

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CASE NO. 2014CF5586CFAXWS

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

PROCEEDINGS: MOTIONS
BEFORE: HONORABLE MARY HANDSEL
Circuit Judge
DATE: September 6, 2017
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

Administrative Office of the Courts
Court Reporting Department
West Pasco Judicial Center
7530 Little Road
New Port Richey, FL 34654
Tel. (727) 847-8156 Fax: (727)847-8159

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:

5 BRYAN SARABIA, ASSISTANT STATE ATTORNEY
6 CHRISTOPHER LABRUZZO, ASSISTANT STATE ATTORNEY
7 JOSEPH LAWHORNE, ASSISTANT STATE ATTORNEY
8 Office of Bernie McCabe, State Attorney
9 Sixth Judicial Circuit, Pasco County
10 7530 Little Road
11 New Port Richey, Fl 34655

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

14 DEAN LIVERMORE, ASSISTANT PUBLIC DEFENDER
15 NICHOLAS MICHAÏLOS, ASSISTANT PUBLIC DEFENDER
16 E. DILLON VIZCARRA, ASSISTANT PUBLIC DEFENDER
17 WILLIAM PURA, ASSISTANT PUBLIC DEFENDER
18 Office of Bob Dillinger, Public Defender
19 Sixth Judicial Circuit, Pasco County
20 7530 Little Road
21 New Port Richey, Fl 34655
22
23
24
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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: All right. Mr. Matos is here.
3 State is here. Defense is here.

4 Just to handle some matters, housekeeping
5 matters. The Defense moved to recuse me. I denied
6 that motion. The Defense appealed my denial and
7 the Second DCA has, in fact, upheld my refusal to
8 recuse myself. So at this point I remain on the
9 case and we'll be moving forward with the motions.

10 So at this point all of those matters have
11 been resolved. Is there any indication that the
12 Defense intends to appeal the Second DCA's ruling
13 on the denial of your motion to have me recused?
14 It's coming as a double negative every time. I'm
15 trying not to do that.

16 MR. LIVERMORE: Well, the nature of the ruling
17 means that it is not appealable. The deadline for
18 rehearing or a motion for a written opinion is
19 Monday.

20 THE COURT: Okay.

21 MR. LIVERMORE: I don't expect it at this
22 point.

23 THE COURT: Okay.

24 MR. LIVERMORE: But I'm still listening to the
25 people smarter than I am.

1 THE COURT: I don't know if there is anybody
2 smarter than you.

3 MR. LIVERMORE: Oh, believe me, there are
4 plenty.

5 THE COURT: Well, at this point we'll move
6 forward, unless something comes up. So let me
7 know. But other than that, we're here for a
8 pretrial calendar and for all pending motions.

9 I have at this point two motions filed by the
10 State. I have a motion to direct Clerk not to post
11 deposition on website. Does the Defense have a
12 copy of that?

13 MR. MICHAÏLOS: I've seen it, Judge.

14 THE COURT: Okay. And then a motion in limine
15 that has multiple parts. You got that?

16 MR. MICHAÏLOS: Yes.

17 THE COURT: Okay. So those are what I have
18 from the State, and we'll talk about those.

19 From the Defense I have a motion to determine
20 competency and to strike or disqualify [REDACTED]
21 [REDACTED] as a State witness. State, you have a copy
22 of that?

23 MR. SARABIA: Yes, Judge.

24 THE COURT: Okay. And then I have a motion
25 for a continuance and I have additional grounds for

1 a motion for a continuance, so I have two. You've
2 seen both of them?

3 MR. SARABIA: Yes, Judge.

4 THE COURT: Okay. And then I have a motion
5 for lack of jurisdiction. Have you seen that?

6 MR. SARABIA: Yes, Judge.

7 THE COURT: Okay. So those are all the new
8 ones that have been filed since our last hearing.

9 Go ahead. I was going to ask, am I missing
10 something?

11 MR. LIVERMORE: There are more, Judge, yes.

12 THE COURT: There are? Okay. I have a motion
13 for jury questionnaire.

14 MR. LIVERMORE: Right.

15 THE COURT: To supplement voir dire and
16 proposed sample questionnaires.

17 MR. LIVERMORE: Right.

18 THE COURT: And I have a motion to declare
19 Section 921.141(5) (h) unconstitutional as written,
20 as implied.

21 MR. LIVERMORE: Yes. EHAC and PTF.

22 THE COURT: Yes. I got that one too.

23 And then I have a motion for individual
24 sequester voir dire.

25 MR. LIVERMORE: Right.

1 THE COURT: I thought we passed that from the
2 other day, but I have that one.

3 MR. LIVERMORE: I wasn't sure. I didn't think
4 you heard that one.

5 THE COURT: Okay. And then I have a motion in
6 limine, I think.

7 MR. MICHAÏLOS: Yes. Regarding the 911 tape.

8 THE COURT: Okay. So are those all of them?

9 MR. LIVERMORE: Yes.

10 MR. MICHAÏLOS: Yes.

11 THE COURT: Okay. So I just want to make
12 sure. So I'm going to do them in a little weird
13 order, but I will let you know what I'm going to
14 hear first.

15 First and foremost, the State's motion to
16 direct the Clerk not to post depositions on the
17 website. I'm going to take that one up first,
18 because that's going to have me direct the Clerk to
19 do something. I have a clerk here, and so if I'm
20 going to do that, I want to do that as soon as
21 possible.

22 MR. SARABIA: And I believe Mr. Vizcarra and I
23 have discussed this previously with the witness in
24 question and I don't believe they're objecting.

25 MR. VIZCARRA: That's correct, Judge. It's

1 one of the Kansas witnesses, and that was part of
2 our deal with her counsel to get her to cooperate.

3 THE COURT: That the deposition will not be
4 posted on the website?

5 MR. VIZCARRA: Right.

6 THE COURT: Okay.

7 MR. SARABIA: We should all understand that it
8 will still be public record available in the court
9 file, but there's a big difference between that and
10 being able to pull it up with two clicks.

11 MR. VIZCARRA: It should be Ms. Stinson.

12 MR. SARABIA: Yes. Ms. Stinson.

13 THE COURT: Yes. It's Michelle Stinson.

14 MR. VIZCARRA: Yes, ma'am.

15 THE COURT: All right. State, since you're
16 both here, I actually am contemplating filing an
17 order that compels the Clerk to take it off their
18 website completely.

19 MR. SARABIA: By what, the depo or the
20 whole --

21 THE COURT: That it cannot be available on a
22 one click. That it goes back to like any other
23 request, you'd have to go through their website and
24 find it. I assume that's what's going to happen
25 with this deposition anyway, correct?

1 MR. SARABIA: The deposition or for all
2 depositions and all filings?

3 THE COURT: For all filings, all depositions.

4 Just for the record, since the appellate
5 counsel -- or appellate record is not going to be
6 clear, right now if you pull up Paula O'Neil, the
7 Clerk of the Circuit Court of Pasco County's
8 website on a general Google search, it comes up,
9 and on the left hand-side is a box, it's in red,
10 and it says, State of Florida versus Adam Matos,
11 and you click on that box and it goes to a separate
12 page where all filings in this case are listed, and
13 you click on that and you can read them right off
14 the Web page.

15 Now, there's only two cases in all of the
16 cases in Pasco County that you can do that, that
17 they have set up, I guess, way back when, the
18 website. And the other one is the Reeves matter,
19 which is being handled on the east side, which was
20 the shooting in the movie theater. So both of them
21 have their own individual box when you pull up the
22 website on any Google search once you get to Paula
23 O'Neil's website.

24 And in this particular case, because we are
25 ready for trial -- unless I grant a continuance,

1 but even if I do, the continuance wouldn't be for
2 that long. The jurors are going to be brought in
3 next week, and I don't think that it would be a
4 good idea -- now, I haven't heard from both
5 sides -- that they're able to quickly go to the
6 website of the Clerk of the Circuit Court and open
7 up all discovery, anything that's been filed in
8 this case, I mean anything, all motions, all
9 orders, all depositions, they're all there.

10 MR. SARABIA: We have no objection to that,
11 Judge.

12 THE COURT: Defense?

13 MR. LIVERMORE: No objection.

14 MR. MICHAÏLOS: We'd appreciate that, Your
15 Honor.

16 THE COURT: Okay. So I am going to order, and
17 I will prepare a written order, but I'm going to
18 let the assistant clerk who's here know that I am
19 going to order that the Clerk of the Circuit Court,
20 Paula O'Neil, remove that specialized banner, for
21 lack of a better term, from the website.

22 MR. SARABIA: At least for the pendency of the
23 case.

24 THE COURT: Right.

25 MR. SARABIA: I personally don't care or the

1 State has no position after.

2 THE COURT: I'm having people stand and people
3 knock, so obviously someone has something to say on
4 your side.

5 MR. LABRUZZO: No. I was going to tell you
6 there's a site, Judge.

7 MR. SARABIA: It's just not a link.

8 MR. LABRUZZO: It's just not a link. There's
9 also a site, adammatostrial.com.

10 THE COURT: Well, I tried to put that site in
11 directly and it wouldn't come up.

12 MR. LABRUZZO: I did it this morning. It
13 pulled it up.

14 MR. SARABIA: Yes.

15 THE COURT: Okay. So what I'd be doing is
16 compelling them to take down the site and the
17 banner and the special whatever it is that's on
18 this case and remove it and send it back to
19 being -- if somebody wants to find it, they'll have
20 to go through the way they find everything else in
21 this county.

22 MR. LABRUZZO: Okay.

23 THE COURT: And it appears that the original
24 authorization was given in this case by Judge --
25 Chief Judge at the time McGrady and Judge Webb. By

1 the way, neither of them are currently circuit
2 court judges. They both retired years ago.

3 So no one has come to me. I didn't even know
4 it existed until about two weeks ago -- someone
5 brought it to my attention -- or I would have, if
6 anybody asked, have removed it a while ago.

7 So at this point I am going to enter an order
8 asking that the Clerk remove the specialized
9 website and banner for this case from her website
10 and move it down to be accessed as any other case
11 would be accessed.

12 Now, I think we all agree it's a public
13 record, everyone has a right to look at it,
14 whatever they're going to look at. I've had no
15 request to seal like we would do in the normal way.
16 All you're asking me to do is make it a normal case
17 like you would have to look for a normal case in
18 any other case in Pasco County? Yes?

19 MR. SARABIA: Yes.

20 THE COURT: So, Defense, you're okay with
21 that? Yes?

22 MR. MICHAÏLOS: Yes, Your Honor.

23 THE COURT: State's okay with that.

24 Okay. And I will enter an order asking or
25 compelling that the Clerk remove the

1 adammatostrial.com.

2 MR. LABRUZZO: Trial.com.

3 THE COURT: What's it say? Adammatos --

4 MR. LABRUZZO: Adammatostrial.com.

5 THE COURT: -- trial.com website and the
6 specialized banner from her website.

7 All right. So that takes care of that. And I
8 will prepare an order for that myself.

9 The next thing I'm going to do is the motions
10 to continue. There are two, one filed by
11 Mr. Vizcarra, as a member of the defense team, I
12 would assume, of the Public Defender's Office?

13 MR. VIZCARRA: Yes, Judge.

14 THE COURT: And another one signed by
15 Mr. Michailos, as additional grounds for a motion
16 to continue.

17 I don't know if you two want to argue this
18 separately or as one big argument.

19 MR. MICHAIILOS: No. Separately, if we could,
20 Your Honor.

21 THE COURT: Okay. Mr. Vizcarra, if you want
22 to argue the first motion to continue, which was
23 filed on September 1st.

