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On the 15th day of March 2007, the Official Court Reporter for the Second Judicial District filed in the Office of the Clerk of the Court a Transcript of Proceedings on Appeal to the New Mexico Supreme Court.

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

CR-2004-3558/Supreme Court #29,978
SUPREME COURT OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

vs.

MARIO CHAVEZ,

Defendant-Appellant.

FILED
APR - 5 2007
Richard J. ... Volume 6 of 25

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TRANSCRIPT OF PROCEEDINGS ORIGINAL

On the 22d day of July 2005, at approximately 9:05, this matter came on for hearing on MOTION TO REVIEW CONDITIONS OF RELEASE, before the HONORABLE RICHARD KNOWLES, Division XV, Judge of the Second Judicial District, State of New Mexico.

The Plaintiff-Appellee, STATE OF NEW MEXICO, appeared by Counsel of Record, GERALD BYERS, Assistant District Attorney, 520 Lomas, Albuquerque, New Mexico.

The Defendant-Appellant, MARIO CHAVEZ, appeared in person and by Counsel of Record, JOSEPH RIGGS, Attorney at Law, 20 First Plaza #303, Albuquerque, NM.

At which time the following proceedings were had:

MASTER INDEX

STATE V. MARIO CHAVEZ

<u>VOLUME</u>	<u>DATE</u>	<u>PROCEEDINGS</u>	<u>REPORTER</u>
1	9/10/04	Arraignment	LORA ZACHEK
2	10/20/04	Hearing	WENDY MORRISON
3	12/20/04	Pretrial	LYNN P. RASMUSSEN
4	2/14/05	Pretrial	YVONNE BACA-MARQUEZ
5	3/24/05	Pretrial	WENDY MORRISON
6	7/22/05	Motion	PEGGY LUNSFORD
7	11/10/05	Pretrial	JAN GIBSON
8	11/21/05	Trial	RUTH ELWELL
9	1/30/06	Trial	JULIE BEATTY
10	1/31/06	Trial	JULIE BEATTY
11	2/1/06	Trial	JULIE BEATTY
12	2/2/06	Trial	JULIE BEATTY
13	2/3/06	Trial	JULIE BEATTY
14	2/6/06	Trial	LORA ZACHEK
15	2/7/06	Trial	LORA ZACHEK
16	2/8/06	Trial	LORA ZACHEK
17	2/9/06	Trial	LORA ZACHEK
18	2/10/06	Trial	LORA ZACHEK
19	2/13/06	Trial	BERNADETTE PEREA
20	2/14/06	Trial	BERNADETTE PEREA
21	2/15/06	Trial	BERNADETTE PEREA
22	2/16/06	Trial	BERNADETTE PEREA

MASTER INDEX, CONT'D

STATE V. MARIO CHAVEZ

<u>VOLUME</u>	<u>DATE</u>	<u>PROCEEDINGS</u>	<u>REPORTER</u>
23	2/17/06	Trial	BERNADETTE PEREA
24	2/20/06	Trial	WENDY MORRISON
25	6/16/06	Sentence	BERNADETTE PEREA

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25

Index to Proceedings

July 22, 2005

Motion to Review Conditions of Release	3
Reporter's Certificate	31

1 July 22, 2005

2 (Note: In Open Court at 9:05.)

3 THE COURT: Mario Chavez, 2004-3558.

4 MR. BYERS: Good morning, Your Honor, Gerald Byers
5 for the State.

6 MR. RIGGS: Joseph Riggs for Mario Chavez.
7 Mr. Chavez is before the court.

8 THE COURT: Okay. We've had some discussions off
9 the record, but to let you know you may put on the record the
10 things you want to put on. One thing I want to note I spoke
11 yesterday on the issue regarding the motion to review
12 conditions of release. As I indicated to counsel, it's one of
13 these things where I think wires got a little bit crossed on
14 and I'm not assuming bad intent on either side. But what I
15 wanted to do is due to the lack of the State's ability to get
16 any relatives of any alleged victims here, as the State
17 wished, I think we are required to give a certain minimum
18 notice under the law. What I was going to let, you know, Mr.
19 Riggs do on review of the conditions of release is let you
20 present what you want.

21 I'll talk to you all about continuing the final portion
22 of this, hopefully, to next Friday, check with you all
23 schedules on that and then give you a final ruling on that,
24 whichever way it goes at that time, so that the State would
25 have an opportunity to bring in anybody they need to bring in

1 on that. You don't bring anybody, I'm saying at that point
2 I'll hear whatever argument and go from there. We'll be
3 talking about the possibility of a trial setting. You got a
4 pending motion for definite trial setting. So, let's go ahead
5 and proceed on the conditions of release with that
6 understanding.

