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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA) Greensboro, North Carolina
) September 30, 2014
vs.) 11:11 a.m.
)
BRIAN DAVID HILL,)
) Case No. 1:13CR435-1
Defendant.)
)

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE WILLIAM L. OSTEEEN, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: ANAND P. RAMASWAMY, AUSA
Office of the U.S. Attorney
101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401

For the Defendant: ERIC D. PLACKE, AFPD
Office of the Federal Public Defender
301 N. Elm Street, Suite 410
Greensboro, North Carolina 27401

Court Reporter: Joseph B. Armstrong, RMR, FCRR
324 W. Market, Room 101
Greensboro, NC 27401

Proceedings reported by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

P R O C E E D I N G S

(At 11:11 a.m., proceedings commenced.)

(Defendant present.)

MR. RAMASWAMY: Good morning, Your Honor.

THE COURT: Good morning, Mr. Ramaswamy. You may call the next case.

MR. RAMASWAMY: Yes, sir. The Government would call United States versus Brian David Hill in 1:13CR435-1. He is represented by Mr. Placke. The matter was set today for sentencing.

THE COURT: All right. Mr. Placke, are you and Mr. Hill ready to proceed?

MR. PLACKE: Yes, Your Honor.

THE COURT: All right. I will note in passing that Mr. Hill's prolific motion filing ability continues. I've reviewed a number of those motions. At this point, having heard from Mr. Hill previously, I am not inclined to address all these pro se motions individually, having found, number one, that Mr. Hill is represented by competent counsel; number two, that there's no reason for that counsel to be removed from the case; and, number three, it appears to me now, particularly with the benefit of a presentence report, that, as I found the last time, much of this motions practice by Mr. Hill is prompted by psychological factors that are more thoroughly described in the presentence report and don't need to be fully

1 addressed here.

2 So to the extent Mr. Hill seeks to reopen this case
3 and file additional evidence and withdraw his plea and proceed
4 ahead to trial upon a plea of not guilty with additional
5 evidence, I find that those motions should be denied at this
6 point in time for the reasons I addressed last time I had heard
7 from Mr. Hill on his request to substitute counsel.

8 Now, having said that, I received a declaration from
9 a woman named Susan Basko. Ms. Welch, if you'll hand that to
10 Mr. Ramaswamy. I don't know if you all have seen that
11 declaration. If you'll step forward and take a look. Have you
12 seen that, Mr. Placke?

13 MR. PLACKE: I have, Your Honor. That is what
14 arrived at our office via email last week, one of several
15 different emails from Ms. Basko.

16 THE COURT: Have you communicated with her at all?

17 MR. PLACKE: No, I haven't, Your Honor.

18 THE COURT: I don't know who she is to make -- she
19 claims she's a lawyer.

20 MR. PLACKE: I did check with the California State
21 Bar and the Illinois State Bar. She is currently admitted to
22 practice in both states.

23 THE COURT: Is this Mr. Hill's family in the back?

24 MR. PLACKE: It is, Your Honor.

25 THE COURT: Grandparents and mother?

1 MR. PLACKE: Yes, Your Honor.

2 THE COURT: Have you all been contacted by this
3 woman, Ms. Basko?

4 MS. BURNETT: In December of 2013.

5 THE COURT: Mr. Ramaswamy, if you don't mind, will
6 you hand that affidavit back to Ms. Welch. Let me ask you
7 about this. If you all don't mind, if you'll step forward.
8 Right behind Mr. Placke will be fine. Actually, just Ken
9 Forinash and Stella Burnett. Mr. -- is it Forinash? Is that
10 correct?

11 MR. FORINASH: Yes, sir.

12 THE COURT: Let me ask you first. This affidavit
13 says that "I have been told by Brian's grandparents, Ken
14 Forinash and Stella Burnett, that Brian wants to withdraw his
15 guilty plea because he is innocent, and he wants a substitute
16 public defender." Did you all tell her that?

17 MS. BURNETT: Yes, sir, we did.

18 THE COURT: And why did you tell her that?

19 MS. BURNETT: Because Brian is innocent, and he's
20 really not been represented. This attorney has never talked to
21 us until right at the end. He called us the night before the
22 sentencing hearing and told us to have Brian to plead guilty
23 and so that's what we did, and that was wrong because Brian is
24 not guilty. He's got autism. He's not guilty. He doesn't
25 like being around children.

