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V I R G I N I A:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

COMMONWEALTH OF VIRGINIA)

vs.) CR No. 09-316

SIRAK MANBEGIROT,)

Defendant.)

* * * * *

COPY

The above-entitled matter came on for motion hearing on Tuesday, July 14, 2009, commencing at 9:50 a.m. at 1425 North Courthouse Road, Arlington, Virginia, before Janice A. Salas, Notary Registration No. 264765, Notary Public.

BEFORE:

THE HONORABLE BENJAMIN N.A. KENDRICK

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

ON BEHALF OF THE COMMONWEALTH:

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P R O C E E D I N G S

THE CLERK: Sirak Manbegirot.

(The interpreter was sworn.)

MS. HICKS: Judge, after receiving additional information from Ms. Eastman yesterday, I filed a written motion for a continuance in this matter. I will note that the case number should be 09-316 and not 08.

In addition to the information outlined in the motion, Judge, we would ask that the Court make as a part of this motion the transcript from the hearing before this Court on July 8th, which should be in the Court's file, so at this time, Judge, we are asking that this matter, the trial date be continued to a date in early September.

MS. EASTMAN: Some would call me a fool. Some would call me strategically inept.

THE COURT: But you don't have to call me Johnson.

MS. EASTMAN: Because, Judge, I'm at -- this moment in time before this Court, if it does

1 decide to do it, before this Court would grant
2 this continuance, the Commonwealth stands at a
3 great advantage. We are at a great advantage. We
4 are prepared. Counsel is not.

5 We have done our investigation. We have
6 read all the police reports. We have learned
7 about our evidence. Looked at our evidence.
8 Counsel has not. We have subpoenaed witnesses.
9 We have interviewed witnesses. We have crafted
10 theories and arguments. I dare say counsel has
11 not done any of that.

12 No pretrial motions of any substance has
13 been filed. No attacks on the validity of our
14 evidence have been made. No challenges pretrial.
15 So for those reasons, Judge, the Commonwealth at
16 this juncture stands at great advantage over the
17 defendant for our case that's set for trial on a
18 murder charge on Monday.

19 And if this were a game of checkers,
20 Judge, and if this were a game, we would not be
21 standing here agreeing to this continuance. But
22 this is not a game. It's not a game. This is

1 about justice. Justice for the victim's families,
2 justice for the witnesses, justice for the
3 community and the Commonwealth, and justice for
4 the defendant.

5 Just as much as the Commonwealth has the
6 right to have its case heard on Monday, the
7 defendant has the right to have adequate
8 representation. And I don't think I'm going too
9 far out on a limb to say that in this case he has
10 not even gotten near to adequate representation in
11 this case.

12 Discovery, our binder, our open file
13 discovery, has been ready and available to
14 counsel. She came on Friday to look at it. On a
15 first-degree murder case, Judge, she came on
16 Friday to look at our discovery, only after the
17 Court denies its motion to continue last week.

18 I'd feel myself compelled at this point
19 to tell the Court that as much as we demand a
20 timely trial for the sake of our family and our
21 witnesses, I know very well that based on
22 counsel's inadequate preparation of this case for

1 trial that it would just come back to us in the
2 end on a habeas.

3 I know that it would come back to us on a
4 habeas because there has been so little work put
5 into this case, and this defendant has been locked
6 up for a year, Judge, on this charge. A year.
7 And what do we have to show for it? Not a whole
8 lot. It pains me to stand here because we are
9 prepared to go forward on Monday. We want to go
10 forward on Monday.

11 But our job is not to play a game. It's
12 to do the right thing. To seek justice for
13 whoever comes before you, and it's not justice to
14 make this defendant go to trial on Monday, and for
15 those reasons, Judge, I have to acquiesce in her
16 motion to continue.

17 But I am asking for little in return.
18 I'm asking the Court to appoint counsel who will
19 do the work, who will get this case prepared for
20 trial when we reschedule it. I think the
21 Commonwealth deserves no less.

22 MS. HICKS: Judge, I've outlined in great

1 detail the sequence of events that brings us to
2 this point, and I guess I must say that I am
3 somewhat offended by Ms. Eastman's recitations to
4 this Court and her feelings as relates to my
5 preparation for this case.

6 This is not a situation where my client
7 has said to me from day one or even at the --
8 after -- prior to the preliminary hearing that he
9 wanted to fight this charge. Ms. Eastman is well
10 aware -- I advised her and stated in this motion
11 of what his position was after the preliminary
12 hearing. We were preparing for a guilty plea.

13 He was before the Court on July 2nd after
14 having signed documentation to enter an Alford
15 plea, and at that moment, at that moment only, he
16 changed his mind and said he did not want to enter
17 the plea. I was as shocked as anyone else because
18 that had not been an issue --

19 THE COURT: How can you properly advise
20 any client as to the appropriate plea to enter or
21 not enter if you haven't done basic minimum
22 required discovery?

