

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION
CASE NO. 23-cr-60173-KMW-1, 2

UNITED STATES OF AMERICA, Miami, Florida
Plaintiff, August 12, 2024
vs. 1:03 p.m. - 1:17 p.m.
CAROLYN DENISE WADE and Pages 1 to 11
TRACY D. WADE,
Defendants.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: DAVID A. SNIDER, ESQ.
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STENOGRAPHICALLY REPORTED BY:
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Southern District of Florida
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13:03:25 1 THE COURT: Good afternoon, Counsel. We are having a
13:03:28 2 status conference. I will explain what occasioned this status
13:03:30 3 conference.

13:03:30 4 I have three cases to get tried with a limited number
13:03:34 5 of trial days in October and November. So the dates that we
13:03:42 6 are going to set are going to be permanent dates with no
13:03:47 7 continuances. I don't have the luxury of having six or seven
13:03:52 8 cases on one docket, and I can interchange freely. So please
13:03:57 9 give us all of your updated information. We'll call the Wade
13:04:06 10 case first

13:04:07 11 COURTROOM DEPUTY: Calling case 23-criminal-60173,
13:04:12 12 *United States versus Carolyn Denise Wade.*

13:04:16 13 Counsel, state your appearances for the record,
13:04:19 14 starting with the Government.

13:04:19 15 MR. SNIDER: Good afternoon, your Honor. For the
13:04:22 16 Government, you have Assistant United States Attorneys David
13:04:25 17 Snider and Derek Zacca.

13:04:28 18 THE COURT: Good afternoon.

13:04:32 19 MR. ZACCA: Good afternoon, Judge.

13:04:35 20 MR. WILCOX: Good afternoon, your Honor. For Carolyn
13:04:35 21 Wade and Tracy Wade, this is Daryl Elliott Wilcox.

13:04:40 22 MR. McCRAY: Good afternoon, Judge. This is Johnny
13:04:43 23 McCray, Jr. I'm here on behalf of Tracy and Carolyn Wade,
13:04:47 24 also.

13:04:47 25 THE COURT: Good afternoon, again, Everyone.

13:04:52 1 In this case, of course, the parties are aware that I
13:04:59 2 issued an order to show cause. I have received a response.

13:05:03 3 In your absence, Mr. Wilcox and Mr. McCray, your case
13:05:08 4 was scheduled for October 7th. And I'm hopeful we can get
13:05:18 5 this case tried in six or seven days. I believe the last
13:05:24 6 case, including receipt of the verdict, took five days. I'm
13:05:30 7 speculating that with two defendants the case can be tried, at
13:05:35 8 least, in seven days.

13:05:38 9 What are your comments in this regard, Counsel?

13:05:43 10 MR. SNIDER: Judge, on behalf of the Government --
13:05:46 11 this is David Snider -- that sounds accurate, and that's a
13:05:52 12 reasonable expectation.

13:05:54 13 THE COURT: All right. Thank you.

13:05:58 14 Mr. Wilcox and Mr. McCray?

13:06:10 15 MR. MCCRAY: This is Johnny McCray. Judge, I concur,
13:06:14 16 six or seven days.

13:06:16 17 MR. WILCOX: Your Honor, this is Daryl Wilcox. I
13:06:20 18 have nothing to add.

13:06:22 19 THE COURT: All right. Mr. Wilcox, we received word
13:06:27 20 that your were -- been incapacitated. We're glad to have you
13:06:31 21 on the line, and you sound well. And I'm assuming all is
13:06:35 22 well.

13:06:36 23 MR. WILCOX: Well, Judge, to be honest with you, I am
13:06:38 24 about 70 percent. I'm still recovering.

13:06:40 25 THE COURT: All right. Let's see. We have -- this

13:06:52 1 case is going to start on October 7th. I don't foresee any
13:06:58 2 issues, Mr. Wilcox.

13:07:00 3 What about your position?

13:07:03 4 MR. WILCOX: Your Honor, I could be fully healed in
13:07:09 5 about two weeks -- Well, I shouldn't say fully healed. I
13:07:16 6 could be about 100 percent in about eight weeks.

13:07:19 7 THE COURT: You're going to be real trouble at 100
13:07:24 8 percent, Mr. Wilcox.

13:07:27 9 All right, Gentlemen. I don't know that there's
13:07:32 10 anything else that we need to discuss in this case.

13:07:41 11 MR. WILCOX: Your Honor, we have the motions that
13:07:43 12 we're contemplating filing by next Monday. That would be the
13:07:52 13 19th.

13:07:54 14 THE COURT: Is that the deadline for filing motions
13:08:01 15 as set in the original scheduling order arrangement?

13:08:06 16 MR. WILCOX: Do we have a scheduling order, Judge?

