 13th, 2016 in the County of Washington, Amy
19 Allwine died. Steven Allwine intentionally killed
20 Amy Allwine, and Steven Allwine acted with
21 premeditation. To this, the defendant has pleaded
22 not guilty. This plea constitutes a denial of every
23 material allegation in the indictment. It is
24 necessary for the State of Minnesota to prove all of
25 the material allegations to the degree stated in

1 order to establish the defendant's guilt.

2 The indictment which I have referred to is
3 not evidence. It creates no inference of guilt. No
4 member of the jury should in any way permit himself
5 or herself to be prejudiced against the defendant
6 because an indictment has been filed, or because he
7 has been arrested or placed on trial.

8 Now, the state will be represented in this
9 case by two attorneys: Mr. Fred Fink and Ms. Jamie
10 Kreuser. Would you rise and turn toward the
11 prospective jurors, please.

12 The defendant is represented by Mr. Kevin
13 DeVore. Mr. DeVore would you do the same, please.

14 MR. DEVORE: Yes. Good morning.

15 THE COURT: Mr. Allwine, would you please
16 rise as well.

17 THE DEFENDANT: Good morning.

18 THE COURT: Now, when you are filling out
19 the questionnaires I've told you about, I am
20 ordering that you will have no electronic or other
21 communication device with you at all, even if it's
22 turned off.

23 So if anyone has a cell phone, iphone,
24 ipad, computer, anything, any device with you on
25 which you communicate, give that to the deputy or

1 jury coordinator before you start answering the
2 questions on the form.

3 It is going to be important that nobody do
4 any checking, research, individual fact gathering,
5 or anything like that during the pendency of this
6 trial.

7 A final comment before you get to those
8 questionnaires. When you go home, you may be asked
9 all sorts of questions about your role in this case
10 or about the case itself. Obviously, the jury has
11 not yet been selected or finalized. So you may say
12 you are being considered as a possible juror in a
13 criminal case. That is all you may tell them. Do
14 not discuss the case with anyone. And as I have
15 said, do not do your own research. Don't even look
16 up the name of the defendant or do anything else
17 regarding this case other than what you are
18 instructed to do.

19 Thank you for your attention. We are
20 going to administer an oath now so that you will
21 follow that. Please rise so you can be sworn in.
22 Raise your right hands.

23 (Whereupon, the clerk administered the
24 oath to the prospective jurors.)

25 THE COURT: Folks, you may now go with the

1 jury coordinator and/or deputy as directed, and
2 start with those forms. And I thank you very much.

3 (Whereupon, the prospective jurors exited
4 The courtroom.)

5 THE COURT: What do you want to do about
6 my error in the fact that a not guilty has not been
7 entered.

8 MR. FINK: That shouldn't be a problem,
9 but he needs to enter a not guilty plea on the
10 record.

11 THE COURT: And he does in fact need to
12 enter a not guilty plea on the record.

13 MR. DEVORE: Yes.

14 THE COURT: I was told that there were a
15 handful that were not here. I don't know what that
16 number is at this point.

17 THE CLERK: 10 is what I am told.

18 THE COURT: 10 at this point. I am going
19 to have all 10 fill out questionnaires, but I didn't
20 want to delay these folks. Stay tuned. Before we
21 get to the end of the morning, I will have those
22 folks come in and we will address that same general
23 instruction. I may add some other admonitions about
24 coming on time.

25 (Whereupon, court was in recess.)

1 (Prospective jurors entered the
2 courtroom.)

3 THE COURT: Folks, those of you who are
4 out there are late. You have been summoned by the
5 District Court of Washington County for the purpose
6 of selecting a jury for a criminal case.

7 My name is Bill Ekstrum and I am a Judge
8 here in Washington County. We will be working
9 together on this case.

10 Now, I have no idea what reasons you may
11 have had for not being here on time, but I am giving
12 a second set of instructions before filling out a
13 questionnaire.

14 I have been in a variety of school
15 settings, I have been in the military, and I
16 certainly have been in the court system. I am well
17 aware that I have had to show up places where I
18 simply hurry up and wait. I get somewhere, and I
19 find that other people are not ready, and I am
20 simply waiting. Even if people cooperate with
21 everything, that's going to happen in this case.
22 But it's important that you be on time, and it's
23 important that you take your responsibilities
24 seriously.

25 In a few minutes you will be asked to

1 complete a rather lengthy questionnaire. Following
2 that, you will be given instructions as to when to
3 call in or come in during the process of Voir Dire
4 which will involve individual questioning of
5 prospective jurors.

