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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,)

Plaintiff,)

-v-)

ROGERIO CHAVES SCOTTON,)

Defendant.)

Fort Lauderdale, Florida
January 3, 2014
2:08 p.m.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
U.S. DISTRICT JUDGE

Appearances:

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1 (Call to Order of the Court.)

2 THE COURT: All righty. And I think that leaves one
3 case left. That is Case Number 12-60049, United States versus
4 Rogerio Chaves Scotton.

5 Would counsel and Mr. Scotton please state their
6 appearances for the record.

7 MS. MITRANI: Good morning, Your Honor. Good
8 afternoon, Your Honor. Bertha Mitrani on behalf of the United
9 States.

10 THE COURT: Good afternoon. Thank you.

11 THE DEFENDANT: Good afternoon, Your Honor.

12 THE COURT: Good afternoon, Mr. Scotton, on behalf of
13 Mr. Scotton. And we have Mr. Kreiss present.

14 MR. KREISS: Good afternoon and Happy New Year, Your
15 Honor.

16 THE COURT: Good afternoon.

17 MR. KREISS: Nice to see you.

18 THE COURT: Nice to see you too.

19 All righty. So this is a status conference that the
20 government had requested. I know that there are a few things
21 that are still pending. Most of the things Judge Matthewman
22 has been good enough to rule upon.

23 There was also a motion that Mr. Scotton had filed
24 requesting that Judge Matthewman be disqualified from the case.
25 And let me just see. I think the number was, I want to say,

1 234, but let me double-check. Yes, 234, motion by Mr. Scotton
2 to disqualify Magistrate Judge Matthewman. And the reasons
3 were allegedly that he committed, quote, harmless error in this
4 case and his hostile comments and decisions has shown
5 inappropriate racism against the defendant, unquote.

6 I have to say that I've reviewed the record and I
7 haven't seen any evidence of any kind of racism of any type
8 because any kind of racism would be inappropriate. I haven't
9 seen any evidence or suggestion in any way that Judge
10 Matthewman has acted in a racist way against Mr. Scotton or
11 that Judge Matthewman is otherwise racist or anything of that
12 nature. To the contrary, he has demonstrated himself to be a
13 professional.

14 And as far as having committed harmless error, I'm not
15 aware that he committed harmless error. But if he did, that's
16 not a basis for disqualification.

17 Then there's an allegation that he committed clear
18 error of judgment by failing to recuse himself from the case.
19 And in explaining this particular argument Mr. Scotton refers
20 at some point to the fact that Judge Valle recused herself and
21 that I re-referred the case, if you will, from Judge Hunt to
22 Judge Matthewman. But Judge Matthewman is in a different
23 position than Judge Valle or Judge Hunt. Judge Valle used to
24 work at the United States Attorney's Office and had a conflict
25 by virtue of the fact that she had some kind of involvement in

1 this case before she became a magistrate judge. So she clearly
2 had an actual conflict of interest.

3 Similarly, Judge Hunt, I learned after I had referred
4 the matter to him, had previously been at the Federal Public
5 Defender's Office at the time that Ms. Doakes was assigned to
6 this case and had had some involvement in the case with
7 Ms. Doakes, and so he also had an actual conflict of interest.

8 Judge Matthewman did not work at the Federal Public
9 Defender's Office nor to my knowledge has he ever been involved
10 in any way in this case other than in his role as a magistrate
11 judge. So there is no basis for having him be disqualified,
12 particularly on the grounds that Ms. Doakes -- or, I'm sorry,
13 that Judge Hunt and Judge Valle were disqualified.

14 In addition, I have not seen any indication that he is
15 biased against Mr. Scotton. Instead, he is simply doing his
16 job. He has to rule on the motions that are brought before
17 him. The simple fact that he may not rule in Mr. Scotton's
18 favor in everything that Mr. Scotton brings does not mean that
19 he is biased. It means that he does not agree with Mr. Scotton
20 on the legal issues or the factual issues or both in some
21 cases.

22 And in short, I see absolutely no basis for the
23 disqualification of Judge Matthewman. You have on several
24 occasions referred in your motion to the inappropriate racism.
25 As I said previously, if there is any racism, it is all

1 inappropriate. I'm not aware of what you're talking about.
2 But maybe you would like to bring my attention to it because it
3 is not something that I know of. So if you want to direct me
4 to a specific portion of the record or a specific hearing where
5 you think that there were racist remarks made or other racist
6 behavior, then I'll hear that from you now.

7 THE DEFENDANT: Your Honor, at this moment if I
8 express myself wrong in the motion, I really apologize for
9 that. It is the fact that during the hearing, the partial
10 evidentiary hearing it was a very emotional scene over there
11 with my mother end up getting sick in the court. So I might
12 have overreact on that because it was not a really good feeling
13 seeing my mom close to having a stroke inside of the courtroom.
14 So I guess we can leave it that way.

