IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 1:22-cr-20290-BB-1

UNITED STATES OF AMERICA,

Plaintiff, January 11, 2024
8:32 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant. Pages 1 THROUGH 191

TRANSCRIPT OF TRIAL DAY 17
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 12

Appearances:

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ALSO PRESENT: Special Agent Sarah Halleran

I N D E X

W I T N E S S

(Call to order of the Court, 8:32 a.m.)

THE COURT: Hi. Good morning to everyone.

Let me acknowledge the presence of the Defendant.

MS. WEINTRAUB: Good morning, Judge.

THE COURT: Good morning.

The Court had provided the attorneys with the copy of the proposed instructions on the law. Are there any issues that we need to address before we make the copies for the jurors?

MS. JIMENEZ: Yes. Your Honor, we had -- in our jury instructions that we had submitted, we had included an aider and abettor instruction, which I did not see.

THE COURT: I was looking to see whether there was the statutory provision within the Superseding Indictment.

MS. WEINTRAUB: I don't think he's charged --

THE COURT: Is there a statutory provision that would allow the Government to have the jury instructed on aiding and abetting?

MS. JIMENEZ: The wire fraud counts, Your Honor.

MS. MARTINEZ: It's on Page 7 of the Indictment, Your Honor.

THE COURT: Okay. Hold on one second. And to that extent --

MS. MARTINEZ: And also Page 8 of the Indictment.

THE COURT: So on Page 7...

MS. MARTINEZ: At the bottom you can see, Your Honor. And at the bottom of Page 8. It's always charged that way because you can commit an act not just on your own but by directing others.

THE COURT: All right.

MR. ETRA: Your Honor, I'm sorry. Did it have 18 USC 2 in there, because I don't have it. I'm sorry.

THE COURT: Yes, it does.

All right. Let's make sure that that's placed back in. Hold on.

(Pause in proceedings.)

THE COURT: All right. Any other issues -- and I think the Government is correct that if it has charged it then it's entitled to the instruction.

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: All right. Any other issues with regard to the jury instructions?

MR. ETRA: Well, Your Honor, we renew our objections. And particularly with respect to the aiding and abetting, we are very concerned because we've got the most recent Eleventh Circuit case -- sorry -- the AIT, Your Honor. I apologize. Aggravated identity theft.

We've got the most recent Eleventh Circuit case which says that being -- which quotes from Dubin being at the crux of the criminality requires more of a causal relationship and further states that -- referring to the decision in Linton --

THE COURT: Yes. And I believe that the Court did follow the law with regard to Page 7 and 8 of the proposed instructions.

MR. ETRA: Well, it says specifically the Government is not required -- that the means of identification was necessary or that the means did, in fact, cause.

So the last sentence is contrary to -- it has to be causal plus. And the last sentence says it doesn't even have to be causal. And frankly, the last two sentences are not from any of the opinions. So we have a problem with both -- the main issue, Your Honor -- and there's lots of ways of drafting this -- is the last two sentences just really negate and gut Dubin, and it feels like a facilitation defense. It should say: "Causal plus," and here it says: "Not causal, not required" --

MS. JIMENEZ: Where's the language in this decision that you're talking about?

MR. ETRA: I would add --

THE COURT: All right. Let's do this, Mr. Etra: If you can give me the case citation and then we'll all pull it up.

MR. ETRA: Sure, Your Honor. In the Carter case, 2024 WL --

THE COURT: All right. Hold on. Let's go a little slower, please.

MR. ETRA: I apologize. In the Carter case, 2024 WL 20847, and at -- well, you know, Star 8, the Westlaw page Star 8.

MS. MARTINEZ: Your Honor, may we be provided with a copy?

MS. WEINTRAUB: I'm giving it to them.

MR. ETRA: And I'll direct the Court further.

THE COURT: Let me just pull it up in Westlaw.

(Pause in proceedings.)

MR. ETRA: Your Honor?

THE COURT: Hold on. Let me just look at the case and then look at the --

MR. ETRA: Sorry.

(Pause in proceedings.)

MS. JIMENEZ: Where's this language about causal?

MS. MARTINEZ: Do you have it perhaps in an email that you could send to us?

THE COURT: All right. So as I understand the argument looking at Carter, obviously the Court is well aware of the Dubin case, that with regard to this instruction, the inconsistency is the last sentence: "The Government is not required to prove that the use of the means of identification was necessary to the loan application or that the use of the means of identification did, in fact, cause the disbursement of loan proceeds."

MR. ETRA: Right, Your Honor. And it should say instead something consistent about causal plus. I mean --

THE COURT: Well, I think we -- causal plus meaning?

MR. ETRA: Well, meaning -- well, I don't want to paraphrase, but being at the crux requires more than a causal relationship. So it has --

THE COURT: The crux of the criminality requires more than a causal relationship. And I believe that is what we said, I think. "Relationship to the predicate offense when the wire possession or use is at the crux of what makes the conduct criminal. This requires there be a genuine nexus." I think that's sufficient under the case law.

MR. ETRA: I mean, it doesn't say -- surely taking out the last sentence, or the last two-plus sentences is helpful, but nowhere does it say it has to be a cause and it has to be more than a cause. The wording here -- you know, the sentence here of: "This requires a genuine nexus between the transfer, possession, and use and the predicate offenses," I mean that's nice legalese, "genuine nexus," but I think jurors would understand the concept of causation, and it's in the case. And we ought to facilitate that by explaining it to them that the requirement requires more than causation.

MS. JIMENEZ: What does that mean to them? Nothing.

MR. ETRA: Well, "nexus" means less.

MS. JIMENEZ: It doesn't require that -- to prove the use of the means of identification was necessary to the loan application. It doesn't require that. None of those cases that was a finding, a requirement.

MR. ETRA: Your Honor, there's also language in the Linton discussion.

MS. JIMENEZ: It doesn't say that it's necessary to accomplish the fraud, which I think is the thrust of that last sentence. None of the cases require that. Dubin certainly doesn't require that.

MR. ETRA: In the Linton discussion --

THE COURT: All right. Hold on. Hold on. Let me just -- it appears that the Court's instruction is consistent with the case. So Mr. Etra, what portion of the non-published Carter case or the Supreme Court Dubin case are you claiming was not included in the Court's instruction?

MR. ETRA: Sorry. The last sentence is inconsistent with the Carter case.

THE COURT: Yes. The last sentence is inconsistent. I agree with you. So I think the last sentence should be deleted.

MR. ETRA: Okay. I wasn't sure --

THE COURT: So in terms of the key mover in the criminality, and the -- is at the crux of what makes the conduct criminal, it appears to be consistent.

MR. ETRA: Well, I would add when it says: "Key mover in the criminality" in the words in the jury instruction, it then defines it meaning that it must be used in a manner that is fraudulent or deceptive. I think that waters down key mover. If we just had a period after "key mover in the criminality," I think that would be more precise. Because I don't see "key mover in the criminality" being narrowed that way in the cases.

THE COURT: Meaning that it must be in a manner that is fraudulent or deceptive.

MR. ETRA: Well, even under pre-Dubin, if you're using a stolen identity, you're using it in a manner that's fraudulent or deceptive --

THE COURT: I don't believe that's -- I mean, the Court has defined it. I don't believe that there's any additional -- the instruction is what the instruction is in terms of defining the key mover in the criminality, meaning that it much used in a manner that is fraudulent or deceptive.

MR. ETRA: Well, it's any -- even under the cases that fall outside of Dubin, the idea is used in a manner that is fraud or deceptive.

THE COURT: For purposes of the cases that you're relying upon, it appears that the Court has adequately defined each of the terms.

MS. JIMENEZ: And Your Honor, I would say -- I'm trying to find it now. But I don't believe the case law says: "The key mover" but "a key mover in the criminality."

And the other with respect to the last --

THE COURT: Hold on. Hold on. Which case are you referring to?

MS. JIMENEZ: Well, Dubin and Gladden. I don't believe -- and I don't have them in front of me. I didn't realize we were going to be having this issue this morning, but the language is "a key mover."

THE COURT: Yeah. It's a -- I'm looking at the case. It's "a key mover."

All right. Hold on. Hold on. "Must be a key mover."

MR. ETRA: Your Honor --

THE COURT: All right. So I just want to make sure for purposes of the record the Court is taking out the last sentence and is replacing "the" with "a key mover in the criminality."

What other issues?

MS. JIMENEZ: I would say the last sentence, Your Honor -- I understand the phrasing of "causing the disbursement of loan proceeds," but I think the thrust of it is accurate and I think it should be restated. That is the identity theft doesn't have to be the thing that accomplishes the predicate offense. That's not what's required in any of these cases.

MR. ETRA: Except for the word "causation." So it's another way of saying no causation, and the cases say there has to be more than a causal relationship. So that language that's suggested by the prosecutor that's inconsistent with --

MS. JIMENEZ: The language was from the Court's order. But we can -- the Government is not required to prove that the use of means of identification was necessary to accomplishing the predicate offense because it doesn't, and -- in none of the cases. It has to be used, and it has to be used in a way that's deceptive, and it has to be used in the scheme and -- in the predicate case and not be an ancillary feature. That's what the cases say.

THE COURT: Well, I understand that. And the Court, on Page 7, is saying: "The Government does not have to prove that the Defendant stole the means of identification, only that there was no legal authority for the Defendant to transfer, possess, or use them."

So I believe that that last sentence, when the Court then looks to what constitutes the "in relation to," "at the crux of" and "a key mover in the criminality" is defining it. This is somewhat inconsistent with the instruction to the jury in terms of the definitions. So I don't believe that this is appropriate, the last sentence.

MS. JIMENEZ: Well, could there be a replacement so that the jury is not left with I think the wrong impression about what the case law is requiring?

THE COURT: What case are you citing to that would require that the Court give additional instruction -- I mean, I looked at Dubin. I'm looking at Carter. I'm looking at the cases that have been cited, Gladden. What case are you relying upon that would require that the Court give any additional instruction with regard to the aggravated identity theft?

MS. JIMENEZ: I don't have a case, Your Honor.

THE COURT: Well, then let's move to the next instruction that's at issue.

Any further issues? Because it's now quarter to nine. I did give this to you last night. I did not receive any additional instructions last night, and I did say that we'd take the time this morning to address any issues with regard to the Court's instructions. So absent a case, we're going to move forward --

MR. ETRA: Your Honor, Similar Act Evidence. The inference about the Defendant had a motive or the opportunity --

THE COURT: What page?

MR. ETRA: I'm sorry. Page 9, and it starts the fourth line from the bottom.

THE COURT: This is the standard instruction.

MR. ETRA: Well, I understand, but I don't think there's been a predicate for motive or opportunity. The others, I understand the way the 404(b) came in that it was intent, basically, state of mind.

THE COURT: But this is the Similar Acts Evidence, Eleventh Circuit instruction, so I'm not going to modify it merely because it may be superfluous. That is the instruction. It's certainly not confusing to the jury at all.

Any other?

MS. WEINTRAUB: Yes, Your Honor.

Judge, we would specifically request with the theory of defense instructions that we submit it to the Court. The Court, I understand, gave the first theory of defense instruction that we requested. However, I believe that we are entitled to have a theory of defense on each of the substantive counts because obviously each count has a different defense, and therefore we would respectfully request the second theory of defense as well that we submitted to the Court. And I believe that we submitted cases in the comment and the blurb with it.

(Pause in proceedings.)

MS. WEINTRAUB: It's on Page 4 of our submitted proposed instructions, Your Honor.

MS. MARTINEZ: Counsel, do you have an extra copy -- we're having trouble locating ours -- of your instruction?

MS. JIMENEZ: Is it in your additional proposed instructions?

MR. ETRA: Yes.

MS. JIMENEZ: Which one is it, please?

MR. ETRA: Number 2.

MS. JIMENEZ: Why do they get to make this argument?

THE COURT: I agree. This Theory of Defense Number 2 is merely an attempt to negate the elements of the aggravated identity theft and is not a defense. The two defenses are the lack of knowledge and good faith defense, which is what the Court gave. I don't believe it's a correct statement of the law. So it's preserved, but I don't believe -- I've given the two that the Court believes are appropriate.

Any further objections so that we can make the changes and make the copies for the jurors?

MS. WEINTRAUB: No. No. As well as the Court has denied by way of substituting the Court's instructions with our instructions. If the Court's not going to go through them, I just want the record to be clear that we have submitted proposed instructions that are different from the Court's on -- and if the Court is denying our request, I just want it to be clear that the Court is denying our request for the proposed instructions that we submitted.

THE COURT: That's correct, and the objections are preserved.

Let me ask since I anticipate that following the conclusion of Mr. Laslow's [sic] testimony, we will then proceed -- and we can take it sidebar if there are additional motions to be addressed. But at that point in time, we would then proceed with the instructions on the law and the closing arguments. So I want to make sure, just in preparation, that the Government has a clean laptop with all of the uploaded exhibits.

MS. WEINTRAUB: And we haven't seen it. I'd like to see it.

MS. JIMENEZ: Your Honor, I know that we have worked diligently on this. I was told that sometime at four in the morning there were additional items submitted from the Defense to our paralegal, and those have not been incorporated. And she worked, I know, late into the night because she sent me a message late into the night. So I can't make that representation to the Court because we don't know what they submitted to us at four in the morning.

THE COURT: When you say: "Submitted," all of the exhibits have been admitted into evidence.

MS. JIMENEZ: They have.

THE COURT: So the submission should be just providing the exhibits that have been admitted, correct?

MS. WEINTRAUB: That's correct.

THE COURT: So these are not additional submissions.

MS. WEINTRAUB: Correct.

THE COURT: The evidence that has been submitted on the part of the Government and the Defendant has concluded, unless --

MS. JIMENEZ: I don't mean additional exhibits that haven't been put in evidence, but that --

MS. MARTINEZ: She just doesn't have an updated exhibit list of the Defense. So she would now have to be updating the exhibit list for the Defense.

Is there anything that they can provide you that would help you?

Here, you can address...

MS. JIMENEZ: So they made changes --

THE COURT: Yeah. Let me ask Mr. Cavallo. Since you obviously have a command of the exhibits, could we work with the Government so that we can get them uploaded. And that tells me that we don't have an exhibit list that has been completed. Do we have one exhibit list for the jurors?

MS. JIMENEZ: We had one as of last night, I believe.

THE COURT: All right. So Mr. Cavallo, if you could review that, make sure those are the exhibits. Because once that jury goes back to deliberate, I'm going to tell them not to begin until the exhibits are provided to them. And I'm going to ask in open court, number one, if the laptop contains all the exhibits admitted into evidence and then, secondly, if the corresponding exhibit list contains all of those exhibits.

So those are two of the questions I will ask. And the third item is I need a clean Superseding Indictment that will go back to the jury. So do we have a clean one without the date and the signature of the assistant US attorney?

MS. JIMENEZ: We'll print one out.

MS. WEINTRAUB: And Judge, I would like to see the laptop before it goes back to --

THE COURT: Yes. Of course. Of course. I'm going to ask that it be inspected and confirmed.

MS. WEINTRAUB: Thank you, Judge.

A housekeeping matter, if I might -- not really. It's a Rule 29. And I understand that the Court is anxious to get this to the jury; however, we would like the opportunity to make argument to the Court. There are substantial arguments to make on the AIT that have recently come up since we submitted the brief that we submitted a written memorandum of law, which I thought was going to be an aid for an oral argument but things didn't work out that way. And I hope that we do have the opportunity to at least argue to the Court based on the recent testimony and based on the law that we can make a substantial argument to the Court.

THE COURT: All right. And I did say that I would reserve ruling. So certainly the Court can address that at the appropriate time. But I'd like to get this back to the -- or to the jury.

So let me discuss the proposed schedule and make sure it comports with each of you. I anticipate that the courtroom deputy is now making copies of the instructions. I anticipate that we will continue with Mr. Lazlo's testimony and we'll be done at approximately 9:30. And the Court will then -- will take motions sidebar briefly because the Court has already advised that I will reserve ruling. So for purposes of preserving the motions, we can certainly do that.

Then the Court will move forward with the instructions on the law from nine to ten o'clock. Since the Government has requested an hour and five minutes --

MS. MARTINEZ: Your Honor, did you say nine to ten o'clock? I think you said Mr. Zaslow --

THE COURT: I'm sorry. 9:30. My apologies. 9:30 to ten o'clock, the instructions on the law.

At that point in time, I think it might -- perhaps we'll just -- I mean, we're only an hour into it. I think what we can do is just move into the Government's opening close, which is from approximately 10 to 11:05. Then we'll take a 10-minute recess. Then we'll proceed to the Defendant's hour and a half, and then we'll take a break following that for 10 minutes.

And then we'll proceed to the Government's close close. And then at that point in time the jury will deliberate. Lunch will be brought in for the jurors. The courtroom deputy will be obtaining lunch orders so that the lunch will be in the jury room. And then following the jury going in to deliberate, I would hope that we would have a review of the exhibits, a finalized exhibit list.

And Ms. Jimenez, if you will provide the courtroom deputy with the clean Superseding Indictment shown to the Defendant first.

Are there any other issues that we need to address?

MS. WEINTRAUB: Judge, can we get a copy emailed to us of the Court's instructions?

THE COURT: I'm going to give you a -- I can email or we can just provide a paper copy. All we're doing is adding the Aiding and Abetting, taking out that one sentence, and replacing "the" with "a."

MS. JIMENEZ: Your Honor -- does Your Honor have an easel in the courtroom?

THE COURT: Do we have an easel? Can we ask Liz if we have --

MS. WEINTRAUB: There was one.

THE COURT: What about this item over here?

MS. WEINTRAUB: The standing desk?

THE COURT: Can we use that?

MS. WEINTRAUB: No. But I was going to ask you if I could use that during closing.

THE COURT: Yes. Of course. I just -- I don't know if we have an easel.

MS. JIMENEZ: I thought I had seen one earlier in the trial.

MS. WEINTRAUB: There was. It was over there.

THE COURT: Can we see -- is there an easel? Yeah. Can we see if it's over here?

MS. MARTINEZ: Your Honor, there's one more issue that I want to clarify with respect to the exhibits.

THE COURT: Okay.

MS. MARTINEZ: During the trial, there was one credit report that the Defense had an issue with, and we had agreed to discuss that. I've never heard exactly what it is that they want us to redact from it. It's 300 pages, so I wanted to clarify that because there's one more redaction that Ms. Font can make. We just need to know exactly what pages of that 300-page report they want to redact.

THE COURT: Do you have Mr. Cavallo?

Sir, do you know what portions there were issues with with regard to personal information?

MR. CAVALLO: I believe I know. I'll have to speak with Mr. Etra to see if we're still doing this.

THE COURT: Can we do that now so that that exhibit can be redacted and then uploaded.

MS. MARTINEZ: And just to advise the parties, with respect -- there was one other redaction that Ms. Font did make, which is that the Defense had requested that the SBA notes had a reference to the fact that the Defendant had been indicted. That was one paragraph, which was one of the most recent notes that they had. Ms. Font went to each SBA note -- exhibit and went to the page that referred to the Indictment, and she did redact that.

MR. ETRA: Any reference to fraud as well.

MS. MARTINEZ: Well, there's -- it says: "With respect to the Indictment." Throughout the notes the SBA is concerned about fraud and there are mentions of it. That was not redacted. That's part of the reason they sometimes deny some of the applications, and there's no way we could do that. That's part of the case.

THE COURT: All right. If we could clarify that.

MS. JIMENEZ: I just need to run to the restroom.

THE COURT: Did we address it, Mr. Cavallo?

MR. CAVALLO: Yes, Your Honor. To the extent we're going to need any redactions to the long report, Ms. Font and I are going to work it out soon before everything is submitted, Your Honor.

THE COURT: All right. Liz advised that we don't have an easel. I'm not certain whose easel that was. Is it possible that it's in the conference room? It's not in the back?

MS. MARTINEZ: Your Honor, Ms. Jimenez went to the restroom, and I'd like to do the same thing before we start.

THE COURT: Yes. Of course. Let's go ahead and take -- we'll take -- let's take a five-minute recess. And if we can get Mr. Lazlo in here and then five minutes -- the jury is here, correct? We have all members?

And in terms of the easel, Ms. Martinez -- perhaps, Liz, could you see if maybe Judge Martinez has one? I know we had one at one point.

MS. WEINTRAUB: It's been back at the interpreters' desk almost the whole trial till yesterday, I noticed.

THE COURT: I remember seeing an easel. I just don't know whose easel it was.

MS. WEINTRAUB: Is it in the jury room maybe?

THE COURT: The court security officer has already checked. Do you want to see if maybe it's in one of the conference rooms perhaps? And if not, maybe just see if there's one in Judge Martinez's courtroom.

Let's go ahead and take a five-minute recess.

MS. MARTINEZ: Well, I'd like to go to the restroom.

THE COURT: Yes. That's why we're going to take a five-minute recess.

(Recess from 9:02 a.m. to 9:10 a.m.)

THE COURT: All right.

Before we proceed, just have a seat for just a moment. I just want to confirm what we had discussed before the start of the trial. And that is to the extent that the jury does make a finding of guilt, I want to address the issue with regard to the forfeiture allegations. Is the Government seeking forfeiture in this case?

MS. JIMENEZ: Your Honor, we had talked about that a money forfeiture is not an issue that the jury has to decide, and that is the only type of forfeiture that we're seeking in this case.

THE COURT: And the parties are in agreement that the jury would not need to stay for any trial related to forfeiture, correct?

MR. ETRA: Consistent with the discussions we had at the beginning of trial, which we don't have to repeat --

THE COURT: But I did just want to confirm before the jury is discharged.

MS. WEINTRAUB: And Judge, what is the Court's procedure with regard to -- you know, I don't want this jury to think that they have to reach a verdict by five o'clock, and I'm nervous about that.

THE COURT: Not at all. I think we will advise them they have the remainder of the day, and at five p.m. that we'd adjourn and they'd come back tomorrow morning.

MS. WEINTRAUB: Okay. That would be great.

THE COURT: Yes. They can take as long as they need.

MS. WEINTRAUB: Thank you.

THE COURT: All right. Any other issues?

Do we have Mr. Laslow?

MS. JIMENEZ: Yes, we do.

THE COURT: If we could bring the gentleman in, so we can have him seated on the witness stand, so we can get started.

MS. WEINTRAUB: Judge, I think it's Zaslow.

MS. JIMENEZ: With a Z.

THE COURT: I keep saying Lazlo. It's Zaslow. You're right. And I have "Zaslow" here.

(Pause in proceedings.)

THE COURT: Hi. Good morning, Mr. Zaslow.

THE WITNESS: Good morning.

THE COURT: If you'll come forward, sir.

(Pause in proceedings.)

THE COURT: Okay. If everyone will stand for the jury, please.

COURT SECURITY OFFICER: All rise for the jury.

(Before the Jury, 9:14 a.m.)

THE COURT: All right. Good morning, Ladies and Gentlemen.

Please be seated, everyone.

It's good to see each of you.

Thank you for being prompt. I apologize for the delay, but we are ready to continue with the testimony of Mr. Zaslow. And we are on cross-examination.

MR. ETRA: Thank you, Your Honor.

CROSS-EXAMINATION [CONTINUED]

BY MR. ETRA:

Q. Good morning, Mr. Zaslow.

A. Good morning.

Q. When we left off, we had discussed the email that went to Mr. Sheppard and all the other clients about the daunting task and potentially your firm helping with the programs, correct?

A. Correct.

Q. And then we discussed that the day after or so Mr. Sheppard wrote an email that was shown to you originally on direct, where he mentions applying for Government programs. You recall that?

A. Yes.

Q. Okay. Great. I want to pick up from there.

MR. ETRA: Your Honor, could we use the -- it's in evidence. Could we use the ELMO?

THE COURT: Certainly.

MR. ETRA: Putting Exhibit 80-2 on the ELMO. I apologize. I had to mark stuff up. And it's the end of trial, so you're not getting the best technology today.

Oh. The power button?

Thank you.

