

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Apr 09 2013 10:58 a.m.
T. J. Lindeman
Clerk of Supreme Court

DOMONIC MALONE,
Appellant,

v.
THE STATE OF NEVADA,
Respondent.

Case No.

RESPONDENT'S APPENDIX

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Counsel for Respondent

INDEX

<u>Title</u>	<u>Date</u>	<u>Page</u>
Second Amended Information	11/3/10	001-008
Transcript – Hearing re: All Pending Motions	11/18/10	009-011
Transcript – Hearing re: All Pending Motions	11/23/10	012-022

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
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- 0
- 1
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- 3
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BY /s/ eileen davis
Employee, District Attorney's Office

SSOKenneth Portz/ed

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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 03 2010

BY, Carol Donahoo
CAROL DONAHOO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DOMONIC RONALDO MALONE,
#1670891,
JASON DUVAL MCCARTY, #0932255

Defendants.

Case No: C-06-224572-3
Dept No: XVII

SECOND AMENDED
INFORMATION

06C224572-3

AINF
Amended Information
1036068



STATE OF NEVADA }
COUNTY OF CLARK } ss.

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That DOMONIC RONALDO MALONE and JASON DUVAL MCCARTY, the Defendant(s) above named, having committed the crimes of CONSPIRACY TO COMMIT KIDNAPPING (Felony - NRS 200.310, 200.320, 199.480); FIRST DEGREE KIDNAPPING (Felony - NRS 200.310, 200.320); BATTERY WITH SUBSTANTIAL BODILY HARM (Felony - NRS 200.481); PANDERING (Felony - NRS 201.300); CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor - NRS 205.060, 199.480); CONSPIRACY TO COMMIT MURDER (Felony - NRS 200.010, 200.030, 199.480); BURGLARY (Felony - NRS 205.060); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165); and ROBBERY WITH USE OF A

1 DEADLY WEAPON (Felony - NRS 200.380, 193.165), on or between April, 2006 and May
2 19, 2006, within the County of Clark, State of Nevada, contrary to the form, force and effect
3 of statutes in such cases made and provided, and against the peace and dignity of the State of
4 Nevada,

5 COUNT 1 - FIRST DEGREE KIDNAPPING

6 Defendant DOMONIC RONALDO MALONE did, in April of 2006, wilfully,
7 unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice, decoy,
8 abduct, conceal, kidnap, or carry away MELISSA ESTORES, a human being, with the intent
9 to hold or detain the said MELISSA ESTORES against her will, and without her consent, for
10 the purpose of inflicting substantial bodily harm on the said MELISSA ESTORES.

11 COUNT 2 - BATTERY WITH SUBSTANTIAL BODILY HARM

12 Defendant DOMONIC RONALDO MALONE, did, in April of 2006, then and there
13 wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-
14 wit: MELISSA ESTORES, by beating and kicking the said MELISSA ESTORES about the
15 head and body, resulting in substantial bodily harm to the said MELISSA ESTORES

16 COUNT 3 - CONSPIRACY TO COMMIT KIDNAPPING

17 Defendants did, on or about May 16, 2006, then and there meet with each other and
18 between themselves, and each of them with the other, wilfully, unlawfully, and feloniously
19 conspire and agree to commit a crime, to-wit: kidnap MELISSA ESTORES, and in
20 furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 4-6,
21 said acts being incorporated by this reference as though fully set forth herein.

22 COUNT 4 - FIRST DEGREE KIDNAPPING

23 Defendants did, on or about May 16, 2006, wilfully, unlawfully, feloniously, and
24 without authority of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or
25 carry away MELISSA ESTORES, a human being, with the intent to hold or detain the said
26 MELISSA ESTORES against her will, and without her consent, for the purpose of inflicting
27 substantial bodily harm on the said MELISSA ESTORES.

