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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MADERA
BEFORE THE HONORABLE KATHERINE M. RIGBY, JUDGE
DEPARTMENT 21

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
)
Plaintiff,) CASE NO. MCR080645
)
vs.) REPORTER'S TRANSCRIPT
)
TREMACHINE CARROLL,) HEARING RE:
)
Defendant.) RULING ON MOTIONS

MADERA, CALIFORNIA DECEMBER 16, 2024

A P P E A R A N C E S:

FOR THE PEOPLE:

SALLY ORME MORENO, DISTRICT ATTORNEY
OF THE COUNTY OF MADERA
BY: ERIC DuTEMPLE, DEPUTY DISTRICT ATTORNEY
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MADERA, CALIFORNIA 93637

FOR THE DEFENDANT:

GOETHALS & STONE
BY: JOSEPH M. GOETHALS, ATTORNEY AT LAW
1131 HOWARD AVENUE
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Reported by: THERESA TRAYLOR, CSR No. 10803

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P R O C E E D I N G S

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HONORABLE JUDGE RIGBY: Calling MCR080645,
People versus Tremaine Carroll.

Appearances, please.

MR. GOETHALS: Joe Goethals for Tremaine
Carroll. I am appearing remotely. My client is in
custody in the courtroom.

MR. DUTEMPLE: Eric DuTemple for the People.

THE COURT: All right. Good morning, folks.
Good morning, Defendant Carroll.

MR. GOETHALS: Good morning, Your Honor.

THE COURT: We are on today for two purposes.
The first is Defense's 995 motion, and the second is the
issue of how defendant is addressed in these proceedings.
I'm going to start with the 995 motion. The Court is in
receipt of the notice of motion and motion to set aside
information pursuant to Penal Code Section 995 filed by
the Defense. And I do appreciate the courtesy copy given
the, I'll call it, misunderstanding at the last court
appearance.

I am also in receipt of the People's response to
Defense's motion to set aside information pursuant to
Penal Code Section 995. And the Court appreciates the

1 courtesy copy there, as well, again given that
2 misunderstanding on the filing of those documents. The
3 Court has read and considered each of those documents.

4 Mr. Goethals, sir, I'll start with you. Are
5 there any other documents that the Court does not have
6 pertaining to the 995?

7 MR. GOETHALS: No documents, Your Honor.

8 THE COURT: And how about you, Mr. DuTemple?

9 MR. DUTEMPLE: No, Your Honor.

10 THE COURT: All right. So the Court has read
11 and considered those documents, as well as the
12 preliminary hearing transcript, as that was cited in the
13 papers. And the Court's tentative, and I will certainly
14 hear argument, is to deny the 995.

15 That being said, Mr. Goethals, it's your motion.
16 I'll start with you, sir.

17 MR. GOETHALS: Thank you, Your Honor. I will be
18 brief. I -- I take issue with this charge, and I take
19 issue with the way that it was presented at the
20 preliminary hearing. I believe that it is -- it is a
21 terrible precedent to set that -- [ZOOM TECHNICAL ISSUES]

22 THE COURT: Mr. Goethals, I'm sorry. I see your
23 lips moving, but I lost you after "...terrible precedent
24 to set..."

25 MR. GOETHALS: -- precedent to set --

1 THE COURT: I can hear you now. Go ahead.

2 MR. GOETHALS: -- that a witness may be called
3 with insufficient experience and who is not qualified as
4 an expert to testify that the words that were used had
5 their opposite meaning. And at its core, I think that is
6 what my issue was at the preliminary hearing, that the
7 prosecution in this case is trying use my client's words
8 that she wanted the witness to tell the truth as meaning
9 that she was threatening the witness. And I understand
10 all of the evidence that was presented, but at its core,
11 that is what was presented at the preliminary hearing,
12 and I don't believe that that should be sufficient.

13 I don't believe that the witness was qualified
14 as an expert. I don't believe that this is something
15 that a lay person can say that words have their opposite
16 meaning. And I don't believe that the witness had
17 sufficient experience or training to be able to present
18 to the Court credible evidence that saying that you want
19 someone to tell the truth means that you want them to
20 somehow not testify at a future court hearing or that you
21 are threatening them in some way.

22 It was a 115 prelim, so I'm not challenging the
23 sufficiency of the Count 1 and Count 2, but as to Count 3
24 it is -- it is more than a stretch. It was not
25 sufficient evidence to say my client was threatening or

1 intimidating or criminal threats. And the standard for
2 this particular charge has gone -- has been lowered and
3 lowered and lowered and lowered so that the jury
4 instruction for this now says any attempt, even if it's
5 not conveyed, even if it wasn't intended to be -- to
6 reach the person, even if it doesn't reach the person.