BY MR. ETRA:

Q. Okay. All right. So again, I apologize for the markings. Here you see there's an email -- I think this was shown to you

on direct, was it not?
A. Correct.
Q. Okay. So it's an email from Mr. Sheppard to Mr. Cupersmith on April 21, 2020. Do you see that?
A. Yes.
Q. And among other things, he talks about PPP loans -- or potentially, right?
A. Yes.
Q. Okay. And Mr. Cupersmith forwards it to -- it's hard to read with my handwriting -- Mr. Zaslow. That's you, sir, correct?
A. Correct.
Q. Okay. So then following up on those communications, you now know that as of April 21 Mr. Sheppard is not just talking about government programs, he was talking about the PPP loans, right?
A. Correct.
Q. Okay. And then I could put on Q-34, and this is the communication that talks about a conference call, correct?
A. Yes.
Q. And is it your testimony that the call happened on April 22nd or do you not know?
A. It was either April 22nd or the 23rd.
Q. Okay. And by the way, were you physically -- it was with Mr. Sheppard, yourself, and Mr. Cupersmith, correct?

A. Correct.
Q. And were you physically in the office, you and Mr. Cupersmith together, in April at that time?
A. I don't recall.
Q. In COVID were you working in the office?
A. It was a hybrid schedule.
Q. Okay. And so your testimony has been this call that happened a day or two after the email on -- that talked about PPP programs, correct?
A. Correct.
Q. Okay. And your testimony is that you have a clear recollection almost four years ago about that phone call, correct?
A. That's correct.
Q. But you have no notes of that call?
A. That's correct.
Q. Okay. And you clearly recall that there was no discussion of anything -- of the -- of the references -- no discussion of government programs or PPP loans that were referenced in the preceding communications, correct?
A. Yes. That call was about not releasing the returns because we had not gotten paid.
Q. Right. And so you didn't say anything to him about: "Hey, you're talking about these government programs and PPP programs, and we should talk about that." That didn't come up?

A. That's correct.
Q. Okay. And so to be clear, you did not give any advice to Mr. Sheppard about the PPP program, correct?
A. That's correct.
Q. So you didn't tell him, for example, that his companies are ineligible, correct?
A. I did not say that.
Q. You never told him that you have to be W-2 employees, correct?
A. That's correct.
Q. Or that a real estate developer is ineligible for government -- for these kind of government programs, correct?
A. Correct.
Q. Never said it, right?
A. Yes.
Q. So your firm tells Mr. Sheppard that you can help with government programs, correct?
A. That was an email -- a mass email to all of our email clients.
Q. And Mr. Sheppard indicates that he's looking at those programs, or applying, or applied, something along those lines, right?
A. Yes.
Q. And and you have a conference call right at that time frame?

A. That's correct.

Q. And whatever happened in that call, definitely didn't give him any advice about --

MS. JIMENEZ: Your Honor, asked and answered.

THE COURT: Sustained.

MR. ETRA: Okay. I want to move forward to 2021.

Your Honor I'm putting on the ELMO documents that are part of the Government Exhibit 28. The first one is -- I have the NC number. NC00198.

MS. JIMENEZ: Your Honor, outside the scope of direct. I object. I was very limited to what I could ask about.

MR. ETRA: It's about discussion of the SBA loans and advice or not advice.

MS. JIMENEZ: Your Honor, I was very limited --

THE COURT: With regard to the use of the exhibit, the objection is sustained. Why don't you ask the question, Mr. Etra, and see if there's a basis.

MR. ETRA: Sorry.

BY MR. ETRA:

Q. Do you recall learning -- sorry. So in late 2021 is when you worked on the 2020 tax returns, correct?

MS. JIMENEZ: Objection. Outside the scope of direct.

MR. ETRA: Well, I'm trying to build a predicate for the question -- for the issue.

THE COURT: Sustained.

BY MR. ETRA:

Q. Did the subject of the SBA loans come up in 2021 in communications between you and the HM companies?

A. I asked about the loan that was on the books when I was doing the tax return.

Q. Right. Because you saw at least one reference to an SBA loan, correct?

A. That was from information provided by Jeanette.

Q. Right. Okay. And at that time, did you tell the companies: "Hey, there's an issue -- you may have an issue here because you probably don't have enough W-2 employees for this loan"?

A. I didn't know what that was for, and I asked Jeanette what that was.

Q. And you never -- so the answer to my question is you never gave that kind of advice to the HM companies when you saw the SBA loan reference on the books and records, correct?

A. That's correct.

Q. Okay. And you didn't -- consistent with 2020, you still never gave any advice one way or the other about the PPP program, correct?

A. That's correct.

Q. And you never got the documents that you requested, correct?

A. That's correct.

Q. But you still filed the tax returns anyway?
A. Based upon the information provided.
Q. Right. And you never called up Mr. Sheppard and said: "Hey, we're missing documents," correct?
A. That's correct.
Q. I want to turn to the subject of 1099 versus W-2. You testified about that.
A. Okay.
Q. Okay. I think, from what I understand your direct testimony was, that from 2017 until the end of the relationship between the two firms, you personally didn't provide any advice regarding how to categorize any workers as W-2 or 1099. Was that your testimony?
A. That's correct.
Q. Okay. I want to understand that a little better. Does that mean you may have done that before 2017?
A. We never advised him on distinguishment between W-2s and 1099s.
Q. Okay. You never did?
A. Correct.
Q. Okay. Is it your testimony that no one at the -- is it your testimony that no one at the Cupersmith firm ever gave advice about how to classify workers to people at the HM companies or before them the WSG companies?
A. I can't speak about what other people in my firm did. I

just know personally I did not.

Q. Right. You don't know what advice was given from the Cupersmith firm to HM companies, or before that WSG, except before 2017, correct?

A. I know that I was not aware of any advice being provided by other employees or staff --

Q. But you don't know what was given, correct?

A. I'm not aware of any advice or discussions between any other staff members.

Q. Did you investigate this matter and talk to all the people that worked in your firm to determine whether they gave him any advice?

MS. JIMENEZ: Objection, Your Honor.

THE COURT: And the basis?

MS. JIMENEZ: It's irrelevant.

THE COURT: Overruled.

You may answer the question, sir.

THE WITNESS: Sorry. Can you repeat the question?

BY MR. ETRA:

Q. Did you investigate all the people that have worked from the Cupersmith firm with the HM companies, or before that WSG, to determine whether -- whether or not they had ever given that advice?

A. No.

Q. Okay. And on a year-to-year basis, you were preparing tax

returns for the HM companies, right?
A. Correct.
Q. Even though Mr. Cupersmith signs as the preparer, correct?
A. That's correct.
Q. Okay. And one of the line items in there is wages, correct?
A. Correct.
Q. And wages, you understand, means W-2 workers, right?
A. That's correct.
Q. It's part of your responsibility as the preparer to make sure that the correct -- that workers are classified correctly, correct?
A. I wouldn't put it that way, no.
Q. Do you bear any responsibility in preparing the returns to do any due diligence to make sure?
A. We ask the question if they filed the 941s, and can we see copies of those.
Q. That's all you do?
A. Correct.
Q. So no effort is made to make sure the companies are classifying these employees or workers correct, right?
A. That's not our responsibility.
Q. Not your responsibility. Did you ever tell that to Mr. Sheppard?
A. No. That's an employer's responsibility.

Q. Did you ever tell that to Mr. Sheppard?
A. No.
Q. Did you ever speak to Mr. Graff about his classification as a 1099ed worker when the other ones were W-2?
MS. JIMENEZ: Objection.
THE COURT: Sustained.
BY MR. ETRA:
Q. Were you comfortable when you filed tax returns, and you had to fit in the wages, that it didn't include W-2 for Mr. Graff -- were comfortable that that was done correctly?
MS. JIMENEZ: Objection.
THE COURT: Sustained.
MR. ETRA: May I have a moment, Your Honor?
THE COURT: All right.
MR. ETRA: No further questions.
THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. JIMENEZ:
Q. During the pandemic, did you have clients who obtained assistance from your accounting firm in relation to government loans?
A. Yes.
Q. Did you have clients who did not seek your advice --
MR. ETRA: Beyond the scope, Your Honor.

BY MS. JIMENEZ:
Q. -- or assistance in relation to government loans?
MR. ETRA: Beyond the scope.
THE COURT: Sustained.
MS. JIMENEZ: It was --
BY MS. JIMENEZ:
Q. You were asked about documents that aren't provided to your firm in relation to the preparation of tax returns. What is the -- what is your responsibility in relation to the preparation of the -- of the Defendant's tax returns?
A. Supposed to rely on the information provided by the client.
Q. Is there something that your firm would include in the tax returns that you prepared for this particular client and his companies in relation to the information or the lack of information that they provided?
A. Yes.
Q. What was that?
A. It was a Tax Preparer Declaration Form.
Q. What is that?
A. It basically said that, you know -- can't remember exactly the terms, but it was something like we relied on the information from the client. We don't believe we had the full information reported in this tax return. If we receive any additional information we'll update amended returns.
Q. In 2018, 2019, 2020, 2021, would you request payroll

records from them?

A. Yes.

Q. Were you provided payroll records, that is 941s?

A. No.

Q. Who was the -- in the last five years up until 2022, when the relationship was severed with the Defendant, who was the primary accountant at your firm who prepared the tax returns for the Defendant?

A. I was.

Q. And so the question about other people providing advice -- you were the principal person?

A. Correct.

Q. Did you provide advice -- was advice sought from you and did you provide any advice regarding the W-2s?

MR. ETRA: Beyond the scope, Your Honor.

THE COURT: Sustained.

MS. JIMENEZ: The question was asked about his advice.

THE COURT: The objection is sustained.

MS. JIMENEZ: One moment, Your Honor.

(Pause in proceedings.)

MS. JIMENEZ: Could we go to the ELMO for a moment.

BY MS. JIMENEZ:

Q. The exhibit you were shown, the email from April 21st, 2020 --

MS. JIMENEZ: First I want to clarify it is actually

Government's Exhibit 81. I think it was noted as 80-2.

MR. ETRA: Whatever it was.

MS. JIMENEZ: Right. Just for the record.

BY MS. JIMENEZ:

Q. And in that message -- in that email communication to Neal that was forwarded to you, did you notice that the Defendant requested a letter from the accountant that he was a general partner or manager and that he would do at least a hundred thousand --

MR. ETRA: Beyond the scope, Your Honor.

MS. JIMENEZ: No --

THE COURT: Overruled.

BY MS. JIMENEZ:

Q. Did you note that? Did you see that before?

A. Yes.

Q. Was the Defendant, for any of his companies, any of his partnerships -- was he a general partner?

A. No.

Q. In giving advice to clients regarding PPP, was it the case that earnings for a partner, or wages for an employee that you can claim, are capped at a hundred thousand?

MR. ETRA: Leading and beyond the scope.

THE COURT: Sustained on the second ground.

MS. JIMENEZ: All right. I have nothing further, Your Honor.

THE COURT: All right. Is Mr. Zaslow excused?

MR. ETRA: Yes, Your Honor.

MS. MARTINEZ: Yes, Your Honor.

THE COURT: All right. Thank you, sir. You are excused.

(Witness excused.)

THE COURT: Any further rebuttal evidence from the Government?

MS. JIMENEZ: No, Your Honor.

THE COURT: All right.

THE WITNESS: Thank you, Your Honor.

THE COURT: Ladies and Gentlemen, both the Government and the Defendant have rested their respective cases. At this point in time -- do we need to take any issues sidebar?

MS. WEINTRAUB: Yes, Your Honor, if we might.

THE COURT: All right.

Instead of taking it at sidebar, let me just advise the jurors for just a moment.

Ladies and Gentlemen, at this point in time we are going to address some issues with the attorneys, and then we will proceed with instructions on the law and the attorneys will have the opportunity to make their closing arguments to you. So at this point in time we will take an issue sidebar and then we'll continue with the trial.

All right. If you'll come forward.

(At sidebar on the record.)

THE COURT: All right. I need each of the attorneys to please hold the microphones. If you could just -- not those.

Okay.

MS. WEINTRAUB: May I?

THE COURT: Yes.

MS. WEINTRAUB: Judge, at this time we would move for a Rule 29. We would renew all motions, objections previously made to the Court in this case, specifically with regard to the 404(b), the 403 on all the uncharged additional 404 that came in.

With respect to the AIT charge, the aggravated identity theft, we would like the opportunity to further argue that to the Court. And we would also -- and we would also renew our objection and move to strike the rebuttal evidence because it was not true rebuttal. They could have done that in their case in chief. He didn't rebut anything. It was a total strategic move. They had him come down two days before and it was all planned.

THE COURT: All right.

MS. WEINTRAUB: And the Sixth Amendment on the hearsay and the right to confront with all the shutdowns on the cross-examination that were specifically addressed at the appropriate time.

THE COURT: All right. So --

MS. WEINTRAUB: With regard to impeachment.

THE COURT: So three separate motions before the Court.

MS. WEINTRAUB: Yes.

THE COURT: Response?

MS. JIMENEZ: Well, I want to respond specifically with respect to -- I mean, I think I responded to the Rule 29 in the filings that we made. But specifically on the issue of rebuttal, this witness specifically rebutted the Defendant's lies on the stand that this firm gave him advice regarding W-2 employees versus 1099 contractors back in December.

And then in -- when he came back in January, he lied to this jury telling them that this firm gave him advice around April 22nd, April 23rd, when he was in the process of applying for PPP loans, gave him specific advice as to which companies should apply, as to the time frame when those companies should apply, and specific information regarding that, and this witness rebutted that. And that was the main thrust of the testimony.

There was also an exhibit introduced by the Defense in their case in chief with respect to W-2s for three of their employees, and they were suggesting with that exhibit that these were the purported 941s that were missing, and there was an effort -- though I don't know that I was able to fully explain that through the testimony -- but that was also part of what -- why he was brought for rebuttal purposes, to explain to the jury that those W-2s are not 941s.

THE COURT: All right. Is there anything further?

You need a mic, Mr. Etra.

Ms. Weintraub?

MS. WEINTRAUB: No, Your Honor. Thank you.

THE COURT: All right. Then as the Court did advise, I will reserve with regard to the motions so that we can move forward with the closing arguments and the instructions on the law.

MS. JIMENEZ: We can proceed. I just need one minute. If I can just step outside. I need to put eyedrops in my eyes.

THE COURT: Not a problem. Here's what we'll do -- because we also have the easel as well that we were able to find in Judge Martinez's. So how about we take a short five-minute stretch break, and this way we can get ready.

(End of discussion at sidebar.)

THE COURT: All right. Ladies and Gentlemen, thank you for your patience. At this point in time, we are going to take a short stretch break. I appreciate your indulgence. And if you'll just step into the jury room and we'll take a five-minute stretch break.

COURT SECURITY OFFICER: All rise for the jury.

(Jury not present, 9:34 a.m.)

THE COURT: All right. We're on a five-minute recess.

(Recess from 9:34 a.m. to 9:53 a.m.)

THE COURT: We have reprinted the -- go ahead and have a seat for just a moment. We have reprinted -- where is Mr. Etra -- Ms. Weintraub is here.

We have reprinted the jury instructions. The Aiding and Abetting came between two of the Defendant's defenses. So we reprinted and clarified that. So copies will be provided.

(Pause in proceedings.)

THE COURT: All right. Are both sides ready to proceed?

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: All right. Then let's go ahead and bring in the jury.

COURT SECURITY OFFICER: All rise for the jury, please.

(Before the Jury, 9:55 a.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated.

I appreciate your patience.

Go ahead and have a seat, everyone.

As the Court did advise you, both the Government and the Defendant have rested their case. At this point we will proceed with instructions on the law, and then the attorneys will have an opportunity to make their final argument.

As some of us are auditory learners, but some of us are visual learners, copies of the Court's instructions to you have been provided. They are being disseminated at this time. You are free to read along with the Court. You don't have to. However, I would request that following the Court's instructions to you, that you place the jury instructions down and give the attorneys your undivided attention, unless they specifically ask that you refer to certain provisions of the Court's jury instructions.

Now that each of you have a copy, Members of the Jury:

It is my duty to instruct you on the rules of law that you must use in deciding this case. After I have completed these instructions, you will go to the jury room and begin your discussions, what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find the Defendant guilty beyond a reasonable doubt.

Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it, even if you do not agree with the law. And you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The Indictment or formal charge against the Defendant is not evidence of guilt. The law presumes every defendant is innocent. The Defendant does not have to prove his innocence or produce any evidence at all. A defendant does not have to testify. And if the Defendant chose not to testify, you cannot consider that in any way while making your decision. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

The Government's burden of proof is heavy, but it does not have to prove a defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any reasonable doubt concerning the Defendant's guilt.

A reasonable doubt is a real doubt, based on your reason and common sense after you have carefully and impartially considered all the evidence in the case.

Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As I said before, you must consider only evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted, but anything the lawyers say is not evidence and is not binding on you.

You should not assume from anything I have said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts. Your own recollection and interpretation of the evidence is what matters.

In considering the evidence, you may use reasoning and common sense to make deductions and reach conclusions. You should not be concerned about whether the evidence is direct or circumstantial.

Direct evidence is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

Circumstantial evidence is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There is no legal difference in the weight you may give to either direct or circumstantial evidence.

When I say you must consider all of the evidence, I do not mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say and how important that testimony was. In making that decision, you may believe or disbelieve any witness in whole or in part.

The number of witnesses testifying concerning a particular point does not necessarily matter. To decide whether you believe any witness, I suggest you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to accurately observe the things he or she testified about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from other testimony or other evidence?

You should ask yourself whether there was evidence that a witness testified falsely about an important fact and ask whether there was evidence that at some other time a witness said or did something, or did not say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake does not mean a witness was not telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

A defendant has a right not to testify. But since the

Defendant did testify, you should decide whether you believe the Defendant's testimony in the same way as that of any other witness.

When scientific, technical, or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter, but that doesn't mean that you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

The Superseding Indictment charges 14 separate crimes, called counts, against the Defendant, Eric Dean Sheppard. Each count has a number. You will be given a copy of the Superseding Indictment to refer to during your deliberations.

Counts 1 through 14 charge that the Defendant committed what are called substantive offenses. Specifically in Counts 1 through 9 the Defendant is charged with wire fraud. In Counts 10 through 14 the Defendant is charged with aggravated identity theft. I will explain the law governing those substantive offenses in a moment.

When a statute specifies multiple alternative ways in which an offense may be committed, the Superseding Indictment may allege the multiple ways in the conjunctive, that is by using the word "and." If only one of the alternatives is proved beyond a reasonable doubt, that is sufficient, so long as you agree unanimously as to that alternative.

It is a federal crime to use interstate wire communications to carry out a scheme to defraud someone else. The Defendant can be found guilty of this crime only if all of the following facts are proved beyond a reasonable doubt:

Number one: The Defendant knowingly devised or participated in a scheme to defraud or to obtain money or property by using false pretenses, representations, or promises; two, the false pretenses, representations, or promises were about a material fact; three, the Defendant acted with the intent to defraud; and four, the Defendant transmitted, or caused to be transmitted, by some wire communication in interstate commerce, to help carry out the scheme to defraud.

A scheme to defraud means any plan or course of action intended to deceive or cheat someone out of money or property by using false or fraudulent pretenses, representations, or promises.

A statement or representation is false or fraudulent if it is about a material fact that the speaker knows is untrue, or makes with reckless indifference to the truth, and makes with the intent to defraud. A statement or representation may be false or fraudulent when it is a half-truth, or effectively conceals a material fact, and is made with the intent to defraud.

A material fact is an important fact that a reasonable person would use to decide whether to do or not to do something. A fact is material if it has the capacity or natural tendency to influence a person's decision. It does not matter whether the decision-maker actually relied on the statement or knew or should have known that the statement was false.

To act with intent to defraud means to do something with a specific intent to deceive or cheat someone, usually for personal financial gain or to cause financial loss to someone else. Proving intent to deceive a loan without the intent to cause loss or injury is not sufficient to prove intent to defraud.

The Government does not have to prove all the details alleged in the Superseding Indictment about the precise nature and purpose of the scheme. It also does not have to prove that the material transmitted by interstate wire was itself false or fraudulent or that use of that wire -- of the wires was intended as the specific or exclusive means of carrying out the alleged fraud, or that the Defendant personally made the transmission over the wire. And it doesn't have to prove that the alleged scheme actually succeeded in defrauding anyone.

To use interstate wire communications is to act so that something would normally be sent through wire communications in the normal course of business.

Each separate use of the interstate wire communications as part of the scheme to defraud is a separate crime.

The law provides for an enhanced penalty when anyone commits aggravated identity theft during and in relation to other certain specified felony offenses.

The Defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

Number one, the Defendant knowingly transferred, possessed, or used another person's means of identification; two, without lawful authority; three, during and in relation to wire fraud, as charged in Counts 2, 3, 6, 8, and 9 of the Superseding Indictment.

A means of identification is any name or number used alone or together with any other information to identify a specific person, including a name, Social Security number, date of birth, officially use -- issued driver's license or identification number, alien registration number, passport number, employer or taxpayer identification number, or electronic identification number or routing code. It can also include a fingerprint, voice print, or other biometric data.

The Government must prove that the Defendant knowingly transferred, possessed, or used another person's identity without lawful authority. The Government does not have to prove that the Defendant stole the means of identification, only that there was no legal authority for the Defendant to transfer, possess, or use them.

The Government must prove that the Defendant knew that the identification in fact belonged to another person -- another actual person, not a fictitious person.

The Government also must prove that the means of identification was transferred, possessed, or used during and in relation to the alleged predicate offense, wire fraud. A Defendant transfers, possesses, or uses another person's means of identification during and in relation to the predicate offense, wire fraud, when the transfer, possession, or use is at the crux of what makes the conduct criminal. That requires that there be a genuine nexus between the transfer, possession, or use of a means of identification and the predicate offense.

For a crime involving fraud or deceit, the Defendant's use of the means of identification of another person must have been used not merely as an ancillary feature of the wire fraud. Rather, the means of identification specifically must be a key mover in the criminality. Meaning that it must be used in a manner that is fraudulent or deceptive.

It is possible to prove the Defendant guilty of a crime even without evidence that the Defendant personally performed every act charged.

Ordinarily, any act a person can do may be done by directing another person or agent, or it may be done by acting with or under the direction of others.

A Defendant aids and abets a person if the Defendant intentionally joins with the person to commit the crime.

A defendant is criminally responsible for the acts of another person if the Defendant aids and abets the other person. A defendant is also responsible if the defendant willfully directs or authorizes the acts of an agent, employee, or other associate. But finding that a defendant is criminally responsible for the acts of another person requires proof that the Defendant intentionally associated with or participated in the crime, not just proof that the Defendant was simply present at the scene of a crime or knew about it. In other words, you must find beyond a reasonable doubt that the Defendant was a willful participant and not merely a knowing spectator.

The Defendant contends that he was unaware of any misrepresentations and false statements in the government loan applications and supporting materials submitted on behalf of his companies and therefore he did not have the intent to defraud any lending institution or governmental agency. The Defendant contends that he did not knowingly participate in any scheme to defraud the lenders or the SBA of money and therefore he is not criminally responsible for any misstatements in the applications or false information in supporting documents. If you find that the Defendant acted without knowledge of misrepresentations and false statements or without the intent to defraud a lender as to any particular counts, you must find Mr. Sheppard not guilty on such counts.

Specifically with respect to the forged 1065 tax returns, the Defendant is charged with the crime of wire fraud for their submission in connection with PPP loan applications. The Defendant contends he was unaware of any forgery or the submission of any forged or falsified tax returns submitted constituting the wire fraud charges involving the PPP program. If you find that the Defendant did not knowingly submit forged tax returns, you must find the Defendant not guilty of such counts.

Good faith is a complete defense to a charge that requires intent to defraud. A defendant is not required to prove good faith. The Government must prove intent to defraud beyond a reasonable doubt.

