

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

FILED
DATE: March 1, 2022
5:00 O'Clock P.M.
DONNA MCQUALITY, CLERK
BY: R.Burns
Deputy

DIVISION: PTA
HON. DEBRA R. PHELAN
CASE NO. P1300CR201600476

DONNA MCQUALITY, CLERK
By: R.Burns, Deputy Clerk
DATE: March 1, 2022

TITLE:

COUNSEL:

STATE OF ARIZONA,

(Plaintiff)

vs.

Ethan Wolfinger / Casi Harris
Yavapai County Attorney's Office (e)
(For Plaintiff)

ANTHONY JAMES RICHARDS,

(Defendant)

Tyrone Mitchell
Tyrone Mitchell, PC (e)
(For Defendant)

TIME SET FOR:
JURY TRIAL DAY 7

NATURE OF PROCEEDINGS

COURT REPORTER
LISA CHANEY – AM /
MINA HUNT - PM

START TIME: 9:02 a.m.

APPEARANCES: Ethan Wolfinger, Counsel for State
Casi Harris, Counsel for State
Det. John McDormett, Case Agent
Anthony Richards, Defendant
Tyrone Mitchell, Counsel for Defendant

Lisa Chaney is the Court Reporter.

The Court reconvenes with Counsel and Defendant present, outside the presence of the Jury Panel.

The Court informs the parties that several members of the Jury Panel arrived early to review their notes in the Division PTA Jury Room.

At 9:04 a.m., the Jury Panel enters the Courtroom.

The Court informs the Jury Panel that Juror #12 was excused from this Trial.

Having been previously administered the oath, Det. John McDormett resumes with testimony.

Counsel for Defendant moves for the marking of Exhibit 308.

Counsel for Defendant publishes Exhibits 308, 101, 102 and 103 to the witness.

Counsel for Defendant moves for the marking of Exhibit 309. Exhibit 309 is marked and published to the witness.

The Court admonishes the Jury Panel and they are instructed to return to the Jury Assembly Room in 10 minutes. The Jury Panel is excused and exits the Courtroom.

At 10:00 a.m., the Court stands at recess.

~*~*~* **RECESS** *~*~*~

At 10:13 a.m., the Court reconvenes with Counsel, Defendant and Jury Panel present.

Det. John McDormett resumes with testimony.

Counsel for Defendant moves for the marking of Exhibits 310 and 311. Exhibits 310 and 311 are marked and published to the witness.

Counsel for State publishes Exhibit 308 to the witness.

Having been previously admitted, Counsel for State publishes Exhibits 209, 253, 113 to the witness and Jury Panel.

The Jury Panel presents questions to the Court for the witness.

The Court and Counsel conduct a sidebar on the record.

The Court directs juror questions to the witness.

Counsel for Defendant presents follow up to the Jury Panel questions.

Counsel for Defendant publishes Exhibit 308 to the witness.

Counsel for State presents follow up to the Jury Panel questions.

Having been previously admitted, Counsel for State publishes Exhibit 113 to the witness and Jury Panel.

Counsel for Defendant publishes Exhibit 311 to the witness.

The Jury Panel presents additional questions to the Court for the witness.

The Court and Counsel conduct a sidebar on the record.

The Court directs juror questions to the witness.

Counsel for Defendant presents follow up to the Jury Panel questions.

The witness is excused and steps down.

The State rests.

The Court admonishes the Jury Panel and they are instructed to return to the Jury Assembly Room in 10 minutes. The Jury Panel is excused and exits the Courtroom.

The Court and Counsel conduct a sidebar on the record.

Counsel for Defendant reserves the Rule 20 Motion until the Defendant decides whether or not he will testify.

The Defendant informs the Court he will not testify in Court.

At 11:35 a.m., the Court stands at recess.

~*~*~*~* **RECESS** *~*~*~*~*

At 11:45 a.m., the Court reconvenes with Counsel, Defendant and Jury Panel present.

The Defense rests.

The Court admonishes the Jury Panel and they are instructed to return to the Jury Assembly Room at 1:30 p.m. The Jury Panel is excused and exits the Courtroom.

Counsel for Defendant presents a Rule 20 Motion on all Counts, specifically Count 1 that the State has failed to meet its burden, has failed to show the premeditation with regards to 1st Degree Murder and presents argument requesting the Court grant a directed verdict as to all counts.

