

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

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UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 Vs.) Case No. 02-CR-27-1
)
 DWIGHT D. YORK,)
 a/k/a MALAKAI Z. YORK,) June 30, 2003
 a/k/a ISA MUHAMMAD,) Macon, Georgia
 a/k/a ISA ALIHAD MAHDI,)
 a/k/a BABA,)
) 1:35 p.m.
 Defendant.)

HEARING
BEFORE THE HONORABLE HUGH LAWSON
United States District Judge presiding

APPEARANCES:

For the Government: MAX WOODS
RICHARD MOULTRIE
OFFICE OF U.S. ATTORNEY
P. O. Box 1702
Macon, GA 31202

For the Defendant: EDWARD T.M. GARLAND
MANUBIR SINGH ARORA
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3151 Maple Drive, NE
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Official U.S. Court Reporter
Post Office Box 124
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Computer-Assisted Transcription

1 (IN OPEN COURT)

2 THE COURT: Good afternoon. Be seated, please.

3 We're here this afternoon in the matter of the United
4 States against Dwight York. Mr. York is present, is he not?

5 MR. GARLAND: Yes, he is, Your Honor.

6 THE COURT: All right. As all of you know -- well,
7 before I go into that, let me say this, I want the record to
8 reflect that sometime between 11:00 and 12:00 this morning,
9 three men came to my office and asked to see me. I received
10 them in my chamber, and they told me that they wished to present
11 to me certain documents on behalf of the defendant. They told
12 me that they wanted me to have Mr. York brought to my office so
13 that they could make the presentation -- so that he could be
14 present while they made the presentation. I told them that that
15 could not be done and that I would not receive any presentation
16 from them there, that whatever presentations would be made in
17 the case would be made here in the courtroom and on the record.
18 I told them that the hearing would be held at 1:30 and that they
19 were welcome to attend the hearing, but I also told them that
20 the fact that they could attend the hearing did not in and of
21 itself mean that they would be allowed to speak or to address
22 the Court in any way, and I suggested to them that if they had
23 any information they wished to impart to the Court, they should
24 either take that matter up with defense counsel or, if not by
25 that route, then they should consult their own attorneys and

1 have counsel to speak for them here in this proceeding.

2 They gave me their names, and I regret that, with the
3 passage of years, my memory has become so decrepit that I don't
4 remember what the names were. It was -- it was a pleasant
5 exchange, but I wanted the record to reflect that that exchange
6 had taken place.

7 As you all know, on January 23rd, 2003, Mr. York
8 entered a plea of guilty to a 2-count superceding information.
9 That plea was entered into based on a plea agreement between the
10 government and the defendant.

11 As we all know, that plea agreement was subject to the
12 approval of the Court based on various factors, including the
13 receipt by the Court of the presentence report from the
14 Probation Office. I have received the presentence report and
15 have read and studied it carefully. The plea, as I -- I entered
16 an order on June the 25th, which rejected the plea agreement in
17 writing. I want to elaborate on that rejection at this time.

18 The plea agreement entered into between the government
19 and the defendant is rejected for the following reasons. The
20 stipulated sentence is not within the applicable guideline
21 range. The stipulated sentence does not depart from the
22 applicable guideline range for justifiable reasons found at 18
23 U.S.C. Section 3553(b).

24 Moreover, the Court has considered the charges
25 contained in the indictment, the admissions made by the

1 defendant when he entered his plea of guilty on January the
2 23rd, the nature and the details of the offenses contained in
3 the presentence report, the post-plea behavior and indications
4 of true acceptance of responsibility of the defendant as shown
5 by the presentence report, and the impact of the conduct of the
6 defendant on the victims.

7 Based on these factors, the Court finds that the
8 stipulated sentence does not adequately address the severity and
9 admitted and alleged -- the severity of the admitted and alleged
10 criminal conduct of the defendant.

11 So the presentence report -- I mean the plea agreement
12 is rejected for those reasons.

13 Now, Mr. York, did you understand what the Court just
14 said about the rejection of the plea agreement?

15 THE DEFENDANT: With all due respect to your court and
16 your government, I'm sovereign; I'm a Native American; I'm
17 indigenous; I'm on record as 215/1993. We're recognized with
18 the United Nations as a sovereign nation.

19 I'm supposed to be put into custody of my own tribe,
20 the Yamassee Native Americans, Creek Cherokees, and held in
21 their courts, which is the Morris Cherokee Court Council
22 (phonetic).

23 Sir, these proceedings --

24 THE COURT: Let me interrupt you -- I want to interrupt
25 you a minute, if you will.

1 THE DEFENDANT: Uh-huh (affirmatively).

2 THE COURT: If you will, simply answer my questions,
3 and then I'll be glad to hear you. Did you understand what I
4 said about the rejection of the plea agreement?

5 THE DEFENDANT: Yes, I understand what you said about
6 the rejection --

7 THE COURT: All right.

8 THE DEFENDANT: -- but the rejection is within the
9 grounds of this court --

10 THE COURT: All right. Thank you.

11 THE DEFENDANT: -- not my court.

12 THE COURT: Let me finish. Then I will hear you.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Now, I want to advise you that
15 having rejected the plea agreement, as I've just said, that I am
16 not required or bound to follow that plea agreement, and I want
17 to at this time give you an opportunity, if you wish to do so,
18 to withdraw your plea of guilty. Can you tell me if you wish to
19 do that?

20 MR. GARLAND: Your Honor, before he answers --

21 THE DEFENDANT: I'm not answering. Of course,
22 according to public venue, the Judge is the one who withdrew the
23 plea.

24 THE COURT: Mr. Garland?

25 THE DEFENDANT: Isn't that what happened on May 29th of

1 this month -- last month? You said the Judge withdrew the plea
2 in a private --

3 THE COURT: Mr. York, your lawyer -- your lawyer is on
4 his feet. Let me hear him, please.

5 MR. GARLAND: May it please the Court, before Mr. York
6 is called upon for that decision, he has requested that there be
7 placed in the record certain positions that he has. We would
8 like the opportunity to place that position in the record. It's
9 Mr. York's position -- we are his counsel, and we have been
10 asked to place that position on the record.

11 THE COURT: I'm not sure that I follow you, Mr.
12 Garland.

13 MR. GARLAND: All I'm asking is that his position --

14 THE COURT: Let me ask you this: Is this a statement
15 of position that you are going to make?

16 MR. GARLAND: No.

17 THE COURT: Mr. York wants to make it?

18 MR. GARLAND: He wants it made. It is not a position
19 that I am presenting and making a legal argument about.

20 THE COURT: Well --

21 MR. GARLAND: But I have a client who wants to put on
22 the record his position on certain matters.

23 THE COURT: I will hear Mr. York's position at
24 reasonable length when we have concluded the formalities that
25 the statute requires, and the first thing that is going to

1 entail is whether or not he wishes to withdraw his plea of
2 guilty.

3 Now, you have a duty to the Court as well as your
4 client. You can help me with this or not as you see fit. So
5 let's go back to my question.

