

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

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

PROCEEDINGS: MOTION TO CONTINUE/MOTION TO COMPEL

BEFORE: HONORABLE MARY HANDSEL
 Circuit Judge

DATE: July 27, 2017

PLACE TAKEN: Pasco County Government Center
 7530 Little Road
 New Port Richey, FL 34654

REPORTED BY: Maria A. Fortner, RPR
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A P P E A R A N C E S

APPEARING ON BEHALF OF
THE STATE OF FLORIDA:

BRYAN SARABIA, Assistant State Attorney
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Office of Bernie McCabe, State Attorney
Sixth Judicial Circuit, Pasco County
7530 Little Road
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APPEARING ON BEHALF OF
THE DEFENDANT, ADAM MATOS:

DEAN LIVERMORE, Assistant Public Defender
NICHOLAS MICHAILOS, Assistant Public Defender
Office of Bob Dillinger, Public Defender
Sixth Judicial Circuit, Pasco County
7530 Little Road
New Port Richey, Fl 34655

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Are you ready for Matos? Do you
3 want to go ahead and do Matos real quick?

4 MR. SARABIA: Sure, Judge.

5 THE COURT: Not that it's going to be quick,
6 but it will get half these people out of my
7 courtroom. At least it will look like I have less
8 people to do.

9 All right. We're here on Adam Matos. And
10 this is 14-5586.

11 Are we going to bring Mr. Matos out?

12 THE BAILIFF: He's on his way up. It will
13 take a moment.

14 THE COURT: We can put him straight to the
15 podium.

16 (Defendant Present.)

17 THE COURT: Hi, Mr. Matos. How are you?

18 THE DEFENDANT: Good. How are you doing?

19 THE COURT: Good. You've come over on a day
20 that we weren't normally set. They asked me to set
21 this between the last time I saw you and the next
22 time I'm supposed to see you. So that's why you're
23 here.

24 I don't know if your lawyers have had an

opportunity to talk to you a lot about it, but they

1 filed a motion to continue, we're going to talk
2 about that; and then the State moved the hearing
3 that we had set for next week up so that you don't
4 have to come two times in like ten days. Okay?

5 THE DEFENDANT: Okay.

6 THE COURT: So we're going to do one and then
7 we'll do the other. Okay?

8 We'll proceed with the Defense's motion to
9 continue first. I did receive a copy of it.

10 Defense?

11 MR. LIVERMORE: Yes, ma'am. One of the
12 reasons we're here this early as opposed to closer
13 to the trial date is because of all of the planning
14 and the number of witnesses and the jurors being
15 impaneled.

16 We have a number of issues, and there's
17 probably one more that is not listed on here. The
18 first issue that's not listed is the fact that we
19 still don't have jury instructions. I don't know
20 what the status of that is. I know that the
21 Supreme Court proposed a set. The rules or the
22 instructions committee proposed another set and as
23 far as I know neither one of them has been approved
24 yet. So we are at that point where we don't have

1 Additionally, there's still a pending -- we
2 have an expert who we have retained to determine,
3 if they can, the competency of the son Triston. We
4 have three witnesses that are currently -- two of
5 them are listed by the State who currently we have
6 been unable to locate, the third possible penalty
7 witness that is now gone missing too. And I just
8 found out that the witness listed by the State in
9 Kansas is now being uncooperative. That deposition
10 is set for next week.

11 So in light of those factors we're asking the
12 Court to continue it at this point to avoid a whole
13 lot of problems as far as we waited until the last
14 minute to move.

15 THE COURT: State?

16 MR. SARABIA: Judge, first I'll address the
17 things they put in their motion. I would note they
18 mentioned the defendant's mother and being out of
19 contact with defendant's mother.

20 The defendant has had a face-to-face
21 conversation with his mother as recently as July
22 13th of this year. So this month. What's that,
23 two weeks ago? I believe she was with his brother
24 and sister-in-law. I think they're living in

Texas. She was relaying that I think she was going

1 back to wherever she lives in California,
2 mentioning people that she associates with there,
3 and that was only two weeks ago.

