

LCLVMAXT

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

20 CR 330 (AJN)

6 GHISLAINE MAXWELL,

7 Defendant.

Jury Trial

8 -----x

9 New York, N.Y.
10 December 21, 2021
11 10:05 a.m.

12 Before:

13 HON. ALISON J. NATHAN,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the
18 Southern District of New York

19 BY: MAURENE COMEY

20 ALISON MOE

21 LARA POMERANTZ

22 ANDREW ROHRBACH

23 Assistant United States Attorneys

24 HADDON MORGAN AND FOREMAN

25 Attorneys for Defendant

BY: JEFFREY S. PAGLIUCA

LAURA A. MENNINGER

-and-

BOBBI C. STERNHEIM

-and-

COHEN & GRESSER

BY: CHRISTIAN R. EVERDELL

Also Present: Amanda Young, FBI

Paul Byrne, NYPD

Sunny Drescher,

Paralegal, U.S. Attorney's Office

Ann Lundberg,

Paralegal, Haddon Morgan and Foreman

LCLVMAXT

(Trial resumed; jury not present)

THE COURT: We have a note.

This will be marked as Court Exhibit 6.

We would like the transcripts testimony of Jane,
Annie, and Carolyn.

Do you have those prepared, counsel?

MS. COMEY: I believe both sides had proposed
redactions. We just need to compare them and then they'll be
ready to send back; so it should be pretty quick, your Honor.

THE COURT: Okay. So my proposal is you come to
agreement on that, give Ms. Williams what you agree to. She
will give it to the CSO to bring them back without bringing
them to the court.

MS. STERNHEIM: Judge, are you going to inform them
that we just need a few minutes? I don't want them to think
that it's coming right now. We need like five or ten minutes.

THE COURT: I can send a note saying we're preparing
the transcripts; they'll be in shortly.

MS. STERNHEIM: Thank you.

MS. COMEY: Thank you, your Honor.

(Recess pending verdict)

THE COURT: I have a note which I'll mark as Court
Exhibit 7.

We would like the FBI deposition, 3505-005, referred
to by the defense during the cross-examination of Carolyn.

LCLVMAXT

Proposals for how to respond.

MS. COMEY: Your Honor, I believe a note saying that that document is not in evidence would be an appropriate response.

MR. PAGLIUCA: Your Honor, I think since there was impeachment from the document -- I agree it's not a deposition, and I agree that the document is not in evidence. But there is 613 impeachment from that document. I think the Court -- and Ms. Sternheim tells me what I was about to say, which is good; we're consistent.

I think something like, you know, You have the evidence and testimony relating to 3505-005. That's it. I don't think that there should be any further discussion about what is or is not in evidence.

THE COURT: How about "all admitted exhibits are before you."

MS. COMEY: I think that's fine, your Honor.

MR. PAGLIUCA: The problem, your Honor, is that there's testimony about it.

THE COURT: You lost your mic.

MR. PAGLIUCA: Sorry.

There's testimony about it.

THE COURT: It's true they've not asked for that though.

MR. PAGLIUCA: They do have the transcript where it's

LCLVMAXT

1 referred to. I think a more limited answer is something along
2 the lines of: You have the admitted evidence relating to
3 3505-5. Something like that.

4 MS. COMEY: Your Honor, I think it's important to
5 clarify for the jury that the particular document they
6 requested is not in evidence; but that they may consider what
7 they already have in the transcript and what they already have
8 in the exhibits.

9 THE COURT: That sounds pretty similar.

10 MR. PAGLIUCA: Which is what I just said without
11 saying the document is not in evidence. Because the testimony
12 about the document is in evidence. I don't think I'm splitting
13 hairs here. I think the evidence is what it is.

14 THE COURT: How about then: You have all admitted
15 exhibits, period. Because it's directly responsive to the
16 question without assuming further questions.

17 MR. PAGLIUCA: I think what we're struggling with is
18 the difference between the testimony and the specific document.
19 I think it diminishes the testimony by inferring that somehow
20 it's not evidence before the jury.

21 THE COURT: They are asking for the document, I
22 presume in part because they have the testimony in front of
23 them.

