

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 23-CR-60170-RNS

UNITED STATES OF AMERICA,	) VOLUME I OF I
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	)
VS.	) DATE OF PROCEEDINGS:
	) MAY 28, 2024
	)
ALEXANDRA ACOSTA,	) COURTROOM NUMBER 12-3
	) WILKIE D. FERGUSON, JR.
DEFENDANT.	) U.S. COURTHOUSE

TRANSCRIPT OF MOTION PROCEEDINGS
BEFORE THE HONORABLE ROBERT SCOLA,
UNITED STATES SENIOR DISTRICT JUDGE,
AT 400 NORTH MIAMI AVENUE,
MIAMI, FLORIDA 33128.

APPEARANCES

FOR THE GOVERNMENT:	TREVOR CHRISTOPHER JONES, ESQ., ADAM LOVE, ESQ. UNITED STATES ATTORNEY'S OFFICE 500 E. BROWARD BOULEVARD SUITE 7TH FLOOR FORT LAUDERDALE, FLORIDA 33394
FOR THE DEFENDANT(S):	BRIAN YAACOV SILBER, ESQ. LAW OFFICE OF BRIAN SILBER, P.A. 916 SOUTH ANDREWS AVENUE FORT LAUDERDALE, FLORIDA 33316
FEDERAL RESERVE-OFFICE OF INSPECTOR GENERAL:	TONYA JOHNSON, AGENT

Stenographically Reported By:
Quanincia S. Hill, RPR
Federal Official Court Reporter
400 North Miami Avenue
Miami, Florida 33128

1 (Proceedings commencing at 8:46 a.m.)

2 **THE COURT:** Our first matter this morning is *United*
3 *States of America versus Alexandra Acosta.*

4 Who's here for the government?

5 **AUSA JONES:** Good morning, Your Honor. Assistant
6 United States Attorney Trevor Jones and Adam Love on behalf of
7 the government. Seated with us is Special Agent Tonya Johnson
8 from the Federal Reserve, Office of Inspector General.

9 **THE COURT:** Good morning.

10 And who's here for the defense?

11 **ATTORNEY SILBER:** Good morning, Your Honor. Brian
12 Silber present on Alexandra Acosta, who's also to my right,
13 present before the Court.

14 **THE COURT:** All right. Good morning.

15 And good morning, Ms. Acosta.

16 **THE DEFENDANT:** Good morning.

17 **THE COURT:** And this is set for the calendar call and
18 for several motions in limine.

19 So let's take up the calendar call first.

20 Both sides are ready for trial next week?

21 **AUSA JONES:** Yes, Your Honor.

22 **ATTORNEY SILBER:** Yes, Your Honor.

23 **THE COURT:** And how long do you anticipate this case is
24 going to last?

25 **AUSA JONES:** Your Honor, depending on the schedule of

1 the Court, we believe the government can put its case on in
2 about three days, case in chief.

3 **THE COURT:** All right. And what's the defense
4 estimate?

5 **ATTORNEY SILBER:** I concur with the government's
6 assessment. About three or four days.

7 **AUSA JONES:** I would submit that if there's a defense
8 put on, that it may be -- based on my experience in these
9 cases, it may be five days, total, or four days.

10 **THE COURT:** Okay.

11 **ATTORNEY SILBER:** I agree.

12 **THE COURT:** And I think I issued an order last week for
13 you to give me a proposed jury instructions. Let's see if that
14 was done.

15 Did you all submit your proposed voir dire
16 instructions?

17 **AUSA JONES:** I filed mine on the docket, Your Honor.

18 **ATTORNEY SILBER:** I have not. I'm going to submit them
19 today or tomorrow. Part of it is I wanted to see how the Court
20 rules on our motions today.

21 **THE COURT:** Okay. All right. So let's take up the --
22 so we're going to start jury selection on Monday, June 3rd, at
23 9:00. We're going to start every day at 9:00 and go till 5:30
24 or 5:45.

25 Okay. So the first motion, if we're going to go on the

1 order that they were filed, is Docket Entry Number 38, which is
2 the government's motion in limine. Let me just get that.
3 Okay.

4 **AUSA JONES:** Would you like to hear the argument, Your
5 Honor?

6 **THE COURT:** Sure.

7 **AUSA JONES:** So this case is a -- contextually simple
8 in that the time period is small. It's a PPP loan case. But
9 this all occurred in January through approximately June of
10 2021. During that period, we've alleged that Ms. Acosta had
11 fraudulently applied for a 20,108 PPP loan with the help and in
12 collaboration with her codefendant, Vilsaint St Louis, who has
13 pled "guilty" to the conspiracy count two weeks ago.

14 Prior to -- the date of the application was --
15 February 1st, it was opened, filed February 3rd, 2021, funded
16 by February 4th, 2021. During this time, Ms. Acosta was a
17 full-time employee at BSO. She was a deputy sheriff and had
18 previously, in 2019, earned approximately \$13,000 as a real
19 estate agent.

