

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

---oOo---

BEFORE THE HONORABLE MORRISON C. ENGLAND, JR., JUDGE

---oOo---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 2:06-cr-0035

VOLUME V

ERIC McDAVID,

Pages 925 to 935

Defendant.

_____ /

---oOo---

REPORTER'S TRANSCRIPT

COURT PROCEEDINGS

TUESDAY, SEPTEMBER 18, 2008

---oOo---

Reported by: DIANE J. SHEPARD, CSR #6331, RPR

APPEARANCES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

For the Government:

McGREGOR W. SCOTT
UNITED STATES ATTORNEY
501 I Street, Suite 10-100
Sacramento, California 95814
BY: R. STEVEN LAPHAM
ELLEN ENDRIZZI
Assistant U.S. Attorneys

For Defendant, Eric McDavid:

MARK J. REICHEL
Attorney at Law
555 Capitol Mall, Suite 600
Sacramento, California 95814

1 SACRAMENTO, CALIFORNIA

2 TUESDAY, SEPTEMBER 18, 2008

3 ---oOo---

4 (Jury out.)

5 THE CLERK: Calling criminal case 06-0035, United
6 States v. Eric McDavid. On for jury trial, Your Honor.

7 THE COURT: Good morning. We're outside the presence
8 of the jury at this time.

9 All right. I've been informed, Mr. Reichel, that you
10 may have done something that --

11 MR. REICHEL: I apologize, Your Honor. I lifted a
12 box to get into my truck at 8:30 to come over here, and it felt
13 like a pulled muscle that -- I believed it was just a pulled
14 muscle, but since that time I have real trouble getting breath
15 -- it's very painful to take a full breath. And I can't sit
16 down right now. And I have real trouble getting air. So I
17 don't know what could have caused it. I thought it was just a
18 pulled muscle. I believed it was a pulled muscle, but I'm
19 trying to figure a way to deal with this for a little while
20 here.

21 THE COURT: The reason I obviously have to talk to
22 you about this is that if it's going to affect your ability to
23 represent Mr. McDavid at this time I need to know that.

24 So I think that's the first question that I have
25 right now is, do you feel that you are physically capable of

1 continuing on with the cross-examination at this point?

2 MR. REICHEL: Well, what I'm asking for is a 15- to
3 30-minute break. I'm not capable of doing it right now. Until
4 I can figure out maybe a position or something where I get
5 better air, and I -- it may be that I need to walk for a minute
6 to get blood flow or I -- you know, I don't know. I do not --
7 I can't sit down, that's for sure, right now, so.

8 MR. LAPHAM: Your Honor, we do have a nurse in the
9 building.

10 MR. REICHEL: Yeah, I would love to see --

11 THE COURT: Yes. I think the best thing to do right
12 now would be to tell the jury we're not going to start until
13 9:30.

14 MR. REICHEL: Thank you.

15 THE COURT: Go downstairs and see the nurse and
16 let --

17 MR. REICHEL: Appreciate it, Your Honor.

18 THE COURT: Let me know as soon as possible. Let me
19 know by 9:30 a.m., so I can at least tell them. All right.
20 We'll be in recess until 9:30.

21 (Break taken.)

22 (9:35 a.m.)

23 (Jury out.)

24 THE COURT: Once again, we're outside the presence of
25 the jury. Mr. Reichel, you were able to go to the nurse here?

1 MR. REICHEL: Yes. I talked to the nurse, Your
2 Honor, and I'm happy that all my vital signs are fine.

3 She theorized that I may have a pulled or torn
4 ligament in some of the rib areas, and I kind of concur. The
5 problem I have is that breathing is very, very difficult and as
6 a result, I do avoid it, and it prevents me from talking, as
7 well too much, and so I just got --

8 THE COURT: Are you going to the --

9 MR. REICHEL: I'm going to go to the doctor
10 immediately. I can't imagine -- I can't see how by, you know,
11 the noon hour or something I'll be in a different situation.
12 But you never know. Mr. Lapham actually has some experience
13 with this type -- possibly this injury.

14 But, anyway, there is a possibility I could be ready
15 to go at 1:30. I'm going to go to a doctor right from here.
16 So I'd ask that we come back at 1:30. If it's something where
17 they are going to give muscle relaxers --

18 THE COURT: Well, if they give you muscle relaxers,
19 then that's it.

20 MR. REICHEL: I'm having trouble getting air, and I'm
21 in extreme pain.

22 And I apologize to the Court and the parties. I have
23 witnesses today that are coming down off of work as well that
24 were going to be here as well, so it's to the defendant's
25 inconvenience as well.

1 THE COURT: Anything at all from the Government?

2 MS. ENDRIZZI: No, Your Honor. We're in a situation
3 where his health takes precedence. I would like to be able to
4 go this afternoon.

5 THE COURT: What I'm trying to think of right now is
6 a way to have you contact the Court sometime before, and if the
7 jurors could call in, and we could have a call-in number, so if
8 it's not going to go, it just won't go, and everyone would
9 know.

10 MR. REICHEL: I can call you at 11:30.

11 (Discussion between Court and Deputy.)

12 THE COURT: We're just going to come back at 1:30,
13 and if you're not able to be here, let me know.

14 MR. REICHEL: I will. We'll let you know right away.

15 THE COURT: By noon if you can.

16 MR. LAPHAM: Your Honor, maybe we should discuss that
17 before the jury comes out, a contingency plan. Would we
18 possibly be in session on Thursday or Friday if we lose a day
19 today?

20 MR. REICHEL: Friday is very difficult for me.
21 Thursday as well.

22 THE COURT: I'm out of town after criminal calendar
23 on Thursday, and Friday I've got civil calendar.

24 MR. REICHEL: Friday I have a three-strikes
25 preliminary that has been set for months with five

1 co-defendants. And I'm available Monday.

