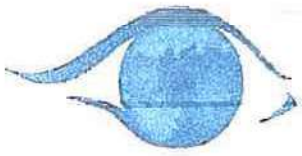


Exhibit A-11



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He might have said this in July or August 2022. The timing is what makes Justin wonder if BB scammed him and ran to the FBI to protect him from Justin because he's going to help on the Bishop situation.

Justin later met people that own Carrio Motors car dealership in Miami FL. They said BB stole a Lamborghini and another vehicle on finance. Justin feels they don't want to get involved with the FBI.

Another lawyer who worked with BB: Brad Malicki. Justin also called Brad's office about a year ago to tell him that he was working with a scammer.

Justin said he'd had a group chat with other people that BB scammed. BB has blocked Justin on his phone.

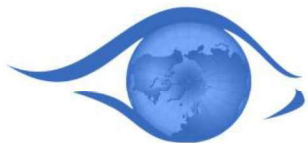
Justin called the FBI and made complaints about BB -- three times until somebody called him back. The agent who called seemed dismissive -- you're probably not going to get the money back, etc. (Justin can share communications with the FBI, the complaint etc.)

Robin Eshagpor

On June 19, 2023, while Robin was arguing over text with BB (see below), BB actually sent Robin a copy of the Adams/Whitehead New Yorker article to boast of how important and connected he was. Robin felt that BB was trying to puff himself up as a big deal in real estate, someone you don't want to cross. Robin countered that he was not intimidated, and BB is a "nobody." To which, BB texted back, "I'll give you like five FBI agents as well as a U.S. Attorney you can call to ask about me."

Robin doesn't think BB mentioned the FBI again, but it is in a text which Robin carefully saved.

Exhibit A-12



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Date : August 14, 2024
BDA File # : 24-G04436-01

DETAILS OF THE INVESTIGATION

Motty:
Hello?

MR:
Hi, is this Motty?

Motty:
Yeah. Give me one second.

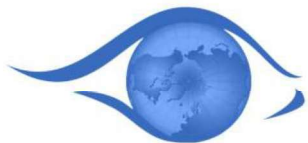
MR:
Okay.

Motty:
Can you hear me?

MR:
Yep, that's good.

Motty:
All right, cool. So yeah, I can give you 10 minutes now?

MR:
Okay. I appreciate it. So let me just tell you who I am. My name is Mike Ruggiero. I'm the President of a company called Beau Dietl & Associates. I don't know if you know who Beau Dietl is? He's pretty a well-



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known private investigator. We were hired by the defense firm for the Lamor Whitehead. And we're just doing some interviews in regard to interaction that you may have had with Brandon Belmonte. So, did you have interaction with Brandon at all?

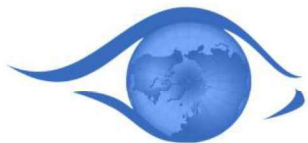
Motty:
A lot actually.

MR:
Okay. And was it regarding the vehicles, a liquor company, which was it?

Motty:
The liquor company.

MR:
Okay. And so could you kind of just walk me through what your experience with him was or your interaction with him was?

Motty:
Sure. At a high level, he started this company called Kosher Corks. The concept was that he had access to purchase kosher wine in volume and get it discounted. And then as a result of that, without making a lot of money, he would turn around and sell it to kosher consumers who would then benefit from better pricing and he would do large volume and with the large volume he would make incremental profits and ultimately everyone will be happy. So at one point he was seeking investors for an opportunity to A, make money and B, get kosher wine at a steeper discount than what he was already ordering. So initially when he came out with Kosher Corks, we paid to advertise on a blog that a lot of kosher consumers follow. I ordered a case of wine and it arrived and I was like, okay, pretty good. And then when he came out with this opportunity to invest, for me, I'm a wine consumer, so I'm like, if I can get discounts at really good pricing for kosher wine I would be happy enough for that. And then he offered, it wasn't like an investment, it was a loan that you lend him money, he pays a certain amount of interest every month, and he pays it over a certain duration, I guess to help finance the business inventory that



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he needed. Put together this whole presentation, slideshows and everything with the whole business case, et cetera.

So after that had happened, so I'm like, okay, he was looking for a minimum of 20K, so I gave him 20K to the business. And obviously as you probably are aware, every time he gets money then it becomes shady. So he kept on promising he was sending wine, he never sent it, and then he was supposed to deposit interest payments, he never deposited. I think I got maybe one or two interest payments. And then I started fighting him on just give me back my money, forget about this, I just want my principal. And he was just making excuses, started blaming this guy, Marc Ravage, who is his partner.

MR:

Did you ever meet Marc at all?

Motty:

Did I ever meet Marc? Later on.

MR:

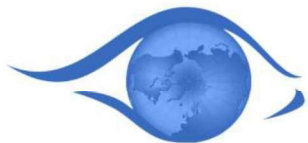
Okay.

Motty:

At this point I did not. I didn't meet him in person, but we had spoken multiple times on the phone. So at that point he had, "Yeah, I'll send you back the money." He instructs Marc to. No response. He kept on answering the phone and every time I would talk to him, he'd go on and on talk about how everybody's trying to screw him. Everybody's trying to fight with him and he's going through all this stuff, but he's got so much money. He sent me pictures of him and his cars and his girlfriend and his dog and his nice parties and glitzy clothing and all this stuff, showing off that he has money. Talks about how his father owned this really valuable construction company. He has multiple liquor stores and he's rich and famous and knows everybody.

MR:

Could you just clarify what timeframe this was when this happened?



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Motty:

I'd have to look through it.

Mike Ruggiero:

Okay. '21, '22 around there?

Motty:

I'd have to look it up, it was sort of hazy even, but probably around '20.

Mike Ruggiero:

Okay.

Motty:

I can't remember. It probably was even before Covid, honestly, so maybe 2019. Let me see. This guy's number was constantly changing. Every time I turned around he had another phone number.

Mike Ruggiero:

So, he was to say the least flaky, unreliable, and didn't live up to what he said he would. So what happened in the end? You gave him 20,000, did he ever repay you anything?

Motty:

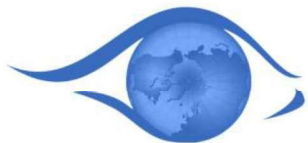
So, I pulled schemes with him because I don't like... Okay my conversation with him go back to 2019, 2018.

Mike Ruggiero:

Okay.

Motty:

2018 is really where it goes back. But in short, I had posted on some forums basically about this guy because my brother-in is in the merchant cash advance business. And so he was one of the guys who gave some of the money for me, the 20K, because it was like, "Oh yeah, let's do it together." So he gave some money. So basically, at that point Brandon was trying to have a car business where he would do



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luxury cars and I guess that's where that stuff kicked in where a lot of the, Melanie and some of the others who got screwed by him.

Mike Ruggiero:
Do you know Avi Rubin?

Motty:
I have been in groups with and spoken to him, not directly. There was somebody I did speak to directly and I can't remember his name but it was a while ago, about his situation where he had bought two cars for him and then he had totaled one and he got one back, but it was wrecked or something. I don't know if that was Avi or somebody else.

Mike Ruggiero:
So let me ask you a question. Did he portray at any time to you that he had protection from the government or any sort of protection at all?

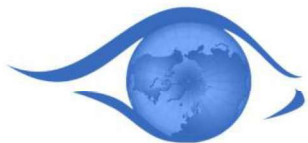
Motty:
He did.

Mike Ruggiero:
Okay. What-

Motty:
I threatened him.

Mike Ruggiero:
Okay.

Motty:
I told him I'm going to go to the cops. I said, there's a larger... I basically applied a lot of pressure to him. I told him I was calling the feds. I gave him timeline and at one point he got really pissed at me and he's



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like, "I know some guy in the FBI," he threw some names out. "I did a sting operation there." Or he didn't say that he was more so "I know the guy, we're buddies. I see him all the time. You don't know what..." like he was threatening me. I don't know if he specifically said protection, but he threw the guy's name around saying that he knows him and that good luck trying to, because he can get anything he wants out of the FBI. Something along those lines.

Mike Ruggiero:

Was the guy's name, if I mentioned the name, do you perhaps know it? Did he mention a name Chris? You're not sure.

Motty:

What was the guy's last name?

Mike Ruggiero:

Well, we don't know, but he has meant... Go ahead. I'm sorry.

Motty:

He's probably written it to me, honestly.

Mike Ruggiero:

Would you have that information?

Motty:

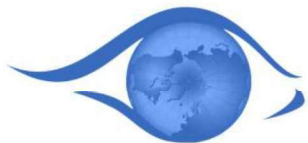
There was so much conversation went back. Okay, here's a comment from him.