20 The -- her and her coconspirator used false tax records
21 submitted to the SBA showing that she had earned over \$100,000
22 in 2019 as a sole proprietor. In the application itself, it
23 reflected that she had earned approximately 8,000-plus dollars
24 on a monthly basis as a salary.

25 Now, there's three parts of the motion in limine to

1 include evidence. And this is just a front -- and I understood
2 defense counsel's intent to try and exclude this evidence.

3 First, we have the IRS case evidence. Second, we have
4 the BSO policy evidence. And then third, we have this pool --
5 existence of a pool contract evidence.

6 **THE COURT:** Just take them one at a time.

7 **AUSA JONES:** Absolutely.

8 So we can begin with the IRS evidence.

9 **THE COURT:** You are really objecting to that? Isn't
10 that your defense, that this person felt bad that they messed
11 up her tax returns, and that's why he did it on his own?

12 **ATTORNEY SILBER:** Not exactly, Your Honor.

13 **THE COURT:** Okay. So without knowing about these tax
14 returns and additional liability, then how's the jury going to
15 know why would this stranger do a loan on her behalf?

16 **ATTORNEY SILBER:** Because he's not a stranger. They
17 knew each other for over ten years at that point in time, and
18 he had prepared her taxes every year since 2014.

19 She had a very sound reason to trust him. He's the
20 person who had all of her financial information, knew her
21 children's names, dates of birth, social security number, every
22 W-2, you know, all the earnings that she had. Same thing with
23 her --

24 **THE COURT:** And so why would he have just done this on
25 his own, then? Even if you're right that he did this without

1 her knowledge and participation, isn't the fact that he felt
2 bad that he had messed up her tax returns by double putting
3 down her real estate taxes --

4 **ATTORNEY SILBER:** No.

5 **THE COURT:** -- which then caused the other --

6 **ATTORNEY SILBER:** Well, we dispute that, in part, and
7 embrace it, in part. They're saying that she had a motive to
8 find \$20,000 to pay this tax liability. But the evidence will
9 show that the reason why she had that liability was because of
10 a mistake that he made, by his own admission. He did a double
11 entry on her tax returns.

12 **THE COURT:** I just said that. I know that. So --

13 **ATTORNEY SILBER:** Right. So our theory of the defense
14 is that he was motivated to offer her this loan for his own
15 benefit because it was his error. It was his malpractice. He
16 was the one who had the --

17 **THE COURT:** He knows that led to the \$18,000 that she
18 owed, which is exactly what they won't admit. So how do you
19 get in his error without saying the error was just remarkably
20 almost the exact amount of money that the PPP loan was for?

21 **ATTORNEY SILBER:** You're not incorrect on that point,
22 Judge, but there's two factors to consider that negate that.

23 **THE COURT:** Yeah.

24 **ATTORNEY SILBER:** Number one, if she is to testify, her
25 testimony will be that when she went to his office to meet and

1 discuss her taxes, he said to her that she would qualify for
2 the PPP loan, because in 2019, she had a 1099 due to the fact
3 that she worked part-time as a realtor, earning about \$13,900.

4 So with that, her attitude was, "Sure, apply for it.
5 What's the worst thing? I don't get it?"

6 And he went and handled it. He did it. And he
7 offered, "I'll handle everything beginning to end."

8 I don't think she realized at the time what was
9 happening, okay, because the way the tax situation was
10 represented to her was that it was just a minor thing. It was
11 a simple entry mistake. It's going to get resolved.

12 And she didn't -- she didn't have the alarm that the
13 government is suggesting she had. It was not something that
14 was on her radar as being overly serious. It was very
15 minimized by him.

16 I understand why he was minimizing it. He knew he had
17 made a mistake, and he was afraid that he'd have to owe her
18 \$20,000 or get bad reviews on Google and let everyone know that
19 she knows --

20 **THE COURT:** And all of that is completely tied into the
21 fact that she has a \$19,000 deficit.

22 How do you, like, talk about all of that stuff without
23 talking about the \$19,000 deficit?

24 **ATTORNEY SILBER:** Because it was not part of their
25 conversations. He's going to say it was. This is a he

1 said/she said, Your Honor.

2 She does not deny that loan was applied for. She
3 doesn't deny it was disbursed. She doesn't deny it had fraud
4 in it. Okay? What she denies is having any knowledge of that
5 fraud or participating in it.

6 The loan was presented to her as an opportunity,
7 separate and apart from what was going on with these taxes. It
8 had nothing to do with it. She was not under the impression
9 that the tax issue is anything substantial.

10 And that's consistent with the rest of her life. She
11 had a great-paying job she had been at for ten years,
12 approximately, earning in excess of \$100,000 --

13 **THE COURT:** So does scores of other police officers who
14 did PPP loan fraud, so --

15 Okay. I'm going to grant the government's motion. I
16 find that the tax liability is inextricably intertwined and
17 part of the government's case that shows her motive for why she
18 would have knowingly participated in this. So I'm going to
19 grant that part of the motion.

20 What's the next part of the motion?

21 **ATTORNEY SILBER:** May I ask one question, Your Honor?

