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#19-003

CONFIRMING  
LEO EMIL WANTA

1 STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY  
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4 STATE OF WISCONSIN,  
5 Plaintiff, TRANSCRIPT OF PROCEEDINGS  
6 vs. Case No. 92-CF-683  
7 LEO E. WANTA,  
8 Defendant.  
9 -----  
10

10 DATE: November 4, 1994;  
11 Madison, Wisconsin;

12 PRESIDING: The Honorable MICHAEL B. TORPHY, JR.,  
13 Circuit Court Judge;

14 APPEARANCES: The State appears by DOUGLAS HAAG,  
15 Assistant District Attorney;  
16 The Defendant appears in person and by  
17 JOHN CHAVEZ, Attorney, Madison,  
18 Wisconsin;

19 PROCEEDINGS: Competency Hearing.  
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23 DEBORAH ZWIEBEL MANKE, RPR  
24 Official Court Reporter  
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WITNESS INDEX

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FOR THE STATE

David Mays 6

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PROCEEDINGS

THE COURT: We are on the record in the matter entitled State of Wisconsin vs. Leo E. Wanta who is charged in an information with violations of 71.83(2)(b)1 and 71.83(2)(b)3.

A hearing was scheduled in this matter on October 31st, 1994 with the appearances, the State by Assistant Attorney General Douglas Haag, Mr. Wanta in person and represented by Mr. Jack Chavez. This is effectually a continuation of that hearing or that -- pursuant to the notice for that hearing. It is all pursuant to the provisions of Section 971.14.

There was on the date of the 31st filed and present in court -- a report filed by Dr. Connie M. Lee and Miss Lee was present in court as well along with Dr. David Mays at that time. Dr. Mays is present today. Miss Lee is not present today. And this is, as I indicate I believe, to be sort of a continuation effectually of that hearing.

And briefly stated, as I recall the hearing on the 31st, and counsel may correct me if I'm wrong, Mr. Haag indicated and was concurred in by Mr. Chavez there had been some conversations with Miss Lee concerning her report and the fact

1           that, and she confirmed that, she would like some  
2           further time to deal with other sources of  
3           information regarding the mental status of Mr.  
4           Wanta. The Court granted that and there was a  
5           specific order prepared which the Court requested,  
6           but on consideration of both the Court and Mr. Haag  
7           I think feels that it does not accurately reflect  
8           the exact happenings and statutory requirements  
9           required as a result and we scheduled this for a  
10          continuation. And with that I'd call on Mr. Haag.

11                       MR. HAAG: Thank you, Your Honor. I  
12           think that does correctly set it forth. As I  
13           indicated on the record before, Dr. Lee, after  
14           consulting at some length, approximately a period  
15           of about an hour, with Dr. David Mays and also in  
16           the presence of a participant in that meeting was  
17           Ph.D. Dr. David Peterson, that discussion took  
18           place with Chavez and myself present and it became  
19           clear to Dr. Lee that she felt that her report was  
20           based upon a lack of information, that she then  
21           indicated to both myself, Mr. Chavez and Dr. Mays  
22           that she would like to have further information and  
23           would like to be able to continue the process of  
24           the evaluation of Mr. Wanta.

25                       I indicated to Your Honor and Mr. Chavez

1           thereafter that I believe that although that was  
2           clear on the record, what was not made clear by me  
3           having the burden was the continued incompetency of  
4           Mr. Wanta and the additional elements that I think  
5           Section 971.14 imposes on the State and on the  
6           Court to continue that observation period. So  
7           today I'm prepared to go forward on those issues.

8                         The first thing, Your Honor, is that Dr.  
9           -- Let me indicate first that I attempted to  
10          contact Dr. Connie Lee. She is on vacation. She  
11          has left the state of Wisconsin. But Dr. Mays,  
12          having had the opportunity to consult in depth with  
13          her and Dr. Peterson, is fully familiar with the --  
14          with Dr. Lee's findings, specifically with regard  
15          to her observation of Mr. Wanta over the past three  
16          months and is in a position to offer opinions to a  
17          reasonable medical certainty about Mr. Wanta's  
18          present condition. And under the circumstances,  
19          not being able to produce Dr. Lee, I'm able to  
20          produce a doctor who can make those opinions and as  
21          a part of that data base has full information on  
22          what has happened with Mr. Wanta over the past  
23          three months. So I'd be prepared to call Dr. Mays.

