

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 21-28-10
)	Washington, D.C.
vs.)	June 3, 2021
)	9:03 a.m.
KENNETH HARRELSON,)	
)	
Defendant.)	
_____)	

TRANSCRIPT OF STATUS HEARING
VIA ZOOM PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography; transcript
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1 P R O C E E D I N G S

2 COURTROOM DEPUTY: Good morning, Your Honor.

3 This is Criminal Case No. 21-28-10, the United States of
4 America versus Kenneth Harrelson.

5 Jeffrey Nestler for the government.

6 Nina Ginsberg and Jeffrey Zimmerman for the
7 defendant.

8 The defendant is appearing via videoconference for
9 this hearing.

10 THE COURT: All right. Good morning, everyone.

11 Mr. Harrelson, good morning. Can you hear me
12 okay, sir?

13 THE DEFENDANT: Yes, I can, Your Honor.

14 THE COURT: Okay.

15 All right. So we're here for a status conference.
16 We had a status conference a couple days ago with the
17 remaining defendants who have appeared and set some
18 parameters and the like. But why don't we just start
19 generally with where things stand with Mr. Harrelson.

20 And, Mr. Nestler, why don't you bring me up to
21 date and then we'll turn to Ms. Ginsberg and Mr. Zimmerman.

22 MR. NESTLER: Yes, Your Honor.

23 The situation with Mr. Harrelson is the same as
24 for the other defendants we discussed two days ago in front
25 of Your Honor in terms of providing discovery. The same

1 holds true in terms of the volume of discovery and the
2 different types of discovery that have been provided,
3 including a hard drive with a cell phone extraction that was
4 FedEx'ed to his counsel.

5 There is some small amount of outstanding
6 discovery, as Ms. Rakoczy discussed at the hearing two days
7 ago, in terms of some additional surveillance video and some
8 additional search warrant videos for all of the defendants,
9 but in general we're making good progress, though there is a
10 substantial amount of information that was already provided
11 to defense counsel that will take some time to go through,
12 I believe.

13 THE COURT: Okay.

14 Ms. Ginsberg and Mr. Zimmerman, your perspective
15 on things?

16 MS. GINSBERG: Your Honor, I was under the
17 impression that in addition to what I think Mr. Nestler
18 correctly described as fairly voluminous discovery, that we
19 were still going to be receiving search warrant returns from
20 cloud storage for telephones or maybe other electronic
21 devices, which, if that's the case, I don't think I can
22 agree with the description of the "small amount of
23 outstanding discovery" still to be produced. My experience
24 is that data that's in cloud storage may be even more
25 voluminous than what's on the phones which we've already

1 been provided and I believe is maybe as much as half a
2 terabyte of data. So I think at this point we've basically
3 been inundated with discovery, and my expectation is that
4 there could be a great deal more coming if we do have these
5 cloud storage returns that we're still waiting for.

6 We do have some -- with respect to, just in
7 general, Mr. Harrelson's conditions, he is currently being
8 held at the Northern Neck Regional Jail. We've had limited
9 ability to have secure communications with him just because
10 of the difficulty in scheduling attorney-client video
11 sessions at the jail. We have actually been forced to have
12 some, what I would consider, attorney-client conversations
13 with him over secure -- an unsecure telephone line just
14 because we have to maintain contact with him. And we
15 have -- it has been impossible for us to share discovery
16 with him, other than during these video sessions where we
17 can hold up a document or read from a document and have him
18 follow along on a computer screen.

19 And the situation there is so bad, as -- I guess
20 the example -- the best example is several weeks ago,
21 Mr. Zimmerman sent Mr. Harrelson a copy of the third
22 superseding indictment. That was not delivered to him until
23 yesterday. And when that happened, the guard who delivered
24 it actually opened it in front of him and read through the
25 document, even though it was marked "legal mail" and

1 commented to him on the contents of the document. So as far
2 as I'm concerned, this is an untenable situation.

3 I had spoken with Mr. Nestler about the
4 possibility of the Marshals Service transferring
5 Mr. Harrelson to the Alexandria Adult Detention Center,
6 which is within ten minutes of both Mr. Zimmerman and my
7 office. They do have -- they have made arrangements in the
8 past to allow defendants to have access to an iPad that the
9 jail facilities will keep secure in the Watch Commanders'
10 Office when it's not in the defendant's possession and
11 provided to the defendant in his cell which is not
12 accessible by other inmates, and I just had a judge in the
13 Eastern District, the Alexandria Division, enter an order
14 requiring that to be done, and the jail was very
15 accommodating.

