

DAVID
MERRILL

\$18.80

PAID

FOURTH JUDICIAL DISTRICT
MARY V. PERRY
CLERK OF COURT
EL PASO COUNTY JUDICIAL BUILDING
270 SOUTH TEJON STREET
P.O. BOX 2980
COLORADO SPRINGS, CO 80901



08-MC-0066 File Original

1 DISTRICT COURT, EL PASO COUNTY
STATE OF COLORADO
2 270 South Tejon
Colorado Springs, CO 80903
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FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAY 06 2010

GREGORY C. LANGHAM
CLERK

4 THE PEOPLE OF THE STATE OF COLORADO
5 the Plaintiff,
6 v.

FOR COURT USE ONLY

7 DAVID MERRILL (a/k/a VanPelt),
the Defendant.
8 -----

Case No. 04CR3218
Division 14

9 For Plaintiff:
Gene Tiell
10 Att. Reg. No. 38493
105 E. Vermijo
11 Colo. Springs, CO 80903
Attorney for Plaintiff
12
13 Telephone: (719) 520-6000
Facsimile: (719) 520-6185

14 For the Defendant:
15 Amanda Philipps
Att. Reg. No. 35885
16 415 South Sahwatch
17 Colo. Springs, CO 80903
Attorney for Defendant
18 Telephone: (719) 475-1235
19 Facsimile: (719) 475-1476

20 REPORTER'S TRANSCRIPT

21
22 This Matter came on for Hearing on Monday,
23 August 25, 2008, before the HONORABLE KIRK S. SAMELSON, Judge
24 of the District Court.
25

ORIGINAL

1 MONDAY, AUGUST 25, 2008, MORNING SESSION.

2 * * *

3 (Whereupon, the following proceedings were
4 had to the Court with the defendant present in custody:)

5 MR. LAMPHERE: Your Honor, could we call David
6 VanPelt, 04CR3218.

7 THE DEFENDANT: I have not responded to or
8 formed that legal or full name in over a decade.

9 My name is David Merrill. My family's name is
10 "VanPelt."

11 THE COURT: Do you have an attorney?

12 THE DEFENDANT: No.

13 I don't want you to enter an appearance.

14 THE COURT: I don't have an Information in this
15 case.

16 MR. TIELL: Your Honor, do you need a copy with
17 regards to the Information?

18 THE COURT: Give me just a second.

19 THE DEFENDANT: I want to understand what is
20 going on. I've been in a vacuum for a week.

21 THE COURT: I don't have a copy. And I don't
22 believe that Mr. Merrill has been provided a copy either.

23 (Pause.)

24 Okay. I do have a one count Information that
25 I'll accept for filing.

1 THE DEFENDANT: Could you tell me what the
2 purpose of this hearing is?

3 THE COURT: It's to provide a copy of the
4 charges to you and to see if you would like the Public
5 Defender to represent you.

6 Would you like Ms. Philipps to represent you?

7 THE DEFENDANT: No, I don't believe so.

8 THE COURT: Mr. Merrill, my recommendation is
9 you are entitled to free representation.

10 Ms. Philipps is an excellent attorney. You are
11 almost always better off having an attorney represent you
12 in a charge rather than representing yourself.

13 I would strongly recommend you let her help you
14 on this.

15 If you decide you want to hire a private
16 attorney later, you can do that.

17 If you decide you want to proceed without an
18 attorney later, you can do that later after I advise you
19 of the consequences of that.

20 But, at this point, you are much better off
21 having an attorney represent you.

22 THE DEFENDANT: Well, back in 2004 is it you
23 that --

24 THE COURT: Mr. Merrill, would you like
25 Ms. Philipps to represent you?

1 THE DEFENDANT: She keeps advising me and I
2 haven't hired her yet.

3 THE COURT: Well, you don't have to hire her.
4 She will represent you without charge.

5 THE DEFENDANT: Well, my question is back in
6 2004, are you who ordered this warrant?

7 THE COURT: No.

8 The District Attorney provided the charges.
9 They brought the charges against you, not me.

10 THE DEFENDANT: All right. Thank you.

11 Well, I'm not trying to be obtuse about it,
12 so --

13 No, I don't want her to represent me. But I --
14 thanks for letting me see these charges. I haven't formed
15 a legal full name for over a decade.

16 THE COURT: Mr. Merrill, let me tell you what
17 your rights are.

18 You've been given a copy of the charge that's
19 been filed against you. You have the right to remain
20 silent; you have the right to be represented by an
21 attorney.

22 If you can't afford an attorney, one will be
23 appointed to represent you. You have the right to a jury
24 trial; and since you are in custody, you have the right to
25 a preliminary hearing.

1 If you make any agreement with the District
2 Attorney's office it has to be voluntary on your part.

3 Do you plan on hiring a private attorney since
4 you don't want Ms. Philipps to represent you?

5 THE DEFENDANT: I'm not sure if I'm going to be
6 hiring an attorney or not.

7 THE COURT: Well, Mr. Merrill, let me advise
8 you that criminal law is a complicated proceeding.

9 You are almost always better off having an
10 attorney represent you. If you choose to represent
11 yourself, I will treat you just as if you were a lawyer.
12 You will be bound by the same rules, same procedures, and
13 same requirements as if you were an attorney.

14 You are greatly at risk by representing
15 yourself. In your situation, since you are in custody,
16 you are entitled to free representation.

17 Ms. Philipps would not charge you, whatsoever.
18 And, as I said, you are almost always better off having an
19 attorney represent you.