24 MR. VIZCARRA: Good afternoon, Judge.

25 THE COURT: Good afternoon.

1 MR. VIZCARRA: Judge, we're getting close to
2 being ready to try this case; however, we're not
3 there yet. I would guess that it would be at least
4 six months away. I'm asking you for a continuance.
5 I'm asking you in good faith. I'm asking you on
6 behalf of my client, Adam Matos, who the State is
7 seeking to put to death.

8 There's over 350 witnesses to this case. We
9 haven't deposed them all. There are still some
10 that are still coming in and there's some that we
11 have not spoken to.

12 In August of this year I got permission to fly
13 to Kansas to depose six witnesses in Kansas. And I
14 was not sure at that time, although we had some,
15 you know, belief as to the extent of what those
16 witnesses had to do with this case.

17 It's four deaths in which Mr. Matos has been
18 charged with committing: Nicholas Leonard, Megan
19 Brown, Greg Brown and Margaret Brown. Mr. Matos
20 was aware that a former lover of Nicholas Leonard,
21 a woman by the name Michelle Stinson, who lives
22 right outside of Wichita, Kansas, had stalked and
23 harassed both Nicholas Leonard and Megan Brown. He
24 mentioned this to the news in a recorded interview
25 when he was arrested. This stalker was on

1 Mr. Matos's mind.

2 I flew to Kansas to talk to Michelle Stinson
3 and the other witnesses, most of which were law
4 enforcement out there, and I found out that she
5 lied to law enforcement, I found out that she had
6 lied to me. I found out that she -- that when I
7 returned, that there were things going on in this
8 case which in fact merit further investigation.

9 I asked for three things from the prosecutor,
10 Mr. Sarabia, when I got back from Kansas, and I put
11 them in a memo dated August 7th, 2017.

12 Number one, I wanted the application for the
13 search warrant. The prosecutor had provided us
14 with the actual search warrant previously, but
15 doing this job as long as I have, I knew that the
16 application for search warrant would contain
17 valuable information, this is because the
18 authorities in Kansas needed probable cause to
19 search Ms. Stinson's telephones.

20 I also wanted a copy of the downloaded
21 information from those two telephones. And then
22 last, I wanted the information of Michelle
23 Stinson's friend, who she stayed with in Florida
24 just prior to the deaths of Mr. Leonard, Megan
25 Brown and her parents.

1 Having received no answer, I followed up my
2 request with a memo dated August 23rd, 2017, and
3 also called Mr. Sarabia, who provided me the first
4 two things to my colleague Mr. Michailos on
5 August 24th.

6 I'm asking you to please take a look of the
7 affidavit of search warrant. About 13 days ago, I
8 got the affidavit of search warrant. And from my
9 investigation of the case, it clearly sets forth
10 that Michelle Stinson lied when she said that she
11 had not seen Nicholas Leonard since October of
12 2013. She pretty much admitted that on her
13 deposition.

14 She lied when she told Detective Krause, who
15 is now Detective Peltier, that she had last visited
16 Florida in April of 2014. She lied when she said
17 that she had never made contact with Mr. Matos.
18 Michelle Stinson lied when she had said that she
19 had call logs, text messages and voicemails from
20 Nicholas Leonard to verify that she and Nicholas
21 were reciprocally in contact with each other. And
22 that is no wonder, looking back now, that she did
23 not meet with Detective Krause, who flew out there
24 on September 11, 2014.

25 Detective Krause, from her own investigation,

1 caught Michelle Stinson in a lie. She found out
2 that just prior to the deaths of the victims in
3 this case that she had in fact been to Florida.

4 Upon further investigation, I found out that
5 Michelle Stinson had in fact contacted Mr. Matos.
6 I found out that some, if not most, of what
7 Nicholas Leonard was telling law enforcement was
8 not what I believe initially was some kind of
9 paranoid delusion or just anger at a past lover,
10 but it was in fact truthful.

11 Upon further investigation, I found out that
12 Michelle Stinson had been stalking Nicholas Leonard
13 and Megan Brown, and that her actions had a bearing
14 to the extent of which it's still being
15 investigated on the actions of all individuals
16 involved in this case. Bottom line, further
17 investigation is warranted.

18 About 13 days ago I got the downloads from the
19 telephones from the State. About 7 days ago I got
20 one of my information technology people to help me
21 open it up so I can view it. There are at least
22 173 pages of information from the reports generated
23 from the telephones of Michelle Stinson.

24 Obviously, the statement she gave Detective
25 Krause that she had call logs, text messages and

1 voicemails from Nicholas Leonard to verify that
2 she and him talked to each other was at the top of
3 my list, and from my review of it none of that is
4 in there.

5 I'm not sure if she used another phone, if she
6 deleted all that information, or whether she never
7 did have that information, just made that up to
8 Detective Krause. I'm not sure what to make of it
9 right now. That is all new to me and I'm still
10 pouring through those documents.

11 In her deposition Michelle Stinson told me
12 face-to-face that she texted Nicholas Leonard a
13 lot. This information was not contained in the
14 download of the phone information that was provided
15 to me by the State that was obtained by the
16 detectives in Wichita, Kansas, that came from
17 Ms. Stinson's telephone. All I know now is that
18 further investigation is warranted.

19 There are several things which are disturbing
20 about the download information, but the one thing
21 that I found most disturbing is located in
22 Paragraph 24 of my motion. About two months prior
23 to the deaths of Nicholas Leonard, Megan Brown,
24 Gregory Brown and Margaret Brown, there is a text
25 in those records.

1 Like I said, I've only had seven days. I'm
2 still going through it. But Michelle Stinson is
3 texting one of her local friends -- when I say
4 local, somebody that lives here in the Tampa Bay
5 area -- and they are saying, "He will get his
6 karma." And then, "Thanks, THX." And then,
7 "Mission Impossible is going to happen soon.
8 After --" and this is not written, it's a text
9 message, but "After come here, I will fly there and
10 we will make it all go down, LOL."

11 That is very disturbing in a case such as
12 this. And I just got that seven days ago. I
13 should have had all this information prior to my
14 flying to Kansas last month, I would argue maybe
15 even a year ago. I only got this information
16 August 24th, and opened it up August 30th.

17 Judge, obviously how can someone not
18 investigate this further? It's a quad homicide
19 case. How can we be forced to go to trial without
20 investigating this information fully? And I don't
21 know how this stalking did not affect the actions
22 of all the individuals involved. What effect did
23 this have on all those people involved? How did it
24 fit into what happened? I know that Mr. Matos knew
25 about this because he mentioned it when he got

1 arrested to the news media, and so he was obviously
2 affected by that.

3 And I thought about how many cases are not
4 fully investigated because people don't fly out to
5 these remote parts of the country, go through phone
6 calls or talk to witnesses about it. We also have
7 experts that we're bringing on board to help us
8 shed more light on this case.

9 Bottom line is, Judge, this case is
10 complicated. This work is painstaking. This
11 requires heightened investigation, heightened due
12 diligence. Judge, we just honestly need a little
13 more time. This is about due process.

14 I'm bringing this to Your Honor's attention
15 and asking you to give us at least six months to
16 answer these questions that are posed by this new
17 information. It is a reasonable request given the
18 circumstances in this case.

19 THE COURT: All right. Counsel, where are you
20 going? I've got questions for you.

21 MR. VIZCARRA: Yes.

22 THE COURT: Number one, you say in your motion
23 that the text messages between Ms. Stinson are with
24 one of her, quote, "local friends." Why do you say
25 that? That's a statement, but that doesn't tell me

1 anything.

2 MR. VIZCARRA: The number that is on that
3 download of information has a local number and has
4 a person's name. That's one thing I didn't
5 mention.

6 The third thing I asked for was a phone number
7 for a Ms. Springer. And I have not called that
8 number yet because I kind of wanted to get
9 everything together before I talked to that lady,
10 and Mr. Sarabia was kind enough to give me another
11 phone number where she can get reached today.

12 But when Ms. Stinson came to Florida,
13 initially she denied, you know, "The last time I
14 was in Florida was two thousand --" you know,
15 sometime before. And then when Detective Krause
16 flew to Kansas, she found out that she had just
17 been to Florida in August of 2014, the same month
18 that everything went down, so to speak.

19 And so the lady that she stayed with had a
20 local number, and this is what I believe, same name
21 is the number of the lady that was texting with
22 her. And I don't know what that means, Judge.
23 I'll be honest with you. I can't say that, you
24 know, "Mission Impossible" was to maybe set up
25 Mr. Leonard or something like that, but that's all

1 I've got.

2 THE COURT: Okay. And number two is
3 Ms. Stinson is -- it's the State's obligation to
4 prove this case beyond a reasonable doubt. The
5 Defense has no obligation in this case. So I'm
6 trying to figure out in my mind is the State
7 calling Ms. Stinson as a witness in their case?

8 MR. VIZCARRA: I don't know what the State's
9 going to do, Judge.

10 THE COURT: Is she listed as a witness in
11 their case?

12 MR. VIZCARRA: I believe that she has been.

13 THE COURT: Okay.

14 MR. VIZCARRA: And our obligation is not just
15 that. Our obligation I think is to tell
16 Mr. Matos's side of his story, whether that
17 includes what he thought of --

18 THE COURT: Well, let me stop you right there.

19 MR. VIZCARRA: Yes.

20 THE COURT: You have a problem in this case,
21 because you have said a lot of stuff about
22 Ms. Stinson, but the State has the obligation on
23 putting on their case.

24 State, are you calling Ms. Stinson as a
25 witness in this case?

1 MR. SARABIA: It's going to depend on how the
2 Defense conducts themselves in trial.

3 THE COURT: But as a rebuttal more than as a
4 State's case in chief?

5 MR. SARABIA: More than likely, yes, Judge.

6 THE COURT: Okay. And so at this point
7 Ms. Stinson is not a State witness case-in-chief
8 person. So basically what you're asking me to do
9 is give the Defense a continuance to find
10 impeachment on a witness who they are not calling
11 in their case.

12 So you want six months in order to investigate
13 someone who you've known about, because you're
14 telling me your client said to somebody when he was
15 arrested about this person, which is in 2014. You
16 want six months to do an investigation to try to
17 find out things that might cause you personally
18 some consideration but don't affect the State's
19 case, and you've known about it for three years.

20 So I'm supposed to give you six months to do
21 what? What exactly would you do with the six
22 months? I read your motion. I can't figure out
23 what you're going to do with six months. You need
24 six months to figure out what you're going to do
25 with it?

1 MR. VIZCARRA: That's intentional, yes, Judge.
2 And the reason is that, like I said, I've only had
3 seven days to pour through this information.

4 THE COURT: But you've known for three years
5 that he said that to the news when he was arrested.

6 MR. VIZCARRA: Right.

7 THE COURT: The application was provided in
8 discovery. So you've known for three years about
9 Ms. Stinson from your own client, but you want six
10 more months to try to figure out what you're going
11 to do about this.

12 So you don't have any direct evidence that you
13 believe that, if you were given more time, you
14 would absolutely find. In your motion you say she
15 may have obstructed justice, she may have deleted
16 information. How would you know? How are you ever
17 going to find that out?

18 What in the world are going to -- you say she
19 may have used another phone. You've got no proof
20 of that. You got she deleted information. You
21 have no idea and no way you get deleted information
22 and she may have tampered with evidence in this
23 case.