6 MR. GARLAND: Yes, sir. I intend to see that that
7 question is answered, Your Honor.

8 THE COURT: All right. Then I want it answered now.
9 Let me repeat the question.

10 I want to know if Mr. York wishes to withdraw his plea
11 of guilty; yes or no.

12 MR. GARLAND: Your Honor, Mr. York --

13 THE COURT: You told me that. I understand your
14 position. You need to understand mine. I want the question
15 answered now.

16 MR. GARLAND: And I'm going to give you an answer, Your
17 Honor.

18 THE COURT: All right, sir.

19 MR. GARLAND: But first, before I give that answer, it
20 will be -- it is the position of the defendant to request this
21 Court to reconsider its position, this Court's position on the
22 plea agreement.

23 It is not the desire of Mr. York to withdraw that plea
24 if the Court could be persuaded to accept the recommended plea.
25 So our position is, at first, before the question is answered,

1 that the decision by the Court not to accept the plea agreement
2 is a position that we submit the Court should not take, and we
3 ask the Court to reconsider that position on whether you would
4 accept the plea agreement.

5 In support of that request for reconsideration, though
6 this Court has passed an order and you have placed in the record
7 today your reasoning, it is our position that the information
8 obtained in the presentence report is not accurate.

9 We filed objections to the presentence report. There
10 has been no determination judicially of the accuracy or
11 inaccuracy of the contentions in the presentence report or the
12 application of the guidelines in the presentence report.

13 Since the Court is basing his decision -- your decision
14 upon a presentence report which by its nature has a process that
15 has not been litigated in any respect, then the Court may well
16 be basing your decision based on inaccuracies that you might
17 find were there a litigated contested hearing on the application
18 of the presentence report to Mr. York.

19 On that basis, I move the Court to reconsider your
20 decision not to accept the proposed plea agreement that has been
21 supported by the United States, to conduct a full hearing on the
22 presentence report and the contentions and allegations in that,
23 including the issue of the application of the guidelines and
24 whether or not Mr. York has, pursuant to his conduct and
25 actions, accepted responsibility, and every other contested

1 issue as set forth in our objections to the presentence report
2 at this point.

3 That would be my motion before Mr. York answers the
4 question.

5 THE COURT: All right. The Court's rejection of the
6 plea agreement is based in part on the plea agreement -- I mean
7 on the presentence report, not altogether. Your motion to
8 reconsider is overruled.

9 MR. GARLAND: Your Honor, in light of that motion and
10 in light of our desire and the Court's ruling, I wish a moment
11 now to confer with Mr. York before this question is answered.

12 THE COURT: Very good.

13 (COUNSEL AND DEFENDANT CONFERRING)

14 MR. GARLAND: Your Honor, could I have a recess to
15 confer with my client?

16 THE COURT: Would you like to take your client back to
17 the jury room?

18 MR. GARLAND: Yes, I would, Your Honor.

19 THE COURT: Can you all arrange that, Marshal? Let
20 everyone else remain in place.

21 (THE DEFENDANT AND HIS COUNSEL WITHDREW FROM THE COURTROOM)

22 THE COURT: All right. We'll be in recess for 15
23 minutes. I'd like for everyone to remain in their seats.

24 (WHEREUPON, THE COURT RECESSED FROM 1:45 P.M. UNTIL 2:15
25 P.M.)

1 THE COURT: Be seated please.

2 Mr. Garland, let me make this observation before you
3 begin. I'm sure you see this, but perhaps the record is not
4 clear.

5 The only decision that the Court is seeking today is a
6 satisfaction of the requirement of the statute that the
7 defendant exercise his option to withdraw or proceed with the
8 guilty plea.

9 In either event, whether he proceeds with the plea that
10 was entered in January or whether he proceeds to trial and is
11 convicted and is then sentenced, the defendant will have a full
12 opportunity to have a full evidentiary hearing on any timely
13 objections to the presentence report that he may file. I don't
14 want it to appear that that was not to be; and the law requires
15 that, as you and I both know.

16 On the other hand, to grant the motion that you made
17 before the recess, to allow you to inquire into and to attack
18 the contents of the presentence report as submitted, would be in
19 effect to allow the defense to prosecute not only the Probation
20 Office but all of the witnesses and the victims of the defendant
21 before the trial, or before he made a decision as to whether to
22 go to trial; and that I will not permit. The law does not
23 require that, and I won't do it.

24 I don't know of any requirement in the law really that
25 I give you any reason for rejecting the plea agreement. The

1 statute makes no provision for that. But I want to record to be
2 clear on that point.

3 Now, someone has suggested to me that perhaps the other
4 motions in the case ought to be addressed before Mr. York is put
5 upon to make the decision that we've been discussing, one of
6 those motions being, of course, the motion for a competency
7 examination; and I'm agreeable to that, if you wish.

8 MR. GARLAND: Your Honor, at this time, before Mr. York
9 answers the question posed by the Court, whether he withdraws
10 his plea or does not withdraw his plea, I would move the Court
11 to deal with the motion on competency to assist counsel and to
12 proceed under these proceedings.

13 I would ask the Court for an indulgence for a moment,
14 if I may, before going into that motion, and allow a process to
15 take place, if Your Honor would; and that is to allow me to
16 place into the record Mr. York's position about these
17 proceedings, simply make a statement of his position.

18 THE COURT: Are you going to make it or is he?

19 MR. GARLAND: I will make the position known that he
20 requested me to make known to the Court.

21 THE COURT: How long is that going to take?

22 MR. GARLAND: That will take about, I would say, 90
23 seconds.

24 THE COURT: All right. Proceed.

25 MR. GARLAND: Secondly, then Mr. York would like to

1 briefly be heard from.

2 THE COURT: I will not hear Mr. York on that point.

3 MR. GARLAND: All right. Your Honor --

4 THE COURT: Now, as I said earlier -- listen to me -- I
5 told him earlier that I would hear him reasonably when the
6 business of the court with respect to these questions is
7 concluded. I'm not going to deviate from that.

8 Go ahead.

9 MR. GARLAND: Before Mr. York is called upon to make
10 his decision as to the withdrawal of the plea, we wish to place
11 on the record the caveat and objection to the proceedings of the
12 Court, and that is that the defendant is a member of a sovereign
13 nation under United States Resolution 215/1993, quote, (READING)
14 The declaration -- the draft declarations of Rights of
15 Indigenous People cited in E slash CN point 4 slash sub 2 slash
16 1994 slash 2 slash edition point 1, 1994, page 1, which states
17 recognizing the urgent need to respect and promote the
18 indigenous rights and characteristics of indigenous peoples,
19 especially their rights to their lands, territories and
20 resources which derive from their political, economic and social
21 structures, and from their cultural, spiritual traditions,
22 histories and philosophies, convinced they're controlled by
23 indigenous peoples over developments affecting them and their
24 lands, territories and resources, will enable them to maintain
25 and strengthen their institutions, cultures and traditions, and

1 to promote their development in accordance with the aspirations
2 and needs.

3 Having placed that position of the defendant in the
4 record of the court, my client wishes to know whether or not a
5 document which he has furnished to me has been sent to or filed
6 with the court. It is a document, if I may pass it up to the
7 Court, if I could determine that on the record.

