

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 25-cr-00076-JMC
	:	
CORTNEY MERRITTS,	:	
	:	
Defendant.	:	

ATTACHMENT 2 TO JOINT PRETRIAL STATEMENT
DEFENDANT MERRITTS'S REQUESTED VOIR DIRE QUESTIONS

Defendant Cortney Merritts ("Merritts"), by and through undersigned counsel and pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure and this Court's Order, respectfully requests that this Court include the following questions (or substantially similar questions) in its examination of prospective jurors.

Duty as Jurors

1. In federal court, each member of the jury is charged with the duty of determining whether the Government proved, or failed to prove, the defendant guilty beyond a reasonable doubt.

Does any member of the panel have any problem with this duty?

The government objects to this question. It is duplicative of the government's proposed question 17, which is identical to the Court's standard voir dire question 12.

2. The members of this panel selected as members of the jury in the case today will be the judges of the facts and must accept the law as the Court explains it in its jury instructions.

Is there any member of the panel who could not accept this duty?

3. This is a criminal case. In our system of justice, the burden of proof is on the Government to prove the allegations beyond a reasonable doubt. The defendant is presumed innocent

unless or until the Government meets its burden. In the United States, no person is ever required to prove his innocence; the Government is required to prove his guilt—and to do so beyond a reasonable doubt. Is there anybody who does not believe in these ideals? Is there anybody who will not hold the Government to its burden of proof?

The government objects to this question. It is duplicative of the government's proposed questions 16 and 17, which are identical to the Court's standard voir dire questions 11 and 12.

4. Has anybody here ever been a juror in a criminal case before? If so, (a) what kind of criminal case? (b) Was the jury able to reach a verdict? (c) Were you the foreperson?

The government objects to this question. It is duplicative of the government's proposed question 7, which is identical to the Court's standard voir dire question 7. Moreover, the proposed follow up questions can be addressed through additional questioning of any prospective juror who answers in the affirmative.

5. Has anybody here ever served on a grand jury? If so, do you understand that the standard of proof to obtain an indictment (probable cause) is a much lower standard than proof beyond a reasonable doubt, the standard applicable to find Mr. Merritts guilty of either count in this case.

The government objects to this question. It is duplicative of the government's proposed question 7, which is identical to the Court's standard voir dire question 7. Moreover, the proposed follow up questions can be addressed through additional questioning of any prospective juror who answers in the affirmative.

Knowledge of Persons and Parties Involved in the Case

6. I am Judge Jia Cobb. My courtroom deputy is Erica Duncan. The Court Reporter is Stacy Johns. My law clerk is Jackson Beard. Do you know or recognize me or any member of the court staff? If so, how do you know or recognize this person? Would that relationship or acquaintance influence your judgment in this case?

The government objects to this question. It is duplicative of the government's proposed question 3, which is identical to the Court's standard voir dire question 3. Moreover, the proposed follow up questions can be addressed through additional questioning of any prospective juror who answers in the affirmative.

7. Do you or any members of your family or friends know Jeanine Pirro, the United States Attorney for the District of Columbia, Ed Martin, the previous United States Attorney for the District of Columbia, or Assistant United States Attorneys Brian Kelly or Emily Miller, who will be prosecuting this case? If so, how do you know any of those individuals?

The government objects to this question. It is duplicative of the government's proposed question 4, which is identical to the Court's standard voir dire question 4. Moreover, the identity of any current or former U.S. Attorney is completely irrelevant for purposes of selecting a jury. The only individuals who need to or should be identified for the prospective jurors are those individuals who will appear or testify before the jury.

8. Have you, a family member, or a close friend ever been employed by:
- a. the United States Government;
 - b. the U.S. Department of Justice (DOJ);
 - c. the Federal Bureau of Investigation (FBI);

- d. the U.S. Attorney's Office for the District of Columbia;
- e. The Small Business Administration (SBA); or
- f. the Internal Revenue Service (IRS).

If so, who and how?

The government objects to this question. It is duplicative of the government's proposed questions 10 and 12.

9. This case was investigated by the FBI and you may hear the testimony of FBI Special Agent Asia Major-Waithe. Does any know Special Agent Major-Waithe? If so, how do you know or recognize Special Agent Major-Waithe? Would that relationship or acquaintance influence your judgment in this case?

