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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

19 Cr. 830(AT)

5 TOVA NOEL and MICHAEL THOMAS,

6 Defendant.

7 -----x

Conference

8 January 30, 2020
9 11:00 a.m.

10 Before:

11 HON. ANALISA TORRES,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

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Attorney for Defendant Thomas

24 BY: MONTELL FIGGINS

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(Case called)

THE COURT: Good morning. We are here in the matter of the United States v. Tova Noel and Michael Thomas.

Would you make your appearance, please.

MS. LONERGAN: For the government, Jessica Lonergan. With me at counsel table are my colleagues Nicholas Roos and Rebekah Donaleski. Good morning, your Honor.

MR. FOY: May it please the court, your Honor, Jason Foy, for Ms. Tova Noel, standing to my right. Also with me at counsel table is associate counsel Eric Sagara. Good morning, your Honor.

MR. SAGARA: Good morning, your Honor.

MR. FIGGINS: Good morning your Honor. Montell Figgins on behalf of Michael Thomas, representing my client, who stands to my right.

THE COURT: I understand that the defense is requesting that I adjourn the trial because of the volume of discovery. I will hear you on that.

MR. FOY: Yes, your Honor. We are asking that the trial date of April 20, 2020, be moved to sometime in October or a date thereafter that's convenient to the court. The reason for the request is because it is necessary in order to provide an adequate and effective assistance of counsel. Why? Yes, because of the voluminous discovery. But also because of the amount of time it is going to take for us to conduct our

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1 own investigation, which can't really fully get started until
2 we appreciate what information has already been provided.
3 That's really the crux of the reason.

4 Now, I noted in the government's opposition, although
5 they agree that some adjournment is warranted, I guess the
6 issue is of how long the adjournment should be. The defense is
7 in the best position to assess how much time we need to perform
8 our important function on behalf of our clients. I say that
9 because we are not making a request for the purpose of simply
10 delaying the proceedings. We are doing it because it is
11 actually necessary to accomplish our goals as counsel.

12 Also, which I did not reference in my letter, is it
13 also takes into account my trial schedule, at least why my
14 request was. Last week, I was scheduled to start a trial
15 before Judge Ramos in 40 Foley Square in July. And part of
16 what I discussed with Judge Ramos in setting that trial date
17 was that I knew that this trial may need to be accommodated in
18 some way. He selected July 20 for that date mostly because of
19 the court's availability at that time. That's also part of the
20 reason. And in that particular case, my client's been
21 incarcerated for almost two years. He is facing a mandatory
22 life sentence. So I do need to spend some of my time getting
23 ready for that as well, and I expect that to be our trial date.

24 THE COURT: What's the date?

25 MR. FOY: What's the date?

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1 THE COURT: In July.

2 MR. FOY: July 20 for that trial.

3 So really it's so we can perform our functions, and of
4 course there are other things going on as far as
5 responsibilities, and that would give us sufficient time to be
6 ready. It is not an unreasonable request. To say a case that
7 started on November 19, 2019, to be tried in less than a year I
8 don't think is an unusual circumstance. I don't think anyone
9 can say it is delayed justice. My client, who is free, she is
10 not incarcerated, so we don't have any of the interests of an
11 incarcerated defendant who wants to get a speedy trial. It is
12 necessary, not an option, not just something we just feel like.
13 This isn't about us laying back, taking our time. It's about
14 doing a diligent job. In order to do that, we do need the
15 time, and I would ask that you grant the request.

16 THE COURT: How long is the Judge Ramos trial?

17 MR. FOY: The government represented that they expect
18 it to be about two weeks.

19 THE COURT: Starting on July 20 you said, yes?

20 MR. FOY: That's correct.

21 MR. FIGGINS: Your Honor, I also join in the motion.
22 The court has had a chance to read my letter with respect to
23 requesting an adjournment. It is very early for us at this
24 point even to have a full appreciation as to what's going to
25 happen in this matter. I have only had the discovery for

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1 approximately two weeks. It's going to take -- I think there
2 was at least 25 witness statements that we not only need to
3 review, but then we need to try and follow up and maybe contact
4 those witnesses. There are some people who were incarcerated,
5 may have been released. There are numerous things that must be
6 done in terms of at least us tracking down specific details
7 that our clients are demanding that we do in their defense.

