No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

MALCOLM ROY EVANS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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United States Court of Appeals
For the Eighth Circuit

No. 17-2216

United States of America

Plaintiff - Appellee

v.

Malcolm Roy Evans

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota - St. Paul

Submitted: May 16, 2018
Filed: November 6, 2018

Before BENTON, KELLY, and STRAS, Circuit Judges.

STRAS, Circuit Judge.

A jury found Malcolm Roy Evans guilty of four offenses arising out of a bank robbery. We affirm his convictions and sentence.

I.

A man armed with a sawed-off shotgun robbed a Wells Fargo branch in Moorhead, Minnesota, and absconded with approximately $10,000. As he left the bank, he jumped into the back of a van that he found parked near the bank's front entrance. The driver escaped and took her keys with her. The robber then fled on foot. Soon thereafter, he carjacked someone else, who drove him at gunpoint to the West Acres Mall in Fargo, North Dakota, right across the border from Moorhead. Once there, the robber forced the driver out of the car and sped off. The police found the car a short distance from the mall.

Using security footage, the police identified Evans as the perpetrator. The day after the robbery, they arrested him in Fargo as he left a Motel 6, where he was renting two rooms. The police then obtained a warrant to search the rooms and found over $2,000 in cash, a sawed-off shotgun, and items of clothing matching those the bank robber had worn.

The United States charged Evans with armed bank robbery, attempted carjacking, carjacking, forcing a person to accompany him while attempting to avoid apprehension, and kidnapping. 18 U.S.C. §§ 1201(e), 2113(a), (d)–(e), 2119(1). The kidnapping charge was dismissed before trial. A jury found him guilty of the remaining four counts, and the district court[1] sentenced him to 360 months in prison. Evans raises five arguments on appeal, which we address in the order they arose.

[1]The Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota.

II.

Evans, in the first of his five arguments, challenges the sufficiency of the affidavit underlying the search warrant, which he believes lacked probable cause. The district court denied Evans's motion to suppress the evidence found in the search of his motel rooms. "In reviewing the denial of [a] motion to suppress, we review the district court's . . . legal conclusions *de novo*." *United States v. Ahumada*, 858 F.3d 1138, 1139 (8th Cir. 2017). "Probable cause exists[] if under the totality of the circumstances, a showing of facts can be made sufficient to create a fair probability that evidence of a crime will be found in the place to be searched." *United States v. Wallace*, 550 F.3d 729, 732 (8th Cir. 2008) (per curiam) (internal quotation marks and citation omitted).

Evans argues that an affidavit from a detective who investigated the bank robbery, which the police submitted as part of the search-warrant application, did not adequately connect him to the crime. See *United States v. Salter*, 358 F.3d 1080, 1084 (8th Cir. 2004). In his view, the bank security footage relied upon by the detective in investigating the robbery was insufficient to establish probable cause, and the other evidence was too inconclusive to establish his identity as the bank robber. We disagree.

The affidavit contained a lot more than just conjecture about the identity of the bank robber. It explained how the detective conducted the investigation, including his examination of video footage from a local bus, which depicted a man whose appearance was "consistent with" the bank robber. He then tracked the man's movements and discovered that the timelines of the bus passenger and the bank robber matched. The bus passenger arrived at the bank shortly before the robbery, and the same man later boarded a bus where the robber had abandoned the carjacking victim. At least three people who knew Evans identified him from the bus footage. Two of those people also said Evans owned a sawed-off shotgun, which was the

weapon used to commit the crimes. Because the affidavit showed that Evans had the means and opportunity to commit the crimes, it established a fair probability that he was the bank robber.

Evans also argues that even if there was reason to suspect he was the robber, the affidavit did not establish that the police would find evidence in his motel rooms. *See United States v. Tellez*, 217 F.3d 547, 550 (8th Cir. 2000). His argument is unpersuasive. The bus footage showed a man identified as Evans, who had a backpack, taking the bus from the West Acres Mall to a stop near the Motel 6. Evans then boarded another bus a short time later, this time without the backpack. The police knew Evans had two rooms at the Motel 6, so they could reasonably infer that Evans went from the scene of the crime to the motel to hide his shotgun and the stolen money. The police arrested Evans the next day as he was leaving the motel, suggesting that both the weapon and the loot might still be inside. The affidavit therefore established a "fair probability" that the police would find evidence from the bank robbery in one or both of his motel rooms. *Id.* at 549.

III.

Evans's second challenge focuses on the numerous letters he sent to the district court, which he now characterizes as requests for new counsel. He says the district court should have granted him a new attorney, even though he never actually asked for one.

Although their content varied, Evans's letters primarily complained about his attorney's failure to share evidence with him. Some letters also focused on his attorney's decision not to pursue certain defense theories. At one point, he asked the court to direct his legal team to "get on the ball." The district court did not directly respond to any of Evans's letters.

At a pretrial hearing, however, the court inquired about the letters. Evans responded:

> I've been wanting to do a speedy trial, but those issues are still those issues. I have still, in my opinion, not seen all of the evidence in my case. . . . I want to go on the record with that and let you all know that, and at the same time I will still proceed to trial on my case.

The court arranged for him to stay in the courtroom after the hearing and examine the government's exhibit book. But the court took no further action, and the case proceeded to trial.

On appeal, Evans argues that the district court should have treated his letters as something they were not: motions for new counsel. He says the court should have read between the lines and granted him relief, even though he did not use magic words indicating that he wanted a new attorney.

Because Evans never actually requested a new attorney or objected to the court's failure to give him one, we review only for plain error. *See United States v. Pirani*, 406 F.3d 543, 549 (8th Cir. 2005) (en banc); Fed. R. Crim. P. 52. The threshold requirement for relief under the plain-error standard is the presence of an error and, under the circumstances of this case, there was none. *See United States v. White Bull*, 646 F.3d 1082, 1091 (8th Cir. 2011).

It is not clear from Evans's letters that he was requesting (or was entitled to) new counsel. Indeed, even when the court asked Evans about the letters, he did not request the appointment of new counsel. Instead, all he said was that his attorney should have shown him the evidence in his case—relief the court then granted him when it ordered the government to share its exhibit book. Under these circumstances, the district court did not err, much less plainly err, in treating Evans's letters as

complaints about his lack of access to the evidence rather than as motions for the appointment of new counsel.

IV.

Evans's third challenge is to the in-court identification by the driver of the van he attempted to carjack. He suggests that her identification was so prejudicial and unreliable that it violated his due-process rights.

When the driver took the stand, the prosecutor played security footage of the suspect approaching her van. The driver then began gesturing toward the defense table, where Evans was sitting. The prosecutor asked whether she could identify the man who had tried to carjack her, and she pointed at Evans. Defense counsel did not object to the testimony at the time. Only midway through the next day of trial did defense counsel formally object and move for a mistrial. The court denied the motion but prohibited the government from using the driver's in-court identification in its closing argument.

On appeal, Evans renews his argument that the circumstances of the in-court identification violated his due-process rights. In his view, the playing of the video and the brief, panicked nature of the driver's encounter with the suspect made the driver's identification particularly unreliable and prejudicial. *See generally Neil v. Biggers*, 409 U.S. 188 (1972) (establishing the standard for due-process challenges to eyewitness identifications).

Before evaluating the substance of Evans's argument, we must decide which standard of review applies: plain-error or de-novo review. The parties disagree about whether defense counsel's objection the following day was timely. *See Pirani*, 406 F.3d at 549 ("An error by the trial court, even one affecting a constitutional right, is forfeited . . . 'by the failure to make *timely* assertion of the right.'" (emphasis added)

(quoting *United States v. Olano*, 507 U.S. 725, 731 (1993))). We conclude that it was not.

An objection is timely only if it is made "at the earliest possible opportunity after the ground of objection be[comes] apparent." *United States v. Shores*, 700 F.3d 366, 370 (8th Cir. 2012) (citation omitted). Here, defense counsel's objection the next day came too late, long after the "earliest possible opportunity" had passed. *Cf. id.* at 370–71 (holding that an evidentiary objection made "just prior to closing arguments" was untimely). Defense counsel should have objected when the driver identified Evans, not the next day, to properly preserve the alleged error. Accordingly, plain-error review applies.

The standard of review is decisive. We recently explained that the law is unsettled on whether an in-court identification can violate due process without a showing of misconduct by the government. *See United States v. Shumpert*, 889 F.3d 488, 490–91 (8th Cir. 2018) (recognizing a circuit split on the issue in light of *Perry v. New Hampshire*, 565 U.S. 228 (2012)). Because Evans has not made a showing of government misconduct, "the error he alleges is not plain under current law." *Id.* at 491.

V.

