

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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UNITED STATES OF AMERICA	*	Case No. 8:21-cr-348
vs.	*	
	*	November 16, 2022
JEREMY BROWN	*	
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ZOOM STATUS CONFERENCE

Heard via Zoom Videoconference
Sam M. Gibbons United States Courthouse
801 N. Florida Avenue
Tampa, FL
November 16, 2022

BEFORE THE HONORABLE SUSAN C. BUCKLEW

UNITED STATES DISTRICT JUDGE

Official Court Reporter:	Tana J. Hess, CRR, FCRR, RMR U.S. District Court Reporter Middle District of Florida Tampa Division 801 N. Florida Avenue Tampa, FL 33602 813.301.5207 tana_hess@flmd.uscourts.gov
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Proceedings recorded by mechanical stenography using
computer-aided transcription software.

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7:42 AM 1 THE COURT: All right. The last case on our status
7:42 AM 2 is the United States of America versus Jeremy Brown, and it
7:42 AM 3 does not appear Mr. Brown is on with us, even though we did
7:42 AM 4 send notice to his jail.

7:42 AM 5 So I need to go ahead and -- I need to go ahead
7:42 AM 6 with this case, however.

7:42 AM 7 If I could get counsel to state their
7:42 AM 8 appearances, starting with counsel for the United States.

7:42 AM 9 MR. MARCET: Good morning, Your Honor. Daniel Marcet
7:42 AM 10 on behalf of the United States.

7:42 AM 11 MR. GOEDMAN: Good morning. Menno Goedman on behalf
7:42 AM 12 of the United States.

7:42 AM 13 THE COURT: And on behalf of Mr. Brown?

7:42 AM 14 MR. FUTERMAN: Good morning, Your Honor. Roger
7:42 AM 15 Futerman on behalf of Mr. Brown.

7:43 AM 16 THE COURT: Okay. Some questions I have. There was
7:43 AM 17 a Superseding Indictment -- since we were here last, a
7:43 AM 18 Superseding Indictment filed, and it added the trip report, I
7:43 AM 19 think is the additional count in the Indictment.

7:43 AM 20 And my -- my -- this case is obviously set to
7:43 AM 21 begin trial, and it's set to begin I believe on December the
7:43 AM 22 5th.

7:43 AM 23 So let me just ask Mr. -- I've read the
7:43 AM 24 classified documents, and without going into anything, any
7:43 AM 25 additional information that's contained therein, both the

7 : 4 3 A M 1 classified documents were filed before the Superseding
7 : 4 3 A M 2 Indictment. However, the Government, knowing it was going to
7 : 4 3 A M 3 supercede, in their response did take into consideration there
7 : 4 4 A M 4 would be a Superseding Indictment, and it added the trip report
7 : 4 4 A M 5 as an additional count.

7 : 4 4 A M 6 So my question to you, Mr. Futerman, is do we
7 : 4 4 A M 7 need to have a hearing on how that classified document is going
7 : 4 4 A M 8 to be presented at trial, or are you satisfied in using the
7 : 4 4 A M 9 silent witness for that document as well?

7 : 4 4 A M 10 MR. FUTERMAN: So I think if we have a brief
7 : 4 4 A M 11 discussion now about the slight distinction and the general
7 : 4 4 A M 12 agreement and the one issue for Court possibly to decide. I
7 : 4 4 A M 13 think the Government agrees that, you know, Mr. Brown is going
7 : 4 4 A M 14 to testify, and Mr. Brown is going to talk about a different
7 : 4 4 A M 15 motivation in his possession of the additional superseding
7 : 4 5 A M 16 count as opposed to the motivation why he would not have held
7 : 4 5 A M 17 the classified documents. And without going into the
7 : 4 5 A M 18 specifics, it's basically a lack of knowledge, a lack of
7 : 4 5 A M 19 motivation as opposed to a knowledge and motivation.