15 THE COURT: Okay. I understand. I thank you for
16 that.

17 All right. So then that motion for appeal, however it
18 is appropriately construed, would then be denied.

19 All right. And then there was an R & R that was
20 pending. I still needed to listen to the actual hearing, and
21 that's why I haven't ruled on it yet. I hope to do that later
22 today, and I should be able to rule on it at that time.

23 Other than that, I am under the impression that most
24 other things have been ruled on except for some of the motions
25 in limine which we previously had hearings on and I, for the

1 reasons I previously discussed, cannot rule further at this
2 point.

3 So that brings us to the status of this case. I'm
4 aware that Mr. Scotton is seeking additional time to prepare,
5 and I'm aware that the government is opposed to that.

6 Let me just make sure that my understanding is
7 correct. Is that right, Mr. Scotton?

8 THE DEFENDANT: As a matter of fact, Your Honor, I
9 have a motion that I would like to present to the Court today.
10 I never had a chance to mail this motion.

11 THE COURT: What is the motion, please?

12 THE DEFENDANT: Response to the government of
13 opposition to continuance.

14 THE COURT: Okay. Why don't you -- you're here now.
15 Tell me what it is, and then I can listen to it.

16 THE DEFENDANT: I filed a motion for letter rogatory.
17 As previous, you understand and you saw the letter of
18 Mr. Duarte, and Mr. Duarte have pretty much claimed saying that
19 I'm innocent of the charges, the allegations against me, and
20 that he's got such a -- a lot of evidence. And it would be
21 very perjurous if I don't have this letter rogatory from him.

22 The investigator was trying to collect a lot of the
23 evidence that I -- you know, my motions, and keeping stay clear
24 that has somehow disappeared for whatever reason might be. As
25 a matter of fact, I got a summon the evidence here that I'm

1 going to present to the Court today or so and I'm going to ask
2 to the judge if there is a way that I can present this is on a
3 sealed portion of this hearing today because it's something
4 that I'm going to introduce as evidence.

5 I've been hold in Palm Beach for two months. The
6 first two weeks of December is the first contact that I have
7 with my investigator. We right in the middle of the holidays,
8 people traveling. So it was very difficult for her to get
9 ahold of people that she need to talk and collect the evidence.

10 Judge Matthewman I think -- I don't know if he put an
11 order for my discovery, that all of my legal papers that are
12 still sitting in FDC to be released to investigator, but that
13 never happened. I have myself sent several letters to FDC
14 Miami to release all of these papers to her.

15 I never get a chance to -- like I say, I -- without
16 any notice I have been transferred to West Palm Beach. They
17 never -- you know, I insist, tell the people over there in the
18 marshals that I need -- I got an order from the judge that I
19 need to take all of my legal paper. But, once again, I was not
20 allowed to take so much paperwork with me.

21 So how can I possibly have a -- without this letter
22 rogatory me being able to start really working this case is
23 going to be very perjurous to me to take this case to trial,
24 Your Honor.

25 THE COURT: Okay. I'll hear anything the government

1 wants to say at this time.

2 MS. MITRANI: Your Honor, these alleged letters
3 rogatory are no basis to continue this trial. There are so
4 many things I could say about that. I think some of them I'll
5 commit to writing as Judge Matthewman has requested the
6 government to respond to that particular motion by Monday.

7 What I will say is, first, whether the defendant is
8 entitled to letters rogatory, whatever information may or may
9 not be gathered from that would not be admissible here without
10 an actual witness to testify. So it would not affect the
11 trial.

12 But beyond that, and I think the larger issue is this
13 whole Osvani Duarte is just a huge red hearing. Osvani Duarte,
14 the fact of the matter, was a client of Mr. Scotton. He wasn't
15 a supplier. And the evidence of Mr. Duarte being the
16 defendant's client has been provided to the defendant in
17 discovery will be set forth in this courtroom.

18 This whole alleged letter, confession letter which the
19 government has never been provided with, you know, it's our
20 position that at best this is a fabrication. And we have some
21 evidence to back up this letter. And even if there was an
22 alleged letter, again that's not any kind of information that
23 would be admissible at a trial in this matter.

24 As set forth in the government's written opposition,
25 this defendant has had 22 months to do whatever letters

1 rogatory, to do whatever he needed to do to get Mr. Duarte here
2 to the United States if, in fact, Mr. Duarte is in Brazil. The
3 defendant has had six months in his pro se status to do this.
4 This is all a red herring to further delay trial of this
5 matter.

6 And so if that is the basis, Your Honor, of the
7 defendant's request for further continuance, that would not be
8 a legitimate basis for which to continue the case.

9 THE DEFENDANT: Your Honor --

10 THE COURT: Yes, Mr. Scotton.

11 THE DEFENDANT: -- I appreciate that the government
12 tried to do her job, and I really appreciate that. And I
13 understand that she's got a job to do it.

14 Ms. Mitrani has offered me a plea agreement not long
15 ago, and this plea agreement is three --

16 THE COURT: Let me stop you for a second. I am not
17 allowed to be involved in your plea negotiations with the
18 government. It's not that I don't want to. It's that the law
19 does not allow me to be involved. So I have to ask you to
20 please not discuss your plea agreement or your plea discussions
21 with the government with the Court. Do you understand?

