

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

IAN CHRISTOPHER HELD,)	
)	
Appellant,)	Case No. 83549
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

Appeal from Jury Verdict and Conviction
Second Judicial District Court of the State of Nevada
The Honorable David Hardy

APPELLANT'S JOINT APPENDIX – VOLUME V

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8 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

11 STATE OF NEVADA,

12 Plaintiff,

Case No. CR20-3104

13 vs.

Dept. No. 15

14 IAN CHRISTOPHER HELD,

15 Defendant.
-----/

16 TRANSCRIPT OF PROCEEDINGS

17 MOTION TO SUPPRESS

18 Wednesday, June 9, 2021

19 Reno, Nevada

20
21
22
23
24 Reported by:

LORI URMSTON, CCR #51

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1 RENO, NEVADA; WEDNESDAY, JUNE 9, 2021; 9:00 A.M.

2 --oOo--

3 THE COURT: This is CR20-3104, the State versus Ian
4 Christopher Held. I'm Judge David Hardy, Department
5 15. I conduct this hearing through our Zoom technology
6 in light of our COVID pandemic. There is an objection
7 to this proceeding occurring through Zoom. I have read
8 that objection. I do not have authority to supplant
9 the chief judge's administrative order. I therefore
10 deny the objection.

11 MS. ROSENTHAL: Your Honor, may I be heard on that
12 issue?

13 THE COURT: My best guess -- hold on,
14 Ms. Rosenthal. My best guess is that the courthouse
15 will open sometime in July. This matter is set for
16 trial to begin by my best guess the week of June 28th
17 or 29th, whatever that week is. Because the courthouse
18 has not yet been opened there is not yet a new
19 administrative order. The trial will occur in the
20 plexiglass courtroom with various protocols for jury
21 selection and spacing.

22 If you have anything to add beyond the motion, you
23 may make your record, Ms. Rosenthal.

24 MS. ROSENTHAL: Thank you, Your Honor.

1 THE COURT: For some reason I can't hear. Hold on,
2 please. I just was adjusting my volume when you spoke
3 the first time. Would you say something, please.

4 MS. ROSENTHAL: Yes.

5 THE COURT: Thank you.

6 MS. ROSENTHAL: You're welcome. Thank you, Your
7 Honor.

8 Melissa Rosenthal appearing on behalf of Mr. Held
9 who is present at the Washoe County Jail.

10 THE COURT: Hold on, Ms. Rosenthal. There may be
11 something with you, because you're going in and out and
12 the last few words you said there was no volume at all.
13 Is there anything covering your microphone?

14 MS. ROSENTHAL: No. One second. Let me try
15 something.

16 I'm going to be using Mr. Silverberg's -- is it
17 echoing now?

18 THE COURT: It sounds much better.

19 MS. ROSENTHAL: Okay. I turned Mr. Silverberg's
20 microphone on and muted myself on my computer. He will
21 be in a minute, but this should get us through.

22 THE COURT: We are now getting an echo.

23 MS. ROSENTHAL: Okay. Is this better?

24 THE COURT: Yes.

1 MS. ROSENTHAL: Okay. I'm going to use his
2 computer then. Sorry for the confusion, but I think
3 with the court reporter we'll be okay.

4 My computer is not working, so I'm using yours.

5 MR. SILVERBERG: Go ahead.

6 MS. ROSENTHAL: Thank you, Your Honor. I apologize
7 for that. Melissa Rosenthal on behalf of Mr. Held.

8 In regards to the objection for this hearing to be
9 conducted via Zoom, that was filed pursuant to the
10 suggestion in the chief judge's order regarding the
11 motion to confirm and how to object to a hearing via
12 Zoom. And that's why that objection was filed in that
13 matter -- or manner. I apologize.

14 The reasons for the objection more substantively
15 are that the -- the crux of the motion or the request
16 for a suppression hearing regarding Franks v. Delaware
17 relates to witness credibility and the importance of
18 that and witnesses perhaps not being totally truthful
19 under oath when sworn previously in front of a judge.

20 In addition, Your Honor, there is evidence,
21 including audio and video files and photos, that would
22 be difficult to be presented to witnesses via the Zoom
23 platform. The rule of exclusion I believe would be
24 hard to control, whether or not other people are

1 watching or in the room when somebody else is
2 testifying in the hearing. We're not sure what's in
3 front or around somebody when they are appearing via
4 Zoom, so it's hard to tell if they are looking at
5 something, looking at someone else or that is
6 influencing their testimony in any way.