8 It took the federal government 90 days to investigate
9 this case and to come up with an indictment. Accordingly, a
10 law firm with one or two attorneys, without the resources of
11 all the federal agencies, it is going to take us more than 90
12 days to do the same amount of work. So I don't think that it
13 is an unreasonable request.

14 Not to mention, I believe that if the court were not
15 to grant some type of an adjournment, we are going to find
16 ourselves back here again, but the defense will just be in a
17 better position to give you more specifics as to why we need
18 more time *à la* maybe we can't track down this witness or we
19 spoke to this witness and now we have to find another one.
20 There are numerous things like that that I think would come
21 about, and that's why we would try and suggest to give the
22 court a bird's eye view of that early on, so that maybe we can
23 delay -- or avoid having to come back repeatedly just to make
24 those additional requests.

25 Additionally, your Honor, I do believe that there is a

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1 high likelihood that I'm going to file a motion to dismiss the
2 indictment based on selective prosecution. I do believe that
3 if certain portions of that motion are granted, then that's
4 going to entitle the defense to additional discovery that we
5 haven't even received yet.

6 So with the request that we are asking for, we are
7 also having an opportunity to kind of see -- I know kind of the
8 things that are going to happen or potentially will happen, so
9 instead of just trying to come back here three or four times to
10 say this is happening, we can kind of just do this now and
11 realize that that motion will probably be filed. That may
12 create other issues with respect to discovery.

13 Also, your Honor, I have also made a specific request
14 under Rule 16 that the defense wants whatever investigation was
15 done and whatever information there is that is discoverable
16 with respect to the Inspector General's report. It is my
17 position that we are entitled to that information. It is an
18 investigation of the same incident. It is an investigation of
19 the circumstances with which my client is being charged. With
20 that being said, I do think that we are entitled to whatever
21 information was generated in those reports, so I believe that
22 also is going to cause a delay in the trial wherever we go with
23 that issue.

24 THE COURT: We already addressed that the last time.

25 (Pause)

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1 THE COURT: I will hear from the government.

2 MS. LONERGAN: Yes, your Honor. As we put in our
3 written submission to the court, we agree that a brief
4 adjournment is appropriate, but we do not think that a
5 six-month adjournment is necessary or warranted.

6 First, the amount of discovery in this case is not
7 particularly voluminous nor complex in light of the cases tried
8 in this district; and, in addition, the further investigation,
9 I want to focus the court on the facts that are going to be at
10 issue in this trial occurred over a 14-hour period. It is true
11 that, as part of our discovery, we provided information outside
12 of that 14-hour period, anticipating many of the types of
13 requests that the defense counsel has already begun to make.
14 But again, your Honor, this is a very focused, single-incident
15 indictment that is about what happened over the period of 14
16 hours. A much larger investigation about, for example, the
17 working conditions at the MCC, it is just not relevant to what
18 is going to be the issues on trial here.

19 I want to also touch on something that plaintiff said
20 about the need to interview witnesses. As we explained to the
21 court, we have done something that's unusual here, which is
22 that we have provided witness statements with our initial
23 discovery almost four months in advance of trial. As the court
24 is aware, we typically provide what we call 3500 material much
25 closer to trial. So the need to review those witness

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1 statements and interview additional -- interview those
2 witnesses, that can't possibly weigh in favor of an adjournment
3 when in fact the defense counsel has so much more time with
4 those materials than they would in a typical trial schedule
5 where they might have those materials just a few weeks before
6 trial, your Honor.

7 So for those reasons, we think that we are hard
8 pressed to identify areas of additional investigation that
9 would touch on the 14-hour time period that is going to be at
10 issue in this trial; and so, for those reasons, while we agree
11 that a short adjournment is warranted, that six months is not
12 required. We do understand of course that that may be
13 difficult with Mr. Foy's trial schedule with having the July
14 trial, but it seems like there may be a possibility of putting
15 this trial before Mr. Foy's July trial and still giving him
16 sufficient time to prepare for both.

