

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,)	NO. 75662
)	
Appellant,)	
)	
vs.)	
)	
RIGOBERTO INZUNZA,)	
)	
Respondent.)	
)	

RESPONDENT'S APPENDIX

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEF.
309 South Third Street, #226
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Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 10 day of December, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

DEBORAH WESTBROOK
P. DAVID WESTBROOK
HOWARD S. BROOKS

I further certify that I served a copy of this document by
mailing a true and correct copy thereof, postage pre-paid, addressed to:

RIGOBERTO INZUNZA
c/o P. David Westbrook
309 South Third Street, Suite #226
Las Vegas, NV 89101

BY /s/ Carrie M. Connolly
Employee,
Clark County Public Defender's Office

Docket 75662 Document 2018-006104 034



Rigoberto Inzunza

Previous



+3

Rigoberto Inzunza checked in to Ocean County Park.

June 20, 2016 · Lakewood, NJ ·



Friends · 2,025



See what you have in common with Rigoberto's friends.

View

English (US) · Español · Português (Brasil) · Français (France) · Deutsch



Rigoberto Inzunza shared Rafaela Goldsmith's photo

June 19, 2016 ·

Happy Fathers Day DAD may u RIP

Rigoberto Inzunza Timeline 2016 All Posts

Intro

- Project manager at Landscaping Inc
- Former Project manager at Landscaping LLC
- Studied Raiders football at Oakland Raiders Nation
- Studied at UNLV
- Studied at Eldorado High School (Las Vegas)
- Went to Eldorado High School (Las Vegas)
- Lives in Las Vegas, New Jersey
- From Las Vegas, Nevada

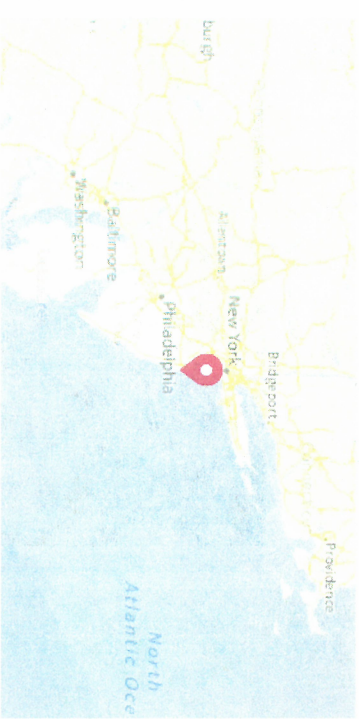


Photos



- Juli Belden Griffin Yours???
- Rigoberto Inzunza yes
- Juli Belden Griffin replied · 1 Reply

Rigoberto Inzunza checked in to SEA GIRL BEACH, NJ



SEA GIRL BEACH, NJ
Region · Sea Girl, NJ
23,492 people checked in here

Share

Save

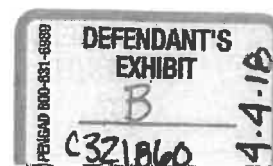
Rigoberto Inzunza shared Dueño y Perdidá's photo.



CONTACT PAGES SEE ALL

- CW
- B-R

CONTACTS



POSED

C321860

037

#14 19610

Moved to Pahrump in May 2003

Rigo was neighbor in Pahrump from March 2004 to January 2005

Rigo lived with in Pahrump from Jan 2005 to March 2005

Rigo moved to Vegas they stayed in Pahrump

November 2006 moved to Vegas, lived on Yerba (one month)

December 2006 lived at 6632 Celeste Ave

March 2007 moved to Webster (NLV) - Rigo moved in with

September 2009 Rigo moved out

DeDe incident occurred October 2010

January 2011 moved from Webster to 720 Easy Street

Harry's dad married DeDe's aunt and they lived across the street

720

DEFENDANT'S PROPOSED
EXHIBIT

C C321860

1 PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
2 P. DAVID WESTBROOK, CHIEF DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 9278
3 309 South Third Street, Suite 226
Las Vegas, Nevada 89155
4 (702) 455-1762
westbrpd@ClarkCountyNV.gov
5 Attorney for Defendant

6
7 **DISTRICT COURT, LAS VEGAS**

8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,)	
)	
10 Plaintiff,)	CASE NO. C-17-321860-1
)	
11 v.)	DEPT. NO. V
)	
12 RIGOBERTO INZUNZA,)	DATE: 3/21/18
)	TIME: 9:00 a.m.
13 Defendant.)	

14
15 **DECLARATION OF COUNSEL IN SUPPORT OF DEFENDANT'S MOTION TO**
16 **DISMISS PURSUANT TO DOGGETT V. UNITED STATES, FOR VIOLATION OF**
17 **STATE AND FEDERAL CONSTITUTIONAL RIGHTS**

18 COMES NOW, the Defendant, RIGOBERTO INZUNZA, by and through P. DAVID
19 WESTBROOK, Chief Deputy Public Defender, and hereby submits this Declaration of Counsel in
20 support of his Motion to Dismiss pursuant to Doggett v. United States, 505 U.S. 647 (1992).

21 DATED this 4th day of April, 2018.

22 PHILIP J. KOHN
23 CLARK COUNTY PUBLIC DEFENDER

24 

25
26 P. DAVID WESTBROOK. #9278
27 Chief Deputy Public Defender
28

DECLARATION

P. DAVID WESTBROOK makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada and I am the Deputy Public Defender assigned to represent the defendant, Mr. Inzunza, in the instant matter.

2. This declaration is based on communications with Mr. Inzunza's sister, Norma Goldsmith, and the other witnesses listed below.