8 THE COURT: I don't have the file before me. I don't
9 know what's been filed and what has not.

10 Let me ask you this -- just a minute; let me ask you
11 this: Is this a document that that you are submitting as
12 counsel?

13 MR. GARLAND: No, Your Honor. I am just inquiring
14 whether or not --

15 THE COURT: Are you tendering this document?

16 MR. GARLAND: I'm trying -- my client wishes to know
17 whether this document has been filed in the record in his case.

18 THE COURT: Well, you're a member of the bar of the
19 Court --

20 MR. GARLAND: Yes, Your Honor.

21 THE COURT: -- you have a license to practice law; you
22 know where the Clerk's Office is; you know where the files are
23 kept. Why don't you make that investigation on your own time?

24 Let's move forward.

25 MR. GARLAND: All right, Your Honor.

1 My client requests to know whether the Court has seen a
2 particular document which I --

3 THE COURT: I'm not even going to address that right
4 now, Mr. Garland.

5 MR. GARLAND: I understand the Court's ruling.

6 THE COURT: All right.

7 MR. GARLAND: Your Honor, in light of that, at this
8 time we would ask the Court to take up the issue of the
9 competency hearing.

10 THE COURT: Very good.

11 MR. GARLAND: Mr. Arora will make that presentation.

12 THE COURT: Mr. Arora?

13 MR. ARORA: Judge, based on your initial statements
14 that you're receptive to it, do you need argument or is that
15 something that the Court is inclined to do based on its
16 observation?

17 THE COURT: I'll be glad to hear anything you wish to
18 reasonably present.

19 MR. ARORA: Judge, we filed a brief with regards to the
20 competency issue; about a week or so ago presented a copy --

21 THE COURT: That is the earlier brief you filed?

22 MR. ARORA: Yes, Your Honor.

23 THE COURT: All right.

24 MR. ARORA: And it deals with regards to -- under
25 Federal Rule of Criminal Procedure 12.2(c), outlines all the

1 portions that I've listed in my brief.

2 Basically, there's an issue with regards to competency,
3 but also the assistance of counsel, based on my client's
4 positions, as far as not being subjected to the jurisdiction of
5 this court, therefore not proceeding with these -- or going
6 forward with these proceedings as far as assisting counsel if
7 and when there is a trial in this matter.

8 THE COURT: I'm sorry, I don't understand.

9 MR. ARORA: Your Honor, you've already heard with
10 regard to what my client's position is.

11 THE COURT: To be honest with you, I did not understand
12 it. I heard what Mr. Garland said, but I'm not sure that I
13 understand it.

14 MR. ARORA: Basically, my client says that he is his
15 own sovereign nation based on his membership with a tribal
16 American Indian nation. He cited some of the provisions that
17 they've filed with the United Nations' charters; and, therefore,
18 his contention is not only is he a sovereign person, he's also a
19 secured party under state law of Georgia.

20 Those are the pleadings that Mr. Garland was trying to
21 show the Court. I don't know if they've been filed with this
22 court or not.

23 And as such, his contention is that he should be
24 transferred over to the Native American tribe that he's a member
25 of where he can be tried for his alleged crimes there and not

1 here.

2 Since he feels that he is not subjected to the laws of
3 the United States or this Court, he's not going forward as far
4 as assisting counsel with regards to his preparation in this
5 trial before this Court, because his position is that he's not
6 subjected to the jurisdiction of this Court.

7 The positions that he's made are one of the reasons
8 we've asked for the competency issue. We're also asking -- the
9 second prong is he is completely unable or unwilling to assist
10 counsel based on his positions.

11 Whether those make him competent to stand trial or not,
12 I'm not clear, and that is why we're asking for the competency
13 issue.

14 And those are the positions I put forward in my brief,
15 Your Honor, and I think --

16 THE COURT: Well, let me ask you this, Mr. Arora: Are
17 you telling me, as counsel for this man and as an officer of
18 this Court, that you believe these positions you are presenting
19 to the Court have legal merit?

20 MR. ARORA: Judge, based on what I've seen in my
21 limited time reviewing these documents, I know the Court made us
22 aware of some of these documents. A lot of them deal with UCC
23 and common-law type issues that I'm not familiar with. I do not
24 know if there's merit or not merit with these positions. The --

25 THE COURT: Mr. Arora --

1 MR. ARORA: Yes, sir.

2 THE COURT: -- you have a duty to this Court not to
3 present frivolous or spurious matters in support of the position
4 of your client -- I'm warning you you're going to be in serious
5 trouble with the Court if you violate that rule.

6 I will hear anything that you want to argue to me about
7 the law in this case, provided you tell me in good faith as a
8 member of the bar of this court that you believe it has legal
9 merit.

10 MR. ARORA: I don't believe at this point that there is
11 legal merit, Judge.

12 THE COURT: All right, sir. I'm not interested in
13 hearing you make an argument that you know is not with legal
14 merit.

15 MR. ARORA: Judge, I'm not making that argument as part
16 of --

17 THE COURT: Then what are you doing? You're on your
18 feet arguing to the Court.

19 MR. ARORA: That's the underlying basis for the reason
20 we requested a competency hearing, is based on his belief
21 system, which isn't necessarily a legal issue. It's the factual
22 basis that makes up my request to ask for a competency hearing,
23 to see if he's able to stand trial competently at this point
24 based on his views that he's trying to present forward to the
25 Court. I'm not saying I agree with those or disagree with those

1 or arguing it legally. I'm saying that is what makes up the
2 request for the competency. That is my foundation for the
3 competency.

4 THE COURT: All right. Is that the only foundation?

5 MR. ARORA: That is the only foundation. The second
6 prong, obviously, with the statute is based on his beliefs. He
7 is not able to assist counsel. We can't have meaningful
8 discussions as far as going forward on the charges that we have
9 here.

10 THE COURT: Well, let's separate the two now.

11 Bear in mind that many cases are tried in which
12 defendants are out of touch with their lawyers. I mean, whether
13 or not he chooses to cooperate with counsel is a decision he's
14 got to make. He can go forward without counsel if he wishes.
15 He's got two excellent lawyers, as we all know, but nothing in
16 the law requires him to cooperate with them.

17 MR. ARORA: I understand that, Judge. But the reason
18 that it's two-pronged argument is the competency stems from his
19 belief system, and that's why he's refusing to cooperate. It's
20 not just "we don't like each other" or "we don't agree." He
21 feels if he cooperates with us, he's violating his
22 jurisdictional argument by complying to the jurisdiction of this
23 Court by saying "I'm now working under this system that I
24 disagree with."

25 THE COURT: Have you told him that you disagree with

1 his jurisdictional argument?

2 MR. ARORA: We've talked about it and had heated
3 discussions, and I'm sure several of the marshals today could
4 tell you that we were yelling and screaming, relatively
5 speaking, or having a heated discussion. Here they can tell you
6 that. The deputies from Jones County can tell you that. We've
7 had issues with regards to phone calls where, you know, he won't
8 to speak with us with regards to these issues.

9 I respect his position. I'm not arguing it legally,
10 but that position make up the competency request, and it goes
11 hand-in-hand with his participation.

12 THE COURT: What is it about his believing that that
13 brings his competency into question? Is he the only person that
14 believes that?

