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UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

UNITED STATES OF AMERICA, Docket No.15-40030-CM

Plaintiff, Kansas City, Kansas
Date: 5/13/16

v.

JOHN T BOOKER,

Defendant.
.....

TRANSCRIPT OF
STATUS HEARING
BEFORE THE HONORABLE CARLOS MURGUIA,
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Plaintiff: Anthony Mattivi
 Asst. US Attorney
 444 SE 6th Avenue
 Room 290
 Topeka, KS 66683

For the Defendant: Kirk Redmond & Melody Brannon
 Asst. Federal Public Defender &
 Federal Public Defender
 425 S Kansas Avenue
 Room 205
 Topeka, KS 66603

Court Reporter: Nancy Moroney Wiss, CSR, RMR, FCRR
 Official Court Reporter
 558 US Courthouse
 500 State Avenue
 Kansas City, KS 66101

Proceedings recorded by machine shorthand, transcript
produced by computer-aided transcription.

10:42:31 1 THE COURT: Thank you for being present. I
10:42:34 2 heard counsel wanted to talk to the court prior to us
10:42:38 3 going on the record, is that correct?

10:42:45 4 MS. BRANNON: Not necessarily before we go
10:42:47 5 on the record. We were hoping we could do the
10:42:50 6 equivalent of approaching the bench. We have some
10:42:50 7 rather sensitive information.

10:42:56 8 THE COURT: The other thing I would note is
10:42:58 9 that Mr. Booker is not in the courtroom. For these type
10:43:03 10 of hearings, I would actually ask that he be brought
10:43:07 11 into the courtroom. So, we'll have the marshals bring
10:43:11 12 him in.

10:46:00 13 (Defendant entered courtroom.)

10:46:05 14 THE COURT: Thank you. Let the record show
10:48:17 15 we're here regarding Case Number 15-40030. It's a case
10:48:23 16 entitled United States of America versus John T Booker.
10:48:27 17 The parties please enter their appearance.

10:48:29 18 MR. MATTIVI: Good morning, Your Honor.
10:48:34 19 Tony Mattivi for the government.

10:48:35 20 MS. BRANNON: Your Honor, Mr. Booker is
10:48:37 21 present in person, and through counsel Melody Brannon
10:48:39 22 and Kirk Redmond.

10:48:41 23 THE COURT: Thank you. Mr. Booker, we're
10:48:43 24 here at the request of your attorneys to take up a
10:48:45 25 matter that they wanted to present to the court.

10:48:50 1 Miss Brannon?

10:48:52 2 MS. BRANNON: Yes, Your Honor. And Your
10:48:55 3 Honor, can we approach?

10:48:57 4 THE COURT: The best method is to actually
10:49:00 5 go to the podium. Thank you.

10:49:04 6 MS. BRANNON: Thank you, Judge. We had
10:49:08 7 asked the court to consider a substitution of counsel in
10:49:10 8 this case. It's probably an unfamiliar procedure for
10:49:16 9 doing this, but we have a couple of reasons for this.
10:49:19 10 Within the last two or three weeks, we have developed a
10:49:24 11 potential conflict in this case with Mr. Booker. We're
10:49:28 12 trying to get out ahead of that. It's not an active
10:49:32 13 conflict or an actual conflict as we stand before the
10:49:35 14 court, but it is certainly headed that direction. For
10:49:37 15 that reason, we are asking the court to -- you know,
10:49:41 16 we're trying to keep this track on -- case on track.
10:49:43 17 We're certainly in the home stretch. We've been
10:49:46 18 discussing this with Mr. Mattivi and Mr. Smith. We
10:49:50 19 tried to put as many of the pieces in place for the
10:49:52 20 court before we approached the court, and we've all
10:49:58 21 ready, as you know, contacted other counsel and
10:50:00 22 discussed the matter with him. And so, that is what we
10:50:06 23 can present to the court right now.

10:50:08 24 THE COURT: Okay. I thought at one time, I
10:50:11 25 may have understood, that counsel was going to request a

10:50:16 1 side bar, a bench conference during these proceedings.

10:50:20 2 Is that still being requested or not?

10:50:23 3 MS. BRANNON: If the court needs more
10:50:25 4 information or has questions beyond this, I think we
10:50:28 5 would certainly need to do that. But you know, if the
10:50:31 6 court is in a position to -- to address our request just
10:50:37 7 based on our representation that we believe we have a
10:50:39 8 potential conflict, I think that's all we would need.

