

Defense Motion for Mistrial

MR. RICHARD C. MOSTY: Your Honor,
11 could we take care of a housekeeping matter?
12 THE COURT: We sure can. Just a
13 moment.
14 All right. Ladies and gentlemen of
15 the jury, we'll take a 10 minute recess now, please.
16
17 (Whereupon, a short
18 Recess was taken,
19 After which time,
20 The proceedings were
21 Resumed on the record,
22 in the presence of the defendant,
23 but outside the presence and
24 hearing of the jury,
25 as follows:)
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1
2 THE COURT: All right. Let the record
3 reflect that these proceedings are being held outside of
4 the presence of the jury.
5 All parties in the trial are present.
6 Mr. Mosty.
7
8 (Whereupon, the following
9 mentioned item was
10 marked for
11 identification only
12 after which time the
13 proceedings were
14 resumed on the record
15 in open court, as
16 follows:)
17
18 MR. RICHARD C. MOSTY: The district
19 attorney's office is in the process of copying all of Mr.
20 Brantley's file, except for the photographs, which we
21 will mark and introduce for record purposes as Exhibit
22 70.
23 THE COURT: Any objection to
24 Defendant's Exhibit 70 for record purposes?
25 MR. TOBY L. SHOOK: No, sir.
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1 THE COURT: Defendant's Exhibit 70
2 will be admitted for record purposes after it is
3 prepared.

4
5 (Whereupon, the above
6 mentioned item was
7 received in evidence
8 as Defendant's Exhibit No. 70,
9 for record purposes only,
10 after which time,
11 the proceedings were
12 resumed on the record,
13 as follows:)

14
15 MR. RICHARD C. MOSTY: In that regard,
16 your Honor, what we would have covered in particular with
17 Mr. Brantley, as part of an offer of proof, or a Bill of
18 Exception is that we would have gone through, and listed
19 in particular, all of those things that he had in his
20 file, the Dallas Morning News reports; Altoona,
21 Pennsylvania, news reports; numerous summaries that I
22 believe --

23 THE COURT: Just a moment. We have to
24 have that noise stop. All right. Now, go ahead.

25 BY MR. RICHARD MOSTY: Also numerous
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1 summaries --

2 THE COURT: The noise has stopped now.

3 If you would start again, Mr. Mosty, please.

4 MR. RICHARD C. MOSTY: This is simply
5 with respect -- Mr. Hagler will handle another matter in
6 a second -- but this is strictly in respect to the FBI
7 agent.

8 And the proof we would offer and, of
9 course, a lot of it will speak for itself in the record,
10 but that he had in his file, and amongst the things that
11 he had relied upon were news reports from Dallas, from
12 Altoona, Pennsylvania.
13 He had numerous summaries of
14 witnesses, who, I believe, were probably conducted by
15 Bosillo as summaries of testimony, many of whom have not
16 testified, some of whom in the nurses, regarding the
17 nurses, in my judgment, also provided exculpatory
18 material, that had never been provided to us, in terms of
19 witnesses that the State had interviewed, mainly in
20 September, if I recall, but the dates will speak for
21 themselves.

22 And there were a number of other

23 records that have not been introduced into the records.
24 And again, those will speak for themselves. But we would
25 have pointed out all of those things.
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1 And also, as a second part of this,
2 the Court denied us the opportunity to, on our behalf, to
3 present information to the FBI agent for him to consider,
4 thereby, making all of his testimony a one-sided version
5 of what the State had given him. Which denies us, of
6 course, our right to confront and cross examine the
7 witnesses.
8 And, as a third part, of course, the
9 Court has denied us the opportunity to put those
10 psychiatric records of the witness Jovell, into evidence,
11 and all of those would be part of, going back to, and
12 incorporating our original Daubert objection, as to this
13 witness testifying, and would remind the Court, on the
14 many occasions where the witness, for instance, turned to
15 the jury and said things like, "Why wasn't there enough
16 force?" or "I believe that this is a contradiction."
17 Those are the things that are
18 specifically prohibited by Daubert, and all of his
19 testimony amounted to, was putting someone under oath,
20 and delivering the State's final argument.
21 And for all of those reasons, we
22 reincorporate our Daubert objection, and we request the
23 Court to instruct the jury to disregard all of his
24 testimony.
25

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1 THE COURT: Thank you.
2 MR. RICHARD C. MOSTY: Is that request
3 denied?
4 THE COURT: That request will be
5 denied.
6 MR. RICHARD C. MOSTY: And we would
7 move for a mistrial.
8 THE COURT: Motion for mistrial
9 denied.
10 And of course, the Court will also
11 note that all -- as regards to Mr. Brantley, all
12 questions asked to Mr. Brantley were referred to exhibits
13 already in evidence, or placed in evidence during his
14 testimony.
15 MR. RICHARD C. MOSTY: I'm sorry. I
16 didn't understand that.

