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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA, )  
 )  
v. ) Docket No. 5:19-CR-106(1)-DAE  
 )  
BENJAMIN BOGARD, ) San Antonio, Texas  
 ) February 7, 2019  
Defendant. ) 3:32 p.m. to 3:59 p.m.  
\_\_\_\_\_)

TRANSCRIPT OF DETENTION HEARING  
BEFORE THE HONORABLE HENRY J. BEMPORAD  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:  
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Proceedings reported by electronic sound recording. Transcript  
produced by computer-aided transcription.

1 (Open court at 3:32 p.m.)

2 THE COURT: Good afternoon. Please be seated.

3 Calling the case of SA:19-MJ-131. And that's United States  
4 of America versus Benjamin Bogard.

5 If I could have announcement of counsel, please.

6 MS. THOMPSON: Good afternoon, Your Honor. Tracy  
7 Thompson appearing on behalf of the United States.

8 THE COURT: Good afternoon.

9 MR. MORRIS: Good afternoon, Your Honor. Mike Morris  
10 on behalf of Mr. Bogard.

11 THE COURT: All right. Good afternoon again,  
12 Mr. Morris.

13 We're set for preliminary and detention hearings at this  
14 time; is that correct?

15 MR. MORRIS: We are ready to waive preliminary, Your  
16 Honor.

17 THE COURT: All right. And just turn to the question  
18 of detention?

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: All right. Very well. I don't know if  
21 you have that form, but my staff will provide you one.

22 MR. MORRIS: Very good, Your Honor.

23 THE COURT: All right. Turning to the question of  
24 detention in the case, let me ask if I can see counsel up here  
25 for a moment, please.

1 MR. MORRIS: Yes, Your Honor.

2 (At the bench)

3 THE COURT: I don't see pretrial here so -- but I  
4 talked to Andy about it, and he reported to me that he's  
5 concerned that the gentleman has an undiagnosed mental  
6 condition. I have the right to know what the diagnosis of the  
7 mental condition is before I can -- before we proceed. I don't  
8 know what y'all's views is, or maybe you know about this,  
9 Mr. Morris --

10 MR. MORRIS: We do.

11 THE COURT: -- more than I do.

12 MR. MORRIS: So we did some work. And so our  
13 proposal -- Laurel Ridge, a private treatment facility here in  
14 Bexar County, up on 1604 --

15 THE COURT: Yeah, I know --

16 MR. MORRIS: -- because his dad is retired military  
17 and qualifies for Tri-Care, they are entitled to full coverage  
18 at Laurel Ridge except for this initial five-day lockdown  
19 period.

20 So what we propose is, as a condition of his release on  
21 bond, he would be committing to a voluntary period of five-day  
22 lockdown at Laurel Ridge, at the end of which they make a  
23 recommendation, either lockdown hospitalization to continue or  
24 not a danger to self, not a danger to --

25 THE COURT: Whatever it might be. And then we can

1 figure --

2 MR. MORRIS: And then he goes home on conditions of  
3 release that the Court --

4 THE COURT: Whatever they might be.

5 MR. MORRIS: Now, the other way that can happen is, of  
6 course, the Court can always order the three-day lockdown  
7 observation period that the Texas statute allows. And we  
8 talked a little bit about that with the AUSA, that if the -- if  
9 the case agent wanted to, the case agent can sign an affidavit  
10 that commits him to a three-day lockdown.

11 But because the five-day observation period's a little bit  
12 better situation and because he's willing to volunteer for  
13 that -- you volunteer in. You can't volunteer out, is what we  
14 confirmed. And I've got the father who can testify. He went,  
15 spent the time at Laurel Ridge today. They would tell him  
16 exactly how much time he needs after that, but at least the  
17 initial period is the determination period.