7 I would -- if the Court is inclined I would ask
8 that we not have the hearing via Zoom today and that we
9 allow for the courthouse to reopen and not confirm the
10 trial for this afternoon and allow the Court to reset
11 it, because I do feel like it is that important that
12 this hearing be held in person.

13 I have discussed that with Mr. Held and he is okay
14 with that outcome. I know it's not this Court's
15 decision on when the hearing can be -- or the trial can
16 be reset. Mr. Held does understand that, but I do
17 think that this hearing being conducted in person is
18 necessary because this is a substantive motion and it
19 is pretty dispositive of how the case would move
20 forward.

21 THE COURT: Mr. DeLong.

22 MR. DELONG: I have a couple thoughts, Your Honor.
23 It's my understanding that the defendant has invoked.
24 That's why we are on the schedule that we have right

1 now. In addition, I do think reliability can be
2 determined over Zoom, especially by the Court since
3 we're not dealing with a jury. The Court has been
4 utilizing this technology for the last year. The audio
5 video files playing, I've done it in hearings before.
6 I know it's been done before the Court before. I know
7 it can be done. It's a little clunky at times, but I
8 don't think it would impair the proceedings in a
9 material way.

10 And then with respect to the rule of exclusion, I
11 don't think there's any reason to believe that any of
12 the officers would violate that in any way and the
13 Court's directives and admonishments can handle that.
14 However, with those comments being added, Your Honor,
15 the State recognizes that this really isn't our fight
16 with regard to whether or not this is done now. We are
17 ready to proceed and I have my witnesses here, Your
18 Honor.

19 THE COURT: How many witnesses do you anticipate
20 appearing, counsel?

21 MR. DELONG: Your Honor, I have three that I
22 anticipate calling with one potential fourth if
23 necessary. And it's my understanding that one more
24 witness may be appearing today for the defense,

1 Annebelle Bush.

2 THE COURT: Let me be very clear. Three officer
3 witnesses and Ms. Bush?

4 MR. DELONG: The State has three, potentially four
5 officer witnesses, plus one lay witness that the
6 defense intends to call is my understanding.

7 THE COURT: Where is Ms. Bush now?

8 MS. ROSENTHAL: Your Honor, Ms. Bush is currently
9 in treatment at Vitality Center, but she has been
10 subpoenaed to appear for the hearing.

11 THE COURT: How would she appear in person?

12 MS. ROSENTHAL: She would be picked up by our
13 investigator and transported or brought by Vitality.
14 If a hearing is set, she's not -- I don't believe -- I
15 believe if this is reset she would be done with that
16 program. She is currently in the Second Judicial
17 District Court drug court program, so where she would
18 be at would be known.

19 MR. DELONG: Your Honor, may I be heard?

20 THE COURT: Hold on. Let me just think for a
21 moment.

22 MR. DELONG: Sure.

23 THE COURT: I asked where she was only because I
24 just wanted to confirm she wasn't out of the county.

1 There is Vitality elsewhere. And so I want to think
2 for a moment.

3 Ms. Rosenthal, if I -- I don't have a courtroom
4 that accommodates a hybrid.

5 MR. DELONG: I did have one important piece of
6 information that I wanted to provide to the Court.

7 THE COURT: Go ahead.

8 MR. DELONG: We did file a stipulation to continue
9 the motion deadlines which I think obviously has been
10 denied by the fact that no order was ruled on it, but I
11 would note for the Court that I received information
12 from my office the transcript of one of the interviews
13 that is key to this hearing should be ready by Friday.
14 We are ready to proceed regardless, but I know that's
15 something that's been in discussions with defense
16 counsel and I thought the Court should know that as
17 well.

18 THE COURT: How long do you anticipate trial to
19 take, Mr. DeLong?

20 MR. DELONG: I would anticipate a minimum of four
21 days, Your Honor, potentially five.

22 THE COURT: And is that for your case in chief or
23 are you adding an estimate of any defense case, jury
24 instructions and so forth? From beginning to end you

1 believe five days or fewer?

