

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 UNITED STATES OF AMERICA,

4 v. 17 CR 548 (PAC)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 December 14, 2017  
2:30 p.m.

10 Before:

11 HON. PAUL A. CROTTY,  
12 District Judge

13 APPEARANCES

14 JOON H. KIM  
15 Acting United States Attorney for the  
16 Southern District of New York

17 MATTHEW JOSEPH LAROCHE  
Assistant United States Attorney

18 BRAFMAN & ASSOCIATES, PC  
Attorneys for Defendant

19 BY: JACOB KAPLAN

20 ALSO PRESENT: JOHN MOSCATO, Pretrial Services

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1 (Case called)

2 THE DEPUTY CLERK: Counsel for the government, please  
3 state your appearances.

4 MR. LAROCHE: Good afternoon, your Honor. Matt  
5 Laroche for the government. With me is John Moscato from  
6 pretrial services.

7 THE COURT: Good afternoon, Mr. Moscato. Thank you  
8 for coming.

9 MR. KAPLAN: Good afternoon, your Honor. Jacob Kaplan  
10 with Brafman & Associates for Mr. Schulte.

11 THE COURT: Mr. Kaplan. Mr. Schulte, how are you?  
12 Mr. Laroche.

13 MR. LAROCHE: Yes, your Honor. We were last here on  
14 November 8. Since that time, two things have happened. One is  
15 that the defendant has changed counsel to Mr. Kaplan.

16 The Second, as the Court is aware from our letter last  
17 week, the defendant was arrested on the bases of charges out of  
18 Virginia. Based on those charges and other information that  
19 we've set forth in our letter, we're now seeking the  
20 defendant's detention.

21 It is my understanding -- and I'll defer to defense  
22 counsel -- that at least with respect to our application, they  
23 are consenting for now without prejudice, and I'll let him  
24 explain that. The government is also ready to discuss a  
25 schedule moving forward.

1 THE COURT: Mr. Kaplan.

2 MR. KAPLAN: Thank you, your Honor.

3 My colleague is correct that we are going to consent  
4 to detention without prejudice. We would like, based on our  
5 conversations with the government, to allow Mr. Schulte to go  
6 down to Virginia do at least address the initial arraignment on  
7 the charges down there with an understanding he'll come back  
8 here to appear before your Honor.

9 THE COURT: What's the schedule for that, Mr. Kaplan?

10 MR. KAPLAN: Nothing is happening until he gets down  
11 there. Based on my conversations with the state prosecutor,  
12 because he's currently in state custody, the deputies from  
13 Virginia are supposed to pick him up on December 20 from the  
14 state facility.

15 Presumably they'll pick him up from the federal  
16 facility instead, and they'll take him down to Virginia. He  
17 has counsel already down in Virginia. Hopefully he'll be  
18 arraigned soon after returning to Virginia. Then depending on  
19 what happens in the court there, I would hope that he could be  
20 brought back here.

21 THE COURT: When he leaves this courtroom, in whose  
22 custody will he be?

23 MR. KAPLAN: My understanding is that he'll be in  
24 federal custody.

25 THE COURT: Is that right, Mr. Laroche?

1 MR. LAROCHE: Yes, your Honor. I think that how it  
2 would work procedurally is that after today he would be in  
3 federal custody, and then the state authorities would take him  
4 out, bring him to Virginia, get him arraigned, and then he  
5 would be back up here still in federal custody for the next  
6 matter.

7 THE COURT: I have a remand order which I've drafted  
8 which provides that, for the reasons stated on the record, bail  
9 is revoked, and the defendant is remanded to the custody of the  
10 U.S. Marshals for the Southern District.

11 Is that what you want?

12 MR. LAROCHE: Yes, your Honor.

13 THE COURT: Mr. Kaplan, is that all right?

14 MR. KAPLAN: It is, your Honor. While we have answers  
15 to a lot of the allegations in the government's letter, we  
16 think it's best to wait until the Virginia matter is resolved  
17 before addressing it.

18 THE COURT: I'm signing the order, and Mr. Schulte is  
19 remanded.

20 The marshals are here? Thank you.

21 Okay. Mr. Laroche, what else?

22 MR. LAROCHE: Yes, your Honor. At the last  
23 conference, I think the parties notified the Court that there  
24 was one remaining issue with respect to discovery, and that was  
25 specifically that the government needed a laptop computer and

1 an additional hard drive so we could load the remaining  
2 discovery.

3 After Mr. Kaplan was appointed counsel or became  
4 counsel for the defendant, he provided us those materials.  
5 We're in the process of loading them, which is taking a bit of  
6 time because of the amount of data. With that said, we will  
7 have that complete by next week. At that point, discovery in  
8 this case will be complete.

9 THE COURT: How much time do you want, Mr. Kaplan.

10 MR. KAPLAN: Well, your Honor, we've obtained the  
11 discovery given to prior counsel, and I've started to go  
12 through that. In addition, there was one other issue which I  
13 believe was raised at our prior conference, which was a  
14 security clearance for counsel to go through some of the  
15 national security evidence that might be present in the case.

16 While most of the national security stuff does not  
17 involve the charges, the actual charges against Mr. Schulte,  
18 the basis for the search warrants in this case involve national  
19 security.

20 So I'm starting the process with their office to  
21 hopefully get clearance to go through some of the information  
22 on that with an eye towards possibly a Franks motion going  
23 forward. So I would ask for more time just to get that  
24 rolling.

25 What I would hope to do, with the Court's approval, is

1 to set a hearing date, a court date, for early January just to  
2 ensure that Mr. Schulte, after dealing with the issue in  
3 Virginia, is brought back here to the Southern District of New  
4 York.

5 In the three weeks in between now and then, I'll have  
6 a better idea, based on the discovery I receive from the  
7 government, as to how much time we would need for motions going  
8 forward.

9 THE COURT: What date do you want in January?

10 MR. KAPLAN: The first week, between January 3 and  
11 January 6.

12 THE DEPUTY CLERK: Conference set for Thursday,  
13 January 4 at 3:45.

14 MR. KAPLAN: That's perfect, your Honor.

15 THE COURT: Mr. Laroche, is that all right with you?

16 MR. LAROCHE: That's fine, your Honor. Thank you.

17 THE COURT: Anything else?

18 MR. LAROCHE: Your Honor, the government moves to  
19 exclude time in the interests of justice from today until  
20 January 4. The basis for the exclusion is so that defense  
21 counsel can continue considering the discovery and also  
22 consider potential motions to be filed.

23 THE COURT: Any objection?

24 MR. KAPLAN: No objection.

25 THE COURT: For the reasons stated, the time between

1 now and January 4 will be excluded. It's in the interests of  
2 justice. Those interests outweigh the interests of the public  
3 and the defendant in a speedy trial.

4 Okay, Mr. Kaplan.

5 MR. KAPLAN: Thank you, your Honor.

6 By some chance if something happens before  
7 January 4 --

8 THE COURT: Come back then.

9 MR. KAPLAN: That's all I ask. Thank you.

10 THE COURT: We're available. I'm not going anywhere.  
11 If there are any problems between now and January 4, drop me a  
12 line.

13 MR. KAPLAN: I appreciate it. Happy holidays.

14 THE COURT: Mr. Laroche?

15 MR. LAROCHE: Thank you, your Honor. That's all.

16 THE COURT: Thank you very much.

17 (Adjourned)

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