

CR-10-00757-PHX-ROS, August 30, 2010

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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4			
5	United States of America,)	
6)	
7	Plaintiff,)	
8	vs.)	
9)	CR-10-00757-PHX-ROS
10	James R. Parker,)	
11)	
12	Defendant.)	
13)	August 30, 2010
14)	10:08 a.m.
15)	

BEFORE: THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE
REPORTER'S TRANSCRIPT OF PROCEEDINGS

STATUS HEARING

Official Court Reporter:
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Proceedings Reported by Stenographic Court Reporter
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A P P E A R A N C E S

1
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P R O C E E D I N G S

(Court was called to order by the courtroom deputy.)

(Proceedings begin at 10:08.)

THE COURT: Please be seated.

COURTROOM DEPUTY: This is case number CR 10-757,

United States of America v. James R. Parker and Jacqueline

L. Parker, on for status conference.

MR. SEXTON: Good morning, Your Honor. Peter Sexton
for the United States.

THE COURT: Good morning.

MS. BERTRAND: Good morning, Your Honor. Joy
Bertrand appears for Jacqueline Parker. She is out of custody,
present today.

And I would like to introduce to the Court Michael
Minns and Rain Minns. They are the counsel for Mr. Parker.
And also present in court is local counsel, John McBee.

THE COURT: All right.

MR. MINNS: Good morning. Michael Minns and I am
representing Mr. Parker.

THE COURT: And that is Michael Mills?

MR. MINNS: I'm sorry. Minns.

THE COURT: Okay. M-I-N-Z?

MS. BERTRAND: M-I-N, as in Nancy, N, as in Nancy, S.

THE COURT: Oh, I see. Okay.

And John McBee?

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1 MR. McBEE: That's right. 10:09:53

2 THE COURT: And over here?

3 MS. MINNS: Rain Minns. I'm Michael's daughter.

4 THE COURT: Okay. And, Ms. Bertrand, you represent
5 Jacqueline? 10:10:19

6 MS. BERTRAND: Yes, ma'am.

7 THE COURT: And am I to understand that for
8 Mr. Parker, he has three attorneys here?

9 MS. BERTRAND: Correct.

10 MR. MINNS: Yes, Your Honor. We're a law firm of 10:10:31
11 three lawyers and my daughter and another lawyer are partners
12 so we work every case together. So I am the only one that has
13 filed an appearance, but my daughter would be filing an
14 appearance also.

15 And then this gentleman is our local counsel. 10:10:44

16 THE COURT: All right. Thank you.

17 Okay. Please be seated. And has been lodged -- the
18 scheduling order been approved by all counsel?

19 MR. SEXTON: Yes, Your Honor.

20 MS. BERTRAND: Your Honor, it has except the 10:11:11
21 parties -- I have the lodged scheduling order filed August 27.
22 It's two pages and the parties had agreed in preparing it to
23 include just a quick footnote or note saying that the defense
24 counsel was joining in this recommended scheduling order but
25 it's been done before we've had a chance to review discovery. 10:11:38

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1 So if an issue comes up with the schedule, we'll certainly let 10:11:41
2 the Court know. But we're making our best estimate here but
3 that may need to change slightly after we take a look at the
4 discovery.

5 THE COURT: All right. We've talked about this a 10:11:58
6 little already.

7 Mr. Sexton, are you prepared to provide the Rule 16
8 disclosures and then thereafter the Jencks Act material and
9 that is -- you're positive you're going to meet those dates?

10 MR. SEXTON: Absolutely. 10:12:19

11 THE COURT: Okay. So has some of the disclosure been
12 made already?

13 MR. SEXTON: No, because of the change of counsel.
14 Neither counsel who just got on board have sent discovery
15 letters yet. We had begun the process with Mr. Hoidal or 10:12:32
16 Mr. Carpenter who got off the case. We sent them some
17 discovery. But as to new counsel, we are waiting for the
18 discovery letters and then I would imagine it would go -- some
19 of would it go out this week.

20 THE COURT: Okay. Is this a complex case? I've read 10:12:47
21 the indictment. I think -- is it that complex?

22 MR. SEXTON: I think it's complex for a number of
23 reasons. I think it's complex because of the duration of the
24 financial transactions going back to the '90s up to the
25 present. I think it's complex because of the number of 10:13:11

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1 entities that were used from the government's perspective as
2 nominees or straw entities. I think it's complex from the
3 standpoint that much of the evidence is going to be in
4 Oklahoma, Texas, Arizona, and perhaps in Belize, Latin America.

