

VALERIE WYANT, CLERK

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

FILED

IN AND FOR THE COUNTY OF COCONINO

Dan R. Slayton, Judge  
Division 2  
Date: April 26, 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 TWELVE  
DEFENSE MOTION FOR MISTRIAL**

**APPEARANCES:** Ammon Barker and Bryan Shea, Deputy County Attorneys, are present, appearing on behalf of the State. Counsel, Joshua Davidson and Burges McCowan are appearing telephonically on behalf of the Defendant.

10:19 a.m. Court is in session.

Upon Court inquiry, Defense Counsel (Joshua Davidson) advises that the Defendant is not present with Counsel; however, the Defendant is in contact with Counsel.

The Court advises that at the close of yesterday's Court hearing, Defense Counsel (Joshua Davidson) made an objection and requested a Mistrial based on a statement that the State (Ammon Barker) had made in closing arguments. The Court denied that Motion; however, the Court asked the court reporter to go through the record and to find the area that the Court believes Counsel Davidson was referring to.

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Just so the Parties understand how the Court is viewing this, there was in fact a Motion in Limine that was brought by the Prosecution precluding self serving hearsay statements. There were three (3) statements, that the Court calls the "Why" statements made in the back of the officer's patrol car and another statement "I thought I was going to die." This is a fairly precise resuscitation of the statements. The statements were made in the back of the patrol car just minutes after the Defendant was arrested. The Motion in Limine was granted and the Court believes it was absolutely accurate, it is black letter law, that self serving statements not fall under a hearsay exception and the Court precluded those statements.

Also, just before the Defendant was arrested, the Court believes that it was Deputy Libarle who indicated, or it might have been someone else, that the State (Ammon Barker) was referencing the Defendant's statement to the effect of "It's me. I'm the only one who did anything wrong." This is where the Court picks up in the closing argument by the State (Ammon Barker):

*"He is admitting right there that he did something wrong. He is not discussing that he was justified. He is not saying that what he did was correct or right. The Defendant realized in that moment that he was arrested for a reason that what he did was wrong. Now, It wasn't until later, of course, when he had an audience with the police in a police station on the record that he started talking about well these people were trying to kill me. The evidence was that he, Mr. Jones, was interviewed for approximately eight (8) hours in this case. But the statement now it wasn't until later, of course, when he had an audience with the police in a police station on the record that he started talking about, "well, these people are trying to kill me" is patently inaccurate. It was, he made that statement minutes after he was arrested and put into the back of the patrol card."*

As the State (Ammon Barker) is shaking his head, the Court inquires as to why he is doing so. The State clarifies that the Defendant did not say that they were trying to kill me. What he told the police at the station was that people were saying that they were going to kill me. That is the thing the Defendant never said that they were going to kill him. That is the distinction and that is why the State said he was shaking his head.

Defense Counsel (Joshua Davidson) renews the Defendant's Motion for a Mistrial. It is a gross misstatement and he does not know how the State can possibly play ignorance on this when they were the proponent of having the statement precluded in the first place. The Defendant's statement in the patrol car cannot be reconciled with the State's statements in their closing argument. Said Counsel feels that it is gross and intentional prosecutorial misconduct and he again renews Defendant's Motion for a Mistrial.

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The State (Ammon Barker) presents additional argument and asks that the Court deny the Defendant's Motion.

The Court advises that the whole aspect about the Defendant's defense for which he is on Trial for First Degree Murder is self-defense. The Court's concern is that the Jury is left with the impression that the Defendant never made any statements that could legitimately be argued as giving him a justification for the actions that he took on that night and leaving the Jury with the improper conclusion that he didn't make any of those statements until he was interviewed somewhere in that eight (8) hour long interview. This is the Court's concern and that is the argument that was made. The Jury doesn't know that distinction, because they don't know that he made three (3) other statements, one of them was in fact using the word kill. As this goes directly to the Defendant's self-defense and the claims that he is making of self-defense, and the Court does not want the Jury left with the impression that he did not make any statements that could be reasonably interpreted by them as or being reasonably argued as claims of self-defense immediately after the incident. The entire encounter has now moved to the statements that the Defendant made at the eight (8) hour interview. The State has taken the statements the Defendant made and put them way beyond the statements he made in the patrol car by the State's argument.

The Court does not want the Jury to be left with the impression that the only statements the Defendant made regarding self-defense were made at the police station. It is not accurate.

The Court wants to give both the Defense and the State an opportunity to weigh in on this and present their arguments. The Court is going to Order the Jury to adjourn for the day, to cease deliberations and then the Court wants the attorneys to give this Court their best memorandum on how this issue should be handled and how the Court should rule. The Court advises It will not necessarily grant a Mistrial, so the Court wants options as to whether or not the Jury should be informed:

- by a stipulation,
- the Jury should be called back in and allowed to listen to those brief statements
- should the be allowed further closing argument.


Based on that, the Court is open to any options and Court will reconvene tomorrow morning at 9:00 a.m.

A copy of the transcript that the Court referred to today will be provided to Counsel.

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**IT IS ORDERED** a continuation of today's hearing, Oral Argument for Mistrial, will be set tomorrow at 9:00 a.m. in Division 2. Defense Counsel may appear telephonically; however, the Court advises there are inherent risks to appearing telephonically. As this is a significant issue, it would be best if Counsel appeared in person.

10:33 a.m. Court is adjourned.

  
cc: Deputy County Attorney (Barker/Shea)  
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Div. 2