22 THE DEFENDANT: I understand, Your Honor.

23 THE COURT: All right. Thank you.

24 THE DEFENDANT: What she claim is not even true, Your
25 Honor, because, you know, the letter is not a fake letter.

1 Osvani -- I have a -- Your Honor, I got a police report here I
2 can introduce to the Court right now. Even before this
3 government claims to investigate, I'm the one reporting this
4 matter. I'm reporting over and over again.

5 THE COURT: Okay. These are -- listen, I understand
6 what you're saying. I heard your discussion about Mr. Duarte.
7 You know, I take no opinion on Mr. Duarte and whether what he
8 is saying is true or not. There's no way I would be able to
9 ascertain that from reviewing what he wrote.

10 THE DEFENDANT: When the government say, Your Honor,
11 that I have all of this -- you know, you need to understand,
12 I'm in jail for 22 months, Your Honor. Jail has a policy.
13 Sometimes for me to even get a piece of paper to write
14 something on it take a week.

15 THE COURT: All right. Mr. Scotton --

16 THE DEFENDANT: So, you know, it be perjurous if I
17 don't get the right people subpoenaed, if I don't have this
18 letter rogatory. This letter rogatory is crucial to me, Your
19 Honor.

20 THE COURT: Okay. I understand what you're saying at
21 this time.

22 THE DEFENDANT: And the government say that I have
23 plenty of time. Well, I'm not a lawyer. I'm learning here as
24 I go.

25 THE COURT: But, Mr. Scotton, look, it has been 22

1 months and it's been a long time. I've continued your trial
2 time after time. I've given you months and months. I
3 really -- at some point this case needs to go to trial, and I
4 think we're at that point now. We are going to try this case
5 when it comes up for trial on the January 21 calendar. I think
6 we just need to move forward with it and give you a chance to
7 present your case.

8 The longer you sit here getting ready for trial the
9 more things -- the more reasons it seems like you come up with
10 why we can't go to trial. This case has been continued I want
11 to say about five times. I don't know off the top of my head,
12 but I know it's been a lot.

13 MS. MITRANI: It has been five, Your Honor.

14 THE COURT: All right. Five times. You've been
15 through six attorneys. We've been through that before. And I
16 think it's just time this case needs to be tried. So we're
17 going to try the case on January 21.

18 Is there anything else we need to address with respect
19 to this case before that?

20 THE DEFENDANT: Your Honor, it's going to be very
21 perjurous if this case go because I am not ready, Your Honor.
22 I have not even have my witnesses subpoenaed, Your Honor.

23 THE COURT: All right. Well, I'm sorry to hear that
24 but --

25 THE DEFENDANT: How am I going to present a witness,

1 Your Honor, when --

2 You know, Mr. Kreiss here just told me today that they
3 tried to subpoena and the warrant has not been issued for the
4 subpoenas. I mean, I don't understand why this government is
5 so -- you know, now that I don't have a lawyer they want to
6 take advantage. That's what it is. And I keep getting
7 transferred from one jail to another. I have not been able to
8 even look at my paperwork for two months, Your Honor, for two
9 months.

10 THE COURT: Well, Mr. Scotton, the last time you were
11 here or at some point when you were here, because this has
12 become a recurring issue as well, I recall instructing you that
13 you had to take your paperwork with you so --

14 THE DEFENDANT: Your Honor, I'm the one in handcuffs.
15 What I'm going to tell the people over there in jail? I don't
16 run the show any more. You know, I'm in jail 22 months and
17 my -- I'm very limit of things that I can do here to defend
18 myself.

19 And with all respect to the Court, the Court needs to
20 understand that I cannot be behind a computer anytime I want
21 to. I cannot get a book anytime I want to. For everything
22 that -- even to go to the bathroom I have to ask permission.

23 So it's going to be very perjurous if this Court don't
24 give me the right condition to prepare for this trial. Because
25 I have not been able to prepare. I just got appointed an

1 investigator. I have been 22 months. I have an investigator
2 go after people that she need to bring in.

3 THE COURT: Mr. Scotton, I'm aware that, for example,
4 when Mr. -- when Judge Matthewman was hearing some of your
5 subpoena requests, that you refused to tell him what the
6 reasons were for some of the subpoenas you were seeking because
7 you were angry. You delayed yourself in doing that. The Court
8 is not going to sit here and allow you to continue to delay the
9 process. 22 months is more than enough time for a criminal
10 case of this nature. I mean, I have given you more
11 continuances than I ever give.

12 THE DEFENDANT: Your Honor, Mr. Matthewman --

13 THE COURT: Excuse me, Mr. Scotton.

14 I've done so because I want you to have an opportunity
15 to represent yourself to the best of your ability, but I feel
16 that you are taking advantage of this situation and that you
17 are doing everything that you can in order to try to gum up the
18 works. And on top of everything else while you are supposed to
19 be getting ready for trial, instead you keep filing these
20 motions to dismiss and these motions about speedy trial which
21 we've already talked about repeatedly and I have written orders
22 on I want to say about eight different times. And the
23 situation never changes.

