

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

3 UNITED STATES OF AMERICA . CR. NO. H-12-503-1
4 VS. . HOUSTON, TEXAS
5 JASON DANIEL GANDY . APRIL 27, 2017
6 . 2:35 P.M. to 2:50 P.M.

7 TRANSCRIPT of SEALED EX PARTE PORTION of HEARING
8 BEFORE THE HONORABLE LEE H. ROSENTHAL
9 CHIEF UNITED STATES DISTRICT JUDGE

10 APPEARANCES:

11 FOR THE GOVERNMENT: SHERRI ZACK
12 U.S. Attorney's Office
13 1000 Louisiana
Suite 2300
Houston, Texas 77002

14 FOR THE DEFENDANT: DAN COGDELL
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Houston, Texas 77002

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18 DeBorde Law Firm
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25 Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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APPEARANCES CONTINUED

OFFICIAL COURT REPORTER:

KATHY L. METZGER
U.S. Courthouse
515 Rusk
Room 8004
Houston, Texas 77002

P R O C E E D I N G S

(Open court, defendant present)

(Ms. Zack and Mr. Neyland not present)

THE COURT: This is in camera, so I need to ask spectators to step outside as well. You can come right back in, sorry --

SPECTATOR: Sorry, Judge. I didn't realize you were talking to --

THE COURT: You weren't. You weren't. We'll advise you when it's safe to return.

(All spectators left the courtroom)

THE COURT: All right. Can you be a little bit more descriptive than you were in the letter about the nature of the breakdown in your relationship? And then I'll hear from Mr. Gandy.

MS. DEBORDE: Being cautious about being overly specific --

THE COURT: And I appreciate that. I'm not asking for that. I don't want you to reveal privileged communications at all.

MS. DEBORDE: With that said, while Mr. Cogdell and I've been working on the case, it has become necessary for us to only meet with Mr. Gandy at the same time to have a -- effectively a witness to the conversation. And if I have a communication with Mr. Gandy, it oftentimes is quickly -- I

1 guess one way to put it would be understood differently
2 potentially than what I feel I have said. And for that reason
3 I don't feel comfortable that I am able to lay my own thoughts
4 and opinions about the legal matters and feel sure that they're
5 being heard and I therefore can't feel confident that Mr. Gandy
6 is making decisions based on the legal advice that I am
7 intending to provide.

8 *MR. COGDELL:* I would echo that, and add my history
9 with Mr. Gandy is lengthier. I have been representing him now
10 for going on five years. He has -- and I guess I should
11 predicate it all by saying I have no ill will towards him.
12 He's not been personally abusive or dismissive, but I feel like
13 this is now the seventh lawyer that Mr. Gandy has hired -- or
14 seventh lawyer on the case and --

15 *THE COURT:* Besides you and Ms. DeBorde?

16 *MR. COGDELL:* She's included in the seven.

17 *THE COURT:* All right.

18 *MR. COGDELL:* And I have lost --

19 *THE COURT:* How long have you been on the case,
20 Ms. DeBorde?

21 *MS. DEBORDE:* It's been about -- and I'd have to go
22 back and look at the docket sheet, but I believe it's been a
23 little over two years.

24 *THE COURT:* Okay.

25 *MR. COGDELL:* The original case was filed in '12. It

1 was superseded in '14.

2 *THE COURT:* All right.

3 *MR. COGDELL:* We came close, very close to a plea
4 agreement and then that was rejected a couple of times and then
5 we had the psychological --

6 *THE COURT:* Rejected by Mr. Gandy?

7 *MR. COGDELL:* Yes, ma'am.

8 And then we had the psychological issues and
9 there was a superseding indictment and here we are.

10 The point being -- and ironically we're not --
11 the only other time I filed a motion to withdraw in federal
12 court was in this court on Mr. Fishes' (phonetic) case when --

13 *THE COURT:* I remember.

14 *MR. COGDELL:* -- there was a conflict. So I'm
15 chagrined to be here the second time on a motion to withdraw.
16 So for that I apologize.

17 *THE COURT:* I assume you have no regrets about that
18 decision.

19 *MR. COGDELL:* None. Bless his heart. None.

20 *THE COURT:* Enough said.

21 *MR. COGDELL:* But I don't feel like that my advice to
22 Mr. Gandy is being heard, is being received, and being
23 assimilated. And I have tried my best to communicate
24 effectively with him and it just -- whatever I say doesn't get
25 heard in the fashion that I wish it to be heard. No offense to

1 Mr. Neyland or any of the other lawyers that have come and
2 gone.

3 *THE COURT:* What -- the lawyers that have come and
4 gone, what has been the history of their involvement?

5 *MR. COGDELL:* Well, I guess the longest acting lawyer
6 besides Ms. DeBorde was Charles Flood. He reached an impasse
7 for essentially the same reasons that we're articulating now
8 with Mr. Gandy last December, I think.

