

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE; AND THE
HONORABLE LYNNE K. SIMONS,
DISTRICT JUDGE,
Respondents,
and,
FRANCISCO MERINO OJEDA,
Real Party in Interest.

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2 JUDITH ANN SCHONLAU
3 CCR #18
4 75 COURT STREET
5 RENO, NEVADA
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7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9 BEFORE THE HONORABLE LYNNE K. SIMONS, DISTRICT JUDGE

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11 THE STATE OF NEVADA,
12 Plaintiff,
13 vs.
14 FRANCISCO MERINO OJEDA,
15 Defendant.
16

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)
) CASE NO. CR15-0829
) DEPARTMENT NO. 6
)
)
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17 TRANSCRIPT OF PROCEEDINGS

18 MOTION FOR CONTINUANCE

19 WEDNESDAY, FEBRUARY 10, 2016, 9:00 A.M.

20 Reno, Nevada
21
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23 Reported By: JUDITH ANN SCHONLAU, CCR #18
24 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

 BY: LUKE PRENGAMAN, ESQ.

 DEPUTY DISTRICT ATTORNEY

 WASHOE COUNTY COURTHOUSE

 RENO, NEVADA

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

 BY: CHRISTOPHER FREY, ESQ.

 DEPUTY PUBLIC DEFENDER

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 RENO, NEVADA

PAROLE AND PROBATION RENE VILLA

1 RENO, NEVADA; WEDNESDAY, FEBRUARY 10, 2016; 9:00 A.M.

2 -oOo-

3 THE COURT: Case number CR15-0829, the State of
4 Nevada versus Francisco Merino Ojeda. State your appearances
5 for the record.

6 MR. PRENGAMAN: Luke Prengaman for the State.

7 THE COURT: Good morning.

8 PAROLE AND PROBATION: Rene Villa on behalf of the
9 Division.

10 MR. FREY: Chris Frey on behalf of Mr. Ojeda present
11 today in custody.

12 THE COURT: Good morning, sir.

13 THE INTERPRETER: Good morning, Judge.

14 THE COURT: This is our certified court reporter, I
15 mean interpreter, excuse me. This is the time set in this
16 case for a motion to continue trial. I have had an opportunity
17 to review the documents that were, I don't have a file date on
18 here, but they are dated February 9, 2016 that was filed by
19 Mr. Frey. My note on top was "no time to oppose?" However, on
20 my break, I was able to review the State's documents in full.
21 So are all parties prepared to go forward and argue this
22 motion today?

23 MR. FREY: We are, Your Honor.

24 MR. PRENGAMAN: Yes, Your Honor.

1 THE COURT: All right. It is your motion, Mr. Frey.

2 MR. FREY: Thank you, Your Honor. I appreciate you
3 setting this hearing. It was the intent of the parties to
4 bring this to your attention before the Motion to Confirm on
5 the 17th. Typically, as is the custom in this jurisdiction,
6 once the trial is confirmed, negotiations cease and the people
7 are committed to the actual trial of the case. I alluded to a
8 continuance early on in January. Around mid January, I
9 reached out to the State with that request. There was
10 communication exchanged. I apparently misinterpreted the
11 response of he State which appeared to be consent to the
12 continuance. The Court expressed any request for continuance
13 be placed on the record, and required confirmation from the
14 State. In deed, there wasn't any support for a continuance,
15 in which case I proceeded to file the motion and requested a
16 hearing date, and here we are.

17 What I would like to do, Your Honor, is, one,
18 highlight the facts of my Motion to Continue. I tried to lay
19 out as much context as I could so you had a full understanding
20 exactly of what this case really entails. I think, in viewing
21 the statement of facts in the motion as well as the statement
22 of facts in the pretrial motion work, we have given you a good
23 sense of where the prosecution would be going in terms of
24 evidence. There are two components to the presentation of the

1 case, DNA evidence as well as Mr. Ojeda's statements. Those
2 statements have been challenged in two Motions to Suppress
3 that are filed with the Court. But I think you, hopefully,
4 have a grasp of exactly what the trial would entail in this
5 case.

6 I will focus now on my Motion to Continue, Your
7 Honor. The thrust of that motion, well, it really boils down
8 to how the defense is going to challenge the DNA.

9 The evidence in this case is highly technical. It
10 is going to be roughly, if not a majority of the presentation
11 of the State, a very appreciable component of their
12 presentation. But I want to get to the context and provide
13 context by way of responding to some of the contentions in the
14 response from the State.

