

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 38
HON. JOHN M. THOMPSON, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF NO. SCD130983

VS.

MICHAEL S. CROWE,
JOSHUA D. TREADWAY,
AARON P. HOUSER,
DEFENDANTS

REPORTER'S TRANSCRIPT
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THURSDAY - 12-17-98 - 1:30 P.M. - VOL. 1., Page 1, Line, 1
SAN DIEGO, CALIFORNIA, THURSDAY, DECEMBER 17, 1998 1:30 PM

The Court: Preliminarily we have a matter with regard to experts?

Mr. Mc Innis: Yes, your honor. My expert says he must have the tuite items there to compare to the other items otherwise he cannot do it with the accuracy that is needed to stand up in court.

Therefore, he proposed that if there is paranoia, that he -- and he took some exception to this -- if he is going to be questioned as to his credibility, that an impartial lab -- this has been done in other courts -- an impartial lab be designated and their representative sit and watch; therefore, I have the privacy to be maintained. Of the defense and the prosecution has the opportunity of watching everything happening.

The Court: So you want an independent criminalist or something of that nature?

Mr. Mc Innis: Yes.

The Court: You two talk after the hearing. If you come up with something, we can take care of it on Monday.

Mr. Mc Innis: All right, sir. Thank you.

Ms. Stephan: Yes, your honor, thank you.

The Court: As I indicated at the close of the morning session, I am not inviting any comment and will accept none at the conclusion of the hearing.

With regard to providing anything other than rulings, I will provide some very brief reasons. But because of the nature of the rulings, I think it would be inappropriate to outline the basis for the rulings, and I will explain that later.

We will start first with Mr. Houser's statement:

Clearly Houser was a target of this Investigation. As of the time that he was contacted at Orange Glen, the police had the benefit of Mr. Treadway's statement. He was placed under arrest, according to Claytor's testimony, for the murder of Stephanie Crowe. There is no question he should have been Mirandized at that point before any questioning.

The Court will find that the cvsa waiver form is not the functional equivalent of an advisement and waiver.

The court will specifically find that the Houser statement was not coerced. The court will find that the statement will be suppressed. It may not be used by the people in their case in chief. It was an unmirandized questioning of a murder suspect in custody.

The motion to suppress is granted.

As to Mr. Crowe's statement, the Polinsky statement was mirandized, he acknowledged and waived. The Court will find that it was neither involuntary nor coercive.

It may be admitted in the people's case in chief.

The January 22nd statement. The statement was Mirandized. Mr. Crowe acknowledged and waived. The statement may be used for all purposes up to tape 2, audio Page 12, line 6. And if my transcript is accurate, this is that point in time that Detective Claytor re-enters the room after a period of time in which Detective Mc Donough was questioning Mr. Crowe. Thereafter everything is excluded. It cannot be used in the people's case in chief.

The Court will find that at this point in time there was commenced a coercive scheme, whether intentional or unintentional; it culminated in the adoption of what we have come to refer to as the "Good Michael, bad Michael" approach. Where, in essence, the defendant, Mr. Crowe, was told if he confessed, if he provided information, he would receive treatment.

In the context of those statements, in the context of the discussion of unconscious acts, I think the Court and any reasonable person would conclude that he was in essence being offered an option of treatment, whether medical or psychological. He was being offered retainment in the Juvenile System if he chose to make a statement to admit his culpability; or if the p.d. had proved the case against him, he would go to prison.

There is no question that this was an offer of leniency and preferential treatment in exchange for a confession. It has to be suppressed.

I think that a comment should be made with regard to these individuals: as I stated during the motion hearing, I am not convinced that these three gentlemen are the geniuses that are portrayed by the people; however, I also find that they are not the unsophisticated, unknowing children that are portrayed by the defense.

Mr. Crowe was certainly bright enough to grasp the offer that was made. He admitted the ultimate act that, as we all know, provided no details about it. Any inculpatory statement, however, whether true or false was the direct result of that promise of treatment or help, it was a promise of leniency. And whether express or implied, there was the threat made if he did not confess, he would go to prison.

So after that point in time that I have indicated on the tape, no other statements of Mr. Crowe can be used.

Now we come to Mr. Treadway's statements. There are three statements at issue in the case. The January 27th, 28th statement, the February 10th statement, and the February 10th post-arrest Mirandized statement.

