IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* TELDRIN FOSTER AND CARLA JACKSON	Criminal Action No. 1:20-CR-296-JPB

United States Motion to Admit Evidence of Co-Defendants' Guilty Pleas

The United States of America, by Ryan K. Buchanan, United States Attorney for the Northern District of Georgia, and Tal C. Chaiken and Samir Kaushal, Assistant United States Attorneys, and by Glenn S. Leon, Chief of the Fraud Section, and Siji Moore, Trial Attorney, respectfully files this Motion to Admit Evidence of Co-Defendants' Guilty Pleas

Background

On February 6, 2024, during opening statements, counsel for Carla Jackson stated that co-defendants Darrell Thomas and John Gaines pleaded guilty. (Feb. 6, 2024 Transcript, at 23:13–14, 24:10–12.) Jackson's counsel also claimed that the investigation of Jackson was sloppy. (*Id.* at 22:24–25.) Two days later, during the cross-examination of the case agent, counsel for Teldrin Foster elicited testimony that 24 people were charged in the case.[1] Foster's counsel then went through individuals' roles in their

[1] Due to this cross-examination, the entire indictment should be presented to the jury without any redactions.

respective crimes, deliberately eliciting information from the case agent on Darrell Thomas, Meghan Thomas, Jesika Blakely, Kahlil Green, John Gaines, Amanda Christian, Charles Petty, Jerry Baptiste, Bern Benoit, Denesseria Slaton, Ricky Dixon, Edward Lee, Derek Parker, Charmaine Redding, Ryan Whittley, David Belgrave, Charles Hill, Dwan Ashong, El Hadj Sall, and Rick McDuffie. Importantly, all of these individuals save Jerry Baptiste and Edward Lee (who was not charged) has pleaded guilty.

In asking about certain fake business owners (Kahlil Green, Charmaine Redding, David Belgrave, Charles Hill, Ryan Whittley, El Hadj Sall, and Rick McDuffie), defense counsel asked whether each business owner had direct communication with Darrell Thomas, establishing that most did not. In doing so, Foster's defense counsel—whether intentionally or not—presented the misleading inference to the jury that the fake business owners were somehow victims of identity theft by Darrell Thomas.

From there, Foster's counsel's intentions became explicit. Counsel asked about Brenda Johnson Miller, an individual who was not charged in this case and was not the subject of direct examination, and elicited information suggesting that Brenda Johnson Miller's name was being used without her knowledge by Darrell Thomas. Later, in response to a government objection during cross-examination, in the presence of the jury, Foster's counsel explained that she was seeking to present evidence that will show that Darrell Thomas had a pattern of using other people's names to benefit himself, such as applying for credit and putting things in other people's names. Foster's counsel then added that Foster's defense is that Darrell Thomas was using Foster's email addresses.

Argument

Foster has opened the door to the introduction of co-defendants' guilty pleas. "A co-defendant's guilty plea or conviction may be brought out at trial provided that 1) the evidence serves a legitimate purpose and 2) the jury is properly instructed about the limited use they may make of it." *United States v. DeLoach*, 34 F.3d 1001, 1003–04 (11th Cir. 1994) (citing cases). A defendant who "open[s] the door by first inviting the [g]overnment to introduce the evidence of [the] plea" waives his challenge to the introduction of that plea. *United States v. King*, 505 F.2d 602, 608–09 (5th Cir. 1974).[2] The former Fifth Circuit recognized that admission of a co-defendant's guilty plea may be appropriate when "'invited by defense counsel.'" *United States v. Fleetwood*, 528 F.2d 528, 532–33 (5th Cir. 1976); *see United States v. Livoti*, 756 F. App'x 841, 852 (11th Cir. 2018) ("To determine whether a guilty plea was used for a proper purpose, we consider several factors," including "whether the defendant invited the introduction of the guilty plea."). For example, in *United States v. DeLoach*, 34 F.3d 1001 (11th Cir. 1994), the defendant "sought to shift culpability to [his co-defendant] and to portray him as the real culprit." *Id*. at 1004. In holding that the

[2] Decisions of the Fifth Circuit rendered before October 1, 1981, constitute binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*).

United States properly admitted evidence of the co-defendant's conviction, the Eleventh Circuit explained that, "[h]ad [the co-defendant's] prior conviction not been brought to the jury's attention, the inference might have been that [the co-defendant] was permitted by the Government to go unpunished." *Id*.

