

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

FILED
DATE: 9-22-11
408 O'Clock P.M.
JEANNE HICKS, CLERK
BY: RHONDI HAGEN
Deputy

DIVISION PRO TEM B

JEANNE HICKS, CLERK

HON. WARREN R. DARROW

BY: R. Hagen, Deputy Clerk

CASE NO. V1300CR201080049

DATE: April 22, 2011

TITLE:

STATE OF ARIZONA,

COUNSEL:

Yavapai County Attorney

By Sheila Polk

Bill Hughes

(Via OnBase)

(Plaintiff)

(For Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly

(Via Electronic Mail)

(For Defendant)

(Defendant)

and

Luis Li/Brad Brian/Truc Do/Miriam Seifter

MUNGER TOLLES & OLSON LLP

(Via Electronic Mail)

(For Defendant *Pro Hac Vice*)

HEARING ON:

JURY TRIAL – DAY 32

NATURE OF PROCEEDINGS

COURT REPORTER

Mina Hunt

START TIME: 8:32 a.m.

APPEARANCES:

Sheila Polk, Counsel for State

Bill Hughes, Co-Counsel for State

Detective Ross Diskin, Case Agent

James Arthur Ray, Defendant

Tom Kelly, Counsel for Defendant

Luis Li, *Pro Hac Vice* Counsel For Defendant

Truc Do, *Pro Hac Vice* Counsel For Defendant

Miriam Seifter, *Pro Hac Vice* Counsel For Defendant

The Court states its **rulings** on pending issues as follows:

With regard to Mr. Hamilton, the question about comparison of sweat lodges will not be permitted on direct. In allowing comparison testimony and prior sweat lodge testimony with regard to causation, the Court perceived what appeared to be common sense inference or interpretation of circumstantial evidence. It would indicate this: if there was a suggestion that somehow there was poison in the material or the material was a problem, then that would show up in other sweat lodges. Therefore, by probability, if other sweat lodges do not have any kind of heat-related issues, but Mr. Ray's sweat lodges do, then the inference there is that there cannot be poisons or toxins within these materials. The issue of causation is now far more complex and the Court will not permit further testimony based on the circumstantial evidence that has been presented so far. The Court will not strike the testimony that has been admitted up to this point. The Court believes the testimony that has been admitted to date on these subjects, comparison / prior sweat lodges, is permissible on other grounds.

The Court addresses Defense Counsel with regard to Mr. Hamilton and states that if the door is opened on these various matters, that is what happens. Counsel must be aware that if the door is opened for either of the Hamiltons to discuss prior sweat lodges, then that is what will happen.

With regard to both of the Hamiltons, there will be no cross examination regarding tax matters as it is not appropriate under Rules 608 and 403.

With regard to Mrs. Hamilton, there will not be a discussion or testimony regarding the Daniel P matter. The Court reiterates this may be discussed or testimony may be taken about this if the door is opened.

The Court emphasizes that there have been hours of testimony regarding prior sweat lodges in '07 and '08, about comparisons, and it is cumulative and it is time to look at Rule 611 considerations.

Discussion ensues regarding clarification of the Court's above rulings. The Court advises that testimony regarding general background is, of course, permitted. Discussion continues.

~~~Recess~~~

At 9:17 a.m. the trial resumes with all previously appearing parties and the Jury present.

Michael Hamilton, previously sworn, takes the witness stand and testifies.

The Court and Counsel conduct a sidebar discussion out of the presence of the Jury on the record.

Testimony continues. Exhibit 587 is offered. The Court and Counsel conduct a sidebar discussion out of the presence of the Jury on the record.

Testimony continues. Exhibit 587 is offered. There being an objection by Counsel for the State, IT IS ORDERED sustaining the objection and Exhibit 587 is not admitted.

The witness and the Jury are admonished and excused for a recess and exit the courtroom.

The Court addresses and instructs Counsel regarding the issues discussed at bench conferences held during testimony.

Discussion and argument ensues regarding Exhibit 587. The Court will review the Exhibit during the recess.

~~~Recess~~~

At 10:51 a.m. the trial resumes with all previously appearing parties present. The Jury is not present.

The Court reviewed Exhibit 587 during the recess. Counsel present further argument regarding the State's objection to the exhibit being admitted into evidence. The Court **finds** that there is no foundation for the admittance of Exhibit 587.

At 11:00 a.m. the Jury enters the courtroom and trial proceeds.

Michael Hamilton resumes the witness stand and testifies further.

Exhibits 155, 182, 185, 207, 216, 218, 221, 400, 405, 409, and 448 through 485 are offered and admitted into evidence.

Exhibit 905 is marked.

The witness and the Jury are admonished and excused for the noon recess.

~~~Noon Recess~~~

At 1:27 p.m. the trial resumes with all previously appearing parties and the Jury present.

Michael Hamilton resumes the witness stand and testifies further.

Exhibits 546, 548 and 550 are offered and admitted into evidence without objection.

The Jury and the witness are admonished, excused for a recess and leave the courtroom.

The Court and Counsel discuss the State's objection to the form of a question posed to the witness. The Court permits the question.

~~~Recess~~~

At 2:51 p.m. the trial resumes with all previously appearing parties and the Jury present.

Michael Hamilton resumes the witness stand and testifies further.

Exhibits 882 and 884 are offered and admitted into evidence without objection.

The Court and Counsel conduct sidebar discussions out of the presence of the Jury on the record.

Exhibit 890 is offered and admitted into evidence pursuant to stipulation of Counsel.

The Jury is admonished, excused for the weekend and leaves the courtroom. The witness is reminded of the rule of exclusion of witnesses and excused for the weekend.

The Court has received a note from a Juror and provides the note to the Clerk for filing.

The Court clarifies for the record that the excerpt played for the Jury was from Exhibit 660. Discussion ensues regarding playing excerpts of un-admitted exhibits. Defense Counsel agrees to provide a written list of excerpts that have been played during Trial. Playing of excerpts of un-admitted exhibits will be permitted pursuant to stipulations made by Counsel.

The Court stands adjourned for the day.

END TIME: 4:08 p.m.

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)
Stone & Magnanini, Co-Counsel Brown Family (e)
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)
Division PTB (e)
Victim Services (e)
Court Administration
Customer Service Supervisor, Verde