

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 CASE NO. 22-cr-20326-KMM

5 UNITED STATES OF AMERICA,
6
7 Plaintiff,

8 vs.

9 ANDRE LORQUET,
10 Defendant.

Miami, Florida
September 7, 2023
Pages 1-11

11 TRANSCRIPT OF HEARING
12 BEFORE THE HONORABLE K. MICHAEL MOORE
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

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1 P-R-O-C-E-E-D-I-N-G-S

9:55 AM 2 THE COURT: Good morning, everyone. Please be seated.
9:55 AM 3 Please call the case.

9:55 AM 4 COURTROOM DEPUTY: Calling case number 22-CR-20326, the
9:55 AM 5 United States of America versus Andre Lorquet.

9:55 AM 6 Counsel, please state your appearances, beginning with the
9:55 AM 7 government.

9:55 AM 8 MR. BAILYN: Good morning, Your Honor. Jonathan Bailyn on
9:55 AM 9 behalf of the United States.

9:55 AM 10 THE COURT: Good morning.

9:55 AM 11 MS. CHAREST-TURKEN: Good morning, Judge, Raemy
9:55 AM 12 Charest-Turken from Asset Forfeiture.

9:55 AM 13 THE COURT: Good morning.

9:55 AM 14 MR. BAILYN: This is Special Agent Jose Hernandez from HSI.

9:56 AM 15 THE COURT: Good morning.

9:56 AM 16 MR. BELL: Good morning, Judge. Henry Bell on behalf of
9:56 AM 17 the defendant, Andre Lorquet, who is, of course, in court sitting to
9:56 AM 18 my right.

9:56 AM 19 THE COURT: Okay. Good morning, everyone. Thank you for
9:56 AM 20 coming in.

9:56 AM 21 So Mr. Bell, I appreciate you being here and taking on the
9:56 AM 22 assignment. I got your motion to withdraw.

9:56 AM 23 So this is sort of the second go-around that we've been in
9:56 AM 24 in this case. The first time around we granted the prior attorney's
9:56 AM 25 motion to withdraw. And we could do that right now and then the

9:56 AM 1 defendant would be left back in the position where he's entered a
9:56 AM 2 plea.

9:56 AM 3 But I think as I may have referenced at an earlier hearing
9:57 AM 4 -- and I understand that there are irreconcilable differences and
9:57 AM 5 that you're not in a position to divulge your attorney-client
9:57 AM 6 relationships and communications, and I respect that. But he's
9:57 AM 7 moving for -- the defendant wants to move to withdraw his guilty
9:57 AM 8 plea, and I'm assuming the government opposes that. Is that correct?

9:57 AM 9 MR. BAILYN: Yes, Your Honor. We filed an objection to the
9:57 AM 10 magistrate's report and recommendation at Docket Entry 70 where we
9:57 AM 11 laid out our rationale for opposing that motion.

9:57 AM 12 THE COURT: Okay. And that was late as I recall in time?

9:57 AM 13 MR. BAILYN: Your Honor allowed us to file it late. I had
9:57 AM 14 a misunderstanding with the procedural posture.

9:57 AM 15 THE COURT: In any event it's the government's position
9:57 AM 16 still on the substance, forget the tardiness, but on the substance
9:58 AM 17 you're still opposing the motion to withdraw.

9:58 AM 18 MR. BAILYN: Yes, Your Honor.

9:58 AM 19 THE COURT: Okay. So Mr. Bell, I wonder whether the
9:58 AM 20 conflict would extend to prohibiting you from continuing to represent
9:58 AM 21 the defendant for the referral of the motion to withdraw the guilty
9:58 AM 22 plea to be heard by the magistrate judge, and the magistrate judge
9:58 AM 23 will conduct whatever hearing as to the knowing and voluntariliness
9:58 AM 24 of the plea that was entered, and then give a report and
9:58 AM 25 recommendation to me. And if it's determined that she recommends

9:58 AM 1 that he should be allowed to do it, the government will file
9:58 AM 2 objections. If she determines that he should not be allowed, you can
9:58 AM 3 file your objections and we can tee it up and make it a ripe motion
9:58 AM 4 and make a ruling on it. And if we have to have a hearing, we'll
9:58 AM 5 have a hearing.

9:59 AM 6 But are you in a position -- and then once that gets
9:59 AM 7 resolved, depending on how it does get resolved, we can revisit the
9:59 AM 8 motion to withdraw as attorney for the defendant.

9:59 AM 9 Is that something that you can live with?

