

VALERIE WYANT, CLERK
2017 APR 20 PM 2:51

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

Dan R. Slayton, Judge
Division 2
Date: April 13, 2017

Valerie Wyant, Clerk
Marie Jones, Deputy Clerk
Steve Garwood, Court Reporter

MINUTE ENTRY

THE STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. CR 2015-00862
)	
STEVEN EDWARD JONES,)	
)	
Defendant.)	

ACTION: JURY TRIAL – DAY FIVE

APPEARANCES: Ammon Barker and Bryan Shea, Deputy County Attorneys, are present, appearing on behalf of the State. The Defendant is present and appearing out of custody with Counsel, Joshua Davidson and Burges McCowan. Sergeant Mike O'Hagan, Investigating Officer, is present.

8:30 a.m. Court is in session. The Defendant, Counsel and the investigating officer are present, outside the presence of the Jury.

Over the break, the Court reviewed the course of the Trial. The Court wants to make sure that the attorneys understood the scope of the Court's rulings on admissible and inadmissible evidence. A document (case law) is now passed out to Counsel.

The Court makes it clear that It is not ascribing any improper motive or purpose in the conduct of this Trial.

The Court feels that Granados is instructive. The Court asks the attorneys to turn to Page 8, and the Court proceeds to reads headnotes 17 through 21 into the record.

State vs. Steven Edward Jones
Cause No. CR 2015-00862
April 13, 2017

In order to make sure that there is no accidental or inadvertent admission of evidence, which has been previously ruled inadmissible, or the same or similar type of evidence that has previously ruled inadmissible:

IT IS ORDERED that as to any exhibit, not previously admitted, that will be brought out through a Witness, those exhibits will be shown to the Court, prior to the Witness' testimony. The Court will review those exhibits and make determinations as to the admissibility, the inadmissibility or the modification of that evidence.

FURTHER ORDERED, from this point forward, with regard to the picture of Mr. Acevedos that there be absolutely no reference at all to the blood on his hands, while attending to the wounds of Mr. Brough. It is not to be mentioned before the Jury and it will not be mentioned by any other Witness.

Upon Court inquiry, Counsel has no question as to this Court's obligation, the Court's Authority or the Court's Rulings and there are no questions from Counsel as to this.

Upon the State's (Ammon Barker) inquiry, the Court has reviewed the Motion regarding the photographs.

Defense Counsel (Joshua Davidson) advises that he is of the understanding that the first officer the State will call today is Officer Park.

Defense Counsel (Joshua Davidson) presents statements regarding Officer Park's testimony and the inadmissibility of some out of Court statements to which he was a witness and the Court took part of it under advisement. Said Counsel would like the Court to give some guidance as to the State's Motion.

The Court advises it previously ruled, the State can correct the Court if the Court is wrong, and it was made on the record. There are three (3) "Why" statements that the Defendant made in the car and then a statement to the effect, "I thought I was going to die." The Court had ruled that this would be considered as self-serving hearsay and could not be brought out through a third party.

The State agrees and there were two videos the Court reviewed, one was the body camera of Officer Park, when he first interacted with the Defendant and then the one in the car, the dash cam. As to the dash cam, those were statements made in the car. Regarding the initial interaction, the State believes the Court previously ruled they were inadmissible statements that the Defendant made partly because they were irrelevant and then, otherwise

State vs. Steven Edward Jones
Cause No. CR 2015-00862
April 13, 2017

they didn't fall within the excited utterance exception. The only statement that the State will be asking is about the first statement the Defendant made identifying himself as the shooter. The Court had ruled nothing else to come in.

Defense Counsel (Joshua Davidson) advises there are some other contemporaneous statements and at the same time said Counsel believes there will be a 106 issue. Not statements made by the Defendant while the Defendant was being placed in the car, but statements made while the Defendant was taken into custody and searched by Officer Park that he believes the State will elicit.

Upon Court inquiry, Defense Counsel (Joshua Davidson) puts the statements on the record as:

- to relevancy
- the way the statements will be interpreted,
- fear and the Defendant's concern for the wellbeing for the individuals shot
- Half-truths being presented to the Jury by the State

The Court presents statements and has ruled previously about the aftermath of what occurred. While it may be probative, the prejudicial value substantially outweighs the probative value due to the emotions:

- because of the heightened emotional state,
- because of the power of the video, and
- because it may not be even probative.