24 She had no direct contact with the evidence
25 that the State is going to provide. So what you're

1 talking about is evidence of her own phone calls,
2 correct? I mean you don't have any proof she was
3 during the murders? You have proof she was here
4 and left, right?

5 MR. VIZCARRA: I have proof that, yes, there
6 are some work records up in Kansas where she was
7 there during the time of this incident.

8 THE COURT: During the time of the murders?

9 MR. VIZCARRA: Yes. Around the time of the
10 murders. But I don't know what her role was and I
11 don't know what effect her harassment of Nicholas
12 Leonard and Megan Brown had on my client or on
13 Nicholas Leonard or Megan Brown and their actions.

14 THE COURT: But how would you ever know that?

15 MR. VIZCARRA: Well, number one, I want to --
16 I guess, this is what I would do if I had more
17 time. I would, number one, talk to our expert who
18 is going to see our client soon, if favorable.

19 THE COURT: Expert of what? You keep using
20 the word "expert." There's a lot of experts.
21 Blood spatter. Fingerprints. There's a lot of
22 experts. What kind of expert are you having talk
23 to your client?

24 MR. VIZCARRA: Judge, we're having him looked
25 at by a psychiatrist.

1 THE COURT: Okay.

2 MR. VIZCARRA: There's two things. Number
3 one, I don't know the extent of the harassment by
4 Ms. Stinson on Mr. Leonard.

5 THE COURT: But Mr. Leonard is deceased,
6 correct?

7 MR. VIZCARRA: Correct.

8 THE COURT: So what difference would it make
9 how Mr. Leonard felt about being harassed by an
10 ex-girlfriend? How does that have anything to do
11 with this trial? He's deceased.

12 MR. VIZCARRA: And I'm trying to answer your
13 question without giving up privilege.

14 THE COURT: Well, you're asking for a
15 continuance.

16 MR. VIZCARRA: Yes.

17 THE COURT: Mr. Leonard is deceased. He was
18 murdered. He was either murdered by your client or
19 murdered by someone else, but he was most certainly
20 murdered. He did not commit suicide, or at least
21 that's what the medical examiner says in the
22 indictment.

23 MR. VIZCARRA: Right.

24 THE COURT: So he was murdered. So what
25 difference would it make how he felt about being

1 harassed by an ex-girlfriend? It would be the
2 same, how did he feel by the neighbors having loud
3 music playing next door or how he felt about the
4 dogs running in the neighborhood? What difference
5 does it make in this case?

6 MR. VIZCARRA: I guess if you boiled it all
7 down, Judge, the actions of Mr. Leonard around the
8 time of the incident and the information that was
9 known to Mr. Matos at the time of the incident may
10 have affected how Mr. Leonard and Mr. Matos reacted
11 in explaining the situation that happened in that
12 house during that period of time.

13 THE COURT: Are you claiming that based on
14 what Ms. Stinson did to Mr. Leonard, Mr. Matos then
15 has some self-defense claim, stand your ground
16 motion?

17 I hate to tell you, but my brain is working as
18 hard as it can right here.

19 MR. VIZCARRA: Right. Right.

20 THE COURT: You're asking for a continuance.
21 I need real hard reasons about what Mr. Leonard
22 felt about what some woman did that wasn't even
23 there at the time the murder happened would affect
24 your client's defense in a trial for murder?

25 I did a lot of murder trials as a prosecutor.

1 MR. VIZCARRA: Right.

2 THE COURT: I spent a lot of years as a
3 prosecutor. I tried most of my cases by trying to
4 figure out what the defense was going to do.

5 MR. VIZCARRA: Right. And I think you're
6 getting warm. I think you're getting warm and I
7 think that that is a way that we might proceed in
8 this case.

9 THE COURT: Getting warm.

10 MR. VIZCARRA: Like I said, it's overwhelming
11 the 350 witnesses, the information all the way out
12 of Kansas. I just opened up this -- this text
13 message was just opened up within seven days. So I
14 would pour through those records and see what else
15 is in there. I'm just telling you what I have at
16 this point in time.

17 THE COURT: The text messages between
18 Ms. Stinson and her friend allegedly who is in
19 Florida doesn't have anything to do with
20 Mr. Leonard, doesn't have anything to do with
21 Mr. Matos.

22 So if I read this, "He will get his karma,"
23 whoever he is his, "Thanks. Mission Impossible is
24 going to happen soon. After come here, I will fly
25 there and we will make it all go down."

1 So I don't know if they're going to drink in
2 the Bahamas or, you know, sneak off to -- I mean
3 there's nothing about Mr. Leonard or Mr. Matos or
4 the victim, the girlfriend. You're just putting
5 stuff in a text.

6 MR. VIZCARRA: I am. But to put that in
7 context -- and feel free look at the download. I
8 don't mind you doing that. I provided a copy of
9 it.

10 THE COURT: I assume Mr. Sarabia is going to
11 show it to me because he has it in his hand.

12 MR. VIZCARRA: Okay. But they are talking
13 about Mr. Leonard in all of this. So additionally,
14 if you read the motion as well, they're talking
15 about two Asian men that are sitting outside that
16 home and that are harassing Mr. Leonard and
17 Mr. Matos and Miss Megan Brown. So that also could
18 affect Mr. Matos and his thinking during this
19 period of time; it could affect Nicholas Leonard
20 and how he's thinking during that period of time.

21 So those are all things that, you know, if
22 they're talking about -- and the way I read the
23 information, they're talking about Nicholas
24 Leonard, then I would say it behooves me don't go
25 to trial in seven days, pour through this

1 information that I've been provided, and talk to
2 Ms. Springer and see where it goes, talk to
3 Mr. Matos, talk to our witnesses more about it and
4 find out as much information as we possibly can
5 before we go to trial on this quad homicide case.

6 THE COURT: Okay. Thank you.

7 State, your response.

8 MR. SARABIA: Judge, I'm going to try and go
9 point by point of Defense's motion.

10 Point 7. Detectives in Kansas applied for a
11 search warrant asking for access to the telephones
12 themselves of Ms. Stinson, that was in the
13 Sheriff's Office report that was discovered years
14 ago now.

15 Number 8. I believe he's correct, I don't
16 think that they had a copy of the application nor
17 did we, but they did have the search warrant. So
18 there was obviously an application out there, an
19 affidavit of some sort.

20 THE COURT: Just so the record is clear, we're
21 talking about on the motion to continue, Number 7
22 says that Mr. Vizcarra found out that the
23 detectives in Kansas applied for a search warrant
24 asking for access to the phone, but, in fact, the
25 Defense has had that information since day one of

1 discovery, correct?

2 MR. SARABIA: Day one or day 15.

3 THE COURT: Day one of --

4 MR. SARABIA: Yes.

5 THE COURT: What I mean is --

6 MR. SARABIA: Very early on.

7 THE COURT: Okay.

8 MR. SARABIA: Very early on. In fact, I think
9 there was a deposition done of a witness in Kansas
10 over the phone approximately six months to a year
11 ago who referenced that.

12 THE COURT: Okay. So they had these search
13 warrants?

14 MR. SARABIA: Yes.

15 THE COURT: What they didn't have was the
16 application?

17 MR. SARABIA: Correct.

18 THE COURT: And they never requested that from
19 you nor did they request that from the Sheriff's
20 Office or a law enforcement agency in Kansas?

21 MR. SARABIA: Not to my knowledge. They did
22 request it from me on August 7th of this year.

23 THE COURT: And you got it back to them in
24 less than 20 days?

25 MR. SARABIA: Yes.

1 THE COURT: Okay.

2 MR. SARABIA: I was out of the country during
3 that period of time; otherwise, I would have gotten
4 it to them quicker.

5 THE COURT: All right.

6 MR. SARABIA: Point 9. Downloaded information
7 from the phones of Michelle Stinson. Those
8 downloads have been in evidence. I believe it is
9 10-AB and 11-AB, for Bissone, Anthony Bissone.
10 They've gotten a copy of the property vouchers more
11 than a year ago indicating all the evidence which
12 includes those items.

13 Those items have been available to them. They
14 did recently request that I give them a physical
15 copy, which I have now done; but that information
16 has been available for a long time.

17 THE COURT: So these downloads from the phones
18 have been in evidence for more than a year and they
19 were provided as an evidence slip to the Defense.

20 And they asked for them when?

21 MR. SARABIA: They specifically requested
22 copies of that from me in the August 7th
23 memorandum.

24 THE COURT: And you got that back to them
25 again within less than 20 days?

1 MR. SARABIA: I believe it was the 24th or
2 25th, yes, Judge.

3 THE COURT: Okay. And you didn't have to go
4 to Kansas to get that? That's something that was
5 in discovery and in the Sheriff's Office the entire
6 time?

7 MR. SARABIA: Correct.

8 THE COURT: Okay.

9 MR. SARABIA: Correct.

10 THE COURT: Go ahead.

11 MR. SARABIA: Point 10. That's something
12 that's been in discovery for a long period of time.
13 It is in the Sheriff's Office report.

14 Point 11.

15 THE COURT: Well, let me go back there.

16 MR. SARABIA: I'm sorry. Let me correct
17 myself. Point 10 was not in the discovery. That's
18 something that Michelle Stinson said in her
19 deposition.

20 THE COURT: Okay. And you went to do her
21 deposition when?

22 MR. SARABIA: We deposed her on August 4th,
23 2017. I would note she's been on the witness list
24 since 2015 sometime. In fact, Mr. Vizcarra had
25 contacted me I want to say it was in 2016 sometime

1 about the Kansas depos. I returned the call and
2 was asking for possible dates, and that was the
3 last that I've heard of it until more recently.

4 THE COURT: And you did some depos with Kansas
5 witnesses by phone over a year ago?

6 MR. SARABIA: We did. I believe it was
7 Detective Blick. And candidly, he was very,
8 very -- I think he may have been the person who
9 swore to the affidavit, which is basically him
10 getting all of his information from Detective
11 Krause, so he had a very minimal role.

12 THE COURT: Okay. And so you found out,
13 Number 10, which is that prior to the death of
14 Mr. Leonard and the other victims, Ms. Stinson had
15 come to Florida and had seen Mr. Leonard and saw
16 his truck at the home of Megan Brown. In the
17 deposition Ms. Stinson -- what did she say she was
18 there in Florida and saw this information?

19 MR. SARABIA: She said she was on vacation --
20 and I'm sure Mr. Vizcarra can correct me if I
21 misstate it -- but she was here on vacation with a
22 friend and they were driving on Old Dixie Highway,
23 which happens to go by 7719 Hatteras Drive, and
24 they recognized Nicholas Leonard's truck, which is
25 fairly distinct, at a residence that she believes

1 to be Megan Brown's residence.

2 THE COURT: And this is what date? August of
3 2014?

4 MR. SARABIA: It would have been approximately
5 one to two weeks prior to August 28th, 2014.

6 MR. VIZCARRA: The trip was August 13th and
7 August 18th.

8 THE COURT: Okay.

9 MR. SARABIA: Point 11 is broken into parts
10 (a), (b), (c) and (d). I'll address them each.

11 In Point (a), not necessarily in the same
12 words, but for the most part that is in the
13 Sheriff's Office report, Detective Krause refers to
14 that.

15 THE COURT: And when you say "The Sheriff's
16 Office report," you're saying something that was
17 provided --

18 MR. SARABIA: -- provided in discovery back in
19 2015.

20 THE COURT: Okay.

21 MR. SARABIA: Point (b). Again, that is
22 largely, if not completely, in the Sheriff's Office
23 report -- again, Detective Krause's report.