4 THE COURT: Was this on jail calls?

5 MR. SARABIA: Yes. On the jail FaceTime
6 conversations.

7 THE COURT: Okay.

8 MR. LIVERMORE: She was also in contact with
9 defendant on July 4th, so twice within the same
10 month, and we are here, it's only July 27th.

11 So clearly within that time we've all known
12 about the trial. She appears to be very loving
13 towards Mr. Matos in wanting to help Mr. Matos. So
14 I can't imagine that she's going to dodge the
15 defense team if they have attempted to procure her
16 or are aware of the situation. So I don't think
17 that that is a valid reason for a continuance.

18 I'm not sure who the two witnesses are they're
19 talking about. I think that they should put that
20 on the record, because it is possible that we've
21 had contact with them. We've talked to a lot of
22 the witnesses just in the past five to seven days.

23 THE COURT: Witnesses, Defense, that we're
24 talking of the two guilt phase witnesses.

MR. LIVERMORE: The guilt phase witness that

1 we have been unable to contact is Mr. Engram.

2 THE COURT: Mr. Engram?

3 MR. LIVERMORE: James Engram, yes.

4 THE COURT: Okay.

5 MR. SARABIA: I don't think he would be a
6 guilt phase witness. I think he would be more of a
7 penalty phase witness.

8 MR. LIVERMORE: Well, they listed him, and
9 they listed a conversation he had.

10 MR. SARABIA: He is a listed witness. He has
11 had conversations with Mr. Matos over his
12 incarceration. Since he wasn't listed, I didn't go
13 looking for him on the phone calls.

14 I know Mr. Matos has been in communication
15 with him while in custody. Mr. Engram also seems
16 sympathetic to Mr. Matos. So my recollection is
17 that he was living in Pennsylvania.

18 I was unable to prepare for that witness since
19 he wasn't listed in the motion, but I'm sure with a
20 little bit of leg work he could be located. We can
21 certainly attempt that. And I still don't know who
22 the second witness is.

23 MR. LIVERMORE: The person is a possible
24 penalty witness. We haven't been able to find him.

So I'm not in a position to list him at this point.

1 THE COURT: Well, you said there's two guilt
2 phase witnesses, and one penalty phase witness his
3 mother.

4 MR. LIVERMORE: Right. Well, mother is also a
5 listed witness. Those are the two listed
6 witnesses, Engram and mother.

7 THE COURT: Okay. So Engram and the mother is
8 the guilt phase witnesses you're talking about?

9 MR. LIVERMORE: Right.

10 THE COURT: And mother is also the penalty
11 phase witness you're talking about?

12 MR. LIVERMORE: Correct. Correct.

13 THE COURT: Okay. All right. So we've
14 already heard about the mother and we just heard
15 about Mr. Engram.

16 All right. And then the jury instructions.
17 State, what else?

18 MR. SARABIA: Judge, it says Defendant has
19 retained an expert to evaluate whether the
20 defendant's son is competent to testify in this
21 case and is waiting the result of the evaluation.

22 I had contact with the child's guardian within
23 the past three hours, maybe four hours. They don't
24 know anything about this. No one has contacted

them about it. There's been nothing set up with

1 the Defense. So this is the first that I've heard
2 about that.

3 I don't know how they would intend to do that
4 and whether they would even be allowed to do that.
5 I don't think that the guardian would be very
6 excited to let that happen.

7 And certainly it doesn't appear to be a reason
8 to continue the trial. If the witness is able to
9 testify competently at trial like any child
10 witness, then we expect that he will testify. If
11 he is not, then I'm sure that the Court will not
12 allow him to testify.

13 THE COURT: Is he even listed as a witness?

14 MR. SARABIA: He has been listed as a witness
15 and he was deposed by Mr. Hendry I want to say a
16 year and a half ago.