2 MR. DELONG: Yes, Your Honor.

3 MS. ROSENTHAL: Your Honor, on that note, this
4 would have to be a bifurcated trial given one of the
5 charges.

6 MR. DELONG: Yes. I apologize. A severed trial
7 actually.

8 THE COURT: I understand.

9 I'm not ignoring you. I'm awaiting my calendar to
10 load.

11 By administrative order the courthouse remains
12 closed. Informally I believe I have the discretion to
13 order an in-person proceeding as the circumstance
14 requires. The fact is COVID today is different than
15 COVID of months ago and a year ago and one broad brush
16 for fluctuating pandemic circumstances is
17 inappropriate.

18 So I'm juggling with one side of my brain, my
19 desire to be compliant with COVID protocols that are
20 established by our current chief judge and court
21 administration. On the other hand, I am personally
22 responsible for the proceedings within Department 15 to
23 ensure that they are not just constitutional but
24 efficacious. I don't know that this proceeding will be

1 efficacious. I have read the motion. I have read
2 Franks, Chism and Liston which are in my hand. I have
3 read the transcript of the application for warrant. I
4 have read the entire proceedings of the preliminary
5 hearing.

6 I come to the bench with some reservations about
7 whether misstatements are of a general benign nature or
8 whether they are so intentional and/or reckless that
9 they caused a decision that would not have otherwise
10 been made. I have some reservations about whether this
11 motion is going to succeed. I haven't made a decision
12 because I haven't heard from counsel and I haven't
13 heard witnesses, but as a judge I prepare in advance.
14 And so I'm thinking I can probably do this by Zoom.

15 I know what the arguments are and I know what the
16 facts proffered are. And if the witness testimony is
17 consistent with the facts proffered, I'll make my
18 decision. That's the one side of me.

19 The other side is that Mr. Held should be entitled
20 to a vigorous defense so that he's given every
21 opportunity to persuade the Court. The problem I have
22 with moving this suppression hearing is that as of this
23 moment I am unwilling to move trial which means that if
24 I order an in-person suppression hearing, it's going to

1 occur on June 2nd, immediately before trial, like the
2 day before trial or three days before trial. I'm not
3 exactly sure when we're going to seat the jury.

4 And often the Court's ruling on dispositive motions
5 tends to change the pretrial dynamics. So I wanted to
6 have a decision of some type in advance of trial. So
7 those are all of my thoughts. And I invite counsel to
8 respond. I am willing to move the motion to suppress
9 in person to June 28th, but I'm unwilling to move the
10 trial date.

11 MS. ROSENTHAL: I would ask for the June 28th, Your
12 Honor.

13 MR. DELONG: Your Honor, I apologize. I probably
14 should have been prepared with this. Are we still
15 fifth in the trial flight is what my wondering is right
16 now, but if we are, then we're not likely to start
17 immediately. That would give us some time is what I'm
18 thinking.

19 THE COURT: I would invite you not to speculate as
20 to where you are in the trial flight or when it may
21 begin only because -- I'm not trying to be guarded. I
22 am aware of conversation internally that may rearrange
23 the start date and we could very well start that week.
24 So by locating the placement of fifth and then trying

1 to project that we're into July, I am fairly confident
2 that we don't know and you should prepare for that
3 first week.

4 MR. DELONG: With every intention, Your Honor, it
5 sounds like my calendar is going to get messy real
6 quick here.

7 THE COURT: Fortunately or unfortunately
8 Ms. Rosenthal and the Court share that same dilemma.

9 Mr. DeLong, I can move this to the 28th to in
10 person.

11 MS. ROSENTHAL: Your Honor, I do have one more
12 question. Sorry.

13 THE COURT: Let me hear from Mr. DeLong about the
14 State's position.

15 MR. DELONG: I'm just thinking, Your Honor. I'm
16 trying to think it through.

17 THE COURT: Mr. DeLong, as the State's attorney you
18 are in some ways the guardian of the record. And I
19 eliminate one important argument by giving to Mr. Held
20 every opportunity to be successful.

21 MR. DELONG: I 100 percent understand, Your Honor.
22 I just needed a second to think this through. But I
23 really don't think the State's position is prejudiced
24 in any way if this motion is done before trial, so the

1 State would defer to the Court.

2 THE COURT: Really the only concern I would have is
3 witness availability. They're subpoenaed I presume to
4 be ready for trial that week anyway.