3. In preparation for the hearing in this case, I contacted several of Mr. Inzunza's close family and friends to see whether they had ever been contacted by law enforcement in an effort to locate Mr. Inzunza. None of these witnesses was ever contacted by law enforcement prior to Mr. Inzunza's arrest. This list includes, but is not limited to, the following:

- Rafaela I DeGoldsmith: Defendant's (mother)
- Guadalupe Lopez DeHughes (sister)
- Kayla Hughes (niece)
- Melissa Collaso (friend of over 20 years)
- James Blomgren (brother-in-law and friend of 46 years)
- Maria Guadalupe Bortolotti (cousin)
- Emmanuel Nicholas Vosdoganis (nephew)
- Courtney Harris (friend of 5 years)
- Norma Goldsmith (sister)

4. I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief. (NRS 53.045).

EXECUTED this 4th day of April, 2018.



P. DAVID WESTBROOK. #9278
Chief Deputy Public Defender

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,)	NO. 75662	Electronically Filed
)		Dec 11 2018 01:18 p.m.
Appellant,)		Elizabeth A. Brown
)		Clerk of Supreme Court
vs.)		
)		
RIGOBERTO INZUNZA,)		
)		
Respondent.)		

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RIGOBERTO INZUNZA
Case No. 75662

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1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 **THE STATE OF NEVADA,**
9 **Plaintiff,**

CASE#: C321860-1
DEPT. V

10 **vs.**

11 **RIGOBERTO INZUNZA,**
12 **AKA RIGOBERTO LOPEZ**
13 **INZUNZA,**

14 **Defendant.**

15 **BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE**
16 **MONDAY, MARCH 19, 2018**

17 ***RECORDER'S TRANSCRIPT OF HEARING: ALL PENDING***
18 ***MOTIONS***

19 **APPEARANCES:**

20 **For the State:**

JACOB J. VILLANI, ESQ.
Chief Deputy District Attorney

21 **For the Defendant:**

P. DAVID WESTBROOK, ESQ.
Deputy Public Defender

22 **ALSO PRESENT:**

DANIELA LABOUNTY, ESQ.

23 **For Diana Saunders**

24
25 **RECORDED BY: LARA CORCORAN, COURT RECORDER**

1 Las Vegas, Nevada, Monday, March 19, 2018

2 [Hearing began at 11:26 a.m.]

3 THE CLERK: On page 3.

4 THE COURT: Case number C321860, State of Nevada
5 versus Rigoberto Inzunza.

6 MR. VILLANI: Good morning, Your Honor. Jake Villani, on
7 behalf of the State.

8 MR. WESTBROOK: David Westbrook, on behalf of Mr.
9 Inzunza.

10 MS. LABOUNTY: Good morning, Your Honor. Daniela
11 LaBounty, on behalf of Diana Saunders.

12 THE COURT: So this is on the Defendant's Motion to
13 Dismiss --

14 MR. WESTBROOK: Yes.

15 THE COURT: -- Pursuant to *Doggett versus United States*,
16 etcetera, etcetera.

17 It is the -- Master Calendar wrongly put this on for the Motion
18 to Vacate the Ex -- well to seal, because we were notified this morning
19 that there was a motion on to seal on an order shortening time. I did
20 sign the Order Shortening Time; however, it didn't get filed or served in
21 time, so --

22 MR. WESTBROOK: Okay.

23 THE COURT: -- it shouldn't have been put on calendar.

24 But do we have everybody we need? Yes for the other
25 motions that are on --

1 MS. LABOUNTY: Yes.

2 THE COURT: -- properly.

3 MR. WESTBROOK: True Your Honor, the Motion to Seal was
4 simply to ask permission to seal the offer of proof that was made in
5 response to Ms. Saunders' motion, which you know, is privileged
6 information for reasons that I described in the Motion to Seal. Just to
7 make sure that that information wasn't produced to any party.

8 THE COURT: Okay.

9 MR. WESTBROOK: So that's -- that was the purpose of the
10 Motion For Order Shortening Time. I'm not sure why it wasn't filed, but
11 that's all there is to it. And you know, the reason that I filed it openly as
12 opposed to just doing an ex parte motion, was simply because I thought
13 that Ms. Saunders would need the opportunity, fairly, to respond to the
14 equal protection argument, if she so desired.

15 It's a pretty simple argument, but if she wants to respond to it
16 then she should be able to.

17 THE COURT: You'd have to file the motion to seal something.
18 You have to -- it can't be ex parte. It needs to be filed with notice to the
19 other side, even if the thing that you're attempting to seal ultimately gets
20 sealed. But like I say, it's not properly before the Court this morning --

21 MR. WESTBROOK: Okay.

22 THE COURT: -- as the Order Shortening Time it didn't get
23 served or filed timely.

24 MR. WESTBROOK: Okay. I was under the impression that
25 they were served and filed timely, but if that's not the case, then that's

1 not the case.

2 THE COURT: No, it has to be -- it should have been filed on
3 Thursday in order for it, but that didn't happen. And in fact, I don't think
4 it got filed until --

5 MS. LABOUNTY: I believe --

6 THE COURT: -- Friday?

7 MS. LABOUNTY: Yes, Your Honor, I believe I saw it come
8 through like Friday late afternoon sometime.

9 THE COURT: We can't shorten anything to less than one full
10 judicial day.

11 MR. WESTBROOK: That is true. When was it signed, do we
12 know that?

13 THE COURT: Thursday.

14 MR. WESTBROOK: Okay.

15 THE COURT: In fact, my JEA emailed it to the secretary to
16 make sure that it would get timely done, but it -- that didn't happen, so
17 it's not on. But I don't, you know, I think we can proceed. Not with that
18 motion, because I can still hear that at a different time as to whether it'll
19 be sealed or not.

