IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, BUTTE COUNTY

ORDER OF THE PRESIDING JUDGE

FINDING GOOD CAUSE TO CONTINUE JURY TRIALS

HELD IN THE CRIMINAL DIVISION

FILED
Superior Court of California
County of Butte
JAN 07 2021
Kimberly Flener, Clerk
By L. Bravo, Deputy
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I.

FINDINGS

A. Ongoing Public Health Crisis

The public health crisis emanating from the coronavirus and COVID-19 remains a persistent threat at a local, state, and national level. Early in the crisis, this court issued orders restricting access to the courthouse and limiting calendars as mitigation measures to balance the need for safety with the obligation to provide access to justice as timely as possible, focusing at all times on the critical core functions of the court and needs of court users. Those orders have either contracted or expanded court access, services, and court calendars, in response to the prevalence and spread of the coronavirus and COVID-19 in Butte County. To make those determinations, the Presiding Judge has relied on county, state, and national public health resources.

The Presiding Judge did then, and continues now, to rely on and take judicial notice of information, guidance and Orders found on the websites of: the Office of the Governor of the State of California, the California Department of Public Health (CDPH), Covid19.ca.gov, Covidactnow.org, the Butte County Department of Public Health (BCPH), the Center for Disease Control (CDC), as well as information provided by the Butte County Sheriff, the District Attorney and the Director of the Public Defenders Consortium, Chiefs of local law enforcement, the Probation Department, and court Administration on all aspects of rates or incidents of infection involving the coronavirus and COVID-19 as the information impacts court operations and courthouse safety.

Herein, this court adopts and incorporates the findings of this court, of the California Judicial Council, and of the Chief Justice of the California Supreme Court, issued previously in response to the public health crisis emanating from the coronavirus and COVID-19.

All sites referenced herein report the crisis with Coronavirus is worsening at an alarming rate. The growing infection rate is increasingly harmful as the resources for hospitals and ICU beds become strained and limited. Public Health officials announce the problem will worsen in response to holiday travel and gatherings that occurred over the holiday weeks, the effect of which is still forthcoming.

B. Particular Orders

On November 19, 2020, the Governor of the state of California placed Butte County on the Purple Tier (most restrictive), a designation demonstrating wide spread of the coronavirus and COVID-19. Since that date, cases have continued to increase steadily within the county and throughout the state. During this timeframe and for the weeks after, the rate of infection has become so widespread that nearly all California counties were placed into the Purple Tier.

On December 3, 2020, in response to the fast-moving spread of the virus and the resulting unavailability of ICU beds in hospitals, the Governor issued a Stay-at-Home Order through the California Department of Public Health. Counties were placed in regions such that if a region had less than 15% ICU capacity, the Stay-at-Home Order became effective for a minimum of three weeks. Butte County was placed in the region identified as the Greater Sacramento Region.

On December 6, 2020, Butte County became subject to the Stay-at-Home Order when ICU capacity fell below 15% for the Greater Sacramento Region. As critical infrastructure, both courthouses remained open with mitigation measures in place. The Butte Superior Court sought and received relief from the Chair of the Judicial Council, the Chief Justice of the California Supreme Court, for authority to hold no jury trials between December 14, 2020 and January 8, 2021, in response to the wide spread of the coronavirus in Butte County and the danger of infection within the courthouses.

On December 28, 2020, the Chair of the Judicial Council, the Chief Justice of the California Supreme Court, approved and this court did implement, extension of time to extend arraignment on criminal cases between December 23, 2020, and December 28, 2020, inclusive, based on an exposure of coronavirus at the Oroville Courthouse by a Deputy Sheriff who had tested positive. This particular incident caused this court to find good cause to continue all criminal matters between noon on December 23, 2020, and through December 28, 2020, as there was not sufficient staffing for the criminal matters due to the exposure.

On January 4, 2021, the Governor extended the Stay-at-Home Order for the Greater Sacramento Region based on the metric that the capacity for ICU beds remains dangerously low.

C. Rate of Infection in the Community

Butte County Public Health (BCPH) has reported an increase daily of COVID-19 cases, as well as an increase in the number of hospitalizations and deaths.

Recent test results demonstrate the concern opined by Public Health officials. According to the BCPH's website and public reporting, the number of positive cases over the last several weeks are as follows:

12/1/2020 through 12/7/2020, an average of 68 cases per day;

12/8/2020 through 12/14/2020, an average of 128 cases per day;

12/15/2020 through 12/21/2020, an average of 128 cases per day;

12/22/2020 through 12/28/2020, an average of 100 cases per day;

12/29/2020 through 1/4/2021, an average of 113 cases per day;

1/5/2021 133 cases and 1/6/2021 121 cases, for a two-day average of 127 cases per day.