10:13:13

5 And so given the number of transactions, the years in
6 question, the location and volume of discovery, I think it's a
7 fair one to be designated complex.

10:13:38

8 THE COURT: And I have already but I'm trying to
9 figure out why it's going to take so much time before this case
10 is ready for trial.

10:13:52

11 MR. SEXTON: Well, I just think it's going to take a
12 bit of time for them to get a sentence for how this case
13 developed in the '90s from a tax standpoint and that there are
14 tax court proceedings that took place that ultimately led to
15 some findings in the tax court that serve as sort of the
16 foundation for which the evasion of tax payments flows from.
17 Then there sort of is a back-end side that deals with the
18 financial status of the two proposed defendants and what their
19 actual net worth was at the time when they were making
20 representations to the IRS to try to compromise their prior tax
21 liabilities.

10:14:10

10:14:33

22 So I think there's going to be a lot of ferreting out
23 by the defense as to what the true state of income and revenue
24 were during this period of time and what the bottom line really
25 was. I suspect they will come back to me and be able to give

10:14:48

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1 me some counter points; but before they do that, I think they
2 have to actually spend a bit of time trying to out-ruffle 15
3 years of revenue streams and expenses and tax histories before
4 they can do that.

10:14:51

5 THE COURT: And you are -- are you contemplating an
6 expert witness or do you know you will use one?

10:15:06

7 MR. SEXTON: I do not believe at this time I will
8 have anything other than summary witnesses that would be able
9 to summarize, from the Internal Revenue standpoint, the history
10 of the case from their perspective and also perhaps some
11 summary witnesses that will deal with the flow of the funds
12 coming from Belize into various bank accounts.

10:15:25

13 But at this point, I can't think of an expert that I
14 would designate at this point.

15 THE COURT: All right.

10:15:46

16 Ms. Bertrand, tell me now, will you need an expert
17 witness?

18 MS. BERTRAND: Your Honor, I -- generally, with these
19 kinds of cases, I, at the very least, consult with an expert
20 witness and usually anticipate one at trial in support of the
21 defense's theory.

10:16:00

22 At this time, I do not have a witness to name because
23 I haven't had a chance to look at discovery and really find
24 someone that is a good dovetail to this case. But I would
25 anticipate at least one expert will be called and we are

10:16:16

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1 certainly --

10:16:20

2 THE COURT: And on what basis? What would the expert
3 opine?

4 MS. BERTRAND: It could opine about several matters,
5 Your Honor, including understandings of the Internal Revenue
6 Code by both clients because, obviously, we have to have
7 willful conduct.

10:16:27

8 THE COURT: But why would that be expert witness
9 testimony? That is factual testimony. What is it that, under
10 Rule 702, would require an expert or *Daubert*?

10:16:44

11 MS. BERTRAND: *Daubert*, I would say is slightly
12 different. At this point, Judge, I don't expect a scientific
13 witness to say there were studies or chemical type witness that
14 you would see in a drug case or a violent crime case. However,
15 I could see a witness saying, "I am familiar with the Internal
16 Revenue Service's practices, their policies and I can give an
17 opinion about whether those are followed by the agency in this
18 case," and, "I can also give an opinion," speaking of the
19 hypothetical witness, "about whether or not the actions alleged
20 by the government would be consistent with misunderstandings"
21 he or she has seen with IRS cases. I think Mr. Minns also will
22 want to talk more about the experts. But that's where I see
23 experts going at this time.

10:17:04

10:17:34

24 Obviously, this is without the full discovery
25 revealed, but I think there's quite a bit that an expert can

10:17:53

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1 explain to the jury, having more knowledge about IRS practices 10:17:57
2 and procedures in particular than the average person would.

3 THE COURT: Well, I will tell you to think hard about
4 that because that is the type of expert that I generally would
5 not allow. But it seems to me that that kind of expertise can 10:18:11
6 well assist you and counsel in determining why your clients
7 knew or didn't know. And it seems to me it's more of a
8 defense, factual defense.

