

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

PLAINTIFF

CASE NUMBER

15-00226CF

vs.

JOHN N. JONCHUCK,

DEFENDANT.

/

PROCEEDINGS: Motion Hearing
DATE: November 5, 2018
BEFORE: HONORABLE CHRIS HELINGER
Circuit Court Judge
PLACE: Pinellas County Justice Center
14250 49th Street North
Clearwater, Florida 33762
REPORTER: Ken Bernard
Digital Court Reporter

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A P P E A R A N C E S

APPEARING ON BEHALF OF
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THE COURT: Ms. Manuele, is that you?

MS. MANUELE: Yes.

THE COURT: Oh. What Jonchuck motions are on today?

MS. MANUELE: We are doing just the motion to compel the video that I don't think there is any objection to. And then we had a motion to compel some *Brady* material related to Gamache and some statements that (unintelligible).

THE COURT: Is that getting withdrawn, or?

MS. MANUELE: No. Well, I spoke to Mr. Bolan and -- and Mr. Ellis; they're of the same understanding that we're going to hear those, and then the others we're going to get another hearing date for today.

THE COURT: Okay.

MS. MANUELE: There were two other -- there's still two motions related to jury selection and -- and the questionnaire and the instructions you don't want to hear right now.

And then there were two other motions from some *Williams* Rule stuff in 916, information that we were going to get a date for today that were filed way back when.

1 And then, so today it's just the ones about
2 the video that there's no objection to, I don't
3 believe, and then the *Brady* one, there will
4 probably be some discussion about.

5 THE COURT: What's the *Williams* Rule?

6 THE COURT: Just -- it's not *Williams* Rule,
7 it's just a motion to -- just a motion in limine to
8 exclude prior bad acts.

9 THE COURT: Okay, thank you.

10 (Thereupon, unrelated proceedings recorded and not
11 included in this transcript; followed by a recess for
12 lunch and then other unrelated proceedings recorded and
13 not included in this transcript.)

14 THE COURT: So, are we ready for Jonchuck?
15 Yes?

16 MS. MANUELE: I don't believe I've seen Mr. --
17 oh, there's Williams. (Unintelligible.) We are
18 all here.

19 THE COURT: Okay. Are you waiving
20 Mr. Jonchuck's presence?

21 MS. MANUELE: Yes, Your Honor.

22 THE COURT: This is Case Number 15-000226.
23 Doug Ellis, Paul Bolan for the State; Jane McNeill,
24 Jessica Manuele, Craig Williams for the Defendant.
25 And are we hearing -- we're not hearing the motion

1 to exclude the evidence pursuant to 916, correct?

2 MS. MANUELE: Correct. We are going to ask to
3 set a date today while we're altogether on that.

4 THE COURT: And we're not doing exclusion of
5 bad acts.

6 MS. MANUELE: Same -- same situation.

7 THE COURT: Okay. Motion to compel Brady
8 material?

9 MS. MANUELE: Yes.

10 THE COURT: Do you want to be heard on that?

11 MR. ELLIS: Yes, Judge.

12 In -- in Subsection A, they want the
13 statements, reports of Dr. Gamache. Dr. Gamache
14 made no statements or reports as anticipated under
15 Florida Rule of Criminal Procedure 3.220.

16 The one -- he did not interview the Defendant
17 and he reached no psychological conclusions
18 regarding the sanity of the Defendant at the time
19 of the murder.

20 The Public Defenders have verbally indicated
21 to us that they were going to run this motion prior
22 to actually filing it, so we called Dr. Gamache; we
23 even got billed by Dr. Gamache for talking to him
24 about that. And he confirmed what we have
25 indicated on the record.

1 We believe that there's no discoverable
2 reports or statements under Florida Rules of
3 Criminal Procedure 3.220 in regards to this case,
4 as Dr. Gamache is a non-listed psychologist.