5 MR. DELONG: And, Your Honor, if they're in the
6 queue, which I can't see them personally, but they may
7 be, I can speak with at least the ROPE detectives,
8 which are all of the State's witnesses for the purpose
9 of this motion, to confirm their availability for the
10 further date. We can do that right now.

11 THE COURT: Yes, Ms. Rosenthal, you said you had a
12 question.

13 MS. ROSENTHAL: Your Honor, I was curious if a new
14 administrative order comes in prior to that time that
15 allows for these hearings would there be the potential
16 to move it up?

17 THE COURT: No. There's a balance on the bench
18 because, again, for those who -- for those judges who
19 strive to be prepared, we develop inclinations along
20 the way. I want to be very clear that I have not made
21 a decision in this case. My comments I hope will aid
22 the parties, the attorneys as they prepare for the
23 hearing.

24 I'm trying to focus on would the outcome have been

1 different if Justice of the Peace Sullivan knew the
2 U-Haul was in the street and not the driveway, if
3 instead of generalizing the statement the defendants
4 admitted their responsibility there was a specific
5 description of the Whisper Rock, Somerset, I think
6 it's Whisper Rock, the University and the Jeep -- you
7 know, each of the three alleged crimes are supported by
8 some form of knowledge as set forth in the opposition.

9 I'm trying to decide if all of that will change the
10 outcome, because the defense has an obligation to make
11 a substantial showing, not clear and convincing, which
12 is a civil standard, but two of the three cases are
13 civil standards regarding motions for summary judgment
14 in federal civil actions. That's really my focus is
15 would there have been a different outcome. And it's
16 upon the defense to demonstrate that in some
17 substantial way.

18 Okay. Ms. Clerk, what time can we begin Monday the
19 28th?

20 THE CLERK: Your Honor, whenever you want to. I
21 believe we can begin at 9:00 if that works for you.

22 THE COURT: Yeah, the problem is there will be
23 jurors in the building at 9 o'clock that morning and so
24 we have to be very, very careful. I'm saying this so

1 that you can coordinate with the attorneys and the
2 Washoe County Sheriff. There must be a very
3 coordinated effort so that there is no interaction in
4 the hallways and there is no -- between Mr. Held and
5 any member of the court staff or the public and there
6 must be no interaction with any prospective jurors.
7 And so we're going to have to facilitate counsel,
8 witnesses and Mr. Held's access to the courtroom
9 through some supervised way.

10 THE CLERK: Yes, your Honor, I'll talk to the
11 sheriff's office. And are we doing it in our
12 courtroom?

13 THE COURT: Yes. And I'm saying that to emphasize,
14 because when I told the chief judge that I wanted to do
15 some proceedings in person, he cautioned me against
16 having any contacts between any case I have and
17 prospective jurors who are otherwise in the building.

18 Why don't we start at 9 o'clock. I presume that --
19 I'm presuming we can make that happen some way.

20 MS. ROSENTHAL: And, Your Honor, I believe that we
21 can definitely coordinate getting Mr. Held up to the
22 second floor and I can walk with him from the
23 elevators. That's kind of what we did when we had that
24 trial in the CLC. We met them upstairs and walked

1 down, but in this case it would just be coming over. I
2 think that that -- he would avoid them on the first
3 floor.

4 THE COURT: My thought about that, Ms. Rosenthal --
5 and I appreciate your suggestion and I know you'll
6 assist in this effort to create integrity in our
7 process. I presume you were walking with a defendant
8 who was in civilian clothes and did not appear to be
9 restrained in any way, whereas for this motion to
10 suppress I presume at the moment that because we aren't
11 picking a jury that day that Mr. Held will not be in
12 civilian clothes and he will be under restraint.

13 MS. ROSENTHAL: I'm happy to put him in civilian
14 clothes to just deter on that day if that helps with
15 the process. As far as the restraints, that would be a
16 sheriff's office question.

17 THE CLERK: Your Honor, I'll coordinate all this
18 with the sheriff's office.

19 THE COURT: Let's start at 9 a.m.

20 Anything else, counsel?

21 MR. DELONG: Your Honor, we're set for a motion to
22 confirm this afternoon. I was wondering if we could
23 handle that this morning.

24 THE COURT: Don't those motions to confirm have to

1 happen in front of the chief judge?

