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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
	)	
-VS-	)	DOCKET NO. 1:20-CR-00296-JPB
	)	VOLUME 8 (PM SESSION)
CARLA JACKSON AND	)	
TELDRIN FOSTER,	)	
	)	
DEFENDANTS.	)	

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT JUDGE
FEBRUARY 14, 2024

APPEARANCES:

ON BEHALF OF THE GOVERNMENT:
TAL C. CHAIKEN, ESQ.
SAMIR KAUSHAL, ESQ.
BABASIJIBOMI MOORE, ESQ.
ASSISTANT UNITED STATES ATTORNEYS

ON BEHALF OF THE DEFENDANT - TELDRIN FOSTER:
LEIGH ANN WEBSTER, ESQ.
SARALIENE DURRETT, ESQ.

ON BEHALF OF THE DEFENDANT - CARLA JACKSON:
DAVID D. MARSHALL, ESQ.

STENOGRAPHICALLY RECORDED BY:

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

(PROCEEDINGS HELD IN OPEN COURT AT 1:59 PM, ATLANTA, GEORGIA)

(The jury entered the courtroom.)

THE COURT: Y'all can be seated.

Members of the jury, it's my duty to instruct you on the rules of law that you must use in deciding this case. After I've completed these instructions, you'll 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 each 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 any 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 a defendant isn't evidence of guilt. The law presumes every defendant is innocent. Each defendant does not have to prove his or her innocence or produce any evidence at all. A defendant does not have to testify, and if any 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 doesn't have to prove a defendant's guilt beyond all possible doubt. The government's proof only has to exclude any reasonable doubt concerning each defendant's guilt.

A reasonable doubt is a real doubt based on your reason and common sense after you've 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're convinced that a defendant has been proved guilty beyond a reasonable doubt, say so. If you're not convinced, say so.

As I said before, you must consider only the 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 isn't binding on you.

You shouldn't assume from anything I've 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 shouldn't 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's no legal difference in the weight you may give to either direct or circumstantial evidence.

When I say you must consider all the evidence, I don't 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 doesn't necessarily matter.

To decide whether you believe any witness, I suggest that 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?

If the government offers evidence the defendant made a statement or admission to someone, you must decide for yourself: One, whether the defendant made the statement, and, two, if so, how much weight to give it. To make these decisions, you must consider all the evidence about the statement, including the circumstances under which it was made.

Any such statement is not evidence about any other defendant.

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 didn't say or do something

that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't 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.

You've been permitted to take notes during the trial, most of you, perhaps all of you, have taken average of that opportunity.

You must use your notes only as a memory aid during 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.

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 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 indictment charges 42 separate crimes called counts against some or all of the defendants. Each count has a number. Specifically, Defendant Foster is charged in Counts 1 through 28, Counts 30 through 41 and Count 59. And Defendant Jackson is charged in Counts 46 and 47. You'll be given a copy of the indictment to refer to during your deliberations.

Some of the counts charge that Defendant Foster knowingly and willfully conspired to commit bank fraud and/or wire fraud.

Other counts charge that Defendants Jackson and/or Foster committed what are called substantive offenses, specifically bank fraud, wire fraud, making false statements to a federally insured financial institution and/or money laundering. I will explain the law governing those substantive offenses -- excuse me -- those substantive offenses in a moment.

But first note that the defendants who are charged in conspiracy counts are not charged in those counts with committing a substantive offense. They are charged with conspiring to commit that offense.

I will also give you specific instructions on

conspiracy.

It's possible to prove a 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 a 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.

It's a federal crime to carry out or attempt to carry out a scheme to defraud a financial institution, or to get money or property owned or controlled by a financial

institution by using false pretenses, representations or promises.

Each defendant can be found guilty of this crime only if all the following acts are proved beyond a reasonable doubt:

The defendant knowingly carried out or attempted to carry out a scheme to defraud a financial institution or to get money, assets or other property from a financial institution by using false or fraudulent pretenses, representations or promises about a material fact;

The false or fraudulent pretenses, representations or promises were material;

The defendant intended to defraud the financial institution;

And the federal institution was federally insured.