24 MR. PAGLIUCA: Right. Which I'm happy to give them
25 the 35 --

LCLVMAXT

1 MS. COMEY: Your Honor, what about "3505-005 is not an
2 admitted exhibit."

3 MR. PAGLIUCA: If the Court is considering that, I
4 think there needs to be a second sentence, which is, "The
5 testimony about 3505-005 has been provided in the transcript."

6 MS. COMEY: That's redundant, your Honor. They know
7 that; that's why they are asking the question. So I don't
8 think it's necessary.

9 MR. PAGLIUCA: Well, it can't really hurt if it's
10 redundant, your Honor.

11 THE COURT: That's true.

12 I'm just writing it out.

13 "3505-005 is not an admitted exhibit. The testimony
14 regarding 3505-005 is in the transcript you have regarding
15 Carolyn's testimony."

16 MR. PAGLIUCA: That's fine with us, your Honor.

17 MS. COMEY: Fine with us, your Honor. Thank you.

18 THE COURT: Okay. I'm happy to bring them out and do
19 it orally or send in a note for efficiency.

20 MS. COMEY: I think sending in a note will save time,
21 your Honor, and makes sense.

22 MR. PAGLIUCA: We agree.

23 THE COURT: Okay. So let me just be clear.

24 I'm going to say: I received your note regarding --
25 I'll just say regarding 3505-005. 3505-005 is not an admitted

LCLVMAXT

1 exhibit. The testimony regarding 3505-005 is in the transcript
2 you have regarding Carolyn's testimony.

3 Agreed?

4 MS. COMEY: Yes. Thank you, your Honor.

5 MR. PAGLIUCA: Agreed.

6 THE COURT: Thank you.

7 All right. I will do that.

8 And we'll wait to hear further.

9 (Recess pending verdict)

10 THE COURT: I'm told that you requested I return.

11 MR. PAGLIUCA: Yes. Thank you, your Honor.

12 After the Court left and I thought about it, there's
13 other testimony regarding this exhibit, specifically from
14 Special Agent Jason Richards. We all can't agree on what was
15 in the note, and it may be important for us to hear exactly
16 what was in the note again before we have some consensus on
17 this.

18 MS. STERNHEIM: Judge, may we receive copies of the
19 court exhibits please?

20 THE COURT: You mean the notes?

21 MS. STERNHEIM: Yes.

22 THE COURT: They need to be redacted because the
23 foreperson has signed their name.

24 MS. STERNHEIM: Understood.

25 MR. PAGLIUCA: My request is going to be that in

LCLVMAXT

1 addition to the name Carolyn, we add "and the testimony of
2 Special Agent Jason Richards," assuming that's appropriately
3 responsive to the question.

4 THE COURT: I don't think it is, remembering fondly
5 when I said "period."

6 MR. PAGLIUCA: I understand, your Honor.

7 THE COURT: "We would like the FBI deposition 3505-005
8 referred to by the defense during the cross-examination of
9 Carolyn."

10 MS. COMEY: Your Honor, I don't see how Agent
11 Richards' testimony is in any way responsive to that note. I
12 think the response that the Court already gave is fully
13 responsive.

14 THE COURT: It is.

15 MR. PAGLIUCA: My request stands, your Honor, we add
16 Special Agent Jason Richards to that.

17 THE COURT: Understood.

18 Overruled. Because it's not what they've asked for.
19 But we can be prepared, should they follow up with that
20 request.

21 MR. PAGLIUCA: We have the transcript here, your
22 Honor.

23 THE COURT: I am reading the notes verbatim, but I
24 will work on redacting the foreperson's name so they can be
25 made public.

LCLVMAXT

1 MS. STERNHEIM: Thank you.

2 THE COURT: Actually, counsel are aware of the
3 identity of the jurors; so I'm comfortable with counsel seeing
4 the note. And then I'll redact for purposes of public exhibit.

5 MS. STERNHEIM: Judge, the primary reason is so that
6 we can, as the parties, look at it and analyze it and, when you
7 come down, be prepared to make the arguments. It has nothing
8 to do with using it for any other purpose.

9 THE COURT: No, I understand.

10 Okay. So do you need these now or do you want --

11 MS. STERNHEIM: We'd like to have copies.

12 THE COURT: Of course.

13 MS. STERNHEIM: But it's not as immediate.

14 THE COURT: Okay. I will figure out who knows how to
15 do a redaction.

16 MS. MENNINGER: We're pretty good at it.

17 MS. COMEY: Your Honor, it is true that the parties
18 know the names of the jurors; so if the Court wanted to send an
19 electronic copy of the note to the parties, the parties could
20 redact it and then send a redacted version back to the Court.

