

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 12-60049-CR-ROSENBAUM

4 UNITED STATES OF AMERICA,

Fort Lauderdale, Florida

5 Plaintiff(s),

February 26, 2014

6 vs.

7 ROGERIO CHAVES SCOTTON,

8 Defendant(s).

9 JURY TRIAL

10 BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 FOR THE PLAINTIFF(S): Bertha Mitrani, Esquire
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14 Fort Lauderdale, Florida 33301

15 FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

16
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1 Thereupon,
2 the following proceedings began at 9:08 a.m.:

3 THE COURT: Good morning. We are back on the record
4 in case No. 12-60049, United States versus Rogerio Scotton.
5 Would the parties please state their appearances for the
6 record?

7 MS. MITRANI: Good morning, Your Honor. Bertha
8 Mitrani for the United States. And with me at counsel's table
9 is Special Agent Roy Van Brunt.

10 THE COURT: Good morning and thank you.

11 MR. SCOTTON: Good morning, Your Honor. Rogerio
12 Scotton, the defendant.

13 THE COURT: Good morning and thank you. All righty.
14 When we left yesterday, the parties were putting together the
15 exhibits. Is that all done?

16 MR. SCOTTON: Your Honor, I never got a chance to
17 really go over everything else. The marshal has a schedule and
18 end up have to --

19 THE COURT: How long were you here for?

20 THE MARSHAL: An hour.

21 THE COURT: An hour? It seems to me that an hour
22 should have been enough time to verify whether all the exhibits
23 were there.

24 MR. SCOTTON: I have a question here, Your Honor. The
25 two thing, 204 or 224, the one we talk about yesterday, the

1 immigration file, the paper?

2 THE COURT: Yes.

3 MR. SCOTTON: The jury going to have both of them,
4 right, or just the one?

5 THE COURT: Yes. 204 is the one that was submitted
6 originally and 204A is the one that you asked be added. So
7 yes, they will have both of them.

8 MR. SCOTTON: Also, Your Honor, I want to take the
9 moment of the Court here and object the scenario yesterday on
10 the end of the prosecution closing argument. I think is very
11 unprofessional for a lawyer to make a joke out of this whole
12 system here, put a clown picture and disrespect the Court and
13 disrespect my family. And I'm going to object that that's an
14 error also. I don't think that was very appropriate to do that
15 and try to get the attention of the jury here to have the side
16 show here.

17 THE COURT: It is overruled for a few reasons. First
18 and foremost, it was not a clown picture. It was a picture of
19 a scarecrow, a straw man, and it was used as a demonstrative
20 aid to assist in the government's argument that the arguments
21 that you were making were straw men, that is, that they could
22 be blown down.

23 The government never at any point said that you were a
24 clown, implied that you were a clown, implied that this was
25 funny, or that there was anything funny about it. That is just

1 an inaccurate characterization of what occurred. There was
2 nothing unprofessional that this Court saw in at least the
3 government's closing arguments.

4 Second, while I completely agree with you that there's
5 nothing funny about a trial and that it's a very serious matter
6 whenever we have a criminal trial, for you to come in here and
7 pretend like you haven't made jokes during the trial is also
8 inaccurate. I can think of a number of them and a number of
9 very inappropriate remarks that you made.

10 Now, I'm not going to go through all of them on the
11 record here today, but you know, I think that the record is
12 very clear about these types of things. And your repeated
13 attempts to mislead this jury to make it believe that there was
14 evidence that did not exist, to make it believe that witnesses
15 would testify to things that you knew they had no knowledge of.
16 And to suggest, when you knew darn well that it was not true,
17 that the government had fabricated Exhibit 204, that just
18 speaks for itself. So that objection is denied.

19 All right. Are there any objections to the exhibit
20 list that the government has proposed to send back?

21 MR. SCOTTON: Yes, Your Honor, several.

22 THE COURT: I will hear them now.

23 MR. SCOTTON: The case here is the United States
24 versus Rogerio Scotton. I'm trying to understand here why they
25 have Exhibit 28B, driver's license of Carlos Colon and 2C

1 Florida identification card of my mother. If the case is --
2 they have my family been diving.

3 THE COURT: One second. What are you looking at?

4 MR. SCOTTON: 28B and 28C.

5 THE COURT: Was it admitted into evidence? I will
6 have to check and see.

7 MS. MITRANI: It was admitted into evidence, Your
8 Honor. In the indictment we had talked about how the defendant
9 used that address and we introduced it. I don't think it was
10 published because I think ultimately it became a nonissue, but
11 it was admitted as a certified --

12 THE COURT: Certified record, I see it now. It was
13 admitted on January 27th. I'm sorry, that sounds more like an
14 objection to the content of the exhibit. That's already been
15 admitted.