17 THE COURT: Oh, okay.

18 MR. SARABIA: And I would note that he said
19 that his father killed his mother. So that is not
20 new information.

21 THE COURT: Okay. I was interested in this
22 one too, because I didn't know if the child had
23 ever been listed or if the child was deposed, but
24 those two things got answered.

So I don't even understand this witness to

1 determine whether a child is competent when the
2 child has already been deposed by the Public
3 Defender's Office.

4 MR. LIVERMORE: Well, the deposition is what
5 we're using to determine whether or not -- the
6 child has autism spectrum disorder, and we have an
7 expert in autism who is evaluating the deposition.

8 When we're done with that, we may try to have
9 him evaluated personally by the doctor. I know
10 everybody is going to object and we've got to fight
11 that later, but right now I'm waiting on the
12 results of the review of what we do have in public
13 record of him, of the child.

14 THE COURT: Well, number one: State, are you
15 putting this child on the witness stand in this
16 trial?

17 MR. SARABIA: We will be evaluating that up
18 until the trial. If he's competent to testify, if
19 we feel he's competent, then absolutely.

20 THE COURT: But we don't have anything that's
21 saying he's incompetent at this time?

22 MR. SARABIA: Correct.

23 THE COURT: Okay.

24 MR. SARABIA: There has never been, to my

1 THE COURT: When was he deposed?

2 MR. LIVERMORE: Don Hendry was still in the
3 office then.

4 THE COURT: Right. So over a year.

5 MR. LIVERMORE: It was a while ago.

6 THE COURT: Almost a year.

7 MR. LIVERMORE: Correct.

8 MR. SARABIA: I want to say it was in mid to
9 late 2015.

10 THE COURT: Okay.

11 MR. LABRUZZO: No. It had to be before
12 April of 2015.

13 MR. SARABIA: No?

14 MR. LABRUZZO: 2016.

15 THE COURT: So sometime 2015, before April of
16 2016, right?

17 MR. SARABIA: Correct. I may be able to pull
18 that up for you quickly, Judge.

19 THE COURT: All right. State, anything else?

20 It's a while ago. You don't have to have an
21 exact date for me.

22 MR. SARABIA: In terms of the jury
23 instructions, Judge, the jury instructions for
24 murder haven't change to my knowledge for many,

25

many years.

1 We're all dealing with a new death penalty
2 statute, but I think that the law and the Supreme
3 Court were very clear on what the law is in that
4 regard.

5 And even if we don't have form jury
6 instructions, I think that the Court would easily
7 be able to instruct the jury on what the proper
8 legal tests are for them to go through.

9 THE COURT: Well, if we go to trial on
10 September 18, we will be the ninth murder case to
11 go in this circuit under the new law. So I can
12 guarantee you I will have instructions that have
13 been used and tweaked and looked at and reviewed by
14 both -- both by the Public Defender's Office,
15 because there's a case next week set for trial, a
16 resentencing that they are using jury instructions
17 that have been promulgated by the jury instruction
18 committee, and they have been approved through the
19 Public Defender's Office, and everybody agreed to
20 them and they're going to trial next week.

21 So they are going to have a two-week trial
22 with these jury instructions that you say we don't
23 have. So other people in your office are using
24 jury instructions.

MR. LIVERMORE: Well, I haven't had that

1 confirmed yet whether they are agreeing, but I do
2 know that the Supreme Court has not approved them.
3 And if everybody wants to take that chance, then
4 that's the thing.

5 We're doing this motion now --

6 THE COURT: I understand.

7 MR. LIVERMORE: -- so, you know, we have it
8 early enough that nobody has to prepare.

9 THE COURT: Okay.

10 MR. LIVERMORE: If we want to ram it through,
11 then we'll go through it.

12 THE COURT: Well, I'm not ramming anything
13 through. As I indicated, by the time we go to
14 trial in September and by the time we get to jury
15 instructions on the death penalty part, that's not
16 even saying that we'll get to there. So first
17 we've got to get there.