At this point in the trial, Foster has misleadingly insinuated to the jury—through questions, testimony, and argument—that the fake business owners were somehow the victims of Darrell Thomas's purported *modus operandi* of using other people's names to benefit himself, when, in fact, every single one of those charged individuals has already pleaded guilty and admitted to being knowing participants in the fraud. Add to these actions Jackson's counsel's decision to state that Darrell Thomas and John Gaines have pleaded guilty and that the investigation was sloppy as to Jackson[3] and the United States has been placed at a great disadvantage in its presentation of its case. The jury has heard that just two of the many individuals identified in this investigation have pleaded guilty, that many fake business owners did not communicate directly with Darrell Thomas, that Darrell Thomas – in Foster's counsel's view – used other people's names to benefit himself, and that the investigation was sloppy. All of this together suggests to the jury that the other charged defendants have not pleaded guilty, were victims of Darrell Thomas and a sloppy investigation,

[3] The United States is not suggesting that Jackson's strategic decision to make these statements during opening was improper.

and have since been exonerated. To correct this misimpression, the United States should be permitted to question the case agent about co-defendants' guilty pleas and the jury should receive a limiting instruction explaining the proper way to evaluate those guilty pleas.

Without admission of the co-defendants' guilty pleas, Foster's defense would be misleading because it would suggest to the jury that other individuals who are not before them on trial were falsely inculpated by Darrell Thomas and/or were unaware of his activities, as Foster claims to be. But all the other defendants in this indictment, save Jerry Baptiste, pleaded guilty and admitted to knowingly participating in PPP fraud. In other words, Foster cannot argue to the jury that Thomas's *modus operandi* is to falsely inculpate and/or conceal activities related to his PPP fraud, while simultaneously preventing the jury from learning the reality that Thomas did not falsely inculpate his co-defendants or conceal the fraud from them, as each, save Jerry Baptiste, admitted that they were in fact culpable for, and knowingly participated in, the PPP fraud.

This is not the first time the United States has raised the concerns described in this motion. On January 17, 2024, the United States noted its concerns in a response to a motion to compel discovery filed by Foster. (Doc. 817 at 7–9.) The concerns initially arose from Foster's statement that "part of his defense will be that . . . Darrell Thomas took steps to conceal the scheme, including Gena Pyfrom-Foster's involvement, from him, and that Darrell Thomas took steps to inculpate Mr. Foster by claiming he performed acts that were actually performed by Ms. Pyfrom-Foster, even though Mr. Foster was unaware of Thomas' or Ms. Pyfrom-Foster's actions." (Doc. 803 at 5–6.) Foster added that he "will argue that this was part of Darrell Thomas' modus operandi, *i.e.*, that he routinely took steps to conceal his activities and/or to blame other people." (*Id.*)

When the United States, in its response to Foster's motion, explained how that defense would open the door to admission of the co-defendants' guilty pleas, Foster, on January 19, 2024, stated that the United States' concerns were "premature." (Doc. 828 at 10.) And Foster then suggested that the United States misunderstood the defense and that it actually will be that Thomas is a liar who falsely tried to protect people from prosecution:

> Mr. Thomas made a regular habit of lying to codefendants, his family, federal agents, federal prosecutors, and anyone else who would listen. In some of his interviews with agents, he was called out for falsely claiming that some people (including Ms. Pyfrom-Foster) were actually innocent. Nothing about showing Mr. Thomas' pattern of systematically, repeatedly, brazenly lying opens the door to co-defendant plea agreements.[4]

[4] This is not a defense to the charges against Foster. Instead, it is impeachment evidence for Darrell Thomas.

(*Id.* at 11.) In doing so, Foster explained that the United States was mistaken in thinking that Foster would suggest that Darrell Thomas "falsely inculpated" his co-defendants in the charged crimes. (*Id.* at 10.) Yet at trial Foster has made this very impression on the jury. Now, the United States' concerns are no longer "premature" as Foster once claimed. (*Id.* at 10.) They have ripened into this motion for admission of the co-defendants' guilty pleas.[5]

Conclusion

For the reasons stated above, the United States should be permitted to elicit testimony on the fact of the co-defendants' guilty pleas.

[5] The United States does not seek to admit the plea agreements themselves, but rather only the fact of the co-defendants' guilty pleas.

Dated: February 9, 2024.

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