1 MS. HICKS: Judge, I didn't have to see
2 the Commonwealth's file to do discovery. We had a
3 preliminary hearing. I have an investigator in my
4 office who had spoken to witnesses prior to the
5 preliminary hearing. I had my own information.
6 My own discovery.

7 THE COURT: And you're comfortable with
8 all that?

9 MS. HICKS: I was comfortable with that.

10 THE COURT: Then let's go to trial
11 Monday.

12 MS. HICKS: Judge, but that is -- again,
13 that's not the issue. As I advised the Court on
14 the 8th of July, when my client changed his mind,
15 there are other motions that should be filed on
16 his behalf. I was in preparation for all of that.

17 I was prepared to file motions yesterday
18 and subpoena witnesses when I received an e-mail
19 from Ms. Eastman saying she would not object to
20 the continuance, but the only way she would not do
21 that was if I put it on the docket for today
22 before this Court. I stopped in the middle of

1 what I was doing in preparation for Monday and
2 filed this motion, and I'm asking the Court to
3 grant it.

4 And I'm also asking the Court not to
5 grant Ms. Eastman's motion to remove counsel.
6 First of all, I don't think she has standing to
7 make the request, and it's not that I am not
8 prepared to represent him as relates to, as I
9 stated before, cross-examining witnesses, knowing
10 what my theory is. I have a theory.

11 I've discussed that with him prior to him
12 signing the Alford plea, but it was his decision
13 on the day before he signed the Alford plea to do
14 that. As his lawyer, I'm responsible for doing
15 what he wants to do. When he decided that he no
16 longer wanted to do that, I began to do the things
17 I was supposed to do, and I'm simply -- I agree
18 with Ms. Eastman.

19 And it's not like the words about justice
20 are just coming out of her mouth today. We
21 discussed that on July 8th. I said to her -- she
22 said, Why should I agree to continue this case?

1 Strategically, that's not good for me. And I
2 said, Well, maybe you should agree to continue it
3 because it's the just thing to do.

4 Because this client deserves to be
5 effectively represented, and when he changed his
6 mind and said he wanted to go to trial, I began to
7 do everything I was supposed to do for him to
8 prepare for that, and there's simply not enough
9 time. I advised this Court there was no motions
10 day.

11 THE COURT: What motions do you have?

12 MS. HICKS: Judge, if you look at the
13 previous hearing on July 8th, I advised the Court
14 I would potentially be asking for -- probably have
15 to ask for an interpreter to review with us the
16 interrogation tapes which were partly done in
17 Amharic. I would ask the Court to appoint an
18 expert to review the autopsy reports, and there
19 potentially might be a motion to suppress.

20 I've told the Court all of that on July
21 8th and I've told Ms. Eastman that prior to July
22 8th. It's not like it's the first time that she's

1 heard that there were motions that could have been
2 filed, but for my client saying he wanted to take
3 responsibility for his trial and plead guilty.
4 This is really simple. He changed his mind and he
5 has a right to do that.

6 And because he changed his mind and wants
7 to go to trial, he has a right to be effectively
8 represented. I stated that to the Court
9 previously. We didn't have to wait until today to
10 have the Commonwealth agree to that and understand
11 that he deserved justice, but it's not because his
12 counsel had not prepared him, and the Court can
13 see from the motion, this is the first trial date.
14 He spent six months being restored to competency.

15 THE COURT: Is this interpreter available
16 to help you?

17 MS. HICKS: Yes, and he has helped me,
18 significantly.

19 THE COURT: Well, I'm inclined to deny
20 the motion. You can have your suppression hearing
21 prior to the trial on Monday. Monday morning.

22 MS. HICKS: And the motions for the

1 expert, Judge, and the interpreter for the --

2 THE COURT: You've got an interpreter.

3 MS. HICKS: -- for the interrogation?

4 THE COURT: You've got an interpreter.

5 Use him.

6 MS. HICKS: Judge, I must state, I don't
7 understand why the Court is going to force parties
8 to go to trial when the Commonwealth is agreeing
9 to the continuance.

10 THE COURT: Well, that's because I think
11 this has been around long enough and it's time
12 to --

13 MS. HICKS: Now, I've been placed at a
14 disadvantage because I put this matter on for a
15 continuance at the behest of Ms. Eastman and
16 stopped what I was doing yesterday in preparation
17 for trial. I do have witnesses to subpoena.

18 Even if I had subpoenaed them on the 8th
19 when the Court denied it, it wouldn't have been
20 enough time according to the clerk's office, which
21 requires 14 days' notice to send out a witness
22 subpoena.

1 THE COURT: Anything else?

2 MS. EASTMAN: All I'm saying, Judge, is
3 with the record that I've just made for you, it's
4 coming back.

5 THE COURT: Well, so what? It's not
6 going to come back.

7 MS. EASTMAN: It's going to come back.

8 THE COURT: This is a very competent
9 attorney and she -- she's going to do a good job.
10 What makes you think it's going to come back?

11 MS. EASTMAN: Well, aside from the fact
12 that I just put on the record that she started
13 discovery on Friday --

14 THE COURT: Well, she indicates that
15 she's got other sources so she doesn't have to
16 disclose to you everything -- how she's preparing
17 her case.