9 *THE COURT:* So all of these individuals were counsel
10 of record for a brief time in addition to you, Mr. Cogdell?

11 *MR. COGDELL:* Yes, ma'am.

12 *THE COURT:* And then they for one reason or another
13 sought and were given leave to withdraw?

14 *MR. COGDELL:* Yes, ma'am.

15 *THE COURT:* Okay. Was there opposition to any of them
16 by Mr. Gandy?

17 *MR. COGDELL:* I don't know.

18 *THE DEFENDANT:* I can't wait to talk. I'm sorry.

19 *MS. DEBORDE:* I am looking at Mr. Flood's motion to
20 withdraw on the docket sheet. It indicates that it was
21 unopposed, and it was the day after I filed a notice of
22 appearance in this case, which was March the 30th, 2015, Your
23 Honor.

24 *THE COURT:* That's a long time ago now. That is about
25 over two years.

1 *MS. DEBORDE:* Yes, Your Honor.

2 *THE COURT:* All right. Let me now hear from
3 Mr. Gandy.

4 *MR. COGDELL:* Sure.

5 *THE DEFENDANT:* I'll start with that. Mr. Flood --

6 *THE COURT REPORTER:* Can he use the microphone,
7 please?

8 *THE COURT:* Use the microphone, please, sir.

9 *THE DEFENDANT:* Mr. Charles Flood, I was on suicide
10 watch and I'd just come off of suicide watch and on suicide
11 watch it's very freezing and I remember I was shaking when he
12 came to visit me and I had a full beard and I was not
13 mentally -- I was on my way to Butner, North Carolina, and I
14 did oppose him quitting. I did not want him to quit. He quit
15 when I was -- I didn't get to have what we're having right now.
16 He just quit while I was on suicide watch, and I didn't think
17 that was fair at all. So it says that I was -- never opposed
18 him quitting, but I did oppose him quitting.

19 I feel that my lawyers very rarely visit me. In
20 fact, the last time I've seen these two lawyers was
21 December 5th when we --

22 *THE COURT:* Well, of course if nothing is happening
23 and we're just waiting for an evaluation to be completed --

24 *THE DEFENDANT:* Well, the evaluation --

25 *THE COURT:* -- or for you to be transferred from one

1 place to another or waiting for a setting, there may indeed be
2 little reason to have to come and visit you. You understand
3 that, right, sir?

4 *THE DEFENDANT:* Yes, ma'am. I'd like to add to that
5 though, that December 5th I was finished with my psych
6 evaluation. I was competent to stand trial. And I told both
7 of them I would like to prepare for trial.

8 *THE COURT:* That's fine.

9 *THE DEFENDANT:* And that was December 5th. And now
10 I'm just now seeing them again. They never visited since -- if
11 you're going --

12 *THE COURT:* This is not even set for trial until the
13 middle of June. And this is not unusual for even complicated
14 cases with lots of documents, and yours is not a document heavy
15 case at all from what I can tell from the file and the nature
16 of the charges, so it's now time to start getting ready in
17 earnest, but getting ready in -- since there was no suppression
18 motion that had to be pursued, I believe that was -- once the
19 government said it was not going to use that evidence, that
20 took care of the need to pursue that motion. So there were no
21 complicated evidentiary issues requiring pretrial motions, no
22 complicated legal issues requiring pretrial motions. I'm not
23 sure what, other than a social how are you, getting to know you
24 better visit, what professional benefits would have been
25 obtained by the kind of interaction that you want more of.

1 *THE DEFENDANT:* I don't want to disclose things about
2 my case but there is some --

3 *THE COURT:* I don't either.

4 *THE DEFENDANT:* There is some --

5 *THE COURT:* I don't want to hear them.

6 *THE DEFENDANT:* There are some defense strategies that
7 I would like them to use.

8 *THE COURT:* Fine. You'll have plenty of time to share
9 them with them or whoever represents you.

10 *THE DEFENDANT:* I would like them to stay on the case
11 and I would like them to --

12 *THE COURT:* Have you put them in a position and have
13 they put themselves in a position in which that's possible?

14 *THE DEFENDANT:* I believe --

15 *THE COURT:* Think about it.

16 *THE DEFENDANT:* I believe they still could represent
17 me. I think they're just frustrated because I wasn't willing
18 to negotiate a plea --

19 *THE COURT:* Well --

20 *THE DEFENDANT:* -- deal.

21 *THE COURT:* -- I don't want to hear that. I mean --

22 *THE DEFENDANT:* Okay.

23 *THE COURT:* -- not that I don't want to hear the
24 substance of what you're saying --

25 *THE DEFENDANT:* Okay.

1 *THE COURT:* -- because of what it is. I don't want to
2 hear anything about --

3 *THE DEFENDANT:* Okay.

4 *THE COURT:* -- those kinds of discussions with your
5 lawyers or anything about any plea negotiations at all. I just
6 don't want to hear it.