5 If the Court wishes to inquire further, we
6 would ask that this would be an ex-parte in-camera
7 hearing. We don't believe that that's necessary,
8 but if the Court wishes to do so, obviously we
9 would comply. I --

10 There is a Section B if they want me to go to
11 that or they want to argue --

12 THE COURT: Well, let's -- let's start -- do
13 you want to respond to Dr. Gamache?

14 MR. WILLIAMS: Judge, we -- in our review of
15 the court file, obviously, we learned that
16 Dr. Gamache had been paid money as a result of his
17 consultation in this case. I understand what the
18 Court has said; however, there is communication
19 between --

20 THE COURT: Mr. Ellis said it, just so the
21 record's clear.

22 MR. WILLIAMS: Oh, I'm sorry.

23 THE COURT: I didn't say it.

24 MR. WILLIAMS: And I -- I have no reason to
25 doubt what he's saying, but because he describes a

1 conversation between the State Attorney's Office
2 and Dr. Gamache, I believe that the Court should
3 grant our motion and conduct an in-camera hearing
4 to determine whether that conversation should be
5 turned over to us or not.

6 THE COURT: Any response?

7 MR. ELLIS: Judge, again, under the rules,
8 it's a statement or a report and it's -- and
9 regarding issues regarding the sanity, he did not
10 reach any conclusions, didn't even interview the
11 Defendant. And therefore, we don't believe that
12 that's necessary. Obvious, if he wishes to do so
13 we will comply with it, but we don't believe that
14 it's necessary to do so.

15 THE COURT: What's the legal basis for wanting
16 a conversation they had with Dr. Gamache? They
17 haven't listed him, there's no reports, there's no
18 statements.

19 MR. WILLIAMS: Well, if that -- if there was
20 no conversation, and there was --

21 THE COURT: I didn't say no conversation; no
22 statements, no reports.

23 MR. WILLIAMS: Because if he evaluated the
24 case in any way, shape, or form and found -- and --
25 and made any findings, then that's discoverable.

1 THE COURT: Any findings?

2 MR. ELLIS: He made no findings, Judge.

3 MR. WILLIAMS: And if they're saying that he
4 had made no findings and offers no opinions as to
5 either Mr. Jonchuck's sanity at the time of the
6 offense or the existence of mental illness, then
7 there may not be any discoverable material there.

8 But even if he made -- even if he formed an
9 opinion as to whether Mr. Jonchuck was mentally
10 ill, we're entitled to know that.

11 THE COURT: Okay. Any response?

12 MR. ELLIS: Judge, he had some theories and
13 ideas, but no conclusions. So, he'd reached no
14 conclusion as to the mental illness or the insanity
15 of -- of the Defendant.

16 THE COURT: I don't think you're entitled to
17 the conversation. That part of the motion will be
18 denied.

19 A -- the content of the oral statements by
20 Dr. Lazzaro on October 24th, 2017 to Assistant
21 State Attorneys Paul Bolan and Doug Ellis made at
22 the North Florida Evaluation and Treatment Center
23 prior to the beginning of the evaluation of the
24 Defendant.

25 Mr. Ellis?

1 MR. ELLIS: Judge, if I'm clear as to what
2 they're asking for, we all went to a room
3 downstairs, gathered up, and then went up to an
4 upstairs room to do the interview.

5 I believe that they're wanting to know what
6 conversations we had in that upstairs room prior to
7 the video being turned on and the interview going
8 on.

9 If that's what they're asking for, any
10 conversation we had on that date was not work
11 related, was not case related, and was casual.

12 There's a case that I can present the Court if
13 you wish, *Olson versus State*, 705 So.2d 687, a
14 Fifth DCA case from 1998 that basically says they
15 can't go into a fishing expedition to find out any
16 conversation we had with Dr. Lazzaro.

17 And they're trying to make Mr. Bolan and I
18 witnesses, potential even impeachment witnesses,
19 which is inappropriate under the *Olson* case.

20 So, I have the *Olson* case if the Court wishes
21 to see it; but this is a casual conversation that
22 we had with the doctor. It has nothing to do with
23 this case and we don't believe that that's in any
24 way discoverable to the Defense.

25 THE COURT: Any response?

1 MR. WILLIAMS: Yes, Judge. As the Court's
2 aware, the -- the evaluation is conducted in a
3 fairly large room. And --

4 THE COURT: I've never been there.

5 MR. WILLIAMS: -- it's a -- it's a conference
6 room. So, there's a -- a regular conference table
7 and there's chairs set up around it. The --

8 Mr. Jonchuck is basically the last person
9 that's brought into that room. So, while the
10 lawyers are sitting there waiting for Mr. Jonchuck,
11 I am setting up our video equipment. I believe
12 that the State Attorney's Office had already set
13 theirs up. So, I believe that at that point then,
14 I was working to set up the video equipment.