18 MR. LIVERMORE: Uh-huh.

19 THE COURT: First we have to have a guilt
20 phase. And if he's found guilty, which he sits
21 here as an innocent person, the State has to prove
22 his guilt, by the time we get there, if we get
23 there, we will be the ninth case in the circuit to
24 go that I know of, it might be more by that time

just in our circuit, not in any other circuit, and

1 my understanding is that we'll have jury
2 instructions by the end of August.

3 MR. LIVERMORE: Okay.

4 THE COURT: Or so I was told. And so I'm not
5 too concerned about the jury instruction part of
6 it. If I was the first one to go, I might be a
7 little concerned. But I also know that there's
8 been at least four within the state that have
9 already gone with jury instructions, either
10 retrials, resentencings, trials or resentencings.

11 And so by the time we get there,
12 notwithstanding our circuit alone, we'll have
13 dozens of cases that have already gone under a set
14 of instructions. So if there's any issues with
15 these instructions, I'll guarantee you I'll have
16 heard about them by then, whether the jury didn't
17 understand or somehow they got confused.

18 You know, because that's all that could be
19 wrong. And we're talking about just the
20 interrogatories and what the jury has to be told.
21 And we've already, you know, kind of tweaked a
22 little bit of the jury instructions of saying, you
23 know, whether it's their opinion or whether it's
24 their verdict, and we, you know, looked at some of

1 And we can all look at them, and you could
2 object to me using any of them at all. But, you
3 know, we can still work on any of the small
4 language that we might have to work on.

5 But jury instructions is not of any concern of
6 mine. I'm not the first and I most certainly not
7 even be the second. So jury instructions are not a
8 problem.

9 We just got back from the judges conference,
10 we had the refresher course. We all have a copy of
11 them. We've all gone over them. We spent three
12 days on them. I think most of the circuit court
13 judges feel pretty comfortable with the
14 instructions the way the Supreme Court is going to,
15 you know, look at them. Whether there's a word
16 here or a word there, everybody has their opinion,
17 but I don't think the overall instructions are that
18 big of a deal.

19 So as to worrying about the instructions, I'm
20 not worried about the instructions, and I don't
21 think it's ramming through. Again, I'm not the
22 first, and I'll have lots and lots of other cases
23 to have been looked at by then.

24 So the other issue becomes the witnesses and

this child victim. And I consider him a child

1 victim only because whoever did this he was there
2 for it, so he witnessed this. And it's his family
3 that are the victims in this case, so I consider
4 him a victim.

5 As to the two guilt phase witnesses, it
6 appears that your client has access to these
7 individuals. So from what the State tells me and
8 what your client just shook his head for, he's had
9 direct contact with his mom in less than seven
10 days.

11 So any mitigation expert that you would have
12 had hired, I assume should have, could have, and
13 would have already spoken to her. And we don't
14 need her as long as the mitigation expert speaks to
15 her.

16 And it seems to me that Mr. Matos has easy
17 access to his mom. She can testify if you want her
18 at guilt phase -- I mean at guilt phase or penalty
19 phase. We can do it if she stays in Texas or
20 California or wherever it is and testifies by
21 videotape, face-to-face, Face Timing us here in the
22 courtroom, I have no problem with that. We can
23 have her live. She can answer questions. She can
24 be cross-examined. And if she has a heart problem,

she never has to leave the state to fly here.

1 I've done it many, many times as a prosecutor
2 and I've done it a couple of times as a judge, and
3 there's no real drawback to it in these type of
4 cases as long as she's live and able to testify.

5 If it's only for penalty phase, she can talk
6 to the mitigation expert and the mitigation expert
7 can, you know, tell that. I mean that's allowed
8 under the law. So I'm not worried about the mom.

9 It doesn't seem like Mr. Engram is anybody
10 that the State's worried about.

11 MR. SARABIA: And neither one of these
12 witnesses are witness we would intend to call
13 during the guilt phase, Judge.

14 THE COURT: Okay.

15 MR. SARABIA: I know they were listed on the
16 guilt phase. And that mostly, particularly in
17 Mr. Engram's case, to do with, he had some contact
18 with Mr. Matos while Mr. Matos was fleeing from law
19 enforcement.

