

**State's summary of cases involving Detective Saldate characterized as impeachment material in the 9<sup>th</sup> Circuit opinion**

**State v. Yanes – CR 130403**

On November 23, 1982, at 8:40 pm, police discovered Eleanor Paez shot to death, and Yanes lying beside her apparently unconscious. Yanes and Paez were common law husband and wife. Police had been called to the scene by civilian witnesses who had observed Yanes yelling for help and claiming Eleanor had been shot. Witnesses also told police that Yanes sustained a head injury during a confrontation with one of the witnesses who had attempted to render aid to Paez. However, at the scene, Officer Vasquez made contact with Yanes in an attempt to assist the medic unit who were trying to treat Yanes. Vasquez said Yanes was awake but was hard to understand and he could smell strong odor of liquor on Yanes' breath. Yanes did ask to see Eleanor. [Police Report dated 11/25/82] Yanes was taken to the hospital by ambulance, and while at the hospital Yanes was restrained to his bed by medical staff. Yanes needed to be restrained in their opinion because he was uncooperative, combative, and refusing medical treatment. [Trial transcript, 6/6/83, p.8 & 14] While at the hospital Officer Vasquez was able to obtain Yanes correct name from him. Yanes again asked to see Eleanor.

During the course of the investigation the night of the murder, Detective Saldate was directed to contact Yanes at the hospital. [Phoenix Police Departmental Report #82-121626 at 1] Detective Saldate had never met Yanes and was unaware of the nature of the injuries. However, as he spoke Spanish fluently, Saldate read Yanes his Miranda rights in English, and then paraphrased the rights in Spanish. *Id.* at 2. When Yanes indicated that he understood his rights Detective Saldate began an interview. *Id.* During the course of the interview Yanes told Saldate that he had seen a man with the victim. That he heard a shot, and found her wounded. Yanes then

said he ran for help. Of note is that other witnesses from the scene confirmed that Yanes had come running for help. At some point, there was a break in the interview so hospital staff could treat the defendant. *Id.* at 3. At 1:43 a.m. Detective Saldate resumed his interview and continued until 1:59 a.m. when Yanes' brother entered the room. *Id.* The brother told the defendant that the family had retained a lawyer for him, at which point Detective Saldate stopped his questioning. *Id.* Yanes was then transported for x-rays. *Id.* at 4. At this time, hospital staff told Detective Saldate that Yanes had a large bump to the rear of his right ear and could possibly have a skull fracture; however, they needed to do an x-ray to verify. *Id.*

**At no time during either interview did Yanes confess to shooting his girlfriend.** Saldate was unable to obtain any sort of description of who Yanes was claiming shot her. Of note is that Milke is claiming Saldate manufactured her confession. Yet in the Yanes case both Milke and the 9<sup>th</sup> Circuit accuse Saldate of misconduct in a case where he interviewed a suspect alone, a suspect they allege was in dire medical straits, yet Saldate documented that Yanes did not confess to murder. They allege that Saldate engaged in misconduct by even attempting to speak with Yanes. Yet there is no legal basis for that claim.

Prior to trial, the trial court conducted a hearing and found that the statements made to Detective Saldate were voluntary. Detective Saldate testified that it was not until after the interview was complete that he learned that the defendant may have a skull fracture. Reporter's Transcript of Proceedings, Vol. I of VII, p. 23 ll. 7-10, *State v. Yanes* CR 130403 (Ariz.Super.Ct. May 21, 1983). In addition, the medical records documented that the initial x-rays were negative for a skull fracture. [Trial transcript, 6/6/83, p. 14] The Court held that the defendant's statements were voluntary, and defendant was eventually convicted at trial. *Id.* at 30, ll. 2-5.