Mike Ruggiero:

Okay.

Motty:

People use a bunch of things, but he is like, that's fine, but I'm out over a million [inaudible 00:09:16] and I didn't need your 20K. Never did, never will. I don't see it going in the account. And I am currently



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working with the government as a confidential informant and have my own government issue ID number that whoever you spoke to in the FBI can easily look it up. You put it into an account that they opened.

Mike Ruggiero:
Wow.

Motty:
I'm out over... Da da da.

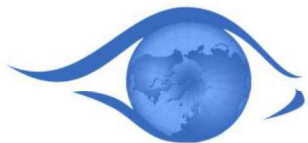
Mike Ruggiero:
That's-

Motty:
It was done voluntarily for the FBI and it was done voluntarily because I'm the victim here because I put all the hours to the store and I put in all the money and lost every, expletive, penny. Marc was paying someone whatever. And whoever you spoke at the FBI will see this because I have assigned papers. My own cousin loaned Marc, okay. And second, I'm working with Homeland Security Financial Crimes right now. I have a fake name and fake identity set up and already brought the US government FBI Counterterrorism Task Force, a \$56 million fraud case and I'm bringing them another \$36 million one. I did this entire case. He sends me this link to some archive. I'm only [inaudible 00:10:14]-

Mike Ruggiero:
Can you send me that archive or if you could send me the message, that would even be greater.

Motty:
Yeah.

Mike Ruggiero:
Is it on a text, the message?



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Motty:

It's in WhatsApp, I can send it to you. Is this your phone number?

Mike Ruggiero:

This is my landline. So I can give you my, I don't have WhatsApp, but could you send it to me on a text? I can give you my-

Motty:

Yeah.

Mike Ruggiero:

All right.

Motty:

Sure. Hold one second.

Mike Ruggiero:

Okay.

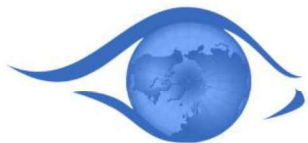
Motty:

And everything I wrote above can be verified with the FBI HSI and I can also give the special agent in charge of the Department of Justice. I know you've only spoken to me on the phone, but if I needed 20K I can... Blah blah blah. I went to the FBI Homeland Security, didn't come to me. I put on a wire and we had conversations that were taped because I am out a crap ton of money. I have all the bank deposits. Let me just see. Just like Marc and Julie's bankruptcy hearing, where they go in and tell, this is in 2019, every month in the business as well as ATM withdrawals and [inaudible 00:11:17] cancelling my case. Oh, Ronald Gardella, that's the guy, his name that he threw out.

Mike Ruggiero:

The agent is Ronald Gardella?

Motty:



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Yes.

Mike Ruggiero:

Okay. G-A-R-D-E-L-L-A.

Motty:

Correct.

Mike Ruggiero:

Okay.

Motty:

Is that the name you've heard before?

Mike Ruggiero:

We've heard that name before too.

Motty:

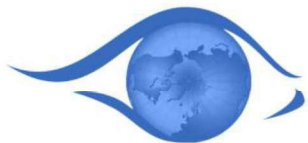
Is that a real name or no?

Mike Ruggiero:

Well, I'll put it to you this way. I'm pretty sure it is. I'm going to put it to you, pretty sure that these are real people. He's mentioned numerous. So Ronald Gardella is a special agent in charge, is the SAC of the Inspector General's Office of the FBI. That's who he is. So he's a high-ranking individual. But he's representing to you that you can't do anything because he has connections to the government, including the FBI. That's what it sounds like to me.

Motty:

That's what he implied, yeah. So I ended up getting a lot of the money back, I think probably like \$16,000 maybe. And he extended in increments. I mean, so basically my brother-in-law, I had posted on the



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forum just so that my brother-in can use that as bait. So when he came asking for an MCA, a merchant cash advance, he told him, "Oh, I see that you owe people money and that's a problem." So he told him he would be able to give him a \$200,000 merchant cash advance line if he settled it with me.

And he came back and he's trying to convince me. I'm like, "Listen, if you give me a certain amount of money by this time, I would consider telling them that you're in good faith making payments and then you'll just pay me the rest." And so it's hard to tell whether he explicitly went into this venture looking to rip people off. I think he just has a tendency to be a poor businessman and he has a high-expensive lifestyle. And so he basically bled any business he was ever in with all the money. And then as a result of that, he just is a greedy SOB.

Mike Ruggiero:

I think you're being very kind. I'm going to put it to you that way.

Motty:

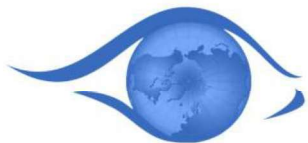
It's funny because the fact is he did make some attempts, even with Melanie. The guy's destroyed the car. I don't feel for the guy because you make your own bed that you sleep in and dishonesty breeds more dishonesty. And someone shady is someone shady. But I don't know, it didn't feel like he explicitly went into the business to steal from people. He just in his mind thought, maybe it's a pathological lying kind of situation where he lies so much that he's convinced he's telling the truth and so he's convinced that his lie is the truth and then just...

Mike Ruggiero:

I think that that's an accurate portrayal. However, our nexus is that we believe that Lamor was set up by this FBI informant Belmonte and he's not a victim. And if someone's an informant, the government is mandated to bring that out during the trial. And they didn't. And that's a problem.

Motty:

They didn't use his testimony



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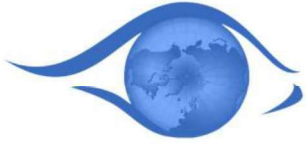
Mike Ruggiero:

Right. But they didn't use his testimony for one very good reason is because they did use his testimony, they just didn't... He testified and took the fifth. So the bottom line is that this whole wire set up and the recording of the information, That's an informant. That's fine, but you have to say

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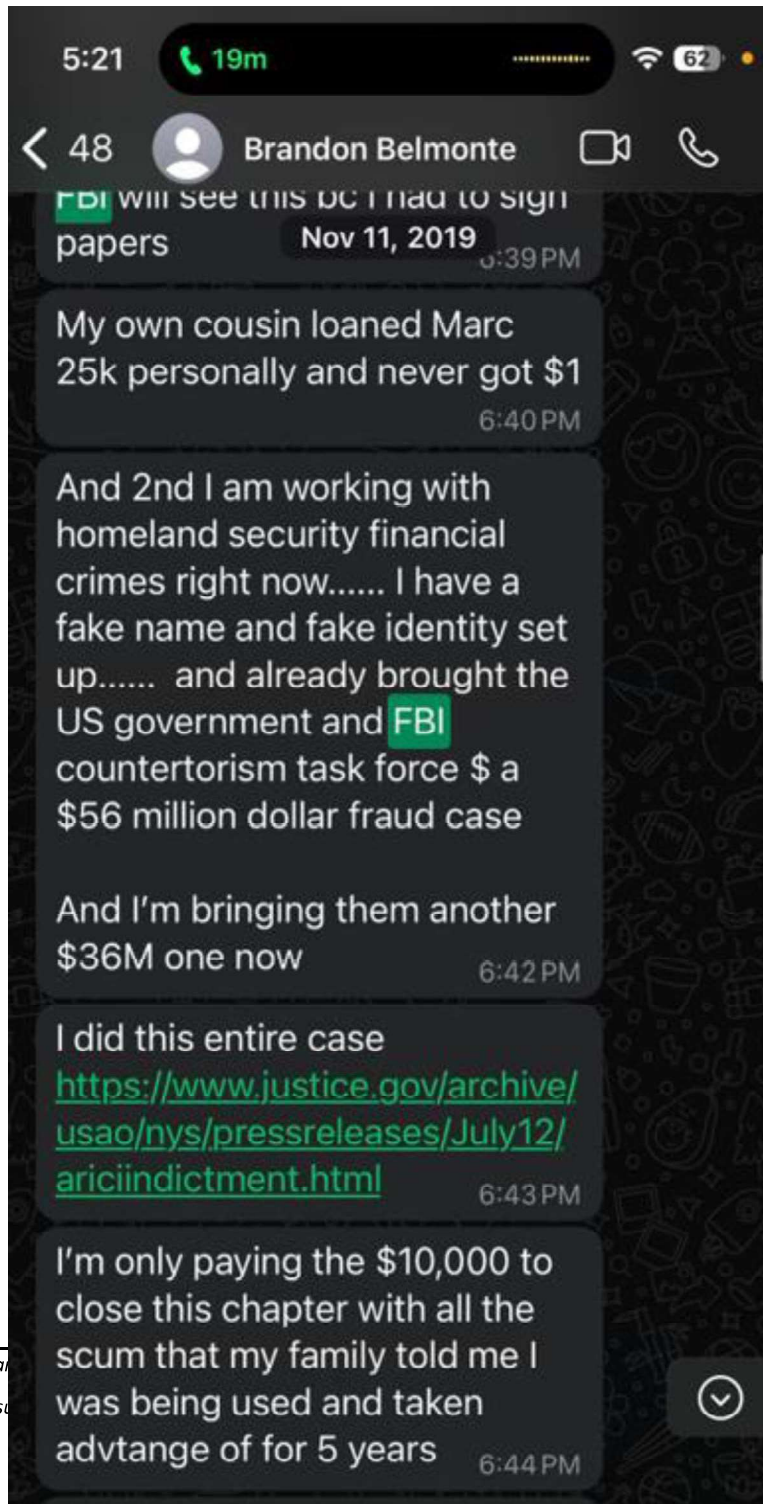
that you're an informant. It's misconduct if you don't. And so that's the nexus of our case. So I'm going to have to go. Thank you.

