

1 DISTRICT COURT, EL PASO COUNTY)
STATE OF COLORADO)
2 270 South Tejon)
Colorado Springs, Colorado 80903)
3 -----)

4 **PEOPLE OF THE STATE OF COLORADO,**)
)
5 Plaintiff,)

6 vs.) **FOR COURT USE ONLY**
) -----

7 **MARSHALL SCOTT BEAVER,**)
)
8 Defendant.) Case No. 19CR3081
)
9 -----) Division 12

10 **For the People:**)
)
MS. NICOLE TRIOLA #051455)
11 State District Attorney's Office)
105 E. Vermijo Avenue, Suite 500)
12 Colorado Springs, Colorado 80903)
(719) 520-6000)

13 **For the Defendant:**)
)
14 MR. ADAM STEIGERWALD #040092)
15 (Appeared via WebEx))
State Public Defender's Office)
16 30 E. Pikes Peak Ave., Suite 200)
Colorado Springs, Colorado 80903)
17 (719) 475-1235)

18 -----
COURT REPORTER'S TRANSCRIPT
19 -----

20
21 The matter came on for Trial on
22 Tuesday, October 27, 2020, before the
23 HONORABLE ROBERT LOWREY, District Court Judge.

24
25 Reported by Sandra Henderer, CSR, RPR, CRCR, CRR

P R O C E E D I N G S

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(Court convened at 8:33 a.m.)

THE COURT: Good morning. Please be seated. We're on the record this morning on 19CR3081, Marshall Beaver. Mr. Beaver is in the back.

Mr. Beaver, do you know where your attorney is this morning?

THE DEFENDANT: I believe he's calling in.

THE COURT: All right. That was not allowed by the Court. He's supposed to be here in person this morning.

Is Mr. Steigerwald on the phone? All right.

Is there anybody from the Public Defender's Office on the phone on behalf of Mr. Steigerwald this morning?

MS. O'RILEY: Your Honor, Deana O'Riley from the Public Defender's Office. I'm not -- I'm not handling Adam's matter today. I was just stopping in to see if there's anything that the Court or Adam needed from our office. So I'm texting him right now. I'm

1 pretty sure he's having problems logging in. I
2 think he used a different link than I used.

3 THE COURT: I couldn't hear that.

4 MR. STEIGERWALD: This is
5 Adam Steigerwald on the phone.

6 THE COURT: Good morning,
7 Mr. Steigerwald. We're all present in court
8 today.

9 Mr. Steigerwald, why are you not here
10 this morning?

11 MR. STEIGERWALD: That's pursuant to
12 CJO 2027 and 2029, and I'm appearing via WebEx
13 because I have informed the Court, pursuant to
14 policy of our office, I wouldn't be proceeding
15 to trial today. We're asking for a continuance.

16 THE COURT: It doesn't matter what the
17 CJO said. I ordered everyone to be here this
18 morning to talk about this case. The last thing
19 I said is we will meet here in Division 12
20 tomorrow morning at 8:30. There's no allowance
21 for appearing by phone.

22 MR. STEIGERWALD: Your Honor, the CJO
23 says shall appear via WebEx.

24 THE COURT: What CJO are you talking
25 about?

1 MR. STEIGERWALD: 2029. Referencing
2 2027.

3 THE COURT: Read to me what exactly
4 you're relying upon.

5 MR. STEIGERWALD: Any criminal
6 proceedings that can be conducted remotely shall
7 be conducted remotely either by phone, WebEx or
8 some other audio/visual device.

9 THE COURT: That doesn't apply. We're
10 set for trial this morning. This is not any
11 other proceeding. This is trial. You are
12 ordered to be here this morning.
13 Nevertheless --

14 MR. STEIGERWALD: I understand.

15 THE COURT: -- you've chosen not to
16 appear. I understand that. Nevertheless, we're
17 planning to proceed to trial this morning.

18 Yesterday, if I understood you
19 correctly, after your Motion to Continue was
20 denied, you said that it didn't really matter.
21 You weren't going to appear for trial anyway.
22 Is that still your position this morning?