Evans's fourth challenge centers on another witness acting unexpectedly—this time, himself. When Evans took the stand to testify in his own defense, he immediately started complaining about how he was being "railroaded," including by his own attorney. The district court cut him off and, after questioning him and determining that he would make similar remarks if placed on the stand again, ruled that he had forfeited his right to testify. Evans argues that these actions deprived him of his constitutional right to testify in his own defense. *See Rock v. Arkansas*, 483 U.S. 44, 49–53 (1987).

A.

At trial, the defense called Evans as its sole witness. Once sworn, Evans did not wait for questions and immediately started cataloging his complaints with everyone involved in his case, including his own attorney and the court. Evans did not stop even after the court excused the jurors and instructed them to return to the jury room. We reproduce the exchange in full:

The Defendant:	Ladies and gentlemen, I am being railroaded, by my attorney—
Defense Counsel:	Your Honor—
The Defendant:	—and by my defense investigator.
The Court:	Just a second. Mr. Evans?
The Defendant:	They have not shown me all the evidence in my case. I have written to this judge over eight documents telling her that I have not seen all the evidence in my case.
The Court:	Mr. Evans?
The Defendant:	The problem persists. I have written to the chief prosecutor, I have written to the chief judge, and I have written to the head lady over the public defenders, all making them aware that I have not seen all the evidence in my case. This is a violation of my constitutional rights.

The Court:	Members of the Jury—
The Defendant:	How can I prepare—
The Court:	—I'm going to ask that you proceed to the jury room.
The Defendant:	—my defense if they will not let me see the evidence in my case[?] It's a violation of my rights. This is wrong. And this is the law? This is a court of law? Really.

With the jury out of the courtroom, the court asked Evans, "have you now said what you wanted to say to the jury?" "No, ma'am," he responded. "There's so much stuff I would like to say, Your Honor."

After an hour-long recess, the court asked Evans to limit his responses to questions and follow the court's instructions. Twice the court asked him whether he could "come and testify and respond to questions and answers" or whether he would "continue to tell the jury [his] complaints about the justice process and the people involved in it as [he had] so far." Each time he said that he would do "both."

The court explained to Evans that he needed to respond only to the attorneys' questions so that it could "rule on objections and those sorts of things," and that if he would not comply, he could not testify. But Evans insisted that he had to air his complaints during his testimony, regardless of the questions he was asked. After the district court asked for the third time whether he would change his mind, he responded with another rant, this time claiming that the district court's inaction on his letters had "forced" him to express his concerns directly to the jury. The court cut him off and found "that if Mr. Evans were allowed to continue his testimony, the

[c]ourt has no assurance that he would comply with the directives or the rules of evidence."

Evans was not done. When the jury returned, the court gave a brief curative instruction. As the jury was getting ready to leave the courtroom to deliberate, Evans yelled, "[t]hey're still railroading me. That's not right. It's not right." The court ordered Evans removed and then excused the jury for the day.

The next morning, defense counsel moved for a mistrial based on Evans's outbursts. The court denied the motion and explained that "[t]he so-called second incident . . . convinces me that the judgment that the testimony should be concluded at this point with regard to forfeiture of the defendant's right to testify further is appropriate." The trial concluded without Evans retaking the stand.

B.

Evans claims that the district court should have allowed him to retake the stand and that its decision not to do so violated his constitutional right to testify in his own defense. *See Rock*, 483 U.S. at 49–53. This right, though fundamental, "may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process," *id.* at 55 (citation omitted), including well-established rules of evidence, *Holmes v. South Carolina*, 547 U.S. 319, 326 (2006). For example, criminal defendants do not have the right to say anything they would like from the stand, regardless of its relevance. *Cf. id.* at 326–27 (explaining that excluding testimony that is only "marginally relevant" would not violate a defendant's right to present a complete defense (citation omitted)); *Rock*, 483 U.S. at 55 (discussing "the right to present relevant testimony").

None of what Evans said during his brief time on the stand was relevant. Relevant evidence makes a "fact [that] is of consequence in determining the action"

"more or less probable than it would be without the evidence." Fed. R. Evid. 401. His negative feelings about his legal team and the criminal-justice system had nothing to do with any of the facts needed to convict him of robbery or carjacking.

Nevertheless, Evans claims that the district court should have done more to determine whether his complaints were relevant before taking away his right to testify. But he just kept repeating the same complaints that he had already described in detail in the letters he had sent to the court. So the court did not need to do anything more under the circumstances, such as hold a separate hearing or conduct a sidebar with the attorneys. It already knew what Evans was going to say and had enough information to evaluate whether it was relevant. Indeed, even now Evans has trouble explaining the relevance of his complaints.

It makes little difference on these facts that Evans expressed his willingness to answer questions alongside his unsolicited and inflammatory remarks about his attorney and the court. Witnesses—even criminal defendants at their own trials—cannot expect to testify if they announce an intention to follow the rules every now and then and openly flout them at other times. Evans had two options: he could follow the evidentiary rules and limit himself to relevant testimony, or he could elect not to testify at all. When he chose a third option—expressing his intention to continue to willfully ignore the rules despite the court's repeated warnings—he put himself at risk of losing his right to testify entirely. *See, e.g.*, *United States v. Nunez*, 877 F.2d 1475, 1478 (10th Cir. 1989) ("[T]he right to testify is not absolute and may be waived by contumacious conduct." (internal quotation marks and citations omitted)); *United States v. Ives*, 504 F.2d 935, 941–42 (9th Cir. 1974) (holding that a defendant may lose his right to testify due to disruptive conduct, because "such conduct cannot be allowed when the defendant takes center stage on the witness stand"), *vacated on other grounds*, 421 U.S. 944 (1975), *opinion reinstated in relevant part*, 547 F.2d 1100 (9th Cir 1976) (per curiam). *See generally Illinois v. Allen*, 397 U.S. 337, 343 (1970) ("We believe trial judges confronted with disruptive,

contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case.").

Of course, not every violation of the evidentiary rules or the court's instructions, no matter how accidental or trivial, justifies depriving a criminal defendant of the right to testify. To the contrary, forfeiture of the right should be limited to only the most defiant of defendants, and then only after the court explains the consequences of continued defiance. *Cf. United States v. Hellems*, 866 F.3d 856, 864–65 (8th Cir. 2017) (recognizing that a trial court must first warn a defendant before it can remove him from the courtroom for disruptive behavior); *United States v. Gillenwater*, 717 F.3d 1070, 1081 (9th Cir. 2013) ("A defendant's right to testify . . . cannot be lost unless it is clearly necessary to assure the orderly conduct of the trial." (internal quotation marks and citation omitted)). But here, Evans persisted in his view that he had the right to make irrelevant and highly inflammatory comments, despite multiple warnings that continuing to do so would cost him his right to testify. Once it became clear that Evans did not intend to follow the rules if placed back on the stand, the court did not abuse its discretion in concluding that he had forfeited his right to testify. *Cf. Hellems*, 866 F.3d at 863–64 (reviewing the decision to remove an unruly defendant from the courtroom for an abuse of discretion).

VI.

Evans's fifth and final challenge is to the calculation of his advisory sentencing range, specifically the court's addition of a two-level enhancement for obstruction of justice. He says that nothing he did was part of an attempt to obstruct justice.

As the district court prepared to give its final instructions to the jury, Evans had yet another outburst. This time, he leapt onto the defense table with his arms above his head—a feat described by the government at oral argument as "amazing"—and

yelled, "[t]his is bullshit." Marshals immediately subdued, handcuffed, and removed him.

With Evans gone, the defense moved for a mistrial. This brought the total number of mistrial motions to four. The first was in response to the driver's in-court identification of Evans. The second occurred approximately an hour after Evans's attempt to testify. He argued then that his own behavior had irreparably prejudiced the jury. The third followed his second outburst—"[t]hey're still railroading me. That's not right. It's not right."—and relied on the same justification. The court denied the fourth motion, just as it had the previous three.

Those motions, along with Evans's misbehavior at trial, proved significant at his sentencing hearing. Over his objection, the district court found that Evans had attempted to cause a mistrial with his final outburst. It then imposed a two-level enhancement for "willfully . . . attempt[ing] to obstruct or impede[] the administration of justice with respect to the . . . prosecution . . . of the instant offense of conviction." U.S.S.G. § 3C1.1. With the obstruction-of-justice enhancement included in his offense level, Evans's Guidelines range rose to 360 months to life in prison. The court imposed a 360-month sentence.

