

1 IN THE SUPERIOR COURT, STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SHASTA

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4 **Certified Copy**

5 THE PEOPLE OF THE STATE  
6 OF CALIFORNIA,  
7 Plaintiff,

8  
9 Case No. 15F5736, 14F6355

10 vs.

11 ROBERT ALAN GIBBS,  
12 Defendant.

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14  
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16 **SEALED - CONFIDENTIAL MARSDEN HEARING**  
17 **NOT TO BE EXAMINED WITHOUT COURT ORDER**  
18 **CLOSED SESSION - Sealed Pgs 385 - 394**

19 7/11/18

20 HONORABLE ANTHONY A. ANDERSON, JUDGE

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25 A P P E A R A N C E S:

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27 FOR THE DEFENDANT:

28 BY: TED SOMERS, Attorney at Law  
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35 Reported by: Melissa Snyder, CSR No. 13370

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A P P E A R A N C E S:

FOR THE DEFENDANT:

BY: TED SOMERS, Attorney at Law

Reported by: Melissa Snyder, CSR No. 13370

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1 CONFIDENTIAL MARSDEN HEARING  
2 CLOSED SESSION - JULY 11, 2018  
3 BEFORE HON. ANTHONY A. ANDERSON, JUDGE PRESIDING

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5  
6 THE COURT: We're here on the People versus  
7 Robert Gibbs matter. We are conducting a Marsden hearing.  
8 The courtroom has been cleared. The only people present  
9 are courtroom personnel, Mr. Gibbs, and his attorney, Mr.  
10 Somers, and we can start the Marsden hearing at this time.

11 Mr. Gibbs, do you want to state the reasons why --

12 THE DEFENDANT: Your Honor, I have -- another --  
13 a number of exhibits that I need to be able to handle.

14 THE COURT: Hang on, Mr. Gibbs. You can't  
15 interrupt the Court. Okay? Do you want to give me your  
16 reasons orally why you believe a Marsden motion should be  
17 granted? What's happening with your attorney, do you  
18 believe -- prevent him from adequately representing you?

19 THE DEFENDANT: Your Honor, I have a number of  
20 exhibits that I need to be able to handle so that I can  
21 show the Court, including --

22 THE COURT: State your reasons.

23 THE DEFENDANT: Well, my reasons are written  
24 down, and I can't very well read them with my hands cuffed  
25 not sitting at a desk where I can handle the paperwork.

26 THE COURT: Why is he shackled?

27 THE BAILIFF: I do not have documentation today,  
28 Your Honor, about everything that's happened. I know in  
29 the past when --

30 THE COURT: What's happened in the past that  
31 requires him to be shackled?

32 THE BAILIFF: When I was assigned in Department  
33 1, he was constantly fighting with staff. We had to bring  
34 him to court numerous times in full restraints in a  
35 wheelchair, completely restrained to the wheelchair, with a

1 spit mask. He was trying to spit on his attorney at the  
2 time.

3 THE COURT: Okay. I'm going to find there's a  
4 manifest need for him to be shackled at this time.

5 THE DEFENDANT: And that was in 2016, and also,  
6 McLeod would tell you that he's had me several times in  
7 here with one cuff loose so that I can handle my paperwork.  
8 Is that not true?

9 THE BAILIFF: That's true.

10 THE COURT: Okay. You're not here to ask  
11 questions. You're here to answer questions, Mr. Gibbs.  
12 I'm giving you an opportunity to state the reasons. You  
13 must know what they are without having to look at them. We  
14 can start with the basics first.

15 THE DEFENDANT: I can't quote case law like this.  
16 I can't --

17 THE COURT: The record should reflect that his  
18 arms are free enough that he can go through those files at  
19 this time.

20 THE DEFENDANT: Okay.

21 THE COURT: So his complaint about being unable  
22 to look at the files was not true. He is able to do that  
23 without --

24 THE DEFENDANT: I'm not sitting at a desk. I  
25 have five very large manilla folders on my lap. I cannot  
26 spread the documents out where I can see them and -- and  
27 actually see what I'm showing the Court at a time -- I'll  
28 do my best, Your Honor. With all due respect to this  
29 Court, my due process and Constitutional rights are being  
30 violated. Specifically, Mr. Somers is my seventh, roughly,  
31 counsel. I've had several counsels Marsdened for  
32 ineffective assistance.

