

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

21 Cr. 746 (MKV)

ADEDAYO LLORI,

Defendant.

Conference

New York, N.Y.
May 25, 2023
2:40 p.m.

Before:

HON. MARY KAY VYSKOCIL,

District Judge

APPEARANCES

DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

BY: JULIANA MURRAY

DANIEL GEORGE NESSIM

DAVID RUSSELL FELTON

Assistant United States Attorneys

MOSKOWITZ COLSON GINSBERG & SCHULMAN

BY: AVRAHAM CHAIM MOSKOWITZ

- AND -

FOLEY & LARDNER LLP

BY: CHRISTOPHER ALBERT DEGENNARO

Attorneys for Defendant

Also Present:

Isabel Loftus, Paralegal Specialist

1 (Case called)

2 THE COURT: Good afternoon, Ms. Dempsey.

3 THE COURT: Please be seated, everyone.

4 THE DEPUTY CLERK: Counsel starting with the
5 government, please state your name for the record.

6 MS. MURRAY: Good afternoon, your Honor. Juliana
7 Murray, Daniel Nessim, and David Felton on behalf of the United
8 States. We're joined by Paralegal Specialist Isabel Loftus.

9 THE COURT: Good afternoon to all of you.

10 MR. MOSKOWITZ: Good afternoon, your Honor. Avraham
11 Moskowitz and Chris Degennaro for Mr. Llori who is seated
12 between us.

13 Your Honor, an issue has come up that I need to raise
14 with the Court before we begin today.

15 THE COURT: Let's get appearances, and then we'll turn
16 to that.

17 Your colleague?

18 MR. DEGENNARO: Christopher Degennaro, also CJA
19 counsel.

20 THE COURT: Good afternoon to you. Good afternoon to
21 you, Mr. Llori, good afternoon. Good afternoon to our court
22 reporter. Thank you for being here.

23 Mr. Moskowitz, what's the issue?

24 MR. MOSKOWITZ: Your Honor, prior to sentencing, I met
25 with Mr. Llori about proceeding today. He is not prepared to

1 proceed today. He has advised me that he does not want me to
2 represent him any more; that he has lost confidence in my
3 advocacy on his behalf; and that he wants a *Fatico* hearing on
4 various issues; and that he requests that new counsel get
5 appointed to handle that.

6 THE COURT: When did this get raised?

7 MR. MOSKOWITZ: About half hour ago, like 45 minutes
8 ago.

9 THE COURT: Mr. Llori, I advised you at several points
10 throughout the life of this case that you cannot just keep
11 changing counsel and delay things, did I not?

12 THE DEFENDANT: Yes, but we are not in agreement on
13 issues that I feel that should be raised. If we are not in
14 agreement on issues that I feel that should be raised. I mean,
15 if we're not in agreement --

16 THE COURT: Meaning you and your counsel?

17 THE DEFENDANT: Yes.

18 THE COURT: Why didn't you call this to the Court's
19 attention before sentencing? You were convicted in November.
20 I set sentencing on that date in January. Mr. Moskowitz
21 stepped in when you fired your last lawyer. Subsequently, I
22 adjourned sentencing to give Mr. Moskowitz time to get fully up
23 to speed on the case and confer with you.

24 So when did you discover this problem?

25 THE DEFENDANT: This has been an ongoing --

1 THE COURT: That's my point. It's an ongoing issue.

2 THE DEFENDANT: -- that we have tried to resolve. And
3 we have come to a point where we do not agree in the direction
4 to go.

5 THE COURT: There are not a lot of options here,
6 Mr. Llori. You've been convicted by a jury on six counts.
7 We're here for sentencing.

8 THE DEFENDANT: Yes. I do understand that. I do
9 understand that we are here for sentencing. But if I have an
10 issue that has to be raised and learning from and the fact of
11 what happened during my trial, I feel like I should be able to
12 raise an objection if I do not agree with the direction that my
13 lawyer is going. I do not agree.