Evans argues that the evidence did not support a finding that he had tried to cause a mistrial. To impose the enhancement, the court had to find by a preponderance of the evidence that his intent was to interfere with the prosecution of his case. *See United States v. Simms*, 285 F.3d 1098, 1101 (8th Cir. 2002). "We review a district court's factual findings underlying an obstruction of justice enhancement for clear error." *United States v. Nichols*, 416 F.3d 811, 821 (8th Cir. 2005).

In imposing the enhancement, the district court observed, "looking back at the record and the sequence of events, I'm convinced [Evans's final, table-jumping

outburst] was an attempt to ramp up efforts to declare a mistrial and start the case all over again." Defense counsel had already moved for a mistrial after both of Evans's previous outbursts, and his conduct had only gotten worse from there, even as the court had repeatedly warned him to behave. From this evidence, the court could have reasonably concluded that Evans's intent was to cause a mistrial and that he knew further disruptive behavior could lead to one. It was no great leap for the court to then conclude that Evans's final outburst—the most dramatic of all—was an effort to finally get one. Therefore, we hold that the court did not clearly err in imposing the obstruction-of-justice enhancement.

VII.

Accordingly, we affirm the district court's judgment.

KELLY, Circuit Judge, concurring in part and dissenting in part.

The court concludes that the district court did not erroneously deny Evans the right to testify in his own defense because none of what Evans said during his brief time on the stand was relevant and there was no need to inquire further into Evans's planned testimony because the district court already knew what Evans was going to say. But "questions of relevance and prejudice are for the District Court to determine in the first instance," Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379, 387 (2008), and the district court did not rule Evans's planned testimony inadmissible for lack of relevance.

Rather, the district court found that "if Mr. Evans were allowed to continue his testimony, [it had] no assurance that he would comply with the directives or the rules of evidence," and concluded that Evans could not "respond to questions in a question-and-answer format." A trial court may surely limit a defendant's right to testify if he fails to abide by the "well-established rules of evidence [that] permit trial judges to

exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury." Holmes, 547 U.S. at 326. But here I respectfully disagree that the district court's limited findings support the complete exclusion of Evans's testimony. See Rock, 483 U.S. at 55–56 ("[R]estrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve.").

When he took the stand, Evans expressed, in narrative form, his frustrations with the judicial process in general and his defense team in particular. The court calls these initial comments "irrelevant and highly inflammatory." In the context of a trial, and if untethered to a defense to the charges, that may well be true. But Evans had been trying to raise these issues with the court for several months. Evans wrote the district court numerous times, expressing his concern that he was not able to see the evidence against him and complaining that his counsel would not develop his defense because he would not plead guilty, that his counsel would not investigate evidence necessary to his defense, and that his defense team was aiding in his conviction. With this backdrop, a ruling on his right to testify could not be divorced from these previous, unsuccessful attempts to direct the district court's attention to the breakdown of the attorney-client relationship. Of course, counsel is not required to "docilely" pursue whatever factual or legal argument a client requests, regardless of its merit. Hunter v. Delo, 62 F.3d 271, 275 (8th Cir. 1995) (quoting United States v. Moore, 706 F.2d 538, 540 (5th Cir. 1983)). But "[w]hen a defendant raises a seemingly substantial complaint about counsel, the judge has an obligation to inquire thoroughly into" the alleged problem. Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991) (cleaned up). It appears that the only time Evans's concerns were addressed was on the Friday before trial, when the district court asked the prosecutor to make the trial exhibits available to Evans for his review. But this limited relief failed to address the full scope of Evans's repeated concerns.

There is little doubt that Evans made his unfortunate situation worse by his own in-court behavior. And it is well within the district court's discretion to require adherence to rules and procedures, and to determine that some evidence is simply not relevant. But for whatever reason, Evans's pretrial concerns were never addressed. Without an inquiry into those complaints and a more fulsome exploration into the probative value of Evans's planned testimony, the record is insufficient to warrant excluding his testimony altogether.

Accordingly, I respectfully dissent from Parts III and V of the court's opinion. I concur in Part II and would not reach the issues raised in Part IV and VI.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-2216

United States of America

Appellee

v.

Malcolm Roy Evans

Appellant

Appeal from U.S. District Court for the District of Minnesota - St. Paul
(0:15-cr-00016-ADM-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 11, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES of AMERICA	)	COURT FILE NO. 15-CR-16 (ADM/LIB)
vs.	)	
MALCOLM ROY EVANS	)	Courtroom 13 West Friday, June 12, 2015 Minneapolis, Minnesota

PRETRIAL CONFERENCE

BEFORE THE HONORABLE ANN D. MONTGOMERY
UNITED STATES DISTRICT JUDGE

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MR. BECKER: Thank you, Your Honor. At this stage, we would formally lodge an objection to the inclusion of those as far as demonstrative exhibits.

THE COURT: Noted but overruled on all exhibits with the exception of the one I indicated was sustained, 46-A.

MR. HOLLENHORST: Your Honor, after this hearing, could we get your copy of the exhibit book back and we're going to ensure that it contains every exhibit, and I apologize to the Court for that.

THE COURT: No problem. You can return it with the copies.

Okay. Were there any other issues that should be addressed from the Government's standpoint?

MR. HOLLENHORST: Your Honor, just one thing. I noticed that there were some documents filed under seal and I think we ended up getting one of them because it was -- a copy was served on our office, and it was a letter -- basically, it was the defendant's concern that he had not heard about this -- the trial date and that he had not reviewed any of the evidence in the case. And I'm not sure if Mr. Becker even has received that letter, but I think that it might be helpful to establish on the record that the defendant is happy with -- or at least isn't asking for a continuance or something like that.

THE COURT: Well, I've received a number of communications from Mr. Evans.

You like writing to me, apparently, so --

THE DEFENDANT: Your Honor, as I've indicated in my writings, I wrote to you because I was forced to write to you. I had nobody to really advocate for me.

THE COURT: Okay.

THE DEFENDANT: And I had to, you know, do this --

THE COURT: I understand. This is a key matter. You are ready to proceed to trial on Monday, I take it, though.

THE DEFENDANT: The issues that I have shared with you in my writings are still those issues. I've been wanting to do a speedy trial, but those issues are still those issues. I have still, in my opinion, not seen all of the evidence in my case.

Just -- you know, like he was talking about the pictures of the Motel 6. I had not seen that picture. He's indicated a picture of -- some video or something of me walking from the location where I allegedly left the truck. I have not seen that. It's a lot of stuff that I have not seen and heard in my case.

I want to go on record with that and let you all know that, and at the same time I will still proceed to trial on my case, but I just want you to know I have not

seen all the evidence in my case.

THE COURT: All right. I understand. And those letters are there. Because there were so many of them, I wasn't sure they should be under seal or not under seal. They've been filed. They're available for counsel's inspection.

Do you have a complete exhibit book? You indicated mine needed to be supplemented.

MR. HOLLENHORST: Yes, I do, your Honor.

THE COURT: Okay. One of the reasons that I held this conference today was to give you an opportunity to look through the Government's exhibit book so that you have seen those before Monday.

So at the conclusion of today's hearing, I'm going to ask that Mr. Evans be provided that book and will have an opportunity for him here in court to look through those exhibits so that he gets a chance to see those.

MR. HOLLENHORST: And, your Honor, obviously I can be here when that happens?

THE COURT: Excuse me?

MR. HOLLENHORST: I'd ask the Court's permission to remain in the courtroom when that happens to ensure the integrity of them.

THE COURT: That's fine.

MR. HOLLENHORST: Thank you.

THE COURT: Mr. Becker, were there other issues that you thought should be addressed from the defense perspective today?

MR. BECKER: The only other loose end that I think the Court should be aware of is that Mr. Evans does on occasion suffer from a bladder issue and frequently needs to go to the bathroom, so I don't know how we ought to communicate that need to the Court. In my personal experience with him, this can come on very quickly, but I don't want to be accused of jumping up in the middle of the Government's direct examination if they feel like they're at a critical point.

So how would the Court like to manage that?

THE COURT: Let's see.

Mr. Evans, do you want to just give me a signal, or do you want to tell your counsel and have him bring it to my attention, or do you have some suggestions in that regard?

THE DEFENDANT: Whatever you all feel is convenient. But I do have a suggestion, that you tell them at the jail to give me my medication as soon as possible. Like for today, I have not had my medication today. And if you tell them to give me my medication as soon as possible, that will help me, you know.

THE COURT: Okay.

THE DEFENDANT: And if you ask them if it's all right if they can give me maybe an extra dose --

THE COURT: Well, they may not be able to do that.

But Deputy Brink, I'm going to ask you to check into his medication status and make sure that he's provided his daily medications early so that he's ready to go on Monday.

DEPUTY BRINK: Will do, Your Honor.

THE COURT: Thank you. All right. Let's see. There was something --

MR. BECKER: But I still think there leaves the question of how do we let the Court know.

