

## **Judge denies mistrial request in Buscemi murder trial after outburst**

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By Christina Stolarz

The Detroit News

MOUNT CLEMENS – A judge on Wednesday denied a request for a mistrial in murder trial involving an Eastpointe party store after an outburst from a prosecution witness who uttered personal attacks at a defense attorney.

Macomb Circuit Judge Donald Miller instructed jurors to disregard the testimony from prison inmate David Maki, but ruled the trial would continue.

"He was uncontrollable, unresponsive," Miller said to the jury. "It negates any sort of value in this trial.

"We have made progress."

Two Detroit men, **Winfred** Roger **Phillips** and Isaiah Mayweather, are on trial on charges they killed one man and injured another during an armed robbery and shooting at the Original Buscemi's pizza shop/party store nearly a year ago. Testimony should resume Wednesday afternoon.

Defense attorney Timothy Barkovic requested a mistrial on the basis of prosecutorial misconduct because he said prosecutors were aware Maki is a "loose cannon" but called him anyway.

"It appears to me they should have at least some control over the witness," Barkovic said. "I can't cross examine him. I can't trust what comes out of his mouth."

Maki testified because he met **Phillips** in Macomb County Jail after **Phillips** was arrested in the murder, assistant prosecutor Steve Fox said. Maki told the courtroom that **Phillips** confessed to shooting one of the employees multiple times.

Maki's outburst occurred after Barkovic asked at least two questions during cross examination.

"Are you a snitch?" Barkovic asked.

"If you want to call it that, then yeah," said Maki, who added he wasn't given a lesser sentence for his testimony. "I want to give back to society."

"You're an informant, a snitch, what other word did you use ... a rat," Barkovic said.

"This is the first time I ever testified against anyone in my life," Maki said.

Maki raised his voice in the exchange, addressed Barkovic by his first name and uttered personal accusations against Barkovic, who once represented Maki in another case.

Barkovic told the court that he feared the jury will be tainted by the personal attacks against himself that could hurt his credibility, and as a result, that of his client.

However, Miller said the jury was instructed to disregard Maki's testimony and scratch out any notes they took while he was on the stand.

Miller denied the mistrial because he said Fox was just as surprised by the outburst as everyone else in the courtroom.

Fox said Maki's testimony was helpful to the case because "he did testify that Mr. **Phillips** confessed to the crime."

But, "our case didn't hinge on his testimony," he said.

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