



## A P P E A R A N C E S

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3 APPEARING ON BEHALF OF  
4 THE STATE OF FLORIDA:

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7 Office of Bernie McCabe, State Attorney  
8 Sixth Judicial Circuit, Pasco County  
9 7530 Little Road  
10 New Port Richey, Fl 34655

11 APPEARING ON BEHALF OF  
12 THE DEFENDANT, ADAM MATOS:

13 DEAN LIVERMORE, Assistant Public Defender  
14 NICHOLAS MICHAÏLOS, Assistant Public Defender  
15 DILLON VIZCARRA, Assistant Public Defender  
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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: All right. Are we ready on  
3 Mr. Matos's case.

4 Before we do that, I have a motion by a victim  
5 for contact. So let me handle that.

6 (Proceedings unrelated to this case were reported  
7 and not made a portion of this transcript)

8 THE COURT: All right. So we're back on the  
9 record on Adam Matos. Case Number 14-5586.  
10 Mr. Matos has come out since I called his case.  
11 He's here with his counsels. The State is here.  
12 And we are set for all pending motions.

13 Now, one of the motions that we originally  
14 had, I think, continued until today was the one  
15 about whether the child was competent to testify,  
16 and in the meantime we had a motion to allow  
17 further depositions.

18 So I assume that deposition has not taken  
19 place yet?

20 MR. LIVERMORE: No. It is now scheduled  
21 for -- what is that?

22 MR. LABRUZZO: October 16th.

23 MR. LIVERMORE: On October 16th. It's a  
24 Monday.

25 THE COURT: Okay. So I assume any issues

1 about that would be reserved until after the  
2 deposition is retaken; is that correct?

3 MR. LIVERMORE: Yes.

4 THE COURT: All right. So there is still the  
5 motion to determine competency and to strike or  
6 disqualify [REDACTED] as a State's witness.  
7 We'll table that until after the deposition is  
8 taken. Okay? So that remains to be decided.

9 I have filed for today -- I got a motion filed  
10 by the Defense on September 25th, the defendant's  
11 objection to sequestration, and that one is  
12 involving the mom of the defendant, correct?

13 MR. LIVERMORE: Yes.

14 THE COURT: Okay. So we'll hold on to that  
15 one.

16 Then I have a motion to preclude capital  
17 punishment because the Indictment fails to allege a  
18 capital crime.

19 MR. LIVERMORE: Oh, I thought we had already  
20 done that one.

21 THE COURT: Did we resolve that one?

22 MR. LIVERMORE: I'm not sure. I thought we  
23 had.

24 MR. SARABIA: They filed a new one last week.

25 MR. LIVERMORE: Yeah. That's a different one.

1           THE COURT: Motion to strike notice of intent  
2 to seek death.

3           MR. LIVERMORE: Yeah.

4           THE COURT: Okay. So this one is resolved.  
5 Then we have I'll call this Number 2 as of today,  
6 motion to strike notice of intent to seek death.

7           Then I have some motions in limine filed by  
8 the State. I didn't know if we wanted to handle  
9 those today or whether we want to put those off  
10 until trial.

11           Are we ready to go on those, Defense?

12           MR. SARABIA: We are. I think Mr. Vizcarra  
13 was specifically present for that.

14           THE COURT: I think we passed it so he could  
15 be present.

16           MR. VIZCARRA: Yes, Judge.

17           THE COURT: But then we talked about putting  
18 off the motions in limine until trial. So I just  
19 want to make sure. I have it as Number 3 for  
20 today. So that's good.

21           Then I have Number 4, a motion for jury  
22 questionnaire to supplement voir dire and proposed  
23 sample questionnaires.

24           MR. LIVERMORE: Yeah. We had talked about  
25 that and I think we're all in agreement to do one.

1 I gave a proposed questionnaire to the State. I  
2 haven't had any response to that yet.

3 THE COURT: State, are you still working on  
4 that?

5 MR. SARABIA: We are, Judge. There are some  
6 questions that we definitely disagree with. There  
7 are some questions that I think were on the  
8 questionnaire that used to go out that are pretty  
9 standard that we are in agreement with.

10 And the ones that we are in disagreement with,  
11 we may be able to agree with the Defense about  
12 something a little less objectionable to us. But  
13 we have been reviewing them. Mr. LaBruzzo is  
14 reviewing that.

15 THE COURT: So do you want to table that for  
16 another day?

17 MR. SARABIA: Yes, Judge.

18 THE COURT: I mean, we all agree we're having  
19 a questionnaire.

20 MR. LIVERMORE: Right.

21 MR. SARABIA: Right.

22 THE COURT: So there's no question that we  
23 will have -- I have granted that we will have a  
24 jury questionnaire to supplement voir dire and we  
25 will work on the questions at another time than

1 today. So we don't really need to discuss that  
2 today.

3 So I have right now --

4 MR. LABRUZZO: And maybe if Mr. Livermore is  
5 available after this hearing today, we can go back  
6 to his office and just kind of hammer it out.

