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FILED

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

STATE OF ARIZONA,

Plaintiff,

vs.

CR-2015-00862

STEVEN JONES,

Defendant.

ORIGINAL

EXCERPTS IN RE MOTION FOR MISTRIAL  
APRIL 25, 2017  
FLAGSTAFF, ARIZONA

BEFORE THE HONORABLE DAN SLAYTON, JUDGE

COURT REPORTER: STEVE L. GARWOOD, CR #50172  
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1 **APPEARANCES:**

2 **FOR THE PLAINTIFF:**

3 **AMMON BARKER, ESQUIRE**  
4 **BRYAN SHEA, ESQUIRE**

5 **FOR THE DEFENDANT:**

6 **BURGES McCOWAN, ESQUIRE**  
7 **JOSHUA S. DAVIDSON, ESQUIRE**

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**BE IT REMEMBERED** that the foregoing captioned case came on for hearing before the Honorable Dan Slayton, Judge, Coconino County Superior Court, in Division 2, on April 25, 2017, at the Coconino County Courthouse, 200 N. San Francisco Street, Flagstaff, Arizona, and the following proceedings were had:

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## P R O C E E D I N G S

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4 MR. BARKER: He's admitting right there that  
5 he did something wrong. He's not discussing that he was  
6 justified. He's not saying that what he did was correct or  
7 right. The defendant realized in that moment that he was  
8 arrested for a reason, that what he did was wrong.

9 Now, it wasn't until later, of course, when  
10 he had an audience with the police in a police station on  
11 the record that he started talking about well, these people  
12 were trying to kill me. Right. But in that moment in  
13 introspection, he knew that what he had done was wrong.  
14 Even the defendant doesn't believe he was justified.

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17 MR. DAVIDSON: Your Honor, during the course  
18 of closing arguments, the prosecution I believe in their  
19 first closing made if not a direct argument an inference or  
20 a continuation to the jury that Mr. Jones did not make any  
21 assertion or articulate any self-defense claim until after  
22 he was in a police audience or something along those lines.

23 The prosecutor knows that's not true because  
24 the prosecution had filed their motion in limine to  
25 preclude what they characterize as self-serving hearsay

1 statements that Mr. Jones made very early on when he was in  
2 police custody along the line please help me, why did they  
3 punch me, why did they chase me.

4           These are statements he made in the car long  
5 before he was transported to the police station and a  
6 police audience. I don't think it's appropriate for either  
7 side, particularly when that particular side is the one  
8 that was proponents of evidence being precluded to if not  
9 directly tell, suggest to the jury that there is evidence  
10 not there when they know it exists; they just happen to have  
11 it precluded.

12           Similarly, Judge, there was absolutely no  
13 question, answer or anything else in the record of this  
14 case by Mr. Jones' demeanor while he was testifying. And  
15 that was also argued by the State.

16           Third and most concerning, Judge, as you  
17 recall, we had a lot of discussions the past few working  
18 days about which justification instructions would be given  
19 and which ones wouldn't. The defense wanted a defensive  
20 display of a firearm instruction. The State objected to  
21 it.

22           The court didn't get it. Didn't give it.  
23 Excuse me.

24           When we discussed that, Judge, it was  
25 basically understood if not represented by the State that

1 they weren't going to be arguing or insinuating that  
2 Mr. Jones was acting outside the law or that he was  
3 breaking the law when he had the gun in his possession from  
4 the time he was at the car until the time the shooting  
5 occurred.

6 Well, that's exactly what Mr. Barker just  
7 insinuated. And I think when the court withholds an  
8 instruction that's predicated on an understanding or  
9 representation by the State that they are not going to make  
10 a certain argument, that's a problem. And so for those  
11 reasons collectively, Judge, I would ask for a mistrial.

