

EXHIBIT B

1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

2 CRIMINAL DIVISION

3 -----X
4 UNITED STATES OF AMERICA, :

5 versus :

Criminal Action Number

6 DONTRELL DEANER, :

2008 CF1 30325

7 Defendant. :
8 -----X

9 Washington, D.C.
10 Thursday, March 31, 2011

11 The above-entitled action came on for a jury
12 trial, before the Honorable WILLIAM M. JACKSON, Associate
13 Judge, in courtroom number 319, commencing at
14 approximately 2:33 p.m.

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

20 APPEARANCES:

21 On behalf of the Government:

22 FINET BRYANT, Esquire
23 Assistant United States Attorney

24 On behalf of the Defendant:

25 JOSEPH RAKOFSKY and SHERLOCK GRIGSBY, Esquires
Washington, D.C.

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Katy M. Zamora, RPR, CRR
Official Court Reporter

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

2 THE DEPUTY CLERK: Matter before the Court at
3 this time, United States versus Dontrell Deaner, case
4 number 2008 CF1 30325.

5 MS. BRYANT: Finet Bryant on behalf of the
6 United States Government, good afternoon, Your Honor.

7 MR. RAKOFSKY: Joseph Rakofsky for Dontrell
8 Deaner.

9 MR. GRIGSBY: Sherlock Grigsby, also, on behalf
10 of Mr. Deaner, who is present.

11 THE COURT: We're waiting for a juror; is that
12 right? Yes.

13 MR. RAKOFSKY: Your Honor, may we approach ex
14 parte, please?

15 THE COURT: Yes.

16 (Bench conference.)

17 MR. RAKOFSKY: Thanks. Dontrell has been asking
18 me -- wants me to ask questions for him and has been
19 asking me to ask questions for him that I believe are very
20 bad questions to ask. I will admit that he's been asking
21 me for the whole day to ask these questions and I've just
22 regularly said no to him. I had, you know -- I just -- I
23 obviously want to do the right thing.

24 I know for certain that there's a communication
25 barrier between us right now, and I know for certain he's

1 not happy with the way this examination is going, and, you
2 know, he's entitled to feel any way he wants. I feel I'm
3 doing the very best job for him but if it's going to
4 require my asking his questions, it's -- it's -- I cannot
5 do that. I believe his questions are bad questions. And
6 I'm asking Your Honor, you know, I just don't think this
7 can be reconciled and --

8 THE COURT: Well, has Mr. Grigsby talked to him?
9 Have you talked to him?

10 MR. RAKOFSKY: He doesn't really like
11 Mr. Grigsby that much.

12 THE COURT: Well, I've asked him twice whether
13 he was satisfied. The issue of -- and he needs to
14 understand that certain questions, you know -- that have
15 to be -- what do you mean by bad questions?

16 MR. RAKOFSKY: Questions that I think are going
17 to ruin him and I cannot have that.

18 THE COURT: If you need time to talk to him and
19 to explain it to him, because sometimes it's very hard in
20 the middle of examination to explain to him why it's a bad
21 question, and if you want time to talk to him about that,
22 you can go into the back and talk to him.

23 MR. RAKOFSKY: Your Honor, respectfully, I think
24 now might be a good time and -- I think it might be a good
25 time for you to excuse me from trying this case. I think

1 that -- I believe that I've worked very hard for him and I
2 believe that -- I don't believe there is anybody who could
3 have prepared for this case more diligently than I. But
4 in light of -- this has been an unusual trial, and in
5 light of this very serious barrier, I think now might be a
6 good opportunity for --

7 THE COURT: We're in the middle of trial,
8 jeopardy is attached. I can't sit here and excuse you
9 from this trial.

10 MR. RAKOFSKY: But I'm trying to do this so that
11 I -- I mean, he's going to tell you that he's very -- he
12 doesn't trust me and I bet you if you asked him, he will
13 say that.

14 THE COURT: Well, I asked him that this morning.

15 MR. RAKOFSKY: In his defense, I don't think
16 that this morning was enough time for him to appreciate
17 the situation he is in. Only 24 hours have passed
18 basically since the opening statement and I feel like,
19 Your Honor, now just, you know, there's no --

20 THE COURT: I'll ask him. I'll voir dire him.

21 MR. RAKOFSKY: Thank you very much. May he
22 approach?

23 THE COURT: Yes.

24 (Attorneys left. Defendant is present.)