7 MR. LIVERMORE: Sure.

8 THE COURT: All right. So that leaves me  
9 three motions today. Is that what everybody else  
10 agrees to?

11 MR. LIVERMORE: Yes.

12 MR. SARABIA: Yes, Judge.

13 THE COURT: Is there any others that I didn't  
14 bring up already that we need to go over?

15 MR. LIVERMORE: (Indicating negatively.)

16 MR. SARABIA: I would note, Judge, there have  
17 been some discussion last time about potentially  
18 graphic photos and trying to have discussions about  
19 that.

20 We did just today, within the past 20 minutes,  
21 get Mr. Michailos a group of those photos and we're  
22 going to be reviewing those, but we may want to  
23 come back and argue about that in the future. In  
24 all fairness to the Defense, I don't think they'd  
25 be prepared to do that today. I don't even think

1 we got them all the photos that we were  
2 considering.

3 MR. LABRUZZO: And what we provided to them  
4 today, Your Honor, was photographs that we  
5 identified primarily with the Medical Examiner.  
6 These are the photographs that he pointed out to us  
7 as ones that he would like having in his testimony.

8 THE COURT: Okay. Again, that's really a  
9 matter in which we're talking about limine or  
10 evidence and those kinds of things. So we don't  
11 have to handle that one today.

12 I assume you're going to give them a list of  
13 the photographers in discovery you want to use and  
14 that gives them an opportunity to review them and  
15 see if they have any pretrial objections to those,  
16 correct?

17 MR. SARABIA: Correct.

18 THE COURT: Okay.

19 MR. SARABIA: And while I'm thinking about it,  
20 the previous motion in limine regarding the mention  
21 on the 911 call the defendant being a Puerto Rican,  
22 I did provide Mr. Michailos with an updated  
23 redaction removing that. I don't know if he's had  
24 a chance to review it and agree that it complies to  
25 the order, but we've done that.



1 I also provided Mr. Michailos today with a  
2 copy of the video interview Mr. Matos did with law  
3 enforcement with redactions or proposed redactions  
4 of things that we feel pretty confident that they  
5 would object to, and proposed redactions from the  
6 interview that Mr. Matos did with the media, so  
7 that they have those. If we admit either one of  
8 those, they would be the copies we would be seeking  
9 to admit.

10 THE COURT: Okay. So you've provided them as  
11 additional tangible discovery?

12 MR. SARABIA: Yes, Judge. And we'll follow it  
13 up with paperwork.

14 THE COURT: They've gotten the originals  
15 earlier?

16 MR. SARABIA: Yes.

17 THE COURT: These would be what you propose to  
18 introduce in front of the jury that have been  
19 redacted?

20 MR. SARABIA: Correct.

21 THE COURT: Okay. And so if there's any  
22 objection to those, then they can raise those when  
23 we talk about the photographs and all that. So  
24 have you had an opportunity to review the redacted  
25 tape-recording?

1           MR. MICHAÏLOS: No, Judge. We just got them  
2 in court today.

3           THE COURT: Okay.

4           MR. MICHAÏLOS: But we did receive them all.

5           THE COURT: Okay. Great. So you have them?

6           MR. MICHAÏLOS: Yes.

7           THE COURT: All right. Great. Okay. So  
8 other than that, I have the three motions. And is  
9 there anything else that's filed that we haven't  
10 gone over? No?

11          MR. LIVERMORE: I don't think so.

12          THE COURT: Okay. So why don't we do them in  
13 this order. The defendant's objection to  
14 sequestration of the mother Rose Matos. That is a  
15 Defense motion.

16          MR. LIVERMORE: Correct.

17          THE COURT: I have reviewed it. State, have  
18 you received a copy of it?

19          MR. SARABIA: Yes, Judge.

20          THE COURT: All right. And what's your  
21 position on that?

22          MR. SARABIA: Well, Judge, I had some  
23 conversations with Mr. Michailos. It depends what  
24 their position is on some of our family members  
25 being sequestered. We do have some family members

1           that we anticipate testifying.

2           And we're not sure if we are going to want to  
3 fight fight of trying to have them present during  
4 the trial, but their testimony is such that I don't  
5 know that the Defense would have an objection to  
6 them being present during the trial, particularly  
7 after they testify, because in the event that they  
8 would have to testify again would be very unlikely.  
9 So I'd be interested to know what they say to that  
10 before we respond to their objection.

11           THE COURT: Which witnesses are you talking  
12 about?

13           MR. SARABIA: James Thomas, Linda Thomas,  
14 Daniel Leonard, Paula Rystrom, and Gregory Aaron  
15 Brown.

16           And I know the Defense is discussing it,  
17 Judge. I would note that James Thomas in  
18 particular, they are aware of his testimony because  
19 he did do a deposition to perpetuate, so his  
20 testimony would expected to be more or less  
21 identical to that.

22           And Linda Thomas also testified in the motion  
23 hearing. Her testimony would be a little bit more  
24 than occurred there, but it is similar. So they  
25 have a general idea what some of these witnesses

1 are going to be testifying to.

2 Daniel Leonard and Paula Rystrom are the  
3 parents of Nicholas Leonard.

4 MR. MICHAÏLOS: Judge, with regard to our  
5 request -- Rose Matos is obviously Mr. Matos's  
6 mother. The State listed her as a witness. I  
7 didn't depose her. I guess there's always the  
8 possibility that the State might call her as a  
9 witness, but I don't see that being at all  
10 feasible.