14 THE COURT: Mr. Moskowitz, are you able to provide any
15 further detail about what we're talking about here?

16 MR. MOSKOWITZ: Yes, your Honor.

17 THE COURT: Let me just say to you, Mr. Llori,
18 objections that you may have about something that happened at
19 trial are generally the subject matter of an appeal.

20 Let me hear from Mr. Moskowitz. Obviously you know
21 the bounds of attorney-client privilege, and I'm not asking you
22 to violate that.

23 MR. MOSKOWITZ: Your Honor, I indicated to the Court
24 in my preliminary statement that Mr. Llori advised me this
25 afternoon that he would like a *Fatico* hearing on certain

1 issues.

2 THE COURT: What issues?

3 MR. MOSKOWITZ: The loss amount, the number of access
4 devices that were used in the fraud scheme.

5 I explained -- I don't believe that that is advisory.

6 THE COURT: Does the number of devices make a
7 difference?

8 MR. MOSKOWITZ: There are enhancements.

9 THE COURT: Loss amount, yes. Number of devices, no.
10 Right?

11 MR. MOSKOWITZ: It's paragraph 70 of the PSR --

12 THE COURT: Let me find it. If you're going to read
13 from it, please go slowly for my benefit and for the benefit of
14 our court reporter. Thank you.

15 MR. MOSKOWITZ: Paragraph 70 refers to Section
16 2B1.1(b)(11)(A)(i)(ii)(B)(11)(C)(ii) which talks about the
17 production of a counterfeit access device or authentication
18 feature and the possession of five or more means of
19 identification that were unlawfully produced from or obtained
20 from another use of identification. It's a two-level
21 enhancement.

22 THE COURT: Right.

23 MR. MOSKOWITZ: That relates to either access devices
24 or Social Security numbers or driver's licenses and the like.

25 THE COURT: Right.

1 MR. MOSKOWITZ: If you have more than five of them,
2 you get a two-point enhancement. I've reviewed the trial
3 transcript. Mr. Degennaro and I have both reviewed it. We
4 have an opinion on whether or not it is advisable to press this
5 issue.

6 THE COURT: I'm going to ask your indulgence.

7 Educate me on what would happen if I were to permit a
8 *Fatico* hearing?

9 MR. MOSKOWITZ: The government would either read into
10 evidence or put on somebody to read or summarize the trial
11 evidence which I think supports the enhancement. And then
12 your Honor would rule on it. And it's by a preponderance of
13 the evidence.

14 THE COURT: And this needs to be done at a hearing?
15 Can't it be done on paper? The transcript is what the
16 transcript is. Right?

17 I'm serious when I say I'm asking -- and I'm going to
18 hear from the government. I'm asking you to educate me a
19 little on this.

20 MR. MOSKOWITZ: I think when the defendant
21 challenges --

22 THE COURT: Requests a hearing.

23 MR. MOSKOWITZ: He is entitled to a hearing.

24 THE COURT: Thank you.

25 MS. MURRAY: Your Honor, the government's view on that

1 is that the evidence presented at trial clearly established
2 that this enhancement is appropriate. That is part of the
3 record. The Court heard that evidence.

4 As Mr. Moskowitz just said, my understanding is it's
5 his interpretation also from the trial transcript, from the
6 evidence that's already before the Court. So there is no
7 dispute over the enhancement.

8 THE COURT: That was my recollection.

9 MS. MURRAY: So with respect to whether the Court may
10 grant a hearing or not, the Court can make a finding and a
11 determination today based on the evidence that was presented at
12 trial that this enhancement applies.

13 THE COURT: Are there other issues?

14 MR. MOSKOWITZ: Those were the two raised most
15 recently.

16 THE COURT: Give me one moment to just look at
17 something.

18 By the way, I'll note for the record there was no
19 objection to an enhancement for the number of devices. There
20 was an objection to the sophisticated means, but those are
21 different. Correct?

22 MR. MOSKOWITZ: Yes, your Honor.

23 THE COURT: Give me one second.

24 By the "loss amount," do you mean the objection you
25 did make about the difference between actual loss and intended

1 loss? Or is there something more?

