

The 'Non' Testimony of Officer Chris Frosch

MR. RICHARD C. MOSTY: May we also
9 identify that Mr. Frosch says the same thing?

10 THE COURT: Mr. Frosch, is that your
11 answer?

12 MR. FROSCH: Yes, sir, it is.

13 MR. RICHARD C. MOSTY: So, now we
14 can't even find out who was involved?

15 THE COURT: Just a minute. Just a
16 minute. Just a minute, gentlemen.

17 All right. All right. The Court's
18 ruling is -- the Court's ruling stands as it is, as it
19 has been expressed. And if you object to that, we will
20 note your objection.

21 MR. RICHARD C. MOSTY: No. My inquiry
22 is, I want to know who else was involved. The State
23 ought to know, this is exculpatory evidence. This ought
24 to be turned over.

25 THE COURT: If the State knows who is
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1 involved, please inform the defense.

2 MR. RICHARD C. MOSTY: I mean, first,
3 there ought to be an investigation going on in Dallas
4 County as we speak about this.

5 THE COURT: Well, there may very well
6 be one, but right now, we're in a trial in Kerrville. We
7 have completed this hearing, and it's five minutes until
8 9:00, and at 9:00 o'clock I intend to continue the cross
9 examination of Darin Routier -- or the direct (sic)
10 examination by Mr. Davis.

11 MR. RICHARD C. MOSTY: When is the
12 State going to give me that information? I mean, it's
13 not going to do me much good in May.

14 THE COURT: Well, the State -- Mr.
15 Mosty, we understand that. Mr. Davis, should you learn
16 the information, give it to the defense as soon as
17 possible.

18 MR. GREG DAVIS: Yes, sir, I will.

19 MR. RICHARD C. MOSTY: And are they
20 under a duty to inquire?

21 THE COURT: Yes, they are under a duty
22 to inquire.

23 MR. RICHARD C. MOSTY: I just want to
24 be clear, because if he never asks him, he might never
25 know it.

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1 THE COURT: Well, Mr. Mosty, I think
2 that Mr. Davis and Mr. Shook and Miss Wallace will ask.
3 All right. Thank you. These
4 proceedings are concluded.

5
6 (Whereupon, a short
7 Recess was taken,
8 After which time,
9 The proceedings were
10 Resumed on the record,
11 In the presence and
12 Hearing of the defendant,
13 But outside the presence
14 Of the jury, as follows:)

15
16 THE COURT: All right. Let's go back
17 on the record. Briefly, Mr. Hagler has a couple more
18 objections he wants to make.
19 MR. JOHN HAGLER: Your Honor, I will
20 be very brief here with the Court.
21 Your Honor, just so that we are clear
22 on the ruling, your Honor, it's our understanding of the
23 ruling that both, of course, Frosch and Patterson have
24 invoked their Fifth Amendment privilege against
25 self-incrimination under the Fifth Amendment.
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1 We further understand the Court's
2 ruling, that in light of that invocation of the Fifth
3 Amendment right, that we're prohibited from inquiring
4 from those two officers, and I assume other officers who
5 may be involved in this intercept.
6 As to the: One, we are prohibited
7 from cross examining and questioning the officers
8 regarding the intercept, and all facts surrounding the
9 intercept.

10 THE COURT: That's correct.
11 MR. JOHN HAGLER: And furthermore, if
12 we were given the opportunity to question the officers,
13 we would go into matters such as the procedures utilized,
14 who initiated the -- who made the decision to initiate
15 the intercept, the individuals involved in the intercept,
16 how it was conducted, and any and all information that
17 was learned through the intercept, including matters, not
18 only those matters on the tape, but also matters that may
19 have been overheard but were not recorded by the
20 officers.

21 THE COURT: All right.
22 MR. JOHN HAGLER: And furthermore,

23 your Honor, we would also submit that the State has made
24 the assertion that there was no exculpatory matters on
25 the tape, and, again, we would urge that it's not for the
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1 State to make that decision. It's one that only the
2 Court can make, and the only one that we could bring to
3 light through cross examination and confrontation of
4 witnesses.

5 THE COURT: All right. Thank you.

6 MR. JOHN HAGLER: And finally, your
7 Honor, we would ask for a mistrial, based on our lack of
8 opportunity to cross examine the witnesses regarding
9 this, and the fact that we cannot question Patterson
10 regarding these matters.

11 THE COURT: All right. Thank you.

12 Now, had you made those objections prior to the ruling,
13 the Court's ruling would have been the same. Regarding
14 the motion for a mistrial, the motion for mistrial is
15 denied. With that in mind --

16 MR. GREG DAVIS: Also, before the jury
17 comes in, if I could inform the Court, that during the
18 break, I delivered to Mr. Mulder and Mr. Mosty the names
19 of two officers who I was informed actually did the
20 taping. So they now have those names.

21 MR. DOUGLAS MULDER: I don't have
22 the -- I would like the names of the co-conspirators in
23 the record, if we might.

24 THE COURT: I think -- the names have
25 been delivered, Mr. Mulder. Thank you.