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U.S. vs. Liddy, et al
Crim. Nos 1827-72

(pages 1676 - 1687 (1690)

Transcript of Proceedings in Chambers
of Chief Judge Sirica 1-26-73

Sealed 7-27-73

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In re: Criminal Case No. 1827-72

USA vs George Gordon Liddy, et al

(The following proceedings held in chambers of Chief Judge Sirica, on Friday, January 26, 1973, 9:30 a.m., and ordered sealed.)

APPEARANCES: Earl Silbert, Peter Maroulis, Seymour Glanzer, Gerald Alch, Donald Campbell, Bernard Shankman

Todd Christoferson, Law Clerk
Richard Azzaro, Law Clerk
Nicholas Sokal, Official Reporter

* * *

THE COURT: Mr. Alch.

MR. ALCH: Thank you, Your Honor, for granting me this opportunity.

There are three matters I wish to bring up, first with regard to your remarks to the defense of duress not being applicable to this case.

In order that I might make a proper record may I inquire Your Honor, as to whether or not your ruling was that the princip1 of duress does not apply to this case --period, or was it based on the evidence thus far adduced?

THE COURT: I don't think it applies to this case at all.

MR. ALCH: In that event may I make an offer of proof as to what I would show if allowed?

THE COURT: All right.

MR. ALCH: If allowed, I would introduce evidence through the defendant and/or other witnesses on behalf of the

defendant that as a result of the defendant's security duties and investigations of various demonstrations throughout the country he learned that these demonstrations were directed primarily against the Republican Party and intensified as the election drew near, that these demonstrations inevitably lead to violence, that he learned of many instances of violence throughout the country and that this constituted a duress upon his mind so that he was under an apprehension, a reasonable apprehension of immediate and impending death or serious bodily harm to himself and/or others; and that acting under this duress he did the acts complained of.

It would have been my intention to argue to the jury with appropriate instructions from Your Honor that this under the law constituted a legal defense of duress.

THE COURT: Have you finished?

MR. ALCH: Yes, sir.

THE COURT: Mr. Glanzer.

MR. GLANZER: Your Honor, as I said in my remarks on Wednesday, that what Mr. Alch is talking about is not duress. He uses a label, once you go behind the label and analyze what he is speaking about he is talking about good motive or a claim of good motive on behalf of Mr. McCord because Your Honor, it is clear that the defense of duress, and there is such a defense, is limited. And it is limited to a clear and present lethal danger to that person, or loved ones, which causes a man to do

something against his will; against his will. And that is the important thing and it has to be contemporaneous and it is clear from what Mr. Alch is saying he is saying Mr. McCord learned something in the past which induced him to do something not against his will which he willingly undertook to breach the law, he said because he was doing a higher good, so to speak; so what Mr. Alch is talking about is a motive, a claim of a good motive, a better motive that induced him to breach the law.

He is not talking about duress, something that causes a man to do something against his will. In other words for example, if a man has his wife and children in the clutches of some criminals and they have a gun to their heads and they say now you go into the Riggs National Bank and hold it up and get that money for us,or go into the vault and get that money for us, or tie dynamite around him and send him in --as happened in Missouri-- that is against a man's will and the law recognizes it.

But what Mr. Alch is talking about is not an act against Mr. McCord's will. He is talking about his perception of what is a danger in the past, not contemporaneous and not a clear present danger. That is not duress what he is talking about.

THE COURT: All right, you both made the record.

MR. ALCH: A couple other matters, if the Court please.

As the Court knows in the past or once in the past on the record I informed the Court and the prosecution that my client in September or October of 1972 made telephone calls to the Chilean Embassy and the Israeli Embassy in which this matter was discussed.

Further, in prior pleadings I have alleged, or my client has alleged that his own phone had been tapped. The government has applied that to their knowledge after perusal of appropriate Justice Department files. They have no information as to any wiretap involving my client. And the reason I again bring this to the Court's attention is if between my last request and now there has been information of any electronic surveillance such as I described I would be entitled to ascertain what, if anything, was overheard and whether or not there exists a taint as a result of what was overheard of evidence introduced.

MR. SILBERT: No s uch evidense has come to our knowledge and I may say before I made the original reply with respect to Mr. Alch's claim and in light of the motion they had made and actually one Mr. Hunt made and I believe Mr. Liddy made at the time of the pretrial motion before Your Honor, not only at that time were the files of the Department of Justice searched but virtually every agency --whether CIA, Defense Department, or any agency that could conceivably be considered to be involved in this kind of activity, not conceding they are, but can be imagined they could be involved, we had the files searched

to determine whether or not any electronic surveillance of any defendant in this case was made and the answer came back no.

That is all I can represent to the Court.

THE COURT: All right.

MR. ALCH: One more thing, if the Court please?