10:50:44 9 THE COURT: I may ask some more questions in
10:50:46 10 regards to that. So, at this time, what we do, since we
10:50:51 11 are set up through video conference, instead of having
10:50:55 12 -- being able to have counsel come up to the side of our
10:50:59 13 bench here, what we've done in the past is actually have
10:51:03 14 people leave the courtroom until this part of the
10:51:07 15 hearing is concluded, at which point we'll call everyone
10:51:11 16 back into the courtroom. So, at this time, we are going
10:51:14 17 to ask if there's people in the courtroom that are not
10:51:17 18 court personnel or counsel, that they leave and just
10:51:22 19 wait outside the courtroom until called back in. Thank
10:51:26 20 you.

10:51:29 21 MS. BRANNON: Your Honor, we have one other
10:51:30 22 attorney, a new attorney from our office that we'd like
10:51:33 23 to stay in the courtroom. He's not at counsel table.

10:51:36 24 THE COURT: That's allowable. Thank you.
10:51:54 25 In regards to this, I don't want to go into great

10:51:58 1 detail, but in terms of the timing of when this became
10:52:02 2 apparent, and more specifically, the type of conflict,
10:52:09 3 either through other cases or through individuals, or
10:52:14 4 something of that nature, please.

10:52:16 5 MS. BRANNON: Certainly, Your Honor. This
10:52:19 6 really came -- excuse me -- to fruition about the first
10:52:23 7 week of March. It's not a matter that existed at the
10:52:27 8 time of the plea. It is not a matter of conflict with
10:52:30 9 other cases or with other clients. It has to do with
10:52:34 10 the attorney/client relationship with Mr. Booker, and
10:52:38 11 some things that have developed there that are
10:52:42 12 interfering or distracting enough that we think he would
10:52:44 13 be better off with new counsel who can address some of
10:52:48 14 his issues, and would hopefully keep this case on track.
10:52:54 15 And as I said, when we talked to Mr. Booker, he did not
10:52:58 16 have an objection to this particular proceeding. So, we
10:53:06 17 have discussed it with him and what we're proposing to
10:53:10 18 the court.

10:53:10 19 THE COURT: Mr. Booker? Did you hear what
10:53:14 20 your attorney, Miss Brannon, said right now?

10:53:18 21 THE DEFENDANT: Yes, I heard what she said.

10:53:20 22 THE COURT: Mr. Redmond, can you move that
10:53:22 23 microphone? I don't know if there's a microphone closer
10:53:24 24 to Mr. Booker, please.

10:53:27 25 THE DEFENDANT: I heard what she said.

10:53:29 1 THE COURT: Yeah, and in that regard,
10:53:31 2 they're asking that the court appoint -- they mentioned
10:53:35 3 it's a substitute, but appoint another attorney for you
10:53:38 4 regarding representing you in this case, and
10:53:41 5 Miss Brannon set out the reasons why they're doing that.
10:53:45 6 Did you understand that?

10:53:48 7 THE DEFENDANT: I understand. I still
10:53:53 8 understand the full situation and can't grasp it.

10:53:55 9 THE COURT: Are you in agreement with the
10:53:56 10 court granting the request to have a different attorney
10:53:59 11 represent you?

10:54:01 12 THE DEFENDANT: Yeah.

10:54:04 13 THE COURT: Has anyone forced you into doing
10:54:05 14 that? We're having trouble hearing what you're saying,
10:54:13 15 Mr. Booker, so let me re-ask these questions.

10:54:17 16 THE DEFENDANT: There's no -- there's no --
10:54:18 17 I said I did not -- when she asked me, she had said that
10:54:21 18 I did not object to it and that they talked to me
10:54:24 19 before. This is not true. They talked to me, but I did
10:54:27 20 object to it.

10:54:31 21 THE COURT: Okay. Let me make sure I'm
10:54:33 22 clear, because again, I didn't hear you clearly. I'll
10:54:36 23 tell you what, it's easier if you come up to the podium.
10:54:39 24 Why don't you come up to the podium. That microphone's
10:54:41 25 better. Please. Thank you. Again, Miss Brannon

10:54:54 1 appears here telling the court that because of this
10:54:58 2 conflict, they do not believe they're able to continue
10:55:02 3 to represent you in this case. Was that talked -- were
10:55:07 4 you -- did you have a discussion with your attorney
10:55:09 5 before then regarding that?

