

K7s1chaa

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 378 (LJL)

5 HERODE CHANCY, MICHAEL
6 ALBARELLA, ADEDAYO ILORI,

7 Defendants.

Arraignment and Initial
Conference
(Via Teleconference)

8 -----x
9 New York, N.Y.
10 July 28, 2020
11 4:02 p.m.

12 Before:

13 HON. LEWIS J. LIMAN,

14 District Judge

15 APPEARANCES

16 AUDREY STRAUSS
17 Acting United States Attorney for the
18 Southern District of New York
19 CECILIA VOGEL
20 TARA M. LA MORTE
21 Assistant United States Attorneys

22 FEDERAL DEFENDERS OF NEW YORK INC.
23 Attorneys for Defendant Herode Chancy
24 BY: CLAY H. KAMINSKY, ESQ.

25 DAVID WIKSTROM, ESQ.
Attorney for Defendant Michael Albarella

SIMPSON THACHER & BARTLETT LLP
Attorneys for Defendant Adedayo Ilori
BY: BROOKE E. CUCINELLA, ESQ.

K7s1chaa

1 THE COURT: Good afternoon. This is Judge Liman.

2 Who do we have on the phone for the government?

3 MS. VOGEL: Good afternoon, your Honor. This is
4 Cecilia Vogel for the government. And you have as well for the
5 government Tara La Morte. And I believe there should be on the
6 line an intern from our office, Mr. Yitzhak Maurer.

7 THE COURT: Welcome, all.

8 And for the defendant Chancy?

9 MR. KAMINSKY: Good afternoon, your Honor. This is
10 Clay Kaminsky, Federal Defenders, for Mr. Chancy. He's also on
11 the line.

12 THE COURT: Good afternoon, Mr. Kaminsky.

13 And for the defendant Albarella -- am I pronouncing
14 that correctly?

15 MR. WIKSTROM: Yes, your Honor. This is David
16 Wikstrom, the attorney for Michael Albarella. I believe
17 Mr. Albarella is also on the line separate from me.

18 THE COURT: Good. Good afternoon.

19 And I'll confirm in a moment the attendance of the
20 individual defendants.

21 And who do we have on the phone as counsel for
22 defendant Ilori?

23 MS. CUCINELLA: Yes, your Honor. For Adedayo Ilori,
24 you have Brooke Cucinella from Simpson Thacher on the line, and
25 I also have a summer associate joining in on the line,

K7s1chaa

1 Ms. Isabel Matson. Good afternoon.

2 THE COURT: Good afternoon, Ms. Cucinella.

3 And do we have Mr. Chancy on the phone?

4 DEFENDANT CHANCY: Good afternoon. I'm on.

5 THE COURT: Okay. Good afternoon, Mr. Chancy.

6 Do we have Mr. Albarella on?

7 DEFENDANT ALBARELLA: Yes, your Honor. Good
8 afternoon.

9 THE COURT: Good afternoon.

10 And Mr. Ilori, are you on the phone?

11 DEFENDANT ILORI: Yes, I am. Good afternoon.

12 THE COURT: Good afternoon.

13 Now as a first order of business, I understand we're
14 here for the purposes of arraignment and an initial conference.
15 We're proceeding by way of telephone, we're not in the physical
16 courthouse, and I am outside of the district. I'd like to make
17 sure, with respect to each defendant, that the defendant has
18 had the opportunity to consult with counsel about proceeding
19 remotely, with me outside of the district, and that counsel
20 consents to proceeding in that fashion. And I'm going to go
21 through each defendant in turn and ask about that.

22 So let me start with you, Mr. Kaminsky. Have you had
23 a chance to talk to your client, Mr. Chancy, about the fact
24 that we are proceeding remotely and that I'm outside of the
25 district, and does he consent to proceeding in that way?

K7s1chaa

1 MR. KAMINSKY: Thank you, your Honor. This is Clay
2 Kaminsky.

3 We spoke about proceeding remotely, and he consents to
4 proceeding remotely. I was not aware that your Honor was
5 outside of the district, but I don't think that changes
6 anything for us.

7 THE COURT: Okay. So let me ask, with me outside of
8 the district, Mr. Kaminsky, do you consent to that?

9 MR. KAMINSKY: Yes, I do, your Honor.

10 THE COURT: Okay. Mr. Chancy, I'm now going to direct
11 myself to you. Have you had an opportunity to talk to
12 Mr. Kaminsky and to counsel to your satisfaction about the fact
13 that we are proceeding remotely and not in the courthouse?

