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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

21 CR 746 (MKV)

ADEDAYO ILORI,

Defendant.

New York, N.Y.
August 5, 2022
11:11 a.m.

Before:

HON. MARY KAY VYSKOCIL,

District Judge

APPEARANCES

DAMIAN WILLIAMS,

United States Attorney for the
Southern District of New York

BY: DANIEL NESSIM

Assistant United States Attorney

BILL LEGAL GROUP

Attorneys for Defendant

BY: PETER E. BRILL

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1 (In open court)

2 (Case called)

3 THE COURT: Good morning, Ms. Dempsey. Please be
4 seated, everyone.

5 MR. NESSIM: Good morning, your Honor. Daniel Nessim
6 for the government.

7 THE COURT: Good morning, Mr. Nessim.

8 MR. BRILL: Good morning, your Honor. Peter Brill on
9 behalf of Mr. Ilori, and Mr. Ilori is present in court as well.

10 THE COURT: All right. Good morning, Mr. Brill, and
11 good morning Mr. Ilori.

12 THE DEFENDANT: Good morning.

13 THE COURT: Good morning, too, to our court reporter.
14 Thank you for being here.

15 Let me confirm for the record, Mr. Ilori, you do not
16 need the services of an interpreter, correct?

17 THE DEFENDANT: Yes.

18 THE COURT: "Yes," you do, or "yes," correct?

19 THE DEFENDANT: Yes, correct.

20 THE COURT: All right. You speak and understand
21 English clearly?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: All right. So, Mr. Ilori, when we were
24 last together, you raised an issue with the Court about your
25 counsel. First, you told me you wanted new counsel. Then, you

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1 told me you wanted time to meet with Mr. Brill and decide
2 whether you were satisfied with counsel and were going to
3 proceed with him.

4 I've since received a letter from Mr. Brill dated
5 July 25, 2022. The letter says: "Dear Judge Vyskocil, I have
6 discussed my ongoing representation with Mr. Ilori, and he has
7 stated that he wishes to continue with me as his attorney."

8 Is that correct, sir?

9 THE DEFENDANT: Yes, it is.

10 THE COURT: All right. So with that, then we will
11 move forward with what we had gathered for previously, which is
12 your arraignment on the superseding indictment in this case.
13 Are you prepared to proceed, Mr. Brill?

14 MR. BRILL: Yes, your Honor.

15 THE COURT: All right. So just to remind everybody,
16 the new Covid protocols permit you, when you are addressing the
17 Court, to remove your mask but then put it back on after you
18 finish speaking with the Court.

19 All right. So, Mr. Ilori, you have been named in a
20 six-count superseding indictment numbered 22 CR 746 (MKV).
21 That indictment charges you with major fraud against the United
22 States, in violation of 18, United States Code, section 1031, 2
23 and 3147; second, conspiracy to commit wire and bank fraud in
24 violation of 18, United States Code, section 1349 and 3147;
25 third, wire fraud in violation of 18, United States Code,

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1 section 1343, 2 and 3147; bank fraud, in violation of 18,
2 United States Code, section 1344, 2 and 3147; fifth, aggravated
3 identity theft in violation of 18, United States Code, sections
4 1028A(a)(1), (b), (c)(4-5), 2 and 3147; and, sixth, conspiracy
5 to commit money laundering, in violation of 18, United States
6 Code, sections 1956(h) and 3147.

7 Mr. Ilori, have you seen a copy of the superseding
8 indictment containing those charges against you?

9 THE DEFENDANT: Yes, I have.

10 THE COURT: Have you had an opportunity to discuss it
11 with your lawyer, Mr. Brill?

12 THE DEFENDANT: Yes.

13 THE COURT: You have discussed it with him?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: All right. And you've had ample
16 opportunity to do so?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: All right. Would you like me to read that
19 superseding indictment aloud in open court, or do you waive
20 public reading?

21 THE DEFENDANT: I waive the public reading.

22 THE COURT: And how do you plead at this time?

23 THE DEFENDANT: Not guilty.

24 THE COURT: To all six counts?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: All right. Thank you.

2 All right. Let's turn to the conference portion of
3 today's hearing. It's the Court's understanding that all time
4 under the Speedy Trial Act was excluded through next week,
5 August 8th, the date on which we had originally planned to hold
6 today's proceeding. Is that correct?