22 **THE COURT:** Yeah.

23 **ATTORNEY SILBER:** Would you consider limiting the
24 amount of evidence, the breadth and the scope, that they can
25 get into?

1 **THE COURT:** I don't know what that means.

2 **ATTORNEY SILBER:** Meaning, in other words, I don't --
3 what my vision of the potential of this evidence is we might
4 have a day of trial on PPP matters, and then, like, another
5 full day on her taxes.

6 The extent that they need to go into it to establish
7 that she owed the government money, I think, is very nominal.
8 They don't really need to tear apart her taxes, "Why did you do
9 this? Why did you do that?"

10 **THE COURT:** If you all can agree to stipulate to things
11 to make it short, it shouldn't become a feature of the trial.

12 I don't know why it would take that long to say that
13 the tax returns show that she claimed two real estate
14 deductions for taxes, which is, I guess, the red flag that
15 popped it up, and when they looked into it, they saw that she
16 couldn't provide the backup documentation for other deductions,
17 and that's what the liability was.

18 I just said that in a minute. I can't imagine it would
19 take them more than 15 minutes to do that, so...

20 **AUSA JONES:** Your Honor, the full scope of things is
21 that there is a tax audit file. There is statements by the
22 defendant in that file that talk about her, you know -- her
23 working with Mr. St Louis in the preparation of it. Then she
24 retracts that later in March and said that he did this all
25 without her knowledge.

1 So the scope of the evidence isn't voluminous. I would
2 not spend any more time than is necessary, as I will do in
3 everything. But I think it is important because it does
4 establish their relationship. It establishes their course of
5 conduct together.

6 And this is so central to their relationship on
7 February 1st when they had a call with the IRS agent and then,
8 that same day, applied for this loan.

9 And she, herself, included these two items in an e-mail
10 to him saying, "Don't tell my wife about this tax case and the
11 loan. I didn't do that. She put it together."

12 **THE COURT:** Okay. So I'm going to grant the motion,
13 but it can't become a feature of the trial.

14 So the next one is about her work as an -- Broward
15 Sheriff's officer. And what is the relevance of that?

16 **AUSA JONES:** So, Your Honor, Broward County Sheriff's
17 Office has an off-duty employment policy. Requires its
18 deputies to submit a yearly, you know, disclosure of what
19 they're getting into.

20 In 2016, Ms. Acosta did submit one of these. In 2017,
21 she did submit one of these policy forms. In 2018, she did it,
22 as well. That was for her real estate side business. And she
23 had earned, I think, somewhere around 30- or \$25,000 in 2018,
24 around there. I can't be certain about it.

25 But 2019, she stopped. 2020, she did not. Again, in

1 2021, she did not. And the relevance of this is not to say
2 that, "Oh, now she's violated a policy." That's not what we're
3 saying at all.

4 We're saying she complied with the policy. We're
5 saying that, in her mind, she did not even believe that what
6 she was doing constituted sufficient work in order to disclose
7 it to her employer. Therefore, how could she have been
8 mistakenly getting the maximum amount of PPP loan for a sole
9 proprietor?

10 And that, to me, is the relevance of the evidence.
11 There's no unfair prejudice -- we're not going to argue
12 anything about violating a policy. We're arguing the opposite.

13 **THE COURT:** Okay.

14 **ATTORNEY SILBER:** Your Honor, first of all, any year
15 other than 2019 is not going to be relevant, because the PPP
16 application that's at issue only referenced 2019 numbers, as
17 they were allowed to do. The application allowed you to rely
18 on 2019.

19 There's no representations about 2020 or 2021. Her
20 state of mind as to those years are, it really is
21 inconsequential to the jury to figuring out what happened here.

22 Secondly, as soon as the government starts talking
23 about, "in her mind," "in her mind," I think that's
24 speculative. They don't know what she's thinking. You know,
25 this is not a --

1 **THE COURT:** Give me an example of how anybody would
2 ever know what somebody's thinking, other than what their
3 actions and their statements.

4 **ATTORNEY SILBER:** What I mean to say, Judge, is it's
5 too tenuous. You know, the -- not that there's a minor policy
6 in law enforcement. All of the policies matter.

7 But this is something that law enforcement members of
8 the agency routinely violate. Not to make it a de minimis
9 thing, but I don't think it has the import or suggests what the
10 government is saying.

11 And I think for that reason, it goes too far. It's too
12 speculative. And it will just prejudice her, because the jury
13 is going to walk away, A, knowing she's in law enforcement,
14 which we'll, I guess, address in a moment, and, B, that she --

15 **THE COURT:** Let's do it as part of this argument,
16 because it's all -- if I grant it as to this, it kind of
17 defeats your motion. So why shouldn't the jury know that she's
18 a police officer?

19 **ATTORNEY SILBER:** So for two reasons. One, the
20 government can tell its story without mentioning that. It's
21 not part and parcel to the case. It really is completely an
22 irrelevant fact. Like I said in my response --

23 **THE COURT:** And how is it prejudicial?

