

1 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 IN AND FOR THE COUNTY OF SHASTA
 3 Hon. Daniel E. Flynn, Judge

4 - - o0o. - -

5 THE PEOPLE OF THE STATE
 6 OF CALIFORNIA,

7 Plaintiff,

8 vs.

No. 14F6355

9 ROBERT ALAN GIBBS,

10 Defendant.

11 _____/ Pages 43 - 65

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13 REPORTER'S TRANSCRIPT OF MARSDEN HEARING

14 - - o0o - -

15 Redding, Shasta County, California

16 December 28, 2015

17 APPEARANCES

18
 19
 20 FOR THE PLAINTIFF:

21 (No appearance noted.)
 22

23
 24 FOR THE DEFENDANT:

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35 (PRINTED ON RECYCLED PAPER)

MARY ALICE TAYLOR, CSR# 10615

1 PROCEEDINGS, DECEMBER 28, 2015

2 Before Hon. DANIEL E. FLYNN, Judge

3 *** **

4 (Proceedings convened with the Court,
5 defense counsel and the defendant present.)

6 THE BAILIFF: Remain seated. Come to order.
7 Court is now in session.

8 THE COURT: All right. We're in lockdown?

9 THE BAILIFF: Yes.

10 THE COURT: Okay. Okay. And calling the
11 case of People v. Gibbs. Mr. Gibbs, Mr. Northam let
12 me know that it was your intent to conduct a Marsden
13 hearing or challenge Mr. Northam's representation of
14 you. Is that what you want to do right now?

15 THE DEFENDANT: I have several concerns,
16 your Honor. I have several things to notify the
17 Court about.

18 THE COURT: Okay. I'm not here to -- I want
19 to make sure that we're here for the right reason.
20 If you want to talk to me about things that don't
21 relate to relieving Mr. Northam, I'm not going to
22 give you this forum to do that. Okay. There's --
23 there may or may not be anything that I can do.

24 If it does relate to representation and you
25 want me to relieve Mr. Northam, that's what we're
26 here to do. Okay?

27 THE DEFENDANT: I would -- I would -- I
28 would like to start defending myself in some way,
29 your Honor, and I'm not -- I'm just not being allowed
30 to.

31 THE COURT: Okay.

32 THE DEFENDANT: First of all, my home has
33 been attempted burglarized by people involved with
34 the case because they know I'm in jail. Nothing is
35 going to happen to them even though they went with

1 guns to my land and cut out a huge gate.

2 THE COURT: Mr. Gibbs, that doesn't have
3 anything to do with your representation by
4 Mr. Northam right now. Okay.

5 THE DEFENDANT: Uh-huh. Well, he's not
6 helping -- he's not helping me to do anything, your
7 Honor. He's had this case for seven weeks.

8 THE COURT: Well, hold on a second, please.

9 (PAUSE NOTED.)

10 THE COURT: So what I'm going to do,
11 Mr. Gibbs, I'm going to do the formalities that's I
12 generally would do in a hearing such as this. Okay?

13 You stated something very generally that
14 Mr. Northam isn't doing things to assist you. I'm
15 not sure in what -- in what way. So, the *Marsden*
16 hearing, as you know -- I think we've conducted at
17 least one in the past -- is for the purposes of
18 getting evidence that Mr. Northam is doing something
19 or is failing to do something he should and that's
20 reasonably, relative to where you sit right now in
21 the stage of the proceedings, denying you your due
22 process right to a fair hearing, generally trial, but
23 it certainly applies to other hearings; or whether
24 the relationship between you and Mr. Northam is
25 deteriorated to the point where the same could be
26 said. Okay?

27 You just made the statement that he's not
28 helping you get things done. What did you mean by
29 that?

30 THE DEFENDANT: Mr. Northam has had the case
31 for seven weeks. He's asked for two continuances.
32 He asked for a three-week continuance so that he
33 could confer with his client which he did for about
34 45 minutes. Most of that time was spent arguing.

35 He seemed to come to the meeting with me

1 with preconceived notions. He took very little
2 notes.

3 I did not see him again until court. Then
4 he said he needed a four-week continuance to read the
5 file which I felt was an excessive amount of time in
6 regards to my speedy trial rights. Because I do
7 expect an affirmative defense at my preliminary
8 hearing, I have asked him to do a certain number of
9 things or asked his investigator to do a certain
10 number of things to get us ready for that. He has
11 failed to do all of that. He is not --

12 THE COURT: What things did you want him to
13 do to prepare for the preliminary hearing?

14 THE DEFENDANT: I asked him to prepare a --
15 an appointment with a forensic psychologist, as
16 you'll remember from our -- from our last two
17 hearings where I asked him in open court to do that.
18 He has failed to do that.

19 I've asked him to get his investigator to
20 talk to several witnesses and get several witnesses'
21 statements prior to my preliminary. He has failed to
22 do that.

23 THE COURT: Who are those witnesses?

24 THE DEFENDANT: Cheri Dubuque, Rob Willis.

25 THE COURT: Slow down a little bit.

26 THE DEFENDANT: Candy Hoover.

27 THE COURT: Cheri Dubuque?

28 THE DEFENDANT: Cheri Dubuque, Rob Willis,
29 Candy Hoover, uhmmm and several others, John Feser,
30 uhmmm, Melissa Fano, uhmmm, Thomas Silva, uhmmm, a
31 man named Naylor (phonetic). I'm not sure what his
32 -- I know his first name, but I don't have it with
33 me -- and possibly a couple other ones; probably
34 Shannon Morris, uhmmm, Greg Moore and Danny Shields
35 as well. I've also asked for certain discovery.

1 THE COURT: What have you asked for?

2 THE DEFENDANT: I have asked several times
3 for, uhmmm, discovery that the District Attorney is
4 obviously withholding. There is a interview between
5 Craig Omura and Cheri Dubuque that would have went on
6 back in, I think, February of 2015. It should be
7 highly exculpatory.

8 From my understanding of the interview,
9 Cheri who is -- who is a witness in all of this,
10 basically told Craig Omura that I never endangered
11 our child on the Buckhorn, that she -- that she never
12 -- that that was an exaggeration, that she felt like
13 the officer was pencil-whipping me. Are you familiar
14 with that term, sir?

15 Basically because I would not admit to a
16 traffic offense, he charged me with a felony and a
17 misdemeanor. She -- she went down and talked to
18 Craig Omura and said, Look, I was in the car; he did
19 not endanger that child. He did not drive
20 recklessly. He might have driven somewhat
21 carelessly. He probably did a 21460 of the Vehicle
22 Code which was crossing a double yellow line passing
23 illegally, but he never endangered that child.
24 Essentially the officer did that because he was angry
25 at Rob for not admitting that he did a 21460.

26 The officer asked me if I did a 21406, and I
27 said, Sir, I can't answer that because I have a right
28 to remain silent. He said, Okay. He went back to
29 his car and charged me with --

30 THE COURT: Okay. I get the gist of the
31 report that you're requesting.

32 THE DEFENDANT: Yeah.

33 THE COURT: I don't know if -- if the D.A.
34 is deliberately withholding information, it can't be
35 provided to you through your attorney. That's all

1 conclusory. I don't know what the situation is, but
2 if you believe it's a report that exists and is being
3 withheld, that can't be attributed to your attorney
4 at this point.

5 THE DEFENDANT: He hasn't asked for it.
6 He's not try to get it. He needs to put in an order
7 to show cause or cause a motion demanding that they
8 do that.

9 THE COURT: Which is a motion generally made
10 prior to trial, and you're not -- well, he is pending
11 trial in that case. I just don't know whether trial
12 has been set. That's the 2800 -- that's not the
13 2800. That's the driving case.

14 Do you represent him on that? Did you take
15 all cases?

16 MR. NORTHAM: I believe I have all of his
17 matters.

18 THE COURT: Okay.

19 THE DEFENDANT: Your Honor, we're asking for
20 a redo of the preliminary hearing itself because we
21 have reason to believe that several of my rights were
22 violated at that hearing including my right to call
23 the declarant witnesses which I was not informed of,
24 including my right to have the hearing postponed so
25 that Cheri Dubuque who is a critical witness would
26 testify in that.

27 THE COURT: Okay.

28 THE DEFENDANT: And I was not allowed to do
29 that.

30 THE COURT: That's not the issue I have
31 right here. I mean, that's -- but I'm -- we have a
32 case pending prelim. You've given me the list of a
33 number of witnesses. I don't know which cases those
34 witnesses relate to.

35 THE DEFENDANT: And that's another problem.

1 THE COURT: Do they relate to all of them?

2 THE DEFENDANT: That's another problem, your
3 Honor, is that, you know --

4 THE COURT: If you can't communicate it to
5 me simply, then the issue isn't with Mr. Northam.
6 It's potentially with your ability to
7 communicate. So when I ask these questions, I need
8 to know.

9 THE DEFENDANT: I think I can communicate it
10 to you fairly simply. It's just somewhat convoluted
11 due to the fact that we're talking about four
12 different cases and that we never really talk about
13 one case. We're always kind of talking about all of
14 them. I presume the Court wants to have one
15 preliminary for all of the cases. I object to that.

16 THE COURT: We've had --

17 THE DEFENDANT: I would like --

18 THE COURT: Which we've had preliminary
19 hearings in at least two cases. We're beyond that.

20 THE DEFENDANT: No, in one case, your Honor.
21 We've had preliminary in one case.

22 THE COURT: We've had a case --

23 THE DEFENDANT: Or two cases that were
24 sandwiched together which I object to, your Honor,
25 because I believe it led to bias. I believe that His
26 Honor essentially attributed --

27 THE COURT: Mr. Gibbs, I'm not going to
28 litigate that. Okay? You're not going to get a new
29 prelim unless you're legally entitled to that.

30 Certain strategies and hindsight that you may have
31 wanted to employ or your attorney may have wanted to
32 employ at that time, that's not --

33 THE DEFENDANT: It's not that simple, your
34 Honor.

35 THE COURT: It is that simple. Okay. All

1 the prelim is designed to do is to determine whether
2 sufficient cause exists to hold a trial. Okay? They
3 can bring hearsay information to it. You can call
4 those witnesses if those witnesses can add something
5 to it.

6 THE DEFENDANT: I attempted to, your Honor.

7 THE COURT: You don't just call them to see
8 if they said the same thing.

9 THE DEFENDANT: I attempted --

10 THE COURT: Your attorney has to make an
11 offer of proof on those. So we're not here to argue
12 for new prelims. As far as I'm concerned you've had
13 those. The only prelims I know that we're pending
14 are the ones in 15F5736 and 15F5464. Okay. And
15 those are the ones that involve -- one of them
16 involves the issue of threats, and the other one is
17 one filed in September which alleges a false
18 imprisonment and of a spousal abuse or battery. So
19 we haven't had prelims in those. So those are the
20 cases pending.

21 Okay? So Cheri Dubuque, is she a witness
22 that you want interviewed before the preliminary
23 hearings.

24 THE DEFENDANT: All of those people that I
25 told you are people that I want interviewed before
26 the hearing.

27 THE COURT: Okay.

28 THE DEFENDANT: I'm also asking to take a
29 lie detector test before the hearing, and the reason
30 for that is that I've alleged that these people have
31 lie, and I believe that my lawyer has every right to
32 have me given a lie detector test; and if I pass, he
33 can confront those witnesses with those, uhmmm --
34 with those answers.

35 I think it's critical in this case because,

1 essentially, I've been lied upon by several people
2 now, and, you know, everything has been made into one
3 big sandwich and I look, you know -- I look almost
4 insane trying to --

5 THE COURT: We're still not really talking
6 about your representation. You're kind of talking
7 about yourself and what you think, and we're still at
8 an early stage in some of those things.

9 THE DEFENDANT: Yeah.

10 THE COURT: Your speedy trial issue is easy
11 to solve. We set dates today.

12 THE DEFENDANT: Yeah.

13 THE COURT: And we set those within time
14 frames.

15 THE DEFENDANT: Yeah.

16 THE COURT: That's how we take care of that.

17 THE DEFENDANT: Yeah.

18 THE COURT: If we're not working toward
19 those dates, then things might happen. Okay? Then
20 there's other things that we can do.

21 THE DEFENDANT: Okay. So you want --

22 THE COURT: But that's an easy thing to fix.

23 THE DEFENDANT: So can I address that then?

24 THE COURT: No. I want you to address why
25 it is I should relieve Mr. Northam.

26 I'm just not here to allow you to air your
27 grievances if they don't relate to that issue.

28 THE DEFENDANT: Because -- because --
29 because I not only have a right under 8 859(b) to a
30 speedy trial within 10 or 60 days for a preliminary,
31 I also have a right under the 14th Amendment and the
32 6th Amendment to effective assistance of counsel and
33 an affirmative defense at those preliminary hearings
34 of which Mr. Northam has refused to prepare for, has
35 refused to cooperate with me to prepare for, has

1 refused to come up -- he wants to go in there blind
2 like Mr. Cotta did.

3 And look what happened with Mr. Cotta: The
4 main charge was not addressed, was not attacked. The
5 -- my main witness was not allowed to come to court
6 when I have a right to do that. I was not informed
7 of my right to cross-examine declarant witnesses. We
8 didn't even talk about what the officer did as far as
9 retaliation and invidious prosecution.

10 THE COURT: We're not talking about
11 Mr. Cotta -- okay -- or the prior prelims.

12 THE DEFENDANT: I'm just saying burn me
13 once.

14 THE COURT: Again, Mr. Northam wasn't there.
15 Mr. Northam wasn't your attorney. You've agreed to
16 these continuances because there's a lot on your list
17 that you want done.

18 THE DEFENDANT: And he's done none of it.

19 THE COURT: So that's where I am.

20 THE DEFENDANT: And he's done none of it in
21 seven weeks, so what does that tell you?

22 THE COURT: Well, I don't know if he has
23 not.

24 THE DEFENDANT: So if I --

25 THE COURT: Just one second.

26 THE DEFENDANT: Ask him.

27 THE COURT: That's what I'm going to do,
28 Mr. Gibbs. Mr. Northam?

29 MR. NORTHAM: Your Honor, just for the
30 record, the continuances have been requested by
31 Mr. Gibbs because Mr. Gibbs does not want to go to
32 preliminary hearing.

33 THE DEFENDANT: That's not true.

34 MR. NORTHAM: I've had that discussion with
35 him a number of times.

1 THE DEFENDANT: That's not --

2 MR. NORTHAM: Secondly, here's what I've
3 done on the case: I retained an investigator,
4 Mr. Don Luster, who has Mr. Gibbs' files and has
5 reviewed those files, has met with Mr. Gibbs.
6 Mr. Gibbs wants to be, quote/unquote, "shrunk," to
7 have his forensic mental evaluation done; and I've
8 explained to Mr. Gibbs that the only way that that's
9 going to come into evidence is if we bring via NGI,
10 not guilty by reason of insanity.

11 In terms of some diminished capacity
12 defense, Mr. Gibbs has a letter from Dr. Carlton in
13 which Dr. Carlton says, I cannot examine you --

14 THE DEFENDANT: You should not be able to
15 testify to my personal correspondence with the doctor
16 in this case.

17 THE COURT: He's not testifying, Mr. Gibbs.
18 He's answering my question.

19 THE DEFENDANT: That's still prejudicial.
20 You're allowing my attorney now to --

21 THE COURT: Mr. Gibbs, that's why we are in
22 this forum. You're bringing up the competence of his
23 representation. You put at issue the things he's now
24 talking about. I need to know what he's doing, what
25 contacts were made, what he's aware of. Okay?

26 THE DEFENDANT: He's arguing something that
27 we already -- in my last hearing, you told him that I
28 could get this psychologist. You told him. After I
29 already argued with him and he said that there was a
30 conflict of interest. Now he wants to bring this
31 back up.

32 THE COURT: Mr. Gibbs, it's certainly
33 possible -- but one of things I have to figure out is
34 whether he's doing his job competently. He get to
35 make strategy decisions. He doesn't have to do

1 everything you say. People don't like that, but the
2 attorney is charged with that, that is, to come up
3 with the strategies that are best to serve your
4 current situation. Okay.

5 That's what I'm finding out. When you put
6 at issue his competence and his ability to proceed
7 and his preparedness, he gets to talk about all those
8 things that he's aware of, and that's what he's
9 doing, and I'm going to allow him to do that. So,
10 Mr. Northam, proceed.

11 MR. NORTHAM: In the letter Dr. Carlton said
12 that Dr. Carlton had been appointed to examine
13 Mr. Gibbs pursuant Penal Code Section 1368.

14 As a result of that court-appointment,
15 Dr. Carlton would have a conflict in then just
16 examining Mr. Gibbs for any other type of mental
17 health issue related to Mr. Gibbs' defense. So I
18 don't believe Dr. Carlton can be appointed to pursue
19 an NGI or a mental health defense.

20 And when I met with Mr. Gibbs, it was longer
21 than 45 minutes. I took notes. I discussed
22 Mr. Gibbs PC422 cases with him which are my focus
23 right now because they're pending preliminary
24 hearing.

25 I have not gone into a potential 995 based
26 on IAC and Mr. Cotta at all. I don't know anything
27 about that. I know that Mr. Gibbs testified at that
28 preliminary hearing, but that's a separate issue.

29 As far as interviewing the witnesses, I told
30 Mr. Gibbs, Melissa -- and I can't spell her name --
31 Fanoë, the public defender, will not be a witness. I
32 am not going to subpoena a public defender. Her
33 testimony is not relevant. Her thoughts on whether
34 or not Mr. Gibbs' constitutional rights were violated
35 in the Fish and Game case or any other case aren't

1 relevant and aren't admissible. So there's no way I
2 can subpoena her as a witness in his defense. So,
3 that's just not going to happen.

4 When I met with Mr. Gibbs, I thought we were
5 both on the same page to proceed with an NGI defense
6 and a mental health defense, and when he informed me
7 this morning that, in fact, he doesn't want to do the
8 NGI defense, I have to kind of recalculate how I'm
9 going to proceed on the 422 matters.

10 But Mr. Gibbs had expressly told me he does
11 not want to do the preliminary hearing in the 422
12 case. He doesn't want to come to court. He doesn't
13 want to hear the cops, quote/unquote, lie about him
14 in that matter. So the request for a continuance
15 that I put in last time was to review his file, to
16 meet with him and to determine how best to proceed
17 which in any opinion is to raise this mental health
18 defense which Mr. Gibbs expressed to me this morning,
19 That is not the path that he wants to go down.

20 So, I talked with Mr. Luster again this
21 morning. Mr. Luster is working on the case, has all
22 the information, met at length, I believe, with
23 Mr. Gibbs, and has a list of to do things from
24 Mr. Gibbs to get done on the matter.

25 So when Mr. Luster does those things and
26 Mr. Luster and I will again confer, then I can
27 continue to, sort of, map out how best to defend
28 Mr. Gibbs in this matter.

29 THE COURT: Mr. Gibbs, have you spoken with
30 Mr. Luster?

31 THE DEFENDANT: Yes, I have.

32 THE COURT: Have you given him the names of
33 the witnesses that you wanted to be interviewed?

34 THE DEFENDANT: Some of them.

35 THE COURT: Have you not given him all of

1 them?

2 THE DEFENDANT: Uhmmm --

3 THE COURT: You've given me a list here of
4 one, two, three -- of ten witnesses. Did you tell
5 him the same witnesses?

6 THE DEFENDANT: Uhmmm, I'm not sure if it
7 would be all of them. I discussed at length with him
8 the case and who would need to be talked to and why
9 to some extent, your Honor. You know, they come for
10 40 minutes, maybe an hour in the room.

11 THE COURT: Okay.

12 THE DEFENDANT: And then, you know, they
13 always have to leave, and so a lot of things get
14 discussed; some things just don't quite get reached.
15 You know, we never get around to talking about them.

16 THE COURT: Okay.

17 THE DEFENDANT: You know, I feel like -- I
18 feel like the whole process is hurried upon me. It's
19 rushed upon me, and that's an -- that's unfair to me
20 because, you know, I should be able to get a clear
21 defense that's not hurried or rushed in any way. No
22 one should talk over me or tell me I can't call
23 certain witnesses.

24 You know, I do believe I have a right to ask
25 for a bail/OR hearing which I've asked Mr. Northam to
26 -- to ask for for multiple reasons, including the
27 fact that I feel like I'm being retaliated against in
28 the jail. I feel like that I'm being allowed to
29 access mental health services in the jail, and I do
30 -- I have been suicidal the entire time I've been in
31 the jail. And, uhmmm, I'm not quite sure that I
32 belong in the jail anymore. I believe it's going to
33 become a competency issue very soon.

34 I do believe that there has been a bias here
35 of my -- of my so-called dangerousness. This is one

1 of the reasons why I've asked him to ask for the
2 psychological forensic examiner is I believe that
3 that examiner will actually say quite the opposite,
4 that I'm not dangerous.

5 And I believe that that does help with the
6 D.A. when we take that to her and say, Look, can we
7 get a more fair plea disposition now? because we have
8 someone here that's a professional, that's not a
9 lawyer or a lay person saying that, you know,
10 Mr. Gibbs is not dangerous. Mr. Gibbs might be
11 emotional. Mr. Gibbs might get angry. Mr. Gibbs
12 might be a lot of things, but he's just not
13 dangerous, and you're attributing that to him, and
14 that's coloring the way you're treating him. It's
15 coloring the way they're treating me in the jail.

16 It's just very, very unfair. It's been very
17 hard for me to get a defense. It's been very hard
18 for me to speak up for myself, and of all the people
19 that should be sticking up for me and just making
20 sure that all these little things get done so that
21 it's all fair and it's all above board, it should be
22 that man over there; and instead all he does is come
23 and talk to me about how I should just go to prison
24 and take their deal.

25 He spent no time on this case. He spent no
26 real effort on this case. He wants me to just do
27 whatever the D.A. wants, and it's not fair because
28 I'm just not dangerous. I'm not a dangerous person.

29 I know if this Court was fair to me, it
30 would realize that I've had a really hard life, and
31 I've done the best that I could, and that people lie
32 on me and people take advantage of me, and I deserve
33 just a little bit better. I deserve a benefit of the
34 doubt. I deserve some small break.

35 Everyone else gets a break. I don't get a

1 break. No one comes to court for me. No one brings
2 my daughter to see me in jail. Okay? And it's all
3 based upon some conceived notion that I'm dangerous.
4 I have to defend myself. When you're a single person
5 and you don't have a family, you have to defend
6 yourself out there.

7 There's mean people in the world. Those
8 people attacking my family, attacking my child, I
9 felt like I had to defend myself. That's all.
10 That's all that happened. All of it from Crowfoot,
11 to the Buckhorn, to all of it was just me trying to
12 be there for my family, making bad choices, whatever
13 you want to call it. Okay.

14 Being angry? Fine, I was angry. I drove
15 like a jerk? Fine, I drove like a jerk. But
16 dangerousness? Really? Danger to the community?
17 I'm 43 years old. I don't have a felony record. I
18 don't really have any record at all, sir. Okay?

19 No one is looking at that. He's not
20 pointing that out to anybody. The psychologist's
21 report that I have right that here says, Mr. Gibbs is
22 not dangerous. He might get angry. He might go
23 right up to the point of being violent, but he's not
24 violent. He stops. Okay? He stops himself. He has
25 self control.

26 He's not pointing that out to the DA or
27 anyone else. The D.A. I don't think is a bad person.
28 I think the D.A. would help me if she just heard the
29 "trust. If someone would just go to her and said,
30 Look, man, he got -- he got one thing after another
31 here, man, and it just built up on him and built on
32 ~~to~~ him, and he didn't know how to deal with it, and
33 all he wants is to prove to everyone that he's not
34 dangerous and that he's not criminal and that he just
35 needs help.

1 And if he can't do that, who can? Who can
2 do that if not my -- my -- my defense attorney?

3 So, so when I say he's not doing his job,
4 sir, he's not doing his job. Okay. When I say
5 there's been a bias here, there's been a bias here.

6 A \$400,000 bond? That was fine when I came
7 in. When I came in and nobody knew any better, I
8 understand. I understand why I was brought to jail.
9 I understand why my bond was jacked, all of that.

10 But he should have asked for a bond hearing,
11 and he should have come in here, and he should have
12 said, "Judge, he is not violent. He has not got any
13 real criminal record. I have a psychological report
14 on him already from three different shrinks. None of
15 them mention any violence. He was in state hospital
16 in 2006 when he was given a violence assessment by a
17 whole team of doctors at state hospital at Metro, and
18 they leveled him a class one." Class one is like the
19 lowest violence that you can be.

20 THE COURT: Mr. Gibbs, again --

21 THE DEFENDANT: And they said in their
22 report --

23 THE COURT: -- we are way off track. Okay?

24 I know you have certain perceptions of
25 yourself, the offenses that you're accused of, what
26 is fair and what is not fair. Okay?

27 None of these things relate to whether
28 Mr. Northam, under the parameters of procedures and
29 what we -- and what is done in criminal law. He
30 can't come in here and do what you're doing right
31 now. Okay? There are certain rules he has to
32 follow. I haven't seen him cross the line in
33 anything.

34 I did sit here and listen to you want time
35 for him to do certain things. Mr. Luster has been in

1 to talk to you. He doesn't go to these witnesses to
2 begin with, and there are good reasons for that.

3 Okay.

4 The reasons investigators go to these people
5 and take information and write it down is because
6 oftentimes those people won't say the same thing
7 between the time they speak to an investigator and
8 the time they come to court. If the only person to
9 have talked to them was Mr. Northam, then you can't
10 impeach your witness. These are all things that are
11 standard things to do.

12 Once the investigator is done, he sits
13 counsel with Mr. Northam, gives him his reports,
14 gives him his impressions -- this is a good witness,
15 this is a bad witness, this is somebody that is going
16 to be difficult, whatever -- so he can, in his mind,
17 begin to put together the strategy of the case and
18 then come to you and say, This is where we are;
19 here's what I think; this is what I perceive; in my
20 professional judgment, this is the direction we
21 should go.

22 You've been on board with that, you know.
23 If you want a speedy hearing, ask for a speedy
24 hearing and we set it. Okay?

25 THE DEFENDANT: The only -- the only reason
26 I was on board with that is assuming that he's using
27 that time efficiently to garner evidence that will
28 help his client, not for him to go on Christmas
29 vacation, not for him to ignore his client, not for
30 him to come to me for 45 minutes.

31 THE COURT: You're not his only client, and
32 things are -- right now, Mr. Gibbs, what I've heard
33 so far isn't enough for me to relieve Mr. Northam,
34 and so -- and I don't want to hear anything more
35 about those things that you -- that are emotional to

1 you. Okay?

2 Those -- he can't come in here and say,
3 Well, he's not dangerous now. Okay? It's not the
4 issue whether or not you intended to follow through
5 with the threat. Okay. That's not even part of the
6 elements of the offense. Okay? That's not what he
7 needs to deal with.

8 Bail is set at a particular way for certain
9 reasons that are set out in the code. Okay? And
10 there are bail schedule amounts. Now, he can bring a
11 motion if there is a significant change as it relates
12 to the things related to bail, but just for you to
13 come in here and say, You're charged now and the jail
14 is a hard place to live is not a change in anything.
15 He'd be wasting his time better spent on other
16 aspects of your case. Okay?

17 And just because you want it, doesn't mean
18 you get it. Okay? It's another -- that's not how we
19 work things. If everybody got to come into court and
20 say, "I want this" and "I want that," I wouldn't have
21 time for anything. That's why the procedures are
22 there.

23 THE DEFENDANT: I deserve -- I deserve --

24 THE COURT: That's why the rules are there.

25 THE DEFENDANT: I deserve to have on the
26 record why my bond is so high just like I deserve to
27 have on the record why the public defender --

28 THE COURT: We've already had the bail
29 hearings. Those are -- I'm not going to reiterate
30 why we set bail at one place or another this late in
31 the game.

32 THE DEFENDANT: I haven't had a bail
33 hearing.

34 THE COURT: You did.

35 THE DEFENDANT: No.

1 THE COURT: We set bail when you were first
2 arraigned.

3 THE DEFENDANT: That wasn't a bail hearing.

4 THE COURT: I'm not going to argue with you,
5 not gonna. Okay?

6 Did you have anything to add as it
7 specifically relates to Mr. Northam's representation?

8 THE DEFENDANT: We're not communicating
9 anymore, your Honor.

10 THE COURT: Okay. And that's your choice,
11 not his.

12 THE DEFENDANT: That's my choice. I'm not
13 communicating with Mr. Northam any more because he's
14 -- he's failed to help me in my case.

15 THE COURT: And I -- I don't see it that
16 way.

17 It's you want things now. It doesn't work
18 that way. There is a process going on. Okay? There
19 is a process of investigation that is going on,
20 process of trying to figure out where these people
21 fit in a legitimate way to defend you, bring motions,
22 other sorts of things that he needs to be doing.
23 You've waived time for that.

24 THE DEFENDANT: It's a whitewash, your
25 Honor.

26 THE COURT: That's your opinion.

27 THE DEFENDANT: It's just enough so that he
28 can pretend like he's done his job --

29 THE COURT: Okay. So I will deny --

30 THE DEFENDANT: -- and because you're --

31 THE COURT: I will deny the motion.

32 Mr. Gibbs, you've made, more than once, a
33 statement that you want to represent yourself. It
34 wouldn't get better with that, but I have a doctor's
35 opinion -- I think it was Dr. Wilson -- who said you

1 cannot represent yourself, you don't have the ability
2 to represent yourself, you can't focus on the case,
3 you have certain things that tend to distract you
4 from doing that.

