

MAVDILO1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 746 (MKV)

5 ADEDAYO ILORI,

6 Defendant.

Jury Trial

-----x

7
8 New York, N.Y.
9 October 31, 2022
9:00 a.m.

10 Before:

11 HON. MARY KAY VYSKOCIL,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
Southern District of New York

16 BY: JULIANA N. MURRAY, ESQ.

DAVID R. FELTON, ESQ.

17 Assistant United States Attorneys

18 BRILL LEGAL GROUP, P.C.

Attorneys for Defendant

19 BY: PETER E. BRILL, ESQ.

20 ALSO PRESENT: ISABEL LOFTUS, Paralegal Specialist, USAO

MAVDILO1

1 (Case called; appearances noted)

2 (Jury not present)

3 THE COURT: So a few things before we bring the jurors
4 out. First, I have the joint request for a new charge 46 on
5 similar acts.

6 This is on consent?

7 MR. BRILL: Yes, your Honor.

8 MS. MURRAY: Yes, your Honor.

9 THE COURT: All right. Thank you.

10 So I've reviewed it. I'm fine with it. I will
11 replace what was charge 46 in what we previously provided to
12 you with this version.

13 Are you able to get this printed into the version we
14 have?

15 LAW CLERK: Yes.

16 THE COURT: This is not a Word document, but you can
17 cut and paste it in?

18 LAW CLERK: Yes.

19 THE COURT: Two things with respect to jury
20 instructions. We'll obviously have the final charging
21 conference later on this morning, but I just want to confirm
22 with the parties on the record, I think we might have done this
23 off the record, so I'm being overly careful perhaps, but we did
24 have a charging conference on Friday afternoon. The evidence
25 is not yet closed, but the parties all consented to us having

MAVDILO1

1 that charging conference on Friday afternoon with the
2 understanding that we will meet one more time before
3 summations, correct?

4 MS. MURRAY: That's correct, your Honor.

5 MR. BRILL: Yes, your Honor.

6 THE COURT: All right. Thank you.

7 One other thing that I wanted to discuss with the
8 parties. I thought about this a great deal over the weekend.
9 The four exhibits that I admitted at the end of the day, the
10 text messages, the more that I think about particularly our
11 conversation at sidebar, you did not admit those exhibits for
12 the truth of the matter asserted, did you, Ms. Murray?

13 MS. MURRAY: No, your Honor. We did not.

14 THE COURT: All right. So Mr. Brill has stipulated to
15 the authenticity of those.

16 MR. BRILL: (Nodding)

17 THE COURT: And they are admitted not for the truth,
18 so they are, therefore, not hearsay. They are admitted for the
19 fact that the conversation took place.

20 Is that accurate?

21 MS. MURRAY: That is, Your Honor.

22 THE COURT: Mr. Brill, do you agree with that?

23 MR. BRILL: I do. I still think you have to do that
24 co-conspirator statement analysis.

25 THE COURT: I don't agree with that.

MAVDILO1

1 MR. BRILL: Okay.

2 THE COURT: So my point is I believe that a limiting
3 instruction is in order with respect to these.

4 Do you disagree with that, Mr. Brill?

5 MR. BRILL: No, your Honor.

6 THE COURT: All right. Ms. Murray?

7 MS. MURRAY: No, your Honor.

8 THE COURT: All right. So when the jury comes out,
9 I'm going to tell them with respect to the last four
10 exhibits -- which I assume may be part of what Mr. Brill will
11 be discussing during his cross, but maybe not -- they will
12 recall they are among the last things that you discussed,
13 Ms. Murray, with the witness. They were admitted not for the
14 truth of what's contained within each of those four exhibits,
15 but rather to establish that the conversations took place.

16 Agreed?

17 MS. MURRAY: Yes, your Honor.

18 THE COURT: Mr. Brill?

19 MR. BRILL: Yes, your Honor.

20 THE COURT: All right. Then is there anything else we
21 need to talk about before we resume with the jury? It's a
22 little early for what we told them, but --

23 MS. MURRAY: Not from the government.

24 THE COURT: Mr. Brill?

25 MR. BRILL: Nothing on our behalf, Your Honor.

MAVDILO1

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1 THE COURT: All right. So we'll stand in recess until
2 9:30 or until all the jurors are here.

3 All right. Thank you, everyone.

4 (Recess)

5 THE COURT: Do we have the witness?

6 MS. MURRAY: Yes, your Honor.

7 THE COURT: Tell me how you pronounce your name.

8 THE WITNESS: Damjan Hezir, your Honor.

9 THE COURT: Hezir?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: All right. You may be seated.

12 DAMJAN HEZIR, resumed.

13 CROSS-EXAMINATION

14 THE COURT: Good morning, everyone.

15 THE JURORS: Good morning.

16 THE COURT: I hope you had a very nice weekend, and
17 thank you very, very much for being here on time and being here
18 promptly to go this morning.

19 So I want to give you one instruction before we give
20 you Mr. Brill's cross-examination of Agent Hezir, whom, if you
21 recall, was on the stand and Ms. Murray examined at the end of
22 the day on Friday. So the very last set of the exhibits as I
23 recall that Ms. Murray talked to the witness about were a group
24 of text messages. Those messages were admitted not for the
25 truth of what's contained within the text messages, but rather

MAVDILO1

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1 simply to establish the fact that those communications took
2 place. All right?

3 Now, with that, I think we're ready for Mr. Brill's
4 cross.

5 MR. BRILL: Thank you, your Honor.

6 THE COURT: Thank you, Mr. Brill.

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. So you, if I recall from Friday, said you were -- you
10 started with DOJ at OIG in 2018?

11 A. Yes, sir. That's correct.

12 Q. Okay. And with the cyber investigations team the whole
13 time?

14 A. Yes, sir.

15 Q. Okay. And you had mentioned that you had volunteered as an
16 auxiliary police officer in Fairfax, Virginia, for about six
17 years before that; is that right?

18 A. That's correct.

19 Q. Okay. What did you do during that time period?

20 A. During that time I was an IT specialist working for the
21 Department of Justice in a different division.

22 Q. Okay. During that whole six-year period?

23 A. Yes, sir. It was part-time, but yes.

24 Q. Did you do anything else in addition to your part-time
25 work?

MAVDILO1

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1 A. I also was a part-time network administrator for a private
2 company.

3 Q. And based upon that experience, is that what, you know, for
4 lack of a better word, got you the job at the cyber
5 investigations team?

6 A. I think combined with my law enforcement background and my
7 network administration and IT specialist skills, yes, I believe
8 so, sir.

9 Q. During your work with DOJ in the part-time position, and
10 since you joined cyber investigations, what type of training
11 had you received with regard to searching and securing --
12 withdrawn -- securing and searching electronic devices?

13 A. The training I received, once I started at the OIG, was
14 with NW3C. That's the National White Collar Crime Center. I
15 have taken a few classes dealing with searching and -- seizing,
16 searching and analyzing digital devices, as well as training at
17 the Federal Law Enforcement Training Center in Georgia.

18 Q. Okay. So the white collar crime center, about how much
19 training did you there in this topic?

20 A. Approximately three courses.

21 Q. Okay. Three courses, like one-hour courses, or are they,
22 you know, longer?

23 A. No, sir. They span a couple days typically.

24 Q. Okay. And then in Georgia?

25 A. In --

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1 Q. Sorry. Go ahead.

2 A. Excuse me. Yes, at the Federal Law Enforcement Training
3 Center, I had trained for the digital evidence acquisition
4 specialist training program. That's a two-week program. And I
5 also started, unfortunately was interrupted due to the
6 pandemic, for the seized computer evidence recovery specialist
7 training. I attended one week there, but didn't finish.
8 Again, it's usually two-week courses at FLETC.

9 Q. Okay. The courses sound like they covered how to get
10 evidence out of devices after they've already been seized. Is
11 that an accurate summary?

12 A. I'm sorry. Were you talking about the FLETC courses?

13 Q. The ones in Georgia, yes.

14 A. No, sir. The one in Georgia was specifically for acquiring
15 evidence, and the second, SCERS, the seized computer evidence
16 recovery specialist, that's actually for analyzing data after
17 it's been collected.

18 Q. So with regard to the devices in this case, the dates of
19 the searches were October 7 and October 8, right?

20 A. That's correct.

21 Q. 2021?

22 A. Yes.

23 Q. Okay. And were you present for both searches?

24 A. Yes, I was.

25 Q. All right. And what type of pre-execution of the search

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1 warrant meetings or planning, you know, that took place before
2 -- let's just separate them out. Let's say the search of the
3 apartment first.

4 A. Sure. We were conducting surveillance a little earlier
5 that evening. And then the first half of my team executed the
6 search warrant, at which point I -- I was with my partner at
7 the time in the vehicle. We came and arrived at the scene a
8 little after the first units entered the door.

9 Q. Okay. So were you assigned a specific role with that
10 search?

11 A. I wouldn't say I was assigned a certain role, I was mainly
12 there in a supporting role, primarily there for the digital
13 devices.

14 Q. When you say you were primarily there for the digital
15 devices, what was the understanding of what you were going to
16 do?

17 A. I was to identify, collect, and then enter those evidence
18 items as -- basically secure the evidence items for retrieval
19 back to -- to return them back to the office.

20 Q. Okay. We'll talk about that in a second. With respect to
21 the October 8 search of Mr. Ilori and the vehicle, what was
22 your role?

23 A. There were fewer agents there on the search that morning.
24 There was only three of us, so my primary goal is officer or
25 agent safety to make sure that we were safe on seen. We were

MAVDILO1

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1 there to conduct the search, but we were concerned about
2 Mr. Ilori first and then we would conduct the search. Again,
3 as a supporting role, I was there primarily for the digital
4 devices as well.

5 Q. Would that be the same thing, identify, collect, and enter?

6 A. That's correct.

7 Q. When you say enter, you mean kind of log them somewhere so
8 that you have a list of what you got, right?

9 A. That's correct.

10 Q. Okay. So let's go back to the apartment for a second. You
11 don't show up until after Mr. Recamier is removed or is he
12 still there when you get there?

13 A. When I arrived at the apartment, Mr. Recamier was still
14 there.

15 Q. All right. And was he handcuffed? Was he separated? What
16 was his situation?

17 A. When I arrived, Mr. Recamier was not handcuffed. He was in
18 the living room, speaking with agents.

19 Q. Okay. And what did you do when you got there?

20 A. At that point, the apartment had been searched in terms of
21 any kind of potential threats. So at that point I wanted to,
22 you know -- went into mode to search for digital devices.

23 Q. And you found two or more than two?

24 A. More than two digital devices.

25 Q. So you found the Mac computer, right?

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1 A. That's correct.

2 Q. You found the Motorola phone, right?

3 A. That's correct.

4 Q. Okay. What else did you find?

5 A. It was a bit chaotic. There was a lot of agents. As we
6 were searching, a couple agents would bring evidence up to me,
7 but I do recall we identified an HP Chromebook. There was a
8 Lexar thumb drive that was plugged into the Chromebook. There
9 was another laptop -- I believe it was a Lenovo -- there on the
10 kitchen table area. And, again, agents would bring -- as they
11 found them, agents would bring to me phones from -- various
12 items.

13 There were other members of my cyber investigations
14 team who had been trained how to handle digital evidence, and
15 they would bring them to me as they found them.

16 Q. Okay. And when it comes to how you handle that evidence,
17 are the devices shut off if they're on, are they left on if
18 they're on? How does that part work?

19 A. Typically we -- what we do is we separate them from the
20 cellular network to prevent any kind of new data coming down or
21 data erasure from happening on the device.

22 Q. So looking at the items you've listed so far found in the
23 apartment, would it be fair to say the only one attached to a
24 cellular network would have been the Motorola phone?

25 A. The Motorola phone is a mobile device that does connect to

MAVDILO1

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1 the cellular network, yes.

2 Q. Okay. So did you physically take that one first or did
3 someone else?

4 A. I don't recall the process. I don't recall which devices
5 were found when and by whom exactly.

6 Q. Okay. When you first saw the Motorola, did you do anything
7 to it?

8 MS. MURRAY: Objection, Your Honor. I'm not sure what
9 Mr. Brill means by "do anything to it."

10 THE COURT: The witness can say if he did anything.

11 THE WITNESS: I don't recall what I did to that
12 device. I would have to refer to my notes.

13 Q. Okay. Do you have those notes available?

14 A. I do not have them here, no.

15 Q. Okay. When you refer to notes, just describe to me what
16 that means. Were you taking notes on a notebook or something?

17 A. Every search warrant is different. Sometimes I have an
18 actual physical notebook where I would take notes, and
19 sometimes I'd have my forensic laptop where I would take notes
20 using Notepad or something similar.

21 Q. Okay.

22 A. And I don't recall in this case which it was.

23 Q. So just so I understand, either it's a physical notebook or
24 a notepad app on a device, right?

25 A. It could also be a Microsoft Word document, but it's

MAVDILO1

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1 basically the same.

2 Q. So some sort of electronic program where you write things
3 down?

4 A. That's fair, yes.

5 Q. Okay. Let's stick to the Motorola for a second. Do you
6 recall if it was connected to WIFI or cellular when it was
7 handed to you, either or, or both?

8 A. I don't recall.

9 Q. Okay. And in terms of the Chromebook, did you ultimately
10 search the Chromebook?

11 A. We did. Excuse me, we did ultimately search the
12 Chromebook, however, with our forensic tools, it wasn't
13 necessarily supported so a manual review of the Chromebook was
14 conducted.

15 Q. Okay. And in terms of the manual review of the Chromebook,
16 was there anything to indicate the ownership of the Chromebook?

17 A. There was an account on the Chromebook, I documented that
18 with a photograph, and that was basically as far as I could go
19 with that review.

20 Q. Do you recall what the account was?

21 A. I don't recall.

22 Q. With regard to the Lenovo laptop, was it connected to
23 cellular, WIFI, or both when you received it?

24 A. The laptop itself, I don't recall.

25 Q. Ultimately, did you conduct a search of the laptop, the

MAVDILO1

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1 Lenovo?

2 A. Yes, I did.

3 Q. And, as part of your search, was there anything revealed as
4 to an account or owner on the Lenovo?

5 A. I don't recall in terms of the laptop at this time.

6 Q. How about the iMac? That's -- was that a desktop or a
7 laptop?

8 A. The iMac was a desktop computer.

9 Q. Was that connected to cellular or WIFI when you received it
10 or first saw it?

11 A. When I first saw it, I -- I don't recall at this time.

12 Q. Okay. And you did a search of that one, right?

13 A. No, sir. I did not conduct a search of the iMac.

14 Q. Someone else on your team?

15 A. That's correct.

16 Q. Okay. So what methods or materials are used during a
17 search to make sure that the machines don't connect to a
18 network of any sort after you've taken possession of them?

19 A. Strictly speaking, in terms of machines such as computers
20 or -- computer desktops or laptops particularly the process is
21 to power off those devices in the current state that they're
22 in.

23 Q. Okay. And do you recall if that was done for the devices
24 that we just discussed?

25 A. I recall that the iMac was powered off physically, meaning

MAVDILO1

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1 the power was pulled from the iMac. I don't recall by whom.

2 The other devices were collected as is.

3 Q. Okay. And then there's just the one phone, right? The
4 Motorola?

5 A. The other phones were recovered from that search warrant.

6 Q. There were other phones as well in the apartment?

7 A. Yes. That's correct.

8 Q. Okay. How many other phones?

9 A. I don't have an exact number.

10 Q. Okay. Did you search those phones?

11 A. Yes.

12 Q. Was there anything on those phones to indicate an account
13 or an individual who owned those phones?

14 A. Accounts were identified on the phones that we recovered,
15 yes.

16 Q. And do you recall the accounts?

17 A. I don't recall the exact accounts, no.

18 Q. Okay. With the phones specifically, do you know what a
19 faraday bag is?

20 A. Yes, I do.

21 Q. What is a faraday bag?

22 A. A faraday bag is used to separate a cellular device from
23 the network.

24 Q. Okay. Were the phones -- well, withdrawn. Did you have
25 faraday bags with you during the search?

MAVDILO1

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1 A. I don't recall if I did or did not.

2 Q. Okay. Based upon your training or experience, specifically
3 the training you mentioned earlier, were you trained to bring
4 faraday bags as a best practice when conducting search warrants
5 with regard to electronic devices?

6 A. We were trained in how to -- excuse me -- employ and use
7 and utilize faraday bags.

8 Q. And why is that? Why is that important?

9 A. Again, faraday bags block the RF, or radio frequency,
10 signals from coming to the cellular device, and it's good to
11 prevent, again, erasure of the device or from new data being
12 written to the device.

13 Q. Basically, whatever you can do to make sure that the device
14 is unchanged from the moment that you seize it, that's the
15 goal, right?

16 A. Yes. That's correct.

17 Q. Okay. What -- so if you didn't have the faraday bags, what
18 methods, if any, did you take to make sure that these devices
19 were no longer communicating with the network? Let's just talk
20 about the cell phones.

21 A. If a faraday bag cannot be used, our primary go to, and
22 actually probably the preferred method is to place the device
23 into airplane mode, which it separates it from cellular and
24 WIFI networks.

25 Q. And with regard to all of the phones that were recovered,

MAVDILO1

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1 were they placed in airplane mode?

2 A. They were eventually placed into airplane mode, yes.

3 Q. What does that mean? Eventually on the scene or some other
4 time?

5 A. For those devices, like I can't specifically say when they
6 were. I'd have to refer to my notes. But, again, agents from
7 my cyber investigations team, which received training how to
8 handle digital forensics, they were familiar with how to place
9 devices in airplane mode. So, again, I don't know who put them
10 in or when.

11 Q. Okay. Based upon your general practice when you take
12 notes, do you take notes if devices are placed in airplane
13 mode?

14 A. Yes. That's correct.

15 Q. And a correspond -- like you -- you would put a device
16 specifically and then what you did with it with regard to
17 airplane mode?

18 A. Yes.

19 Q. And when you say notes, that's the same notes you were
20 talking about a couple minutes ago, right?

21 A. That's correct. Yes.

22 Q. Okay. The phones specifically were not -- well, all of the
23 electronic devices, the phones and computers, they were not
24 examined in the apartment, right?

25 A. That's correct.

MAVDILO1

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1 Q. Where were they examined?

2 A. The initial forensics took place in the apartment in terms
3 of placing them into airplane mode or powering off depending on
4 the device, at which point they were taken to our lab
5 eventually for analysis.

6 Q. Okay. Between the time they were seized and when they were
7 brought for the lab -- I'm sorry. Where's the lab?

8 A. Our lab in this case is located in Arlington, Virginia.

9 Q. And between the time they were seized in New York and
10 brought to Arlington, where were they?

11 A. They were transported down between New York and Arlington
12 in between -- I don't recall exactly where.

13 Q. Okay. Did they go straight from New York to Arlington or
14 did they go other places in between?

15 A. No. They would have gone only between New York and our
16 lab.

17 Q. And when you say lab, what is your lab? Can you just
18 describe it?

19 A. It's actually my office space and my colleagues'. That's
20 where we have our forensic tools that we use, imagers and other
21 devices that can parse and extract the data from these digital
22 devices.

23 Q. Is the lab shielded from cellular signals?

24 A. The lab is just a typical office space.

25 Q. So no, right?

MAVDILO1

HEZIR - CROSS

1 A. That's correct.

2 Q. You could make a cell phone call on your own cell phone
3 from your office, right?

4 A. It's a secure area so, you know, we can't have personal
5 devices in there. However, yes, you could make a cellular
6 call.

7 MR. BRILL: Okay. Ms. Loftus, could we take a look at
8 Exhibit 662, please? Thank you.

9 Q. Agent Hezir, this is the iPhone 12; is that correct?

10 A. That's correct.

11 Q. And where was this recovered from?

12 A. This was recovered from Mr. Ilori's person.

13 Q. And you earlier said, this was not supported by forensic
14 tools, right?

15 A. That's correct.

16 Q. So to clarify that, you use a couple of different devices
17 or programs to extract data from cell phones, right?

18 A. That's correct.

19 Q. One of them would be Cellebrite?

20 A. Yes.

21 Q. There's a couple of others, right?

22 A. Yes.

23 Q. All right. And in terms of the iPhones, the later model
24 iPhones, they're encrypted, right?

25 A. Yes, they have encryption.

MAVDILO1

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1 Q. So they come that way? It's not something that a user has
2 to set on their own, right?

3 A. Correct.

4 Q. And would it be fair to say at the time you did these
5 searches, iPhone 11, and 12 and up were not supported by
6 Cellebrite?

7 A. I can't say exactly which models or what was or was not
8 supported. At this time, using our current forensic tools,
9 this specific phone was not supported.

10 Q. Okay. So the iPhone 12 was not supported, right?

11 A. This specific iPhone 12 was not supported, correct.

12 Q. All right. And when you say not supported, essentially it
13 means that you plug it into the Cellebrite device and it can't
14 download the data?

15 A. Correct. In this case, we attempted two different software
16 programs and neither were supported.

17 Q. Okay. Are IP addresses assigned to specific devices like
18 this iPhone?

19 A. Yes, they can be.

20 Q. And did you determine at any point if this specific device
21 had an iPhone -- excuse me, IP address assigned to it?

22 A. In this case, to determine if there was an IP address, we
23 would have to have it on a network, and, again, that goes
24 against best practices, so no, I did not determine if there was
25 an IP address on this iPhone.

MAVDILO1

HEZIR - CROSS

1 Q. Now, there was also an iPhone 11 that was seized, right?

2 A. Yes. That's correct.

3 Q. And where was that seized from?

4 A. The iPhone 11 was seized from Mr. Ilori's person.

5 Q. Okay. And, again, that was not, in your words, supported
6 by forensic tools, right?

7 A. I believe so.

8 Q. Essentially, again, you couldn't download the data on the
9 device, right?

10 A. If it wasn't supported.

11 Q. Okay.

12 MR. BRILL: Ms. Loftus, could we look at Exhibit 631,
13 please? All right.

14 Q. Now, this, I think you explained, was not an extraction of
15 the phone but was some sort of extraction of the SIM card,
16 right?

17 A. No, sir. This is an extraction report for the actual
18 Samsung device.

19 Q. Oh, this is a Samsung. I'm sorry.

20 All right. We can take that down. I just have the
21 wrong exhibit.

22 At some point you did an extraction of the SIM card
23 that went with the iPhone 11?

24 A. Yes.

25 Q. Okay. Give me one second, please.

MAVDILO1

HEZIR - CROSS

1 MR. BRILL: I'm sorry. I think it was 660-A. Can we
2 put that up for a second? I think that was the one that we had
3 trouble finding originally.

4 Can we go to the second page? All right.

5 Q. What I was talking about is the SIM card extraction?

6 A. Yes, sir.

7 Q. All right. So does this refresh your memory a little bit
8 about whether you were able to do the full extraction of this
9 device?

10 A. It doesn't refresh my memory. I do remember this being the
11 SIM phone extraction from the iPhone 11, which is separate from
12 the device.

13 (Continued on next page)

MAV1ILO2

Hezir - Cross

1 BY MR. BRILL:

2 Q. Okay. If you can get into the actual device, do you
3 normally do a separate SIM card extraction?

4 A. Yes, it's good practice to do a separate SIM card
5 extraction, even if you can't get into the device.

6 Q. Did you do a SIM card extraction on the other phone, the
7 iPhone 12, if you recall?

8 A. I don't recall at this time.

9 Q. And so the SIM card extraction, that's the, to be clear,
10 the little tiny card that you usually slip into the side or the
11 bottom of the phone when it gets activated, right?

12 A. Yes, that's correct.

13 Q. And those cards can be changed between phones, correct?

14 A. When you say changed, I'm not sure I --

15 Q. Sure. The card itself, little SIM card, can be removed
16 from one phone and put into another phone if that second phone
17 is compatible, correct?

18 A. Yes, it can be moved.

19 Q. So at the time of the extraction of the SIM card, was there
20 any way to tell how long the SIM card had been in the iPhone
21 11?

22 A. I'm not sure if there's any way to tell how long it was in
23 the iPhone.

24 Q. Is there any sort of, you know, piece of data that the
25 phone registers that says, this is my new number, for --

MAV1ILO2

Hezir - Cross

1 withdrawn. I have to ask you a different question first.

2 The phone number comes with the SIM card, right?

3 A. It can, yes.

4 Q. Was it that way with the iPhone 11?

5 A. There was a phone number, or MSISDN, associated with the
6 SIM card, yes.

7 Q. Okay. So was the -- going back to my other question, does
8 the iPhone register a time when it says, aha, new SIM card, new
9 phone number?

10 A. I'm not sure.

11 Q. So the information that you could get from the SIM card was
12 that this SIM card had a phone number associated with it; is
13 that correct?

14 A. Yes, that's correct.

15 Q. Okay. And is that phone number on this page or no?

16 A. I believe it's on the next page.

17 MR. BRILL: Okay. Could we scroll down, please.

18 Thank you very much.

19 Q. All right. So towards the bottom here, it says
20 SIM/USIMMSISDN; that's line 8, right?

21 A. Yes, that's correct.

22 Q. Okay. And that's the phone number ending in 0642, correct?

23 A. Correct.

24 Q. Looking at the contact above there, what is line 3,
25 voicemail phone, there's a phone number under that on line 3

MAV1ILO2

Hezir - Cross

1 above, right?

2 A. Yes, I see it.

3 Q. Do you know what that means, the 805 number that's there?

4 A. No, I do not.

5 Q. Would that be the number associated with the phone on a
6 previous install or something like that, if you know?

7 A. I don't know.

8 MR. BRILL: Okay. Okay. We can take that down.

9 Q. The Motorola was not extracted either, right, the one that
10 was found in the apartment?

11 A. I don't recall.

12 Q. I think on Friday we looked at some pictures of it because
13 you said there was a manual examination; is that correct, or
14 no?

15 A. There was a manual review conducted. I don't recall if
16 there was another extraction completed or not.

17 Q. Okay. And then with regard to the Samsung, where was that
18 recovered from?

19 A. The Samsung in question, probably this one was the -- from
20 the vehicle.

21 Q. Okay. Did you recover it; do you recall?

22 A. I did, yes.

23 Q. And so where exactly was it?

24 A. The general area was in between the driver's side and the
25 front passenger seat.

MAV1ILO2

Hezir - Cross

1 Q. All right. So there's a console in between the seats?

2 A. There is.

3 Q. Is that a closed console, you know, one of those ones that
4 would open and click shut, or is it an open console?

5 A. I -- I don't recall in this case for this vehicle.

6 Q. Okay. This was a Mercedes S500; is that right?

7 A. I don't recall the exact model.

8 Q. All right. S class?

9 A. I don't recall.

10 Q. Nice Mercedes?

11 A. It was a nice Mercedes.

12 Q. Okay. Was there any sort of other analysis done of the
13 Samsung, forensic analysis, nondigital, like fingerprints or
14 DNA or anything like that?

15 A. I don't recall if they -- if there was any additional
16 analysis performed.

17 MR. BRILL: Ms. Loftus, could we pull up 631, please.

18 631 should have come up, not -- before.

19 All right. Can we scroll in on the -- sorry -- just
20 this whole box, if we can zoom in on that. Thank you.

21 Q. All right. So going down this box, we see that the phone
22 activation time, which is, I don't know, about six or seven
23 lines down, it says July 10, 2020, right?