15 MR. ARORA: As far as sitting at this table, yes, Your
16 Honor.

17 THE COURT: I mean, is this -- is this a belief that is
18 unique to him?

19 MR. ARORA: I'm not aware of who else is out there or
20 any case law supporting this position at this point, Judge.

21 THE COURT: Well, I've seen a number of things that
22 have come through the Clerk's Office that have to do with his
23 membership in the tribe that's been mentioned. A lot of people
24 apparently have signed these papers. Do they all believe that?
25 Are they all incompetent?

1 MR. ARORA: Judge, I haven't interviewed those folks.
2 But with regards to standing --

3 THE COURT: I mean, what do you think?

4 MR. ARORA: Judge, I understand what their belief
5 system is, but just because you believe something that is so far
6 from what our laws dictate, at least to my understanding, I
7 don't know if that makes you competent or not competent.

8 THE COURT: All right. Well, that's a matter for the
9 Court to determine.

10 MR. ARORA: Yes, Your Honor.

11 THE COURT: Okay. What else?

12 MR. ARORA: That's all. Those are the issues we raised
13 forward. The citations are in the brief itself.

14 THE COURT: Let me ask you this: Have you raised the
15 question of this man's competency in the State Court
16 proceedings?

17 MR. ARORA: No, Your Honor, because we didn't have a
18 lot of these issues that came up. There were one or two
19 occasions, and we discussed the secured party issue, but Mr.
20 York was always cooperative, understood what was going on, and
21 was interviewed. We talked about the facts of the case itself.
22 The jurisdiction issue, at least with me, did not come up --

23 THE COURT: Are you telling me that, in your place as
24 counsel, you do not believe that your client understands what's
25 going on now?

1 MR. ARORA: I don't know if he does or not, Judge.

2 The fact that he believes what he's purported to the
3 Court causes me concern before we go forward on such a serious
4 case. It's just a matter of a few weeks. The statute allows, I
5 believe, 30/up to 45 days to have it reviewed. I say, please,
6 let's have that evaluation so there's no taint with regard to a
7 trial if there is going to be one.

8 THE COURT: All right. Anything else you'd like to
9 say?

10 MR. ARORA: No, sir.

11 THE COURT: Mr. Moultrie, would you like to respond?

12 MR. MOULTRIE: Yes, Your Honor.

13 Your Honor, the government, out of an abundance of
14 caution, does not object to the motion for psychological
15 evaluation. However, I think it would be appropriate for the
16 defense to address an earlier evaluation that was done at their
17 behest with respect to Mr. York.

18 My understanding is that it was some sort of trial
19 preparation evaluation that was conducted by a psychologist,
20 Nancy Aldridge in DeKalb County. And I can't really speak very
21 intelligently about the extent of the evaluation, but the
22 defense has assured me that the evaluation did not involve an
23 address concerning Mr. York's competency. But I do think that
24 it would be appropriate, Your Honor, for the defense to state on
25 the record the extent of the evaluation that was done and what

1 it involved --

2 THE COURT: Mr. Arora?

3 MR. MOULTRIE: -- before the Court makes an order.

4 MR. ARORA: Judge, with regard to Dr. Aldridge, I
5 defend a lot of child abuse type cases such as the ones here,
6 and whenever a child makes an allegation of sexual abuse,
7 there's usually an interview done by the DFACS protocol, which
8 is the Department of the Family and Children Services. We have
9 experts retained that review those, either videotapes or the
10 interview summations, to see if there's any suggestibility or
11 improper interview techniques being done.

12 Dr. Aldridge interviewed several children in this case,
13 reviewed the files for us, and prior to trial agreed to meet
14 with Dr. York to get a full background and understanding of what
15 the life was like with regards to the area known as 404 Shady
16 Dale Road. It was in no way, shape, or form supposed to be a
17 competency request. We never filed a request for that, because
18 I did not have a good faith basis at that point like I do now.

19 That was simply to prepare to contradict what the State
20 psychiatric experts would say; in other words, their social
21 workers, other counselors, as well as psychologists, that have
22 been treating the children over the course of time since this
23 case first began.

24 And that is what she does. She is licensed to do that.
25 She was the Director for the Georgia Center of Children prior to

1 going into private practice, and she's an expert in that area,
2 and that's why she met with him for about a day or two.

3 I think the presentence investigation, paragraph 298,
4 states she met with him for six days, which is incorrect. I
5 think she only met with him for two days or so, about a week and
6 a-half before the trial was supposed to begin. Then the plea
7 agreement worked out, and we cut off any further evaluations as
8 far as that goes. And that was our understanding with regards
9 to the evaluation.

10 THE COURT: All right. Anything else, Mr. Moultrie?

11 MR. MOULTRIE: No, Your Honor.

12 THE COURT: All right. What other motions are pending?

13 MR. ARORA: Judge, at this point we filed a venue
14 request, and this afternoon I filed the first suppression
15 motion.

16 I'm of the understanding that there's going to be a
17 superceding indictment. That same issue is addressed on the
18 State Court case with regards to the search at 404 Shady Dale
19 Road and the sufficiency of the warrant. I filed that today in
20 anticipation of a superceding indictment coming up, and Mr.
21 Moultrie is aware of that I believe.

22 THE COURT: Mr. Moultrie, are you going to seek a
23 superceding indictment?

24 MR. MOULTRIE: Yes, Your Honor; only to add a
25 forfeiture count, a count that is not substantive in terms of

1 the substantive criminal counts. It will not involve any
2 requirement of providing the defense with any additional
3 discovery, any additional evidence. So I do not believe and am
4 fairly certain that adding the superceding counts in the
5 superceding indictment with respect to forfeiture will not
6 involve any need to continue the case further on that basis.

7 MR. GARLAND: We don't join that. We haven't seen what
8 our new indictment would be, Your Honor, or its substantive -- I
9 couldn't address it, but except to say we fully intend to assert
10 every right on behalf of this defendant that is available under
11 the law.

12 MR. MOULTRIE: If I may, Your Honor.

13 The original indictment includes four substantive
14 criminal counts. The superceding indictment will involve the
15 same four substantive criminal counts. The only addition will
16 be a Count 5 that is a forfeiture count. That's it.

17 THE COURT: To forfeit what?

18 MR. MOULTRIE: Perhaps the Putnam County property and
19 the Athens, Georgia, property.

20 (PAUSE)

21 THE COURT: All right. Let's talk about the motion for
22 change of venue.

23 MR. GARLAND: Your Honor, in light of the pretrial
24 publicity that has occurred in this case, we feel that in order
25 to ensure a fair and impartial jury, that the interests of

1 justice require a transfer to another location other than here
2 in Macon. And at this point, we've been looking at what has
3 been the impact, the publicity in other areas, and it is our
4 feeling that perhaps Columbus would be a better jurisdiction.

5 THE COURT: All right. Thank you.

6 MR. MOULTRIE: Your Honor, it certainly is true that
7 there has been a great deal of pretrial publicity about this
8 case, and specifically about Mr. York's entry of a plea of
9 guilty both here in the Macon Division and also in the Northern
10 Division, which was the alternative division for trial that Mr.
11 Arora and Mr. Garland originally mentioned in their motion for a
12 change of venue. I understand that the defense's position is
13 that Columbus might provide a better venue for the trial; and,
14 certainly, that might be true. There is also Thomasville,
15 Albany, and Valdosta.

