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

UNITED STATES OF AMERICA, :
: Case No. 02:CR-27-1
VS. :
: August 6, 2003
: Macon, Georgia
DWIGHT D. YORK, ET AL, and : 3:00 PM
KATHY JOHNSON, DEFENDANTS :

STATUS CONFERENCE

BEFORE THE HONORABLE C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: MR. MAXWELL WOOD, U.S. ATTORNEY
MR. RICHARD MOULTRIE, AUSA
MS. STEPHANIE THACKER, AUSA

FOR THE DEFENDANT YORK MR. EDWARD T.M. GARLAND,
MR. FRANK A. RUBINO

FOR DEFENDANT JOHNSON: MR. BRIAN STEEL

COPY

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Computer-Aided Transcription

P R O C E E D I N G S

AUGUST 6, 2003

THE COURT: Let me start out by telling y'all that I expect you to be on time in the future. So three o'clock means three o'clock, and you're going to find that I like to be punctual and I like to move the cases along. So in the future please be on time. It's sometimes difficult to get down 75, but it's been that way for so long that you all know about that and be available.

COUNSEL: Yes, sir.

THE COURT: Now, let me tell you that I understand this case has been around for, I guess, a year and three months. He was indicted probably in May of last year, and I have not been involved in this case, and quite frankly, don't know a lot of about it.

And because of the status of the case with him being off for an examination and the likelihood of anything being required of me any time soon seems not to be eminent, but I really haven't done much.

I understand that there was a plea, and the agreement was rejected by Judge Lawson. I'm not at all clear about what the plea agreement was or why he rejected it. I haven't even read the indictment. I have read the report from Dr. Satchi and consider that as the primary basis for sending him off to wherever he is. I think he's in New York; is that correct?

MR. GARLAND: He's still in Atlanta. He's scheduled to

1 leave a week from today. I saw him this morning.

2 THE COURT: I see. Well, I thought he had been moved,
3 but apparently I was wrong about that. So I'm here for y'all to
4 tell me whatever you want to tell me about the case and enlighten
5 me about the case, and I understand that there is a motion to
6 suppress. I understand that there is a 404(b) motion in the case,
7 and I'll be glad for you to give me some of the details of that if
8 you're interested, but it seems like to me it's probably
9 premature. I'm not sure what we can do in the case until we find
10 out if the man is competent.

11 MR. GARLAND: I think that would be consistent with where
12 we find ourselves, with a client in the condition, assuming that
13 is reflected in that report, we're in a very delicate position,
14 Your Honor, about announcing a position or advising the Court that
15 we're going to take a particular course of action because of the
16 requirement that whatever we do that the client knowingly and
17 intelligently be advised of it and consent to it.

18 THE COURT: Right.

19 MR. GARLAND: So we're kind of here with our hands kind
20 of tied right now.

21 THE COURT: I understand.

22 MR. GARLAND: As to the position, the actual position the
23 pleadings and the issues is that Mr. York has been afforded the
24 opportunity before Judge Hugh Lawson disqualified himself to
25 withdraw his previously tendered plea, and he has not yet

1 withdrawn that plea, and that process was suspended pending these
2 psychiatric examinations. So the case was left at that posture as
3 it related to the plea. And so the orders entered after the plea
4 relating to forfeiture that are still in place, but if he
5 withdraws his plea, it is anticipated those prior orders would be
6 vacated.

7 But the decision does he proceed to withdraw his plea
8 needs to be intelligently and knowingly made, and so we're in a
9 delicate posture. I guess that we could discuss timing of trial
10 and things of that nature as it relates to the schedulings and
11 all, but beyond that, I feel like our hands are pretty well tied.

12 THE COURT: Well, that sounds reasonable to me, and I
13 certainly understand why you would be in that position, and I'm
14 not sure that there's anything that I can do until we have a
15 disposition on that issue. Is there anything that I do need to
16 do?

17 MR. ROBINO: The government was kind enough, Your Honor,
18 to furnish us today with a copy of Dr. Sache's report. Things are
19 much clearer now that we have the report. Until now we had no
20 idea what it contained.

21 THE COURT: Well, I thought you had received that.

22 MR. ROBINO: No, sir.

23 MR. GARLAND: But we had a chance to look at it. We were
24 actually here ahead of time, about an hour, Your Honor, and would
25 have made it across the street had we not met with a deluge in the

1 absence of umbrellas.