23 MR. STEIGERWALD: No, I would not
24 characterize it that way, Your Honor. I did not
25 say it doesn't really matter.

1 THE COURT: Tell me -- tell me how you
2 characterize it then.

3 MR. STEIGERWALD: I'm trying to do so.
4 I apologize.

5 It is our office policy since we have
6 a client who is willing to waive speedy trial
7 and the numbers are such that we have a good
8 faith belief it is not safe to proceed to trial,
9 and we are not required to proceed to trial, and
10 I'm -- and that's how I feel. I laid it out in
11 the motion. I understand the Court didn't see
12 the motion until we appeared in court. I
13 understand the Court doesn't believe what the
14 media is reporting or parts of it, you said on
15 the record yesterday, and that's our position.

16 THE COURT: Well, I think you're
17 mischaracterizing what I said. I don't know
18 what the media is reporting exactly nor do I
19 have any reason to believe or disbelieve it.

20 What I do believe is the procedures
21 we've put in place in El Paso County here at the
22 courthouse are safe to proceed to trial. That's
23 what I continued to express yesterday. The
24 procedures we have have been approved by the
25 El Paso County Health Department. We've been

1 approved by the Chief Justice of the Colorado
2 Supreme Court.

3 So if I'm understanding what your
4 position is, you have an office policy that says
5 you don't have to come to trial basically if you
6 think it's unsafe. Is that what it amounts to?

7 MR. STEIGERWALD: Pursuant to the
8 current data, yes.

9 THE COURT: When was this office
10 policy developed?

11 MR. STEIGERWALD: It's been in place
12 during the pandemic, Your Honor. We've just
13 never come to this. The numbers in El Paso
14 County and the state of Colorado has never been
15 what they are today. Yesterday was the worst
16 day in the state of Colorado. The numbers in
17 El Paso County is at a severe rate, and the
18 hospitalization rate is the worst it has ever
19 been.

20 THE COURT: So your position is as
21 long as you think it's unsafe, you don't have to
22 do any trials in El Paso County; is that
23 correct?

24 MR. STEIGERWALD: If our client is
25 willing to waive speedy trial, that's correct.

1 THE COURT: If your client is not
2 willing to waive speedy trial, then you think
3 it's safe enough to proceed to trial. Is that
4 what you are telling me?

5 MR. STEIGERWALD: If our client is not
6 willing to waive speedy trial, then we have to
7 balance a number of other factors and make a
8 decision in connection with our office and the
9 State office. That's not the case in
10 Mr. Beaver's case, Judge.

11 THE COURT: Is this a written policy
12 you're talking about?

13 MR. STEIGERWALD: It is not.

14 THE COURT: Well, who developed this
15 policy?

16 MR. STEIGERWALD: A supervisor at the
17 Public Defender's Office.

18 THE COURT: Are you talking about the
19 El Paso County -- Colorado Springs Public
20 Defender's Office?

21 MR. STEIGERWALD: Yes, sir.

22 THE COURT: So if I'm understanding
23 this position then, these trials can be
24 continued indefinitely as long as your client
25 waives speedy trial. You would never have to go

1 to trial as long as you deem it unsafe and your
2 client is willing to waive speedy. Is that also
3 correct?

4 MR. STEIGERWALD: I don't believe
5 that's the case, Judge. As long as the numbers
6 are such, as long as the Health Department is
7 not acting safely, then that would be the case.
8 This pandemic continues to worsen, and the
9 County Health Department is nonresponsive to
10 those issues, then that would be the case, but I
11 don't believe that will be the case.

12 THE COURT: Well, COVID is not going
13 away. We all understand that. It's going to be
14 around probably for years. So at what point do
15 you think it's going to be safe?

16 MR. STEIGERWALD: When we're not in
17 the middle of the worst spike in our community
18 that we have.

19 I've done a trial. I know that
20 Your Honor and Division 12 has not. I've done a
21 trial during the COVID pandemic on August 26,
22 and the numbers were dramatically different than
23 they are now.

24 This is not a position I take lightly.
25 It's not a position our office takes lightly,

1 but it is our position.

2 THE COURT: Do you have any empirical
3 evidence that we are unsafe here in El Paso
4 County with what you told me here today about
5 these numbers you're referring to?

6 MR. STEIGERWALD: I -- I understand
7 the Court does not believe or disbelieve the
8 numbers. I can't -- I can't do anything other
9 than provide the Court the information that the
10 county and the state and the national health
11 organizations are providing to us.

12 The governor has restricted groups of
13 10 people from two households in response to
14 these numbers. Basically a trial would require
15 in the neighborhood of 15 to 20 people in a room
16 at a time, and that's after jury selection; all
17 from different households.

