

Transcript of Willow Cherry record

EVENTS:

10/05/2018	Arraignment
10/26/2018	Motion Hour
11/30/2018	Status Hearing
12/19/2018	Other Hearing
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05/10/2019	Status Hearing
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04/02/2020	Bond Hearing
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09/09/2021	Status Hearing
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10/04/2024	Change of Plea

10-5-2018 Arraignment

[timestamps off by approximately 2 mins]

VR: 10/05/2018; 13:10:08. () "Come on up."

VR: 10/05/2018; 13:10:14. () "Mr. Cherry is before the court today for arraignment."

VR: 10/05/2018; 13:10:17. () "Your Honor, may I approach?"

VR: 10/05/2018; 13:10:19. () "Mm-hmm."

bench conference

VR: 10/05/2018; 13:10:25. () "Your Honor, I represented Mr. Cherry in district court and before the superseding indictment."

VR: 10/05/2018; 13:10:31. () "He's now charged with murder."

VR: 10/05/2018; 13:10:33. () "And it's going to be my motion at this time to withdraw and appoint public defender's office."

VR: 10/05/2018; 13:10:40. () "Motion to withdraw."

VR: 10/05/2018; 13:10:44. () "And will you be assigned to the case?"

VR: 10/05/2018; 13:10:46. () "I will be assigned to that case."

VR: 10/05/2018; 13:10:48. () "Actually, now that we're in court, I am assigned to that case."

VR: 10/05/2018; 13:10:51. () "Yes."

VR: 10/05/2018; 13:10:59. () "Your Honor, the family has reached out to me."

VR: 10/05/2018; 13:11:04. () "And there are severe mental issues that are documented in his past."

VR: 10/05/2018; 13:11:12. () "And they have raised concerns that he's not receiving the medication in the jail that he needs."

VR: 10/05/2018; 13:11:22. () "They're psychotic medicine and they're just saying that he's not receiving it."

VR: 10/05/2018; 13:11:27. () "And so it would be my motion at this time for any type of order instructing the jail to..."

VR: 10/05/2018; 13:11:35. () "Does he have prescriptions for them?"

VR: 10/05/2018; 13:11:39. () "I believe... I know he's had prescriptions in the past, but I don't know how current they are."

VR: 10/05/2018; 13:11:47. () "Does he need to go to KCPC?"

VR: 10/05/2018; 13:11:53. () "I don't know. I haven't met him yet."

VR: 10/05/2018; 13:11:57. () "I mean, he's on psychotic medication?"

- VR: 10/05/2018; 13:11:59. () "I believe so, yes."
- VR: 10/05/2018; 13:12:01. () "But I don't really feel comfortable asking for that evaluation at this point since I'm asking to withdraw."
- VR: 10/05/2018; 13:12:08. () "That's one way to ensure that he gets them, number one."
- VR: 10/05/2018; 13:12:13. () "It's probably the quickest way to get it, but again, I can't just automatically order that he go."
- VR: 10/05/2018; 13:12:19. () "But I'm concerned that if he is on prescription psych meds, that at some point there's going to be a motion for a competency evaluation."
- VR: 10/05/2018; 13:12:29. () "I think it would be the Commonwealth's motion To send him, at least."
- VR: 10/05/2018; 13:12:31. () "To just go ahead and get him?"
- VR: 10/05/2018; 13:12:33. () "KCPC, I don't want to speak for you, but..."
- VR: 10/05/2018; 13:12:37. () "And I don't know that..."
- VR: 10/05/2018; 13:12:39. () "I mean, if you're making that motion, that's fine."
- VR: 10/05/2018; 13:12:41. () "I'm not making that motion. It's just... I don't..."
- VR: 10/05/2018; 13:12:44. () "Okay, the court will, on its own motion, order that the defendant go to KCPC for a proper evaluation,"
- VR: 10/05/2018; 13:12:50. () "given the representation that he has been in the past on psychotic medications that he's not currently getting in custody."
- VR: 10/05/2018; 13:12:58. () "I guess, Mr. Friedman, my question to you is would you want me to go ahead and order that,"
- VR: 10/05/2018; 13:13:03. () "even before you have had an opportunity to talk to him?"
- VR: 10/05/2018; 13:13:07. () "Because I think if he's not getting them and he is still at the jail,"
- VR: 10/05/2018; 13:13:10. () "there may be a decline in his abilities to communicate."
- VR: 10/05/2018; 13:13:16. () "Since it's going to happen on the court's own motion, I'm not going to slow it down."
- VR: 10/05/2018; 13:13:21. () "Okay."
- VR: 10/05/2018; 13:13:21. () "I think probably the only thing that will come up is a very quick motion for funds, so I can have my own expert there for testing."
- VR: 10/05/2018; 13:13:29. () "Okay."

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VR: 10/05/2018; 13:13:32. () "And just to make it clear, the Commonwealth will be objecting to him getting out of custody."

VR: 10/05/2018; 13:13:39. () "Oh, absolutely."

VR: 10/05/2018; 13:13:39. () "Which is why we're okay with him going to KCPC to get..."

VR: 10/05/2018; 13:13:42. () "And I think that's the best of both worlds."

VR: 10/05/2018; 13:13:44. () "One, he's been... there's a direct indictment, superseding indictment on this murder charge."

VR: 10/05/2018; 13:13:50. () "Rather than go through the long adversarial bond hearing and all of that,"

VR: 10/05/2018; 13:13:53. () "I think with the representations that he's been on psych meds and they're not properly given to him now,"

VR: 10/05/2018; 13:13:59. () "that may affect his communication skills or his abilities to communicate or even function, I think,"

VR: 10/05/2018; 13:14:07. () "which is what raised some concerns."

VR: 10/05/2018; 13:14:10. () "So if we go ahead and get him there, I'll go ahead and approve the funds."

VR: 10/05/2018; 13:14:14. () "And I think the sooner we get the order in, the sooner he can be transported."

VR: 10/05/2018; 13:14:19. () "Okay."

VR: 10/05/2018; 13:14:19. () "But we need to get him arraigned, so I'll sustain the motion, get you appointed,"

VR: 10/05/2018; 13:14:23. () "and then get the date."

VR: 10/05/2018; 13:14:24. () "Okay."

end bench

VR: 10/05/2018; 13:14:27. () "Alright, Mr. Mashni has"

VR: 10/05/2018; 13:14:30. () "orally asked the court to withdraw. He represented"

VR: 10/05/2018; 13:14:34. () "Mr. Cherry in district court and has indicated"

VR: 10/05/2018; 13:14:38. () "that Mr. Cherry does not have the funds for an attorney."

VR: 10/05/2018; 13:14:42. () "Mr. Friedman with the Department of Public Advocacy"

VR: 10/05/2018; 13:14:46. () "was at the bench with us and has indicated that he will be"

VR: 10/05/2018; 13:14:50. () "taking over the representation of Mr. Cherry."

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VR: 10/05/2018; 13:14:53. () "And so with that, we'll go ahead and get him arraigned. Have you actually"

VR: 10/05/2018; 13:14:57. () "seen a copy of the indictment?"

VR: 10/05/2018; 13:15:01. () "Okay, well we'll get you a copy that was directly indicted. We'll get you a copy of that indictment. With that I'll go ahead and waive formal arraignment."

VR: 10/05/2018; 13:15:11. () "Okay."

VR: 10/05/2018; 13:15:17. () "Rather than set pretrial and status dates at this time,"

VR: 10/05/2018; 13:15:21. () "I think it is more appropriate with the representations"

VR: 10/05/2018; 13:15:25. () "to the court that Mr. Cherry be"

VR: 10/05/2018; 13:15:29. () "evaluated by the Kentucky, by KCPC."

VR: 10/05/2018; 13:15:33. () "We'll go ahead and order that so if he is required to be on"

VR: 10/05/2018; 13:15:37. () "medication, that that medication be administered"

VR: 10/05/2018; 13:15:41. () "through KCPC and a proper evaluation be done."

VR: 10/05/2018; 13:15:45. () "The court will also sustain your motion made at the bench for funds."

VR: 10/05/2018; 13:15:50. () "Again, the sooner that order is entered, the better. We will"

VR: 10/05/2018; 13:15:53. () "set this out for six weeks for a status to see if he is back"

VR: 10/05/2018; 13:15:57. () "from KCPC. And at that time, we can schedule a pretrial conference"

VR: 10/05/2018; 13:16:03. () "and another status."

VR: 10/05/2018; 13:16:05. () "Pretrial with the Commonwealth and status once we get that"

VR: 10/05/2018; 13:16:09. () "report back and a hearing done. Okay? Thank you, Mr."

VR: 10/05/2018; 13:16:13. () "Mashni and Mr. Friedman. Yes? Your Honor, the Commonwealth will be"

VR: 10/05/2018; 13:16:17. () "prepared to turn over discovery next week and at that point we'll"

VR: 10/05/2018; 13:16:21. () "submit our notice as well as the order for reciprocal."

VR: 10/05/2018; 13:16:25. () "And at this time, the Commonwealth does also have two motions"

VR: 10/05/2018; 13:16:31. () "which we're submitting today only because"

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VR: 10/05/2018; 13:16:35. () "we weren't sure who the defense attorney was on the case. One is for"

VR: 10/05/2018; 13:16:39. () "a buccal wab, Your Honor. And the other one is a motion"

VR: 10/05/2018; 13:16:43. () "for a court order for"

VR: 10/05/2018; 13:16:46. () "news media coverage"

VR: 10/05/2018; 13:16:50. () "that the Commonwealth just found out about that involved"

VR: 10/05/2018; 13:16:54. () "after Mr. Cherry turned himself in to the"

VR: 10/05/2018; 13:16:58. () "Fayette County Detention Center. It's our understanding that he participated in an"

VR: 10/05/2018; 13:17:02. () "interview with the local News Media Station. We're asking for a court order"

VR: 10/05/2018; 13:17:06. () "for... Or a copy of that. The unedited footage, yes."

VR: 10/05/2018; 13:17:12. () "And we can submit an order"

VR: 10/05/2018; 13:17:14. () "next week. We're still trying to figure out the details exactly of"

VR: 10/05/2018; 13:17:18. () "who was in the interview and that kind of thing."

VR: 10/05/2018; 13:17:23. () "Motion for unedited"

VR: 10/05/2018; 13:17:29. () "version of interview."

VR: 10/05/2018; 13:17:36. () "And a motion for buccal swabs."

VR: 10/05/2018; 13:17:43. () "Do we know who the interview was with? What media"

VR: 10/05/2018; 13:17:46. () "outlet? It was WKYT."

VR: 10/05/2018; 13:17:52. () "Ok."

VR: 10/05/2018; 13:17:55. () "It was posted on their website on September 27th"

VR: 10/05/2018; 13:17:59. () "I believe. But I'm not entirely sure if that's when"

VR: 10/05/2018; 13:18:02. () "the interview actually happened. I think it is based on"

VR: 10/05/2018; 13:18:06. () "when he turned himself in. But we just want to be clear on the details."

VR: 10/05/2018; 13:18:11. () "Ok."

VR: 10/05/2018; 13:18:25. () "Alright."

VR: 10/05/2018; 13:18:26. () "The court will sustain both motions."

VR: 10/05/2018; 13:18:32. () "You will check into the information"

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VR: 10/05/2018; 13:18:34. () "with respect to the interview? Yes, Your Honor. And get the specifics"

VR: 10/05/2018; 13:18:38. () "for the court for purposes of the order? Yes. And with respect to the"

VR: 10/05/2018; 13:18:42. () "buccal swab, is the detective present today to collect that? Or will that need to be"

VR: 10/05/2018; 13:18:46. () "scheduled? That's going to have to be scheduled. Ok. And again, it's probably"

VR: 10/05/2018; 13:18:50. () "going to be a minute before he's transported to KCPC."

VR: 10/05/2018; 13:18:56. () "But"

VR: 10/05/2018; 13:18:59. () "again, the defendant's attorney would have a right to be present"

VR: 10/05/2018; 13:19:03. () "if the defendant wishes to be. So"

VR: 10/05/2018; 13:19:06. () "arrangements would need to be made as far as scheduling"

VR: 10/05/2018; 13:19:10. () "that with Mr. Freeman. And I understand Mr. Freeman just came onto the case."

VR: 10/05/2018; 13:19:15. () "Exactly. Get it in the way."

VR: 10/05/2018; 13:19:17. () "Right, right. And again, I don't know how long it will take KCPC."

VR: 10/05/2018; 13:19:21. () "Sometimes it's immediate. But then other times it could be a week or two."

VR: 10/05/2018; 13:19:26. () "Actually, in my experience, I've never seen"

VR: 10/05/2018; 13:19:29. () "Ok. Well, we can be hopeful."

VR: 10/05/2018; 13:19:34. () "Ok. And so let's set this for status about"

VR: 10/05/2018; 13:19:37. () "six weeks out. Just so we'll have it back on the calendar."

VR: 10/05/2018; 13:19:43. () "Takes us to"

VR: 10/05/2018; 13:19:45. () "1, 2, 3, 4, the 9th or the"

VR: 10/05/2018; 13:19:50. () "16th. November 9th for status."

VR: 10/05/2018; 13:19:57. () "And that will be at 1 o'clock."

VR: 10/05/2018; 13:19:59. () "Ok. Thank you."

VR: 10/05/2018; 13:20:01. () "Thank you."

10-26-2018 Motion Hour

[timestamps approximately 2 mins off]

VR: 10/26/2018; 13:21:23. () "Okay."

VR: 10/26/2018; 13:21:28. () "Are you Mr. Hornbach?"

VR: 10/26/2018; 13:21:30. () "I am."

VR: 10/26/2018; 13:21:30. () "Okay, alright. So this is a matter of Willow Cherry, 18 CR 1114."

VR: 10/26/2018; 13:21:38. () "And I believe it was on October, I'm not sure what date the parties were here,"

VR: 10/26/2018; 13:21:44. () "where the commonwealth asked the court to enter an order preserving, I think,"

VR: 10/26/2018; 13:21:49. () "an interview that WKYT did with Mr. Cherry at the jail."

VR: 10/26/2018; 13:21:56. () "I got your motion. I reviewed it. It's a motion to reconsider that order,"

VR: 10/26/2018; 13:22:02. () "indicating that, one, there was no subpoena issued,"

VR: 10/26/2018; 13:22:05. () "that WKYT had not been given an opportunity to respond to the motion at the time that it was made,"

VR: 10/26/2018; 13:22:12. () "and that WKYT does object, I think, at this point to the order"

VR: 10/26/2018; 13:22:23. () "and wants an opportunity for the court to consider this order."

VR: 10/26/2018; 13:22:26. () "I didn't see a response. I didn't know if the commonwealth was going to make one"

VR: 10/26/2018; 13:22:29. () "or just want to orally argue the motion."

VR: 10/26/2018; 13:22:32. () "Just orally argue."

VR: 10/26/2018; 13:22:33. () "Okay. Okay."

VR: 10/26/2018; 13:22:36. () "So I have reviewed it and understand WKYT's position with respect to that."

VR: 10/26/2018; 13:22:41. () "It is, I guess, well taken at this point."

VR: 10/26/2018; 13:22:55. () "And so they're basically making the argument about the proper procedure to obtain the records, basically."

VR: 10/26/2018; 13:23:03. () "And then even if those efforts were undertaken, it would be WKYT's position"

VR: 10/26/2018; 13:23:09. () "if there were constitutional protections in place, which would protect WKYT from producing that information."

VR: 10/26/2018; 13:23:21. () "Is that right?"

VR: 10/26/2018; 13:23:22. () "Your honor, that's correct."

VR: 10/26/2018; 13:23:23. () "Essentially, while the constitutionality issues and other protections were agreed,"

VR: 10/26/2018; 13:23:28. () "the real issue right now in the report is whether the proper procedure was followed."

VR: 10/26/2018; 13:23:31. () "It wasn't a constitutional issue."

VR: 10/26/2018; 13:23:34. () "The motion itself, by mistake, was delivered and observed by the defense counsel, but not WKYT."

VR: 10/26/2018; 13:23:41. () "The first notice WKYT received was yours."

VR: 10/26/2018; 13:23:44. () "Okay. That makes sense."

VR: 10/26/2018; 13:23:46. () "Ms. Phillips?"

VR: 10/26/2018; 13:23:47. () "Well, Your Honor, in regards to the procedure, first of all, the defendant had already been indicted."

VR: 10/26/2018; 13:23:53. () "My understanding would be ex parte to send a subpoena."

VR: 10/26/2018; 13:23:57. () "A court order has more protections than a subpoena at that point."

VR: 10/26/2018; 13:23:59. () "The party to the case is the defendant, Willow Cherry."

VR: 10/26/2018; 13:24:02. () "He was the one that certainly came in front of the court and we explained."

VR: 10/26/2018; 13:24:05. () "And that's how we gather information in any criminal case."

VR: 10/26/2018; 13:24:08. () "I guess that we could, in retrospect, go back and also come to court and ask for a subpoena"

VR: 10/26/2018; 13:24:14. () "and do it with him and then send the subpoena, whatever the procedure would be."

VR: 10/26/2018; 13:24:19. () "This actually has more protections than an ex parte subpoena."

VR: 10/26/2018; 13:24:22. () "We actually brought it before the court. The court entered the appropriate order."

VR: 10/26/2018; 13:24:26. () "That having been said, we're here. We tried to do it the right way."

- VR: 10/26/2018; 13:24:29. () "I don't think that the RCR regarding subpoenas actually directly applies."
- VR: 10/26/2018; 13:24:35. () "It's just a method of issuing subpoenas."
- VR: 10/26/2018; 13:24:38. () "It doesn't say you have to do subpoenas in certain circumstances."
- VR: 10/26/2018; 13:24:42. () "And when a defendant is indicted, he is a party and he has to be noticed."
- VR: 10/26/2018; 13:24:46. () "He wouldn't be noticed with a subpoena."
- VR: 10/26/2018; 13:24:47. () "All that having been said, we are now at the second step."
- VR: 10/26/2018; 13:24:50. () "However, we got here. They have not provided the records."
- VR: 10/26/2018; 13:24:53. () "You've entered the court order."
- VR: 10/26/2018; 13:24:54. () "So whether we were here by way of subpoena and they are coming to quash the subpoena"
- VR: 10/26/2018; 13:24:58. () "or here because they're asking you to change your ruling on the court order,"
- VR: 10/26/2018; 13:25:03. () "we're at the same place at this point."
- VR: 10/26/2018; 13:25:05. () "And I don't think that anyone would surely say that we did anything intentionally, not correctly."
- VR: 10/26/2018; 13:25:13. () "I don't think that's the... well, maybe it is."
- VR: 10/26/2018; 13:25:15. () "But now we're here. But now we're here."
- VR: 10/26/2018; 13:25:17. () "They said that it's protected. It's not protected."
- VR: 10/26/2018; 13:25:21. () "So a defendant is charged with murder and a defendant's at the jail."
- VR: 10/26/2018; 13:25:24. () "The news then goes to talk to that defendant."
- VR: 10/26/2018; 13:25:28. () "Knowing he's charged with murder, they conduct an interview of that defendant."
- VR: 10/26/2018; 13:25:32. () "We aren't asking for any sources. We aren't asking for any other outside information."
- VR: 10/26/2018; 13:25:36. () "Just the unedited interview."
- VR: 10/26/2018; 13:25:39. () "We all know that when news people talk to people that they're going to put in a story,"
- VR: 10/26/2018; 13:25:45. () "there's more being said than just what is actually put in the story."

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- VR: 10/26/2018; 13:25:48. () "And I think that's the issue."
- VR: 10/26/2018; 13:25:49. () "First of all, I think Mr. Friedman would argue that the newspaper or the TV station did not Mirandize Mr. Cherry"
- VR: 10/26/2018; 13:25:57. () "and that any statements that he may have made at that time during that type of interrogation,"
- VR: 10/26/2018; 13:26:02. () "obviously he was in custody, perhaps some things that were said."
- VR: 10/26/2018; 13:26:07. () "So I think the argument is had they received a copy of the motion,"
- VR: 10/26/2018; 13:26:11. () "they would have filed an objection or an argument stating that they did not believe that it should be produced."
- VR: 10/26/2018; 13:26:18. () "Now whether or not it's WKYT or Mr. Cherry, because I'm sure Mr. Friedman is going to chime in here in just a second."
- VR: 10/26/2018; 13:26:28. () "And so obviously the intent to receive the unedited version of his statements would be to use whatever he said against them."
- VR: 10/26/2018; 13:26:38. () "And if he wasn't Mirandized at the time that he was interviewed by WKYT, and I'm sure he probably wasn't,"
- VR: 10/26/2018; 13:26:46. () "then I'm not sure that that could be used against him anyway."
- VR: 10/26/2018; 13:26:50. () "Well, Your Honor, that would be an argument for down the road."
- VR: 10/26/2018; 13:26:52. () "That's not any reason not to get the interview."
- VR: 10/26/2018; 13:26:55. () "Once we get the interview and both sides look at it and figure that out,"
- VR: 10/26/2018; 13:27:00. () "first of all, it's not custodial arrest because it's not a police officer and it's not an interrogation for a police officer for those purposes."
- VR: 10/26/2018; 13:27:06. () "But we can argue that on down the road."
- VR: 10/26/2018; 13:27:08. () "I also do want to point something out. I'm not sure if counsel is aware."
- VR: 10/26/2018; 13:27:12. () "We called the news station before we even came to court that day."

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- VR: 10/26/2018; 13:27:16. () "And we let them know that we were going to do the order because that's the way we've done it in the past."
- VR: 10/26/2018; 13:27:21. () "And got a name and were told to just email the order after we got it."
- VR: 10/26/2018; 13:27:25. () "So there's certainly no intent to not give notice or let people know."
- VR: 10/26/2018; 13:27:31. () "Quite honestly, you know, you don't expect a WKYT automatically to have to contact their attorney."
- VR: 10/26/2018; 13:27:39. () "And there's no confidentiality or privilege in any of the news gathering information unless there's some sort of source."
- VR: 10/26/2018; 13:27:45. () "And we're not asking for that."
- VR: 10/26/2018; 13:27:47. () "Other than first amendment privilege."
- VR: 10/26/2018; 13:27:48. () "What is the privilege though? I don't know what the privilege is."
- VR: 10/26/2018; 13:27:51. () "The court, and your honor, we haven't briefed this issue."
- VR: 10/26/2018; 13:27:54. () "For his statements."
- VR: 10/26/2018; 13:27:55. () "That's really what we're talking about is the procedure."
- VR: 10/26/2018; 13:27:57. () "We haven't briefed the issues and we would love the opportunity if they want to issue a subpoena"
- VR: 10/26/2018; 13:28:01. () "that WKYT can brief the constitutional issues before."
- VR: 10/26/2018; 13:28:05. () "But really what we're here on is the process."
- VR: 10/26/2018; 13:28:07. () "There's a way to issue a subpoena to get third party documents."
- VR: 10/26/2018; 13:28:12. () "Otherwise, WKYT is not before the court, respectively."
- VR: 10/26/2018; 13:28:15. () "WKYT is not a party to the action."
- VR: 10/26/2018; 13:28:18. () "The way the court gets jurisdiction over WKYT is the issuance of a subpoena."
- VR: 10/26/2018; 13:28:22. () "Then the court, either WKYT can respond to it in some way."
- VR: 10/26/2018; 13:28:26. () "And if WKYT violates your honor's order through the subpoena, your honor can enforce that."
- VR: 10/26/2018; 13:28:31. () "But otherwise, WKYT is not even before the court and certainly hasn't had an opportunity in our case."

- VR: 10/26/2018; 13:28:36. () "I would have to agree with WKYT on that."
- VR: 10/26/2018; 13:28:44. () "If they are to be ordered as a result of the subpoena to produce that,"
- VR: 10/26/2018; 13:28:50. () "I would respectfully point out that it would need to be produced to the court,"
- VR: 10/26/2018; 13:28:55. () "not to one party to the litigation as opposed to the other."
- VR: 10/26/2018; 13:29:00. () "Exactly. We aren't allowed to subpoena to us."
- VR: 10/26/2018; 13:29:03. () "But I would be very interested in hearing what WKYT has to say about journalistic privilege in this case."
- VR: 10/26/2018; 13:29:12. () "Okay, so what is your position then?"
- VR: 10/26/2018; 13:29:15. () "Is that the court should sustain the motion and allow the commonwealth to then issue a subpoena?"
- VR: 10/26/2018; 13:29:22. () "My suggestion to the court is I think it would be in certainly WKYT's interest,"
- VR: 10/26/2018; 13:29:30. () "and I think probably in my client's interest, to allow WKYT an opportunity to brief the issue and allow the commonwealth an opportunity to respond."
- VR: 10/26/2018; 13:29:41. () "But can't that be done in response to their motion for the unedited version?"
- VR: 10/26/2018; 13:29:48. () "Or do you think that the order has to be vacated, a subpoena issued, they then file a motion to quash the subpoena?"
- VR: 10/26/2018; 13:29:57. () "I mean, that just seems like something unnecessary."
- VR: 10/26/2018; 13:30:01. () "Unless, Your Honor, Mr. Hornbach says this is a special appearance, which he hasn't so far."
- VR: 10/26/2018; 13:30:13. () "I think the court has gained jurisdiction by consent of the client, and therefore does not need to go through this subpoena process."
- VR: 10/26/2018; 13:30:24. () "With that said, as a matter of procedure, I think it's a matter of substance."
- VR: 10/26/2018; 13:30:29. () "I am very interested in hearing what WKYT has to say about where there is a privilege again."
- VR: 10/26/2018; 13:30:37. () "Okay. I think to save time and to save steps, I understand WKYT's position, and I too would be interested in, one, their argument here,"

VR: 10/26/2018; 13:30:51. () "the Commonwealth's written response to that, and so what the court... I'm going to... have you seen... you haven't seen their original motion to produce the unedited version?"

VR: 10/26/2018; 13:31:04. () "I did."

VR: 10/26/2018; 13:31:05. () "You do have that? Okay. So I'm going to, one, sustain the motion to reconsider."

VR: 10/26/2018; 13:31:12. () "Now with that said, I'm just sustaining the motion to reconsider it. I'm not vacating it."

VR: 10/26/2018; 13:31:16. () "I'm just sustaining the motion to reconsider it at this point to allow WKYT to file a written brief in response to the motion to produce it."

VR: 10/26/2018; 13:31:25. () "Commonwealth can then respond. You can see what their constitutional First Amendment arguments are."

VR: 10/26/2018; 13:31:31. () "And once I have both sides' positions on that, then I can decide whether to leave the order in place, give you so many days to produce it, or vacate the order and order them to do something else."

VR: 10/26/2018; 13:31:41. () "We would ask for a temporary ruling that it be preserved."

VR: 10/26/2018; 13:31:44. () "Yeah. Obviously this is pending, so that it be preserved. How much time, sir, do you need to do that?"

VR: 10/26/2018; 13:31:51. () "Um, Your Honor, if I may, would 12 weeks be okay?"

VR: 10/26/2018; 13:31:57. () "That would be fine."

VR: 10/26/2018; 13:32:03. () "Two weeks takes us to the 16th."

VR: 10/26/2018; 13:32:09. () "I believe that's okay, Your Honor."

VR: 10/26/2018; 13:32:12. () "And then how much time to respond?"

VR: 10/26/2018; 13:32:16. () "I think we'll respond very quickly, Your Honor."

VR: 10/26/2018; 13:32:20. () "So, can I then... well, the 23rd is Thanksgiving, so the 30th?"

VR: 10/26/2018; 13:32:27. () "The 30th of December."

VR: 10/26/2018; 13:32:28. () "To come back, you can respond."

VR: 10/26/2018; 13:32:31. () "Okay."

VR: 10/26/2018; 13:32:31. () "So, see if we can respond quickly."

VR: 10/26/2018; 13:32:34. () "Whatever that means."

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VR: 10/26/2018; 13:32:35. () "And then November 30th to come back before the court, okay?"

VR: 10/26/2018; 13:32:38. () "Did you want to get something and write it in there, or did you just want to see what he said?"

VR: 10/26/2018; 13:32:46. () "I'd like to see what he says, and then decide what I would use."

VR: 10/26/2018; 13:32:51. () "Okay. If you'll serve that on both parties."

VR: 10/26/2018; 13:32:55. () "Thank you."

VR: 10/26/2018; 13:32:55. () "Your Honor, while our parties are here, the involved parties in this case, at the arraignment or the last court date, I don't think we submitted the discovery compliance notice."

VR: 10/26/2018; 13:33:05. () "I'd like to go ahead and submit that at this time."

VR: 10/26/2018; 13:33:07. () "And also, I think the court has ruled on our motion last time we were here for buckle swabs of the defendant."

VR: 10/26/2018; 13:33:14. () "I don't think you all objected."

VR: 10/26/2018; 13:33:16. () "We don't object."

VR: 10/26/2018; 13:33:17. () "And I don't think the order came through."

VR: 10/26/2018; 13:33:19. () "So, if we could just submit one to you."

VR: 10/26/2018; 13:33:22. () "Submit one."

VR: 10/26/2018; 13:33:23. () "Okay, that's fine. Thank you."

VR: 10/26/2018; 13:33:24. () "And he's on the waiting list to go to KCPC."

VR: 10/26/2018; 13:33:27. () "Correct, Your Honor."

VR: 10/26/2018; 13:33:28. () "And I will acknowledge actual receipt of the discovery yesterday morning."

VR: 10/26/2018; 13:33:35. () "Okay."

VR: 10/26/2018; 13:33:35. () "Thank you, Your Honor."

VR: 10/26/2018; 13:33:36. () "Thank you, Ms. Hornback."

VR: 10/26/2018; 13:33:39. () "Thank you."

VR: 10/26/2018; 13:33:40. () "I appreciate it."

11-30-2018 Status Hearing

- VR: 11/30/2018; 13:04:30. () "This is actually a motion that was filed by the Commonwealth to obtain some information or a recording from WKYT."
- VR: 11/30/2018; 13:04:39. () "We filed, I represent WKYT, we filed a motion to reconsider the court's order.'s order"
- VR: 11/30/2018; 13:04:45. () "Judge Goodwine granted that, allowed us time to respond to the Commonwealth's request, and set a hearing date for today."
- VR: 11/30/2018; 13:04:52. () "We did receive a response from the Commonwealth. I'm not sure if Ms. Parker is here or not yet."
- VR: 11/30/2018; 13:05:00. () "Yes, I was going to say, Ms. Phelps and Ms. Parker did request to be here, so I'm kind of..."
- VR: 11/30/2018; 13:05:04. () "No, that's okay, I can wait."
- VR: 11/30/2018; 13:05:06. () "Yeah, I'm sorry, Alice."
- VR: 11/30/2018; 13:05:07. () "No problem."
- VR: 11/30/2018; 13:05:11. () "Don't worry, we're going to be here for a while."

case recalled

- VR: 11/30/2018; 13:21:08. () "I believe we still have a motion."
- VR: 11/30/2018; 13:21:12. () "And so, Your Honor, the Commonwealth previously filed a motion to attempt to get an unaired, unedited video of a, essentially a jailhouse interview that WKYT did of Mr. Cherry shortly after he turned himself in and was incarcerated."
- VR: 11/30/2018; 13:21:30. () "And Judge Goodwine gave us an opportunity to respond. We did so and the Commonwealth has also filed a reply brief."
- VR: 11/30/2018; 13:21:37. () "And our argument, Your Honor, WKYT's position is that this implicates serious, not only state, but First Amendment issues as well."
- VR: 11/30/2018; 13:21:48. () "As I mentioned, Mr. Cherry gave a jailhouse interview shortly after he turned himself in. Portions of the interview were aired publicly. Portions were not, as I understand it."

- VR: 11/30/2018; 13:21:59. () "And the Commonwealth seeks the unedited version of that interview."
- VR: 11/30/2018; 13:22:04. () "Your Honor, in our briefing, we cite Kentucky Supreme Court case saying that the Right to Gather news is clearly entitled to First Amendment protection."
- VR: 11/30/2018; 13:22:13. () "And otherwise, freedom of the press would be severely compromised."
- VR: 11/30/2018; 13:22:16. () "In the Maddox case, Your Honor, from the Jefferson Circuit Court, it noted the same."
- VR: 11/30/2018; 13:22:21. () "And it also evaluated the Kentucky Shield Law, which is one of our arguments."
- VR: 11/30/2018; 13:22:26. () "And the Shield Law protects sources of information."
- VR: 11/30/2018; 13:22:30. () "The Commonwealth has taken the position that Mr. Cherry himself is the source."
- VR: 11/30/2018; 13:22:35. () "But when you look at the Maddox v. Williams case, Your Honor, that is attached to our response, it talks about the source in the context of the documents that were being requested from the media outlets in that case."
- VR: 11/30/2018; 13:22:51. () "As the documents themselves as being the source."
- VR: 11/30/2018; 13:22:54. () "Similarly, in Illinois, they have a shield statute that's somewhat similar."
- VR: 11/30/2018; 13:22:59. () "And they talk about the source being photographs that were taken."
- VR: 11/30/2018; 13:23:03. () "And it's our position that the term source in the Shield Law doesn't apply just only to individuals, but applies to the information itself."
- VR: 11/30/2018; 13:23:10. () "In this case, the information is contained on a videotape."
- VR: 11/30/2018; 13:23:13. () "That videotape, portions of it have not been aired."
- VR: 11/30/2018; 13:23:17. () "And the Commonwealth obviously has access to the public portions of that."
- VR: 11/30/2018; 13:23:21. () "But the un-aired portions, the unpublished portions, remain protected by the Shield Law."
- VR: 11/30/2018; 13:23:28. () "The follow-up argument, Your Honor, is the First Amendment concerns."

- VR: 11/30/2018; 13:23:31. () "The Third Circuit has held that journalists under the First Amendment possess a qualified privilege not to disclose unpublished information."
- VR: 11/30/2018; 13:23:43. () "And that's our position in this case, Your Honor, is that this unpublished information, we have a qualified privilege under the First Amendment not to produce."
- VR: 11/30/2018; 13:23:51. () "And in the Lexington Herald-Leader case, the Court looked at whether the information sought was relevant or what goes to the heart of the case,"
- VR: 11/30/2018; 13:23:59. () "whether the disclosure outweighs the importance of the freedom of the press,"
- VR: 11/30/2018; 13:24:04. () "and another concern is whether the Commonwealth has exhausted every reasonable alternative source of information."
- VR: 11/30/2018; 13:24:11. () "We respectfully submit that the Commonwealth hasn't adhered to any of those three factors,"
- VR: 11/30/2018; 13:24:15. () "and that the unpublished, un-aired video be protected from disclosure by this qualified person."
- VR: 11/30/2018; 13:24:24. () "Thank you."
- VR: 11/30/2018; 13:24:25. () "Good evening, Your Honor. Amanda Parks on behalf of the Commonwealth."
- VR: 11/30/2018; 13:24:30. () "So, I'm not entirely sure that's everything that the Jefferson County case has to say,"
- VR: 11/30/2018; 13:24:35. () "but starting off, Your Honor, the United States Supreme Court has specifically stated that journalists, the press, etc.,"
- VR: 11/30/2018; 13:24:42. () "have the same duty and obligation as any ordinary citizen to provide information that is specifically relevant to a case."
- VR: 11/30/2018; 13:24:50. () "I don't know if you've had an opportunity to review the interview that was published by WKYT,"
- VR: 11/30/2018; 13:24:54. () "but it starts off with the defendant in the case answering a question that we don't know what the question is,"
- VR: 11/30/2018; 13:25:02. () "but talking about his involvement with an alleged murder."

- VR: 11/30/2018; 13:25:08. () "And so, I think that that is absolutely relevant to the litigation that we're dealing with right now."
- VR: 11/30/2018; 13:25:16. () "The Lexington Herald-Leader case that Mr. Hornback has brought up, it doesn't actually set forth any three-part test or anything like that."
- VR: 11/30/2018; 13:25:27. () "Really, what it says is that the litigant, that although there is an important freedom of the press,"
- VR: 11/30/2018; 13:25:39. () "that gets balanced against the interests of the litigant's rights to disclosure of information relevant, and that must be respected."
- VR: 11/30/2018; 13:25:47. () "And so I would argue that here, the Commonwealth's interest in having this information in the unedited portions of an interview"
- VR: 11/30/2018; 13:25:58. () "discussing the defendant's involvement in a murder far outweighs WKYT's freedoms of the press."
- VR: 11/30/2018; 13:26:12. () "I didn't turn anything in in writing. I reserved the right to do so after seeing what the other sides have done."
- VR: 11/30/2018; 13:26:23. () "I received an electronic copy of the Commonwealth's response last night."
- VR: 11/30/2018; 13:26:29. () "My thoughts, without committing them yet to writing, are as follows."
- VR: 11/30/2018; 13:26:34. () "One, we don't know whether Mr. Cherry was promised that certain information they collected would be on background or deep background, or off the record"
- VR: 11/30/2018; 13:26:50. () "in which case there would be something completely illegitimate about it, a forced disclosure, something that not only would violate a journalist's right,"
- VR: 11/30/2018; 13:27:00. () "and would probably have a chilling effect on freedom of the press, but would also turn WKYT, after the fact, into a kind of police agent,"
- VR: 11/30/2018; 13:27:16. () "possibly after assurances were given that something he said would not be made public."
- VR: 11/30/2018; 13:27:25. () "I don't particularly know whether that happened, because Mr. Cherry is currently at KCPC, and the reason he was up here"
- VR: 11/30/2018; 13:27:36. () "was that he was showing florid psychotic symptoms and was to check into the Ridge to have them treated."

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VR: 11/30/2018; 13:27:45. () "So up to this point, he's not been, shall we say, a particularly reliable source of information to me."

VR: 11/30/2018; 13:27:52. () "But my concerns are that we don't know what assurances were given to him by the journalist, and that should be relevant."

VR: 11/30/2018; 13:28:02. () "And I think we should protect against an institution that serves the valuable function of being a check into, after the fact, an arm of the government."

VR: 11/30/2018; 13:28:25. () "Let me ask, if I may, is there any objection to the court doing an in-camera inspection of the unedited interview?"

VR: 11/30/2018; 13:28:35. () "No objection."

VR: 11/30/2018; 13:28:39. () "What if we pass this for a couple, three weeks, if you can get me a copy of the unedited interview?"

VR: 11/30/2018; 13:28:51. () "We can get that, hopefully get that in the next few days. Is it okay to just drop it by your office?"

VR: 11/30/2018; 13:28:55. () "That'd be great."

VR: 11/30/2018; 13:29:01. () "Do you want a copy of it?"

VR: 11/30/2018; 13:29:12. () "Back on maybe for the 21st?"

VR: 11/30/2018; 13:29:15. () "Your Honor, I won't be here."

VR: 11/30/2018; 13:29:28. () "And I understand the 28th is canceled?"

VR: 11/30/2018; 13:29:33. () "Yes."

VR: 11/30/2018; 13:29:34. () "I don't really want to go into January. You've been gone that whole week?"

VR: 11/30/2018; 13:29:43. () "Sorry?"

VR: 11/30/2018; 13:29:44. () "How long are you going to be gone around the 21st?"

VR: 11/30/2018; 13:29:47. () "Uh, let's see. I am off starting on the 20th, and will be back in the office on the 3rd of January."

VR: 11/30/2018; 13:30:00. () "What about Wednesday the 19th?"

VR: 11/30/2018; 13:30:04. () "I expect to be here. That works for the CW."

VR: 11/30/2018; 13:30:08. () "Continue to December 19th at 1 o'clock?"

VR: 11/30/2018; 13:30:15. () "Your time of day that's better? 1.30?"

VR: 11/30/2018; 13:30:18. () "1.30 is fine with me, Your Honor."

VR: 11/30/2018; 13:30:22. () "I'm going to say 1.30 for a hearing."

VR: 11/30/2018; 13:30:53. () "Thank you."

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VR: 11/30/2018; 13:30:54. () "Thank you, Your Honor. Welcome back, Judge."

VR: 11/30/2018; 13:30:56. () "Glad to be here."

12-19-2018 Other Hearing

VR: 12/19/2018; 13:27:44. () "Good afternoon."

VR: 12/19/2018; 13:27:50. () "Technically, I guess it's the case of Commonwealth v. Willow Cherry, 18 CR 1114."

VR: 12/19/2018; 13:27:58. () "The matter before the court this afternoon is a motion to reconsider a prior ruling by Judge Goodwine"

VR: 12/19/2018; 13:28:04. () "on the certain video evidence, for lack of a better word."

VR: 12/19/2018; 13:28:15. () "Right."

VR: 12/19/2018; 13:28:16. () "Are you ready for him?"

VR: 12/19/2018; 13:28:18. () "Oh, sure. I'm sorry."

VR: 12/19/2018; 13:28:29. () "Have you gotten the evaluation?"

VR: 12/19/2018; 13:28:31. () "Pardon?"

VR: 12/19/2018; 13:28:31. () "Have you gotten the evaluation?"

VR: 12/19/2018; 13:28:32. () "No, I have not."

VR: 12/19/2018; 13:28:33. () "It's back?"

VR: 12/19/2018; 13:28:34. () "It's back."

VR: 12/19/2018; 13:28:35. () "So he's back?"

VR: 12/19/2018; 13:28:36. () "He's back, yes. We'll need to set a hearing."

VR: 12/19/2018; 13:28:54. () "Who's the judge?"

VR: 12/19/2018; 13:28:55. () "Well, this is the substitute judge, because Judge Goodwine got appointed to the court of appeals, and this is Judge Clark, who's a retired serving judge."

VR: 12/19/2018; 13:29:06. () "Thank you."

VR: 12/19/2018; 13:29:06. () "Hi, Judge."

VR: 12/19/2018; 13:29:08. () "Mr. Cherry?"

VR: 12/19/2018; 13:29:09. () "As I was indicating, this is a matter of Commonwealth v. Willow Cherry, 18 CR 1114."

VR: 12/19/2018; 13:29:15. () "The matter before the court is a motion filed by intervening party WKYT to reconsider Judge Goodwine's prior ruling"

VR: 12/19/2018; 13:29:27. () "on the turning over of certain video information in the possession of the movement."

- VR: 12/19/2018; 13:29:32. () "So Mr. Cherry is present with his counsel, Mr. Friedman, also WKYT is present, represented by Mr. Hornback, and the Commonwealth is present."
- VR: 12/19/2018; 13:29:43. () "Yes, sir."
- VR: 12/19/2018; 13:29:44. () "Ready to proceed?"
- VR: 12/19/2018; 13:29:45. () "Sure, Your Honor."
- VR: 12/19/2018; 13:29:46. () "As Your Honor noted, and I think on December 5th we delivered a copy of the unedited interview with Mr. Cherry to Your Honor's chambers."
- VR: 12/19/2018; 13:29:56. () "I hope that was viewable and okay."
- VR: 12/19/2018; 13:29:58. () "It was."
- VR: 12/19/2018; 13:29:59. () "I should put for the record that I have reviewed both. I think the Commonwealth previously had provided to me prior to the initial hearing date a copy of what was aired."
- VR: 12/19/2018; 13:30:09. () "Somebody provided it. So I'd seen the shorter version and then received the copy of the video, the full version from you all, and I have in fact reviewed it."
- VR: 12/19/2018; 13:30:17. () "Okay."
- VR: 12/19/2018; 13:30:18. () "And Your Honor, I think at our last hearing we went through some of the argument that set forth in our brief, and I don't know how much Your Honor wants to revisit that argument."
- VR: 12/19/2018; 13:30:26. () "Essentially, our argument from WKYT's perspective is under the Kentucky Shield Statute, they shouldn't be able to get the unedited, un-aired, un-public video of Mr. Cherry's interview."
- VR: 12/19/2018; 13:30:42. () "And also under the First Amendment, they shouldn't be able to get that video as well."
- VR: 12/19/2018; 13:30:46. () "And we cite to a case, Your Honor, in addition to the Maddox case, which is Jefferson Circuit Court,"
- VR: 12/19/2018; 13:30:53. () "and the Lexington Herald-Leader case, which we would suggest, Your Honor, there's a three-part test for when the government can get media information that is unpublished."
- VR: 12/19/2018; 13:31:06. () "And that's set forth in our briefing."

- VR: 12/19/2018; 13:31:08. () "But we would also, Your Honor, turn your attention to U.S. v. Cuthbertson."
- VR: 12/19/2018; 13:31:13. () "It's a Third Circuit case."
- VR: 12/19/2018; 13:31:15. () "And in that case, there were defendants that were seeking outtakes from a 60-minute interview."
- VR: 12/19/2018; 13:31:21. () "And the Third Circuit found that journalists possess a qualified privilege not to disclose unpublished information in their possession in a criminal case."
- VR: 12/19/2018; 13:31:33. () "And in that case, the unpublished information that the journalists had were not only documents, but also videotape recordings and videoed interviews."
- VR: 12/19/2018; 13:31:44. () "And we would respectfully request, Your Honor, that the three-part test noted in our briefing, which includes the information sought as central to the case and goes to the heart of the matter,"
- VR: 12/19/2018; 13:31:55. () "the information is unavailable from any other sources, and the Commonwealth has exhausted their efforts to obtain the information from alternative sources,"
- VR: 12/19/2018; 13:32:06. () "and the litigants' need for the disclosure outweighs the importance of freedom of the press."
- VR: 12/19/2018; 13:32:11. () "We would respectfully submit that the Commonwealth has not met any part of that three-part test, other than the fact that they say they need it."
- VR: 12/19/2018; 13:32:21. () "And I would point out to Your Honor, respectfully, this is our third hearing, and we haven't heard any articulation from the government of why they think they need this video,"
- VR: 12/19/2018; 13:32:31. () "other than as Mr. Cherry talked about."
- VR: 12/19/2018; 13:32:34. () "And Your Honor has now reviewed the tape and knows what's on it."
- VR: 12/19/2018; 13:32:39. () "We haven't heard why the government needs it, other than it could be potentially a phishing expedition of some nature, which isn't permitted in the discovery process."
- VR: 12/19/2018; 13:32:48. () "So we respectfully submit, Your Honor, that the portion of the interview that's been aired publicly obviously is available publicly, and the Commonwealth has that."

- VR: 12/19/2018; 13:32:56. () "We would ask to protect the unpublished version of the unedited video, because otherwise we risk turning the press into an investigation arm or investigatory arm of the government."
- VR: 12/19/2018; 13:33:13. () "Thank you."
- VR: 12/19/2018; 13:33:13. () "Thank you."
- VR: 12/19/2018; 13:33:15. () "Alma, yes ma'am."
- VR: 12/19/2018; 13:33:17. () "Thank you, Your Honor."
- VR: 12/19/2018; 13:33:18. () "I would just like to say that there actually really isn't a three-part test."
- VR: 12/19/2018; 13:33:25. () "The case that opposing counsel discussed, it talks about three factors, but then ultimately it's the totality of the circumstances."
- VR: 12/19/2018; 13:33:34. () "And ultimately the court determined that there is a duty to disclose very similar to that of an average citizen or someone like that."
- VR: 12/19/2018; 13:33:47. () "I think it's very clear why the Commonwealth wants to have this unedited, unaired portion."
- VR: 12/19/2018; 13:33:53. () "And it's because the defendant is talking about the crime."
- VR: 12/19/2018; 13:33:57. () "And moreover, the Commonwealth nor the police ever asked WKYT to interview him or anything like that."
- VR: 12/19/2018; 13:34:05. () "And so WKYT chose to do it on its own."
- VR: 12/19/2018; 13:34:09. () "The Commonwealth never asked them to do that or anything."
- VR: 12/19/2018; 13:34:12. () "And so if they chose to do that, fine, but we should have an opportunity to see what the defendant stated about the crime which we are prosecuting."
- VR: 12/19/2018; 13:34:21. () "Thank you. Mr. Friedman, do you have any input?"
- VR: 12/19/2018; 13:34:25. () "Well, I think at this point only the court knows whether and how much of the unpublished stuff is about the crime."
- VR: 12/19/2018; 13:34:35. () "I mean, I guess I'm in the position of kind of shadowboxing here."
- VR: 12/19/2018; 13:34:44. () "But I'll say this, that I do support the First Amendment, the freedom of the press, quite strongly."

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- VR: 12/19/2018; 13:34:51. () "And I do subscribe to the position that journalists should not post hoc be turned into an investigatory arm of the government."
- VR: 12/19/2018; 13:35:05. () "Okay, thank you. Mr. Norbeck, anything further?"
- VR: 12/19/2018; 13:35:10. () "The court has had an opportunity to review the briefs of both parties that have submitted on the matter."
- VR: 12/19/2018; 13:35:16. () "The court has also had an opportunity, as indicated, to review both the short version of the video that was actually aired to the public,"
- VR: 12/19/2018; 13:35:24. () "as well as the unedited version that was provided to the court."
- VR: 12/19/2018; 13:35:35. () "And if there is not a... if the video the court received is not in the record, I'll need to get that to you,"
- VR: 12/19/2018; 13:35:45. () "and it will be filed under seal at this point, just for record purposes."
- VR: 12/19/2018; 13:35:52. () "But the court's going to overrule the motion to reconsider."
- VR: 12/19/2018; 13:35:56. () "The court believes, from the briefs and from the arguments that have been made in review of the video,"
- VR: 12/19/2018; 13:36:02. () "is that essentially I agree with the Commonwealth's position that they're not requesting the court to order the movant"
- VR: 12/19/2018; 13:36:15. () "to disclose any sources, any confidential information."
- VR: 12/19/2018; 13:36:20. () "There are no other individuals, without getting into the details of the video,"
- VR: 12/19/2018; 13:36:24. () "there are no other individuals on the video other than Mr. Cherry,"
- VR: 12/19/2018; 13:36:29. () "who apparently was voluntarily submitting to the interview and was responding to questions by the reporter."
- VR: 12/19/2018; 13:36:37. () "There's no other third parties... does not appear to be any unidentified third parties providing any information within the video,"
- VR: 12/19/2018; 13:36:47. () "so the court does not believe that the Commonwealth is requesting... by their request is asking..."
- VR: 12/19/2018; 13:36:53. () "and I too, Mr. Friedman, I'm a strong supporter of the First Amendment and the protections provided,"

VR: 12/19/2018; 13:36:57. () "but I think in this particular situation there's no request for disclosing the sources of information."

VR: 12/19/2018; 13:37:03. () "The source is the video. The source is the person on the video."

VR: 12/19/2018; 13:37:07. () "And so that's a known source, it's a publicized source,"

VR: 12/19/2018; 13:37:11. () "so that there's no attempt to disclose any confidential or any other information that is not fully disclosed,"

VR: 12/19/2018; 13:37:23. () "partially public, but fully disclosed on the video."

VR: 12/19/2018; 13:37:27. () "So on that basis, the court's going to overrule the movant's motion to reconsider."

VR: 12/19/2018; 13:37:33. () "Okay?"

VR: 12/19/2018; 13:37:34. () "Your Honor, if I may?"

VR: 12/19/2018; 13:37:35. () "Yes, sir."

VR: 12/19/2018; 13:37:35. () "Your Honor has a copy of that video, and I understand from Your Honor's ruling that that may be made available to the parties."

VR: 12/19/2018; 13:37:42. () "I understood, and I'm not a criminal court guy normally, I apologize,"

VR: 12/19/2018; 13:37:46. () "I understood that the production of that video should be placed with the clerk so it's available both to the defendant and the prosecution."

VR: 12/19/2018; 13:37:55. () "Do I need to produce another copy to the clerk, or would the copy that I provided you previously just make its way into..."

VR: 12/19/2018; 13:38:04. () "I apologize for the question."

VR: 12/19/2018; 13:38:05. () "No, no, no, that's a good question."

VR: 12/19/2018; 13:38:08. () "My intent would be the copy that I received from you, we'll place that in the record under seal."

VR: 12/19/2018; 13:38:24. () "However, it will be available for the parties for their review, but not for any other public disclosure."

VR: 12/19/2018; 13:38:34. () "Okay. Thank you, Your Honor."

VR: 12/19/2018; 13:38:35. () "So we'll copy your copy?"

VR: 12/19/2018; 13:38:42. () "It might be a little cleaner if WKYT would just provide new copies to both Commonwealth and Mr. Friedman."

VR: 12/19/2018; 13:38:48. () "Okay."

VR: 12/19/2018; 13:38:49. () "That way the one that I'm going to put in the record remains sealed so it doesn't get opened and closed and opened and closed, if that's okay."

VR: 12/19/2018; 13:38:55. () "With the directive that, I guess at this point, neither the defense or the Commonwealth will disclose it to any other outside sources."

VR: 12/19/2018; 13:39:07. () "Good. Thank you, Your Honor."

VR: 12/19/2018; 13:39:09. () "Obviously he's back from KCPC, I don't know if the court has received a report from KCPC."

VR: 12/19/2018; 13:39:15. () "I'm not aware of any."

VR: 12/19/2018; 13:39:16. () "I'm assuming it's..."

VR: 12/19/2018; 13:39:17. () "When did you get back, Mr. Cherry, do you know?"

VR: 12/19/2018; 13:39:20. () "I don't. I just want to make a verbal request for a speedy trial."

VR: 12/19/2018; 13:39:27. () "And I was going to ask for it to be dismissed for lack of evidence, but evidently we're filing it up as we speak."

VR: 12/19/2018; 13:39:33. () "So I'm kind of coming out of a cloud of no meds myself."

VR: 12/19/2018; 13:39:40. () "And are you being medicated as directed now?"

VR: 12/19/2018; 13:39:43. () "Meds affirmative, yes, sir."

VR: 12/19/2018; 13:39:46. () "It's a lot clearer than I've been in many years."

VR: 12/19/2018; 13:39:51. () "That and if it's not time for that, I guess maybe a request for final disposition."

VR: 12/19/2018; 13:40:01. () "As well as a motion to have the discovery sent to myself independently."

VR: 12/19/2018; 13:40:14. () "Maybe another motion to exclude evidence."

VR: 12/19/2018; 13:40:17. () "Well, I think after this you probably ought to leave the motions to your attorneys."

VR: 12/19/2018; 13:40:24. () "I think invoking the right to a speedy trial is something entirely up to you."

VR: 12/19/2018; 13:40:29. () "So that's fine for you to do that."

VR: 12/19/2018; 13:40:32. () "Okay."

VR: 12/19/2018; 13:40:35. () "Can we... would you chat with me?"

VR: 12/19/2018; 13:40:38. () "Sure."

VR: 12/19/2018; 13:40:40. () "Let me ask, is Mr. Freedman and Mr. Cherry, you've indicated your request for a speedy trial."

- VR: 12/19/2018; 13:40:48. () "Do you wish to hold that request until you have an opportunity to talk with Mr. Freedman?"
- VR: 12/19/2018; 13:40:54. () "Do you wish to proceed with that motion, that request at this point?"
- VR: 12/19/2018; 13:40:59. () "Unless..."
- VR: 12/19/2018; 13:40:59. () "Well, I think it would be a very good idea at minimum to hang fire until two things happen."
- VR: 12/19/2018; 13:41:08. () "Number one, I get to see that recording."
- VR: 12/19/2018; 13:41:12. () "And number two, assuming the court will grant the ex parte motion I've brought along for funds for a mental health expert,"
- VR: 12/19/2018; 13:41:20. () "until my expert renders an opinion to me, because it will be central to trial strategy."
- VR: 12/19/2018; 13:41:35. () "So, does that mean..."
- VR: 12/19/2018; 13:41:37. () "That means..."
- VR: 12/19/2018; 13:41:38. () "That you are withdrawing the motion for a speedy trial at this point until those two things occur?"
- VR: 12/19/2018; 13:41:43. () "I am recommending that Mr. Cherry withhold his request until those things are done."
- VR: 12/19/2018; 13:41:50. () "And after that, if he wants a speedy trial, I'll be behind him."
- VR: 12/19/2018; 13:41:54. () "Can you see the motions that he has? Can you see the motions now?"
- VR: 12/19/2018; 13:41:59. () "Well, they're supposed to be off the public record."
- VR: 12/19/2018; 13:42:04. () "What does that mean? I'm sorry."
- VR: 12/19/2018; 13:42:07. () "It means..."
- VR: 12/19/2018; 13:42:09. () "Well, that's part of what it means, but it also means that the Commonwealth doesn't get to see this."
- VR: 12/19/2018; 13:42:14. () "Oh, yes."
- VR: 12/19/2018; 13:42:18. () "Well, just to clarify then, you are withdrawing at least at this point?"
- VR: 12/19/2018; 13:42:23. () "Withdrawing temporarily, yes."
- VR: 12/19/2018; 13:42:25. () "And you agree with that, Mr. Cherry?"
- VR: 12/19/2018; 13:42:28. () "With the right to request at any point in the future once your attorney feels like it's appropriate."

VR: 12/19/2018; 13:42:32. () "Yes, sir. I'm behind my attorney at this point."

VR: 12/19/2018; 13:42:36. () "If you could clarify, we haven't had a chance to speak yet."

VR: 12/19/2018; 13:42:40. () "Since he's been back from KCPC."

VR: 12/19/2018; 13:42:44. () "Not that I would remember anyway."

VR: 12/19/2018; 13:42:48. () "That's one of my issues is that I don't remember things too long."

VR: 12/19/2018; 13:42:52. () "There's my wife."

VR: 12/19/2018; 13:42:55. () "And she's the one that's told me that we haven't spoken with the attorney yet."

VR: 12/19/2018; 13:42:59. () "But they're asking me to continue and wait for a speedy trial."

VR: 12/19/2018; 13:43:06. () "There's been a lot of pressure behind me to push for that."

VR: 12/19/2018; 13:43:11. () "But now I guess we're waiting."

VR: 12/19/2018; 13:43:15. () "I would suggest you not take legal advice from non-attorneys."

VR: 12/19/2018; 13:43:20. () "Yeah, okay."

VR: 12/19/2018; 13:43:22. () "And we need to schedule this for a status?"

VR: 12/19/2018; 13:43:24. () "Yes, sir."

VR: 12/19/2018; 13:43:24. () "When do you want to go to?"

VR: 12/19/2018; 13:43:35. () "We just need time to get the report and look at the report."

VR: 12/19/2018; 13:43:39. () "Yeah, we do need time for that."

VR: 12/19/2018; 13:43:42. () "Could we go perhaps to February 11th?"

VR: 12/19/2018; 13:43:46. () "That will also give my expert a chance to at least get started."

VR: 12/19/2018; 13:43:53. () "Looks like February 8th and 19th are the first, 8th, and 15th."

VR: 12/19/2018; 13:43:58. () "How did I miss that?"

VR: 12/19/2018; 13:44:02. () "But I don't have my glasses on either, so let me double check."

VR: 12/19/2018; 13:44:08. () "Let's see."

