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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
)
)
Plaintiff,)
)
vs.)
)
RICHARD MAYNOR BLACKSTOCK,)
)
)
Defendant.)

CASE NO. 06-CR-62-TCK

TRANSCRIPT OF PROCEEDINGS
JUNE 19, 2006
BEFORE THE HONORABLE TERENCE KERN, DISTRICT JUDGE
MOTION HEARING

APPEARANCES:

For the Plaintiff: MS. LORETTA RADFORD
MR. KENNETH SNOKE
U.S. Attorney's Office
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Tulsa, Oklahoma 74119

For the Defendant: MR. OSCAR STILLEY
Attorney at Law
2120 North B Street
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1 MR. STILLEY: I can finish the trial, Judge. Here's
2 what I don't want to do: If we get into a situation where the
3 jury is here -- sure, Judge, I'd have no qualms about finishing
4 the trial. The only thing I'm asking is if the trial has been
5 completed and the jury retires, I'd like to be excused at that
6 point in time and be able to go on to my other duties. And
7 what I'm saying is, at that point in time, if we could have
8 local counsel available, that would be very helpful.

9 THE COURT: Mr. McGrew.

10 MR. MCGREW: Your Honor, I've talked to counsel about
11 that. I guess what he proposed was Thursday or Friday, if the
12 jury is out and he's not available, he'd like me to be here. I
13 can probably work that out. I do have a nonjury trial on
14 Thursday. My plan was to file a motion to continue that based
15 on this trial, although I hadn't done that yet because I didn't
16 know my schedule or whether we were actually, in fact, going to
17 go.

18 But other than that, I would be available on Friday or
19 Thursday afternoon, no problem. You know, I guess, again, you
20 know, I'm standby counsel, so I guess I would continue in that
21 position and Mr. Blackstock would be his own counsel at that
22 point; I'm not sure.

23 THE COURT: Very well. Well, I will leave you in
24 this case as standby counsel then. You're free to stay or go
25 as you choose, with the exception that once this case goes to

1 the jury, then we will need your services.

2 MR. MCGREW: That would be fine, Your Honor. Can I
3 be excused?

4 THE COURT: You may.

5 MR. MCGREW: Thank you.

6 THE COURT: Now, the government has filed a
7 superseding indictment, Mr. Stilley, and I'm sure you're aware
8 of that. The Court has determined that that superseding
9 indictment doesn't add anything, and so we've proceeded to
10 trial. Is that all right with the defendant?

11 MR. STILLEY: Your Honor, we discussed this just a
12 little bit on Thursday at the second arraignment, and the
13 government said that there was a -- that the defendant had a
14 right to 30 days to prepare for trial and asked for a waiver of
15 that right. But when we looked at it, it appeared that the --
16 that more than 40 days had expired from the speedy trial clock,
17 and we felt like that based on what the government was saying,
18 it was impossible for them to bring the defendant to trial
19 within the 70 days.

20 And so on that grounds, we would move to dismiss on speedy
21 trial. And if the Court would like to hear from the government
22 -- I think that that probably should be considered and decided
23 before we proceed further.

24 THE COURT: Very well.

25 Mr. Snoke.

1 MR. SNOKE: Your Honor, since last Thursday when
2 Mr. Stilley made his appearance and we had this session on
3 arraignment on the superseding indictment, I have found a
4 Supreme Court case, United States vs. Rojas-Contreras, 474 U.S.
5 231, 1985; indicates that the 30-day trial preparation period
6 is not required to begin -- to run anew from the date of filing
7 of a superseding indictment, especially when one is -- there's
8 no surprise and there's no real changes to the superseding
9 indictment.

10 In that case, the government filed a superseding
11 indictment the day before trial, as a matter of fact, and
12 defendant wanted 30 days and the court didn't give it to him.

