

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA . Cause No. 3:07CR192
. .
Plaintiff . Oxford, Mississippi
. March 21, 2008
v. . 10:11 a.m.
. .
DAVID ZACHARY SCRUGGS .
. .
Defendant .
.

CHANGE OF PLEA AS TO COUNT 1 OF THE INFORMATION
BEFORE THE HONORABLE NEAL B. BIGGERS
U.S. SENIOR DISTRICT JUDGE

APPEARANCES:

For the Government: United States Attorney's Office
Northern District of Mississippi
BY: THOMAS W. DAWSON, ESQ.
BY: ROBERT H. NORMAN, ESQ.
BY: DAVID A. SANDERS, ESQ.
900 Jefferson Avenue
Oxford, Mississippi 38655-3608

For the Defendant: TODD P. GRAVES, ESQ.
NATHAN GARRETT, ESQ.
Graves, Bartle & Marcus, LLC
1100 Main Street
Suite 2600
Kansas City, Missouri 64105
816-256-3173

MICHAEL C. MOORE, ESQ.
Michael Moore Law Firm, LLC
10 Canebrake Boulevard, Suite 150
Post Office Box 321048
Flowood, Mississippi 39232

Court Reporter: Rita Davis Sisk
911 Jackson Avenue, Room 369
Oxford, Mississippi 38865
(662) 281-3027

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 (Call to Order of the Court)

2 THE COURT: All right, gentlemen. In the case of the
3 *U.S. v. David Zachary Scruggs*, is there an announcement to be
4 made in that case?

5 MR. SANDERS: Yes, sir, Your Honor. The Government
6 would like to announce that the defendant has agreed to -- with
7 the Government to enter into a plea agreement in this matter.

8 THE COURT: All right. What -- so what is that -- is
9 the defendant ready to enter a plea?

10 MR. SANDERS: Yes, sir, Your Honor.

11 THE COURT: All right. Mr. Graves?

12 MR. GRAVES: Yes, Your Honor.

13 THE COURT: All right. Let him come up.

14 (Parties complying.)

15 THE COURT: All right. Mr. Scruggs, is your true
16 name David Zachary Scruggs?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Now, the Court is informed that you wish
19 to change the plea that you previously entered to a plea of
20 guilty to another charge; is that correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. According to this document
23 that's been furnished to me just this morning, this plea
24 agreement calls for you to waive indictment and to plead guilty
25 under oath to a one-count information, which charges the

1 misprision of a felony. Is that your intention?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: All right. Do you understand that you
4 have not been indicted on the crime of misprision of a felony;
5 and you have the right, under the law, to have a grand jury to
6 hear the evidence and decide whether you should be officially
7 charged with misprision of a felony?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: You want to waive that right?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: All right. Have you signed the waiver of
12 indictment? Has it been signed yet?

13 MR. GRAVES: Not yet, Your Honor.

14 THE COURT: All right. Well, have you got that --
15 furnish that to the defendant.

16 MR. SANDERS: (Passing document.)

17 THE CLERK: (Passing document to the Court.)

18 THE COURT: Thank you. All right. Here you go. Put
19 that in the record.

20 All right. Before accepting your guilty plea, there are a
21 number of questions I will ask you to assure that it is a valid
22 plea. If you do not understand any of these questions or at
23 any time you wish to consult with your attorneys, you may let
24 me know.

25 The clerk will please swear the defendant.

1 THE CLERK: (Oath administered.)

2 THE DEFENDANT: I do.

3 THE COURT: All right. Mr. Scruggs, do you
4 understand now that you are under oath and any answers to my
5 questions will be subject to the penalties of perjury if you do
6 not answer them truthfully?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: All right. What is your age?

9 THE DEFENDANT: Thirty-three years old.

10 THE COURT: And how far did you -- you have a
11 bachelor degree and a law degree?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you presently under the influence of
14 any drugs, medicines, or alcohol?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: You think you fully understand what is
17 happening here today?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Mr. Graves, Mr. Moore, do
20 either of you have any doubt as to the defendant's competence
21 to enter a plea at this time?

