

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CASE NO. 2014CF005586CFAXWS-3

STATE OF FLORIDA, :
 :
 Plaintiff, :
-VS- :
 :
 ADAM MATOS, :
 :
 Defendant. :

PROCEEDINGS: PRETRIAL/MOTIONS
BEFORE: HONORABLE PAT SIRACUSA
Circuit Judge
DATE: August 20, 2015
PLACE TAKEN: Pasco County Government Center
7530 Little Road
New Port Richey, FL 34654
REPORTED BY: Maria A. Fortner, RPR
Notary Public
State of Florida at Large

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3 APPEARING ON BEHALF OF
4 THE STATE OF FLORIDA:

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11 APPEARING ON BEHALF OF
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P-R-O-C-E-E-D-I-N-G-S

THE COURT: All right. Let's see what we've got here.

Good afternoon. We're here in the case of State of Florida versus Adam Matos. Case Number is 14-5586.

The State is present and represented by Mr. LaBruzzo and Mr. Sarabia. The Defense is present and represented by Mr. Livermore.

And, Mr. Pura, are you on this?

MR. PURA: No, sir.

THE COURT: No? Okay.

All right. So we're here for a pretrial today and we have a couple of motions set. I've taken the time to review the motions before we came in.

Anybody want to suggest an order on the motions? It doesn't matter?

MR. LIVERMORE: It doesn't.

THE COURT: Let's do the motion to perpetuate testimony first. It's on top of the stack.

State, this is your motion.

MR. LABRUZZO: Yes.

THE COURT: You want to perpetuate the testimony of James Thomas.

Mr. Livermore, do you have any objection under

1 the rule to James Thomas's testimony being
2 perpetuated?

3 MR. LIVERMORE: At this point I have to,
4 Judge. We have triple hearsay about the condition
5 of the witness. I think we need a little bit more
6 than that before I agree that it's necessary.

7 We have an affidavit from Mr. Halkitis that he
8 talked to the wife, who talked to the doctor. I
9 don't know that that's enough evidence to justify
10 the perpetuation.

11 THE COURT: Okay. Have you taken the regular
12 deposition of James Thomas yet?

13 MR. LIVERMORE: No. Not that I'm aware of.

14 MR. SARABIA: They have not.

15 MR. LIVERMORE: I am only doing the penalty
16 phase, and Mr. Vizcarra and Mr. Hendry are both on
17 vacation.

18 THE COURT: Oh, all right. I was going to say
19 do you need me to wait for either of them?

20 MR. LIVERMORE: I don't think they did depos.

21 THE COURT: Oh, all right. What would be the
22 prejudice to the Defense if I allowed the
23 preparation of the testimony with the understanding
24 that if Mr. Thomas was still alive at the time of
25 the trial, that he'd be available to do it live?

1 What would be the disadvantage?

2 MR. LIVERMORE: One of the problems -- and I
3 can't speak for Mr. Hendry -- is generally the
4 order. There are some depositions we don't do up
5 front until we get some background and find out
6 what's going on. I mean, that's the way I do it.

7 THE COURT: Okay.

8 MR. LIVERMORE: Other than that, you know, is
9 the time and the expense is the only other issue.

10 THE COURT: Well, this is a victim impact
11 witness. So it would be more in your part of the
12 trial than Mr. Hendry and Mr. Vizcarra's.

13 MR. LIVERMORE: The first paragraph of the
14 motion talks about something I think that they
15 would be looking for for trial.

16 MR. SARABIA: Yes. We would intend to call
17 him during the trial, Judge.

18 THE COURT: Oh, you'd call him in the main.
19 Oh, that's the second paragraph. I didn't look at
20 the first paragraph. I saw, moreover, he's the
21 father of Margaret Brown and they have permissible
22 victim impact testimony.

23 Okay. State, is there anything you want to
24 supplement on the record before I rule on the
25 motion?

1 MR. SARABIA: Judge, I can tell you that
2 personally have had contact with Linda Thomas and
3 James Thomas since Mr. Halkitis did, and they
4 reiterated to me their concerns.

5 Mr. Thomas did forward me to some scheduled
6 medical procedures he has in the very near future,
7 and I believe that they are based on some of the
8 recent issues he's been going through.

9 So my understanding of the depo to perpetuate
10 is that it would be sealed unless he is unavailable
11 for trial. So there's really no prejudice. You
12 know, we do it, we have it in case we need it. And
13 if we don't need it, great. And nobody is
14 prejudiced.