7 MR. RIGGS: Yes.

8 THE COURT: Yes, sir.

9 MR. RIGGS: First, I would ask that the Court set
10 it for next Wednesday, I think, you know, even assuming that
11 the State did not get appropriate notice of the motion hearing
12 and, I think, that the State did. My staff has a note
13 indicating that a call went out on the 28th of June when we
14 had to have the July hearing rescheduled. I did talk with Mr.
15 Byers on Tuesday. We were in another pretrial with Judge
16 Shepherd and said, "I'll see you on Friday." And he expressed
17 surprise not appearing to know that it was set today.

18 So, at the very least if there was no notice today, I
19 think the rule simply requires five days notice and I would
20 ask that the Court hear us on it, make the Court's decision on
21 conditions of release on Wednesday, again, starting the five
22 day time clock here today.

23 THE COURT: I'll tell you the only concern I have
24 about that is the rule on time computation is that if the
25 amount of time is less than ten days, you're talking business

1 days, if I remember that correctly.

2 MR. RIGGS: Actually, I don't think so, but I can't
3 cite the Court to the rule, but I think it's five days notice
4 and --

5 THE COURT: Oh, yeah, it does say five days notice.
6 There's a time computation provision and I'm looking it up,
7 not to sort of -- it's more like making sure that I'm
8 comfortable in my memory of it. This is 5-104(A) computation.
9 It says, "When the period of time prescribed or allowed is
10 less than 11 days, intermediate Saturdays, Sundays and legal
11 holidays shall be excluded." Holidays. Names a list of
12 holidays. It talks about any period of time prescribed or
13 allowed by these rules, local rules, by order of the court or
14 by any applicable statute and how it's figured.

15 And, so that's the main concern I have on that is if I
16 say next Wednesday, I may be explicitly violating the rule and
17 I also under the rule I can order a lesser amount of time if I
18 so choose, but that's one concern I have. Mr. Byers?

19 MR. BYERS: Your Honor, briefly, information that
20 -- not to -- information that I had was on August 3d at 1:30.
21 I passed that on to the decedent's wife. She had made
22 arrangements for her daughter to be able to stand in for her
23 on August 3d. We tried to contact that lady yesterday
24 afternoon, after speaking with the Court and defense counsel.
25 Their phone number had changed. We've gotten -- since gotten

1 another phone number for them. We've left a message and in
2 view of that and in view of the specific act of the
3 legislature to reenforce the victim's rights provision this
4 last legislative session, we would request that the hearing be
5 -- that the State be given the opportunity to produce our
6 victim on this coming Friday, five days, that should give us
7 ample time to provide appropriate notice, make travel
8 arrangements, if we need to, by subpoena to get them in here
9 since they are out of state.

10 Ms. Taylor is in Germany right now and her daughter
11 lives in Arizona and I think that in view of everything that's
12 being considered, that would be the most fair, I would
13 propose, because of the options that are available under the
14 new statute. It does provide for the Court to hear argument
15 of counsel and then hold on 'til we can hear from the victims
16 and we are not digging our heels in the ground and demanding
17 that we postpone the entire proceedings, we're just asking for
18 the time period.

19 THE COURT: Sure. I understand. Mr. Riggs,
20 anything else you like to say on that?

21 MR. RIGGS: I think the time computation should
22 begin at least from Tuesday of this week, the 19th, when Mr.
23 Byers and I spoke. Obviously, you know, given the fact that
24 it's going to be a disjointed hearing, you know, we think the
25 State has been given appropriate notice and in the appropriate

1 way. So I'm asking the Court to set it as speedily as
2 possible. As I said, Mr. Byers knew on Tuesday when I
3 mentioned I would see him on Friday. So, at the very least,
4 the time clock should start on that date and should go 'til
5 what Monday, Monday or Tuesday of next week.

6 THE COURT: I understand that, but did he know then
7 when -- in other words, did he know Wednesday was a
8 possibility at that point?

9 MR. RIGGS: Well, I said, "I'll see you on Friday."
10 He said, "Why?" "Because we're doing Mario's motion to review
11 conditions of release."

12 THE COURT: I understand. In other words, for him
13 to be able to give notice to folks to show up?

14 MR. RIGGS: No --

15 THE COURT: Going to be --

16 MR. RIGGS: No, I think that wouldn't have given
17 him the time period to notify them for today, but the time
18 clock starts from the notice.

19 THE COURT: But the thing he wouldn't have notice
20 as to when the hearing was, then if I had blew that portion of
21 the hearing from today --

22 MR. RIGGS: Okay.

23 THE COURT: Bottom line is, I'll do it next Friday
24 and we'll do it at 8:30 and I'll -- I understand your points,
25 Mr. Riggs, and I really appreciate you trying to get this in

1 for your client. The way I started this was originally
2 scheduled for the 3d of August and I think it was his request
3 by your office you have a special setting, which I appreciate
4 and understand, and I think that's kind of when the wires got
5 crossed. Again, it's not a fault thing, I'm not blaming you,
6 I think everybody is trying to act in good faith. We'll get
7 this done as soon as we can. We'll still get it done before
8 it was originally set. In any event, we'll start today,
9 finish up next Friday and that will be at 8:30 in the morning.
10 Let's go ahead and proceed on your motion.