24 A. Yes.

25 Q. Okay. Now does that indicate to you that that's the first

MAV1ILO2

Hezir - Cross

1 time the phone was activated or is that when the most recent
2 SIM card was put in? Do you know what that means?

3 A. I don't know what that specific value indicates.

4 Q. Okay. So now you have the current SIM phone number,
5 correct? And that's the same number we looked at before, the
6 0642 number, right?

7 A. I see that field, yes.

8 Q. Okay. So you have a SIM card that's physically removed
9 from the iPhone 11, right?

10 A. Correct.

11 Q. And when you analyze that SIM card, it comes up with the
12 same phone number, 0642, correct?

13 A. Correct.

14 Q. All right. And this phone says that the current number of
15 the phone is 0642 as well, correct?

16 A. This value does indicate that.

17 Q. Okay. Is that the phone number, to your understanding,
18 that was in use by this phone at the time you seized it?

19 A. For my -- based on my knowledge, I would actually refer to
20 the SIM card extraction of this Samsung to determine the
21 current phone number.

22 Q. Okay. Did you do a SIM code -- sorry -- SIM card
23 extraction of the Samsung?

24 A. I don't recall.

25 Q. And do you see the line right below that where it says SIM

MAV1ILO2

Hezir - Cross

1 change time, 7/10/2020 at 10:34 p.m., right?

2 A. Yes.

3 Q. Around eight minutes later then from the phone activation
4 time, correct?

5 A. Yes.

6 Q. And would that indicate that the phone had a SIM card
7 swapped out of it or swapped into it after its activation?

8 A. I -- I couldn't say that for sure.

9 Q. Okay. But the MSISDN number following the SIM change time
10 is a 929 phone number, right, over here?

11 A. Yes, I see that.

12 Q. And just so the record is clear, MSISDN number, that's a
13 phone number, correct?

14 A. Correct.

15 Q. Okay. So then at the bottom here, you have two entries;
16 you have "last known use" twice, right?

17 A. Yes.

18 Q. Okay. Do you know what "last known use" refers to?

19 A. I -- in this case, no.

20 Q. All right. So would you agree that "last known use" would
21 correspond with the MSISDN number that's right below it?

22 A. Based on how the report appears, yes.

23 Q. All right. So last known use on August 4, 2020,
24 corresponds to the 0642 number, correct?

25 A. Again, based on the report, yes.

MAV1ILO2

Hezir - Cross

1 Q. I understand. I mean, look, these are reports that you
2 rely on in your job, right?

3 A. Yes.

4 Q. Okay. So you have no reason to believe that they're
5 inaccurate, correct?

6 A. Not necessarily. However, we do typically like to verify
7 if a particular artifact is irrelevant.

8 Q. Okay. But as you sit here today, you don't recall whether
9 you extracted the SIM for this phone, right?

10 A. Not off the top of my head, no.

11 Q. Okay. So the MSISDN number last known use was for a number
12 9691, correct?

13 A. Correct, September 23rd, yes.

14 Q. September 23rd. And just, again, so the record is clear,
15 the search here was October 8th when this phone was recovered,
16 right?

17 A. That is correct.

18 MR. BRILL: Okay. We could take this down.

19 Could we put up 638, please.

20 Q. When -- you're familiar with this exhibit, right?

21 A. Yes.

22 Q. Okay. When -- what app, if you know, was this
23 conversation -- took place on? What app did this conversation
24 take place on?

25 A. This app was the Telegram messaging app.

MAV1ILO2

Hezir - Cross

1 Q. Are you familiar with Telegram?

2 A. Casually, yes.

3 Q. Okay. And would it be fair to say that Telegram can be
4 installed on multiple devices at the same time for the same
5 user?

6 A. That I can't say.

7 Q. Is Telegram associated with a specific phone number when
8 you install it on your phone?

9 A. I haven't installed it personally so I don't know.

10 Q. Okay. So the phone number --

11 MR. BRILL: Let's just -- could we just zoom in on the
12 first three bubbles.

13 Q. So when up here it says from a specific number, do you know
14 where the Telegram app is getting that information from? Is it
15 getting it from the -- some other part of the phone or is that
16 entered in by the user when they install the app?

17 A. I'm not sure where it's pulling that number from.

18 Q. When it says Unknown, would the app be looking somewhere to
19 try to find a name or a number and not being able to find it;
20 do you know?

21 A. I don't know.

22 Q. Okay. When is the first message on this chain?

23 A. February 17, 2021.

24 MR. BRILL: Okay. And Ms. Loftus, could you go to the
25 last page of this conversation.

MAV1ILO2

Hezir - Cross

1 Sorry.

2 Could you just highlight the last two, please.

3 Q. And the last use of this was what date?

4 A. October 6, 2021.

5 Q. Okay. And again, same thing. Between Jonathan and
6 Unknown, correct?

7 A. That's correct.

8 Q. Okay. Could we put up -- well, I mean, technically these
9 are missed calls, but it's the same parties, correct?

10 A. There appears to be a call on the right.

11 Q. Outgoing call hangup?

12 A. Duration in seconds, 474 seconds.

13 Q. Yeah. So that would indicate there might have been a call.
14 Okay. But either way, these are phone calls, not messages,
15 correct?

16 A. That's correct.

17 MR. BRILL: All right. Could we take that down.
18 Could we put up 639, please.

19 Q. And this one is between this person Teddy Riley and
20 Jonathan, correct?

21 A. That's correct.

22 Q. And first conversation, February 28, 2021, correct?

23 A. That's correct.

24 MR. BRILL: Okay. And could we go to the last page,
25 please.

MAV1ILO2

Hezir - Cross

1 Just highlight the last two, please.

2 Q. The last conversation, May 26th of 2021, correct?

3 A. That's correct.

4 Q. All right. Now just looking at the source info, do you
5 know what that means, at the bottom in the small print?

6 A. It's where it's found in the extraction.

7 Q. All right. So it's found in a file directory called
8 cache4.db, right?

9 A. That's what the report demonstrates.

10 Q. Okay. And that is -- again, is there any way to tell that
11 this file was created contemporaneously with the message that
12 is here?

13 A. I'm not sure.

14 Q. Do you know if messages -- I asked you a slightly different
15 version of this question before. But do you know, if you
16 download the Telegram app, does it download all of the prior
17 messages of the user that is assigned to that app when the
18 Telegram app is installed?

19 A. That I don't know. Again, I have limited use of Telegram
20 so --

21 Q. I understand.

22 MR. BRILL: This is 639. Could we just look at 640,
23 please.

24 Q. And this is a conversation between Googly Eyes and
25 Jonathan, right?

MAV1ILO2

Hezir - Cross

1 A. That's correct.

2 Q. And the first message here is April 2nd of 2021, correct?

3 A. Correct.

4 Q. Also using Telegram, right?

5 A. Correct.

6 MR. BRILL: All right. Can we go to the last page,
7 please.

8 Q. And again, last conversation, April 7th of 2021, correct?

9 A. Correct.

10 MR. BRILL: Okay. And could we put up 641, please.

11 Q. And again, a conversation between someone named Donald and
12 someone -- and Jonathan again, correct?

13 A. Correct.

14 Q. And 9/11/2020 is the first message, correct?

15 A. Correct.

16 MR. BRILL: And can we go to the last page, please.

17 Q. 9/14/2021 is the last message, correct?

18 A. Correct.

19 MR. BRILL: Okay. And we can take this down. Thank
20 you.

21 Q. And just -- the search of Mr. Ilori, how many phones were
22 found physically on him?

23 A. I believe there were three phones found on him.

24 Q. But this was not one of them, correct?

25 A. Which phone is that?

MAV1ILO2

Hezir - Cross

1 Q. Sorry. The Samsung.

2 A. Correct.

3 Q. Okay. And was the Samsung on when you got it out of the
4 console?

5 A. I don't recall.

6 Q. Would that be in your notes?

7 A. It might be in my notes.

8 MR. BRILL: Could we pull up 642, please.

9 Q. Agent Hezir, what is this?

10 A. We're looking at a Cellebrite extraction report; looking at
11 calendar entries.

12 Q. This is from the Samsung, right?

13 A. Yes.

14 MR. BRILL: Okay. Can we go to the last page of this
15 for a second and come back.

16 Q. There are 23 calendar entries here, right?

17 A. Yes.

18 Q. Okay. During your investigation --

19 MR. BRILL: Let's just go back to the first page for a
20 sec.

21 Q. During your investigation did you determine who met --

22 MR. BRILL: Just blow it up so we can just read like
23 the first three.

24 Q. Do you see meeting with James Sung is the first one, right?

25 A. Yes.

MAV1ILO2

Hezir - Cross

1 Q. Did you determine who met with James Sung?

2 A. Personally, no.

3 Q. Did your investigation determine that?

4 A. I am not sure.

5 Q. Okay. And that's a -- not to ask the same question over
6 and over again, but did your investigation determine who met
7 with George Psaki or Olga Verdugo?

8 A. No, I -- personally, no.

9 Q. No, I understand that, but you were part of a larger
10 investigative team, correct?

11 A. I performed a supporting role for a larger investigative
12 team, yes.

13 MR. BRILL: Can we look at Exhibit 730, please.

14 Q. This is a summary chart of information that was received
15 from Google, right?

16 A. Yes, that's correct.

17 Q. Basically your team sent out a bunch of subpoenas to Google
18 for different accounts, and this is just compiled into a chart
19 for ease of reference, right?

20 A. Yes, correct.

21 Q. What is a terms of service IP address, meaning the column
22 on the last one?

23 A. Terms of service IP address is the IP address, in this case
24 Google records when you create the account.

25 Q. Did anyone specifically -- well, let me ask you a different

MAV1ILO2

Hezir - Cross

1 question first.

2 The IP address that has the -- I don't know, I'm not
3 good at my math terms, but the ones with the letters and the
4 numbers, is there a way to figure out why those are different
5 than the ones with just the numbers?

6 A. Yes. There's ones -- the longer ones are actually IPv6
7 addresses. It's a different standard. And then there are
8 numbers that are IPv4. Different versions for 4 and version 6.

9 Q. Do different devices use IPv6 versus IPv4?

10 A. It's device-specific and also ISP-specific as well,
11 internet service provider-specific.

12 Q. Okay. And a terms of service IP address, is that the IP
13 address assigned to the specific device that logs on?

14 A. Yes, the terms of service IP address is the terms of
15 service -- is the IP address of the device logging in to accept
16 the terms of service for that Google account.

17 Q. Were these IP addresses subpoenaed to determine what
18 locations they matched up to?

19 A. I don't recall.

20 Q. Would the IP addresses match up to specific locations?

21 A. They could.

22 MR. BRILL: Could we put up Exhibit 720, please.

23 Q. With respect to the GX201 entry on Exhibit 720 here, that
24 has the Dayo Ilori name associated with it, right?

25 A. Yes.

MAV1ILO2

Hezir - Cross

1 Q. Is there a way to determine -- you've seen Exhibit 201
2 previously, correct? Do you recall?

3 A. Exhibit 720 or --

4 Q. No, I'm sorry. This is Exhibit 720, but you've also seen
5 the exhibit associated with it, Exhibit 201?

6 A. I reviewed it previously, yes.

7 MR. BRILL: Okay. Why don't we just put it up, just
8 so we can refresh your memory.

9 And if we could just scroll down to the next page.

10 Okay. And we can go back to the first.

11 Q. The IP address up here, what does that correspond to?

12 A. Based on the request sent to Apple, the request was for
13 that specific IP address.

14 Q. And is this the IP address of where the device logged on
15 from?

16 A. Yes, that's correct.

17 Q. And do you know which device logged on based upon the
18 information you got back from Apple?

19 A. I don't recall which device it was.

20 MR. BRILL: Can we look briefly at Exhibit 114,
21 please.

22 Q. We looked at this briefly on Friday, correct?

23 A. Yes.

24 Q. Okay. Do you know if David Dilley is a real person?

25 A. I do not.

MAV1ILO2

Hezir - Cross

1 Q. And previously we also saw a spelling with a G, David
2 Gilly, correct?

3 A. Correct.

4 Q. Do you know if David Gilly is a real person?

5 A. I do not know.

6 MR. BRILL: Your Honor, may I confer with the
7 government for one moment.

8 THE COURT: Sure.

9 (Counsel conferring)

10 MR. BRILL: Your Honor, give me one moment. Thank
11 you.

12 THE COURT: Yes.

13 (Counsel conferring)

14 BY MR. BRILL:

15 Q. Agent Hezir, I'm just going to hand to you what's been
16 marked as 3501-005 for identification.

17 You had mentioned notes previously. Are those the
18 notes you were referring to?

19 A. These are my notes. These are notes regarding --

20 THE COURT: Just answer the question that he asked.
21 Are those the notes you referenced earlier?

22 THE WITNESS: Sorry. No. These are not my forensic
23 notes.

24 THE COURT: This is not in evidence yet, so you can't
25 go beyond answering the question, okay?

MAV1ILO2

Hezir - Cross

1 THE WITNESS: Understood, your Honor.

2 MR. BRILL: I'll take it back. Thank you.

3 BY MR. BRILL:

4 Q. So at some point you met with the government, the
5 prosecutors, and prepped for this case, correct?

6 A. Yes.

7 Q. Okay. At any point did you retrieve those notes from
8 wherever you had taken them and provide them to the government?

9 A. Those notes would have been packaged up and sent with my
10 report.

11 Q. Have you seen those notes at any meeting you had with the
12 government?

13 A. Not that I recall.

14 MR. BRILL: Your Honor, may we approach for one
15 moment.

16 THE COURT: Yes.

17 (Continued on next page)

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MAV1ILO2

Hezir - Cross

1 (At the sidebar)

2 MR. BRILL: I think the government was under the
3 impression that the 3500 material that I just referenced was
4 the notes. They're not the notes. Obviously I'll let the
5 government speak for themselves, but I don't think we've ever
6 received those.

7 MS. MURRAY: Your Honor, I did provide Mr. Brill with
8 660-B, which is the forensic extraction report that Special
9 Agent Hezir put together relating to all the devices that were
10 recovered on October 7th and 8th. I pointed Mr. Brill to this
11 particular document because he asked me in the middle of his
12 questioning whether we had provided any notes regarding
13 extractions. I believe 660-B is likely what Mr. Brill is
14 referring to, but I can't know exactly what notes he's
15 referencing other than those forensic notes.

16 THE COURT: But are there more than just that one
17 document? Because when he was asked that question, his answer
18 was no, that is not his notes.

19 MS. MURRAY: I understand. And I believe what is also
20 660-B, which is also in Special Agent Hezir's 3500, is the
21 forensic notes he's referred to. We've produced all the
22 witnesses' 3500 to Mr. Brill.

23 THE COURT: But is that document more than one page?

24 MR. BRILL: No. I pulled the whole tab.

25 THE COURT: But you gave him only one page.

MAV1ILO2

Hezir - Cross

1 MR. BRILL: No, I gave him two.

2 THE COURT: Oh. I couldn't really see since I wasn't
3 provided a copy.

4 MS. MURRAY: Yes, I gave Mr. Brill my copy.

5 MR. BRILL: Yes, it was faster that way.

6 660-B, isn't that the actual extraction, the actual
7 Cellebrite extraction?

8 MS. MURRAY: No. 660-A is the SIM card extraction.
9 We marked 660-B, which is also separately in the 3500. That's
10 the report that lists every single one of the devices that
11 Special Agent Hezir had reported and indicates the log number
12 that DOJ-OIG associated with those devices.

13 MR. BRILL: Can we just grab that so we can -- can I
14 just step back for a second?

15 THE COURT: Sure.

16 (Pause)

17 MR. BRILL: 660-B was added later so it's not in -- I
18 have it, but it's not in my binder. But I don't think this is
19 it. I have 660-B. I'll ask the witness if this is what he's
20 referring to. My guess--maybe I'm wrong--is that this is not
21 it, because this doesn't look like notes; it looks like a
22 report that he produced from the notes. But we may be back
23 here in another 15 seconds or so.

24 THE COURT: Well, just so we don't keep going back and
25 forth, what is it that you were asking me? Assuming he says

MAV1ILO2

Hezir - Cross

1 no, what are you asking me? I mean, it's kind of impossible
2 for me to make a judgment right now about whether something was
3 or wasn't produced.

4 MR. BRILL: No, understood. I mean, ultimately the
5 question is, did they secure the devices sufficiently to
6 maintain the data integrity of the device at the time of the
7 seizure.

8 THE COURT: Yes, I understand.

9 MR. BRILL: He says those would be in his notes,
10 whether they were on, or whether they were off, whether they
11 were put in airplane mode or not. There's a fairly high hurdle
12 for adverse inference, but that's kind of where I'm going. And
13 I'm sure we don't want to take an hours-long break while they
14 search for them, but certainly that's the question that's out
15 there.

16 THE COURT: So you're kind of forewarned.

17 MS. MURRAY: Understood, your Honor.

18 Another way that Mr. Brill could get to this is he
19 could point to each and every device extraction report and that
20 would indicate what date the device was extracted, how the data
21 was found. So, I mean, that would be a slightly longer path,
22 but if that is what he wants --

23 THE COURT: Of course you could do that on redirect.

24 MR. BRILL: Just to be clear, the extraction report
25 would have been conducted in Arlington potentially days after

MAV1ILO2

Hezir - Cross

1 the seizure, not necessarily indicative of what the device --
2 the device between the day of the seizure and the day of the
3 extraction.

4 THE COURT: The problem I see with the state of the
5 record is there was an awful lot of "would have" as opposed to
6 "did" in terms of the answers and the questioning. So I don't
7 vouch for what the record looks like in that regard. Sometimes
8 you were asking him hypothetically and sometimes he was
9 answering hypothetically, and I don't know that you pinned it
10 down in every instance to what happened with this device, did
11 you turn it off or was it your practice that it would have been
12 turned off, those kinds of things. I don't know.

13 MR. BRILL: I think the hypothetical generally
14 followed from the "I don't know" or "I don't recall" answer,
15 but --

16 THE COURT: Look, the record is what it is. I'm just
17 telling you that as I sat here, that was an observation I had,
18 and I wondered if there were going to be objections, and there
19 weren't, so the record is what it is.

20 MR. BRILL: Understood.

21 So this is 660-B?

22 MS. MURRAY: Correct.

23 THE COURT: All right.

24 MR. BRILL: Thank you, your Honor.

25 THE COURT: So I think we're going back, but we might

MAV1ILO2

Hezir - Cross

1 be back.

2 MR. BRILL: Perhaps.

3 (In open court)

4 THE COURT: All right. Mr. Brill.

5 BY MR. BRILL:

6 Q. Agent Hezir, let me show you what's been marked as -- not
7 marked -- entered into evidence as Exhibit 660-B.

8 THE COURT: And do you want this up on the screen?

9 MR. BRILL: Not just yet.

10 THE COURT: Okay.

11 Q. Take a look at that and let me know if that's what you were
12 referring to when you were talking about your notes.

13 A. These would not be my notes. This is a report.

14 Q. Okay. So let me just clarify then one thing.

15 Without your notes, can you determine whether the
16 devices that you seized were isolated from the network at the
17 time, from any network, cellular, WiFi, etc., at the time that
18 they were seized either at the apartment or at the vehicle, the
19 Mercedes?

20 A. Without my notes, I don't think I could definitively say
21 when they were pushed into airplane mode.

22 THE COURT: That's not the question. The question is
23 can you determine whether they were isolated.

24 I'm sorry. It does say at the time. Sorry,
25 Mr. Brill.

MAV1ILO2

Hezir - Cross

1 Q. So that was your answer.

2 A. Yes, sir.

3 MR. BRILL: Give me one moment.

4 Your Honor, may we approach again briefly.

5 THE COURT: Sure.

6 (Continued on next page)

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MAV1ILO2

Hezir - Cross

1 (At the sidebar)

2 MR. BRILL: I'm done with my cross. I think that I've
3 made the record as clear as I can under the circumstances, and
4 I have a motion at some point. I don't know if you want to
5 hear it now or prior to -- we could do it at our final charge
6 conference, I suppose.

7 THE COURT: You mean like a Rule 29 motion?

8 MR. BRILL: No, no, no, no. Just for, you know, an
9 instruction with regard to his testimony.

10 THE COURT: Ah. Well, I don't think now is the time
11 for that.

12 MR. BRILL: Right. But unless the government thinks
13 that they can get them in a fairly short order and then we can
14 hold him briefly to be able to cross him about the notes.

15 THE COURT: Are you going to have redirect?

16 MS. MURRAY: Briefly.

17 THE COURT: I mean, we're going to take our break at
18 around 11, so you can redirect now, then we'll take our break,
19 and if you want to have someone in your office be looking for
20 them in the meantime, because when we break, we'll deal with
21 this issue.

22 MS. MURRAY: Okay.

23 THE COURT: Okay?

24 MS. MURRAY: Thank you, your Honor.

25 THE COURT: All righty. Thank you.

MAV1ILO2

Hezir - Redirect

1 (In open court)

2 THE COURT: Mr. Brill?

3 MR. BRILL: Thank you, Agent Hezir. I have nothing
4 further.

5 THE COURT: All right. Thank you.

6 Ms. Murray, do you have redirect?

7 MS. MURRAY: Yes, your Honor. Thank you.

8 REDIRECT EXAMINATION

9 BY MS. MURRAY:

10 Q. Special Agent Hezir, you were asked some questions on
11 cross-examination about the devices that you recovered in this
12 case, correct?

13 A. Correct.

14 Q. That included the Samsung phone that was recovered from the
15 center console of the Mercedes?

16 A. Yes.

17 Q. And you conducted a SIM card extraction of that phone; is
18 that right?

19 A. Of the Samsung, I don't recall.

20 MS. MURRAY: Ms. Loftus, if you could please publish
21 Government Exhibit 660-A, page 3.

22 Actually, page 2, please, first.

23 Q. Special Agent Hezir, this is the extraction report of the
24 SIM card of the Samsung; is that right?

25 A. I would have to determine log 19 first to verify it's from

MAV1ILO2

Hezir - Redirect

1 that device.

2 Q. Okay. The parties have stipulated to the fact that the
3 Samsung was recovered from the Mercedes and have stipulated to
4 the fact that that Samsung device was the device that we're
5 essentially looking at the SIM card extraction for. So for
6 purposes of my question to you, on the next page -- Ms. Loftus,
7 again, zooming in on the bottom, SIM data item 8 -- Special
8 Agent Hezir, the phone number associated with the Samsung SIM
9 card at the time the defendant was arrested is this
10 646-575-0642 number, correct?

11 A. Correct.

12 MS. MURRAY: And Ms. Loftus, if we could put up,
13 please, Government Exhibit 631.

14 And if we could zoom in on the top portion.

15 Q. Special Agent Hezir, this is another extraction report
16 relating to the devices that you recovered in this
17 investigation; is that right?

18 A. That's correct, yes.

19 Q. And Mr. Brill asked you some questions about this on
20 cross-examination. Here again, we see the 0642 number; is that
21 right?

22 A. Yes, that's correct.

23 Q. And this was one of the phones that was recovered from the
24 defendant; is that right?

25 A. It was recovered from the vehicle the defendant was near.

MAV1ILO2

Hezir - Redirect

1 MS. MURRAY: Thank you, Ms. Loftus. We can take that
2 down.

3 Q. And both of those phones we just looked at were associated
4 with the 0642 number at some point, based on the extraction
5 reports; is that right?

6 A. Yes.

7 Q. And both of those phones were recovered on October 8, 2021,
8 correct?

9 A. Yes.

10 Q. And on that date, they were either on the defendant's
11 person or in proximity to him in the Mercedes; is that right?

12 A. Yes, that's correct.

13 Q. And the defendant was alone that morning, wasn't he?

14 A. Yes.

15 Q. There was no one with him in the Mercedes at the time that
16 you approached him and arrested him?

17 A. That's correct.

18 Q. And Chris Recamier had been arrested the day before; isn't
19 that right?

20 A. Yes, that's correct.

21 Q. And the search warrant on apartment 1805 at Purves Street
22 had been conducted the day before the defendant's arrest,
23 correct?

24 A. Correct.

25 Q. The day before these two phones were recovered.

MAV1ILO2

Hezir - Redirect

1 A. Yes.

2 Q. You were asked some additional questions about Telegram
3 messages. I just wanted to look at one or two of those that
4 Mr. Brill had pointed out to you.

5 MS. MURRAY: Ms. Loftus, if we could please pull up
6 Government Exhibit 638.

7 If we could zoom in on the top portion, the
8 participants, please.

9 Q. Now Mr. Brill asked some questions about the numbers that
10 are listed here for the participants. Looking at those
11 numbers, the number of digits and how the numbers are, are you
12 able to determine whether those are phone numbers or account
13 numbers for a Telegram account?

14 A. It does appear to be account numbers.

15 Q. And how many digits are there in a typical phone number,
16 including area code?

17 A. There are ten, including area code.

18 Q. And then looking at, for example, the Jonathan (owner)
19 number that's associated with this Jonathan (owner) user in
20 this Telegram extraction, focusing on the 3 first, which is
21 after the 1, how many digits are in that number?

22 A. Nine.

23 MS. MURRAY: Ms. Loftus, if we could please go to
24 Government Exhibit 639, page 115.

25 Q. This is another exhibit that Mr. Brill pointed out to you

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Hezir - Redirect

1 on cross.

2 MS. MURRAY: If we could just look at the last two
3 messages here. Oh, actually, the last three messages, please.

4 Q. Looking first at the first message from the Teddy Riley
5 user, how did that user refer to the user of the Samsung?

6 A. Dee.

7 Q. And then looking at the next message, again, that Mr. Brill
8 had pointed out for us, item No. 4, can you read that message.

9 A. "Should I withdraw the PPP application for Mula and Baron?
10 It's still processing but they told me wait, they will partner
11 with community banks to fund some businesses."

12 MS. MURRAY: Thank you, Ms. Loftus. You can take that
13 down.

14 Q. Now, Special Agent Hezir, you were also asked some
15 questions, both general and specific, about the devices that
16 you secured in the course of this investigation. Do you recall
17 those questions?

18 A. Yes.

19 Q. For the devices that you recovered from 1805 Purves Street
20 on October 7, 2021, did you secure those devices consistent
21 with your training and experience?

22 A. Yes, I did.

23 Q. And for the devices that you recovered on October 8th from
24 the Mercedes and/or from the defendant--again, 2021--did you
25 secure those devices consistent with your training and

MAV1ILO2

Hezir - Recross

1 experience?

2 A. Yes, I did.

3 Q. And during the investigation after the seizure and securing
4 of those devices, after those devices were entered into
5 evidence, did you or someone else from DOJ-OIG conduct a review
6 of the contents of those devices or the reports of the
7 extractions of those devices?

8 A. Yes.

9 Q. Based on that review, do you recall whether there was any
10 indication that any of the data on those devices had been
11 manipulated or deleted after the time of the seizure?

12 A. No.

13 THE COURT: No, you don't recall?

14 THE WITNESS: No, there was no evidence about
15 manipulation or alteration.

16 MS. MURRAY: May I have a moment, your Honor.

17 THE COURT: Yes.

18 MS. MURRAY: No further redirect.

19 THE COURT: All right. Thank you.

20 Recross?

21 MR. BRILL: Brief.

22 RECROSS EXAMINATION

23 BY MR. BRILL:

24 Q. Agent Hezir, if you're not particularly familiar with the
25 Telegram app, is there a way to determine if a user deletes a

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Hezir - Recross

1 message on one device that it wouldn't then delete the message
2 on the device that you had in your custody?