An honestly held opinion or an honestly formed belief cannot be fraudulent intent, even if the opinion or belief is mistaken. Similarly, evidence of a mistake in judgment and error in management or carelessness cannot establish fraudulent intent, but an honest belief that a business venture would ultimately succeed does not constitute good faith that the Defendant intended to deceive others by making representations the Defendant knew to be false or fraudulent.

During the trial, you have heard evidence of acts allegedly done by the Defendant on other occasions that may be similar to acts with which the Defendant is currently charged. You must not consider any of this evidence to decide whether the Defendant engaged in the activity alleged in the Indictment. This evidence is admitted and may be considered by you for the limited purpose of assisting you in determining whether the Defendant had the state of mind or intent necessary to commit the crime charged in the indictment, the Defendant had a motive or the opportunity to commit the acts charged in the Indictment, the Defendant acted according to a plan or in preparation to commit a crime, or the Defendant committed the acts in the Indictment by accident or mistake.

You'll see the Superseding Indictment charges that a crime was committed on or about a certain date. The Government does not have to prove that the crime occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that the act was done voluntarily and intentionally and not because of a mistake or by accident.

There have been summary testimony from witnesses at this trial, and the Court permitted this testimony in order to aid you in considering the evidence. Therefore, you are to give no greater consideration to summary testimony than you would give to the evidence upon which that testimony is based.

It is for you to decide whether the summary testimony or chart offered by a witness correctly presented the information contained in the documents on which they were based and what weight to give such evidence.

Each count in the Superseding Indictment charges a separate crime against the Defendant. You must consider each crime and the evidence relating to it separately. If you find the Defendant guilty of one crime, that must not affect your verdict for any other crime charged.

I caution you the Defendant is on trial only for the specific crimes charged in the Superseding Indictment. You are here to determine from the evidence in this case whether the Defendant is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether a defendant is guilty. If you find a defendant guilty, that punishment is for the judge alone to decide later.

You have been permitted to take notes during the trial. Most of you, perhaps all of you, have taken advantage of that opportunity. You must use your notes only as a memory aid during your deliberations. You must not give your notes priority over your independent recollection of the evidence, and you must not allow yourself to be unduly influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

Your verdict, whether guilty or not guilty, must be unanimous; in other words, you must all agree. Your deliberations are secret and you will never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, do not hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong, but do not give up your honest beliefs because others think differently or because you simply want to get the case over with. Remember that in a very real way you are judges, judges of facts. Your only interest is to seek the truth from the evidence in this case.

Ladies and Gentlemen, I will shortly review the Verdict Form and give you further instructions, but I would ask at this time that you place your jury instructions down. We will now proceed with closing arguments.

Each side will have equal time, but the Government is entitled to divide this time between an opening argument and a rebuttal argument after the Defendant has spoken. We will certainly take a break following the Government's initial closing argument. And then we will proceed with the Defendant's closing argument, we'll take a break, and then we'll proceed with the rebuttal before the Court gives you additional instructions. But please give the attorneys your undivided attention at this time.

On behalf of the Government.

MS. JIMENEZ: Thank you, Your Honor.

(Pause in proceedings.)

MS. JIMENEZ: Good morning, Ladies and Gentlemen.

First, I want to thank you on behalf of the United States and the FBI for being willing to serve, for the time you have given to this case, which obviously is much more time than anyone had anticipated, and for the close attention you have paid to the evidence presented during this trial.

This is an important case for the United States, for the FBI, for the Small Business Administration, for the lenders involved in this case, and also for Mr. Eric Sheppard. This is not, however, a complicated case. We told you in opening statements that this was a case about lies, lies the Defendant made over and over again, both big and small, in order to make his businesses appear as if they were eligible for these COVID relief loans when, in fact, he was not. And but for those lies, he would not have gotten those loans.

The evidence has shown beyond a reasonable doubt that the Defendant lied to the lenders, that he lied to the SBA, that he lied to Nelly Palancar at Nationwide, and then he took the stand here as a witness and he lied to you.

We've talked about the PPP program, the Paycheck

Protection Program, in which a business with employees could apply for a loan to help pay wages to employees, and a business could apply for an Economic Injury Disaster Loan to help cover the fixed costs of the business, capital expenses of a business's actual operations. The Defendant lied to the lenders to get the PPP funds when he had no wage employees, and he lied to the SBA to get Economic Injury Disaster Loans for businesses that did not have actual operations. And even as to the businesses that had operations, HM Management and HM-UP Development Alafaya Trails, he lied about those businesses too, inflated the figures relating to those companies.

Now, you heard a lot in this case from the Defense about this -- the conversion of the Toys "R" Us into a Burlington store. This is not a case about what happened at Burlington Coat Factory. This is a case about the fraud factory located at 180 Bal Cross Drive in Bal Harbour, Florida, the Defendant's home, where he was working during COVID.

The Defense has told you the Defendant spent all the money on his businesses. You saw the flow of the money from Mr. Hysa at the FBI showing that the loan proceeds, the fraud proceeds, went into the Defendant's business accounts. And from there, yes, he spent the money on his businesses as he chose, but he also spent the money on his home mortgage, personal expenses on his credit card, car payments, his children's tuition. He spent the money on a lot of different things. And you know he didn't spend the money as intended, and that he knew it, because he did not even apply for forgiveness for two of the three PPP loans.

Now, no matter how the money was spent, the Defendant was not entitled to get it. If you rob a bank and you spend the money on your business, you've still committed a crime. In this case the Defendant committed numerous crimes in obtaining those funds to which he was not entitled; wire fraud crimes and aggravated identity theft.

And why the Defendant wanted this money -- he told you he could cover it, he had funds available from other sources. So why did he want this money? Because he could get it. Because it was practically free money, right? The PPP loans were forgivable. At worst case, you pay them back at one percent. And the EIDL loans, you get a below-market rate that you pay back over the course of 30 years. It was advantageous to him, and so he took it.

The Defendant is charged with devising and carrying out a scheme to defraud the private lenders and the SBA in order to receive these funds to which he and his companies were not entitled. There are nine counts of wire fraud, which are acts in execution of the scheme to defraud, and five counts of aggravated identity theft involving the use of other people's identities, who you've heard from, Neal Cupersmith, Heimdal Barrios, Maged Salem. He used their names, their titles, their positions, their signature to generate false documents purportedly prepared by them or signed by them, so that the Defendant -- and he used those documents in support of his lies and to support his scheme to defraud.

I want to go over some of the jury instructions with you.

All right. At the beginning of the trial, you took an oath to be fair and impartial judges of the facts. And so you must not be influenced in any way by either sympathy for or prejudice against either the Defendant or the Government, and you can only base your decision on the evidence presented during the trial. There is one thing, however, that you can bring into your deliberations that is outside the evidence presented in this trial, and that is your common sense. Your collective common sense is something that you will employ when you evaluate the evidence in this case, and you should.

Credibility of the witnesses. These are instructions that help you gauge -- or questions to ask yourselves when you think about how you judge the credibility of the witnesses: Did the witness have a particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Well, who had a personal interest in the outcome of the case? Of course, the Defendant.

And the Defendant was on the stand for a long time, both on direct and cross-examination. He lied about things big and small, basic things, like -- I don't know if it took 15 minutes to have him acknowledge that he was the boss of his companies. I don't think he ever once mentioned the word employee. A successful businessman with a degree in economics and finance cannot and does not know, he claims here, the difference between employees, independent contractors, W-2 wages, 1099 payments, has no clue.

And of course, at one point, he gave you a mini lecture on the difference between the accrual basis and the cash basis of accounting in relation to those profit/loss statements that we saw. And of course, he lied about much, much bigger things, and we'll talk about that.

Other witnesses. Of course there was the Defendant's brother, the people who were paid by the Defense quite handsomely I submit to you as window dressing for their case. And then you look at the Government's witnesses, the SBA, the lenders. They don't know the Defendant. It's just one more loan application. The contractors, Mr. Joe Beirne, who certainly didn't want to be here; Mr. Carlos Granda, the electrical engineer; Mr. Jeff Graff, lifelong friend of the Defendant; and the victims of identity theft, individuals to whom the FBI came knocking one day, showed them a document -- in the case of Mr. Cupersmith, many documents -- they don't have an interest in the outcome of this case.

All right. So let's talk about the crimes here. For wire fraud, the Defendant has to knowingly devise or participate in a scheme to defraud to obtain money by using false pretenses, representations, or promises. Those are lies -- by using lies. And those lies need to be material. And the Defendant had to act with intent to defraud and then transmit or cause to be transmitted in interstate commerce some wire communication to help carry out the scheme to defraud. And we'll talk about these things.

The Defendant's scheme to defraud. So the Government doesn't have to prove all of the details that are in the Superseding Indictment about the nature and purpose of the scheme. But generally the scheme was to receive CARES Act money from the Paycheck Protection Program, from the Economic Injury Disaster Loan program, for his businesses and for himself by lying about his businesses in order to qualify for the loans. I mean, that's the basic scheme.

The time period for the scheme to defraud, it starts in the Superseding Indictment in April of 2020. Obviously, you heard about the loan involving -- the loan application submitted by Jeff Graff on the Defendant's behalf, which was end of March. And then the scheme is charged through the end of March of 2021. And you've got evidence that extends far beyond that into September of 2021.

The main loans that constitute the scheme to defraud, as you heard about the PPP loans for HM-UP Development Alafaya

Trails, the PPP loans for HM Management, and there were a number of EIDL loans that we talked about, but the main one and the focus of the Superseding Indictment is the HM Four EIDL loan.

You have the chart of the companies that we've been talking about to sort of give you a visual depiction of where they are relative to each other. Obviously, HM Management is the management company. And then you've got the shopping center Alafaya Trails, CJUF, the shopping center in Miami. And the owners, right? HM Four owns Alafaya Trails, HM Six owns CJUF. Sheppard Flagler Holdings is an owner of an owner. And you heard about these companies.

Summary of the loan applications. So that's down here. And this really is to just give you a chronology of what the Defendant was doing, and I said starting with really what was at the end of March asking Jeff Graff to submit the loan application for HM Four, but then what actually made it to lenders is here starting with the loan to PayPal. Then there's a series of EIDL loans that he applies for through Nelly Palancar at Nationwide. Then he goes back on his own with these owner companies that don't handle operations, HM Six and HM Four. Then the funding for the PPP program starts back up again in 2021, and he resumes that with a second round to PayPal and Cross River Bank.

And what's not on here is what continued, which was in

April of 2021, with respect to the EIDL loans that were actually funded, HM Management, HM-UP, and HM Four, there's the possibility to obtain a loan increase. So he goes back to Nationwide and then -- on his own for those three loans, and he continues to provide false records.

All right. So with respect to the scheme to defraud, there has to be material lies. "A material fact is an important fact that a reasonable person would use to decide whether or not to do something," something that would have the natural tendency -- oops -- whoa -- that would have the natural tendency to influence the person's decision. And it doesn't matter whether the decision-maker actually relied on the statement.

What are the basic material lies here? Well, with respect to the PPP loan fraud, wage employees, right? The loan amount is based on how much you actually pay your wage employees, divided by 12 months, times two and a half. And then the question posed to all the lenders was: "Well, you know, if you provide your 1099s, if you let the lender know that you actually have independent contractors, what is the amount of the loan?" And of course they all said the loan amount is zero. So that's a material lie.

And then, with respect to the EIDL loans, it's for a fixed cost of an operating business. HM Four is an owner. It's not an operating business.

The Defendant has to act with the intent to defraud. That is: "The specific intent to deceive or cheat someone, usually for personal financial gain." Well, I submit to you everything in this case tells you about the Defendant's intent to defraud. The very precise, the very purposeful lies on the loan applications and the supporting documents, the inserting of wages and all of the things that you've seen, the forged documents, the absence of real records. You saw that 1099 for Martin Joe Beirne that they had that they produced. They didn't produce that to any lenders. Right? The absence of any real actual records, and of course his personal benefit as a result of this fraud, all of these things tell you he had the intent to defraud.

MS. WEINTRAUB: Excuse me. I'm just going to object and reserve a motion.

THE COURT: All right, then.

MS. JIMENEZ: The knowledge, of course, goes with intent. Did he know? Was he confused? Gosh. What are employees? Well, you've got small segments of deposition transcripts from a deposition in February of 2019, before this PPP problem came along. Right?

As to Jeff Graff: "He's not an employee. He's on a consultant basis. Everyone gets a 1099." Another question: "They're not employees of the company. They get paid to do tasks. Carlos Diaz is a consultant, not a salaried employee."

Question: "Does HM Management withdraw employment taxes from the employee's paychecks?"

"If they're employees, they do. If they are not, they don't. They pay payroll taxes. As to laborers, they're independent contractors. They just get paid. They're not employees."

His answers were clear. His answers were direct. He knew who employees were. He knew they got 1099s and that they were independent contractors. He wasn't confused, like he pretended to be on the witness stand for days.

The Defendant causes the wire transmission to go into interstate commerce. The wire transmission itself doesn't have to be fraudulent, as long as it helps carry out the scheme to defraud. In this case, each of the wire fraud counts that are charged do contain fraudulent transmissions. And the Defendant personally doesn't have to be the one who transmits the wire. He can cause it to be transmitted. So he can, for instance, direct someone else to do it, or by virtue of applying submitting a false document causes the lender to provide a wire to him, for instance, like a wire payment back to him, he's causing the wire transmission.

These are the nine wire fraud counts. I don't have time to read them. But basically Counts 1 through 3 relate to the HM Four EIDL application. The wire transmissions to the SBA are to California and Virginia from the Defendant's home.

Counts 4 through 6 relate to the second Alafaya Trails application in 2021 to PayPal, whose servers are all around the country outside the state of Florida, transmitted from the Defendant's home.

Then the -- Count 7 and 8 relate to the application to Northeast Bank, whose servers are in Virginia, again transmitted from the Defendant's home. And then Count 9 is the second application to -- for HM Management to Cross River Bank, whose servers are in Pennsylvania, again transmitted from the Defendant's home. All interstate wire transmissions. That's the easy one.

All right. This is really not a whodunit case, right? The Defendant was the listed representative, the authorized representative on each and every one of these loan applications; his driver's license that he carries in his wallet was submitted for every loan application; his phone number -- and there was his landline -- his home landline was on some of the loan applications as well; his main email and some other emails all attributable to the Defendant.

The lenders, the SBA, Nationwide, all of the email communication in those loan files are with the Defendant, only with the Defendant. The text communications that Nelly Palancar from Nationwide provided, all of her text communications are with the Defendant. That's who communicated with them, not anyone else.

Of course, the Defendant's home address is listed, his business address. The Internet Protocol address that comes back really for all the loan applications, except the four EIDLs that were submitted through Nationwide because those went through the Nationwide portal -- but everything else comes back to the Defendant's home. And then, of course, all of the money went to the Defendant for his benefit, for his use.

This is a chart showing all of the Internet Protocol addresses captured. And for the most part, when you -- when he would log into the portal and submit the information, the lenders or the SBA would capture the IP address, and then on the back end with the DocuSigning they would capture the IP address. What's missing are the four EIDLs through Nationwide.

And then the ACAP loan application, the initial submission into the portal, they do not capture an IP address. But the next day they submit an application back to him to DocuSign, which did capture his IP address. Of course, all the money goes to him to accounts where he's the sole signer on the account.

So let me talk a little bit about the bigger lies that he told to deflect. Because like I said, this is not a case about who did it. The Defendant pushed the blame on everyone around him. His longtime accountants of 25 years: "Well, they gave me this advice that I could apply for a PPP loan, and everything was fine." His lifelong friend Jeff Graff: "No.

He's the one who told me that we should apply for an HM Four loan, to list a hundred employees, to put all this other information on the application," where Jeff Graff is the one who actually requested some sort of indemnity in that email. Jeff Graff, who is an accountant, has a master's in accounting, who's a lifelong friend: "No. It's Jeff Graff."

Jeanette Gonzalez, longtime bookkeeper, loyal bookkeeper of his. Her own daughter was working at the company with her. The idea that Jeanette Gonzalez, on her own initiative, is going to generate these false documents on his behalf, behind his back, for his benefit, I submit to you, Ladies and Gentlemen, if you use your common sense, that makes absolutely no sense, but it's part of the blaming of everyone around him.

And then, of course, Jeff Vasilas. Jeff Vasilas, who is surely not resting in peace today. Right? Worker for the Defendant. I mean, he had his own business for sure. But for those two years, 2020 and 2021, he was his worker, project manager in Orlando. And then, in 2021, going back and forth working on that punch list, going in -- going up there to pay -- to pay the other workers, provide their checks, coming back to Miami, doing work around the Defendant's house. That's what Jeff Vasilas was doing.

But no, Jeff Vasilas has the audacity to be in the Defendant's office, on the Defendant's own computer, and from the Defendant's own computer generating and submitting false documents for the Defendant on his behalf, behind his back and for his benefit, in the Defendant's own home, on his own computer. Again, I submit to you that is ludicrous and does not make any sense.

All right. Let's go through the loan applications. Scheme starts roughly in April of 2020. You heard about the first Alafaya Trails application to PayPal WebBank, which was funded. April 15th it is submitted, 80 employees. He claimed HM-UP Development Alafaya Trails, doing business as HM Management, submits bank statements for HM Management, CJUF. He submits this, which he claims it's something he saw for the first time when he was arrested in this case.

And of course, you know -- this is what tells you, I submit to you, from the very beginning. His knowledge, his intent to defraud. He knows right from the beginning this has to do with wage employees only. He includes a column of withholdings that is entirely made up, no withholdings. In 2019 there were three people working for, of course, the other company, HM Management, not HM-UP, the applicant. Jeanette, Vanessa, and Maria, whose wages had withholdings -- of course those payments weren't turned over to the IRS, but there were withholdings for three people at a different company.

But here's an entire column of withholdings, a draw for Eric Sheppard and Jeff Graff of 99,000, which, again, you know the payments were capped to employees and to partners at a hundred thousand. He knows this. You saw that in the email that he -- where he's asking his accountants for some kind of letter saying he made a hundred thousand dollars. He knows from the very beginning, in April of 2020, what all the rules are.

Labor report that he submits with the forgiveness application, which is the following year in 2021. He submits the application starting in February 2021, before PayPal's portal is even up. And then it's finally DocuSigned May 2021. He misspells Jeff Vasilas's name, which is V-A-S-I-L-A-S, but claims Jeff Vasilas did this.

All right. So after the first PayPal application is funded for PPP money, of course, the Paycheck Protection Program shortly runs out of money, he turns to the EIDL program. And the focus of the Indictment is the HM Four application, which is chock full of lies. Tells you -- and the lies tell you -- lies are material because they go to the operation of the business and it shows you his intent to defraud.

HM Four is not an operating business. He lies with these figures about revenues. Of course he lists his wife as 80 percent owner. He submits the false lease, the false bank letter. And of course he has just received an EIDL loan from HM-UP Development Alafaya Trails. HM Four owns HM-UP. So now he's double-dipping, right, the company and the owner.

We had talked about HM Six. He applies to HM Six before HM Four, which you know is an owner of CJUF. He claims to be a hundred percent owner of HM Six. He's only 50 percent owner of HM Six. It's to cut out his partner Leon Wildstein. And then the SBA tells him: "There were one or more items that were reviewed that caused the SBA to question the validity of certain information you submitted as part of the application."

So what does he do? He applies as Jennifer Sheppard. He's denied the HM Six application October 21st, applies as Jennifer Sheppard on the HM Four application on October 22nd.

You have an aider and abettor instruction, which is the Defendant is responsible for the crimes of others if the Defendant aids and abets the other person or if he directs the other person. So even if he's directing, for instance, his wife or someone's who's working for him, under an aider and abettor theory, he's also responsible.

I don't have to go through this. You know Jennifer Sheppard was not 80 percent owner of the business. You have the HM Four 2019 tax return and the 2020 tax return. They show the same ownership percentage. He and his wife are 52 percent owners. Mr. Kallman is 48 percent owner. That never changed.

You know HM Four is not an operating business. The SBA told you it's used for capital expenditures, fixed expenses of a business, not to expand a business, not to fund a project.

Mr. Cupersmith told you, Jeff Graff told you, HM Four has no operations. Just like he testified in the deposition about HM Six, that it was a nothing, that it was a shell company, same with HM Four.

The tax return for HM Four for 2019, I just want to point out, the -- he signs the 2019 tax return for HM Four, which lists nothing, no rents, no income, nothing. He signs that October 14th, 2020, and that's eight days before he fills out the EIDL application for HM Four -- and this is a piece of it -- listing those gross revenues, cost of goods sold, rental properties. That's intent to defraud, Ladies and Gentlemen.

As part of that application, you have the email from Jennifer Sheppard, a/k/a Eric Sheppard, with -- when he provides this HM Four Management agreement that's been talked about. The agreement has HM Four as the owner, HM Eight as the manager. They've shown you the signature block, which has that reversed; HM Four is manager, HM Eight as owner because they're trying to show or claim that HM Four manages, has operations. False.

And of course, the Mattress1One lease agreement, which we'll talk about. And then -- all right. So then he writes he owns other non-related businesses and is authorized to speak about this matter because he handles the taxes and certain business functions for the company.

The lease agreement. We'll talk about these signatures later. But Maged Salem -- and I'll talk about what he said also. But Maged Salem, you know from the lease it doesn't even spell his name correctly. And it's -- all the leases you have in this case regarding that shopping center -- you have the DICK'S Sporting Goods lease, you have the Burlington Coat Factory lease -- all of the tenants, their leases are with HM-UP, not with HM Four.

You have this email communication between the Defendant and Jeff Vasilas May 18th, 2020, when clearly they're trying to renegotiate the terms of this lease, and maybe they come up with some sort of compromise going forward. And the Defendant sends Jeff Vasilas a document, right? The new name of Mattress1One is Pacific MS Management, Mattress1One, with HM-UP -- HM-UP Development Alafaya Trails. He's sending him a lease he wants Mattress1One to sign, and it's with HM-UP.

All right. You have the original lease with Mattress1One. Again, it's with HM-UP Development Alafaya Trails. Mr. Maged Salem's name is not misspelled.

And of course, you have -- you have bank records. The thing that isn't biased, the thing that doesn't have faulty memory, the thing that doesn't have an interest in the outcome of the case are these bank records, right? All of the payments from Mattress1One go to HM-UP Development Alafaya Trails. Before the renegotiations that occurred in May of 2020 and after, all of the payments go to Alafaya Trails.

You have the bank letter, which -- and let me just say a little bit about the materiality. The lease, the bank letter -- of course the SBA is requesting these things. The leases -- actually, they requested to provide a utility statement or phone records, something to show there's a real business. Right? So the lease is provided for that reason.

The banker's letter. The SBA needs verification of the bank account. Even though this is not something that they -- they subsequently requested an actual bank statement. It's something the Defendant thought that he could use to get his bank account verified because, of course, he's just opened this account. It has no money. And Mr. Heimdal Barrios told you he didn't -- that doesn't look like his signature. He would not send a letter that's unsigned. And of course, it's dated on Veterans Day when the bank is closed and certainly a banker is not going to be working.

And then, of course, he ultimately has to obtain a bank statement. He deposits 60,000 into the account, removes 50,000 the same day, and writes to the SBA: "This account is used for ACH or wires to fund the payroll accounts." And of course Mr. Sheppard couldn't quite answer the question. He was like: "Oh. That was kind of silly for me to say that." More lies. More intentional lies.

You've got -- after the EIDL loans, 2021, he turns back to the PPP program after it's funded again. You've got the second draw application from Alafaya Trails to PayPal submitted January 19, 2021. Many lies, many documents that are false. And there's three counts relating to that false -- those false submissions, listing of 80 employees.

And there was one thing that was real that ultimately tripped up this application. He listed the actual industry code from his real tax return, which indicated the business was a landlord of commercial properties, which happened to be a disqualifier for these types of loans. So the one real point, the one real fact he put in the application got him disqualified.