15 I was in the room, so I was able to overhear
16 part of Dr. Lazzaro's statements. And it is --
17 what I heard was her comment directly about
18 opinions she had formed of Mr. Jonchuck before the
19 evaluation started, before she'd ever seen him.

20 THE COURT: Who was she -- you -- you heard
21 her, was she just speaking out in the room?

22 MR. WILLIAMS: I do not know if she was
23 speaking to Mr. Ellis, Mr. Bolan; I don't know if
24 it was pursuant to a question they asked her, if it
25 was, as the State said, just a conversation.

1 But what I heard were her voicing her opinions
2 as to Mr. Jonchuck was not a danger to -- to the
3 lawyers assembled in the room, that he was only a
4 danger to women and children and animals.

5 I heard part of a statement she made that she
6 said, "If he tries to do anything to me, I'll kill
7 him." The only way, and I can't quote this, but
8 the only way you can -- the only way that won't
9 happen is if you hold me down or if you stop me.

10 THE COURT: Do you have any reason to believe
11 she said more than what you've told me she said?

12 MR. WILLIAMS: I'm certain she said more words
13 than that; I don't know that they are more ideas or
14 more conclusions that she -- or opinions that she
15 offered.

16 THE COURT: Well, when would she have offered
17 them? I mean you were there and the State was
18 there during the whole time she's there?

19 MR. WILLIAMS: Yes.

20 THE COURT: Okay. So, was she -- obviously,
21 it wasn't a private conversation because you heard
22 it, right?

23 MR. WILLIAMS: That's correct. I mean, I
24 don't -- she was not speaking to me; I was not
25 involved in a conversation with her.

1 So, I overheard statements that she was
2 making. Obviously, they concerned me.

3 After the evaluation was conducted, at some
4 later date I called the State Attorney's Office and
5 said, "Look, I heard some of what she said, I'm
6 asking you guys to write down as best you can
7 remember exactly what she said; I think this may
8 become an issue in the case."

9 And I think it is an issue, because --

10 THE COURT: Well, did you ask Mr. Bolan that
11 or Mr. Ellis? Do you remember?

12 MR. WILLIAMS: I think it was Mr. Ellis,
13 because --

14 THE COURT: Was there any response, like what
15 did she say? Or --

16 MR. WILLIAMS: No, because I didn't ask them
17 to respond.

18 THE COURT: I understand.

19 MR. WILLIAMS: I just asked them to note their
20 file as to their -- their -- their recollection of
21 the statements she made.

22 THE COURT: Okay. Mr. Ellis, Mr. Bolan?

23 MR. ELLIS: Judge, I know that the Defense
24 turned on the video and audio portion of the tape
25 prior to the evaluation and caught several minutes

1 of that, which I thought was inappropriate, but we
2 didn't object to it.

3 I don't believe that they even asked
4 Dr. Lazzaro any questions about that in the
5 deposition.

6 Judge, we did not discuss work or this case --
7 it was more of a casual kind of conversation with,
8 Judge, Dr. Lazzaro.

9 And I don't wish to put Mr. Bolan and I as
10 witnesses in this case --

11 THE COURT: I -- I get that. So, have you
12 listened -- you've obviously listened to the tape
13 to see how much, how many of these statements are
14 captured.

15 MR. WILLIAMS: None. Well --

16 MS. MANUELE: (Unintelligible) tail end is
17 captured on our audio. We don't have the
18 (unintelligible).

19 MR. WILLIAMS: Right. I don't know what -- we
20 don't know what the State's video has at all,
21 because we don't have a copy of that yet.