20 But let's take the Motion to Vacate the Ex Parte Order first.
21 Since that was filed first.

22 MR. WESTBROOK: Your Honor, I was going to suggest, of
23 course it's up to the Court's pleasure on this, but I was going to suggest
24 that we do the dispositive motions first since it would render Ms.
25 Saunders' motion moot if this case was dismissed. But it's up to the

1 Court.

2 THE COURT: Well I'm, I mean, I want to take this motion first.

3 MR. WESTBROOK: Okay.

4 MS. LABOUNTY: Thank you, Your Honor. We moved to
5 vacate the ex parte order on the basis of privilege that the record that
6 the Defendant was seeking from Ms. Saunders, who's a licensed
7 marriage and family therapist, are privileged and no exception under the
8 statute has been established by the Defendant.

9 Once Ms. Saunders claims a burden on behalf of her client,
10 which she's entitled to do under the statute, is then the burden shifts to
11 the person seeking the records to establish which exception may apply.

12 Defendant has argued that somehow this privilege has been
13 waived. Ms. Saunders, no privilege has been waived. While she can
14 assert the privilege on behalf of her client she can't waive it. It has to be
15 a voluntary disclosure by the holder of the privilege.

16 Ms. Saunders is a marriage and family therapist. She's been
17 treating who I believe is the victim in this underlying criminal matter. And
18 some allegations or some details were revealed to her under which she
19 was obligated to report them to law enforcement, as she's a mandatory
20 reporter for any instances of abuse or neglect, sexual assault, anything
21 of that of a minor.

22 So she complied with her legal obligations and reported these
23 allegations to the police. It was limited to specific facts that were
24 revealed to her during a therapy counseling session that, I believe, must
25 have led to the underlying criminal charges. There was no discussion of

1 therapy or treatment. It was her reporting to the police was simply
2 limited to what her client revealed to her that rose to the level of
3 mandatory reporting under the statute.

4 There's been no other voluntary waiver or disclosure that
5 would waive privilege. There's nothing in any of case law that supports
6 production of privileged records. In fact it's very clear, that even under
7 the discovery requirements of the State privileged records still don't
8 need to be produced unless an exception has been established. And no
9 such exception has been established in this case. And there's also our
10 position that the order itself was over broad. It just was a blanket order
11 for records. There was no time specified, there was no limitation on the
12 content in the records sought.

13 Ms. Saunders has been treating this client for a number of
14 years. I don't believe the allegations were revealed until two or three
15 years into treatment. So there would definitely need to be, if the Court is
16 inclined to grant productionary [sic] records the order would definitely
17 need to be limited in its scope, to a very specific time period, as well as,
18 very specific content of those actual records limited to specifically what --
19 or specifically to any mention of the allegations in this case, and you
20 know, nothing else regarding third parties or any other therapy notes for
21 treatment.

22 But it's our position, that the records are privileged and the
23 Defendant has failed to meet his burden to an exception to that privilege.

24 THE COURT: All right.

25 MR. WESTBROOK: Well, Your Honor, I'd like to start with

1 exceptions.

2 THE COURT: Okay.

3 MR. WESTBROOK: Obviously Ms. Saunders is not in a
4 position to know whether or not we've actually established something
5 that would meet the privilege, the exceptions to the privilege, because
6 she's not privy to the offer of proof that I submitted under seal for
7 purposes of meeting that burden. Nor should she be, because it has to
8 be presented under seal. To rule otherwise, to rule for example, that
9 *Bradley* requires the defense to expose privileged information, such as,
10 defense strategy and client communications in order to meet the *Bradley*
11 standard would violate equal protection, unless of course, Ms. Saunders
12 and her client are required to do the same.

13 So I submitted my information under privilege and I also argue
14 that they would also be required to submit their information to privilege, if
15 I am, which is what *Bradley* appeared to say so that the Court can
16 review it. And what's important to understand here and to keep our eyes
17 on the ball is that this is not the same thing as producing it to the
18 defense.

19 The whole purpose of in camera review and filing something
20 under seal is so that a finder of fact and a knower of the law, which is
21 Your Honor, can take a look at all of the information and determine
22 whether it's relevant and should be turned over to actually weigh the
23 standards. And unless we turn them over, then no one can make that
24 intelligent decision.

25 So I created an offer of proof. I filed it under seal initially and

1 filed it with a motion to file under seal, which I believe I filed on the 13th
2 of March. And then, excuse me I have a cold, Master Calendar set it for
3 the 28th, which of course was too late. So we tried to get it on for today
4 to argue. I'm not sure where the miscommunications happened or why it
5 didn't get filed on time, I apologize for that. But I got everything over
6 here as soon as I personally could. And I certainly have no problem with
7 the Court delaying a decision regarding whether or not we met the
8 standards of the exceptions to the privilege rule until the -- until Ms.
9 Saunders has a chance to respond to our Motion To File Under Seal I
10 suppose. Or until the time the Court has had a chance to look at my
11 offer of proof under seal.

12 Now the offer of proof again, can't be shared outside of the --
13 of chambers. I did submit an order to seal for in camera review, but I
14 believe that offer of proof more than meets the exceptions that were
15 noted. And it, you know, counters Ms. Saunders's points that we haven't
16 provided information to meet any exceptions. We have, she just can't
17 look at it. And also to the extent that Ms. Saunders might argue, well if I
18 can't look at it, how can I respond to it. That is precisely the Defense
19 argument when we're asking for records of this treatment.

20 As to the specific comments about SCOPE, the reason why
21 SCOPE from the beginning is important is because these allegations
22 came out of therapy. And it's our understanding that other prior
23 allegations, I don't know if they're prior false allegations or prior true
24 allegations, but other allegations have been made as a part of the
25 therapy. And that in fact, that is the reason for the therapy, as I

1 understand it. And again, this is one of the reasons why I need these
2 documents to actually verify if what I understand to be true is true.

3 But as I understand it, there've actually been four people
4 accused by the subject minor here of committing some kind of sexual
5 misconduct. One of which is her father, one of which is her uncle, one of
6 which is Darrington Rivers, and there's a record of that by both sides
7 and this is a witness for the State. And the fourth of which is Mr.
8 Inzunza.