15 I would also alert the Court I brought to, I
16 believe, Mr. Hendry's attention Mr. James Thomas
17 and Ms. Linda Thomas as witnesses being in the
18 Keys, and that they've wanted to take a trip for
19 months now.

20 I've been constantly letting the Defense know
21 that I have been available for depositions. And
22 while they have been setting steadily some
23 depositions, I have much more time that I can
24 accommodate depositions with through most of
25 September.

1 So if we needed to depose Mr. Thomas before
2 the depo to perpetuate, if they want to do that, I
3 can accommodate them, if it's done quickly; but we
4 want to try and get his testimony perpetuated
5 before the end of the September, if possible.

6 THE COURT: All right. After reviewing the
7 affidavit filed in the motion, hearing the
8 arguments of counsel, I'm going to grant the motion
9 to perpetuate testimony and direct that you
10 coordinate the perpetuation of the testimony
11 consistent with the Rule of Criminal Procedure for
12 taking the perpetuated testimony.

13 If during the course of the proceedings you've
14 taken the perpetuated testimony and after having
15 taken the perpetuated testimony, it comes to your
16 attention there were additional questions or
17 information that you needed to obtain that you did
18 not have revealed to you until you took the
19 deposition of other witnesses or got other
20 evidence, you can apply to the Court for
21 redeposition of James Thomas, and the Court will
22 consider it, in light of the fact that you were
23 rushed to take the perpetuated testimony because of
24 James Thomas's health. He is at this point 77
25 years of age.

1 All right. Next issue. Motion to prohibit
2 death qualification of prospective jurors. That's
3 yours. Did you want to make argument on that one,
4 Mr. Livermore?

5 MR. LIVERMORE: Yes, sir.

6 THE COURT: And I have both read your motion
7 and the memorandum that you provided.

8 MR. LIVERMORE: The one thing that I have, I
9 made copies for the Court and for the State, but I
10 haven't distributed them yet.

11 To back up a little bit. The motion on the
12 constitutionality, which is basically plagiarizing
13 Justice Breyer's opinion, mentions in there a study
14 by Susan Rozelle that was published in the Arizona
15 State Law Journal, Volume 38, 769, in 2006.

16 The background in this is that death
17 qualification as the problem first arose in the
18 *Witherspoon* decision. The *Witherspoon* court said
19 that there wasn't enough evidence or there wasn't
20 enough studies that had been completed to show that
21 a death-qualified jury is conviction prone.

22 What that article does is put together and
23 consolidate a lot of the studies about the effect
24 of death qualification on a jury. And it is now
25 pretty well recognized that a death-qualified jury

1 is more likely to convict and more likely to vote
2 for death.

3 And the argument is that that is not fair. It
4 doesn't meet due process, it doesn't meet equal
5 protection, to have basically the thumb on the
6 scales to pick a jury that's more likely to
7 convict.

8 And the remedy that we're seeking is two
9 juries. Pick a jury without death qualification.
10 If they come back with the first and the State
11 still seeks death, then impanel a new jury. That's
12 the only way to make sure that the defendant gets a
13 fair trial specifically in the first phase of the
14 trial.

15 I have the studies if the Court wants to see
16 it. I know the case law is against me. I can
17 provide it anyway. But I firmly believe that it's
18 not fair to the defendant to go to trial on a case
19 where the jury is death-qualified and more likely
20 to convict.

21 It has been argued, and it's argued in that
22 motion, that sometimes the State will seek death --
23 not this State, but as a whole -- the prosecutors
24 will seek death to get the jury and then waive it.

25 Like the *Andrea Yates* case, where she was

1 convicted of killing her three children, with
2 severe mental health, they did death qualification
3 and then they waived seeking death once they got
4 the conviction.

5 That's the basis of that motion. I'll stop.

6 THE COURT: Okay. State, is there anything
7 you want to put on record in reply?

8 MR. LABRUZZO: Judge, I'd only say that the
9 current status of law is that this is not the law,
10 and the Court is obligated to follow the law.

11 No authority suggests that the Court should
12 follow this motion; therefore, we ask that the
13 Court deny this motion.

14 THE COURT: All right. Your motion is
15 preserved for appeal, but is denied, Mr. Livermore.

16 It's never been done that I'm aware of in
17 Florida. And I'm sure if it had been done and you
18 were able to find it, I would have heard about it.
19 But it is preserved for purposes of appeal should
20 the case go against you.

21 Motion to bar the imposition of death sentence
22 on the ground that Florida's Capital Sentencing
23 Procedure is unconstitutional under *Ring v.*
24 *Arizona*.