7 : 4 5 A M 20 So when we talk about the silent witness rule, I
7 : 4 5 A M 21 think the Government's position is at trial, everyone can
7 : 4 5 A M 22 essentially talk line by line pretty much in great detail. The
7 : 4 5 A M 23 jury gets the documents to a limited degree, and then it just
7 : 4 5 A M 24 doesn't get put into the record or taken back.

7 : 4 5 A M 25 The one issue that the Government I think is

7:45 AM 1 opposed to -- and I've talked to Mr. Brown, whose position has
7:45 AM 2 vacillated a little bit, but there is a named soldier in the
7:45 AM 3 document that he presents.

7:45 AM 4 THE COURT: Right.

7:45 AM 5 MR. FUTERMAN: The Government's position is that they
7:45 AM 6 do not want that soldier named at any point during the trial.
7:46 AM 7 Mr. Brown wants to name that soldier's name, and then the
7:46 AM 8 question I'm sure the Court -- that's -- I think that's the
7:46 AM 9 threshold issue for the Court to decide, and I don't know
7:46 AM 10 whether it's the next hearing we have with the Court why he
7:46 AM 11 wants to name that soldier for something -- how we handle that,
7:46 AM 12 but I believe that -- I believe that's the remaining issue as
7:46 AM 13 to that document, if I'm articulating that properly.

7:46 AM 14 THE COURT: Okay. So let me make sure I understand
7:46 AM 15 without getting into the classified document, now classified
7:46 AM 16 document. So you're -- you're okay with proceeding with the
7:46 AM 17 silent witness rule and allowing the expert that the Government
7:46 AM 18 is going to call to be examined and cross-examined by you about
7:47 AM 19 that particular document and that the jurors see that document,
7:47 AM 20 but only a redacted portion goes into the record.

7:47 AM 21 What you are not -- what you want to do,
7:47 AM 22 however, is that you want to name the soldier involved. Is
7:47 AM 23 there -- and the Government, Mr. Marcet, is opposed to that;
7:47 AM 24 correct?

7:47 AM 25 MR. MARCET: Yeah, Judge. Saying the name on the

7 : 4 7 A M 1 unclassified record, that's correct. The name will be in the
7 : 4 7 A M 2 document that the jury will see. Mr. Brown can say, you know,
7 : 4 7 A M 3 in line 1 on page 1, that soldier, you know. So it can be --
7 : 4 7 A M 4 it will be known to the jury, but my understanding is that
7 : 4 7 A M 5 it -- it may -- I don't know that we got a definitive answer on
7 : 4 7 A M 6 it, but it may well be classified, as I've told Mr. Futerman,
7 : 4 8 A M 7 that the involvement of the Defendant and his, you know, highly
7 : 4 8 A M 8 sensitive unit in that recovery mission, that fact is likely
7 : 4 8 A M 9 classified, is my understanding. We haven't got a definitive
7 : 4 8 A M 10 answer, but even that very basic fact may be classified. So if
7 : 4 8 A M 11 the soldier is named in conjunction with the Defendant
7 : 4 8 A M 12 describing what he was doing and where he was working at the
7 : 4 8 A M 13 time, we would run a very real risk of divulging classified
7 : 4 8 A M 14 information with no corresponding benefit because the jury will
7 : 4 8 A M 15 see -- the jury will see the information.

7 : 4 8 A M 16 THE COURT: All right. Perhaps -- Mr. Futerman, let
7 : 4 8 A M 17 me just ask you. Do you want me to have a hearing on this
7 : 4 8 A M 18 issue?

7 : 4 8 A M 19 MR. FUTERMAN: I don't think it's necessary. I
7 : 4 8 A M 20 think -- I'm wondering -- I don't know, because it's such an
7 : 4 8 A M 21 unusual procedure. I guess then all we need to do is in order
7 : 4 9 A M 22 to preserve that record, while the jury is looking at the name
7 : 4 9 A M 23 of the soldier, Mr. Brown just doesn't need to refer to the
7 : 4 9 A M 24 name, and that will alleviate the issue. And then I think
7 : 4 9 A M 25 that's it. If they're seeing the name, we can tell the jury

7:49 AM 1 essentially that's what we're doing so it doesn't look odd, and
7:49 AM 2 then he can testify without naming him because they're seeing
7:49 AM 3 it. Then we have no problem.