A scheme to defraud includes 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 relating to a material fact.

The 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 as to the truth and makes with intent to defraud. A statement or representation may be false or fraudulent when it's a half truth or effectively conceals a material fact and it was --

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 doesn't matter whether the decisionmaker actually relied on the statement or knew or should have known 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 a loan without the intent to cause loss or injury is not sufficient to prove intent to defraud.

The government doesn't have to prove all the details alleged in the indictment about the precise nature and purpose of the scheme. It also doesn't have to prove that the alleged scheme actually succeeded in defrauding anyone. What must be proved beyond a reasonable doubt is that the defendant knowingly attempted or carried out a scheme substantially similar to the one alleged in the indictment.

It's a federal crime to use interstate wire, radio or television communications to carry out a scheme to defraud someone else.

Each defendant can be found guilty of this crime --

Counsel, when we were reviewing these, bank fraud and wire fraud both say "each defendant." Shouldn't that just say "a defendant"?

MS. WEBSTER: That seems right.

THE COURT: Agreed, Ms. Webster?

MS. WEBSTER: Yes.

MR. MARSHALL: Yes, Judge.

THE COURT: Okay, Mr. Marshall?

MR. MARSHALL: Yes.

THE COURT: Government?

MR. KAUSHAL: Either way is fine, Your Honor.

THE COURT: Okay.

When I was describing the bank fraud, I said "each defendant" can be found, but I should have read "a defendant" can be found. And here again with wire fraud, I'm going to say it's a federal crime to use interstate wire, radio or television communications to carry out a scheme to defraud someone else.

A defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt.

And, Ms. Mueller, if you can change that on page 14 and 12 and reprint those two pages. Thank you.

The following facts are proved beyond a reasonable doubt:

The defendant knowingly devised or participated in a

scheme to defraud someone by using false or fraudulent pretenses, representations or promises;

The false pretenses, representations or promises were about a material fact;

The defendant acted with the intent to defraud;

And 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 of representation is false or fraudulent if it's about a material fact 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 material fact, it has the capacity or natural tendency to influence a person's decision -- excuse me.

A fact is material if it has the capacity or natural tendency to influence a person's decision. It doesn't matter

whether the decisionmaker actually relied on the statement or knew or should have known 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 doesn't have to prove the material -- 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 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.

It's a federal crime to knowingly and willfully

conspire or agree with someone to do something that, if actually carried out, would result in the crime of bank fraud or wire fraud.

A conspiracy is an agreement by two or more persons to commit an unlawful act. In other words, it is a kind of partnership for criminal purposes. Every member of the conspiracy becomes the agent or partner of every other member.

The government does not have to prove that all the people named in the indictment were members of the plan or that those who were members made any kind of formal agreement. The heart of a conspiracy is the making of the unlawful plan itself, so the government does not have to prove that the conspirators succeeded in carrying out the plan.

Each defendant can be found guilty of this conspiracy offense only if all the following facts are proved beyond a reasonable doubt:

Two or more persons in some way or manner agreed to try to accomplish a common and unlawful plan to commit bank fraud or wire fraud as charged in the indictment;

And the defendant knew the unlawful purpose of the plan and willfully joined in it.

A person may be a conspirator even without knowing all the details of the unlawful plan or the names and identities of all the other alleged conspirators.

If the defendant played only a minor role in the plan

but had a general understanding of the unlawful purpose of the plan and willfully joined in the plan on at least one occasion, that's sufficient for you to find the defendant guilty.

But simply being present at the scene of an event or merely associating with certain people and discussing common goals and interests doesn't establish proof of a conspiracy. Also, a person who doesn't know about a conspiracy but happens to act in a way that advances some purpose of one doesn't automatically become a conspirator.

In this case, some of the conspiracy counts in the indictment allege that a defendant conspired to commit bank fraud and to commit wire fraud. In other words, in some counts the defendants are charged with conspiring to commit two separate substantive crimes.

The government does not have to prove that a defendant willfully conspired to commit both crimes. It is sufficient if the government proves beyond a reasonable doubt that a defendant willfully conspired to commit one of those crimes. But to return a verdict of guilty, you must all agree on which of the two crimes the defendant conspired to commit.

