

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
October 24, 2023
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11 TRANSCRIPT OF EVIDENTIARY HEARING
12 BEFORE THE HONORABLE LAUREN FLEISCHER LOUIS
13 UNITED STATES MAGISTRATE JUDGE

14 APPEARANCES:

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

2 COURTROOM DEPUTY: All rise. United States District
3 Court for the Southern District of Florida is now in session,
4 the Honorable Lauren Luis presiding.

5 THE COURT: Good afternoon. Please be seated.

6 COURTROOM DEPUTY: Calling case number 22-20326
7 criminal-Judge Moore, United States versus Andre Lorquet.

8 Counsel, would you please note your appearances for the
9 record, beginning with the plaintiff.

10 MR. BAILYN: Good afternoon, Your Honor. Jonathan
11 Bailyn for the government. I'm here with Special Agent Jose
12 Hernandez of Homeland Security.

13 MR. BELL: Hello, Judge. How are you today?

14 THE COURT: Well, thank you.

15 MR. BELL: Henry Bell on behalf of the defendant, Andre
16 Lorquet, who is sitting in court to my left.

17 THE COURT: I see that, and that he is not wearing
18 handcuffs for which I am grateful to the Deputy Marshals for
19 purposes of this hearing.

20 We have this on today for your motion to withdraw your
21 guilty plea. I was not at the last hearing with Judge Moore,
22 but I just wanted to ask Mr. Bell if you wouldn't mind so that
23 it's clear to me, what the status is on your motion to withdraw
24 as counsel.

25 MR. BELL: That hasn't been ruled on.

1 THE COURT: Okay.

2 MR. BELL: Judge Moore and I sort of came to an
3 understanding where, at least for now, I would continue to
4 represent Mr. Lorquet. So to be clear, I continue to represent
5 him, I am counsel of record.

6 THE COURT: That's exactly what I was asking. Okay.
7 Thank you. And so but after this hearing, Mr. Bell, will you
8 also tell me if there's any change as to the status, meaning are
9 you still, after this hearing, waiting for the court to resolve
10 the motion as it was filed, or if there is any change in the
11 relationship necessitating, you know, like denial without
12 prejudice or some other outcome.

13 MR. BELL: I'm sorry. I apologize. I'll bring it to
14 the court's attention if Mr. Lorquet, or me, or both of us
15 decide that we need a ruling on that motion.

16 THE COURT: Okay. All right. I very much appreciate
17 it.

18 Then so Mr. Lorquet, to turn to you, the hearing is set
19 for the purpose of, frankly, taking evidence. The motion was
20 filed by counsel on your behalf. It represents, as I -- well, I
21 guess I should just ask it. Have you seen a copy of the motion
22 to withdraw your guilty plea?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. And are you aware of the grounds,
25 the facts that are advanced in the motion that would justify the

1 court allowing you to withdraw your guilty plea?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. So the government has responded in
4 opposition. Have you seen a copy of their motion in opposition?
5 Are you aware of what it says?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. Likewise, there was a lot of
8 evidence attached, like transcripts of phone calls and so forth.
9 So now it is what I would characterize as a factual dispute.
10 Right? One side says I was pressured into taking this plea by
11 my attorney; one side has advanced evidence that would tend to
12 undermine those factual allegations. So I set the hearing today
13 to give you an opportunity to present evidence, because I'll
14 have to make factual findings and make a recommendation to Judge
15 Moore about whether to grant the motion and allow you to
16 withdraw the guilty plea or to deny it. Okay? So do you
17 understand why I've set the hearing?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. Then either you or Mr. Bell tell me
20 how we're going to proceed today.

21 MR. BELL: Judge, I think you should ask Mr. Lorquet
22 whether he wants to testify in support of his motion or not, and
23 he can tell you what his answer is.

24 THE COURT: That's where I was headed.

25 So Mr. Lorquet, evidence can come in lots of different

1 places, right? So you saw, for example, the government relied
2 on the transcript of my change of plea hearing where you were
3 under oath and you gave statements and the recorded jail calls.
4 Okay. That's one form of evidence. The other one, of course,
5 is just plain old testimony. If you want to advance statements
6 to me, then you have to take the oath to tell the truth, the
7 whole truth and nothing but the truth so help you God, under the
8 penalty of perjury, meaning as you might remember from our
9 change of plea hearing, that if the statements are demonstrably
10 not true, then you subject yourself to perjury or a prosecution,
11 another prosecution for making a false statement in court.

12 Do you understand where I am so far?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. So ultimately, you know, if you
15 choose to testify, then that would be your testimony obviously,
16 right? I don't know if you have considered or are wanting to
17 call somebody else to testify here or present any other type of
18 evidence, but I would say that those are your choices.

