

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	Docket#	
UNITED STATES OF AMERICA,	:	14-cr-399 (ENV) (RER)
	:	
- versus -	:	U.S. Courthouse
	:	Brooklyn, New York
KYLEEN CANE,	:	
Defendant	:	July 29, 2014
-----X		

TRANSCRIPT OF CRIMINAL CAUSE FOR ARRAIGNMENT
AND BAIL HEARING
BEFORE THE HONORABLE RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Government:

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1 (Microphones not functioning properly, thereby
2 creating indiscernible portions in the record.)

3 THE CLERK: Criminal Cause for Arraignment on
4 an indictment, United States v. Kyleen Cane, 14-cr-399.

5 Counsel please state your name for the record.

6 MS. JONES: Shannon Jones (indiscernible) for
7 the United States.

8 Good morning, your Honor.

9 THE COURT: Good morning.

10 MR. LEVINE: Good morning, your Honor.

11 (Indiscernible).

12 THE COURT: Good morning.

13 Ms. Kane, you're here today because a grand
14 jury has returned an indictment against you charging you
15 with three crimes. The purpose of this proceeding is to
16 make sure you understand the charges that are pending
17 against you, make sure you understand your rights as a
18 defendant in a criminal case and to address the question
19 of whether you should be released on bail or held in jail
20 until the trial.

21 You have the right to remain silent. You do
22 not have to make a statement to anyone. If you start to
23 make a statement, you can stop at any time. If you made
24 statements in the past, you are not required to make
25 statements in the future. Any statements that you do

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1 make can be used against you in your case except for
2 statements that you make to your attorney. Those are
3 privileged.

4 Do you understand that

5 THE DEFENDANT: (Indiscernible).

6 THE COURT: You also have the right to be
7 represented by an attorney throughout your case. I
8 understand that you have retained Mr. Levine to represent
9 you but if at any time you can no longer afford to retain
10 him, you can ask the Court to appoint counsel for you and
11 if you are eligible financially, the Court will appoint
12 an attorney to represent you.

13 Do you understand that?

14 THE DEFENDANT: (Indiscernible).

15 THE COURT: Ms. Cane, a grand jury has returned
16 an indictment against you charging you with three crimes.
17 Count One is conspiracy to commit securities fraud and
18 Count Two is conspiracy to commit mail and wire fraud.
19 Count Four is securities fraud. And there's also a
20 criminal forfeiture allegation in the indictment.

21 Have you seen a copy of the indictment?

22 THE DEFENDANT: (Indiscernible).

23 THE COURT: Have you discussed the charges with
24 your attorney?

25 THE DEFENDANT: (Indiscernible).

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1 THE COURT: Do you understand the charges
2 pending against you?

3 THE DEFENDANT: (Indiscernible).

4 THE COURT: Mr. Levine, would you like me to
5 read the indictment aloud?

6 MR. LEVINE: No, your Honor.

7 THE COURT: How does Ms. Cane plead to Counts
8 One, Two and Four?

9 MR. LEVINE: Not guilty, your Honor.

10 THE COURT: We'll deal with the question of
11 bail at the end. As I understand, there's a small
12 dispute.

13 Ms. Cane, under the Constitution and laws of
14 the United States. you're entitled to a speedy trial,
15 commencing within seventy days of today's date. If the
16 government fails to bring you to trial in seventy days,
17 that could be a basis for a motion to dismiss the
18 indictment that's been filed against you.

19 And if you would be successful in making that
20 motion, the indictment would be dismissed and no charges
21 would go forward against you.

22 I understand from the application that's been
23 given to me that you wish to exclude from today through
24 August 15th from the calculation of the seventy day
25 period in which you must be brought to trial and the

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1 purpose for the exclusion of time is because you need
2 additional time to investigate and prepare for the trial
3 due to the complexity of the case.