24 Point (c). I don't believe it is stated in
25 that language, but there is something regarding

1 that in the Sheriff's Office report.

2 Moreover, I think that Mr. Matos, in his
3 interview to the Tampa Bay Times, referenced an
4 incident that is reminiscent of Point (c). So I
5 would not consider that new information, and
6 certainly that is not something that came out at
7 the depo, that I recall, of any of the witnesses in
8 Kansas.

9 THE COURT: So Number (c) says "he," and I
10 don't know when he says "he," he means Mr. Leonard
11 or he means Mr. Matos. So he says "He stated there
12 were two men sitting outside his home, described
13 them as heavier set, Asian, that were harassing
14 him." So I am taking that every "he" and "him" is
15 Mr. Leonard; is that correct?

16 MR. VIZCARRA: Yes, Judge. It is Mr. Leonard,
17 and it was information given to me by Stephanie
18 DeLong, who is a supervisor of Michelle Stinson,
19 who at deposition advised me that the day prior to
20 when the State is believing the murders took place,
21 she got a phone call from Mr. Leonard indicating
22 these matters were given to her. She sent those to
23 her IT department -- I'm sorry. Not IT.

24 THE COURT: HR.

25 MR. VIZCARRA: The Human Resources department,

1 as far as a complaint against Ms. Stinson.

2 Lo and behold, the next day that's when the
3 murders took place and no one has heard from these
4 people ever since. So it was the 27th of August,
5 2014, that these complaints came in to
6 Ms. Stephanie DeLong.

7 THE COURT: Were they recorded?

8 MR. VIZCARRA: She said that she recorded them
9 in the deposition, but I did not get those. I have
10 not gotten that yet. She said that she thought she
11 had those somewhere.

12 THE COURT: A recording of Mr. Leonard?

13 MR. SARABIA: And, Judge, I believe what she
14 said is that -- and I would note she has an
15 interview that is recorded or written down in the
16 police report by Detective Krause where she makes
17 reference to on August 27th, 2014, she received a
18 complaint from Nicholas Leonard regarding Michelle
19 Stinson. So that is not new information.

20 At the deposition I believe she said that
21 there was an email sent to her HR department or
22 that ended up with her HR department that
23 originated from Nicholas Leonard that was forwarded
24 to her.

25 So that email I believe is the recording that

1 Mr. Vizcarra is referencing. I have not seen that
2 email. It's not in the possession of the State.
3 Ms. DeLong, I think she did give the name of the HR
4 director and gave some information to Mr. Vizcarra
5 at the deposition about where that email may be
6 able to be obtained, but I don't have it. I don't
7 know that she personally has it --

8 THE COURT: Can I stop you right there?

9 MR. SARABIA: -- and the basics of it are in
10 the Sheriff's Office report.

11 THE COURT: Hold on one second. Maybe I'm
12 misunderstanding what you're saying.

13 On the day before the murders occurred,
14 Ms. DeLong received an email from the HR department
15 that had all this information in it and then called
16 Mr. Leonard? Or Mr. Leonard called Ms. DeLong and
17 then she forwarded something to the HR department?
18 I'm confused here.

19 MR. VIZCARRA: And, Judge, I've got the
20 deposition right here. Mr. Leonard called a
21 Ms. Gilmore, and it was the wrong store.
22 Ms. Stinson did not work at Ms. Gilmore's store.
23 So Ms. Gilmore, who was a manager at another
24 Brighton store in Wichita, forwarded that
25 information, the complaint information to

1 Ms. DeLong, and Ms. DeLong contacted Mr. Leonard.

2 So just to clarify that. I hate to interrupt,
3 but that's what she said on her deposition that's
4 been filed, and it was taken on August the 4th, as
5 well.

6 MR. SARABIA: And I apologize. I don't have
7 the depo in front of me. I don't recall if she
8 said that those conversations were recorded by
9 Verizon for quality, she may have said that; but
10 she did not say that she is certain that a
11 recording of such a conversation exists.

12 MR. VIZCARRA: That's right.

13 MR. SARABIA: But, again, that situation,
14 maybe not the very particulars of the allegations
15 or the complaint, but that situation is referenced
16 in the police report, and I believe it's been in
17 discovery since 2014.

18 THE COURT: Okay.

19 MR. SARABIA: So it's not new.

20 Point (d). I don't think that there was any
21 reference to that prior to the depositions.

22 THE COURT: And whose deposition would that
23 have come out with?

24 MR. SARABIA: I believe it was Stephanie
25 DeLong, who I would note has been on the witness

1 list for over a year now.

2 THE COURT: Okay.

3 MR. SARABIA: I want to say over two years.

4 THE COURT: And when was her deposition
5 finally taken?

6 MR. SARABIA: August 4th of 2017.

7 THE COURT: Okay. Go ahead.

8 MR. VIZCARRA: The problem with getting the
9 depositions out in Kansas, of course, Judge, was we
10 wanted to make sure that those people, if Mr. --

11 THE COURT: Mr. Vizcarra, I haven't asked for
12 your answer yet.

13 MR. VIZCARRA: Okay.

14 THE COURT: See, this is when they talk. They
15 didn't interrupt you. So when they're done, I'll
16 come back to you, but this is their turn. Okay?

17 MR. VIZCARRA: Yes.

18 THE COURT: Go ahead. State, Mr. Vizcarra
19 found out that Michelle Stinson was informed of
20 this and was frustrated.

21 MR. SARABIA: I believe that that is a
22 quotation from one of Stephanie DeLong's answers in
23 the deposition. So that specific phrase and
24 information is not contained in that formal police
25 report.

1 THE COURT: So this Michelle Stinson was
2 informed of this and was frustrated is somebody's
3 opinion on what Ms. Stinson thought when she was
4 informed that Mr. Leonard had complained about her?

5 MR. SARABIA: Yes. More or less.

6 THE COURT: Which must have happened prior to
7 the death?

8 MR. SARABIA: Well, presumably it would have
9 happened on August 27th.

10 THE COURT: So she was talked to on the day
11 that these people died in Kansas by someone. Is
12 this what we're saying?

13 MR. SARABIA: Yes.

14 THE COURT: So we have proof, proof -- and I'm
15 asking you as the State Attorney -- that she was
16 interviewed and talked to in Kansas by this
17 Ms. DeLong on the same day that these people were
18 murdered?

19 MR. SARABIA: We have Ms. DeLong and
20 Ms. Martinez and time card records that indicate
21 that Ms. Stinson was in Kansas the 27th, 28th and
22 29th of August, which would encompass, I believe,
23 our entire relevant period.

24 THE COURT: So clearly the State feels that it
25 has witnesses for an alibi for Ms. Stinson --

1 MR. SARABIA: Absolutely.

2 THE COURT: -- for her being in Kansas? So
3 there's no way Ms. Stinson could have committed
4 these murders?

5 MR. SARABIA: That is absolutely our opinion,
6 Judge.

7 THE COURT: So this entire thing about getting
8 a continuance about Ms. Stinson, Ms. Stinson has a,
9 for lack of a better term, airtight alibi?

10 MR. SARABIA: We agree.

11 THE COURT: So they want a continuance to go
12 over some sort of relationship that Ms. Stinson had
13 with Mr. Leonard that wasn't good, as far as
14 Mr. Leonard thought, but Ms. Stinson could not have
15 committed this murder? The State's going to put on
16 witnesses to say that?

17 MR. SARABIA: If they bring up Michelle
18 Stinson at all in the trial, then we expect that we
19 will have witnesses that will be able to say that.
20 They're all willing to fly here.

21 I have been in contact with Mr. Michailos to
22 find out how necessary that's going to be for me to
23 schedule them, and he has not given me a firm
24 answer; but, yes.

25 THE COURT: Okay. So, Defense, I'm back to

1 you. Who cares about Ms. Stinson? Why all this
2 about Ms. Stinson? They have an alibi for her. Do
3 you not think that they have an alibi for her? Do
4 you think that her alibi is not good? Somehow
5 Ms. Stinson committed this murder?

6 I know nothing about this trial I must know.
7 I know I have a lot of dead people, and I have a
8 defendant, and I know where it happened, and I know
9 the date it happened. You guys know everything
10 about this case. I try to know nothing about cases
11 because it's easier for me that way.

12 But when I read this motion for a continuance,
13 I read it with the idea that you intend to make
14 Ms. Stinson the person that you believe committed
15 this crime. So are you intending to say that
16 Ms. Stinson committed this crime?

17 MR. VIZCARRA: I think that's oversimplistic.

18 THE COURT: It's not oversimplistic. Are you
19 saying that Ms. Stinson herself committed this
20 crime? Yes?

21 MR. VIZCARRA: I'm not saying that today, no.

22 THE COURT: Okay. So the only other way you
23 could go is that these Asian people, who --
24 allegedly two Asian men, or somehow she hired
25 somebody to commit these murders. Is that the idea

1 that you have?

2 MR. VIZCARRA: That may be part of it, but it
3 also could be that Mr. Leonard and Miss Brown and
4 Mr. Matos were affected by this harassment by the
5 Asian guys.

6 THE COURT: You keep using that word
7 "affected." I don't know what that means.

8 MR. VIZCARRA: Yeah. And that's why I need
9 the six months to answer that question. I want to
10 be able to tell you that that affected their
11 actions in this particular case.

12 So, you know, like I said, all this
13 information is very new. I am going back and forth
14 with it. I'm pouring over this.

15 THE COURT: And you would need an expert to
16 find out whether it affected somebody who is not
17 here to defend themselves or speak for themselves
18 or answer any questions? So you're going to have
19 some expert you believe somehow testify how
20 something affected someone who's not here to
21 testify?

22 MR. VIZCARRA: That may not be particularly
23 true. That expert may talk to us about how it
24 affects or affected someone that is here.

25 THE COURT: Okay. So, State, go ahead.

1 MR. SARABIA: Point 13, that Ms. Stinson was
2 married to a man in Kansas during the relationship.
3 That is largely in the report. It was discussed by
4 some of the witnesses, who were familiar with
5 Mr. Leonard and Ms. Stinson, in deposition; and
6 James Stinson, Michelle's husband, has been on the
7 witness list for a year and a half, two years. So
8 I'm hard-pressed to say that that's new
9 information.

10 THE COURT: Okay.

11 MR. SARABIA: Point 14. Yes, they did send me
12 the memo as a reference.

13 Point 15. The memo, yes. I don't disagree
14 with these dates. They look correct.

15 Point 18. Yes, I agree.

16 Point 19. That is --

17 THE COURT: -- a conclusion?

18 MR. SARABIA: It is. But it's also largely
19 contained within the police report. And more
20 importantly, on Point 20, which kind of relates to
21 it, that is in Sergeant Ross's report, which has
22 been part of discovery for over a year, a year and
23 a half, possibly over -- you know, almost the
24 entirety of the three years, but has long been in
25 the possession of the Defense.

1 THE COURT: Well, just for a note, Number 20
2 is absolutely incorrect because it could not have
3 happened in 2017.

4 MR. SARABIA: Yes. I'm sorry.

5 THE COURT: We all agree that date should be
6 August 28th of 2014?

7 MR. VIZCARRA: Yes. I apologize, Judge.

8 THE COURT: Okay.

9 MR. VIZCARRA: That's a typo on my part.

10 MR. SARABIA: I'll tell you what, Judge, I'll
11 agree to that if they agree the Indictment should
12 say Indictment.

13 THE COURT: We'll go to that next.

14 MR. SARABIA: Okay.

15 THE COURT: It's fine.

16 MR. SARABIA: I just thought I'd throw that in
17 there.

18 Point 21. That's in Detective Krauss's
19 report, which has long been in discovery.

20 Point 22. That appears to be taken right out
21 of Detective Krauss's report, which is in
22 discovery.

23 The rest of the points pertain to -- well,
24 Points 23 and 24 pertain to those phone dumps,
25 which have been in evidence.