19 Have you thought about what you want to do?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. Tell me what you want to do.

22 THE DEFENDANT: Testify.

23 THE COURT: Okay. I'm going to -- Mr. Bell, if it's
24 okay with you, I would have him just stay there next to you, or
25 would you prefer him -- it would be easier for you because you

1 could use the podium.

2 MR. BELL: I can use the podium, Judge. I would
3 obviously defer to the court how you want to run things.

4 THE COURT: Understood. I just wanted to make sure
5 just logistically, because I think for the marshals rather than
6 have everybody move around the courtroom, that would be better.

7 MR. BELL: I think given the fact that it's just us
8 here, today that's fine.

9 THE COURT: Okay. All right.

10 Well then Mr. Lorquet, I'm going to have you stand and
11 be sworn.

12 COURTROOM DEPUTY: Sir, please raise your right hand.
13 Do you solemnly swear or affirm that the testimony you're about
14 to give will be the truth, the whole truth and nothing but the
15 truth, so help you God?

16 THE DEFENDANT: Yes, ma'am.

17 COURTROOM DEPUTY: Thank you, sir.

18 THE COURT: Before you start questioning, Mr. Bell, I
19 just want to make sure -- Mr. Lorquet, you go ahead and have a
20 seat -- I just want to hear from you so that I know that you're
21 understanding me, and that we understand each other.

22 Can you just tell me, in your own words, what you
23 understand when I tell you that false testimony here, meaning
24 testimony that can be proven as not true, could result in you
25 being charged with perjury. Can I hear in your own words how

1 you understand that to mean?

2 THE DEFENDANT: I don't know what perjury means.

3 THE COURT: Perjury is a federal crime. It is making a
4 false statement under oath. It carries a 10-year maximum term
5 of imprisonment.

6 So now can I hear in your own words what you understand
7 would be the consequence of making a false statement to me here
8 at this hearing?

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: No, I want to hear in your own words. I
11 want to hear you tell me so that I'm sure that you understand
12 the consequence of you making a false statement now that you've
13 taken an oath.

14 THE DEFENDANT: You're saying if I say a lie, I would
15 commit perjury?

16 THE COURT: Uh-huh?

17 THE DEFENDANT: And that will give me 10 more years.

18 THE COURT: The government could prosecute you.

19 THE DEFENDANT: Yes.

20 THE COURT: For making a false statement here. And if
21 you were convicted of those new charges, you could face a
22 maximum penalty of another 10 years. Do you understand this?

23 THE DEFENDANT: I understand a little bit. Yes, ma'am.

24 THE COURT: Do you also understand -- I mean, there are
25 other potential consequences like contempt of court or adverse

1 sentencing impacts that all could be taken into account.

2 THE DEFENDANT: No, I didn't know that, ma'am.

3 THE COURT: Okay. I want you to understand the full
4 panoply of making a false statement under oath.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Do you feel like you understand now?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: I'm sorry, Mr. Bell.

9 MR. BELL: Could I have a moment, Judge?

10 THE COURT: Of course.

11 (Pause)

12 MR. BELL: Okay, Judge. I'm ready to proceed if the
13 court is.

14 THE COURT: I am.

15 MR. BELL: All right. Thank you.

16 DIRECT EXAMINATION

17 BY MR. BELL:

18 Q. Mr. Lorquet, could you tell us how old you are?

19 A. 38. No 39. Yesterday was my birthday.

20 THE COURT: Oh. Congratulations.

21 THE WITNESS: Thank you.

22 BY MR. BELL:

23 Q. How far did you go in school, Mr. Lorquet?

24 A. 12th grade.

25 Q. Are you able to read and write?

1 A. No, sir.

2 Q. How is it that you were able to --

3 A. Learning disability. Special need.

4 Q. I'm sorry. Did I interrupt you?

5 A. No.

6 Q. So do you have a complete inability to read and write or do
7 you have some ability or difficulty?

8 A. Some ability.

9 Q. Have you been able to read on your own everything that I've
10 provided you or have you required my help?

11 A. Required your help.

12 Q. Okay. Who was your lawyer before the court appointed me to
13 represent you?

14 A. Ms. Bozanic.

15 Q. And do you recall the last time you were in court in person
16 before Judge Louis in January of this year?

17 A. I don't remember the date, but I do recall.

18 Q. Okay. And did Ms. Bozanic, was she with you that day at the
19 hearing?

20 A. Yes.

21 Q. Did you have any conversations or meeting with her before
22 that hearing before Judge Louis in January?

23 A. Yes.

24 Q. And where were those meetings?

25 A. At FDC Miami and in here.

1 Q. Okay. And did Ms. Bozanic talk to you about whether you
2 wanted to plead guilty?

3 A. Yes.

4 Q. What did you tell her?

5 A. I told her no, I don't want to plead guilty.

6 Q. Did you talk about whether you wanted to go to trial or the
7 plea offer being made?

8 A. Yes, I talked about I wanted to go to trial. She told me we
9 had a day to make a decision, the prosecutor was giving a day.
10 It was -- I felt like my back was against the wall. I felt like
11 I was pressured and coerced, and my family was getting
12 threatened and I was getting threatened by other people.