12 THE COURT: Mr. Barker.

13 MR. BARKER: Thank you. I did not make any  
14 inference to the fact that the defendant may have made  
15 other statements. I'm talking about the first argument  
16 made by the defense. I was very specific in my wording.  
17 And know this, Judge, that I, when I talked about this with  
18 Mr. Shea, we made it very clear that the statements the  
19 defendant made to Nick Acevedo, Nick Pletke, and Deputy  
20 Libarle, I was very specific about these are the statements  
21 he made to these three people.

22 I wasn't referencing any other statement he  
23 may have made. I wasn't suggesting that he didn't make any  
24 other statements. But these statements in particular were  
25 relevant because they showed that in the very first moment,

1 at least with Nick Acevedo, the very first statement he  
2 made was I don't know.

3 And then Nick Pletke, the only statement he  
4 heard was what did I do. And Deputy Libarle consistent  
5 with the testimony was I did something wrong or nobody did  
6 anything wrong but me. So there is no suggestion beyond  
7 that what I stated in my first close.

8 Secondly, there was testimony, in fact,  
9 defense counsel knows this because he was the one doing  
10 direct of the defendant and asked him what kind of  
11 emotional state. This came out two or three different  
12 times.

13 And the defendant testified that I was crying  
14 different times or I was emotional different times or  
15 distraught at different times. The record will bear that  
16 out.

17 The third thing regarding defensive display,  
18 I was not arguing that the defendant committed a crime when  
19 he had a gun in his hand. What I'm arguing is that he  
20 reflected and he walked toward the group with the intent to  
21 hurt somebody. That's the problem.

22 So for all those reasons, it should be denied  
23 summarily. Thank you.

24 THE COURT: I am going to -- I think there is  
25 some issues that were a little bit concerning and I tried

1 to as best I could reflect on the testimony that was given.  
2 I think at this point, though, that the err, if any, did  
3 not rise to a level to grant the motion for mistrial. The  
4 motion is denied.

5 MR. DAVIDSON: Your Honor, in the  
6 alternative, would the court consider amending the jury  
7 instructions to provide the jury a defensive display  
8 justification instruction at this point?

9 MR. BARKER: Judge, again, I wasn't arguing  
10 that the defendant couldn't display a weapon. The problem  
11 is the defendant went and pointed at someone's face.  
12 That's the argument I made, not defensive display.

13 And the defendant isn't charged with  
14 displaying a weapon. There is no reason to give that  
15 instruction.

16 MR. DAVIDSON: Your Honor, when counsel flips  
17 through the instruction addressing the jury in closing  
18 argument and challenges them to find an instruction in  
19 there in that says what Mr. Jones was doing is not illegal,  
20 if that's not an insinuation, I don't know what is.

21 THE COURT: Well, I think that the defensive  
22 display of a weapon is a justification for the display of  
23 the weapon and/or perhaps and a disorderly conduct with a  
24 weapon I think in this case.

25 And I think what I heard was not that there

1 was anything wrong with Mr. Jones walking to the place  
2 where ultimately the young men were shot with a weapon but  
3 that the walking to the place with a weapon was the act of  
4 premeditation in this case.

5 My concern is that the jury may have a  
6 tendency to think that the defendant -- that they should  
7 consider that the defendant did something wrong if we give  
8 them this. It's a display justification. Even though he  
9 was not charged with anything that brought a charge for  
10 wrongful display of the weapon. So I'm going to deny the  
11 motion to submit a defensive display instruction.

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BE IT REMEMBERED that the foregoing trial took place at the time and place mentioned in the caption above; that I, STEVE L. GARWOOD, CR# 50172, an Arizona Certified Court Reporter, took down by stenographic means and digital means said trial, that the foregoing transcript of excerpts contains a true transcription of my stenographic notes and digital recording; and that I am not of counsel, related to any party, nor otherwise interested in the outcome of this action, signed this 26th day of April, 2017.

*/s/ Steve L. Garwood*  
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Steve L. Garwood, CR# 50172