

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE

APACHE CO SUPERIOR COURT
NO. _____ FILED DOCKETED

DEC 15 2008

AT _____ O'CLOCK M
SIF HALL CLERK

In re the Matter of.)
)
CHRISTIAN RYAN ROMERO)
)
A person under 18 years of age)
)
_____)

CASE NO JV 2008065

m

TRANSCRIPT OF STATUS CONFERENCE

December 8, 2008

BEFORE THE HONORABLE MICHAEL P. ROCA

Lynne McSeaton
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Transcriber No. 00281

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APPEARANCES

FOR THE STATE:

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FOR THE JUVENILE

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THE GUARDIAN AD LITEM:

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ALSO PRESENT:

MS. JENNIFER HIMES,
Juvenile Detention Center Director

P R O C E E D I N G S

(Proceedings commenced at 9:03-40 a.m.)

THE COURT. This is the time set for a status conference in JV2008065, Christian Romero Mr Carlyon is here again for the State, Mr. Brewer for the defense. Mr. Candelaria is with Mr. Carlyon.

This, being a status conference, what's the status?

MR. BREWER: Judge, for purposes of the record, we'd be waiving Christian's appearance at this proceeding

THE COURT: I think we discussed that previously.

MR. BREWER: I have a couple of issues. I can go through mine, however you want to proceed, Judge.

THE COURT: Well, my first question is: Where are we on doctors' exams?

MR CARLYON: Your Honor, the State's nominee is set for an evaluation on December 17th. I believe Probation is waiting for the Court to accept the Defense nominee before they set it up.

THE COURT. I thought that had been done.

MR CARLYON: They didn't seem to know about it from what I understand

THE COURT: November 26th, "Motion of the Juvenile and good cause appearing, it is hereby ordered appointing Daniel Juliano, Ph.D , to conduct the competency examination

1 on Christian Romero "

2 MR BREWER There have been some changes regarding

3 --

4 THE COURT. Did --

5 MR. BREWER. -- that, Judge, if I could advise the
6 Court with regard to that. We are going to be withdrawing our
7 request for Dr. Juliano. We're going to be going with --

8 THE COURT Timely.

9 MR. BREWER. What's that?

10 THE COURT Okay. Please.

11 MR. BREWER. And we're going to -- we're going to be

12 --

13 THE COURT I'm sorry. I shouldn't have
14 interrupted.

15 MR. BREWER. -- requesting that Dr. Cady be our
16 person who we submit the redacted copy of the Court report
17 And so --

18 THE COURT. Okay He was --

19 MR. BREWER He was solely for our purposes
20 initially

21 THE COURT Right

22 MR. BREWER Now we're going to change that if
23 possible and use him for our -- ours.

24 MR. CARLYON: I just want to make that Mr Brewer
25 understands that the information that is provided to Dr. Cady

1 to help him reach his conclusion, I believe, would be
2 discoverable by the State; be able to effectively cross-
3 examine; just to make sure there's nothing that they provide
4 that they don't want the State to have.

5 THE COURT Is that going to cause any heartburn?

6 MR. BREWER No, Judge; it's not. In addition, we
7 have the report, we have the decision We'll be redacting
8 that and providing copies to the respective parties. However,
9 we are of the firm belief that this is not a public record and
10 will not be disseminated in any fashion.

11 THE COURT. Okay Secondary dissemination is
12 prohibited.

13 MR. BREWER. Okay

14 THE COURT. Period.

15 MR. BREWER: So we will have that to the Court
16 probably by the end of the week.

17 THE COURT: And of yours as well

18 MR. CARLYON. My only other thought that's popping
19 my head is Dr. Cady was in with this young man very early.
20 Most of the examiners request to have a lot of other
21 information such as offense reports, interviews with different
22 people that know him. It sounds like Dr. Cady doesn't -- or
23 did not use that in reaching his conclusion; and become a big
24 issue probably during cross-examination if we get to that
25 point. I don't know if they want to provide that to him, as

1 we would with Dr. Juliano and will with Dr. Johnson, to make
2 sure everybody's talking from the same book.

3 THE COURT. Okay All right. Let's back up a
4 second. I don't see that that's a problem. It could well be
5 the basis for impeachment of Dr. Cady if he's making decisions
6 and offering opinions based on what may ultimately be deemed
7 to be an inadequate background basis. But I don't see that
8 it's objectionable at this point.