11 With regard to the other witnesses, my  
12 understanding is they're going to be called maybe for  
13 minor things, but they're all going to be  
14 witnesses. So at this point in time we're not in a  
15 position to agree to that.

16 THE COURT: Give me a moment. Well, I'm  
17 looking at a case *Beasley v. State*, 774 So.2d, 649.  
18 It's a first-degree murder case, a death penalty  
19 case, where the Supreme Court said that it was not  
20 improper for the Court to allow the victim's family  
21 members -- whether the rule of sequestration would  
22 apply to the victims's next of kin, even if they  
23 were witnesses. And the Court said that as long as  
24 the witness's testimony have been memorialized in  
25 prior depositions, police reports and, et cetera,

1 that under the circumstances the trial Court did  
2 not error in denying defense's motion's request to  
3 apply the rule of sequestration to the victim's  
4 next of kin.

5 So based on that, I assume these witnesses  
6 that you've just listed, their depositions have all  
7 been taken?

8 MR. SARABIA: Yes, Judge.

9 THE COURT: Okay. And we have copies of those  
10 depositions.

11 So for that matter, any witness who is on the  
12 witness list who is a next of kin of the victims,  
13 because there's multiple victims, or the defendant  
14 will be allowed to be present in the courtroom  
15 while the trial is going on.

16 Now, just because they can doesn't mean you  
17 should until after they testify. But I'm saying  
18 that as long as their depositions have been taken,  
19 they have a right to be here as next of kin under  
20 the rule.

21 There's two separate constitutional rights  
22 going on here: One, is the victim is the next of  
23 kin; and, one, is the defendant's rights. And it  
24 appears that the Supreme Court has reviewed this on  
25 numerous occasions and have said as long as these

1 witnesses's testimony has been memorialized in  
2 depositions and police reports, they can be  
3 impeached. So if they change their testimony, you  
4 know, it can be brought to the jury's attention  
5 very easily.

6 But it appears to me that none of these  
7 witnesses's, at least from what you said, testimony  
8 is key. It more seems on the boundary of the  
9 testimony that's going to come out. But, again, as  
10 long as they are next of kin of one of the victims  
11 or the defendant, I will allow them to be present  
12 throughout the trial.

13 Now, again, just because I said they can  
14 doesn't mean -- you may want to keep them out of  
15 the courtroom until after they testify and then  
16 say, for the record, they have not been present  
17 throughout the trial but I'm now asking them to be  
18 able to be present. Sure. Or if you want them  
19 just here for jury selection or just for opening  
20 statements and then remove them. Whatever the  
21 situation is.

22 I would ask, however, if both sides do have  
23 those people in the courtroom, we make a record of  
24 that. If they are kept out of the courtroom, we  
25 make a record of that. It would just be easier for

1           appellate purposes.

2           So at this point the Defense's motion is  
3 granted. His mom can be present, although she is  
4 on the witness list. However, additionally, I will  
5 allow the next of kin, even if they're on the  
6 witness list, for any of the victims to be present  
7 throughout the trial. So that's my ruling. Okay?

8           MR. LABRUZZO: Your Honor, could you repeat  
9 that cite?

10          THE COURT: Sure. It's *Beasley*,  
11 B-e-a-s-l-e-y, v. *State*. 774 So.2d, 649. It was  
12 the first case I came to. I've Shepardized it. It  
13 appears to be consistent with other cases of the  
14 same kind.

15          So, again, you know, in Florida victims have a  
16 constitutional right, and so I have to balance that  
17 right. If the Defense wants to bring a motion  
18 giving me specifics of why a specific one of those  
19 numerous people who are the victim's family need to  
20 be kept out, I can reconsider.

21          I haven't heard anything saying, oh, well, you  
22 definitely can't let this person testify because,  
23 you know, whatever. It sounds like the testimony  
24 of the victims's families, whether it's the  
25 defendant's family or whether it's the next of kin,

1 is all peripheral to the facts of this case.

2 MR. MICHAIILOS: And obviously, Judge, if  
3 something occurs at trial that would make it very  
4 important that those witnesses not hear something,  
5 we can bring it up in the middle of trial?

6 THE COURT: Absolutely. I assume some of  
7 these witnesses are merely here to identify the  
8 body, unless you all can come up with stipulations.

9 MR. MICHAIILOS: Well, we stipulated to that.

10 MR. SARABIA: Yes. We already stipulated.

11 THE COURT: You're already going to stipulate  
12 to that? Okay.

13 MR. SARABIA: Yeah. There's already a stip  
14 entered. I believe it's filed in the court file.

15 THE COURT: All right. So that takes care of  
16 that.

17 The next one is the motion to strike notice of  
18 intent to seek death filed by the Defense on  
19 October 4th. It was filed yesterday.

20 MR. SARABIA: I'm sorry, Judge?

21 THE COURT: The motion to strike notice of  
22 intent to seek death filed by the Defense  
23 yesterday. Have you received a copy of that,  
24 State?

25 MR. SARABIA: We have seen it, Judge.



1 THE COURT: All right.

2 MR. SARABIA: I don't know that we received a  
3 copy of it, but we saw it on the website before it  
4 went down.

5 THE COURT: Okay. And what's your position  
6 about this?

7 MR. SARABIA: We are obviously objecting. I  
8 believe they actually ran the same motion a couple  
9 of years ago on the previous notice. I could be  
10 mistaken. But if it's the motion that I recall  
11 reading, it's they're saying we did not specify  
12 which aggravators to which counts.

