IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff,	) Criminal Action No. 20-cr-278
vs.	) BOND REVOCATION HEARING
Keith Berman, Defendant.	) Washington, DC) April 11, 2023) Time: 10:05 a.m.

TRANSCRIPT OF BOND REVOCATION HEARING
HELD BEFORE
THE HONORABLE JUDGE TREVOR N. McFADDEN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

For Plaintiff: **Christopher Fenton**
Katherine McCarthy
Matthew Reilly
U.S. Department of Justice
1400 New York Avenue, NW
Washington, DC 20530

For Defendant: **Michelle Peterson**
Office of Federal Public Defender
625 Indiana Avenue, NW, Suite 550
Washington, DC 20004
Kevin Collins
Nick Xenakis
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001

Pretrial Services: Christine Schuck

Court Reporter: Janice E. Dickman, RMR, CRR, CRC
Official Court Reporter
United States Courthouse, Room 6523
333 Constitution Avenue, NW
Washington, DC 20001
202-354-3267

* * * * * * *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 versus Keith Berman*.

From pretrial, Officer Christine Schuck.

Counsel, please come forward to identify yourselves for the record, starting with the government.

MR. FENTON: Good morning, Your Honor. Christopher Fenton, Kate McCarthy, and Matt Reilly for the United States. And with us here we have U.S. Postal Inspector Kevin Powers.

THE COURT: Good morning, folks.

MR. COLLINS: Good morning, Your Honor. Kevin Collins, from Covington & Burling, joined by my colleagues Elizabeth Ertle, Nicholas Xenakis, and our co-counsel Michelle Peterson from the Public Defender's Office.

THE COURT: And we have Mr. Berman appearing by video conference. Mr. Collins, have you discussed with your client proceeding virtually -- well, his virtual appearance for purposes of today's hearing?

MR. COLLINS: Yes, Your Honor. And, in fact, he's joined by an assistant federal defender, Jon Aminoff, from the Central District in California.

THE COURT: Am I correct, Mr. Berman, that you want to proceed virtually for today's bond revocation hearing?

THE DEFENDANT: Yes.

THE COURT: Mr. Collins, have you also had an

opportunity to talk with your client about potentially transferring this case to California?

MR. COLLINS: Yes, Your Honor. We -- we're inclined to move the case to California. We've talked to the government about it. And, so, given the medical conditions and everything else, we would propose doing that.

THE COURT: Okay. I haven't done this before -- well, what's your understanding of what that process looks like and what standard needs to be met?

MR. COLLINS: I don't have a good understanding of that, Your Honor. This is something that -- we've had a difficult time communicating with Mr. Berman. He's in the hospital. We can't call him. He's called us a few times over the last couple weeks. That's among the reasons we want to move the case. We will stay on it as counsel, but I don't have a good answer for Your Honor right now.

THE COURT: All right. Mr. Fenton, do you know?

MR. FENTON: I do, Your Honor. The motion would have to be made to the defendant. It would be pursuant to Rule 21(b). And the government -- we just spoke to counsel about this issue for the first time yesterday, early afternoon; late morning, early afternoon. So we have still not formulated a position.

The government's concern, of course, is now that we have a firm trial date, now that the defendant is in custody,

you know, we see a clear path toward proceeding the trial on December 8th, particularly given the medical records that were recently submitted, which seem to confirm that the defendant is okay and getting the treatment that he requires. But, we have not formulated a position yet. So it may be the case that the government opposes it and -- opposes any such motion and seeks to proceed in this court on December 8th.

THE COURT: All right. So let me tell you what my instinct is, is that we give you all, I'm thinking, about a week to figure out -- I guess my instinct is not to proceed with a revocation hearing, if this is going to another judge elsewhere. I think that that judge should make the decision. I know things have been moving a little quickly for everyone and, so, I guess my instinct is to continue this, maybe for about a week, to give the defense an opportunity to move for transfer and for the government to formulate its view on whether or not transfer would -- whether they would consent to it. Does that make sense to you, Mr. Collins?

MR. COLLINS: Just -- that works for the defense. We'll file an appropriate motion.

THE COURT: Okay. So just looking at the calendar here -- I don't to leave Mr. Berman just kind of in limbo here indefinitely.

I guess, I would suggest setting -- continuing this hearing for, maybe, 10 a.m. next Thursday, and asking -- is

this -- so, Mr. Fenton, is this something -- do you have to consent or do I hear your view and then decide?

MR. FENTON: My understanding -- and this is subject to us just double checking the law -- but my understanding is that you would hear our view and then decide.

THE COURT: Okay. So how quickly could you file something Mr. Collins?

MR. COLLINS: We will have something in by the end of this week.

THE COURT: Okay. And can I ask -- well, first does next Thursday morning work for continued hearing, sir?

MR. FENTON: Your Honor, it would be preferable if we could do it early the following week, if all -- all things being equal. Perhaps the 24th or the 25th?

THE COURT: I could do 10 a.m. on April 24th.

MR. COLLINS: Your Honor, I'm out of town on the 24th. I'm in town on the 25th.

THE COURT: Okay. On the 25th, 10 a.m. the 25th.

MR. FENTON: Yes, Your Honor. Thank you.

THE COURT: All right. Just so we've got our schedules, we're all on the same page, Mr. Collins is going to file his motion by the 14th. I'll ask the government to file its response, I think would be the appropriate term, on the 20th. And then let's be back together on the 25th. I think -- I'll ask you to have your witness available, to the extent that

you're not consenting. If you're consenting, you don't need to have your witness available. But if you're not, I think I would first hear argument, to the extent we need to hear argument, and then at least give you an opportunity to reply to their opposition. And then if I'm keeping the case, we would move right to the revocation hearing. Does that make sense, Mr. Collins?

MR. COLLINS: Sounds fine, Your Honor.

THE COURT: Does that make sense to you, sir?

MR. FENTON: Yes, Your Honor.

THE COURT: I think we already have the speedy trial tolled, so I don't think there's anything else I need to do at this point. Do you agree, Mr. Fenton?

MR. FENTON: Yes, Your Honor.

THE COURT: And Mr. Collins?

MR. COLLINS: Yes, Your Honor.

THE COURT: Great. Thank you, gentlemen. I'll see you on -- I guess it's Tuesday, April 25th.

MS. PETERSON: Does the Court have something immediately after this? Or could we keep Mr. Berman in a Zoom call for a moment?

THE COURT: I do have something, but it's live -- are we next at 10:30? This went much fast than expected.

MS. PETERSON: If you could put us in a breakout room and I will join and then we'll just sit someplace where we can

talk with him outside of the courtroom, if that works. Thank you, Your Honor.

THE COURT: I'll take a 15-minute break.

* * *

CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, 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.

Dated this 29th day of July, 2024

_____

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
Room 6523
333 Constitution Avenue, N.W.
Washington, D.C. 20001