

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *

UNITED STATES OF AMERICA,) Criminal Action
) No. 21-00117
Plaintiff,)
)
vs.)
)
RYAN TAYLOR NICHOLS,) Washington, D.C.
) October 7, 2022
Defendant.) 10:08 a.m.
)
* * * * *

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE THOMAS F. HOGAN,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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4 District of Columbia
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1 THE COURTROOM DEPUTY: This is Criminal Matter
2 21-117-1, the United States of America versus Ryan Taylor
3 Nichols.

4 Counsel, please approach the lectern and state
5 your appearance for the record, beginning with Government
6 counsel.

7 MR. BRASHER: Good morning, your Honor. Doug
8 Brasher for the Government, along with --

9 You can introduce yourself.

10 MS. ROCHA: Sarah Rocha. Good morning, your
11 Honor.

12 THE COURT: Thank you. Good morning.

13 Good morning, Mr. Brasher. Good to see you up
14 here from Texas.

15 MR. BRASHER: Good to be here.

16 MR. MCBRIDE: Good morning, your Honor. Joseph
17 McBride on behalf of Mr. Nichols. And I have with me
18 today --

19 MR. GROSS: Jonathan Gross on behalf of
20 Mr. Nichols.

21 THE COURT: Thank you both for coming down from
22 New York. I appreciate it.

23 Mr. Nichols is here.

24 And I appreciate getting him in for the hearing in
25 person so we can discuss these issues.

1 Let me just talk about a couple procedural matters
2 first and then counsel can respond as necessary and then we
3 can go to the merits of the Defendant's motion for --
4 emergency motion for immediate pretrial release and request
5 for an emergency hearing filed earlier last month.

6 I received this morning a supplemental filing and
7 opposition to the motion for release by the Government, and
8 I want to make sure whether Mr. McBride has had a chance to
9 review that and see that at all.

10 MR. McBRIDE: No, I have not, your Honor.

11 THE COURT: Well, we're going to have to suspend
12 for a minute so you get a chance to read it through. It has
13 in it an attachment, Exhibit 1, and that is concerning the
14 issue about the hard drives. And the Government in their --
15 you need to read it. And I'll give you a chance now to take
16 a break, because you need to read it. It said they
17 confiscated one hard drive on August 29th and Mr. Nichols
18 returned it without reviewing its contents, with an attached
19 exhibit and affidavit from the person who did that, and that
20 there is no second hard drive still in existence. The last
21 other drive was the one returned to you, but it didn't work
22 a while ago.

23 So you need to look at that and talk to
24 Mr. Nichols about it and make sure where we are here and
25 what we're talking about and be ready to respond to that.

1 If that is a problem for you, you can file an opposition to
2 the supplemental reply, a supplement later, and I won't
3 decide about the issue of the hard drive today.

4 The other issue that came up today was, the sudden
5 thing that changed in the case is the petition for habeas
6 was dismissed voluntarily. I got that this morning. So
7 Mr. McBride -- and I'm sure the Government hasn't seen it,
8 but Mr. McBride dismissed the habeas petition this morning.
9 So that's not pending for us right now. But it wasn't ripe
10 yet, but it's not pending. So he can dismiss it if he wants
11 to without prejudice.

12 So then it leaves Defendant's emergency motion for
13 immediate pretrial release, although part of that was the
14 seizure of the hard drive with the discovery materials of
15 Mr. Nichols, what he was concerned about, and he alleged
16 there's also strategy contained in that with his counsels'
17 advice, et cetera, contained in that.

18 The Government covers that as well in their
19 affidavit they filed from the officer that seized it about
20 it was in an envelope and never reviewed, never seen by
21 anyone.

22 But let me let you look at those documents. If
23 there's no extra copies, I will provide copies to you in a
24 minute from here, both as to the exhibit and supplement to
25 opposition, because you're going to have to be in a position

1 to address that somehow. And if you want to leave that out
2 of the argument today, we can treat it later. That's fine.

3 MR. McBRIDE: Your Honor, the sum and substance of
4 our argument today will turn on the hard drive. It is what
5 is at issue. I can say with absolute confidence that the
6 hard drive -- I'm going to review this, obviously. But the
7 hard drive has not been returned to us. We don't have it.