13 Q. So did you discuss the plea offer?

14 A. Yes.

15 Q. And what was your -- what did you tell Ms. Bozanic about the
16 plea offer?

17 A. That I don't want to plead guilty -- I don't want to take
18 this charge, I want to take it to trial.

19 Q. Which charge were you talking about?

20 A. Aggravated identity.

21 Q. Okay. And do you recall signing a plea agreement?

22 A. Yes.

23 Q. Why did you sign the plea agreement if you didn't want to go
24 to trial?

25 A. Because I felt -- I felt like I was pressured, I was under

1 stress, I was coerced, I was -- I felt my back was against the
2 wall. So this is the only thing I can do, because this is what
3 she told me we was here for. I didn't know I could say so, I
4 didn't know I could say anything. But she told me I could only
5 say yes or no.

6 Q. So let me ask you this, a slightly -- I'm sorry, a similar
7 question but slightly different in some ways.

8 If you didn't want to plead guilty, why did you go
9 through the hearing with Judge Louis where you told her you were
10 guilty?

11 A. Because I felt that that was the only thing I could do. You
12 know, I had a lot going on. I was under distress. She was
13 pressuring me and said this is what we're here for. And
14 besides, you know, me getting threats from my family -- my
15 family was getting threats and me getting threats.

16 Q. Could you be more specific about what Ms. Bozanic told you?

17 A. She told me I know you have a problem understanding stuff
18 and, you know, we spoke about this and, you know, you know, this
19 is what we're here. You know, you can't go back. This is what
20 we're here for, and this is what you need to do, you need to
21 answer yes or no's.

22 Q. Do you feel like your guilty plea was voluntary?

23 A. No.

24 Q. You mentioned in response to some of my questions issues or
25 problems with your family and other threats. Could you be more

1 specific for Judge Louis?

2 A. So I felt pressured by my lawyer. People that was involved
3 in my loan, they're the ones that was coming after me and my
4 family.

5 Q. What, if anything, did these people say?

6 A. That I'll need to sign the plea or leave.

7 Q. What do you mean by leave?

8 A. Well, when I was on bond in November.

9 Q. So are you explaining these are things that happened earlier
10 in the process while you were still on bond release?

11 A. Yes.

12 Q. Is there anything else that you would like to explain to
13 Judge Louis before I cease my questioning?

14 A. No, not that I know of.

15 Q. Okay.

16 MR. BELL: Thank you.

17 THE COURT: Mr. Lorquet, when you were with me I asked
18 you the specific question has anyone threatened you in any way
19 to take this plea agreement, and you told me no.

20 THE WITNESS: Yeah, that's why I was crying through the
21 whole situation because --

22 THE COURT: I'm sorry. I don't understand?

23 THE WITNESS: That's why I was crying through the whole
24 situation that day, and I just didn't know what I can do.

25 That's why I was in tears.

1 THE COURT: What do you now mean when you tell me that
2 you were threatened to take the plea? What was the threat?

3 THE WITNESS: The threat was threatening me to sign the
4 plea, don't take it to trial.

5 THE COURT: Who?

6 THE WITNESS: And threatening my family. People who
7 was involved in my loan.

8 THE COURT: Who?

9 THE WITNESS: It was a bunch of people.

10 THE COURT: How did they communicate it to you?

11 THE WITNESS: This was back when I was out on bond,
12 they communicated to my mother.

13 THE COURT: So back in November, somebody threatened
14 your mother to tell you to take a plea?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: What was the threat?

17 THE WITNESS: The threat was me getting leave, run,
18 they said put a price tag on your head, that means to kill me or
19 me to leave.

20 THE COURT: Why did the same people who wanted you to
21 leave want you to take a plea?

22 THE WITNESS: Because they didn't want me to go to
23 trial.

24 THE COURT: Are these co-defendants?

25 THE WITNESS: No, I don't have co-defendants.

1 THE COURT: Not in this case, but I don't know if there
2 are other people that -- okay. You understand that it just
3 doesn't make sense to me? Is the last time you heard this
4 threat back in November?

5 THE WITNESS: Hmm-hmm.

6 MR. BELL: You have to answer out loud.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Okay. Mr. Lorquet, you were under oath in
9 January when you told me that no one threatened you, that you
10 were pleading guilty because you are in fact guilty, that you
11 were fully satisfied with the attorney and the representation
12 she had given you at that time. Just like you're under oath
13 now.

