

05-09-01451-CV

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REPORTER'S RECORD

VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. 199-80283-08
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11:24 AM
DEC 3 2009
STATE OF TEXAS
CLERK OF DISTRICT COURT

THE STATE OF TEXAS) IN THE DISTRICT COURT
)
vs.) COLLIN COUNTY, TEXAS
)
ROBERT LEE BLACKBURN) 429TH JUDICIAL DISTRICT

PLEA

On the 3rd day of December, 2009, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable John L. McCraw, Jr., Senior Judge, Judge Presiding, held in McKinney, Collin County, Texas.

Proceedings reported by computerized stenotype machine.

Sharon Pearson, CSR 2330

ORIGINAL

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APPEARANCES

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1 P R O C E E D I N G S

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3 THE COURT: All right, sir. You are
4 Robert Lee Blackburn?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you were previously
7 arraigned; is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you entered a plea of not
10 guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: These charges were set back in
13 February of '08?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you previously requested a
16 jury trial?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And you are waiving your right
19 to a jury trial and going forward under a plea of
20 guilty. Is that your understanding?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You understand in each of
23 these three cases --

24 MR. CURRAN: Four, Your Honor.

25 THE COURT: Four cases. I'm sorry. Cause

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1 No. 199-80286-2008, 1-80285-2008, and 199-80284-08, and
2 199-80283-08, in each of these cases you're asking to
3 enter a plea of guilty?

4 *THE DEFENDANT:* Yes, sir.

5 *THE COURT:* And you understand that the
6 range of punishment in each of these cases that -- the
7 Court could fix punishment anywhere within the range of
8 a third degree felony, which could be up to ten years
9 confinement in the state penitentiary, and that is in
10 the case of -- the case wherein you're charged with
11 assault of a public servant.

12 *THE DEFENDANT:* Yes, sir.

13 *THE COURT:* You could receive up to ten
14 years confinement in the Texas Department of Criminal
15 Justice?

16 *THE DEFENDANT:* Yes, sir.

17 *THE COURT:* Institutional Division.

18 And in Cause No. 199-80285-2008, you are
19 charged with the offense of tampering with evidence and
20 you desire to enter a plea of guilty to that charge
21 also; is that correct?

22 *THE DEFENDANT:* Yes, sir.

23 *THE COURT:* And that is, I assume a state
24 jail felony -- no. Third degree felony, which also
25 carries up to 10,000 dollar fine and up to ten years

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confinement?

THE DEFENDANT: Yes, sir.

THE COURT: And in Cause No.

199-80284-2008 wherein you're charged with the offense of harassing a public servant, which is also a third degree felony, that has that potential punishment?

THE DEFENDANT: Yes, sir.

THE COURT: And also Cause No.

199-80283-08 wherein you are charged with possession of a controlled substance, a state jail felony?

THE DEFENDANT: Yes, sir.

THE COURT: That has a potential punishment up to two years confinement in the state jail.

THE DEFENDANT: Yes, sir.

THE COURT: Up to a 10,000 dollar fine.

You understand you have a right to have a jury hear the case and make a fact finding determination?

THE DEFENDANT: Yes, sir.

THE COURT: Even though this case is almost two years old, you still have a right to have those witnesses brought forward?

THE DEFENDANT: Yes, sir.

THE COURT: Now, are you satisfied with

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1 the representation your attorney has given you?

2 THE DEFENDANT: Yes.

3 THE COURT: How do you desire to plead in
4 each of these cases? Are you guilty or not guilty?

5 THE DEFENDANT: Guilty.

6 THE COURT: Pleading guilty because you
7 are guilty and for no other reason?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did anyone threaten you in any
10 way to induce you or make you enter this plea?

11 THE DEFENDANT: No, sir.

12 THE COURT: Anyone promise you anything to
13 make you enter this plea?

14 THE DEFENDANT: No, sir.

15 THE COURT: You understand the full range
16 of punishment is available?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And --

19 MR. ROLATER: Your Honor, at this time the
20 State objects to the Court proceeding further on
21 accepting the Defendant's guilty pleas on the grounds
22 that the State has not consented to the Defendant's
23 waiver of a jury trial in this case and, therefore, this
24 Court lacks any authority to conduct what is, in a
25 sense, a bench trial.

