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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION
Case 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,

Plaintiff,

FT. LAUDERDALE, FLORIDA

vs.

August 27, 2013

ROGERIO CHAVES SCOTTON,
aka, "Roger Scotton,"

Defendant.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ROBIN S. ROSENBAUM,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: BERTHA MITRANI, A.U.S.A.
500 East Broward Blvd., 7th Floor
Ft. Lauderdale, FL 33301 954.356.7255

FOR THE DEFENDANT: ROGERIO CHAVES SCOTTON, Pro Se

REPORTED BY: PAULINE A. STIPES, RPR-CM
Official United States Court Reporter
Federal Courthouse
299 E. Broward Boulevard
Ft. Lauderdale, FL 33301
954-769-5496

1 THE COURT: All right. This is case number 12 dash
2 60049.

3 United States versus Rogerio Chaves Scotton.

4 MS. MITRANI: Bertha Mitrani with me Special Agent Roy
5 Van Brunt with the FBI and Nathan Frank with the FBI.

6 THE COURT: Thank you.

7 Mr. Scotton.

8 THE DEFENDANT: Good afternoon.

9 THE COURT: I need you to speak into the microphone.
10 Would the Court interpreters state your name.

11 THE INTERPRETER: Maria Carolina Paraventi.

12 THE INTERPRETER: Patricia Markow.

13 THE COURT: Mr. Scotton, you understand the proceedings
14 through the interpreter?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Scotton, I believe, if it is not
17 provided yet, Mr. Berry will provide a copy of the order I
18 issued on your motion to dismiss that you filed on August 26th,
19 yesterday.

20 That leaves pending some other motions which I want to
21 address before I dismiss the Government to address the subpoena
22 issue with you.

23 All right. First we have the motion in limine that the
24 Government filed which is at docket entry number 144, and in
25 this motion in limine, first of all, Mr. Scotton, have you had a

1 chance to review the motion in limine that I am talking about?

2 THE DEFENDANT: I don't remember which one that is now.

3 THE COURT: This is the one where the Government seeks
4 to prevent you from introducing any kind of evidence or asking
5 any questions concerning any kind of drug scam and drug
6 conspiracy allegedly carried out by FedEx and/or the Department
7 of Justice and prevent you from making any type of statement
8 about your lack of representation.

9 Have you reviewed this motion?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. All right. I also have reviewed the
12 motion, and I want to give you a chance to explain why I should
13 allow you to do both of these things that the Government has
14 asked me not to allow you to do.

15 So, whenever -- If you want to address that, now would
16 be the time to do so.

17 THE DEFENDANT: First of all, the reason for this
18 motion, you know, is to take into account together with the
19 evidences that were gathered by my family, this was handed over
20 to the lawyers first, Roberto --

21 THE COURT: Let me stop you for just a minute.

22 Maybe we are not talking about the same thing.

23 In docket entry 144, that is the Government's motion.
24 They are asking the Court not to allow you to present any
25 evidence or ask any questions about any kind of a drug scam or

1 drug conspiracy carried out by FedEx or the Department of
2 Justice.

3 Do you understand that?

4 THE DEFENDANT: Yes, I understand. It is all related
5 to the same situation. That is why we are here talking about
6 this.

7 THE COURT: What I am asking you, though, is why is
8 anything regarding an alleged drug scam or drug conspiracy
9 allegedly carried out by FedEx and/or the Department of Justice
10 relevant to this case?

11 Why should I allow any evidence or questioning about
12 that at your trial?

13 I need you to explain that to me.

14 THE DEFENDANT: Well, because it all is related to what
15 we are here for. As a matter of fact, the reason that I want to
16 include FedEx is because they were doing things behind my back,
17 and that is why I am here. I was accused because of that.

18 MS. MITRANI: Hold on, I'm sorry.

19 Your Honor -- Madam Translator, if you would speak into
20 the mike. I am having difficulty hearing you. If that is okay
21 with the Court.

22 THE COURT: Sure, that is fine.

23 Mr. Scotton, I understand you are saying it is related.
24 What I don't understand is why? I need you to explain how it is
25 related and why it is related because it is not immediately

1 obvious to me that it is.

2 I am not saying that it is not but I don't have the
3 evidence that you say you have.

4 So I have no way of knowing without your explaining it
5 to me. Do you understand?

6 THE DEFENDANT: I understood.

7 THE COURT: So, can you please explain to me why you
8 think this is relevant?

9 THE DEFENDANT: My relationship with the company
10 started way back in 2004, and FedEx was the main carrier of
11 my --

12 THE COURT: Let me stop you for a minute. Your
13 relationship with what company?

14 THE DEFENDANT: With Federal Express.

15 THE COURT: Okay. Started in 2004?

16 THE DEFENDANT: Yes. Your Honor, we had a witness here
17 from Federal Express. I want to indicate he has been here. He
18 just left the courtroom.

19 THE COURT: Okay, thank you, go ahead, Mr. Scotton.

20 THE DEFENDANT: During the run, I met a lot of people
21 from Federal Express and the individuals knew about Rubens
22 Amaral, and my situation and dealing with the experts with the
23 auto parts; and, during this period, I also met with a
24 pharmaceutical people Jadao Jiminez (Phonetic) and his wife from
25 Canada, so, the implications regarding my accusation are related

1 to all the promises that they made to me and the sponsorship
2 that they had with my company.

3 THE COURT: I'm so sorry, I am not trying to be
4 difficult, but I need you to fill me in. I don't know any of
5 the background. I don't know what you are talking about, and it
6 is not obvious to me how this is related to the charges of mail
7 fraud.

8 THE DEFENDANT: To me it is very difficult to present
9 anything to this Court because I do not have a lawyer.

10 I don't know the rules of this Court. I am going into
11 a trial and I don't know what else to explain.

12 THE COURT: All right. Mr. Scotton, I don't want to
13 hear anything else about your not having a lawyer. It is your
14 fault you don't have a lawyer. It is as simple as that. You
15 have had six lawyers. You fired three of them. You sued two of
16 them. You have been verbally abusive to multiple attorneys.
17 You fired more than three of them. It is your fault.

18 I explained to you, Judge Matthewman explained to you.
19 I explained to you on at least two occasions, one, when you
20 fired Ms. Doakes, and another time when you fired Mr. Armstrong
21 that your continued failure to cooperate with counsel and assist
22 in your defense would result, eventually, if you did not change
23 your ways in your representing yourself.

24 The Court has spent a lot of money bringing multiple
25 attorneys up to speed in your case. All of them had to repeat

1 the work of the ones that came before. You could not get along
2 with any of them.

3 The Court does not have that kind of money to keep
4 throwing money at attorneys so multiple attorneys can learn the
5 same thing as already multiple attorneys have done in your case.
6 I am not going to do it.

7 Your conduct has been abusive to the attorneys the
8 Court hired for you, and it is not going to go tolerated.

9 I am not spending any more time on this issue. You are
10 representing yourself. That is the way it is. If you want to
11 do so, I am here to listen to what your position is.

12 I want to give you a fair trial. I want to give you a
13 chance to explain yourself. I don't know the facts that you
14 seem to think you know. I am asking you what they are. I will
15 not hear any more about it not being fair you don't have
16 counsel.

17 If you want to address the Court, I will hear it. If
18 not, I will grant the Government's motion because I have no way
19 of knowing how this is relevant in absence of an explanation
20 from you.

21 THE DEFENDANT: Just for the records, first of all, the
22 only lawyer that is being sued is Stuart.

23 THE COURT: All right. Mr. Scotton, you threatened to
24 sue Ms. Doakes for \$10,000,000 if she did not immediately admit
25 to her supervisor her corrupt representation during the case.