13 THE COURT: Correct.

14 MR. SARABIA: And our position is we don't  
15 need to. We are actually seeking all the  
16 aggravators for all of the counts. So I don't  
17 think that that's really a big issue. But, yeah,  
18 our position is that we don't need to.

19 THE COURT: Okay. Defense, and your position  
20 is?

21 MR. LIVERMORE: They do.

22 THE COURT: Okay. That will be denied. They  
23 are seeking both aggravators on all counts. So  
24 when they list all four counts and the two  
25 aggravators in the middle, that seems to meet the

1 definition of this new statute that we all have,  
2 which says you got to give them notice.

3 Notice is I have four counts and here are the  
4 two aggravators we intend to seek. And so I don't  
5 know how much more clearer they had to be. If they  
6 were going to seek some different ones for  
7 different counts, I would see your point.

8 But in this particular case it sounds like  
9 they're seeking the two for all four victims. So  
10 their notice meets the statutory requirements and  
11 the motion the strike will be denied.

12 So the next thing we have is the motion in  
13 limine that was filed by the Defense. And it was  
14 filed on August -- it says filed by the State,  
15 sorry, on August 31st.

16 Mr. Sarabia, I think you signed this one. And  
17 we can do them one by one, if you want. Do you  
18 want to go one by one?

19 MR. SARABIA: That's fine.

20 THE COURT: Okay. The first one alleges that  
21 the State is asking that I limine the testimony and  
22 evidence, Number 1 being any and all testimony or  
23 evidence concerning the unsolved criminal mischief  
24 complaints on 4/30, 2014.

25 MR. MICHAÏLOS: Judge, we don't have to go one

1 by one. We're not objecting to any of these.

2 THE COURT: Okay.

3 MR. MICHAÏLOS: We can go right to Number 8,  
4 to make it easier.

5 THE COURT: Okay. Well, just for the record,  
6 Numbers 1, 2, 3, 4, 5, 6 and 7 you're agreeing to?

7 MR. MICHAÏLOS: Yes.

8 THE COURT: So the State can do an order that  
9 says that those are granted, correct?

10 MR. MICHAÏLOS: Yes.

11 THE COURT: Okay. Now, again, as we all  
12 indicated earlier, I don't know if everybody is  
13 here, but this is a motion in limine. So if you  
14 guys get to a point during trial where you think,  
15 you know, I agreed to that but I don't agree to it  
16 anymore, all you have to do is come to the bench  
17 and say, Judge, we had this motion to limine that  
18 you granted and here it is, but this is why I don't  
19 think it applies anymore and this is why I want to  
20 get it in.

21 We don't run through doors. We knock. Okay.  
22 So we'll be knocking on any doors that we think are  
23 open before we run through them. Everybody clear  
24 about that?

25 MR. SARABIA: Yes, Judge.

1 MR. MICHAÏLOS: Yes, Judge.

2 THE COURT: All right. So 1 through 7 are  
3 granted.

4 And then we're up to 8. So 8 is, "Any and all  
5 testimony or evidence concerning Internal Affairs  
6 investigations regarding former Detective Shawn  
7 Kennedy, former Deputy Fredrick Heidgerken,  
8 H-e-i-d-g-e-r-k-e-n, and Nancy Sulinski,  
9 S-u-l-i-n-s-k-i. Such evidence or testimony  
10 concerning collateral matters that are not relevant  
11 to any material issue at trial."

12 State?

13 MR. SARABIA: And, Judge, that's our position.  
14 There were no IA complaints or investigations that  
15 were founded that I'm aware of that arose out of  
16 this incident for any of these three former law  
17 enforcement officers or forensic technician.

18 Much later, I believe, I think we sent a  
19 letter about Detective Kennedy, former Detective  
20 Kennedy. I don't recall the circumstances of  
21 Deputy Heidgerkin, but I know that it was brought  
22 up and the Defense is aware that he did resign, and  
23 I think there was a pending IA investigation at  
24 that time. I don't believe it was ever resolved.

25 And Ms. Sulinski recently left the Sheriff's

1 Office, and I don't think we have the details of  
2 that yet.

3 MR. LABRUZZO: There are no details.

4 MR. SARABIA: I don't know if there was an IA  
5 investigation or if there was one and she left  
6 before it was completed, but my understanding is  
7 that there was nothing that had to do with any of  
8 the handling of this case.

9 THE COURT: All right. Defense?

10 MR. VIZCARRA: Judge, The only one that I'm  
11 aware of at this point in time, maybe if we can get  
12 provided the Nancy Sulinski Internal Affairs, maybe  
13 we can make a request for that. But the only thing  
14 that I am aware is Mr. Fredrick Heidgerkin, he  
15 testified at the Williams Rule/911 Excited  
16 Utterance hearing where the State had objected to  
17 our line of questioning: Why did you get fired?  
18 Did you resign because of that?

19 And we had raised the grounds that it goes to  
20 his credibility, and Judge Siracusa at that time  
21 said it was overruled, that we have wide latitude  
22 to ask those questions. And so my recollection, I  
23 haven't got the transcript in front of me, I  
24 apologize, but something about conduct unbecoming  
25 and then something about lying about the

1           whereabouts is what I remember, something like  
2           that.