9:59 AM 10 MR. BELL: I believe so. I would, if the court will
9:59 AM 11 indulge me, ask for a second or two here to confer with Mr. Lorquet.

9:59 AM 12 THE COURT: Sure. Okay. Please do.

9:59 AM 13 (Counsel conferring with defendant)

10:00 AM 14 MR. BELL: Judge, following up on your comments, I think
10:00 AM 15 yes, I can live with that. I will -- we can shelve, if you will, the
10:00 AM 16 motion to withdraw as counsel, and I will continue to represent him
10:01 AM 17 and his motion to withdraw the plea as you've articulated or
10:01 AM 18 described here this morning.

10:01 AM 19 You know, he's asking or wants that to move forward or that
10:01 AM 20 be re-filed, for lack of a better term. And if you're referring it
10:01 AM 21 to Judge Louis, I will address it before Judge Louis and then file
10:01 AM 22 whatever objection if any is necessary.

10:01 AM 23 THE COURT: Okay.

10:01 AM 24 So Mr. Lorquet, let me address you personally. I do think
10:01 AM 25 at this point, while you may have some disagreements with your lawyer

10:01 AM 1 about other matters, that at least with respect to this issue of
10:01 AM 2 motion to withdraw the guilty plea, you would be better served by
10:01 AM 3 having a lawyer at your side than trying to do it on your own. Or
10:01 AM 4 having -- you know, maybe the magistrate judge, if I just referred it
10:02 AM 5 to her, would then say well, now we're going to get a third attorney
10:02 AM 6 for just that hearing. I don't think it would really serve anybody's
10:02 AM 7 interests, I mean, unless you just can't get along with Mr. Bell,
10:02 AM 8 period. But, I mean, I think with respect to this particular motion
10:02 AM 9 to withdraw the guilty plea, that you would be better served by
10:02 AM 10 having a lawyer familiar with the case, and Mr. Bell is familiar in
10:02 AM 11 that regard. I think he could serve you. Depending on how it goes
10:02 AM 12 after that, then we'll address where we are in that posture so --
10:02 AM 13 whatever that posture is at that time.

10:02 AM 14 With respect to the referral, there is an outstanding
10:03 AM 15 motion to refer. Do we know what it is on the docket?

10:03 AM 16 MR. BAILYN: So Your Honor, procedurally the report and
10:03 AM 17 recommendation and the motion to withdraw the guilty plea has been
10:03 AM 18 denied as moot because the defense filed, on July 24th, an unopposed
10:03 AM 19 motion to withdraw the motion to withdraw. That motion was granted,
10:03 AM 20 and then the court denied as moot the pending objection -- or excuse
10:03 AM 21 me, the pending report and recommendation and the pending motion to
10:03 AM 22 withdraw the guilty plea.

10:03 AM 23 So I think there's two -- if I may continue, Your Honor, I
10:03 AM 24 think there would be two ways to go about doing this if the court
10:03 AM 25 were to entertain a motion to withdraw.

10:03 AM 1 THE COURT: Yeah, that's what I want to hear.

10:03 AM 2 MR. BAILYN: Yeah. I guess it would be to sort of -- to
10:03 AM 3 vacate the order denying as moot, or to allow the defendant to file a
10:03 AM 4 new motion to withdraw the guilty plea and start the process anew.

10:04 AM 5 THE COURT: Okay. Do you have a preference? You didn't
10:04 AM 6 file the first motion to withdraw the guilty plea.

10:04 AM 7 MR. BELL: That would be correct.

10:04 AM 8 THE COURT: Okay. So if you want your own handiwork on the
10:04 AM 9 pleading, I'm happy to -- I mean it's more work for you, I'm happy --

10:04 AM 10 MR. BELL: It's not the work, Judge.

10:04 AM 11 THE COURT: Well --

10:04 AM 12 MR. BELL: You know, I mean, again, I don't want to get
10:04 AM 13 into my attorney-client relationship but, I mean, I think either one
10:04 AM 14 of those two -- if you don't mind, if we could sort of speak out loud
10:04 AM 15 or think out loud here for a second. If you vacate the order, as
10:04 AM 16 counsel has suggested, then there's an objection pending before the
10:04 AM 17 court, right? And then I would need to respond to the objection and
10:04 AM 18 then you would decide it? Or would this just go back to Judge Louis?