1 I will not hear any more of this.

2 I am happy to sit here and listen to the reasons why,
3 but I am not going to listen any more to your complaints about
4 not having counsel, something that you caused to happen to
5 yourself after repeated warnings from this Court that that is
6 precisely what would happen if you could not get along with
7 counsel.

8 Now, let's return to the motion in limine and let me
9 hear from you why this information is relevant.

10 THE DEFENDANT: Because the company ordered services
11 from me through Osvani -- the company offered me services.

12 THE COURT: Meaning FedEx, are you talking about?

13 THE DEFENDANT: Yes, it is FedEx, because this is the
14 company that relates to what we will be talking to, and with the
15 people that also have been involved in this with FedEx. I have
16 videos to show they went into my house, and also they offered
17 opium and boxes of opium were also involved in this.

18 THE COURT: I am not challenging your facts. I want to
19 the make sure I understand them.

20 When you say things about the company, I don't know if
21 you are talking about your company, FedEx, or some other
22 company. I am not challenging you. I want to make sure I
23 understand what you are saying.

24 THE DEFENDANT: Okay. So you want to know what company
25 it is?

1 THE COURT: When you are talking about a company,
2 instead of calling it "the company," if you could identify it by
3 its name so I don't have any confusion, that would be helpful.

4 THE DEFENDANT: Yes, this is what I mean, all the
5 companies involved. Lead moving, FedEx, DHL, UPS, all these
6 companies.

7 As a matter of fact, didn't UPS pay the Government
8 \$40,000,000, didn't they go into a settlement with the
9 Government? What I am saying this is the truth.

10 THE COURT: I am so sorry, I still don't understand.

11 I think you think I know things that I don't know.

12 I need you to be very precise and explain. All I know
13 about this case is what has been filed on the Court's docket. I
14 don't get to see the evidence that the Government has produced
15 to you in discovery, nor have I seen any documents your family
16 has provided to you.

17 So, I don't know anything about what you are talking
18 about unless you explain it to me.

19 One more time, if you would, please go ahead and
20 explain to me why this is relevant. I need you to explain the
21 background because I don't have that information.

22 THE DEFENDANT: This is what is going on. This
23 investigation is going on for four years, as the FBI says, you
24 know the companies involved, the companies have their own
25 departments of investigation.

1 THE COURT: I'm so sorry. I still don't know what you
2 are talking about.

3 THE DEFENDANT: I am going to get there. You are going
4 to understand.

5 THE COURT: All right. Great.

6 THE DEFENDANT: So, four years of investigation,
7 correct?

8 So, you know they all have a fraud department and I
9 have been working on this, you know, picking up boxes,
10 delivering boxes, and nobody tells me what's going on. So, in
11 about middle of 2010, 2011, Felix from FedEx asked me if I
12 wanted to open up a store to help them out.

13 So, simply they offered to me because they knew what I
14 was doing -- that I had found out what they were doing. And
15 based on that, I am being accused -- they were the ones who
16 offered me the service to do the service for them.

17 So, this is kind of a cover up, you know, covering up
18 so I won't tell the Government what they were doing.

19 THE COURT: What was it that you say they were doing?
20 I don't have any of this information.

21 THE DEFENDANT: Illegal drug trafficking,
22 pharmaceutical.

23 THE COURT: Who was doing it?

24 THE DEFENDANT: The trafficking of drugs were being
25 done with these companies, Rubens Amaral, Lider Mudancas, FedEx,

1 UPS, it is a long time since these companies are involved in
2 this.

3 THE COURT: How do you say you found this out?

4 THE DEFENDANT: You know, I was kind of -- I suspected
5 something because the shipments that we would send were lost and
6 sent through other routes.

7 Many times I was contacted by M Visa. M Visa in Brazil
8 would be equivalent to the Department of Health. They wanted my
9 medical license because all of the content that I was sending
10 had medications in the transports of it. And I never sent
11 medications to Brazil.

12 And when this happened, I would contact, you know,
13 Lead, Osvani, and also Felix in Brazil to deal with this
14 situation.

15 One time I had gotten a box at home by mistake -- no,
16 it was returned to me. We sent it and it was returned to me
17 and, in this box, there was a car vacuum cleaner full of what
18 your guys call blue pill. That is what we had in the box.

19 A lot of my evidence I am going to be showing during
20 the trial to show a lot of my own shipments were used by them to
21 use for drug purposes.

22 One time I remember a shipment of a Subzero
23 refrigerator going to Brazil from Belgium, from Belgium to
24 Brazil. When you check where the refrigerator was, it was in
25 transit. Actually, the refrigerator never got there, it

1 disappeared.

2 And they had to pay for that claim.

3 I never had the intention of opening any FedEx store.
4 They were the ones doing that to appease me, because, actually,
5 to sponsor, the sponsorship stopped.

6 And, during the time I have been incarcerated, my
7 family has been threatened.

8 THE COURT: All right. Let me stop you for a second.

9 I am not aware that you opened a FedEx store.

10 The charges in the indictment --

11 Maybe I misunderstood them.

12 Is there an allegation that Mr. Scotton opened a FedEx
13 store?

14 MS. MITRANI: No, no allegation that Mr. Scotton opened
15 a FedEx store.

16 Towards the end of the period in the indictment the
17 Defendant was opening a store front, a private store front
18 called the Merry Mailman. The Merry Mailman is analogous to a
19 Pak Mail, where people can drop off packages for delivery and
20 rent Post Office boxes.

21 My Special Agent Van Brunt went to the store and spoke
22 to Mr. Scotton as he was building it out. There is no FedEx
23 store, and the store itself doesn't factor into the charges, if
24 that helps the Court.

25 THE COURT: Okay. So, now, let me ask you, you are

1 saying that every single one of the three --

2 Let me ask the Government.

3 There are three alleged victims in this case, UPS, DHL,
4 and FedEx, right?

5 MS. MITRANI: Correct.

6 THE COURT: Did I miss anyone?

7 MS. MITRANI: You did not.

8 THE COURT: Okay. So, every one of the three alleged
9 victims were involved in a giant drug trafficking conspiracy, am
10 I understanding you correctly?

11 THE DEFENDANT: Yes. By the way, yeah, this has been
12 going on this whole time, then, after I started being
13 investigated and I opened up my store, everyone disappeared. It
14 seemed very strange.

15 Actually, within FedEx itself, they have a policy that,
16 when you open a FedEx store, they have a policy that says that
17 you can have -- it is like a distance policy, you can open
18 stores very close to the store that you are opening, and it is
19 very strange that there were three stores -- there were three
20 FedEx stores surrounding my own store, and that was a conflict
21 of interest. But, even though that was against their own
22 policy, they approved that.

23 And, actually, there was another box that came from
24 China to me and the box came damaged. There was some kind of
25 chemical fluid in there and Paulo and Roberto Moreira, they came

1 and picked up the box in my store.

2 THE COURT: Who picked up the box?

3 THE DEFENDANT: Paulo Araujo Moreira.

4 Middle name Araujo, A-r-a-u-j-o.

5 THE COURT: Who is Mr. Moreira associated with?

6 THE DEFENDANT: According to his credentials he used to
7 work for DHL in Brazil and he was working with Osvani.

8 THE COURT: How does the Department of Justice somehow
9 get involved in this.

10 THE DEFENDANT: Well, many times I reported when there
11 were things happening with my boxes, many times I called the
12 corporations to make an official complaint.