24 The reason that you are in the predicament that you
25 are in is because of the way that you treated your attorneys

1 and your refusal to work with them. It's not a punishment.
2 But there's no other way that I can get this case to trial with
3 you unless you're trying it yourself because you've already
4 demonstrated that you cannot work with any attorney, and also
5 you've already demonstrated that you're not willing to work
6 with any attorney.

7 And the Court can't keep paying for attorneys to come
8 up to speed. It's time for this case to go to trial, and I'm
9 sorry but we're at that point. I think I've been very patient,
10 but I think this case needs to proceed to trial.

11 THE DEFENDANT: Your Honor, it's going to be very
12 perjurous to me if this go. I'm not ready. I'm not a lawyer.
13 What am I going to do here, sit here and look at the jury
14 everyday? I mean, this is going to be very perjurous.

15 I even asked Mr. Jason, I even talked to Mr. Jason,
16 because we get along, we working together, I even ask him,
17 like, you know what, why not go ahead and take over this case
18 for me. Because I'm not a lawyer, Your Honor. I don't know
19 how to handle this thing. So if the Court now complained that
20 I'm filing motions, well, I have to do something.

21 THE COURT: I'm not complaining that you're filing
22 motions. I'm complaining that you're filing motions that you
23 know the answer to already because you filed the same motion
24 every time, which is a motion to dismiss for violation of your
25 Speedy Trial Acts right which you created yourself and which

1 I've already explained to you on several occasions why that's
2 not a basis for dismissing. That takes up your time. That
3 takes up the Court's time. And there's no -- you're not
4 getting anything out of that. You're not preparing yourself
5 for trial. You're not doing anything to help your situation.
6 You've been given more than enough time. I'm not going to
7 argue with you about it. We are going to trial during that
8 trial period of January 21.

9 Are there any matters that we need address before that
10 time?

11 THE DEFENDANT: Your Honor --

12 MS. MITRANI: Yes, Your Honor. There's one matter. I
13 don't have the docket entry. I apologize. I can find the
14 docket entry.

15 THE COURT: That's okay.

16 MS. MITRANI: When was the hearing? On December 19
17 the government filed an emergency motion to quash subpoenas and
18 for protective order. Judge Matthewman did quash the subpoenas
19 that the defendant's investigator had improperly served. But
20 there was a second component to that motion that Judge
21 Matthewman didn't rule on which is the protective order. And
22 specifically, Your Honor --

23 THE COURT: I want to say that he might be ruling on
24 it today or something. I'm not sure.

25 MS. MITRANI: Oh.

1 THE COURT: I'm not sure. But I received an e-mail
2 from him, and I thought he was indicating to me that he had
3 either ruled on everything that was pending or he was about to
4 rule on everything that was pending. I may have misunderstood
5 it though so.

6 MS. MITRANI: Obviously, I don't know what -- Judge
7 Matthewman has been very diligent in ruling on things as they
8 become ripe. I know that the government owes the Court some
9 responses which it will file today or Monday to some of the
10 defendant's outstanding motions. I don't know if Judge
11 Matthewman --

12 THE COURT: That's what he said. He said he had to
13 wait on the response from the government.

14 MS. MITRANI: Judge Matthewman may think he's disposed
15 of that motion because he's quashed the subpoenas and that did
16 dispose of the emergency part of the subpoena -- excuse me, the
17 emergency part of the motion which was to quash the subpoenas,
18 but, in addition, there was a protective order that the
19 government's seeking that to the extent that the defendant
20 through his investigator is to serve subpoenas in the future,
21 that they be served in a reasonable time, place, and manner
22 which was not done previously.

23 I'll give you a glaring example. The defendant's
24 investigator served a subpoena on a woman whose initials are
25 RM, and she served the subpoena at 11 o'clock at night by

1 banging on this lady's door, ringing the doorbell. The lady
2 did not answer the door at first. She was persistent, the
3 investigator, waking up this lady's small children who started
4 crying and then basically throwing the subpoena to the witness
5 who then contacted the FBI fearful.

6 So it's our position if the defendant is going to
7 serve subpoenas in the future, they should not be done at
8 11 o'clock at night, they should not be done in an intimidating
9 manner. It's our position that subpoenas should be served
10 during business hours or from 7:00 to 7:00, something
11 reasonable, and should be served reasonably and in advance of
12 trial. In this instance a subpoena was served the night before
13 this hearing, and these witnesses weren't even relevant to the
14 hearing.

15 THE COURT: Okay. I'm going to check in with Judge
16 Matthewman about that since he already heard the evidence on
17 this. I think it's appropriate that he would then rule on it.

18 THE DEFENDANT: Your Honor, let me get this straight.

19 THE COURT: Yes, Mr. Scotton.

20 THE DEFENDANT: Those witnesses -- is the government a
21 witness lawyer right now or -- because I mean --

22 THE COURT: I'm not ruling on it right now.

23 THE DEFENDANT: Renata used to be my employee. And as
24 far as the investigator spoke to Renata, Renata has been
25 afraid. That's what she say. She doesn't want to get

1 involved. Because Renata has been engaged in a fake marriage,
2 Your Honor, and now she's afraid she's got a prosecutor off the
3 fake marriage that she has. It is a huge evidence to prove
4 that she's engaged in a sham marriage.