22 MR. GRAVES: No, sir.

23 MR. MOORE: No, sir.

24 THE COURT: The Court finds that this defendant is
25 competent to enter a plea. Have you had an ample opportunity

1 to discuss this case with your attorneys?

2 THE DEFENDANT: I have, Your Honor.

3 THE COURT: Are you satisfied with your attorneys'
4 representation of you?

5 THE DEFENDANT: I am, Your Honor.

6 THE COURT: Do you believe that they have competently
7 represented your best interests in this case?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: Do you understand that under the
10 Constitution and laws of the United States that you are
11 entitled to a trial by a jury on this charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you understand that if you wish to
14 have a trial the -- you would be presumed to be innocent of
15 this charge and the Government would be required to prove you
16 guilty beyond a reasonable doubt before you could be found
17 guilty? Are you aware of that?

18 THE DEFENDANT: I am, Your Honor.

19 THE COURT: And do you understand that in the course
20 of a trial the witnesses for the Government would have to come
21 into Court and testify in your presence; that your attorney
22 could cross-examine the witnesses for the Government; they
23 could object to evidence offered by the Government and offer
24 other evidence in your behalf? Are you aware of that?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 **THE COURT:** Do you further understand that if you
2 wish to testify in your own defense you have that right, but if
3 you chose not to testify no inference or suggestion of guilt
4 would be drawn by the fact that you did not testify? Are you
5 aware of that?

6 **THE DEFENDANT:** I am, Your Honor.

7 **THE COURT:** Now, if you plead guilty here today and I
8 accept your plea, do you understand that you're going to waive
9 your right to a trial; the other rights I've just discussed
10 with you; there will be no trial; and I will enter a judgment
11 of guilty and sentence you on the basis of your guilty plea
12 after considering a presentence report?

13 **THE DEFENDANT:** Yes, sir, Your Honor.

14 **THE COURT:** If you plead guilty here today, do you
15 also understand that you will also waive your right not to
16 incriminate yourself, which you're guaranteed by the Fifth
17 Amendment of the Constitution, because I will ask you questions
18 about what you did in order to satisfy myself that you are
19 guilty as charged? Do you understand that?

20 **THE DEFENDANT:** I do, Your Honor.

21 **THE COURT:** All right. Now, by your knowing what
22 you're waiving by pleading guilty at this time, do you still
23 want to go forward with this guilty plea?

24 **THE DEFENDANT:** I do, Your Honor.

25 **THE COURT:** Have you received a copy of this

1 information?

2 THE DEFENDANT: I have, Your Honor.

3 THE COURT: It charges you with having knowledge of
4 the actual commission of a felony. You concealed it and did
5 not make known the same to some judge or other person in
6 authority under the United States law in violation of Title 18,
7 United States Code, Section IV. That's what you're charged
8 with. Have you discussed with your attorney this charge and
9 any defense that you might have to it?

10 THE DEFENDANT: I have, Your Honor.

11 THE COURT: All right. Now, before you could be
12 found guilty of this charge, the Government would have
13 to present evidence to the Court, to the jury, that four
14 elements occurred. First, that a felony, a federal felony, was
15 committed. Secondly, that you had knowledge of the commission
16 of that felony. Third, that you failed to notify an authority
17 as soon as possible. And fourth, that you committed an act, as
18 charged, to conceal the crime.

19 Are you aware that the Government would have to prove all
20 four of those elements beyond a reasonable doubt before you
21 could be found guilty?

22 THE DEFENDANT: I am, Your Honor.

23 THE COURT: Do you have any questions about this
24 charge?

25 THE DEFENDANT: No, sir, Your Honor.

1 **THE COURT:** Do you understand the maximum possible
2 penalty under the law for this crime?

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

4 **THE COURT:** What's your understanding of it?

5 **THE DEFENDANT:** Three years.

6 **THE COURT:** All right. And also a \$250,000 fine.

7 **THE DEFENDANT:** That's correct, Your Honor.

8 **THE COURT:** And supervised release of up to a year.

9 Are you aware of that?

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

11 **THE COURT:** Has anyone threatened you or forced you
12 to plead guilty to this charge?