13 In this situation, we have, both on Thursday at the
14 arraignment in front of the magistrate and today, I guess, the
15 defendant saying that he wants to go to trial here this
16 morning. And I think that's irrespective of a written waiver
17 which talks about in the Speedy Trial Act that that is
18 technically being waived by him wanting to go to trial here
19 this morning. And of course, he objected to our motion for
20 continuance back -- filed a week or so ago.

21 And I disagree with counsel that 40 days have run, because
22 I think that the filing of these motions, one of which, a
23 motion to dismiss by the defendant, has not yet been ruled on
24 by the Court -- we filed a response to it just this morning --
25 has stopped the clock at 36 days. And so there is still over

1 30 days left should the defendant wish to have 30 days'
2 preparation time and still be within the original 70.

3 There's also a motion before the Court from the
4 government, let alone the defendant's motions, and the
5 government's motion stops the speedy trial clock as well. We
6 had a motion to -- relative to discovery and reciprocal
7 discovery. And I'm announcing to the Court this morning that
8 we have received no reciprocal discovery, even after the
9 appearance of Mr. Stilley last Thursday in the case. So that
10 motion is yet to be ruled on by the Court.

11 I think there's -- the clock has definitely stopped with
12 the filing of all these motions. Anyway...

13 THE COURT: Mr. Stilley, any other argument on that?

14 MR. STILLEY: Yes, Your Honor, just briefly. What I
15 would say is that the reason I raised this is because the
16 government told us that there was a right for it, and I felt
17 that when I'm representing a client facing as much time as this
18 gentleman is facing, that I had the duty to waive -- had a duty
19 to raise arguments that I felt like had merit based upon the
20 government's representations. Now they're taking a different
21 approach. I think the proper thing is just to let the Court
22 rule on it and proceed. We are ready to try today.

23 THE COURT: Very well.

24 Mr. Snoke, I do want to make sure that there's not
25 something I've missed. It appears the only thing that has

1 changed in the superseding indictment was maybe one date; is
2 that correct?

3 MR. SNOKE: The ending date of the charge, and there
4 was also some language changed on that first page with respect
5 to forms involved other than 1040 and 1040X. That's -- those
6 are the only changes, Your Honor.

7 THE COURT: The Court ruled initially and continues
8 to believe that the superseding indictment doesn't present
9 anything new. The Court did refuse the government's request
10 for a continuance based on the superseding indictment. The
11 defendant did object to any continuance based on the
12 superseding indictment. And the Court overrules the
13 defendant's motion to dismiss based on speedy trial. We are
14 prepared to try this case at this time. And we will go forward
15 with that trial.

16 There is a pending motion to dismiss. Mr. Stilley, do you
17 wish that motion to also apply to the superseding indictment?

18 MR. STILLEY: Yes, Your Honor, we would like for that
19 to apply to the superseding indictment.

20 THE COURT: Very well. Defendant argues the
21 indictment is insufficient because it never alleges the accused
22 is a person as required in Section 7206(b).

23 Secondly, it's not specific as to what was false about the
24 alleged false deduction.

25 And third, it fails to allege the specific provision of

1 the tax code that would give notice to the accused that claim
2 of right was otherwise false and fraudulent.

3 And fourth through sixth, Forms 1040 and 1040X for the
4 years in question are in violation of the Paperwork Reduction
5 Act and, therefore, the defendant cannot be held liable for
6 their false preparation. The government has responded to that
7 motion today.

8 Mr. Stilley, any other argument on that? Do you wish
9 to present anything in addition to the motion?

10 MR. STILLEY: Yes, Your Honor.

11 THE COURT: Very well.

12 MR. STILLEY: Your Honor, I think that the first --
13 the first three points, I guess, would -- I think I'd just like
14 to stand on the written briefs on that.

15 But with respect to the Paperwork Reduction Act, the
16 government has responded in actually less than a page here, and
17 they have responded on the basis of the Paperwork Reduction Act
18 of 1980, which is no longer in effect and hasn't been in effect
19 since 1995.