THE COURT: Right. I think when you need a break, will you just let your counsel know, or if he's up there, hand him a Post-it note or let him know, or give me a signal. Maybe if you point at that (indicating) door, it'll let me know that you need a break, and as long as it's within reason, we'll get you out to a break as quickly as we can.

THE DEFENDANT: Yes, ma'am.

THE COURT: I'll do my best to accommodate that. I'll know that that's what you want if you point to that door. That may be the easiest.

Or would you like it to go through you, Mr. Becker?

MR. BECKER: I think that would be very effective. The only thing I'm thinking about is whether the jury would somehow make an improper inference, or at least from their position would make some sort of an inference.

THE DEFENDANT: I will communicate it directly to him.

THE COURT: If you can. You know, if there's urgency and you have to do it, then let's do that, but to the extent we can keep that issue from the jury, it seems that that makes sense.

Mr. Evans, do you have something other than a jail suit that you'd like to wear?

MR. BECKER: We are arranging clothes for him and we'll drop those off with the marshals.

THE COURT: Okay. I think that makes sense. I think he should be in something other than the jumpsuit for trial.

All right. I think I'm ready to go and know what I need to do. I'm going to expect -- I'm going to ask the deputies to stay here as Mr. Evans reviews the binder of the Government. I will be close at hand here doing some other work, but I'd like him to have an opportunity to sort through the Government's binder of the proposed exhibits and then I'll expect that mine will be supplemented with the others. Or maybe he can look at my binder while you're

getting the others up to speed or however that mechanically works, okay?

MR. HOLLENHORST: Will do, Your Honor.

THE COURT: All right.

MR. HOLLENHORST: Thank you.

THE COURT: Other than that, I expect that this process may take little while, but I'll be checking on you periodically, all right?

MR. BECKER: Thank you, Your Honor.

THE COURT: All right. Court will be in recess.

(Proceedings concluded at 10:10 a.m.)

* * * * *

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES of AMERICA	)	COURT FILE NO. 15-CR-16 (ADM/LIB)
vs.	)	
MALCOLM ROY EVANS	)	Courtroom 13 West Monday, June 15, 2015 Minneapolis, Minnesota

JURY TRIAL PROCEEDINGS

VOLUME I

BEFORE THE HONORABLE ANN D. MONTGOMERY
UNITED STATES DISTRICT JUDGE
AND A JURY

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

For the Government: **OFFICE OF THE U.S. ATTORNEY**
By: THOMAS M. HOLLENHORST
BRADLEY M. ENDICOTT
Assistant U.S. Attorneys
600 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

For the Defendant: **OFFICE OF THE FEDERAL PUBLIC DEFENDER**
By: JAMES S. BECKER
Assistant Federal Defender
107 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

Court Reporter: **TIMOTHY J. WILLETTE, RDR, CRR, CRC**
Official Court Reporter - U.S.D.C.
1005 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415
612.664.5108

(9:30 a.m.)

P R O C E E D I N G S

IN OPEN COURT

(Defendant present)

THE COURT: Good morning. Please be seated.

THE CLERK: The matter before the Court is U.S.A. versus Malcolm Evans.

Counsel, would you please note your appearances for the record.

THE COURT: Mr. Hollenhorst, we'll start with you.

MR. HOLLENHORST: Yes, Your Honor. Tom Hollenhorst and Brad Endicott, attorneys for the Government, and we have with us Special Agent Troy Breitenbach of the FBI.

THE COURT: All right. And Mr. Becker?

MR. BECKER: Good morning, Your Honor. James Becker on behalf of Mr. Evans, who's seated alongside me, as well as John Cich, a member of the defense team.

THE COURT: All right. We have a jury empaneled and ready to arrive momentarily. It's my understanding counsel needed a minute with me before the arrival of the jury.

MR. BECKER: Yes. Thank you, Your Honor. There's one particular issue I wanted to apprise the Court of and I think Mr. Evans also wished to address the Court.

THE COURT: All right.

MR. BECKER: I don't know if there's overlap in what we're about to say.

THE COURT: Okay.

MR. BECKER: When Mr. Evans was brought in on Friday for his pretrial conference, he packed up all his legal paperwork, everything, in two bags. The folks at Sherburne County consolidated that into one bag and it was brought to the courthouse. Since then it's gone missing. It was never taken back to Sherburne on Friday afternoon. Sherburne has promised me that they don't have it. They've checked their property there. And when I contacted -- or when Mr. Cich contacted the marshals this morning about it, they have no idea where it is.

And so Mr. -- I did see Mr. Evans over the weekend in anticipation of trial, but effectively he's spent the weekend without materials that he ought to have had.

Now, again, I think Mr. Evans might want to say a couple things about that as well, but just wanted to bring that to the attention of the Court. He does have additional paperwork at this point. It's critically important that we ensure that that stuff stays with him back and forth.

THE COURT: All right.

MR. BECKER: Thank you.

THE COURT: Mr. Evans, I'm going to have you come

up to the lectern, because it's just much easier for me to understand if I have you at the microphone.

THE DEFENDANT: Yes, ma'am. Thank you, Your Honor.

I just want to restate for the record like I told you Friday, I have not seen all of the evidence in my case and so I just wanted to put that on record, because that's a violation of my due process rights.

The prosecutor did let me see his file and there was a lot of pictures and stuff in there that I do not have copies of, and that's my case and I was supposed to have copies of that. I was not able to look at the DVDs or CDs or anything of that nature, but I'm positive there's a lot of stuff that I have not seen.

In addition to that, with respect to what Mr. Becker was saying, my property or all my legal work was supposed to be brought over here with me, and now the next thing I know, Your Honor, I don't have anything. The only thing that I have is what Mr. Becker gave me the other day that has to do with the brief that he has with respect to outlining how this trial is going to go and one other document, your ruling on the magistrate's report and recommendation. Every other thing in my case, Your Honor, literally, I do not have. I needed that material, Your Honor, in order to be prepared for trial today, so I have

not been able to prepare because I've been without my materials.

I think that's kind of funny in a way or ironic, Your Honor, because I've been filing a lot of paperwork with respect to some issues between me and my attorney and some other issues of things that's happening at the jail. Now people that I have paperwork pending against, all of a sudden all of this legal work has gone missing. I mean, several hundred pictures, at least six or 700 pages, among other stuff, Your Honor.

THE COURT: All right. Well, I'm going to note those comments -- you may be seated now and Mr. Becker as well -- for purposes of the record.

I'm going to ask both the United States Marshal to take one more look and see if there's any chance that those materials can be here. I'm going to also ask that we check and call out to Sherburne and have them make an additional search and do all we can to see if that material can be located.

In the meantime, I am -- that's an important issue and it's important that you have those, but it's more important that your counsel does, and I'm convinced that the requisite and the necessary materials have all been provided and are available, so we're going to go ahead with trial today.

I do want to take particular care to make sure that the materials that Mr. Evans has today stays with him and are available for his use in the courtroom and we'll maybe be supplementing if there's particular items that you want copies of that have been -- as they're introduced or located, you can make a note of that and at the end of the day let me know.

The record should reflect that after our session on Friday, I did ask the Government to make available all of the exhibits which would be introduced during trial and the defendant has had access to that. I know you have maybe, as you indicated for the record, not seen everything or entirely to your satisfaction, but I've done the best I can under the circumstances to make sure that you have access to that material.

All right. We will summon the jury.

Mr. Endicott, did you have something further?

MR. ENDICOTT: Your Honor, if I could be heard very briefly on one small issue.

In the Government's opening, we're asking for one additional picture to be inserted to that opening, Your Honor, that we neglected to mention on Friday, and that is Government Exhibit 39-R, which has already been provided to defense. It's a photo of the Walgreens and the 99 Bottles. For the same reasons that we asked to have the other

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES of AMERICA	)	COURT FILE NO. 15-CR-16 (ADM/LIB)
vs.	)	
MALCOLM ROY EVANS	)	Courtroom 13 West Wednesday, June 17, 2015 Minneapolis, Minnesota

JURY TRIAL PROCEEDINGS

VOLUME III

BEFORE THE HONORABLE ANN D. MONTGOMERY
UNITED STATES DISTRICT JUDGE
AND A JURY

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

For the Government:
OFFICE OF THE U.S. ATTORNEY
By: THOMAS M. HOLLENHORST
BRADLEY M. ENDICOTT
Assistant U.S. Attorneys
600 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

For the Defendant:
OFFICE OF THE FEDERAL PUBLIC DEFENDER
By: JAMES S. BECKER
Assistant Federal Defender
107 United States Courthouse
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Court Reporter:
TIMOTHY J. WILLETTE, RDR, CRR, CRC
Official Court Reporter - U.S.D.C.
1005 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415
612.664.5108

THE COURT: Good afternoon. Please be seated.