It's a federal crime to knowingly make a false statement or report to a federally insured financial institution.

Each defendant can be found guilty of this crime only

if all the following facts are proved beyond a reasonable doubt:

The defendant made a false statement or report;

The defendant did so knowingly and with intent to influence an action of the institution described in the indictment regarding an application, advance, commitment or loan or a change or extension to any of those;

And the deposits of the institution were insured by the Federal Deposit Insurance Corporation.

A statement or report is false if it is untrue and made and the person making it knows it is untrue.

The heart of the crime is the attempt to influence the action of the institution by knowingly making a false statement or report. The government does not have to prove that the institution was actually influenced or misled.

It's a federal crime to knowingly engage in certain kinds of financial transactions, commonly known as money laundering.

Each defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

The defendant knowingly conducted or tried to conduct a financial transaction;

The defendant knew that the money or property involved in the transaction were the proceeds of some kind of

unlawful activity;

Money or property did come from a specified unlawful activity, specifically wire fraud;

And the defendant knew that the transaction was designed, in whole or in part, to conceal or disguise the nature, location, source, ownership or the control of the proceeds.

One moment.

To conduct a transaction means to start or finish a transaction or participate in a transaction at any point.

A transaction means a purchase, sale, loan, promise, gift, transfer, delivery or other disposition of money or property. A transaction with a financial institution also includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, use of a safe deposit box or purchase or sale of any stock, bonds, certificate of deposit or other monetary instrument.

A financial transaction means a transaction that in any way or to any degree affects interstate or foreign commerce by sending or moving money by wire or other means; or a transaction that in any way or to any degree affects interstate or foreign commerce by involving one or more monetary instruments. The phrase "monetary instruments" includes coins or currency of any country, Travelers or personal checks, bank checks or money orders, or investment

securities or negotiable instruments in a form that allows ownership to transfer on delivery; a transaction involving the use -- or a transaction involving the use of a financial institution that is involved in interstate or foreign commerce or whose activities affect interstate or foreign commerce in any way or degree. The phrase "financial institution" includes a bank insured by the Federal Deposit Insurance Corporation.

Interstate or foreign commerce means trade and other business activity between people or businesses in at least two states or between people or businesses in the United States and people or businesses outside the United States.

To know that the money or property involved in the transaction came from some kind of unlawful activity is to know that the money or property came from an activity that's a felony under state, federal or foreign law.

The term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of the activity.

The phrase "specified unlawful activity" means wire fraud.

To prove the element of concealment, the government must prove that the purpose, not merely the effect, was to conceal or disguise the nature, location, source, ownership or

control of the proceeds. Evidence of concealment must be substantial. Merely conducting a transaction with money whose nature has been concealed is not in and of itself a crime.

Where a statute specifies multiple alternative ways in which an offense may be committed, the 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 for a conviction so long as you agree unanimously as to that alternative.

Good faith is a complete defense to a charge that requires intent to defraud. A defendant isn't 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 -- excuse me -- cannot be fraudulent intent, even if the opinion or belief is mistaken. Similarly, evidence of a mistake in judgment, an error in management or carelessness can't establish fraudulent intent.

But an honest belief that a business venture would ultimately succeed doesn't constitute good faith if the defendant intended to deceive others by making representations the defendant knew to be false or fraudulent.

You'll see that the indictment charges that a crime was committed on or about a certain date. The government doesn't 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 an act was done voluntarily and intentionally and not because of a mistake or an accident -- or by accident.

The word "willfully" means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something the law forbids before you can find that the person acted willfully, the person need not be aware of the specific law or rule that his or her conduct may be violating.

This next instruction applies only to the government's case against Defendant Jackson. It does not apply to the government's case against Defendant Foster.

If a defendant's knowledge of a fact is an essential element of a crime, it's enough that the defendant was aware of a high probability that the fact existed unless the defendant actually believed the fact didn't exist.

Deliberate avoidance of positive knowledge, which is the equivalent of knowledge, occurs, for example, if a defendant possesses a package and believes it contains a controlled substance but deliberately avoids learning that it

contains the controlled substance so he or she can deny knowledge of the package's contents.

