

VALERIE WYANT, CLERK
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

Dan R. Slayton, Judge
Division 2
Date: May 2, 2017

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

MINUTE ENTRY

THE STATE OF ARIZONA,)

Plaintiff,)

vs.)

STEVEN EDWARD JONES,)

Defendant.)

Cause No. CR 2015-00862

**ACTION: JURY TRIAL – DAY FIFTEEN
CONTINUATION OF JURY DELIBERATIONS/
JURY QUESTIONS / DECLARATION OF MISTRIAL**

APPEARANCES: Ammon Barker and Bryan Shea, Deputy County Attorneys, are present, appearing telephonically on behalf of the State. Counsel, Joshua Davidson, is present on behalf of the Defense. The Defendant is not present.

10:40 a.m. Court is in session.

Defense Counsel (Joshua Davidson) advises that Counsel McCowan is not present telephonically, they have spoken earlier and the Defendant's presence is waived.

The Court advises that the Jury has asked this question:

"In the event that we cannot come to a consensus of guilty or not guilty on all counts, what shall we do?"

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In reading over this question, one thing came to the Court's mind. The Court would like to clarify with the Jury whether or not they have reached verdicts on some or any of the counts. The Court is not exactly certain on how to interpret this question and believes this needs to be clarified.

The Court proposes to simply write back on the question, "*Has the Jury reached a verdict on any counts?*" Depending on the Jury's answer, the Court will proceed from there.

The State (Ammon Barker) is in agreement.

Defense Counsel (Joshua Davidson) presents statements and suggests that the Court approach it from a different angle. Asking the Jury if they have reached verdicts on any of the counts may not go far enough. They should be asked if they can reach verdicts on one or more counts and, if so, they should go ahead and do that.

The Court would like an initial clarification if the Jury has reached a verdict on any of the counts. If they say "no" then the Court will proceed to advise them of the Impasse Instruction and to review the other instructions. If they can't reach a consensus on First Degree Murder, they should then proceed to Second Degree Murder and then right down the line.

Again, the Court wants to know if they have reached a verdict on any of the counts. If they have reached a verdict on some counts, then the Court will take those verdicts and the Court will ask the Jury to go back and use the Impasse Instruction to see if further deliberations would help them to reach verdicts on the ones they are still deciding.

Again, on the Jury's question, the Court will write: "*Has the Jury reached a verdict on any counts?*" The Court needs Counsel to be immediately available for the Jury's response and then the Court will proceed from there.

While waiting for the Jury's response, the Court addresses what two Court employees overheard two Jurors apparently talking about the case. The Court proceeds to read the two memos from Court employees into the record as to what they heard and what was observed by those two individuals.

Cheryle Hartman, the bailiff, relays her discussion with the two jurors in this case.

The Court advises It can give the Jurors a reminder, the Admonition not to talk about the case and that they are not to discuss the case until everyone is present in the Jury Deliberation Room.

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The Court advises the bailiff has just come back with a response to "*Has the Jury reached a verdict on any counts?*" Their answer is "*No.*"

The State (Ammon Barker) advises that Standard Instruction #42, the Impasse Instruction, should now be given to the Jury.

The Court also wants to address an issue with Counsel that two of the Jurors are apparently or possibly talking about the case outside the presence of the rest of the Jury.

The Court has the 2010 bench book and the 2016 Impasse Instruction. The Court notes a paragraph in the 2010 bench book, that is not contained in the 2016 Impasse Instruction, and reads it into the record.

Defense Counsel (Joshua Davidson) presents statements regarding the 2016 RAJI Impasse instruction 42.

If Counsel is comfortable with the Impasse Instruction, the Court will print off twelve copies, bring the Jury back in and read the instruction to them.

Court and Counsel confer on how to proceed.

The Court advises that, if the Jury is discharged, Defense Counsel should be present. If the Court sends back the Jury Impasse Instruction and gets a solid "No" from the foreperson, Counsel need to be present.

Court and Counsel confer as to what to tell the Jurors.

The clerk has informed the Court that the Jurors have given all the exhibits back to her. The Court will await the Jury's answer and let Counsel know as to what their response is.

The Court reads the Impasse Instruction into the record.

11:05 a.m. Court is adjourned.

1:31 p.m. On the record and in Chambers. The Court, the Court Reporter and the Clerk are present.