28 ///

1 COUNT 5 - BATTERY WITH SUBSTANTIAL BODILY HARM

2 Defendants did, on or about May 16, 2006, then and there wilfully, unlawfully, and
3 feloniously use force or violence upon the person of another, to-wit: MELISSA ESTORES,
4 by beating and kicking the said MELISSA ESTORES about the head and body, resulting in
5 substantial bodily harm to the said MELISSA ESTORES, the Defendants being responsible
6 under one or more of the following theories of criminal liability, to-wit: (1) by directly or
7 indirectly committing said crime, and/or (2) by conspiring with each other to commit the
8 crime of battery and/or kidnapping where each co-conspirator is liable for the general intent
9 crimes committed by fellow co-conspirators which were a foreseeable consequence of the
10 conspiracy; and/or (3) by aiding and abetting, by Defendant JASON DUVAL MCCARTY
11 driving the said MELISSA ESTORES and Defendant DOMONIC RONALDO MALONE to
12 the location where said battery took place, then instructing the said MELISSA ESTORES to
13 submit to said beating.

14 COUNT 6 - ROBBERY

15 Defendants did, on or between May 16, 2006 and May 17, 2006, then and there
16 wilfully, unlawfully, and feloniously take personal property, to-wit: purse and/or its contents,
17 from the person of MELISSA ESTORES, or in her presence, by means of force or violence
18 or fear of injury to, and without the consent and against the will of the said MELISSA
19 ESTORES, the Defendants being responsible under one or more of the following theories of
20 criminal liability, to-wit: (1) by directly or indirectly committing said crime, and/or (2) by
21 conspiring with each other to commit the crime of battery and/or kidnapping where each co-
22 conspirator is liable for the general intent crimes committed by fellow co-conspirators which
23 were a foreseeable consequence of the conspiracy; and/or (3) by aiding and abetting, by
24 Defendant JASON DUVAL MCCARTY driving the said MELISSA ESTORES and
25 Defendant DOMONIC RONALDO MALONE to the location where a battery took place,
26 then instructing the said MELISSA ESTORES to submit to said beating, thereafter driving
27 both DOMONIC RONALDO MALONE and MELISSA ESTORES from the location as
28 DOMONIC RONALDO MALONE robbed MELISSA ESTORES of her purse and/or its

1 contents.

2 COUNT 7 - PANDERING

3 Defendants did, on or between May 16, 2006 and May 17, 2006, then and there
4 wilfully, unlawfully, and feloniously induce, persuade, encourage, inveigle, entice, or
5 compel VICTORIA MAGEE to become a prostitute, and/or to engage or continue to engage
6 in prostitution.

7 COUNT 8 - CONSPIRACY TO COMMIT BURGLARY

8 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there meet
9 with each other and between themselves, and each of them with the other, wilfully and
10 unlawfully conspire and agree to commit a crime, to-wit: Burglary, and in furtherance of
11 said conspiracy, Defendants did commit the acts as set forth in Count 11, said acts being
12 incorporated by this reference as though fully set forth herein.

13 COUNT 9 - CONSPIRACY TO COMMIT KIDNAPPING

14 Defendants did, on, about, or between May 17, 2006 and May 19, 2006, then and
15 there meet with each other and between themselves, and each of them with the other,
16 wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: kidnap
17 CHARLOTTE COMBADO and/or VICTORIA MAGEE, and in furtherance of said
18 conspiracy, Defendants did commit the acts as set forth in Counts 11-17, said acts being
19 incorporated by this reference as though fully set forth herein.

20 COUNT 10 - CONSPIRACY TO COMMIT MURDER

21 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there meet
22 with each other and between themselves, and each of them with the other, wilfully,
23 unlawfully, and feloniously conspire and agree to commit a crime, to-wit: Murder, and in
24 furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 11-17,
25 said acts being incorporated by this reference as though fully set forth herein.

26 COUNT 11 - BURGLARY

27 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there
28 wilfully, unlawfully, and feloniously enter, with intent to commit assault and/or battery

1 and/or a felony, to-wit: Kidnapping and/or Murder, that certain building occupied by
2 LEONARD ROBINSON, located at 1525 East Fremont, Room No. 222, Las Vegas, Clark
3 County, Nevada.

4 COUNT 12 - FIRST DEGREE KIDNAPPING

5 Defendants did, on or between May 17, 2006 and May 19, 2006, wilfully, unlawfully,
6 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,
7 conceal, kidnap, or carry away CHARLOTTE COMBADO, a human being, with the intent
8 to hold or detain the said CHARLOTTE COMBADO against her will, and without her
9 consent, for the purpose of committing murder.