7 *THE DEFENDANT:* Okay --

8 *THE COURT:* It's not proper for me to --

9 *THE DEFENDANT:* I agree.

10 *THE COURT:* -- to hear it at all.

11 In order for you to proceed with these good
12 lawyers as your lawyers, and they are good lawyers --

13 *THE DEFENDANT:* I agree.

14 *THE COURT:* -- they need to be able to be confident
15 that you will listen to what they have to say, seriously
16 consider it, and understand that they know a whole lot more
17 about the facts and the law and the courts and how they -- the
18 courts operate than jailhouse lawyers, other inmates, family
19 members, or other sources of lay advice that you may be
20 getting, including your own -- I mean, obviously you have to
21 make the final decision, but you need to make an informed
22 thoughtful decision, not one framed based solely on an
23 uninformed perspective of how you would like things to be.

24 *THE DEFENDANT:* I understand.

25 *THE COURT:* So if you are able to make that commitment

1 to me on the record and if these lawyers are willing to
2 continue to try to do what they do best, then I don't think we
3 need to add another lawyer at this point. I am reluctant to do
4 that, because you have greatly superior knowledge of the
5 defendant and this case. Mr. Neyland would have a hard time
6 catching up, although he may well be able to do so. It's not
7 that complicated. As I said, it's not a document intensive
8 case and the law is pretty straightforward.

9 Are you willing to do that and do you feel able
10 to do that, more importantly?

11 Would you gentlemen please wait outside. Thank
12 you.

13 *MR. COGDELL:* I think she was asking him the question.

14 *THE COURT:* I'm asking you now.

15 *MR. COGDELL:* You're asking me this?

16 *THE COURT:* Yes, sir. Do you want to confer with
17 Ms. DeBorde before --

18 *MR. COGDELL:* If the Court please.

19 *THE COURT:* Of course.

20 *THE DEFENDANT:* I had a question.

21 *THE COURT:* Not yet.

22 *THE DEFENDANT:* Okay.

23 *MR. COGDELL:* I'm sorry. I should have had my glasses
24 on when I was looking at you, because I thought you were
25 looking at him and not me.

1 I don't think it is possible, Your Honor. I just
2 think the relationship, given my history with Mr. Gandy and
3 given my experiences with Mr. Gandy are going to be too much of
4 a steep hill to climb. I just don't think I can look the Court
5 in the eye and assure the Court that that's likely to happen.
6 I think we're going to be facing the same issues we've been
7 facing. I think Ms. DeBorde is of the same --

8 *MS. DEBORDE:* We're in the same spot, Your Honor. We
9 have tried in a variety of ways to resolve this short of a
10 motion to withdraw unsuccessfully.

11 *THE COURT:* All right. I don't really see an
12 alternative to granting your motion.

13 You did have a question. Do you want to ask
14 Mr. Cogdell first before I sign the order while he is still
15 indeed your lawyer?

16 *MR. COGDELL:* Do you want to ask me something or do
17 you want to ask her something?

18 *THE DEFENDANT:* I want to ask you something, Judge,
19 Your Honor --

20 *THE COURT:* Do you want to hear it first, Mr. Cogdell?

21 *THE DEFENDANT:* -- Judge Rosenthal.

22 *MR. COGDELL:* Why don't you --

23 *THE COURT:* Okay.

24 *MR. COGDELL:* -- ask me and let me --

25 *THE DEFENDANT:* Okay.

1 *(Defendant conferring with Mr. Cogdell)*

2 *THE DEFENDANT:* I have recently paid a substantial
3 amount of money to these two lawyers. And I paid them to go to
4 trial, aside for Ms. DeBorde, she wanted to charge a separate
5 fee for a trial. And I feel that if they want to quit, I
6 should get my money back for the trial, at least that portion
7 of their payments that I've given them. I don't want them to
8 quit. I would like them to stay on and go to trial like I
9 agreed when I paid them all their money upfront.

10 *THE COURT:* You also agreed to engage in a particular
11 way with respect to their professional services and I gather
12 that that --

13 *THE DEFENDANT:* I don't feel like I engaged --

14 *THE COURT:* -- there is at best a dispute as to
15 whether that occurred.

16 *THE DEFENDANT:* Yeah, I did not engage in any way
17 except ask for them to please help me with my defense and I
18 feel they have not. At one point it went one year without
19 visiting, and I know that's kind of a long time to not visit
20 your client that you've paid to defend you.

21 *THE COURT:* Well, you're making it even more clear why
22 the relationship can't succeed and --

23 *THE DEFENDANT:* But is it my fault that they don't
24 visit me?

25 *THE COURT:* This is not a question of fault.

1 I certify that the foregoing is a correct transcript from the
2 record of proceedings in the above-entitled cause, to the best
3 of my ability.

4

5 /s/ Kathy L. Metzger
6 Kathy L. Metzger
7 Court Reporter

4-21-25
Date

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