25 Is there any new or novel portion of that that

1 you wish to argue to the Court?

2 MR. LIVERMORE: Well, the only thing about
3 this argument is, as the Court is probably aware,
4 it is set for argument before the Supreme Court in
5 October.

6 The Supreme Court has agreed to the *Timothy*
7 *Hurst* case to look at the Florida death penalty
8 scheme based upon the *Ring* decision. It is set for
9 then. It is backed by, I believe, it's four prior
10 Florida Supreme Court Justices have the filed an
11 Amicus Brief.

12 There are one, two, three, four, five, six,
13 seven circuit court judges who filed Amicus Briefs.
14 There's the ACLU and the ABA have all filed briefs
15 in support of the motion that under *Ring* the
16 Florida death penalty statute is unconstitutional.

17 It's kind of interesting you can be
18 convicted -- it's takes a unanimous decision of six
19 to be convicted of battery, but a nonunanimous,
20 nonspecific majority opinion to get death. You
21 know, it just doesn't make any sense. But, anyway,
22 that's the status of it.

23 THE COURT: I understand.

24 State, is there anything you wish to
25 supplement in your argument other than it's not the

1 current state of the law?

2 MR. LABRUZZO: No, Judge. But I'd also just
3 suggest to the Court that the Court deny without
4 prejudice in case if anything --

5 THE COURT: It's like you were reading my
6 mind. I was actually going to say I'm going to
7 deny it at this time. However, I'm pretty
8 confident we're not going to try this case before
9 the Supreme Court gives us a ruling. So if four
10 current Justices agree with the four former
11 Justices or more, then I'm sure I'll be hearing
12 about that and we'll be back. Okay.

13 Next up is motion to declare the death penalty
14 unconstitutional. Anything new or novel you want
15 to add to the argument as set out in your motion,
16 Mr. Livermore?

17 MR. LIVERMORE: That is the motion that
18 plagiarizes Justice Breyer. We now have four
19 Supreme Court Justices who think that the death
20 penalty is unconstitutional.

21 And some of the interesting facts in there --
22 I don't know if the Court has seen all of this --
23 they talk about the unreliability. Four innocent
24 people executed, 26 people on death row exonerated
25 just in Florida, 155 that have been exonerated

1 since they started keeping all the numbers.

2 In Justice Breyer's opinion, he cites the
3 National Academy of Science that calculates that
4 four percent of the people on death row are
5 innocent. So if you take that to Florida where
6 we're down to not 393 right now, that means 15
7 people on death row are innocent.

8 That's why it's cruel and unusual and that's
9 why it's unreliable. It's also because, you know,
10 nobody without the death penalty has ever
11 reinstated it, no state. And the trend is for the
12 states to be dropping it, you know, especially of
13 the fact 25 years on the row is the standard in
14 Florida execution. And for the reasons cited in
15 the brief, we believe it is not constitutional.

16 THE COURT: Okay. And, State, do you wish to
17 supplement your argument?

18 MR. LABRUZZO: No, Your Honor.

19 THE COURT: All right. Motion to declare the
20 death penalty unconstitutional is denied.

21 All right. Other things that we have for the
22 pretrial calendar today --

23 MR. LIVERMORE: Judge, there's one other
24 motion.

25 MR. LABRUZZO: There's one other motion.

1 THE COURT: There was?

2 MR. LABRUZZO: Yes, Judge.

3 MR. LIVERMORE: Yes. It's a motion to compel.

4 MR. LABRUZZO: And, Judge, the State's
5 position on the motion to compel is that we will
6 agree and ask the Court to set an August 31st date
7 to comply with the Bill of Particulars.

8 THE COURT: Is August 31st enough time,
9 Mr. Livermore?

10 MR. LIVERMORE: Considering the expected time
11 it's going to take to try this case, yes.

12 THE COURT: All right. Granted. On the
13 motion to compel, did you provide me with an order
14 on the motion to compel.

15 MR. LIVERMORE: Hopefully, I did. The person
16 who runs my life gave me all kinds of orders.

17 THE CLERK: I did not get that order.

18 MR. LIVERMORE: They're right here.

19 THE COURT: I was going to say, I did not get
20 that motion or that order. So I can't say that I
21 have that.

22 The other four I'll provide the order on.

23 MR. LIVERMORE: They are the standard orders
24 on the other ones.

25 THE COURT: All right. Let's see what they

1 are. Okay. These are the other orders.

