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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	
)	Case No. 6:10-CR-60066-HO
Plaintiff,)	
)	
v.)	June 21, 2012
)	
STEVEN DWIGHT HAMMOND (1) and)	
DWIGHT LINCOLN HAMMOND, JR., (2),)	
)	
Defendants.)	
<hr/> <hr/>		Pendleton, Oregon

TRANSCRIPT OF PROCEEDINGS
(Excerpt of Colloquy)

BEFORE THE HONORABLE MICHAEL R. HOGAN, DISTRICT JUDGE

COURT REPORTER:	AMANDA M. LeGORE, RDR, FCRR, CRR, CE
	U.S. Courthouse
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Colloquy

1 (Excerpt of colloquy held after closing arguments
2 Wednesday, June 21, 2012; 3:26 p.m.)

3 THE COURT: Thank you.

4 Members of the jury, you have two verdict forms, one
5 for each defendant.

6 They're a little long, but you'll find that they --
7 I'm not suggesting any answer you give. All I want to tell you
8 is every place you mark must be unanimous.

9 And there's one thing that was described to you, and
10 I'm not suggesting this or any other result but just to help
11 you get through the forms. If there is one of the counts where
12 you believe the verdict is not guilty, then the rest doesn't
13 apply under that number. You go to the next.

14 I'm not suggesting either guilty or not guilty on any
15 count or any defendant, just to help you understand the forms.

16 At this time, I would like to swear the bailiff.

17 (Bailiff duly sworn.)

18 THE COURT: Thank you.

19 Members of the jury, two of you, Ms. George and
20 Mr. Locher (phonetic), you've been serving as the alternates.
21 You've been heroes, to me.

22 I've calculated that by the time you get home today,
23 together you will have driven over 4,000 miles to keep the
24 other jurors healthy and attending on time. You're miracle
25 workers, as far as I'm concerned.

Colloquy

1 So you can get your things back in the jury room.
2 Wait to leave with your friends. And then don't leave any
3 notes you've taken here. You can have your copies of the
4 verdict -- or the jury instructions, if you like.

5 If you want to call later to ask about what your
6 colleagues' work or conclusions were, you may. All right?

7 I would appreciate it, actually, if you didn't talk
8 to people about the case until then, because in case something
9 would happen and we need to pull one of you back into the
10 process. Okay?

11 And for the others, when you get to the jury room, go
12 ahead and select your presiding juror. And then any exhibits
13 will be there in a few moments.

14 Good luck.

15 By the way, if you need Ms. Wright to call any family
16 members along the way, just give her a note, and she'll do so
17 for you. All right?

18 (Jurors exit.)

19 MR. MATASAR: Okay. There's two things I want to
20 mention.

21 First of all, Mr. Papagni stated, during his
22 argument, that the Government did not do a fire. And the
23 reason they didn't present a fire expert on Lower Bridge was
24 they didn't do a fire investigation because of lack of
25 resources.

Colloquy

1 I have found two origin and cause reports on Lower
2 Bridge. I think there are three. So I think that's a
3 misstatement, and I think the jury should be so informed.

4 Second of all, Mr. Papagni said again and again --
5 and I didn't object in the beginning, and then I did later --
6 that his role is to get justice and our role is to sort of
7 monkey with the witnesses for our clients.

8 That's wholly improper, and I would ask the Court to
9 give some sort of instruction to the jury about both of those
10 matters.

11 MR. BLACKMAN: I join in that motion.

12 MR. PAPAGNI: If the Court has any questions of me,
13 the one thing that Mr. Matasar says that concerns me, in the
14 Lower Bridge Creek, an investigation was done by a Mr. Miracle,
15 ten months after the -- the event. That's why I did not offer
16 it.

17 If the Court feels that was a misrepresentation, I'm
18 more than willing to have an instruction to that effect. But
19 that was the reason why it didn't cross my mind in using this
20 individual. Besides that, his ignition evaluation No. 1, of
21 this particular fire, wasn't done. So that statement that I
22 made, you have an explanation for.