Counsel for State presents argument on a premeditation charge and all other Counts.

Counsel for Defendant presents rebuttal argument and requests the Court direct judgment for the Defendant under Rule 20.

Having heard the evidence presented in this case, the Court *denies* the Rule 20 Motion. As to all Counts the Court believes all evidence presented thus far contains at least substantial evidence to overcome the Motion for Rule 20.

The *Motion to Reconsider regarding State's Intent to Use Statements of Glen Croshaw* is *moot*.

The Motion in Limine to Preclude Testimony Regarding Other Cases and/or Character Evidence is *moot*.

The remaining Motion is the *Request for a Willits Instruction regarding Lost Evidence*.

Counsel for Defendant presents argument and moves for a Willits Instruction in regards to basis 1 and 6, basis 2 through 5 are withdrawn.

Counsel for State presents argument.

With regards to the Willits Instruction, the Defendant would need to show that the alleged evidence has a tendency to exonerate him and he has suffered actual prejudice. The Defendant has failed to show that the alleged evidence has a tendency or would have a tendency to exonerate him and does not find prejudice has resulted.

The Request for the Willits Instruction for Final Jury Instruction is *denied*.

Counsel for Defendant requests the Court not provide a lesser included and presents argument.

Counsel for State presents argument and believes 2nd Degree Murder is appropriate.

The Court believes based on the evidence, particularly the testimony of Diana Jensen and *finds* there is evidence to support a 2nd Degree Murder instruction. The Court *grants* the State's request and will be added to the Final Jury Instructions.

Counsel for Defendant requests an Instruction for Manslaughter and Criminal Negligence be included and presents argument.

Counsel for State objects and presents argument.

Counsel for Defendant presents rebuttal argument.

The Court is not inclined to add the Manslaughter and Criminal Negligence and will consider the option.

At 12:09 p.m., the Court stands at recess.

~*~*~* **RECESS** *~*~*~

At 1:25 p.m., the Court reconvenes with Counsel and Defendant present, outside the presence of the Jury Panel.

Mina Hunt is the Court Reporter.

With regard to the Defense's Request for Manslaughter and Negligent Homicide, the Court notes there is not evidence to support an instruction of Manslaughter or Negligent Homicide. There is evidence to support an intentional killing that lacks premeditation, 2nd Degree Murder.

Counsel for Defendant presents argument.

Counsel for State presents argument.

The Court believes there is sufficient evidence for the Jury to consider both a 1st Degree and 2nd Degree, an intentional killing with premeditation and without premeditation, but does not see that facts as disclosed by the evidence would support a lesser included beyond that. The Defendant's Request for an Instruction on Manslaughter or Negligent Homicide is *denied*.

Discussion ensues regarding the Final Jury Instructions.

At 1:31 p.m., the Court stands at recess.

~*~*~* **RECESS** *~*~*~

At 1:48 p.m., the Court reconvenes with Counsel and Defendant present, outside the presence of the Jury Panel.

Discussion ensues regarding the Final Jury Instructions.

At 1:57 p.m., the Court stands at recess.

~*~*~*~* **RECESS** ~*~*~*~*

At 2:19 p.m., the Court reconvenes with Counsel, Defendant and Jury Panel present.

The Court reads the Final Jury Instructions.

At 2:47 p.m., the State presents closing argument.

The Court admonishes the Jury Panel and they are instructed to return to the Division PTA Hallway in 10 minutes. The Jury Panel is excused and exits the Courtroom.

At 3:49 p.m., the Court stands at recess.

~*~*~*~* **RECESS** ~*~*~*~*

At 3:57 p.m., the Court reconvenes with Counsel and Defendant present, outside the presence of the Jury Panel.

The Court informs the parties the Defense will present their closing argument tomorrow morning.

At 3:58 p.m., the Jury Panel enters the Courtroom.

The State resumes with closing argument.

The Court admonishes the Jury Panel and they are instructed to return to the Jury Assembly Room at 9:00 a.m., on March 2, 2022. The Jury Panel is excused and exits the Courtroom.

The Court directs Counsel and Defendant to be present in the Courtroom on March 2, 2022 at 9:00 a.m.

END TIME: 4:24 p.m.

c: Honorable Debra R. Phelan, Division PTA (e)
PVS (e)
SOD (e)