

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. 08-20261-JPM
)	
VON RICO WEBBER,)	
)	
Defendant.)	

MOTION HEARING
BEFORE THE HONORABLE CHIEF JUDGE JON PHIPPS MCCALLA
JANUARY 6, 2010

BRENDA PARKER
OFFICIAL REPORTER
SUITE 942 FEDERAL BUILDING
167 NORTH MAIN STREET
MEMPHIS, TENNESSEE 38103

A P P E A R A N C E S

Appearing on behalf of the Plaintiff:

UNITED STATES ATTORNEY'S OFFICE
SUITE 800 FEDERAL BUILDING
167 NORTH MAIN STREET
MEMPHIS, TENNESSEE 38103
By: KEVIN RITZ, ESQ.
VIVIAN DONELSON, ESQ.
JOSEPH MURPHY, ESQ.

Appearing on behalf of the Defendant:

AUTUMN B. CHASTAIN, ESQ.
707 ADAMS AVENUE
MEMPHIS, TENNESSEE 38105

1 WEDNESDAY MORNING

2 JANUARY 6, 2010

3 The motion hearing in this case began on this
4 date, Wednesday, January 6, 2010, at 11:35 o'clock a.m.,
5 when and where evidence was introduced and proceedings
6 were had as follows:

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10 **THE COURT:** Because I received the motion from
11 Ms. Chastain and because we were going to have so many
12 people come in, I asked Mr. Warren to notify everybody
13 that we would address this issue first and we would not
14 have everybody come in because that seemed unfair since we
15 might have a change, we might have a change of counsel.
16 At the same time, we wanted to understand a little bit
17 more about change of counsel at this stage because it's
18 certainly going to be disruptive to do that. So what is
19 our situation?

20 **MS. CHASTAIN:** Your Honor, I think that we're
21 to a point where we have to because I think I potentially
22 could be a witness in the future. I was not the original
23 counsel in this case. There has been appointed counsel
24 previous to mine, so -- just for the court's knowledge.

25 **THE COURT:** Well, Mr. Erwin was counsel

1 beforehand, before -- that's correct.

2 The government's position in this case.

3 **MS. DONELSON:** Your Honor, I have filed a
4 notice of appearance. I'm here to appear for the purposes
5 of this hearing primarily.

6 **THE COURT:** Yes, exactly.

7 **MS. DONELSON:** To start with, the government as
8 to the motion to withdraw, our concern is quite serious if
9 you look at the nature of the statements that are made in
10 the motion to withdraw. If you -- gleaned from reading
11 that, although it is not specifically stated, there is a
12 strong inference and innuendo that the AUSA in this case
13 has done something improper as far as -- the word is not
14 used, but I would say for purposes here of a
15 misrepresentation being made, that is the reading that I
16 get from reading the motion to withdraw, that is the issue
17 that we have serious concerns about. And in that regard,
18 I passed to Ms. Chastain an e-mail that made its way to
19 our office on Monday morning, if I'm not mistaken, or it
20 was retrieved Monday out of the -- it was sent to AUSA
21 Joseph Murphy, and I would like to tender it to the
22 court --

23 **THE COURT:** Yes, ma'am.

24 **MS. DONELSON:** -- to explain why the United
25 States would request an evidentiary hearing on the

1 statements that are contained within Ms. Chastain's
2 motion.

3 **MS. CHASTAIN:** Your Honor, may I be heard?

4 **THE COURT:** Is it inappropriate for me to read
5 the e-mail?

6 **MS. CHASTAIN:** Well, it's not an e-mail from
7 me, it was an e-mail that was sent out by another
8 individual.

9 **THE COURT:** That's true, that's true, it is.

10 **MS. CHASTAIN:** My only -- the only thing that
11 is before the court is my motion to withdraw. Any of the
12 evidentiary information or concerns the government has
13 really aren't ripe before the court. Those are issues
14 that potentially have to do with withdrawal of the plea or
15 the sentencing in this matter, and at this point, we're
16 only dealing with my motion to withdraw, and really we
17 can't have an evidentiary hearing or even discuss it if
18 I'm still counsel because that could potentially waive any
19 confidentiality with my client, and I'm not in the
20 position to do that.

21 **MS. DONELSON:** I would strongly disagree that
22 the e-mail has nothing to do with the allegation.
23 Ms. Chastain filed a pleading with this court.

24 **THE COURT:** Right.

25 **MS. DONELSON:** And she made certain

1 representations and statements in that pleading, and as an
2 officer of the court, those allegations are serious, and
3 it is taken so seriously by our office, that is one of the
4 reasons that I am here, and Mr. Ritz will more than likely
5 be taken off of this case.

6 **THE COURT:** I understand.

7 **MS. DONELSON:** Because of those particular
8 allegations. If the court reads the e-mail, the
9 allegations, if she's true that it does not come from her,
10 but if you read the facts or the representations in there,
11 it seems to be that it is connected with this case. And
12 that particular thing says that there was a
13 misrepresentation.

14 **THE COURT:** Let me read the e-mail.