VR: 12/19/2018; 13:44:10. () "About the 22nd then."

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VR: 12/19/2018; 13:44:17. () "February 22nd."

VR: 12/19/2018; 13:44:19. () "That's 19 and it will be at 1 o'clock."

VR: 12/19/2018; 13:44:22. () "Thank you, sir."

VR: 12/19/2018; 13:44:28. () "Thank you all."

VR: 12/19/2018; 13:44:30. () "Thank you."

VR: 12/19/2018; 13:44:30. () "Thank you."

3-29-2019 Status Hearing

VR: 03/29/2019; 14:29:40. () "Yes, sir."

VR: 03/29/2019; 14:29:42. () "We're still working with our mental health expert."

VR: 03/29/2019; 14:29:45. () "We've got a conference call scheduled for the ungodly hour of 8 a.m. on Monday."

VR: 03/29/2019; 14:29:51. () "I know. It's going to take weeks to recover from that."

VR: 03/29/2019; 14:29:55. () "So we'd like to go to May 10th, if we could."

VR: 03/29/2019; 14:29:59. () "I'm not sure exactly what our expert wants to do from here, but I need to find out."

VR: 03/29/2019; 14:30:03. () "All right. May 10th at 1 o'clock for status."

VR: 03/29/2019; 14:30:05. () "Thank you. That's all I have today."

5-10-2019 Status Hearing

VR: 05/10/2019; 13:52:29. () "Mr. Cherry met with a mental health professional yesterday."

VR: 05/10/2019; 13:52:53. () "I haven't been told exactly when to expect the report."

VR: 05/10/2019; 13:52:57. () "I think we can do either of two things."

VR: 05/10/2019; 13:53:00. () "We can set it for another status, or we can set it for a competency hearing, but set it out a little ways."

VR: 05/10/2019; 13:53:06. () "I'm going to report the first."

VR: 05/10/2019; 13:53:08. () "When did he get back from KCPC?"

VR: 05/10/2019; 13:53:11. () "When did you get back?"

VR: 05/10/2019; 13:53:14. () "Sometime last year."

VR: 05/10/2019; 13:53:15. () "Oh, goodness. Where's the report?"

VR: 05/10/2019; 13:53:18. () "KCPC?"

VR: 05/10/2019; 13:53:19. () "Yeah."

VR: 05/10/2019; 13:53:19. () "Oh, you haven't seen it?"

VR: 05/10/2019; 13:53:23. () "If we have the report, why don't we just set it?"

VR: 05/10/2019; 13:53:26. () "Well, because I'd like to see the report from my own mental health expert first."

VR: 05/10/2019; 13:53:31. () "Okay."

VR: 05/10/2019; 13:53:32. () "But if you want to set it farther out, that would probably work too."

VR: 05/10/2019; 13:53:38. () "Alright, let's just do that. That will give you time to have your guy look at it."

VR: 05/10/2019; 13:53:41. () "Okay. How far out, July?"

VR: 05/10/2019; 13:53:42. () "That sounds like a decent idea."

VR: 05/10/2019; 13:53:51. () "How about, oh, do we have anything the 8th or 9th of July?"

VR: 05/10/2019; 13:54:00. () "It would be just an hour over lunch. You need more than that?"

VR: 05/10/2019; 13:54:07. () "We might if we have two witnesses."

VR: 05/10/2019; 13:54:32. () "Let's see here."

VR: 05/10/2019; 13:54:34. () "Friday the 26th?"

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VR: 05/10/2019; 13:54:38. () "There's a good chance I'll be out of town then and all of the next week."

VR: 05/10/2019; 13:54:49. () "Anything?"

VR: 05/10/2019; 13:54:50. () "We said an afternoon, but you're going to have a trial."

VR: 05/10/2019; 13:54:55. () "On what date?"

VR: 05/10/2019; 13:54:57. () "The trial probably won't go. 18 of July?"

VR: 05/10/2019; 13:55:07. () "Yes. 3 o'clock? 2:30?"

VR: 05/10/2019; 13:55:21. () "Ms. Parker, will you make sure the doctor is available?"

VR: 05/10/2019; 13:55:23. () "Yes, I'll make sure the doctor is available."

VR: 05/10/2019; 13:55:27. () "And Mr. Friedman will be okay with the kcpc testifying over the phone. I need to check with my client."

VR: 05/10/2019; 13:55:38. () "Okay, that's fine. I just wanted to double check."

VR: 05/10/2019; 13:55:46. () "Okay, Mr. Cherry, we're going to continue this out a while so that your attorney can consult with his expert."

VR: 05/10/2019; 13:55:54. () "Okay, thank you."

VR: 05/10/2019; 13:55:56. () "And that's all I have."

5-17-2019 Motion Hour

VR: 05/17/2019; 14:46:23. () "Now, that's Mr. Friedman."

VR: 05/17/2019; 14:46:27. () "And Mr. Beck."

VR: 05/17/2019; 14:46:28. () "Yeah."

VR: 05/17/2019; 14:46:30. () "You ready to call that?"

VR: 05/17/2019; 14:46:32. () "I can call that."

VR: 05/17/2019; 14:46:32. () "Okay."

VR: 05/17/2019; 14:46:33. () "Cherry."

VR: 05/17/2019; 14:46:35. () "Cherry."

VR: 05/17/2019; 14:46:57. () "Okay, it's my understanding that the KCPC doctor will
be unable to make the hearing"

VR: 05/17/2019; 14:47:03. () "and so we will need to set a new date for a hearing."

VR: 05/17/2019; 14:47:08. () "You mean by telephone they'll be unable to make it?"

VR: 05/17/2019; 14:47:12. () "We've requested in person due to the gravity of the
case."

VR: 05/17/2019; 14:47:17. () "So do you have his schedule?"

VR: 05/17/2019; 14:47:19. () "I do not. He's not available until at least the last week
of July."

VR: 05/17/2019; 14:47:35. () "You're asking for in person and he's available in July."

VR: 05/17/2019; 14:47:39. () "I guess we'll have to set it in July."

VR: 05/17/2019; 14:47:40. () "I'm sorry."

VR: 05/17/2019; 14:47:47. () "Okay."

VR: 05/17/2019; 14:47:49. () "Well, if Mr. Cherry is willing to waive his personal
appearance, then we're more flexible."

VR: 05/17/2019; 14:47:58. () "We do them by telephone and he can ask questions and
cross-examine."

VR: 05/17/2019; 14:48:02. () "That's typically how we do it."

VR: 05/17/2019; 14:48:03. () "But you can wait if you want."

VR: 05/17/2019; 14:48:05. () "It's just going to hold the case up a little bit."

VR: 05/17/2019; 14:48:08. () "Right, right. My memory is not the best but I think I've
seen him about as much as I've seen you."

VR: 05/17/2019; 14:48:23. () "Well, that's fine."

VR: 05/17/2019; 14:48:26. () "What's his schedule like for telephone?"

VR: 05/17/2019; 14:48:39. () "And I think they were under the impression that it was going to happen."

VR: 05/17/2019; 14:48:51. () "Let's just set it in..."

VR: 05/17/2019; 14:48:54. () "But he's not available even by telephone in July?"

VR: 05/17/2019; 14:48:58. () "No."

VR: 05/17/2019; 14:48:58. () "Okay, let's set it some other time then."

VR: 05/17/2019; 14:49:08. () "Well, if we're more flexible, perhaps we could go a little earlier?"

VR: 05/17/2019; 14:49:13. () "Yeah."

VR: 05/17/2019; 14:49:17. () "He can't, the doctor can't do it on this day."

VR: 05/17/2019; 14:49:21. () "So move it up earlier."

VR: 05/17/2019; 14:49:22. () "Earlier?"

VR: 05/17/2019; 14:49:23. () "Yeah. How about July 2?"

VR: 05/17/2019; 14:49:27. () "I think that's going to work."

VR: 05/17/2019; 14:49:30. () "What time?"

VR: 05/17/2019; 14:49:33. () "Sorry? 9 AM."

VR: 05/17/2019; 14:49:36. () "Tuesday."

VR: 05/17/2019; 14:49:37. () "Is there any afternoon time available?"

VR: 05/17/2019; 14:49:40. () "Okay, yeah."

VR: 05/17/2019; 14:49:41. () "Could we do maybe 2 o'clock in the afternoon?"

VR: 05/17/2019; 14:49:46. () "I have a 10 o'clock docket to cover on Tuesdays."

VR: 05/17/2019; 14:49:58. () "Thank you."

VR: 05/17/2019; 14:50:02. () "I think that's it."

VR: 05/17/2019; 14:50:04. () "All right."

VR: 05/17/2019; 14:50:04. () "So we did get an earlier date."

VR: 05/17/2019; 14:50:08. () "Thank you."

3-3-2020 Other Hearing

VR: 03/03/2020; 10:21:33. () "First of all, and I guess I'm a little concerned because this is ex parte. I know that there have been situations where this ex parte motion was put in the file and it was heard by the Commonwealth."

VR: 03/03/2020; 10:21:46. () "So we need to take precautions that this hearing needs to be sealed or in some way not disclosed to the Commonwealth. So just on the record I want that."

VR: 03/03/2020; 10:21:58. () "Thank you Judge."

VR: 03/03/2020; 10:21:59. () "You're welcome."

VR: 03/03/2020; 10:21:59. () "Now, I filed the motions and one of them had attached to it the Dr. Fabian's CV as well as a letter from Dr. Houchen stating the reasons why he believes that we should hire Dr. Fabian."

VR: 03/03/2020; 10:22:15. () "That was attached to the original which is sealed and my experience is usually the courts get that. I wanted to make sure that you had seen the letter from Dr. Houchen regarding why we're requesting..."

VR: 03/03/2020; 10:22:25. () "Well, I'm not so sure I have."

VR: 03/03/2020; 10:22:26. () "Because I was thinking that if you haven't seen that then you might have a lot of questions about why we're requesting it. This spells it out."

VR: 03/03/2020; 10:22:34. () "May I look at that?"

VR: 03/03/2020; 10:22:35. () "I thought maybe that you just had the courtesy copy which didn't have this attached."

VR: 03/03/2020; 10:22:39. () "That's all I have. Okay."

VR: 03/03/2020; 10:22:45. () "When the court's ready I have a few other things I'd like to take up before we bring in Mr. Cherry."

VR: 03/03/2020; 10:22:49. () "Okay."

VR: 03/03/2020; 10:25:19. () "Alright, so this is from Dr. Houchen and you want to get it for... and who's the individual that you feel is best... who's the doctor?"

VR: 03/03/2020; 10:25:31. () "Dr. Fabian."

VR: 03/03/2020; 10:25:32. () "Why did you pick Dr. Fabian?"

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VR: 03/03/2020; 10:25:35. () "He's been used in other cases and he is qualified for what Dr. Houchen was recommending that we do."

VR: 03/03/2020; 10:25:41. () "And I have his CV which I attached to the sealed motion which I doubt you're seeing."

VR: 03/03/2020; 10:25:46. () "Do you have his CV with you?"

VR: 03/03/2020; 10:25:48. () "I do not, Judge. I will forward that to..."

VR: 03/03/2020; 10:25:50. () "Well, I can open up the sealed one and open court and then reseal it."

VR: 03/03/2020; 10:25:54. () "The one person who can always open it is you, Judge."

VR: 03/03/2020; 10:25:57. () "Oh, I know that. That's what I said. I can open it and..."

VR: 03/03/2020; 10:26:00. () "Judge, if I may... a few more... some factual context here, Judge."

VR: 03/03/2020; 10:26:06. () "Yeah."

VR: 03/03/2020; 10:26:06. () "This is a murder case."

VR: 03/03/2020; 10:26:07. () "I know. I saw that. I read it in the report that he's in on a murder case."

VR: 03/03/2020; 10:26:12. () "Right."

VR: 03/03/2020; 10:26:13. () "Yeah, this was very clear. He's in on the murder case and other charges. He's also been evidently assaulted at the detention center."

VR: 03/03/2020; 10:26:22. () "Correct. So, Judge, the last time that we were... that Mr. Cherry was in court, I believe, was in May."

VR: 03/03/2020; 10:26:30. () "And at that time, a competency hearing was scheduled for July."

VR: 03/03/2020; 10:26:35. () "That hearing was taken off the docket because between May and July, we learned that he had been assaulted in the jail and taken to the hospital and maybe suffered a head injury."

VR: 03/03/2020; 10:26:43. () "So we were going to have Dr. Houchin reevaluate based on that."

VR: 03/03/2020; 10:26:47. () "Which we got this."

VR: 03/03/2020; 10:26:48. () "Exactly. And so, a little bit more, though, as I said, factual context."

VR: 03/03/2020; 10:26:53. () "So, in the visits that have occurred since then between me and Mr. Cherry and Mr. Friedman and Mr. Cherry,

as well as Dr. Houchin, he doesn't appear to recognize that Mr. Friedman and I at all."

VR: 03/03/2020; 10:27:07. () "And he had a hard time remembering Dr. Houchin, but vaguely had a sense that he was a doctor."

VR: 03/03/2020; 10:27:14. () "He has not one time, and this may be hard for you to believe with your experience with criminal defendants, complained to us about not having court since May."

VR: 03/03/2020; 10:27:23. () "He seems very confused about where he is or why he's there."

VR: 03/03/2020; 10:27:29. () "For a long time, over the last several months, he was calling and leaving long, rambling voicemails that were tangential and really didn't make any sense on the voicemail box of our investigator, Emily Swientoski."

VR: 03/03/2020; 10:27:44. () "He did that for a while and then since has stopped calling completely."

VR: 03/03/2020; 10:27:48. () "He never calls our office, never sends any correspondence, and when we visit him, he doesn't appear to recognize us or really recall what's going on in this case."

VR: 03/03/2020; 10:27:59. () "As you can see, that was Dr. Houchin's experience as well, his reason for recommending that we do a more thorough neuropsych eval so that we can see if there's any kind of organic brain issue going on."

VR: 03/03/2020; 10:28:14. () "So, I just wanted to provide the court with that sort of factual context of where we are in our relationship."

VR: 03/03/2020; 10:28:19. () "How old is this gentleman?"

VR: 03/03/2020; 10:28:24. () "Judge, I don't have that in front of me, but I want to say he's in his 50s."

VR: 03/03/2020; 10:28:31. () "Can't say with certainty, but certainly middle-aged."

VR: 03/03/2020; 10:28:34. () "Okay, and I note that on this, it's a murder indictment, capital offense."

VR: 03/03/2020; 10:28:41. () "What's the grounds for it being a capital offense? What are the aggravating circumstances?"

VR: 03/03/2020; 10:28:47. () "Well, there are no aggravating circumstances. Every murder is technically..."

VR: 03/03/2020; 10:28:51. () "Well, but, you know, there's a... not every murder, I mean..."

VR: 03/03/2020; 10:28:57. () "Every murder is considered a capital offense, even if it's not death eligible."

VR: 03/03/2020; 10:29:01. () "Well, I'm talking about death eligible."

VR: 03/03/2020; 10:29:03. () "Okay."

VR: 03/03/2020; 10:29:04. () "It's not a death... that's the one I'm trying to... alright, so it is not a death eligible..."

VR: 03/03/2020; 10:29:07. () "Correct."

VR: 03/03/2020; 10:29:08. () "Alright, I was saying, surely it's not."

VR: 03/03/2020; 10:29:10. () "And who was Peter Lyon in relationship to Mr. Cherry? Do you know?"

VR: 03/03/2020; 10:29:19. () "His... the alleged victim in the case... I will point out as well that they haven't found a body in this case."

VR: 03/03/2020; 10:29:25. () "It's kind of an interesting factual position."

VR: 03/03/2020; 10:29:29. () "But he... the alleged victim is Mr. Cherry's brother-in-law."

VR: 03/03/2020; 10:29:36. () "Where did this occur?"

VR: 03/03/2020; 10:29:37. () "At his sister's apartment, I believe. And I don't recall if Mr. Cherry was living with his sister at that time or not."

VR: 03/03/2020; 10:29:52. () "So, the alleged victim is... Mr. Lyon, is the spouse or deceased spouse or missing spouse of Mr. Cherry's sister."

VR: 03/03/2020; 10:30:11. () "Correct."

VR: 03/03/2020; 10:30:14. () "And this happened in 2018?"

VR: 03/03/2020; 10:30:17. () "Yes."

VR: 03/03/2020; 10:30:20. () "And where was Mr. Lyon, just out of curiosity, Peter Lyon last seen?"

VR: 03/03/2020; 10:30:27. () "Well, he is... he was last seen in the apartment by... my recollection of the facts is a little bit hazy because it's been a while since we've dealt with them thoroughly."

VR: 03/03/2020; 10:30:44. () "But he was last seen at the apartment by his wife, Mr. Cherry's sister, as well as Mr. Cherry's spouse."

VR: 03/03/2020; 10:30:56. () "Do you know the street address or where that was?"

VR: 03/03/2020; 10:31:01. () "Mount Tabor?"

VR: 03/03/2020; 10:31:03. () "Yes, in that area."

VR: 03/03/2020; 10:31:05. () "174 Mount Tabor, I see. Okay."

VR: 03/03/2020; 10:31:07. () "Alright, I was just kind of getting a..."

VR: 03/03/2020; 10:31:09. () "Yeah, sure."

VR: 03/03/2020; 10:31:10. () "Okay, so..."

VR: 03/03/2020; 10:31:11. () "There are a couple of other facts about Mr. Lyon. He is a sushi chef who has been known to sort of vanish into thin air and reappear before."

VR: 03/03/2020; 10:31:28. () "But he's been missing since 2018?"

VR: 03/03/2020; 10:31:30. () "Correct."

VR: 03/03/2020; 10:31:32. () "Okay, alright, well, this is interesting."

VR: 03/03/2020; 10:31:36. () "Okay, so how... when you made the motion for this additional... and it's clear from Mr. Houchen's letter and it's clear from the change in circumstances where he was severely assaulted at the jail."

VR: 03/03/2020; 10:31:53. () "How long was... did he have to go to UK Hospital?"

VR: 03/03/2020; 10:31:57. () "To the best of my knowledge, yes."

VR: 03/03/2020; 10:31:59. () "How long... do you know how long he was there?"

VR: 03/03/2020; 10:32:01. () "No, I don't."

VR: 03/03/2020; 10:32:03. () "Okay, do you... have you had any opportunity or have you thought to talk to... based on his situation, have you talked with... is he kept in medical? Or is he in..."

VR: 03/03/2020; 10:32:15. () "He's gone in and out of that, Judge, and I don't know his current status. He is in a wheelchair today."

VR: 03/03/2020; 10:32:19. () "Why is he in a wheelchair?"

VR: 03/03/2020; 10:32:21. () "He has difficulty walking."

VR: 03/03/2020; 10:32:23. () "Because of the neurological issues as a result of the... did he have difficulty walking before the assault?"

VR: 03/03/2020; 10:32:29. () "He did."

VR: 03/03/2020; 10:32:29. () "He did? Oh, so he's always had..."

VR: 03/03/2020; 10:32:32. () "Alright, so... how much... have you talked with this doctor to find out what he would charge for these tests?"

VR: 03/03/2020; 10:32:39. () "Well, Judge, yes. The amount that we requested is what he said that we should request based on what he anticipates it would cost."

VR: 03/03/2020; 10:32:48. () "And what is that again?"

VR: 03/03/2020; 10:32:50. () "\$10,000, Judge."

VR: 03/03/2020; 10:32:52. () "Really?"

VR: 03/03/2020; 10:32:54. () "Does this gentleman, Mr. Cherry, have Medicaid or Medicare or anything?"

VR: 03/03/2020; 10:33:00. () "It wouldn't pay for a forensic examination anyway."

VR: 03/03/2020; 10:33:04. () "Why do you say that?"

VR: 03/03/2020; 10:33:05. () "Because it doesn't. This is not to be treated. This is strictly for forensic..."

VR: 03/03/2020; 10:33:10. () "Well, but if you did it... but if it finds out there would be treatment..."

VR: 03/03/2020; 10:33:17. () "At the jail?"

VR: 03/03/2020; 10:33:18. () "No, I'm not saying at the jail. I'm just saying... let's be a little creative here, gentlemen. Think about this."

VR: 03/03/2020; 10:33:24. () "If you... if he weren't in jail and he had these issues and you took him to the hospital and they ran all these to see what was wrong with him, to try to treat him and help him,"

VR: 03/03/2020; 10:33:35. () "wouldn't that be covered by Medicare or Medicaid or whatever he might have as..."

VR: 03/03/2020; 10:33:41. () "It might or might not be, depending on the first instance on whether the provider accepted Medicaid."

VR: 03/03/2020; 10:33:48. () "Wow."

VR: 03/03/2020; 10:33:50. () "But of course, he's not entitled to that while he's in jail."

VR: 03/03/2020; 10:33:58. () "I know, it just seems like... I guess my issue is... I think it's important that you get this information, especially based on these charges, but what I don't want to do is just give you a blanket \$10,000."

VR: 03/03/2020; 10:34:11. () "I think that that doctor needs to... has he broken down the tests, each test, and what they're going to cost?"

VR: 03/03/2020; 10:34:19. () "No."

VR: 03/03/2020; 10:34:21. () "Okay. Because what I'm wondering is what could he do initially to see certain things to rule out, well, that's not it, that's not it, and kind of go through where we need to go from there."

VR: 03/03/2020; 10:34:37. () "Has he met with this gentleman and talked to him or anything?"

VR: 03/03/2020; 10:34:41. () "No, he has not judge... typically..."

VR: 03/03/2020; 10:34:46. () "Is he the neurologist?"

VR: 03/03/2020; 10:34:49. () "Sorry?"

VR: 03/03/2020; 10:34:49. () "Is he the neurologist?"

VR: 03/03/2020; 10:34:50. () "He's a neuropsychologist."

VR: 03/03/2020; 10:34:52. () "Well, then why aren't you getting a neurologist?"

VR: 03/03/2020; 10:34:55. () "Because he said that there should typically include evaluation by a neurologist, brain MRI, blood and urine laboratory tests, hearing tests, and additional neuropsychological testing, if deemed appropriate by his evaluating neurology team."

VR: 03/03/2020; 10:35:12. () "Why aren't we first letting a neurologist evaluate him, which is what this doctor recommended?"

VR: 03/03/2020; 10:35:19. () "Mr. Beck?"

VR: 03/03/2020; 10:35:24. () "Well, it's my understanding after consulting with Dr. Houchen and sharing Dr. Fabian's CV with Dr. Houchen that Dr. Houchen believed Dr. Fabian was qualified to do the testing and examination that he was requesting."

VR: 03/03/2020; 10:35:38. () "Well, what I'd like you to do is I'd like you to go back to Dr. Houchen and ask him if there is a..."

VR: 03/03/2020; 10:35:44. () "Because what I'd like to do is kind of go through this process before..."

VR: 03/03/2020; 10:35:51. () "Because if you need an evaluation by a neurologist and you're hiring a neuro... what'd you call him?"

VR: 03/03/2020; 10:35:57. () "Neuropsychologist."

VR: 03/03/2020; 10:35:57. () "A neuropsychologist, he can't do any of this stuff."

VR: 03/03/2020; 10:36:01. () "Actually, he can do a lot of that stuff."

VR: 03/03/2020; 10:36:03. () "Well, I don't see... he's not a neurologist."

VR: 03/03/2020; 10:36:07. () "He can ask for an MRI. He can refer somebody to laboratory medicine."

VR: 03/03/2020; 10:36:12. () "Well, but this neurologist can do all that. A neurologist could do all that as well, couldn't he?"

VR: 03/03/2020; 10:36:17. () "Probably charging a lot more than a neuropsychologist."

VR: 03/03/2020; 10:36:20. () "Why do you think that?"

VR: 03/03/2020; 10:36:22. () "Because in about 25 years of experience dealing with medical experts, they tend to charge more if they have an MD."

VR: 03/03/2020; 10:36:32. () "So this guy doesn't even have an MD."

VR: 03/03/2020; 10:36:34. () "He has a Ph.D. in psychology. He has a fellowship in neuropsychology. He has board certification in forensic psychology."

VR: 03/03/2020; 10:36:46. () "He still just has a Ph.D."

VR: 03/03/2020; 10:36:49. () "Well, as someone who has a Ph.D., I take exception to the courts putting it down."

VR: 03/03/2020; 10:36:54. () "Well, I'm not putting it down. I'm just saying it's a Ph.D. versus an MD."

VR: 03/03/2020; 10:36:57. () "Would you ask Dr. Halchen if he thinks there is a neurologist that he would recommend to do these first steps?"

VR: 03/03/2020; 10:37:10. () "Didn't we ask him?"

VR: 03/03/2020; 10:37:12. () "We did judge, and we can follow up with him. But as I recall, he didn't have anyone in mind in particular."

VR: 03/03/2020; 10:37:25. () "So did he know this Dr. Fabian?"

VR: 03/03/2020; 10:37:27. () "I don't think he did, but we shared the CV with him."

VR: 03/03/2020; 10:37:31. () "Well, but I would like him to give me an idea of who..."

VR: 03/03/2020; 10:37:35. () "If this was his client, which obviously it is, not in, say, this setting, but this was his client, who would he..."

VR: 03/03/2020; 10:37:46. () "Or better yet, if this were a family member, and he saw these type of symptoms, who would he want his family member to go to?"

VR: 03/03/2020; 10:37:58. () "Well, Your Honor, I think that question is perhaps irrelevant in context."

VR: 03/03/2020; 10:38:03. () "Well, Mr., I don't have to... I mean, Mr. Freeman, we're all on the same team here, but I'm not going to just..."

VR: 03/03/2020; 10:38:10. () "I mean, I don't... I don't see what's wrong... Why is that a problem with this court finding out if..."

VR: 03/03/2020; 10:38:15. () "What I don't want to do is I don't want to get the best person."

VR: 03/03/2020; 10:38:18. () "I don't want to say, this guy, when all I have is his CV, and you all have used him in the past."

VR: 03/03/2020; 10:38:24. () "I don't think... I'd rather have... I'd rather have a doctor tell me who he recommends,"

VR: 03/03/2020; 10:38:30. () "rather than trial lawyers who aren't experts in the field say, well, we've used this guy before, is my justification for using Dr. Fabian."

VR: 03/03/2020; 10:38:39. () "That's where I'm coming from."

VR: 03/03/2020; 10:38:41. () "Now, if you think you know better than Dr. Halchen, and that... because you all have used him in the past,"

VR: 03/03/2020; 10:38:46. () "then that's fine, but I don't see that appropriate."

VR: 03/03/2020; 10:38:49. () "I want to know what the doctor recommends, not what lawyers recommend,"

VR: 03/03/2020; 10:38:53. () "when it comes to truly evaluating someone for neurological problems."

VR: 03/03/2020; 10:38:59. () "Judge, we can certainly..."

VR: 03/03/2020; 10:39:00. () "And I'm sorry you don't think that's relevant."

VR: 03/03/2020; 10:39:02. () "Well, I didn't get a chance to explain why."

VR: 03/03/2020; 10:39:06. () "Well, go ahead."

VR: 03/03/2020; 10:39:07. () "And what I said was not really relevant as a question,"

VR: 03/03/2020; 10:39:11. () "but Dr. Halchen or I or anybody else would want if a family member presented as Mr. Cherry did,"

VR: 03/03/2020; 10:39:23. () "because Dr. Halchen, as an evaluating physician,"

VR: 03/03/2020; 10:39:30. () "is in a totally different position from being a treating physician."

VR: 03/03/2020; 10:39:36. () "If... but that makes... no, that's... it is..."

VR: 03/03/2020; 10:39:40. () "If he had a family member that he evaluated and saw those things going on or witnessed them,"

VR: 03/03/2020; 10:39:45. () "he's not going to take off his hat as a forensic psychiatrist when he sees things."

VR: 03/03/2020; 10:39:50. () "He's not."

VR: 03/03/2020; 10:39:51. () "And those are the kind of things that he saw in this gentleman."

VR: 03/03/2020; 10:39:56. () "If he saw them in a family member, I would assume he would want them to get evaluated."

VR: 03/03/2020; 10:40:02. () "And if he did, he would say, this is who I think should be doing it."

VR: 03/03/2020; 10:40:05. () "That's all I asked."

VR: 03/03/2020; 10:40:07. () "Versus just accepting... because there might be somebody better than the Dr. Fabian that you all used in the past."

VR: 03/03/2020; 10:40:14. () "That's all I'm asking."

VR: 03/03/2020; 10:40:15. () "Should we reconvene next week, Judge, after we've had a chance to touch base with Dr. Halchen?"

VR: 03/03/2020; 10:40:21. () "That way it'll just... we have a set time to come back and be before..."

VR: 03/03/2020; 10:40:24. () "And in the meantime, I want you to get in touch with Dr. Fabian and ask him what all of these..."

VR: 03/03/2020; 10:40:30. () "Like, obviously, he's not a neurologist. He can't do the exam."

VR: 03/03/2020; 10:40:34. () "Who's he intending to get to do that if he's going to follow the request of Dr. Halchen?"

VR: 03/03/2020; 10:40:42. () "Which was evaluation by a neurologist, brain MRI, all of those things."

VR: 03/03/2020; 10:40:47. () "Who is... what is he... how's he plan on doing all of those things?"

VR: 03/03/2020; 10:40:51. () "Okay."

VR: 03/03/2020; 10:40:53. () "From a... you know, who does he plan to use and what are they going to... what... breaking them down, what the costs are going to be."

VR: 03/03/2020; 10:41:00. () "Can we come back at the same time next week, Judge?"

VR: 03/03/2020; 10:41:02. () "Actually, I would prefer that it would not be 10 o'clock on a Tuesday."

VR: 03/03/2020; 10:41:08. () "I'm normally covering a district court docket..."

VR: 03/03/2020; 10:41:11. () "Well, I don't know what my calendar looks like either."

VR: 03/03/2020; 10:41:13. () "And frankly, gentlemen, these are just things I need to know."

VR: 03/03/2020; 10:41:16. () "I mean, the question is, do we need to even have a formal when you just get it?"

VR: 03/03/2020; 10:41:21. () "Is there an issue with... because it's ex parte."

VR: 03/03/2020; 10:41:24. () "Is there an issue with just... I mean, I could do it Tuesday, but you can't do it."

VR: 03/03/2020; 10:41:31. () "Not at 10, no."

VR: 03/03/2020; 10:41:33. () "Can you do it at 9?"

VR: 03/03/2020; 10:41:34. () "No."

VR: 03/03/2020; 10:41:36. () "Do you both need to come?"

VR: 03/03/2020; 10:41:41. () "Well, I suppose one person could. Mr. Beck thought I should be here and I agreed simply because I've been dealing with medical and psychological experts my entire legal career."

VR: 03/03/2020; 10:42:06. () "Well, are you comfortable since we're just answering those questions?"

VR: 03/03/2020; 10:42:09. () "The bottom line, gentlemen, I'm going to give you the ability to do this."

VR: 03/03/2020; 10:42:14. () "I just want to make sure it's not money wasted or money that the court doesn't feel."

VR: 03/03/2020; 10:42:18. () "Since I'm the one that has to give you the money, I want to make sure it's spent the best way possible."

VR: 03/03/2020; 10:42:29. () "If we can find somebody better than Dr. Fahey, I can't disagree."

VR: 03/03/2020; 10:42:34. () "Well, that's what I'm wondering."

VR: 03/03/2020; 10:42:35. () "Judge, I will say, and I'm happy to follow up because I think the court's questions are more than valid in terms of can Dr. Fabian do everything that Dr. Houchen is asking and what is his plan of attack."

VR: 03/03/2020; 10:42:51. () "I will say, just so the court is clear, we didn't take Dr. Houchen's recommendation and then go hire Fabian because we've..."

VR: 03/03/2020; 10:42:58. () "I've never worked with him, but because someone in our office had before."

VR: 03/03/2020; 10:43:01. () "We went back to Dr. Houchen and said, hey, what will this guy do? Here's his CV."

VR: 03/03/2020; 10:43:05. () "And Dr. Houchen said he thought that would be fine."

VR: 03/03/2020; 10:43:08. () "And Dr. Fabian..."

VR: 03/03/2020; 10:43:09. () "But did you ever ask Dr. Houchen in detail who he would get if he saw those?"

VR: 03/03/2020; 10:43:14. () "We did discuss that. And I was looking at my notes. We talked to him back in December about that."

VR: 03/03/2020; 10:43:19. () "I don't recall what he said."

- VR: 03/03/2020; 10:43:22. () "As I recall, though, he did say he didn't have anyone in mind."
- VR: 03/03/2020; 10:43:26. () "But since I can't remember specifically, I want to follow up on that."
- VR: 03/03/2020; 10:43:29. () "Now, I'm happy to correspond with the court. I mean, it is ex parte."
- VR: 03/03/2020; 10:43:33. () "Via email about this, and we don't have to schedule another hearing unless after we've tried to answer the question."
- VR: 03/03/2020; 10:43:38. () "Why don't you just call Allie in the office?"
- VR: 03/03/2020; 10:43:41. () "Okay."
- VR: 03/03/2020; 10:43:41. () "And say, I've got this information, and can Judge Goodman give me a time today to come over and talk about it?"
- VR: 03/03/2020; 10:43:48. () "Because it's ex parte, and it doesn't necessarily have to be on the record, does it?"
- VR: 03/03/2020; 10:43:54. () "Not... well, I think..."
- VR: 03/03/2020; 10:43:56. () "This part of it."
- VR: 03/03/2020; 10:43:57. () "The only reason that it needs to be on the record, Judge, is if you're going to reject it."
- VR: 03/03/2020; 10:44:01. () "Well, I'm not rejecting it."
- VR: 03/03/2020; 10:44:03. () "We have to be able to set..."
- VR: 03/03/2020; 10:44:04. () "No, I'm not going to reject it. I just want to make sure it's the right..."
- VR: 03/03/2020; 10:44:08. () "Understood."
- VR: 03/03/2020; 10:44:09. () "...fit."
- VR: 03/03/2020; 10:44:10. () "Okay."
- VR: 03/03/2020; 10:44:11. () "Is that acceptable?"
- VR: 03/03/2020; 10:44:11. () "And then, obviously, when you give me all that, if you want, we can just very quickly put it on the docket, and I can just set it out that, you know, having heard all that, looked at everything, this is the court's order."
- VR: 03/03/2020; 10:44:24. () "Okay."
- VR: 03/03/2020; 10:44:24. () "Yeah, but I don't think this trying to deal with who we're going to get and how much it's going to cost needs to necessarily be on the record."

VR: 03/03/2020; 10:44:32. () "Okay."

VR: 03/03/2020; 10:44:32. () "Do you have an objection, Mr. Friedman?"

VR: 03/03/2020; 10:44:35. () "Well, since the court has said that it's not going to reject our request, I don't have an objection."

VR: 03/03/2020; 10:44:42. () "Yeah, I'm not going to reject your request for a medical expert based on everything. I'm just going to want you to give me a little more detail before we lock ourselves into \$10,000 or some number close to that to this guy, Fabian."

VR: 03/03/2020; 10:44:55. () "Okay."

VR: 03/03/2020; 10:44:56. () "Yeah. How's that sound?"

VR: 03/03/2020; 10:44:58. () "Sounds good, Judge."

VR: 03/03/2020; 10:44:59. () "All right. We got a plan then, gentlemen?"

VR: 03/03/2020; 10:45:01. () "Yes."

VR: 03/03/2020; 10:45:01. () "I hope we do."

VR: 03/03/2020; 10:45:02. () "Here, I'll give this back to you because we don't want it floating around."

VR: 03/03/2020; 10:45:05. () "Thank you, Judge."

VR: 03/03/2020; 10:45:05. () "You're welcome."

VR: 03/03/2020; 10:45:06. () "We'll be in touch soon."

VR: 03/03/2020; 10:45:07. () "All right, not a problem. You know where to find me."

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VR: 03/13/2020; 13:16:47. () "He sustained a head injury. Okay, maybe it was that."

VR: 03/13/2020; 13:16:49. () "I thought that there was a... that he had had a competency hearing and that came back and then he was assaulted and now there was a desire to have another competency hearing."

VR: 03/13/2020; 13:16:59. () "I haven't had this before. Haven't I had him before?"

VR: 03/13/2020; 13:17:02. () "No, Your Honor. You have not."

VR: 03/13/2020; 13:17:04. () "Judge, I think you were..."

VR: 03/13/2020; 13:17:06. () "Yeah, we have."

VR: 03/13/2020; 13:17:08. () "No, Your Honor."

VR: 03/13/2020; 13:17:08. () "Something on something else."

VR: 03/13/2020; 13:17:09. () "I think it was an ex-parte, Your Honor."

VR: 03/13/2020; 13:17:12. () "Yeah, I was going to say..."

VR: 03/13/2020; 13:17:14. () "Well, okay, but..."

VR: 03/13/2020; 13:17:16. () "The court did have Mr. Beck and me in court and we had a discussion that was by statute ex-parte."

VR: 03/13/2020; 13:17:26. () "I know. Okay, but I did think that... what is it you want me to do?"

VR: 03/13/2020; 13:17:30. () "Well, Judge, we didn't have another date at all in this case. And so it was just kind of hanging out there."

VR: 03/13/2020; 13:17:37. () "If we need another date, let's get another date."

VR: 03/13/2020; 13:17:39. () "And so I wanted another date, but I also..."

VR: 03/13/2020; 13:17:41. () "Well, don't you also think... so previously, the first time, was he found competent when you had the..."

VR: 03/13/2020; 13:17:47. () "Judge, I don't think we ever had the hearing. We had him evaluated at KCPC."

VR: 03/13/2020; 13:17:54. () "And then I know that the defense wanted to have Mr. Cherry evaluated by their own people because he was found confident by KCPC."

VR: 03/13/2020; 13:18:02. () "Is that before or after he was assaulted?"

VR: 03/13/2020; 13:18:06. () "I don't remember, Judge."

VR: 03/13/2020; 13:18:08. () "But to cut to the chase, as the court might remember..."

VR: 03/13/2020; 13:18:13. () "I do."

VR: 03/13/2020; 13:18:14. () "He has been evaluated by a forensic psychiatrist who has recommended what we discussed ex-parte."

VR: 03/13/2020; 13:18:21. () "But my issue is with the Commonwealth. After he was assaulted, did the Commonwealth ever have another evaluation done?"

VR: 03/13/2020; 13:18:29. () "No."

VR: 03/13/2020; 13:18:30. () "Why not?"

VR: 03/13/2020; 13:18:30. () "I didn't even know he's been evaluated because I haven't gotten a report."

VR: 03/13/2020; 13:18:33. () "No, that's not... just ignore all that. Just ignore that."

VR: 03/13/2020; 13:18:38. () "Judge, I don't know if..."

VR: 03/13/2020; 13:18:39. () "After he was assaulted."

VR: 03/13/2020; 13:18:41. () "I don't know if the Commonwealth knew he was assaulted. The last the Commonwealth knew, he was..."

VR: 03/13/2020; 13:18:48. () "he had not wanted... he was not cooperating, I think, with the defense expert or there was some issue."

VR: 03/13/2020; 13:18:56. () "How could the Commonwealth not know he was assaulted? Were there charges brought against whoever assaulted him at the jail?"

VR: 03/13/2020; 13:19:02. () "I don't know the answer to that."

VR: 03/13/2020; 13:19:04. () "Which is why I put it up for a status because..."

VR: 03/13/2020; 13:19:10. () "Well, here's... does anybody know if after he was assaulted, because the court has no recollection of this one question, what the answer is."

VR: 03/13/2020; 13:19:19. () "After he was assaulted at the jail, was he ever re-evaluated by the Commonwealth?"

VR: 03/13/2020; 13:19:24. () "Not to my knowledge."

VR: 03/13/2020; 13:19:25. () "Well, does... my concern is, now that the Commonwealth has found out he's been assaulted,"

VR: 03/13/2020; 13:19:32. () "is the Commonwealth planning on just simply using that competency hearing to go forward since his change in circumstances?"

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VR: 03/13/2020; 13:19:45. () "Well, I don't know if I know the answer to that. Was he being... I guess the question I have is, was he evaluated..."

VR: 03/13/2020; 13:19:52. () "did you want him evaluated by the defense expert?"

VR: 03/13/2020; 13:19:55. () "He had been."

VR: 03/13/2020; 13:19:56. () "Because he had been assaulted."

VR: 03/13/2020; 13:19:58. () "Well, I wanted him evaluated by a defense expert anyway."

VR: 03/13/2020; 13:20:03. () "We had to have the expert go back and do more work because of the head injury and he was symptomatic."

VR: 03/13/2020; 13:20:12. () "So, I take it you guys are just going to rely on your report that is obviously outdated and..."

VR: 03/13/2020; 13:20:20. () "I'm just trying to figure out what we're doing here."

VR: 03/13/2020; 13:20:25. () "Could we approach briefly and you could tell me what the... because I don't know anything about what's going on or what..."

VR: 03/13/2020; 13:20:31. () "I didn't have to tell you anything. I don't think that's what..."

VR: 03/13/2020; 13:20:33. () "Well, I mean, basically, he was assaulted."

VR: 03/13/2020; 13:20:35. () "I don't know if we should... I don't know if it's necessary to have him sent back to KCPC. I just..."

VR: 03/13/2020; 13:20:40. () "Well, you know, I could request an evaluation on an outpatient basis."

VR: 03/13/2020; 13:20:46. () "Just to reevaluate..."

VR: 03/13/2020; 13:20:47. () "Yeah. I mean, and I would not object to that if you want to do that."

VR: 03/13/2020; 13:20:51. () "I just don't want to put this on any date when there are things that obviously people aren't paying attention to or don't know what's going on."

VR: 03/13/2020; 13:21:02. () "And I don't want to put dates and then have everybody come in and say, well, we can't do it because we just found something out."

VR: 03/13/2020; 13:21:08. () "We need to know that there's an issue."

VR: 03/13/2020; 13:21:10. () "Okay."

VR: 03/13/2020; 13:21:11. () "And you haven't gotten a report because he hasn't written it yet."

VR: 03/13/2020; 13:21:13. () "Okay."

VR: 03/13/2020; 13:21:15. () "So, what do you want to take from this book?"

VR: 03/13/2020; 13:21:17. () "I guess not knowing anything about this assault."

VR: 03/13/2020; 13:21:24. () "How do you not know? How do you not know about the assault?"

VR: 03/13/2020; 13:21:28. () "Because we don't necessarily find out when something happens to an inmate in custody."

VR: 03/13/2020; 13:21:33. () "But this is one of your cases and you haven't done anything, [inaudible]?"

VR: 03/13/2020; 13:21:40. () "Well, the problem, Judge, was that we were waiting..."

VR: 03/13/2020; 13:21:44. () "When we were last in court, he hadn't been evaluated by the defense experts."

VR: 03/13/2020; 13:21:49. () "So, we kind of were like, well, we need to put things on hold until we know he's evaluated by the defense experts."

VR: 03/13/2020; 13:21:55. () "So, then we can have a comprehensive..."

VR: 03/13/2020; 13:21:56. () "Well, but since May, I don't know."

VR: 03/13/2020; 13:21:58. () "It's almost been a year."

VR: 03/13/2020; 13:22:00. () "There's nothing we could really..."

VR: 03/13/2020; 13:22:02. () "Well, you could have checked and said, have you gotten it done? Do I have to report?"

VR: 03/13/2020; 13:22:05. () "Well, and that's when I realized that we hadn't..."

VR: 03/13/2020; 13:22:10. () "Done anything?"

VR: 03/13/2020; 13:22:10. () "That nothing had happened to us."

VR: 03/13/2020; 13:22:12. () "It's not even his job to push the case along. It's your job."

VR: 03/13/2020; 13:22:15. () "Right. But, I mean..."

VR: 03/13/2020; 13:22:17. () "In fact, with some difficulty, we have been pushing the case along from the mental health standpoint."

VR: 03/13/2020; 13:22:25. () "But that's been mostly ex parte."

VR: 03/13/2020; 13:22:30. () "We can have him sent back to KCPC."

VR: 03/13/2020; 13:22:32. () "No, I'm not saying we need to do that necessarily."

VR: 03/13/2020; 13:22:34. () "I'm just saying, do you want to just..."

VR: 03/13/2020; 13:22:38. () "I guess the question is, if you get a report back from them and it's not good,"

VR: 03/13/2020; 13:22:41. () "are you going to then look at the court and say, well, we're not going to apply."

VR: 03/13/2020; 13:22:45. () "Do we want our own report? That's what I'm trying to figure out."

VR: 03/13/2020; 13:22:48. () "I'm just from a scheduling standpoint. I'm just trying to figure out."

VR: 03/13/2020; 13:22:52. () "Right."

VR: 03/13/2020; 13:22:55. () "And I'm probably not going to object to whichever option the Commonwealth chooses."

VR: 03/13/2020; 13:23:02. () "I guess without knowing any information, the safest bet is to have him go back to KCPC."

VR: 03/13/2020; 13:23:20. () "He's finished the evaluation but for what we were in court for last week."

VR: 03/13/2020; 13:23:27. () "Which, because of the nature..."

VR: 03/13/2020; 13:23:30. () "And I'm not trying to say I'd like to know what the ex parte situation is..."

VR: 03/13/2020; 13:23:34. () "No."

VR: 03/13/2020; 13:23:36. () "But you share your opinion."

VR: 03/13/2020; 13:23:38. () "Oh, yeah."

VR: 03/13/2020; 13:23:44. () "Oh, no."

VR: 03/13/2020; 13:23:45. () "So the question then becomes, I don't want to ship him off to KCPC."

VR: 03/13/2020; 13:23:49. () "Well, and I don't necessarily either."

VR: 03/13/2020; 13:23:53. () "Mr. Freeman, do you have an idea of when the report will be done?"

VR: 03/13/2020; 13:24:00. () "I could call Dr. Halpern and ask."

VR: 03/13/2020; 13:24:15. () "Yes, we'll be right here at that point."

VR: 03/13/2020; 13:24:21. () "April 17th."

VR: 03/13/2020; 13:24:22. () "And I ask that you all kind of work together."

VR: 03/13/2020; 13:24:25. () "So on April 17th..."

VR: 03/13/2020; 13:24:26. () "And here's the thing, if this gets done before April 17th,"

VR: 03/13/2020; 13:24:30. () "where you all figure out what you're doing,"

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VR: 03/13/2020; 13:24:32. () "do you feel you need to send him off,"

VR: 03/13/2020; 13:24:34. () "Let's not wait until April 17th."

VR: 03/13/2020; 13:24:37. () "Let's do a conference call or do something for the court
so that we can get this written."

VR: 03/13/2020; 13:24:42. () "How does that sound to you?"

VR: 03/13/2020; 13:24:43. () "Sounds like a plan."

VR: 03/13/2020; 13:24:46. () "Great. See we do agree on some things."

VR: 03/13/2020; 13:24:47. () "I know you all I'm impressed."

VR: 03/13/2020; 13:24:49. () "Okay, so status for April 17th."

VR: 03/13/2020; 13:24:51. () "Thank you."

VR: 03/13/2020; 13:24:58. () "All right, next please."

4-2-2020 Bond Hearing

VR: 04/02/2020; 10:51:25. () "I can see..."

VR: 04/02/2020; 10:51:29. () "And this is Bob Friedman."

VR: 04/02/2020; 10:51:31. () "Oh, okay. I can see where you've been now."

VR: 04/02/2020; 10:51:36. () "Okay. Mr. Friedman, he's here for a bond hearing. Go ahead."

VR: 04/02/2020; 10:51:44. () "Okay. We submitted a fairly extensive motion in memorandum."

VR: 04/02/2020; 10:51:51. () "And the Commonwealth has recently submitted a reply."

VR: 04/02/2020; 10:51:56. () "And I think it's very important that we correct one assertion they make that is completely false."

VR: 04/02/2020; 10:52:05. () "And that false assertion is that he fled to Florida."

VR: 04/02/2020; 10:52:10. () "He did not flee. He lived in Florida. He simply returned home."

VR: 04/02/2020; 10:52:15. () "I think that makes all the difference, since they're arguing for a financial bond on that basis."

VR: 04/02/2020; 10:52:25. () "Mr. Cherry is not a young man anymore."

VR: 04/02/2020; 10:52:32. () "And as you can see, he's not at the absolute best of health, not having the ability to practice social distancing."

VR: 04/02/2020; 10:52:42. () "Not just because he's in jail, but because he's less mobile than most of the other inmates and correctional officers."

VR: 04/02/2020; 10:52:53. () "He's a low risk in both categories."

VR: 04/02/2020; 10:52:56. () "He's charged with a serious crime, but I'll point out that there are a couple of really unusual features to this case."

VR: 04/02/2020; 10:53:03. () "Number one, unless there's been a really, really recent development, nobody's ever found the body."

VR: 04/02/2020; 10:53:10. () "Number two, the alleged decedent has indeed disappeared."

VR: 04/02/2020; 10:53:17. () "However, he has been known to disappear for months at a time before."

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- VR: 04/02/2020; 10:53:24. () "So, not only is there a question about who done it, there's a very, very big question about what was done here."
- VR: 04/02/2020; 10:53:39. () "I'm not going to let you argue the case at this point. Okay. Go ahead."
- VR: 04/02/2020; 10:53:49. () "Those are two very important facts, though, about this case."
- VR: 04/02/2020; 10:53:56. () "I think the strength, and I'm not going to do a whole trial here, but the strength of the case against him is a reasonable thing to consider."
- VR: 04/02/2020; 10:54:05. () "So we've got that. We've got the completely false claim that he fled."
- VR: 04/02/2020; 10:54:12. () "And we've got the fact that he is not in the best of health, that he has a low risk rating in both categories."
- VR: 04/02/2020; 10:54:25. () "And we have a very insightful comment by a man who I believe he might have been among the first leaders in pretrial services in the late 70s, Ed Crockett,"
- VR: 04/02/2020; 10:54:42. () "who says that the only real purpose of a financial bond is to keep poor people in jail."
- VR: 04/02/2020; 10:54:49. () "And according to the Abrams case, that's not a legitimate reason for setting the bond."
- VR: 04/02/2020; 10:54:58. () "There are ways of keeping track of him, reporting in."
- VR: 04/02/2020; 10:55:04. () "I'll again note that he's not the most mobile fellow in the world, so he has a lower risk of disappearing than most at this point."
- VR: 04/02/2020; 10:55:13. () "He was not in that condition when he was first charged."
- VR: 04/02/2020; 10:55:19. () "And we still have to get him a neurological examination, exactly the court is aware of all of that, which is not what he's going to do in the jail."
- VR: 04/02/2020; 10:55:30. () "Well, I don't think at this point anybody's going to do a period until the band has been lifted on the six foot and that we're all supposed to be at home."
- VR: 04/02/2020; 10:55:41. () "So I don't think that's going to be an issue."
- VR: 04/02/2020; 10:55:44. () "Ms. Phillips, do you want to add anything quickly?"
- VR: 04/02/2020; 10:55:51. () "Sorry. Good morning, Judge."

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- VR: 04/02/2020; 10:55:53. () "I know you're aware, Your Honor, what we need to consider is the gravity of offense charges past criminal acts and its reasonably anticipated conduct."
- VR: 04/02/2020; 10:56:01. () "The body was not found, but it is the Commonwealth's case, and only the defendant knows what he did with the body."
- VR: 04/02/2020; 10:56:07. () "And all the evidence is overwhelming that he did commit these crimes."
- VR: 04/02/2020; 10:56:10. () "I do agree that there should be some bond set on the count of murder."
- VR: 04/02/2020; 10:56:14. () "I think there's no bond at this time. That's right."
- VR: 04/02/2020; 10:56:16. () "And a typical bond for an offense of this nature would be \$500,000 cash, Your Honor."
- VR: 04/02/2020; 10:56:22. () "At this point..."
- VR: 04/02/2020; 10:56:24. () "Go ahead, Mr. Friedman."
- VR: 04/02/2020; 10:56:25. () "I would reply to that one particular point."
- VR: 04/02/2020; 10:56:29. () "That under the circumstances, especially given that he was originally, once he was accused of murder, appointed public defenders,"
- VR: 04/02/2020; 10:56:40. () "and that he has been in jail for a significant time,"
- VR: 04/02/2020; 10:56:44. () "we can take it for granted that if he's not penniless, he's certainly unable to come close to posting such a bond."
- VR: 04/02/2020; 10:56:54. () "And that's one legitimate consideration."
- VR: 04/02/2020; 10:56:56. () "In fact, it's so far above his means that I would argue that it is unconstitutionally high."
- VR: 04/02/2020; 10:57:02. () "All right, the court's looked at everything, both Ms. Phillips and Mr. Friedman and Mr. Beck."
- VR: 04/02/2020; 10:57:07. () "I reviewed the file. I did note that it did not appear to the court that he had absconded to Florida."
- VR: 04/02/2020; 10:57:13. () "It looked like he had come up from Florida to allegedly commit this crime,"
- VR: 04/02/2020; 10:57:18. () "and just returned to where he had originally lived with his wife."
- VR: 04/02/2020; 10:57:23. () "The court does take into that account, though, that there had to be an issue warranted,"

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VR: 04/02/2020; 10:57:28. () "and he had to be located in Florida, and that he isn't a resident of this area."

VR: 04/02/2020; 10:57:34. () "He lives, I guess, in Florida."

VR: 04/02/2020; 10:57:36. () "The court also looks at the seriousness of the crime, and I have looked at his record and the situation."

VR: 04/02/2020; 10:57:43. () "The court, at this time, is going to set a bond for the murder charge, which up until now has not had one."

VR: 04/02/2020; 10:57:50. () "And at this point in time, the court's going to set it at \$50,000 full cash."

VR: 04/02/2020; 10:57:54. () "Obviously, I assume he has a boat or something in Florida."

VR: 04/02/2020; 10:57:59. () "I mean, he was residing in Key West, but that's what the court's going to do at this point."

VR: 04/02/2020; 10:58:07. () "So, I've set a bond of \$50,000 full cash on the murder."

VR: 04/02/2020; 10:58:12. () "Thank you, Your Honor."

VR: 04/02/2020; 10:58:13. () "Okay, Mr. Cherry, did you hear?"

VR: 04/02/2020; 10:58:17. () "Hey."

VR: 04/02/2020; 10:58:19. () "Did you hear?"

VR: 04/02/2020; 10:58:22. () "You have a bond of \$50,000."

VR: 04/02/2020; 10:58:24. () "Okay."

VR: 04/02/2020; 10:58:24. () "Okay?"

VR: 04/02/2020; 10:58:25. () "Okay."

VR: 04/02/2020; 10:58:26. () "All right, you take care."

VR: 04/02/2020; 10:58:29. () "You guys, be safe." [Cherry stuttering]

VR: 04/02/2020; 10:58:32. () "You, too."

VR: 04/02/2020; 10:58:33. () "Bye."

10-29-2020 Status Hearing

VR: 10/29/2020; 11:30:37. () "Alright, Mr. Cherry, can you see the court as well as your attorney, Mr. Beck?" [Cherry waves]

VR: 10/29/2020; 11:30:43. () "Alright, and we are on for a status, is that correct, Mr. Beck?"

VR: 10/29/2020; 11:30:49. () "That's correct, Your Honor. And Mr. Friedman has asked me to pass this case to the court's next date, as far as the date you're scheduling, which I believe would be February 4th of next year."

VR: 10/29/2020; 11:31:02. () "Now, this is a 2018 case, though. How much longer?"

VR: 10/29/2020; 11:31:06. () "It is, Judge. This is a homicide case. The charge is murder here."

VR: 10/29/2020; 11:31:12. () "There are some remaining questions about Mr. Cherry's competency to stand trial."

VR: 10/29/2020; 11:31:18. () "Dr. Houchin is involved in our part, and he has recommended some further evaluations, and that requires us to seek additional expert hires."

VR: 10/29/2020; 11:31:29. () "And Mr. Friedman is working on that, Judge, and intends to be presenting those types of funding requests to the court with due speed."

VR: 10/29/2020; 11:31:40. () "Alright, well, Ms. Parker, do you have anything you want to say?"

VR: 10/29/2020; 11:31:45. () "No, Judge. It was CW understanding that we were all still waiting for the defense expert to be able to evaluate Mr. Cherry, and I think that until that happens, we can't really do anything, so that's fine."

VR: 10/29/2020; 11:32:01. () "Alright, so we'll set it for February 4th at 10 a.m., unless I hear otherwise."

VR: 10/29/2020; 11:32:05. () "Thank you very much, Your Honor."

VR: 10/29/2020; 11:32:08. () "Alright, thank you. It's good to see you."

VR: 10/29/2020; 11:32:09. () "Thank you, Judge."

VR: 10/29/2020; 11:32:10. () "Alright, thanks, Mr. Cherry. You take care."

2-4-2021 Status Hearing

VR: 02/04/2021; 10:06:18. () "Well, we need Miss Cherry."

VR: 02/04/2021; 10:06:21. () "Oh, Mr. Cherry."

VR: 02/04/2021; 10:06:22. () "Oh, Mr. Cherry, I'm sorry, yes."

VR: 02/04/2021; 10:06:26. () "Great, thank you. And after that, it'll be George Hill
and then Justin Elam."

VR: 02/04/2021; 10:06:36. () "After Cherry, it will be George Hill and then Justin
Elam."

VR: 02/04/2021; 10:06:42. () "Great, thank you."

VR: 02/04/2021; 10:06:49. () "We have Hill and Elam."

VR: 02/04/2021; 10:07:12. () "Allie, if you ever see Woodford County pop up, let me
know."

VR: 02/04/2021; 10:07:18. () "Okay. I'm going to check to see if they transferred him
to Fayette County."

VR: 02/04/2021; 10:07:41. () "Sorry, Your Honor, for the delay, Mr. Cherry is in a
wheelchair, so it's taking a little bit longer to get him."

VR: 02/04/2021; 10:07:46. () "I understand."

VR: 02/04/2021; 10:07:52. () "Who's the prosecutor on this case?"

VR: 02/04/2021; 10:07:55. () "It's me, Judge. Miss Morgan."

VR: 02/04/2021; 10:07:57. () "Okay, Miss Morgan."

VR: 02/04/2021; 10:08:02. () "And this one's on for status?"

VR: 02/04/2021; 10:08:04. () "Yes, Your Honor."

VR: 02/04/2021; 10:08:05. () "Do you all have a date you'd want to go to, the two of
you?"

VR: 02/04/2021; 10:08:10. () "Well, I was going to ask the court, what is the date the
court is continuing cases to,"

VR: 02/04/2021; 10:08:19. () "in anticipation of being advanced, if there's a plea
agreement?"

VR: 02/04/2021; 10:08:24. () "Allie?"

VR: 02/04/2021; 10:08:27. () "I think we're getting close to April."