3 MS. MURRAY: Objection.

4 THE COURT: Sustained, as to form.

5 Q. I'll get back to it.

6 The -- you previously stated that you weren't aware of
7 whether Telegram can be installed on more than one device by
8 the same user; is that correct?

9 A. Yes, that's correct.

10 Q. Okay. Ms. Murray showed you records that indicated that
11 two phones had used the same phone number, right, the 0642
12 number?

13 A. Yes, that's correct.

14 Q. Would it be fair to say, based upon your training and
15 experience, that you can't have two phones using the same phone
16 number at the same time?

17 A. It's uncommon. SIM cloning does exist, meaning that a
18 phone could use -- theoretically use the same phone. It's a
19 possibility.

20 Q. Did you see any evidence of that here?

21 A. I did not see evidence of that.

22 Q. And based upon your and your team's investigation, when was
23 the last time that Mr. Recamier was in the Mercedes prior to
24 October 7, 2021?

25 A. I don't recall seeing Mr. Recamier in the Mercedes.

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1 Q. Okay. So you don't know the last time he was in it?

2 A. Correct, I do not know.

3 MR. BRILL: All right. Thank you. Nothing further.

4 THE COURT: All right. Thank you.

5 MS. MURRAY: Nothing further.

6 THE COURT: All right. Thank you very much. You are
7 excused, sir. Thank you very much for coming in to help us.

8 THE WITNESS: Thank you.

9 (Witness excused)

10 THE COURT: The government's next witness?

11 MS. MURRAY: At this time the government rests.

12 THE COURT: All right. Ladies and gentlemen, that
13 means the government has completed its presentation of evidence
14 to you with respect to its case against Mr. Ilori, so at this
15 time, a couple minutes early, we'll take our morning break,
16 because I have some things I need to confer with counsel about.

17 If we could be back here at about 11:05. I think I
18 need a few extra minutes this morning. And if we're running
19 long, we'll let you know that, all right?

20 So please, you're getting close to the end of your
21 service, or your hearing of evidence in this case. Please do
22 not discuss the case among yourselves during the break, all
23 right? Have a good break. And put the case aside for a few
24 moments more. Thank you.

25 THE DEPUTY CLERK: Rise for the jury.

MAV1ILO2

1 (Jury not present)

2 THE COURT: All right. Please be seated, everyone.

3 So what I'd like to do is just take a five-minute
4 stretch break for ourselves, and then we'll come back here and
5 regroup on the various things we have to talk about, all right?

6 Thank you. I will see you all shortly.

7 (Recess)

8 (Continued on next page)

MAV1ILO2

1 (Jurors not present)

2 THE COURT: Please be seated.

3 All right. Mr. Brill, are there any motions?

4 MR. BRILL: Your Honor, just to make a clear record,
5 the government indicates, and I don't have any reason to doubt
6 them, that they provided a very large file on May 9th of this
7 year that included all of this agent's work. Included in a zip
8 file within that file, there were hundreds if not thousands of
9 documents related to his work on these devices. Included in
10 that are a couple -- probably more than a couple, a number of
11 text files that include text notes.

12 Now, those were not included in the agent's 3500
13 material, and, again, they were produced five and a half months
14 ago within hundreds or thousands of other documents. I'm
15 satisfied that he created them contemporaneously with his work
16 based upon that. The notes themselves are fairly straight
17 forward, so I don't have any further questions about it and I
18 don't have a motion.

19 THE COURT: Okay. So the government has rested. Do
20 you have any other motions?

21 MR. BRILL: Your Honor, it is the defendant's position
22 that the government has failed to prove its case beyond a
23 reasonable doubt as to each of the charges, and, as such, we
24 ask the Court to dismiss the charges.

25 THE COURT: All right. You're moving under Rule 29?

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1 MR. BRILL: Yes, your Honor.

2 THE COURT: All right. So, as you know, a judgment by
3 the Court of acquittal under Rule 29 is appropriate only if the
4 evidence that the defendant committed the crime alleged is not
5 existent or so meager that no reasonable jury could find guilt
6 beyond a reasonable doubt, and I am bound to view the evidence
7 in the light most favorable to the government. I'm also
8 obligated to defer to the jury to make assessments about
9 credibility and weight of the evidence. And the burden on a
10 defendant moving under Rule 29 is quite heavy.

11 I do find at this time that there is sufficient
12 evidence for each of the six counts to be submitted to the
13 jury, so the motion is denied at this time.

14 All right. So when we bring the jurors back, it will
15 be time for the defendant's case. Mr. Brill, is the defense
16 intending to present any evidence?

17 MR. BRILL: Your Honor, based upon my prior
18 conversations with Mr. Ilori, he was not intending to testify
19 on his own behalf, although I'd ask the Court to inquire
20 directly so again we have a clear record in that regard.

21 THE COURT: All right. And do you have any other
22 evidence that you intend to present?

23 MR. BRILL: Given that Mr. Recamier invoked his right
24 against self incrimination, we do not.

25 THE COURT: Very good. So, Mr. Ilori, I want to speak

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1 to you directly, sir.

2 THE DEFENDANT: Yes.

3 THE COURT: You, as the defendant on trial here, have
4 the right to testify, but certainly you have no obligation
5 whatsoever to do so. I'm going to instruct the jury that the
6 burden of proof is exclusively on the government to prove
7 beyond a reasonable doubt each of the charges against you, and
8 that you carry no burden whatsoever.

9 Having said that, if you wish to testify, it is
10 certainly your right to do so. And, at the end of the day, it
11 is your call as the defendant and as the client of Mr. Brill to
12 make the decision whether you wish to testify or not.

13 Do you understand all of that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Do you wish to testify?

16 THE DEFENDANT: Just a minute. I had a -- I cannot
17 make an educated, intelligent decision at this time.

18 THE COURT: Well, you have to make a decision, sir.
19 Either you take the stand or --

20 THE DEFENDANT: Well --

21 THE COURT: -- you don't take the stand, and at the
22 end of the day, it is your call.

23 THE DEFENDANT: Like I had stated to the Court on
24 Friday, I did not -- I am not in possession of any of the 3500
25 material leading up to the trial, and while I'm here, also, I

MAV1ILO2

1 do not still have them. So I cannot in that sense trust my
2 lawyer that -- and to advise me if I should take the stand or
3 not, because I do not know what evidences are I am up against
4 or if there is anything that I should be wary of.

5 THE COURT: All right. You do know what evidence
6 you're up against because you've sat through the government's
7 case.

8 THE DEFENDANT: Yes.

9 THE COURT: Excuse me. Let me finish.

10 You've heard every bit of evidence against you. So
11 you've made your record about your grievances. Now we're at
12 the point in the case where it's time for the defense, if it
13 wishes to do so, to present a case.

14 And the question for you is do you wish to testify or
15 not?

16 THE DEFENDANT: And given my circumstances, no.

17 THE COURT: No, did you say?

18 THE DEFENDANT: Yes.

19 THE COURT: And you understand what I've told you
20 about the government's burden of proof, and that no burden
21 rests on you, and it is your decision?

22 THE DEFENDANT: Yes, I do understand.

23 THE COURT: All right. And based on where we're at,
24 your decision is you do not wish to testify, correct?

25 THE DEFENDANT: Correct, I do not wish to testify

MAV1ILO2

1 because of the reasons I stated to the Court on Friday, and
2 that I'm restating now.

3 THE COURT: All right. Thank you.

4 All right. Anything else from you, Mr. Brill, for the
5 record?

6 MR. BRILL: Your Honor, based upon one of Mr. Ilori's
7 statements now and a prior statement that was made in the
8 robing room, I just wanted to be clear that there was a
9 protective order entered for the 3500 material. The 3500
10 material could not be given to Mr. Ilori without someone
11 present. So if there's any confusion on the record, that
12 should be made clear.

13 Beyond that, no, nothing else.

14 THE COURT: All right. So we're going to bring the
15 jury back. I'm going to call on you, Mr. Brill, to say does
16 the defense wish to call any witnesses or present any evidence.
17 You'll answer on the record. If the answer is no, I think then
18 we're at the point where we need to do the charging conference.

19 So, as we talked about Friday, we had talked about
20 letting the jurors take an early lunch, but, quite frankly, my
21 preference is -- I think the charging conference is going to be
22 very brief, because we've discussed the charges several times
23 and they are, as I understand it, all on consent. We now know
24 which of charge 41 and 42 we're going to be using. So I would
25 like to take another very brief break, go into the robing room

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1 -- well, no. I guess because of the situation with the
2 Marshals we better let the jurors recess, do the charging
3 conference, and then go right into the government's closing
4 statement, your initial closing statement at that point. Then
5 we'll see where we're at timing wise, whether we'll hear from
6 you, Mr. Brill, or whether we'll -- you know, when we'll break
7 for lunch. All right.

8 MR. BRILL: Yes, your Honor.

9 THE COURT: All right. So that's the game plan.

10 Ms. Dempsey, do you want to bring the jurors back out,
11 please?

12 (Continued on next page.)
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1 (Jurors present)

2 THE COURT: All right. You may be seated.

3 Thank you very much, ladies and gentlemen.

4 All right. So the government has rested its case. It
5 is time now for the defendant's case, if any.

6 Mr. Brill.

7 MR. BRILL: Your Honor, the defense rests.

8 THE COURT: All right. Thank you.

9 I'm sorry to have dragged you back out again, but this
10 is all a necessary part of the process. I need now -- at this
11 point, that means the evidentiary record is closed. So I need
12 to confer briefly with the parties with regard to the
13 instructions that I'm going to be giving you on the law and any
14 other issues that they want to raise, and then we'll be ready
15 after that to hear from the government with its closing
16 argument.

17 So we're going to recess again for another few
18 moments. I don't think we'll be very long, but we do need to
19 ask you to leave the courtroom again. Thank you.

20 (Continued on next page)

MAV1ILO2

1 (Jury not present)

2 THE COURT: Okay. Do we have anybody in the courtroom
3 other than parties to the case, counsel, Marshals?

4 MS. MURRAY: (Shaking head)

5 THE COURT: Okay. Because I'd prefer to just stay
6 here and do the charging conference here given the number of
7 parties and moving parts and all of that.

8 So my courtroom deputy has given you each a printed
9 copy of the charges as they now stand. As I said on the record
10 earlier, this was a jointly submitted request, with some minor
11 modifications made by the Court along the way, specifically to
12 insert the Court's standard instructions that you asked me to
13 insert way back when we met in July. I have done that.

14 In July, you all signed off on these. The set that
15 you now have in front of you contains charges 41 and 42. We're
16 going to strike 41, which is defendant's testimony. And we'll
17 leave in defendant's right not to testify, and take out the
18 header -- I assume you're requesting this, Mr. Brill.

19 MR. BRILL: Yes, your Honor.

20 THE COURT: All right. So we'll take out the header,
21 if applicable and requested by the defense. And then I will
22 replace charge number 46 with what Ms. Murray submitted to me
23 as a joint request by the parties this morning on similar act
24 evidence. Correct?

25 MR. BRILL: Yes, your Honor.

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1 MS. MURRAY: (Nodding head)

2 THE COURT: All right. Are there any other objections
3 to the proposed charges as they stand?

4 MS. MURRAY: Not from the government.

5 MR. BRILL: No, your Honor.

6 THE COURT: All right. So I'm going to ask my
7 chambers then to make those two changes that we just talked
8 about, and to print a copy, which we will make available to the
9 jurors when we're ready for me to charge them, which is not
10 yet.

11 We're ready then for the government's summation,
12 correct?

13 MR. FELTON: Yes, your Honor.

14 THE COURT: All right. Mr. Felton, are you giving the
15 initial summation?

16 MR. FELTON: Yes, I will, your Honor.

17 THE COURT: All right. And you do intend to sum up
18 after Mr. Brill, right?

19 MS. MURRAY: Yes, Your Honor. I'll be rebutting.

20 THE COURT: All right.

21 MR. FELTON: Your Honor, may I move the lectern? And
22 just for the Court's, everyone's awareness, I expect it to be
23 around an hour, somewhere between 45 minutes, an hour.

24 THE COURT: All right. That's perfect.

25 I assume, Mr. Brill, we'll break at that point, but

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1 we'll see. If he's shorter, maybe we'll keep pressing on.

2 We'll see.

3 All right. So we're ready to bring the jurors back.

4 (Continued on next page)

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1 (Jurors present)

2 THE COURT: All right. You may be seated.

3 Thank you all very much. I'm sorry for the back and
4 forth. I know it was short, but I'm trying to keep everything
5 moving in the courtroom.

6 We're ready at this point for closing arguments from
7 the lawyers, and we begin with the closing statement -- the
8 initial closing statement by the government.

9 Mr. Felton.

10 MR. FELTON: Thank you, your Honor.

11 The evidence is now in, and it points overwhelmingly
12 to one conclusion, the defendant Adedayo Ilori is guilty. He
13 conspired, he agreed with others to commit a massive and
14 sophisticated fraud, and he stole innocent people's identities
15 and taxpayer money to line his own pockets and fund his luxury
16 lifestyle.

17 You have heard from a few of his many victims, Gerald
18 Hanson, Jonathan Herttua, and William Jamieson, and you've seen
19 evidence of countless more victims, innocent people whose most
20 personal information was stolen and used without their
21 knowledge. And you heard that these victims experienced real
22 harms from the defendant's actions. Their reputations were
23 damaged. They had to delay retirement. And they continue to
24 be hounded by creditors and landlord for debts they do not owe.

25 The defendant used those identities to steal

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1 government money that was set aside to help small businesses
2 stay afloat during the COVID pandemic. You've seen the PPP
3 loans and EIDL applications the defendant and his
4 co-conspirators submitted to steal more than one million
5 dollars. And you know what Ilori did with the money. He
6 funneled it to his investment and bank accounts, he withdrew
7 bulk cash from various ATM's across New York City, and he
8 funded his lifestyle, driving a Mercedes, renting a luxury
9 apartment, frequently visiting La Colombe, and investing in
10 cryptocurrency. All of the evidence you've seen at this trial
11 overwhelmingly proves that the defendant is guilty of the
12 charged crimes.

13 Ladies and gentlemen, this closing statement is our
14 opportunity to walk through the evidence that you've seen and
15 heard over the last week. The evidence has come in quickly.
16 You've seen a lot of documents that we published only briefly,
17 and for those documents, we pointed out just a few of dozens of
18 clear examples of the defendant's crimes.

19 So this is my chance to explain how it all fits, and
20 when you put those pieces together, the picture is clear, and
21 it is devastating. The defendant is guilty.

22 Now, before I get to that, let's talk a little bit
23 about the charges. Judge Vyskocil will give you detailed
24 instructions on the charges, and you should follow her
25 instructions on the law. If anything I say differs from what

MAV1ILO2

1 the judge says, please follow her instructions.

2 Let me briefly go through just some of the highlights
3 of what I expect she will tell you. The defendant is charged
4 with six offenses that all relate to the fraud scheme you've
5 heard about over the past week. Count 1 is major fraud against
6 the United States; Count 2, wire and bank fraud conspiracy;
7 Count 3, wire fraud; Count 4, bank fraud; Count 5, aggravated
8 identify theft; and Count 6, money laundering conspiracy. The
9 fraud offenses include major fraud against the United States,
10 bank fraud and wire fraud.

11 Count 1, major fraud, involves defrauding the U.S.
12 Government in connection with government loans with a value of
13 at least one million dollars. And you know, from the SBA
14 witness testimony and from Government Exhibit 750 and its
15 underlying exhibits that the defendant received over one
16 million dollars in government and government-backed money meant
17 to help small businesses during the pandemic. That's not in
18 dispute. Here, in Government Exhibit 750, you see that the
19 defendant received over one million dollars in government and
20 government-backed money.

21 Count 3, wire fraud, that's committing a fraud where
22 you use interstate wires, such as text messages, phone calls,
23 and emails. The use of interstate wires is not in dispute
24 either. The parties agreed that the financial transactions in
25 the bank statements were executed using interstate wires that

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1 pass through the Southern District of New York. That's
2 Government Exhibit 1.

3 And you saw plenty of interstate wires during this
4 trial, including on the various phones and electronic devices
5 recovered, and extracted where you saw text messages, phone
6 calls, and emails in furtherance of the fraud.

7 The loan application submitted to the SBA also crossed
8 state lines. You heard from Kathleen Littwin of the SBA that
9 the SBA's interstate wires involved Denver, Kansas City,
10 Virginia, and Iowa. The use of interstate wires is easily
11 satisfied here, and not contested.

12 Count 4, bank fraud, that's fraud effecting a bank
13 that is insured by the Federal Deposit Insurance Corporation.
14 You know that each of the banks involved were insured by the
15 FDIC during the charged time period here. Again, the parties
16 agreed to that fact. Government Exhibit 1 is on your scree.
17 That is also not in dispute.

18 Defendant was also charged in Count V with aggravated
19 identity theft. That's for his use of names and identities of
20 real people without lawful authority when he committed the
21 charged frauds in Counts 1 through 4.

22 There is no question that identities were stolen and
23 used fraudulently. You saw evidence of that identity theft
24 throughout this trial, and you even heard from several of the
25 victims directly, Gerald Hanson, Jonathan Herttua and William

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1 Jamieson.

2 The defendant is also charged with conspiracies to
3 commit three different crimes: In Count 2, to commit wire
4 fraud and to commit bank fraud; and in Count 6, to commit money
5 laundering. A conspiracy just means an agreement to do
6 something criminal, that the defendant agreed with other people
7 to commit crimes. There's plenty of conspiracy evidence about
8 the defendant and Chris Recamier, which we'll discuss in
9 detail.

10 As for money laundering, it just means that the
11 defendant conducted financial transactions intending in whole
12 or in part to conceal or disguise the nature, the source, or
13 the control of the crime proceeds. That's of the money moved.
14 You've seen significant evidence where the defendant moved the
15 fraud money around into and among the counts in various
16 identity theft victims' names, and you've seen evidence that he
17 spent the money from those accounts all in an effort to further
18 conceal the illegal source of funds.

19 You'll also see on the verdict form that for each of
20 the six counts you'll be asked whether the defendant committed
21 the offense in full or in part after he was released on bail on
22 or about March 6, 2020. That is also not in dispute.
23 Government Exhibit 70 is defendant's appearance bond that he
24 signed setting his bail conditions on or about March 6, 2020.

25 And you know, based on the parties' stipulation,

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1 Government Exhibit A, that between in or about March, 2020, and
2 in or about October, 2021, the defendant was released under
3 conditions of bail. And you also know from Government Exhibit
4 750 and its underlying exhibits that all of the fraudulent loan
5 applications were submitted during the time period when the
6 defendant was released on bail. There is no question on this
7 point.

8 So, in short, there are many issues that are not in
9 dispute. It's not in dispute that the SBA loans were
10 fraudulent, nor is there any dispute that individuals'
11 identities were stolen. You saw stolen identity after stolen
12 identity in this case. Five of them are included in this
13 slide, but you know there's even more than that. This was a
14 broad, sophisticated identity theft fraud scheme.

15 You saw the notebook full of stolen identities from
16 the Purves Street apartment. That's Government Exhibit 554.
17 You see how the defendant tracked which stolen identities
18 worked and at which banks. You see victim Gerald Hanson's name
19 and information in the notebook, victim Thomas Hockenberry's
20 information in the notebook as well.

21 It's also not in dispute that bank, email, phone and
22 other accounts were opened using identity theft victims'
23 information. You heard the financial analyst, Elizabeth
24 Palmer, she testified about the loan money that was feverishly
25 cycled to a whole series of accounts, from one to another, back

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1 and forth, over and over, and to Coinbase, and to Robinhood.
2 That's Government Exhibit 701 through 709 and their underlying
3 exhibits.

4 Here's Government Exhibit 708 showing an overview of
5 the money movement. You remember the bank records and the
6 testimony showing that as soon as the loans hit the bank
7 accounts, the defendant right away started furiously spending
8 and emptying those accounts and moving those funds in
9 electronic transfers, ATM withdrawals, and debit card
10 purchases, and nobody disputes that documents and IDs were
11 falsified, that more than one million dollars in government
12 funds was stolen, that fraudulent wires passed through the
13 Southern District of New York, and that the defendant was on
14 bail from March 3rd, 2020, through his October 8, 2021, arrest.
15 On this final point, the time period when the defendant was on
16 bail covers the whole period of the charged offenses.

17 So what is in dispute? What's left for you to decide?
18 Just one question, whether the defendant was involved in the
19 charged crimes. That's what's being contested here.

20 Did the defendant do it? Was he involved with
21 Recamier, or is he somehow just an overly trusting friend? All
22 of the overwhelming evidence that you've seen and heard points
23 to a single conclusion, the defendant and Recamier, his partner
24 in crime, committed the crimes together.

25 There was a mountain of evidence introduced at trial

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1 over the last week, and I'm going to give you seven reasons
2 that you know the defendant is guilty. First, follow the 0642
3 phone to Ilori. Second, the physical evidence and digital
4 fingerprints also lead to Ilori. Third, Ilori's use of William
5 Jamieson's identity. Fourth, Ilori's use of the fraud office
6 at Purves Street. Fifth, Ilori's own words. Sixth, follow the
7 money to Ilori. And, seventh, Ilori's conviction for similar
8 fraud.

9 The first reason that you know that the defendant is
10 guilty is the location of the 0642 phone. Following that phone
11 lead you straight to the defendant. Of course the defendant
12 was holding this phone when he was arrested.

13 In Government Exhibit 750, the third loan from the
14 bottom, that BRS Consulting Corp loan for over \$530,000, those
15 funds went to a Capital One BRS Consulting Corp account. Here,
16 in Government Exhibit 155, this is the PPP application for that
17 same loan. Here you can see that the defendant listed the 0642
18 phone on that loan application. You see that in the bottom
19 right in red.

20 The 0642 phone user is responsible for this loan
21 application. That 0642 phone account was set up in August,
22 2020. It was subscribed in the name of Jonathan Herttua.
23 That's Government Exhibit 372.

24 You saw the movements of the phone. You heard a
25 special agent, Harry Lidsky, did good old-fashioned police

MAV1ILO2

1 work, surveillance, following that 0624 phone all around New
2 York City. Government Exhibit 570, that's the map showing
3 where the 0624 phone number traveled. On your left, that's the
4 La Colombe Coffee Shop in Lower Manhattan, not too far from
5 where we are right now. In the middle, that's Long Island
6 City. That's the surveillance footage from the Purves Street
7 apartment capturing the defendant and Recamier together. And
8 on the right, that's St. Albans in Queens, where the phone
9 spent every night, as you saw and heard from Special Agent
10 Lidsky.

11 This is Government Exhibit 571. This is the map
12 showing the 0624 phone's whereabouts in the middle of the
13 night, showing that it stayed in St. Albans every single night.
14 Ladies and gentlemen, this is a smoking gun. It shows that the
15 0624 phone is the defendant's, not anybody else's.

16 That St. Alban's location is critical. You know
17 that's where agents saw the black Mitsubishi car that drove to
18 La Colombe when the defendant was there, and it's where the
19 defendant and his white Mercedes were when the defendant was
20 arrested.

21 Then there's Government Exhibit 660. Here at the top
22 are pictures of the iPhone 11 that the defendant had on him
23 when he was arrested. We know it's the defendant's phone and
24 not anybody else's phone because it travels with him including
25 to La Colombe, and it again was on him the day he was arrested.

MAV1ILO2

1 On the bottom there's Government Exhibit 660-A, the
2 SIM card extraction from this iPhone 11. It shows that the
3 phone recovered from the defendant when he was arrested is the
4 0624 phone, the exact phone that Special Agent Lidsky and his
5 team tracked across the city. And, again, we know it's the
6 defendant's phone because it sleeps in St. Albans every night,
7 not at Recamier's house, not anywhere else. It's always with
8 the defendant. And we know it's the defendant's phone because
9 he had it at the time of his arrest, hours after Recamier was
10 arrested.

11 Here's the 0624 summary chart, Government Exhibit
12 740-C. This shows just how essential the 0624 phone is to the
13 fraud. It shows that many of the bank accounts in the case
14 listed that 0624 phone number that you know the defendant used
15 and always had on him.

16 About eight lines down, there's that Capital One BRS
17 Consulting Corp account that received the over \$530,000 loan.
18 Additionally, you see that there's three different Chase
19 accounts, an HSTC account, two MNC bank accounts, an Apple
20 account, and an Enterprise account that all were subscribed
21 using that 0642 phone. That phone at the center of the fraud,
22 the bank accounts, the Robinhood account, and the Coinbase
23 account all were used to launder the fraud proceeds, and that
24 phone was found on the defendant when he was arrested. His
25 possession and control over the 0642 phone is powerful evidence

MAV1ILO2

1 of his guilt.

2 The second reason that you know that the defendant is
3 guilty is the damning evidence that was recovered from him when
4 he was arrested. You just heard about the 0624 phone. That
5 was not all that the defendant had on him. Far from it.

6 He was also arrested with the BRS Consulting debit
7 card that he used at La Colombe and that was also associated
8 with the 531,000 dollar PPP loan that we've been discussing.
9 He was arrested with keys to the Purves Street apartment in
10 Long Island City, and he was arrested with keys to the Mercedes
11 that was fraudulently leased and that he was driving, not Chris
12 Recamier. In the Mercedes trunk, as you can see, he was
13 arrested with a fake ID in victim Thomas Hockenberry's name,
14 with Recamier's picture on the ID, as well as two debit bank
15 cards in victim Hockenberry's name.

16 Now let's take a look at some of the additional
17 electronic devices that were recovered. Every single
18 electronic device that law enforcement accessed tied the
19 defendant to the fraud. Every single one. The defendant's
20 involvement in the scheme is inescapable.

21 I'll focus on his personal phone, that's the iPhone
22 12, and the iMac. I'll discuss the contents of the Samsung
23 from the Mercedes a little bit later. First, there's the
24 iPhone 12 that was on the defendant's body at the time he was
25 arrested. You could convict the defendant based on information

MAV1ILO2

1 found on this phone alone. Government Exhibit 661. Here's a
2 picture of the phone.

3 How do we know that the defendant used the phone and
4 not someone else? Well, for one, his face unlocked it
5 biometrically, face ID recognized his face. You heard that
6 from Special Agent Harry Lidsky. That's about as compelling
7 evidence as there is. Not Chris Recamier's face, not someone
8 else's face, the defendant's face.

9 That's not all. Look at Government Exhibit 662 on
10 your left. The phone settings. They show as clear as day that
11 the phone is registered in his name, Dayo, which is short for
12 Adedayo, Ilori.

13 Let's look at the next page in the middle of the
14 slide. What's the name of the phone? Dayo's iPhone. That's
15 the defendant. Not Recamier's iPhone, not anyone else's.

16 Government Exhibit 663 on the right, when we look at
17 the Gmail account for the iPhone 12 we see the same thing.
18 Dayo is in the Gmail address. There can be no question that
19 the defendant is the user of this phone.

20 Government Exhibit 665 is the Gmail trash folder on
21 this phone, what the defendant tried to get rid of, to hide.
22 In that trash folder you'll see on the left multiple
23 communications with the Jonathan Herttua Gmail email account.
24 The email account that the defendant set up when he was
25 planning the fraud.

MAV1ILO2

1 You know from Mr. Herttua's testimony and from
2 Government Exhibit 750 that that's one of the main victim
3 identities that the defendant used to commit the crime fraud.
4 The defendant used Mr. Herttua's identity for three of the loan
5 applications, including the 530,000 dollar one we've been
6 talking about from BRS Consulting.