9 All of that is certainly relevant, because if she's making prior
10 false allegations and remember we're saying that this is a false
11 allegation, and that goes directly to her credibility. And furthermore, it
12 invokes whether or not her therapy itself is relevant, because she's
13 going to therapy and she's accusing people. Okay, so it goes to her
14 state of mind and it actually brings the therapy into relevance.

15 As for the waiver of privilege, I agree that if you're a
16 mandatory reporter and you go and report that that is not a waiver of
17 privilege, because you're required by a different statute to do that.
18 However, Ms. Saunders did far more than just report. As a mandatory
19 reporter she's required to go in to the police department and report what
20 she knows. That's one time and it should be limited to the facts that she
21 knows and mainly it should be as a way to encourage further
22 investigation by the police.

23 She doesn't have to share a lot of information to do that. She
24 just has to go in and say, you know, my client told me that she was
25 touched by so and so and you need to follow up with the investigation.

1 Well Ms. Saunders, didn't just go there once, she actually met with
2 police at the request of her client and that's a very important fact to
3 remember. At the request of her client she went to the police three
4 different times. Spoke to the police often on behalf of her client relaying
5 things her client was not comfortable saying, and this is all in the police
6 report.

7 And she didn't just talk about the facts that concern Mr.
8 Inzunza; she also talked about the facts that concern Mr. Rivers. And
9 furthermore, Ms. Saunders, again with the permission and at the
10 express request of her client, told the police that she suffers from a
11 mental illness. Her diagnosis of a mental illness has nothing to do --
12 either her diagnosis of a mental illness has nothing to do with the
13 reporting or it has everything to do with the reporting. Either way it
14 certainly goes outside of what she was required to do under that statute.

15 She shared facts regarding the therapy by disclosing that the
16 client has -- her client has a mental illness. By doing that, she has
17 waived the privilege. We need to get to the bottom of it. And when I say
18 waive the privilege; I'm talking about as it relates to pretrial discovery.
19 Of course under *Bradley* the entire issue of whether or not we can cross-
20 examine on this under the confrontation clause is still open. *Bradley* is
21 purely a pretrial discovery rule. It has nothing to do with whether or not
22 we can get into these issues on cross-examination.

23 But what wasn't discussed in *Bradley* and what I have
24 discussed in my motion is that in order to be prepared to do a cross-
25 examination under the Sixth Amendment to the United States

1 Constitution, and to be effective, I need the stuff before we go in there.
2 We're talking about a case when my client's facing a life sentence. As I
3 said in my motion, and I'll say it again, I am ineffective if I'm going in
4 there and just wing it. And if I'm forced to go through this and try to
5 prepare a cross-examination without these documents, it's exactly what
6 I'll be doing. I'll be going in there and asking questions to a witness for
7 which I do not know the answers having reviewed -- having failed to
8 review the important relevant documentation.

9 *Bradley* doesn't discuss or deal with effective assistance of
10 client -- excuse me -- I have a really bad cold. Effective assistance of
11 clients at all it -- that issue wasn't brought up. But my position is that if
12 I'm forced to go through with this without reviewing these documents I
13 will be ineffective. It will be impossible for me to be effective.

14 So to summarize, the privilege was waived because she's
15 sharing information on three different occasions with police regarding not
16 just what she told them about Mr. Inzunza, but what she told them about
17 other people. The details of how the therapy session went, who was
18 present at the therapy session, what was said at the therapy session,
19 and most importantly her diagnosis. Her diagnosis was shared with
20 police. That means it has to be shared with us and it's relevant.

21 MS. LABOUNTY: Thank you, Your Honor.

22 Going to the point of the waiver again, I have a hard time
23 believing that an effective reporting would be simply going to law
24 enforcement and saying, my client has said that she was abused or
25 assaulted in any way.

1 Ms. Saunders did go to police. It's documented in the police
2 report. I think most of the information of what Mr. Westbrook is looking
3 is actually in the police report. And simply stating that her client has a
4 mental illness isn't a waiver of that privilege. It's simply stating a fact of
5 why she was getting therapy, again no details of her therapy or of her
6 treatment plan were revealed voluntarily by the victim in this case.

7 *Bradley* is very clear, that relevance is not enough to
8 overcome the privilege. And what Mr. Westbrook is arguing is that the
9 records are relevant. And I'm not going to, you know, make an
10 evidentiary argument; I'm probably sure they probably are. But the point
11 is he has to make -- establish -- they go to a substantive issue of law of
12 the defense of his client. And that's unclear because of whatever offer
13 of proof that he claims that he's making, I don't know; I can't respond to
14 that, because I haven't seen it.

15 Regarding the time delay and coming back again to hear the
16 motion on the offer of proof, I would object to that, I mean, we were here
17 a couple weeks ago, you set a briefing schedule. We all knew the
18 timeframe of when you were going to hear this. You know, my client
19 incurs fees and costs every time that I have to read something, respond
20 to it, appear in Court, and so that's something that's a concern for her.
21 So, you know, I would object to further delaying this out, because it's,
22 you know, it's a burden on my client. And with that I don't have anything
23 further.

24 MR. WESTBROOK: Could I have two things real quick,
25 Judge?

1 THE COURT: No. This is, you know, this was her motion.
2 You get to --

3 MR. WESTBROOK: All right.

4 THE COURT: -- argue. She gets to respond. That's how it
5 works.

6 MR. WESTBROOK: Okie dokie.

7 THE COURT: All right.

8 So I read the *Bradley* case. I believe that this motion is
9 properly brought. That in fact, you're correct. The holder of the
10 privilege, I think we all need to remember, is not the counsellor; it is the
11 client, the patient. And here we don't have anything. I've got no person,
12 no patient in here saying I'm willing to waive the privilege and so is there
13 an exception? The -- there're only a few exceptions set forth for this
14 particular privilege and nothing that has been submitted, whether it be in
15 the form of the offer of proof arises to the -- a showing that there is an
16 exception to the privilege.