16 This is not about whether things were properly
17 admitted. This is about whether you have any objections about
18 the way the government has characterized the exhibits so when
19 it sends back the exhibit list, it is a fair characterization.
20 Do you have any objections to the exhibit list, and that would
21 include if there's anything on the exhibit list that was not
22 admitted into evidence, then that would be a fair objection.
23 It there's any objection that things were not characterized in
24 a correct or fair way, that would also be a fair objection. I
25 would be happy to hear those. Do you have any of those?

1 MR. SCOTTON: Your Honor, they have several documents
2 over there that I was looking at on this paper. For example,
3 on the third SunTrust Bank account, they don't have no account
4 opening documents.

5 THE COURT: Once again, this is not about the content
6 of the exhibits. Do you have any objection to the way that the
7 exhibits are described on this exhibit list or do you have any
8 objections that any of the exhibits that are described on this
9 exhibit list were not actually admitted into evidence?

10 MR. SCOTTON: No, Your Honor.

11 THE COURT: Okay. In that case I'm going to go ahead
12 and send that back. Did you want me to send back a list of the
13 defendant's exhibits as well?

14 MR. SCOTTON: Yes, Your Honor.

15 THE COURT: Have you prepared one?

16 MR. SCOTTON: No, I have not, Your Honor.

17 THE COURT: All right. Mr. Scotton, well, once again,
18 I am going to do this for you. Mr. Creary is going to give you
19 a blank exhibit and witness list and you can write it out. And
20 if you need to take a look at what I have written out, I'm
21 happy to lend it to you, unless you want to do your own
22 description, and that's fine too.

23 Do you want to see what I wrote out?

24 MR. SCOTTON: Yes, Your Honor.

25 THE COURT: All right.

1 MR. SCOTTON: I will go on the Court list.

2 THE COURT: You want to use the Court's list?

3 MR. SCOTTON: Yes, let's go ahead and do that.

4 THE COURT: Show it to the government and make sure
5 that the government is okay with that.

6 MR. SCOTTON: Do I have to give this back, the blank
7 one?

8 THE COURT: You can keep it if you want.

9 MS. MITRANI: Your Honor, I want to point something
10 out that I just noticed.

11 THE COURT: All right.

12 MS. MITRANI: So Exhibit 14A is a recording and there
13 were three calls on it, Wal-Mart, Sound Stream, and Target.
14 Sound Stream was the one that only half of it had the
15 defendant, not the other one. We didn't publish it. We had
16 discussed it at sidebar. But the 14E was admitted in its
17 entirety because that's how the disc was saved and that's how
18 it was given to the FBI. So I don't know how the Court wants
19 to handle that.

20 THE COURT: Well, if it was admitted into evidence,
21 then it was admitted into evidence and this is a proper
22 reflection of the exhibit.

23 MS. MITRANI: We never played it. We haven't
24 referenced it because the defendant had, you know, made some
25 kind of objection. I wanted to streamline the process. But

1 yes, that is how the exhibit was admitted because we didn't
2 alter or change it in any way from the way that Fed-Ex had
3 provided it to us.

4 THE COURT: Okay. Thank you.

5 Anything else we need to address? No? Okay. Well,
6 if counsel would please stay within a ten-minute radius of the
7 courthouse and make sure your contact information is provided
8 to Mr. Creary, if we receive any questions or information from
9 the jury, then we will be able to call you back here and
10 hopefully resolve that as soon as possible. Thank you. See
11 you all later. Have a good day.

12 (Thereupon, a recess was taken at 9:17 a.m.)

13 MR. KREISS: Can I ask a question of the Court? What
14 is the Court's protocol as far as my representation as standby
15 trial counsel?

16 THE COURT: What do you mean?

17 MR. KREISS: As far as moving forward, does the Court
18 expect me to remain as standby counsel throughout the
19 sentencing process? Is the Court expecting a motion after a
20 verdict or post conviction?

21 THE COURT: I think -- well, I have to think about it,
22 but I think you probably should be here as standby counsel
23 during the sentencing process, thank you, if there is a
24 sentencing process because there may not be.

25 (Thereupon, a recess was taken at 9:19 a.m.)