5 THE COURT: Okay.

6 THE DEFENDANT: I'm the one being accused. And Carla
7 Filini --

8 THE COURT: No, Mr. Scotton.

9 THE DEFENDANT: This is not fair, Your Honor. This
10 whole thing has been perjurous to me, Your Honor.

11 THE COURT: Mr. Scotton, I'm not hearing it right now
12 because Judge Matthewman already heard this. So he's going to
13 rule on this. And it's not appropriate for you to argue it to
14 me now because I'm not the one who's going to be ruling on it.
15 Do you understand?

16 THE DEFENDANT: Well, if the -- you know, whatever the
17 prosecutor say that -- you know, my investigator is here to
18 testify that she didn't went over there intimidating people and
19 knocking people's door at 11 o'clock at nighttime.

20 THE COURT: I'm not ruling on this. I already
21 explained that.

22 THE DEFENDANT: But I don't want the government
23 putting false statements in the record that they keep on doing
24 this, Your Honor.

25 THE COURT: All right. I understand that it's the

1 defendant's position that this didn't happen. Was evidence
2 presented before Judge Matthewman regarding this issue?

3 MS. MITRANI: No. There was our written submission.
4 I'm not sure -- I can't remember if I set forth an oral
5 proffer, but whatever oral proffer I may have stated would be
6 the same thing that I just stated to the Court. We will await
7 Judge Matthewman's ruling. If for some reason he doesn't rule
8 on that particular aspect of the motion, we will just renew our
9 motion at some point.

10 THE COURT: We're going to take a break. I need to
11 give the court reporter a break anyway. We're going to take
12 ten minutes.

13 (Recess at 2:31 p.m.)

14 (Call to Order of the Court.)

15 THE COURT: Thank you. Please be seated.

16 All righty. I just talked to Judge Matthewman. And
17 just to facilitate things and as long as we have the
18 investigator here, I'm going to go ahead and I'll hear it
19 today. We'll take care of the motion for protective order.

20 So I've heard the government's proffer.

21 And if Mr. Scotton wishes to present his investigator,
22 I'll hear from the investigator.

23 MR. KREISS: I think she may have just stepped out,
24 Your Honor.

25 THE DEFENDANT: Your Honor, is there any way I can

1 file this today with the Court or --

2 THE COURT: Is it something other than what you've
3 already said? Because what I'm trying to do is avoid having
4 things pending. That's why I'm trying to rule on whatever it
5 is that's as issue, so that there's not things pending so you
6 can get ready for trial.

7 THE DEFENDANT: The response of the government
8 opposition. And also I have a reason here to put a motion for
9 renew reasonable bond.

10 THE COURT: Well, I'm denying the motion for renew
11 reasonable bond. There's nothing new that's happened and -- I
12 mean, you file it if you want to, but it will be noted in the
13 record that it is denied. There's nothing new that you've
14 presented. There's no basis for a bond. The reason you're
15 still in jail awaiting trial is, as I've already said numerous
16 times on the record, because of yourself. So you don't get to
17 use that as a basis for bond.

18 All right. If you want to present your investigator,
19 I'll be happy to hear from her at this time.

20 NIAOKSA MARTINEZ, DEFENDANT'S WITNESS, SWORN

21 THE COURTROOM DEPUTY: Please be seated. State your
22 full name, first and last, for the record.

23 THE WITNESS: Niaoska Martinez. N-I-A-O-S-K-A
24 M-A-R-T-I-N-E-Z.

25 THE COURT: All right. Thank you.

1 And, Mr. Scotton, whenever you're ready, you can
2 ask --

3 Is it Ms. Martinez? I'm sorry.

4 THE WITNESS: Martinez. Thank you.

5 THE COURT: Thank you.

6 You can ask Ms. Martinez any questions you wish to ask
7 her.

8 DIRECT EXAMINATION

9 BY THE DEFENDANT:

10 Q. Martini, you went and speak to Renata several times?

11 A. Correct.

12 Q. And what is the question you ask Renata about it?

13 A. It was on two occasions.

14 THE COURT: Let me stop you for a second. This is not
15 about that. This is about whether or not a protective order
16 should be issued. That's it. That's all I'm hearing right
17 now. And the question is regarding the circumstances under
18 which the subpoena was served. Okay? So you can ask her
19 anything you want regarding that. That's what we're talking
20 about right now.

21 BY THE DEFENDANT:

22 Q. How many times you went to Renata's house to try to
23 subpoena her to come to testify on evidentiary hearing?

24 A. Three times.

25 Q. Three times. And during the time she was not home I

1 assume?

