

SECOND JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-202-CR-2016-00789

DARRIUS DAVON VALLES,

Defendant.

FILED IN MY OFFICE THIS

MAY 31 2017 3:08pm TC


CLERK DISTRICT COURT

MOTION TO DISMISS HOMICIDE COUNT

COMES NOW, the Defendant, through the undersigned counsel, and moves this Court to dismiss Count I of the Indictment. As grounds for this motion, the Defendant argues that the evidence, viewed in the light most favorable to the State, is insufficient as a matter of law to prove the charges beyond a reasonable doubt pursuant to NMRA Rule 5-601 and State v. Foulfont, 119 N.M. 788, 895 P.2d 1329 (Ct. App. 1995).

In State v. Foulfont, the Court held that where there is no dispute as to the facts of the case and the only issues before the court are questions of law, the court has the authority to decide the legal issues and may dismiss one or more counts if appropriate. State v. Foulfont at 790, 593 P.2d 240 (1995).

I. The Allegations and Facts in Light Most Favorable to the State.

In this case, Defendant, Darrius Davon Valles is charged with first degree murder, aggravated battery and other charges related to the shooting death of Jerry Wayne Jennings on January 15, 2016. When apprehended by police, Mr. Valles declined to make a statement. At the time of the shooting, Mr. Valles was being supervised by an electronic monitoring bracelet. Electronic monitoring documents purport to place Mr. Valles at or near the scene of the crime at the time of the shooting.

During the alleged confrontation between Mr. Valles and Mr. Jennings, Ms. DeAmber Yonker called 911. During the 911 recording, Ms. Yonker is purported to say that Mr. Valles shot Mr. Jennings, but that it was in self-defense. Ms. Yonker is not available at this time to authenticate the recording or offer any testimony regarding the content of the recording or her observations at the time of the alleged shooting.

After the incident, Mr. Valles was apprehended in California. NO statements from any other witnesses place Mr. Valles at the scene of the crime. Likewise, no other witnesses identified Mr. Valles as the individual who shot Mr. Jennings.

DeAmber Yonker has not appeared for any scheduled witness interviews. Unless she appears prior to trial and makes herself available for interviews, anything that Ms. Yonker has said in the past is inadmissible hearsay. A material witness warrant has been issued for her arrest. The whereabouts of this key witness for the State remains unknown. Without Ms. Yonker to testify as to the content of the 911 call, the State is unable to identify Mr. Valles as the individual who shot Mr. Jennings, whether it was in self-defense or not.

II. The Admissible Evidence Cannot Establish that Darrius Davon Valles killed Jerry Wayne Jennings

Without the testimony of DeAmber Yonker, the State simply cannot tie the Defendant to the shooting of Mr. Jennings. While evidence of flight by the Defendant and evidence of electronic monitoring that the Defendant was near the scene of the shooting, there is no admissible evidence that the Defendant committed the crimes charged. Here there are no facts to support any theory of murder or aggravated battery. Therefore all Counts of Homicide and aggravated battery should be dismissed.

III. Conclusion

WHEREFORE, given the cases statutes and undisputed facts, Defendant requests this Court to dismiss the count of intentional murder, as well as possible lesser included counts of second degree murder and voluntary manslaughter as well as aggravated battery because the evidence viewed in the light most favorable to the State is insufficient, as a matter of law, to prove the charges beyond a reasonable doubt.

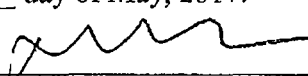
CLARK, JONES & PENNINGTON, LLC

By: 

Thomas M. Clark
Attorney for Defendant
432 Galisteo St.
Santa Fe, New Mexico 87501
(505) 820-1825

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was mailed to the Office of the District Attorney on this 31 day of May, 2017.


Thomas M. Clark