18 THE COURT: And y'all's view may be that he has to be  
19 detained no matter what. He's a young kid, and undiagnosed  
20 concerns me. But I'll hear from you certainly about anything  
21 you'd like to say about that, because I've heard it's pretty --

22 MS. THOMPSON: The videos of the danger to the  
23 community, the mass violence threats --

24 THE COURT: Yeah.

25 MS. THOMPSON: -- that first got the attention of the

1 FBI concern me.

2 THE COURT: Yeah.

3 MS. THOMPSON: So I'm not okay releasing him -- here's  
4 my bottom line: Sending a 20-year-old kid that's got these  
5 issues to GEO is never going to make him better. He definitely  
6 needs some intensive psychological help. So I don't object to  
7 Laurel Ridge, but I'm not -- I can't let him out of custody for  
8 any reason at this point until we're -- until we're satisfied  
9 that he doesn't create that imminent danger. I mean, right now  
10 there's an imminent --

11 THE COURT: I have to say, I'm in agreement with this.  
12 What I would propose then is getting through the lockdown and  
13 evaluation. They should be able to do that. And then bring  
14 him back into court, and we'll have a hearing to figure out  
15 what we can do at that point. It may or may not be that he  
16 can -- of course, they may say that he's got to be committed  
17 for a longer period of time. I'll need to work that through  
18 with you guys because I also need the competency rulings done  
19 here.

20 MR. MORRIS: Absolutely.

21 THE COURT: But they -- but Laurel Ridge can usually  
22 do that, but there's a lot of complexities here.

23 MS. THOMPSON: Right. Because if they --

24 THE COURT: I would like to try to find a way to make  
25 it work out if everyone can agree. I'm concerned for the

1 reasons you're concerned.

2 MS. THOMPSON: Well, if they say -- if they do the  
3 evaluation and say, in five days, he's fine to go home, I want  
4 a detention hearing.

5 THE COURT: Yeah. Well, no. I --

6 MS. THOMPSON: And given the stuff that I have -- and  
7 we'll share everything we can with Laurel Ridge so they have  
8 it. So I'm assuming they're not going to make that. The  
9 problem is, I get uneasy with the let him out and commit  
10 himself to Laurel Ridge. Now he knows he's going to prison or  
11 facing prison time.

12 THE COURT: Yeah. Yeah. Yeah.

13 MS. THOMPSON: If he was willing to go out in a blaze  
14 of glory a few days ago, now would be the time.

15 MR. MORRIS: Well, and my only concern with that is he  
16 knew for at least eight days that his phone and all the  
17 evidence and everything the government's looking at, materials  
18 was all out there. He's at home and didn't pick up, didn't  
19 leave, didn't go anywhere, didn't try and destroy evidence,  
20 didn't do anything, just waited eight days for them to come  
21 arrest him. I don't see this as a flight risk. I think the  
22 biggest concern we all have is, really we --

23 THE COURT: Whether there's a danger.

24 MR. MORRIS: -- to look at the mental health issue.

25 THE COURT: Yeah. Well, undiagnosed or untreated.

1 MR. MORRIS: I mean, absolutely it has to be looked  
2 at.

3 THE COURT: Okay. Yeah. I would -- my great  
4 preference is if y'all could talk through a way of this  
5 transferring thing. The end game, the after the five days is  
6 easy because I'm just going to set it for a hearing.

7 MS. THOMPSON: Right.

8 THE COURT: And so whatever happens the end of five  
9 days, he's coming back no matter what it is. And so then we  
10 are all here together and we can make a decision together.

11 MR. MORRIS: Sure.

12 THE COURT: This initial transfer stuff, I'm willing  
13 to work with y'all on it --

14 MS. THOMPSON: Yeah.

15 THE COURT: -- if we can come up with some solution  
16 that would work on that. Let me -- if y'all mind, can I take a  
17 short recess, let y'all talk about it? If we can't get it  
18 worked out today, I'm willing to work it out tomorrow. I would  
19 just like to try to get it resolved if we can all agree. If we  
20 can't, we'll go forward with the hearing.

