

IN THE CIRCUIT COURT IN THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NUMBER: 05-2012-CF-035337-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

-vs-

BRANDON BRADLEY,

Defendant.

ORIGINAL

_____ /

TRANSCRIPT OF DIGITAL
STATUS CONFERENCE RECORDING

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SCOTT ELLIS

The transcript of the hearing taken in the above-styled cause at Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, Florida, 32940, on the 8th of August, 2013, before the Honorable Morgan Laur Reinman, commencing at 8:35 a.m.

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A P P E A R A N C E S

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P R O C E E D I N G S

1
2 THE COURT: Okay, let's go ahead. And I had
3 State of Florida versus Brandon Bradley set for
4 this morning. I know that -- I note that Mr. Bross
5 is also here, so that will pertain to
6 Andrea Kirchner. We set this for a status
7 conference to discuss the status of the trial and
8 where we're at.

9 Mr. Moore?

10 MR. MOORE: Yes, ma'am. I asked to set this
11 to see if we could set a trial date. I'm leaving
12 the office, I'm being dropped at the end of March
13 next year. And I figure that this will be a
14 five -- five to six week, at the most, jury trial
15 because death penalty phase and all that. Unless
16 the State -- (Unintelligible). Unless and until
17 that happens, that's what I predict.

18 THE COURT: It was previously represented
19 that it was going to be four to five weeks. Do we
20 think five to six?

21 MR. MOORE: I -- you know, somewhere in that
22 ballpark. It's hard to predict with any accuracy,
23 but I think five is a fair estimate, five weeks.
24 And so I would ask that the trial be set for the
25 end of January, January 27th. As it relates to the

1 co-defendant's trial, Ms. Kirchner, we will file a
2 motion to sever. And I, respectfully, believe that
3 that will be granted.

4 There's a Bruton problem, and that would
5 then -- the scheduling would pertain primarily to
6 us. But my request is to set it for January 27th,
7 that day or that week. And the remaining work that
8 we have to do for on behalf of Mr. Bradley -- who
9 by the way, we waived his presence. He's not here.
10 We spoke to him and he agreed not to appear. The
11 remaining work that needs to be done can be done by
12 that date, it's doable.

13 There may be a venue issue, but -- and we
14 will file a motion, timely file a motion with
15 respect to that -- but you don't know and we won't
16 know until we actually undertake to try to pick a
17 jury. And I'm thinking if the Zimmerman case, with
18 all its notoriety was able to produce a jury in a
19 week, then anything is possible. So I think it's
20 doable from our side to have it set for that date
21 and try to begin the trial on that date.

22 THE COURT: Okay. I was hopeful as a result
23 of Zimmerman as well that perhaps we can get a jury
24 seated and not have to leave Brevard County. That
25 would be problematic for me with regard to my

1 family in that, you know, I have to take care of my
2 child and I'm the sole parent. So that would be
3 problematic. And I was hoping that if we were
4 going to do that, that would happen in the
5 summertime when there's no school. That was my --
6 kind of where I was thinking the trial might be.
7 But I understand Mr. Moore's concern about being in
8 the drop program and retiring on March 31st.

9 Response from the State?

10 MR. MCMASTER: Judge, the State will be here
11 whenever the Court says that the case needs to go
12 to trial. The January trial period is doable as
13 Mr. Moore says. I think it's optimistic. We do
14 have depositions scheduled currently. A number of
15 them in September, a number of them in November.

16 And Mr. Moore has just indicated he's got
17 four additional civilian witnesses that he wants to
18 depose. There have been no motions to suppress on
19 behalf of Mr. Bradley filed. There have been no
20 death penalty motions filed as yet, but I know the
21 Court's hearing time is short. So whatever the
22 Court says as to when we start the trial, the State
23 will be here. We'll be ready to go.

24 THE COURT: You know, I actually do have some
25 hearing time the first part of January. So if we

1 can get those filed, that would be helpful to get
2 those set. I added an extra week. The way the
3 schedule worked out, you were going to have to come
4 back from Christmas vacation and have the last week
5 of a jury trial docket.

6 And I kind of figured that wasn't going to
7 work out well with everyone being on Christmas
8 vacation. And so instead of making that a trial
9 week, I'd turn that into a hearing week. So I do
10 have some hearing time. I added three days of
11 hearing time, so that should help with that.

12 MR. MCMASTER: Judge, I would suggest that
13 whatever we do that we set a status conference, a
14 pretrial conference, and go over all of the status
15 of discovery and any motions and decide what's
16 still outstanding and what needs to be filed. For
17 the pretrial conference, I would suggest that
18 Mr. Bradley and Ms. Kirchner both be present so
19 that we can inquire of them as to if they're in
20 agreement with their counsel's desire to go forward
21 quickly with the trial.