VR: 02/04/2021; 10:08:31. () "Yeah."

VR: 02/04/2021; 10:08:32. () "April?"

VR: 02/04/2021; 10:08:34. () "April 8th."

VR: 02/04/2021; 10:08:35. () "April 8th work?"

VR: 02/04/2021; 10:08:37. () "Yes, it does, Your Honor."

VR: 02/04/2021; 10:08:39. () "Miss Morgan, is that okay with you?"

VR: 02/04/2021; 10:08:42. () "That's fine, Judge."

VR: 02/04/2021; 10:08:43. () "Okay."

VR: 02/04/2021; 10:08:46. () "I filed an ex parte motion, Your Honor."

VR: 02/04/2021; 10:08:51. () "It did work the option of giving us a hearing."

VR: 02/04/2021; 10:08:55. () "There have been some problems with the case that need to be discussed."

VR: 02/04/2021; 10:09:00. () "When did you file that, Mr. Friedman?"

VR: 02/04/2021; 10:09:03. () "I got acknowledgment of it yesterday and sent a courtesy copy to the court's chambers."

VR: 02/04/2021; 10:09:10. () "Well, the court hasn't seen it yet."

VR: 02/04/2021; 10:09:14. () "When you say acknowledgment, from whom?"

VR: 02/04/2021; 10:09:19. () "Basically from the electronic filing apparatus."

VR: 02/04/2021; 10:09:22. () "Well, I don't get it in the electronic filing."

VR: 02/04/2021; 10:09:24. () "I haven't seen it in the electronic filing."

VR: 02/04/2021; 10:09:27. () "And then, did you just mail it yesterday or hand deliver it?"

VR: 02/04/2021; 10:09:31. () "Neither, Your Honor."

VR: 02/04/2021; 10:09:33. () "It was filed electronically and emailed to Miss Dean."

VR: 02/04/2021; 10:09:37. () "Miss Dean says she doesn't have it."

VR: 02/04/2021; 10:09:40. () "She's sitting right here."

VR: 02/04/2021; 10:09:42. () "Can you double check?"

VR: 02/04/2021; 10:09:43. () "Well, in that case, Your Honor, I will email you a courtesy copy later today."

VR: 02/04/2021; 10:09:47. () "That'd be great. Thank you."

VR: 02/04/2021; 10:09:48. () "And then I'll look at it and I'll get back in touch with everybody."

VR: 02/04/2021; 10:09:52. () "There's Mr. Cherry."

VR: 02/04/2021; 10:09:55. () "Yes, I think the court suggested April 8th and that is fine with us."

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VR: 02/04/2021; 10:10:02. () "All right. Okay."

VR: 02/04/2021; 10:10:05. () "There are some things to discuss ex parte."

VR: 02/04/2021; 10:10:07. () "Absolutely. And I'll get on that as soon as I see it."

VR: 02/04/2021; 10:10:11. () "All right, now, Mr. Cherry, we're coming back on April the 8th at 10 a.m."

VR: 02/04/2021; 10:10:18. () "Do you hear me, Mr. Cherry?"

VR: 02/04/2021; 10:10:21. () "I think he's... yes, he does."

VR: 02/04/2021; 10:10:26. () "Okay. All right."

VR: 02/04/2021; 10:10:28. () "All right, well, I'll see everybody on April the 8th, if not sooner."

VR: 02/04/2021; 10:10:31. () "Okay, thank you."

VR: 02/04/2021; 10:10:32. () "Thank you, Your Honor. That's all I have this morning."

VR: 02/04/2021; 10:10:34. () "Great, and thank you for the heads up, Mr. Freeman."

VR: 02/04/2021; 10:10:36. () "I'll check on that."

VR: 02/04/2021; 10:10:37. () "You're welcome."

VR: 02/04/2021; 10:10:38. () "All right. Is that all you have, Miss Morgan?"

VR: 02/04/2021; 10:10:42. () "Yes, Judge."

VR: 02/04/2021; 10:10:43. () "All right. It's good to see you. Take care."

VR: 02/04/2021; 10:10:45. () "Thank you, Judge."

4-8-2021 Status Hearing

VR: 04/08/2021; 10:40:07. () "There's Mr. Freedman. I was going to defer to Mr. Freedman. He's lead counsel in this matter."

VR: 04/08/2021; 10:40:11. () "Alright, Mr. Freedman, we have Mr. Cherry is on the screen. Mr. Cherry?"

VR: 04/08/2021; 10:40:17. () "I don't think he... Mr. Cherry, can you see the court? I don't know that he wants to look..."

VR: 04/08/2021; 10:40:23. () "Alright, good. He sees us. Alright, Mr. Freedman, what are we doing at this time?"

VR: 04/08/2021; 10:40:28. () "Okay, we have an expert who is going to be meeting with Mr. Cherry next Saturday."

VR: 04/08/2021; 10:40:36. () "Great."

VR: 04/08/2021; 10:40:37. () "I expect we will require some time after that. What's the date that the court is choosing to place cases on?"

VR: 04/08/2021; 10:40:48. () "Sorry, go ahead."

VR: 04/08/2021; 10:40:50. () "No, I'm sorry, Mr. Freedman. I missed what you said because somebody's talking because they're not on mute."

VR: 04/08/2021; 10:40:57. () "So I missed what you said, what date you wanted to go to."

VR: 04/08/2021; 10:41:02. () "Oh, I was asking which date the court was defaulting to today for get it known or..."

VR: 04/08/2021; 10:41:13. () "Do you want to do May or June?"

VR: 04/08/2021; 10:41:14. () "June. They can always advance."

VR: 04/08/2021; 10:41:17. () "June 3rd?"

VR: 04/08/2021; 10:41:19. () "June 3rd work, but you can always advance?"

VR: 04/08/2021; 10:41:22. () "Yes."

VR: 04/08/2021; 10:41:24. () "Alright, I'm glad to see you're making progress, though, with getting everything lined up."

VR: 04/08/2021; 10:41:30. () "Okay, Mr. Cherry, I'm fully vaccinated now, so I'll see you next week."

VR: 04/08/2021; 10:41:35. () "Oh, great. Great. Good to hear, Mr. Freedman."

VR: 04/08/2021; 10:41:39. () "Alright, thank you, Mr. Cherry. Take care."

6-3-2021 Status Hearing

VR: 06/03/2021; 10:51:25. () "Alright, in the matter before the court, it's Kamloops v. Willow Cherry, 18 CR 1114."

VR: 06/03/2021; 10:51:31. () "Mr. Friedman, your client is on the screen and I take it, can you see Mr. Friedman?"

VR: 06/03/2021; 10:51:39. () "Do you see Mr. Friedman in the court?"

VR: 06/03/2021; 10:51:44. () "Yeah. What are we doing, Mr. Friedman?"

VR: 06/03/2021; 10:51:47. () "Your Honor, I'd like to put this on for, let's say, the 5th of August."

VR: 06/03/2021; 10:51:56. () "I'm checking."

VR: 06/03/2021; 10:52:00. () "That works?"

VR: 06/03/2021; 10:52:01. () "Uh-huh."

VR: 06/03/2021; 10:52:02. () "Alright, August the 5th, that'll be at 9 a.m. in person."

VR: 06/03/2021; 10:52:07. () "Okay. Very well."

VR: 06/03/2021; 10:52:08. () "Got it. We'll see you then."

VR: 06/03/2021; 10:52:13. () "Alright. Thank you, Mr. Friedman."

8-5-2021 Status Hearing

VR: 08/05/2021; 10:04:48. () "Who's your co-counsel on this?"

VR: 08/05/2021; 10:04:50. () "Well, I don't have one right now."

VR: 08/05/2021; 10:04:53. () "But you did have one."

VR: 08/05/2021; 10:04:55. () "I've got to get one."

VR: 08/05/2021; 10:04:56. () "I was going to say, you did have Mr. Beck, didn't you?"

VR: 08/05/2021; 10:04:58. () "I did have Mr. Beck. Mr. Beck, of course, that's..."

VR: 08/05/2021; 10:05:01. () "He's moved on to the Rocky Mountain High."

VR: 08/05/2021; 10:05:04. () "Yes. All right, and the matter before the court is CW
versus Willow Cherry. Mr. Cherry is in court."

VR: 08/05/2021; 10:05:10. () "I'm over here, Mr. Cherry."

VR: 08/05/2021; 10:05:14. () "With his attorney, Mr. Friedman. And what are we
doing at this time, gentlemen?"

VR: 08/05/2021; 10:05:17. () "Well, I would like to pass this to September 9th so I can
scrounge around and get a second chair attorney."

VR: 08/05/2021; 10:05:26. () "Allie? September 9th? All right, September the 9th,
then."

VR: 08/05/2021; 10:05:31. () "Okay, thank you."

VR: 08/05/2021; 10:05:32. () "And that'll be at 9 a.m."

VR: 08/05/2021; 10:05:34. () "All right."

VR: 08/05/2021; 10:05:35. () "Okay..."

9-9-2021 Status Hearing

VR: 09/09/2021; 13:54:41. () "And so, did not get to talk to him. Wow, are you better? You've got a bad cough."

VR: 09/09/2021; 13:54:46. () "Yeah, apparently that's the neural circuit that had so much practice of coughing it doesn't know that it no longer needs to."

VR: 09/09/2021; 13:54:57. () "That's probably true. It becomes a habit."

VR: 09/09/2021; 13:55:01. () "Yeah, yeah, I mean, the 37 cent course of antibiotics knocked it out that week."

VR: 09/09/2021; 13:55:11. () "Alright, that's a tough one. Alright, that's the 30th for Mr. Cherry as well. Are we done?"

VR: 09/09/2021; 13:55:17. () "I think we are done, Your Honor."

VR: 09/09/2021; 13:55:18. () "Alright, thank you very much, Mr. Friedman. Is that the docket? Do we have any not to cover?"

9-30-2021 Status Hearing T

VR: 09/30/2021; 09:43:00. () "I'm good. Who do you have today?"

VR: 09/30/2021; 09:43:02. () "Okay, first of all, in the case of Willow Cherry, we've submitted..."

VR: 09/30/2021; 09:43:05. () "I've got the docket passed already and I've already signed it."

VR: 09/30/2021; 09:43:07. () "Okay."

11-18-2021 Status Hearing

VR: 11/18/2021; 09:48:10. () "Okay, could we go off the record briefly?"

VR: 11/18/2021; 09:48:13. () "Off the record?"

VR: 11/18/2021; 09:48:15. () "Yeah."

VR: 11/18/2021; 09:48:17. () "Well, I'm not going to go off the record, but we've got the news."

VR: 11/18/2021; 09:48:21. () "Okay, I have had trouble finding a second chair for Mr. Cherry's case."

VR: 11/18/2021; 09:48:26. () "Seems when I ask people, they say they're on their way out."

VR: 11/18/2021; 09:48:30. () "Well, I've decided I am too."

VR: 11/18/2021; 09:48:32. () "Are you really?"

VR: 11/18/2021; 09:48:33. () "And, uh, so..."

VR: 11/18/2021; 09:48:36. () "When are you on your way out?"

VR: 11/18/2021; 09:48:37. () "Pardon me?"

VR: 11/18/2021; 09:48:37. () "When are you on your way out?"

VR: 11/18/2021; 09:48:39. () "I'm sorry, ma'am, I can't hear you."

VR: 11/18/2021; 09:48:41. () "When are you on your way out?"

VR: 11/18/2021; 09:48:44. () "I'm looking at sometime in January. February, if things don't go well."

VR: 11/18/2021; 09:48:49. () "Okay, uh, and who's... what we lost? Was it Mr. Duval that was with you on this?"

VR: 11/18/2021; 09:48:59. () "Um, this is something that I had had with, um..."

VR: 11/18/2021; 09:49:02. () "Peyton Sands?"

VR: 11/18/2021; 09:49:04. () "With, uh, Mr. Beck."

VR: 11/18/2021; 09:49:06. () "That's right, Warren Beck."

VR: 11/18/2021; 09:49:06. () "And I've been looking for a second chair."

VR: 11/18/2021; 09:49:12. () "And, as luck seems to be, people are on their way out and don't want to make the commitment, and I don't blame them."

VR: 11/18/2021; 09:49:19. () "I don't either."

VR: 11/18/2021; 09:49:21. () "And, basically, I've had enough."

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VR: 11/18/2021; 09:49:23. () "I understand."

VR: 11/18/2021; 09:49:24. () "Uh, so, I wanted to let you know why I don't think a lot's going to be done anytime soon."

VR: 11/18/2021; 09:49:33. () "Let's put this out until February."

VR: 11/18/2021; 09:49:35. () "I'm sorry?"

VR: 11/18/2021; 09:49:36. () "I'd like to put it out until February, give you time to find somebody."

VR: 11/18/2021; 09:49:39. () "If you find somebody that gets transferred, then we can advance it."

VR: 11/18/2021; 09:49:44. () "Very well."

VR: 11/18/2021; 09:49:45. () "Is that okay with you?"

VR: 11/18/2021; 09:49:46. () "It works."

VR: 11/18/2021; 09:49:47. () "I'm sorry to hear what you're telling me, but..."

VR: 11/18/2021; 09:49:49. () "I'm sorry I have to say it."

VR: 11/18/2021; 09:49:51. () "I know, I know."

VR: 11/18/2021; 09:49:53. () "Well, I understand. I can understand, Mr. Freeman. That's all I can tell you."

VR: 11/18/2021; 09:49:58. () "Okay, yes."

VR: 11/18/2021; 09:49:58. () "I understand totally."

VR: 11/18/2021; 09:50:00. () "All right, February date?"

VR: 11/18/2021; 09:50:02. () "First part of February, please."

VR: 11/18/2021; 09:50:05. () "February 3rd or 10th?"

VR: 11/18/2021; 09:50:06. () "3rd or 10th."

VR: 11/18/2021; 09:50:07. () "10th."

VR: 11/18/2021; 09:50:08. () "10th. February 10th. Thank you."

VR: 11/18/2021; 09:50:11. () "All right. Next, please."

VR: 11/18/2021; 09:50:17. () "All right, thank you."

VR: 11/18/2021; 09:50:18. () "Mr. Paisley."

5-12-2022 Status Hearing

VR: 05/12/2022; 10:08:38. (**bench conference**) "Mr. Cherry keeps writing...I sent you all copies of everything. I don't mind his really bad jokes."

VR: 05/12/2022; 10:08:44. () "I'm a little worried. What are we going to do with him?"

VR: 05/12/2022; 10:08:46. () "We had a pre-trial. I don't think... it did not look hopeful for a resolution."

VR: 05/12/2022; 10:08:53. () "So I'm still getting everything together. There's some investigation that hasn't been done that I've started undertaking."

VR: 05/12/2022; 10:09:00. () "And the other thing is, I guess Dr. Houchin has been with Mr. Cherry multiple times,"

VR: 05/12/2022; 10:09:06. () "but I don't have any information from that. So I'm waiting to get the information from Dr. Houchin."

VR: 05/12/2022; 10:09:11. () "I know, but what am I going to do? When he comes out here, he keeps telling me he wants to go to get it done."

VR: 05/12/2022; 10:09:18. () "What am I supposed to do?"

VR: 05/12/2022; 10:09:21. () "Ms. Morgan was anticipating a docket pass."

VR: 05/12/2022; 10:09:24. () "Right, well, I mean, I could docket pass it, but we were just going to ask for a date in July, the July 14 day."

VR: 05/12/2022; 10:09:30. () "Well, we could, but... I mean, you can bring him out, but you know he's going to want to talk forever,"

VR: 05/12/2022; 10:09:35. () "and you know he's also going to ask me why I'm not making you do anything."

VR: 05/12/2022; 10:09:39. () "Well, I think he knows the plan."

VR: 05/12/2022; 10:09:42. () "Okay, well then bring him out. I hope springs a time."

VR: 05/12/2022; 10:10:05. (**end bench**) "The matter before the court is Commonwealth v. Willow Cherry. He's in court with his attorney, Mr. Tracy."

VR: 05/12/2022; 10:10:12. () "And we have Ms. Caneer for the Commonwealth. What are we doing today, Mr. Tracy?"

VR: 05/12/2022; 10:10:16. () "Judge, just wanted to inform the court we had a pre-trial conference date with Ms. Parker."

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VR: 05/12/2022; 10:10:20. () "We are planning on setting a trial date, but there's a couple bits of investigation left to accomplish."

VR: 05/12/2022; 10:10:26. () "I think Mr. Cherry knows that as well. We've got to get up with a doctor."

VR: 05/12/2022; 10:10:30. () "We've got to talk to a couple of the witnesses. So we're asking today for July 14th."

VR: 05/12/2022; 10:10:34. () "And with any luck, we'll be setting our trial date then."

VR: 05/12/2022; 10:10:36. () "Alright. Sounds like a plan."

VR: 05/12/2022; 10:10:39. () "Can I talk? You're here, its your court."

VR: 05/12/2022; 10:10:44. () "Is this a competency game?"

VR: 05/12/2022; 10:10:46. () "No, today you're just visiting me to say hello."

VR: 05/12/2022; 10:10:49. () "Oh, hey, how are you?"

VR: 05/12/2022; 10:10:51. () "Yeah."

VR: 05/12/2022; 10:10:55. () "So, real quick, I guess I fell asleep or had a seizure or something at some point."

VR: 05/12/2022; 10:11:01. () "And I just wanted to apologize for that."

VR: 05/12/2022; 10:11:06. () "I guess we're waiting for Tim Houchin. I don't know why we have to wait so long."

VR: 05/12/2022; 10:11:12. () "I mean, is there any way we can speed this up in vain?"

VR: 05/12/2022; 10:11:15. () "I've asked for a speedy trial."

VR: 05/12/2022; 10:11:17. () "Well, you're going to get a trial date next time you come."

VR: 05/12/2022; 10:11:20. () "Which will make him have to have it all done."

VR: 05/12/2022; 10:11:23. () "So, is there any way we can move that up?"

VR: 05/12/2022; 10:11:26. () "No, that's about the next available."

VR: 05/12/2022; 10:11:29. () "If we get it done early, we can move it up for today."

VR: 05/12/2022; 10:11:32. () "Yeah, if you get everything done before, then you could ask to advance it."

VR: 05/12/2022; 10:11:37. () "And I'd put it on a little earlier."

VR: 05/12/2022; 10:11:39. () "Okay."

VR: 05/12/2022; 10:11:41. () "So, how long is that from now?"

VR: 05/12/2022; 10:11:43. () "I'm sorry to take your time."

VR: 05/12/2022; 10:11:45. () "That's alright."

VR: 05/12/2022; 10:11:45. () "Four years now?"

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VR: 05/12/2022; 10:11:47. () "I know. It's just a couple months."

VR: 05/12/2022; 10:11:51. () "Six or seven weeks?"

VR: 05/12/2022; 10:11:52. () "Yeah."

VR: 05/12/2022; 10:11:53. () "Okay."

VR: 05/12/2022; 10:11:54. () "Well, it's a captive audience is at least an audience."

VR: 05/12/2022; 10:12:01. () "What about that? Is that something I need to say?"

VR: 05/12/2022; 10:12:06. () "So, did you do that? Or is that a yay or nay?"

VR: 05/12/2022; 10:12:08. () "That's what you can call it."

VR: 05/12/2022; 10:12:10. () "Well, who do we have here that's representing so I can speak with somebody?"

VR: 05/12/2022; 10:12:15. () "That's for us to talk to later."

VR: 05/12/2022; 10:12:17. () "I'm not going to."

VR: 05/12/2022; 10:12:22. () "So, who was the first counsel that I hired?"

VR: 05/12/2022; 10:12:25. () "That's something I need to know."

VR: 05/12/2022; 10:12:27. () "Do you have that information?"

VR: 05/12/2022; 10:12:31. () "Was his first? I thought his first might have been..."

VR: 05/12/2022; 10:12:33. () "2018."

VR: 05/12/2022; 10:12:34. () "Was it Clay?"

VR: 05/12/2022; 10:12:35. () "I had a paid attorney as well."

VR: 05/12/2022; 10:12:38. () "Did you have Shannon?"

VR: 05/12/2022; 10:12:39. () "Yes."

VR: 05/12/2022; 10:12:41. () "Sorry."

VR: 05/12/2022; 10:12:42. () "Did you have Shannon Brooks?"

VR: 05/12/2022; 10:12:45. () "Not yet."

VR: 05/12/2022; 10:12:47. () "Oh, you want Shannon Brooks."

VR: 05/12/2022; 10:12:50. () "She answers the phone as able to."

VR: 05/12/2022; 10:12:58. () "Yeah, I came in with a paid attorney. I can't afford \$60,000."

VR: 05/12/2022; 10:13:06. () "Did you have Abe Mashni?"

VR: 05/12/2022; 10:13:08. () "Abe Mashni?"

VR: 05/12/2022; 10:13:10. () "Yeah."

VR: 05/12/2022; 10:13:14. () "Can you write his name down for me, please?"

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VR: 05/12/2022; 10:13:18. () "He's got it. Mr. Hornback and Mr. Mashni."

VR: 05/12/2022; 10:13:24. () "Oh, and jury instructions. How do I get those?"

VR: 05/12/2022; 10:13:27. () "Well, we haven't done them yet."

VR: 05/12/2022; 10:13:29. () "Okay."

VR: 05/12/2022; 10:13:30. () "They'll do that as soon as we set a trial date. They'll start working on them."

VR: 05/12/2022; 10:13:34. () "But you don't really do those until you get sorted to trial because you have to wait to see what the evidence is before you finish your instructions."

VR: 05/12/2022; 10:13:41. () "Right."

VR: 05/12/2022; 10:13:42. () "Right. Okay."

VR: 05/12/2022; 10:13:43. () "So, I really appreciate your time."

VR: 05/12/2022; 10:13:45. () "It's nice to see you."

VR: 05/12/2022; 10:13:47. () "Yeah."

VR: 05/12/2022; 10:13:47. () "Yeah, and you're right. Pizza jokes are cheesy."

VR: 05/12/2022; 10:13:52. () "Pardon?"

VR: 05/12/2022; 10:13:52. () "Pizza jokes are cheesy."

VR: 05/12/2022; 10:13:54. () "Yes, they are. That they are."

VR: 05/12/2022; 10:13:57. () "I could tell you a tennis joke, but I don't want to make a racket. Too loud, too loud."

VR: 05/12/2022; 10:14:00. () "A racket, I know."

VR: 05/12/2022; 10:14:02. () "You guys have a good day."

VR: 05/12/2022; 10:14:04. () "Thank you."

7-14-2022 Status Hearing

VR: 07/14/2022; 11:42:24. () "Alright, who do you have now?"

VR: 07/14/2022; 11:42:25. () "Two more. The next one is Willow Cherry."

VR: 07/14/2022; 11:42:29. () "Yes, he wrote me a letter."

VR: 07/14/2022; 11:42:30. () "Yeah, I saw. I believe they have him downstairs. We are just passing him."

VR: 07/14/2022; 11:42:37. () "I've talked to Ms. Parker. We're still getting some information together. So if we could go to September 1st."

VR: 07/14/2022; 11:42:41. () "September 1st, fine for Willow Cherry."

VR: 07/14/2022; 11:42:44. () "I will tell you that he did send me the letter. Did you all get a copy of this letter?"

VR: 07/14/2022; 11:42:49. () "I got a copy of the letter. I don't know if it's the same one or not."

VR: 07/14/2022; 11:42:53. () "Well, I'll put it in the file. It will be in the file for both the Commonwealth and the Defense to See."

VR: 07/14/2022; 11:43:07. () "I do note that he actually, he must be doing research in there because he came across a civil case that dealt with..."

VR: 07/14/2022; 11:43:18. () "and he talks about it in here that I was involved in."

VR: 07/14/2022; 11:43:21. () "I didn't see that letter then."

VR: 07/14/2022; 11:43:23. () "Yeah, but I find that... I was kind of impressed."

VR: 07/14/2022; 11:43:27. () "I don't know what he's reading in there, but it's pretty thorough."

VR: 07/14/2022; 11:43:31. () "Alright, we got that then. Anything else, Mr. Tracy?"

VR: 07/14/2022; 11:43:34. () "Finally, the last one is..."

9-1-2022 Status Hearing

VR: 09/01/2022; 09:35:09. () "Yes, I'm just filling in for Mr. Tracy today, and he's just asking..."

VR: 09/01/2022; 09:35:13. () "Cherry was not transported from the jail."

VR: 09/01/2022; 09:35:16. () "He wasn't."

VR: 09/01/2022; 09:35:18. () "No, they hadn't gotten him into transport yet, and so..."

VR: 09/01/2022; 09:35:22. () "What day are you coming back?"

VR: 09/01/2022; 09:35:24. () "Asking for October 13th."

VR: 09/01/2022; 09:35:27. () "October 13th. All right, so October 13th."

VR: 09/01/2022; 09:35:30. () "Well, we could... you know, he writes all of us regularly, and we always have to discuss the jokes."

VR: 09/01/2022; 09:35:39. () "I think the most recent one that we all voted was his. One of his better was the banana."

VR: 09/01/2022; 09:35:45. () "You know, and why did he go to hospital? He wasn't peeling well."

VR: 09/01/2022; 09:35:53. () "Aren't you sorry you don't have Willow Cherry as a client?"

VR: 09/01/2022; 09:35:56. () "I mean, sometimes, yes."

VR: 09/01/2022; 09:36:00. () "Next, I have number 27 on your docket, Colin Michael Hurt."

VR: 09/01/2022; 09:36:04. () "All right, what are we doing on that matter?"

VR: 09/01/2022; 09:36:06. () "Your Honor, this is on for a change of course."

12-22-2022 Status Hearing

VR: 12/22/2022; 12:09:06. () "Cherry."

VR: 12/22/2022; 12:09:29. () "Hello Willow, how are you?"

VR: 12/22/2022; 12:09:31. () "As long as you guys are okay."

VR: 12/22/2022; 12:09:34. () "We're okay. You look good."

VR: 12/22/2022; 12:09:36. () "Then I'm okay."

VR: 12/22/2022; 12:09:37. () "You look good. I enjoy your letters."

VR: 12/22/2022; 12:09:39. () "Oh well, I'm glad somebody does."

VR: 12/22/2022; 12:09:43. () "I do. I enjoy them. We read them. I read them."

VR: 12/22/2022; 12:09:46. () "I'm so glad you're smiling."

VR: 12/22/2022; 12:09:48. () "That makes me feel better."

VR: 12/22/2022; 12:09:50. () "You're heard."

VR: 12/22/2022; 12:09:52. () "In Mr. Cherry's case, I believe that we are going to be asking the court to set a competency hearing."

VR: 12/22/2022; 12:09:59. () "I think that prior to that, we have some information that we're going to give to the Commonwealth."

VR: 12/22/2022; 12:10:05. () "And we also may have a little bit of follow up with our own doctor."

VR: 12/22/2022; 12:10:08. () "And I believe that the Commonwealth will probably ask the court to contemplate case PC."

VR: 12/22/2022; 12:10:14. () "I know that they have done some of their meetings recently, telephonically or virtually."

VR: 12/22/2022; 12:10:20. () "My hope is maybe they'll be able to do that with Mr. Cherry."

VR: 12/22/2022; 12:10:25. () "I mean, he is certainly capable of interacting with someone on a virtual setting."

VR: 12/22/2022; 12:10:31. () "Absolutely."

VR: 12/22/2022; 12:10:32. () "Some people, I don't think they can."

VR: 12/22/2022; 12:10:36. () "Although, with his charge, now that I'm saying it out loud,"

VR: 12/22/2022; 12:10:39. () "I think I remember them saying they would rather have him in person."

VR: 12/22/2022; 12:10:44. () "But I guess we can find out what they do."

VR: 12/22/2022; 12:10:47. () "That's up to them."

VR: 12/22/2022; 12:10:48. () "So the plan will be to do that in the near future."

VR: 12/22/2022; 12:10:52. () "I don't know if we want to go ahead and set a date for that hearing or if we want to get those things..."

VR: 12/22/2022; 12:10:57. () "I'd like to get everything put in place to let me see what you are contemplating, what you all have."

VR: 12/22/2022; 12:11:04. () "That would be fine."

VR: 12/22/2022; 12:11:04. () "And then we'll set it as quickly as possible."

VR: 12/22/2022; 12:11:07. () "Should we order..."

VR: 12/22/2022; 12:11:10. () "Mr. Morgan, I don't know if he is anticipating this, based on the note that I have."

VR: 12/22/2022; 12:11:15. () "I guess I would ask that we get an order for KCPC so we can get that ball rolling."

VR: 12/22/2022; 12:11:23. () "Well, I'm okay with that, but I'm hoping we don't have to send him off, that we can work something else out on KCPC."

VR: 12/22/2022; 12:11:31. () "Right, and I'm ready to talk to them."

VR: 12/22/2022; 12:11:33. () "I don't disagree, just the line is so long that I'd rather get him..."

VR: 12/22/2022; 12:11:39. () "Might as well get out of the line."

VR: 12/22/2022; 12:11:40. () "Yeah, I'm with Mr. Judge on that. I don't think it hurts."

VR: 12/22/2022; 12:11:43. () "And if we want to withdraw it later, that doesn't hurt anybody."

VR: 12/22/2022; 12:11:46. () "All right, we can do an order KCPC evaluation here."

VR: 12/22/2022; 12:11:52. () "To be done here."

VR: 12/22/2022; 12:11:54. () "Is the previous visit null and void or something?"

VR: 12/22/2022; 12:11:58. () "Not null and void, it's just..."

VR: 12/22/2022; 12:12:00. () "Well, it's just that you've made such wonderful progress."

VR: 12/22/2022; 12:12:03. () "Right."

VR: 12/22/2022; 12:12:04. () "It's outdated."

VR: 12/22/2022; 12:12:05. () "Okay."

VR: 12/22/2022; 12:12:07. () "It's expired."

VR: 12/22/2022; 12:12:08. () "Okay."

VR: 12/22/2022; 12:12:09. () "Same reason that I think Dr. Altschmidt will be talking to you again, staleness and all that..."

VR: 12/22/2022; 12:12:14. () "But that's okay, you don't mind talking, do you?"

VR: 12/22/2022; 12:12:17. () "No, no, I don't at all."

VR: 12/22/2022; 12:12:21. () "So whatever date the court thinks, we'll be back and have a lot more of this figured out."

VR: 12/22/2022; 12:12:26. () "Well, do you want to come back in a February date?"

VR: 12/22/2022; 12:12:28. () "Always advancing it if you need to see me ahead of time so we can do something."

VR: 12/22/2022; 12:12:32. () "Or if you even need to do it off doc... I mean do it off the regular motion hour."

VR: 12/22/2022; 12:12:37. () "All right, so..."

VR: 12/22/2022; 12:12:38. () "We can take that ninth day for now."

VR: 12/22/2022; 12:12:40. () "All right, we'll take the ninth day."

VR: 12/22/2022; 12:12:41. () "If we can get things figured out earlier, we'll come see you sooner."

VR: 12/22/2022; 12:12:43. () "All right, perfect. Got it."

VR: 12/22/2022; 12:12:45. () "Okay."

VR: 12/22/2022; 12:12:46. () "All right, you take care of yourself."

VR: 12/22/2022; 12:12:47. () "I'm doing the best I can. Thank you guys so much."

VR: 12/22/2022; 12:12:50. () "Thank you, Judge."

VR: 12/22/2022; 12:12:50. () "All right, take care. Bye, Mr. Cherry."

VR: 12/22/2022; 12:12:53. () "Bye."

VR: 12/22/2022; 12:12:54. () "And I think everything else I have, I have taken care of."

VR: 12/22/2022; 12:12:57. () "Please."

VR: 12/22/2022; 12:12:58. () "I think I've taken care of everything else absent the podium or the lectern."

VR: 12/22/2022; 12:13:02. () "All right."

2-9-2023 Status Hearing

VR: 02/09/2023; 10:46:57. () "Hello, Willow Cherry. You look good today."

VR: 02/09/2023; 10:47:00. () "Thank you so much."

VR: 02/09/2023; 10:47:02. () "Mr. Cherry, what has many keys but can't open a lock?"

VR: 02/09/2023; 10:47:09. () "A piano."

VR: 02/09/2023; 10:47:10. () "That's right. That's what you told me last time."

VR: 02/09/2023; 10:47:12. () "Is that right?"

VR: 02/09/2023; 10:47:13. () "Yeah, because I got it on your letter."

VR: 02/09/2023; 10:47:16. () "I see. A keyboard as well, I guess."

VR: 02/09/2023; 10:47:18. () "Yeah, a keyboard."

VR: 02/09/2023; 10:47:19. () "I'm trying to come up with a different answer."

VR: 02/09/2023; 10:47:21. () "I know."

VR: 02/09/2023; 10:47:24. () "Is there anyway I can give you..."

VR: 02/09/2023; 10:47:26. () "Do you want me to get that to Chris?"

VR: 02/09/2023; 10:47:30. () "Yes, I've got one for Chris as well."

VR: 02/09/2023; 10:47:32. () "Okay."

VR: 02/09/2023; 10:47:33. () "Judge, I think we need a new date to come back,
according to Mr. Tracy."

VR: 02/09/2023; 10:47:37. () "And then I can tender whatever Mr..."

VR: 02/09/2023; 10:47:40. () "Is it another letter?"

VR: 02/09/2023; 10:47:42. () "No. No, this is official only, unfortunately. Or
fortunately."

VR: 02/09/2023; 10:47:48. () "You need to let your lawyer see it, too."

VR: 02/09/2023; 10:47:51. () "Yeah, I've got one for him."

VR: 02/09/2023; 10:47:52. () "Well, look at it real quick, Mr. Muncy, and make sure
it's something that you feel appropriate for the court to
see at this time."

VR: 02/09/2023; 10:47:59. () "Yes, I think it needs to be discussed elsewhere."

VR: 02/09/2023; 10:48:04. () "Not on the record."

VR: 02/09/2023; 10:48:06. () "Well, okay. But you think it's acceptable to give me
whatever it is?"

VR: 02/09/2023; 10:48:10. () "I think so."

VR: 02/09/2023; 10:48:11. () "Okay. Well, give it to me. I'll look at it, and then maybe we can discuss it at a time that's not on the record."

VR: 02/09/2023; 10:48:19. () "Okay."

VR: 02/09/2023; 10:48:20. () "Okay."

VR: 02/09/2023; 10:48:21. () "Alright."

VR: 02/09/2023; 10:48:21. () "Can we get a date to come back for the 6th of April?"

VR: 02/09/2023; 10:48:29. () "It's gone."

VR: 02/09/2023; 10:48:30. () "It's gone? Okay. 20th... or 27th, sorry."

VR: 02/09/2023; 10:48:33. () "Alright, April 27th. But why don't you have Mr. Tracy..."

VR: 02/09/2023; 10:48:36. () "I can have him reach out."

VR: 02/09/2023; 10:48:37. () "...after he reviews the motion..."

VR: 02/09/2023; 10:48:38. () "Absolutely."

VR: 02/09/2023; 10:48:39. () "...to see if he'd like to get that set earlier."

VR: 02/09/2023; 10:48:43. () "Of course. Absolutely."

VR: 02/09/2023; 10:48:44. () "Thank you so much."

VR: 02/09/2023; 10:48:45. () "We'll do that."

VR: 02/09/2023; 10:48:45. () "I'd like a trial as soon as possible."

VR: 02/09/2023; 10:48:47. () "I know you do."

VR: 02/09/2023; 10:48:48. () "I'll pass this on to Chris."

VR: 02/09/2023; 10:48:49. () "Can I get a date, please?"

VR: 02/09/2023; 10:48:51. () "The 27th."

VR: 02/09/2023; 10:48:52. () "Right."

VR: 02/09/2023; 10:48:52. () "April 27th."

VR: 02/09/2023; 10:48:56. () "This is an amazing operation."

VR: 02/09/2023; 10:48:58. () "Can you hold him so I can bring him a card, please?"

VR: 02/09/2023; 10:48:59. () "Yes."

VR: 02/09/2023; 10:49:00. () "I'll bring you a card."

VR: 02/09/2023; 10:49:00. () "Alright. Thank you so much."

4-27-2023 Status Hearing

VR: 04/27/2023; 10:52:35. () "So if you get mad at me, you've got to get mad at her, so she's my insurance policy."

VR: 04/27/2023; 10:52:40. () "That's a good one. I just can't believe you would put her through this after..."

VR: 04/27/2023; 10:52:47. () "You are looking good, Willow Cherry."

VR: 04/27/2023; 10:52:51. () "I don't know about that, but I know you are."

VR: 04/27/2023; 10:52:54. () "Oh, you're sweet. But no, you do. You look great. And I so enjoy your letters."

VR: 04/27/2023; 10:52:59. () "And I was most impressed that you cited a case in your last letter to me, citing States v. Garcia,"

VR: 04/27/2023; 10:53:09. () "that it requires no extended argument to establish that prosecutors do not deviate from fundamental concepts of justice."

VR: 04/27/2023; 10:53:17. () "It should be equally obvious that prosecutors are under no duty to file charges as soon as probable cause exists,"

VR: 04/27/2023; 10:53:23. () "but before they are satisfied, they will be able to establish the suspect's guilt beyond a reasonable doubt."

VR: 04/27/2023; 10:53:30. () "Very impressive. You do a nice job of reading the law."

VR: 04/27/2023; 10:53:35. () "So we have an order in to KCPC, and we're waiting on KCPC to comply with that order."

VR: 04/27/2023; 10:53:42. () "And KCPC is in the situation that they're in, and I understand that many divisions have been calling and asking of KCPC."

VR: 04/27/2023; 10:53:52. () "Our most recent update is it still may well be a while. KCPC says that their order was received January 9th,"

VR: 04/27/2023; 10:54:00. () "that they are looking at 10 to 12 months, but they have not assigned an evaluator."

VR: 04/27/2023; 10:54:05. () "This is a 2018 case. So what are we doing?"

VR: 04/27/2023; 10:54:10. () "So the KCPC, I mean, unfortunately that's our step."

VR: 04/27/2023; 10:54:16. () "Now we have provided some information from our independently held expert to the Commonwealth today."

VR: 04/27/2023; 10:54:25. () "Some old, some new. I guess the old stuff had never been provided before, but so we have provided that."

VR: 04/27/2023; 10:54:30. () "Our doctor believes that there are some steps that maybe could be taken that KCPC doesn't typically take."

VR: 04/27/2023; 10:54:37. () "Brain scan, MRI, things like that."

VR: 04/27/2023; 10:54:41. () "And so it would probably behoove the parties to get together and talk about maybe trying to do some of that before this,"

VR: 04/27/2023; 10:54:48. () "since we have time to wait on KCPC, unfortunately."

VR: 04/27/2023; 10:54:53. () "Mr. Cherry has been exceedingly patient with everything, and I think that patience is wearing thin."

VR: 04/27/2023; 10:54:58. () "How long has he been in there now? Since 18?"

VR: 04/27/2023; 10:55:01. () "Yes, ma'am. I walked in the door myself."

VR: 04/27/2023; 10:55:04. () "No, that's all right."

VR: 04/27/2023; 10:55:08. () "I'm wondering even if it's also an ID issue. I'll talk if you might even consider a mediation based on the time he's been in there and everything that we've been facing."

VR: 04/27/2023; 10:55:17. () "As of now, I don't believe that the defense is in a position to accept a plea."

VR: 04/27/2023; 10:55:21. () "Okay. I understand that, but I'm down the road to maybe see if there's some..."

VR: 04/27/2023; 10:55:25. () "Right. So I think we'll probably pursue that avenue to see if maybe we can get some of this stuff knocked out of the way,"

VR: 04/27/2023; 10:55:32. () "if we can beforehand, at least try to be productive while we're waiting."

VR: 04/27/2023; 10:55:35. () "Okay."

VR: 04/27/2023; 10:55:36. () "We're going to go back and look at some stuff that predates Ms. Brooks' tenure on the matter."

VR: 04/27/2023; 10:55:43. () "You got the A-team now."

VR: 04/27/2023; 10:55:45. () "I know. I know. I very much appreciate everybody coming together..."

VR: 04/27/2023; 10:55:54. () "Right. You got the A-team on both sides."

VR: 04/27/2023; 10:55:57. () "I'm a little bit shy to speak."

VR: 04/27/2023; 10:56:02. () "I do appreciate your time, and I hope you appreciate mine as well."

ATTORNEY WORK PRODUCT – NOT AN OFFICIAL TRANSCRIPT

VR: 04/27/2023; 10:56:10. () "A speedy trial was requested in December of 18, I believe, when competency was established."

VR: 04/27/2023; 10:56:20. () "Tom Radian was right."

VR: 04/27/2023; 10:56:23. () "So is there an ETA on KCPC's getting me there?"

VR: 04/27/2023; 10:56:29. () "But we're working on maybe even other avenues. But we're working on other avenues that might work much before that time."

VR: 04/27/2023; 10:56:37. () "Okay."

VR: 04/27/2023; 10:56:38. () "That's our whole intent. Both the Commonwealth and the defense."

VR: 04/27/2023; 10:56:42. () "Gotcha."

VR: 04/27/2023; 10:56:43. () "Yeah, we're doing... they're doing all they can, but..."

VR: 04/27/2023; 10:56:46. () "Okay."

VR: 04/27/2023; 10:56:48. () "Just a little more patience, Mr. Cherry."

VR: 04/27/2023; 10:56:52. () "Yes, ma'am."

VR: 04/27/2023; 10:56:53. () "Just keep those letters coming."

VR: 04/27/2023; 10:56:58. () "I may or may not be writing anything."

VR: 04/27/2023; 10:57:02. () "Okay. Take care."

VR: 04/27/2023; 10:57:05. () "What date do we want to see?"

VR: 04/27/2023; 10:57:06. () "You all tell me."

VR: 04/27/2023; 10:57:09. () "I saw the July date over there. We can do that. July 13."

VR: 04/27/2023; 10:57:15. () "That's fine. You can always advance it if you need to. If you need to come see me about anything, if you need to discuss anything, I'm always here."

VR: 04/27/2023; 10:57:22. () "Thank you, Judge."

VR: 04/27/2023; 10:57:23. () "Yeah, thank you."

VR: 04/27/2023; 10:57:24. () "You guys have a great day."

VR: 04/27/2023; 10:57:25. () "You, too."

7-13-2023 Status Hearing

VR: 07/13/2023; 11:13:09. () "Okay."

VR: 07/13/2023; 11:13:11. () "You know, Mr. Cherry is quite a prolific writer, as you all know."

VR: 07/13/2023; 11:13:16. () "He writes me."

VR: 07/13/2023; 11:13:18. () "Hello, Mr. Cherry."

VR: 07/13/2023; 11:13:20. () "Hello."

VR: 07/13/2023; 11:13:20. () "You're looking good. You look better every time I see you."

VR: 07/13/2023; 11:13:23. () "Likewise."

VR: 07/13/2023; 11:13:24. () "Yeah, and I'm very pleased to see that you had nice things to say about Madame Curie."

VR: 07/13/2023; 11:13:31. () "Alright."

VR: 07/13/2023; 11:13:31. () "And I loved her quotes. I actually liked Einstein's the best, though."

VR: 07/13/2023; 11:13:35. () "That he resisted quantum mechanics, you said? Or physics."

VR: 07/13/2023; 11:13:40. () "Because he said that God didn't play dice."

VR: 07/13/2023; 11:13:44. () "Yeah, something Einstein said."

VR: 07/13/2023; 11:13:46. () "Yeah, that was good."

VR: 07/13/2023; 11:13:47. () "Deterministic."

VR: 07/13/2023; 11:13:48. () "Yeah, and hers was also very good."

VR: 07/13/2023; 11:13:54. () "Yeah."

VR: 07/13/2023; 11:13:55. () "So, is the prosecution present?"

VR: 07/13/2023; 11:13:59. () "She's right there."

VR: 07/13/2023; 11:14:01. () "It's not our particular prosecutor."

VR: 07/13/2023; 11:14:03. () "Right."

VR: 07/13/2023; 11:14:04. () "Okay. Do all parties have access to these briefs?"

VR: 07/13/2023; 11:14:10. () "Oh, the cases that you cited for me?"

VR: 07/13/2023; 11:14:15. () "Specifically, I would like to refer to 190 through 200, which would be the last three, last month, the month prior to this."

VR: 07/13/2023; 11:14:27. () "Would you like the prosecution, as well as Mr. Tracy, to review those?"

VR: 07/13/2023; 11:14:32. () "It's not necessary, I don't think, as long as they have access to them."

VR: 07/13/2023; 11:14:36. () "Well, they do."

VR: 07/13/2023; 11:14:39. () "Because I'm going to refer to them in a motion based on them."

VR: 07/13/2023; 11:14:46. () "There was a motion. I think, first of all, I want to quote Justice Ginsberg, Supreme Court."

VR: 07/13/2023; 11:14:58. () "It's the defendant's prerogative, not the counsel's, to decide the object of his case."

VR: 07/13/2023; 11:15:03. () "You need case number on that."

VR: 07/13/2023; 11:15:06. () "So, basically, I've asserted a hybrid counsel more than a year ago."

VR: 07/13/2023; 11:15:17. () "I asserted a speedy trial on, I think it was December the 9th or the 19th of 2018."

VR: 07/13/2023; 11:15:29. () "So, I would like that recognized by the court."

VR: 07/13/2023; 11:15:39. () "So, I've got a little bit of concern about misconduct from the prosecution during the grand jury."

VR: 07/13/2023; 11:16:02. () "Well, you have every right to the grand jury, just when I'm sure your counsel has it."

VR: 07/13/2023; 11:16:07. () "We have it. We can review it."

VR: 07/13/2023; 11:16:09. () "I would like you to review it for him."

VR: 07/13/2023; 11:16:11. () "Absolutely."

VR: 07/13/2023; 11:16:13. () "So, the view of the discovery has been an issue."

VR: 07/13/2023; 11:16:17. () "I think I may... I'm asking the counsel to file the duties."

VR: 07/13/2023; 11:16:35. () "I may like to change those up a little bit and withdraw their presentation for..."

VR: 07/13/2023; 11:16:46. () "I'm trying to be a little fast here."

VR: 07/13/2023; 11:16:48. () "I don't have the facilities, like a table and everything set out here."

VR: 07/13/2023; 11:16:56. () "besides my lap."

VR: 07/13/2023; 11:17:00. () "Nor have we conferred on this before, so I'm having to do it by myself."

VR: 07/13/2023; 11:17:08. () "That's because it's an actual motion that I submitted by ex parte."

VR: 07/13/2023; 11:17:15. () "Okay. So, let's see."

VR: 07/13/2023; 11:17:25. () "Item 1, excuse me, I know it would be item 2 on his copy and your copy."

VR: 07/13/2023; 11:17:35. () "Item 2, conducting direct cross-examination of all sentencing exams."

VR: 07/13/2023; 11:17:42. () "I may withdraw that for the time being until I can get some things."

VR: 07/13/2023; 11:17:46. () "Okay."

VR: 07/13/2023; 11:17:47. () "Confirm that list. Do you have access to that? Mhm."

VR: 07/13/2023; 11:17:52. () "Okay."

VR: 07/13/2023; 11:17:54. () "So, I would like that to be considered the speedy trial."

VR: 07/13/2023; 11:18:02. () "I appreciate you doing that."

VR: 07/13/2023; 11:18:06. () "I'm sorry I don't have any jokes today."

VR: 07/13/2023; 11:18:08. () "They were so bad, it's been a brain cell I'm trying to understand."

VR: 07/13/2023; 11:18:12. () "Well, I actually very much enjoy your quotes from scholars."

VR: 07/13/2023; 11:18:20. () "Yeah, they're insightful to say the least."

VR: 07/13/2023; 11:18:27. () "I'm a little bit sorry that I can't be more entertaining."

VR: 07/13/2023; 11:18:33. () "No, you don't need to be entertaining."

VR: 07/13/2023; 11:18:35. () "Yeah, I've gotten quite dry and my time has run out. This has become a, I don't know if you read my last brief, this has become too expensive."

VR: 07/13/2023; 11:18:42. () "So, I don't need the money necessarily."

VR: 07/13/2023; 11:18:55. () "I may or may not."

VR: 07/13/2023; 11:18:58. () "The speedy trial."

VR: 07/13/2023; 11:19:00. () "I want to assert the speedy trial act, which includes the amendments and in itself 18 U.S.C. 3161."

VR: 07/13/2023; 11:19:15. () "There's a Parker test that has the length of delay, the reason for delay, defendant's assertion of the right, which was December the 19th, it looks like, is what we've got written here."

VR: 07/13/2023; 11:19:28. () "I've asked for records of that and I haven't received that yet."

VR: 07/13/2023; 11:19:31. () "The law of the court, transcripts of all the court hearings."

VR: 07/13/2023; 11:19:35. () "Because I think at one time when it was Bob and I, which Bob and I were on the same page, I think more than we've had a chance to with the other counsels since then, as I've written."

VR: 07/13/2023; 11:19:50. () "So, I think that there's no reason there should be a motion to dismiss, which would cause the court to consider the Parker test."

VR: 07/13/2023; 11:20:12. () "Well, the court will. What I'd like you to do is work with Mr. Tracy and Ms. Brooks."

VR: 07/13/2023; 11:20:19. () "She's going to be on it, isn't she Mr. Tracy?"

VR: 07/13/2023; 11:20:21. () "She is."

VR: 07/13/2023; 11:20:21. () "She is. Shannon Brooks and Mr. Tracy are excellent lawyers."

VR: 07/13/2023; 11:20:26. () "I know you had a good rapport with Mr. Friedman."

VR: 07/13/2023; 11:20:28. () "But I'd like you to work with them."

VR: 07/13/2023; 11:20:31. () "I would like you to sit down and go over the grand jury with him testimony to make sure that he's comfortable with that."

VR: 07/13/2023; 11:20:37. () "Because that is indeed where it all begins."

VR: 07/13/2023; 11:20:40. () "Yes, right, right."

VR: 07/13/2023; 11:20:41. () "Yeah, and so..."

VR: 07/13/2023; 11:20:42. () "So, the other issue I think that's pertinent that I can't operate without is transcripts of these interactions of all the court hearings."

VR: 07/13/2023; 11:20:54. () "Well, those cost... I think... does the clerk's require a fee for those?"

VR: 07/13/2023; 11:21:01. () "They're... well, they're... transcripts don't exist. I mean, they would have to be produced."

VR: 07/13/2023; 11:21:05. () "Right. I mean, they could get the tape."

VR: 07/13/2023; 11:21:08. () "The exact... I think Shannon mentioned that. And then she... well, I don't want to say what anybody said."

VR: 07/13/2023; 11:21:15. () "So, I guess there are recordings."

VR: 07/13/2023; 11:21:18. () "She can get a tape of everything."

VR: 07/13/2023; 11:21:20. () "Right, right."

VR: 07/13/2023; 11:21:20. () "You can get a tape of everything."

VR: 07/13/2023; 11:21:23. () "But somebody's going to have to request it."

VR: 07/13/2023; 11:21:26. () "And that would be... Ms. Brooks could do it and Mr. Tracy could do it for you."

VR: 07/13/2023; 11:21:30. () "So, I've sent an email through family, a month and a half or two ago. And since the request itself, it's been maybe six months or so. Okay?"

VR: 07/13/2023; 11:21:45. () "Who'd you send it to?"

VR: 07/13/2023; 11:21:50. () "The email itself was sent, I think, a couple weeks ago. Yeah."

VR: 07/13/2023; 11:22:01. () "Well, I'm going to ask you and Mr. Tracy to kind of meet and Ms. Brooks. And then you all can come back and we can have another discussion."

VR: 07/13/2023; 11:22:07. () "And we might even put a discussion with the prosecutor on an off-docket time to see where we are on everything."

VR: 07/13/2023; 11:22:14. () "And I can acknowledge the request. I just don't remember receiving the email from anybody."

VR: 07/13/2023; 11:22:19. () "Okay."

VR: 07/13/2023; 11:22:23. () "So, your Honorable Justice Goodman, this is an issue..."

VR: 07/13/2023; 11:22:29. () "Well, I'm not a justice. I'm just a judge."

VR: 07/13/2023; 11:22:32. () "I'm sorry."

VR: 07/13/2023; 11:22:34. () "No, I'd rather be just a judge."

VR: 07/13/2023; 11:22:36. () "Okay, all right."

VR: 07/13/2023; 11:22:36. () "Yeah."

VR: 07/13/2023; 11:22:41. () "So, the issue, I think, is that the over... Did you not see the case of the overworked and underfunded public defenders?"

VR: 07/13/2023; 11:22:57. () "Oh, I truly know."

VR: 07/13/2023; 11:22:59. () "Yeah."

VR: 07/13/2023; 11:22:59. () "Everybody does."

VR: 07/13/2023; 11:23:00. () "Everybody does."

VR: 07/13/2023; 11:23:01. () "Yeah, so, therefore, I'm not sure why we're asking them to do things they don't have the capacity to do."

VR: 07/13/2023; 11:23:12. () "I understand what you're saying, but that is the only process in which to do it."

VR: 07/13/2023; 11:23:20. () "Okay."

VR: 07/13/2023; 11:23:20. () "So, does the court recognize the defendant as present today?"

VR: 07/13/2023; 11:23:24. () "Yeah."

VR: 07/13/2023; 11:23:24. () "Okay."

VR: 07/13/2023; 11:23:25. () "I see you right there."

VR: 07/13/2023; 11:23:27. () "I see you as well."

VR: 07/13/2023; 11:23:31. () "So, the competency question that was brought up was in error."

VR: 07/13/2023; 11:23:41. () "But I think that's been addressed, has it not?"

VR: 07/13/2023; 11:23:44. () "We're waiting on the KCPC return."

VR: 07/13/2023; 11:23:46. () "We're still waiting?"

VR: 07/13/2023; 11:23:46. () "Yes."

VR: 07/13/2023; 11:23:47. () "How about we got one? Did we not get any?"

VR: 07/13/2023; 11:23:51. () "It was ordered earlier this year, and unfortunately, that seems to be the way it is."

VR: 07/13/2023; 11:23:56. () "They keep saying 10 to 12 months."

VR: 07/13/2023; 11:23:58. () "I've called a couple times and checked specifically on Mr. Cherry's status, and they keep telling me the end of the year."

VR: 07/13/2023; 11:24:03. () "So, in 2018, when I went and was expedited, I didn't cooperate with the prosecutor."

VR: 07/13/2023; 11:24:10. () "Right, I was going to say, we did once before."

VR: 07/13/2023; 11:24:12. () "So, I don't see any reason why a defendant would cooperate with an offender. I see no reason to cooperate with these. Does that make sense?"

VR: 07/13/2023; 11:24:27. () "Certainly, you could get your own evaluation."

VR: 07/13/2023; 11:24:31. () "Yeah, well, that's done already."

VR: 07/13/2023; 11:24:33. () "I know, I know."

VR: 07/13/2023; 11:24:35. () "I know, but here's what you need to realize. Here's what you need to realize for the court."

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VR: 07/13/2023; 11:24:42. () "So, I'm telling you."

VR: 07/13/2023; 11:24:43. () "The court, in those situations, KCPC would do one."

VR: 07/13/2023; 11:24:49. () "If it's different from what, say, your evaluator said, your attorney's mental health professional said,"

VR: 07/13/2023; 11:25:00. () "I have a very full-blown hearing, and I make a determination on which one I believe to be the most credible."

VR: 07/13/2023; 11:25:07. () "Right."

VR: 07/13/2023; 11:25:07. () "And I rule from that."

VR: 07/13/2023; 11:25:09. () "Okay."

VR: 07/13/2023; 11:25:09. () "So, you need to cooperate."

VR: 07/13/2023; 11:25:13. () "With the offender? With the offender prosecution?"

VR: 07/13/2023; 11:25:16. () "Well, you need to cooperate with KCPC, which are not necessarily part of, they're not part of the Commonwealth Attorney's Office."

VR: 07/13/2023; 11:25:25. () "They may be funded by the state, but they are not, they're for the court to get evaluation and to know what's going on."

VR: 07/13/2023; 11:25:44. () "I'm not sureBecause I need..."

VR: 07/13/2023; 11:25:46. () "That makes sense to me."

VR: 07/13/2023; 11:25:47. () "Well, it..."

VR: 07/13/2023; 11:25:50. () "So, does that make, I mean, I'm not sure why I would go toward an offensive move. Does that make sense?"

VR: 07/13/2023; 11:25:59. () "Well..."

VR: 07/13/2023; 11:26:00. () "Very basic, as far as I can tell."

VR: 07/13/2023; 11:26:01. () "The KCP report, those doctors, just like, and if Eastern State was going to do it, if they'd be willing to do it, which they do sometimes here, I know those doctors really well."

VR: 07/13/2023; 11:26:18. () "I trust them."

VR: 07/13/2023; 11:26:20. () "Yeah."

VR: 07/13/2023; 11:26:21. () "And they, Eastern State is not at KCPC. They're here, for everybody and anybody."

VR: 07/13/2023; 11:26:28. () "Let me, if I may, try to save you time, and I'll try to save everybody time."

- VR: 07/13/2023; 11:26:34. () "I appreciate everybody's time here."
- VR: 07/13/2023; 11:26:36. () "Five and a half years of my time have been spent on this, I know you all are overworked and overloaded..."
- VR: 07/13/2023; 11:26:45. () "Try to..."
- VR: 07/13/2023; 11:26:55. () "The..."
- VR: 07/13/2023; 11:26:55. () "Do you..."
- VR: 07/13/2023; 11:26:58. () "Are you questioning my competency to stand trial at this point?"
- VR: 07/13/2023; 11:27:03. () "I think because of your health issues early on..."
- VR: 07/13/2023; 11:27:08. () "What health issues?"
- VR: 07/13/2023; 11:27:08. () "Well, for a long time, you had issues. I mean, you weren't able to communicate in different things. I mean..."
- VR: 07/13/2023; 11:27:17. () "Where is that documented? Can I get a copy?"
- VR: 07/13/2023; 11:27:19. () "Well, I think I remember that very clearly."
- VR: 07/13/2023; 11:27:22. () "I do as well."
- VR: 07/13/2023; 11:27:23. () "Well, so, what I want to do is, the law does not ever, and because of that, we sort of need verification from an expert."
- VR: 07/13/2023; 11:27:33. () "And we're not experts. Lawyers and judges are not experts on a person's mental facilities."
- VR: 07/13/2023; 11:27:41. () "And so, I just need, because of the history, to be able to make that clear on the record."
- VR: 07/13/2023; 11:27:47. () "That it is a situation where we can go forward."
- VR: 07/13/2023; 11:27:50. () "Okay. So, I want to clarify right now, can you requote that we're experts on the law, right?"
- VR: 07/13/2023; 11:28:00. () "Yeah, we're experts on the law. Yeah, but we're not experts on a person's mental state or mental capabilities."
- VR: 07/13/2023; 11:28:09. () "I think if anybody in here could tell me what consciousness is, then they would get a prize for it immediately. Become famous."
- VR: 07/13/2023; 11:28:18. () "The issue with experts on the law is that a defendant in a case of this magnitude should not have to address the court I don't think."
- VR: 07/13/2023; 11:28:27. () "Does that make sense?"