10:04 AM 19 My guess is procedurally, the way I'm sort of reading
10:05 AM 20 things, if you vacate the order granting our motion to withdraw, the
10:05 AM 21 motion to withdraw the plea, then that puts the government's
10:05 AM 22 objection to Judge Louis's report and recommendation in play, if you
10:05 AM 23 will. Do we agree there?

10:05 AM 24 THE COURT: Say that again?

10:05 AM 25 MR. BELL: Okay. So procedurally what happened here,

10:05 AM 1 Judge, is the following: Judge Louis entered a report and
10:05 AM 2 recommendation that the motion to withdraw the plea be granted. You
10:05 AM 3 may recall that.

10:05 AM 4 THE COURT: And she did that on the basis that it was
10:05 AM 5 unopposed.

10:05 AM 6 MR. BELL: Yeah. I mean, she cited in the report and
10:05 AM 7 recommendation that the averments were unrebutted. The government
10:05 AM 8 then filed an objection to that report and recommendation, and in
10:05 AM 9 that objection they explained why they hadn't rebutted, if you will,
10:06 AM 10 the averments earlier. Then I was appointed. Right?

10:06 AM 11 THE COURT: Right.

10:06 AM 12 MR. BELL: I'm appointed with that objection pending before
10:06 AM 13 Your Honor. We then, the defendant, moved to withdraw the motion to
10:06 AM 14 withdraw the guilty plea. You granted that motion rendering the
10:06 AM 15 objection moot, and that's kind of where we are today. So
10:06 AM 16 if you vacate that order, right, that renders the whole thing moot
10:06 AM 17 and granting my motion to withdraw the motion to withdraw the plea,
10:06 AM 18 procedurally it seems to me that that objection that was pending --
10:06 AM 19 and to be more specific, the objection to Judge Louis's R and R -- is
10:06 AM 20 now in play again. That becomes viable, if you will. And I guess my
10:06 AM 21 question of you is whether you agree with that procedural
10:06 AM 22 understanding.

10:07 AM 23 THE COURT: Well, so step one in this scenario would be
10:07 AM 24 that I would be vacating the order granting the motion to withdraw
10:07 AM 25 the guilty plea, right?

10:07 AM 1 MR. BELL: Right. No, you would be vacating the order --
10:07 AM 2 yes. The order granting the motion -- I'm sorry. No, you're right.
10:07 AM 3 I think you described it correctly. I apologize.
10:07 AM 4 THE COURT: And that is docket entry number?
10:07 AM 5 MR. BAILYN: 77.
10:07 AM 6 THE COURT: That also would -- that would leave open the --
10:07 AM 7 MR. BELL: The government's objections.
10:07 AM 8 THE COURT: The government's objections?
10:07 AM 9 MR. BELL: Right. So I think candidly --
10:08 AM 10 THE COURT: So that should be denied as well without
10:08 AM 11 prejudice. What is that docket entry?
10:08 AM 12 MR. BAILYN: Is Your Honor referring to the government's
10:08 AM 13 objections or the report and recommendation?
10:08 AM 14 THE COURT: Yes, the government's objections.
10:08 AM 15 MR. BAILYN: So the objections are Docket Entry 70.
10:08 AM 16 MR. BELL: So if you denied those objections and ruled
10:08 AM 17 against the United States, then you would be vacating the plea.
10:08 AM 18 Perhaps the easier route is just to allow the defendant to
10:08 AM 19 re-file or file a new motion to vacate the plea. That would allow me
10:08 AM 20 to work with him on that, although that gets awfully close to the
10:08 AM 21 reasons why I'm here on a motion to withdraw as counsel.
10:09 AM 22 THE COURT: Well, okay. I wouldn't deny them without
10:09 AM 23 prejudice, I would deny them as moot in light of the referral back to
10:09 AM 24 the magistrate judge on the --
10:09 AM 25 MR. BELL: On the original motion.

10:09 AM 1 THE COURT: On the original motion, or your new motion.

10:09 AM 2 MR. BELL: But if you did that -- that makes sense, Judge,
10:09 AM 3 right? Because then she would then -- they would have the
10:09 AM 4 opportunity to file a response to his motion before Magistrate Louis
10:09 AM 5 is basically what you're getting at.

10:09 AM 6 THE COURT: Right. Okay.

10:09 AM 7 So let's do that. Let's have you -- see what happens when
10:10 AM 8 you don't file your objections on time?

10:10 AM 9 So you'll go ahead and file a motion to withdraw the guilty
10:10 AM 10 plea, right?

10:10 AM 11 MR. BELL: I can do that.