15 Your Honor, this case has been pending for roughly
16 eight months. Judge, I think relatively speaking, that is not
17 a very long time for a murder case to go to trial, certainly a
18 murder case involving the deadly weapon enhancement in which
19 the penalties are actually forty to life if you base it on the
20 date of the commission of the alleged offense which was 2004.
21 Mr. Ojeda, it would entail he would in effect spend the rest
22 of his natural life in prison if either Your Honor sentences
23 him to life without possibility of parole or if you simply
24 sentence him on the deadly weapon enhancement, provided there

1 was a finding from the jury in that regard and the subsequent
2 offense. That is forty to life. Typically, once the first
3 motion is filed in a case, according to my experience in this
4 jurisdiction, and I think this will be corroborated by the
5 State, then negotiations do terminate.

6 The defense reached out to the State with a proposal
7 in November, precisely on November 5th. That was a settlement
8 offer that had been pending under consideration by the State
9 until mid January. Roughly two and a half months had elapsed
10 at that point in time. The settlement offer was, at that
11 point, rejected, then we renewed another settlement offer
12 which to this day is still under consideration. In the
13 meantime, between roughly January 19th, January 25th, I should
14 say, when the settlement offer was rejected and to this point
15 in time, the message appears to be quite clear that the State
16 may not been entertaining any offers in this case which, quite
17 frankly, came as news to the defense.

18 The message prompted us to begin to retain the
19 appropriate experts one of which was the DNA expert
20 referenced.

21 THE COURT: Mr. Inman?

22 MR. FREY: Mr. Inman, absolutely. Because if this
23 case indeed was going to trial, the defense would have to
24 meet, in an intelligent fashion, the DNA evidence going to be

1 presented by the State, hence, the retention of Mr. Inman.
2 There was inquiry when he was retained in January, late
3 January directly after the rejection of the settlement offer
4 which had been pending for over two months. I think that was
5 prudent in terms of timing, a prudent time to retain
6 Mr. Inman. The defense is a representative of the Washoe
7 County Public Defender's office. Certainly, we want to reach
8 a settlement if we can. But we also have to be stewards of
9 public resources. In this case, we didn't want to cross the
10 bridge so to speak and retain experts that would accumulate a
11 total of thousands of dollars until we knew settlement efforts
12 were exhausted. I think, at this point, the State is not
13 entertaining any settlement proposed by the defense. If that
14 is the case, that is, again, news to us.

15 What I would ask the State to do, as I have in
16 correspondence, is to at least please be transparent whether
17 or not we are going to settle this case. If there is a chance
18 of settlement, that would affect how we spend our resources.
19 If there is not a chance of settlement, again, that will
20 affect how we use our resources and the timing when we
21 actually obtain those resources. If we are going to trial on
22 this matter, we certainly want to be prepared. So I want to
23 put that in context, because that explains kind of the timing
24 issue with respect to the retention of Mr. Inman and the

1 service of the subpoena on January 29th which requested a
2 number of items.

3 The State has made a suggestion there needs to be a
4 showing of materiality with respect to those items. I can
5 certainly absolutely make that showing.

6 THE COURT: Basically, you take the position we need
7 a continuance for you to prepare an adequate defense. That
8 defense includes, at this juncture, two prongs you need to
9 address. One is the DNA evidence and retaining Mr. Inman.
10 The second is some sort of linguistic expert that will be able
11 to analyze the interviews conducted, correct?

12 MR. FREY: That's correct.

13 THE COURT: I don't know what the actual specialized
14 training or degree would be. Let's go to the DNA. I read
15 your motion to say you had effectively requested this because
16 of this catch-all phrase that says scientific evidence in your
17 original discovery request before. You come along now and
18 asked for more, which I did have a note why was this not
19 served January 29th? I think you have given me that reason.
20 I think I also understand you are saying you effectively
21 requested this by that catch-all scientific information over
22 seven months ago. But isn't the point that, number one, there
23 is samples. Two, they were analyzed. Three, there was a
24 result. So you want to be able to have your expert recreate

1 what they did within all the parameters they did and/or
2 analyze what they have done. In order to do that, you need
3 this additional information including the CD, a manual,
4 whatever to ensure the methodology and what was done by the
5 State's expert are correct?

6 MR. FREY: Absolutely, I think at the minimum.

7 THE COURT: So my question on the CD Rom, is there
8 in fact one that can be produced? I am going to let you
9 address this. So I want to know every single one of these
10 things that have been requested if they actually exist. Some
11 of them may not, I am saying may not exist. I required that
12 this be put on the record simply because what bothered me was
13 that we sat here and you chose the date, and Mr. Ojeda has
14 been in custody for a significant amount of time. We had an
15 extensive discussion. This was the date, and the Court has
16 reserved these two weeks. So it is not simply whether or not
17 it is for the defense or the State but also the Court's
18 resources and time.