14 DEFENDANT CHANCY: Yes, I have, your Honor.

15 THE COURT: Okay. And do you consent to proceeding
16 that way?

17 DEFENDANT CHANCY: I do.

18 THE COURT: And now I understand you've not talked to
19 your counsel about the fact that I'm outside of the district.
20 Would you like an opportunity to do so?

21 DEFENDANT CHANCY: No. That's fine, your Honor.

22 THE COURT: Okay. Do you consent to proceeding with
23 me being outside of the district?

24 DEFENDANT CHANCY: Yes, I do.

25 THE COURT: Okay. Good.

K7s1chaa

1 Let me now turn to you, Mr. Wikstrom, with respect to
2 Mr. Albarella. Have you had a chance to talk to your client
3 about the fact that we are proceeding remotely and not in the
4 physical courthouse and to discuss with him whether to consent
5 to proceeding that way?

6 MR. WIKSTROM: Yes, I have, your Honor.

7 THE COURT: Okay. And do you consent on behalf of
8 Mr. Albarella to proceed in that manner?

9 MR. WIKSTROM: I do, your Honor.

10 THE COURT: And do you consent, knowing that I am
11 outside of the district?

12 MR. WIKSTROM: Certainly, yes.

13 THE COURT: Mr. Albarella, did you hear what your
14 lawyer just said?

15 DEFENDANT ALBARELLA: Yes, I did, your Honor.

16 THE COURT: And did you have an opportunity to consult
17 to your satisfaction with Mr. Wikstrom about the fact that
18 we're proceeding remotely?

19 DEFENDANT ALBARELLA: Yes, I did, your Honor.

20 THE COURT: And do you consent to proceeding remotely?

21 DEFENDANT ALBARELLA: Yes, I do, your Honor.

22 THE COURT: Now do you want to talk to your lawyer
23 about the fact that I'm outside of the district?

24 DEFENDANT ALBARELLA: No, your Honor. I do not need
25 to speak to my lawyer about that.

K7s1chaa

1 THE COURT: And do you consent to proceeding knowing
2 that I'm outside of the district?

3 DEFENDANT ALBARELLA: Yes, I do, your Honor.

4 THE COURT: Thank you.

5 Ms. Cucinella, the same questions to you. Have you
6 had an opportunity to talk to your client about the fact that
7 we are proceeding remotely and do you consent on behalf of your
8 client?

9 MS. CUCINELLA: Yes, your Honor, we have discussed the
10 fact that we would be proceeding remotely and consent to that.
11 As with the others, we had not realized you would be out of the
12 district, so I have not had the opportunity to discuss with him
13 that fact.

14 THE COURT: Do you consent to proceeding knowing that
15 I'm outside of the district?

16 MS. CUCINELLA: I do, yes, your Honor.

17 THE COURT: And Mr. Ilori, have you had a chance to
18 talk to your counsel to your satisfaction about the fact that
19 we are proceeding remotely and not in the courthouse?

20 DEFENDANT ILORI: Yes, your Honor.

21 THE COURT: And do you consent to proceeding in that
22 manner?

23 DEFENDANT ILORI: Yes, I do.

24 THE COURT: Okay. And do you want to talk to your
25 lawyer about the fact that I'm not in the district?

K7s1chaa

1 DEFENDANT ILORI: No, I don't.

2 THE COURT: Do you consent to proceeding knowing that
3 I'm not in the district?

4 DEFENDANT ILORI: Yes, I do.

5 THE COURT: Thank you very much, all.

6 Ms. Vogel, are there any questions that you would have
7 me ask on that subject?

8 MS. VOGEL: Sorry. I was on mute. This is Cecilia
9 Vogel.

10 No, your Honor. No further questions. Thank you.

11 THE COURT: Okay. Thank you.

12 So Ms. Vogel, am I correct that we are here for the
13 purpose of arraignment and an initial conference?

14 MS. VOGEL: That's correct.

15 THE COURT: So what I'm now going to do is, taking
16 each defendant in turn, I'm going to arraign the defendants on
17 the indictment before me.

18 Let me start with you, Mr. Chancy. Can you hear me
19 okay?

20 DEFENDANT CHANCY: Yes, I can, your Honor.

21 THE COURT: Okay. And Mr. Chancy, are you aware that
22 you have been indicted in an indictment returned in the
23 Southern District of New York?