5 And the only way I will do it is if we
6 appoint two doctors to give us an opinion regarding
7 self-representation, and I can do that now if you
8 want me to. They can give that opinion, but I
9 already have one doctor's opinion that says you
10 cannot.

11 THE DEFENDANT: Your Honor, the last thing
12 that I'm going to do is I'm going to ask you to
13 recuse yourself for bias.

14 THE COURT: I'm not going to recuse myself.

15 THE DEFENDANT: That's all I can do.

16 THE COURT: Mr. Gibbs, I'm treating you like
17 I treat everybody else. Okay? I'm giving you time
18 --

19 THE DEFENDANT: I'm sure you are. I'm sure
20 you are.

21 THE COURT: Okay. Well, I'm not going to do
22 that.

23 MR. NORTHAM: If I may interject, your
24 Honor, for the record, because that doesn't count as
25 the peremptory challenge; correct?

26 THE COURT: No, it does not.

27 MR. NORTHAM: All right. I just want to
28 make sure that's preserved.

29 THE COURT: No, the 170.1 he was attempting
30 has to be done in a particular way. If you want to
31 do that, by all means, you can try to -- try to do
32 that. I'm not going to take that orally.

33 MR. NORTHAM: Okay.

34 THE COURT: And it's certainly not a
35 peremptory challenge.

1 MR. NORTHAM: Okay.

2 THE COURT: I mean, that strategically
3 should be reserved for other points in time --

4 MR. NORTHAM: Correct.

5 THE COURT: -- not something like that, plus
6 I've already been on the case too long. It would be
7 untimely.

8 MR. NORTHAM: Right.

9 THE COURT: So, how did you want -- did you
10 want to put another setting date on, or do you want
11 it set within time? Do you want to spend some time
12 with Mr. Gibbs to figure out how he wants that set?

13 MR. NORTHAM: Well, my request would be to
14 put it over to January 11th for setting. If
15 Mr. Gibbs does not want to waive time, we can set the
16 preliminary hearing within the time frame and do the
17 preliminary hearing.

18 THE DEFENDANT: You're not prepared for the
19 preliminary hearing, and I'm not even going to
20 communicate with you any more because you're not
21 trying to prepare for the preliminary hearing, not in
22 a meaningful and substantial way.

23 You're -- you're attempting to just --

24 THE COURT: Mr. Gibbs, have that
25 communication with your lawyer. Okay?

26 THE DEFENDANT: I'm making --

27 THE COURT: You're saying you're not going
28 to communicate to him, but you're doing it right now.
29 So, continue to talk to him. Okay? He doesn't have
30 all the information you need because Mr. Luster
31 doesn't have all the information, and I don't even
32 know if you've told him all the things that you want.
33 Okay? You don't even know if you've told him the
34 names of all of those witnesses.

35 THE DEFENDANT: I've asked to things in

1 court that he hasn't even tried to get for me yet.

2 MR. NORTHAM: My request then would be to go
3 to January 25th. That should give me sufficient time
4 to meet with Mr. Gibbs, and we can --

5 THE COURT: I think that's too long. I like
6 the 11th better.

7 MR. NORTHAM: Okay.

8 THE COURT: Time had previously been waived.

9 MR. NORTHAM: Okay.

10 THE COURT: So we'll set the 11th. The D.A.
11 and the probation are not here, but when they --

12 MR. NORTHAM: I'm going to text Ms. Lane.

13 THE COURT: Okay. So the 11th at 8:30.

14 We'll put that on for setting.

15 MR. NORTHAM: Send her an email, I meant.

16 THE BAILIFF: Mr. Gibbs, come on back.

17 (Proceedings concluded.)

18 (The remainder of the page intentionally left blank.)

19 (Nothing omitted unless so noted.)

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SHASTA
3 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING
4 DEPARTMENT 1

5
6
7 PEOPLE OF THE STATE OF CALIFONRIA,)
8 PLAINTIFF,)
9 VS.)
10 ROBERT ALAN GIBBS,)
11 DEFENDANT.)

COPY

CASE NO. 14F6355,
15F5736

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THURSDAY, FEBRUARY 4, 2016

TRANSCRIPT OF MARSDEN HEARING

- SEALED PROCEEDINGS -

MAY NOT BE EXAMINED

WITHOUT A COURT ORDER PER CRC 8.45

A P P E A R A N C E S

FOR THE PEOPLE: DEPUTY DISTRICT ATTORNEY
(NOT PRESENT)

FOR THE DEFENDANT: SHON NORTHAM
ATTORNEY AT LAW

REPORTED BY: SUE N. SMEDLEY, CSR 8159
OFFICIAL COURT REPORTER

1 REDDING, CALIFORNIA - THURSDAY, FEBRUARY 4, 2016

2 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING

3 DEPARTMENT 1, AFTERNOON SESSION

4 -000-

5
6 (THE FOLLOWING CONFIDENTIAL PROCEEDINGS WERE HELD
7 IN A CLOSED COURTROOM:)

8 BY THE COURT: Q All right. And Mr. Gibbs is
9 present. Our first order of business, Mr. Gibbs, is my
10 understanding from your Counsel is that you wish to have a
11 Marsden Hearing to determine whether he should remain as
12 your attorney. Yes?

13 A. Yes, sir.

14 Q. Okay. The investigator's here and usually when
15 that happens I ask whether that's okay with you. He is
16 part of the Defense team and would be under the same
17 obligations to keep confidences as your attorney is. But
18 I usually ask to see whether that would be okay with you.

19 A. I don't -- I don't think I'm going to need him,
20 Your Honor.

21 Q. Okay. If something comes up where it involves
22 the --

23 THE COURT: And I know your name, but it's
24 slipping me right now.

25 THE INVESTIGATOR: Don Luster.

26 THE COURT: Don Luster. I'm sorry.

27 BY THE COURT: Q If Mr. Luster is needed for
28 some reason, I will discuss that with you and then we can
29 have him come here and provide input if it seems
30 necessary; would you agree to that? If it's necessary.
31 Otherwise, I'll excuse him from the hearing.

32 A. Yes, sir.

33 THE COURT: All right. Thank you. If you'll
34 just wait outside.

35 (MR. LUSTER EXITED THE COURTROOM.)

1 THE DEFENDANT: Your Honor, I have a few things
2 I'd like to have in front of me. If I could be seated at
3 Counsel table?

4 BY THE COURT: Q If that would be useful, go
5 ahead. Just follow the instructions of the marshal. Go
6 behind the bar there.

7 A. How are you today, sir?

8 Q. I'm doing fine.

9 We've gone through this process before, but I
10 want to make sure I just remind you of the sorts of things
11 that we are interested in at the Marsden Hearing.

12 As I say, it is a hearing to see whether or not I
13 should relieve Counsel. There are two basic issues that
14 I'm looking at. The first is whether he is doing or he is
15 not doing something that he should in the context of the
16 process of the case, which would lead one to believe you
17 are being deprived of due process rights to fair hearings
18 or trial. The other is whether or not your relationship
19 and communication has broken down to a point where that is
20 appearing to violate your due process rights.

21 And I just ask for facts from you first and I
22 will let you give me a statement about that. I can and do
23 often times ask questions or ask for clarification or
24 something like that. When that's finished, I turn it over
25 to Mr. Northam and he can respond in any way he thinks
26 relevant. And I can also ask him questions.

27 So I'll just turn it over to you. What do you
28 think I should know?

29 A. Your Honor, I am first going to, first of all,
30 ask that you please be patient with me. I have quite a
31 few issues that are all incredibly relevant. I know it's
32 a lot to listen to, I know your time is very short. I can
33 make them very, very quick.

34 Q. Okay.

35 A. I have actually prepared myself with what I need

1 to just read into the record. I would like for her to let
2 me know if I'm going too fast and she would like me to
3 slow down so that I can, you know, everything's clear in
4 the record. I have basically two things I prepared. This
5 is notes of what I feel Mr. Northam has done that should
6 result in a successful Marsden Hearing.

7 Q. Okay.

8 A. This is also a Marsden argument. It goes into a
9 little more depth of my case and what my defense is. The
10 fact that he is essentially not respecting my lines of
11 defense, which I believe I have a right to. I don't know
12 if you got the Motion that I -- I asked him to file it. I
13 also sent a copy of it to the court clerk.

14 Q. I've got it, if it's the Motion to Dismiss.

15 A. Yes. It's dated --

16 Q. I have it.

17 A. It's dated 11th of January.

18 Q. To tell you about that, that's not officially
19 filed because you are represented. But it was sent to the
20 Court, I figured it would be part of what we are talking
21 about today.

22 A. Okay. I would just like it on the record, if
23 nothing else, Your Honor. And I understand that
24 Mr. Northam doesn't think it's much of an argument. And
25 I, you know, that's his opinion. I would ask for the
26 opportunity at some point to argue this Motion. All I
27 would say about this Motion right now is that essentially
28 what it says is --

29 Q. I have read it.

30 A. Okay.

31 Q. So let's do this first. Let's take it
32 step-by-step.

33 You had your initial piece of paper, and that was
34 your written reminders regarding Mr. Northam's
35 performance. That was the shorter of the two on your

1 legal pad. Why don't you start with that.

2 A. Okay. First of all, I'm illegally blind, sir. I
3 have roughly 2300 vision. Which means as I'm talking to
4 you right now, I can't recognize whether you are my Judge
5 or not.

6 I have asked Mr. Northam to let you know that so
7 that the jail could have me fitted with prescription lenses
8 so that I can have the right to see and confront witnesses
9 and participate in my defense. So far he has not done
10 that.

11 I have asked Mr. Northam to prepare for the
12 preliminary, essentially by what I have asked for the last
13 few times that I have been in court. Which is to ask for
14 a forensic examination by Doctor Ray Carlson. He's not
15 only refused to do that, he has made arguments that
16 essentially he cannot do that. Even though His Honor in
17 open court told him that he could do that and asked him to
18 please do that. So he's been instructed by the Courts to
19 do it.

20 And I have asked him to basically do that and
21 gather a few witness statements, and together to present
22 what I -- what's known under the law as a diminished
23 actuality defense. And he keeps confusing it as a
24 diminished capacity defense. He keeps offering to plead
25 me not guilty insane, he keeps offering to plead me not
26 competent. What I have tried to explain to him is that
27 under the law, there is a concept known as diminished
28 actuality. And it comes from People versus Wells, People
29 versus Gershon(ph). It's called the Wells Gershon Rule.
30 It says that a person may be sane and nonetheless lack the
31 capacity to form the necessary intent.

32 The other cases that go along with that are
33 People versus Freeman, People versus Nunn, People versus
34 Hood, People versus McCowen.

35 Now, in People versus Freeman, it was basically

1 said that the Defendant did not have an understanding or a
2 comprehension of the nature or the quality of his act.
3 And he was therefore not responsible.

4 Under Wells and Gershon, it said that a person
5 can be sane, but nonetheless lack the capacity at the time
6 to form the necessary intent.

7 People versus Hood basically affirmed that.

8 In People versus McCowen, the Defendant suffered
9 from a severe depressive episode which had significant
10 impact on his thought processes. Again, he's not forming
11 proper intent, he was not responsibility. He was not not
12 guilty in sane, he was not temporarily insane, he was not
13 not competent, he was innocent under the law.(sic.)

14 Now, I'll try to make this -- I'll try to cut
15 some of the fat out of this and give you the muscle of it.

16 Q. I don't mind if you just read it, if you've spent
17 the time to go through it.

18 A. Okay.

19 Q. Go ahead and do that.

20 A. If I get too fast, if you'll please tell me,
21 ma'am.

22 The law intends that a Defendant's chosen avenues
23 or lines of defense should be respected. Mr. Northam is
24 not respecting my lines of defense. My defense is
25 diminished actuality as opposed to diminish capacity.
26 People versus Wells, People's versus Gershon. I explained
27 that. I won't explained it again.

28 People versus Freeman, I explained that. I won't
29 explain that again.

30 Okay. Now this comes from Hale's Pleas of the
31 Crown, Your Honor. And it's a very old, old idea. No
32 principal of criminal jurisprudence was ever more
33 zealously guarded than that a person is guiltless if at
34 the time of his commission of an act defined as criminal,
35 he has no knowledge of the deed. Hale's Pleas of the

1 Crown, Volume 1, Page 473.

2 Also see *Fein versus Commonwealth*. It is a
3 sacred principle of the criminal jurisprudence that the
4 intention to commit the crime is of the essence of the
5 crime itself. And that to hold a man that -- and that to
6 hold a man criminally responsible for an offense of which
7 he was ignorant at the time would be intolerable tyranny.

8 In *People versus McCowen*, I explained that. He
9 suffered from a major depressive episode. I think that
10 goes to the heart of my case, Your Honor. I think that I
11 was very sick on 9-11. I think I was incredibly sick. I
12 needed help and no one understood how to get it to me or I
13 didn't understand how to ask for it. Nothing.

14 And we are in here still in this contentious,
15 this vicious atmosphere, this invidious atmosphere, where
16 it's David and Goliath. Where I have to fight against
17 people that just will not see the nose. They won't see
18 the forest for the trees and say Mr. Gibbs really has an
19 emotional history going back to when he was nine years
20 old. He's -- he's -- I got to read what -- let me
21 continue reading.

22 In *People versus Heath*, the Defendant was able to
23 show that he did not have the time to form the required
24 intent. In other words, the heat of the moment, Your
25 Honor.

26 In *People versus Scott*, the Defendant was able to
27 show that even though his thinking was delusional, it was
28 nonetheless reasonable in his mind, and he was, therefore,
29 not responsible.

30 Now, Your Honor, I have to point out that most of
31 these cases, these men were convicted and sent to prison.
32 And they were only able to get their cases reversed upon
33 appeal. And that's what I'm facing here. I'm facing a
34 lawyer that's not well-versed in these types of arguments.
35 I'm facing a Prosecutor that's probably never faced this

1 type of argument. I'm facing a Judge that maybe is -- is
2 not on the same page as me. And yet, you know, if this
3 keeps going --

4 Q. Mr. Gibbs, you know I can't be on the same page
5 as you, as the way you put it, because I can't be an
6 advocate either way. I'm neutral.

7 A. I understand. I understand. But understanding
8 that I have a cogent defense and that it's not
9 gobbledygook. Understanding that I'm not just incompetent
10 or not NGI. It's not his responsibility to plead me NGI
11 if, in fact, I am innocent. It's his job if I am innocent
12 to prove me innocent. And I have given him more than
13 enough ammunition.

14 If I could please continue. In *People versus*
15 *Salas*, this one is going to be very important in my case.
16 The Defendant, despite some circumstantial evidence that
17 he formed intent, was able to provide substantial proof or
18 evidence that he lacked the requisite intent and was
19 therefore not responsible. Again, he had to go through
20 the whole appeal process. Okay? It was overturned on
21 appeal. Most of these cases were. These people were all
22 convicted, they were all sent to prison, and it was all
23 reversed.

24 In *People versus Cortez*, the Defendant was able
25 to show that because of up-bringing and traumatic
26 experiences in his past, his behavior was affected. As
27 was his perception of events.

28 In *People versus Nunn*, the Defendant was able to
29 demonstrate that because of past psychological trauma --

30 Q. I think at this point you need to slow down a
31 little bit.

32 A. Okay.

33 In *People versus Nunn*, the Defendant was able to
34 demonstrate because of past psychological trauma,
35 Defendant tended to overreact to stress and apprehension.

1 A condition likely to result in impulsivity.

2 The due process clause of the 14th Amendment
3 obviously says that the Prosecutor has to prove every
4 element and every ingredient of the crime. We know that.
5 I don't have to tell Your Honor that.

6 In re Winship, in the seminal case In re Winship,
7 the Bedrock --

8 THE COURT REPORTER: I'm sorry, one more time
9 again, please?

10 THE DEFENDANT: I'm sorry. The Bedrock axiomatic
11 and elementary constitutional principle prohibits the
12 state from using evidentiary presumptions that have the
13 effect of relieving the state of its burden of persuasion
14 beyond a reasonable doubt of every element of a crime.

15 See also Sandstrom versus Montana, Patterson
16 versus New York, Mulaney versus Wilbur, Morissette versus
17 United States.

18 In the case of Winship, Supreme Court Justice
19 Harlan said, It is far worse to convict an innocent man
20 than it is to allow a guilty man to go free.

21 In Patterson versus New York, the state may not
22 shift the burden of proof to a Defendant by presuming that
23 ingredient upon proof of the other elements of the case.

24 I go on now to speak of Dr. Carlson's examination
25 of me. In his psychological examination of August 8th,
26 which I point out is literally a month before the events
27 of 9-11, Doctor Carlson states on Page 12, Paragraph 7,
28 Diagnostically, Robert shows features of a mood disorder
29 in that he is quite emotionally volatile. Irritable and
30 perpetually overwrought. There is certainly a basis for
31 post-traumatic stress disorder, which accounts for
32 secondary symptomology of heightened anxiety, vigilance,
33 and depression.

34 In Paragraph 8 he states, This man has developed
35 a deep distrust to authority.

1 On Page 2, Paragraph 5 he states, Robert is
2 sensitive to the lack of caring exhibited by people in
3 authority.

4 On Page 3, Paragraph 1 he states, Robert is
5 volatile, but was never on the verge of aggression. Was
6 well-practiced at being vehement without physically acting
7 out his hostility. Much of his emotional display appear
8 to be associated with the overreaction to stresses in his
9 life, both past and present. His mood was predominantly
10 one of intense outrage and resentment, especially
11 regarding his current legal cases and the leave-taking of
12 his girlfriend. Exhibits chronic overreaction to stress.
13 His sense of judgment seems erratic, particularly when
14 emotionally impulsive.

15 In his report of May 13th, 2015, Doctor Wilson on
16 Page 7 states, Mr. Gibbs reported and demonstrated
17 tension, anxiety, depression, and difficulty
18 concentrating. And says that a man who fits this profile
19 tends to overreact even to minor problems.

20 Back to the Marsden. Mr. Northam continues to
21 refuse to allow a forensic examination by Doctor Ray
22 Carlson of the events of 9-11. I think it's essential the
23 man shrunk(sic.) me 30 days before 9-11. He has not been
24 given the opportunity to go ahead and put the cherry on
25 the cake here and say, okay, I get, you know, I had this
26 to say, now he's been charged with this new crime, let's
27 go ahead and amend this report so that it's all clear.
28 You know, he can say whatever he wants. I don't even care
29 if it's discoverable at this point. Because obviously if
30 he will not allow it to be a nondiscoverable expert
31 witness, then we should make it a discoverable expert
32 witness. The Court should just order it. I'm not afraid
33 of it.

34 I believe Doctor Carlson will double down on his
35 statements. He will simply say, I told you all that back

1 in August. Okay?

2 So I think it's a huge tactical mistake by him to
3 poo poo Doctor Carlson and say, oh, well, you know, I can
4 get ahold -- I can get a fresh shrink for you and he will
5 know as much as Doctor Carlson. Doctor Carlson had the
6 unique position of having had the other two psychiatric
7 reports to build upon. Okay? So he was much more
8 accurate, in my opinion.

9 If it is true and demonstrable by the evidence
10 that I was suffering from a major depressive episode on
11 9-11, 2015, near days after Doctor Carlson completed his
12 report, where his comments were eminently clear that I
13 have been entangled in emotional turbulence for over two
14 years while involved in perpetual legal struggle with this
15 justice system over a pile of poop that was cleaned up. A
16 one inch polygravity feed to my cabin. A road I have
17 written prove and permission to use.

18 A blatantly false charge of child endangerment
19 that was a retaliation for refusing to admit to CHP that I
20 crossed a double yellow line.

21 A text that was entrapped by a controversial
22 parole agent. A he said/she said probably misdemeanor
23 domestic violence situation where me and my girlfriend
24 rolled around on the ground.

25 And the events of 9-11, which I believe were the
26 direct result of a serious depressive episode that was
27 brought on by so much stress from going through this court
28 system for two years and being under represented by these
29 lawyers and being, you know, a David and Goliath type
30 situation.

31 If that is true, what it says here is both
32 Carlson, as well as Wilson and Saunders --

33 THE COURT REPORTER: I'm sorry, slow down,
34 please.

35 THE DEFENDANT: Sorry.

1 Both Carlson, as well as Wilson and Saunders,
2 that's the three doctors, believe I am suffering from PTSD
3 because of having a rifle pointed to my head by Fish &
4 Game, if all three doctors concluded in their reports that
5 I suffer from anxiety and overreact to stress, even minor
6 stresses and am overwrought, all of these things point to
7 emotional impulsivity and are direct evidence of the
8 extreme likelihood that the events of 9-11, 2015 were
9 actually emotional disturbance and not criminal activity.

10 For me, Mr. Northam to continue to ignore such a
11 clear and viable avenue of defense for his client, a
12 defense which is not diminished capacity or NGI defense,
13 which would expose his client to state hospital but, in
14 fact, a complete and well-ensconced legal defense which
15 would, in fact, under the law render his client innocent
16 as charged, is a violation of my rights and is ineffective
17 assistance of Counsel.

18 Now, Mr. Northam refused to advocate referral to
19 the Behavioral Health Court for his client in the face of
20 over 30 years of well-documented mental health issues in
21 regards to his client in the absence of any documented or
22 proven aggression or violence by his client with the
23 substantial amount of clinical observation, including by
24 doctors at state hospital that his client is emotionally
25 disturbed but not prone to actual violence, is a violation
26 of my rights under mental health parity laws, the 8th
27 Amendment provision to equal protection under the law, and
28 is ineffective assistance of Counsel.

29 That Mr. Northam has not prepared himself for an
30 affirmative defense at my Preliminary Hearing, despite
31 having months to do so. Has not respect this Defendant's
32 wishes regarding his lines of defense, has not subpoenaed
33 a single witness on behalf of the defense, has failed in
34 contravention to his Defendant's lawful request to
35 subpoena and prepare questions for declarant witnesses,

1 has refused to allow expert testimony which would greatly
2 benefit his client, has refused to prepare any real
3 affirmative defense whatsoever in anticipation of his
4 client's Preliminary Hearing, is violation of his client's
5 rights, to wit: The 14th Amendment right to due process,
6 the 6th Amendment right to effective assistance of
7 Counsel, California Penal Code 859, 860 and 861.

8 Q. Slow down.

9 A. Sorry.

10 People versus Hertz, People versus Erwin, People
11 versus Oaks, People versus Gibbs, People versus Johnson,
12 People versus Cortez, People versus Nunn, et cetera, et
13 cetera, et cetera.

14 That Mr. Northam has failed to force discovery of
15 relevant and exculpatory evidence held by the District
16 Attorney and others in preparation for my Preliminary
17 Hearing, is a violation of my right to discovery under the
18 14th Amendment to the United States Constitution.

19 People versus Noisy --

20 THE COURT REPORTER: I'm sorry, Noisy?

21 THE DEFENDANT: People versus Noisy. You're
22 really fast if you're keeping up with me.

23 BY THE COURT: Q Mr. Gibbs, you just need to
24 take a deep breath and slow down.

25 A. I'm sorry, sir.

26 Q. Understand that she's going through that.

27 A. Yes.

28 Q. Okay? Since you've got it there in your hand,
29 just go slower.

30 A. I'm almost finished. Which shows you how much
31 respect I have for your time, sir.

32 Q. But go slowly. I have no problem with you
33 finishing up.

34 A. Okay.

35 Is not effective assistance -- People versus

1 Noisy, People versus Hertz. It is not effective
2 assistance of Counsel as defined by the 6th Amendment to
3 the United States Constitution.

4 That Mr. Northam continues and assists -- insists
5 upon allowing his obviously innocent client to be treated
6 criminally and allowed to languish in the jail without
7 psychological treatment, amounts to a violation of my
8 right to be free from cruel and unusual punishment under
9 the 4th Amendment to the United States Constitution.

10 As Mr. Northam insists upon under representing
11 his client at every turn, I respectfully request his
12 immediate dismissal under my right to effective assistance
13 of Counsel under the 6th Amendment of the United States
14 Constitution.

15 Q. All right. And that's all for now?

16 A. Um, with the exception of whatever I didn't read
17 off of this page, which is -- I was -- what I am asking
18 him specifically as far as discovery for him to get is I
19 am still asking for the interview between Sheree
20 Dubuque(ph) and Craig Omura that goes back to February of
21 2015, I believe, which is incredibly exculpatory.

22 I'm asking for the case PA049140 out of Los
23 Angeles County, which is a case against principal witness
24 Sheree Dubuque alleging 288 PC, which is a consideration
25 in moral turpitude. In other words, this is a witness
26 against me, and we ought to have her case so that we can
27 cross-examine her as to whether or not she would lie
28 through her teeth. That conviction date is 2-16, 2005.

29 I have asked for criminal record reports of
30 Shannon Thompson, Greg Moore, and Danny Shields. Again,
31 witnesses that we have not even done any kind of criminal
32 background search on.

33 I believe that -- I believe that in this case my
34 lawyer should really be asking for a Pitchess Motion. I
35 believe that essentially this case comes down to 7 or 8

1 police officers that would say things about me that I --
2 I -- I resolutely dispute.

3 I have asked to take a lie detector test. I
4 realize it's not normally admissible, per se. However,
5 what I have told my lawyer is that what he ought to do is
6 he ought to get me a lie detector test and see if I pass
7 it. If I do pass it, he ought to at least be able to use
8 that on Cross Examination with these officers and say,
9 look, this guy's suing you for lying in court. He's
10 accused you of perjury before you even come in on this
11 case. Now you want to come in on this case and you want
12 to say this and this and this, and that's fine. But I
13 have had my client, in the interest of justice, take this
14 polygram(sic.) examination and, as it turns out, he's
15 passed on several questions that relate to your honesty.
16 So, I'm going to at least ask the Judge if I can use this
17 in my Cross Examination of you because I want the full
18 truth to come out. I want the whole truth to come out
19 here.

20 Again, I have asked him to have my shrunk by Ray
21 Carlson so that we can get a very clear picture of my
22 psychological state on 9-11.

23 I have asked him to get a copy of my federal
24 deposition in my federal lawsuit against five of the seven
25 officers that have come testify against me. Five of them
26 are embroiled in a federal lawsuit against them alleging
27 violation of civil rights, perjury, filing false reports.
28 Okay?

29 My federal deposition at least should be part of
30 the record so that it's very, very clear that I was
31 talking to Mr. Fazer(ph) for a reason. That -- that I
32 have -- that I put on -- I have deposed myself fully to
33 their attorneys. That case is completely been destroyed
34 now. I can't -- I probably cannot sue them at this point
35 because I'm supposed to be in points and authorities on

1 the 24th of February, and my trial on that is supposed to
2 start like March 28th. I'm probably not going to get
3 there.

4 There's interview notes taken by attorney Cotta
5 of witness Edward McGinnis(ph). Edward McGinnis was in my
6 car that day on the Buckhorn. And he said many
7 exculpatory things that correlate with what I have said
8 and what Sheree Dubuque has said about that day. And
9 those notes have somehow gone missing. I don't know where
10 those notes are. Mr. Cotta would know where those notes
11 are. He would remember that interview. We sat down in
12 his office for 30 or 45 minutes. He took copious notes.
13 I'd like to find those notes.

14 Sheree Dubuque has my cellphone. And on that
15 cellphone is a photograph of a huge bruise on my chest
16 that was taken around August 25th. It is proof that I was
17 injured in that physical confrontation with Miss Dubuque.
18 Because Miss Dubuque has the cellphone, she's refused to
19 give it to my lawyer.

20 And I'll tell you what, she doesn't want me to be
21 able to prove later that she actually attacked me.
22 Because what will happen is she will lose custody of our
23 daughter Forest. I would never do that to her, Your
24 Honor. Okay? I've told her in letters, and I'm telling
25 you right now on the record, I don't want custody of my
26 child.

27 Q. Slow down.

28 A. I don't want custody of Forest because Sheree put
29 hands on me. Okay? But I -- but I think that for her to
30 withhold the photograph, for her to withhold the phone
31 which has Edward McGinnis's phone number on it so that my
32 lawyer could call him and ask him if he could still be a
33 witness as to what happened on the Buckhorn. I think all
34 of that shows you that she's -- that she's -- that's a
35 crime to bury -- to bury evidence like that. I'd like

1 that subpoenaed. I'd like her straight subpoenaed to
2 produce that cellphone immediately.

3 She's also taken possession of my wallet and
4 rings that belonged to my father that were heirlooms given
5 to me. Before something happens and those disappear, I
6 would like those subpoenaed by the Court and handed over
7 to my defense attorney for safekeeping.

8 She has gone to my property and stolen a boat
9 that she gave me for helping her with her father. When
10 her father passed away, I went for four months and went to
11 Weaverville.

12 Q. This doesn't have much to do --

13 A. I know.

14 Q. -- at all with the case.

15 A. I know. But -- but it's part of the discovery
16 because, again, it goes -- she's a witness here and she's
17 basically been raiding my land. She's been stealing
18 things from my land. It goes towards moral turpitude.