1 THE COURT: What does the autism got to do with his
2 guilt or innocence?

3 MS. BURNETT: Because we're around Brian all the
4 time, and he does not like children at all. He's like a child.
5 I mean, when it comes time to watch a parade or anything like
6 that, he doesn't even recognize the children there. He walks
7 up front and takes his pictures.

8 THE COURT: Have you seen any of the forensic
9 evidence in the case?

10 MS. BURNETT: No, sir.

11 THE COURT: Have you seen any of the images?

12 MS. BURNETT: No, sir.

13 THE COURT: Are you aware of any of the statements
14 that Brian gave law enforcement officers at the time of his
15 arrest --

16 MS. BURNETT: Yes, sir, we are.

17 THE COURT: -- or at the time of the search?

18 MS. BURNETT: Yes, sir, but --

19 THE COURT: What did he tell them at that time?

20 MS. BURNETT: At the time of the search?

21 THE COURT: Yes, ma'am.

22 MS. BURNETT: Something about being interested in 12
23 year olds, but we've never --

24 THE COURT: What did he tell them at that time?

25 MS. BURNETT: Tell?

1 THE COURT: Law enforcement at the time of the
2 search.

3 MS. BURNETT: Did you not see the papers we sent you?

4 THE COURT: I'm asking you.

5 MS. BURNETT: What did he -- I wasn't there. Oh, I
6 was at the search.

7 THE COURT: Yes, what did he tell law enforcement at
8 the time of the search?

9 MS. BURNETT: Nothing.

10 THE COURT: Nothing?

11 MS. BURNETT: No, we were all on the front porch.
12 They called him in, and we weren't in there.

13 THE COURT: You didn't hear what was said at the
14 time?

15 MS. BURNETT: At the time of the search, no, I
16 didn't.

17 THE COURT: So you don't know whether he admitted to
18 the conduct or not?

19 MS. BURNETT: No, sir. We just know that we have
20 been lied to by the same police that say he said that. We have
21 been lied to. We sent that to the Court, yes, sir, we have.
22 By the same officers --

23 THE COURT: Why would you communicate to this -- have
24 you ever met this woman?

25 MS. BURNETT: Met whom?

1 THE COURT: This Susan Basko?

2 MS. BURNETT: No, sir, but she is an attorney. The
3 things she told about, we have pictures, Your Honor, with --

4 THE COURT: Before you pull anything out, she's an
5 attorney where?

6 MS. BURNETT: On the internet. She represents people
7 on the internet like news people and alternative news people.

8 THE COURT: So you contacted her?

9 MS. BURNETT: No, sir. Actually when Brian was
10 arrested, he gave us this email, and we saw where she had sent
11 some emails. Then, yeah, after that, we contacted her.

12 THE COURT: And you told her you thought he was
13 innocent?

14 MS. BURNETT: Yes, sir, we do think he's innocent.
15 We know he's innocent.

16 THE COURT: Mr. Forinash, do you agree with that?

17 MR. FORINASH: Yes, sir.

18 THE COURT: All right. You may have a seat.

19 I'm going to make a comment here. I said it before,
20 and I'm going to say it again. For this lawyer in Illinois or
21 wherever she is located to make a statement under oath that "I
22 am aware that Brian David Hill is innocent of the charges, and
23 I will explain how I know this," and then to read how she
24 describes she is aware of that, I find, quite honestly on this
25 record, to -- I don't want to use the word fraud, but I find

1 that to be almost as irresponsible a statement by an attorney
2 as I have seen in some period of time. And I make that
3 statement because she nowhere in this declaration describes any
4 familiarity with the statements that Mr. Hill made at the time
5 of the arrest, with the forensic analysis of Mr. Hill's
6 computer, nor, frankly, in my mind, does she fully describe a
7 connection between Mr. Hill and these other individuals who she
8 claims were set up by persons or persons unknown such that that
9 would explain making a statement like, "I am aware that Brian
10 David Hill is innocent of the charges, and I will explain
11 herein how I know this."