1 I would note that Point 24, that text message
2 in particular, I actually spoke to Ms. Stinson
3 about it when I was in Kansas because it was in
4 discovery and I knew about it.

5 And I asked her about this exact phrase, the
6 "Mission Impossible," and she informed me, so the
7 Defense is aware, that "Mission Impossible" -- and
8 she had a longer explanation story to go with it --
9 involved her and her friend going out and having a
10 good time without her friend getting drunk. So
11 that was what that was about per Ms. Stinson.

12 Point 25. I don't know where that's coming
13 from. They indicated they have spoken to a
14 witness. They haven't added such a witness. That
15 would be news to me.

16 THE COURT: They have not listed the witness
17 in this?

18 MR. SARABIA: They have not listed this
19 witness, and they certainly haven't named them in
20 the motion.

21 Same thing with Point 26. That would be news
22 to me. They have not listed a witness that says
23 any of that.

24 THE COURT: So let me get this straight. On
25 25, it says that Mr. Vizcarra, who's, I guess,

1 going to testify in this case? I don't know.
2 That's the point of this part of this motion that
3 concerned me is that you the lawyer has spoken to a
4 witness not named who advised that Michelle Stinson
5 had, in fact, spoken to Adam Matos. Are you going
6 to list that witness?

7 MR. VIZCARRA: I don't have a duty to list
8 that witness, Judge.

9 THE COURT: Okay. But you can't use that as a
10 reason for a motion for continuance unless you
11 intend to call the witness. So you're saying that
12 you have somebody that's going to say something,
13 but you're not listing that witness nor are you
14 calling that witness. So why do you need a
15 continuance?

16 MR. VIZCARRA: I may be calling that witness.

17 THE COURT: Okay.

18 MR. VIZCARRA: I may be using that witness,
19 but that is not a witness that I have the duty to
20 list.

21 THE COURT: So at this point you have not
22 listed them, so they're not testifying.

23 MR. VIZCARRA: I don't have a duty to list
24 them, Judge.

25 THE COURT: Counsel, I'm not saying you have a

1 duty to list a witness. I'm saying that it can't
2 be a reason for a continuance if it's not a witness
3 that you've listed because then you can't call
4 them, and if you can't call them none of this is
5 coming in in trial.

6 MR. VIZCARRA: That's not true, Judge.

7 THE COURT: Okay.

8 MR. VIZCARRA: There is a witness that was
9 there that can testify that doesn't have to be
10 listed and that I can speak to on a daily basis.

11 THE COURT: Okay.

12 MR. SARABIA: In terms of 28, may have used
13 another phone to lead to the information and
14 tampered with evidence in the case. I would note
15 for Ms. Stinson's sake, the tampered with evidence
16 in this case is a significant jump and I think is a
17 little bit defamatory to her, because I don't know
18 if she's ever had access to the evidence in the
19 case when the phone was taken from her.

20 She certainly didn't do anything with it
21 afterwards. And if she deleted something prior to
22 that -- you know, she may have deleted all of her
23 conversations with Mr. Leonard for all I know prior
24 to any of this occurring or becoming an issue for
25 her.

1 But in any case, I understand Mr. Vizcarra's
2 fears, but I don't know how they pertain to what is
3 ultimately going to happen in trial.

4 And Point 29 is correct.

5 THE COURT: Okay. Defense, anything else?

6 MR. VIZCARRA: I think Mr. Michailos has some
7 more grounds to list.

8 THE COURT: All right. Mr. Michailos, do you
9 want your additional grounds?

10 MR. MICHAIILOS: Yes, Judge. As far as witness
11 availability, Judge, there is a couple of witnesses
12 that we were not able to contact that have been
13 listed as penalty phase witnesses, one of which is
14 also a trial phase witness listed by the State.
15 His name is Mr. Ingram.

16 He was brought to the Court's attention last
17 time. We had a motion to continue, and the State
18 said that at some point Mr. Matos had contact with
19 him. There's no denying that that's the case, but
20 I think that was about a year ago.

21 Our mitigation expert has been trying for some
22 time now to reach Mr. Ingram and she's having a
23 difficult time. There's also another penalty phase
24 witness, it's Adreanna Clause, that I listed in my
25 motion that we're unable to find. We're working on

1 it, our investigator is working on it, and we might
2 have to go to Pennsylvania. So I thought I'd
3 include that obviously as a ground for a
4 continuance.

5 Ground Number 2, I put in there because I
6 didn't want to miss anything. Obviously, if this
7 goes to trial, we may be able to have these other
8 witnesses testify via Skype or other via
9 conferencing means. So I don't think that's a bar
10 to going to trial in September.

11 As Ground 3, there is an expert we've hired
12 that has planned to visit Mr. Matos soon. And at
13 this point in time we haven't listed him because he
14 has not yet to do so, but I thought I would include
15 this because it may be grounds for a continuance in
16 the near future, it may be grounds for the State to
17 ask for a continuance. So since we're here, I
18 thought I'd inform the Court, even though I did so
19 last time as well.

20 Ground 4, I included that -- well, let me go
21 to Ground Number 5, Judge. I just want, as a
22 general grounds for a continuance -- I think we've
23 known each other for several years. I've appeared
24 before Your Honor for a number of years. I've
25 tried a couple of cases at least in front of Your

1 Honor. And I think, at least I hope you would
2 agree, that I'm always prepared when I go to trial.
3 And sometimes, I think, at least once you've
4 complimented me that I know the facts sometimes
5 better than the State does.

6 I also don't ask for continuances in bad faith
7 or as a ploy. If we were ready to go to trial, we
8 would declare ready. I think myself and my
9 colleagues at the Public Defender's Office do that
10 always, if not most of the time.

11 If Defense was trying to get a continuance
12 unethically, Judge, we could have been less prompt
13 in our filing of the Writ of Prohibition we filed
14 in this case, which we did not do. We filed it
15 very promptly in order to get a response from the
16 Second DCA so it would not hinder this trial taking
17 place on time.

18 We have been preparing this case in good faith
19 for some time now. We want the case to go as much
20 the State does, but sometimes things don't turn out
21 the way you plan them. We need more time to be
22 effective, to better familiarize ourselves with the
23 hundreds of witnesses that will testify in this
24 case.

25 Now, one of the problems we have is that we

1 had another attorney that was on the case who did
2 the first one-third of the depositions in this
3 case, which is roughly a hundred. So as we're
4 preparing for trial and we're cataloging these
5 transcripts, I'm reading them and I'm discovering
6 things I didn't know because I wasn't the attorney.
7 I think at some point the State brought out that a
8 Kansas witness was deposed a long time ago. I'm
9 pretty sure that person wasn't deposed by either
10 myself or Mr. Vizcarra.

11 So as we're preparing for trial things
12 develop. For instance, I'll give you a good
13 example, we just listed a witness, a witness by the
14 name of Dunlavey, Robert Dunlavey. The State has
15 from day one listed a Ralph Dunlavey as a State
16 witness. Ralph Dunlavey was deposed by Mr. Hendry
17 a long time ago.

18 As I'm preparing for trial, I'm seeing that
19 things don't line up because there's also mention
20 of a Robert Dunlavey. There's a 911 tape listed, I
21 get a copy of that tape, I get my investigator out,
22 it turns out that the State listed Ralph Dunlavey
23 in error. The person who has actual knowledge of
24 things in this case is Ralph Dunlavey. I just
25 listed Ralph Dunlavey as a defense witness. He

1 would provide important testimony for the Defense,
2 and the State just had an opportunity to depose
3 this person as recent as one week ago.

4 So what I'm trying to tell the Court is I
5 don't know what I don't know. If I haven't totally
6 gone over all the transcripts, read them and
7 prepare for trial, I don't know what other problems
8 I may anticipate, and I fear that there will be
9 error in the future that will not be remedied short
10 of another trial.

11 So there's 7,000 photographs in this case. I
12 included for Ground Number 4, Jerry Findley. He's
13 an expert listed by the State. He's a crime scene
14 reconstruction expert. I was not the one who
15 deposed Mr. Findley. When I was preparing for
16 trial, I read his deposition and I was surprised to
17 find out some conclusions reached by this expert
18 which I think defy the laws of physics.

19 And I would have read this earlier if I
20 thought, because I knew we had a crime scene, I
21 knew there was blood. I didn't expect any
22 surprises by reading Dr. Findley's report, and I
23 was going to file a downward motion in limine for
24 today's date, but then when I touched bases with
25 Mr. Sarabia, he agrees that some of the conclusions

1 reached might be farfetched and they would not ask
2 for the witness to testify to that. So at this
3 point in time I haven't filed that motion because
4 I'm hoping that there will be no need to.

5 What I'm telling the Court is that I don't
6 anticipate being ready to provide Mr. Matos with an
7 effective representation regarding this case, even
8 if all discovery was completed in this case, and I
9 don't think we're at the point where it's complete
10 as of yet.

11 Both Mr. Vizcarra and myself both agree that
12 we're almost there. And I know he asked for six
13 months in the abundance of caution, but we're
14 almost there. And you know how it is, you were a
15 prosecutor for several years, you're not ready
16 until you get that trial notebook ready.

17 And I've tried several cases, but this is the
18 first time I've tried a case with 300 witnesses.
19 Albeit several of those are relevant, but they make
20 things more complicated because it's trying to find
21 needles in a haystack when you have to screen
22 through all the relevant ones.

23 So we're doing that, we're working diligently,
24 we're delegating duties in this case, but I think
25 picking a jury next week is something that we're

1 not ready for, Judge.

2 And I think we can agree also, if we can agree
3 on anything, is that we also have Hurricane Irma in
4 the background. And the State is also apprehensive
5 that something unanticipated might happen which
6 might cause problems with the transportation of
7 witnesses, so forth and so on. I'm still ordering
8 some transcripts.

9 So at this point in time, Judge, in good faith
10 Defense doesn't have a choice but to ask for a
11 continuance. And trust me, we all would like to
12 move this case along just as much as the Court
13 does, just as much as the State does, but our hands
14 are tied at this point in time.

15 THE COURT: Okay. Mr. Sarabia, second part of
16 the motion to continue.

17 MR. SARABIA: Yes, Judge. I would note
18 Mr. Michailos has been on this case less time, but
19 he has been making diligent efforts. I would
20 compliment him. He's been very communicative with
21 me about things that they need or things that they
22 want.

23 So I don't mean to disparage him, but Point 3,
24 they're talking about a witness maybe that they're
25 going to add. We are going to pick a jury on this

1 case potentially in eight days and they might add a
2 witness yet? They don't know?

3 My problem in these situations are do we have
4 to actually be staring at a jury panel before they
5 add these witnesses? Because if they add a witness
6 that we cannot strike, we may need a continuance if
7 it's a complicated psychiatrist. But we have no
8 ability to make them add them until we are
9 literally eight days before trial, and then not
10 even now, and that is my biggest frustration with
11 these things.

12 I would note that the conclusions that
13 Mr. Michailos mentioned to me about Mr. Findley are
14 things that we do not intend to elicit.
15 Mr. Findley is primarily testifying, if not
16 entirely testifying, regarding the types and manner
17 in which bloodstains come to be where they are.
18 And there were some things about positioning and
19 trajectory of shots that Mr. Michailos mentioned,
20 and we do not intend to bring that out through
21 Mr. Findley.