24                         I indicate to the Court, Your Honor, that  
25          today Dr. Mays has filed with the Court a letter

1 dated November 3rd, 1994 regarding Mr. Wanta and  
2 copies have been provided to counsel and Mr. Wanta.  
3 That report sets forth Dr. Mays' finding of  
4 continued incompetency on the part of this  
5 defendant and there are some other issues that I  
6 think need to be examined, and I would ask the  
7 permission of the Court to call Dr. Mays to lay  
8 those factors on the table, so to speak.

9 THE COURT: You are effectually  
10 proceeding under 971.14(4)?

11 MR. HAAG: Yes, sir.

12 (DAVID MAYS, having been called as a  
13 witness on behalf of the State, was duly sworn,  
14 examined, and testified under oath as follows:)

15 DIRECT EXAMINATION BY MR. HAAG:

16 Q Doctor, would you state your full name please?

17 A David Mays, M-a-y-s.

18 Q And by whom are you employed?

19 A I'm employed by the Mental Health Institute,  
20 Mendota Mental Health Institute.

21 Q And what is your profession?

22 A I'm a psychiatrist.

23 Q Are you familiar with the defendant in this case,  
24 Leo E. Wanta?

25 A Yes, I am.

10-12  
MINUTES!!

1 Q Did you have occasion to personally examine Mr.  
2 Wanta at one point in time in the past?  
3 A Yes, I did.  
4 Q And when was that?  
5 A I'm not sure what the exact date was. It was  
6 several months ago.  
7 Q And as a result of that examination, did you -- and  
8 further information, collateral information of  
9 historical fact provided to you by various sources,  
10 did you have an occasion a little over three months  
11 ago to have an opinion with regard to Mr. Wanta's  
12 then competency to proceed in a criminal case?  
13 A Yes, I did.  
14 Q And what was that opinion at that time, doctor?  
15 A My opinion was that Mr. Wanta was not competent to  
16 proceed to trial on his charges and furthermore  
17 that he was not competent to make decisions about  
18 medication.  
19 Q And are the opinions that were adduced of you at  
20 that time as well as all the opinions that I'll ask  
21 of you today offered to a reasonable degree of  
22 medical or psychiatric certainty?  
23 A Yes, they are.  
24 Q Now, doctor, within the past several days,  
25 directing your attention specifically to October

1           31st, Monday of this week, did you have an  
2           opportunity to meet with a physician from the  
3           Winnebago Mental Health Institute by the name of  
4           Dr. Connie M. Lee?

5    A       Yes, I did.

6    Q       Did you also have an opportunity to meet with  
7           psychologist Dr. David Peterson?

8    A       Yes, I did.

9    Q       During the course of that meeting, were you able to  
10          ascertain facts and information from Dr. Lee and  
11          Dr. Peterson about Mr. Wanta's progress or lack  
12          thereof during the past three months of his  
13          observation at Winnebago Mental Health instutue?

14   A       Yes, I would.

15   Q       Could you discuss just very briefly please what  
16          facts you determined in your discussion with Dr.  
17          Lee were probative and helpful to you in forming an  
18          opinion, if you have one here today?

19   A       The first thing I did was read the reports of both  
20          Dr. Peterson and Dr. Lee. After reading those  
21          reports, I talked to them specifically about what  
22          the basis was of their opinions about Mr. Wanta's  
23          competence and his mental status. In asking Dr.  
24          Lee and Dr. Peterson questions about that, they  
25          gave me quite a bit of information about how they



1           perceived Mr. Wanta, what his behavior had been  
2           like at Winnebago and how they felt his mental  
3           status could best be described. So during the  
4           course of that information I felt like I got a very  
5           accurate representation of how they viewed Mr.  
6           Wanta and the circumstances on which they base that  
7           opinion.

8       Q     Did it develop during that discussion that you had  
9           access to additional information, historical fact  
10          perhaps that was not known at the time that Dr. --  
11          by Dr. Lee at the time that she wrote her report to  
12          the Court, the report in the file dated October  
13          12th, 1994?

