

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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United States of America,	)	
	)	
Plaintiff,	)	2:17-cr-00585-GMS
	)	
vs.	)	Phoenix, Arizona
	)	December 4, 2017
Thomas Mario Costanzo,	)	1:46 p.m.
	)	
Defendant.	)	
	)	

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BEFORE: THE HONORABLE G. MURRAY SNOW, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

Official Court Reporter:  
Charlotte A. Powers, RMR, FCRR, CCR, CSR, CMRS  
Sandra Day O'Connor U.S. Courthouse, Suite 312  
401 West Washington Street, Spc. 40  
Phoenix, Arizona 85003-2151  
(602) 322-7250

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

For the Government:

U.S. Attorneys Office  
By: CAROLINA ESCALANTE, ESQ.  
MATTHEW H. BINFORD, ESQ.  
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For the Defendant Thomas Mario Costanzo:

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Phoenix, AZ 85007

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

(Proceedings resume at 1:46 p.m.)

THE COURT: Please be seated.

COURTROOM DEPUTY: This is CR17-585, United States of America versus Thomas Mario Costanzo, on for status conference.

MR. BINFORD: Good afternoon, Your Honor.

Matthew Binford, Gary Restaino, and Carolina Escalante on behalf of the United States.

THE COURT: Good afternoon.

MS. WEIDNER: Good afternoon, Your Honor.

Maria Weidner and Zachary Cane for defense.

THE COURT: All right. So who is left in this case and who is not left in this case?

MS. WEIDNER: Your Honor, Mr. Costanzo is the sole remaining defendant, is my understanding, based on the government's motion to dismiss that was granted.

MR. BINFORD: That's correct, Your Honor.

THE COURT: All right. So outstanding motions are what?

MR. BINFORD: So, the motion to dismiss Counts 3, 4, 5, 6, and 7 of the first superseding indictment for outrageous government conduct, which was filed on November 6th, the government filled a response earlier today.

THE COURT: What docketed number is that?

MR. BINFORD: That is docket number 63.

1 THE COURT: Okay. So docket number 63 remains?

2 MR. BINFORD: Docket number 65, which is the motion to  
3 suppress evidence obtained from the April 20th search of  
4 Mr. Costanzo's residence. That's docket 65.

5 Docket number 67 is a motion to dismiss Count 8 of the  
6 indictment.

7 MR. RESTAINO: And then two others, Your Honor. The  
8 severance or misjoinder motion is docket number 58; and docket  
9 number 71 by cross-reference to 54 is the motion as to the  
10 transcript and legal colloquy in front of the Grand Jury.

11 So we count five motions.

12 THE COURT: Ms. Weidner?

13 MS. WEIDNER: Your Honor, we also have docket number  
14 64, which is a motion for leave to file a nonelectronic  
15 exhibit.

16 THE COURT: Okay. I'll grant 64.

17 MR. RESTAINO: Judge, and if you're in the granting  
18 mood, 72 is a motion to extend our time to respond to all of  
19 these motions by today, and that will happen.

20 THE COURT: All right. So 72 is granted.

21 MR. RESTAINO: Thank you.

22 THE COURT: 72 and 64 is granted.

23 Are we headed to trial in this case?

24 Are you going to need me to rule on motions,

25 Ms. Weidner?

1 MS. WEIDNER: Your Honor, at this point, we have  
2 extended a potential resolution to the government. We have not  
3 received any offers. So in the absence of an opportunity to  
4 resolve it, it looks like we are headed to trial.

5 THE COURT: All right. So Kathleen, I know I've  
6 made -- I've thrown a wrench in the works, but do we have a  
7 date we can schedule these matters for hearing?

8 COURTROOM DEPUTY: I don't have a hearing date, yet,  
9 Judge, but we have a trial date.

10 THE COURT: We have a trial date. What is the trial  
11 date?

12 MR. BINFORD: The trial date is March 20 through 22,  
13 27 through 29, April 3 through 5.

14 THE COURT: Okay. Can you give me those again?  
15 March 20 through 22.

16 COURTROOM DEPUTY: 27 through 29.

17 THE COURT: 27 through 29.

18 COURTROOM DEPUTY: And April 3 through 5.

19 THE COURT: April 3 through 5.

20 Any reason this trial date can't go firm?

21 MR. BINFORD: No, Your Honor.

22 MS. WEIDNER: No, Your Honor.

23 THE COURT: And I assume the defense is waiving time  
24 to get that trial date?

25 MS. WEIDNER: Yes, Your Honor.

1 THE COURT: All right.

2 (Confers with courtroom deputy.)