With regard to statement number one, the Court will find that that statement was, per se, coercive. The defendant was placed in a coercive environment given his age, lack of prior contact with the criminal system and the sleep deprivation aspect.

That statement will be suppressed on those grounds and those grounds only.

Statement two: there is no doubt in my mind that at this particular point in time Mr. Treadway was a target of this investigation. It is my conclusion that he should have been mirandized if not at the beginning of that February 10th interrogation, certainly within the first hour and before anything new had been provided in the case.

As an unmirandized statement, the 2/10 statement must be suppressed and may not be used by the people in their case in chief; however, that really is not the pivotal issue and we all know that.

The second issue is regarding the voluntariness of the 2/10 statement. Now, I had the opportunity to review Mr. Treadway's statements over the 27th, 28th and the one on February 10th. They have both been reviewed a minimum of three times. The statement of the 10th was reviewed a fourth time, various parts of it. I had the opportunity to observe Mr. Treadway in court. I had the benefit of the testimony of his mom and dad. As all of you pointed out the test for whether a statement is voluntary is based upon the totality of the circumstances. In essence, what I'm asked to look at is a set of objective criteria and apply it to a subjective defendant. And from the very beginning and throughout every viewing of that tape, there is no doubt in my mind that Joshua Treadway was making voluntary statements on February 10th. They were not coerced. Any taint had been attenuated; any coercive aspects that had been present on the 27th and 28th were absent on the 10th. Any promises that had been made impliedly or expressly in the 27th or 28th statement did not serve to induce statements made on the 10th.

Mr. Treadway was voluntarily present. He was voluntarily responding to those questions. And that is the decision, as I understand it, that I have to make. It can only come down that way, that those were voluntary statements.

That leads to the conclusion of the third statement, and that is the post-arrest, mirandized statement. And according to the case law as cited by both sides, the post arrest mirandized statement comes in and can be used by the people for all purposes.

The tentative rulings on the remaining issues are as follows:

the 995's as to each defendant are denied, tentatively we will have the hearing on this.

In spite of the rulings on the statements, I still believe there was sufficient evidence to get past the 995's as to each defendant.

The tentative rulings on the Johnson motions is to deny those. The court finds there was no prosecutorial misconduct at the grand jury that would justify dismissal of these indictments.

Regarding third party culpability, the request to present third party culpability evidence with the proviso that the court will require an offer of proof as to the nature of the proof that is going to be presented. But I will do what I'm entitled to do and that is in essence say what can come in and what doesn't.

On the 402's, Ofshee will be able to testify as to the credibility of these statements because notwithstanding my rulings the issue at trial still becomes whether or not confessions are, in fact, truth or not. And in essence, we're going to have this same thing all over again and 12 people are going to be called upon to make that determination. So Ofshee will be allowed to testify.

The fluorescence issue comes in. It's relevant And it's going to be allowed. I don't think it's one that is susceptible to 402 challenges.

Statements by Dr. Spitz, although it is relatively unique, it is nothing more than tool mark type evidence. He can give his opinion, he's crossed on it. And I don't think a 402 is appropriate for spitz. He will be allowed to testify.

The motion to suppress the knife. Given the deference given by law and the magistrate the motion is denied.

Argument that statements by Mr. Treadway are statements against penal interest and can be used against other defendants, that motion is denied. The use of the Treadway statements is, in my mind, clearly a violation of Mr. Houser's and Mr. Crowe's right of confrontation. I don't think that we can get past, no matter what the argument is, an obviously Maranda/Bruton problem.

So Mr. Treadway's statement cannot be used against Mr. Houser and Mr. Crowe.

The motion to sever by defendants Crowe and Houser is going to be granted.

Mr. Treadway will be tried first. His trial will commence January 13th. In the event there is any disposition in Mr. Treadway's case, the other defendants will be prepared to go to trial on the 13th.

Motion hearings on the tentative rulings will be calendared for Tuesday, January 5th. I anticipate we should be able to get them done in a day.

The court will be available all of next week. For purposes of any ex parte matters or further hearings. I probably won't be available the following week.

Mr. Mc innis: Your honor, in regards to Mr. Houser's motion to sever from Mr. Crowe, that's granted?

The Court: Denied at this point. Those statements can be cleaned up. Mr. Treadway goes first followed by the other two.

