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IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR BRADFORD COUNTY, FLORIDA

CASE NO.: 04-2023-CA-000264-CAAM

STATE OF FLORIDA,
Plaintiff,

vs.

DUANE E. OWEN,
Defendant.

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STATUS CONFERENCE BEFORE
THE HONORABLE JAMES M. COLAW

Friday, May 26, 2023

1:27 p.m. - 1:43 p.m.

Bradford County Courthouse
Courtroom 1
945 North Temple Avenue
Starke, Florida 32091

Taken stenographically before
Karen F. Howard, RPR, FPR-C, CCR (GA)

1 behalf of the state.

2 THE COURT: Good afternoon, ma'am.

3 MS. FUSARO: Lisa Fusaro, on behalf of
4 CCRC-Middle, on behalf of Duane Owen.

5 THE COURT: Good afternoon, ma'am.

6 MS. FUSARO: Good afternoon.

7 MS. LAURIENZO: Morgan Laurienzo, CCRC-Middle,
8 on behalf of Duane Owen.

9 THE COURT: As far as you-all know, is this
10 everybody that I should be expecting to appear and
11 attend this status conference this afternoon?

12 MS. TERENCE: On behalf of the Attorney
13 General's Office, the State of Florida, yes, sir.

14 MS. FUSARO: On behalf of the defense, that's
15 all we expect as well.

16 THE COURT: All right. Great. Then we can go
17 ahead and get started with the conference. So I
18 don't know who wants to be heard first as it relates
19 to these issues.

20 MS. TERENCE: Well, Your Honor, since I
21 filed -- this is Celia Terenzio. Since I filed the
22 request for a status hearing -- we appreciate your
23 promptly setting this -- we'll go forward.

24 THE COURT: Go ahead.

25 MS. TERENCE: The governor signed the death

1 warrant on Duane Owen 17 days ago, and within two
2 hours of that, the Florida Supreme Court had issued
3 its -- basically, its marching orders to the circuit
4 court and to the parties, to have everything in the
5 circuit court completed within ten days of that
6 order. And the Florida Supreme Court left it to the
7 circuit court to devise its own scheduling and
8 keeping in mind everything should be completed within
9 the ten days and urged everyone to act as
10 expeditiously as possible.

11 Duane Owen was seen by his doctor,
12 Dr. Eisenstein, 11 days ago, and that prompted
13 Mr. Owen to file a letter to the governor invoking
14 922.07 for a determination of competency to be
15 executed. At the filing -- excuse me -- on the -- in
16 the initial brief, also filed a couple of days ago,
17 Mr. Owen's counsel indicated that they were going to
18 be pursuing 3.811 as well.

19 So at this point the defense is well into the
20 process of the evaluation regarding competency to be
21 executed. So far four doctors have seen Duane Owen,
22 and so the factual issues, I think, have been
23 crystallized.

24 Therefore, based on the warrant time
25 constraints, the work that's already been done by

1 Mr. Owen pursuing this particular issue on
2 competency, we feel that it would not be unreasonable
3 for this court to have these proceedings concluded by
4 next week, with a hearing possibly Tuesday or
5 Wednesday.

6 I dare not tell the judge when the court should
7 issue its determination; but, hopefully, as with the
8 guidance of the Florida Supreme Court to be done as
9 expeditiously as possible, and if any appeal is to be
10 pursued by either side, it should be filed by -- the
11 notice of appeal and the record by next Friday.

12 Obviously, that's a suggestion, Your Honor. But
13 based on the guidance of the court and what's already
14 transpired in this case, the state doesn't think that
15 that would be an unreasonable scheduling.

16 THE COURT: All right. Thank you, Ms. Terenzio.
17 Counsel for Mr. Owen?

18 MS. FUSARO: Yes. So we haven't even filed a
19 motion under Rule 3.811 yet, so a lot of this really
20 shouldn't even be determined yet. We plan to file
21 our motion next week.

22 Dr. Eisenstein is going back on Tuesday to do
23 further evaluation of Duane Owen, and the only reason
24 why that's being done on Tuesday is, due to the
25 holiday weekend, DOC wouldn't allow him to go up

1 there on Monday. So he's going to have to do a
2 supplemental report.

3 And the reason why we're doing this is because
4 of the commission of three psychiatrists that
5 simultaneously evaluated Mr. Owen. They were
6 thinking he did not suffer from any mental illness
7 and that he was malingering, so we would like to
8 provide further testing.

9 So in order to avoid piecemeal litigation, we
10 plan on filing our motion next week as soon as we get
11 a supplemental report from Dr. Eisenstein.

12 Under Rule 3.811, there's no time frame listed
13 in there, so there should not be any issue with
14 filing that next week, after we receive that report.