3           So I think it goes to credibility. And I  
4           think that that is something, if we choose, that we  
5           should be able to ask him about, and it would go to  
6           his credibility as a witness in this case.

7           His role in this investigation, Judge, is the  
8           fact that the Williams Rule, he investigated that,  
9           which was the allegation that our client used a  
10          knife right before these murders are pretty  
11          important testimony.

12          THE COURT: So you believe that you should be  
13          able to ask any one of these three officers why  
14          they were dismissed, quit, fired -- since I don't  
15          know what happened with any of them. It's not  
16          really laid out in this motion -- collaterally to  
17          this incident?

18          So my question is you say that he testified  
19          about officer unbecoming, whatever he said -- I  
20          don't have the transcript -- with that in regards  
21          to this offense? Did he get removed, IA, fired,  
22          whatever because of something he did here in this  
23          case?

24          MR. VIZCARRA: If he lied as an officer.

25          THE COURT: So you're not answering my

1 question.

2 MR. VIZCARRA: Yes.

3 THE COURT: Did he get fired because of what  
4 he did in this case?

5 MR. VIZCARRA: No, he did not.

6 THE COURT: This case?

7 MR. VIZCARRA: He did not, Judge.

8 THE COURT: Okay. So first and foremost, just  
9 so the record is clear, whatever these officers did  
10 or didn't do and why they were moved or left or  
11 whatever, did not come out of anything that  
12 occurred in this case? Whether prior to the  
13 murders about the Williams Rule, it didn't have  
14 anything to do with this case before, during or  
15 after, correct?

16 MR. VIZCARRA: Correct.

17 THE COURT: All right. So the second issue is  
18 you're saying that if an officer lied, specifically  
19 lied, then you can bring that before the jury? Do  
20 you have case law?

21 MR. VIZCARRA: Lied and was reprimanded,  
22 fired, or otherwise disciplined for lying in his  
23 capacity as a law enforcement officer, yes.

24 THE COURT: Okay. Do you have case law?

25 MR. VIZCARRA: I do not.

1 THE COURT: You have no case law?

2 MR. VIZCARRA: I don't know about the other  
3 two, of course.

4 MR. SARABIA: And, Judge, if I can put on the  
5 record, I'm clarifying with Mr. LaBruzzo to make  
6 sure my memory is correct, but Detective Kennedy  
7 resigned pending an AI investigation. So there was  
8 never a formal finding.

9 Deputy Heidgerkin also resigned pending an IA  
10 investigation. And I think the IA allegations they  
11 were eluding to were the pending IAs. They were  
12 never actually followed to completion either.

13 Ms. Sulinski had an IA investigation unrelated  
14 to any of her duties at the Sheriff's Office that  
15 was unfounded and resigned shortly thereafter. So  
16 I think that will clarify the --

17 MR. LABRUZZO: Yes. She resigned.

18 THE COURT: State, do you have any case law?

19 MR. SARABIA: I'm sorry, Judge?

20 THE COURT: Do you have any case law?

21 MR. SARABIA: Well, Judge, we were relying on  
22 the Rules of Evidence that no specific bad acts  
23 would be admissible to prove propensity or  
24 character inconformity. I think that line of cases  
25 is pretty clear.



1           There are some exceptions to that with law  
2 enforcement officers, but none of these fall within  
3 those. So I think we fall squarely within the  
4 evidence rule that it's improper character  
5 testimony.

6           Now, if it was reputation testimony, that  
7 would be different, but that's not what we're  
8 dealing with here. I mean, I see *State v. Bullard*,  
9 B-u-l-l-a-r-d, a Second DCA case, 858 So.2d, 1189.

10          THE COURT: You do know you're talking about  
11 as fast as anybody can barely write. So it is 858  
12 So.2d 1189? Is that what you're saying?

13          MR. SARABIA: Yes. Correct. And that's  
14 actually regarding whether it was a *Brady* violation  
15 by not disclosing that there were IA  
16 investigations, and it was determined it was not.  
17 It's not even that it would have been inadmissible,  
18 but it didn't even rise to the level of *Brady*.

19          And I believe the exceptions would be it goes  
20 to a specific case, which none of them deal with;  
21 or use of excessive force, which I think we all  
22 agree was not an issue here and is not any of these  
23 IA complaints.

24          THE COURT: All right. I just read Detective  
25 Kennedy's deposition and he was questioned about it

1 by Mr. Michailos. And in the deposition he  
2 indicates that he retired with no knowledge of an  
3 IA investigation that was going on, which he found  
4 out after the fact, and he indicates that it was  
5 unfounded, all the cases were unfounded and there  
6 was nothing, the IA was closed. That's what he  
7 tells Mr. Michailos.

8 Do you all have any other facts other than  
9 what's in the deposition? Does the Defense have  
10 anything else that's not contained in the  
11 deposition about Detective Kennedy? Because I  
12 think it's important that this is done one witness  
13 by itself, because it could be a different decision  
14 as to each witness depending on why it is that they  
15 left the agency and what was alleged.

16 MR. MICHAIILOS: Judge, to be frank, we didn't  
17 order the IA file for Detective Kennedy. So  
18 perhaps we can put off ruling on that until we do  
19 that.