2 THE CLERK: Yes, Your Honor.

3 MR. DELONG: I've gotten this to work before. I
4 thought I would try again.

5 THE COURT: I'm trying so hard to keep my own
6 counsel and not say anything on this record. At the
7 moment you'll have to do your motion to confirm in
8 front of the chief judge.

9 MR. DELONG: Thank you, Your Honor.

10 THE COURT: Mr. Held, there's no reason for us to
11 have any conversation with each other. I simply
12 acknowledge your presence and wish you a good day.

13 MR. DELONG: Your Honor, I apologize. I did have
14 one other -- I think we briefly mentioned it, but the
15 State's position is that based on the case law because
16 the gun issues in this case are not in any way related
17 to the other facts, the gun charge is going to need to
18 be completely severed and not just bifurcated for
19 purposes of the jury. So we would need entirely new
20 evidence to prove the gun charge to either a second
21 jury or a severed trial is what the State thinks.

22 THE COURT: What is the defense position on
23 bifurcation versus severance?

24 MS. ROSENTHAL: Your Honor, our preference would be

1 a separate jury.

2 THE COURT: And that's essentially what I -- I
3 summarize what I think I heard. That was your request,
4 Mr. DeLong?

5 MR. DELONG: Yes, Your Honor, I think it's required
6 by the law.

7 THE COURT: So that means that that separate trial
8 will occur at some subsequent date.

9 MR. DELONG: Yes, Your Honor.

10 THE COURT: I am very, very hopeful that in the
11 near -- I don't know what's going to happen with trial
12 flights and stacks. I don't know. I'm not hiding that
13 information. But I'm hopeful that I can soon begin
14 setting my own cases.

15 MS. ROSENTHAL: Your Honor, I would ask if the
16 Court could bring in Ms. Bush, Officer Catalano, Fye
17 and Tindell and hold them to their subpoenas for that
18 new date instead of us reissuing them.

19 THE COURT: Okay. It's Ms. Bush, Officer Tindell.

20 MR. DELONG: Detective Fye, F-y-e.

21 THE COURT: Yes.

22 MR. DELONG: And Officer Catalano.

23 THE COURT: All right. Ms. Clerk, I see that
24 you're promoting people. I am awaiting -- well, it may

1 be that Tindell is with Fye and Catalano. Is that
2 right? Oh, there's Catalano separately.

3 Tindell and Catalano and Bush, if you'll please
4 activate your videos.

5 MS. ROSENTHAL: I believe Detective Fye -- there he
6 is.

7 THE COURT: Good morning to all four of you. I see
8 that Ms. Bush is present through Zoom, law enforcement
9 officers Fye, Tindell and Catalano. Each of you have
10 been subpoenaed to appear at a hearing on a motion to
11 suppress. You will be called upon to provide witness
12 testimony.

13 I have convened the evidentiary hearing now and am
14 continuing it until Monday morning on June 28th at
15 9 a.m. You remain under subpoena to be present at that
16 time. You will be in person at the courthouse.

17 Counsel, are you satisfied?

18 MS. ROSENTHAL: Yes, Your Honor. Thank you.

19 THE COURT: I'm just going to acknowledge
20 personally to all four and additionally to Mr. Held,
21 this is a crazy time. I'm a little embarrassed that
22 we're not -- I'm not embarrassed personally, but I'm
23 just sorry for the inconvenience. And we'll get
24 through it and I'll see everybody, all four of you, on

1 June 28th. Good day to all of you.

2 Court will be in recess.

3 (The proceedings were concluded.)

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

4 I, LORI URMSTON, Certified Court Reporter, in and
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me
7 at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my
10 supervision; that the foregoing is a full, true and
11 correct transcription of the proceedings to the best
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an
14 employee of any attorney or any of the parties, nor am
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws
17 of the State of Nevada that the foregoing statements
18 are true and correct.

19 DATED: At Reno, Nevada, this 12th day of
20 November, 2021.

21
22 LORI URMSTON, CCR #51
23

24 LORI URMSTON, CCR #51

The document to which this certificate is
attached is a full, true and correct copy of the
original on file and of record in my office.

By: ALICIA L. LERUD, Clerk of the Second
Judicial District Court, in and for the County of
Washoe.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the Appellant's Joint Appendix – Volume V to the following:

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WASHOE COUNTY DISTRICT ATTORNEY
Attn: Appellate Department
Via Electronic Mail

DATED this 28th day of February, 2022.

/s/Randi Jensen
Randi Jensen