11 MR. RIGGS: Okay. Judge, it is our motion. First,
12 this is a motion to review conditions of release. This Court
13 knows that this case has been going on for an extended period
14 of time. The Court should know that Mario Chavez' mother, his
15 grandmother, his father, his uncle and another family friend
16 is in the courtroom showing their support. They're all local
17 residents. They're all willing to take whatever
18 responsibility the Court would give in terms of a combination
19 bond. Right now the bond is set at 2 million cash only. We
20 think based upon the things we're going to present to the
21 Court today, the Court should substantially reduce that bond,
22 but if the Court wanted any of them as a third party
23 custodians, you know, each of them would gladly lend their
24 support to Mario.

25 We recognize that this is a serious case. It's a first

1 degree murder case and bonds are normally high. One of the
2 things that the Court takes into account is ties to the
3 community. He has strong ties to the community. He could
4 live with any of these people and they would gladly welcome
5 him into their home. He has no prior record. He is
6 effectively a first offender. You know he had a long history
7 of work and education, all of these things I know were
8 previously presented to the Court, but what has changed now is
9 the nature of the evidence.

10 When I began this case last October, you know, the case
11 had been going on for several months, investigations were
12 simply beginning at that point. I don't think the Court has a
13 great deal of knowledge about this case, but the State's
14 primary witness is a boyhood friend of Mario Chavez, Eloy
15 Montano.

16 After this shooting occurred last August 16th, my client
17 was with Eloy Montano for a number of days. Eloy Montano then
18 gave three statements to the police in which he pointed the
19 finger at Mario Chavez as being the one who committed this
20 crime. Mario Chavez never gave a statement and he has been in
21 custody ever since.

22 During the time that this case has been going on, a
23 number of pieces of evidence have been explored. I know that
24 we have talked to the Court in pretrials previously about the
25 nature of some of the evidence. One of the most significant

1 starting points of this case was knowledge of certain phone
2 calls that were made to Garland Taylor, the victim. There was
3 a phone call to Garland Taylor at 8:44 a.m. on the morning
4 that he was shot and killed. My client, you know, at an early
5 stage in the case, and as I represented him said to me,
6 "Joseph, I did not make this phone call." The police traced
7 the phone call to a pay phone on Wyoming and Paseo at the
8 Smith's. It showed up on Mr. Taylor's caller ID. So, it was
9 the phone call that we believe lured him to a house that he
10 was showing.

11 He was real estate agent showing a house on 11107 Pino,
12 Northeast. There was also a call to another realtor, Rod
13 Miller at 8:38 a.m. It kind of gave us a starting point and
14 as I began to look at the case and talk with my client, I
15 said, "Where were you?" He said, "I was at the Starbucks on
16 Wyoming and Academy." We timed it, it's approximately ten
17 minutes away from the location and I said, "How can we prove
18 that?" One of the early breaks in the case was an effort to
19 find out with the wireless internet if you can establish the
20 location it was used. We ultimately got from T-Mobile that
21 Mario Chavez was using his T-Mobile wireless internet system.
22 He was logged in at the Starbucks at 8:49, which is just a few
23 minutes, you know, distance from the time period the phone
24 call was made and would have made it impossible for him to
25 have logged on.

1 We've presented this evidence to the State. This led us
2 to other evidence -- and much of this was based upon what my
3 client told me and I have been -- been struck by when he would
4 tell me to look at something, I would go and I would find it.

5 The Court should note that the gun that was purchased
6 that was used to kill Garland Taylor was purchased by Mario
7 Chavez. It was purchased he told me for Eloy Montano and I
8 said, "Well, why would you buy a gun for someone who was later
9 going to use this in the homicide?" And he said, "Joseph, if
10 you will check, you will see Eloy Montano has a suspended or
11 revoked driver's license and was -- new that he couldn't use
12 his license." I went to Metro Court, you know, pulled Eloy
13 Montano's record to and behold I found a warrant for his
14 arrest for a DWI and a revocation of his license.

15 Each time that Mario would tell me these things, I would
16 go and look and I would be quickly -- easily, quickly able to
17 confirm. He said to me, "Joseph, he gave me a \$100 to buy
18 this gun, but he also withdrew a 150 or so from his bank
19 account on the day the gun was purchased." Recently, with the
20 corporation of the State, we acquired Eloy Montano's bank
21 records and to and behold on the date that the gun was
22 purchased, there is a withdrawal of \$150.

