IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

- - - - - - - - - - - - - - - - - x
THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

KEITH BERMAN,

Defendant.
- - - - - - - - - - - - - - - - - x

Criminal Action No.
1:20-cr-00278-TNM-1
Wednesday, March 15, 2023
1:18 p.m.

TRANSCRIPT OF STATUS CONFERENCE
HELD BEFORE THE HONORABLE TREVOR N. McFADDEN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

THE COURTROOM DEPUTY: Your Honor, this is Criminal Case 20-278, *United States of America vs. Keith Berman*. Can the parties please introduce yourselves starting with the government.

MR. FENTON: Good afternoon, Your Honor; Christopher Fenton and Kate McCarthy for the United States.

THE COURT: Good afternoon, folks.

MR. COLLINS: For the defense, Your Honor; Kevin Collins from Covington. We just entered our appearance I think yesterday. I'm joined by a couple of my Covington colleagues, Elizabeth Ertle, Nick Xenakis, and we're also pleased to be joined by Shelli Peterson from the federal defender's office as well.

THE COURT: Good afternoon, folks.

All right. And good afternoon, Mr. Berman.

Why don't we -- Ms. Peterson, are you looking to withdraw at this point, or are you going to continue on?

MS. PETERSON: Your Honor, I will remain on the case, but Covington & Burling will be taking over.

THE COURT: All right. Well, I'm happy to have all of you on the case. Thank you for your presence here.

I think the main thing we should discuss, now that we have clarity of defense counsel, is the trial schedule. We've got a trial scheduled for the week of July 10th.

Mr. Collins, does that date still work for defense?

MR. COLLINS: It does not, Your Honor. We had a brief phone call with the government lawyers yesterday where we tried to explore schedules between counsel, obviously subject to the Court's approval, but I have a -- I do a number of these cases.

I have a murder trial in Rockville the week after the initial date, so I know that this date would run over, so there's an immediate conflict.

In addition, we -- I think we've received, you know, 400,000 pages worth of discovery yesterday, so we have some work to do.

And so we'd be looking to move and continue the trial date.

THE COURT: And how long do you think you would need, Mr. Collins?

MR. COLLINS: Well, I have a series of these cases, including a two-week or an eight-day trial in Rockville in the middle of September. So the dates we were looking at, Your Honor, were end of October, end of November.

THE COURT: All right. Well, what's the government's position on that?

MR. FENTON: Thank you, Your Honor.

The government -- just for the record, the government strongly believes that the case should proceed to trial on July 10th. Covington is obviously one of the most sophisticated, largest, resource-rich law firms in the country, in the world. We think that they can certainly prepare for a trial that's four months away.

It's our understanding that it's only -- that there are four Covington attorneys who are staffed to this matter, plus the First Assistant Federal Public Defender. Only one has a conflict in July, which leaves the other four that do not. And it's our understanding that counsel is new. They have not done any work on this case yet. There's no institutional knowledge, and as far as we're aware. You know, Mr. Collins is not an indispensable member of this team.

And the other thing I would note is that Covington, being as large as it is, has 700 attorneys in D.C. to choose from who could also be staffed in this case, and 1,300 worldwide.

So given the history of this case and the fact that, you know, we have been waiting to try this case for a very long time, and given Covington's ability and resources, we think that it would be appropriate to go to trial on July 10th.

But if Your Honor were to disagree with that, we

can certainly discuss alternative dates and availability.

THE COURT: Well, Mr. Collins, I think Mr. Fenton just made a big plug for your law firm there. I certainly -- you know, I think some of the points are -- do not persuade me, but I think he's right that you all obviously have just joined the case, and there are multiple attorneys present.

MR. COLLINS: Your Honor --

THE COURT: It would be helpful for me to understand a little more why we're talking late fall. That feels longer than I was expecting, and frankly longer than I'd like to go.

MR. COLLINS: I'm happy to explain, Your Honor, and elaborate.