4 Is that correct?

5 THE DEFENDANT: (Indiscernible).

6 THE COURT: Do you understand your right to be
7 brought to trial within seventy days?

8 THE DEFENDANT: (Indiscernible).

9 THE COURT: Have you discussed this exclusion
10 of time with your attorneys?

11 THE DEFENDANT: (Indiscernible).

12 THE COURT: Has anyone threatened, forced or
13 pressured you to agree to this exclusion of time?

14 THE DEFENDANT: (Indiscernible).

15 THE COURT: You understand that if I exclude
16 this period of time today, you will not be able to argue
17 later on that it should be included in the seventy-day
18 calculation.

19 THE DEFENDANT: (Indiscernible).

20 THE COURT: I'll sign the order of excludable
21 delay finding that it's in the interest of justice and to
22 the public, as well.

23 I understand you folks have reached an
24 agreement on bail except for the travel restrictions.

25 MS. JONES: That is correct. Yes, your Honor.

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1 THE COURT: All right. The agreement --
2 partial agreement, whatever you want to call it, \$1
3 million bond, no contact with co-defendants in the case
4 except in the presence of counsel. Surrendering of
5 passport by August 15th.

6 MS. JONES: I think it has been already
7 surrendered, your Honor. (Indiscernible).

8 THE COURT: Is that correct?

9 MR. LEVINE: That is correct. (Indiscernible).

10 THE COURT: All right. I'm going to remove
11 that, so there is no confusion and I'm going to underline
12 Ms. Cane shall not apply for any passports. Pretrial
13 Services supervision, subject to random home and
14 workplace visits. No solicitation of money from
15 investors. The home in Las Vegas, the address of which
16 is on the bond will be security for the bond.
17 Confessions of judgment filed by August 15th.

18 Is that correct?

19 UNIDENTIFIED SPEAKER: (Indiscernible).

20 THE COURT: And there are two sureties: Susan
21 Cane and Shirley Cane. Who are Susan and Shirley?

22 MR. LEVINE: (Indiscernible).

23 THE COURT: And they will sign the bond by the
24 status conference which is August 15th? Okay. That
25 makes sense.

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1 MR. LEVINE: (Indiscernible) California, your
2 Honor.

3 THE COURT: Sign in California. Well fax the
4 bond over there. Okay, great.

5 What's the problem with travel restrictions?

6 MS. JONES: Your Honor, the government has the
7 (indiscernible). We believe the defendant as someone who
8 has (indiscernible). First of all, the defendant
9 (indiscernible) is actually (indiscernible). We have
10 calculated the potential sentence of these defendants be
11 over 300 months.

12 This defendant was only involved as far as the
13 (indiscernible) investigation date and one of the four
14 stocks (indiscernible) just involved in that one stock
15 (indiscernible) estimate the intended loss be close to
16 \$200 million dollars.

17 We also have the added enhancement that
18 (indiscernible) because the defendant is a lawyer and she
19 used her special skill being a lawyer to help
20 (indiscernible).

21 So assuming a very conservative estimate, we
22 believe the defendant is looking well over ten years in
23 jail. She also has substantial assets. She reports to
24 pretrial that her personal assets alone toll more than \$5
25 million dollars and then if you include her business

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1 assets, that's another -- I think that's another \$13
2 million dollars in addition to that.

3 So what we're asking for is we're asking for a
4 (indiscernible) reasonable limits on her travel. We want
5 her travel to be to actually where she needs to be on a
6 regular basis. (Indiscernible) be -- the government
7 would actually know where she is. So we agreed to the
8 District of Nevada, the Eastern District of New York for
9 court appearances, and if she had some place that she
10 needed to be regularly, I mean like once a week, once
11 every two weeks, we'd be willing to consider it.

12 However, defendant's counsel said she
13 (indiscernible) be able to go anywhere she wants
14 (indiscernible).

15 The other thing that we'd ask for that defense
16 counsel has disagreed with is the defendant owns a
17 private plane and has a private pilot's license. We also
18 ask that she travel on commercial airlines. Again, there
19 is a level of ability to flee without detection.

20 So I don't think that those are unreasonable
21 restraints considering the sentence that she's looking at
22 and, you know, I want to note for the Court that this is
23 a wiretap case. We do have a wiretap. We do have a
24 defendant who (indiscernible) on the wiretap. We believe
25 we have actually a very strong case. (Indiscernible).