13 **THE DEFENDANT:** No, sir.

14 **THE COURT:** All right. Counsel have advised the
15 Court there is a plea agreement entered into. What is the
16 substance of that plea agreement, Mr. Sanders?

17 **MR. SANDERS:** Yes, sir. The defendant agreed to
18 waive indictment and plead guilty under oath to a one-count
19 information charging misprision of a felony. The United States
20 agrees not to charge the defendant with any other offenses
21 arising from or related to the above charges and agrees to
22 dismiss the original indictment upon conclusion of sentencing.

23 After being fully advised of all the facts and
24 circumstances of the defendant's involvement, the Government
25 will recommend a probated sentence. However, there is no

1 agreement as to the sentence to be imposed, which will be in
2 the sole discretion of the Court subject to the applicable
3 Federal Sentencing Guidelines which have been explained to the
4 defendant by his attorney. And both parties reserve their
5 right to speak at sentencing.

6 This agreement does not bind any prosecuting authority of
7 any state or any other federal district, nor does it bind the
8 Attorney General of the United States with regard to any
9 matter, criminal or civil, involving the federal tax laws.

10 The defendant is aware that if he violates this agreement
11 all statements made pursuant hereto will be admissible against
12 him. He hereby waives the provisions of Rule 11(f) of the
13 Federal Rules of Criminal Procedure and Rule 410 of the Federal
14 Rules of Evidence. He may also, in that event, be prosecuted
15 for all federal offenses, including perjury and false
16 statements related to this agreement.

17 Apart from being advised of the advisory nature of the
18 United States Sentencing Guidelines, no promise or
19 representation whatsoever has been made to the defendant. This
20 agreement fully reflects all the promises, agreements, and
21 understandings between the defendant and the United States
22 Attorney.

23 His agreement is knowing, free, and voluntary, not the
24 product of force, threat, or coercion. He is pleading guilty
25 because the defendant is in fact guilty of the charges. And

1 that's essentially the substance of the plea agreement.

2 THE COURT: All right. Mr. Scruggs, you heard
3 Mr. Sanders state his understanding of the agreement that you
4 entered into with the Government. Did he accurately state it
5 as you understand it to be?

6 THE DEFENDANT: He did, Your Honor.

7 THE COURT: Mr. Graves --

8 MR. GRAVES: Yes, sir.

9 THE COURT: -- Mr. Garrett, is it the
10 understanding -- as you understand it to be? Mr. Moore?

11 MR. GARRETT: Yes, Your Honor.

12 MR. MOORE: Yes, Your Honor.

13 THE COURT: All right. Has anyone made any promise
14 to you in addition to this plea agreement to cause you to enter
15 a plea of guilty?

16 THE DEFENDANT: No, sir, Your Honor.

17 THE COURT: All right. You understand, Mr. Scruggs,
18 that any recommendation of sentence which the plea agreement
19 contains is not binding on this Court; and the Court can
20 sentence you up to the maximum three years which the law
21 provides for this?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: All right. Has anyone made any
24 prediction what sentence you would receive?

25 THE DEFENDANT: No, sir, Your Honor.

1 **THE COURT:** Did you, as charged in Count 1 of this
2 indictment, have knowledge of a felony, a federal felony,
3 having been committed and conceal it, not report it to the
4 authorities as required by law?

5 **THE DEFENDANT:** I did, Your Honor.

6 **THE COURT:** All right. Mr. Sanders, what evidence
7 would the Government be able to present as to this charge?

8 **MR. SANDERS:** Yes, sir. Should the present action go
9 to trial, the Government would show that on or about March 15th
10 of 2007 the defendant, along with Richard Scruggs and Sid
11 Backstrom, met with Steve Patterson and Tim Balducci and,
12 during this meeting, discussed Balducci's relationship with
13 Circuit Judge Henry Lackey.

14 At that time, Judge Lackey was presiding over a civil
15 matter styled *Jones v. Scruggs*. Also at that meeting, it was
16 decided that, because of his close relationship with Judge
17 Lackey, Tim Balducci would speak to the judge in an ex parte
18 manner and ask him to rule in favor of the defendants.
19 Everyone was aware that Balducci had not made an official entry
20 of appearance on behalf of the Scruggs Law Firm to represent
21 them in the matter.