18 THE COURT: So if your client is not
19 willing to waive speedy, you would balance the
20 interest and find it safe enough to proceed to
21 trial, but if your client is waiving speedy, you
22 find it is not safe. Is that the bottom line?

23 MR. STEIGERWALD: I think the bottom
24 line is is if my client is not willing to waive
25 speedy trial, which is not the situation with

1 Mr. Beaver, then that right of his would be
2 balanced with a number of other factors to
3 include an attorney's willingness to do the
4 trial, how unsafe we believe the trial is, and
5 what policies and procedures are in place with
6 the Health Department and the courthouse.

7 THE COURT: All right. Ms. Triola, do
8 you have anything to say this morning that
9 hasn't already been said?

10 MS. TRIOLA: Your Honor, I think the
11 People, given this, may be filing a written
12 motion to possibly look to disqualify the PD's
13 office from continued representation of
14 Mr. Beaver, but we can file a written motion to
15 that effect.

16 THE COURT: Well, we were set for
17 trial today. As far as the Court is concerned,
18 we were ready to proceed to trial this morning.
19 Mr. Steigerwald, of course, has put this Court
20 in a position of having no choice but to order
21 Mr. Steigerwald to appear for trial this
22 morning. That order is effective immediately
23 right now. We will plan to proceed this morning
24 as we were scheduled to proceed.

25 I don't have any empirical numbers to

1 suggest it's unsafe. I understand if I believe
2 the numbers, if I accept them, that
3 Mr. Steigerwald has presented that numbers
4 have gone up in El Paso County over the last
5 couple of weeks, but that alone doesn't suggest
6 to me that it's unsafe to conduct a trial in
7 El Paso County.

8 The procedures have been in place.
9 They have worked well as I understand it. I
10 have no information whatsoever to suggest anyone
11 has become ill or suffered as a result of being
12 a participant in a trial in El Paso County, and
13 trials have been going on now for about two and
14 a half months, as I recall.

15 This division has not come up for a
16 trial yet. The results that I've heard have
17 been very good. The juries have been pleased.
18 No one has been ill. So I believe it is safe to
19 proceed to trial. So that will be the order of
20 the Court. We plan to proceed to trial.

21 MR. STEIGERWALD: Your Honor,
22 essentially I have provided the Court with
23 empirical evidence to support. It's just that,
24 again, the Court does not believe. I -- I
25 understand the Court's position. I'm not going

1 to trial.

2 THE COURT: First of all, I didn't say
3 I didn't believe your numbers. I said I don't
4 believe or disbelieve because I have no
5 evidence. I have no medical expert here telling
6 me those numbers.

7 What I said was if I accepted it as
8 true, I still believe it's safe to proceed to
9 trial in El Paso County. All the evidence I
10 have here is from conversations in the
11 courthouse and the responses from other judges
12 that say it's safe to proceed.

13 I also know our policy has been
14 approved by the chief justice as well as the
15 deputy director of the El Paso County Health
16 Department who's also our elected coroner in
17 El Paso County. That's the empirical evidence I
18 rely on that says it is safe to proceed.

19 So what is it you just said there at
20 the end, Mr. Steigerwald? You regarded the last
21 -- very last statement you made was regarding
22 what?

23 MR. STEIGERWALD: I apologize. I
24 understand the Court's position. I will not be
25 proceeding to trial.

1 THE COURT: So you're refusing to
2 represent your client here today. Is that what
3 you are telling me?

4 MR. STEIGERWALD: I believe I am
5 representing my client, Your Honor. I'm
6 refusing to proceed to trial.

7 THE COURT: Well, let's rephrase.
8 You're refusing to appear and represent your
9 client in trial today; is that correct?

10 MR. STEIGERWALD: I'm refusing to
11 appear in trial.

12 THE COURT: You're violating a direct
13 order of this court. The Court has no choice
14 but to find you are in contempt of court at this
15 point in time. There's a direct contempt of
16 court. We have to deal with sentencing that is
17 appropriate under these kinds of conditions.

18 Mr. Steigerwald, we can proceed to --
19 I'll let you have some leeway in how you want to
20 proceed with respect to sentencing. If you want
21 some time to deal with that, we can set it for
22 that -- for a citizen factor.

23 MR. STEIGERWALD: That would be fine.

24 THE COURT: When would you like to
25 appear? Obviously we have some time this week

1 now that we're not going to trial. I'm not
2 going to require your client to go to trial by
3 himself. That certainly violates his
4 constitutional rights.