13 THE COURT: What kind of complaints did you make?

14 THE DEFENDANT: Well, I would complain about some of
15 the box being redirected to different routes or I remember that
16 I would go to the local FedEx close to me to make the
17 complaints.

18 And then when I would go to that local FedEx store,
19 they would say that I could not pick up those boxes because it
20 had a different name, even though the address was mine there.

21 THE COURT: Okay. Now, let me ask you, did you make
22 any other complaints to FedEx or any of the other companies?

23 THE DEFENDANT: I believe that I have filed some police
24 reports with the Department of Police in Boca Raton. I believe
25 that I talked to the president of Crime Stop Association of

1 Miami about the subject.

2 And there was a deputy that actually lived with me from
3 the Sheriff's Department and he actually witnessed a box coming
4 to my home that was full of syringes.

5 THE COURT: Okay. And who was this?

6 THE DEFENDANT: David Conklin (phonetic).

7 THE COURT: Can you spell it, please?

8 THE DEFENDANT: I have no idea how to spell it.

9 THE COURT: What Sheriff's Department was he with?

10 THE DEFENDANT: Palm Beach.

11 THE COURT: Okay. Now, let me return --

12 I understand you say you made these complaints to other
13 people. Were there any other complaints other than those you
14 described to me that you made to FedEx or any other companies,
15 not law enforcement?

16 THE DEFENDANT: Yes, many, many times I made those
17 complaints because I rarely stayed at my office, I was always
18 traveling and putting together events for the community.

19 THE COURT: I am not asking how many times you made the
20 complaints. I am asking what were the complaints about?

21 I want you to tell me what all of the things the
22 complaints were about and don't leave anything out.

23 THE DEFENDANT: Missing boxes, boxes that instead of
24 being shipped to Brazil would be shipped to Mexico or a
25 different country; boxes that were shipped with certain type of

1 material and then would be -- would arrive at the destination
2 with a different type of material.

3 THE COURT: What kind of materials would they arrive
4 with instead?

5 THE DEFENDANT: Medical material.

6 THE COURT: Okay. Any other kinds of complaints that
7 you made to the companies other than those that you just
8 described?

9 THE DEFENDANT: We made a series of complaints also
10 with the Brazilian Government, with Visa, with the Federal
11 Police in Brazil.

12 THE COURT: Okay. Did you say -- I think you said you
13 have evidence of all of these complaints that you have been
14 talking about. Did I understand you correctly?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay.

17 I need to take a look at the evidence so I could
18 determine whether there is a good faith basis for putting
19 forward this defense.

20 Can you show it to me, please?

21 THE DEFENDANT: I am going to need the help of a
22 paralegal --

23 THE COURT: You are not going to have the help of a
24 paralegal. You are going to have the help of yourself. I
25 already explained.

1 THE DEFENDANT: How am I going to be able to have
2 access to things inside of the jail?

3 THE COURT: Mr. Scotton, you have brought this upon
4 yourself. It is not a punishment but the Court cannot afford to
5 keep hiring attorneys and keep firing them and have the
6 attorneys keep relearning everything the other attorneys have
7 been paid to learn.

8 I am sorry. You are going to have to figure it out for
9 yourself.

10 You had however many months. You had six attorneys you
11 could have brought this through and done this with.

12 This is the first I am hearing of it, 17 or 18 months
13 in.

14 You either have the evidence here or you are going to
15 figure out a way to get it but that is what the situation is.

16 THE DEFENDANT: With all due respect, Your Honor, this
17 is the first time ever that I have had the opportunity to
18 actually take a look at all of the evidence.

19 After all the lawyers I have been through, this is the
20 first time I really had access of all of the evidence presented
21 to me.

22 THE COURT: I am sorry, Mr. Scotton --

23 Excuse me, I am sorry, I don't believe you. We had
24 this discussion the other day, as well, and we had two
25 attorneys, two attorneys who are officers of the Court and this

1 Court had in numerous other cases, represent to the Court that
2 they reviewed the materials with you and/or you represented to
3 them that you had reviewed the materials, and they provided you
4 with the materials.

5 In addition, there was an investigator employed by the
6 Federal Public Defender's Office and she was put under oath, and
7 she swore she, too, reviewed the materials with you. Some of
8 them you wished not to review but she made them available to
9 you.

10 I'm sorry, I don't find those complaints to be
11 credible.

12 Mr. Scotton, if you have the evidence, I want to see it
13 so I can assure there is a good faith basis for this.

14 If you don't have the evidence, you need to make
15 arrangements to get it. That is something you have to deal
16 with.

17 THE DEFENDANT: Your Honor, I used to have a video and
18 a letter from Osvani Duarte where he is confessing to all of
19 this and, actually, this letter had been delivered to the Public
20 Defender Office, and the letter had been translated into English
21 before.

22 How come I don't see this letter any more?

23 And, actually, this confession was made in front of the
24 Federal Police in Brazil.

25 THE COURT: Mr. Scotton, I have been advised that I

1 have had Ms. Doakes, I had Ms. Perez, Mr. Adelstein, all come in
2 here and say they provided you with everything they had. If
3 they had it, you should have it.

4 I have arranged for you to be able to review the
5 discovery in the cell, in the jail, which is something I never
6 do.

7 You asked me for another week. I have given you what
8 you asked me for to review it.

9 You either have it or you don't.

10 THE DEFENDANT: This is the letter, this is the letter,
11 the copy has a stamp from Brazil. How come I don't see the
12 original? How come I don't see the ones handed to the lawyers?

13 THE COURT: Mr. Scotton, I am not here to answer your
14 questions about discovery.

15 If you want to provide it to me to take a look at it, I
16 am happy to do that.

17 We are not going into another extended gripe session
18 you had with the attorneys in this case.

19 If you wish me to review it, I will be happy to do so.

20 THE DEFENDANT: Well, Your Honor, you are asking me
21 where the evidence is, and I mean the evidence was handed over
22 to the lawyers. If the evidence disappeared with the lawyers, I
23 need to have it.

24 THE COURT: Mr. Scotton, I am not discussing this any
25 further. Give me the letter if you want me to review it. If

1 not, we are moving on to another subject.

2 THE DEFENDANT: This is my own evidence. I am not
3 going to give this to the Court.

4 THE COURT: Okay. If I can't review it, I don't know
5 how I could determine this is a good faith basis. I could have
6 Mr. Berry give you a copy of it and give you back what you gave
7 me.

8 If you do not wish me to review it, I don't have a
9 choice. I will have to grant the Government's motion in limine.
10 I don't have the evidence about the conspiracy you allege
11 multiple companies working together to have a drug trafficking
12 operatoin; and, with the aid of the Department of Justice,
13 culminating in the Department of Justice's indication to hide
14 this.

15 I need a good faith basis to allow you to proceed with
16 this defense. Taking up a jury's time to listen to this, I am
17 happy to do it if there is a good faith basis, but I am not
18 going to do it based on your say so.

19 THE DEFENDANT: I have contacted the lawyers. Months
20 ago I wanted to sit down with the FBI agent and prosecutor to
21 talk about this.

22 And my only option was to send a letter, that I did, to
23 the prosecutor because I haven't had a chance to sit down and
24 talk to her.

25 THE COURT: All right. Mr. Scotton, do you want to

1 provide me with any evidence whatsoever in court that I will
2 return to you while you sit here, I will not take it out of the
3 courtroom, so I can make a determination whether there is a good
4 faith basis for your position?