1 THE COURT: Okay. We have received actually a few
2 questions from the jury. You each have a copy of the paper
3 that contains the questions.

4 It reads as follows: Question, Count 10, what is the
5 charge. Is there a claim? Is there a box missing? We need
6 supporting documentation. Waybill No. 6720. Cannot find
7 anything in boxes. And then it's signed and dated.

8 My thought is to respond to this in writing by saying
9 all evidence -- all exhibits that were admitted into evidence
10 have been provided to you. The charge is contained in the
11 second superseding indictment at Count 10, and please use your
12 best recollection of the evidence to evaluate the claim. How
13 does that sound? Any objections to any of that?

14 MR. SCOTTON: No, Your Honor.

15 MS. MITRANI: To evaluate the count?

16 THE COURT: The count, yes.

17 Any objections?

18 MS. MITRANI: So you are going to say all exhibits
19 entered into evidence have been provided to you. The charge is
20 contained in the second superseding indictment at Count 10.
21 Please use your best recollection of the evidence as to that
22 count. Did I read that correctly?

23 THE COURT: Let me just double-check.

24 MS. MITRANI: I'm sorry.

25 THE COURT: No, that's okay.

1 Maybe I will just reorder it so that it comports with
2 the order in the question. Okay. The charge is contained in
3 the second superseding indictment at Count 10. All exhibits
4 that were admitted into evidence have been provided to you.
5 Please use your best recollection of the evidence to evaluate
6 the count.

7 MS. MITRANI: No objection.

8 THE COURT: Any objection?

9 MR. SCOTTON: No, Your Honor.

10 THE COURT: So I'm going to send that back in writing
11 to them as soon as I make it into a nicer note.

12 All right. I added one sentence. It says, dear
13 members of the jury. We have received your note provided at
14 11:58 a.m. today, February 26, 2014, and then it continues as I
15 previously stated.

16 Any objection?

17 MS. MITRANI: No, Your Honor.

18 MR. SCOTTON: No, Your Honor.

19 THE COURT: All right. Go ahead. Let me just send
20 that to Mr. Creary and he will provide it.

21 All right. It should be on its way. Let me give you
22 the original so you can file it in the record, Mr. Creary. We
23 will let you know if we hear anything further.

24 (Thereupon, a recess was taken at 12:12 p.m.)

25 THE COURT: All righty. All rise for jury.

1 (Thereupon, the jury entered the courtroom at
2 2:47 p.m.)

3 THE COURT: Welcome back to the courtroom for the last
4 time. Everybody please be seated.

5 I understand that you all have reached a verdict, is
6 that correct, Ms. Brzezniak?

7 A JUROR: That's correct.

8 THE COURT: And I understand that you were elected as
9 the foreperson. Is that also correct?

10 A JUROR: That's correct.

11 THE COURT: Would you please turn the verdict over to
12 Mr. Creary. Thank you.

13 All righty. Mr. Creary, would you please publish the
14 verdict.

15 MS. MITRANI: Yes, Your Honor. United States District
16 Court, Southern District of Florida, case
17 No. 12-60049-Criminal-Rosenbaum. United States of America
18 versus Rogerio Chaves Scotton a/k/a Roger Scotton.

19 Verdict. We, the jury, unanimously find the
20 defendant, Rogerio Chaves Scotton, as to Count 1, guilty as
21 checked. As to Count~2, guilty as checked. As to Count 3,
22 guilty as checked. As to Count 4, guilty as checked. As to
23 Count 5, guilty as checked. As to Count 6, guilty as checked.

24 As to Count 7, guilty as checked. As to Count 8,
25 guilty as checked. As to Count 9, guilty as checked. As to

1 Count 10, guilty as checked. As to Count 11, guilty as
2 checked. As to Count 12, guilty as checked. As to Count 13,
3 guilty as checked. As to Count 14, guilty as checked.

4 As to Count 15, guilty as checked. As to Count 16,
5 guilty as checked. As to count 17, guilty as checked. As to
6 count 18 guilty as checked. As to count 19 guilty as check.
7 As to count 20, guilty as checked. As to do you want 21 guilty
8 as checked. As to Count~22, guilty as checked.

9 As to Count~23, guilty as checked. As to Count~24,
10 guilty as checked. As to Count~25, guilty as checked. As to
11 Count~26, guilty as checked. As to Count 27, guilty as
12 checked. As to Count 28, guilty as checked. As to Count 29,
13 guilty as checked.