16 THE COURT: So, Ms. Ginsburg --

17 MS. GINSBERG: So we're in a position now where we
18 just can't share discovery with him and --

19 THE COURT: I'm sorry, Ms. Ginsberg. You said you
20 had spoken with the U.S. Marshal about this or no?

21 MS. GINSBERG: No, we haven't -- I spoke with
22 Mr. Nestler, because --

23 THE COURT: Oh.

24 MS. GINSBERG: -- my experience has been that the
25 Marshals will accede to requests by the government to either

1 retain or move a defendant to a particular location. But
2 I've never had the ability to convince a Marshal that they
3 ought to keep a defendant where I want them to be, but I
4 have had the experience in the past of the United States --
5 the government asking the Marshals to keep somebody or bring
6 somebody at a particular jail and they do it at the
7 government's request. Mr. Nestler informed me that he was
8 not in a position to make that request at this time.

9 THE COURT: Okay.

10 MS. GINSBERG: So I guess we're looking to the
11 Court for some assistance in getting Mr. Harrelson from the
12 Northern Neck, preferably to the Alexandria Adult Detention
13 Center, but if not, to the D.C. jail, where he can --

14 THE COURT: Mr. Nestler, can I ask you, is there a
15 particular reason the government is not able to assist; in
16 other words, you know, there are oftentimes cases where
17 defendants are separated for legitimate reasons, concerns
18 about witness safety, coordination among defendants, that
19 sort of thing, but is that the issue here, or is it just
20 that the government doesn't want to -- would prefer not to
21 be involved?

22 MR. NESTLER: It's not that we would prefer not to
23 be involved, it's that the Marshals Service has its own
24 provisions and regulations about where it places inmates,
25 and it's not the U.S. Attorney's Office practice to get

1 involved in the details of where those things are.

2 I've had brief conversations with the Marshals
3 about why Mr. Harrelson is in Northern Neck and generally my
4 understanding was because of the medical treatment they were
5 providing him there and that they were able to have better
6 contact with the medical staff at Northern Neck than they
7 would at the D.C. jail.

8 But I don't have any more details about why he's
9 at Northern Neck and not in the D.C. jail, but I'm not in a
10 position to ask or tell the Marshals where they ought to
11 house an inmate. It's a Marshal service.

12 THE COURT: No, no. Right. I wasn't suggesting
13 that you would tell them, and I know that's sort of beyond
14 your purview, but I just wanted to confirm that the issue
15 wasn't something law enforcement related.

16 MR. NESTLER: The U.S. Attorney's Office did not
17 specifically request the Marshals to house Mr. Harrelson
18 outside the D.C. jail. That was a Marshals decision.

19 THE COURT: Okay.

20 All right. Well, let me do the following,
21 Ms. Ginsburg. I'll make some inquiries with our U.S.
22 Marshal and ask him what the story is and whether we can get
23 Mr. Harrelson closer to D.C. I can't promise that, A, I'll
24 be able to do that, and, B, if I can do something, that
25 I can manage to get him at the Alexandria facility. We're

1 on a contract basis with the Alexandria facility and I,
2 frankly, don't know all the -- or understand all the ins and
3 outs with respect to the contract facility -- the contract
4 and how many people we can put over there and that sort of
5 thing.

6 MS. GINSBERG: I do know, Judge -- and I'm sorry
7 to interrupt, but I do know there's at least one other
8 defendant from one of these cases who is being housed at
9 Alexandria.

10 THE COURT: Yeah. Most of them are at CTF is my
11 understanding, the Central -- or it used to be called the
12 Central Treatment Facility, but is now part of the D.C.
13 jail. So I'll make an inquiry and we'll see what we can
14 find out and we'll get back to you, okay?

15 MS. GINSBERG: Thank you. I appreciate it.

16 THE COURT: Anything else, then, from the
17 discovery front?

18 I did neglect to do one important thing and that
19 is have Mr. Harrelson arraigned. There is a fourth
20 superseding indictment and there is a new count against
21 Mr. Harrelson. So I want to make sure we don't -- I want to
22 make sure we get that done; I'd forgotten that we needed to
23 do that at the start of the hearing.

24 MS. GINSBERG: Yeah.

25 Your Honor, we have reviewed the indictment

1 with -- the new indictment with Mr. Harrelson. We waive a
2 formal reading of the indictment and enter pleas of not
3 guilty to all counts.

4 THE COURT: All right.

5 Well, Ms. Ginsberg, if I could just sort of --
6 I'm going to ask the Courtroom Deputy to just announce the
7 new count and then you can waive the formal reading of it
8 and enter the plea. He's not going to go over all of the
9 counts, he'll just sort of -- he'll mention the earlier
10 counts and incorporate those but just identify specifically
11 the new count against Mr. Harrelson, if that's acceptable to
12 you.