The statements made by the Defendant at the time of his arrest, really go to the aftermath. **IT IS ORDERED** that the Court provisionally rules that the preceding statements will not be brought out. However, the Court could anticipate a matter in which perhaps the Defendant's mental state is called into question, the intentionality so on and so forth in terms of something that may be brought out; however, the Court is not going to allow those statements to come in, because those are statements that were made afterwards, they were statements of remorse but they are not statements that should really be considered by the Jury, at this time, in the issues that they have to decide. Again, these statements are not to be brought out by the officer.

The Court is now ready to proceed with the Jury.

For the record, the case law passed out read into the record by the Court, is the State of Arizona vs. Crispin Granados.

8:44 a.m. The Jury is now present.

State vs. Steven Edward Jones
Cause No. CR 2015-00862
April 13, 2017

Defense Counsel (Joshua Davidson) provides Defendant's Exhs. #363 through #369 to be marked for purposes of identification.

The State (Ammon Barker) calls Officer Keegan Park to the stand. The Witness is sworn and testifies on direct examination.

The State (Ammon Barker) asks that the record reflect that the Witness has identified the Defendant and **IT IS SO GRANTED.**

The Witness continues to testify on direct examination. At times during cross examination, the Witness testifies as Exh. #316 is published.

As there is an objection to a line of questioning by Defense Counsel (Joshua Davidson), Court and Counsel sidebar on the record.

The question is re-asked for the Witness.

There is another objection, and at the State's (Ammon Barker) request, Court and Counsel hold a bench conference off the record.

The Witness continues to testify on cross examination by Defense Counsel (Joshua Davidson).

At the request of the State (Ammon Barker), Court and Counsel hold a bench conference off the record.

Defense Counsel (Joshua Davidson) moves to admit **Exh. #365** into evidence. There being no objection, **IT IS SO ORDERED.**

Permission is granted to publish the exhibit to the Jury.

The Witness continues to testify on cross examination by Defense Counsel (Joshua Davidson).

There is no redirect examination or Jury Questions. There being no objection, The Witness is excused.

At the request of the Court, Court and Counsel hold a bench conference off the record.

State vs. Steven Edward Jones
Cause No. CR 2015-00862
April 13, 2017

The Court advises It will take the morning recess and gives the Admonition.

9:24 a.m. Court is in recess.

9:36 a.m. Court reconvenes. The Defendant, Counsel, the investigating officer, and the Jury are present.

The State (Bryan Shea) calls Austin Contreras to the stand. The Witness testifies on direct examination. At times during direct examination, the Witness testifies as Exh. #316 is published.

The Witness continues to testify on cross examination by Defense Counsel (Burges McCowan). At times during cross examination, the Witness testifies as Exh. #316 is published.

The State (Bryan Shea) requests a bench conference off the record.

The Witness continues to testify on cross examination by Defense Counsel (Burges McCowan). At times during cross examination, the Witness testifies as Exh. #316 is published.

The Witness continues to testify on redirect examination by the State (Bryan Shea).

As there is a Jury Question, Court and Counsel review and sidebar on the record.

The Witness continues to testify on the Jury Question and follow-up examination by Defense Counsel (Burges McCowan).

There being no objection, the Witness is excused.

The Court advises It will now take the second mid-morning recess and gives the Admonition.

10:51 a.m. Court is in recess.

11:06 a.m. Court reconvenes. The Defendant, Counsel, the investigating officer, and the Jury are present.

State vs. Steven Edward Jones
Cause No. CR 2015-00862
April 13, 2017

The State (Ammon Barker) calls Jacob Mike to the stand. The Witness is sworn and testifies on direct examination.

The State (Ammon Barker) asks that the record reflect that the Witness has identified the Defendant and **IT IS SO GRANTED.**

The Witness continues to testify on direct examination.

The State (Ammon Barker) moves for the admission of **Exh. #140** into evidence. There being no objection, **IT IS SO ORDERED.**

The Witness continues to testify on direct examination. At times during direct examination, the Witness testifies as Exh. #316 and Exh. #353 are published.