VR: 07/13/2023; 11:28:29. () "Well, I see what you're saying and..."

VR: 07/13/2023; 11:28:31. () "So, and that's where I stood before, and now I come to the forefront of my counsel, because the counsel has not been effective at this time."

VR: 07/13/2023; 11:28:41. () "Well..."

VR: 07/13/2023; 11:28:41. () "So, I have to, I have to ask to be heard by the court myself..."

VR: 07/13/2023; 11:28:45. () "Unfortunately, I have been here the whole time."

VR: 07/13/2023; 11:28:48. () "Right, and I do think you've had effective counsel."

VR: 07/13/2023; 11:28:52. () "I understand."

VR: 07/13/2023; 11:28:53. () "All along. And if I didn't think you did, I think I would raise issues."

VR: 07/13/2023; 11:28:57. () "And I don't think it's, it's not a personal thing when I use a systematic thing, and I've written it many times."

VR: 07/13/2023; 11:29:10. () "But, you know, and everybody seems to know that, so that's the reason for it, and it's my tax money as well."

VR: 07/13/2023; 11:29:15. () "But, as this experiment goes, the..."

VR: 07/13/2023; 11:29:23. () "So, I guess what we can save time with is..."

VR: 07/13/2023; 11:29:30. () "The briefs that I'm submitting, are they, they're on record?"

VR: 07/13/2023; 11:29:35. () "They're all right here."

VR: 07/13/2023; 11:29:36. () "And are all, and what's the extent of the briefs, if I may ask?"

VR: 07/13/2023; 11:29:41. () "What do you mean? I mean, they're..."

VR: 07/13/2023; 11:29:43. () "When did they start? So, I was going to read this page to you."

VR: 07/13/2023; 11:29:49. () "Well, you don't need to read any of them, because I read everything."

VR: 07/13/2023; 11:29:52. () "Okay."

VR: 07/13/2023; 11:29:53. () "Yeah."

VR: 07/13/2023; 11:29:54. () "That's fine."

VR: 07/13/2023; 11:29:54. () "Believe me, I read it."

VR: 07/13/2023; 11:29:56. () "They're in the file."

VR: 07/13/2023; 11:29:57. () "They're in the file."

VR: 07/13/2023; 11:29:58. () "Now, there are some new ones that haven't gotten there, because I read them."

VR: 07/13/2023; 11:30:02. () "Okay."

VR: 07/13/2023; 11:30:03. () "And, see, that's, that's why another reason I kind of stood down the best I could is because I don't want to offend the court."

VR: 07/13/2023; 11:30:12. () "You don't offend the court."

VR: 07/13/2023; 11:30:14. () "You know, put anybody in harm's way or whatever, but..."

VR: 07/13/2023; 11:30:17. () "Yeah, no."

VR: 07/13/2023; 11:30:18. () "The court, the court's desire, as well as Mr. Tracy's, I'm sure, and Ms. Brooks', is that you get the best representation possible."

VR: 07/13/2023; 11:30:26. () "You get competent representation, better than competent, to be honest, and that we move it properly."

VR: 07/13/2023; 11:30:36. () "And so, I'm always concerned about making sure that all the I's are dotted and the T's are crossed."

VR: 07/13/2023; 11:30:46. () "Right."

VR: 07/13/2023; 11:30:47. () "Especially with charges this serious."

VR: 07/13/2023; 11:30:49. () "Absolutely, and I appreciate that."

VR: 07/13/2023; 11:30:51. () "So, let's see, I want to give you time to talk with Mr. Tracy, go over the grand jury report, and then I'll go ahead and set a status date."

VR: 07/13/2023; 11:31:00. () "But let's see once you get some things going and what you've looked at."

VR: 07/13/2023; 11:31:04. () "And if, Mr. Cherry, if you all feel it's, you would like to go ahead and maybe have an off-docket meeting or conference, we could do that."

VR: 07/13/2023; 11:31:17. () "Meaning not when we're doing this whole docket."

VR: 07/13/2023; 11:31:19. () "Right."

VR: 07/13/2023; 11:31:20. () "Yeah."

VR: 07/13/2023; 11:31:21. () "Does that mean not yourself?"

VR: 07/13/2023; 11:31:27. () "No, first confer with them and then we'll all confer together."

VR: 07/13/2023; 11:31:31. () "Okay, such as we are now?"

- VR: 07/13/2023; 11:31:32. () "Yes, but not during a regular docket with people that don't need to be here, like probation and parole or people of that nature."
- VR: 07/13/2023; 11:31:40. () "And the right, and the correct prosecutor is here."
- VR: 07/13/2023; 11:31:42. () "Okay, and this hasn't happened as of yet?"
- VR: 07/13/2023; 11:31:45. () "Well, I mean, you all have done it before. You've had pre-trial conferences and you all have talked."
- VR: 07/13/2023; 11:31:50. () "I mean, they've talked to the prosecutors over the time period."
- VR: 07/13/2023; 11:31:54. () "But I'm saying if there are more concerns for you, once you've looked at the grand jury proceedings, I'd like to see where we are after that with everyone talking."
- VR: 07/13/2023; 11:32:03. () "Okay, so is the speedy trial accepted? Is the speedy trial assertion accepted by the court?"
- VR: 07/13/2023; 11:32:12. () "In other words, your motion for a speedy trial?"
- VR: 07/13/2023; 11:32:15. () "The assertion of December 19, 2016."
- VR: 07/13/2023; 11:32:18. () "Well, I know the law on a speedy trial, and I believe at this point we've complied with that based on everything that's happened with COVID and everything else that's happened and your health issues and all of that."
- VR: 07/13/2023; 11:32:29. () "I think we're still on track."
- VR: 07/13/2023; 11:32:31. () "My health issues, not addressing the court, expecting counsel to?"
- VR: 07/13/2023; 11:32:36. () "No, I'm talking about before when we were having trouble getting you to be responsive after."
- VR: 07/13/2023; 11:32:42. () "Okay, can I see documentation of that?"
- VR: 07/13/2023; 11:32:46. () "Yeah, we'll get those tapes. You'll get all the tapes."
- VR: 07/13/2023; 11:32:50. () "We have?"
- VR: 07/13/2023; 11:32:51. () "You have all of that, yes. He'll give you all of that."
- VR: 07/13/2023; 11:32:54. () "Okay, so another thing by the by is that at one point there was an assault at the FCDC, and I guess you remember that?"
- VR: 07/13/2023; 11:33:06. () "I know all of that, yeah."
- VR: 07/13/2023; 11:33:07. () "Okay, so am I correct in remembrance that you deemed anything prior to that inadmissible or something of that nature?"

- VR: 07/13/2023; 11:33:16. () "But that's from memory, not tape at this point."
- VR: 07/13/2023; 11:33:21. () "I don't recall."
- VR: 07/13/2023; 11:33:22. () "Right. See what I'm saying?"
- VR: 07/13/2023; 11:33:23. () "I don't know of any motion that's been already deemed inadmissible."
- VR: 07/13/2023; 11:33:27. () "No, I don't think any formal motions have been filed to that point."
- VR: 07/13/2023; 11:33:31. () "So I don't see anybody else having time than I do to address my own defense."
- VR: 07/13/2023; 11:33:36. () "Well, I think your goal, your job should be to assist as much as you can, but you have to also remember your limitations in that you're not an attorney."
- VR: 07/13/2023; 11:33:47. () "And you need to rely on your attorneys for the legal guidance and the procedural guidance as to what's acceptable, what's appropriate, what's admissible, things of that nature."
- VR: 07/13/2023; 11:33:57. () "Sure, sure. I do want to, for the record as well, I contest all evidence and request experts as well as I need to be in discovery."
- VR: 07/13/2023; 11:34:09. () "Well, and all of that, your attorney has already asked for all of that. Has asked for all discovery, all of that."
- VR: 07/13/2023; 11:34:15. () "So I've asked for it and I've been given some of it on key drives and this and that."
- VR: 07/13/2023; 11:34:22. () "I haven't been able to see it. The access to the courts has not been full by any means through the facilities, being imprisoned at this time."
- VR: 07/13/2023; 11:34:34. () "There's a procedure, I think, Bounds v. Smith requires that all administrative remedies be exhausted before we file."
- VR: 07/13/2023; 11:34:45. () "A federal lack of access to the courts."
- VR: 07/13/2023; 11:34:59. () "So there's, as you can see, the writing with pencil is something I haven't done since I was in grade school."
- VR: 07/13/2023; 11:35:08. () "But, so, since that has happened, I'm going to probably roll those in the same thing."
- VR: 07/13/2023; 11:35:15. () "So as far as not being allowed or not having hybrid firmly accepted at this point, there's a case that I wanted to bring up."

- VR: 07/13/2023; 11:35:28. () "I think it's April or something like that. Murray v. Commonwealth, April 27, 2023."
- VR: 07/13/2023; 11:35:41. () "I'm being a quick as I can here, guys."
- VR: 07/13/2023; 11:35:51. () "Brief number 195.2 refers to Murray."
- VR: 07/13/2023; 11:36:00. () "Murray's competency being brought to the fore as opposed to his hybrid representation consideration."
- VR: 07/13/2023; 11:36:10. () "So he was denied hybrid because of competency."
- VR: 07/13/2023; 11:36:14. () "So, basically, he went to KCPC, he refused to cooperate."
- VR: 07/13/2023; 11:36:20. () "During that time, he filed a federal lawsuit against the Department of Public Advocacy."
- VR: 07/13/2023; 11:36:27. () "And I guess the holding facility, which is something that was done in due process as well."
- VR: 07/13/2023; 11:36:35. () "At that time, the court had seen him as competent, I think, because he was filing suits."
- VR: 07/13/2023; 11:36:40. () "And therefore, he was allowed... I think after that, he didn't ask for hybrid again and therefore his appeal was denied..."
- VR: 07/13/2023; 11:36:54. () "It is a course of action that I would like to kind of give everybody a heads up."
- VR: 07/13/2023; 11:36:59. () "Because if it's all I can do, it's all I can do."
- VR: 07/13/2023; 11:37:02. () "I understand. I understand."
- VR: 07/13/2023; 11:37:04. () "I so much appreciate it."
- VR: 07/13/2023; 11:37:06. () "It's a pleasure speaking with you. Mr. Tracy, when..."
- VR: 07/13/2023; 11:37:10. () "Pleasure to see you guys."
- VR: 07/13/2023; 11:37:12. () "When do you think you'll have an opportunity to talk with... you and Ms. Brooks will have an opportunity to meet with Mr. Cherry?"
- VR: 07/13/2023; 11:37:18. () "And what day do you want to come back?"
- VR: 07/13/2023; 11:37:20. () "Knowing that you can always call the chambers with the prosecutor and we can go ahead and set it up for an off docket time to talk about everything."
- VR: 07/13/2023; 11:37:29. () "Just to let Mr. Cherry know, we have a new online platform that we're now subscribed to."
- VR: 07/13/2023; 11:37:35. () "We had piloted it end of last year and it's just now come online for us."

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- VR: 07/13/2023; 11:37:40. () "Which allows us to upload audio, video, and get a transcript created automatically by an algorithm."
- VR: 07/13/2023; 11:37:48. () "It's not perfect, but you can go through and edit it and get it pretty good."
- VR: 07/13/2023; 11:37:53. () "I plan to do that with the grand jury recording per Mr. Cherry's request."
- VR: 07/13/2023; 11:37:57. () "Perfect."
- VR: 07/13/2023; 11:37:58. () "And that shouldn't take too terribly long. I can't remember off the top of my head how long the grand jury recording but usually not longer than 15 mins at the most."
- VR: 07/13/2023; 11:38:06. () "Right."
- VR: 07/13/2023; 11:38:08. () "So that shouldn't take too long. My guess would be we can meet with him certainly, definitely by the end of next month."
- VR: 07/13/2023; 11:38:15. () "But I think we may be able to meet with him sooner than that."
- VR: 07/13/2023; 11:38:18. () "Perfect."
- VR: 07/13/2023; 11:38:18. () "Without Ms. Brooks here, I don't know about aligning everyone's schedules."
- VR: 07/13/2023; 11:38:23. () "And of course, me or her, we could go down in tandem or in turn."
- VR: 07/13/2023; 11:38:30. () "Right."
- VR: 07/13/2023; 11:38:30. () "So due to lack of schedule, I'm going to have to press with my own actions at this time."
- VR: 07/13/2023; 11:38:36. () "Okay, well, the court at this point is... what I'm going to do is I think I'd like you all to..."
- VR: 07/13/2023; 11:38:44. () "Let's get back on the docket for..."
- VR: 07/13/2023; 11:38:50. () "I'm going to put it on September 21st, but that's just a code of place, September 21st."
- VR: 07/13/2023; 11:38:56. () "But I think before then, if you'd get with the prosecutor and Ms. Brooks and obviously Mr. Cherry,"
- VR: 07/13/2023; 11:39:03. () "and then we could see about setting up an off docket where it's a special hearing just for Mr. Cherry's case."
- VR: 07/13/2023; 11:39:18. () "I guess there's a... should I file, I don't want to overstep by bounds..."

VR: 07/13/2023; 11:39:30. () "Mr. Cherry, I can't give you legal advice. I can't tell you what you should or shouldn't do."

VR: 07/13/2023; 11:39:35. () "But what I am going to do is, as I told you, I've said something for September,"

VR: 07/13/2023; 11:39:38. () "with the idea that once Mr. Tracy and Ms. Brooks get to meet with you before that date, if possible,"

VR: 07/13/2023; 11:39:44. () "we'll set up just a time for you, because I still have individual attorneys who are waiting to be heard,"

VR: 07/13/2023; 11:39:50. () "and I'm still on a docket that's been going on since 9 o'clock."

VR: 07/13/2023; 11:39:56. () "I could have passed the LSAT this whole time I've been sitting here. All right, well."

VR: 07/13/2023; 11:40:00. () "Not just this, but the time I've spent reading cases in my life."

VR: 07/13/2023; 11:40:05. () "So, I just want to, with all due respect, as far as I can tell, assert all the rights that I have today,"

VR: 07/13/2023; 11:40:19. () "and have been briefed in other briefs."

VR: 07/13/2023; 11:40:28. () "Absolutely. All is well noted."

VR: 07/13/2023; 11:40:30. () "That's enough said."

VR: 07/13/2023; 11:40:32. () "Alright, it's good to see you, Mr. Cherry. You take care. One more thing, on record of course..."

VR: 07/13/2023; 11:40:42. () "Should I start filing these briefs with the clerk?"

VR: 07/13/2023; 11:40:47. () "Well, they all go down to the clerk, and they all get in the file."

VR: 07/13/2023; 11:40:50. () "Okay."

VR: 07/13/2023; 11:40:50. () "Yeah, I read them, but they all get to the clerk, and they all get in the file."

VR: 07/13/2023; 11:40:53. () "So, are all of the briefs that I've ever filed..."

VR: 07/13/2023; 11:40:58. () "Everything you've ever written to me is in the file."

VR: 07/13/2023; 11:41:00. () "Unless it's still here, and it hasn't made it to the file yet."

VR: 07/13/2023; 11:41:04. () "Because I read them, and sometimes I go back and re-read them."

VR: 07/13/2023; 11:41:07. () "So, is all of that binding precedent?"

VR: 07/13/2023; 11:41:11. () "Well, it's all in the file. It's just part of the case."

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VR: 07/13/2023; 11:41:14. () "When you say binding precedent, that's what judges do."

VR: 07/13/2023; 11:41:20. () "Like, the Supreme Court will set precedent, or a court of appeals will set precedent."

VR: 07/13/2023; 11:41:25. () "Yeah, but people don't set precedent."

VR: 07/13/2023; 11:41:27. () "Right, so my citing of those judges..."

VR: 07/13/2023; 11:41:30. () "Well, the citing is, it's on the record. It's in the record. It's part of the case."

VR: 07/13/2023; 11:41:34. () "Gotcha, so there have been so many citings that I doubt anybody."

VR: 07/13/2023; 11:41:38. () "I've signed myself up half the time to understand all of it."

VR: 07/13/2023; 11:41:43. () "Well, I've read them all."

VR: 07/13/2023; 11:41:45. () "I see. It's amazing."

VR: 07/13/2023; 11:41:48. () "I wouldn't say that, but it's good to see you. You take care."

VR: 07/13/2023; 11:41:51. () "Likewise. Likewise. Thanks, you guys, for your time."

VR: 07/13/2023; 11:41:54. () "No worries. Take care."

VR: 07/13/2023; 11:41:57. () "Mr. Tracy, do you have any other matters?"

9-21-2023 Motion Hour

VR: 09/21/2023; 09:45:09. () "Alright, so at this point in time we are calling Mr. Cherry out."

VR: 09/21/2023; 09:45:15. () "Alright, and we are here in the matter of Willow Cherry."

VR: 09/21/2023; 09:45:18. () "Ms. Brooks is here."

VR: 09/21/2023; 09:45:19. () "Mr. Cherry, as you know, I read all your letters, I deal with everything."

VR: 09/21/2023; 09:45:23. () "I think we need to set some... a date for a hearing."

VR: 09/21/2023; 09:45:28. () "Yes, please."

VR: 09/21/2023; 09:45:29. () "For discussions and everything."

VR: 09/21/2023; 09:45:30. () "Yes, Judge."

VR: 09/21/2023; 09:45:31. () "Oh, well, actually you say it."

VR: 09/21/2023; 09:45:34. () "Uh, so..."

VR: 09/21/2023; 09:45:35. () "Mr. Cherry is requesting to address the court as opposed to me today."

VR: 09/21/2023; 09:45:39. () "So I just came in here and started talking."

VR: 09/21/2023; 09:45:42. () "We talked about him being the one that is speaking to the court today."

VR: 09/21/2023; 09:45:48. () "Okay."

VR: 09/21/2023; 09:45:48. () "Is that alright?"

VR: 09/21/2023; 09:45:49. () "Yes, but now I do have a crowd, so..."

VR: 09/21/2023; 09:45:52. () "I see that, I see that."

VR: 09/21/2023; 09:45:54. () "Yeah."

VR: 09/21/2023; 09:45:55. () "I would say to fix a jack-o'-lantern you need a pumpkin patch, but..."

VR: 09/21/2023; 09:46:02. () "By advice of counsel, I am requesting a hearing date so that I may receive a written order for motions previously filed for all that stuff."

VR: 09/21/2023; 09:46:11. () "I would also like to set a trial date as soon as possible."

VR: 09/21/2023; 09:46:14. () "I think that's been on the record for some time now."

VR: 09/21/2023; 09:46:17. () "Uh..."

VR: 09/21/2023; 09:46:18. () "The, uh, last..."

VR: 09/21/2023; 09:46:20. () "last briefing..."

VR: 09/21/2023; 09:46:22. () "I've covered nine total briefs."

VR: 09/21/2023; 09:46:26. () "Uh, there's basically one sentence."

VR: 09/21/2023; 09:46:28. () "Um..."

VR: 09/21/2023; 09:46:29. () "The idea..."

VR: 09/21/2023; 09:46:32. () "is, uh, basically..."

VR: 09/21/2023; 09:46:36. () "to, uh..."

VR: 09/21/2023; 09:46:38. () "conclude what was..."

VR: 09/21/2023; 09:46:40. () "reiter..."

VR: 09/21/2023; 09:46:41. () "well, to reiterate, I guess, uh..."

VR: 09/21/2023; 09:46:43. () "December 19th, 2018..."

VR: 09/21/2023; 09:46:46. () "which is before your hearing the case, I believe."

VR: 09/21/2023; 09:46:50. () "Um..."

VR: 09/21/2023; 09:46:52. () "There's..."

VR: 09/21/2023; 09:46:52. () "the assertions, uh..."

VR: 09/21/2023; 09:46:55. () "basically due process that I've kind of been harping on."

VR: 09/21/2023; 09:46:59. () "Um..."

VR: 09/21/2023; 09:46:59. () "Let's just cut to it."

VR: 09/21/2023; 09:47:00. () "Uh..."

VR: 09/21/2023; 09:47:01. () "You can read this and get it on record."

VR: 09/21/2023; 09:47:03. () "Uh..."

VR: 09/21/2023; 09:47:04. () "The full discovery in court records disclosed..."

VR: 09/21/2023; 09:47:09. () "disclosure ruled oral..."

VR: 09/21/2023; 09:47:11. () "which basically led the last time, uh..."

VR: 09/21/2023; 09:47:13. () "when Chris was here..."

VR: 09/21/2023; 09:47:15. () "and she wasn't..."

VR: 09/21/2023; 09:47:17. () "Um..."

VR: 09/21/2023; 09:47:18. () "Uh..."

VR: 09/21/2023; 09:47:18. () "You had said that it was okay to get the court records
so I could review..."

VR: 09/21/2023; 09:47:22. () "all this time before you were here, I guess, as well."

VR: 09/21/2023; 09:47:25. () "So I can figure out what's going on."

VR: 09/21/2023; 09:47:28. () "Um..."

VR: 09/21/2023; 09:47:29. () "And so I think we're..."

VR: 09/21/2023; 09:47:30. () "you know, I'm the one that has the time for all that."

VR: 09/21/2023; 09:47:34. () "So..."

VR: 09/21/2023; 09:47:35. () "that's what that is referring to."

VR: 09/21/2023; 09:47:37. () "Uh..."

VR: 09/21/2023; 09:47:38. () "July 13th, 2023 is the date that that hearing was on."

VR: 09/21/2023; 09:47:43. () "So you can see that..."

VR: 09/21/2023; 09:47:44. () "that oral ruling that you..."

VR: 09/21/2023; 09:47:46. () "uh..."

VR: 09/21/2023; 09:47:47. () "said..."

VR: 09/21/2023; 09:47:48. () "was joined by requests for expert pretrial conferences to
not enter or delay final disposition no later than
November 12th, 2023."

VR: 09/21/2023; 09:47:58. () "This is because there's a on record, uh..."

VR: 09/21/2023; 09:48:02. () "in accord..."

VR: 09/21/2023; 09:48:03. () "I'll just read this part of my..."

VR: 09/21/2023; 09:48:05. () "pro se here."

VR: 09/21/2023; 09:48:07. () "Uh... in accord with records documented since well
before May the 12th, 2022."

VR: 09/21/2023; 09:48:12. () "Okay?"

VR: 09/21/2023; 09:48:14. () "And that's something that you're..."

VR: 09/21/2023; 09:48:16. () "I guess your assistant or somebody put on record as
well."

VR: 09/21/2023; 09:48:20. () "So, uh..."

VR: 09/21/2023; 09:48:21. () "and letter..."

VR: 09/21/2023; 09:48:22. () "the letter I sent you is on record, I guess, as well, I
appreciate that."

VR: 09/21/2023; 09:48:28. () "Uh..."

VR: 09/21/2023; 09:48:30. () "The..."

VR: 09/21/2023; 09:48:30. () "So that basically..."

VR: 09/21/2023; 09:48:31. () "there's a..."

VR: 09/21/2023; 09:48:32. () "a year and a half rule..."

VR: 09/21/2023; 09:48:34. () "uh..."

VR: 09/21/2023; 09:48:34. () "for a..."

VR: 09/21/2023; 09:48:35. () "even for a complex case."

VR: 09/21/2023; 09:48:36. () "So we're..."

VR: 09/21/2023; 09:48:37. () "November 22nd of this year..."

VR: 09/21/2023; 09:48:38. () "we'll put..."

VR: 09/21/2023; 09:48:39. () "it's past that year and a half rule..."

VR: 09/21/2023; 09:48:40. () "which is presumptive prejudice."

VR: 09/21/2023; 09:48:42. () "By the way, I'm reading it."

VR: 09/21/2023; 09:48:45. () "So..."

VR: 09/21/2023; 09:48:45. () "that's with the Barker test for speedy trial."

VR: 09/21/2023; 09:48:48. () "So..."

VR: 09/21/2023; 09:48:55. () "So..."

VR: 09/21/2023; 09:48:56. () "that's the main thing I..."

VR: 09/21/2023; 09:48:58. () "wanted to request that we have a trial before then."

VR: 09/21/2023; 09:49:01. () "And that's why..."

VR: 09/21/2023; 09:49:02. () "there's..."

VR: 09/21/2023; 09:49:02. () "that's the reasoning behind it."

VR: 09/21/2023; 09:49:04. () "Okay."

VR: 09/21/2023; 09:49:05. () "So..."

VR: 09/21/2023; 09:49:05. () "thank you for your patience, everybody."

VR: 09/21/2023; 09:49:07. () "No, not a problem."

VR: 09/21/2023; 09:49:09. () "Good."

VR: 09/21/2023; 09:49:09. () "Thank you all for your service."

VR: 09/21/2023; 09:49:10. () "Alright."

VR: 09/21/2023; 09:49:11. () "Okay, so what do you think we've been getting here?"

VR: 09/21/2023; 09:49:14. () "How long do you think you're going to need for a hearing?"

VR: 09/21/2023; 09:49:18. () "Uh..."

VR: 09/21/2023; 09:49:19. () "hour-wise?"

VR: 09/21/2023; 09:49:20. () "Uh-huh."

VR: 09/21/2023; 09:49:20. () "Two hours?"

VR: 09/21/2023; 09:49:21. () "Uh..."

VR: 09/21/2023; 09:49:21. () "by vice council?"

VR: 09/21/2023; 09:49:23. () "Two hours?"

VR: 09/21/2023; 09:49:24. () "Do you think..."

VR: 09/21/2023; 09:49:26. () "That's what she says."

VR: 09/21/2023; 09:49:28. () "I don't think these two know more about that than I do."

VR: 09/21/2023; 09:49:38. () "The uh..."

VR: 09/21/2023; 09:49:38. () "the hybrid motion..."

VR: 09/21/2023; 09:49:42. () "uh..."

VR: 09/21/2023; 09:49:46. () "well..."

VR: 09/21/2023; 09:49:47. () "that's addressed as well, that's why I'm asking to speak."

VR: 09/21/2023; 09:49:49. () "Well?"

VR: 09/21/2023; 09:49:50. () "Before and in front of my attorney at this time."

VR: 09/21/2023; 09:49:55. () "As well as before."

VR: 09/21/2023; 09:49:56. () "How about Monday at 9.30?"

VR: 09/21/2023; 09:50:03. () "Judge I have a meeting with the medical examiner at 10.30 that day?"

VR: 09/21/2023; 09:50:11. () "Um..."

VR: 09/21/2023; 09:50:12. () "Wednesday?"

VR: 09/21/2023; 09:50:13. () "I can't do Wednesday."

VR: 09/21/2023; 09:50:15. () "Uh..."

VR: 09/21/2023; 09:50:17. () "Tuesday..."

VR: 09/21/2023; 09:50:21. () "Um..."

VR: 09/21/2023; 09:50:21. () "How about..."

VR: 09/21/2023; 09:50:23. () "I know, I know."

VR: 09/21/2023; 09:50:26. () "Yeah, we figured as much."

VR: 09/21/2023; 09:50:30. () "Um..."

VR: 09/21/2023; 09:50:30. () "Yeah."

VR: 09/21/2023; 09:50:35. () "How about..."

VR: 09/21/2023; 09:50:36. () "Can you do a Tuesday at..."

VR: 09/21/2023; 09:50:39. () "at 9 o'clock?"

VR: 09/21/2023; 09:50:40. () "Sure."

VR: 09/21/2023; 09:50:42. () "Yep."

VR: 09/21/2023; 09:50:42. () "Can you do that?"

VR: 09/21/2023; 09:50:52. () "I can make that work."

VR: 09/21/2023; 09:50:53. () "Alright."

VR: 09/21/2023; 09:50:54. () "So we will have the hearing Tuesday..."

VR: 09/21/2023; 09:50:57. () "Okay."

VR: 09/21/2023; 09:51:01. () "9 a.m."

VR: 09/21/2023; 09:51:02. () "Right."

VR: 09/21/2023; 09:51:02. () "And I can give you two hours."

VR: 09/21/2023; 09:51:04. () "But that will be probably about it."

VR: 09/21/2023; 09:51:06. () "But I'll definitely mark... I've marked off."

VR: 09/21/2023; 09:51:08. () "I do have two hours."

VR: 09/21/2023; 09:51:09. () "Excellent. Thank you so much."

VR: 09/21/2023; 09:51:10. () "Tuesday the 26th."

VR: 09/21/2023; 09:51:11. () "I appreciate you, Judge."

VR: 09/21/2023; 09:51:12. () "And I think that just to clarify..."

VR: 09/21/2023; 09:51:16. () "Um..."

VR: 09/21/2023; 09:51:17. () "I think really it's the issue of hybrid..."

VR: 09/21/2023; 09:51:19. () "of designation and role of counsel and addressing the
speedy trial motion apparently that he'd filed
previously"

VR: 09/21/2023; 09:51:27. () "The other issue is with discovery."

VR: 09/21/2023; 09:51:29. () "I'm working to make sure he's got all the court
appearances, past court appearances."

VR: 09/21/2023; 09:51:36. () "Yeah, because I think I've already..."

VR: 09/21/2023; 09:51:37. () "Yes."

VR: 09/21/2023; 09:51:38. () "...ordered that that be given to him."

VR: 09/21/2023; 09:51:40. () "Yes."

VR: 09/21/2023; 09:51:41. () "And I don't know what else I need to do on that other
than if it's not being done."

VR: 09/21/2023; 09:51:45. () "Right."

VR: 09/21/2023; 09:51:46. () "And I don't think it's necessarily..."

VR: 09/21/2023; 09:51:49. () "I mean, they're just videotapes, right?"

VR: 09/21/2023; 09:51:51. () "Right."

VR: 09/21/2023; 09:51:51. () "Yeah."

VR: 09/21/2023; 09:51:52. () "I mean, I don't know that that's your place to do it."

VR: 09/21/2023; 09:51:54. () "I've gotten them."

VR: 09/21/2023; 09:51:55. () "Okay."

VR: 09/21/2023; 09:51:55. () "I've gotten them."

VR: 09/21/2023; 09:51:57. () "And, you know, the issue always is it's just like two computers for the whole jail."

VR: 09/21/2023; 09:52:01. () "That's a systemic problem."

VR: 09/21/2023; 09:52:03. () "But I think there's other issue about KCPC that we need to address as well."

VR: 09/21/2023; 09:52:10. () "And..."

VR: 09/21/2023; 09:52:11. () "Well, I think that what I'll do is I would..."

VR: 09/21/2023; 09:52:14. () "What I'd like to do is what we can..."

VR: 09/21/2023; 09:52:16. () "At that..."

VR: 09/21/2023; 09:52:18. () "I can do the..."

VR: 09/21/2023; 09:52:19. () "I can do the..."

VR: 09/21/2023; 09:52:19. () "Yes."

VR: 09/21/2023; 09:52:20. () "And I can do the Faretta hearing first."

VR: 09/21/2023; 09:52:22. () "And then we could go sort of down the list."

VR: 09/21/2023; 09:52:25. () "Okay."

VR: 09/21/2023; 09:52:25. () "As you all would like to address them."

VR: 09/21/2023; 09:52:27. () "That sounds good."

VR: 09/21/2023; 09:52:28. () "And I'll let you all handle it that way."

VR: 09/21/2023; 09:52:29. () "Thanks so much."

VR: 09/21/2023; 09:52:30. () "All right."

VR: 09/21/2023; 09:52:30. () "Thank you."

VR: 09/21/2023; 09:52:31. () "Thank you all."

9-26-2023 Other Hearing for Pro Se Motions

VR: 09/26/2023; 09:05:25. () "Is everyone ready to go you think?"

VR: 09/26/2023; 09:05:28. () "Let's give Ms. Brooks a moment."

VR: 09/26/2023; 09:05:33. () "Alright, the matter before the court is Commonwealth v. Willow Cherry, 18 CR 1114."

VR: 09/26/2023; 09:05:42. () "Mr. Cherry has for quite a few years written to the court on a regular basis."

VR: 09/26/2023; 09:05:51. () "The court has reviewed his request, read everything."

VR: 09/26/2023; 09:05:54. () "He has always had representation through the Department of Public Advocacy, Ms. Brooks, Mr. Tracy."

VR: 09/26/2023; 09:06:04. () "But he has asked that he be allowed to co-counsel, I believe, or be his own attorney."

VR: 09/26/2023; 09:06:12. () "Mr. Cherry, do you want to be co-counsel or do you want to represent yourself alone?"

VR: 09/26/2023; 09:06:29. () "Honorable judge goodman, may it please the court, the term that I have come to be comfortable with in case law, as far as I'm reading, if I'm reading it right, is hybrid representation."

VR: 09/26/2023; 09:06:41. () "It's something that Kentucky, the Constitution, allows."

VR: 09/26/2023; 09:06:44. () "Well, it does, as well as it allows a defendant to represent themselves."

VR: 09/26/2023; 09:06:53. () "But it requires, before the court allows that, that the court has to conduct what is known as a Feretta hearing."

VR: 09/26/2023; 09:07:01. () "I would object to that."

VR: 09/26/2023; 09:07:03. () "Based on Cassano v. Shoup in 2021 on the Sixth Circuit, it says that hybrid representation does not trigger a Feretta hearing because there is..."

VR: 09/26/2023; 09:07:14. () "Alright, but the court feels very strongly that when I let you, if I decide to let you do hybrid representation, that you should be in a position to help your attorneys, not to hinder them, to understand what's involved."

- VR: 09/26/2023; 09:07:31. () "So the court feels strongly that I need to ask you questions before I let, before I make a determination as to whether or not I will let you do that."
- VR: 09/26/2023; 09:07:43. () "And one of the biggest concerns this court will have is that in the areas that I do not, if I find there are areas that I do not believe that you fully understand and are capable of addressing,"
- VR: 09/26/2023; 09:07:58. () "that you understand the importance of relying on the attorneys who are educated in the area of the law."
- VR: 09/26/2023; 09:08:07. () "Okay. I appreciate the clarification. I would like to preserve that for the appeal."
- VR: 09/26/2023; 09:08:13. () "That's fine. Alright, and I'd ask you to raise your right hand because I want to ask you some questions."
- VR: 09/26/2023; 09:08:17. () "Do you swear to tell the truth, the whole truth, and nothing but the truth?"
- VR: 09/26/2023; 09:08:21. () "Um, no."
- VR: 09/26/2023; 09:08:22. () "No? Okay. So you don't swear to tell the truth?"
- VR: 09/26/2023; 09:08:29. () "I don't swear. I don't believe in it."
- VR: 09/26/2023; 09:08:30. () "Alright, do you affirm that you will tell the truth?"
- VR: 09/26/2023; 09:08:33. () "Yeah, I can try that."
- VR: 09/26/2023; 09:08:34. () "You can try?"
- VR: 09/26/2023; 09:08:36. () "Yes."
- VR: 09/26/2023; 09:08:36. () "Well now, Mr. Cherry?"
- VR: 09/26/2023; 09:08:38. () "Yes, ma'am."
- VR: 09/26/2023; 09:08:39. () "If I ask you to affirm that you will tell the truth, and your position is that you are only going to try, then you and I have a problem."
- VR: 09/26/2023; 09:08:48. () "Because if you can't assure this court that you will be truthful with the court, then how can the court believe and trust in anything you say?"
- VR: 09/26/2023; 09:08:57. () "I am basically hedging that on what truth is interpreted as in the law dictionaries. So, that's something I'm a little confused about."
- VR: 09/26/2023; 09:09:16. () "Are you talking about capital T truths or small T truths?"
- VR: 09/26/2023; 09:09:19. () "What's the difference?"

- VR: 09/26/2023; 09:09:21. () "Capital T truths are things that you believe beyond anything else, kind of. And then little T truths are things that you believe in."
- VR: 09/26/2023; 09:09:28. () "So that's my contention, is belief is maybe different with different people."
- VR: 09/26/2023; 09:09:34. () "Well, there are questions such as if I say to you, did you ever go to law school? Do you not think you could answer that truthfully?"
- VR: 09/26/2023; 09:09:46. () "It's a fact."
- VR: 09/26/2023; 09:09:48. () "It's a true fact."
- VR: 09/26/2023; 09:09:49. () "In this courtroom, there are no alternative facts."
- VR: 09/26/2023; 09:09:54. () "Okay."
- VR: 09/26/2023; 09:09:55. () "So, if I say to you, Mr. Cherry, did you ever go to law school?"
- VR: 09/26/2023; 09:10:04. () "Right. I think as the court would interpret it, that would be a negative. I would say no."
- VR: 09/26/2023; 09:10:11. () "Alright. And I'll ask you if you've ever represented yourself in any other cases as a criminal defendant."
- VR: 09/26/2023; 09:10:19. () "No. This is my second case in my life."
- VR: 09/26/2023; 09:10:26. () "Now, Mr. Cherry, I'm talking to you now, and I'm asking questions now. Yes m'am."
- VR: 09/26/2023; 09:10:30. () "That's right."
- VR: 09/26/2023; 09:10:31. () "Alright. Now, what I'd like to remind you is you do realize you're charged with murder, which is a Class A felony."
- VR: 09/26/2023; 09:10:38. () "And you are charged with tampering physical evidence, which is a Class D felony."
- VR: 09/26/2023; 09:10:42. () "I don't understand the classes, but I understand the two charges."
- VR: 09/26/2023; 09:10:46. () "Alright. And you do understand in a murder case, you could get a long time in the penitentiary."
- VR: 09/26/2023; 09:10:57. () "This is not a capital. You've not gone for the capital."
- VR: 09/26/2023; 09:11:01. () "So, you can't get death, but you could basically spend close to the rest of your life in the penitentiary. You understand that."
- VR: 09/26/2023; 09:11:09. () "I do. I've spent five and a half years so far, I think so."

- VR: 09/26/2023; 09:11:13. () "Well, and I acknowledge that, but let's also clarify for the record."
- VR: 09/26/2023; 09:11:19. () "First of all, this court wasn't on the bench in 2018, so I didn't have your case until the very end of 2019."
- VR: 09/26/2023; 09:11:27. () "I think we all should acknowledge, and I think you will acknowledge, that there was a time period where the courts had to be closed for COVID."
- VR: 09/26/2023; 09:11:37. () "So, that is an issue that none of us could anticipate, nor can we be blank for. Correct?"
- VR: 09/26/2023; 09:11:46. () "But then you also spent a great deal of time not in the best of health."
- VR: 09/26/2023; 09:11:54. () "I would object to that, preserve it for appeal."
- VR: 09/26/2023; 09:11:56. () "Alright. So, is it because you object because you don't recall what happened during a certain period of time because of your mental situation?"
- VR: 09/26/2023; 09:12:06. () "No."
- VR: 09/26/2023; 09:12:06. () "Why are you objecting to that?"
- VR: 09/26/2023; 09:12:14. () "Is there, Basically, I've asked for the court hearing records because I wanted to clarify that."
- VR: 09/26/2023; 09:12:19. () "I've not been able to have access to them to date. It's been ten weeks, I think, or something of that nature. You know the brief I think, two weeks ago..."
- VR: 09/26/2023; 09:12:30. () "Mr. Cherry, you and I are having a dialogue here."
- VR: 09/26/2023; 09:12:35. () "Okay."
- VR: 09/26/2023; 09:12:35. () "Alright. So, what I'm asking is, you don't have any... when I ask you if you recall that time period when you were in a situation where you went to Eastern State for evaluation, but also the time period when you really weren't in a position to help your attorneys and talk, do you recall that independently?"
- VR: 09/26/2023; 09:13:04. () "I disagree with that statement, if I may."
- VR: 09/26/2023; 09:13:07. () "First of all, do you recall independently that you had any issues? How's that?"
- VR: 09/26/2023; 09:13:19. () "I don't feel comfortable making that statement in court at this time."
- VR: 09/26/2023; 09:13:24. () "Well, I think I would look to your counsel who has attempted to help you for a long time. And I'd ask Ms.

Brooks to, on the record, establish how long it was before there was that ability to be able to communicate and work together."

VR: 09/26/2023; 09:13:44. () "Well, candidly, Judge, I'm a little in the same situation as you are, because I didn't really come on to be helping out with this case. I think it was in May of 2020... oh, April of 2022."

VR: 09/26/2023; 09:14:01. () "And then I was otherwise detained for about six months. And so I am... after I met Mr. Cherry, the issues had already been moving on. And I think there was some progress out of that situation because Dr. Houchen didn't come back down to see Mr. Cherry."

VR: 09/26/2023; 09:14:21. () "Yes."

VR: 09/26/2023; 09:14:21. () "And I think that that led us up to a point to which Mr. Cherry was not interested in proceeding with the line that Dr. Hatch was going on. And that led us to the need for the brain scan. I'm not sure if that's why the Commonwealth folks decided that he needed to be on the list for KCPC."

VR: 09/26/2023; 09:14:46. () "Well, I believe it was because there was no ability... and his home attorneys felt it because there wasn't an ability to communicate. And I recall that. That was going on when I came on board in 2019. And Mr. Duvall and Mr. Friedman... I think Mr. Duvall was on it. It was Mr. Friedman, for sure."

VR: 09/26/2023; 09:15:05. () "I think it was Mr. Beck."

VR: 09/26/2023; 09:15:06. () "Mr. Beck. That's right. Mr. Beck and Mr. Friedman couldn't communicate with him. And their concerns were they could not give him a fair defense if they couldn't have a dialogue."

VR: 09/26/2023; 09:15:19. () "All right. Now, as we go through this, I want to ask you a little bit more. You do realize that when we have proceedings in court, and I will be honest with you, I've been a little lax with you and let you go further than I would most, but when we are in trial, and there's a jury here, the court will be bound to follow the clear rules."

VR: 09/26/2023; 09:15:45. () "The rules of evidence, the rules of procedure, criminal procedure. Are you very well versed in the rules, the Kentucky rules of evidence?"

VR: 09/26/2023; 09:15:56. () "Very well versed?"

VR: 09/26/2023; 09:15:57. () "Yes."

VR: 09/26/2023; 09:15:59. () "I've not been to law school, as you've mentioned, so I don't know about very well."

VR: 09/26/2023; 09:16:04. () "But you haven't studied the rules of evidence through law school?"

VR: 09/26/2023; 09:16:07. () "No, I've studied them for about five and a half years."

VR: 09/26/2023; 09:16:09. () "No, I mean, when did you first start studying? I don't think there were time periods, Mr. Cherry, where you could study them because of your mental situation."

VR: 09/26/2023; 09:16:20. () "Yeah, again, I object to that. I haven't been shown that I was found incompetent at any point in time, and I would like to see that record if at all possible."

VR: 09/26/2023; 09:16:32. () "Alright, well, the court is advising that having dealt with your situation and being the individual that made sure that you got the treatment you needed and that you were where you needed to be, but at the end of the day, you have never had formal training in the rules of evidence?"

VR: 09/26/2023; 09:16:52. () "Nor psychiatry."

VR: 09/26/2023; 09:16:54. () "And you've never had formal training in the rules of criminal procedure?"

VR: 09/26/2023; 09:16:58. () "That's affirmative."

VR: 09/26/2023; 09:16:59. () "Okay. Now, in light of the penalty that you're looking at, the fact that you could spend the rest of your life in the penitentiary, and for all practical purposes,"

VR: 09/26/2023; 09:17:13. () "do you feel that you are comfortable truly representing yourself, or being involved in your actual representation in the capacity as a, for lack of a better term, a lawyer?"

VR: 09/26/2023; 09:17:34. () "So, is this the Feretta that we're pushing through with?"

VR: 09/26/2023; 09:17:38. () "Well, because it's the same, it's not a Feretta hearing other than in the sense that I need to be very comfortable in allowing you to do a hybrid representation."

VR: 09/26/2023; 09:17:50. () "And these are the same type of things that I would ask anyone who wanted to come in and be a part of their

defense, because my concern is to protect you, even if it means having to protect you from yourself. Yeah."

VR: 09/26/2023; 09:18:04. () "So that you are guaranteed the best, considering that you're facing a Class A felony, a murder charge, that you are getting the best possible representation."

VR: 09/26/2023; 09:18:16. () "So what I feel I need to be very comfortable with is that you are not in any way going to inadvertently sabotage yourself or your attorneys."

VR: 09/26/2023; 09:18:28. () "With the most respect, I really appreciate what you're putting forth and what the court is putting forth."

VR: 09/26/2023; 09:18:39. () "What comes to my mind is life, liberty, and the pursuit of happiness, and the constitutional right to do so for any sovereign individual and we the people."

VR: 09/26/2023; 09:18:51. () "And I agree with that."

VR: 09/26/2023; 09:18:53. () "And I believe that everyone in this world has a right, regardless of their mental condition, regardless of their wealth, regardless of their education, has a fair trial and that everyone has the right to competent representation."

VR: 09/26/2023; 09:19:15. () "So that's where I'm coming from, is competent representation, not representation just because they want it."

VR: 09/26/2023; 09:19:25. () "So what I have to feel very strongly is whether or not you are competent to assist your attorneys as a lawyer, because that's what you want to be."

VR: 09/26/2023; 09:19:35. () "You want to act as if you were a lawyer. I object to that."

VR: 09/26/2023; 09:19:41. () "Well, you want a hybrid representation, which means you want to be in the same role as the lawyer, rather than the defendant with a lawyer."

VR: 09/26/2023; 09:19:55. () "You want to be in the same role as the attorney."

VR: 09/26/2023; 09:20:02. () "Your Honorable Judge, if I may present that through my own lay study of law, criminal rights are waived unless they are presented to court, such as speedy trial and all these due process issues that I've been raising for over a year and a half or so."

VR: 09/26/2023; 09:20:29. () "In writing, I've waived previous to that with my attorneys. I didn't speak with the court directly."

- VR: 09/26/2023; 09:20:36. () "Well, you didn't waive them in the sense that there wasn't a situation where you weren't getting a speedy trial considering the health issues, considering the COVID situation."
- VR: 09/26/2023; 09:20:51. () "Well, you want to look at it and keep saying it's a 2018. You're not taking into consideration, the court doesn't feel, all of the issues that no one in this courtroom, the attorneys or the judge, had any control over."
- VR: 09/26/2023; 09:21:11. () "So, for a murder case to, when all that is said and done, when COVID was lifted and your health was lifted, for someone to say, I want a speedy trial in a year or a year and a half, and it's a murder case, that is not unreasonable."
- VR: 09/26/2023; 09:21:30. () "That is not a violation of someone's right to a speedy trial."
- VR: 09/26/2023; 09:21:35. () "It truly isn't, especially when you're looking at a judge who's practiced for over 40 years and done those type of cases, to be truly prepared and adequately prepared and adequately represented in a murder trial, a very serious murder trial, to take two years is not unreasonable."
- VR: 09/26/2023; 09:21:59. () "So, is that in reference to the Barker-Wingo standard?"
- VR: 09/26/2023; 09:22:04. () "That's in reference to the law. Whatever case you want to rely on, whatever arguments you want to make through reading the cases, that is pretty much the law."
- VR: 09/26/2023; 09:22:18. () "So, with that said, when you say you want to be hybrid, what do you want to do? Tell the court what you think you're capable of doing from your readings and your training. What role would you want to play in your trial?"
- VR: 09/26/2023; 09:22:35. () "The duties..."
- VR: 09/26/2023; 09:22:36. () "No, I want you to look at me and tell me what role you want to play."
- VR: 09/26/2023; 09:22:42. () "I would like to defend my liberty."
- VR: 09/26/2023; 09:22:44. () "Well, no one's not letting you defend your liberty, but what I'm asking you in trial, like when the Commonwealth puts on their case, what are you going to want to do? Are you going to rely on Ms. Brooks and Mr. Tracy to do the cross-examination? Do you think

you should be allowed to do the cross-examination?
What do you want to do in your role as hybrid counsel?"

VR: 09/26/2023; 09:23:12. () "Is the court telling me that I can't refer my notes here?"

VR: 09/26/2023; 09:23:18. () "Well, I'm asking you these questions first. I don't think it's getting us anywhere if you just give me... you just start reading things. I want you to talk to me."

VR: 09/26/2023; 09:23:28. () "What is it that, having done all your reading, having digested all of that law, what is it that you would want to do as hybrid counsel? What role do you want to play? And I think Ms. Brooks has a right to know that, the court has a right to know it, and Mr. Tracy has a right to know it, so that everyone knows where they come from."

VR: 09/26/2023; 09:23:55. () "Counsel was not aware, to my understanding, of hybrid counsel options in this state, so I had to look them up myself."

VR: 09/26/2023; 09:24:03. () "No, we all know there's a hybrid counsel. It's really not much different than, I mean, pro se, because often what will happen if a defendant wants to be pro se, oftentimes judges will one, either find no, end of story, or at the most, I'll let you be hybrid counsel. Courts do it all the time."

VR: 09/26/2023; 09:24:25. () "And I guarantee you Ms. Brooks and Mr. Tracy know that. So, no, we all know about hybrid counsel. But, it doesn't say the court allows it if it finds it is more detrimental to the defendant than helpful."

VR: 09/26/2023; 09:24:46. () "If I may draw the court's attention to the hearing in December of 2018, December 19, 2018."

VR: 09/26/2023; 09:25:00. () "Well, 2018 I wasn't on the bench."

VR: 09/26/2023; 09:25:03. () "That's why..."

VR: 09/26/2023; 09:25:03. () "Here, I was on a different bench."

VR: 09/26/2023; 09:25:04. () "That's why I'm verbally notifying the court that, at that time, I asked for a speedy trial in this setting. Bob was representing me. I hadn't seen him."

VR: 09/26/2023; 09:25:21. () "The public defenders for indigent defendants, such as myself, they had a caseload of over 500% from what the American Bar Association, Kentucky Bar Association, recommend."

VR: 09/26/2023; 09:25:36. () "As far as I'm understanding from reading the case laws, right, Halvert (?) is a good case for that."

VR: 09/26/2023; 09:25:45. () "I asserted my due process rights at that time."

VR: 09/26/2023; 09:25:49. () "And I never withdrew them. My counsel suggests..."

VR: 09/26/2023; 09:25:53. () "And this court, what this court's trying to say to you, Mr. Cherry, is all that considered, the court does not find any evidence that supports that you've been denied due process and the right to a speedy trial."

VR: 09/26/2023; 09:26:05. () "And I thought I'd laid out clearly on what grounds the court finds that."

VR: 09/26/2023; 09:26:10. () "The fact that your mental condition alone kept it from being able to go forward."

VR: 09/26/2023; 09:26:15. () "The, COVID kept it from going forward."

VR: 09/26/2023; 09:26:17. () "We're now in a situation where it is... we're looking at maybe a year and a half to two year period for a murder trial."

VR: 09/26/2023; 09:26:26. () "When all of that is set aside, there's not an unreasonable amount for a murder trial."

VR: 09/26/2023; 09:26:38. () "So let's get back to the important thing. You want me to decide on whether or not I'm going to let you be hybrid counsel."

VR: 09/26/2023; 09:26:44. () "I'm trying to make a good decision on that."

VR: 09/26/2023; 09:26:46. () "So what I'm asking you is, what is it that you would... what do you think you get to do or want to do as hybrid counsel?"

VR: 09/26/2023; 09:26:55. () "File motions and defend myself in court alone."

VR: 09/26/2023; 09:26:58. () "Well, I've always let you file motions. That hasn't... and you write me regularly and I read everything."

VR: 09/26/2023; 09:27:04. () "But here's my issue. In the trial setting..."

VR: 09/26/2023; 09:27:17. () "Yeah, I keep trying to get to it."

VR: 09/26/2023; 09:27:22. () "I want a ruling on the motions. Oh, yeah. Touché."

VR: 09/26/2023; 09:27:26. () "Yeah, but also what I want to know is, if I decide you're going to be hybrid, what is it that you want besides the ruling on the motions?"

VR: 09/26/2023; 09:27:34. () "What is it you want to do at trial?"

VR: 09/26/2023; 09:27:36. () "I would like... frankly, in a trial..."

VR: 09/26/2023; 09:27:43. () "Yes."

VR: 09/26/2023; 09:27:45. () "I don't know that the deference from this list and the duties laid out is any different."

VR: 09/26/2023; 09:27:56. () "The duties for the counsel and the defendant are specifically differentiated, as far as my understanding, in a hybrid representation. Is that not correct?"

VR: 09/26/2023; 09:28:06. () "No."

VR: 09/26/2023; 09:28:08. () "Right."

VR: 09/26/2023; 09:28:11. () "Yeah, so the..."

VR: 09/26/2023; 09:28:16. () "In general, the original specifics... but I can't read my list, so I'm a little bit torn here."

VR: 09/26/2023; 09:28:31. () "I would like to reserve the right to ask witnesses and cross-examine and examine presents."

VR: 09/26/2023; 09:28:39. () "I honestly would rather that they do that, but that's the one thing that since Bob has left and I've not been able to reach the DPA consistently until she came on, that I've kind of backed off of that particular duty."

VR: 09/26/2023; 09:28:59. () "That's one."

VR: 09/26/2023; 09:29:01. () "Basically, I want them for advice, direct and cross-examination, obtain expert witnesses, subpoenaing witnesses, requesting directed verdicts, post-trial motions, notice of appeal..."

VR: 09/26/2023; 09:29:13. () "You want them to do all that?"

VR: 09/26/2023; 09:29:15. () "...and investigations."

VR: 09/26/2023; 09:29:16. () "So you want them to do all that?"

VR: 09/26/2023; 09:29:18. () "That's affirmative, but I would reserve the direct and cross-examination at this time."

VR: 09/26/2023; 09:29:26. () "Because I haven't settled on it. If I'm reading the statutes correctly, in the case law anyway, I can actually change that right up until we start trial."

VR: 09/26/2023; 09:29:37. () "Well, that is if I let you be hybrid counsel."

VR: 09/26/2023; 09:29:40. () "Pardon?"

VR: 09/26/2023; 09:29:42. () "That is if I let you be hybrid counsel."

VR: 09/26/2023; 09:29:44. () "Yeah."

- VR: 09/26/2023; 09:29:45. () "Alright, well I'm going to reserve that right as to what I'm going to do at this point. Let's talk about the motions."
- VR: 09/26/2023; 09:29:53. () "Alright. I tried to kind of bullet this as best I could. There are nine specific motions. I don't really... I guess since the camera is on, we're going to change our demeanor a little bit. So I'll just go down the list."
- VR: 09/26/2023; 09:30:20. () "I'm not. I'm not changing my demeanor."
- VR: 09/26/2023; 09:30:24. () "Well, I would normally... pardon? Cameras are on trial table."
- VR: 09/26/2023; 09:30:27. () "Yeah, I see that now."
- VR: 09/26/2023; 09:30:35. () "Basically, in 2018, I requested discovery. I still to this day have not received all of my discovery."
- VR: 09/26/2023; 09:30:43. () "Alright, let's back up there. We need to address that. One motion is you say that you requested and have been denied discovery."
- VR: 09/26/2023; 09:30:53. () "December 19th, 2018, I requested discovery on record and video hearing."
- VR: 09/26/2023; 09:30:59. () "Alright, well, again, I'll ask Ms. Morgan, is there any discovery that you have not given over to the defense?"
- VR: 09/26/2023; 09:31:13. () "No judge."
- VR: 09/26/2023; 09:31:15. () "And when did you give all the discovery? When did the Commonwealth comply with the discovery?"
- VR: 09/26/2023; 09:31:19. () "We filed a notice of discovery compliance at the arraignment, which would have been in October of 2018."
- VR: 09/26/2023; 09:31:30. () "And then I believe we republished everything back in March of 2023. And that may have been when Ms. Brooks came on to the case."
- VR: 09/26/2023; 09:31:52. () "But all of it was given originally in 2018?"
- VR: 09/26/2023; 09:31:54. () "Yes. And the only thing that I know is outstanding that Ms. Brooks let me know she would be filing a motion is about the DNA."
- VR: 09/26/2023; 09:32:07. () "So DNA was tested in this case, and Ms. Brooks has asked for the complete file with specifically the data from the analyst."
- VR: 09/26/2023; 09:32:17. () "And that is so that they may have their own expert."

VR: 09/26/2023; 09:32:22. () "But the DNA results were given?"

VR: 09/26/2023; 09:32:25. () "Yes, the DNA results were given as soon as we got them, which I don't believe was at the arraignment, but I think it was in 2019."

VR: 09/26/2023; 09:32:33. () "And that's for the missing person?"

VR: 09/26/2023; 09:32:34. () "Alright. And Ms. Brooks, is it your understanding that what Ms. Morgan has said is accurate?"

VR: 09/26/2023; 09:32:40. () "To the best of my knowledge, yes, Judge."

VR: 09/26/2023; 09:32:42. () "Alright."

VR: 09/26/2023; 09:32:45. () "Okay, So, may I address the court?"

VR: 09/26/2023; 09:32:50. () "Yes."

VR: 09/26/2023; 09:32:50. () "Alright. I really appreciate everybody's time and understanding today."

VR: 09/26/2023; 09:33:01. () "It does seem that I'm speaking somewhat the same language, although I haven't been in law school."

VR: 09/26/2023; 09:33:06. () "The discovery, if I'm understanding correctly, is basically not presented."

VR: 09/26/2023; 09:33:14. () "The digital discovery is not able to be accessed due to my incarceration."

VR: 09/26/2023; 09:33:21. () "And in general, I can be specific. I've written everything out as that always happened."

VR: 09/26/2023; 09:33:27. () "I've presented it to the court, so I'll reiterate it orally today."

VR: 09/26/2023; 09:33:33. () "The discovery, I've gotten 40 digital files total, and I've had those since 2022, I think, when Bob left."

VR: 09/26/2023; 09:33:46. () "Before that, I was not even aware that there were any."

VR: 09/26/2023; 09:33:50. () "Although I'd asked for everything, I'd only been given, I think, 150 pages, which I now have in triplicate because of the different attorneys that have been presented by the DPA."

VR: 09/26/2023; 09:34:03. () "Well, let's get this clarified then. When you say that you have now in triplicate, how many pages?"

VR: 09/26/2023; 09:34:11. () "Approximately 150 pages."

VR: 09/26/2023; 09:34:14. () "Times three?"

VR: 09/26/2023; 09:34:15. () "Times three."