14       A     Yes, it was absolutely clear to me that I knew a  
15           number of facts which Dr. Lee and Dr. Peterson did  
16           not know at the time they prepared their report.  
17           In fact, I asked them specifically about a number  
18           of those facts, as did other people who were  
19           present in the room, and it was clear that they had  
20           not heard those facts or didn't know of their  
21           existence.

22       Q     Were you able to ascertain in your conversation  
23           whether or not Dr. Lee had at any time during that  
24           period of time consulted with Mr. Wanta's counsel,  
25           Mr. Jack Chavez?

1 A It is my observation that that never happened. Dr.  
2 -- I believe that Dr. Lee said that quite  
3 specifically and I'm certain that Dr. Peterson  
4 never did.

5 Q Did she have occasion in your presence to have a  
6 brief conversation about Mr. Wanta with Mr. Wanta's  
7 counsel?

8 A Yes, she did.

9 Q Did she during any time in that period that Mr.  
10 Wanta was at Winnebago have an opportunity to  
11 consult with you, the physician who had made the  
12 finding of incompetency?

13 A She had never consulted with me.

14 Q Did she indicate as a result of your discussions  
15 that those factors that she had not been aware of  
16 were probative and would have been helpful to her  
17 in arriving at an opinion in this case?

18 A She stated quite specifically that the presence or  
19 absence of the truth or falsity of the facts that  
20 we were presenting to her for the first time would  
21 have a very direct bearing on her opinion about Mr.  
22 Wanta's competency.

23 Q And in particular, doctor, so that the record is  
24 clear on what we're talking about, as an example,  
25 are those facts that you're talking about, at least

1 in part, statements and beliefs of Mr. Wanta that  
2 you believe to be delusional?  
3 A Yes.  
4 Q On the basis of the information that you had,  
5 historical fact, the observations of Mr. Wanta and  
6 now the discussions with both Dr. Connie Lee and  
7 Dr. Peterson, do you have an opinion as to Mr.  
8 Wanta's present competency to proceed?  
9 A Yes, I do.  
10 Q What is that opinion, doctor?  
11 A My opinion is that Mr. Wanta remains incompetent to  
12 proceed.  
13 Q Doctor, with regard to all of the sources of data  
14 that we previously mentioned here, as well as your  
15 knowledge of Mr. Wanta, do you have an opinion as  
16 to whether or not Mr. Wanta continues not to be  
17 competent to refuse medication?  
18 A Yes, I have an opinion.  
19 Q What is that opinion, doctor?  
20 A My opinion is that Mr. Wanta continues to not be  
21 competent to make decisions about his treatment and  
22 in specific about medication.  
23 Q And doctor, do you have an opinion on the basis of  
24 your observations and your information as well as  
25 your experience and education as to whether, if

→ 10/12 MINUTES!

GOLAG.925

1 provided with appropriate treatment, Mr. Wanta is  
2 likely to become competent during the next periods  
3 that are -- that he is potentially -- that he could  
4 potentially be kept by the state at Winnebago, that  
5 is, during the next six, nine or twelve -- for the  
6 period ending with a total of six, nine or twelve  
7 months in the institution?

8 A Yes. It is my opinion that Mr. -- there is a  
9 likelihood that if Mr. Wanta received appropriate  
10 treatment that he could be restored to competency.

11 Q And does that then indicate to you, doctor, that  
12 there is a potential for Mr. Wanta to make  
13 sufficient progress so that this Court can make not  
14 only a finding of competency, but one of  
15 recommitment to Winnebago?

16 A Yes.

17 MR. HAAG: No further questions, Your  
18 Honor. I'd ask that the report be received.

19 THE COURT: Dr. Mays, I show you Exhibit  
20 No. 1 which appears to be the report referred to by  
21 Mr. Haag dated November 3rd and apparently bearing  
22 your signature. Is that indeed your report?