22 MR. MOORE: What we might do to simplify
23 things is to prepare and file a motion to sever
24 first, and that would answer the lingering question
25 as to whether they're going to be tried together or

1 not. And that way we don't clutter up the Court's
2 time with a case that doesn't need to be dealt with
3 at this time. So we can do that and that should
4 not take too much time. We'll get that filed and
5 docketed. We'll expedite it and do that quickly.

6 THE COURT: How long do you think a motion to
7 sever will take to be heard?

8 MR. MOORE: To be heard, 30 minutes at the
9 most.

10 THE COURT: How much?

11 MR. MOORE: 30 minutes at the most.

12 MR. MCMASTER: Judge --

13 THE COURT: Maybe I can get that set.

14 Mr. Bross?

15 MR. BROSS: With all do respect, maybe the
16 Court should inquire the State if they will just
17 stipulate to the severance. Then we don't have to
18 go through the motion and spend more Court's time
19 because, of course, I'll be filing a written motion
20 as well to sever. And, Judge, I think it's more
21 fortuitous of us just to ask the State if they have
22 no objection to sever the -- the defendants.

23 THE COURT: Mr. McMaster, what says the State
24 with regard to the motion to sever?

25 MR. MCMASTER: The State intends to try both

1 defendants together. I don't anticipate that
2 there's going to be a Bruton problem.

3 MR. BROSS: We tried.

4 THE COURT: Okay.

5 MR. BROSS: Thank you.

6 THE COURT: I think it might take a little
7 bit longer to do the motion to sever but --

8 MR. MOORE: I'll get with your JA and
9 we'll --

10 THE COURT: I'll talk to her as well when I
11 go back to into the office and see where we can fit
12 that in. How soon could you be ready on that?

13 MR. MOORE: Week after next, I would say.

14 THE COURT: I don't know if I have time that
15 quickly, but I'll try to get it set within the
16 next -- let's say the next month or six weeks so we
17 can -- because I think that will help everyone to
18 figure out where we'll be. What would be a good
19 time to do -- to have a pretrial hearing? How -- I
20 mean, I'm going to go ahead and set both cases for
21 January the 27th, and we'll -- we'll set them on
22 that trial week for -- we'll set them -- what's the
23 calendar call before that?

24 January the 22nd, 2014, is calendar call, and
25 then we'll set them for trial January the 27th,

1 2014. I'm going to set both cases at that -- for
2 that time at this time, and then we'll see what
3 would happen. I just want to get these dates on
4 the calendar. When do we think that -- I'll set
5 both for the pretrial hearing, and then we'll see
6 where we are with the motion to sever. I assume if
7 the severance is granted, the State wants to go
8 forward -- I'm just making this assumption -- on
9 Bradley before Kirchner?

10 MR. MCMASTER: I don't know yet, Judge.

11 THE COURT: Okay, okay. I only was making
12 that assumption because of Mr. Moore.

13 MR. MCMASTER: Yes, ma'am.

14 THE COURT: Mr. Moore's position that he's
15 retiring.

16 MR. MOORE: Could we use another word for
17 that?

18 THE COURT: Well, you said you were in drop
19 and you didn't even explain what that was. And so
20 we're on the record, and I thought that -- I was
21 trying to be kind.

22 MR. MOORE: Okay. I think a status hearing
23 in early January would be productive.

24 THE COURT: Okay. We can do that.

25 MR. MOORE: I meant September.

1 THE COURT: Early September?

2 MR. MOORE: Right.

3 THE COURT: How long do we think we'll need
4 on that? And we want both -- well, I think I
5 should set that after the motion to sever.

6 MR. MOORE: That's fine.

7 THE COURT: And for that we want both
8 defendants present. How long do you think that
9 will take, 30 minutes or less?

10 MR. MCMASTER: At least 30 minutes. This
11 number of lawyers, we have a hard time saying our
12 names in less than that.

13 MR. MOORE: We're talking about the motion to
14 sever?

15 THE COURT: No. This is the motion, the
16 status hearing with both the defendants present to
17 discuss the --

18 MR. MOORE: If it's just the Bradley case
19 that the Court is dealing with a status hearing,
20 then I think 30 minutes is realistic. We'll try to
21 do that, do the motion to sever before we get to
22 the status hearing.

23 THE COURT: Okay. Is there any other
24 questions or concerns?

25 MR. MCMASTER: Both cases are currently

1 scheduled for docket sounding on August 14th. Are
2 those dates cancelled in light of the calendar call
3 date?