22 I would note, Judge, Mr. Michailos has been in
23 contact with me and told me that they were still
24 seeking a continuance and told me the flavor of
25 some of these grounds, and we have not yet

1 scheduled the out-of-state witnesses, but we are
2 going to do so today if this case is not continued
3 because we have to.

4 We're at a point now where if we don't
5 schedule them, the hotels may be booked up, the
6 flights may not be available, there could be a
7 hurricane that makes it difficult for us to reach
8 some of them. So we are going to be doing that, so
9 we want to know today if we are going to trial.
10 And I would hope that the Court will -- that if
11 they add a witness between now and then that is
12 technical and expert in nature, the Court will
13 understand if we ask for a motion to strike.

14 But that is where we are. And we believe that
15 we will be ready. There are a couple of witnesses
16 that we have lost contact with over the past couple
17 of weeks. And even today and yesterday we were
18 trying to reach some that we know the hurricane may
19 be an issue for. But thus far we have not had a
20 problem with any of these people. We believe we
21 will have them by the time the trial comes next
22 week. So we are respectfully objecting to the
23 continuance.

24 THE COURT: My biggest problem with this is
25 the hurricane, not so much the motion.

1 I understand Mr. Michailos's position. And he
2 is always well prepared for trial and he is always
3 very organized. And I think he's finding out that
4 in these types of murder cases, no matter how
5 organized or well prepared you are, you never have
6 enough time because you have 300 witnesses, and
7 that's part of the problem, but it's part of the
8 job.

9 We set this trial back in January of this
10 year. We originally set it in February. We set it
11 in December for February and we moved it from
12 February to now. And, Mr. Michailos, you were on
13 this case, so we're talking about seven months, and
14 we've had numerous hearings and numerous status
15 checks, pretrials, to be ready for this trial.

16 I set aside, you know, multiple days on my
17 calendar. And, oh, well, you know, I continued
18 other cases that were multiple weeks, if I need to
19 continue those. This case needs to be tried
20 altogether and at once and not start and then stop
21 because of the inability to get witnesses here.

22 We're talking about Kansas, we're talking
23 about, you know, Florida, we're talking about
24 hurricane season, and one barreling down on the
25 state of Florida as we speak, with an inability at

1 this particular moment to say whether we're in a
2 situation of full evacuation of Pasco County or a
3 lot of wind.

4 But at the last update it appears that it's
5 going to the right. However, that doesn't mean the
6 state of Florida, and Pasco County in particular,
7 won't have 90-mile-an-hour winds at the last
8 indication if it goes straight up the state,
9 50-mile-an-hour winds if it goes more to the east.

10 From what I understand they're closing schools
11 in Pasco, Pinellas and Hernando County so that they
12 can open shelters so that they can take all the
13 people from South Florida and stick them in our
14 county, which means that our county is going to be
15 a little crazy, considering I had to get up at
16 5:00 A.M. to get gas in my car this morning, which
17 will continue until all of this is gone.

18 This is my biggest issue right here: I don't
19 want to fly people in, not have hotels, not be able
20 to bring jurors in and no jurors show up because
21 they can't get here because their schools are
22 closed or they can't get gas or they can't get
23 water or we're flooded, because we all know that it
24 doesn't take more than a heavy rain for Pasco
25 County to flood. It doesn't take a hurricane to

1 flood this town.

2 So this is the thing that I'm most concerned
3 about. And I want this trial to go, I want this
4 trial to go when I set it, but I don't want to get
5 in a situation where we have to continue the case
6 because we can't get witnesses and we can't get
7 jurors. So I'm trying to be realistic about this.

8 Six months for a continuance because of things
9 that might be out there? I'm not granting a
10 continuance because of that. I'm not granting a
11 continuance because the Defense needs more time to
12 be super prepared, because no matter how much time
13 I give you I can guarantee you you'll never feel
14 like you're super prepared.

15 The witness, the expert witness, I'm concerned
16 about that. I'm concerned that you're talking
17 about hiring a psychiatrist that you haven't even
18 had come down and speak to your client. Now,
19 granted, you could have him come down and speak to
20 your client and not list him. But I can't
21 understand why you haven't had him come down and
22 speak to your client. Can you give any reason for
23 that?

24 Why is this expert, who we've been talking
25 about -- we talked about this expert back when you

1 asked for the first continuance that I denied,
2 which was four or five weeks ago.

3 MR. MICHAÏLOS: We were looking for the expert
4 a long time. We didn't find him until recently,
5 and then he had a conflict in his schedule. He's
6 from Rhode Island. He couldn't make it until right
7 now.

8 THE COURT: Okay. And when is he coming?

9 MR. LIVERMORE: Friday.

10 THE COURT: Friday?

11 MR. LIVERMORE: Maybe.

12 MR. SARABIA: I doubt it, Judge.

13 THE COURT: So he's not coming Friday.

14 So therein lies my problem. You have an
15 expert, you don't even know if you're going to list
16 him because, as you indicated, you don't know what
17 you don't know because you've got to have the
18 witness come down and speak to your client, and if
19 you don't have the witness speak to your client,
20 you're talking about a 3.850.

21 Because if he comes down and speaks to your
22 client later, at the end of the trial, if your
23 client's convicted and if the worst happens, you
24 know that's going to be raised as a reason that you
25 didn't get your expert down because I wouldn't give

1 you a continuance because there's a hurricane in
2 the Gulf.

3 And I'm sure it will be a category as the
4 worst category 19 hurricane that's ever been,
5 highest winds, fastest hurricane ever recorded in
6 the Atlantic, from what I understand. So, you
7 know, I'm stuck in the fact that I really don't
8 want to grant a continuance, but I really don't see
9 how I can't because of the hurricane, not because
10 the Defense isn't ready, but there are things
11 standing in their way.

12 And they can't bring the witness in because
13 you're probably not going to be able to fly anybody
14 in Friday to do anything, because they're probably
15 going to close the airport, because the winds are
16 going to be in excess in Tampa of 50 to 60 miles an
17 hour. That's, in best case scenario, if the
18 hurricane doesn't even hit our side of the coast,
19 because it's going right up the side. So the
20 125-mile-an-hour winds are supposed to go all the
21 way across the state. My guess is Tampa Airport is
22 going to close.

23 I'm watching the, you know, tidal winds and
24 all that speed. And Fox has got it the biggest,
25 the fastest and the strongest hurricane ever. As

1 is normally in the state of Florida, it will be
2 sunshiny and chirping birds next week. But I mean
3 that's what -- welcome to Florida. That's what
4 we've got to deal with.

5 Originally we said we were going to do this
6 case for three weeks. Are we still looking at
7 that?

8 MR. SARABIA: Judge, the three weeks, we were
9 contemplating two to three days for jury selection.
10 I think the State's case in chief will be
11 approximately between six and eight full days.
12 Probably closer to the six, but I'm not entirely
13 certain. And then I expect closing arguments for
14 both sides altogether to be about a day.

15 I don't know what the Defense's case will be.
16 I don't know how many witnesses they would intend
17 to call or how long that would go or if it will
18 entail a rebuttal case, but I don't expect a
19 rebuttal case will be substantial.

20 THE COURT: So just given jury selection,
21 opening statement in the State's case, we're
22 talking ten days?

23 MR. SARABIA: I believe so.

24 THE COURT: And I'm not going to speak for the
25 Defense, but normally one or two days at max. So

1 we're talking about we're still into five plus five
2 plus five. You know, we're into 15 days, because
3 we always have to -- whether it happens or not, I
4 have to give time for second phase when we do this
5 because we can't be shortchanged if we need it. We
6 may not need it and we may be fine, but if we need
7 it, we have to have it.

8 So I'm just trying to figure out if I can push
9 it back a week. What does everybody's October 30th
10 look like? 30th? November 6th? November 13th?

11 MR. SARABIA: November 6th is better for me.

12 THE COURT: Okay. Start on the 6th. Go to
13 the 6th, the 13th to the -- but your 20th, your
14 third week runs into Thanksgiving. That's your
15 problem.

16 MR. LABRUZZO: Yes. Mr. Pura, you're
17 involved? You're sitting here, but you're involved
18 in the case too, correct?

19 MR. PURA: Correct.

20 MR. SARABIA: Okay. Mr. Pura and I have a
21 case upstairs, Jeffrey Crumb.

22 THE COURT: That would be downstairs, because
23 I'm at the top.

24 MR. LABRUZZO: I keep forgetting. Okay.

25 THE COURT: Unless you're on the roof.

1 MR. LABRUZZO: No.

2 THE COURT: Okay.

3 MR. LABRUZZO: So that would require moving
4 that. I'm not saying we can't agree to that.
5 That's our actual first trial date on that case.

6 So if we were to move it to that day, that
7 would mean you would have to be in agreement with
8 me.

9 MR. PURA: That would be fine with me.

10 MR. LABRUZZO: Okay.

11 MR. SARABIA: Judge, will you still be doing
12 jury selection on the Thursday prior to that?
13 Because I think that that was a good plan.

14 THE COURT: It was a good plan, but it doesn't
15 sound like it's going to work the next time around.

16 MR. SARABIA: I'm a little bit concerned about
17 the amount of subpoenas. I mean we will have to
18 resubpoena everybody for those days. There are
19 approximately 10 to 15 of the witnesses that we
20 need to subpoena.

21 THE COURT: Well, and the reason that I have a
22 problem with any other day is we have some weeks
23 that Matos was set where we have no jurors coming
24 in, and I need enough time for them to send out new
25 juror, and it takes about four weeks, five weeks.

1 So if I'm going to change the date of jury
2 selection, I have to give the clerk enough time to
3 actually issue the jury notices.

4 MR. LABRUZZO: And, Judge, the issue is that I
5 have a trial that starts, and I just don't know if
6 I can guarantee my availability on the 26th and
7 27th.

8 THE COURT: You know, we don't have to do
9 that. I mean I factored in the two days for jury
10 selection into the 15 days. I mean that's still,
11 with jury selection being on the 30th and the 31st,
12 that, you know, probably on the 31st, jury
13 selection can't go long because people have kids
14 that they need to trick or treat with.

15 MR. LABRUZZO: Right. Right.

16 THE COURT: Not me, but other people. This
17 will take a lot of work by my JA, but I can get it
18 done.

19 MR. LABRUZZO: And, Judge, I mean I only want
20 to throw this out there. Since we have been in
21 close contact with all of our essential witnesses
22 for the pending trial starting next week, we could
23 probably get ahold of a lot of these people and
24 quickly report back to the Court. I'm not saying
25 we don't set it today.

1 MR. SARABIA: Yes. I would note there are
2 several people who arranged their schedules
3 specifically, and I'm thinking Mr. McCann in
4 particular because he's on a ship for three or four
5 weeks at a time and then back, and he's arranged
6 his schedule. So he may already be scheduled to be
7 on the boat after this longer than -- I just don't
8 know without speaking to him.

9 THE COURT: Do you want to have a hearing
10 tomorrow and look at the dates? I'm here tomorrow.
11 We're closed Friday thanks to the Supreme Court.