24 DEFENDANT CHANCY: Yes, I am, your Honor.

25 THE COURT: And have you had a chance to review and

K7s1chaa

1 read that indictment?

2 DEFENDANT CHANCY: Yes, I have, your Honor.

3 THE COURT: Have you discussed it with your lawyer?

4 DEFENDANT CHANCY: I have.

5 THE COURT: Would you like me to read it to you?

6 DEFENDANT CHANCY: No, your Honor. That's perfectly
7 fine.

8 THE COURT: How do you plead to the indictment?

9 DEFENDANT CHANCY: Not guilty, your Honor.

10 THE COURT: Okay. Thank you very much, Mr. Chancy.

11 Mr. Albarella, have you had a chance to read and
12 review the indictment?

13 DEFENDANT ALBARELLA: Yes, I have, your Honor.

14 THE COURT: And have you discussed it with your
15 attorney?

16 DEFENDANT ALBARELLA: Yes, I have, your Honor.

17 THE COURT: Would you like me to read it to you?

18 DEFENDANT ALBARELLA: No, thank you, your Honor.

19 THE COURT: How do you plead to the indictment?

20 DEFENDANT ALBARELLA: Not guilty, your Honor.

21 THE COURT: Mr. Ilori, have you had a chance to read
22 the indictment?

23 DEFENDANT ILORI: Yes, I have, your Honor.

24 THE COURT: And have you discussed it with your
25 attorney?

K7s1chaa

1 DEFENDANT ILORI: Yes, I have.

2 THE COURT: Would you like me to read it to you?

3 DEFENDANT ILORI: No.

4 THE COURT: How do you plead to the indictment?

5 DEFENDANT ILORI: Not guilty.

6 THE COURT: Thank you.

7 Is there anything, Ms. Vogel, that you would have me
8 ask by way of arraignment that I haven't asked?

9 MS. VOGEL: No. Thank you, your Honor.

10 THE COURT: Okay. Now anything that any of the
11 defendants would have me ask by way of arraignment before we
12 move on to the initial conference portion of this?
13 Mr. Kaminsky?

14 MR. KAMINSKY: No, thank you, your Honor.

15 THE COURT: Mr. Wikstrom?

16 MR. WIKSTROM: No, your Honor.

17 THE COURT: Ms. Cucinella?

18 MS. CUCINELLA: No, your Honor. Thank you.

19 THE COURT: Now, Ms. Vogel, I have read the complaint
20 in this case. I assume that that's been provided to counsel
21 for each of the defendants. And I have also seen the
22 protective order. I understand that there has been some
23 pre-indictment discovery. Would you be so kind as to describe
24 for me the case in your words, what it's about, and then where
25 we stand in terms of the case.

K7s1chaa

1 MS. VOGEL: Yes. So, your Honor, in terms of a
2 summary of the facts of the case, and the allegations,
3 Mr. Chancy, who was a bank manager, and Mr. Ilori agreed to
4 engage in the commercial loan fraud scheme. As part of that
5 scheme, they submitted fraudulent loan applications to an
6 undercover agent, who represented himself to be, and who
7 Mr. Chancy and Mr. Ilori believed to be, a corrupt underwriter
8 working for a commercial lender.

9 Mr. Chancy and Mr. Ilori -- part of these applications
10 included doctored bank statements that essentially took bank
11 statements and primarily changed the bank account number on the
12 statement, as well as at times changed the actual dollar values
13 on statements; and they used the identities of other people on
14 these loan applications, as well as they set up bank accounts
15 using the identities of other people in order to receive the
16 loan payments. And the intent, as discussed in various
17 recorded conversations, they intended not to repay the loans.
18 And ultimately, over the course of the investigation, they
19 applied for just over a million dollars in loans.

20 After submitting two rounds of loan applications for a
21 total of just over a million dollars, they agreed with
22 Mr. Albarella, who was also a bank manager, to launder some of
23 the proceeds of the scheme through an additional bank account
24 that was opened, also using the identity of another person, and
25 Mr. Albarella opened that bank account at the bank where he

K7s1chaa

1 worked, and he accepted a \$10,000 bribe from a second
2 undercover officer and a confidential source as part of opening
3 that account.

4 So there were two undercover officers involved in this
5 investigation as well as a confidential source. And so the
6 evidence primarily consists of numerous recorded meetings and
7 calls and text messages that were made with the assistance of
8 the confidential source and the undercovers.

