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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

-----X
UNITED STATES OF AMERICA :
v. : Criminal Action No.:
DONTRELL DEANER, : 2008-CF1-30325
Defendant. :
-----X

Washington, D.C.
Friday, April 1, 2011

The above-entitled action came on for a Jury Trial before the **HONORABLE WILLIAM JACKSON**, Associate Judge, and a jury duly impaneled and sworn in, in Courtroom Number 319, commencing at approximately 9:46 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

VINET BRYANT, Esquire
Assistant United States Attorney
Washington, D.C.

On behalf of the Defendant:

JOSEPH RAKOFSKY, Esquire
SHERLOCK GRIGSBY, Esquire
Washington, D.C.

* * * * *

Margary F. Rogers, BS, CRI Telephone (202) 879-4635
Official Court Reporter

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1 **P-R-O-C-E-E-D-I-N-G-S**

2 DEPUTY CLERK: The matter before the Court at
3 this time, United States versus Dontrell Deaner,
4 2008-CF1-30325.

5 MS. BRYANT: Vinet Bryant on behalf of the
6 United States Government. Good morning, your Honor.

7 THE COURT: Good morning.

8 MR. GRIGSBY: Good morning, your Honor.
9 Sherlock Grigsby on behalf of Mr. Deaner.

10 THE COURT: Good morning.

11 MR. RAKOFSKY: Joseph Rakofsky for Dontrell
12 Deaner. Good morning.

13 THE COURT: Good morning.

14 (Defendant present.)

15 THE COURT: Good morning, Mr. Deaner.

16 DEFENDANT: Good morning.

17 THE COURT: Mr. Deaner, when we adjourned
18 yesterday -- right before we adjourned yesterday, you
19 said that you wanted a new lawyer in this particular
20 case, and we had -- I had explained to you that if I
21 did give you a new lawyer, we would have to abort the
22 trial, let's say. We will have to dismiss the jury. I
23 also explained to you that the Government would be able
24 to prosecute you again for these charges. And you said
25 you understood that, but you still, nonetheless, wanted

1 another lawyer.

2 I also explained to you that it could probably
3 result, more than likely, in your continued detention
4 until this case is actually -- the other -- the case is
5 tried. And you said you understood that. And I asked
6 you to think about it overnight.

7 Have you had an opportunity to think about that?

8 DEFENDANT: Yes.

9 THE COURT: And is it your desire to have a new
10 lawyer?

11 DEFENDANT: Yes.

12 THE COURT: Let me say that this arose in the
13 context of counsel, Mr. Rakofsky, approaching the bench
14 and indicating that there was a conflict that had
15 arisen between he and Mr. Deaner. Mr. Deaner, when I
16 acquired of him, indicated that there was, indeed, a
17 conflict between he and Mr. Rakofsky. Mr. Rakofsky
18 actually asked to withdraw mid-trial and appeared --
19 and according to Mr. Deaner, there was a conflict as
20 well between local counsel, Mr. Grigsby's legal advice
21 and Mr. Rakofsky's legal advice.

22 I must say that even when I acquired of
23 Mr. Deaner, I -- as to whether or not, when the Court
24 found out through opening, at least near the end of the
25 opening statement, which went on at some length for

1 over an hour, that Mr. Rakofsky had never tried a case
2 before. And, quite frankly, it was evident, in the
3 portions of the trial that I saw, that Mr. Rakofsky --
4 put it this way: I was astonished that someone would
5 purport to represent someone in a felony murder case
6 who had never tried a case before and that local
7 counsel, Mr. Grigsby, was complicit in this.

8 It appeared to the Court that there were
9 theories out there -- defense theories out there, but
10 the inability to execute those theories. It was
11 apparent to the Court that there was a -- not a good
12 grasp of legal principles and legal procedure of what
13 was admissible and what was not admissible that inured,
14 I think, to the detriment of Mr. Deaner. And had there
15 been -- If there had been a conviction in this case,
16 based on what I had seen so far, I would have granted a
17 motion for a new trial under 23.110.

