

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
BEFORE THE HONORABLE LOURDES A. MARTÍNEZ

CRIMINAL CLERK'S MINUTES at Las Cruces

CASE NUMBER: CR 06-538 JH DATE: 11/28/07 COURTROOM: FTR/KBM

CLERK: E. GARCIA TYPE OF HEARING: MOTION TO RECONSIDERATION OF DETENTION

DEFENDANT(S):	ATTORNEY(S):
JOSEPH BUTTS	BERNADETTE SEDILLO (X) Appt'd. ( ) Ret'd.
_____	_____ ( ) Appt'd. ( ) Ret'd.
_____	_____ ( ) Appt'd. ( ) Ret'd.
_____	_____ ( ) Appt'd. ( ) Ret'd.

USA by: LUIS MARTINEZ, Asst. U. S. Attorney Interpreter: NONE

Pretrial / Probation Officer present: ISABEL DAVILA Court in Session: 2:26-2:37PM {11 min.}

X Defendant(s) in custody

X Conditions of Release set at: COURT ORDERS: \$5K UNSECURED BOND; PSA SUPERVISION; NO FIREARMS; TRAVEL RESTRICTIONS TO COUNTY OF RESIDENCE, WITH DIRECT TRAVEL TO LAS CRUCES, NEW MEXICO TO MEET W/ATTORNEY AND ATTEND COURT PROCEEDINGS, ALL TRAVEL IS AT PSA DISCRETION, DEFT CAN TRAVEL TO DENVER FOR HIS APPEAL; NO ALCOHOL OR ALCOHOL ESTABLISHMENTS; ALCOHOL TESTING & TREATMENT AT PSA DISCRETION; NO DRUGS; DRUG TESTING & TREATMENT AT PSA DISCRETION; MAINTAIN OR ACTIVELY SEEK EMPLOYMENT; ZERO TOLERANCE; DEFT IS TO RESIDE IN A HALFWAY HOUSE IN PIMA, ARIZONA, OR NEAREST ONE TO PIMA, ARIZONA, DEFT IS TO FOLLOW ALL RULES AND OBLIGATIONS OF THE HALFWAY HOUSE; AT PSA'S DISCRETION, IF DEFT IS DOING WELL, HE MAY RESIDE IN HIS OWN APARTMENT; DEFT CAN HAVE CONTACT W/HIS SISTER AND BOTHER-IN-LAW, BUT CANNOT DISCUSS ANYTHING REGARDING THIS CASE; DEFT IS TO HAVE NO CONTACT WITH ANY OTHER CO-DEFT; DEFT IS TO BE RELEASED ONCE PLACEMENT AT A HALFWAY HOUSE HAS BEEN APPROVED BY PSA; EVEN IF IT'S YOUR RELIGIOUS BELIEF, YOU ARE NOT ALLOWED TO USE MARIJUANA

X Other: COURT CALLS CASE

DEFENSE: ADVISES COURT THAT DEFT HAS BEEN IN CUSTODY FOR OVER 21 MONTHS; WHEN DEFT WAS ARRESTED HE WAS RESIDING W/HIS SISTER AND BROTHER-IN-LAW IN PIMA, ARIZONA, REQUESTING THAT THE DEFT RESIDE WITH HIS FAMILY IN PIMA, ARIZONA; ADVISES COURT THAT PSA IS RECOMMENDING THE HALFWAY HOUSE. ADVISES THE COURT THAT IF THE DEFT WAS RELEASED TO HIS FAMILY, HE WOULD BE SUPERVISED THE SAME WAY AS IF HE WERE IN A HALFWAY HOUSE

COURT: ADVISES DEFENSE THAT DEFT'S CANNOT RESIDE TOGETHER, THAT DISQUALIFIES ANYONE AS BEING A 3<sup>RD</sup> PARTY CUSTODIAN

PSA: AGREES W/COURT

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DEFENSE: ADDRESSING THE ISSUE THAT DANUEL AND MARY ARE MARRIED AND THEY LIVE TOGETHER AND THEY DON'T HAVE A 3<sup>RD</sup> PARTY CUSTODIAN, THAT IS WHY THE REQUEST OF NO 3<sup>RD</sup> PARTY CUSTODIAN FOR MY DEFT AND TO HAVE HIM RESIDE W/HIS SISTER AND BROTHER-IN-LAW IN ARIZONA, THE DEFT WOULD BE SUPERVISED THE SAME WAY THEY ARE BEING SUPERVISED IN ARIZONA

COURT: THEY ARE CO-DEFENDANT'S AND THE CASE HAS NOT BEEN SET FOR TRIAL, ISSUES OF WITNESSES TALKING; ADDRESSING THE ISSUES AS TO THEM BEING MARRIED; THE DEFT IS NOT THE SPOUSE; WHAT'S THE OBJECTION OF A HALFWAY HOUSE

DEFENSE: DEFT HAS ALMOST SERVED HIS SENTENCE; ADDRESSING ISSUES OF PLACEMENT AT THE HALFWAY HOUSE, AWAY FROM HIS FAMILY, IS A FORM OF INCARCERATION IN THE HALFWAY HOUSE, WOULD LIKE FOR HIM TO RETURN HOME TO RE-BUILD HIS LIFE

