

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2021-001704-001 DT

05/22/2025

HONORABLE JUSTIN BERESKY

CLERK OF THE COURT
J. Matlack
Deputy

STATE OF ARIZONA

TREENA JEANELLE KAY

v.

LORI N DAYBELL (001)

ROBERT A ABERNETHY
PAMELA C HICKS

INMATE LEGAL SERVICES
JUDGE BERESKY

MINUTE ENTRY

Lori N. Daybell (G062213)

The Court has received and reviewed the following:

- Defendant's *Motion for New Trial* filed May 1, 2025;
- State's *Response to Defendant's Motion for New Trial* filed May 6, 2025;
- Defendant's *Reply to State's Response to Defendant's Motion for New Trial* filed May 14, 2025.

The Court will address the issues in the order in which they appear in the Defendant's Motion:

A. Juror Misconduct

The Defendant alleges there was juror misconduct based on a statement Juror 15 made to reporters following the verdict wherein he stated "you know I feel sorry for her, driving home yesterday, I was like God she's spending the next three lives in prison, in a cell" On its face, this statement would seem to indicate the juror violated the admonition and researched the Defendant, acquiring knowledge about her sentence imposed in another matter, prior to the

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lifting of the admonition. However, the *State's Response* included multiple additional media clips of statements Juror 15 made both immediately prior to, after the statement referenced herein above, in every one of which he specifically denies any knowledge of the Defendant's other case/sentence prior to the Court releasing the jurors from the admonition.

At best Juror 15 gave a single statement which seems to be in conflict with all his other statements when he specifically denied any misconduct.¹ Here, on the limited record of the pleadings before the Court, there being no affidavits or sworn testimony evidencing any misconduct as contemplated by Rule 24.1(d)², the Court does not find a clear indication of juror misconduct let alone any evidence of prejudice to the Defendant. Juror misconduct requires a new trial only if the defendant shows actual prejudice or if it can fairly be presumed from the facts. *State v. Lehr*, 227 Ariz. 140, ¶ 49, 254 P.3d 379, 390 (2011).

B. Preclusion of Tylee Ryan and Alex Cox Statements and Impermissible Testimony by Detective Daniel Coons

The Court issued a preliminary pre-trial ruling on March 11, 2025, regarding the inadmissibility of statements made by Tylee Ryan and Alex Cox. The Court's ruling stated that out-of-court statements made by Tylee Ryan and Alex Cox appeared to be hearsay and the Defendant failed to establish that any specific statement was either non-hearsay or fell within an exception to the rule excluding hearsay. The Court went on to give the Defendant the opportunity to offer specific statements at trial by stating the Defendant could re-urge the issue outside the presence of the jury. Not only did the Defendant never take the Court up on its offer during trial, the Defendant's *Motion for New Trial* and *Reply* only argue in generalities, failing to set forth any specific statement that should have been admitted into evidence under either a non-hearsay exemption or an exception to the hearsay rule.

As to Detective Coons' testimony, the Defendant argues the Detective did not have foundation to testify as an expert. Sufficient foundation was laid for the Detective to give his opinion and the Defendant has offered no specific information as to what additional foundation should have been required. To the extent the Defendant believed the witness was not qualified, or his opinion should not be given weight by the jury, she had the opportunity to cross-examine the witness about his qualifications (or lack thereof) as well as the basis for his opinion.

¹ Even if there were misconduct, the Defendant's own *Motion* undercuts her argument that prejudice exists because she points out Juror 15 stated he was leaning toward not guilty through deliberations, a distinct indication that *if* Juror 15 did have any extraneous information at that time, it did not affect his consideration of the evidence.

² Neither the State nor the Defense chose to have an Affidavit prepared by Juror 15, or any other juror, so the Court is left with the media clips provided in the pleadings.

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The Defendant also argues she did not have time to rebut Detective Coons' testimony. The record is clear that the Defendant was offered more time to prepare for trial and declined. Moreover, the argument that the basis of Detective Coons' testimony was the walk through of Alex Cox is not supported by the record. The Defendant's *Reply*, for the first time, raises the additional argument that Tylee Ryan's statements also formed the basis for Detective Coons' testimony. Again, there is no evidence of this and the Defendant offers no specific statement by Tylee Ryan or Alex Cox to support her assertion. Even if what Alex Cox and/or Tylee Ryan told Detective Coons somehow contributed to his opinion, the Defendant never asked the Detective those questions, i.e., "did anything Alex Cox show you or tell you contribute to your opinion?" This type of question would have been permissible however, the Defendant did not ask it nor was she ever precluded from asking it.