9 MR. CARLYON: I wasn't saying that --

10 THE COURT: I mean, it's a decision that the Defense
11 makes. They're big kids. They made it.

12 Mr. Brewer, do you want me to rescind the order
13 appointing Dr. Juliano?

14 MR. BREWER: Yes, Judge

15 THE COURT: Okay. It's ordered rescinding the order
16 executed November 24th, filed November 26th, appointing Dr.
17 Juliano to examine the minor.

18 State's doctor is due to examine the minor -- or at
19 least interview the minor --

20 MR. CARLYON: The 17th of November.

21 THE COURT: Okay

22 MR. CARLYON. I mean December.

23 THE COURT: Okay Is that workable for Juvenile
24 Probation?

25 MS. HIMES: (No audible response)

1 THE COURT: Okay.

2 MR BREWER: Judge --

3 THE COURT: We've got a sequence of nods Okay

4 MR BREWER We are -- we are going to request that
5 the doctor drive up here to do the examination. That's going
6 to be a five-hour trip both ways. For Christian, he's going
7 to have probably four hours in the hot seat with the doctor.
8 That's too much. That's too much for an adult, let alone an
9 eight-year-old kid.

10 So I would ask that the doctor be required to come
11 up here or there be some alternative where he can stay down
12 there and not have to do it all in one shot because that's a
13 long -- a long trip for anybody.

14 THE COURT It's a long trip for anyone.

15 Mr. Carlyon, is there any way your doc can travel?

16 MR. CARLYON. I don't know. I haven't talked to
17 him. The Juvenile Probation has been setting it up. I don't
18 even know where the interview is to take place.

19 THE COURT Okay Is there any way to park the
20 minor overnight so that he doesn't have to do all of that in
21 one day?

22 MS. HIMES There is. The interesting thing is this
23 doctor says that it would only take an hour and a half --

24 THE COURT. Okay.

25 MS HIMES. -- to do the evaluation.

1 THE COURT Okay So that takes us from 14 hours
2 down to 11 and a half?

3 MS. HIMES Yeah

4 THE COURT Okay. That's still a long day for a
5 kid. Is there any way to park the minor overnight?

6 MS. HIMES Oh, yes.

7 THE COURT: Okay Let's do it that way then.

8 Okay. What's next, Mr Brewer?

9 MR. BREWER. Judge, there have been some -- we are
10 still concerned about the disclosure, and we would like some
11 kind of deadline. We have yet to receive any kind of
12 forensics and DNA; anything --

13 THE COURT: My guess is the State has yet to receive
14 them as well.

15 MR. BREWER: And I understand that, but in the
16 meantime, my client's basically in isolation in detention, and
17 I don't think that's in his best interests. It's hurting him
18 to have to stay there that long. So we're going to try to
19 fight and press to get the government to provide us with the
20 documentation we need

21 THE COURT: The who?

22 MR BREWER: The -- I use "the government," Judge.
23 I understand that's contentious with this Court, but --

24 THE COURT: This is not the Federal District Court.

25 MR. BREWER: Okay. All right, Judge.

1 THE COURT: Anyway.

2 MR. BREWER: In any event, we would like to have
3 some deadline. I think they can put the -- put the fire under
4 the feet of the guys at the lab. I mean, this needs to be
5 resolved quickly, and we need to get this information.

6 THE COURT: You're absolutely right It needs to be
7 resolved quickly You need to get the information. So do
8 they. And --

9 MR. BREWER: But I --

10 THE COURT: -- I fully agree with you. It's
11 necessary, and it's -- it would be wonderful if it were here.
12 And I have one question for you. Have you ever tried to get
13 prompt action out of the individuals that you're talking
14 about?

15 MR. BREWER: Judge, I -- we haven't talked to them.

16 THE COURT: I have.

17 MR BREWER: I try to limit my conversations with
18 them as much as I can, but --

19 THE COURT: I understand that. On the other hand,
20 there have been times when I've been on a first-name basis
21 with half the people in the lab from me pleading piteously to
22 get lab results.