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1 THE COURT: What kind of plane?

2 MS. JONES: I'm not sure.

3 THE COURT: Cessna prop plane or is it a jet?

4 MS. JONES: I also want to point out, your
5 Honor, that as reported to pretrial, she does have a lot
6 of international travels. Just over the last several
7 years she's been to Italy, (indiscernible), China,
8 Panama, and --

9 THE COURT: That's not going to happen without
10 the passport. So --

11 MS. JONES: Unless she can fly it on her own.

12 THE COURT: Not going to have an issue.

13 But I mean those points are not
14 (indiscernible). The government's concern is -- why
15 unlimited travel in the continental U.S. any time she
16 wants?

17 MR. LEVINE: (Indiscernible). And another
18 pretrial services officer (indiscernible) travel in the
19 United States. (Indiscernible).

20 The vast majority of the proffer
21 (indiscernible). She's a member of the bar. She travels
22 (indiscernible).

23 THE COURT: How about continental United States
24 and on twenty-four hours notice to pretrial services
25 outside the District of Nevada (indiscernible)? I'm

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1 going to L.A. for the weekend. Here's where I'm staying.

2 MR. LEVINE: Your Honor, we'd obviously would
3 accept that. We would ask that she travel
4 (indiscernible).

5 THE COURT: There are (indiscernible) issues in
6 California.

7 MR. LEVINE: (Indiscernible).

8 THE COURT: Do you have a problem with that?

9 MS. JONES: Well, your Honor, it is travel for
10 any reason whatsoever? I mean is it a client, is it a
11 family, medical, (indiscernible) but just to travel
12 around the country because (indiscernible).

13 THE COURT: Bail is not a punitive measure
14 though. Right? Bail is to make sure the defendant comes
15 to court when they're supposed to and we have the
16 passport. There's limitation on travel to the
17 continental U.S. I don't see why she can't
18 (indiscernible).

19 MS. JONES: It's more of a burden on pretrial
20 and if for --

21 THE COURT: There's absolutely no burden on
22 pretrial. Ms. Cane will be staying -- she's going to
23 California or actually, (indiscernible) California travel
24 restrictions. She's going to Oregon and they know where
25 she is and, you know --

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1 MR. LEVINE: Your Honor, (indiscernible).

2 MS. JONES: Well, your Honor, could we just
3 exclude the borders of California and the
4 (indiscernible)? It (indiscernible) California but
5 (indiscernible).

6 MR. LEVINE: I just think (indiscernible)
7 pretrial services when (indiscernible). She will also
8 tell the (indiscernible).

9 MS. JONES: Your Honor?

10 THE COURT: Go ahead. Last word.

11 MS. JONES: I just point out there are three
12 defendants who are arraigned on this. All three of them
13 were released ROR. All three of them. It didn't matter
14 what their role in the offense was (indiscernible). Of
15 those three, they've all been arraigned here, they also
16 (indiscernible) million dollar packages and Abraxas
17 Discala, the lead defendant, is actually on home
18 confinement and electronic bracelet.

19 So the fact that the (indiscernible) Las Vegas
20 (indiscernible) does not (indiscernible).

21 MR. LEVINE: I've also said (indiscernible).

22 THE COURT: (Indiscernible) pretrial service
23 office conferred with their recommended (indiscernible).

24 Look, I think restricting Ms. Cane's travel to
25 the continental United States, giving twenty-four hours

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1 notice to pretrial for travel outside of Nevada
2 (indiscernible) California (indiscernible). So that's
3 what we're going to do.

4 MR. LEVINE: (Indiscernible).

5 THE COURT: Not going to (indiscernible) time
6 tomorrow? It's 11 -- I mean, it's in essence
7 (indiscernible) pretrial services officer where you are
8 going to stay, what your flight plans are, flight
9 numbers, all that and then I don't see a problem with
10 that.

