

CR-10-00757-02-PHX-ROS, June 4, 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-10-00757-02-PHX-ROS
10	Jacqueline L. Parker,)	
11)	
12	Defendant.)	
13)	June 4, 2012
14)	3:01 p.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
401 West Washington Street, Spc. 35
Phoenix, Arizona 85003-2151
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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

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A P P E A R A N C E S

1
2 For the Government:

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P R O C E E D I N G S

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

(Ms. Bertrand is participating telephonically.)

(Proceedings begin at 3:01.)

THE COURT: Please be seated.

03:01:41

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

MR. SEXTON: Peter Sexton for the United States.

MS. BERTRAND: Good afternoon, Your Honor. Joy
Bertrand appears for Jacqueline Parker. I am here by phone and
I would ask that my client's appearance be waived.

03:01:52

THE COURT: And your client's appearance is waived.

This is a motion to continue the July 17, 2012, trial
filed by defendant Jacqueline Parker.

03:02:14

Ms. Bertrand, I would imagine it's not a surprise to
you as to how many documents the government has for the trial
and has been using in the trial. Am I right?

MS. BERTRAND: For Mr. Parker's case, correct. I
know how many were proffered for Mr. Parker's case. I think
it's in excess of 500 that I've received, 534 maybe.

03:02:39

THE COURT: Something like that.

So you can't actively tell when Ms. Parker's trial is
going to take and how long and when the witnesses should be
available.

03:03:02

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1 And eight weeks away and, Mr. Sexton, you have
2 opposed the motion. And the reason?

03:03:14

3 MR. SEXTON: Primarily because it's hard to know what
4 the Court would move the trial into because as this Court
5 knows, that I am set for a long trial on September 4. I know
6 Mr. Perkel has a trial conflict, so both of us have done things
7 like move vacations around and tried to work around other trial
8 schedules.

03:03:39

9 So if you are going to bump it and there are reasons
10 to bump it -- don't misunderstand me, there are reasons to bump
11 it. And if I may, one of the odd things -- first off, it
12 wouldn't be imprudent to allow the government to assess the
13 results of the first trial and then have some time to discuss
14 with Miss Bertrand what those results are and what it might
15 mean to possibly not bothering the court with the second trial.

03:03:58

03:04:24

16 My only hurdle, as this court is familiar with, is
17 Maine Justice Tax Division generally controls the pleas in a
18 tax case. And so it's a little bit more of a difficult process
19 to work with that. So I don't have quite the latitude I
20 normally have in a case.

03:04:47

21 The other thing that has been presented, and
22 Ms. Bertrand can speak to this, is that it has been told to us
23 that in the event there is a trial of Jacqueline Parker, that
24 it would be Ms. Bertrand's desire to have James Parker testify
25 in her trial. And if we did it on July 17, you would have this

03:05:08

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1 odd circumstance of him perhaps having already been convicted 03:05:13
2 in the first trial but still not sentenced by this court. So
3 he might be taking the stand to do something for the benefit of
4 his wife in a way that he is in somewhat of a legal limbo both
5 from the standpoint of our cross-examination and whether or not 03:05:31
6 it's a conviction for impeachment purposes because he hasn't
7 been sentenced.

8 So there are a lot of different things that make
9 sense to move it. I guess I would just wish to be heard that
10 if you were going to move it, can we move it sort of clear of 03:05:48
11 what is really on mine and Mr. Perkel's and perhaps
12 Ms. Bertrand's immediate horizon?

13 THE COURT: Ms. Bertrand, do you have reason to
14 believe that Mr. Parker is going to waive his Fifth Amendment
15 rights and testify in your client's case? 03:06:06

16 MS. BERTRAND: I don't believe he will waive a Fifth
17 Amendment right if he's not resolved his case. That was one of
18 the primary bases for our severance motion, and the discussion
19 about his being able to offer exculpatory information for
20 Mrs. Parker, and that is why Mr. Parker going first. 03:06:28

21 THE COURT: Well, that's correct. But Mr. Sexton has
22 mentioned -- and I thought maybe it was because he had spoken
23 to you about Mr. Parker testifying.

24 And Mr. Parker, although he hasn't been convicted
25 yet, still has a Fifth Amendment right. If he's acquitted, 03:06:48

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1 then of course he has the opportunity to testify in your
2 client's case should that come to pass.