19 Also, my lawyer has not notified the Court that
20 my land has been broken into several times by armed
21 people. And my caretakers have caught these people. They
22 have their names, they have their addresses. They caught
23 them -- they caught them with weapons. They caught them
24 destroying a very expensive gate. A steel gate with
25 battery operated grinders, in an attempt to perform an
26 armed burglary on my land.

27 Now, I have a caretaker who is a 60-year-old man.
28 He is unarmed. He is a peaceful man. And he's in danger
29 up there. Because essentially he's got people, armed
30 marauders trying to go in there and burgle me. And if he
31 catches them in the act, they could hurt him.

32 Now, I have tried to file a report with the
33 sheriffs. The sheriffs have not taken a report from me.
34 They have refused to take a report from my caretaker.

35 I have given Mr. Northam the information,

1 including the people's names. It's Ronald Nailor(ph) and
2 Tom Silver -- Silva? Ronald Nailor lives in Cottonwood.
3 Mr. Northam's actually heard of Ronald Nailor. He's aware
4 that this is a real person. I have his address.

5 And also, Your Honor, those two individuals, it's
6 a weird twist, but going back to 2013 when I was false
7 arrested by Fish & Game, when I had the rifle pointed to
8 my head, it was those individuals who were being evicted
9 from my property. Because I had bought the property and
10 they were riding motorcycles up there, and they were
11 riding all over these people's properties. And I had
12 permission from my neighbors to evict them. I lawfully
13 evicted them --

14 THE COURT REPORTER: I'm sorry, just one second.

15 THE COURT: Slow down.

16 THE DEFENDANT: I lawfully evicted them. They
17 tore down no trespassing signs, they tore down gates, they
18 threatened and stalked and harassed me. And Your Honor,
19 they were the ones who called Fish & Game and made a false
20 report on me that led to Fish & Game investigating me in
21 the first place. So we have disgruntled evicted people
22 filing false reports by using the CalTIPS line, anonymous
23 line.

24 This case is so much more complicated than it
25 seems, and I am so much more innocent than everyone gives
26 me credit for. And I apologize for my emotional impulses
27 and how -- how poorly I have -- I have reacted to all of
28 this. I truly am. And I have done everything I could to
29 respect this Court's time and respect this Court's need to
30 do its real job, which is to prosecute armed burglars that
31 go and try to, you know, steal everyone's stuff. And
32 people that would lie and file false reports. And people
33 that would, you know, threaten and stalk and harass
34 people.

35 And I understand that there is a process that we

1 have to go through here. But this Motion, it really says
2 it all. Because what it says is that we have given too
3 much power to these Prosecutors to where they're Goliath.
4 And now our poor Defense Attorneys are David. And it's
5 overwhelming. It's stifling. We can't get a word in
6 edgewise. You know, they just expect us to condense our
7 case down to next to nothing, and either go to trial or
8 take whatever deal they offer. And there's no in between.
9 There's no civility. There's no conversation. There's
10 no -- you know, the law is really -- it boils down to
11 negotiation. That's what it boils down to. We have to
12 somehow --

13 Q. Mr. Gibbs, we are so far away from --

14 A. I know. You've given me great --

15 Q. -- where we need to be. I'm going to turn this
16 over to Mr. Northam --

17 A. Yes.

18 Q. -- to have him respond so far.

19 A. Yes.

20 MR. NORTHAM: Thank you, Your Honor.

21 I think Doctor Carlson's probably a big sticking
22 point. But Mr. Gibbs has a letter from Doctor Carlson
23 wherein --

24 THE DEFENDANT: Your Honor, I have to object.

25 THE COURT: Don't.

26 THE DEFENDANT: I'm --

27 THE COURT: There's no objections. This is a
28 response. He was very quiet the whole time.

29 THE DEFENDANT: Okay.

30 THE COURT: I'm going to let him talk.

31 THE DEFENDANT: Okay.

32 MR. NORTHAM: Doctor Carlson in the letter to
33 Mr. Gibbs says, I have interviewed you pursuant to the
34 Court's appoint for 1368. I cannot conduct a private
35 forensic evaluation on you.

1 And I have gone over that letter with Mr. Gibbs
2 on at least two occasions reading the paragraph to
3 Mr. Gibbs that Doctor Carlson says that Doctor Carlson
4 cannot perform dual roles because that would be, if
5 nothing else, a perception of a conflict.

6 So Doctor Carlson cannot be appointed. And
7 Mr. Luster, the investigator on this case, and I are
8 working to obtain a doctor that is most suitable to have
9 Mr. Gibbs shrunk, for lack of a better description. But
10 have a psychological forensic examine performed on Mr.
11 Gibbs to assess his mental state for trial.

12 I know that's a big issue for Mr. Gibbs. I think
13 that's just one of the -- he's just not understanding that
14 Doctor Carlson cannot do it. And that's exactly what
15 Doctor Carlson said.

16 The glasses. We talked about the glasses. I'm
17 going to try to get him some glasses. I don't know his
18 prescription. He tells me he has nearsightedness.

19 The diminished actuality defense is an
20 interesting defense in light of a PC 422. And the
21 difficulty that I am encountering is that, at least with
22 respect to the Preliminary Hearing, which I don't think
23 it's applicable to the Preliminary Hearing even though
24 it's a, quote, unquote, "affirmative defense," given --

25 THE COURT: You're speaking faster than
26 Mr. Gibbs. I need you to slow down.

27 MR. NORTHAM: -- given the relatively low
28 standard of proof at a Preliminary Hearing. I don't
29 believe that that defense would mitigate the conduct down
30 to the extent that the conduct in this case is words.
31 It's not as if Mr. Gibbs actually followed through and did
32 an act. I guess the act would be, in this case, would be
33 the words that Mr. Gibbs spoke.

34 And I know that Mr. Gibbs really wants me to
35 subpoena Mr. Fazer, the Attorney General, for the

1 Preliminary Hearing. As I have discussed with Mr. Gibbs,
2 I said I would not do that because, one, I don't think he
3 is going to help us out. I think any information from
4 Mr. Fazer is going to simply provide the Prosecutor with
5 ample argument that the reason Mr. Gibbs made the
6 statements in this case and threatened to shoot law
7 enforcement officers and school children is because the
8 rug was pulled out from underneath Mr. Gibbs' proverbial
9 feet related to this Fish & Game case.

10 So Mr. Gibbs seems to think Mr. Fazer will
11 exculpate Mr. Gibbs at the Preliminary Hearing, and I
12 disagree. I think that Mr. Fazer's testimony is going to
13 do everything but exculpate Mr. Gibbs.

14 THE COURT: Mr. Fazer was the A.G. who had the
15 phone call, as I recall.

16 MR. NORTHAM: Correct. Correct.

17 So Mr. Gibbs and I disagree tactically on whether
18 or not we should have Mr. Fazer here. And I have
19 explained to Mr. Gibbs that I don't know the Court would
20 even permit Mr. Fazer to testify since we are not -- the
21 Defense is not essentially negating an element of the
22 crime, asserting an affirmative defense, or impeaching the
23 credibility of a witness. I don't believe I am going to
24 impeach Mr. Fazer with his testimony at Preliminary
25 Hearing. So I have made a tactical decision not to
26 subpoena or not to have Mr. Fazer present. I just don't
27 see that's going to benefit Mr. Gibbs in any way.

28 I have discussed the NGI with Mr. Gibbs; he
29 doesn't want to go NGI. He and I are still discussing
30 that.

31 As far as the referral to Behavioral Health
32 Court --

33 THE COURT: That's a -- you can't make the
34 referral to Behavioral Health Court.

35 He doesn't make that. At some point that's

1 either part of what the People negotiate. And to the
2 extent that I have some ability to tell the Prosecutor
3 what to do, they don't have to make any offer at all.
4 It's not until the time of sentencing, depending on what
5 happens, under the right circumstances would a referral be
6 made. And it is not a right, even with any probationer.
7 That is a voluntary program, it is highly structured, and
8 there's not very many slots for people. So, it's really
9 not even part of the conversation yet. Okay? Just so
10 that you know.

11 MR. NORTHAM: As to the lack of mental health
12 treatment in the jail, that's solely up to Mr. Gibbs.
13 I've asked them if he's availed himself of treatment or
14 medication; he has not. And, in fact, he went on a hunger
15 strike for quite some time. That was verified through my
16 investigator. Or by my investigator, our investigator,
17 with the jail.

18 THE COURT: Well, with regard to the defense,
19 that of diminished actuality, I know California doesn't
20 have diminished capacity. There is actually statute on
21 that. But whether you label it diminished actuality or
22 you attack the mental state required to commit a crime,
23 it's basically saying the same thing.

24 Have you abandoned that type of thing for trial?

25 MR. NORTHAM: No, not at all. In fact,
26 Mr. Luster and I spend a majority of our time discussing
27 who's going to be the appropriate doctor that we can get
28 on board to conduct the forensic exam. And there's --
29 Mr. Luster prepared a list of doctors that are potential.
30 Doctor Boyle, Doctor Caruso, and Doctor Parmea(ph).

31 And Mr. Luster and I have actually met with
32 Mr. Gibbs on Monday for a couple hours and talked about
33 who is best suited to conduct this forensic evaluation on
34 Mr. Gibbs. So that's --

35 BY THE COURT: Q And Mr. Gibbs, for your

1 information, first of all, if Doctor Carlson doesn't want
2 to be an expert witness in the fashion that you requested,
3 he doesn't have to be and no one can make him. Now, his
4 report is going to be relevant to any doctor.

5 If you testify as an expert in psychiatry,
6 psychology, whichever, they can rely on previous reports,
7 even 1368 reports. They can reach back into your history,
8 as far as mental health exams, treatment, medications.
9 They can take a look at behaviors to see if they are
10 consistent. That's the nature of experts.

11 So Doctor Carlson's report doesn't necessarily
12 become irrelevant, but nobody can force him to be a
13 witness. As sort of a paid expert witness. You see what
14 I mean? I mean he took the appointment because he's on
15 the appointments list. He did that job. When the job for
16 the 1368 review was over, his job was over. And if he
17 doesn't want to be that consulting type of an expert, he
18 doesn't have to be. It's up to him, not up to Mr. --

19 A. Can I respond to that now or would you like me to
20 wait till you --

21 Q. No, I'm just telling you the truth. He doesn't
22 have to. Okay?

23 Now, I don't know what strategy would be, okay?
24 But he did one thing, and he did that thing based on a
25 fairly narrow set of circumstances and looking at certain
26 things. Whether or not he would be called or could be
27 called in your case, that's up to your attorney. Okay?
28 Whether he says certain things, that's not it.

29 You wanted your attorney to pursue him as a
30 retained expert. He said no because he believes there
31 would be some professional conflict in his mind between
32 what he was appointed for and paid to do by the Court
33 versus what you want. That's legitimate. He doesn't have
34 to if he doesn't want to. That's just the rule.

35 A. Would you like me to respond to that now or --

1 Q. No, you don't have to respond to that. I'm just
2 telling you --

3 A. Because I have a letter right here.

4 Q. I don't care.

5 A. And we disagree about what the letter even says.
6 And we disagree about whether or not this is not
7 confidential client/doctor privileged information.

8 Q. I'm just telling you, if he doesn't want to be a
9 witness --

10 A. He doesn't say that. He actually says, Now if
11 the Court reappointed me to evaluate you once again, I
12 would still be only in one role. An objective
13 evaluator --

14 Q. I could appoint him again for 1368, but you're
15 not asking me to do that, you're not asking your attorney
16 to do that. You're asking him to assume a different role.
17 A retained expert for purposes of testimony on
18 psychological defenses is different than what Doctor
19 Carlson has already done. And that's exactly what
20 Mr. Northam just told me.

21 He said, look, I'll look at you again if I'm
22 appointed to do that again, in the same role that I
23 already have. But I am not going to go outside of that
24 role. Because he doesn't think professionally that's the
25 thing he wants to do because of whatever perception people
26 might have.

27 All right. I need to break this because I do
28 have a group that's been waiting for me. I will be
29 cutting that meeting short to 4:00 o'clock, so we will
30 come back and finish this hearing at 4:00. But I've had
31 those people waiting for half an hour.

32 MR. NORTHAM: Okay. Thank you.

33 THE COURT: So we will come back to that, okay?

34 MR. NORTHAM: May I just leave my file here?

35 THE COURT: Yeah.

1 MR. NORTHAM: Okay.

2 THE COURT: We will be meeting in this room,
3 though, so you might want to take that with you.

4 MR. NORTHAM: You know, I'll just take it with
5 me.

6 (BRIEF RECESS IN MARSDEN HEARING.)

7 (MARSDEN HEARING CONTINUED IN A CLOSED COURTROOM
8 AS FOLLOWS:)

9 THE COURT: All right. I appreciate that. We
10 did finish our meeting, and returning to People versus
11 Gibbs, we are in our confidential session. And it's just
12 Mr. Gibbs, Mr. Northam, and the necessary court personnel.

13 Mr. Northam, you were responding. So if you can
14 continue.

15 MR. NORTHAM: Thank you.

16 I think I may have left off with Mr. Gibbs was
17 not receiving any mental health treatment at the jail, and
18 I talked with him about he needs to avail himself of that.
19 I can't compel the jail to help him get that treatment.

20 Regarding the discovery, I know that we have --
21 and I provided that to my investigator -- I should say I
22 have provided the following to my investigator, the tape
23 recorded conversation with Mr. Gibbs and Mr. Fazer.
24 There's a couple other CD's that we received that
25 Mr. Luster has, and he is currently reviewing those. And
26 I expect that he will be conferring with me about those
27 items, as well as discussing those with Mr. Gibbs at some
28 point fairly soon.

29 Some of the other discovery Mr. Gibbs mentioned,
30 this is the first time I've mentioned that the 288.1
31 report, I will just say this. Generally speaking,
32 obviously any moral turpitude that relates to the witness
33 in this case is going to be acquired by the Defense prior
34 to trial.

35 From the Defense standpoint, this is really a

1 trial case. I know that Mr. Gibbs feels like there's
2 going to be some big crescendo or some big event that will
3 then help Ms. Amber Lane, who is the Prosecutor on this
4 case, see the light and offer Mr. Gibbs probation. And
5 that's simply not the case.

6 Ms. Lane and I have discussed a number of times
7 Mr. Gibbs's matter. I've talked about Behavioral Health
8 Court with her; I've talked about probation with her; I've
9 discussed at length with Ms. Lane Mr. Gibbs's mental
10 health history and the extent of that mental health
11 history. Not just in terms of the gravity of his mental
12 health issues, but also the length just in terms of time
13 throughout his life.

14 I think Ms. Lane has considered all that
15 information. She is not changing her position on her
16 belief that Mr. Gibbs needs to go to prison. In fact, I
17 think just yesterday or the day before, Ms. Lane had
18 offered a 4, 3 split. Four years in prison, I think three
19 years on supervised release. But Ms. Lane is -- I think
20 she has a lot of the information, she simply is entitled
21 to her own opinion and I disagree with it. And Mr. Gibbs,
22 I think, feels like there's going to be some watershed
23 moment from Ms. Lane, and that's simply not going to
24 happen.

25 I agree with Mr. Gibbs, he has a mental health
26 defense. At least I should say there is sufficient
27 evidence to assert a mental health defense in this case.
28 He and I may disagree as to whether or not the jury's
29 going to buy that. But certainly Mr. Gibbs and I have
30 talked about that.

31 So, I am doing everything that he needs to be
32 done in connection with Mr. Luster, who's met with
33 Mr. Gibbs a number of times. I think Mr. Gibbs and I are
34 on the same page as far as where the Defense needs to go.
35 I think we just have some difficulty in terms of how we

1 are going to get there.

2 BY THE COURT: Q Okay. Mr. Gibbs, you can
3 respond to what Mr. Northam has told me.

4 A. Can I ask him a question first?

5 Q. I don't allow question and answer interchange,
6 okay?

7 A. Well, he mentioned a 4, 3 split. Can he --

8 Q. I can explain that to you. What he was asking
9 for is not a prison term, but mandatory supervision.
10 Which isn't probation, but it looks like that. It gives
11 the opportunity for more custody time up front. The rest
12 of it is on mandatory supervision, which equates really to
13 probation. But it's not, it's actually the rest of the
14 prison term.

15 So what he was asking for from Ms. Lane was a
16 sentence that didn't send to you state prison, that housed
17 you in the jail, then had you released and then supervised
18 for the remainder of whatever term is imposed.

19 A. See, he didn't tell me about that. Had he told
20 me about that, that would have been something we could
21 have discussed. And this is what I mean. He talks about
22 a watershed moment --

23 Q. Well, it hasn't even been offered. He was
24 searching for some offer from her. I mean he's bringing
25 up all the different layers of potentials. But he was not
26 given that offer. What he is trying to do is, well,
27 soften her down from her position, is what I understood.

28 A. Okay. Let me explain the watershed moment thing.
29 I'm not looking for a watershed moment for her to suddenly
30 get it. I understand her position completely. What I --
31 what I think should have been happening this whole time,
32 is as more and more of the facts of the case came out and
33 were shared with Ms. Lane, that she should have taken all
34 of that into consideration.

35 Now, one of the things he's told me is that it's

1 basically political with Ms. Lane. He's actually used
2 that term with me, the word "political." And, you know,
3 that means her -- her -- her -- her stance has been overly
4 rigid. And this is why no matter how much exculpatory
5 evidence we give her, she really hasn't broken down.

6 Now, I can tell you that she offered the 3, 6
7 deal to me, which was three to six in state prison.
8 Mr. Ahart said if we offered her three in state prison
9 back, that she would take that. With no priors, that
10 would be a 33 percent term would be a year. Okay? I've
11 already got almost time in the county jail of a year,
12 which would mean we'd be talking about a turnaround in
13 state prison. Mr. Ahart said that in his opinion, his
14 strong opinion, she would take that deal.

15 Now, that was before any of this exculpatory
16 information reached her ears. So --

17 Q. Here's the thing. What -- by the way, you're
18 making an assumption that he is not telling her. We have
19 had discussions about your case either at plea dispo or
20 setting it. I'm trying to find a way we can get some sort
21 of reasonable disposition. That's not escaping her
22 attention.

23 What she has, however, is the offenses
24 themselves. And you seem to minimize what that offense
25 is. I fully believe that you think that the whole
26 situation has been pulled out of proportion, or blown out
27 of proportion. But what you said was alarming. And it is
28 going to be taken very, very seriously.

29 We would expect someone who says that to have
30 certain things going on in their mind that other folks may
31 not. That's what this mental health issue, that's what
32 the Defense is all about. But you are not realistic at
33 all in believing that something is going to happen to
34 cause Ms. Lane to have a different position from the
35 things that you've said so far. Those things that you've

1 said so far are common characteristics of 90 percent of
2 the inmates at state prison. Okay?

3 I have been in criminal law 25 plus years. I
4 have toured state prisons; I've talked to state prisoners.
5 Okay? This is not unusual. And if your issue with
6 Mr. Northam is that her offers are too tough, she can make
7 those offers leaving you only one alternative, to plead
8 straight up and see what the Court does. Okay? That's
9 not a good idea. Okay? Generally speaking. Because
10 you're going to want to understand and have some
11 guarantees. Most defense attorneys are not going to
12 advise you. Okay? Because that exposes you to
13 everything. There are certain defenses here that need to
14 be developed. They are not simple defenses. They are
15 more complicated defenses and they need time to develop,
16 okay? And they need to be given to a jury. I agree with
17 the assessment so far.

18 Now, an attorney has the obligation not only to
19 present those defenses and work through those defenses
20 with you. But in his own or her own independent judgment,
21 determine what the best strategy is for developing and
22 presenting them.

23 Mr. Northam has told me, and I see nothing wrong
24 with the logic, to expend the bullets of that gun
25 so-to-speak at your Preliminary Hearing is not a good
26 idea. Okay? Particularly if you believe that the
27 Prosecution is of this mind that they are out to get you.
28 Because they are going to take that, and you give them
29 everything they need to spend a month or two combating
30 that. The time they should really hear that strategically
31 is when they have less time. They should hear it at the
32 time of the trial. That's a perfectly sound and
33 legitimate strategy, okay?

34 Having been around criminal law, trying cases,
35 hearing cases, sitting in this chair for almost eight

1 years, I see nothing wrong with the strategy. I know you
2 don't agree with it, but it is the purview of the lawyer
3 to develop that for the time they think best appropriate.
4 Okay?

5 My impressions, okay? For what they are worth to
6 you.

7 A. I appreciate what you're saying, and I agree with
8 you 100 percent. All I would say to that is that what I'm
9 trying to say is not that Ms. Lane or the Court should not
10 be alarmed. What I'm saying is that I have no real
11 criminal history. I mean not -- not, you know, you can
12 point at this or that, but it's stuff that was dismissed
13 and it was stuff that was never, you know, it was reduced
14 to misdemeanors. I never went to prison; I have no
15 strikes.

16 What I'm trying to say is that me and Ms. Lane
17 are just -- we're just this far apart is all. You know?
18 She wants me to do a little time. I -- I -- I feel like
19 no matter what's happened here, you know, probation should
20 not be off the table. A split -- a split sentence like
21 he's saying with some jail time and some supervised parole
22 supervision should not be off the table.

23 Q. That's what he's trying to do, okay? But he
24 can't force her to make that offer. If she says no, she
25 says no.

26 A. Of course.

27 Q. I can't make you that offer --

28 A. Of course.

29 Q. -- because I'm not the Prosecutor.

30 A. Of course.

31 Q. They take it out of my hands -- they take it out
32 of their own hands if you pled straight up; I've told you
33 the wisdom of that. I don't think it's a very wise thing
34 to do, especially early. And when they go to trial.

35 A. Of course.

1 Q. Once a jury renders a verdict, it's up to that
2 Judge. Okay? But he's not going to be able to do any
3 more with Ms. Lane than he's already done, I have a
4 feeling. And she's going to want to see the Prelim, too.
5 She's goint to want to see how this thing hammers out.

6 A. Right. And all I'm saying is that he should be
7 open-minded to considering to continue to point out to her
8 that we are really not that far off, is all I'm saying.
9 Just saying, Look, Amber, you know, you're here and we're
10 here, and we feel like we are giving you more and more
11 information.

12 That's why I think that the forensic examination
13 by Carlson would be most helpful. I'd like to --

14 Q. Well, she already has that. She already has his
15 1368 evaluation. So if it's written, those things you
16 quoted me in that evaluation, she already has it.

17 A. Right.

18 Q. She already understands that.

19 A. Right.

20 Q. She's not -- she's not a dense Prosecutor. She
21 is very bright and she's very ambitious. And she's been
22 around here for, I don't know, about a year now --

23 A. Right.

24 Q. -- in a particular assignment. And I have seen
25 quite a bit. So I'm telling you, she's read it; she
26 understands it --

27 A. Right.

28 Q. -- she's processed it.

29 A. What I would ask to do, Your Honor, is I would
30 ask that this letter be made part of the record.

31 Q. I can do that.

32 A. And what I would point out is I will initial or I
33 will put a star by the paragraph that I think is
34 pertinent. And I think where the rubbers leaving off the
35 road here is that I think it could possibly be a conflict

1 of interest for Mr. Carlson to work for the defense as a
2 non-discoverable defense expert witness.

3 However, I think he says right here in this
4 paragraph, he says, If the Court reappointed me to
5 evaluate you once again, I would still be only in one
6 role, an objective evaluator to the Court with no private
7 personal involvement with you to complicate my status. No
8 one could accuse me of being in conflict over conducting a
9 private forensic assessment. So I think what he's saying
10 there --

11 Q. Let me just tell you something pretty quick.

12 A. Yeah.

13 Q. If Mr. Northam is going to get an assessment,
14 that assessment may hurt you, okay? You're talking about
15 a very thin intellectual line between somebody who is not
16 guilty because they didn't know what they were doing.
17 Okay? Versus someone who was agitated and motivated to
18 say what they said. Whether you ever intended to follow
19 through on what you said doesn't matter to the offense
20 they've charged. That's why he started that way. Okay?

21 If that is his opinion and you leave it wide
22 open, and it's not good for you, and it is evidence that
23 could be used against you, if you open it up, it's not
24 protected by the privileges of a doctor who is sought
25 privately to advise you and your attorney before that's
26 ever made public.

27 A. Yes.

28 Q. Okay? If I'm an attorney, I'm not giving that
29 up. Whether you want that done or not. I want to have --

30 A. Yes.

31 Q. -- advice from an expert that is not being turned
32 over so it can be intelligently evaluated within the
33 confines of your privileges not to disclose it.

34 A. Yes.

35 Q. Okay? I think it's sound strategy, that's all

1 I'm saying.

2 A. Yes, and it is, and I agree. What I don't agree
3 with is that I do not have the right to override that and
4 to say essentially that I think I already know what
5 Mr. Carlson's going to say and I think it is going to be
6 exculpatory, and I am willing to roll those dice.

7 Q. Okay.

8 A. So --

9 Q. I get that.

10 A. So I'm asking that that be over-ridden. And
11 that's going to be a point of contention between me and
12 him. And that's why I would like the letter on the
13 record.

14 Q. And it will come in. Just a second.

15 I'm going to mark that as a Court's exhibit. It
16 will be placed under seal, however, marked in the Marsden
17 situation. Or marked as identification, Court's Exhibit 1
18 for the Marsden. We are going to seal it. It will be
19 sealed without -- it won't be opened for anyone unless the
20 Court orders that. Someone would have to show good cause
21 to do it, or if Mr. Northam wants it. In which case he
22 can come in and just bring the file into court, I'd let
23 him look at it obviously, because he knows about that.

24 That is something that we have some time and you
25 and Mr. Northam have some time. Remember, what Doctor
26 Carlson has said, he's already said. He's not going to
27 say much more than that. You based a lot of what you told
28 me on what he said. And I appreciate what you are telling
29 me.

30 But what I am also hearing from Mr. Northam, and
31 not disagreeing with either is, he is dealing with a very
32 subtle issue. And he needs to understand what's going to
33 come out of the mouth of somebody, because he has to go a
34 little bit beyond what this doctor is saying. Because
35 remember, this doctor wasn't looking at this, as far as a

1 defense. He was looking at it and making conclusions for
2 the Court in deciding whether or not 1368 was appropriate.
3 He is coming at it from a different angle. Having seen it
4 a number of times, I understand what the differences might
5 be.

6 When you get to that point where witnesses are
7 being put together to defend you at trial, should it get
8 there, then the discussion is wide open about whether or
9 not Doctor Carlson is an appropriate witness, from
10 whichever direction you can. So I don't think your at
11 that time yet where this is a drop-dead issue. I don't
12 think it is. Because remember, preparation for trial is a
13 dynamic thing. Things come together. They don't show up
14 all at once.

15 And when you're talking about mental defenses,
16 they develop also. Okay? The psychological world for
17 defenses, too, I can tell you as a Prosecutor years ago, I
18 loved to see them. They are hard from the Defense
19 standpoint, unless they are very, very obvious. And you
20 articulate well, okay? I've told you I don't agree with
21 certain things that you have said. I have not told you
22 they are not legitimate things, okay? But I haven't been
23 able to develop them as an attorney would. And I
24 shouldn't. I'm just putting everything together here.
25 Okay?

26 So let's go ahead and we will mark that, and I am
27 going to read it before we seal it. Give me a minute to
28 do that.

29 (COURT'S EXHIBIT 1 WAS MARKED FOR IDENTIFICATION
30 AND SEALED.)

31 (PAUSE IN PROCEEDINGS.)

32 THE COURT: Okay. I have reviewed that. We will
33 just put that in the envelope and keep that in the
34 confidential portion of the Court's file.

35 All right. Anything else?

1 A. Yes. So we are clear on the record that I have
2 stated that I believe it is my right to have Doctor
3 Carlson as a discoverable witness for forensic
4 examination, and that that is exactly what I'm asking for.

5 We are clear on that?

6 Q. I understand what you are asking for.

7 A. Okay. I do believe that to deny that, with or
8 without his advice to do so, is a violation of my right.

9 I also believe that he needs to fully debrief
10 Mr. Fazer about the entire history of my conversations
11 with him. And he needs to determine, by taking statements
12 and questioning from him in depth, he needs to determine
13 whether or not that would help us at our preliminary.
14 Because it is in my opinion that he is an exculpatory
15 witness. That he can shed a lot of light on what happened
16 here. And even his own motivation for what he did here,
17 okay? I think -- I think again, he's denying me an
18 affirmative defense at my preliminary.

19 I think to not subpoena -- to try to subpoena the
20 cellphone from Miss Dubuque --

21 Q. We don't have to go over everything again.
22 Remember, I've already heard these things. And I have
23 already heard his reasons for doing or not doing certain
24 things.

25 A. Right. I think overall, me and Mr. Northam are
26 going to continue to disagree about some very fundamental
27 issues in my case. I believe that unless he really had a
28 see(sic.) change about which one of us is going to be in
29 change of this defense, ultimately we are going to -- the
30 communication is going to break down.

31 I believe that, you know, looking at what's
32 already happened is indicative of the problem. You know,
33 he was going to 1368 me rather than just admit that he's
34 not really been trying to see my point of view. Okay?

