UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. TELDRIN FOSTER, Defendant.	))))))))	Case No. 1:20-cr-296-JPB-CMS

RESPONSE IN OPPOSITION

COMES NOW, Defendant TELDRIN FOSTER, by and through the undersigned attorneys, and files this Response in Opposition to the Government's Motion. In support thereof, Mr. Foster shows as follows:

Mr. Foster is charged in 42 counts in this case, 14 of which are conspiring with other co-defendants to prepare the fraudulent PPP loans. At trial so far, the government has presented virtually zero evidence about the codefendants with whom Mr. Foster is charged with conspiring—with the limited exception of Darrell Thomas. In Mr. Foster's cross-examination of Agent Stites, Mr. Foster elicited evidence about the role of the other codefendants in this case. At times, Mr. Foster questioned Agent Stites about whether those codefendants had communicated directly with Teldrin Foster, and at times, Mr. Foster questioned Agent Stites about whether those codefendants had communicated directly with Darrell Thomas or if they had communicated primarily with recruiters.

In a separate line of questioning, Mr. Foster questioned Agent Stites about Darrell Thomas' use of a woman named Brenda Miller as the purported CEO of Bellator Phront Group without Ms. Miller's participation.

The government has—without citing to any particular question—asserted that these lines of questioning have opened the door to the admission of the guilty pleas of each of Mr. Foster's codefendants. Mr. Foster did not open the door to this evidence, and this Court should deny the government's motion.

1. **<u>The introduction of the guilty pleas and/or plea agreements of any codefendant without the testimony of the charged person would violate Mr. Foster's constitutional rights.</u>**

"It is a basic tenet of our criminal jurisprudence that guilt or innocence must be determined one defendant at a time without regard to the disposition of charges against others." *United States v. Eason*, 920 F.2d 731, 738 (11th Cir. 1990) (quotation omitted). "[I]t must be remembered that a jury has an obligation to exercise its untrammeled judgment upon the worth and weight of testimony and to bring in its verdict and not someone else's." *United States v. Eason*, 920 F.2d 731, 734 (11th Cir. 1990) (quotation omitted).

"A jury may abdicate its duty" if it learns of a conspirator's conviction, as it "may regard the issue of the remaining defendant's guilt as settled and the trial as a mere formality." *Id.* (quotation omitted). The Eleventh Circuit has held:

> Introduction of [the codefendant's] guilt violated two of the most basic tenets of our criminal jurisprudence. First, the evidence against an accused must come from the witness stand in open court so that a defendant may confront his accusers. A verdict of guilt must be based on the evidence at the defendant's trial, not the evidence developed at some other defendant's trial. . . . Second, guilt or innocence must be determined one defendant at a time without regard to the disposition of charges against others. **In a conspiracy trial, which by definition contemplates two or more culpable parties, courts must be especially vigilant to ensure that defendants are not convicted on the theory that guilty "birds of a feather are flocked together."**

United States v. Griffin, 778 F.2d 707, 711 (11th Cir. 1985) (citations omitted, emphasis added). The Eleventh Circuit also emphasized that admitting this type of evidence deprives the defendant of the ability to cross-examine the evidence at the codefendant's trial. *Griffin*, 778 F.2d at 711. Therefore, the Eleventh Circuit has held that the admission of evidence of a coconspirator's conviction that is not subject to cross-examination constitutes plain error. *Eason*, 920 F.2d at 734.

The cases relied on by the government are not persuasive and are factually so dissimilar as to be irrelevant to the issue before the Court. Most importantly, in *United States v. DeLoach*, 34 F.3d 1001, 1003 (11th Cir. 1994), the conviction referenced was the conviction *of the testifying codefendant*. The same is true of the remaining cases cited by the government. *See United States v. King*, 505 F.2d 602, 605-06 (5th Cir. 1974) (describing the codefendant as "a chief Government witness"); *United States v. Fleetwood*, 528 F.2d 528, (5th Cir. 1976) (sole issue on appeal is the "contention that statements elicited from government witnesses" had pled guilty to crimes similar to the charges facing the defendant on appeal); *United States v. Livoti*, 756 F. App'x 841, (11th Cir. 2018) (rejecting argument where government introduced convictions to "blunt the impact of [the defendant's] attacks" on the witness' credibility). Obviously, the conviction of a defendant who is testifying at trial is admissible for purposes of addressing that witness' credibility. *DeLoach*, 34 F.3d at 1004 ("We have said that *when a co-defendant testifies*, either the Government or the defense may elicit evidence of a guilty plea or conviction to aid the jury in assessing the co-defendant's credibility."). Because the government cites no cases permitting the introduction of evidence where the co-conspirator was not testifying, this Court should reject the government's motion.

While the government suggests that it has been unfairly prejudiced by Mr. Foster's line of questioning, the reality is that it is Mr. Foster who will suffer extreme prejudice by the government's introduction of the evidence of the codefendants' guilty pleas. They will leave the impression with the jury that essentially every other person that he has been charged with has pled guilty *to conspiring with him*, such that Mr. Foster must be guilty too. Mr. Foster will not be able to cross-examine them or to have them establish that he had no interaction with them, resulting in an obvious depravation of his Confrontation Clause rights. Moreover, in *DeLoach*, the defendant "sought to shift culpability to [the codefendant] and to portray him as the real culprit." *Id.* That is not Mr. Foster's defense here, as Mr. Foster is asserting that he was not the one using the email addresses in question.