6 Now, Voir Dire is a French term that
7 roughly means to speak the truth. So it's important
8 that you give free, and full, and truthful answers
9 both on the questionnaire and when you are called in
10 for further questioning.

11 Some questions are personal. This is not
12 an attempt to unnecessarily pry into your lives, but
13 rather to seek information which will help select a
14 fair and impartial jury.

15 There is a rule that applies to some of
16 this personal information. If sensitive or
17 embarrassing questions are included on the
18 questionnaire, instead of answering any particular
19 question in writing, you may request an opportunity
20 to address the court incamera with counsel and
21 defendant present concerning your desire that the
22 answers not be public.

23 Now, the reason for the lengthy
24 questionnaire, as well as for any individual
25 questioning that occur in the coming days is the

1 nature and complexity of this case.

2 An indictment has been filed by the Office
3 of the Washington County Attorney charging Stephen
4 Allwine with Premeditated Murder in the First
5 Degree. The charge reads as follows: On
6 November 13th, 2016 in the County of Washington, Amy
7 Allwine died. Stephen Allwine intentionally killed
8 Amy Allwine, and Stephen Allwine acted with
9 premeditation. To this, the defendant has pleaded
10 not guilty.

11 This plea constitutes a denial of every
12 material allegation in the indictment. Therefore,
13 it is necessary for the State of Minnesota to prove
14 all of the material allegations to the degree stated
15 in order to establish the defendant's guilt. The
16 indictment which I have referred to is not evidence,
17 and it creates no inference of guilt. No member of
18 the jury should in any way permit himself or herself
19 to be prejudiced against the defendant because an
20 indictment has been filed against him, or because he
21 has been arrested, or placed on trial.

22 Now, the State of Minnesota is represented
23 in this case by Mr. Fred Fink and Ms. Jamie Kreuser.
24 Would the two of you please rise and face the
25 prospective jurors.

1 MR. FINK: Good morning.

2 MS. KREUSER: Good morning.

3 THE COURT: The defense in this case is
4 Mr. Kevin DeVore. Mr. DeVore, would you rise?

5 MR. DEVORE: Good morning.

6 THE COURT: Mr. Allwine, would you please
7 rise?

8 THE DEFENDANT: Good morning.

9 THE COURT: You certainly may be seated
10 now.

11 Now, folks when you are filling out the
12 questionnaire that I have told you about, I am
13 ordering that you will have no communication device
14 with you, electronic or otherwise, at all. Even if
15 it is turned off. So if anyone has a cell phone,
16 iPhone, iPad, computer, anything, any any electronic
17 device on which you communicate, give that to the
18 deputy or jury coordinator before you start
19 answering the questions on the form.

20 I do have a final comment before you go to
21 those questionnaires. When you go home, you may be
22 asked all sorts of questions about your role in this
23 case, or about the case itself. You may say that
24 you are being considered as a possible juror in a
25 criminal case, and that is all you may tell them.

1 Do not discuss the case with anyone. Do not do your
2 own research. Don't even look up the name of the
3 defendant or do anything else regarding this case
4 other than what you are instructed to do.

5 Thank you for your attention. Let's get
6 these folks sworn. So please stand, raise your
7 right hand to be sworn.

8 (Whereupon, the prospective jurors were
9 administered the oath.)

10 THE COURT: You may now go with the
11 deputy, so that you can go back to the jury
12 receiving room and start filling out those
13 questionnaires.

14 (A recess was taken.)

15 THE COURT: Let me observe that both
16 defense counsel and prosecution are here. We have
17 had the questionnaires filled in. Immense work, in
18 my opinion, by the folks that are down in the jury
19 area in getting 69 questionnaires completed, copied,
20 and delivered. So I thank them for that and I will
21 thank them separately.

22 But there are several things to talk
23 about. One of the issues right now is what we are
24 going to do in terms of calling the particular
25 jurors in on Tuesday morning.

1 (Whereupon, the defendant entered the
2 courtroom.)

3 THE COURT: All right. Mr. Allwine is
4 here with his attorney, and as I stated before,
5 prosecution is here as well.

6 So all have the questionnaires completed.
7 All meaning 69 in this particular case. One of the
8 things to determine is how we proceed on Monday
9 morning. I think you have had about as much a
10 chance as I have to look through the questionnaires.
11 You have glanced and chosen who to look at.

12 But I did make several notes, and one of
13 the things that I noticed was that there were a few,
14 maybe 10, if I counted correctly, that had what I
15 thought were legitimately expressed concerns about a
16 multiple week commitment in terms of job or health
17 commitment. Then there were others that expressed
18 concerns about a multiple week commitment, but had
19 other reasons, some of which looked more valid than
20 others. I would have to go back to see each one.