25 Good afternoon, Mr. Deaner.

1 THE DEFENDANT: Yeah.

2 THE COURT: You wanted to address the Court?

3 THE DEFENDANT: Yeah.

4 THE COURT: What do you want to address the
5 Court about?

6 THE DEFENDANT: Just, after he did the
7 cross-examination I learned, man, he, like, every question
8 I asked him to write down -- I write down for him to ask,
9 he just won't ask, you know what I'm saying? And I try to
10 tell Mr. Grigsby, like he's just ignoring me.

11 THE COURT: Okay. Sometimes a question that you
12 might want to ask could very well be very harmful to you
13 in your case, and it's really a lawyer's judgment that --
14 that's why lawyers are trained to be able to make those
15 type of decisions.

16 THE DEFENDANT: See, when I ask him, before I
17 asked him I refer to Mr. Sherlock, and he be like, yeah,
18 that's a good question because we have evidence to back it
19 up. And he just won't ask him. He just won't ask. And
20 when I refer to Sherlock, he say he just here just because
21 Joseph can't be here by himself. So he's basically saying
22 he can't make the decision, it's on Joe, and I give it to
23 him but he can't say nothing. Like he approve of it, but
24 he can't make the final decision because Joe got to do it.

25 THE COURT: And was it the questions of this

1 witness that you wanted to ask, not the other witnesses
2 who have testified?

3 THE DEFENDANT: No, it was just this one.

4 THE COURT: Some of the questions that he may
5 have wanted to ask, because he tried to ask and legally it
6 couldn't be asked and so there was an objection.

7 THE DEFENDANT: Well, those his own questions
8 that he asked when he was objecting to. And I was trying
9 to tell him like basically stick to the point, the
10 questions that he was asking when he was asking stuff that
11 really -- like you could see in my notes that I was
12 writing on there, telling him the questions really that he
13 ask really don't matter, for real, you know what I'm
14 saying? The case that we got. I knew the case because
15 it's my case and the evidence and everything and just like
16 he won't listen. I got the notes to show you and
17 everything.

18 THE COURT: Well, I shouldn't look at those
19 notes because those are personal and confidential notes
20 between you and your lawyer and I shouldn't be seeing
21 those. I'm not disputing that you've asked him questions
22 and he has said no. I'm not disputing what you're saying.
23 All I'm saying to you is that sometimes there is a
24 difference between a lawyer -- a layman, like yourself,
25 understanding of what should be asked and a lawyer's

1 judgment of basically saying, if I ask that, it's going to
2 hurt my client, it's going to hurt you.

3 THE DEFENDANT: Yeah, I know, that's why before
4 I gave it to him I gave it to Sherlock and he said it was
5 all right because we got evidence to back the question for
6 when he answer it. He just won't ask it.

7 THE COURT: And so what do you want the Court to
8 do?

9 THE DEFENDANT: See if I can get another lawyer.

10 THE COURT: If I get another lawyer, it's going
11 to have to start all over again and the only way I could
12 get another lawyer is for you to ask me to get another
13 lawyer, which means that this trial is going to end and a
14 mistrial will be declared and we'll start all over again.
15 You understand?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Can you step back.

18 THE DEFENDANT: Thank you, Your Honor.

19 (End of bench conference.)

20 THE COURT: Mr. Rakofsky and Mr. Grigsby, please
21 come forward.

22 (Bench conference.)

23 He has requested new counsel, and from all other
24 things he said, he's asking you questions to ask and that
25 you have refused to ask them and he has said that

1 Mr. Grigsby has, when he's shown them to -- I'm not
2 telling you whether it's true or not, okay, I'm just
3 telling you what he said -- that Mr. Grigsby says that
4 there is good questions, we've got evidence to back them
5 up, but then when he shows them to you, you don't ask
6 them, so...

7 Again, I'm not talking about the veracity or the
8 truth of that or what it has -- could very well be his
9 perception of what's going on, but if I do appoint new
10 counsel, we're talking about a mistrial had and a waiver
11 of any double-jeopardy claim that would happen to the
12 defendant. And I told him that. So I'm not sure what I'm
13 going to do right now.