7 Back to the defendant's phone. That's the defendant
8 sending documents from his personal email account to the
9 account he controlled in the name of Herttua. That's damning
10 evidence right there.

11 And then in the middle and on the right of the slide,
12 the defendant also accessed the Robinhood account used to
13 launder large portions of the fraud proceeds from this phone,
14 his phone. That's not all. There's a reference on the iPhone
15 12 to another one of the companies that the defendant used to
16 receive fraudulent loan money, Twinway. That was used for two
17 more of the loan applications. You see that in Government
18 Exhibit 750.

19 In the defendant's phone, we're on page five of
20 Government Exhibit 665, here he is receiving financial
21 information to his personal account for Twinway Corporation.
22 Powerful proof of the defendant's guilt.

23 There's more. There's a reference on the iPhone 12 to
24 another one of the companies that the defendant used to receive
25 fraudulent loan money, Appensible.com, LLC. You see that

MAV1ILO2

1 again in Government Exhibit 750.

2 Look at Government Exhibit 665. Here we see the
3 defendant receiving financial information to his personal
4 account for this company App sensible.com, LLC. Right here on
5 his own phone. That's not all. Then there's the notes file on
6 his iPhone 12. And what does your common sense tell you about
7 this? That he would have saved important information on his
8 notes file. Sure enough, that's where the defendant saved the
9 name and business identification number of yet another company
10 that he used for a fraudulent SBA loan application. Appserd,
11 Inc.

12 Let's take a look at Government Exhibit 670 and 156
13 side by side. That's the defendant's phone notes file on your
14 right and the PPP net application for Appserd, Inc., on your
15 left. 465422859, in both. Incredibly strong evidence that the
16 defendant committed the charged crimes from the personal iPhone
17 12 that undoubtedly was used by the defendant and that the
18 defendant had on him at the time he was arrested.

19 The next device is the iMac. That's the computer in
20 the picture on your left in the Purves Street apartment. It
21 was loaded with fraudulent documents to further the fraud, and
22 we know that the defendant used this iMac to commit fraud based
23 on the log-ins alone. On the iMac, the defendant signed into
24 email accounts set up in identity theft victims' names. That
25 computer accessed the victim fraud email accounts and other

MAV1ILO2

1 accounts used to further the scheme.

2 So how do we know that the defendant and not someone
3 else used this iMac? Government Exhibit 603, the iMac's device
4 info right there, the device's host name, Dayo's iMac. Not
5 Recamier's, not some unknown other person. This was the
6 defendant's computer.

7 There's more. Government Exhibit 604. This shows 16
8 different user accounts on the iMac, all with Dayo in their
9 names. Not Recamier. Dayo. Here you see two of them.
10 Dayodfine01@gmail.com and Dfinebydayo@gmail.com. Government
11 Exhibit 604 is the full exhibit. I encourage you to look at it
12 when you go back to deliberate.

13 And now from the files found again in the trash folder
14 of iMac Government Exhibit 607 that defendant tried to conceal
15 the fraud, he had a whole bunch of fake passport files with his
16 picture on passports in the names of various other people. And
17 in Government Exhibit 607, page 12, that's the middle slide
18 here, here we have the defendant's picture on a fake passport
19 in the name of someone else, Nazmul Islam. Page 13, that's the
20 left side of the slide, we've got the defendant's picture on a
21 fake passport in the name of someone else, this time Eric
22 Charles Chenworth. Then in case there was any doubt about who
23 that picture was in those fake passports, and there isn't any
24 doubt, also on the iMac there's that same picture in what
25 appears to be a photo of the defendant's actual passport.

MAV1ILO2

1 That's on the right. That right there is proof of the
2 defendant's guilt. Proof that cannot be explained away.

3 And in Government Exhibit 611, again from the iMac's
4 trash, you see that the defendant tried to erase some fake bank
5 statements formula. That's on the top of the slide.

6 On the bottom of the slide you see that Mula Apps Corp
7 is yet another of the companies that the defendant used for two
8 fraudulent loan applications. That's Government Exhibit 750.

9 Then there's Government Exhibit 610, many pages of
10 Source 4 Jets files on iMac. We know that that's yet another
11 of the companies that the defendant used for fraudulent loan
12 applications. You see that in Government Exhibit 750, right
13 there on his own computer.

14 Here on this slide is the actual EIDL application for
15 Source 4 Jets on the left, and the file for the iMac on the
16 right. Collectively, all of this is especially powerful proof
17 of the defendant's personal involvement in the scheme. His
18 digital fingerprints are all over this fraud.

19 The list goes on and on. The physical and digital
20 evidence in this case points to one inescapable conclusion,
21 that the defendant is guilty.

22 The third reason that you know that the defendant is
23 guilty is his unauthorized use of identity theft victim William
24 Jamieson's identity. You all saw that fake ID card with the
25 defendant's face on it. This is devastating evidence. You

MAV1ILO2

1 could convict the defendant based on this fact alone. The
2 defendant left zero guesswork about his involvement in the
3 fraud. This picture is worth a thousand words.

4 And you know from Government Exhibit 750 that Jamieson
5 is not just the victim identity that the defendant used to rent
6 an apartment. It's one of the victim identities that the
7 defendant used to commit the SBA loan fraud.

8 Now let's look at Government Exhibit 341 up top.
9 That's the rental application you saw where the defendant
10 claimed that he was William Jamieson. He used Jamieson's name.
11 He used his date of birth. He used his Social Security number.
12 He claimed he was making \$250,000 per year and working for an
13 air charter company called Amana Air Charters, LLC. You know
14 those are lies. The real William Jamieson came to court and
15 told you so.

16 In support of that luxury apartment rental
17 application, the defendant included this completely fake ID in
18 Jamieson's name but with the defendant's own picture on it.

19 And you heard from real estate agent Robert Bateman
20 all about the month-long process dealing with the person he
21 thought was Jamieson, who clearly met the description of the
22 defendant, and not Chris Recamier or anyone else. Bateman
23 identified the defendant in open court. There was no question
24 that the defendant impersonated one of the identity theft
25 victims so that he could spend some of the fraudulent loan

MAV1ILO2

1 funds for his own selfish purposes to rent a luxury apartment
2 in Brooklyn using fraud proceeds.

3 If that weren't enough, look at Government Exhibit
4 645. The same ID was found on the defendant's Samsung phone,
5 which was in the Mercedes center consul the day of the
6 defendant's arrest.

7 Then you also have emails where the defendant
8 impersonated William Jamieson, e-mailing real estate agent
9 Robert Bateman about the apartment. Those emails also were
10 recovered from the Samsung phone found in the defendant's
11 Mercedes. That's Government Exhibit 636.

12 The lease for that luxury Brooklyn apartment the
13 defendant rented as William Jamieson was also recovered from
14 the defendant's Samsung phone, which was found in the Mercedes,
15 too. That's Government Exhibit 647.

16 Also on the Samsung phone was a letter from the SBA to
17 Jamieson declining the loan application under the EIDL program.
18 That's Government Exhibit 650, also on the Samsung phone.

19 Finally, the defendant's iMac from the Purves Street
20 apartment had files proving that the defendant had manipulated
21 documents. For example, look at the Amana Air Charters' bank
22 statement, Government Exhibit 612. Page two, the spotlight
23 layer names on the left show the defendant's alteration of bank
24 statements of Amana Air Charters on the right.

25 Where we compare the altered documents with the real

MAV1ILO2

1 ones, we see exactly what the defendant did on his iMac to make
2 sure he could rent the apartment. He forged the bank
3 statements to make it seem like a lot more money came into the
4 account than actually did. He lied. He claimed on the right
5 that the Amana account received over \$320,000 in deposits and
6 additions in a single month when the reality was more like, as
7 it says on the left, there was only \$3,500 in deposits and
8 additions. That's almost 91 times more than the account
9 actually received.

10 Why does this matter? Because it's yet another
11 example of the defendant's blatant fraud. He manipulated the
12 document so he would qualify to rent a nicer apartment.

13 You heard Robert Bateman's testimony on this point,
14 and you know that the real Mr. Jamieson, he never worked for
15 Amana. The documents the defendant submitted were fake. The
16 defendant's repeated and entirely fraudulent use of Jamieson's
17 identity is crushing evidence of his guilt.

18 The fourth reason you know that the defendant is
19 guilty is his use of the Purves Street fraud office. There's
20 no question that the defendant had access to and used the
21 Purves Street apartment. The defendant had one of the two key
22 fobs to the apartment on him at the time of his arrest. And
23 you know that the other key fob was Recamier's. The other one
24 was recovered from the Purves Street apartment the night
25 Recamier was arrested.

MAV1ILO2

1 You saw the Purves Street apartment, and you know
2 exactly what it was. It was the defendant's and Recamier's
3 fraud office. The building records confirmed that the
4 defendant's key fob was added to the lease so that the
5 defendant could access the fraud office whenever he wanted to.

6 On the left, Government Exhibit 510, is a picture of
7 Recamier's key fob recovered during the Purves Street apartment
8 search. Government Exhibit 520, on the right, that's the
9 defendant's key fob recovered during his arrest. Government
10 Exhibit 282, on the bottom right, those are building records
11 showing the card numbers of the apartment.

12 Side by side, with the defendant's arrest card on your
13 right, and the building records underneath the picture on the
14 right, you can see that they both end in 28884. The defendant
15 had and was arrested with the key fob for the apartment.
16 There's no question about that.

17 And you remember, you passed this key fob around the
18 jury box. You saw this with your own eyes.

19 Then there's Government Exhibits 521 and 552. The
20 same business card, Dfine by Dayo Ilori, the defendant. It was
21 found both on the defendant's person when he was arrested, it
22 was on him, he was holding it, and in the Purves Street
23 apartment, showing his use of the apartment.

24 (Continued on next page)
25

MAV1ILO4

Summation - Mr. Felton

1 MR. FELTON: And then there's the hallway video
2 surveillance from Purves Street showing the defendant coming
3 and going, sometimes with Recamier, and sometimes with others.
4 You saw video of him enter the apartment with another
5 companion.

6 Here are images of the defendant together with
7 Recamier, his partner in crime. These are Government
8 Exhibits 316 and 325.

9 You've heard all about how the Purves Street apartment
10 hallway video matches up with IP records from Robinhood and
11 Charles Schwab, how the records prove that, right when the
12 defendant was in the apartment, that's when loan fraud proceeds
13 were moved into a variety of investment accounts.

14 Take Government Exhibits 308 and 309 and 327 and 325
15 as examples. Those video file exhibits and the IP records show
16 that the defendant was in the fraud office at critical times,
17 when the fraud proceeds were laundered. We've highlighted just
18 a few examples, but you have additional videos in evidence.
19 Those are Government Exhibits 304-328. And look at the time
20 stamps in Government Exhibit 5. You can watch them for
21 yourself if you'd like.

22 And you've seen the IP address records for the
23 672455923 static IP address for the Purves Street apartment.
24 Special Agent Lidsky explained that an IP address is a unique
25 address that at any point in time is assigned to a device

MAV1ILO4

Summation - Mr. Felton

1 connected to the internet. The 67 IP address was assigned to
2 devices connected to the internet at the Purves Street
3 apartment.

4 Take a look at Government Exhibit 720. You'll note
5 from the IP address records that, in red outlined on the slide,
6 on May 7, 2021, the Robinhood account was accessed at the
7 Purves Street apartment within minutes after there was a login
8 to the defendant's personal Apple account, which is linked to
9 his dayodfine01@gmail.com email address. There is no doubt
10 that that email address is the defendant's account, not
11 Recamier's. It has both his name, bio, and his business,
12 DFine, in the name.

13 And look at June 26, 2021. That's another date. This
14 one's in blue on the slide. We know from the surveillance
15 video--those are Government Exhibits 308 and 309--that the
16 defendant was in the Purves Street apartment when the Robinhood
17 account was accessed from the Purves Street apartment based on
18 the IP address records.

19 And on July 21, 2021, that's in yellow on the slide,
20 that's another date when we know that the defendant was at the
21 Purves Street apartment from the surveillance video--Government
22 Exhibits 327 and 325--when, sure enough, the Charles Schwab
23 account was accessed at the Purves Street apartment, based on
24 the IP address records.

25 Collectively, this is compelling evidence of the

MAV1ILO4

Summation - Mr. Felton

1 defendant personally controlling and laundering the fraud
2 proceeds from the Purves Street apartment.

3 And you saw photos of this apartment--a living room
4 with no furniture or TV, but rather a shredder, scanner,
5 printer, and computer, falsified documents, and notebooks
6 overflowing with the personal information of identity theft
7 victims. Government Exhibit 581 on the left, that's the
8 kitchen counter with the defendant's iMac computer that you saw
9 holding all that evidence of fraud. The scribbled paper
10 checklist tracking the fraud account used in the SBA fraud,
11 that's Government Exhibit 551. By now, you recognize all the
12 names of those entities.

13 Here you've got Government Exhibits 594 and 595,
14 photos of the shredder, which appeared to be full, and a
15 scanner. This was not a typical New York City apartment. This
16 was a full-time fraud operation.

17 Here's the notebook full of stolen identities from the
18 Purves Street apartment, Government Exhibit 554. Here again,
19 you see how the defendant tracked which stolen identities
20 worked and at which banks. You see Gerald Hanson's and Thomas
21 Hockenberry's names and information. Hanson was the first
22 witness you heard, at the very start of this trial. You
23 remember him. That's the Red Cross volunteer and volunteer
24 firefighter, who told you how he had to delay his retirement
25 after his identity was stolen.

MAV1ILO4

Summation - Mr. Felton

1 Here you see loan applications submitted in both of
2 these victims' names--Hanson up top, and Hockenberry twice on
3 the bottom--the first and the last victim, both in that same
4 notebook.

5 Throughout this point, you saw many chats between
6 Recamier and Ilori about looking for an apartment to rent.
7 Purves Street clearly was a place that they intended to use and
8 did use together for their crimes. Everything that you know
9 and have seen about the Purves Street apartment and the fact
10 that Ilori had the key needed to access the apartment on him at
11 the time he was arrested is strong evidence that the defendant
12 was a key participant in the charged crimes.

13 Now there's a fifth reason that you know the defendant
14 was involved in the fraud. You saw encrypted message after
15 encrypted message catching him in the act. I could be here for
16 hours going on and on.

17 You know Ilori was the person using the Samsung phone.
18 The Samsung phone was found in the Mercedes, the car that the
19 defendant was driving when he was arrested. It wasn't with
20 Recamier. The Samsung phone stored the defendant's
21 communications when he was impersonating William Jamieson and
22 talking to Robert Bateman to lease an apartment. We've already
23 heard about that. And you also know that the defendant used
24 the Samsung phone to communicate with Recamier, who was using
25 the Purves Street Motorola phone. You've seen both sides of

MAV1ILO4

Summation - Mr. Felton

1 that conversation. The user of the Samsung is referred to as
2 Dee. Dee is Dayo Ilori, not Chris Recamier. The Samsung phone
3 user is the defendant, and the Motorola user is Recamier.

4 Now we walked you through just a small few examples
5 from the Samsung messages that are clear proof of the
6 defendant's guilt. But again, I encourage you to flip through
7 those Telegram messages. Those are Government
8 Exhibit 638--those are the messages with Recamier--and
9 Government Exhibits 639-641. When you look through those
10 messages, you will be left with absolutely no doubt about the
11 defendant's deep involvement in the fraud, and about the fact
12 that he is guilty beyond any reasonable doubt.

13 Here are just some of the many examples.

14 Government Exhibit 638. Here on the top left is
15 Recamier asking the defendant, "I need the password to enter
16 Jonathan," referring to victim Jonathan Herttua. And 12 or 13
17 minutes later, on the bottom right, the defendant responds,
18 "Actually, don't worry about Jonathan. I will check it
19 myself." This is the defendant himself, personally carrying
20 out the fraud.

21 Recamier and the defendant constantly discussed what
22 "we" need to do, what "we" need to submit and file, showing
23 that they were working together, that they were in agreement in
24 a joint enterprise. Government Exhibit 638 is full of these
25 messages. I'll just read some of these.

MAV1ILO4

Summation - Mr. Felton

1 "Unless we bring work up, there's no way to bring
2 someone else on board."

3 "Do we need the credit card for payment at M&T?"

4 "Are we meeting today?"

5 "We are working tomorrow so shave, look good, and be
6 ready."

7 "We worked on 4 already."

8 This is powerful conspiracy evidence.

9 Then there's Government Exhibit 639. Here, the
10 defendant discusses the need to submit quote-unquote the big
11 one, on March 15, 2021. Then he and the other person exchange
12 information about a company called Appserd, Inc. That same
13 day, March 15, 2021, they submit the largest loan application
14 in the whole scheme on behalf of that very entity, Appserd,
15 Inc., for over \$4.4 million. The big one.

16 So the fifth reason you know that the defendant was
17 involved in the fraud is that you saw his own words, encrypted
18 message after encrypted message, showing him carrying out the
19 fraud with Recamier and others.

20 The sixth reason that you know the defendant committed
21 the fraud is that following the money leads directly back to
22 the defendant. You heard Special Agent Lidsky explain how he
23 followed the money and how all the pieces fit.

24 You all saw, third from the bottom again, that BRS
25 Consulting Corp. \$530,000 loan. That was submitted in Jonathan

MAV1ILO4

Summation - Mr. Felton

1 Herttua's name. It went to a Capital One BRS Consulting Corp.
2 account. When we followed the funds from loan disbursement to
3 that Capital One account, we see that the 5953 debit card is
4 linked to the account that received the loan. That's what
5 you're looking at. 5953 debit card number, you see that on the
6 top right. These are Government Exhibits 154 and 102, side by
7 side. Following that 5953 debit card is pivotal to finding a
8 person behind the scheme.

9 And where was that 5953 debit card found? In the
10 defendant's pocket, at the time of his arrest. That's the
11 bottom middle image on this slide. Right in the defendant's
12 pocket, holding the very card associated with the \$531,218 PPP
13 loan for the Capital One account.

14 You also saw the defendant on video at La Colombe
15 coffee shop buying coffee with that same 5953 debit card. We
16 have a photo of the video on the top middle and the matching
17 receipt on the top right. Josh Sarver, the coffee store
18 manager, he testified that he remembered the defendant
19 regularly buying coffees at his La Colombe NoHo store. Sarver
20 identified the defendant in open court. And the La Colombe
21 receipts match up to the video. All the pieces fit.

22 In Government Exhibit 705, you see in financial
23 analyst Elizabeth Palmer's summary exhibit that most of this
24 BRS Consulting PPP loan ultimately ended up going to Coinbase,
25 about \$406,000 worth of it. That's on the bottom left of the

MAV1ILO4

Summation - Mr. Felton

1 slide. The Coinbase account is also linked to the same
2 Jonathan Hertzua Capital One bank account. You can see that in
3 Government Exhibit 252. The defendant's control over that bank
4 account and his use and possession of the 5953 debit card
5 proved that he's guilty. When you follow the money, it leads
6 you straight to the defendant.

7 The seventh and final reason you know that, contrary
8 to what the defense has claimed in its opening, that the
9 defendant was not a victim of circumstances, that he was not
10 merely a gullible friend of Chris Recamier, is because he was
11 convicted of similar conduct, and therefore, this was not all
12 some misunderstanding, as the defense claims. In April 2021,
13 he was convicted of a similar criminal offense. That
14 conviction is in evidence in Government Exhibit 7 in the
15 stipulation between the parties. The defendant's prior
16 conviction for a similar fraud is evidence of the defendant's
17 criminal intent. It shows you that the defendant knew that
18 what he was doing was wrong and illegal. This wasn't some
19 accident or a mistake, but instead, he knew exactly what he was
20 doing.

21 Now I want to be clear. Judge Vyskocil will give a
22 limiting instruction about how this evidence can be considered,
23 and you must follow that instruction, just like you must follow
24 all of her instructions. You may consider this evidence for
25 the limited purpose of determining whether the defendant had

MAV1ILO4

Summation - Mr. Felton

1 guilty knowledge or criminal intent as to the offenses for
2 which he is charged in this case. As you know from the
3 parties' stipulation on your screen, Government Exhibit 7, in
4 March 2020, the defendant was arrested and charged with many of
5 the crimes he is charged with here--conspiracy to commit wire
6 fraud, wire fraud, aggravated identity theft, and conspiracy to
7 commit money laundering. The charges in that case involved the
8 defendant's participation in a scheme to submit fraudulent bank
9 loans. Those applications used the stolen identities of
10 companies and individuals and involved falsified financial
11 statements. On April 8, 2021, the defendant pled guilty to
12 that earlier case to a charge of conspiring to commit wire
13 fraud.

14 What do you know from this? You know that it wasn't
15 some accident that the defendant had Jonathan Herttua's debit
16 card in his pocket when he was arrested; it wasn't a mistake
17 that he was spending fraud proceeds at La Colombe using a debit
18 card in Herttua's name; the defendant wasn't unaware of what he
19 was driving when he got behind the wheel of that Mercedes; and
20 the defendant wasn't just hanging around in the Purves Street
21 fraud apartment when fraud proceeds were being laundered. In
22 short, the defendant's prior conviction is the seventh reason
23 that the defendant had knowledge of the fraud and possessed
24 criminal intent. This was not some accident or mistake.

25 As you've heard, there are simply seven -- these are

MAV1ILO4

Summation - Mr. Brill

1 simply seven of the many reasons you know the defendant is
2 guilty.

3 Now I'm about to sit down. We told you at the start
4 of this trial that this was a case about lies, about greed, and
5 about brazen theft. You know that the defendant's crimes had a
6 significant cost. You know that the money the defendant stole
7 was specifically set aside to help small businesses who were
8 trying to stay alive during a global public health crisis.

9 Ladies and gentlemen, this is not a close case. All
10 the evidence that you've seen points to one and only one
11 conclusion--that the defendant is guilty.

12 He tried to cover his tracks, to avoid getting caught,
13 to avoid being in this courtroom today. He tried to pull the
14 wool over everyone's eyes. He tried to hide behind a maze of
15 fake identities until he had gotten the money, emptied the bank
16 accounts, and laundered the money in cryptocurrency. But at
17 the end of the day, he couldn't outrun the law. He was caught
18 red-handed. He can't duck responsibility and try to pin it all
19 on some other guy.

20 Ladies and gentlemen, you can see the defendant; you
21 can see the evidence of his lies and deceit. You can and must
22 hold him to account. There's one way to do that. When you go
23 back to the jury room to deliberate, when you look at the
24 evidence, and when you use your common sense, you will reach
25 the only verdict that is consistent with the evidence, the law,

MAV1ILO4

Summation - Mr. Brill

1 your common sense, and with every single thing that the
2 defendant did, and that verdict is guilty.

3 Thank you.

4 THE COURT: Mr. Brill, are you ready to proceed with
5 the defense summation at this point?

6 MR. BRILL: Yes, your Honor.

7 THE COURT: All right. Thank you.

8 MR. BRILL: So Mr. Felton mentioned the word
9 "responsibility" just now. And I think it's important to note
10 that Mr. Ilori did take responsibility. He took
11 responsibility, as we stipulated to on his previous case. He
12 pled guilty on that case. He did not plead guilty here for a
13 reason, and it's because he's not guilty here. So to suggest
14 that the act of demanding your constitutional right to a fair
15 trial before a jury is somehow not taking responsibility really
16 doesn't apply here.

17 The government hasn't proved their case is what the
18 issue is here. The government has proved their case as to
19 Mr. Recamier. Their evidence against Mr. Recamier is damning,
20 certainly, but that's not evidence that is damning and
21 certainly not evidence that is beyond a reasonable doubt to
22 prove that Mr. Ilori engaged in the acts that are before you to
23 decide.

24 The government pointed to the fact that they showed a
25 snapshot of transactions and a snapshot of the evidence among

MAV1ILO4

Summation - Mr. Brill

1 hundreds or thousands of transactions to suggest that there is
2 overwhelming evidence against Mr. Ilori. And again, the fact
3 is that there is overwhelming evidence against Mr. Recamier.
4 Those hundreds and thousands of transactions were hundreds and
5 thousands of transactions that were in fact Mr. Recamier's
6 transactions, not Mr. Ilori's transactions.

7 Mr. Ilori, you know, would stop by his friend's
8 apartment. He would use his friend's WiFi. He would hang out
9 with his friend, you know, but his friend -- it's his friend's
10 apartment. His friend applied for that apartment, his friend
11 rented that apartment. And the government, for example, points
12 to the key fob and says, well, you know, Mr. Ilori had equal
13 access to the apartment because he had the key fob. But he got
14 the key fob after Mr. Recamier got his own key fob. It's not
15 as if they both applied for this apartment at the same time and
16 said, hey, roomie, here's your key fob, here's my key fob. At
17 some point Mr. Recamier said, hey, would you like a key fob,
18 you know, it's easier when you come over, or if you want to use
19 the apartment. You saw at one point on the video, at
20 least--more than one point, I think--Mr. Ilori going to the
21 apartment with a woman. So there are other reasons why
22 Mr. Ilori may have wanted to use that apartment, not to commit
23 identity theft.

24 The fact is that you cannot, and the government has
25 not, put Mr. Ilori's hand on a keyboard, his digital

MAV1ILO4

Summation - Mr. Brill

1 fingerprints on any of these accounts. Mr. Recamier's digital
2 fingerprints are all over these accounts. Mr. Recamier's
3 fingerprints are probably actually over all the devices as
4 well, because all of the devices were in his apartment, and in
5 his cars. Indeed, Mr. Ilori was, as Mr. Felton said, an overly
6 trusting friend.

7 And it doesn't matter that he has a prior conviction
8 for something similar. In fact, you would think that that
9 would warn you against doing something like this again. And
10 certainly, again, as Judge Vyskocil will tell you, you cannot
11 use the fact that Mr. Ilori has a prior conviction for
12 something similar to say, well, he did it then, he must have
13 done it now. That's not the point that that evidence was
14 brought in for. The government is suggesting that because he
15 had a prior conviction, that it's not a mistake or it's not a
16 surprise; he shouldn't say, oh, I'm innocent, I didn't know my
17 friend was doing this, I didn't -- I shouldn't have trusted my
18 friend. I think anyone who has been in that situation
19 previously would have been extra careful not to have been in
20 the situation again. And that's exactly what Mr. Ilori was.
21 So relying on the good graces of your friend and expecting that
22 your friend is not going to, you know, let you do things or
23 cause you to do things, in this case, that would get you into
24 trouble again, I think that that's a much more compelling
25 argument than, oh, he did it before, he must have done it

MAV1ILO4

Summation - Mr. Brill

1 again, which, again, is not the way that you're supposed to
2 look at that evidence.

3 This is a complex identity fraud scheme that the
4 government is trying to make very simple. The government is
5 trying to say, well, the fact is that because someone says or
6 someone uses a name, that must be the name of the person. But
7 of course all over this case people are pretending to have
8 different names. So why, in the government's evidence, should
9 we be pointing to -- or should they be pointing to, because I'm
10 not part of this part -- why should they be pointing to this
11 name being a real name but this name is a fake name, just on
12 their say-so, right? Why do we trust that when someone uses
13 the word Dayo on one account but Mr. Hanson on another account,
14 that it's Mr. Hanson whose identity is actually being stolen
15 but Mr. Ilori is involved and not Mr. Recamier using his
16 friend's identity in an illegal way? Again, this is not --
17 these are not things that the government can actually fully
18 justify, and that's the problem, right? The problem in a
19 criminal case is that you hear all of the government's evidence
20 because it's the government that has to prove it, and we then
21 have to poke holes in the government's evidence. Ultimately,
22 you have to be convinced that the government has proved its
23 case to you beyond a reasonable doubt. And again--I told you
24 this in the opening, I'm just repeating it now--the way I
25 interpret that is that the government then must eliminate all

MAV1ILO4

Summation - Mr. Brill

1 reasonable explanations of the evidence other than theirs.