COURT: WHAT ABOUT A HALFWAY HOUSE IN PIMA, ARIZONA

PSA: WILL LOOK INTO THAT

COURT: IF THE DEFT STARTED THERE, PSA COULD EVENTUALLY GET HIM INTO HIS OWN APARTMENT

PSA: WILL LOOK INTO WHAT THE RULES ARE

COURT: ASKING DEFENSE IF THAT WOULD BE ACCEPTABLE; DEFT COULD GET A JOB, THEN WITHIN TIME, THE DEFT COULD LIVE ALONE; THE COURT DOES NOT HAVE A PROBLEM WITH THE DEFT LIVING ALONE, THE RESTRICTION IS, THE DEFT CAN'T LIVE W/CO-DEFT'S

GOVT: OPPOSES RELEASE AS TO THE EXTENT THAT THE COURT HAS ARTICULATED; WOULD AGREE TO HAVE THE DEFT RELEASED TO A HALFWAY HOUSE; CLARIFICATION - THIS CASE IS A MINIMUM MANDATORY CASE, DEFENSE STATED HE IS CLOSE TO SERVING HIS POTENTIAL SENTENCE, BUT IF THEY GO TO TRIAL, THEN HE IS FURTHER OUT - 5 YEAR SENTENCE

COURT: ADVISING THAT THE PRIOR PLEA WAS WITHDRAWN, ASKING IF A NEW PLEA AGREEMENT HAS BEEN NEGOTIATED

GOVT: ADVISING COURT THAT NO NEW PLEA HAS BEEN OFFERED; ADVISING COURT THAT CASE IS BEFORE THE 10<sup>TH</sup> CIRCUIT, IT HAS NOT YET BEEN APPROVED FOR INTERLOCUTORY APPEAL, THEY ARE CONSIDERING IT, AND BRIEFS HAVE BEEN REQUESTED FROM BOTH THE GOVT AND ALL PARTIES

COURT: DURING THAT PROCESSES, IS THE GOVT NOT WILLING TO OFFER ANY TYPE OF PLEA AGREEMENT

GOVT: AT THIS TIME, THE DEFT'S ARE INTERESTED IN A PLEA AGREEMENT

DEFENSE: A LOT WILL DEPEND ON WHAT THE COURT OF APPEALS ACTUALLY HOLDS; AT THIS POINT, THE LONGER THE DEFT REMAINS IN CUSTODY IT WILL BE AS IF HE SERVED HIS SENTENCE AND IT WOULDN'T MATTER, HE WILL HAVE NO INCENTIVE TO PLEA

COURT: AGREES THE DEFT HAS BEEN IN A VERY LONG TIME, HAS NO OBJECTIONS TO LETTING DEFT OUT, BUT THE COURT HAS TO FOLLOW THE RULES OF PSA AND THEY ARE VERY STRICT; ADVISES THE DEFT THAT IT IS VERY IMPORTANT THAT HE GO BACK TO HIS HOME TOWN, START WORKING THERE AND TO START MAKING A LIFE FOR HIMSELF WHILE THE CASE IS ON INTERLOCUTORY APPEAL

GOVT: ASKING ABOUT CONTACT WITH THE CO-DEFT'S

COURT: CAN ORDER THAT THERE BE NOT CONTACT WHATSOEVER

GOVT: ADVISES COURT THAT WOULD BE HARD, SINCE IT IS A SMALL TOWN

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COURT: WILL ALLOW CONTACT AS LONG AS NOT DISCUSSION ABOUT CASE; DOES NOT THINK IT WOULD BE ANY HARDER THAN THE TWO MAIN DEFT'S WHO LIVE TOGETHER; ADVISING DEFENSE COUNSEL AND GOVT OF WHAT ISSUES WERE DISCUSSED AS TO THE TWO MAIN DEFT'S AT TIME OF RELEASE, THEY GAVE THE COURT THEIR WORD THEY WOULD NOT DISCUSS CASE, AND SO FAR, THE COURT HAS NOT HEARD IF THEY HAVE BROKEN THAT PROVISION, BUT IT WAS DISCUSSED; WILL IMPOSE THE SAME CONDITIONS FOR DEFT, WANTS DEFT'S WORD, THAT HE CANNOT DISCUSS THE CASE W/CO-DEFT'S; ADDRESSING ISSUES THAT CAN COMPROMISE THE CASE; ADDRESSING WHAT DEFT IS LOOKING AT IF THEY HE DOES GO TO TRIAL

DEFT: AGREES

PSA: IF THERE IS NOT A HALFWAY HOUSE IN PIMA, WOULD YOU LIKE FOR HIM TO RESIDE AT DIERSEN

COURT: ADVISES PSA TO FIND A HALFWAY HOUSE CLOSEST TO PIMA, ARIZONA THAT THEY CAN; FEELS DEFT NEEDS TO BE IN ARIZONA, DEFT HAS NO TIES TO THIS COMMUNITY

DEFENSE: ASKING IF DEFT CAN HAVE CONTACT W/SISTER AND HIS BROTHER-IN-LAW

COURT: FAMILY IS FAMILY, SO YES, AS LONG AS NO DISCUSSION REGARDING CASE

GOVT: AGREES W/COURT, DEFT CAN HAVE CONTACT W/SISTER AND BROTHER-IN-LAW, BUT THEY CANNOT DISCUSS THE CASE; DOES NOT THINK DEFT HAS FAMILY IN THIS STATE, THE ONLY FAMILY IS IN ARIZONA

COURT: YOU CAN HAVE CONTACT W/SISTER AND BROTHER-IN-LAW, BUT YOU CANNOT DISCUSS THE CASE; YOU CANNOT HAVE ANY CONTACT WITH THE OTHER CO-DEFT'S

DEFENSE: IF DEFT HAS TO TRAVEL TO DENVER, COLORADO FOR HIS APPEAL, WILL THAT BE OKAY

COURT: YES