So I do a number of these cases with younger litigators as a means of professional development. I've done, I don't know, probably 50 criminal felony trials in federal and state court. I'm in charge of this matter. I'd be the lead Covington lawyer. I do think I'm indispensable.

I have murder trials scheduled for April, May, June, one starting in July in Charles County on the 17th. I have a family wedding in August, a two-week trial essentially in September.

We're just getting into the case, and while I recognize that we have hundreds of lawyers, a hundred

lawyers haven't entered their appearance in this case.

I had discussions with the government yesterday. We've had discussions with the federal defender. We're happy to jump into this case, but there's got to be some recognition that we have other cases that we're staffed on and other things, and it's not 1,700 lawyers jumping into this case.

THE COURT: Yes, I recognize that, sir. What two weeks in September are you in trial?

MR. COLLINS: It's the 18th and the 25th. It's a multidefendant murder trial in Rockville before McCally.

THE COURT: All right. So I'm looking at right after Columbus Day, October 10th. Is there any reason you couldn't be ready then?

MR. COLLINS: My preference -- I'm not -- the answer is I could be ready. My preference is October 30th, but if the Court's inclined to make it on the 10th, I guess we'll make it work.

THE COURT: Mr. Fenton -- well, actually, Ms. Peterson, does that work for you?

MS. PETERSON: Yes, Your Honor. Either of those dates work for me. My recollection was someone -- I thought the government had a conflict that week, which is why we were looking at October 30th.

THE COURT: All right. I haven't gotten to them

yet.

Mr. Fenton.

MR. FENTON: Yes, Your Honor, and I just -- I really do want to underscore and emphasize for the Court the fact that the prosecutors who will be trying this case have really scheduled their time, their other trials, around this July trial date, so Mr. Reilly and myself, for example, we have a trial in Miami in September. It begins September 11th. We have a trial in Hawaii, which probably sounds more fun than it will be, which begins on October 17th.

So the date that we would be available -- we could do a trial in November, which, again, is not what we want to do. But what I would hate to happen is to have these -- you know, we've scheduled these other trials around the July date. I'd hate to now have this trial move to now conflict with those because I do anticipate that those other trials will go at that time.

MS. PETERSON: I'll point out, Your Honor, that Mr. Fenton -- as Mr. Fenton has noted, the government has more lawyers working for it than Covington has, and perhaps Mr. Fenton is the one who is not indispensable.

THE COURT: All right. All right.

I understand the government's frustration. I also -- I think there have been some very unusual circumstances here.

Ms. Peterson knows anyway I like to move things along. I try to keep firm dates. But we've had the defendant's health situation that has obviously been out of anybody's control, and, you know, his former attorneys have also -- are no longer available also, you know, through no fault of the defendant. So I think under the circumstances it's not really fair to hold the defense to the July date, and I think I indicated to Ms. Peterson that I recognized we needed to be flexible with that when I asked her to step in.

So my -- yeah, I feel like I have a lot of dates, trials, in 2023, but I have not booked out to November yet.

So what's your -- what date are you suggesting, Mr. Fenton? Recognizing that I'm denying your -- well, I'm granting the defense motion for a continuance.

MR. FENTON: I appreciate that, Your Honor.

We did have a conversation with defense counsel, and I think that November 27th, which is the Monday following -- the week following Thanksgiving, would be a good time for us to start.

I believe it was agreeable for everybody.

THE COURT: All right. Of the very few things I do have scheduled, I have an Administrative Office of the Court meeting a couple of days in the following week, and I wouldn't want to disrupt the trial there.

So I can either start on the 11th of December or

we can move it back earlier in November. What's your preference?

MR. COLLINS: Your Honor, I have a hard conflict the 15th, 16th, and 17th of November, and that's sort of where we ended up on the 27th. So if it has to be December 11th, right before the holidays, I guess that's what we'll do.

If it works for Your Honor and obviously government.