17 THE COURT: All questions asked to Mr.
18 Brantley when we were referring to various exhibits and
19 things referred were -- he was questioned on exhibits
20 already in evidence or from exhibits already in evidence,
21 or exhibits placed in evidence during his testimony.
22 MR. RICHARD C. MOSTY: And of course,
23 the Court will also note on the record that he said that
24 he relied on a number of documents that are not in the
25 record.
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1 THE COURT: His testimony will be
2 noted, and all of his testimony will be in the record.
3 All right.

4 Now we have covered Mr. Mosty. Mr.
5 Hagler.

6 MR. JOHN HAGLER: Thank you, your
7 Honor. I have just one brief objection.

8 THE COURT: Oh, okay. Go ahead.

9 MR. JOHN HAGLER: Your Honor, again,
10 we have already objected and of course certainly
11 understand the Court's ruling, however, after
12 reviewing -- after hearing this witness' testimony, it's
13 pretty apparent that there is only one conclusion that
14 can be drawn from his testimony, and that is the

15 conclusion, at least from his standpoint, that the
16 defendant committed the offense.

17 Now, regardless of what his testimony
18 was, where he said he never testified that the defendant
19 did it, and although admittedly maybe he never did make
20 that specific statement, it is pretty apparent, that the
21 sum total of all his testimony, is that the defendant did
22 commit the offense.

23 And again, this total, the sum total
24 of his testimony constitutes a violation of 704. I
25 should say it goes beyond the scope of 704 in the fact
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1 that such testimony reaches the issue of ultimate guilt
2 or innocence of the defendant, and therefore, we would
3 move for a mistrial based on the admission into evidence
4 of that testimony based on the Fifth, Sixth and
5 Fourteenth Amendments.

6 THE COURT: All right. Motion for
7 mistrial denied. Anything else? Are we ready to bring
8 the jury in?

9 MR. GREG DAVIS: Yes, sir.

10 THE COURT: Just a moment.
11 MR. DOUGLAS MULDER: Judge?
12 THE COURT: Yes, sir.
13 MR. DOUGLAS MULDER: I assume they're
14 going to rest just as soon as the jury comes in, and
15 we're going to make a motion for a directed verdict,
16 which, in line with everything else you have done, I'm
17 sure you will deny it.
18 THE COURT: Well, we will certainly
19 hear the motion, Mr. Mulder.
20 MR. DOUGLAS MULDER: Well, are we
21 going to run the jury out twice or can we do it now?
22 THE COURT: Yes, we can do it right
23 now. Is that satisfactory?
24 MR. GREG DAVIS: Yes, sir, that is
25 fine.
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1 THE COURT: All right. Go ahead with
2 your motion, Mr. Mulder.
3 MR. DOUGLAS MULDER: Well, we are
4 going to wait until they rest.
5 MR. GREG DAVIS: While we're here,
6 outside the presence of the jury, the State will announce
7 at this time, that it rests its case in chief.
8 THE COURT: All right. You will do
9 that again in front of the jury?
10 MR. GREG DAVIS: Yes, sir, I will.
11 THE COURT: And you are ready to go
12 forward?
13 MR. DOUGLAS MULDER: Yes, sir.
14 THE COURT: You can have your motion
15 now.
16 MR. JOHN HAGLER: Okay, your Honor.
17 With leave of the Court, before they rest in front of the
18 jury, your Honor, we would urge that a review of the
19 evidence by this Court, which is, obviously it has the
20 power to do in determining whether or not the State has
21 satisfied their burden of proof.
22 And we would urge, your Honor, that in
23 reviewing all of the evidence, the testimony and exhibits
24 and documentation, that the State has failed to carry its
25 burden of proof under Jackson_versus_Virginia.

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1 In fact, in light of the fact that a
2 rational trier of the fact could not have found that the

3 defendant committed all of the elements, or any of the
4 elements alleged in the indictment.
5 And, based on the State's failure to
6 carry the burden under Jackson_versus_Virginia, we would
7 urge this Court to instruct a verdict of not guilty.

8 THE COURT: All right. Motion for
9 instructed verdict of not guilty is denied.
10 And if you will bring the jury in,
11 please.

12
13 (Whereupon, the jury
14 Was returned to the
15 Courtroom, and the
16 Proceedings were
17 Resumed on the record,
18 In open court, in the
19 Presence and hearing
20 Of the defendant,
21 As follows:)

22
23 THE COURT: All right. Be seated,
24 please. Let the record reflect that all parties in the
25 trial are present, and the jury is seated.
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1 Mr. Davis.

2 MR. GREG DAVIS: Yes, sir. May it
3 please the Court, your Honor, and ladies and gentlemen of
4 the jury, at this time the State of Texas rests its case
5 in chief.

6 THE COURT: All right. Ladies and
7 gentlemen, that's all the testimony you are going to be
8 hearing from the State, that is their case in chief.

9 Mr. Mulder, are you ready to go
10 forward?

11 MR. DOUGLAS MULDER: Yes, sir.

12 THE COURT: All right, sir.