23 THE WITNESS: Yes, it is.

24 THE COURT: Mr. Chavez, any questions of  
25 Dr. Mays?

1 MR. CHAVEZ: No, Your Honor.  
2 THE COURT: You may step down, sir.  
3 Thank you.  
4 (Witness excused.)  
5 THE COURT: Further, Mr. Haag?  
6 MR. HAAG: Your Honor, on the basis of  
7 the information --  
8 THE COURT: Any further evidence?  
9 MR. HAAG: No sir.  
10 THE COURT: Mr. Chavez?  
11 MR. CHAVEZ: No, Your Honor. In  
12 consulting with my client, he doesn't object to Dr.  
13 Mays' testimony, number one, and again he feels  
14 he's competent to proceed.  
15 THE COURT: Any evidence that you wish to  
16 present, Mr. Chavez?  
17 MR. CHAVEZ: No, Your Honor.  
18 THE COURT: All right. Now, Mr. Haag.  
19 MR. HAAG: I'd only ask that if Mr. Wanta  
20 has any evidence, since we're in this strange  
21 situation of my having the burden, I'd ask that the  
22 Court inquire of Mr. Wanta whether he has any  
23 evidence he wishes to present.  
24 THE COURT: Mr. Wanta?  
25 THE DEFENDANT: I thank you, Your Honor.

*Yes I did*  
*10-12*  
*MINUTES*  
*15*  
*Stupid!!*

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I was quite surprised to see the government permit Attorney Chavez here because Dr. Lee gave me a letter of August 5th, 1994 from Attorney James Reilley that he is now my attorney. He was at Winnebago. He talked to Dr. Lee and Dr. Peterson at length and they gave me a letter, if I may produce this, that Lee passed on to me that James Reilley, a lawyer with Helene Zinberg here in Madison, had been paid and retained to represent me and yet he is still on the case. And since I have never hired Chavez, I have no understanding why he's here and why my doctors, Dr. Lee and Dr. Peterson who you yourself appointed, are not here to state what I think is the truth.

And also at one time Dr. Mays said that I was never a candidate for Inspector General Defense. Dr. Peterson produced me a copy of a letter from Congressman Toby Roth, and yes, indeed I spent time at the White House and yes, indeed I'm a nominee for Inspector General Defense. So I have no idea how long I'm going to be accused of a crime that was never committed.

I paid these taxes in 1992 as a nuisance and then in 1993 I was arrested in Geneva for failure to pay what Attorney Tom Wilson in Appleton

1 my family attorney, had paid and settled, and the  
2 court has a record on June 24th, 1992 of full  
3 payment and settlement by the Wisconsin Department  
4 of Revenue for \$14,000 of this alleged crime of  
5 income which I have never yet to receive which was  
6 a promissory bank note which is in the German  
7 courts right now, and the German courts will be  
8 giving you affidavits that yes, this was a  
9 promissory bank note to the corporation in Vienna  
10 and in Mississippi and at no time income to me. In  
11 fact, the principal that gave me the loan on behalf  
12 of the corporation is not even requesting the  
13 payment of the promissory bank note.

14 I have all of these exhibits, Your Honor,  
15 and I think that these gentleman are making a scam  
16 on the Court and I feel very, very bad that you  
17 have been taken by these people. I have a bank  
18 receipt here from the Geneva bank that shows that I  
19 had paid \$30,000 and \$25,000 to Mark Eisenberg.  
20 Mark Eisenberg isn't here but the bank shows that  
21 \$25,000 has been remitted to Mark Eisenberg.

22 I don't understand how long this fallacy  
23 and this corruption or conspiracy is going to go  
24 on. I have more kinds of documents that any  
25 reasonable court would see that I'm innocent of no

1 crime.

2 THE COURT: Mr. Wanta, let me just -- let  
3 me ask Mr. Chavez to give me the letter that you  
4 wanted me to have or the bailiff can do that, the  
5 letter apparently, whichever one was to --

6 THE DEFENDANT: I have no delusions.

7 THE COURT: Let me -- What I am  
8 interested in at this point is the first letter  
9 that you indicated. I don't want to get into the  
10 issues, very honestly, of the substance of the  
11 charges.

12 THE DEFENDANT: But I keep paying for  
13 attorney's fees and nobody shows up. What is this?  
14 I don't even live in the United States.