23 Again, each time he would tell me these things, we would
24 corroborate it effectively through the nature of the
25 evidence. Eloy Montano we're positiving to the Court --

1 we'll argue this to a jury at a later time -- was the one in
2 fact who killed Garland Taylor. The gun, the Court should
3 know had a silencer, a homemade silencer. The State believes
4 that Mario Chavez is the one who made this and who used it to
5 kill Garland Taylor. We have mounted an exhaustive
6 investigation to find out where this silencer came from and
7 how it was -- how someone learned how to make it.

8 The police seized several computers in this case, laptop
9 computers. Our first step was to determine who purchased
10 those laptop computers. They are vital because what is in the
11 laptops -- we determined Eloy Montano, who is an employee at
12 Staples, a local Staples, purchased the computers using a
13 fraudulent account that he set up. How do we know this? He
14 bought a Hewlett Packard and a Averatec laptop computer. He
15 then gave one to Mario Chavez. We have had our expert look at
16 the records that were developed by the F.B.I. Based upon
17 analysis of it -- and we can track who used the computers at
18 what time. The HP computer shows that both Mario Chavez and
19 Eloy Montano used it and this is based upon them, you know,
20 checking their e-mails and signing in, logging on. The
21 Averatec computer was used solely and completely by Eloy
22 Montano. There is no evidence from any records or e-mails or
23 usage that it was used by Mario Chavez.

24 What is significant about the Averatec computer is there
25 are repeated references to how to make a silencer and there

1 are references to books presented by Paladin Press on how to
2 make a silencer. It is clear Eloy Montano was the only one
3 who used this computer. Currently we have the F.B.I. looking
4 at a third computer that we had seized a month or six weeks
5 ago, pursuant to a search warrant. I think we had a
6 discussion about this. We actually believe Eloy Montano may
7 have downloaded additional information about how to make a
8 silencer.

9 So we have -- the way we found the computers and where
10 the computers came from was in evidence. There was a receipt
11 signed by -- on a couple accounts at Staples signed by
12 someone. We then determined by subpoenaing Eloy Montano's
13 records from Staples, his employment records, his employment
14 application, that his signature matches the signature on the
15 receipt which were used to purchase these two computers.

16 We're currently -- and the court's going to sign an
17 order today, ordering the sheriff's department to provide a
18 complete copy of the hard drive. We're looking for some
19 additional things. We believe we may find other information
20 relevant to Eloy Montano and his efforts. We also uncovered a
21 massive scheme of fraud by Eloy Montano where he was doing
22 identity and credit checks on people on this laptop that only
23 he had access to and then he would go and set up bogus
24 accounts. The evidence was found at his house. The evidence
25 was found in his truck showing that he was setting up accounts

1 at Staples and other places after doing identity searches and
2 credit checks on people.

3 So we know that -- that he and only he had access to
4 this book from Paladin Press about the making of the silencer.
5 Notably one -- in one of the statements he gave to the police
6 after he was taken in, was he showed the police where the gun
7 with the silencer was found. He claims that Mario Chavez --
8 he was with Mario Chavez when it was thrown, but he has been
9 the source of all of this information for the sheriff's
10 department.

11 So, you know, we have uncovered, you know, a huge amount
12 of discrepancy with Eloy Montano. He gave three statements
13 last August. At a time before he would realize that we would
14 get the entirety of his phone records for August 16th and
15 Mario Chavez phone records for August 16th and the phone
16 records refute virtually all of what he says about what he did
17 and the sequence of events on August 16th. Why Mario Chavez'
18 boyhood friend would do this to him, you know, is a question
19 we're still exploring and we don't have the final answer yet,
20 but we hope to.

21 So, additionally, with all the sequence of events in the
22 days leading up to August 16th, Mario Chavez has identified
23 himself to the people he contacted. He was looking at houses.
24 He contacted realtors and gave his name and address, his
25 telephone number, and everything always came back to him. He

1 was trying to buy a car, again, using his name and so
2 everybody was easily able to find him. Eloy Montano on the
3 other hand, admits that he was at 11107 Pino, Northeast, on
4 the day of the shooting. Mario Chavez admits that he was
5 there. He was seen. He talked with a neighbor. He waived to
6 several people. Nobody ever saw Eloy Montano. He remained
7 hidden to everybodys view.

8 Other bits and pieces began to come forth about Eloy
9 Montano in his statement. He says that Mario Chavez gave him
10 some latex gloves to use. In a search -- and we found this in
11 evidence -- in a search of Eloy Montano's truck, there were
12 additional latex gloves found in Eloy's truck and a similar
13 search of Mario's vehicles, of course, no latex gloves were
14 found. It appears Eloy Montano simply took what he had done
15 and turned it back on Mario Chavez saying, you know, I went
16 with Mario when he threw the gun, that's why he was able to
17 show them where the gun was. Mario gave me the latex gloves.
18 What he didn't realize is they would find latex gloves in his
19 truck and not Mario's vehicle.

