

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA,

4 v. 17 CR 548 (PAC)

5 JOSHUA ADAM SCHULTE,
6 Defendant.

7 -----x

8 New York, N.Y.
9 December 14, 2017
2:30 p.m.

10 Before:

11 HON. PAUL A. CROTTY,
12 District Judge

13 APPEARANCES

14 JOON H. KIM
15 Acting United States Attorney for the
16 Southern District of New York

17 MATTHEW JOSEPH LAROCHE
Assistant United States Attorney

18 BRAFMAN & ASSOCIATES, PC
Attorneys for Defendant

19 BY: JACOB KAPLAN

20 ALSO PRESENT: JOHN MOSCATO, Pretrial Services

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1 (Case called)

2 THE DEPUTY CLERK: Counsel for the government, please
3 state your appearances.

4 MR. LAROCHE: Good afternoon, your Honor. Matt
5 Laroche for the government. With me is John Moscato from
6 pretrial services.

7 THE COURT: Good afternoon, Mr. Moscato. Thank you
8 for coming.

9 MR. KAPLAN: Good afternoon, your Honor. Jacob Kaplan
10 with Brafman & Associates for Mr. Schulte.

11 THE COURT: Mr. Kaplan. Mr. Schulte, how are you?
12 Mr. Laroche.

13 MR. LAROCHE: Yes, your Honor. We were last here on
14 November 8. Since that time, two things have happened. One is
15 that the defendant has changed counsel to Mr. Kaplan.

16 The Second, as the Court is aware from our letter last
17 week, the defendant was arrested on the bases of charges out of
18 Virginia. Based on those charges and other information that
19 we've set forth in our letter, we're now seeking the
20 defendant's detention.

21 It is my understanding -- and I'll defer to defense
22 counsel -- that at least with respect to our application, they
23 are consenting for now without prejudice, and I'll let him
24 explain that. The government is also ready to discuss a
25 schedule moving forward.

1 THE COURT: Mr. Kaplan.

2 MR. KAPLAN: Thank you, your Honor.

3 My colleague is correct that we are going to consent
4 to detention without prejudice. We would like, based on our
5 conversations with the government, to allow Mr. Schulte to go
6 down to Virginia do at least address the initial arraignment on
7 the charges down there with an understanding he'll come back
8 here to appear before your Honor.

9 THE COURT: What's the schedule for that, Mr. Kaplan?

10 MR. KAPLAN: Nothing is happening until he gets down
11 there. Based on my conversations with the state prosecutor,
12 because he's currently in state custody, the deputies from
13 Virginia are supposed to pick him up on December 20 from the
14 state facility.

15 Presumably they'll pick him up from the federal
16 facility instead, and they'll take him down to Virginia. He
17 has counsel already down in Virginia. Hopefully he'll be
18 arraigned soon after returning to Virginia. Then depending on
19 what happens in the court there, I would hope that he could be
20 brought back here.

21 THE COURT: When he leaves this courtroom, in whose
22 custody will he be?

23 MR. KAPLAN: My understanding is that he'll be in
24 federal custody.

25 THE COURT: Is that right, Mr. Laroche?

1 MR. LAROCHE: Yes, your Honor. I think that how it
2 would work procedurally is that after today he would be in
3 federal custody, and then the state authorities would take him
4 out, bring him to Virginia, get him arraigned, and then he
5 would be back up here still in federal custody for the next
6 matter.

7 THE COURT: I have a remand order which I've drafted
8 which provides that, for the reasons stated on the record, bail
9 is revoked, and the defendant is remanded to the custody of the
10 U.S. Marshals for the Southern District.

11 Is that what you want?

12 MR. LAROCHE: Yes, your Honor.

13 THE COURT: Mr. Kaplan, is that all right?

14 MR. KAPLAN: It is, your Honor. While we have answers
15 to a lot of the allegations in the government's letter, we
16 think it's best to wait until the Virginia matter is resolved
17 before addressing it.

18 THE COURT: I'm signing the order, and Mr. Schulte is
19 remanded.

20 The marshals are here? Thank you.

21 Okay. Mr. Laroche, what else?

22 MR. LAROCHE: Yes, your Honor. At the last
23 conference, I think the parties notified the Court that there
24 was one remaining issue with respect to discovery, and that was
25 specifically that the government needed a laptop computer and

1 an additional hard drive so we could load the remaining
2 discovery.

3 After Mr. Kaplan was appointed counsel or became
4 counsel for the defendant, he provided us those materials.
5 We're in the process of loading them, which is taking a bit of
6 time because of the amount of data. With that said, we will
7 have that complete by next week. At that point, discovery in
8 this case will be complete.

9 THE COURT: How much time do you want, Mr. Kaplan.

10 MR. KAPLAN: Well, your Honor, we've obtained the
11 discovery given to prior counsel, and I've started to go
12 through that. In addition, there was one other issue which I
13 believe was raised at our prior conference, which was a
14 security clearance for counsel to go through some of the
15 national security evidence that might be present in the case.

16 While most of the national security stuff does not
17 involve the charges, the actual charges against Mr. Schulte,
18 the basis for the search warrants in this case involve national
19 security.

20 So I'm starting the process with their office to
21 hopefully get clearance to go through some of the information
22 on that with an eye towards possibly a Franks motion going
23 forward. So I would ask for more time just to get that
24 rolling.

25 What I would hope to do, with the Court's approval, is

1 to set a hearing date, a court date, for early January just to
2 ensure that Mr. Schulte, after dealing with the issue in
3 Virginia, is brought back here to the Southern District of New
4 York.

5 In the three weeks in between now and then, I'll have
6 a better idea, based on the discovery I receive from the
7 government, as to how much time we would need for motions going
8 forward.

9 THE COURT: What date do you want in January?

10 MR. KAPLAN: The first week, between January 3 and
11 January 6.

12 THE DEPUTY CLERK: Conference set for Thursday,
13 January 4 at 3:45.

14 MR. KAPLAN: That's perfect, your Honor.

15 THE COURT: Mr. Laroche, is that all right with you?

16 MR. LAROCHE: That's fine, your Honor. Thank you.

17 THE COURT: Anything else?

18 MR. LAROCHE: Your Honor, the government moves to
19 exclude time in the interests of justice from today until
20 January 4. The basis for the exclusion is so that defense
21 counsel can continue considering the discovery and also
22 consider potential motions to be filed.

23 THE COURT: Any objection?

24 MR. KAPLAN: No objection.

25 THE COURT: For the reasons stated, the time between

1 now and January 4 will be excluded. It's in the interests of
2 justice. Those interests outweigh the interests of the public
3 and the defendant in a speedy trial.

4 Okay, Mr. Kaplan.

5 MR. KAPLAN: Thank you, your Honor.

6 By some chance if something happens before
7 January 4 --

8 THE COURT: Come back then.

9 MR. KAPLAN: That's all I ask. Thank you.

10 THE COURT: We're available. I'm not going anywhere.
11 If there are any problems between now and January 4, drop me a
12 line.

13 MR. KAPLAN: I appreciate it. Happy holidays.

14 THE COURT: Mr. Laroche?

15 MR. LAROCHE: Thank you, your Honor. That's all.

16 THE COURT: Thank you very much.

17 (Adjourned)

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