23 As far as the attorneys are concerned, I certainly
24 did not wish to infer -- and I don't know that I said anything
25 about I'm doing justice and they're not. I was trying to argue

Colloquy

1 the fact that they did a wonderful job on cross-examination to
2 test our witness's credibility. And I tried to do that.

3 THE COURT: I was concerned about your statement --
4 or your argument that the witness -- these were the witnesses,
5 exhibits; that the Government had no part in production of
6 them. That sort of stretches --

7 MR. PAPAGNI: Oh, that.

8 THE COURT: -- credibility, to me.

9 MR. PAPAGNI: I (pause) -- I reviewed their work, and
10 told them to do it, and that's true. You're right.

11 THE COURT: All right. I want -- please return the
12 jury for a few minutes.

13 MR. MATASAR: If I can just respond.

14 I'm -- Mr. Papagni said -- my objection was not to
15 why he didn't present the evidence but that he said to the jury
16 that there was no report --

17 THE COURT: I know.

18 MR. MATASAR: Okay. All right. Thank you, your
19 Honor.

20 (Pause. Jurors enter.)

21 THE COURT: Jurors, I have just a comment or two.
22 These shouldn't be given any greater or lesser weight than any
23 of my other instructions.

24 There is a -- you heard argument for two and a half
25 hours. You may remember every word that was said, I don't.

Colloquy

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1 But, nevertheless, there is the concern that a statement was
2 made that there was not an origin and cause investigation done
3 of the Lower Bridge Creek fire because of budget. And if you
4 had that impression, that's not so. There were origin and
5 cause investigations done.

6 There's some question of whether the time -- timing
7 is the same as the other, but you shouldn't consider it, a
8 budgetary matter, as being -- having anything to do with this.

9 Then another -- these lawyers you have in front of
10 you are quite experienced. They are gladiators. They're going
11 to fight hard. They may make a comment or two about what the
12 other one's trying to do. Don't give that much consideration.
13 All right?

14 And it's -- what's also true is that lawyers are
15 involved with witnesses when they're preparing exhibits. That
16 doesn't mean that the testimony is not of that witness. But
17 that's especially true when there are demonstrative exhibits
18 prepared.

19 So those are just a couple of things. Don't give
20 those any greater weight than anything else I've said during
21 the trial. But I just wanted -- you know, you're all important
22 to us. You've given almost two weeks to this effort, and I
23 want to protect your work here. All right?

24 Thank you. Go ahead with your work.

25 (Jurors exit.)

Colloquy

1 THE COURT: Anything more?

2 MR. PAPAGNI: Nothing for the Government.

3 MR. MATASAR: A few things, your Honor. We -- we
4 have our motions. I don't know if Ms. Sgarlata did the memo.

5 I guess I want to say about the -- the --

6 THE COURT: Those are taken under advisement.

7 MR. MATASAR: I guess the -- the -- I know the
8 Court -- or I think it unlikely the Court will bring the jury
9 out yet again.

10 THE COURT: Quite unlikely. I didn't use your words.

11 MR. MATASAR: No. It seemed to me that your language
12 might be seen by the jury as more a criticism of the defense
13 than the prosecution.

14 I think that by saying lawyers are gladiators, and
15 that sort of thing, and that it's okay for the lawyer to be
16 involved with the demonstrative exhibits, it sounded to me like
17 what you were doing was -- instead of indicating your feeling
18 of what you -- what you thought when you addressed Mr. Papagni,
19 it sounded like you -- the jury would think that you were
20 criticizing me for even suggesting that they were making these
21 kinds of exhibit -- exhibits.

22 If that's what you were doing, fine, but I thought --
23 I thought the tenor, in your mind, was different. So I'm
24 really worried that the statements you made to the jury are
25 seen as a criticism of the defense; which I don't think is

Colloquy

1 warranted.