- VR: 09/26/2023; 09:34:16. () "All right. So just for clarification, Ms. Brooks, the 150 pages, where do they come from?"
- VR: 09/26/2023; 09:34:23. () "Well, the way that the Commonwealth and defendants share information is through their portal, their discovery access portal."
- VR: 09/26/2023; 09:34:32. () "And so the documents, I think, that Mr. Cherry is referring to are listed under documents, really, just underneath in the portal."
- VR: 09/26/2023; 09:34:41. () "And so I've downloaded them and I've provided them."
- VR: 09/26/2023; 09:34:45. () "And so is that the extent of what the digital..."
- VR: 09/26/2023; 09:34:50. () "Well, there's also audio recordings in the form of 911 calls."
- VR: 09/26/2023; 09:34:56. () "There's video, audio, video recordings of folks at the headquarters."
- VR: 09/26/2023; 09:35:03. () "There's..."
- VR: 09/26/2023; 09:35:09. () "Okay, there are two calls from the police, perhaps. They're not 911 calls."
- VR: 09/26/2023; 09:35:14. () "But has he had access to those?"
- VR: 09/26/2023; 09:35:16. () "And there's body cam."
- VR: 09/26/2023; 09:35:17. () "Has he had the ability to see those?"
- VR: 09/26/2023; 09:35:20. () "Well, I think the issue that Mr. Cherry has, which is one that all my folks share, is that there's not many laptops and not much accessibility for folks to get a laptop to be able to view their body cam, to be able to view their..."
- VR: 09/26/2023; 09:35:35. () "But at any point have you been able to show him any of that?"
- VR: 09/26/2023; 09:35:38. () "I have been able to show him some of it."
- VR: 09/26/2023; 09:35:40. () "I have gotten things transcribed in hopes that that would be helpful."
- VR: 09/26/2023; 09:35:45. () "But I think that Mr. Cherry is not satisfied with the transcriptions, rather would like to see the digital information himself."
- VR: 09/26/2023; 09:35:57. () "And so he's asking what the portal is."
- VR: 09/26/2023; 09:36:00. () "There is some ability, and I'm honestly not sure why we haven't gotten to this point technologically anyway, but

he's got a tablet where he's able to email, access some things on the internet."

VR: 09/26/2023; 09:36:12. () "I'm not sure how deep that goes because I'm not a tech person."

VR: 09/26/2023; 09:36:19. () "I don't know if it's possible for Mr. Cherry to access the portal from his tablet or if there's..."

VR: 09/26/2023; 09:36:28. () "Other institutions have presented a brief to the court based on that."

VR: 09/26/2023; 09:36:33. () "Yes, but other institutions may, but I have to deal with what we have access to here, Mr. Cherry."

VR: 09/26/2023; 09:36:41. () "Is this the portal that she's speaking of?"

VR: 09/26/2023; 09:36:43. () "No, the portal is where we get all of our discovery crimes."

VR: 09/26/2023; 09:36:47. () "Well, my question is, is there any way that Ms. Brooks, what you have digitally, can you transfer it to his..."

VR: 09/26/2023; 09:36:58. () "The best that I can do to provide for him at the jail as far as that goes is providing a thumb drive."

VR: 09/26/2023; 09:37:04. () "For his..."

VR: 09/26/2023; 09:37:05. () "That he can see whenever he's got access to the computer."

VR: 09/26/2023; 09:37:07. () "But it won't work with what he is..."

VR: 09/26/2023; 09:37:11. () "Whatever that thing is."

VR: 09/26/2023; 09:37:12. () "Yes, it's essentially like a small iPad."

VR: 09/26/2023; 09:37:15. () "Yeah."

VR: 09/26/2023; 09:37:18. () "Well, how long would it take for someone to look at those things?"

VR: 09/26/2023; 09:37:23. () "All those."

VR: 09/26/2023; 09:37:24. () "140 documents."

VR: 09/26/2023; 09:37:27. () "I've got 40 so far."

VR: 09/26/2023; 09:37:30. () "We're not talking about documents, we're talking about videos and things of that nature."

VR: 09/26/2023; 09:37:35. () "She said."

VR: 09/26/2023; 09:37:39. () "I've got..."

VR: 09/26/2023; 09:37:40. () "Couple of hours?"

- VR: 09/26/2023; 09:37:42. () "I mean, so the issue is that everybody, every single person has a body cam on and you just don't know when they enter in the scene."
- VR: 09/26/2023; 09:37:49. () "I don't know cumulatively how long it would take him."
- VR: 09/26/2023; 09:37:52. () "Sometimes it's repetitious because it's the same from a different angle."
- VR: 09/26/2023; 09:37:56. () "Different angle."
- VR: 09/26/2023; 09:37:57. () "There are under 10 body cams that I have to date."
- VR: 09/26/2023; 09:38:02. () "You already have them."
- VR: 09/26/2023; 09:38:04. () "The body cams, some of them, every time I ask for discovery, evidently to me, there is something new shows up..."
- VR: 09/26/2023; 09:38:12. () "But what I think you're forgetting is when your attorneys are giving the discovery, you have the discovery."
- VR: 09/26/2023; 09:38:20. () "I would object to that."
- VR: 09/26/2023; 09:38:22. () "Well, I know you would, but that's neither here nor there."
- VR: 09/26/2023; 09:38:25. () "I appreciate you saying that, but it's not as if you can't take the position that the Commonwealth never gave it to you."
- VR: 09/26/2023; 09:38:30. () "You can't take the position that your defense attorneys are doing everything possible to give you what they can."
- VR: 09/26/2023; 09:38:38. () "So, to the extent that you're arguing you haven't gotten the discovery, based on the courts hearing everything, the court finds you have, in good faith, received your discovery."
- VR: 09/26/2023; 09:38:49. () "Now, the issue may be that because of the jail's situation, it may be that we try to figure out a way where, at some point, he can sit with you, Ms. Brooks, or Mr. Tracy, even if it has to be in the courtroom, when we're off, when the courtroom is available, to watch everything."
- VR: 09/26/2023; 09:39:13. () "That's why I was wondering what the time might take."

- VR: 09/26/2023; 09:39:17. () "I'm happy to go down and do that. I think that my understanding is that Mr. Cherry is seeking the ability to do this at will."
- VR: 09/26/2023; 09:39:28. () "Well, but Mr. Cherry, there are limitations to what all of us can do. Lots of us would like to do things at will that we don't have the opportunity to do."
- VR: 09/26/2023; 09:39:36. () "You have to live in a very real world. So the issue becomes, the court does not find that you've ever been denied discovery."
- VR: 09/26/2023; 09:39:48. () "What the court does find is, because of situations, that Ms. Brooks is willing to come down, sit with you, and show you everything on her laptop."
- VR: 09/26/2023; 09:39:58. () "So, that's, you know, your motion arguing that you haven't gotten discovery, the court finds to be moot that you've had discovery as early as October of 2018."
- VR: 09/26/2023; 09:40:09. () "So, that's one motion. What's the second?"
- VR: 09/26/2023; 09:40:12. () "Okay, I would object and preserve for appeal, please."
- VR: 09/26/2023; 09:40:14. () "Absolutely."
- VR: 09/26/2023; 09:40:15. () "Thank you."
- VR: 09/26/2023; 09:40:17. () "The speedy trial, asserted on that same day..."
- VR: 09/26/2023; 09:40:20. () "The court's already addressed that and found that you have been granted a speedy trial."
- VR: 09/26/2023; 09:40:25. () "And I've preserved for appeal."
- VR: 09/26/2023; 09:40:28. () "Right."
- VR: 09/26/2023; 09:40:28. () "Alright, thank you so much."
- VR: 09/26/2023; 09:40:31. () "Bill of particulars for the discovery, the best that I've gotten, I've received on 8-26-23 so far, and it's not in totality from what I can tell."
- VR: 09/26/2023; 09:40:45. () "Alright, the court will, at this point, address bill of particulars."
- VR: 09/26/2023; 09:40:50. () "Bill of particulars are often done when the allegations are not clear, there's no real understanding of what's happened."
- VR: 09/26/2023; 09:41:02. () "The court, having reviewed the indictment, finds the allegations to have been very clear."

VR: 09/26/2023; 09:41:09. () "The court further finds that all the discovery has been given."

VR: 09/26/2023; 09:41:13. () "Bill of particulars are often asked for when there's not sufficient evidence being given."

VR: 09/26/2023; 09:41:19. () "Or, for lack of a better word, the discovery."

VR: 09/26/2023; 09:41:24. () "The court's found all of that to have occurred."

VR: 09/26/2023; 09:41:26. () "So, the court finds that your argument on bill of particulars, really at this stage, is redundant to what's already been done."

VR: 09/26/2023; 09:41:38. () "If I may sidebar for just a moment with the court, if I were to go full pro se, would it be the responsibility of the commonwealth attorney to provide discovery as opposed to the department of public advocacy?"

VR: 09/26/2023; 09:42:04. () "They would do exactly what they did for Ms. Brooks. They'd give it to you the same way, and because you don't have access to it, that'd be your problem."

VR: 09/26/2023; 09:42:15. () "That'd be my problem?"

VR: 09/26/2023; 09:42:16. () "Yes, sir."

VR: 09/26/2023; 09:42:17. () "I wouldn't have access to my discovery? Gotcha."

VR: 09/26/2023; 09:42:18. () "No, because they don't treat anyone differently, so you'd have to be capable of doing exactly what your defense attorneys have done."

VR: 09/26/2023; 09:42:26. () "And if you're not capable of doing that from your situation, that is not the commonwealth's issue, nor is it the court's."

VR: 09/26/2023; 09:42:33. () "Okay."

VR: 09/26/2023; 09:42:33. () "Which is why the court grants indigent people lawyers, and very competent lawyers."

VR: 09/26/2023; 09:42:42. () "Alright, so we've done the bill of particulars, what's your next one?"

VR: 09/26/2023; 09:42:46. () "May I back up really quickly, did you say you reserved the right for hybrid, so I'm not granted hybrid?"

VR: 09/26/2023; 09:42:56. () "Not at this point."

VR: 09/26/2023; 09:42:57. () "Okay, so I would object to that."

VR: 09/26/2023; 09:42:59. () "Well, you have objected, and it's safe for rights of appeal."

VR: 09/26/2023; 09:43:03. () "Yeah."

VR: 09/26/2023; 09:43:03. () "I've reserved that right at this point."

VR: 09/26/2023; 09:43:05. () "Thank you."

VR: 09/26/2023; 09:43:10. () "There was an injunctive relief motion filed on 5-4-22, based on digital discovery access."

VR: 09/26/2023; 09:43:20. () "That was one of the, I don't know if that's a motion, or I guess it is a motion for injunctive relief, to direct jail to provide equipment so I can view the discovery that I did have at that time."

VR: 09/26/2023; 09:43:37. () "Well, the court doesn't really have access to, the court can and has advised your attorneys to assist in every way they can."

VR: 09/26/2023; 09:43:50. () "But the court is not in a position to tell the jail to do something they're not capable of doing."

VR: 09/26/2023; 09:43:56. () "The funds are not there, it's not that the court can't say, oh, you have to go do that."

VR: 09/26/2023; 09:44:01. () "I mean, it's not within my purview, it's not."

VR: 09/26/2023; 09:44:03. () "So, the court has taken every step possible, and it's clear to the court that the Commonwealth and the defense attorneys have absolutely worked as hard as they could to get you all the evidence you need."

VR: 09/26/2023; 09:44:17. () "While inhibiting my liberty."

VR: 09/26/2023; 09:44:20. () "Well, I don't think anyone's inhibiting your liberty."

VR: 09/26/2023; 09:44:23. () "I object to that, I'm in jail."

VR: 09/26/2023; 09:44:26. () "Well, but you were given a bond, as everyone is."

VR: 09/26/2023; 09:44:36. () "Alright, so next."

VR: 09/26/2023; 09:44:38. () "There was an extensive motion for the dismissal of the indictment based on prosecutorial misconduct, filed on 7/6/22."

VR: 09/26/2023; 09:44:51. () "It was mentioned on the docket for our last hearing, but it was not heard."

VR: 09/26/2023; 09:44:59. () "Alright, and go ahead and tell the court why you feel there's prosecutorial misconduct on the record."

VR: 09/26/2023; 09:45:04. () "I would draw the court's attention to the motion filed on July the 6th."

- VR: 09/26/2023; 09:45:22. () "I'm asking you to state it on the record, Mr. Cherry, why you believe there has been prosecutorial misconduct."
- VR: 09/26/2023; 09:45:35. () "In short, in general, I guess, if that's what you're asking."
- VR: 09/26/2023; 09:45:42. () "Well, I need the facts on which you base your allegation that there has been prosecutorial misconduct."
- VR: 09/26/2023; 09:45:49. () "A misleading statement of hearsay is fact."
- VR: 09/26/2023; 09:45:56. () "...shall not make false statements as fact."
- VR: 09/26/2023; 09:46:05. () "But what I'm asking you is, what facts?"
- VR: 09/26/2023; 09:46:08. () "Now, that's a legal thing, you can't make, you can't do certain things."
- VR: 09/26/2023; 09:46:15. () "But what is it factually that the Commonwealth did that causes you to believe that they have committed prosecutorial misconduct?"
- VR: 09/26/2023; 09:46:21. () "What specific facts?"
- VR: 09/26/2023; 09:46:24. () "Right."
- VR: 09/26/2023; 09:46:25. () "What facts did Ms. Morgan or the Commonwealth do? What did they do?"
- VR: 09/26/2023; 09:46:29. () "I would clarify that I guess the touchstone of prosecutorial misconduct is that it's not the culpability of the prosecutor, but the fairness of the trial."
- VR: 09/26/2023; 09:46:40. () "So it's not her."
- VR: 09/26/2023; 09:46:41. () "No, you're talking about generalities or giving legal terminology."
- VR: 09/26/2023; 09:46:49. () "But what I'm asking you is, when someone says there has been prosecutorial misconduct, they have to give the facts."
- VR: 09/26/2023; 09:46:56. () "What, factually, did Ms. Morgan do? In your case."
- VR: 09/26/2023; 09:47:00. () "Right. So, the same as they're required to give facts when they charge someone with murder, I completely understand that."
- VR: 09/26/2023; 09:47:13. () "The prosecutor's office opening statements for the case at bar..."
- VR: 09/26/2023; 09:47:18. () "Well, there haven't been opening statements. We haven't had a trial yet."

- VR: 09/26/2023; 09:47:22. () "And opening statements are at trial."
- VR: 09/26/2023; 09:47:24. () "Grand jury trial? Is that not a trial?"
- VR: 09/26/2023; 09:47:27. () "No."
- VR: 09/26/2023; 09:47:28. () "Okay, so grand jury hearing, I guess?"
- VR: 09/26/2023; 09:47:30. () "It's a grand jury. It's a presentation of the case and as to whether or not there is probable cause, which is a very low bar compared to what has to be proved at trial, which is beyond a reasonable doubt."
- VR: 09/26/2023; 09:47:42. () "Right."
- VR: 09/26/2023; 09:47:42. () "So, what specifically, if anything, was said that you believe created prosecutorial misconduct?"
- VR: 09/26/2023; 09:47:52. () "There are no less than ten specific statements in the allegation of..."
- VR: 09/26/2023; 09:48:02. () "In fact, I might pop that up to maybe ten to fifteen specific statements that I've listed here in the grand jury for the count one, as it was stated as fact, in the hearing."
- VR: 09/26/2023; 09:48:27. () "So, I can go through them specifically, but..."
- VR: 09/26/2023; 09:48:31. () "Why don't you just read the first sentence of each paragraph?"
- VR: 09/26/2023; 09:48:39. () "So, yeah, the first sentence of each paragraph is the prosecutor's office opening statements for the case of Barr, transcriptions, right, exactly, grand jury tamper, dot dot dot, tampering."
- VR: 09/26/2023; 09:48:52. () "But you're not giving me any facts."
- VR: 09/26/2023; 09:48:54. () "No."
- VR: 09/26/2023; 09:48:55. () "You're alleging there was tampering, but you're not giving me facts."
- VR: 09/26/2023; 09:48:58. () "No, that's what the prosecutor said."
- VR: 09/26/2023; 09:49:01. () "Oh, no, they say you've been charged with tampering with physical evidence."
- VR: 09/26/2023; 09:49:04. () "That's affirmed."
- VR: 09/26/2023; 09:49:04. () "I think they believe that there was evidence that was taken to Florida, right?"
- VR: 09/26/2023; 09:49:11. () "Yeah."
- VR: 09/26/2023; 09:49:12. () "Could I have the indictment?"

VR: 09/26/2023; 09:49:21. () "I think, uh..."

VR: 09/26/2023; 09:49:38. () "Put that up, it's contended, but it's..."

VR: 09/26/2023; 09:49:48. () ...

VR: 09/26/2023; 09:50:11. () "Can I object? Do we have to verbalize?"

VR: 09/26/2023; 09:50:20. () "If you're going to say that you're alleging prosecutorial misconduct..."

VR: 09/26/2023; 09:50:24. () "You have to give the specific facts under the law."

VR: 09/26/2023; 09:50:27. () "You have to say, when they did this, this, and this, that was prosecutorial misconduct."

VR: 09/26/2023; 09:50:32. () "And you have to say what the specific facts are."

VR: 09/26/2023; 09:50:36. () "Mr. Cherry, what your experience is, I'm holding you to the same standard that I would hold a lawyer who came in here and alleged prosecutorial misconduct."

VR: 09/26/2023; 09:50:45. () "Or alleged lack of a speedy trial."

VR: 09/26/2023; 09:50:48. () "If you want to be hybrid, counsel, or you want to be pro se, you will be held to the same standard."

VR: 09/26/2023; 09:50:55. () "That is required by the law."

VR: 09/26/2023; 09:50:57. () "So when you say to me there has been a lack of discovery, then I hold you to the standard, show me."

VR: 09/26/2023; 09:51:04. () "If you say there's been prosecutorial misconduct, I say, then tell me."

VR: 09/26/2023; 09:51:09. () "What facts, what actual actions did the Commonwealth take that rise to the level of prosecutorial misconduct?"

VR: 09/26/2023; 09:51:18. () "I think the most egregious at the present, on August 11th of 2023, shows as, and was the body ever located."

VR: 09/26/2023; 09:51:36. () "That's kind of dropped my jaw."

VR: 09/26/2023; 09:51:40. () "What does that have to do? There are often murder cases where a body was never found."

VR: 09/26/2023; 09:51:45. () "This was not in the murder allegation, this was in the tampering."

VR: 09/26/2023; 09:51:49. () "Well, if the body disappears and the allegation is somebody killed the person and the body's gone,"

VR: 09/26/2023; 09:51:56. () "and the last person to have it was the person that allegedly killed him,"

VR: 09/26/2023; 09:52:00. () "then a jury could find from the evidence that the person who killed the person and the body's missing was the one that tampered with it."

VR: 09/26/2023; 09:52:11. () "And that's evidence. That's the law."

VR: 09/26/2023; 09:52:14. () "So how is that prosecutorial misconduct?"

VR: 09/26/2023; 09:52:19. () "False statement is fact, as previously stated."

VR: 09/26/2023; 09:52:22. () "Well, that is a question of fact. And that's what trials are all about."

VR: 09/26/2023; 09:52:26. () "That they're questions of fact and dispute."

VR: 09/26/2023; 09:52:29. () "You know, your defense may be, and I don't know what your defense is going to be, but your defense may be,"

VR: 09/26/2023; 09:52:35. () "I didn't touch the body, I don't have the body, but if the Commonwealth has evidence that otherwise,"

VR: 09/26/2023; 09:52:41. () "then it's a question for the jury, the 12 jurors, to determine if they believe you did have the body and that it disappeared"

VR: 09/26/2023; 09:52:49. () "and that they can make an assumption that if it's gone, that you're the one that tampered with it."

VR: 09/26/2023; 09:52:57. () "So that's not prosecutorial misconduct. That's the law."

VR: 09/26/2023; 09:53:01. () "Well, again, I would object to the... object to the..."

VR: 09/26/2023; 09:53:09. () "If I can sidebar this a second, you seem to be being held to the same standards as registered attorneys but..."

VR: 09/26/2023; 09:53:17. () "Yes, that's when you ask to, and that's what I tried to explain to you."

VR: 09/26/2023; 09:53:21. () "When the court makes a determination as to whether or not you are capable of being hybrid counsel"

VR: 09/26/2023; 09:53:27. () "or you're capable of representing yourself pro se, the court has to make it clear that if you choose to do that,"

VR: 09/26/2023; 09:53:36. () "you have to be held to the same standards."

VR: 09/26/2023; 09:53:38. () "Am I still being denied that right though, currently?"

VR: 09/26/2023; 09:53:42. () "Well, I'm trying to figure out if I can... if you're capable of doing the work at the same standard."

VR: 09/26/2023; 09:53:50. () "Because, in all fairness to you, if I find that you're not capable of doing it at the same standard,"

VR: 09/26/2023; 09:53:58. () "then it would be inappropriate for the court to let you be hybrid because you would be hurting yourself."

VR: 09/26/2023; 09:54:07. () "And the court has a duty to protect everyone's rights, both the Commonwealth's rights and the defendant's rights."

VR: 09/26/2023; 09:54:14. () "You have to have... the court's duty is to make sure you have a level playing field."

VR: 09/26/2023; 09:54:20. () "And if I find that you aren't capable of representing yourself to the same standard as a lawyer,"

VR: 09/26/2023; 09:54:30. () "then I wouldn't let you be pro se."

VR: 09/26/2023; 09:54:32. () "And if I find that you're not capable of rising to the level of a lawyer and would, in effect,"

VR: 09/26/2023; 09:54:40. () "adversely affect yourself by adversely affecting the lawyers who are trying to represent you,"

VR: 09/26/2023; 09:54:46. () "then I would not find you capable of being hybrid counsel."

VR: 09/26/2023; 09:54:50. () "If I may clarify with the court, was that not ascertained just a moment ago?"

VR: 09/26/2023; 09:54:55. () "What?"

VR: 09/26/2023; 09:54:56. () "That I was denied hybrid counsel?"

VR: 09/26/2023; 09:54:59. () "No, I told you I was reserving that to the end of all of these other motions. I made that clear."

VR: 09/26/2023; 09:55:04. () "Okay, well, pardon me."

VR: 09/26/2023; 09:55:06. () "That's okay."

VR: 09/26/2023; 09:55:06. () "All right, so is there anything else that you want to say that the Commonwealth did to rise to the level of prosecutorial misconduct?"

VR: 09/26/2023; 09:55:16. () "I would again object to the motion in writing not being heard and a pro se litigant being asked to verbalize everything."

VR: 09/26/2023; 09:55:31. () "Well, that's what I expect of every..."

VR: 09/26/2023; 09:55:33. () "Okay."

VR: 09/26/2023; 09:55:34. () "That's what I expect of every lawyer."

VR: 09/26/2023; 09:55:35. () "Right."

VR: 09/26/2023; 09:55:36. () "Every lawyer."

VR: 09/26/2023; 09:55:37. () "And every court. Civil, criminal."

VR: 09/26/2023; 09:55:41. () "Pardon me, and I appreciate your patience."

VR: 09/26/2023; 09:55:43. () "No, I'm fine. I'm fine. But I'm just telling you, I'm not holding you to any higher standard."

VR: 09/26/2023; 09:55:49. () "In fact, I'm giving you some leeway, but that is expected."

VR: 09/26/2023; 09:55:54. () "If you make an allegation, you have to give the facts that support it."

VR: 09/26/2023; 09:55:59. () "And then if you do, the court rules."

VR: 09/26/2023; 09:56:02. () "But if you don't give any facts, the court rules and finds there is no prosecutorial misconduct."

VR: 09/26/2023; 09:56:06. () "If I may..."

VR: 09/26/2023; 09:56:08. () "Yes, sir."

VR: 09/26/2023; 09:56:08. () "...make a rather candid statement..."

VR: 09/26/2023; 09:56:10. () "Yes, sir."

VR: 09/26/2023; 09:56:11. () "...for everybody."

VR: 09/26/2023; 09:56:13. () "The giving of leeway is something that, from my perspective, and again, I object to the finding of incompetency without being documented, without being asked."

VR: 09/26/2023; 09:56:28. () "Or any of that that I'm aware of."

VR: 09/26/2023; 09:56:32. () "In fact, I don't think I was found incompetent."

VR: 09/26/2023; 09:56:35. () "But, you know, you're saying..."

VR: 09/26/2023; 09:56:37. () "It's the only excuse that I know that would reason for the public to be..."

VR: 09/26/2023; 09:56:42. () "or for being denied all of these due processes."

VR: 09/26/2023; 09:56:46. () "Well, sir, I have not found that, based on all the evidence, as I've stated continually on the record, that you have been denied any due process."

VR: 09/26/2023; 09:56:55. () "I understand."

VR: 09/26/2023; 09:56:56. () "Okay. So..."

VR: 09/26/2023; 09:56:57. () "And I've objected and preserved."

VR: 09/26/2023; 09:56:59. () "Well, of course you have."

VR: 09/26/2023; 09:57:00. () "Okay. Thank you."

VR: 09/26/2023; 09:57:01. () "As always."

VR: 09/26/2023; 09:57:02. () "I'm new here."

- VR: 09/26/2023; 09:57:03. () "That's all right. So I don't find there's any prosecutorial misconduct at this stage."
- VR: 09/26/2023; 09:57:09. () "Okay. And I object and preserve."
- VR: 09/26/2023; 09:57:13. () "Yes. So what else? What other motions?"
- VR: 09/26/2023; 09:57:16. () "Evidentiary hearings. Basically, all of the evidence I would object to."
- VR: 09/26/2023; 09:57:22. () "And I haven't had a chance. I don't have a list of all of the evidence."
- VR: 09/26/2023; 09:57:28. () "Well, now, let me explain something to you."
- VR: 09/26/2023; 09:57:31. () "If you want evidence kept out at a trial, the appropriate time is right before trial and you make a motion in limine."
- VR: 09/26/2023; 09:57:38. () "And then the court addresses the motions in limine and determines, as under the law, if there's any reason to justify any of the evidence being kept out."
- VR: 09/26/2023; 09:57:48. () "So to the extent that there may be evidence that needs or should be kept out, I would anticipate I'll get motions in limine that address that."
- VR: 09/26/2023; 09:57:59. () "But that is not... that's premature at this stage."
- VR: 09/26/2023; 09:58:06. () "So the E is pronounced A."
- VR: 09/26/2023; 09:58:09. () "In limine? Yeah."
- VR: 09/26/2023; 09:58:11. () "So that's one thing we'll go through. But I've only read this stuff."
- VR: 09/26/2023; 09:58:15. () "Um, 2-17-23, there was a motion for bond credit tendered."
- VR: 09/26/2023; 09:58:23. () "The court did not find that appropriate. I think we've already gone through that."
- VR: 09/26/2023; 09:58:31. () "In fact, I think at one point, presently, the court finds the bond to be fair based on the charges and the facts and the situation as it now stands."
- VR: 09/26/2023; 09:58:50. () "So the court addressed that. I don't think bond credit is appropriate in this situation."
- VR: 09/26/2023; 09:58:55. () "And when did you rule on that?"
- VR: 09/26/2023; 09:58:59. () "You said you addressed that."

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VR: 09/26/2023; 09:59:01. () "I think I've addressed the bond several times, or they have been addressed several times. We have several different bond changes."

VR: 09/26/2023; 09:59:08. () "So at this point in time, the court will again state for the record that it finds the \$50,000 bond to be more than fair in this situation."

VR: 09/26/2023; 09:59:19. () "And that it does not find bond credit to be appropriate."

VR: 09/26/2023; 09:59:26. () "Today is 9-25."

VR: 09/26/2023; 09:59:28. () "Yes, sir."

VR: 09/26/2023; 09:59:30. () "All right. And do you want to object to the record and save it for appeal?"

VR: 09/26/2023; 09:59:38. () "Okay."

VR: 09/26/2023; 09:59:38. () "Yes. I was told to object to everything."

VR: 09/26/2023; 09:59:42. () "All right."

VR: 09/26/2023; 09:59:44. () "Who told you to do that?"

VR: 09/26/2023; 09:59:50. () "I'll reserve comment on that."

VR: 09/26/2023; 09:59:53. () "Okay."

VR: 09/26/2023; 09:59:54. () "There are specific... do you have brief 271?"

VR: 09/26/2023; 10:00:05. () "I've got all of them here, sir, but I don't know that I have them in order of..."

VR: 09/26/2023; 10:00:12. () "Okay. So that has a list of the nine weeks. Basically, I've been filing briefs every week..."

VR: 09/26/2023; 10:00:20. () "Uh-huh. I know."

VR: 09/26/2023; 10:00:20. () "...since counsel disappeared almost two years ago, or from my view."

VR: 09/26/2023; 10:00:26. () "Well, but for the record, counsel has never disappeared."

VR: 09/26/2023; 10:00:30. () "Yeah."

VR: 09/26/2023; 10:00:30. () "You've been represented by the Department of Public Advocacy from the very beginning, and you have never been without representation."

VR: 09/26/2023; 10:00:39. () "Then that would be my objection to due process violations, if I'm reading that right."

VR: 09/26/2023; 10:00:45. () "Okay. All right."

VR: 09/26/2023; 10:00:52. () "Obviously, she's been great."

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VR: 09/26/2023; 10:00:57. () "She is great. I believe the Commonwealth would agree with that, even."

VR: 09/26/2023; 10:01:02. () "You have an extremely competent attorney that lots of people would pay tons of money to have..."

VR: 09/26/2023; 10:01:09. () "But you can't."

VR: 09/26/2023; 10:01:10. () "...that you get for free."

VR: 09/26/2023; 10:01:11. () "But you can't. My liberty is not free. I don't know that I would agree with that."

VR: 09/26/2023; 10:01:18. () "But I understand where you're coming from with most people."

VR: 09/26/2023; 10:01:22. () "There's a specific citing that is of import to me that was stated in by the Western District of Kentucky in 2023, U.S. v. Cater."

VR: 09/26/2023; 10:01:42. () "It says the most serious, basically the access to digital discovery being denied for whatever reason through a state agency,"

VR: 09/26/2023; 10:01:50. () "is the most serious because the inability of a defendant to adequately prepare his case skews the fairness of the entire system."

VR: 09/26/2023; 10:02:00. () "That has been quoted quite a few times in these briefs, so I just wanted to put that orally on the record."

VR: 09/26/2023; 10:02:08. () "And I understand that, but I do think you need to realize that the jail does have..."

VR: 09/26/2023; 10:02:15. () "You may not feel it's efficient or you may not, but they do have the ability..."

VR: 09/26/2023; 10:02:22. () "They do supply computers at the jail for defendants to be able to look at things."

VR: 09/26/2023; 10:02:29. () "Now, what I have said the court's willing to do is to set up a time if it would help, and the jail doesn't allow it,"

VR: 09/26/2023; 10:02:38. () "for Ms. Brooks to sit down with her computer and do it."

VR: 09/26/2023; 10:02:42. () "Now, I assume she could do it at the jail."

VR: 09/26/2023; 10:02:45. () "Yes, I have no problem getting down to the jail."

VR: 09/26/2023; 10:02:47. () "And so, that's not that you're... And she has her own computer, so you wouldn't be dependent on the jail"

VR: 09/26/2023; 10:02:54. () "and you would be able to see it and what you need to see."

VR: 09/26/2023; 10:02:58. () "So, I appreciate the presence in court."

VR: 09/26/2023; 10:03:06. () "And I don't think that's ever been denied from you, by your counsel."

VR: 09/26/2023; 10:03:11. () "If it hasn't been denied, then why do I only have 40 files and I've only seen one of what was ruled on last time?"

VR: 09/26/2023; 10:03:18. () "Maybe you haven't made it... You all haven't set up a time to do it, but I don't think anyone's denied you."

VR: 09/26/2023; 10:03:26. () "No one's said, no, you can't have it."

VR: 09/26/2023; 10:03:29. () "Sure, sure. I understand that."

VR: 09/26/2023; 10:03:30. () "No one's ever denied you the right to see any of that."

VR: 09/26/2023; 10:03:34. () "If I'm reading the court's mandate, or the statutes and court rules,"

VR: 09/26/2023; 10:03:45. () "discovery is to be presented almost immediately after..."

VR: 09/26/2023; 10:03:48. () "Well, I think the Commonwealth made it clear that the bulk of the discovery was given as far back as 2018."

VR: 09/26/2023; 10:03:54. () "To the Department of Public Advocacy?"

VR: 09/26/2023; 10:03:56. () "To your lawyers."

VR: 09/26/2023; 10:03:58. () "Okay. So, I'm going to go ahead and make this statement, that the DPA seems to be a stopgap between a defendant and their right to discovery. Not her specifically."

VR: 09/26/2023; 10:04:11. () "That is not true. And it's no different."

VR: 09/26/2023; 10:04:16. () "And in all honesty, if you were paying your attorney, if you had retained counsel, it works the same way."

VR: 09/26/2023; 10:04:23. () "It doesn't go to the defendant directly, it goes to their attorneys."

VR: 09/26/2023; 10:04:28. () "So, you're not being treated, because you have a public defender, any differently than a defendant who has private counsel."

VR: 09/26/2023; 10:04:38. () "That's exactly how it works with private counsel."

VR: 09/26/2023; 10:04:41. () "If I may differ, Your Honor, when I did have private counsel in 2018, before I bonded out, there was a laptop available to me every day."

VR: 09/26/2023; 10:04:52. () "That's not what we're talking about here. We're talking about you're saying that the Commonwealth, that the attorneys are used as a stopgap to keep defendants from having their evidence. And that's not true."

VR: 09/26/2023; 10:05:04. () "Well, it's actually a combination of the DPA's caseload. Previously, I think she's a little bit different, frankly."

VR: 09/26/2023; 10:05:12. () "But, a general..."

VR: 09/26/2023; 10:05:17. () "This is..." [whispers at table]

VR: 09/26/2023; 10:05:22. () "Okay."

VR: 09/26/2023; 10:05:29. () "The..."

VR: 09/26/2023; 10:05:30. () "I mean, it is a..."

VR: 09/26/2023; 10:05:40. () "As far as I'm understanding, okay, it is a material fact that I don't have the ability to view my discovery right at this moment, in court."

VR: 09/26/2023; 10:05:51. () "Well, first of all, it would never be appropriate for you to review your discovery right now, in court, in front of all of these individuals."

VR: 09/26/2023; 10:06:02. () "That would be to your detriment."

VR: 09/26/2023; 10:06:07. () "Especially with the Commonwealth sitting right there, watching how you react, watching what you say."

VR: 09/26/2023; 10:06:13. () "So, that is a protection for you, Mr. Cherry. Not a deprivation, it's a protection."

VR: 09/26/2023; 10:06:23. () "My statement was cut off because, basically, it extends to before I came out here, and then the privacy of, you know, when I'm incarcerated."

VR: 09/26/2023; 10:06:39. () "So, I just can't get past the fact that it's been five and a half years and I have asked for discovery."

VR: 09/26/2023; 10:06:47. () "To the extent, and I think it is very disingenuous of you to continually state that for five years you've been denied discovery."

VR: 09/26/2023; 10:07:03. () "You've had good lawyers, Mr. Friedman, Mr. Beck, Ms. Brooks, and they have all gone above and beyond to give you discovery."

VR: 09/26/2023; 10:07:16. () "In fact, you have it in triplets. You've even admitted it. You've got 150 pages in triplets."

VR: 09/26/2023; 10:07:23. () "So, to continually argue that you've been denied discovery, I find to be less than candid with the court."

- VR: 09/26/2023; 10:07:34. () "And I understand that you feel frustrated because of the digital situation, or the body cams, or the interviews."
- VR: 09/26/2023; 10:07:43. () "But those are all rectified, will be rectified, and Ms. Brooks is going to set up a time when she comes to show you what she hasn't already given you in transcripts, or what she hasn't already shown you."
- VR: 09/26/2023; 10:07:57. () "Or maybe what Mr. Friedman showed you. We don't know what Mr. Friedman showed you."
- VR: 09/26/2023; 10:08:01. () "I've written it down for you."
- VR: 09/26/2023; 10:08:03. () "But we don't know. We don't have Mr. Friedman here to defend himself as you're continually saying that the only good lawyer you ever had was Ms. Brooks."
- VR: 09/26/2023; 10:08:14. () "I would recant that statement. I didn't mean to tell anybody. It's more of a systematic thing, I think, than an individual."
- VR: 09/26/2023; 10:08:24. () "Alright. What other motions do we have?"
- VR: 09/26/2023; 10:08:27. () "Those are the only motions."
- VR: 09/26/2023; 10:08:29. () "Okay." [whispers]
- VR: 09/26/2023; 10:08:31. () "Oh. Yeah, there was an oral ruling, and this is something I..."
- VR: 09/26/2023; 10:08:49. () "Did you see that?"
- VR: 09/26/2023; 10:08:50. () "No."
- VR: 09/26/2023; 10:08:54. () "There was... I don't know if you were present or not."
- VR: 09/26/2023; 10:08:59. () "There was an oral ruling by yourself, if memory serves."
- VR: 09/26/2023; 10:09:03. () "I think it was in 2019 when, right after I made the assertions in court for discovery and speedy trial, that there was an assault at the jail."
- VR: 09/26/2023; 10:09:21. () "And something that you had said in court was that basically evidence previous to that assault would not be admissible."
- VR: 09/26/2023; 10:09:34. () "So I've asked for the hearing videos so I can review."
- VR: 09/26/2023; 10:09:40. () "Well, first, I would have never taken a position that evidence that existed before, if it's evidence relevant to this case, that I would have ever said it was not admissible."

VR: 09/26/2023; 10:09:54. () "That is not true. You may have misunderstood."

VR: 09/26/2023; 10:09:59. () "Certainly may."

VR: 09/26/2023; 10:09:59. () "Oh, I do know, and of course I wasn't there, but my understanding of what had happened to you neurologically was the result of a fight at the jail."

VR: 09/26/2023; 10:10:10. () "And that's simply what I had been told."

VR: 09/26/2023; 10:10:13. () "Which explained why we had such a long delay in getting you back to being healthy."

VR: 09/26/2023; 10:10:20. () "And I don't know any of the facts of that assault. I don't know if anyone was ever prosecuted. It's not relevant to this case."

VR: 09/26/2023; 10:10:31. () "The oral rulings, in my opinion, would be relevant to this case, and that's why I've asked for the hearing videos."

VR: 09/26/2023; 10:10:39. () "Okay. Can I say something?"

VR: 09/26/2023; 10:10:43. () "Absolutely."

VR: 09/26/2023; 10:10:43. () "Okay. I think that Mr. Cherry and I have not been here for even just a portion of the amount of hearings you've had."

VR: 09/26/2023; 10:10:55. () "I've gotten a copy of his hearings. He has not been able to go through all of them because he's had a tough time getting them off the disc and onto the jump drive."

VR: 09/26/2023; 10:11:03. () "But we're working on that, and I'll hopefully have it to him by the end of the week."

VR: 09/26/2023; 10:11:09. () "I think that Mr. Cherry believes that there are oral rulings that have been made in court that have not found their way onto pieces of paper."

VR: 09/26/2023; 10:11:21. () "And believes that the oral rulings in court ought to hold the same weight as if they were to have been put on a piece of paper."

VR: 09/26/2023; 10:11:31. () "And so I think a lot of his confusion is in, I think a little bit just as we've seen about the evidence being admissible, not being admissible before the assault."

VR: 09/26/2023; 10:11:41. () "I think that there are things that happen in court that Mr. Cherry takes as rulings."

VR: 09/26/2023; 10:11:48. () "Or not rulings."

- VR: 09/26/2023; 10:11:49. () "I'm not here, so I can't say with a lot of them, so I can't say what they are to be fair."
- VR: 09/26/2023; 10:11:55. () "But he believes that there are some oral rulings that have been made that haven't found their way to a piece of paper."
- VR: 09/26/2023; 10:12:02. () "That he has been moving forward as if they are rulings that have been made that will be carried forward."
- VR: 09/26/2023; 10:12:12. () "The court doesn't, it's recollection is that we haven't had hearings and motions where I would have made any formal rulings."
- VR: 09/26/2023; 10:12:22. () "I have often listened to Mr. Cherry, listened to his concerns, telling him that I understand his concerns."
- VR: 09/26/2023; 10:12:29. () "But I don't recall any rulings or oral statements that I would find to be rulings that I would have put as a ruling on paper to be the law of the case."
- VR: 09/26/2023; 10:12:46. () "May I address the court, ma'am?"
- VR: 09/26/2023; 10:12:47. () "Yes, sir."
- VR: 09/26/2023; 10:12:48. () "Address the court."
- VR: 09/26/2023; 10:12:49. () "Uh-huh."
- VR: 09/26/2023; 10:12:51. () "These nine, and plus if I guess competency is going to be the reasoning that's subjected to and preserved for appeal,"
- VR: 09/26/2023; 10:13:06. () "the nine motions that we have heard today, is there any way that we can get those in writing or how do we proceed?"
- VR: 09/26/2023; 10:13:17. () "Well, simply the court normally has counsel draft a proposed order and then I review it and change it to make it appropriate as to what I ruled."
- VR: 09/26/2023; 10:13:32. () "I mean, I think I've made it clear on all of these that, as to how I've ruled, so I don't think they'd have any problem doing their draft."
- VR: 09/26/2023; 10:13:43. () "And counsel are always required to share whoever takes the lead on it, the other one has to agree to it, that's the local rule, that it does accurately reflect what I said."
- VR: 09/26/2023; 10:13:58. () "But I will tell you, even the rulings themselves, I think you anticipate that they'll be long dissertations, but

often times when they are denials of a motion, they're simply denied. It's a one line. That's it."

VR: 09/26/2023; 10:14:21. () "Yeah, I've got denied written down by all of these nine items that are presented to the court today. I'm not sure..."

VR: 09/26/2023; 10:14:48. () "I don't know how complicated it would be for the clerk's office, but Mr. Cherry is seeking a docket sheet."

VR: 09/26/2023; 10:15:11. () "Do you have a docket sheet that the court makes, if those are kept or not, or how that goes?"

VR: 09/26/2023; 10:15:18. () "We only have up to..."

VR: 09/26/2023; 10:15:24. () "Up to 2022?"

VR: 09/26/2023; 10:15:27. () "Possibly."

VR: 09/26/2023; 10:15:27. () "Possibly. I'd have to check. Are you the clerk?"

VR: 09/26/2023; 10:15:35. () "Yes, he's the clerk."

VR: 09/26/2023; 10:15:36. () "Why couldn't I just ask that?"

VR: 09/26/2023; 10:15:38. () "He's the bench clerk for the fourth division."

VR: 09/26/2023; 10:15:40. () "Gotcha. Vince?"

VR: 09/26/2023; 10:15:45. () "No, no, that's not Vince."

VR: 09/26/2023; 10:15:49. () "Well, nice to see you at least. Thank you so much for printing out the motion that you did and sending it back. I guess that was you or some of your staff."

VR: 09/26/2023; 10:16:03. () "So yeah, the docket sheet, so there's a cutoff date, so there's maybe a year in retrospect. Roughly."

VR: 09/26/2023; 10:16:11. () "I don't think you are going to see anything on the... I mean, I'm just giving you a heads up."

VR: 09/26/2023; 10:16:17. () "The docket sheet will probably just say that it's been passed to the next day, what the new date is."

VR: 09/26/2023; 10:16:23. () "Right."

VR: 09/26/2023; 10:16:24. () "Yeah, the docket sheets don't... the docket sheets are not orders and don't have judges' rulings on them."

VR: 09/26/2023; 10:16:36. () "They just would have new status dates."

VR: 09/26/2023; 10:16:42. () "So, if I can clarify with the court, the court is relying on the defense attorney or the commonwealth's attorney to draft writing, written rulings, is that correct?"

VR: 09/26/2023; 10:17:01. () "On these, we'll just do very brief so they both agree because the court feels very strongly that it needs to know that everybody heard the same thing."

VR: 09/26/2023; 10:17:10. () "When it's a draft, they give it to me, I then put it the way I want it written."

VR: 09/26/2023; 10:17:15. () "Yes."

VR: 09/26/2023; 10:17:15. () "Yes."

VR: 09/26/2023; 10:17:16. () "But they do a draft."

VR: 09/26/2023; 10:17:18. () "Right."

VR: 09/26/2023; 10:17:21. () "I think that's why I've been writing briefs weekly to the court and really for everybody since there's been inaction from my point of view."

VR: 09/26/2023; 10:17:33. () "They've gotten a little more strict and started citing case law and all that stuff."

VR: 09/26/2023; 10:17:40. () "All those issues, I guess."

VR: 09/26/2023; 10:17:43. () "Brief 271, you said you had... if I'm not mistaken."

VR: 09/26/2023; 10:17:49. () "Yes, I have it right here."

VR: 09/26/2023; 10:17:50. () "Okay, so it basically goes over the briefs that I've presented to the court, 212 through 268 since the last hearing, previous last week's hearing to set today's date."

VR: 09/26/2023; 10:18:07. () "The speedy trial was denied orally that day."

VR: 09/26/2023; 10:18:12. () "Please."

VR: 09/26/2023; 10:18:16. () "I'm sorry, what day did you say?"

VR: 09/26/2023; 10:18:18. () "The... what was the last hearing date?"

VR: 09/26/2023; 10:18:24. () "Yeah, last week."

VR: 09/26/2023; 10:18:28. () "No, the one before that."

VR: 09/26/2023; 10:18:30. () "July 13th."

VR: 09/26/2023; 10:18:32. () "July 13th, thank you so much."

VR: 09/26/2023; 10:18:37. () "And I think that there is some question in Mr. Cherry's mind about whether or not there are rulings on the briefs that he's been submitting"

VR: 09/26/2023; 10:18:48. () "or whether or not they've been counting as motions or... I mean, I guess they're briefs, but some of them look like motions to me."

VR: 09/26/2023; 10:19:00. () "They're memorandums of law."

VR: 09/26/2023; 10:19:05. () "They're his position on a lot of things."

VR: 09/26/2023; 10:19:09. () "I don't know that the court would refer to them as briefs, as is written by a lawyer."

VR: 09/26/2023; 10:19:23. () "And some are just him talking to the court."

VR: 09/26/2023; 10:19:29. () "That is how the court has viewed them."

VR: 09/26/2023; 10:19:34. () "So, I guess I'll orally clarify this. I've written it as well."

VR: 09/26/2023; 10:19:43. () "Basically, the briefs started when I was unable to contact counsel."

VR: 09/26/2023; 10:19:51. () "I sent letters to the DPA over a period of about six months, and Bob was unavailable way before she came in."

VR: 09/26/2023; 10:20:05. () "So, basically, the DPA was unreachable for an amount of time, and during that time, I took up writing in court because I didn't feel there was any choice but to do so."

VR: 09/26/2023; 10:20:23. () "So, the briefs started then. I don't believe they were even labeled briefs in the beginning."

VR: 09/26/2023; 10:20:32. () "But they were intended to be viewed, construed liberally as pro se."

VR: 09/26/2023; 10:20:43. () "Motions as needed."

VR: 09/26/2023; 10:20:45. () "There's a lot of law on that."

VR: 09/26/2023; 10:20:49. () "But they've fluctuated both from a less strict to a more strict."

VR: 09/26/2023; 10:20:55. () "And they've gotten, in the last four or five, they've gotten more specific in citing case law."

VR: 09/26/2023; 10:21:04. () "And the motions that she's speaking about have written on the top side of the briefs that I would hope that they'd be seen as motions."

VR: 09/26/2023; 10:21:13. () "Such as the motion to dismiss indictments was, as well, brief 248."

VR: 09/26/2023; 10:21:20. () "There's a speedy trial appeal that is currently being held by the DPA that was also brief 237."

VR: 09/26/2023; 10:21:30. () "I don't understand what you mean by a speedy trial appeal that's being held by DPA."

VR: 09/26/2023; 10:21:35. () "So, on July the 13th, did we not rule against dismissal for lack of a speedy trial?"

VR: 09/26/2023; 10:21:44. () "No, I've never had that addressed, nor has the Commonwealth had an opportunity to respond or write a written response."

VR: 09/26/2023; 10:21:56. () "Gotcha. Well, I think, if I'm understanding right, the..."

VR: 09/26/2023; 10:22:05. () "So, let me back up for a moment."

VR: 09/26/2023; 10:22:09. () "Today's citing of the 12-19-18 speedy trial, what I have construed as a lack of speedy trial, that is actually the first present of that to the court."

VR: 09/26/2023; 10:22:32. () "I've been saying it for... very consistently."

VR: 09/26/2023; 10:22:35. () "Well, I would take it, what you're telling me, is that the court in 18 denied that motion."

VR: 09/26/2023; 10:22:42. () "And, obviously, if it looks like your charge was in 9 of 18,"

VR: 09/26/2023; 10:22:49. () "three months later, to demand that you hadn't been getting a speedy trial would be, I think, found to be nonsensical."

VR: 09/26/2023; 10:23:03. () "To believe that only three months into a murder charge that you're denied a speedy trial if you didn't have a trial right then, I mean..."

VR: 09/26/2023; 10:23:12. () "The assertion and the asking for dismissal..."

VR: 09/26/2023; 10:23:16. () "You've asked for a speedy trial, even today you've asked for a speedy trial,"

VR: 09/26/2023; 10:23:21. () "and the court has said that, based on all the facts that have occurred,"

VR: 09/26/2023; 10:23:25. () "the court doesn't find that you've been denied a speedy trial and that you are getting a speedy trial."

VR: 09/26/2023; 10:23:30. () "Because you have to take into consideration everything that has happened,"

VR: 09/26/2023; 10:23:36. () "both with your health and with COVID, as to whether or not you have in any way been denied a speedy trial."

VR: 09/26/2023; 10:23:44. () "And the court doesn't find those facts to exist, Mr. Cherry."

VR: 09/26/2023; 10:23:47. () "So I object to that and preserve it for appeal?"

VR: 09/26/2023; 10:23:50. () "Sure."

VR: 09/26/2023; 10:23:51. () "Thank you so much."

VR: 09/26/2023; 10:23:52. () "Yeah."

- VR: 09/26/2023; 10:23:52. () "I want to address that right to appeal, if possible, on 7-28-23, when brief 237 was a speedy trial appeal."
- VR: 09/26/2023; 10:24:10. () "There is no... an appeal never happens here, an appeal goes to the court of appeals."
- VR: 09/26/2023; 10:24:15. () "Right."
- VR: 09/26/2023; 10:24:16. () "But I don't know that your motion for a speedy trial would be allowed to go up on appeal until after the trial, because..."
- VR: 09/26/2023; 10:24:24. () "There are certain... from my reading of case law, there are certain circumstances where if it would inhibit a trial,"
- VR: 09/26/2023; 10:24:31. () "then it can be appealed. If it would not, then it wouldn't be."
- VR: 09/26/2023; 10:24:36. () "So a dismissal, a speedy trial, is one of those things, the way I read it."
- VR: 09/26/2023; 10:24:42. () "I'm not a lawyer. I've just been reading this stuff for six years almost."
- VR: 09/26/2023; 10:24:50. () "The brief 243 was a judicial..."
- VR: 09/26/2023; 10:24:56. () "First of all, the court never perceived your letters to me to be motions or briefs."
- VR: 09/26/2023; 10:25:08. () "The court saw those to be letters."
- VR: 09/26/2023; 10:25:15. () "Yeah, I mean, that's what I believed. I didn't believe..."
- VR: 09/26/2023; 10:25:19. () "You know, I found the letters, I read them all, I was interested in them."
- VR: 09/26/2023; 10:25:27. () "I often enjoyed your jokes, both in court and in the letters."
- VR: 09/26/2023; 10:25:34. () "So to the extent that you have felt they were perceived by the court as motions or..."
- VR: 09/26/2023; 10:25:45. () "The court just felt they were just you sort of talking to the court of your frustrations or of your situation."
- VR: 09/26/2023; 10:25:55. () "So that was to stopgap a reasonable competency for lack of a speedy trial."
- VR: 09/26/2023; 10:26:02. () "And that was put forth initially..."
- VR: 09/26/2023; 10:26:05. () "Well, sir, first of all, the court has again, I've told you already, I've never found any facts in this case, since I

took the bench in November of 2019, that you have ever been denied a speedy trial."

VR: 09/26/2023; 10:26:19. () "Right. Because?"

VR: 09/26/2023; 10:26:23. () "Yet again, I will tell you, because of COVID, which stopped everything, no one was allowed in the courtroom."

VR: 09/26/2023; 10:26:31. () "There were no trials."

VR: 09/26/2023; 10:26:33. () "I don't believe I can object to that."

VR: 09/26/2023; 10:26:35. () "And there was a situation at a time when you could not, because of your health... Right and what had happened to you, even communicate with your attorneys so that they could..."

VR: 09/26/2023; 10:26:51. () "You couldn't even assist them in your defense."

VR: 09/26/2023; 10:26:54. () "So to demand that you be given a... or force you to go to trial when your own attorneys couldn't even have a dialogue with you would have been unconscionable."

VR: 09/26/2023; 10:27:06. () "So all of those facts are why we are now here and you haven't, as you want to say, had a trial."

VR: 09/26/2023; 10:27:14. () "But those aren't facts that anyone could have prevented. I mean, those are the facts."

VR: 09/26/2023; 10:27:22. () "I mean, the court can't do anything about COVID. The court can't do anything about your mental condition and your health."

VR: 09/26/2023; 10:27:31. () "Those were what we were faced with."

VR: 09/26/2023; 10:27:38. () "The defendant would again point attention to the written documents presented to the court for well over a year now as a stopgap for the reasoning."

VR: 09/26/2023; 10:27:56. () "And the court disagrees with your description of that."

VR: 09/26/2023; 10:28:02. () "Right. There was actually one brief where I learned that the briefs were actually called Memorandums of Law. Do you remember that?"

VR: 09/26/2023; 10:28:14. () "Well, they... there are such a thing that... Briefs are used at the appellate level."

VR: 09/26/2023; 10:28:21. () "Right."

VR: 09/26/2023; 10:28:22. () "Memorandums of Law or Memoranda of Law are used at the circuit court level."

VR: 09/26/2023; 10:28:27. () "Gotcha."

VR: 09/26/2023; 10:28:28. () "Yeah."

VR: 09/26/2023; 10:28:30. () "So, would the hearing videos that I'm supposed to have access to, would those be reviewed by an appellate court as well?"

VR: 09/26/2023; 10:28:40. () "You mean when you came out for your status hearings?"

VR: 09/26/2023; 10:28:43. () "Yes."

VR: 09/26/2023; 10:28:44. () "And I'd let you talk to me?"

VR: 09/26/2023; 10:28:45. () "Like now."

VR: 09/26/2023; 10:28:46. () "Well, yeah, they can see all... No, this is different. This is an actual hearing on motions."

VR: 09/26/2023; 10:28:50. () "Okay."

VR: 09/26/2023; 10:28:52. () "Those were your status hearings and I would let you come out because you would want to talk to me and I'd let you talk to me."

VR: 09/26/2023; 10:28:58. () "Yes, they can have access to all that."

VR: 09/26/2023; 10:29:00. () "Okay."

VR: 09/26/2023; 10:29:09. () "The... what I labeled as the letter that was labeled as Brief 243, filed on 8/3/23, was further evidence of judicial due process versus executive crime control."

VR: 09/26/2023; 10:29:29. () "It was intended as a valid present and evidence of my concern for due process."

VR: 09/26/2023; 10:29:45. () "Mr. Cherry, I understand what you are saying."

VR: 09/26/2023; 10:29:48. () "What I am telling you is the court has looked at all the facts, the totality of the circumstances, and finds your concerns to be... while you may have those concerns, the facts do not justify finding that you have in any way been denied due process or a speedy trial."

VR: 09/26/2023; 10:30:12. () "So I'm writing this down. So the court finds due process has been provided."

VR: 09/26/2023; 10:30:21. () "Yes."

VR: 09/26/2023; 10:30:22. () "Okay."

VR: 09/26/2023; 10:30:23. () "That's how you want to word it, yeah."

VR: 09/26/2023; 10:30:26. () "Your due process rights have not been denied, nor have you been denied the right to a speedy trial."

VR: 09/26/2023; 10:30:33. () "Okay."

VR: 09/26/2023; 10:30:35. () "So I object and preserve, please."

VR: 09/26/2023; 10:30:38. () "Yes."

VR: 09/26/2023; 10:30:40. () "The motion to dismiss was labeled as brief 248."

VR: 09/26/2023; 10:30:45. () "And Mr. Cherry, I've advised you yet again, the court did not perceive those as formal motions filed for the court to address."

VR: 09/26/2023; 10:30:57. () "The court looked at those simply as you writing to the court."

VR: 09/26/2023; 10:31:02. () "And the court, knowing you had competent counsel, felt that if any such allegations needed to be brought to the court, having worked with the public defender's office now for 15 years, the court felt that if they felt any of those motions needed to be brought, they would have brought them."

VR: 09/26/2023; 10:31:31. () "Okay."

VR: 09/26/2023; 10:31:31. () "But in fairness to you, because you are so concerned, I have let, with your counsel there, who seems fine with going forward on all of these issues, I have let you speak to all of them."

VR: 09/26/2023; 10:31:43. () "And I have ruled on all of them."

VR: 09/26/2023; 10:31:46. () "Except for the hybrid counsel, which I'm still reserving."

VR: 09/26/2023; 10:31:54. () "May I refer to these briefs as just the title of a letter?"

VR: 09/26/2023; 10:32:00. () "Is that okay from here forward?"

VR: 09/26/2023; 10:32:02. () "Sure, you can."

VR: 09/26/2023; 10:32:03. () "Yeah. Okay."

VR: 09/26/2023; 10:32:05. () "That's really, I heard you the first time."

VR: 09/26/2023; 10:32:08. () "Just trying to get through my list here."

VR: 09/26/2023; 10:32:11. () "So, brief 248, filed on 8-11-23 was the motion to dismiss, that was denied today."

VR: 09/26/2023; 10:32:18. () "I just heard, not that, but I guess today's oral motion was denied."

VR: 09/26/2023; 10:32:25. () "But it was written by me in that motion, so there was certainly intent established anyway."

VR: 09/26/2023; 10:32:33. () "Brief 256 on 8-17-23 was an additional competency stopgap."

VR: 09/26/2023; 10:32:42. () "Basically when, so that was your initial reasoning for the letters to the court."

VR: 09/26/2023; 10:32:50. () "Does that make sense? Like a competency stopgap for a reason?"

VR: 09/26/2023; 10:32:55. () "You use terminology that doesn't seem appropriate or doesn't make much sense."

VR: 09/26/2023; 10:33:03. () "I don't understand, what are you saying?"

VR: 09/26/2023; 10:33:05. () "Are you saying you're not competent?"

VR: 09/26/2023; 10:33:07. () "I mean, I'm not, you're sort of throwing terms together that aren't very clear."