5 Do you want to do that or not? Yes or no?

6 THE DEFENDANT: Yes, I can hand you this copy, Your
7 Honor, but I need it back.

8 MS. MITRANI: Will the Government be permitted to see
9 whatever this thing is?

10 THE COURT: No, not now.

11 Mr. Scotton, is it okay if I have Mr. Berry make a copy
12 and I will return it to you immediately so I can look at it.

13 THE DEFENDANT: May I say something?

14 THE COURT: I am just waiting. I don't want you to
15 have any concern you are not getting back what you gave us.

16 I want to make sure it is scanned in and copied and you
17 get it back.

18 I don't want you to have your attention distracted.

19 THE DEFENDANT: I would like to say something to you,
20 Your Honor, if I could.

21 THE COURT: All right. Let's wait until I give you
22 back your document so there is no question that I have given it
23 back to you. Okay?

24 Just one minute.

25 All right. Mr. Berry is returning the document to you.

1 Do you have the full document? Take a look and make
2 sure it is all there.

3 Is it there? You are satisfied?

4 THE DEFENDANT: Right.

5 THE COURT: Now Mr. Berry will print out a copy for me
6 so I could take a look at it.

7 Is there something you wanted to say while I am waiting
8 for it?

9 THE DEFENDANT: Yes.

10 Your Honor, I am tired of all of this already.

11 Many lawyers that I interviewed here in court they said
12 to me, if I want justice, they ask me how much money do I have
13 to pay for justice?

14 My family is sick. I am not here to fight. I am here
15 to really seek justice being done and to go after the people who
16 put me in this situation.

17 THE COURT: All right. Mr. Scotton, we are all here to
18 seek justice being done.

19 That is certainly why I took this job.

20 But this has gone way beyond what you complain of.

21 There were three different attorneys that this Court
22 paid for to represent you.

23 All three attorneys paid for by the Court to represent
24 you have appeared in this Court before me and I have always been
25 impressed with their representation.

1 I told you at the time, Ms. Doakes has a number of
2 acquittals under her belt in this very courthouse.

3 Mr. Adelstein is one of the best in the district. He
4 represents defendants in cases that include the death penalty.
5 That is how well established he is. He practiced in this area
6 for 35 years.

7 And, Mr. Armstrong, who recently, when I appointed him
8 in your case and I appointed him, had appeared before me and
9 obtained the only acquittal in the case. Although his defendant
10 was convicted of one of the charges, he was acquitted of three
11 of the charges.

12 You sued them.

13 We are done with it. That is it. No more.

14 THE DEFENDANT: I understand, Your Honor. I don't want
15 to talk about lawyers. I understand that you do not want to
16 talk about lawyers any more. I want to solve this situation.

17 My mom, she is sick, and I am killing her little by
18 little.

19 THE COURT: All right. Excuse me, Mr. Scotton, I am
20 sorry for your mother being sick. I really and truly hope she
21 recovers quickly.

22 That is not what this case is about.

23 We are to address this case.

24 All right. I am looking at the letter you provided to
25 me. It appears to be in a different language. Is this in --

1 THE DEFENDANT: Portugese.

2 THE COURT: Who wrote this letter?

3 THE DEFENDANT: Osvani Duarte.

4 THE COURT: Okay.

5 Can the interpreter come up here and let me know what
6 this says, please?

7 Thank you.

8 (Sidebar out of the hearing of the Government.)

9 (Thereupon, the Government returned to the Courtroom.)

10 THE COURT: We are going to take 10 minutes for the
11 Court reporter. We will come back five after three.

12 (Thereupon, a short recess was taken.).

13 THE COURT: All right. So, the motion in limine, there
14 are two parts to it, one involves the alleged drug conspiracy.

15 I am going to defer ruling on that part of it.

16 The other involves the lack of representation and the
17 Government's request that Mr. Scotton not be permitted to remark
18 in any way about the fact that he is not represented, and it
19 does not seem at all relevant to me, so I am going to grant the
20 motion in limine as it pertains to remarks regarding the fact
21 that Mr. Scotton is not represented.

22 So, Mr. Scotton, you are not to complain about the fact
23 that you are not represented by counsel, you are not to remark
24 about it in any way. You are not to in any way refer to the
25 fact that you are not represented by counsel.

1 The Court will discuss the issue with the jurors during
2 voir dire in jury selection, but will advise the jurors that you
3 are to be treated the same as if you had counsel.

4 You understand?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Thank you.

7 All right. We also have the Government's motion to
8 resolve any recording related issues.

9 Mr. Scotton, have you received a copy of this.

10 Docket entry 145.

11 THE DEFENDANT: I believe so.

12 THE COURT: You believe so?

13 Okay, good.

14 In this motion, the Government indicates that it
15 intends to offer five different categories of evidence.

16 Do you have any objections to such evidence being
17 offered?

18 THE DEFENDANT: I do.

19 THE COURT: All right. I will hear those objections.

20 THE DEFENDANT: Yes, one is I heard one of the evidence
21 is video from a FedEx store. It has no audio. They said there
22 is a transcript but how do they get the transcript if there was
23 no audio?

24 THE COURT: Government, are you talking about paragraph
25 five here, maybe, three clips with no audio tape in November 17,

1 2008, November 28, 2008, and December 2, 2008?

2 MS. MITRANI: Yes, and there is no transcript.

3 THE COURT: The Government is saying there is no audio
4 that it received?

5 MS. MITRANI: Yes.

6 THE COURT: That is why there is no transcript, because
7 there is nothing to transcribed.

8 Do you understand, Mr. Scotton?

9 THE DEFENDANT: Were the videos authenticated regarding
10 the Rule 901?

11 THE COURT: Well, obviously, they would have to be
12 authenticated before they would be entered into evidence, and
13 the Government would be required to demonstrate their
14 authentication.

15 This is alerting you that the Government intends to try
16 to put these into evidence and will authenticate it, I imagine,
17 at that time providing an appropriate foundation.

18 Assuming they do so, is there any objection you have to
19 the evidence?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. What is that objection, please?

22 THE DEFENDANT: Yes. My objection is that I would like
23 to have the person who collected the material, I would like to
24 be able to ask questions to this person because now-a-days, you
25 know, any type of material can be changed with different

1 software and I want to know how this was collected and I want to
2 have the chance of cross-examining the witness.

3 THE COURT: It is your right to cross-examine the
4 witness.

5 Let me make sure I understand.

6 Is the Government intending to put the foundation on,
7 relevancy, etc., before we bring in the jury or is the
8 Government simply asking -- or putting the Defendant on notice
9 what it intends to introduce?

10 MS. MITRANI: Sort of two-fold, Your Honor.

11 I guess with respect to number one and number two,
12 which are the undercover meeting between Special Agent Van
13 Brunt, and number two is the Defendant's interview before United
14 States Immigration Citizens Services.

15 We provided the Defendant with the recordings, with the
16 transcript of the recordings and with excerpts. The most
17 fundamental thinking is, whether the Defendant objects to the
18 excerpts, that should be outside the presence of the jury.

19 Matters of authentication, we will authenticate the
20 evidence, and we will have appropriate witnesses to do that.

21 I am not asking for a preliminary ruling, assuming we
22 get to through the authentication process, do we need to have
23 other -- do we have objections to that evidence, and that deals
24 with all five categories?

25 THE COURT: Let's start with the audio visual regarding

1 an accompanying transcript of the undercover meeting with FBI
2 Agent Van Brunt and Mr. Scotton, and audio and visual recording
3 with Immigration and Citizen Services Officer Fred Brooks
4 occurring on October 31, 2011.