You saw that he -- with his persistence and his impatience, he submits the information to the portal January 19. Then he uploads an application January 24th. And then, of course, there's a moratorium that the SBA places on applications being processed, and tells the lenders: "Okay. Process applications with fewer than 20 employees." He's on it. February 23rd, he submits another application, same payroll information, but now you drop from 74 employees to 19 employees, so that he can make that cutoff. That's intent to defraud. That's very intentional, Ladies and Gentlemen.

We heard a lot about these false 941s. You might remember they were for four quarters. Two of them were typed. The rest were handwritten. You know that there were no 941s filed for this company at all, because it had no wage employees, HM-UP, at any point.

And of course, the Defendant's own email that he put in admits: "I received the 941s for 2020 from our accounting department and submitted them to the portal." He says that in his email. He submits them.

And this is the same 941. This is actually two withdrawal tickets from the HM-UP bank account. That's when the Defendant goes to the bank, withdraws money, and he handwrites the withdrawal ticket. I asked the Defendant if it was his handwriting. Of course he denied it. Jeff Graff told you for each and every one of these false Form 91s [sic] he identified the Defendant's handwriting, he identified the Defendant's signature. You can look for yourselves. You look at the withdrawal slips. This one, you can look up here. The bottom one, lowercase, you can look here. You can look for yourselves.

He submits a false arrest and forged 2019 tax return that Mr. Cupersmith told you his signature is forged. And he does that because he inserts wages for a company that has no wages. Right? Very intentional. $717,000 of non-existent wages. And this is Mr. Cupersmith's copy of the tax return.

And then this email -- so he -- the 2019 tax return is submitted -- and you have the records -- February 15, 2021. Then February 17 they put in an email that he submits the parent company, HM Four's tax returns. And then there's this email -- because, again, he's impatient, he's persistent -- February 22nd: "Following up to make sure you received my email with the other 1065s you requested." What does that tell you? He knows of the false 2019 returns and the other ones that he submitted, the HM Four. He knows of multiple tax returns that were submitted. And I didn't put the exhibit number, but that's Exhibit 82. Exhibit 82.

All right. So this is actually a count. The 2020 Alafaya Trails tax return is a count. Cupersmith's name is misspelled. Of course, Mr. Cupersmith denied that he signed this. And just like the other ones, it has the false entries for the wages. And then here you've got gross rents that he dropped to pretend that he had a 25 percent decrease in revenue, which was a requirement for round two of these loan applications. The 2020 tax return had not even been filed as of June 2022.

You've got the gross wages. Again, listing wages. Very intentional for people who were just paid contractors.

You saw the false Florida Department of Revenue forms, which there weren't any for this business. And then, like I said, ironically, PayPal denies the loan application based on the one piece of true information he provides from his tax return. He puts on the application that he's a landlord.

But he's not deterred. He turns around to ACAP SME Northeast Bank, submits the same information, but now changes the industry code for his business, very similar information. Of course he's lowered the number of employees to 19 to get below the moratorium number. This is the submission to the portal with the reduction in gross revenues, 19 employees.

He submits a false 491 here. It's actually different from the one he submitted previously to PayPal, and you can compare them. He submits a false Form 940. And then, of course, this is the return -- exact identical return he submits to PayPal, but now the business code has changed. Same forgeries on these tax returns.

You know, there wasn't actually a decrease in rental income, as actually the rental income went up. This is his lecture to you about accrual versus cash method that he's very familiar with, although he doesn't know what wages and employees are.

So here you can look at the tax return forgeries. He submits the same one, like I said, to PayPal and Northeast Bank. And he told you, well, gosh, that's not his signature, so somebody else is doing this. Well, you can look for yourself. His signature was not always the same. These are Amerasia signature cards when he goes into the bank and opens the account. Same year, 2021. You can look for yourselves whether these signatures are similar.

All right. That application is actually funded. And for ACAP SME Northeast Bank, he has to DocuSign twice, March 12th and March 25th. And interestingly, March 12th and March 25th are also dates that relate to the Cross River Bank applications, which we'll talk about in a moment. And he says that he was here to DocuSign this one but didn't do the Cross River Bank. And we'll talk about why that is.

HM Management loan application. In January, when he applies to PayPal for HM-UP, he also applies to Cross River Bank for HM Management. That HM Management application doesn't get processed. So again, he's persistent. He comes back in March.

March 12th, Cross River Bank's process was a little bit different than the other lenders. With Cross River Bank, you go into the portal, provide your information, but you also have to upload your documents at the same time and submit them all together in one submission. So all the false documents got submitted at once, which is why he says: "Well, gee, March 12th I DocuSigned the Northeast Bank, but I certainly didn't do this."

You've got the false 940, the false and forged tax return, which Mr. Cupersmith told you he had not signed for HM Management. And of course, this is prepared in February. He prepares tax returns, and his date for this year is actually December of 2021. No record of filings for these tax returns with the IRS. And Cupersmith's own copy of salaries and wages is 2,456, instead of 815,000, which is actually the same figure that he provides with the Northeast Bank application for HM-UP.

You can look at his signature. Again, this is a different Amerasia account, also opened in 2021. You can see whether the signatures are similar. You can see for yourself.

All right. That application is signed March 25th, 2021.

Construction Service X -- there was one thing I wanted to talk about that I skipped over. February 26th, which was in the ACAP -- the ACAP -- yeah, it's this one.

Nope.

Well, it's too far back. It's the false tax return February 26th to PayPal. He shows you, if you remember, his daughter's basketball game February 24th, but says: "No. The championship is later, and I was still in Lakeland, Florida," which it's odd that he's got a photograph of February 24th, but the actual championship, which he says occurred later, there's no photograph.

All right. And then, as I mentioned earlier, after these PPP loans are funded in March of 2021, he's still persisting. Now he turns back to the EIDLs. He goes back to Nationwide to get -- for the loans that were funded, the EIDLs that were funded in 2021, you can get a loan increase up to $500,000. So he starts working with Nationwide on that. And you have documents, false documents, from September of 2021 that were submitted for those loan increases.

HM Management and Development, he lists Jennifer Sheppard as a manager with a forged Jeanette Gonzalez signature. HM-UP Development Alafaya Trails, Jennifer Sheppard is a ten percent member. She was not. Jeanette Gonzalez's signature, forged.

I'm showing you -- this is actually a clip from the bank records, with a check written by Jeanette Gonzalez, endorsed -- that is, cashed by Jeanette Gonzalez. This is Jeanette Gonzalez's signature, Exhibit 39-5. Okay? These are the Defendant's forgeries, September 2021, long after Mr. Jeff Vasilas has passed away, which happened in early August of 2021.

Aggravated identity theft. Defendant has to transfer, possess, or use another person's means of identification without lawful authority in relation to the wire fraud. And we'll talk about what those counts were. Aggravated identity theft requires a genuine nexus. The use of a person's means of identification -- there has to be a genuine nexus between that and the predicate offense, the wire fraud.

The means of identification must be a key -- it should say: "A key mover in the criminality," meaning that it must be used in a manner that is fraudulent or deceptive.

These are your aggravated identity theft counts: Mr. Maged Salem's identity, used in the submission of the Mattress1One lease to support the SBA application for HM Four;

Heimdal Barrios's letter, also with the submission of the HM Four application; Neal Cupersmith's identity, used on those false tax returns that had false wages for the PPP loan applications to PayPal, Northeast Bank, and Cross River Bank.

Mr. Maged Salem told you he didn't sign that lease, he initials every page. There was one lease with the true landlord with Alafaya Trails. There was probably some renegotiation in May of 2020 with the store manager or someone. And you saw that there was a check with a larger amount for some of the back rent that was owed, but there was no lease with HM Four. And of course, the fake lease supports the SBA core requirement that the business have operations.

Heimdal Barrios's letter. He testified he didn't recognize the signature, didn't authorize anyone to sign for him. It's dated on Veterans Day, when the bank is closed, when he's not working.

The account verification letter on his behalf, he would indicate only the signer on the account. And of course, it was only Eric Sheppard on the account. And of course, the SBA needed to verify the account.

All right. Neal Cupersmith's identity on those forged tax returns. It doesn't -- aggravated identity theft doesn't mean that the lender has to say: "Oh, geez. I see Neal Cupersmith's signature on these tax returns, I better approve them." That's not what the law requires. These tax returns lend credibility and reliability to these false tax returns that he's providing.

I mean, he's a business claiming, you know, a million plus of gross revenues. It's not going to be a TurboTax. It's going to be a tax return with an actual accountant preparing the return. And so it's used in the fraud. It's used in a manner -- the means of identification is used in a manner that is fraudulent or deceptive. It is to lend credibility to his applications.

All right. These are all of the wire fraud counts, the aggravated identity theft counts, which I don't have time to read. But -- so I'm going to sit down now and give you folks a break from me. But at the conclusion of this case, or after the Defense speaks, my colleague is going to speak to you, and we're going to ask you at that time to return the only verdict that is consistent with all of the evidence in this case, and that is a verdict of guilty on all 14 counts.

Thank you, Ladies and Gentlemen.

THE COURT: Thank you, Ms. Jimenez.

And Ladies and Gentlemen, as I did advise, we're going to take a 10-minute recess.

COURT SECURITY OFFICER: All rise.

(Jury not present, 11:08 a.m.)

THE COURT: All right. Just for purposes of timing, you have 13 minutes that will be added to the close close.

MS. JIMENEZ: Oh. Look at that. I flew.

THE COURT: All right. We're on a 10-minute recess.

(Recess from 11:09 a.m. to 11:20 a.m.)

THE COURT: All right. Welcome back.

Let me acknowledge the presence of the Defendant.

Are we ready to continue?

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: If we could see if they are all ready to go.

Thank you.

THE COURT: Ms. Weintraub, are we ready to proceed or we need a few minutes?

MS. WEINTRAUB: No. I'm ready, Judge.

THE COURT: A few minutes?

MS. WEINTRAUB: No. Thank you. Thank you, Judge. That's okay. I don't need to hear me or see me.

THE COURT: Do you need this or no?

MS. WEINTRAUB: (No verbal response.)

THE COURT: Okay.

All right. Let's bring in the jury.

MR. ETRA: Your Honor, did you say there was extra time or did I mishear you?

THE COURT: It's an hour and a half. They had asked for an hour o five, and they only -- right. And she only used -- which gave her till 11:20, and Ms. Jimenez finished at

11:07.

(Before the Jury, 11:22 a.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated, everyone.

And on behalf of the Defendant, Mr. Sheppard.

MS. WEINTRAUB: Thank you, Your Honor.

May I proceed?

THE COURT: Yes. Of course.

MS. WEINTRAUB: May it please the Court, co-counsel, Mr. Sheppard, counsel for the Government.

Ladies and Gentlemen, this will be the last time that the Defense will get to address you. It is the only time that we are permitted under the rules to address you before you go back and deliberate. Government went first and the Government will go behind me, which is the hardest thing in the world for anybody to sit when the Government goes again. So I'm going to ask you -- I know it's hard. You've paid attention. It's been a crazy long trial with breaks that we've all tried to deal with. But we thank you for your time, your patience, your attention, and most of all of your service, because without you obviously the system just doesn't work and we wouldn't have a system.

To represent Eric Sheppard has been a true responsibility -- and his whole family, who you've seen here every day, day after day -- and that responsibility will soon be handed to you. You will decide whether or not Eric Sheppard is guilty or not guilty. So let's review the evidence and see what's there. Because, to start with, of course I have to disagree with the Government. I disagree, and I think this is a very complicated case. I think there was nothing that wasn't complicated about this case. There were thousands of documents that you've all had to sit through, that you've listened to, all new terms. It's a whole different language. Well, for me it was. I'm sure for you as well.

So to start out with, I'm going to try and simplify what we've seen and what we've heard in a manner that's more palatable to people and not just documents. You've heard how Eric Sheppard is a self-made man, how he was basically on his own at 17, when his mom was hit-and-run. Nobody handed Eric Sheppard anything. And what's important about Eric's background, something that -- he learned to work hard, and he always has. Nobody gave him a silver spoon and nobody gave him shortcuts. Eric has worked hard. That's undisputed. Eric built his own business from the ground up.

We told you in opening that there was going to be evidence that certain funds -- certain loans were funded in this case, and that the money was all used for proper purposes, and we proved that to you. I told you in opening statement that you were not going to hear about any fancy cars, or fancy boats, or luxury items that you've heard fraudsters make use of these loans with. You didn't hear any of that. What you heard was that Eric Sheppard used the loan money that he got to pay workers and to get the work done. It was used for its intended purpose.

Now, the Government wants you to think that this is about a rich guy who just wanted to get richer. And you know what? That's not a crime. We are in the United States. There is nothing wrong with somebody who has money taking advantage of a program that he's entitled to take advantage of. He was just as entitled as any other business owner. There were no exceptions for how much money you had in the bank or how much was available to you if you'd borrow other money.

The evidence in this case is all about the Alafaya Trails shopping center. It's in Orlando. It's huge. It's between 25 and 32 acres of built property. That's unbelievable. You heard how Eric saw this property and built it from his vision. He took out a $22 million loan, a mortgage on the property that you're looking at right here. It was basically swampland when he saw it. He knew that was a fabulous location right near UCF, right on Alafaya Trails Boulevard, and he knew this would be a great place for a shopping center, and he was right.

The Basis loan, the $22 million loan, is a loan that he took out, and he has been paying back $90,000 a month every month for almost 10 years now. He's obliged legally to pay that. There's no grace for COVID. There was no grace for COVID in building Burlington. You would think it would have been built into these leases. But who could have built in a pandemic? Who would have thought there would be a pandemic where these courtrooms would be shut down? There were no jurors. Our offices were shut down. There were no schools open. The banks weren't open. Stores weren't open. Stores weren't paying rent. Restaurants weren't open.

It's really crazy to remember that just a couple of years ago we were wiping off food before we brought it into the house, taking our shoes off, making sure that our clothes were okay, taking showers so that we didn't have any germs on us. It was crazy. And yes, thank God, now we're back here in a courtroom, and things seem more normalized, but let's remember that when all this activity was going on the world was not normal. Nothing was normal. Eric's life was not normal. None of our lives were normal. That's not an excuse. It's an explanation. Because we have to keep things in context.

Working at home remotely by yourself is not the same as working with a staff and yelling: "Jeanette." It just isn't. Things don't get done the right way. Mistakes were made. That doesn't make it criminal.

Think about what Eric had to do to show that he was prepared to take on that loan and qualified to pay it back.

Think about those huge binders that I showed Jeff Graff, that his bio is one of, just to get a different loan.

So let's talk about this vision of Eric Sheppard's. In 2018, the shopping center was thriving. Toys "R" Us -- he has huge anchor stores. You heard him. He's been fortunate to develop and nurture national tenant retail people. But they wouldn't do it just because he's a good guy. They do it because he delivers a great product for them. Toys "R" Us goes up and is doing great. DICK'S goes up, doing great. Mattress1One is there. There are other stores that are coming. Sixty-thousand-foot store. Toys "R" Us goes bankrupt, goes out of business -- this is not good -- a hundred thousand dollars a month in rent gone.

November 2019 Eric is fortunate to negotiate with Burlington Coat Factory. The Government says this isn't a case about Burlington. Yes, it is. Because that's what the project started out to be in COVID, and that's where these things happened. Burlington was a 60,000-square-foot store, and he negotiates that they would be able to come in May 2020. He's got just a few months' crunch time to turn this around. And he accepts that challenge because he's determined to get it done. And you heard even Graff had to admit Eric Sheppard has never walked away from a project, never, not even with Canyon Ranch. He didn't leave people in a lurch. Eric Sheppard follows through and gets it done.

November and December 2019, Eric's focus was on Burlington. He's meeting with subcontractors. He wants to get people moving. Eric is meeting in the Miami office at Biscayne Boulevard that you heard about. He was working with Jeff Graff. He was working with Joe Beirne in Orlando. And then Jeff Vasilas is coming around.

Demolition starts on Burlington. You've seen the video. Things are moving. This wasn't just a situation where they just took out a shelf and put on a new one. They had to renovate, redo, tear up, and remake this entire store of 60,000 square feet. That's larger than a football field.

Just before COVID there are five things going on for Eric, the Burlington build-out that I just mentioned, phase 3 -- this is -- the shopping center is being built in phases. Phase 3 -- it took five years to get the approval -- after loan, permits, zoning, inspections, five years. And they got the approval for phase 3 in January 2020, before COVID. In January 2020 he starts dealing with new tenants to come in for phase 3. You heard about Amazon Fresh. You heard about all the other tenants that -- Marshalls, Home Goods -- that he had leases with in January.

The third thing that he was dealing with, the Chase Bank. March 10th -- before the shutdown, March 10th there's a lease signed with Chase. And what did that encompass? That, we know, led to Indianhead Trail. And that -- Indianhead Trial is just a word for the road that had to be built. You saw pictures of what we had in. Even Eric gave his testimony that Eric was actually helping build that road.

Why were they building a road? They had to. It was required by the county, who could obviously shut them down -- it was required by the county that if he built an additional outparcel there, he would have to permit and make arrangements for another road for traffic. And so it was Eric's responsibility, which, of course, he accepted, to get that road built. But again, that was dealing with more stuff that had to be done.

Now, he was also dealing with the effort to replace this deadbeat tenant Mattress1One, who just wouldn't leave and they're not paying rent. We'll come back and talk about Mattress1One. But for now, those are the five things that Eric is dealing with.

He's going back and forth from Orlando to Miami, doing his best with Jeff Graff, but things aren't moving as fast or as well as he wants. And Jeff Vasilas starts getting in Eric's ear. Jeff Vasilas sees an opportunity to jump on Eric's coattails, like a lot of other people we've heard about.

Who is Jeff Vasilas? Jeff Vasilas is the guy who owned a strip club named King of Diamonds. We've heard a lot about it. It was on Miami Gardens Drive. And he did all the construction -- he did all the renovation for King of Diamonds.

He knew the construction business. He knew how to get things built. He had people that would work for him. So he starts saying to Eric: "I'll get this done. I'll move up to Orlando." He had no problems, whereas Jeff Graff, you heard, wasn't going to leave and move to Orlando.

So let's pause and think about what was going on with this person. Eric told you that his lawyers suggested to him that he buy the property, and it was a great location, where the Strip of Diamonds [sic] club was. Not to buy the Strip of Diamonds, to buy the property. The business was going out, but they were going -- he and Rob Kallman were going to buy the property and renovate that. They were maybe going to make apartment buildings. They hadn't even come to what they would use it for. But it was a great location.

What happens? The deal falls through. Deposits are put down and Jeff Vasilas winds up owing Eric Sheppard money. Jeff Vasilas knew what was going on. He sweet-talked Eric, and Eric bought it hook, line, and sinker.

Now, at the same time he's telling Eric: "I can go up there and get this stuff done on Burlington, no-brainer. I'll move up there. I've got guys that I'll bring up from Miami to be subcontractors." By this time, COVID is coming. And Eric's inner circle, to tell you honestly -- Rob Kallman, who you heard from, and even Jeff Graff -- told him they didn't like Jeff Vasilas. They didn't trust him and they didn't like him.

But it fell on deaf ears because Eric was determined to get it done. He also told you that he believed in second chances. He kind of liked the underdog. He liked the gruffness of Vasilas, and he said: "I trusted him."

So what happens? Eric's under tremendous pressure. He needs to get this built out by May 2020. And Eric wanted to get it done, and he lets Jeff go. Jeff goes up to Orlando and COVID hits. COVID hits big and bad. Burlington is shut down. Everything is shut down. Now, Eric's business undeniably, irrefutably, was impacted by the closing of the stores, not getting rent, by COVID. Eric was obliged to be still paying the Basis loan back at $90,000. COVID hits his office. He has to get out. He's got nowhere to go. Goes to his house.

You've also heard that Eric is not exactly the most organized or neatest person in town. And you have seen pictures of that, stacks of papers everywhere in his office and the house. But that's what they're left with. So they have to leave Biscayne Boulevard. Nobody wanted to come into the office anymore. Everything is put in big storage and is taken to his house.

There were tenants that were in place for phase 3 that are canceling. They want to delay. They don't want to move in. Nobody knows what's going to be. Nobody knows if this COVID thing is going to last, how long. Nobody's going to make investments right now. And they're losing workers from the subcontractors that are shutting down. They need people to work.

On top of all that, Jeff Graff, his friend of 20 years -- or his friend -- sorry -- of life is leaving after working for him for 20 years. He took a job as the executive director at his synagogue because he also figured: "This is a great job. I can make good money and I have security for my family." And honestly, it was probably the right time for him to leave because things weren't getting done.

So Jeff Graff leaves and Eric is by himself. You heard about Jeanette Gonzalez. She's at her home, working remotely. She's got severe asthma. We know that Mary Ataca went back and forth between Eric's house and Jeanette's house, bringing back and forth checks and other papers. But let's focus back on Jeff Graff.

Jeff Graff is the guy that he grew up with, and Jeff Graff is the guy that they bring in here to be their handwriting expert. Now, the first thing that Jeff Graff tells you is that he goes -- he came in as the CFO and stopped being the CFO and stopped doing anything with the accounting side because he wanted to go to the development side. The only problem with that was that he wasn't too good at it. Jeff Graff tells you he's got equity in deals that Eric gave him because he founded and started working as the dealer on the Arundel deal.

Well, that would have been fine, except that we have the tax returns that showed: "What are you talking about? Eric Sheppard gave you that equity because that's who Eric is." He had given it to the two guys who were working on it, and there was 10 percent there. And Eric said: "You know" -- to Rob Kallman, who you heard from: "You know what? Let's give it to Graff now." Ten percent. He got a check for $122,000. That's a lot of money. But he didn't find it. He didn't start that deal. He was just tooting his own horn. You-all knew that when I showed him the tax return from six years earlier, when it was really started. He lied.

We brought you evidence. We brought you Rob Kallman who talked about it. Jeff was on the sidelines watching Eric skyrocket, and he wasn't. He said he went to the development side and he no longer did any of the accounting. But we know that was a lie. Eric relied on Jeff until the day he left, and even after.

Jeff's biography in 2017: "His duties have included and currently include development, management of, and accounting for the company's one-million-plus square feet of commercial properties." That's a lot of properties.

"Mr. Graff is also responsible for coordinating and accounting for the projects in the acquisition, development and construction phases."

Jeff Graff was always working as a financial advisor.

We also know from one week before he left, on March 22nd, 2020, Eric writes an email to Jeanette and Eric -- from Eric on behalf of Eric, Jeff Graff -- to Jeff Graff and Jeanette: "Income and expenses March 2020. I understand, Jeanette, you have the information in your computer and Jeff sits with you to go over it." And Eric is saying to them: "Hey, I need these documents taken care of. I need these documents and the REA, the real estate agreement. I need everything to be managing the assets properly. You guys need to be taking care of this. What's going on?"

Of course Jeff Graff was still involved. But he comes into this courtroom with all of his feelings on his sleeve. Jeff was jealous. He was hurt. He watched Jeff Vasilas push him out of where he wanted to be, because Jeff Graff wanted to be the bigshot in Orlando, but instead Jeff Vasilas got that job.

And what did he tell you? He tells you that Eric one day, years ago, made him a 1099 employee. Really? Do you really think, after everything you've heard in the past several weeks, that Eric Sheppard went to Jeff Graff to give him a tax benefit, which he had no idea he would get? And even though he has the other W-2 workers, Jeanette, Vanessa, Elva -- you heard about other W-2 employees that were there. Why would he just take Jeff Graff and say: "Be a 1099"? That doesn't even make sense.

Eric testified, and told you, Jeff Graff one day came to him and said: "Listen, I'm making my own company, Graffco, and it would be good for me for tax benefits. Can I be 1099?" Eric doesn't care. He said: "Sure." What does he care? That's what makes more sense.

Now, Jeff Graff is the CPA. He's the one who has a master's in accounting. He's the one who's getting the benefits. Benefits? Boy, did he get benefits. Remember what we showed you? We showed you he started taking a salary. Instead of the $150,000 that he was given, he wrote $15,000. At first I thought it was me and a zero was missing. No. He was cheating and defrauding the government for 10 years. Remember? And he was, I think, kind of surprised that we caught him.