14 THE WITNESS: Yes, ma'am. And she told me only answer
15 yes or no's. I didn't know I could make an input or make a
16 different decision, and that's why I was crying through the
17 whole situation besides the threats and besides the pressures
18 from her and pressures from everything else becoming involved
19 and the whole entire thing.

20 THE COURT: How do I take the same person making
21 statements under the same oath, and make the decision that today
22 he's telling me the truth and last time he was lying to me.

23 THE WITNESS: Because I'm telling the truth now and
24 this is the truth. I'm not in tears. I'm really telling you
25 the truth. And my mom could tell you the truth too.

1 THE COURT: I mean, I don't have her here. You
2 understand how different this explanation is from what you said
3 over the telephone.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Is there an explanation?

6 THE WITNESS: I told my mom that I don't know why the
7 recording is not there. When I called her, I told her I was
8 under distress. She says once you put the motion under the
9 distress, and then we spoke about other things. But under the
10 distress was in the phone call, it's not in the evidence. I
11 didn't see it.

12 THE COURT: Okay. I don't understand. Are you telling
13 me that there is another phone call that I don't have where you
14 would have told your mother that you were under distress?

15 THE WITNESS: Yes, because she mentioned that she spoke
16 to my lawyer.

17 THE COURT: Okay. But the phone calls that I do have
18 would still seem to really undermine this explanation.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: They would offer a very different reason
21 why you want to withdraw your guilty plea.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Do you want to explain that?

24 THE WITNESS: The phone calls between me and my mom and
25 my friends were going back on the aggravated identity and what

1 was -- you know, besides the distress and my -- let me see how
2 can I explain. Trying to understand.

3 The phone calls would make it look like I'm lying, but
4 I'm not. You know, I guess seven-minute phone calls, and it's
5 not enough to explain everything and I didn't like to talk over
6 the phone because a lot of my lawyer did tell me, don't talk
7 about anything about the case on the phone, my previous lawyer.
8 And, you know, I didn't know this was -- they were going to be
9 able to bring phone call evidence to the situation at that time
10 period when I was on the phones. I didn't know that could go
11 against me at that time.

12 THE COURT: Can I re-visit -- Mr. Bell, asked you a
13 little bit about high school. Did you graduate?

14 THE WITNESS: No, ma'am.

15 THE COURT: And what is the classes that you attended?

16 THE WITNESS: ESE. It's learning disability, special
17 need classes.

18 THE COURT: Do you know what the special need is or the
19 learning disability is?

20 THE WITNESS: Yeah. I have trouble reading and
21 writing. It's a disability. Some kids are born with
22 disability, I was born with disability.

23 THE COURT: Do you know if it's dyslexia?

24 THE WITNESS: I don't remember. I take Ritalin a lot
25 too, and ADD pills.

1 THE COURT: Okay. So you were diagnosed with ADD.

2 THE WITNESS: Yes.

3 THE COURT: Do you know whether you were also diagnosed
4 with any learning disabilities?

5 THE WITNESS: Yes, I was, ma'am.

6 THE COURT: But as you sit here you don't remember what
7 they were called?

8 THE WITNESS: No, ma'am. My mother knows.

9 THE COURT: Okay.

10 THE WITNESS: I don't have a good memory.

11 THE COURT: Other than not being -- well, that's one.
12 So do you have trouble with long-term, short-term?

13 THE WITNESS: Long-term and short-term.

14 THE COURT: Have you ever had treatment for the memory
15 problems?

16 THE WITNESS: Yes, ma'am. I used to see a counselor
17 from elementary to high school with my special needs.

18 THE COURT: Okay. So so long as you were in a school
19 setting you were getting that treatment?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: But you haven't gotten treatment since
22 leaving school?

23 THE WITNESS: No, ma'am. So I have trouble
24 understanding and comprehending things.

25 THE COURT: Can you remind me what you were doing for

1 work?