ATTACHMENTS:



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Exhibit A-13

2:36



< 57



Brandon With On Phone >

The problem is that you sent me a doctored up title report and I'm quite concerned about people that Dr. documents

What

No I didn't

That's the title report I got directly from FM capital

I'll give you like five FBI agents as well as her US attorney you can call and ask about me, I don't Dr. any documents

Thu, Jan 19 at 9:00 PM

They have no idea who you are

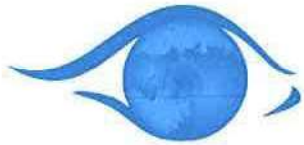
Fri, Feb 17 at 7:36 PM

Heard you over the world money

Ehat

What

Exhibit A-14



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[Faint, illegible text, likely a redacted or low-quality scan of a document.]

Avi Rubin

Attached are Avi Rubin's records of communication with the FBI, with an agent named Chris Merriman. BB never boasted to Avi of his connections to the FBI. This is just to support the pattern of the FBI seemingly ignoring or overlooking BB's criminal activity.

¹ <https://www.dnainfo.com/new-york/20160920/upper-west-side/how-mob-informant-who-left-witness-protection-got-100m-from-widow>
<https://nypost.com/2021/10/05/shot-lamborghini-driver-was-once-accused-of-kidnapping-a-rods-nephew/>

----- Forwarded message -----

From: Avi Rubin <avirubin930@gmail.com>

Date: Tue, Aug 8, 2023 at 10:35 AM

Subject: Re: Brandon Belmonte Kosher Corks

To: <CJmerriman@fbi.gov>

Chris,

Good morning, I saw that Brandon was indicted at the end of last week. Is there anything I need to do on my end to potentially recover the money that was stolen?

Thank you,

Avi Rubin

On Wed, Feb 15, 2023 at 11:16 PM Avi Rubin <avirubin930@gmail.com> wrote:

Chris,

Attached is more documentation about the scam starting from the initial pitch deck (check the powerpoint and excel) (I missed them the first time since I was searching for the wrong email). There is also plenty of email correspondence asking for payment and not receiving it.

Thank you,

Avi Rubin

On Wed, Feb 15, 2023 at 12:00 PM Avi Rubin <avirubin930@gmail.com> wrote:

Chris,

Good afternoon, attached are a few documents which may help the case as well as a summary of the scam that Brandon did that my father and I were victims of.

It started with a flyer that was sent around on a Jewish email list in October of 2018. That email/flyer was then sent to me (File Name: "decoy flyer that came before the pitch deck to get familiar with the brand"). This flyer included clickable links that take you to the KosherCorks.com website and looked very legitimate and you can add items to a cart etc. This website/flyer had great deals for liquor and we even commented that we should buy some because the prices looked really good.

We did not purchase any liquor but a few days later we received a flyer to invest in that company ("pitchdeck Flyer"). Again, the website KosherCorks.com was active and working, and I believe it was modeled off of a different kosher liquor website which I was familiar with at the time. It seemed like a good deal and investment, so I messaged customercare@koshercorks.com like the flyer said, to get more details and invest money (First Email). I remember there being promisings of investor meetings and events etc. I definitely spoke on the phone with Brandon as well.

He messaged me back (Responses to first email) and we took it from there (I'm attaching the documents in that chain as well). After editing the contract a few times, we signed the contract with Julie Ravage, who we thought was part of Kosher Corks. I definitely spoke to Brandon on the phone but I'm not sure about Marc or Julie since it was a while back. After signing the contract, my father and I both sent checks for \$20,000 each (\$40,000 total). I am attaching a copy of my initial investment check, which potentially has identifying information for Brandon's accounts on the back of the check. (If necessary I can get the check from my father as well).

Things went wrong very quickly. They were late on the first payment (which they did eventually send but that was basically it). We sent multiple late notices, default notices, accelerated payment notice etc. We sent letters certified but they never got received since the liquor store never did exist. I went to visit that store in Brooklyn and there was a big notice on it (I believe from a government agency shutting it down and no trespassing). I started to look at the online forums and there were a few things about Brandon being a scam artist but not as much information as there is now.

It was definitely a scam from the very beginning as there was no intention of there ever being a liquor store business and really nothing to invest in. From the decoy flyer, the operable decoy website, from using Marc and Julie Ravage as a front and signing the contracts, to just stealing our money, this criminal needs to be in prison. He is taking advantage of too many people and is a threat to society.

Let me know what additional information you need and I'm available to hop on the phone as well.

Thank you,

Avi

Exhibit A-15

1 O35UWHI1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

-----x

4 UNITED STATES OF AMERICA

5 v.

22 CR 00692 (LGS)

6 LAMOR WHITEHEAD

Trial

7 Defendant

-----x

New York, N.Y.
March 5, 2024
9:00 a.m.

11 Before:

12 HON. LORNA G. SCHOFIELD
13 District Judge
-and a Jury-

14 APPEARANCES

15 DAMIAN WILLIAMS
16 United States Attorney for the
Southern District of New York

17 JANE KIM
18 JESSICA GREENWOOD
DEREK WIKSTROM
Assistant United States Attorneys

19 DAWN M. FLORIO LAW FIRM PLLC
Attorneys for Defendant

20 DAWN M. FLORIO
21 DECLAN J. MURRAY
-and-

22 DERRICK MAGWOOD

23 ALSO PRESENT: CHRISTOPHER DeGRANDPRE, Paralegal (USAO)
24 NYA MATTHEWS, Paralegal (Defense)

25

1 (Jury not present)

2 THE COURT: Good morning.

3 So our first order of business was hearing from
4 Mr. Belmonte. I've been informed that the defense wanted to
5 call Mr. Belmonte. The government then informed that he
6 intends to assert his Fifth Amendment privilege against
7 self-incrimination. So given that I have the discretion to
8 exclude the testimony if it has no probative value or if the
9 probative value is outweighed by the prejudice, I thought we
10 would hear his testimony outside the presence of the jury, so
11 that's why we're here. So is Mr. Belmonte present?

12 MR. MISKIEWICZ: Yes, your Honor.

13 THE COURT: Could you please take the witness stand.
14 And you're accompanied by your lawyer, is that right?

15 MR. MISKIEWICZ: Yes.

16 THE COURT: Would you like to give the court reporter
17 your name.

18 MR. MISKIEWICZ: Yes, your Honor. James Miskiewicz,
19 spelled the usual way.

20 THE COURT: That's a joke, right?

21 BRANDON BELMONTE,

22 called as a witness by the Defendant,

23 having been duly sworn, testified as follows:

24 THE COURT: So defense has said that this is their
25 witness, so who will be questioning for the defendant?

O35UWH1

Belmonte - Direct

1 MS. FLORIO: I will, your Honor.

2 DIRECT EXAMINATION

3 BY MS. FLORIO:

4 Q. Good morning, Mr. Belmonte.

5 A. Good morning, ma'am.

6 Q. Mr. Belmonte, could you tell us how old you are?

7 A. Thirty-nine years old.

8 Q. Can you tell us where you currently are -- what state do
9 you live in?

10 A. State of New Jersey.

11 Q. Mr. Belmonte, can you tell us, do you know Lamor Whitehead?

12 A. Yes, I do.

13 Q. And can you tell us how you know Mr. Lamor Whitehead?

14 A. On the advice of counsel, I'm invoking my Fifth Amendment
15 right not to answer questions.

16 Q. Can you tell us when you first met Mr. -- Mr. Whitehead?

17 A. On the advice of counsel, I'm invoking my Fifth Amendment
18 right not to answer questions.

19 Q. Can you tell us when -- do you own a body shop?

20 A. On the advice of counsel, I'm invoking my Fifth Amendment
21 right not to answer the questions.

22 Q. Can you tell us, have you owned any business, businesses
23 before?

24 A. On the advice of counsel, I'm invoking my Fifth Amendment
25 right not to answer the question.

O35UWH1

Belmonte - Direct

1 Q. Can you tell us -- did there come a time that you went to
2 the United States Attorney's Office?

3 A. On the advice of counsel, I'm invoking my Fifth Amendment
4 right not to answer the question.

5 Q. Did Lamor Whitehead try to extort you for \$5,000?

6 A. On the advice of counsel, I'm invoking my Fifth Amendment
7 right not to answer the question.

8 Q. Did Lamor Whitehead try to get you to loan him \$500,000 and
9 promised you favors with the mayor of New York?

10 A. On the advice of counsel, I'm invoking my Fifth Amendment
11 right not to answer the question.

12 Q. Did you tell the FBI that the mayor of New York told you to
13 do business with Lamor Whitehead because he could do big
14 things?