22 Shortly thereafter, Balducci met with Judge Lackey and
23 discussed the *Jones v. Scruggs* lawsuit. Judge Lackey
24 subsequently contacted the United States Attorney's Office and
25 began working with the Government in an undercover capacity.

1 Over the course of the next few months, Balducci met with
2 Judge Lackey on several more occasions, many of which were
3 recorded. And on October 18, Judge Lackey gave Balducci a
4 signed order ruling in favor of the defendants. Balducci then
5 drove the order from Judge Lackey's chambers in Calhoun City to
6 the Scruggs Law Firm in Oxford and left the order with the
7 defendant Zach Scruggs.

8 At this time, Scruggs was aware that the order would send
9 the *Jones v. Scruggs* matter to arbitration; and he was aware
10 that the plaintiffs were unaware of both Balducci's involvement
11 and that Judge Lackey's ruling was based in part on something
12 other than the merits of lawsuit, that is, Balducci's personal
13 relationship with Judge Lackey.

14 Scruggs was also aware that such an act deprived the state
15 of Mississippi of its intangible right to the honest services
16 of Judge Henry Lackey performed free from deceit, bias,
17 self-dealing, and concealment.

18 By November 1st, 2007, the order Balducci delivered to
19 Scruggs on October 18th had not yet been entered. On
20 November 1st, Balducci returned to the Scruggs Law Firm with
21 another order and, on this date, met with Zach Scruggs and Sid
22 Backstrom in Backstrom's office.

23 During this meeting, Balducci explained to both Scruggs
24 and Backstrom that the order he left with Scruggs on October
25 18th had not been entered because before the judge had time to

1 file it the plaintiffs filed additional motions; and the judge
2 believed he needed to draft an order addressing these
3 additional filings.

4 Balducci, by this time, was cooperating with the United
5 States and was wearing an audio recorder. Both Scruggs and
6 Backstrom spent time examining the order and discussing its
7 contents. After receiving and examining the order, Scruggs
8 failed to inform the firm's counsel of record of the manner in
9 which the order had been obtained, thereby concealing this fact
10 from the plaintiffs, whom the firm's counsel would have been
11 bound to inform.

12 While it is not necessary that the defendant knew of this
13 fact, the Government would show that also on November 1st an
14 e-mail was sent via wire transmission in interstate commerce
15 from the Scruggs Law Firm to Tim Balducci containing documents
16 related to the order sending this case to arbitration.

17 Finally, the Government would show that the
18 above-described criminal activity took place in Lafayette
19 County, Mississippi, which is in the Northern Judicial District
20 of Mississippi.

21 **THE COURT:** Mr. Scruggs, did you do what the
22 prosecutor just described you as having done?

23 **THE DEFENDANT:** I did, Your Honor.

24 **THE COURT:** The Court finds there is a factual basis
25 for this defendant to plead guilty to this charge. Do you

1 plead guilty or not guilty to Count 1 of this information?

2 THE DEFENDANT: I plead guilty, Your Honor.

3 THE COURT: Since you acknowledge that you are
4 guilty; you know what your right is to a trial; you know what
5 the maximum possible punishment is; and then the Court's
6 finding you're voluntarily pleading guilty; the Court will
7 accept your guilty plea and enter a judgment of guilty on your
8 plea.

9 All right, now, I see from this plea agreement -- from
10 what counsel said, this plea agreement does not require the
11 defendant to cooperate with the Government on any other cases,
12 testify in any other cases?

13 MR. SANDERS: Yes, sir, Your Honor.

14 THE COURT: That's what it calls for?

15 MR. SANDERS: Yes, sir.

16 THE COURT: Do you have knowledge that he has
17 information on other cases?

18 MR. SANDERS: We have no knowledge that he has any
19 information on other cases at this time, Your Honor.

20 THE COURT: All right. Of course, this is quite a
21 difference of charges from six felony counts involving
22 conspiracy and the related counts down to one count of
23 misprision of a felony. If the prosecution thinks that's what
24 they want to charge him with now, the Court will -- that's the
25 prosecution's call.