So you may find the defendant -- that a defendant knew about the possession of a controlled substance if you determine beyond a reasonable doubt that the defendant actually knew about the controlled substance or had every reason to know but deliberately closed his or her eyes.

And I would add, with counsel's permission, for example. Hearing no objection.

But I must emphasize that negligence, carelessness or foolishness isn't enough to prove that the defendant knew about the possession of the controlled substance, in that example.

Each count of the indictment charges a separate crime against one or more of the defendants. You must consider each crime and the evidence related to it separately. And you must consider the case of each defendant separately and individually. If you find a defendant guilty of one crime, that must not affect your verdict for any other crime or any other defendant.

I caution you that each defendant is on trial only for the specific crimes charged in the indictment. You're here to determine from the evidence in this case whether each 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, the punishment is for the judge alone to decide later.

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

Each of you must decide the case 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're discussing the case, don't hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

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

One moment.

All right. Before I complete the instructions, either my law clerk or one of the counsel has identified a couple other places where I've said "each defendant" where it should have said "a defendant."

When I was describing conspiracy to commit bank fraud and/or wire fraud I said, "each" defendant can be found guilty of this conspiracy offense. I should have said "a" defendant

can be found guilty.

Same thing when I was discussing false statement to a federally insured institution, I said "each" defendant can be found guilty of this crime. I should have said "a" defendant can be found guilty of this crime.

Counsel, does that address those "each" versus "a" issues that I -- some of which I found as I was reading through, others of which someone else found as I was reading through and I didn't see the e-mail until just now?

MS. WEBSTER: Yes, your Honor, I think so.

MR. MARSHALL: Yes, your Honor.

MR. KAUSHAL: Your Honor, since we are making these small edits, page 18, the sentence that says -- that starts with, "In other words," should say "a defendant" is charged, instead of "the defendants" are charged.

THE COURT: Okay.

All right. And pardon us, ladies and gentlemen of the jury. We went through all of these but missed a few of the things we were supposed to switch around.

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

A verdict form has been prepared for your convenience.

Ms. Lee, can you put the verdict form on the -- I

always thought it was an Elmo, but I heard somebody call it an Exhibitron during this trial, which I thought was an even better way to describe it. So I might use Exhibitron from now on.

Can you put the verdict form on the Exhibitron, Ms. Lee?

COURTROOM DEPUTY CLERK: Yes. Which one first?

THE COURT: Let's start with Mr. Foster's.

All right. So you're going to have two separate verdict forms, ladies and gentlemen of the jury. The first one involves Mr. Foster.

And for each of the counts listed there, for example, Count 1, as to Count 1 of the indictment charging conspiracy to commit wire fraud as to Bellator Phront Group, Inc., we, the jury, unanimously find defendant, Teldrin Foster, and you'll check either not guilty or guilty.

For some of these, for example -- can you go to Count 6 on page 2, Ms. Lee?

Some of these will ask you -- and only if you reach a guilty verdict. If you reach a not guilty verdict, you don't answer the second part of the question. But if you reach a guilty verdict, you then answer whether or not you find -- unanimously find the government proved that the object of the conspiracy was bank fraud, wire fraud or both.

And you'll just answer those questions for all the

counts up to Count 59. And then you will sign and date -- and the foreperson will sign and date the verdict form.

With Ms. Jackson's verdict form, which we see here, you will -- just like with the first count mentioned of Mr. Foster's verdict form, you will simply decide between the options listed there, not guilty and guilty. And then, again, the foreperson will sign and date the form.

You'll have the verdict form with you in the jury room. When you've agreed on your verdict, the foreperson, again, will sign the form and date it and carry it back in to the courtroom.

You will have -- in addition to the verdict form, you will have a copy of my instructions. You will also have the indictment. And you will have all of the exhibits.

Which, Ms. Lee, have you and the various parties worked through those exhibits? Are those close?

COURTROOM DEPUTY CLERK: They're close.

THE COURT: Okay. Those will -- we'll get a packet with you including all these materials shortly.