16 I would mention, Your Honor, that in terms of which of
17 those locations would prove most appropriate, that Valdosta
18 might be that location for these reasons. One is, the Court is
19 already set up technically to try this type of case. Second,
20 the Court has previously tried cases there and routinely tries
21 cases in Valdosta. Third, the Marshal's Service operates an
22 office at that location. And, four, the issues of security.
23 Certainly, having the trial moved to Valdosta would alleviate
24 those concerns. Finally, moving to Valdosta would not require
25 that another District Court Judge be displaced, since there is

1 not a District Court Judge that sits in Valdosta permanently.

2 So, for all those reasons, the government would suggest
3 that Valdosta might be a better location than Columbus. But,
4 again, certainly, Your Honor, Columbus, Thomasville, Albany, and
5 Valdosta don't appear to offer the same kinds of pretrial
6 publicity challenges that would be involved if the case were
7 tried here in Macon.

8 THE COURT: So the government does not object to a
9 change of venue?

10 MR. MOULTRIE: Not from this division, Your Honor; but
11 we would object to moving it outside the district.

12 THE COURT: Is a trial within the district satisfactory
13 with the defendant?

14 MR. GARLAND: Your Honor, it depends on what the
15 publicity saturation has been in --

16 THE COURT: Well, it's not going to be Athens; it's not
17 going to be Macon. You suggested Columbus.

18 MR. GARLAND: Yes, sir. We would agree with Columbus.

19 THE COURT: Valdosta or Thomasville or Albany?

20 MR. GARLAND: I don't believe -- just a minute; let me
21 determine the amount of our research on that.

22 (PAUSE)

23 MR. GARLAND: Would you hear from Mr. Arora on the
24 statistics, Your Honor?

25 THE COURT: Surely.

1 MR. ARORA: Judge, we filed a brief on this matter back
2 on the 24th, last week, and I believe I faxed a copy over to the
3 Court. I dealt with the Middle District exclusively in that
4 brief, going over the viewership of the T-V stations, the
5 subscription rates of the newspapers within the Middle District.

6 The reason we've asked for Columbus, Judge, is based on
7 it has the greatest populations between the Thomasville, the
8 Albany, the Valdosta, and the Athens Division; Athens obviously
9 having other issues as far as the defendant's publicity goes
10 there. But under the law that I cited within my brief, Your
11 Honor -- and I know you've had a chance to read it, so I won't
12 go into excruciating detail, but it deals a lot with
13 percentages. The bottom line is "how much media affects how
14 many people," and there's a certain ratio that those case law
15 has gone over.

16 In the Macon Division, I addressed that case law
17 specifically by going into the specific numbers. Columbus, the
18 total division, with the different counties in Columbus, comes
19 up to 265,348 based on the last census data we have. Obviously,
20 once this trial -- if it gets moved, there's going to be a
21 tremendous amount of publicity, but with all of the divisions
22 within the Middle District, that's got the greatest population
23 center. So if there is going to be an issue, I think it would
24 be the least harmful in the Columbus Division versus Thomasville
25 which only has 162,000 and some. Valdosta has 196,000 and some;

1 and Albany has about 20,000 less than what Columbus does. So we
2 found that Columbus would probably be the best jurisdiction.
3 Since the prosecution didn't want to move it out of the
4 district, in order to try to move this process along, I think
5 Columbus would be the best choice.

6 Like we said in our brief, we'd prefer the Northern
7 District based on the pure percentage ratio, which is what's
8 mandated by the case law, as far as being the critical factor.
9 So that's why we've come with Columbus, to try to have some
10 consensus between the parties as far as that goes.

11 MR. MOULTRIE: Your Honor, my only confusion around
12 moving the case to Columbus is that the defense's -- the crux of
13 the defense's argument for a change of venue is the amount of
14 prejudicial pretrial publicity. Columbus is within the Atlanta
15 news market. The Atlanta Journal and Constitution has heavily
16 reported the circumstances of Mr. York's case and his entry of a
17 plea of guilty and, most recently, the change in the
18 circumstances as it relates to his case. And for those reasons,
19 I would question whether Columbus would be the most appropriate
20 jurisdiction, given that Columbus is within the Atlanta news
21 market. And I'm not sure if the defense has considered that
22 issue, but I think it might behoove the defense to do so.

23 THE COURT: All right. Thank you.

24 MR. ARORA: Your Honor, may I be heard for one second?

25 THE COURT: Surely.

1 MR. AROBA: Judge, the reason we asked for Atlanta,
2 it's a percentage issue. I understand that there's been a lot
3 of publicity with the Atlanta Journal, but it's not front-page
4 necessarily. It was about a year ago when the case first broke,
5 but now it's back in the metro section in an occasional news
6 blurb. My fear with these smaller divisions within the Middle
7 District is when they have the small either weeklies or dailies,
8 this is going to be the biggest news there is.

9 We went through this process when we moved jurisdiction
10 out of Putnam County to another other county, and the first
11 thing, the very next day, it was on the front page as big as
12 day, is that this trial was coming there. So the idea is if
13 something like that were to happen, it would be most diluted in
14 the Columbus market versus some of these other smaller markets
15 where people pretty much focus in on the dailies and the
16 subscription rates.

17 I can go into the specific subscription rates if I
18 could have a few more days with the Court, but I tried to put
19 forward an intelligent basis based on populations and the
20 newspaper coverage that's out there in most of those
21 jurisdictions. Most of them have weeklies in the smaller
22 counties, but some of the bigger counties within each division
23 have a higher rate, and the percentage rates would be far
24 greater in excess of what we would get in Atlanta or Columbus,
25 Your Honor.

1 THE COURT: Okay. What else? Nothing else on these
2 motions?

3 MR. GARLAND: On these motions, nothing further, Your
4 Honor.

5 THE COURT: Anything else generally?

6 MR. GARLAND: Yes, Your Honor. Mr. York would like to
7 address the Court.

8 THE COURT: I'll hear him briefly.

9 THE DEFENDANT: Your Honor, with all due respects to
10 your government, your nation, and your court, we the indigenous
11 people of this land have our own rights, excepted sovereign, our
12 own governments. We are a sovereign people, Yamassee, Native
13 American Creeks, Seminole, Washitaw Mound Builders. And all I'm
14 asking is that the Court recognize that I am an indigenous
15 person. Your court does not have jurisdiction over me. I
16 should be transferred to the Moors Cherokee Council Court in
17 which I will get a trial by juries of my peers. I cannot get a
18 fair trial, Your Honor, if I'm being tried by the settlers or
19 the confederates. I have to be tried by Native Americans as a
20 Native American. That's my inalienable rights, and it's on
21 record.

22 Your Honor, one other question. I recognize that when
23 you received this document from the State of Georgia with the
24 Governor, Sonny Purdue, and Ms. Cathy Cox, I -- I recognize that
25 any document -- you are one of the officers of the court that

1 received it. Did you receive this document, sir?