10:10 AM 12 THE COURT: And how long will it take for you to do that?

10:10 AM 13 MR. BELL: You know, ordinarily it would be quick. But
10:10 AM 14 candidly I'm really busy this week, and next week I'm going to be at
10:10 AM 15 the CJA conference. So I would ask for two weeks.

10:10 AM 16 THE COURT: Two weeks? Today is the 7th. So why don't we
10:10 AM 17 give you until -- this will give you something to do on a weekend.
10:10 AM 18 We'll give you until the 18th. That's a Monday.

10:10 AM 19 MR. BELL: That's fair.

10:10 AM 20 THE COURT: To file a motion to withdraw the guilty plea.

10:11 AM 21 When I get that, I will vacate the order granting the
10:11 AM 22 motion to withdraw guilty plea, Docket 77. I will deny as moot
10:11 AM 23 Docket Entry Number 70, and I will refer the motion to withdraw the
10:11 AM 24 guilty plea to the magistrate judge, and I will deny without
10:11 AM 25 prejudice the motion to withdraw counsel.

10:11 AM 1 Tell me what's wrong.

10:11 AM 2 MR. BAILYN: Yeah. So, Your Honor, Docket Entry 77 is the
10:11 AM 3 paperless order granting the defendant's motion to withdraw his
10:11 AM 4 guilty plea. If the court were to vacate that order, it would be
10:12 AM 5 vacating denials as moot that were contained within that order, and
10:12 AM 6 it would therefore make Judge Louis's current report and
10:12 AM 7 recommendation viable again, as well as the previous motion to
10:12 AM 8 withdraw.

10:12 AM 9 I don't think there's a need to do anything with Docket
10:12 AM 10 Number 77. As of now, we have sort of a blank slate. And if Your
10:12 AM 11 Honor would like the defendant to file a new motion to withdraw, the
10:12 AM 12 government can file its responses and we can start that process anew.

10:12 AM 13 THE COURT: And what happens with these other orders that
10:12 AM 14 are outstanding?

10:12 AM 15 MR. BAILYN: They're not outstanding. They've been denied
10:12 AM 16 as moot, Your Honor.

10:12 AM 17 THE COURT: No action needs to be taken on 77?

10:12 AM 18 MR. BELL: I think he's right, because basically we're just
10:12 AM 19 filing a second motion to withdraw the plea. The other one has been
10:12 AM 20 resolved already, and now he's coming back with a second.

10:12 AM 21 THE COURT: Okay. Don't do anything?

10:13 AM 22 MR. BELL: I mean, I'll defer to the court but I understand
10:13 AM 23 Mr. Bailyn's, sort of, procedural point that what we're really doing
10:13 AM 24 here is permitting, if you will, the defendant, despite the prior
10:13 AM 25 rulings and the prior motions, to advance a second motion to withdraw

10:13 AM 1 his guilty plea.

10:13 AM 2 THE COURT: Okay. I just want to make sure that our record
10:13 AM 3 for appellate review purposes, that they understand what we did and
10:13 AM 4 why we did it.

10:13 AM 5 MR. BELL: I understand.

10:13 AM 6 THE COURT: So I'm not going to do anything then other than
10:13 AM 7 wait until the 28th for you to file your motion to withdraw your
10:13 AM 8 guilty plea.

10:13 AM 9 MR. BELL: Understood.

10:13 AM 10 THE COURT: Okay?

10:13 AM 11 MR. BAILYN: Is it the 28th? I think you had earlier said
10:13 AM 12 the 18th.

10:13 AM 13 THE COURT: The 18th. Excuse me.

10:13 AM 14 MR. BELL: The 18th is fine, and thank you.

10:13 AM 15 THE COURT: Okay. Anything else? Thank you for coming in.

10:13 AM 16 MR. BELL: Thank you, Judge.

10:13 AM 17 COURTROOM DEPUTY: All rise.

10:13 AM 18 (PROCEEDINGS CONCLUDED)

10:13 AM 19 C E R T I F I C A T E

10:13 AM 20 I certify that the foregoing is a correct transcript from
10:13 AM 21 the record of the proceedings in the above-entitled matter. Any
10:13 AM 22 redaction of personal data identifiers pursuant to the Judicial
10:13 AM 23 Conference Policy on Privacy is noted within the transcript.

10:13 AM 24 5-28-2024
Date

/s/ Dawn M. Savino, R.P.R., C.R.R.
DAWN M. SAVINO, R.P.R., C.R.R.