

APPEARANCES:

ON BEHALF OF PLAINTIFF:
OFFICE OF THE UNITED STATES ATTORNEY
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~~ON BEHALF OF DEFENDANT:~~
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ALSO PRESENT: JEFF CUGNO, FBI CASE AGENT

FRIDAY, JANUARY 17, 2003; LOS ANGELES, CALIFORNIA

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Item Number 1, CR 2002-350-AHM, United States versus Steven William Sutcliffe. Counsel, state appearances, please.

MS. DUARTE: Good morning, Your Honor. Elena Duarte and Jason Gonzalez on behalf of the United States.

MR. GONZALES: Good morning, Your Honor. Jason Gonzales on behalf of the United States.

THE COURT: Good morning.

MR. NICOLAYSEN: Good morning, Your Honor. Greg Nicolaysen from the CJA indigent defense panel here at the request of the court to consider the possibility of appointment.

THE DEFENDANT: Steven Sutcliffe present.

THE COURT: Okay. Mr. Nicolaysen, you were contacted, I think, by the court clerk because of your membership on the CJA panel, and especially because of what I have been informed is your unusually extensive experience with computer law, computer usage and computer technology.

I already reviewed very carefully and at a previous proceeding issues relating to representation by counsel by Mr. Sutcliffe. I don't intend to do that again today. I made a specific finding that he sensibly declined to exercise his right to proceed on his own under the Ferreta doctrine and to represent himself. I explained that was a wise choice but that he had no authority or power and neither did I to arrange for

funds to be provided to him personally to select successor counsel.

You are now appointed as counsel. You will be serving as counsel for Mr. Sutcliffe and we will proceed on that basis.

I think you may already know, Mr. Nicolaysen, but you're free to discuss this with Mr. Sutcliffe as you are everything relating to his situation, that there are two sets of prior counsel in this case. Initially the Federal Public Defenders Office represented Mr. Sutcliffe. And until the hearing on, I think it was Tuesday, Mr. William Harris represented him.

I have explored with Mr. Sutcliffe certain things relating to who would succeed Mr. Harris and what would happen with respect to that relationship. I explored those things outside the presence of the government. I anticipate but would encourage both of you to discuss what I explained to Mr. Sutcliffe when you have an opportunity to confer with each other. You may have learned that after exploring a number of issues at considerable length, acting on my own and exercising my inherent authority as well as my authority under Title 18, I determined that a competency examination would be not only be warranted but necessary.

The prosecutor has submitted a proposed order which we'll turn to later. But I think the first order of business is to arraign Mr. Sutcliffe on the First Superseding Indictment.

Let's do that, please.

THE DEFENDANT: I want to object to these proceedings. I have not authorized this man to speak for me. If anybody in the courtroom thinks they have authority to speak for me I want to see their authority right now.

THE COURT: Mr. Nicolaysen -- sit down, Mr. Sutcliffe.

THE DEFENDANT: I will proceed with my arraignment, if you wish. No man --

THE COURT: Sit down, Mr. Sutcliffe.

THE DEFENDANT: No man speaks for me unless he can show me his authority that I signed over and delegated him to speak for me.

THE COURT: Mr. Nicolaysen is your lawyer and he's proceeding under the authority of the court.

THE DEFENDANT: No, he's not my lawyer. He's your lawyer. He's not my lawyer. He's your lawyer.

THE COURT: Mr. Sutcliffe, you will be arraigned on the Superseding Indictment.

MR. NICOLAYSEN: Does Your Honor wish us to remain at counsel table?

THE COURT: You should go to the lectern.

MR. NICOLAYSEN: Fine. Come on, Steve.

THE DEFENDANT: I object. I object. I want to see your authority to speak for me before you attempt to speak for me.

THE COURT: Mr. Sutcliffe, you will be addressed directly by the clerk.

THE DEFENDANT: I want to see your delegation of authority that I have given you to speak for me.

THE COURT: Mr. Sutcliffe --

THE DEFENDANT: Acknowledge that, sir. You do not speak for me. Acknowledge that, sir.