But he was forced to admit that he's been defrauding the government every year for 10 years for over a million dollars. He's the guy they brought in to testify against Eric. I don't know. Maybe he's not going to get prosecuted for that fraud.

Jeff Graff came into this courtroom, and he did tell you that Eric is not good with the computer. He told you that he does rely on people too much and all the time. And he also told you, and had to admit, that he often signs things that he doesn't sit and read. I think you've all gotten a pretty good idea of Eric Sheppard. He's the one that's not reading, that's got a thousand things going at one time, that Glenn Sheppard described to a tee of him walking around in circles on his phone and going around the block. That's who Eric is. He's making deals and getting things done.

Eric believes when COVID hits he's eligible for these loans. We all start hearing about stuff. Nobody really knows what the rules are because, of course, the rules were changing every day. But we know that Eric asked Jeff to help him with that HM Four application. Now, while Jeff is filling out this application, and getting all the documents together, Eric gets an email from a guy named Waserstein March 30th, 2020. The dates are really important.

And on this email there are a bunch of attachments with information all about these loans. And Eric has one question for Graff: "Hi, Jeff. I received this from Was. Please let me know if this makes any sense or if we need to modify anything." That is Eric Sheppard's intent. That is what's going through his mind. "Are we compliant? Are we good?" He asked Graff right then and there: "Do we need to do anything?"

And you know what happens here? This is really important. What happens here is one of the first Government games. You know how this came into evidence? Let me remind you. This email did not come into evidence. The Government brought the attachments that were being sent from Eric to Jeff

Graff and asked him all about the attachments, making it seem and implying to you that Eric was sending all this information about the SBA loans to Graff, like: "Take care of this," like he knows all about it and did all this research. Nothing could have been further from the truth.

The Government didn't bring you this email. We did. And the email says: "Let me know if we need to change anything." That, they didn't want you to know. Because that was his intent from day one.

Jeff Graff, the handwriting expert. They also tell you that Jeff Graff told Eric not to apply on HM Four. Well, that also didn't make sense. And that was something new that he also didn't tell the FBI in all those interviews and discussions. But Jeff Graff came into court and said that.

Now, Jeff Graff is the meticulous, like brainiac kind of guy. He memos and writes everything. I even asked him: "Do you memorialize things in writing all the time, anything that's important?"

"Absolutely."

Well, did you see any memos about him telling him not to do it? Nope. You know what you did see? The opposite. You see that Jeff Graff fills out the application. And what does he do? He writes to Eric: "It's been done," wishing him good luck. That's what he says. "Let me know when you get the email confirmation, and good luck." That's what he wrote. He didn't write: "Don't forget you can't get this," because that didn't happen. Jeff Graff never told Eric: "Don't apply." Jeff Graff never said -- with his accounting background and reading whatever -- because maybe it wasn't true at the beginning you needed W-2. But nobody's telling Eric: "You have to have W-2 employees." His closest people, in his circle for 20 years, that have accounting background, and nobody's telling him.

So why did the Government call Jeff Graff? They called him because they don't have a handwriting expert. Gee, you think that would have been good in this case, when they keep saying about all these signatures, who signed what and where. Do you think they should have called a handwriting expert? Do you think you're entitled to proof beyond a reasonable doubt or you should guess about what Graff is saying?

Of course graff is also admitting that Jeanette is signing his name on checks. He's also admitting that he's notarizing stuff that other people signed on Eric's behalf. We know when Jeff Vasilas did signing his name on personal guarantees that was not with his permission. We know people were signing Eric's name. We know. So shouldn't we have had a handwriting expert? There are two reasons why you didn't have a handwriting expert. One, the expert couldn't say what they wanted. Think about it. Why else wouldn't they bring an expert? Why else wouldn't they bring you something that would be a slam dunk and show you? Because they don't have the evidence because it doesn't exist. The handwriting expert either couldn't give it to them or said: "Can't tell." Either way -- either way, you were entitled to an expert opinion.

Now, the Government recognizes that there are different signatures, and that's also interesting. Different signatures. First, they wanted you to think that he was like doing it differently on purpose. Why would he do that? Second, then they show you signatures from years back, which also don't match up, by the way. So they settled for Jeff Graff. The Government's case is throwing what we call proverbial spaghetti on the wall to see what sticks, anything. You heard about a whole bunch of things that have nothing to do with what's in this Indictment that you're going to look at. But they settled for Jeff Graff.

And what did he tell you about those handwritings -- signatures? He told you things like: "Yeah. Looks like Eric's signature." Looks like? This is a criminal case. These are really serious consequences. His freedom is at stake. Looks like? And then he said something that was beyond. He said: "Those numbers, well, some of them are consistent with." Consistent with? This guy is watching too much "Law & Order." "Consistent with" is a legal concept. Either he picked it up from hanging out with the Government or

TV. But it's not something that normal, everyday people say.

Why? Because he's a hurt, angry guy. He's upset. For some reason he thinks he's entitled to be what Eric is, just because he grew up with him. Eric has always taken care of him. Think about his salary. $150,000, he tells you that it was his salary. "Is that all you make?" That's what he told the FBI.

"Don't you get a new BMW every year?"

"Yes."

"Don't you get health insurance, not just for you but for your wife, your whole family?"

"Yes."

"You think that's worth something?"

"I guess."

So it's closer to $200,000, and you punch a clock nine to five, Monday to Friday. Sounds like a pretty good job.

Plus, he gets a deal here and a deal there, a hundred thousand on Arundel, $122,000 on the Kentucky deal. He's riding pretty high.

The Government brought him here to talk about things that have nothing to do with this case, that he was mad that somebody signed his name and he was going to do this Mala nightclub thing, which you heard about. I'm not even going to get into it. The bottom line is, is that somebody signed for Jeff Graff. Wasn't Eric. And there were two people that had signatures for Jeff Graff, the engagement letter for the lawyer -- and think about it. He said that he never saw Eric sign "Jeff Graff." But he comes in here and says: "Yeah. Jeff Graff. Yeah, that was Eric." Where is he getting this?

But he's not charged with that, nor is he charged with forgery, nor is he charged with anything connected to the signatures. I mean, maybe Jeff was just getting back at him.

Nobody's telling Eric that he didn't qualify. And there's an email that we have to talk about from Neal Cupersmith. Neal Cupersmith says: "Applying can be a daunting process." Daunting. And that's from an accountant.

We have to talk about April 1st, 2020. Eric emailed Alex Zaslow, who you finally heard from in rebuttal, who you probably should have heard from from the get-go --

MS. JIMENEZ: Objection.

THE COURT: The basis of the objection?

MS. JIMENEZ: (Inaudible.)

(Court reporter interruption.)

THE COURT: I'm sorry. I can't hear you, Ms. Jimenez.

MS. JIMENEZ: Commentary on the order of witnesses.

THE COURT: The objection is overruled. You may continue.

MS. WEINTRAUB: Because he was the one who did all the tax returns for the past seven or eight years, because he's the one who prepared the tax returns that had the SBA loans on it that Neal Cupersmith, his partner, didn't even see. But that's who they brought in to testify.

He writes to Neal Cupersmith: "I am applying for some of the government programs." Now, Zaslow and Cupersmith have been his accountants for 25 years. Some years they filled out as many as 30 or 40 returns. Don't you think they have some kind of fiduciary obligation here? Don't you think that they should think: "He's a pretty darn, you know, good client. I should take care of him"? Don't you think they should reach out to him? Don't you think that he would expect if something's wrong with him doing a government loan that he would be told by his accountants? Wasn't that reasonable for Eric to think? Of course. But Zaslow doesn't think that. "No. We didn't tell him anything. We got the email, we knew," and he put it on his tax returns.

They set up a conference call to talk. Remember, that's a conference call that Neal Cupersmith said never happened, until we showed him an email where he is saying -- Zaslow says: "Neal and I just tried to call you, and the conference call is set up for ten o'clock." There was a call. And contrary to what Zaslow just said, there was a call, and they talked about the loans, just like what he had sent. Whether he doesn't remember or not, and how he could testify from four years ago a conversation that wasn't important about paying a bill, I don't know.

But if that didn't happen, why would Eric, when he applied for the loan, say: "I need to change something in the application. I just talked to my CPA"? Does that make sense? No. He said: "I have to change something. I just talked to my CPA," because that's exactly what happened. He had talked to the CPA the day before, and then he writes it on the loan.

Says right here: "I need to add more documentation from my CPA to the submittal but the site will not let me," because, Ladies and Gentlemen, these portals were not easy. As Cupersmith said, they were a daunting task. They're hard to understand. He's not good with the computer to begin with. And you just push buttons. You can't even see what you're doing. You don't even see the application until it's sent.

There are a lot of details to show you and to talk about, and I am really limited on time, and I'm already over. So let's look and just express to you when you go back there and look at this Indictment, the Indictment is charging him not with a million loans that the Government has this nice chart for, with the guy that came in, that could have -- could have done an analysis but didn't -- the FBI agent, Hysa, came in here. And all he did was add up a bunch of numbers literally and put them on a chart, as opposed to the expert forensic accountant that we called to explain to you and follow the money and show you money going in, money going out. That FBI agent could have done the same thing. He's a forensic accountant. But he didn't, because they don't want to know about money going in and money going out.

In the loans, you're going to see I color-coded it just for effects. But the Indictment is about four loans, the HM Four, the HM-UP failed PPP, HM-UP PPP, HM Management PPP with Cross River, four loans. But rather than go through all of the loans, I need to discuss the specific allegations of what's going on.

And right before that, look at this email from March 23rd. March 23rd, before everything is done, before the CARES Act is signed, before the government loans are out, Eric Sheppard is writing, and look what he writes: "People at Orange County has instructed us that we can't have large amounts of employees in the building." He doesn't say: "Workers." He says: "Employees," because that's his language. That's what Eric Sheppard thinks. Eric Sheppard thinks he's employing people. They're his employees.

I'm not saying he's stupid and he doesn't know there's a 1099 and a W-2. I'm saying he doesn't know who gets what. That's what I'm saying. I'm saying he didn't know which employees were which because it didn't matter and it wasn't in his wheelhouse. But to him, they were all employees.

Eric took the stand that he didn't have to take because he wanted to. Eric took the witness stand and was cross-examined for almost 10 hours. Was it difficult? Yeah.

He did the best he could. It wasn't easy. You-all saw. But he wanted to show you and talk to you. He was on his email in his home office, he tells you, when he sees pop-ups start coming at the beginning. Eric's mindset was that he had always gotten loans before. He went to a bank. He talked to people. And if there a was question, he called a lawyer or he called a bank guy. That's what Eric did. That's what he thought this would be. Wrong.

The uncontroverted evidence is he's very unsavvy with the computer. And that Maria Ataca, who does his filing, actually had to prepare a spreadsheet for him as a template because he didn't even know how to do a template. And by the way, while we're mentioning Maria Ataca, the Government -- all throughout their case they told you: "Well, 1099s, it wasn't for" -- "you couldn't have a PPP loan if you had 1099ed workers because they're entitled to get their own, and they apply and do it separately."

Well, wrong again. Maria Ataca told you that she had another business, and that she did apply for a PPP loan and she was flat out rejected.

So again, you know, it's easy what the Government has these witnesses say that are sitting, you know, high in their thrones, in their corporate offices, that didn't actually do these loans. They bring in these supervisors at the top level that have no personal knowledge of anything. They bring them in to say how it should have worked, what should have happened when I saw this application. Do you know if that happened? Nope.

So is that the evidence beyond a reasonable doubt that you-all want before you can take his freedom? Aren't you entitled to the people that were doing the work, that were making decisions, to ask them why, or are you going to take a supervisor saying: "Well, he must have meant this"? Really?

Let's discuss this W-2 versus 1099 head on. You heard Eric testify that he looked at the workers as employees. You heard that the Government has cherrypicked a couple of lines from a multi-day deposition in a civil case that he had to prepare for, and that's what you saw. Whether or not Eric remembered how he was prepared for that deposition regarding the 2016 lawsuit in 2020, that's just crazy.

And what about that depo? There is something about that depo we should mention, right? Because again, the Government changes its colors. But that case was about Leon Wildstein suing Eric Sheppard and losing. He was sued for fraud, and he lost, and he was mad because Eric countersued him for fraud and won seven figures. Wildstein, you heard the testimony, threatened he would get Eric back and he would have the FBI go after him.

And guess what? Here we are. And guess what else? Wildstein's lawyer sits in the back of that courtroom every day. You've all seen him taking notes, not being happy that we have outed him now. And he spends time with Sarah Halleran, the FBI agent, who you also see here. And you have seen them chatting, chatting, and exchanging notes every single day that we have been in session. What his connection to the FBI is, I don't know. It's not a coincidence that we're here.

But back to the W-2. Jammie Hutcheson about W-2 versus 1099: "So there's nothing in the portal telling the applicant it has to be W-2, correct?"

Answer: "Correct."

Jammie Hutcheson admits: Nowhere on the portal. So how does she know what the loan processor was thinking or relying upon? Did she have any information? No.

Philip Palmer. He came him in -- the IRS agent. He's an expert from the IRS. And what did he tell you? As an expert, he even made a mistake. And he understands, whether or not they file 1099s for them or W-2s, small business owners confuse the words and terms interchangeably.

Let's go to the second page.

"The word 'workers' by itself means it can include independent contractors, right?"

And what does Mr. Palmer say? "It can. Correct."

It's not on the portal. Everybody came in here and said: "Well, they know that you got to be W-2." And Mr. Etra must have asked every single witness 10 different questions west of Sunday: "Is it there? Do they know?"

"Uh, no. Well, they should have known. They had to go to the regulations."

Really? That was in what they call the CFR, the Code of Federal Relations. I have one because I'm a lawyer. I'm sure nobody else in this room does, except the other lawyers. Who would go look up guidelines? One of these witnesses actually said that the applicant was supposed to go and look them up. "Well, were they directed to?"

"No."

"Were they told to?"

"No."

So again, from their palace of supervisors, they're saying what an applicant shoulda, woulda, coulda. And then they want you to convict him when it wasn't there? If it was there, we wouldn't be here.

Eric believed that he was eligible for these loans. The eligibility requirement on the left side of your screen, it's four questions. And basically it just says whether you have been barred or disbarred, whether you're a convicted felon. And then it says: "Continue."

Now, a normal person would look at these three or four questions, fill them out, answer them, and press the button to continue, thinking: "Okay. Done with eligibility. Let's go to the next."

There's no time period about the employees -- how many employees do you have -- when Eric filled it out, at first thinking he's going to need 80 to a hundred employees at least to get that job done. Even Graff said it would need a hundred people to get Burlington built. When we look at what the construction was at Burlington, you can clearly see that it was going to take a lot of people.

But we showed you more with this first PayPal loan. Eric is asking for help. He is trying and requesting through customer service, and he says: "I am the owner of multiple companies so I need to change the application to reflect self-employed with employees, and the LLC needs to be changed. How do I do this?" Is this somebody who's committing fraud and creating documents? No. This is somebody who's trying to do the right thing, and he fills it out and says: "Help me."

And Jammie Hutcheson, from on high in supervisor world, says: "Throughout the course of the PPP program, we received many contacts, and we were just unable to respond." Really? Really? One of these people, I forgot who, said: "Well, we had customer lines available." Are you kidding? There were no customer service people picking up a phone. "I needed to add more documentation from my CPA to the submittal, but the site will not let me." That's Eric's intent.

The SBA was rushing to get the loans out. April 23rd, 2020, remember we showed you Eric was setting up a call with Zaslow. Here it is April 23rd, and he's writing and PayPal's not responding. There is a scanned, corrected application and it's ignored. And what do they say -- he's trying to do it the right way -- "Sorry. You have an application affiliated with this email so we're not even going to look at this. You're rejected."

And look, it's right on April 27th, at 12:38, it's scanned and sent. And at 1:31, what happens? It's funded. It's funded. The application, with all the wrong information he's trying to correct, is funded. Because they're just rushing it out and getting it out. But it shows Eric's good faith.

The certifications that go on are really important, and the Government has made a big deal about them. The government certifications, so we can look at it, talk about good faith, not accurate a hundred percent under penalty of perjury like the Government likes to say. Good faith. There is good faith here. The applicant was in operation on February 15th, 2020, had employees for whom it paid salaries and payroll taxes or -- or -- paid independent contractors. It's confusing. It's not easy to understand.

"And the funds will be used to retain workers." Check. And that's what happened.

Althea Harris from the SBA. She's the deputy director. She was the first witness, I think. She comes in here from on high and she says: "The applicant must apply in good faith." And that's what he did. His company had as much need for that loan as anyone else. And in the Government's opening, they tell you, basically, it's only intended for people that are destitute. That's not what the evidence is. It's not true.

And Althea Harris even testified and told you: "So you would never say, for example, the PPP program was not for rich people? You would never say that?"

"Correct."

Again, I mean the Government just plucks things from the sky. They make things up to appeal to you that are prejudicial to Eric Sheppard. They want to win this case, there's no doubt about it, but the evidence isn't there.

Getting back to the charges in the Indictment. Jeff Graff, at one point, said he told him that he shouldn't do it with HM Four, even though there was nothing written about that, because it never happened. If it was fraud, he would not have signed his name to it. If it was fraud -- "Well, you're not saying it was fraud to do it that way, were you?"

"No." Because he knew. He knew, and he never said that it was. But again, he couldn't tell the truth. HM Four, uncontroverted evidence -- the Government loves to say that it's a nothing, and all the charts, and one company owns another company. But you know what? He didn't set it up that way. The accountants and the lawyers set it up that way years and years back. And we know why. Graff testified every different project, for liability purposes, the bank -- the bankers who were lending the money want to make sure it's secure with just one project. They don't want to get tied to a million different things they can't collect on. So every project is incorporated separately with a different name.

That's why that happened. And it was a simple explanation. The Government makes it seem like it was nefarious and something was, you know, shady or wrong about it. But HM Four is a real company. It's on Sunbiz.

You saw the real estate agreement. It is a binding agreement that says HM Eight as the developer can assign the power to HM Four to manage the CAM. We've all learned about the CAM. That's what Glenn Sheppard does full-time. That's the maintenance. This was 30 acres of property. There's a lot of maintenance to do. You've got parking lots, roads, lights, plumbing. You've got all sorts of stuff going on at all sorts of common area places.

A long time ago, Eric Sheppard told Neal Cupersmith about it, even though Neal Cupersmith said they never talked. But he did admit that he knew HM Four was a legitimate operating company. It's convenient that the Government comes in here and tries to say that it isn't, because Rob Kallman also told you that HM Four had real responsibilities.

HM Four. Brent Motes testified -- well, first Cole Blakeley from the SBA says: "Send at least two items below dated prior to January 31st," very minimal requirement. Brent Motes comes in here, and he looks at the management agreement that we introduced, that's in evidence -- and we said: "So this management agreement, that satisfies the requirement that HM Four was an operational, real company?"

"Yes."

"And it met all the requirements?"

"Yes."

So what are we talking about?

Her Honor has given you instructions on the law. When you're considering the term of "aggravated identity theft," it has to be considered with great scrutiny, a special scrutiny. First thing it says to you is there's an enhanced penalty for it. So let's look at it really carefully.

"For a crime involving fraud or deceit, the Defendant's use of an identification cannot be an ancillary feature of the wire fraud. It has to be a key mover in the criminality." What does all that stuff mean? It means not merely as an ancillary feature of the wire fraud. It has to be a key mover in the criminality, meaning it has to be what's pushing the fraud, the wire fraud. Mr. Etra asked every single witness, asked Brent Motes, asked Althea Harris. Not one witness said that any of these documents, the lease that we're going to talk about or the bank letter, were at the crux of any fraud.

Let's look at what the bank letter is. Two things: One, bank letter; two, the lease. First of all, there was no crime here. But what were the lengths that we had to go through? And what was the Government doing while this was going on? The Government told you in their opening statement that they were going to prove that the bank letter is forged and used without the consent of the author Heimdal Barrios. Is that what the evidence was? You know better.

Look to the bank letter and the testimony of Heimdal Barrios. He says: "I've signed so many of them," those reference letters, "I don't know if I did this or not."

"Are you denying under oath you signed this letter?"

"No. I'm just saying I don't remember."

That's a far cry from forgery and somebody stole my identification.

But what did he tell you? "I'm the only one with access to my email."

Once we brought this in, and showed you that, what did the Government do? Remember, they said it was a fake letter that Eric created on his computer and sent, right? Then they start asking questions when we bring in the email. And they're asking Mr. Barrios all sorts of things. "Well, can the Microsoft Word be manipulated? Can they change the wording on this document?" And they're implying that he totally fabricated this letter and the email. And then we went to break. And we thought: My God. It's not our burden. It's their burden. But look at the games they're playing. They leave you with the impression that Eric Sheppard, the master of Microsoft Word in the computers -- that he fabricated this letter.

So what did I do? We -- we hired a nationally recognized expert. That, of course, the big cross-examination was: "Well, when was the last time that you took a class?" And he starts: "I teach the class."

"When was the last time that you were sitting in class?"

You don't understand. John Jorgensen still has his own business today, and -- in four different places, and he testified he's got NSA clearance, National Security Agency clearance "For Eyes only." There are very few people in the whole United States who have that kind of security clearance for digital data forensics. And the best that the Government could cross-examine him on is: "When was the last time you were in class?" Are you kidding?

He was unimpeachable. But more than that, he brought you evidence that the email was last modified by somebody, and he said somebody named Heimdal Barrios at SunTrust Bank. And then the Government now is stuck with this. And what did they do? What they always do. They pivot 180. "Okay. So maybe it was real." Huh? You just said it was fake and fraud and forged. And now it's real?

And the Government now says: "Maybe" -- "maybe it's not. Maybe somebody else signed it on your behalf." Do you remember that? I guess she forgot about the testimony of Heimdal Barrios, who said: "I'm the only one who has access to sign into that computer." There's no dispute Heimdal Barrios wrote the letter.

And interestingly, what did John Jorgensen say? The timing worked out perfectly coincidently. We couldn't have known that because we didn't have the expert. Eric Sheppard told you. He went to the bank, gets the letter, it's printed out, and he takes it, and that's exactly what happened.

That's an aggravated identity theft with enhanced penalties that they've charged him with because they didn't know what they had. And don't you think they should have investigated that before? Don't you think it should have been looked at before they charge him with an Indictment and arrest him?

We, the Defense, with no burden, brought you the truth. And we brought you an expert witness, something they could have done too with the handwriting. Because an expert is unlike other witnesses. An expert's allowed to give his opinion or her opinion. You don't have to accept it, but you're allowed to consider his opinion based on his experience.

Then we have the lease. We also know -- I'm sorry. You can put it back.

We also know that the letter was never requested. They didn't even want the letter. They wanted his bank account, and he sends the letter instead from the bank manager because that's what he usually did with loans. And what happens? There's nothing in the record even asking for it, reviewing it, or relying on it. This had nothing to do with any loan or alleged fraud -- wire fraud to get the loan. Is this letter at the crux of the loan? I don't think so.

Mr. Motes testified: "Do you agree with me the letter was never requested by Mr. Blakeley who was the SBA representative?"

Something else that happened here. There's nothing in this letter that talks about Jennifer Sheppard being a signator on the loan. Remember? Remember Barrios's -- what Mr. Barrios's testimony was? He said that the FBI agent told him -- told him -- gave him information. Is that the way they investigate these days? They tell you what they want you to say first? Heimdal Barrios said: "The FBI agent told me that Jennifer Sheppard was not an owner or signator on the account." And I got him to tell the truth and to say that he said: "But I don't really have any information on my own about that."

That's scary. And then you want to know why somebody wants a lawyer when the Government and these agents come knocking? That's why.

Let's look at Count 11. In Count 11, the Indictment alleges that Eric Sheppard knowingly submitted a false document, and that's the lease from Mattress1One of Maged Salem. Remember him? From opening forward, they first tell you again that the lease is fake and forged, it's fraud. Then we have Maged Salem, as slippery and deceiving as he was. Remember when he took that stand? This guy couldn't tell the truth if it hit him in the face. He couldn't answer one question. Talk about credibility.