The Court finds the statements of Tylee Ryan and Alex Cox were properly excluded and the Defendant has failed to raise a single specific statement that should have been permissibly allowed under the Rules of Evidence. Nor does has the Defendant established Detective Coons' testimony was improper.

C. Discovery Violation

Although Defendant's *Motion* alleges the contents of the hard drive "are exculpatory," she never articulates any single item whatsoever that would constitute exculpatory evidence. Again, merely stating something is "exculpatory" does not make it so. The Defendant's request for additional discovery related to Charles Vallow's phone was accommodated. The State had previously disclosed all evidence it had in its possession at that time. The Defendant requested access to the actual phone to run a new examination with software that had been updated since the phone was examined several years ago. The Defense has offered no evidence that any additional information was obtained from the phone let alone it being exculpatory.

The Court finds no discovery violation.

D. Prosecutorial Misconduct

The Court finds nothing in the Defendant's allegations come close to establishing prosecutorial misconduct. The State is allowed to argue reasonable inferences from the evidence presented. The Defense does not have to agree with those inferences and is permitted to argue the evidence should be interpreted differently.

The Defendant argues in her *Reply*, for the first time, that both the State and the Court violated the Defendant's rights under the Religious Freedom Restoration Act (RFRA). Although new arguments are not to be considered when first raised in a *Reply*, the Court will nonetheless

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address this. The RFRA protects religious freedom and prohibits the government from substantially burdening a person's exercise of religion. There is no conduct but either the State or Court that somehow infringed on the Defendant's freedom to practice her religion. Nor is there anything about the trial that impacts the Defendant's freedom to believe whatever it is she chooses to believe. Moreover, the RFRA does not protect someone from committing criminal acts in the name of religion nor does the RFRA prevent any person from disagreeing with another's belief system. Here, different witnesses may have had different interpretations regarding who Nephi was or the significance of his story. The Defendant had an opportunity to cross-examine those witnesses regarding the same. None of this infringes on the Defendant's religious freedom.

For these reasons, the Court finds no prosecutorial misconduct.

E. Court's Lack of Impartiality

The Defendant alleges the Court was not impartial because the Court struck two of the Defendant's witnesses from the Defendant's witness list.³

Contrary to the Defendant's assertion that no rule of law or evidence requires her to establish a witness has relevant information, Arizona Rules of Evidence 601 and 602 require just that. Prior to trial, the Defendant was given an opportunity to make a general offer of proof as to what relevant information the witnesses would provide which the Defendant was unable to provide. When the Court precluded the witnesses, the Defendant was also advised by the Court that during the course of the trial, if she believed these witnesses had relevant information, the Court would revisit the issue. Thereafter, the Defendant did not again offer any witness even though she was specifically told she could re-urge the issue. In addition, in her *Motion for New Trial*, the Defendant offers no further information on what testimony the witnesses would have given if they were permitted to be called as witnesses.

The Defendant also argues the Court demonstrated a bias based on the Court's comment made while overruling the State's objection during the Defendant's questioning of Serena Sharp. The State was objecting to the relevance of the question and the Court thought the question had some minimal relevance based on the context of the Defendant's line of questioning. The Court notes the Defendant's argument as to why the question was relevant was not in line with why the Court surmised it was relevant. While the Court's comment was not necessary, it does not evidence bias nor does it mean the Court was demonstrating any partiality. Nonetheless, the

³ The Defendant's Reply seems to argue the Defendant was precluded from calling all twelve of her witnesses which is not the case, the Defendant chose not to call any witnesses during the Defendant's case in chief.

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Court acknowledges the Court's comment was unnecessary and the Court should have simply overruled the State's objection without comment. Moreover, the Court has been presented no evidence whatsoever that this comment influenced the jurors.

Having carefully considered Defendant's arguments, all of the briefing and the record, the Court finds the Defendant received a fair and impartial jury trial and the Defendant has failed to establish any ground for a new trial under A.R.Crim.R. 24.1(c).

IT IS ORDERED DENYING the Defendant's *Motion for New Trial* filed May 1, 2025.