12 MR. SARABIA: In the afternoon we can do that,
13 yes, like 3:30 or 4:00.

14 MR. LABRUZZO: Just to report back. I don't
15 know if we would need much time.

16 MR. SARABIA: I think we would need Mr. Matos
17 here, though.

18 THE COURT: Well, I can get him here. That's
19 not a problem.

20 Well, I will be here later in the afternoon
21 tomorrow because I have grand jury, and I set a
22 restitution hearing for 3:30. So I'm here at 3:30
23 after grand jury tomorrow, which we will get to in
24 a minute about that. We're not leaving without
25 talking about that.

1 Will you already be here tomorrow at 3:30
2 anyway?

3 MR. SARABIA: Yes.

4 MR. LABRUZZO: We will be here.

5 THE COURT: So is it okay we'll come back
6 tomorrow at 3:30, and talk about that date,
7 October 30th? So everybody calls their very
8 important witnesses, including this psychiatrist,
9 who we've had a lot of problems getting ahold of,
10 and seeing if he is available. It would be at the
11 end, of course, because he's not going to be called
12 in their case or jury selection. So, you know, it
13 be near the back side of the trial, so we're
14 talking about mid-November.

15 Can you all be here at 3:30 tomorrow?

16 MR. LABRUZZO: Yes, the State can.

17 MR. MICHAÏLOS: I can, Your Honor.

18 MR. SARABIA: Judge, that does encompass
19 Veterans Day, right?

20 THE COURT: Yes.

21 MR. SARABIA: Okay.

22 THE COURT: But we were going to encompass
23 Rosh Hashanah anyway. We had a day during our
24 trial that was going to be off anyway. I actually
25 like it because the jurors are going to need a day.

1 MR. SARABIA: Okay.

2 THE COURT: So, yes.

3 Now, I could choose, if they decide, if you
4 guys want, I can do that trial -- I mean we can
5 keep going on that day. If we want to do a half
6 day or we just want to have it off, we can make
7 that decision.

8 Bailiffs, can I get Mr. Matos here tomorrow?
9 Yes?

10 THE BAILIFF: Yes, Your Honor.

11 THE COURT: Yes. Thank you.

12 They wouldn't let my JA order him, so I had to
13 ask you.

14 Okay. We're going to come back tomorrow. But
15 before we go, we need to talk about the lack of
16 jurisdiction motion.

17 MR. SARABIA: Absolutely.

18 THE COURT: And in that motion, Mr. Livermore,
19 you have moved to dismiss for lack of jurisdiction
20 Counts III and IV of the charging document.

21 MR. LIVERMORE: That's correct.

22 THE COURT: And I assume that's because,
23 although the Information alleges that this is
24 Indictment four, and it lists the four counts, and
25 it says, "The grand jury of the State of Florida,

1 impaneled and sworn to inquire and true charge make
2 in and for the body of the County of Pasco, upon
3 their oath do charge that Adam Matos in Pasco
4 County, on or between, did unlawfully by a
5 premeditated design." That's Count I.

6 Count II says, and the grand jury of the State
7 of Florida, impaneled and sworn to inquire and true
8 charge make in and for," and that's Count II.

9 Count III says, "And the State Attorney
10 aforesaid, under oath as aforesaid, further
11 Information makes."

12 And Count IV says, "And the State Attorney,"
13 correct?

14 MR. LIVERMORE: Correct.

15 THE COURT: However, you will agree that the
16 Information says that it encompasses one, two,
17 three, four counts, and it is signed as a true bill
18 by the foreman of the grand jury on Page 2 at the
19 bottom?

20 MR. LIVERMORE: Yes.

21 THE COURT: Okay. So the grand jury
22 foreperson signed it as an indictment for murder in
23 the first degree, capital felony Count I, capital
24 felony County II, III and IV.

25 MR. LIVERMORE: Well, I disagree that it's III

1 and IV; but, yes.

2 THE COURT: Well, there's four on there,
3 right?

4 MR. LIVERMORE: There's four on there.

5 THE COURT: Okay.

6 MR. LIVERMORE: But they're not worded that
7 way.

8 THE COURT: I understand the wording is, but
9 I'm on Page 2 at the bottom.

10 MR. LIVERMORE: I get it.

11 THE COURT: Where it says, "Indictment for,"
12 and there's four counts there. And it's signed by
13 the foreman of the grand jury, correct?

14 MR. LIVERMORE: That is correct.

15 THE COURT: Okay. State, your argument?

16 MR. SARABIA: Judge, first I'd like to point
17 out that the Defense's motion was filed on
18 August 31st, 2017. In their motion for
19 continuance, which was filed September 6th -- I'm
20 sorry. September 1st, .1, they say, "The defendant
21 has been charged by indictment with four counts of
22 murder in the first degree.

23 THE COURT: Sorry. Do not write down them
24 laughing.

25 MR. SARABIA: And I would note there are

1 several other filings by the Defense in this case
2 previous to that as well where they refer to all
3 four counts.

4 THE COURT: So by writing that, thereby
5 indicating that they're giving up on this motion?

6 MR. SARABIA: I would pause at that.

7 But also, Judge, a couple of things. First of
8 all, we all have a copy of the Indictment. It
9 clearly says Indictment. It says Indictment for,
10 and then it lists Counts I, II, III and IV, murder
11 in the first degree, capital felony.

12 And I would agree that the first phrase in
13 Counts III and IV is an error. But they both say,
14 "And the state attorney aforesaid." There is no
15 "aforesaid" because it is an indictment. "And
16 under oath as aforesaid," there is no "aforesaid."
17 "Further Information makes," it's clearly an error
18 in IV. I would note that --

19 THE COURT: A scrivener's error, perhaps?

20 MR. SARABIA: A scrivener's error. And I
21 would concede that it is my scrivener's error.

22 But Rule 3.140, Subsection (o), "No indictment
23 or information, or any count thereof, shall be
24 dismissed or judgment arrested, or new trial
25 granted on account of any defect in the form of the

1 indictment or information or of misjoinder of
2 offenses or for any cause whatsoever, unless the
3 court shall be of the opinion that the indictment
4 or information is so vague, indistinct, and
5 indefinite as to mislead the accused and embarrass
6 him or her in the preparation of a defense or
7 expose the accused after conviction or acquittal to
8 substantial danger of a new prosecution for the
9 same offense."

10 And as to Count I of their motion to continue
11 indicates, the Defense is clearly aware that the
12 defendant has been charged by four counts. They're
13 not going to be embarrassed. It's not vague. So
14 really the only question is is this an indictment?
15 Is this a sufficient indictment?

16 And again I'd cite, it's titled an
17 "Indictment". It says, "Indictment IV, four counts
18 of murder." And then on Page 3, "Indictment for
19 murder in the first degree, capital felony," four
20 times, "A true bill." Signed off by the foreman of
21 the grand jury. So it is very clearly in all
22 respects an indictment.

23 I have some cases for the Court. I've never
24 had the opportunity yet to legitimately argue an
25 1872 case, but --

1 MR. LIVERMORE: Oh, Mr. Halkitis --

2 THE COURT: I was going to say. I think the
3 file folder stayed and he left.

4 MR. SARABIA: I couldn't even print the -- may
5 I approach, Judge?

6 THE COURT: You may.

7 MR. SARABIA: I couldn't even print this out
8 of two columns because it's not formatted properly
9 for that.

10 But in this situation essentially -- and I got
11 the impression that at this time period they had a
12 statute that says more or less what Subsection (o)
13 and the rule says. And the Defense was taking
14 issue with the word "jurors" instead of "grand
15 jurors," and thus that it was -- and I want to say
16 that's on Page 4 or 5. But the language of the
17 indictment which follows --

18 THE COURT: Four.

19 MR. SARABIA: "The jurors of the State of
20 Florida, in and for the body of the county of Leon,
21 upon their oaths present," and they had an issue
22 with "jurors" instead of "grand jurors," and it was
23 noted that that is not a problem, it was still
24 clearly an indictment.

25 I have a 1930 case for the Defense, and this

1 is *Edge v. State*. And, I'm sorry, that last one
2 was *State v. Pearce*, P-e-a-r-c-e, 14 Florida 153,
3 Supreme Court of Florida.

4 *Edge v. State*, 99 Florida 1242. "The
5 indictment, in the expression "then and there,"
6 omitted the word "there". So it just said, "then
7 and." But, again, it was a clerical mistake.

8 And it says, "In an indictment where the
9 meaning is perfectly clear from the context and is
10 plainly a clerical misprision -- I don't even know
11 that we use that word anymore -- "and where the
12 defendant was not misled and will not be exposed
13 to danger of any prosecution for the same offense,
14 this court will not reverse a judgment of
15 conviction because of such omission."

16 *Pickeron v. State*, a 1927 case, 94 Florida
17 268, Supreme Court of Florida. The heading
18 indicated that the jury met, the grand jury met 20
19 years prior to date of offense. Clearly a
20 typographical error.

21 And it says, "But where the defect complained
22 of is a matter of form only, consisting of a
23 clerical misprision found in the caption of the
24 indictment, and it does not appear that such defect
25 renders the indictment so vague, indistinct and

1 indefinite as to mislead the accused or embarrass
2 him in the preparation of his defense or expose him
3 after his conviction or acquittal to substantial
4 danger of a new prosecution for the same offense,
5 the rule is otherwise."

6 And basically the thrust of the case is it was
7 clearly a typographical error and the indictment
8 was valid.

9 I have a 2013 -- I would note in that case it
10 refers to the caption. These older cases seem to
11 refer to what is now considered the commencement as
12 the caption because now we have that term as well
13 "commencement," which I believe Mr. Livermore would
14 argue the section, the pending section where this
15 indictment is.

16 I also have *State v. Akers*, 104 So.3d 1259, a
17 Second DCA case. In this case they actually have
18 the printout of what the indictment looks like.

19 It indicates that "Todd Akers was charged.
20 Count I indicates that Todd Akers did unlawfully
21 from a premeditated design to effect the death of a
22 human being," and it goes on for the rest of what
23 you would expect for a first-degree murder charge.

24 And then in Count II it omits the name of the
25 defendant, which again indicates was a

1 typographical error. And I believe they even cite
2 the rule, Florida Rule of Criminal Procedure 3.140
3 (o). So again it wasn't a problem in that case.

4 This is clearly a minor defect in form. It is
5 still an indictment. The defendant was clearly
6 indicted for four counts of first-degree murder by
7 a grand jury on September 23rd, 2014. Therefore,
8 the Defense's motion should be denied.

9 THE COURT: Defense, any case law?

10 MR. LIVERMORE: You're asking me?

11 THE COURT: Yes.

12 MR. LIVERMORE: I'm sorry. I didn't catch
13 that.

14 Judge, I cited the cases in my memorandum.
15 The point is this is not a minor error. This is
16 not an omission. This is not a scrivener's error.
17 The rule says to charge an indictment you use
18 certain wording. To charge an information you use
19 certain wording.

20 The State is entitled to charge nonindictable
21 offenses as part of the indictment. That's
22 commonly done. You charge a robbery on a felony
23 murder, that kind of thing. It specifically says
24 the wording that needs to be used.

25 The entire charge in III and IV are written as

1 an information. They are allowed to do it, you
2 know, the State is allowed to charge an offense by
3 information, but you can't charge first-degree
4 murder by an information. You cannot amend it.
5 You can't strike it out.

6 The only thing that can cure this is a
7 superseding indictment, because they have charged
8 improperly, they have charged murder in the first
9 degree by information as opposed to by indictment.
10 Clearly it follows the language. And I'm sure it
11 may have been a matter of hitting the wrong button,
12 but the point is by charging it as an information,
13 there's no jurisdiction to proceed on those two
14 counts. Because they are charged improperly, it is
15 void.