10 COUNT 13 - FIRST DEGREE KIDNAPPING

11 Defendants did, on or between May 17, 2006 and May 19, 2006, wilfully, unlawfully,
12 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,
13 conceal, kidnap, or carry away VICTORIA MAGEE, a human being, with the intent to hold
14 or detain the said VICTORIA MAGEE against her will, and without her consent, for the
15 purpose of committing murder.

16 COUNT 14 - MURDER WITH USE OF A DEADLY WEAPON

17 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there
18 wilfully, feloniously, without authority of law, and with premeditation and deliberation, and
19 with malice aforethought, kill CHARLOTTE COMBADO, a human being, by striking the
20 said CHARLOTTE COMBADO about the head and body with a deadly weapon, to-wit: a
21 golf club and/or a knife and/or a rock and/or an unknown blunt object and/or an unknown
22 sharp object, the said actions of the Defendants resulting in the death of the said
23 CHARLOTTE COMBADO; the Defendants being responsible under one or more of the
24 following principles of criminal liability, to-wit: (1) by having premeditation and
25 deliberation in its commission; and/or (2) the killing occurring during the perpetration or
26 attempted perpetration of kidnapping and/or robbery and/or burglary and/or (3) by being
27 liable as co-conspirator for the acts done in furtherance of the conspiracy, which acts were
28 intended by the Defendants; and/or (4) by aiding and abetting in the commission of the crime

1 by accompanying each other to the crime scene where the Defendants acted as lookouts for
2 one another, the Defendants did physically take the said CHARLOTTE COMBADO, to a
3 remote area, the Defendants did take personal property from the person or presence of the
4 said CHARLOTTE COMBADO, the Defendants did either both physically strike the said
5 CHARLOTTE COMBADO, or did act as lookout and prevent her from escaping while the
6 other struck the said CHARLOTTE COMBADO about the head and body with a golf club
7 and/or a knife and/or a rock and/or an unknown blunt object and/or an unknown sharp
8 object, the said actions of the Defendants resulting in the death of the said CHARLOTTE
9 COMBADO, the Defendants left the crime scene together, the Defendants encouraging one
10 another throughout by actions and words, the Defendant and the accomplice acting in
11 concert throughout each with intent to commit murder.

12 COUNT 15 - MURDER WITH USE OF A DEADLY WEAPON

13 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there
14 wilfully, feloniously, without authority of law, and with premeditation and deliberation, and
15 with malice aforethought, kill VICTORIA MAGEE, a human being, by striking the said
16 VICTORIA MAGEE about the head and body with a deadly weapon, to-wit: a golf club
17 and/or a knife and/or a rock and/or an unknown blunt object and/or an unknown sharp
18 object, the said actions of the Defendants resulting in the death of the said VICTORIA
19 MAGEE; the Defendants being responsible under one or more of the following principles of
20 criminal liability, to-wit: (1) by having premeditation and deliberation in its commission;
21 and/or (2) the killing occurring during the perpetration or attempted perpetration of
22 kidnapping and/or robbery and/or burglary and/or (3) by being liable as co-conspirator for
23 the acts done in furtherance of the conspiracy, which acts were intended by the Defendants;
24 and/or (4) by aiding and abetting in the commission of the crime by accompanying each
25 other to the crime scene where the Defendants acted as lookouts for one another, the
26 Defendants did physically take the said VICTORIA MAGEE, to a remote area, the
27 Defendants did take personal property from the person or presence of the said VICTORIA
28 MAGEE, the Defendants did either both physically strike the said VICTORIA MAGEE, or

1 did act as lookout and prevent her from escaping while the other struck the said VICTORIA
2 MAGEE about the head and body with a golf club and/or a knife and/or a rock and/or an
3 unknown blunt object and/or an unknown sharp object, the said actions of the Defendants
4 resulting in the death of the said VICTORIA MAGEE, the Defendants left the crime scene
5 together, the Defendants encouraging one another throughout by actions and words, the
6 Defendant and the accomplice acting in concert throughout each with intent to commit
7 murder.

8 COUNT 16 - ROBBERY WITH USE OF A DEADLY WEAPON

9 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there
10 wilfully, unlawfully, and feloniously take personal property, to-wit: clothing, from the
11 person of CHARLOTTE COMBADO, or in her presence, by means of force or violence or
12 fear of injury to, and without the consent and against the will of the said CHARLOTTE
13 COMBADO, said Defendants using a deadly weapon, to-wit: a golf club and/or a knife
14 and/or a rock and/or other unidentified blunt or sharp object, during the commission of said
15 crime.

