

IN THE COURT OF COMMON PLEAS OF DEFIANCE COUNTY, OHIO

State of Ohio

Plaintiff *FILED* : Case No. 15-CR-12414  
*IN COURT OF COMMON PLEAS*  
*DEFIANCE COUNTY, OHIO*

-vs-

*JUL 19 2016*

Kasym S. Assaf

Defendant *by: M. Stahlbraith* : JUDGMENT ENTRY  
*CLERK*

This cause is before the court on Defendant's Motion for Mistrial. Immediately prior to the commencement of trial, defense counsel became aware that a key state's witness, Drevon Thomas, had possibly provided a statement to Officer Delaney of the Defiance City Police Department. No transcript or Officer's summary of any such statement had been provided to the defense in discovery. Specific inquiry was made regarding any such witness statement to law enforcement and counsel for the state expressly and specifically represented that, while acknowledging that Officer Delaney spoke with Drevon Thomas shortly after the incident giving rise to the instant case, such statement had nothing to do with the alleged robbery before the court or the matters at issue in this trial. In actual, and not unreasonable, reliance upon these representations from the prosecution, defense counsel inquired of the witness Drevon Thomas regarding prior statements give to law enforcement. In response to defense questioning, Drevon Thomas testified that within days of the incident in question, while at the juvenile detention facility, Drevon Thomas, with his attorney present, provided a formal statement specifically regarding this alleged robbery to Officer Delaney. Drevon asserted that he had told the entire truth regarding this alleged robbery at the time of that statement and that the content of that statement was consistent with his trial testimony, notwithstanding other varying statements previously given by the witness. Whereupon defense counsel requested a mistrial be declared.

The court determined further inquiry was required and, out of presence of the jury, permitted Officer Delaney to be questioned regarding the subject statement. Officer Delaney testified that he had in fact taken a formal statement from Drevon within days of the alleged robbery. The statement was taken at the juvenile detention facility with Drevon's attorney present. The statement was specifically and entirely about the alleged robbery in the instant case. Officer Delaney testified that a digital audio recording of the statement was made. Officer Delaney testified further that he did not at any time review the recorded statement of Drevon until shortly before the trial of the instant case. At that time, Officer Delaney stated he discovered the data of the digitally recorded statement was corrupted, no recording could actually be played nor any transcript produced. Officer Delaney further testified that, notwithstanding the import of Drevon's confession and implication of co-defendants, that he made no written summary of the statement or notes related to its content. As noted, previously, no reference to this statement was made in response to formal discovery requests.

Based on the foregoing, it is apparent to the court that a mistrial must be declared, the jury discharged and it is appropriate that the Indictment herein be dismissed.

It is therefore **ORDERED, ADJUDGED and DECREED** that a mistrial is declared and the Indictment is hereby **DISMISSED**. The Defendant is discharged, costs to the State.

  
Joseph N. Schmenk  
JUDGE

cc: Joy S. O'Donnell  
Assistant Prosecutor

Clayton J. Crates  
Attorney for Defendant