15 MS. KIM: Objection.

16 THE COURT: Overruled.

17 MS. KIM: Your Honor, to the extent that the defense
18 plans to continue asking questions and the witness continues to
19 invoke, I'm not sure that we need to go through every single
20 question, if the rest of the substantive questions the witness
21 intends to invoke.

22 THE COURT: Well, I'll let this go on for a while,
23 obviously we won't sit here all morning but I -- I'll let
24 counsel continue to ask questions. So there was a question.
25 I'm going to ask counsel to repeat the question.

O35UWH1

Belmonte - Direct

1 MS FLORIO: Sure.

2 Q. Did you tell the FBI that the mayor of New York told you to
3 do business with Lamor Whitehead because he does big things; is
4 that right?

5 A. On the advice of counsel, I'm invoking my Fifth Amendment
6 right not to answer the question.

7 Q. Have you owned any multiunit buildings in the Bronx in
8 2022?

9 A. On the advice of counsel, I'm invoking my Fifth Amendment
10 right not to answer the question.

11 Q. Were you ever the owner of 3160 Villa Avenue?

12 A. On the advice of counsel, I'm invoking my Fifth Amendment
13 right not to answer the question.

14 Q. Did Lamor Whitehead ever tell you that he could remove a
15 stop work order by calling the mayor and getting it removed?

16 A. On the advice of counsel, I'm invoking my Fifth Amendment
17 right not to answer the question.

18 Q. Did you promise Lamor Whitehead \$5,000 for a rental
19 reimbursement?

20 A. On the advice of counsel, I'm invoking my Fifth Amendment
21 right not to answer the question.

22 Q. Did you tamper with any of the recordings when you were
23 recording Mr. Whitehead for the FBI?

24 A. On the advice of counsel, I'm invoking my Fifth Amendment
25 right not to answer the question.

O35UWH1

Belmonte - Direct

1 Q. Was this a sting operation with the FBI against the mayor
2 of New York?

3 A. On the advice of counsel, I'm invoking my Fifth Amendment
4 right not to answer the question.

5 Q. Do you have any proffer agreements for working with the FBI
6 on this case?

7 A. On the advice of counsel, I'm invoking my Fifth Amendment
8 right not to answer the question.

9 Q. Were all of the calls with the FBI consensual?

10 A. On the advice of counsel, I'm invoking my Fifth Amendment
11 right not to answer the question.

12 Q. Did you make the recordings with the FBI?

13 A. On the advice of counsel, I'm invoking my Fifth Amendment
14 right not to answer the question.

15 Q. Did the FBI tell you to make these recordings?

16 A. On the advice of counsel, I'm invoking my Fifth Amendment
17 right not to answer the question.

18 Q. Was this a sting operation?

19 THE COURT: You've already asked that question.

20 Q. What was the target of this investigation?

21 A. On the advice of counsel, I'm invoking my Fifth Amendment
22 right not to answer the question.

23 Q. Do you have a cooperation agreement with respect to the
24 case in the Eastern District?

25 A. On the advice of counsel, I'm invoking my Fifth Amendment

O35UWH1

Belmonte - Cross

1 right not to answer the question.

2 Q. Did Mr. Lamor Whitehead try to or attempt to try to extort
3 you of \$5,000 in 2022?

4 A. On the advice of counsel, I'm invoking my Fifth Amendment
5 right not to answer the question.

6 Q. Did Lamor Whitehead ask you for \$500,000 in exchange for a
7 stake in real estate?

8 A. Could you please repeat the question? There's two people
9 asking the question at the same time.

10 Q. Sure. Did Lamor Whitehead ask you for \$500,000 in exchange
11 for a stake in real estate and promise you favors with the
12 mayor?

13 A. On the advice of counsel, I'm invoking my Fifth Amendment
14 right not to answer the question?

15 THE COURT: Is that all?

16 MS FLORIO: That's it. I have no further questions.

17 THE COURT: Are there any questions of the government
18 would ask?

19

20 CROSS-EXAMINATION

21 BY MS. KIM:

22 Q. Mr. Belmonte, with respect to your interactions with Lamor
23 Whitehead, are there any substantive questions to which you
24 would not invoke your Fifth Amendment rights?

25 A. No, ma'am.

O35UWH1

Belmonte - Cross

1 THE COURT: Thank you. So, as explained in my
2 previous order dated February 23, 2024, "A district court has
3 the discretion to prevent a party from calling a witness solely
4 to have that witness invoke the privilege against
5 self-incrimination in front of the jury," *United States versus*
6 *Deutsche*, D-E-U-T-S-C-H-E, 987, F2d 87 at 883 and 84, Second
7 Circuit, 1993. To decide whether to exclude the witness, the
8 district court must weigh whether the probative value of the
9 proffered evidence is substantially outweighed by the danger of
10 unfair prejudice and may exclude the witness if his testimony
11 consists only of the invocation of privilege against
12 self-incrimination or irrelevant information. See *Deutsche*.

13 As shown by the testimony that we've just heard,
14 outside the presence of the jury, Mr. Belmonte's relevant
15 testimony consists only of the invocation of the privilege.
16 Accordingly, any probative value is substantially outweighed by
17 the danger of unfair prejudice. The defendant may not call
18 Mr. Belmonte to testify in front of the jury.

19 Thank you, you may be excused.

20 THE WITNESS: Thank you.

21 (Witness excused)

22 THE COURT: We're a little bit early, but since we're
23 all sitting here waiting maybe we could take care of some of
24 housekeeping. I know the government wanted to preadmit
25 Exhibits 403-8 through 403-14. Does the defendant have any

O35UWH1

Belmonte - Cross

1 objection?

2 MR. MURRAY: Your Honor, could I get the exhibit
3 numbers one more time?

4 THE COURT: Sure. 403-8 through 403-14.

5 MS. KIM: And just to assist the process those are
6 documents from Cash App for Block and our understanding is that
7 the defense does not object to those exhibits.

8 MR. MAGWOOD: Your Honor, based on that, I do believe
9 that -- I do not believe that we had lodged any objections to
10 those exhibits, and I don't see anything that was not raised
11 previously that we would raise as to those exhibits.

12 THE COURT: All right. So they are admitted, 403-8
13 through 403-14.

14 (Government's Exhibits 403-8 through 403-14 received
15 in evidence)

16 THE COURT: In addition, the government had sought to
17 exclude certain surveillance videos that were produced at the
18 end of last week and I had asked defense counsel, as well as
19 former defense counsel, to make submissions in that regard.
20 Actually, at the end of last week and that deadline has passed,
21 I haven't received anything. So where are we on that?

22 I had asked defense counsel -- and I'm seeing puzzled
23 looks, so let me respond. I had issued an order for defense
24 counsel to submit the videos to us and file a letter
25 identifying the portions that you intend to use. I presume

O35UWH1

Belmonte - Cross

1 that it's not -- sorry -- the order was yesterday, apology.
2 But the -- I presume you don't intend to use all of the videos,
3 particularly since I understand some of them are duplicates.
4 And then I had asked you to forward the order immediately to
5 Mr. Ponder, prior counsel, who was supposed to file a letter
6 explaining the delay in the production, as I understand the
7 government just received these videos.