21 MS. THOMPSON: I think we're kind of on the same page.  
22 It's just the details.

23 THE COURT: I share the concerns about being very  
24 controlled until we know what's going on.

25 MR. MORRIS: Okay.

1 THE COURT: And then we can have an informed decision  
2 from all of us.

3 MR. MORRIS: Is there -- and maybe --

4 THE COURT: Yeah.

5 MR. MORRIS: -- I'm asking of ignorance. Is there a  
6 mechanism by which the Court is initially saying he's released  
7 to the parents' custody to be immediately transferred to Laurel  
8 Ridge --

9 THE COURT: Yeah. That's -- well, I need to know,  
10 does Laurel Ridge have a bed?

11 MR. MORRIS: They do.

12 THE COURT: Okay. And then how do we get him to that  
13 bed, the two things I'm concerned about --

14 MR. MORRIS: So do you want the parents transporting  
15 or the marshals?

16 THE COURT: Okay. I'll let -- that's why I want to  
17 take a break, let y'all talk it through. If there's a way for  
18 the marshals to do it -- usually they don't like doing that.  
19 But I'm very -- it has to be controlled, and we have to feel  
20 safe. I would like y'all both to be in agreement. If we can't  
21 reach agreement, then I need to try to figure it out.

22 MS. THOMPSON: The FBI may be willing to do that.

23 THE COURT: If they -- Rex is willing to do it or the  
24 FBI want to, that'd be fine with me, too.

25 MR. MORRIS: [Inaudible] maybe pretrial can do that.



1 THE COURT: Yeah, pretrial -- so here come -- speaking  
2 of.

3 UNIDENTIFIED SPEAKER: Speaking of the devil.

4 THE COURT: There he is. Okay. I'm going to take a  
5 short recess, let y'all all confer about -- we kind of have a  
6 plan, but I'm totally with -- actually, I'm totally with Tracy.  
7 We have to have a hearing before I figure out what on earth  
8 we're going to do. I'm concerned.

9 MS. THOMPSON: Yeah.

10 THE COURT: This is a case that -- I'll be off duty,  
11 but I'm going to keep this one --

12 MR. MORRIS: Okay. Thank you.

13 THE COURT: -- because I've been involved. I don't --  
14 I think it's a mistake to give it to somebody else who  
15 [inaudible]. All right. Very good.

16 MS. THOMPSON: Thank you.

17 (Open court)

18 THE COURT: Mr. Bogard, I've just been talking to the  
19 attorneys, and the pretrial services officer just got here.  
20 I'm going to take a short recess to let them discuss to see if  
21 they can present a proposal to me on how to resolve the case  
22 for the meantime. Take a short recess.

23 (Recess at 3:40 p.m. until 3:51 p.m.)

24 THE COURT: All right. I took a short recess in  
25 Mr. Bogard's case so that the attorneys for each party could

1 consult with the pretrial services officer to see if there's an  
2 agreement that could be reached with regard to the  
3 circumstances of this case.

4 Let me hear from the parties about that.

5 MR. MORRIS: Yes, Your Honor. Mike Morris on behalf  
6 of Mr. Bogard.

7 It's clear from conversations with Laurel Ridge that they  
8 have bed capacity; that they have the ability to structure a  
9 five-day voluntary commitment period for evaluation,  
10 determination of dangerousness, determination of self-harm,  
11 determination of those things that the Court obviously has  
12 concern about when considering a pending decision on bond.

13 The transportation logistics that I think the government  
14 has worked out is that the Court would release Mr. Bogard to  
15 the custody of the FBI to transport there, and then with the  
16 order to return Mr. Bogard to the custody of the FBI upon  
17 receipt of information from Laurel Ridge that they're ready to  
18 testify regarding the evaluation on safety.

19 THE COURT: All right.

20 MR. MORRIS: And that that would happen -- at least  
21 preliminarily we're thinking this is a five-day out day and  
22 setting.

23 THE COURT: All right. Let me -- I think I can do  
24 that. Mr. Morris, let me ask you. I had a -- thought that --  
25 were you out of town next week? Is that --

1 MR. MORRIS: I'll be wherever you need me to be, Your  
2 Honor. I don't believe I have a vacation letter for that week.  
3 I think in March --

4 THE COURT: Well, I think -- oh, okay. All right.  
5 No. Because I thought Kriston had told me that you had tried  
6 to move this hearing up because there was a concern you might  
7 be out of town. But it might have been another case.

8 MR. MORRIS: It was a conflict that I had with another  
9 case that's no longer a conflict.

10 THE COURT: Oh, okay. Got you. All right.

11 MR. MORRIS: We're good to go.

12 THE COURT: Very good. Okay. Great.

13 MR. MORRIS: Thank you.

14 THE COURT: Ms. Thompson, Mr. Morris has indicated  
15 what he understands to be a working agreement for the temporary  
16 release of Mr. Bogard. You in agreement with this plan?