2 A. Right.

3 Q. You go back over there a third time?

4 A. Correct.

5 Q. What is the -- how you pursue over there to subpoena her?

6 Can you explain to the Court your behavior of subpoenaing Renata?

7 A. It was in the normal manner. They were watching TV. The
8 lights were on. The people had a video. Every time that I
9 subpoena people I videotape. So the recording was on. The
10 light was on, and people were inside of the house watching TV
11 like normal, like regular basis.

12 Q. Did you throw subpoena on her face kind of thing?

13 A. No.

14 Q. Did you see if she was complaining or if she's mad because
15 you were waking up the baby?

16 A. No, she did not express that to me.

17 Q. Is any unusual thing that happen during that day that
18 testify what the accusations from the prosecutor here?

19 A. No.

20 Q. So you pretty much come, you subpoena her, explain to her
21 what the reason why we ask her to come to testify?

22 A. Correct.

23 Q. What she mention to you in reference to the subpoena?

24 A. Actually, she had to work the other day. She was very busy
25 and she didn't want to get involved in the case because she had

1 an issue that she didn't want to get involved.

2 Q. Why she didn't want to get involved?

3 A. She didn't mention that to me. She was afraid basically.

4 But she don't mention that. She say, I'm afraid, I'm busy, and
5 I don't want to get involved in this any more.

6 Q. She's afraid?

7 A. That's what she say.

8 Q. She's afraid of you?

9 A. She don't mention from whom she was afraid.

10 MS. MITRANI: That's it, Your Honor. No more
11 questions.

12 THE COURT: Any redirect from the government or cross
13 from the government, I guess.

14 CROSS-EXAMINATION

15 BY MS. MITRANI:

16 Q. Did you subpoena her at 11 o'clock at night?

17 A. No.

18 Q. What time was it?

19 A. It was -- according to my camera, the video was at 10:47.
20 I don't have the -- I didn't come prepared for --

21 Q. It was 10:47 p.m.?

22 A. Yes.

23 Q. It was 10:47 p.m., correct?

24 A. That's correct. The light was on in the house. That's why
25 I knock on the door.

1 Q. Have you ever testified in court before?

2 A. Yes.

3 Q. Okay. So you know. Let me ask you a question and you
4 answer it. Got it?

5 A. Sure.

6 Q. It was dark outside, correct?

7 A. Outside, yes.

8 Q. Did you hear the baby start to cry after you knocked on the
9 door?

10 A. No.

11 Q. You didn't hear that.

12 Okay. You knocked on the door and rung the bell more
13 than two times, correct?

14 A. Only once.

15 Q. Your position is only once? You did it only once?

16 A. Correct.

17 Q. So if Renata came or indicated that you knocked on the door
18 and rang the bell more than two times, you disagree with that?

19 A. Sure.

20 Q. If Renata were to say you woke her up, her and the kids,
21 you would disagree with that?

22 A. I'm not inside of the house. I'm outside the house.

23 Q. Your position is you didn't wake up the kids or her, right?

24 A. I'm not inside the house to see if the kids are sleeping or
25 not. However, my camera video show that people were inside the

1 house and watching TV and people jumping around. I don't know
2 if they were kids or somebody else.

3 Q. And you deny you threw the paper in front of her?

4 A. Yeah.

5 Q. Okay.

6 MS. MITRANI: Your Honor, may I approach the witness?

7 THE COURT: Sure. Why don't you show Mr. Scotton.

8 MS. MITRANI: I am.

9 THE COURT: Okay. Thank you.

10 MS. MITRANI: May I approach the witness?

11 THE COURT: Yes.

12 MS. MITRANI: I'm going to hand up a copy to the
13 Court.

14 BY MS. MITRANI:

15 Q. I'm showing you was been marked as Government's Exhibit
16 No. 1. Do you recognize this?

17 A. Sure.

18 Q. Is this a copy of the subpoena that you served on the lady
19 named -- whose initials are RMM?

20 A. Correct.

21 Q. And is that -- in the middle of the subpoena where it says
22 "Courtroom 4 - Third Floor," is that your handwriting?

23 A. Correct.

24 Q. And you subpoenaed -- you wrote in the date of 12/19/2013,
25 1:00 p.m., correct?

1 A. Correct.

2 MS. MITRANI: Your Honor, the government would move
3 the subpoena into evidence.

4 THE COURT: Any objection?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Okay. It's admitted as Government's 1.

7 (Received in evidence Government's Exhibit(s) 1.)

8 BY MS. MITRANI:

9 Q. And so the record is clear, you served this at 10:47 p.m.
10 the night before the evidentiary hearing, correct?

11 A. I don't have the time with me. I didn't prepare with that.
12 It was around that time. 10:30 or something like that.

13 Q. You served it the night before the actual hearing?

14 A. I went three times to the house and nobody answer.

15 Q. Ma'am, my -- did you give this paper to Ms. -- to RMM the
16 night before the hearing? Yes or no?

17 A. Yes.

18 Q. Okay. You knew the hearing was about the government's
19 alleged intimidation of the defendant's mother and stepfather,
20 correct?