First, Maged Salem verifies his signature on the lease. Then realizes when he goes home: "Uh-oh. I've got $14 million worth of creditors. I just changed the name of a company so I can get money and defraud the creditors, circumvent them from knowing about my income. I just admitted this to the FBI." So he calls the FBI back and says: "You know what? On second thought, it's not a real lease. It's not my signature." Huh? Don't you think they should have looked a little, done a little investigation, Google him at least and see who this guy is?

They claimed -- I was trying to cross-examine him about one lawsuit after another, showing you the fraud that this guy had perpetrated. He admitted to six different lawsuits, judgments of $14 million. Why did he change the name of the tenant? Doesn't take a rocket scientist to realize this guy is committing fraud. So he changes the name because Mattress1One -- SOS Furniture, d/b/a Mattress1One, has all the creditors after them.

The second lie that Maged Salem said was: "That's not a real lease because I would have initialed every page, like I do on every legal document I sign."

MS. JIMENEZ: Every lease.

MS. WEINTRAUB: Not true either. We show him a document, the Tenant Estoppel Letter, where he signed the third page, and one, two, and three are not initialed, like he said. They're not.

Then he says: "Well, the third page is a stand-alone document." I'm going: Huh? What is that? He says: "Well it's only one page," because I only showed him one page. "Oh, no, Mr. Salem. Here are the other two pages."

"Oh."

No answer because he's a liar.

You use your common sense. We know from the checks that all of a sudden the checks are a way different amount of money for the lease. Well, if you don't have a new lease telling you you have to pay twenty-two five up front, and 8,000, plus sales tax, then why on earth are you submitting $8,400, which is the 8,000 plus the sales tax, and a check for the twenty-two eight for past due rent? Why would you do that?

The lease is real.

He even said he wasn't being evicted or thrown out. Remember that? We know better.

(Video:)

"MR. VASILAS: Today, Tuesday, May 12, I, Jeff Vasilas" --

MS. JIMENEZ: Your Honor -- Your Honor --

(Video stopped.)

THE COURT: Hold on. Hold on.

MS. JIMENEZ: There was no audio to this video.

THE COURT: That's correct. The objection is sustained.

MS. WEINTRAUB: The video is in evidence, Your Honor.

THE COURT: Yes. The video was in evidence, but we did not include the audio. So I do agree.

MR. ETRA: I thought the ruling was we couldn't play the audio. So just go without -- just play it without the audio.

MS. JIMENEZ: The audio is hearsay.

MR. ETRA: They hadn't listened to it yet.

THE COURT: That's not correct. The objection is sustained.

You may continue.

MS. WEINTRAUB: According to Brent Motes, the lease was also irrelevant. If it's irrelevant, and if it wasn't asked for, and it's not relied on and part of the file, then it's not the crux -- it's not at the crux or a key mover in the loan.

We asked Brent Motes: "The name Maged Salem, or whatever the real name is, that wasn't the critical aspect or crux of this loan application?"

He says: "Yeah, like I said, we trusted it."

"The name here wasn't the crux or key aspect on a lease?"

"Right. On most lease agreements provided by applicants, the name wouldn't be the critical aspect." The name wouldn't be the critical aspect. There is no aggravated identity theft.

And then we have tax returns. Then we have these fake tax returns that we told you from day one -- we acknowledged they're fake tax returns. We don't know anything about them. For the counts in the Indictment about the fake tax returns, let's look at what's important. David Toye said the tax returns weren't relied on either. He said for that loan size they weren't required to prove by the tax returns because it was under $150,000. That was the Northeast Bank.

Jammie Hutcheson from PayPal: "Is there any indication anyone at PayPal relied on that purported tax return?"

"No. Correct."

Then we have the Cross River. Although Spencer Lord claimed to know that he did request some kind of tax return, in retrospect he was probably talking about something else, the 941s. None of the documents produced showed that a 1065 tax return was requested or that Cross River even read it.

As far as the tax returns were concerned, nobody was saying -- every witness -- Jammie Hutcheson, David Toye, Spencer Lord, Philip Palmer, Althea Harris, the whole gambit, wasn't required to have an accountant or preparer or sign it. It doesn't have to be signed by the tax preparer. Most people don't have a CPA or don't need one. So why would that have been a requirement? It's not.

Here we have another incident of the Government's manipulation of evidence. What we have here is the application for the PPP loan. And you will remember that the borrower had a choice, loss over the year or compare quarter to quarter. And you have to be -- you see the pop-ups -- Sole Proprietor and Independent Contractor, Partnership, Corporations, or Sole Proprietor with the Employers.

What's the Government game? This was the failed PPP loan that's charged. The Government game here is the loan review: "You are in the wrong tab." See? Pink. "You are in the wrong tab," so it failed, because they were in the corporation tab.

And then, when they resubmitted it: "You are in the correct tab."

"What form of support did the borrower provide for the revenue decline?" It was under the $150,000. You didn't need to prove anything. You didn't have to provide anything if it was under the 150.

Now you're in the correct tab, so it's approved. But they want you to think that those fake tax returns mattered and that it failed because of it. He just wasn't in the right tab. What does that tell you?

The Government intentionally misleads you time after time. On direct -- another issue is with the PayPal for HM-UP. On direct what you saw was the witness saying the borrower was emailed for tax returns and asked for tax returns. But that's not what happened. The Government was content to leave that testimony just like that. On cross-examination we said: "Well, where is that document? Where is that email where that guy said that, where the loan representative that's working on this actually said that?"

She says: "It's in the loan documents. I mean it's in the log."

And we said: "Where on the log? We have the log and we don't see it." We go through the whole thing. That's not there. And again, Government's happy to leave it. We go back and we find the February 16th email from PayPal. And what did it ask for? They didn't ask for that tax return that the

Government said. The email asks for the partners of the company's tax return. And on February 17th, the very next day, what's submitted is the partner's tax returns, just like they were asked for, HM Four and HM Eight. Those were the partners. There was no fraud. But they want you to think that the other tax return was asked for because they didn't bother to look and find that email. They'd rather just convict him and ask for him to go to jail.

This is not aggravated identity theft. The Government is asking you to speculate and guess. The Government doesn't have a single witness who's going to say, or who did say, that Eric Sheppard signed anything. They don't have a single witness to say that he uploaded and sent things. We know that Jeff Vasilas was in that house, and we know that Jeff Vasilas was sending things. How do we know? The Government's right. Remember he had the huge punch list for Burlington, and in 2021 Eric's sick.

And I have to stop and pause because we know that Eric had cancer. We know he had surgery. We know he had COVID. We know he had treatment. We know, as Kallman said, it came back recently. And the prosecutor had the nerve -- it was stunning -- to mock him. "Well, you're looking pretty good, Mr. Sheppard." Really? Really? I think everybody in this courtroom, unfortunately, in these days, knows somebody who has had cancer. To say that to somebody, a cancer survivor, hopefully, is unbelievable. That's a new low.

His home office with the computer, there's only one computer there, and that's the one that Jeff Vasilas was on. And you know, they talk about this IP address, and where things were being sent from, and we know that some of the IP addresses come back to the house. We also know Eric's not there. For example, at Jordan -- at his daughter's basketball championship. We know that he wasn't there on February 24th, and we take a picture. She asks for more pictures. He goes to show it to her, and now she doesn't want them anymore.

But what did we show you? We showed you a text. Jeff Vasilas is still in the house on February 26th and 27th. We showed you, February 27th, Cellebrite from the Government, that Jeff Vasilas is at the house. Text messages. We know that Eric is not there.

You know, it's kind of like those traffic cameras with the red lights. Unfortunately, I get a bunch of them. But the traffic cameras don't take a picture of the person driving. They just take a picture of the car. It's the same thing here, except the traffic light people, because they don't have a picture of the person, it's only a civil fine and a traffic ticket that you have to pay, because they don't have the person. So we're not going to take somebody's liberty away for that. Well, here it's the same thing. They don't know who's on that computer, and they knew from day one it's an issue. So what did they do about it? Nothing.

One of the Government's favorite things to look at and talk about is the commingling of funds. And I know I'm running out of time, so I'm going to try to summarize as best I can. But this case has been so complicated, and there is so much to talk about, that I have to take another few minutes. The commingling. The Government claims that: "Oh, he pays his house mortgage. He pays for a bracelet for his daughter. He pays for school tuition." No. Money is commingled, yes. Nothing's wrong with it. Nothing. Not one witness in this entire case said that commingling was not allowed.

As a matter of fact, everybody acknowledged commingling was the acceptable practice. Jammie Hutcheson -- here's Brent Motes: "The SBA money is fungible. Yes." Althea Harris: "There's no rule that it's to be separated. You could send it to whatever account the borrower or business bank account had." David Toye said -- everybody said commingling was fine.

So why does the Government want you to still believe that he's paying his house mortgage? Because it sounds good? Because the mortgage was a lot of money? You already know it's going to be a lot of money. That's not a crime. He had more money in that account, and it was all accounted for. Even Cupersmith admitted that his accounts were separated, the personal from the business. There were distributions at the end of the year. That's the way they did it.

Is that the best business practice, to keep everything in one account? Of course not. Kallman was appalled. But nevertheless, it's not illegal and it's not wrong. And Cupersmith and Jeanette always sort it out.

The two instructions that Her Honor gave you, one is about good faith. And Her Honor told you that good faith is a complete defense to a charge that requires the intent to defraud. You know he did not have an intent to defraud. He wasn't looking to cheat people or steal money. Are you kidding? He's got these loans, he's paying them back.

And by the way, of course the Government didn't bring that out to you. We had to every time. He's been paying those loans back, as he was supposed to. They want to make it seem for one percent or two percent that that's why we committed fraud. Come on. Common sense tells you that's not true.

We know other people are signing his name, including Jeff Vasilas. They want to play this game? Here you go. You look at the signatures. He is signing as a personal grantor his name is Eric Sheppard and he's the owner of a house.

The truth is, when Eric got sick, as he told you, 2021, Eric couldn't take it anymore with these loans. He'd had enough. That was it. He just couldn't deal with it. He kept trying to fix the PayPal loan, the very first one. They wouldn't listen. It was too stressful once he got the cancer.

He had other things to concentrate on. He had phase 3. He had other things going on. He wanted to negotiate, get those leases up and going if he could, get Indian Trails done, the road. He had things to do.

And what does Jeff Vasilas say? He says: "Hey, buddy. I got this" -- because he's back at the house. "I got this." He's there two, three times a week. We know it. We know it from everybody. And Jeff Vasilas says: "I'll do it."

He had the right to rely on him. He had done him well. Burlington came out. He actually got Burlington done. And unbeknownst to Eric -- he didn't know what Jeff Vasilas was really doing behind his back. He didn't know about the liens that were going to come. He didn't know about the accident when he got stuck in the mud and the two big tractors. He didn't know that was coming. To him, Jeff Vasilas was his new go-to guy. Jeanette's not at the house, Jeff Graff is gone, and Jeff Vasilas is getting things done. So when Jeff Vasilas says: "I got this," he said: "Okay." And Jeff Vasilas, you know, had access to everything.

Mr. Bouchner. He's an expert witness, the forensic expert witness. And Mr. Bouchner came in here and he explained to you he followed the money. He didn't add things up like the FBI agent, Hysa. He followed the money. He did an analysis, and he showed you that analysis, and he showed you there was four times as much money in that account as what was spent on the loans.

So for the personal expenses that were there, we're not denying they were there. They were there. He pays his mortgage. He ramps up that AmEx card. We've all seen it here. Glenn testified about it. Two people in Orlando had that AmEx card, burning it up. So what? As long as it's all accounted for, there wasn't a problem.

But we know that the money was there. It's kind of like the example that Scott Bouchner gave you about Grandma. Grandma gives you a hundred dollars and tells you: "Go buy a sweater." I'm thinking: "Good. I really wanted a new sweater." But on the way home, I stop and I get gas. And I take out the hundred dollar bill, and I get gas, and now I've only got probably $40 left. But the point is I go home and I order that sweater online for a hundred dollars because Grandma gave me a hundred dollars. And Scott Bouchner explained, yes, you have a hundred dollars from Grandma.

It's the same thing here. He followed the money, and he showed you that that money, the personal money, was not used -- not spent from Government money.

The gate installation at Eric's house we know, again, February, the IP address is right there. That .129, that's Eric's house, and that's Jeff Vasilas signing February 19th. So what are we talking about?

The bank accounts. What did Scott Bouchner use? He used the same thing Neal Cupersmith used. Where did he get them from? Neal Cupersmith, production from the Government, all the bank accounts that were subpoenaed, all the records, all the QuickBooks that were done, not after Eric got arrested -- all the QuickBooks that were done that Neal Cupersmith had in his possession from years ago. That's what was used in Scott Bouchner's analysis, real-time figures following the money. We don't trace serial numbers of money.

We put on a full defense case. That's very unusual. Not only did Eric testify, Rob Kallman, his friend of 20 years, who's investing millions of dollars -- this is a guy who owns the second largest book distributorship in the country. He's the guy who sells the books to Amazon to sell to us. That's who he is. You think he's going to invest with somebody who is committing fraud? No.

Rob Kallman told you something else. He told you and corroborated what Eric was talking about with his ownership of HM Four. There came a point where only Eric was putting in that money. So Eric called Kallman and said: "Hey, buddy. I'm diluting your interest because I'm the one putting up this two and a half million dollars." And Kallman said: "Fine. We'll work it out." And that's what happened. And he trusted him, and he's always worked it out with him, and never had any issue. What does that tell you?

Speaking of what does that tell you, you know, we know that Eric is a success at business. But you know what else? We know that he's just a success -- you know why? Because every day we see that gallery filled with different family members and friends. That's why. And you know what? That's a success in life. That's what that is, people that show up every day, day after day, weeks. That's somebody who we got to think about here.

Mary Ataca tells you she went to work at Biscayne -- at 12000 Biscayne Boulevard. She was the cleaning lady at first. Ten years ago she goes there and she realizes they have a cleaning service, and she says: "Eric, you don't need me. There's a cleaning service. I really could have used the money." And Eric says: "Don't worry. I got you. You know what, Mary? I need somebody to do filings so much." And we heard how much filing there was to do. We heard about the 14 storage bins. We heard about all those filing cabinets that were taken to Eric's house too. And we saw the binders and what's there. That's the kind of guy he is. "Don't worry, Mary. I got you," and he puts her to work. And she's been working ever since doing the filing.

We put on Glenn Sheppard. Glenn Sheppard came and told you he works and does the CAM, the CAM that they think is not part of the real business of HM Four. That's what he does. Do you think that guy was lying? That guy couldn't tell a lie. He couldn't stop talking either. But Glenn Sheppard told you from the bottom of his heart everything that was going on, and just rambling and telling you everything. That's who Glenn Sheppard is.

Kerby Kleef. What did he tell you? He told you how he got a job in COVID and how grateful he was. These were real people getting real money during COVID. When nobody else was paying them, when they had no other way to support themselves, Eric Sheppard was paying them.

There were no witnesses that told Eric he didn't qualify. There were no witnesses, no warnings, not on the application, not in the portal. There was nobody that was defrauded or injured. There was no money stolen. You heard from Althea Harris if it didn't go to him it was going to the next guy. You heard that. They were in a hurry to get out the billions of dollars.

And what else did you hear? Ninety-six percent of it are all forgiven, and that's it, the government's okay. But after he did get one forgiveness, he didn't even apply anymore. He's like: "Okay. I'm paying for it," and he does. So unlike the other 95 percent in this country that didn't bother to pay it back, he's paying it back. And that's who they've indicted? And they tell you in opening he's taking money from people and he's using it for his personal benefit. Not true. None of it.

No witness of Eric having anything to do with these forged tax returns. Don't you think that Eric knew -- he gets extensions every single year for 20 years. Don't you think he knew his taxes weren't done in February? Of course he knew. One of these forged tax returns says February. That never would have happened with Eric. He knows how to spell Neal Cupersmith's name. He didn't do this.

There's no witness that Eric knew about these 941s. He calls up Jeanette -- if Jeanette did something -- let me pause. Where is Jeanette Gonzalez? Not our burden. Their burden. They know where she is. They've subpoenaed her before. They've talked to her before. Even after she had a lawyer, you heard, they talked to her. Don't you think if they wanted to bring you any information they would have? Maybe she did it with Jeff Vasilas inadvertently or on purpose to help him. I don't know. We can't guess. We're not to speculate.

Her Honor Judge Bloom has instructed you on the law. Your verdict must be based on the evidence, only the evidence in this courtroom. The evidence is the testimony that you heard, and of course applying your common sense and the law. And that's how you'll put together a verdict.

So let me talk to you for a minute about the verdict. You've been here a long time, and we all know that. And we all know that it's not a fun thing to be taken away from your homes, your families, your businesses, your lives. We know that. But I'm going to ask you to take your time in that jury room. I'm going to ask you to look at every single thing in there. There are 14 counts, Ladies and Gentlemen. And every count the Government is looking to take his freedom. And every single count we've talked to you about why they have not proven beyond a reasonable doubt.

You know, the jury instruction says: "Proof beyond a reasonable doubt is a real doubt." It also tells you that you're to rely -- would you rely on that decision in the most important of your affairs. In other words, think about the evidence you heard. Would you rely on Maged Salem to pick a doctor? Are you kidding? Would you rely on the testimony of Jeff Graff about the signatures as an expert and say it's okay that they didn't bring one in? Think about it. Talk about it.

If I might have one minute.

THE COURT: Certainly.

(Pause in proceedings.)

THE COURT: You still have time, Ms. Weintraub.

MS. WEINTRAUB: Thank you, Judge.

Oh. Before we do that, let's talk about the payroll report. The payroll report that the Government talked about already, and made a big deal about, from what you've heard, from what the evidence is -- the Government just asking you to guess and speculate. But from what the evidence is, would you think that Eric Sheppard knows how to prepare a payroll report with withholdings? Really? I mean, nobody -- I don't think anybody believes that Eric knew how to do that. Or if he looked at it and saw withholdings, if he knew that would be fake numbers or not numbers, or the numbers are right? But there's no evidence of it. That's what's important. There's absolutely no evidence.

Jeff Vasilas's signature on the borrower application form -- take a look at these signatures. Because what we know is that Jeanette Gonzalez signs his name. It's Jeff Vasilas's signature, and Jeff Vasilas is signing -- you see what they're saying is Eric's on the bottom, which isn't Eric's, and Eric said it's not his, compare that to Jeff Vasilas. I mean, if you want to play expert, let's play expert.

They showed bank records in their closing argument to you already. Bank records. And they told you that he signed that withdrawal form, that Eric did, that he signed the withdrawal deposit slip. And it was from 2018. And all I kept thinking about is really? Who was at the bank? Do they have a picture? We know that Mary Ataca did all the banking, or maybe Jennifer did it that day. Do we know? Are we supposed to guess? That's what the Government's giving you; go fish. That's not what we do here. What we do here is we look at evidence. Evidence.

I don't know, we don't know, if Jeff Vasilas did all this. I don't know if Jeanette helped him. I don't know if she did any of it. I don't know if she knows about it. She still works for Eric. You heard that. But what we do know is that Jeff Vasilas is committing fraud right here. What we do know is that he signs Jeff Vasilas as owner of his house when he was doing the gate work. He signs Jeff Vasilas. He signed for Eric Sheppard when Eric was out of town. We don't know what else he did. We don't. But what we do know is he was committing fraud.

Eric Sheppard's intent can be seen by his actions and by the documents, not just by what I say. Eric Sheppard's intent goes back to asking Jeff Graff: "Are we good? Do we need to change anything," writing PayPal, begging them: "I can't get on the portal. Can you help me? I need to make a change. I need to make a correction," talking to his accountant: "I just applied for a government loan." Then right away he just writes them: "I just talked to my CPA. I need to make a change." That's Eric's intent. He had no intent to defraud anybody.

The Government told you in opening that they have charged him with misusing loan funds for his own personal benefit. Not true.

We know that you will consider carefully everything that was said. This is the hardest thing for any lawyer to do, is to sit down knowing that the Government's going to come back up and I won't be able to rebut it. Think about the things that we talked about. Think about his intent. Think about his life. Think about: Why would he do that? For what? To save two percent on a loan? No.

Why would he do that when he was sick, he didn't feel well, and Jeff Vasilas was offering to do it? Why wouldn't he say: "Okay"? Why would he think that Jeff Vasilas would have thought this stupid scam up? Why? Because that's the real issue here. Do you believe that Eric Sheppard scammed, schemed, and deliberately put this whole thing together for a couple of hundred thousand dollars? Do you really think that? No. The evidence says that wasn't him. The evidence said no.

COVID was an awful time. It was scary and life was different. And you have to remember that's when this was going on. And who knows? You know, they say we're blaming the dead guy. No. We're blaming the guy that did this. We're blaming the guy that was signing for Eric as owner, who's giving his own checks, who's writing and causing liens to be put on his property now. They're saying: "Blame the dead guy." We wish he were alive, because then he'd be here and Eric wouldn't and neither would his family.

As I said in opening statement, Eric Sheppard did not use this money for any inappropriate purpose. He used this money completely one hundred percent properly, and you heard that from the expert and it was undisputed. They could have called an expert in rebuttal. They didn't.

There can only be one verdict in this case. And as I sit down, we can only hope that you deliberate, talk, think, look, review the instructions by Her Honor Judge Bloom. And after you have, we can only hope that you will see the evidence that Eric Sheppard is not guilty because he isn't.

Thank you.

THE COURT: Thank you, Ms. Weintraub.

Ladies and Gentlemen, let's take a 10-minute recess, please.

COURT SECURITY OFFICER: All rise for the jury.

(Jury not present, 12:57 p.m.)

THE COURT: We're on a 10-minute recess.

(Recess from 12:57 p.m. to 1:08 p.m.)

THE COURT: Both sides ready to continue?

MS. MARTINEZ: Yes, Your Honor.

MR. ETRA: Yes, Your Honor.

THE COURT: Could we just see if they are all ready to go.

Thank you.

(Pause in proceedings.)

THE COURT: Okay. You can bring them in. Thank you.

(Before the Jury, 1:08 p.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated, everyone.

And we will continue with the Government's closing argument.

Ms. Martinez?

MS. MARTINEZ: Thank you, Your Honor.

Good afternoon.

Counsel just asked you: "Why would Eric Sheppard do this?" I'm going to show you Eric Sheppard's own words. This is from Exhibit 68. These are his texts when he was texting with Nelia Palancar, who testified here regarding the Economic Injury Disaster Loans. This is from September 17th, 2020.

Mr. Sheppard nudging Nelia Palancar along: "Okay, young lady. Money doesn't sleep. Let's work to get this funded."

The Defendant definitely cared about taking advantage -- a word used by Defense counsel. He definitely cared about taking advantage of an opportunity that was once in a lifetime, to be able to get business loans, loans to fund your business, at only one percent. And even more, funding that could be forgiven. Which, in fact, as you know, he did get one of the loans forgiven.

He also wanted to take advantage again of something that doesn't happen, hasn't happened before, a national disaster declaration, such that every businessman in the country, if they had been impacted by the disaster, if they had had an economic injury, could apply for a below-market interest rate loan that was payable over 30 years. You didn't have to put up your house. You didn't have to put up a personal guaranty. But you could get this money only during the pandemic.

As you saw, the Defendant took advantage -- again, using the words of Defense counsel -- of this program. And why? Because we know, and the Defendant said so himself, and his text tells you he cares about getting this money.

So one of the first things that Defense counsel said when she got up here is this is complicated. Actually, lies can be complicated. And in fact, one of the methods of fraud is -- that you saw in this case, in fact -- is to make it seem complicated. But the truth is very straightforward. So let me just take you to a few small summaries of the truth.

I don't know if -- can you-all see it from that side?