23 MR. BREWER: Maybe the Court can issue an order. I
24 --

25 THE COURT: King Canute tried that; didn't work for

1 him

2 MR BREWER: I'm just concerned, Judge. We've been
3 waiting --

4 THE COURT: I know I sympathize with you entirely.
5 Mr. Carlyon, do you have any proposed solution?

6 MR. CARLYON Not a proposed solution. The DPS
7 Crime Lab does know this is a high profile case

8 THE COURT Right

9 MR. CARLYON. They have prioritized it. However,
10 they also provide forensic services statewide There are
11 other matters that are --

12 THE COURT Or not

13 MR. CARLYON -- pending trials that are coming up
14 real quick. They're trying to get us to the front of the
15 queue.

16 THE COURT Okay

17 MR. CARLYON But they can't throw everybody else
18 aside just to work on this case.

19 THE COURT. I understand.

20 MR. CARLYON. DNA, we've been pushing and working
21 with them hard because they're the ones who are going to have
22 all the initial testing of much of the evidence before it can
23 go on to other people. They have put us towards the very,
24 very front

25 THE COURT: Okay.

1 MR. CARLYON: And instead of the typical year --

2 THE COURT: Ballpark?

3 MR. CARLYON -- we're looking at probably sometime
4 late January.

5 THE COURT: Late January?

6 MR. CARLYON: That's two months compared to a year.
7 That's pretty much for them a major rush. And we're trying to
8 get them to go quicker, and I think they're trying to be
9 realistic at when they can get it to us

10 THE COURT: So it may be mid-January, but certainly
11 not early or this month?

12 MR. CARLYON. It's not going to be in December --

13 THE COURT: Okay

14 MR. CARLYON. -- especially with the holidays coming
15 up They've started their analysis, from what I understand,
16 but it's not something you get done in 15 minutes and then
17 print out an answer

18 THE COURT: No, I understand that

19 MR. CARLYON: It takes --

20 THE COURT: They -- can they get -- can they scan
21 for samples for DNA and then pass the stuff through?

22 MR. CARLYON. That's what I understand they're
23 doing. They're just taking their samples that they need so
24 that they can pass on this evidence to other parts of their
25 criminal lab for the other tests that need to be conducted;

1 then passed onto others. It's not something that everybody
2 can work simultaneously. There are steps that would need to
3 be taken to get the best potential results or most accurate
4 results.

5 THE COURT: Okay There's your deadline, Mr.
6 Brewer, end of January, period.

7 Mr. Carlyon, will it do any good for the -- for you
8 to present that to them as a deadline that they in fact
9 picked?

10 MR. CARLYON: They would probably argue with me that
11 they picked that So, I mean, that's what they're trying to
12 get accomplished for me

13 THE COURT: Okay. Well, you know --

14 MR. CARLYON: And I don't know what may come up that
15 could interfere I'm hoping that's a deadline. If it's not,
16 then I'm sure Mr. Brewer will be back here again.

17 THE COURT: We've both been in Mr. Brewer's shoes,
18 although not necessarily in a -- in a case with -- of this
19 magnitude We've also -- Mr. Brewer hasn't been, but I've
20 been in your shoes and just terribly frustrated. I don't see
21 any way -- any way around it They've got to have the time to
22 do what they do.

23 On the other hand, would a deadline help is my
24 question.

25 MR. CARLYON: Can't hurt.

1 THE COURT Okay. End of January.

2 MR. CARLYON Okay

3 THE COURT You know, sprouts wings, floats away if
4 it's not done Fair enough?

5 MR. CARLYON We may be back begging, but okay.

6 THE COURT. Okay Well, it may be modifiable for
7 good cause, but it better be good.

8 Okay. What else?

9 MR. BREWER: Judge, just let me go over that,
10 because of the potential extended delay on that, we probably
11 will be making some requests for additional times out for
12 Christian. We aren't going to do that on the record today --
13 or we're going to try to keep that as under the radar as
14 possible. But we will be making those requests --

15 THE COURT: Wasn't that announcement sort of self-
16 defeating?

17 MR BREWER: Well, I mean, presumably that's going
18 to be assumed by everybody, that we're going to be requesting
19 that at some point in time, but we -- just for the Court's
20 information.

21 The next issue, Judge, is we filed a request for an
22 appointment of a therapist for the juvenile There are some
23 fairly specific --

24 THE COURT. Okay. I --

25 MR BREWER: -- requirements in there --

1 THE COURT. -- read that --

2 MR. BREWER. -- from our perspective

3 THE COURT. -- read that pleading. You want me to
4 appoint somebody outside the range of services customarily
5 provided by Juvenile Probation. I'll allow you to direct the
6 process and to exempt the individual from the operation of the
7 criminal law, right?