13 MS. GINSBERG: Absolutely. Thank you, Your Honor.

14 THE COURT: All right.

15 Mr. Douyon.

16 COURTROOM DEPUTY: May the record reflect that the
17 defendant, through counsel, has received a copy of the
18 fourth superseding indictment.

19 Mr. Harrelson, the fourth superseding indictment
20 charges you with Counts 1, 2, 3, 4, and 12.

21 You were already arraigned on Counts 1, 2, 3, and
22 4 for the third superseding indictment, and those counts
23 remain the same.

24 In Count 12, you're being charged with tampering
25 with documents or proceedings, in violation of Title 18

1 United States Code Section 1512(c) (1) .

2 Do you waive a formal reading and how do you wish
3 to plead?

4 MS. GINSBERG: Your Honor, Mr. Harrelson has not
5 received a copy of the new indictment, he has received it
6 through his attorneys, but as I said before, we have
7 reviewed the fourth superseding indictment with him.

8 We enter pleas of -- waive formal reading and
9 enter pleas of not guilty to all counts.

10 THE COURT: Okay.

11 All right. So the record will reflect an entry of
12 a plea of not guilty for Mr. Harrelson on the new count of
13 the fourth superseding indictment.

14 All right. So what we did, we did two things in
15 terms of scheduling at the last hearing. The first thing we
16 did was, the parties who had expressed concerns about the
17 ever-growing government indictment and whether new
18 defendants might get added and what that will mean for a
19 trial date, what I said to the parties then, Ms. Ginsberg
20 and Mr. Zimmerman, was we'll just have to wait and see. I'm
21 hopeful that we can have resolutions for some defendants,
22 but it's hard to envision a 16-person trial at this
23 juncture. But that said, you know, certainly since
24 Mr. Harrelson is detained, if we do split up any trial in
25 this case, it's going to be -- those who are detained will

1 be in an earlier group than anyone else who might not be.

2 We didn't set a trial date, but I did set a
3 motions schedule. And so any Rule-12-type motions, and so
4 that will include any motions to dismiss charges, motions
5 with respect to severance of counts or individuals, venue
6 motions and the like, basically any Rule 12 motions, and
7 specifically that would not include motions in limine, we
8 set a due date -- we set a schedule for that, which you may
9 have seen in the Minute Order. I think we set opening
10 motions for the defendants to be by July 1, and then the
11 government had, I think, 30 days or so, I think 28 days or
12 so to respond. But that schedule is set forth in the Minute
13 Order. And then we set the next status conference for
14 July 2nd at 11:00 a.m. Hopefully, Counsel, you're available
15 on that date and time?

16 MS. GINSBERG: I'm available, Your Honor, yes.

17 THE COURT: Okay.

18 And then finally --

19 MS. GINSBERG: Judge, before you go on, can we at
20 least, for the record, object to the 30-day extension as it
21 relates to Mr. Harrelson's Speedy Trial rights, as much as
22 he is detained?

23 And just if I could say that I think it is
24 possible that some Rule 12 motions would be impacted by
25 discovery that we have not yet received, and to the extent

1 that that's true, we would request leave to file motions
2 outside that filing date without prejudice to
3 Mr. Harrelson's Speedy Trial rights.

4 THE COURT: Well, so certainly -- I guess a couple
5 things:

6 One is, I was just about to get to the exclusion,
7 and the objection will be noted for the record.

8 And with respect to Mr. Harrelson, I'll grant the
9 government's motion in part to exclude an additional 30 days
10 for the same reasons I did with respect to the other
11 defendants, which is that there still remains discovery that
12 needs to be provided to the defense. The government's
13 discovery in this case is voluminous, it's certainly a
14 complex case, given the number of defendants and the volume
15 of discovery that's been described and the need for
16 additional time for the defense to receive that discovery
17 and review it and prepare a defense.

18 And then finally, time still is excluded under the
19 current standing order for purposes -- or for reasons
20 related to the pandemic and the difficulties associated with
21 having a trial during the pandemic. And so for those
22 reasons -- and for those additional reasons set forth in the
23 standing order, I'll exclude 30 days for those reasons as
24 well.

25 In terms of motions, as I said, Ms. Ginsberg, they

1 are due on June the 2nd, Rule 12 motions. And I've sort of
2 included in that category -- any motions to suppress would
3 be included in that category. And basically any motions,
4 other than motions in limine, will be included in the
5 deadline.

6 You know, it's a criminal case, and so there's got
7 to be some flexibility built in. I think in my view, it's a
8 motion schedule. If for whatever reason motions need to be
9 filed later than the deadline, I tend to be fairly flexible
10 about it, because, as I said, it is a criminal case.