35 This is my defense. I have to -- you know, it

1 says right in the law books that a Defendant's wishes in
2 regards to his lines of defense should be respected. I am
3 willing to give-and-take. I am willing to hear what he
4 has to say. But ultimately, if he's going to shut me
5 down, I think that's a mistake. I think it's a violation
6 of my rights. And I'm not sure going forward that me and
7 him -- that the communication is not going to breakdown,
8 you know, as it already has. I think this hearing has
9 helped. I think we might be a little bit closer to, you
10 know, trying to see eye-to-eye here. But I think it's
11 precarious.

12 He really needs to talk to Mr. Fazer; he really
13 needs to get some kind of a statement taken from him; he
14 needs to give that to Amber Lane; he needs to -- if it's
15 my wishes to have Doctor Carlson do a forensic exam on the
16 911 events, which I think is important. You know, you say
17 that he's not going to say much more than he's already
18 said, but I -- I -- I think it gives him an opportunity to
19 point out not only that --

20 Q. This is what -- I want you to be -- there's many
21 parts to what the doctor just told you. It is a
22 professional problem for him to do that. And here's why.
23 He is on a list of people that the Court appoints for
24 these evaluations for competency. Okay? If it looks like
25 he is using that, then to transition into a paid position
26 to be a consultant and a paid expert, that's really bad
27 for him professionally. And it is a significant piece of
28 Cross Examination. And he doesn't want that. That's part
29 of what he's saying.

30 Now, you may say you can force him to do that,
31 but Doctor Carlson is going to be hard-pressed to say I'm
32 going to consent to that. Because it looks like he's
33 using these Court appointments to get business. Okay?
34 That's not ethical. And you are going to have a hard time
35 having him do that. You were very focused on that.

1 Doctor Carlson's reputation is very important.
2 Not just to him personally because he's testified here
3 before, but because of what he does for a living. I don't
4 think that that is realistic for you to expect Doctor
5 Carlson to consent to. He doesn't have to violate that
6 professional integrity because you want him to. You see?
7 That's a big part of this conflict.

8 Not just because he was appointed and did one
9 thing, but because that really is impeachable. That could
10 cost him business. That could come back to him every
11 other time he testifies as a Cross Examination piece,
12 you're just after it for the money. He doesn't want to
13 put himself in that spot.

14 I don't think you fully understand what Doctor
15 Carlson's telling you in that piece of paper why there is
16 a conflict for him professionally.

17 A. I don't understand then what the notated
18 paragraph means then.

19 Q. Yeah, I know you don't. That's why I'm
20 explaining it to you.

21 A. But it says, and I quote, it says, "Now, if the
22 Court were to reappoint me for a forensic examination,
23 that I would still be in one role because I would still be
24 working for the Court.

25 Q. Mr. Gibbs, you asked me to read it, I read it.
26 That's how I interpret it.

27 A. What about --

28 Q. You can interpret it in a completely different
29 way if you want, but you asked me to read it for a reason.
30 I read it. I saw two or three significant pieces in there
31 why he is saying that's not appropriate. And I understand
32 what he says about the Court reappointing him to do
33 something. It's not what you are saying. At least as I
34 interpret his letter. Just being fair with you --

35 A. Okay.

1 Q. -- I don't read it the same way.

2 A. Okay. I will give you that, if you will give me
3 this.

4 Q. I'm not negotiating with you.

5 A. I know, I understand that. But I'm just --

6 Q. Mr. Gibbs, I think we're done because you are not
7 responding to Mr. Northam anymore and I've got all the
8 information that I need. I will give you one more, but --
9 I will give you one more opportunity to tell me something,
10 but I'm not negotiating with you.

11 A. Well, let's -- let's -- let's --

12 Q. I understand your position.

13 A. -- let's leave Carlson off. Let's leave Carlson
14 off. I think I'm on the record in my position of that.

15 I still -- I still -- I still say that in order
16 for me to go forward with this lawyer, we have got to
17 figure out what our defense is, and we've got to agree on
18 that defense. And if I absolutely feel like he is
19 shutting me down on something that's just absolutely
20 essential, then it's just not going to work.

21 He's told me things about other people's cases
22 that are client privileged things that I don't think he is
23 supposed to be telling me. He's told other people things
24 about my case that I don't think he's supposed to be
25 talking about. I have serious questions as to whether or
26 not, you know, he really is trying to help me and whether
27 or not our communication is just going to break down
28 further in the future.

29 I think, you know, he has copies of discoveries
30 of things that I am not even getting, that I have asked
31 him for. I have asked him for basically whatever he's got
32 by way of discovery so that I can look through it and try
33 to help him, you know, get his whole file together.

34 Like the interview notes of Edward McGinnis by
35 Richard Cotta. Those should be in there. His letter that

1 he just got from Sheree Debuque. I'd like to get that and
2 be able to review it.

3 I'd like him to speak to Mr. Fazer at length, or
4 his investigator, and ask some of the questions that I
5 would ask of him. And if it turns out that those comments
6 that are on the smoking gun audiotape, which I refer to as
7 the smoking red herring audiotape, you know, if it turns
8 out that that audiotape was started halfway between the
9 conversation, if it turns out that that, therefore, took
10 that conversation completely out of context, as I said
11 three times to the detectives when I was being interviewed
12 that my comments were taken out of context, my comments
13 were taken out of context, three times in the police
14 report it says that.

15 If that's true, then, you know, Mr. Fazer should
16 probably come into the preliminary and tell us all that,
17 you know, we were talking about this, the conversation kind
18 of got turned upside down. I kind of challenged
19 Mr. Gibbs. I kind of, you know -- first of all, I pulled
20 the rug out from under his feet. He was having an
21 incredibly terrible time and moment in his life, and he
22 had been suicidal for weeks. I didn't necessarily know
23 that. But then this conversation starts going south --

24 Q. Slow down.

25 A. -- and I start challenging him. Okay?

26 Which when you challenge someone that's upset,
27 they are just going to double down and they are just going
28 to say more and more outrageous things.

29 So it became a situation where, you know, I liken
30 it to Seppuku, where you cut open your own cuts, you know?
31 That's what that felt like to me that day. Was that, you
32 know, nobody understood me, nobody cared what I was going
33 through, nobody cared that that conversation started out
34 as a perfectly legitimate legal conversation between a
35 lawyer and a litigant in a lawsuit.

1 And, you know, I understand that that
2 conversation went incredibly south. That has a lot to do
3 with my mental health history. It has a lot to do with --

4 Q. We are still covering the same grounds. I don't
5 need to hear all of this again.

6 A. I'm just saying he needs to get inside Fazer's
7 head and really break this down. That's not negotiable.

8 You know, we take Carlson off the table. There's
9 still, you know, he needs to get more of the discovery to
10 me. He needs to demand that they give him a transcript of
11 the interview between him and Sheree Dubuque. Between --

12 Q. Mr. Gibbs, I've heard this again.

13 A. But I have yet --

14 Q. You're covering old ground.

15 A. But I have yet to get it.

16 Q. Well, I know. But saying it over and over and
17 over again to me doesn't help at this hearing.

18 A. Okay. Okay.

19 Q. I asked for something new, I haven't heard
20 anything new. Are you done?

21 A. I think I have covered a great deal here today.
22 I do have concerns that, you know, if things don't get
23 better, nothing's going to get better.

24 I would reiterate one more last time, Your Honor,
25 that me and the Prosecution are not so far off. I wish we
26 could just all understand that what's happened here is
27 really terrible, everybody feels sorry about it. We just
28 need to -- I need mental health treatment to beat the bad.
29 I needed it before 911, I need it even more now. There is
30 no mental health in this jail; I don't care what you say.
31 There is nothing in this jail. I am in a cell 23 hours a
32 day --

33 Q. Okay. Stop. This is -- again, I'm going to keep
34 it to what's relevant to this hearing, okay? I can't deal
35 with some of those other sorts of things. People think I

1 can. I can't. Not unless it's properly in front of me.

2 Okay. Mr. Northam, I'm assuming that you are
3 submitting?

4 MR. NORTHAM: I am.

5 THE COURT: Mr. Gibbs, I think you know from what
6 I have been telling you, I don't think that what he is
7 doing right now is contrary to your interests. I see his
8 decision-making process as those that the attorney should
9 be making. I know you don't agree with a very many of his
10 decisions, but those are things he is entitled to do.

11 I am denying your Motion and I don't think that
12 the communication has broken down here to a point where it
13 raises to a due process violation. So the Motion for
14 Marsden is denied.

15 I'm assuming there is no one else out in the
16 foyer.

17 With regard to the Preliminary Hearing, that's
18 vacated. Obviously we can't go forward with that today at
19 all.

20 MR. NORTHAM: Correct. May I have just a moment?

21 THE COURT: Yes.

22 (Counsel confers with Defendant off the record.)

23 THE COURT: Why don't I do this. If we can have
24 that conversation somewhere else, as soon as you're ready,
25 I need -- if you want to, we can come back tomorrow
26 afternoon. That will give you some more time to discuss
27 what your next step and desire is.

28 MR. NORTHAM: Actually, can we come back in the
29 mid-morning tomorrow or do you have --

30 THE COURT: I have AOP starting at 10:30.

31 MR. NORTHAM: Okay. 1:30 is fine.

32 THE COURT: 1:30?

33 MR. NORTHAM: Yes.

34 THE COURT: It will be called afterwards.

35 Now, with regard to the Prelim, I think there was

1 already a 10 and 60 waiver.

2 MR. NORTHAM: I believe that there was.

3 THE COURT: Okay. So we will reset tomorrow or
4 take other appropriate action.

5 MR. NORTHAM: Correct.

6 THE DEFENDANT: Can I get a copy of that letter
7 back?

8 THE COURT: Sorry, I already -- I already marked
9 it as a Court exhibit. It's sealed and I need to keep
10 that. Okay?

11 THE DEFENDANT: I'd like at least a copy of it
12 for my -- for my records. That's my only copy of it.

13 THE COURT: Okay, we can make a copy of it. We
14 will provide it back to you tomorrow.

15 THE DEFENDANT: Okay.

16 THE COURT: Okay?

17 MR. NORTHAM: 1:30 tomorrow, correct?

18 THE COURT: Well, can we set it for 2:00? Since
19 I will have an arraignment calendar and that's more
20 realistic.

21 MR. NORTHAM: Okay.

22 THE CLERK: Well, actually it's the first Friday
23 of the month.

24 THE COURT: Have a seat right there, Mr. Gibbs.
25 I might have an issue.

26 We or the other court?

27 THE CLERK: I think it's us.

28 THE COURT: If it's us, that's not a problem. I
29 think it's us, too.

30 THE CLERK: I think it's us.

31 THE COURT: Yeah.

32 Never mind, we're good.

33 MR. NORTHAM: Okay.

34 (MARSDEN HEARING CONCLUDED. END OF PROCEEDINGS
35 ON THIS DATE.)

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SHASTA
3 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING
4 DEPARTMENT 1

5
6
7 PEOPLE OF THE STATE OF CALIFONRIA,)
8 PLAINTIFF,)
9 VS.)
10 ROBERT ALAN GIBBS,)
11 DEFENDANT.)

COPY

CASE NO. 14F6355,
15F5736

VOLUME 1 OF 1
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12
13
14
15 THURSDAY, JUNE 16, 2016

16
17 **TRANSCRIPT OF MARSDEN HEARING**
18 **- SEALED PROCEEDINGS -**
19 **MAY NOT BE EXAMINED**
20 **WITHOUT A COURT ORDER PER CRC 8.45**
21

22
23
24
25 A P P E A R A N C E S

26
27 FOR THE PEOPLE: DEPUTY DISTRICT ATTORNEY
(NOT PRESENT)

28
29 FOR THE DEFENDANT: SHON NORTHAM
ATTORNEY AT LAW

30
31
32
33 REPORTED BY: SUE N. SMEDLEY, CSR 8159
34 OFFICIAL COURT REPORTER
35

1 REDDING, CALIFORNIA - THURSDAY, JUNE 16, 2016

2 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING

3 DEPARTMENT 1, MORNING SESSION

4 -000-

5
6 (THE FOLLOWING CONFIDENTIAL PROCEEDINGS WERE HELD
7 IN A CLOSED COURTROOM:)

8 BY THE COURT: Q All right. I have gone through
9 what the basics of the Marsden Hearing are. Those are the
10 issues regarding Counsel's performance doing something he
11 shouldn't, doing something he should, and those issues
12 that relate to the communication between you and
13 Mr. Northam.

14 Did you want me to explain that further or do you
15 remember in the past us talking about what I need to hear
16 regarding Marsden Motions?

17 A. No, I am fully briefed on the process for the
18 Marsden. Thank you, Your Honor.

19 Q. So I'll just turn it over to you and you can
20 describe to me, I think we have had a Marsden already with
21 Mr. Northam. What other information did you want me to
22 know?

23 A. First of all, Your Honor, I would like to
24 apologize for not being in court on Tuesday. I was having
25 a very bad day. I was not sure of my course of action,
26 and I apologize that I wasted your time. Sincerely.

27 I would also like to say that Mr. Northam and
28 myself were just having a very candid, very open
29 conversation that I feel he was getting something out of,
30 actually, and it related to simply us working together a
31 little bit longer and trying to resolve this matter with
32 the District Attorney.

33 I told Mr. Luster that my desire to file a
34 Marsden Motion on him was nothing personal, that I'm not
35 angry at him or anything, that I'm just frustrated that

1 certain things have not happened. Mostly that the
2 District Attorney has not done not so much as Mr. Northam.
3 I believe Mr. Northam has advocated quite diligently on my
4 behalf with the District Attorney. I believe the District
5 Attorney has acted somewhat recalcitrantly.

6 I believe that a resolution is in sight in this
7 case if Mr. Northam is willing to just try a little
8 harder, try to be a slight bit more convincing, and really
9 try to advocate for the type of individual that he has for
10 a client.

11 Q. Well, Mr. Gibbs, let me ask you this. Did you
12 want to have him continue with what he is doing? I mean
13 he's finished with that very long, difficult case in
14 Sacramento. And that was a pretty high profile murder
15 case. It was his obligation to attend that case and
16 obviously his travel arrangements made it very difficult
17 for him to make certain dates. And since he was in trial,
18 he was subject to the orders of that Court.

19 Why don't we hold off on this, that being my
20 suggestion, set our dates for Preliminary Hearing and
21 allow you to work with Mr. Northam. And then if that
22 deteriorates again, be happy to come back into this
23 setting and continue with the Marsden.

24 Would that be appropriate?

25 A. I would have a counter proposal.

26 Q. Okay.

27 A. My counter proposal would be we set this matter
28 off for now; we give Mr. Northam some time to reacclimate
29 to my case from his cases that he's been on.

30 However, I would ask that no preliminaries be set
31 and I will use my personal waiver to waive as much time as
32 is needed. Simply because if we were to go ahead with the
33 Marsden Motion, I would be reading a laundry list of
34 things that he needs to do that I have every right under
35 the Constitution and case law to have done before a

1 preliminary could even go forward. And I mean it is a
2 laundry list. It is a bucket list. So --

3 Q. So what your request is is to put it on for
4 setting, giving you time to work with Mr. Norton on your
5 requests?

6 A. Yes.

7 Q. I can do that.

8 MR. NORTHAM: And if I may just interject, I know
9 that one of the, I think, primary issues for my Mr. Gibbs
10 and myself in terms of disagreement is whether or not
11 Mr. Fazer, the Attorney General -- and the Court's
12 familiar with, obviously, the facts of this case --

13 THE COURT: Somewhat. But I mean only what's
14 been discussed in open court or in previous plea dispo
15 hearings.

16 MR. NORTHAM: Correct.

17 That there is a witness that Mr. Gibbs feels is
18 credibly important that sort of initiated the major 422
19 case, that Mr. Gibbs has wanted subpoenaed. And I know
20 that Mr. Luster has attempted a number of times to contact
21 Mr. Fazer.

22 I have indicated to Mr. Gibbs that under Penal
23 Code Section 866, this witness, who is over 150 miles,
24 which I'd have to file a declaration to the Court, has to
25 negate an element of the crime, impeach the credibility of
26 a witness, or assert an affirmative defense. And I'm not
27 sure, and I had told Mr. Gibbs that I don't believe
28 initially that Mr. Fazer -- that the Defense could put him
29 on at Preliminary Hearing.

30 But what I indicated yesterday when I met with
31 Mr. Gibbs is that Mr. Luster will still attempt to contact
32 Mr. Fazer. I know that Mr. Gibbs is somewhat insistent on
33 the Defense taking a statement from Mr. Fazer. And I
34 said, Look, the guy doesn't have to talk to us. But I
35 will exert every effort, and Mr. Luster will try to

1 contact him to get a statement from him. As well as I
2 will petition the Court with a declaration trying to
3 subpoena Mr. Fazer for Preliminary Hearing.

4 THE COURT: Whether or not he can, in fact, be
5 called at that time I think is a little different than
6 whether he can be subpoenaed. And I think that additional
7 time to speak with that witness to determine whether he
8 has anything relevant under the code is certainly
9 advisable. So that's --

10 MR. NORTHAM: I agree.

11 THE COURT: -- that's just something that you and
12 Mr. Gibbs will work through as you get closer to the
13 Preliminary Hearing.

14 MR. NORTHAM: That's fine. I agree.

15 THE DEFENDANT: May I clarify, Your Honor?

16 THE COURT: Sure.

17 THE DEFENDANT: To clarify, I have a right under
18 People versus Erwin and the 14th Amendment to the United
19 States Constitution to call and see and confront and
20 cross-examine declarant witnesses.

21 John Fazer, Assistant Attorney General, is
22 someone I have had several conversations with in relation
23 to my federal lawsuit, and he is a crucial and axiomatic
24 witness in my case because he is the only one that can
25 contextualize and put into context the so-called recording
26 of my so-called statements. Okay?

27 Also --

28 BY THE COURT: Q Mr. Gibbs, let me just -- I
29 don't think you have to explain yourself because I think
30 that what you're saying is something that is correct. It
31 depends on what the issue at hand is at whatever hearing.
32 But seriously, it is something that you and Mr. Northam
33 need to go through. Because I am not going to order him
34 to do anything, and I don't have any quarrel with what you
35 are telling me.

1 So I think what would make sense is we do as
2 little as possible here, and that you and Mr. Northam and
3 Mr. Luster do as much as you possibly can between now and
4 our next court date.

5 A. Yes.

6 And also to clarify, because I was talking about
7 trying to reach a resolution with the District Attorney,
8 and you said that would you give us more time to work
9 together for both and all purposes.

10 I want it clear to Mr. Luster that, you know, we
11 can go forward to the preliminary at some point if you are
12 prepared. We can deal with that in the future. The Judge
13 is going to take that off the table for now. But our
14 primary focus, and the reason why I'm trying to work with
15 you longer here, is to give you a chance to reacclimate
16 from what you have been doing, get back on my case.

17 I would appreciate it if you would come to see me
18 in the jail so we can discuss specifically what we were
19 just discussing in the holding area. And just try to, you
20 know, get the D.A. to meet us halfway. I am amenable to
21 all sorts of, you know, things here.

22 There's also some things I would work on as far
23 as the domestic violence case. I know I have talked to
24 you and Mr. Luster about, you know, apparently that
25 witness does not want to testify against me. She is
26 adamant about that.

27 I was going to ask you to get a statement from
28 her perhaps, you know, if that's her wish so that you can
29 give that statement to the District Attorney that that's
30 her wish, that she does not want to pursue that at all.

31 And, you know, again, I'm trying to do these
32 things in the interest of justice to save the Court's
33 time, to save my time, so that we don't continue to
34 alienate each other.

35 Q. Mr. Gibbs --

1 A. I'm trying to cooperate with the Court.

2 Q. -- I don't disagree with anything that you're
3 saying. It's not Marsden matters at this point --

4 A. Right.

5 Q. -- unless there's a complete breakdown of that.
6 But I think what we need to do now is give you the time.
7 It makes perfect sense to me to put it on for setting
8 given the fact that there are a good number of issues you
9 and your attorney need to go through.

10 A. Okay.

11 Q. So, let's just do that.

12 A. Okay.

13 MR. NORTHAM: Okay.

14 THE COURT: Okay?

15 MR. NORTHAM: Okay.

16 (MARSDEN HEARING CONCLUDED. PAGES 120 THROUGH
17 122 WERE HELD IN OPEN COURT.)

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SHASTA
3 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING
4 DEPARTMENT 1

5
6
7 PEOPLE OF THE STATE OF CALIFONRIA,)
8 PLAINTIFF,)
9 VS.)
10 ROBERT ALAN GIBBS,)
11 DEFENDANT.)

COPY

CASE NO. 14F6355,
15F5736

VOLUME 1 OF 1
PAGES 133 TO 162

12
13
14
15 FRIDAY, JULY 8, 2016

16
17 **TRANSCRIPT OF MARSDEN HEARING**

18 **- SEALED PROCEEDINGS -**

19 **MAY NOT BE EXAMINED**

20 **WITHOUT A COURT ORDER PER CRC 8.45**

21
22
23
24
25 A P P E A R A N C E S

26
27 FOR THE PEOPLE:

DEPUTY DISTRICT ATTORNEY
(NOT PRESENT)

28
29 FOR THE DEFENDANT:

SHON NORTHAM
ATTORNEY AT LAW

30
31
32
33 REPORTED BY:

SUE N. SMEDLEY, CSR 8159
OFFICIAL COURT REPORTER

1 REDDING, CALIFORNIA - FRIDAY, JULY 8, 2016

2 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING

3 DEPARTMENT 1, AFTERNOON SESSION

4 -000-

5
6 (THE FOLLOWING CONFIDENTIAL PROCEEDINGS WERE HELD
7 IN A CLOSED COURTROOM:)

8 BY THE COURT: Q All right. Normally, as you
9 know, I try to describe what the Marsden process is before
10 each hearing. Unless you don't think that that is useful
11 and you have the process already in mind.

12 Do you have the process in mind?

13 A. I believe it's appropriate if -- if this is an
14 adversarial contest between me and my lawyer, I believe
15 it's appropriate that we both sit at the desk.

16 Q. It's not adversarial. No one's advocating for
17 one thing or another, you're simply making --

18 A. I believe I'm at a disadvantage to sit in the
19 Defendant's chair while my lawyer gets to sit at a desk.

20 Q. I'm not going to allow you to sit at the desk.
21 You sit right where you are.

22 MR. NORTHAM: I'll come sit next to you.

23 BY THE COURT: Q Did you want to have your
24 investigator, Mr. Luster, remain in the courtroom?

25 A. That's immaterial to me. That's Mr. Northam's
26 investigator, he is not my investigator.

27 THE COURT: All right. So Mr. Luster, I will
28 have you wait out in the foyer.

29 All right. Mr. Gibbs, did you want me to go
30 through my standard discussion about what the Marsden
31 Hearing is and what I need to hear from you? Or do you
32 feel comfortable knowing what that is and are you ready to
33 proceed?

34 A. This is the third time we've been here.

35 Q. It's more than that.

1 Okay. So what facts did you want to discuss with
2 me that tells me I should remove Mr. Northam?

3 A. Again I have prepared a written statement citing
4 certain ccases, talking about what I believe is the bear
5 minimum of duties that my lawyer owes to me in this
6 particular case.

7 Q. Did you want me to read that?

8 A. I wanted to read it for the record.

9 Q. Go ahead. And make sure that when you're reading
10 it, you're doing it at a pace where we can take it down.

11 A. Okay.

12 Q. So keep it slow.

13 A. Under the 14th Amendment to the United States
14 Constitution, a Defendant in a criminal case has the
15 Constitutional Right to due process.

16 Q. Hold on for just a second.

17 Marshal Backovich has returned and there's some
18 issue with regard to Mr. Gibbs believing you have some
19 information on your private phone. And because there is
20 an issue there and it might deter him from giving me
21 information, whether it's true or not, if I could just
22 have you not be part of this proceeding.

23 THE BAILIFF: Absolutely, Your Honor.

24 THE COURT: All right. Thank you.

25 THE BAILIFF: Thank you.

26 BY THE COURT: Q All right. You can go a little
27 faster than that. Go ahead.

28 A. Included in the due process of any criminal case
29 in the State of California is the right to a fair
30 Preliminary Hearing. The right to present an affirmative
31 defense, the right to all discovery before the hearing.

32 Cite People versus Hertz. Cite also People
33 versus Noisy. The willful suppression of evidence by the
34 government constitutes a denial of fair trial and due
35 process. Authorities cited.

1 In addition to these rights, a Defendant in any
2 case in the State of California is entitled to the right
3 to call declarant witnesses.

4 Would cite People versus Erwin. Authority cited.

5 The right to effective assistance of Counsel.

6 Would cite the 6th Amendment to the United States
7 Constitution. Authority cited.

8 The right to see and confront witnesses. Would
9 cite the 6th Amendment.

10 The right to compel witnesses on his behalf,
11 including the power of subpoena. Would cite the 6th
12 Amendment to the United States Constitution.

13 The right for sufficient time to prepare for
14 hearing. Would cite People versus Gibbs, People versus
15 Johnson.

16 The right to cross-examine witnesses. Would cite
17 the 6th Amendment to the United States Constitution.
18 Authority cited.

19 Mr. Northam continuously refuses to properly
20 prepare for my Preliminary Hearing. A violation of my
21 right to effective assistance of Counsel as described in
22 the 6th Amendment to the United States Constitution.

23 As well as my right under the 14th Amendment to
24 United States Constitution, to wit: Due process. A fair
25 Preliminary Hearing and an affirmative defense. Authority
26 cited.

27 Mr. Northam refuses to properly investigate the
28 pertinent and exculpatory evidence as requested by me, his
29 client; refuses to contact and pre-depose declarant
30 witness, John Fazer, of the California Attorney General's
31 Office to determine if there are facts of which he knows
32 which would be highly beneficial to his client's.
33 Speaking of Mr. Northam.

34 Mr. Northam refused to subpoena declarant witness
35 John Fazer to be properly cross-examined by him to

1 determine facts which may be highly beneficial to his
2 client. Adamantly and stubbornly refuses to prepare a
3 list of pertinent questions to accurately ascertain the
4 facts of the case which are exculpatory and highly
5 beneficial to his client. Adamantly, stubbornly, and
6 unlawfully refuses to challenge prejudicial and illegally
7 obtained evidence. Adamantly, stubbornly, and unlawfully
8 refuses to respect his client's wishes on how to proceed
9 with his preliminary. Refuses to respect this Defendant's
10 chosen lines of defense. Refuses to prepare to adequately
11 attack every element necessary to constitute the crimes as
12 charged. All of which violate this Defendant's rights
13 under the 16th and 14th Amendments to the U.S.
14 Constitution. To effective assistance of Counsel and due
15 process.

16 As well as Sandstrom versus Montana, Patterson
17 versus New York, Mullaney versus Wilbur, Morissette versus
18 United States.

19 Prosecution has the sole burden of proof to prove
20 every element of an alleged crime.

21 Also cite People versus Simon. Defendant
22 entitled to the benefit of doubt in regards to the
23 construction of the language in a statute in question.

24 Would also cite Fain versus Commonwealth. It is
25 a sacred principle of criminal jurisprudence that the
26 intention to commit the crime is of the essence of the
27 crime. And to hold that a man shall be hold criminally
28 responsible for an offense of which he was ignorant at the
29 time, would be intolerable tyranny.

30 Cite also People versus McCowan. The Defendant
31 due to pressures and stresses the Defendant was under,
32 suffered a major depression which had a significant impact
33 on his thought processes. It was demonstrated that intent
34 was not proven and Defendant was not responsible.

35 Cite also Stovall versus Denno. Trial Court must

1 guard against the clear danger of convicting an innocent.

2 Cite also People versus Frierson. Failure to
3 call potentially favorable witnesses is ineffective
4 assistance of Counsel.

5 Cite also People versus Wells and People versus
6 Gorshin. A Defendant may be sane, but nonetheless lack
7 the capacity to form the necessary intent.

8 Cite also People versus Freeman. The Defendant
9 did not comprehend the nature and the quality of his act
10 and was, therefore, not responsible.

11 Cite also People versus Heath. Defendant was
12 able to show he did not have time to form the proper
13 intent.

14 Cite also People versus Scott. Defendant was
15 able to show that even though his thinking was delusional,
16 it was nonetheless reasonable in his mind and he was,
17 therefore, not responsible.

18 Cite also People versus Nunn. The Defendant was
19 able to demonstrate that because of past psychological
20 trauma, Defendant tended to overreact to stress and
21 apprehension, a condition likely to result in impulsivity.

22 Cite also People versus Salas. The Defendant,
23 despite some circumstantial evidence that he did form the
24 requisite intent, was able to provide substantial proof
25 that he lacked intent and was, therefore, not responsible.

26 Cite also Patterson versus New York. A state may
27 not shift the burden of proof to the Defendant by
28 presuming any required ingredient upon proof of the other
29 elements of the case.

30 Cite also in regards to Winship. This bedrock
31 axiomatic and elementary constitutional principle
32 prohibits the state from using evidentiary presumptions
33 that have the effect of relieving the state of its burden
34 of persuasion beyond a reasonable doubt of every element
35 of a crime. Authority cited.

1 A proper and lawful affirmative defense at this
2 preliminary on these charges would require at bear minimum
3 that attorney Shon Northam be prepared to challenge the
4 obvious and unlawful presumption of intent. The illegal
5 and unauthorized wire tapping of this Defendant in
6 violation of Penal Code 637.2.