03:06:53

3 But I am confused as to how much time you need and
4 why you really need it. I mean, you basically are able to
5 prepare for trial I think as well as anyone can because the
6 case has been severed.

03:07:21

7 MS. BERTRAND: Well, one of the hurdles that I have
8 right now, Judge, is because I've been sequestered, I don't
9 know what's going on with the trial. And, in fact, I was going
10 to raise with the Court today that I received -- I haven't
11 opened them actually. I'm receiving minute entries of the
12 day's events. But I don't know any substance of what's going
13 on day-to-day and I'm getting notices saying transcripts are
14 complete. They are not available to me, but I just want to
15 make sure that there is no misunderstanding about my compliance
16 with the sequestration order.

03:07:39

03:08:02

17 So I don't know how fast the case is moving. I don't
18 know if it's even going to be ready to go on July 17 but,
19 moreover, I may not have access to the transcripts of the case
20 until very late in the case which, given the length of this
21 trial, it would be very difficult for me to start reading them
22 and preparing cross-examination, pretrial issues that have come
23 up that I don't know are coming up, that kind of thing, in the
24 time that we have because right now, I don't -- from what I
25 understood about the Court's scheduling of Mr. Parker's trial,

03:08:27

03:08:50

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1 the likelihood of it finishing by July 17 is a stretch. And if
2 it were, I would maybe have a week to have all of these
3 transcripts given to me so that I can prepare.

03:08:53

4 So I think in that sense, I really am -- of all of us
5 in the room right now, I am the one who doesn't know the most.

03:09:20

6 THE COURT: That is true. But, you know, there's
7 something that is -- I'm glad that we're here, just the three
8 of us -- that I have been confused about since I heard your
9 client was a potential witness. Of course if counsel are told
10 that your client will take the Fifth if she's called to
11 testify, which certainly would make sense to me, then she can't
12 be required to take the stand and take the Fifth Amendment
13 after each question is asked.

03:09:49

14 Have you indicated to counsel that your client may
15 well testify; in other words, that your client is going to
16 waive the Fifth Amendment?

03:10:10

17 MS. BERTRAND: No. My position with Mr. Parker's
18 counsel consistently has been that she has asserted her Fifth
19 Amendment privilege and she is not waiving it in this trial. I
20 think he remains hopeful that, I don't know, love will overcome
21 that or something; but my position is firm and I've spoken with
22 my client about that outside of the presence of her husband and
23 her husband's counsel, that we are in agreement that she is not
24 going to waive that privilege.

03:10:30

25 THE COURT: Well, if she has said that she's not

03:10:49

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1 going to waive the privilege, then she cannot be a
2 witness and -- unless you're going to tell me that that could
3 change. If that's the case now, then what I need to do is talk
4 with Mr. Minns and tell him and you need to tell him that she
5 cannot be a witness and then you can be part of this trial.

03:10:51

03:11:10

6 So that's an initial issue.

7 MR. SEXTON: May I add something to that, Judge?

8 I've spoken to Mr. Minns. I said, "To the extent
9 that she is invoking her Fifth Amendment, are you releasing her
10 as witness?"

03:11:32

11 And he says, "I will not because she may change her
12 mind," and that is really where he is.

13 So because he is continuing to try to convince her to
14 waive her Fifth, that was the potential that we would then
15 allow her to sit in court and then she changes her mind and,
16 having listened to the testimony, suddenly decides to take the
17 stand.

03:11:47

18 THE COURT: I understand that.

19 But, Ms. Bertrand --

20 MS. BERTRAND: Yes, ma'am.

03:11:59

21 THE COURT: -- have you sent a letter to Mr. Minns
22 telling him unequivocally that your client is going to take the
23 Fifth if she's called?

24 MS. BERTRAND: I believe I sent him not a letter on
25 my letterhead, it was an e-mail saying my client intends to

03:12:08

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1 take the Fifth, yes.

03:12:14

2 THE COURT: Well, if you send him a specific letter
3 and say that under no circumstances will she testify in this
4 trail, that she will assert the Fifth Amendment, then she's not
5 a witness.

03:12:28

6 MS. BERTRAND: Okay.

7 THE COURT: I mean, that is my understanding of what
8 the law is and then that will allow you to be present in the
9 courtroom.