19 That being said, with regard to the Motion for
20 Continuance, I am inclined to grant it unless the State
21 convinces me otherwise in their argument. I have read
22 everything. I am not going to preclude you from putting a
23 defense on in this case. But what this Court is going to do,
24 I am going to require parameters in the interim. I am going

1 to require a series of hearings on all of these motions so
2 that we do not get backed up to the new date and then we are
3 spending late nights on all of these motions.

4 So that being said, I am going to let the State
5 argue. I wanted to be fair about what my inclination was so
6 that the State can address that. Go ahead.

7 MR. PRENGAMAN: Thank you, Your Honor. I don't know
8 I am going to convince you to change your mind on the
9 continuance. I think the situation, the defense is basically
10 saying, as I take it, they are not ready and they need more
11 time. I don't think that is going to change. So I understand
12 the Court's perspective. What I do take issue with, as I
13 indicated in my response, is the blame shifting. I frankly
14 consider it unreasonable to take a position they made an offer
15 to the State and they held off for months and months and
16 months doing any preparation pending that decision. If that
17 was the case, I would have expected reasonable defense
18 counsel, I don't mean to disparage Mr. Frey, I would have
19 expected anyone to tell me, look, Mr. Prengaman, will you let
20 me know. I have got experts to retain, and sort this out.
21 That would be reasonable. That would tell me there is some
22 reason I should be maybe moving faster. I never would have
23 expected somebody in a murder case to do little preparation,
24 not retain an expert when DNA is obviously an essential piece

1 of evidence in the case, to not address some of the other
2 things that have been mentioned. So I think that is
3 unreasonable.

4 I want the record to be clear that is an
5 unreasonable position to take, and where we are because of
6 that. But, frankly, if I had known any of that, it might have
7 changed things. But I still think that should have been
8 conveyed to the State. As far as -- So I guess, unless the
9 Court has any questions of me as far as the continuance issue?

10 THE COURT: I mean whether or not it is an office
11 policy not to consider any type of, as Mr. Frey says, kind of
12 settlement offer in this case, certainly, if one is directed
13 to you, you have to consider it, correct? I would imagine you
14 would thoughtfully consider any offer, not just dismiss it out
15 of hand.

16 MR. PRENGAMAN: That might be reasonable to do. I
17 don't think the State has the full same burden as the defense.
18 The defense has the responsibility to take the offer to his
19 client. I don't think the State has an ethical burden to
20 consider an offer. I think the State can reasonably take a
21 position we are not to consider it.

22 THE COURT: But for the community's resources and
23 funding.

24 MR. PRENGAMAN: It certainly would be prudent and

1 reasonable for a prosecutor to consider an offer, of course.
2 In fact, I never told Mr. Frey in this case I wouldn't
3 consider any offers, we weren't going to negotiate. But it is
4 also not a small thing to do. The things I think are
5 reasonable the prosecutor needs to do in order to, again,
6 without going into all the details, if you are going to
7 consider an offer like that, although the prosecutor makes the
8 decision, there are certainly a number of people that should
9 be included in the know, so to speak, that an offer is under
10 consideration. That is not an insignificant thing, especially
11 when there is a death involved.

12 THE COURT: I understand. I don't want to know any
13 of the details of any sort of negotiation, but I wanted to
14 establish that, based on not only office policy, certainly you
15 would consider anything if it was propounded..

16 I do want to move to a couple of other questions I
17 have. That is with respect to my recollection, something was
18 provided in a PDF and it cannot be read. That was not
19 provided in the appropriate form. What I want to know, in
20 regard to those items that are delineated on page 6 and 9 of
21 the motion, I think sometimes the defense can ask for
22 information but it may not exist. With regard to electronic
23 data on CD Rom including, not limited to raw data files
24 produced by the typing instrument, do you have that?

1 MR. PRENGAMAN: Your Honor, the Crime Lab has that
2 material. Now I think I addressed that at least in part in my
3 response.

4 THE COURT: Your position is it is not material?

5 MR. PRENGAMAN: Your Honor, what my position was, the
6 defense would need to show it is material. There is a couple
7 of issues that surround that.