7:49 AM 4 THE COURT: Okay. But he would -- right. And then
7:49 AM 5 they are going to know the name because they're going to see it
7:49 AM 6 when the Government has to prove -- prove up that particular
7:49 AM 7 count, and -- but he would not be referred to in any testimony
7:49 AM 8 by Mr. Brown by name.

7:49 AM 9 MR. FUTERMAN: Yes. The basic argument on the bigger
7:49 AM 10 issue is that here we have this (inaudible) of documents. He
7:49 AM 11 wants to say, "Look, I know nothing about this. I had no
7:49 AM 12 involvement. I had no knowledge. It's nothing to do with me,"
7:49 AM 13 as opposed to this physical tangible document that I admit
7:50 AM 14 possessing. "I possessed it. I had knowledge of it. I was
7:50 AM 15 involved in it." And so there will be that comparison without
7:50 AM 16 naming (inaudible) on the record. So I don't think we need a
7:50 AM 17 hearing now that we've clarified that.

7:50 AM 18 THE COURT: Okay. All right. Mr. Marcet and
7:50 AM 19 Mr. Futerman, let me ask a question. This is -- during the --
7:50 AM 20 during the testimony obviously or I guess during the opening
7:50 AM 21 statements, at some point it's going to come out, I would
7:50 AM 22 think, that -- but maybe not, and that's why I'm asking because
7:50 AM 23 I've got to know about jury selection; that Mr. Brown was a
7:50 AM 24 participant in the January 6th -- whatever you want to call it,
7:50 AM 25 on the Capitol. Is that right? Is that going to come out?

7:51AM 1 MR. FUTERMAN: So I actually intend to file my jury
7:51AM 2 questions today along with my exhibits. It's a little ahead of
7:51AM 3 time. One of the questions that I had put for the Court's
7:51AM 4 consideration is something -- because I don't know the extent
7:51AM 5 how he's going to be associated with that. There's all kinds
7:51AM 6 of variables, as you can imagine. But I thought that maybe a
7:51AM 7 question -- and I could pull it up, but something like this
7:51AM 8 case touches upon the January 6th, 2021 insurrection, and while
7:51AM 9 Mr. Brown hasn't been charged with any felony offense related
7:51AM 10 to that, there may be some mention of some -- are there any
7:51AM 11 jurors who feel so strongly about that event that they would be
7:51AM 12 unable to be fair in this case?

7:51AM 13 So I filed a question, and there's going to be a
7:51AM 14 mention of his either -- his either involvement in it or his
7:52AM 15 discussions about it or his -- you know, because that will come
7:52AM 16 out. Whether it comes out he was there or not, I don't know,
7:52AM 17 but certainly one of the questions will be does anyone have
7:52AM 18 such strong feelings about that event that they couldn't put
7:52AM 19 that aside? I would want the Court to inquire.

7:52AM 20 THE COURT: Okay. Mr. Marcet, is -- in the
7:52AM 21 Government's case, is it going to come out in any way, in any
7:52AM 22 of the questioning or in the -- maybe in your opening
7:52AM 23 statement, anything about Mr. Brown being present for the
7:52AM 24 January 6th event?

7:52AM 25 MR. MARCET: Judge, that's not our intention, but it

7:52 AM 1 could be elicited on cross-examination. You know, in essence,
7:52 AM 2 it -- if Mr. Futerman is trying to elicit why they were there,
7:52 AM 3 that's going to be the answer.

7:52 AM 4 THE COURT: All right.

7:52 AM 5 MR. MARCET: I will -- one other thing just to note.
7:52 AM 6 So in the folder where he was keeping all the classified
7:52 AM 7 information, he had a photograph of himself at January 6th.

7:53 AM 8 THE COURT: Sure.