2 THE COURT: Just make your statement.

3 THE DEFENDANT: I'm just trying to find out whether you
4 received this so I'll know -- so I can know how to answer you
5 next.

6 THE COURT: I'm not going to answer questions. If
7 you'd like to make a statement, go on.

8 THE DEFENDANT: I will assume for the record that you
9 received this document. Well, this document clearly states that
10 we are recognized by the government. We're recognized as
11 indigenous people in Washington, DC, as well as in Geneva. We
12 have an indigenous number, which is on record, which 215-1993,
13 drafted in June 26, 1992, and went into motion. We do exist.
14 We went to Washington, DC, sir, and we spoke to the people in
15 Washington, DC, to verify our existence as a tribe.

16 I don't see why the Court or the government, this
17 government that's opposing our government, does not acknowledge
18 my inalienable rights to be tried as a Native American amongst
19 my own people. This is -- it's been accepted by the government
20 of the United States. It's on record. And we have -- you know,
21 we have rights, and I don't understand why my rights are being
22 -- why I'm being put under duress. I've been subject, since May
23 8th of last year to now, to be tortured, inhumane treatment,
24 abused mentally and physically.

25 I understand the competence test is being set up, for

1 my opinion, to make me look like I'm incompetent or to make me
2 look like I'm some kind of a kook because of my rights. It's
3 not a belief -- this is not a -- this not a belief or a
4 religion. This is something that our government -- your
5 government recognizes and has recognized over the peace treaties
6 between sovereign nations, Native Americans. We have
7 governments, and we have -- respect each other's inalienable
8 rights. I know that Mr. Garland knows it's real. I know that
9 Mr. Moultrie knows it's real. I know -- I know all the officers
10 of the court recognize Native Americans. I don't understand why
11 in my case -- is it because I'm dark-skinned and don't have
12 straight hair? Is it that I appear to be an African? But I
13 have inalienable rights. I just happen to be a Native American.
14 I'm a Yemassee. Do you understand, Your Honor?

15 And all I'm asking is that my rights be respected and I
16 be transferred immediately, as it says on record, into the
17 custody of Native Americans where I will be tried of a jury of
18 own peers and there will get what I consider a fair trial.
19 There's no way I can get a fair trial now because a -- another
20 oversight, while we're talking about jurisdiction and courts, is
21 that computers exist today. Computers didn't exist when y'all
22 made the law on jurisdiction or transfer of venues. Those laws
23 are outdated. People now have computers, and they've heard this
24 case all across the country. My cellmate is from Valdosta right
25 now. You can check it. And he was telling me all about the

1 case, and you can verify to see if I'm lying. Just coincidentally
2 God works in his own ways; that you brought up a venue that I
3 have a cellmate who's from Valdosta, and he knows all about the
4 case. The Nuwaubians are all over the doggone country, and
5 computers have made it possible -- if it wasn't for -- I think
6 if it wasn't for our illustrious Sheriff Sills, he put it in the
7 paper this week. Most people didn't even know this was going on
8 until it was put in the paper about sovereignty.

9 Another correction, sir, I'd like to make, in all due
10 respect, is when Mr. Arora tied in common law and made it
11 frivolous. Like, common law is -- this is not common law. This
12 has nothing to do with common law. This is Native American.
13 This is on record. Common law -- I understand about all the
14 paperwork and all that jargon that might have been passed on to
15 the Court without me there, but this is not common law. This is
16 -- there are Native American tribes existing. We are sovereign.

17 And the land which they propose to confiscate is by
18 right sovereign land. And, thus, when -- when Sheriff Howard
19 Sills, sir -- when he went there and snatched these children off
20 the land with the assistance of Mr. Noel Lee Wilson, who by the
21 way has recently been arrested for drug abuse, when he did this,
22 he took children who were sovereign off of a reservation that is
23 legally on record and documented since June 26, 1992. It's on
24 record, and we have a number. And it behooves me why we're
25 being ignored as if we don't exist.

1 It appears to me that y'all want to proceed on in your
2 system with our lives. We are Native Americans. We have our
3 own lives; we have our own rights; we have our own inalienable
4 rights; we are indigenous people; and we're sovereign. I am to
5 be tried, sir, by a jury of my peers, among my people. And
6 there are people in court right now who are Yamassees who are
7 qualified to stand up and speak for me. Can one of them come
8 and talk? With all due respect, Your Honor, just give me the
9 benefit -- this is, as you know, my life. My life is hanging,
10 you know, on a string of y'all's decisions on me. And so it's
11 only fair that I get a fair shot at, you know, expressing my own
12 feelings before I'm determined crazy, the mad-man, and it goes
13 on down the line. There's gentlemen in the court who are
14 qualified to speak on behalf of me right now, if you could just
15 indulge them for a little while, so we can proceed on. Could I
16 be granted that, sir?

17 THE COURT: Do you understand what we're doing here
18 today?

19 THE DEFENDANT: Yes, I do. I vaguely understand what
20 the process that's going on. I am -- I am -- I'm totally upset
21 by the fact that I wasn't informed. I never got any documents,
22 no lawyers visits.

23 THE COURT: What were you not informed about?

24 THE DEFENDANT: I wasn't even -- I wasn't informed
25 about this case or when I was coming to court. I didn't know

1 about the May 29th case. I was not informed. Nobody came to
2 see me. I didn't get no documents. I happened to see it
3 because another inmate who has access to the television, which I
4 don't have access to. I don't have access to television. I
5 don't get access to the telephone. I don't get access to walk
6 outside and breathe fresh air. I'm locked in a room 24/7. You
7 know what I'm saying? But on two occasions, I might add -- on
8 two occasions while I was considered a special prisoner, an
9 inmate was put in there. Both of them was convicted of murder,
10 and they was allowed to live with me a short period of time.
11 One of them -- one of them's name is Brian Moore (phonetic), and
12 the other gentleman was in Putnam County. I'm quite sure Mr.
13 Sills knows who I'm talking about, the tall gentleman who
14 eventually was tried and found guilty in Covington for killing
15 his family. I was allowed to be in the cell with these people
16 when I'm not classified, according to even your peers, as a
17 violent offender. But murderers were --

18 THE COURT: Mr. York --

19 THE DEFENDANT: Yes, sir. I'm running on. I'm running
20 on. Okay, sir. What I'm asking --

21 THE COURT: Let me ask you --

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- on June the 19th of this year --

24 THE DEFENDANT: Yes.

25 THE COURT: -- 10 or 12 days ago --

1 THE DEFENDANT: Uh-huh (affirmatively).

2 THE COURT: -- did Mr. Arora come to the jail to speak
3 with you? Do you remember?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: He did?

6 THE DEFENDANT: Yes, he did.

7 THE COURT: Did he have with him Mr. --

8 THE DEFENDANT: Joel Pagani (phonetic).

9 THE COURT: Pagani?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did you speak with them on that day?

12 THE DEFENDANT: That day? Yes, I did. And I asked
13 them how come I was not informed or in the court physically when
14 they was going to have a discussion pertaining to the plea. I'm
15 supposed to be there physically so I can defend myself. I said
16 I wasn't there physically. They had a meeting. I was told a
17 lawyer was hired on my behalf, I was told, to come out of
18 Florida, and he was rejected right into the courtroom. And this
19 can be verified. He was -- he was coming in to make a certain
20 statement, and they would not let him in so they can have a
21 covered meeting, of which I was supposed to be there, according
22 to the law, in person so I can defend myself. I know it says
23 you have the right in a plea hearing for me to stand up and
24 voice my opinion. Is that not right, sir?