33 THE COURT: I don't need a history. I need to  
34 know why Mr. Somers is inadequate.

35 THE DEFENDANT: Let me start by -- let me start

1 by --

2 THE COURT: You need to remain relevant to this  
3 issue to Mr. Somers.

4 THE DEFENDANT: I understand, Your Honor, and  
5 it's very hard to remain relevant if I am constantly  
6 interrupted. I am trying to slowly say what I'm trying to  
7 say. I want to start by objecting to what Mrs. Jones said  
8 earlier on the main record. Okay?

9 THE COURT: That's irrelevant to the Marsden  
10 motion.

11 THE DEFENDANT: You said that I could answer that  
12 on the record. Do you remember that? Do you remember not  
13 saying to me this morning you can answer that when we have  
14 the Marsden? Can I then answer it because it is important,  
15 and it's relevant.

16 THE COURT: Are you going to continue to arguing  
17 the Court --

18 THE DEFENDANT: She said specifically --

19 THE COURT: -- or are you going to give the  
20 reasons that you believe that Mr. Somers is giving --

21 THE DEFENDANT: He has not hired a psychiatric  
22 evaluator for me. He has not interviewed critical  
23 witnesses in my case. He has had the case for eight  
24 months. He has not gotten all of the discovery that I am  
25 entitled to in the cases. He has not submitted all of the  
26 motions that I am entitled to have submitted on my case,  
27 including 995 motions for my first four preliminaries where  
28 I was not allowed to make an affirmative defense at those  
29 preliminaries for ineffective assistance of counsel, where  
30 my prior seven counsels have not done anything to represent  
31 me, which Mr. Somers has noted that in his files. He has  
32 recognized that in his files.

33 I would like to question him specifically about what  
34 he knows about past conduct of my lawyers and what they  
35 have and haven't done to prepare. The complexity of my

1 cases -- there are five cases. A psychiatric evaluator and  
2 examiner is absolutely critical in my case because these  
3 are intense specific crimes, and my defense is that I --  
4 that a psychiatric evaluator can -- can help me to vocalize  
5 why my intent is not -- that I don't have the intent to  
6 commit these crimes. Okay? That I don't -- that I'm not  
7 capable of forming the intent in the way in the manner that  
8 these crimes are alleged.

9 He has not spoken to witnesses that more than likely  
10 have very exculpatory evidence or testimony to offer that  
11 could straighten a lot of this out pre-trial. So I've been  
12 front loaded here. I've been, you know -- he knows for a  
13 fact that three of my charges are not good. He's tried to  
14 get those three charged dislodged, however, we both feel  
15 that Judge Beatty has been biased in my case and is not  
16 listening to us and is biased against our cause. We  
17 already recused Judge Flynn. We're now considering  
18 recusing Judge Beatty. Meanwhile, my cases have gone on  
19 three years. So I've also asked him to state for the  
20 record that my speedy trial rights are being violated and  
21 asked him to file a timely motion to dismiss based on due  
22 process and speedy trial rights. He has not done that so  
23 far. We are scheduled for trial in a week. He is  
24 willfully unprepared, and, again, he's had these cases for  
25 eight months and he's the seventh lawyer.

26 Now, there's some question, some legitimate question,  
27 as to whether or not now that -- that I've had ineffective  
28 assistance of counsel for so long, whether or not I can get  
29 any kind of fair trial based upon the fact that very little  
30 of the investigation has been done.

31 THE COURT: Okay. Well --

32 THE DEFENDANT: Memories are eroding. My memory  
33 is eroding.

34 THE COURT: Now, Mr. Gibbs, I'm going to ask Mr.  
35 Somers some of the issues and ask him to address those

1 issues that you brought up.

2 So, Mr. Somers, Mr. Gibbs has indicated that he  
3 believes that a psychiatric evaluation is necessary. He  
4 indicated it was because it would help him vocalize the  
5 fact that he doesn't have the intent to make the crimes.  
6 Have you looked into that issue?

