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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,) Docket No. 03 CR 11
)
Plaintiff,)
)
v.) Chicago, Illinois
) April 22, 2004
MATTHEW HALE,) 12:15 o'clock p.m.
)
Defendant.)

VOLUME 12
TRANSCRIPT OF PROCEEDINGS - TRIAL
BEFORE THE HONORABLE JAMES T. MOODY, and a jury

APPEARANCES:

For the Government: HON. PATRICK J. FITZGERALD
United States Attorney, by
MS. VICTORIA J. PETERS
MR. M. DAVID WEISMAN
Assistant United States Attorneys
219 South Dearborn Street
Chicago, Illinois 60604

For the Defendant: DURKIN & ROBERTS, by
MR. THOMAS ANTHONY DURKIN
MR. PATRICK W. BLEGEN
53 West Jackson Boulevard
Suite 615
Chicago, Illinois 60604

ALEXANDRA ROTH, CSR, RPR
Official Court Reporter
219 South Dearborn Street
Room 1744-A
Chicago, Illinois 60604
(312) 294-0134

1 (The following proceedings were had in open court outside
2 the presence of the jury:)

3 THE COURT: I received the following message from this
4 jury. "Judge Moody, may we have a flip chart and markers in
5 order to write notes slash a time line on the wall. In
6 parenthesis and scotch slash masking tape, end of parenthesis.
7 Thank you."

8 Guess who.

9 MR. WEISMAN: Mark Hoffman.

10 THE COURT: Good. My response is to give it to them
11 with the following message: "Members of the jury, I received a
12 note from you that requests a flip chart, markers, scotch slash
13 masking tape. In response I am furnishing you with the
14 requested items." Enter April 22, 2004, signature line and my
15 signature.

16 Any objection?

17 MR. WEISMAN: None by the government.

18 MR. DURKIN: No.

19 THE COURT: Is it on its way?

20 MR. WEISMAN: It's on its way, your Honor.

21 THE COURT: I take it I should ask this on the record,
22 the defense does waive the presence of the defendant at this
23 little session?

24 MR. DURKIN: Yes.

25 THE COURT: Thank you.

1 (Defendant entered the courtroom.)

2 (Brief pause.)

3 THE COURT: Do we have markers?

4 MS. PETERS: We have markers.

5 THE COURT: Flip chart?

6 MS. PETERS: And flip chart.

7 THE COURT: Mr. Durkin, could you look at it and see
8 if it's okay?

9 No inappropriate wording on it? What does it say on
10 the back?

11 MR. DURKIN: "Great Lakes Center, 12th Floor."

12 THE COURT: Is it okay to give that?

13 MR. DURKIN: I think so.

14 THE COURT: Any doubt about it?

15 MR. DURKIN: No.

16 THE COURT: How about the government?

17 MS. PETERS: No, it's fine.

18 THE COURT: How about the tape and markers? Okay?

19 MS. PETERS: We are thrilled.

20 MR. DURKIN: Fine with me.

21 THE COURT: Greg if you could give that to the CSO
22 along with my instruction, or response rather. I think we are
23 done. Thank you.

24 (Recess until 3:30 o'clock.)

25 THE COURT: Counsel, I just received another note from

1 this jury and it reads as follows: "Judge Moody, we need all
2 Court transcripts related to the witness Jon Fox." And then in
3 parenthesis, "whenever he was in court being questioned by the
4 government or the defense, end of parenthesis. Thank you.
5 Mark Hoffman."

6 I intend to give them the transcript as requested.
7 Any objection to that?

8 MS. PETERS: No.

9 MR. BLEGEN: No.

10 THE COURT: The court reporter has furnished you with
11 a transcript of Jon Fox's testimony. But she has indicated
12 that there may be other testimony included in one of the
13 booklets that contain his testimony. Can you please go through
14 it --

15 MR. WEISMAN: Yes, your Honor.

16 THE COURT: -- and delete everything or take
17 everything out that does not pertain to Jon Fox, as far as his
18 personal testimony is concerned.

19 I intend to give that transcript with the following
20 response: "Members of the jury, I have received a note from
21 you that requests the transcript of the testimony of witness
22 Jon Fox. In response I am furnishing you with a written
23 transcript of his testimony. Keep in mind that you should
24 consider this testimony together with all the other evidence.
25 Do not consider it by itself, out of context. Consider all the

1 evidence together as a whole." Today's date, my signature.