25 THE COURT: Did you hire Mr. Garland and --

1 THE DEFENDANT: No, I didn't hired Mr. Garland.

2 THE COURT: -- Mr. Arora?

3 THE DEFENDANT: No, I didn't.

4 THE COURT: You did not?

5 THE DEFENDANT: No, I didn't. I would ask that Mr.
6 Garland show us a document, because if I hired him, he should
7 have a -- a --

8 THE COURT: A contract.

9 THE DEFENDANT: -- a contract, sir. He should have a
10 contract with me, whether verbal or signed.

11 THE COURT: Well, I mean, he has --

12 THE DEFENDANT: He's representing me because he -- he
13 -- he met with my sister, sir. My sister and them, you know,
14 feared that I was not going to get just treatment as a Native
15 American so they -- so my nephew hired him. Right? And they
16 never drew a contract. They got paid an exuberant amount of
17 money. You follow? And as far as I was concerned, I repeatedly
18 stated over, "I'm sovereign; I'm a Native American; I'm not
19 under the jurisdiction of your court; I'm Yamassee and I'm not
20 supposed to be here; I'm supposed to be in my court being tried
21 by my people." Whatever their findings is, that's them; but
22 that's -- that's the law. That is the law of this country, of
23 this land under which we both live. We've accepted y'all into
24 our country as native indigenous people, and now we made
25 treaties, and we have -- we -- we respect these treaties. We're

1 supposed to keep these treaties. And I --

2 THE COURT: Well, let me ask you this, if I may.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You appear to have accepted Mr. Garland and

5 Mr. Arora as your lawyers. They appeared with you back in

6 January. And I remember I talked to you about your lawyers, did

7 I not? And I asked you if they were your counsel --

8 THE DEFENDANT: Uh-huh (affirmative).

9 THE COURT: -- and my recollection is that you

10 responded, yes, they were. I asked you if you had had time to

11 talk and confer with them, and I believe you told me that you

12 had. I asked you if they had done everything that you wanted

13 them to do as your counsel, and you responded in the

14 affirmative. I asked if you were satisfied with their services,

15 and I believed you said that you were. Are all those things

16 true?

17 THE DEFENDANT: I was under duress, sir. I had been

18 locked down in the federal penitentiary with a -- in a two-man

19 cell with four men. I'm almost 60. I'm sleeping on the floor;

20 rats, bugs --

21 THE COURT: Are you telling me then that the plea that

22 you entered in January was an involuntary plea, that you did not

23 want to enter it?

24 THE DEFENDANT: Sir, I repeated to counsel, with all

25 due respect, that I was indigenious. They kept telling me, "Our

1 courts ain't going to recognize that, and your butt is in a
2 sling, and you're looking at a thousand years, and if you don't
3 think so" --

4 THE COURT: Listen, I've got the part about your being
5 indigenous. I understand your --

6 THE DEFENDANT: I'm glad. So you got --

7 THE COURT: -- position on that.

8 THE DEFENDANT: So you got this blue-back?

9 THE COURT: No, let me ask you this. I'm trying to
10 understand about your plea in January.

11 THE DEFENDANT: Right. I was under duress.

12 THE COURT: Was that an involuntary -- did you want to
13 with enter that plea?

14 THE DEFENDANT: I was under duress.

15 THE COURT: Well, does that mean that it was an invalid
16 plea?

17 THE DEFENDANT: No, it means that I was under duress.
18 That means that after -- after going --

19 THE COURT: Well, you made --

20 THE DEFENDANT: -- after being tortured and given
21 inhumane treatment and mental persuasion by officers of the
22 court telling me that "If you don't do this, you're going get a
23 thousand years," I don't think we could win this case, and then
24 once I went before the court of Putnam County and I saw the
25 circle of three and how they worked together -- the Judge, the

1 Sheriff, the D-A, and they was denying every one of our motions,
2 regardless of what it was; like today, another motion, just bang
3 -- they made it look like, sir, it was no way possible a human
4 being was going to get a fair trial in this court. They made it
5 look like a racial issue to me. "Listen, you're basically a
6 black man and you're not going to get a fair trial in here." So
7 we asked for a venue move, sir. And instead of them moving it
8 to a suitable environment, they moved it to, let's say, 20 miles
9 away. Anybody who goes to K-Mart and can't find a product in
10 K-Mart, the next stop is to go to Covington, so everybody in
11 Covington already knew the case before I got there. So I was on
12 the cross already, sir. The crucifixion was there. The nails
13 were going in. And all I was asking for is a fair trial; that's
14 all. I think I'm entitled to a fair trial but in my court.

15 THE COURT: I understand your position about that.

16 Now, you said that the plea that you entered in January
17 was under duress?

18 THE DEFENDANT: Yes, sir. I felt I was under duress.

19 THE COURT: It was forced?

20 THE DEFENDANT: No, I was under duress. I don't want
21 to go any further because I don't want to add words.

22 THE COURT: I'll just have to figure out what that
23 means, but --

24 THE DEFENDANT: Well, I'm quite sure you're --

25 THE COURT: My sense is that you didn't want to do it.

1 THE DEFENDANT: I'm quite sure you're much more
2 educated than I am and know --

3 THE COURT: I'm not sure about that at all.

4 THE DEFENDANT: -- what "duress" means. I don't want
5 to go any further than what's the legal jargon. The legal
6 jargon is "under duress" --

7 THE COURT: Okay.

8 THE DEFENDANT: -- because as a sovereign, it does --
9 it does state --

10 THE COURT: How would you like to be relieved of the
11 burden of that plea?

12 THE DEFENDANT: I would like to be transferred into the
13 custody of Native Americans of my tribe where I can be tried by
14 a jury of my peers, as indigenous people who have our
15 inalienable rights and have been accepted by Geneva. We have a
16 seat in Geneva and a seat in the United Nations, number that
17 number 215-1993, which was recognized and drafted on June 26th
18 -- I have to keep it on record -- June 26th of 1992. And
19 there's officers in the court right now that's willing to stand
20 up and just give you a slight briefing. While I'm wasting the
21 time, they're much more eloquent than I --

22 THE COURT: Have y'all paid your United Nations dues?

23 THE DEFENDANT: I beg your pardon? Yes, we do.

24 THE COURT: You do?

25 THE DEFENDANT: We have a seat. The United Nations

1 called us to come there -- when is the date?