8 So, Mr. Murray?

9 MR. MURRAY: Yes, your Honor, my apologies, I did not
10 see that submission yesterday. I am sure I received a
11 notification of it. But we would not be intending to play the
12 full videos, just a portion. I believe the total portions are
13 -- from one of them -- I think they totaled maybe -- I know the
14 longest video, which I believe is the duplicate, I think it's
15 10 or 15 minutes.

16 THE COURT: So what I --

17 MR. MURRAY: Twenty-one minutes.

18 THE COURT: So what I'd like is, I'd like to be able
19 to view the portions that you intend to play. So I need for
20 you to upload the relevant portions or upload the videos and
21 give me the time stamps so that I can look at the relevant
22 portions.

23 MS. GREENWOOD: If I may just for the record, your
24 Honor.

25 THE COURT: Yes.

O35UWH1

Belmonte - Cross

1 MS. GREENWOOD: To be clear, defense counsel's
2 response to our motion indicated that they were unsure how we
3 received 24 videos and that they only uploaded five. We
4 received 24 videos. They are not all duplicates. There are a
5 couple of them that have the same name. However, even some of
6 the ones that have the same name, have different lengths. And
7 when you go into them and attempt to match the time stamps and
8 see if they're the same, they're not the same. So the review
9 burden is at this point in order for us to understand that the
10 complete scope is large.

11 The witness that the government intends to call, the
12 first witness, who was present at -- or purportedly present at
13 the time we documented on these recordings, is testifying this
14 morning. This is very late in the day, particularly for
15 something defense is now calling, "critical to its case." It
16 should have been discussed between counsel and the defendant
17 before the deadline for their exhibits. And the fact that this
18 video was missing from their possession would have been
19 identified at that time, if, in fact, they had been talking
20 about these videos, in fact, had identified them as critical.

21 The fact that, you know, more than hours and hours and
22 hours of video, which have many irregularities, your Honor,
23 date stamps are wrong, time stamps are wrong, the links don't
24 match up with the file lengths when you open them, the videos
25 skip around, and the images of what appear to be our agents

O35UWH1

Belmonte - Cross

1 skip around to where they move from one place to another place
2 with what appears to be time missing.

3 There's a lot of issues with these videos that we
4 simply have not been given sufficient time to look into because
5 the defendant did not comply with his obligation to identify
6 and produce pretrial exhibits pursuant to the Court's order.

7 So that's our concern. Your Honor has heard extensive
8 testimony at this point about the defendant's creation of
9 fraudulent materials. The government has a very real concern
10 about the inability to review and test the materials that we're
11 receiving from the defendant mid-trial in a fraud case like
12 this one.

13 THE COURT: Ms. Florio?

14 MS FLORIO: Your Honor, just to be clear, we would not
15 be intending to play the videos with the first witness and we
16 apologize for not -- for missing, you know, the order. We
17 would be able to show the government, as well as the Court, we
18 can upload just the portion that we wanted to use, and it's
19 basically showing the two cars, Tom Ford, and the witness that
20 would be testifying this morning, like approaching
21 Mr. Whitehead's house and is then having a conversation.
22 There's no audio, but having the conversation. You could see
23 them in the driveway. So that would be the portion that we
24 would be seeking to admit. But we would not -- if we do admit
25 it at all, it would not be through this witness.

O35UWH1

Belmonte - Cross

1 MS. GREENWOOD: If I may ask a follow-up, your Honor.

2 THE COURT: Yes.

3 MS. GREENWOOD: Can we have some understanding?

4 Again, I have a concern about the timing of how this plays out
5 for a couple of reasons. First of which because Agent Loizias
6 is one of the agents shown on that video. To the extent that
7 there's a fabrication problem or an optional completeness
8 problem, for example, if defense wants to attempt to show
9 portions that they're going to try to suggest are inconsistent
10 with Agent Loizias' testimony about what happened that morning
11 during the search of Mr. Whitehead's phone -- and to be clear,
12 despite the date stamp being wrong, assuming the videos are
13 authenticate -- I'm going to put that in brackets, of assuming
14 -- assuming the videos are authentic, dealing with the
15 substance, they purport to show the FBI agents arriving at the
16 defendant's home on June 8th, 2022, which is the date of the
17 first search that resulted in them recovering his first cell
18 phone and where he made the false statements denying that he
19 had a second cell phone, which was, in fact, in the house.

20 Based on what we understand the agents will testify
21 to, they described the sequence of events, how they arrived,
22 how they got the phone, what actions the defendant took, and
23 what actions they took, and the conversations that they had.
24 The only issue with respect to, you know, to that interaction,
25 or the primary issue, is what was said between the parties.

O35UWH1

Belmonte - Cross

1 This is an audio-free sequence of video. So we're concerned
2 about, one, if it's being used to suggest that the -- that the
3 actions of the people who were involved didn't happen, that
4 Agent Loizias is going to have already testified by the time we
5 even get time stamps of what the defense wants to use.

6 And second, that we fail to understand how this
7 evidence could be, quote, critical to the defense, given that
8 the issue on that particular date are statements made between
9 the individuals involved and this is an audio-free set of
10 recordings.

11 So it would certainly assist the government in
12 understanding the prejudice to us by only having this evidence
13 identified when our first FBI witness is scheduled to testify
14 this morning, to have a proffer from the defense as to what
15 they think is critical to the defense case on these videos.

16 THE COURT: Ms. Florio, I think it's a reasonable
17 request, also for me to understand so that I can rule either
18 now or later, even what -- what the probative value is of what
19 you're proposing and whether a screenshot might suffice and --
20 sorry for the many questions -- and why we would need 15
21 minutes of interaction when the issue is around a statement
22 that took place over a much shorter period of time.

23 So anyway, Ms. Florio, why don't you explain to me
24 what it is you're interested in showing and the probative value
25 of that?

O35UWH1

Belmonte - Cross

1 MS FLORIO: So, we're primarily interested in showing
2 the interaction in the driveway where there's conversations
3 between four agents and my client. You can see my client
4 leaving, coming back, leaving, coming back, and it just gives
5 context, and there's certain hand motions that are not captured
6 by just explaining. And it's a very short -- we can -- we can
7 cut it down to a very short period of time that's the most
8 relevant part.

9 THE COURT: So, my understanding is that you have no
10 intention of playing it during this witness's testimony and it
11 sounds like it's something that you would put on in your case,
12 if at all --

13 MS FLORIO: Correct.

14 THE COURT: -- is that right?

15 MS FLORIO: Yes.

16 THE COURT: So what I would like you to do is -- I'm
17 not going to hold up the trial any more, I mean we've gotten
18 delayed and delayed. You need to submit it to me and to the
19 government, just the portion, or identify just the portion that
20 you intend to play or to show, and then I can make a ruling
21 based on that and hear more argument from both of you, if
22 that's necessary.

23 MS FLORIO: Thank you, your Honor.

24 THE COURT: Is there anything else we need to discuss?

25 MS. GREENWOOD: Yes, your Honor, just briefly. I

O35UWH1

Belmonte - Cross

1 discussed with defense counsel in advance of Agent Loizias'
2 testifying this morning, just a few matters that I want to put
3 on the record for him.

4 THE COURT: Okay.

5 MS. GREENWOOD: So in particular, in light of your
6 Honor's ruling excluding the testimony of Mr. Belmonte and the
7 government's intention to offer his statements not for their
8 truth but only for their effect on Mr. Whitehead and other
9 appropriate non-hearsay purposes, it is my intention to ask
10 some leading questions of Agent Loizias to ensure that I'm not
11 eliciting from him for the truth, statements made by Mr.
12 Belmonte to the FBI outside of the recordings that are being
13 offered.

14 THE COURT: Okay.

15 MS. GREENWOOD: And defense counsel indicated they had
16 no objection to me doing that.

17 Second, your Honor, I also conferred with defense
18 counsel about my intention to ask some questions of Agent
19 Loizias of non-hearsay instructions given by the FBI to
20 Mr. Belmonte. So, for example, instructing him to provide
21 \$5,000 in cash to Mr. Whitehead and instructing him that he
22 could not, in fact, open an LLC, which is something that he had
23 represented to the defendant that he was doing as part of their
24 proposed scheme. And again, defense counsel repeated they
25 would not object to my asking questions of non-hearsay

O35UWH1

Belmonte - Cross

1 instructions given by the FBI to Mr. Belmonte.

2 THE COURT: Okay.

3 MS. GREENWOOD: This is also the witness, your Honor,
4 through whom we intend to seek to offer and admit the
5 recordings that are between Mr. Belmonte and the defendant.
6 Assuming those are ultimately admitted, we've conferred with
7 defense about using transcripts of those recordings to show the
8 jury. And those -- for each recording, your Honor, the
9 transcript is designated with a dash T that matches with the
10 recording number. So for Exhibit 101, which is the recording,
11 101-T is the transcript. We understand that if the recordings
12 are admitted, defense counsel has no objection to use and
13 admission of the transcripts.