The government objects to this question. Special Agent Major-Waithe will already be identified as a potential witness as part of the government's proposed question 6, which is identical to the Court's standard voir dire question 6. There is no reason to identify her separately here.

10. The defendant is Cortney Merritts. Does anybody know Mr. Merritts? If so, how do you know or recognize Mr. Merritts? Would that relationship or acquaintance influence your judgment in this case?

The government objects to this question. It is duplicative of the government's proposed question 5, which is identical to the Court's standard voir dire question 5.

11. Mr. Merritts is represented by Justin Gelfand and Joseph DiRuzzo, attorneys with the law firm Margulis, Gelfand, DiRuzzo & Lambson, which has offices in St. Louis, Missouri,

Washington, D.C., and Fort Lauderdale, Florida. Is there any member of the panel related to, or acquainted with, these attorneys or their law firm?

The government objects to this question. It is duplicative of the government's proposed question 5, which is identical to the Court's standard voir dire question 5.

12. Has anybody had any experiences with the law firm Margulis, Gelfand, DiRuzzo & Lambson?

The government objects to this question. It is duplicative of the government's proposed question 5, which is identical to the Court's standard voir dire question 5.

13. Has anybody seen, heard, or read anything about this case? If so, what have you seen, heard or read? (We prefer any answers be stated at sidebar so as not to prejudice other members of the panel.) Have you formed any opinions about this case based on what you saw, heard, or read?

The government objects to this question. It is duplicative of the government's proposed question 1, which is identical to the Court's standard voir dire question 1. Moreover, the proposed follow up questions can be addressed through additional questioning of any prospective juror who answers in the affirmative.

14. Has anybody discussed any aspect of this case with anybody who claimed to have some knowledge about what may have happened? If so, what have you heard (at sidebar) and have you formed some opinion based on what this person told you?

The government objects to this question. It is duplicative of the government's proposed question 1, which is identical to the Court's standard voir dire question

1. Moreover, the proposed follow up questions can be addressed through additional questioning of any prospective juror who answers in the affirmative.

15. Does anybody know any other member of the jury panel? If so, who are you acquainted with, and how do you know that person? Would that relationship or acquaintance influence your judgment in this case?

The government objects to this question. It is duplicative of the government's proposed question 25, which is identical to the Court's standard voir dire question

16. Moreover, the proposed follow up questions can be addressed through additional questioning of any prospective juror who answers in the affirmative.

16. Does anybody know any of the following people who may testify in this trial (court to be provided lists of potential witnesses from the parties)?

The government objects to this question. It is duplicative of the government's proposed question 6, which is identical to the Court's standard voir dire question

6.

Victims of Crime

17. Have any of you ever been the victim of a crime or have you had a relative or close friend who was the victim of a crime? If so:

- a) Was anyone apprehended as a result of that crime?
- b) Did you testify in that case?
- c) Were you satisfied with the outcome of that case? (Why or why not?)
- d) Did you feel justice was done? (Why or why not?)
- e) Is there anything about that experience that you believe could influence your judgment in this case?

The government objects to this question. It is duplicative of the government's proposed question 13, which is derived from the Court's standard voir dire question 9. Moreover, the proposed follow up questions can be addressed through additional questioning of any prospective juror who answers in the affirmative.

Witnesses

18. Have any of you ever been called as a witness in a trial? If so:

- a) Was it a criminal or civil trial?
- b) What kind of case was it?
- c) Was there anything about that experience that you found unpleasant?
- d) Was there anything about that experience that could influence your judgment in this case?

The government objects to this question as being irrelevant.

19. Would anybody be influenced by the sheer number of witnesses who may testify for the prosecution or for the defense? Does anybody think that if the defendant calls no witnesses, he/she would be unable to make a decision as to whether the prosecution proved Mr. Merriitts guilty beyond a reasonable doubt?

The government objects to this question as confusing. At the very least, the second part of this question should be omitted.

20. Would any of you give greater or lesser weight or credibility, no matter how slight, to the testimony of a federal agent or law enforcement officer merely because that person is a law enforcement officer? For example, if two people have different recollections about an occurrence and one is a police officer, would you tend to believe the police officer over the civilian just because that person is a police officer?

