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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

HONORABLE A. HOWARD MATZ, DISTRICT JUDGE PRESIDING

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
STEVEN SUTCLIFFE, )  
 )  
Defendant. )

CR. 02-350-AHM

**CERTIFIED  
COPY**

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
CHANGE OF PLEA  
LOS ANGELES, CALIFORNIA  
MONDAY, NOVEMBER 8, 2004

MARIA R. SANTILLAN-BUSTILLOS  
OFFICIAL COURT REPORTER  
C.S.R. 12254  
UNITED STATES COURTHOUSE  
312 NORTH SPRING STREET  
ROOM 404  
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(213) 894-2739

## 1 APPEARANCES OF COUNSEL:

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1 LOS ANGELES, CALIFORNIA; MONDAY, NOVEMBER 8, 2004

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3 (COURT IN SESSION AT 4:00 P.M.)

4  
5 THE CLERK: All rise. This court is again in session.  
6 The Honorable A. Howard Matz presiding.

7 THE COURT: Good afternoon. Welcome. Please be  
8 seated.

9 THE CLERK: Calling Item Number 6, CR02-3508(a),  
10 U.S.A., versus Steven Sutcliffe.

11 Counsel, state your appearances, please.

12 MS. DUARTE: Good afternoon, your Honor. Elena Duarte  
13 for the United States.

14 THE COURT: Good afternoon.

15 MR. ROME: Richard Rome, R-o-m-e for Mr. Sutcliffe.

16 THE COURT: All right. Good afternoon to both of you.  
17 We're here on Mr. Rome's motion on behalf of Mr. Sutcliffe for  
18 bail, pending appeal; and I've looked at the motion and the  
19 Government's opposition. I don't think you filed a reply, did  
20 you?

21 MR. ROME: No.

22 THE COURT: Okay. I'll tell you how I analyzed the  
23 issues on this case. I've read the Castro decision carefully;  
24 and of course, that decision reflects what is the fundamental  
25 background context to this motion, which is that we're waiting

1 for Supreme Court guidance on the aftermath of Blakely and  
2 Ameline. How soon that guidance will be provided and what it  
3 will be, I have no desire to speculate about, but facing that  
4 confusion, the Castro court and order that the Government  
5 notes, that bail would be one permissible alternative to  
6 address the rights of Mr. Sutcliffe. No bail would be another.  
7 I already noted in the previous ruling that the -- on the  
8 merits of the issue as to whether or not the sentence is valid  
9 notwithstanding the upward departures, the Government would be  
10 entitled, if it gets to have that requirement, to try to prove  
11 the basis for those upward departures beyond a reasonable doubt  
12 and to a jury. So there's a lot that remains to be resolved  
13 about this case and about the status of the law.

14 I think that the Government is correct that under the  
15 applicable standards, the defendant remains a flight risk and a  
16 danger to the community. I make that finding on the basis of  
17 the fact that the Ninth Circuit already affirmed my ruling on  
18 both those prongs; and the situation now is no different, if  
19 anything, a little bit more difficult for Mr. Sutcliffe and his  
20 lawyer to overcome; and he has the burden, and it's a burden by  
21 height and standard of clear and convincing evidence.

22 The sureties that he propose would provide  
23 troublesome -- particularly, Mr. McAfee, not only troublesome  
24 but a totally unacceptable basis to minimize or offset if I  
25 were in a position to make a finding, and I could, the danger