20 I would highly recommend at this point that you
21 let Ms. Philipps represent you. If you decide later on to
22 proceed on your own, that's a choice you can have at any
23 point in time.

24 THE DEFENDANT: Could you tell me what the
25 sentencing requirements are?

1 THE COURT: I can advise you of your rights.
2 That's as far as we're going to go right now.

3 I can tell you that the possible sentences go
4 up to eighteen months in prison -- one year to eighteen
5 months in prison. It could be probation, it could be
6 community corrections. That assumes either a conviction
7 or a guilty plea on your part.

8 Would you allow Ms. Philipps to represent you
9 at this point?

10 THE DEFENDANT: No.

11 THE COURT: All right. How would you like to
12 proceed, Mr. Merrill?

13 THE DEFENDANT: Well, I believe I'm bondable.

14 THE COURT: Do we have a bond set in this case?
15 There is a bond set in the amount of \$1500.

16 THE DEFENDANT: Could you reduce that to a P.R.
17 bond?

18 THE COURT: No, sir. I'm not going to do that
19 without more information.

20 THE DEFENDANT: Well, is there a nonstatutory
21 abatement for misnomer in your file?

22 THE COURT: You know what, I don't have any
23 idea what you are talking about.

24 What I'm going to do at this point,
25 Mr. Merrill, is we can either set this for a preliminary

1 hearing, we can set it for a disposition where the
2 District Attorney can contact you and see if there is an
3 offer that you would like to accept as far as a plea
4 agreement.

5 Or, we can set it for a preliminary hearing,
6 where you could -- where the District Attorney will
7 provide evidence to me to determine whether there is
8 sufficient evidence to believe there is probable cause to
9 hold you on these charges.

10 THE DEFENDANT: Yeah, that's what I was trying
11 to do is get you more information.

12 Since the abatement failed, I'll be showing up
13 for any future appearances.

14 THE COURT: Would you like it set for trial,
15 would you like it set for preliminary hearing, or would
16 you like it set for disposition?

17 THE DEFENDANT: I would like a P.R. bond. You
18 said you needed more information.

19 THE COURT: I'm not going to set it for P.R.
20 bond right now, Mr. Merrill.

21 You've got a choice: You can set it for
22 disposition, you can set it for preliminary hearing, or
23 set it for trial.

24 THE DEFENDANT: Set it for disposition.

25 THE COURT: Ms. Philipps, I would like to

1 appoint you to represent Mr. Merrill despite the fact he
2 doesn't want you to represent him if you are willing to do
3 that.

4 MS. PHILIPPS: I am, Your Honor.

5 THE COURT: Thank you.

6 MS. PHILIPPS: If that's the case, Your Honor,
7 I would request a preliminary hearing.

8 THE COURT: September 15th at 1:30.

9 MS. PHILIPPS: And, I'm sorry. I didn't hear
10 the conversation about bond.

11 THE COURT: \$1500 is what it is set at.

12 MS. PHILIPPS: Okay. If I could address bond
13 at the next court date, as well?

14 THE COURT: You may.

15 MS. PHILIPPS: Thank you.

16 THE COURT: Ms. Philipps, just so you know,
17 there was an original bond set for Mr. Merrill of \$750.

18 He failed to appear in June of 2004; the bond
19 was raised to 1500 dollars at that time.

20 MS. PHILIPPS: Okay. Thank you.

21 (Whereupon, the hearing concluded.)

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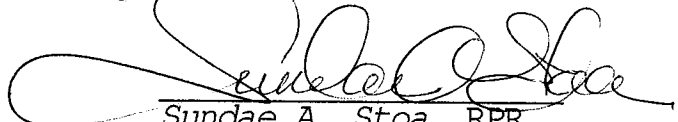
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REPORTER'S CERTIFICATE

The foregoing is a true and complete transcription of my stenotype notes taken in my capacity as Official Reporter of Division 14, District Court, El Paso County, Colorado, at the date and place previously set forth.

Dated at Colorado Springs, Colorado, this 7th day of April, 2010.


Sundae A. Stoa, RPR
Certified Shorthand Reporter

ORIGINAL

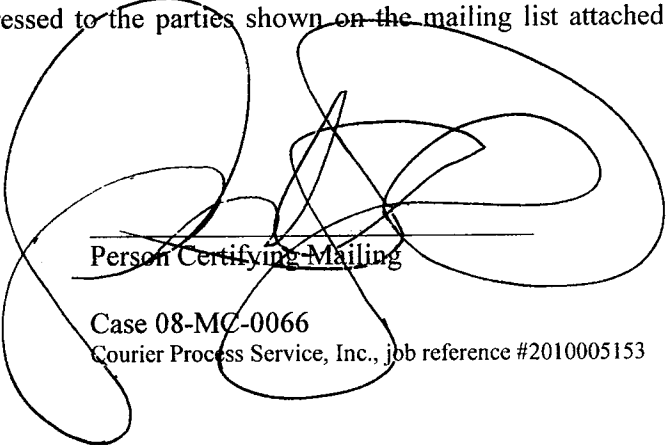
CERTIFICATE OF MAILING

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- A pre-addressed postage paid envelope
- Empty envelope with David Merrill \$18.80 paid written on it, envelope to be filed and copy to be returned
- Reporter's Transcript case no. 04CR3218 for August 25, 2008
- Copies of Certificate of Mailing, one copy to be filed and one copy to be returned

in the United States mail, postage prepaid, addressed to the parties shown on the mailing list attached hereto, this 4th day of May, 2010.



~~Person Certifying Mailing~~

Case 08-MC-0066

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