VR: 09/26/2023; 10:33:12. () "Are you saying you're getting ineffective assistance of counsel?"

VR: 09/26/2023; 10:33:16. () "Oh, yeah. Yeah, that makes sense."

VR: 09/26/2023; 10:33:24. () "I basically have wanted to, by advice of counsel, I wanted to take competency off the table since the prosecution started in 2018."

VR: 09/26/2023; 10:33:35. () "I was not there."

VR: 09/26/2023; 10:33:36. () "I don't know what he's talking about. I wasn't there in 2018 either."

VR: 09/26/2023; 10:33:40. () "Judge, I think that the issue of competency has been raised."

VR: 09/26/2023; 10:33:43. () "And I think it was raised initially at the district court level, and that's why Mr. Cherry was sent to KCPC."

VR: 09/26/2023; 10:33:50. () "At that time it was pre-COVID, so there was not an issue getting in and out of KCPC."

VR: 09/26/2023; 10:33:55. () "And I think that my understanding is that after he had that injury, that there may have been another issue of competency raised after that."

VR: 09/26/2023; 10:34:07. () "Because he was not communicative at all."

VR: 09/26/2023; 10:34:11. () "It wasn't for quite some time."

VR: 09/26/2023; 10:34:14. () "It was by choice."

VR: 09/26/2023; 10:34:21. () "So, how do I get him off the table?"

VR: 09/26/2023; 10:34:23. () "Well, you have to ask the judge to take it off. I don't know that..."

- VR: 09/26/2023; 10:34:29. () "I'm a little not clear on what I'm supposed to say and what I'm not supposed to say."
- VR: 09/26/2023; 10:34:33. () "I guess procedurally, the only thing that I can add is that, yes, KCPC was ordered at the arraignment back in October 2018."
- VR: 09/26/2023; 10:34:49. () "That's obviously when Your Honor was not on the bench."
- VR: 09/26/2023; 10:34:52. () "Right."
- VR: 09/26/2023; 10:34:55. () "We never ended up having a competency hearing."
- VR: 09/26/2023; 10:34:58. () "And from my memory, that is because it was scheduled to be in July of 2019."
- VR: 09/26/2023; 10:35:05. () "But then, Mr. Friedman wanted to have a defense expert evaluate Mr. Cherry based on... to rebut some of what KCPC had put in their report."
- VR: 09/26/2023; 10:35:22. () "But then, that got delayed between COVID, Mr. Cherry's injury..."
- VR: 09/26/2023; 10:35:27. () "Which came after the competency hearing. I mean, after the first competency evaluation."
- VR: 09/26/2023; 10:35:32. () "After the first competency evaluation, correct. And then, in my understanding from the reports that Dr. Houchin has done,"
- VR: 09/26/2023; 10:35:40. () "he evaluated Mr. Sherry in December of 2019, said he wanted additional things done,"
- VR: 09/26/2023; 10:35:47. () "then was re-evaluated, then re-evaluated Mr. Cherry in December of 2022,"
- VR: 09/26/2023; 10:35:53. () "reiterating that he wanted some things done."
- VR: 09/26/2023; 10:35:56. () "And then, it was shortly after that, later in December of 2022, that I think Mr. Tracy asked for a KCPC re-evaluation as well."
- VR: 09/26/2023; 10:36:08. () "So... and at that time, I think... I have a vague memory, candidly, of Mr. Tracy saying that it would probably be in November of this year"
- VR: 09/26/2023; 10:36:20. () "that he would probably get that evaluation done based on talking to KCPC."
- VR: 09/26/2023; 10:36:26. () "So, a lot of it has been for the same issues that the court has brought up already."
- VR: 09/26/2023; 10:36:35. () "About the delays and why things have not happened."

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VR: 09/26/2023; 10:36:39. () "Perfect. May I address the court?"

VR: 09/26/2023; 10:36:45. () "Yes."

VR: 09/26/2023; 10:36:46. () "What was labeled... a letter presented to the court that was labeled as brief 230, presented on 7-21-23,"

VR: 09/26/2023; 10:36:58. () "that first reiterated a hearing off docket, which we are finally here today, so I appreciate that,"

VR: 09/26/2023; 10:37:05. () "was very specific on medical self-determination and competency rebuts"

VR: 09/26/2023; 10:37:12. () "and an intention that would stand consistent with the 2018 KCPC evaluation"

VR: 09/26/2023; 10:37:22. () "that there is no intent to cooperate with the prosecution's competency queries."

VR: 09/26/2023; 10:37:33. () "I'm not as concerned about the commonwealths because that's done and passed."

VR: 09/26/2023; 10:37:43. () "It's my understanding now that your own attorney had requested the evaluation,"

VR: 09/26/2023; 10:37:50. () "which I find to be warranted and good lawyers doing what they should be doing."

VR: 09/26/2023; 10:38:01. () "So this doesn't have any... this new... where we are now and what's being asked at this point,"

VR: 09/26/2023; 10:38:08. () "from my understanding, has nothing to do with what the commonwealth wants."

VR: 09/26/2023; 10:38:15. () "Am I correct, Ms. Brooks?"

VR: 09/26/2023; 10:38:23. () "Based on what..."

VR: 09/26/2023; 10:38:24. () "He wants me to reserve comment on that."

VR: 09/26/2023; 10:38:26. () "I don't... I was here, I think, the last... I remember of the letter..."

VR: 09/26/2023; 10:38:33. () "there was another letter sent that we got Dr. Hatch to do that was provided to the commonwealth"

VR: 09/26/2023; 10:38:38. () "that I... my understanding is that maybe Mr. Tracy thought it had been provided to the commonwealth,"

VR: 09/26/2023; 10:38:43. () "but then I think it turned out that it had not."

VR: 09/26/2023; 10:38:45. () "And I'm not in that loop."

VR: 09/26/2023; 10:38:46. () "I know, I know."

VR: 09/26/2023; 10:38:46. () "I mean, I don't... that is... the court doesn't..."

VR: 09/26/2023; 10:38:49. () "I know, I know, that's not..."

VR: 09/26/2023; 10:38:49. () "Yeah, that is not the court's..."

VR: 09/26/2023; 10:38:52. () "You know, and I think that at the time we're requesting the KCPC evaluation,"

VR: 09/26/2023; 10:38:56. () "that we don't... we're not necessarily understanding that it's going to be a year"

VR: 09/26/2023; 10:39:01. () "and some change for him to be evaluated."

VR: 09/26/2023; 10:39:05. () "Well, then I guess the issue becomes, if you have..."

VR: 09/26/2023; 10:39:09. () "I don't know what your doctor is saying or not saying,"

VR: 09/26/2023; 10:39:12. () "but, I mean, at some point, if we have different opinions,"

VR: 09/26/2023; 10:39:17. () "they're going to need to be addressed."

VR: 09/26/2023; 10:39:20. () "Your Honor?"

VR: 09/26/2023; 10:39:20. () "Yes, sir."

VR: 09/26/2023; 10:39:21. () "There's the... when Chris presented that in court, I guess last year at this point..."

VR: 09/26/2023; 10:39:31. () "Well, no, it was this year."

VR: 09/26/2023; 10:39:33. () "No, it was last year."

VR: 09/26/2023; 10:39:37. () "Because I was doing best to stand behind my attorney,"

VR: 09/26/2023; 10:39:43. () "as you've made clear today is proper etiquette,"

VR: 09/26/2023; 10:39:48. () "I didn't object to my own attorneys when I present,"

VR: 09/26/2023; 10:39:55. () "which I'm stumbling over now because that doesn't make sense, right?"

VR: 09/26/2023; 10:40:00. () "So, there's a lot of case law about pro se litigants disagreeing with their attorneys."

VR: 09/26/2023; 10:40:07. () "The Murray case that I mentioned last time was a telling case."

VR: 09/26/2023; 10:40:14. () "It's not binding, but, you know, if it pleases the court at this level."

VR: 09/26/2023; 10:40:23. () "The day after that was said in court, the letter was forwarded to the court,"

VR: 09/26/2023; 10:40:35. () "making clear that because of the way it played out in court,"

VR: 09/26/2023; 10:40:41. () "basically exactly what I just said, if that makes sense."

VR: 09/26/2023; 10:40:45. () "So, I didn't... I don't agree with the competency inquiry,"

VR: 09/26/2023; 10:40:49. () "if it's going to take me a long time."

VR: 09/26/2023; 10:40:51. () "And the court's concerns in a competency situation is,"

VR: 09/26/2023; 10:40:58. () "the court doesn't listen to necessarily the lawyers or the defendant,"

VR: 09/26/2023; 10:41:05. () "but more so the experts."

VR: 09/26/2023; 10:41:10. () "And that's what the court feels it should do."

VR: 09/26/2023; 10:41:14. () "And if there's a disagreement between maybe the lawyers and the defendant"

VR: 09/26/2023; 10:41:18. () "as to whether or not there's a competency issue,"

VR: 09/26/2023; 10:41:21. () "then the best way for the court to address it is to have an expert give the court guidance."

VR: 09/26/2023; 10:41:28. () "If I may present, since we've got a few more minutes here,"

VR: 09/26/2023; 10:41:32. () "I'm going to try to make this an hour, but..."

VR: 09/26/2023; 10:41:35. () "Well, we've been... I think it's..."

VR: 09/26/2023; 10:41:38. () "No, we're up to... we're almost to two hours."

VR: 09/26/2023; 10:41:40. () "Yes, we are. Yeah."

VR: 09/26/2023; 10:41:42. () "I wasn't expecting to be explained so much, and I appreciate your..."

VR: 09/26/2023; 10:41:45. () "No, that's why I'm here."

VR: 09/26/2023; 10:41:50. () "I'm taken aback. You know, this is... I'm kind of due to being charged and arrested and whatnot."

VR: 09/26/2023; 10:41:58. () "I'm a little bit taken aback. I'm actually, frankly, quite a bit taken aback by"

VR: 09/26/2023; 10:42:04. () "how easily we, the people, empower our state to take away liberties."

VR: 09/26/2023; 10:42:10. () "But you said that there's due process served, so I guess that's where we're at with that."

VR: 09/26/2023; 10:42:20. () "Medical self-determination has come up, and there's a new case this year,"

VR: 09/26/2023; 10:42:26. () "Cameron v. The Women's Medical Surgery, basically because of the Dodd's Rule."

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VR: 09/26/2023; 10:42:36. () "Medical self-determination, from the way I read it, is a person's right,"

VR: 09/26/2023; 10:42:42. () "a right of refusal to any medical interventions in their own lives,"

VR: 09/26/2023; 10:42:46. () "and personal property of a sovereign being."

VR: 09/26/2023; 10:42:48. () "I think it deals with a woman's right to control her own body."

VR: 09/26/2023; 10:42:51. () "Absolutely. And a sovereign person, I would reiterate."

VR: 09/26/2023; 10:42:59. () "You know, certainly women deserve every right a man does."

VR: 09/26/2023; 10:43:03. () "Thank you."

VR: 09/26/2023; 10:43:04. () "Yeah, I would hope."

VR: 09/26/2023; 10:43:05. () "Yeah, right? You guys would make this one."

VR: 09/26/2023; 10:43:10. () "Anyway..."

VR: 09/26/2023; 10:43:16. () "The letter that was labeled Brief 230 is very specific."

VR: 09/26/2023; 10:43:20. () "If we had the time, I would go through it."

VR: 09/26/2023; 10:43:22. () "And specify the reasoning that I want competency taken off the table."

VR: 09/26/2023; 10:43:27. () "But I don't know that I feel that you're competent to make that determination."

VR: 09/26/2023; 10:43:38. () "To make what determination specifically?"

VR: 09/26/2023; 10:43:41. () "As to whether or not you're competent."

VR: 09/26/2023; 10:43:44. () "Right."

VR: 09/26/2023; 10:43:45. () "I don't think..."

VR: 09/26/2023; 10:43:50. () "I think that's what the experts need to tell me."

VR: 09/26/2023; 10:43:54. () "Right."

VR: 09/26/2023; 10:43:56. () "So, I'm objecting to that, and the reasons are very specific."

VR: 09/26/2023; 10:44:02. () "I presented a few of them, but..."

VR: 09/26/2023; 10:44:06. () "Judge, there was an issue, and I know that the Commonwealth has..."

VR: 09/26/2023; 10:44:11. () "You know the Commonwealth has the most recent report from Dr. Houchin,"

VR: 09/26/2023; 10:44:15. () "in which he requests a brain scan?"

VR: 09/26/2023; 10:44:18. () "Yes."

VR: 09/26/2023; 10:44:18. () "Okay."

VR: 09/26/2023; 10:44:19. () "I think that is where we come to the line of medical self-determination"

VR: 09/26/2023; 10:44:24. () "that Mr. Cherry is speaking of."

VR: 09/26/2023; 10:44:26. () "He doesn't want to do the brain scan."

VR: 09/26/2023; 10:44:27. () "He does not wish to do a brain scan."

VR: 09/26/2023; 10:44:30. () "I would also add..."

VR: 09/26/2023; 10:44:32. () "Why do you not want to do the brain scan?"

VR: 09/26/2023; 10:44:35. () "Medical self-determination was asserted in 2018 at KCPC."

VR: 09/26/2023; 10:44:39. () "I did not cooperate with them."

VR: 09/26/2023; 10:44:41. () "I disagree with telling somebody else what they can believe,"

VR: 09/26/2023; 10:44:44. () "or what they are, or what they think."

VR: 09/26/2023; 10:44:46. () "Those are my beliefs, personally."

VR: 09/26/2023; 10:44:48. () "Yeah, but my question is, why are you opposed to a brain scan?"

VR: 09/26/2023; 10:44:53. () "Very specifically, why are you opposed to it?"

VR: 09/26/2023; 10:44:55. () "What are your facts for being opposed to it?"

VR: 09/26/2023; 10:44:57. () "I'm a trained scientist, and I realize that..."

VR: 09/26/2023; 10:45:01. () "in jurisprudence, as well as science, or any other studies,"

VR: 09/26/2023; 10:45:08. () "that there are..."

VR: 09/26/2023; 10:45:10. () "I think I put this in one of the briefs."

VR: 09/26/2023; 10:45:12. () "Basically, humans have never been 100% right about anything, whatsoever,"

VR: 09/26/2023; 10:45:16. () "to date, in our 2,000 years, you know."

VR: 09/26/2023; 10:45:19. () "And not, you know..."

VR: 09/26/2023; 10:45:21. () "Everybody hasn't agreed on everything, so..."

VR: 09/26/2023; 10:45:25. () "The fact of judging another person's thoughts, or..."

VR: 09/26/2023; 10:45:29. () "I realize I can't bench press 1,000 pounds."

VR: 09/26/2023; 10:45:34. () "That's a material fact, as far as I'm understanding."

VR: 09/26/2023; 10:45:37. () "Or, you know, an empirical fact."

VR: 09/26/2023; 10:45:40. () "My training is more in coding computers and all that,"

VR: 09/26/2023; 10:45:43. () "which you're aware of, I think."

VR: 09/26/2023; 10:45:45. () "So, empiricism is quite a big deal to me."

VR: 09/26/2023; 10:45:53. () "But, again, medical self-determination is a constitutional right."

VR: 09/26/2023; 10:45:57. () "So, if you were suffering..."

VR: 09/26/2023; 10:45:59. () "So, what you're telling me is, if you were suffering from severe migraines,"

VR: 09/26/2023; 10:46:03. () "and a doctor said, you may have a tumor,"

VR: 09/26/2023; 10:46:05. () "but we could do a brain scan and rule out the tumor,"

VR: 09/26/2023; 10:46:08. () "your position would be,"

VR: 09/26/2023; 10:46:09. () "no, I'm just going to suffer with the severe migraines."

VR: 09/26/2023; 10:46:13. () "I wouldn't say that my position would be one way or another."

VR: 09/26/2023; 10:46:16. () "I would say that any sovereign person's right would be protected by me,"

VR: 09/26/2023; 10:46:20. () "and by anybody that I know,"

VR: 09/26/2023; 10:46:22. () "and I would go to court and the United States of America..."

VR: 09/26/2023; 10:46:25. () "So, why do you keep using the term sovereign?"

VR: 09/26/2023; 10:46:28. () "We're all people. We're all individuals."

VR: 09/26/2023; 10:46:31. () "The court acknowledges the rights of individuals."

VR: 09/26/2023; 10:46:36. () "Where are you getting this sovereign issue?"

VR: 09/26/2023; 10:46:41. () "Jail talk?"

VR: 09/26/2023; 10:46:42. () "Pardon?"

VR: 09/26/2023; 10:46:42. () "The jail talk?"

VR: 09/26/2023; 10:46:44. () "No, I don't talk to any of those guys."

VR: 09/26/2023; 10:46:46. () "Oh. Okay."

VR: 09/26/2023; 10:46:48. () "The..."

VR: 09/26/2023; 10:47:01. () "You're asking where sovereign comes from?"

VR: 09/26/2023; 10:47:03. () "I would have to look it up."

VR: 09/26/2023; 10:47:05. () "And, you know, when you question me,"

VR: 09/26/2023; 10:47:07. () "I would have to reinforce my own beliefs as to what it means."

VR: 09/26/2023; 10:47:12. () "But as I sit here, it basically is..."

VR: 09/26/2023; 10:47:18. () "Sovereignty is something that people trust the state with."

VR: 09/26/2023; 10:47:21. () "So, and the..."

VR: 09/26/2023; 10:47:24. () "The state's trusted with..."

VR: 09/26/2023; 10:47:26. () "We're not going to get into a big dialogue,"

VR: 09/26/2023; 10:47:28. () "but the state is entrusted with acknowledging everyone is equal,"

VR: 09/26/2023; 10:47:33. () "everyone has a right to due process,"

VR: 09/26/2023; 10:47:36. () "every human being."

VR: 09/26/2023; 10:47:37. () "But this idea of one's more sovereign to the other,"

VR: 09/26/2023; 10:47:41. () "or there's this sovereign thing, I think,"

VR: 09/26/2023; 10:47:43. () "is kind of using a word that isn't appropriate"

VR: 09/26/2023; 10:47:46. () "when our Declaration of Independence and our Constitution are very clear."

VR: 09/26/2023; 10:47:52. () "Especially the Declaration of Independence, you know,"

VR: 09/26/2023; 10:47:54. () "that all people, you know, are to be, you know,"

VR: 09/26/2023; 10:48:02. () "given the right to a trial by jury."

VR: 09/26/2023; 10:48:05. () "We have the issue that all people have a right to life, liberty,"

VR: 09/26/2023; 10:48:09. () "and the pursuit of happiness."

VR: 09/26/2023; 10:48:10. () "And all people, which means also people don't have a right to be murdered,"

VR: 09/26/2023; 10:48:15. () "people don't have a right to be hurt in any way,"

VR: 09/26/2023; 10:48:19. () "and that's the..."

VR: 09/26/2023; 10:48:21. () "But we're not..."

VR: 09/26/2023; 10:48:22. () "But right now we're dealing with an issue that I also, as a judge,"

VR: 09/26/2023; 10:48:27. () "cannot let a case go forward"

VR: 09/26/2023; 10:48:29. () "or anyone be tried if they are not competent to stand trial."

VR: 09/26/2023; 10:48:33. () "That is my duty."

VR: 09/26/2023; 10:48:37. () "And if there is concern by lawyers,"

VR: 09/26/2023; 10:48:41. () "either Commonwealth or defense,"

VR: 09/26/2023; 10:48:43. () "that someone is not competent,"

VR: 09/26/2023; 10:48:45. () "cannot truly help their lawyers to defend them,"

VR: 09/26/2023; 10:48:50. () "then the court has to address that first and foremost."

VR: 09/26/2023; 10:48:55. () "Now, with that said, it's been almost two hours, Mr. Cherry."

VR: 09/26/2023; 10:48:59. () "Yes, Your Honor. I appreciate your patience."

VR: 09/26/2023; 10:49:03. () "We have reserved the hybrid duties."

VR: 09/26/2023; 10:49:07. () "There is a specific rule, 807."

VR: 09/26/2023; 10:49:21. () "It's in brief 230."

VR: 09/26/2023; 10:49:24. () "I think it's 807.6, subsection 5, if memory serves,"

VR: 09/26/2023; 10:49:30. () "but it clearly states that the withdrawal of the competency query"

VR: 09/26/2023; 10:49:38. () "cannot be used in a trial"

VR: 09/26/2023; 10:49:41. () "if withdrawn by the counsel."

VR: 09/26/2023; 10:49:45. () "So the very existence of that rule would lead me to believe that"

VR: 09/26/2023; 10:49:53. () "if Chris was mistaken, or pardon me, if the counsel may have been mistaken,"

VR: 09/26/2023; 10:50:00. () "because they had 100 cases or whatever and just rushed through it,"

VR: 09/26/2023; 10:50:06. () "that we could address that and rectify it almost immediately,"

VR: 09/26/2023; 10:50:12. () "like I tried to with the letter."

VR: 09/26/2023; 10:50:14. () "Well, I don't think... I think counsel needs to..."

VR: 09/26/2023; 10:50:19. () "If counsel feels there's a competency issue,"

VR: 09/26/2023; 10:50:22. () "then that's counsel's prerogative."

VR: 09/26/2023; 10:50:28. () "And within counsel's prerogative."

VR: 09/26/2023; 10:50:33. () "I think Mr. Cherry's concern has to do with whether or not"

VR: 09/26/2023; 10:50:35. () "the jury would be able to hear about the issues and questions of competency."

VR: 09/26/2023; 10:50:42. () "Well, if he was determined to be competent, it wouldn't be relevant at trial."

VR: 09/26/2023; 10:50:46. () "Correct."

VR: 09/26/2023; 10:50:46. () "It wouldn't even come up at trial."

VR: 09/26/2023; 10:50:50. () "These are all pre-trial issues."

VR: 09/26/2023; 10:50:52. () "This all has to be addressed before trial."

VR: 09/26/2023; 10:50:54. () "Because if you're not competent to stay in trial,"

VR: 09/26/2023; 10:50:56. () "there is no trial."

VR: 09/26/2023; 10:50:58. () "I'm asking for a trial today."

VR: 09/26/2023; 10:51:01. () "Well, I know you're asking for a trial today,"

VR: 09/26/2023; 10:51:03. () "and the court is aware of that, but I guess the first..."

VR: 09/26/2023; 10:51:06. () "I mean, the court would give a trial date,"

VR: 09/26/2023; 10:51:08. () "but I'm not going to let it go forward if you're not competent."

VR: 09/26/2023; 10:51:11. () "And we haven't resolved that."

VR: 09/26/2023; 10:51:16. () "I'm... I'm... Judge, I'm on Mr. Cherry..."

VR: 09/26/2023; 10:51:19. () "I told Mr. Cherry we would get a trial date today."

VR: 09/26/2023; 10:51:21. () "All right, well, if I could have the calendar screen..."

VR: 09/26/2023; 10:51:25. () "I think it's better to have something on the calendar"

VR: 09/26/2023; 10:51:29. () "that we are working against the..."

VR: 09/26/2023; 10:51:32. () "How many days do you all think it'll take to try this case?"

VR: 09/26/2023; 10:51:47. () "I was thinking that that would probably be four days."

VR: 09/26/2023; 10:51:54. () "I think that sounds reasonable to me."

VR: 09/26/2023; 10:51:56. () "Does that include inventory hearings and all?"

VR: 09/26/2023; 10:51:59. () "No, we'll have separate evidentiary hearings as we..."

VR: 09/26/2023; 10:52:02. () "Everything has to be done before all those things are done."

VR: 09/26/2023; 10:52:05. () "The motions, the limine and everything are done before the actual trial."

VR: 09/26/2023; 10:52:08. () "Before the jury."

VR: 09/26/2023; 10:52:09. () "When the jury comes, the jury comes and we try the case."

VR: 09/26/2023; 10:52:12. () "There's no, you know, evidentiary hearings that they are already all done."

VR: 09/26/2023; 10:52:18. () "Right."

VR: 09/26/2023; 10:52:19. () "Unless something crazy happens."

VR: 09/26/2023; 10:52:22. () "Oh, at that point, yeah."

VR: 09/26/2023; 10:52:24. () "So, when do we have our trial date?"

VR: 09/26/2023; 10:52:27. () "I've got my calendar, so we'll see."

VR: 09/26/2023; 10:52:32. () "All right."

VR: 09/26/2023; 10:52:33. () "I have been open for six years."

VR: 09/26/2023; 10:52:36. () "No, you haven't, Mr. Cherry."

VR: 09/26/2023; 10:52:38. () "You haven't been ready for six years."

VR: 09/26/2023; 10:52:41. () "Well, I'm open."

VR: 09/26/2023; 10:52:42. () "I don't know if I'm ever ready."

VR: 09/26/2023; 10:52:57. () "And Judge, I do..."

VR: 09/26/2023; 10:52:59. () "I do think that we should..."

VR: 09/26/2023; 10:53:04. () "I can do within a year and a half."

VR: 09/26/2023; 10:53:06. () "Because I think we've done enough of our investigation."

VR: 09/26/2023; 10:53:09. () "Now that we have to get those issues of, obviously..."

VR: 09/26/2023; 10:53:14. () "Well, I don't want to say the word again, but competency."

VR: 09/26/2023; 10:53:17. () "And other issues that we'll need to address."

VR: 09/26/2023; 10:53:22. () "But I think as far as our investigation goes, we can do it within a year and a half easily."

VR: 09/26/2023; 10:53:28. () "You mean from today?"

VR: 09/26/2023; 10:53:30. () "Sure, yes."

VR: 09/26/2023; 10:53:31. () "From today?"

VR: 09/26/2023; 10:53:32. () "Yes."

VR: 09/26/2023; 10:53:33. () "All right, so we're looking sometime in..."

VR: 09/26/2023; 10:53:35. () "You just mentioned a year and a half..."

VR: 09/26/2023; 10:53:38. () "Yeah, but you're talking about from today."

VR: 09/26/2023; 10:53:40. () "So you're talking sometime towards the end of 2024?"

VR: 09/26/2023; 10:53:44. () "Yes."

VR: 09/26/2023; 10:53:44. () "Okay. I'm going to object to that."

VR: 09/26/2023; 10:53:49. () "And Mr. Cherry is going to object to that."

VR: 09/26/2023; 10:53:52. () "Of course he is."

VR: 09/26/2023; 10:53:53. () "I got it."

VR: 09/26/2023; 10:54:01. () "All right."

VR: 09/26/2023; 10:54:08. () "I'm going to try to give you a date that's where you're first at."

VR: 09/26/2023; 10:54:11. () "Please."

VR: 09/26/2023; 10:54:11. () "Yes."

VR: 09/26/2023; 10:54:16. () "The only month that's cumbersome for me in 2024 right now is April."

VR: 09/26/2023; 10:54:25. () "Well, I'm already... if you want first status, I'm already into November."

VR: 09/26/2023; 10:54:31. () "Does first status push us later?"

VR: 09/26/2023; 10:54:34. () "First status makes you first. No other cases are ahead of yours."

VR: 09/26/2023; 10:54:37. () "I think I understand that, but it pushes the actual date further out?"

VR: 09/26/2023; 10:54:42. () "Well, you're guaranteed you have that date versus I can give you a date in June, but you might be third status, which means you won't necessarily go because the other cases may go first."

VR: 09/26/2023; 10:54:56. () "And then if they go, you've lost your thing and you're looking at the year after that then."

VR: 09/26/2023; 10:55:00. () "I don't want to beat a dead horse. I've just been very clear for a long time that I would like to a speedy trial."

VR: 09/26/2023; 10:55:06. () "All right, November 11th."

VR: 09/26/2023; 10:55:08. () "Thank you so much."

VR: 09/26/2023; 10:55:10. () "And that's 2024?"

VR: 09/26/2023; 10:55:11. () "Will that work for everybody?"

VR: 09/26/2023; 10:55:13. () "That was our weekend day, November the 11th, because it's usually 11-11 every year."

VR: 09/26/2023; 10:55:18. () "Oh, it's Veterans Day and you're not here?"

VR: 09/26/2023; 10:55:33. () "November 25th or December 2nd?"

VR: 09/26/2023; 10:55:42. () "I think December 2nd only. I don't like that either.
Well, just because November 28th is Thanksgiving."

VR: 09/26/2023; 10:55:49. () "I know, but you guys..."

VR: 09/26/2023; 10:55:50. () "I know, I know, you know, I'm not..."

VR: 09/26/2023; 10:55:51. () "All right, let me..."

VR: 09/26/2023; 10:55:58. () "Let me try to back up and see if I can take something
off the docket or off the calendar."

VR: 09/26/2023; 10:56:07. () "How about August 26th?"

VR: 09/26/2023; 10:56:13. () "And I'll take some things off."

VR: 09/26/2023; 10:56:15. () "Thank you."

VR: 09/26/2023; 10:56:20. () "That works for me, Judge. That works really well."

VR: 09/26/2023; 10:56:25. () "August 26th."

VR: 09/26/2023; 10:56:26. () "August 26th?"

VR: 09/26/2023; 10:56:27. () "Yes, four-day trial."

VR: 09/26/2023; 10:56:29. () "2024?"

VR: 09/26/2023; 10:56:30. () "Yes, four-day trial."

VR: 09/26/2023; 10:56:33. () "Got it."

VR: 09/26/2023; 10:56:33. () "Have you all ever decided to go do mediation or it's just
never going to happen?"

VR: 09/26/2023; 10:56:40. () "Well, perhaps the court would be willing to talk to Mr.
Cherry a little bit about the positives and negatives of
mediation."

VR: 09/26/2023; 10:56:46. () "Mr. Sherry, mediation is often very successful in
criminal cases because you have seasoned judges who
are retired who have tried a lot of cases,"

VR: 09/26/2023; 10:57:01. () "know what juries do and don't do and how
unpredictable they might be."

VR: 09/26/2023; 10:57:04. () "And in that opportunity, you get to hear in a very
informal way, separate from the Commonwealth, what
the court believes is their strongest part of their case,"

VR: 09/26/2023; 10:57:17. () "the weakest part of their case, what the court thinks
might happen."

VR: 09/26/2023; 10:57:22. () "And then the Commonwealth also gets to hear from a
judge as to what the judge thinks are their weakest
issues,"

- VR: 09/26/2023; 10:57:28. () "which helps the parties if there is ability to resolve it through some type of plea, that the parties have that opportunity."
- VR: 09/26/2023; 10:57:39. () "Which gives, in my opinion, the most important part of it is, it gives the defendant themselves the right to control."
- VR: 09/26/2023; 10:57:50. () "I guess Mr. Cherry has also already heard about mediation."
- VR: 09/26/2023; 10:57:55. () "Yes, you've explained that to me."
- VR: 09/26/2023; 10:57:56. () "He does not seem to be interested in doing that."
- VR: 09/26/2023; 10:57:59. () "You're not interested?"
- VR: 09/26/2023; 10:58:00. () "At this time."
- VR: 09/26/2023; 10:58:01. () "I don't know that... I think we've pushed this out to six years."
- VR: 09/26/2023; 10:58:11. () "Let's get off that, Mr. Cherry. You need to move past that. That's in the past. Let's deal with the present."
- VR: 09/26/2023; 10:58:18. () "The past isn't going to get you anywhere. Let's deal with the present."
- VR: 09/26/2023; 10:58:20. () "Why are you not willing to mediate? Mediation isn't going to change your trial date. It's just something you could do before the trial date."
- VR: 09/26/2023; 10:58:30. () "It's not going to take your trial date away, but it might be something that could get done this year and might help move things along."
- VR: 09/26/2023; 10:58:37. () "So, I also sent a letter to the Commonwealth concerning mediation the first time that I didn't have counsel to..."
- VR: 09/26/2023; 10:58:53. () "Ms. Morgan asked us if she didn't get it, so I don't know."
- VR: 09/26/2023; 10:58:56. () "I think I got that."
- VR: 09/26/2023; 10:58:58. () "Morgan instead of Parker. I think it said it was addressed to Parker. I've got a copy of it if you need."
- VR: 09/26/2023; 10:59:03. () "Addressed to who?"
- VR: 09/26/2023; 10:59:05. () "Oh, my previous last name."
- VR: 09/26/2023; 10:59:07. () "Yes, that was your congratulations."
- VR: 09/26/2023; 10:59:10. () "Alright, so my question is, are you not willing to mediate it?"

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VR: 09/26/2023; 10:59:13. () "If I'm understanding correctly, the prosecution would only present something that is including the time that I've already been held without liberty. Is that correct?"

VR: 09/26/2023; 10:59:27. () "I don't understand what you're talking about."

VR: 09/26/2023; 10:59:29. () "In other words, we're so far past where I would have been in a position to..."

VR: 09/26/2023; 10:59:39. () "So your position is, you don't want to do anything but go to trial?"

VR: 09/26/2023; 10:59:43. () "No, I'm open to mediation. I don't know why I wouldn't be."

VR: 09/26/2023; 10:59:46. () "Well, then that's all I'm asking. If you're open to mediation, can you two try to schedule a mediation if everybody's willing?"

VR: 09/26/2023; 10:59:53. () "Alright, schedule a mediation. Try to do it sooner rather than later."

VR: 09/26/2023; 10:59:57. () "Okay."

VR: 09/26/2023; 10:59:57. () "Alright, got it."

VR: 09/26/2023; 11:00:00. () "Okay, and I'm just making sure out loud, because there was a nod, that Mr. Cherry's willing to participate in mediation if we could get it set up."

VR: 09/26/2023; 11:00:12. () "I don't know why refusing to would put me in any danger at this point. Does that make sense?"

VR: 09/26/2023; 11:00:24. () "No."

VR: 09/26/2023; 11:00:25. () "Are you willing to mediate and are you willing to cooperate in the mediation?"

VR: 09/26/2023; 11:00:35. () "With all rights reserved, absolutely."

VR: 09/26/2023; 11:00:40. () "Yes, you will still have your right if the mediation does not go through, you will still have your right to your trial."

VR: 09/26/2023; 11:00:44. () "Oh yeah, you won't lose any rights."

VR: 09/26/2023; 11:00:47. () "Alright, so we'll do mediation."

VR: 09/26/2023; 11:00:49. () "Yes."

VR: 09/26/2023; 11:00:50. () "I'll order a mediation."

VR: 09/26/2023; 11:00:51. () "Thank you, Judge."

VR: 09/26/2023; 11:00:52. () "Thank you all."

VR: 09/26/2023; 11:00:53. () "Thank you all."

VR: 09/26/2023; 11:00:54. () "There is no status date."

VR: 09/26/2023; 11:00:56. () "Oh, we do need a status date."

VR: 09/26/2023; 11:00:58. () "We need a new status date, and I'd like one so that you could tell me when the mediation is scheduled and all that."

VR: 09/26/2023; 11:01:04. () "Oh, sure."

VR: 09/26/2023; 11:01:08. () "You have to order it and then someone contacts us."

VR: 09/26/2023; 11:01:12. () "Yes, and I will order it, but I just would like the status, you know, once I do it, once I do it, I'd like you all to be able to say,"

VR: 09/26/2023; 11:01:18. () "Judge, we've not heard or we've gotten somebody or here's what we're going to do."

VR: 09/26/2023; 11:01:22. () "Just that."

VR: 09/26/2023; 11:01:23. () "Okay."

VR: 09/26/2023; 11:01:26. () "Or can we just call the court right now and then put it on for a status hearing once you have the mediation date set?"

VR: 09/26/2023; 11:01:31. () "Well, I think I'd probably just, so we don't have a, let's go ahead and just, so, just so it doesn't fall through the cracks."

VR: 09/26/2023; 11:01:36. () "You can pick the date then, Judge."

VR: 09/26/2023; 11:01:37. () "Yeah, just put it out quite a bit. November?"

VR: 09/26/2023; 11:01:40. () "December."

VR: 09/26/2023; 11:01:41. () "No, no, no."

VR: 09/26/2023; 11:01:42. () "November."

VR: 09/26/2023; 11:01:43. () "What is this?"

VR: 09/26/2023; 11:01:43. () "November 30th."

VR: 09/26/2023; 11:01:45. () "November 30th."

VR: 09/26/2023; 11:01:45. () "And then if something gets set, we can always do an agreed order passing it to, because we know the mediation is, whatever."

VR: 09/26/2023; 11:01:53. () "I understand."

VR: 09/26/2023; 11:01:54. () "Yeah."

VR: 09/26/2023; 11:01:55. () "All right."

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VR: 09/26/2023; 11:01:55. () "Thank you all."

VR: 09/26/2023; 11:01:56. () "Thanks, Judge, I appreciate it."

VR: 09/26/2023; 11:01:58. () "Thank you all."

VR: 09/26/2023; 11:02:00. () "She said, there's no mediation date they contact us..."

VR: 09/26/2023; 11:02:04. () "Yeah, there's an order."

1-22-2024 Status Hearing

VR: 01/22/2024; 09:17:28. () "Hello, Mr. Cherry. How are you? I'm good. How are you? I'm okay. Good. Thanks for asking."

VR: 01/22/2024; 09:17:35. () "Huh? Thank you for asking. Oh, you're very welcome. Thank you for asking about me."

VR: 01/22/2024; 09:17:41. () "I think Mr. Tracy's been talking to you. I assume you know there is an offer."

VR: 01/22/2024; 09:17:48. () "Yes, yeah, that's the same one that's been since 2019, I think."

VR: 01/22/2024; 09:17:53. () "Around February then. Although the chairs have changed so much, they've gotten different. Sorry."

VR: 01/22/2024; 09:18:00. () "No, I know, I know. At this point, I assume the question for the court would be if you are considering that offer or what you would want to do at this point."

VR: 01/22/2024; 09:18:21. () "I was just mentioning to counsel that, honestly, I haven't... I've just gotten back from KCPC."

VR: 01/22/2024; 09:18:34. () "I'm not sure if this is a court-worthy discussion here, but I can't really function very well without a tablet."

VR: 01/22/2024; 09:18:44. () "I've got a lot of... I started sending you guys stuff electronically."

VR: 01/22/2024; 09:18:50. () "So I don't have any access to the last six months or so, as well as the appeals stuff."

VR: 01/22/2024; 09:18:59. () "He said that he needs that to be able to send me things. So I haven't gotten anything on those as well."

VR: 01/22/2024; 09:19:07. () "So I'm really kind of waiting on that, as hot as that may sound, as superficial as that may sound."

VR: 01/22/2024; 09:19:13. () "Well, it doesn't sound superficial, but you're waiting on what? The appeal?"

VR: 01/22/2024; 09:19:18. () "The tablet."

VR: 01/22/2024; 09:19:20. () "Oh, just your iPad."

VR: 01/22/2024; 09:19:22. () "I don't have the equipment to access the data that I need to make the decisions."

VR: 01/22/2024; 09:19:27. () "To make an informed decision?"

VR: 01/22/2024; 09:19:29. () "Informed, yes."

VR: 01/22/2024; 09:19:30. () "Okay. The court would be curious what the offer is, just so the court has an idea."

VR: 01/22/2024; 09:19:39. () "The same thing as..."

VR: 01/22/2024; 09:19:41. () "I've never been... the offer's never been..."

VR: 01/22/2024; 09:19:44. () "The offer is to amend the murder charge to manslaughter, second degree, with a recommendation of seven years, and dismissal of count two, which is the tampering."

VR: 01/22/2024; 09:19:54. () "We don't have an objection to an Alfred appeal."

VR: 01/22/2024; 09:19:58. () "And it would be conditional to keep the appeal."

VR: 01/22/2024; 09:20:07. () "That hasn't been offered before, last month."

VR: 01/22/2024; 09:20:12. () "What, the appeal can continue?"

VR: 01/22/2024; 09:20:16. () "Right, so he would still be able to appeal the issues that..."

VR: 01/22/2024; 09:20:20. () "He had outs... yeah."

VR: 01/22/2024; 09:20:21. () "Right."

VR: 01/22/2024; 09:20:22. () "Alright, so it would be manslaughter, second, with an offer of seven years, right?"

VR: 01/22/2024; 09:20:27. () "Okay, alright. And the tampering's dismissed."

VR: 01/22/2024; 09:20:31. () "Okay."

VR: 01/22/2024; 09:20:33. () "..."

VR: 01/22/2024; 09:20:34. () "So we've discussed that some, as I mentioned, this is the first time we've succinctly talked about it."

VR: 01/22/2024; 09:20:38. () "I don't think that we have a resolution that I've at least asked to come up to consider keeping it open for a little while."

VR: 01/22/2024; 09:20:45. () "Mr. Cherry has asked me for particular items that I believe it appears that he is missing."

VR: 01/22/2024; 09:20:54. () "So I can, I'm going to get those items together this week and should have that to him."

VR: 01/22/2024; 09:20:58. () "Hopefully the jail gets him his tablet so he can continue with his research in there."

VR: 01/22/2024; 09:21:06. () "Okay."

VR: 01/22/2024; 09:21:07. () "It's not just research, it's communication."

VR: 01/22/2024; 09:21:10. () "Okay."

VR: 01/22/2024; 09:21:17. () "With his time in, would he be eligible to get out?"

VR: 01/22/2024; 09:21:24. () "Likely he'd be served out."

VR: 01/22/2024; 09:21:26. () "He would have served out, so he'd be released."

VR: 01/22/2024; 09:21:30. () "Right."

VR: 01/22/2024; 09:21:41. () "Well, do you want another status date?"

VR: 01/22/2024; 09:21:44. () "I think that would be good. She does have the kcpc report that she can look up, so she's going to get us a copy."

VR: 01/22/2024; 09:21:51. () "I'm going to get every... it came just a few days ago, actually."

VR: 01/22/2024; 09:21:56. () "Another status would be good, Judge."

VR: 01/22/2024; 09:22:01. () "Alright."

VR: 01/22/2024; 09:22:02. () "The media is not here, so..."

VR: 01/22/2024; 09:22:04. () "Well, why don't you give me an idea when you all would want to come back for a status?"

VR: 01/22/2024; 09:22:12. () "So, we're set for trial in August."

VR: 01/22/2024; 09:22:16. () "We want a chance to review KCPC and see what we're going to do there."

VR: 01/22/2024; 09:22:22. () "I believe that Mr. Cherry will eventually be asking for a hearing to determine his request to act as hybrid counsel."

VR: 01/22/2024; 09:22:33. () "And I know that we were kind of... I think we were kind of waiting on KCPC to run its course,"

VR: 01/22/2024; 09:22:38. () "which it now has."

VR: 01/22/2024; 09:22:39. () "Well, why don't you set your date with the idea that you're... I'll give you the report, which speaks for itself."

VR: 01/22/2024; 09:22:47. () "And then, after you are able to talk with Mr. Cherry, and he has everything he needs to consider the offer,"

VR: 01/22/2024; 09:22:56. () "if he doesn't want to take the offer, then what we would do, the court would do, is go ahead with a hearing."

VR: 01/22/2024; 09:23:03. () "We could set a hearing up."

VR: 01/22/2024; 09:23:05. () "So, how far do you want to go out to let him have an opportunity to deal with that first issue as to whether or not he wants to accept the offer?"

VR: 01/22/2024; 09:23:13. () "And we could put it on for a status then."

VR: 01/22/2024; 09:23:15. () "And if he doesn't, then I could go ahead and schedule the hearing on the hybrid counsel request."

VR: 01/22/2024; 09:23:23. () "What does Monday, if it were a 19, look like?"

VR: 01/22/2024; 09:23:27. () "We have court February 19."

VR: 01/22/2024; 09:23:29. () "Monday?"

VR: 01/22/2024; 09:23:30. () "Yeah."

VR: 01/22/2024; 09:23:31. () "Did you say Monday?"

VR: 01/22/2024; 09:23:31. () "I mean, to keep it on an off docket. We could put it on a docket, too."

VR: 01/22/2024; 09:23:35. () "Well, then, let me... I'll have to go get my calendar real quick."

VR: 01/22/2024; 09:23:39. () "You could probably pick a Thursday for that day, to be honest."

VR: 01/22/2024; 09:23:42. () "Just for that one?"

VR: 01/22/2024; 09:23:43. () "Yeah."

VR: 01/22/2024; 09:23:44. () "Yeah, and then we could put the other, just to get a status."

VR: 01/22/2024; 09:23:47. () "Okay."

VR: 01/22/2024; 09:23:48. () "So..."

VR: 01/22/2024; 09:23:48. () "What about Thursday, February 15?"

VR: 01/22/2024; 09:23:51. () "Do we have court February 15?"

VR: 01/22/2024; 09:23:53. () "Yeah, February 15, then."

VR: 01/22/2024; 09:23:56. () "Okay."

VR: 01/22/2024; 09:23:56. () "And then, if there isn't something that could be resolved at that time, or we don't think there's going to be a resolution,"

VR: 01/22/2024; 09:24:04. () "then I'll go ahead and we'll set an off docket for the hearings."

VR: 01/22/2024; 09:24:09. () "Okay."

VR: 01/22/2024; 09:24:10. () "On the hybrid. Okay?"

VR: 01/22/2024; 09:24:12. () "Alright."

VR: 01/22/2024; 09:24:13. () "Okay."

VR: 01/22/2024; 09:24:14. () "So, may I address the court?"

VR: 01/22/2024; 09:24:18. () "Yes, sir."

VR: 01/22/2024; 09:24:22. () "So, we're not going to address the hybrid duties that I've requested?"

VR: 01/22/2024; 09:24:29. () "Not at this point, because right now you're working with your attorney, and this is all..."

VR: 01/22/2024; 09:24:34. () "We're not having hearings that would require you to be co-counsel, because I'm letting you speak, usually, always."

VR: 01/22/2024; 09:24:43. () "So, if you're not going to take the offer, then that would be a time to address all of that and go through the necessary requirements of the law."

VR: 01/22/2024; 09:24:53. () "Right."

VR: 01/22/2024; 09:24:54. () "On that."

VR: 01/22/2024; 09:24:56. () "Now, if I may inquire as to the... I submitted a motion through the clerk for medical records."

VR: 01/22/2024; 09:25:08. () "I don't have your medical records."

VR: 01/22/2024; 09:25:11. () "Okay, so they've been..."

VR: 01/22/2024; 09:25:13. () "The court doesn't... the court just has the KCPC reports, which of course the court will give copies to you and your attorney. You'll have that. That's all I have access to."

VR: 01/22/2024; 09:25:24. () "Okay."

VR: 01/22/2024; 09:25:25. () "I mean, that's the only thing within this court's purview. Yeah. If you want to get your medical records from hospitals or whatever..."

VR: 01/22/2024; 09:25:36. () "Right."

VR: 01/22/2024; 09:25:36. () "I mean, there's just a form to fill out for that."

VR: 01/22/2024; 09:25:38. () "No, KCPC was withholding them from the patient at this time. I was instructed to get the judge to order."

VR: 01/22/2024; 09:25:54. () "Well, I mean, I have... the KCPC report sets everything out."

VR: 01/22/2024; 09:25:58. () "Right."

VR: 01/22/2024; 09:25:58. () "What they looked at, what was there. And you'll get that."

VR: 01/22/2024; 09:26:02. () "Yeah."

VR: 01/22/2024; 09:26:02. () "Yeah."

- VR: 01/22/2024; 09:26:03. () "Okay, so was the motion received by the clerk? And is that not going to be heard?"
- VR: 01/22/2024; 09:26:15. () "On the medical records?"
- VR: 01/22/2024; 09:26:17. () "Well, I think I just explained to you that the court... I mean, I have your report, which is what the court will turn over to you. And then obviously that'll set out everything they looked at, what they relied upon. It's all set out in the report."
- VR: 01/22/2024; 09:26:32. () "Okay. I've got written records of them refusing."
- VR: 01/22/2024; 09:26:41. () "Well, but it's right here, and I'll get to it."
- VR: 01/22/2024; 09:26:44. () "I understand that. So, I guess what I'm getting to is that they wouldn't give me the records. I understand we have them now, and it's kind of passed, right?"
- VR: 01/22/2024; 09:26:58. () "However, without an order, it doesn't look like they're following the HIPAA guidelines, right. Because of, I guess, an order initially from the court? Or was the excuse or the reasoning behind the refusal?"
- VR: 01/22/2024; 09:27:18. () "Well, HIPAA doesn't apply to... I mean, HIPAA applies to all medical personnel, but it doesn't prevent a patient from getting their records."
- VR: 01/22/2024; 09:27:30. () "It prevents them from sharing it with other individuals."
- VR: 01/22/2024; 09:27:37. () "I mean, that's what I thought as well."
- VR: 01/22/2024; 09:27:39. () "Yeah, yeah."
- VR: 01/22/2024; 09:27:40. () "So they're just patently wrong in that sense?"
- VR: 01/22/2024; 09:27:44. () "Well, I'm not really aware of what Mr. Cherry, what you all talked about, you and KCPC or whatever, the details of that were."
- VR: 01/22/2024; 09:27:54. () "It's written out..."
- VR: 01/22/2024; 09:27:56. () "I'm just telling you what my understanding of the law has always been as to HIPAA."
- VR: 01/22/2024; 09:28:04. () "I see that my sister's here."
- VR: 01/22/2024; 09:28:07. () "Oh, that's nice. And who's with her?"
- VR: 01/22/2024; 09:28:19. () "The sister was married to the decedent."
- VR: 01/22/2024; 09:28:23. () "I know, I know, but I don't know. They want to identify themselves. I don't think they want to."

VR: 01/22/2024; 09:28:40. () "So, that would assist if she wants me to take the offer or something that maybe, something I could consider at this time."

VR: 01/22/2024; 09:28:51. () "You mean if your sister would like you to take it?"

VR: 01/22/2024; 09:28:53. () "Yeah, yeah."

VR: 01/22/2024; 09:28:56. () "I'll have a conversation with them and convey anything to Mr. Cherry that I think is relevant."

VR: 01/22/2024; 09:29:01. () "Yeah, if your sister is willing to talk to you, she's welcome to talk to you."

VR: 01/22/2024; 09:29:06. () "If she doesn't want to talk to you, she doesn't have to. That's totally within her purview."

VR: 01/22/2024; 09:29:13. () "But I'm sure that if she's willing to talk to you, she'll let you know how she feels about it."

VR: 01/22/2024; 09:29:22. () "Yeah, I've been clear with both the court and the family on what I just said previously to this time."

VR: 01/22/2024; 09:29:31. () "All right, okay."

VR: 01/22/2024; 09:29:37. () "Well, I will see everybody back on the 15th."

VR: 01/22/2024; 09:29:41. () "We might need to change it. I think Ms. Eaton has some medical stuff going on and was wondering if we could do February 29th instead."

VR: 01/22/2024; 09:29:49. () "Are we here the 29th?"

VR: 01/22/2024; 09:29:51. () "Yes."

VR: 01/22/2024; 09:29:51. () "Okay, thank you."

VR: 01/22/2024; 09:29:52. () "Thank you."

VR: 01/22/2024; 09:29:53. () "If she wants to be here, yes."

VR: 01/22/2024; 09:29:55. () "Yep."

VR: 01/22/2024; 09:29:56. () "And I take it that's his sister, is Ms. Eaton?"

VR: 01/22/2024; 09:29:59. () "Okay, all right. Absolutely."

VR: 01/22/2024; 09:30:03. () "All right, so we'll set up for the 29th of February."

VR: 01/22/2024; 09:30:07. () "And I will make sure you all have a copy of this."

VR: 01/22/2024; 09:30:12. () "Okay."

VR: 01/22/2024; 09:30:13. () "Thank you."

VR: 01/22/2024; 09:30:15. () "Can you make it for me?"

VR: 01/22/2024; 09:30:17. () "I guess."

VR: 01/22/2024; 09:30:18. () "Great, great."

VR: 01/22/2024; 09:30:19. () "Yep."

VR: 01/22/2024; 09:30:33. () "Okay."

VR: 01/22/2024; 09:30:34. () "And obviously, if you all look at all this and you feel you have a resolution before then, I can always advance it. You know that."

VR: 01/22/2024; 09:30:43. () "And we can do it off docket."

VR: 01/22/2024; 09:30:45. () "Sounds good."

VR: 01/22/2024; 09:30:46. () "Okay."

VR: 01/22/2024; 09:30:46. () "Thank you, Judge."

VR: 01/22/2024; 09:30:47. () "And actually, Lee's making a copy now."

VR: 01/22/2024; 09:30:50. () "Oh, beautiful."

VR: 01/22/2024; 09:30:50. () "Thank you."

VR: 01/22/2024; 09:30:51. () "Okay."

VR: 01/22/2024; 09:30:52. () "So, what do you call parents after the holidays?"

VR: 01/22/2024; 09:30:55. () "Oh, I know, I know."

VR: 01/22/2024; 09:30:59. () "St. Nickle less."

VR: 01/22/2024; 09:31:02. () "Okay."

VR: 01/22/2024; 09:31:04. () "I got it."

VR: 01/22/2024; 09:31:07. () "I got it."

VR: 01/22/2024; 09:31:09. () "You're on top of things."

VR: 01/22/2024; 09:31:11. () "I guess there's a reason you're [inaudible]."

VR: 01/22/2024; 09:31:14. () "Well, I'm a reader. I read everything."

VR: 01/22/2024; 09:31:38. () "Yeah."

VR: 01/22/2024; 09:31:38. () "Okay."

VR: 01/22/2024; 09:31:40. () "Mr. Tracy, are you all right for me just to give him one? A copy?"

VR: 01/22/2024; 09:31:45. () "Mr. Cherry?"

VR: 01/22/2024; 09:31:46. () "That'd be fine."

VR: 01/22/2024; 09:31:46. () "Okay."

VR: 01/22/2024; 09:31:47. () "Well, Mr. Cherry, here's your copy."

VR: 01/22/2024; 09:32:12. () "And you'll give... we'll need one for Mr. Cherry and we'll need one for Mr. Tracy."

2-29-2024 Status Hearing

VR: 02/29/2024; 10:45:53. () "What else are we going to do with Mr. Cherry?"

VR: 02/29/2024; 10:45:54. () "He wanted to ask about an order today."

VR: 02/29/2024; 10:45:57. () "What?"

VR: 02/29/2024; 10:45:57. () "He wanted to ask about a particular order today."

VR: 02/29/2024; 10:46:00. () "What was the particular motion? I don't know."

VR: 02/29/2024; 10:46:03. () "Alright."

VR: 02/29/2024; 10:46:08. () "Hello."

VR: 02/29/2024; 10:46:09. () "Hi Mr. Cherry, how are you?"

VR: 02/29/2024; 10:46:11. () "Depends on how you are."

VR: 02/29/2024; 10:46:13. () "I'm hanging in there."

VR: 02/29/2024; 10:46:17. () "We have our trial date set."

VR: 02/29/2024; 10:46:18. () "Mr. Cherry wanted to ask the court"

VR: 02/29/2024; 10:46:21. () "about ordering the jail"

VR: 02/29/2024; 10:46:22. () "to make sure he was furnished with a tablet."

VR: 02/29/2024; 10:46:25. () "Well, I don't think"

VR: 02/29/2024; 10:46:27. () "I have any control over the jail."

VR: 02/29/2024; 10:46:29. () "I don't have any"

VR: 02/29/2024; 10:46:30. () "jurisdiction over the jail."

VR: 02/29/2024; 10:46:32. () "I could ask them if they'd be kind enough"

VR: 02/29/2024; 10:46:34. () "to give him a tablet, but I don't have"

VR: 02/29/2024; 10:46:36. () "any authority over the jail."

VR: 02/29/2024; 10:46:39. () "They're not part of"

VR: 02/29/2024; 10:46:41. () "what I have control over."

VR: 02/29/2024; 10:46:43. () "There are"

VR: 02/29/2024; 10:46:44. () "several"

VR: 02/29/2024; 10:46:47. () "I guess other judges"

VR: 02/29/2024; 10:46:48. () "are doing it."

VR: 02/29/2024; 10:46:51. () "Well, I don't know"

VR: 02/29/2024; 10:46:52. () "what other judges are doing it."

VR: 02/29/2024; 10:46:55. () "Who told you that?"

VR: 02/29/2024; 10:46:57. () "Well, there are people"

VR: 02/29/2024; 10:46:58. () "that have them"

VR: 02/29/2024; 10:46:59. () "furnished by the state."

VR: 02/29/2024; 10:47:01. () "So he has one now."

VR: 02/29/2024; 10:47:04. () "I think it's at his cost"

VR: 02/29/2024; 10:47:06. () "and he's afraid"

VR: 02/29/2024; 10:47:07. () "the funds may run out to keep it."

VR: 02/29/2024; 10:47:11. () "He is"

VR: 02/29/2024; 10:47:12. () "working on various"

VR: 02/29/2024; 10:47:15. () "issues with his case"

VR: 02/29/2024; 10:47:17. () "and wants to be able to"

VR: 02/29/2024; 10:47:18. () "continue research."

VR: 02/29/2024; 10:47:23. () "That's the only law"

VR: 02/29/2024; 10:47:25. () "library that's available there."

VR: 02/29/2024; 10:47:28. () "Well, I mean, I think"

VR: 02/29/2024; 10:47:29. () "he should have the tablet"

VR: 02/29/2024; 10:47:30. () "and I could just request"

VR: 02/29/2024; 10:47:32. () "that they"

VR: 02/29/2024; 10:47:35. () "waive fees,"

VR: 02/29/2024; 10:47:36. () "but I don't think I can even tell them."

VR: 02/29/2024; 10:47:38. () "I can't order them to do it because"

VR: 02/29/2024; 10:47:39. () "I don't control the jail and its tablets."

VR: 02/29/2024; 10:47:42. () "But what I can do"

VR: 02/29/2024; 10:47:43. () "is I could request"

VR: 02/29/2024; 10:47:45. () "that the jail waive any fees"

VR: 02/29/2024; 10:47:47. () "for the tablet."

VR: 02/29/2024; 10:47:49. () "And I'll do that."

VR: 02/29/2024; 10:47:50. () "Okay."

VR: 02/29/2024; 10:47:51. () "That's what we were interested in today."

VR: 02/29/2024; 10:47:53. () "Otherwise, if we have our trial date set, I'm sure we'll
be back to our status at some point."

5-2-2024 Status Hearing

VR: 05/02/2024; 10:27:01. () "How goes it with Mr. Cherry?"

VR: 05/02/2024; 10:27:03. () "You know, he's sort of up on appeal, or kind of up on appeal, or kind of on..."

VR: 05/02/2024; 10:27:08. () "something."

VR: 05/02/2024; 10:27:08. () "I think there's been many things..."

VR: 05/02/2024; 10:27:10. () "So, but I worry that maybe I can't proceed because the case is now..."

VR: 05/02/2024; 10:27:15. () "I've lost jurisdiction if it's on appeal under the law."

VR: 05/02/2024; 10:27:19. () "So, I'm concerned how much further..."