17 And I believe the motion is well taken. I'm -- I do believe that
18 further, I think, there is an argument that the -- in any event the order
19 was patently overbroad, I agree with that. It was and that the Court
20 should not have issued such an order and so the motion is granted. And
21 we'll take up whether or not the offer of proof will be filed under seal, but
22 I don't know that it's necessary for your client to be here for that frankly.

23 MS. LABOUNTY: Okay.

24 MR. WESTBROOK: And Your Honor, I think -- I was going to
25 ask maybe since you've already said that you reviewed the offer of proof

1 in consideration of this motion, is that what I heard?

2 THE COURT: I did.

3 MR. WESTBROOK: Okay.

4 In that case, I would suspect Ms. Saunders' counsel just to
5 streamline everything, would say there's no objection to filing it under
6 seal as an offer of proof so that it goes with the record. That way no one
7 would have to respond and we wouldn't have to have more court dates?

8 THE COURT: Well it's a little more complicated than that,
9 because the law is that things aren't supposed to be filed under seal
10 unless there is a showing and that only things that would be properly
11 sealed should be sealed, otherwise it should be redacted.

12 There were things in your offer of proof that amounted to
13 further arguments on the motion. So --

14 MS. LABOUNTY: May I make a suggestion? Maybe if you
15 withdrew your motion to file the offer of proof under seal, I don't know if
16 that would remedy the situation and from having to come back or I don't
17 -- just a suggestion.

18 MR. WESTBROOK: No, my offer of proof needs to remain
19 with the record under seal; otherwise we won't have an appellate record
20 unfortunately. Which is why to streamline it seems to make sense just to
21 see if there's an objection by the other side to filing under seal. If there's
22 no objection I would assume that it would be filed.

23 THE COURT: It wouldn't matter whether they object or not.
24 It's the Court's burden to make a decision as to whether something gets
25 filed under seal.

1 MR. WESTBROOK: Okay.

2 THE COURT: Because otherwise the presumption is
3 everything that's filed in a case isn't to be filed under seal. And so I
4 have to make that decision apart. And so my concern is that there are --
5 even if -- it would be far better on -- when you -- if you want something to
6 be filed under seal that it be just the offer of proof. An offer of proof is
7 just a recitation of facts. It is not further argument on a brief and that's
8 what you did in this case. And so I don't know if you want to -- I may
9 have to fashion something. And I don't know frankly, whether I'm
10 going -- whether I think that you've properly cited to case law, because I
11 haven't had a chance to read it --

12 MR. WESTBROOK: Mm-hmm.

13 THE COURT: -- because I filed the Order Shortening Time.
14 But then it was never given to me to look at the substance of the basis
15 for your argument that it should be filed under seal. So right now --

16 MR. WESTBROOK: So in that case is it still on for the 28th?

17 THE COURT: Exactly.

18 MS. LABOUNTY: Your Honor, --

19 MR. WESTBROOK: Just --

20 THE COURT: I'm not going to change the status quo on it for
21 now, but I don't know that you have --

22 MS. LABOUNTY: Well the thing was is his Motion to File
23 Under Seal was also a counter motion. It was also a motion to compel
24 us to produce records in camera, so is that motion denied or moot as --

25 THE COURT: Yes.

1 MS. LABOUNTY: -- a matter that you've denied or you've
2 granted the motion to vacate?

3 THE COURT: Yes.

4 MR. WESTBROOK: I'm sorry, Your Honor, that motion's not
5 on today. We have to discuss that on the 28th.

6 THE COURT: Well I -- I'm not going continue to bring counsel
7 who had to bring this motion in the first place, because frankly it's my
8 error in doing this ex parte order. To keep having to come back to Court
9 when you didn't do what you were supposed to do to properly get it on
10 file. So --

11 MR. WESTBROOK: It is on file for the 28th, though right?

12 THE CLERK: No.

13 MR. WESTBROOK: At this moment? That's what my filed
14 copy says. I'm just curious.

15 THE COURT: I don't know --

16 THE CLERK: It is not, Your Honor. I was looking, because I
17 was confused. The calendar did not reflect it. It is not, and so we're
18 talking about the second one listed on your calendar, correct, Your
19 Honor?

20 MR. WESTBROOK: Motion to File Defendant's Offer of Proof
21 Under Seal.

22 THE CLERK: Which is the one that we were notified late
23 about.

24 THE COURT: I've just got the Motion to Vacate Ex Parte
25 Order. That's on here.

1 THE CLERK: Okay, so the final calendar that I have is
2 different.

3 THE COURT: Okay.

4 THE CLERK: Okay. Got it.

5 THE COURT: Okay.

6 THE CLERK: And so that is -- I don't know where it went.

7 MR. WESTBROOK: It should be on the 28th of March.

8 THE CLERK: Oh no, they did add it to our calendar today, so
9 what I'll do, Your Honor, is continue it to the 28th? Is that -- it was just
10 late notice. I mean, I got the email at home at 9:00 p.m. and forwarded it
11 to everyone, because I was like --

12 THE COURT: I know it's ridiculous. I don't -- I've got to take it
13 up -- I don't know if we even have a -- who's acting the clerk right now?

14 THE CLERK: I'm not sure.

15 THE COURT: Who do I complain to?

16 THE CLERK: I will complain for you, Your Honor.

17 THE COURT: Okay.

18 MR. WESTBROOK: All I know is I was literally running
19 documents here by hand myself as much as I could just to make sure it
20 happened. And I don't know how it didn't happen.