So we only have three companies that actually got funded. He tried for a number of companies -- and I'm going to go over that -- but he only had three companies that got funded. So let's just for one second -- the Paycheck Protection Program ones. He got funding for HM-UP Development Alafaya Trails under the Paycheck Protection Program in May of 2020. That was the first one. He actually filed it with a doing business as HM Management, as though it was doing business as this. And the funding actually got deposited into the HM Management account. But the application, the PayPal one, the first one, May 1st of 2020, it was to HM-UP Development Alafaya Trails.

That company never, ever had employees, ever. This is the company that owned the Orlando shopping center. So this is the company that received rent monies. That company was basically a landlord. Okay? The only -- so this is -- to review the simplicity of this, HM Management and Development, another company that he got Paycheck Protection Program funds for on the second round in 2021, when he got it for both HM Management and for HM-UP Development Alafaya Trails in the second round -- this company, HM Management is the only one that ever, ever had any employees. And only three.

How do you know that? You know that because the lady from the Florida Department of Revenue came to testify. For years -- for years -- HM Management and Development had reported only three employees. They have to because they have to submit Florida forms for unemployment compensation. They call it now reemployment tax. That's why you hear the RT-6 forms. And those forms came up in this case because the Defendant submitted some false ones, completely falsified. But HM Management is the only one that ever had three employees.

You know that from the Florida Department of Revenue lady. And she said it stopped at the end of 2018. That is consistent with the IRS, Philip Palmer, who came and told you that the employer taxes -- which is really just an employer getting to the IRS the withholding that they're just holding in trust for the IRS, the income taxes, and then also the Medicare and the Social Security -- those forms, the Defendant stopped -- the last time he filed them was in 2018. And again, it was only for HM Management. And again, it was only for those three employees, Jeanette Gonzalez, Vanessa Gonzalez, Elva Baluarte, who is really actually somebody who works in the Defendant's home.

What happens -- and I'm just -- what I'm covering for you is just the simplicity of the fact that only one of his companies ever had employees, and it didn't have employees during this time period, and the employees that it had was only three. Okay? So we know that from the entire history of him and his company doing it properly with the Florida Department of Revenue till the end of 2018, doing it properly with the IRS until the end of 2018.

What happens at the end of 2018? Well, Philip Palmer, the gentleman from the IRS who was one of the first witnesses in this case, he explained to you that what happened was that in the last -- when you do your employer -- when the employer turns over to the IRS the income tax that they've taken from a W-2 employee, and the Medicare and Social Security -- when they turn it over to the IRS, they have to file these forms on a quarterly basis. That's what -- all those 941s that everybody's been talking about, Employer's Tax Return Form 941.

So that day, what the IRS gentleman had, Philip Palmer, he had a transcript, like a record from the IRS that showed that the Defendant actually -- at the end of 2018, he had filed it, said he needed to turn over about $10,000. It was income tax and Social Security and Medicare from those three employees. But he actually didn't pay it at the end of 2018. He didn't. And that created a change after that.

After that, there was a penalty that was just in the IRS records, you know, accrued interest, penalty because you didn't pay it. And after that, that's it. That's it. He's off the grid with respect to employees. He doesn't file anything more with the IRS with respect to employees.

2019 -- now, let me tell you something interesting with respect to HM Management and Development and these three employees, something more. We saw that the Defendant's accounting expert had to admit it. There's only one account ever the Defendant had had -- bank account -- only one bank account ever that had the title that said: "Payroll," only one. It was a Bank of America bank account. That bank account paid only the three people: Jeanette Gonzalez; Vanessa, the daughter of Jeanette Gonzalez; and Elva Baluarte, the lady that cleans at the house of Mr. Sheppard.

What happened is that you can see in that bank account that he's still paying only net wages. He's still paying only -- you know, he's not going to a gross wage, but he's still continuing to use that payroll account till the end of 2019, and he's continuing to pay net wages. But then nothing more happens, no more filings with the IRS, no more turning over to the IRS, no more filings for unemployment compensation with the Florida Department of Revenue. So he just stops. He just stops.

And at that point in 2019, he stops. Now, let's go further. They still submit -- and I'm just focusing on some of the things that you have that make it so clear. HM Management is the only one that ever had employees, and they only had three. The Defendant knew it. In 2019, when they did the tax returns, Mr. Cupersmith, Mr. Zaslow, who came on rebuttal, they emailed him and said: "You've given us some records showing some withholdings, but we don't have any 941s. We don't have" -- because that is the form that folks look to see: Do you have employees? Do you have an employer's tax return to show that you have withheld from employees income tax, Medicare, Social Security?

He never -- him, Jeanette Gonzalez, who's the only person that's in his accounting department, they never submit that to the tax accountant, Mr. Cupersmith and Mr. Zaslow. So Mr. Cupersmith and Mr. Zaslow submit with the IRS a disclaimer basically saying: "We've prepared this based on what we have, but we haven't seen all the information that we need to see. So we would have to modify it if we get the additional information."

The point of this is that the Defendant -- the

Defendant never had employees with HM-UP Development Alafaya Trails, the company that owned the Orlando shopping center.

Let me cover HM Four for a second, just for purposes of the concept of employees. I mean, HM Four never even had a bank account until October 22nd, 2020, when he applied for an Economic Injury Disaster Loan. Only till then -- I mean, only then for the first time ever. In fact, the only bank account they ever had was one that was used to receive the Economic Injury Disaster Loan, and then to use it. That's it. This company didn't -- was just -- HM Four was just an owner on paper of the company that was the landlord at the mall in Orlando. And this company, of course, didn't have operations and certainly had no employees, not even workers, nothing there.

Now, since I'm talking about the simplicity of the fact that he never had employees, let's talk about a couple of other reasons why you know that when he was applying he absolutely knew -- absolutely knew -- that for a Paycheck Protection Program you need to have W-2 employees.

How do you know that? Ms. Jimenez showed you the forms. From the beginning, from the first loan -- and I think it might be helpful if I put up the other chart, so you can follow, to the extent that hopefully you can see some of this. I'm talking about the first loan, the one from April -- the application was April 15th, 2020, relating to Alafaya Trails, but that was actually funded in May 1st of 2020.

From the very beginning of the first Paycheck Protection Program application, the, quote/unquote, payroll report that is submitted, now, it's not in that one. It's just a piece of paper. It says: "Payroll Report," and it listed about 11 names. Some of the people on that list are people that testified here that said to you that they were 1099s, like Carlos Granda, Joe Beirne, Jeff Graff. Those people were on the list. And of course, they were not employees.

But here's what's interesting: That list, from the beginning, had withholdings -- had withholdings for people that never had withholdings. And what does that tell you? That tells you that from the first day -- from the first day -- Mr. Sheppard knew that what the loan program was was a loan program for, you know, regular employees, the type of employees that a company has on board, like the ones he previously had, that you withhold taxes, income tax, and you also contribute and withhold from them the Medicare and Social Security.

So if he had thought that it was okay from the beginning, it could be any worker, could be anyone, when they ask him for documentation, what would you submit? If it's 1099s, you'd just submit to PayPal your 1099s. You just would do that. I mean, that's the documentation you have. And that would have been the truth, right? Carlos Granda had a 1099. Joe Beirne had a 1099. We saw the 1099 here for Joe Beirne.

It was admitted into evidence.

But that's not what Mr. Sheppard submitted. If he was going -- you know, they're workers. You know, they're workers. That's how he calls them. They're workers. Well, they ask you for documentation. We saw in this courtroom that the documentation for Joe Beirne was a 1099. But he didn't submit that. Mr. Sheppard did not submit that.

So what I'm saying is that, number one, the simplicity. This is simplicity of truth, right? Number one, he did not have employees in HM-UP Development Alafaya Trails. And he absolutely knew that the -- from day one, that the Paycheck Protection Program related to W-2 employees only and purposefully made up paperwork to make it look that there were withholdings that in the bank records you never see. They just don't exist.

I'm going to go for a moment to the applications. So -- just to run them through. I want to make sure that I talk for a moment about the Economic Injury Disaster program. Okay? Because after the Defendant gets the funding on May 1st -- and remember, just an easy number, okay -- almost all the loans that were funded, it's 150,000. That's a rough number. It always would come out a little bit less. For the Economic Injury Disaster Loans, I think they just would take off like a hundred dollars. So what was actually deposited was 149,900.

And then for the Paycheck Protection Programs there was an adjustment, and it was deposited a little bit less, maybe 146 for some, 147 for others. But just for purposes of having rough numbers as we talk about it, just think about each loan that was funded, 150,000 is what was obtained and what he was trying to do in the first round before he tried to get increases. But remember one of the things about this program. The funding was limited and folks were trying to get it. So it kept running out. So when it was running out, the Defendant then turns to Economic Injury Disaster Loans. And that's what's happening in the next phase, over the next part of 2020.

The importance of seeing all the times that he tried, even when he didn't succeed, is because that tells you his intent. That tells you his insistence of: "I am going to tell you whatever lie and give you whatever false document I need to give you to get this money at this advantageous rate."

So that's why it's important to look at all the evidence of his intent, all the evidence of his scheme, including the times when he was told no, because that taught him: "Okay. What's the next false document that I need to turn in?"

But what happens is that in July of 2024, he, using the assistance of Nelia Palancar, submits to the SBA four -- four different Economic Injury Disaster Loan applications, a program that is supposed to be for only companies that have economic injury.

Now, I'm going to go over the fact that there was no injury. I mean, you have it from the records of the forensic accountant from the FBI, but you also have it from the Defendant's own accountant. The Defendant's own accountant showed you how much rental money he had, and he agreed with my numbers. It was multimillion dollars in rental money that he had during this time. And I'm going to show you one of the Government's exhibits again. He had no -- no impact.

But still, had there been an impact, you can't try, for example -- to try to get the impact -- let's say it was true, which it's not. I'll show you the exhibits again. But if you're going to say falsely that Alafaya Trails didn't have rent, you can't then also try to say that HM Four, that it just owns it on paper, has the same injury. That's like double-dipping. And indeed, the SBA -- and if you look at the evidence and the SBA notes, they were looking for that -- for something like that.

But that's, in fact, what the Defendant did. He tried -- he was successful in getting the funding for HM-UP Development Alafaya Trails and HM Management. And then he also tried to get it for HM-UP Alafaya Trails II and Sheppard Flagler Holdings. And as you can see, these are other companies that he owned with a different partner.

When you see that there was also an application that he did with HM Six, that's where you need to go to the other side of the chart. HM Six is just also a shell company, which Ms. Jimenez pointed out from a previous deposition how the Defendant identified himself that it was just a shell company. He tried to get a loan for HM Six and that one also failed.

When that was denied, that's when he went back in and he said: "Well, now I'm going to try with HM Four to get the Economic Injury Disaster Loan."

At that point he had already been able to get it for HM Management and for HM-UP Development Alafaya Trails, making up the economic injury. Again, I'm going to show you there was no economic injury.

But when he gets denied the HM Six, that was on October 21st, 2020. Okay? October 22nd, 2020, he then -- he goes into overcharge. Okay? He opens a bank account that had never been opened for HM Four. He opens that. Within a few days, he deposits just $80. He then is -- he has to verify the bank account. And he comes up with the idea of trying to do this false letter with Heimdal Barrios.

The way that you know that that letter is false is Heimdal Barrios, who has absolutely no interest in this case, didn't try to overstate what his memory was. He didn't tell you: "Oh, I definitely remember this." He said: "You know, I don't recall. I really don't recall. But what I can tell you" -- this is what Heimdal Barrios said about the letter that was -- where his name was forged. He said: "That bank account that was opened, it was opened only with Eric Sheppard as a signer. That letter has Jennifer Sheppard in there." He said: "I would never add Jennifer Sheppard to a letter if that's -- if she's not on the account."

In addition, he said: "I would never just have a letter go out like that. I would make sure that it's a PDF and that I actually sign it." He looked at the signature and he said: "It's not mine." And he described in detail why he could see that that's not his signature. He described it himself. And then, in addition, he described that he puts two little dots that weren't there. So he was sure that was not his signature.

But let me tell you quickly about -- because time is flying. Let me tell you quickly about what else Mr. Sheppard did with respect to that account. Remember that what he chose to do in HM Four is then at that point to say that it was in the name of Jennifer Sheppard. That's one of the things that you can see in this exhibit. And this is Exhibit 72. It's a summary exhibit. Jennifer Sheppard -- as the evidence shows, she was never the 80 percent owner as it was indicated on that.

And what the Defendant admitted here in the courtroom is that he actually started sending emails -- and he admitted it -- and he would sign "Jennifer." He would be writing as though he was her. So that's why he needed for that banker's letter to have Jennifer on there even though she wasn't on the account.

But what the Defendant did more is that then he realizes that they want more. So he goes on November 16th and he deposits $60,000 -- and this is why I want to go back to my chart with the companies. He goes back to the bank account HM-UP Development Alafaya Trails. He takes $60,000 out of this account. That's the account -- one of the accounts -- there's multiple bank accounts for that company, but that's the company that's receiving the rent. Takes $60,000 out of there on November 16th -- remember, this is happening quickly. He wants to get this loan.

The very next day -- he moves 60,000 from HM-UP to HM Four November 16th. The very next day, November 17th, two-step process, he goes to get a printed bank statement to prove that there's some activity in the account. Sixty thousand dollars is in the account. Gets the printed document, and in one fell swoop -- we showed you that exhibit. In one fell swoop -- because I showed it to the Defendant's expert, and he couldn't explain why somebody would do that. And the next -- he gets the bank statement showing that 60,000 is in the account, again to show some activity. And then, that same day, as he's getting the printed partial bank statement -- it's not even a month because the bank account is new -- he removes out the 50,000. And where does it go? Right back where it was.

That transaction was for no business purpose other than to fake out the SBA and to make it seem that there was some activity in HM Four.

I'm going to quickly run through some of the other ones, because I need to make sure that I respond to a couple of arguments. But let me just say that what happens -- I'm going to stay just with HM Four to make sure that I cover the lease. Okay?

The false -- the false lease, it is -- you remember Maged, who came, and he said: "I would never be signing a lease in the middle of COVID, May 2020." But he submits a false lease, and then he submits a false management agreement. I could show it to you. We don't have enough time. That management agreement, it is so false that -- the beginning part of the agreement, where they pretend -- they want to try to pretend that HM Four has some activity -- the beginning part of the agreement has one company as the owner, HM Four, and HM Eight is the manager. And then what they did in the cutting -- in the cutting and pasting is that they changed it in the back.

So bottom line -- meaning in the signature. So if you look at the signature page, front page, it doesn't match. And you would have to go back to it. It's in Exhibit 58, if I remember correctly.

So what I'm going to do is show you -- this is the lease, and there's a reason why I want to show it to you right now. This is the signature page that Maged Salem told you had his signature forged. That's "Maged" at the bottom. Notice that also this purports that Jennifer -- it purports that Jennifer Sheppard was in Orlando. That's incorrect. Jennifer Sheppard was not in Orlando. If she signed it, she would have signed it as a false document in Miami.

But let me show you something.

(Pause in proceedings.)

MS. MARTINEZ: I'm going to show you some checks that show that -- they've blamed Jeff Vasilas. They've blamed the guy who passed away. Notice that the signature of Jeff Vasilas, which would purportedly be up here -- see if I can get this to respond -- doesn't match any -- doesn't match any of Jeff Vasilas's signatures on his own -- when he's endorsing his own checks.

My colleague has pointed out to me that I should show you an example of one that's typed, so that you can see the name of Jeff Vasilas here. I'm not going to play with the zoom because I may mess it up. So I'm just going to show you now the signature, and I'm going to live with that example because I need to move on. But just to show you not only is this lease false...

(Pause in proceedings.)

MS. MARTINEZ: I'm going to show you several, so you see how he endorses his checks. See if I can get it. And now

I'm going to show you the one that they have versus the ones in the back of Jeff's checks.

And let me tell you something about handwriting, because it was mentioned by Defense counsel. Anybody who has someone that they've known for a long time, you know you can tell other people's handwriting. This is called lay opinion, when -- someone who's not an expert. When it comes to handwriting, a regular person, just with their own eyes, can tell a signature.

In this case, none of us have known Jeff Vasilas ourselves. The man is deceased. But we can tell that the signature on this false lease is not even Jeff Vasilas's.

MS. WEINTRAUB: Judge?

THE COURT: I'm sorry?

MS. WEINTRAUB: Time?

THE COURT: On time. My clock is 1:48.

MS. WEINTRAUB: I thought it was 1:40.

MS. MARTINEZ: Thank you, Your Honor.

(Pause in proceedings.)

MS. MARTINEZ: Because I'm talking about Maged Salem and Heimdal Barrios, let me talk for a moment about aggravated ID theft. The aggravated ID theft is a separate crime, and it's a separate crime that is incredibly appropriate in this case. This is a case where the Defendant, not -- as you saw, he wants to use other people's money, right? He wants to use taxpayers' money. He wants to use Robert Kallman's money. He wants to use other people's money to get his business done.

And in addition, what you saw is that he wants to use other people's names to get things done. He -- you saw it in this case, right? And that is something that helped to lend credibility to his applications. There's no way that he could do a banker's letter without a signature. But if he had gone back to Heimdal Barrios, Heimdal Barrios would have ultimately said: "When I look at this, I can't sign this with Jennifer's name." So he wouldn't have signed it. That's what he said. And in fact, he said he didn't sign it. But the Defendant wanted that to happen anyway, so he used Heimdal Barrios's name. He wanted to lend credibility to his application, and he wanted to be able to move his fraud along.

The same thing -- he was asked to prove that there was operations with HM Four. He sends a false lease. He has to have the name of a tenant. The tenant won't sign the lease at this time. He falsifies the name.

And then let's go to the many important counts that we have with the forged tax returns that were forging the name of the accountant Neal Cupersmith, who came here. Every single tax return that the Defendant had ever had for years, you heard, had always been prepared by an accountant. So to him, he expected that if he's going to submit one it's going to have the signature of an accountant, and indeed he does that. And he is intending that it lends credibility to his application and that it move it forward.

So when you see in the jury instruction that it's using somebody else's means of identification without their consent, and that it has to be used in a manner that is deceptive, and it has to be a key mover of the criminality, that is what the Defendant was doing. He was trying to make it happen.

And you know that it was not a mistake and that it was him because you know from the evidence in this case that that is something -- as I just showed you, he just did it for Jeff Vasilas's as well. And as Mr. Jeff Graff testified, you know that it's not a mistake because Jeff Graff's name was used in an application for a visa, and it was not without his consent. And the Defendant had -- it was not with his consent --

MS. WEINTRAUB: I need to object.

THE COURT: All right. The objection is noted.

MS. MARTINEZ: And like I said, it's something that you know tells you that there was no mistake in the forgeries in this case. It was intended.

So I don't have time to cover everything. So I'm going to tell you, if you need it, some of the Government's summaries, in particular 41-16, the financial summaries, will show you in there that there was not any loss of rent at all. There was not any loss of rent. So the false documents that pretended that there was, there was not. He never had any economic injury.

Also, another point that I want to make sure that I make -- I have just two minutes, guys -- I know you're happy. So remember that the victims, the lenders, the SBA, they don't need to rely -- look at the -- one of the things, if you have any questions, look at the jury instructions that the Court has given you. The jury instructions are incredibly helpful. They define materiality. They tell you that the victim does not have to rely on the lie. It just has to be the type of lie that would tend to influence someone. If it's that type of a lie, and that was the intent, and you had intent to defraud, then it's material.

So like I said, take a look at the jury instructions of the Court with respect to who -- everything in this case, but also with respect to who would have had a motive to lie in this case. The person who had motive to lie in this case is the Defendant, the Defendant for two reasons. Number one, because all this money went to only one person. He was the sole signer in the bank accounts, no one else. So it went to him. And now he is the one that has something at stake in this case. Every other witness that you had here on behalf of the Government, they just were required to come because of this case. They had no interest in the outcome.

So I ask you now to do something that is one of the most important functions in our system. As the Court said to you, when you walk into the room, we stand up. And when you walk out of the room, we stand up. That's because folks from our community, jurors coming together like you, we rely on your common sense and we rely on you to be able to tell what is the truth. And that's all that is required here, to say the truth of what actually happened.

Dict -- verdict. The "ver" part is the truth. "Dict" is about announcement. And all we ask you now is to announce the truth that every count in the Indictment the Defendant is guilty because he did do it knowingly. He did it with intent to defraud.

Thank you so much, not just for today, but for the entire time.

THE COURT: All right. Thank you, Ms. Martinez.

Ladies and Gentlemen, when you get to the jury room, choose one of your members to act as the foreperson. The foreperson will direct your deliberations and will speak for you in court.

A Verdict Form has been prepared for your convenience. Let us review the Verdict Form.

"United States of America v. Eric Dean Sheppard, Defendant.

"Verdict Form.

"We, the jury, unanimously find the Defendant Eric

Dean Sheppard, as to Count 1 of the Superseding Indictment" -- there are two lines, one for guilty, one for not guilty. You are to check only one line.

"As to Count 2 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 3 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You're to check only one line.

"As to Count 4 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 5 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 6 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 7 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 8 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 9 of the Superseding Indictment" --

there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 10 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 11 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 12 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 13 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"As to Count 14 of the Superseding Indictment" -- there's a line for guilty. There's a line for not guilty. You are to check only one line.

"So say we all" -- there's a line for the foreperson to sign and date the Verdict Form.

Take the Verdict Form with you to the jury room. When you have all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it back when you return to the courtroom.

If you do wish to communicate with me at any time, please write down your message or question and give it to the court security officer, who is the marshal. The marshal will bring it to me, and I will respond as promptly as possible, either in writing or by talking to you in the courtroom, but I caution you not to tell me how many jurors have voted one way or the other at that time.

Now, Ladies and Gentlemen, we have lunch provided for you. I would ask that you deliberate as you're eating lunch; however, I would ask that you not begin your deliberations until the evidence is brought back to you.

You will be given a laptop. On the laptop are all of the uploaded exhibits. Along with the laptop will be an exhibit list that will guide you through the exhibits.

You will also receive a copy of the Superseding Indictment.

I would ask that you remain in the jury room and wait for the evidence before you begin your deliberations.

Now, as you can see, it is 10 to two. You certainly can take as long as you need to decide your verdict. If at today about five o'clock you have not made a decision, then certainly we'll bring you back tomorrow. And once again, you can take as long as you need to deliberate and decide your verdict. But a cautionary instruction: You are not to deliberate unless all of you are present in the jury room. If you do need to take a break, everyone takes a break and then you reconvene, but you cannot deliberate unless all of you are present in the jury room.

All right. So at this point in time I would ask that you follow the court security officer into the jury room, your lunch is there, and wait upon us for the exhibits to be brought to you.

COURT SECURITY OFFICER: All rise for the jury, please.

(Jury not present, 1:52 p.m.)

THE COURT: All right. Go ahead and have a seat.

Three items that we do need to address. The first item is: Has the Government provided a clean Superseding Indictment?

MS. JIMENEZ: Yes.

THE COURT: Has that been shown to the Defendant?

MS. JIMENEZ: (No verbal response.)

THE COURT: The forfeiture allegation should be removed.

MS. MARTINEZ: We have -- we have -- the last two pages are blacked out, with the exception of just -- it says: "A true bill."

THE COURT: All right. Is that acceptable?

MS. WEINTRAUB: The date is on it.

MS. JIMENEZ: This had to be redacted? The date of the Indictment?

THE COURT: Is it just the date of the filing?

MS. JIMENEZ: It's just the CM/ECF.

MR. ETRA: They were told the arrest was in July, so it could be confusing.

THE COURT: Is there a way to redact that portion, please?

Josue, perhaps we can assist by giving them the white tape -- we can assist by giving you the white tape, and we will make a copy.

The second item is the laptop that contains all of the exhibits that have been admitted into evidence. Has the laptop been uploaded with the exhibits?

MS. MARTINEZ: Ms. Font is nodding yes.

THE COURT: All right. And has the Defendant been shown the laptop to verify the exhibits, along with the one exhibit list to go back to the jury?