24 **ATTORNEY SILBER:** Well, because people have very poor
25 attitudes these days about law enforcement. And I think there

1 will be jurors -- maybe not all of them -- that will hold it
2 against her, or they'll hold her to a different standard than
3 any other defendant.

4 **THE COURT:** Isn't that why we have jury selection? If
5 there's anybody who feels that way, we'll eliminate them from
6 the jury.

7 **ATTORNEY SILBER:** Well, because I think it's a little
8 bit -- can be a little bit of a controversial opinion that
9 someone will necessarily not want to publicize and may keep it
10 to themselves. And that's why we would prefer to keep it out.

11 The government doesn't need this information. They
12 could just as well say she's a taxi driver or a restaurateur.
13 It really is not relevant.

14 **THE COURT:** Okay. So, number one, I find that it's not
15 prejudicial to bring out before the jury that somebody is a law
16 enforcement officer.

17 Number two, I do believe the government's evidence
18 concerning her completion or noncompletion of the off-duty
19 employment form is relevant.

20 I think even though the 2019 year is more relevant, the
21 fact that she did complete the forms in those earlier years,
22 again, goes to her state of mind, goes to her knowledge of --
23 at the time that the application was submitted.

24 So I'm going to grant the government's motion and allow
25 that testimony to come in.

1 And I'm going to deny that part of the defense motion
2 that seeks to exclude any mention that she and her wife are law
3 enforcement officers.

4 What's the third part of that motion?

5 **ATTORNEY SILBER:** May I ask a question of the Court?

6 **THE COURT:** Yes.

7 **ATTORNEY SILBER:** So her wife may or may not testify.
8 She's potentially a rebuttal witness.

9 Would the Court consider excluding the fact that the
10 wife is in law enforcement? Because that truly, I think,
11 really has nothing to do with anything.

12 **THE COURT:** And what's the prejudice of that?

13 **ATTORNEY SILBER:** Same argument, Your Honor.

14 **THE COURT:** All right. Denied.

15 Okay. What's the third part of your motion?

16 **AUSA JONES:** The third part, Your Honor, is this --
17 we'll quote it as pool evidence. It's the existence of a
18 65- -- Ms. Acosta was building a \$70,000 pool at her house. I
19 think they got under contract in May of 2020. The contract was
20 ongoing, and she got a \$65,000 loan at the end of 2020, in or
21 around there, for the construction of the pool.

22 During the period in which the conspiracy existed, she
23 had this outstanding liability. The result of that was a
24 dispute between her and the contractor, over \$19,000 of
25 outstanding money due and owed. That resulted in a civil case.

1 Now, I would not -- obviously, I'm not interested in
2 arguing anything about a dispute with a contractor as a basis
3 for anything. But what I do believe is relevant is the
4 existence of this pretty high expenditure that was outstanding
5 at the time.

6 The same time she needed \$20,000 for a tax liability,
7 she still had outstanding expenditures related to this pool, a
8 substantial outlay as a loan that existed that was weighing on
9 her. And this all will end up going to her intent at the time
10 and her motive for needing this money and taking steps that
11 were not legal.

12 The pool evidence can either come in as a certified
13 record of the contract. I also have the e-mails during the
14 conspiracy -- alleged conspiracy period.

15 **THE COURT:** Let me -- if she borrowed \$65,000 and the
16 pool cost \$70,000, how did she owe 19,000?

17 **AUSA JONES:** She was disputing whether to pay the
18 contractor, release the funds from Lions Construction to the
19 contractor.

20 Granted, it's not coming out of her pocket yet, but
21 it -- this is at a time where Ms. Acosta was already hit with
22 this tax liability, and then she still has this outstanding,
23 you know, substantial loan existing.

24 It just adds to the circumstances of her life right
25 there, someone that was effectively paycheck to paycheck for

1 all the relevant period. And then --

2 **THE COURT:** How do you know she was paycheck to
3 paycheck?

4 **AUSA JONES:** The bank records, Your Honor.

5 **THE COURT:** So you have all of her financial records
6 during that time period that you're going to put on to show
7 her --

8 **AUSA JONES:** I'm not putting in the JP Chase. I'm only
9 putting in the ones where the money -- where she claimed to
10 have done any business expenses, the ones that she submitted
11 for her taxes, the ones where the part -- the most of her BSO
12 funds went into.

13 I'm not going to distract the jury with endless
14 accounts. But we do have two of her SunTrust accounts -- now
15 Truist -- that would be admitted into evidence to show where
16 the money came and went back and forth. So that's the basis of
17 it.

18 **THE COURT:** Okay.

19 **ATTORNEY SILBER:** So I have two problems with it.
20 First of all, the timing does not match up. The issue with
21 this pool contractor did not come to fruition until about
22 August of '21. That's when it really started becoming a
23 problem.

24 They were in the middle of construction when this was
25 going on at that time, the summer before the pool contractor

1 had passed a certain number of inspections.

2 But when problems started to occur in August of '21,
3 later on, that's when a lawsuit was filed by my client. She's
4 the plaintiff.