VR: 05/02/2024; 10:27:22. () "I mean, I don't mind having statuses, or you all come out,"

VR: 05/02/2024; 10:27:25. () "but I don't think I can..."

VR: 05/02/2024; 10:27:27. () "As long as it's on appeal, I think I've lost jurisdiction."

VR: 05/02/2024; 10:27:34. () "Don't you all? Isn't that the law?"

VR: 05/02/2024; 10:27:36. () "Am I missing something here?"

VR: 05/02/2024; 10:27:40. () "I don't necessarily think the court's wrong."

VR: 05/02/2024; 10:27:44. () "I don't know the particulars of it, standing here today."

VR: 05/02/2024; 10:27:48. () "I know that we have an appellate attorney that's involved, Mr. Tim Arnold. I can ask his opinion of it."

VR: 05/02/2024; 10:27:54. () "But I don't... I think unless somebody tells me otherwise,"

VR: 05/02/2024; 10:27:58. () "I think once something's gone up on appeal..."

VR: 05/02/2024; 10:28:01. () "Now, there are, in civil situations, some areas where, in civil cases,"

VR: 05/02/2024; 10:28:07. () "if it's a very limited area interlocutory, that the court can proceed on others."

VR: 05/02/2024; 10:28:14. () "But I don't know that I have that same..."

VR: 05/02/2024; 10:28:17. () "that that would be the same in criminal cases when it's gone up on appeal."

VR: 05/02/2024; 10:28:24. () "I'm so sorry, just because I know this is kind of a complex case."

VR: 05/02/2024; 10:28:28. () "What is the current appeal, and for what? Not sure?"

VR: 05/02/2024; 10:28:33. () "And I would just say..."

VR: 05/02/2024; 10:28:35. () "Dispositive, just due to trial."

VR: 05/02/2024; 10:28:38. () "Yeah, it's like all the basic stuff."

VR: 05/02/2024; 10:28:41. () "Okay, and just to the appellate court,"

VR: 05/02/2024; 10:28:42. () "I see one here now for discretionary review towards the Supreme Court."

VR: 05/02/2024; 10:28:47. () "Yeah."

VR: 05/02/2024; 10:28:48. () "In another case that I have in a similar situation with a similarly placed defendant"

VR: 05/02/2024; 10:28:52. () "who is also pro se with somewhat hybrid or whisper counsel,"

VR: 05/02/2024; 10:28:55. () "he appealed to the Supreme Court for recusal of the judge."

VR: 05/02/2024; 10:28:59. () "And while that... when that motion was filed, yes, they lost..."

VR: 05/02/2024; 10:29:04. () "let me remember how to phrase this properly..."

VR: 05/02/2024; 10:29:07. () "the specific fact jurisdiction over that particular defendant in his case,"

VR: 05/02/2024; 10:29:11. () "but not the general jurisdiction should the case come back down."

VR: 05/02/2024; 10:29:14. () "Well, yeah, but that's the law."

VR: 05/02/2024; 10:29:16. () "I mean, the law is if it gets appealed,"

VR: 05/02/2024; 10:29:21. () "then the court loses jurisdiction until such time as the court rules"

VR: 05/02/2024; 10:29:25. () "and either remands it or does whatever it's going to do."

VR: 05/02/2024; 10:29:29. () "Right, so like procedural stuff."

VR: 05/02/2024; 10:29:31. () "Yeah, so in that case..."

VR: 05/02/2024; 10:29:33. () "I mean, the appeal itself has been disposed to us."

VR: 05/02/2024; 10:29:37. () "No, you're up on..."

VR: 05/02/2024; 10:29:40. () "Yeah, but so it's still... now you're filed with the Supreme. MDR has not been accepted yet."

VR: 05/02/2024; 10:29:48. () "But I can't..."

VR: 05/02/2024; 10:29:51. () "Yes, yeah, which stops the process."

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VR: 05/02/2024; 10:29:53. () "So I can do nothing until all that's resolved."

VR: 05/02/2024; 10:29:56. () "Okay. So I'm now given another status date,"

VR: 05/02/2024; 10:29:58. () "but I can't hear anything, I can't make any rulings"

VR: 05/02/2024; 10:30:01. () "other than to keep the case maybe on status"

VR: 05/02/2024; 10:30:04. () "to make sure we keep up to see what's going on."

VR: 05/02/2024; 10:30:07. () "So what date do you want to come back?"

VR: 05/02/2024; 10:30:10. () "Well, I guess the MDR petition, if it's going today,"

VR: 05/02/2024; 10:30:15. () "I mean, at least, I guess at least a month would make sense."

VR: 05/02/2024; 10:30:18. () "Let's set it sometime in late June maybe, early July,"

VR: 05/02/2024; 10:30:23. () "to see where we are."

VR: 05/02/2024; 10:30:24. () "And if we get a ruling ahead of time,"

VR: 05/02/2024; 10:30:27. () "depending on whatever that ruling is,"

VR: 05/02/2024; 10:30:28. () "we could address the issues if we're allowed to."

VR: 05/02/2024; 10:30:31. () "What?"

VR: 05/02/2024; 10:30:32. () "June 27th."

VR: 05/02/2024; 10:30:33. () "Is June 27th acceptable?"

VR: 05/02/2024; 10:30:35. () "Sure."

VR: 05/02/2024; 10:30:37. () "Can you not do that date?"

VR: 05/02/2024; 10:30:39. () "I can't, but I'm not sure you don't have to be here."

VR: 05/02/2024; 10:30:42. () "Well, it's always safety in numbers."

VR: 05/02/2024; 10:30:44. () "Okay."

VR: 05/02/2024; 10:30:45. () "That one doesn't work, give me another one."

VR: 05/02/2024; 10:30:48. () "July 11th?"

VR: 05/02/2024; 10:30:49. () "That should work as well."

VR: 05/02/2024; 10:30:51. () "Alright, July 11th."

VR: 05/02/2024; 10:30:53. () "We'll see you on July 11th."

VR: 05/02/2024; 10:30:54. () "But now if the Supreme Court does whatever it's going to do earlier,"

VR: 05/02/2024; 10:30:58. () "we can always bring it back."

VR: 05/02/2024; 10:31:00. () "Sure."

VR: 05/02/2024; 10:31:00. () "Okay."

VR: 05/02/2024; 10:31:01. () "May I just..."

VR: 05/02/2024; 10:31:02. () "No, you can't, because I can't hear you."

VR: 05/02/2024; 10:31:05. () "I can't hear anything."

VR: 05/02/2024; 10:31:05. () "Okay."

VR: 05/02/2024; 10:31:06. () "So this order is null and void..."

VR: 05/02/2024; 10:31:13. () "Yeah, because of..."

VR: 05/02/2024; 10:31:14. () "Yeah."

VR: 05/02/2024; 10:31:15. () "Because, yeah."

VR: 05/02/2024; 10:31:16. () "So no fines, huh?"

VR: 05/02/2024; 10:31:18. () "Huh?"

VR: 05/02/2024; 10:31:18. () "No fines."

VR: 05/02/2024; 10:31:19. () "No funds."

VR: 05/02/2024; 10:31:20. () "Not today."

VR: 05/02/2024; 10:31:23. () "I know you've got a full court, but..."

VR: 05/02/2024; 10:31:27. () "Dentist..."

VR: 05/02/2024; 10:31:27. () "It was at..."

VR: 05/02/2024; 10:31:29. () "The judge was at the dentist, and..."

VR: 05/02/2024; 10:31:32. () "The judge said to the dentist..."

VR: 05/02/2024; 10:31:34. () "Thank you."

VR: 05/02/2024; 10:31:36. () "Do you promise to pull the tooth, not the most tooth,"

VR: 05/02/2024; 10:31:41. () "Have a good day."

VR: 05/02/2024; 10:31:43. () "You too."

7-11-2024 Status Hearing

VR: 07/11/2024; 11:04:43. () "I have no jurisdiction. There is an outstanding writ."

VR: 07/11/2024; 11:04:47. () "I checked that. In fact, we checked that because I was worried that if everything was done, we didn't need to proceed."

VR: 07/11/2024; 11:04:53. () "But at this point... So do you want me to put it on for next... the 20th? What's the date?"

VR: 07/11/2024; 11:04:58. () "Well, next week is the 18th."

VR: 07/11/2024; 11:05:00. () "Not the 18th, then."

VR: 07/11/2024; 11:05:01. () "I won't be here the week of the 25th."

VR: 07/11/2024; 11:05:03. () "You won't? Well, how bad is the 18th?"

VR: 07/11/2024; 11:05:05. () "I think I will be."

VR: 07/11/2024; 11:05:07. () "Will you be here on the 25th?"

VR: 07/11/2024; 11:05:09. () "Probably."

VR: 07/11/2024; 11:05:10. () "Because it will be very short, unless between now and then we get a ruling on the writ."

VR: 07/11/2024; 11:05:14. () "Right."

VR: 07/11/2024; 11:05:14. () "I'm available on the 25th."

VR: 07/11/2024; 11:05:16. () "Can we just put it on the 25th, and then I would just have to explain to him that as long as that writ is outstanding, I can't do anything."

VR: 07/11/2024; 11:05:24. () "Which may mean we have to withdraw the trial date, if it continues."

VR: 07/11/2024; 11:05:28. () "Right, and I think that's kind of what both the Commonwealth is interested in, and we're obviously interested in just knowing..."

VR: 07/11/2024; 11:05:35. () "Well, the court is as well."

VR: 07/11/2024; 11:05:36. () "I think there's also probably at least a Feretta, maybe a competency hearing that will have to occur first."

VR: 07/11/2024; 11:05:43. () "Yeah, and who's the cw attorney on this one?"

VR: 07/11/2024; 11:05:46. () "It's now going to be Ms. Schaffer and Mr. Fegebusch."

VR: 07/11/2024; 11:05:50. () "Okay."

VR: 07/11/2024; 11:05:50. () "I think Mr. West was on it, but..."

VR: 07/11/2024; 11:05:53. () "Well, maybe. Is there not any hope, based on his mental situation, is there not any hope of getting this resolved in any way?"

VR: 07/11/2024; 11:06:03. () "I hold out infinite hope."

VR: 07/11/2024; 11:06:05. () "How long has he been in custody?"

VR: 07/11/2024; 11:06:06. () "He's been in custody over five years. His offer is essentially credit for time served. I remain hopeful that..."

VR: 07/11/2024; 11:06:12. () "I mean, the offer's credit for time served. How can he..."

VR: 07/11/2024; 11:06:19. () "Thus far, he has consistently expressed that he wants to exercise his constitutional right to a speedy trial."

VR: 07/11/2024; 11:06:25. () "But have we determined he's competent even to do that?"

VR: 07/11/2024; 11:06:28. () "Unfortunately, no."

VR: 07/11/2024; 11:06:30. () "Not since he's come back this time, I don't think."

VR: 07/11/2024; 11:06:33. () "Okay. All right, so we'll put it on just for review on the 25th."

VR: 07/11/2024; 11:06:40. () "What day is that?"

VR: 07/11/2024; 11:06:41. () "It's a Thursday, July 25th at 11 o'clock."

VR: 07/11/2024; 11:06:45. () "Yes."

VR: 07/11/2024; 11:06:45. () "11 o'clock."

VR: 07/11/2024; 11:06:47. () "Can you do that?"

VR: 07/11/2024; 11:06:48. () "Yes, Judge."

VR: 07/11/2024; 11:06:49. () "All right, 11 o'clock."

VR: 07/11/2024; 11:06:49. () "I just assumed it was..."

VR: 07/11/2024; 11:06:50. () "No, I booked... Originally, I had a five-day trial, so criminal was canceled, but what I'm adding is all these type of things to keep the docket from getting too..."

VR: 07/11/2024; 11:07:02. () "All right."

VR: 07/11/2024; 11:07:03. () "All right."

VR: 07/11/2024; 11:07:04. () "Thank you, Judge."

VR: 07/11/2024; 11:07:05. () "Thank you."

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VR: 07/25/2024; 11:06:30. () "I am here for that."

VR: 07/25/2024; 11:06:35. () "What about Mr. Tracy?"

VR: 07/25/2024; 11:06:38. () "He was not available today."

VR: 07/25/2024; 11:06:40. () "And what are we doing today?"

VR: 07/25/2024; 11:06:42. () "Well, you can come over here and sit down."

VR: 07/25/2024; 11:06:45. () "Shouldn't you be at a table?"

VR: 07/25/2024; 11:06:47. () "Oh, these tables are always on."

VR: 07/25/2024; 11:06:49. () "I can go left, I can go right."

VR: 07/25/2024; 11:06:52. () "I think it's my understanding that the appeals are still pending I checked this morning."

VR: 07/25/2024; 11:06:56. () "They are. We have..."

VR: 07/25/2024; 11:06:58. () "One's not. The Supreme Court denied discretionary review and sent it all back, or did whatever."

VR: 07/25/2024; 11:07:03. () "But there's still the Court of Appeals stuff filing, right? Pending?"

VR: 07/25/2024; 11:07:07. () "I think it was filed as an original action with the Supreme Court."

VR: 07/25/2024; 11:07:12. () "I think it's a writ of mandate, but I don't really have access to those filings."

VR: 07/25/2024; 11:07:18. () "Or I think it's styled as a writ of mandate."

VR: 07/25/2024; 11:07:20. () "But I thought there was a Court of Appeals issue."

VR: 07/25/2024; 11:07:24. () "I think that there were two, and the first was the Court of Appeals, which then he tried to get discretionary review."

VR: 07/25/2024; 11:07:31. () "And then there was a second one that was filed more recently that is styled as an action against this court."

VR: 07/25/2024; 11:07:39. () "That's a writ."

VR: 07/25/2024; 11:07:41. () "And it's not in the Court of Appeals, I take it."

VR: 07/25/2024; 11:07:44. () "I thought it went directly to the Supreme Court."

VR: 07/25/2024; 11:07:47. () "Weren't it supposed to go to the Court of Appeals? A writ of mandamus?"

VR: 07/25/2024; 11:07:50. () "It should, but since he filed it himself, he may not have understood."

VR: 07/25/2024; 11:07:54. () "Yeah, a writ of habeas. And that one, I thought we got something just yesterday on Mr. Cherry."

VR: 07/25/2024; 11:07:59. () "There was something filed yesterday, but it looked like it was either filed by Mr. Cherry or..."

VR: 07/25/2024; 11:08:07. () "Okay, I did not see anything yesterday."

VR: 07/25/2024; 11:08:13. () "Well, I got something in the mail from the Supreme Court yesterday."

VR: 07/25/2024; 11:08:16. () "Okay."

VR: 07/25/2024; 11:08:18. () "In our..."

VR: 07/25/2024; 11:08:20. () "No, I mean, I got something from the actual court, not from Mr. Cherry. I thought this was a court of appeals order?"

VR: 07/25/2024; 11:08:32. () "Saying what? ...hybrid counsel....speedy trial...motion for discovery...[mostly inaudible]"

VR: 07/25/2024; 11:08:53. () "I believe... I'm sorry."

VR: 07/25/2024; 11:08:56. () "It's okay, go ahead."

VR: 07/25/2024; 11:08:57. () "I believe that that is the finality date on the first appeals."

VR: 07/25/2024; 11:09:01. () "I think, technically, he appealed from an order of yours that addressed multiple issues."

VR: 07/25/2024; 11:09:07. () "The bill of particulars..."

VR: 07/25/2024; 11:09:08. () "That's that one."

VR: 07/25/2024; 11:09:09. () "Yes. I don't believe that the..."

VR: 07/25/2024; 11:09:12. () "The last one."

VR: 07/25/2024; 11:09:13. () "...writ, or whatever it is, is resolved."

VR: 07/25/2024; 11:09:15. () "So what are we going to do?"

VR: 07/25/2024; 11:09:18. () "I don't know the answer to that, Your Honor."

VR: 07/25/2024; 11:09:19. () "We have subpoenas out, or are in the process of getting prepared for trial, just in case that's where we are."

VR: 07/25/2024; 11:09:25. () "But it was my understanding from the previous status date that, based upon that writ, and then there was some discussion, I believe, that perhaps Mr. Cherry still was in need of further mental health evaluation."

VR: 07/25/2024; 11:09:38. () "I think something happened that we thought we were back on track for that."

VR: 07/25/2024; 11:09:42. () "Okay. Because he's had several, I know."

VR: 07/25/2024; 11:09:44. () "Yeah. It's my understanding that he has gone to KCPC. He came back somewhere around January."

VR: 07/25/2024; 11:09:50. () "Oh, yeah."

VR: 07/25/2024; 11:09:51. () "I think the appeals have been all, I don't know, pending since then. So my understanding is that we would likely need a competency hearing, because I don't... I was not involved in the case when he was sent to KCPC."

VR: 07/25/2024; 11:10:05. () "So you want a competency hearing?"

VR: 07/25/2024; 11:10:08. () "I don't know that I'm asking for one, but he went to KCPC for a reason."

VR: 07/25/2024; 11:10:12. () "Right. I think if the issue was raised, it either has to be waived or we have to have a hearing."

VR: 07/25/2024; 11:10:17. () "Yeah, and I think he's... I think we... I think he's gone a couple of times, because first we had the issue where he had been beaten up in the jail or something, and then for a long time had issues, I thought."

VR: 07/25/2024; 11:10:31. () "And then we sent him off, and then he came back, and then he got better. Maybe I'm confusing him with somebody else, but then I thought that he sort of went off again, or went sort of awry, and people were worried, so we sent him again. I don't know that we've had any kind of hearing on that second one."

VR: 07/25/2024; 11:10:54. () "I would guess there was a hearing on the first one at some point, before probably any of us were involved in the case."

VR: 07/25/2024; 11:11:00. () "And then I thought at one point he had a plea worked out, but he didn't want to take it unless his sister was okay with it."

VR: 07/25/2024; 11:11:09. () "And his sister, who is the victim's wife?"

VR: 07/25/2024; 11:11:13. () "Yes, I know. And she was here, and she tried to speak, but then the cw wouldn't let her."

VR: 07/25/2024; 11:11:17. () "Okay. My understanding, and I have not spoken to the sister, so I don't want to speak on her behalf. My understanding is that she was in favor of the plea deal, but I can't say that."

- VR: 07/25/2024; 11:11:27. () "Well, and I remember when we got ready to take the plea, he said he wanted to know if she was okay with it."
- VR: 07/25/2024; 11:11:33. () "And she went to speak, and I believe it was Ms. Schaefer, whoever was here for the come up, refused to let her talk."
- VR: 07/25/2024; 11:11:39. () "And so then based on that, he wasn't willing to go forward, because he didn't know if his sister wanted it."
- VR: 07/25/2024; 11:11:45. () "Is that what you remember?"
- VR: 07/25/2024; 11:11:48. () "A little differently. I think we didn't want her speaking with him, because that's a very..."
- VR: 07/25/2024; 11:11:55. () "She doesn't want to have communication with him, so we weren't going to make her..."
- VR: 07/25/2024; 11:11:59. () "Well, but I wasn't, but she started to sort of... she was back there nodding, and I needed on the record to know if she was opposed to it, so when I asked her..."
- VR: 07/25/2024; 11:12:10. () "And we can certainly get, you know, at least written confirmation."
- VR: 07/25/2024; 11:12:13. () "I do, because I was pretty offended by the fact that I had asked her something, and the come up told her she couldn't answer."
- VR: 07/25/2024; 11:12:20. () "The other issue that I was understanding is that at some point, perhaps Mr. Cherry wanted to represent himself."
- VR: 07/25/2024; 11:12:28. () "Oh, well, that's come and gone."
- VR: 07/25/2024; 11:12:29. () "Okay, but I didn't know if we still had..."
- VR: 07/25/2024; 11:12:30. () "That went up on appeal, and they said no, he doesn't get the... he wanted the... along with the department."
- VR: 07/25/2024; 11:12:40. () "And so I don't know whether that issue is ultimately resolved, and he's just going to be represented by DPA."
- VR: 07/25/2024; 11:12:45. () "Well, I think if we could have the competency hearing, and if it turns out they feel he is competent to go to trial, you know, to work with his attorney and everything, that maybe then we could try that plea again."
- VR: 07/25/2024; 11:13:03. () "And we're certainly..."
- VR: 07/25/2024; 11:13:04. () "If the victim is still willing, and she's willing to tell the court she's willing."

VR: 07/25/2024; 11:13:09. () "Yeah, and I think with some adequate preparation, that shouldn't be a problem to have her here, or at least have something..."

VR: 07/25/2024; 11:13:16. () "Because she tends to come a lot, doesn't she? Not anymore?"

VR: 07/25/2024; 11:13:19. () "No."

VR: 07/25/2024; 11:13:20. () "Yeah, I don't know why she came that time, because I guess..."

VR: 07/25/2024; 11:13:22. () "Because we thought we were doing a guilty plea that day."

VR: 07/25/2024; 11:13:25. () "Yeah, well, I did too."

VR: 07/25/2024; 11:13:26. () "So, you know, we can..."

VR: 07/25/2024; 11:13:27. () "We got close, we got close."

VR: 07/25/2024; 11:13:28. () "Yeah, we can make sure that, you know, we get something that will assure Mr. Cherry that his sister's in favor of this."

VR: 07/25/2024; 11:13:35. () "Yeah, because he wanted to do what she wanted. If she didn't want him to plead, you know, I mean, he wasn't going to plead."

VR: 07/25/2024; 11:13:42. () "I would say, Judge, that I was not at that court date, but at no time have one of my co-counsel told me that we were prepared to plead."

VR: 07/25/2024; 11:13:50. () "I think there may have been an optimism about a plea deal, but Mr. Cherry has not expressed to me at any time since I've been on his case since January."

VR: 07/25/2024; 11:13:59. () "Well, that time he was, he did want to plead, but he didn't want to do it unless she wanted him to."

VR: 07/25/2024; 11:14:05. () "At least that's what he articulated to me."

VR: 07/25/2024; 11:14:08. () "Because we were ready to do sort of a... and then it all went south."

VR: 07/25/2024; 11:14:14. () "As Mr. Cherry's case tends to go."

VR: 07/25/2024; 11:14:17. () "Yes."

VR: 07/25/2024; 11:14:17. () "Since we are on 2018, and this is 2024."

VR: 07/25/2024; 11:14:24. () "KCPC, COVID, KCPC again, all the appeals."

VR: 07/25/2024; 11:14:28. () "Oh, I know, I was just saying, yeah, I know, I know, but it needs to be resolved. He's been in jail now for..."

- VR: 07/25/2024; 11:14:36. () "Yeah, I mean, I'll note that even if the Department of Corrections were to treat a Man 2 conviction as violent time, he would be very close to parole elig now."
- VR: 07/25/2024; 11:14:44. () "Well, that's what I mean. I think he's about ready to get out, you know, so..."
- VR: 07/25/2024; 11:14:48. () "If he had taken the deal at least prior to the new law being in place, he would have gotten out more or less immediately and thus far declined to do so."
- VR: 07/25/2024; 11:14:58. () "Is the law such that it doesn't get to apply if it's an old case? I thought that was sort of an issue."
- VR: 07/25/2024; 11:15:04. () "Well, the law..."
- VR: 07/25/2024; 11:15:04. () "And if you asked for that defense, you could get it."
- VR: 07/25/2024; 11:15:07. () "The law, as I understand it, is just as the court described it, which would be that it would go based upon the time of the offense, if the defendant so elected."
- VR: 07/25/2024; 11:15:17. () "However, the Department of Corrections has at least unofficially stated that as of last Monday, they will start treating it based on the day of the sentence."
- VR: 07/25/2024; 11:15:27. () "Because the Department of Corrections are... their lawyers?"
- VR: 07/25/2024; 11:15:30. () "I can't remember where they came up with that, but that's what they said they're going to do."
- VR: 07/25/2024; 11:15:35. () "It is the Department of Corrections' position that it should be based on the date of the sentencing, not the date of the offense."
- VR: 07/25/2024; 11:15:42. () "But where do they get that, other than they're just the Department of Corrections?"
- VR: 07/25/2024; 11:15:47. () "Well, apparently the law on what is allowed to be retroactive and what isn't is a bit complex."
- VR: 07/25/2024; 11:15:53. () "Yes, it is. We've been down that road before on the DUI thing, or some of the other things that come up."
- VR: 07/25/2024; 11:15:58. () "And so, we talked about this extensively at the DPA conference. I don't want to present myself as an expert, but my best understanding is that they're probably going to have to litigate."
- VR: 07/25/2024; 11:16:07. () "Yes, so some poor schmuck of a judge."

VR: 07/25/2024; 11:16:11. () "So, I think it will depend on what the Supreme Court ultimately intends."

VR: 07/25/2024; 11:16:14. () "So, some poor schmuck of a judge is going to have to decide to let it run as at the time of the sentencing."

VR: 07/25/2024; 11:16:20. () "And then another judge is going to have to have it as the time of the sentencing, so that there will be conflicting, so that it will go up to the Supreme Court."

VR: 07/25/2024; 11:16:30. () "I suspect somebody will file an original action against the Department of Corrections."

VR: 07/25/2024; 11:16:35. () "You think?"

VR: 07/25/2024; 11:16:35. () "I think. I would think so."

VR: 07/25/2024; 11:16:38. () "I don't always know. I imagine that would be our Frankfort that would do that."

VR: 07/25/2024; 11:16:42. () "And I know they are gearing up to litigate this issue. I think there are two separate ones."

VR: 07/25/2024; 11:16:46. () "One is changing the parole eligibility, and then the other issue is that they're taking away all credits from violent offenders."

VR: 07/25/2024; 11:16:53. () "And so, I think there are two different... as of right now, they can gain some portion of credits on their offense, as long as it doesn't reduce it below 85%."

VR: 07/25/2024; 11:17:02. () "Are these just legislators who aren't lawyers?"

VR: 07/25/2024; 11:17:08. () "I don't know the answer to that, Your Honor."

VR: 07/25/2024; 11:17:11. () "Historically, the Office of the Secretary, Office of General Counsel have dealt with those things. I'm not sure where this is coming from."

VR: 07/25/2024; 11:17:19. () "I mean, I don't know where the legislators are getting so... I mean, we... what is it? Kentucky is the third highest number of incarcerated people in the world?"

VR: 07/25/2024; 11:17:30. () "Correct."

VR: 07/25/2024; 11:17:31. () "Is it the third?"

VR: 07/25/2024; 11:17:32. () "I believe that's correct."

VR: 07/25/2024; 11:17:33. () "Yeah, and so what? Our goal is to be number one in the world? Is that what we're planning here?"

VR: 07/25/2024; 11:17:38. () "Yeah, I mean, what are we..."

VR: 07/25/2024; 11:17:42. () "Gotta be best at something, Judge."

VR: 07/25/2024; 11:17:44. () "Well, yeah, I think we're already first in rickets, so maybe now we're trying to, you know... I'm just like, what are we..."

VR: 07/25/2024; 11:17:52. () "It's got all kinds of great provisions in that bill."

VR: 07/25/2024; 11:17:55. () "I know, I know. So, we can't do anything today."

VR: 07/25/2024; 11:18:00. () "I think if the judge wished to remove the trial date, I think we could do that, but I don't think any motions can be ruled on."

VR: 07/25/2024; 11:18:06. () "No, I think we need to try to remove the trial date. I think we need to try to see if you could reach out to the physician at KCPC to see if there might be some available dates to have a competency hearing, if that's what you think we need to go."

VR: 07/25/2024; 11:18:24. () "And then also, maybe if you feel that he is where he needs to be mentally, and if all goes well in the competency hearing, we could maybe see if he still might be considering a plea."

VR: 07/25/2024; 11:18:38. () "I, in all candor, while it would be our advice for him to take that plea deal, he has been fairly adamant, at least with me, that he doesn't want it. He wants to go to trial."

VR: 07/25/2024; 11:18:51. () "Well, maybe we could find out if his sister would like him to take it."

VR: 07/25/2024; 11:18:55. () "That concerns me."

VR: 07/25/2024; 11:18:55. () "And then if you find that out, that she would like him to take it, then you could relay that to him."

VR: 07/25/2024; 11:19:00. () "I'm happy to do so. Again, I'm not sure to what extent is that actually impacting his decisions versus is that what he's claiming?"

VR: 07/25/2024; 11:19:08. () "Well, that was what we did last time, so we'd like to see if that is still where he is."

VR: 07/25/2024; 11:19:12. () "Sure, we can certainly answer that question."

VR: 07/25/2024; 11:19:13. () "Yeah, and if you could answer that, and then you could relay that information to him."

VR: 07/25/2024; 11:19:19. () "I certainly would do so."

VR: 07/25/2024; 11:19:21. () "I know you would. Okay, so, is there anything else?"

- VR: 07/25/2024; 11:19:25. () "I don't believe, perhaps if we want to put this on for status in a couple of weeks."
- VR: 07/25/2024; 11:19:29. () "That would be good for you all to check out things."
- VR: 07/25/2024; 11:19:30. () "For us to check and see if we come up with some dates, potentially for a compensating hearing."
- VR: 07/25/2024; 11:19:36. () "Or if the court would like to give us some dates, and I can check with Dr. Perry."
- VR: 07/25/2024; 11:19:40. () "Well, let's do that. Why don't I, why don't we get the calendar and try to give them some dates, and then we don't have to put it on."
- VR: 07/25/2024; 11:19:47. () "We could just put it on the date we're going to try to do."
- VR: 07/25/2024; 11:19:50. () "Yeah, and then we could maybe just do an agreed order for one more month."
- VR: 07/25/2024; 11:19:52. () "Yeah, that would be great. That would probably be better."
- VR: 07/25/2024; 11:19:56. () "How long do you think, guys, it will take to do the call? It's usually, they're usually pretty short."
- VR: 07/25/2024; 11:20:00. () "Yeah, I would think an hour, particularly given the fact that I believe the same doctor evaluated him both times."
- VR: 07/25/2024; 11:20:06. () "So, there's already some testimony in the records for the court for a while."
- VR: 07/25/2024; 11:20:13. () "I know this is, like, really quick, but I could do it on Monday, if you could get a doctor, say, at 9 o'clock."
- VR: 07/25/2024; 11:20:27. () "Unfortunately, I have another hearing on Monday morning at 9 o'clock."
- VR: 07/25/2024; 11:20:30. () "What time would you be done with that?"
- VR: 07/25/2024; 11:20:34. () "This says 10.30. I don't know whether that's accurate or not."
- VR: 07/25/2024; 11:20:38. () "I could do it at 11.30."
- VR: 07/25/2024; 11:20:43. () "That's actually with you, Judge, I believe. Travis Case?"
- VR: 07/25/2024; 11:20:48. () "Yeah, I have it down as a..."
- VR: 07/25/2024; 11:20:51. () "I have it at 9.30, actually. I'm sorry."
- VR: 07/25/2024; 11:20:53. () "I have it at 9.30, but I can't read conditional release."

VR: 07/25/2024; 11:20:57. () "It looks like there was a motion to void diversion. That's what that's for, perhaps, like a probation or a vacation hearing kind of thing."

VR: 07/25/2024; 11:21:03. () "Yeah, so that's that. I don't think... I've got it at 10 o'clock, so I don't think you'd get more than a half hour."

VR: 07/25/2024; 11:21:09. () "Yeah, I don't think it would take more than that."

VR: 07/25/2024; 11:21:11. () "Yeah, and then I have an adversarial bond hearing. I don't know who has that matter."

VR: 07/25/2024; 11:21:16. () "It's me."

VR: 07/25/2024; 11:21:16. () "It's you? Well, how long do you think that'll take? An hour?"

VR: 07/25/2024; 11:21:19. () "I don't... yeah. I don't anticipate longer than an hour, certainly."

VR: 07/25/2024; 11:21:22. () "Yeah, so it'll... could you all do it at 11? Or 11.30? I mean, if the doctor can."

VR: 07/25/2024; 11:21:27. () "Yes, it's pretty short notice for the case..."

VR: 07/25/2024; 11:21:29. () "Yeah, but sometimes the doctors are..."

VR: 07/25/2024; 11:21:31. () "He may be available."

VR: 07/25/2024; 11:21:32. () "Yeah, which would be great, because we could just get it done. Because, you know, there's so many other things filling up the dock, and I'm worried about..."

VR: 07/25/2024; 11:21:44. () "So, July the 29th at 11?"

VR: 07/25/2024; 11:21:50. () "You could do it at 11, 11.30."

VR: 07/25/2024; 11:21:52. () "Okay."

VR: 07/25/2024; 11:21:54. () "And from the sounds of it, even 10.30. Because you don't think the adversarial bond hearing will go much more than a half hour, right?"

VR: 07/25/2024; 11:22:00. () "It may go a little bit longer than a half hour."

VR: 07/25/2024; 11:22:03. () "Okay."

VR: 07/25/2024; 11:22:04. () "But if that day's not available, you want to give me a couple of others?"

VR: 07/25/2024; 11:22:08. () "Well, yeah, but I'm trying to find one."

VR: 07/25/2024; 11:22:10. () "Oh, sure."

VR: 07/25/2024; 11:22:11. () "Now we're going out further, which concerns me."

VR: 07/25/2024; 11:22:29. () "Because, see, I have these, like, five-day trials that are killing us."

VR: 07/25/2024; 11:22:35. () "..."

VR: 07/25/2024; 11:22:36. () "..."

VR: 07/25/2024; 11:22:40. () "See, now the problem is we're getting into... I could do it..."

VR: 07/25/2024; 11:22:46. () "Well, I guess we have the week of August 26th that we're all available, since that's when the trial was scheduled."

VR: 07/25/2024; 11:22:53. () "Well, except for I already had a second status."

VR: 07/25/2024; 11:22:57. () "Yeah. You know, maybe I put second and third statuses. That's the problem."

VR: 07/25/2024; 11:23:06. () "I don't think the doctors usually take more than about a half hour, do they?"

VR: 07/25/2024; 11:23:12. () "Usually half an hour to an hour is all that it takes."

VR: 07/25/2024; 11:23:14. () "Do you think you'll be longer? Because usually when I've done them, they're pretty short."

VR: 07/25/2024; 11:23:18. () "I have a hard time anticipating anything in this case, Judge."

VR: 07/25/2024; 11:23:22. () "There's an X factor here."

VR: 07/25/2024; 11:23:23. () "Good point. Yeah. Good point. Good point."

VR: 07/25/2024; 11:23:31. () "Well, what we could do is we could maybe put it on second status on August 26th, because we have another..."

VR: 07/25/2024; 11:23:39. () "Maybe that other case, it's a criminal case, will plead."

VR: 07/25/2024; 11:23:42. () "Do you know which case that is, Judge?"

VR: 07/25/2024; 11:23:43. () "It's Commonwealth v. Rodriguez-Clara."

VR: 07/25/2024; 11:23:49. () "It's..."

VR: 07/25/2024; 11:23:54. () "It's a three-day trial. And then I go into criminal docket and civil."

VR: 07/25/2024; 11:24:09. () "Do you know the case number on that case, by chance?"

VR: 07/25/2024; 11:24:13. () "Rodriguez-Clara."

VR: 07/25/2024; 11:24:14. () "22 CR 321."

VR: 07/25/2024; 11:24:18. () "Thank you."

VR: 07/25/2024; 11:24:22. () "That could be a second status. And I could put it on for an 830 on September 4th."

VR: 07/25/2024; 11:24:30. () "But then I go into a long oral argument case and two final pre-trials."

VR: 07/25/2024; 11:24:35. () "Which will take up..."

VR: 07/25/2024; 11:24:36. () "September the 4th?"

VR: 07/25/2024; 11:24:38. () "Yeah, at 830."

VR: 07/25/2024; 11:24:44. () "So either that August 26th or September 4th would both be 830."

VR: 07/25/2024; 11:24:53. () "I'm available for either of those days."

VR: 07/25/2024; 11:24:55. () "Well, now, the August 26th, if that case doesn't go, we could do it at 9."

VR: 07/25/2024; 11:25:00. () "Okay."

VR: 07/25/2024; 11:25:00. () "Yeah."

VR: 07/25/2024; 11:25:08. () "How's that?"

VR: 07/25/2024; 11:25:09. () "Would those all work for you all?"

VR: 07/25/2024; 11:25:12. () "Those would all work for me, September 4th at 830."

VR: 07/25/2024; 11:25:15. () "I don't know if I'd be available on the 26th, but I'll check with Mr. Tracy and see if it's..."

VR: 07/25/2024; 11:25:20. () "Okay, okay. But the other ones are okay?"

VR: 07/25/2024; 11:25:24. () "Yes."

VR: 07/25/2024; 11:25:24. () "Okay."

VR: 07/25/2024; 11:25:25. () "Let's see if any of those work."

VR: 07/25/2024; 11:25:28. () "I will try to get with the doctor today and see what capability he has..."

VR: 07/25/2024; 11:25:35. () "We'll put them all on that day, and then if any of them work, we'll put an odd on order, just stating them for that day."

VR: 07/25/2024; 11:25:43. () "We can tender an agreed order if one of these dates is going to work."

VR: 07/25/2024; 11:25:45. () "Okay, that'd be great."

VR: 07/25/2024; 11:25:47. () "Okay."

VR: 07/25/2024; 11:25:47. () "All right, and then, other than that, we don't have anything to do, do we, Mr. Chair?"

VR: 07/25/2024; 11:25:52. () "I don't believe we can do anything."

VR: 07/25/2024; 11:25:54. () "No, I don't think we can either."

VR: 07/25/2024; 11:25:58. () "I'm sure he would like to be brought out and say something."

VR: 07/25/2024; 11:26:01. () "I knew you were going to say that."

VR: 07/25/2024; 11:26:03. () "I was just hoping."

VR: 07/25/2024; 11:26:05. () "I was trying to avoid that today."

VR: 07/25/2024; 11:26:06. () "Yeah, I was so hoping."

VR: 07/25/2024; 11:26:10. () "Okay, bring him out."

VR: 07/25/2024; 11:26:27. () "It's been a doozy of a day."

VR: 07/25/2024; 11:26:33. () "Mr. Gillespie, did you see where I responded to..."

VR: 07/25/2024; 11:26:35. () "I did, Your Honor. I responded back, I think it was right before you came into the room, so you may not have seen that."

VR: 07/25/2024; 11:26:40. () "That's okay."

VR: 07/25/2024; 11:26:42. () "He... I spoke to Mr. Mitzi by text message. He said he'd be available for a conference call if you wanted to reschedule it over the phone."

VR: 07/25/2024; 11:26:49. () "Otherwise, my suggestion would be to put it up on the docket next week, because I hate to drag him in here..."

VR: 07/25/2024; 11:26:53. () "Well, and I did the same. Yeah, and I did the same, so we could just put him on for... put it on for next week, just to get it done."

VR: 07/25/2024; 11:27:00. () "That'd be fine for me, Your Honor."

VR: 07/25/2024; 11:27:02. () "All right."

VR: 07/25/2024; 11:27:02. () "All right."

VR: 07/25/2024; 11:27:04. () "Thank you."

VR: 07/25/2024; 11:27:05. () "All right, we are on in the matter of 18 CR 1114, Commonwealth v. Willow Cherry. Mr. Cherry is present."

VR: 07/25/2024; 11:27:19. () "And, um, Mr. Cherry, how are you?"

VR: 07/25/2024; 11:27:24. () "As long as you're okay."

VR: 07/25/2024; 11:27:25. () "I think I'm okay."

VR: 07/25/2024; 11:27:27. () "Are we ready?"

VR: 07/25/2024; 11:27:31. () "Well, here's the issue."

VR: 07/25/2024; 11:27:33. () "We really can't address anything substantive because you're... you still have one appeal pending and maybe a writ pending."

VR: 07/25/2024; 11:27:42. () "So until the appellate courts rule, I really don't have jurisdiction to do any more motions or set anything or, you know, or those kind of things."

VR: 07/25/2024; 11:27:57. () "You know, I can't... I can't make rulings until they tell me what they're doing on the other rulings I've already done."

VR: 07/25/2024; 11:28:02. () "Because I've kind of lost the right to do any... that kind of stuff."

VR: 07/25/2024; 11:28:08. () "I understand what you're saying. Could you point me to the statutes for that?"

VR: 07/25/2024; 11:28:15. () "Well, it's actually case law. Well, I think it's... there might be a statute on it. I'd have to look it up, but I mean, it's..."

VR: 07/25/2024; 11:28:23. () "Anything will do. Just help me out. I don't want to take your time."

VR: 07/25/2024; 11:28:26. () "I explained to us one of those things that I'm not honestly sure where it is either."

VR: 07/25/2024; 11:28:32. () "I think... how about you, Mr."

VR: 07/25/2024; 11:28:35. () "Well, that's what I'm currently trying to pull out."

VR: 07/25/2024; 11:28:37. () "I think there might be a statute."

VR: 07/25/2024; 11:28:39. () "It may be in the competency statute that a motion for competency calls any further action."

VR: 07/25/2024; 11:28:44. () "Yeah, but I'm talking about even on appellate."

VR: 07/25/2024; 11:28:49. () "Yeah, it's a slightly different issue."

VR: 07/25/2024; 11:28:51. () "I think it might be under the rules."

VR: 07/25/2024; 11:28:53. () "Yeah, I think it's in the rules of procedure."

VR: 07/25/2024; 11:28:57. () "I can look and see if I can find it."

VR: 07/25/2024; 11:28:58. () "I think it might be in the appellate rules."

VR: 07/25/2024; 11:29:02. () "We've got a lot of attorneys in here."

VR: 07/25/2024; 11:29:05. () "We've just always... that's always been drilled in our heads so much."

- VR: 07/25/2024; 11:29:08. () "Yeah, we all just sort of know that's it, and if you try to get around it, you know, you could be in some hot water."
- VR: 07/25/2024; 11:29:15. () "Yeah, but we'll look, and I'll get you something. I'll get it to your attorney."
- VR: 07/25/2024; 11:29:19. () "The judge's word is the last, as far as I understand it, either way."
- VR: 07/25/2024; 11:29:27. () "So, I want to make clear the request for bond credit with the offer for time served."
- VR: 07/25/2024; 11:29:46. () "I've never missed a court date, and I've self-surrendered on my own accord, but to the appeal or a trial or anything..."
- VR: 07/25/2024; 11:30:01. () "Were you talking about a..."
- VR: 07/25/2024; 11:30:04. () "I think he's requesting bail credit. I think he's arguing that the commonwealth being willing to let him plead and get out should..."
- VR: 07/25/2024; 11:30:11. () "Well, plead is different than bail credit. Plead is plead."
- VR: 07/25/2024; 11:30:15. () "And if you pled, that would be... bail credit wouldn't even be an issue. It wouldn't be relevant."
- VR: 07/25/2024; 11:30:24. () "But that's different than bail credit."
- VR: 07/25/2024; 11:30:28. () "Bail credit happens when you haven't pled. Once you've pled, then you get credit for all the time you've served."
- VR: 07/25/2024; 11:30:35. () "That's the law. You can't get sentenced to a certain thing and then not have that time you've been sitting in there count towards the sentence."
- VR: 07/25/2024; 11:30:45. () "You definitely will get credit for all the time you've served, and that's really not the commonwealth's call, that's this court's call."
- VR: 07/25/2024; 11:30:52. () "Yeah, and I would... I mean, I always give credit for time served. I don't think I really should do anything but that. I think that maybe it's kind of the law, yet again."
- VR: 07/25/2024; 11:31:04. () "I think he is attempting to argue that the commonwealth being willing to offer a plea deal that would get him out very quickly is indicative that he's not dangerous and therefore he should be a candidate. I think that's the line."

- VR: 07/25/2024; 11:31:15. () "So are you trying... are you thinking about entering a plea? Is that what you're telling me?"
- VR: 07/25/2024; 11:31:19. () "No. The fact that the commonwealth is at a point where they're willing to let me walk."
- VR: 07/25/2024; 11:31:29. () "Well, let you walk with a plea is very different than letting you just get out. They're saying we're acknowledging you've served enough time based on everything to justify offering you that plea."
- VR: 07/25/2024; 11:31:43. () "They are not saying that... they want you out running around without a plea."
- VR: 07/25/2024; 11:31:51. () "Pardon?"
- VR: 07/25/2024; 11:31:52. () "They're not saying... by saying that, they're not saying we think you are a good candidate for getting out prior to entering a plea."
- VR: 07/25/2024; 11:32:06. () "The commonwealth's here."
- VR: 07/25/2024; 11:32:08. () "I would concur with what the court is saying. I certainly understand the basic premise of the argument Mr. Cherry is making."
- VR: 07/25/2024; 11:32:16. () "But I believe the court is correct. Those are apples and oranges."
- VR: 07/25/2024; 11:32:21. () "So the commonwealth would be opposed to his motion?"
- VR: 07/25/2024; 11:32:24. () "Well yeah, because it kind of puts them in a position that they're... if you went out and did anything inappropriate, then they're on the hook for having let somebody out or agreeing to let somebody out pending trial or pending a plea."
- VR: 07/25/2024; 11:32:38. () "And then you went out and did something bad, then they look bad."
- VR: 07/25/2024; 11:32:42. () "We all do."
- VR: 07/25/2024; 11:32:44. () "I would also state again for the record that I've never missed a court date and I self surrendered in the first place."
- VR: 07/25/2024; 11:32:52. () "And I understand that, but..."
- VR: 07/25/2024; 11:32:54. () "Where the danger comes in is in anything."
- VR: 07/25/2024; 11:32:56. () "Well, I don't know. I'm just telling you."
- VR: 07/25/2024; 11:32:59. () "Yeah, I appreciate it."

VR: 07/25/2024; 11:33:00. () "Yeah, okay. So, we're gonna..."

VR: 07/25/2024; 11:33:06. () "Excuse me."

VR: 07/25/2024; 11:33:09. () "The other issue is that there's a court date pending for the trial."

VR: 07/25/2024; 11:33:21. () "Well, I think we're working on that issue."

VR: 07/25/2024; 11:33:24. () "Okay."

VR: 07/25/2024; 11:33:25. () "We'll keep you posted."

VR: 07/25/2024; 11:33:27. () "Pardon?"

VR: 07/25/2024; 11:33:28. () "We'll keep you posted."

VR: 07/25/2024; 11:33:29. () "Yeah, thank you."

VR: 07/25/2024; 11:33:30. () "You're welcome."

VR: 07/25/2024; 11:33:31. () "I'm a little hard of hearing."

VR: 07/25/2024; 11:33:33. () "So, at this time, the..."

VR: 07/25/2024; 11:33:35. () "Okay, and we really can't have a trial until the Court of Appeals does whatever they're gonna do."

VR: 07/25/2024; 11:33:41. () "So, to be clear, the appeal is settled. That was settled about a week and a half or two weeks ago."

VR: 07/25/2024; 11:33:51. () "The writ is still pending, so..."

VR: 07/25/2024; 11:33:54. () "Yeah, and until that's dealt with, our hands are tied."

VR: 07/25/2024; 11:33:59. () "Or my hands are tied."

VR: 07/25/2024; 11:33:59. () "Is there gonna be a case law and whatnot on that?"

VR: 07/25/2024; 11:34:02. () "Yes, we'll figure out where that is."

VR: 07/25/2024; 11:34:04. () "One more thing for the record, I'm sorry."

VR: 07/25/2024; 11:34:12. () "The court records, the videos, are a little incomplete."

VR: 07/25/2024; 11:34:19. () "Yeah, I said you could have them."

VR: 07/25/2024; 11:34:20. () "Yeah. Could I request those again?"

VR: 07/25/2024; 11:34:23. () "Well, do you know what's missing?"

VR: 07/25/2024; 11:34:25. () "Would you work with her and tell her what you think is missing?"

VR: 07/25/2024; 11:34:28. () "And she'll get that to me, and then we'll make sure you get it."

VR: 07/25/2024; 11:34:30. () "Sounds great."

VR: 07/25/2024; 11:34:31. () "Yeah. Is that alright?"

VR: 07/25/2024; 11:34:32. () "Yes, Judge."

VR: 07/25/2024; 11:34:33. () "Yeah, that's how we'll handle that."

VR: 07/25/2024; 11:34:35. () "Okay, great. Because you can't really talk to me ex parte, but you tell her, and then she'll tell me."

VR: 07/25/2024; 11:34:39. () "Yeah."

VR: 07/25/2024; 11:34:40. () "And she'll tell me, and we'll all make sure Mr. Fagenbusch knows."

VR: 07/25/2024; 11:34:43. () "Obviously, I have no objection to Mr. Cherry getting copies of any court CDs."

VR: 07/25/2024; 11:34:47. () "All right, great. All right, we're good."

VR: 07/25/2024; 11:34:49. () "Thank you so much."

VR: 07/25/2024; 11:34:49. () "All right, you take care, Mr. Cherry."

VR: 07/25/2024; 11:34:51. () "All right, bye."

VR: 07/25/2024; 11:34:52. () "Bye."

VR: 07/25/2024; 11:34:53. () "What does the judge have at a bar? Just ice."

VR: 07/25/2024; 11:35:04. () "That was a good one. Okay."

VR: 07/25/2024; 11:35:07. () "Just ice."

VR: 07/25/2024; 11:35:10. () "Just ice."

VR: 07/25/2024; 11:35:11. () "All right, are we done?"

VR: 07/25/2024; 11:35:13. () "Did we want to do anything else with the trial date?"

VR: 07/25/2024; 11:35:15. () "I think at this point, we can assume it's not going to happen."

VR: 07/25/2024; 11:35:20. () "Okay."

VR: 07/25/2024; 11:35:20. () "I mean, I'm happy to remand it from the docket if you want me to."

VR: 07/25/2024; 11:35:24. () "The only issue is we do have subpoenas outstanding, some of which they're active in the process of trial."

VR: 07/25/2024; 11:35:28. () "Well, I think we probably should remand it."

VR: 07/25/2024; 11:35:31. () "We should remand it because I think what we might want to try to do first and foremost is see what this doctor says."

VR: 07/25/2024; 11:35:38. () "Do the competency hearing."

VR: 07/25/2024; 11:35:39. () "And then after that, we might see if we could get a resolution."

- VR: 07/25/2024; 11:35:49. () "I think we understand where the court's head is and we'll see where we are once we get this vaccine."
- VR: 07/25/2024; 11:35:58. () "I mean, I don't dislike Mr. Cherry, but I don't like him enough to see him the rest of my life."
- VR: 07/25/2024; 11:36:04. () "On a weekly basis."
- VR: 07/25/2024; 11:36:05. () "I don't know about you, Judge, but I'm not planning on working the rest of my life."
- VR: 07/25/2024; 11:36:08. () "That's right, it's going to seem like the rest of your life."
- VR: 07/25/2024; 11:36:12. () "I just also want to make clear for the record that the defense was not requesting a continuance, just logistically asking."
- VR: 07/25/2024; 11:36:19. () "It's understanding about it."
- VR: 07/25/2024; 11:36:21. () "I do think logistically, based on what's involved in this case, that it would be inefficient to keep it there and tie up."
- VR: 07/25/2024; 11:36:31. () "I just don't see us being able to jump through at least three, minimum three hoops we have to jump through before we can proceed with trial."
- VR: 07/25/2024; 11:36:37. () "Yeah, because we don't know when the writs coming back."
- VR: 07/25/2024; 11:36:39. () "Correct."
- VR: 07/25/2024; 11:36:40. () "That's the biggest thing."
- VR: 07/25/2024; 11:36:42. () "They take their time."
- VR: 07/25/2024; 11:36:45. () "Yeah."
- VR: 07/25/2024; 11:36:46. () "Alright, great. Thank you all. Take care."
- VR: 07/25/2024; 11:36:50. () "Okay, that's Mr. Cherry. Do we have him on a... we're going to see which of those three dates work, Steve."
- VR: 07/25/2024; 11:36:59. () "And then we'll remand the trial date due to the fact that the writ is still pending and other issues are still unresolved. Just put it that way."

9-12-2024 Status Hearing

VR: 09/12/2024; 09:06:23. () "There's a problem with the hearing date."

VR: 09/12/2024; 09:06:26. () "There's a problem with the hearing date?"

VR: 09/12/2024; 09:06:28. () "Yeah, I guess Dr. Allen's not available. I don't know what it is at first."

VR: 09/12/2024; 09:06:33. () "Beyond that, Judge, I think we'll all find out together."

VR: 09/12/2024; 09:06:43. () "How you doing, Mr. Cherry?"

VR: 09/12/2024; 09:06:46. () "I'm doing fine, thank you for asking. How about yourself?"

VR: 09/12/2024; 09:06:48. () "I'm good, thank you. You look good."

VR: 09/12/2024; 09:06:50. () "Likewise."

VR: 09/12/2024; 09:06:51. () "Thank you."

VR: 09/12/2024; 09:06:51. () "Why do I keep getting older?"

VR: 09/12/2024; 09:06:53. () "What?"

VR: 09/12/2024; 09:06:54. () "Why do we keep getting older?"

VR: 09/12/2024; 09:06:54. () "Well, don't we all?"

VR: 09/12/2024; 09:06:56. () "Yeah, yeah."

VR: 09/12/2024; 09:06:58. () "Alright, so we need a new competency hearing date."

VR: 09/12/2024; 09:07:02. () "Judge, we had set it for November 1st, and we've learned that Dr. Allen's not going to be available November 1st."

VR: 09/12/2024; 09:07:08. () "But I guess generally he's available on Wednesdays, is what Mr. [inaudible] was told."

VR: 09/12/2024; 09:07:14. () "Generally any Wednesday?"

VR: 09/12/2024; 09:07:16. () "Your Honor, that's what he said, and I have him on the phone right now."

VR: 09/12/2024; 09:07:19. () "Not actually on the phone, but over text. And if you throw out a date, I can confirm it with him."

VR: 09/12/2024; 09:07:25. () "How about... how long do you all think it'll take, counsel?"

VR: 09/12/2024; 09:07:31. () "I think the report speaks for itself."

VR: 09/12/2024; 09:07:35. () "Well, but I mean, I'm just..."

VR: 09/12/2024; 09:07:38. () "And he could do it..."

VR: 09/12/2024; 09:07:48. () "Can he do it..."

VR: 09/12/2024; 09:07:55. () "December 18th?"

VR: 09/12/2024; 09:07:55. () "It's a Wednesday."

VR: 09/12/2024; 09:08:03. () "And Your Honor, I remember at the last hearing, there was a question about whether or not the..."

VR: 09/12/2024; 09:08:09. () "Mr. Cherry's sister was okay with the plea agreement."

VR: 09/12/2024; 09:08:13. () "And we've spoken with her, and she is okay with that plea agreement."

VR: 09/12/2024; 09:08:17. () "She is okay with it?"

VR: 09/12/2024; 09:08:18. () "Yes, we just wanted to inform you."

VR: 09/12/2024; 09:08:19. () "All right, thank you. I asked that from her mouth and not from the people giving..."

VR: 09/12/2024; 09:08:30. () "Well, how about if she gives an affidavit?"

VR: 09/12/2024; 09:08:33. () "Which is a sworn statement by her."

VR: 09/12/2024; 09:08:35. () "She's my sister. If she doesn't want to talk to me, then I'll proceed."

VR: 09/12/2024; 09:08:40. () "So you're saying that unless she talks to you, you're not going to plead?"

VR: 09/12/2024; 09:08:45. () "I mean, we're going to talk when we get out."

VR: 09/12/2024; 09:08:47. () "Well, what makes you think you'll talk when you get out?"

VR: 09/12/2024; 09:08:50. () "Is she talking to you now?"

VR: 09/12/2024; 09:08:54. () "She's come to visit me several times in jail."

VR: 09/12/2024; 09:08:56. () "Oh. Really?"

VR: 09/12/2024; 09:08:59. () "Yes."

VR: 09/12/2024; 09:09:00. () "Your Honor, I've been talking with her very recently. She's expressed she wants no contact."

VR: 09/12/2024; 09:09:04. () "She's actually been sending letters to her address and putting legal document on them so they're not going to be picked up by the judge or the jail."

VR: 09/12/2024; 09:09:12. () "Has she been..."

VR: 09/12/2024; 09:09:12. () "I've copied the court though as well."

VR: 09/12/2024; 09:09:14. () "Can you check to see if she's been seen?"

VR: 09/12/2024; 09:09:18. () "I could, but just based on talking with her very recently, that does not sound like it's plausible."

VR: 09/12/2024; 09:09:25. () "Your Honor, my sister is the Commonwealth's only potential witness."

VR: 09/12/2024; 09:09:31. () "I know that, but I just would like to know if she has gone to see him."

VR: 09/12/2024; 09:09:36. () "And that's contingent upon..."

VR: 09/12/2024; 09:09:38. () "I just want to know."

VR: 09/12/2024; 09:09:40. () "Okay."

VR: 09/12/2024; 09:09:43. () "I don't think it has to be a contingent on anything. The court just wants to know."

VR: 09/12/2024; 09:09:47. () "Well, I'm just confused because at the last date we were kind of holding it up because we did not know if she was in agreement with the plea agreement."

VR: 09/12/2024; 09:09:55. () "And she very much is."

VR: 09/12/2024; 09:09:56. () "But that's what she's expressed to us profusely."

VR: 09/12/2024; 09:09:59. () "If I may, that was established."

VR: 09/12/2024; 09:10:01. () "We've got emails and all that."

VR: 09/12/2024; 09:10:03. () "Very well established that the Commonwealth supports whoever's advocate with my sister"

VR: 09/12/2024; 09:10:08. () "and is obviously going to support the plea agreement that you're presented."

VR: 09/12/2024; 09:10:12. () "But if she's not willing to talk about it, I don't see any reason to continue with that line."

VR: 09/12/2024; 09:10:16. () "Well, but the issue is all the court wants to know is if she's in agreement with it."

VR: 09/12/2024; 09:10:21. () "That's all I care."

VR: 09/12/2024; 09:10:22. () "I understand that, but the Commonwealth is saying it's not her."

VR: 09/12/2024; 09:10:26. () "So, I asked you, will you take an affidavit?"

VR: 09/12/2024; 09:10:29. () "Yes, ma'am. No, I wouldn't because I don't know that she's competent to understand the gravity of an affidavit."

VR: 09/12/2024; 09:10:37. () "Can she just come and advise the court, on the record, that she's okay with the plea so we can get this wrapped up?"

VR: 09/12/2024; 09:10:45. () "I think she would very much not appreciate doing that, but I can ask her and tell her that that's..."

VR: 09/12/2024; 09:10:49. () "And I would like to know if she has been visiting him."

VR: 09/12/2024; 09:10:53. () "Okay."

VR: 09/12/2024; 09:10:53. () "That's all."

VR: 09/12/2024; 09:10:54. () "Not recently, to be fair, but..."

VR: 09/12/2024; 09:10:56. () "No, but if she has ever, I'd like to know that."