As of the date of this Order, Butte County reports a total of **8,217** COVID-19 cases. For the period of 12/1/2020 through 1/6/2021, **4,012** new positive COVID-19 cases were reported.

D. Rate of Infection in the Butte County Jail and Court

The presence of COVID-19 in the Butte County Jail has had an ongoing impact on court operations in the Butte Superior Court. As with prior Orders on court operations affecting the Criminal Division, the Presiding Judge considered the rate of infection and rate of spread in the jail.

The Butte County Sheriff reports that as of the date of this order, there are 20 positive cases at the Butte County Jail, and 60 pending tests, affecting a total of 80 inmates. As of January 6, 2021, the Butte County Sheriff's Office reported seven housing pods were in quarantine, along with one dormitory housing, and two single cells. The policy of the Sheriff's Office as reported to this court is that the quarantine status for a cell or housing unit is not lifted until each inmate housed therein tests negative for coronavirus. Because it is unknown when all inmates will test negative, the date for a quarantine status to be lifted is unknown.

E. Rate of Infection in the Butte Superior Court

The court is reporting that as of the date of this order, there have been 12 positive cases amongst court staff within the last 14 days, including 6 in the last week. Thirty-three court employees are currently or have been recently under quarantine at home within the last 14 days, triggering an "outbreak" as defined by Cal/OSHA. This has significantly reduced the number of staff available to perform the court's critical functions.

The Butte Superior Court (BCCH) is the courthouse location wherein all criminal matters are heard, including the taking of evidence during jury trials. Mitigation measures for trials add a demand for additional staff resources. The current outbreak at BCCH among staff, as well as the current surge in the community, and the increase in quarantine and infection rate at the jail, causes the Presiding Judge to find there is good cause to continue any jury trials that are scheduled to be heard from January 11, 2021, through January 24, 2021. The continuance will allow for the outbreak at BCCH to dissipate and for the rates of infection to slow in the community and at the jail.

F. Impact on Jury Trials

The Presiding Judge issued Orders in response to the coronavirus as early as March 2020. The Orders were in response to Public Health information, designations or guidelines. The Orders affected court operations in order to protect the health and safety of court users, court employees, judges, justice partners and the public while balancing statutory and Constitutional rights that ensure due process. For a period of time, the threat from the coronavirus and COVID-19 warranted findings of good cause to extend jury trial dates, some beyond the time limit found in Penal Code section 1382, as the danger of infection was good cause and not under the control of the court, the parties, or the attorneys. The findings of good cause were narrowly tailored to be the briefest period of time necessary to ensure due process while meeting the safety goal the Order was designed to achieve.

To mitigate the impact of the coronavirus on prospective jurors summoned for jury duty, the court has taken the following steps: staggering the arrival time for prospective jurors, entertaining hardship requests through written form, designating seating in any jury assembly or courtroom with at least six-foot separation with prospective jurors seated in gallery seating rather than the jury box, utilizing additional courtrooms instead of jury rooms for deliberation and for jury recess, and utilizing the only

two courthouses in the County to be able to select two Criminal juries each week, effectively delaying all Civil jury trials. These measures consume additional resources for the court that include the need of two judges at each courthouse to assist with jury selection, and the need for additional security and additional court staff. The court has also experienced an increased number of staff affected by COVID-19 infection and the quarantine requirements, which further impacts the court's ability to operate.

The increase in the infection rate in Butte County, placement in the most restrictive tier by the Governor due to the rate of infection in the county, and the restrictions as a result of the Regional Stay-at-Home Order for the Greater Sacramento Region on December 10, 2020; coupled with the threat to jurors and witnesses to participate in jury selection and trial while the uncontrolled coronavirus advances in the county, causes the Presiding Judge to find good cause to continue all Criminal Division jury trials currently set to proceed to trial between January 11, 2021, and January 24, 2021.

G. Authority

The Presiding Judge of the Superior Court holds the responsibility for the management of cases within the court's jurisdiction, and the responsibility to ensure the safety of all court users, and court staff, judges and judicial officers, justice partners and the public. (California Rule of Court, Rule 10.603). Furthermore, contagion has been upheld as a basis for a good cause finding in cases where the threat of disease was less than what is currently faced here, and specifically with respect to the coronavirus. (Stanley v. Superior Court (2020) 50 Cal. App. 5th 164; People v. Tucker (2011) 196 Cal. App. 4th 1313.)

II.

ORDER

By this finding of good cause, for the reasons stated herein, this court orders all Criminal Division jury trials currently set to proceed to trial between January 11, 2021, and January 24, 2021, be continued to the date of January 25, 2021, or a date thereafter within 30 days of the vacated date. By this order, the Clerk of the Court is directed to file a copy of this order in each affected case and circulate the same by way of email to the District Attorney and Defense Counsel and to send other notice as required.

Date: 1/7/2021

Clare Keithley

Hon. Clare Keithley
Presiding Judge