5 The defendant, the pool company, hired an attorney.
6 They fired -- filed a counterclaim for the 19,500, which is the
7 balance that was due to complete the pool. That was
8 subsequently dismissed about a year later.

9 So, first of all, it's not relevant because the time
10 frames just don't match. The fact that she had an outstanding
11 line of credit, I do not believe is relevant. I mean, she had
12 a mortgage, also. She had children to pay for.

13 And that leads me to my second problem, is that they're
14 only telling a partial story. They're not going to be able to
15 tell a story of financial problems.

16 Because they didn't have financial problems. They had
17 a dual-income household. Their mortgage was paid. Their
18 children were cared for. They were not in any kind of
19 financial straights.

20 They sued this pool contractor because he didn't do his
21 job. They contracted with him to build a pool, and he didn't
22 do it. And that's what that lawsuit is about. And it happened
23 after the fact.

24 It really is irrelevant, and it will only distract the
25 jury and imply that there's something wrong with her, that I

1 think is more prejudicial than it is probative.

2 **THE COURT:** All right. I'm going to deny the
3 government's motion as it relates to introduction of any
4 dispute with the pool contractor, the pool loan, for the
5 reasons that the defense just articulated.

6 **AUSA JONES:** Your Honor.

7 **THE COURT:** Yeah.

8 **AUSA JONES:** Just to make it clear, if the defense
9 testifies, I'll be able to get into these things as part of her
10 cross-examination.

11 **THE COURT:** All of the motions in limine are subject to
12 renewal if things change during the trial.

13 **AUSA JONES:** Thank you.

14 **THE COURT:** So you can -- if it somehow becomes
15 relevant because of her testimony or for any other reason, we
16 can revisit it.

17 Okay. So your second motion in limine is ECF Number
18 39. It looks like there's four subparts of that. So let's
19 take those one at a time.

20 So the first one is a motion in limine concerning the
21 attempt or successful repayment of the fraudulent loans.

22 **AUSA JONES:** Yes, Your Honor. And this would be the
23 only one that is at dispute between the parties. The others
24 have effectively been agreed to. This is -- it's a relevancy
25 issue. We have -- whether Ms. Acosta has now paid the loan

1 after she's been charged --

2 **THE COURT:** So my first question: When did she first
3 pay back the loan or start to pay back the loan?

4 **ATTORNEY SILBER:** I can answer that, Your Honor. So
5 the first question -- the answer before that is she only
6 learned of the fraud in this case upon being arrested. She did
7 not know --

8 **THE COURT:** Save that for the jury. Okay.
9 So what --

10 **ATTORNEY SILBER:** She -- it was in the last 30 days,
11 Judge. It was fairly recent, because it took time to put the
12 finances together. It took time to figure out who and how to
13 make the payments.

14 Mr. Jones will tell you, from our very first
15 conversation, I told him -- and we had not known if we're going
16 to have a trial or not at this point -- whatever happens in
17 this case, she's going to pay the money back because she knows
18 now that she was not entitled to it. Win, lose, they could
19 dismiss the case, she was going to do that.

20 So the only reason why we want to bring it in is to
21 answer the one question that the jury will innately have, is,
22 "Well, you're telling us you didn't know. You're telling us
23 you weren't part of it. But did you keep the money?"

24 And I think that's a natural question that people will
25 have. And that's why we merely just want to admit one or two

1 questions -- one or two documents. We're not going to argue --

2 **THE COURT:** Okay. What document?

3 **ATTORNEY SILBER:** There's an e-mail that the SBA
4 requires you to send to them upon making payment. I think the
5 cleared check might be the second document.

6 **THE COURT:** What are those dates?

7 **ATTORNEY SILBER:** I'm sorry?

8 **THE COURT:** What are those dates, roughly? I mean, a
9 month ago?

10 **ATTORNEY SILBER:** In the last 30 days, Your Honor.

11 **THE COURT:** Okay. Well, isn't part of the government's
12 case that -- to refute her allegation that the accountant did
13 this on his own that she received the money and she knowingly
14 spent the money and didn't pay it back at that time?

15 **AUSA JONES:** Yes. And we will prove -- we will prove
16 that with our evidence. And then the argument here is, Your
17 Honor, that this is a nullification. This is an attempt to
18 have the jury say, "Well, they got the money back. It's not a
19 big deal."

20 And the case law -- we submitted the *Fields* case, which
21 is not, you know, controlling, but it cites controlling
22 precedent regarding whether repayment is relevant at all.

23 And in the 641 -- this case has intent to deceive with
24 the SBA charges and intent to defraud with the wire fraud
25 count. As to those issues, the -- whether someone robs --

1 whether someone pays back a loan after being charged -- maybe
2 if it was before being charged, sure.

3 After being charged, now you're just creating a record
4 of fixing things to try and make it look better. And that
5 doesn't even come in for a civil case when you're trying to
6 repair side wall, for instance.

7 But I think in this instance, that is what's going to
8 mislead and confuse the jury.

9 **THE COURT:** And how much has she paid back?