20 We did do it on Heidgerkin, and I have that in  
21 my office. But because we were busy on this case,  
22 I don't think -- I think the intent was to order  
23 Kennedy's, but we never did.

24 THE COURT: Okay.

25 MR. MICHAIILOS: So we don't have anything --

1           THE COURT: Okay. Well, for right now I'll  
2 grant the motion in limine as to Detective Kennedy  
3 leaving the agency and whether there was or wasn't  
4 a pending IA investigation. If you find more  
5 information out, you can always ask me to  
6 reconsider.

7           So as to Detective Kennedy, it appears that it  
8 was unrelated to this matter. It does not allege  
9 that he falsified any information or that he  
10 perjured himself or anything that would normally be  
11 impeachable.

12           It says that there's some -- I don't know,  
13 something was going on about a bank scam and they  
14 didn't like the way he did the investigation. I  
15 don't know if the victims complained because it got  
16 no info-ed and they didn't think he did his job. I  
17 don't know.

18           I don't know what the facts are, but it  
19 doesn't alleged that he did anything untoward, hid  
20 evidence, perjured himself, committed a criminal  
21 offense, anything that would normally -- this is  
22 isn't a use of force issue. So I mean those have  
23 been ruled to be admissible even if they were  
24 unfounded.

25           But in this particular case there was some

1 sort of IA investigation, and he says it's not even  
2 directly related to him. It was directly related  
3 to another individual and then he got pulled in.

4 I don't know anything about this, but right  
5 now there's no indication of any facts that would  
6 allow the Defense to go into this IA investigation  
7 involving Detective Kennedy that was never  
8 officially completed. No findings were made, no  
9 indication that he perjured himself or changed any  
10 documents that the jury could look at to determine  
11 his credibility.

12 MR. MICHAÏLOS: And, Judge --

13 THE COURT: Yes. Go ahead.

14 MR. MICHAÏLOS: And, like, I can't put  
15 anything specifically on the record because, like I  
16 said, I haven't looked at the IA file. But my  
17 understanding was there was allegations of some  
18 dishonesty and fraud of some sort. But at this  
19 point in time I'm not making any formal  
20 announcements until I review that file.

21 THE COURT: Okay. So as to Detective Kennedy,  
22 right now I will grant that.

23 I mean, this particular motion has been filed  
24 since, you know, August. So I assumed that you all  
25 would be ready with any case law or any indication

1 of what it is that you intended to impeach the  
2 witness with that they're asking me not to allow  
3 you to do it. So at this point I'm going to grant  
4 it to that one.

5 MR. SARABIA: Yes, Judge, both former Deputy  
6 Heidgerkin and Nancy Sulinski's deposition were  
7 taken before any of this. So if you're reading the  
8 depositions --

9 THE COURT: Oh, so it's not going to be in  
10 there because they didn't ask them about it.

11 MR. SARABIA: It would not be in there.

12 THE COURT: It's in the motion.

13 MR. SARABIA: And I don't believe that's been  
14 transcribed.

15 THE COURT: Okay. So there was a hearing on a  
16 motion, the one that Judge, Siracusa actually did  
17 the order on, on whether the 911 tape was  
18 admissible, and during that testimony there was  
19 some questions asked about why Heidgerkin had left  
20 the agency.

21 Do you recall what he said specifically?

22 MR. SARABIA: I don't recall exactly what he  
23 said, but I believe it was he indicated he had  
24 resigned and that there were pending IA  
25 investigations when he did so. I do remember the

1           conduct unbecoming an officer.  And, I'm sorry,  
2           what was the other one?

3           MR. VIZCARRA:  I thought that he had --

4           MR. SARABIA:  I believe what Defense counsel  
5           represented was accurate, I believe.

6           MR. VIZCARRA:  Something about his  
7           whereabouts.  I wish I had my notes here.

8           MR. SARABIA:  And Mr. Lawhorne reminded me as  
9           well.  I think it had to do with him saying he was  
10          on duty or working at times when he was not.

11          But, again, my understanding, unless Defense  
12          counsel knows something I don't know, is that those  
13          were never followed up on or taken to completion,  
14          that they were just allegations and investigations  
15          were not completed on those.

16          THE COURT:  At this time I'm going to grant  
17          the motion in limine in reference to all three of  
18          the witnesses.

19          If the Defense can provide to the Court  
20          specific impeachment areas that they intend to  
21          raise with a witness, I could reconsider.  But the  
22          fact that they had an IA investigation at this  
23          point is inadmissible.  The fact that they left the  
24          agency is inadmissible.  But if there's specific  
25          questions that you feel go to specific impeachment,

1 I would reconsider.

2 But right now I'll grant the motion and limit  
3 the questioning of these witnesses about any  
4 general questions involving why they no longer work  
5 at the agency or if there was at one point some,  
6 quote, "IA investigation".

7 Because at this point it would just be bad  
8 character evidence. It would be the same thing as  
9 asking any other witness, you know, did you get  
10 fired from your job? That has nothing to do with  
11 what they witnessed. It's just trying to paint  
12 them in a bad light, which is inadmissible no  
13 matter who it is, whether it's a defense or a State  
14 witness.