7 MR. SOMERS: He's referring to the criminal  
8 threats charges, which are -- one of the elements of which  
9 is a specific intent to make a threat. I have engaged --  
10 and predecessor counsel, two counsel ago, engaged a doctor  
11 out of Berkeley to review all of Mr. Gibbs' psychiatric  
12 records that we possess dating back to his youth, Arizona,  
13 and the system in Arizona, and a number of the alienists  
14 who have evaluated him for 1368 or other reasons while his  
15 matters have been pending here. That doctor, a Dr. Tucker,  
16 did review those materials, did review a transcription of  
17 a -- excuse me, of a phone call between Mr. Gibbs and a  
18 deputy attorney general which forms, really, the basis of  
19 the charges in 15F5736, which is a five-count criminal  
20 threats case, as well as Mr. Gibbs' interview by Shasta  
21 County Sheriff's Deputies, which occurred on the day of his  
22 arrest in that case. That doctor has opined that --

23 THE DEFENDANT: I object.

24 THE COURT: You can't -- you can't object. He  
25 didn't interrupt you.

26 THE DEFENDANT: He is --

27 THE COURT: Mr. Gibbs --

28 THE DEFENDANT: -- divulging attorney work  
29 product that can bias this hearing.

30 THE COURT: -- listen carefully. Listen  
31 carefully. Mr. Somers has a right to address the Court and  
32 address the issues that you have brought up.

33 THE DEFENDANT: Okay. And if it means to  
34 prejudice --

35 THE COURT: If you interrupt me, I'm going to



1 have to remove you from this hearing.

2 THE DEFENDANT: Fine. Go ahead.

3 THE COURT: Go ahead, Mr. Somers.

4 MR. SOMERS: We have --

5 THE COURT: I'm not going to warn you again, by  
6 the way.

7 MR. SOMERS: We have engaged one expert. That  
8 expert has not told us -- has not given his opinion that  
9 Mr. Gibbs wants to hear, necessarily. I have discussed  
10 with Mr. Gibbs the request to the administrator of the  
11 conflict public defender contract hiring another local  
12 expert to do a more generalized psychological assessment  
13 and see if that can assist us to the specific intent issue  
14 in his five-count criminal threats case, and as well as his  
15 first felony case, 14F4854, which is a single-count  
16 criminal threat case. I am requesting to continue  
17 Mr. Gibbs' trial matters that are set next week. I filed a  
18 motion today.

19 THE COURT: You did?

20 MR. SOMERS: It hasn't made the Court's file. I  
21 filed it at the end of this morning, and -- well, I would  
22 assume it has not, and it does state that I believe  
23 Mr. Gibbs is entitled to an exploration of this issue that  
24 I am not -- I won't submit either way or I can't, you know,  
25 state an expectation that we would call a doctor at this  
26 point, but I think Mr. Gibbs' frustrations generally are  
27 that his cases have been sat on, compromised, in a  
28 prejudicial way by prior counsel. I hold that firm opinion  
29 and it's true, and it's stated in my declaration for this  
30 motion to continue that predecessor counsel did nothing in  
31 the way of investigation of Mr. Gibbs' felony matters. I  
32 got his cases last December, confirmed as counsel in early  
33 January, which was over two years since all his felony  
34 matters have been pending, and there was not one  
35 investigative report from a defense investigator in the

1 file.

2 So I agree with Mr. Gibbs that his predecessor counsel  
3 have been ineffective. I'm not sure what his remedy is  
4 besides giving me more time.

5 THE COURT: So why -- why after eight months are  
6 you now requesting a continuance for this further  
7 psychological evaluation?

8 MR. SOMERS: I -- because we've been trying to  
9 systematically work through the issues in his case. I've  
10 taken two writs to the DCA at this point. One was granted;  
11 one was denied summarily. His files are voluminous. They  
12 were in a complete state of disarray when I received them.  
13 I have, you know, 40 other cases pending right now. Some  
14 more -- some more significantly serious than Mr. Gibbs',  
15 and I think I'm doing the best that I can. And I'm just  
16 not ready to go next week, and I think Mr. Gibbs, despite  
17 how --

18 THE COURT: Don't say anything -- don't say  
19 anything more on the motion to continue. Witnesses  
20 interviewed, are there any witnesses left to be  
21 interviewed?

22 MR. SOMERS: Yes. That's addressed in my motion.

23 THE COURT: Okay.

24 MR. SOMERS: There are a couple that are not  
25 located, but we're making efforts to locate them. I think,  
26 Your Honor, you can ask Mr. Gibbs if he really wants me  
27 relieved. I think that would be an interesting question  
28 for him, but from my perspective, I am doing my job. I  
29 don't think there's any basis to grant this motion, and I'm  
30 happy to continue to respond as the Court desires.