12 Number two, for an attorney, without having the
13 benefit of that type of information before corresponding with
14 and speaking to family members of an individual defendant
15 about, A, the innocence of the defendant -- absolute innocence,
16 not qualified, absolute innocence of the defendant -- and, B,
17 thereby impinging the work of counsel of record in the case
18 and, in my mind, likely confidence in counsel of record, is
19 about as concerning of conduct as I've seen been by an attorney
20 in a case.

21 Paragraph 2 of this affidavit says, "I'm a lawyer
22 licensed in Illinois and California. I practice law for
23 independent media, including the internet. I do not generally
24 go into court, so I ask the Court to please forgive if my
25 paperwork is not in the exact usual form."

1 So what's wrong with that? Number one, as I
2 understand what I was just told by Mr. Hill's grandparents, she
3 is rendering advice and counsel in the state of North Carolina
4 to family members in relation to a criminal case pending in the
5 state of North Carolina.

6 Number two, it seems to me, that by sending a
7 declaration to the Court describing the innocence of a
8 defendant who has been prosecuted in the United States District
9 Court for the Middle District of North Carolina, she has
10 injected herself and her opinion in these proceedings, and,
11 quite frankly, not in any positive way.

12 I don't know what to do about this, quite honestly.
13 I'm troubled on two levels. Number one, troubled by this
14 conduct of Ms. Basko holding herself out rendering advice and
15 counsel in a pending criminal case when it appears to me she
16 really has no business rendering advice and counsel.

17 And, number two, I, quite honestly, now fully
18 appreciate the position that Mr. Placke found himself in where
19 he is having to defend himself not only to his client, but to
20 family members who are challenging Mr. Placke's actions without
21 any understanding of the evidence in the case, the relevant
22 admissible evidence in the case. Quite honestly, I don't know
23 that I find it fair for Mr. Placke to have to continue under
24 these circumstances.

25 Mr. Ramaswamy, I'm curious as to what the

1 Government's impression of this situation is at this point?

2 MR. RAMASWAMY: Frankly, Your Honor, I had not
3 considered it in the manner that the Court has framed it.
4 Early in this matter, very early in this matter, there was an
5 email. I believe because our email addresses are part of the
6 ECF record, Mr. Placke and I received the same email. As
7 Mr. Placke did, I did confirm that she was -- this person was a
8 licensed attorney in California, appears to be a licensed but
9 nonpracticing attorney.

10 I did not look at it so much in the attorney context
11 because -- as with much of the filings here and some of the
12 things that are from prior proceedings in this court and in the
13 magistrate court related to Mr. Hill that become reported on
14 the internet by persons associated with him that are largely
15 not representing what actually happened, it appeared that
16 person, the attorney, was yet another one of the ones
17 associated through the internet of reporting things were not
18 factually correct to maintain the actual innocence.

19 I hadn't considered it in terms of her -- she's the
20 only one of the group who is in that filing to the Court using
21 her credentials as an attorney to bolster her statements, but
22 there are a number of people, not in filings to the Court, but
23 in internet postings who, I'd say, maintain similar positions.
24 That had not been a concern because I think to explore that
25 further may go into some of the issues and the persecution --

1 the ideas of persecution or give an impression that this
2 prosecution is about anything other than the offense conduct.
3 It has nothing to do with any belief political or otherwise of
4 the defendant. I'm not certain --

5 THE COURT: I'll tell you what I'm thinking about
6 doing. Let me hear from Mr. Placke. Mr. Placke, do you want
7 to address any of this?

8 MR. PLACKE: Just two things, Your Honor. One
9 related to Ms. Basko and some of these other folks. I did
10 review everything that she sent to our office. I did check to
11 see if she was actually an attorney. I was concerned that she
12 was expressing opinions that didn't seem to have a basis in
13 knowledge of the evidence in the case. She had asked in her
14 email that I present this declaration to the Court. I declined
15 to do that. But I tended to view it like much of the other
16 internet material I had seen related to this case, intended to
17 sort of place her in that category of people. I didn't realize
18 she was going to send her declaration directly to the Court.

19 THE COURT: She sent it to be filed on CM/ECF, and
20 the Clerk's Office sent it to me for determination as to
21 whether it should be filed on CM/ECF.