7:53 AM 9 MR. MARCET: So I don't know that they'll -- that the
7:53 AM 10 jury will know that that's where it's from, but that's also
7:53 AM 11 possible. It's a picture of him in Washington, D.C. in, you
7:53 AM 12 know, battle gear.

7:53 AM 13 THE COURT: All right.

7:53 AM 14 MR. MARCET: Introduced solely to show that the stuff
7:53 AM 15 in the folder was his, but, you know, that is where the picture
7:53 AM 16 is.

7:53 AM 17 THE COURT: Sure. All right. Well, I'll look at
7:53 AM 18 your proposed voir dire questions when I get them because
7:53 AM 19 clearly that's a hot topic. People have very strong feelings
7:53 AM 20 about it, and it will make a difference in how many jurors I
7:53 AM 21 summon in.

7:53 AM 22 MR. FUTERMAN: I will tell the Court that I do intend
7:53 AM 23 to discuss that event, definitely in opening, as a motivation
7:53 AM 24 for retaliation, but not mention in opening that he was
7:53 AM 25 necessarily present. The search warrant was a result of his

7:53 AM 1 (inaudible). I don't intend to get into that in opening, but I
7:54 AM 2 do intend to talk about the discussions that Mr. Brown had with
7:54 AM 3 the agents in December when they were talking to him about
7:54 AM 4 January and about their concern and, of course, then he
7:54 AM 5 broadcasted publicly in May and June, naming the agents. Of
7:54 AM 6 course, his theory is that that is retaliation. The planting
7:54 AM 7 of the evidence is retaliation for him publicly broadcasting
7:54 AM 8 about the January 6th event, so there's definitely going to be
7:54 AM 9 mention of that.

7:54 AM 10 THE COURT: Okay. Remind me, Mr. Marcet, how long of
7:54 AM 11 a trial do you think this is?

7:54 AM 12 MR. MARCET: I think our case in chief, five to six
7:54 AM 13 days at most. We do have -- with the new trial date, we did
7:54 AM 14 have one witness who was out of the country until the Thursday,
7:54 AM 15 so the 8th. They'll be available to testify first thing Friday
7:54 AM 16 morning, the 9th. I don't anticipate us finishing before
7:55 AM 17 Friday morning. If we did, that would be the only request we'd
7:55 AM 18 have from Your Honor, that we could call our final witness on
7:55 AM 19 the morning of the 9th. I don't think we'll be done by then,
7:55 AM 20 but if we somehow were --

7:55 AM 21 THE COURT: Okay. And, Mr. Futerma, clearly you've
7:55 AM 22 said that Mr. Brown is going to testify in the case. I am not
7:55 AM 23 surprised a bit, and you anticipate there will be other
7:55 AM 24 witnesses that he might call or you might call.

7:55 AM 25 MR. FUTERMAN: I think our case would be a day, very

7:55 AM 1 brief. We have three character witnesses. We have listed his
7:55 AM 2 girlfriend who he was living -- was living with at the time,
7:55 AM 3 all very brief witnesses. So our case won't be more than a
7:55 AM 4 day.

7:55 AM 5 I will tell the Court one issue that Mr. Marcet
7:55 AM 6 and I were discussing is the verification of the photos. We
7:55 AM 7 have about 100 pictures or so that we want to put in as
7:55 AM 8 exhibits. I'm sure a lot of them we'll end up having to delete
7:55 AM 9 those. There's a photographer that took some of the pictures.
7:56 AM 10 There's three sets of pictures we're putting in. There's the
7:56 AM 11 September search pictures, the December search pictures, and
7:56 AM 12 then the few other pictures which are on the classified CD
7:56 AM 13 which are not date stamped. I'm not sure who took them, but
7:56 AM 14 the Government may put them in. But if they don't, they have
7:56 AM 15 told me the name of the photographer, Mr. Munn (phonetic).
7:56 AM 16 They are not bringing him in. They are not calling him as a
7:56 AM 17 witness, and I understand for multiple reasons why they're
7:56 AM 18 doing that. They may have some problems with that witness.
7:56 AM 19 They did discover when Mr. Marcet actually interviewed their
7:56 AM 20 witness in September who was apparently with Mr. Munn the whole
7:56 AM 21 time. My only discussion -- Mr. Marcet I think is in
7:56 AM 22 agreement -- that we will either stipulate or authenticate
7:56 AM 23 through their case pictures without even having to recall a
7:56 AM 24 witness. For example, in the last set of pictures -- because I
7:56 AM 25 don't know who took them and when they're taken, but they're

7:56 AM 1 given to me by the Government, the Court will allow those
7:56 AM 2 pictures to come into evidence during this case.