I apologize for the expanding lunch hour, but we did deal with a number of matters in your absence and I think we are now ready to proceed. We will proceed with the case of the defense.

Mr. Becker, you may proceed.

MR. BECKER: Thank you, Your Honor. At this time the defense calls Mr. Malcolm Evans.

THE COURT: Mr. Evans, if you'd come forward to be sworn. We need not take Mr. Evans' picture because the jury has had an adequate opportunity to view him throughout the trial.

And I think, Mr. Evans, you know the drill here in terms of what's expected. We don't need to take your picture. They've had a chance to see you through the whole trial, so you can just step into the witness stand, please, and raise your right hand.

MALCOLM ROY EVANS, DEFENDANT, SWORN

THE COURT: Thank you. Please be seated.

And Mr. Evans, would you please state for the record your full name and then spell each name.

THE DEFENDANT: My name is Malcolm Roy Evans. Malcolm, capital M-A-L-C-O-L-M; Roy, capital R-O-W; Evans, capital E-V-A-N-S.

THE COURT: You spelled Roy different than I

expected. Is it R-O-W or R-O-Y?

THE DEFENDANT: R-O-Y. Did I spell it --

THE COURT: I thought you said W. It could be my bad ears. That's fine.

Mr. Becker, we'll proceed.

MR. BECKER: Thank you, Your Honor.

THE DEFENDANT: Ladies and gentlemen, I am being railroaded, by my attorney --

MR. BECKER: Your Honor --

THE DEFENDANT: -- and by my defense investigator.

THE COURT: Just a second. Mr. Evans?

THE DEFENDANT: They have not shown me all the evidence in my case. I have written to this judge over eight documents telling her that I have not seen all the evidence in my case.

THE COURT: Mr. Evans?

THE DEFENDANT: The problem persists. I have written to the chief prosecutor, I have written to the chief judge, and I have written to the head lady over the public defenders, all making them aware that I have not seen all the evidence in my case. This is a violation of my constitutional rights.

THE COURT: Members of the Jury --

THE DEFENDANT: How can I prepare --

THE COURT: -- I'm going to ask that you proceed

to the jury room.

(Jury begins exiting the courtroom)

THE DEFENDANT: -- my defense if they will not let me see the evidence in my case.

(Jury entrance door now closed)

THE DEFENDANT: It's a violation of my rights. This is wrong. And this is the law? This is a court of law? Really.

I'll stand up and put my hands behind my back, gentlemen.

THE COURT: Mr. Evans, you may step down and return to counsel table.

(Defendant escorted to defense counsel table)

THE COURT: Mr. Becker, did you have any inclination that the outburst was going to be coming in that fashion?

MR. BECKER: No, Your Honor.

THE COURT: All right. What's your suggestion with respect to how we next proceed?

(Pause)

THE COURT: We'll take a ten-minute recess.

MR. BECKER: Thank you, Your Honor.

THE COURT: Mr. Evans, that was entirely inappropriate.

THE DEFENDANT: I was forced to do that, Your

Honor. Like I said, I've written to you numerous times and yet they still got me here going to trial and I haven't even seen all the evidence in my case. How can I prepare a defense? How can I even attempt to prepare a defense?

THE COURT: Mr. Evans, please direct your comments to me.

THE DEFENDANT: They are, Your Honor.

THE COURT: Do you have other testimony or other matters you wish, or have you now said what you wanted to say to the jury?

THE DEFENDANT: No, ma'am. There's so much stuff I would like to say, Your Honor.

THE COURT: All right. We'll take a ten-minute recess. Mr. Evans should be taken downstairs.

(Recess taken at 12:48 p.m.)

(Chambers conference off the record with Government counsel and defense counsel)

* * * * *

(2:05 p.m.)

IN OPEN COURT

(Defendant present)

(Without the jury)

THE COURT: Good afternoon. Please be seated.

The record should reflect that we are outside the presence of the jury.

Mr. Becker, it's my understanding that you have a motion to present to the Court at this time.

MR. BECKER: Thank you, Your Honor.

At this time, we do move for a mistrial on the basis that the jury has now been so prejudiced in response to what had happened in the courtroom earlier today that it's impossible for them to remain unbiased and therefore provide Mr. Evans with a fair trial.

There's a couple different aspects of this where I think that the prejudice is so pronounced that we're unable to proceed.

The first and foremost, of course, has to do with the prejudice that flows towards Mr. Evans, and I think that there's a few different aspects of this.

The jury's role in the trial is to focus exclusively on the facts in a dispassionate manner in order to assess the weight and credibility of the evidence put before them, whether it's physical evidence, testimonial evidence or otherwise. I believe that given what's happened, their minds can no longer be on the facts, and I can only imagine that their minds are on him. And we've heard testimony from witnesses regarding the fact that they were in fear of him, and I believe that now the jurors have been put in that same position, and once that has happened, I don't see any way to undo that.

And so on that basis, I don't believe that they can provide him with a fair and unbiased -- or a fair trial because they are now no longer unbiased.

Secondly, I believe what occurred has also -- and I'm not exactly sure how to phrase this, but it certainly damaged my ability to represent him effectively.

The very first thing that Mr. Evans said was that he was being railroaded by his attorney, and if I do anything in closing argument or in a presentation of the defense case where I'm attacking the credibility of the Government, I've been damaged. And I think that there -- again, this is not something that can be undone. There's now been a seed planted in their minds that there's some kind of issue between Mr. Evans and myself that undermines my ability to defend him in a vigorous and appropriate manner.

And so on those bases, we do believe that that is grounds for a mistrial. I'd also like to make a very quick record regarding any concerns that on granting the motion should be -- is disfavored for various equitable factors that the Court might consider.

First of all, as it's turned out, although we anticipated this might be a trial lasting as long as a week, the fact is it's now Wednesday and this has been essentially a three-day trial. So the burden of having a second trial

is absolutely ameliorated by the fact that we've already demonstrated that it is a short trial. So we're not talking about weeks, we're not talking months long of having to sort of recommit resources and personnel in order to conduct a second trial.

Secondly, if there's any concern regarding any expenses that might be incurred -- obviously this is related to the time issue, but a lot of the expenses that the Government expends in preparation for trial have already been expended and they don't need to be re-expended. I can only anticipate that any additional resources that they might have to commit have to do with their time as well as some of the expenses related to witnesses and testimony. But beyond that, they don't need to do more regarding the evidence or their investigation, I believe, and so they're not disadvantaged in that way. The system's not disadvantaged by any undue expense or hardship because of the length of the trial itself.

Furthermore, I think that there's some basis to believe that this is not a scenario that would repeat in a subsequent trial. I think that what was demonstrated in court today does raise some legitimate issues regarding possible mental health concerns, and if that were explored or substantiated in any way, we could then provide treatment which would have a high likelihood of -- if that is the

case -- would have a high likelihood of fundamentally altering how a second trial would be conducted.

Furthermore, there's been the experience of this first trial and there'd be some prophylactic measures that could be anticipated better.

So on that basis we do ask for the Court to grant our motion for a mistrial, and I want to be unambiguously clear that I don't believe that there's any way to undo the damage to the jury that has already been done.

Thank you.

THE COURT: Thank you, Mr. Becker.

The Government's argument with regard to the granting of a mistrial, Mr. Endicott.

MR. ENDICOTT: Your Honor, we would object to that motion. The Government believes that the manifest necessity standard for a mistrial has not been met in this case. We believe less drastic measures can be employed.

We would ask that the jury be instructed appropriately and be given an appropriate curative instruction before they're released tonight so we can let the dust settle and perhaps restart tomorrow.

THE COURT: The record should reflect that after the emotional comments of Mr. Evans from the witness stand, which lasted a minute or two in duration -- the jury was quickly excused -- Mr. Evans, I asked you when you went back

to counsel table if there was more testimony or other matters, and you indicated to me that there were a number of other matters that you still wish to tell the jury about. Does that remain the situation?

THE DEFENDANT: Yes, ma'am, it does.

THE COURT: All right. And now that we are in a situation where you've had a chance to reflect upon that, is it your thought that you could come and testify and respond to questions and answers, or if you were put back on the witness stand, would you continue to tell the jury your complaints about the criminal justice process and the people involved in it as you have so far?

THE DEFENDANT: I could do both, Your Honor, to be honest. I don't think that I would be able to present my side without actually doing both.

THE COURT: Okay. So is the answer to my question then of whether you would allow Mr. Becker to ask you questions and just respond to those questions without going beyond that so that I can rule on objections and those sorts of things, is your answer no, that you can't present your testimony in that fashion, or yes, you think you could?