15 THE COURT: All right. So any reason we can't
16 Thursday morning of next week have a hearing on all
17 the issues?

18 MS. FUSARO: Your Honor, we plan on filing our
19 motion either -- late Wednesday, once we receive the
20 report from Dr. Eisenstein; at the very latest by
21 Thursday morning. So I think that would be a little
22 premature because you haven't even received our
23 motion yet. We haven't filed anything yet, so even
24 the status conference, in my opinion, is premature.

25 Usually you would have us file a motion first,

1 and then we would pull proceedings under 3.811. We
2 haven't even filed the motion yet.

3 MS. TERENCE: Your Honor, if I may be heard.

4 There was no motion filed when the Florida
5 Supreme Court entered its marching orders when the
6 warrant was signed either. Nothing filed anywhere,
7 and the court just said, if something is going to be
8 filed, it has to be filed and completed by this date,
9 leaving it to the circuit court to decide -- in its
10 discretion and power -- to decide when this is
11 supposed to happen.

12 And we are under a time constraint, obviously.
13 The situation -- excuse me -- the execution is
14 scheduled to take place in three weeks. The court
15 has indicated things need to be done as expeditiously
16 as possible. And even though a motion hasn't been
17 filed, there obviously were sufficient grounds in
18 counsel's mind to pursue something under 922. So
19 it's not like they're starting anew.

20 THE COURT: Can the state be prepared -- even if
21 counsel's saying they're not going to -- or wouldn't
22 potentially file a motion until Wednesday or first
23 thing Thursday morning, can the state be prepared to
24 have a hearing Thursday afternoon?

25 MS. TERENCE: Yes, Your Honor. I have

1 co-counsel sitting in, Mr. Browne. I believe so,
2 unless Mr. Browne has anything different to add to
3 that, but I think we would be ready.

4 MR. BROWNE: Your Honor, we will be ready
5 Thursday morning, if necessary. We were hoping to
6 find some court time Tuesday or Wednesday. But, yes,
7 Your Honor, we will be ready.

8 THE COURT: Yeah. The only problem I have with
9 Tuesday or Wednesday is I'm not actually available
10 those days because I have something -- two trials
11 scheduled.

12 But, Ms. Fusaro, any reason you-all can't be
13 available and prepared to litigate the matters on
14 Thursday afternoon should -- depending on what
15 ultimately is or isn't filed?

16 MS. FUSARO: We would have to confer with
17 Dr. Eisenstein to figure out his availability as
18 well. He's been kind of rescheduling things in order
19 to prioritize this, so I'm not positive what he has
20 going on then.

21 Also we have another witness that we're going to
22 call, and she's on an Alaskan cruise for the duration
23 of the week. So if the hearing was to begin on
24 Thursday, I don't think that she'd be available
25 Thursday or Friday.

1 THE COURT: And what witness is that?

2 MS. FUSARO: We're also intending to call
3 Dr. Sultan. And we may have other witnesses as well,
4 but those are at least two that we have determined at
5 this point, because, again, a lot of this is
6 premature because we have not even yet filed the
7 motion. I mean, even in Provenzano v. State, they
8 didn't even invoke 922.07 up until two days before
9 his execution date. So, realistically, I don't think
10 this needs to be completed next week.

11 THE COURT: Well, what is Dr. Sultan's
12 involvement?

13 MS. FUSARO: She evaluated Mr. Owen back in 1994
14 through 1995, I believe, and then she also testified
15 at his other trial.

16 There's other additional experts that we've been
17 diligently trying to locate as well. Some of them
18 have since passed, but the ones that are alive, we
19 are also in the process of reaching out to. We have
20 calls in to some of the other doctors as well.

21 THE COURT: All right. Anything else from
22 anyone who's present with me this afternoon?
23 Anything else from anyone?

24 MS. TERENZIO: No, Your Honor. Just,
25 logistically, what she said, we'd be requesting some

1 witnesses to be able to appear by Zoom and that sort
2 of thing, but I guess we should wait until the court
3 schedules the hearing.

4 THE COURT: Yeah.

5 Anything else from defense?

6 MS. FUSARO: No, Your Honor. I would just ask
7 if there's any way we would postpone it to the
8 following week, we would appreciate that.

9 THE COURT: Well, I do understand your request,
10 but, respectfully, I'm going to set it for next
11 Thursday at 1:30 p.m. for a hearing. You can have as
12 much time as you need. If Thursday afternoon
13 starting at 1:30 isn't enough, then we'll continue
14 into Friday. So you have all of Thursday afternoon,
15 you have all of Friday that we can use as a
16 continuation, but the hearing would be scheduled for
17 1:30 p.m. on Thursday.

18 I'm happy to accommodate -- if y'all have an
19 agreement and a need for it -- to accommodate
20 witnesses by Zoom video, such as we've conducted this
21 status conference today, if that is requested.