7:57 AM 3 THE COURT: You mean out of order?

7:57 AM 4 MR. FUTERMAN: Well, you know, truly unknown
7:57 AM 5 witnesses took some pictures that were given to me. I don't
7:57 AM 6 know who took them, and also out of order from the first set
7:57 AM 7 and the last set. I'm just hoping the Court will allow the
7:57 AM 8 pictures. We now know that the photographer is not being
7:57 AM 9 called for authenticity purposes. I hope Court will allow me
7:57 AM 10 to put them in out of order or just allow --

7:57 AM 11 THE COURT: Yeah. Well, I certainly don't have any
7:57 AM 12 objection to out of order, but it's kind of hard for me to rule
7:57 AM 13 on the other without looking at what the problem is. So I'm
7:57 AM 14 just going to defer on that.

7:57 AM 15 Okay. I've got a jury waiting, so I'm going to
7:57 AM 16 have to cut this short.

7:57 AM 17 Next, we really only have one week, one --
7:57 AM 18 because Thanksgiving is next week, and I'm in trial right up to
7:57 AM 19 the Thanksgiving holidays, but if you need -- if we need to do
7:58 AM 20 a hearing, I'm certainly available that week before the trial,
7:58 AM 21 and we can set a hearing, either by Zoom or in person, if there
7:58 AM 22 are issues that come up. I'd rather get them resolved before
7:58 AM 23 the trial than during the trial.

7:58 AM 24 MR. FUTERMAN: Do you know what courtroom -- you had
7:58 AM 25 mentioned technical issues. Do you know what courtroom we're

7:58 AM 1 in?

7:58 AM 2 THE COURT: Ms. Black, how is 17? Is it not being
7:58 AM 3 used still?

7:58 AM 4 COURTROOM DEPUTY: No, it's not. It's not being
7:58 AM 5 used.

7:58 AM 6 THE COURT: Not at all?

7:58 AM 7 COURTROOM DEPUTY: No.

7:58 AM 8 THE COURT: Do you know what courtroom we're trying
7:58 AM 9 this case in?

7:58 AM 10 COURTROOM DEPUTY: We are set for -- so we are set
7:58 AM 11 for either 17 or 7A.

7:59 AM 12 THE COURT: All right.

7:59 AM 13 COURTROOM DEPUTY: So if 17 is up, then we'll go
7:59 AM 14 there.

7:59 AM 15 THE COURT: Okay. Right now 17 is not up, and if
7:59 AM 16 it's not 17, it'll be 7A, and we'll let you know. I'll let you
7:59 AM 17 know the week before. We'll have a good idea.

7:59 AM 18 MR. FUTERMAN: No problem.

7:59 AM 19 THE COURT: Okay. All right. Thank you all.

7:59 AM 20 (End of proceedings.)
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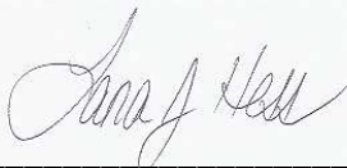
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

REPORTER TRANSCRIPT CERTIFICATE

I, Tana J. Hess, Official Court Reporter for the United States District Court, Middle District of Florida, certify, pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcription of the stenographic notes taken by the undersigned in the above-entitled matter (Pages 1 through 14 inclusive) and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States of America.



Tana J. Hess, CRR, RMR, FCRR
Official Court Reporter
United States District Court
Middle District of Florida
Tampa Division
Date: January 25, 2023

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