5 MS. MITRANI: That is August 31st.

6 THE COURT: August, sorry, a long day.

7 In any case, my question with respect to those two
8 things is, the Government says that instead of playing the
9 entirety of each of those recordings for the jury, that it
10 intends to put on excerpts from those recordings so as not to
11 unnecessarily take the jury's time up with things the Government
12 thinks may not be relevant and material.

13 So, the first question is -- Well, the first question,
14 have you had a chance to review the transcripts of these
15 particular recordings?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. Do you challenge the transcripts or
18 do you agree with the transcripts?

19 THE DEFENDANT: I challenge.

20 THE COURT: Okay. Then you need to provide your own
21 version of the transcripts so the Court can make a determination
22 where the -- which transcripts should govern. Do you
23 understand? What is the basis?

24 THE DEFENDANT: Seems to me the video is corrupt. The
25 video has much stops. The video has been corrupt.

1 THE COURT: Mr. Scotton, if you want to use the
2 interpreters, that is fine. You need to use the interpreters,
3 you understand?

4 THE DEFENDANT: Okay.

5 THE COURT: All right.

6 THE DEFENDANT: Okay, the video was changed. There are
7 stops in the video, and while I was sitting in the meeting with
8 the agent, I asked him if I was being accused and this is not in
9 the video.

10 I also want to know what system was used, how it was
11 collected and the time stamps.

12 THE COURT: All right. First of all, the issue with
13 respect to the authentication is an issue that will be resolved
14 at trial. We will not go through that right now.

15 The Government either can or cannot present a
16 foundation that authenticates the video.

17 So that is, you know, that is a matter for the
18 Government to address.

19 But, assuming, because I need to in order to be
20 prepared to deal with the issue at trial, assuming just for
21 purposes of this hearing without making a decision, that the
22 Government is able to present an appropriate authentication of
23 the video, then the question is whether the transcript
24 accurately reflects what is in the video.

25 Do you understand what I am saying?

1 I know you disagree that the video is complete, but
2 based on what is in the video, is it your position the
3 transcript accurately represents what is actually in there?

4 THE DEFENDANT: In general terms, I am not in agreement
5 with this video.

6 THE COURT: Okay, I understand that.

7 If you have an objection what the transcript is,
8 though, you need to provide your own version of the transcript.

9 By doing so, you are not conceding that the video is
10 authentic or admissible, all you are doing is, if it turns out
11 that the Court finds that it is authenticated and admissible,
12 you are insuring that the Court has an opportunity to consider
13 your version of the transcript.

14 But if you don't want to submit a transcript, that is
15 fine, we will go with the Government.

16 Do you understand what I am saying?

17 THE DEFENDANT: So, what I am hearing or understanding
18 is if the video was forged, it was changed, it will be
19 admissible in court. So, it has more than six stops.

20 THE COURT: All right. That is not what I said.

21 What I said was, I am not deciding now. I have to look
22 at the video. I have to hear what the testimony is. I don't
23 know if the Government is going to be able to put on an
24 appropriate foundation; but, if the Government is able to put on
25 an appropriate foundation, then I need to be able at that time

1 to give the jury a transcript. I can't stop and make the jury
2 wait while we figure out what an appropriate transcript is.

3 I am not ruling the video is admissible. I have no way
4 of knowing.

5 I am trying to anticipate an issue that comes up during
6 the trial so I don't waste the jury's time.

7 Do you understand?

8 THE DEFENDANT: I understand.

9 THE COURT: Okay. Once again, assuming the video is
10 admissible, but not deciding it is admissible, I don't know,
11 okay, my question to you is, the transcript of what is on that
12 video, do you have any objection to the transcript of what is on
13 that video?

14 THE DEFENDANT: No.

15 THE COURT: Thank you.

16 I have the same question for you with regard to the
17 video recording and transcript of your interview with
18 Immigration and Citizen Services Officer Fred Brooks.

19 Once again, I am not deciding whether the video is
20 admissible. I haven't seen it or heard the testimony to be able
21 to determine whether it is admissible, do you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: But, if it is admissible, if it turns out
24 that it is admissible, I need to know whether you have any
25 objections to the transcript that the Government has produced of

1 what the Government says is on that video.

2 Do you have any objections to that transcript?

3 THE DEFENDANT: No.

4 THE COURT: Okay, thank you.

5 Now, I am thinking that maybe I should, although
6 normally I wouldn't, maybe in this circumstance I should go
7 ahead and have the Government, if not today, because the
8 Government may not be prepared for this since I hadn't advised
9 the Government to do so, put on the foundation and let me hear
10 it because Mr. Scotton has indicated he believes he has reason
11 to believe the video has been altered in some way.

12 That being the case, he has asked for an expert on
13 this. I probably need to make a determination about whether
14 there is a reasonable basis for the Court to pay the fees
15 associated with hiring an expert on whether the video has been
16 corrupted in some way.

17 So, I think I need to probably hear this sometime soon.

18 What is the Government's position?

19 MS. MITRANI: How would the Government like to proceed?
20 I could proceed by proffer right now or I can put on a witness
21 tomorrow.

22 I assume we are not starting tomorrow.

23 THE COURT: No. We are not starting tomorrow.

24 Mr. Scotton advised us he needs another week to review the
25 documents.

1 I want to make sure he has the time to be prepared.

2 Let me hear the proffer. I will want to hear the
3 evidence, but just so we all know what we are talking about, I
4 think it might be helpful to the Court and Mr. Scotton if we
5 heard the proffer.

6 MS. MITRANI: Yes, Your Honor, and I may consult with
7 Special Agent Van Brunt, but I can tell you Special Agent Van
8 Brunt was wired up with equipment, with FBI recording equipment,
9 I think it was an Eagle -- I am not positive -- some standard
10 recording FBI equipment and he had this meeting with
11 Mr. Scotton.

12 I could tell the Court that what Mr. Scotton is
13 referring to in terms of the breaks because of the way the
14 recording device was set up, the recording couldn't be done in
15 one fell swoop, so it is four recordings, four starts and stops,
16 but there is continuity. There is no break in the meeting.

17 In other words, Special Agent Van Brunt didn't turn off
18 the Eagle. It was continuously running. It was recorded in
19 four sessions.

20 THE COURT: Let me make sure I understand you.

21 You are not saying the Eagle was voice activated, and,
22 when there wasn't any, it was turned off and then voice
23 activated again.

24 There was a certain amount of data that had to be saved
25 in four different packages?

1 MS. MITRANI: Yes.

2 THE COURT: I understand.

3 MS. MITRANI: Sometimes I am not so eloquent.

4 THE COURT: No. No. I wanted to be sure I was on the
5 same page.

6 MS. MITRANI: If you see the recording, and the Court,
7 I expect, will have an opportunity to see it, you will see it is
8 one meeting, a fluid session. The recording was always on from
9 the beginning to the end when Special Agent Van Brunt gave his
10 formal ending, "this concludes the meeting."

11 The equipment was in good working order.

12 The only glitch which I think is confusing the
13 Defendant is that the date that is time stamped on the recording
14 is not August 31st, 2011. It is another date.

15 I am advised the reason that happened is this is not
16 the most modern equipment; so, if the battery ran out, which it
17 did, when it gets recharged or when a new battery is put in it
18 will pick up from that date.

19 The recording does not have the accurate date, but
20 Special Agent Van Brunt of the FBI will testify this is the date
21 of the recording; and, in fact, he says so in the beginning of
22 the recording. It is on the date, the date of the recording.
23 The digital imprint is correct.

24 THE COURT: Okay, thank you.

25 Mr. Berry, when do we have available to have a hearing

1 on this issue.