20 We've got a new Paperwork Reduction Act, the Paperwork
21 Reduction Act of 1995 which has been considerably strengthened
22 over the 1980 Act, and it has been strengthened in a way that
23 is determinative in this case.

24 I would like to read to you from section 3512 of the Act,
25 which is entitled Public Protection. And it says under

1 subsection (a), "Notwithstanding any other provision of law, no
2 person shall be subject to any penalty for failing to comply
3 with a collection of information that is subject to this
4 chapter if:

5 "One, the collection of information does not display a
6 valid control number assigned by the director in accordance
7 with this chapter, or;

8 "Two, the agency fails to inform the person who is to
9 respond to the collection of information that such person is
10 not required to respond to the collection of information unless
11 it displays a valid control number."

12 Subsection (b), "The protection provided by this section
13 may be raised in the form of a complete defense, bar, or
14 otherwise at any time during the agency administrative process
15 or a judicial action applicable thereto." And certainly this
16 would be a judicial action applicable thereto.

17 Now, let me say this, on the older act, the 1980 Act, we
18 didn't have this language concerning -- that said that no
19 person shall be subject to any penalty for failing to comply.

20 Now, it's an easy case when someone just doesn't fill out
21 the form, but in the case where somebody is alleged to have
22 filled out the form in an incorrect manner, that's a failure to
23 comply. It is at least an alleged failure to comply and,
24 therefore, it's covered by the Act, by the terms of the Act,
25 which is a new wrinkle from what we had in the past.

1 Now there's another thing we have to think about. The
2 government has cited to the James case which involved a 1981
3 and a 1984 form. There are a lot of very significant reasons
4 that we should not consider James -- and that we should find
5 that James, which dealt with the 1980 Act, has no application
6 under the 1995 Act.

7 Let's start with what the commissioner's theory is. The
8 commissioner of the Internal Revenue since the 1995 Act has
9 taken the position that the tax forms are governed by the
10 Paperwork Reduction Act. And the commissioner has told
11 everybody that reads either the form or the instructions to the
12 form, unless we comply with the Paperwork Reduction Act, you
13 can't be punished for failing to comply.

14 Now, when the commissioner tells the people that read the
15 words that that's going to be his theory, Your Honor, it would
16 be the defendant's position that the government is estopped and
17 now turn around and say, no, we're going to go to the statutory
18 origin theory, which I believe that that would be what James
19 would constitute, we're going to go to the statutory origin
20 theory, and the public had no right to rely on our words and
21 we're going to say because this request for information was
22 statutory in origin, you can't rely on the Paperwork Reduction
23 Act. You can't rely on that public protection.

24 Now, there's another thing very important that we need to
25 look at, and that is in 1981 and 1984, the exempt amount was in

1 the law. So the requirement -- that the citizen could go to
2 the law and look and see here's the exempt amount and here's
3 the law that says if you have income that exceeds the exempt
4 amount, then you have to file this tax return.

5 Well, since 1989, there has been no exempt amount in the
6 law. And I think that even the expert witnesses that are
7 likely to testify in this case would admit to you that the
8 exempt amount is not in the law.

9 When you have a crucial, critical piece of the puzzle that
10 is relied upon to make a requirement to supply information,
11 when that is created solely by agency action, then no longer
12 can we rely on the statutory origin theory and the cases that
13 are based on the statutory origin theory.

14 Now, Your Honor, I've brought with me a copy of the
15 Internal Revenue Code and I brought with me a copy of the
16 entire set of regulations. And if the government thinks that
17 the exempt amount is in the law or in the regulations, I would
18 certainly invite them to show me where that's at. Because I've
19 challenged them before, and they've never been able to do it.

20 So we have a situation here where that the James case
21 cited by the government just doesn't make any sense at all.
22 The government is attacking the wrong statute. They're
23 attacking the law that hasn't been around for over ten years.

24 Your Honor, under the circumstances here, let's not forget
25 that the Dawes case, which says that the form has to comply,

1 which is a Tenth Circuit case, the Dawes case that we cited,
2 the government didn't even address that.