The government objects to this question. It is duplicative of the government's proposed question 14, which is identical to the Court's standard voir dire question 10.

21. Would any of you give the testimony of a prosecution witness greater weight or credibility over that of a witness called on Mr. Merritts's behalf, just because that person was testifying as a witness called by the prosecution?
22. Do any of you believe that you would have any difficulty being asked to judge the honesty and credibility of a witness?
23. If you are selected as a juror in this case, you will be instructed that when considering the credibility of a witness, you can consider any biases or prejudices that the witness may have or any motives the witness may have for telling the truth or not telling the truth; do you all understand that concept? Does anybody have a problem considering that a witness may not be telling the truth even if that witness takes an oath in this courtroom and promises to tell the truth?

The government objects to this question. The jurors will be instructed as to determining the credibility of witnesses during the trial, including through Redbook Instruction 2.200. The proposed question also implies bias, and that the jurors should almost presume that witnesses will be untruthful. To the extent that the defense is particularly concerned about jurors making credibility determinations, their proposed question 22 is sufficient.

Instructions

24. Does anybody here think that because Mr. Merritts has been charged with a crime, Mr. Merritts must have committed the crime?

25. Does anybody here have any opinion at all about whether Mr. Merritts is guilty or innocent in this case before hearing any evidence?

26. Does everybody understand that Mr. Merritts is by law presumed innocent?

27. Does anybody here feel that Mr. Merritts must have done something illegal or he would not have been charged with a crime?

28. Does anybody here feel that, in criminal cases, the prosecution is usually right?

The government objects to proposed questions 24 to 28. They are redundant of one another, and are duplicative of the government's proposed questions 15, 16, 17, and 18, which are identical to or derived from the Court's standard voir dire questions 11, 12, and 13.

29. Does anybody here have any difficulty with the concept of passing judgement on another?

In other words, there are some people who for moral, ethical or religious reasons, believe that it is not proper to pass judgment on the conduct of others. Do any of you hold such beliefs?

The government objects to this question. It is duplicative of the government's proposed question 28, which is derived from the Court's standard voir dire question 18.

30. If you are selected to sit on the jury in this case, you will have one of twelve votes. Will you agree to independently decide whether the prosecution has or has not proven Mr. Merritts guilty beyond a reasonable doubt even if other members of the jury disagree with you?

The government objects to this question. It is confusing, and moreover it is inconsistent with the Standardized Criminal Jury Instructions for the District of Columbia

(“Redbook”) that instruct jurors to deliberate with an open mind and consider one another’s conflicting viewpoints. See § 2.601.

31. Does anybody feel like defendants in a criminal trial should have to prove that they are innocent?

The government objects to this question. It is duplicative and redundant of numerous other questions already proposed by the defense and the government.

32. Is there anyone here who does not understand that an indictment is not evidence that the crime charged was committed, and it may not be considered as evidence by you in deliberating?

The government objects to this question. It is duplicative of the government’s proposed question 18, which is identical to the Court’s standard voir dire question 13.

33. If the prosecution fails to meet its burden of proving Mr. Merritts guilty beyond a reasonable doubt, is there anyone who does not understand that you must find Mr. Merritts not guilty?

- a) What about if the Government can produce some evidence of guilt, but not enough to leave you convinced beyond a reasonable doubt that he is guilty—are there any of you who think you would not be able to find Mr. Merritts not guilty in that instance?
- b) Is there anyone who would feel that by not returning a guilty verdict, your job as a juror is incomplete or a failure?

The government objects to this question. It is duplicative and redundant of numerous other questions already proposed by the defense and the government.
By the government’s count, the defense has proposed no fewer than eleven

questions (1, 3, 5, 24-28, and 31-33) that state in different—and often clearly biased or suggestive—ways that the defendant is presumed innocent and that the government bears the burden of proving his guilt beyond a reasonable doubt.

34. Do you all understand that Mr. Merritts does not have to testify in this trial, and that nothing can be inferred from him not testifying? Can you follow an instruction from the judge that you cannot infer anything from the fact that the defendant does not testify if he does not testify?

The government objects to this question. It is duplicative of the government's proposed question 16, which is identical to the Court's standard voir dire question 11.