7 And I think that to deny this 995 motion takes
8 that bar even lower to a point where almost anything
9 would suffice as intimidation of a witness. And in the
10 future I would see lots and lots of other defendants
11 being charged with intimidation for having a phone call
12 where they say that person should tell the truth.

13 And, Your Honor, that is -- that is my argument,
14 and I -- I rest on the arguments in my papers. Thank you
15 very much.

16 THE COURT: Thank you.

17 Mr. DuTemple, response?

18 MR. DUTEMPLE: Yeah, just very quickly. We
19 didn't need an expert to testify as to what those words
20 meant. Basically, what Tremaine Carroll was asking
21 people to do for the price of \$500 was to intimidate our
22 witness and have her tell a story different than what she
23 already testified to. We don't need an expert witness to
24 testify what that means.

25 Now, certainly the Defense is going to have

1 another interpretation of those words, but that's an
2 issue for the jury. Any reasonable person can come to
3 that conclusion that she was trying to -- Defendant
4 Carroll was trying to intimidate the victim here in this
5 case, and the prior Court found that. I believe that a
6 jury certainly can find that.

7 Certainly, Defense could argue another way, but
8 this has nothing to do with expert testimony. This has
9 to do with the words that were said. And, basically,
10 Defendant Carroll, you know, was going to pay \$500 to
11 have someone march her up to -- or run up on someone and
12 have them tell something different than what they told
13 investigators in this case.

14 And with that, I'll submit.

15 THE COURT: Any response, Mr. Goethals?

16 MR. GOETHALS: No, Your Honor. The matter is
17 submitted.

18 THE COURT: All right. One moment.

19 (BRIEF PAUSE.)

20 THE COURT: As the Court indicated previously,
21 the Court has read and considered both the Defense's
22 motion as well as the People's response, as well as the
23 preliminary hearing transcripts as cited in those papers.
24 The Court has now considered the arguments of both
25 counsel. And upon consideration of those items, the

1 Court is adopting its tentative and the 995 motion by
2 Defense is denied.

3 That turns us now to the second issue, and that
4 is the issue regarding the reference to defendant and
5 gender identity. The Court -- let me turn to my other
6 notes. One moment.

7 (BRIEF PAUSE.)

8 THE COURT: The Court, again, will thank both
9 counsel for providing courtesy copies of their briefing.
10 The Court is in receipt of the defendant's brief in
11 support of the Court's ruling affirming defendant's right
12 to identify and be identified by her gender, as well as
13 the People's response to the Court's ruling to use
14 defendant's preferred pronouns, though different than the
15 defendant's biological sex.

16 Mr. Goethals, I'll start with you, sir. Am I
17 missing any documents or is that everything that's been
18 filed on this issue?

19 MR. GOETHALS: That is everything, Your Honor.

20 THE COURT: And how about you, Mr. DuTemple?

21 MR. DUTEMPLE: Yes, that was everything, Your
22 Honor.

23 THE COURT: All right. Thank you.

24 So the Court has read and considered both of
25 those documents. And the Court's tentative, and I'll

1 certainly hear argument, is to maintain the ruling that
2 defendant be referred to by preferred pronouns. With
3 that, the Court will hear argument.

4 And, Mr. DuTemple, since it was the People who
5 were objecting to the Court's admonition or ruling on
6 that, I'll let you go first.

7 MR. DUTEMPLE: Well, Your Honor, the bottom line
8 is here this is a biological male with male genitalia who
9 is currently housed in a male prison and is accused of
10 committing two rapes against two females, a crime that
11 can only be committed by a biological male. And as I
12 stated in my briefing, specifically in the case Varner,
13 the Court compelling us to use that language, which is
14 contrary to the facts, could indicate approval for the
15 defendant's legal position.

16 It certainly runs contrary to our legal theory
17 of the case, is that the defendant is using these
18 pronouns simply to get into a female prison so he can
19 carry on these unlawful sexual contacts, rapes. It runs
20 contrary to our case. It would lead to confusion at
21 trial in the court hearing -- any court hearings or
22 trials. And it's absolutely disrespectful to and
23 traumatic to the victims that would then have to testify
24 and have to worry about policing their language as to the
25 person that raped them.

1 And, again, I don't see any case law on point
2 that says the Court has to do one thing or another. It
3 should be dictated by common sense. And, you know, maybe
4 it doesn't matter if it's a 10851, a vehicle theft or
5 possession of drugs, but this is at the very core what
6 this case is about. This is someone who claims that they
7 are transgender, went to a female prison, raped two
8 people, and then was determined by the California
9 Department of Corrections that I guess you're not a
10 female anymore, and now they are back at a male prison.

11 And, again, this isn't about whether transgender
12 people should be treated with disrespect. That's not the
13 case at all. Everyone has a right to live their life,
14 but in this case, this goes contrary to what this case is
15 all about. And you're really handcuffing us by making
16 this order. And I think, you know, I would want some
17 further guardrails as to how I'm supposed to tell my
18 victims how are they supposed to testify based on this
19 order. It seems pretty problematic.