THE COURT: He has no duty to acknowledge that and you have no authority to interfere with that.

THE DEFENDANT: I have not given you authority to speak for me. Your silence acknowledges that.

Would this court like to arraign me now?

THE COURT: Yes.

THE DEFENDANT: Fine.

THE CLERK: Is Steven William Sutcliffe your true and correct name?

THE DEFENDANT: No.

THE COURT: What is your true and correct name?

THE DEFENDANT: Steven of the Sutcliffes.

The correct spelling is upper case S, lower case t, lower case e, lower case v, lower case e, lower case n, hyphen, upper case W, lower case i, lower case l, lower case l, lower case i, lower case a, lower case m, colon, space, upper case S, lower case u, lower case t, lower case c, lower case l, lower case i, lower case f, lower case f, lower case e.

Pronounced Steven of the Sutcliffes, not Mr. Sutcliffe or any variation. I will be addressed as Steven of the Sutcliffes. That's it.

THE COURT: Proceed to arraign the defendant, please.

THE CLERK: You're advised that you're in the United States District Court for the Central District of California and that a First Superseding Indictment has been filed against you in this court charging you with violating the laws of the United States.

Have you received a copy of this First Superseding Indictment?

THE DEFENDANT: No, I have not. Now I have.

THE CLERK: Do you need to have the First Superseding Indictment read to you?

THE DEFENDANT: Yes, I would.

THE COURT: May I have the -- here you go, Steve.

THE CLERK: United States District Court for the Central District of California, October 2000 Grand Jury.

United States of America, plaintiff, versus Steve William Sutcliffe, defendant. CR 02-350(A)-AHM, First Superseding Indictment. 18 USC Section 875(c), Threats To Injure In Interstate Commerce; 18 USC Section 1028(a)(7), Fraud And Related Activity In Connection With Identification Information; 18 USC Section 2: Aiding and Abetting, Causing An Act To Be Done.

THE DEFENDANT: Motion to dismiss, misnomer on this indictment.

THE COURT: Denied. Keep reading the indictment.

THE CLERK: The grand jury charges Counts 1 through 4, 18 USC Sections 875(c), introduction, one, at all times relevant to this indictment the defendant Steven William Sutcliffe ("defendant") was a former employee of the Global Crossing Development Company --

THE COURT: You can just read the words.

THE CLERK: Global Crossing, located in Beverly Hills, California. Defendant's employment at Global Crossing ceased in approximately September of 2001.

Two, at some point after defendant's employment terminated but not later than on or about October 18, 2001 defendant created a web site known as evilgx.com and posted text and photographs on this web site.

In addition, defendant's web site contained electronic links to various pages located on other web sites.

Three, during the course of these postings defendant threatened various individuals associated with Global Crossing including process server Tracy Hall, chairman of the Board of Directors Gary Winnick and Assistant General Counsel Elizabeth Greenwood with bodily harm and also published numerous social security numbers of individuals associated with Global Crossing.

THE COURT: Does the prosecutor need to address the

court?

MS. DUARTE: I'm sorry, Your Honor. May I give a copy to the court reporter? I have a copy.

THE COURT: Sure.

THE CLERK: Interstate threats. Four, on or about the following dates defendant willfully, knowingly and with specific intent to threaten transmitted, caused to be transmitted and aided and abetted the transmission of the following communications in interstate commerce which communications were threats to injure the person of another.

Count 1, date 10/24/01, victim Tracy Hall, nature of threat posting on web site evilgx.com, stating I will personally send you back to hell from where you --

THE DEFENDANT: Objection; misstatement.

THE COURT: Back to the hell is the correct way it reads. You inadvertently deleted the word "the". Keep going.

THE CLERK: Count 2, date 1/31/02, victim Tracy Hall, nature of the threat, posting on web site evilgx.com stating I will kill you.

Count, 3, date 2/13/02, victim Gary Winnick. Nature of threat. Posting on web site evilgx.com stating keep your dogs at bay. I am now armed.