17 THE COURT: And how long do you expect this trial to
18 go?

19 MS. LONERGAN: Your Honor, if this trial is confined
20 to that 14-hour time period, setting aside jury selection, I
21 can't imagine it lasting more than a week.

22 THE COURT: Okay. The trial is set for June 8.

23 With respect to the motion to dismiss, the motion is
24 due on March 9, opposition is due by April 6, and the reply is
25 due on April 20.

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1 Are there any further applications?

2 MR. FIGGINS: Yes, your Honor. You said we dealt with
3 the issue with respect to the Investigator General's report.
4 This court has never addressed it at all. You never said
5 anything with respect to that. So I just want to make that
6 clear. Do I need to file a motion with respect to that?

7 THE COURT: You may file a formal motion.

8 MR. FIGGINS: Thank you.

9 THE COURT: Anything further?

10 MR. FIGGINS: Your Honor, can I have an additional two
11 weeks? Can we push the motion schedule back at least an
12 additional two weeks? Because I have my 80-something-year-old
13 relative coming to visit me from February 23 through March 1,
14 so I kind of won't be working during that time. So if you
15 could just make it like -- if you could make it something
16 around like the 18th or the 21st.

17 THE COURT: All right, then. You can file your motion
18 by March 20.

19 How long does the prosecution need to oppose?

20 MS. LONERGAN: Your Honor, three weeks, please.

21 THE COURT: So the prosecution will file opposition on
22 April 10, and the reply will be April 24.

23 Is there anything further?

24 MS. LONERGAN: Yes, your Honor, at this time the
25 government moves to exclude time between now and the trial

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1 date, which has now been set for June 8, for the following
2 reasons:

3 It will allow the parties to discuss potential
4 pretrial dispositions, to allow defense counsel to review the
5 discovery, make and file motions, the court to resolve those
6 motions, and for the defense counsel to conduct the additional
7 discovery that they have been discussing today in court.

8 MR. FOY: Your Honor, I don't oppose the government's
9 position.

10 I wanted to just go back to one thing. I understand
11 you have ruled. I accept that it is June 8. Hopefully there
12 are no delays because I anticipate being out of the country --
13 we haven't set a specific date, but I'm traveling with family
14 at the end of June. So if there is any delay, that could be an
15 issue.

16 THE COURT: You are talking about leisure travel?

17 MR. FOY: Well, leisure. My family, first-priority
18 travel. That's what it is. So I don't know if it's just
19 leisure. It is not business, but it is the business of having
20 family business.

21 THE COURT: Well, you should work your family schedule
22 around your professional obligations, counsel.

23 MR. FOY: Well, if there is a delay in the
24 professional schedule of trial, because it is not unusual for
25 sometimes there to be delays, because if we start a week later

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1 for some reason, then it's going to create a conflict.

2 THE COURT: You will not be starting a week later. We
3 are starting on the 8th of June.

4 MR. FOY: Okay. Here is the issue. The government
5 has represented to you that this is just about a 14-hour
6 period. I suspect that, when the trial comes around, that the
7 only thing that won't come up during the trial is the 14-hour
8 period, right? Because it's not as if we are not here because
9 of other things having nothing to do with the defendants in
10 this case, and the working conditions at MCC are directly
11 related to why things happened in that 14-hour period. The
12 years of conduct, the culture of the institution, the failures
13 in security measures beyond counts.

14 We have been provided with three videos of the 192
15 that exist. In the SHU there are nine video cameras. Only one
16 has been produced, and it shows almost nothing. And why that
17 is, the circumstances, what it means, is relevant.

18 So maybe it will be a one-week trial. That's
19 possible. But what I am trying to avoid is some type of
20 conflict that we can see now that -- you know, because, you
21 know, I understand professional obligations, but if I had to
22 choose between family and my professional obligations, it's --

23 THE COURT: All right. Well, counsel, I am directing
24 that you be here on June 8 to start trial.

25 MR. FOY: I will be here.

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1 THE COURT: That is my order.