7 Cite also the 4th Amendment prohibition on
8 warrantless search and seizure.

9 The Fifth Amendment prohibition on
10 self-incrimination. Laws against entrapment and failure
11 to issue Miranda warning. A proper and lawful affirmative
12 defense at this preliminary on these charges would require
13 at bear minimum that attorney Shon Northam be prepared to
14 call and exam declarant witness John Fazer for the purpose
15 of clarifying and contemptualizing not only the instant
16 and illegally recorded conversation, but the very nature
17 of his relationship to the Defendant.

18 Any and all exigent, pertinent, relevant, and
19 auxiliary conversations between Mr. Fazer and this
20 Defendant, any and all relevant, pertinent, and possibly
21 exculpatory documents, communications, recommendations,
22 depositions, legal filings, or any other relevant,
23 pertinent, and possibly exculpatory evidence in
24 Mr. Fazer's possession or under his control.

25 Any proper, effective, and affirmative defense at
26 this preliminary on these charges would require at bear
27 minimum that attorney Shon Northam be prepared to
28 demonstrate that the events of 9-11, 2015 were actually
29 direct evidence of emotional disturbance and not criminal
30 activity.

31 For Mr. Northam to stubbornly continue to ignore
32 such a clear and viable avenue of defense for his client,
33 a defense which is not a diminished capacity defense or an
34 NGI defense, but which would expose his client -- which
35 would expose his client to commitment to state hospital,

1 but is, in fact, a defense which, if demonstrated, would
2 render his client innocent as charged, amounts to
3 ineffective assistance of Counsel.

4 Any proper, effective, and affirmative defense at
5 this preliminary on these charges would require at bear
6 minimum that attorney Shon Northam be prepared to
7 subpoena, prepare, pre-question and interview any other
8 witnesses whose testimony, or potential testimony, could
9 reasonably be relevant, pertinent, and germane to any
10 element of these alleged crimes. Including specifically
11 and especially intent and/or state of mind of this
12 Defendant at the time of the alleged offense.

13 This would include witnesses, Candy Hoover, Rob
14 Willis, John Rowe, Ken Cochral, Sheree Dubuque, John
15 Fazer, Attorney Richard Cotta, Attorney Craig Omura,
16 Edward McGiniss, Judge Daniel Flynn, Judge Gregory Gall,
17 District Attorney Steven Carlton, Attorney Timothy
18 Prentiss, Attorney Melissa Fanoie, Attorney Gary Bickwood,
19 Judge Gary Gibson, Judge Gallagher, Family Law Facilitator
20 Nanette Stomberg, County Supervisor Leonard Modey, Record
21 Searchlight Reporters Jim Schultz and Joe Keselowski.
22 Record Searchlight Editor Carol Ferguson, Child and Family
23 Services Social Worker Alicia Meyer, Mr. Steven Lock,
24 Mr. Mark Barbella, Assistant Attorney General Alberto
25 Gonzales, Mr. Andrew Lloyd, Attorney Johnathon McCrone,
26 Miss Georgia Trump, et cetera, et cetera, et cetera.

27 And I would add here, Your Honor, that none of
28 those people are frivolous. None of those people
29 are making up anything that -- these are people that know
30 about this case. This case is way, way, way, way deeper
31 than either he or the District Attorney wants to admit.
32 They want this to be easy. And this goes to my Marsden.
33 Okay?

34 Q. No, I understand that. I need you to slow down a
35 little bit. You're getting to that point where you do get

1 emotional about it, which is okay.

2 A. I'm sorry. I'm sorry.

3 Q. But take a deep breath and just keep your pace in
4 a way --

5 A. This is so much deeper and wider than they want
6 to admit. And I have told my lawyer time and time again
7 that I just want to -- I want to not wait waste the
8 Court's time. I want to not -- I don't want this fight.
9 I never wanted this fight. I'm a man of principles and
10 this was thrust upon me.

11 Q. And I've heard a lot of that. I want to ask you
12 a question, okay? You spent a good deal of time talking
13 about evidence which negates intent. What do you think
14 the intent is for the offenses that you're alleged to have
15 committed?

16 A. Intent to commit criminal threats. Intent for my
17 words to be conveyed to the public and/or to the so-called
18 victims. And my -- my -- my assertion this whole time,
19 and this is my honest assertion that I have not wavered
20 from one time and I've said it to officers in the jail and
21 I've been completely open about it, was that on 9-11 I was
22 psychiatrically disturbed. And I knew it. And I needed
23 help. I needed psychiatric intervention. I needed the
24 kind of guidelines which are now in place in this county
25 that weren't in place at the time. Which the Grand Jury
26 has since said needs to be in place. Which is, how do we
27 deal with someone that's having a psychiatric emergency?

28 Last year those guidelines were not in place.
29 And if I had a chance to speak to the Grand Jury, I would
30 have told them that I needed help, but I -- I didn't know
31 how to get help. And I felt like there was no help. And
32 I felt like -- I felt like I had to provoke people in
33 order to help me. And that's a very scary feeling. And
34 people --

35 Q. Okay.

1 A. And I'm not blaming anyone for not understanding
2 that at the time, but I blame them for not understanding
3 it now after four psychologists have seen me and four
4 psychologists have said --

5 Q. Mr. Gibbs --

6 A. Yeah.

7 Q. The indent that you described is not the intent
8 that needs to be proven for the crime. Okay? What you
9 have actually described is an argument that the element of
10 intent actually exists for how it needs to be proven.

11 It doesn't matter, okay, what prompted you to
12 make the threats, be it anger or a cry for help. The
13 intent is one that says that the threat be taken as a
14 threat. Meaning, you wanted something to happen because
15 people were frightened.

16 A. No.

17 Q. People felt threatened.

18 A. No, Your Honor, that's --

19 Q. And it makes no difference.

20 A. No, that's not what I meant.

21 Q. No, that's not what you said. Okay? And so I
22 wanted to make sure that I understood clearly. Because
23 the reason is, if you think it is a bad thing that
24 Mr. Northam is not putting on that type of information,
25 but you are putting on information that you made specific
26 statements to get people to act --

27 A. No, sir.

28 Q. -- you may be admitting the offense itself.

29 A. I understand that.

30 Q. And that would be incompetency.

31 A. I understand that.

32 Q. So you have to be very careful. That is a
33 difficult crime, okay? It came up years and years ago
34 with the -- what we call the Step Act. It was an act
35 designed specifically to address criminal street gang

1 problems years and years ago. But it is an offense which
2 has been interpreted extremely broadly and used in ways
3 not initially envisioned. Okay?

4 When it says the threat must be immediate, that
5 is an immediate prospect of execution, most people would
6 say, well, that means right now. Because that's what
7 immediate means. And it doesn't. It means that it could
8 be carried out in a reasonable period of time from the
9 time of the threat for a foreseeable thing.

10 Like if someone goes in and bails out, say, for
11 example, you are in a spousal abuse situation. And the
12 person while beating his wife says, I'm going to kill you.
13 And the neighbor intervenes and he says that as he's
14 leaving with the cops.

15 Her fear obviously is not that he is going to
16 kill her now. Her fear is that when he is released, he
17 could come back and do that. Even if she doesn't know
18 that he is being held without bail and was chained down,
19 doesn't make any difference. Okay?

20 So, it's a complicated offense. And if you
21 get on the stand and you testify, or Mr. Northam puts on
22 information from people that you think helps you, that
23 says, well, we don't think he intended to follow through
24 with this at all, we think he threatened this -- these
25 threats were made so that he could get help. Quite
26 frankly, that may help the Prosecutor, okay?

27 I understand it's been a theme through most of
28 your writs, many of the things that you've said in court,
29 that you certainly did not intend in any way to follow
30 through with these threats. Whether I believe you or not
31 is not material. Personally I don't think you were going
32 to, okay? That doesn't matter when it comes to proving
33 the elements of the crime. Okay?

34 And that's why I wanted you to define it.
35 Because it's all -- your difficulties circle this intent.

1 The intent can be interpreted very broadly.

2 A. Okay. Can I --

3 Q. And it doesn't make any difference whether they
4 believe you're going to follow through on it or not.

5 A. Right. No, I understand that. And what you said
6 was very astute and I appreciate you giving me that
7 warning. And Mr. Northam agrees with that and he's
8 conveyed that to me.

9 What I would like to clarify, however, was that
10 not that my thinking was to provoke people into helping me
11 by making threats. What actually happened was the
12 conversation, the context of the conversation was that
13 Mr. Fazer, I'm having thoughts about hurting people; and
14 I'm not that kind of a person and I don't want to think
15 that way.

16 And he said, Well, Robert, you're not going to do
17 anything.

18 And I said, I don't know that, sir. I don't know
19 that. I'm really walking around thinking that this
20 community is out to get me. This community does not care
21 what these police have done to me and my family. There is
22 no recourse here. You are trying to have this case thrown
23 out of Federal Court against your own recommendations,
24 because your bosses are overruling your recommendations.
25 You've told me that you have sympathy for what happened to
26 me here and that it was not right and that you are going
27 to recommend that they actually settle with me. Now they
28 are going to overrule you, and I have to tell you, I have
29 to stop you right now and tell you that I'm walking around
30 out there feeling like it's me against the world and that
31 revenge is the only course of action here.

32 That's the context of these so-called threats.

33 Q. Okay. And okay --

34 A. This was something that had to be said at the
35 time to this lawyer who I trusted. And I realize this is

1 not a normal relationship between someone and an opposing
2 lawyer.

3 What you have to understand that keeps getting
4 missed here is that me and John Fazer had many
5 conversations, and that I have considered him a friend by
6 this point. I was -- I was too honest; I was too open
7 with what was going on with me emotionally. But I am glad
8 that I said it, and I will tell you why.

9 I was also on the phone with the police for
10 the -- for at least two weeks before that, basically
11 threatening to kill myself, okay? They didn't bother to
12 come get me; they didn't bother to put me in a mental
13 hospital or try to get me any help for that. They didn't
14 care about that. They didn't counsel for me that. They
15 basically just told me, well, you know, if you want to
16 come turn yourself in, maybe we can get you 5150'd or
17 something. And that was basically it.

18 Q. Okay. We're off the path here. Okay?

19 A. I understand.

20 Q. You don't have to defend yourself in your case to
21 me.

22 A. I understand.

23 Q. All right?

24 A. I'm -- I'm -- I'm -- I'm trying to let it be very
25 clear to everyone.

26 Q. What I was doing was trying to get a context of
27 your thinking regarding the ineffective assistance that
28 you're alleging --

29 A. Right.

30 Q. -- as it relates to your defense. Okay?

31 A. Right.

32 Q. So let me stop you right now. You've said a
33 number of things. I'm going to turn it over to
34 Mr. Northam to get his response.

35 MR. NORTHAM: Mr. Gibbs and I have had a number

1 of discussions about sort of the catch-22 in this case,
2 the evidence related to Mr. Gibbs' mental state.

3 I suspect that the Prosecution will probably
4 stipulate that Mr. Gibbs was under extreme emotional
5 disturbance. The evidence that we would put on at
6 Preliminary Hearing, and I will get to the witnesses in a
7 second, is the same evidence that the D.A.'s going to go,
8 Exactly. He was nutty, for lack of a better description,
9 he was off his rocker and that's why he made those threats
10 and that's why those threats were taken seriously.

11 So it's a double-edge sword. The argument is
12 while this proves that I didn't really have the intent to
13 follow through on the crimes. But the flip side of the
14 coin is, well, that's just the amount of evidence that the
15 D.A. is going to go, Hey, Ladies and Gentlemen of the
16 Jury, that's why he did what he did.

17 But I had a great meeting with Mr. Gibbs the
18 other day with Mr. Luster, or the other night. And we
19 went through a lot of issues in this case. And I told
20 Mr. Gibbs, I acquiesce. I said, I will subpoena
21 Mr. Fazer. I can see your argument about why you want to
22 put this in context. I said, so I will do the declaration
23 for when it's over 150 miles. I said, then we can just
24 take it up with the Court as to whether or not he actually
25 hits the stand. Because there's specific rules, as the
26 Court's well-aware, and Mr. Gibbs is aware as well.

27 There are several things Mr. Gibbs wanted me to
28 do, one of which is depose Mr. Fazer. And I have
29 explained a number of the times, Mr. Fazer doesn't have to
30 submit to a deposition; he doesn't have to submit to being
31 interviewed. Until he is subpoenaed, he doesn't have to
32 return phone calls. And I know Mr. Luster's attempted
33 several times to contact Mr. Fazer. We are still trying
34 to speak with Mr. Fazer.

35 BY THE COURT: Q And I would suggest, Mr. Gibbs,

1 Mr. Fazer is an employee of the Attorney General's Office.
2 There is a lawsuit pending where he is a witness and he is
3 an attorney. He isn't going to speak to anybody until he
4 is forced to do it.

5 And Mr. Northam's right. In a criminal case, you
6 don't depose people. The only exception is someone that
7 you think is going to die before the trial is heard, like
8 a victim with Cancer or something like that, and then you
9 can have what they call a conditional exam. Which really
10 is a deposition, but it's still subject to the same trial
11 rules, not deposition rules which are much broader.

12 And if he comes in, Mr. Northam's going to have
13 to make an offer of proof that he fits into the category
14 of relevant evidence and material for Preliminary Hearing.
15 Whether his credibility could be substantially questioned
16 by his testimony. But he can't just say, I just want to
17 see what he has to say.

18 The Preliminary Hearing is not a deposition. And
19 if he says, well, I just want to kind of dig in a little
20 bit and see this, if it doesn't fall into those specific
21 categories, the code allows for testimony at Preliminary
22 Hearing, I am not going to allow it. No Court would.
23 That's the rule.

24 Sometimes the Preliminary Hearing is a good place
25 to try to defend the case. Because what you are trying to
26 do is get that terminal ruling that says there is not
27 enough probable cause here. There's dangers in doing
28 that.

29 Years ago when I was a D.A. in Bakersfield, it
30 was a significant case, the Defense decided to put on
31 their alibi witness, which is an affirmative defense, and
32 they had every reason to do it. I blew it up. That there
33 was the conviction. The trial was academic once I blew up
34 their alibi. Because juries basically say, look, if your
35 defense is alibi and we don't believe it, and we know you

1 were there, no other defense will work. And that's an
2 example.

3 What you've told me is more relevant to the
4 Prosecution than it is to you. Whether you like that or
5 not. Okay? Because of what that intent is for the crime
6 that is alleged. All right?

7 Now, here's the bottom line. When you're talking
8 about issues of strategy like I have just gone through,
9 the Defendant -- the Defense Attorney does not have to
10 follow your specific instructions. That's why you have an
11 attorney. He gets to make discretionary calls that he
12 believes is tactically best before and during trial.
13 Okay?

14 I get what you're saying; I understand that you
15 don't think you committed a crime for very specific
16 reasons. Those reasons very well may be evidence the
17 Prosecution would use. And having been a trial lawyer for
18 18 years, I was a Prosecutor, I would be -- I'd be
19 wringing my hands because you just admitted an element of
20 this crime.

21 And I know that you don't like that, okay? But
22 my years of trial experience are all in criminal court.
23 Seven years heavy gang prosecutions. I have used this
24 statute in gang prosecutions. It's harder in other
25 things, but it's broader than you think. You need to be
26 very, very careful of what you want to put into evidence.
27 And you need to understand just how broad that is and what
28 applies to it, and what arguments can be made based on
29 what you're saying.

30 You need to trust, to a certain extent, your
31 lawyer. You really want to get your point out; you want
32 to make people know that you are oppressed. You want to
33 make sure people understand you had no intention of
34 following through with these things. All good. That's
35 human nature. I'm not the monster they make me out to be.

1 Okay?

2 All of that is great, but the jury's going to be
3 told your to make a decision based on reason and not one
4 on emotion. Okay?

5 The plea that I'm not as bad a guy as these
6 counts make me look like, is a plea to their emotion. And
7 they are specifically instructed not to do it.

8 Anyway --

9 A. Your Honor --

10 Q. I get what you're saying, but there is a tactical
11 piece of a complicated case. Okay? That your attorney
12 has to go through. And he shouldn't have to battle you
13 with it so that you get what you want. An opportunity to
14 present evidence that is going to end the case at
15 Preliminary Hearing in favor of the Prosecution. Okay?

16 And those are just -- those are just thoughts as
17 they relate to how you relate to any attorney, be it
18 Mr. Northam or somebody else. And how they relate to an
19 allegation that he's doing something wrong by not putting
20 that information forward.

21 The Court is not to question the tactics of the
22 attorney unless clearly inadequate under the rules of his
23 practice. And that's what you are telling me, you don't
24 agree with his tactical calls. You know? There you go.
25 I won't say any more on that.

26 Mr. Gibbs does want to add something, so go
27 ahead.

28 A. Okay. Directly to what you are talking about, I
29 think the case that most defines my case is Stovall versus
30 Denno. The general idea in that case is that the Court
31 has to guard against the clear danger of convicting an
32 innocent.

33 Okay. The Prosecution has their theory of
34 events, okay? They have some circumstantial evidence that
35 a crime has been committed, that I have the intent to

1 commit it. And also the Defense has it's version of
2 events and its legal hypothesis of defense. And the law
3 is very clear that if you have two opposing circumstantial
4 cases of someone's indent to do something, and those --
5 and those two are generally equally acceptable, okay, and
6 by that I mean --

7 Q. No, I'm perfectly familiar with how
8 circumstantial evidence is to be viewed.

9 A. Right. And that's -- but see, to me that's
10 essential. And I don't feel like he's -- I don't feel
11 like he's coming from that angle, and he should be.
12 Because what he should be saying here is, okay, yeah,
13 maybe my client said those things. Maybe my client meant
14 for John Fazer to have some apprehension, but that's where
15 it ends. Now let's get in our facts. Our facts is his
16 family was terrorized by the local police.

17 Q. Yeah, but Mr. Gibbs, No. 1, that's evidence of
18 motive.

19 A. I understand that. But --

20 Q. No, I don't think you do. Because his job isn't
21 to put together everything you want. His job is to make
22 sure that the evidence that should get in, gets in. And
23 the evidence that should stay out, stays out. And
24 evidence that you don't want, doesn't get in. So that the
25 best foot can be put forward.

26 If you are telling me that my duty is to guard
27 against unwrongful conviction, it is. But you telling me
28 you didn't do it or didn't intent it, is not what that
29 case is saying. I don't make that decision. I don't just
30 say, hey, we've talked at a Marsden Hearing, your case is
31 dismissed.

32 We have to base that on admissible evidence. And
33 can do those sorts of things during trial following the
34 rules of evidence, arguments of Counsel, making sure they
35 are fair. And we do have the ability to dismiss a case

1 after the People have presented their case. I can dismiss
2 it after the Preliminary Hearing, but the threshold of the
3 Preliminary Hearing is very shallow. Enough information
4 that a reasonable person can have a strong belief -- well,
5 what is it called? I usually say sufficient cause. That
6 a reasonable person entertains a belief that the offense
7 occurred and that the person accused is the person who
8 committed it. Just so that it can go to trial. Just to
9 make sure that there is enough to do that. Okay?

10 The design of the Preliminary Hearing is to be a
11 brief hearing to make sure the People have enough to
12 charge you for trial. Not it's been added. Because
13 Preliminary Hearing was never the initial rule, it was
14 Grand Jury.

15 At the Grand Jury, you weren't there unless you
16 were called as a witness. And you certainly have rights
17 not to speak. But you weren't sitting there trying a
18 case. That's what the People did. They put it in front
19 of the Grand Jury to make a decision, and you weren't
20 represented by Counsel there unless you were called as a
21 witness. And then your Counsel would say you shouldn't
22 say anything, and off you go.

23 Preliminary Hearings came in to try to vet more
24 things in a more efficient way. Okay? So that opened up
25 the ability to present only certain affirmative defenses
26 or other things, like significant problems in the
27 credibility of a witness central to the outcome of the
28 case. And things like that, okay? That's what I can tell
29 you.

30 I mean, if you want to have a Preliminary Hearing
31 with the 40 witnesses that say you were out of sorts and
32 for good reasons, that's not going to be enough. Okay?
33 Because of that very, very low threshold and the fact that
34 it sound to me like motive. You know? Motives can be
35 pure. You know what I mean?

1 I mean, in some circles, beating the snot out of
2 somebody who committed an atrocious crime against your
3 daughter, most of society is going to say, well done.
4 It's still a crime.

5 If the jury under those circumstances decides to
6 give them the sympathy vote, go to trial and try to get
7 it. Okay? I don't have a sympathy vote. You know, no
8 Judge has a sympathy vote. Except when it comes to
9 sentencing. And on that very same thing, after hearing
10 that person may get convicted of a fairly serious crime on
11 paper, that the person can say that was extreme
12 provocation, it's not likely to happen again. So this
13 person, even though presumptively should go to prison,
14 won't go to prison. Okay? That's how that works.

15 And you don't have a great deal of contact with
16 the criminal court until this recent stuff. And you've
17 been immersed deeply in. And it's my opinion that the
18 case should get beyond Preliminary Hearing so the
19 significant work can be done if you are held to answer.
20 Okay?

21 But to try to do that at the Preliminary Hearing
22 prolongs your incarceration. It makes evidence stale for
23 the trial.

24 I just want you to have very reasonable
25 expectations about what your attorney can and can't do,
26 and what he should and should not do. Even though you
27 really want it. He wants to make sure that he is not
28 adding to the People's case. You know? And you need to
29 really fully discuss everything he sees in the evidence
30 and how it relates to how these elements have been
31 interpreted and how they are applied versus how you see
32 yourself in this situation.

33 Because Courts have never promised this, that you
34 are going to get a perfect trial and a perfect verdict.
35 They will say that you will get a fair trial and,

1 hopefully after a fair trial, a fair verdict.

2 And even in the Appellate Courts, there are
3 errors in trials all the time. Appellate Courts will say,
4 well, that one was harmless. It didn't add to the
5 evidence of conviction. Everyone will make a mistake,
6 some are excused. Okay?

7 Until you understand that, and I think you do,
8 okay, but you're fighting for your freedom. And I get
9 that. That's why I want you to be through Preliminary
10 Hearing as quickly as you can so that that fight take
11 place in the right place. You don't want the D.A. to have
12 a shot at that type of evidence. You know? From what I'm
13 hearing. You know? All they are going to do is sit back.

14 I would doubt that after the testimony you've
15 told me you expect from Mr. Fazer, that a reasonable
16 Prosecutor is going to ask any more than one or two
17 questions. Because that's all they want to hear. And
18 I'll bet you, Fazer's talking to them.

19 A. Well, that just makes it -- that just makes it
20 that much more unfair that my lawyer can't access him.

21 Q. Why bring that person in and set yourself up?
22 Because once you get him on record like that -- and
23 whatever's said about what Mr. Fazer said by a cop(sic.)
24 in here, that doesn't come in at the trial. You know?
25 The only way they can bring in that information that was
26 said to Mr. Fazer at trial, is by Mr. Fazer. But if
27 there's not a reason under the Preliminary Hearing law to
28 have him called, he doesn't get examined. You know?

29 So you need to talk to your attorney about under
30 what circumstances he can be called. And you may not like
31 that. I'll bet you wouldn't if I said, we are not calling
32 Mr. Fazer, the offer of proof is not sufficient. Okay?

33 I've long since given up on trying to make people
34 like what I do. People ask me all the time to do things
35 and I will tell them, I can't do that. A lot of people

1 tell me, you can do anything, you're the Judge. That is a
2 dangerous place to be if, you know, if you were in my
3 head. If I don't believe I am constrained by the law and
4 what I am supposed to do, then I am a tyrant. Okay?

5 And I know there have been times where you think
6 I have been very heavy handed. Okay? I apologize for
7 that. But I don't do anything, okay, that I don't believe
8 is legally justified. And if I think I am going to do
9 something that isn't, I stand up, tell everybody I'm going
10 to have a recess, and I walk to the back until I can
11 finish it. And if I can't finish it, I excuse myself.
12 All right?

13 Those are some of the rules that we all have to
14 work on here. Court is not reality. Court is what the
15 evidence brings to it. Reality is what the jury comes up
16 with.

17 A. Your Honor, I think what is important about
18 Fazer's testimony is not so much whether or not I would
19 have carried out the threats or whether or not, you know,
20 I realize the danger in having Fazer, this is why I would
21 like him pre-questioned. Because I would like my attorney
22 to be able to ask him, okay, you've talked to Gibbs
23 before, you've talked about police corruption, you've
24 talked about how helpless he feels. You have said that
25 you are going to recommend that his case actually be
26 settled because there is liability by the state.

27 That he's only the state lawyer. There's a whole
28 other side to that lawsuit regarding the Shasta Sheriffs,
29 where I think their actions were way more reprehensible
30 than Fish & Wildlife. And Fish & Wildlife's attorney is
31 trying to say that they are liable.

32 So we haven't heard a word from Gary Brickwood as
33 far as what the sheriffs -- you know, he's trying to just
34 say that they have qualified immunity.

35 Judge Kalesen in the federal case said that their

1 argument in the federal case was essentially unpersuasive.
2 That was his word. He still basically said that they had
3 qualified immunity. But that was basically a mistake
4 because he was saying that based upon the presumed idea
5 that they have qualified immunity and not the actual
6 statute which actually says that if they have broken a
7 law --

8 Q. Mr. Gibbs --

9 A. -- they don't have qualified immunity.

10 Q. What's happening there is relevant only in how it
11 motivated you to act. Whether those --

12 A. I understand.

13 Q. -- people were right or wrong --

14 A. I understand. But what I'm trying --

15 Q. Just let me tell you something.

16 A. Let me skip forward. Let me skip forward. Okay?

17 Q. But let me tell you one thing.

18 A. Yeah.

19 Q. If it doesn't relate to Mr. Northam's exercise of
20 his discretion, it doesn't matter.

21 A. I know. It does. It does. It does.

22 Q. Okay.

23 A. It's just very difficult. And this is where I
24 feel like I'm at a disadvantage. This is why this is
25 extra frustrating for me. I don't want people to say, you
26 committed a crime here, but we are going to feel sorry for
27 you so we are not going to prosecute you.

28 What I want people to realize is that when you
29 are having a psychiatric emergency, you might call your
30 psychologist, you might call your sister-in-law, or the
31 phone might ring and it might be Mr. Fazer, the kind man
32 that you've been dealing with in your lawsuit. And you
33 might just pick up that phone and he might say something
34 to you like, You know, I called you last week and told you
35 we are going to settle our suit with you, but now I'm

1 going to flip the script and pull the rug out from
2 underneath you.

3 Right when, you know, your girlfriend just left
4 you and took the baby and was sleeping with another man,
5 and you're feeling like the whole world is out to get you.
6 I'm going to set you up for that.

7 And then when you start telling me your -- your
8 psychiatric emergency and what's going on with you and how
9 you're feeling, and that you do not want to threaten
10 police officers, and you do not want a confrontation with
11 police officers or with the community, and you do not want
12 to make threats and do this.

13 And he says to you, Well, you won't do that. And
14 you say, I don't know that; that's the problem. This is
15 the problem.

16 Q. Yeah, and--

17 A. And you double down.

18 Q. Mr. Gibbs, if you say that to a jury, you're
19 done. You know what I mean? And this is a call that
20 Mr. Northam has to make. And if Mr. Fazer doesn't want to
21 speak with him, he --

22 A. You don't know that because Mr. Fazer hasn't
23 spoken with him to say that.

24 Q. You know, I think --

25 A. He hasn't spoken with him --

26 Q. -- Mr. Luster's tried more than once to call and
27 say he left messages and say --

28 A. He's a busy man.

29 THE COURT REPORTER: Your Honor --

30 THE COURT: Yeah, I get it.

31 BY THE COURT: Q We can go around and around. I
32 get the picture here. Okay?

33 Did you have anything else specific? Not new
34 things about what your state of mind is. And you've read
35 your letter. Okay?

1 A. People versus Simon, that the construction of
2 language in the statute matters. And that the benefit of
3 the doubt has to be given to the Defendant. And to that I
4 mean specifically conveyance.

5 I'm not talking to those officers. I'm not
6 talking to those officers.

7 If I don't ask Mr. Fazer to threaten those
8 officers by proxy, then I haven't threatened those
9 officers.

10 Q. Yes, you have, under the law. Here's why.
11 Here's why. This is what the law says. If you tell
12 somebody in an official capacity, like a peace officer,
13 like Mr. Fazer, or anybody else, where a reasonable person
14 would believe that threat had to be communicated, whether
15 you wanted it to be communicated or not, you have
16 communicated that threat. Whether you agree that that
17 should be the law or not, it is. Okay? So you can talk
18 about --

19 A. But you're applying another law to that law. And
20 I understand what you're saying, and you're right, but I
21 still would argue that that law does not make me guilty of
22 the criminal threats. It just doesn't.

23 Q. But Mr. Gibbs, you do have an opinion, it is a
24 strongly held opinion, and that's fine. I'm not going to
25 try to dissuade you of it. But what you're saying here is
26 Mr. Northam is acting incompetently.

27 A. He's not --

28 Q. And all you are doing --

29 A. He's not -- but what I'm saying is --

30 Q. Don't interrupt me.

31 A. -- he's not providing any defense at all.

32 Q. Please. Don't interrupt me.

33 He doesn't have to provide a defense at the
34 Preliminary Hearing. It may not be a tactically wise
35 thing to do at the Preliminary Hearing. And he gets to

1 make that call.