2 Motion granted to compel. Motion to compel
3 what, Mr. Livermore?

4 MR. LIVERMORE: A bill of particulars. A
5 statement of particulars.

6 THE COURT: Oh, all right.

7 MR. LIVERMORE: I had previously filed the
8 motion. The State said they were going to file it
9 and they hadn't yet, so I withdrew it.

10 THE COURT: All right. None of the orders
11 that you've given me are the orders for the motion
12 for a statement for particulars. These three are
13 the orders on the three other items.

14 MR. LIVERMORE: Oh, I'm sorry.

15 THE COURT: So if you give me an order on that
16 with setting it out by August 31st, I'll sign that
17 one, and I'll do my own order on the others that
18 were argued.

19 Okay. Other than the motion to compel, what
20 else do we have?

21 MR. LIVERMORE: That's it.

22 THE COURT: State, anything further from the
23 State?

24 MR. SARABIA: For the record, Judge, I think
25 there were two motions to compel that are addresses

1 for witnesses that are moot now.

2 I've spoken to either Don Hendry or Dillon
3 Vizcarra regarding those. So I'm not sure if
4 they're withdrawn or if they can be denied, but we
5 did provide a new address for one and we actually,
6 I believe, served a subpoena on the other one.

7 THE COURT: All right. Well, it doesn't sound
8 like they're asking for them to be heard, so it
9 sounds like this is covered.

10 All right. This is actually only our second
11 pretrial on this case with me presiding, and I know
12 that there's a lot of witnesses still to be
13 deposed.

14 How far out are we from the point where we're
15 going to be able to set a trial in this case?
16 State, what would you say? Are we looking at
17 setting it in January -- not setting it for
18 January, but January you'll be able to tell me
19 we're ready to set? Is that your expectation?

20 MR. SARABIA: We may be in January, Judge. I
21 don't know where the Defense is. Most of the FDLE
22 work that I'm expecting is complete. There is
23 still some blood that they're trying to match up
24 with which victim. Other than that, I think
25 everything that we're excepting is done. So once

1 that is complete, then we're ready to go.

2 THE COURT: All right. What's your schedule
3 look like at this point, Mr. Livermore? In
4 January, when we reconvene, will we be able to
5 expect to set a trial date?

6 MR. LIVERMORE: I highly doubt it.

7 THE COURT: Okay.

8 MR. LIVERMORE: There's 350 witnesses to
9 depose.

10 THE COURT: State, 350 witnesses? You can't
11 pare that down a little bit?

12 MR. SARABIA: Due to the nature of the case,
13 Judge, we've had conversations about it and we
14 don't feel that we could.

15 Most of the witnesses that we would pare down,
16 if we were to be forced to, they've already
17 deposed. So I think out of those 350, they've
18 already deposed about 50 to 60 of them, and there's
19 another 15 to 20 set for next week and some more
20 deposition coming up.

21 So they are moving. I have a lot of time to
22 make available to them if they'd like to take
23 advantage of it. There's a lot of local people,
24 law enforcement officers that we could depose in a
25 day or two.

1 THE COURT: 350 witnesses. How many days
2 trial are you anticipating this being?

3 MR. SARABIA: Judge, my rough, rough estimates
4 of the number of witnesses I would call at trial
5 are approximately 65 to 70.

6 There's a number of records custodians. You
7 have to understand, Judge, there is two separate
8 crime scenes with four different victims, multiple
9 different items of evidence, multiple forensic
10 technicians.

11 And I say crime scenes, there are several
12 other locations that may become relevant, such as
13 locations in Tampa and things of that nature. So
14 it's unfortunate, but that's the way that it is.

15 THE COURT: I understand. I'm more just
16 trying to get a realistic estimation.

17 So 65 witnesses, if we did 10 a day, that's at
18 least -- well, six and a half, by the math. But
19 throw in openings, throw in closings and throw in
20 jury selection of three to five days, this is going
21 to be a minimum of a three-week trial before we
22 even get to whether or not we need to have a
23 penalty phase.

24 Defense, do you have listed witnesses at this
25 time?

1 MR. LIVERMORE: No.

2 THE COURT: No listed witnesses at this time?

3 MR. LIVERMORE: No.

4 THE COURT: Well, as long as you continue to
5 make progress and continue to set depositions, I'll give
6 you another pretrial date, but I'll set it all the
7 way off to January.