22 MR. PLACKE: Quite frankly, when she sent it to me,
23 and I just let it sit there declining to do anything further, I
24 thought that was going to be the end of it.

25 THE COURT: That's what I would have done if I had

1 been in your shoes.

2 MR. PLACKE: She actually mentions some folks in
3 there, one of whom I did talk to at length at Mr. Hill's
4 request some months ago, a Mr. Dan Johnson. He -- we spent
5 quite a bit of time on the phone, and he gave me his opinion
6 about exactly what had happened and how I should handle the
7 case and so forth. I asked some pointed questions about how
8 what he was saying would fit in the rules of evidence and the
9 rules of procedure, and that sort of turned the conversation a
10 little bit. Mr. Johnson is a 20-year-old in Ohio who is very
11 active on the internet and concerned about certain issues and
12 had been in contact with Mr. Hill. After that conversation, I
13 didn't view it as particularly productive for Mr. Hill's
14 defense to continue contacting all these other people.

15 Anyway, my point there and my first point was simply
16 in trying to triage how to handle things in this case, I tended
17 to put things from Ms. Basko in the same category as my phone
18 conversations with Mr. Johnson, again, not knowing that she
19 intended to send her declaration directly to the Court.

20 The second thing I would say regarding the whole
21 issue of counsel is Mr. Hill has continued to ask for new
22 counsel. It's continued to be my view that under the
23 circumstances, our office -- I should individually and our
24 office as an office should do everything we can to assist
25 Mr. Hill and as much as possible shrug off, if you will, some

1 of the extra work necessitated by some of these things and to
2 recognize that some of it is the product of mental illness.

3 That said, over the weekend, I received a voice mail
4 indicating that Mr. Hill intended to file a lawsuit against me,
5 and that email -- or excuse me -- the voice mail and that,
6 therefore, would constitute a conflict of interest and,
7 therefore, I wouldn't be able to serve as counsel anymore.
8 That was from Mr. Hill. There was some documents he wanted to
9 pass up to the Court to that effect.

10 What concerns me, though, is there's also in what he
11 wanted to pass up to the Court a document that says -- it
12 simply identifies itself as being from a friend that seems to
13 suggest that as a strategy for obtaining new counsel.

14 THE COURT: Well, I'll tell you what I'm inclined to
15 do at this point. I don't know if it's appropriate or not, but
16 I can't tell anymore whether or not Mr. Hill is being
17 improperly encouraged to press these positions without -- by
18 individuals and/or an attorney who have, at least as near as I
19 can tell, no familiarity with the specific facts of this case,
20 the forensic analysis, or the statements of Mr. Hill given as
21 reflected in the presentence report. We can talk about that in
22 detail, but in light of what I am considering, quite frankly,
23 I'm not interested in airing that out at this point for public
24 consumption.

25 So what I'm considering doing is, in light of the

1 current allegations, allowing Mr. Placke to withdraw from this
2 case, appointing substitute counsel, and giving notice of the
3 fact that I am considering whether or not I should withdraw
4 Mr. Hill's acceptance of responsibility for falsely asserting
5 in a very public manner his innocence of the case without ever
6 presenting any facts that would address the specific facts of
7 this case, setting that matter on for a hearing, and asking the
8 Government to subpoena Ms. Basko, because Ms. Basko has
9 submitted a declaration, given under penalty of perjury, that
10 Mr. Hill is innocent of the charges. It would seem to me she
11 has at this point injected herself into this proceeding.

12 And there's one of two ways to interpret Mr. Hill's
13 actions. Either Mr. Hill is genuinely attempting to establish
14 his innocence believing that he has been wrongfully prosecuted
15 at this point; or, two, Mr. Hill is being encouraged by a
16 person or persons as yet unidentified to assert positions that
17 are inconsistent with the facts of the case as not publicly and
18 widely known.

19 And quite honestly, in light of some of the -- in
20 light of the investigative materials as I've had a chance to
21 see in the presentence report, it would seem to me that even
22 if -- even if there were some way to establish some of this
23 with respect to these other individuals being set up that
24 Mr. Hill still faces an uphill battle in light of the materials
25 that were found and in light of his statements given to law

1 enforcement during the course of this investigation.