10 **AUSA JONES:** It's paid in full. She does not owe them
11 any --

12 **THE COURT:** Wrote, like, one check for 19- -- whatever
13 it was --

14 **ATTORNEY SILBER:** It looks like -- yeah, 20-something.

15 **THE COURT:** Okay. I'm going to deny the -- because
16 part of the government's presentation is going to be to show
17 that she received the money and spent it and didn't pay it
18 back, I'm going to allow the defense to put in the evidence
19 that she did pay it back. But I may give a jury instruction
20 letting the jury know that the fact that she paid it back is
21 not a defense.

22 All right. So that's denied.

23 And then the other three parts about negligence by the
24 loan processors --

25 **ATTORNEY SILBER:** We don't dispute --

1 **THE COURT:** -- profit by the victims and jury
2 nullification, those are all agreed to by the defense? So I
3 can grant those part of the motion by agreement?

4 **AUSA JONES:** Yes, Your Honor.

5 **ATTORNEY SILBER:** Yes, Your Honor.

6 **THE COURT:** Okay. I think that takes care of your
7 motions.

8 **AUSA JONES:** Yes, Your Honor.

9 **THE COURT:** Okay. So let's move to the defense
10 motions.

11 So the first one is Number 49 -- ECF Number 49. So
12 I've already ruled on -- so I'm going to deny that part of it
13 that seeks to exclude evidence that she and her wife are law
14 enforcement officers.

15 I'm going to deny the motion to exclude evidence of the
16 IRS audit and tax liabilities.

17 Granting that part of the motion relating to the
18 lawsuit about the pool.

19 Denying it as to her off-duty work.

20 And then there's a statement made in the presence of
21 Sergeant Eric Giraldo that they're seeking to exclude. I'm
22 going to grant that by agreement.

23 **ATTORNEY SILBER:** Yes, Your Honor.

24 **AUSA JONES:** Yes.

25 **THE COURT:** Okay. And then the last part is motion to

1 exclude evidence of overly prejudicial statements regarding
2 COVID-19 or the purpose of PPP loans, including any mention
3 that the program ran out of funds.

4 **AUSA JONES:** Your Honor, the government's position is
5 that we will -- we intend to tell the story through our SBA
6 representative explaining what the program is, the way in which
7 it was set up, that it inevitably ran out of money, not that
8 Ms. Acosta is the cause of that because of her \$20,000 loan,
9 obviously.

10 **THE COURT:** What's the relevance that it ran out of
11 money?

12 **AUSA JONES:** Well, to begin with, there was two
13 separate tranches of this, right? So in the beginning, in
14 2020, the initial tranche -- then that ran out of money. Then
15 it had to wait. There was a waiting period. And then in
16 March -- or sorry -- January of 2021 is when they allowed the
17 next batch.

18 So I think naturally, in the story of the way this
19 program operated, the SBA testifies about the program. It was
20 only opened for this limited purpose to respond to COVID-19.
21 It was intended for certain businesses and, ultimately, was
22 only available to, you know, a limited portion of people.

23 I agree I should not argue that, you know --
24 unnecessarily that Ms. Acosta is somehow single-handedly
25 responsible for, you know, terminating everybody else's ability

1 to get this money.

2 But it is, you know, a completion of the story type
3 fact where the SBA is just going to be explaining what the
4 program is.

5 **THE COURT:** All right. Well, I don't think the fact
6 that the program ran out of money is relevant at all to this
7 proceeding. So I'm going to grant that part of the motion.

8 All right. The next one is ECF Number 52. The
9 defendant wants to admit hearsay statements made by Mr. St
10 Louis to the defendant about the loans.

11 And the government is opposing that.

12 **AUSA JONES:** Just two things. One, we believe that
13 what he's asking for is nonhearsay statements initially.
14 Anything -- she's talking about reliance on a statement by her
15 coconspirator that she was entitled to the loan, right, and,
16 therefore, she allowed him to apply for it.

17 They also bake in other statements that were made by
18 St Louis, or St Louis, during his factual proffer with the
19 United States Government.

20 **THE COURT:** Well, is he going to testify?

21 **AUSA JONES:** I don't believe so, Your Honor.

22 **THE COURT:** If he doesn't testify, how are you going to
23 get those in?

24 **ATTORNEY SILBER:** Well, that's why I'm asking to admit
25 the hearsay. I could do it in cross-examination of --

1 **THE COURT:** Well, that's double hearsay. If Mr. Acosta
2 [sic] testifies and you want to introduce the statement of your
3 client to him, that's hearsay.

4 And then we can argue about whether it is hearsay,
5 whether it's admissible for the truth, whether it's admissible
6 to show her state of mind.

7 But if he doesn't testify, then now you have -- how are
8 you going to get it in front of the jury?

9 **ATTORNEY SILBER:** Well, that's what I'm asking the
10 Court to permit us to do. Just like in the *Eisenstein* case,
11 that they're allowed to bring up what the lawyer counseled them
12 just to explain why they did what they did, not that --

13 **THE COURT:** All right. Who's your witness that's going
14 to be on the stand?