THE DEFENDANT: No, ma'am, I would not be able to present my testimony in that fashion.

THE COURT: You would not be able to.

THE DEFENDANT: No, ma'am, I would not.

THE COURT: Well, upon review of the facts and circumstances here, the Court is of the mind that a mistrial is not appropriate under the circumstances. It is a -- the situation that occurred this afternoon was of Defendant's making, certainly not defense counsel, and the Court is clear that Mr. Becker had no idea -- what I will term as an outburst was about to occur, and I am not assured that under any circumstances it would be different.

I think there was some substance to your arguments, Mr. Becker, about maybe the situation would be different, might be different at another time. Those are all matters which it's appropriate for me to consider on a motion for a new trial when we see and proceed forward as to how the jury reacts in this matter.

The prejudice that has enured from the outburst that did occur will be subject to a curative instruction from the Court prior to their departure today. And by having them depart today and getting some time and distance and cool reflection on it, I will do all I can to dissipate the taint of the outburst this afternoon. I understand clearly that the defendant does not think that that is sufficient, but the motion for mistrial is denied.

Mr. Evans, that leaves us in the situation of where do we go from here, and hearing you tell me that you cannot respond to questions in a question-and-answer format,

I don't see how I can let you testify again, because I think we'd have a very similar situation to what happened earlier this afternoon.

Is that your understanding as well, that you would continue on in much the manner you had previously?

THE DEFENDANT: May we back up and let me address something that you just said a few minutes ago with respect to the situation was something that I created?

Your Honor, in all honesty, you cannot make that ruling because you don't have all the facts that made me -- well, let me correct that. You have many of the facts that made we respond that way, because I have clearly indicated earlier that I have written you many, many writings explaining to you about the situation that has been going on for months. Over eight documents I've written you. And in those documents it lays out a number of things that put me in a position where I have written to you and other people. And so because you all had not taken any type of action as far as I could see to remedy the situation, then it put me in a position where I had to do what I did. I felt forced.

And like I told you in many of my writings when I wrote to you, I explained to you that my educational level is not that good. I'm not that smart. It takes me a real long time to write stuff.

And the only reason why I write to you is because I could not get my attorney to do so. I could not get my attorney to investigate certain things in order for me to be able to even attempt to present my defense.

I tried to get him to look into some things before the motion hearing that had to do with officers making false and misleading statements that was on the record and all you have to do is just look at it, but they did not do that until after the motion hearing. I believe that they deliberately withheld doing those investigations so that that evidence could not be available for the motion hearing.

Example: Some documents that were submitted to a magistrate over in Moorhead, Minnesota, indicated that an individual matching the description of the robber was seen boarding a bus at the West Acres Mall with a green scarf, a blue bag, and a dark coat. They was talking about me, when in actuality, the individual who they saw boarding the bus was in fact me, but I was not dressed the way that they said I was dressed.

When the information that was presented to the Moorhead magistrate, he -- they're talking about they took that warrant for my arrest and presented it to a Fargo judge or a Fargo magistrate, and based upon that false information, he presented a warrant for my motel rooms.

These are things that I wanted my attorney to

address at the motion hearing. If those issues would have been investigated and addressed by a competent attorney, such as Mr. Becker, then I'm sure that would be some type of ruling, or at least it would have been better represented, but I don't know the law and so I don't know how to do all that. I believe a ***Franks*** hearing would have been the appropriate thing.

THE COURT: So I'm going to cut you off at this point, but I am reading into and understanding what you say is that your frustration level remains very high and the entire process has been unfair and you would continue to express that to the jury if given the option to do so. Is that a fair statement of where you are?

THE DEFENDANT: What else can I do?

THE COURT: Okay.

THE DEFENDANT: I mean, this is supposed to be the justice system. I mean, listen, I'm 52 years old. The offenses -- and I'm not admitting to guilt, because I'm not guilty. I maintain my innocence. But the offenses with which I am charged with and with my criminal history, that will hide me in prison for the rest of my life. So, I mean, what else can I do?

If I have -- like I said, I wrote to the chief prosecutor and made him briefly aware in a short document. I've done the same thing with Ms. Ann D. -- Ann D. Mont --

Roe and the federal prosecutor. I've made certain people aware of certain things and nothing has been done to protect me, although I have an attorney and that's part of his job is to make sure that my procedural due process rights are -- but it's not happening.

THE COURT: Okay. At this point I think I've given you a fair opportunity to voice your frustrations. I do find that if Mr. Evans were allowed to continue his testimony, the Court has no assurance that he would comply with the directives or the rules of evidence.

For the remainder of the trial, Mr. Evans, I'm going to require that you sit at that (indicating) table rather than at counsel table. The two gentlemen next to you, of course, are deputy marshals.

I have advised them that they're not to touch you or lay a hand on you as long as you remain seated. If you become obstreperous, if you stand or move, we will immediately excuse the jurors and the marshals will quickly remove you from the courtroom.

Mr. Becker, does the defense have any other witnesses that they intend to call in this matter?

MR. BECKER: No, Your Honor. There was a written stipulation between the parties. I provided a copy to counsel. I believe I have a copy for you and I'll provide that to the Court. I don't think we need to do anything

with it until tomorrow. There is a stipulation --

THE COURT: I am going to require that you rest your case in the presence of the jury when they next arrive in court.

MR. BECKER: Tonight or this afternoon?

THE COURT: This afternoon, and that will close the evidence on the case with the exception of the stipulation. I will then be sending the jury home for the evening and we will argue and instruct. I do intend to give them a curative instruction as well tonight.

MR. BECKER: Yes, Your Honor.

THE COURT: All right. Let's see.

MR. BECKER: And Your Honor, just to make sure that the record is clear, we understand that the Court has denied our motion and we make an objection to --

THE COURT: All right. That's noted.

All right. Mr. Evans, this is going to be your final opportunity to say anything before the jury comes in. After this you are to remain silent the remainder of the trial, but at this point I'll hear what you would like me to know.

THE DEFENDANT: Your Honor, there were witnesses that I wanted to call on my behalf, but my lawyer failed to develop that and failed to call those witnesses, et cetera. Again, I'm being railroaded, Your Honor. I don't feel that

that's fair.

THE COURT: Okay. That's your last comment in court. From now on you are to remain silent in the presence of the jury.

All right. We'll take a brief standing stretch break.

(Jury enters)

THE COURT: Good afternoon, Members of the Jury. Please be seated.

Members of the Jury, when we were last in session the defendant, Mr. Evans, became emotional and did not comply with the directives of the Court with regard to the orderly presentation of testimony.

He is understandably very frustrated with the process. I direct that you should entirely disregard his comments of this afternoon and do not discuss them in your deliberations of the case.

At this point, Mr. Becker, it's my understanding that the defense will rest its case, is that accurate?

MR. BECKER: That's true, Your Honor. I do have one stipulation to enter into the record that I'll read and I'll now do that and then proceed accordingly.

THE DEFENDANT: I'm still being railroaded.

THE COURT: All right. Jury, I'm going to send you to the jury room immediately.

THE DEFENDANT: They're still railroading me.

(Jury begins exiting courtroom)

THE DEFENDANT: That's not right. It's not right. It's not right, Your Honor.

(Jury has exited, door closed)

THE COURT: Please be seated.

All right, Mr. Evans. I'm going to have you removed from the courtroom unless you promise me you can remain silent through the remainder of the thing. I just intended to dismiss the jury for the day.

THE DEFENDANT: Your Honor, that's not right what you're all doing to me, Your Honor.

THE COURT: I'm sorry that you feel that way. I've done my best to give you a fair trial.

The defendant will be removed from the courtroom.

(Defendant handcuffed and removed from the courtroom)

THE COURT: The jury will be summoned.

(Jury enters)

(Defendant not present)

THE COURT: All right. Please be seated.

And I think when we were last in court you were presenting a stipulation, Mr. Becker.

MR. BECKER: Thank you, Your Honor.

Jurors, I'm now going to read into the record a stipulation between the Government and the defense, and a

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

CHAMBERS OF
ANN D. MONTGOMERY
DISTRICT JUDGE

13W U.S. COURTHOUSE
MINNEAPOLIS, MINNESOTA 55415
612. 664.5090

March 12, 2015

Malcolm Roy Evans
Sherburne County Jail
13880 Business Center Drive
Elk River, MN 55330

RE: USA v. MALCOM ROY EVANS
CRIMINAL NO.: 15-16 ADM/LIB

Dear Mr. Evans:

I have received your letter of March 9, 2015. As you requested, I am returning a copy of the first page of your letter which shows it was received by the U.S. District Court on March 12, 2015.

