UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CRIMINAL DIVISION
CASE NO. 23-CR-60173 WILLIAMS (GRAHAM)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CAROLYN D. WADE,

Defendant.

Miami, Florida

May 21, 2024

10:48 AM - 3:22 PM

Pages 1 to 32

TRANSCRIPT OF **TRIAL**

HELD BEFORE THE HONORABLE DONALD L. GRAHAM

UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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ALSO PRESENT: Carolyn Wade

(Call to the Order of the Court.)

THE COURT: Good morning, everyone.

MR. SNIDER: Good morning.

THE COURT: I think you have before you a question that was submitted by the members of the jury, and it reads, "Does signing an application -- in parentheses -- PPP loan forgiveness, constitute knowingly agreeing to all of its contents?"

That is an interesting question, but it is a question of fact. And as you-all are aware, I cannot answer questions of fact. It would appear that I will simply advise them of that and perhaps reread the wire fraud instruction, along with the definition of knowingly, and have them continue deliberating and, of course, to advise them that the instructions are to be read in conjunction with all of the other instructions that were given.

So I'm interested in your comments.

MR. SNIDER: Your Honor, I think that's an appropriate response to this question. It does seem factual in nature. And I think that it would help the jury to be reminded of both the instruction on wire fraud and knowingly because I think that that instruction explains what has to be done knowingly in this first scheme to defraud, which is to knowingly devise and participate in the scheme, not with respect to any particular piece of information.

The knowing element is to act knowingly, as far as the way I read it, devising and participating in this scheme. The only element in which knowingly is included is the first element. And of course, there's a knowing element in the definition of intent to defraud.

THE COURT: Yes.

Defense.

MR. MCCRAY: Judge, I agree that the jury needs to be told that it's the Government's burden to prove that Ms. Wade knowingly agreed to this document. So I think that the instructions that the Court has proposed to read -- I think that would suffice.

THE COURT: All right. I think I will have the jury come in and have them bring their copy of the instructions and to follow along with me as I reread the instructions.

(Jury entered at 10:53 AM.)

THE COURT: Good morning.

THE JURY: Good morning.

THE COURT: We have received your communication.

As you will recall, there are two judges in the courtroom at this time: a judge of the facts and a judge of the law. I can tell you what the law is, but I cannot answer a question with respect to what the facts are. So this is seemingly circular, right? But we each have our role. And as I advised, you have to follow the law whether you agree with

it or not. And you as the judge of the facts have to decide what those facts are.

What I can do is to attempt to assist you by rereading the wire fraud instruction and the definition of knowingly in conjunction with all of the other instructions which you have previously been given.

I would request that you turn to page 9, and I want you to read along with me. Our experience is that if you read and listen at the same time that the instructions are clearer. So let's see if we can do that.

Count 1, as you know, charges a wire fraud in violation of Title 18, United States Code, Section 1343. It is a federal crime to use interstate wire communications to carry out a scheme to defraud someone. The defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt: One, the defendant knowingly devised or participated in a scheme to defraud someone by using false or fraudulent pretenses, representations, or promises.

Two, the false pretenses, representations, or promises were about a material fact. The defendant acted with the intent to defraud, number three, and four, the defendant transmitted or caused to be transmitted by wire some 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 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 act knowingly and with the specific intent to use false or fraudulent pretenses, representations, or promises to cause loss or injury.

Proving intent to deceive alone 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 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 using the wire was intended as a specific or exclusive means of carrying out the alleged fraud or that the defendant personally made the transmissions over the wire. And it does not 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, radio, or television communications in the normal course of business. Each separate use of the interstate wire commissions as part of the scheme to defraud is a separate crime.

Now, on page 12, the term knowingly is defined. So when that term is used in the wire fraud instruction, the word knowingly means that an act was done voluntarily and intentionally and not because of mistake or by accident. Now, these two instructions must be read in conjunction with all of the other instructions that you were given. You shouldn't dwell on one particular instruction.

Hopefully, this assists. We understand how you would like me to really tell you what the facts are, which I am by law not allowed to do. So thank you very much. You may continue your deliberations.

(Jury exited at 11:01 AM.)

THE COURT: Counsel, anything further at this time?

MR. MCCRAY: Not from the defense, Judge.

MR. SNIDER: Not from the Government.

THE COURT: All right. Thank you very much.

(Recess from 11:02 AM to 11:49 AM.)

THE COURT: So the last communication reads, "The jury is at a deadlock," signed by Lenworth Dyer, which means that Mr. Dyer is the foreperson. And he is in seat number three, the third seat from the left.

So what I propose to do is to read the duty to deliberate instruction on page 15 and direct them to continue with their deliberations.