Count 4, date 3/17/02, victim, Elizabeth Greenwood, nature of threat. Posting on web site evilgx.com stating dead-dedicated to Elizabeth Greenwood and accompanied by sound file

of voice stating this is all far from over. And link to a photograph of Green and her young daughter.

Counts 5 through 9, 18 USC Sections 1028(a)(7), 2. Five, the grand jury re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 3 above.

6, on or about the following dates, defendant knowingly transferred, caused to be transferred and aided and abetted the transfer without lawful authority and in a manner affecting interstate commerce social security numbers which are means of identification issued by and under the authority of the United States belonging to other persons with the intent to aid and abet any unlawful activity that constitutes a violation of federal law, namely false representation of social security numbers for any purpose with intent to deceive in violation of Title 42, United States Code Section 408(a)(7)(B) as follows:

Count 5, date 10/24/01, items transferred.

Approximately 15 social security numbers assigned to other individuals.

Count 6, date 11/12/01, items transferred.

Approximately 100 social security numbers assigned to other individuals.

Count 7, date 10/3/01, items transferred approximately 1,900 social security numbers assigned to other individuals.

Count 8, date 2/13/02, items transferred. The social security number assigned to Gary Winnick.

Count 9, date, 3/17/02, items transferred. The social security number assigned to Elizabeth Greenwood.

A true bill and there's a place for the signature of the foreperson. To the left is Deborah Y. Yang, United States Attorney, signature of Jacqueline Chooljian, Assistant United States Attorney, Chief Criminal Division. Below that Arif Alarcon, Assistant United States attorney, Chief, Computer Crime Section.

THE COURT: Thank you for the reading of the First Superseding indictment. Please proceed.

THE DEFENDANT: Motion to dismiss as vague, fails to state a crime against the United States, it fails to list specific victims on Counts 5 through 7. Further, that this law is being improperly applied, unconstitutionally.

THE COURT: Denied.

THE DEFENDANT: All?

THE COURT: All.

THE CLERK: How do you now plead to Count 1 of the First Superseding Indictment, guilty or not guilty?

THE DEFENDANT: I cannot make a plea at this time until I know the nature of this crime, as that, the nature has seemed, has seemed to have changed in the past. So if this court could answer a question or two I might be able to make a plea at this point.

Will this court answer a question or two so I can

ascertain the nature of the crime so I can prepare a proper defense?

THE COURT: No. The court will construe the response to be a plea of not guilty. The plea is applicable to each of nine counts of the First Superseding Indictment. So Mr. Sutcliffe will be deemed to have plead not guilty to the charges in the First Superseding Indictment. That concludes the arraignment of the charges.

THE DEFENDANT: Let the record --

THE COURT: You and Mr. --

THE DEFENDANT: Secret jurisdiction. I will not tell the court --

THE COURT: Sit down at the table.

THE DEFENDANT: Nature of this crime.

THE COURT: Sit down. This is not going to be a debate.

THE DEFENDANT: You changed the nature once. You going to change it again?

THE COURT: Mr. Sutcliffe, there's much less to accomplish today than you my realize.

THE DEFENDANT: How can I prepare a defense here, if you won't even tell me the nature of the crime?

THE COURT: The first order of business --

THE DEFENDANT: They told me the nature was something once. Now they have changed the nature after almost a year.

Are they going to change it again? How many --

THE COURT: Now I am ordering you to be quiet. The first order of business is to complete the competency examination. I have received the motion and will grant the motion, although I'm going to change slightly the language in the proposed order that the government has lodged with the court and filed.

And Mr. Nicolaysen, I don't know if you have seen it yet but it's a recently filed document and you will have an opportunity to review it today, although there won't be a need for you to do anything more than assist with the representation much Mr. Sutcliffe for purposes of that competency examination.

MR. NICOLAYSEN: Is Your Honor signing the proposed order submitted by the government?

THE COURT: With very slight changes.

MR. NICOLAYSEN: Thank you.

THE COURT: Those changes will be to add the words "or psychological" on line 18 of page 3 after the word "psychiatric." And to contain a recital on page 4 referring to 18 USC 3161(h)(8)(A).

