

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)	Docket No.
)	94-506-Cr-HURLEY
Plaintiff,)	
)	West Palm Beach, Fl.
v.)	January 27, 1997
)	9:30 a.m.
JESSE DEAN,)	
)	
Defendant.)	
)	
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TRANSCRIPT OF MOTIONS PRIOR TO TRIAL
BEFORE THE HONORABLE DANIEL T.K. HURLEY

APPEARANCES:

For the Government: BARBARA SCHWARTZ, Assistant U.S. Attorney.

For the Defendant: JACOB ROSE and DEBRA ROSE, ESQS.

Court Reporter: Pauline A. Stipes C.S.R, C.M.
United States Courthouse
West Palm Beach, FL 33401

1 THE COURT: Good morning, everyone. This is case
2 94-506. This is United States of America versus Mr. Jesse
3 Dean.

4 MS. ROSE: Good morning, I apologize, Debra Rose on
5 behalf of the defendant.

6 Your Honor, at this time, we are considering a
7 possible change of plea. The Government is considering a
8 possible --

9 THE COURT: We are here for trial.

10 MS. ROSE: Your Honor, the prosecutor is currently
11 speaking with my co-counsel.

12 THE COURT: The court will not accept a plea. We are
13 ready to go to trial.

14 MR. ROSE: May I have a moment?

15 THE COURT: Would you ask the parties to step in,
16 please.

17 Let me invite counsel to make appearances for the
18 record. This is 94-506. Let me first recognize counsel for
19 the Government.

20 MRS. SCHWARTZ: Good morning, Your Honor, Barbara
21 Schwartz for United States Government.

22 THE COURT: Counsel for the defense?

23 MR. ROSE: Jacob Rose, counsel for the defense, along
24 with Debra Rose.

25 THE COURT: Are the parties ready to proceed to

1 trial? Is the Government ready to proceed?

2 MRS. SCHWARTZ: Your Honor, I am going to have to give
3 you a qualified answer to that. I am ready to proceed,
4 however, my first witness will not be here until 3 o'clock
5 today. My second witness is a prisoner, and although we had an
6 order for him to be up here at this courtroom for today, he was
7 taken out of the district. We did everything we could last
8 week to get him back. I understand he is someplace in the
9 county, but they have told the agents that he wouldn't be here
10 until tomorrow morning.

11 THE COURT: Let me help you out, on both sides, so you
12 know what the schedule might be.

13 The court will not be in session tomorrow because
14 there is an en banc session of the court to consider some
15 local -- not local rules -- I guess they are local rules,
16 actually, and so what we will do is select the jury today and
17 do opening statements and, probably, given the amount of time,
18 we probably won't start testimony until Wednesday morning.

19 MRS. SCHWARTZ: That would be perfect. We have no
20 problem.

21 THE COURT: Let me turn to counsel for the defense.
22 Is defense ready to proceed?

23 MR. ROSE: Qualified yes, we are ready to proceed,
24 however, there are a couple preliminary matters specifically
25 with regard to a motion in limine that we believe we would want

1 the court to hear before the beginning of testimony.

2 THE COURT: I will be happy to do that. No problem in
3 that regard.

4 MR. ROSE: The other matter, I am not sure what was
5 said while we were outside, but we were over the weekend, last
6 night, and this morning, discussing the matter of a superseding
7 information dropping the indictment and arranging a plea not
8 with regard to the indictment but with regard to the
9 superseding information, and that is what we had under
10 discussion.

11 THE COURT: Well, obviously, that is a decision up to
12 the Government. If the Government changes the charge, that
13 effectively takes the decision away from the court; otherwise,
14 I would tell you I think the days, time for pleas are over, and
15 what we need to do is prepare to move forward with the case.
16 This is a case that is pending for an awful long time. While I
17 would be delighted to see you come to a resolution if you can,
18 I don't think we can stop the trial to permit that. We have a
19 jury that has, as you know, been waiting in the hallways ready
20 to proceed. I think we need to do that. I don't want to
21 discourage you in your discussions. Absent having resolved
22 those now, we need to be prepared to go to trial. I will be
23 happy to handle any motions in limine prior to opening
24 statement.

25 MR. ROSE: The only other matter, I am not sure what

1 impact it will have, and I didn't want to make a commitment of
2 any kind on behalf of Mr. Dean but we were -- with respect to
3 essentially the drug charges are being dropped under the
4 superseding information, and has to do with a charge using a
5 telephone to facilitate a felony, and those matters that we
6 were considering is -- the language being used is not the kind
7 of language that would be acceptable. We believe it could be
8 done, but it is the sort of thing that we would have to guide
9 Mr. Dean on. If the Government wants to file a superseding
10 information, we will do the same thing we are doing, discuss
11 resolution which I believe is likely.

12 We are ready to proceed as I indicated to the court.

13 THE COURT: Well, as you are, I am sure, aware, there
14 is a bright line test in Federal Court that absolutely
15 prohibits the court from becoming in any way involved in
16 negotiations that may be ongoing between the parties, and I
17 want to first acknowledge the fact I am aware of that, and I
18 want to be very sensitive that I do not cross any impermissible
19 line. Obviously, as happens in a civil case and can happen in
20 a criminal case, parties can be involved in ongoing
21 discussions. The only time the court would have discretion is
22 if a negotiated plea were presented to the court based on an
23 indictment. If the Government effectively moves to dismiss the
24 indictment and supersede with an information that has one
25 count, and the defendant is prepared to plead guilty to that, I

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1 don't know that the court has, frankly, much discretion in that
2 matter.

3 I will leave those matters in your decision. Doesn't
4 sound to me right now you have arrived at a mutually agreeable
5 conclusion. Is that right?

6 MRS. SCHWARTZ: That is right, Your Honor.

7 THE COURT: I really think what we need to do is move
8 forward with the selection of the jury.

9 Now, at this point, what are the charges that are
10 pending against Mr. Dean?

11 MRS. SCHWARTZ: Your Honor, I believe that it is a -- I
12 know it is a conspiracy to import, importation, conspiracy to
13 possess with intent to distribute, and there is a telephone
14 count.

15 THE COURT: Tell me about the telephone count, what is
16 exactly alleged in that?

17 MRS. SCHWARTZ: Your Honor, we are alleging that Mr.
18 Dean either made or received a telephone call that was to
19 facilitate or further a narcotics transaction.

20 THE COURT: Okay. Hold on a second.

21 MRS. SCHWARTZ: Judge, I want to check the indictment,
22 please.

23 Your Honor, he is charged in count 4 with possession
24 with intent to distribute.

25 THE COURT: So there are four charges that are here