14 THE COURT: Defense counsel has no --

15 MS. GREENWOOD: Objection.

16 THE COURT: -- objection to the use and admission of
17 the transcripts?

18 MS. GREENWOOD: That's my understanding, your Honor.

19 THE COURT: Is what we have heard so far, correct, Ms.
20 Florio?

21 MS FLORIO: Yes, your Honor. And with respect to the
22 -- the Court has not ruled on whether the recordings or the
23 transcripts can be admitted into evidence. I believe the
24 Court's ruling was that the government had to lay the proper
25 foundation. The only thing is that we won't know until the

O35UWH1

Belmonte - Cross

1 government actually asks the questions, and we would want an
2 opportunity -- and I know that we're only allowed to say
3 objection, but we wanted to be heard. And I know that is not
4 the Court's practice, but I think in this situation we would
5 like to make arguments. For example, there's chain of custody
6 issues, there is whether the -- whether the recordings are
7 actually authentic. For example, in one recording, the
8 recording is taken by Mr. Belmonte and not given over to the
9 agent for 19 days later. There's a lot of gaps and I think
10 that --

11 THE COURT: Okay. Let me just interrupt. I
12 understand your point. I think that's really not an issue for
13 argument, and I do not want to hear argument, but I will allow
14 you to voir dire the witness on the admissibility of the tapes
15 before I admit them. So, in other words, the government will
16 lay the foundation, you could ask to have a brief voir dire. I
17 will allow that. You can question the witness about issues
18 that go to the admissibility of the exhibit, then I'll rule on
19 it, then we can proceed.

20 MS FLORIO: So, your Honor, since Mr. Belmonte is not
21 testifying, we don't have an opportunity to ask Mr. Belmonte
22 whether or not there's additional conversations or additional
23 recordings. And since he refuses to answer, we're asking that
24 counts two and three be dismissed because the government will
25 -- is not going to be able to prove their case and we're

O35UWH1

Belmonte - Cross

1 hampered in our ability to get this information, since it's
2 very clear that none of the agents were -- the agents were not
3 present for each and every one of the recordings.

4 MS. GREENWOOD: If I may, your Honor.

5 THE COURT: Yes.

6 MS. GREENWOOD: I think these issues have been
7 previewed with the Court. The government cited extensive case
8 law in its motion *in limine* response to the defendant's attempt
9 to exclude this evidence. The vast majority of the evidence
10 being made by defense counsel go to weight rather than
11 admissibility. As proffered by the government in its motion *in*
12 *limine* response, Agent Loizias will testify about extensive
13 interactions both with Mr. Belmonte and the defendant that gave
14 him the ability to recognize both their images and voices.

15 He will testify with respect to two of the recordings.
16 That he participated in wiring up Mr. Belmonte to meet with the
17 defendant and that's how those recordings were created. And as
18 to the remainder, he will testify as to his ability to identify
19 the voices on the recordings as Mr. Belmonte and Mr. Whitehead
20 for two of them in addition that show video to identify
21 Mr. Whitehead's image or Mr. Belmonte's image.

22 And based on the case law cited in the government's
23 briefing, we believe that would be sufficient, we understand
24 the Court has also indicated if we lay that foundation that the
25 recordings will be admitted, and, obviously, defense is free to

O35UWH1

Belmonte - Cross

1 make arguments and cross-examination of Agent Loizias with
2 respect to the weight that should be afforded those recordings
3 by the jury.

4 THE COURT: So we will proceed as I just said, and
5 then I'll rule on whether the tape, video, audio, whatever it
6 is, is admitted.

7 MS. GREENWOOD: Two other minor points, your Honor.

8 THE COURT: Yes.

9 MS. GREENWOOD: Again, assuming, or I should say,
10 setting aside whether the recordings in fact come in, one other
11 thing that we're going to do with Agent Loizias is read out
12 chats which have been preadmitted into evidence between Mr.
13 Whitehead and Mr. Belmonte. In order to -- to streamline that
14 process and make it faster, we've combined the chats which
15 appear across multiple exhibits into a single summary document
16 which we intend to offer. And again, we've conferred with
17 defense counsel and understand there's no objection to use of
18 that exhibit marked as GX607 for Agent Loizias.

19 THE COURT: And that's not in evidence yet, you'll
20 offer it after you lay a foundation; is that right?

21 MS. GREENWOOD: That's correct, your Honor. We have
22 two versions of that document ready. We have one that
23 references the recordings so that when you go chronologically -
24 we have two versions of that exhibit prepared, one which refers
25 to the recording exhibit numbers in the chronological order

O35UWH1

Belmonte - Cross

1 they appear so that they're inter-sliced with the text messages
2 and we can play them at the appropriate time. If, for some
3 reason, any of those exhibits are not admitted, we have an
4 alternate version that removes reference to the GX numbers with
5 the recordings so that we can still read through the chats
6 which have been preadmitted.

7 And then the last issue, unless you have questions
8 about that, your Honor.

9 THE COURT: No.

10 MS. GREENWOOD: If this witness, again, assuming, we
11 get into the recordings would be -- I believe that the
12 witness -- it would be appropriate for giving a limiting
13 instruction on use of statements by Mr. Belmonte.

14 THE COURT: Okay.

15 MS FLORIO: Yes. That was going to be my request as
16 well. I also just -- I don't want to beat a dead horse, but I
17 just also wanted to say there were recordings by Belmonte that
18 he did on his own that no one had any -- no one had any
19 information as to where they came from, when they were
20 recorded, what was done, so I just wanted to also just brief
21 that for the Court.

22 Also, in one of the documents that is in the chat
23 which is a Government Exhibit, I'm going to show the government
24 -- there is a picture and these were text messages where Eric
25 Adams -- that there's a picture that is actually side by side,

O35UWH1

Belmonte - Cross

1 one before when my client was in prison and you could tell that
2 he was in jail because of the background, side by side with the
3 picture -- I'm going to identify that to the government so that
4 that could be redacted.

5 MR. WIKSTROM: Yes, your Honor, just for the record,
6 Ms. Florio and I have conferred about that and ask the Court
7 and the government will take a look at the exhibit she's
8 referring to redact --

9 THE COURT: I'm sorry. Redact... You trailed off.

10 MR. WIKSTROM: Oh, forgive me. We spoke about this
11 already before the Court, and I indicated to Ms. Florio that we
12 will review the exhibit that she's referring to, and if we can
13 find the picture she's talking about, we'll either remove it
14 from the exhibit or we will redact it. I wasn't aware of this
15 and we don't intend to rely on it.

16 THE COURT: Anything else?

17 MS. GREENWOOD: I don't believe so, your Honor.

18 THE COURT: One thing I wanted to mention is I assume
19 that the government's witnesses will take us into tomorrow,
20 including the cross-examination. Is that still everyone's best
21 guess?

22 MS. GREENWOOD: Certainly, your Honor. I think we
23 will finish Mr. Anderson in very brief order this morning. We
24 expect he will have some significant cross-examination.

25 Agent Loizias, assuming the recordings are admitted,

O35UWH1

Belmonte - Cross

1 will be on the stand for a significant period of time. The
2 recordings themselves are approximately 90 minutes. And then
3 he will have additional testimony, so that may take us two and
4 a half hours to get through Agent Loizias' direct. So that may
5 be the majority of today.

6 And then, you know, we would expect to get through the
7 remainder, either tomorrow or -- we hope to reach at least
8 another witness this afternoon, but that's the sequence.

9 THE COURT: So it's hard to know how far into tomorrow
10 we're going to get, and I think --

11 Ms. Florio, do you have any more insight into how long
12 a defense case might take for planning purposes?

13 We need to have a charging conference is where I'm
14 going.

15 MS FLORIO: So, your Honor, we have not -- I don't
16 have insight on how long it's going to take yet. It really
17 depends on all the evidence that's presented by the government,
18 so I don't want to mislead the Court. So we have not made a
19 lot of decisions yet. Dependent upon when the government
20 rests, that's when we will have our final decisions.

21 THE COURT: And are there any of the witnesses who you
22 subpoenaed who you have eliminated, in other words, who you
23 know you're not going to call either because you weren't able
24 to serve them or because you now know that you're not going to
25 call them?