May I please predicate my remarks by saying this to Your Honor: I have been treated with the utmost courtesy by you, judge, throughout this trial. I want you to know that I deem it a privilege to practice law in your courtroom. I have the highest respect for you and what I am about to move is based solely on my interpretation of my duty as it pertains to my client and I beg Your Honor not to infer any antagonism or disrespect in my remarks. I only am doing what I feel is called for in regard to my duty to my client. I mean no disrespect to you personally whatsoever.

I would move for a mistrial and that Your Honor recuse himself on the following ground: that prior to the commencement of the trial and subsequent to the commencement of the trial Your Honor has indicated that, or at least in my opinion, remarks of Your Honor have indicated that Your Honor is acting more than just in the role of the judiciary, but is acting in the area normally assigned to the investigative branch of government, the prosecution branch of government.

I feel that the statements made by Your Honor with regard to getting behind this incident, who hired the men, who

paid them money? I feel that last Wednesday when Your Honor made the remark about the grand jury still being open, I did not take it as a threat and do not take it as a threat now. I merely call to Your Honor's attention most respectfully, naturally I had a duty to convey to my client, which I did; but I feel the remarks of the Court has indicated that Your Honor has in your own mind come to a conclusion that my client is guilty. And I know that Your Honor has been most careful not to make any of these remarks such as when questions were proposed to the defendants who pleaded guilty in presence of the jury.

It is my contention, most respectfully submitted, that a defendant in order to obtain a fair trial is entitled not only to an impartial finder of fact but also an impartial decider of law, and Your Honor made mention that you are a human being, and naturally no lawyer can control a judge's thoughts or even dare to suggest that he could, but I feel that when a Court expresses his feelings which I interpret as a predisposition of the issue of guilt or innocence of a defendant per se, even though the jury may be insulated from it, it deprives my client of a fair trial.

Now again I say that most respectfully.

THE COURT: I understand your position. Have you finished?

MR. ALCH: Yes, sir.

THE COURT: Do you want to say anything?

MR. GLANZER: Your Honor, the only thing I would like

to say in behalf of the government in commenting upon Mr. Alch's statement of behalf of Mr. McCord is the fact as Mr. Alch said, I have detected no indication from this Court in the presence of the jury or anywhere else that you have reached a conclusion with respect to these defendants on trial as to their guilt or innocence. But I think it would blink at reality for anyone to expect either the jurors or a judge listening to this case to maintain -- well, no one would want a judge who wouldn't understand the facts in the case. As a matter of fact, most federal courts, when important cases are tried --federal judges-- and for example judges in this courthouse --Judge Gasch, Judge Gesell have done it routinely-- require pretrial memos from both sides to understand the positions of the parties so the judge can rule intelligently on what is coming in a case. How can a judge comprehend or give judicious rulings, rulings based on reason and judgment if he doesn't understand what the case is about? And it is obvious that a judge and a jury must have their mind in a formulative state as this evidence is coming in.

We wouldn't expect them to be totally ignorant; we wouldn't want people like that to listen to a case. It would be unjust to the defendants and the government if such situations existed. So I think Mr. Alch's comments in that respect blink at reality, and he has stated for the record time and again that there has been no indication from Your Honor, nor has there been

any suggestion or intent to convey anything to the jury as to what Your Honor's view is with respect to this case.

THE COURT: Well, the Supreme Court has ruled that a judge may go so far in a case in his charge to the jury, or for that matter I believe during the trial, he may take the witness "X" in his charge to the jury and say, "Members of the jury, let's look at the testimony of Mr. X. Now I wouldn't believe anything he said personally; however, in the final analysis the credibility of this witness is for the jury to decide." You may express an opinion as to whether a witness is telling a lie or telling the truth provided you leave the final determination to the jury.

No judge can be expected to sit on a case and not form some kind of an opinion regarding either the guilt or innocence of a defendant.

I have tried cases for many years. I am sure the appellate court here is conscious of it, the lawyers are, I have said it at the bench, expressed my opinion at the bench out of presence of the jury what I thought about the testimony of a witness. The Hanrahan case quote me as having said to one of the defendants,"If you don't plead guilty I will put you in jail," which of course was a big lie.

Anyway, this was in the record and accused me of all kinds of things.

Down in Tennessee during the Hoffa trial they brought

out that the federal judge was sleeping, or going around with some prostitute down there --everything in the world they can accuse of.

You will find in my charge I do not comment on the evidence in the case. I leave it up to the judgment of the jury. I give them abstract principles of law and I don't try to summarize the evidence.

So far as this case is concerned I thinkit is my duty if I think material evidence hasn't been developed byeither side I think in the interest of justice, in the interest of seeing that both sides get a fair trial whether it hurts the government or helps the government, or whether it hurts a defendant or helps a defendant, I think it is the judge's duty and his business to bring that evidence out before that jury.

The trial of every case, whether it happens to be a civil case or criminal case is simply an objective search for the truth. What we are searching for in this trial is the truth, and I am not impressed with your statement. I know you don't mean this personally.

MR. ALCH: I don't.

THE COURT: You have a client to represent and you made the record. That is all I have to say.