Comment from counsel?

MR. SNIDER: That seems appropriate, Your Honor.

MR. MCCRAY: Judge, I would just object. I -- I would just object. I think the jury has made it clear to the Court that it's deadlocked. To force them to go back, Judge, I think that that creates problems. So I would respectfully object.

THE COURT: Well, they have not been deliberating an inordinate amount of time. They started deliberating, I would say, after lunch yesterday, ending about 4:40, and they have been deliberating this morning since 9:30.

So I am going to give the duty to deliberate instruction once again. Now we need to consider what we do after that point in time and the question is whether I give the Allen charge or not. I will make sure you receive a copy

of this Court's Instruction. The Eleventh Circuit pattern is slightly different. It talks about cost to the parties. And frankly, it's this Court's opinion that cost to the parties is not an issue that ought to be considered in determining whether they should continue to deliberate or not. We'll get you a copy of that. This is in the eventuality that we get to this point.

So you can take a look at it and you can give me your thoughts in the event we get to this stage.

All right. Bring the jury in, please.

(Jury entered at 11:52 AM.)

THE COURT: Be seated, ladies and gentlemen. We have to await the arrival of two more jurors, so we will do just that.

Ladies and gentlemen, we have received your recent communication, so I have more law for you, and I want you to listen carefully. It won't be necessary to read along with me since it is very short.

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 the other jurors. So you must discuss the case with one another and try to reach an agreement.

While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong, but do not give up your honest beliefs just because others think differently or merely because you simply want to get the case over with.

Remember that in a very real way you are judges, judges of the facts. Your only interest is to seek the truth from the evidence in the case.

Thank you very much. You may be excused to continue with your deliberations.

(Jury exited at 11:55 AM.)

THE COURT: I don't know if you've had an opportunity to take a look at the Allen charge. Why don't you take a minute or so to review it and then we can discuss preliminarily what your thoughts are.

All right. Counsel, your preliminary thoughts.

MR. SNIDER: Your Honor, on behalf of the United States, the Government has no objection to the Court's supplemental instruction to the jury, which was just provided to the parties. And if we get to the point where the deadlock continues, the Government would ask the Court to read this instruction.

MR. MCCRAY: Judge, as I indicated before, if we have to get to this point, I would be objecting to this Allen charge. I think it's a form of coercion. The jury has

already indicated that they are deadlocked. If they come back saying it again, that they're deadlocked, you know, I think that in a sense this is basically forcing them to reach a verdict, so I would be opposed to it.

THE COURT: All right. I understand. As you, Counsel, are aware, this is an approved Eleventh Circuit instruction.

MR. MCCRAY: I'm keenly aware of it, Judge.

THE COURT: And so your argument, basically, is that it is an improper form of coercion.

MR. MCCRAY: That's correct, Judge. That's my argument.

THE COURT: All right. I have your positions. Let's wait and see what happens.

MR. SNIDER: If the Court wants -- if we reach a point where this is -- where the Court needs to make a decision, the Government can supplement the Court with additional authority on the appropriateness of this charge from the Eleventh Circuit, if necessary.

THE COURT: Well, I'm always interested in your law. So if you have a case or two that you want me to review, I'm happy to consider it. I've been doing this for quite a long time and it's the first time someone has told me about some laws. Is there something new you have in mind or --

MR. SNIDER: No. I raise this issue sort of

contemporaneously with my office and I'm getting information that there may be cases supporting reading this. That's all. And if the Court doesn't need to hear any argument, that's fine. I just wanted to --

THE COURT: If you can find something that's recent or instructive, I'm happy to take a look at it.

MR. SNIDER: Okay.

THE COURT: But generally, as I stated, the law is, this is a proper instruction.

MR. SNIDER: Yes.

THE COURT: The question is should I give the instruction. And a lot of that, frankly, in my opinion, is dictated based on how long they've been deliberating. At this stage, it has not been an inordinate amount of time. But let's assume that at 5 o'clock today they tell us they're hopelessly deadlocked, then I have to make a decision. That's a more difficult decision than at this stage of the proceeding.

MR. SNIDER: I would agree, Your Honor.

THE COURT: So let's wait and see what happens.

MR. SNIDER: Thank you, Judge.

THE COURT: Let me see what is happening with regard to ordering lunch and then I can tell you when you should be on call. Should it be an hour from now or maybe you should just go downstairs to the cafeteria and be on call in

15 minutes.

All right. I understand that they are placing an order, which frankly means that their lunch is not going to arrive until 1 o'clock, approximately.

MR. SNIDER: Does the Court have a sentencing hearing at 1:00 PM today?