10:55:11 6 THE DEFENDANT: We discussed it, but when
10:55:15 7 she said that I objected to it, that's not true.

10:55:18 8 THE COURT: Okay.

10:55:19 9 THE DEFENDANT: Or she said that I didn't
10:55:22 10 object to it. That's not true. I object to it.

10:55:24 11 THE COURT: Okay. So, why are you objecting
10:55:25 12 to their request to have a different attorney represent
10:55:29 13 you?

10:55:30 14 THE DEFENDANT: Well, honestly, Judge, you
10:55:36 15 got my previous letters, right?

10:55:39 16 THE COURT: Yeah, but the question is, why
10:55:42 17 are you objecting to a different attorney, because
10:55:46 18 through your letters, you know, which we told you have
10:55:50 19 to come through your attorney, you seem to have maybe
10:55:52 20 some concerns about them representing you. But why are
10:55:58 21 you -- what's that?

10:56:00 22 THE DEFENDANT: I said I agree, Your Honor.

10:56:04 23 THE COURT: So, why are you objecting to a
10:56:05 24 different attorney representing you?

10:56:07 25 THE DEFENDANT: Because I feel like, you

10:56:09 1 know, what's been happening lately, the full situation
10:56:12 2 hasn't come to fruition yet. I mean, the full situation
10:56:14 3 hasn't been explained in the court and to the public
10:56:18 4 what's really going on, because what's really going on
10:56:20 5 is a lot more deeper than saying I'm wrong, they're
10:56:24 6 wrong. What I'm saying is I feel like they're taking a
10:56:27 7 problem and running away with it, and they think it's
10:56:30 8 going to be solved by them running away with it.

10:56:34 9 There's so much things that's happened. They just put
10:56:42 10 me in seg for three weeks. On April 6th --

10:56:43 11 THE COURT: Mr. Booker, Mr Booker,
10:56:45 12 Mr. Booker, we can't write down what you're saying
10:56:48 13 because you're speaking too fast. So, you're going to
10:56:51 14 have to slow down.

10:56:54 15 THE DEFENDANT: I said they threw me in seg
10:56:57 16 for -- segregation for three weeks. I called up Melody
10:57:01 17 Brannon Evans on April 6th around 11:32 PM. Two hours
10:57:04 18 -- approximately an hour later, I was escorted by a
10:57:07 19 corrections officer with pepper spray saying that I was
10:57:11 20 put in marshal hold through my lawyer for three weeks
10:57:14 21 with no phone calls, no visits, no --

10:57:17 22 THE COURT: You need to slow down.
10:57:21 23 Mr. Booker, you need to slow down. Slow down, 'cause we
10:57:24 24 can't take down what you're saying. You have to -- you
10:57:27 25 have to speak slower.

10:57:29 1 THE DEFENDANT: I said that approximately
10:57:35 2 April 6th, 11:32 PM, I was escorted. I called Melody
10:57:43 3 Brannon Evans to speak to her about something, and --
10:57:48 4 and I informed her about my so-called attorney which
10:57:53 5 discussed about my case on the 2nd. I came here on the
10:57:56 6 2nd. I leave. Two -- approximately two hours after
10:57:59 7 that, which I was told that I would be visiting on
10:58:04 8 Friday, approximately two hours after that, I was
10:58:06 9 escorted by corrections officer out of my room saying
10:58:09 10 that I had marshal hold with me -- on me, by my
10:58:12 11 attorneys for three weeks straight 'til I believe --
10:58:17 12 can't remember -- 22 days later, I talked to the warden
10:58:22 13 through the marshals, and I was able to get out of the
10:58:24 14 segregation. I got out. An hour later, I was placed
10:58:28 15 back in segregation for the same -- for -- by my
10:58:31 16 attorneys. Now before, I was told I had been situated
10:58:34 17 about a conflict. My question is, if they had a
10:58:36 18 conflict with me, what's the new -- what's the new
10:58:39 19 problem? You know, I want to know the full situation,
10:58:42 20 you know. And also, I don't want to -- there's nothing
10:58:44 21 -- I'm not trying to hide the situation. I'm not trying
10:58:47 22 to hide the situation, because there's a lot of things
10:58:49 23 that we can investigate about the situation that both
10:58:51 24 parties will be in trouble for.