2 THE WITNESS: Security and promotion, marketing,
3 advertisement, promoting, car rentals.

4 THE COURT: Carving tools?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Like woodworking?

7 THE WITNESS: Renting cars.

8 THE COURT: Oh, rental. Beg your pardon.

9 MR. BELL: I think he meant rental cars, Your Honor.

10 THE WITNESS: And taxes.

11 THE COURT: Okay. Have you considered any evaluation
12 that may be necessary? Or no?

13 MR. BELL: Well, I guess if his mother were here today
14 she would beg you to have him evaluated.

15 THE COURT: Got it.

16 Okay. Mr. Bailyn, did you want to ask questions?

17 MR. BAILYN: I'll ask a few Your Honor. Thank you.

18 CROSS-EXAMINATION

19 BY MR. BAILYN:

20 Q. Mr. Lorquet, you said you worked in taxes. What kind of
21 work did you do?

22 A. Basic income taxes, W-2s.

23 Q. Did you call yourself Dr. Taxology?

24 A. That was one of the tax offices.

25 Q And you advertised yourself as a tax specialist?

1 A. And I worked as a subcontractor at another tax office.

2 Q. So you did tax forms for people?

3 A. Say it again?

4 Q. You did tax forms for people?

5 A. Yes, sir.

6 Q. Tax forms are pretty complicated, right?

7 A. Well, the computer does everything.

8 Q. Right. But people have to hire someone to do tax forms,
9 right?

10 A. Yes.

11 Q. Because they're hard for most people to do.

12 A. Well, yes. But the computer does everything.

13 Q. Okay. But you operated that computer.

14 A. Yes.

15 Q. And so people hired you to do complex tax forms.

16 A. Not complex, basic W-2's. Once you enter the W-2
17 information into the right column, it's really match what's on
18 the piece of paper and the computer does everything.

19 Q. Okay. So you could actually read the numbers and input them
20 correctly?

21 A. Yes.

22 Q. And so you didn't mix up numbers, you were precise.

23 A. Yes.

24 Q. Okay. So you have no problem with numbers.

25 A. No.

1 Q. Okay.

2 A. Some numbers.

3 Q. Some numbers. What numbers do you have problems with?

4 A. Well, math in general.

5 Q. I noticed in one of your telephone calls that you mentioned
6 you read the book *Busted by the Feds*. Did you enjoy that book?

7 A. No, I never read it.

8 Q. You didn't read it?

9 A. No.

10 Q. Okay.

11 A. It was in the dorm.

12 Q. But you said you read the book. You told your mom that,
13 right?

14 A. Yeah.

15 Q. And you were lying to her.

16 A. Yes. Because someone read it to me. I didn't read it.

17 Q. You mentioned there's this aggravated identity theft. Can
18 you describe to me what you mean by the aggravated identity
19 theft charge?

20 A. By stealing someone's identity to make the loan happen,
21 saying I stole a letter, I created the letter, and I did not
22 create the letter.

23 Q. And that's the charge you're hung up on, right?

24 A. Yes.

25 Q. Right. And that's the charge that was really upsetting you

1 during the plea.

2 A. Yes.

3 Q. Did the prosecution in this case offer to drop that charge?

4 THE COURT: Mr. Bailyn, I want to be careful about
5 involving me in settlement discussions or anything close to it.
6 I don't know where you're headed, but do I need that --

7 MR. BAILYN: I think it's highly relevant, Your Honor.

8 THE COURT: Are we getting close to settlement
9 discussions?

10 MR. BAILYN: I'll move back then.

11 THE COURT: Okay. Remember that I don't know where
12 you're going. I just -- you've heard my concern, right?

13 MR. BAILYN: I understand. And, you know, I don't
14 think the line of questioning is probably necessary.

15 THE COURT: Okay.

16 BY MR. BAILYN:

17 Q. Did you trust Ms. Bozanic?

18 A. I didn't know her. My mom knew her.

19 Q. How did your mom know her?

20 A. I can't say I trust her because my mom referred her as a
21 lawyer. I wanted to go with someone else.

22 Q. Do you trust your mom?

23 A. Certain extent. Sometimes. They may mom is always right.
24 But sometimes, you know, you have disagreement. I'm a child, so
25 I'm supposed to listen to my mother. But, you know, between me

1 and my mom, she's always right but sometimes, you know, I feel
2 like I should have a say-so, because I am a man. I am a grown
3 person. But, you know, sometimes it bites you when you don't
4 listen to your mother. And yes, I trust my mother.

5 Q. Does a man make his own decisions?

6 A. Huh?

7 Q. A man makes his own decisions?

8 A. Yes.

9 Q. And you're a man?

10 A. Yes.

11 Q. So you make your own decisions?

12 A. Yes.

13 MR. BAILYN: I have no further questions, Your Honor.

14 MR. BELL: I just have a few, Judge.

15 THE COURT: Sure thing, Mr. Bell.

16 REDIRECT EXAMINATION

17 BY MR. BELL:

18 Q. Mr. Bailyn asked you about the aggravated identity theft
19 count, right? Do you recall his questions?

20 A. Yes.

21 Q. What's your understanding of what Count 9 that charges you
22 with violating the aggravated identity theft statute.

23 MR. BAILYN: Your Honor, I'm going to object. I wasn't
24 allowed to go into a line of questioning on this.

25 THE COURT: That's almost exactly the same question --

1 hang on. Because that was -- as I understand what Mr. Bell is
2 asking, you asked, he answered. I think Mr. Bell is setting a
3 foundation for something.