8 Are there victims' families or victim advocate
9 people here on this case?

10 MR. SARABIA: Yes, Judge. There are.

11 THE COURT: Is there a better day of the week
12 for them to come in? Because I'm suspecting that
13 the number of people sitting behind you are with
14 them. Do you have a preference? Monday through
15 Friday, I'm always here. So I can make it whatever
16 day works best. All right.

17 MR. SARABIA: No preference.

18 THE COURT: Any reason that I shouldn't do it
19 in January? I don't want you to have come back
20 every month and a half for me to yell at the State
21 and the Defense to get moving on the case.

22 So my expectation is I'd set it off until
23 January and they can either tell me that they're
24 not ready or we can set a trial. If they tell me
25 that they're not ready, I'll ask them where they

1 are and try to keep moving them forward.

2 But with 350 witnesses, I know it's going to
3 take a little while. So is there any reason not to
4 go to January? Take a poll of the victims' family,
5 Mr. Sarabia, and see if there's anything that's in
6 January that will keep them from being here. No?

7 MR. SARABIA: They're good.

8 THE COURT: All right. Nobody is shaking
9 their head. So it sounds like January will work.

10 I have my calender open for January. Let's
11 see. Give me a day in January that we can do this.
12 Who's got a calendar up?

13 MR. LABRUZZO: Judge, how about January the
14 15th? It's a Friday.

15 THE COURT: It sounds like that would work.

16 Mr. Livermore, January 15th, would you be
17 available?

18 MR. LIVERMORE: I think it's far enough out.
19 I think I can say, yes.

20 THE COURT: All right.

21 MR. LIVERMORE: One of us will be here.

22 THE COURT: All right. Why don't we do
23 January 15th, then, at -- we are all always here,
24 but the victims' family -- do you have a preference
25 between morning or afternoon? Maybe it will be

1 easy to work with. All right. Well, then, let's
2 do it at 1:00 in the afternoon on January 15th.

3 State, is there anything else I can do for you
4 today to help advance the cause?

5 MR. LABRUZZO: Judge, can we ask for a later
6 time in the afternoon?

7 THE COURT: Absolutely. 3:00?

8 MR. LABRUZZO: That's better, Judge.

9 THE COURT: If 3:00 is better, we'll do 3:00.
10 See, there we go. All right. 3:00.

11 And, State, is there anything else I can do to
12 advance the case for you today?

13 MR. SARABIA: No, Judge.

14 THE COURT: All right. Mr. Livermore, is
15 there anything else I can do to advance the case
16 for you today?

17 MR. LIVERMORE: No, sir.

18 THE COURT: All right. Mr. Matos, I'm pretty
19 sure I told you the last time we were here, but I
20 can't say I have an independent recollection. At
21 every court date if there's anything ever that you
22 have a concern about that you need to bring to the
23 Court's attention, you're welcome to do that.

24 Obviously Mr. Livermore is an experienced
25 attorney that's prepared to provide you with

1 effective assistance as trial counsel and he's
2 prepared to answer your questions.

3 But I don't want you to ever feel like there's
4 a situation where you can't talk to the Court and
5 say, Judge, my concern is this or that thing is
6 happening and I don't think it should be happening
7 and this is why.

8 I need to know these things as we're going
9 along. Because the day is going to come when I'm
10 going to set your case for trial, and my
11 expectation is when I set the trial, that the trial
12 is going to happen. And my expectation is that
13 when we get to that trial day, that the State is
14 ready, that the Defense is ready, and that you are
15 ready to have that trial.

16 So if at any point something comes up you want
17 to bring to my attention, you're welcome to do
18 that. I would highly recommend before you bring it
19 to my attention that you talk to Mr. Livermore, run
20 it by him, whatever you're going to say, because
21 everything that we say obviously is on the record,
22 and anything that you say could be used against
23 you.

24 So I wouldn't suggest that you surrender any
25 of the valuable legal rights that Mr. Livermore

1 wants to protect on your behalf, but I still also
2 don't want you to be afraid to talk to the Court if
3 you have a concern. Okay?

4 Do you have any questions or concerns I can
5 address today?

6 DEFENDANT MATOS: No, Your Honor.

7 THE COURT: Okay. Fantastic.

8 Then we're going to be in recess for ten
9 minutes so we can set up for the next court
10 hearings, and Court's adjourned.

11 THE BAILIFF: All rise.

12 (HEARING CONCLUDED.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PASCO)

I, MARIA FORTNER, Registered Professional Reporter for the Sixth Judicial Circuit, do certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record.

DATED this 7th day of August, 2018.

/S MARIA A. FORTNER
MARIA A. FORTNER
Registered Professional Reporter