

FILED
TIME 3:39 P M

JUN 16 2011

IN THE SUPERIOR COURT
MOHAVE COUNTY, STATE OF ARIZONA

VIRLYNN TINNELL
CLERK SUPERIOR COURT
BY: CM DEPUTY

Honorable Steven F. Conn
Division: III Courtroom: A
Court Reporter: Jim Glover

Virlynn Tinnell, Clerk of Superior Court
By: Christine Murphy, Deputy Clerk
Hearing Date: June 16, 2011

STATE OF ARIZONA,

Plaintiff,

vs.

JOHN CHARLES MCCLUSKEY,

Defendant.

CASE NO: CR-2010-00823

JURY TRIAL-DAY THREE

START: 10:39 A.M.

APPEARANCES: Victoria Stazio, Deputy County Attorney; John Pecchia and Jason Steffen, Attorney for and with the Defendant.

Defense exhibits E0000025 through E0000029 (photos) are marked for identification.

State's exhibit E0000030 through E0000039 (photos) are marked for identification.

All parties are present, including the Jury but excluding Juror 236665.

The Court advises that Juror 236665 is not present due to a medical emergency and hereby is determined an alternate.

Mr. Munir Qureshi is duly sworn as Court Interpreter for the language of Punjabi.

The State calls witness Mr. Prabhjeet Baines, who is duly sworn, now testifies to the Court.

The record shall reflect that the witness has identified Mr. McCluskey.

The State moves for the admission of exhibits E0000030 through E0000034 into evidence; the Defense does not oppose.

IT IS ORDERED admitting into evidence exhibit E0000030, E0000031, E0000032, E0000033 and E0000034.

The Jury is admonished and the Court stands in recess at 11:27 a.m.

The Court reconvenes at 11:38 a.m.; all parties heretofore mentioned are present, including the Jury.

The witness resumes the stand and continues testifying to the Court.

The State moves for admission of exhibit E0000024 into evidence; the Defense opposes.

The Court finds that sufficient foundation has been laid; the weight of this exhibit will be up to the Jury.

IT IS ORDERED admitting exhibit E0000024 into evidence.

The State moves for admission of exhibit E0000035 through E0000038 into evidence; the Defense objects.

State's exhibits E0000035 through E0000038 will not be admitted at this time.

Mr. Pecchia moves for the admission of exhibit E0000029 into evidence; the State does not oppose.

IT IS ORDERED admitting exhibit E0000029 into evidence.

The witness is excused.

The State calls witness Gordeep Singh, who is duly sworn, now testifies to the Court and is excused.

The Jury is admonished and excused at 12:35 p.m.

Now, outside the presence of the Jury:

Discussion ensues as to the State's last two witnesses.

The Court expresses concern that the State continues to gather evidence regarding statements made to Corrections Officers by the Defendant.

The Court notes that the State has filed a Motion to Add Allegation of Aggravating Factors. A separate proceeding will take place if the Defendant is found guilty.

Ms. Stazio has three written statements from witness Corrections Officer Goins, witness Corrections Officer Cassidy and witness Deputy Director Brown. The Court will review these written statements during the lunch hour instead of a future Evidentiary Hearing; the Defense does not oppose.

The Court stands in recess at 12:45 p.m.

The Court reconvenes at 1:37 p.m.; all parties heretofore mentioned are present, including the Jury.

The State calls witness Detective Brad Conway, who is duly sworn, now testifies to the Court.

The State moves for the admission of exhibit E0000036 into evidence; the Defendant does not oppose.

IT IS ORDERED admitting exhibit E0000036 into evidence.

The State moves for the admission of exhibit E0000035 into evidence; the Defense opposes on the grounds of relevancy.

IT IS ORDERED admitting exhibit E0000035 into evidence.

The witness is excused.

The State calls witness Deputy Robert Watkins, who is duly sworn, now testifies to the Court.

The record shall reflect the witness has identified the Defendant.

The witness is excused.

The State rests.

The Jury is admonished and excused at 2:11 p.m.

Now, outside the presence of the Jury:

The Court has reviewed the three reports presented by the State.

The Court will not allow the State to get into these reports without an Evidentiary Hearing.

Ms. Stazio makes statements.

Mr. Pecchia makes statements and opposes the admission of these statements.

The Court is not going to allow the State to offer into evidence the comments attributed to Mr. McCluskey made to either Officer Goins, Officer Cassidy or Deputy Director Brown.

The clerk is directed to mark the reports, in any order, as exhibit E0000039, E0000040 and E0000041.

These exhibits will not be admitted into evidence and will not go to the Jury.

State's exhibits E0000039, E0000040 and E0000041 (reports) are marked for identification.

The State rests.

The Court recesses at 2:27 p.m.

The Court reconvenes at 2:31 p.m.; all parties heretofore mentioned are present, excluding the Jury.

Outside the presence of the Jury:

Mr. Steffen moves for a Directed Verdict of Acquittal pursuant to Rule 20 as to all charges.

Mr. Steffen presents argument.

Ms. Stazio presents argument.

Discussion ensues as to the Stipulation of the parties regarding the Defendant being a "prohibited possessor."

The Court makes its findings on the record;

IT IS ORDERED denying the Defense Motion for a Directed Verdict of Acquittal.

The Defense rests.

Discussion ensues as to scheduling and jury instructions.

The State's exhibits E0000020, E0000021 and E0000022 (t-shirts) will be replaced with photos of the t-shirts due to biohazard precautions.

The Court stands in recess at 2:51 p.m.

The Court reconvenes at 2:53 p.m.; all parties heretofore mentioned are present, including the Jury.

The Court advises the Jury of the Stipulation between the parties regarding the Defendant being a "prohibited possessor" at the time of the alleged offenses.

The Court advises the Jury of the exchange as to the photo's of the t-shirts.

The Jury is admonished and the Court stands in recess at 2:56 p.m.

The Court reconvenes at 3:10 p.m.; all parties heretofore mentioned are present, excluding the Jury.

The Court reviews the proposes jury instruction with counsel and the forms of verdict.

Discussion ensues.

The Court recesses at 3:39 p.m.

cc:

MOHAVE COUNTY ATTORNEY*

Victoria Stazio

MOHAVE COUNTY PUBLIC DEFENDER*

John Pecchia and Jason Steffen

THERESA M. DUNCAN*

Federal Counsel

Informational Copy

MOHAVE COUNTY JAIL*

HONORABLE STEVEN F. CONN*

Division III