17 MS. THOMPSON: I am, Your Honor. I just hesitate with  
18 the word "release."

19 THE COURT: Yeah.

20 MS. THOMPSON: I know technically the Court has to  
21 release him from the marshal's custody.

22 THE COURT: Yes.

23 MS. THOMPSON: But it's the intention that he will go  
24 from the marshal's custody into FBI custody for the sole  
25 purpose of transportation to Laurel Ridge, where he will be

1 locked down and unable to leave until he is then transported  
2 by -- back into the FBI's custody to be transported back to  
3 GEO.

4 THE COURT: Yeah.

5 MS. THOMPSON: So I -- that will work. The FBI has  
6 confirmed that that will work. And whenever Laurel Ridge is  
7 finished with the evaluation, I will give them -- or I'll give  
8 them the name ahead of time, of the FBI agent. It'll be  
9 Special Agent Rex Miller --

10 THE COURT: All right.

11 MS. THOMPSON: -- that will provide the  
12 transportation. And then we'll have a hearing on the issues of  
13 detention at that time.

14 THE COURT: All right. Very well.

15 Well, to allay your concerns, which I do share because this  
16 is a serious offense and they're circumstances that give me  
17 concern, as I understand it, under 18 USC 3142(i), someone who  
18 is subject to detention, which Mr. Bogard is until such time as  
19 I conclude a hearing in this case, may be released to the  
20 custody of -- it says either a U.S. Marshal or another  
21 appropriate person for such time as is needed for compelling  
22 reason. I find the evaluation is a compelling reason that  
23 would allow me to release Mr. Bogard from marshal custody to  
24 the FBI and Laurel Ridge's custody for this -- a lockdown  
25 evaluation. At the -- he would have to remain in their

1 custody. He can't go anywhere else.

2 And then after that's completed, he could be returned to  
3 this Court so we can try to figure out what to do in the case.  
4 I think that's provided for by statute. And so that's what I'm  
5 going to order. I hope that allays your concerns.

6 MS. THOMPSON: It does, because under the release  
7 conditions under the Adam Walsh Act, he would have to be  
8 equipped with --

9 THE COURT: Yeah. There's all kinds of -- yeah.

10 MS. THOMPSON: -- an electronic monitor. And I don't  
11 know that that's necessary, given he will be -- in effect,  
12 he'll be in custody the entire time.

13 THE COURT: Yeah, yeah. No. This effectively the  
14 temporary transfer to custody of another appropriate person,  
15 Laurel Ridge facility and Mr. Miller -- Agent Miller -- excuse  
16 me.

17 AGENT MILLER: Yes, sir.

18 THE COURT: -- until such time as the Court can figure  
19 out whether I can set release conditions in the case. We're  
20 just not there yet. That's the -- how I'm going to approach  
21 it, if that's all right with you.

22 MS. THOMPSON: And we will provide whatever  
23 information we can to Laurel Ridge to help in the evaluation.

24 THE COURT: All right. All right. And, Mr. Morris,  
25 does this sound okay to you? That's how I'm proposing

1 approaching this matter --

2 MR. MORRIS: It does.

3 THE COURT: -- with the idea that there's going to be  
4 a hearing at the end where everyone has a right to present  
5 evidence before me and testimony as needed to try to figure out  
6 what to do in the case.

7 MR. MORRIS: Let's talk about that for one second.

8 THE COURT: Sure.

9 MR. MORRIS: I need to make sure that my client has  
10 the ability to communicate --

11 THE COURT: Yes.

12 MR. MORRIS: -- with counselors there --

13 THE COURT: Yes.

14 MR. MORRIS: -- without a fear of evidence being  
15 created that's incriminating as far as him. The United States  
16 government is going to provide to Laurel Ridge videos and  
17 things that they've seen online that cause them concern so that  
18 they can have a conversation with my client.

19 My understanding, and based on my conversations with the  
20 AUSA, because this is for evaluation of mental health or  
21 treatment thereof, that these are not evidentiary matters that  
22 can be eventually brought against him for his potential for  
23 incriminating evidence. And I just want to make sure that we  
24 have that understanding on the record so that I'm not asking my  
25 client to not cooperate with his own evaluation.