9 THE COURT: When were the defendants arrested?

10 MS. VOGEL: They were arrested on March 4, 2019.

11 THE COURT: And are there postarrest statements from
12 any of the defendants?

13 MS. VOGEL: There are, and they have been produced to
14 the defendants with the initial pre-indictment discovery.

15 THE COURT: Okay. Thank you.

16 And were there search warrants conducted or any other
17 law enforcement technique that could give rise to motion
18 practice, in your mind?

19 MS. VOGEL: So, yes, there have been search warrants
20 for various cellphones that were seized at the time of the
21 arrests. Those searches are not yet complete because the
22 arrests took place shortly before everything shut down for the
23 pandemic. Although we had secured the search warrants for the
24 cellphones, we believe it was that Friday, the 13th, right
25 before everything closed down, it took -- although the search

K7s1chaa

1 process began in terms of extracting the information from the
2 cellphones, it took significantly longer, given very limited
3 staffing because of office closures for the pandemic. So the
4 process took longer. We've recently obtained three of the four
5 phones for which we obtained warrants, so we will, in this next
6 round of discovery, turn those phones over. We are in the
7 process of initiating the responsiveness review for those
8 phones. And as to the fourth phone, which is a cellphone,
9 another cellphone belonging to Mr. Chancy seized at that time,
10 we have not yet been able to get into the phone. We have not
11 yet been able to essentially break through the password.

12 So yes, there were search warrants done with respect
13 to the phones, and that search is ongoing.

14 And other than that -- sorry, your Honor.

15 THE COURT: I'm sorry. Go ahead. Go ahead, please.

16 MS. VOGEL: I was just -- as I mentioned, there are a
17 number of recorded conversations. Those were recorded by the
18 confidential source and the undercovers.

19 THE COURT: And have the search warrant applications
20 been produced in discovery?

21 MS. VOGEL: They have not yet been produced, no.

22 THE COURT: When are they scheduled to be produced?

23 MS. VOGEL: Now that there's been an indictment,
24 essentially the outstanding -- we produced the bulk of the
25 discovery, which are the recordings, the text messages,

K7s1chaa

1 including draft transcripts, photos from videos, to the extent
2 they exist, from these various meetings, postarrest statements,
3 agent reports. So the discovery that's outstanding primarily
4 consists of the emails sent to the undercovers as part of the
5 scheme, mailings sent to the undercovers as part of the scheme,
6 various bank records, as well as the phones. I anticipate that
7 we can produce the search warrants, you know, any records, by
8 the end of next week, consistent with how we produced prior
9 documents in this case.

10 For the actual cellphones themselves, I would just ask
11 for three weeks, because at this point we will need a drive
12 from defense counsel. Given that people are not in the office,
13 coordinating that process takes a little bit longer, especially
14 with the assistance of IT. And at this point I cannot say when
15 our responsiveness review will be done because I don't have
16 information about the volume of these phones, so it's hard for
17 me to estimate at the moment. But we intend to produce on a
18 rolling basis as that responsiveness review is completed.

19 THE COURT: What is the government's sense right now
20 of the length of the trial, assuming that this case goes to
21 trial, and against all three defendants?

22 MS. VOGEL: I would estimate approximately two weeks,
23 your Honor, just given that there are three defendants and the
24 number of recordings.

25 THE COURT: Thank you.

K7s1chaa

1 Before I turn to defense counsel, is there anything
2 else that you would like to apprise the Court of?

3 MS. VOGEL: No, your Honor. Thank you.

4 THE COURT: Thank you.

5 Mr. Kaminsky, why don't I turn first to you. Any
6 objection, first of all, to the government having three weeks
7 to turn over the cellphone and to producing the discovery on a
8 rolling basis? My thought is to schedule another conference in
9 maybe six or seven weeks' time to discuss the status of
10 discovery and see if we're in a position to schedule a motion
11 practice.

12 MR. KAMINSKY: That's fine, your Honor. I might even
13 ask for slightly more time than that. And the reason for that
14 is that I am new to this case. Although Mr. Chancy has been
15 represented by the Federal Defenders since his arrest, he was
16 initially represented by my colleague, Ian Marcus Amelkin, who
17 is now out on paternity leave, so I am not up to speed on the
18 discovery that's been produced so far, and with that and the
19 new discovery coming in, of course I'll want to review
20 everything before I can report on whether we're going to file
21 motions.