The Witness continues to testify on direct examination.

The Court advises It will now take the luncheon recess and gives the Admonition.

11:57 a.m. Court is in recess.

1:32 p.m. Court reconvenes. The Defendant, Counsel, the investigating officer, and the Jury are present.

Jacob Mike, the current Witness, retakes the stand and continues to testify on cross examination by Defense Counsel (Burgess McGowan).

As there is an objection by the State, Court and Counsel hold a bench conference off the record.

The Witness continues to testify on cross examination by Defense Counsel (Burgess McCowan).

At the request of the State (Ammon Barker), Court and Counsel hold a bench conference off the record.

The Witness continues to testify on cross examination by Defense Counsel (Burgess McCowan and redirect examination by the State (Ammon Barker).

State vs. Steven Edward Jones
Cause No. CR 2015-00862
April 13, 2017

As there is a Jury Question, Court and Counsel sidebar and review on the record.

The Witness continues to testify on the Jury Question, with no follow-up examination by Counsel.

There being no objection, the Witness is excused.

The State (Ammon Barker) calls Shay McConnell to the stand. The Witness is sworn and testifies on direct examination.

The State (Ammon Barker) asks that the record reflect that the Witness has identified the Defendant and **IT IS SO GRANTED.**

The Witness continues to testify on direct examination. At times during direct examination, the Witness testifies as Exh. #316 is published.

The Court advises It will take a recess and gives the Admonition.

2:24 p.m. Court is in recess.

2:45 p.m. Court reconvenes. The Defendant, Counsel, the investigating officer, and the Jury are present.

The Witness continues to testify on cross examination by Defense Counsel (Burgess McCowan).

At the request of the Court, Court and Counsel hold a bench conference off the record.

The State (Ammon Barker) withdraws the previous question.

The Witness continues to testify on redirect examination (Ammon Barker).

As there is a Jury Question, Court and Counsel sidebar and review on the record.

The Jury Question is not asked.

There being no objection, the Witness is excused.

State vs. Steven Edward Jones
Cause No. CR 2015-00862
April 13, 2017

The State (Bryan Shea) calls Chas Jones to the stand. The Witness is sworn and testifies on direct examination. At times during direct examination, the Witness testifies as Exh. #316 is published.

The State (Bryan Shea) asks to publish Exh. #353, previously admitted, for the Witness.

Defense Counsel (Joshua Davidson) objects as it is cumulative, prejudicial, and it was the video that was filmed prior to this Witness' arrival. There has already been Leica Scan footage; it will prejudice the Jury and it is cumulative.

Court and Counsel sidebar on the record.

The objection is sustained.

At the request of the Court, Court and Counsel hold a bench conference off the record.

The Witness continues to testify on direct examination and cross examination by Defense Counsel (Joshua Davidson). Once during cross examination, the Witness testifies as Exh. #316 is published.

At the request of the State (Bryan Shea), Court and Counsel hold a bench conference off the record.

The objection is sustained and the question will be rephrased.

The Witness continues to testify on redirect examination by the State (Bryan Shea).

As there are Jury Questions, Court and Counsel sidebar and review on the record.

The Witness continues to testify on Jury Questions and follow-up examination by Defense Counsel (Joshua Davidson).

There being no objection, the Witness is excused.

The Court advises It will take the afternoon recess and gives the Admonition.

3:59 p.m. Court is in recess.

State vs. Steven Edward Jones
Cause No. CR 2015-00862
April 13, 2017

4:18 p.m. Court reconvenes. The Defendant, Counsel, the investigating officer, and the Jury are present.

The Court advises that this Trial is pretty far ahead of schedule. It will not take as long a May 5th. Counsel is moving very efficiently. There is one Witness we could put on today, but we have decided not to do that, and will begin tomorrow morning.

The Court advises It will recess for the evening and gives the Admonition.

The Court notes that there is a civil matter tomorrow morning and the Trial may start a little past 8:30 a.m.

Juror #10 is asked to remain in the courtroom.

The Jurors are excused.

At the request of Defense Counsel (Joshua Davidson), Court and Counsel hold a bench conference off the record.

IT IS ORDERED cutting the Press linefeed at this time.