10:58:52 25 THE COURT: Okay. All right. Thank you.

10:58:54 1 THE DEFENDANT: I feel like they're running
10:58:56 2 away from the problem.

10:58:57 3 THE COURT: Thank you. You can return to
10:58:59 4 the table. Thank you.

10:59:02 5 MS. BRANNON: Judge, if I may. I'm focused
10:59:06 6 to the date. We've been dealing with this about --
10:59:08 7 about a month, five weeks or so. So, I said March, and
10:59:14 8 I believe it was April this sort of came to light.

10:59:18 9 THE COURT: Based on what the court has been
10:59:20 10 told, counsel, I'm going to bring this up in a different
10:59:23 11 manner with you, and I appreciate that counsel notified
10:59:29 12 the court in regards to an issue regarding the federal
10:59:35 13 public defender's office continuing to represent
10:59:38 14 Mr. Booker, specifically, Miss Brannon, you and
10:59:42 15 Mr. Redmond. The -- the manner in which that was
10:59:47 16 relayed to us is fine. I would tell you, though, that
10:59:52 17 our general policy here, although the local rules do
10:59:55 18 allow for substitution of counsel, is that in this
11:00:00 19 particular case, with these circumstances where we have
11:00:04 20 a defendant who has appointed counsel, what we generally
11:00:09 21 have counsel do is actually either file or make an oral
11:00:14 22 motion to withdraw, and the court would consider what's
11:00:19 23 now transpired to be your oral motion to withdraw based
11:00:23 24 on the conflict. And again, what we generally do would
11:00:30 25 then -- if the court were to grant the motion, find that

11:00:35 1 the indigent defendant, in this case, Mr. Booker, should
11:00:39 2 at this point then have a different appointed counsel.
11:00:44 3 Now, I know what's been communicated or related to the
11:00:46 4 court is that Mr. Thomason had been contacted about
11:00:52 5 substitute counsel. Again, that information was
11:00:56 6 received. There's nothing wrong with that having been
11:00:59 7 relayed to the court. The court at this time, though,
11:01:02 8 would consider its normal procedure, which would be to
11:01:06 9 contact the CJA coordinator/administrator, and tell her
11:01:12 10 that we now need another different appointed counsel. I
11:01:18 11 don't know her system. I don't know. The procedure
11:01:21 12 would follow, if it is Mr. Thomason who's next on her
11:01:24 13 list, then that's who it is, but procedurally, that's
11:01:27 14 what the court is going to find should take place,
11:01:32 15 unless you have any comments or objections to that.

11:01:37 16 MS. BRANNON: Your Honor, I will inform the
11:01:41 17 court that we have involved Laura Shaneyfelt in this
11:01:47 18 process. We have consulted with Mr. Mattivi about
11:01:49 19 certain counsel. Our only concern was whoever is next
11:01:53 20 on the rotation, because this is a sensitive and
11:01:57 21 difficult case, Mr. Thomason has in other cases followed
11:02:06 22 us on rather difficult cases and difficult clients, and
11:02:09 23 that was the only reason we had proposed him, but I did
11:02:12 24 want the court to know that we had all ready consulted
11:02:14 25 with the CJA administrator.

11:02:16 1 THE COURT: Thank you. What I'll do at this
11:02:18 2 time --

11:02:18 3 MS. BRANNON: It was our proposal. I'm
11:02:21 4 sorry, the name was our proposal. It came from us.

11:02:23 5 THE COURT: Again, what I would do is just
11:02:25 6 refer to her, and let her do whatever she normally does
11:02:28 7 in the normal course of procedures there in regards to
11:02:32 8 new appointment of counsel. Unless you have anything
11:02:36 9 else that we need to take up here at the bench from
11:02:39 10 either you or Mr. Mattivi, then I would ask that whoever
11:02:44 11 was asked to leave the courtroom be allowed to return at
11:02:47 12 this time.

11:02:50 13 MS. BRANNON: And would you like us to go
11:02:51 14 ahead and make an oral motion to withdraw at that time?

11:02:54 15 THE COURT: Yes. So, we'll go ahead and
11:02:58 16 call -- Mr. Mattivi, unless you have some other reason
11:03:01 17 we shouldn't bring people back into the courtroom?