2 MR. ROBINO: We were meeting with the U.S. Attorney's
3 Office for the last hour.

4 THE COURT: Well, both sides were late so.

5 MR. GARLAND: We were both stopped at the door.

6 THE COURT: All right, I understand. What about from the
7 government's side?

8 MR. MOULTRIE: Well, Your Honor, I just wondered if we
9 might be able to address the issue of when a potential trial date
10 might be set, or is that premature.

11 THE COURT: Well, I'm going to tell you when that is, but
12 I wanted to hear from y'all first. It sounds like the defense has
13 told me everything they want to tell me.

14 MR. GARLAND: Well, I do have something about it. I have
15 a wrongful death civil case pending that a judge has been
16 appointed to hear because it involved some matters that
17 disqualified the judges of the state court of DeKalb County. He
18 specially set that either October 15th or 16th. It's the death of
19 an Emory law student who was in community service, and it's a suit
20 going out of that negligence, he fell off of the back of a garbage
21 truck, he was put on without training, and it's been a long haul
22 to get the case to trial. There are three or four defendants
23 Judge MacBeth, superior court judge in Cobb County, has scheduled
24 two weeks of time in the DeKalb County courthouse, and I would ask
25 the Court not to set it at that time.

1 MR. ROBINO: I, Your Honor, have a trial set for the 15th
2 or 18th, whatever the Monday is in September which will take
3 approximately two weeks. I'm then set October 20th before two
4 separate federal judges who are going to be fighting which one
5 gets me first for about a six week period. We had discussed among
6 ourselves, and we would ask the Court jointly to set the trial
7 some time in January.

8 I realize that's a way back, but when Dr. York come
9 backs which probably will be at least a month from now we will
10 need that adequate time to prepare if we go to trial, so that
11 would be our request.

12 THE COURT: You say jointly.

13 MR. ROBINO: The defense lawyers. No, I strike that. I
14 mean I can speak for us, shall we say the right side of the table.

15 MR. MOULTRIE: Your Honor, we just have one conflict, Ms.
16 Thacker, fortunately, is going to be marrying in early September
17 and will be going away on her honeymoon.

18 MS. THACKER: On September 6th.

19 MR. GARLAND: That's fortunate for somebody.

20 MR. MOULTRIE: But other than that we don't have any
21 other conflicts.

22 THE COURT: Well, I had planned to try this case starting
23 the week of November 3rd, which is really the first time I can get
24 to it. What's the government position about January?

25 MR. WOOD: We prefer the November. I mean -- we're

1 flexible, Judge.

2 MR. MOULTRIE: I think we're flexible, Your Honor.

3 THE COURT: So now tell me again what the conflict is
4 with that date?

5 MR. ROBINO: I have two federal judges, both have me set
6 for October 20th. I can give you the judges' names, case numbers,
7 et cetera, and basically I'm not sure which one is going to make
8 me go first, but they're both specially setting me, and they say,
9 well, we'll work it out when we get there, but one of us has you.

10 THE COURT: Are they older cases than this one?

11 MR. ROBINO: Oh, much older, yes, sir. And they were set
12 some time back, and each one -- both are -- one is a two defendant
13 case, one is a five defendant case. So the judges worked on
14 setting that date.

15 THE COURT: Okay, well -- -

16 MR. ROBINO: One will make me trail the other is what I
17 tend to think is going to happen. I'll start the one on the 20th
18 and go four to six weeks, I think the next one will pick me right
19 up in the next docket.

20 THE COURT: All right, well, what I want you to do is
21 file a motion on this.

22 MR. ROBINO: Of course.

23 THE COURT: And advise me of the case names and so forth,
24 and give the government the opportunity to respond to that, and
25 we'll decide what to do about it. But it won't be before November

1 3rd.

2 MR. GARLAND: I think my conflict will be over.

3 THE COURT: Right, that's the way it sounds. Okay.

4 Well, what is the status of the co-defendant?

5 MR. STEEL: Your Honor --

6 THE COURT: You don't need to stand up.

7 MR. STEEL: I'm just so used to --

8 THE COURT: We're very informal here.

9 MR. STEEL: I want to apologize for holding everyone up
10 and being late. I wasn't coming from Atlanta. I was -- it's a
11 funny story, and I'm not going to bore you with it, I was in a
12 prison, I was locked in, and that's why I was late, but -- it's
13 not even good being a visitor locked in.