14 So say we all, Michelle Brzezniak, dated 2/26/14.

15 THE COURT: All right. Thank you, Mr. Creary. Would
16 either side like to have the jurors polled? Ms. Mitrani?

17 MS. MITRANI: No, Your Honor.

18 THE COURT: Mr. Scotton?

19 MR. SCOTTON: No, Your Honor.

20 THE COURT: All right. Let me thank the jurors for
21 your service. We all very much appreciate it. As I said when
22 we started the process, we couldn't have jury trials, we
23 wouldn't be able to fulfill the constitutional guarantee of a
24 jury trial in criminal trials if we didn't have citizens like
25 you who were willing, at great personal sacrifice I might add,

1 to come in here and do your civic duty day after day and week
2 after week in what has been a very long trial, and we all very
3 much appreciate it.

4 It's also -- we also appreciate the fact that it is
5 evident from the fact that you started your deliberations at
6 9:30 this morning and it is now 10 of 3:00 that you obviously
7 spent a lot of time going through the evidence and considering
8 this case and really conducting your deliberations so we thank
9 you for that as well.

10 With that, we have certificates for each of you for
11 your service, and Mr. Creary is going to hand them out. As I
12 explained at the beginning of this trial, no one can ever force
13 you to talk to them about your jury service or what happened in
14 this case or anything of that nature. If you wish to speak
15 with the attorneys, that's up to you, but you would have to --
16 or I should say the attorney or party. You would have to
17 contact them yourself because they will not be contacting you.

18 All right. Is there anything else that we need to
19 address before we dismiss this jury, Ms. Mitrani?

20 MS. MITRANI: No, Your Honor.

21 THE COURT: Mr. Scotton?

22 MR. SCOTTON: No, Your Honor.

23 THE COURT: All right then. Thank you all. You are
24 excused with our great appreciation. All rise for the jury.

25 (Thereupon, the jury exited the courtroom at

1 2:52 p.m.)

2 THE COURT: Please be seated. The next thing that
3 will occur in this case will be the sentencing. And in
4 conjunction with that, a probation officer will visit you,
5 Mr. Scotton, and will ask you for information in the
6 preparation of the presentencing report that the probation
7 officer will prepare. That report will contain information
8 that helps me to decide what an appropriate sentence is in this
9 case. So she's going to or he's going to interview you a
10 little bit regarding that.

11 It's very important that you cooperate and be truthful
12 with the probation office or else things may not go as well for
13 you as you might like at sentencing.

14 Mr. Creary, when are we setting sentencing for in this
15 case?

16 THE COURTROOM DEPUTY: Sentencing will be May 9th at
17 1:00 p.m.

18 THE COURT: May 9th at 1:00 p.m.?

19 THE COURTROOM DEPUTY: Yes, Judge.

20 THE COURT: May 9th at 1:00 p.m. Is there anything
21 else that we need to address before we adjourn the proceedings
22 in this case?

23 MS. MITRANI: No, Your Honor.

24 THE COURT: Mr. Scotton?

25 MR. SCOTTON: No.

1 THE COURT: Thank you all, and we will be in recess.

2 Is there any reason why I should not unseal the court
3 record with regard to the ex parte hearings that I had with the
4 defendant regarding defense strategy, Mr. Scotton?

5 MR. SCOTTON: What is the options here, Your Honor?

6 THE COURT: I'm asking you if you have any objection
7 to my unsealing -- I am assuming, although I don't know, that
8 you may want to appeal. And I should tell you that you have a
9 right to appeal both the conviction and the sentence within 14
10 days of the entry of the judgment and that will occur after
11 your sentencing.

12 And if you can't afford to pay the cost of an appeal,
13 you may apply for leave to appeal in-forma-pauperis. So
14 anticipating that you may wish to appeal, one of the things
15 that the person appealing must do is to determine what
16 transcripts need to be made available for the appellate court
17 to review in considering any issues on appeal.

18 And in anticipation of the possibility that you may
19 wish to appeal some of the rulings I made with respect to, for
20 example, denying subpoenas or declining to provide you with a
21 court appointed counsel from the court, those types of things,
22 it is occurring to me that you may possibly need to use those
23 transcripts. And if you do, it seems likely that the
24 government would have the opportunity to respond.