2 THE COURTROOM DEPUTY: Tomorrow, 1:30.

3 THE COURT: Is 1:30 okay to have the evidence on this
4 and Mr. Scotton will have the opportunity to cross-examine the
5 agent?

6 MS. MITRANI: Yes, Your Honor.

7 THE COURT: You understand, Mr. Scotton?

8 THE DEFENDANT: Yes.

9 THE COURT: You will have a chance to cross-examine the
10 agent what he testifies about, but only that as relates to the
11 issue of the authentication of the recording.

12 MS. MITRANI: In respect to the second recording, I
13 didn't interpret Mr. Scotton to be objecting about that. There
14 are no breaks, you turn it on, and that is what occurred. I
15 don't think there is a time stamp. There is no time stamp
16 issue. He is concerned about the FBI recording, not the
17 Immigration Citizenship recording.

18 THE COURT: Is that right?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Thank you. The hearing tomorrow
21 1:30 will be about the FBI recording.

22 That brings us to the third item which is five separate
23 audio recordings and accompanying transcripts of five separate
24 FedEx calls where the individual on the telephone, the
25 Government will prove, is Mr. Scotton opened a new account with

1 FedEx.

2 Okay, Mr. Scotton, do you have any objections to the
3 audio recordings? I understand you want the Government to
4 authenticate them first, but do you have any other objections to
5 them?

6 THE DEFENDANT: Yes, I was not the one who made the
7 call.

8 THE COURT: All right. And let me ask the Government,
9 how is the Government going to prove that it was the Defendant?

10 MS. MITRANI: In various different ways, Your Honor.
11 Perhaps most directly, witnesses who are familiar with the
12 Defendant's voice will testify that it is the Defendant. That
13 is, we have at least two witnesses -- three, we have three
14 witnesses that will say that is the Defendant's voice.

15 We also have circumstantial evidence indicating that it
16 is the Defendant and very strong circumstantial evidence.

17 THE DEFENDANT: Does the Government -- the witnesses
18 that you are bringing in, are they experts in voice?

19 THE COURT: Mr. Scotton, you need to talk to me and not
20 the Government.

21 The Government under the Federal Rules of Evidence can
22 authenticate a recording by an individual who is appropriately
23 familiar with your voice identifying it as your voice and need
24 not be an expert.

25 The Government, however, has to establish for those

1 witnesses that the witness, each witness would be appropriately
2 familiar with your voice.

3 All right. So, that is going to be a matter I will
4 have to hear the evidence to know, and I am not making any
5 judgments at this time because I haven't heard the evidence.

6 But, if it turns out that the recordings are
7 authenticated -- You would have the opportunity, Mr. Scotton, I
8 should say, to cross-examine each of the witnesses to show the
9 witnesses are mistaken or lying.

10 Okay? You understand?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. And it might turn out it is a
13 question for the jury to resolve. I don't know.

14 I may or may not admit the recordings.

15 I will have to hear them and hear the evidence.

16 There is no way I could know that without having heard
17 any of the evidence regarding them.

18 Again, as with the first two issues, in case I do
19 decide that it is admissible or that the decision for the jury,
20 it will be admissible for the jury to decide whose voice it was,
21 I guess, then, the next issue involves the transcripts.

22 So, my question for you is, if I find that the
23 recordings are admissible, do you have any objection to the
24 Government's version of the transcripts for these recordings?

25 THE DEFENDANT: No.

1 THE COURT: Okay, thank you.

2 Now, the next one is a May 15, 2009 recorded telephone
3 conversation and accompanying transcripts between DHL employee
4 Fred Pennicut and Pablo Surrente and the Government is going to
5 prove is Mr. Scotton.

6 Once again, the same authentication issues as the
7 others and, until I hear the evidence, I will not know whether I
8 will be admitting these things, but, once again, in case I do
9 admit them, I need to know if you have any objection to the
10 Government's version of the transcript of this telephone
11 conversation.

12 THE DEFENDANT: As to these recordings, I need to be
13 sure of the time stamps, the caller ID, and that they have to be
14 synchronized with what the company provided and also who
15 collected the information.

16 THE COURT: All right. I understand you are objecting
17 to them and you will have a chance to do cross-examination of
18 the witnesses the Government presents.

19 My question doesn't concern whether you are objecting
20 to the recordings.

21 My question is this: If -- and I haven't ruled yet, I
22 haven't heard the evidence, so I can't rule yet; but, if I rule
23 that this particular recording for May 15, 2009 is admissible,
24 my question for you is whether you have any objection to the
25 Government's version of the transcript of that recording?

1 THE DEFENDANT: No.

2 THE COURT: Okay. Thank you.

3 Finally, there are three video clips with no audio
4 taken November 17, 2008, November 28, 2008, and December 2,
5 2008, of you at DHL Boca Raton station.

6 We briefly discussed those earlier and, once again, we
7 will -- admissibility will be contingent upon the Government's
8 demonstrating authentication and if there is any other objection
9 besides authentication, then I will hear that.

10 MS. MITRANI: Your Honor, I suppose we probably are
11 going to need to address the issue of the excerpts.

12 THE COURT: I am getting to that.

13 MS. MITRANI: Sorry.

14 THE COURT: I don't hear any objection to the video
15 clips, any other ones other than those pertaining to
16 authentication, is that right, Mr. Scotton?

17 THE DEFENDANT: That is right.

18 THE COURT: All right.

19 Let me return to where we started, that is, the
20 Government does not intend to present the entirety of the
21 recordings, but, rather, excerpts -- which recordings are we
22 doing the excerpts on.

23 MS. MITRANI: Both --

24 THE COURT: The first and second.

25 MS. MITRANI: The first and second, three and four are

1 very brief. They will be played in their entirety.

2 THE COURT: Okay.

3 Now, I think you said you provided Mr. Scotton with a
4 copy of the excerpts, that is right?

5 MS. MITRANI: Yes.

6 THE COURT: Have you had a chance to review the
7 excerpts, Mr. Scotton?

8 THE DEFENDANT: What are these excerpts?

9 THE COURT: The FBI undercover tape we discussed
10 earlier, I don't know whether it is admissible or not yet but we
11 will have a hearing about it tomorrow. And the interview you
12 had with Immigration and Customs.

13 Those are two lengthy recordings. Okay.

14 So, rather than play all of each of those recordings
15 for the jury because the Government doesn't think that all of
16 each of those recordings is material to this case, although the
17 Government would seek to admit all of each of them in case the
18 jury wants to watch it back in the jury room, the Government's
19 intention is to play only short pieces of each of those two
20 recordings for the jury and to provide transcripts of the pieces
21 that they collect.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you familiar with the excerpts or
25 shorter pieces that the Government intends to play for the jury?

1 THE DEFENDANT: No.

2 THE COURT: You need to watch them today and figure out
3 if you have an objection to them.

4 If you can't watch them today, you need to do it
5 tomorrow morning.

6 MS. MITRANI: We provided the text. He received the
7 text this past Saturday.

8 THE COURT: Have you reviewed the transcripts of the
9 transcripts of the excerpts?

10 THE DEFENDANT: No.

11 THE COURT: You need to do that between today and
12 tomorrow, 1:30, so I know if you have any objections, if I
13 decide that either of these recordings is admissible, to have
14 the Government play only the excerpts instead of the entirety of
15 each of the recordings.

