

CR-10-00757-PHX-ROS, April 2, 2012

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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5	United States of America,)	
6)	
7	Plaintiff,)	
8	vs.)	
9)	CR-10-00757-PHX-ROS
10	James R. Parker,)	
11)	
12	Defendant.)	
13)	April 2, 2012
14)	10:00 a.m.
15)	

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

STATUS HEARING

Official Court Reporter:
Elaine Cropper, RDR, CRR, CCP
Sandra Day O'Connor U.S. Courthouse, Suite 312
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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

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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 10:00.)

THE COURT: Please be seated.

COURTROOM DEPUTY: This is case number CR 10-757,
United States of America v. James R. Parker, on for status
hearing.

10:00:54

MR. PERKEL: Good morning, Your Honor. Walter Perkel
and Peter Sexton on behalf of the United States.

THE COURT: Good morning.

10:01:07

MR. MINNS: Michael Minns, Michael Kimerer, and
Ashley Arnett, and John McBee.

THE COURT: I can't hear you, Counsel.

MR. MINNS: I apologize, Your Honor. Mr. McBee on
behalf of Jim Parker.

10:01:20

THE COURT: All right. Thank you. Counsel, we're
ready to go to trial, I understand, on May 29.

Please be seated.

And if there are any pleas that you anticipate, then
you don't have to tell me about it now but certainly before the
29th, at least 10 days prior to that. Those plea settlement
negotiations need to be closed.

10:01:37

We will use a questionnaire for trial so counsel are
to submit the questionnaire as following: You need to set
forth a very synoptic statement of what this case is all about

10:01:59

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1 and then you can submit, for each side, five questions. That
2 is each side, the defense is to submit the five questions and
3 the government has five. Those will be in addition to the
4 standard questions in my questionnaire.

10:02:06

5 I presume there are -- there will be no motions in
6 limine. Am I correct?

10:02:21

7 MR. SEXTON: At this point, we don't have any in
8 mind.

9 MR. MINNS: We have quite a number, Your Honor.

10 THE COURT: Well, the time is probably past for
11 filing the motions in limine. Is that correct?

10:02:34

12 MR. MINNS: Perhaps I'm -- can Ashley speak, Your
13 Honor?

14 MS. ARNETT: My understanding was the pretrial
15 deadline is April 20.

10:02:48

16 COURTROOM DEPUTY: It is, Your Honor.

17 THE COURT: Okay. So, all right. April 20 and then
18 you're filing a number of motions in limine. When you say
19 that, what do you anticipate?

20 MS. ARNETT: The government has an exhibit with
21 American Express for Jackie Parker and it's only Jackie
22 Parker's American Express whereas Jacqueline Parker was severed
23 out, so that would be one item in the motion in limine.

10:03:05

24 Another item is the insurance for a Rolls Royce that
25 Cimarron Ranch, the defendant's son's ranch property -- it's

10:03:26

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1 complicated -- out in Oklahoma purchased a Rolls Royce. The 10:03:31
2 insurance was put in Mr. Parker's name. The insurance form
3 lists the use of the vehicle is pleasure. Mr. Parker said that
4 the insurance company did it, feels it's prejudicial for the
5 case because pleasure for people for the use of a range. 10:03:52

6 MR. MINNS: It's also hearsay statement. So we
7 suspect that the insurance agent probably did that because it
8 has a lower insurance rate than business purpose; but if they
9 want testimony, that would be different. It says somebody says
10 this was not for business. 10:04:14

11 The government's position is pure pleasure. The
12 defense position is that it was owned by the company for
13 business. So that hearsay statement on the application says
14 pleasure and we don't want that in.

15 There's also -- the government claims that the 10:04:32
16 Parkers own cars --

17 THE COURT: I'm sorry. Is that -- when you say
18 pleasure, that's -- on what document is that?

19 MS. ARNETT: It's on the insurance paperwork for the
20 use of the vehicle. 10:04:45

21 THE COURT: And I take it, from what you're saying
22 that that is information that the form was filled out by the
23 insurance agent and that's why you're saying it's hearsay?