15 **ATTORNEY SILBER:** Well, I was hoping to either bring it
16 in through her or to cross-examine --

17 **THE COURT:** Well, if she testifies --

18 **ATTORNEY SILBER:** Right.

19 **THE COURT:** Okay. If she testifies, that resolves the
20 hearsay with a hearsay.

21 So let's assume it comes through her testimony. "I
22 spoke to Mr. Acosta [sic]. He told me X, Y and Z."

23 Why isn't that admissible?

24 **AUSA JONES:** If she's going to be bringing in that he
25 did it, that he submitted it himself, "He told me, 'I would

1 submit it,'" that's not effect on the listener. That is for
2 the truth of the matter asserted.

3 Now, the statement that I agree with is, "St Louis told
4 me" -- I'm not saying this is actually true. I'm saying I
5 agree that this is admissible. It's for effect on the
6 listener -- would be, "St Louis told me I was entitled to a PPP
7 loan," full stop. Okay?

8 Now, the additional things, things that I can't get in
9 by asking Ms. Johnson what St Louis told us during a proffer,
10 that, you know -- I can't get in things for the truth of the
11 matter asserted about their conversations because it happened
12 after the conspiracy.

13 Likewise, he can't ask Ms. Acosta about defendant St
14 Louis's statements to her about his acts that he was going
15 to --

16 **THE COURT:** Let's go back. You just said you can't
17 get --

18 So she's on the stand. And she says, "Mr. Acosta [sic]
19 told me A, B and C, which is why I don't think I did anything
20 wrong."

21 So now you're cross-examining her. Why can't you
22 bring --

23 **AUSA JONES:** I mean, I can cross-examine her, yeah,
24 about what he told her at that time.

25 **THE COURT:** Or anytime. So let's assume -- so during

1 the time of the conspiracy --

2 **AUSA JONES:** Right.

3 **THE COURT:** -- before the loan was submitted and once
4 the monies are received in that short period of time, okay,
5 they introduced evidence that's -- appears to be exculpatory to
6 her, based on statements to him.

7 Now, you get up on cross-examination. What other
8 statements are you talking about that are not part of that time
9 period?

10 **AUSA JONES:** Something that he's referenced in his
11 motion, I believe it says -- he said, "We're all under
12 agreement that he did this without her knowledge," right? And
13 what he was citing was a factual proffer report --

14 **THE COURT:** Right.

15 **AUSA JONES:** -- from a meeting with the U.S. Government
16 after he was charged.

17 And he told us at that time that she -- he told us that
18 she asked whether she was going to get caught, and then also
19 said that she -- she didn't know about the false -- he created
20 the false forms, the forms. Like, he just did that for her.
21 And that's what he said.

22 And I saw that in his motion. I want to make clear
23 that we object to the introduction of any -- if he wants to go
24 in there, I'll go in there, too. But I'm just suggesting that
25 there's hearsay in that postarrest statement by St Louis.

1 **THE COURT:** Okay. That's why I want to figure out who
2 is your witness at the time. So if she testifies that any
3 statements -- particularly in light of her defense, any
4 statements that Mr. St Louis made to her are relevant to her
5 state of mind, then you can cross-examine her about any other
6 statements.

7 **AUSA JONES:** Right.

8 **THE COURT:** Okay. Now, if there's some report where
9 Mr. St Louis said something else, I don't know how that's not
10 hearsay.

11 But, I'm not going to rule on that issue right now.
12 I'm going to -- obviously, somebody might have to call Mr. St
13 Louis if --

14 If you have a report that says Mr. St Louis told
15 Agent X that on this date, the defendant told him X, okay, you
16 can ask her, "Isn't it true that on this date, Mr. St Louis
17 told you this?" And if she says, "No," I think you can then
18 say, "Well I have this report that says that."

19 **AUSA JONES:** Absolutely.

20 **THE COURT:** You can call Mr. St Louis, but that's a
21 different issue.

22 So right now, let's just say this: On the motion
23 in limine, the Court should not exclude any evidence or
24 testimony unless it is clearly inadmissible.

25 So it seems to me that most, if not all, of the

1 statements between Mr. St Louis and Ms. Acosta are admissible.
2 So I'm going to grant the defendant's motion to admit hearsay
3 statements, generally. So I don't know. There might be some
4 exception to that. So you can -- I'll take it up on a
5 question-by-question basis.

6 Okay. So then the next part of your motion is to admit
7 evidence that she repaid her loan.

8 So I'm going to grant that one, again, with the proviso
9 that I may be giving a jury instruction that's not going to be
10 very helpful to her on that issue.

11 Because part of the government's -- I would say it's
12 not admissible. But because part of the government's case is
13 that when she got the money, she didn't pay it back, then I
14 think she's entitled to introduce that repayment, albeit very
15 late.

16 Are there any other motions that I haven't gotten to?

17 **ATTORNEY SILBER:** I don't believe there's any other
18 motions, Your Honor. I think that's it, Your Honor.

19 **THE COURT:** Okay. So any other matters that we can
20 take up this morning?