11:03:03 18 MR. MATTIVI: I don't, Judge. Thank you.

11:03:05 19 THE COURT: Okay.

11:03:07 20 (People returned back to the courtroom.)

11:03:33 21 THE COURT: If we have everybody back in the
11:03:36 22 courtroom that was asked to leave or even other
11:03:39 23 individuals, again, the court appreciates the fact that
11:03:41 24 you were able to accommodate the court's request.
11:03:45 25 Again, generally what we would do, if we were all

11:03:49 1 present in the same courtroom, is that we would have
11:03:53 2 conducted this side bar at the side of the bench, and we
11:03:58 3 would have put on the artificial noise to take up
11:04:01 4 these -- these issues that were for the court to hear.
11:04:05 5 So, that's why we cleared the courtroom. We have, in
11:04:09 6 fact, now concluded that part, and so, now we're back
11:04:12 7 again here in the open court on the record, and at this
11:04:16 8 time, the court is going to ask Miss Brannon to
11:04:19 9 continue.

11:04:20 10 MS. BRANNON: Your Honor, at this time, the
11:04:23 11 federal public defender's office would ask the court to
11:04:26 12 allow us to withdraw as counsel for Mr. Booker, and ask
11:04:29 13 the court to consider appointing new counsel on his
11:04:32 14 behalf.

11:04:33 15 THE COURT: At this time --

11:04:34 16 MS. BRANNON: We base this request -- I'm
11:04:37 17 sorry.

11:04:37 18 THE COURT: Go ahead.

11:04:38 19 MS. BRANNON: I was just going to say for
11:04:40 20 the record, we base this request on a conflict that has
11:04:43 21 developed within the attorney/client relationship.
11:04:47 22 That's all we have, Your Honor.

11:04:48 23 THE COURT: Unless there's anything else, at
11:04:51 24 this time, the court is going to find that there does
11:04:55 25 appear to be an apparent conflict of interest, as well

11:05:01 1 as the court would find that there has developed
11:05:06 2 interference of the attorney/client relationship and
11:05:12 3 interruptions that at this point is not allowing
11:05:16 4 Mr. Booker to receive the representation that he
11:05:21 5 deserves. So, based on that, the court does find
11:05:26 6 there's good cause, that this line of communication has
11:05:28 7 been irretrievably broken, that there's not a feeling
11:05:34 8 that -- at least, I'm sure, Mr. Booker, on your part,
11:05:38 9 that you would feel comfortable, or you would trust your
11:05:42 10 present attorneys to continue representing you. So, in
11:05:45 11 that regard, Mr. Booker, the court is going to find that
11:05:47 12 a different attorney should be appointed to represent
11:05:50 13 you. So, with this new attorney, Mr. Booker, if you
11:05:56 14 have anything that you want your new attorney to review
11:06:01 15 or bring up, then your new attorney knows, they're a
11:06:05 16 legally trained attorney, so they know the law, they
11:06:09 17 know how to file things on your behalf, and that's who
11:06:13 18 you will now speak to. So, the court makes that
11:06:17 19 finding, and grants an oral motion to withdraw by the
11:06:21 20 federal public defender's office, again, for good cause.
11:06:26 21 Anything else? Anything else from the government?

11:06:29 22 MR. MATTIVI: Nothing further from the
11:06:33 23 government, Your Honor. Thank you.

11:06:34 24 THE COURT: If there's nothing else,
11:06:35 25 Mr. Booker, you'll be contacted by your new attorney,

11:06:38 1 and then again, if there's anything that needs to take
11:06:42 2 place, your new attorney knows how to file things or
11:06:46 3 contact the court on your behalf. This hearing's
11:06:50 4 adjourned. Thank you.

11:06:53 5 (Whereupon, court recessed proceedings.)

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C E R T I F I C A T E

I, Nancy Moroney Wiss, a Certified Shorthand Reporter and the regularly appointed, qualified and acting official reporter of the United States District Court for the District of Kansas, do hereby certify that as such official reporter, I was present at and reported in machine shorthand the above and foregoing proceedings.

I further certify that the foregoing transcript, consisting of 16 typewritten pages, is a full, true, and correct reproduction of my shorthand notes as reflected by this transcript.

SIGNED July 20, 2016.

S/ _____
Nancy Moroney Wiss, CSR, CM, FCRR