2 THE COURT: My only contingency I can think of is
3 that we go Monday.

4 MR. REICHEL: I'm available Monday and Tuesday.

5 THE COURT: Any conflicts?

6 MR. LAPHAM: None.

7 MS. ENDRIZZI: No, Your Honor.

8 THE COURT: Okay. That's all we can do. Thank you.

9 (Jury in.)

10 THE COURT: And for the record, the jurors have
11 entered the courtroom.

12 Good morning, ladies and gentlemen. I apologize for
13 the delay in bringing you out. I'd ask that you not get too
14 comfortable right now. We're going to be taking an unexpected
15 break this morning.

16 This morning, on the way to court, Mr. Reichel
17 apparently did something I think we all may have done at some
18 point in time, tried to pick up a box or did something, and may
19 have possibly torn ligaments in the rib cage area, which
20 affects his ability to breathe at this point in time.

21 And our nurse here at the building has strongly
22 advised that he go to a physician immediately to see what the
23 situation is.

24 I think, obviously, if you've ever been in any
25 situation like this, it makes it very difficult to concentrate

1 and do anything. So what I've done is I'm going to order a
2 recess this morning, and we'll come back at 1:30. And,
3 hopefully, we will know that Mr. Reichel can continue, or if
4 there's been some other developments, we'll advise you at that
5 time. I apologize for what is an unexpected delay, but
6 sometimes things happen this way.

7 I've talked to counsel about what would happen as far
8 as the timing. I don't know how it's going to affect future
9 evidence at this point in time. There may be things that we
10 can do. But right now it does not appear -- in fact, I know
11 it's not going to happen -- that we're going to be able to go,
12 if we needed to, any part of Thursday or Friday, so that won't
13 affect the scheduling this week.

14 There may, however, be a necessity of going maybe on
15 Monday of next week. I'm not sure. We just won't know until
16 we find out this afternoon. So I'll let you know as soon as I
17 can and keep you apprised and updated, so that you can adjust
18 accordingly.

19 And, again, I apologize for this unexpected turn of
20 events, but it's just simply unavoidable at this point in time.
21 Any questions at all? Yes.

22 JUROR 1. As far as deliberation, Your Honor, that
23 would be after Monday then?

24 THE COURT: If we go Monday. It could be -- in
25 theory, what we were planning on trying to do is to have the

1 evidence presented by tomorrow, even hopefully get the
2 instructions to you, and so that you could have started
3 deliberating. It would have been pushing it very hard to do
4 that, but that was the intent. I don't know how that's going
5 to affect it today.

6 But if it -- remember, like I said, we're in the
7 evidence portion of the trial Monday, Tuesday, Wednesday. But
8 once you begin deliberations, it's every day or -- yes, it goes
9 Monday through Friday then, if you need to do so. That's
10 something I can't tell you.

11 And the reason we can't go Thursday, I have a
12 criminal calendar on Thursday morning that deals with another
13 aspect of the court, and plus I have to go out of town that
14 morning. And on Friday I've got another civil calendar that's
15 going on. The attorneys are also in other court appearances on
16 that date. We've all scheduled around it. That's the reason
17 why.

18 Any other questions at this time? You're free to go.
19 You don't have to stay here in the jury deliberation room or
20 downstairs. Just as long as you return here by 1:30 p.m.
21 today.

22 Remember your admonitions regarding discussing the
23 case, forming opinions. And, also, let me remind you, too,
24 please, don't read any newspaper reports or television or radio
25 broadcasts regarding this trial. Thank you. We'll see you

1 back here at 1:30 p.m.

2 (Jury out.)

3 THE COURT: All right. If nothing else, see you at
4 1:30 p.m.

5 Mr. Reichel, please call as soon as you find any
6 information out. And let's have a fail safe of by noon.

7 MR. REICHEL: Okay.

8 THE COURT: Thank you.

9 (9:42 a.m.)

10 (Break in proceedings.)

11 (Jury in. 1:35 p.m.)

12 THE COURT: All right. Good afternoon, ladies and
13 gentlemen. As you can see, Mr. Reichel is not present at this
14 time. We have spoken with his investigator, and apparently he
15 is being -- there is some concern that there may even be a
16 fractured rib of some type, and he is being x-rayed at this
17 point in time, so he will not be able to return this afternoon.

18 So at this point in time, I'm going to assume that we
19 will be commencing tomorrow morning at our normal time. If
20 something happens in the interim period of time, either the
21 Deputy or the Jury Administrator will contact you all at the
22 numbers that we have. And I don't know if they are all cell
23 phone numbers or home numbers, but I would ask that you please
24 check any messages that you may have on whatever number you
25 gave us, your home or cell, so that we can give you the latest

1 information.

2 We will be in touch with him as much as possible
3 during the afternoon. And as soon as we have any additional
4 information, we will let you know.

5 I'm sorry. I don't have any more information other
6 than you are going to be excused now with remembering, please,
7 to not listen to any radio, TV reports, read the newspaper or
8 discuss the case or form any opinions. Thank you.

9 If nothing else, thank you. We'll see you tomorrow
10 morning at 9:00.

11 (Jury out.)

12 THE COURT: All right. Mr. Lapham, Ms. Endrizzi,
13 obviously there's nothing we can do at this point in time since
14 we don't have Mr. Reichel present, so we'll see you tomorrow
15 morning at 9:00. Court's adjourned.

16 (Court adjourned. 1:40 p.m.)
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, Diane J. Shepard, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/S/ DIANE J. SHEPARD
DIANE J. SHEPARD, CSR #6331, RPR
Official Court Reporter
United States District Court