22 MS. FUSARO: Your Honor, for the defense, I
23 don't know if there's going to be any way for that
24 doctor to get Internet access while she's on the
25 cruise. We're in the process of trying to get at

1 least an affidavit from her prior to her embarking;
2 but, again, she's already in Alaska for the cruise.

3 So would we -- is there anything else we could
4 do for that witness? because I don't know if she'll
5 even be able to appear via Zoom.

6 THE COURT: I'm not really sure what else. I
7 mean, but -- like I said, I'm happy to try to
8 accommodate it in any way that you-all can come up
9 with to accommodate it. I mean, I'm open to
10 solutions, but I think you'd have to -- you'd have to
11 check with her to see what options are available,
12 like you said.

13 Do you know when she gets on the cruise?

14 MS. FUSARO: I believe she gets on the cruise
15 tomorrow, so -- then I think they said it was a week,
16 so that's why I assume she'd be back home -- or back
17 somewhere with Internet by Monday of the following
18 week.

19 THE COURT: Yeah. So I don't -- you know that
20 the ship doesn't have Internet?

21 MS. FUSARO: I'm not positive, but I know that
22 we have been trying to get the affidavit signed
23 before she leaves tomorrow because of the fact that
24 she said she would not be able to be reached.

25 THE COURT: Okay. All right. I would say I

1 would double up my efforts to get the affidavit, I
2 guess. I don't know what to say other than that.

3 MS. FUSARO: Thank you, Your Honor.

4 THE COURT: But I'm open to other solutions if
5 you can think of them, but postponing the hearing
6 into the following week isn't one of them.

7 MR. BUSTAMANTE: Your Honor, is there a
8 particular timeline as to when the motion needs to be
9 filed? I think that the state should at least have,
10 you know, at least an hour or so to review.

11 THE COURT: I'm going to -- Ms. Fusaro had
12 indicated that she expects, if they file a motion,
13 it'll be filed Wednesday or -- the way I heard it was
14 at the latest on Thursday morning. So I would
15 expect, if they are going to file a motion, it would
16 be filed by end of business on Wednesday or first
17 thing Thursday morning.

18 MS. FUSARO: That's correct, Your Honor. We
19 would have it filed at the latest on Thursday
20 morning. We could even say by 9:00 at the latest
21 we'd be able to have it filed.

22 THE COURT: Okay. Anything else,
23 Mr. Bustamante?

24 MR. BUSTAMANTE: No, Your Honor.

25 THE COURT: Anything else from the Attorney

1 General's Office?

2 MS. TERENCE: Yes, Your Honor. One thing. We
3 could overnight to the court, for Tuesday morning,
4 the records on appeal from Mr. Owen's trial in the
5 Worden case, the retrial in the Slattery case, and
6 the records from Mr. Owen's first post-conviction
7 motion and the current one that's presently before
8 the Florida Supreme Court, just for the court's
9 edification.

10 THE COURT: Okay.

11 MS. TERENCE: And so the court will entertain
12 Zoom -- these proceedings be by Zoom? Although most
13 of us will obviously be in the court, there are some
14 colleagues that will not be, so we would like them to
15 be able to have access.

16 THE COURT: Yeah. For both of y'all -- I'll
17 have the same Zoom link up and available for the
18 proceedings that you both can use. I certainly -- if
19 there is some opposition or objection by either side
20 to any particular person appearing by Zoom, I would
21 expect you-all to bring that to my attention prior to
22 the hearing so I can address it or rule on it with
23 enough time to -- so that witness knows what they
24 have to -- what they have to do or where they have to
25 be.

1 MS. TERENCE: Your Honor, would we be allowed
2 to bring our work-issued laptops with us to court?

3 THE COURT: Of course.

4 MS. TERENCE: Okay. Thank you.

5 THE COURT: Anything else? Counsel for the --
6 for Mr. Owen?

7 MS. FUSARO: No, Your Honor.

8 THE COURT: Okay. All right. Then I will -- if
9 I don't hear from you before then, I will see
10 everybody on Thursday afternoon at 1:30.

11 MS. TERENCE: Thank you, Judge.

12 MR. BROWNE: Thank you, Your Honor.

13 THE COURT: Y'all have a great day.

14 MS. TERENCE: You too, sir.

15 THE COURT: All right. We'll be in recess.

16 (Concluded at 1:43 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF BRADFORD

I, Karen F. Howard, RPR, FPR-C, CCR (GA), do hereby
certify that I was authorized to and did
stenographically report the foregoing proceedings and
that the transcript is a true record of my stenographic
notes.

Dated this 27th day of May, 2023.



Karen F. Howard, RPR, FPR-C, CCR (GA)