MR. ETRA: No. It's just been given to Mr. Cavallo now.

THE COURT: All right. Let's go ahead and review that.

Does the laptop require a password?

MS. MARTINEZ: No.

(Pause in proceedings.)

MS. WEINTRAUB: Judge, I have --

THE COURT: Do we have the exhibit list to provide to Mr. Cavallo?

Do you have that, sir?

MR. ETRA: That was just provided to us.

THE COURT: All right. And do we have the Superseding Indictment that we can redact the top portion and make a copy?

MS. MARTINEZ: Ms. Jimenez is putting tape on it.

(Pause in proceedings.)

MS. WEINTRAUB: Judge, at the Court's convenience, I would also like to be heard on closing motions.

THE COURT: Let me just take care of this so we can get this back to the jury.

MS. WEINTRAUB: Yes, Judge.

(Pause in proceedings.)

MS. MARTINEZ: Your Honor, is the Court going to want any extra exhibit lists, because just we have extras?

THE COURT: I just need one exhibit list for the jury.

MS. MARTINEZ: Okay. We're waiting for Mr. Cavallo to review it. I mean, I have extra copies. Would you --

COURTROOM DEPUTY: Just one.

(Pause in proceedings.)

MR. CAVALLO: Your Honor, we've reviewed the laptop. It's sufficient.

THE COURT: All right. And does the laptop contain all of the exhibits that were admitted into evidence, Mr. Cavallo?

MR. CAVALLO: Yes, Your Honor.

THE COURT: And have you reviewed the exhibit list and is that consistent with the uploaded exhibits?

MR. CAVALLO: Yes, Your Honor.

THE COURT: All right. Then if you can provide to the court security officer the laptop, the exhibit list. And Ms. Jimenez, if you can provide us with the Superseding Indictment, so we can make a copy to remove that date on the top.

MS. MARTINEZ: She's almost at the last page.

THE COURT: All right. And while Ms. Jimenez is doing that, Ms. Weintraub, did you want to place something on the record?

MS. WEINTRAUB: Yes, Your Honor.

Your Honor, I objected twice during closing. The first was on Fifth Amendment grounds. Ms. Jimenez I think shifted the burden to the Defense and said that we could have called somebody and we could have done something and brought in evidence or whatever, and it was completely improper.

The second is much more troubling, and we would move for a mistrial. Ms. Martinez actually said to the jury that he signed the visa application. This is the one thing that has been -- as the Court well knows and is probably sick of me saying -- a thorn in my side. This is the 404(b) evidence that I couldn't argue any stronger than I have tried to. And this is the one thing that the Government represented over and over:

"Well, Judge, we're not looking at the visa application. We're only talking about the retainer, the engagement letter." And there in closing close, Ms. Martinez says he signed the visa application. I would move for a mistrial.

MR. ETRA: Could I briefly, Your Honor, add, it's my understanding of the briefing that the inference from the 404(b) was intent to defraud, and motive, and that kind of thing. And the briefing, at least initially, specifically said: "We're not arguing that because he's forged before he's forging now." And now in rebuttal, for the first time, when you weren't supposed to do that, the argument was: "He's forged before. He's forging now."

MS. WEINTRAUB: And that's exactly what's prohibited.

MR. ETRA: Which was always one of our concerns.

THE COURT: All right. Ms. Martinez?

MS. MARTINEZ: Yes, Your Honor. What I did is follow to the best that I could from my recollection the instructions of the Court with respect to 404(b) and to refer to the witness testimony of the issue that had come up with respect to that matter. I just tried to reference it as a visa matter, just so I could -- so that it could be recalled as to what the matter was about in a quick way.

So -- and I repeated repeatedly the lines from the jury instructions regarding to -- showing intent and showing motive. That's what I tried to do. And if I included the words: "Lack of mistake," I did it because I was following the instructions in my head.

THE COURT: All right. Did you want to respond to the argument I believe that -- when Ms. Jimenez was arguing with regard to shifting the burden?

MS. MARTINEZ: Your Honor, maybe my colleague wants to respond to that, but I will just say that the Defendant did put on a case. So do you recall what it was that you said?

MS. JIMENEZ: I don't know what was objectionable about what I said. I don't know...

THE COURT: Ms. Weintraub's argument is that the Government specifically said that the Defendant could have called a certain witness.

MS. JIMENEZ: I never said the Defendant could have called a certain witness.

MS. WEINTRAUB: Or could have done something to rebut it.

THE COURT: All right. Is there any further argument with regard to these matters?

MS. WEINTRAUB: Yes, Judge. I'd like a ruling because what Ms. Martinez said isn't what she put on the record. What she put on the record was that Jeff Graff said that Eric Sheppard signed the visa application, which she should not have said. I'd like some kind of instruction which I'd like to think about over the lunch break --

THE COURT: Are you asking for the Court to bring the jury back to give them an instruction?

MS. WEINTRAUB: If the Court is not inclined to grant my mistrial, yes.

THE COURT: Are you seeking a mistrial at this time?

MS. WEINTRAUB: Yes. And the next question is, no, I have not.

THE COURT: Did you want to speak with Mr. Sheppard before you make that motion for a mistrial?

MS. WEINTRAUB: I think I could make an executive decision at this point, but I will. Thank you.

THE COURT: All right.

(Pause in proceedings.)

MS. WEINTRAUB: I've spoken with my client.

THE COURT: All right. And your client is supporting your motion?

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: All right. I do not believe that the error, if any, rises to the level of warranting a mistrial.

With regard to shifting of the burden, the record will bear out specifically what was said. To the extent that the Government did shift the burden, then certainly I will consider bringing out the jury with regard to a further instruction. And you can certainly fashion that, show that to Ms. Martinez and Ms. Jimenez for the Court to consider.

All right. The Court will be close at hand. I would suggest -- it's two o'clock now -- that you take the next hour for a lunch break, since the jury will be eating lunch. We will bring back the laptop, the exhibit list, as well as the clean Superseding Indictment.

But I would ask that you -- following three o'clock, that you be close at hand to the extent that the jury has a question or arrives at a verdict. I know that Liz has obtained from each of you cell numbers. I'm not requiring that you remain in the courthouse, but please be close at hand. If you are going to be traveling more than a 15-minute distance, if you will just let Liz know so that we can accommodate your travel.

MS. WEINTRAUB: Judge, is it the Court's practice to bring the jury back at five o'clock or will the Court just dismiss them if they have not --

THE COURT: I'm going to bring them back to give them further instructions at five, and then we'll adjourn. I do need to give them instructions with regard to tomorrow morning coming into the vestibule because I don't want them coming into the jury room. It will remain locked.

MS. WEINTRAUB: Okay. So we will come back here --

THE COURT: Yes. So at the very least, we will return so the Court on the record can give the jury further instructions.

MS. WEINTRAUB: Thank you, Your Honor.

THE COURT: Okay. Is there anything further on behalf of the Government?

MS. JIMENEZ: No, Your Honor.

THE COURT: On behalf of the Defendant?

MR. ETRA: Do we still have the conference room? And if so, for how long?

THE COURT: Yes. Of course. You can certainly use the conference room until we conclude the trial.

Okay. Have a nice lunch break.

(Recess from 2:03 p.m. to 3:21 p.m.)

THE COURT: All right. Welcome back. I trust that everyone had a pleasant lunch.

Let me acknowledge the presence of the Defendant.

Please be seated.

We have a note from the jurors that reads as follows: "Can we use the poster boards that the Government used in their closing statement," signed at 2:40 p.m.

MS. WEINTRAUB: And who is it signed by, Your Honor?

THE COURT: It begins with a D or an N. It's a signature. I mean, I can certainly show you the note, which -- it will be part of the record, but I do need an answer to the question.

MS. WEINTRAUB: Obviously, we object. It's not in evidence.

MS. MARTINEZ: Well, no -- well, they are in evidence. Those are -- Exhibit 72 is the loan summary.

THE COURT: Okay. Let me see these poster boards.

MS. JIMENEZ: It was going so fast, I didn't -- so this is in evidence. And this one, I didn't put a sticker on it. And I was going to mention it to the jury, but I was going too fast, which is -- I made one change, so I didn't put a sticker number. I made one change. I told the Defense. The d/b/a Construction Service X is not in the --

THE COURT: Okay. I mean, clearly these are demonstrative aids that were used in closing argument that do not go back to the jury. The question is: What is the appropriate response to the jury's question?

MS. WEINTRAUB: I would like them to rely on their own recollection of what the evidence was at this time. And if the Court will recall, as to the summary of the loan applications, these are all uncharged loans. These were loans that we were not on notice of. Some of them -- they're not in the Indictment. There was an Indictment, then a Superseding Indictment. They still didn't appear. The number here has always been no more than $460,000 of loans. And now we're looking at 1.7 million, and we object.

MS. JIMENEZ: I would ask that --

MS. WEINTRAUB: I don't think they can demonstrate it, after five minutes, that they need the demonstrative aids.

MS. JIMENEZ: I'm going to ask that they be advised that they could look at Government Exhibit 23-1 and Government Exhibit 72.

MS. MARTINEZ: That's these documents.

MS. JIMENEZ: I mean, this -- the one that is here is changed.

THE COURT: Right. So that is not a demonstrative of what was in evidence. And regardless, even if it was, the demonstrative -- or the poster boards are demonstrative aids. They are not in evidence.

MS. JIMENEZ: They could be advised that Government Exhibit 23-1 and Government Exhibit 72 represent --

MS. WEINTRAUB: I think that's commenting on the evidence. I would ask that the Court tell -- respond to them and say they were demonstrative aids used by the prosecutor for closing argument.

MS. MARTINEZ: Actually, one is exactly a blow-up even with the exhibit number. So it really is a blow-up of an exhibit. It's no different than if I had shown the exhibit in ELMO.

THE COURT: But regardless, then it should have -- the jury should have been told that that is a demonstrative or a blow-up of the evidence.

I am suggesting that the Court respond in writing by saying the following: "The poster boards are demonstrative aids and not in evidence. You are to rely on the evidence in this case."

Is there any objection?

MS. WEINTRAUB: No.

MS. JIMENEZ: Yes. They have -- they have these things in evidence. It's not like it's -- it's putting something --

THE COURT: And again, the evidence is with the jury. To instruct the jury that the poster board, one of them may or may not be -- by your own statement, one of the demonstrative aids is not an exhibit that's in evidence. So it would be inappropriate -- first and foremost, it would be error for the Court to allow a demonstrative aid, absent an agreement by the parties, to go back to the jury. And secondly, it's inappropriate for the Court to show emphasis to one piece of evidence over the other, unless the jury specifically asks with regard to a piece of evidence.

MS. MARTINEZ: Your Honor, may I ask again if you could read your response?

THE COURT: "The poster boards are demonstrative aids and not in evidence. You are to rely on the evidence in this case."

MS. MARTINEZ: Yes.

THE COURT: Any objection by either side?

MR. ETRA: No, Your Honor.

MS. MARTINEZ: No, Your Honor.

THE COURT: All right, then.

All right. This will be Court Exhibit 1. We will send it back to the jury, and then obviously it will be filed on the docket.

All right. So let me go ahead and write this out.

(Pause in proceedings.)

MS. JIMENEZ: I mean, maybe to -- make it clear to them that the boards are not in evidence. I don't want the suggestion that -- because these things are in evidence. I don't want, you know, the suggestion that --

MS. WEINTRAUB: The Court ruled. I mean, I don't even understand this.

THE COURT: All right. Once again, for the record -- all right. The Court's response to the question: "Can we use the poster boards that the Government used in their chasing statements," the Court's response: "The poster boards are demonstrative aids and not in evidence. You are to rely on the evidence in this case."

All right. I'll ask the courtroom deputy to just provide that to the jury. And at this point in time, we'll just stand in recess.

All right. Is there anything further by either side?

MS. JIMENEZ: No, Your Honor.

MR. ETRA: No, Your Honor.

MS. WEINTRAUB: Thank you, Judge.

THE COURT: Okay, then.

(Recess from 3:27 p.m. to 4:09 p.m.)

THE COURT: All right. Welcome back.

Please be seated.

Let me acknowledge the presence of the Defendant.

We have received a note from the jury that reads as follows: "Unanimous agreement on two of 14 charges. No progress on other 12. Will not reach unanimous agreement on them."

MR. ETRA: It's early.

THE COURT: My suggestion is the Court read the modified Allen charge and send the jury back to continue the deliberations.

MS. WEINTRAUB: I'm sorry, Judge. Did you say you're going to give them an Allen charge now?

THE COURT: Well, what is it that you would --

MS. WEINTRAUB: I would not request an Allen charge at all at this time. I would just -- I would tell them to keep deliberating.

THE COURT: Without any direction, instruction, or statements by the Court? I'm suggesting the modified Allen charge --

MS. WEINTRAUB: I mean, what time was the note sent?

THE COURT: 3:55.

MS. WEINTRAUB: I mean, they weren't even deliberating an hour. I mean, it's just a first vote.

THE COURT: So what is it that the parties are requesting or suggesting to the Court?

MS. WEINTRAUB: My suggestion to the Court on behalf of the Defense, Your Honor, would be to please keep deliberating at this time.

MS. JIMENEZ: Your Honor...

(Pause in proceedings.)

MS. JIMENEZ: I mean, we have no objection to the Allen charge, if the Court wants to do it at this time.

(Pause in proceedings.)

THE COURT: Ms. Weintraub, can you articulate why you would not be in favor of the Court providing the modified Allen charge?

MS. WEINTRAUB: Can I have a second?

THE COURT: Certainly. And perhaps I should read to you the modified Allen charge from the Eleventh Circuit's decision of United States v. Elkins. Would that be helpful?

MS. WEINTRAUB: Sure.

THE COURT: "Members of the Jury:

"I'm going to ask that you continue your deliberations in an effort to agree on a verdict and dispose of this case, and I have a few additional comments I'd like for you to consider as you do so.

"This is an important case. The trial has been expensive in time, effort, money, and emotional strain to both the defense and the prosecution. If you fail to agree on a verdict, the case will be left open and may have to be tried again. Another trial would increase the cost to both sides, and there is no reason to believe that the case can be tried again by either side any better or more exhaustively than it has been tried before you.

"Any future jury must be selected in the same manner and from the same source as you were chosen. There's no reason to believe that the case could ever be submitted to 12 people more conscientious, more impartial, or more competent to decide it, or that more or clearer evidence could be produced.

"If a substantial majority of you are in favor of conviction, those of you who disagree should reconsider whether your doubt is a reasonable one, since it appears to make no effective impression upon the minds of the others. On the other hand, if a majority or even a smaller number of you are in favor of an acquittal, the rest of you should ask yourselves again, and most thoughtfully, whether you accept the weight and sufficiency of the evidence that fails to convince your fellow jurors beyond a reasonable doubt.

"Remember at all times that no juror is expected to give up an honest belief about the weight and effect of the evidence. But after fully considering the evidence in this case, you must agree upon a verdict if you can. You must also remember that if the evidence fails to establish guilt beyond a reasonable doubt, the Defendant must have your unanimous verdict of not guilty. You should not be hurried in your deliberations and should take all the time that you feel is necessary.

"I now ask that you retire once again and continue your deliberations with these additional comments in mind. Apply them in conjunction with all of the other instructions I have previously given to you."

MS. WEINTRAUB: I change my mind. I will defer to the Court.

THE COURT: Is there any objection to the Court reading the modified Allen charge?

MS. JIMENEZ: Not from the Government, Your Honor.

MS. WEINTRAUB: No, Judge.

THE COURT: All right. Then let's bring in the jury, please.

(Before the Jury, 4:14 p.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated, everyone.

I received a note that states as follows: "Unanimous agreement on two of 14 charges. No progress on other 12. Will not reach a unanimous agreement on them."

Members of the Jury:

I am going to ask that you continue your deliberations in an effort to agree on a verdict and dispose of this case, and I have a few additional comments that I would like for you to consider as you do so.

This is an important case. The trial has been expensive in time, effort, money, and emotional strain to both the defense and the prosecution. If you fail to agree on a verdict, the case will be left open and may have to be tried again. Another trial would increase the cost to both sides. And there is no reason to believe that the case can be tried again by either side any better or more exhaustively than it has been tried before you.

Any future jury must be selected in the same manner and from the same source as you were chosen. There is no reason to believe that the case could ever be submitted to 12 people more conscientious, more impartial, or more competent to decide it, or that more or clearer evidence could be produced.

If a substantial majority of you are in favor of a conviction, those of you who disagree should reconsider whether your doubt is a reasonable one, since it appears to make no effective impression upon the minds of the others. On the other hand, if a majority or even a smaller number of you are in favor of an acquittal, the rest of you should ask yourselves again, and most thoughtfully, whether you should accept the weight and sufficiency of the evidence that fails to convince your fellow jurors beyond a reasonable doubt.

Remember at all times that no juror is expected to give up an honest belief about the weight and effect of the evidence. But after fully considering the evidence in the case, you must agree upon a verdict if you can. You must also remember that if the evidence fails to establish guilt beyond a reasonable doubt, the Defendant must have your unanimous verdict of not guilty.

You should not be hurried in your deliberations and should take all the time you feel is necessary. So I now ask that you retire once again and continue your deliberations with these additional comments in mind. Apply them in conjunction with all of the other instructions that I have previously given to you.

Please continue your deliberations.

(Jury not present, 4:18 p.m.)

THE COURT: All right. We'll remain in recess.

MS. WEINTRAUB: Thank you, Judge.

MS. JIMENEZ: Your Honor, my understanding is that the video went to the jury with the audio. It was not removed from -- the audio.

THE COURT: Well, it was the Government that uploaded the exhibits. So why did you upload the exhibit with the audio?

MS. JIMENEZ: Because, I mean, the exhibit -- I don't know if there's a way to remove the audio from the exhibit, from the --

THE COURT: I asked whether all of the exhibits were uploaded. I then asked the Defendant whether the Defendant had reviewed them. So at this point in time, to take evidence back from the jury, when it has already been submitted to the jury, would not be appropriate. So my question, once again, is: Why did you not bring it to the Court's attention or remove the audio when it was uploaded?

MS. MARTINEZ: Your Honor, we relied on the Defense. It's a Defense exhibit.

THE COURT: But it was the Government that uploaded the exhibits.

MS. MARTINEZ: Some of the exhibits, Your Honor, as you know, were sent to Ms. Font at four in the morning. So I'm sure that she did her best, but we do rely on the Defense to correctly provide exhibits to us. So we now verified with them, and this is what we learned. So I understand -- if there's nothing further to be done, I mean, we just --

THE COURT: Well, do you believe, Ms. Martinez, that the law would support taking the evidence back from the jury, who is in the jury room deliberating, so that I can remove audio that the Government inadvertently did not remove?

MS. MARTINEZ: Your Honor, we are not requesting to remove that.

THE COURT: All right, then.

MS. MARTINEZ: And I do say, Your Honor, though, it was not the responsibility of the United States to redact something that was the Defense's exhibit.

THE COURT: Well, I understand that it may have not been initially the responsibility. But during the course of the closing arguments, when it was played, it should have alerted the Government that what was uploaded on the computer should not include the audio.

To the extent that it was inadvertent, I'm not faulting anyone, all I'm saying is that you're asking the Court to do something that I think is improper.

MS. MARTINEZ: Perhaps it would be good if the Defense would just let us know what is on that audio. We have no idea.

MR. ETRA: You have a copy. I mean --

MR. CAVALLO: You have the copy with the audio.

MS. MARTINEZ: Would you like to let the Court know or anybody know?

MR. CAVALLO: I mean, if you want me to summarize, I can do the best I can right now.

MS. MARTINEZ: Yes.

MR. CAVALLO: It's: "My name is Jeff Vasilas. It's this date. I'm standing in front of Mattress1One, and I've put a padlock on the door."

THE COURT: Is that the extent of the audio?

MS. WEINTRAUB: Yes, Your Honor.

MR. CAVALLO: Yeah, and I believe it was shortened.

MS. WEINTRAUB: It was.

MR. CAVALLO: Yes. It's stating who it is, and the date, and then basically: "I'm putting a -- I'm locking the door."

MR. ETRA: "And no one could get in," comments like that.

MS. MARTINEZ: I think it's helpful to have that summary, Your Honor.

THE COURT: Okay. All right, then. I'll see you at five o'clock.

(Recess from 4:21 p.m. to 4:59 p.m.)

THE COURT: Back on the record.

Let me acknowledge the presence of the Defendant.

The jury wasn't aware that we were going to adjourn for the evening. So I did receive another note: "A juror needs to leave. We will reconvene tomorrow." The time is five o'clock.

So I would suggest that we bring the jury back. I will advise them tomorrow -- now, I'm going to give them specific instructions with regard to tomorrow morning. You do not need to be here tomorrow morning. But the court security officer, as well as the courtroom deputy, will assemble the jurors once they are all here, unlock the door, and then they will begin their deliberations at nine a.m.

Are there any issues that we need to address at this time?

MS. MARTINEZ: Just to clarify, we do not need to be here or would you like us here?

THE COURT: You do not need to be here at nine o'clock. There's nothing that's going to take place in the courtroom with regard to that case. They are merely going to go back in the jury room to continue their deliberations.

MR. ETRA: We need to be 15 minutes --

THE COURT: Yes. If you could just be close at hand, to the extent that the jury arrives at a verdict or has a question.

Okay. Any issues we need to address before we bring the jury in?

MS. WEINTRAUB: Judge, I do note that Jay Weaver was here for closings, and I would ask they be reminded, respectfully, that -- you know, of course, not to read anything or look at anything on the news because I'm sure that it will be in The Herald.

THE COURT: All right. Certainly.

All right. Let's bring in the jury.

(Before the Jury, 5:00 p.m.)

THE COURT: All right. Welcome back, Ladies and

Gentlemen.

Please be seated, everyone.

I did receive a note that states: "A juror needs to leave. We will reconvene tomorrow."

Yes. We will reconvene tomorrow. Ladies and Gentlemen, we will adjourn for the evening.

Now, the instructions for tomorrow are as follows: The jury room will remain locked. Your juror notes, as well as the evidence, will remain in the jury room. You are not to enter the jury room, and the court security officer will not permit you to enter the jury room until all of you are here. So if you will come into the vestibule and just remain seated until all 12 of you are here. Then you will go into the jury room to continue your deliberations.

We will start precisely at nine a.m. Please plan on being here at nine a.m.

As we adjourn for the evening, please remember you are not to discuss this case with anyone, nor permit anyone to speak with you. You're not to read or listen to any reports that there may be about the case. Everything learned about the case has already been learned in this courtroom.

So have a pleasant evening, and I will see you at some point tomorrow. But if you'll meet the courtroom deputy at nine a.m. in the vestibule.

Have a pleasant evening.

(Jury not present, 5:02 p.m.)

THE COURT: All right. We do -- go ahead and have a seat for just a moment. We do have some matters tomorrow in the courtroom. So I would just ask if you can just allow use of the counsel table. You may certainly keep your items in the conference rooms behind you, but I would just need use of the tables.

Is there anything that we need to address at this time? On behalf of the Government?

MS. JIMENEZ: No, Your Honor.

THE COURT: On behalf of the Defendant?

MS. WEINTRAUB: No, Your Honor.

THE COURT: All right. Have a pleasant evening. And I'll see you at some point tomorrow.

MR. ETRA: Thank you, Judge.

MS. MARTINEZ: Thank you, Your Honor.

(Proceedings adjourned at 5:03 p.m.)

UNITED STATES OF AMERICA)
ss:
SOUTHERN DISTRICT OF FLORIDA)

C E R T I F I C A T E

I, Yvette Hernandez, Certified Shorthand Reporter in and for the United States District Court for the Southern District of Florida, do hereby certify that I was present at, and reported in machine shorthand, the proceedings had the 11th day of January, 2024, in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that this transcript contains pages 1 - 191.

IN WITNESS WHEREOF, I have hereunto set my hand at Miami, Florida, this 25th day of February, 2025.

/s/Yvette Hernandez

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