After the conviction a request for post-conviction relief was made alleging that trial counsel had been ineffective by failing to present medical testimony regarding the Defendant's medical condition at the time of the interview by Saldate. [*Supplemental Mtn to Suppress*, September 26, 1984 at 5] In fact, it was not until two days after Yanes was admitted to the hospital that the exact extent of his injuries was known. *Id.* at 6. Ultimately, the trial court granted the defendant's motion to "suppress those statements made by the defendant to Armando Saldate on November 24, 1982." Ruling, *State v. Yanes* CR 130403 (Ariz.Super.Ct. November 26, 1984). The Ninth Circuit Court of Appeals characterized the *Yanes* case as a "Fifth Amendment Violation." *Milke v. Ryan*, 711 F.3d 998 (2013). The 9<sup>th</sup> Circuit criticized Detective Saldate because he "admitted interrogating a suspect who was strapped to a hospital bed, incoherent after apparently suffering a skull fracture." *Id.* at 1014. However, nowhere in the record does the trial court or defense allege misconduct by Detective Saldate. To the contrary, in the defendant's own pleading, **defendant acknowledged that Saldate had no knowledge of the extent of the Defendant's injuries when he questioned Yanes.** Although the trial court ultimately suppressed "those statements made by the defendant to Armando Saldate," that clause is nothing more than an identifier for which statements were suppressed. To construe such a clause as a finding of misconduct would be a complete misrepresentation of the record. For anyone to attribute misconduct to Detective Saldate in this case would be a false statement. **There was no evidence in the record that Detective Saldate knew anything about Yanes' injuries such that he should have known anything Yanes said was unreliable. No nurse or doctor informed him of such.** There is no law or statute or rule that precludes talking to a suspect or witness who is hospitalized, regardless of their condition. The medical information certainly may play a role in a court's evaluation of the voluntariness of the statement, but for

Detective Saldate to not at least try to get information from Yanes as to who and how his girlfriend had been killed would have been malfeasance. If a third party had killed her, as indeed Yanes claimed, any delay in identifying that suspect could have damaged the ability of police to apprehend the killer.

Based upon the record which the Court seems to have ignored in their opinion, Detective Saldate was not guilty of any misconduct during the investigation of Yanes. Detective Saldate did not make the decision to introduce Yanes' admissions. Detective Saldate merely documented what was said and under what conditions the statements were obtained. The trial court on hearing what had occurred, and what Saldate knew about Yanes' medical condition, admitted the statements for the trial. **It was not until the Court was provided with additional information, information that Saldate did not possess, that the Court granted a new trial and suppressed the statements.**

**State v. Rodriguez – CR 161282**

On August 29, 1986, the victim and a friend were riding bikes when they encountered Rodriguez and another male. Rodriguez punched the victim in the face. When the victim began to ride away, Rodriguez fired a single shot that struck the victim in the back. A single casing was found at the scene. The victim's friend and several of the neighbors reported hearing the shot. A second shot was also fired near the scene, but into a trailer.

Rodriguez filed a motion to remand requesting a new grand jury presentation citing a factual error in the grand jury transcript. Motion for Redetermination of Probable Cause, *State v. Rodriguez* CR 161282 (Ariz.Super.Ct. October 20, 1986) at 4, ll. 5-12. The actual transcript of the grand jury proceedings contained an exchange between a juror and Detective Saldate during which it appeared Saldate had testified the victim was shot four times with the shotgun. Grand Jury Transcript, *State v. Rodriguez* CR 161282 (Ariz.Super.Ct. September 5, 1986) at 18, ll. 8-13. In its response the State took issue with the accuracy of the transcription of the proceeding. The State argued that if this answer had indeed been given, either the detective or the attorney for the State would have caught this discrepancy. Response to Motion for Redetermination of Probable Cause, *State v. Rodriguez* CR 161282 (Ariz.Super.Ct. November 13, 1986) at 4. The trial court granted the motion to remand noting:

...having reviewed the transcript of the Grand Jury and the Court having been informed that the reporter's notes and the transcript of the Grand Jury both reflect that the testimony of the State's witness was that the deceased was shot four times and the Court having been advised by the State and the defense counsel in the hearing of this matter that the facts in this case are undisputed that the deceased was shot only one time...

Ruling, *State v. Rodriguez* CR 161282 (Ariz.Super.Ct. November 20, 1986).

