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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NO.
. 4:03-CR-188-A
VS. .
. .
RICHARD MICHAEL SIMKANIN . January 7, 2004
. 9:00 a.m.
.

VOLUME V
TRIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN H. McBRYDE
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the United States: Mr. David L. Jarvis
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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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P R O C E E D I N G S,

(Court Reporter's Note: This is a continuation of
Volume IV. There have been no deletions or additions.)

THE COURT: The jury is going to be excused now, and
you'll have your transportation back to wherever you're parked.
I don't know where it is, but wherever it is you'll have your
transportation. And you'll be escorted from the building so
there is no possibility of a problem.

You have the right, from this point forward, to discuss
the case with anyone you want to discuss it with or decline to
discuss it with anyone you want to. I am going to instruct you
on one thing, and that is if somebody were to contact you about
the case -- I don't know how they would find your name because
we've taken extra precautions to be sure that your names are
not disclosed to anybody other than the participants.

And I've instructed the lawyers and the defendant who, of
course, does know your names since he was here when the jury
was being selected, I've ordered them not to disclose your
names to anyone. And I'm going to order you not to -- if
someone were to contact one of you, somehow or other find out
one of your names and contact you, I'm ordering you not to
disclose the name of any other juror.

Do you understand what I'm saying? I don't think anyone
will contact you, but if they did they may ask you for the name
of someone else on the jury. And I'm ordering you not to

1 disclose -- I'm ordering each of you not to disclose the name
2 of anybody else on this jury. I don't think anything
3 unpleasant can happen, but we want to do whatever we can to
4 avoid any unpleasantness.

5 Now, that having been said, except for disclosing the name
6 of other members of the jury, you can discuss the case with
7 anybody who contacts you, or you can contact people and discuss
8 it with them if you would like, with the qualification I've
9 just given you about not disclosing the name of any other
10 juror, or any other information about any other juror, such as
11 a place of residence, where you live. I don't want you to --
12 I'm ordering you not to disclose any information to anyone
13 about any other member of this jury.

14 Now, there are some qualifications to what I said you can
15 discuss it with people beyond what I've already told you, and
16 that is you should have no contact with anybody connected with
17 the case, and they should not have any contact with you, that
18 is, the attorneys, the government agents, the witnesses, the
19 defendant, anyone connected with the case. They know not to
20 contact you and I'm telling you not to contact them. I don't
21 think that will be a problem. I think that covers what I
22 wanted to tell you about that.

23 Now, sometimes jurors -- it's late in the evening. I
24 think you're probably more interested in getting home than what
25 I'm going to go over with you now, but sometimes jurors want to

1 know a little bit about the sentencing process so I'm going to
2 give you a two- or three-sentence statement. The defendant
3 will appear before me for sentencing at 9:00 o'clock a.m. on
4 April 30, 2004. The reason that's so far off is a lot of
5 information has to be developed before we can determine exactly
6 what sentence should be imposed, and an investigation is
7 conducted for that purpose. And if any of you have any
8 interest in the sentencing, you would be welcome to come to the
9 courtroom at that time. It's at 9:00 o'clock a.m. on April 30,
10 2004.

11 I think you're obligated to call that Code-A-Phone number
12 after 3:00 o'clock tomorrow to see what else might be in store
13 for you. With a little luck, you won't be called back, but I
14 think you still have that obligation. You don't use up your
15 duty by serving one time. You have to do it until whatever --
16 30 days, is that how long it goes on?

17 JUROR NO. 2: I think it's two weeks.

18 THE COURT: Is that all?

19 JUROR NO. 2: Yes, sir.

20 THE COURT: They've changed it. Okay. I do
21 appreciate your service. You obviously have worked very hard,
22 and you're to be complimented for your diligence and your hard
23 work. I can't think of anything else we need to go over.
24 You're excused, and again --

25 MR. McCOLL: Excuse me, Your Honor. Could we

1 approach the bench, please?