21 THE COURT: All right. We'll do that. Thank you.

22 MS. COMEY: Thank you, your Honor.

23 (Recess pending verdict)

24 THE COURT: I have a note.

25 We would like to end today at 5 p.m., deliberate from

LCLVMAXT

1 9 to 4:30 tomorrow, and have lunch at 12 noon if possible. So
2 I'll bring them out at 5.

3 MR. PAGLIUCA: I apologize, your Honor.

4 It took a while to get back here.

5 THE COURT: I can't hear you, but that's fine.

6 MS. MENNINGER: He was in the lockup back there.

7 THE COURT: I see.

8 I'll give you the note, Mr. Pagliuca.

9 We would like to end today at 5 p.m., deliberate from
10 9 to 4:30 tomorrow, and have lunch at 12 noon if possible.

11 So I'll dismiss them -- I'll bring them out to dismiss
12 them at 5, bearing instructions in mind.

13 I think the only open question in my mind, I have
14 explored, given the timing, the efficiency with which trial
15 proceeded, it is possible for them to deliberate on Thursday.

16 MS. STERNHEIM: Judge, I was going to ask you --
17 apologize. I have been in situations where on holidays judges
18 have invited the jury, if they wish to come in. I think given
19 the circumstances here, just Thursday --

20 THE COURT: Yes. And actually, the Court is not
21 always closed before Christmas Eve. So when I thought we were
22 proceeding to trial, it made sense not to sit that day, but --
23 and that is the jurors' expectation, so they may not be able
24 to. But I think if they are not finished their deliberations
25 tomorrow, I should offer that.

LCLVMAXT

1 MS. COMEY: Yes, your Honor.

2 MS. STERNHEIM: Judge, I just wanted to add, I know
3 that the Court typically does close the day before Christmas.
4 But because this year Christmas is on a Saturday, I think
5 that's why Thursday is the other day that's off.

6 THE COURT: The courthouse is closed on Christmas Eve,
7 of course, and Christmas. But the 23rd it's not.

8 MS. STERNHEIM: Judge, would you be inclined to offer
9 that to them today, in case they need to make arrangements, if
10 that's an option for them?

11 THE COURT: I'll hear from the parties.

12 I think I could say if deliberations are ongoing or if
13 they haven't completed their deliberations, the Court can
14 arrange for them to deliberate on Thursday, the 23rd, if they
15 wish to.

16 MS. COMEY: That's fine, your Honor.

17 THE COURT: Do the parties have a view as to doing
18 that today or tomorrow, I guess, for the arrangement point?

19 MS. STERNHEIM: I would suggest that we do it today in
20 case they do want to have that option and need to make
21 childcare or other arrangements.

22 THE COURT: So I think what I said was if the jury has
23 not completed its deliberations, it is possible for them to
24 deliberate this week on Thursday, December 23rd, if they wish.

25 MS. COMEY: Yes, your Honor.

LCLVMAXT

1 MS. STERNHEIM: Thank you.

2 THE COURT: All right. So when I bring them out to
3 dismiss them for the evening at 5 -- and let's everybody please
4 be here right at 5 so we can meet their timing wishes. And
5 I'll remind them of my instructions and give them that
6 information. I suppose I should say -- well, I'll leave it at
7 that. They know to let me know.

8 Okay. And we will send a PDF of the notes so that you
9 can redact it again. Thank you.

10 MS. STERNHEIM: Thank you.

11 (Recess pending verdict)

12 THE COURT: I have a note. Court Exhibit 9.

13 Can we consider Annie's testimony as conspiracy to
14 commit a crime in Counts One and Three?

15 MS. COMEY: The one-word answer would be correct here,
16 your Honor, yes.

17 THE COURT: Government's proposal is yes.

18 MR. EVERDELL: Your Honor, if we could just have a
19 minute to confer on this?

20 THE COURT: Sure.

21 And would counsel like to look at the note?

22 MR. EVERDELL: Yes, please.

23 THE COURT: Ms. Comey, you may also take a look, if
24 you like.

25 MS. COMEY: Thank you, your Honor.

LCLVMAXT

1 THE COURT: Mr. Everdell.

2 MR. EVERDELL: Your Honor, I think --

3 THE COURT: Clearly the substantive answer is yes.

4 MR. EVERDELL: Well, I think, as we've discussed in
5 the briefing and in the limiting instruction, the answer is a
6 little more complicated than --

7 THE COURT: Well, your view is more complicated. You
8 took a different view. I have ruled differently. And so I
9 think based -- I think it's clear based on my rulings the
10 answer to the question is yes.