20 THE COURT: But you didn't plan on calling him
21 as a witness?

22 MR. SARABIA: No, Judge.

23 THE COURT: So at this point the State is not
24 asking for a continuance if Mr. Engram is not

25

available. Has he been deposed?

1 MR. SARABIA: No.

2 THE COURT: All right. And it seems like the
3 only person who's had contact with him is the
4 defendant from the jail.

5 MR. SARABIA: Correct. We did have some phone
6 conversations with him probably more a year and a
7 half ago, but Mr. Matos has had more recent contact
8 with him.

9 THE COURT: So again if this is a witness that
10 if you want, it seems like your client has more
11 access to him than the State.

12 And so on those two, as to those witnesses,
13 the motion to continue is denied; as to the jury
14 instructions denied; and as to the child victim at
15 this point denied, because I don't have any reason
16 to believe that the child is not competent to
17 testify.

18 You had a depo over a year ago with this
19 child. If there was some expert that needed to be
20 called and things that needed to be done, you've
21 had over a year and a half to do it. So you're
22 telling me that you have an expert that might
23 perhaps decide that he's incompetent and then he
24 wants to evaluate him.

You did a depo. I mean it doesn't seem to me

1 that you're claiming that he's incompetent, and the
2 State hasn't -- I mean the State might call him and
3 might not call him. So I think it's a motion in
4 limine once you have an expert opinion, and then
5 I'll decide whether he's competent to testify.

6 MR. MICHAÏLOS: Judge, if I may briefly?

7 THE COURT: Sure.

8 MR. MICHAÏLOS: With regard to that issue,
9 that deposition obviously was captured by
10 videotape, it's recorded. I've seen it, so has
11 Mr. Livermore, and Mr. Sarabia I'm assuming has
12 seen it as well.

13 In this videotaped deposition the child
14 struggles and for the first 20 minutes has a hard
15 time going past putting his name on the record.

16 THE COURT: Okay.

17 MR. MICHAÏLOS: In all the CPI records, the
18 child has never been truth qualified. And it's
19 stated clearly in black and white by all the
20 experts who talked to this child that he could not
21 be truth-qualified, which is I think the second
22 factor in a child or any witness being qualified
23 incompetent to testify, is that they know the
24 difference between a falsity and reality.

1 child by Mr. Sarabia, it's clear the child at some
2 point rambles on, "My daddy killed mommy." Nowhere
3 is it made clear that the child saw a homicide, saw
4 anything other than the fact -- it could be that
5 the child was told that daddy killed mommy.

6 THE COURT: Uh-huh.

7 MR. MICHAILOS: So these statements are just
8 thrown out there. That's why this expert has
9 reviewed both the videotape, and the State also
10 submitted additional evidence, an audiotape that's
11 more recent, about a month or two ago where the
12 child is heard making statements in a room with his
13 aunt, and that's also been given to the expert. So
14 that's what that expert opinion would be based on,
15 whether or not the Court grants the expert leave to
16 actually evaluate the child. But I think we
17 clearly believe there's definitely an issue with
18 regard to the child not being competent.

19 THE COURT: That's a motion in limine. File
20 it. I got plenty of time between now and
21 September. I'll be happy to hear it. I'm not even
22 sure I need an expert witness to testify if you
23 have CPI people and other psychologists that have
24 interviewed the child to make a decision.

But that's a motion in limine. That's not a

1 motion to continue. I got time between now and the
2 trial date to hear a motion in limine. A motion to
3 strike a witness, a motion to declare incompetent,
4 any of those things. I'll hear any of those.

5 MR. MICHAÏLOS: I have one other issue, Judge,
6 that was not included in the motion for
7 continuance, so obviously we were surprised by the
8 State's -- we were not aware of the communication
9 between the mother and Mr. Matos. But
10 regardless --

11 THE COURT: Well, let me make this clear.
12 He's right there, he's your client, you might want
13 to ask him before you file a motion.