4 MR. BELL: I'm not going to ask about plea negotiations
5 if that's your concern or Mr. Bailyn's, and obviously I respect
6 the court's ruling.

7 THE COURT: Okay. Okay. Go ahead and repeat your
8 question, Mr. Bell.

9 BY MR. BELL:

10 Q. Could you explain to us what your understanding of Count 9,
11 the aggravated identity theft count, means in this case, what
12 are they alleging against you?

13 A. Taking someone's identity and using it to do a loan.

14 Q. Okay. Whose identity?

15 A. Chris Davis or Cher Davis.

16 Q. Is it Cher Davis?

17 A. I believe so, yes.

18 Q. Is that a name you saw in the discovery that's been provided
19 to you?

20 A. Yes.

21 Q. And who was Cher Davis or who is Cher Davis, based on your
22 reading of the discovery that I've provided you?

23 A. First I thought it was a guy, but it end up being a girl.
24 It's a person who did my business tax return, and that has an
25 income of, supposed to be a CPA or a tax preparer.

1 Q. And does the discovery show that this person's name and
2 identity was used to submit documents in connection with one of
3 the loans you're charged with?

4 A. Yes.

5 Q. Okay. Have you on Saturday reviewed the discovery the
6 government gave us on Friday?

7 A. With you, yes.

8 Q. Could you tell the Judge what it shows?

9 A. It shows that the person who -- Cher Davis was involved with
10 loans or involved in doing other people business taxes to commit
11 the fraud.

12 Q. Okay. So that discovery we reviewed on Saturday tends to
13 show that she was involved in other fraudulent loans?

14 A. Yes.

15 MR. BELL: Okay. Nothing further.

16 THE WITNESS: And I do not know her.

17 MR. BELL: Nothing further.

18 THE WITNESS: Okay.

19 THE COURT: Okay. Mr. Lorquet, is there any other
20 evidence that you wish to present?

21 THE WITNESS: Not that I know of, ma'am.

22 THE COURT: Okay. Mr. Bell, let me just ask you to
23 reiterate, is there any other evidence that you intend to
24 advance on behalf of Mr. Lorquet?

25 MR. BELL: None, Your Honor.

1 THE COURT: Okay. Then I'll turn to Mr. Bailyn and ask
2 if other than what you attached to your response, there's any
3 other evidence the government's going to present.

4 MR. BAILYN: No, Your Honor. Unless you need me to
5 formally move that evidence in.

6 THE COURT: For purposes of this hearing, that's true.

7 MR. BAILYN: Sure. So Your Honor, I would move to
8 admit Government Exhibit 1 which is the transcript of the plea
9 colloquy, as well as Government Exhibits 2 through 8. These are
10 jail calls that were received through the United States Marshals
11 Service. I have with me the agent who can authenticate them if
12 you need that next level, but I would proffer that they've been
13 provided to defense counsel and that it's Mr. Lorquet's voice.

14 THE COURT: Okay. Any objection to Government's
15 Exhibits 1 through 8 coming in for purposes of this hearing?

16 MR. BELL: None, Judge.

17 THE COURT: Okay. Then they'll all be admitted.

18 (Government Exhibits 1-8 in evidence)

19 MR. BAILYN: Thank you, Your Honor.

20 THE COURT: That completes the government's
21 presentation?

22 MR. BAILYN: Yes, Your Honor. There's no more evidence
23 that we would introduce.

24 THE COURT: Okay. Well counsel, if you would like the
25 opportunity to argue beyond your papers, please do. I will

1 confess that I don't know that I understand, Mr. Bell, what you
2 just elicited. I don't know how to quite contextualize it. So
3 if either of you want the opportunity to further explain the
4 evidence that you've presented? Okay.

5 MR. BELL: So Judge, I think you're asking about the
6 last line of questioning I asked in rebuttal, and I brought that
7 up specifically in response to questions that the government
8 asked of Mr. Lorquet.

9 If you'll recall, Mr. Bailyn was asking Mr. Lorquet
10 about the conversations with his mother about Count 9, or the
11 aggravated identity theft count, as is sort of being a sticking
12 point, and I believe I'm using his terms, not mine.

13 And I think what Mr. Bailyn was getting at is
14 Mr. Lorquet, apparently in the calls, was upset about having
15 pled to that count. And as you heard here today, he suggested,
16 or stated overtly, that he doesn't even know the victim of the
17 identity theft. This accountant, whose name and letterhead the
18 evidence and the discovery shows was used to help facilitate,
19 obtain one of the loans at issue in the indictment.