1 And the Court will consider this case, consider the facts
2 of the case, have a presentence report conducted, and determine
3 what would be the proper sentence under this particular charge
4 at a later date.

5 Put the defendant in touch with the probation officer
6 before you leave here today, and they'll start the presentence
7 report. Anything else?

8 MR. GRAVES: Your Honor, could the defendant speak
9 briefly?

10 THE COURT: Pardon?

11 MR. GRAVES: Could Mr. Scruggs speak briefly to the
12 Court?

13 THE COURT: Yes.

14 THE DEFENDANT: Thank you, Your Honor. This is my
15 first time to be before Your Honor in Court, and no one is
16 sorrier than I that it's under these circumstances. I'd like
17 to start out by telling the Court, and the public, that I had
18 no knowledge that Tim Balducci bribed Judge Lackey in
19 connection with this arbitration order. I didn't conspire to
20 bribe Judge Lackey in connection with an arbitration order, and
21 I would have stopped it had I known.

22 However, I did have some knowledge that Tim Balducci had a
23 close personal relationship with Judge Lackey, and that he used
24 that personal relationship to have improper ex parte contacts
25 with the judge regarding the order. Such improper contacts, if

1 left unchecked, can -- and in this case did -- deprive the
2 people of the state of Mississippi of fair and honest services.

3 As a member of the Mississippi Bar, and as an officer of
4 the Court, I had a duty to prevent such contacts from occurring
5 and to report them; and I failed to do so. I am truly and
6 humbly sorry for that; and I apologize to the Court, to the
7 legal profession I love so deeply, and to the people of the
8 state of Mississippi.

9 I'm here today to accept full responsibility for my acts
10 and prepared to accept the full consequences, both from this
11 Court and the Mississippi Bar. We, as members of the Bar, have
12 high standards we have to live up to. And it's not just enough
13 that we not engage in ex parte contact or unethical contact; we
14 have a duty to prevent others from doing so. And I failed to
15 do so in this particular case.

16 I hope that the profession and the Mississippi Bar will
17 learn from and benefit from my failure, and that it will -- my
18 actions here today will improve the Mississippi Bar Association
19 for the better. And may God save this Court and our honorable
20 profession. Thank you, Your Honor.

21 **THE COURT:** All right, Mr. Scruggs. Of course, the
22 legal profession that you say you love so much, you will not be
23 a part of it the rest of your life. You understand that?

24 **THE DEFENDANT:** Yes, Your Honor.

25 **THE COURT:** Okay. The Court will accept your

1 statement and consider it, along with all the other evidence,
2 as well as the sentencing guidelines involved in a case such as
3 this; and you'll be notified of the exact date of sentencing.
4 I'm not going to set that date at this time. But you'll be
5 notified. It'll probably be within six weeks or a couple of
6 months, maybe six weeks, 6 to 8 weeks.

7 And Counsel, of course, will be notified. And you can
8 keep that road hot between here and Kansas City as you have
9 been doing for the last several weeks. All right, Mr. Graves,
10 put him in touch with the probation office; and with that
11 understanding, then, you may be excused until you're ordered to
12 be back.

13 **THE DEFENDANT:** Thank you.

14 **MR. GRAVES:** Thank you, Your Honor.

15 **THE COURT:** All right. If there's nothing further,
16 we'll be in recess.

17 (THE SENTENCING ENDED AT 10:32 a.m.)
18
19
20
21
22
23
24
25

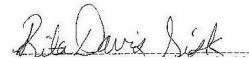
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Rita Davis Sisk, RPR, BCR, CSR #1626, Official Court Reporter for the United States District Court, Northern District of Mississippi, was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I, Rita Davis Sisk, RPR, BCR, CSR #1626, have caused said stenographic notes to be transcribed via computer, and that the foregoing pages are a true and accurate transcription to the best of my ability.

Witness my hand, this 21st day of March, 2008.



RITA DAVIS SISK, RPR, BCR, CSR #1626
Official Court Reporter