2. **Mr. Foster is entitled to show that he had no communication with the vast majority of his charged co-conspirators.**

Mr. Foster is charged with conspiring with Meghan Thomas (Counts 1, 20, 25), Darrell Thomas (Counts 1, 3, 6, 9, 12, 15, 18, 20, 23, 25, 27, 30, 32, 34), Jesika Blakely (Counts 3, 6, 15, 25), Kahlil Gibran Green (Counts 3), John Gaines (6), Amanda Christian (Counts 9, 20, 25, 32, 34), Charles Petty (Count

9), Jerry Baptiste (Count 9), Bern Benoit (Counts 9), Denessaria Slaton (Counts 9, 20, 25, 32, 34), Ricky Dixon (Counts 12, 15, 18, 23, 27), Derek Parker (Count 18), David Belgrave (Counts 20), Charmaine Redding (Count 23), Charles Hill IV (Counts 25), Ryan Whittley (Count 27), Dwan Ashong (Counts 30), El Hadj Sall (Count 30), and Rick McDuffie (Count 34). He is also charged with substantive counts with most if not all of these codefendants.

The jury will have to determine if Mr. Foster was conspiring with these people, and until Mr. Foster's cross of Agent Stites, the jury had never even heard of most of these people and did not even know they existed. Mr. Foster is entitled to present evidence to the jury that he had not communicated with—and did not even know—the vast majority of the people with whom he is charged with conspiring. Mr. Foster asked repeatedly if various codefendants had ever communicated with *him*. This was plainly permissible when he is charged with conspiring to commit fraud with them, and the line of questioning does not and cannot open the door to the evidence sought to be admitted by the government.

3. <u>Mr. Foster did not in any way suggest that any charged codefendant was not actually involved in the charged conspiracy.</u>

The government suggests that by asking if certain business owners communicated directly with Darrell Thomas, as opposed to the recruiters, Mr. Foster has indicated to the jury that the business owners are the victims of identity theft. But a review of the transcript plainly establishes that this is not true.

Mr. Foster started off the cross-examination by having Agent Stites identify the number of people charged in the case (24), and then asking expressly, "So were they each involved in one of these loans?" Mr. Foster then asked about Darrell Thomas and clarified that Darrell Thomas communicated primarily with the recruiters and sometimes with the business owners. The agent clarified that when the business owners received the PPP loan proceeds, Darrell Thomas communicated with the recruiters, who in turn then instructed the business owners where to send the money. The agent clarified which people were recruiters and which were business owners.

When Mr. Foster then asked about the individual business owners, he clarified whether they communicated with Darrell Thomas *or whether they* *communicated with the recruiter*.[1] For example, Mr. Foster asked if Derek Parker, the owner of D Parker Holdings, communicated with Mr. Thomas *or* if he only communicated with Ricky Dixon. The line of questioning was similar for other business owners: David Belgrave communicated with Amanda Christian; Charles Hill was communicating with Denessaria Slaton; Ryan Whitley communicated with Ricky Dixon primarily, but some with Darrell Thomas; and Rick McDuffie communicated with Amanda Christian. This does not in any way suggest that these individuals had their identity stolen and had not actually communicated with anyone in the scheme, but merely communicated to the jury who they communicated with and their role in the offense. The government's assertion to the contrary should be rejected.

The government improperly conflates Mr. Foster's questioning about Brenda Miller with the line of questioning about the codefendants. But a review of the transcript makes clear that these were separate lines of questioning. And Mr. Foster did not present anything about Brenda Miller that is not true. If the government had a plea agreement from Brenda Miller

[1] Mr. Foster established that there were communications directly with Ricky Dixon and Charmaine Redding in anticipation of his later line of questioning that they had falsely identified Teldrin Foster. (Tr. at 244-45). On Friday morning, Mr. Foster also made clear that Redding stated that she had communicated with Darrell Thomas.

that established that she was an active participate in Bellator Phront Group, the government could admit that. But it has no such plea agreement, and the admission of other people's guilty pleas does not address Darrell Thomas' use of Brenda Miller's identity.[2]

Put simply, contrary to the government's assertions, Mr. Foster has not—and will not—"suggest that Darrell Thomas 'falsely inculpated' his [other] co-defendants in the charged crimes." (Doc. 912 at 7). Mr. Foster will argue that Darrell Thomas is someone who used deceit, but, again, he does not and will not argue that Thomas falsely implicated the codefendants who have pled guilty, such that the government's intended evidence will not rebut Mr. Foster's arguments or positions.

4. <u>Mr. Foster cannot be punished because of the codefendant's opening remarks.</u>

The government's motion references the opening arguments by Ms. Jackson. Ms. Jackson only referenced two codefendants—Darrell Thomas and John Gaines—and therefore, it obviously cannot have invited the pleas

[2] To the extent that the government complains of counsel's comments in responding to the government's objection to the evidence, the government could have—but did not—ask to address the issue outside the presence of the jury.

of other codefendants. But Mr. Foster did not do so, and he cannot be prejudiced by the arguments of his codefendants.

WHEREFORE, Mr. Foster requests that the evidence be excluded due to being untimely disclosed, and that the government's motion be denied.

Respectfully submitted this 11th day of February, 2024.

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