8 THE COURT: Read the thing, because it's talking
9 about a different hard drive maybe.

10 MR. McBRIDE: Okay.

11 THE COURT: There's also Exhibit 1. Did you have
12 a copy of the exhibit?

13 MR. BRASHER: Yes, your Honor.

14 THE COURT: And the supplement, both?

15 MR. BRASHER: Yes. I just gave it to him.

16 THE COURT: I'm going to take a break. I really
17 think you need to look at that with your client for a few
18 minutes --

19 MR. McBRIDE: Okay.

20 THE COURT: -- particularly if you want to make
21 that the main issue today. Be ready to either address it or
22 ask for an extension and we'll have you back here as soon as
23 we can.

24 MR. McBRIDE: Okay.

25 THE COURT: In fairness to you, you haven't gotten

1 it.

2 MR. McBRIDE: I understand, your Honor. Thank you
3 for the opportunity to be able to review this. We certainly
4 were not aware of its existence until just now. So we will
5 review it and come back and be prepared to proceed one way
6 or another.

7 MR. BRASHER: Just briefly, if I could address the
8 timing of our supplement.

9 THE COURT: All right.

10 MR. BRASHER: We spoke with Ms. Washington, I
11 think, on September 26th. And then there was the issue
12 about the second hard drive that was raised in the filing
13 that was more recent. So we just -- I would have liked to
14 have provided this to the Court and to counsel sooner, but
15 just the timing of when information was made available to us
16 has dictated when we could file it. So I apologize.

17 THE COURT: Dealing with the jail is difficult for
18 both sides.

19 I'll take a break now and let you all talk about
20 it with Mr. Nichols as well. And just let my courtroom
21 deputy know when you're ready to proceed.

22 MR. McBRIDE: Yes, your Honor. Thank you.

23 THE COURT: Thank you. We'll stand in recess.

24 (Thereupon a recess was taken, after which the
25 following proceedings were had:)

1 THE COURT: We're back on the record.

2 Now we've taken a break for counsel to review the
3 new pleading that came in. It's 11:03. The pleadings filed
4 by the Government yesterday were filed at 3:50 p.m. on the
5 record.

6 So let me hear where we are at this point. I'll
7 ask Mr. McBride to address it.

8 MR. McBRIDE: Thank you, Judge. Is it okay that I
9 speak from here?

10 THE COURT: Why don't you come up if you're going
11 to talk for a while. It'll be easier to stand and everybody
12 can hear you better. Thank you.

13 MR. McBRIDE: Is it okay if I remove this?

14 THE COURT: Yes, please. Thank you.

15 MR. McBRIDE: Thank you, your Honor.

16 So we were prepared to move forward today with
17 regard to the hearing based on the papers that were
18 available up until yesterday. It's come to our attention --
19 the Court has notified us, and we're thankful for that --
20 that a supplemental motion was filed late last night which
21 calls into question some of the material issues and facts
22 with regard to the discovery and hard drives that are at
23 issue in this case.

24 We need to ask for a continuance. We don't want a
25 long one here and we certainly don't want to get into a

1 back-and-forth. But we believe that -- we know for a
2 reasonable degree of certainty that we'll be able to provide
3 the Court information indicating that the hard drive -- the
4 zip drive with attorney-client-privileged work product
5 information does in fact exist. I think in essence, if I
6 were to sum up the Government's supplemental motion in one
7 sentence, basically it says that there's really no proof
8 that this drive exists, that the thumb drive exists. And
9 because of that, you know, maybe it shouldn't be considered.

10 We obviously disagree. We have different ways
11 that we can prove the thumb drive's existence.

12 THE COURT: There are two different thumb drives?

13 MR. McBRIDE: Right.

14 THE COURT: He was in possession, you're saying,
15 of two different thumb drives back on August 29?

16 MR. McBRIDE: Yes. So let me -- if the Court will
17 indulge me for a moment, I will explain sort of the progeny
18 of the hard drives.

19 There is a discovery hard drive that I gave
20 Mr. Nichols. It's a one-terabit [sic] discovery on a black
21 ScanDisk hard drive. That hard drive has traveled with
22 Mr. Nichols from the D.C. Jail to his new location in
23 Virginia. He has that. That has the discovery from the
24 Government on it and it's obviously necessary for him to be
25 able to prepare for his defense.