14 I represent Ms. Kathy Johnson and the U.S. Attorney's
15 Office has been nothing but honorable, and we have entered -- to a
16 reduced charge a Rule 11(e) plea that has not been rejected by the
17 Honorable Court.

18 We were stayed pursuant to the Court's order until
19 Mr. Garland -- until the Dr. York case was finished, is the order
20 I got about our plea. I never received anything from the
21 pre-sentence report investigator. So I believe, and I'm going on
22 the understanding -- Mr. Moultrie has been nothing but
23 professional with me our way -- unless this court finds offense to
24 the plea that we entered, our case is going to go away whenever
25 the court can meet it.

1 MR. MOULTRIE: Your Honor, I'm not aware that Judge
2 Lawson has recused himself with respect to Ms. Johnson's case.

3 THE COURT: Well, I think the assumption was is that when
4 this case was transferred to me, the whole case came to me.

5 MR. MOULTRIE: All right.

6 THE COURT: What's your understanding about that?

7 MR. STEEL: I received an order with my client's name on
8 it stating that all matters will be before Your Honorable Court
9 now, so that's why we are here, I guess.

10 THE COURT: Okay. Do you have any objection to me
11 handling it?

12 MR. MOULTRIE: No, not at all, Your Honor. The
13 government's position would be, Your Honor, that nothing has
14 changed and the manner in which the government evaluated Ms.
15 Johnson's case that Ms. Johnson was appropriately permitted to
16 plead guilty to the charge of misprison of a felony for not having
17 informed the court about what she knew about Mr. York's alleged
18 activities, and that it is appropriate to sentence her in
19 accordance with that plea agreement. There's been no change in
20 the evidence that exists in the case with respect to Ms. Johnson,
21 and we think it's appropriate for her to be sentenced in
22 accordance with that agreement.

23 THE COURT: All right, both sides are in agreement to
24 leave it in its current status until the York case gets resolved?

25 MR. STEEL: We're at the court's pleasure. We'll enter

1 the plea this afternoon, or we'll enter it whenever the York case
2 is resolved.

3 MR. MOULTRIE: Well, you mean -- she's entered her plea
4 right? You mean the sentence

5 MR. STEEL: Excuse me, the sentence, I'm sorry.

6 THE COURT: All right, well, I'll think about that and
7 just leave it as it currently stands at this point. What else do
8 we need to talk about?

9 MR. GARLAND: I can't think of anything, Your Honor.

10 THE COURT: Tell me where he has been. For some reason I
11 thought he had been moved. Where has he been?

12 MR. ROBINO: He was taken to the Atlanta Federal
13 Penitentiary to be transferred, we were told, to New York.

14 THE COURT: Right.

15 MR. ROBINO: While in Atlanta he had a seizure and that
16 held up his transfer. They actually pulled him out early this
17 morning at four o'clock in the morning, as they do, to put him on
18 the plane to New York today, and he was told something was wrong
19 with his paperwork, and he has to wait until next week. And I met
20 with him this morning, and that's the update I have. Because he
21 should have or would have been on the plane this morning, but for
22 some paperwork glitch.

23 THE COURT: Where was he before he moved to Atlanta?

24 MR. ROBINO: Jones County Jail.

25 THE COURT: All right. And does anybody have a sense for

1 how long that process should take?

2 MR. ROBINO: No. I mean, we're not even sure why he's
3 going to New York because the facility he is going to is basically
4 a pre-trial holding facility. I've been there many times. It's
5 nothing more than just a high rise jail, if you will, a federal
6 one. So it's not like Springfield, Missouri, where it's a federal
7 prison hospital, or even Butner, North Carolina, which are prison
8 hospitals that have psychiatric staffs and what have you. We just
9 have to assume -- we are -- that they're bring someone from
10 outside to see him while he's at that location.

11 MR. MOULTRIE: And generally, Your Honor, the time frame
12 they give for that process is between 30 to 90 days.

13 THE COURT: Okay.

14 MR. MOULTRIE: Your Honor, in addition to what we've
15 already discussed, the only thing that the government would ask is
16 that we be able to assess if possible Mr. Rubino's conflict as
17 soon as possible. My concern is, the government's concern is,
18 that we have a trial date so that we can begin to subpoena
19 witnesses and avoid any conflicts and witnesses making other
20 arrangements to be elsewhere during the time that we plan to try
21 the case.