9 MR. SEXTON: Judge, I forgot something. We did some
10 handwriting analysis pre-indictment that we will present as to 10:18:32
11 the signatures on some of the documents that were presented to
12 the IRS, more particularly as to the wife rather than the
13 husband. But I anticipate having to use that absent a
14 stipulation of the parties as to the handwriting in question.

15 THE COURT: And, Mr. Minns and Mr. McBee, do you have 10:18:52
16 anything to offer in terms of expert witnesses?

17 MR. MINNS: Yes, Your Honor. And I guess I agree
18 probably with 90 percent of what the government has said. But
19 the interpretation of the type of person they are planning on
20 putting on as summary witness is clearly an expert. Even a 10:19:12
21 calculator is an expert. I would hope to get an expert report
22 on that. Tracing of offshore funds is an area that layman are
23 not very good at and the government frequently uses an expert
24 to do that and it's appropriate and courts have found it
25 appropriate. 10:19:32

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1 The controverting thing on that is another summary 10:19:33
2 witness to point out different possibilities.

3 Most of the jurors, most of the lawyers in the
4 courthouse are not personally familiar with offshore
5 transactions. They are legitimate, necessary offshore 10:19:49
6 transactions that go on every day. We found that jurors,
7 particularly after 9-11, distrust that. They are worried about
8 it. If a citizen has an account in Mexico or Canada, they are
9 worried about it and distrust it.

10 So an expert is necessary to explain the normal and 10:20:07
11 legal and constant everyday transactions that cross borders and
12 countries so that they don't think that that, per se, is a
13 violation. And the expert is necessary to explain how -- I
14 mean, there's, basically, a multitude of different reasons why
15 citizens may go offshore. One of them are for tax benefits. 10:20:29
16 Another one is to commit a crime. So the expert needs to
17 differentiate between the two, the legitimate reason for going
18 offshore and the non-legitimate reason for going offshore.
19 Then the jury determines whether or not the parties intended a
20 legitimate reason or intended a non-legitimate reason. 10:20:51

21 I've tried a number of these and most recently I was
22 court appointed in Seattle Washington in the *United States v.*
23 *Moran*. Without expert testimony, I do not think the jurors
24 would have understood that almost everything that was done was
25 a normal, customary transaction. The Morans were acquitted on 10:21:12

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1 all counts.

10:21:18

2 So there's -- there has to be an explanation on that.
3 Some of it can be given in court instructions by the Court but
4 there has to be an explanation.

5 I trust the government. He has a good reputation. I
6 trust he's not just trying to use the summary witnesses as a
7 pointer device but to actually enlighten the jurors, and that
8 would be the same thing, controverting summary witness by the
9 defense.

10:21:32

10 So I am anticipating an expert report from their
11 summary witness. If we don't receive it, I would be surprised.
12 If we don't, we would petition the Court to ask for one. And
13 we will be putting up almost certainly summary witness of our
14 own to -- so the jurors can decide which version of the summary
15 of the facts is more accurate, but also to educate the jurors
16 in the legitimate use of devices.

10:21:50

10:22:11

17 We're just learning the case. We're new to the case.
18 So we don't know as much about it as the government does. We
19 don't know exactly -- we just finished skimming the indictment.
20 We're not experts on it by any stretch of the imagination, as
21 the government is.

10:22:31

22 So until we know what their summary witness is going
23 to testify to, it's hard to make an elaborate proffer to the
24 Court about what our defense expert will be saying.

25 But I think he's given an honest and good background

10:22:47

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1 of why he intends to offer him and so those ring experts to me, 10:22:50
2 Your Honor.

3 THE COURT: There is, as counsel knows, everybody is
4 experienced enough to know there's a difference between a
5 summary witness who testifies and the -- and gives explanation 10:23:04
6 of documents that are either stipulated, admitted or somehow
7 admitted by the Court as opposed to an expert witness.

8 And I will keep an open mind about whether or not I
9 will allow it. But under 702, the expert has to provide
10 something that the jury wouldn't ordinarily know and can not 10:23:29
11 testify to the state of mind of the defendants. That is
12 obvious.

13 So I think we all understand -- and certainly if the
14 witness you are going to proffer qualifies as a summary
15 witness, that is different. If it's an expert witness and the 10:23:51
16 government disagrees, then I'll decide that before trial.