In its opinion, the Ninth Circuit Court of Appeals characterized the *Rodriguez* case as an incident in which a trial judge determined that Detective Saldate was “Lying Under Oath.” *Milke v. Ryan*, 711 F.3d 998 (2013). The Court dismissed the idea of a transcription error and incorrectly characterizes the trial court’s ruling stating, “The court concluded that Saldate had made a false statement, not that the court reporter had erred.” *Id.* This characterization is blatantly incorrect. As quoted above, the ruling merely states because the reporter’s notes and the transcript both indicated four shots, the case should be remanded. Nowhere in the ruling does the court make a finding that Saldate lied. The mere fact that the notes and the transcript match in no way dispel whether there was an error in the transcription, as a transcript is a direct product of the reporter’s notes. Thus, if the error occurred when the proceeding was initially transcribed in the notes the error would also occur in the transcript. Had the Court of Appeals actually reviewed the grand jury transcript in its entirety, perhaps it would have seen noted further evidence supporting transcription error. Throughout the grand jury presentation, Detective Saldate characterized the shot that killed the victim in the singular. See Grand Jury Transcript, *State v. Rodriguez* CR 161282 (Ariz.Super.Ct. September 5, 1986) at 7, ll. 10-12 (indicating cause of death was “the shotgun blast to the back”); at 9, ll. 20-21 (testifying that the victim’s friend “heard a loud shot” before seeing the victim slump over his bike); at 13, ll. 23-25 (testifying that nearby witnesses “heard a shot” after seeing Rodriguez walk by with a shotgun); at 15, ll. 6-7 (testifying that “there was a spent shell casing found at the scene.”).

The report of the medical examiner concluded a single shotgun shot was fired into the victim. A shot which resulted in 15 to 20 smaller injuries as a result of the birdshot contained in the shotgun shell. There was absolutely no way Detective Saldate or the prosecutor would have thought they could intentionally mislead the grand jury and get away with it. Either the court

reporter made a mistake, or Saldate accidentally misspoke. This case demonstrates another instance of the 9<sup>th</sup> Circuit failing to correctly characterize what occurred. The Court misrepresented the conduct of Saldate even when presented with the record. They also falsely claim that a trial court determined that Saldate lied.

**State v. Conde – CR 88-05881(B)**

On May 27, 1988, Conde and an accomplice entered a bank armed with handguns and demanded money. After filling a grocery bag with cash, the men ran to the parking lot where Conde commandeered a vehicle from a civilian at gunpoint. An off-duty Phoenix Police Officer working security in the area fired at the men, but was killed when Conde returned fire. Conde carjacked two more people before finally getting into a shootout with police, during which he was wounded and eventually arrested. That same day Conde was transported to the hospital for treatment of his injuries received during the arrest. Detective Saldate was asked to make contact with Conde in the hospital. **After Saldate read *Miranda* warnings, Conde made some admissions about participating in the robbery as he drifted in and out of consciousness. Because of his medical condition Detective Saldate stopped the interview. This was documented in his police report.** Contrary to what the 9th Circuit represented, the State did not seek to use these statements at trial.

On June 7, 1988, **10 days after Conde had been admitted for treatment of his injuries, Detective Saldate contacted Conde for a second interview.** Conde appeared to have recovered since the detective's first contact with him, and although he was on medication, he had not taken any yet that day. Phoenix Police Departmental Report #88-069346A dated June 8, 1988 at 1. During this interview, Conde made a similar statement to his first, admitting his involvement in the robbery, but denying shooting anyone. It was this second confession for

which the trial the court conducted a voluntariness hearing. Ultimately the trial court found that Conde was properly advised of his Miranda rights, acknowledged his rights, and validly waived his rights. Transcript, *State v. Conde* CR 88-05881(B)(Ariz.Super.Ct. October 25, 1989) at 23, ll. 20-22. The court also found that Detective Saldade did not promise, force or coerce Conde into making his statement. *Id.* at ll. 22-23. **However, the court ultimately found the statement “involuntary” because Conde was not given his initial appearance within Rule 4 guidelines due to his hospitalization.** *Id.* at 24, ll. 8-25.

In its opinion, the Ninth Circuit Court of Appeals characterized the *Conde* case as a “Fifth Amendment” violation. *Milke v. Ryan*, 711 F.3d 998 (2013). Thus, **the Court of Appeals completely misrepresented the rulings in the Conde case as it related to the conduct of Detective Saldade.** For reasons unknown they focused their analysis on the first attempt to interview Conde. An interview that Saldade ended due to Conde’s medical situation. The court seems to acknowledge that two interviews took place, but for reasons unknown completely ignores that it was the second interview the State sought to admit. The court’s opinion attempts to conclude that because Conde was in medical distress, slipping out of consciousness his statements were involuntary; however that was not the trial court’s ruling. The trial court did not evaluate the voluntariness of the initial interview because the State did not seek to admit it. To the contrary, as discussed above, the trial court found Conde’s Miranda waiver knowing, intelligent and voluntary, and that his statements were not the product of force or threats. Instead, the trial court suppressed the statements on a technical violation because Conde was not given an initial appearance within the time limits.