1 Additionally, there are two other thumb drives
2 that have been in existence.

3 So the way it works is I came onto this case in
4 August of '21. Prior to that, Buck Files, who was the
5 previous attorney, had given Mr. Nichols two thumb drives
6 for his discovery. The reason why he needed to give him two
7 is because -- which he was his attorney for two discovery
8 dumps. So one discovery was on one; one discovery was on
9 the other. When I -- so he had that. He had those two
10 drives, a blue thumb drive and a red thumb drive, before I
11 ever came on.

12 When I came on, I said: Look, these multiple
13 thumb drives don't make any sense. I'm just going to buy
14 you all a big terabit hard drive and we'll just put your
15 discovery on there and we'll swap it out accordingly,
16 because these little thumb drives are not going to work,
17 given the magnitude of the discovery in this case.

18 So what we did with those other two hard drives is
19 we essentially converted them into attorney-client work
20 product, where we were able to put his -- my thoughts, his
21 thoughts on there and work on the case with those thumb
22 drives.

23 I have in my possession the red thumb drive. The
24 blue thumb drive is what's unaccounted for. So we're not --
25 we don't have all the information that is on the blue thumb

1 drive, but we have most of it on the red thumb drive in my
2 possession.

3 Our concern is that -- I know what's on that thumb
4 drive. And my concern, now that it's unaccounted for, who's
5 got it?

6 At the last status hearing that we had -- or
7 hearing that we had, representations were made that I could
8 go down to D.C. Jail and pick up whatever was available. So
9 I went down to D.C. Jail. I said: Hey, I'm here to pick up
10 Mr. Nichols's thumb drive, his personal belongings and
11 effects, his legal papers and his books, his personal
12 correspondence.

13 Sorry, Mr. McBride. We don't have it.

14 I said: Well, you know, what do you mean you
15 don't have it? This has been at issue in the court.
16 General counsel knows about it. You know, the jail's been
17 on notice that this stuff is material. Please don't tell me
18 it's disappeared into the wind.

19 No. Let me go check on it.

20 I spoke to an officer named Officer King, a very
21 nice gentleman. He went, came back. He said: Look, at
22 some point the warden came down, scooped up all his stuff,
23 and I don't have an answer as to where it's gone.

24 I said: Okay. I'll leave my number. I'll follow
25 up with you. Please follow up with me at a reasonable time.

1 I'll come and get it.

2 But no followup. It appears to be gone.

3 So that is cause for concern for us because not
4 only now are the thumb drives at issue; Mr. Ryan Nichols's
5 legal papers, other strategies and, you know -- I've met
6 with Mr. Nichols at the D.C. Jail. I've sure we can pull
7 the visitor logs, but I've been there probably 20 or 30
8 times. And there's a wealth of papers that have gone back
9 and forth between Mr. Nichols and I which are relevant to
10 all different types of his trials, especially the strategy
11 and theories of our defense, which are also now gone.

12 And we have to, you know, ask ourselves why. I'll
13 make those arguments at the next adjournment.

14 For the time being, I think that it is best for me
15 to go back and to secure proof of their existence as much as
16 I can and to also make an oral Rule 16 discovery request
17 here on the record to the Government -- I will, of course,
18 provide one in writing -- asking for the evidence logs, the
19 property logs, indicating that Mr. Nichols did in fact --
20 was in possession of three drives while at D.C. Jail. I
21 know that he signed for them with general counsel at some
22 point. The jail was aware of their existence.

23 And it's not only Mr. Nichols who had these thumb
24 drives. All the other guys have been using their drum
25 drives for attorney-client stuff as well. It's not like

1 this is just him.

2 THE COURT: Right.

3 MR. McBRIDE: This is the culture that was there.
4 When the jail would come in and say, "Okay. Your time is up
5 for access to the computer," they would remove the discovery
6 hard drives that didn't have the attorney-client-privileged
7 stuff for everyone. So it was an indication culturally
8 that: We understand. We recognize you have your stuff on
9 your hard drives. That's attorney stuff. We're not going
10 to touch that. But we are going to take the discovery back,
11 because that's the policy.

12 I don't know if that's written in the document or
13 no. I'll look at the papers and find it. But that is the
14 accepted way things have been done at D.C. Jail for the past
15 year. I understand that they recently revised the policy
16 before Mr. Nichols -- or contemporaneously with
17 Mr. Nichols's departure. And, you know, that's sort of a --

18 THE COURT: All right. I appreciate your
19 explanation about that there is another thumb drive that
20 hasn't been recovered. I'm not sure when exactly it
21 disappeared per your explanation. You can provide that,
22 whether it's August 29, September 5 or sometime earlier.

