

STATE OF MICHIGAN  
WAYNE COUNTY CIRCUIT COURT  
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-vs-

Case # 01-09786

Hon. Timothy Kenny

KEVIN SIMPSON,

Defendant.

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Patricia Leonard, Assistant Wayne County Prosecutor  
Wayne County Prosecutor's Office  
12<sup>th</sup> floor – Frank Murphy Hall of Justice  
1441 St. Antoine  
Detroit, MI 48226  
(313) 224-5831

Steven Fishman (P23049)  
Attorney for Defendant  
615 Griswold, Suite 1125  
Detroit, MI 48226  
(313) 962-4090

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**MOTION TO CLARIFY PROPOSED  
USE OF DEFENDANT'S STATEMENTS AT TRIAL**

Now comes Kevin Simpson, Defendant herein, by and through his attorney Steven Fishman, and in support of his motion to clarify proposed use of Defendant's statement at trial states as follows:

1. Defendant Simpson is charged with two counts of second-degree murder and felony-firearm.
2. On information and belief, the prosecution intends to introduce at trial statements allegedly made by Defendant Simpson after his arrest to ATF Agent Michael Yearby.

3. Defendant Simpson contends that portions of said statement are irrelevant and inadmissible under MRE 402 and MRE 403.

4. Defendant Simpson further contends that if any portion of his statement is admitted at trial, other relevant portions are also admissible under MRE 106.

5. The issues concerning Defendant Simpson's statement need to be addressed prior to trial so that both counsel can properly prepare for voir dire, opening statement, and the balance of the trial.

WHEREFORE, Defendant Simpson requests that this Court grant his motion to clarify the use of his statements at trial.

Respectfully submitted,

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Steven Fishman (P23049)  
Attorney for Defendant Simpson  
615 Griswold, Suite 1125  
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(313) 962-4090

Dated: December 6, 2001

**BRIEF IN SUPPORT OF MOTION  
TO CLARIFY USE OF DEFENDANT'S  
STATEMENTS AT TRIAL**

**Statement of Facts**

Kevin Simpson is charged with two counts of second-degree murder and felony-firearm. On information and belief, the prosecution intends to introduce evidence of statements allegedly made by Mr. Simpson to ATF Agent Michael Yearby after his arrest on or about October 16, 2001.

Mr. Simpson's "statement" is neither written nor signed by him; rather, it consists of the recollections of Agent Yearby as contained in a report prepared by the agent. The report contains a number of statements attributed to Mr. Simpson, some of which are the subject of this motion.

According to Agent Yearby, Mr. Simpson admitted that at the time of the instant offense, he was involved in the sale of drugs. Mr. Simpson also admitted that the deceased in the case worked for him selling drugs out of the house located at 5895 Holcomb. Mr. Simpson denied participating in the shooting incident that resulted in the two deaths, and insisted that he had no motive for wanting them to be killed.

Agent Yearby's report also made reference to another shooting on Belvidere street. According to the agent, Mr. Simpson denied participating in that shooting as well, stating that he heard the victims were shot because they were carjackers in the neighborhood. When asked why he might have been named as a participant in these shootings by people in the neighborhood, Mr. Simpson responded that it probably resulted from jealousy ("player hating").

Agent Yearby's report also made reference to cocaine and guns found at the residence of Gloria Everett. According to the report, Mr. Simpson admitted that the contraband belonged to

him and made other incriminating statements about selling drugs and having guns in his possession.

Agent Yearby's report also discussed a separate arrest of Mr. Simpson in December, 1997. According to the agent, Mr. Simpson made admissions about drugs, narcotics proceeds, and items purchased by him with narcotics proceeds.

According to Agent Yearby, Mr. Simpson also discussed his relationship with lawyers, including fees allegedly paid for representation and conversations with them about various issues.

Defendant Simpson now moves to clarify what portions of his statement are to be introduced at trial.

#### Argument

MRE 106 provides as follows:

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

On information and belief, the prosecution intends to introduce at least those portions of the statement where Defendant Simpson allegedly admits that he was involved in the drug business at the time of the shooting. The prosecution may intend to introduce other parts of the statement as well, including his alleged admissions concerning amounts of drugs, money, and guns.

Defendant Simpson contends that if the prosecution is allowed to introduce evidence of his statements concerning his drug relationship with the deceased, MRE 106 dictates that the

exculpatory portion of those statements, where he specifically denies any involvement in the killings, be introduced as well. While there may indeed be a serious debate about the relevance or admissibility of other portions of Defendant Simpson's statement, there can be no question that he is entitled under MRE 106 to have his denial included in any discussion of anything he allegedly had to say about his relationship with the deceased in this case.

MRE 402 provides that evidence which is not relevant is inadmissible. MRE 403 provides that even relevant evidence may be excluded if its probative value is substantially outweighed by its prejudicial effect.

In the instant case, Defendant Simpson's statement to Agent Yearby includes references to his relationship with lawyers, including fees allegedly charged for representation, and conversations that took place between them. None of those references have any relevance to the instant murder case. Those statements, therefore, should be specifically excluded at trial.

In addition to his statements about his lawyers, Defendant Simpson also allegedly made a number of admissions to Agent Yearby about the extent of his drug dealing both at the time of this incident and on other occasions. The statements about other occasions, while presumably admissible in a federal drug case if one were to be brought against Defendant Simpson, are irrelevant and highly prejudicial in the instant case. They too should be excluded at trial.

In the instant case, both the Court and counsel are faced with an interesting dilemma – on the one hand, some of the statements allegedly made by Defendant Simpson are favorable to the prosecution while on the other, some favor the defense. At the same time, some of the statements are irrelevant to any of the issues that will be placed before the jury. It is the task of the Court and counsel to endeavor to separate the wheat from the chaff in an attempt to insure that

Defendant Simpson receives a fair trial.

**Conclusion**

WHEREFORE, for the reasons set forth above, Defendant Simpson requests that this Court grant his motion to clarify the use of his statements at trial, and to determine which statements are properly admissible.

Respectfully submitted,

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Steven Fishman (P23049)  
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Dated: December 6, 2001