11 MR. LEVINE: All right. (Indiscernible).

12 THE COURT: Then --

13 MR. LEVINE: We'll call the (indiscernible).
14 Thank you, your Honor.

15 MS. JONES: (Indiscernible).
16 (Indiscernible conversation).

17 MS. JONES: Your Honor, it's (indiscernible).
18 If she gets in a plane and takes off, she could be gone
19 (indiscernible). It's not a (indiscernible).

20 MR. LEVINE: (Indiscernible).

21 THE COURT: Don't all commercial and private
22 planes have to have transponders to keep track?

23 MS. JONES: (Indiscernible).

24 THE COURT: Why not --

25 MR. LEVINE: Pretrial services (indiscernible).

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1 your Honor. the same twenty-four hours before. I don't
2 -- we're happy to give the, notice.

3 MS. JONES: And provide the transponder
4 information if there is such a thing on a plane?

5 THE COURT: Where can I put this on the bond?
6 All right. Other conditions number (6): Twenty-four
7 hours notice to PTS on use of private plane and provide
8 transponder --

9 But now understand something, for whatever
10 reason pretrial services does not have the ability to
11 track transponders -- I don't know (indiscernible) do
12 GPS, they can do other things but if they can't do that,
13 then come back and ask (indiscernible) alternatively put
14 GPS on the plane.

15 UNIDENTIFIED SPEAKER: Your Honor, if we could
16 also just as part of this, just point out that if Mr.
17 (indiscernible) not only can't track the plane but if for
18 example, Ms. Cane gives notice and had some concern that
19 (indiscernible) at the time of the notice (indiscernible)
20 that they transmit that notice to us, so we can make our
21 own assessment about whether we have any concerns. That
22 way we could also bring it to the Court's attention.

23 And similarly, with the transponder
24 information, we can put in a place a method whereby the
25 defendant (indiscernible).

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1 MR. LEVINE: Your Honor, (indiscernible)
2 notice, we will. Frankly, the aircraft is moving around
3 the country (indiscernible). I'm happy to give them
4 notice. I don't see any reason why (indiscernible)
5 pretrial services office. It's just -- and it's not as a
6 matter of any concern I have about my client's conduct,
7 there's none. It's just as a matter of the principle
8 that my client has been charged in a small count of a
9 bigger indictment. We think that this is -- already this
10 bond is unnecessary. But there's just no reason for
11 these additional restrictions on our liberty, given her
12 history, given her family ties.

13 And I think some of these concerns are more
14 fanciful than a concrete (indiscernible) compliant.

15 UNIDENTIFIED SPEAKER: (Indiscernible) not
16 fanciful and if we don't put restrictions on
17 (indiscernible). The government is requesting the
18 defendant (Indiscernible). The defendant has said she is
19 (indiscernible) travel maybe a fair amount.
20 (Indiscernible).

21 Beyond that, I would note that (indiscernible)
22 times that as a reason for why they should not
23 (indiscernible) member of the bar. (Indiscernible) that
24 kind of special treatment for someone (indiscernible) is
25 something that is (indiscernible) judicial system. As

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1 you know, a lawyer (indiscernible) and if anything
2 suggests (indiscernible) the defendant is a member of the
3 bar (indiscernible) why she should be monitored
4 (indiscernible) from public defendants.

5 THE COURT: I'm going to ask as a condition of
6 this bond, although -- well, I'm going to ask pretrial
7 services to notify the United States Attorney's Office
8 (indiscernible). So you'll know if there's a problem.
9 You can raise it with (indiscernible) or (indiscernible).
10 That's -- well, it's travel outside the --

11 UNIDENTIFIED SPEAKER: (Indiscernible)
12 transponder or GPS.

13 THE COURT: That's for travel outside of
14 California, Nevada or Eastern District of New York. You
15 have to tell them twenty-four advance if you're going to
16 Oregon. Pretrial Services will then say hey, we've got
17 this request, send it over to (indiscernible).

18 And use of the plane, right? (Indiscernible).
19 I don't understand transponder with GPS. I don't
20 understand --

21 UNIDENTIFIED SPEAKER: I thought that was
22 something your Honor brought up as a way to -- because
23 (indiscernible) commercial flight, we don't have a way to
24 monitor.