Cori Bush

35. Does anybody have any strong feelings about former U.S. Congresswoman Cori Bush?

36. Does anyone have any strong feelings, positive or negative, about elected officials or political figures generally?

37. Would anybody weigh the testimony of a politician differently from the testimony of any other witness just because that person has either served in the United States Congress or is running for a seat in the United States Congress?

The government objects to questions 35 to 37. For the reasons stated in the Government's Motion In Limine to Exclude Evidence, ECF No. 24, Former Congresswoman Bush's identity, involvement in politics, and relationship with the Defendant is completely irrelevant and immaterial to the charges and facts at issue in this case. These proposed questions merely confirm the government's concern that because the Defendant has no actual defense on the merits, he is determined

to inject politics into a completely apolitical case. In order to determine whether an additional motion in limine regarding Ms. Bush's testimony was necessary, the government requested that the Defendant provide a brief proffer of her expected testimony. The Defendant refused to provide any proffer – even failing to identify whether she was being called as a fact witness or a character witness. The government notes that even if the defense were to seek to offer Ms. Bush as a character witness, it is unclear what pertinent character trait that is relevant to the offenses charged she could testify to, especially without knowing what relationship, if any, she and the Defendant had during the relevant time period in this case. Therefore, the government intends to file a motion in limine regarding Ms. Bush's testimony as a fact and/or character witness in this case.

Moving Company Experience

38. Has anybody here ever worked for a moving company?

39. Has anybody here ever owned their own small business?

Tax Preparation and Accounting Experience

40. Does anybody here have any experience preparing tax returns?

41. Has anybody here received any formal training in law, accounting, or bookkeeping?

42. Has anybody here ever worked in a professional capacity in the areas of law, accounting, or bookkeeping?

The government objects to questions 40 to 42. This is not a tax case. The government intends to admit into evidence a small number of tax-related documents at trial to show that the defendant's tax filings, or lack thereof, during the relevant time period are inconsistent with his representations (e.g., as to revenue) in the two

charged loan applications. As of today, the government expects that it will introduce only three tax-related documents at trial—(1) the defendant’s Form 1040 income tax return filed for tax year 2019, (2) an IRS certificate of no records showing that the defendant made no other tax filings in his name during the relevant time period, and (3) an IRS certificate of no records showing that the defendant made no tax filings in the name of his moving company (Vetted) during the relevant time period. There is no evidence that the defendant or any other relevant witness in this case ever “received any formal training in law, accounting, or bookkeeping,” or ever “worked in a professional capacity in the areas of law, accounting, or bookkeeping.” Asking these questions is not only irrelevant but is likely to confuse prospective jurors as to the nature of this case.

Government Assistance Programs

43. Has anyone here, a family member, or close friend ever applied for any type of federal loan program or for government assistance? Is there anything about your experience, or that person’s experience, that would influence your judgment in this case?

The government objects to this question as overly broad and not probative of potential juror bias as to the charges in this case. A more targeted question that is limited to the federal programs at issue here is more appropriate. Such targeted questions are proposed by the parties elsewhere, in the government’s proposed question 22, and defense proposed questions 35 and 36 (below).

35. Have you, a family member, or a close friend ever applied, successfully or unsuccessfully, for COVID-19 pandemic-related loans, either through the Paycheck Protection Program or

the Economic Injury Disaster Loan Program? Is there anything about your experience, or that person's experience, that would influence your judgment in this case?

The government objects to this question because it is duplicative of the government's proposed question 22. The follow-up question regarding their experience can be addressed through further questioning of any prospective juror who answers in the affirmative.

36. Does anyone here have any opinions about COVID-19 pandemic-related loans, either though the Paycheck Protection Program or the Economic Injury Disaster Loan Program?

The government objects to this question because it is duplicative of the government's proposed question 23. Moreover, the government's question is limited to affirmative responses where a prospective juror has "such strong feelings ... that it would be difficult for you to be fair and impartial in this case."

The defense proposal more broadly asks about having "any opinion[]."

37. Have you, any of your family members, or any of your close friends ever worked for a bank, lender, or financial institution that was involved in processing PPP loans or similar government loan programs? Is there anything about your experience, or that person's experience, that would influence your judgment in this case?

The government does not object to this question but suggests that the follow-up question regarding their experience can be addressed through further questioning of any prospective juror who answers in the affirmative.