17 Okay. Now, in terms of timing, let me ask,
18 Ms. Bertrand, you have some sense about what the evidence is
19 going to be composed of.

20 How many documents are we talking about? 10:24:14

21 MR. SEXTON: Mr. Perkel is working this case with me;
22 and at this point, we're looking at roughly 20,000 to 25,000
23 pages that have been compiled. The thing that is delaying a
24 little bit is simply we're having to redact certain information
25 that is private to some of the information on there. 10:24:34

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1 THE COURT: And will these documents be digitized on 10:24:40
2 a computer?

3 MR. SEXTON: Yes.

4 THE COURT: So that will be turned over to counsel.
5 And with respect to those 28,000 documents, there are some that 10:24:49
6 are critical to the government and some that aren't?

7 MR. SEXTON: That is correct.

8 THE COURT: And what do you think?

9 MR. SEXTON: Oh, I always think the trial comes down
10 to about 20 exhibits really when you get down to it. 10:25:05

11 But from the standpoint of -- it has always been my
12 practice that we will begin starting to mark exhibits well in
13 advance of the trial setting as I've done already in a
14 particular case before this court. I've already marked the
15 first 500 for trial set for next year. 10:25:21

16 So I will begin that process and it should aid
17 counsel in seeing what we think is the important evidence from
18 our perspective. So that should be a very valuable assistance.

19 THE COURT: Okay. And when you think about 20
20 documents, I presume because there are 20 transactions which 10:25:36
21 are critical?

22 MR. SEXTON: Yes, Judge, that, ultimately, there are
23 a few things that everybody is arguing inferences about.

24 THE COURT: All right. Well, in view of that, let's
25 alter the scheduling order and this case will go to trial in 10:25:56

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1 May as opposed to July. So you can resubmit a scheduling order 10:26:00
2 that allows for a trial at the end of May as opposed to July
3 26.

4 MR. SEXTON: Judge, if I may. I know I have two
5 weeks of vacation with a wedding surrounding it in the very 10:26:21
6 first part of June. So I will actually work with counsel to
7 try to suggest something at the end of April as opposed to the
8 end of May.

9 THE COURT: All right. That is certainly better.

10 MR. SEXTON: Okay. 10:26:36

11 THE COURT: Okay. And how long do you think the
12 trial will take?

13 MR. SEXTON: I believe the government's case should
14 take three weeks.

15 MS. BERTRAND: Your Honor, the concern I have is, as 10:26:52
16 the Court is well aware, I'm counsel for the lead defendant in
17 the Brown matter and I believe last week we just set a jury
18 trial date in that case to start May 17.

19 I don't know how physically I can do both complex
20 trials back to back. One is a mortgage fraud case where the 10:27:17
21 government has stated they have approximately 11,000 documents;
22 and I'm always hopeful for a settlement, but right now I have
23 to treat it like -- in respect to the trial date that the Court
24 set.

25 And my concern is that April would have two trials 10:27:33

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1 back up to each other. It really would be quite onerous for me 10:27:36
2 to prepare for both.

3 THE COURT: And I -- those are always the problems we
4 deal with and where we have responsibilities for more than one
5 defendant. But that is the date I'm going to set now. And as 10:27:52
6 burdensome as that is, that is the way it's going to be.

7 MR. SEXTON: And just for the record, Judge, I
8 have -- I have a complex designation set with you in April in
9 the Mathon matter as well and how this all comes about, we'll
10 see. 10:28:15

11 THE COURT: We'll see. You'll do the best you can.
12 I have confidence in counsel. You'll either get this case out
13 of the way because of a plea or you'll go to trial.

14 Okay. So then you work with counsel. Let's move the
15 date back and earlier than July and submit it to me and I will 10:28:29
16 sign the order.

17 MR. SEXTON: Thank you.

18 THE COURT: This matter is adjourned.

19 COURTROOM DEPUTY: All rise.

20 (Whereupon, these proceedings recessed at 10:28 a.m.)

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C E R T I F I C A T E

I, ELAINE M. CROPPER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control, and to the best of my ability.

DATED at Phoenix, Arizona, this 5th day of August, 2012.

s/Elaine M. Cropper

Elaine M. Cropper, RDR, CRR, CCP

United States District Court