

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 23-cr-60173-CR-WILLIAMS

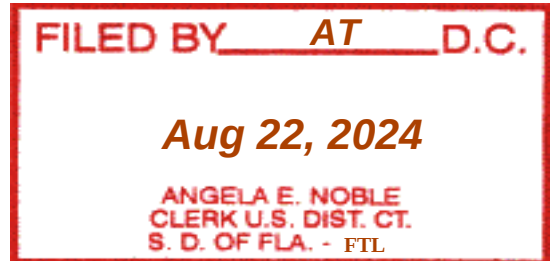
UNITED STATES OF AMERICA,

Plaintiff,

v.

CAROLYN DENISE WADE, and
TRACY D. WADE,

Defendants.



ORDER

THIS CAUSE is before the Court following an order of reference [DE 129] by Senior United States District Judge Donald L. Graham regarding the Government's *ore tenus* motion [DE 113] for a *Garcia* hearing.

On July 15, 2024, I conducted a *Garcia* hearing, pursuant to Federal Rule of Criminal Procedure 44(c), in light of the stated intention for Daryl Elliott Wilcox and Johnny Leonard McCray, Jr. to jointly represent both Defendants. At the start of the July 15 hearing, given that the AUSA assigned to the case was unavailable that day, the Government requested the opportunity to file a memorandum explaining the potential conflicts of interest that could arise from joint representation in this case. While I granted the Government's request to submit its memorandum, I nonetheless proceed with the *Garcia* hearing, after excusing the Government in order to avoid any disclosure of privileged discussions between Defendants and their counsel.

After obtaining a brief extension of time in order to obtain a full transcript of Tracy Wade's testimony from Defendant Carolyn Wade's May 2024 trial, the Government filed that memorandum on July 24, 2024. [DE 108]. The next day, I entered an order finding, based on

their responses to my inquiries at the *Garcia* hearing, that the Defendants had knowingly, intelligently, and voluntarily waived the potential conflicts of interest that could arise out of defense counsels' joint representation of the Defendants and that the Defendants had knowingly and intelligently waived their right to conflict-free counsel. [DE 116]. While acknowledging that the Court (and the Defendants) did not have the benefit of the Government's memorandum and the transcript of Mr. Wade's testimony at the *Garcia* hearing, I found that the Court adequately addressed with the Defendants the potential conflicts raised in the Government's memorandum, albeit with less specificity than the Government's memorandum articulates. *Id.* at n. 2. Nevertheless, the Court has re-referred the Government's motion for a *Garcia* hearing to me to ensure that the Defendants are aware of the facts and arguments made in the Government's memorandum and that they have considered that information in deciding whether to waive their right to conflict-free counsel.

Accordingly, it is hereby:

ORDERED AND ADJUDGED that the parties shall confer and determine three dates and times at which counsel and both Defendants are available to conduct a further hearing before me. The parties shall thereafter contact my courtroom deputy in order to schedule that further hearing.

It is further **ORDERED** that, prior to the further hearing, defense counsel shall provide both Defendants with both the Government's Memorandum in Connection with Rule 44(c) *Garcia* Hearing [DE 108] and the transcript excerpts of Tracy Wade's testimony attached thereto [DE 108-1]. Defense counsel shall ensure that both Defendants have thoroughly read both the Government's memorandum and the transcript excerpts prior to the hearing. At the hearing the Court will ask each Defendant to confirm whether they have read the Government's

memorandum and the transcript. The Court will also give the Government an opportunity to further explain its concerns regarding potential conflicts. The Court will thereafter conduct a further colloquy of the Defendants regarding whether they wish to proceed with joint representation and whether they wish waive their right to conflict-free counsel.

DONE and ORDERED in Chambers at Fort Lauderdale, Florida, this 22nd day of August, 2024.



JARED M. STRAUSS
UNITED STATES MAGISTRATE JUDGE