8 THE COURT: Okay.

9 MR. PRENGAMAN: I don't think -- The Court read my
10 response. I don't need to outline my position in regard to
11 the statute and what is required. But addressing your
12 question about the existence of the material, this case goes
13 obviously, back to 2004.

14 THE COURT: I know.

15 MR. PRENGAMAN: There was over a hundred samples,
16 well over 100 samples that were processed in the course of
17 this case. There were a number of people who provided a DNA
18 sample to be eliminated as suspects. There was a very, very,
19 significant analysis in this case. I know going back to 2004
20 is going to be a very significant amount of work. It is not
21 like I can just punch up this case and have all this data
22 appear. It is going to require significant investment of time
23 by Crime Lab personnel to go back and cull that information.

24 THE COURT: They must have some index.

1 MR. PRENGAMAN: I can't pretend I am familiar with
2 the index. I know, from speaking with the Crime Lab, it is
3 not just a matter of sitting down and punching it up. It will
4 have to be searched for. They don't store it in like a filing
5 cabinet and here is that log-in item for this case. It is not
6 like that, I know from speaking with them.

7 THE COURT: Let me step back. Those 100 samples can
8 be analyzed for other cases as well or only this case?

9 MR. PRENGAMAN: It depends on the sample. I think
10 some people gave just sort of broad consent, here is my DNA.
11 Some people gave limited consent, and the police were only
12 going to use this to compare in this case and no other case.
13 So it does kind of vary.

14 THE COURT: Here is what I think we are going to do
15 with regard to this. And I understand your position. I am
16 going to require the defense to establish those items are
17 material, however, I am going to direct you to notify the
18 Crime Lab that these requests might be coming, and we are
19 going to have a hearing on exactly what would be required to
20 do it. And I want them to tell you so we are not guessing.
21 We are going to have a very clear indication of what. They
22 don't need to go through Herculon efforts if it is just
23 unfathomable or unreasonable. But I am going to, because I
24 agree, which this is a very serious case, the charges are very

1 severe, but I also believe when you have any kind of technical
2 data or testing that is performed, that the parameters of the
3 testing, the methodology, the guidelines, anything that is
4 used should be able to be discovered by the other side, should
5 be produced. But I am going to give you a chance to explain
6 that more in depth, not just rely on your opposition to the
7 Motion to Continue.

8 So that being said, what I think we should do here
9 is, I find that there is good cause to continue this, however,
10 I wanted to get an idea with regard to the DNA, because I am
11 trying to frame how much time I am going to give. And I did
12 have-- I need to say I didn't start off by contemplating a
13 continuance. But I have a memorandum up here somewhere
14 regarding appropriate times. Let's hope I didn't leave it on
15 my desk. Do you have a copy of that? Here it is. Never
16 mind. It is going to be according to the Court's calendar.
17 And here is your options. We are going to start with this and
18 go backwards. Now we are going to set some hearings today as
19 well, because I happen to know two weeks are available now.

20 MR. FREY: That's right.

21 THE COURT: So here are suggested dates. I am going
22 to work from the farthest out backward. The weeks of
23 September 19th to September 26th. Or September 12th to the
24 19th. I can also do the weeks of August 22nd to 29th or the

1 weeks of July 25th to August 1st. So I was inclined, based on
2 some of what you presented, what I think will be extensive
3 motion practice, to go with the September dates, but I will
4 hear from you if that is not convenient.

5 MR. FREY: Well, Your Honor, for purposes of the
6 motion hearings, I wouldn't have any objection to doing those
7 in March provided the State's witnesses that they believe they
8 need to have present are available.

9 THE COURT: Well, there are a lot of motions. We
10 are going to have more than one motion here. What we are
11 going to do is pick a trial date, your dates for disclosure.
12 I imagine you can retain your expert, but you don't
13 necessarily have to have them incur time if you aren't going
14 to do anymore negotiation. We are going to go backwards. We
15 are going to have a trial date. You have the deadlines that
16 are normal under the rules, correct, for disclosure?

17 MR. PRENGAMAN: Yes, Your Honor.

18 THE COURT: Those are going to be moved up by thirty
19 days. I am going to issue an order to that effect. Now with
20 regard to, let's look at September for trial dates first.

21 MR. FREY: I have a murder trial that begins
22 September 12th, Robert Ramirez, Department 8.

23 THE COURT: Is it going to go?

24 MR. FREY: I expect it will.

1 THE COURT: Okay. Then let's go back to August.
2 August 22nd to 29th.

3 MR. PRENGAMAN: Your Honor, I have a two-week
4 murder, I am sorry, actually attempted murder, multiple sexual
5 assaults, two-week trial set the beginning, the 8th scheduled
6 to go through the 19th.