2 So the government propounds a theory. The government
3 gives you an idea that this is our theme, this is our
4 story--that is, the government--and this is the story you
5 should believe. And you as the jury should be looking at this
6 evidence, saying, well, you know, you can't sit here and say,
7 well, what if aliens came down and did this, right? I mean,
8 that's not reasonable. You know, what if Zeus, you know, on
9 Mount Olympus, you know, came down and, you know, threw his
10 lightning bolt at someone. That's not reasonable. But the
11 question is, can you eliminate all other reasonable
12 explanations, and there are other reasonable explanations that
13 you are being offered.

14 Mr. Recamier rented the Purves Street apartment.
15 Mr. Recamier lived in the Purves Street apartment. I don't
16 know where they're coming up with this idea that it's the
17 "fraud office." This is a new term for me. It's not a fraud
18 office; it's Mr. Recamier's apartment, where Mr. Recamier
19 committed fraud, okay? Many people work from home, but that
20 was maybe what his job was, but this is not a fraud office.
21 The only reason the government is calling it that is to make
22 you think that Mr. Ilori is part of it in that same way, that
23 he went to work at the fraud office. Well, Mr. Recamier, you
24 saw from his -- excuse me. Mr. Ilori, you saw from his
25 business card, is a personal trainer. The government points to

MAV1ILO4

Summation - Mr. Brill

1 the single piece of evidence, the one piece of evidence that
2 puts Mr. Ilori's item in the Purves Street apartment. That's
3 his business card as a personal trainer. You would think that
4 as a personal trainer, you would give your business card out to
5 your clients. That does not indicate anything other than the
6 fact that Mr. Ilori gave Mr. Recamier his business card.

7 Mr. Recamier clearly used the devices in the Purves
8 Street apartment, right? You saw his Motorola phone, with his
9 text messages, with his face on it. It's all of his stuff in
10 the Purves Street apartment. It's his clothes, his medical
11 records, his notebook with all of this info of people's
12 identities.

13 The times are also a little confusing because the
14 government suggests that, for example, the Robinhood logs all
15 match up to times when Mr. Ilori was in the apartment. Of
16 course they cannot eliminate Mr. Recamier being in the
17 apartment at the exact same time. So again, to suggest that
18 Mr. Ilori was doing it and Mr. Recamier wasn't, how do they do
19 that? All they have are the comings and goings in the hallway,
20 right, of the people going into and out of this apartment, but
21 the witness said that they didn't actually pull all the video
22 for all of the people's comings and goings. So you have a few
23 of them, and you can't tell when Mr. Ilori is there, when
24 Mr. Ilori left, when Mr. Recamier is there, when Mr. Recamier
25 left. You can tell sometimes when they appear, sometimes when

MAV1ILO4

Summation - Mr. Brill

1 they leave. But how is the government, you know -- we missed
2 the secret x-ray vision part where the government can tell you
3 who's in the apartment when these logins are happening. You
4 can see around the same time maybe Mr. Ilori goes in or around
5 the same time Mr. Recamier goes in, but you don't have the
6 video from before that where Mr. Recamier left or the video
7 after that when Mr. Ilori left. So again, they're
8 cherry-picking little bits of evidence to try to make a case to
9 you that may not actually be the case in reality.

10 And again, as I said in the opening, the ID theft
11 evidence is overwhelmingly against Mr. Recamier. It's his face
12 on all of the IDs. It's his face whenever he has to go to a
13 meeting in the bank. As far as we could tell, again, the
14 government didn't go and track down every piece of video
15 surveillance from every meeting that we saw, for example, on
16 the iPhone, but you don't have Mr. Ilori anywhere except
17 looking at an apartment, and that's not really part of this
18 identity theft scheme, right? The identity theft scheme is
19 signing up for government loans, stealing the money, putting it
20 into an account, trading it, etc. And what the government
21 wants to do is they want to relate the apartment to the theft
22 from the government. And yeah, I mean, the apartment is what
23 it is. But Mr. Ilori's -- the fact that Mr. Ilori was using
24 Mr. Jamieson's name in that specific circumstance does not then
25 logically lead to a logical conclusion that he was then using

MAV1ILO4

Summation - Mr. Brill

1 that identity to steal from the government. So the major fraud
2 against the government, the wire fraud, the bank fraud, that's
3 all part of the scheme to steal from the government, right?
4 Not to rent an apartment under someone else's name. There's no
5 evidence that he used stolen funds to rent that apartment;
6 there's no evidence that he did anything really other than use
7 someone else's name when he rented the apartment.

8 So ultimately Mr. Recamier appears again and again and
9 again in this evidence; far, far, far more likely to have been
10 the driving force behind this identity theft. The thousands
11 and thousands of trades through Robinhood all appear from a
12 different IP address, not the one that was linked to Mr. Ilori.
13 And again, it's linked to Mr. Ilori in a very strange way.
14 It's the one time when Mr. Ilori walks in the apartment and
15 logs in through his Apple account using that IP address, right?
16 Again, I asked Agent Lidsky, hey, did you ever go to someone's
17 house and ask for their WiFi password? It happens all the
18 time.

19 Then they say then Jonathan Herttua logs on. Okay.
20 That's not Mr. Ilori; that's Jonathan Herttua. So who is the
21 person logging in as Mr. Herttua? The government is asking you
22 to make a leap--it's not a logical conclusion, it's a logical
23 leap--that because Mr. Ilori logged on around the same time,
24 then therefore that must mean that Mr. Ilori is also logging on
25 as Herttua. Again, not eliminating Recamier as the actual

MAV1ILO4

Summation - Mr. Brill

1 perpetrator of this fraud.

2 The Mercedes is leased by Mr. Recamier. It is his
3 Mercedes. The fact that he may have let Mr. Ilori drive it, he
4 let Mr. Ilori drive it. Mr. Ilori was the beneficiary of some
5 of Mr. Recamier's generosity.

6 And it's Mr. Recamier's phone that is recovered from
7 the center console of the Mercedes. If you take the
8 government's word for it, not only did Mr. Ilori have three
9 phones on him, but apparently now he needed a fourth phone that
10 he just happened to leave in the car. Because remember, he was
11 getting back into the car when he was stopped. So he had the
12 foresight or the habit or what have you to carry the three
13 phones around with him and then he just left this phone in the
14 car because it was his; it was important, but I'm going to
15 leave that one in the car. No. The reason it was in the car,
16 it was because it was Mr. Recamier's phone. So a lot of this
17 digital evidence the government is saying, well, this must be
18 the Samsung phone, this is Mr. Recamier speaking to Mr. Ilori
19 because that's Mr. Ilori's phone, the only reason why that's
20 Mr. Ilori's phone, from the government's perspective, is
21 because it was in the car. So therefore, because Mr. Ilori was
22 driving the car and the phone was in the car, it's Mr. Ilori's
23 phone. Well, it's not Mr. Ilori's phone. Mr. Recamier's car,
24 Mr. Recamier's phone.

25 And the digital evidence is even more confusing

MAV1ILO4

Summation - Mr. Brill

1 because of the phones that the government recovered.

2 Apparently at one point this 0642 number was associated with
3 one phone fairly briefly, then associated with a Samsung phone,
4 which neither of those phones appeared to have been using the
5 0642 number at the time of the transactions that the government
6 is concerned about and alleging were fraudulent. So
7 Mr. Recamier puts in the 0642 number, as we saw on some of
8 those applications, but the date of the application and the
9 date that the phone was used -- or the phones that were
10 recovered, I should say, were used with the 0642 number don't
11 match up.

12 So did Mr. Recamier use that number as a studied and
13 experienced person involved in identity theft, used the number
14 briefly, get rid of it, give a phone to Mr. Ilori, leave the
15 phone in the car unattended? There are, again, multiple
16 explanations that do not synch with the government's
17 explanation.

18 Similarly, the dates of the Telegram chats don't match
19 up. There are hundreds of Telegram chats, as you saw. We
20 scrolled through 150 pages, on at least one example. But the
21 kind of clean picture that the government wants to portray to
22 you is much more messy. There is no doubt that Mr. Ilori
23 benefited from some of these things. He got to drive a nice
24 car, on occasion. I mean, mostly it seemed he was chauffeuring
25 Mr. Recamier around, because the white male who was seen in the

MAV1ILO4

Summation - Mr. Brill

1 Mitsubishi or the white male who was seen in the other rental
2 car previously from Avis, where ultimately the Mercedes that
3 was purchased, and this, you know, this was not Mr. Recamier --
4 excuse me, Mr. Ilori's car to drive around as he saw fit. All
5 right. Based upon the limited evidence that we have, seems to
6 have been something that Mr. Ilori was doing, driving
7 Mr. Recamier around. But, you know, he benefited from that.
8 It's a Mercedes S class. It's a nice car. It's nice to drive
9 it around. He got to bring it home. He apparently got a phone
10 out of it. But, you know, he benefited, as we talked about a
11 minute ago, also from being able to use this ID to rent this
12 apartment. But again, ultimately, there is no proof or
13 knowledge or intent to engage in a fraud in the way that the
14 government asserts. I mean, obviously you have a question
15 about why is someone using someone else's name, but that's not
16 the crime that is charged here in that way. Because Mr. Ilori
17 had to have known Mr. Jamieson was a real person; had to have,
18 as the indictment says, engaged in aggravated identity theft.
19 There are very specific legal requirements for what that
20 actually means, that, again, the government hasn't proved.

21 So there's no proof that Mr. Ilori stole an identity.
22 There's no proof that, as I said, the apartment that he rented
23 wasn't paid for legitimately. And ultimately, the proof really
24 shows that Mr. Ilori, as I said at the beginning of this case,
25 was a friend and a personal trainer of Mr. Recamier. He

MAV1ILO4

Rebuttal - Ms. Murray

1 enjoyed his friend's generosity. And ultimately the charges
2 here are a stretch for the government, and a stretch really
3 means that the government hasn't proved them. You have to go
4 through each and every element of these charges--and that's not
5 my job, that's the judge's job to read them to you--and
6 obviously you're going to have a written copy when you go back
7 so you can look through it and say, okay, did they prove that,
8 did they prove that. But ultimately, you really have to hold
9 them to their proof, because that's the issue here. It's not,
10 well, do we think someone might have done something, or maybe
11 they did something or probably they did something, right?
12 Ultimately it's an issue of, did the government prove this to
13 me beyond a reasonable doubt, which is the requirement that we
14 have in this court, under the Constitution. And if the
15 government has not proved that person guilty beyond a
16 reasonable doubt, then that person is not guilty. That is the
17 requirement of you as the jurors, that's the requirement of the
18 law, and that's the reason why we have the system we have,
19 because it should be very hard to prove someone guilty.

20 So I thank you for your attention. Take care.

21 THE COURT: All right. Ms. Murray, final word on
22 behalf of the government.

23 MS. MURRAY: Ladies and gentlemen, what you just heard
24 was an experienced and skillful defense attorney. He is
25 working very hard to do his best for his client.

MAV1ILO4

Rebuttal - Ms. Murray

1 Mr. Brill is a very good lawyer, but he's not a
2 magician. He can't make evidence disappear.

3 He can't make the fact that the defendant had the 0642
4 phone with him when he was arrested disappear.

5 He can't make the GPS data for that phone
6 disappear--the data showing that that phone slept at the
7 defendant's house every night.

8 He can't make the 5953 Herttua BRS debit card that was
9 in the defendant's pocket when he was arrested disappear.

10 He can't make the Purves Street key fob that was in
11 the defendant's pocket at the time of his arrest disappear.

12 He can't make the defendant's iMac that lived at the
13 Purves Street apartment--the fraud office--disappear.

14 He can't make the false IDs and fraudulent,
15 manipulated documents on that iMac, the defendant's iMac,
16 disappear.

17 He can't make all of the evidence of the fraudulent
18 scheme, which was found on each and every one of the devices
19 that was recovered from the defendant, disappear.

20 As best he tried, he can't make the William Jamieson's
21 driver's license with the defendant's picture on it disappear.

22 Now because Mr. Brill can't make this evidence
23 disappear, he tried to explain it to you, to explain why each
24 piece of evidence points to some conclusion other than the fact
25 that his client is guilty. Now let me be clear. The defendant

MAV1ILO4

Rebuttal - Ms. Murray

1 has no burden. But defense counsel has chosen to make
2 arguments, so I'm going respond to those arguments.

3 But first, if you just take a step back and look at
4 the big picture, you'll realize that what Mr. Brill is really
5 trying to tell you is that the defendant, Adedayo Ilori, is the
6 unluckiest man in the world.

7 Mr. Brill says the defendant just happened to have the
8 5953 debit card on him when he was arrested. Who knows how it
9 got there. He was the beneficiary of his friend's generosity.
10 He just happened to have used that card for months, just
11 happened to have started using it right after that Capital One
12 account was funded with a fraudulent government loan.

13 Defendant just happened to have three phones on him,
14 on his person, when he was arrested, including the 0642 phone.
15 He just happened to take that 0642 phone home with him every
16 single night.

17 And he just happened to hang out at his friend's
18 apartment all the time, the apartment that you saw with no
19 living room furniture, no TV, just an iMac belonging to the
20 defendant, a shredder, and piles of evidence of the fraud. He
21 just happened to hang out at that apartment multiple times when
22 the IP address that belonged to that apartment connected to
23 various of the accounts in victims' names that were used in
24 furtherance of the fraud. He happened to keep his own desktop
25 computer at his friend's place, because that's where it would

MAV1ILO4

Rebuttal - Ms. Murray

1 make sense to keep your computer. And that iMac, the
2 defendant's iMac just happened to have numerous fraud documents
3 saved to it. And those include the identity documents that
4 were manipulated in Photoshop to show the defendant's face on
5 passports with other people's names.

6 Ladies and gentlemen, let's get real. The defendant
7 is not the unluckiest man in the world. He is a fraudster, and
8 he is a money launderer. He made the choice to steal innocent
9 people's identities and to use those identities for his own and
10 for Chris Recamier's purpose, including to steal over a million
11 dollars in government pandemic relief funds, and he did it
12 again, and again, and again. No one made him do it. No one
13 tricked him. He's not the unluckiest man in the world. No
14 one's that unlucky. What the proof you've heard and seen
15 points to is one conclusion--the defendant is guilty.

16 Now I want to briefly address just a few of the points
17 that Mr. Brill made in his closing statement. I'm not going to
18 address everything he said, frankly, because I don't need to.
19 You've seen and heard the evidence. You know that much of what
20 he said simply does not add up.

21 Now Mr. Brill said that the government hasn't put the
22 defendant's fingers on any of the fraudulent conduct. That's
23 absolutely false. When you go to deliberate, take a look at
24 Government Exhibit 274. That's a Gemini account record in the
25 name of Gerald Hanson, one of the identity theft victims here.

MAV1ILO4

Rebuttal - Ms. Murray

1 Take a look at that exhibit. You'll see the defendant's
2 fingers on the fraud.

3 And consider what was right at the defendant's
4 fingertips when he was arrested on October 8, 2021, in his
5 pocket, within reach--the 5953 debit card; the phone with
6 communications with his co-conspirators about the fraud.

7 And Mr. Brill also said that there was only one piece
8 of evidence in the Purves Street apartment that connected the
9 defendant to that apartment; it was a business card for his
10 personal training business. That statement ignores the fact
11 that there was voluminous electronic evidence in that apartment
12 tied directly to the defendant. I'm not going to go over that
13 again, but the defendant's own desktop computer, Dayo's iMac,
14 that was in the apartment. Mr. Brill was trying to distract
15 you by saying that of all the pieces of evidence, the only one
16 that had the defendant's true name on it was this one innocent
17 business card. You've seen and heard the evidence. You know
18 better than that.

19 And I have to tell you, I can't quite keep track of
20 the explanation that Mr. Brill provided. Was the defendant
21 just visiting Recamier at Purves Street to hang out with a
22 friend? That's what he suggested at one point. Or was it that
23 Chris Recamier was one of the defendant's personal training
24 clients? That was another suggestion that Mr. Brill made. And
25 at one point Mr. Brill said that maybe the defendant just

MAV1ILO4

Rebuttal - Ms. Murray

1 borrowed Recamier's WiFi password, that that would be the
2 explanation, the innocent explanation for everything you've
3 seen.

4 Mr. Brill also said that the defendant was a
5 beneficiary of his friend's generosity. And I tell you, I need
6 friends like that. He's just letting him bring home a Mercedes
7 S class? Giving him a phone? Giving him total access to his
8 apartment? It doesn't add up.

9 Now at various points Mr. Brill argued that DOJ-OIG
10 should have taken certain investigative steps but they didn't.
11 This is another distraction. I'll talk about a couple of the
12 examples, but first and foremost, I expect that Judge Vyskocil
13 will instruct you that there is no legal requirement that law
14 enforcement agents investigate crimes in a particular way, or
15 that the government prove its case through any particular
16 means. All that matters, all that you need to decide, is
17 whether the evidence DOJ-OIG did gather proves the defendant's
18 guilt. And of course it does.

19 I want to briefly respond to just one example that
20 Mr. Brill has raised. He's argued that no one ever saw the
21 defendant send messages, nobody ever put the various phones in
22 the defendant's hands, nobody was in that Purves Street
23 apartment who could tell us exactly what happened at times that
24 you know the defendant and Chris Recamier were there, at times
25 that you know that accounts were accessed in furtherance of the

MAV1ILO4

Rebuttal - Ms. Murray

1 fraud.

2 Ladies and gentlemen, Mr. Brill is basically
3 suggesting that the government should have figured out a way to
4 look inside the Purves Street apartment, to get inside the
5 defendant's car, the defendant's house, to surveil each and
6 every moment the defendant did anything, so that they could
7 confirm exactly which phone he was using at the time, exactly
8 who he was communicating with, so they could come in and parade
9 every single bit of evidence in front of you and say, we can
10 prove that the defendant was using this because we were
11 watching him the whole time. That's preposterous. And they
12 didn't need to do that, because the texts and the emails and
13 the fake documents, and all of the evidence that you've seen
14 speaks for itself.

15 When Mr. Brill opened in this case, he told you that
16 the defendant was a victim of circumstance. And again today,
17 he told you he just happened to be friends with Chris Recamier.
18 Wrong person, wrong time. Now if that were the truth, why
19 would the defendant have met with a real estate agent and
20 texted and emailed with that real estate agent using an email
21 account in that victim's name, all while holding himself out to
22 be William Jamieson? It doesn't make sense. Why would the
23 defendant have submitted a false driver's license with his
24 picture and an identity theft victim's information, an identity
25 theft victim whose name was used to submit one of the

MAV1ILO4

Rebuttal - Ms. Murray

1 fraudulent PPP COVID loan applications? Why would he submit
2 that to rent an apartment? It doesn't make sense. And how
3 would that fake ID, the William Jamieson ID, just happen to be
4 in the name of one of the identity theft victims that the
5 defendant alleges only Mr. Recamier was involved in putting
6 loan applications in for? It doesn't make sense.

7 And why would the defendant be exchanging victim
8 information with other people, with Chris Recamier, with the
9 various other individuals you saw on the chat? That
10 information included victims' names, their dates of birth,
11 their addresses, their Social Security numbers. Mr. Brill
12 cannot credibly tell you that the defendant didn't know these
13 were real people. You've seen the evidence that the defendant
14 and Mr. Recamier and others were tracking these people's
15 information, verifying their information, using that
16 information for their own purposes. And that's because they
17 were setting up the scheme. They were committing the fraud
18 together.

19 Now I want to make one point about what a conspiracy
20 is. And I expect Judge Vyskocil will instruct you on the law.
21 A conspiracy is simply an agreement between two or more people
22 to do something--in this case, to violate certain laws. All
23 you need for a conspiracy is for two people to agree together
24 or with others that they are going to take an action. Again,
25 Mr. Brill tried to distract you. He tries to point the finger

MAV1ILO4

Rebuttal - Ms. Murray

1 at Chris Recamier. "Some other dude did it. It wasn't my
2 client. My client wasn't involved." But ladies and gentlemen,
3 the government does not disagree that Chris Recamier was
4 involved in this fraud. We're not coming to you and telling
5 you that Mr. Ilori did this alone. Absolutely not. He worked
6 in lockstep with his co-conspirators, with Chris Recamier, with
7 other people. Together they conspired and they committed this
8 fraud.

9 But you also know that the defendant is central to the
10 fraud. For this point, look no further than the 0642 phone.
11 And I know we've spent a lot of time talking about that phone
12 during this trial, but that's because that phone was integral
13 to the fraud. It is connected to the BRS Consulting Corp. loan
14 that started the entire investigation. It was connected to the
15 bank account that received those loan proceeds, the bank
16 account that the defendant had the debit card for in his pocket
17 when he was arrested--the 5953 card. It was connected to two
18 of the other fraudulent loan applications, and two additional
19 bank accounts that were tied to those loans. It was connected
20 to the business records for numerous accounts the defendant and
21 Chris Recamier and their other co-conspirators set up in
22 victims' names and used to commit the fraud, including Apple,
23 Robinhood, Coinbase, and Enterprise Rental Car.

24 And Mr. Brill told you that the 0642 phone was
25 actually Recamier's phone. Now you've seen Telegram messages

MAV1ILO4

Rebuttal - Ms. Murray

1 that prove to you that the defendant had control over the 0642
2 phone, that he used it. And those are messages with another
3 co-conspirator we talked about yesterday, where the
4 co-conspirator writes and says, "I need the code sent to the
5 Jonathan Herttua phone for the Capital One account." And what
6 does the defendant respond? He responds with the code. He is
7 in control of the phone, the phone that is receiving
8 information for sign-ins to various of the fraudulent accounts.
9 There's no question. And as we've discussed, you've seen the
10 0642 phone that slept at the defendant's house every single
11 night.

12 Now Mr. Brill asked Special Agent Hezir some questions
13 this morning about the 0642 number, the fact that it was listed
14 as last used in one extraction and it was listed as the SIM
15 phone number in another. Again, don't let those questions
16 distract you. Here's what you need to keep in mind. Both of
17 the phones that Mr. Brill was asking Special Agent Hezir
18 questions about, both of those phones that were associated with
19 0642, those were recovered when the defendant was arrested,
20 when he was alone, when no one else was around. The 0642 phone
21 was in the defendant's pocket. There is simply no question
22 that he was the person using that phone.

23 You also know that the defendant is central to the
24 fraud because you followed the money. You've seen the flow of
25 funds, from the government loans to bank accounts, and then you

MAV1ILO4

Rebuttal - Ms. Murray

1 saw where the money went and how it led to the defendant. And
2 just remember what Special Agent Lidsky told you about the
3 times when the 0642 phone and the money led to the same place,
4 and importantly, who DOJ-OIG found in those places at those
5 times. On September 22, 2021, the phone and the money were
6 both in the same place, at La Colombe. And you saw the
7 defendant on video surveillance on that day, alone. You saw
8 that he used the 5953 debit card to buy his coffee. And then
9 again, the phone and the money led DOJ-OIG to the same place on
10 October 8, 2021--to St. Albans. That's when the defendant was
11 arrested, as he was getting into the white Mercedes that was
12 leased with fraudulent loan proceeds. And again, one of the
13 phones in his pocket that day, the 0642 phone.

14 There is no doubt. All roads lead to the defendant.

15 And look again at the damning evidence the defendant
16 was arrested with on October 8th. We just talked about the
17 0642 phone, the fraud phone in his pocket. But what else did
18 he have? He had the 5953 debit card, which he had been using
19 for his own personal expenses for months. He had his iPhone
20 12, Dayo's iPhone, and you saw that that iPhone had clear
21 evidence linking him to the fraudulent loan accounts. He had
22 his own key fob for the Purves Street apartment. As Mr. Brill
23 acknowledged, that key fob was assigned after Mr. Recamier
24 first rented the apartment. It gave the defendant 24/7 access
25 to that apartment.

MAV1ILO4

Rebuttal - Ms. Murray

1 And then look at the Mercedes itself. The Mercedes
2 itself and the fact that the defendant was alone in that car
3 when he was arrested proves that it was his car. That car was
4 leased in the name of an identity theft victim for the
5 defendant's use. It was not a gift from Chris Recamier. It
6 was not a generous offer from a friend.

7 Then we have the Samsung. Now Mr. Brill suggested to
8 you that the Samsung may not have been Ilori's. He actually
9 suggested to you that the Samsung was Chris Recamier's. And as
10 you recall, when we looked at the Samsung and we looked at the
11 Motorola that was recovered from the Purves Street apartment,
12 we can see the mirror of the same conversation. Now that is a
13 good trick. I'd like to know how I can have a text
14 conversation with myself using two different phones. It
15 doesn't add up. It doesn't make sense. You know the defendant
16 was using the Samsung. You've seen the messages he's had with
17 Recamier and others on that phone. You've seen a document to
18 tie him to that phone. And you know where the defendant --
19 where the Samsung was found. It was found in the Mercedes, the
20 defendant's Mercedes, the car that he drove, the car that he
21 took home, in the center console--the defendant's own car,
22 which he was alone in at the time of his arrest.

23 And we haven't even talked about the bag of evidence
24 in the trunk of the Mercedes. You saw that that included a
25 debit card in the name of Thomas Hockenberry, which is another

MAV1ILO4

Rebuttal - Ms. Murray

1 one of the identity theft victims--another person whose
2 personal information you saw jotted down in that notebook, an
3 identity theft victim whose name was on the account that funded
4 \$30,000 to a Robinhood account.

5 Ladies and gentlemen, these pieces of evidence
6 collected from the defendant himself and the Mercedes when he
7 was arrested, they prove he's guilty.

8 And you know that the defendant was on pretrial
9 release for similar charges at the time that he committed these
10 offenses, and that he pled guilty to one of those charges in
11 the middle of this loan fraud and money laundering scheme,
12 right around the time he put in the loan application for the
13 big one, the \$4.4 million loan at M&T Bank. It was not some
14 mistake or happenstance, as the defense wants you to believe,
15 that the defendant was caught red-handed with the debit card in
16 Herttua's name and the phone that was central to the fraud,
17 driving a Mercedes taken out in another identity theft victim's
18 name. Simply put, the defendant was not an innocent victim of
19 circumstance.

20 (Continued on next page)

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MAV1ILO4

Rebuttal - Ms. Murray

1 MS. MURRAY: He was not a gullible friend. He knew
2 full well what he was doing. It was carefully planned. It was
3 sophisticated. And every step was arranged to try to keep his
4 name and his face out of it, to stay behind the scenes so he
5 would not get caught.

6 What you've seen is evidence that the defendant took
7 advantage of Chris Recamier and others. He conspired with
8 Chris Recamier and others. He worked with them. This was a
9 joint operation, but he sent Recamier in to banks and other
10 companies so that Recamier's face and not the defendant's face
11 would be associated with those stolen identities. He put
12 Recamier's photo and the photos of the other people that you've
13 seen on the fraudulent IDs, people who looked nothing like the
14 defendant on those fake IDs. That was no accident. The
15 defendant purposely kept his name and face off these accounts
16 for one reason, to avoid getting caught.