11 MR. EVERDELL: I think what we should do is give the
12 jury the same limiting instruction as to her testimony that you
13 gave before her testimony; because I think that actually gives
14 the jury exactly what they can consider and not consider her
15 testimony for.

16 MS. COMEY: Your Honor, the limiting instruction was
17 targeted at Counts Two and Four, the substantive counts, to
18 make clear that Annie's testimony was not the basis of a
19 substantive count. I don't think it's necessary for Counts One
20 and Three. I think the answer is clearly yes, made all the
21 more so by the fact that Annie's testimony or a part of it is
22 referenced as an overt act in the indictment in the
23 instructions. I think the simplest answer and the correct
24 answer is yes.

25 MR. EVERDELL: I don't think it's correct at all that

LCLVMAXT

1 it's only to Two and Four. Because the instruction was that
2 you can't consider her testimony as a legal sexual activity as
3 charged in the indictment. And that applies to One and Three
4 as well.

5 MS. COMEY: Your Honor, that was not the limiting
6 instruction. The limiting instruction was that what she
7 describes is not illegal sexual activity as defined in the
8 indictment.

9 THE COURT: That's precisely the precision with which
10 I have made this point. And the defense has continued to
11 revert to the idea that the testimony can't be considered for
12 that. That was the basis -- that was the basis for exclusion.
13 But her testimony is relevant, may be considered by the jury
14 with respect to the conspiracy counts.

15 The answer is yes. And they are asking not for what
16 it can't be used for, which is what the limiting instruction
17 gave them, they are asking whether it may permissibly be
18 considered for these counts. And the answer to that is yes
19 under my rulings.

20 MR. EVERDELL: Your Honor, I respectfully think that
21 what they are asking for is how can we consider her testimony.

22 THE COURT: May I have the note back?

23 MS. COMEY: Yes, your Honor.

24 It's a yes-or-no question.

25 THE COURT: Can we consider Annie's testimony as

LCLVMAXT

1 conspiracy to commit a crime in Counts One and Three?

2 The answer is yes, they can.

3 Do you have a proposal for how to say that other than
4 just yes? I'm happy to hear it.

5 MR. EVERDELL: Your Honor, my proposal is to give them
6 the limiting instructions that we got before.

7 THE COURT: The limiting instruction is nonresponsive
8 to their question.

9 MR. EVERDELL: One moment, your Honor.

10 THE COURT: They are not asking what it may not be
11 used for. They have a specific question, I think, probably in
12 light of the limiting instruction as to whether they may
13 consider it for this. And the substantive answer to that is
14 yes.

15 MR. EVERDELL: One moment, your Honor.

16 (Counsel conferred)

17 MR. EVERDELL: Your Honor, I think, as you're saying,
18 to say yes, while technically accurate, allows the jury to then
19 use her testimony more broadly if they aren't given the
20 instruction of how they can use the testimony. So if the
21 simple answer is yes, then the concern is that they would use
22 it and apply the testimony more broadly. And so I think what
23 was given before with the limits in the limiting instruction is
24 how they can use it appropriately in testimony and should be
25 given again.

LCLVMAXT

1 MS. COMEY: That's not correct, your Honor.

2 The answer should be yes, full stop.

3 MS. STERNHEIM: Judge, may I just be heard?

4 THE COURT: You need your mic on.

5 MS. STERNHEIM: I apologize.

6 It's like saying you could drive, but you have to
7 abide by the speed limit. Here, it's saying you can just drive
8 and not abide by anything when there is an instruction that
9 limits their availability to use it in total. So I think it
10 needs to be qualified.

11 MS. COMEY: Your Honor, if someone asked me if I
12 drive, the direct answer would be yes or no.

13 MS. STERNHEIM: But if you're in an area that has a
14 limit -- which we know is in the record, because the Court gave
15 an instruction -- that would be part of it as well.