16 The cases that I've cited a number of them
17 came about because of *Furman*. When *Furman* first
18 came out and struck the death penalty, they were
19 charging people by information with first-degree
20 murder until the new statute came in, and that's
21 where a lot of this case law came about.

22 And it's clear, if you use the words, if you
23 charge by information, there is no jurisdiction to
24 proceed on those two charges. And it can't be just
25 delineated like an information. You cannot amend

1 it.

2 THE COURT: So you're saying the grand jury
3 can't amend their indictment?

4 MR. LIVERMORE: That is correct. That's one
5 of the last cases I cited. They cannot amend it.
6 They cannot amend an indictment.

7 The only way to fix it is a superseding
8 indictment. And that's -- I forgot what the case
9 law is. I believe that's *Snipes v. State*, 733,
10 1000, or *Smith v. State*. It's a Supreme Court case
11 1982. "A grand jury cannot charge a new or
12 different crime through an amendment to the
13 indictment."

14 THE COURT: Well, it's not a new or different
15 crime.

16 MR. LIVERMORE: Well, it is because it's
17 worded as an information.

18 THE COURT: No. A new and different crime is
19 something that's not contained in the information,
20 in the indictment.

21 You're saying that if they change a word, that
22 changes the crime. There is no crime of
23 first-degree murder by information.

24 MR. LIVERMORE: Correct.

25 THE COURT: So it's not a new or different

1 crime. It's the exact same crime.

2 So you're saying *Snipes* says they can't amend
3 the information because of a clerical error?

4 MR. LIVERMORE: Correct.

5 THE COURT: They cannot file an indictment
6 that says amended to fix a date or to fix a
7 spelling of a name or to fix a time period that
8 was accidentally -- although he has case law that
9 says they can, you're saying under the new case,
10 under *Snipes*, if they accidentally typed 2017 when
11 they meant 2014, and everything they heard was from
12 2014 -- it was a clerical error.

13 They're not alleging a new crime or a
14 different crime. They're alleging the same crime
15 but they put the wrong date. They put 2017 when
16 the murder was actually 2014. You're saying they
17 have to go back and call all the same witnesses
18 again and reindict?

19 MR. LIVERMORE: I'm saying in this case they
20 charged the defendant by information. They cannot
21 amend it to be an indictment without a new grand
22 jury providing an indictment.

23 This is not a clerical error. This is an
24 error using the wrong charge. They charged him by
25 information with first-degree murder. You can't

1 fix that just by striking out a word. You have to
2 have an indictment to charge first-degree murder.

3 They don't have an indictment charging
4 first-degree murder. They have an information
5 charging first-degree murder. It is void.

6 THE COURT: Well, they have an indictment that
7 alleges first-degree murder, yes, they do, in
8 Counts I and II.

9 MR. LIVERMORE: I and II.

10 THE COURT: You're alleging that Counts III
11 and IV, although say in the same indictment that
12 says "Indictment for," and lists the four counts
13 right here, somehow if they make a clerical error,
14 even though it says "indictment," it has four
15 counts under indictment, it's signed by the
16 foreperson of the grand jury as a true bill,
17 there's no way in an indictment you can have an
18 error?

19 MR. LIVERMORE: I'm saying they cannot fix it.
20 It is improperly charged. It is not a clerical
21 error. It cannot be fixed without a new
22 indictment. Obviously, you don't agree with me,
23 but that's our position.

24 THE COURT: No, I'm asking for your opinion.
25 I'm not saying I don't disagree.

1 MR. LIVERMORE: That's my opinion is. It is
2 charged improperly.

3 THE COURT: There's no reason for you to get
4 upset. You might be right. I'm not disagreeing
5 with you.

6 MR. LIVERMORE: Yes, you are. But that's all
7 right.

8 THE COURT: No. I might be being
9 argumentative because I'm trying to figure out
10 exactly what your argument is, but that doesn't
11 mean I disagree with you. I may agree with you. I
12 don't know because I've never had this happened
13 before. See.

14 MR. LIVERMORE: Neither have I.

15 THE COURT: That's right. So you may be
16 absolutely correct. And I'm not saying it's wrong.
17 I'm kind of playing devil's advocate on this side,
18 as I would do the State if it was their side.

19 So I'm just trying to figure out what these
20 cases say, because *Snipes* is yellow, which means
21 somewhere, somehow somebody disagrees with this.

22 MR. SARABIA: And, Judge, if I can clarify. I
23 would agree with Mr. Livermore that we cannot amend
24 an indictment unless it's the same grand jury. We
25 can file a new indictment which is -- I don't know

1 really what the difference is in that -- either way
2 of filing a different document with an amendment,
3 but I think that that's what he is saying with
4 *Snipes*. However, I don't know that -- our position
5 is that it doesn't need to be amended or
6 reindicted, that the document as is is an
7 indictment. Clearly their position is different.
8 So in terms of the amendment --

9 THE COURT: Well, what would I do? Are you
10 saying that somehow I would just let you fix it?

11 MR. SARABIA: No. As is it is still an
12 indictment and is properly charged and we can
13 proceed on it.

14 THE COURT: So although it says, "The State
15 attorney aforesaid, under oath further informs,"
16 you're saying that's still an indictment?

17 MR. SARABIA: Yes, I am.

18 THE COURT: And you're saying because it
19 doesn't have to say the word "indictment" because
20 the title says indictment?

21 MR. SARABIA: And the end and the signature of
22 the foreperson, yes, Judge.

23 THE COURT: So those words in there are
24 superfluous?

25 MR. SARABIA: Yes. I would note that there is

1 an indication in the rule that we can strike
2 superfluous things. However, I'm not comfortable
3 with that.

4 We can actually amend certain parts of the
5 indictment such as the caption, but since it's not
6 clear where the caption ends and where the
7 commencement begins, again, I'm not willing to do
8 that.

9 THE COURT: So you're in the asking to at this
10 point strike what you consider superfluous language
11 in the indictment?

12 MR. SARABIA: Correct. And as indicated in
13 the cases that I've cited, those were not amended
14 and they were not corrected. One was of them was
15 missing the county, one of them said just jurors,
16 and they were still clearly indictments.

17 Again, I don't think this embarrasses or
18 affects the Defense in any way. The only question
19 is is this an indictment as it stands. And I think
20 that clearly the document in all respects is an
21 indictment.

22 If the Court would like, we could rehear this
23 tomorrow afternoon with the rest of the matters
24 that we are going to address tomorrow afternoon.

25 THE COURT: Okay. I will take it under

1 advisement until tomorrow at 3:30, when we rehear
2 the other matters. And in the meantime, I will
3 look into it myself and see if I can find any case
4 law.

5 So all the other motions at this point we'll
6 table, because I don't think we need to hear the
7 motions in limine at this point if we're going to
8 move the trial, because there will probably be more
9 by then.

10 MR. SARABIA: And to clarify, Judge, you are
11 ruling that we are not going to trial starting on
12 the 14th, right?

13 THE COURT: Correct.

14 MR. SARABIA: Okay.

15 THE COURT: Because I just don't think they
16 can get their witness in to see the defendant
17 because of the hurricane.

18 MR. SARABIA: Potential witness.

19 THE COURT: Well, I think they still need to
20 have the witness interview their client and make
21 sure that they do all their due diligence. Whether
22 it's for penalty phase or whether it's for guilt
23 phase, I think it's pretty clear that they have an
24 obligation to have him reviewed.

25 And they're telling me that he's coming in

1 Friday, and I'm saying that the airport is probably
2 not going to be open. I can't see any way in the
3 world the airport is going to be open on Friday.

4 MR. MICHAIILOS: Judge, for clarification, are
5 we addressing the motion in limine tomorrow or at a
6 later time?

7 THE COURT: The motion in limine at a later
8 time.

9 MR. MICHAIILOS: At a later time?

10 THE COURT: Right. But I will still do the
11 order and ask that this be taken off the website.

12 MR. MICHAIILOS: Okay.

13 THE COURT: Well, I'm going to do the order
14 and I'm going to give it to Dr. O'Neil tomorrow
15 morning. So she should be at grand jury tomorrow.
16 I hear at grand jury she usually swears them in.
17 So I will personally talk to her about that
18 tomorrow.

19 MR. SARABIA: Judge, I would note, I guess
20 it's more relevant now, I think we have depos
21 scheduled on Monday for some phone depositions.

22 MR. MICHAIILOS: Yes.

23 THE COURT: That's should be okay.

24 MR. SARABIA: With people that live on the
25 east coast.

1 THE COURT: Good luck with that.

2 MR. LIVERMORE: Yes. It may or may not
3 happen.

4 THE COURT: I'm thinking that's not going to
5 happen.

6 MR. SARABIA: So I would note that may become
7 a problem.

8 MR. MICHAÏLOS: I could have put that in my
9 motion to continue, if you reminded me.

10 MR. SARABIA: I know this was discussed on the
11 record I think back in February and March, and I
12 don't recall if we've ever done it, but the Court
13 made mention that -- at some point Mr. Michailos
14 indicated he does not intend to depose all the
15 witnesses on the witness list.

16 THE COURT: Right.

17 MR. SARABIA: And the Court had made some
18 mentioned that there would be a discussion with
19 Mr. Matos regarding the witnesses that were not
20 deposed and that he is okay with that. I don't
21 know that that ever happened. And I think we're
22 down to closer to 60 witnesses or so, maybe less,
23 of witnesses who have not been deposed.

24 If that is something that we're going to do, I
25 would like to do it soon, so that if Mr. Matos does

1 want Mr. Michailos to depose any of those
2 witnesses, that that can be done quickly.

3 MR. MICHAIILOS: I have composed a list. It's
4 not complete yet. But if we could set a date for
5 that, I'll make sure to go over that with Mr. Matos
6 beforehand.

7 THE COURT: Okay. Remind me of that, and I'll
8 set a date when we reset all the other ones, and
9 we'll put it on the list that we need Mr. Matos on
10 the record agreeing that you're going to waive any
11 depositions of the list of witnesses that you
12 provide the Court.

13 Of course, he doesn't have to do that. It's
14 up to him. He could choose to tell you to do them
15 all, and then we'll have to figure out how we're
16 going to get that done. But on each witness, I'll
17 probably ask the State if they intend to call them.
18 Some of the witnesses could be just custodian of
19 records and you already have the records, so why
20 depose them.

21 "Are these the records?"

22 "Yes."

23 "Are you the custodian?"

24 It's the same thing you're going to ask them
25 in trial. So, you know, if we can just get the

1 people and why you're not going to do their
2 deposition, and the State can just confirm on the
3 record that is all that they intend to list them
4 for. So that will probably be the easiest way to
5 do it.

6 MR. MICHAIILOS: And there's a number of
7 witnesses that Mr. Sarabia did tell me he's not
8 going to call as well when we talked about it.

9 THE COURT: Right. I don't know if the State
10 wants to, after we do that, actually physically
11 list them as Category C witnesses or whatever we
12 say as rebuttal only witnesses. I assume they're
13 on the witness list because you just want to make
14 sure something doesn't come up at trial that you
15 need a rebuttal for.

16 MR. SARABIA: Finally someone who understands.

17 THE COURT: So we could move them to the
18 rebuttal side of the witness list, which means they
19 won't call them in their case in chief, they only
20 intend to call them if they need them in rebuttal
21 Okay?

22 MR. MICHAIILOS: Yes.

23 THE COURT: All right. I'll see you all
24 tomorrow at 3:30.

25 (HEARING CONCLUDED.)

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 10th day of May, 2018.

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