MR. NICOLAYSEN: Deleting one and replacing --

THE COURT: No, no. Adding the reference to (h)(8) which is the all purpose interest of justice provision.

MR. NICOLAYSEN: Thank you.

THE COURT: Those will be the only changes in the

proposed order.

MR. NICOLAYSEN: May I inquire of Your Honor whether or not the court is planning to make any factual findings in regard to the reasonable cause standard under the statute since there are no findings that have been submitted by the government.

THE COURT: Reasonable cause standard for the requirement of the competency exam?

MR. NICOLAYSEN: Yes, Your Honor. Under 4241, Subsection A, as the court very well knows, there's a reasonable cause requirement. Is the court inclined to make any findings to support its determination that reasonable cause --

THE COURT: I already did but I will repeat them. You were not here. The findings are focused primarily on the prong of competence that inquires into whether or not the defendant has the capacity and willingness to assist counsel in his own defense.

Those findings in turn arise out of and refer to and include findings that Mr. Sutcliffe has displayed apparent confusion about the proper roles of any counsel and all counsel, at least those counsel who have represented him thus far in this case, vis-a-vis the client and in particular vis-a-vis him.

Mr. Sutcliffe has displayed some apparent confusion as to the actual charges and what they consist of and what the elements are. Mr. Sutcliffe has refused to provide answers to very clear and simple questions, including some focused on what

his requests are or were, especially concerning whether he wished to have counsel or not have counsel and proceed to represent himself.

There is a sufficient and lengthy course of history in this case reflected in unauthorized filings that I chose to deem authorized or allow to be filed that reflect at least a tendency, if not a concerted plan to disregard the role and evidently the advice and the assistance of his prior counsel.

For all these reasons I think there is an existing question as to whether or not under the standards in 18 USC 4241 the defendant, Mr. Sutcliffe, has the competency to proceed to trial. For that reason on my own and before the government submitted its written motion I made the determination that a competency exam was warranted.

The motion itself in the order itself contains the necessary recitals relating to speedy trial considerations and I adopt those as well.

Mr. Nicolaysen, I have explored previously, in the last hearing especially, with prior counsel and with counsel for the government the status of discovery. And my understanding is that both Mr. Harris and Ms. Duarte are prepared to, if they have not already done so, assist in the transition.

So that in the event that the finding of the authorized examiner is that Mr. Sutcliffe is competent to proceed to trial we can set a date for trial at the next hearing or at least the

first available opportunity consistent with your schedule, the schedule of the other parties and to assist in making sure that the date is not a day longer than would otherwise would be necessary.

I'm expecting you in the interim to review the discovery, take what other steps you in your own professional view think are appropriate to prepare in the eventuality that there is a trial in this case.

Any further questions, counsel?

MS. DUARTE: Yes, Your Honor. The court has set a date at the previous appearance of March 25, ten weeks out. Is that a status date or is that date --

THE COURT: For the time being we will consider it the trial date. But my expectation is that may not be either feasible or convenient to some or all of the lawyers in this case. I think that first we have to determine what the status and the pace of the competency exam is, what the outcome of the exam is. At the very least there will be a status conference before then.

Either side is welcome to submit a request for an earlier status conference or for written clarification about the schedule before that March date.

MR. NICOLEYSEN: Your Honor, the proposed order from the government leaves it to the discretion of MDC to decide whether the evaluation is done by them or some other facility.

I would respectfully ask the court to consider designating a facility. For example, if it were Rochester, Minnesota which in my experience is very well suited for these evaluations, I would vote for that. I think it's a superior environment, provides the district court with much better guidance.

THE COURT: What about bringing in a competent, experienced, respected physician or psychologist to conduct the examination here in Los Angeles at the facility the MDC but not someone who has been designated by the MDC.

MR. NICOLAYSEN: I have done that too over the years on the CJA panel. For example, Dr. Saul Fehrstein comes to mind. The reason I'm not recommending that now, and again I just speak from experience is this. There tends to be an evaluation made on a one time interview basis as opposed to a continuum of interviews which a facility is better suited to do.