THE COURT: I do.

MR. SNIDER: Okay.

THE COURT: But the good news is that I have entertained all issues for that sentencing except for the pronouncement of a sentence. So it won't take that long.

And I actually haven't heard from the parties. They wanted the actual pronouncement continued in order to determine if they could resolve the case that I tried with another case that is pending, and I don't know what the resolution of that is, but I'm proceeding today whether they have resolved the other case or not.

So we haven't been informed as to the decision of counsel. So that shouldn't interfere with any of our proceedings.

MR. SNIDER: Thank you, Judge.

THE COURT: All right. Thank you all very much. Let's be on call at about 1:10.

MR. MCCRAY: I'll be on the 7th floor, Judge.

THE COURT: All right. I think I mentioned there is

a conference room up on 14 as well. I don't know if you've seen it. It's a nice facility. I don't think it's used very much, but that is an alternative. Thank you.

(Recess from 12:04 PM to 1:51 PM.)

THE COURT: We have received another communication which indicates the jury is still deadlocked. So the question is whether the Court should present the Allen charge. Did the Government find any recent cases? Anything current, in this decade?

MR. SNIDER: The cases that the Government would rely on -- I don't think it's anything new -- one is from 2008 and one is from 2013 -- United States versus Woodard, 531 F.3d 1352, upholding the Allen charge after the jury said it was deadlocked, and United States versus Bush, which was 727 F third 1308, which --

THE COURT: You're throwing out cases. Are you telling me you want me to read them?

MR. SNIDER: No, I was just telling the Court -- citing for the record.

THE COURT: All right.

MR. SNIDER: In that case, the jury hadn't even said they were deadlocked yet and the Court gave the charge and the Eleventh Circuit upheld it.

THE COURT: I am not a mind reader, but I have noted the anguish on the faces of the jury as I read the

instruction. I'm not sure exactly what that means.

Let me hear your positions regarding this one paragraph, keeping in mind that we have reread the duty to deliberate instruction. And then on page 1, the last paragraph, "If a substantial majority of you are in favor of a conviction, those of you who disagree should reconsider. If, on the other hand, a majority of an even smaller number of you are in favor of acquittal, the rest of you should ask yourselves whether you should accept that verdict."

Then there's the paragraph -- you must also remember if the evidence fails to establish guilt beyond a reasonable doubt, the defendant must have your unanimous verdict of not guilty. Again, I'll ask Mr. McCray to analyze those provisions for me as you would argue them.

MR. MCCRAY: Judge, it would be the defense's position that this language basically imposes undue coercion on the jury where it says if a substantial majority of your number are in favor, those of you who disagree should reconsider whether your doubt is a reasonable one.

Judge, I think that language alone places an undue burden on those who may be in the substantial minority, and I believe it impinges upon the oath of the jury. They have a duty to deliberate, and they've deliberated. And they've indicated it twice that they are deadlocked. One of the things the Court just pointed out -- and I noticed it when you

indicated the -- I guess the body language of some of the jurors.

There is a case -- I believe it may have been the Ray case, which was cited in the Woodard case, which is the preeminent case out of the Eleventh Circuit. The Eleventh Circuit said that the trial court is in a better position to observe the body language of sort of the jurors --

THE COURT: Do you have that case with you? Does it say the body language? Can you pass it up if you have it? If not, I can get it.

MR. MCCRAY: I have it in my computer, Judge, and I left it down at the seventh floor cafeteria.

THE COURT: Give us the cite.

MR. MCCRAY: Rey, Judge, is 811 F.2d 1453, which is an Eleventh Circuit 1987 case. I believe it was that case.

THE COURT: All right. I'm going to get a copy of it. I would like to take a look at it.

MR. MCCRAY: Judge, do you mind if Ms. Wade goes down to get my computer real fast?

THE COURT: I can get a copy of the case in just a minute.

MR. MCCRAY: But there was another case, Judge, that was cited. I didn't write that cite down. It won't take but a second.

THE COURT: All right.

MR. MCCRAY: Go ahead.

(The Defendant exited the courtroom.)

THE COURT: I don't recall a case addressing body language. That's why I'm kind of curious. I want to take a look at the case to see what it states.

MR. MCCRAY: The functional equivalent of it was body language. I'll get the case to you in a second.

MR. SNIDER: Your Honor, if the Court wants a copy of the case that I cited, I have it. I provided a copy to defense counsel too.

THE COURT: Does the case just simply say it's the judge's call to make the decision or is it something more than that?

MR. SNIDER: I would -- yeah, that's essentially what it's saying. And it was a similar case in that the jury had already told the Court that they were deadlocked, and then the Court gave the Allen charge after the second time they said they were deadlocked.