15 So at this point, since the reasons for their  
16 removal or their leaving the agency has no direct  
17 relationship to this case or any Williams Rule  
18 that's being allowed in this case, at this point it  
19 would be inadmissible bad character evidence.

20 However, again, Mr. Michailos, you asked for  
21 time to look at the IA. If you can find something  
22 specific that you're wanting to ask these witnesses  
23 that you think shows impeachment, then I'll  
24 reconsider. If there's a specific reason, you  
25 know, I would reconsider. But this general, hey,

1 they left the agency under maybe an IA  
2 investigation was pending or they were thinking of  
3 filing an IA, that's not admissible. I mean,  
4 that's just bad character evidence. So clearly  
5 that's inadmissible. I think all the case law says  
6 so. We're not talking about use of force and those  
7 types of things. We're just trying to, you know,  
8 paint somebody in a bad light who no longer works  
9 at the agency.

10 So I'll grant that for now with the  
11 understanding that it can be reraised again to  
12 reopen the door, if you can give me specific  
13 questions and reasons for those questions. Okay?  
14 And that would directly relate to an IA  
15 investigation, I assume, or some testimony involved  
16 in the IA investigation.

17 All right. So 1 through 7 is granted -- 1  
18 through 8 is granted. I'm sorry.

19 And, State, you can do an order saying I grant  
20 1 through 8.

21 MR. MICHAÏLOS: Judge, if I could just clarify  
22 something with regard to Paragraph 4. As I was  
23 sitting here I read something, so I just want to  
24 put something on the record.

25 I'm not objecting to the fact that the State



1 is requesting all testimony regarding statements  
2 made by Nicholas Leonard to Ralph Dunlavey. I'm  
3 not objecting to that, because my understanding  
4 from preparing this case for trial is that there  
5 were no such statements made by Nicholas Leonard to  
6 Ralph Dunlavey on August 28 of 2014.

7 So I just want to put on the record I'm not  
8 stipulating or conceding as to if such statements  
9 existed, whether or not they'd be hearsay or not  
10 hearsay. I don't think none were made. After some  
11 investigation, it was determined that the  
12 statements were made to the son of Ralph, Robert,  
13 and anything Ralph would have heard would have been  
14 double hearsay from his son Robert. So I just want  
15 to clarify that for the record, if I could.

16 THE COURT: Okay. State, do agree with that?

17 MR. SARABIA: I am in agreement with that.

18 THE COURT: Okay. So the motion in limine is  
19 very clear on that one. All testimony or evidence  
20 concerning the contents of statements made by  
21 Nicholas Leonard to Ralph Dunlavey on or about  
22 8/28.

23 Now, the other person, they're not moving for  
24 that. This is this person to that person, and  
25 right now I'm granting that. Okay?

1           Anything else?

2           MR. MICHAÏLOS: No, Your Honor.

3           THE COURT: Okay. So if both sides will send  
4 one of their members of their team up to my bench,  
5 I have for both sides copies of the jury pool.

6           This is everyone that notice has been sent for  
7 the 30th, and this is for the 31st. State has a  
8 copy, Defense has a copy, and I have a copy. So  
9 for the record, I have provided to both sides a  
10 copy of the people who have been summoned for jury  
11 service on October 30th and October 31st.

12           Now, these are the arrangements that I have  
13 made for the jurors: Number one, that when these  
14 people arrive, the people on the 30th specifically  
15 arrive, as soon as all the people are in, before  
16 the video is played, before any dignitaries speak  
17 to the jurors summoned, they will give me 100  
18 jurors and be brought up to my courtroom by 8:30.

19           No questioning. No videos. No, hey, I'm  
20 judge so and so. Nobody is to talk to them.  
21 They'll be told two things: Number one is if you  
22 have a sheet that you filled out and brought with  
23 you, a questionnaire, bring it with you to court;  
24 and, Number two, you need to turn off all your cell  
25 phones. And they'll be brought up to this

1 courtroom and that's where I will meet them.

2 So all preliminary statements made to them,  
3 told to them, anything is going to be done on the  
4 record in front of all of you with me present.  
5 Once we dismiss jurors from this courtroom, they  
6 will be dismissed for the day. They will be told  
7 that they are to go home, they are not to speak to  
8 any of other jurors, they're not to go back  
9 downstairs. We've made arrangements for whatever  
10 they need to do. They will not go back to the jury  
11 pool room. Okay?

12 If we need additional jurors, again, we will  
13 bring them up and I will start from scratch. Now,  
14 the second group, if we bring them up, will have  
15 seen the video and all that kind of stuff, but they  
16 won't have any interaction or any time with the  
17 jurors that were brought up. So they're going to  
18 be from scratch.

19 On day two, those are our jurors and our  
20 jurors only. So they will have no interaction with  
21 jurors from other jury pools, because they're only  
22 coming on Tuesday, if we need them, and they're  
23 only from this case.

24 So does anybody have any objection to that  
25 procedure at this time?

1 MR. SARABIA: No, Judge.

2 THE COURT: Defense?

3 MR. LIVERMORE: No, ma'am.

4 THE COURT: Okay. And the reason I did that  
5 was if we did need to pull more people on day one,  
6 I didn't want the people that we've excused to  
7 somehow poison the people downstairs. So they  
8 won't go back downstairs and say, oh, there's this  
9 huge murder case going on upstairs, it's horrible,  
10 terrible, awful, or, you know, they are saying this  
11 or they are saying that.