24 MR. MINNS: Yes, Your Honor.

25 THE COURT: Anything else in terms of what you 10:05:00

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1 anticipate the motions in limine to be? 10:05:02

2 MR. MINNS: The government has -- part of the case is
3 the lifestyle of the -- of Mr. Parker. They say he had a
4 wealthy lifestyle and the lifestyle questions, as they
5 increase, they become prejudicial. One of the particular 10:05:20
6 prejudicial photographs is a photograph they said he had many
7 cars. There's a photograph of the house, which is a very nice
8 house, where they lived in and there's -- the driveway is
9 filled with expensive cars, none of which are owned by the
10 Parkers. So another motion in limine would be to either 10:05:39
11 eliminate the picture altogether or to redact the cars that are
12 not -- even the IRS agrees aren't owned by the Parkers or any
13 businesses that the Parkers were involved in.

14 THE COURT: Why were the cars there?

15 MS. ARNETT: The pictures were taken after the 10:06:03
16 Parkers sold the home, the Parker children sold the Amarillo
17 home. The date on the bottom of the picture I think is 2011.
18 There's also pictures of the interior of the home.

19 THE COURT: But I don't understand. That being the
20 case, why were the cars there? 10:06:24

21 MS. ARNETT: Somebody else owns the home.

22 THE COURT: I see. Anything else?

23 MS. ARNETT: The interior pictures of the home in
24 Amarillo after the Parkers didn't live there. It's somebody
25 else's interior. 10:06:36

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1 THE COURT: Okay. In other words, the individuals 10:06:37
2 who bought the home, they then placed their own personal
3 property within the home?

4 MS. ARNETT: That's my understanding, Your Honor.

5 THE COURT: Okay. Anything else in terms of 10:06:52
6 anticipated motions in limine?

7 MR. MINNS: If I could confer for just a second, to
8 be sure, Your Honor. We never -- only the Court and people
9 that practice before the Court know exactly what happens in the
10 status. This is useful but I apologize. 10:07:06

11 The investigation began when the special agent
12 recommended prosecution of the -- of Mr. Parker and
13 investigated the children also. So there is -- the children
14 took over limited liability corporations and these limited
15 liability corporations did not file tax returns. 10:07:41

16 The government has -- but the limited liabilities
17 corporation's failure to file tax returns, and we think some of
18 them are required by law to file, we the put those into
19 evidence.

20 They are prejudicial. Even if the government's 10:08:00
21 theory of the case were correct, they are prejudicial. But the
22 government's other theory of the case is that the children were
23 doing something wrong. So if the children are doing something
24 wrong, it's prejudicial and it's also irrelevant. So the
25 nonfiling of the entities that are owned by the children that 10:08:17

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1 the government claims are controlled by Mr. Parker should not
2 come in. They are not -- they are not evidence in chief of any
3 name but they are prejudicial and prejudice outweighs any
4 possible -- I can't see a possible probative value.

10:08:24

5 They also have some years in which -- and this is
6 unfortunate. I've had heated debates with lawyers all over the
7 country on this. There's a lot of lawyers, including one who
8 practices in Arizona, that would tell clients to stop filing
9 tax returns when they are under IRS scrutiny. I would suggest
10 in meetings that none of them have ever been in a court of law
11 defending a client on failure to file when the lawyer told them
12 not to file.

10:08:46

10:09:08

13 There are subsequent nonfiling years. The government
14 has brought them up. That's highly prejudicial. It's
15 irrelevant to the tax filings that were made. It's an entirely
16 different type of conduct; and in my experience in 35 years of
17 doing this, it's usually done at the behest of an attorney who
18 doesn't try the cases but gets ready for them before trial and
19 gives bad legal advice. And before you get to the jury, you
20 want to be in as much compliance as you can and before you get
21 to the judge, you end up having a problem with the jury and you
22 don't prevail.

10:09:32

10:09:57

23 Nevertheless, those subsequent nonfile returns are
24 being offered into evidence by the government, too. They
25 should be kept out of evidence.

10:10:14

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1 THE COURT: Okay. 10:10:17

2 What you're saying, you mentioned that the government
3 believes that these entities were controlled by your client and
4 that's the issue?

5 MR. MINNS: Yes. 10:10:30

6 THE COURT: I'm not going to ask the government to
7 respond to the anticipated motions in limine. You obviously
8 know, have a sense of what they are all about and what I
9 strongly urge counsel to do -- and I'm going to more than
10 strongly urge you is order you to do -- is to sit down and talk 10:10:50
11 about these motions in limine so you can avoid a needless
12 consumption of time. If, in fact, the United States government
13 is going to tell counsel, "Look, this is our position and this
14 is why we think we're going to be successful."