(The Defendant re-entered the courtroom.)

MR. MCCRAY: Yes, Judge, I have it. It's a 2022 case. The cite, Judge, is --

THE COURT: All right. Hold on one second. When lawyers come in, they just throw out cases and, like, I'm supposed to have considered it, so I'm going to have to take a look at it if there's something in particular you want me to

consider.

MR. MCCRAY: Sure, Judge. I was giving you the cite of the case that talks about the jury's conduct -- the Court having observed the jury's conduct. And that case is Rubinstein versus Yehuda, Y-E-H-U-D-A. It's an Eleventh Circuit case found at 38 F.4th 982, and the relevant key number, Judge, is 20. And I'm just citing the key number.

What it says, it says, "When considering on appeal whether an Allen charge was impermissibly coercive, Court of Appeals is mindful that district judge watching the jury's file -- jurors" -- I just lost it. Just a second, Judge.

MR. SNIDER: Is this a criminal or a civil case?

MR. MCCRAY: It's a RICO case.

Here it is, Judge. It says, "When considering on appeal whether an Allen charge was impermissibly coercive, Court of Appeals is mindful that the district judge watching the jurors file back into the courtroom and looking them in the eye can make a better judgment than an appellate court reading the cold record."

In this case, the judge observed the jury's, I guess, behavior or conduct, specifically.

MR. MCCRAY: Judge, and this was a civil RICO case.

THE COURT: One moment, please.

What's interesting is that the Rubinstein case cited by the defense is a relatively new case -- 2022. And in this

case, the Eleventh Circuit states, "Whether an Allen charge is coercive depends on two things: the language of the charge and the totality of the circumstances under which it was delivered.

"When considering whether an Allen charge was coercive, we're mindful that a district judge watching the jurors file back into the courtroom and looking them in the eye can make a better judgment than an appellate court reading the cold record."

And then the court cites five circumstances that are relevant to the analysis: the total length of deliberations, the number of times the jury reported being deadlocked and was instructed to resume deliberations, whether the judge knew of the jury's numerical split -- and that, this Court is not aware of, and they didn't have an -- haven't indicated in a question and followed the Court's instruction in that regard not to reveal any numerical division -- "whether any of the instructions implied that the jurors were violating their oath or acting improperly by failing to reach a verdict and the time between the final supplemental instruction and the jury's verdict."

What's interesting is that one of the factors is whether the Court knows what the split is. Yes, our instructions tell them don't ever tell us your split. So how would the Court consider that as a factor?

MR. SNIDER: I think -- I think the guidance from these cases is not to inquire what the split is so we don't put any undue pressure or coercion on any one particular juror, if it is one person. We don't know how many people it is. So I think what the Eleventh Circuit is saying is don't ask -- don't inquire as to what any split might be.

MR. MCCRAY: Judge, and I agree with that. In fact, in -- I believe it's the Woodard case and the Rey case, it talked about the Court not having polled the jury. So that was not a factor to consider in determining whether or not the case should be reversed because it implied that holding the jury would not be proper.

THE COURT: Also interesting is that in United States versus Rey, the 1987 case, the panel held that they wouldn't follow the precedent and that they think the instruction is coercive, but they felt bound by the precedent of that panel. And now we have a 2022 case telling us to look at the body language, which is very unusual because body language doesn't mean anything. Some people laugh when they're nervous. Some people don't. So what does body language mean?

I'm going to make a suggestion and see what you-all think about this. I am considering bringing them in and simply advising them to make one last attempt to reach a verdict, and if you can't do so, let us know. And if you can reach some resolution considering the duty to deliberate, let

us know -- and leave it at that.

Your thoughts?

MR. SNIDER: Well, Judge, my reaction to that is I think that that is pretty similar to the previously read --

THE COURT: It is.

MR. SNIDER: -- duty to deliberate.

THE COURT: It is. And, in fact, in some of the cases, they came back four times without an Allen charge.

MR. SNIDER: I'm sorry?

THE COURT: In the cases that you-all have submitted, the jury notified the judge on four occasions that they couldn't reach a verdict.

MR. SNIDER: Is the Court's suggestion that it provide that instruction that it just read to us instead of --

THE COURT: I'm sorry. I'm not -- the Court's suggestion is that it provide that instruction -- I mean, I'm just simply going to say make one last attempt.

MR. SNIDER: So is that the equivalent of the Allen charge?

THE COURT: No, it's not the Allen charge. It's make one last attempt in consideration of your duty to deliberate that was previously read.

MR. SNIDER: Okay.