It is safe to say that any unbiased third party reviewing this distortion of the facts would wonder whether the appellate court had an agenda which was not supported by the truth.



**State v. Reynolds – CR 880605**

On Tuesday, September 6, 1988, the victim was found raped and strangled in her upstairs bedroom. Based upon witness statements, which if true and accurate, the victim was alive up until about 12:30 am the morning of September 6th. During the investigation police learned that on the evening of September 5, 1988, victim's five year old son was home. During an interview with another detective the son said he had witnessed a man come into the apartment. A neighbor also told police that she had seen a man outside the victim's apartment the night of the murder. The child and a neighbor eventually identified Reynolds in a photo lineup as being the person they had seen.

**Time**

Phoenix Police Detective Addington interviewed the victim's five year old son about his recollection of the night of the murder. See Detective Addington Supplement, Phoenix Police Departmental Report #88-116757 at 3-10. The only reference to the timing of the murder is as follows:

Q: When did you go to bed last night?

A: 8 o'clock.

Q: Were you watching anything on TV when you went to bed?

A: Gary Shandling Show.

Q: You went to bed after that show?

A: Yeah, this man came in and turned the TV off.

...

Q: Did he say anything when he left?

A: No, all he did was turn out the lights and turn off the show.

- Q: I thought he did that when he came in?
- A: No, when he left.
- Q: When he took your mom upstairs where were you?
- A: In the living room.
- Q: The whole time?
- A: Yeah.
- Q: Did you get to watch all of Gary Shandling?
- A: No, he turned it off. I only saw the first part.

*Id.* at 3, 7. At no point during this conversation was the victim's son specifically asked what time the man entered the apartment. Additionally, no attempt was made to determine what time the Garry Shandling show actually aired<sup>1</sup>. If Addington would have known this show did not even air the night of the murder the son's statement as to time would have clearly been in error. At that point all that could have been said was that the son saw a man some time during the night of September 5th.

In its opinion, the Ninth Circuit Court of Appeals classifies the *Reynolds* case as a "Lying Under Oath." *Milke v. Ryan*, 711 F.3d 998 (2013). The Court stated that, "the son told detectives that the defendant left the apartment about 8 p.m.; the son knew this because defendant turned off the Garry Shandling Show." *Id.* at 1013. The Court focused on Saldate's testimony that the son had said Reynolds had drug his mother upstairs "late at night" rather than telling the jurors the son had seen Defendant at 8pm. The Court went on to say that this omission was critical because other witnesses saw the victim alive after midnight, thus proving that Reynolds had not

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<sup>1</sup> It's Gary Shandling! aired on Sunday evenings. September 6, 1988 was a Tuesday. Brooks, Tim (2007). *The Complete Directory to Prime Time Network and Cable TV Shows: 1946-Present (Ninth Edition)*. Ballantine Books. p. 678. ISBN 978-0-345-49773-4.

killed her during their argument. *Id.* The Court characterized this testimony as an example of Saldate lying under oath to support the notion that the son saw Reynolds later in the night to coincide with her being alive after midnight. Specifically Detective Saldate testified that the victim's friend, Deborah Comstock, was at the victim's apartment between midnight and 12:30 a.m. *Id.* Grand Jury Transcript, *State v. Reynolds* CR 88-09605 (Ariz.Super.Ct. October 18, 1988) at 9, ll. 11-21. The 9<sup>th</sup> Circuit fails to note that the trial court did not find that Saldate had lied. In addition the facts show the son did not know an exact time. The simple answer is that he did not know when his mother was killed and did not know if Defendant had returned later to kill his mother. It is not even clear if the son knew what time any of this occurred for certain. While the trial court ordered a new grand jury determination there was no finding of misconduct.