21 THE COURT: Yeah, when you don't make sure that the
22 secretary does her next part then it doesn't get done, so.

23 MR. WESTBROOK: I'll tell you what though; I'll bet a million
24 dollars it's not your staff's fault.

25 THE COURT: I wouldn't take that bet, because --

1 MR. WESTBROOK: They're top notch that's why. We all
2 know that.

3 THE COURT: -- I know it wasn't their fault. I followed up on
4 that already. Okay, so I don't know whether you want to prepare to --

5 MS. LABOUNTY: Yeah, I just for purposes of the record I'll
6 prepare an order granting our motion to vacate. And then with respect
7 to -- I guess you're going to hear the motion to file the offer of proof
8 under seal on the 28th. But with respect to that motion to compel us to
9 produce records in camera, is that --

10 THE COURT: I don't know why that would be -- there would
11 be a countermotion? Like I said, I haven't seen the motion itself. I just
12 looked at the motion for an order shortening time and signed it on that
13 basis.

14 But why that you would file a countermotion to produce the
15 records in camera when that's what I'd already done and that's the
16 whole subject matter of this motion to vacate that order. I don't --

17 MR. WESTBROOK: I can explain it. Because as I was
18 preparing my offer of proof and rereading -- what is still a very new case
19 in *Bradley*, it occurred to me that it didn't seem like it was particularly fair
20 and constitutionally so under equal protection and due process. That I
21 was sitting here filing an offer of proof, to be submitted to the Court in
22 camera that had my client's privileged information in it, including his trial
23 strategy, etcetera, in order to meet the requirements of *Bradley* if Ms.
24 Saunders wasn't required to do the same. That seemed to me to be an
25 equal protection violation.

1 If they don't have to actually submit this stuff in camera to be
2 reviewed intelligently so we can see whether or not it's relevant or
3 beyond relevant, whatever standard *Bradley* just created for us. Then
4 why should I have to in responding to it and in trying to meet some of
5 these possible exceptions, do what Ms. Saunders's counsel doesn't
6 have to do. I mean, why am I -- why do I have to expose my client and
7 his privilege for in camera review if Ms. Saunders' client doesn't have to
8 expose her privilege for in camera review. So it's an equal protection
9 violation.

10 As I was filing the motion -- writing the motion to file under
11 seal, I realized that and so I made it a compound motion. Which is legal
12 if not preferable, legal under our statutes and it is a proper filing. I filed
13 it, but it was set for the 28th. Then I attempted to get it on for today so
14 that it would be easier and we would just have one court date in order to
15 make it so that Ms. Saunders's counsel wouldn't have to come here
16 twice. That's the whole reason I did it. But if we can't hear them today,
17 that's fine, I understand. We can come back on the 28th.

18 THE COURT: Right, well the only thing I'm going to consider
19 on the 28th is whether your offer of proof gets filed under seal or not,
20 that's all.

21 MR. WESTBROOK: Okay.

22 MS. LABOUNTY: So --

23 THE COURT: Because my ruling is -- I looked at your offer of
24 proof and I don't feel that it, I mean, basically you're arguing *Brady*,
25 that's how I look at it. And *Bradley*, made very clear that *Brady* is not a

1 discovery, I mean, rule, it's a post-conviction remedy after trial. Nothing
2 that you've said in your offer of proof goes beyond really what you're --
3 frankly what you're arguing today. And so I don't -- again I'll have to look
4 more closely at your motion to see whether I'm going to file it under seal
5 or not. But I don't believe that there's any exception that's been met by,
6 you know, for the privilege.

7 And this is the same exact arguments that were made in the
8 *Bradley* case when Judge Herndon ordered in camera review of certain
9 otherwise privileged records. And so I don't think it rises to the level
10 where any exception has been shown. And there are reasons that the
11 privileges exist and I don't see that any of that's been met. And so and
12 it's not been -- there's been no waiver certainly by the client.

13 The counsellor is asserting privilege on behalf of the client and
14 there's nothing that's been shown to my satisfaction that there's any
15 exception to the privilege that's been met, so.

16 MS. LABOUNTY: Okay. So I guess then for the purposes of
17 the order I'll do the order granting our motion to vacate and denying the
18 countermotion to produce records in camera?

19 THE COURT: Yes.

20 MS. LABOUNTY: Okay.

21 THE COURT: Because it's intertwined and I'm not -- the -- I --
22 you know. All I want to focus on for this continued hearing is whether or
23 not the offer of proof should be filed under seal.

24 MR. WESTBROOK: Okay. And so for my purposes, Motion
25 to Compel Saunders to File the Subject Counseling Records Under Seal

1 For In Camera Review as Required by The Equal Protection Clauses of
2 the State and Federal Constitutions, is being denied without the Court
3 reading it?

4 THE COURT: No I heard your arguments today. I just am not
5 persuaded by that circular argument.

6 MR. WESTBROOK: I understand, Your Honor, but I just
7 wanted to make a record that you haven't read the motion that you're
8 denying.

9 THE COURT: I heard you offer, you know, make your
10 arguments on it. And, you know, if you want to argue at the time after
11 I've read that that I should reconsider it and you can make that argument
12 and I'll look at it and decide whether I want to reconsider it.

13 Based upon your arguments today as the basis for that part of
14 the motion, I need a countermotion. I'm not persuaded by that if --

15 MR. WESTBROOK: And is this the --

16 THE COURT: If it's something --

17 MR. WESTBROOK: -- motion currently on calendar? The
18 second --

19 THE COURT: Pardon me?

20 MR. WESTBROOK: -- the second part of my motion. Is that
21 currently on calendar or is that not on calendar for argument?

22 THE CLERK: It was moved up to today and so, Your
23 Honor, --

24 THE COURT: But we're having to reset it.

25 THE CLERK: Correct.

1 THE COURT: Because it shouldn't have been moved up.

2 And it so -- the date is when?

3 THE CLERK: March 28th, 9:00 am. We'll put it back where it
4 was.

5 MR. WESTBROOK: Okay, sounds good. Thank you.

6 THE COURT: After I've read the pleading if I find that there
7 were things you didn't tell me in your oral argument today on that one
8 issue then I'd reconsider it.