14 MR. MICHAÏLOS: I understand. Judge, it is
15 very likely we're going to list an additional
16 expert to testify in the trial phase of this case.

17 Because of confidentiality I cannot give you
18 specifics or the reasons why that expert has not
19 been listed as of yet, but it is very likely that
20 --

21 THE COURT: Guilt or penalty?

22 MR. MICHAÏLOS: Guilt.

23 THE COURT: Okay. And you're going to list an
24 expert in what area of the law? I'm not granting a

continuance because you tell me you're going to

1 file an additional witness list.

2 MR. MICHAÏLOS: Right. And i understand. I
3 just want to give you a heads up. You know,
4 because I know a notice is going to be sent out for
5 jury selection and --

6 THE COURT: I'm telling you we've been working
7 --

8 MR. MICHAÏLOS: It would be based on
9 psychology, it would be a psychologist or a
10 psychiatrist.

11 THE COURT: Okay. We've been working on this
12 case from day one. I've had numerous court
13 hearings.

14 MR. MICHAÏLOS: I understand.

15 THE COURT: File your witness, tell me what
16 he's going to say, the State can move to strike,
17 the State can move to strike them because whatever
18 they're going to say isn't relevant or admissible.

19 I did it in a couple of other cases with some
20 other psychologists in some other cases, since I
21 don't know what this person is going to testify to.
22 It does not sound like you're telling me that
23 you're going to claim insanity.

24 MR. MICHAÏLOS: No.

THE COURT: You haven't said the words.

1 MR. MICHAÏLOS: No.

2 THE COURT: So, then, now you're getting into
3 whether you're going to get into, you know, smaller
4 areas of his culpability. So I can't tell you I'd
5 even allow that person to testify or not because
6 you haven't listed them and said what they're going
7 to testify to. But as soon as you do, Mr. Sarabia
8 seems to be working at a very fast pace over there,
9 knows things that you don't even know. I'm sure
10 you're good with him listing whoever he wants to
11 list, but you're asking him to do it by a certain
12 date. Right?

13 MR. SARABIA: Absolutely, Judge. This is
14 definitely the first we've heard of that.

15 THE COURT: We have pretrial motions. All
16 motions have got to be filed by September 6th. I
17 would ask that any witnesses that you're going to
18 add, I would expect that you would add by the end
19 of August. That's all I can say.

20 This case is a 2014 case. There's nothing
21 about this case that not all of us don't already
22 know. There's nothing new that's come up. It's
23 not like Mr. Matos went to the state hospital and
24 then came back and then went back like some other

cases. I mean he's been in the jail. You've had

1 access to him the whole time. You've been on this
2 case from the beginning. If you're going to list
3 an expert, list him.

4 Give me a reason that I would allow it, of
5 course, in the guilt phase. I mean, of course,
6 you're going to list your penalty phase witnesses
7 that is going to include a doctor. But I'm sure
8 the State can be prepared and ready to go wherever
9 you list that person.

10 But I'm not going to grant a continuance on a
11 case that is more than two and a half years old
12 when you're telling me that you might list a
13 witness that might testify to something that I
14 can't even figure out what they're going to testify
15 to yet.

16 So at this point the motion to continue is
17 denied. We have a pretrial and a motion, all
18 pending motions on September 6th. We have the
19 trial on September 18th.

20 And in the meantime I will get with all my
21 other judges in the circuit and the State and I
22 will have proposed jury instructions ready to go
23 for the penalty phase to give to you just so you
24 can review them in case we get there. We may not

ever get there, so it won't matter. But if we get

1 there, you'll have them way ahead of time. Other
2 than that, the motion to continue is denied.

3 All right. State, you're here on a motion for
4 some compel pass code.

5 MR. SARABIA: Correct.

6 THE COURT: Defense, have you had an
7 opportunity to look over the pass code motion?

8 MR. MICHAILOS: I have, Your Honor.

9 THE COURT: And what's your status on that?

10 MR. MICHAILOS: Judge, I think the motion is
11 moot. Mr. Matos indicated to me that he would
12 waive any Fifth Amendment rights he had to privacy
13 regarding this pass code and volunteer it if he had
14 present memory of it, but he indicates he does not.