15 **MS. DONELSON:** Yes, sir.

16 **THE COURT:** I don't take raising these types of
17 issues other than very serious, and need to be very
18 cautiously made if there's an accusation. Since I deal
19 with all of you all the time, these are very difficult
20 issues. Let me go over the papers one more time.

21 What does the government suggest regarding how
22 we should proceed? I do regard it as a very serious
23 accusation.

24 **MS. DONELSON:** As to whether --

25 **THE COURT:** And I feel really -- these things

1 are very difficult for all of us.

2 **MS. DONELSON:** It is very difficult, Your
3 Honor. As to whether Ms. Chastain should be allowed to
4 withdraw --

5 **THE COURT:** Yes.

6 **MS. DONELSON:** -- the government is not
7 advancing a position about that, Your Honor. I think
8 that's something that based on what she tells the court
9 her conflict is, which we're not sure what that is --

10 **THE COURT:** Right.

11 **MS. DONELSON:** -- our biggest concern or our
12 paramount concern is not -- is to deal with the
13 allegation, the assertion that is there --

14 **THE COURT:** Right.

15 **MS. DONELSON:** -- as something improperly being
16 done that led to her decision or her talking with her
17 client perhaps, whatever. I would -- the United States
18 would suggest, Your Honor -- we do request an evidentiary
19 hearing, and if that means that that has to be put off on
20 another date because from an evidentiary hearing
21 standpoint, the United States would be prepared to put on
22 proof, we're prepared today.

23 **THE COURT:** Right. Well --

24 **MS. DONELSON:** And I know Ms. Chastain --

25 **THE COURT:** I think Ms. Chastain is correct --

1 **MS. DONELSON:** That's correct.

2 **THE COURT:** -- that she has to be excused in
3 the case.

4 **MS. DONELSON:** That's correct.

5 **THE COURT:** And I'm not disagreeing. And so
6 I'm obviously going to grant your motion to be allowed to
7 withdraw in the matter and --

8 **MS. CHASTAIN:** May I address my motion? I know
9 Your Honor is concerned, but --

10 **THE COURT:** I'm concerned about -- it's a
11 difficult situation in which there is almost certainly no
12 good -- ultimately good resolution.

13 **MS. CHASTAIN:** And I agree, that's why I have
14 issue with this e-mail even being presented. I didn't
15 draft this e-mail, it is not my document --

16 **THE COURT:** And I think your concern about that
17 was that you were not -- well, I don't know anything about
18 the e-mail, and I don't want to go there because I can't
19 go there. All I can do is say at this point that I should
20 grant your motion.

21 **MS. CHASTAIN:** And if you look at my motion,
22 specifically I think paragraph seven is the one that
23 they're concerned with --

24 **THE COURT:** That is exactly what we have all
25 been looking at.

1 **MS. CHASTAIN:** And that's part of my concern
2 with, I worked very carefully to try to draft that so as
3 to not make accusations, my attempt was to say that I made
4 representations to my client --

5 **THE COURT:** I understand.

6 **MS. CHASTAIN:** -- based on information. That
7 information, not saying it was false, but the information
8 I provided to my client was inaccurate information, and
9 because of that, it affected what he has done, and I have
10 to, I feel, step back and withdraw. That was the point of
11 my paragraph seven.

12 **THE COURT:** Well, however we construe paragraph
13 seven, I do have to let you withdraw. I mean that's the
14 answer on that, and then some other matters will await a
15 different day, it appears. So the motion from
16 Ms. Chastain to be allowed to withdraw in the case is
17 granted based on the record as developed thus far in the
18 case, it definitely should be granted. And then I have
19 the difficult task of determining -- and, of course,
20 the -- and of course, Mr. Webber will be referred
21 immediately to the magistrate judge for appointment of new
22 counsel. And it should be a senior counsel of the bar
23 preferably, but I can't -- I don't usually interfere in
24 that regard, I don't interfere at all, it is most
25 attorneys are going to find that is what it needs to be.

1 **MS. DONELSON:** The United States' concern is
2 this, Your Honor, I understand granting the motion, but
3 the basis for granting the motion, it is not -- I would
4 assume, it is not because of the allegations or statements
5 contained in Ms. Chastain's motion are considered to be
6 true.

7 **THE COURT:** No, it's not.

8 **MS. CHASTAIN:** Exactly.

9 **THE COURT:** It's not. It's only that
10 Ms. Chastain appears to now be a witness, is that how you
11 understand this?

12 **MS. DONELSON:** Yes. But the -- I understand
13 that. I wanted to make clear because there's a public
14 record that has been -- there's a document that has been
15 filed.

16 **THE COURT:** It is not that I'm determining that
17 paragraph seven is true, and I'm not even sure that
18 Ms. Chastain is making that assertion. She is asserting
19 perhaps two things, but one of them would include the fact
20 that -- that the relationship with her client is adversely
21 affected and that there may be a lack of confidence by the
22 client --

23 **MS. CHASTAIN:** Yes, Your Honor.