15 And then defense counsel can argue to the government 10:11:06
16 that, "Look, we're going to win on these issues so we don't
17 need to file motions in limine."

18 So that's what you need to do before they are filed
19 and you have some time before that date and, as you know, once
20 they are filed, then a response is due, no reply, unless there 10:11:30
21 is a reason that the Court sees and then I'll let you know and
22 ask for a reply.

23 So this trial is scheduled for the 29th and you'll
24 need to, as I said, set to work on the questionnaire so that
25 can be submitted. 10:11:56

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1 When should that be submitted? Christine? 10:11:58
2 COURTROOM DEPUTY: I need it at least three weeks
3 prior to the final pretrial conference.
4 THE COURT: Which is scheduled?
5 COURTROOM DEPUTY: Yeah, it's set for the 14th at 10:12:18
6 1:30, Your Honor.
7 THE COURT: Okay. The 14th at 1:30 is the final
8 pretrial conference. And if I haven't already ruled on the
9 motions in limine, they will be ruled on at that time and by
10 the then -- 10:12:33
11 Is it the 20th is the date for filing the motions?
12 COURTROOM DEPUTY: That is, Your Honor.
13 THE COURT: And that's also the date for submitting
14 your joint instructions and your joint form of order, a verdict
15 form. 10:12:52
16 So and at least 10 days prior to the trial, so that
17 would be on or before the 19th which is -- the 18th of May you
18 are to let counsel -- each counsel know -- well, and the Court
19 know that date whether or not you are going to have any plea
20 agreements of any sort. 10:13:20
21 Now, you've asked me -- I believe the government
22 asked, Mr. Perkel, whether or not we will be in trial three or
23 four days a week. Likely only three days a week although we
24 are going to set the trial schedule based upon what my schedule
25 is, and we will let you know as soon as we can. So the 29th of 10:13:39

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1 May, then we are into June and I can't recall at this point 10:13:47
2 what I have scheduled for June. But Christine will know and so
3 she'll let you know as soon as possible what the schedule would
4 be.

5 Is there anything else from the government? 10:14:02

6 MR. PERKEL: No, Your Honor. Thank you.

7 THE COURT: How about defense counsel, anything?

8 MR. MINNS: Two short things, one personal and one
9 related to another motion which I was discussing with the
10 government. We were both in the room nervous that we were 10:14:16
11 going to be late so we kept coming out to make sure we got
12 here. Nothing worse than having the Court come out and one
13 counsel not be here. So we were doing what the Court suggested
14 already on this.

15 We have -- we are going to file a motion for the 10:14:33
16 eight counts based on -- a motion to dismiss based on summary
17 judgment -- based on the statute of limitations.

18 THE COURT: Okay. Let me ask you, it seems to me
19 that that motion is late. Am I right? Wasn't there pretrial
20 motions that were set earlier? 10:14:51

21 MR. MINNS: If so, we are incorrect. We are laboring
22 under the misapprehension that we had until April 20 and I
23 apologize.

24 THE COURT: Usually -- I can't remember.

25 Christine, did I set -- at trial of this, I usually 10:15:04

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1 set it and then if noted, then the ordinary rules apply. Do 10:15:10
2 you know?

3 COURTROOM DEPUTY: We extended just the motions table
4 when they filed the motion to continue the trial, Your Honor.

5 THE COURT: All right. The motion will be -- can be 10:15:22
6 filed on the 20th and that is for -- based upon the statute of
7 limitations on certain counts?

8 MR. MINNS: Yes, Your Honor.

9 THE COURT: Okay. All right.

10 And so, then, we will -- I will expect to see that 10:15:36
11 and that -- because of that type of motion, then there will be
12 a motion, response, and reply in accordance with the rules.

13 Anything else?

14 MR. MINNS: One other thing. And I was hospitalized
15 last summer, Your Honor, and I'm healthy now but I asked 10:15:55
16 permission of the Court so that if there's another lawyer from
17 our side handling a witness, that I be allowed to go to the
18 restroom without making any sounds or jumping up or anything
19 and coming back.

20 THE COURT: Certainly. No problem at all. 10:16:15

21 All right. Anything else?

22 We're adjourned.

23 (Whereupon, these proceedings recessed at 10:16 a.m.)

24 * * * * *

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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 8th day of August, 2012.

s/Elaine M. Cropper

Elaine M. Cropper, RDR, CRR, CCP

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