8 MR. BREWER Right

9 THE COURT I'm not usually in the business of
10 granting prospective immunity. I doubt even that the Attorney
11 General would be willing to do that.

12 MR. BREWER. And, Judge, my concern is solely for
13 the health --

14 THE COURT. I --

15 MR. BREWER: -- of Christian. I'm not --

16 THE COURT: I understand fully. On the other hand
17 --

18 MR. BREWER: I don't want to try to use information
19 that she's getting. I don't want to try to get --

20 THE COURT: I'm not suggesting you do. And I --

21 MR. BREWER: And if there's a way we can fashion
22 that order that would be more agreeable to where that goal
23 would be met ultimately -- and I don't have a problem with
24 that. But I just don't want her to be fearful of having to be
25 called to testify about communications she has with Christian

1 inside the detention. I think that's going to be very
2 defeating and that defeats the whole purpose.

3 THE COURT The way it's proposed now, I can't go
4 along with it I really can't.

5 MR. BREWER: Are there suggestions the Court has
6 that would --

7 THE COURT: Not right off the top of my head. Have
8 you conferred with Juvenile Probation about what's available
9 and what could be provided?

10 MR. BREWER: Judge, I mean, I --

11 THE COURT I take it that is a no.

12 MR. BREWER: That is a no.

13 THE COURT. Okay I regularly beat my gums about
14 what a splendid resource probation officers are, and it's --
15 at least it's true in the case of juveniles as it is with
16 adults My I impose on you, please, to discuss this with the
17 staff and management at Juvenile Probation to find out, first
18 of all, what's available and how? If it needed modifying,
19 that can be tailored to suit the needs of your client.

20 MR. BREWER: Yeah I'll do that, Judge.

21 THE COURT Okay. As far as the other pending
22 request, you wanted the Court to finance a -- an opinion
23 expert on juvenile confessions?

24 MR. BREWER. Correct.

25 THE COURT: Do you have a proposed individual? Do

1 you have a proposed budget?

2 MR. BREWER: Judge, we can provide that --

3 THE COURT: Okay.

4 MR. BREWER: -- to the Court by the end of the week,
5 but we do have someone who we believe will be able to do that
6 --

7 THE COURT: Okay. I would appreciate it --

8 MR. BREWER: -- and my information --

9 THE COURT: I would appreciate seeing some numbers
10 and some names.

11 MR. BREWER: Okay.

12 THE COURT: Okay.

13 MR. BREWER: We can do that, Judge

14 THE COURT: Mr. Carlyon?

15 MR. CARLYON: Sir?

16 THE COURT: He had a laundry list. I'll bet you do,
17 too.

18 MR. CARLYON: Laundry list of what?

19 THE COURT: Stuff.

20 MR. CARLYON: Mainly we're here to let the Court
21 know what the status is of how this case is moving. We've
22 covered the forensics

23 Interviews, we have actually two sets of interviews
24 going -- set up to go at the same time with multiple
25 attorneys, investigators. We have a half day worth of

1 interviews on Tuesday, a full day on Thursday. That should
2 make a very large dent into getting the interviews done

3 THE COURT: Okay.

4 MR CARLYON: We've covered the status now of the
5 competency and sanity evaluations.

6 THE COURT: Can I interrupt for a second?

7 MR CARLYON: Please.

8 THE COURT: Mr. Brewer, have you cloned yourself?

9 MR. CARLYON: Mr. Wood's participating and Mister --

10 THE COURT: Mr. Wood's in this?

11 MR CARLYON: -- Garsha.

12 MR. BREWER: He is.

13 THE COURT: Is Mr. Legate in this, too, or is he
14 minding the store?

15 MR. BREWER: He's mind the store for now, Judge,
16 yeah

17 THE COURT: Okay. So we got two for the defense --

18 MR. CARLYON: Okay. Three with Mr. Garsha. I think
19 he's participating, too

20 MR. BREWER: Right.

21 THE COURT: Is he cloning himself?

22 MR. BREWER: I'm not sure I follow you, Judge. What
23 do you mean by that?

24 THE COURT Well, how can he be in two interviews at
25 once?

1 MR BREWER. We have discussed -- or at least Mr.
2 Wood had emailed the prosecution regarding their desire to do
3 two interviews at the same time, and we're not on that same
4 page. We are going to want to interview one at a time, which
5 will probably extend the length of time needed to do the
6 interviews. So this is a serious case, Judge, and we need to
7 treat it as such and that's why --

