

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
FIFTH DIVISION**

**STATE OF ARKANSAS**

**PLAINTIFF**

**VS.**

**CR13-224**

**JOSH HASTINGS**

**DEFENDANT**

**STATEMENT OF CONDITIONS NECESSITATING STATE'S NOLLE PROSEQUI**

Comes now the State of Arkansas, by and through John F. Johnson, chief deputy prosecuting attorney, to state the following:

- 1) On August 12, 2012, Joshua Hastings shot and killed Bobby Joe Moore.
- 2) On January 18, 2013, he was charged with Manslaughter by the State of Arkansas for recklessly causing the death of Bobby Moore. Hastings was subsequently set to be tried on June 18, 2013.
- 3) On June 22, 2013, a Saturday, the jury retired to deliberate at 11:06 a.m. after 5 days of trial. Almost immediately the jury sent out the question, "Why is self defense not a defense?" even though the Court had instructed them as to the law on this issue and both sides argued that issue to them.
- 4) At 4:15 p.m., the jury sent out a question regarding the definition of "recklessly," even though they had been instructed on the law regarding this term.
- 5) Thirty minutes later, at 4:45 p.m., the jury sent out word that they were deadlocked with people voting for all 3 options, Manslaughter, Negligent Homicide and not guilty of a homicide offense. They were instructed by the Court to continue to deliberate.
- 6) Nearly 2 hours later, at 6:10 p.m., the court sent the jury home with instructions to return at noon on June 23, 2013, a Sunday.
- 7) Before the jury was sent out to deliberate on the 23<sup>rd</sup>, the Court read them the Allen (dynamite) instruction.
- 8) Throughout that day, the jury sent out various questions and at one point requested a dictionary to define "unjustifiable risk." Later in the day the jury again declared itself hung but then, in short order, sent word that it was still working.

- 9) At 5:28 p.m. on June 23, 2013, the jury reported that it was deadlocked and the Court declared a mistrial. While not questioned by the Court, it was widely reported in the media that the jury was hung either 11-1 or 10-2 in favor of guilt.
- 10) The first jury had been out for deliberations for approximately 12 ½ hours over two days.
- 11) This case was reset for trial on September 16, 2013, and commenced on that day.
- 12) In the retrial, while allowing the attorneys for both sides to submit voir dire questions to the Court and to ask follow-up questions during voir dire, the Court conducted the majority of voir dire. This process went on for 6 days with testimony beginning on the 7<sup>th</sup> day of trial, September 24, 2013.
- 13) The State presented its case in one day and the defense called no witnesses.
- 14) The jury in the second trial of this case was sent out to deliberate at 10:22 a.m. After only 3 hours of deliberations the second jury declared itself dead locked. At 2:53 p.m. the Allen instruction was read to them. At 4:47 p.m. the foreperson reported to the court that the jury was hopelessly deadlocked and a second mistrial was declared by the court.
- 15) While not questioned by the Court, it was widely reported in the media that the jury was hung 11-1 in favor of acquittal. The foreperson of this jury contacted the Prosecutor's Office and confirmed these reports.
- 16) In the first trial, an all white jury was seated with a white female being the lone hold-out not voting to convict the defendant of a homicide offense.
- 17) In the second trial, with the Court heavily involved in jury selection, a jury of 7 women and 5 men was selected. There were two African Americans on this jury both of whom voted in favor of acquittal. The lone holdout for guilt in the second trial was the foreperson, a white female.
- 18) In other words, two diverse groups of people were selected under very different circumstances and were unable to reach a unanimous verdict.
- 19) Everything about each trial was different from the other beginning with the voir dire process, to the make-up of the jury to the amount of time spent deliberating. In the first trial the jury deliberated two to three times as long as the second jury.
- 20) This is a case where the facts are largely undisputed. Neither the identity of the defendant, the manner of death, nor the cause of death is in question. The only real issue for a jury in this case is whether the actions of the defendant were unlawful. Yet the jury in each trial struggled to reconcile the facts of the case with the law they were given, and in the end were unable to decide one way or another.

- 21) The State of Arkansas stands by the charges in this case and the arguments it has made for the guilt of this defendant. However, the role of the prosecutor is to put before a jury the facts of the case and to advocate for the people of the State of Arkansas and the victim, not to seek a conviction at any cost. The role of the jury is, if possible, to reach a conclusion as to the guilt or innocence of the accused.
- 22) It has become abundantly clear that in this case there is no unanimity one way or another with regard to the guilt or innocence of the defendant and it does not appear there ever will be.

**WHEREFORE**, because it is apparent from these two very different trials that 12 jurors will never unanimously agree beyond a reasonable doubt that the defendant is guilty of a homicide offense, the State cannot in good faith proceed with this prosecution and therefore must act in the interests of the community and justice and nolle pros the charges against this defendant.

Respectfully submitted,

/s/ Larry Jegley  
Larry Jegley  
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/s/ John F. Johnson  
John F. Johnson  
Chief Deputy Prosecuting Attorney