7 THE COURT: Okay. You can't get ready in three
8 days?

9 MR. PRENGAMAN: I cannot, Your Honor.

10 THE COURT: That is why you have to be ready 30 days
11 in advance. Okay. July 25th and August 1st. Here is the
12 problem. That backs up against another murder trial in
13 October.

14 MR. PRENGAMAN: Your Honor, if it helps, when Mr.
15 Frey initially broached subject of a continuance, I think
16 there was a legitimate misunderstanding. One thing I
17 mentioned to him was that, because he mentioned a short
18 continuance, I told him on my calendar I was looking at
19 honestly, December.

20 THE COURT: We are not doing a murder trial in
21 December. You won't have very happy jurors.

22 MR. PRENGAMAN: No. I was just mentioning the date.
23 I agree with Your Honor. But as far as timing on my calendar,
24 I told him then I was full, that is what I was looking at,

1 because I have got a death penalty re-sentencing in October.
2 I have got trials that go out. Honestly, to have enough lead
3 time to prepare for this case, I would have to set it in early
4 December, even though I think I even mentioned I prefer not to
5 have it in December. So I would suggest --

6 THE COURT: January.

7 MR. PRENGAMAN: Yes, Your Honor. I don't like it,
8 but with my calendar.

9 THE COURT: I mean we are going to talk to
10 Mr. Ojeda, specifically. He's in custody, been in custody a
11 long time. This is almost another eleven months. I want to
12 make sure. It is eleven months if we go to January. However,
13 we have an eight week trial starting in February. It is a
14 civil trial. But it is about over 900 million dollars, so I
15 have a feeling it will go. Do I think it will be eight weeks?
16 No. What do we have in January?

17 THE CLERK: Five-day bench trial January 23rd.
18 Five-day jury January 30th.

19 THE COURT: What if we go back two weeks in January?

20 THE CLERK: First two weeks. January 3rd.

21 THE COURT: What about the following, the 10th?

22 THE CLERK: January 9th?

23 THE COURT: January 9th.

24 MR. FREY: My trial calendar does not extend that

1 far out. I imagine I am available.

2 THE COURT: Okay. January 9th. We can do it the
3 3rd. I think if anyone is going out of town that doesn't make
4 the most sense. January 9th two weeks.

5 MR. PRENGAMAN: Your Honor, if I may, just to sort of
6 maybe preparatory for you're setting a hearing on the
7 discovery of the DNA material, I am prepared to, I could
8 outline today, go down that list on the subpoena. I have
9 discussed it with the Crime Lab. I can give the Court an idea
10 what is and isn't there. There is one item that isn't there.
11 I think there are some issues as to the others. But I am
12 prepared to at least, if that helps in terms of leading into a
13 hearing, I am prepared to do that right now.

14 THE COURT: Okay. We may. We are in the midst of a
15 two-week trial right now. They are coming back at 1:00
16 o'clock. I am trying to stage this so I have had enough time
17 to do my work as well and fairly consider it. We are going to
18 set this.

19 So your continuance, I find there is good cause for
20 the continuance. I will continue it based on the availability
21 of dates that counsel has expressed for January 9th. I would
22 like specific consent from Mr. Ojeda that he understands that
23 what the request is is that he have additional time to prepare
24 this defense and the proposed date is January 9, 2017. That

1 he will be in the position of remaining in custody until then.
2 I want to know if he consents to that trial date.

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Now let's go to the next item we
5 are going to. We have those two weeks that we were set for
6 this starting March 7th. So during those two weeks, first, I
7 want you prior to meet and confer and try to work out this
8 subpoena and the Motion to Quash the subpoena to determine
9 what you have, what you will agree to and basically what you
10 stipulate is material. Anything you cannot agree to or would
11 be within the category of Herculon efforts, that the State
12 will be allowed to present that to the Court.

13 So in preparation for the date we are going to
14 select, you can just file an outline of what is still at
15 issue, what you object to with the backup of what is required
16 to produce it. If you need witnesses to support that, I am
17 going to obviously take the representation of counsel, if you
18 represent to me you consulted, exactly what would be required,
19 you consulted with the Crime Lab personnel. All right.
20 Whatever you don't work out, you are going to tell me what you
21 have, what you don't have, what it would take to produce it
22 for the defense.

23 MR. PRENGAMAN: If I may, to be sure, with your
24 permission, may I do that without Affidavit by representation

1 with my discussion with the Crime Lab?