20 And with that, I'll submit.

21 THE COURT: Mr. Goethals, response?

22 MR. GOETHALS: Yes, Your Honor. I'm going to
23 agree in part with Mr. DuTemple that this -- this case
24 really is about setting a precedent across the board for
25 how all transgender individuals should be treated and

1 that it shouldn't be on a case-by-case analysis. This
2 case may be different factually, but it shouldn't be a
3 case where because of the facts that we treat the
4 defendant differently.

5 And I -- I understand that the language is new
6 and different. And I don't think that the Court is in
7 any way limiting what the prosecution can argue. The
8 prosecution's arguments are clear. And the prosecution's
9 theory is going to be clear, that there was an
10 intentional act by my client to get into the women's
11 prison for these reasons.

12 But my client is entitled to respect. All
13 defendants are entitled to respect. And this is an issue
14 statewide that we -- that we support. So I agree with
15 the Court, and I believe that the Court's tentative
16 should be adopted.

17 Thank you, Your Honor.

18 THE COURT: Any response, Mr. DuTemple?

19 MR. DUTEMPLE: People submit.

20 (BRIEF PAUSE.)

21 THE COURT: As I mentioned, the Court has read
22 and considered the briefing of both counsel. The Court
23 has now considered the arguments of both counsel. I will
24 note that in preparation for today, in considering your
25 briefing, the Court did read the authority cited by the

1 parties in their briefs. And the Court will note in
2 People v. Zarazua, 85 Cal.App.5th 639, at Page 641 of the
3 opinion, it states, "Parties are to be treated with
4 respect, courtesy and dignity -- including the use of
5 preferred pronouns. Failure to do so offends the
6 administration of justice. Nevertheless, given the
7 record here, we conclude any misconduct was not
8 prejudicial and therefore affirm."

9 The Court also looks at Page 646 of that same
10 opinion, in pertinent part, "Moreover, we note trial
11 courts have obligation to ensure litigants and attorneys
12 are treated with respect, courtesy, and dignity --
13 including the use of preferred pronouns. When court
14 proceedings fall short of that, judges should take
15 affirmative steps to address the issue."

16 And looking also at that Footnote 2 of that
17 opinion, "Though we needn't decide whether misconduct
18 occurred, we note that because of the unique function
19 prosecutors perform in representing interests of -- and
20 exercising the power of -- the state, they 'are held to
21 an elevated standard of conduct'" -- The Court is not
22 going to read each of the citations in the footnote.
23 Counsel can refer to the opinion -- "and should use a
24 defendant's preferred pronouns 'out of respect for the
25 litigant's dignity'...Not doing so undermines the

1 administration of justice, can inject prejudice into
2 proceedings, and can suggest a defendant is not
3 credible...Additionally, to ensure a litigant is treated
4 with dignity, a trial court can admonish counsel to use
5 the litigant's preferred pronouns."

6 The Court also looks at California Judicial
7 Canons 3(B)(5) and 3(B)(6). 3(B)(5) states, " A judge
8 shall perform judicial duties without bias or prejudice.
9 A judge shall not, in the performance of judicial duties,
10 engage in speech, gestures, or other conduct that would
11 reasonably be perceived as bias, prejudice or harassment,
12 including but not limited to bias, prejudice, or
13 harassment based upon race, sex, gender, gender identity,
14 gender expression, religion, national origin, ethnicity,
15 disability, age, sexual orientation, marital status,
16 socioeconomic status, or political affiliation, or sexual
17 harassment."

18 3(B)(6) states, "A judge shall require lawyers
19 in proceedings before the judge to refrain from
20 manifesting, by words or conduct, bias, prejudice or
21 harassment based upon race, sex, gender, gender identity,
22 gender expression, religion, national origin, ethnicity,
23 disability, age, sexual orientation, marital status,
24 socioeconomic status, or political affiliation, or sexual
25 harassment against parties, witnesses, counsels or

1 others. This canon does not preclude legitimate advocacy
2 when race, sex, gender, gender identity, gender
3 expression, religion, national origin, ethnicity,
4 disability, age, sexual orientation, marital status,
5 socioeconomic status, political affiliation, or other
6 similar factors are issues in the proceeding."

7 Based on my review of all of these items, the
8 Court does not believe that by maintaining my order that
9 we respect not just the defendant but all parties'
10 preferred pronouns, I do not see that in any way limiting
11 the People's arguments or theory. The People can still
12 certainly argue that they do not believe, if they so
13 choose, based on my understanding of your argument, that
14 Defendant Carroll, in fact, identifies a particular way
15 or has the ability or inability to commit certain
16 conduct.