Mr. Fisher: What time on January 5th?

The Court: 9:00 o'clock.

Mr. Fisher: And is somebody going to contact the city attorney for the Pitchess?

The Court: They will be resolved notwithstanding the argument. Generally Pitchess motions are resolved with the Court reviewing the material and determining what material comes in and what material comes out.

Given the ruling with regard to Mr. Treadway's statement, the fact that the issue of truthfulness of a confession will now be before the trier of fact, that will certainly guide me in my pitchess review of the material to determine what, if any, additional material there is. And secondarily, whether it will be released to the defense. Unless I hear differently from the two of you, I think we should schedule to meet Monday at 9:00 o'clock.

On this discovery issue unless it can be resolved the remaining time today or over tomorrow, I think the suggestion of an independent or intermediary observer probably would be a good idea. It looks like we're creating yet another witness in the case. But that's all right. It will be a case filled with many witnesses and moments like this, I'm sure.

Mr. Mc Innis: Your honor, can we have it then set for 9:00 o'clock and then we will notify the court if we can't make it?

The Court: Anything else?

Ms. Attridge: Yes, your honor. With respect to I had filed a billion petitions for different records and you were going to review them. When will I have those available?

The Court: You're available monday?

Ms. Attridge: Sure, if you want me to be.

The Court: Let's have you meet on Monday and we will go over -- if you can be here Monday at 9:00 and we will go over all of those things. I reviewed a lot of them and we need to talk as to what extent a lot of that material is coming in.

Ms. Attridge: Can I waive the presence of Mr. treadway for that?

The Court: That's fine. I don't think they need to be here for that. How about Mr. Houser's appearance, is he is willing to waive?

Mr. Mc Innis: Yes, he is willing to waive.

The Court: For the purpose of the issues with regard to the expert?

Defendant Houser: Uh-huh.

Mr. Mc innis: You have to speak up so she can hear you.

Defendant Houser: Yes.

The Court: I would prefer to have him say yes on his own rather than he is told to say yes. Mr. houser, you're entitled to be present at all stages of the proceedings against you. Mr. Mc Innis has indicated his recommendation that you not be present for this particular hearing. Do you want to waive your right to that particular hearing?

Defendant Houser: Yes.

The Court: Mr. Treadway?

Defendant Treadway: Yes, your honor.

The Court: Mr. Crowe?

Defendant Crowe: Yes, your honor.

The Court: Tentatively all defendants will be ordered back to this department on January 13th, we will do it at 8:30. In the interim, however, I need counsel, all counsel if you have not done so yet to commence preparation of the questionnaire. Because it was my understanding that you are going to use a questionnaire for the first group, separate them out, and it will give you a chance over the weekend to review all the questionnaires and maybe give you a day on each side and commences actual selection. It is probably beneficial to narrowing down the decisions.

Ms. Attridge: What was your position on jury voir dire?

The Court: In this particular case you will be granted time, all counsel will.

Ms. Attridge: Great.

The Court: Now, I'm hoping that we can, by use of the questionnaires, as I say, cut down the amount of time that we need to use. In essence, I want you to focus on people in the defense in your mind as opposed to spending the time unwisely. and having that in mind, I usually give you far less than you would want, but that seems to be the case in any event.

We will stand in recess. I would ask that the two of you, however, get together and see if you can get that. As far as the three, I'm going to order that all three defendants be present for the motions on January 5th, Tuesday. Let's have all defendants present because those are tentatives; and I don't think they're going to change, but I certainly will be happy to hear argument.

We will stand in recess. (Adjournment.)

I, ELAYNE G. STUDENBERG, CSR, CERTIFICATE NO. 7975, AN OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, HEREBY CERTIFY THAT I REPORTED IN MACHINE SHORTHAND THE PROCEEDINGS IN THE WITHIN CASE, AND THAT THE FOREGOING TRANSCRIPT, CONSISTING OF PAGES NUMBERED FROM 1 TO 12, INCLUSIVE, IS A PARTIAL, TRUE AND CORRECT TRANSCRIPTION OF THE PROCEEDINGS IN THIS CASE.

DATED AT SAN DIEGO, CALIFORNIA, THIS ____ DAY OF _____, 1999.

ELAYNE G. STUDENBERG CSR 7975

OFFICIAL REPORTER