24 **THE COURT:** -- in her representation, and I am
25 going to ask Mr. Webber, is it your preference that now a

1 new attorney be appointed and that Ms. Chastain be
2 excused?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** And so I think that that is the
5 reason that we need to proceed in this way. I'm making no
6 determination at all, and the record does not reflect a
7 determination by the court adverse in any way to the AUSA,
8 it is not.

9 **MS. DONELSON:** Because our response --

10 **THE COURT:** I need that to be absolutely clear.

11 **MS. DONELSON:** Our response definitely -- that
12 was filed definitely brings into question whether there
13 were any statements or representations made about a plea
14 agreement because the plea agreement was tendered to this
15 court, and it's been specifically stated that there were
16 no other agreements, and there is a -- that's where our
17 concern is that it is hanging out here in the -- with the
18 local bar, for lack of a better word of dealing with it
19 right now, that there was an agreement and that is
20 essentially what Ms. Chastain left on Mr. Ritz's voice
21 mail that it was her understanding that the plea agreement
22 contemplated that the particular drug would be -- the only
23 drug that was going to be dealt with was marijuana.

24 **THE COURT:** Yes, ma'am, that's what the
25 document says.

1 **MS. DONELSON:** That's what the --

2 **THE COURT:** That's what the allegation is.

3 **MS. DONELSON:** Allegation says, exactly.

4 **THE COURT:** That is what the allegation is, but
5 the court took the plea.

6 **MS. DONELSON:** Yes, Your Honor.

7 **THE COURT:** And that record speaks for itself.

8 **MS. DONELSON:** That's correct, Your Honor.

9 **THE COURT:** But I don't think we have any
10 choice at this stage --

11 **MS. DONELSON:** I would agree.

12 **THE COURT:** And I want to be very clear that
13 I'm not -- I'm not ruling on those issues. I'm only
14 dealing with the question of whether Ms. Chastain should
15 be allowed to withdraw.

16 **MS. CHASTAIN:** And please note I tried very
17 hard to not make any statements or things in that motion
18 other than the -- what I gave to my client was inaccurate
19 information, whether it was on my behalf or any other --
20 I'm not making any statements like that.

21 **THE COURT:** I understood you were writing it
22 that way, but the government has little choice but to
23 respond in a way in which the government has responded
24 because they have to -- they can't select their
25 construction of the language.

1 **MS. DONELSON:** Therein lies the innuendo that
2 the government is concerned about.

3 **THE COURT:** I understand.

4 **MS. DONELSON:** And I understand --

5 **THE COURT:** And while Ms. Chastain is saying
6 one thing, the language says what it says.

7 **MS. DONELSON:** It says what it says, correct.

8 **MS. CHASTAIN:** Well, and I respect the court's
9 understanding, I wanted to clarify since I did write the
10 words of what the intent or meaning behind my words were.

11 **THE COURT:** I understand.

12 **MS. CHASTAIN:** There is also a motion to seal
13 the government's response that I filed.

14 **THE COURT:** Yes, and I believe --

15 **THE CLERK:** It was granted.

16 **THE COURT:** I have already granted that. I did
17 that as soon as it came in.

18 **MS. DONELSON:** I wish we could have been heard,
19 Your Honor, on that. I understand what the court has
20 done, but Ms. Chastain filed a motion that is out there --

21 **THE COURT:** Do I need to seal this other
22 document also?

23 **MS. DONELSON:** I would only ask the court to
24 reconsider, and this is my basis for asking that, the
25 motion to withdraw contains the innuendo, the accusation,

1 and if our response is sealed, then nothing is there for
2 the public to see the government's response.

3 **THE COURT:** Okay, I understand that. I was
4 actually anticipating that I would get a subsequent motion
5 to seal the motion to withdraw, but I didn't, but -- I was
6 trying to -- sometimes it is hard to put the fire out
7 after it has already burned.

8 **MS. DONELSON:** I took it that the motion was
9 asked to seal the government's response.

10 **THE COURT:** It was.

11 **MS. DONELSON:** And not the motion to withdraw.

12 **THE COURT:** I can --

13 **MS. DONELSON:** If Your Honor wants to seal them
14 both, then that is fine with us. If I could have a
15 moment.

16 **THE COURT:** It is complicated.

17 **(Ms. Donelson conferred with Mr. Ritz and Mr.**
18 **Murphy.)**

19 **THE COURT:** What is the government's
20 preference?

21 **(The next portion of the transcript until the**
22 **end of transcript was transcribed and filed under seal.)**

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(This matter concluded at 12:00 noon.)

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C E R T I F I C A T E

I, Brenda Parker, do hereby certify that the foregoing 19 pages, are unredacted, and to the best of my knowledge, skill and ability, a true and accurate transcript from my stenotype notes of the motion hearing on January 5, 2010, in the matter of:

United States of America

vs.

Von Rico Webber

Dated this 12th day of January, 2010.

S/Brenda Parker

BRENDA PARKER
Official Court Reporter
United States District Court
Western District of Tennessee