I'll also say, by agreement of the parties, you'll see in the indictment there are references to company 1, for example, and bank 1, for example. And there's a stipulation that the parties agreed to that describe which companies and banks are listed therein.

If you wish to communicate with me at any time,

please write down your message or question and give it to the court security officer. He or she will bring it to me and I'll 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 any time.

All right. Jurors 27 and Juror 30, who are you? I've lost track.

Okay. Jurors 27 and 30, you are alternate jurors in this case, so you will not go back and deliberate, but I do need you to stand by in case we need you at any point. Thank you.

All right. So now I'll ask the jury -- or, first off, Counsel, other than all those "each" and "a" issues that I think we fixed, any issues with the charge other than what's been previously objected to?

MS. WEBSTER: Your Honor, I think --

MR. KAUSHAL: No.

MS. WEBSTER: Your Honor, I think I have to renew my objection to the previously decided ones to preserve it for appeal.

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

MR. MARSHALL: Judge, and I think the Court already said it, subject to previous objections.

THE COURT: I did.

MR. KAUSHAL: No objection from the government.

THE COURT: All right. Thank you.

Okay. You can now, please -- 12 of the 14 of you, please go to the jury room to deliberate and we will be there shortly with the verdict form, the indictment and the instructions and the exhibits. Thank you.

(The jury exited the courtroom to deliberate.)

THE COURT: Counsel, anything else for now?

MS. WEBSTER: I do have one issue, Your Honor.

THE COURT: All right. Let's wait for the jury to go out.

Yes, Ms. Webster?

Y'all can be seated.

MS. WEBSTER: Thank you, Your Honor.

We are requesting that the Court find that there was a constructive amendment or a material variance during the government's closing argument, specifically as the Court is aware, I -- we've litigated a bunch of motions about the conspiracy -- or not a bunch. We litigated a multiplicitous argument arguing that it should be one conspiracy and not 14. And the government opposed that at every step along the way. And then I believe they stood up in closing and said that it's actually one conspiracy.

And so we would move for a -- for the Court to find that there's a material -- or constructive amendment or

material variance on that basis.

THE COURT: Yes, Ms. Chaiken.

MS. CHAIKEN: Your Honor, first of all, this wasn't raised in any contemporaneous objection, so I don't think it's been preserved.

But in any event, I don't think anything I said in closing suggested that there was only one conspiracy. What I said is that as to each loan Teldrin Foster conspired with Darrell Thomas. And I don't think there was any constructive amendment.

The evidence at trial showed the existence of multiple conspiracies because it established that the business owners did not work together with each other, were not connected by any kind of rim. So I think based on our prior briefing I don't think anything I said in closing changed the propriety of the way that the case was charged.

THE COURT: All right. One moment.

All right. Ms. Webster, anything else?

MS. WEBSTER: Nothing additional, Your Honor.

THE COURT: All right. I'm going to deny that motion.

All right. Thanks, everyone.

(After a recess at 1:39 p.m., the proceedings continued at 4:31 p.m., as follows:)

THE COURT: Y'all can be seated. Thank you.

I wanted to check in and get on the record given the issues we've been having. You know, it's pretty typical, you know, sometimes to tell the jury, okay, begin your deliberations, we'll -- or go back to the jury room, we'll have the stack here for you shortly with the verdict form, instructions, if y'all have consented to send them back and have agreed to send them back, and then the exhibits. That happened here, too. My impression was that things were about ready.

You know, there was a question from the jury if they could begin deliberations before they got everything. And I had Ms. Lee check with counsel to get counsel's position on that. I was told that counsel did not want that to happen, and I was only going to let that happen if everybody agreed. So I said okay, I understand no one wanted that to happen, so I said, tell the jury not to begin deliberations then.

Then I got a follow-up message a little bit later saying the documents still weren't ready but could -- was it permissible to let the jury start deliberating. I was told all counsel was amenable to that. So I said, fine, let the jury know they can begin deliberating, thinking again we were close to having the stack sent back to them.

So, first off, is my understanding of the communications so far, is that accurate, Ms. Chaiken?

MS. CHAIKEN: Yes, your Honor.

THE COURT: Ms. Webster?