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1 *THE COURT:* Sir, I'm not conducting a
2 bench trial. I'm accepting his constitutional right to
3 enter a plea before the Court. I would submit the
4 United States Constitution allows a defendant the right
5 to enter a plea based on the Court's request and to
6 avoid needless four jury trials and have at least a
7 couple hundred county citizens come forward and waive
8 their right to make any type of living that particular
9 day and costing the county some \$5,000.00 per trial. I
10 don't understand why the State is refusing to allow a
11 defendant -- or opposing to allow the Defendant to enter
12 a plea of guilty.

13 *MR. ROLATER:* If I could, Your Honor, I'd
14 like to present some authorities to the Court and to
15 opposing counsel.

16 *THE COURT:* All right, sir.

17 *MR. ROLATER:* I have tendered to the Court
18 and opposing counsel a copy of Article 1.13 of the Texas
19 Code of Criminal Procedure which only allows a waiver of
20 jury trial with consent and approval of the court and
21 the attorney representing the State; and at this time I
22 represent to the Court that the State of Texas, by and
23 through the Collin County Criminal District Attorney's,
24 office, does not consent to the Defendant's waiver of a
25 jury trial.

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1 *THE COURT:* Why does the State not
2 consent?

3 *MR. ROLATER:* Well, among other things,
4 Your Honor, the Defendant would be eligible for deferred
5 adjudication if he pled guilty to the Court. We do not
6 believe he's a suitable candidate for that sort of
7 probation.

8 *THE COURT:* He has not requested deferred
9 adjudication. I've warned him of the fact that the full
10 range of punishment is up to ten years in the
11 penitentiary. Now, why is the State not allowing him to
12 go forward when he could be punished up to ten years?
13 He's not applied for deferred.

14 *MR. ROLATER:* Your Honor, nevertheless, he
15 would be eligible for deferred based upon his plea in
16 the types of cases before the Court.

17 *THE COURT:* Would the State go forward
18 with a request for deferred adjudication? Is that what
19 you're attempting to do?

20 *MR. ROLATER:* No, sir. The State opposes
21 deferred adjudication in the case. We believe that the
22 case is suitable for confinement in the Department of
23 Criminal Justice.

24 *THE COURT:* So you're using deferred
25 adjudication as a straw man?

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1 MR. ROLATER: Your Honor, we're merely
2 pointing out that it does -- that the tenor of how these
3 cases are disposed affects the punishments that this
4 person could face. Also, we believe that it's an
5 appropriate case, given the nature of the charges and
6 the facts alleged, that a jury of Collin County citizens
7 hearing these cases would determine the guilt of the
8 Defendant.

9 THE COURT: I just completed a jury of
10 Collin County citizens that turned loose an armed robber
11 so -- gave him probation. So I don't understand that
12 argument, either.

13 MR. ROLATER: Your Honor, I would also
14 point out, though, in addition to Article 1.13 which
15 I've tendered to the Court, I have tendered to the Court
16 the cases of State, ex rel., Curry v. Carr, which is 847
17 S.W.2nd 561. It's a Texas Court of Criminal Appeals
18 case from 1992 that also stands for the proposition that
19 the Court cannot proceed on a waiver of jury trial
20 absent the consent of the State.

21 Also tender to the Court a copy of the
22 Court's opinion in State, ex rel., Turner v. McDonald,
23 which is 676 S.W.2nd. 371, Texas Court of Criminal
24 Appeals, from 1984, which stands for the same
25 proposition.

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1 *THE COURT:* That a judge cannot accept a
2 plea of guilty unless -- even if the State has brought
3 the indictment? Without the State dropping the
4 indictment?

5 *MR. ROLATER:* Your Honor cannot proceed
6 without a jury in this case absent the consent of the
7 State, and the State does not consent to the Defendant's
8 waiver of jury trial.

9 *THE COURT:* So the State wants to control
10 who sets the punishment hearing. Is that what the fight
11 is about here?

12 *MR. ROLATER:* Your Honor, the State does
13 not consent to the Defendant's waiver of a jury trial.

14 *THE COURT:* So the State is, in effect,
15 forum shopping for a particular judge to fix the
16 punishment here. Is that the bottom line?

17 *MR. ROLATER:* Your Honor makes a very
18 interesting point. I would point out that I believe
19 that opposing counsel, in fact, is seeking to have a
20 different judge other than Your Honor. I think that how
21 it originally started was he wanted a different judge
22 other than Your Honor to dispose of this case, which is
23 not the right of a defendant.