20 So, all of these things have been coming forth and there
21 is -- the Court knows there's some additional work to do. We
22 believe that a thorough exploration of these computers will
23 show us additional things that will pinpoint Eloy Montano's
24 involvement. We have that Mario uncovered from a friend that
25 he had known from childhood, you know, this massive scheme of

1 fraud. Well, that provided the motive for Eloy Montano to
2 blame Mario Chavez or something he did, we don't know, but we
3 are going to be exploring that in a couple of weeks when we
4 interview Eloy Montano.

5 Finally, Judge, after virtually everything that Mario
6 Chavez told me and I was somewhat amazed, you know how
7 lawyer's work, client's will tell you, you know this is what I
8 was doing or this is where I was or this is how this occurred,
9 and a lawyer will go out and attempt to prove it, to
10 corroborate it. Everything that Mario told me, you know, from
11 where he was that morning to what his phone calls would later
12 show, to all of these things, would be proven. Why he bought
13 the gun instead of Eloy Montano. I was very impressed and I
14 have been very impressed as we have worked our way through
15 this. The credibility of what he has told me, this led up to
16 us deciding to perform a polygraph on him.

17 I have disclosed these results to Mr. Byers. He was
18 polygraph on whether or not he fired a gun on August 16th and
19 whether he shot Garland Taylor and whether he was present in
20 the house when Garland Taylor was in the house, shot and
21 killed and he has passed that polygraph. You know -- and this
22 was done -- my policy always is I want the polygraph in my gut
23 to be convinced before I have someone do it and the nature of
24 the evidence disclosed by my client and the quality of the
25 evidence convinced me that he would be a good candidate for a

1 polygraph. I think this Court signed an order for a transport
2 and it was done.

3 That's where we are today. And, obviously, you know, I
4 have met with Mr. Byers and Detective Hicks, who's present in
5 the courtroom, disclosed these things to them. We believe
6 that additional investigation of Eloy Montano is necessary.
7 You know one of the tantalizing unresolved questions is
8 Garland Taylor's wallet, Garland Taylor's wallet was taken on
9 the day that he was shot. A couple of his credit cards were
10 found near the gun out on Tramway, but the most bizarre and
11 difficult to understand fact is that the wallet was -- the
12 rest of the wallet, along with other identification items were
13 sent to Tucson, Arizona.

14 They ended up in a gym of a Jewish community center.
15 They were found by someone who called the victim's family a
16 few days later and said, you know, we found this wallet and,
17 you know, they were told that he unfortunately was dead and it
18 began the trail of everybody trying to figure out why this
19 wallet ended up in a Jewish community center in Tucson,
20 Arizona.

21 Interestingly, it was a block and a half from my
22 client's father-in-law's house -- business. It was also in
23 the same town of the fraudulent company or the company Eloy
24 Montano used this fraudulent account to set up and to get
25 these computers. Obviously, one would wonder if Mario Chavez

1 was really the killer in this case, you know, why would he
2 send the victim's wallet to some place near his father-in-law,
3 obviously, that doesn't make any sense at all. We believe
4 some effort had been made to pin this on Mario Chavez and
5 everything continues to keep leading back to Eloy Montano.

6 These are all factors, I think, the Court can take into
7 consideration in deciding conditions of release. As I said,
8 these matters have been disclosed to the State. The State has
9 been very cooperative in terms of seeking out additional
10 evidence, cooperating with the acquisitions of Eloy Montano's
11 computer. Cooperating with other evidence, getting Eloy
12 Montano's phone records, which as I predicted before they got
13 the records, I said you will find a withdrawal on August 3d of
14 money in a range of \$150. I think I said a 130 to 160, which
15 would corroborate what my client told me about where the money
16 came from for the gun. Lo and behold that was acquired with
17 assistance of the State, yet it proved the point I was trying
18 to make.

19 So, these are factors that the Court can take into
20 consideration and, I think, given the difficulty of getting
21 this case set for trial quickly, we are going to ask the Court
22 to substantially reduce the bond. You know, I would like to
23 see the Court do some sort of combination bond that would
24 allow my client to have an opportunity to bond out, you know,
25 in combination with family members who will stand forward and

1 provisions in the rules. My understanding is that Mr. Riggs
2 believes that this goes to the weight of the evidence against
3 the Defendant, however, all of the information that has been
4 presented concerning computers does not verify who was
5 actually manipulating the computer. It's just an electronic
6 trail of what that computer did. It doesn't link anybody to
7 anything. It's not totally dispositive. Beyond that, there's
8 another issue with regard to the witnesses, Mr. Riggs is
9 pronouncing that he is ready to go to trial. The defense has
10 only asked for the interview of one witness so far, that is
11 Eloy Montano. He's set for August 2d. There are a number of
12 witnesses that need to be heard and interviewed by both
13 parties, Your Honor, before either side is ready to go to
14 trial. And the reason I bring this forward is not too --

15 THE COURT: You can say whoever you want to talk to
16 ahead of time. Mr. Riggs wants to talk to any other witnesses
17 ahead of trial, that is his call.