I will address your concerns related to your counsel only when the case comes before me for a hearing. You have a motions hearing scheduled for tomorrow before Magistrate Judge Brisbois and I am hopeful your concerns can be resolved there.

Very truly yours,

S/Ann D. Montgomery

Ann D. Montgomery

cc: Magistrate Judge Brisbois
James Becker, Office of the Federal Defender
Thomas Hollenhorst, Assistant U.S. Attorney

1 of 5

In re Criminal No. 15-16(ADM/LIB)
EX PARTE MALCOLM ROY EVANS

Ann D. Montgomery District Judge
Office of The Clerk
708 Warren E. Burger Federal Building
316 N. Roberts Street
St. Paul, MN 55101

March 9, 2015

Dear Judge Montgomery.

I'm having some serious problem with my assistant federal defender James Becker, attorney ID No. 388222.

I am 52 yrs old. I completed the 8th grade.

I am charged with five different felony offenses.

My attorney wants me to plead guilty. I refuse to do so.

On January 26 2015 whin counsel was appointed I made it crystal clear to him that I wanted a "speedy Jury Trial" he responed the goverment has 70 days to take you to trial, etc.

Subesquent to counsel appointment supra and prior to this letter of March 9, 2015 I have re-affirmed my desire for a speedy jury trial.

Around February 14, 2015 I received a-lot of discovery information in my case.

But as of the time of the writing of this letter (March , 2015; 5:P.M) I have not been given the opportunity to hear the verbatim recording of withessess statement nor have I been permitted to review all the DVD evidence. I need to review all this critical evidence before I can even begain building a-meaningful defense.

On March 7, 2015 Friday, Attorney James Becker and John Cich federal defender investigator visited me.

3 of 5

Attorney Becker had something on his chest he had to get off.

It took 15 or 20 minutes befor he could get the DVD's to play. So after about 15 or 20 minutes of review DVD's the visiting time had expired, I only saw a verry small potion of the evidence.

Their is still 5 or 6 CD's / DVD's to review. I need immediate access to this evidence so I can take part in my defence and provide input.

In the verry recent past I have asked counsel to do several things as it relates to building my defence it does not appear that he has taken any action on my request.

Previously Victor Jackson investigator was assigned to my case. His employment with the office of the Federal Defender has since been terminated. This created some delays in the investigation of my defense.

But I am not a fault for that in anyway. And I should not be punished with delays. I want a speedy Trial by jury in accordance with the law.

I am under an EXTREME HARDSHIP. I have choisen my defense. My attorney dont like the defense I've choisen as a result he has failed to develope said defense.

My attorneys inaction in failing to vigoresly develope my chosen line of defense serves to effectively facilitate violation of my constutional right to effective assistance of counsel. It vidlates my constutional right to due process of law, and equal protection of law. The legal proceeding in my case as conducted by counsel is not adversarial as required by the constitution.

Counsel's inaction ensures I will be convicted on all counts.

And the goverment will ensure I will get the maxum penilty.

5 of 5

You are the judge in my case. As such you have the power and legal authority to ensure that the constitution is followed. Please do so. And any other action deemed appropriate by this honorable Court.

Thank you Judge Montgomery

Pursuant to U.S.C. § 1746 I declair under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Excuted on this March 8, 2015.

Sincerly Malcolm Evans #8013

Malcolm Evans
Sherburne County Jail
13880 Business Center Dr
Elk River, MN 55330

P.S. Please send me a copy of this document file stamped the date & time received. Thanks again.

EX PARTE MALCOLM ROY EVANS

MEMORANDUM

In re: United States of America
Plaintiff

V.

EX PARTE MALCOLM ROY EVANS
Defendant.

Criminal No. 15-16 (ADM/LIB)

District Judge Ann D. Montgomery
Office of The Clerk
708 Warren E. Burger Federal Building
316 North Roberts Street
St. Paul, MN 55101

TO: The Honorable Judge
Ann D. Montgomery,

Enclosed please find a letter from my attorney James S. Becker
The letters content talks for itself.
On March 13, 2015 we had a motion hearing in my case.
I have not as of the time of my writing this memorandum to you been afforded my right to review all the evidence against me.
The enclosed letter states in part "Rest assured, however, that we will have a full opportunity to review and discuss the discovery prior to the filing of any pretrial motions."
But such has not been the case. I have not heard a half of the recording in my case. And I have NOT seen half of the DVD's in my case. Counsel is dragging his feet. This is a clear violation of my due process rights and my rights to equal protection under the law.

Their may have been things or issues contained in the CD's / DVD's that I may have wanted to challenge. On 1-26-2015 to I told counsel upfront I wanted to have a speedy jury trial. From that time on he should have conducted this matter in light of a speedy jury trial. I have asked Counsel to do several thing in connection with trial and he has failed to do so.

Week before last I belive it was I complained to Katherian Dr Roe about not been given ~~access to the~~ full access to the CD's / DVD's in my case. She said She would send her chief investigator to come review that evidence with me prior to March 13, 2015. I've had several short visits maybe a hour or little more. It takes 20 minutes to get the computer going. I will NOT plead guilty like my attorney wants me to. I'm going to trial. I'm making a record of how I'm be railroaded. Sincerly, Malcolm Evans

Malcolm Evans

Excited March 15, 2015 3 of 3

OFFICE OF THE
FEDERAL DEFENDER
District of Minnesota
107 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
Phone: 612-664-5858
Fax: 612-664-5850

*KATHERIAN D. ROE
Federal Defender

*ANDREW H. MOHRING
First Assistant Defender

*KATHERINE MENENDEZ
Chief of Training

*MSBA Certified Criminal Law Specialist

*MANNY ATWAL
REGGIE ALIGADA
*DOUGLAS OLSON
JAMES BECKER
SHANNON ELKINS
Assistant Defenders

TIM TREBIL
CHAD SPAHN
JOHN CICH
Investigators

February 6, 2015

Malcolm Roy Evans
Sherburne County Jail
13880 Highway 10
Elk River, MN 55330

Dear Mr. Evans:

I received your voicemail requesting a complete set of your discovery to review. We received your discovery today, and enclosed you will find those materials. The only items not included are the various videos, which I will review with you by computer when I come out there next to visit with you.

I will be in trial beginning February 17, 2015, in Duluth, so I may not be able to visit with you for a couple weeks. Rest assured, however, that we will have a full opportunity to review and discuss the discovery prior to the filing of any pretrial motions. I hope this finds you well.

Sincerely,

JAMES S. BECKER
Assistant Federal Defender

JSB

encl.

Malcolm Roy Evans #150420

DOUGLAS COUNTY JAIL
1310 N. 14th Street
Superior, WI 54880

BY MAIL

RECEIVED
MAR 19 2015
CLERK, U.S. DISTRICT COURT
ST. PAUL, MINNESOTA

IMMEDIATE ATTENTION REQUESTED

District Judge Ann D. Montgomery
Office of the Clerk
708 Warren E. Burger Federal Building
316 North Roberts Street
St. Paul, MN 55102

neopost
03/16/2015
US POSTAGE $000.46⁰

FIRST-CLASS MAIL
PRSRT

ZIP 54880

APPENDIX 60A

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

CHAMBERS OF
LEO I. BRISBOIS
MAGISTRATE JUDGE

412 GERALD W. HEANEY FEDERAL BUILDING AND
UNITED STATES COURTHOUSE AND CUSTOMHOUSE
515 W. FIRST STREET
DULUTH, MINNESOTA 55802
(218) 529-3520

March 18, 2015

Mr. Malcolm Roy Evans
#15040
Douglas County Jail
1310 N. 14th St.
Superior, WI 54880

Re: United States v. Malcolm Roy Evans
Court File No. 15-cr-16 (ADM/LIB)

Dear Mr. Evans,

I received a document that you mailed to my chambers. I am returning this document to you. I have not read the document and I have not made copies of it.

You are represented by counsel. A defendant in a criminal case does not have a constitutional or statutory right to represent himself while he is also being represented by counsel. As long as you are represented by counsel, you must act through your counsel; you must not directly contact the court or file any papers except through your attorney.

Respectfully,

Leo I. Brisbois
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

EX PARTE MALCOLM ROY EVANS

MEMORANDUM

Re: United States v. Malcolm Roy Evans
Court File No. 15-cr-16 (ADM/LIB)

TO THE HONORABLE DISTRICT JUDGE ANN D. MONTGOMERY

NOW HERE COMES Ex Parte Malcolm Roy Evans, and presents this his MEMORANDUM and would show as follows:

I.