16 Do you understand?

17 THE DEFENDANT: I understood.

18 THE COURT: All right. Thank you.

19 Was there anything else?

20 MS. MITRANI: No.

21 THE COURT: All right. So tomorrow we are addressing
22 number one and the excerpts, right?

23 MS. MITRANI: Yes, Your Honor.

24 THE COURT: All right. That is 1:30 tomorrow.

25 Okay, now that brings us to the Government's notice to

1 introduce evidence inextricably intertwined, Rule 404(b).

2 This is docket entry 132.

3 In this motion, the Government is advising Mr. Scotton
4 that it is going to seek to introduce evidence that when
5 Mr. Scotton traveled to Brazil in 2008, he applied for a Visa to
6 return to the United States and that Visa was denied. Although
7 it was denied, Mr. Scotton still returned to the United States
8 by traveling to the Bahamas from which he was transported to the
9 United States in a private water craft.

10 This is the evidence the Government seeks to admit.

11 The Government seeks to admit it under two different
12 bases. One, it is inextricably intertwined means it is
13 intrinsic evidence that are charged in Count 28 and 29 of the
14 second superseding indictment because Counts 28 and 29 relate to
15 alleged false statements that Mr. Scotton made concerning his
16 alleged residing with a Cuban national and the fact that he did
17 not return to the United States after 1992.

18 And this evidence the Government has asserted in its
19 motion is inextricably intertwined because it shows, first of
20 all, he did return to the United States after 1992, that he was
21 actually in Brazil in 2008 because his photograph was taken
22 there and he filled out the Visa there or request for the Visa,
23 and it was denied and that, after that time, he was in the
24 United States. I am sorry, did not re-enter the United States
25 since 1992.

1 This shows if he was in Brazil in 2008 and in United
2 States after 2008, the statement that he even did not enter the
3 United States since 1992 is false.

4 It is intrinsic to prove the Government inferences.

5 In the alternative, the Government is saying it should
6 be admitted as extrinsic evidence to show Mr. Scotton's motive
7 in allegedly lying because the statement that he had not entered
8 the United States since 1992 according to the motion provided a
9 motive for the misstatement to hide his unlawful entry and gain
10 permanent residency and citizenship.

11 So, I want to hear from you, Mr. Scotton, about whether
12 you have any opposition to the Government seeking to admit the
13 evidence that I've talked about; that is, specifically that you
14 traveled to Brazil in 2008, you applied for a Visa to return to
15 the United States and Visa was denied, and you returned to the
16 United States by traveling to the Bahamas from where you were
17 transported to the United States in a private watercraft.

18 THE DEFENDANT: Yes, I am going to fight that because I
19 have evidence that I did not re-enter the country illegally, and
20 I was inspected actually by the Coast Guard. I have photos and
21 audio to prove that, as well.

22 THE COURT: Let me stop you for just a moment.

23 The question isn't whether you legally re-entered the
24 country. You are not charged with illegal re-entry. You are
25 charged with lying to customs officials. Okay? Do you

1 understand?

2 So, the question -- so, the Government wants to put
3 this evidence on to show that you lied, okay? You lied when you
4 said you hadn't re-entered the country since 1992, not that you
5 illegally re-entered the country in 1992, although that is, in
6 effect, what is going to wind up being shown because that is the
7 disqualifying factor that the Government alleges preventing you
8 from getting citizenship in the United States.

9 Am I getting this right?

10 MS. MITRANI: Yes, more or less.

11 THE COURT: Do you understand, Mr. Scotton?

12 THE DEFENDANT: Actually, I never made false statements
13 to Immigration. Actually, Immigration was aware I had gone back
14 to Brazil, so much so, when they approved the 101 Visa, I had
15 another lawyer who actually applied to get law 1140 for me and
16 he knew I had already obtained the 101 Visa, and he knew about
17 that.

18 THE COURT: All right. Mr. Scotton, I am not trying
19 you on an illegal re-entry or illegally obtaining a Visa.

20 I am not trying you on that.

21 Right now the only issue is whether the evidence the
22 Government is seeking to admit should be allowed to be
23 presented.

24 THE DEFENDANT: No, because it is false.

25 THE COURT: All right.

1 THE DEFENDANT: And, if their evidence is admissible, I
2 should also be able to present my defense.

3 THE COURT: All right. Having heard Mr. Scotton's
4 basis for objecting which is the evidence is allegedly false, I
5 will find that the evidence is inextricably intertwined and,
6 therefore, admissible but Mr. Scotton has a right to
7 cross-examine all the witnesses who testified to any of these
8 things, to inspect the documents and to present his defense
9 regarding his issue, and the jury will decide whether it
10 believes the evidence the Government puts on or the evidence
11 Mr. Scotton puts on.

12 All right. Any other outstanding matters I need to
13 address today?

14 MS. MITRANI: No, Your Honor.

15 THE COURT: In that case, I will dismiss the Government
16 and we will see the 1:30, and we will address the audio and the
17 excerpts.

18 MS. MITRANI: Can we address -- we weren't here
19 yesterday, the first notice the Government had that the case may
20 not be proceeding tomorrow was the suggestion that Mr. Scotton
21 had asked for more time.

22 THE COURT: I apologize.

23 MS. MITRANI: Can we address the start of the trial?

24 THE COURT: Yes, I apologize, I thought you were aware
25 of it.

1 MS. MITRANI: No.

2 THE COURT: All right. We are not going to start the
3 trial. Mr. Scotton asked for a week. That brings us to next
4 Wednesday, right, Mr. Scotton?

5 THE DEFENDANT: Well, I am analyzing the process, and
6 preparing myself for my opening statements, and also I am
7 preparing for the subpoenas, and I would like the Court to take
8 into consideration the fact because I am incarcerated I have
9 limited access to doing certain things.

10 THE COURT: Okay. Mr. Scotton, here is what I am
11 asking you, I want to give you the time that you want.

12 But I also know you filed about 17 motions to dismiss
13 the case for speedy trial violations.

14 I also want to make sure that I give you a trial as
15 soon as you want it. You understand what I am saying?

16 So, what I am trying to do is schedule the trial as
17 soon as possible while giving you the time that you want and
18 need to prepare for trial.

19 So, I am relying on you to tell me how much time you
20 need to prepare for trial.

21 I am happy to give you the time you need but I need to
22 know what that is, because I need to try other cases in the mean
23 time. If it is going to be awhile, I don't mind, but I need to
24 know what is going on.

25 How much time do you want? I will give you the time

1 you want and we will set it as soon as possible after that time.

2 If I am in the middle of trial, we will have to wait
3 until I complete the trial, but we will set it as soon as
4 possible after you are ready, but I need to know how much time
5 you want.

6 THE DEFENDANT: I will be able to give you an answer to
7 that Your Honor after I come to the number of people I have to
8 subpoena. After I have that number, after the Government leaves
9 the room, I will be able to give you an answer.

10 THE COURT: All right. I will tell you what.

11 We are not going to trial at least before Wednesday of
12 next week. Tomorrow Mr. Scotton will advise everybody here when
13 he wants to go to trial.

14 All right, Mr. Scotton?

15 THE DEFENDANT: Okay.

16 MS. MITRANI: We literally are picking somebody up from
17 the airport we flew in from Arizona. We flew in somebody from
18 Tennessee yesterday.

19 I know the Court is in a difficult situation. As best
20 we can, I would like to get the best date certain that we can
21 for obvious reasons.

22 THE COURT: I completely understand. It is a
23 reasonable request. I should have let you know yesterday. I
24 apologize for not doing so. We will do better on that.

25 MS. MITRANI: Not at all.

1 Two things, real quick, I apologize, I know it is late.
2 We are going to take this up tomorrow? We will take up
3 the start-up date tomorrow. I want the Court to know and
4 Mr. Scotton to know the Government is unavailable September 25
5 through the 27. I want to put that out now.