22 THE COURT: Was it going before yours?

23 MR. WILLIAMS: I don't know; I don't.

24 MR. ELLIS: No. No.

25 THE COURT: So --

1 MR. ELLIS: I turned it on when she walked in
2 the room and the evaluation began not prior --

3 THE COURT: Okay. So, yours is going to have
4 more.

5 MR. WILLIAMS: Ours has more, but what I have
6 described occurred while I was setting up my
7 camera.

8 THE COURT: Okay.

9 MR. WILLIAMS: So, I had no tape in the -- in
10 the camera at the time that those statements were
11 made. I may have caught the very tail end of it,
12 but not the statements that I have described to the
13 Court this afternoon.

14 MS. MANUELE: And if I may?

15 THE COURT: Sure.

16 MS. MANUELE: In addition, Judge, there is
17 additional reason to believe that other statements
18 -- the Court has inquired; there was reason to
19 believe any other statements that Mr. Williams had
20 overheard were said. And I would -- there -- there
21 is additional reason to believe that.

22 As Mr. Williams is setting up the camera, I
23 asked if I could speak with Mr. Jonchuck briefly
24 before getting started.

25 And so I went downstairs with his counselor,

1 Heather Davis. As we were going down -- we were
2 going downstairs to get Mr. Jonchuck and come back
3 up while Mr. Williams was setting up and everything
4 that took place that he's described was occurring.

5 As we're going down in the escalator,
6 Ms. Davis made a comment to me at that time that
7 the doctor already seems very predisposed due to
8 comments that she had made in her presence prior to
9 our arrival.

10 So, I presume that Mr. Ellis and Mr. Bolan
11 were present at the time --

12 THE COURT: Who was this person that --

13 MS. MANUELE: Heather Davis is a counselor at
14 North Florida Evaluation and Treatment Center.

15 And so, there is reason to believe that she
16 had made additional statements specifically
17 regarding Mr. Jonchuck.

18 THE COURT: Well, how do you know that
19 Mr. Ellis and Mr. Bolan were there for those
20 statements (multiple speakers)?

21 MS. MANUELE: Well, my understanding is, they
22 all went up to the room together, in which case
23 they all -- Ms. Davis was with them when they went
24 up to the room, to let them into that area.

25 And so, in order for her to have overheard it,

1 it would have been at the time that the prosecutors
2 were also present in the room.

3 THE COURT: Okay. Well, I guess there's two
4 issues, Mr. Ellis and Mr. Bolan, either one.

5 Do you recall any of these statements that
6 Mr. Williams has repeated, that he indicates
7 Dr. Lazzaro said? Do you remember them?

8 MR. ELLIS: Judge, again, we don't feel it's
9 appropriate for us to make us witnesses in this
10 case. I would be objecting to --

11 THE COURT: I understand. I'm asking you a
12 question, though. Because I think there's a
13 problem if, in fact --

14 MR. ELLIS: The statements that Mr. Williams
15 indicated, no. The only statement that we recall
16 is he said something to the effect, are you
17 concerned being very pregnant that the Defendant is
18 sitting right across from you, and security is
19 longer distance than you and I are right now.

20 THE COURT: You asked her that?

21 MR. ELLIS: We asked her that. And she said
22 jokingly, "No, I'm like a mama bear, at this time
23 he's not going to hurt me; he's not -- if he does
24 try to hurt me, I'll" -- you know, something to the
25 effect that "he will be hurt, not me". But she

1 said that sort of in a jokingly manner.

2 That's the only thing that I recall of that
3 conversation that's anywhere near what they said.

4 Otherwise, there was innocuous, how long it
5 took her to get there, how long she could be there
6 that day, those kind of things.

7 THE COURT: Well, anywhere near kind of
8 concerns me. What is that -- I mean --

9 MR. ELLIS: Nothing, Judge. She did not make
10 the statements in our presence that she's being
11 accused of making.

12 THE COURT: Okay. (Indicating.) And then, as
13 to Heather Davis. Were you with her there and with
14 Dr. Lazzaro, too?

15 MR. ELLIS: Right. Ms. Davis was there. I
16 don't -- and she kind of took us all up to the
17 room. I don't -- we went up in different
18 elevators. I don't remember if she was present or
19 not, Judge, to be honest with you.

20 THE COURT: You don't remember Ms. Davis
21 saying that Dr. Lazzaro seemed to be pretty
22 disposed?

23 MR. ELLIS: She didn't tell us that at all.

24 And we conducted a deposition of her and she
25 never brought that up, either. We didn't know that