8 THE COURT. And so --

9 MR. BREWER -- we want to have --

10 THE COURT -- you want to be able to double-team
11 the interviewee?

12 MR. BREWER: Potentially, yes.

13 MR. CARLYON. Triple

14 THE COURT: Well, if Mr Garsha participates, how
15 does he -- how does he maintain a status as a mere witness?
16 So at least double.

17 MR. CARLYON. If that's what they want, then I
18 assume they're in communication with Barbara to help me --

19 THE COURT Okay. Well --

20 MR CARLYON -- schedule these interviews

21 THE COURT: -- then that late January date doesn't
22 look all that unrealistic either True?

23 MR. BREWER: Well, I mean, we can -- well, we can
24 continue to do interviews as long as we need to do them.

25 THE COURT. Okay.

1 MR. BREWER: I mean, I understand --

2 THE COURT All right.

3 MR. BREWER: -- where the Court's coming from, but,
4 in the same vein, if we need to pick up our pace, we certainly
5 will.

6 THE COURT: Okay All right. Mr Carlyon, I
7 interrupted you. My apologies. Please go ahead.

8 MR. CARLYON No, that really pretty much covered
9 the status of how the case is moving along. I think the Court
10 has the understanding that nobody's dragging their feet on
11 this. We're trying to move as quickly as practical forward

12 THE COURT. I understand.

13 MR. CARLYON: I think the only motion the State has
14 pending before the Court is this motion to dismiss one count.

15 MR. BREWER: And, Judge, I would -- I would rather
16 -- because this was a status, I would rather have that set for
17 Wednesday where we can have our client here and be able to
18 address the Court with regard to that motion.

19 THE COURT: Okay. Well, I think it -- I think it
20 needs to be addressed as promptly as possible

21 Mr Carlyon, since -- well, okay. The statutes
22 controlling the issue or addressing the issue of competency
23 presuppose that nothing will happen while an individual is
24 incompetent The implicit command of that statute is one that
25 substantive matters will not proceed. The parallel to the

1 adult practice or the criminal court practice under Rule 11, I
2 think, is instructive. In the early days of Rule 11, after it
3 became effective in 1973, the orders were in fact captioned
4 "and stay of proceedings."

5 That's a local practice in some counties. It may
6 not be prevalent in others as well.

7 It's essentially unnecessary, but it was thought to
8 be the essence of the -- of the thing. And even now in
9 criminal matters, nothing happens while there's a Rule 11
10 pending.

11 The equivalent is, and I feel should be, true in
12 juvenile matters. I don't feel that it's appropriate to
13 address substantive issues such as major strategic moves while
14 there's a competency inquiry pending.

15 Now, the fact that that may put the State behind the
16 eight ball is, and I don't think should be, the Court's
17 problem. The State had an opportunity to chessboard this
18 thing from the very start; had enough evidence on both counts
19 to file them, to pursue and obtain a probable cause
20 determination. The broad outlines of the moves and
21 countermoves that could be made by the various parties were, I
22 think, if not obvious then certainly discernible at the time
23 that the matter was initiated.

24 So that's --

25 MR. CARLYON. But --

1 THE COURT: -- that's where we are. I'm not going
2 to address that while the competency issue is pending.

3 MR. CARLYON: Then, Judge, you put us in a position
4 where we have to seriously consider dismissing both charges,
5 re-filing of them because we're still within the 45-day
6 statute of limitations for it.

7 THE COURT: I'm putting you in the position?

8 MR. CARLYON: No You're making us seriously
9 consider that. That will be the only way to make sure, from
10 this point in time, that this case does not fall through the
11 cracks because it's not set up to handle a case of this nature
12 against a juvenile so young. If you don't allow us to address
13 the motion to dismiss on the one count because of the pending
14 competency, then the result is if the Court finds the juvenile
15 incompetent and not restorable, even after 240 days that
16 they're not restorable, then the -- then nothing happens.