2 Any objection to that?

3 MS. PETERS: No.

4 MR. BLEGEN: No.

5 THE COURT: Thank you.

6 MR. WEISMAN: Judge, there is a problem in the
7 transcript.

8 THE COURT: What is that?

9 MR. WEISMAN: I am looking at page 68, line 16, of
10 Volume 6. I will read you the question. It's cross-
11 examination of Mr. Fox -- or I'm sorry. Maybe -- she didn't
12 say it's cross. Questioning of Mr. Fox.

13 The question is, "But you do have a lawyer now,
14 correct?"

15 The answer is, "Yes, Mr. Blegen was appointed from the
16 Public Defender's Office."

17 And I can tell you Mr. Blegen was not appointed by
18 the --

19 THE COURT: I don't think that was --

20 MR. WEISMAN: It's Brayman.

21 MS. PETERS: Should be Brayman B-r-a-y-m-a-n.

22 THE COURT: It's just a typo, right? Or what she
23 heard.

24 MR. WEISMAN: Right. And the only reason, I wouldn't
25 even care. It's going to confuse the heck --

1 THE COURT: How are you going to straighten it out?

2 MS. PETERS: Maybe we just need to have the transcript
3 corrected.

4 THE COURT: Does that appear any other place?

5 MR. WEISMAN: I think that would be the only time the
6 question was asked.

7 THE COURT: Can you put a little sticky on that, and
8 we will have the court reporter take it back and have a new
9 page printed out with that correction.

10 Maybe what we should be doing while the jury is
11 deliberating, if these transcripts are already done of other
12 witnesses, counsel you jointly go through them all and get them
13 ready.

14 (Brief pause.)

15 THE COURT: Here is what happened. I have another
16 note from the jury. It reads as follows: "Hello, Judge Moody.
17 I am sure we are not going to reach a decision today. Can we
18 retire the day? Can the door at 4:15?"

19 I think I understand the intent. They want to go home
20 at 4:15. Anybody disagree with that?

21 MS. PETERS: No.

22 THE COURT: Signed Lucy Davenport and?

23 MS. PETERS: Mark Hoffman.

24 MR. BLEGEN: Did one of the earlier notes say that Ms.
25 Davenport was the foreperson?

1 THE COURT: No, it just said Lucy Davenport. Nobody
2 has told me who the foreperson is. I have no clue. Do you?

3 MR. BLEGEN: No. That's why I was asking. I thought
4 it was her at first since she wrote the first note, but the
5 next one came from Hoffman.

6 THE COURT: We talked about that too. Maybe they have
7 joint forepersons.

8 MR. BLEGEN: We didn't prohibit that in the
9 instructions.

10 THE COURT: No. We have inquisitive minds.

11 Here is what I am going to do. I am going to bring
12 them out, if you have no objection to this, give them the
13 following evening recess instructions. You tell me if you
14 disagree with this.

15 "Given the hour and the note that I have just
16 received, we are about to take a recess for the evening. And I
17 remind you of the instruction I have been giving you at all
18 overnight recesses throughout this trial. During this recess
19 you must not discuss this case with anyone, including your
20 fellow jurors, members of your family, people involved in the
21 trial, or anyone else. If anyone tries to talk to you about
22 the case, please let me know about it as soon as possible. Do
23 not read, watch or listen to any news reports of this trial.
24 Finally, when you arrive back here in the morning, you must not
25 discuss the case with your fellow jurors until all 12 of you

1 are present and have reassembled in the jury room. You are to
2 return tomorrow morning at 9:00 a.m."

3 Any objection?

4 MS. PETERS: No.

5 MR. BLEGEN: No. I'd just like Mr. Durkin to be here.
6 I will call him. He can be over here in five minutes, if you
7 are going to bring the jury out.

8 THE COURT: I am.

9 MR. BLEGEN: Are you going to bring them out right
10 now?

11 THE COURT: Pretty soon.

12 MR. BLEGEN: I will get him over here.

13 THE COURT: Please.

14 (Brief pause.)

15 THE COURT: During this recess, I have been informed
16 by the court reporter that the other transcripts are not yet
17 completed. I will instruct counsel to do what you are now
18 doing with Fox with the testimony of Ms. Fox, with the
19 testimony of Evola, and who else you might anticipate they will
20 want. Those are the ones that I can anticipate that they will
21 want. Because what I am going to do is, you are going to go
22 down to wherever the court reporters are, and you are going to
23 go through this and make sure that they are done to your
24 satisfaction so that we don't waste time tomorrow doing what
25 you are presently doing with Jon Fox's stuff.