21 A. Correct.

22 Q. RMM is not the defendant's mother, correct?

23 A. Correct.

24 Q. RMM is not the defendant's stepfather, correct?

25 A. Correct.

1 MS. MITRANI: No further questions, Your Honor.

2 THE COURT: Any redirect, Mr. Scotton?

3 THE DEFENDANT: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY THE DEFENDANT:

6 Q. You also went to subpoena Carla Filini, right?

7 A. Correct.

8 Q. What time did you subpoena Carla Filini?

9 A. Around 4:30.

10 Q. 4:30 in the afternoon?

11 A. Correct.

12 Q. And did you walk to her store?

13 A. Correct.

14 Q. And was anybody else over there present inside the store?

15 A. And two more people.

16 Q. Okay. And you presented her with the subpoena?

17 A. Correct.

18 Q. Any statements from Carla Filini?

19 A. Correct.

20 Q. What did she say?

21 MS. MITRANI: Your Honor, I object to what Ms. Filini
22 may or may not have said.

23 THE COURT: Why is this relevant?

24 THE DEFENDANT: Well, it seems to be that the
25 government accuse the investigator of going over there

1 intimidating people so I want to know if anybody is intimidated
2 now. People that used to be so close to me, now they are the
3 government witness and they feel so terrified by what --

4 THE COURT: That's not what the hearing is about right
5 now. Sustained. Any other questions?

6 THE DEFENDANT: Your Honor, just for the record, so is
7 any -- I'm trying to understand because I'm not a lawyer. Is
8 any rules in the times people get subpoenaed? Because my
9 70-year-old mother end up getting a subpoena once at 8 o'clock
10 in the nighttime. It was dark outside.

11 THE COURT: I'm not here to instruct you on the law,
12 Mr. Scotton. If you have any other questions for Ms. Martinez,
13 you can ask them now.

14 BY THE DEFENDANT:

15 Q. Ms. Martinez, did you conduct anything wrong during those
16 two people getting subpoenaed?

17 MS. MITRANI: Objection.

18 THE COURT: What's the objection?

19 MS. MITRANI: Form of the question. Whether she did
20 anything wrong.

21 THE COURT: Overruled.

22 Go ahead. You can answer. Did you do anything wrong
23 when you served the subpoenas in your opinion?

24 THE WITNESS: No.

25

1 BY THE DEFENDANT:

2 Q. Did you handle professional as investigator?

3 A. Yes.

4 Q. Can you tell this Court how long you have been an
5 investigator?

6 A. Eight years.

7 Q. Have any complaint in anybody getting a subpoena from you
8 before?

9 A. No.

10 Q. So Renata made a complaint to you that you knock on her
11 door at 11 o'clock in the nighttime or 10:45?

12 A. No.

13 Q. She never object that you knock on her door to subpoena
14 her?

15 A. Not to me.

16 Q. But she just mentioned that she didn't want to get involved
17 because she's afraid?

18 A. Correct.

19 THE DEFENDANT: No more questions, Your Honor.

20 THE COURT: All right. Thank you. You may step down.

21 (Witness was excused.)

22 THE COURT: All right. Here is what we're going to
23 do. I'm just going to impose rules that will be appropriate
24 for all parties on the service of subpoenas.

25 Service of subpoenas shall occur between the hours of

1 7:00 in the morning and 9:00 at night unless you've received
2 prior permission from the Court to do it outside of those hours
3 after a showing of good excuse that it's necessary. If you
4 make a showing of good cause that it's necessary, then I'll be
5 happy to allow it. But outside of that showing they must be
6 served between the hours of 7:00 in the morning and 9:00 at
7 night.

8 In addition, they shall be served at least 48 hours
9 prior to the time of appearance that is required unless there
10 was no way that the party could have known prior to 48 hours,
11 and then you're going to need to explain that to me. And I
12 will tell you whether or not it can be authorized with less
13 time than 48 hours.

14 And, of course, all subpoenas shall be served in a
15 professional manner. And for whoever is serving on behalf of
16 each party, obviously, I will anticipate that no witnesses
17 being subpoenaed will be intimidated in any way.

18 Okay. Anything else we need address?

19 MS. MITRANI: Nothing from the government, Your Honor.

20 THE DEFENDANT: Your Honor, I have spoken to Judge
21 Matthewman about the second investigator, and he request
22 some --

23 That's what he request, right, at the time?

24 So he request that we can bring the paper to the
25 Court. The investigator just give me this information for the

1 second investigator. I'm trying to -- I'm guessing this is
2 also something we need to resolve on a sealed party hearing.

3 THE COURT: Okay. I'll submit it to Judge Matthewman
4 for consideration. Why don't you --

5 Mr. Query, would you mind picking up whatever it is
6 that Mr. Scotton wishes to file and we will get that filed
7 today, please.

8 THE COURTROOM DEPUTY: Yes, Judge.

9 THE COURT: Thank you. And, Mr. Query, would you mind
10 also doing an immediate order of referral to Judge Matthewman
11 for me on that please. Thank you.