17 The child doesn't get any help The victims get no
18 sense of justice. And it just shows that our system is not
19 set up to treat this kind of case.

20 THE COURT: Which is something you knew in advance,
21 and so did I, and so did Mr. Brewer, and so did everybody in
22 the room. This system is not set up for a case like this

23 MR. CARLYON: Then it probably shouldn't be a shock
24 if we end up having to -- that we need to dismiss both to re-
25 posture ourselves because we were moving quickly as this came

1 up trying to -- trying to do the best that we could with the
2 information we had at the time.

3 THE COURT: I'm not questioning your sincerity or
4 the incredible effort that had to have gone into the
5 determination to proceed as the case has been presented so
6 far; not even for a millisecond. On the other hand, I do
7 believe that the proceedings are and should be stayed, and,
8 you know, I did this myself.

9 MR. CARLYON: This was --

10 THE COURT: On the other hand, I think both you and
11 Mr. Brewer would've been terribly disappointed if I hadn't
12 raised the issue of competency way back when --

13 MR. CARLYON: Oh --

14 THE COURT -- and neither of you objected.

15 MR. CARLYON: Oh, no. It's clearly an issue that
16 needs to be addressed. And I guess my corollary question back
17 to the Court is: Does that preclude the State from moving to
18 dismiss both counts from the analysis that you're taking?
19 Because there's a --

20 THE COURT. Is that a substantive issue?

21 MR. CARLYON: Yes

22 THE COURT Okay.

23 MR. CARLYON: So I assume your answer is yes

24 THE COURT I said I'm not going to address
25 substantive issues while the issue of competency remains

1 unresolved. It --

2 MR. CARLYON But with no offense --

3 THE COURT: -- would you like to talk to the Court
4 of Appeals about it?

5 MR. CARLYON: We (indiscernible) --

6 THE COURT: You know, because I'd like to have some
7 guidance on this.

8 MR. CARLYON: And that's where I was going. With no
9 offense to the Court, could the Court make sure that that's in
10 the Minute Entry? Because we need to contemplate

11 THE COURT: Okay.

12 MR. CARLYON: -- a special action on that issue.

13 THE COURT: The Court is specifically declining to
14 address substantive matters, particularly the State's pending
15 motion to dismiss -- I think it's Count I of the petition,
16 while the issue of competency remains unresolved.

17 MR. CARLYON: Could we also have you include in that
18 --

19 THE COURT. It is ordered that a transcript of this
20 proceeding be prepared at the earliest possible opportunity.

21 MR. CARLYON: Appreciate that.

22 THE COURT What else?

23 MR. CARLYON: If you could include that that would
24 also include the State's moving to dismiss both counts; just
25 so it's clear on the record for moving up.

1 THE COURT: We're going from not doing prospective
2 immunity to not doing prospective orders, but, yeah

3 MR CARLYON: But the 45 days --

4 THE COURT: It's a substantive matter.

5 MR CARLYON: Okay.

6 THE COURT: I feel that my hands are properly tied.

7 MR. CARLYON: And I understand, Judge. I'm not
8 trying to get into a fight with the Court

9 THE COURT: No. I --

10 MR CARLYON: It's just you need to understand --

11 THE COURT: Okay Yeah.

12 MR CARLYON: -- we got that 45-day statute of
13 limitations, too.

14 THE COURT: Yeah. No, I understand.

15 MR CARLYON: Okay.

16 THE COURT: But one -- you know, I don't see why
17 that clock isn't stopped, too.

18 MR. CARLYON: I can see arguments against that,
19 though, but I understand that's argument I would be making,
20 but --

21 THE COURT. I don't -- one more time, I don't see
22 why that clock isn't stopped, too

23 MR. CARLYON: Okay.

24 THE COURT: So a motion to dismiss is a motion to
25 dismiss It's a substantive motion. You know, and I don't

1 feel that it's appropriate to address one or both of the -- of
2 the counts while the competency issue remains unresolved.