### **Intoxication**

Detective Saldate interviewed Reynolds on two separate occasions – on September 6<sup>th</sup> and October 12<sup>th</sup>, 1988. See Detective Saldate's Supplements, Phoenix Police Departmental Report #88-116757, date September 6, 1988 and October 13, 1988. During his initial interview on September 6, 1988, Reynolds spoke at length about his activities on the day of the murder and his previous contact with the victim. Towards the end of the first interview, Reynolds told Detective Saldate that he may have gone back to the victim's apartment on the night of the murder, but he was too drunk to remember because was drinking and smoking marijuana earlier in the day. Saldate Supplement dated September 6, 1988 at 7. During a subsequent interview on October 12, 1988, Reynolds told Detective Saldate that although he was drinking at a barbeque and continued drinking at a pool, he did not believe he was drunk. Saldate Supplement dated October 13, 1988 at 1. During the grand jury presentation, a juror asked about whether Reynolds was intoxicated. Detective Saldate replied that, "[d]uring an interview with me, he said he was

not drunk. He had been drinking but was not drunk.” Grand Jury Transcript, *State v. Reynolds* CR 88-09605 (Ariz.Super.Ct. October 18, 1988) at 36, ll. 4-7. Thus the testimony was truthful.

In its opinion, the Ninth Circuit Court of Appeals classifies the *Reynolds* case as a “Lying Under Oath.” *Milke v. Ryan*, 711 F.3d 998 (2013). The court characterizes the detective’s testimony about intoxication as a false statement; however this is not the case. *Id.* at 1013. Detective Saldate’s testimony during the grand jury proceeding is exactly what Reynolds told him during his interview on October 12, 1988, that he was drinking, but was not drunk. The Ninth Circuit wrote that Reynolds told Saldate he “was too drunk to remember some of the events from that night,” however that is a mischaracterization of his interview. In fact, the sole thing Reynolds had difficulty recalling was whether he had returned to the victim’s apartment on the night of the murder, and it was that sole memory lapse that he attributed to his drinking. Saldate Supplement dated September 6, 1988 at 7.

What is also of note is that the exhibit 15 M which is part of the appellate record is in error. It contains a minute entry from Judge Seidel remanding the case to the grand jury. That order involved a grand jury presentation which occurred in October 1988. The transcript of that proceeding was not a part of the record and neither was the original pleading filed by Defendant asking for remand. What is in the record is a second motion to remand that is unrelated to the first grand jury presentation other than it summarizes the original issues.

**State v. Rangel** – CR 89-08086

On June 25, 1989, the victim who was an employee at the Pointe, was found lying dead in the street with four gunshot wounds to her chest. It was after she got off work that the victim was last seen alive by fellow workers. Detective Saldate interviewed the victim's fiancé, Rangel, on a number of occasions. Rangel eventually confessed to the murder. During the initial interview Rangel said he went to a baseball game the night of the murder and did not realize the victim was missing until he woke up the next morning. Phoenix Police Departmental Report #88-116757 at 2. Later when confronted with the fact that witnesses had seen his car, Rangel admitted to driving to the Pointe to speak with the victim, but maintained he had left the Pointe without her. *Id.* at 2. When told the witnesses had seen the victim get into a truck, Rangel admitted that he drove the victim to a Carl's Jr. to buy her a soda. *Id.* at 3. Eventually, Rangel admitted to getting into an argument with the victim as they drove to check on locations where he had accounts for his street sweeping business. *Id.* Saldate asked Rangel if he owned a gun, and Rangel told him while he considered buying one for protection, he had not purchased one. *Id.* at 5. Shortly after this portion of the interview, Rangel stated, "I think I may need an attorney." *Id.* Saldate documented the request and told him that that was his decision, but that there were further points that needed clarification. *Id.* Eventually, Rangel admitted that he had a gun in the truck, which spurred an argument between he and the victim, and that ultimately resulted in his shooting her when she got out of his truck. *Id.* 7-8.

During the grand jury presentation, **the attorney for the State decided to only present Rangel's version of events on the night of the murder that preceded his request for an attorney.** See Grand Jury Transcript, *State v. Rangel* CR 89-08086 (Ariz.Super.Ct. August 9,

1989) at 13-14, 18-23. Towards the end of the presentation on of the jurors asked whether Rangel was confronted with the inconsistencies in his story, specifically:

Q: Did you confront him? His last story as that he took her back to the Pointe. Saw her get into her car, and then drove away. But the boots were not on her body, and he admitted to the fact or in his story said that she had taken her boots off in his truck. Did you ask him why she didn't take her boots with her to drive the car again?