On January 26, 2015 the court appointed Assistant Federal Defender James S. Becker, ID No. ~~388222~~ to represent me in this matter.

II.

My attorney has not allowed me access to review all the evidence in my case.
And on March 30, 2015 approximately ten days away is Voir Dire / Jury Instruction. And my trial starts April 6, 2015.
As of this March 20, 2015; 5:45 p.m. My attorney has not allowed me to review half of the DVD evidence against me. I've seen only about 3 four at the most but ~~four~~ even four is not half.
I have not been allowed to review all the taped recording in my case. I've heard several about 3 or 4, but even four is not half.
My attorney has been stalling on leting me see and hear the evidence against me.

III.

My attorney has been with-holding the existence of evidence from me in my case on purpose. On March 16, 2015 I was talking to John Cich federal defender investigator and I learned from him that their exists

IV.

I have a constitutional right to have an attorney who is an advocate and acts like one on my behalf. The conduct of counsel as noted herein make clear his representation is suspect. Counsel's inaction violates my constitutional right to Due process of law and equal protection of law. It violates fundamental fairness.

V.

My attorney has failed to follow up on thing I asked him to look in to for example. I told my attorney that on Jan 16, 2015 law enforcement presented me with a search-warrant for my DNA I complied and gave them four samples. Afterwords they gave me a receipt of two DNA samples not four witch is what I provided.

It seems like they might be planting DNA evidence ~~against~~ against me.

I have asked my attorney to investigate this several times he has not. He has not acted as an advocate.

~~Evidence of the~~ Picture evidence / and maybe reports of the following: I am charged with bank robbery, attempted carjacking, and kidnapping. Their exists picture evidence of the restroom of Hornbachers grocery store wate I alleged to to have went in the restroom and throw away a coat in the trash. I did not know about the existence of this evidence and my attorney has been with-holding it from me.

I did not know of the existence of picture photo of the van I am alleged to have tryed to carjack.

I did not know of the picture/photo of the 99 Bottles Liquor Store. The existence of this evidence and reports I did not know about. Until March 16, 2015. I do not have copies of this evidence. My attorney has with-held this evidence from me on purpose

Their is approximately 35 pictures/photos of evidene in my case that my attorney has not provided me copies of.

Their is a greater chance their is a lot more evidence my attorney is purpasely keeping from me.

Thir are several other things I asked him to investigate as it relates to my defense but he has failed to follow-up on them. I did want to document and call these issues to the Courts attention.

IN CLOSING

I swear under penalty of perjury that the forgoing information is True and correct to the best of my knowledge and ability.

Excuted on this March 20, 2015

Sincery, Malcolm Roy Evans
Malcolm Roy Evans
Sherburne County Jail
13880 Business Center Dr.
Elk River, MN 55330

Office of the Clerk
708 Warren E. Burger Federal Building
316 North Roberts Street
St. Paul, MN 55101

March 20, 2015

To Whom It May Concern:

Enclosed is a "Memorandum" please ensure that Judge Montgomery has the opporunity to review it befor March 30, 2015, Voir Dire Jury Instruction

Please also file ~~this~~ stamp the date is document was received and file with the Court, and if you can send me a copy for my file.

Thank you

Ex Parte
Sincerly Malcolm Ray Evans
Malcolm Ray Evans

Evans, Malcolm
SHERBURNE COUNTY JAIL
13880 BUSINESS CENTER DR.
ELK RIVER, MN 55330

MINNEAPOLIS MN 553
MAR 2015 PM 5 L

IMMEDIATE OPENING REQUESTED

Office of the Clerk
708 Warren E. Burger Federal Building
316 North Roberts Street
St. Paul, MN 55101

MAR 27 2015

55101$1495

MEMO: Requesting Acknowledgement of RECEIPT

RE: USA v. MALCOLM ROY EVANS
CRIMINAL NO.: 15-16 ADM/LIB

3 June 2015

District Judge Ann D. Montgomery
13W U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

DEAR JUDGE MONTGOMERY:

Please acknowledge receipt of any or all ~~documents~~ documents I've sent you. Please, Thank you.

Sincerely
Malcolm Roy Evans

APPENDIX 70A

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

CHAMBERS OF
ANN D. MONTGOMERY
DISTRICT JUDGE

13W U.S. COURTHOUSE
MINNEAPOLIS, MINNESOTA 55415
612. 664.5090

June 8, 2015

Malcolm Roy Evans
Sherburne County Jail
13880 Business Center Drive
Elk River, MN 55330

RE: USA v. MALCOLM ROY EVANS
CRIMINAL NO.: 15-16 ADM/LIB

Dear Mr. Evans:

I have received a number of documents from you. They are all being held in a file in my chambers. We will discuss the substance and relevance of those submissions when you are in court for your trial next week.

Very truly yours,

S/Ann D. Montgomery

Ann D. Montgomery

9 June 2015

COMPLAINT

RE: USA v. MALCOLM ROY EVANS
Criminal No.: 15-16 (ADM/LIB)

TO: Ann D. Montgomery
District Judge
13W U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415

Dear Judge Montgomery:

On June 8, 2015 Mr. Becker informed me my case was set for trial next week June 15, 2015. Judge Montgomery you know I have been complaining about being denied access to the CD and DVD and other evidence in my case. I have a right to see the evidence against me to aid in my defense. This is a clear violation of Due Process and equal protection of law. This does not serve justice.

Sincerely Malcolm Roy Evans
Malcolm Roy Evans

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,	)	**INDICTMENT** CR 15-16 ADM/LIB
	)	
Plaintiff,	)	18 U.S.C. § 1201(a)(1)
	)	18 U.S.C. § 2113(a)
v.	)	18 U.S.C. § 2113(d)
	)	18 U.S.C. § 2113(e)
MALCOLM ROY EVANS,	)	18 U.S.C. § 2119(1)
	)	
Defendant.	)	

THE UNITED STATES GRAND JURY CHARGES THAT:

COUNT 1
(Armed Bank Robbery)

On or about December 29, 2014, in the State and District of Minnesota, the defendant,

MALCOLM ROY EVANS,

did by force, violence and intimidation, take from the person and presence of a victim teller approximately $10,110 in United States currency, money which belonged to and was in the care, custody, control, management and possession of the Wells Fargo Bank, 101 11th Street South, Moorhead, Minnesota, a bank whose deposits were then insured by the Federal Deposit Insurance Corporation, and in committing the offense, the defendant did assault and put in jeopardy the life of another person by the use of a dangerous weapon, that is, a short-barreled shotgun, all in violation of Title 18, United States Code, Sections 2113(a) and 2113(d).

COUNT 2
(Attempted Carjacking)

On or about December 29, 2014, in the State and District of Minnesota, the defendant,

MALCOLM ROY EVANS,

did knowingly and unlawfully attempt to take a motor vehicle, that is, a 2012 Volkswagen Routan minivan, Vehicle Identification Number 2C4RVABG1CR355522, that had been transported, shipped and received in interstate and foreign commerce, from the persons and presence of victims B.A.V. and A.E.V., by force and violence and by intimidation, with the intent to cause serious bodily harm, all in violation of Title 18, United States Code, Section 2119(1).

COUNT 3
(Carjacking)

On or about December 29, 2014, in the State and District of Minnesota, the defendant,

MALCOLM ROY EVANS,

did knowingly and unlawfully take a motor vehicle, that is, a 2010 Ford F-150 pickup truck, Vehicle Identification Number 1FTFW1EV4AFB62246, that had been transported, shipped and received in interstate and foreign commerce, from the person and presence of victim R.J.B., by force and violence and by intimidation, with the intent to cause serious bodily harm, all in violation of Title 18, United States Code, Section 2119(1).

COUNT 4
(Kidnapping)

On or about December 29, 2014, in the State and District of Minnesota, the defendant,

MALCOLM ROY EVANS,

did unlawfully and willfully seize, kidnap and abduct victim R.J.B. and, in committing or in furtherance of the commission of the offense, traveled in interstate commerce from the State of Minnesota to the State of North Dakota, all in violation of Title 18, United States Code, Section 1201(a)(1).

COUNT 5
(Forcing a Person to Accompany the Defendant
While Avoiding and Attempting to Avoid Apprehension)

On or about December 29, 2014, in the State and District of Minnesota, the defendant,

MALCOLM ROY EVANS,

while avoiding and attempting to avoid apprehension for the commission of the offense alleged in Count 1 of this indictment, that is, armed bank robbery, which count is hereby realleged and incorporated herein by reference, did unlawfully and knowingly force victim R.J.B. to accompany him without the consent of R.J.B., all in violation of Title 18, United States Code, Section 2113(e).

A TRUE BILL

UNITED STATES ATTORNEY

FOREPERSON