23 MR. McBRIDE: I can, with the Court's permission,
24 of course. So on the August -- it was gone -- it's been
25 gone permanently since the 5th of September. Mr. Nichols

1 was put in administrative segregation with other people
2 because there was an incident that happened at the jail. He
3 was subsequently moved after that point.

4 THE COURT: But you're saying he had it in his
5 possession on the 5th in his cell?

6 MR. McBRIDE: He had it on the 5th in his cell,
7 yes.

8 THE COURT: So it wasn't taken on the 29th. A
9 different thumb drive was taken on the 29th that was
10 returned to him?

11 MR. McBRIDE: The discovery hard drive was taken
12 on the 29th and returned to him. That is correct.

13 THE COURT: And the blue one then was not taken
14 from him. Apparently, they didn't see it in the cell or
15 something?

16 MR. McBRIDE: The blue one was in his cell with
17 his personal effects, you know, in between whatever he had
18 there.

19 THE COURT: The day it disappeared, then, was
20 September 5th?

21 MR. McBRIDE: Yes. That's correct.

22 And I actually -- you know, so of course when this
23 happened, I asked Mr. Nichols to make a record of it. I can
24 provide that at a later date. I have a record of this stuff
25 happening.

1 THE COURT: So when can we get this back on to get
2 this done, the emergency motion? I'd like to get it heard
3 and resolved. Mr. Brasher flew up from Texas, so we need to
4 see when we can get it back on the calendar.

5 MR. McBRIDE: Sure. I can be here at whatever
6 time we needed. I probably -- I need to make a request for
7 documentation. I will make that request in writing today to
8 the Government. I think probably we need to give them
9 whatever time the Court deems appropriate to respond, and
10 then we come back at the soonest possible time. I can make
11 myself available at the earliest possible time that makes
12 sense to your Honor.

13 THE COURT: Well, I think probably you should
14 confer with Mr. Brasher and with Ms. Rocha because they're
15 going to have to go to the D.C. Jail and respond to your
16 request and find out what else -- if there's any other
17 materials available or not, interview witnesses out there.
18 You may have to go there and interview people.

19 Let me have you all talk and then submit a couple
20 of different dates. Andrea can look at our calendar with
21 you and see when we can do it again. I'll make myself
22 available. I'm going to be gone -- I'm not going to be
23 gone. I'm going to be here until December 1. I have two
24 days I'll be gone. Otherwise, I'm here. So I'm here
25 October, November without a break. So I can do it sometime

1 in that timeframe that's good for you all when you're ready
2 to go forward again.

3 MR. McBRIDE: Sure.

4 THE COURT: I don't know if you want to file
5 something explaining this to the Court before you come in,
6 before you come back, so I know what the issues are.

7 MR. McBRIDE: Okay.

8 THE COURT: I'll let you work out your schedule
9 right now with them here in the courtroom. And just tell --
10 tell Andrea here about the schedule and she'll clear it on
11 my calendar and see when we're available and I'll do it at
12 your convenience in the next few weeks whenever you're
13 ready. But you're going to have to file a document request.
14 It takes some time for the Government to respond and then
15 you want to file a supplement.

16 MR. McBRIDE: Sure.

17 THE COURT: So plan all that in so we can do it
18 appropriately.

19 MR. McBRIDE: Yes, your Honor. I will look to do
20 that in the most expedient timeframe possible.

21 I just do believe it's important for us to give
22 whatever cold, hard proof that we have that these hard
23 drives were in fact in existence.

24 Additionally, I just want to make a brief record
25 about Mr. Nichols's current situation with regard to

1 discovery. So he does have the hard drive at the jail, but
2 there's no way for him to use it. He hasn't been able to
3 use it since he's been there. Not only can he not use it;
4 he also does not have access to evidence.com, which was a
5 reasonable alternative during times where Mr. Nichols didn't
6 have the --

7 THE COURT: So he's not provided the temporary use
8 of a laptop in the jail at this point?

9 MR. McBRIDE: No. No.

10 And lastly, your Honor, we've spoken about this at
11 length since March of this year, about the relativity.com
12 database, which was the -- there's two databases. Your
13 Honor had agreed with us on a few occasions that Mr. Nichols
14 should be given access to the relativity.com database. And
15 he was never given access to relativity.com while he was at
16 D.C. Jail and he certainly doesn't have it now.

