

Subject: [JIT] News: Judge: Deaf-mute still can't stand trial

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Judge: Deaf-mute still can't stand trial

A six-month delay was ordered so an accused killer and rapist can learn sign language.

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JAMES CITY

--- A deaf-mute man facing capital murder charges in James City County can communicate with his lawyers, but only at the level of a young child, his lawyer said in court Thursday.

Oswaldo Martinez, a 37-year-old illegal immigrant from El Salvador, is accused of the 2005 rape and killing of 16-year-old Brittany Binger outside the Whispering Pines Mobile Home Court in James City County. On Thursday, Williamsburg-James City County Circuit Court Judge Samuel Powell ordered that Martinez be given another six months to hone his sign-language skills to the point that he can understand the legal proceedings against him and assist his lawyers with his defense.

"He's made strides," Powell said after reviewing a report prepared by language experts from Gallaudet University. "In my view, he is obviously incompetent. But in my view, he is restorable in the foreseeable future."

Hinting at the quandary that has frustrated the prosecution and Binger's loved ones, Powell added: "I don't know when the 'foreseeable future' is. It's one of those undefined phrases."

Police say Binger was attacked from behind in the early evening of Jan. 2, 2005, down the road from her residence in the Grove section

of the county and not far from a shed Martinez occupied on his brother's property. Martinez is charged with rape, murder, sodomy and robbery.

When police arrested Martinez, they learned that he had no formal schooling and relied exclusively on primitive hand gestures to communicate.

Martinez, who faces the death penalty if convicted, has undergone three years of intensive sign-language instruction so that he can be deemed fit to stand trial.

The court-ordered competency report finalized in May found that Martinez is able to communicate at a level commensurate with a child of 4 years and 8 months. He still relies on pantomime, or hand gestures unrelated to formal sign language, for roughly 75 percent of his communication, Martinez's lawyer, Timothy Clancy, told the judge.

He asked Powell Thursday to deem Martinez irretrievably unfit to stand trial, in which case he would be turned over to the state Department of Mental Health and Mental Retardation, said Williamsburg-James City County Commonwealth's Attorney Nate Green.

Clancy told Powell he feels confident Martinez can understand his interpreter, but not vice versa. Sign language is ill-equipped to indicate shifts in time, Clancy argued, and Martinez's other nonverbal communication "requires speculation on the part of the listener, and there's a high margin of error."

Martinez, who wears his hair in a wispy ponytail and sports a scraggly beard, followed Thursday's proceedings through the help of a sign-language interpreter to whom he nodded frequently and signed to occasionally.

Martinez will head to Central State Hospital in Dinwiddie County for further evaluation and is scheduled to have his competency revisited in January.

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