2 THE COURT: Well, let me tell you something that's
3 true about a trial.

4 MR. MATASAR: They don't care? Is that --

5 THE COURT: No. They don't know who made the
6 objection.

7 MR. MATASAR: Right.

8 THE COURT: The jurors all love me. (Laughter.)

9 MR. MATASAR: I can see why, your Honor.

10 THE COURT: And they don't take anything that I say
11 as being critical. They think I'm being helpful.

12 And it's one of the things, as you know, that you
13 have to learn when you're in court, is that though the judge
14 may be wrong, you don't take them on too hard because it just
15 doesn't pay. Right?

16 You all know that.

17 MR. MATASAR: I -- I learned that early, and I try to
18 keep it in mind. And I don't -- I know -- I hope you're not
19 seeing that here. I'm not --

20 THE COURT: No. You are being as -- using that term
21 I used a while ago.

22 When I do mediation, I said when the gladiators --
23 when one is laying on the coarse sands of the coliseum floor,
24 with the mortal blood oozing out of that wound, it's not the
25 gladiator who dies in this process.

Colloquy

1 MR. PAPAGNI: Judge, I'm pretty conscientious about
2 what I tell the Court. I'm being advised now that Mr. Miracle,
3 who was supposed to do Lower Bridge Creek ten months later --
4 and it doesn't matter. But Ms. Sgarlatta told me that they
5 checked, and they didn't do it because of budget. But that
6 doesn't matter.

7 I was simply responding to -- yeah, I know, it's --
8 welcome to my world.

9 I was responding to Mr. Blackman's good argument -- I
10 thought it was a good one -- that we didn't do a fire cause in
11 Lower Bridge Creek.

12 I was acting under the understanding that if
13 Mr. Miracle didn't do it, it was some sort of budget thing.
14 That's why we didn't have all of these experts do it.

15 That's what I thought when I said it. I am told it
16 was because of budget. It doesn't matter.

17 THE COURT: I didn't hear that in evidence.

18 MR. PAPAGNI: I didn't either. And so that's -- I
19 was responding.

20 And not to get in overly explanation about these
21 things --

22 THE COURT: I see that Mr. Okeson is still
23 interested. He's going out and writing notes to you still.

24 He's very competitive, here.

25 MR. PAPAGNI: (Laughing.) That's what they're

Colloquy

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1 saying. But I -- that doesn't matter.

2 I think the admonition was sufficient. I deserved
3 it. I didn't -- by the way, Mr. Matasar, if it makes you feel
4 any better, I feel like it hurt me a lot more than it hurt you.
5 So that's all.

6 THE COURT: You, either one, seriously want me to
7 bring the jury back in?

8 MR. MATASAR: Well, I guess if I knew exactly what
9 you were going to tell them (laughter) -- I could make that
10 decision. Seriously, if I knew -- if I knew what you were
11 going to tell them, I -- I could make that decision. But I
12 don't, so --

13 THE COURT: You don't have that advantage.

14 MR. MATASAR: I don't. I know.

15 So I think, given where we are now, I -- and if I
16 can't get that advantage, I would say, no, I don't want you to
17 bring them back in.

18 THE COURT: All right.

19 MR. PAPAGNI: I'll take that.

20 THE COURT: Do you agree?

21 MR. PAPAGNI: I agree.

22 THE COURT: Thank you.

23 Please give us cell phone numbers and be within 15
24 minutes of the courthouse.

25 MR. BLACKMAN: Your Honor, do you have some idea of

Colloquy

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1 how late you are likely to keep the jury?

2 THE COURT: That will be partly up to them.

3 I am hoping that they -- usually, you know, these
4 people have come from a long distance.

5 We have a 97-miler left and an 89-miler, a 66-miler,
6 and so on. If they have want to keep working, they're going to
7 have my blessing. All right?

8 MR. BLACKMAN: Okay. Thank you.

9 MR. MATASAR: And someone will call us, though, when
10 they go home? Could somebody?

11 THE COURT: More than that. You'll be called back to
12 hear before they go home.

13 MR. BLACKMAN: Oh, okay. Great. Great.

14 THE COURT: All right.

15 (Court adjourned.)

16 (Conclusion of afternoon session.)

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