20 And given that the government brought this up and given
21 that the government brought this up as a motive or sort of
22 intertwined with the defendant's reasons for wanting to withdraw
23 the plea, I just wanted to elicit evidence that on Friday
24 afternoon they've provided extensive Brady showing that this
25 alleged victim is actually a fraudster, apparently, and was

1 involved in numerous, or at least a number of, fraudulent PPP
2 loans, something that seriously calls into question whether
3 she's really a victim of my client's so-called identity theft.
4 And I understand the court's question, like, where is this
5 coming from, but it's my attempt to respond to that line of
6 questioning.

7 THE COURT: Okay.

8 MR. BELL: To show that apparently there are real
9 questions as to whether my client committed that offense at
10 Count 9 which is aggravated identity theft. And if that's true,
11 we could then understand why someone would be really upset about
12 having pled to the offense.

13 THE COURT: Okay. All right. Mr. Bailyn, is that
14 accurate? Was there a Brady disclosure made on Friday
15 afternoon?

16 MR. BAILYN: I don't consider it to be a Brady
17 disclosure. If anything it was a Giglio disclosure. I've moved
18 to the West Palm Beach office, Your Honor, and while in West
19 Palm Beach I've taken on a new investigation.

20 During this investigation, on Thursday I received grand
21 jury subpoena returns and produced them to Mr. Bell on Friday.
22 They contain bank records, and I also have some PPP applications
23 that were submitted on behalf of the aggravated identity theft
24 victim. There's no evidence that's been provided to the defense
25 that these applications are fraudulent.

1 Now, one could surmise that it's because he's receiving
2 them as part of a government investigation, I have suspicions
3 that they may be. But the defense cannot make any argument
4 these are necessarily fraudulent applications. There's no
5 evidence of that. Regardless --

6 THE COURT: Hold up. Before you move past the
7 "regardless", you turned them over why? You just characterized
8 it as a Giglio disclosure.

9 MR. BAILYN: Sure. Because it shows that the victim of
10 this -- of the aggravated identity theft in this case had
11 received monies from people who I believe are involved in PPP
12 fraud. I consider that to be --

13 THE COURT: Doesn't sound like a leap.

14 MR. BAILYN: Oh no, I consider that to be relevant and
15 that's why I produced it.

16 THE COURT: Okay. Oh, I'm trying to be so careful
17 about what I say next.

18 I'm going to just ask it this way. Notwithstanding
19 that disclosure and where you are, your position is the same in
20 this case; is that accurate?

21 MR. BAILYN: In terms of the opposition to the motion
22 to withdraw?

23 THE COURT: Yes.

24 MR. BAILYN: Yes, Your Honor.

25 THE COURT: And do you need additional time to assess

1 that?

2 MR. BAILYN: I need additional -- for the purposes of
3 the motion to withdraw, I don't need additional time to assess
4 that. The defendant has admitted to these facts. The theory of
5 my case in West Palm Beach is not mutually exclusive with the
6 defendant being guilty of aggravated identity theft. A person
7 can be both a perpetrator and a victim. It happens quite
8 frequently in these cases because people become involved in
9 criminal rings and their information gets used in ways that they
10 never intended.

11 MR. BELL: May I be heard, Judge?

12 THE COURT: Sure.

13 MR. BELL: So Judge, as I understand it, and -- some of
14 these other persons that the government has identified as having
15 been involved with this accountant, who is the victim in Count 9
16 in our case, are suspected, and I believe there's evidence of
17 their involvement in the loans in this case as well. In other
18 words, the evidence here is even taken in light favorable to the
19 government as it relates to the fraud counts is that my client
20 received PPP loan funds based on applications submitted for his
21 benefit in which other people very obviously were involved.
22 These other people, apparently, are now being investigated in
23 another matter with Ms. Davis, the alleged victim of identity
24 theft in this case. In other words, Davis and these other
25 persons are suspected of and are being investigated for PPP loan

1 fraud, and it really does, I think, call into question whether
2 the victim in Count 9 is really a victim.

3 Now, to be fair to Mr. Bailyn, you know, he's still
4 investigating it.

5 THE COURT: Well, that's my point about the additional
6 time question. Again, I want to be crystal clear, I have no
7 opinion, and certainly not enough of a factual basis to have an
8 opinion. My question is only whether or not, in light of the
9 fact that this came to issue on Thursday and today is Tuesday --

10 MR. BELL: It's actually Friday, Judge.

11 THE COURT: To Mr. Bailyn.

12 MR. BELL: Yeah.

13 THE COURT: Whether or not, and there being no fire, we
14 need -- the royal we -- need additional time.

15 MR. BAILYN: Your Honor, in fact I would be willing, if
16 there was a way for him to withdraw the plea as to the
17 aggravated identity theft, I've spoken with my supervisors, I
18 would have no objection to that.

19 THE COURT: This sounds like you all need some time. I
20 don't know if that was news to Mr. Lorquet, I don't know. At a
21 bare minimum -- I'm going to step outside for a minute and give
22 you all a minute. Okay? Just holler to Ms. Williams if you
23 want to resume the hearing right now, if you want to see me
24 again in a week, just please take a minute.