17 And he messed up the once. He messed up with William
18 Jamieson, and from that driver's license with the defendant's
19 face and William Jamieson's information, that driver's license
20 that he submitted for an apartment, when he met with somebody
21 as William Jamieson, that alone is all the proof you need to
22 know the defendant was acting with intent. This was not a
23 mistake. He knew exactly what he was doing. He was involved
24 at every stage of the fraud, and he was profiting from the
25 scheme, hiding his money in accounts that were not in his own

MAV1ILO4

Rebuttal - Ms. Murray

1 name, having Chris Recamier rent the Mercedes that he was going
2 to use. Classic money laundering.

3 You heard from Mr. Brill about reasonable doubt.
4 Judge Vyskocil will instruct you about what that term means in
5 a few minutes, and as you listen to Judge Vyskocil's
6 instructions, please just keep this in mind.

7 There is nothing magical or mysterious about the term
8 beyond a reasonable doubt. It is the very same burden of proof
9 that is applied in criminal cases every single day in every
10 single courtroom in this country, and it's been that same
11 burden of proof since this country was founded. And every day
12 juries reach verdicts.

13 Every criminal defendant is entitled to a trial,
14 absolutely, but not every case is a close case. And this one,
15 it's not close at all. The defendant is guilty.

16 THE COURT: All right. Thank you, Ms. Murray.

17 So, ladies and gentlemen, the next step in this
18 process is that I am going to instruct you on the law. Before
19 we do that, though, we'll take our lunch break.

20 Please leave your notebooks here for the last time.
21 Please do not discuss the case while you are on your lunch
22 break.

23 If you can be back here in 45 minutes, that would be
24 terrific. It's now 1:00, so I will see you all at 1:45. I
25 will charge you on the law, and then you'll retire to

MAV1ILO4

Rebuttal - Ms. Murray

1 deliberate. All right?

2 Thank you very much, and have a good lunch.

3 (Continued on next page)

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MAV1ILO4

Rebuttal - Ms. Murray

1 (Jurors not present)

2 THE COURT: All right. Please be seated, everyone.

3 I just want to say on the record, Mr. Brill mentioned
4 earlier the 3500 protective order. I just want to note for the
5 record I believe you're talking about ECF No. 56. That was
6 transmitted to the Court on July 7th by cover letter from the
7 U.S. Attorney's office. And that cover letter is ECF 55 and
8 tells me that it was on consent or with no objection. It's a
9 fairly standard order as I understand things. All right. So,
10 for the record.

11 Anything else, Ms. Murray?

12 MS. MURRAY: No, your Honor. Thank you.

13 THE COURT: Mr. Brill?

14 MR. BRILL: No, your Honor.

15 THE COURT: All right. So have a good lunch,
16 everyone, and I'll see you back shortly before 1:45.

17 (Recess)

18 THE COURT: All right. Please be seated, everyone.

19 Is there anything that we need to discuss before the
20 jurors come out?

21 MS. MURRAY: No, your Honor.

22 MR. BRILL: No, your Honor.

23 THE COURT: All right. Mr. Brill, we can talk about
24 the issue that you raised once we get the jury charged and --
25 okay?

MAV1ILO4

Rebuttal - Ms. Murray

1 MR. BRILL: Yes, your Honor.

2 THE COURT: All right. So, Ms. Dempsey, do you want
3 to bring out our jurors?

4 (Continued on next page)

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MAV1ILO4

Rebuttal - Ms. Murray

1 (Jurors present)

2 THE COURT: Please be seated, everyone.

3 All right. So good afternoon, ladies and gentlemen.
4 We've reached the point in the case where it is my duty at this
5 point to instruct you on the law. This will take a little
6 while, and then you'll retire to deliberate. All right?

7 So it's your duty to accept these instructions of law
8 as I'm about to give them to you and apply them to the facts as
9 you determine them. Over the course of the trial, I've ruled
10 -- I'm sorry. Have we distributed?

11 COURTROOM DEPUTY: Not yet.

12 THE COURT: I'm sorry.

13 THE DEPUTY CLERK: It's okay.

14 THE COURT: We'll give you a copy of these, because
15 it's sometimes easier. People might want to follow along. But
16 I would just suggest to you, it's up to each of you, but you
17 might want to think about just listening to the instructions.
18 You'll have a copy of them that you can take with you, but it's
19 entirely up to you. If you are going to read along, please
20 read along and don't read ahead of where I'm at. Okay?

21 All right. Thank you, everyone.

22 So as I started to say, over the course of the trial
23 I've ruled on what testimony and evidence is relevant and
24 admissible under the law for your consideration. You must take
25 the law as I give it to you. If any of the lawyers has stated

MAV1ILO4

Rebuttal - Ms. Murray

1 a legal principle different from any that I state to you in
2 these instructions, it is my instruction that you must follow.
3 You shouldn't single out any instruction as alone stating the
4 law, but you should consider my instructions as a whole when
5 you retire to deliberate in the jury room. You should not, any
6 of you, be concerned about the wisdom of any rule of law that I
7 state. Regardless of the opinion that you may have as to what
8 the law may be or what it ought to be, it would violate your
9 sworn duty to base a verdict upon any other view of the law
10 than that which I give you.

11 Your final role is to pass upon and decide the fact
12 issues that are in this case. You, the members of the jury,
13 are the sole and exclusive judges of the facts. You pass upon
14 the weight of the evidence. You determine the credibility of
15 the witnesses. You resolve such conflicts as there may be in
16 the testimony. And you draw whatever reasonable inferences you
17 decide to draw from the facts as you have determined them.
18 I'll later discuss with you how to pass upon credibility or
19 believability of witnesses.

20 In determining the facts, you must rely upon your own
21 recollection of the evidence. The evidence before you consists
22 of the answers given by witnesses as they sat here in the
23 witness stand, the testimony they gave as you recall it, and
24 the exhibits that were received in evidence. The stipulations
25 of the parties are also evidence, and so are the exhibits that

MAV1ILO4

Rebuttal - Ms. Murray

1 were received pursuant to those stipulations, including audio
2 recordings, photographs, and physical evidence. You may also
3 consider the exhibits that were admitted as demonstratives.

4 What the lawyers have said to you during opening
5 statements, in closing arguments, in any objections, or in the
6 questions to the witnesses are not evidence. You should bear
7 in mind that a question put to a witness is never evidence. It
8 is only the answer that is evidence. But you may not consider
9 any answer if I directed you to disregard or if I directed that
10 anything be stricken from the record.

11 Nothing that I may have said during this trial or may
12 say during these instructions with respect to a fact issue
13 should be taken in substitution for your own individual
14 recollection. What I say is not evidence. Since you are the
15 sole and exclusive judges of the facts, I do not mean to
16 indicate any opinion as to the facts or what your verdict
17 should be. The rulings I've made during the trial are not any
18 indication of what -- of my views of what your decision should
19 be as to whether or not the guilt of the defendant has been
20 proven beyond a reasonable doubt.

21 I ask you to draw no inference from the fact that upon
22 occasion I interacted with certain witnesses. Anything I said
23 was only intended for clarification or to expedite matters, and
24 certainly was not intended to suggest any opinion on my part as
25 to the verdict you should render or whether any witnesses may

MAV1ILO4

Rebuttal - Ms. Murray

1 have been more credible than any other witnesses. You are
2 expressly to understand that the Court, meaning me, has no
3 opinion as to the verdict you should render in this case.

4 You are to perform your duties of finding of facts
5 without bias or prejudice as to any party. You must have an
6 attitude of complete fairness and impartiality. The case is
7 important to the government for the enforcement of criminal
8 laws is a matter of prime concern to the community. Equally,
9 it is important to the defendant, who is charged with serious
10 crimes.

11 The fact that the prosecution is brought in the name
12 of the United States of America entitles the government to no
13 greater consideration than that accorded to any other party to
14 a litigation. By the same token, it is entitled to no less
15 consideration. All parties, whether the government or an
16 individual, stand as equals at the bar of justice.

17 The defendant has pleaded not guilty to the charges in
18 the superseding indictment. To convict the defendant, the
19 burden is on the prosecution to prove the defendant's guilt of
20 each element of the charge beyond a reasonable doubt. The
21 burden never shifts to the defendant.

22 The law does not require the defendant to call any
23 witnesses or to produce any evidence or to testify at trial.
24 The defendant starts with a clean slate, and is presumed
25 innocent of the charges until such time, if ever, that you as a

MAV1ILO4

Rebuttal - Ms. Murray

1 jury are satisfied that the government has proven that the
2 defendant is guilty of the charge beyond a reasonable doubt.

3 What is reasonable doubt? It is a doubt based upon
4 reason. It is a doubt that a reasonable person has after
5 carefully weighing all the evidence. It's a doubt that would
6 cause a reasonable person to hesitate to act in a matter of
7 importance in his or her own life. Proof beyond a reasonable
8 doubt must, therefore, be proof of a convincing character that
9 a reasonable person would not hesitate to rely upon in making
10 an important decision.

11 A reasonable doubt is not caprice or whim, it's not
12 speculation or suspicion, it is not an excuse to avoid the
13 performance of an unpleasant duty. The law does not require
14 the government to prove guilt beyond all possible doubt. Proof
15 beyond a reasonable doubt is sufficient to convict. If, after
16 fair and impartial consideration of the evidence, you have a
17 reasonable doubt as to the defendant's guilt with respect to
18 the charges in this case, you must find the defendant not
19 guilty. On the other hand, if, after fair and impartial
20 consideration of all the evidence you are satisfied beyond a
21 reasonable doubt of the defendant's guilt with respect to the
22 charges, you should find the defendant guilty.

23 The defendant, Adedayo Ilori, was formally charged
24 with a federal crime by a grand jury in a superseding
25 indictment. As I instructed you at the outset of this case,

MAV1ILO4

Rebuttal - Ms. Murray

1 the superseding indictment is a charge or an accusation. It is
2 not evidence. The defendant is not charged with committing any
3 crime other than the offenses in the superseding indictment.

4 The superseding indictment charges the defendant
5 Adedayo Ilori with six counts. Count 1 of the superseding
6 indictment charges that from at least in or about August 2020
7 through at least in or about October 2021, in the Southern
8 District of New York and elsewhere, the defendant committed or
9 attempted to commit major fraud against the United States.

10 Count 2 of the superseding indictment charges that
11 from in -- from at least in or about August, 2020, through at
12 least in or about October 2021, in the Southern District of New
13 York and elsewhere, the defendant conspired to commit wire and
14 bank fraud.

15 Count 3 of the superseding indictment charges that
16 from at least in or about August of 2020 through at least in or
17 about October of 2021, in the Southern District of New York and
18 elsewhere, the defendant committed wire fraud.

19 Count 4 of the superseding indictment charges that
20 from at least in or about August of 2020 through at least in or
21 about October of 2021, in the Southern District of New York and
22 elsewhere, the defendant committed bank fraud.

23 Count 5 of the superseding indictment charges that
24 from at least in or about August of 2020 through at least in or
25 about October of 2021, in the Southern District of New York and

MAV1ILO4

Rebuttal - Ms. Murray

1 elsewhere, the defendant committed aggravated identity theft.

2 Count 6 of the superseding indictment charges that
3 from at least in or about August 2020 through at least in or
4 about October of 2021, in the Southern District of New York and
5 elsewhere, the defendant conspired to commit money laundering.

6 Count 1 charges the defendant Adedayo Ilori with
7 committing major fraud against the United States.
8 Specifically, Count 1 charges Mr. Ilori with fraudulently
9 obtaining and attempting to obtain more than one million
10 dollars in government guaranteed loans intended to assist small
11 businesses during the COVID-19 pandemic.

12 In order to prove the defendant Adedayo Ilori guilty
13 of committing major fraud against the United States, the
14 government must establish the following four elements beyond a
15 reasonable doubt:

16 First, there was a scheme to defraud the United States
17 or a scheme to obtain money or funds from the United States
18 Government by means of materially false or fraudulent
19 pretences, representations, or promises as charged in the
20 superseding indictment.

21 Second, that the defendant executed or attempted to
22 execute the scheme with the intent to defraud the United States
23 government.

24 Third, that the scheme took place with respect to a
25 loan, guarantee, or other form of federal assistance extended

MAV1ILO4

Rebuttal - Ms. Murray

1 by the United States Government.

2 And, fourth, that the value of that loan, guarantee or
3 other form of federal assistance was at least one million
4 dollars.

5 I will now explain each of these elements in more
6 detail. The first element that the government must prove
7 beyond a reasonable doubt is that there was a scheme to defraud
8 the United States and/or a scheme to obtain money or property
9 from the United States Government through false or fraudulent
10 pretences, representations, or promises.

11 A scheme to defraud is defined as a pattern or a
12 course of conduct concerning a material matter designed to
13 deceive the Federal Government into releasing money or property
14 with the intent to cause the government to suffer a loss.

15 A representation is fraudulent if it was falsely made
16 with the intent to deceive. Deceitful statements of half
17 truths, the concealment of material facts, and the expression
18 of an opinion not honestly entertained may constitute false or
19 fraudulent representations under the statute.

20 The deception need not be premised upon spoken or
21 written words alone. The arrangement of the words or the
22 circumstances in which they are used may convey a false and
23 deceptive appearance. If there is intentional deception, the
24 manner in which it is accomplished does not matter.

25 A fraudulent representation must relate to a material

MAV1ILO4

Rebuttal - Ms. Murray

1 fact or matter. A material fact is one which would reasonably
2 be expected to be of concern to a reasonable and prudent person
3 in relying upon the representation or statement in making a
4 final decision. This means that if you find a particular
5 statement of fact to have been false, you must determine
6 whether that statement was one that a reasonable person might
7 have considered important in making his or her decision. The
8 same principle applies to fraudulent half truths or omissions
9 of material fact.

10 Although it is not necessary for the government to
11 prove an actual loss of funds by the government, the government
12 must prove beyond a reasonable doubt that by executing or
13 attempting to execute the scheme alleged in the superseding
14 indictment, the defendant placed the government at risk of loss
15 and that the government did not knowingly accept such a risk.

16 The second element that the government must prove
17 beyond a reasonable doubt is that the defendant executed or
18 attempted to execute the scheme knowingly, willfully, and with
19 specific intent to defraud the government. Knowingly means to
20 act voluntarily and deliberately, rather than mistakenly or
21 inadvertently. Willfully means to act knowingly and
22 purposefully, with an intent to do something the law forbids.
23 That is to say, with bad purpose either to disobey or to
24 disregard the law. To act with intent to defraud means to act
25 willfully and with the specific intent to deceive for the

MAV1ILO4

Rebuttal - Ms. Murray

1 purpose of causing some financial loss to another.

2 The question of whether a person acted knowingly,
3 willfully, and with an intent to defraud is a question of fact
4 for you to determine, like any other fact question. This
5 question involves one's state of mind.

6 Direct proof of knowledge and fraudulent intent is
7 almost never available. It would be a rare case where it could
8 be shown that a person wrote or stated that as of a given time
9 in the past, he committed an act with fraudulent intent. Such
10 direct proof is not required.

11 The ultimate facts of knowledge and criminal intent,
12 though subjective, may be established by circumstantial
13 evidence based upon a person's outward manifestations, his
14 words, his conduct, his acts, and all the surrounding
15 circumstances disclosed by the evidence and the rational or
16 logical inferences that may be drawn therefrom.

17 Circumstantial evidence, if believed, is of no less
18 value than direct evidence. In either case, the essential
19 elements of the crime charged must be established beyond a
20 reasonable doubt.

21 In order to prove that the defendant attempted to
22 execute the scheme, the government must prove beyond a
23 reasonable doubt that, one, the defendant intended to execute
24 the scheme alleged in the superseding indictment; and, two,
25 that the defendant did some overt act that was a substantial

MAV1ILO4

Rebuttal - Ms. Murray

1 step in an effort to execute the scheme. Merely preparing to
2 commit a crime is not a substantial step. The defendant must
3 go beyond mere preparation, and his act must strongly confirm
4 that he intended to execute the scheme.

5 However, the government does not have to prove that
6 the defendant did everything except the last act necessary to
7 complete the scheme. A substantial step beyond mere
8 preparation is enough.

9 The third element that the government must prove
10 beyond a reasonable doubt is that the scheme took place with
11 respect to a loan, guarantee, or other form of federal
12 assistance, including through an economic stimulus, recovery
13 and rescue plan provided by the Federal Government.

14 The fourth element that the government must prove
15 beyond a reasonable doubt is that the value of the loan,
16 guarantee, or other form of federal assistance was at least one
17 million dollars.

18 Count 2 of the superseding indictment charges Adedayo
19 Ilori with participating in a conspiracy to commit wire fraud
20 and bank fraud. A conspiracy is a kind of criminal
21 partnership, a combination or agreement of two or more persons
22 to join together to accomplish some unlawful purpose.

23 The crime of conspiracy to violate a federal law is an
24 independent offense. It is separate and distinct from the
25 actual violation of any specific federal law which the law

MAV1ILO4

Rebuttal - Ms. Murray

1 refers to as substantive crimes.

2 In order to satisfy its burden of proof with respect
3 to the allegation of conspiracy, the government must prove
4 beyond a reasonable doubt the following two elements:

5 First, that the conspiracy charged in Count 2 of the
6 superseding indictment existed. That is, that there was an
7 agreement or understanding between two or more people to commit
8 wire fraud and/or bank fraud as charged in the superseding
9 indictment;

10 And, second, that the defendant knowingly and
11 willfully became a member of the alleged conspiracy.

12 The first element that you must find is that the
13 conspiracy charged in Count 2 of the superseding indictment
14 existed. There are two parts to the first element of the crime
15 of conspiracy, an agreement, and, second, an illegal goal or
16 goals.

17 The actual commission of the crime that is the object
18 of the conspiracy is not required. In this case, Count 2 of
19 the superseding indictment alleges what is called a
20 multi-object conspiracy, which charges that the objectives of
21 the conspiracy were to commit wire fraud and bank fraud --

22 It should be and/or bank fraud.

23 MS. MURRAY: (Nodding)

24 THE COURT: Okay? It should be and/or bank fraud.

25 So if you have your copies and you want to annotate

MAV1ILO4

Rebuttal - Ms. Murray

1 it, we're on page 23, the last line before "a agreement." It
2 should read "conspiracy or to commit wire fraud and/or bank
3 fraud."

4 And both Ms. Murray and Mr. Brill agree?

5 MS. MURRAY: Yes, your Honor.

6 MR. BRILL: Yes, your Honor.

7 THE COURT: All right. Let's talk about the agreement
8 aspect.

9 A conspiracy is just an agreement. To meet its burden
10 of proof on this element, the government must prove beyond a
11 reasonable doubt that there was an agreement to engage in the
12 criminal object I will describe to you in a moment. The
13 government is not, however, required to prove that the alleged
14 conspirators stated in words or writing what the scheme was,
15 its object, or its purpose, or every precise detail of the
16 scheme, or the means by which its object or purpose was to be
17 accomplished. It is enough if two or more people in some way
18 or manner expressly, impliedly, or tacitly came to a mutual
19 understanding to violate the law.

20 You may find that the existence of the agreement has
21 been established by direct proof. However, since conspiracy is
22 by its very nature characterized by secrecy, you may also infer
23 its existence from the circumstances of this case and the
24 conduct of the parties involved. In the context of a
25 conspiracy charge, actions often speak louder than words.

MAV1ILO4

Rebuttal - Ms. Murray

1 In this regard, you may, in determining whether an
2 agreement existed here, consider the actions and statements of
3 all of those whom you found to or find to be participants as
4 proof that a common design existed on the part of the persons
5 involved in the conspiracy to act together to accomplish an
6 unlawful purpose.

7 The second part of the first element is an illegal
8 goal. The government alleges that the conspiracy charged in
9 Count 2 had the goals of committing wire fraud, and/or
10 committing bank fraud. In order to satisfy its burden the
11 government must prove that the conspiracy involved a plan to
12 commit at least one or both of those separate substantive
13 crimes. The government does not have to prove both of the
14 objects charged beyond a reasonable doubt.

15 In other words, to find the defendant guilty of Count
16 2, you do not need to find that the defendant agreed to
17 accomplish both wire fraud and bank fraud. Rather, an
18 agreement to accomplish either the objective of wire fraud or
19 the objective of bank fraud is sufficient. Thus, if you find
20 that the defendant agreed to commit either wire fraud or bank
21 fraud, the illegal purpose element of conspiracy will be
22 satisfied. You must, however, be unanimous that the government
23 has proven beyond a reasonable doubt at least one of these two
24 alleged objectives of the conspiracy. You must also be
25 unanimous as to which of the two types has been proven.

MAV1ILO4

Rebuttal - Ms. Murray

1 Substantive wire fraud and bank fraud are charged in
2 Counts 3 and 4 respectively, and I'll explain the elements of
3 those substantive offenses to you in a few minutes.

4 If you conclude that the government has proven beyond
5 a reasonable doubt that the conspiracy charged in Count 2
6 existed and that the conspiracy had as its object at least one
7 of the unlawful purposes charged in the superseding indictment,
8 that is, wire fraud or bank fraud, then you must next determine
9 whether the defendant knowingly and willfully participated in
10 the conspiracy with knowledge and in furtherance of one or both
11 of its unlawful purposes.

12 I've already instructed you on what the terms
13 knowingly and willfully mean in my instruction for the second
14 element of Count 1. You should apply that instruction here as
15 well.

16 Again, direct proof of state of mind is not required.
17 The ultimate facts of knowledge and criminal intent are
18 subjective, and they may be established by circumstantial
19 evidence based on someone's outward manifestations, words,
20 conduct, acts, or all the surrounding circumstances disclosed
21 by the evidence and the rational or logical inference that may
22 be drawn therefrom.

23 In the context of a conspiracy, it is not necessary
24 that the defendant be fully informed as to all of the details
25 of the conspiracy or have known the identities of each and

MAV1ILO4

Rebuttal - Ms. Murray

1 every member of the conspiracy or be apprised of all of the
2 co-conspirator's activities in order to justify an inference of
3 knowledge on his part. To have guilty knowledge, the defendant
4 need not have known the full extent of the conspiracy or all of
5 its activities or all of its participants, nor is it necessary
6 that the defendant receive any monetary benefit from
7 participating in a conspiracy or that he have a financial stake
8 in the outcome, so long as he in fact participated in the
9 conspiracy in the manner I have explained.

10 However, you are instructed that while proof of a
11 financial interest in the outcome of a scheme is not essential,
12 if you find that the defendant had such an interest, that is a
13 factor which you may properly consider in determining whether
14 or not the defendant was a member of the conspiracy charged in
15 the superseding indictment.

16 The duration and extent of defendant's participation
17 has no bearing on the issue of the defendant's guilt. A
18 conspirator's liability is not measured by the extent or
19 duration of his or her participation. Indeed, each member of
20 the conspiracy may perform separate and distinct acts, and may
21 perform them at different times. Some conspirators may play
22 major roles, while others may play minor roles in the scheme.
23 An equal role is not what the law requires. In fact, even a
24 single act may be sufficient to draw the inference -- I'm
25 sorry, to draw the defendant within the ambit of the

MAV1ILO4

Rebuttal - Ms. Murray

1 conspiracy.

2 I want to caution, however, that a defendant's mere
3 presence at the scene of the alleged crime does not by itself
4 make him a member of the conspiracy. Similarly, mere
5 association with one or more members of the conspiracy does not
6 automatically make the defendant a member.

7 A person may know or be friendly with a criminal
8 without being a criminal himself. Mere similarity of conduct
9 or the fact that they may have assembled together and discussed
10 common aims and interests does not necessarily establish
11 membership in the conspiracy.

12 I also want to caution you that mere knowledge or
13 acquaintance -- or acquiescence, I'm sorry, without
14 participation in the unlawful plan is not sufficient.
15 Moreover, the fact that the acts of the defendant without
16 knowledge merely happened to further the purposes or objectives
17 of the conspiracy does not make the defendant a member. More
18 is required under the law. What is necessary is that the
19 defendant must have participated with knowledge of at least
20 some of the purposes or objectives of the conspiracy and with
21 the intention of aiding in the accomplishment of those unlawful
22 ends.

23 In sum, the defendant, with an understanding of the
24 unlawful character of the conspiracy, must have intentionally
25 engaged, advised, or assisted in it with the purpose of

MAV1ILO4

Rebuttal - Ms. Murray

1 furthering an illegal undertaking. The defendant thereby
2 becomes a knowing and willing participant in the unlawful
3 agreement, that is to say, a conspirator.

4 If you find a conspiracy existed and that the
5 defendant was a member, you may take into account against the
6 defendant any acts or statements made during and in furtherance
7 of the conspiracy by any of his co-conspirators, even though
8 such acts or statements were not made in the presence of the
9 defendant or even if they were made without his knowledge.

10 Count 3 charges the defendant Adedayo Ilori with
11 committing wire fraud. In order to prove the defendant Adedayo
12 Ilori guilty of committing wire fraud, the government must
13 establish the following three elements beyond a reasonable
14 doubt. First, the existence of either, A, a scheme or artifice
15 to defraud; or, B, a scheme or artifice to obtain money or
16 property by means of materially false and fraudulent pretences,
17 representations or promises.

18 Second, that the defendant participated in the scheme
19 or artifice to defraud with knowledge of its fraudulent nature
20 and with specific intent to defraud.

21 Third, in the execution of the scheme, the defendant
22 used or caused to be used interstate wires.

23 As to the first element, a scheme or artifice is
24 simply a plan for the accomplishment of an object. Fraud is a
25 general term. It includes all the possible means by which a

MAV1ILO4

Rebuttal - Ms. Murray

1 person seeks to gain some unfair advantage over another person
2 by false representation, false suggestion, false pretences, or
3 concealment of the truth. Thus, a scheme to defraud is merely
4 a plan to deprive another of money or property by trick,
5 deceit, deception, or swindle.

6 Apart from proving a scheme or artifice to defraud, as
7 I've just explained it to you, the wire fraud statute
8 alternatively provides that it can be satisfied by the
9 existence of a scheme or artifice to obtain money or property
10 by means of false or fraudulent pretences, representations, or
11 promises.

12 A pretense, representation, statement, or document is
13 fraudulent if it was made falsely and with intent to deceive.
14 A reputation -- a representation, statement, claim or document
15 may also be fraudulent if it contains half truths or if it
16 conceals materially -- material facts in a manner that makes
17 what is said or represented deliberately misleading or
18 deceptive.

19 The deception need not be premised on spoken or
20 written words alone. The arrangement of words or the
21 circumstances in which they are used may convey the false and
22 deceptive appearance. If there is deception, the manner in
23 which it is accomplished does not matter. This element does
24 not require that any particular person actually relied on or
25 actually suffered damages as a consequence of any fraudulent

MAV1ILO4

Rebuttal - Ms. Murray

1 representation or concealment of facts. Nor need you find that
2 the defendant profited from the fraud. It is enough that a
3 false statement or statement omitting material facts that made
4 what was said deliberately misleading, was made as part of a
5 fraudulent scheme in the expectation that it would be relied
6 on.

7 You must concentrate on whether there was such a
8 scheme, not on the consequences of the scheme. Of course,
9 proof concerning the accomplishment of the goals of the scheme
10 may be the most persuasive evidence of the existence of the
11 scheme itself.

