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## Judge to rule on recorded evidence in child death case

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CHARLESTON — A judge wants to read transcripts of a conversation between an accused killer and another jail inmate before deciding if the account can be used as prosecution evidence.

What took place during the conversation between Jamie L. Thomasson and Jonathan Gilmore will go toward deciding whether the prosecution obtained the recording of the conversation legally, Circuit Judge Teresa Righter said Wednesday.

Attorneys argued whether the recording of what, if anything, Thomasson said about allegedly killing his girlfriend's 2-year-old son violated his right to have his attorney present while being questioned. Righter then said she'll read transcripts and other materials and try to make a decision within two weeks.

Thomasson, 31, of Springfield is charged with first-degree murder and aggravated battery of a child for allegedly injuring Holden Jones, the son of his girlfriend Amy Bennett, at Bennett's home on Union Street in Charleston on June 20.

Police testimony at an earlier hearing in the case indicated that Gilmore notified authorities about Thomasson's repeatedly referring to Holden by a vulgarity that meant he thought the boy wasn't tough enough.

Gilmore also claimed Thomasson said he "did everybody a favor" because Holden's death meant Bennett would no longer have to associate with Jason Jones, Holden's father, according to the testimony.

Defense attorney Mark Wykoff then filed a motion asking that any evidence obtained from court-authorized recordings from a concealed device Gilmore later wore not be used against Thomasson. On Wednesday, Righter said she thinks her ruling will address the motion, though she could say Wykoff raised a valid enough point to order the prosecution to present evidence that the recording was legal.

Wykoff noted that he went on record as representing Thomasson on June 25 and court authorization for the recordings came five days later.

"Everybody was on notice" that Thomasson had an attorney and the prosecution took "deliberate steps to circumvent" his right to not be questioned without his attorney present, Wykoff said. Just to "put the two in proximity" of one another for a conversation to take place was enough to violate Thomasson's rights, he contended.

State's Attorney Steve Ferguson argued that the prosecution followed procedures established by earlier court rulings from similar situations. Namely, Gilmore was told "more than once" that he couldn't prompt Thomasson or ask him questions about Holden's death, but to "only listen," he said.

Wykoff and Ferguson differed on whether the transcripts showed if Gilmore did question Thomasson, leading Righter's decision to read them before ruling. The contents of the transcripts haven't been revealed publicly, and the two attorneys Wednesday also disagreed on whether Thomasson said anything to incriminate himself.

Wykoff also said he's prepared to file a motion asking to bar what Gilmore initially told authorities about what Thomasson allegedly said. He said he'll wait until Righter's ruling on the recorded statements before

deciding if he'll actually file it.

According to the earlier testimony, an autopsy showed that Holden's collar bone was broken in a way indicating that his arm was grabbed and jerked violently, while brain contusions and other injuries indicated "severe shaking."

Thomasson first told police that Holden fell out of bed but later said he was "playing rough" with the boy, used a wrestling move and threw him onto an air mattress several times. Holden was dead the following morning.

Thomasson is jailed without bond. The charges against him include allegations that the acts were "exceptionally brutal or heinous," and that Thomasson was an adult who killed a child younger than 12.

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