6 THE COURT: Okay. You understand that, Mr. Scotton?

7 THE DEFENDANT: The agent is not going to be available?

8 THE COURT: We will not try the case September 25, 26,
9 and 27.

10 If you are able to go before then, we can start the
11 trial before that time, and we will finish the trial after the
12 27, but there will be a break in the trial.

13 Do you understand?

14 MS. MITRANI: The other thing --

15 THE COURT: Do you understand?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay, go ahead.

18 MS. MITRANI: Two other real quick things, maybe we
19 could take it up tomorrow. I want the Court to know we made
20 demand for reciprocal discovery from the Defendant. It was made
21 in 2012. We hand delivered a letter to the Defendant, in July,
22 I think. We did hand deliver a letter to the Defendant the end
23 of July requesting reciprocal discovery. We did not receive
24 any. The Defendant made a lot of remarks concerning the alleged
25 evidence that he has.

1 I would like to have the Court order the Defendant to
2 produce that to the Government if he is intending to use that at
3 trial.

4 THE COURT: Mr. Scotton, the evidence that you are
5 intending to use at trial must be provided to the Government, do
6 you understand?

7 THE DEFENDANT: Yes.

8 THE COURT: It should be provided to the Government
9 now. In fact, it should have already been provided. Do you
10 understand?

11 THE DEFENDANT: Yes.

12 MS. MITRANI: We don't need to return with our evidence
13 tomorrow, do we?

14 THE COURT: No. Tomorrow we are going to be addressing
15 the evidence about the recording.

16 You understand?

17 MS. MITRANI: Yes, Your Honor.

18 THE COURT: Are you asking whether you need to return
19 with the trial evidence or whether you need to return with the
20 evidence for Mr. Scotton to review?

21 MS. MITRANI: The Court ordered us to produce all the
22 discovery, which we did. We brought in the physical boxes, all
23 the documentary evidence. My understanding Mr. Scotton didn't
24 even look at it. Are we to bring this back tomorrow?

25 THE COURT: Oh, I misunderstood.

1 THE COURT: Mr. Scotton, it is true, this evidence has
2 been here all day. You have been here since 9:30. My
3 understanding is you have not looked at any of the evidence, is
4 that right?

5 THE DEFENDANT: I don't need to look at those evidence.

6 THE COURT: All right. Then, I am not going to have
7 the Government bring it back because it is a lot of work to
8 carry that back and forth between the two buildings.

9 Do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: The record should reflect that the evidence
12 was made available to you, and you are choosing not to look at
13 it.

14 Do you understand that, Mr. Scotton?

15 THE DEFENDANT: Yes.

16 THE COURT: That also includes the DVD's. Do you
17 understand that, Mr. Scotton?

18 The Government brought a computer for you to look at
19 the DVD's, and they are not bringing them back tomorrow, because
20 you didn't want to look at them, right?

21 THE DEFENDANT: Okay.

22 THE COURT: That is right?

23 THE DEFENDANT: No, it is not right; but, as I said
24 before, I wanted a chance to talk to the agent about the
25 evidence. There are a lot of things about the evidence I don't

1 agree with, but I guess we are going to have to try this case in
2 front of the jury.

3 THE COURT: Once again, Mr. Scotton, you have been
4 given a chance to review the CD's and you have been given a
5 computer to review them on, have you not, today?

6 THE DEFENDANT: No.

7 THE COURT: All right. In that case, I will need to
8 ask the courtroom deputy, Mr. Berry, if he would please advise
9 the Court on the record of what was provided to Mr. Scotton and
10 what happened today?

11 THE DEFENDANT: What are you trying to say? Are you
12 trying to say all the evidence is here today?

13 Yeah, I know the evidence is here. I am trying to
14 define the situation. I am trying to talk about some things and
15 it hasn't been done.

16 THE COURT: All right. Mr. Scotton, as you know, today
17 was designated for one of the days for you to look at the
18 evidence including the CD's. The Government brought all the
19 evidence and a computer and brought the CD's.

20 For whatever reason, you chose not to look at them.

21 Are you saying that is not an accurate statement?

22 THE DEFENDANT: Well, yeah, I did not look at the
23 evidence. I was there in the cell, you know, reviewing some
24 documents, some papers. I have no way of writing down anything,
25 doing anything.

1 THE COURT: All right. Mr. Berry, I am sorry to ask
2 you this but we need to do it for the record.

3 Would you please for the record state the arrangements
4 that were made for Mr. Scotton to review the documents today
5 including any kinds of writing implements and other items made
6 available to Mr. Scotton.

7 THE COURTROOM DEPUTY: This morning at 9:00 a.m.
8 federal agents brought over boxes of discovery, a box of
9 exhibits they intended to or possibly introduce at trial. They
10 brought in several boxes, two cartfulls of physical evidence.

11 The boxes were marked with counts that related to the
12 indictment. They brought in a clean laptop computer often used
13 for jurors that does not have internet access and a folder full
14 of CD's or DVD's.

15 They instructed before me were various audio, video and
16 spread sheets.

17 I provided Mr. Scotton with a set of headphones where
18 he could review the audio clips without the Government agents
19 knowing which videos or audio clips he was listening to so he
20 could do so in private.

21 The Marshals had provided him in the past with writing
22 utensils and paper.

23 I was here. He did not ask for anything.

24 We were here for a matter of five to seven minutes and
25 he informed everyone that he did not wish to review the

1 materials before he spoke to AUSA Bertha Mitrani and he intended
2 to go back to the cellblock so the Marshals escorted him back to
3 the cellblock.

4 I do not recall if he had pen or pencil and paper, but
5 we were here very accomdating and he did not request anything.

6 THE COURT: That was approximately 9:30?

7 THE COURTROOM DEPUTY: 9:30, and he was in the
8 cellblock by 9:37.

9 THE COURT: He understood and the Court previously
10 advised that we would have the hearing 1:30 and Ms. Mitrani need
11 not be here until that time.

12 Is that correct, Mr. Scotton?

13 THE DEFENDANT: That is correct.

14 THE COURT: All right. Thank you.

15 All right. Thank you. Under those circumstances and
16 where the Government has brought the evidence over and
17 Mr. Scotton has said he is not going to look at it anyway. I am
18 not going to require the Government to bring it over again.

19 All right. Anything else we need to address before I
20 dismiss the Government today?

21 MS. MITRANI: Not for today. Tomorrow may be another
22 day.

23 THE COURT: All right. Have a great night, see you
24 tomorrow.

25 MS. MITRANI: Thank you so much.

1 THE COURT: I am going to need to keep Mr. Scotton here
2 for a little while and seal the proceedings.

3 MS. MITRANI: When we finish the sealed proceeding, you
4 want us to come back in?

5 THE COURT: It could be a little while on the sealed
6 proceeding.

7 THE DEFENDANT: Do you mind if we take a 10 minute
8 break?

9 THE COURT: All right. We will take 10 minutes. We
10 will be back 10 after four, and I will hear the sealed
11 proceeding with Mr. Scotton.

12 THE DEFENDANT: Thank you, sorry for the inconvenience.

13 THE COURT: That is okay.

14 (Thereupon, a recess was taken.).

15 (Following proceedings sealed.).

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

17 I hereby certify that the foregoing is an accurate
18 transcription of proceedings in the above-entitled matter.

19
20 October 5, 2013

\s\ Pauline A. Stipes

21 DATE

PAULINE A. STIPES

Official United States Court Reporter
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23 954.769.5496

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