13:08:09 17 THE COURT: Well, you don't have a scheduling order,
13:08:10 18 but you do have a discovery order, which includes the setting
13:08:16 19 of motions, as I recall. The standing discovery order -- and
13:08:25 20 remind me. Does the standing discovery order have a deadline
13:08:29 21 for motions?

13:08:30 22 MR. SNIDER: Judge, this is David Snider.

13:08:32 23 I don't think that it does. I think that the local
13:08:37 24 rules provide that any motion shall be filed within -- I think
13:08:45 25 it's 45 days of first appearance. But the Government would

13:08:57 1 consent to a briefing schedule where motions could be filed.
13:09:03 2 If defense counsel wants to file them by next week, that's
13:09:07 3 fine with the Government.

13:09:09 4 THE COURT: So you want -- defense is requesting that
13:09:14 5 motions be filed on what date, Counselor?

13:09:20 6 MR. WILCOX: Your Honor, we're going to have all of
13:09:23 7 our motions in by next Monday.

13:09:29 8 THE COURT: So that would be the 19th. All right.
13:09:32 9 So motion deadline is the 19th.

13:09:36 10 And, Government, what are you requesting for a
13:09:39 11 response?

13:09:42 12 MR. SNIDER: Well, I think we usually get two weeks
13:09:47 13 under the -- 14 days under the rules. I don't know how many
13:09:51 14 motions they're planning on filing. We haven't conferred yet.
13:09:56 15 So I guess we'll -- we'll take the two weeks under the rules,
13:10:01 16 and if we need more time, I'll ask the Court for more time,
13:10:07 17 depending on the content of the motions and how many there
13:10:10 18 are.

13:10:10 19 THE COURT: What are you contemplating, Defense?

13:10:12 20 MR. MCCRAY: You mean what motions are we
13:10:15 21 contemplating filing?

13:10:16 22 THE COURT: Yes, sir.

13:10:18 23 MR. MCCRAY: Your Honor, we're thinking about filing
13:10:20 24 two motions to dismiss, one based off (indiscernible)
13:10:24 25 prosecution, another one based on the violation upgrade in the

13:10:30 1 first trial. And we're probably going to get filed a
2 (indiscernible) request.

13:10:39 3 THE STENOGRAPHER: Counsel, I didn't hear --

13:10:39 4 THE COURT: When you say in the first trial, I'm not
13:10:42 5 sure I'm clear. The first trial ended in a hung jury. We're
13:10:46 6 getting ready to start the second trial, and I assume you are
13:10:51 7 going to make some specific requests as to the second trial.

13:10:56 8 So what is the theory there?

13:11:05 9 MR. WILCOX: The theory is that -- the theory, your
13:11:09 10 Honor, that we're contemplating -- and we're probably going to
13:11:14 11 file it -- is that during the first trial there was graded
13:11:21 12 material that was not identified. In fact, it was identified
13:11:25 13 sort of, ambiguously as a general discovery, we thought. And
14 it should have been identified as (indiscernible) --

15 THE STENOGRAPHER: Excuse me. It should have been
16 identified as what, Counsel. I'm having a hard time hearing
17 you.

18 MR. WILCOX: First of all, this is Daryl Wilcox,
19 Madam Court Reporter.

13:11:55 20 We discovered -- it appeared that there were material
13:12:02 21 that were disclosed at the 11th hour in the first trial that
13:12:12 22 we're saying is clearly Brady but identified it in generic
13:12:18 23 discovery response.

13:12:25 24 THE COURT: All right. Well, I'm sure you will clear
13:12:29 25 up your theory, Mr. Wilcox, in the motion --

13:12:33 1 MR. WILCOX: Yes, sir.

13:12:34 2 THE COURT: There is added in that, I'm not sure in
13:12:38 3 any event, that the first trial would have an impact with
13:12:41 4 respect to the second defendant. But please be specific in
13:12:47 5 your motion so I can fully follow your argument and determine
13:12:53 6 if any relief is appropriate or not.

13:12:58 7 So I think what we will do, just to be clear, we will
13:13:03 8 issue a scheduling order, including the dates that you
13:13:08 9 mentioned today, along with any other matters that we need to
13:13:14 10 entertain. We'll probably have a pretrial conference just
13:13:21 11 before the trial. And if there are any unique evidentiary
13:13:28 12 issues, be sure to have those ready for some argument during
13:13:34 13 our pretrial conference. And keep in mind motions in limine
13:13:41 14 are not motions that should be filed during the normal motion
13:13:48 15 process. So if there's something that's not evidentiary
13:13:54 16 that's something that's unique, you should make sure you file
13:13:57 17 it in accordance with the dates that we have already
13:14:01 18 discussed.

