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2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE WESTERN DISTRICT OF MISSOURI**
 WESTERN DIVISION

4 **UNITED STATES OF AMERICA,**) **Case No. 09-00112-01-CR-W-ODS**
)
5 **Plaintiff,**) **Kansas City, Missouri**
) **November 9, 2009**
6 **v.**)
)
7 **CLIFTON D. TAYLOR,**)
)
8 **Defendant.**)
)
_____)

9
10 **TRANSCRIPT OF ATTORNEY APPOINTMENT HEARING**
11 **BEFORE THE HONORABLE ROBERT E. LARSEN**
 UNITED STATES MAGISTRATE JUDGE

12 **APPEARANCES:**

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25

1 (Court in Session at 1:30 p.m.)

2 THE COURT: Be seated everyone. Good afternoon.

3 MR. POINDEXTER: Good afternoon.

4 THE COURT: I have a matter to take up this afternoon.

5 This is the case of *United States of America vs. Clifton D.*

6 *Taylor*. The number is 09-112-01-CR-W-ODS. Let me have the

7 Assistant U.S. Attorney's appearance.

8 MS. RAMANA: Your Honor, Leena Ramana and Dan Nelson on
9 behalf of the United States.

10 THE COURT: Let me get counsel for the defendant,
11 please.

12 MR. POINDEXTER: Your Honor, Travis Poindexter on behalf
13 of Mr. Taylor, who is present today.

14 THE COURT: Okay. I've gotten a letter from Mr. Taylor
15 complaining about representation here, and so I thought I would
16 get everyone together and find out what the problem is. Mr.
17 Taylor, do you want to tell me what it is that you're complaining
18 about here with regard to Mr. Poindexter?

19 MR. TAYLOR: I don't like him. He's not working in my
20 best interest. He's not arguing with the evidence. He's not
21 saying anything about Government misconduct. He hasn't filed one
22 motion since I've been incarcerated. He doesn't come to see me,
23 he doesn't talk about my case. And he's like a dead-beat dad.
24 And I don't need him on my case. And it's going to be a problem
25 because I don't want him on my case. And I done like put down

1 like five motions to get this dude off my case.

2 THE COURT: Let me just tell you, Mr. Taylor. Raising
3 your voice to me and trying to act --

4 MR. TAYLOR: Man, I'm not trying to act.

5 THE COURT: Let me just --

6 MR. TAYLOR: I keep telling you I don't want this dude
7 on my case.

8 THE COURT: Well, we're not going to take up anything
9 until you can control yourself. We'll recess here. I just --

10 MR. TAYLOR: What you mean control myself?

11 THE COURT: I want the --

12 MR. TAYLOR: How many times I got to tell I don't want
13 him on my case.

14 THE COURT: I want the record -- yeah. Take him out.

15 (Defendant Removed from Courtroom)

16 THE COURT: I want the record --

17 MR. TAYLOR: Get off --

18 THE COURT: -- to reflect that the defendant --

19 MR. TAYLOR: Watch out there.

20 THE COURT: -- is resisting the Marshals. He's been
21 yelling and screaming in court and acting totally improperly here
22 in front of me. So, now that he's left, is there any additional
23 record, Mr. Poindexter, that you want to make about, first of
24 all, the behavior in front of me? Did I adequately and
25 accurately describe it?

1 MR. POINDEXTER: I believe you did, Your Honor.

2 THE COURT: Okay. And now is there any additional
3 record that the Government wants to make on that behavior?

4 MS. RAMANA: No, Your Honor.

5 THE COURT: Okay. Now, yes. The Marshals have
6 returned. And I just want to take this systematically here.
7 With regard to his complaints concerning the representation, is
8 there anything that you want to tell me about that since I can't
9 have him in the courtroom with you with his behavior being as it
10 is right now?