12 In addition, the false or fraudulent representation or
13 failure to disclose must relate to a material fact or matter.
14 A material fact is one which would reasonably be expected to be
15 of concern to a reasonable and prudent person in relying upon
16 the representation or statement in making a decision. That
17 means that if you find a particular statement or representation
18 false, you must determine whether that statement or
19 representation was one that a reasonable person might have
20 considered important in making his or her decision.

21 The same principle applies to fraudulent half truths
22 or omissions. That is, failures to disclose facts. A scheme
23 to defraud need not be shown by direct evidence, but may be
24 established by all the circumstances and facts in the case.

25 Second, the government must establish beyond a

MAV1ILO4

Rebuttal - Ms. Murray

1 reasonable doubt that the defendant devised or participated in
2 the fraudulent scheme knowingly, willfully, and with the
3 specific intent to defraud. The words "devised" and
4 "participated" are words that you're familiar with, and
5 therefore I don't need to spend much time defining them for
6 you.

7 To do devise a scheme to defraud is to concoct or to
8 plan it. To "participate" in a scheme to defraud means to
9 associate one's self with it with a view and an intent towards
10 making it succeed. While a mere onlooker is not a participant
11 in a scheme to defraud, it is not necessary that a participant
12 be someone who personally and visibly executes the scheme to
13 defraud.

14 The government must prove that the defendant knowingly
15 and willfully participated in the charged scheme with the
16 intent to defraud. I've already defined those terms for you,
17 and those definitions apply here as well.

18 In order to satisfy this element, it is not necessary
19 for the government to establish that the defendant originated
20 the scheme to defraud. It is sufficient if you find that a
21 scheme to defraud existed even if originated by another, and
22 that the defendant, while aware of the scheme's existence,
23 knowingly participated in it.

24 It is also not required that the defendant participate
25 in or have knowledge of all of the operations of the scheme.

MAV1ILO4

Rebuttal - Ms. Murray

1 The guilt of the defendant is not governed by the extent of his
2 participation. It is also not necessary that the defendant
3 have participated in the alleged scheme from the beginning. A
4 person who comes in at a later point, with knowledge of the
5 scheme's general operation, although not necessarily all of its
6 details, and intentionally acts in a way to further the
7 unlawful goals, becomes a member of the scheme and is legally
8 responsible for all that may have been done in the past in
9 furtherance of the criminal objective, and all that is done
10 thereafter.

11 Even if the defendant participated in the scheme to a
12 lesser degree than others, he is nevertheless equally guilty so
13 long as that defendant became a member of the scheme to defraud
14 with knowledge of its general purpose and scope.

15 The third and final element that the government must
16 establish beyond a reasonable doubt as to Count 3 is that
17 interstate wires, for example, phone calls, email
18 communications, or text messages were used in furtherance of
19 the scheme to defraud. The wire communication must be an
20 interstate wire. That is, it must pass between two or more
21 states.

22 The use of the wire need not itself be a fraudulent
23 representation. It must, however, further or assist in some
24 way in carrying out the scheme to defraud.

25 It is not necessary for the defendant to be directly

MAV1ILO4

Rebuttal - Ms. Murray

1 or personally involved in any wire communication, as long as
2 the communication is reasonably foreseeable in the execution of
3 the alleged scheme to defraud in which the defendant is accused
4 of participating. In this regard, it would be sufficient to
5 establish this element of the crime if the evidence justifies a
6 finding that the defendant caused the wires to be used by
7 others. And this does not mean that the defendant himself must
8 have specifically authorized others to execute a wire
9 communication.

10 When one does an act with knowledge that the use of
11 the wires will follow in the ordinary course of business, or
12 where such use of wires can reasonably be foreseen, even though
13 not actually intended, then he causes the wires to be used.
14 Incidentally, this wire communication requirement is satisfied
15 even if the wire communication was done by a person with no
16 knowledge of the fraudulent scheme, including a victim of the
17 alleged fraud.

18 Let me also add the following: Only the wire
19 communications must be reasonably foreseeable, not the
20 interstate component. Thus, if you find that the wire
21 communication was reasonably foreseeable, and the interstate
22 wire communications actually took place, then this element is
23 satisfied even if it was not foreseeable that the wire
24 communication would cross state lines.

25 Count 4 charges the defendant Adedayo Ilori -- I'm

MAV1ILO4

Rebuttal - Ms. Murray

1 sorry, Adedayo Ilori with committing bank fraud. In order to
2 prove the defendant Adedayo Ilori guilty of committing bank
3 fraud, the government must establish the following three
4 elements beyond a reasonable doubt.

5 First, the existence of either, A, a scheme or
6 artifice to defraud a bank; or, B, a scheme or artifice to
7 obtain money owned by or under the custody or control of a bank
8 by means of material, false, or fraudulent pretences,
9 representations, or promises.

10 Second, that the defendant knowingly and willfully
11 engaged in the scheme or the artifice. That is, that he acted
12 with knowledge of the fraudulent nature of the scheme and with
13 the specific intent to defraud the bank or to obtain by
14 deceiving the bank money owned or control by that bank.

15 And, third, that the bank was involved -- that the
16 bank involved was federally insured.

17 The first element requires that the government prove
18 that the defendant either, A, executed or attempted to execute
19 a scheme or artifice to defraud a bank, or, B, executed or
20 attempted to execute a scheme or artifice to obtain money owned
21 by or under the custody and control of a bank by means of
22 material, false, or fraudulent pretences, representations or
23 promises.

24 I've already defined these terms to you in the context
25 of Count 1 and Count 3, and those definitions apply here, too.

MAV1ILO4

Rebuttal - Ms. Murray

1 Here, the scheme or artifice must be directed toward a bank.

2 The second element that the government must prove
3 beyond a reasonable doubt is that the defendant participated in
4 the scheme knowingly, willfully, and with the specific intent
5 to defraud. I've already defined those terms for you, and
6 those definitions apply here as well.

7 The third element of the crime of bank fraud is that
8 the deposits of at least one of the banks that was the target
9 of the scheme were federally insured. I instruct you, as a
10 matter of law, that banks insured by the Federal Deposit
11 Insurance Corporation, or FDIC, are federally insured.

12 It is not necessary for the government to prove that
13 the defendant knew the identity of the particular financial
14 institution, or that the defendant knew that the deposits of
15 the institution were federally insured.

16 All right. We're turning now to Count 5, and if
17 you're following along with me, I see there's a typo on this
18 one as well. I apologize for that. We're on page 44.

19 So Count 5, not Count 3, charges the defendant Adedayo
20 Ilori with aggravated identity theft. To sustain its burden of
21 proof, the government must prove each of the following three
22 elements beyond a reasonable doubt:

23 First, that the defendant knowingly used, transferred,
24 or possessed a means of identification of another.

25 Second, that the defendant used the means of

MAV1ILO4

Rebuttal - Ms. Murray

1 identification during and in relation to Count 2, the
2 conspiracy to commit wire fraud.

3 And this also should be and/or bank fraud.

4 Ms. Murray.

5 MS. MURRAY: Yes, your Honor. I agree that should be
6 wire and/or bank fraud.

7 THE COURT: Mr. Brill?

8 MR. BRILL: Just one moment, Your Honor.

9 THE COURT: On page 44.

10 MR. BRILL: Yes. I'm looking at the indictment.

11 THE COURT: Ah.

12 MS. MURRAY: Your Honor, on this point, per the
13 indictment, the aggravated identity theft relates to Counts 1
14 through 4.

15 MR. BRILL: I agree.

16 THE COURT: So it should be wire and/or bank fraud,
17 right?

18 MS. MURRAY: Yes.

19 MR. BRILL: Yes, your Honor.

20 THE COURT: All right.

21 So again, ladies and gentlemen, my apologies.

22 So the second element on this aggravated identity
23 theft is that the defendant used the means of identification
24 during and in relation to Count 2 through --

25 MS. MURRAY: Counts 1 through 4, Your Honor.

MAV1ILO4

Rebuttal - Ms. Murray

1 THE COURT: So this should read 1 through 4.

2 MS. MURRAY: Correct.

3 (Continued on next page)

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MAV1ILO6

Charge

1 THE COURT: Which we've already talked about up to
2 this point.

3 All right. We're on Count Five now.

4 The third element is that the defendant acted without
5 lawful authority; alternatively, that the defendant aided and
6 abetted others to do the same.

7 The first element which the government must prove is
8 that the defendant knowingly used, transferred, or possessed a
9 means of identification of another person. The term "means of
10 identification" means any name or number that may be used alone
11 or in conjunction with any other information to identify a
12 specific individual, including any name, signature, Social
13 Security number, date of birth, official state or
14 government-issued driver's license or identification number,
15 alien registration number, government passport number, or
16 employer or taxpayer identification number. In addition, the
17 government must prove both that the means of identification was
18 that of an actual person, living or deceased, and that the
19 defendant knew that the means of identification was that of
20 another person.

21 To act "knowingly" means to act voluntarily and
22 intentionally and not by mistake or accident. I instructed you
23 earlier on the manner of proof you may consider when making a
24 decision about the defendant's state of mind. Those same
25 instructions apply to your decision here in determining whether

MAV1ILO6

Charge

1 the defendant acted knowingly, with respect to his use,
2 transfer, or possession, if any, of a means of identification
3 of another person.

4 As you may have noticed, the charge of aggravated
5 identity theft requires proof of guilt on at least one of
6 Counts One, Two, Three, and Four. If you find the defendant
7 not guilty on all four of those counts, then you must find the
8 defendant not guilty on this Count Five. All this is relevant
9 because the second element which the government must prove is
10 that the defendant used, transferred, or possessed the means of
11 identification during and in relation to at least one of the
12 offenses charged in Counts One, Two, Three, and Four. The
13 phrase "during and in relation to" means that the government
14 must prove that the use, transfer, or possession of the means
15 of identification facilitated or had the potential to
16 facilitate the offense in question.

17 The third element which the government must prove is
18 that the defendant acted without lawful authority. "Lawful
19 authority" means authorization recognized by statute or
20 regulation. Thus, "without lawful authority" means without
21 authorization recognized by statute or regulation. To prove
22 the "without lawful authority" element, the government need not
23 prove that the means of identification were stolen. However,
24 proof that the means of identification were stolen would
25 certainly satisfy the "without lawful authority" element.

MAV1ILO6

Charge

1 "Without lawful authority" includes situations in
2 which the defendant comes into lawful possession of identifying
3 information and had the lawful authority to use that
4 information for a lawful purpose, but used the information for
5 an unlawful purpose. The term also includes situations where
6 the person whose identity was used in furtherance of a crime
7 consented to or gave permission for that use.

8 Count Six. Count Six charges the defendant, Adedayo
9 Ilori, with conspiracy to commit money laundering.

10 I've already instructed you on the elements of a
11 conspiracy charge generally, and these instructions apply to
12 Count Six, which charges a money laundering conspiracy. The
13 elements of a money laundering conspiracy are:

14 First, that two or more persons entered into an
15 unlawful agreement to violate specified laws of the United
16 States prohibiting money laundering; and

17 Second, that the defendant knowingly and wilfully
18 entered into the agreement.

19 In other words, the elements of the conspiracy charged
20 in Count Six are the same elements the government is required
21 to prove with respect to the conspiracy alleged in Count
22 Two--namely, the existence of an agreement to violate the law
23 and knowing and willful entry of the defendant into that
24 agreement.

25 Count Six charges the defendant with participating in

MAV1ILO6

Charge

1 a conspiracy whose object was to engage in financial
2 transactions involving the proceeds of wire and/or bank fraud
3 in order to conceal or disguise the nature, location, source,
4 ownership, or control of those criminal proceeds. You do not
5 need to find that the defendant actually committed this crime
6 of concealment, money laundering. You must only find that he
7 agreed with others to commit it.

8 Concealment money laundering has four elements:

9 First, that the defendant conducted a financial
10 transaction.

11 The term "conducts" includes the action of
12 initiating, concluding, or participating in initiating or
13 concluding a transaction.

14 A "transaction" includes a purchase, sale, loan,
15 pledge, gift, transfer, delivery, or other disposition of
16 property.

17 The term "financial transaction" means a transaction
18 involving a financial institution that is engaged in, or the
19 activities of which affect, interstate or foreign commerce in
20 any way or degree, or transaction that in any way or degree
21 affects interstate or foreign commerce and involves the
22 movement of funds by wire or other means, or involves one or
23 more monetary instruments. A "transaction involving a
24 financial institution" includes a deposit, withdrawal, transfer
25 between accounts, exchange of currency, loan, extension of

MAV1ILO6

Charge

1 credit, purchase, or sale of any stock, bond, certificate of
2 deposit, or other monetary instrument, use of a safe deposit
3 box, or any other payment, transfer, or delivery by, through,
4 or to a financial institution by whatever means.

5 Interstate commerce includes any transmission,
6 transfer, or transportation of goods or services, both tangible
7 or intangible, communications, and/or persons, between persons,
8 places, or entities located in one state (including the
9 District of Columbia), and other persons, places or entities
10 located in another state, regardless of whether done for a
11 business purpose or otherwise. Foreign commerce means the same
12 thing except it is between a person, place, or entity in the
13 United States and a person, place, or entity in a foreign
14 country.

15 In determining whether someone is engaged in, or
16 whether his activities affect interstate or foreign commerce,
17 the involvement in interstate or foreign commerce can be
18 minimal. Any involvement at all will satisfy this element.

19 You do not have to decide whether the effect on
20 interstate or foreign commerce was harmful or beneficial to a
21 particular business or to commerce in general. The government
22 satisfies its burden of proving an effect on interstate or
23 foreign commerce if it proves beyond a reasonable doubt any
24 effect, whether it was harmful or not.

25 In addition, it is not necessary for the government to

MAV1ILO6

Charge

1 show that the defendant actually intended or anticipated an
2 effect on interstate or foreign commerce by his actions or that
3 commerce was actually affected. All that is necessary is that
4 the natural and probable consequence of the acts the defendant
5 agreed to take would affect interstate or foreign commerce.

6 The second element of concealment money laundering is
7 that the financial transactions must involve the proceeds of
8 specified unlawful activity. Here, the, "specified unlawful
9 activity" is wire fraud and bank fraud, in violation of
10 Title 18, United States Code, Sections 1343 and 1344.

11 I instruct you as a matter of law that the term
12 "specified unlawful activity" includes wire and bank fraud.
13 However, it is for you to determine whether the funds were the
14 proceeds of that unlawful activity.

15 Count Three charges wire fraud and Count Four charges
16 bank fraud, and I've instructed you on the elements for those
17 offenses in my earlier instructions.

18 The term "proceeds" means any property derived from or
19 obtained or retained, directly or indirectly, through some form
20 of unlawful activity, including the gross receipts of such
21 activity. Proceeds can be any kind of property, not just
22 money.

23 The third element of concealment money laundering is
24 that the defendant knew that the financial transactions at
25 issue involved the proceeds of some form, though not

MAV1ILO6

Charge

1 necessarily which form, of unlawful activity. The defendant
2 must have known that the property involved in the transactions
3 represented proceeds from some form, though not necessarily
4 which form, of activity that constitutes a felony under state,
5 federal, or foreign law. Thus, to satisfy this element, the
6 government does not have to prove that the defendant
7 specifically knew that the property involved in the
8 transactions represented the proceeds of wire fraud, bank
9 fraud, or any other specific offense, or that the defendant
10 personally participated in the wire fraud and bank fraud
11 schemes. The government only has to prove that the defendant
12 knew that the property involved in the transactions represented
13 the proceeds of some illegal activity that was a felony. I
14 instruct you as a matter of law that wire fraud and bank fraud
15 are felonies under federal law.

16 The fourth and final element of concealment money
17 laundering concerns the knowledge and intent of the
18 transaction.

19 Specifically, the government must prove beyond a
20 reasonable doubt that the defendant conducted financial
21 transactions with knowledge and intent that the transactions
22 were designed in whole or in part to conceal or disguise the
23 nature, location, source, ownership, or control of the proceeds
24 of the specified unlawful activity.

25 As I previously instructed, to act knowingly means to

MAV1ILO6

Charge

1 act purposefully and deliberately, and not because of mistake
2 or accident, mere negligence, or other innocent reason. That
3 is, the acts must be the product of the defendant's conscious
4 objective. If you find that the evidence establishes beyond a
5 reasonable doubt that the defendant knew the purpose of the
6 particular transaction in issue and the transaction was either
7 designed to conceal or disguise the true origin of the property
8 in question, then this element is satisfied. Intent to
9 disguise or conceal need not be the sole motivating factor.
10 However, if you find that the defendant knew of the transaction
11 but did not know that it was either designed to conceal or
12 disguise the true origin of the property in question, but
13 instead thought that the transaction was intended to further an
14 innocent transaction, you must find that this element has not
15 been satisfied and find the defendant not guilty. Again, as I
16 instructed you earlier, proof of knowledge and intent of the
17 purpose of the financial transaction may be established by
18 circumstantial evidence or reasonable inference from evidence
19 of the defendant's words, actions, or other acts of outward
20 manifestation.

21 For the fourth element to be satisfied, the defendant
22 need not know which specified unlawful activity he was agreeing
23 to help conceal. He need only know that a purpose of the
24 financial transaction was concealing the nature, location,
25 source, ownership, or control of the funds.

MAV1ILO6

Charge

1 Now in addition to charging the defendant with the
2 substantive counts of major fraud against the United States,
3 wire fraud, bank fraud, and aggravated identity theft, all four
4 of these counts also charge the defendant with what is called
5 aiding and abetting.

6 Aiding and abetting a crime is one manner of
7 committing that crime. The defendant can be convicted of
8 committing a crime if he helps someone else to commit the
9 crime. For example, if the government proves beyond a
10 reasonable doubt that the defendant committed the aggravated
11 identity theft alleged in, just as an example, Count Five, then
12 you need not consider aiding and abetting with respect to that
13 count. If, however, you find that the government did not prove
14 beyond a reasonable doubt that the defendant engaged in
15 aggravated identity theft, to continue using Count Five as an
16 example, you should consider whether the government has
17 nonetheless proved beyond a reasonable doubt that the defendant
18 aided and abetted someone else in the commission of aggravated
19 identity theft as alleged in that count.

20 The concept of aiding and abetting is alleged in all
21 four substantive counts; that is, Counts One, Three, Four, and
22 Five. Counts Two and Six are the conspiracy counts. And you
23 will see this in the verdict sheet that we'll be sending back
24 with you into the jury room when you deliberate.

25 Under the federal aiding and abetting statute, whoever

MAV1ILO6

Charge

1 aids, abets, counsels, commands, induces, or procures the
2 commission of an offense is punishable as a principal. A
3 person who aids and abets another to commit a substantive crime
4 is just as guilty of that crime as if he had personally
5 committed it. You may thus find the defendant guilty if you
6 find beyond a reasonable doubt that the government has proven
7 that someone committed the substantive offense and that the
8 defendant helped or assisted that person in the commission of
9 the offense.

10 The first requirement of aiding and abetting liability
11 is that somebody else has committed the crime at issue. The
12 defendant cannot be convicted of aiding and abetting if nobody
13 committed the underlying crime. But if you do find that the
14 underlying crime at issue was committed by someone other than
15 the defendant, you should consider whether the defendant aided
16 and abetted the person who actually committed the crime.

17 To aid and abet another to commit a crime, the
18 defendant must have wilfully and knowingly associated himself
19 in some way with the crime and he must have willingly and
20 knowingly sought by some act to help make the crime succeed.
21 Participation in a crime is willful if action is taken
22 voluntarily and intentionally.

23 The mere presence of the defendant in a place where a
24 crime is being committed, even coupled with knowledge that a
25 crime is being committed, is not enough to make him an aider

MAV1ILO6

Charge

1 and abettor. The defendant's acquiescence in the criminal
2 conduct of others, even with guilty knowledge, is not enough to
3 establish aiding and abetting. An aider and abettor must have
4 his own affirmative interest in the criminal venture.

5 To determine whether the defendant aided and abetted
6 the commission of the crime, ask yourself these questions:

7 Did someone other than the defendant commit the crime
8 at issue? If no, please go on to the next count.

9 Did the defendant participate in the crime charged as
10 something that he wished to bring about?

11 Did he associate himself with the attempt to commit
12 the crime by other people knowingly and wilfully?

13 Did he seek, by his actions, to make the criminal
14 venture succeed?

15 If so, the defendant is an aider and abettor and
16 therefore he is guilty of the offense under consideration. If
17 not, then he is not an aider and abettor and he is not guilty
18 of the offense under consideration.

19 As I've explained, all six counts alleged in the
20 superseding indictment require the government to prove that the
21 defendant acted knowingly. In determining whether the
22 defendant acted knowingly, you may consider whether the
23 defendant deliberately closed his eyes to what otherwise would
24 have been obvious.

25 I would like to point out that the necessary knowledge

MAV1ILO6

Charge

1 on the part of the defendant with respect to any particular
2 charge cannot be established by showing that the defendant was
3 careless, negligent, or foolish. However, one may not wilfully
4 and intentionally remain ignorant of a fact material and
5 important to his conduct in order to escape the consequences of
6 criminal law. The law calls this conscious avoidance or
7 willful blindness. In other words, the government can prove
8 either that the defendant actually knew the goal of a given
9 crime or he consciously avoided knowledge of that goal.

10 Thus, if you find beyond a reasonable doubt that the
11 defendant was aware that there was a high probability a crime
12 was being committed but that the defendant deliberately and
13 consciously avoided confirming this fact, such as by purposely
14 closing his or her eyes to it or intentionally failing to
15 investigate it, then you may treat this deliberate avoidance of
16 positive knowledge as the equivalent of knowledge, unless you
17 find that the defendant actually believed that he was not
18 engaged in such unlawful behavior. In other words, the
19 defendant cannot avoid criminal responsibility for his own
20 conduct by deliberately closing his eyes or remaining
21 purposefully ignorant of facts which would confirm to him that
22 he was engaged in unlawful conduct. Put another way, a person
23 cannot look at all sorts of things that make it obvious to any
24 reasonable person what is going on and then claim in court that
25 because he deliberately avoided learning what was explicitly

MAV1ILO6

Charge

1 obvious, he did not know the incriminating fact.

2 You must also keep in mind that there is an important
3 difference between knowingly and intentionally taking part in
4 the crime, which I just explained to you, and knowing the
5 specific goal of the crime on the other hand. You may consider
6 conscious avoidance in deciding whether the defendant knew the
7 objective of the conspiracy--that is, whether he reasonably
8 believed that there was a high probability that a goal of the
9 conspiracy was to commit the crime charged as objects of the
10 conspiracy and took deliberate and conscious action to avoid
11 confirming that fact but participated in the conspiracy anyway.
12 But conscious avoidance cannot be used as a substitute for
13 finding that the defendant knowingly and intentionally joined
14 the conspiracy in the first place. It is logically impossible
15 for the defendant to intend and agree to join a conspiracy if
16 he or she does not actually know it exists. However, if you
17 find beyond a reasonable doubt that the defendant knowingly
18 chose to participate in such a joint undertaking, you may
19 consider whether the defendant took deliberate and conscious
20 action to avoid confirming otherwise obvious facts about the
21 purpose of that undertaking.

22 In sum, if you find that the defendant believed there
23 was a high probability that a fact was so and that the
24 defendant took deliberate and conscious action to avoid
25 learning the truth of that fact, you may find that the

MAV1ILO6

Charge

1 defendant acted knowingly with respect to that fact. However,
2 if you find that the defendant actually believed the fact was
3 not so, then you may not find that he acted knowingly with
4 respect to that fact.

5 With respect to each count in the superseding
6 indictment, in addition to proving the essential elements of
7 that charge, the government must also prove that at least one
8 act in furtherance of the charge occurred in the Southern
9 District of New York. This is called establishing venue.

10 The Southern District of New York includes all of
11 Manhattan and the Bronx, as well as Westchester, Rockland,
12 Putnam, Dutchess, Orange, and Sullivan counties.

13 The government does not have to prove that a completed
14 crime was committed within the Southern District of New York or
15 that the defendant was ever in the Southern District of New
16 York. It is sufficient to satisfy the venue requirement if any
17 act in furtherance of the crime charged occurred in this
18 district. The act itself may not be a criminal act, and the
19 act need not have been taken by the defendant, so long as the
20 act was part of the crime that you find the defendant
21 committed.

22 Unlike the elements of the offenses, which must be
23 proven beyond a reasonable doubt, the government is only
24 required to prove venue by a preponderance of the evidence. A
25 preponderance of the evidence means that it is more probable

MAV1ILO6

Charge

1 than not that some act in furtherance of the crime you are
2 considering occurred in the district.

3 The superseding indictment charges that the defendant
4 committed the offenses charged in Counts One through Six of the
5 superseding indictment while he was released on bail. That
6 would be in violation of Section 3147 of Title 18 United States
7 Code.

8 Therefore, if you find the defendant guilty of any of
9 Counts One through Six, you must make one additional finding:
10 whether the government has proven beyond a reasonable doubt
11 that the defendant committed those offenses while he was
12 released on bail. There's a place on the verdict form you'll
13 receive where you can record your findings on this question for
14 each count.

15 It is unimportant whether a victim might have
16 discovered the charged fraud schemes had the victim probed
17 further. If you find that a scheme or artifice to defraud
18 existed, it is irrelevant whether you believe that a victim was
19 careless, gullible, or even negligent.

20 Negligence, carelessness, or gullibility on the part
21 of the victims is no defense to a charge of fraud.

22 The superseding indictment alleges that the defendant,
23 Adedayo Ilori, engaged in the charged offenses from at least in
24 or about August 2020 through at least in or about October of
25 2021. It is not essential that the government prove that the

MAV1ILO6

Charge

1 defendant committed the charged offenses during these exact
2 time frames. The law only requires a substantial similarity
3 between the dates alleged in the superseding indictment and the
4 date or dates established by the evidence.

5 In deciding whether or not the government has met its
6 burden of proof, you may consider both direct and
7 circumstantial evidence.

8 Direct evidence is evidence that proves a disputed
9 fact directly. For example, when a witness testifies to what
10 he or she saw, heard, or observed, that is called direct
11 evidence.

12 Circumstantial evidence is evidence that tends to
13 prove a disputed fact by proof of other facts. To give just a
14 simple example, suppose that when you came into the courthouse
15 today, the sun was shining and it was a nice day. But the
16 courtroom blinds were drawn and you could not see outside.
17 Then later, as you were sitting here, someone walked in with a
18 dripping wet umbrella. And soon after, someone else walked in
19 with a dripping wet raincoat. Now on our assumed facts, you
20 cannot look outside of the courtroom and you cannot see whether
21 or not it is raining, so you have no direct evidence of the
22 fact, but on the combination of the facts about the umbrella
23 and the raincoat, it would be reasonable for you to infer that
24 it had begun to rain.

25 That's all there is to circumstantial evidence. Using

MAV1ILO6

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1 your reason, experience, and common sense, you infer from
2 established facts the existence or nonexistence of some other
3 fact.

4 The law makes no distinction between direct and
5 circumstantial evidence. Circumstantial evidence is of no less
6 value than direct evidence, and you may consider either or both
7 and may give them such weight as you conclude is warranted.

8 Now I just used the term "inference." I said that you
9 can infer, on the basis of your reason, experience, and common
10 sense, from one or more established facts, the existence of
11 some other fact.

12 An inference is not a suspicion or a guess. It is a
13 reasoned, logical decision to conclude that a disputed fact
14 exists on the basis of another fact that you know exists.