13:14:08 19 MR. McCRAY: Judge, before we conclude -- I know
13:14:11 20 Mr. Wilcox mentioned the 19th, Monday.

13:14:13 21 Can we have until the 21st, Wednesday, two extra
13:14:17 22 days, Judge?

13:14:17 23 THE COURT: No. The problem, Counsel, is time is
13:14:20 24 fleeting.

13:14:20 25 MR. McCRAY: No problem.

13:14:22 1 THE COURT: We don't want to be up against the
13:14:25 2 deadline. I have a couple of other cases. And I have a lot
13:14:29 3 pending on my docket. I would think that being a Senior Judge
13:14:35 4 I wouldn't have as much, but, I don't know, for some reason I
13:14:40 5 seem to attract these cases that have hung juries and
13:14:44 6 otherwise. So I really need to get your motion so that we can
13:14:48 7 take adequate time to get them decided, and I appreciate you
13:14:54 8 getting everything filed timely.

13:14:55 9 MR. MCCRAY: No problem, Judge.

13:14:56 10 MR. SNIDER: Judge, this is David Snider.

13:14:59 11 Are you setting a deadline for motions in limine? I
13:15:03 12 mean, the Government anticipates one motion in limine,
13:15:06 13 anticipates renewing the motion that is filed as to the -- as
13:15:12 14 to Carolyn Wade in the first trial, which the Court granted.
13:15:16 15 I am going to renew that motion as to both defendants.

13:15:20 16 THE COURT: Tell me, once again, the relief
13:15:23 17 requested.

13:15:24 18 MR. SNIDER: So I don't have it in front of me, but I
13:15:27 19 can generally say that the Government was asking to exclude
13:15:32 20 any evidence of lender negligence as it related to the PPP
13:15:42 21 program. There was an argument about -- it was -- you know,
13:15:47 22 any jury nullification argument, the defense never --

13:15:52 23 THE COURT: Jury nullification is obviously not
13:15:55 24 allowed.

13:15:57 25 MR. SNIDER: Right.

13:15:58 1 THE COURT: So what I suggest you do is file that
13:16:02 2 motion now --

13:16:03 3 MR. SNIDER: Okay.

13:16:03 4 THE COURT: -- so we can get it resolved early, and
13:16:06 5 we won't be trying to reach issues at the very last minute.
13:16:11 6 So if it's really just a repetition of what you filed
13:16:16 7 previously, then your work is done, and you can simply re-file
13:16:21 8 it, to the extent it will relate to both defendants.

13:16:24 9 MR. SNIDER: Yes. We'll do that.

13:16:25 10 And the second -- I haven't discussed this with
13:16:28 11 defense counsel yet. I don't think -- well, I'm not sure what
13:16:32 12 their position will be. But, obviously, the Government is
13:16:35 13 going to ask the Court to exclude any reference to the first
13:16:38 14 trial or to a hung jury or to a mistrial, anything to that
13:16:43 15 effect.

13:16:43 16 MR. WILCOX: Now, Judge -- this is Daryl Wilcox.

13:16:50 17 Now, your Honor, there may be instances where we have
13:16:53 18 transcript of witnesses from the first trial, and it may be
13:16:57 19 that I will refer to the first trial of another proceeding.

13:17:03 20 THE COURT: That would be appropriate, Mr. Wilcox,
13:17:08 21 perhaps: You testified in a prior proceeding.

13:17:10 22 MR. SNIDER: Yes.

13:17:11 23 THE COURT: Then ask your question in accordance with
13:17:14 24 the impeachment or whatever the point is with respect to the
13:17:19 25 prior testimony.

13:17:22 1 MR. WILCOX: Thank you, your Honor.

13:17:24 2 MR. SNIDER: Judge, that's --

13:17:27 3 THE COURT: We will get you a scheduling order within
13:17:32 4 the next few days. And we appreciate your cooperation.

13:17:34 5 Thank you very, much Counsel.

13:17:38 6 And get to 100 percent quickly, Mr. Wilcox.

13:17:41 7 MR. WILCOX: Thank you, your Honor.

13:17:42 8 THE COURT: We were concerned about you.

13:17:45 9 All right. Have a good day, Gentlemen.

10 (The proceedings adjourned at 1:17 p.m.)

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C E R T I F I C A T E

I certify that the foregoing pages represent a true and correct transcript of the above-styled proceedings as reported on the date, time, and location listed.

This hearing occurred via Zoom Video Communications platform and is, therefore, subject to the technological limitations inherent in remote communications.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was reported, and further that I am not financially nor otherwise interested in the outcome of the above-entitled matter.

DATE: 4/23/25 /s/Mary Ann Casale, RDR, FPR-C, CLR, CSR-IL
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