16 THE COURT: All right. But I think the implication of
17 this question is that they are following the limiting
18 instruction and they want to know what it's relevant for.
19 That's why they --

20 MS. STERNHEIM: We're reading into that. And if you
21 want to ask them are they following the limiting instruction,
22 then we would have clarity. But based upon this note, I don't
23 think we have that precision.

24 MS. COMEY: Your Honor, the jury asked a very simple
25 yes-or-no question. They need a very simple answer. The

LCLVMAXT

1 answer is yes.

2 THE COURT: I will say, I received your question.
3 I'll say, Yes, you may consider it.

4 MS. COMEY: Thank you, your Honor.

5 THE COURT: All right. So I will say: I received
6 your note. The answer is yes, you may consider it.

7 Please, everybody be back at 4:55 and ready to go.

8 I'll bring the jury out right at 5.

9 MS. COMEY: Yes, your Honor.

10 THE COURT: Thank you.

11 (Recess pending verdict)

12 THE COURT: So just to go over what I'm going to say,
13 I'll say that I received their note regarding dismissal tonight
14 at 5 p.m. and timing for tomorrow. That's fine. And we'll
15 have lunch for them by noon tomorrow. I'll ask them to give
16 Ms. Williams their lunch order on their way out.

17 I would say what I said I would say regarding
18 deliberations Thursday, if they wish. We got just a reminder
19 from the chief judge to remind everyone to wear masks at all
20 times, given where we are with the variant. So I'm going to
21 just remind them, other than when briefly eating or drinking,
22 they should have their mask on in the jury room.

23 Anything else?

24 MS. COMEY: No, your Honor.

25 MS. STERNHEIM: No, thank you.

LCLVMAXT

1 THE COURT: All right. Please bring in the jury.

2 (Jury present)

3 THE COURT: Thank you so much.

4 First, I received your note regarding dismissal
5 tonight at 5 p.m. and timing for tomorrow. That's fine. We
6 will have lunch for you by noon tomorrow. Please do give
7 Ms. Williams your lunch order on your way out.

8 And as a reminder for the morning, when you come in,
9 as soon as all 12 of you are present, you may begin your
10 deliberations, not before all 12 are present.

11 Next point I want to say, if you have not completed
12 your deliberations, it is possible for you to deliberate this
13 week on Thursday, December 23rd, if you wish. You can discuss
14 and let me know, if pertinent.

15 And then I want to give you a reminder that our chief
16 judge has asked us to remind all people in the courthouse that
17 masks are required to be worn at all times, unless they're
18 briefly off for eating and drinking. So a reminder to wear
19 masks at all times other than that.

20 With that, I just do want to have you bear in mind my
21 instructions, of course. I know that you are, but I just find
22 it important to repeat.

23 When you're not together deliberating, the 12 of you,
24 no discussions with each other or anyone else regarding the
25 case. Obviously no communications regarding the case, no

LCLVMAXT

1 consuming of any information regarding the case.

2 So we appreciate your diligence and wait to hear from
3 you tomorrow.

4 Have a good night. Thank you.

5 (Jury not present)

6 THE COURT: I want to know if the transcripts have
7 been reviewed for the government.

8 MS. COMEY: They have, your Honor.

9 THE COURT: So they are ready to go?

10 MS. COMEY: They are, your Honor.

11 THE COURT: It was frustrating to have to have the
12 jury wait for three hours to get what they requested.

13 MS. COMEY: Yes, your Honor.

14 And we apologize for that.

15 THE COURT: Defense agrees that they are now ready to
16 go?

17 MR. EVERDELL: Yes, your Honor. We've conferred on
18 every witness at this point.

19 THE COURT: Okay.

20 Second thing. I'm inclined to have Ms. Williams just
21 call our alternates tonight to say deliberations are ongoing.
22 All the rules continue to apply. She'll communicate with any
23 further instructions.

24 MS. COMEY: Yes, your Honor.

25 MS. STERNHEIM: No problem. Thank you.

LCLVMAXT

1 THE COURT: Okay. We will do that.

2 Anything else to take up?

3 MS. COMEY: No. Thank you, your Honor.

4 MS. STERNHEIM: No, thank you.

5 THE COURT: Okay. All right. See you in the morning.

6 Have a good night. We're adjourned.

7 (Adjourned to December 22, 2021 at 9:00 a.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25