2 THE COURT: Right. I mean it is not as Mr. Frey is
3 going to disbelieve you.

4 MR. FREY: No one is going to require Affidavits.

5 THE COURT: That is number one. Number two, we have
6 these Motions to Suppress. I don't know if these have been
7 actually submitted.

8 MR. FREY: No, Your Honor. I don't believe the State
9 filed its opposition.

10 THE COURT: What we are going to do, you have time
11 to file these and during the normal course, and then they will
12 be submitted to the Court for decision. But I want to utilize
13 the time between now and trial to start picking off these
14 motions. One of them that I am, I don't know if you opposed it
15 or not, but I am going to allow is the Motion for Equal Access
16 to the criminal records of the potential jurors. You filed
17 that, correct?

18 MR. FREY: I did. They opposed and we submitted.

19 THE COURT: It is granted. I will tell you what is
20 going to happen. You are going to provide that material, but
21 you don't usually get the jury list until Thursday. In my
22 observation of trials recently, I am going to give an example,
23 I don't expect we would have somebody with similar charges on
24 a jury, we had a DUI causing substantial bodily harm. Out of

1 the 24 persons we had up here, eight of them had DUIs. And
2 there were at least seventeen the D.A. indicated they had some
3 concern about. So my normal extrapolation of that fact was the
4 the P., would have more concern. It absolutely cemented to
5 this Court that is information that the defense should be
6 allowed to have. However, that being said, I understand the
7 Federal guidelines. So you will be required to deliver a hard
8 copy -- Are we switching? We have a new interpreter who has
9 been here for some time listening to what has occurred now
10 filling in. Welcome. You will provide it to the Court in
11 hard copy no later than 4:00 o'clock on the Friday before
12 trial. You will pick it up by 5:00 o'clock on the Friday
13 before trial in hard copy. I am going to tell you what
14 happened in this prior trial. It was provided by e-mail. Ms.
15 Boe waited until late in the day to provide it to the defense.
16 We never got it. We showed up on Monday. The State had
17 provided it, but it bounced back in the system. No one knew
18 that. The prosecutor didn't know. The defense didn't have
19 it. We didn't know it had been produced. I am not going to
20 allow that to happen again. Produce the hard copy. If it is
21 as extensive as we have been seeing in trial, you should have
22 a hard copy. Those are the parameters. If you want a written
23 order, we'll prepare it.

24 MR. PRENGAMAN: If I may, if you could, please,

1 enter a written order.

2 THE COURT: Absolutely. Now I think what we should
3 do, I would like to, we are going to set a hearing date. Do
4 you have a preference between March 7th and the 18th, anybody?

5 MR. FREY: No.

6 MR. PRENGAMAN: I request it be the 7th. That would
7 coincide with the subpoena the State has served.

8 THE COURT: I think our trial that was going to
9 occur behind you if yours did not occur went off, so we'll
10 have it on the 7th. This will be a motions hearing. What I
11 would like you to do is designate by February 22nd what
12 motions you request to be heard on that date. On that date, we
13 are going to set other motions hearing for any other motions
14 that you wish that make common sense. An example is issues
15 regarding voir dire. Whatever any of those other motions that
16 logically make sense to decide later. I wanted to just give
17 my ruling on the equal access, because I knew what I was going
18 to do on that. We'll issue a written order. So you will
19 provide the Court with what motions will be the subject. If I
20 want to expand it, I will notify you. Or, if I want to cull
21 it down, I will notify you. It should be with regard to the
22 pending issues on the subpoena and the quash should be
23 narrowed by your work, meeting and conferring. Okay. Then
24 have dates in mind for subsequent hearings, because we are

1 going to have hearings probably every two months up to trial
2 so that we can decide. I would rather take them off than try
3 to schedule them.

4 MR. FREY: I am assuming, with regard to any motions
5 you are requesting oral arguments, correct, at this point?

6 THE COURT: If there are any in which you say you
7 don't want them, please notify me and we'll decide them on the
8 paper. I tend to decide them on the submitted papers, but I
9 don't want to foreclose if you want to request. You indicated
10 there was one of first impression.

11 MR. FREY: I think within the State of Nevada it
12 pertains to the issue if it is Motion to Suppress regarding
13 defective Miranda waiver, there is case law, Federal Circuit
14 Courts. In that sense, it would be a first impression issue.