18 MR. BYERS: Indeed it is, if that's his call, so be
19 it.

20 THE COURT: If you want to talk to other witnesses,
21 so be it. You all know the rules as well as I do.

22 MR. BYERS: Now, for example, Mr. Riggs, he
23 disclosed the polygraph information. To date we have not
24 received a single document with regard to the polygraph
25 information. He indicated to me what the results were, what

1 the questions were, but I have no report. I have no
2 documentation. I have no way to follow up on that and, of
3 course, we're asking for it formally right here, right now.

4 As far as the other factors associated with the motion
5 to review conditions of release in this matter, Your Honor,
6 this particular matter has been before this Court six times.
7 No less than six times from the time of the homicide until
8 today has the situation of the Defendant's release conditions
9 had an opportunity to be addressed by a judge.

10 Each time the arrest warrant was signed by Judge
11 Blackmer for two million cash only and it has stayed the same
12 from that time to now. Judge Blackmer was on the grand jury
13 bench warrant, indicated that the two million cash only run
14 consecutive to all the other charges or all of the other bonds
15 in other cases. And that brings us to whatever he's facing
16 right now, he's been indicted by the Federal government
17 because he has -- of this silencer.

18 He also has a fugitive bench warrant out of Arizona. We
19 shouldn't forget that after the homicide, the Defendant and
20 Eloy Montano showed up in Texas. So we've got a case, Your
21 Honor, which covers at least three states. The Defendant has
22 already shown that he's a flight risk. Pretrial Services in
23 their analysis previously -- Mr. Riggs says that he has a
24 clean record, we beg to disagree. He has six misdemeanors,
25 three convictions for issuing worthless checks, concealing ID,

1 suspended license. All of these types of charges are
2 associated with character and credibility. What is one of the
3 major themes throughout this entire case so far is character
4 and credibility because it's a confidence gain. There's been
5 news reports by realtors in Arizona that indicated that they
6 experienced the same kind of situation with Mr. Chavez that
7 Mr. Taylor had. That they had been led along a path being
8 shown high level houses where the Defendant clearly didn't
9 have any means to pay for them.

10 In any event, that is what predicated this circumstance.
11 Also as far as family ties, our information indicates that the
12 Defendant lived in town about a week prior to this crime. Now
13 previously he had lived in a number of different places, but
14 no place for over two years. There was a search warrant
15 issued for his arrest. The sheriff's department SWAT team
16 mobilized, they announced, did he come out? No, he had to be
17 extracted. I won't go into further descriptions about that,
18 but as far as the consideration about what type of danger this
19 witness poses to -- correction that this Defendant poses to
20 witnesses and ~~other people in the community~~ -- and I'm not
21 getting into secret facts or anything.

22 Clearly, Garland Taylor was shot once in the back of the
23 head. He was a 74 year old man and the person who was seen at
24 the crime scene was Mario Chavez. He was scene by an adult.
25 He was also scene by a small child and, Your Honor, those are

1 the two -- at least two of the witnesses put at risk if this
2 Defendant were to be able to post a bond because if he were
3 indeed a cold, callous killer who would shot somebody, a 74
4 year old man in the back of the head and leave him to die,
5 what about the small child, especially if that's the only
6 person who can identify him being at the crime scene.

7 Your Honor, this Defendant's employment status -- he's
8 had a number of business ventures. Last information that I
9 had is that this business ventures were on the rocks and his
10 former business partner don't want to have anything to do with
11 him. Again, it goes back to his credibility whether or not we
12 can depend upon him to keep his word to show up in court or
13 whether or not he's going to commit any other crimes. As I
14 had mentioned earlier, Your Honor, all of the things that Mr.
15 Riggs pointed out with regard to his investigation of facts of
16 the case and building his case for his client by trying to
17 discredit the State's primary witness, those are matters for
18 trial.

19 But the one thing that we do know is that the only
20 person who has been seen at the crime scene on the date of the
21 murder is standing here before the Court right now and his
22 name is Mario Chavez. And he is the one who fled from this
23 jurisdiction immediately after the crime, went to Texas and
24 then came here -- came back to Albuquerque, had to be
25 extracted by a SWAT team. Your Honor, the Court is well aware

1 you can set a no bond hold on this case. One of the questions
2 that the Court had early on for the State was whether or not
3 we felt that it was necessary to -- whether or not we would
4 pursue the death penalty, because of the change of law we had
5 to do that within the 90 day time frame. Our position has not
6 changed, but as issues develop that is a matter that can still
7 be brought forward before the Court.