7 MR. NESSIM: Yes, your Honor. That's correct.

8 THE COURT: All right. Is that your understanding,
9 Mr. Brill?

10 MR. BRILL: Yes, your Honor.

11 THE COURT: All right. Is there any additional
12 discovery that needs to be provided?

13 MR. NESSIM: No, your Honor.

14 THE COURT: All right. Mr. Brill, you have received
15 discovery and had an opportunity to meet with Mr. Ilori and
16 review it with him?

17 MR. BRILL: A number of times prior to the last
18 conference and a number of times since then, your Honor, yes.

19 THE COURT: And you do not anticipate any motion
20 practice at this time?

21 MR. BRILL: No further motion practice, Judge, no.

22 THE COURT: All right. Thank you.

23 So then we're at the point where we are ready to set a
24 trial date. The Court has availability on September 13th and
25 can try the case that week. How long is the government

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1 thinking this trial will last?

2 MR. NESSIM: One week, your Honor.

3 THE COURT: One week for presentation of evidence --

4 MR. NESSIM: We believe the full trial will take no
5 more than a week.

6 THE COURT: Including jury selection?

7 MR. NESSIM: Yes.

8 THE COURT: Okay. All right. So September 13th --
9 let me just pull up my calendar -- that is a Tuesday; so we can
10 set this down for trial at that time.

11 MR. NESSIM: Your Honor, we had previously written to
12 the Court with some conflicts and proposed dates.

13 THE COURT: I know you have, Mr. Nessim, but I don't
14 know where the litigants get the idea that you all dictate to
15 the Court when cases are going to be tried.

16 MR. NESSIM: Your Honor, that's not what we believe or
17 suggest, but given a balance of factors, to the extent that it
18 works with the Court's schedule. You know, I have a colleague
19 on the case. It's myself, it's Mr. Brill, we all have trials
20 schedules.

21 THE COURT: And so does the Court.

22 MR. NESSIM: Understood, your Honor. I'm not
23 suggesting that we are in any way dictating, but I believe
24 September 13th, for example, is a conflict with my colleague
25 Juliana Murray. She has a trial going on at the same time. I

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1 don't remember offhand, I think some witnesses may also have
2 some conflicts with that week, which is why we consulted and
3 proposed dates that worked for everyone, well, with the
4 litigants and the witnesses.

5 Understand if those dates do not work for the Court.
6 We are not suggesting in any way that -- you know, we
7 understand that we can move things around and make things work
8 if there's nothing else that works, but to the extent possible,
9 we would appreciate a trial date at a time that is convenient
10 for all parties.

11 THE COURT: Let me just look at the calendar.

12 (Pause)

13 All right. Please give us a minute. We're trying to
14 see what we can move around.

15 MR. NESSIM: Thank you, your Honor.

16 (Pause)

17 THE COURT: All right. I'm going to set this for
18 trial the week of October 24th, which is one of the weeks that
19 you told me worked for the parties and the witnesses. It will
20 require me to move something else, another trial in a civil
21 case, but criminal cases, particularly where we have an
22 incarcerated defendant, take priority. Although, the reality
23 here is that Mr. Ilori is incarcerated on conviction in another
24 case; so that isn't going to change whether he's acquitted here
25 or not.

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1 MR. NESSIM: Thank you, your Honor.

2 THE COURT: All right. Now just to confirm for the
3 record, I do have a letter, it's a joint letter, telling me
4 that the parties -- I had given you, when we were last
5 together, some proposed or sent to you some proposed revisions
6 to your requested voir dire and jury charges. I gave you some
7 edits that I intended to make. You have filed a letter saying
8 you have no objection. Is that correct, Mr. Brill?

9 MR. BRILL: Yes, that's correct, your Honor.

10 THE COURT: All right. Mr. Nessim?

11 MR. NESSIM: Yes, your Honor.

12 THE COURT: All right. So we have consensual
13 voir dire questions and requests to charge the jury.

14 And you also informed me that you do not need that
15 additional proposed charge you had asked for about interest of
16 witnesses, where I didn't really know what you meant by it.
17 You've now told me it's covered by one of our standard charges,
18 where you asked us to use our standard language. Is that
19 correct?

20 MR. NESSIM: That's correct, your Honor.

21 MR. BRILL: Yes, your Honor.

22 THE COURT: All right. So you raised an issue at the
23 last conference with regard to your efforts, Mr. Brill, to
24 subpoena Mr. Recamier, Mr. Ilori's original co-defendant in
25 this matter.

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1 (Pause)

2 All right. I'm sorry. You had raised the issue about
3 your subpoena that you served on Mr. Recamier, and his counsel
4 telling you that Mr. Recamier intended to invoke the Fifth. Is
5 that where things stand?