2 MR. FOY: And I will be here. I just don't want there
3 to be any delay that creates that issue.

4 MR. FIGGINS: Your Honor -- sorry to cut you off.

5 Your Honor, I'm thankful Mr. Foy said that about the
6 family vacation. I am actually going to be in Italy on a
7 cruise June 1 through June 14. We fly back on the 15th of
8 June.

9 THE COURT: And you just forgot about it?

10 MR. FIGGINS: Your Honor, I don't keep my social
11 calendar. Luckily he said that and I realized that in June we
12 do have a cruise scheduled, and I didn't even know the date, so
13 I had to find out just now.

14 THE COURT: When do you return?

15 MR. FIGGINS: The 15th, and I don't even know what day
16 of the week that is, but . . .

17 THE COURT: We will start on the 22nd of June.

18 MR. FOY: Well, Judge, that's the time I was just
19 talking to you about. Right? That I'm trying to make
20 arrangements to travel with my family. Right?

21 THE COURT: Well, I understand that it is desirable to
22 have family time, but you also have an obligation to zealously
23 represent your client, and so we are going to start on the
24 22nd.

25 MR. FOY: So I don't understand. I mean, I have no

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1 problem zealously representing my client, and I will do so. If
2 my daughter is going to be in Italy, ironically, and my wife
3 and my other daughter are going to travel there at the end of
4 her program so we can spend time, how is that an issue for us
5 to take that into consideration in a professional setting?
6 Like, I don't understand.

7 THE COURT: Counsel, you will use Skype. Is there
8 anything --

9 MR. FOY: No, no, no, no, no, no, no, no.

10 THE COURT: Is there anything further?

11 MR. FOY: I'm not going to use --

12 THE COURT: Counsel, I have heard enough. Is there
13 anything further?

14 MR. FOY: Well, look, I'm not --

15 THE COURT: Sit down, counsel.

16 MR. FOY: Can I be heard?

17 THE COURT: You will sit down.

18 MR. FOY: And then be heard from the seat?

19 THE COURT: No. You will sit down.

20 Is there anything further unrelated to the vacation
21 plans --

22 MR. FOY: This is not just vacation, your Honor.

23 THE COURT: Counsel, I have had it. Now, you sit down
24 and stop --

25 MR. FOY: Before --

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1 THE COURT: -- with this nonsense.

2 MR. FOY: Before I sit down, your Honor --

3 THE COURT: No.

4 MR. FOY: -- you said June 8.

5 THE COURT: Counsel, I have directed --

6 MR. FOY: My co counsel --

7 THE COURT: -- you to sit down.

8 MR. FOY: My co-counsel says --

9 THE COURT: Sit down, counsel.

10 MR. FOY: -- he has vacation and --

11 THE COURT: Sit down.

12 MR. FOY: -- we are going to interrupt --

13 THE COURT: Sit down.

14 MR. FOY: -- my family --

15 THE COURT: Counsel.

16 MR. FOY: -- obligations --

17 THE COURT: Counsel.

18 MR. FOY: -- for a nonviolent --

19 THE COURT: Sit down, counsel.

20 MR. FOY: -- criminal case with no mandatory jail --

21 THE COURT: Counsel, sit down.

22 MR. FOY: -- that's not even --

23 THE COURT: Sit down.

24 MR. FOY: -- based on their conduct?

25 THE COURT: Sit down.

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1 MR. FOY: It's based on what some other man did?

2 THE COURT: Counsel, you don't have a jury here. Stop
3 performing.

4 MR. FOY: No. I'm not -- there is no jury here. I'm
5 trying to address the unfairness --

6 THE COURT: Sit down.

7 MR. FOY: -- of proper consideration of a
8 professional --

9 THE COURT: You are trying my patience, counsel. Sit
10 down.

11 All right, then. The matter is adjourned.

12 MS. LONERGAN: Your Honor, sorry. We are going to
13 amend our application to exclude time now until June 22, which
14 is the date the court has now set for trial for the reasons we
15 previously stated on the record.

16 THE COURT: The matter is adjourned until June 22.
17 The time is excluded under the Speedy Trial Act for the reasons
18 already stated by the prosecution.

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