16 COUNT 17 - ROBBERY WITH USE OF A DEADLY WEAPON

17 Defendants did, on or between May 17, 2006 and May 19, 2006, then and there
18 wilfully, unlawfully, and feloniously take personal property, to-wit: clothing, from the
19 person of VICTORIA MAGEE, or in her presence, by means of force or violence or fear of
20 injury to, and without the consent and against the will of the said VICTORIA MAGEE, said
21 Defendants using a deadly weapon, to-wit: a golf club and/or a knife and/or a rock and/or
22 other unidentified blunt or sharp object, during the commission of said crime.

23 DAVID ROGER, District Attorney

24
25 BY

Christopher J. Lalli
26 CHRISTOPHER J. LALLI
27 Chief Deputy District Attorney
28 Nevada Bar #005398

Names of witnesses known to the District Attorney's Office at the time of filing this
Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
ALLRED, CLAY	HPD #1221
BENJAMINS, FELICIA	HPD #720
COLLINS, GERARD	HPD #324
ESTORES, MELISSA	UNKNOWN ADDRESS
FUENTES, FRANKLIN	HPD #621
HALL, RAMAAN	UNKNOWN ADDRESS
HERB, DONALD	UNKNOWN ADDRESS
HERB, HAROLD	140 SIR NOBLE ST., LVN
HOSAKA, MARK	HPD #777
KUBICZEK, PIOTR DR.	CORONER'S OFFICE
NAGEL, LYNN	C/O CCDA OFFICE
PARKER, DAVID	CANCUN APARTMENTS
PHILLIPS, CORRINA	C/O CCDA OFFICE
RIDINGS, CRAIG	HPD #358
ROBINSON, LEONARD	1525 E. FREMONT #F-222, LVN
WEBSTER, MICHAEL	HPD #899

DA#06FH0742A, B/mb
HPD EV#06-11513
CONSP; KIDNAP; BWSBH; BURG; MWDW; RWDW - F
(TK5)

48

FILED

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[Signature]
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,

Defendant.

CASE NO. C224572-2

DEPT. XVII

06C224572-2
RTRAN
Recorders Transcript of Hearing
1159013



BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 18, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:

ALL PENDING MOTIONS

APPEARANCES:

For the State:

CHRISTOPHER LALLI, ESQ.,
Deputy District Attorney

For the Defendant:

Not present
(Standby Counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

CLERK OF THE COURT

RECEIVED
JAN 12 2011

1 LAS VEGAS, NEVADA; TUESDAY, NOVEMBER 18, 2010

2 [Proceeding commenced at 8:13 a.m.]

3
4 MR. LALLI: Your Honor, I did receive a call from the jail
5 that I want to take up with the Court. I suppose if he's --

6 THE COURT: Well, let's don't take it up until the Special
7 PD's here.

8 MR. LALLI: Okay.

9 THE COURT: At least at this point, I'm going to pass it for
10 next Tuesday.

11 THE MARSHAL: Is that with an Order?

12 THE COURT: Pardon?

13 THE MARSHAL: Is that with an Order for him to be here?

14 THE COURT: Yes.

15 THE MARSHAL: So they'll know.

16 THE COURT: All right.

17 MR. LALLI: Well, can I just put on --

18 THE COURT: I rather not because --

19 MR. LALLI: Understood.

20 THE COURT: -- I don't want to have ex parte communications.

21 MR. LALLI: Okay.

22 THE COURT: Even though I'm assuming you're not going to
23 argue the merits of the case; it's just probably best that we
24 don't.

25 MR. LALLI: No. It was just the jail issue that I was

1 contacted --

2 THE COURT: Okay.

3 MR. LALLI: -- with at the jail that ask that I try to
4 resolve --

5 THE COURT: Okay.

6 MR. LALLI: -- something today, but it's just going to be
7 passed for a week?

8 THE COURT: Yes. Tuesday.

9 MR. LALLI: Your Honor, can I --

10 THE CLERK: November 23rd.

11 MR. LALLI: All right. Thank you.

12 THE COURT: You're welcome.

13 [Proceeding concluded at 8:14 a.m.]