2 THE COURT: Yes.

3 (Bench conference with lead attorneys:)

4 MR. McCOLL: Your Honor, I scrupulously followed the
5 Court's instructions and instructed all my staff that they were
6 not to have any contact with the jurors, and I'm sure they will
7 respect that. But I don't remember being asked by the Court to
8 make a similar instruction to the witnesses as to when the
9 trial was over.

10 THE COURT: Well, they don't know the jurors' names,
11 so --

12 MR. McCOLL: But I didn't make any such instruction.
13 I just wanted you to know.

14 THE COURT: Will you do that?

15 MR. McCOLL: Judge, the Court -- I mean --

16 THE COURT: Your witnesses.

17 MR. McCOLL: My witnesses have dispersed all over the
18 country: Colorado, Pennsylvania.

19 THE COURT: You're not willing to get on the phone
20 and call them?

21 MR. McCOLL: I'm happy to do that. I'm just telling
22 the --

23 THE COURT: Will you please do it? You're telling me
24 you haven't. I'm just asking you to do it.

25 MR. McCOLL: Sure, Judge, I'll do that.

1 THE COURT: Okay.

2 MR. McCOLL: All right.

3 THE COURT: And you do the same, Mr. Jarvis.

4 MR. JARVIS: Yes, sir, understand.

5 (End of bench conference.)

6 THE COURT: Okay. You're excused -- Oh, let me add
7 one other thing. Y'all are still here. If anyone were to
8 contact you who shouldn't, and I don't think it will happen,
9 you should let the Court know immediately. Okay. Thank you.

10 (Jury out, 8:30 p.m.)

11 THE COURT: Okay. Y'all can be seated.

12 Mr. Simkanin, you heard me explain to the jury that your
13 sentencing hearing is set for 9:00 o'clock a.m. on April 30,
14 2004. It will be before me in this courtroom.

15 At this time I'm signing an order that fixes that time and
16 date for sentencing and establishes a timetable for
17 accomplishment of things that need to be accomplished between
18 now and then.

19 Your attorney will go to the probation office in the
20 morning and set up a time when the probation officer, who will
21 be assigned to your case, can conduct a presentence interview
22 of you. The purpose of that interview is so the probation
23 officer can gain from you the information the probation officer
24 needs for the preparation of a presentence report. The degree
25 of your cooperation, under some circumstances, can be a factor

1 in the severity of your sentence. I don't know that it will
2 make any difference in this case, but it possibly could. So
3 that will be something you'll want to discuss with your
4 attorney.

5 I rely very heavily on that presentence report. It's
6 based on information you give the probation officer, the
7 information the probation officer gets from the prosecutor,
8 from asking investigating agencies, and perhaps other sources.
9 And I rely very heavily on that information in determining what
10 sentence to impose in the case, so it needs to be as complete
11 and as accurate as possible.

12 When you receive -- and once that report is prepared, your
13 attorney and you will get copies, and the government's attorney
14 will get copies. When you get your copy, you need to study it
15 very carefully, and if you think anything in it is incorrect or
16 if something has been left out that should be in it, you should
17 inform your attorney of that fact so he can make whatever
18 objections are appropriate based on what you tell him.

19 Okay. And is there anything else we need to deal with? I
20 don't think there is.

21 MR. McCOLL: You expect me to be -- you are
22 requesting that I be at the probation office at 9:00 in the
23 morning?

24 THE COURT: Well, I didn't say 9:00. I said in the
25 morning.

1 MR. McCOLL: Yes, sir, okay.

2 THE COURT: Sometime in the morning you need to go by
3 there and set up a time for the presentence interview.

4 MR. McCOLL: Yes, sir.

5 THE COURT: Okay. The defendant is remanded to
6 custody, and the attorneys are excused.

7 (Proceedings concluded, 8:33 p.m.)

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9 CERTIFICATE

10 I certify that the foregoing is a correct transcript from
11 the record of proceedings in the above-entitled matter. I
12 further certify that the transcript fees format comply with the
13 those prescribed by the Court and the Judicial Conference of
14 the United States.

13

14 _____ Date _____
15 Eileen M. Brewer
16 Official Court Reporter
17 Texas CSR No. 3016

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