11 MR. POINDEXTER: No, Your Honor. The only thing I would
12 offer for the record, Your Honor, is we've made several attempts
13 to contact Mr. Taylor and he's refused contact with us each of
14 the last few times that we've done so.

15 THE COURT: Okay. This is not the first time that this
16 issue has come before me with Mr. Taylor, I don't think. I think
17 I've seen this before, haven't I?

18 MR. POINDEXTER: Yes, Your Honor. He's filed numerous,
19 probably a dozen-plus *pro se* filings.

20 THE COURT: Okay.

21 MR. POINDEXTER: Not only in regards to this, but a
22 number of other matters that the Court has addressed.

23 THE COURT: Okay. Is this case set for trial?

24 MR. POINDEXTER: Judge, I currently think the pending
25 status is that our last appearance was a competency hearing. The

1 Court adopted the findings of the report without objection and
2 issued an R&R on that. I think we're still waiting on the final
3 order for that.

4 THE COURT: Okay. So, once that's -- if that's adopted,
5 which I'm sure it will be, then it will be set for trial on a
6 docket. This is in front of Judge Smith. So, okay. I think --
7 just have a seat. I think we'll see if -- is he calmed down now
8 or do you guys --

9 U.S. MARSHAL: As soon as we walked back he was calm.
10 He just doesn't --

11 MR. POINDEXTER: He just doesn't like me.

12 U.S. MARSHAL: -- like Mr. Poindexter.

13 THE COURT: Okay. Well, why don't you bring him back in
14 and we'll see if we can talk to him now.

15 (Defendant Reenters Courtroom)

16 THE COURT: Okay. Mr. Taylor is back with us. Mr.
17 Taylor, I would hope that you would be able to maintain some
18 level of respect here, if not for me, at least for the office
19 here, and not yell and scream and do those types of things. If
20 you can behave here, we can have a conversation. All right.
21 Now, you were talking about you don't want to have Mr. Poindexter
22 represent you, correct?

23 MR. TAYLOR: Yeah.

24 THE COURT: Okay. Now, you mentioned that he hasn't
25 filed any motions for you, right?

1 MR. TAYLOR: He hasn't done anything.

2 THE COURT: Okay. Well, now tell me about the motions
3 that you want him to file for you that he hasn't filed.

4 MR. TAYLOR: I want him to file motions on Government
5 misconduct, evidentiary hearing, motion to suppress the evidence.
6 I want *in camera* review motions on the expert witnesses as far as
7 the bank teller is concerned, as far as the witness outside who
8 seen somebody else, described somebody else. I want *in camera*
9 reviews of this stuff. I have a lawsuit for organized crime
10 against this case -- against this man right here. And there's
11 just no way he's going to be working in my best interest because
12 I requested that he be removed from the bar as a relief.

13 THE COURT: Okay. Now, tell me about the -- you said
14 you want to have him file motions about Government misconduct?

15 MR. TAYLOR: Yes.

16 THE COURT: What does that relate to?

17 MR. TAYLOR: The tampering with evidence.

18 THE COURT: What tampering are you talking about?

19 MR. TAYLOR: They tampered with the video evidence, if
20 it hasn't been clarified by now.

21 THE COURT: And this is video evidence of the bank?

22 MR. TAYLOR: No. At the store I was in, the phone --
23 the Cricket store.

24 THE COURT: Okay. And what are you saying that they did
25 that was tampering with that evidence?

1 MR. TAYLOR: The whole video is cut up. There's people
2 missing out the video. Some of the actions is missing out the
3 video. They altered it towards -- to their expectations.

4 THE COURT: Who did? The Government?

5 MR. TAYLOR: Yes.

6 THE COURT: Okay.

7 MR. TAYLOR: There wasn't a Title 3 sealing requirement
8 on it.

9 THE COURT: It wasn't a what, sir?

10 MR. TAYLOR: They didn't seal it as far as a Title 3 is
11 concerned. It wasn't sealed, it wasn't protected. I haven't
12 seen the warrant for the video.