5 MR. STEIGERWALD: I -- if the Court is
6 willing to give me time, I would prefer towards
7 the end of the week so I can -- so I can speak
8 to the higher-ups in my office, and then the
9 State Public Defender's Office.

10 THE COURT: All right. What's the
11 People's position?

12 MS. TRIOLA: Your Honor, we would
13 defer to the Court. That's fine. We don't have
14 a preference on that.

15 THE COURT: All right. We can do
16 Thursday afternoon about 1:30 or two o'clock or
17 we can set it first thing Friday morning.

18 Do we have anything already set, Dana?

19 COURT CLERK: No.

20 THE COURT: Okay.

21 MR. STEIGERWALD: I'm available.

22 THE COURT: How about two o'clock
23 Thursday afternoon?

24 MR. STEIGERWALD: That's fine.

25 THE COURT: I want to make it clear

1 for the record, the Court does not do something
2 like this very lightly. Certainly never in the
3 history of this division has this ever happened.
4 I've never had an attorney engage in what I
5 believe is only inexplicable behavior in
6 refusing to appear for trial.

7 It is the job of the Court to manage
8 dockets and set trials; not the job of the
9 public defender or any other defense counsel.
10 To adopt Mr. Steigerwald's position, seems to
11 me, it would create chaos. Any time someone
12 who's out of custody who presents the issue and
13 they want a continuance would simply be given
14 it. That cannot be a proper way for any sort of
15 management of the criminal justice system
16 anywhere as far as this Court is concerned.

17 I note this trial was set back in May
18 for July. It continued in July because of the
19 pandemic. We set this date which was accepted
20 by the Defense at that time, and here we are
21 ready for trial today.

22 I don't have any belief that it would
23 be safer to do this trial four months from now
24 or six months from now as it is today. If you
25 look at the numbers, I don't know if they are

1 going to get any better. We have no way of
2 knowing that. I don't believe it's appropriate
3 that a trial continue forever when we do have
4 safe procedures in place as far as this Court
5 knows.

6 So that's the thinking of the Court
7 today. I find this unfortunate for both the
8 client and Mr. Steigerwald and the court system.
9 Nevertheless, that is the position the Court has
10 been placed in, and that's the way we'll
11 proceed.

12 We'll see everyone back here on
13 Thursday afternoon at two o'clock.
14 Mr. Steigerwald, it is a personal appearance.
15 You don't call in for that. That is a
16 sentencing so you need to be here in person.

17 MR. STEIGERWALD: I understand.

18 COURT CLERK: Judge, speaking about
19 the trial, does Mr. Beaver need to be here as
20 well, and we'll reset him at that time?

21 THE COURT: That will probably be the
22 smartest thing to do. Can you be here Thursday
23 afternoon at two o'clock? You were set for
24 trial this week.

25 THE DEFENDANT: Yes. I just -- I'm

1 supposed to pick up my kids that day.

2 THE COURT: What were you planning to
3 do while you were in trial?

4 THE DEFENDANT: We -- I'm not sure. I
5 hadn't figured that part out.

6 THE COURT: You'll have a chance to
7 talk with your attorney between now and then to
8 discuss resetting this case, and -- if he's
9 still your attorney. I don't know if he will be
10 or not -- but we'll talk about resetting your
11 case as well on Thursday afternoon. All right.
12 So be here at two o'clock Thursday afternoon.

13 THE DEFENDANT: Okay.

14 THE COURT: All right. Anything else
15 from either party?

16 MS. TRIOLA: No, Your Honor.

17 MR. STEIGERWALD: No, Your Honor.

18 THE COURT: We'll be in recess.

19 - - -

20 **(Proceedings adjourned at 8:52 a.m.)**

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COURT REPORTER'S CERTIFICATE

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3 I, Sandra Henderer, CSR, RPR, CRCR,
4 CRR, within the State of Colorado, do hereby
5 certify that the within and foregoing Court
6 Reporter's Transcript is a true and complete
7 transcription of my shorthand notes taken during
8 a WebEx hearing in my capacity as Official
9 Reporter, within and for the County of El Paso,
10 Fourth Judicial District, State of Colorado.

11 In witness hereof, I have hereunto set
12 my hand this 27th day of October, 2020.

13
14
15 /s/ Sandra Henderer

16 _____
17 Sandra Henderer, CSR, RPR, CRCR, CRR
18 Certified Realtime Court Reporter
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