1 MR. WEISMAN: That's fine. We will do that. For the
2 record that there -- we did not have the volume of Mr. Fox from
3 April 13, 2004. We didn't have it. We have our copy but not a
4 copy with the redacted sidebars. So we have got that. We have
5 gone through that, identified there aren't any sidebars. We
6 have reviewed.

7 THE COURT: I don't really need to know all that. All
8 I need to know tomorrow morning at 9:00 o'clock is that all
9 those transcripts are in excellent condition or in condition to
10 your satisfaction and the defense's satisfaction, so that when
11 they make this request they will get it. I don't care where it
12 comes from, how it comes. It just has to be to your
13 satisfaction.

14 I am instructing you to have Ms. Fox and Mr. Evola's
15 as well. That's a joint project.

16 MR. WEISMAN: We will have Mr. Durkin work on.

17 (Brief pause.)

18 THE COURT: Mr. Durkin, the latest note that we
19 received from the jury indicates to us that they wish to retire
20 for the day. And we have agreed that that will happen under
21 proper instruction.

22 MR. DURKIN: That's fine. How does the note read?

23 THE COURT: It reads as follows: "Hello, Judge
24 Moody." Has a date at the top. "I am sure we are not going to
25 reach a decision today. Can we retire the day." I don't know

1 how we can do that, but I think I get the sense they want to go
2 home. "Can the door at 4:15." We are supposed to can the
3 door. We can do that. But I think they want us to let them go
4 home by 4:15. Signed Lucy Davenport and?

5 MR. DURKIN: We have a co-foreman, Mark Hoffman?

6 THE COURT: Can we do that?

7 MR. DURKIN: I am going to move for a mistrial because
8 they are clearly not following your instruction.

9 THE COURT: I never told them they couldn't have
10 co-foremen. Never. I never had it happen, through. Have you?

11 MR. DURKIN: No, very interesting.

12 THE COURT: Can we get the jury in here and I will
13 admonish them and they can do whatever they have to do.

14 (Jury entered the courtroom.)

15 THE COURT: Please be seated.

16 Ladies and gentlemen, given the hour and considering
17 your most recent request, we are about to take a recess for the
18 evening. I remind you of the instruction I have been giving
19 you at all overnight recesses throughout this trial. During
20 this overnight recess, you must not discuss this case with
21 anyone. That includes your fellow jurors, members of your
22 family, people involved in this trial, or anyone else. Just
23 can't do that. Don't let anyone discuss it with you or in your
24 presence. Can't do it. If anyone tries to talk to you about
25 this case, let me know as soon as you can. Do not read, watch,

1 or listen to any reports of this trial.

2 And finally, when you arrive back here in the morning,
3 you must not discuss this case with your fellow jurors until
4 all 12 of you are present in the jury room and have reassembled
5 to continue with your deliberations. All 12 of you have to be
6 there before you can start these deliberations again.

7 You are to return here tomorrow morning at
8 9:00 o'clock. The marshal will now escort you back to the jury
9 room to get your belongings and have a nice evening. See you
10 tomorrow morning.

11 (Jury exited the courtroom.)

12 THE COURT: The response to the request for Jon Fox's
13 transcript of his testimony is going to be modified because I
14 have to change the date. That's the only modification. We
15 have agreed to everything else.

16 And again, jointly go through and perfect the
17 transcripts of the testimony of Evola, Ms. Fox and anyone else
18 that you jointly can anticipate this jury may want so we don't
19 waste time like we are wasting time here. We are not wasting
20 time, but we are taking time unnecessarily if we can do it.
21 Fine.

22 MR. WEISMAN: In advance, okay.

23 MR. DURKIN: Scruggs would be my other suggestion, if
24 they are doing it methodically.

25 THE COURT: They are. They are going count by count,

1 it appears to me.

2 MR. DURKIN: That's what it sounds like. Therefore, I
3 suggest Scruggs.

4 THE COURT: You might want to get Scruggs. That's
5 short. That won't be very long.

6 MR. WEISMAN: We will do that as well.

7 (Trial adjourned until the following day, April 23, 2004,
8 at the hour of 9:00 o'clock a.m.)

9 CERTIFICATE

10 I HEREBY CERTIFY that the foregoing is a true, correct
11 and complete transcript of the proceedings had at the hearing
12 of the aforementioned cause on the day and date hereof.

13
14 Alexandra Post
15 Official Court Reporter
16 U.S. District Court
Northern District of Illinois
Eastern Division

4-23-04
Date

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