MS. WEBSTER: Yes, your Honor.

THE COURT: Mr. Marshall?

MR. MARSHALL: Yes, your Honor.

THE COURT: That unfortunately was probably an hour and half plus ago. And I understand -- well, first off, I understand that a member of the Foster defense team was ill and so wasn't here, your paralegal, which would explain maybe why we're having some issues.

But bottom line is, you know, I think at this point I need to bring the jury in and say, we're having some trouble with the documents and we're going to pause for the rest of the day and bring you back in in the morning, at which time we will have all the documents ready to go.

To me, that seems clearly like what we should do at this point unless, Ms. Webster, you tell me that your documents are minutes away from being ready to go back.

MS. WEBSTER: I don't think I can say that they're minutes away from going back. Hopefully within half an hour or something, but I -- I'm very sorry, but I don't think I can promise they're minutes away.

THE COURT: Okay. Would anyone like to be heard on my suggestion, and that is, again, that I release the jury and have them come back in the morning given this issue?

MS. CHAIKEN: No, your Honor.

MR. MARSHALL: Your Honor, is there any instruction we can give them that just reminds them that they don't have the exhibits yet and not to form any conclusions in the case or anything related to that until they have all the evidence --

THE COURT: Well, we've already told them they could begin deliberations by consent of everyone, so I'm not going to try to get into the verbal gymnastics of don't decide anything or do decide something. I don't think that would be fair to them given that we've by consent told them they could go ahead and talk about the case and that the documents are on the way.

Do you want to be further heard, Mr. Marshall?

MR. MARSHALL: No, that's fine, Your Honor.

THE COURT: So my intent is just to bring the jury in and say, without any attribution as to which party has caused the issue, just to say we're having some issues with the documents unfortunately. Minutes have turned into hours and I've decided to pause your deliberations until you can come back in the morning with the documents.

Is that acceptable to everyone?

Ms. Chaiken?

MS. CHAIKEN: Yes, your Honor.

THE COURT: Ms. Webster?

MS. WEBSTER: Yes, your Honor.

THE COURT: Mr. Marshall?

MR. MARSHALL: Yes, Judge.

THE COURT: Could someone grab the CSO and have him bring in the jury. Thank you.

And, Ms. Webster, again, I understand your paralegal that normally does all this stuff was not here and that makes sense to me it would become an issue. It's unfortunate but it's fine and we're dealing with it and everything's going to be okay.

MS. WEBSTER: Thank you, Your Honor. I appreciate that.

COURTROOM DEPUTY CLERK: As to the alternates, do you want me to message them they're not to come in?

THE COURT: Yes, that would be fine.

Actually, does everyone consent, the alternates, to release them but tell them they're on standby to potentially need to come back?

Ms. Chaiken?

MS. CHAIKEN: That's fine, Your Honor.

THE COURT: Ms. Webster?

MS. WEBSTER: Yes, Your Honor.

THE COURT: Mr. Marshall?

MR. MARSHALL: Yes, Judge.

THE COURT: Actually are they close by? I want to bring them in and tell them that in person and thank them.

Thank you. Just have them come up, please.

Counsel, does everyone also consent to my telling them once they receive the stack in the morning, they can restart their deliberations without me coming into -- bringing them into the courtroom and bringing you all in the courtroom and telling them that?

MS. CHAIKEN: Yes, Your Honor.

MS. WEBSTER: Yes, Your Honor.

MR. MARSHALL: Yes, Your Honor.

And, Your Honor, I believe Mr. Foster's counsel is submitting I think --

THE COURT: I'm sorry, let me interrupt you. I won't say restart, I'll just say continue.

MR. MARSHALL: Continue, yes.

I believe Mr. Foster's counsel has documents that will be submitted on a flash drive.

Is that correct, Ms. Webster?

MS. WEBSTER: Yes, Your Honor. I was going to put that on the record.

I think by consent of the parties we have documents that we had admitted into evidence and it turns out that they were not actually all printed, which is part of the issue. And so we had discussed putting them on a flash drive and sending them back that way, so to avoid the time in printing and stickering them and stuff. And so I think all the parties

have agreed, so that's what we are planning to do. I think we're trying to wrap up that process.