2 Whether you agree with the law, whether you think
3 it is the law or not, is not material to whether he is
4 performing his job like he is supposed to be performing
5 his job.

6 Last word.

7 A. He's had no -- he's had no recommendations on his
8 own line of defense. So it's not like we have two
9 competing lines of defense. There's my lines of defense
10 and he's ignoring them.

11 THE COURT: Are you ignoring what he's telling
12 you?

13 MR. NORTHAM: No, we've discussed it; I disagree
14 with him. For example, and I'll just be brief, Mr. Gibbs
15 wanted me to bring in all the federal documents from his
16 federal lawsuit for Preliminary Hearing. I said I wasn't
17 going to do that because it's not relevant for Preliminary
18 Hearing.

19 Mr. Gibbs also wants a polygraph exam. And I've
20 said, they're not admissible. And Mr. Gibbs said, I
21 understand it, but I can get a polygraph exam and you can
22 have a discussion at side-bar, or with the Court and the
23 D.A., and say, well, my client's taken a polygraph and he
24 passed it.

25 I said, no, I can't do that and I won't do that;
26 it's not admissible.

27 There's a plethora of attorneys Mr. Gibbs wants
28 me to call. And I've said I'm not calling attorneys
29 because I'm not going to get into an issue of
30 attorney-client privilege, and we are not going down that
31 road.

32 So I have formulated a defense for Mr. Gibbs; he
33 doesn't like it. I have talked about the NGI because I
34 think this case lends itself to that sort of a defense.

35 There are several witness that I am going to have

1 Mr. Luster contact and interview, and then I will decide,
2 after sitting down with Mr. Gibbs, as to whether or not we
3 want to put that evidence on at Preliminary Hearing. But
4 Candy Hoover, Rob Willis, Kim Cochral, Mr. Luster's going
5 to go interview those folks.

6 I can't compel Mr. Fazer to pick up the phone or
7 to return a phone call. I just can't. So I did acquiesce
8 on subbing Mr. Fazer for Prelim. I'm trying to work with
9 Mr. Gibbs to move this case along. But there are some
10 cases, as the Court pointed out, that you can -- that's
11 the hill that you will die on. If you can fight the good
12 fight at Prelim and have success. This, in my opinion, is
13 not that case.

14 I just recently had a murder case where the facts
15 lent itself to a good fight at Preliminary Hearing and the
16 murder charge was dismissed against the client.

17 The course that Mr. Gibbs wants to go to, as I
18 pointed out earlier, again gets back to the motive.

19 So, I'm doing what I need to do for Mr. Gibbs,
20 but we are just having some difficulties agreeing as to
21 the propriety of certain things.

22 THE COURT: Understood.

23 BY THE COURT: Q Mr. Gibbs, you do have the last
24 word here.

25 A. I -- I -- I believe that a Pitchess Motion is
26 appropriate. I believe that me having all of the
27 discovery at this point is appropriate. I believe that
28 having two separate preliminaries on two separate days to
29 avoid any prejudice or confusion is appropriate.

30 I believe -- I believe deposing or
31 pre-questioning Mr. Fazer, possibly getting his
32 recommendations, possibly getting his notes from any prior
33 conversations would be essential.

34 I believe to not subpoena Mr. Fazer and
35 pre-question him would be a violation of my rights.

1 And at the end of the day, you know, I think the
2 only thing that's going to be proven in this case, by
3 trial or otherwise, is that we will never really know what
4 really happened here, and we will never really be able to
5 come to any kind of real conclusion, except that I'll
6 either go to prison or I won't go to prison.

7 But I honestly believe, given my record and my
8 life being a law-abiding citizen, this was obviously
9 provoked to the nth degree. And I just don't think it's
10 in the interest of justice. And I believe that's an
11 important principle for us to decide. Which cases really
12 should our courts be wasting their time on. And not to
13 pick favorites or pre-triage any cases or anything like
14 that.

15 But it all comes down to the District Attorney's
16 offer to me. The District Attorney's offer to me was
17 three to six.

18 Mr. Ahart says, we'll offer him the three,
19 they'll take that, you'll be out in 18 months. The person
20 who set the Bole's Fire got three years; he got out in 18
21 months.

22 Q. I don't care what he got.

23 A. I know, but I'm just -- just as a comparison. He
24 burns down --

25 Q. I'm not here to hear your philosophies.
26 Seriously. I'm here to hear one thing.

27 A. My point is, Your Honor, that this has to make
28 sense at the end of the day. It really does.

29 Q. And you know where we are. We are early in the
30 morning.

31 A. Right.

32 Q. End of the day is 18 hours away and we can't get
33 to mid-morning.

34 A. Right.

35 Q. Let's get to mid-morning. The Motion is denied.

1 THE COURT: All right. Let's put it on Monday
2 morning for setting. That way I'll have everybody with
3 me.

4 MR. NORTHAM: May I check my calendar real quick?

5 THE COURT: Yeah.

6 THE DEFENDANT: That's not going to give him
7 enough time.

8 THE COURT: No, that's for setting. Not to
9 actually do it.

10 MR. NORTHAM: Monday morning works.

11 THE COURT: All right, 8:30. And we will set
12 that -- I don't know if you'll be able to speak with
13 Counsel to determine a date. We'll get into that on
14 Monday.

15 MR. NORTHAM: And I apologize, I didn't mean to
16 sort of be informal when I said, yeah, that works.

17 THE COURT: No, that's fine. Okay.

18 THE DEFENDANT: When are we going to determine
19 about the marshal's cellphone situation?

20 THE COURT: I've told you, I'm not going to get
21 into that specifically. I'm letting Mr. Northam and his
22 investigator go into that.

23 THE DEFENDANT: We can't ask him if he's got
24 something on his cellphone related to --

25 THE COURT: I'm not going to ask him about his
26 private stuff.

27 MR. NORTHAM: No. And I'll just indicate right
28 now --

29 THE DEFENDANT: It's not private if it has a
30 Defendant's stuff on it.

31 MR. NORTHAM: I'm going to indicate right now --

32 THE COURT: You want me to search someone's
33 cellphone. I can't do that.

34 THE DEFENDANT: I just want you to ask him.

35 THE COURT: I'm not going to ask him. I have no

1 right to ask him.

2 MR. NORTHAM: Correct. And that's not going to
3 go anywhere because they don't have to answer any
4 questions, they don't have to turn on their phones.
5 Essentially what you're asking for is an illegal search
6 and seizure of a private phone, which would violate the
7 4th Amendment. And I know you understand the
8 Constitution.

9 THE COURT: So that's it.

10 (MARSDEN HEARING CONCLUDED. END OF PROCEEDINGS
11 ON THIS DATE.)

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SHASTA
3 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING
4 DEPARTMENT 1

COPY

7 PEOPLE OF THE STATE OF CALIFORNIA,)
8 PLAINTIFF,)
9 VS.) CASE NO. 14F6355,
10 ROBERT ALAN GIBBS,) 15F5736
11 DEFENDANT.) VOLUME 1 OF 1
PAGES 163 TO 173

12
13
14
15 TUESDAY, JULY 12, 2016

16
17 **TRANSCRIPT OF MARSDEN HEARING**
18 **- SEALED PROCEEDINGS -**
19 **MAY NOT BE EXAMINED**
20 **WITHOUT A COURT ORDER PER CRC 8.45**
21

22
23
24
25 A P P E A R A N C E S

26
27 FOR THE PEOPLE: DEPUTY DISTRICT ATTORNEY
(NOT PRESENT)

28
29 FOR THE DEFENDANT: SHON NORTHAM
ATTORNEY AT LAW

30
31
32
33 REPORTED BY: SUE N. SMEDLEY, CSR 8159
34 OFFICIAL COURT REPORTER
35

1 REDDING, CALIFORNIA - TUESDAY, JULY 12, 2016

2 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING

3 DEPARTMET 1, AFTERNOON SESSION

4 -000-

5
6 (THE FOLLOWING CONFIDENTIAL PROCEEDINGS WERE HELD
7 IN A CLOSED COURTROOM:)

8 THE COURT: Okay. We are in a Marsden setting.
9 and the courtroom has been cleared. We are locked down.

10 BY THE COURT: Q Mr. Gibbs, I'm going to
11 consider what we are doing today sort of as an extension
12 of what the Marsden was just the other day. We have all
13 the parties present again. So I don't need to hear again
14 what you said on that day, I'll certainly incorporate
15 everything that you said. What I would want to hear is
16 what new things have happened. Okay?

17 And again I'll ask you, did you want me to go
18 through essentially the guidelines or rules on Marsden or
19 are you ready to tell me what has happened?

20 A. That's pretty much what I prepared for, Your
21 Honor, was new information.

22 Q. Just the new information then since the last
23 Marsden.

24 A. I have -- I have -- I have something I'd like to
25 read that would take about five minutes. I'd ask the
26 Court --

27 Q. Is it new?

28 A. Yes. It's what I've written in the last couple
29 days.

30 Q. I know you've written it, is it new information?
31 Is it something that happened within the last couple of
32 days or are you just saying, essentially, the same things
33 that you have been saying?

34 A. No, Your Honor, it's -- it's -- it's a little bit
35 complicated. I know sometimes I talk about this and I

1 talk about that, and it seems like I'm getting a bit far
2 afield, but it's just the way I write things back together
3 and I think it's important. I think some things don't
4 even seem to be specifically about the Marsden, but I
5 think they are.

6 Q. Well --

7 A. I'm asking for just five minutes of indulgence to
8 get us started, and then a few more minutes after that to
9 make an argument and then I'll be done. I mean, I don't
10 think 10 minutes is that much to ask the Court for in this
11 kind of situation.

12 Q. I just don't want to hear what I have already
13 heard, okay?

14 A. No.

15 Q. That does waste my time.

16 A. Of course. Of course.

17 Q. So go ahead and start reading what you have. And
18 remember, keep your pace at a level where we can expect
19 that it can be reasonably transcribed, okay? Go ahead.

20 A. Again, Your Honor, if this sounds like it's going
21 a bit afield, please indulge me. It really does tie up at
22 the end. And it is important, okay?

23 Q. You don't have to preface it. Go ahead and read
24 it.

25 A. I don't want to say anything in here that's not
26 absolutely essential.

27 I am an emotional person. I admit it. I think
28 with my heart and not my mind. And I cannot and I will
29 not change. I wouldn't change if I could. And I would
30 never ever change for any of you.

31 I woke up on Sunday morning and I cried. I
32 thought of my father, the only real influence I have ever
33 had in my life. My father was a very intelligent man. He
34 was never troubled by being overly emotional. In fact, my
35 father had an analytical mind that was sharp as a razor.

1 Despite this, my father eventually recognized
2 that his son was different and was an emotional person.
3 He never once tried to change me. In fact, I think my
4 father was proud of my difference and became more so as
5 time went on.

6 As I sit here in this courtroom, I have never in
7 my entire life felt less like a person. Felt less a
8 appreciated for who I am. Felt more alien to others.
9 Felt more of a disconnect between myself and the people
10 around me. I just want to scream every time I enter this
11 courtroom. I am a human being.

12 I have a two and a half year old daughter who
13 needs her father. It is not normal for a person to be
14 endlessly entangled in the criminal justice system. My
15 God and creator never intended for me to struggle
16 endlessly with my so-called society. This process is
17 completely and thoroughly dehumanizing.

18 The more you talk about the law and guilt or
19 innocence, or responsibility, the less I care. I want to
20 plead guilty and go to prison just so I never have to see
21 these people ever again. I want to plead not competent
22 and go to state hospital so I can ask the doctors if I am
23 crazy, but I know I am not. They, like most people not
24 associated with the justice system, would readily agree
25 that this process is not normal and it is dehumanizing to
26 a human being.

27 People who think that one size fits all have
28 ruined our world. People who think that people should
29 ever be forced through a process like a product or
30 commodity or unit of livestock, are thoroughly
31 thoughtless, incorrigibly inhuman, intractably arrogant.
32 Heavy-handed does not begin to describe it.

33 Has this Court not bothered to read my
34 psychological reports? I am no psychologist, but from
35 what I glean from these reports is a picture of a man

1 tormented by his society his entire life. Misunderstood,
2 ostracized, abandoned, victimized, institutionalized,
3 dehumanized, antagonized. What good does this Court think
4 can come from further processing of such a person by a
5 thoroughly dehumanizing process?

6 First of all, it should be highly illegal and
7 improper to proceed against someone like me in the manner
8 you are proceeding, knowing full-well that my primary
9 psychological profile is one who is completely
10 destabilized emotionally. Who is abysmally distrustfull
11 and reactionary toward authority. Who already feels
12 invalidated, disempowered and violated. Who is already
13 experiencing feelings of having no control over his life.
14 Who already believes this entire Shasta justice system is
15 uncaring, uncompassionate, insensitive and thoughtless.
16 Who is described by this Court's own psychologists as
17 suffering from resentment towards this community, intense
18 anger towards law enforcement, further complication to his
19 PTSD from having a rifle pointed at his head by Fish &
20 Wildlife officers.

21 Doctor Ray Carlson says on Page 15 of his report,
22 "This examiner's conclusion about Robert's mental state is
23 that it is primarily a function of chronic anxiety from
24 PTSD, ingrained personality traits, and a volatile
25 moodiness that is part and parcel of his long-standing
26 perception of having been persecuted and misunderstood all
27 of his life."

28 On Page 13 Doctor Carlson says, "His world view
29 has been formed by seeing himself as always getting the
30 short end of the stick. He is constitutionally suspicious
31 of authority. He has little to no trust that other people
32 will advocate for his best interest. He is resentful that
33 society fails to appreciate the great traumas that he has
34 experienced, and fails to give him credit for attempting
35 to be a productive citizen despite his PTSD and emotional

1 dislocation," unquote.

2 You cannot separate people's perceptions,
3 feelings, or mental states from the people themselves so
4 that you may process them in an emotional vacuum. It is
5 patently, morbidly and constitutionally unfair to expect
6 me to think like you, agree with you, set aside my
7 feelings or beliefs, allow for your arrogant, overly
8 clinical, aggressive and inhumanly sterile intellect to
9 subject myself to your holy, unilateral, authoritarian,
10 punitive and emotionally devoid psychology.

11 In short, your process is legalistic and
12 government sanction, spiritual rape and intellectual
13 tyranny. And if you do not stop, you will only further
14 damage an already compromised person and further victimize
15 an already traumatized individual.

16 Let me make one thing completely clear. I am the
17 victim in this case, not the police. The District
18 Attorney wants to portray me as a monster in order to
19 vindicate the police politically at a time when the whole
20 nation is fatigued and disgusted with the police. This
21 top-down revisionistic lack of understanding towards its
22 citizenry is precisely the kind of unbridled arrogance
23 that makes people loathe not just police, but government
24 in general.

25 This District Attorney does not want to
26 de-escalate my situation with the police. He does not
27 want to bury the hatchet or make peace or admit that I
28 have any reason to be angry with the police. No, he wants
29 to vindicate the police because of his world view.
30 Probably a world view formed by a lifetime of sheltered
31 suburban existence.

32 No, this District Attorney wants to fear me and
33 vilify me so that he looks like the great big hero who's
34 going to save the day for so-called good folks by putting
35 me away. I am the boogie man de jure. I am a one-man

1 weapon of mass destruction. I am the designated reason
2 for people like him and Sheriff Bosenko to go to the
3 citizens of this county hand-in-hand to plead for more
4 money for more officers and more jail space. They say,
5 What would you do without the police?

6 The chief of police Brown of the Dallas Police
7 has it exactly right when he says, The divisiveness
8 between our citizens and our police must stop.

9 Presidential candidate Donald Trump has it
10 exactly right when he says, What our country needs is
11 leadership, love and understanding. Presidential
12 candidate Hillary Clinton has it exactly right when she
13 says, White people need to shut up for once and listen.
14 President Barack Obama has it exactly right when he says,
15 There is a gulf of mistrust between law enforcement and
16 local communities. Hillary Clinton has it exactly right
17 when she says, We have to recognize the fear and anxieties
18 in our people. And President Obama says it exactly right
19 when he says, Simmering distrust -- There exists simmering
20 distrust between police and communities.

21 Listen to your leaders. Listen to your people.
22 Make your police forces accountable to the people they
23 serve, not the other way around. Do not tell your
24 citizens that police have qualified immunity and are
25 immune to prosecution. Do not tell your citizens we do
26 not take complaints against officers. Do not let
27 policemen hide behind the law or union lawyers, or the
28 thin blue line. It is this elevation of police to a
29 station somehow above the people that leads to mistrust.

30 This District Attorney has not once ever
31 considered the events that led to 9-11, 2015. This
32 District Attorney has never once seen me as a human being
33 or a citizen with rights.

34 Attorney Shon Northam should be doing everything
35 in his power to show this D.A. that his client is a

1 law-abiding citizen and productive member of society, who
2 has simply been drawn into a web of societal incivility.
3 Incivility that this D.A. perpetrates in his arrogance and
4 indifference at the cost of further alienating this
5 citizen.

6 On the one hand, this Court pleads with me to
7 trust it and to trust my lawyer, despite my long history
8 of being screwed by them in power.

9 On the other hand, this Court allows this D.A. to
10 grind its axe day after day, week after week, with no end
11 in sight. This Court has never once suggested that a
12 meaningful settlement be reached. That this clock be
13 reset. That the politics and rancor be set aside so that
14 the future is not as dark and hopeless a place as
15 yesterday was. So that people are who are not enemies can
16 remember that they are not enemies. So that a lasting and
17 meaningful peace is reached so that healing can begin so
18 that our country can become a better place.

19 I cannot remove the target on your back until you
20 remove the target on my back. You will be my enemy until
21 you are not my enemy anymore. You will never be free
22 until I am free.

23 As Meechee said, Beware of them that would fight
24 monsters, lest you become monsters yourselves. Them that
25 look into the abyss are looked into by the abyss.

26 And I thank Your Honor very, very kindly for
27 allowing me to finish that. Because that was all very,
28 very, very important. And I think we can turn a new page
29 now. And I have no idea -- I have every belief that you
30 heard what I just said and you took it to heart. So let's
31 turn a new page.

32 He has to help me more. He has to stick his neck
33 out here and somehow make this Court understand that this
34 whole thing has gone sideways. It's gone sideways for
35 three years. And I sit in the cell and I cry my eyes out

1 every dam day because enough is enough is enough is
2 enough. And the D.A. doesn't know any of this and he's
3 never going to know any of this, and that's fine, that's
4 our system of justice. I'm not here to fix the whole
5 system of justice, I'm just trying to save my skin.

6 THE COURT: Any comments?

7 MR. NORTHAM: I would. I have a report from
8 Mr. Gibbs. We did -- Mr. Luster did interview Mr. Maughs.
9 Unfortunately, Mr. Maughs has told a different story to
10 the Defense in that he didn't see anything, he didn't hear
11 anything, with respect to the habeas corpus petition.

12 So if we have a hold on Mr. Maughs, I would ask
13 that the hold be lifted because he does not appear to be a
14 viable witness for the Defense.

15 THE COURT: Okay.

16 THE DEFENDANT: He doesn't want to get held up
17 from going to prison, Your Honor. He wants to get on the
18 bus. I don't blame him.

19 BY THE COURT: Q With regard to Marsden, there
20 was nothing said that relates to Marsden.

21 I understand your philosophy, your view of how
22 you are being treated, okay? There is nothing I can do or
23 say, nor should I, to try to change your opinions of where
24 you are. Those are valid for you. But you didn't give me
25 any information that would cause me to --

26 A. That's where the argument part comes in, Your
27 Honor. My argument is that I am too frustrated to
28 continue to deal with this process in the manner that it's
29 proceeding. I am too frustrated with Mr. Northam to --
30 you know, I'm having -- I'm having feelings of doing -- of
31 harming myself because of what's going on here. Because I
32 don't feel like he's doing enough to defend me.

33 Q. Mr. Gibbs, and I say this to put it out there,
34 not to belittle it, no one will. To that level. Nobody
35 can. Their job is one that is based on reason in their

1 approach. Any lawyer who becomes that emotionally
2 involved with a client will do a very poor job.

3 You can decide to agree with his approach or not
4 agree with his approach. You can decide the D.A.'s
5 approaching and viewing you as you believe that they are.
6 For all I know, they might be.

7 I cannot step into the executive branch and cause
8 the D.A. to do anything different, other than try to
9 facilitate this case to trial. That is what I am doing.
10 I can't dismiss it for any reason that you have given me
11 here today. I have heard no evidence. There is nothing I
12 can do.

13 But there is no attorney in the world who is
14 going to adopt your philosophy and approach their job in
15 your case or any other in that manner. Okay? Whether you
16 believe me or not.

17 A. I simply think that another lawyer would have a
18 different point of view and would possibly work harder
19 than Mr. Northam has.

20 Q. All right. Did you have any other argument?

21 A. Just that my Feretta waivers are filled out and
22 ready to be signed. And if the Court will not see fit to
23 give me another lawyer, I would like to invoke my right to
24 self-representation.

25 Q. And I have denied that right unless you would
26 submit to the evaluation for the purposes of determining
27 whether you are able to proceed on your own.

28 You are under specific orders regarding your
29 behavior in court. You've been significantly disruptive.
30 This hearing had nothing to do with Marsden. I have told
31 you what Marsden is. You gave me no facts. You gave me
32 your philosophies. Your viewpoint. These are important
33 to you. I don't mind you doing it, but it is clear to me
34 you have very little understanding of the processes of the
35 court. Or if you do, you do not care about them.

1 So unless you are found to be able to represent
2 yourself by a psychiatric evaluation, I am not going to
3 allow you to proceed. The record on this case is very,
4 very long and clear. The writs that you have filed are
5 almost schizophrenic in their approach from philosophies
6 to Beatles' quotes, to things that actually make sense.
7 You are a different person in day-to-day. Okay?

8 I don't believe you can follow the directives of
9 the Court. I don't believe you can present a defense. I
10 don't think that you can follow the rules of evidence from
11 everything that you have done so far.

12 A. Then let's have the psychiatric evaluation.

13 Q. All right. I've got Doctors Carlson and Caruso
14 who have already done the 1368 evaluations. And I'll
15 appoint one or the other. Did you have a preference?

16 A. Doctor Caruso.

17 THE COURT: Doctor Caruso will be appointed. He
18 is appointed to do an evaluation, and the specific issue
19 is whether Mr. Gibbs is able to take upon himself the task
20 of self-representation.

21 We will set a date in four weeks for that. Do we
22 have a date that we have already put down for setting?

23 MR. NORTHAM: I think we have a Prelim set, I
24 want to say September 1st; is that correct?

25 THE CLERK: Correct.

26 THE COURT: So we will keep other dates. We will
27 want to come back before that date.

28 THE CLERK: Four weeks would be August 9th.

29 THE COURT: All right. August 9th at 8:30 to
30 receive that report. If it is favorable, we will consider
31 that in light of the rest of the record in the case as I
32 view it. Okay? So we will be adjourned for today.

33 THE CLERK: And the Marsden is?

34 THE COURT: Denied.

35 (END OF PROCEEDINGS ON THIS DATE.)

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SHASTA
3 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING
4 DEPARTMENT 1

5
6
7 PEOPLE OF THE STATE OF CALIFORNIA,)
8 PLAINTIFF,)
9 VS.)
10 ROBERT ALAN GIBBS,)
11 DEFENDANT.)

COPY

CASE NO. 14F6355,
15F5736

VOLUME 1 OF 1
PAGES 175 TO 184

12
13
14
15 WEDNESDAY, AUGUST 10, 2016

16
17 **TRANSCRIPT OF CLOSED HEARING**
18 **- SEALED PROCEEDINGS -**
19 **MAY NOT BE EXAMINED**
20 **WITHOUT A COURT ORDER PER CRC 8.45**
21

22
23
24
25 A P P E A R A N C E S

26
27 FOR THE PEOPLE: DEPUTY DISTRICT ATTORNEY
28 (NOT PRESENT)

29 FOR THE DEFENDANT: SHON NORTHAM
30 ATTORNEY AT LAW

31
32
33 REPORTED BY: SUE N. SMEDLEY, CSR 8159
34 OFFICIAL COURT REPORTER
35

1 REDDING, CALIFORNIA - WEDNESDAY, AUGUST 10, 2016

2 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING

3 DEPARTMET 1, AFTERNOON SESSION

4 -000-

5
6 (THE FOLLOWING CLOSED HEARING WAS HELD IN A
7 CLOSED COURTROOM:)

8 THE COURT: All right. Mr. Gibbs is present.

9 And we are locked?

10 THE BAILIFF: Yes, Your Honor.

11 BY THE COURT: Q Okay. Mr. Gibbs, I have closed
12 the courtroom and asked the D.A. and other personnel to
13 leave. We are in a situation similar to a Marsden because
14 I have a number of things I want to make sure I understand
15 and that I tell you so that you understand them. Okay?

16 Now, let me tell you this, first of all, might
17 answer a question for you. I have every intention of
18 granting your Motion, okay, to represent yourself.
19 Although, there are going to be significant restrictions
20 on you because you don't actually act like a lawyer. As
21 you recall, you are already under orders which you will
22 need to follow, and I have set out what the contempt
23 procedure will be and what the sanctions will be, okay?

24 Like last time you were here, you just started
25 talking and interrupting me. If you are going to
26 represent yourself, there will be a time for you to speak,
27 there will be a time for you to listen and there will be a
28 time for you to stop. Okay?

29 Here's the reason. The Court is guided, the
30 Judge, me, I am guided by the law, which gives me
31 guidelines, which gives me boundaries. I like that, okay?
32 It's not relative. It doesn't apply differently to
33 different people depending on what they think about it.
34 It doesn't apply differently to different people because
35 of different charges or mindsets or world views.

1 You don't agree with that. Okay? But I'm going
2 to follow the law and it's guidelines and boundaries. If
3 you step beyond those, okay, if you disrupt the Court in
4 your self-representation, and you do it enough times,
5 depending on how you do it and it's frequency, I will pull
6 yourself self-representation.

7 Do you understand?

8 A. Yes, sir.

9 Q. Okay. What did you want to tell me last time?

10 A. Your Honor, I apologize if I have to speak up for
11 myself and I don't know when is the proper time to do
12 that. I believe if in a situation --

13 Q. You wanted me to have all three doctors come in.
14 Why did you want that?

15 A. Well, I could do it with just Doctor Caruso. I
16 thought the other two doctors would basically make my case
17 better.

18 Q. Your case for what?

19 A. My case for having a different attorney assigned.
20 An attorney --

21 Q. That's not the issue. The issue is whether you
22 represent yourself or not.

23 Let me get into something else, and I'm going to
24 come back to that.

25 The reason -- first of all, I did a considerable
26 amount of research on self-representation. And I have no
27 doubt that your ability to represent yourself exists. My
28 issue is competence to represent yourself. Not whether or
29 not you are foolish in doing so. I use the word foolish
30 because Appellate Courts have used the word foolish in
31 people representing themselves.

32 You have filed now 15 petitions for habeas
33 corpus. Your latest one is an admission to most of the
34 elements of your crime. It was, in fact, fool hardy. It
35 will have to become a public document. I have no choice.

1 I have not ruled on it, I have the file, but eventually it
2 becomes one.

3 You are charged with a unique crime in that some
4 of its elements are beyond your ability to admit. Had you
5 done -- had you been given another crime or charged with
6 something else, I have no doubt it would be a confession.

7 The difference is, an admission is a series of
8 statements which tend to prove certain elements of the
9 crime, but not all of them. You, in fact, have done that
10 in the petition. Okay? You have given the D.A. motive
11 for your actions.

12 You don't agree with your situation, and this is
13 what I am getting at to begin with. It doesn't matter to
14 the law whether you agree with it. That your situation
15 was different than others who have been charged with this
16 offense. You find yourself in a situation that is
17 structured. Okay? The fact that you think it's a
18 political statement, okay? The fact that you think that
19 you didn't commit a crime because you were just under
20 stress and decided to run your mouth at the attorney over
21 the phone. All of those things are not defenses. You
22 have, in fact, hurt yourself by this habeas petition. But
23 that's not my issue. You can hurt yourself all you want.
24 All I need to know is whether you are competent to
25 represent yourself.

26 Did you read Doctor Caruso's report?

27 A. Yes, I did.

28 Q. Did you get his point? It's basically my point.
29 You are not -- you are not going to be able to represent
30 yourself well factually. If you put forward as a defense
31 what you have put in writing now in this habeas petition,
32 the chances of your conviction are very, very high. You
33 don't know how to proceed in this thing within the bounds
34 of those rules. But whether you know it or not is not my
35 issue. My issue is whether you are competent to do so.

1 I think your marginally competent to do so. Not
2 because of lack of intellect or interest, but because you
3 don't believe this law should apply to you as a relative
4 feeling. I am different than other people, therefore,
5 this shouldn't apply to me as it does to others.

6 That's not true in the court. Whether it's this
7 Court, another department, in the trial, okay? And that's
8 obvious to me based on what you wrote in your petition.

9 That is my statement to you. If you continue to
10 make statements like you have done here, the chance of
11 your conviction, while I can't prognosticate a jury's
12 decision, is almost certain if do you that. And if you
13 continue to say things like that.