VR: 09/12/2024; 09:10:58. () "I'd like to know if she's gone to see him."

VR: 09/12/2024; 09:11:01. () "Brought her daughter and everybody else?"

VR: 09/12/2024; 09:11:03. () "I'd like to know. I'd like to know if his family members are seeing him."

VR: 09/12/2024; 09:11:06. () "The advocates are..."

VR: 09/12/2024; 09:11:08. () "I don't want to go, but I'd like to know if they've seen him."

VR: 09/12/2024; 09:11:13. () "Okay?"

VR: 09/12/2024; 09:11:14. () "All right, so what's the consensus on that date?"

VR: 09/12/2024; 09:11:18. () "That works."

VR: 09/12/2024; 09:11:19. () "All right. So what time do I want to do it? I've got jury orientation that day. What time is that usually set?"

VR: 09/12/2024; 09:11:24. () "9.30."

VR: 09/12/2024; 09:11:25. () "9.30. Can we do it at 8.30?"

VR: 09/12/2024; 09:11:27. () "Yes, Your Honor."

VR: 09/12/2024; 09:11:28. () "Be done by 9.30?"

VR: 09/12/2024; 09:11:30. () "I was thinking in my head it might take two hours."

VR: 09/12/2024; 09:11:34. () "All right, well then I could do it later. How about 10.30?"

VR: 09/12/2024; 09:11:40. () "Can we go 10.30, 11.30, 11.30, 12.00?"

VR: 09/12/2024; 09:11:43. () "12.30, if necessary. How's that?"

VR: 09/12/2024; 09:11:47. () "Is there a reason the competency hearing was not called for early?"

VR: 09/12/2024; 09:11:52. () "Mr. Cherry, I don't know. You might have to take that up with your attorneys and they might take it up at the cw."

VR: 09/12/2024; 09:12:00. () "This court doesn't... that's not my purview."

- VR: 09/12/2024; 09:12:08. () "So you did say that you think that the report speaks for itself. The court, pardon me, has said that."
- VR: 09/12/2024; 09:12:15. () "But it needed to be found determined from KCDC and then we've had colloquies in exchange."
- VR: 09/12/2024; 09:12:24. () "I was of the understanding that the competency was understood at that time by the court, which is the..."
- VR: 09/12/2024; 09:12:30. () "But at the end of the day, if your attorneys feel there needs to be a hearing, there needs to be a hearing."
- VR: 09/12/2024; 09:12:36. () "So this is on the DPA?"
- VR: 09/12/2024; 09:12:37. () "I'm not sure how it's on other than the record. Usually in criminal cases, those things as a matter of law and procedure need to be addressed on the record."
- VR: 09/12/2024; 09:12:48. () "So that if at the end of the day, things go up on appeal, it's clear that we did everything we were supposed to do, Mr. Cherry."
- VR: 09/12/2024; 09:12:56. () "So it's not so much that... I mean, it's just in this situation, it's pretty much required."
- VR: 09/12/2024; 09:13:03. () "I think competency is clear, your honor."
- VR: 09/12/2024; 09:13:04. () "Well, that'll be for the doctor. And once I hear the doctor, I have to make a ruling."
- VR: 09/12/2024; 09:13:11. () "I have to make a ruling, but I have to make the ruling based on expert testimony."
- VR: 09/12/2024; 09:13:16. () "And that's all we're doing is we're just jumping through the hoops."
- VR: 09/12/2024; 09:13:20. () "Okay? We got a plan?"
- VR: 09/12/2024; 09:13:22. () "And then I would like to know... and you can just... I think we could... you can find out and let the court know."
- VR: 09/12/2024; 09:13:33. () "And we can maybe just do it through email with everybody on it so it's not an ex parte of any way."
- VR: 09/12/2024; 09:13:39. () "My answer to those... you're the answer to my two questions."
- VR: 09/12/2024; 09:13:43. () "Did the court enter a formal order that I'm not confident? Or has there ever been that injury on the record?"
- VR: 09/12/2024; 09:13:50. () "I don't know that there's ever been a hearing so that that could have ever been done. No. No. Okay?"

VR: 09/12/2024; 09:13:57. () "So could the question of competency be entered on the record?"

VR: 09/12/2024; 09:14:01. () "The question of competency already has been entered."

VR: 09/12/2024; 09:14:04. () "There was a concern early on that there was issues and that's why it ever happened to begin with."

VR: 09/12/2024; 09:14:09. () "Okay, so I've requested both in verbally as well as writing all of the records from the court."

VR: 09/12/2024; 09:14:18. () "Well, that's between you and the clerk. The clerks have to give you all of that."

VR: 09/12/2024; 09:14:24. () "Those are just court records. You just, I guess, write a letter to the clerk asking for copies of everything."

VR: 09/12/2024; 09:14:31. () "And that would be it, I guess."

VR: 09/12/2024; 09:14:38. () "Well, I don't usually have to ask the clerk for... because the judge gets everything."

VR: 09/12/2024; 09:14:46. () "When I want it. But I don't know how the clerks handle it if parties ask."

VR: 09/12/2024; 09:14:51. () "So you just need to write a letter to the clerk basically saying you want a copy of all of your files."

VR: 09/12/2024; 09:14:58. () "I've done that. Okay."

VR: 09/12/2024; 09:15:15. () "There's been 52 hearings [inaudible] I think that I do not have knowledge of that at this point. With everything else on my docket, I apologize."

VR: 09/12/2024; 09:15:22. () "Alright, now, we have a date set, right?"

VR: 09/12/2024; 09:15:26. () "And I'm to approach the clerk directly?"

VR: 09/12/2024; 09:15:29. () "Well, you have to just send a letter. No, you're not allowed to."

VR: 09/12/2024; 09:15:31. () "And this isn't... he is an assistant clerk. You have to write it to the clerk."

VR: 09/12/2024; 09:15:40. () "Yes, I've started to address things to the clerk as opposed to the court itself."

VR: 09/12/2024; 09:15:46. () "Yeah, send it to Mr. Riggs, who's the clerk."

VR: 09/12/2024; 09:15:49. () "He's studious in returning and filing."

VR: 09/12/2024; 09:15:51. () "Yeah."

VR: 09/12/2024; 09:15:53. () "So, go ahead and address it to Mr. Riggs because he is the clerk."

VR: 09/12/2024; 09:15:57. () "Alright."

VR: 09/12/2024; 09:15:57. () "The elected official."

VR: 09/12/2024; 09:15:59. () "Alright, we're good to go."

VR: 09/12/2024; 09:16:07. () "May I ask how he will know the difference between a brief to the court and a letter to the clerk? You address it on that side of the envelope. You address it to Mr. Vince Riggs."

VR: 09/12/2024; 09:16:12. () "Yeah, I've done that."

VR: 09/12/2024; 09:16:13. () "Yeah, that's all you..."

VR: 09/12/2024; 09:16:14. () "I've done it by addressing the inside of the envelope."

VR: 09/12/2024; 09:16:17. () "No, you have to do the outside. I've done both."

VR: 09/12/2024; 09:16:20. () "So it goes to him."

VR: 09/12/2024; 09:16:21. () "Okay, so you want me to try that again?"

VR: 09/12/2024; 09:16:23. () "Yes. Okay object due to lack of due process."

VR: 09/12/2024; 09:16:24. () "Alright."

VR: 09/12/2024; 09:16:26. () "This assistant will give him a heads up, it might be coming."

VR: 09/12/2024; 09:16:28. () "Yeah, I'm sorry guys, it's going to be a lot."

VR: 09/12/2024; 09:16:31. () "That's alright."

VR: 09/12/2024; 09:16:33. () "Alright."

VR: 09/12/2024; 09:16:33. () "Alright."

VR: 09/12/2024; 09:16:34. () "Everybody got it?"

VR: 09/12/2024; 09:16:35. () "Thank you, Judge."

VR: 09/12/2024; 09:16:36. () "Thank you."

VR: 09/12/2024; 09:16:37. () "Thank you, Judge."

VR: 09/12/2024; 09:16:37. () "Thank you."

VR: 09/12/2024; 09:16:38. () "It's good to see everybody."

VR: 09/12/2024; 09:16:49. () "Next, please."

10-4-2024 Change of Plea

VR: 10/04/2024; 11:36:11. () "Are we still hopeful?"

VR: 10/04/2024; 11:36:13. () "Mr. Cherry is here. I think we're good to go."

VR: 10/04/2024; 11:36:15. () "Okay. All right."

VR: 10/04/2024; 11:36:28. () "Hello, Mr. Cherry. How are you, sir?"

VR: 10/04/2024; 11:36:33. () "Mr. Cherry, how are you?"

VR: 10/04/2024; 11:36:35. () "I'm fine, and yourself?"

VR: 10/04/2024; 11:36:36. () "I'm good, thank you."

VR: 10/04/2024; 11:36:37. () "I appreciate you asking."

VR: 10/04/2024; 11:36:38. () "Well, thank you for asking."

VR: 10/04/2024; 11:36:40. () "All right, and it's my understanding that you would like
at this point in time to change your plea. Is that
correct?"

VR: 10/04/2024; 11:36:49. () "To change my plea?"

VR: 10/04/2024; 11:36:50. () "Yes, sir."

VR: 10/04/2024; 11:36:53. () "To accept the..."

VR: 10/04/2024; 11:36:55. () "Yes, right now you're saying it's a not guilty plea.
You're willing to accept the recommendations of the
Commonwealth."

VR: 10/04/2024; 11:37:02. () "Yeah, yeah."

VR: 10/04/2024; 11:37:03. () "All right."

VR: 10/04/2024; 11:37:05. () "Lawyers are doing all that stuff, so..."

VR: 10/04/2024; 11:37:07. () "Yes, but... and also, because we had originally felt that
there was a need for a competency hearing, is it my
understanding, Mr. Tracy, that in talking with Mr.
Cherry, who's technically kind of your co-counsel, to
some degree, that you all have agreed to waive that. Is
that correct?"

VR: 10/04/2024; 11:37:24. () "I believe we will be waiving that issue and stipulating
to..."

VR: 10/04/2024; 11:37:28. () "Competency."

VR: 10/04/2024; 11:37:28. () "Competency."

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VR: 10/04/2024; 11:37:29. () "All right. And I take it there's no objection, Mr. Pagan-Bush, in the Commonwealth?"

VR: 10/04/2024; 11:37:33. () "All right. And in that case, then, Mr. Cherry, are you ready to go forward?"

VR: 10/04/2024; 11:37:39. () "I would say this is an Alfred Plea and condition."

VR: 10/04/2024; 11:37:42. () "That's fine."

VR: 10/04/2024; 11:37:42. () "Just to let you know."

VR: 10/04/2024; 11:37:43. () "All right. And are you ready to go forward, Mr. Cherry?"

VR: 10/04/2024; 11:37:46. () "I'm ready to discuss the conditions, and I believe so."

VR: 10/04/2024; 11:37:51. () "Well, let me swear you in."

VR: 10/04/2024; 11:37:54. () "Okay."

VR: 10/04/2024; 11:37:55. () "Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?"

VR: 10/04/2024; 11:37:59. () "Sure."

VR: 10/04/2024; 11:37:59. () "All right. I would ask you to state your full name, sir, for the record."

VR: 10/04/2024; 11:38:04. () "Willow Cherry."

VR: 10/04/2024; 11:38:05. () "All right."

VR: 10/04/2024; 11:38:06. () "There was a mistake on that with the records."

VR: 10/04/2024; 11:38:09. () "It's Willow Cherry."

VR: 10/04/2024; 11:38:10. () "Yes. No middle name."

VR: 10/04/2024; 11:38:11. () "No middle name. All right. And what is your age?"

VR: 10/04/2024; 11:38:15. () "Fifty-two, I guess, at this point."

VR: 10/04/2024; 11:38:17. () "And what is your date of birth?"

VR: 10/04/2024; 11:38:19. () "Ten-one-seventy-two."

VR: 10/04/2024; 11:38:20. () "All right. And, Mr. Cherry, where did you reside before you got incarcerated? What was your home?"

VR: 10/04/2024; 11:38:26. () "I got a home in Kentucky as well as a... I just changed my residence to Florida."

VR: 10/04/2024; 11:38:34. () "To Florida? But do you have a home there yet?"

VR: 10/04/2024; 11:38:37. () "Pardon?"

VR: 10/04/2024; 11:38:38. () "An actual address? Do you have an actual address there yet?"

VR: 10/04/2024; 11:38:40. () "I have one here. I don't know..."

VR: 10/04/2024; 11:38:42. () "Could you give me the address here?"

VR: 10/04/2024; 11:38:44. () "I don't know it off the top of my head."

VR: 10/04/2024; 11:38:45. () "All right. We'll worry about that later."

VR: 10/04/2024; 11:38:47. () "I rented that house out."

VR: 10/04/2024; 11:38:48. () "All right. Now, Mr. Cherry, what did you do for a living?"

VR: 10/04/2024; 11:38:54. () "Computer coding and staffing and lots of other things."

VR: 10/04/2024; 11:38:57. () "All right. What education do you have?"

VR: 10/04/2024; 11:39:00. () "B.C.S."

VR: 10/04/2024; 11:39:02. () "Please?"

VR: 10/04/2024; 11:39:03. () "Bachelor of Computer Science."

VR: 10/04/2024; 11:39:04. () "All right. So you obviously can read and write."

VR: 10/04/2024; 11:39:07. () "Yes, ma'am."

VR: 10/04/2024; 11:39:08. () "All right. And are you the same person who is named in the indictment? I don't have a document sheet for Mr. Cherry."

VR: 10/04/2024; 11:39:15. () "Eighteen CR 1114. Eighteen."

VR: 10/04/2024; 11:39:19. () "Thank you. And Mr. Cherry, are you the same individual who under 18 CR 1114 is charged with murder and tampering with physical evidence?"

VR: 10/04/2024; 11:39:31. () "Those are the charges."

VR: 10/04/2024; 11:39:33. () "Right, right."

VR: 10/04/2024; 11:39:34. () "All right."

VR: 10/04/2024; 11:39:34. () "Yeah."

VR: 10/04/2024; 11:39:35. () "And have you ever suffered from, at times or been treated with a mental problem? Well, you did have that issue after being attacked in the jail, correct?"

VR: 10/04/2024; 11:39:49. () "That's what I hear."

VR: 10/04/2024; 11:39:50. () "Yes. Today, are you sick or ill in any way? All right. And are you taking any drugs or medication that would affect your ability to understand these proceedings?"

VR: 10/04/2024; 11:40:01. () "That's my knowledge."

VR: 10/04/2024; 11:40:02. () "All right. Did you have all the time you need to talk with your attorneys?"

VR: 10/04/2024; 11:40:11. () "I'm a little confused about their duty and function in this juncture, but I'm fine with you."

VR: 10/04/2024; 11:40:21. () "All right. And are you..."

VR: 10/04/2024; 11:40:22. () "And then the Commonwealth as well."

VR: 10/04/2024; 11:40:23. () "All right. And are you okay with... I mean, do you feel like in the questions you've asked of Mr. Tracy that he's made a good faith effort to answer your questions?"

VR: 10/04/2024; 11:40:36. () "Well, we're here."

VR: 10/04/2024; 11:40:37. () "Yes."

VR: 10/04/2024; 11:40:37. () "All right."

VR: 10/04/2024; 11:40:38. () "So he's done that much."

VR: 10/04/2024; 11:40:39. () "All right. And so, if you have any complaints about his representation, they're not to the degree that you don't feel comfortable being here talking to me and going forward, correct?"

VR: 10/04/2024; 11:40:53. () "Not with you."

VR: 10/04/2024; 11:40:55. () "Right."

VR: 10/04/2024; 11:40:56. () "These guys are just overworked beyond..."

VR: 10/04/2024; 11:40:58. () "Well, there's no question about that, and the court will not. But I think they make, as I'll state on the record, a very good faith effort..."

VR: 10/04/2024; 11:41:06. () "Certainly."

VR: 10/04/2024; 11:41:08. () "...to properly assist and defend their clients."

VR: 10/04/2024; 11:41:11. () "Certainly. Yes. Like I said, we are here and we answered that call, so..."

VR: 10/04/2024; 11:41:16. () "Great. All right. And now, did you have sufficient time to read the waiver of further proceedings with petition to enter a plea of guilty and discuss that document?"

VR: 10/04/2024; 11:41:25. () "It's not a plea of guilty."

VR: 10/04/2024; 11:41:26. () "Well, it's an Alfred plea."

VR: 10/04/2024; 11:41:29. () "Right."

VR: 10/04/2024; 11:41:29. () "And it will be an Alfred plea throughout the whole proceedings."

VR: 10/04/2024; 11:41:32. () "Okay."

VR: 10/04/2024; 11:41:32. () "But have you had sufficient time to review that form?"

VR: 10/04/2024; 11:41:36. () "I have, and I will sign it."

VR: 10/04/2024; 11:41:42. () "All right. And do you fully understand it, you believe, and what it says?"

VR: 10/04/2024; 11:41:46. () "Well, I haven't had time to completely investigate it to the extent that I probably should. It's a business."

VR: 10/04/2024; 11:41:56. () "Well, the court is familiar with it, and I'll talk to you basically throughout this calliloquy about some of it to some degree."

VR: 10/04/2024; 11:42:06. () "All right. Now, at this point in time, are you willing to sign it?"

VR: 10/04/2024; 11:42:10. () "With some editing, there's been a question as to whether what the court says verbally is binding. Thank you. There you go."

VR: 10/04/2024; 11:42:28. () "And that's gone both ways. So I don't know if the record stands from verbal or only in writing."

VR: 10/04/2024; 11:42:37. () "Well, I think the record, the whole record..."

VR: 10/04/2024; 11:42:40. () "Right."

VR: 10/04/2024; 11:42:40. () "...is everything. What's said in the courtroom, what's placed in documents. It's the entire record."

VR: 10/04/2024; 11:42:48. () "All right."

VR: 10/04/2024; 11:42:48. () "Are these proceedings, they're recorded, they are part of the case, part of the record."

VR: 10/04/2024; 11:42:56. () "Mm-hmm. Yeah. And so, for example, this is a conditional plea deserving the right to appeal all pretrial rulings."

VR: 10/04/2024; 11:43:05. () "Right."

VR: 10/04/2024; 11:43:05. () "It's my understanding that if you had an issue to unappeal with something that was said, that you can raise that."

VR: 10/04/2024; 11:43:14. () "Well, you can absolutely raise it and you can just refer to it on the videotape where that was said. Absolutely."

VR: 10/04/2024; 11:43:23. () "That is because what is said is recorded because it is part of the record of the case."

VR: 10/04/2024; 11:43:30. () "Right. Okay."

VR: 10/04/2024; 11:43:33. () "Yeah."

VR: 10/04/2024; 11:43:33. () "Well, I appreciate you clarifying that..."

VR: 10/04/2024; 11:43:36. () "All right."

VR: 10/04/2024; 11:43:36. () "...and obtaining the right to change your mind as we go forward."

VR: 10/04/2024; 11:43:40. () "All right. Now, Mr. Tracy, because this is an Alfred plea, I will not ask Mr. Cherry to discuss what the allegations were."

VR: 10/04/2024; 11:43:50. () "Right."

VR: 10/04/2024; 11:43:50. () "But I would ask you on the record to state very briefly what the allegation is that led to a murder charge. What is he alleged to have done?"

VR: 10/04/2024; 11:43:59. () "I believe the allegation is that Mr. Cherry is charged with ending the life of his sister's husband, Peter Liu,"

VR: 10/04/2024; 11:44:11. () "who, no, no, Peter Liu has been recovered. A body has not been recovered."

VR: 10/04/2024; 11:44:17. () "And otherwise, as far as everyone, I think, understands, he is missing. He's on the missing persons registry."

VR: 10/04/2024; 11:44:25. () "He's not made himself known in public since these allegations."

VR: 10/04/2024; 11:44:31. () "It's also my understanding that he was not American and had the ability to travel internationally."

VR: 10/04/2024; 11:44:38. () "So we don't know if he's on the other side of the world or what."

VR: 10/04/2024; 11:44:42. () "All right."

VR: 10/04/2024; 11:44:43. () "And that tampering with physical evidence?"

VR: 10/04/2024; 11:44:45. () "Right. That in the course of this, that there was certain pieces of evidence that were missing."

VR: 10/04/2024; 11:44:52. () "Can we object to that because we're not stipulating to that? Is that right?"

VR: 10/04/2024; 11:44:56. () "That's being dismissed."

VR: 10/04/2024; 11:44:58. () "Oh, it's being dismissed. All right. Well, thank you. We don't need to worry about that."

VR: 10/04/2024; 11:45:01. () "Sure."

VR: 10/04/2024; 11:45:01. () "All right. All right."

- VR: 10/04/2024; 11:45:04. () "So on the murder charge, has Mr. Tracy gone through you what the elements are and what the Commonwealth would have to prove?"
- VR: 10/04/2024; 11:45:12. () "You know, just talk to you about it. It's a murder charge. They're going to have to prove this, this, and this."
- VR: 10/04/2024; 11:45:17. () "They don't have to have a body to do it."
- VR: 10/04/2024; 11:45:21. () "And they can prove, they can prove a murder charge on circumstantial evidence. I'm sure he's gone through all of that with you."
- VR: 10/04/2024; 11:45:28. () "If I could get a trial date."
- VR: 10/04/2024; 11:45:30. () "Huh?"
- VR: 10/04/2024; 11:45:31. () "I said if I could get him to trial."
- VR: 10/04/2024; 11:45:33. () "At a trial."
- VR: 10/04/2024; 11:45:34. () "At a trial. At a trial. Yes."
- VR: 10/04/2024; 11:45:36. () "All right."
- VR: 10/04/2024; 11:45:36. () "All right. And so you understand, and obviously you understand that the Commonwealth does have the ability to dismiss some of the charges, amend them, do all those things, which obviously my understanding is their intent is to dismiss the tampering."
- VR: 10/04/2024; 11:45:50. () "Yes, Your Honor, as well as amend the murder charge."
- VR: 10/04/2024; 11:45:53. () "Oh, all right. All right. Okay. All right."
- VR: 10/04/2024; 11:45:58. () "All right."
- VR: 10/04/2024; 11:46:01. () "All right. So, Mr. Cherry, when you took that form to look at, which is going to be an Alfred plea, and that's verification that you're entering an Alfred plea, it also advises you in that form the rights that you have and that you will waive when you enter the plea."
- VR: 10/04/2024; 11:46:28. () "So there's a stipulation on here, right to appeal, retained."
- VR: 10/04/2024; 11:46:34. () "Yes, you will retain. That's what I was going to talk to you about."
- VR: 10/04/2024; 11:46:37. () "Normally, the court would advise that when you enter your Alfred plea that you waive your right to an appeal."

VR: 10/04/2024; 11:46:43. () "But you are taking the right, which you have, to file a conditional plea, which allows you to keep that appeal right, that right to appeal. Do you understand that?"

VR: 10/04/2024; 11:46:59. () "I do, and I appreciate your clarification."

VR: 10/04/2024; 11:47:02. () "All right."

VR: 10/04/2024; 11:47:02. () "And we've put that on the form, as well."

VR: 10/04/2024; 11:47:04. () "Excellent."

VR: 10/04/2024; 11:47:04. () "Crossed out that part because it retains right to appeal."

VR: 10/04/2024; 11:47:07. () "Which is part of the conditional plea, the Alfred plea."

VR: 10/04/2024; 11:47:10. () "And you also understand that once this happens, you're not going to have a trial, though."

VR: 10/04/2024; 11:47:18. () "And there aren't going to be witnesses coming in to testify against you."

VR: 10/04/2024; 11:47:24. () "So I've edited on here, no guilt whatsoever, because it's just all over this page."

VR: 10/04/2024; 11:47:30. () "Well, that's fine, because you're entering an Alfred plea, which is not... an Alfred plea, Mr. Cherry, is not an admission of guilt."

VR: 10/04/2024; 11:47:41. () "That is clearly what an Alfred plea is. It is saying, I am not admitting I did anything wrong."

VR: 10/04/2024; 11:47:48. () "And there are situations where the court is willing to accept an Alfred plea."

VR: 10/04/2024; 11:47:56. () "And the court is willing to do that in this case."

VR: 10/04/2024; 11:47:58. () "Now you know, though, when you do enter the Alfred plea, you're not going to be able to go to trial and bring witnesses in or cross-examine witnesses."

VR: 10/04/2024; 11:48:08. () "Do you understand that?"

VR: 10/04/2024; 11:48:11. () "I object to not having the option up to this point, but I do understand it."

VR: 10/04/2024; 11:48:17. () "All right. Okay. All right."

VR: 10/04/2024; 11:48:22. () "So you do understand that when you sign this Alfred plea, there's not, at this point in time, going to be a trial or witnesses."

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VR: 10/04/2024; 11:48:31. () "There will be an appeal. And if indeed you are successful on the appeal, it may be that it comes back or the charges are dismissed or whatever."

VR: 10/04/2024; 11:48:43. () "I mean, it will be up to the appellate court. Correct?"

VR: 10/04/2024; 11:48:46. () "We all understand that?"

VR: 10/04/2024; 11:48:49. () "All right. Now..."

VR: 10/04/2024; 11:48:51. () "All right. Now, at this point in time..."

VR: 10/04/2024; 11:48:59. () "Yes, sir?"

VR: 10/04/2024; 11:49:01. () "Quickly, there's a 7 years, and it's my understanding it's a 5-10. Is there any way that you can go to 5, since they'll be served out anyway?"

VR: 10/04/2024; 11:49:13. () "No, we have to stay with the 7, because that's what was discussed with and agreed upon."

VR: 10/04/2024; 11:49:17. () "Okay."

VR: 10/04/2024; 11:49:19. () "And why was it 5?"

VR: 10/04/2024; 11:49:21. () "Okay, well, let's let the court hear it. Mr. Faganbush, what is the recommendation?"

VR: 10/04/2024; 11:49:26. () "Your Honor, upon a change of plea, the Commonwealth would move to amend Count 1, murder to manslaughter in the second degree..."

VR: 10/04/2024; 11:49:33. () "All right."

VR: 10/04/2024; 11:49:33. () "...with a recommended sentence of 7 years."

VR: 10/04/2024; 11:49:36. () "And we would move to dismiss Count 2, tampering with physical evidence, in exchange for that plea."

VR: 10/04/2024; 11:49:42. () "We have no objection to an alpha plea or a conditional plea."

VR: 10/04/2024; 11:49:46. () "All right, and it's a recommendation of 7 years."

VR: 10/04/2024; 11:49:49. () "And one thing we wanted to put on the record, Judge, that me and Mr. Cherry talked about..."

VR: 10/04/2024; 11:49:53. () "When this was alleged, in the indictment time frame, I think everyone is in agreement that manslaughter second, at that time, was what's called a nonviolent or 20% crime."

VR: 10/04/2024; 11:50:03. () "Talking about mainly parole eligibility there."

VR: 10/04/2024; 11:50:07. () "Because of House Bill 5, we all believe that now manslaughter second is a violent crime or 85%."

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- VR: 10/04/2024; 11:50:14. () "Neither should matter. We actually believe Mr. Cherry has enough time spent that he's actually served out, either way."
- VR: 10/04/2024; 11:50:22. () "However, we wanted to put it on the record because we believe that it should be counted by the Department of Corrections as a nonviolent 20% crime."
- VR: 10/04/2024; 11:50:31. () "Because of when it occurred, when it was charged, it seems as though DOC maybe currently has the position that they're just going to go ahead and treat everything as it is right now."
- VR: 10/04/2024; 11:50:42. () "Although my impression was that both the Commonwealth and defense and the courts believe that it's the other way."
- VR: 10/04/2024; 11:50:50. () "That it should be how it existed at the time."
- VR: 10/04/2024; 11:50:53. () "Yeah."
- VR: 10/04/2024; 11:50:54. () "Yeah."
- VR: 10/04/2024; 11:50:55. () "And so we anticipate litigation, not necessarily in Mr. Cherry's case, perhaps, if that becomes an issue."
- VR: 10/04/2024; 11:51:01. () "But it shouldn't affect him, practically speaking."
- VR: 10/04/2024; 11:51:05. () "Because even under the new law, he has enough credit time to be served out once the Department of Corrections gets his paperwork."
- VR: 10/04/2024; 11:51:13. () "Alright. Excellent."
- VR: 10/04/2024; 11:51:14. () "I also want to actually, not just practically, but actually condition this plea on release from the current facility."
- VR: 10/04/2024; 11:51:26. () "Basically, when we get back to the time served, or whatever you guys call it."
- VR: 10/04/2024; 11:51:33. () "Well, yeah, we will have served, but what will happen is, because I will, if we get to the point where the plea is, if actually we take it and you complete it,"
- VR: 10/04/2024; 11:51:44. () "the court's position has always been that I will always give the individual credit for the time they have served."
- VR: 10/04/2024; 11:51:52. () "And when the court states that, then you will get whatever that credit is."
- VR: 10/04/2024; 11:51:56. () "And nobody can take that away from you, if that's what you mean."
- VR: 10/04/2024; 11:52:01. () "This is the reason that I was approaching a five year..."

VR: 10/04/2024; 11:52:16. () "Yeah, it always has to. They have to get the paperwork in process."

VR: 10/04/2024; 11:52:23. () "That is just what happens."

VR: 10/04/2024; 11:52:26. () "Yeah, I've got to get a DOC number."

VR: 10/04/2024; 11:52:30. () "Yeah, exactly. And once they do that, then you would be eligible. They would release you at that point."

VR: 10/04/2024; 11:52:37. () "But they have to do that processing, so there's paper in the record."

VR: 10/04/2024; 11:52:41. () "I would beg the court to amend 7 to 5, make the violent non-violent an actuality, and recognize the served out status."

VR: 10/04/2024; 11:52:54. () "Well, the court will accept that this is being amended to a manslaughter second."

VR: 10/04/2024; 11:53:03. () "The court has also made it very clear that it believes, as does the Commonwealth and the defense,"

VR: 10/04/2024; 11:53:10. () "that the old law is what should apply, which would not place that 20% violent crime situation on you."

VR: 10/04/2024; 11:53:22. () "So the court has, on the record, made that clear, that that is the court's position."

VR: 10/04/2024; 11:53:30. () "We don't necessarily object to that, Your Honor. We can't buy the Department of Corrections,"

VR: 10/04/2024; 11:53:34. () "but that would also be my legal analysis that that would be the proper way for this to be applied."

VR: 10/04/2024; 11:53:39. () "Yeah, the Commonwealth and the defense and the court are all in agreement that that is how we interpret the law."

VR: 10/04/2024; 11:53:50. () "Alright, now you also understand that it's a recommendation, and that they are only recommending 7, but I could give you 10."

VR: 10/04/2024; 11:54:00. () "Right."

VR: 10/04/2024; 11:54:02. () "Right?"

VR: 10/04/2024; 11:54:04. () "With the option to withdraw the plea."

VR: 10/04/2024; 11:54:07. () "Right. If I gave you more, you'd have a right to withdraw."

VR: 10/04/2024; 11:54:10. () "Yeah."

VR: 10/04/2024; 11:54:11. () "And there are no other issues or anything out there that this would have to run consecutive to?"

VR: 10/04/2024; 11:54:16. () "Nothing."

VR: 10/04/2024; 11:54:17. () "Nothing, alright."

VR: 10/04/2024; 11:54:17. () "No probation, no parole, no pending charges anywhere."

VR: 10/04/2024; 11:54:20. () "There are... I'm going to, if it's okay. I had written up a draft, and unfortunately that's all I've got, because he was so quick on the draw on this, which I appreciate."

VR: 10/04/2024; 11:54:32. () "But I guess I would... can you copy things?"

VR: 10/04/2024; 11:54:36. () "Yes, they can make a copy for you."

VR: 10/04/2024; 11:54:38. () "I'm sorry."

VR: 10/04/2024; 11:54:39. () "No, that's alright."

VR: 10/04/2024; 11:54:40. () "I'll talk out of order here."

VR: 10/04/2024; 11:54:43. () "If you want to get it from him, and then we can make a copy."

VR: 10/04/2024; 11:54:46. () "Well, I was going to edit it a little bit, I think, because I was looking for an option to expunge him, and I guess that's an option on this charge."

VR: 10/04/2024; 11:54:55. () "So I want to mark that out, and I would appreciate my voting rights retained, and if I need the DPA's assistance in retaining those, I would maintain my proper status for anything regarding this case."

VR: 10/04/2024; 11:55:11. () "Well, you do retain your proper... to my knowledge, you will retain."

VR: 10/04/2024; 11:55:16. () "Now, once this is over, since you're going to do an appeal, you'll have to fill out the form again as to establish your income or your assets to determine if you are still deemed to be qualified to be a pauper, and therefore get free representation."

VR: 10/04/2024; 11:55:35. () "But that'll be what you'll have to do first."

VR: 10/04/2024; 11:55:38. () "So I guess I should read this to be fair, really quickly."

VR: 10/04/2024; 11:55:41. () "Absolutely, that's fine."

VR: 10/04/2024; 11:55:42. () "It's basically a petition of plea acceptance, and I'm assuming it's something of this nature, but this is obviously much more extensive and professional."

- VR: 10/04/2024; 11:55:53. () "Well, the court has a duty to make sure you have seen that, read it, and I've been discussing parts of it with you throughout this proceeding."
- VR: 10/04/2024; 11:56:04. () "Right. In regards to the official one, I do, with all respect to Chris and Kaitlyn as well, and I appreciate all of your work, and Commonwealth, frankly, has done a lot."
- VR: 10/04/2024; 11:56:22. () "I just got records from you guys, I think, yesterday. So, wow. And thank you very much."
- VR: 10/04/2024; 11:56:32. () "I believe my attorney has done all that anyone could. There's a big difference in it, so we've just discussed it between private counsel and the DA."
- VR: 10/04/2024; 11:56:46. () "Yes, but what that's saying is you believe, knowing your attorney, knowing the situation that he's done."
- VR: 10/04/2024; 11:56:52. () "Sure."
- VR: 10/04/2024; 11:56:52. () "Yeah, that's sort of that question."
- VR: 10/04/2024; 11:56:54. () "I frankly think the mine should be over there in most situations, but for a defendant, for myself, I have an issue with, you know, I believe my attorney has done all that anyone could because he can't do that."
- VR: 10/04/2024; 11:57:11. () "Well, he can in the sense that for anyone in his position, he has done any. I think that Mr. Tracy and Kaitlyn, Ms. Dunnington, right, have gone above and beyond what you would think somebody with their limited resources could have done."
- VR: 10/04/2024; 11:57:36. () "In fact, I think they've excelled in that sense."
- VR: 10/04/2024; 11:57:42. () "Yeah, I've done the same thing with that, and yours as well."
- VR: 10/04/2024; 11:57:50. () "Is there a doubt in his position to that particular point?"
- VR: 10/04/2024; 11:57:53. () "Yes, and I said in their position, and I wrote that in."
- VR: 10/04/2024; 11:57:56. () "That's fine, that's fine, that's fine. That's an acknowledgment, which we all have to do, that we know that our system is not perfect."
- VR: 10/04/2024; 11:58:05. () "Yeah, yeah."
- VR: 10/04/2024; 11:58:06. () "And that is, I don't think that any judge who is in the trenches on a daily basis would not acknowledge that."

VR: 10/04/2024; 11:58:19. () "All right."

VR: 10/04/2024; 11:58:20. () "All right."

VR: 10/04/2024; 11:58:20. () "I don't feel good in my after bed. I'm on board with that."

VR: 10/04/2024; 11:58:24. () "Okay."

VR: 10/04/2024; 11:58:25. () "Now, you're not entering your effort plea because somebody's promised you that I'm going to go easy on you or give you any special treatment, are you?"

VR: 10/04/2024; 11:58:34. () "No, I wouldn't expect that from you at all."

VR: 10/04/2024; 11:58:35. () "All right, all right."

VR: 10/04/2024; 11:58:37. () "And at the end of the day, you are making this decision, and no one's making you do it, are they, Mr. Cherry?"

VR: 10/04/2024; 11:58:44. () "Well, if somebody were threatening my life, I wouldn't be able to say no to that anyway, would I?"

VR: 10/04/2024; 11:58:49. () "Well, but I think, you know, you could tell me in code or something."

VR: 10/04/2024; 11:58:53. () "He's got a gun, don't worry."

VR: 10/04/2024; 11:58:57. () "He's pretty good about containing it, though."

VR: 10/04/2024; 11:59:01. () "Yeah, I hear you."

VR: 10/04/2024; 11:59:02. () "And then the... let's see here."

VR: 10/04/2024; 11:59:09. () "The conditional, so I had honored rights to accessing any kind of videos."

VR: 10/04/2024; 11:59:14. () "That's another thing."

VR: 10/04/2024; 11:59:15. () "These guys have things that they were going to drop off at the facility."

VR: 10/04/2024; 11:59:20. () "And they will. They will."

VR: 10/04/2024; 11:59:21. () "Well, I don't know if I'll be there now, so I can..."

VR: 10/04/2024; 11:59:23. () "Well, you'll be there. They'll get it to you."

VR: 10/04/2024; 11:59:25. () "I would hope they could get it to you very quickly because you're not going to get processed today."

VR: 10/04/2024; 11:59:31. () "I mean, it may take a few days."

VR: 10/04/2024; 11:59:33. () "Yeah, I don't have an issue with that."

VR: 10/04/2024; 11:59:37. () "The... what I've written here is released from the current facility no later than 10 days."

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VR: 10/04/2024; 11:59:42. () "Well, now, I can't make any... I don't control what DOT does."

VR: 10/04/2024; 11:59:46. () "Right."

VR: 10/04/2024; 11:59:47. () "I mean, DOC, Department of Corrections, DOC."

VR: 10/04/2024; 11:59:49. () "So..."

VR: 10/04/2024; 11:59:49. () "I don't control the Department of Corrections."

VR: 10/04/2024; 11:59:52. () "Yeah."

VR: 10/04/2024; 11:59:52. () "So, I don't know that we could put that in there."

VR: 10/04/2024; 11:59:56. () "Now, maybe sooner. I don't know."

VR: 10/04/2024; 11:59:58. () "I don't know enough about how long it takes them to process."

VR: 10/04/2024; 12:00:02. () "Yeah, my plan is to notify Michelle Blakeman, who is the regional head of our region for probation and parole, which is part of the Department of Corrections,"

VR: 10/04/2024; 12:00:15. () "to let her know that Mr. Cherry has pled, assuming that that's where we end up today, that he has pled that we all are kind of in agreement that he served out on his time,"

VR: 10/04/2024; 12:00:24. () "and so that he just needs to be looked at as fast as possible."

VR: 10/04/2024; 12:00:27. () "And I think Ms. Blakeman would do that."

VR: 10/04/2024; 12:00:29. () "She's done that in the past."

VR: 10/04/2024; 12:00:30. () "Yes, and I can't imagine she wouldn't. And if it would even help, I'll be happy to contact her myself."

VR: 10/04/2024; 12:00:36. () "To that extent, we're asking to be sentenced today."

VR: 10/04/2024; 12:00:38. () "Yes. Oh, all right. Okay, he's waiving form."

VR: 10/04/2024; 12:00:41. () "We would not object to that, with the only caveat being that he will still have to complete the PSI process."

VR: 10/04/2024; 12:00:47. () "Well, they just make him fill out the form."

VR: 10/04/2024; 12:00:49. () "He can't be waived, but he can do that afterwards."

VR: 10/04/2024; 12:00:50. () "But you can do that afterwards. They just ask you to come and fill out the form."

VR: 10/04/2024; 12:00:54. () "I don't know what the PSI is."

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- VR: 10/04/2024; 12:00:56. () "It's just a report saying, you know, confirming when your birth date is, and confirming that you don't have any other prior charges,"
- VR: 10/04/2024; 12:01:05. () "and going through that, and where you grew up, and who your parents were."
- VR: 10/04/2024; 12:01:09. () "It's just sort of a background, normally for a judge, who doesn't know all the defendants that well,"
- VR: 10/04/2024; 12:01:15. () "to get a better understanding of who the defendants are when they go to sentence them."
- VR: 10/04/2024; 12:01:20. () "It's to help the judge be more informed, and really know more about the person."
- VR: 10/04/2024; 12:01:26. () "I think, in all honesty, I would not have a problem with you all waiving the PSI,"
- VR: 10/04/2024; 12:01:31. () "because I feel over the years I've come to know you fairly well, Mr. Jerry,"
- VR: 10/04/2024; 12:01:36. () "and your intelligence, and your confidence, and also where you come from."
- VR: 10/04/2024; 12:01:42. () "Yes, so I would be very comfortable allowing everyone to waive the report."
- VR: 10/04/2024; 12:01:47. () "But you still have to fill it out, because it has to go in the file."
- VR: 10/04/2024; 12:01:51. () "Okay, all right."
- VR: 10/04/2024; 12:01:52. () "The other, the next line, so what I wrote under that is that's per DPA Chris Tracy,"
- VR: 10/04/2024; 12:01:59. () "and if you need her help, she's offered that."
- VR: 10/04/2024; 12:02:02. () "I would absolutely, yeah."
- VR: 10/04/2024; 12:02:04. () "No subsequent or superseding arresting effects from allegations unlimited by holders,"
- VR: 10/04/2024; 12:02:09. () "so I don't know what has happened since I've been in here."
- VR: 10/04/2024; 12:02:15. () "I know that there's a, one of my boats, something happened in Florida,"
- VR: 10/04/2024; 12:02:20. () "that were, that received some paperwork."
- VR: 10/04/2024; 12:02:23. () "And I guess you guys would see that there's a holder, if there was."
- VR: 10/04/2024; 12:02:27. () "I'm not aware of any holder from anywhere."

VR: 10/04/2024; 12:02:30. () "No, me neither."

VR: 10/04/2024; 12:02:32. () "I need to make sure that that's, that we're on board with that."

VR: 10/04/2024; 12:02:36. () "I think the Commonwealth would know if there were any criminal matters pending against you,"

VR: 10/04/2024; 12:02:41. () "or any type of holding."

VR: 10/04/2024; 12:02:41. () "We've not received any."

VR: 10/04/2024; 12:02:42. () "As would Mr. Tracy."

VR: 10/04/2024; 12:02:44. () "That it's their process that you'd have been in district court on an extradition case."

VR: 10/04/2024; 12:02:48. () "Yeah, you would have already been probably served if there were,"

VR: 10/04/2024; 12:02:51. () "because you were incarcerated, you would have probably been served if there was a warrant outstanding."

VR: 10/04/2024; 12:02:55. () "Right, okay."

VR: 10/04/2024; 12:02:56. () "Well, that's, she's still taking care of something."

VR: 10/04/2024; 12:03:03. () "So the options for voting rights, I would approach the DPA for assistance in,"

VR: 10/04/2024; 12:03:09. () "I guess, approaching the governor for retaining those, or having those restored."

VR: 10/04/2024; 12:03:13. () "We may do some of that."

VR: 10/04/2024; 12:03:16. () "You know, we were kind of focused on criminal..."

VR: 10/04/2024; 12:03:18. () "Yeah, I don't know what departments would do."

VR: 10/04/2024; 12:03:21. () "There may be, if they have the department that does, I'm sure they'd be willing to."

VR: 10/04/2024; 12:03:26. () "Honestly, I was going to ask the Commonwealth if they would mind me retaining my voting rights in this respect."

VR: 10/04/2024; 12:03:36. () "Unfortunately, we don't have any control over that."

VR: 10/04/2024; 12:03:38. () "I don't think we have the control or the authority over that."

VR: 10/04/2024; 12:03:40. () "Right, so would the Commonwealth object to petitioning for me, or not even that,"

VR: 10/04/2024; 12:03:51. () "but just signing something that's saying you don't mind if I vote?"

VR: 10/04/2024; 12:03:55. () "Unfortunately, we don't have the ability to do that, Mr. Chair."

VR: 10/04/2024; 12:03:58. () "Yeah, I mean, I don't think that, I don't think they necessarily would go out and try to fight it."

VR: 10/04/2024; 12:04:05. () "That's true."

VR: 10/04/2024; 12:04:06. () "Yeah, I don't think, yeah."

VR: 10/04/2024; 12:04:09. () "I just don't know anything about losing the right to vote."

VR: 10/04/2024; 12:04:14. () "I do it with my pocketbook every day, but I still think something more of it than I think most folks do back there."

VR: 10/04/2024; 12:04:24. () "Proper status upheld for anything regarding this case?"

VR: 10/04/2024; 12:04:29. () "And you see, I think you stipulated that."

VR: 10/04/2024; 12:04:32. () "Well, no, I didn't stipulate. You didn't maybe listen closely."

VR: 10/04/2024; 12:04:36. () "You'll have to fill out a form once you get out that establishes that you don't have enough assets to take care of yourself."

VR: 10/04/2024; 12:04:43. () "So that's with an appeal?"

VR: 10/04/2024; 12:04:44. () "Yes."

VR: 10/04/2024; 12:04:45. () "So, basically, any kind of information that I need from the clerks and the DPA for this case?"

VR: 10/04/2024; 12:04:55. () "You'll have everything."

VR: 10/04/2024; 12:04:56. () "I have access to that, and I'll do speak."

VR: 10/04/2024; 12:05:02. () "Okay."

VR: 10/04/2024; 12:05:03. () "That's like 700 pages."

VR: 10/04/2024; 12:05:05. () "Yeah."

VR: 10/04/2024; 12:05:08. () "There were some good jokes in that."

VR: 10/04/2024; 12:05:10. () "At least."

VR: 10/04/2024; 12:05:17. () "And then I've got arguments below that."

VR: 10/04/2024; 12:05:19. () "I guess we're going to enter this into the record with this."

VR: 10/04/2024; 12:05:22. () "One, the honored right of access to the records."

VR: 10/04/2024; 12:05:24. () "That's ensuring the current verbal order that we discussed and you've produced on 9-12 for delivery."

VR: 10/04/2024; 12:05:32. () "And I actually got that yesterday, so it's non-sequitur."

VR: 10/04/2024; 12:05:36. () "Ensuring, number two, a release from current facilities is ensuring defense counsel interpretation of prosecution's offer time served is accurate."

VR: 10/04/2024; 12:05:46. () "We've discussed that."

VR: 10/04/2024; 12:05:47. () "Number three, subsequent arresting effects or holders."

VR: 10/04/2024; 12:05:51. () "That's ensuring actual release without hindrance to due allegation."

VR: 10/04/2024; 12:05:55. () "That's been discussed."

VR: 10/04/2024; 12:05:57. () "Advocating protestant effect."

VR: 10/04/2024; 12:05:59. () "The voting rights thing I'll address."

VR: 10/04/2024; 12:06:04. () "Don't foresee any issues with it."

VR: 10/04/2024; 12:06:07. () "Defendant's proper status upheld."

VR: 10/04/2024; 12:06:09. () "Ensuring proper processes are completed after release."

VR: 10/04/2024; 12:06:14. () "So I want to compile records and, again, have access to all the records and reports that everybody's expressed that I do have those."

VR: 10/04/2024; 12:06:24. () "Absolutely, they're public record and you are the party to the action."

VR: 10/04/2024; 12:06:28. () "You have every right to the records."

VR: 10/04/2024; 12:06:30. () "And no one will dispute that."

VR: 10/04/2024; 12:06:33. () "Now the videos, is that a public record too?"

VR: 10/04/2024; 12:06:36. () "Yes. Oh, it's all."

VR: 10/04/2024; 12:06:38. () "Gotcha."

VR: 10/04/2024; 12:06:38. () "Yes, yes."

VR: 10/04/2024; 12:06:39. () "They've got CDs."

VR: 10/04/2024; 12:06:41. () "Okay."

VR: 10/04/2024; 12:06:42. () "So I've also got emails that I've been sending with the DPA."

VR: 10/04/2024; 12:06:45. () "Would I have access to those?"

VR: 10/04/2024; 12:06:47. () "That would be something they would have to fish out, I think."

VR: 10/04/2024; 12:06:49. () "Yeah."

VR: 10/04/2024; 12:06:50. () "Like you said, you own your file."

VR: 10/04/2024; 12:06:52. () "Yeah, so you'll get all that."

VR: 10/04/2024; 12:06:53. () "Okay."

VR: 10/04/2024; 12:06:55. () "Any emails, period, that will be addressed with this case?"

VR: 10/04/2024; 12:06:58. () "Yep."

VR: 10/04/2024; 12:06:59. () "Okay."

VR: 10/04/2024; 12:06:59. () "They will give you everything."

VR: 10/04/2024; 12:07:00. () "I've been reading about them for a while now."

VR: 10/04/2024; 12:07:01. () "Yeah, yeah."

VR: 10/04/2024; 12:07:02. () "She sent the most."

VR: 10/04/2024; 12:07:04. () "Yeah."

VR: 10/04/2024; 12:07:05. () "I really appreciate everybody's patience."

VR: 10/04/2024; 12:07:13. () "So, videos, emails, all records."

VR: 10/04/2024; 12:07:18. () "So I think, I think we could..."

VR: 10/04/2024; 12:07:22. () "Yeah."

VR: 10/04/2024; 12:07:22. () "Okay, so I can just go through and ask Mr. Tracy a couple of questions."

VR: 10/04/2024; 12:07:28. () "Mr. Tracy, do you have any questions of Mr. Cherry?"

VR: 10/04/2024; 12:07:30. () "At this time, I do not believe that I have any questions."

VR: 10/04/2024; 12:07:33. () "And do you represent him as appointed or retained?"

VR: 10/04/2024; 12:07:35. () "Appointed counsel."

VR: 10/04/2024; 12:07:36. () "All right."

VR: 10/04/2024; 12:07:37. () "Do you have any reason to doubt his identity and the identity he has given this court?"

VR: 10/04/2024; 12:07:42. () "No."

VR: 10/04/2024; 12:07:43. () "All right."

VR: 10/04/2024; 12:07:43. () "And did you explain to him his applicable constitutional rights and specifically his boycott rights?"

VR: 10/04/2024; 12:07:49. () "I have."

VR: 10/04/2024; 12:07:50. () "And do you believe that he understands those rights and the nature of the proceedings that are being held now?"

VR: 10/04/2024; 12:07:56. () "I do."

VR: 10/04/2024; 12:07:57. () "All right."

VR: 10/04/2024; 12:07:58. () "And obviously, you explained all the elements of the offenses."

VR: 10/04/2024; 12:08:02. () "You also told him about lesser offenses, obviously, because the Commonwealth amended it, so it is a lesser offense."

VR: 10/04/2024; 12:08:09. () "And you talked about the defenses with him, correct?"

VR: 10/04/2024; 12:08:13. () "That's right."

VR: 10/04/2024; 12:08:13. () "And is this effort plea consistent with your advice to him?"

VR: 10/04/2024; 12:08:17. () "Very much so."

VR: 10/04/2024; 12:08:17. () "All right."

VR: 10/04/2024; 12:08:18. () "And do you feel that this effort plea is being made voluntarily, freely, intelligently, and understandingly?"

VR: 10/04/2024; 12:08:25. () "I do."

VR: 10/04/2024; 12:08:26. () "Do you agree with his answers, Mr. Cherry?"

VR: 10/04/2024; 12:08:29. () "Yes, ma'am."

VR: 10/04/2024; 12:08:29. () "All right. Thank you."

VR: 10/04/2024; 12:08:31. () "All right."

VR: 10/04/2024; 12:08:32. () "And have you signed it yet?"

VR: 10/04/2024; 12:08:34. () "Yes, Your Honor."

VR: 10/04/2024; 12:08:36. () "No, Your Honor."

VR: 10/04/2024; 12:08:52. () "The good buddy don't do the good part."

VR: 10/04/2024; 12:08:55. () "Although, it's a good joke, I thought."

VR: 10/04/2024; 12:08:57. () "You know, you could put it that way, but it's..."

VR: 10/04/2024; 12:09:05. () "I was in the radio a few years ago, so it was an inside joke there."

VR: 10/04/2024; 12:09:11. () "You can sign that if you like."

VR: 10/04/2024; 12:09:13. () "Yes."

VR: 10/04/2024; 12:09:15. () "Mr. Tracy, have you signed it?"

VR: 10/04/2024; 12:09:17. () "I have signed it, Judge, yes."

VR: 10/04/2024; 12:09:19. () "All right. Thank you."

VR: 10/04/2024; 12:09:21. () "That's you."

VR: 10/04/2024; 12:09:21. () "That's me."

VR: 10/04/2024; 12:09:22. () "Ah, I understand what you're saying."

VR: 10/04/2024; 12:09:24. () "It's just like your description."

VR: 10/04/2024; 12:09:25. () "Good, good Lord."

VR: 10/04/2024; 12:09:31. () "I guess we'll be tendering this document with the..."

VR: 10/04/2024; 12:09:33. () "Absolutely. That will be made a part of the Albert plea."

VR: 10/04/2024; 12:09:37. () "And ask for a copy of these four pages, is that right?"

VR: 10/04/2024; 12:10:04. () "Yes, you'll get it."

VR: 10/04/2024; 12:10:05. () "All right, Mr. Cherry, let me sign it first so that you can have my signature as well."

VR: 10/04/2024; 12:10:42. () "All right, and Lee, if you'd be kind enough to make copies of this and give them back to Mr. Cherry."

VR: 10/04/2024; 12:10:49. () "All right, Mr. Cherry, based on my review and signing the document,"

VR: 10/04/2024; 12:10:54. () "I do find that you understand the nature of the charges against you,"

VR: 10/04/2024; 12:10:57. () "the elements of the charges against you,"

VR: 10/04/2024; 12:10:59. () "the elements of any lesser-included offenses,"

VR: 10/04/2024; 12:11:01. () "and any possible defenses you may have at trial."

VR: 10/04/2024; 12:11:03. () "The court further finds that your plea is being made intelligently, freely, and voluntarily,"

VR: 10/04/2024; 12:11:09. () "that you intelligently, knowingly, and voluntarily waive your right to a trial by jury,"

VR: 10/04/2024; 12:11:13. () "privilege against self-incrimination, right of confrontation,"

VR: 10/04/2024; 12:11:17. () "but that you retain the right under a conditional plea of appeal."

VR: 10/04/2024; 12:11:22. () "And there's a factual basis for your plea of guilty."

VR: 10/04/2024; 12:11:25. () "Alfred plea, I'm sorry."

VR: 10/04/2024; 12:11:27. () "Wherefore, it is ordered that the petition be filed and your Alfred plea be accepted and entered."

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VR: 10/04/2024; 12:11:31. () "Therefore, it is ordered in a judge that, at this time,"

VR: 10/04/2024; 12:11:35. () "you're entering an Alfred plea to manslaughter in the second degree"

VR: 10/04/2024; 12:11:40. () "with a recommendation from the Commonwealth of seven years"

VR: 10/04/2024; 12:11:43. () "and tampering with physical evidence has been dismissed by the Commonwealth."

VR: 10/04/2024; 12:11:47. () "It is also my understanding at this time, Mr. Cherry,"

VR: 10/04/2024; 12:11:52. () "that you would like to waive the pre-sentence investigation report"

VR: 10/04/2024; 12:11:57. () "and go ahead and be sentenced so that the process can start to have you released"

VR: 10/04/2024; 12:12:02. () "and that there is no objection from the Commonwealth, Mr. Bacon."

VR: 10/04/2024; 12:12:05. () "Yes, I have."

VR: 10/04/2024; 12:12:06. () "All right. Based on that, the court will go ahead and formally sentence you"

VR: 10/04/2024; 12:12:10. () "to manslaughter in the second degree."

VR: 10/04/2024; 12:12:12. () "I will follow the recommendation of seven years,"

VR: 10/04/2024; 12:12:16. () "but I will give you credit for all the time you have served,"

VR: 10/04/2024; 12:12:20. () "which should, in all of ours belief,"

VR: 10/04/2024; 12:12:22. () "allow you to be released once the processing process is completed."

VR: 10/04/2024; 12:12:28. () "So the court has at this time accepted your Alfred plea."

VR: 10/04/2024; 12:12:31. () "Now, if something doesn't work out and you get shipped off or something,"

VR: 10/04/2024; 12:12:50. () "you have no idea. I've not done this before, so..."

VR: 10/04/2024; 12:12:53. () "Well, I can't imagine that if you've met your time..."

VR: 10/04/2024; 12:12:56. () "Right. I mean, it may take some days."

VR: 10/04/2024; 12:13:00. () "It's not going to happen overnight. You know that."

VR: 10/04/2024; 12:13:02. () "And I can't even promise it will happen in ten days."

VR: 10/04/2024; 12:13:08. () "I suspect it will happen close to that,"

VR: 10/04/2024; 12:13:10. () "especially if we can get Ms. Blakeman involved and have her working at it."

ATTORNEY WORK PRODUCT – NOT AN OFFICIAL TRANSCRIPT

VR: 10/04/2024; 12:13:14. () "But you're not going to... I can't imagine why you would be..."

VR: 10/04/2024; 12:13:17. () "Unless you go back in that detention center and do something bad,"

VR: 10/04/2024; 12:13:21. () "which I don't see, I don't see any reason why they would not process you"

VR: 10/04/2024; 12:13:25. () "as quickly as possible so that you can go on and start your life again."

VR: 10/04/2024; 12:13:35. () "I'm just new to this, and I'm a little uncomfortable with that."

VR: 10/04/2024; 12:13:41. () "Well, you've done a..."

VR: 10/04/2024; 12:13:45. () "You've done a nice job of holding your own, Mr. Cherry."

VR: 10/04/2024; 12:13:49. () "All right. All right."

VR: 10/04/2024; 12:13:51. () "All right. Well, we're done."

VR: 10/04/2024; 12:13:53. () "The only other issue, Your Honor, we currently have a court date of December the 18th, 2024."

VR: 10/04/2024; 12:13:57. () "We'll set that aside."

VR: 10/04/2024; 12:13:59. () "That is remanded."

VR: 10/04/2024; 12:14:01. () "All right."

VR: 10/04/2024; 12:14:02. () "It's over. It's over, Mr. Cherry."

VR: 10/04/2024; 12:14:06. () "Okay."

VR: 10/04/2024; 12:14:08. () "Good luck to you."

VR: 10/04/2024; 12:14:10. () "Good luck."

VR: 10/04/2024; 12:14:14. () "Good luck to you."

VR: 10/04/2024; 12:14:15. () "Yes."

VR: 10/04/2024; 12:14:16. () "I'll let you know when we come by and give you whatever we got."

VR: 10/04/2024; 12:14:19. () "Whatever you want."

VR: 10/04/2024; 12:14:23. () "All right. All right."

VR: 10/04/2024; 12:14:27. () "Do you want to just..."

VR: 10/04/2024; 12:14:29. () "Don't take him..."

VR: 10/04/2024; 12:14:30. () "Don't take him away until I get this copy for him."