3 THE COURT: Is counsel available the week between  
4 Christmas and New Year's?

5 MS. WEIDNER: Yes, Your Honor.

6 MR. RESTAINO: Judge, our agents aren't available, and  
7 so some of this depends on whether the Court would be inclined  
8 to want an evidentiary hearing or just oral argument.

9 THE COURT: Have you asked for an evidentiary hearing  
10 on any of these motions, Ms. Weidner?

11 MS. WEIDNER: Your Honor, I believe with respect to  
12 document 65, that's the motion to suppress, we also asked for a  
13 Franks hearing, and we definitely asked for oral argument as to  
14 the motion to dismiss for outrageous government conduct. I --  
15 we would not have witnesses for that. But if the government  
16 wished to call witnesses, that would be at their option.

17 THE COURT: Really, the government would need  
18 witnesses on the motion to suppress, and that's it; right?

19 MR. BINFORD: Your Honor, we may also need the  
20 witnesses for the motion to dismiss based on outrageous  
21 government conduct.

22 THE COURT: All right.

23 MR. BINFORD: We -- we think that the motion -- some  
24 of the motions may be resolved without a hearing, but we'll  
25 obviously leave it up to the Court's discretion on that issue.

1 MR. RESTAINO: Could we just have a minute, Your  
2 Honor, on the timing on this, on availability? I just want to  
3 consult with counsel, if I can.

4 THE COURT: I didn't hear your question.

5 MR. RESTAINO: Oh. Sorry, Judge. Can we just have  
6 one minute to consult among ourselves on that schedule?

7 THE COURT: Yes.

8 (Pause in proceedings.)

9 THE COURT: Mr. Binford?

10 MR. BINFORD: Your Honor, if needed, we would be  
11 available, and one of the witnesses would be available for --  
12 to have a hearing on the motions that week between Christmas  
13 and New Year's. The agent who swore the affidavit that's the  
14 subject of the Franks motion is unavailable from December 22nd  
15 through January 1st. But if we needed a hearing, we could have  
16 a hearing on the other motions during that time frame, and then  
17 have the hearing, if needed, for the Franks motion at a later  
18 date.

19 THE COURT: Could you do January 4th?

20 MR. BINFORD: We -- we can make that work, Your Honor.

21 MS. WEIDNER: That's not a problem for us, Your Honor.

22 THE COURT: All right. So January 4th at --

23 COURTROOM DEPUTY: 9:00 a.m.

24 THE COURT: -- 9:00 a.m.

25 And then I take it I can dismiss docket -- docket

1 number -- motions at docket 52, 55, 59, 61, and 62 as moot.

2 MR. BINFORD: Yes. Your Honor, I believe all those  
3 relate to Counts 1 and 2 of the superseding indictment which  
4 have been dismissed at this point.

5 THE COURT: All right.

6 So Ms. Weidner, any objection?

7 MS. WEIDNER: Your Honor, I am just double-checking my  
8 docket numbers to make sure that's right. Your Honor said  
9 documents 61, 62 --

10 THE COURT: Docket numbers 52, 55, 59, 61, and 62.

11 MS. WEIDNER: Thank you, Your Honor.

12 Yes, Your Honor. No problem with that.

13 THE COURT: Do you have any problem -- okay. So  
14 docket -- the motions at docket numbers 52, 55, 59, 61, and 62  
15 are dismissed as moot.

16 I have granted docket 64, the motion for leave to file  
17 non-electronic exhibit. I granted whatever it was -- whatever  
18 docket number it was for filing until today.

19 MR. RESTAINO: 72, Judge. Thank you.

20 THE COURT: 72.

21 What about -- do you have any objection to my granting  
22 docket number 80, Ms. Weidner, which is a motion for leave to  
23 file non-electronic exhibit by the government?

24 MS. WEIDNER: No objection, Your Honor.

25 THE COURT: All right. So I will also grant the

1 motion for leave to file a non-electronic exhibit at document  
2 number 80 filed by the government.

3 Anything else we need to do prior to seeing you on  
4 January 4th?

5 MR. BINFORD: Nothing from the government, Your Honor.

6 MS. WEIDNER: And, Your Honor, January the 4th  
7 starting at 9:00, that's going to be all of our motions?

8 THE COURT: Yes. It is.

9 MS. WEIDNER: Your Honor, do we have scheduling for  
10 jury instructions, motions in limine, all of that?

11 THE COURT: You'll receive that.

12 MS. WEIDNER: Thank you, Your Honor.

13 THE COURT: It will be filed. You'll get that.

14 All right. Thank you.

15 (Proceedings in recess at 1:58 p.m.)

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C E R T I F I C A T E

I, CHARLOTTE A. POWERS, 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.

DATED at Phoenix, Arizona, this 18th day of January,  
2018.

s/Charlotte A. Powers  
Charlotte A. Powers, RMR, FCRR