14 Now, as a matter of public record that I must put
15 back into the court files and rule on. It becomes a
16 matter that can be taken and used against you as evidence,
17 and it is damaging. Okay? That's what you've done.
18 Because of your mindset. Because of your world view.
19 Because of your feelings of persecution which lie, I
20 think, in some psychiatric issues that the doctor brings
21 out. But they don't make you incompetent to proceed.

22 Now, I would have to urge you to consider
23 maintaining your attorney. He is doing what he should do
24 to keep from the People, the Prosecution, any evidence,
25 damning information which is going to convict you, which
26 you have now put out into the public record. And you will
27 continue to do that, I am betting, if I allow you to
28 represent yourself.

29 But Doctor Caruso would know better than I
30 whether you have some sort of difficulty in competence,
31 and he doesn't believe that you do.

32 Do you understand what I'm saying?

33 A. Am I allowed to speak?

34 Q. Yeah. I wanted to make sure you fully understood
35 what I'm telling you.

1 A. I fully understand.

2 You're talking about the 10 page habeas corpus
3 that I wrote?

4 Q. I'm just talking about the latest one. I didn't
5 count the pages.

6 A. It's to the District Court. It's not to this
7 Court.

8 Q. Mr. Gibbs, it doesn't matter who you wrote it to.

9 A. You're saying --

10 Q. You filed it in Shasta County. It is a public
11 record.

12 A. That's fine.

13 Q. It can be entered into evidence.

14 A. That's fine. I did that deliberately. I did
15 that deliberately because it's against Shasta County.
16 However, if you'll see on the front page, it's directed to
17 the United States District Court.

18 Q. This has nothing to do with where you filed it.
19 This has everything to do with your ability to
20 intelligently proceed in the case where you have now
21 provided ammunition against you.

22 A. Well, I think you have to allow me to respond on
23 the record to that then.

24 Q. No. All I'm saying is, do you understand it?

25 A. Yeah.

26 Q. Okay. Do you want to continue to represent
27 yourself? I'm not going to give you another attorney.

28 For him, Mr. -- or any attorney to do what you
29 have said here, which is a summary of what you think
30 should be done to defend you, would not be competent.

31 A. Why is that?

32 Q. I'm not going to explain it to you. I'm telling
33 you that's the case. You don't have to agree with me.
34 I'm telling you if you go forward with that defense, your
35 chance of conviction is almost certain.

1 All they have to prove now is that the people who
2 were the target of these alleged threats believe that they
3 were in fear that you could have carried them out.

4 A. That's not true.

5 Q. That is true, Mr. Gibbs, whether you agree --

6 A. No, that's not true.

7 Q. -- whether you agree with me or not.

8 A. May I speak for the record?

9 Q. All I want to know is, do you understand that?

10 A. Once again, you're not allowing me to speak.

11 Q. Mr. Gibbs, this isn't something where I want to
12 hear from you. I want to know whether you understand --

13 A. Well, I just had to hear from you about what you
14 think --

15 MR. NORTHAM: May I have a moment? Just may I
16 have a moment?

17 THE COURT: All I'm saying to Mr. Gibbs is if he
18 wants to represent himself, he's already --

19 THE DEFENDANT: That's not all you said to me.
20 You just said to me basically that I admitted all the
21 elements of the case, and that's not true. That's not a
22 fact.

23 BY THE COURT: Q Mr. Gibbs --

24 A. You are actually skewing the facts now.

25 Q. Mr. Gibbs, I didn't say that. I said --

26 A. That's exactly what you said. You said --

27 Q. You interrupt me again --

28 A. -- your chances of being convicted --

29 Q. You interrupt me -- Mr. Gibbs --

30 A. -- are very high.

31 Q. Mr. Gibbs -- Mr. Gibbs, it is this interruption
32 of the Court, it is your failure to listen and respond to
33 my questions that make you inappropriate for
34 self-representation. And I'm telling you, you do that,
35 you disrupt this Court --

1 A. There's no disruption of the court for me to
2 speak.

3 Q. It is. Right now you have no right to speak.
4 You have a right to testify. I have bent over backwards
5 to give you more than enough time to speak. And in ways
6 that are contemptuous. Which is why you are currently
7 under orders. I'm telling you, it is not a good idea.

8 I don't want to hear your explanation, because
9 that's not the issue. The issue is whether you want to
10 represent yourself or whether you want to maintain Counsel
11 you have now. That's it.

12 A. And I should have a third option of asking for a
13 hearing to determine whether or not Mr. Caruso's
14 recommendation was actually that I be allowed a stand-by
15 attorney or another attorney --

16 Q. That's not his --

17 A. -- which was his actual recommendation.

18 Q. I'm not -- I don't -- you either represent
19 yourself or you don't. I don't, as a habit, hedge that
20 bet. You decide to represent yourself or you don't. If
21 you do, Mr. Northam's off the case. Mr. Caruso, Doctor
22 Caruso, doesn't make that decision, I do. You either
23 decide to go it alone or you have help. One way or the
24 other.

25 You'll maintain your investigator. He will
26 continue to help you as he is assigned. But I'm not going
27 to -- I am not going to give you -- you have a right to
28 represent yourself. You either do it or understand what
29 I'm saying and keep Mr. Northam. Those are your options.

30 A. Can I confer with Mr. Northam about it?

31 Q. You absolutely may.

32 Why don't I step away.

33 MR. NORTHAM: That's fine.

34 (Counsel and Defendant confer off the record.)

35 (Short break in proceedings.)

1 THE COURT: All right. Returning to Gibbs, what
2 is the decision?

3 MR. NORTHAM: Your Honor, I spoke with Mr. Gibbs.
4 He is prepared to withdraw his Faretta request for now.
5 There are -- and I will just, since we are in a
6 confidential proceeding -- Mr. Gibbs has apparently sent a
7 lengthy letter to Mr. Hanna in late July. I don't know if
8 Mr. Hanna's received that letter, since Mr. Hanna's been
9 out of the office. But apparently there was a proposal
10 that Mr. Gibbs put in the letter offering to resolve the
11 case for right around three years.

12 And I don't know, Mr. Hanna's been out of the
13 office, so I have not had a chance to talk with him as to
14 whether or not he's received it. But Mr. Gibbs would like
15 for me to remain on the case in an effort to try to
16 resolve the case according to Mr. Gibbs's proposed
17 disposition.

18 THE COURT: All right. So we will drop it from
19 calendar and maintain whatever future dates we have set.

20 MR. NORTHAM: Correct. Thank you.

21 THE DEFENDANT: Your Honor?

22 THE COURT: Yes.

23 THE DEFENDANT: Can I bring up another issue?

24 Habeas Corpus 3244 was consolidated and
25 dismissed. And I believe that you thought that somehow I
26 had resolved that as a grievance issue. And actually, in
27 fact, it was not resolved as a grievance issue, which is
28 why I wrote the Habeas Corpus.

29 THE COURT: Okay.

30 THE DEFENDANT: So I'm asking if we could put
31 that one back in circulation so that --

32 THE COURT: No, we've already ruled on it on the
33 record. I had set a date, that was the record that we
34 made. That it had been -- some effect or some action had
35 been taken administratively, and so we dismissed it as

1 already -- as moot for the action. So, no, I'm not going
2 to do that.

3 THE DEFENDANT: Your Honor, it was not -- I
4 didn't get a hearing.

5 THE COURT: Mr. Gibbs, you did have a hearing.
6 That's what we showed up for. So -- and this is a
7 confidential proceeding done for one purpose. This isn't
8 the purpose. So if there is something else you need to
9 do, Mr. Northam was appointed on that, you can talk to him
10 about what you want to do.

11 MR. NORTHAM: I would only ask with respect to
12 the latest Habeas petitions --

13 THE COURT: There is one issue still remaining.

14 MR. NORTHAM: Correct.

15 THE COURT: It's on you to put back on calendar
16 if you wish.

17 MR. NORTHAM: Correct. I don't have a copy of
18 the latest. So if the Court could -- madam clerk, copy
19 the latest Habeas petition or the last document that was
20 filed by Mr. Gibbs.

21 THE COURT: It's 16HB5118. It is addressed to
22 the District Court, but it has been filed in Shasta
23 County. So I can get you a copy of that. There actually
24 is an extra copy in the file; I don't know why. Why don't
25 I give you that copy.

26 MR. NORTHAM: Okay.

27 THE COURT: Mr. Gibbs, you want me to give this
28 to your attorney?

29 THE DEFENDANT: Yeah, that's fine.

30 THE COURT: So we are adjourned.

31 And you can let Mr. Toller know that there's no
32 other action that he needs to be present for. All future
33 dates remain.

34 THE BAILIFF: Yes, Your Honor.

35 (END OF PROCEEDINGS ON THIS DATE.)

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SHASTA
3 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING
4 DEPARTMENT 1

5
6
7 PEOPLE OF THE STATE OF CALIFORNIA,)
8 PLAINTIFF,)
9 VS.)
10 ROBERT ALAN GIBBS,)
11 DEFENDANT.)

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FRIDAY, SEPTEMBER 16, 2016

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TRANSCRIPT OF MARSDEN HEARING

18

- SEALED PROCEEDINGS -

19

MAY NOT BE EXAMINED

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WITHOUT A COURT ORDER PER CRC 8.45

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A P P E A R A N C E S

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FOR THE PEOPLE:

DEPUTY DISTRICT ATTORNEY
(NOT PRESENT)

28

29

FOR THE DEFENDANT:

SHON NORTHAM
ATTORNEY AT LAW

30

31

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33

REPORTED BY:

SUE N. SMEDLEY, CSR 8159
OFFICIAL COURT REPORTER

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35

1 REDDING, CALIFORNIA - FRIDAY, SEPTEMBER 16, 2016

2 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING

3 DEPARTMENT 1, AFTERNOON SESSION

4 -000-

5
6 (THE FOLLOWING CONFIDENTIAL PROCEEDINGS WERE HELD
7 IN A CLOSED COURTROOM:)

8 BY THE COURT: All right. We are in the
9 confidential setting of the Marsden. Again, only persons
10 here are present for security or other essential court
11 purposes.

12 Mr. Gibbs is present, Mr. Northam is present, and
13 we are here because, Mr. Gibbs, you have again told me
14 that it is your desire to have Mr. Northam, your appointed
15 Counsel, relieved of his responsibilities.

16 Q. Did you need to have me go through the Marsden
17 process? I know that you have heard it before.

18 A. No, sir.

19 Q. Okay. So why don't you tell me what facts you
20 believe would cause me to have Mr. Northam removed.

21 A. Your Honor -- Your Honor, are you aware that I
22 was removed from a suicide safety cell on September 1st?

23 Q. I'm not answering, I asked you a question. Why
24 is it that I should have Mr. Northam relieved?

25 A. Because Mr. Northam had me removed from a suicide
26 safety cell to be brought to court without clearing it
27 with mental health.

28 Q. No, Mr. Gibbs, I did that. Mr. Northam had no
29 say in the matter.

30 A. So -- so you were aware that I was removed from a
31 safety cell?

32 Q. I absolutely was.

33 A. Okay. And was it cleared with mental health?

34 Q. Then you have no complaints with Mr. Northam.

35 A. No, I have complaints with Mr. Northam.

1 Q. Well, then get to them.

2 A. I -- I have been charged with a new charge?

3 Q. Not that I know of.

4 A. I was told at the last hearing that I was being
5 arraigned.

6 Q. You are being arraigned. You were arraigned on
7 the Complaints, which are now Informations past the
8 Preliminary Hearing. But those are not new charges, those
9 are the ones that had always been pending.

10 A. Okay. Well, I was led to believe that I was
11 getting new charges.

12 Q. I don't know why you were led to believe that.
13 You committed a crime in this Court's presence by
14 committing a battery against your Counsel, but they
15 haven't filed it, nor have I heard that they wish to. You
16 were in contempt in the last court proceeding.

17 I do not believe that you are mentally ill or
18 unstable. I believe that what you were doing was a
19 calculated way to keep yourself from coming to court, and
20 consistent with other things you have done to do the same
21 thing. Like remaining in your cell. I think you chose
22 that way to go last time because I told you in another
23 hearing that if you did that again, I would make sure you
24 were brought to court.

25 I also explained to you how it was you'd be found
26 in contempt. And I think you just found another way to
27 try to stay out of the hearing which you claimed to want
28 to have had, but have done everything in your power to
29 avoid. And that's why I had you removed from the cell to
30 be brought here, because I needed you at least to start
31 the hearing.

32 A. Your Honor --

33 Q. Mr. Northam had no say in those things. In fact,
34 I don't think he was wanting me to do that. But that
35 wasn't his choice.

1 MR. NORTHAM: That is actually correct. And just
2 so Mr. Gibbs understands that I had expressed that we try
3 a different procedure. So it was --

4 THE DEFENDANT: I would like to consult with
5 Mr. Northam if I can.

6 THE COURT: You can do that.

7 (Counsel and Defendant confer off the record in
8 the holding cell.)

9 (Pause in proceedings.)

10 THE COURT: All right. Returning to the Marsden
11 Hearing, that is the Court remains locked down for that
12 purpose, was there anything else that we needed to
13 discuss?

14 MR. NORTHAM: Not at length. I will indicate
15 that Mr. Gibbs would like to address the Court briefly. I
16 believe the Marsden issue is sort of tabled for now.
17 Mr. Gibbs did re-raise the Faretta issue, and I indicated
18 to Mr. Gibbs that I believe he still has a right to go
19 Faretta, but that's an issue that has to be discussed with
20 the Court.

21 THE COURT: The Court has a right to reject it.
22 Based on the behaviors over the last couple of weeks, it
23 is very clear to me that Mr. Gibbs cannot conduct himself
24 in a manner which would be respectful to the Court and the
25 process, which wouldn't do anything but create a
26 considerable disruption in the court process. And I would
27 at this point reject his ability to go forward on his own.

28 MR. NORTHAM: And so on Mr. Gibbs's behalf, what
29 I would ask is for the Court to allow Mr. Gibbs an
30 opportunity to demonstrate that he can be respectful and
31 comply with the court decorum.

32 Mr. Gibbs is concerned about having his trial set
33 without a time waiver because -- and I believe that
34 Mr. Gibbs does have some mental health issues. A private
35 psychiatrist needs to be retained to evaluate Mr. Gibbs

1 for our trial strategy.

2 But I told Mr. Gibbs that that trial date issue
3 cannot be resolved today, that I will have to add the
4 matter on calendar after discussing with Mr. Hanna, or
5 file an appropriate Motion, so we can vacate the trial
6 date and reset the trial date in order for me to have time
7 necessary to do what I need to do to prepare for trial.

8 THE COURT: Right. Good cause to continue is
9 just that. And if that is developed, I have no issues
10 with it.

11 MR. NORTHAM: Correct. So I will defer to
12 Mr. Gibbs. I believe -- I will just defer to Mr. Gibbs
13 right now.

14 THE COURT: Well, unless it has anything to do
15 with Marsden, we are done for today.

16 THE DEFENDANT: Your Honor, I do have -- I do
17 have something I'd like to say about the Faretta.

18 BY THE COURT: I'm not going to hear Faretta
19 today.

20 Mr. Gibbs, based on what I have been witnessing,
21 there is no way, up to this point, that you could convince
22 me that you are doing anything other than trying to
23 obstruct the court process.

24 A. I understand that.

25 Q. So I'm not going to. You are also in contempt
26 and were under very specific orders. And to this point I
27 have chosen not to impose sanctions. Okay? But there is,
28 on this record, a Judge anywhere would be a fool to allow
29 you to continue to obstruct the processes as you have.
30 You are not capable of representing yourself in a
31 reasonable manner without significant disruptions. And we
32 are not going to do that.

33 THE COURT: I don't know what he can do to prove
34 himself, but we've got some time.

35 THE DEFENDANT: Your Honor, I would like to,

1 first of all and foremost, I would like to apologize for
2 what I said to you. I want you to understand that that
3 was misdirected. All of those feelings that I was saying
4 in court on September 1st, I should have directed those
5 more at the District Attorney and the police.

6 BY THE COURT: Q Mr. Gibbs, you shouldn't direct
7 them to anybody. Let me give you a piece of advice, if
8 you're willing to hear it. Okay?

9 You are charged with offenses that if a jury
10 observed the behaviors that you had in court, regardless
11 of how thin you might think the fact are to convict you,
12 you would convict yourself in front of any trier of fact
13 by doing what you did. You are going to have to get your
14 emotions in line and be able to understand where you are
15 in the process and what forum you are in. Twelve jurors
16 witnessing what you did here in court would probably
17 convict you for seeing that. So you are going to have to
18 do that.

19 And when you say it should have been directed
20 someplace else, in this place and in the situation you are
21 in, it should not be directed anywhere. You have to come
22 across as a reasonable, rational thinking human being, and
23 portray that. A trial is somewhat of a play. Okay?
24 Because we can't go back and put the people there at the
25 place and time to watch. You know?

26 It is the perceptions that people have within the
27 courtroom, and the delicacy of that type of a process that
28 lawyers deal with. They have to create an image. The
29 image you are creating is one of guilt. It is an
30 admission of guilt, and you are going to have to watch
31 that. I don't know if your attorney's told you that. But
32 that is the thinking that you just displayed that you
33 should be yelling at other people.

34 I have never said that your feelings about this
35 are wrong. They are yours, it is a private matter for

1 you. But you must understand where you are and how you
2 are going to need to proceed emotionally. And that's why
3 when I told you about these things, if you needed time to
4 collect yourself, speak with your attorney, I was happy to
5 give you that time.

6 That's for whatever it's worth to you. Okay?
7 That's the reality of the courtroom. And once you get to
8 that one place where the public will interface with the
9 judicial process, they are going to be watching that very,
10 very closely. And those types of outbursts are going to
11 be used by them, even though a Court will tell them not
12 to, people are people. And your attorney and you should
13 be very, very aware of that.

14 I know Mr. Northam is very aware of that. He is
15 not an inexperienced person when it comes to being in
16 trial. He understands the theatre of the courtroom; if
17 you understand the expression. We try to bring -- the
18 whole system is designed to bring in the truth. Okay?
19 But perception is a large part of truth. And I know you
20 are a wise man when you wish to be that person. You
21 understand what I'm saying, okay? So don't create that
22 perception down the line. Okay?

23 A. I appreciate that advice, sir, and I would only
24 respond that I -- I -- I do have mental illness. That is
25 not faked.

26 What happened on September 1st with me being in a
27 safety cell, part that have was me trying to avoid court
28 and I will openly admit that, but only part of it. Part
29 of it was actually the agitation and the feelings that I
30 was feeling that was too explosive for me to deal with and
31 I needed to be put someplace where I could calm down and
32 stay calm. Just like you told me that you wanted me to
33 tell you if I was not calm, that was my way of doing that.

34 And yes, it's an avoidance behavior because I
35 know that my emotional state is fragile. And that's the

1 only point I would make to you is that, you know, you're
2 talking about the theatre of the court, and I appreciate
3 that 100 percent, but what I need you to understand, Your
4 Honor, is that my emotionality is completely fragile. It
5 is completely brittle. It is completely reactionary.

6 And the -- you know, I'm -- I'm really borderline
7 competent the whole time I'm in this court. I could very
8 easily be found incompetent at any time. I'm trying to
9 maintain competency and avail myself to the process
10 because I believe that my innocence takes precedence over
11 my mental illness. And -- and I just -- I -- I would hope
12 that you would try to understand that and try to not think
13 that everything for me is manipulation. And try to not
14 think that I shouldn't represent myself because, honestly,
15 as good as Mr. Northam is, I can be just as persuasive and
16 I know the facts better than him and I know what's
17 happened better than him, and I -- I honestly believe I
18 could convince 12 people --

19 Q. Well, then work with Mr. Northam to get him to
20 your level of understanding. That's your job. I have
21 already told you that unless something significantly
22 different happens with the way you conduct yourself, what
23 you have demonstrated is contrary to me allowing you to
24 proceed on your own. And I don't want to hear anything
25 more about it, I want to see something different. Okay?

26 A. Okay.

27 THE COURT: And that's all for today. The
28 Marsden is denied.

29 MR. NORTHAM: Yes. And I think we have dates.

30 THE COURT: We do.

31 MR. NORTHAM: Could I have just a brief moment?

32 (Counsel and Defendant confer off the record.)

33 MR. NORTHAM: Thank you

34 (MARSDEN HEARING CONCLUDED. END OF PROCEEDINGS
35 ON THIS DATE.)

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SHASTA
3 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING
4 DEPARTMENT 1
5
6

7 PEOPLE OF THE STATE OF CALIFORNIA,)
8 PLAINTIFF,)
9 VS.)
10 ROBERT ALAN GIBBS,)
11 DEFENDANT.)

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15F5736

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15 MONDAY, OCTOBER 24, 2016
16

17 **TRANSCRIPT OF MARSDEN HEARING**

18 **- SEALED PROCEEDINGS -**

19 **MAY NOT BE EXAMINED**

20 **WITHOUT A COURT ORDER PER CRC 8.45**
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25 A P P E A R A N C E S
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27 FOR THE PEOPLE: DEPUTY DISTRICT ATTORNEY
28 (NOT PRESENT)

29 FOR THE DEFENDANT: SHON NORTHAM
30 ATTORNEY AT LAW
31
32

33 REPORTED BY: SUE N. SMEDLEY, CSR 8159
34 OFFICIAL COURT REPORTER
35

1 REDDING, CALIFORNIA - MONDAY, OCTOBER 24, 2016

2 HONORABLE DANIEL E. FLYNN, JUDGE PRESIDING

3 DEPARTMET 1, AFTERNOON SESSION

4 -000-

5
6 (THE FOLLOWING CONFIDENTIAL PROCEEDINGS WERE HELD
7 IN A CLOSED COURTROOM:)

8 MR. NORTHAM: Your Honor, Mr. Gibbs has indicated
9 that Mr. Luster is welcome to stay.

10 THE COURT: All right. Mr. Luster, if you
11 desire, you can remain in the courtroom. As part of the
12 Defense team, I think that would be okay with Mr. Gibbs's
13 agreement.

14 MR. NORTHAM: And I believe, just for the record,
15 as part of the Defense team, Mr. Luster is privy to
16 confidential information and shares in that
17 attorney-client privilege.

18 THE COURT: All right. So it looks like we are
19 now in the confidential setting. All necessary people are
20 here, others have been excused.

21 BY THE COURT: Q And Mr. Gibbs, do you want me
22 to go through the basics of Marsden? I know that we have
23 gone through those before. Or did you just want to tell
24 me what new information you have which relates to whether
25 or not I should remove Mr. Northam?

26 A. I don't need to be re-admonished, Your Honor, I
27 just want to read my statement that I have written.
28 Basically it goes into the events of August 12th, August
29 23rd, September 1st, leading up to my Preliminary
30 Hearings.

31 And also I would like to state very clearly for
32 the record that I believe that my trial is a public
33 spectacle trial. That it is highly inappropriate for you
34 to have the Record Searchlight in here. Especially when
35 the Record Searchlight has refused to tell any of my side

1 of this story.

2 Q. Mr. Gibbs, that's not why I'm here. Nor is it
3 why we are in a confidential setting. If you have
4 information that is related --

5 A. Well, I'm going to ask --

6 Q. -- to the Marsden, I'm not going to excuse the
7 press unless there is something else that has been filed
8 because --

9 A. I've -- I've --

10 Q. Mr. Gibbs --

11 A. -- I've asked for a Gag Order.

12 Q. This is an open and public forum. Okay? There's
13 Motions that can be filed if good cause is shown to
14 exclude the press from certain things like this hearing.
15 But I am not going to. I have already made orders with
16 regard to their access to the courts. They have access to
17 the courts, as well as any member of the public. So I am
18 not entertaining that now. Nor would I entertain it in
19 the absence of the Record Searchlight. Notice to them so
20 that they can bring attorneys in and argue that point.

21 What do you have related to the Marsden? If you
22 want to read, please read slowly so that we can take down
23 what you're saying.

24 A. I, Robert Gibbs, the Defendant, do hereby
25 formally object to the continued representation of
26 attorney Shon Northam on the following grounds.

27 On or about August 12th, 2016, I argued
28 vociferously and vehemently to be relieved of Shon
29 Northam's representation. I've demanded my right to
30 self-representation if the Court refused for the sixth
31 time to replace Mr. Northam with a competent attorney. As
32 stated on the record at the end of that Marsden Hearing,
33 that I was very reluctantly willing to forego his being
34 detached from my case for the purpose of having
35 Mr. Northam approach the District Attorney again to

1 attempt to resolve the matter by way of a fair plea
2 agreement.

3 Approximately two weeks later, on or about August
4 23rd, 2016, despite the fact that I had very clearly
5 stated on the record that I was demanding an affirmative
6 defense at my Preliminary Hearing, as well as that
7 Mr. Northam had thus far refused for nearly one year to
8 respect my chosen lines of defense or to properly prepare
9 for my Preliminary Hearing, despite the fact that I have
10 bitterly complained that neither Mr. Northam nor his
11 investigator had even attempted to investigate any of my
12 claims in my defense, or even properly question principal
13 witnesses like Deputy Attorney General John Faser or
14 witness Sheree Dubuque, despite the fact that Mr. Northam
15 knew very well that I expected him to challenge certain
16 expected evidence as prejudicial and illegally obtained.
17 I am speaking of illegally obtained tape recorded
18 conversation between myself and Deputy A.G. Faser.
19 Despite the fact that I have made it clear to Mr. Northam
20 that he was not prepared for my preliminary, that I still
21 wanted to represent myself, that I reserved my right to
22 testify, that I expected him to challenge the fact that
23 this District Attorney has not offered any contextual
24 evidence as required by law to contextualize my
25 conversation with Fazer, and despite many multifaceted
26 problems with our defense going forward, Mr. Northam
27 nonetheless and deliberately violated all of my rights to
28 preliminary by waiving my presence in court on or about
29 August 23rd, 2016 without and against my consent, knowing
30 full well that the cases were set for Preliminary Hearing.
31 And by waiving my presence so that it would not be -- so
32 that I would not be brought down from the jail for my
33 hearing, the preliminary would go forward on September
34 1st, 2016 without my being able to object or request
35 another Marsden Hearing. A violation of enumerable civil

1 rights, including but not limited to a violation of my 6th
2 Amendment Right to effective assistance of Counsel, a
3 violation of my 14th Amendment Right to due process, a
4 violation of my 6th Amendment Right to see and confront
5 witnesses, a violation of my 6th Amendment Right to
6 subpoena witnesses on my behalf, my 6th Amendment right to
7 field an affirmative defense, a violation of my 14th
8 Amendment Right to due process by denying my right to
9 attend my Preliminary Hearing, a defacto violation because
10 quite naturally by being ambushed into my preliminary
11 deliberately by Mr. Northam and Judge Flynn, I did choose
12 to boycott my hearing as it was already illegal and a
13 violation of my rights. And so in protest, I did boycott
14 it.

15 See Meyer versus --

16 THE COURT REPORTER: I'm sorry, one second.

17 THE DEFENDANT: See Meyer versus City of Chicago,
18 violation of rights generates anger, poisons process --

19 BY THE COURT: Slow down a little bit, if you
20 would, please.

21 A. Sorry. I apologize.

22 A violation of my chosen lines of defense, which
23 are clear and on the record and well-known by Mr. Northam
24 and Judge Flynn.

25 I hereby object under these grounds to the
26 validity of both of those Preliminary Hearings, any
27 evidence presented in them, the continued use of any
28 so-called evidence or testimony from them, or any
29 judgments stemming from them.

30 I hereby state unequivocally for the record that
31 Judge Flynn's ordering me removed from a suicide safety
32 cell, wherein I had been duly and lawfully placed by
33 mental health professionals for my own safety, was
34 illegal, unconscionable, and a violation of my right to
35 appropriate medical care.

1 I hereby state unequivocally and on the record
2 that to facilitate bringing me to court for my illegally
3 staged Preliminary Hearing, that sheriff's deputies and
4 court marshals did under color of law assault my person,
5 injury me, and bring me into course semi-unclothed while I
6 was already suffering from a psychotic, psychiatric
7 emergency thereby disturbing me mentally and emotionally.
8 A further despicable and unconscionable violation of my
9 civil rights and my human dignity.

10 I was then filmed by --

11 THE COURT REPORTER: I'm sorry, I need you to
12 slow down. Filmed by...

13 THE DEFENDANT: Sorry. I was then filmed by
14 local newspaper personnel against my will in a state of
15 emotional disturbance. And this film was posted on the
16 Internet nationwide and viewed by untold amounts of
17 people, a violation of my right to privacy and human
18 dignity, and an act which amounts to civil harassment
19 under color of law, and was fully sanctioned and allowed
20 by this Court.

21 I then did spit on Mr. Northam, which shows my
22 real feelings for him, and made him a victim of battery as
23 defined by the Penal Code.

24 Despite this fact, the Court saw fit to not
25 relieve Mr. Northam despite the fact that it is now a
26 conflict of interest for Mr. Northam to continue to
27 represent me, whether or not charges were filed, as this
28 battery was nonetheless viewed by the Judge, the District
29 Attorney, and court marshals. And any reasonable person
30 would now question Mr. Northam's ability to represent
31 someone who was filmed spitting on him, without any bias
32 toward his client.