2 SPECTATOR: September.

3 THE DEFENDANT: -- September, for us to appear -- I
4 beg your pardon?

5 SPECTATOR: September 19th.

6 THE DEFENDANT: September 19th, we should be there in
7 the United Nations. I am -- and I must add my name is Maku.

8 THE COURT: Maku?

9 THE DEFENDANT: That's my title. It's called Amico
10 (phonetic). That's the Native American name for the Yamassee
11 tribe of a chief, Chief Black Eagle. And I'd like to also add
12 that Mrs. Baskins (phonetic), if I might add, while she was
13 interrogating a witness, was a police officer, meaning a officer
14 of the government, in the court in Putnam County. She asked him
15 does he know me. He said, "Yes." She said, "How long?" He
16 said, "Since 1979." "Did you know him as Maku or Black Eagle?"
17 He said, "Yes." Then he asked -- she asked him in reference to
18 the land, of which he said he does not know. So he put on
19 record, and Mrs. Baskins asked him, that I am a Native American.
20 Plus, our officer/sheriff, Mr. Sills, with all due respect, he
21 mentioned -- he calls himself a Yamassee Native American.
22 Right?

23 THE COURT: All right.

24 THE DEFENDANT: It's on the record. It's in the case
25 with Ronnie Jones versus -- all I need is the officers to stand

1 up for me, sir, someone who can come in and give me a couple of
2 minutes.

3 THE COURT: I can't accommodate you in that way. Is
4 there anything you'd like to tell me that you've not already
5 said?

6 THE DEFENDANT: I understand what you're saying.

7 THE COURT: All right.

8 THE DEFENDANTS: I do hear you, sir.

9 THE COURT: All right. Thank you. You may be seated.

10 THE DEFENDANT: Thank you, sir. Thank you for letting
11 me be heard.

12 THE COURT: Are there any other issues that we need to
13 resolve today?

14 MR. GARLAND: Not at this time, Your Honor.

15 THE COURT: If there is a trial, there will be a change
16 of venue. I'll enter an order in due course on that.

17 My mind is unsettled on the motion for a competency
18 examination, and when it is settled, I'll issue an order on
19 that. We're going to proceed in any event as if we're going to
20 meet the August 4th trial date. So, Mr. Garland, you and Mr.
21 Arora need to keep your schedules somewhat flexible because you
22 may be required to -- we will probably hold pretrial hearings
23 here. And I think you mentioned a motion to suppress. If there
24 is a hearing needed in that, how long will it take to hear it?

25 MR. ARORA: Judge, I think it will just be one witness,

1 like we did on the State side. It would be a federal agent
2 testifying with regards to --

3 THE COURT: So we can do that in a day or less?

4 MR. MOULTRIE: Yes, Your Honor.

5 THE COURT: Well, we'll do that fairly quickly. I
6 probably want to do it before then. We'll talk about that.

7 Mr. Moultrie, there's some question under the -- in my
8 mind, under the present order, about what documents are actually
9 supposed to remain under seal in this file. I want you and your
10 office to examine the file and make an appropriate presentation
11 to me, because it's obvious that some do not need to be sealed
12 and should be made available for public consumption. So I wish
13 you all would do that immediately.

14 Mr. York?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: There are two more things that I'm required
17 to tell you, and I want to do that before we leave here today.
18 One of them I touched on briefly, but I don't think I was able
19 to complete this advice to you before we became embroiled in the
20 other issues. You are advised that the Court is not required to
21 follow the plea agreement which you made with the government and
22 which was the basis of your plea of guilty back in January. The
23 Court is not required to follow that. Do you understand?

24 THE DEFENDANT: I understand what you're saying, sir.

25 THE COURT: And you have the right to withdraw your

1 plea of guilty. Now, Mr. Garland, on your behalf, has said that
2 he does not want you to do that today; and that's all right; but
3 at some point in the near future you're going to have to decide
4 whether or not you're going to withdraw this plea of guilty.

5 If you withdraw the plea of guilty and if further
6 negotiations with the government do not produce a satisfactory
7 resolution to the case, then we're going to proceed to a jury
8 trial, and it looks like now that's going to begin on August the
9 4th, somewhere in the Middle District of Georgia. Do you
10 understand that?

11 THE DEFENDANT: I understand that.

12 THE COURT: If you do not -- if you do not withdraw
13 your plea of guilty, then the Court will proceed to sentence;
14 and I'm telling you that in that event, if you don't withdraw
15 your plea of guilty and if you proceed to sentence under the
16 present plea which you entered in January, the case may result
17 in a disposition which is less favorable to you than that which
18 was contemplated by the plea agreement which you originally
19 entered into; that is to say, if you are sentenced -- if you
20 don't withdraw the plea agreement and you go to sentence, you
21 will probably end up being sentenced to serve more time than the
22 15 years you originally agreed to. Do you understand that?

23 THE DEFENDANT: No, sir. It is confusing to me, if I
24 may add.

25 THE COURT: All right. Let me say it again.

1 You've heard me say that you have the right to withdraw
2 the plea of guilty that you entered in January. Do you
3 understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. If you do not withdraw it, then
6 you will be sentenced under that guilty plea. Do you understand
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. The plea agreement which
10 accompanied the guilty plea back in January stipulated that the
11 sentence that you would receive would be 15 years, 180 months.
12 Do you recall that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. That is the part that the Court
15 rejects. And it's fair to assume, although a decision will not
16 be made until that time -- you've heard all that Mr. Garland has
17 said about objections to the presentence report, and all of
18 those things have to be resolved -- but it's possible that if
19 you are sentenced under this plea agreement that you entered,
20 under the guilty plea that you entered in January, that you will
21 receive a sentence more severe than 180 months or 15 years. It
22 is possible. Do you understand?

23 THE DEFENDANT: I'm not trying to be difficult.

24 THE COURT: Nor am I.

25 THE DEFENDANT: I'm saying -- I'm saying I'm not trying

1 to be. What it sounds like you're saying, I took a plea for 15,
2 that I'd better take off, and if I do take it off, then I'll go
3 to trial where I can get more time, and if I don't take it off,
4 then y'all will proceed with trial where I'll get more time.
5 That's what it sounds like to me. I mean, that's why -- my mind
6 must be joggled. But is that -- is that what it's saying?

7 THE COURT: I'm saying that if you go to trial, you
8 could get more time than 15 years.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: If you go to trial, you could also be found
11 not guilty and get nothing.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Those are the two possibilities.

14 THE DEFENDANT: And withdrawing the plea --

15 THE COURT: And if you do not withdraw your plea --
16 that is, if you proceed, leave your plea of guilty intact and
17 then are sentenced -- there is the possibility that you could
18 receive more time than 15 years.

19 THE DEFENDANT: So in both cases I receive more time?

20 THE COURT: No, you're making it a certainty. I'm
21 telling you it's a possibility.

22 THE DEFENDANT: Oh, I see what you're saying. I see
23 exactly what you're saying. Uh-huh (affirmative).

24 THE COURT: Now, do you understand?

25 THE DEFENDANT: Yes, I do, sir. Uh-huh (affirmative).

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THE COURT: All right. Is there anything else?

MR. ARORA: Your Honor, with regards to the venue motion, could we keep that portion under seal as we've discussed?


THE COURT: Yes. Now, that's all we can do today. This matter is concluded.

(THEREUPON, THIS CASE ADJOURNED AT 3:10 P.M.)

CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript of the proceedings taken in the above-captioned matter.

10/30/03
Date



W. Craig DeLoach
Official U. S. Court Reporter