22 Obviously, the Court may take more time to decide which
23 trial date will actually be set, but I just wanted to bring to the
24 Court's attention that we'll be waiting to see if we can get it
25 resolved for that purpose.

1 THE COURT: So you would like for me to decide as soon as
2 possible.

3 MR. MOULTRIE: That would be our preference.

4 THE COURT: Or reasonably soon, anyway, so you'll know
5 whether you got November or January.

6 MR. MOULTRIE: Yes, Your Honor.

7 THE COURT: What's the chances of the cases being
8 resolved short of trial?

9 MR. RUBINO: I doubt both of them will. I don't know
10 which one, but I have to tell you honestly, one of them is going
11 to trial in my honest opinion. So probably both -- at this stage
12 both, not that I'll turn down a reasonable offer if given to me,
13 but I don't see it happening on both of the cases.

14 In fact, one of them I'm positive. There's no offer. I
15 take that back. One of them is going no matter what. The other
16 one could possibly be resolved, but, no, one is going. There's
17 just no offer on one of them, or would be acceptable.

18 THE COURT: All right, well, submit something to me on
19 that.

20 MR. RUBINO: Yes, sir.

21 THE COURT: And we'll consider it. It's going to be hard
22 to know when they'll complete their evaluation of him in New York,
23 but I would think that they would have it done so that the case
24 could be reached by November. What else do we need to talk about?
25 Anything else?

1 MR. RUBINO: We would request of the Court that when Dr.
2 York is returned if he could be housed in Atlanta, the federal
3 facility, instead of the local county jail since Mr. Garland's
4 office is in Atlanta. I'm from Miami, but I fly into Atlanta, it
5 saves us two hour driving to interview and visit with the client
6 and would facilitate our work.

7 THE COURT: Can that be arranged? I mean, if I have the
8 power to do that, that will be fine.

9 MR. RUBINO: He originally was, and then I think he was
10 taken out because of the state court is why he ended up at the
11 county jail.

12 MR. MOULTRIE: I would assume that because the federal
13 case is being tried first, that's he's going to be in --

14 MR. RUBINO: He'll stay federally.

15 MR. MOULTRIE: Right.

16 THE COURT: Okay.

17 MR. MOULTRIE: And Mr. Robino is correct, Your Honor, the
18 only reason why he was moved to Jones County was because of the
19 state court proceeding.

20 THE COURT: Well, maybe the best thing to do since it
21 sounds like he's likely to go back to the federal prison anyway is
22 to see what happens and then you can call me and notify me, and I
23 can enter an order, assuming I can do that, and we'll take care
24 that.

25 MR. GARLAND: It's probably just a friendly call to the

1 U.S. Marshal.

2 THE COURT: Well, it may be, I don't know. You know, I
3 was told how powerful federal judges are, but now that I've gotten
4 here, I find out that's really not true. A lot of things I
5 thought I could do that I can't, especially when it involves the
6 federal bureaucracy so. Anything else?

7 COUNSEL: No, sir.

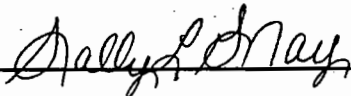
8 THE COURT: All right, well, if you don't know of
9 anything I need to do -- if y'all know of anything I need to do
10 right now in this case, just let us know. I don't think I need to
11 do anything, and I'm going to go back and work on my other cases.

12 COUNSEL: Thank you, Your Honor.

13 (STATUS CONFERENCE CONCLUDED)

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16 **CERTIFICATE OF REPORTER.**

17
18 I, **SALLY L. GRAY**, Official Court Reporter of the
19 **United States District Court, in and for the Middle District of**
20 **the State of Georgia, Macon Division, do hereby CERTIFY** that the
21 **foregoing is a correct transcript from the record of proceedings**
22 **in the above-entitled matter.**

21 

22 **SALLY L. GRAY, CCR**
23 **OFFICIAL COURT REPORTER**
24 **UNITED STATES DISTRICT COURT**
25 **MIDDLE DISTRICT OF GEORGIA**

24 9-30-03
25 **DATE**