1 THE COURT: Let me allay fears on that matter as well.

2 MR. MORRIS: Thank you, Your Honor.

3 THE COURT: This is a little bit unusual circumstance.  
4 Sometimes, Mr. Bogard, we'll send someone to be evaluated by  
5 government officials, usually at the Bureau of Prisons. That's  
6 not what's happening here. As I understand it from your  
7 attorney, this is something that's being provided by your  
8 family at their expense.

9 In those circumstances, those people at Laurel Ridge are  
10 acting as the agents of your attorney. All of that is  
11 privileged and confidential information until your attorney's  
12 ready to disclose it. I will tell you, he's going to need to  
13 disclose to me anything about mental health issues. If I don't  
14 have enough information about that, then I'm going to have to  
15 do exactly what I just mentioned, and send you to the Bureau of  
16 Prisons to have an evaluation that everyone can talk about.

17 However, to the extent that you're exchanging personal  
18 information with them, that's privileged until such time as  
19 Mr. Morris releases it. Mr. Morris is going to have to release  
20 as much information as possible, or I'm not going to be able to  
21 make a determination as to detention.

22 So it is privileged. But, Mr. Morris, I think you have  
23 control of that. I will urge you, Mr. Morris, to share as much  
24 information. Just as the government is sharing with you, share  
25 everything with them so we can come to a solution here that --

1 if it is possible to come to a solution -- that we can.

2 Ms. Thompson, you may have some concerns. And I'm happy to  
3 hear from you as to those concerns.

4 MS. THOMPSON: My concern is, unless there's an  
5 agreement to share the information, the entire evaluation with  
6 pretrial services and the Court, so that the Court can --

7 THE COURT: Oh, that's -- that's -- I'll allay --

8 MS. THOMPSON: -- deal with dangerousness, then I'm --  
9 why go through it?

10 THE COURT: I can allay those -- I can allay those  
11 concerns as well. Anything that is disclosed to pretrial  
12 services or to the Court as part of the pretrial services  
13 evaluation must remain confidential and cannot be used as to  
14 guilt or innocence on the case. So yes, they have to be  
15 disclosed to me.

16 I was going a little bit farther than that and saying that,  
17 to the extent you can, disclose everything you can to  
18 Ms. Thompson as we try to work through some sort of solution  
19 here, if possible.

20 I will -- I know, Mr. Bogard, your family is here as well.  
21 I will urge your family to cooperate with the pretrial services  
22 officer to give them as much information as possible. Again,  
23 the information gathered by the pretrial services officer must  
24 remain confidential. It's only disclosed to me until such time  
25 as I disclose it to other [inaudible]. And it cannot be used



1 on guilt or innocence in any case.

2 But it's very important to get all this information out  
3 there so we can try to come up with some sort of solution in  
4 the case; or if we can't come up with a solution, at least  
5 we're making a decision based on the real evidence and not on  
6 absence of evidence, which is where we are right now. I'm  
7 trying to get as much information as I can, so I can make the  
8 right decision in the case.

9 MR. MORRIS: Very good.

10 THE COURT: So that's -- does that -- I think that  
11 allays Mr. Morris' concerns.

12 MR. MORRIS: Yes.

13 THE COURT: Does that allay your concerns,  
14 Ms. Thompson?

15 MS. THOMPSON: Yes, Your Honor.

16 THE COURT: This is an unusual circumstance. I want  
17 to make sure we're doing it the right way.

18 All right. So that's what we're going to do. Mr. Bogard,  
19 you're going to be released as -- with the agreement of the  
20 parties, to the custody of Mr. Miller -- or Agent Miller, who's  
21 going to take you to Laurel Ridge to get all of your  
22 evaluations and work through with the doctors there. Then  
23 you'll come back to court here, and we'll try to figure out  
24 what to do.

25 All right. That concludes this hearing. We'll be in

1 recess.

2 \* \* \*

3 (End of proceedings at 3:59 p.m.)

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2 I certify that the foregoing is a correct transcript from  
3 the electronic sound recording of the proceedings in the  
4 above-entitled matter.

5  
6 Date: 3/3/2019

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