25 But in order to sort of expedite that process, I am

1 asking you if you want me to unseal the transcripts of those
2 and just those meetings that we had, if you want me to unseal
3 those transcripts so that they will be readily available after
4 your sentencing. I don't have to. I could wait and you could
5 designate things and then we could unseal them. But I'm just
6 asking you to try to facilitate things so this can move a
7 little more quickly if that's what your desire is.

8 MR. SCOTTON: Your Honor, I really appreciate the
9 Court concern, but at this point I'm going to keep it sealed
10 until I have a lawyer to decide on my behalf.

11 THE COURT: No problem.

12 All righty. Anything else we need to address?

13 MS. MITRANI: No, Your Honor.

14 MR. SCOTTON: No, Your Honor.

15 THE COURT: I think the government's records are
16 probably too voluminous for us to upload into our system on the
17 record, the docket record, because there are boxes upon boxes.
18 But I note that Mr. Scotton's exhibits are -- there aren't too
19 many of them. And also, again, for convenience and so we don't
20 have to worry about them getting lost, what I would like to do
21 is have them uploaded as a docket entry as your exhibits. That
22 way if for some reason you get separated from them or whatever,
23 you can always obtain a copy of them from the court record
24 because they will be filed in the court record. All right?

25 MR. SCOTTON: Your Honor, also I want to put on the

1 record here I release all my personal paperwork that was in
2 court to Nina Martinez today so she will have custody of all my
3 discovery and all my paperwork to release to my family.

4 THE COURT: Ms. Martinez, did you say that was okay
5 with you?

6 THE INVESTIGATOR: It's okay, Your Honor.

7 THE COURT: So there's no question about what was
8 released, do you guys have some kind of bag and some tape or
9 something, we could put it all into a bag, tape it up, and have
10 Mr. Scotton initial over the tape so that way we can make sure
11 that everything you gave to Ms. Martinez gets to your family.
12 Do we have any supplies of that type that we can use?

13 THE INVESTIGATOR: You can put it on those boxes.

14 THE COURT: That's fine. Tape it up nice and tightly.
15 And when you are done, Mr. Scotton, I want you to initial right
16 over the tape and onto the box so anyone who looks at it will
17 know if it was tampered with.

18 THE INVESTIGATOR: I would like to put on the record
19 that I have the laptop computer in my car, and inside the
20 briefcase is an external drive and couple of DVDs from the
21 discovery too.

22 THE COURT: Okay. And, Mr. Scotton, what do you want
23 done with those items?

24 MR. SCOTTON: That's all going to be returned to my
25 family.

1 THE COURT: So with respect to those items, if you
2 would, Ms. Martinez, please go ahead and prepare a cover letter
3 for those materials saying what is included, make a copy for
4 your records, and then return that material as well to
5 Mr. Scotton's family. All right?

6 THE INVESTIGATOR: All right, Your Honor. Thank you.

7 THE COURT: Why don't we go ahead and take care of
8 this on the record right now. Put everything that you have in
9 the box. And, Mr. Scotton, satisfy yourself that it's all
10 there.

11 MR. KREISS: Your Honor, may I just confirm my status
12 in this case?

13 THE COURT: Absolutely.

14 MR. KREISS: At this point in time, it's my
15 understanding I am going to remain as standby counsel through
16 sentencing.

17 THE COURT: That is correct unless Mr. Scotton hires
18 an attorney.

19 MS. MITRANI: Your Honor, we should retain obviously
20 custody of the government's exhibits, correct?

21 THE COURT: Yes.

22 Mr. Scotton, have you had the opportunity to inspect
23 the materials to your liking and ensure that everything was
24 there?

25 MR. SCOTTON: Yes, Your Honor.

1 THE COURT: And have you sealed the box? How many
2 boxes are there?

3 MR. SCOTTON: Three box, Your Honor.

4 THE COURT: Have you sealed the three boxes and signed
5 over the tape of each of the three boxes?

6 MR. SCOTTON: Yes, Your Honor.

7 THE COURT: All right. Thank you. Is there anything
8 else we need to address here today before we recess?

9 MS. MITRANI: No, Your Honor.

10 THE COURT: Anything further, Mr. Scotton?

11 MR. SCOTTON: No, Your Honor.

12 THE COURT: All right. Then we will be in recess.
13 Thank you.

14 (Thereupon, the trial concluded at 3:05 p.m.)

15 - - -

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

17
18 I hereby certify that the foregoing is an
19 accurate transcription of the proceedings in the
20 above-entitled matter.
21

22
23 7/24/14

24 s/ Tammy Nestor
25 Tammy Nestor, RMR
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