2 Now, this case could be unwinding toward a very
3 difficult result because up to this point both the
4 Government -- or the defendant had asserted -- counsel for the
5 defendant had asserted that a departure was appropriate; and
6 while I'm not sure I agreed under 5H1.4, I did agree under
7 5H1.3, in the absence of any objection from the Government,
8 that a departure was appropriate, and I think the clear
9 implication with respect to the sentence the Government was
10 seeking in light of all these factors was one which could have
11 resulted in a probationary sentence for Mr. Hill.

12 But at this point in time in light of what I see to
13 be not only an individual defendant making statements that are
14 unsupported by anything I see in the record, the defendant
15 somehow has now assembled a group of individuals who are
16 independently and on his behalf urging these alternate facts on
17 the Court, and I don't see any -- I really, quite honestly,
18 find this whole thing to be a very serious situation. It could
19 be anything from -- you know, on the one hand if anything they
20 say is true, then perhaps something should be done. But at
21 this point, it begins to look more like a fraud on a United
22 States District Court than anything else with a lawyer
23 participating. I mean, you all may disagree with my assessment
24 of this material, but I find it alarming, to say the least.

25 Mr. Ramaswamy, if we have such a hearing, I'm going

1 to want the Government to subpoena Ms. Basko because I want to
2 know what she knew and didn't know and at whose direction she
3 acted in sending this information.

4 MR. RAMASWAMY: Yes, sir.

5 THE COURT: Does that seem unreasonable to you?

6 MR. RAMASWAMY: No, sir.

7 THE COURT: Mr. Placke, does anything I've described
8 up to this point seem unreasonable or improper?

9 MR. PLACKE: No, it doesn't, Your Honor. It's hard
10 to tease out in situations like this who's influencing whom,
11 who has assembled whom. I've had concerns about friends --
12 so-called friends on the internet and the influence that they
13 had on my client throughout the case. Those concerns keep
14 growing instead of diminishing.

15 THE COURT: And how is this contact continuing after
16 he's been arrested? He's been in custody, hasn't he?

17 MR. PLACKE: He's been in custody. Of course, he has
18 access to mail; and based on statements made here today, I
19 understand that Ms. Basko has been in contact with his family
20 as well. Of course, I can see that on the email that -- you
21 know, who received the email.

22 THE COURT: Well, I don't want to impinge on anyone's
23 right to counsel. I don't want to impinge on anyone's right to
24 free speech, but there's nothing about free speech that allows
25 anyone to come in to attempt to persuade a court to act in a

1 certain fashion without evidence to support that or without
2 authority to support such conclusory allegations.

3 Mr. Placke, I'm going to allow you to withdraw from
4 this case. I'm going to order that the discovery that's been
5 previously provided by the United States to Mr. Placke on
6 behalf of the defendant be sealed. It can only be viewed by
7 substitute counsel in the matter. No discovery is to be
8 distributed or shared with anyone else at this particular point
9 until I find out who knew what when in this matter. This
10 sentencing is continued -- what is my 30 to 45 days out,
11 Ms. Welch? Probably going to need a pretty good gap of time.

12 All right. I'm going to set it on for sentencing on
13 Friday, November 7, 2014, at 3:00 in the afternoon. I'm going
14 to also appoint substitute counsel in this matter for Mr. Hill,
15 and I am going to, in light of my order in relation to
16 discovery on October the 15th -- that was a sentencing day,
17 Ms. Welch?

18 THE CLERK: Yes.

19 THE COURT: Okay. On October the 15th at 2:00 in the
20 afternoon, we'll set a status conference in this thing to
21 revisit my order to the extent necessary as well as any other
22 procedural issues that need to be addressed in preparation for
23 proceeding with this hearing that's occurred here.

24 I don't know whether I'm looking at -- I hesitate to
25 use the word "fraud," but I don't know whether I'm looking at

1 careless and reckless conduct in relation to this court or
2 whether I'm looking at a tragedy or a travesty or what, but
3 I'll tell you, for an outside -- for an attorney -- a licensed
4 attorney to send a letter advising this Court of the innocence
5 of an individual who is not only addressing a criminal
6 prosecution but also clearly having to deal with other
7 significant matters, without more understanding of the actual
8 facts of this case than what are described in that declaration,
9 is, at least on the front face of it, about as irresponsible as
10 anything I have seen in terms of conduct in relation to a
11 criminal defendant. But we'll get to the bottom of this one
12 way or another.