33 I do hereby unequivocally object on the record to
34 Mr. Northam's continued representation of me after this
35 battery.

1 I do hereby object to Judge Dan Flynn's continued
2 assignment to these cases after this battery and my
3 documented accusations against him that he is a
4 despicable, disgusting tyrant, and that --

5 Q. Okay, Mr. Gibbs, you keep up with that, I'm going
6 to hold you in contempt. I've already given you orders.

7 A. I'm sorry. I'm sorry.

8 Q. You don't do that in here.

9 A. I'm sorry. It was --

10 Q. Because you may disagree with how I have
11 interpreted and applied the law, I am not going to allow
12 you to continue to commit contemptuous acts here. And I
13 will be, and you are on notice of that, beginning to
14 remove custody conduct credits if you continue that way.

15 A. I apologize.

16 Q. You are now on notice.

17 A. I apologize. You're misunderstanding --

18 Q. I'm not misunderstanding, Mr. Gibbs. I know
19 exactly what you're saying. Continue without the
20 contemptuous insults of this institution.

21 A. As that exchange has now gone viral on social
22 media nationwide, which would cause any reasonable person
23 to question whether or not Judge Flynn can continue to
24 adjudge these proceedings without bias against this
25 Defendant.

26 I do hereby state and object on the record that I
27 do believe Judge Flynn has continuously and deliberately
28 violated this Defendant's civil and Constitutional Rights;
29 is wholly biased against this Defendant, and has made
30 statements regarding this Defendant's alleged guilt from
31 the Bench; has allowed the continued and deliberate
32 violation of my rights by this Defendant's assigned
33 Counsel, Shon Northam, is constitutionally --

34 Q. Okay, this is not related to Marsden. Your
35 complaints about me are aside from Marsden.

1 What else did you want to tell me about your
2 representation of Mr. Northam?

3 A. That -- that -- I -- I think that he, um, that I
4 object to the uncivil, contentious, and political nature
5 of my prosecution. That he should be trying to stop that.
6 That he should not be allowing me to be absolutely
7 demonized as to wrap me up to a trial. This is not --
8 this isn't done anywhere by anyone.

9 If I asked for a Gag Order of local press because
10 they are essentially providing one side of a story to the
11 entire community, he should be doing everything he can to
12 stop that from happening. To stop my vilification in the
13 press.

14 He should be addressing the fact that I have been
15 assaulted in the jail, that my rights have been violated
16 in the jail. He should be addressing the fact that -- that
17 I feel that my preliminaries were not legal.

18 He should be addressing the fact that I feel that
19 this trial has -- has been completely political. That I
20 cannot get a fair trial in this county because essentially
21 this county is a pro-law enforcement, pro-military, you
22 know, more or less a right-winged community, and I have
23 now kicked over the ant hill and my political views do not
24 match your political views. And because of that, the
25 whole county's coming down on top of me. And there is no
26 way you can get a fair trial in that environment.

27 Q. That's not an issue for Marsden, that's an issue
28 for -- if Mr. Northam thinks it's appropriate, to make a
29 Motion to change venue.

30 A. Mr. Northam --

31 Q. But now isn't the time for that.

32 A. Mr. Northam -- okay, well, I've listed lots of
33 reasons why he has failed me miserably.

34 He told me today -- and you can ask Mr. Luster --
35 I said to him today that he ambushed me at my Preliminary

1 Hearing. And what he said exactly --

2 Q. So what do you mean by "ambushed" you at your
3 Preliminary Hearing?

4 A. He waived my presence a week before, knowing that
5 I was not going to allow him to go forward because --

6 Q. Wait. I'm sorry.

7 A. -- he was not prepared.

8 Q. Waived your presence for the Preliminary Hearing
9 or for something else?

10 A. Before the Preliminary Hearing so that I could
11 not object to him allowing the preliminary dates to remain
12 set.

13 You had set the preliminary dates. So
14 essentially what he did is rather than bring me down here
15 where he knew I was going to object and ask for a Marsden
16 and say that he was not ready, rather than allowing me to
17 go on the record and say what I had to say and to make my
18 objections, he waived my presence so that the court dates
19 would stay in place.

20 And then what happens? They bring me in here. I
21 happen to be in a strip cell for my own safety. They
22 bring me in here in a wheelchair, half naked in front of
23 the Record Searchlight and, surprise, here's your
24 Preliminary Hearing.

25 Obviously I boycotted it at that point because it
26 was completely illegal. It was a violation of my right to
27 have --

28 Q. Slow down.

29 A. -- to have an affirmative defense at my
30 preliminary.

31 Q. Mr. Gibbs, slow down.

32 He didn't ambush you at all. There have been
33 times you have refused to come down. At that time he
34 confirms hearings that are already set. You have failed
35 to cooperate with him. The record is full of that.

1 A. You can't keep blaming me.

2 Q. Mr. Gibbs, do not interrupt me.

3 A. You keep blaming me for the past; you keep
4 blaming me for the one time I didn't come to court.

5 Q. Mr. Gibbs, you're the one to blame for your
6 actions.

7 A. That's not fair. You're using that as an
8 excuse.

9 Q. Okay, you can stop talking.

10 Mr. Northam placed on the record at the time of
11 your Preliminary Hearing, many objections to it. He also
12 placed on the record, because he felt he needed to,
13 because you, by your actions, which were voluntarily, and
14 now by your labeling your actions as a boycott, calculated
15 and thought through your behavior kept you from your
16 Preliminary Hearing. (sic.)

17 Mr. Northam put proper objections on, and he made
18 a record regarding his -- his strategic decisions to
19 approach the case as he did. None of them were
20 unreasonable decisions. Many of the rights you are
21 talking about are those which are exercised as trial
22 rights, not rights generally exercised at the time of the
23 Preliminary Hearing.

24 He had your witness available to you. He had
25 discussed information with your witness. And gave reasons
26 why, which were very cogent and credible, he believed
27 calling that witness was not in your best interest,
28 whether you were here or not.

29 You have told me nothing that I would require
30 Mr. Northam to respond to. I have heard these before.
31 There is nothing deficient in his representation.

32 Also, I am not going to allow you to commit a
33 crime which is designed specifically to interfere with
34 your representation and the court process. You can't
35 commit crimes in here and then demand that your attorney

1 be relieved. Or that I be removed from a case just
2 because of your specific and deliberate actions in that
3 attempt. It's not a Marsden issue.

4 Mr. Northam has continually stated he is ready,
5 willing and able to defend you at trial and bring Motions
6 which, in his best judgment, are in your best interest
7 strategically. Your continuing efforts to remove him or
8 not work with him, or not listen to him, or at least try
9 to understand what he's doing, is not within his control
10 nor in mine. That is up to you.

11 So I have heard nothing which would compel me to
12 grant Marsden at this point.

13 Mr. Northam, was there anything that you wished
14 to add?

15 MR. NORTHAM: No.

16 THE DEFENDANT: I still -- I still believe that I
17 have a right to Faretta, and I believe that that should
18 not be waived simply because he went off the reservation
19 and ambushed me at my preliminary --

20 THE COURT: Mr. Gibbs, he didn't do anything that
21 caused me to deny Faretta. I denied Faretta because of
22 your actions and your continued actions, and for your
23 continued contemptuous behavior. This Marsden is over and
24 it is denied. We are confirming the trial dates.

25 THE DEFENDANT: Can I consult with my attorney,
26 please?

27 THE COURT: Sure.

28 (Counsel and Defendant confer off the record.)

29 BY THE COURT: Q All right. We are back on the
30 record. Have we concluded the issues related to Marsden?

31 A. I had one more thing and that was all, Your
32 Honor, if I could?

33 Q. Okay.

34 A. When I spoke to Mr. Northam earlier today, he
35 said in front of Mr. Luster, I said to him that he had

1 ambushed me at my preliminary and he said, I quote, "I did
2 ambush you," and he laughed about it. I'd like that on
3 the record.

4 MR. NORTHAM: Well, I do want to address this.
5 That's not true at all. I actually started laughing
6 because Mr. Gibbs was talking about spitting on me. And I
7 said I had forgiven him for spitting on me, I didn't
8 really care about it.

9 And Mr. Gibbs said, Well, you ambushed me. And I
10 was still sort of laughing, going -- and I laughed. I
11 said, I didn't ambush you. Here's what happened.
12 Mr. Luster was present in court --

13 THE DEFENDANT: His words were --

14 THE COURT: Mr. Gibbs, let him explain.

15 MR. NORTHAM: I did not ambush him.

16 So Mr. Luster is here and I would ask for
17 Mr. Luster to verify whether or not I said I did ambush
18 him.

19 THE COURT: I don't think it's relevant to
20 anything.

21 MR. NORTHAM: That's fine.

22 THE COURT: It is -- we are sinking into an
23 is not/is so sort of a thing --

24 MR. NORTHAM: Correct. Correct.

25 THE COURT: -- that is well beyond the type of
26 reasonable interaction that should happen. And those
27 types of conversations, levity, whatever else it is,
28 certainly may have a place in discussions or to lighten
29 things up or to try to create some sort of an atmosphere
30 of reasonable discussion, but it has no relevance to the
31 Marsden issue.

32 THE DEFENDANT: Your Honor, I would quote
33 Michigan versus Bryant --

34 THE COURT: You can quote all you want to. Right
35 now this issue is over. Marsden is denied.

1 And we will go ahead and open up just so that we
2 can have everyone back for purposes of confirming the
3 trial at this point.

4 (MARSDEN HEARING CONCLUDED. PAGES 208 THROUGH 209
5 WERE HELD IN OPEN COURT.)

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SHASTA
3 HONORABLE WILSON CURLE, JUDGE PRESIDING
4 DEPARTMENT 1

5
6
7 PEOPLE OF THE STATE OF CALIFONRIA,)
8 PLAINTIFF,)
9 VS.)
10 ROBERT ALAN GIBBS,)
11 DEFENDANT.)

COPY

CASE NO. 14F6355,
15F5736

VOLUME 1 OF 1
PAGES 212 TO 225

12
13
14
15 FRIDAY, JANUARY 6, 2017

16
17 **TRANSCRIPT OF MARSDEN HEARING**

18 **- SEALED PROCEEDINGS -**

19 **MAY NOT BE EXAMINED**

20 **WITHOUT A COURT ORDER PER CRC 8.45**

21
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23
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25 A P P E A R A N C E S

26
27 FOR THE PEOPLE: DEPUTY DISTRICT ATTORNEY
(NOT PRESENT)

28
29 FOR THE DEFENDANT: SHON NORTHAM
ATTORNEY AT LAW

30
31
32
33 REPORTED BY: SUE N. SMEDLEY, CSR 8159
34 OFFICIAL COURT REPORTER
35

1 REDDING, CALIFORNIA - FRIDAY, JANUARY 6, 2017

2 HONORABLE WILSON CURLE, JUDGE PRESIDING

3 DEPARTMET 1, MORNING SESSION

4 -000-

5
6 (THE FOLLOWING CONFIDENTIAL PROCEEDINGS WERE HELD
7 IN A CLOSED COURTROOM:)

8 THE COURT: Okay. Let's go to Mr. Gibbs's many
9 items. Originally Mr. Gibbs is on for a trial setting --
10 not trial setting, trial confirmation for jury trial next
11 week with a general time waiver. However, he did not want
12 to come to court earlier this morning. He is now here,
13 though, thank you, Mr. Gibbs.

14 And I have been given to understand before I took
15 the Bench by staff that you wished to have a Marsden
16 Hearing.

17 MR. NORTHAM: Correct.

18 THE COURT: Is that your understanding?

19 MR. NORTHAM: Yes.

20 THE COURT: Is that your desire?

21 THE DEFENDANT: Yes, sir. Good morning, Your
22 Honor.

23 THE COURT: I note from the record that you have
24 had 7 Marsden Hearings already. Your most recent one was
25 October 24th. So a couple of three months ago.

26 In a moment what I'm going to do is ask you
27 what's occurred since October 24th to lead me to replace
28 your Counsel. Now, before I get to that, though, let me
29 set the table for you so -- who is this gentleman here?

30 MR. NORTHAM: This is Mr. Don Luster. He is the
31 investigator for both myself and Mr. Gibbs.

32 THE COURT: Okay. Comfortable having your
33 investigator sit in?

34 THE DEFENDANT: I don't think we need Mr. Luster
35 for this.

1 THE COURT: Well, you may not need him, but are
2 you comfortable having him here?

3 THE DEFENDANT: I don't think so.

4 THE COURT: Okay. Mr. Luster, you can step out.

5 (MR. LUSTER EXITED THE COURTROOM.)

6 BY THE COURT: What I have done is cleared the
7 courtroom. The reason I'm having the courtroom cleared is
8 because, Mr. Gibbs, in order for me to make a
9 determination as to whether I should change your attorney
10 for you at your request, you may have to, you are not
11 required to, you may not have to, but you may have to
12 reveal to me some of your strategies or plans for your
13 trial. And that's information we don't want the District
14 Attorney's Office to have. They are not to have that.
15 And you have seen the District Attorney depart. So now
16 the courtroom is empty, other than for bailiffs, court
17 reporter, court clerk, and obviously your Counsel.

18 But as I said, you may not have to reveal that to
19 me. But regardless, we want to make sure that the
20 District Attorney's Office does not get that information.

21 And also to that end, I will make an order now
22 that as soon as this hearing is over, the record that the
23 court reporter is taking is going to be sealed. Which
24 means it cannot be opened without a Court Order. In other
25 words, the newspaper or the D.A.'s Office or some
26 interested member of the community can't go and get a copy
27 of the transcript to read what you had to say, just in
28 case you did say something about your trial.

29 Q. You're nodding, so I take it you understand that.

30 A. Yes, sir.

31 Q. Okay. And you have been through seven of these
32 here, so I suspect you should. Although I don't believe
33 that I have sat on any one of those, unless they go way
34 back.

35 At any rate, Mr. Gibbs, the floor is now yours.

1 So if you could precisely tell me what it is that your
2 Counsel has done that would lead me to replace him or that
3 he hasn't done and should have done which would lead me to
4 replace him.

5 A. Your Honor, my main complaint with the
6 representation of Mr. Northam is his continued insistence
7 to fail to respect my chosen lines of defense. His
8 refusal for 16 months to properly interview primary
9 witness John Faser, who is a Deputy Attorney General. His
10 refusal for 16 months, approximately, not quite 16 months
11 because he hasn't been my lawyer that entire time --

12 Q. Well, I take it if you are going back 16 months
13 that this issue has been raised at a number of other
14 Marsden Hearings.

15 A. It continues to be a problem and we are days out
16 from a trial and --

17 Q. And you want him to interview an Assistant
18 Attorney General.

19 A. And he's known this for month.

20 Q. And why would he be interviewing this Assistant
21 Attorney General?

22 A. As you know, Your Honor, it is ineffective
23 assistance of Counsel to refuse to interview a witness
24 that may be an exculpatory witness.

25 Q. Why would he be interviewing this particular
26 individual?

27 A. Because that individual has knowledge that would
28 aid in my defense.

29 Q. And what knowledge would that be?

30 A. Um, that, um, he -- the conversation of which I
31 am accused of criminal threats was, in fact, a privileged
32 conversation and, um, that I was very upset, I was having
33 a psychiatric emergency. That --

34 Q. And you had the conversation with this Assistant
35 Attorney General?

1 A. Yes, sir.

2 Q. And the labeling it of as a "privileged
3 conversation" is not up to you. You don't get to make it
4 called a privileged conversation. The legislature is the
5 body that sets forth what's privileged and what isn't.

6 So how is this conversation you had -- and by the
7 way, is this Assistant Attorney General a victim in the
8 matter?

9 A. No.

10 MR. NORTHAM: Well, he's not a named victim, he's
11 a percipient witness to a 422 case. The threats -- at
12 least the statements that are purported to be threats,
13 came from Mr. Gibbs to the Attorney General, who then at
14 some point during the conversation became concerned about
15 the gravity of these statements that were allegedly made,
16 turned on a recorder, and then there's a fairly lengthy
17 minute recording of Mr. Gibbs and Attorney General Faser,
18 and there's some colloquy in which there's some statements
19 that were deemed to be criminal threats.

20 BY THE COURT: Q Okay. I'm strongly suspecting
21 this ground has been covered by other Judges in other
22 Marsdens before; am I correct?

23 A. Um --

24 Q. Or is this a new complaint?

25 MR. NORTHAM: This issue -- I don't want to speak
26 over Mr. Gibbs, but it has been covered a number of times.
27 We did the Preliminary Hearing back, I think, on September
28 1st.

29 Mr. Faser -- I had subpoenaed Mr. Faser to come
30 to the Preliminary Hearing because Mr. Faser was not
31 availing himself of sort of an informal interview with my
32 investigator prior to the September 1st Preliminary
33 Hearing.

34 When Mr. Faser showed up, I had a discussion with
35 Mr. Faser about the conversation with Mr. Gibbs that's at

1 issue, some other issues that Mr. Gibbs has raised with me
2 about statements that Mr. Fazer purportedly made. And
3 when I asked Mr. Fazer about those statements, Mr. Fazer
4 denied making those statements and essentially only
5 provided further information that I deemed to be
6 inculpatory and that would not benefit Mr. Gibbs.

7 THE COURT: Was Mr. Fazer on the stand?

8 MR. NORTHAM: No. In fact, I did not put him on
9 the stand because of the information that was provided to
10 me that would not have benefited Mr. Gibbs in his defense
11 or at the Preliminary Hearing.

12 THE COURT: And the People didn't call
13 Mr. Fazer.

14 MR. NORTHAM: Correct.

15 And so after speaking with Mr. Fazer, as well as
16 with the presence of my investigator --

17 THE COURT: So you and your investigator have
18 talked to Mr. Fazer?

19 MR. NORTHAM: Correct.

20 BY THE COURT: Q Well, the Complaint I just
21 heard, Mr. Gibbs, is that they haven't talked to
22 Mr. Fazer.

23 A. Can I clarify that issue?

24 Q. Sure.

25 A. Um, the problem is not that they did not
26 eventually talk to Mr. Fazer, the problem is that he
27 talked to Mr. Fazer and asked him only the questions that
28 he wanted to ask him. He asked him none of the questions
29 that are the line of questioning that I want him asked. I
30 have a right to have these questions asked.

31 Q. That's not necessarily true at all. And I can't
32 say that you do without knowing what those questions are.
33 So you are jumping ahead here.

34 A. I actually have a list of the questions written
35 out.

1 Q. And have you provided that list to your attorney?

2 A. Um, we have discussed --

3 Q. Have you provided that list to your attorney?

4 A. No, I haven't.

5 Q. Well, it's going to be hard for him to ask those
6 questions if he was of a mind to, even if you haven't told
7 him what questions to ask.

8 A. Well, again, Your Honor, this is one issue. If
9 you want to table that issue for a moment, if you'll let
10 me bring it back to the overall problem is, is that he is
11 not preparing for any kind of trial based upon my chosen
12 line of defense. Which is, to be very clear, I have
13 researched this in the law, I am very clear about it, it's
14 a Wells/Gorshin defense. Which is that essentially I am
15 alleging that while I am competent, I was not competent at
16 the time to, um, to be aware of my intent or the impact
17 that my statements were making on Mr. Fazer or would have
18 made on a person.

19 Because of my psychiatric problems at that time,
20 I was undergoing a severe depressive episode, my family
21 had left the day before. This was in regards to a loss --

22 Q. I suspect this is an issue you have raised at
23 previous Marsden Hearings?

24 A. Um, yes, but --

25 Q. Okay. I told you at the beginning, I'm not
26 dealing with anything that's already been passed on by a
27 Judge on a previous Marsden Hearing. So if a Judge heard
28 your complaint, heard your position, and he or she then
29 decided that it was not grounds to replace, Counsel, I'm
30 not re-hearing that. There's already been a decision
31 made.

32 A. Okay.

33 Q. What I'm looking for, as I said at the top, at
34 the beginning, was what has occurred since October 24th,
35 your last Marsden Hearing?

1 A. Okay. Well, since October 24th, I sent a letter
2 to Mr. Northam's boss, Jeff Jens at the Conflict Counsel,
3 and I basically complained of the way Shon has handled the
4 case.

5 And also, on approximately November, the 1st part
6 of November, my investigator admitted to me that he
7 essentially committed a felony. He admitted to me that he
8 committed a criminal threat himself to his neighbor. He
9 told me, um, that he told his neighbor he was going to rip
10 his throat out. Because of --

11 Q. What does that have to do with your case?

12 A. Well, because this is my investigator. And if he
13 admits that he committed a felony, that would affect his
14 licensure as an investigator. I don't feel comfortable
15 having an investigator who has admitted to committing a
16 felony to my face. He told me this.

17 And I believe because Mr. Northam works so
18 closely with this investigator, I believe that it makes it
19 hard for me also to work with Mr. Northam. Um, and I
20 believe I have a right to an investigator whose licensure
21 is not casting a doubt because of something like that.
22 This is something this man told me.

23 Q. Well, unfortunately, Mr. Gibbs, this Court has
24 known Mr. Luster from before he was even an investigator.
25 When he was a member of the police force in this county.
26 So I find that hard to believe that his license is in
27 danger.

28 Secondly, I would, if I were in your shoes, have
29 a much larger complaint if it occurred to me or it was
30 evident to me that my attorney was not working
31 hand-in-hand with my investigator. You want a close
32 relationship between the attorney and the investigator,
33 not a distant one.

34 So what else do you have?

35 A. Your Honor, the over-arching issue is that

1 Mr. Northam and I cannot see eye-to-eye on how to proceed
2 with this case, and it's leading to the case being bungled
3 over and over and over again.

4 He's actually -- he's actually, um, caused my
5 right to represent myself to be jeopardized because of
6 what he did at my Preliminary Hearing that caused a row in
7 court. And now the Judge is trying to say I shouldn't be
8 able to represent myself.

9 The fact that I'm here today in a spit mask and
10 chains is based upon the fact that he absolutely ambushed
11 me at my preliminary by not conducting an affirmative
12 defense.

13 Q. When was the Preliminary Hearing?

14 MR. NORTHAM: I thought it was on September 1st
15 of this year. Sorry.

16 THE COURT: September 1st of this year?

17 MR. NORTHAM: Sorry. We're in 2017. 2016.

18 THE DEFENDANT: It was September 1st.

19 MR. NORTHAM: Correct. September 1st.

20 BY THE COURT: Q Which is prior to the last
21 Marsden Hearing. So this wasn't discussed at the last
22 Marsden Hearing?

23 A. I've tried to bring some of this stuff up. I've
24 just been shut down. I've been told it doesn't matter.
25 But it does matter. It's encroaching slowly on --

26 Q. Well, I've got some information for you,
27 Mr. Gibbs, which you may not understand; although, I
28 suspect that a number of Judges have already told you
29 this. Your attorney does not -- listen to me, does not
30 have to pursue all grounds and tactics that you wish him
31 or her, in this case him, to pursue.

32 Your attorney is also a member of the court. An
33 officer of the court. And if you have chosen a route to
34 take which is deleterious to your position in his view, or
35 is illegal under California law in his understanding of

1 the law, he doesn't have to follow those lines.

2 Why don't we hear from your attorney about what
3 his position is on following the defense you wish him to
4 provide.

5 MR. NORTHAM: Your Honor, I think what Mr. Gibbs
6 is saying is that there's been sort of a breakdown in
7 communication between Mr. Gibbs and myself. And --

8 THE COURT: Well, he hasn't said that, but one
9 could certainly draw that.

10 MR. NORTHAM: Correct. Correct. He's not used
11 those words.

12 Prior to recent months, Mr. Gibbs was not taking
13 any mental health medication. And I think a lot of our
14 discord was as a result of Mr. Gibbs's mental state and
15 not necessarily being on medications and being in a right
16 frame of mind.

17 Mr. Gibbs has now been on medication, I have met
18 with him. He seems to be of a rational mind now, a more
19 sound mind. And we have disagreements about how to defend
20 his case.

21 I think to a certain extent there's been a
22 breakdown in communication. There have been times when I
23 haven't been able to meet with Mr. Gibbs or he won't talk
24 to me. And there's been this struggle that's gone on.

25 And I think in previous Marsdens, at least my
26 feeling was a lot of the angst or animus came from
27 Mr. Gibbs's instability regarding his mental health. He
28 seems -- in fact, I would, just for the record, put on
29 that I met with him this morning at the jail. Indicated
30 to Mr. Gibbs that I would object, and I did indicate to
31 Marshal Davis, that I didn't feel the need to have the
32 spit mask on, I was comfortable with Mr. Gibbs. I was the
33 target of the intended bodily fluid assault. But that
34 Mr. Gibbs has never been physically combative with the
35 marshals, but I understand they have to take certain

1 security precautions. But I don't feel like Mr. Gibbs
2 poses a physical threat to myself.

3 Having now been with Mr. Gibbs since he's been on
4 his medication, we are still having these same sort of
5 structural communicative issues where we're not on the
6 same page. And I don't know that we are ever going to be
7 on the same page, as far as being able to co-exist in this
8 relationship where we can have a conversation about what's
9 the best way to proceed.

10 THE COURT: Well, let me interrupt you. Sorry.

11 MR. NORTHAM: Sure. No, no, no.

12 THE COURT: Let me sum up what I think you're
13 saying, and they're in two different areas. And when my
14 summation goes awry, call me on it.

15 What I'm hearing you say is that earlier you felt
16 that before he took medication or became compliant with
17 medication, that the routes of your problems were his
18 instability which you expected to work out once he was on
19 his medication regiment, but that has not been borne
20 fruit.

21 MR. NORTHAM: Correct.

22 THE COURT: That did not occur.

23 MR. NORTHAM: Correct.

24 THE COURT: Secondly, and here's the one I want
25 you to correct me on. I'm hearing you say that at the
26 time in the past, before the medication, you felt that you
27 had an inability to work with your client. There was a
28 breakdown. What you expected that breakdown to be
29 repaired by medication, that has not occurred and there is
30 still, from your view, a breakdown that's irreparable
31 between yourself and your client in the ability to
32 communicate.

33 MR. NORTHAM: That is all correct.

34 BY THE COURT: Well, given that, then I will
35 release your Counsel and appoint new Counsel.

1 A. Your Honor, I also concur with that. I'm
2 sorry.

3 Q. I'm sorry?

4 A. You didn't ask me, but that's --

5 Q. Wait, wait, wait. Why should I ask you? You did
6 this hearing to have Counsel relieved.

7 A. I know.

8 Q. And I'm doing that.

9 A. I know.

10 Q. Now, did you want to change your mind and not
11 have that happen?

12 A. No.

13 Q. Then why did you want me to ask you about it?

14 A. I just want it to be clear. I'm just trying to
15 be clear.

16 Q. Well, I think we're clear on it.

17 A. I think -- I think -- I think what I have been
18 trying to say this whole time is that he was not -- I
19 believe in my defense. And he believes in his line of
20 defense. And they are day and night. They are just so
21 opposite. And with all due respect to --

22 Q. I'm going to appoint you knew Counsel, Mr. Gibbs.
23 But I'm also going to tell you that your new Counsel may
24 not be enthralled with your line of defense either.

25 A. But they might be.

26 Q. I'm just letting you know that.

27 A. Right.

28 Q. I could be wrong.

29 A. Right.

30 Q. I just want you to know there's that
31 possibility.

32 A. Right.

33 Q. Okay?

34 THE COURT: Is it somebody else from
35 Mr. Jens' staff?

1 MR. NORTHAM: Correct. I believe Adam Ryan would
2 be the next in order. And my suggestion would be to at
3 least vacate the trial date right now, put the matter on
4 for Monday or Tuesday of next week just for the
5 confirmation of Counsel.

6 THE COURT: I will vacate the trial date and we
7 will have you back -- how about Monday morning?

8 MR. NORTHAM: Monday morning sounds good.

9 THE COURT: 8:30?

10 MR. NORTHAM: I think so.

11 THE COURT: Well, I think Judge Anderson's going
12 to be here anyway, so what does he know about the
13 calendar?

14 THE CLERK: Actually, we don't have a Judge yet
15 for Monday.

16 THE COURT: Oh, you don't have a Judge for
17 Monday.

18 We don't have a Judge yet for Monday. As I think
19 everybody knows, well, the small numbers that are here,
20 that Judge Flynn was called away suddenly on a grave
21 family emergency. And they are still looking for a Monday
22 Judge. So I'm going to put it on Tuesday morning.

23 MR. NORTHAM: Okay. That's fine. I don't know
24 that it matters what Judge is here.

25 THE COURT: Well, at this point there is no Judge
26 for Monday.

27 MR. NORTHAM: Oh, okay.

28 THE COURT: So in case somebody else has to
29 double up, I don't want to burden his or her calendar.

30 MR. NORTHAM: Okay. I got you now.

31 THE COURT: That's all.

32 MR. NORTHAM: Okay.

33 THE CLERK: So that would be the 10th at 8:30.

34 THE COURT: 10th at 8:30.

35 So I'll have you back on Tuesday morning at 8:30

1 to meet your new attorney.

2 MR. NORTHAM: Okay. Thank you, Your Honor.

3 (MARSDEN HEARING CONCLUDED. END OF PROCEEDINGS

4 ON THIS DATE.)

5 (AFTERNOON ADJOURNMENT.)

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