O35UWH1

Belmonte - Cross

1 MS. FLORIO: So, your Honor, not right now but we
2 definitely know that we're going to be calling, 100 percent,
3 Mark Kaplan. And he just wanted to know, you know, around like
4 what times that we would have to sit through the whole day, so
5 I could probably give him an update after today. But the other
6 witnesses, you know, scheduling is really not an issue.

7 THE COURT: So as soon as the government is done
8 tomorrow, which is when I assume it will be, we will go into
9 your case. So you should have your witnesses prepared for
10 that. Obviously, we'll all know more at the end of the day
11 today where we are.

12 And so given all of that, I may try to have a charging
13 conference. Well, I may try to have the charging conference at
14 the end of the day today. I know I haven't sent you anything
15 yet, but I can tell you now that the draft charge has the same
16 instructions as the substantive instructions I gave you in the
17 preliminary charge, plus additional instructions on separate
18 issues that have come up during the trial, more or less, as
19 requested by the parties. And when I send them to you, I'll
20 tell you which ones those are, but I don't think there should
21 be anything startling or surprising in them. And so we'll plan
22 on having it either today or tomorrow, depending on what the
23 schedule looks like. Okay? All right. Let's take a break
24 until we bring the jury out at five of ten or ten or something.

25 (Recess)

Exhibit A-16



PRESS RELEASE

Lamor Whitehead, Brooklyn Church Leader, Sentenced To Nine Years In Prison For Fraud, Extortion, And False Statements

Monday, June 17, 2024

For Immediate Release

U.S. Attorney's Office, Southern District
of New York

Damian Williams, the United States Attorney for the Southern District of New York, announced that LAMOR WHITEHEAD was sentenced today by U.S. District Judge Lorna G. Schofield to nine years in prison for wire fraud, attempted wire fraud, attempted extortion, and making false statements to federal law enforcement agents. WHITEHEAD was previously convicted on all charges following a two-week trial.

U.S. Attorney Damian Williams said: “Lamor Whitehead is a con man who stole millions of dollars in a string of financial frauds and even stole from one of his own parishioners. He lied to federal agents, and again to the Court at his trial. Today’s sentence puts an end to Whitehead’s various schemes and reflects this Office’s commitment to bring accountability to those who abuse their positions of trust.”

According to the allegations in the Indictment and the evidence at trial:

WHITEHEAD, who leads a church in Brooklyn, New York, stole from his own parishioners, sought to defraud and extort a businessman, and committed loan fraud. First, WHITEHEAD induced one of his parishioners to invest approximately \$90,000 of her retirement savings with him by promising to use the money to help her buy a home. He then spent the money on luxury goods and other personal expenses and, when she demanded to be paid back, he continued to lie to avoid returning the money. Second, WHITEHEAD extorted a businessman for \$5,000, then attempted to convince the same businessman to lend him \$500,000 and give him a stake in certain real estate transactions in return for favorable actions from the Mayor of New York City, even though WHITEHEAD knew he could not obtain the favors he promised. Third, WHITEHEAD submitted a fraudulent application for a \$250,000 business loan, including doctored bank statements that falsely claimed WHITEHEAD had millions of dollars in the bank and hundreds of thousands of dollars in monthly revenue. He submitted similar fraudulent applications to various other financial institutions, stealing millions of dollars in the process. Finally, when speaking with FBI agents who were executing a search warrant outside WHITEHEAD's mansion in New Jersey, WHITEHEAD falsely claimed that he had no cellphones other than the phone he was carrying when, in fact, WHITEHEAD had and regularly used a second cellphone, which was inside his house at the time.

* * *

In addition to the prison term, WHITEHEAD, 45, of Paramus, New Jersey, was sentenced to three years of supervised release and ordered to pay \$85,000 in restitution and forfeit \$95,000.

Mr. Williams praised the outstanding investigative work of the Federal Bureau of Investigation.

This case is being handled by the Office's Public Corruption Unit. Assistant U.S. Attorneys Jessica Greenwood, Jane Kim, and Derek Wikstrom are in charge of the prosecution.

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Updated June 17, 2024

Topic

FINANCIAL FRAUD



PRESS RELEASE

U.S. Attorney Announces Arrest Of Lamor Whitehead For Fraud, Extortion, And False Statements

Monday, December 19, 2022

For Immediate Release

U.S. Attorney's Office, Southern District
of New York

Damian Williams, the United States Attorney for the Southern District of New York, and Michael J. Driscoll, Assistant Director in Charge of the New York Field Office of the Federal Bureau of Investigation (“FBI”), announced today the unsealing of an Indictment charging LAMOR WHITEHEAD with defrauding one of his parishioners out of part of her retirement savings, attempting to extort and defraud a businessman, and lying to the FBI. WHITEHEAD was arrested this morning and will be presented in federal court today before United States Magistrate Judge Gabriel W. Gorenstein. The case is assigned to United States District Judge Lorna G. Schofield.

U.S. Attorney Damian Williams said: “As we allege today, Lamor Whitehead abused the trust placed in him by a parishioner, bullied a businessman for \$5,000, then tried to defraud him of far more than that, and lied to federal agents. His campaign of fraud and deceit stops now.”

FBI Assistant Director Michael J. Driscoll said: “As we allege today, Whitehead carried out several duplicitous schemes in order to receive funds from his victims. Additionally, when speaking with authorities, Whitehead consciously chose to mislead and lie to them. If you are willing to attempt to obtain funds through false promises or threats, the FBI will ensure that you are made to face the consequences for your actions in our criminal justice system.”

According to the Indictment unsealed today in Manhattan federal court and publicly available information:[1]

LAMOR WHITEHEAD, who leads a church in Brooklyn, New York, has engaged in a course of conduct in which he sought money and other things of value from victims on the basis of either threats or false promises that the victims' investments would benefit the victims financially. First, WHITEHEAD induced one of his parishioners to invest approximately \$90,000 of her retirement savings with him but instead spent the investment on luxury goods and other personal purposes. Second, WHITEHEAD extorted a businessman for \$5,000, then attempted to convince the same businessman to lend him \$500,000 and give him a stake in certain real estate transactions in return for favorable actions from the New York City government, which WHITEHEAD knew he could not obtain. In addition, when speaking with FBI agents who were executing a search warrant, WHITEHEAD falsely claimed that he had no cellphones other than the phone he was carrying when, in fact, WHITEHEAD owned a second phone, which he regularly used to communicate — including to send a text message describing it as “my other phone” shortly after telling the agents he had no other phones.

* * *

WHITEHEAD, 45, of Paramus, New Jersey, is charged with two counts of wire fraud, each of which carries a maximum sentence of 20 years in prison; one count of extortion, which carries a maximum sentence of 20 years in prison; and one count of making material false statements, which carries a maximum sentence of five years in prison.

The maximum potential sentences are prescribed by Congress and are provided here for informational purposes only, as any sentencing of the defendant will be determined by the judge.

Mr. Williams praised the outstanding work of the FBI.

The prosecution of this case is being handled by the Office's Public Corruption Unit. Assistant U.S. Attorneys Hagan Scotten, Celia V. Cohen, and Andrew Rohrbach are in charge of the prosecution.

The charges contained in the Indictment are merely accusations, and the defendant is presumed innocent unless and until proven guilty.

[1] As the introductory phrase signifies, the entirety of the Indictment and the descriptions of the Indictment set forth herein constitute only allegations, and every fact described should be treated as an allegation.

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Updated December 19, 2022

Attachment

[U.S. v. Whitehead Indictment.pdf](#) [PDF, 382 KB]

Topic

PUBLIC CORRUPTION

Component

[USAO - New York, Southern](#)

Press Release Number: 22-402

Related Content

PRESS RELEASE

New York City Mayor Eric Adams Charged With Bribery And Campaign Finance Offenses

Damian Williams, the United States Attorney for the Southern District of New York, James E. Dennehy, the Assistant Director in Charge of the New York Field Office of the Federal...

September 26, 2024

Exhibit B

JURY INSTRUCTIONS

March 7, 2024

United States v. Lamor Whitehead

22-cr-692

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I. GENERAL INTRODUCTORY INSTRUCTIONS

A. Introductory Remarks

Members of the jury, you have now heard all of the evidence in the case. We have reached the point where you are about to undertake your final function as jurors. You have paid careful attention to the evidence, and I am confident that you will act together with fairness and impartiality to reach a just verdict in this case.

My duty at this point is to instruct you on the law. It is your duty to accept these instructions of law and to apply them to the facts as you determine them, just as it has been my duty to preside over the trial and to decide what testimony and evidence were proper under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney or witness has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow. You are to consider these instructions together as a whole; in other words, you are not to isolate or give undue weight to any particular instruction.