14 MR. RAKOFSKY: Is he willing to sign the waiver?

15 THE COURT: Of double jeopardy?

16 MR. RAKOFSKY: Yeah.

17 THE COURT: (Judge nodded.) But I'm not sure
18 whether I'm going to grant that or not. It just seems to
19 me that -- all right. We're just going to take a break
20 here. I'm going to explain to Ms. Bryant what's going on.

21 (End of bench conference.)

22 Ms. Bryant, the defendant has requested new
23 counsel, and there appears to be a conflict that has
24 arisen between counsel and the defendant. I have
25 explained to him that if the Court does that, he will be

1 waiving any double-jeopardy claim on a retrial. It will
2 probably also involve his continued -- a delay in the new
3 trial because new counsel would have to come in on this
4 case, learn the case, get discovery, do an investigation
5 and it's not like we can do this -- just turn around and
6 do a new trial next week or next month.

7 Do you understand that, Mr. Deaner?

8 THE DEFENDANT: Yes.

9 THE COURT: I can't decide this right now. But
10 I'm leaning towards granting the request in light of all
11 the circumstances of this case as I see. So I don't know
12 what the government's position -- it's really -- it
13 doesn't really involve the government, the government
14 doesn't need to take a position here, because I said, it's
15 he that's asking for, quote, unquote, technically a
16 mistrial and so there's really no double-jeopardy issue as
17 far as the government is concerned.

18 MS. BRYANT: The Court is not making findings at
19 this time?

20 THE COURT: No.

21 MS. BRYANT: Then the government will reserve an
22 opinion until the Court makes findings.

23 THE COURT: Take a brief recess, 20 minutes.
24 I'll tell the jury that we're being delayed.

25 MS. BRYANT: Thank you.

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(Court in recess from 2:45 p.m. until 3:12 p.m.)

THE DEPUTY CLERK: Your Honor, recalling United States versus Dontrell Deaner, case number 2008 CF1 30325.

MS. BRYANT: Finet Bryant on behalf of the United States government.

MR. RAKOFSKY: Joseph Rakofsky for Mr. Deaner.

MR. GRIGSBY: Sherlock Grigsby for Mr. Deaner.

THE COURT: All right. Mr. Deaner is present. When we adjourned just about 15 minutes or so ago, Mr. Deaner, you had requested that the Court provide a different attorney for you; is that right?

THE DEFENDANT: Yes.

THE COURT: Now, we had -- you and I had a conversation yesterday about your lawyer; do you recall that?

THE DEFENDANT: Yes.

THE COURT: And then again today we had a conversation, earlier this morning about that as well; do you remember that?

THE DEFENDANT: Yeah.

THE COURT: Now, did that in any way influence your decision as to whether or not you want another lawyer?

THE DEFENDANT: No. No, it didn't.

THE COURT: You understand that because you are

1 requesting a lawyer, if the Court grants your request, the
2 Court will declare a mistrial, that is this jury will be
3 discharged and this case will at least, for the time
4 being, end; you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: You understand that because you are
7 asking for that to happen, that is to say you are asking
8 for a mistrial, you're waiving your right to double
9 jeopardy; that is to say, you are waiving your right
10 because -- to double jeopardy because the government will
11 be able to prosecute you again. You understand?

12 THE DEFENDANT: Yeah.

13 THE COURT: You also understand that if we do
14 that, if I do grant a mistrial and the government elects
15 to prosecute you for this again, it will probably result
16 in your continued detention until the case is resolved; do
17 you understand?

18 THE DEFENDANT: Yes.

19 THE COURT: Knowing that, do you still wish
20 to -- for this Court to declare a mistrial and to grant
21 you another lawyer?

22 THE DEFENDANT: Yes.

23 THE COURT: Ms. Bryant, are there any questions
24 you believe the Court needs to ask of Mr. -- because I'm
25 not going to rule today; I'm going to have him think about

1 it overnight. But are there any additional questions that
2 you believe -- this is not an issue of manifest necessity
3 because he's requesting a mistrial, so I don't need to
4 make findings of manifest necessity.

5 MS. BRYANT: I was not aware of that. Having
6 not had an opportunity to spend time thinking of it,
7 offhand, I can't think of any additional questions the
8 Court has not already asked.