Juror No. 12 is now present

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First of all, the Court notes that It is calling the Juror by number for confidentiality purposes and to protect the Juror's identity. The Court has spoken to both the prosecutor and the defense and they have waived their presence for this proceeding.

The Court thanks the Juror for letting Court and Counsel know about this text/note. Even though the Juror knows the person who sent the text or note, the Juror advises that the note did not exert any influence on this juror and this will not influence this juror's decision. She will be able to stand by her convictions and beliefs and not be affected by this text; this will not influence any of her views.

The Juror leaves Chambers.

For purposes of the record, the Court reads the note from Juror No. 12 into the record as follows:

"I just wanted you to know I received a text (I did not respond) that said "Hung Jury?"

Again, for purposes of the record and with the agreement of Counsel, their presence was waived by the Court and the Court proceeded to interview Juror No. 12. The Juror did verbally state what the text was to the other Jurors.

1:35 p.m. Off the record and in Chambers.

2:02 p.m. In Chambers and on the record. The State (Ammon Barker and Bryan Shea) are present on behalf of the State. Defense Counsel (Joshua Davidson and Burges McCowan) are present on behalf of the Defendant, who is not present at this time.

The Court advises Counsel have been made aware of an outside message to one of the Jurors during Jury Deliberations. Each Juror will be brought in and the Court advises how It will proceed according to the answer that the individual Juror gives.

The Jurors are brought into Chambers in the following order: Juror. No. 1, Juror. No. 2, Juror No. 3, Juror No. 4, Juror No. 5, Juror No. 6, Juror No. 7, Juror No. 8, Juror No. 9, Juror No. 10, Juror No. 12, and Juror No. 13.

As to each Juror:

- For confidentiality purposes they are referred to by number
- They are asked if they aware of a text message that another Juror received

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- If they are aware of the text, do they know how it happened and what was said
- Can they still be a fair and impartial juror
- Can they still hold on to their convictions, as to what the evidence showed or didn't show
- They are not to continue with deliberations until all Jurors are present.
- When they return to the Jury Deliberation Room, they are not to discuss anything about these questions with their fellow jurors.

It should be noted that there was no follow-up by Counsel.

Prior to the questioning of Juror No. 3 in Chambers, the Defendant was present in Chambers.

2:51 p.m. Questioning of the individual jurors concludes in Chambers.

4:07 p.m. Court reconvenes. The Defendant, Counsel and the Jury are present.

The Court has received the following note from the Jury Foreperson through the bailiff.

"We do not feel that additional deliberations or assistance will help us reach a verdict."

The Court addresses the Jury Foreperson and advises that the Court has been informed that the Jury has indicated that they felt that additional deliberations or assistance will not help the Jury in reaching a verdict. The Jury Foreperson confirms that this is correct.

The Court wants to make sure that it is placed on the record that, after the Jury was given the additional instruction, they did in fact go back, ask for the exhibits and did spend a few hours reviewing them again. The Jury Foreperson again confirms that this is correct; therefore,

IT IS ORDERED declaring a Mistrial in this case. The Court asks the attorneys to waive the sixty (60) day rule. The Court realizes that resetting this case has to be done in sixty days and the Court also understands that getting all of the witnesses back together may take some more time. Now that the Court has three full weeks beginning the first of August, the Court would like to set the Trial for that day understanding that it will probably be subject to a continuation.

Defense Counsel (Joshua Davidson) waives time on behalf of the Defendant and, with the Court's comments regarding possible rescheduling and possible conflicts, that should work.

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The State (Ammon Barker) is in agreement.

The Court addresses the members of the Jury and that they did not fail. They stuck to the courage of their convictions and honored the Oath they took as Jurors.

The Jurors are formally discharged, the Admonition is lifted and the Jurors are free to talk or not talk to anyone they wish to regarding this Trial.

The Jury is profusely thanked for their service by the Court.

4:11 p.m. The Defendant and Counsel are present, outside the presence of the Jury.

IT IS ORDERED Jury Selection shall begin August 1, 2017 at 8:30 a.m. in Division 2, before the Honorable Dan R. Slayton.


IT IS ORDERED affirming the Defendant's current conditions of release and they shall remain the same.

IT IS ORDERED a Status Conference will be set sometime in June, 2017 by minute entry.

Upon Court inquiry, nothing further from Counsel.

4:11 p.m. Court is adjourned.

IT IS ORDERED setting a **Status Conference** on **June 28, 2017, at 4:30 p.m. in Division 2, before the Honorable Dan R. Slayton.**



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