*Id.* at 28, ll 19-25. However, before the detective could answer this question, the attorney for the State interrupted and said "That point again we can't for legal reasons can't get into that." *Id.* at 29, ll. 1-2. Therefore, the grand jurors did not hear that Rangel eventually admitted to possessing a gun, nor did they hear that he admitted to shooting her during their argument. **They did not hear this testimony because of the prosecutor's decision, not because of Detective Saldate.**

Rangel filed a motion to remand based on the State's failure to present his entire statement to police, because it foreclosed the grand jurors' ability to indict for a lesser degree of murder. Ruling, *State v. Rangel* CR 89-08086 (Ariz.Super.Ct. October 16, 1989). The trial court granted the motion concluding that, "the defendant's final statement to law enforcement should have been presented to the grand jury. The fact that the acquisition of the statements might be later found to have been in violation of the defendant's constitutional rights is of no moment." *Id.*

Despite the true facts, the Ninth Circuit Court of Appeals classified the *Rangel* case as Detective Saldate "Lying Under Oath". *Milke v. Ryan*, 711 F.3d 998 (2013). The court alleged that during his grand jury testimony, Saldate, "...omitted some of defendant's statements in such a way as to make defendant look more culpable." The 9<sup>th</sup> Circuit wrote that the trial judge "held that Saldate's and the prosecutor's statements had materially affected the grand jury's deliberations and remanded the case for a new finding of probable cause." *Id.* at 1014. **That is false.** Judge Martin simple concluded the second statement should have been presented. Judge

Martin did not find that Saldate had omitted information to make Rangel appear more culpable. In fact if one reads the police report in this matter much of the statement made after Rangel mentioned counsel was more incriminating.

The Ninth Circuit's conclusion is also overly broad because nowhere in the ruling does the trial court make a finding of misconduct with respect to the detective. It was the State's attorney that directed the grand jury presentation, and it was the State's attorney that prevented the detective from answering the grand juror's question citing legal reasons. In fact, in its response to Rangel's motion to remand, the State explained that the admissions in question were not presented because they were obtained after Rangel may have invoked his right to remain silent. Response to Defendant's Motion to Remand, *State v. Rangel* CR 89-08086 (Ariz.Super.Ct. September 25, 1989). To assign fault to the detective based on decisions made by the prosecutor is improper and a misrepresentation of the trial court's ruling.

**State v. Mahler – CR 90-00296**

On November 8, 1989, the victim and his wife heard a knock at their door. When the victim's wife answered the door, two men with guns pushed their way inside the home. As the wife ran for safety, she heard two shots. The victim was later found in his recliner dead from a gunshot wound. Through their investigation, police identified Mahler as a suspect in the homicide. When Detective Saldate attempted an interview on January 19, 1990, Mahler immediately told him that he was aware of the games police played, and that he was not going to be fooled. Phoenix Police Departmental Report #89-166429 at 1. Mahler went on to say that he did not want to discuss the murder because he knew the State could make him swallow a pill for murder. *Id.* When Detective Saldate told Mahler he was not there to get admissions, but to get his side of the story, Mahler responded by telling the detective he was either going to get him a

lawyer or cut his girlfriend a deal. *Id.* Mahler also stated that he would agree to give himself up, if his girlfriend was released. *Id.* at 2. There was no evidence to tie Mahler's girlfriend to the murder, so police released the girlfriend. There was also no evidence that she was released so as to gain a confession from Mahler. Mahler was not told that if he confessed she would be released. Mahler was the one who brought it up. Ultimately, Mahler did confess to murdering the victim.

In its opinion, the Ninth Circuit Court of Appeals classifies the *Mahler* case as a "Fifth Amendment Violation." *Milke v. Ryan*, 711 F.3d 998 (2013), in which Saldate violated Mahler's right to remain silent. Regardless of the characterization, any statements that Mahler did not want to talk or requested an attorney are clearly documented in the police report by Detective Saldate. In fact Mahler did not ask for an attorney. He said he did not want to talk about a murder. Mahler brought up his girlfriend. No promise was made by Saldate.