17 The Court is not limiting -- not limiting
18 arguments or theories, simply maintaining its order that
19 the defendant be referred to by preferred pronouns or, as
20 we've discuss at previous court dates, neutral terms such
21 as "the defendant" or "Defendant Carroll." That will be
22 the order.

23 Mr. DuTemple, with respect to guardrails for
24 witnesses, that is something that can be addressed at a
25 pre-trial conference should we get to that point.

1 Anything further by the Defense?

2 MR. GOETHALS: Your Honor, my client and I thank
3 you for upholding her dignity in this courtroom. We
4 appreciate it very much. And I need to notify the Court
5 that Mr. DuTemple provided me with some additional
6 discovery. That discovery poses a challenge for me. I
7 now have a unavoidable and unwaivable conflict going
8 forward, and I must withdraw. I can no longer represent
9 my client.

10 THE COURT: All right. Based on the Defense
11 Counsel, Mr. Goethals' declaration of conflict, the Court
12 will allow him to withdraw as counsel of record.

13 Defendant Carroll, you do have the right to have
14 an attorney to represent you through every stage of these
15 proceedings. If you cannot afford an attorney at this
16 time, the Court will appoint one today at no cost to you.
17 Are you able to afford an attorney at this time?

18 THE DEFENDANT: No.

19 THE COURT: Would you like me to appoint one?

20 THE DEFENDANT: No.

21 THE COURT: Would you like to represent yourself
22 or seek private counsel?

23 THE DEFENDANT: Um, represent myself.

24 THE COURT: All right. So that requires what we
25 call a Faretta hearing. So what we're going to do is

1 provide you the paperwork that we need you to fill out.

2 And then, Mr. DuTemple, to give Defendant
3 Carroll time complete that paperwork, are you available
4 to return tomorrow for that Faretta hearing?

5 MR. DUTEMPLE: I am.

6 THE COURT: All right.

7 So we'll go ahead and I'll have madam clerk
8 provide you with the paperwork for that, and we're going
9 to return tomorrow at 8:30 in this department, 21, to
10 hear that Faretta hearing.

11 Anything further by the People?

12 MR. DUTEMPLE: Yes, Your Honor. Just there was
13 a lot of talk about dignity for the defendant. I think
14 that we forgot about the dignity of the victims in this
15 case. But with that, I'll submit. I have nothing
16 else.

17 THE COURT: All right.

18 And Defendant Carroll, before I let you speak I
19 just want to remind you that everything said on the
20 record is being taken down by the court reporter for the
21 court record. And everything you say is being heard by
22 the attorney prosecuting your case. With that
23 understanding, did you still wish to address the Court?

24 THE DEFENDANT: Yes.

25 THE COURT: Go ahead.

1 THE DEFENDANT: Um, it's -- everything that --
2 everything the district attorney said is part of the
3 record too and --

4 (COURT REPORTER INTERRUPTS FOR CLARITY.)

5 THE COURT: Just one moment. There was some
6 background noise. I apologize. Go ahead.

7 THE DEFENDANT: I said everything the district
8 attorney said is a part of the record too. And his
9 continued bias towards me would -- would, you know,
10 starting off with Mr. Carroll, I don't know if the
11 district attorney is contacting the prison and telling
12 them not to allow me to shave so I could appear this way.

13 I don't know if the district attorney
14 intentionally had Rodriguez sitting right here next to me
15 and I'm one of the victims, as he's from CCWF. And I'm
16 innocent until proven guilty. And the district attorney
17 is making me out to be guilty, guilty of something that I
18 haven't been found guilty of.

19 Further, CDCR didn't -- CDCR never said that I'm
20 not transgender or I'm not a woman. They sent me back --
21 they sent me back to a men's prison based on these
22 allegations. And them sending me back is all part of --
23 of them trying to give the district attorney legal aid to
24 not use proper pronouns and to -- and to, basically, try
25 to railroad me.

1 So, um, I just wanted to -- I just wanted to
2 state those things on the record. I don't know how
3 this -- how I'm supposed to be separated from Rodriguez
4 and they come sit me right next to him, and I'm one of
5 the plaintiffs in a lawsuit against him. I'm also one of
6 the victims this district attorney failed -- he didn't
7 file charges against Rodriguez for me or any other
8 transwomen who were victims of his at CCWF.

9 THE COURT: All right. Thank you.

10 All right. So, folks, we will return tomorrow
11 at 8:30 for the Faretta hearing.

12 (PROCEEDINGS ADJOURNED.)

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1 STATE OF CALIFORNIA)
 2 COUNTY OF MADERA) SS.

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I, THERESA TRAYLOR, Certified Shorthand Reporter, in and for the state of California, do hereby certify:


That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing is a true record of the testimony given.

I further certify that I am neither financially interested in the action, nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

DATED: DECEMBER 31, 2024
 Madera, California





 THERESA TRAYLOR, CSR No. 10803