15 There are times when different inferences may be drawn
16 from facts, whether proved by direct or circumstantial
17 evidence. The government asks you to draw one set of
18 inferences, while the defense asks you to draw another. It is
19 for you and you alone to decide what inferences you will draw.

20 You've heard reference in the arguments of defense
21 counsel in this case to the fact that certain investigative
22 techniques were or were not used by law enforcement
23 authorities. There is no legal requirement that law
24 enforcement agents investigate crimes in a particular way or
25 that the government prove its case through any particular

MAV1ILO6

Charge

1 means. While you are to carefully consider the evidence
2 presented, you need not speculate as to why certain techniques
3 were used or why others were not used. The government is not
4 on trial, and law enforcement techniques are not your concern.
5 Your concern is to determine whether or not, based on the
6 evidence or the lack of evidence, the guilt of the defendant
7 has been proven beyond a reasonable doubt.

8 You've heard testimony about evidence seized in
9 connection with certain searches or seizures conducted by law
10 enforcement officers, and in particular, of email and other
11 electronic evidence obtained pursuant to court-approved search
12 warrants. Evidence obtained from these searches and seizures
13 was properly admitted in this case and may be properly
14 considered by you. Such searches and seizures were entirely
15 appropriate law enforcement actions. Whether you approve or
16 disapprove of how evidence was obtained should not enter into
17 your deliberations, because I instruct you that the
18 government's use of the evidence is entirely lawful.

19 You must, therefore, regardless of your personal
20 opinions, give this evidence full consideration along with all
21 the other evidence in the case in determining whether the
22 government has proven the defendant's guilt beyond a reasonable
23 doubt.

24 You've heard evidence in the form of stipulations of
25 testimony. A stipulation of testimony is an agreement among

MAV1ILO6

Charge

1 the parties that, if called as a witness, the person would have
2 given certain testimony. You should accept as true the fact
3 that the witness would have given that testimony. It is for
4 you, however, to determine the effect to be given to that
5 testimony.

6 You've also heard evidence in the form of stipulations
7 of fact. A stipulation of fact is an agreement among the
8 parties that a certain fact is true. You should regard such
9 agreed facts as true. It is for you, however, to determine the
10 effect to be given to any stipulated fact.

11 It must be clear to you by now that the government and
12 the defense are asking you to draw very different conclusions
13 about various factual issues in this case. Deciding these
14 issues will involve making judgments about the testimony of the
15 witnesses you have listened to and observed. In making these
16 judgments, you should carefully scrutinize all of the testimony
17 of each witness, the circumstance under which each witness
18 testified, and any other matter in evidence that might help you
19 decide the truth and the importance of each witness's
20 testimony.

21 Your decision whether or not to believe a witness may
22 depend on how that witness impressed you. How did the witness
23 appear? Was the witness candid, frank, and forthright; or did
24 the witness seem to be evasive or suspect in some way? How did
25 the way the witness testified on direct examination compare

MAV1ILO6

Charge

1 with how the witness testified on cross-examination? Was the
2 witness consistent or contradictory? Did the witness appear to
3 know what he or she was talking about? Did the witness strike
4 you as someone who was trying to report his or her knowledge
5 accurately? These are only examples of the kinds of common
6 sense questions you should ask yourself in deciding whether a
7 witness is or is not truthful.

8 How much you choose to believe a witness might also be
9 influenced by the witness's bias. Does the witness have a
10 relationship with the government, or with the defendant, that
11 may affect how he or she testified? Does the witness have some
12 incentive, loyalty, or motive that might cause him or her to
13 shade the truth? Does the witness have some bias, prejudice,
14 or hostility that may cause the witness to give you something
15 other than a completely accurate account of the facts he or she
16 testified to?

17 You should also consider whether a witness had an
18 opportunity to observe the facts he or she testified about.
19 Also, you should consider whether the witness's recollection of
20 the facts stands up in light of the other evidence in the case.

21 In other words, what you must try to do in deciding
22 credibility is to size up a person just as you would in any
23 important matter when you are trying to decide if a person is
24 truthful, straightforward, and accurate in his or her
25 recollection.

MAV1ILO6

Charge

1 You've heard testimony from law enforcement officers
2 and employees of the United States Department of Justice Office
3 of the Inspector General. The fact that a witness may be
4 employed by the DOJ-OIG does not mean that his or her testimony
5 is necessarily deserving of more or less consideration, or
6 greater or lesser weight than that of an ordinary witness.

7 In this context, defense counsel was allowed to try to
8 attack credibility of such a witness on the grounds that his or
9 her testimony may be colored by a personal or professional
10 interest in the outcome of the case.

11 It is your decision, after reviewing all the evidence,
12 whether to accept the testimony of the law enforcement officer
13 or employee witnesses and to give that testimony the weight you
14 find it deserves.

15 Now the defendant did not testify in this case. Under
16 our Constitution, the defendant has no obligation to testify or
17 to present any evidence, because it is the government's burden
18 to prove the defendant's guilt beyond a reasonable doubt. That
19 burden remains with the government throughout the entire trial,
20 and it never shifts to the defendant. The defendant is never
21 required to prove that he is innocent.

22 You may not attach any significance to the fact that
23 the defendant did not testify. No adverse inference against
24 him may be drawn by you because he did not take the witness
25 stand. You may not consider this against the defendant in any

MAV1ILO6

Charge

1 way in your deliberations in the jury room.

2 You heard evidence during the trial that some
3 witnesses had discussed the facts of the case and their
4 testimony with the lawyers before the witnesses appeared here
5 in court.

6 Although you may consider that fact when you are
7 evaluating a witness's credibility, I should tell you that
8 there is nothing unusual or improper about a witness meeting
9 with lawyers before testifying so that the witness can be aware
10 of the subjects he or she will be questioned about, focus on
11 those subjects, and have the opportunity to review relevant
12 exhibits before being questioned about them. Such consultation
13 helps conserve your time and the Court's time. In fact, it
14 would be unusual for a lawyer to call a witness without such
15 consultation.

16 Again, the weight you give to the fact or the nature
17 of the witness's preparation for his or her testimony and what
18 inferences you draw from such preparation are matters
19 completely within your discretion.

20 There are individuals whose names you have heard
21 during the course of this trial who did not appear here to
22 testify. I instruct you that each party had an equal
23 opportunity, or lack of opportunity, to call any of these
24 witnesses. Therefore, you should not draw any inference or
25 reach any conclusions as to what they would have testified to

MAV1ILO6

Charge

1 had they been called. Their absence should not affect your
2 judgment in any way.

3 You should, however, remember my instruction that the
4 law does not impose on the defendant in a criminal case the
5 burden of proof or the duty of calling any witnesses or
6 producing any evidence.

7 You may not draw any inference, favorable or
8 unfavorable, towards the government or the defendant from the
9 fact that any person other than the defendant is not on trial
10 here in this case. You also may not speculate as to the reason
11 why other persons are not on trial. Those matters are wholly
12 outside your concern and have no bearing on your function as
13 jurors.

14 The government has offered evidence tending to show
15 that on different occasions, the defendant, Adedayo Ilori,
16 engaged in conduct similar to the charges in the indictment.
17 In particular, the parties stipulated in Government Exhibit 7
18 to the government's prior arrest on March 4, 2020, and
19 conviction on April 8, 2021. The parties also stipulated in
20 Government Exhibit 8 that the defendant was released under
21 conditions of bail between March of 2020 and October 8, 2021.

22 MS. MURRAY: Excuse me, your Honor. Just on that
23 point, I believe the Court may have misspoken and said
24 stipulated to the government's prior arrest on March 4th,
25 just to make that clear for the record.

MAV1ILO6

Charge

1 THE COURT: Oh. Of course.

2 In particular, the parties stipulated in Government
3 Exhibit 7 to the defendant's prior arrest -- if I misspoke, I
4 apologize -- on March 4, 2020, and conviction on April 8, 2021.
5 The parties also stipulated in Government Exhibit 8 that the
6 defendant was released under conditions of bail between March
7 of 2020 and October 8, 2021.

8 In that connection, let me remind you, the defendant
9 is not on trial for committing acts not alleged in the
10 indictment in this case. Accordingly, you may not consider
11 this evidence of similar acts as a substitute for proof that
12 the defendant committed the crimes charged in this case. Nor
13 may you consider this evidence as proof that the defendant has
14 a criminal personality or bad character. The evidence of the
15 other similar acts was admitted for a much more limited purpose
16 of proving the defendant's knowledge, intent, identity, motive,
17 lack of accident, or absence of mistake, and you may consider
18 it only for that limited purpose.

19 Similarly, the evidence that the defendant was
20 released under conditions of bail between March of 2020 and
21 October 8 of 2021 was admitted for the limited purpose of
22 proving whether the defendant committed the acts charged in the
23 indictment in this case while he was released on bail.

24 If you determine that the defendant committed the acts
25 charged in the indictment and similar acts as well, then you

MAV1ILO6

Charge

1 may, but need not, draw an inference that in doing the acts
2 charged in the indictment, the defendant acted knowingly and
3 intentionally and not because of some mistake, accident, or
4 other innocent reason. However, evidence of other similar acts
5 may not be considered by you for any other purpose.

6 Specifically, you may not use this evidence to conclude that
7 because the defendant committed the other act or acts, or
8 because the defendant was on pretrial release relating to the
9 other act or acts, he must also have committed the acts charged
10 in the indictment.

11 Now some of the exhibits that were admitted into
12 evidence were in the form of charts and summaries. For these
13 charts and summaries that were admitted into evidence, you
14 should consider them as you would any other evidence.

15 You will soon go into the jury room to begin your
16 deliberations. Juror No. 1, Ms. Singfield, will be the
17 foreperson of the jury unless for any reason she prefers not to
18 act in that capacity. In that event, your first order of
19 business will be to select a foreperson. In either case,
20 however you decide to proceed, please, as your first act of
21 business, send me a note, signed and dated, identifying the
22 foreperson. The foreperson will send out any notes to the
23 Court, which I will discuss more in a moment. When the jury
24 has reached a verdict, the foreperson will notify the Marshal
25 that the jury has reached a verdict. When you come out into

MAV1ILO6

Charge

1 open court, the foreperson will be asked to state what the
2 verdict is.

3 If during your deliberations you want to see or to
4 hear any of the exhibits, upon request they will be sent to you
5 in the jury room or you'll be brought back into the courtroom
6 to examine them.

7 If you want any of the testimony read, that also can
8 be done. Please remember, though, that it's not always easy to
9 locate what you might want, so please be as specific as you
10 possibly can in requesting exhibits or portions of testimony
11 that you may want.

12 Your requests for exhibits or testimony and any other
13 communications with the Court should be made to me in writing,
14 signed by your foreperson, and given to one of the Marshals.
15 Notes must include the date and the time that they were sent,
16 and they should be as clear and as precise as possible. Notes
17 from the jury will become part of the record in this case.

18 I will respond to any questions and requests that you
19 have as promptly as possible, either in writing or I may have
20 you return to the courtroom so that I may speak to you in
21 person.

22 Do not tell me or anyone else how the jury stands on
23 the issue of the defendant's guilt until after a unanimous
24 verdict is reached on each count.

25 During the trial, I permitted you to take notes. As I

MAV1ILO6

Charge

1 told you at the start of the case, those notes are to be used
2 solely to assist you and they are not to substitute for your
3 recollection of the evidence in the case. The fact that a
4 particular juror has taken notes entitles that juror's views to
5 no greater weight than those of any other juror, and your notes
6 are not to be shown to any other jurors during your
7 deliberations. As I just explained, if during your
8 deliberations you have any doubt as to any of the testimony,
9 you will be permitted to request that the official trial
10 transcript, which was made of these proceedings, be read to
11 you.

12 Under your oath as jurors, you are not to be swayed by
13 sympathy. You are to be guided solely by the evidence in this
14 case. The crucial question you must ask yourself as you sift
15 through the evidence is: Has the government proven the guilt
16 of the defendant beyond a reasonable doubt with respect to each
17 of the elements of the offenses charged?

18 It is for you alone to decide whether the government
19 has proven beyond a reasonable doubt that the defendant is
20 guilty of the crimes for which he is charged solely on the
21 basis of the evidence or the lack of evidence, and subject to
22 the law as I have explained it to you. Once you let fear,
23 prejudice, bias, or sympathy interfere with your thinking,
24 there is a risk that you will not arrive at a true and just
25 verdict.

MAV1ILO6

Charge

1 If the government has failed to establish the
2 defendant's guilt beyond a reasonable doubt, you must acquit
3 him. But on the other hand, if you should find that the
4 government has met its burden of proving the defendant's guilt
5 beyond a reasonable doubt, you should not hesitate because of
6 sympathy or any other reason to render a verdict of guilty.

7 The question of possible punishment of the defendant
8 is of no concern to you. It must not enter into or influence
9 your deliberations. The duty of imposing sentence rests
10 exclusively upon the Court. Under your oath as jurors, you
11 cannot allow consideration of the punishment that might be
12 imposed on the defendant if he were convicted to influence your
13 verdict in any way.

14 Your function now is to weigh the evidence in this
15 case and to determine whether the government has proven the
16 guilt of the defendant beyond a reasonable doubt with respect
17 to the charges in the superseding indictment.

18 You must base your verdict solely on the evidence or
19 lack of evidence, and these instructions as to the law, and you
20 are obliged under your oath as jurors to follow the law as I
21 have instructed you, whether you agree or disagree with the
22 particular law in question.

23 The verdict must represent the considered judgment of
24 each juror. In order to return a verdict, it is necessary that
25 each juror agree with it. Your verdict, whether guilty or not

MAV1ILO6

Charge

1 guilty, must be unanimous.

2 It is your duty as jurors to consult with one another,
3 and to deliberate with a view to reaching an agreement, if you
4 can possibly do so without violence to individual judgment.
5 Each of you must decide the case for himself or herself, but do
6 so only after an impartial discussion and in consideration of
7 all of the evidence in the case with your fellow jurors. In
8 the course of your deliberations, do not hesitate to reexamine
9 your own views and change an opinion if convinced it is
10 erroneous. But do not surrender your honest conviction as to
11 the weight or effect of the evidence solely because of the
12 opinion of your fellow jurors.

13 Remember, at all times you are not partisans. You are
14 judges--judges of the facts. Your sole interest is to seek the
15 truth from the evidence in this case.

16 If you are divided, do not report how the vote stands,
17 and if you have reached a verdict, please do not report what it
18 is until you are asked to do so here in open court.

19 In conclusion, ladies and gentlemen, I'm sure that if
20 you listen to the views of your fellow jurors and if you apply
21 your own common sense, you will reach a fair verdict here.

22 Remember, your verdict must be rendered without fear,
23 without favor, and without prejudice or sympathy.

24 So with that, I'm going to ask you please to collect
25 your belongings and you may retire to the jury room. Remember

MAV1ILO6

1 that, as I asked you, your first note to me should be to tell
2 me who the foreperson of the jury is.

3 It's up to you how long you wish to deliberate and
4 whether to take a short break before you begin your
5 deliberations. I'd ask you not to leave the courthouse at this
6 point, though. It's 3:40. As I say, you can begin your
7 deliberations at whatever point you're all ready to do that
8 this afternoon. You also may stay as long as you wish or leave
9 at whatever point you collectively determine you're going to
10 leave for the day. I would just ask you to please let us know,
11 through the Marshals, who your foreperson is, when you leave
12 for the day, and if you have any questions or requests. All
13 right?

14 Thank you, all. With that, I'm going to ask my
15 courtroom deputy, before you all hop up -- Mr. Ilori, please be
16 seated. Ms. Dempsey is going to swear the Marshal, who will
17 accompany the jurors then to the deliberation room.

18 (Marshal sworn)

19 THE DEPUTY CLERK: Thank you.

20 THE COURT: All right. If you'd all please rise and
21 follow the Marshal to the jury deliberation room.

22 (Jury not present)

23 THE COURT: All right. You may be seated.

24 All right. So Ms. Dempsey will give to the Marshals
25 her contact information. They will let us know when we have

MAV1ILO6

1 notes from the jury. I asked them to send out the name of the
2 foreperson, so it's up to you whether you want to wait for that
3 or not. But each time we receive a note, Ms. Dempsey will let
4 each of you know. I don't know if she's asked you yet, but she
5 will ask you to give her your I guess cellphone or other
6 contact information so that she can be in touch with you, okay?

7 And then Mr. Brill, you asked us to look into
8 something?

9 MR. BRILL: I don't think it's ripe.

10 THE COURT: I don't either. I just was going to tell
11 you it's not something we're going to be able to deal with just
12 yet, but all in due course, okay?

13 MR. BRILL: Okay.

14 THE COURT: If appropriate.

15 Anything else?

16 MS. MURRAY: No, your Honor. Thank you.

17 MR. BRILL: Nothing. Thank you, your Honor.

18 THE COURT: Okay. Ms. Dempsey, do you have the
19 contact information? We can go off the record. Just let me
20 say on the record, thank you to both of our court reporters.
21 Only one is here with us right now, but I thank you both very
22 much for your patience with us throughout the trial.

23 THE REPORTER: Thank you.

24 THE COURT: I'm sorry. I neglected to discharge the
25 two alternates, so Ms. Dempsey, do you want to just ask the

MAV1ILO6

1 Marshals to let them know, come back out here.

2 (Alternate jurors present)

3 THE COURT: I'm sorry. If you could just have a seat
4 for one second, I'll be right with you.

5 Thank you. All right. So ladies and gentlemen, you
6 two are alternate jurors in this case. So at this point I am
7 going to excuse you. You're not permitted to be back with the
8 rest of the jurors to deliberate.

9 JUROR: I was sending that question out to you right
10 now.

11 THE COURT: You're way ahead of me. It's been a long
12 day and I'm a little tired, so I really apologize to you. I
13 should have done that in the presence of your fellow jurors.

14 I am going to ask you, though, to please refrain from
15 talking about the case to anybody. The job of an alternate is,
16 if something should arise with respect to any of the jurors and
17 they're not able to continue their service, we would need to
18 reach out to you to ask first one, then perhaps both of you to
19 step in to fill those roles, so I'm going to ask you please,
20 don't discuss the case with anyone until you hear from
21 Ms. Dempsey. If you give her your contact information, I
22 promise we will let you know when the case has concluded and
23 what the outcome is and that you're now discharged from your
24 service completely. You are technically discharged, but that
25 you are free to talk about the case at that point. All right?

MAV1ILO6

1 JUROR: Okay.

2 THE COURT: Thank you both, very, very much.

3 JUROR: I have one question, your Honor. Our
4 notebooks, do we leave them here, do we give them to you?

5 THE COURT: Leave them here. Everybody leaves them
6 here when they're finished deliberating, and we shred them.

7 JUROR: Do we leave them out here or in there? Mine
8 is on top of the cupboard.

9 THE COURT: And yours?

10 JUROR: On the table.

11 THE COURT: So we will collect them at the end of the
12 day and shred them along with all the rest of them that get
13 shredded when the case concludes, all right?

14 All right. Thank you both very, very much.

15 JUROR: Thank you.

16 THE COURT: Can I ask the Marshal to accompany both of
17 you back. First, tell the jurors we're going to interrupt them
18 and they should stop talking. Can you accompany our two
19 alternates back to retrieve their belongings. Why don't you
20 retrieve your notebooks and give them to Ms. Dempsey. That
21 way, we don't have any risk that anybody else is looking at
22 your notes. All right? Thank you both very much. Thank you.

23 JUROR: You're welcome.

24 (Alternates discharged)

25 THE COURT: You may all be seated.

MAV1ILO6

1 All right. So the Marshal has a note from our jurors.

2 All right. So this is October 31, 2022, at 3:44 p.m.

3 Jury agrees that the foreperson will be Dana Lynn Singfield,
4 Juror No. 1. All right? So we will put this with the record
5 of the case, marked as Exhibit 1, or Note 1.

6 And with that, as I say, I'm going to recess, and it's
7 entirely up to you whether you all wish to stay here or not.
8 All right? Thank you.

9 (Recess pending verdict, 3:48 p.m.)

10 (In open court; jury not present; 4:57 p.m.)

11 THE COURT: Please be seated, everybody.

12 So we will bring the jurors out in a moment. We have
13 three notes from them. None of them are substantive. Is
14 Mr. Ilori gone?

15 MR. BRILL: I think they brought him downstairs until
16 we told them we needed him back.

17 THE COURT: I don't think we need him back for any of
18 these.

19 But the three notes are, in the order in which they
20 came, which were within a few minutes of each other:

21 4:52 p.m., 31 October 2022: "Will lunch be provided
22 or can we go out for lunch to the cafeteria tomorrow?"

23 So the answer is: We will give them the order forms
24 and order lunch for them tomorrow. Once they begin
25 deliberating, the Court does provide lunch. Any disagreement,

MAV1ILO6

1 problem, issue?

2 MS. MURRAY: No, your Honor.

3 MR. BRILL: No, your Honor.

4 THE COURT: Next note, 4:30 -- I guess it's 4:55 p.m.
5 31 October 2022. 4:55 p.m. "Can we leave the room at all
6 tomorrow?"

7 And the answer is no. Only to return to the courtroom
8 if there's any evidence or anything they ask to have read back,
9 but otherwise, the answer is no. Agree?

10 MR. BRILL: I think you gave them an instruction that
11 if they were smokers, that they might be able to leave for that
12 purpose.

13 THE COURT: I did not give them any such instruction.

14 MR. BRILL: No? Not with the instructions. I thought
15 maybe at the outset. Maybe it was a different trial. I'm
16 sorry.

17 THE COURT: That is an interesting issue, though.
18 Maybe that's what they're asking about. Hmm. I honestly don't
19 have any experience with this. Do either of you?

20 MR. BRILL: Yes, your Honor. Generally they're told
21 they have to all stop deliberating until they're all back
22 together.

23 THE COURT: Yes.

24 MR. BRILL: But, you know, beyond bathroom breaks and
25 smoking, I never knew juries to go out for any reason.

MAV1ILO6

1 THE COURT: Even bathroom breaks, there are restrooms
2 there.

3 MR. BRILL: I know, but technically they have to stop
4 deliberating.

5 THE COURT: Yes.

6 MS. MURRAY: I have no different view, your Honor.

7 THE COURT: All right. And then one minute later,
8 4:56 p.m., 31 October 2022: "Jury will start tomorrow at
9 9:30 a.m." Which I take to mean they're ready to go home, but
10 we'll find out. All right?

11 So Ms. Dempsey, do you want to ask the Marshals to --

12 MR. BRILL: Your Honor, just in an abundance of
13 caution, I don't want there to be an issue if Mr. Ilori is not
14 present. I know it's not substantive, but --

15 THE COURT: No, that's true. So let's have him
16 brought up. So who arranges that?

17 THE DEPUTY CLERK: I can call the Marshals.

18 THE COURT: All right. And then as soon as we do
19 that, we'll let the Marshals know that we'll bring them out as
20 soon as the defendant comes up.

21 I've asked Ms. Dempsey to confirm that there is a
22 Marshal available that if a juror feels the need to go out to
23 smoke, they need to be accompanied by a Marshal, I believe.
24 They really shouldn't be outside the presence of a Marshal
25 during deliberations.

MAV1ILO6

1 MR. BRILL: Agreed.

2 THE COURT: So she's going to check and let us know
3 that. But yes, Mr. Brill, thank you.

4 (Pause)

5 THE COURT: I should put on the record that the
6 Marshals had answered that they do not accompany the jurors
7 when they take a break, so I'm going to encourage them to
8 please try not to.

9 (Defendant present)

10 THE COURT: All right. Please have a seat.

11 Mr. Ilori, there are three notes from the jurors.
12 They're all scheduling type of things. But you have a right to
13 be present, so we're going to bring the jurors back out and
14 answer their questions.

15 (Jury present, 5:11 p.m.)

16 THE COURT: All right. Thank you. Please be seated,
17 everyone.

18 So we have three notes from you.

19 The first note, dated 4:52 p.m., today's date: "Will
20 lunch be provided or can we go out for lunch to the cafeteria
21 tomorrow?" The answer is, once you begin your deliberations,
22 no, you cannot go out for lunch. We'll give you an order form
23 in the morning and we will have lunch brought in for you to the
24 jury deliberation room. You should recess your deliberations,
25 stop your deliberations while you're having lunch, for however

MAV1ILO6

1 long you all collectively decide, enjoy your lunch, and then
2 resume deliberations, but we ask you to please not leave in the
3 middle of deliberations to go to the cafeteria.

4 All right? The next note: "Can we leave the room at
5 all tomorrow?" This is I believe at 4:55 p.m. today. The
6 answer is really no. But I don't know if you're asking me that
7 because someone has a need to smoke. If it's anything other
8 than that, and you really, really -- if you really, really,
9 really need to smoke, I'm not going to say you cannot leave the
10 room to go do that. It would mean you have to leave the
11 building because there's no smoking in the building. If
12 anybody does that, though, the jury needs to stop deliberating.
13 Deliberations cannot continue if somebody leaves the building
14 to go smoke. And I would ask you all to please keep it as
15 short as possible and get back and join your fellow jurors.
16 But unless you're talking about something like that, then no,
17 you really cannot leave the room during deliberations. I'd ask
18 you to remain together as a group during the daytime. You
19 leave for the day whenever you decide you're leaving for the
20 day, but otherwise, no, you shouldn't leave the jury room. All
21 right?

22 And the last question, a minute later -- well, it's a
23 note really to tell me that you're going to start tomorrow at
24 9:30. So we appreciate your letting us know that.

25 So with that, you can return to the jury room and

MAV1ILO6

1 leave at whatever time you elect to leave tonight. I take it
2 from your note perhaps that's now. But you'll just let the
3 Marshal know that and he'll let us know that. All right?

4 I'm just going to remind you again, when you leave for
5 the day, please leave your notebooks in the jury room. Do not
6 bring them home with you in the evenings. And do not, over the
7 breaks -- most critically important during deliberations -- do
8 not discuss the case with anyone and do not do any research
9 when you adjourn for the day. And if you all just let us know
10 then when you're back in the morning through the Marshals, let
11 us know that everyone's there and that you're beginning
12 deliberations again. And whatever time you decide to leave for
13 the day today, if you'd please let the Marshal know that too so
14 that he can let Ms. Dempsey know and we can let the court
15 reporter, who's waiting here in case there's anything we have
16 to put on the record, and let the parties as well know that
17 they can leave for the day as well. All right?

18 So thank you all very much, and you can return to the
19 jury room then. Thank you.

20 THE DEPUTY CLERK: Rise for the jury.

21 (Jury not present)

22 THE COURT: Okay. You may be seated.

23 It's up to you all whether you want to wait around for
24 a moment or two for the jury to tell us whether or not they're
25 leaving for the day. Their note suggested they were, but I'm

MAV1ILO6

1 not a good reader of poker faces, so I don't know whether
2 they're adjourning for the day.

3 All right. They're leaving for the day. So why don't
4 we just give them a chance to clear the hallway. And they told
5 us they're coming back at 9:30. You all need to be around and
6 available.

7 Mr. Ilori, they'll bring you back here tomorrow as
8 well to be back here at that time. Okay?

9 All right. Everyone have a good evening and I'll see
10 you tomorrow. Thank you.

11 (Adjourned to November 1, 2022, at 9:30 a.m.)
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16
17
18
19
20
21
22
23
24
25

INDEX OF EXAMINATION

Examination of:	Page
DAMJAN HEZIR	
Cross By Mr. Brill	722
Redirect By Ms. Murray	764
Recross By Mr. Brill	769