15 This is the first time that it's been
16 requested of him. I know he was interviewed by law
17 enforcement early on when he was arrested. He
18 waived his Miranda rights. He was never asked
19 about this pass code probably because this is
20 pretty new case law, I guess. But at this point in
21 time he does not remember this pass code. I think
22 it was one that he had on the phone temporarily.

23 My understanding is he didn't have the phone
24 more than five months, and during most of the use

of this phone he did not use a pass code. So there

1 was one on there, I'm assuming there was one on
2 there when it was taken into custody, but he
3 doesn't remember what that temporary pass code was.

4 THE COURT: State?

5 MR. SARABIA: Well, Judge, we'd ask that you
6 grant the motion. And then if he puts on the
7 record that he doesn't remember, then you could
8 hold him in contempt if you don't believe him.
9 Other than that, that ends that issue.

10 I would note in terms of waiving his Miranda
11 rights, he did; but then he reinvoked them prior to
12 questioning, it would have gotten to the point of a
13 pass code for his phone. So it didn't come up not
14 for negligence on the part of the detectives.

15 THE COURT: Can you all approach.

16 * * * * *

17 (Thereupon a discussion was held off the record.)

18 record.

19 (Open Court.)

20 THE COURT: I have it off. You can talk to
21 him right there. It's not being picked up. It's
22 off. I'll turn it off.

23 Are we ready?

24 MR. MICHAÏLOS: I am, Judge.

THE COURT: Okay. So does he want to waive

1 the right to them getting into his phone?

2 MR. MICHAÏLOS: He indicates at this time he
3 does not, Judge.

4 THE COURT: So then, Mr. Matos, I need you to
5 provide them the pass code, because they've already
6 gotten the search warrant to seize the phone and
7 they have a right to the pass code.

8 So do you have the pass code?

9 THE DEFENDANT: No, Your Honor, I do not. I
10 don't remember it.

11 THE COURT: Okay.

12 THE DEFENDANT: It's been three years since
13 I've seen my cellphone, and I just -- that's
14 something that wasn't really on my mind for the
15 past three years. I've been too concerned with
16 other matters.

17 THE COURT: Okay. So at this time the
18 defendant is refusing to provide the pass code.

19 So since I've already signed a search warrant
20 to allow the State to look at the phone and gather
21 the information, I'll go ahead and indicate that
22 they can use any means available to bypass the code
23 because the defendant is refusing to provide the
24 code on court order.

So as indicated I will allow the State, since

1 they already have secured a search warrant of the
2 phone, that they can use any means necessary in
3 order to bypass the lock on the pass code and get
4 access to the phone.

5 As I indicated at the bench, I have Googled on
6 my laptop here how to bypass the code on a 5s, and
7 there's a little tutorial available on YouTube
8 under the YouTube.com Watch, and it says how to
9 bypass the IOS 7.0.2 pass code lock and access
10 iPhones 5s.

11 Now, granted it was just put on there in July
12 of 2017, but I'll allow you to use any means
13 necessary, including YouTube videos, since the
14 defendant is refusing to provide the pass code at
15 this time.

16 Of course, the State, if you do obtain
17 anything from the phone, you will provide it in
18 discovery, correct?

19 MR. SARABIA: Absolutely, Judge.

20 THE COURT: Okay. Anything other than that?

21 MR. SARABIA: No, Judge.

22 THE COURT: All right. So based on that, I
23 think we are finished with Mr. Matos' case. And
24 the next court hearing is now set for September 6th

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at 1:30. Okay? Thank you.

1 MR. MICHAÏLOS: Thank you, Judge.

2 (HEARING CONCLUDED.)

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CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA)
)
COUNTY OF PASCO)

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

DATED this 31st day of July, 2017.

/S MARIA A. FORTNER

MARIA A. FORTNER, RPR