24 *THE COURT:* Let me give you the
25 background. He was here for an arraignment. He

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1 objected to having a visiting judge that he did not know
2 hear the case; and I asked him, then if you object to
3 that case setting, then I'm going to set the case unless
4 you waive a jury and go forward on a plea today. He
5 chose to go forward on a plea today. You're opposing
6 it.

7 By way of judicial economy, I cannot
8 understand why you're waiving -- you're attempting to
9 create four jury trials unnecessarily. I just don't
10 understand that.

11 *MR. CURRAN:* Judge, I want to make it very
12 clear on behalf of the Defendant that all we're
13 requesting to be done in this particular case is to be
14 sentenced -- my client to be sentenced by the presiding
15 judge of the 429th Judicial District Court of Collin
16 County. I think that's his right. That was our
17 expectation. That's all we're doing. So I don't see
18 how we'd be forum shopping, wanting the sitting judge in
19 the very court that this case is set in to sentence my
20 client.

21 *THE COURT:* Any response to that?

22 *MR. ROLATER:* Yes, Your Honor.
23 Essentially that's just a back door objection to you as
24 a visiting judge; and the Defendant, and the State
25 likewise, have no right to object to a visiting judge.

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1 *THE COURT:* I've accepted his plea. He
2 can't object. He cannot -- this is a criminal setting.
3 It's not a civil setting. All I'm doing is taking his
4 plea, setting it up for the duly appointed judge to make
5 a decision, trying to save four jury trials and all of
6 the needless expense that that creates, plus the fact
7 you've got a two year old case here which you might or
8 might not even find your witnesses.

9 *MR. CURRAN:* Judge, I also want to make it
10 clear that we are not -- and I have never represented --
11 that we were going to be seeking deferred adjudication
12 probation. So I don't know where that argument is
13 coming from.

14 *THE COURT:* The Court notes there's no
15 application for deferred and no plea papers for
16 deferred, but all the Court is attempting to do is take
17 the plea so the case can be resolved. Now, if it's a
18 turf battle, that well may be, but my job is to resolve
19 cases and this would resolve four jury cases.

20 *MR. KNAPP:* Judge, may I just interject
21 one thing here?

22 I was assigned to this case when it was
23 originally indicted in the 199th court, and this case
24 was set for jury trial at that time because we could not
25 reach any kind of agreement and it was set for jury

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1 trial. It was subsequently transferred to the 429th and
2 continued to be set for jury trial because they could
3 not reach any agreement.

4 This is not in any way, shape, or form any
5 type of forum shopping. It's been set for jury trial
6 all along, and that's -- that's where we're at.

7 *THE COURT:* Well, he's come in early and
8 entered a plea of guilty. Now you're opposing his entry
9 of a plea of guilty is what I'm understanding.

10 *MR. KNAPP:* No, Judge.

11 *THE COURT:* You want to withdraw that plea
12 of guilty and say, let's have four jury trials and waste
13 all the taxpayers' money for that?

14 *MR. KNAPP:* Judge, just to be clear.
15 We're talking apples and oranges here, and this is
16 one -- this is four incidents -- four charges out of one
17 incident.

18 *THE COURT:* Well, I've heard his plea. Do
19 you want me to withdraw it and say, set this down for
20 four jury trials? Is that what you're asking me to do?

21 *MR. KNAPP:* Judge, with all due respect,
22 sir, I don't believe the Court could sever them like
23 that and make him open for -- to those charges being
24 stacked. I don't think -- I think that's completely
25 improper if we're talking about four separate jury

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1 trials because if they're separate then I have the
2 ability to stack, and that certainly -- that would be
3 improper for a judge --

4 *THE COURT:* For the record, you're asking
5 me to withdraw his plea of guilty so you can go for a
6 jury trial. Is that what you're telling me?

7 *MR. KNAPP:* Again, Judge, with all due
8 respect, we're talking apples and oranges because we
9 have not waived a jury trial. I don't believe the Court
10 can legally get to that point of accepting a jury trial.

11 *THE COURT:* So you're asking me to
12 withdraw any action so that you can have a jury trial on
13 four cases?

14 *MR. ROLATER:* Yes, Judge. We are.