THE COURT: Yeah, Mr. Fenton, if we do the second half of -- actually, what I'd do is plan to pick a jury on Friday, December 8th, and we'd get started then -- well, I'd want us to be ready to start on the 8th, but really looking to the next couple of weeks for trial.

Does that work for the government?

MR. FENTON: Yes, Your Honor.

THE COURT: All right. So I'm granting what I understand to be the defense motion for a continuance.

Am I correct on that, Mr. Collins?

MR. COLLINS: Yes, Your Honor.

THE COURT: All right. I am granting the defense motion for a continuance in light of the fact that we now have new attorneys on the case. We're scheduling the trial date for Friday, December 8th, at 9:00 a.m. in Courtroom 2.

Let's push back to a -- pick some other dates

right now.

How about -- did you -- are you available on November 17th for a pretrial conference, Mr. Collins? I think you said you were not available.

MR. COLLINS: I am not. On the 15th, 16th, and 17th I'm actually out of the country.

THE COURT: Okay. So how about July -- I'm sorry, November 13th at 10:00 a.m.? Does that work for a pretrial conference for the government?

MR. FENTON: Yes, Your Honor.

THE COURT: And for the defense?

MR. COLLINS: It works for Covington.

THE COURT: Ms. Peterson?

Great. All right. So we'll set a pretrial conference for November 13th.

I think I'm not going to -- that is still a significant ways from now. I'm not going to set intermediate dates. I think maybe the attorneys can be discussing a briefing schedule that makes sense to the parties in light of that, but at this point I think let's just set another status conference in maybe about a month and see where things are, and we can go from there.

I think we have a status conference set April 28th at 10:00 a.m. Am I correct about that, Mr. Fenton?

MR. FENTON: Yes, Your Honor.

THE COURT: All right. So, Mr. Collins, does that still work for defense?

MR. COLLINS: It works for me, Your Honor, and we'll get the Covington team to be present.

THE COURT: And, Ms. Peterson, does that still work for you?

MS. PETERSON: Yes, Your Honor.

THE COURT: Okay. So I think I'll just leave things where they are, and we'll come back on April 28th to discuss intermediate schedules.

I take it, Mr. Fenton, you're making sure that discovery is getting over to new defense counsel?

MR. FENTON: Yes, Your Honor. I'm happy to report that we've already provided discovery.

THE COURT: Great.

All right. Mr. Fenton, do you have a motion?

MR. FENTON: I do, Your Honor. The government moves to exclude time under the Speedy Trial Act from July 10th to December 8th in the interests of justice because of the complexity of the case and to allow the defense adequate time to prepare for trial.

THE COURT: Mr. Collins?

MR. COLLINS: No objection, I think.

Is that right, Ms. Peterson?

MS. PETERSON: Yes.

THE COURT: All right. I think it is appropriate for us to toll the speedy trial clock until December 8th in light of the defense continuance, including the need for a new defense team to get up to speed on the trial, and frankly the defense counsel's schedule, which I think is an appropriate justification under the speedy trial clock to toll. I understand why Mr. Berman wants to be able to take advantage of Mr. Collins's services, and I also understand Mr. Collins has a busy schedule. I think it is appropriate for the clock to toll until December 8th, and I find that the interests of justice outweigh the interests of the public and the defense in a speedy trial to the extent that I will toll until the 28th.

Mr. Collins, anything further for defense?

MR. COLLINS: Not today, Your Honor. Thank you very much.

THE COURT: Thanks, folks. I will see you on April 28th.

MR. COLLINS: Thank you, Your Honor.

MR. FENTON: Thank you.

(Whereupon the hearing was concluded at 1:34 p.m.)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, LISA A. MOREIRA, RDR, CRR, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

NOTE: This hearing was held remotely by Zoom or some other virtual platform and is subject to the technological limitations of court reporting remotely.

Dated this 5th day of June, 2024.

/s/Lisa A. Moreira, RDR, CRR
Official Court Reporter
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