MR. GLANZER: With Mr. Alch's contention, were there any validity, the proposition would be a judge who presides at

a trial where there is a mistrial would not be permitted to re-hear the case again and contrary is the case in most jurisdictions.

Furthermore, as Your Honor knows and Mr. Alch and Mr. Maroulis knows, in most federal jurisdictions, particularly in the second circuit where conspiracy cases are tried the judge in his charge formulates contentions based on evidence and comments on the evidence in the case in his charge, where Your Honor is not going to do it.

THE COURT: I have never done it. Have you ever heard me do it?

MR. GLANZER: No.

THE COURT: I might do it out of presence of the jury, which I have the right and I have a right to do it in presence of the jury as long as you qualify it with the statement: "Afterall it is not my impression whether the witness is telling the truth, it is up to the jury." They don't have to take my opinion about it. At least as a matter of practice I don't do it.

All right.

MR. ALCH: Judge, on Monday when we go forward in our defense I intend calling several character witnesses. I have been discussing with Mr. Glanzer the necessary questions to put to a witness or to try to eliminate objections to the questions and I would like to ask Your Honor in my experience I have been able to elicit character opinion as to reputation from a witness

by asking him after I establish that he has known the defendant, has discussed it with other people, the second to last question I have put to the witnesses: have you discussed him with other people in the community -- period? Then after he says yes, my last question is: based upon your discussions do you know his reputation in the community for the particular character trait involved?

It is the government's position that that second to last question must be: have you discussed the defendant in the community with other people with regard to the particular character trait involved?

Now I would like to get a ruling from the Court.

THE COURT: First of all, put a witness on the stand. "Do you know the defendant?" Yes. "How long have you known him?" What is the nature of your acquaintance?" Establish that predicate. "Do you know where the defendant lives?" He might say I knew where he lived at one time but I don't know now.

Say the man is from this area. "How long have you known him in this area?" Say the metropolitan area. "I have known him for 20 years." "Do you know other people who in turn know this defendant in this area, we'll say?" "Yes." "What is his reputation among those other people for honesty, integrity, truth and veracity" and whatever traits you think. It is very simple.

I do not believe it is fair to confine character testimony to the immediate area or neighborhood where a defendant lives because a lot of people do not know where a defendant lives but know people in the general metropolitan area thatknow him either where he works or lives.

So the geographical boundary I don't think is too important. I think it is the general reputation in this community. Is that what you want to know?

MR. ALCH: Yes. In other words the question with regards to specific character traits would be the last question?

THE COURT: Yes. "What is his reputation for truth, veracity, being a law-abiding citizen," and so forth. And they can cross examine him. All right.

MR. ALCH: Thank you.

MR. GLANZER: One other thing, Your Honor, before we break:

I spoke to Mr. Alch about this. We have a photocopy of a letter referred to during the cross examination of Mr. Baldwin from McCord to the Federal Communications Commission for authorization or license to use a particular frequency for the transceivers --the walkie-talkies, and the response from the Federal Communications Commission. I have a gentleman coming down from the FCC Mr. Brownstein. I spoke to him on the phone and imparted to Mr.

Alch what he would say to Your Honor. Of course this is set forth in the CHR's and Your Honor could take judicial notice of it.

What he would say, Your Honor, is to use a transceiver, that is, a walkie-talkie --we are not talking about Government Exhibit 105, the receiver in the room. Mr. McCord never wrote to the FCC asking permission to use that. What he was asking to use was the walkie-talkies which they call transceivers.

What Mr. Brownstein would say is that anybody who uses a transceiver, a walkie-talkie, on a particular frequency must get permission from the FCC. That is written in the CHR's.

There are two exceptions for those situations where the transceiver is operating well below 2 watts, which is not the case with these transceivers and an exception for the federal government.

The federal government doesn't have to get a license.

Now, I imparted that to Mr. Alch and I said to him: do you want us to put this gentleman on out of presence of the jury so His Honor can take judicial notice of that or do you want to eliminate that from the case entirely?

THE COURT: Can you answer that?

MR. ALCH: Your Honor, I am satisfied if you are satisfied with that explanation. I don't find it necessary to bring him in.

THE COURT: We don't have to discuss it now, do we?

MR. GLANZER: No. I just wanted to bring it up.

MR. ALCH: I am not going to argue to the jury my man had legal authority to do what he did.

THE COURT: Doesn't that answer it?

MR. GLANZER: I just wanted to get it clear. All right, we will take it up later.

THE COURT: All right. Now, has there been a stipulation regarding what Mrs. Wells and Mr. Oliver would testify to if they were called or are you going to call them?

MR. SILBERT: They will be called to the stand, Your Honor.

THE COURT: All right. Thank you. We'll see you in court.

* * * (10:00 a.m.)

CERTIFICATE

It is certified the foregoing is the official transcript of proceedings indicated.

Nicholas Sokal

NICHOLAS SOKAL
Official Reporter