21 One of the be possibilities is that we
22 delay those folks, and don't address them on Tuesday
23 and Wednesday. In other words, that we start with
24 the people that had no objection to a multiple week
25 commitment. But I am willing to listen to anyone

1 that wants to talk to me about ideas and how to
2 select numbers. I will be telling Jennifer this
3 afternoon before 4:00 what number jurors to ask to
4 be here on Monday, and that process will happen each
5 day for the following day. So any ideas.

6 MR. DEVORE: Judge, this is what I found
7 in trials that I have done. Sometimes people write
8 stuff and then you talk to them, and they learn a
9 little more about how the process works. Sometimes
10 their fear of commitment is alleviated, sometimes it
11 isn't.

12 THE COURT: Correct.

13 MR. DEVORE: My recommendation to the
14 court would be to simply call them in the number of
15 the random order that we have, and then we can just
16 ask them. If it turns out that they are so jammed
17 up that they cannot possibly focus on the case, we
18 can strike them for cause, but I would rather do it
19 that way.

20 THE COURT: That certainly is possible.
21 That leaving the question if I ask more than ten to
22 be called on Tuesday. Subpoena because out of the
23 first 12, there are 1, 2, 3, 4 that I would put in
24 the other category, so that's 6 out of 12. So we
25 may not do well in terms of timing, and I would

1 rather keep the process moving forward. So perhaps
2 I would ask for 12 or something like that on
3 Tuesday.

4 MR. FINK: I agree with counsel. Doing
5 them sequentially as we see them. Given the number
6 of concerns that we have, and assuming counsel has
7 as well as Your Honor, maybe 14 the first day.

8 THE COURT: Sure. I don't have any
9 problem with that.

10 MR. DEVORE: That's fine.

11 THE COURT: If that backs up, hopefully it
12 won't. If we look at three plus hours in the
13 morning, and the same time in the afternoon. I
14 mean, that's sort of the time that we would have for
15 active questioning. We are talking certainly less
16 than half an hour, less than 15 minutes, per side in
17 questioning. That may work out just fine. If it
18 doesn't, we will just figure it out for the next day
19 as we go forward.

20 MR. DEVORE: It might be -- I don't know
21 what your plan is, if you are planning to talk to
22 each one first with a few questions. Maybe the ones
23 that rise to the top, the questions that you deal
24 with initially, that would be at the top of what I
25 would talk about.

1 THE COURT: I would tell each juror, or
2 each prospective juror, the difference between a
3 challenge for cause and preemptory challenge, and
4 explain they are going to get individually
5 questioned. I would have very few questions for
6 them.

7 One would have to do with whether they
8 have had any conversations or other extra court
9 contact with Mr. Allwine, or his name, or any
10 research, or anything like that.

11 And the other is to go through the very,
12 very first part of my questioning in terms of
13 whether they would have difficulty accepting or
14 following some basic rules of law. And whether,
15 indeed, they know any of the people we had on that
16 long list of people. But I don't know how carefully
17 they went through that long list of potential
18 witnesses. I won't do much more questioning.

19 I would turn it over to you folks. So if
20 we have the entire panel gathered, as some of you
21 may know, the questions -- most of the subjects have
22 been covered by the questionnaire. So that's about
23 as much as I am going to do.

24 I also have an interest in sealing the
25 questionnaires. I have not told the jurors that. I

1 believe that is something under the discretion of
2 the court. I don't know if either side has an
3 opinion on that. But once we get the process going,
4 it seems to me that that's a good idea for a variety
5 of reasons.

6 One, it tends to, at least for a period of
7 time, to protect the jurors from too much sail
8 outside of the courtroom. Any problem with me
9 signing such an order?

10 MR. FINK: Not at all, Your Honor.

11 MR. DEVORE: No.

12 MR. FINK: That includes us returning the
13 questionnaires upon completion of jury selection.

14 THE COURT: It would. You certainly have
15 the right to make your own notes, what you want to
16 keep for your own purposes, but yes, it would.

17 Now, when we do pick the jury, I am
18 following the rule of the normal process for
19 selection of a jury in a First Degree Murder case.
20 Which, among other things, not only involves the
21 number of preemptory challenges that they are aware
22 of, 15 and 9, but also the exercise of those
23 challenges right at the end of each question/answer
24 period.