15 THE COURT: All right. Let me just --  
16 You've indicated that. Let me get back to what Mr.  
17 Haag started with.

18 THE DEFENDANT: Thank you, Your Honor.

19 MR. HAAG: Your Honor, I would -- I think  
20 the record ought to have some fair rebuttal with  
21 regard to Mr. Wanta's statements of his retaining  
22 counsel. The fact of the matter is that I was  
23 contacted by Miss Zinberg a number of months ago  
24 saying that they were contemplating representing  
25 Mr. Wanta but they needed money first and that's

*Jerry  
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\$13-14000  
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Chavez never retained nor hired by Amb. Wanta

why Mr. Chavez is still here. I think I had similar contacts --

THE COURT: My position on contact is that I find nothing in the file that indicates any retainer. Nobody has appeared on behalf of Mr. Wanta in this case and until they do, they're not representing him, it's as simple as that. I have to deal with whoever says they're representing you. Nobody says they're representing you except Mr. Chavez. The Court has received nothing from Mr. Reilley. The Court has received -- no, this isn't addressed to me -- received nothing from Mr. Eisenberg. It's not a retainer, it is not an appearance in this action and there's nothing I can do to some attorney or by way of forcing some attorney to appear in this case. It's just as simple as that.

I want to deal with the subject of retention and all I'm telling you is that regardless of this letter that Mr. Reilley seems to have written to somebody by the name of Salchert, he has not appeared in this action. Now, what I would like to deal with is the subject regarding 971.14(4). Mr. Haag?

MR. HAAG: Thank you, Your Honor. The

See U.S. SUP. CT. RULINGS ON LAWYER APPEARANCES

Rec'd Medical Files w/ Retainer letter

1 State would move on the basis of the information  
2 that has been presented to this Court, both on the  
3 31st and today, that the Court find that the  
4 defendant Leo Wanta is incompetent, that the State  
5 has met its burden by clear and convincing  
6 evidence, that the defendant continues to not be  
7 competent to refuse medication, the State has met  
8 that burden, that the defendant is likely if  
9 provided with appropriate treatment to become  
10 competent during the time that the statute allows,  
11 and finally that accordingly, he's making  
12 sufficient progress so that he may be recommitted  
13 to Winnebago.

14 And I'd further ask that as a result of  
15 those findings the Court issue an order returning  
16 Mr. Wanta to the Winnebago Mental Health Institute  
17 and ordering that he is not competent to refuse  
18 medication but that he may be given medication and  
19 whoever administers the medication and treatment to  
20 Mr. Wanta shall observe appropriate medical  
21 standards.

22 THE COURT: My assumption is that on the  
23 basis of the record that Mr. Wanta's position  
24 personally remains the same and Mr. Chavez's  
25 position remains the same as it was on the 31st

1 with regard to either opposition or consent to the  
2 motion just made by Mr. Haag.

3 And that accordingly, the Court would  
4 find in accordance with the motion, enter an order  
5 as requested pursuant to the motion specifically  
6 finding that the named defendant is incompetent to  
7 proceed pursuant to the provisions of -- as that is  
8 defined in Section 971.13 of the statutes, that his  
9 mental disability precludes him from ascertaining  
10 the advantages or disadvantages of medication and  
11 accordingly, is incompetent to make decisions in  
12 that regard. And it is ordered that they may be  
13 administered without his consent and that he is  
14 committed to the Winnebago State Hospital --

15 MR. HAAG: Thank you, Your Honor.

16 THE COURT: -- pursuant to the provisions  
17 of 971.14(5). And I believe, quite frankly, that  
18 the order that you earlier presented now is  
19 appropriate except that on Page 2, if you want to  
20 make reference to it, the second line of Paragraph  
21 7 should be changed to recite today's date as well  
22 as the testimony of Dr. Mays.

23 MR. HAAG: I can do that.

24 THE COURT: And if you would do that, I  
25 will sign it.

*False testimony* →

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MR. HAAG: Thank you, Your Honor. I know  
Mr. Wanta's anxious to get back up there and I'll  
do that immediately after this hearing and have it  
over to Your Honor this morning.

THE COURT: All right. Thank you.  
(Proceedings concluded.)