15 *THE COURT:* And the purpose is to avoid a
16 duly appointed judge fixing punishment. Is that the
17 bottom line of what we're fighting over?

18 *MR. ROLATER:* No, sir.

19 *THE COURT:* I think we ought to clarify it
20 for the appellate court. As I say, if they want to be
21 involved in forum shopping, fine. Let them do it. I
22 don't see -- I think the Constitution of the United
23 States allows an individual to enter a plea to the duly
24 appointed judge. That's all I've attempted to do, is
25 set it up for the duly appointed judge to resolve the

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1 punishment.

2 *MR. ROLATER:* Your Honor, the Defendant
3 does have a right to choose his plea of guilty or not
4 guilty. We're not depriving him of his choice to plead
5 guilty or not guilty. What we want is a jury trial. If
6 he wants to plead guilty to a jury, that's just fine.
7 If he wants to --

8 *THE COURT:* So you're saying the State of
9 Texas has a right to a jury trial.

10 *MR. ROLATER:* Yes, Your Honor. As
11 encompassed in that Article 1.13 of the Code of Criminal
12 Procedure, the State has the right to demand a jury by
13 refusing to consent to a defendant's waiver of jury
14 trial.

15 *THE COURT:* What about the United States
16 Constitution that gives an individual the right to enter
17 a plea of guilty?

18 *MR. ROLATER:* Your Honor --

19 *THE COURT:* Is that superior to the
20 Constitution of the United States?

21 *MR. ROLATER:* Your Honor, I think that
22 it's a matter reserved to the State of Texas under the
23 United States Constitution as to how a defendant can
24 exercise his right to plead guilty.

25 *THE COURT:* So I'm asking you again, are

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1 you asking to withdraw his plea so that you can have a
2 jury trial?

3 *MR. ROLATER:* Your Honor, the State of
4 Texas desires a jury trial in these matters.

5 *THE COURT:* Court will find that's a waste
6 of judicial economy and needless cost to the citizens of
7 this county for four jury trials, much less the expense
8 of bringing the jurors in to try a case when an
9 individual desires to enter a plea of guilty and allow a
10 duly elected judge to fix the punishment. So I will
11 deny your request, and there's a record on it.

12 And the Court will note that the Defendant
13 has entered his plea of guilty and the Court will make a
14 finding of guilt in the case of Cause No. 199-80286-08,
15 assault of a public servant, find the Defendant guilty
16 as charged; in Cause No. 199-80285-08, find the
17 Defendant guilty of the offense of tampering and
18 fabricating physical evidence; and in Cause No.
19 199-80284-08 find the Defendant guilty of harassment of
20 a public servant; and in Cause No. 199-80283-08 find him
21 guilty of the offense of possession of a controlled
22 substance, and will set the matter on the docket of the
23 duly elected judge to proceed with the disposition of
24 the case.

25 Now, I'll sign any findings concerning

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1 entry of the plea of guilty. I note the State has not
2 made those available to me, but -- and I will sign one
3 if the Defense desires.

4 MR. ROLATER: We'll take care of it,
5 Judge.

6 THE COURT: And then if you'll check with
7 the court coordinator and see when the matter is set for
8 punishment.

9 MR. CURRAN: Yes, Your Honor. We'll sign
10 a pass slip right now.

11 THE COURT: Thank you, Counsel.

12 MR. CURRAN: May I be excused?

13 THE COURT: Yes, sir.

14 MR. KNAPP: Judge, before we --

15 MR. ROLATER: I think I need a written
16 order.

17 THE COURT: That's what I --

18 MR. ROLATER: Okay. If I go prepare a
19 written order, basically denying the Court's --

20 THE COURT: Denying your right to allow
21 him -- requesting a withdrawal of his plea of guilty, be
22 happy to sign that.

23 MR. ROLATER: Okay. That should probably
24 take me about twenty minutes.

25 THE COURT: I'm here tomorrow.

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MR. ROLATER: You're here tomorrow?

2

THE COURT: Yes, sir.

3

MR. ROLATER: Okay. Bring that to you

4

tomorrow.

5

(Proceedings concluded.)

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STATE OF TEXAS

COUNTY OF COLLIN

I, Sharon Pearson, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is \$115⁰⁰ and was paid/will be paid by Collin County District Attorney.

Certified to this 7th day of December 2009.

Sharon Pearson

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