22 THE COURT: I would have no problem scheduling our
23 next conference for eight weeks from now.

24 I understand all of the defendants are out on bail; is
25 that correct, Ms. Vogel?

K7s1chaa

1 MS. VOGEL: That's correct.

2 THE COURT: Okay. Anything else, Mr. Kaminsky, that
3 you would like to raise with the Court? The thought would be
4 to schedule a conference in eight weeks' time. The intervening
5 time would be used for the production of discovery, the review
6 of discovery, and to consider potential motion practice.

7 MR. KAMINSKY: No. That makes sense to me, your
8 Honor.

9 THE COURT: Okay. Mr. Wikstrom?

10 MR. WIKSTROM: Yes, your Honor. I concur in the
11 suggestion that we schedule another conference in eight weeks
12 to permit the government to complete discovery, and we can
13 report more intelligently to the Court at that time.

14 THE COURT: Okay. Anything else that you would like
15 to raise with me?

16 MR. WIKSTROM: No, your Honor.

17 THE COURT: Okay. Counsel for Mr. Ilori?

18 MS. CUCINELLA: Yes. This is Brooke Cucinella, your
19 Honor.

20 I believe that we would be fine with that schedule. I
21 will note that my client is on home detention, and we have been
22 working with the government and pretrial's consent to come up
23 with less restrictive terms to his bail, and so we will likely
24 put in a letter to the Court on that issue before the eight
25 weeks is up. But other than that, I think that we are fine

K7s1chaa

1 with scheduling eight weeks from now.

2 THE COURT: Okay. And I will look forward to your
3 letter with respect to the bail conditions.

4 Ms. Cucinella, is there anything else that you'd like
5 to raise with me?

6 MS. CUCINELLA: Not at this time.

7 THE COURT: Okay. Ms. Vogel, is there an application
8 with respect to the Speedy Trial Act?

9 MS. VOGEL: Yes, your Honor. The government requests
10 to exclude time until the date of our next conference,
11 approximately eight weeks out from now, on the basis of
12 allowing defense counsel an opportunity to review the discovery
13 and decide on whether they have any motions, and for the
14 parties to engage in potential discussions about a pretrial
15 resolution as well.

16 THE COURT: Okay. And let me ask my courtroom deputy,
17 Mr. Fishman, is there a date that you can give us about two
18 months out, eight weeks out?

19 THE DEPUTY CLERK: September 22nd at 3 p.m.

20 THE COURT: That will likely be telephonic. Does that
21 work for the government?

22 MS. VOGEL: Yes, your Honor.

23 THE COURT: Mr. Kaminsky, does September 22nd work for
24 you and do you have any objection to excluding time under the
25 Speedy Trial Act?

K7s1chaa

1 MR. KAMINSKY: Thank you, your Honor. That works, and
2 I have no objection.

3 THE COURT: Mr. Wikstrom, the same questions for you.
4 September 22nd, any objection to excluding time?

5 MR. WIKSTROM: And the same answers. 9/22 at 3 p.m.,
6 and no objection.

7 THE COURT: Ms. Cucinella?

8 MS. CUCINELLA: No objection, your Honor. Thank you.

9 THE COURT: Okay. Thank you, all.

10 So I am going to exclude time from today until
11 September 22nd under the Speedy Trial Act, 18 U.S.C.
12 3161(h)(7)(A). I find the interests of justice outweigh the
13 interests of the defendants and the public in a speedy trial in
14 that the time from today until September 22nd can and will be
15 used by the government to continue to produce discovery, by the
16 defendants to review discovery, to discuss potential
17 resolution, and to discuss potential motion practice.

18 What I contemplate on September 22nd is that we will
19 discuss the status of discovery, and if discovery is close to
20 being complete, I expect that I will set a schedule for motion
21 practice, so counsel should come prepared with respect to that.

22 Anything further from anybody? From the government?

23 MS. VOGEL: This is Cecilia Vogel, your Honor.
24 Nothing from the government.

25 THE COURT: Mr. Kaminsky, anything further from you?

K7s1chaa

1 MR. KAMINSKY: No, your Honor.

2 THE COURT: Mr. Wikstrom?

3 MR. WIKSTROM: No, your Honor.

4 THE COURT: Ms. Cucinella?

5 MS. CUCINELLA: No, your Honor. Thank you.

6 THE COURT: Thank you, all. Stay safe and stay
7 healthy, and I look forward to seeing you or hearing from you
8 on the 22nd. Have a good day. Thank you.

9 ALL COUNSEL: Thank you.

10 o0o

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25