9 MR. WESTBROOK: Thank you, Your Honor.

10 MS. LABOUNTY: So, Your Honor, do we need to respond
11 and then appear, I guess, on the 28th for that separate countermotion?

12 THE COURT: Not if you don't want to.

13 MS. LABOUNTY: Okay.

14 THE COURT: Now, thank you. So I just wanted to finish that
15 so, because the next -- the other motion that's on calendar doesn't have
16 anything to do with Ms. Saunders' counsel.

17 MS. LABOUNTY: Okay.

18 THE COURT: Thank you.

19 MS. LABOUNTY: Thank you, Your Honor, and I will prepare
20 the order.

21 THE COURT: So Defendant's Motion to Dismiss. Mr. Villani
22 is present for the State.

23 All right. So I've read the papers, my concern about the
24 State's response just is that it really didn't address the issue of the delay
25 from the filing of the criminal complaint and the issuance of the arrest

1 warrant. And so, you know, I've only been involved in this case since
2 the Indictment happened. So I'm not -- in the motion itself, you didn't
3 give me a very good posture of the case for me to get all the dates, but I
4 tried to figure it out and write things down, so let me see here.

5 But I'm still lacking -- when was the date that the arrest
6 warrant was issued? Can you -- can somebody tell me that?

7 MR. VILLANI: So the criminal complaint was filed on
8 December 3rd, 2014. Let me see if I've got a copy of the arrest warrant
9 here. I doubt I do.

10 THE COURT: Well it's probably been simultaneously.

11 MR. VILLANI: Yes.

12 THE COURT: The criminal complaint was filed December 3rd,
13 2014?

14 MR. VILLANI: Correct.

15 THE COURT: And when was the date of the arrest on the
16 original warrant? He was arrested on the original warrant, right?

17 MR. WESTBROOK: That is correct, and I actually believe that
18 was earlier, but I don't have the arrest warrant with me.

19 MR. VILLANI: I don't know when he was arrested. I can tell
20 you his initial appearance date, oh actually --

21 MR. WESTBROOK: Oh, when he was actually arrested, yes.
22 I know that, that's in my motion, I'm sorry, Your Honor

23 THE COURT: On the original warrant, I just want to make
24 sure I -- because I have --

25 MR. WESTBROOK: He was arrested -- okay I don't have the

1 date of the original arrest warrant. I do have the date of the original
2 police report.

3 THE COURT: Okay. The police report I don't think is a
4 controlling factor necessarily, I mean.

5 MR. WESTBROOK: Sure.

6 THE COURT: So, December 3rd, 2014, a criminal complaint's
7 filed and that certainly gets the ball rolling on that.

8 MR. WESTBROOK: Correct, Your Honor.

9 THE COURT: Are you sure you didn't have that date for the --

10 MR. VILLANI: There's a supplemental arrest report. I don't
11 know that I have that in my file, but it's in discovery.

12 THE COURT: Let's see.

13 MR. WESTBROOK: Of course we know it can't be after
14 December 3rd, 2014, because there's always an arrest warrant
15 associated with a criminal complaint filing. So that would be the latest it
16 could possibly be. And then the earliest it could be would be November
17 3rd, so we're talking about a one month period.

18 THE COURT: And then when was he arrested? It just says
19 between November 3rd and the date of his arrest, so I've been looking
20 for the date of his arrest.

21 MR. WESTBROOK: It's January, I'm sorry, Your Honor.

22 MR. VILLANI: According to the motion it's January --
23 according to the Defense motion the date of his arrest was January 29th,
24 2017.

25 MR. WESTBROOK: That's right, just found it.

1 MR. VILLANI: But his first appearance in Justice Court was
2 January 15th, according to my notes. Perhaps that's a misprint.
3 Perhaps it was February 15th, but the date says January 15th--

4 MR. WESTBROOK: That's interesting.

5 MR. VILLANI: -- not the 17th. But a --

6 MR. WESTBROOK: Yeah, he was -- what happened is he
7 was arrested and then he was transported in custody, because he was
8 in New Jersey.

9 THE COURT: Right. He was extradited?

10 MR. VILLANI: He was extradited from New Jersey, yes.

11 MR. WESTBROOK: Yeah, his recollection is January 28th.
12 My record shows January 27th, the 28th was the arrest date.

13 MR. VILLANI: 2017, right?

14 MR. WESTBROOK: 2017, sorry. January 27th, 2017.

15 THE RECORDER: You can't walk and talk.

16 MR. WESTBROOK: Sorry.

17 THE COURT: January 27th, 2017?

18 MR. WESTBROOK: Right.

19 THE COURT: So we're talking about a two year roughly --

20 MR. WESTBROOK: Like two years, two months and 18 days
21 or something like that. I wrote it somewhere in my motion.

22 THE COURT: The other thing I don't know and it would be, I
23 think, something that a court in the analysis that remember *Doggett*
24 really is just further clarification of *Barker versus Wingo*.

25 MR. WESTBROOK: Mm-hmm.

1 THE COURT: And so, one of the things that they talked about
2 in *Doggett*, because *Barker versus Wingo*, was delay going to trial not
3 this pre-arrest delay that is what the court talked about and considered
4 in *Doggett*.

5 But in the analysis there's some discussion about what efforts
6 did the police take or in that interview *Doggett* it was the DEA that, you
7 know, took to get him arrested. And, you know, there's this long thing
8 about where he is and these different countries, etcetera.

9 So my understanding is this was a North Las Vegas case.

10 MR. WESTBROOK: Correct.

11 THE COURT: And what I don't have is anything -- because
12 you don't really address that, so --

13 MR. VILLANI: I don't because I don't have that information. I
14 don't know what steps were taken. I can tell you commonly, a warrant is
15 put into NCIC. But I don't what steps North Las Vegas took to track him
16 down after so that --

17 THE COURT: There's two things I want to know and I want to
18 have an evidentiary hearing about it.

19 MR. WESTBROOK: Okay.

20 THE COURT: I want to know what steps, if any, they took.
21 And I want to know since my understanding is that the victim or victim's
22 family gave them information about his whereabouts.