31 THE COURT: Well, you said he is entitled to a  
32 995 motion, but I see a 995 motion in the file.

33 MR. SOMERS: I filed a 995 in one of his cases.  
34 I took a writ, based upon the denial of that 995 motion to  
35 the DCA. Mr. Gibbs is a very intelligent and motivated

1 man, insofar as his cases are concerned. He has a lot of  
2 ideas for pre-trial motions, and I have simply not been  
3 able to complete all of them or even fully discuss them  
4 with him. He's also -- he and I have had a fine  
5 relationship. He's not the easiest man to work with. It's  
6 very difficult to accomplish a lot with Mr. Gibbs in  
7 meetings because of his comportment, and that's fine. We  
8 do all right, but this is just a labor intensive bunch of  
9 cases that he is frustrated about, but I don't think he  
10 wants me removed anyway. So I'm not really sure why we're  
11 here.

12 THE COURT: So after what Mr. Somers said, do you  
13 still want to go forward with the Marsden motion?

14 THE DEFENDANT: I do.

15 THE COURT: Okay.

16 THE DEFENDANT: But I can --

17 THE COURT: Hold on. So discovery, has discovery  
18 been completed to your satisfaction?

19 MR. SOMERS: To my satisfaction. I think he can  
20 be specific about whatever he is referring to, and I can  
21 respond. But I think my --

22 THE COURT: What discovery do you think needs to  
23 be done?

24 THE DEFENDANT: My lawsuit that underlies the  
25 false arrest that led to why I was having a conversation  
26 with John Feser, any records that we can still get  
27 regarding witness Cheri Dubuque. There may be some parole  
28 records.

29 THE COURT: Parole records?

30 THE DEFENDANT: Yeah. She was on parole. She's  
31 accusing me of attacking her. In fact, what happened was  
32 she attacked me. She has a record of violent --

33 THE COURT: Hold on. Is she part of the  
34 complaint?

35 MR. SOMERS: She's the alleged victim in 14 --

1 excuse me, 15F5464. I think what Mr. Gibbs is referring to  
2 now is information that the Defense could solicit by way of  
3 a subpoena. It's not information that's in the possession  
4 of the DA's office. There was certainly information in  
5 possession of a the DA's office and the prosecution team  
6 that I was shocked wasn't in the files when I got these  
7 cases in December, but I'm satisfied at this point that I  
8 have what they have.

9 THE COURT: Okay. So here's what we're going to  
10 do: I'm going to deny the Marsden motion at this time.

11 Mr. Somers, you have indicated that you do not think  
12 you can adequately represent him at trial starting next  
13 week. So with that statement, the Court will not force you  
14 to go to trial, and based upon that, then these other  
15 issues may still be brought up. There may be another  
16 Marsden motion in the future, but I have the psychiatric  
17 evaluation, which you've already addressed. There's the  
18 witness interviews that he's concerned with. There's the  
19 discovery that he's brought up, but you've, again,  
20 addressed those. I think you've addressed the 995, at  
21 least to some extent, and Mr. Somers, you and Mr. Gibbs can  
22 sit down and discuss each and every one of these in further  
23 detail. And if a Marsden motion is being made, you need to  
24 sit down and specifically address a witness, why they are  
25 relevant, or why they are not relevant. The fact that he's  
26 unwilling to make motions that you want, that's not a basis  
27 for a Marsden motion, but the other things can be. But I  
28 don't think I have much choice here, Mr. Somers, with what  
29 you just told the Court.

30 So let's bring in Ms. Jones.

31 MR. SOMERS: And, Your Honor, just for the  
32 record, I was not asking to be relieved at any point.

33 THE COURT: I'm not relieving you.

34 MR. SOMERS: Just in terms of statements I've  
35 made today, I don't think there's a basis for that.

1 THE COURT: No, you're not being relieved. I  
2 don't think there is, either.

3 (Reporter clarification.)

4 THE COURT: We'll seal the record, the Marsden  
5 motion.

6 (End of Confidential Marsden Hearing closed session.)

7 Go to page 395 for open proceedings.

8 Nothing missing or omitted.)

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