2 MR. MOSKOWITZ: No. Mr. Llori contends that the
3 government did not prove more than \$9.5 million or \$9 million,
4 whatever that cutoff was. I think it was \$9 million to \$25
5 million or something like that.

6 THE COURT: The other issue that I have is while I am
7 loathe to allow Mr. Llori to once again dismiss counsel because
8 he's not satisfied, somebody has to make the argument in order
9 for me to rule on it with respect to these requests for a
10 *Fatico* hearing.

11 And if he is at odds with his current counsel, who is
12 supposed to make that argument?

13 I honestly don't see that I have any choice but to
14 appoint new counsel, and then each side can submit to me on
15 this request for a *Fatico* hearing.

16 But, Mr. Llori, I'm going to tell you your new counsel
17 may give you the same advice from Mr. Moskowitz and
18 Mr. Degennaro. These are two experienced lawyers who are
19 giving you their professional judgment which, with all respect
20 to you, is far superior to your judgment on what the law is on
21 these subjects.

22 I also sat through the trial. And my recollection is,
23 at least with respect to the number of devices issue, that the
24 argument doesn't have merit.

25 MS. MURRAY: Your Honor, if I may propose a very brief

1 adjournment. We have a couple of the trial exhibits that we
2 would like to discuss with Mr. Moskowitz, and perhaps then we
3 could present them to your Honor, and we could see if we could
4 resolve the issue of a hearing or no hearing.

5 THE COURT: The only problem with that is
6 Mr. Moskowitz has told me he doesn't disagree with you. So
7 he's not in a position to zealously advocate on behalf of
8 Mr. Llori. That's the concern I have.

9 MS. MURRAY: We completely understand, your Honor.

10 THE COURT: He's been convicted. He is in jail.
11 Whatever sentence he gets here is going to be consecutive to
12 the sentence in that case. So there is not really a lot of
13 prejudice to the government here.

14 MS. MURRAY: No. I completely understand, your Honor.
15 With respect to the defendant's right to a hearing, however, I
16 believe the standard is if the Court does not have sufficient
17 evidence before it to make a determination based on a
18 preponderance of the evidence.

19 So I'd just ask for a few minutes to speak with
20 Mr. Moskowitz and look at the evidence and see if we could
21 present something to the Court that would not affect whether or
22 not Mr. Moskowitz is advocating for a hearing but whether the
23 Court determines one would be

24 THE COURT: I'm happy to give you the break to discuss
25 it with Mr. Moskowitz, but I'm not happy to put Mr. Moskowitz

1 in -- he's in the Jack box now basically.

2 Do you disagree with me?

3 MR. MOSKOWITZ: No, Judge. I actually agree that
4 your Honor has hit it on the head. I'm in a position where
5 either I'm advocating for something I think is wrong or I'm not
6 advocating strongly enough for my client.

7 THE COURT: That's the issue I have. I appreciate
8 what you're saying, and I'm telling Mr. Llori, in the strongest
9 terms I possibly can, which is why I think we should take a
10 break and give him the evidence --

11 Mr. Moskowitz, you're not uncomfortable giving him the
12 evidence?

13 MR. MOSKOWITZ: No, your Honor.

14 THE COURT: Give him the evidence, and then I want a
15 letter on whether Mr. Llori is pressing his request for a new
16 counsel, in which case we'll new counsel appointed, and we'll
17 move forward.

18 I'll either rule that we need a hearing or we don't.
19 If not, we'll have sentencing. But before we take a break, I
20 want to raise one more question with counsel for each side.

21 I've been presented with a proposed order of
22 restitution and a proposed order of forfeiture.

23 Have those orders been shared? Obviously they've been
24 shared with you, Mr. Moskowitz.

25 Are those on consent? You don't know?

1 MR. MOSKOWITZ: At the moment, Judge, I can't say
2 that.

3 THE COURT: I need to know in advance of sentencing if
4 there are issues with respect to the financial penalties
5 because I would need to hold an evidentiary hearing. So that's
6 one more thing you all need to talk about.