13 THE COURT: Hold --

14 MR. TAYLOR: The DNA evidence.

15 THE COURT: Hold it. Let's just take the video for the
16 first thing. What are we talking about with regard to video
17 evidence here? What is he referring to?

18 MS. RAMANA: What I believe he's referring to is a video
19 that was from the Cricket store --

20 THE COURT: Right.

21 MS. RAMANA: -- that this defendant was at just prior to
22 his arrest.

23 THE COURT: You can have you agent talk here. I mean,
24 we have the agent here. Do you know what he's talking about?

25 AGENT MRACHEK: Yeah. There's a video surveillance

1 system at the Cricket store, Your Honor.

2 THE COURT: Okay.

3 AGENT MRACHEK: And it was a new system at the time of
4 this incident, and one of the agents on our squad, J.C. Bauer,
5 took the actual system to the RCFL and had the video downloaded
6 so that we could get the video, because the owner didn't even
7 know how to do it. So, that, I think, is what he's referring to,
8 the video at the Cricket store.

9 THE COURT: Okay. And so, a copy of that has been
10 provided to Mr. Poindexter, right?

11 AGENT MRACHEK: Yes.

12 THE COURT: And so is there -- have you looked at the
13 video?

14 MR. POINDEXTER: We have, Your Honor.

15 THE COURT: And with regard to -- I mean, I understand
16 there's no need for a warrant for that. I assume that you guys
17 got it either by subpoena or the owner voluntarily produced it.
18 Which?

19 AGENT MRACHEK: The owner was cooperative, Your Honor.

20 THE COURT: Just gave it to you?

21 AGENT MRACHEK: I don't recall whether he was served
22 with a subpoena --

23 THE COURT: Right.

24 AGENT MRACHEK: -- but I know he was cooperative.

25 THE COURT: Okay. So, we don't -- I mean, the whole

1 issue of warrant doesn't enter into this as far as I can see,
2 unless somebody has got a different take on that.

3 MR. POINDEXTER: Your Honor, we had an extensive
4 discussion about Title 3 and what it was applicable to and what
5 it was not.

6 THE COURT: Uh-huh.

7 MR. POINDEXTER: And that it was not applicable --

8 THE COURT: Right.

9 MR. POINDEXTER: -- in this case.

10 THE COURT: Okay. Now, tell me about, he's saying that
11 there were portions of it that were jumbled or deleted or
12 something. Do you know what he's talking about here?

13 AGENT MRACHEK: I don't, Your Honor.

14 THE COURT: Okay. Does it appear -- I mean, what you're
15 going to have to do is if you're going to play the video, you're
16 going to have to establish the chain of custody for the video,
17 right?

18 MS. RAMANA: Yes, Your Honor.

19 THE COURT: Right? Okay. So, I mean -- and so, I mean,
20 they can't -- in order for them to get the video in, they're
21 going to have to show where they got it from and who handled it
22 until it got back to the FBI lab and downloaded it there and then
23 produced that copy here in court. And, you know, your lawyer
24 will get an opportunity to cross-examine those witnesses to see
25 if there's been anything that's been done to the video. It's a

1 piece of real evidence so it has to have -- either somebody was
2 involved in it. Do you have a witness who can say that's an
3 accurate depiction of it or are you going to do the chain of
4 custody here? There's only one of two ways to get it in that I
5 know of.

6 MS. RAMANA: Through the chain of custody, Your Honor.

7 THE COURT: Okay. So, you know, that whole issue will
8 be litigated at trial. I mean, that issue is something that Mr.
9 Poindexter can ask them about when the witnesses are --

10 MR. TAYLOR: They won't --

11 THE COURT: -- when the witnesses are produced at trial.
12 But there's nothing there that I see that requires that Mr.
13 Poindexter do anything right now. There's nothing for him --

14 MR. TAYLOR: I want expert witnesses involved.

15 THE COURT: Well, tell me about that. What expert
16 witnesses are you talking about?

17 MR. TAYLOR: I want the bank teller, the one who was
18 robbed.

19 THE COURT: The bank teller who was robbed?

20 MR. TAYLOR: Yeah.

21 THE COURT: Well, the bank teller is a lay witness,
22 that's not an expert. But the bank teller will be called as a
23 witness?