THE COURT: If you can reach a verdict, let us know. If you cannot reach a verdict, let us know. There's no time

limit on when you make this decision.

MR. SNIDER: Okay. The Court would not give an Allen charge past that point?

THE COURT: After that, I would not give an Allen charge.

MR. SNIDER: So the Government's position is that the Court give the Allen charge now that --

THE COURT: I understand.

MR. SNIDER: -- it proposed. That follows the model and a pattern Allen charge -- almost exactly -- it takes out language that I think is helpful to the defense which is -- I mean, it's helpful to take out that language about the cost to both sides. I think that was some of the language that the Rey court had an issue with, and the Court has removed that from this proposed Allen charge.

And in the Woodard case, the Eleventh Circuit commended the district court for doing that, for giving an Allen charge with consideration of some of the issues that had caused the Eleventh Circuit in Rey to have concerns and the -- and in Woodard, the Court affirmed the propriety of the Allen charge.

THE COURT: All right. Mr. McCray.

MR. MCCRAY: Judge, on behalf of the defense, I would not be opposed to the procedure that the Court has suggested just moments ago in lieu of the Allen charge at this point.

THE COURT: All right. Let's bring the jury in.

(Jury entered at 2:27 PM.)

THE COURT: Good afternoon again, ladies and gentlemen.

We're going to ask that you take one last opportunity to see if you can reach a verdict. I am not going to reread the duty to deliberate. You may desire to do that. But we're going to request that you take one last opportunity. If you can reach a verdict, fine. If you cannot reach a verdict, fine. Just let us know. There is no time limit. We leave that decision up to you as the judge of the facts.

Thank you.

(Jury exited at 2:28 PM.)

THE COURT: I'll ask that you stay in around the area. I suspect we're going to get a decision relatively quickly, but we don't know for sure. So let's await our next message from the jury and we will proceed accordingly. Thank you.

(Recess at 2:29 PM.)

(Proceedings resumed at 3:17 PM.)

THE COURT: All right. Ladies and gentlemen, we have received a communication indicating that the jury continues to be deadlocked. So I am simply going to have them enter the courtroom and declare this case a mistrial and excuse them for the afternoon.

Any comment, Counsel?

MR. MCCRAY: Not from the defense, Judge.

MR. SNIDER: I think that the Government -- we asked for the Allen charge. I think the Court overruled us. I just wanted the record to be clear.

THE COURT: Of course. I decided that it wasn't appropriate. This is our third attempt. And as I stated previously, I'm going to declare a mistrial.

MR. SNIDER: Very well.

THE COURT: Bring the jury in, please.

(Jury entered at 3:18 PM.)

THE COURT: We have received your last communication. Accordingly, I am deeming this case a mistrial, which means that the Government will have to decide how it wants to proceed hereafter.

But I want to thank you for your service. I know this was a very difficult decision, obviously, from your communications. That's the beauty of our jury system. The people decide. And we appreciate you being here, carrying out your responsibility as a citizen. I'm going to ask that you go into the jury room and I will excuse you permanently in a few moments. Thank you.

(Jury exited at 3:19 PM.)

THE COURT: The case of the United States of America versus Carolyn Denise Wade, Case Number 23-CR-60173-Williams

is deemed a mistrial.

Thank you all very much for participating in this case. You both represented your clients well. If the agent was here, I would tell her to thank Government counsel, and I'm going to tell Ms. Wade to thank her counsel because they did a fabulous job. Unfortunately, the jury was not able to decide the facts in this case.

So I wish you all well. I look forward to seeing you in our next case, counsel -- maybe not this case but another case, but we'll see how that develops.

Anything further by the parties?

MR. MCCRAY: No, Judge.

THE COURT: Thank you all very much. You are excused.

MR. MCCRAY: Judge, I'm sorry. Ms. Wade just indicated to me that she's on pretrial. So do I need an order or something having her --

THE COURT: Well, we will be deeming the case a mistrial. An order will be issued to that effect. And so the same bond conditions that were in effect previously would remain in effect. Were there any restrictions or...

MR. MCCRAY: No -- yes, but there's no problem. We need to file --

THE COURT: All right. If there's some issue, you can file a motion.

MR. MCCRAY: Thank you, Judge.

THE COURT: Thank you all.

(The proceedings concluded at 3:22 PM.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcription of the record of proceedings in the above-entitled matter prepared from my stenotype notes.

DATE: 25th of August, 2024

/s/Lance W. Steinbeisser
Lance W. Steinbeisser,
FCRR, RPR, FPR-C
Official Court Reporter
United States District Court
Southern District of Florida
Miami, Florida

/

/s/Lance [1] - 26:8

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