15 THE COURT: That you definitely I want oral
16 argument. Have you actually filed the motion?

17 MR. FREY: Filed, have not opposed it.

18 THE COURT: That's right I want to give ample time
19 to oppose what you need. And I assume you will work together
20 on any, with professional courtesy, extensions of times since
21 we have a lot more time now. But we are going to, all of your
22 dates right before trial are now moved back by 30 days. So by
23 the 7th I want you to prepare a stipulation that outlines all
24 the necessary disclosure dates prior to trial. I want you to

1 agree on them 30 days in advance with the Court's signature.
2 We'll be working on this in December, but we'll have our trial
3 later.

4 Motion to Confirm, let's do it a bit earlier than we
5 would normally do.

6 THE CLERK: Friday December 9, 2016.

7 MR. FREY: That's fine.

8 THE COURT: Anything else we can accomplish today?

9 MR. PRENGAMAN: Well, Your Honor, as to the motions,
10 we both have outstanding motions. It might be easier to set a
11 date to have the opposition due and go from there while we are
12 here.

13 MR. FREY: I don't oppose any extension of time if
14 the State's requesting that.

15 THE COURT: I just would like to have it so I can
16 review all of them before any hearing. That is where I
17 thought, that was my concept in delineating what we were here
18 for. I didn't get your filing until I walked in this morning,
19 and I had taken everything with me last night. Listen, I know,
20 I litigated complex cases, I totally understand we do what
21 deadlines are requiring us to do. But I want to make sure I
22 get the time and my law clerk gets the time to thoughtfully
23 consider anything either party files. If we work from that
24 7th, you figure out what we are going to decide. You just

1 agree on whatever dates you want for the opposition and reply.
2 All of it has to be to me one week prior the 29th.

3 MR. FREY: I didn't catch, the 29th?

4 THE COURT: You need to have everything submitted by
5 the 29th if you want it considered on the 7th.

6 MR. PRENGAMAN: In other words, any motions we are
7 going to hear on the 7th need to be submitted.

8 THE COURT: Yes. I understand we don't have to
9 consider them all on the 7th, because we have so much more
10 time. I think both the Court and the Court staff would be
11 appreciative if we can stage some of these motions. I am
12 telling you on the 7th we are going to pick another day on
13 motions. I have those two weeks, too. We want to pick
14 another one during those two weeks if we can.

15 MR. PRENGAMAN: One thing, Your Honor, I mentioned
16 Mr. Frey mentioned in his Motion to Continue, it has to do
17 with the translation. He made reference to challenge to the
18 State's translation. I am not going to try to get into the
19 case law or my ability to present things at trial. However,
20 for purposes of the motion hearing, the suggestion was there
21 would be a challenge to that. I think I am entitled to notice
22 of that if there is an alternative translation as the case
23 suggests. If there is going to be an expert witness, a
24 Spanish speaker, I think I am entitled, as I would have been

1 by the discovery deadlines in this case, entitled to that
2 material. So I just want to make that request on the record
3 that I expect that is one of the things we want to deal with
4 at the Suppression Motion on the 7th. But that is going to be
5 an issue for the State if that kind of material is going to be
6 presented at that hearing, and I don't have it ahead of time.
7 I think it is reasonable.

8 THE COURT: Let's set another date within that two
9 weeks right now for your calendar. So we have our 7th. Let's
10 do a backup date in case something is brought up that you need
11 additional time. I am expecting you to give him all the
12 information in the interim. I am going to give a backup date.
13 We set something on the 24th, I think.

14 THE CLERK: March 7th, March 18th the two-week
15 period.

16 THE COURT: Oh, you are right. How about March
17 18th? I can't set anything on the 25th anyway.

18 THE CLERK: You have the Wilson sentencing set.

19 THE COURT: The morning of, how about the 14th?
20 March 14th?

21 MR. FREY: Motion to Suppress?

22 THE COURT: This is just in case. It probably will
23 go off.

24 MR. PRENGAMAN: If I may, Your Honor, because I am

1 going to be, I presume the things are the ones we are talking
2 about for instance the suppression of evidentiary hearings, I
3 anticipate subpoenaing witnesses. If the Court could
4 accommodate, could we set a secondary date? A week is not
5 much time.

6 THE COURT: To subpoena witnesses?

7 MR. PRENGAMAN: What I would plan to do is probably
8 have to subpoena them all at once or have enough time in
9 between if something fell through on the 7th, I would have
10 enough to time to subpoena witnesses.

11 THE COURT: I will give you all day until 4:00 on
12 the 7th. I am not giving you to 5:00 o'clock that day, but I
13 will give you till 4:00 o'clock. That is why I want a road
14 map what you are expecting to have. If you would like to go
15 into the 8th, we can. And you are under a continuing
16 subpoena.