3 Now, why wouldn't they address that? Let's think about
4 that. They should take this opportunity -- I'm sure they're
5 taking notes -- they should take this opportunity to say why
6 they wouldn't address a Tenth Circuit case that is just very
7 contrary to their position.

8 And let's not forget -- and I believe it's in Dawes, I'd
9 have to make sure -- but one of these cases on the PRA, there's
10 a footnote where it says that the learned justices at the Court
11 of Appeals asked the government if there was a unified position
12 with respect to the Paperwork Reduction Act, and the government
13 responded no.

14 Well, Your Honor, I would respectfully submit that the
15 government ought to have a unified position. And this is not a
16 surprise to them. This is not new. The 1995 Act has been out
17 there for ten years. They've had plenty of time to comply with
18 this Act. And if they didn't comply with this Act -- they told
19 the public that they had a right to rely on this Act. If these
20 two elements are in place, then Mr. Blackstock should not have
21 to go through this trial. This case should be dismissed for
22 the failure of the government to comply with the laws that have
23 been passed by Congress. Thank you.

24 THE COURT: Response.

25 MS. RADFORD: Your Honor, with respect to the

1 defendant's argument on the Paperwork Reduction Act, the cases
2 cited in the defendant's -- in the plaintiff's response, in the
3 United States' response and the reference to the Paperwork
4 Reduction Act of 1980 is primarily to use, by analogy, the fact
5 that the Paperwork Reduction Act, as originally intended and
6 even as set forth in the new Act, which the defendant refers
7 to, is designed to regulate the actions of administrative
8 agencies and it does not purport to contain the -- to constrain
9 the actions of Congress.

10 Congress has implemented and empowered the Internal
11 Revenue Service to collect, assess and regulate the payment of
12 income taxes.

13 The law set forth in the James case and other cases
14 clearly indicate that the Paperwork Reduction Act does not
15 operate as a defense to bar prosecution in this type of case.

16 As -- additionally, Your Honor, the provision which the
17 defendant's counsel made reference to is not applicable in this
18 particular case even if we were to believe that the Paperwork
19 Reduction Act qualifies as a defense, because there's no
20 allegation that there was a failure to supply any information
21 in this particular case.

22 This defendant is alleged to be one individual removed
23 from actually filing the tax returns himself. He doesn't fall
24 within the provisions which he relies upon within the Paperwork
25 Reduction Act.

1 For those reasons, we're asking the Court to deny the
2 motion to dismiss.

3 THE COURT: Very well. The Court concludes with
4 respect to the first three arguments that the indictment is
5 sufficient in all respects to state the essential elements of
6 the crimes charged and to inform the defendant of the charges
7 against him.

8 With respect to the argument regarding the Paperwork
9 Reduction Act, this Act does not operate to bar the prosecution
10 of criminal conduct. And whether we're talking about the 1980
11 Act or the 1995 Act, there's no case law the Court is aware of
12 in which a court has ever found that the Act does bar the
13 prosecution of criminal conduct. As Ms. Radford indicated,
14 it's primarily designed to regulate the actions of
15 administrative agencies, but it's not a defense in a criminal
16 case.

17 Are there any other pending motions?

18 MR. STILLEY: Your Honor, actually, this is not a
19 motion, but I wanted to take it up at this point in time, and
20 that is on another case I have a conference that I needed to
21 attend telephonically starting at 10:30 in the morning. If we
22 could just take our break at that point in time, I don't think
23 it will take very long.

24 THE COURT: Which morning?

25 MR. STILLEY: Tuesday morning.

1 THE COURT: Tuesday morning. Very well.

2 MR. STILLEY: And there is one other thing that
3 magistrate asked to be taken up this morning, and I want to see
4 how the Court wants to proceed with it, and that is during the
5 arraignment on Thursday, the government announced that they had
6 a criminal investigation against Oscar Stilley; that is,
7 counsel for the defendant.