17 So I just want to be clear that in terms of what
18 appeared to be the three available ways for Mr. Nichols to
19 participate in going through his evidence, number one, the
20 hard drive that he has and, number two, the two available
21 databases. He's not been able to utilize any of those
22 options since being transferred to Virginia.

23 THE COURT: All right. That's a concern, at least
24 as to the materials that he already had on his hard drives.
25 We'll have to see about relativity in his new place. But he

1 should at least have access to work on his discovery
2 material that you've provided to him. We'll have to find
3 out what the rules are in this new facility that he's in in
4 Rappahannock Regional Jail.

5 I did want to ask the Government one question, if
6 I might.

7 Your affidavit, Mr. Brasher, from the legal
8 instruments examiner, Ms. Washington, I guess it's really
9 actually in your supplement. It says that it's on Page 2 at
10 the bottom. According to information provided by the U.S.
11 Marshals Service, Nicholas's USB hard drive was transferred
12 to him at the Central Virginia Regional Jail. Is that the
13 same as what's been identified otherwise?

14 MR. BRASHER: Is that the same hard drive?

15 THE COURT: No; the same jail. The Central
16 Regional Virginia -- it's identified as the Rappahannock
17 Jail. Is that the same facility?

18 MR. BRASHER: I'm not familiar with the
19 terminology. It's where I understand Mr. Nichols is today,
20 or has been.

21 THE COURT: I'm not sure. I want to make sure we
22 have the right place. And whatever their rules may be,
23 we'll have to find out as to the ability to review the
24 discovery regardless of any missing --

25 MR. McBRIDE: Your Honor, my understanding is that

1 he's at -- "Rappahannock"?

2 THE COURT: "Rappahannock."

3 MR. McBRIDE: Thank you.

4 I'm not sure if those are the same two places.

5 But I think we can agree that that's where he's at.

6 THE COURT: All right.

7 MR. BRASHER: If I can just be heard briefly, your
8 Honor.

9 THE COURT: Yes.

10 MR. BRASHER: I think we will certainly make
11 whatever inquiries the Court directs. But we're also of the
12 position that as officers of the Court, we've represented
13 now multiple times that the prosecution team has never been
14 exposed to any material that it should not be exposed to.

15 So if there's missing hard drives, I understand
16 why that could be a concerning thing. But in terms of this
17 case and where we go forward, we'll make the inquiries the
18 Court wants to make. But I don't think it's any basis for
19 disqualification or release or dismissal.

20 THE COURT: I understand your position, unless
21 it's been turned over or somehow exposed to the prosecution
22 team or the Justice Department in some way, if someone gave
23 it to the trial counsel here. I understand you're concerned
24 about that, that that may have been lost as opposed to
25 anybody particularly. But we'll wait for Mr. McBride to see

1 what he has to say about that.

2 I'm going to ask you to pick a date. You're going
3 to have to come back. I appreciate -- look at your calendar
4 and see what will work.

5 MR. BRASHER: Okay. Just so I'm clear, the Court
6 would like us to make inquiries as to --

7 THE COURT: I would like to see if we can get a
8 history of this second drive and what happened to it and the
9 jail's knowledge of the second drive or not that he's had.
10 He said he's had two drives the whole time he's been there,
11 apparently. He no longer has them. So that's what we need
12 to determine.

13 MR. BRASHER: We will do our best to gather the
14 information. That's all we've done today, was gather
15 information and provide it to Mr. --

16 THE COURT: It was very helpful, what you got, but
17 we need to pin this down a little bit. And we'll see with
18 Mr. McBride whatever evidence he can produce.

19 So pick your dates and we'll get back.

20 Give me about two hours on my calendar for this,
21 please.

22 We'll stand in recess. Thank you.

23 MR. BRASHER: Thank you, your Honor.

24 (Proceedings concluded.)

25

CERTIFICATE

I, LISA EDWARDS, RDR, CRR, do hereby
certify that the foregoing constitutes a true and accurate
transcript of my stenographic notes, and is a full, true,
and complete transcript of the proceedings produced to the
best of my ability.

Dated this 12th day of October, 2022.

/s/ Lisa Edwards, RDR, CRR
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