8 So, all of those things considered, Your Honor, we
9 believe that it is -- that the bond that is set in this case
10 is reasonable, that the method in which we have been
11 proceeding has been timely and expeditious. As far as speedy
12 trial is concerned, there's no -- clearly this is a complex
13 case and there's no presumptive prejudice until the 15th
14 month. We're not at the 15th month. I think -- I believe the
15 15th month is January, December somewhere in that time frame.
16 But in any event, the community deserves to be safe from
17 somebody of this potential and if he has passed a polygraph
18 test, the Court is -- I'm sure there is a number of reasons
19 that people can pass polygraph tests and there is a question
20 as to whether or not the polygraph test results could even be
21 admissible and there's an entire plethora of analysis that has
22 to go on in order to address that in their particular case
23 law.

24 THE COURT: which I'm relatively familiar.

25 MR. BYERS: I believe so. So, all of that being

1 taken into consideration, we would respectfully request that
2 the Court keep the bond at the 2 million cash only and as far
3 as -- I'll leave it that. We'll address the other matter
4 about scheduling later.

5 THE COURT: Mr. Riggs?

6 MR. RIGGS: Judge, much of what Mr. Byers has said
7 is implicit in any case of this seriousness. The State always
8 says that if the Court releases someone on reasonable bond
9 there is a danger to witnesses. You know there is no evidence
10 in this case that Mario Chavez during the entirety of the time
11 that he has been in custody has posed any danger to any
12 witness in this case. We dispute that he has any prior
13 conviction for issuing worthless checks. When we come back
14 next Friday, I will bring the Court information about that.
15 The fact that they sent a SWAT team out when they effectuated
16 his arrest at his residence merely means nothing, that he was
17 arrested.

18 You know business ventures, he had a business venture in
19 Arizona that went bad. It resulted in charges that he has not
20 been able to defend himself because he's been in custody here.
21 You know none of these things raise questions about his
22 credibility. The nature of the evidence has changed. We have
23 worked hard to explore this case and develop evidence and
24 provide it to the State. My polygrapher has been out of town.
25 We know our obligation in terms of providing tapes and charts

1 and the report. I mean I disclosed this to Mr. Byers in good
2 faith. When we have all the pieces together -- and we're now
3 trying to have transcribed the tapes of the pretest interview
4 so that that can all be provided. Mr. Byers knows that I
5 would not tell him or the Court in good faith that he had
6 passed a polygraph if in fact he hadn't.

7 So, you know, the State is not arguing the weight of the
8 evidence. The State knows that Mario Chavez was seen at the
9 residence on the day of the shooting, the only reason he is
10 charged is because Eloy Montano now says that he was there
11 also but, of course, he was not seen by anybody in any way,
12 shape, or form and Mr. Montano will be the subject of further
13 scrutiny as we prepare for trial.

14 I think the Court has -- is able to look at the strength
15 of the evidence and the nature of and strength of the evidence
16 and looking at these things. And I think the Court should --
17 the sixth time this was brought before the Court, according to
18 Mr. Byers, were all shortly after indictment, original
19 arraignment in which I was not counsel of record, this Court
20 has not seen me come forth on a motion to review conditions of
21 release until we had the evidence.

22 THE COURT: Well, there was at least one that --

23 MR. RIGGS: There was one. We decided to wait
24 until the evidence was developed.

25 THE COURT: Right, I recognize the change in

1 circumstances may --

2 MR. RIGGS: There are huge changes in
3 circumstances. So, I know we have to wait for someone to
4 respond on behalf of the family, you know, and I certainly
5 support victim's rights in terms of their ability to speak. I
6 don't think the Court is going to learn any additional
7 information about this case, but of course based upon the law
8 need to take it into account. I think the Court sees that the
9 nature of the case has changed and I think it will continue to
10 change. All of the focus now is on Mr. Montano, the computers
11 that he worked with. When Mr. Byers says the log in record of
12 a computer doesn't prove who was using the key boards when
13 someone signs on with their E-mail address and acquires their
14 E-mail, that is strong circumstantial evidence that they are
15 the one that was seeking to read their e-mails after signing
16 on with their required information. So, that's something of
17 course that will be debated during trial --

18 THE COURT: Sure.

19 MR. RIGGS: -- at length, but we think it is a
20 compelling -- compelling information about Mr. Montano and his
21 reading and acquisitions of books how to make a silencer. I
22 told Mr. Byers shortly before this hearing, I hope to have the
23 book in my hand before the end of the day today because I
24 ordered it. The picture on the front of the book is identical
25 to the picture of the silencer that the State has in evidence

1 that was listed on Mr. Montano's computer.