6 MR. BRILL: Yes, your Honor. I haven't pursued it
7 since our last appearance, since we were going to have a
8 different trial date, but now that we do, I'm going to go back
9 to them, tell them what the Court told me, which is that he has
10 to at least be produced for that purpose. And the other
11 interesting part is now that's past his sentencing date; so
12 there may be less of a jeopardy question for him.

13 THE COURT: That may be right because what I was going
14 to tell you is that, you know, while he clearly has to appear
15 pursuant to a subpoena. If his counsel tells me he's going to
16 invoke the Fifth Amendment, what we have to do is put him on
17 the stand outside the presence of the jury. You can ask him
18 whatever you want to ask him. He can invoke, if he wants to
19 invoke, and then I have to rule on whether he does, in fact,
20 have a legitimate claim of a potential risk of incriminating
21 himself.

22 MR. BRILL: Agreed.

23 THE COURT: And the fact that a sentencing had not yet
24 occurred, clearly would lead me to sustain his claim of
25 privilege.

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1 MR. BRILL: Understood. Thank you, your Honor.

2 THE COURT: But the fact that he's sentenced, you and
3 Mr. Ilori need to understand, does not mean that his right
4 against self-incrimination is gone. It depends what you intend
5 to ask him.

6 MR. BRILL: We've discussed that. Thank you.

7 THE COURT: All right. So one other thing that
8 Ms. Dempsey is pointing out to me, there are about eight or ten
9 other requests for venires on October 24th. Meaning it's
10 highly unlikely that we are going to get a jury pool for that
11 day. The best I can do then is move us to the next day, the
12 25th. Otherwise, we're kicking this out pretty indefinitely,
13 but that means that you need to work as best you can at
14 streamlining your case.

15 MR. NESSIM: Yes, your Honor. I believe that even if
16 we start on Tuesday, we should be able to try this case to a
17 verdict within the same week.

18 THE COURT: All right. Mr. Brill, any concerns?

19 MR. BRILL: No, nothing significant.

20 THE COURT: All right. So we'll set this down then to
21 start on the 25th of October.

22 Right, Ms. Dempsey; is that where we are?

23 THE DEPUTY CLERK: Yes.

24 THE COURT: All right. Is there a motion with respect
25 to the speedy trial clock?

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1 MR. NESSIM: Yes, your Honor. The government moves
2 for the exclusion of time through October 25th to allow the
3 parties time to prepare for trial.

4 MR. BRILL: We join in that application. Thank you,
5 your Honor.

6 THE COURT: All right. On the joint motion of the
7 government and the defendant, all time between today and
8 October 25 is excluded for purposes of the Speedy Trial Act.
9 The Court does find that the exclusion of such time allows the
10 parties to prepare for trial, if they wish to talk about a
11 potential consensual disposition of the case. Those interests,
12 in the Court's view, outweigh the interests of the public and
13 the defendant in a speedy trial.

14 All right. Is there anything else we should discuss
15 today?

16 MR. NESSIM: Not from the government. Thank you.

17 MR. BRILL: No, your Honor. Thank you.

18 THE COURT: All right. Then I'll see everyone on
19 October 25.

20 What time, Ms. Dempsey?

21 THE DEPUTY CLERK: 9:00 a.m.

22 THE COURT: All right. 9:00 a.m. here.

23 MR. BRILL: Judge, with regard to that, do we intend
24 to start at 9:00 every day, or is that just for the first day?

25 THE COURT: No, roughly 9:00 every day, unless one of

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1 the jurors has a problem.

2 MR. BRILL: Okay.

3 THE COURT: We'll go 9:00 to 5:00, and we'll take a
4 lunch break and a morning break and an afternoon break.

5 MR. BRILL: Okay. Some judges do 9:30, some do 10:00;
6 so I just wanted to be sure.

7 THE COURT: Yes. I mean, obviously, the jurors, once
8 they're in place, tell me, you know, some are coming from upper
9 counties or whatever, and they prefer 9:30, we'll adjust it
10 accordingly. But right now you should plan on 9:00 a.m.
11 because there are often things we need to talk about outside
12 the presence of the jury.

13 MR. NESSIM: Thank you, your Honor.

14 THE COURT: All right. Anything further, Mr. Brill?

15 MR. BRILL: No. Thank you, your Honor.

16 THE COURT: All right. Then we'll stand adjourned.

17 Thank you very much to our court reporter.

18 Have a good day, everyone.

19 (Adjourned)