THE COURT: That's fine. Do you have a list of exhibits that's going to apply to? I guess we should just put that on the record if you have it or we might need to do that tomorrow.

MS. WEBSTER: I think tomorrow.

THE COURT: All right. Thank you.

Ready. Thank you, Officer.

(The jury entered the courtroom at 4:43 p.m.)

THE COURT: All right. You can be seated.

Ladies and gentlemen of the jury, so we have had some issues with the exhibits, with the documents. As you know, this has been a fairly document intensive case with some hard documents, some electronic documents, et cetera.

When I sent you back to choose your foreperson, it was my expectation that soon thereafter we would be giving you a stack of the materials. I thought that was going to be in a few minutes or a couple minutes. A couple minutes have turned into a couple hours. It's now 4:45. I think I sent you back at 2:30-something or so.

A little while after I sent you back, it was confirmed after discussions with the parties that you weren't to begin your deliberations until you got the documents, but when we realized it was going to be a little bit longer for

the documents, the parties consented to allow you to begin your deliberations without the documents, which was communicated to you, again, with the expectation that those documents would be coming fairly shortly.

But now as additional time has passed and you still don't have the documents, I've decided to direct you to pause your deliberations for the day. And we will be putting the documents together once and for all this afternoon into this evening, as long as it takes for there to be a stack of documents ready for you to go tomorrow morning at 9:00.

I want to underscore to you that I'm not happy that this has transpired this way. And I know we've taken a lot of your time for this trial and this has been an even greater inconvenience over the last couple hours dealing with this.

I apologize that this has happened, but we're going to try to get it fixed the rest of this afternoon, into this evening, and make sure we have a stack for you at 9:00 tomorrow morning.

I've also, just to save us a little time of the back-and-forth, spoken with the parties and they've consented that once all 12 of you are here in the morning and you have that stack of documents, you can continue your deliberations at that point. I'm not going to bring you back into the courtroom just to tell you to continue your deliberations.

So, again, you have my apologies that this has

happened. I'm sorry that it's happened. I'm sorry that it's inconvenienced you, but we will hopefully have things straight and ready for you to go full speed ahead with your deliberations with everything you need at 9:00 tomorrow morning.

All right. Thank you very much. And, again, I apologize.

And to the two alternates, I'll release the jury and then I need to talk to the two alternates as well.

Thank you. Y'all have a good evening.

(The jury exited the courtroom at 4:47 p.m.)

THE COURT: All right. Y'all can be seated.

Jurors 27 and 30, hello. I want to thank you also for being here throughout this case and the attention you've given it. I've spoken with the parties and what we're going to do, instead of continue to hold you here while the rest of the jury deliberates and have you come back tomorrow while they deliberate, I'm instead going to release you on the condition that you will keep your cell phones with you and have them at the ready should we lose one of the other jurors for some reason tomorrow or however long they deliberate, we may still need to bring one or both of you back to become jurors.

Does that make sense?

All right. Both Jurors 27 and 30 are indicating,

yes, it makes sense.

So thank you for your service on this jury. It may well be that I don't see you again. If not, thank you.

Take care.

(Alternate jurors excused.)

THE COURT: Anything else this evening, Counsel?

MS. CHAIKEN: No, Your Honor.

THE COURT: And just so I'm abundantly clear on this, I don't care if -- it's 4:48, I don't care if it takes to 5:58 or 6:58 or 3:00-in-the-morning-48, let's make darn sure we have that stack ready to go for the jury at 9:00. Okay.

MS. WEBSTER: Yes, sir.

MR. MARSHALL: Your Honor, I think we have all our exhibits in. I don't think we need to stay. We only had a few anyway, Judge.

THE COURT: I understand that, Mr. Marshall, but thank you. All right.

Best of luck. And, again, I understand the situation. And had I had a, you know, when I was practicing, a gigantic case with a million pages of documents and without a paralegal, I probably would have had a similar problem. So all will be well.

Take care, everyone.

(After a recess at 4:49 p.m., the proceedings were continued as follows on February 15, 2024:)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 14th Day of February, 2024.

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER

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