12 THE COURTROOM DEPUTY: I'll upload this.

13 THE COURT: Perfect.

14 What else?

15 THE DEFENDANT: Your Honor, is there any way we can
16 file that under seal as well?

17 THE COURT: You want what filed under seal?

18 THE DEFENDANT: The paper I just hand to the Court.

19 THE COURT: Mr. Query, can you file that under seal,
20 please?

21 THE COURTROOM DEPUTY: Yes, Your Honor.

22 THE COURT: Thank you.

23 Anything else we need to address?

24 THE DEFENDANT: Your Honor, in reference the
25 subpoenas, I don't know if the Court really has received the

1 motion that I put probably a week ago with the names of the
2 witness.

3 THE COURT: That was filed and referred -- that was
4 referred to Judge Matthewman. As I said, my understanding is
5 when he initially tried to address this with you you were
6 unwilling to talk to him about it.

7 THE DEFENDANT: No, that's another motion, Your Honor.
8 This is after the --

9 THE COURT: Right. After you were unwilling to talk
10 to him about, right?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. So he'll address that when he
13 receives it.

14 THE DEFENDANT: So he have not received the motion?

15 THE COURT: Well, I suppose he's received it, but he
16 will address it as soon as he has an opportunity to do so. He
17 obviously had the opportunity to address it a couple weeks ago
18 or whenever it was when you didn't wish to do so. So he'll get
19 to it as soon as he can.

20 Anything else?

21 THE DEFENDANT: Your Honor, I'm just trying to go
22 ahead and ask the Court to consider give me some kind of little
23 time here because I don't have all of my files. The
24 investigator still a lot of work to do on this case. This is a
25 high-profile case, Your Honor.

1 THE COURT: Well, let me say this. I understand it's
2 an important case because it's obviously an important case to
3 whoever it is who's the defendant, and I understand that. In
4 no way am I suggesting it's not an important case. But this is
5 not any more of a high-profile case than any of the other cases
6 that I have. So I don't see how that -- and even if it were, I
7 don't see how that should affect how I would rule on something.
8 I mean, that's not something that I consider when I decide how
9 to rule.

10 THE DEFENDANT: Judge Rosenbaum, I'm just asking for
11 to be fair here. And I understand it's 22 months. And I don't
12 want the Court think that I'm enjoying here being in jail,
13 being transferred in handcuffs from one place to another.

14 THE COURT: I'm not suggesting that you're enjoying,
15 but I am suggesting -- I'm saying, I'm not suggesting, that
16 every time you come, there's some reason why we can't proceed.
17 And I just think enough is enough and we're at the point where
18 we have to go forward.

19 So I've heard what you said. It's all on the record.
20 Maybe the Eleventh Circuit will disagree with me. And if
21 that's the case, then we'll certainly address that if you wind
22 up being convicted. But you might not be convicted. If you're
23 not convicted, then you'll be done because we will have tried
24 the case in a couple of weeks. If you're convicted and I'm
25 wrong, then the Eleventh Circuit will address it.

1 I think that I have been more than fair, that I have
2 been more that patient, that I have granted motion after motion
3 after motion of yours for continuance, that I have tried
4 extremely hard to be able to get you an attorney that you could
5 work with, that I appointed someone as standby counsel when
6 you're really not entitled to standby counsel at this point.

7 I mean, I just -- I think that the Court has done
8 everything possible to try to facilitate this trial and to make
9 sure you get a fair trial, but at some point the manipulation
10 by the defense has to stop, and we've hit that point, and
11 that's where we are.

12 THE DEFENDANT: Your Honor, it's not about
13 manipulation.

14 In reference the lawyers, Your Honor, I mean, I have
15 not -- you know, I appreciated Mr. Jason. He's a great lawyer
16 and we get along. We have no problem. He's been helping me a
17 lot. And I wish I have him from day one in this case. This
18 case would be in trial by now.

19 So the thing is that, you know, I'm refuse, you know,
20 just sitting down here and go back here on a Rule 2255 because
21 lawyer has not done what they supposed to do. So that's why I
22 was arguing with the lawyers.

23 THE COURT: Well, let me say this. I think that if
24 you wind up getting convicted, we'll be here on a 2255 no
25 matter what happens. I would like to avoid there being a basis

1 for the 2255, and I think I've done everything in my power to
2 ensure that you get a fair trial, but under the circumstances
3 you have to do your part too and I don't think you are. At
4 this point I'm not going to talk to you about it any further.
5 I made my ruling. We're going to trial during the week of the
6 21st, during that trial period.

7 If there are any other issues that we need to address,
8 I'll hear them now otherwise we will be in recess.

9 All right. Hearing none --

10 MS. MITRANI: None from the government.

11 THE COURT: -- thank you all. Have a nice day, Happy
12 New Year to you, and we'll see you in a couple weeks.

13 We're in recess.

14 (Proceedings concluded at 4:57 p.m.)

15

16 C E R T I F I C A T E

17 I, Karl Shires, Registered Professional Reporter and
18 Federal Certified Realtime Reporter, certify that the foregoing
19 is a correct transcript from the record of proceedings in the
20 above-entitled matter.

21 Dated this 15th day of January, 2014.

22

23



24 Karl Shires, RPR FCRR

25

25

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