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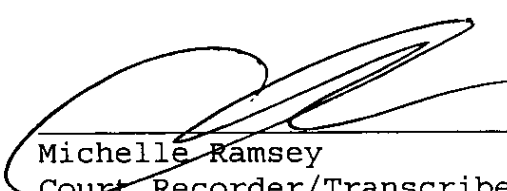
ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

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Michelle Ramsey
Court Recorder/Transcriber

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TRAN

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FILED

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John D. Sullivan
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,

Defendant.

CASE NO. C224572-2

DEPT. XVII

08C224572-2
RTRAN
Recorders Transcript of Hearing
1159014



BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 23, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:

ALL PENDING MOTIONS

APPEARANCES:

For the State:

CHRISTOPHER LALLI, ESQ.,
Deputy District Attorney

For the Defendant:

CHARLES A. CANO, ESQ.,
Special Public Defender
(Standby Counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

RECEIVED
JAN 12 2011
CLERK OF THE COURT

1 LAS VEGAS, NEVADA; TUESDAY, NOVEMBER 23, 2010

2 [Proceeding commenced at 8:12 a.m.]

3
4 MR. CANO: Your Honor, I think there was a motion on for Mr.
5 Malone in this case. In speaking with him yesterday, he wanted to
6 withdraw that motion at this point in time.

7 MR. LALLI: We were never served with it, so --

8 THE COURT: Okay. Mr. Malone, you did file a motion with
9 motion to dismiss prosecutorial misconduct grounds Brady violation
10 or in the alternative the jury to be instructed on Malone's exact
11 whereabouts during the time of the murder. Do you wish to withdraw
12 that motion, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Motion is withdrawn. If you want to
15 refile it, you just have to renote it up. All right.

16 THE DEFENDANT: Your Honor, I want to withdraw the other one
17 that was attached to it too, sir.

18 THE COURT: Okay. You also had motion in limine to abolish
19 witness deposition statement request for evidentiary hearing
20 basically stating that Mr. Herb is being untruthful. Is that
21 correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. That motion will be withdrawn as
24 well.

25 And, Mr. Malone, you didn't show up last time and I was

1 advised by one of the Correction Officers that you refused to come
2 to Court.

3 THE DEFENDANT: Yes. At the time, I was emotionally
4 distraught on the situation, sir. Personal situation
5 [indecipherable] that's about it.

6 THE COURT: All right, sir, as you know you're under the --
7 when you represent yourself, you're under the same rules as an
8 attorney and Mr. Cano doesn't have the right to stay home and say I
9 just don't want to show up today 'cause I don't feel like going to
10 Judge Villani's Court. If you do that again, I have grounds to
11 revoke your status of not -- I mean, revoke your status of
12 representing yourself because I have a basis to do that if you're
13 disruptive to the Court, you don't file a proper Court procedure.
14 Do you understand that, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: So if you do that again, Mr. Cano or Mr. Pike
17 will be representing you. Do you understand that?

18 THE DEFENDANT: Yes, sir. It won't happen again, sir.

19 THE COURT: All right.

20 THE DEFENDANT: Sir, I want to let the Court know that I
21 thank you for the legal library, but I haven't been to the legal
22 library since mid October. Something -- some changes had happened.
23 They had requested me to get -- support some order, one stating
24 that I supposed to be able to go to legal library. I wasn't able
25 to do, so I'm currently housed at 2J in this point in time. They

1 say I supposed to be able to go to the legal library over there,
2 but I have been unable to do so, sir.

3 THE COURT: I think the last time we were in Court or perhaps
4 two times ago which was when we had Calendar Call, you had
5 announced that you were ready to go forward. You were prepared.
6 You did all your research, but you know we had the other case going
7 forward.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And so what other -- I mean, you're not telling
10 me any specifics. You still need other research because you
11 announced you were ready to go.

12 THE DEFENDANT: Yes. I announced I was ready to go because I
13 had really wanted to maintain the Court date I had and if I had was
14 forced to go then I would have to get ready, sir. I wasn't quite
15 adequately prepared. However, I was prepared to go if I had to go,
16 sir.

17 THE COURT: All right. Well, unfortunately because of
18 various issues, we can't just not able to order the jail to have
19 the special treatment for you for indefinite period of time.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If you have certain issues, we can bring this up
22 you know perhaps in a month or so if there's specific research you
23 need to do advise your attorney or stand-by counsel. They're not
24 going to do the research for you unless they agree too, but you can
25 at least talk to them about that and then if you need a status

1 check on further access to the library then we can address it, but
2 at this time because of scheduling issues in the jail --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: -- that I'm not able to continue -- I'm going to
5 vacate the order giving you every other day for three hours per
6 day.