24 MS. RAMANA: Yes, Your Honor.

25 MR. TAYLOR: And I want people at the Cricket store

1 called, the employees.

2 THE COURT: Well, then tell -- I'm sorry. I'm
3 interrupting you. Go ahead. The Cricket store employees.

4 MR. TAYLOR: The employees at the Cricket store.

5 THE COURT: Okay. Right.

6 MR. TAYLOR: Whoever was outside working that seen the
7 guy run away.

8 THE COURT: Okay. Now --

9 MR. TAYLOR: That described somebody else. I want him
10 subpoenaed to court.

11 THE COURT: Okay. Now, do you -- do we know who he's
12 talking about as to who identified somebody other than this
13 defendant as being at the Cricket store? Do you know who he's
14 talking about?

15 MR. POINDEXTER: Not from our review of the evidence,
16 Judge.

17 THE COURT: Okay. Well, now, do you know, if you know
18 that person or you have some information of the person, Mr.
19 Poindexter will be happy to investigate it. But you have to
20 give --

21 MR. TAYLOR: The only information I have for you is I
22 want this dude off my case.

23 THE COURT: Now, you're not --

24 MR. TAYLOR: I done been through a psychic evaluation
25 because he is not working for me at all.

1 THE COURT: Now, you see now --

2 MR. TAYLOR: And it's -- I don't know. I'm out of
3 patience. You know, I'm a really nice guy and this is really
4 working me.

5 THE COURT: Your patience has nothing to do with my
6 decision here.

7 MR. TAYLOR: But it has something to do with my decision
8 on how I'm going to handle this situation.

9 THE COURT: Well, that's right. It does. That's right.
10 And here's your options. I'm trying to figure out if you've got
11 a legitimate complaint here by going through it with you. But if
12 you're saying, well, I'm just not going to work with this guy,
13 then, you know, if I don't find anything that he's done that's
14 improper or failed to do, I'm not going to bring in some other
15 lawyer just so that you can do the same thing with the other
16 lawyer. I'm not going to do that. Now, so then your options
17 become one of two. You can either have your family hire another
18 lawyer.

19 MR. TAYLOR: Or write Mr. James Smith.

20 THE COURT: You can -- if you can hire somebody --

21 MR. TAYLOR: I can write Mr. James Smith in Jefferson
22 City about my -- about you. Because you're not complying with
23 the ordinances of effective counsel.

24 THE COURT: Well, there you go. And so you can write to
25 whomever you want to. You have a First Amendment right to do

1 that. But I'm saying to you is, if you can get a lawyer who's
2 licensed to practice in our court to appear here, and that lawyer
3 complies with our rules, then I'll allow Mr. Poindexter to
4 withdraw from the case.

5 MR. TAYLOR: If I could get a lawyer, I wouldn't have
6 state -- I wouldn't have court-appointed attorney now.

7 THE COURT: That's exactly my point. So --

8 MR. TAYLOR: So, you --

9 THE COURT: So, I mean, that's not really option for
10 you, right?

11 MR. TAYLOR: Oh, it's an option.

12 THE COURT: Well, okay. It's an option. So, see if you
13 can get another lawyer.

14 MR. TAYLOR: No. It's an option that the Court provide
15 me with effective assistance.

16 THE COURT: I'm not going to replace Mr. Poindexter
17 based on what I've heard thus far.

18 (Defendant Overturns Table)

19 THE COURT: Well, now the defendant has now stood up and
20 overturned the table at which counsel was seated. So --

21 (Off Record Talking)

22 (Defendant Removed from Courtroom)

23 (Off Record Talking)

24 THE COURT: Well, he turned over the table here in open
25 court and now we've got some problems with the recording system.