17 MR. PRENGAMAN: I think that is highly likely given
18 the amount of material at least on the suppression of the
19 statements, it is highly likely that is going to be at least a
20 two-day hearing. I would suggest planning for two days.

21 THE COURT: My experience is we better plan for
22 three days then. We'll plan for those two days. We'll also
23 have the afternoon of the 9th available. So those will be the
24 backup dates. However, I expect the ultimate professionalism

1 between the parties. Since we have this additional time, that
2 you utilize agreements. With regard to any additional
3 hearings after that, I am going to set status hearings at a
4 minimum of every two months after that. So you are very busy,
5 and I understand that. Our calendar is very busy the entire
6 year. So I want to set dates I prefer to take off, but they
7 are dates that will be there in case motions are filed and
8 submitted we can hear oral argument. You are doing your
9 outline so we know what we are doing on the 7th. We'll
10 reserve the time on the 7th, 8th and afternoon of the 9th so
11 you can subpoena your witnesses. You will work and agree on
12 whatever you can in the interim.

13 MR. FREY: Would you like me to respond to the
14 State's opposition to the Motion to Quash the subpoena?

15 THE COURT: It is up to you.

16 MR. FREY: I think so so there is a full record with
17 respect to our new material. Well, I already have one item.

18 THE COURT: I think if you take the time to sit and
19 discuss, some of it will work itself out. We'll narrow it
20 down what you need to. You may have some flexibility on the
21 Motion to Quash, and you may have some flexibility on the
22 underlying subpoena. So I would like you to explore that
23 first, okay?

24 MR. FREY: Okay.

1 MR. PRENGAMAN: Your Honor, on that issue, I guess
2 if trial will be continued, it obviates the need for the Crime
3 Lab to comply with those subpoenas. I would assume that is
4 one of the concerns.

5 THE COURT: Let's let the Court rule on the Motion
6 to Quash, okay, and the underlying narrowing. Yes, you can
7 advise them that -- What was your date for producing -- You
8 served it on the 7th of February.

9 MR. FREY: I think we are all waiting your order on
10 the 7th after our hearing on the Motion to Quash factually
11 what will be produced.

12 THE COURT: What you can tell them, I am going to
13 define what will be produced, and I am going to define, there
14 currently is a date of the 17th, but the Court will review
15 that date and modify it. I can do that on the Motion to Quash
16 if I don't quash the whole thing.

17 MR. FREY: I think the date is kind of tolled now
18 that I filed the Motion to Quash. I wouldn't have any issue.

19 THE COURT: I think he's trying to clarify the
20 timeline.

21 MR. PRENGAMAN: What I would like to tell them,
22 because the trial date is continued, technically the subpoena
23 is void. I would like to still --

24 THE COURT: Just say it is held in abeyance. It is

1 tolled. We'll give them a date certain. All right.

2 Mr. Ojeda, we have had a lot of discussion today,
3 and you will have the opportunity to discuss the procedural
4 matters with your attorney. If there is any questions that
5 you have he cannot answer, which I don't know there will be,
6 that you will have the right to be back in front of the court.
7 All right?

8 THE DEFENDANT: Uh-huh. That's fine.

9 THE COURT: Anything else, counsel?

10 MR. FREY: Not at this time.

11 THE COURT: All right. Thank you.

12 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)

4 I, Judith Ann Schonlau, Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department
8 No. 6 of the above-entitled court on Wednesday,
9 February 10, 2016, at the hour of 9:00 a.m. of said day and
10 that I then and there took verbatim stenotype notes of the
11 proceedings had in the matter of THE STATE OF NEVADA vs.
12 FRANCISSCO MERINO OJEDA, Case Number CR15-0829.

13 That the foregoing transcript, consisting of pages
14 numbered 1-32 inclusive, is a full, true and correct
15 transcription of my said stenotypy notes, so taken as
16 aforesaid, and is a full, true and correct statement of the
17 proceedings had and testimony given upon the trial of the
18 above-entitled action to the best of my knowledge, skill and
19 ability.

20 DATED: At Reno, Nevada this 17th day of March, 2016.

21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on 2nd day of June 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Joseph R. Plater, Appellate Deputy
Washoe County District Attorney's Office

I further certify that I have on this date, emailed a copy of this document to:

The Chambers of Judge Lynne K. Simons
(C/O Heidi Boe, Judicial Assistant)

John Reese Petty

John Reese Petty

Washoe County Public Defender's Office