18 So I am going to grant Mr. Deaner's request for
19 new counsel. I believe both -- it is a choice that he
20 has knowingly and intelligently made and he has
21 understood that it's a waiver of his rights.
22 Alternatively, I would find that they are based on my
23 observation of the conduct of the trial manifest
24 necessity. I believe that the performance was below
25 what any reasonable person could expect in a murder

1 trial.

2 So I'm going to grant the motion for new trial.
3 And I must say that just this morning, as I said, when
4 all else, I think, is going on in this courtroom, I
5 received a motion from an investigator in this case who
6 attached an e-mail in this case from Mr. Rakofsky to
7 the investigator. I, quite frankly, don't know what to
8 do with this because it contains an allegation by the
9 investigator about what Mr. Rakofsky was asking the
10 investigator to do in this case.

11 So that's where we are. And I'll figure out
12 what to do about that case. But it just seems to me
13 that -- so, I believe that based on my observations
14 and, as I said, not just the fact that lead counsel had
15 not tried a case before; any case. It wasn't his first
16 murder trial; it was his first trial. And I think that
17 the -- As I said, it became readily apparent that the
18 performance was not up to par under any reasonable
19 standard of competence under the Sixth Amendment.

20 So I'm going to grant the motion. We'll set
21 this over -- Do you want to retain a lawyer, another
22 lawyer or do you want me to appoint you another lawyer?

23 DEFENDANT: I don't understand the question.

24 THE COURT: If you cannot afford a lawyer, I
25 will appoint you a lawyer.

1 DEFENDANT: Okay.

2 THE COURT: There are some good, competent
3 lawyers who have tried these cases before.

4 DEFENDANT: Yeah. I would like for you to do
5 that.

6 THE COURT: Okay. So what I'm going to do is
7 I'm going to have you come back next Friday, and I'll
8 appoint a lawyer, in the meantime, and they will get an
9 opportunity to go over and see you at the jail.

10 DEFENDANT: Okay.

11 THE COURT: All right.

12 MS. BRYANT: That completes our matters before
13 the Court, your Honor. May I be excused?

14 THE COURT: Yes.

15 MS. BRYANT: Thank you.

16 THE COURT: You might want to take a look at
17 this pleading.

18 MS. BRYANT: I was, actually, going to ask, but
19 I don't know if I --

20 THE COURT: Mr. Grigsby and Mr. Rakofsky.

21 MS. BRYANT: May we have copies?

22 THE COURT: I don't know what to do with it. I
23 don't know whether you should see it or not.

24 MS. BRYANT: Okay. Well, I'll accept the
25 Court's --

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THE COURT: There's an e-mail from you to the investigator that you may want to look at, Mr. Rakofsky. It raises ethical issues.

That's my only copy.

MR. GRIGSBY: Your Honor, I was just going to look out here and then bring it back, your Honor.

MR. RAKOFSKY: Your Honor, is that something you wanted to discuss?

THE COURT: No. But you might want to discuss it with somebody else.

MS. BRYANT: Your Honor, that was filed in the court?

THE COURT: It was delivered to Judge Leibovitz this morning. She sent it over to me because this case was originally Judge Leibovitz's.

(The proceedings adjourned at 9:55 a.m.)

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CERTIFICATE OF REPORTER

I, MARGARY F. ROGERS, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the Jury Trial in the case of the **UNITED STATES OF AMERICA v. DONTRELL DEANER, Criminal Action No. 2008-CF1-30325** in said Court on the 1st day of April, 2011.

I further certify that the foregoing 7 pages constitute the official transcript of said proceedings, as taken from said shorthand notes, my computer realtime display, together with the audio sync and tape recording of said proceedings.

In witness whereof, I have hereto subscribed my name, this 12th day of April, 2011.


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