21 **AUSA JONES:** I want to flag for the Court just the
22 difference between these charges. We can -- I'm happy to brief
23 it, as well.

24 But in advance, any good faith exception would apply to
25 a wire fraud because there's intent to defraud. But the SBA

1 counts, the false statement to the SBA, that statute is an
2 intent to deceive statute.

3 And I believe the case law maintains that it's a -- the
4 good faith exception does not apply to it. There's a reason
5 why the good faith instructions were submitted in bold to the
6 Court as only submitted by defense counsel.

7 But I did want to flag it so it's not a surprise when
8 we're going to the charging conference.

9 **THE COURT:** So you're saying that it is admissible for
10 some of the counts, but not for others?

11 **AUSA JONES:** Yeah. The wire fraud, the good faith
12 defense applies because there's an intent to defraud. There's
13 only willfulness to join a conspiracy. But this isn't an IRS.
14 So I don't think it's an element of the conspiracy to defraud
15 by false statement to the SBA.

16 At 15 USC 645(a), that count is only an intent to
17 deceive statute. It doesn't require materiality, and it
18 doesn't require an intent to defraud.

19 And the reason why that's pertinent is because an
20 attempt to defraud and intent to deceive, they're distinct in
21 that attempt to deceive does not -- you do not get a good faith
22 instruction on that.

23 So I would submit that any instruction to the jury
24 would be -- on a good faith basis would say, you know --
25 applicable to Count 4.

1 **THE COURT:** All right. Do you agree with that?

2 **ATTORNEY SILBER:** No, I don't agree, because it's
3 applicable to all the conduct in this whole case. They may
4 have charged her differently for basically the same thing, but
5 it comes down to the fact that there's a third party involved
6 here, and she's saying the third party is the one who did
7 everything that's illegal.

8 "Yes, I'm involved, but I'm not involved criminally,
9 and my conduct was done lawfully and in good faith. I was not
10 party to a conspiracy."

11 So she should be able -- or making false statements to
12 the SBA. "As far as I knew, everything was not a false
13 statement." So she should be able to argue that.

14 **THE COURT:** All right. All right. It looks like -- I
15 just went through the jury instructions. That's the only major
16 difference that we need to resolve. So I'll look at all those
17 cases, and we'll talk about it next week.

18 **AUSA JONES:** Okay. Would you like me to file some
19 briefing on it, Your Honor?

20 **THE COURT:** I see there's cases cited in the joint
21 motion. I mean, if there's anything beyond that, any other
22 cases --

23 **AUSA JONES:** Yes. Absolutely. This distinction that
24 I'm raising right now is not in that -- because he cited his
25 support for the good faith exception. I have not briefed my

1 dispute over it.

2 **THE COURT:** Yes. So yes. Why don't you brief that and
3 get it by the end of the week, and we'll talk about that next
4 week.

5 **AUSA JONES:** Thank you, Your Honor.

6 **THE COURT:** Okay. All right. So I have the United
7 States' proposed voir dire questions.

8 So can you get me those by noon tomorrow, your five
9 questions?

10 **ATTORNEY SILBER:** Yes, Your Honor. I can do that.

11 **THE COURT:** Okay. All right. We'll see everybody
12 Monday at 9 o'clock -- one second.

13 Does either side have any witnesses who we're going to
14 need an interpreter?

15 **AUSA JONES:** No, Your Honor.

16 **ATTORNEY SILBER:** Not from us, Your Honor.

17 **THE COURT:** Okay. All right. Thank you all.

18 **ATTORNEY SILBER:** I have one last thing, Your Honor.
19 I'm sorry.

20 Would it be permissible if my investigator sat at the
21 table with me to assist me during trial? He's not going to be
22 speaking or anything.

23 **THE COURT:** Sure.

24 **ATTORNEY SILBER:** Thank you. His name is James Harden,
25 by the way.

1 **THE COURT:** Okay. Anybody need -- anybody bringing
2 electronic equipment that needs orders? Get them to us the
3 next -- when we get orders in --

4 **ATTORNEY SILBER:** I'm going to bring a laptop.

5 **THE COURT:** -- at 8 o'clock Monday morning when we're
6 running around doing all those things.

7 **ATTORNEY SILBER:** I'm sure we'll have at least two
8 laptops that we want to bring.

9 **THE COURT:** Okay. All right. Thank you. We'll see
10 you on Monday at 9 o'clock.

11 **ATTORNEY SILBER:** Thank you, Your Honor.

12 (Proceedings concluded at 9:25 a.m.)
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C E R T I F I C A T E

I certify that the foregoing pages represent a true and correct transcript of the official electronic sound recording as provided to me by the U.S. District Court, Southern District of Florida, as taken on the date and time previously stated in the above matter.

I certify that the foregoing pages represent a true and correct transcript of the above-styled proceedings as reported on the date, time, and location listed.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was reported, and further that I am not financially nor otherwise interested in the outcome of the above-entitled matter.

/s/Quanincia S. Hill, RPR
Quanincia S. Hill, RPR, CRR
Official Court Reporter
Southern District of Florida

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