23 MR. VILLANI: Mm-hmm.

24 THE COURT: Did they notify him or, you know, is there any
25 evidence that he knew? Because both of those things were considered

1 in *Doggett*. And I think they have relevance in the analysis on -- there's
2 four things that I have to analyze and the first two being kind of
3 intertwined. I need that information.

4 MR. VILLANI: Okay. And the -- I agree an evidentiary
5 hearing is the only way to get that. So I'll get Detective Hoyt, here for a
6 hearing on the Court's pleasure.

7 THE COURT: Well we need to do that immediately.

8 MR. VILLANI: Okay.

9 THE COURT: Because as we have right now, a trial date, that
10 is I'm not delaying any further, for April 23rd. So we're basically one
11 month away, so I want to set the hearing in, let's see.

12 THE CLERK: Your Honor, I think it would have to be -- in a --
13 would it -- how long do you anticipate it taking?

14 MR. VILLANI: I wouldn't even venture to guess. My part will
15 be very short.

16 MR. WESTBROOK: I don't anticipate --

17 THE COURT: Maybe an hour at the most.

18 MR. WESTBROOK: -- calling any witnesses, because like I'd
19 be proving a negative. I can't --

20 [Colloquy between the Judge and Clerk]

21 THE COURT: Yeah, but we could start early, if we start at
22 8:00 o'clock?

23 MR. WESTBROOK: I can start at 8, sure.

24 MR. VILLANI: I'm sorry, what date are we talking about?

25 THE CLERK: March 30th.

1 MR. VILLANI: Okay, I have a nine o'clock murder prelim on
2 that date and I'm at a conference on the 26th through the 29th.

3 THE COURT: Okay, so --

4 MR. VILLANI: If we could just roll it that Monday the 2nd, could
5 we do it then?

6 THE CLERK: No, because that's our --

7 MR. VILLANI: Okay. Yeah I'm sorry; I'm just not available on
8 the 30th, at 10 anyway. I can do it in the afternoon.

9 THE COURT: Well I'm going to be in trial.

10 MR. VILLANI: Okay.

11 THE COURT: Well if we did it on -- wait we could just put it at
12 the end of the criminal calendar. Try and keep the calendar somewhat
13 light so we can get the calendar done in time.

14 [Colloquy between the Judge and Clerk]

15 THE COURT: April 4th, we'll just put you on for 11?

16 MR. VILLANI: Okay.

17 MR. WESTBROOK: April 4th at 11.

18 I would like to object for the record to this evidentiary, because
19 the State had more than enough time to present any evidence
20 whatsoever that any steps were taken whatsoever by the police to
21 contact my client or to locate him or any other witnesses.

22 They provide absolutely nothing in response to my motion and
23 they shouldn't be given the second bite at the apple. I'm also deeply
24 concerned that they'll be going and talking to the police, and saying, hey
25 you better come up with something and that something they'll come up

1 with that's not necessarily supported by any records or any basis in fact.

2 I know my client wasn't contacted. There's no evidence that
3 my client was contacted. There's evidence that the State has stipulated
4 to that the police knew where he was and that the entire delay prior to
5 February 5th, was the fault of the State solely. That is a stipulation in this
6 case, they admitted it. So going and having an evidentiary hearing to
7 get them out of it, I don't think that's fair to my client.

8 THE COURT: I don't recall any such stipulation. I want to
9 have -- I want the information. And the information that, you know, when
10 *Doggett* was decided was available. So I want to have this information.

11 MR. WESTBROOK: Your Honor, I misspoke. Stipulation is a
12 legal term of art. They admitted it, not stipulated to it.

13 THE COURT: When did they admit to that?

14 MR. WESTBROOK: By not opposing any of it during their
15 motion. And by saying that we were responsible for February 5th on, but
16 not saying that we were responsible for the continuances or the delays
17 prior to February 5th. I mean, it's also a matter of record that they're
18 responsible for it, but --

19 THE COURT: That may be, I mean, their argument at this
20 point seems to be that the length of the delay between the time of the
21 complaint and the arrest isn't significant enough to rise to the level of an
22 extraordinary delay. And that may be the case that I would -- I'd like to
23 err on the caution of having all the information before I rule on something
24 as important as this.

25 MR. WESTBROOK: Thank you, Your Honor.

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THE CLERK: April 4th, at 11:00 a.m.

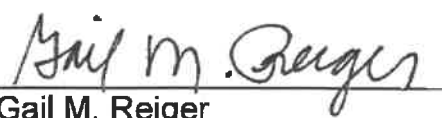
MR. VILLANI: Thank you, Your Honor.

THE CLERK: And the other matter is March 28th, 9:00 a.m.,
its back on.

[Hearing concluded at 12:09 a.m.]

* * * * *

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


Gail M. Reiger
Court Recorder/Transcriber

EXHIBIT(S) LIST

Case No.: C321860

Hearing Date: APR - 4 2010

Dept. No.: 5

Judge:

~~CAROLYN ELLSWORTH~~

Court Clerk: **ANDREA NATALI**

Plaintiff: The State of Nevada

Recorder: LARA CORCORAN

Counsel for Plaintiff: Jake Villani Chf Dep. D.A.

vs.

Defendant: Rigoberto INZUNZA

Counsel for Defendant: P.D. Westbrook, Dep.
P.D.

Hearing BEFORE THE COURT

Defendant's EXHIBITS

[illegible]



POSED

C321860

`, ``, ``, ``, `<u>`, `<code>`, `<chem>`

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[illegible][illegible]

Photos



Seventy Ventures LLC

Rigoberto Inzunza appeared on *El Nueve* program.

It's an