18 MS. EASTMAN: But I don't -- Judge, I
19 don't even know what the motion to suppress is. I
20 don't even know any of these. Perhaps counsel
21 can, you know, advise me of what the grounds of
22 her suppression. Which of the multiple statements

1 she's moving to suppress. I don't even know
2 anything of that, and we're supposed to do that on
3 Monday morning?

4 THE COURT: All of them? All of the
5 statements? Why don't you just assume all of the
6 statements.

7 MS. EASTMAN: On what grounds, Judge?

8 MS. HICKS: Judge, it's hard to make that
9 determination without having the interpreter
10 review all of the tapes. Part of them are in
11 English and part of them in Amharic.

12 THE COURT: Well, I say you better get
13 started.

14 MS. HICKS: Judge, this is clearly
15 unreasonable, and I will state to the Court, even
16 though I am an experienced attorney and can be
17 prepared to go through the motions of a trial, it
18 will amount to ineffective assistance of counsel,
19 and I agree with Ms. Eastman. It will come back,
20 and it's not necessary. He's being held without
21 bond.

22 THE COURT: For a year.

1 MS. HICKS: Again, Judge, six months --
2 six months of that for restoration of competency.
3 You should continue this case.

4 THE COURT: He came in last week wanting
5 to renew that motion for competency, but it was
6 phrased in, I need more education.

7 MS. HICKS: But, Judge, part of the law
8 is that the defendant should be able to assist his
9 counsel in his defense.

10 THE COURT: I understand.

11 MS. HICKS: And if he can't make a
12 decision based on the legal terms because he
13 doesn't understand that --

14 THE COURT: He can make a decision. I
15 think he's playing you like a fiddle.

16 MS. HICKS: The Court should grant this
17 motion. We're asking you respectfully to do so.

18 MS. EASTMAN: I'm asking the Court to do
19 the same thing, but with assurances that I have
20 counsel who's going to do the work.

21 THE COURT: You want this Court to grant
22 a continuance, remove counsel, substitute new

1 counsel to come in, and in two months or less come
2 up to speed for a murder trial.

3 MS. EASTMAN: She just started discovery
4 on Friday, Judge. I mean, what does that amount
5 to? What does that amount to? Counsel has told
6 the Court that to proceed to trial on Monday would
7 be inadequate representation because she's not
8 prepared to go to trial on Monday. It's not like
9 she's prepared to go to trial on Monday and if you
10 appoint somebody else, they would be not prepared
11 to go to trial in two months.

12 Why we're at this point, I don't know.
13 It's -- it's -- it shouldn't happen, and I agree
14 with the Court's sentiments that it shouldn't
15 happen. We shouldn't have to continue this case.
16 The parties should be ready to go on Monday.
17 We're ready to go on Monday if the Court insists
18 upon it, but despite my advantage, I have to urge
19 the Court to do that.

20 But I don't know that if you continue it
21 for two months that much is going to change.

22 We've had a year to be prepared for trial and

1 we're not there. She said she's not properly
2 prepared to go to trial after a year of
3 representing this defendant, so perhaps I don't
4 have standing, but I think the Court can make
5 certain factual conclusions about the importance
6 of appointing counsel who would be ready for trial
7 on a next trial date.

8 THE COURT: The motion for continuance is
9 granted. The motion to remove counsel is denied.

10 What date do you want?

11 MS. HICKS: As I said on the 8th, Judge,
12 early September date should be sufficient.

13 THE COURT: How long is it going to take?

14 MS. HICKS: It was originally set for
15 four days, Your Honor.

16 THE COURT: Four days?

17 MS. HICKS: It was.

18 MS. EASTMAN: Is September 28th
19 available?

20 THE COURT: I'm sorry. I didn't hear
21 you, counsel.

22 MS. EASTMAN: Is September 28th

1 available?

2 THE COURT: September 28 is available.

3 MS. HICKS: Is the week before available?

4 MS. EASTMAN: No. I have a three-day
5 trial starting with one of your assistants the
6 week before. I mean, on the 15th.

7 THE COURT: September 28. Jury or
8 nonjury?

9 MS. HICKS: Defendant waives, Your Honor.

10 MS. EASTMAN: Commonwealth does not.

11 THE COURT: With a jury, four days. No
12 more continuances.

13 MS. HICKS: Yes, sir.

14 (Whereupon, the proceedings at 10:11 a.m.
15 were concluded.)

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1 CERTIFICATE OF REPORTER

2 I, Janice A. Salas, do hereby certify
3 that the foregoing proceedings were taken by me in
4 stenotype and thereafter reduced to typewriting
5 under my supervision; that I am neither counsel
6 for, related to, nor employed by any of the
7 parties to the action in which these proceedings
8 were taken; and further, that I am not a relative
9 or employee of any attorney or counsel employed by
10 the parties hereto, nor financially or otherwise
11 interested in the outcome of the action.

12 _____
13 JANICE A. SALAS

14 Notary Registration No. 264765
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