8 I had been told about, I think three weeks earlier by
9 Brian Shern, who works for the IRS criminal investigation
10 division, that I was not under criminal investigation.

11 Nevertheless, I've been told by Mr. Snoke that Doug Horn
12 had told Mr. Snoke that Oscar Stilley was under criminal
13 investigation. And they asked for the defendant to waive any
14 rights that he would have to conflict-free counsel; in other
15 words, to waive this situation.

16 Your Honor, I would respectfully submit that we feel that
17 it's improper for the government to say something that is
18 exactly 180 degrees opposite of what they had recently said.

19 It appears that this was done for the purpose of causing
20 Mr. Blackstock to be nervous about his counsel. However, that
21 has been raised by the government, and the magistrate said that
22 it needed to be addressed this morning. And I'll let the Court
23 decide how you want to deal with that.

24 THE COURT: Mr. Snoke.

25 MR. SNOKE: Your Honor, we raised that at the -- last

1 Thursday when Mr. Stilley made his appearance because we
2 believed that there was a possible conflict of interest in this
3 case because of this situation with respect to the fact that
4 the office is investigating Mr. Stilley. He's under
5 investigation. And that's the announcement I made to the
6 magistrate.

7 The magistrate had Mr. Blackstock state in court that he
8 waived that possible conflict of interest and -- but he did --
9 wanted him to think about it over the weekend and wanted to
10 bring it up again before this court.

11 So that's, I think, why counsel just brought it up again.
12 If he hadn't, I would have. It was directed by the magistrate
13 to bring it before this court again this morning for possible
14 additional waiver or change of mind by the defendant. The
15 point being that there's a possible conflict because
16 Mr. Stilley might have the -- might have a reason to curry
17 favor with the office to the detriment of his client. I think
18 the ethics case law is clear that that's a possible conflict of
19 interest, and that's why we made the announcement on Thursday
20 and bring it up again today.

21 THE COURT: Mr. Blackstock, you have heard this
22 little exchange. Do you have any desire to change your
23 position?

24 THE DEFENDANT: No, Your Honor, I don't.

25 THE COURT: Very well. We'll proceed.

1 MS. RADFORD: Your Honor, if the Court would allow
2 me, I have one other matter, which is not really in a motion,
3 per se. I was in receipt late this morning of the proposed
4 voir dire questions by defense counsel in this case. I've
5 reviewed those questions, and I just wanted to bring it to the
6 Court's attention, prior to us proceeding with the selection of
7 a jury, that I object to at least 14 of those questions that
8 are listed there on that requested voir dire.

9 In comparing those questions to which I object to, which
10 I'll be glad to put the numbers in the record, with respect to
11 this Court's courtroom rules regarding the conduct of attorneys
12 during voir dire, it appears that those 14 questions would be a
13 direct violation of the Court's courtroom rules.

14 THE COURT: Okay. You can make those objections if
15 and when it becomes appropriate.

16 The government also had a motion to find that they had
17 complied with discovery. Mr. Stilley, do you have any problems
18 with the discovery, the providing of discovery or the attempted
19 providing of that discovery by the government?

20 MR. STILLEY: Your Honor, I actually haven't seen
21 that. I don't anticipate any problems. I've got a set of the
22 exhibits, but I'm not making any complaint about their
23 discovery.

24 THE COURT: Very well. The Court finds that the
25 government is in compliance with the rules of discovery in this

1 case.

2 Anything further?

3 MS. RADFORD: No, Your Honor.

4 MR. STILLEY: No, Your Honor.

5 THE COURT: Bring the jury in.

6 (Further proceedings were had but not designated as part
7 of this record.)

8

REPORTER'S CERTIFICATE

9

10 I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
11 TRANSCRIPT OF THE PROCEEDINGS IN THE ABOVE-ENTITLED
12 MATTER.

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S/Terri Beeler
Terri Beeler, RMR
United States Court Reporter

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