1 I've got the marshal here. I'll just ask, Mauri Sheer is here.
2 Mauri, would you confirm that my description of what happened
3 here is accurate?

4 MARSHAL SHEER: Absolutely.

5 THE COURT: Yeah.

6 MARSHAL SHEER: Yes, sir.

7 THE COURT: So, I mean, he's obviously not interested in
8 behaving if he doesn't get his own way on this business. I think
9 what I'm going to do is at this point is make a report to Judge
10 Smith and advise the judge what the situation is and recommend
11 that we don't comply with his request, and that if it proceeds to
12 trial, if he misbehaves in front of the judge at trial, that we
13 have alternative -- an alternative system in place where he can
14 watch the trial from a cell, because I sense that he's not going
15 to comply with anybody's rules. So, anyway. Unless somebody has
16 got a different take on this, I think that's about all we can do.
17 Anything else that the Government thinks?

18 MS. RAMANA: No, Your Honor.

19 THE COURT: Anything else here, Mr. Poindexter?

20 MR. POINDEXTER: No, Judge. Just a procedural note,
21 evidentiary-wise, the Government provided us today with some
22 requested information regarding DNA testing that they had done.
23 We have our own expert that's reviewing that information. That
24 would be the only hang-up for us getting this case ready for
25 trial at this point, so.

1 THE COURT: Okay. This has been an open file discovery
2 case?

3 MS. RAMANA: Yes, Your Honor.

4 THE COURT: All right. So, and you've had access to it,
5 right?

6 MR. POINDEXTER: Yes, sir.

7 THE COURT: And you've done whatever appropriate
8 independent investigation on these matters that he's raising,
9 correct?

10 MR. POINDEXTER: Yes, Your Honor.

11 THE COURT: I notice that we have Ron Ninemeyer who's
12 one of your investigators. Has he been involved in this
13 investigation?

14 MR. POINDEXTER: From the very beginning, Your Honor.

15 THE COURT: Okay. Is there any record you want to make
16 on any of these allegations here?

17 MR. POINDEXTER: Not at this point, Judge.

18 THE COURT: Okay. All right. Okay. Well, thank you
19 all.

20 (Court in Recess from 1:47 p.m. to 1:52 p.m.)

21 THE COURT: We're back on the record on the Clifton
22 Davis -- is that his last name? Davis?

23 MR. POINDEXTER: Taylor.

24 THE COURT: Clifton Taylor?

25 MR. POINDEXTER: Yes, Your Honor.

1 THE COURT: Is that right? When we took our break here,
2 after I got off the bench, I heard that apparently in the process
3 of overturning the table, that the defendant injured Mr.
4 Ninemire, is that right?

5 MR. POINDEXTER: He may have, Your Honor. I would note
6 that Mr. Ninemire was kind of sitting with his arm on the table
7 at the time that it was upended. And he indicated after things
8 were calmed down that he may have injured his shoulder. I just
9 wanted the record to reflect that.

10 THE COURT: Okay. And so do you want to add anything to
11 the record, Mr. Ninemire?

12 MR. NINEMIRE: No, Your Honor. I think I had my arm
13 back there which popped my shoulder out, but it went back in --

14 THE COURT: Okay.

15 MR. NINEMIRE: -- as soon as I was able to stand back
16 up, so.

17 THE COURT: All right. So, do you think you need to go
18 to the doctor or the hospital or something?

19 MR. NINEMIRE: No. I'll be fine.

20 THE COURT: Okay. All right. Well, we'll add that to
21 the record, too. Anyway, we'll see where we wind up with this
22 guy. Thank you all.

23 (Court Adjourned at 1:54 p.m.)

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above-entitled matter.

/s/ Lissa C. Whittaker
Signature of transcriber

November 12, 2009
Date