

Appendix D

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America,)
)
Plaintiff,)
) CR15-08178-02-PCT-SRB(DKD)
vs.) Phoenix, Arizona
) May 31, 2017
Nolan Lewis,) 10:02 a.m.
)
Defendant.)
)
)
)

BEFORE: THE HONORABLE SUSAN R. BOLTON, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

RESTITUTION HEARING

APPEARANCES:

For the Government:

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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

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P R O C E E D I N G S

(Called to the order of court at 10:02 a.m.)

THE COURT: Good morning. Please sit down.

THE CLERK: Criminal case 15-8178, *United States of America v. Nolan Lewis*. Time set for Restitution Hearing.

MS. PATTERSON: Good morning, Your Honor. Kiyoko Patterson on behalf of the United States.

MR. BRESNEHAN: Good morning, Your Honor. Mike Bresnehan representing Nolan Lewis who is present in custody.

THE COURT: Ms. Patterson, you may proceed with your evidence.

MR. BRESNEHAN: Your Honor, I'm sorry to interrupt.

There is an issue that's come up and I think I need to make a record. It's something that I have been mulling over for the last 24 hours or so and I thought I'd better make a record of it at this point in time.

And it may affect what we do today. It may not. But I should make the record, if I may.

THE COURT: Go right ahead.

MR. BRESNEHAN: Thank you.

Your Honor, as the Court knows, I was appointed to handle the appeal in this case but the restitution hearing was still hanging out there. The other -- the trial-level attorney Dana Carpenter had been granted leave to withdraw.

So it was my understanding I'm the only attorney

1 onboard at this point. And so I went over and saw Mr. Lewis.
2 I began communicating with the AUSA about restitution issues
3 and the exhibits they might have or other information and so
4 forth and began working with my client to try to understand --
5 and with the prosecutor -- to try and understand what the
6 issues were and what position my client wanted to take with
7 respect to that; and, again, also to see whether we might
8 resolve this without a hearing.

9 I saw my client -- or I have seen my client now three
10 times for a total of about two-and-a-half hours over the last
11 week. And what struck me almost immediately at the first
12 visit was how little response I got from him as we were
13 talking about things. I had a sense that I had to explain
14 things several times before he sort of got it and I'm not sure
15 how much he got. And this continued. These three visits were
16 over the past week or so.

17 The last visit was -- was as recently as yesterday.
18 I had concerns. And after the first visit, I went back. We
19 talked for, I think, about an hour on the second visit. I
20 continued to have those concerns. We talked about the kinds
21 of things that lawyers are supposed to ask their clients if
22 they have concerns about their client's competency, like: How
23 far did you go in school? Do you have trouble reading
24 English? Have you ever had a head injury?

25 Those kinds of things.

1 anything like that.

2 THE COURT: Well, I'm not sure that she would know.

3 MR. BRESNEHAN: Okay. Oh, I see your point. Okay.

4 No, I did not. And maybe that's why I didn't see
5 that one had been done. Okay. And maybe that -- maybe that's
6 enough for the Court to --

7 THE COURT: I have no recollection of it. Maureen
8 just saw it on the docket that it was requested and granted.

9 I can't even say as I sit here today that I ever saw
10 it. But apparently, Mr. Carpenter, about a year ago, had
11 concerns and those concerns were satisfied as a result of this
12 evaluation that was done so that we were then able to proceed.

13 MR. BRESNEHAN: Were they -- if I may ask, Your
14 Honor, were they satisfied to Mr. Carpenter's satisfaction?

15 THE COURT: I'm assuming. I don't remember. And
16 obviously it didn't come to a hearing before me because
17 Ms. Patterson doesn't know about it because it's sealed and ex
18 parte.

19 MR. BRESNEHAN: And so it sounds as though
20 Mr. Carpenter satisfied himself and didn't take it any
21 further, perhaps?

22 THE COURT: Perhaps.

23 MR. BRESNEHAN: Yes.

24 THE COURT: And that's, you know, just based on the
25 fact that Ms. Patterson doesn't know about it and she wouldn't

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1 know about it until -- unless Mr. Carpenter requested a
2 hearing on competency.

3 So, you know, I think we can all conclude from our
4 experience that the evaluation did not -- that the evaluation
5 satisfied Mr. Carpenter's concerns.

6 MR. BRESNEHAN: All right. Nevertheless, I guess I
7 have to make my own record based upon my own observations.

8 And so I'm making that record at this point in time
9 and I wanted to propose something. The victim's family is
10 here today. They have traveled a long distance and that's not
11 lost on me at all.

12 I wonder if we could proceed provisionally today and
13 wrap this up provisionally. And perhaps the Court could grant
14 me five days leave to -- or leave to speak with Mr. Carpenter,
15 maybe look at the report which I haven't received yet; or at
16 least I don't think I have received it. I certainly haven't
17 looked at it.

18 Then have a chance to look at the report and then
19 take a position in writing at that point in time. And if my
20 conclusions are the same as Mr. Carpenter's, the Court's
21 orders here would stand.

22 But if I file something and the Court were convinced
23 that there's reasonable probability that he should be
24 examined, the Court could so order and vacate any findings in
25 the hearing.

1 That's the best I can do in terms of recommendations.

2 THE COURT: All right. So, Ms. Patterson, you may
3 proceed.

4 MS. PATTERSON: Your Honor, the government calls
5 Marilyn Scott.

6 THE COURT: And as Ms. Scott comes forward, my
7 recollection is -- well, it's not my recollection.

8 My review of the record is that the -- there's
9 approximately \$4,200 of restitution at issue.

10 At the time that sentencing went forward, there was
11 no dispute as to \$1,280 in restitution.

12 Let me -- are you still seeking the entire remaining
13 balance or is it something different?

14 MS. PATTERSON: No, Your Honor. The government will
15 be seeking \$3,500.94.

16 After an additional review of all the documentation
17 and the docket and talking with Ms. Scott, the government --
18 our figure has since changed because there was some
19 inaccuracies in the accounting.

20 THE COURT: Okay. So it's gone down?

21 MS. PATTERSON: It's gone down, Your Honor. So even
22 though the \$1,200 has already been ordered, in addition, the
23 government is seeking \$3,500.94.

24 THE COURT: Okay. Thank you.

25 (Witness duly sworn)