12 The people who we excuse will be sent home and  
13 that way if we have to pull another group, we don't  
14 have to worry about them having talked to anybody  
15 that was released from our panels.

16 You have the list who the 100 is going to be  
17 in. Who's going to show up, good luck with that.  
18 You know, I think it's 500 names. I think we've  
19 summoned 500 people for day one and 300 people for  
20 day two. It is random.

21 I have asked that if any one of this group  
22 asks to be excused, that those excuses come to me,  
23 if they're not automatically excused under the  
24 rules. There is certain rules that indicate that  
25 you can get automatic that you're excused from jury

1 service for, you know, specific statutory reasons.  
2 The clerk can do that themselves if they meet the  
3 statutory rules.

4 But any, hey, I've got work and I'm going to  
5 lose all my money or I'm out of town -- lately,  
6 I've had a lot of people who have a mailing address  
7 here, live here, you know, but don't actually live  
8 here.

9 Whether it's military, because if you're in  
10 the military, you can list any address as your  
11 address; or they just happen to list they're in  
12 school or they're working out of town for six or  
13 eight months at a time. I had a couple of people  
14 that are actually overseas.

15 But I will specifically copy why they're  
16 asking to be excused and my answer and I will  
17 provide that to you as we go along so you can take  
18 those people off your list. The less people you  
19 have to look up, easier for you to do.

20 But I've had a couple lately, and I assume  
21 I'll get a couple more people who are permanently  
22 disabled. And they can be excused because they  
23 can't sit for long periods of time or they're  
24 bedridden or, you know, they have some medical  
25 reasons. And those are only given if I have a

1 doctor's note, which I will provide to you. Okay?  
2 Any other questions about that? I just want to  
3 make sure.

4 Now, once we bring them up here we will get  
5 questionnaires, the original questionnaires, and we  
6 will give them their new questionnaires. Okay?  
7 The reason I didn't want that done downstairs is I  
8 didn't want the people downstairs to know what's  
9 going on. They've never been here before so they  
10 don't know how we normally do things anyway. So  
11 it's not going to be any big deal to them.

12 All right. Other than these three matters, is  
13 there anything else we need to do other than maybe  
14 set another pretrial date before the trial? State?

15 MR. SARABIA: No, Judge.

16 THE COURT: Defense?

17 MR. LIVERMORE: No, ma'am.

18 THE COURT: All right. Let's see what we've  
19 got going here. You are doing that deposition on  
20 October 16th.

21 MR. LIVERMORE: Correct. And Thursday and  
22 Friday of that week is "Life Over Death".

23 THE COURT: Right. I could have you all come  
24 back on the afternoon of the 25th or the 27th to  
25 finish up the questionnaires so that the jury pool

1 person -- well, so that we can make copies and be  
2 ready to go.

3 What do you think? The 23rd is pretty busy.  
4 State, what does it look like?

5 MR. SARABIA: I would prefer the 27th.

6 THE COURT: Okay. Defense, the 27th, it would  
7 be at 1:30?

8 MR. MICHAÏLOS: That's good with me, Your  
9 Honor.

10 MR. LIVERMORE: In the afternoon is fine.

11 THE COURT: Yes. Yes. All right. So we will  
12 go ahead and set one last pretrial for  
13 October 27th at 1:00 PM. I'm going to do it at  
14 1:00, and the trial will remain set.

15 I assume everybody has had an opportunity to  
16 speak to their witnesses, their experts, all that  
17 kind of stuff, and all of them are ready to go at  
18 least during some point during the trial? Yes?

19 MR. SARABIA: We are looking good, Judge. I  
20 would also note -- I guess we haven't really  
21 addressed it yet -- but we have received no other  
22 witnesses from the Defense. It's my understanding  
23 from them that they are not planning to list a  
24 psychiatrist. So that is what we are operating  
25 under.

1 THE COURT: At this point, Defense, any extra  
2 witnesses we need to know about?

3 MR. LIVERMORE: No.

4 THE COURT: Okay. So that's a, no. This  
5 witness that you were going to have talk to your  
6 client, that person has been able to talk to your  
7 client? Yes?

8 MR. LIVERMORE: That person will not be a  
9 witness.

10 THE COURT: Okay. I just want to make sure  
11 they talked to your client. Whether they're a  
12 witness or not, that's up to you all.

13 MR. LIVERMORE: They did.

14 THE COURT: But I just want to make sure that  
15 that person was able to get here and speak to your  
16 client because that seemed to be a concern.

17 Okay. Great. So we'll see you on  
18 October 27th, and we're good to go for trial.

19 (HEARING CONCLUDED.)

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## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF FLORIDA )

4 COUNTY OF PASCO )

5  
6  
7 I, MARIA FORTNER, Registered Professional  
8 Reporter for the Sixth Judicial Circuit, do certify that  
9 I was authorized to and did stenographically report the  
10 foregoing proceedings and that the transcript is a true  
11 record.

12 DATED this 7th day of August, 2018.

13  
14 /S MARIA A. FORTNER  
15 MARIA A. FORTNER  
16 Registered Professional Reporter  
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