25 So Mr. DeVore, you're questioning a juror.

1 You will, when you finish, challenge for cause or
2 exercise your preemptory challenge. That juror will
3 be either in or out at that point. If there are no
4 challenges for you, then it goes to you. We keep
5 going until we have the number of jurors we want,
6 which in my view is 12 plus 3 alternates.

7 MR. DEVORE: That's fine.

8 MR. FINK: Yes.

9 MR. DEVORE: Judge, do you want me to
10 state it if I have challenge for cause, or do you
11 want me to approach and to approach?

12 THE COURT: I think it's appropriate to
13 approach every once in a while. There are those
14 kinds of challenges it doesn't matter one way or the
15 other for cause.

16 MR. DEVORE: What about for preemptories?

17 THE COURT: I think that's a good idea.
18 As I think about it, I would not need to inform the
19 juror either way, thank you for your service kind of
20 thing. Approach either way.

21 Now, have we -- the jury instructions, the
22 first draft, there have been some things.

23 THE CLERK: Correct. So preliminary
24 drafts were circulated for the preliminary
25 instructions for trial instructions. Everyone

1 received a copy of that, as I understand it.

2 THE COURT: Before trial instructions are
3 very standard. The post we can argue. Will will I
4 plead guilty. Possible stipulation AGS to
5 foundation.

6 Q That's been submit Indiana writing.
7 That's in the case file Your Honor?

8 THE COURT: So we will just follow that.
9 Anything else you want to address this afternoon,
10 Mr. Fink.

11 MR. FINK: No, Your Honor.

12 THE COURT: Anything else you want to
13 address, Mr. DeVore?

14 MR. DEVORE: It's a ways away, but on
15 opening, do you have any problem using a Power Point
16 on opening?

17 THE COURT: I don't have a problem with
18 Power Points. Obviously, there is a purpose for
19 opening statements that you are well aware of.
20 Don't go beyond those bounds. But I have no problem
21 with Power Points. Is it your intent at this point
22 to be delivering your statement -- to deliver right
23 after opening statements of the state?

24 MR. DEVORE: At this point it is, yes.

25 THE COURT: All right. Any other

1 arrangements that need to be made over the next
2 week, or whatever it takes to pick a jury? We can
3 communicate that. I don't have a problem with the
4 podium or not a podium, or whatever arrangement you
5 wish when either of you make your arguments, or ??
6 provided with the case.

7 Obviously, when we are in trial, I do want
8 you at your table to ask questions, and you will ask
9 permission to approach if you are going to do
10 anything else, such as get an exhibit entered, or
11 for any other purpose.

12 I also am expecting, and I think we talked
13 about this awhile back, that every witness, every
14 potential witness will be sequestered, so no witness
15 will be present.

16 I will tell you, I have had multiple
17 contacts from Dateline. I have written an order
18 denying television coverage or video coverage of the
19 trial.

20 There are different rules for when a trial
21 is over. If there is a sentencing that is
22 progressing in a proceeding like this, so many
23 things happen quickly. I have included in my order
24 a denial of that as well. I have had multiple
25 contacts, not me personally, my law clerk has

1 received personal contacts, where they persisted in
2 some requests. So you should know that. I do
3 expect someone from Dateline, and certainly maybe
4 other folks from the media to be sitting in all or a
5 portion of what we do in the next few weeks. I
6 don't know when that will be. They will be welcome
7 as any other member of the public. Thank you.

8 MR. FINK: Your Honor, just a couple of
9 things. This may be premature at this point. With
10 the number of exhibits that the state intends to
11 introduce, could we have a table set up in the --
12 somewhere, maybe perhaps over here, so we can place
13 the exhibits here, otherwise you will get drowned.

14 Secondly, it's been my habit to stand
15 by/at the table.

16 THE COURT: I don't have a problem with
17 you standing. You will stay at the table. The same
18 goes for you Mr. DeVore.

19 We will be ready to start interviewing the
20 first prospective juror at 9:00 Tuesday morning. Be
21 here a bit before then if there are questions to be
22 dealt with.

23 MR. FINK: Thank you.

24 MR. DEVORE: Thank you.

25 (Proceedings concluded.)

1 STATE OF MINNESOTA)
) ss:
2 COUNTY OF WASHINGTON)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, DEBORAH L. FOSTER, do hereby certify that the above and foregoing transcript, consisting of the preceding pages, is a correct transcript of my stenographic notes and is a full, true, and complete transcript of the proceedings to the best of my ability.

Dated: June 11, 2018.

DEBORAH L. FOSTER
Official Reporter
Washington County District Court
(651) 430-6354(certificate.ecl)