25 MR. BAILYN: I'm sorry, Your Honor. I thought you said

1 when you need more time, I thought you were referring to the US
2 Attorney's Office, not defense counsel.

3 THE COURT: I meant collectively.

4 MR. BAILYN: I'm sorry. I misunderstood.

5 THE COURT: I'm just going to be in the other room. I
6 want to make sure I heard you. Again, not my fiefdom to help
7 you guys negotiate a resolution to this case. Please take me at
8 face value when I say that.

9 But did I just hear you say, Mr. Bailyn, that your
10 office has no objection to Mr. Lorquet withdrawing his guilty
11 plea as to Count 9?

12 MR. BAILYN: Yes, Your Honor.

13 THE COURT: Okay. Did Mr. Lorquet just hear you say
14 that?

15 MR. BELL: He did, Judge. And I don't want to get into
16 attorney-client communications.

17 THE COURT: I don't either. No. Ditto.

18 MR. BELL: I have no problem with Mr. Bailyn.

19 THE COURT: Ditto.

20 MR. BELL: He's been transparent in turning over
21 documents --

22 THE COURT: I hear you, Mr. Bell.

23 MR. BELL: -- throughout the case. So i don't want
24 this record to seem like, even though I may disagree with some
25 of the arguments that he just made, I don't want it to seem like

1 he's been sort of underhanded and unfair in any way whatsoever.

2 THE COURT: I don't think there's anything that would
3 suggest that. I just want to make sure that there's been --

4 MR. BELL: Agreed.

5 THE COURT: -- some thought, particularly -- I guess
6 the part that would just have me confused and when I come back
7 out I may still have questions on if it isn't resolved, is
8 whether I should understand that the government only partially
9 opposed the motion to withdraw if the government doesn't oppose
10 his withdrawal to Count 9. Don't answer that yet. I'm just
11 going to step outside and you guys tell me how you want to
12 proceed okay? Just procedurally. All right? Thank you.

13 MR. BELL: Thank you, Judge.

14 (Brief recess)

15 COURTROOM DEPUTY: All rise. Court is again in
16 session.

17 THE COURT: Okay. Have a seat. Okay. All right.

18 MR. BELL: Judge, so I have a proposal if -- you know,
19 a scheduling proposal if you would hear me. That is that you
20 reschedule a continuance of this hearing, preferably for Tuesday
21 morning of next week if you have it available. And if you do
22 not, then sometime on Monday of next week although Tuesday
23 morning would be the first choice.

24 THE COURT: So I'm on duty next week. The answer is I
25 do, but we would have to do it before 10 a.m. and every day next

1 week is going to be the same.

2 MR. BELL: So if we could do it -- well, assuming
3 counsel's -- I don't know. 10 a.m. is early for Mr. Bailyn.

4 MR. BAILYN: Because I have to come from West Palm
5 Beach. But I'll do it for this hearing.

6 THE COURT: Do you want to check the Brightline
7 schedule?

8 MR. BAILYN: I take the Brightline.

9 THE COURT: But do you want to check the schedule and
10 tell me?

11 MR. BAILYN: Yeah, if you'll give me one moment I can.

12 MR. BELL: So that Tuesday morning would be perfect.

13 THE COURT: Okay. Because alternatively, we could do
14 it at like 11. Like I do my morning calendar and then see you
15 at 11.

16 MR. BELL: That's fine too.

17 MR. BAILYN: I mean, Your Honor, that would definitely
18 be better for me.

19 THE COURT: Okay.

20 MR. BAILYN: Sure.

21 THE COURT: Then I will hold this open, and I will see
22 you both on Tuesday, on Halloween. Halloween morning, 11 a.m.

23 MR. BAILYN: It's fitting. Thank you, Your Honor.

24 THE COURT: Okay. Agent Hernandez, you can be back
25 here with us? Okay. All right. I appreciate it. I will see

1 you on Tuesday morning. Thank you, Counsel.

2 MR. BELL: Thank you, Judge.

3 MR. BAILYN: Thank you, Your Honor.

4 COURTROOM DEPUTY: All rise.

5 (PROCEEDINGS CONCLUDED)

6 * * * * *

7 C E R T I F I C A T E

8 I certify that the foregoing is a correct transcript
9 from the digital recording of the proceedings in the
10 above-entitled matter. Any redaction of personal data
11 identifiers pursuant to the Judicial Conference Policy on
12 Privacy is noted within the transcript.

13 5-24-2024
14 Date

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

I N D E X

WITNESSES

ALL WITNESSES: PAGE:

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Andre Lorquet:

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EXHIBITS

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