7 And then I'm going to raise with the government one
8 other question that I had. And I intended to talk to you about
9 it during sentencing, but since we're going to have to adjourn,
10 I might as well flag this for you so that you can look into it
11 in the meantime.

12 The proposed order of restitution that you gave me
13 lists an amount of \$1,120,462.47.

14 Right? That's the revised one?

15 MS. MURRAY: Yes, your Honor.

16 THE COURT: It says that Mr. Llori's obligations are
17 joints and several with those of Mr. Recamier. The restitution
18 order that Mr. Recamier is bound by says that restitution is in
19 a different amount, \$1,072,062.47.

20 MS. MURRAY: Yes, your Honor. The difference is a
21 \$48,400 amount of restitution that is being sought by a rental
22 property that Mr. Llori rented an apartment under an identity
23 theft victim's name.

24 That restitution request came to the government within
25 the last month or so based on rent that had been owed from the

1 time of the rental up until the present.

2 THE COURT: OK. So the problem I'm having though is
3 Mr. Recamier is not here, and you're asking me to sign a
4 restitution order in a higher amount which says that
5 Mr. Recamier is jointly and severally liable for that amount.

6 MS. MURRAY: Yes. Understood, your Honor. We will
7 clarify that portion of the restitution order to indicate which
8 amount of the restitution is joint and several and which of
9 that is with regard to Mr. Llori.

10 THE COURT: Thank you.

11 I'll break at this point, and you can share with
12 Mr. Moskowitz, who will simply pass it through to Mr. Llori,
13 whatever evidence you want to show to him.

14 Then, Mr. Moskowitz, how long do you think you need to
15 let me know whether Mr. Llori is pressing his request for new
16 counsel?

17 Or do you think he's going to press it no matter what?

18 MR. MOSKOWITZ: I suspect that that will be the
19 answer. I am beginning a trial next week in front of
20 Judge Rakoff.

21 As I expect the answer to be, I'm sure Mr. Degennaro
22 can get a letter out between now and the end of next week
23 certainly.

24 THE COURT: Can you do that, Mr. Degennaro?

25 MR. DEGENNARO: Yes, your Honor.

1 THE COURT: Mr. Llori, you'll let your current lawyers
2 know before the end of next week so that they can write to me
3 by the end of next week telling me whether you are still
4 insistent on discharging these lawyers and whether you still
5 are requesting a *Fatico* hearing.

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: If you are, we need to have another
8 hearing in which the new CJA counsel will show up, and we'll do
9 the same thing we did the day of your verdict.

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And I am not changing your lawyer again.
12 Do you understand?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Whatever disagreements you may have -- and
15 I suspect you're going to have them -- we are moving forward
16 with that lawyer. And there's nothing funny about this. So
17 you should stop smirking.

18 Do you understand?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: All right. Is there anything else we can
21 accomplish today?

22 MR. MOSKOWITZ: No, your Honor.

23 THE COURT: Then with respect to the hearing on
24 substitution of counsel, which I have to presume is going to go
25 forward, do you have any sense of how long your trial is going

1 to last?

2 MR. MOSKOWITZ: Judge, just give me a second.

3 THE COURT: As I say, the only reason I'm not pressing
4 about timing on this is because Mr. Llori is incarcerated and
5 his sentence here is going to be consecutive. So he's got a
6 long way to go on the sentence he's serving.

7 Right?

8 MR. MOSKOWITZ: Yes, Judge. Judge, if we did it the
9 week of June 12, I'll certainly be available.

10 THE COURT: June 12 or thereafter. I'll do the best
11 that I can. I am out most of that week for a family wedding.

12 MR. MOSKOWITZ: Perhaps I can speak to your deputy.

13 THE COURT: That would be fine. Maybe confer with the
14 government too.

15 MR. MOSKOWITZ: Sure.

16 THE COURT: Anything else we can accomplish?

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

18 THE COURT: Anything else, Mr. Moskowitz?

19 MR. MOSKOWITZ: No, your Honor.

20 THE COURT: I thank everybody. I thank the marshals.
21 I thank the court reporter, and we'll stand adjourned.

22 (Adjourned)

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