4 THE COURT: We will cancel the docket
5 sounding on both cases for August the 14th.

6 Mr. Bross, how far along are you with regard
7 to getting the case ready for trial?

8 MR. BROSS: Judge, we filed the affidavit
9 and/or narrative of Dr. Alan Waldman, and we're
10 waiting on the hearing on the motion to suppress
11 her statements. We believe that will help us to
12 know how far along we are.

13 THE COURT: I haven't seen that come across
14 my desk.

15 MR. BROSS: It should have, Judge, and we've
16 been waiting on that hearing. I don't know the
17 hearing date.

18 MR. MCMASTER: August 23rd.

19 THE COURT: Oh, there is a hearing date on
20 that?

21 MR. MCMASTER: Yes, ma'am.

22 THE COURT: Okay. Then Ms. Billy
23 (Phonetically) set it without -- I didn't see that.
24 So August the 20 --

25 MR. MCMASTER: 23rd.

1 THE COURT: Okay. Is the hearing date on
2 that, okay.

3 MR. BROSS: We also have another motion we're
4 preparing, Your Honor, as well. And depending upon
5 that, it will also give us some understanding at
6 the status hearing how far along we are as well.

7 THE COURT: Okay.

8 MR. BROSS: So we're still continuing to
9 proceed forward in defending Ms. Kirchner as well.
10 We will be moving, as Mr. Moore said, in the Bruton
11 motion. We would need as much time as the
12 public defender's office to argue our Bruton motion
13 as well in order to sever.

14 THE COURT: So if I set that for an hour,
15 because Mr. Moore represented 30 minutes.

16 MR. BROSS: I think -- well, that's
17 Mr. Moore's 30 minutes. The Court knows I'm very
18 brief in everything I do, so I would need at least
19 30 minutes as well.

20 THE COURT: I'm going to set it -- I'm only
21 kidding -- for two hours. No, I'm kidding. We'll
22 set it -- I think we can do it in an hour. I think
23 both -- all attorneys are proficient, so I think we
24 can do it in an hour.

25 MR. BROSS: Judge, also, just to make sure,

1 the State -- I believe had announced before but I'm
2 not sure -- that they're not seeking the death
3 penalty on Ms. Kirchner.

4 MR. MCMASTER: We have not filed a notice,
5 but we have not waived it either.

6 MR. BROSS: Could the Court inquire of the
7 State -- I mean, see, that matters too because
8 either I need to get my death penalty motions in so
9 I can have those being resolved or not. It would
10 be inappropriate for us to file death penalty
11 motions if the State is not -- is filing, but has
12 not filed yet. So if the Court could inquire of
13 the State if we could have a status date or a
14 deadline date to know what they're doing so we can
15 better prepare our defense.

16 THE COURT: Mr. McMaster, with regard to that
17 issue?

18 MR. MCMASTER: At the present time, the State
19 has not waived the death penalty as to Ms. Kirchner
20 or Mr. Bradley. I don't anticipate that's going to
21 change at least until we have a pretrial conference
22 and are able to go over the status of the case. I
23 will be discussing it with the State Attorney, and
24 if something changes, I'll promptly notify
25 Mr. Bross.

1 MR. BROSS: It just delays our ability to
2 prepare our defense for a decision about how long
3 it's going to take and when we'll be ready.
4 Because, again, with all of the voluminous amount
5 of death penalty motions that will be mandated and
6 necessary, Judge, it could stall and/or delay our
7 case for longer than we anticipated. It is a
8 felony murder rule in this case, not a first-degree
9 felony murder premeditated heinous atrocious rule.

10 THE COURT: Mr. McMaster, if we can do the
11 motion to sever prior to the next status
12 conference, we would have already probably done the
13 hearing on Kirchner that's set for August the 23rd.
14 If I set that -- if I get the motion to sever
15 scheduled and completed, and Mr. Bross's
16 outstanding motion on Kirchner completed, and we
17 set the status conference sometime in -- the next
18 status conference sometime in September, do you
19 think you could -- would have a decision with
20 regard to that on the death penalty on Kirchner at
21 that time?

22 MR. MCMASTER: I will certainly do my best,
23 Judge. I will certainly get together with the
24 State Attorney and discuss it with him.

25 THE COURT: Because I think that would be an

1 appropriate time period for -- and once we get the
2 motion to sever, I think that will make a
3 difference too as to whether the urgency of knowing
4 the answer to that question.

5 Okay, anything else?

6 MR. BROSS: Nothing else from defense on
7 Ms. Kirchner.

8 MR. MOORE: Nothing from us.

9 THE COURT: Okay.

10 MR. MCMASTER: Nothing from the State.

11 THE COURT: Okay. Thank you very much, I
12 appreciate it. Have a good day everyone.

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