10 And, secondly, although I understand --

03:12:41

11 MR. SEXTON: Judge, I remind you that she is also on
12 his witness list as well showing her as a witness to a
13 conversation with Greg Robinson, and so he has her on there as
14 well for that separate reason.

15 THE COURT: All right. Then I had forgotten that.
16 That is correct.

03:12:57

17 MS. BERTRAND: And that is why I had mentioned, in
18 the context of my sequestration as it applies to me
19 specifically, that I could sit in on the trial that doesn't
20 apply to that.

03:13:15

21 THE COURT: I forgot. That takes care of that. I am
22 not going to grant the continuance at this time, although I can
23 appreciate why you filed it, Ms. Bertrand. Hope springs
24 eternal and maybe the trial will be finished earlier. Maybe
25 the United States government will work something out with your

03:13:33

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1 client.

03:13:35

2 But the necessity to set a firm trial date and not
3 have it adjusted is really important for everyone; and if I
4 move it, I am not sure when I can move it. Mr. Sexton is
5 correct, there's a huge trial on the agenda for early September
6 and this trial would run into it if I set it at any other time.
7 This case has been around a long time, as has the other one, so
8 I'm not going to grant the motion to continue the trial at this
9 point.

03:13:55

10 If things change, I will reconsider.

03:14:20

11 MS. BERTRAND: Would the Court be amenable to leaving
12 the motion open and setting another status date, perhaps in 10
13 days?

14 THE COURT: No.

15 MS. BERTRAND: Because, again, I don't know what's
16 going to get resolved with the sequestration, so I don't have
17 any way of knowing how things are going. And I want to -- if I
18 may also, I just want to say one other thing about the system
19 and the privilege with my client but I just mention that before
20 I forget to say anything about it.

03:14:33

03:14:50

21 THE COURT: Well, no, I'm going to deny the motion at
22 this time.

23 If something happens in the next week to ten days, I
24 may reconsider it. But I am glad that Mr. Sexton brought to my
25 attention that you also are sequestered, at least at this

03:15:06

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1 point.

03:15:09

2 If Mr. Minns changes his mind, if your client
3 continues to assert the Fifth, then, in fact, you and she can
4 be present in the courtroom.

5 All right. Is there anything else that you wanted to
6 tell me, Ms. Bertrand?

03:15:22

7 MS. BERTRAND: I appreciate the Court's suggestion
8 about sending a formal letter to Mr. Minns saying Mrs. Parker
9 is unequivocally asserting her Fourth Amendment privilege. I
10 have a concern that she may bow to that pressure later even if
11 I send that letter, and it's my -- I have no actual reason to
12 think that. She's been adamant with me that she is comfortable
13 with this position but I just -- my intuition tells me that I
14 need to raise this as a concern because I don't want something
15 to happen in two weeks when all of this time and effort has
16 been invested in Mr. Parker's trial and have this become a
17 problem.

03:15:38

03:16:05

18 And I don't know what the answer is to it, but it's a
19 strong concern that I have.

20 THE COURT: Well, you've got -- I leave that to you.
21 You're representing your client and you have to decide whether
22 or not to send the letter and, more importantly, you're a
23 potential witness.

03:16:18

24 MS. BERTRAND: Right.

25 THE COURT: Okay. This matter is adjourned.

03:16:34

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1 MS. BERTRAND: Does the Court want to do anything
2 other than take my word for it that I'm not opening these
3 minute entries and these notices that I'm getting from the
4 Court about Mr. Parker's trial?

03:16:35

5 THE COURT: No. We'll take your word for it.

03:16:46

6 MS. BERTRAND: Okay. Again, I felt uncomfortable
7 receiving them.

8 THE COURT: Okay. Okay. I see what you mean. We
9 can make it easier for you and just take you off the mailing
10 and Christine is nodding her head.

03:17:01

11 MS. BERTRAND: Because I -- again, I have taken it
12 very seriously and I don't want anyone to misunderstand it
13 later.

14 THE COURT: Okay. We've got it taken care of.

15 MS. BERTRAND: Okay. Thank you so much, Judge.

03:17:15

16 THE COURT: We're adjourned.

17 MS. BERTRAND: All right. Thank you, Your Honor.
18 Bye-bye.

19 (Whereupon, these proceedings recessed at 3:18 p.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 13th day of August,
2012.

s/Elaine M. Cropper

Elaine M. Cropper, RDR, CRR, CCP

United States District Court