3 Okay Does that give the record you need to go --

4 MR. CARLYON: Yes.

5 THE COURT -- go talk to the Court of Appeals about
6 it?

7 MR. CARLYON: It does.

8 THE COURT Okay.

9 MR. CARLYON: Thank you.

10 THE COURT. All right. Next question. To be
11 redundant, do you want a stay of proceedings?

12 MR. CARLYON Yes.

13 THE COURT Discovery to continue?

14 MR. CARLYON Yes

15 THE COURT. Okay It's ordered staying proceedings;
16 discovery is to continue; exams are to continue Probation
17 Department is requested to contact Mr Brewer taking the first
18 step with an eye to procuring therapeutic intervention

19 Mr. Brewer, if you can come up with some alternative
20 that doesn't require me to violate the law flagrantly, or even
21 a little bit for that matter, I'd appreciate it

22 Okay. What else can we address today?

23 MR. BREWER. Judge, given the Court's recent order,
24 I would ask that we go into chambers on the record and discuss
25 issues about pertaining to Mr. Romero's potential release for

1 periods of time. I think that that's necessary given that
2 this could end up taking a lot longer than we anticipated
3 initially

4 THE COURT. Can we reconvene later? Because we've
5 got a long list of stuff --

6 MR. BREWER We can, Judge

7 THE COURT -- on this morning's calendar.

8 MR. BREWER. No, that's fine

9 THE COURT Okay Mr. Carlyon, can you stay around
10 for another half hour, 40 minutes?

11 MR. CARLYON. If it's a half hour to 40 minutes,
12 yes. If it's going to be substantially longer --

13 THE COURT Okay. Well, I've got some in-custodies
14 on the regular calendar?

15 THE CLERK. Yes

16 THE COURT Which I have a copy of around here
17 somewhere (Brief pause.) One arraignment, a pretrial
18 conference, a sentencing, a status Okay.

19 Is Judge Grimsley ready to take the bench?

20 THE CLERK. (Indiscernible, away from microphone)

21 THE COURT If you would, please.

22 Mr Brewer, are you prepared to clone yourself?

23 MR. BREWER: Not presently, Judge.

24 THE COURT: Okay. So if we break -- if we break and
25 reconvene in chambers, nothing's going to happen anyway, so.

1 All right. Next question, as soon as the clerk
2 returns: Next hearing or further status conference?

3 MR. CARLYON. Yeah.

4 THE COURT: When?

5 MR. BREWER: I believe so, Judge

6 MR. CARLYON: I would say sometime after the 17th
7 just to ensure that the psychological from the State's nominee
8 --

9 THE COURT: Okay.

10 MR. CARLYON: -- is proceeding.

11 THE COURT: All right. What are you doing on the
12 22nd? Not wanting to be here, I suppose. That's a Monday.
13 Your kids are out of school?

14 MR. CARLYON: My kids are out of school. Hopefully
15 we'll have daycare. But I think I should be available.

16 THE COURT: Okay. Mr. Brewer, does that work?

17 MR. BREWER: Yes.

18 THE COURT: Okay. 9:00 a.m., December 22nd, for a
19 status conference.

20 MR. CARLYON: Do you want to move it up 8:30, so it
21 has a lesser impact on the remainder of your long motion
22 calendar?

23 THE COURT: No

24 MR. CARLYON: Okay.

25 THE COURT: Do you?

1 MR. CARLYON. Doesn't bother me.

2 MR. BREWER: So are we going to be re-meeting today,
3 Judge?

4 THE COURT: I think we're -- well, okay. We need to
5 recess to chambers.

6 MR. BREWER: Okay.

7 THE COURT: Okay. Anything else that we need go on
8 the record at this time about?

9 MR. CARLYON: No

10 THE COURT: Okay.

11 MR. BREWER: I don't believe so, Judge.

12 THE COURT: Thank you very much. We're in recess.
13 I'll see counsel in chambers on the record.

14 THE CLERK: All rise

15 (Whereupon, the proceedings were concluded at
16 9:30:24 a.m.)

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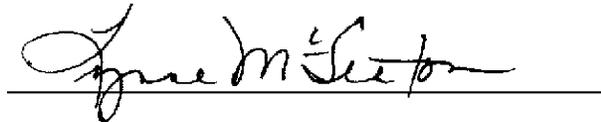
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C E R T I F I C A T E

I, LYNNE McSEATON, CERT, do hereby certify that the foregoing pages numbered 1 through 28 constitute a full, true, and accurate transcript from a copy of the electronic recording of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties and that I am not in any way interested in the outcome thereof

SIGNED and dated this 9th day of December, 2008.



Lynne McSeaton

Certified Electronic Court Reporter
and Transcriber No. 00281