7 THE DEFENDANT: I appreciate that, sir.

8 THE COURT: Do you understand that, sir?

9 THE DEFENDANT: Yes, Judge.

10 THE COURT: Okay. Anything else, sir?

11 THE DEFENDANT: Yes, sir. Thank you.

12 MR. CANO: Your Honor, I think he still needs access to the
13 legal library. I don't know exactly what kind of access they're
14 giving him because they've moved him from the North Tower to the
15 South Tower now. And I know that they're being limited as far as
16 like from my understanding like they're cutting back on some of the
17 Correction Officers things of that nature 'cause they're doing some
18 -- something in the North Tower from my understanding of it.

19 But he should be able to hopefully have access maybe at
20 least once a week or something like that. If not, as numerous as
21 it was before. Obviously he's not prepared for trial as he was
22 before. Of course, that's down the line, but there's certainly
23 issues he may want to raise. He may want to research so that he
24 does have access to the library.

25 Maybe we could amend the order to allowing him maybe

1 access it once a week so maybe the jail could be more accommodating
2 in that sense or at least once every other week.

3 THE COURT: I think --

4 MR. LALLI: Your Honor, I'll -- I'm sorry.

5 THE COURT: Go ahead.

6 MR. LALLI: Well, all prisoners have some access to the
7 library. They can request that certain cases be pulled things of
8 that nature. I don't think at this point this Defendant was given
9 an extraordinary amount of access to the library.

10 Nobody anticipated that this trial would go for six
11 weeks and during the period of time certainly leading up to the
12 trial and into a portion of the trial he was given that sort of
13 access.

14 And really, legally he's representing himself. He made
15 that decision. The Court did not have to bend over backwards to
16 accommodate him which understanding you know the Court's desire
17 that even though he's representing himself that he be treated
18 fairly. I understand that. And certainly don't quivel [sic] with
19 the Court for doing that.

20 But at this point, enough's enough. He has access to
21 the library through kites and things of that nature. That's
22 certainly sufficient at this point particularly when he announced
23 that he was ready to go to trial.

24 MR. CANO: Mr. Lalli's well aware that issues come up all the
25 time even during trial that need to be researched and you know

1 there could be issues that he develops you know throughout the
2 course of you know of the pending trial that's coming up. So I'm
3 just trying like to play the middle ground here so at least he has
4 some access even through the kite system that was the problem
5 before. He would make certain requests, they wouldn't understand
6 his request and so he would never get the proper research he needed
7 to file whatever motions he wanted. That's why the Court made this
8 accommodation for him.

9 THE COURT: All right. No. I understand that and -- but at
10 some point I just can't leave this open-ended. First off, we need
11 to set a new trial date.

12 MR. CANO: Okay.

13 THE COURT: Now was there any opening by all parties in
14 October?

15 MR. CANO: As far --

16 THE COURT: I think the Special Public --

17 MR. CANO: -- as far as the defense is concerned, Your Honor,
18 we indicated before that both myself and Mr. Pike are free from mid
19 September forward, so any time after mid September 2011 we are
20 open.

21 MR. LALLI: Mr. DiGiacomo has two murder cases set in the
22 month of October.

23 THE COURT: Is there any way we can go forward with you
24 picking up a new co-counsel because then unfortunately with both
25 the Special PD's schedule which they have a lot of cases you know

1 against you, then we're getting so far down the road that it
2 concerns me about witnesses and also the Defendant's rights to have
3 a trial in a reasonable amount of time.

4 MR. LALLI: Well, Mr. DiGiacomo has two trials. This isn't
5 the sort of case the Court probably well knows from -- from sitting
6 through it where somebody can just kind of jump in and -- and carry
7 on. Particularly having --

8 MR. CANO: Mr. Lalli did that. You know. With all due
9 respect, Mr. Lalli did just jump in and carried on. He did an
10 admirable job in this case. He replaced Mr. Owens.

11 MR. LALLI: Well, it's a little different once there's
12 already been a trial and the intricacies of the trial. I can tell
13 the Court I'm going to be out of the jurisdiction at the end of
14 July. I'm sorry at the end of October, so that's a further problem
15 with doing it in October.