2 So, when I find it, I will be asking the sheriffs
3 department to investigate to see if it is identical to the
4 silencer described how to be made from Eloy Montano's
5 computer. We ask the Court to take all these things into
6 consideration.

7 THE COURT: I appreciate the presentation from both
8 sides. It's been very interesting. I'm not ruling today.

9 MR. BYERS: May I just make --

10 THE COURT: No. I mean it's Mr. Riggs' motion. I
11 have other stuff to do. I've got a meeting at 10:30 which is
12 in 40 minutes. I'm not going to go back and forth further on
13 this at this point. There's evidence you wanted to present a
14 little more next Friday, response to what he said I'll let you
15 start next Friday. I'll let you add whatever else you want to
16 but not today. I let Mr. Riggs have the last word since it's
17 his motion. I'll make a ruling next Friday. Yes. I'm
18 cutting you off today, but I'll let you say more next Friday.

19 MR. BYERS: Thank you, Judge.

20 THE COURT: But I do appreciate it, counsel. With
21 respect to one point raised by Mr. Byers, I wanted to address
22 particularly that's the discovery issue on the polygraph. You
23 all know the Rule 11-708. There's some disclosure
24 requirements to comply. You know there's nothing that
25 requires tapes be transcribed before they're presented. You

1 know then as I indicated, you know, simply familiar with rules
2 with respect to that, State, as soon as they can take them
3 aside, whatever you want to do, with respect to it that may
4 have an effect on timing at trial and I don't want somebody to
5 be in a position where somebody -- something otherwise might
6 be admitted and as a result of there being bad faith sand bag
7 you. Anything else? I don't want to be put between a rock
8 and a hard place and do I continue or do I start excluding
9 stuff, folks, or not. So, proceed appropriately with those
10 things in mind.

11 You know I'm going to suggest that we defer the
12 conversation on timing of trial to next Friday for a number of
13 reasons. We've had some discussions with respect to this
14 morning off the record, you know, I want to let both sides
15 have some argument on that, but, you know, I'm going to want
16 to know what discovery issues remain I think in terms of what
17 issues each of you all want to be talking to. I'm not going
18 to require one side to talk to witnesses they don't want to
19 talk to, you know, one side or the other, but make those
20 decisions.

21 I'll give you some indication what my schedule looks
22 like. Right now because of the cycle for when I have the
23 arraignment calendar and things like that, and after some
24 indications from you all about other obligations you have for
25 the State and for the defense, you know, if I didn't have the

1 arraignment calendar I had, I probably be thinking mid
2 November any way because of the arraignment calendar, we're
3 probably looking at late November.

4 I want to hear what else you have to say on those issues
5 on Friday. And as I say, I don't want there to be the
6 possibility of something that one side or the other consider
7 useful, being useful, consider it. It's a discovery issue.
8 There's -- whether or not the State is seeking the death
9 penalty, it's a capital case. Capital includes potential life
10 imprisonment as well and I want to make sure it's tried right
11 whichever way it goes. I want both sides to have a fair shot
12 at it. Is there anything else that is critical this second?

13 MR. RIGGS: No, Judge. We have two orders that the
14 State has agreed to an order of disclosure of hard drive.
15 They are not identified in terms of serial numbers. The State
16 knows which we are talking about. We know which ones we're
17 talking about. State has ordered orthopedic shoes for my
18 client. There's been some problems with it. We contacted the
19 jail, they said Court orders it, the family will acquire it,
20 they will search it and --

21 THE COURT: X-ray those shoes.

22 MR. RIGGS: X-ray the shoes and make sure that --

23 THE COURT: I don't know how you search a shoe.

24 MR. RIGGS: They have a method. This is what we
25 need.

1 THE COURT: I'm not sure I want to know, but I
2 believe you. Thank you very much. I look forward to seeing
3 you next Friday. I appreciate the presentation.

4 MR. RIGGS: Thank you, Judge.

5 (NOTE: Court in recess at 10:55.)
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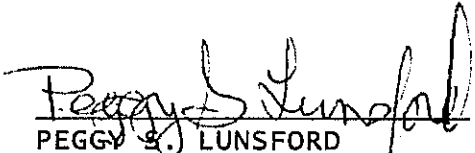
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STATE OF NEW MEXICO)
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COUNTY OF BERNALILLO)

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I, PEGGY S. LUNSFORD, Official Court Reporter for the Second Judicial District of the State of New Mexico, hereby certify that I reported, to the best of my ability, the proceedings, CR-2004-3558; that the pages numbered 2 through 30, inclusive, are a true and correct transcript of my stenographic notes, and were reduced to typewritten transcript through Computer-Aided Transcription; and that on the date I reported these proceedings, I was a New Mexico Certified Court Reporter.

Dated at Albuquerque, New Mexico, this 15th day of March, 2007.


PEGGY S. LUNSFORD
New Mexico CCR No. 203
Expires: December 31, 2007

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