Secondly, I think Mr. Sutcliffe might be an actual candidate for some type of profile testing. I notice for example, Your Honor expanded the options, not just psychiatric by psychological. Possibly the court had in mind a battery of psychological tests.

THE DEFENDANT: I object. I object.

THE COURT: Sit down and be quiet.

THE DEFENDANT: No, I will not be quiet.

THE COURT: You may continue.

THE DEFENDANT: I will not be quiet. I will not be

quiet.

THE COURT: If you disregard my orders I will order that you be removed.

THE DEFENDANT: I want it on the record that this man is not speaking for me. You ordered originally a competency hearing only. Now you're adding additional psychological and additional conditions based on your evaluation. That man sat up there and said well, he might have a screw loose. He might be a child molester, too. Where is the proof? Where is evidence I want to hear?

THE COURT: I deny your motion. Be quiet.

THE DEFENDANT: I object to this whole proceeding. It's a farce.

THE COURT: Your objection is noted.

THE DEFENDANT: It's a kangaroo court.

THE COURT: Your objection is noted and denied. Please continue, Mr. Nicolaysen.

MR. NICOLAYSEN: Thank you, Your Honor. My experience has taught me that it's not as meaningful in terms of clinical feedback to the district court to have the outside forensic psychiatrist come in and do a single session. I would respectfully ask Your Honor to consider having Mr. Sutcliffe have the benefit of a better clinical environment than can-do testing.

I think it's much more advantageous to him since we're

trying to give this our best shot. We want to get the best feedback possible.

MDC staff does not typically have experienced psychologists other than Dr. Ralph Healy who's been there for many years. Whereas, Rochester is a formal clinical environment. I have seen that to be a better resource. So I just offer that to Your Honor as an option at this stage.

THE COURT: Okay. What I think would be the prudent thing to do would be to permit you to make any related or additional requests. For example, I don't know enough about Rochester or about alternatives to Rochester, including alternatives outside of Los Angeles and outside the MDC.

Do you wish to respond initially to Mr. Nicolaysen's proposal?

MS. DUARTE: Yes, Your Honor. I actually think that's probably a very good idea. The reason I didn't propose it is there is a provision in the rule which indicates that if at all possible the defendant should remain as close to home, as close to where he is being detained as possible. I couldn't think of another word to use.

And so because of that provision, unless there's some kind of a waiver I thought it was probably safer to ask for MDC first and a federal medical facility second. But I think that the Minnesota and also SCI Springfield are excellent facilities where based on my limited experience with them --

THE COURT: What is the precise name of the facility in Rochester, Minnesota?

MS. DUARTE: It's just escaping my mind right now. Mr. Nicolaysen may know.

MR. NICOLAYSEN: The initials are FMC for Federal Medical Center Rochester. I will be happy to pull that off the web site.

THE COURT: I can find it myself.

MR. NICOLAYSEN: Your Honor, it's www.bop.gov as the web address and they have all the facilities listed. There's a link on the home page to the facilities.

THE COURT: Okay. I will consider Mr. Nicolaysen's oral request. And if I conclude that the initial proposal referring to MDC and decisions or alternatives being considered and chosen from by MDC is not well advised I will substitute an appropriate facility.

It's highly likely to be the one in Minnesota. I think it's important for me to understand more what that entails, so I will look into it.

Either way, this order will go out today. I will make that determination today.

Anything further, counsel?

MR. NICOLAYSEN: Not at this time, Your Honor.

MS. DUARTE: No, Your Honor. Thank you.

THE COURT: We're adjourned.

(PROCEEDINGS ADJOURNED)

C E R T I F I C A T E

I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT OF THE ABOVE-ENTITLED PROCEEDINGS, PAGES 1-21.
DATED DECEMBER 10, 2004; LOS ANGELES, CALIFORNIA.

Lynne Smith

LYNNE SMITH

OFFICIAL COURT REPORTER