13 Any questions, Mr. Placke?

14 MR. PLACKE: No questions, Your Honor, but perhaps it
15 would be beneficial for everyone in light of the Court's order
16 about the sealing the discovery for me to describe on the
17 record here what I've received from the Government and actually
18 return it at this point.

19 THE COURT: I'm fine with that.

20 MR. PLACKE: Your Honor, I received in terms of
21 discovery in this case from the Government two CDs, one of
22 which contained the audio recording of the interview of
23 Mr. Hill, the other of which contained law enforcement reports
24 in PDF format. I've printed those out. The reports are a
25 Mayodan Police Department report dated August 22, 2012, and a

1 North Carolina State Bureau of Investigation case file dated
2 October 23, 2013. And perhaps in light of everything else, I
3 should just return those to the Government at this point.

4 THE COURT: Mr. Ramaswamy, I'll note Mr. Placke is
5 returning the material to you. My sealing order does not
6 prohibit your disclosure of that same material to substitute
7 counsel in the case, but it can only be done with the
8 understanding of no further disclosure at this point to occur
9 until at least the time of the status conference on the 15th.

10 MR. RAMASWAMY: Yes, sir. May I ask as to that last
11 declaration from the attorney that the Government receive a
12 copy to assist us in preparing the subpoena?

13 THE COURT: I'll leave it with Ms. Welch. Unless
14 there's an objection, I think in light of what I've heard, I'm
15 going to have it filed on CM/ECF. Any objection, Mr. Placke?

16 MR. PLACKE: No, Your Honor.

17 THE COURT: I'll let Ms. Welch go ahead and give you
18 a copy of it. But she sent it in, we're going to file it on
19 CM/ECF.

20 Mr. Ramaswamy, I don't know what your reaction is to
21 my response to this, but I'll simply say it may be that I'm
22 stepping into the middle of something that in the modern Web
23 2.0 age is something that invites more trouble than can be
24 resolved, but the seriousness of this kind of conduct is -- I
25 don't know how you ignore it. If you want to be heard further,

1 I'll hear from you.

2 MR. RAMASWAMY: I don't know that I should do it.
3 While it's not part of discovery and not part of his materials,
4 I think Mr. Placke and I both have seen a substantial amount of
5 online statements similar to this. I don't believe the Court
6 can ignore this conduct, but I would say we're past that point.
7 But all in all, as to this individual and what is unique in
8 terms of plea offer as to this matter, I still believe it was
9 suited in this matter.

10 THE COURT: I'm not criticizing the plea, and I'm not
11 criticizing the parties' respective positions in this matter in
12 any way. As a matter of fact, at least from the indications I
13 had, I thought it was an entirely appropriate way to resolve
14 this matter.

15 MR. RAMASWAMY: And please don't misinterpret that as
16 we thought the Court was. I think at the outset at the Rule 11
17 hearing the Court indicated its inclination to accept. But
18 it's that same third party involvement or what appears that
19 same third party involvement that may well cause the loss of
20 the benefit of the bargain.

21 THE COURT: We'll investigate whether or not she
22 acted independently and what evidence she had to make those
23 representations to this Court or whether or not she acted at
24 the direction of Mr. Hill, in which case he's responsible for
25 the representations to the Court given under oath by a

1 practicing attorney.

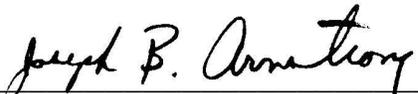
2 All right. If there's nothing further then, we'll
3 stand in recess until 2:00.

4 (At 11:49 a.m., proceedings concluded.)

5 * * * * *

6 C E R T I F I C A T E

7 I certify that the foregoing is a correct transcript
8 from the proceedings in the above-entitled matter.

9 
10 Date: 06/24/2015 Joseph B. Armstrong, RMR, FCRR
11 United States Court Reporter
12 324 W. Market Street
13 Greensboro, NC 27401
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