It is interesting to note that the 9th Circuit opinion fails to mention that the trial court found the confession to have been lawfully obtained. While the Arizona Court of Appeals decided otherwise, an Arizona trial judge decided Saldate had done nothing wrong. **Also another example of failing to acknowledge the fact that Saldate once again fully documented his own conduct. But for that honesty no one would have been aware of the circumstances surrounding the confession.** Saldate documented what happened here just as he did in the Milke case, and every other case he worked. Saldate did not decide to introduce the confession, the State did, and the trial court ruling supported that decision.



**State v. Jones – CR 90-05217**

Around March 27, 1990, the victim was reported missing. On March 27<sup>th</sup>, police stopped the victim's vehicle, which was driven by Samuel Knott and contained Jones and two additional occupants. Officers had reason to believe that Knott may be involved in the victim's disappearance, so they transported him to the police station for an interview. Jones agreed to drive the victim's car to the station, and once there waited in the lobby with the two other occupants for police to finish interviewing Knott. Detective Saldate interviewed one of the girls who had been with Knott and Jones in the victim's car. During the course of the interview Saldate stepped outside the room to tell other officers about information he obtained. When he stepped outside, he saw Jones and other individuals in the lobby and suggested that they all be separated so that presumably in case they were somehow involved in the victim's disappearance their statements would not be as rehearsed. Unfortunately, another officer placed Jones in an interview room and handcuffed him to the table. At this time, while Jones had come to the police department voluntarily, there was no probable cause to arrest Jones. Eventually Detective Martinsen came into the interview room, uncuffed Jones, and began to interview him. During that interview, Jones confessed to participating in the victim's murder.

In its opinion, the Ninth Circuit Court of Appeals characterizes the *Jones* case as a "Fifth Amendment Violation." *Milke v. Ryan*, 711 F.3d 998 (2013). The Court claimed that the trial court, in suppressing the confession of Jones, found that Saldate "directed an officer to place a juvenile by himself in an interrogation room, where he was handcuffed to a table." *Id.* This statement is not true. The trial court did not make that finding. The trial court said "... at the direction of Detective Saldate, he was separated from his two companions and placed in a police interview room. He was handcuffed to a table in that room." [Jude Katz order of 11/29/1990] If

the 9th Circuit had wanted to know the facts, they might have suggested a need to review the testimony taken by Judge Katz. Apparently no one felt the need for this case to be judged on all of the facts. Because if they had, they would have discovered the only evidence was that Saldate asked for Jones to be separated from the others and that they be separated from him. He did not order Jones to be placed in any room. **However, it is once again noteworthy that the only way the trial court knew how any of this even began was from the testimony of Saldate.**

At the voluntariness hearing conducted in this case, Detective Saldate testified when he saw the individuals waiting in the lobby he asked that they be separated. Voluntariness Transcript, *State v. Jones* CR 90-05217 (Ariz.Super.Ct. November 29, 1990) at 55-56. The detective stated, "I didn't order him into the room. I ordered some of the – told the police officers, detectives, what are these people doing up front? Let's separate them, or something to that effect." *Id.* at 58, ll. 6-11. At no time did Detective Saldate order that Jones be locked in a room or handcuffed to a table as suggested by the Ninth Circuit. Nor did the trial court find that Detective Saldate committed any sort of misconduct. To the contrary, when reviewing the facts, the trial court expressly stated that it found the officers in question, including Detective Saldate, acted in good faith in their treatment of Jones. *Id.* at 103, ll. 18-25. Judge Katz said "... the officers subjectively believed that the Defendant had not been arrested." [order p.2].