25 THE COURT: Yeah. No,. I put in twenty-four

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1 notices to pretrial service on the use of a private plan,
2 provide transponder info or GPS to PTS (indiscernible)
3 not track the (indiscernible).

4 UNIDENTIFIED SPEAKER: Very good.

5 THE COURT: I don't know what their capability
6 is, so they will have to get back in touch with us
7 (indiscernible). I actually would be surprised if they
8 could track (indiscernible). Usually the FAA is the one
9 that does that, right?

10 UNIDENTIFIED SPEAKER: (Indiscernible).

11 MR. LEVINE: Your Honor. also can I just ask
12 (indiscernible).

13 THE COURT: All right.

14 Ms. Cane, do you understand all of that?

15 THE DEFENDANT: (Indiscernible).

16 THE COURT: No? All right. We're going to go
17 through it again.

18 THE DEFENDANT: No, I -- I think I got it.

19 THE COURT: Okay. I think I should go through
20 it again, so (indiscernible). \$1 million bond, travel
21 restrictions to the continental United States, twenty-
22 four hour notice to pretrial if you travel outside of
23 Nevada, the Eastern District of New York and California.
24 No contact with co-defendants except in the presence of
25 counsel. No applications for any passports. Pretrial

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1 Service supervision subject to random home and workplace
2 visit and reporting (indiscernible). No solicitation of
3 money from investors. Twenty-four hour notice to
4 pretrial service with use of a private plane and provide
5 transponder info or GPS if Pretrial Services cannot track
6 (indiscernible). If Pretrial Service cannot track
7 transponder, then GPS must (indiscernible).

8 You're putting up the house that -- on West
9 Lake Road in Las Vegas. (Indiscernible) and Susan and
10 Shirley will sign the bond by August 15th, as well.
11 Notification -- Pretrial Services will notify the United
12 States Attorney's Office regarding travel.

13 Those are the terms of the bond.

14 MR. LEVINE: (Indiscernible).

15 THE COURT: I -- oh, oh, okay.

16 UNIDENTIFIED SPEAKER: (Indiscernible).

17 THE COURT: (Indiscernible) to New York.

18 So if you violate the terms and conditions of
19 the bond, they're going to know about it. They'll come
20 back to us and (indiscernible). If you commit any crimes
21 when you're out on release, that's a violation of the
22 bond. (Indiscernible) at trial plus face charges
23 (indiscernible).

24 If you attempt to influence the testimony of
25 any witness against you, that is a violation of the bond.

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1 It's also witness tampering. (Indiscernible) charges
2 plus face a charge of witness tampering on top.

3 And if you do not come to court when you're
4 supposed to, that's a violation of the bond. You'll be
5 detained on these charges until your trial and you'll
6 face a charge of bail jumping on top of what you already
7 face.

8 You'll come to court when you're supposed to.
9 Don't attempt to influence the testimony of any witness
10 and don't commit any crimes.

11 Do you understand?

12 THE DEFENDANT: (Indiscernible).

13 THE COURT: All right. You have to provide to
14 Pretrial Services whatever -- I don't know whatever
15 transponder -- whatever your plane -- the signal that
16 gets sent to the towers.

17 UNIDENTIFIED SPEAKER: (Indiscernible).

18 THE COURT: All right. Whatever device that
19 actively tracks your plane, Pretrial Services has to know
20 what the code is or whatever, so that they could track it
21 also and if they can't, then GPS will have to be put on.
22 Okay. Great. Here we go.

23 UNIDENTIFIED SPEAKER: (Indiscernible)

24 THE COURT: She's got to sign.

25 THE CLERK: Wait. Can you please sign the

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1 bond? (Indiscernible).

2 MR. LEVINE: (Indiscernible).

3 MR. LEVINE: Thank you, your Honor.

4 THE COURT: You're welcome.

5 (Matter concluded)

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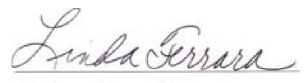
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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 5th day of August, 2014.


Linda Ferrara

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