11 And so I think if you need additional time,
12 Ms. Ginsberg, or if something comes up in your review of the
13 discovery that causes you to file after June the 2nd --
14 I mean, July the 2nd -- July the 1st, excuse me, then odds
15 are you're not going to have an issue. But, you know, that
16 doesn't mean something that's really delayed and there's no
17 excuse for it may not be deemed too -- but I think by and
18 large, I'm fairly flexible in terms of timing in criminal
19 cases, but I did set a deadline hoping to get these moving
20 in the right direction.

21 MS. GINSBERG: I'm not sure I understood if you
22 said that motions to suppress are -- which are Rule 12
23 motions generally -- are due by July 1st?

24 THE COURT: Yes.

25 MS. GINSBERG: Because there may well be

1 statements attributable to Mr. Harrelson that have not even
2 been disclosed yet.

3 THE COURT: Well, certainly -- look, the bottom
4 line is, if, obviously, you get discovery late that impacts
5 motions you'll file, then that's good cause to not file by
6 the deadline.

7 Certainly I would have hoped that Mr. Harrelson's
8 Rule 16 statements would have been disclosed by now.

9 Mr. Nestler, any reason to think that any Rule 16
10 statements haven't been disclosed at this point?

11 MR. NESTLER: No, Your Honor.

12 The only categories Ms. Ginsberg alluded to was
13 that there are some cloud storage materials like Google or
14 Apple for Mr. Harrelson and/or other defendants that we are
15 still working with the FBI to pull down and convert into a
16 format to be able to disclose to defense counsel.

17 But as Ms. Rakoczy indicated on the call or on the
18 hearing two days ago, to the extent the government has
19 identified anything that's relevant or probative, we've
20 already pulled those out and disclosed them. So these
21 search warrant returns are additional materials we're
22 planning to provide, but we believe the most probative
23 information is of the cell phone extractions, which is why
24 we prioritized those.

25 THE COURT: Okay.

1 So, Ms. Ginsberg, it sounds like you should have
2 your client's Rule 16 statements. And then to the extent
3 that there are -- to the extent there's evidence that's been
4 obtained through a search warrant -- and I don't know
5 whether the parties or the defendant intends to challenge
6 the search warrants or not, but obviously if you get
7 material, either the actual search warrants themselves or
8 the returns, if you don't get that in sufficient time to
9 file your motions, then you'll just let me know that, okay?

10 MS. GINSBERG: Thank you, Your Honor.

11 THE COURT: All right.

12 I'm trying to think what else we have on tap in
13 terms of Mr. Harrelson. I think that's it.

14 Is there anything else I'm missing in terms of
15 what we needed to get accomplished for Mr. Harrelson this
16 morning?

17 MS. GINSBERG: I don't believe so.

18 MR. NESTLER: Not from the government's
19 perspective.

20 But I did want to inform Your Honor about one
21 development, which is that the final defendant in the fourth
22 superseding indictment was arrested this morning.

23 THE COURT: Okay.

24 MR. NESTLER: So as soon as we get the arrest
25 warrant return, I'll make sure the clerk has it and we can

1 get the full indictment unsealed.

2 THE COURT: Good.

3 Well, let's -- and do we know -- well, we don't
4 necessarily need to detain -- or keep Ms. Ginsberg and
5 Mr. Zimmerman and Mr. Harrelson.

6 The other two defendants who had detention
7 hearings, do we know what happened to them?

8 MR. NESTLER: Yes, Your Honor.

9 Mr. Hackett had a detention hearing on Friday
10 afternoon in Tampa and was ordered detained, I believe the
11 judge issued his detention order yesterday, and was ordered
12 transferred to D.C.

13 Mr. Dolan, who was in the Southern District of
14 Florida, had his detention hearing start yesterday. It did
15 not finish, and it's continuing today at 10:00 a.m., in Palm
16 Beach, which is southern Miami in Florida. And so once
17 that's completed, I'll let your clerk know what the status
18 is with regard to his detention.

19 THE COURT: Okay.

20 All right. Well -- okay. Well, once we figure
21 all that out, we'll figure out what we need to do in terms
22 of getting folks arraigned and up to D.C. and get those
23 cases moving.

24 Okay. Anything else on behalf of Mr. Harrelson?

25 MS. GINSBERG: No, Your Honor, nothing else.

1 MR. ZIMMERMAN: No. Thank you, Judge.

2 THE COURT: Thank you all very much and we'll see
3 everybody in about 30 days.

4 MS. GINSBERG: Thank you, Your Honor.

5 MR. NESTLER: Thank you, Your Honor.

6 MR. ZIMMERMAN: Thanks, Judge.

7 (Proceedings concluded at 9:24 a.m.)

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C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Please note: This hearing occurred during the COVID-19 pandemic and is therefore subject to the technological limitations of court reporting remotely.

Date: July 9, 2021

/S/ William P. Zaremba

William P. Zaremba, RMR, CRR

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