4:21 p.m. The Defendant, Counsel, and the investigating officer are present, outside the presence of the Jury.

The Court advises Juror #10 that Court and Counsel understand her situation. As such, on Tuesday, Court will recess at 12 noon. Counsel will schedule witnesses accordingly.

Juror #10 is excused from the courtroom.

The State (Ammon Barker) advises that the State's Motion pertaining to the photographs has to be addressed prior to Dr. Czarnecki testifying tomorrow.

Court and Counsel review the photographs at the bench and off the record.

4:57 p.m. The Defendant, Counsel, and the investigating officer are present, outside the presence of the Jury.

The Court has been with Counsel, sidebar. The Court has heard the arguments and will allow the State and the Defense to make any further arguments that they want to on the record.

State vs. Steven Edward Jones
Cause No. CR 2015-00862
April 13, 2017

Based upon the Court's review of the photographs, **IT IS ORDERED** that the Court will allow the following photographs to be admitted into evidence: photograph Exh. 110, Mr. Brough's shirt; Exh. 113, one of the bullets removed from Mr. Brough; Exh. #120, which is a picture of Mr. Brough's back showing the location of the bullet protruding into the skin; Exh. #132, which is the stippling around the neck wound; Exh. #135, the partial upper body which shows the location of both wounds; Exh. #130, Exh. #131, Exh. #357, and Exh. #358, which show the top side and the underside of Mr. Brough's both right and left hands.

Upon Court inquiry, the State (Ammon Barker) advises the State understands the Court's rulings regarding the photographs; however, as indicated at the bench, if there is an issue raised during testimony that would require the admission of other photos, the State will ask the Court to allow it. The State notes that on that Motion, there was also a video clip that the State asked the Court to review.

The Court advises It has reviewed the clip.

The State (Ammon Barker) asks for the admission of that very short, twenty second, clip, the body camera of Officer Sapp, when he testifies.

Defense Counsel (Joshua Davidson) makes a brief record as to the Defense's objection and concerns as to Exh. #110, #Exh. #113, and Exh. #120.

The Court advises that Defense Counsel's objections are noted; however, **IT IS ORDERED** affirming the Court's rulings.

The Court advises that as to Exh. #113, the bullet, and Exh. #120, the bullet that was protruding and not breaking through is relevant as it shows the effect of a bullet that mushrooms, as opposed to one that retains its basic shape. On this basis too, Defense Counsel's objection is noted for the record.

The Court presents statements as to the twenty second clip that the Court reviewed.

Defense Counsel (Joshua Davidson) feels that it has very minimal, if any, probative value. The audio is not much different from the audio that the State sought to admit last week and the Court noted that it was some of the more prejudicial, inflammatory and emotional invoking footage that the Jury could possibly be shown. There are statements that are hearsay that will be coming in, Mr. Prado will be called as a witness in this case, there are other people talking in the background, and said Counsel just doesn't see the probative value to even be close to warranting the admission of the clip.


State vs. Steven Edward Jones
Cause No. CR 2015-00862
April 13, 2017

The Court presents statements regarding the Court's objection to the State's video last week; however, In this twenty second video the State is attempting to introduce an identification of the Defendant, through one of the young men who was shot, immediately after. It is a short video, it doesn't show any of the wounds, it doesn't show any of the blood and the Court does think that it is relevant to a state of mind with regard to Mr. Prado and to the police's understanding of who they had in custody, and who they might have been looking for; therefore, **IT IS ORDERED** that the Court will allow the twenty second clip.

Defense Counsel (Joshua Davidson) presents statements as to the admission of the twenty second clip and the testimony of the officer who took the clip.

The Court presents findings on the record and that the probative value outweighs the prejudicial value. Defense Counsel's objection is noted; however, the clip will be allowed.

5:10 p.m. Court is adjourned.


cc: Deputy County Attorney (Barker/Shea)
Burges N. McCowan, Burges McCowan, PLC, 1421 E. Thomas Rd., Phoenix, AZ 85014
Joshua Davidson, Law Offices of Joshua S. Davidson, PLC, 8110 E. Cactus Road,
Suite 100, Scottsdale, AZ 85260
Legal Defender's Office (Pearlmutter)
Div. 2