16 THE COURT: And then the Special PD, they weren't available
17 until mid September, correct?

18 MR. CANO: Mid September forward, Your Honor.

19 THE COURT: All right. And September --

20 MR. CANO: Mid September, October, November.

21 THE COURT: -- right. And September for the record is my
22 civil stack. November -- mid November through the rest of the year
23 is my civil stack.

24 MR. CANO: Okay.

25 THE COURT: And so it's unfortunate --

1 MR. CANO: We're setting January I guess. Is that where
2 we're looking at then?

3 THE COURT: Yeah, that's --

4 MR. LALLI: Well, I have a capital case that's been continued
5 a number of times that's set February 6th.

6 THE COURT: Why don't we recall it and see if my JE -- JEA
7 has the 2012. We'll recall it in about five minutes.

8 [Matter trailed]

9 [Matter recalled at 8:27 a.m.]

10 THE COURT: Okay. And I understand someone was busy in
11 January; is that correct?

12 MR. LALLI: Your Honor, I'm not busy in January, but what I
13 can tell the Court is I've got a capital case in the middle -- in
14 the middle of February. Now, that -- this case obviously is older
15 than that one.

16 THE COURT: Middle of February is my civil stack, so you're
17 safe here. Can we put you January 9th?

18 MR. CANO: We're open, Your Honor.

19 THE COURT: State?

20 MR. LALLI: We can, but I think -- I think a January 9th date
21 is going to invade the schedule of that other trial that I have.
22 Now, maybe -- maybe this one will be much quicker.

23 THE COURT: Maybe. Well, we could start -- well, because of
24 the questionnaires we need to have we're into the last week of
25 December to have people come in and it's going to be very difficult

1 --

2 MR. CANO: I agree with the Court.

3 THE COURT: -- with the Court. Let's just set January 9th and
4 I have to need to make some adjustments we'll do that, so --

5 MR. LALLI: Very well.

6 THE COURT: -- we'll have Calendar Call January 3rd at 8:15.
7 Trial January 9th at 10.

8 Mr. Malone, I don't know if you're up on everything
9 that was occurring in the other trial. I just want you to realize
10 for the record that there is testimony going to be involved
11 regarding fingerprints, DNA, blood splatter, forensic issues on
12 cause of death and many other issues. Those are -- please don't
13 interpret that to be an exhaustive list of issues, but those are
14 very technical issues. And I just want to make sure you're aware
15 of that, sir, and the folly of your decision to represent yourself.
16 Do you understand, sir?

17 THE DEFENDANT: Yes, sir. Which January, next year 2012?
18 Which one was it?

19 THE COURT: January 9th.

20 MR. CANO: 2012.

21 THE COURT: 2012. I'm sorry.

22 THE DEFENDANT: Okay. Thank you, Your Honor.

23 THE COURT: All right.

24 MR. CANO: Your Honor, the motion for library privileges;
25 what were we going to do with that?

1 THE COURT: What I'm going to do is because of the time frame
2 and we can't have it -- the problem with the jail can't have an
3 open -- open-ended order. What I'll do is I'm going to put it back
4 on calendar in a month or so, so you can give me in your mind what
5 other issues you need to resolve or research. And this way when
6 you get the library privilege, you can expedite your research
7 process. Do you understand that, sir?

8 'Cause I cannot set up a special treatment just for you
9 for the next year.

10 THE DEFENDANT: I understand, sir.

11 THE COURT: All right. And again I think Mr. Lalli makes a
12 good point that's part of the folly of you representing yourself.

13 THE DEFENDANT: And I do appreciate everything you have done
14 for me, sir.

15 THE COURT: All right. Good. We'll see you back -- put it
16 back on calendar in a month or so. We'll set it up for perhaps one
17 week at a time and go from there.

18 THE DEFENDANT: Thank you, sir.

19 THE COURT: All right.

20 MR. LALLI: Thank you, Your Honor.

21 [Proceeding concluded at 8:30 a.m.]

22 * * * * *

23 ATTEST: I hereby certify that I have truly and correctly
24 transcribed the audio/video proceedings in the above-entitled case
25 to the best of my ability.

Michelle Ramsey
Court Recorder/Transcriber