9 THE COURT: This is what I'm going to do,
10 Mr. Deaner, I'm inclined to grant your request, but I want
11 you to think about it overnight. We'll come back here
12 tomorrow morning. You can get somebody to stand in for
13 you, if you wish.

14 MS. BRYANT: I think I can be here very early in
15 the morning if we do it early.

16 THE COURT: It will be 9:30. And we will -- and
17 if you think about it, like I said, I'm inclined to grant
18 your request, but I just want you to make sure that you're
19 making a knowing, intelligent, voluntary decision. It is
20 voluntary on your part; is that right?

21 THE DEFENDANT: Yes.

22 THE COURT: Has anybody forced you or threatened
23 you or made you decide that you want another lawyer at
24 this time?

25 THE DEFENDANT: No.

1 THE COURT: All right. So we'll continue -- I'm
2 going to send this jury home. Now, I've already told them
3 that they're not going to be here tomorrow because they
4 are not sitting, so I assume that they're going to make
5 other plans, but I'm going to discharge this jury and send
6 them home today. And if I grant the request, I'll have
7 them come in on Monday at 9:30 and send them home.

8 THE DEPUTY CLERK: You don't want me to get
9 their numbers and just call them tomorrow and tell them?

10 THE COURT: That's true, we can do that. But I
11 won't have an opportunity to thank them for their service.

12 MS. BRYANT: As would I.

13 THE DEPUTY CLERK: All right.

14 THE COURT: All right. So we'll see you in the
15 morning, Mr. Deaner.

16 (Jury present.)

17 You may be seated. Good afternoon, ladies and
18 gentlemen. Ladies and gentlemen, we are stopping
19 proceedings today and I'm going to be sending you home
20 today, momentarily. Some legal issues have come up and
21 it's going to be quite some time before we resolve those,
22 so there's no sense in having you sit back there waiting
23 for 45 minutes, an hour, hour and-a-half. So I'm going to
24 send you home at this time.

25 The legal issues that have come up may in fact

1 result in you not coming in on Monday. What I will -- if
2 that is the case, what I will do is we will get
3 identification from you, we will call you tomorrow and let
4 you know one way or the other so that you can make
5 appropriate plans and not have to -- as I said, I try my
6 best to keep the mystery out of this and not sort of like
7 not tell you until the last minute or something. This is
8 something that just came up this afternoon, and, as I
9 said, I just don't think it's fair to have you sit back
10 there for hours while we resolve those matters.

11 And it makes absolutely no sense to have you
12 come in on Monday as well if it's not going to be
13 resolved. So have a good weekend. Have a good Friday.
14 We planned on not sitting Friday, tomorrow, in any event,
15 but I think if those issues are resolved, I will be able
16 to let you know. We will call you and let you know one
17 way or the other if you're needed on Monday.

18 Thank you, and have a good afternoon.

19 THE JUROR: Did you want us to write our
20 information down?

21 THE DEPUTY CLERK: Yes, just put it in your
22 notebooks. You can do it in the jury room.

23 (Jury not present.)

24 THE COURT: So I will see you folks 9:30
25 tomorrow morning.

1 MS. BRYANT: Your Honor, just one question. I
2 was under the impression the Court was going to tell them
3 to return on Monday. If there is a decision where we are
4 not going forward, I would just hate to leave them with
5 the impression that somehow the government had done
6 something to create a mistrial in this matter. I think
7 that that's just kind of unfair.

8 THE COURT: I don't think they have the -- I
9 don't know how they could get that impression.

10 MS. BRYANT: Well, I'd like to think that they
11 wouldn't have that impression, but there was certainly
12 things said that might otherwise lead them to believe that
13 there's ulterior motives here and I'd just hate to leave
14 them with that impression. I will defer with the Court.
15 I understand the Court's decision. I was just under the
16 impression that the Court was going to bring them back.

17 THE COURT: Well, it was my -- you know, this
18 would not have been -- I mean, it would have been an easy
19 issue if suddenly, you know, the jury was sitting
20 tomorrow, but that was my concern in weighing that. But,
21 you know, also weighing the fact that they're coming down
22 here, you know, having to come down here and -- when they
23 could make other plans and the cost to them of that.

24 MS. BRYANT: Yes, Your Honor, I mean, I
25 understand.