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2017 MAY -2 PM 2:52  
FILED

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

Dan R. Slayton, Judge  
Division 2  
Date: April 27, 2017

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

MINUTE ENTRY

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

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**ACTION: JURY TRIAL – DAY THIRTEEN/  
ORAL ARGUMENT REGARDING DEFENSE MOTION FOR MISTRIAL/  
RESUMPTION OF JURY DELIBERATIONS**

**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.

8:53 a.m. Court is in session. The Defendant, Counsel and the investigating officer are present, outside the presence of the Jury.

The Court notes It has received and read the Memorandums. The Court advises It will play for the Parties, for purposes of the record, the DVD that contains the Defendant's statements and wants to make sure that Counsel knows precisely what the statements are, what the Court is looking at and what the Court is considering in this case.

Upon Court inquiry, Counsel waive the reporting by the court reporter.

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The Court asks that the CD, which was the CD that was submitted with the Motion to Preclude Self-Serving Hearsay Statements, be marked and admitted into evidence for purposes of the record. The Parties have no objection and **IT IS SO ORDERED**. The Clerk marks the exhibit as **Exh. #1**.

The Court proceeds to play three excerpts from the DVD. As the third entry is very soft, Court and Counsel approach to listen.

At the request of Defense Counsel (Joshua Davidson), the second excerpt is replayed.

For the record, those statements came at approximately 730 to 750. The next set of statements come at approximately twenty-three minutes and fifty seconds and the statement in the patrol car comes around one hour twelve minutes and thirty-seven seconds.

Defense Counsel (Joshua Davidson) presents additional argument. If a Mistrial in this matter is not granted, said Counsel thinks that the appropriate remedy is contained in case law from the 9<sup>th</sup> Circuit, the Robinson Case, and that the Robinson case parallels this case quite closely. Said Counsel suggests that the Jury be allowed to hear this tape and Chas Jones statements; this would be a fair remedy.

The State (Bryan Shea) presents oral argument on how to resolve this issue.

The Court relays what the Court advised the Jury when It suspended deliberations yesterday.

The State (Bryan Shea) continues with oral argument as to:

- the Defendant's Motion for a Mistrial,
- the Why Statements, which are self-serving, and
- the statements of Chas Jones.

The Court advises the State that It has already stated what statements the Court is considering.

The State (Bryan Shea) continues with oral argument.

The Court advises It has read the briefs and does not find that the State (Ammon Barker) intentionally committed misconduct; therefore, the Court is not going to grant the Motion for Mistrial based on prosecutorial misconduct. Again, the Court believes it was an inadvertent statement by the State.

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The State (Bryan Shea) continues with oral argument.

Defense Counsel (Joshua Davidson) presents rebuttal argument.

**IT IS ORDERED *denying*** the Defendant's Motion for a Mistrial. The Court does not find that the State (Ammon Barker) intentionally, with any kind of malice or calculation deliberately or through some slight of hand, tried to mislead the Jury in this case. The Court advises that the context is what the Court is concentrating on. The Court advises that both Parties were provided the excerpt of the court reporter's transcript and proceeds to read from page 5, line 23, part of the State's closing argument; those statements are what the Court is concentrating on. There are self-defense claims by the Defendant that could be legitimately argued as self-defense.

The Defendant's self-defense claim was put forward to the Jury in such a way that it appears that the first time he raises a self-defense claim sometime in that eight (8) hour interview with the police; however, the Jury does not know, that prior to that, within twenty (20) minutes of that and in the police car, he was making statements that could have legitimately been argued, but for this Court's ruling that those statements were self-serving hearsay.

The Court is proposing a curative instruction, a copy of which is provided to Counsel. The Court will give Counsel time to make their edits. The Court proceeds to read the curative instruction into the record.

9:38 a.m. Court is in recess.

9:48 a.m. Court reconvenes. All Parties are present.

As to the curative instruction, Defense Counsel (Joshua Davidson) provides recommendations on the record.

The Court and Defense Counsel confer.

As to the issue of the DVD and the impact, the Court does not want this to become nor does the Court think any Trial should become a battle of videos. Especially, where the emotional impact of those videos is so great that one feels the emotion of those statements and what is portrayed in the video. Such that, rather than the Jury making decisions based on facts, testimony, evidence and issues of credibility, it becomes a battle of which video portrays the most emotional power. The Court has let into evidence two slips and stands by It's ruling to allow those two clips and the Court's ruling to disallow the playing of a thirteen (13) minute

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portion of what happened that the Prosecution sought to introduce. **IT IS ORDERED** the Court will not allow the Jury to hear the statements from the DVD; however, the Court feels that the Jury should be informed as to the Defendant's statements, but not the playing of said statements.

The State (Bryan Shea) and Defense Counsel (Joshua Davidson) present recommendations and changes to the Court's proposed curative instruction.

The Court reads into the record what the Court will read to the Jury.


Defense Counsel (Joshua Davidson) inquires if the curative instruction will be in written form and given to the Jurors.

The Court advises that the instruction will not be provided in written form. As such, Defense Counsel briefly suggests that the Jurors have their notebooks available to take notes of the instruction. The Court does not have time to respond, as the Jury is now present.

10:14 a.m. The Jury is now present.

The Court reads the curative instruction to the Jury.

10:15 a.m. Court is adjourned.

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