**Even counsel for Jones in oral argument before Judge Katz said "... and when I say misconduct, I don't mean bad faith misconduct." [Voluntariness Transcript p. 109].**

**State v. King** – CR 90-00050

On December 27, 1989, Defendant and his accomplice disarmed a security guard outside a convenience store, shooting and killing him. The men then went inside the store and killed the store clerk. The clerk's death was captured on the store surveillance system, which showed King as one of the assailants. During his interview, Detective Saldate read King his *Miranda* warnings, and had King read them aloud himself. King admitted to visiting the convenience store in question, but denied involvement in the murders. When Saldate attempted to focus King on discussing the murders, King stated, "Look I know the game, I know exactly what you're trying to do but I'm not going to answer any more of your questions." Phoenix Police Departmental Report #89-192553 at 2. King went on to say he knew how the system worked, and that he had no reason to commit the murders. *Id.* He continued to laugh at the situation and make jokes about Arizona's failure to actually use the death penalty, stating that it would probably be used again if he was convicted. *Id.* **All of these facts were once again fully documented in Saldate's police report.**

King filed a motion to suppress his statements on the basis of a *Miranda* violation, and the trial court held a voluntariness hearing. A review of the transcript of this hearing reveals that the prosecutor had apparently not read the police supplement prepared by Saldate. This despite making reference to it and even emphasizing that it had been provided to defense counsel. For during direct examination, the following exchange occurred regarding King's willingness to discuss the murders:

Q: Did he ever specifically say he didn't want to talk to you about it?

A: No.

Q: Did he ever say he didn't want to answer *any* questions?

A: No.

Voluntariness Transcript, *State v. King* CR 90-00050 (Ariz.Super.Ct. June 22, 1990) at 22, ll. 8-13. (Emphasis added). What the Detective testified to was true. What needed to be asked next was simply at what point did King say he did not want to talk about the murder anymore.

However, it should be noted that no confession was obtained. In fact **Saldate told the trial court, and noted in his supplement, that the Defendant denied his involvement in the murders.** Defendant did admit to knowing one of the witnesses, and to having been at the murder scene. Presumably this is what the prosecutor was asking to admit at trial. These statements were made prior to refusing to answer any more questions about the murders.

On cross examination, defense counsel obviously asked the following:

Q: Now you told us on direct examination that he never said he didn't want to answer anymore questions; is that right?

A: Correct.

Q: Now in your report, let me read from your report: Look, I know the game. I know exactly what you are trying to do, but I'm not going to answer anymore of your questions. Is that what he said?

A: Yes

*Id.* at 29-30. The detective goes on to testify that the statements made by King regarding the death penalty were made after his statement that he did not want to answer anymore questions. *Id.* at 10-24.

Once again the 9th Circuit misrepresented what occurred. They classified the *Rangel* case as a "Lying Under Oath and Fifth Amendment Violation." *Milke v. Ryan*, 711 F.3d 998 (2013). The Court claimed that, "Saldate testified on direct examination that the defendant never indicated he didn't want to answer questions," and that he was later impeached on this point with

his own report. *Id.* However, looking at the testimony, the characterization is incorrect. On direct, the detective was asked, “Did he ever say he didn’t want to answer *any* questions?” *Transcript* at 22 ll. 11-12. (Emphasis added). That statement is correct, as King never stated that he would not answer any questions. It was only after King had answered questions and discussed his visiting the crime scene that he indicated his unwillingness to answer further questions. After answering questions for a time, King said he would answer no more questions about the murder. **Nowhere in the hearing does the defense attorney allege that Saldate testified falsely and nowhere does the trial court even remotely make such a finding.**

At the conclusion of the hearing, the trial court initially found that the statements after King said he no longer wanted to answer questions were voluntary, and thus admissible. *Id.* at 33-34. When King’s attorney informs the court that the statements were joking comments about the death penalty, the court reversed itself, stating, “...they’re not admissible. That could create a problem. I didn’t realize what those statements were.” *Id.* at 35, ll. 23-25. The trial court did not suppress the statements because they are involuntary, but instead appears to have suppressed the statements due to the prejudicial content.

With respect to the detective continuing the conversation with King, as in his other cases, he documented the conversation in his report and freely admitted that he continued speaking with him. As he always did, Detective Saldate documented that King did not confess. In direct contrast to what Milke claims when she alleges Saldate made the whole thing up. That would be in direct contrast to his conduct in these other cases like Reynolds, Yanes, and King where when given the opportunity Detective Saldate honestly reported no confession. It should also not go unnoticed that Detective Saldate interviewed James Styers. Yet Saldate reported that Styers would not talk and made no confession. He had the same opportunity to fabricate a

confession for Styers as is claimed by Milke. However, he did not do so for Styers and he did not do so for Milke.