To the extent there are any differences between these instructions and the preliminary instructions I gave you at the beginning of trial, the instructions I am giving you now control, meaning that these instructions are the ones you must follow in your deliberations.

B. Role of the Jury¹

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You determine the reliability of the evidence. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them,

¹ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

and you determine the weight of the evidence or lack of evidence. It is your sworn duty, and you have taken the oath as jurors, to determine the facts and to follow the law as I give it to you. You must not substitute your own notions or opinions of what the law is or ought to be.

C. Equality of the Parties²

I remind you that in reaching your verdict, you are to perform your duty of finding the facts without bias or prejudice as to any party. You must remember that all parties stand as equals before a jury in the courts of the United States. The fact that the prosecution is brought in the name of the United States does not entitle the government or its witnesses to any greater consideration than that accorded to any other party. By the same token, the government is entitled to no less consideration. The government and Mr. Whitehead stand as equals at the bar of justice. Your verdict must be based solely on the evidence or the lack of evidence.

D. Presumption of Innocence³

Now, I will instruct you on the presumption of innocence and the government's burden of proof in this case. Mr. Whitehead has pleaded not guilty. In so doing, he has denied every allegation against him. As a result of Mr. Whitehead's plea of not guilty, the burden is on the prosecution to prove Mr. Whitehead's guilt beyond a reasonable doubt. This burden never shifts to Mr. Whitehead for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

The law presumes Mr. Whitehead to be innocent of the charges against him. I therefore instruct you that Mr. Whitehead is to be presumed by you to be innocent throughout your

² Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

³ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

deliberations. Mr. Whitehead began the trial here with a clean slate. This presumption of innocence alone requires you to acquit Mr. Whitehead unless you as jurors are unanimously convinced beyond a reasonable doubt of Mr. Whitehead's guilt, after a careful and impartial consideration of all the evidence in this case. If the prosecution fails to sustain its burden as to Mr. Whitehead, then you must find him not guilty. This presumption was with Mr. Whitehead when the trial began, remains with him even now as I speak to you, and will continue with him during your deliberations unless and until you are convinced that the prosecution has proven the elements of each offense beyond a reasonable doubt.

E. Proof Beyond a Reasonable Doubt⁴

Now, the next question is, what is reasonable doubt? It is a doubt that a reasonable person has after carefully weighing all of the evidence or a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

In a criminal case, the burden is at all times upon the prosecution to prove guilt beyond a reasonable doubt. The law does not require that the prosecution prove guilt beyond all possible doubt; rather, proof beyond a reasonable doubt is sufficient to convict. The burden never shifts to Mr. Whitehead, which means that it is always the prosecution's burden to prove each of the elements of the crimes charged against Mr. Whitehead beyond a reasonable doubt.

If, after fair and impartial consideration of all the evidence, or the lack of evidence, you are satisfied of the guilt of Mr. Whitehead beyond a reasonable doubt, then you must convict Mr.

⁴ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

Whitehead. On the other hand, if after fair and impartial consideration of all the evidence, you have a reasonable doubt as to the any of the charges you are considering as to Mr. Whitehead, then you must acquit Mr. Whitehead on that charge.

F. The Nature of the Evidence⁵

In determining the facts, you must rely upon your own recollection of the evidence. Evidence consists of the testimony of witnesses and exhibits. The statements and arguments made by the lawyers are not evidence. Their arguments are intended to convince you what conclusions you should draw from the evidence or lack of evidence. You should weigh and evaluate the lawyers' arguments carefully, but you must not confuse them with the evidence. As to the evidence presented at trial, it is your recollection that governs, not the statements of the lawyers. You should also bear in mind that a question put to a witness is never evidence. It is the answer to the question that is evidence. However, if a witness affirms the facts in a question by answering "yes," you may consider the facts in that question to be evidence.

G. Direct and Circumstantial Evidence⁶

There are two types of evidence that you may properly use in deciding whether Mr. Whitehead is guilty or not guilty of the crimes with which he is charged. One type of evidence is called direct evidence. Direct evidence of a fact in issue is presented when a witness testifies to that fact based on what he or she personally saw, heard or observed. In other words, when a witness testifies about a fact in issue on the basis of that witness' own knowledge -- by virtue of what he or she sees, feels, touches, or hears -- that is direct evidence.

⁵ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

⁶ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

The second type of evidence is circumstantial evidence. Circumstantial evidence is evidence that tends to prove a disputed fact indirectly by proof of other facts. There is a simple example of circumstantial evidence that I gave you on the first day of trial, and I will repeat it now.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day outdoors. Assume that the courtroom shades were drawn and you could not look outside. Assume further that as you were sitting here, someone walked in with an umbrella that was dripping wet and then, a few moments later, somebody else walked in with an umbrella that was also wet.

Now, because you could not look outside the courtroom and you could not see whether it was raining, you would have no direct evidence of that fact. But, on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to conclude that it was raining.

That is all there is to circumstantial evidence. You infer on the basis of your reason, experience, and common sense from one established fact the existence or the nonexistence of some other fact. Drawing inferences is not the same as guesswork or speculation. An inference is a logical, factual conclusion that you might reasonably draw from other facts that have been proven.

It is sometimes difficult to prove material facts by direct evidence. Such facts may be established by circumstantial evidence and the reasonable inferences you draw.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both or to none; it is up to you to decide how much weight, if any, to give to any evidence.

H. Credibility of Witnesses⁷

I am going to give you a few general instructions about how you may determine whether witnesses are credible and reliable and whether the witnesses told the truth at this trial. It is really just a matter of using your common sense, your judgment and your experience.

First, consider how well the witness was able to observe or hear what he or she testified about. The witness may be honest, but mistaken. How did the witness's testimony impress you? Did the witness appear to be testifying honestly and candidly? Were the witness's answers direct or were they non-responsive? Consider the way the witness acted, his or her way of testifying and the strength and accuracy of his or her recollection. Consider whether any outside factors might have affected a witness's ability to perceive events.

Consider the substance of the testimony. How does the witness's testimony compare with other proof in the case? Is it corroborated or is it contradicted by other evidence? If there is a conflict, does any version appear reliable, and, if so, which version seems more reliable?

In addition, you may consider whether a witness had any possible bias or relationship with a party. Such a bias or relationship does not necessarily make the witness unworthy of belief, but these are factors that you may consider.

If a witness made statements in the past that are inconsistent with his or her testimony during the trial concerning facts that are at issue here, you may consider that fact in deciding how much of the testimony, if any, to believe. In making this determination, you may consider whether the witness purposely made a false statement, or whether it was an innocent mistake. You may also consider whether the inconsistency concerns an important fact or merely a small

⁷ Adapted from the charge delivered in *United States v. Calk*, 19 Crim. 366 (S.D.N.Y. July 12, 2021) (LGS).

detail, as well as whether the witness had an explanation for the inconsistency, and, if so, whether that explanation appealed to your common sense.

If you find that a witness has testified falsely as to any material fact or if you find that a witness has been previously untruthful when testifying under oath or otherwise, you may reject that witness's testimony in its entirety or you may accept only those parts that you believe to be truthful or that are corroborated by other independent evidence in the case.

I. Testimony of Law Enforcement Officials and Clergy⁸

You have heard testimony from law enforcement officials and a member of the clergy. The fact that a witness may be or may have been employed by the United States Government, including as a law enforcement official, does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. Similarly, the fact that a witness may be or may have been employed as a member of the clergy, does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of any witness. You should give that testimony whatever weight, if any, you find it deserves.

J. Expert Witnesses⁹

You heard testimony from what we call an expert witness. An expert witness is a witness who, by education or experience, has acquired learning in a science or a specialized area of knowledge. Such witnesses are permitted to give their opinions as to relevant matters in which

⁸ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

⁹ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

they profess to be experts and give the reasons for their opinions. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

Your role in judging credibility applies to experts as well as to other witnesses. You should consider the expert opinions received in evidence in this case and give them as much or as little weight as you think they deserve. If you decide that the opinion of an expert was not based on sufficient education, experience, or data, or if you conclude that the trustworthiness or credibility of an expert is questionable for any reason, or if the opinion of the expert was outweighed, in your judgment, by other evidence in the case, then you might disregard the opinion of the expert entirely or in part.

On the other hand, if you find the opinion of an expert is based on sufficient data, education, and experience, and the other evidence does not give you reason to doubt his or her conclusions, you would be justified in placing reliance on the expert's testimony, but the extent of such reliance is your choice.

K. Defendant's Testimony¹⁰

The defendant testified at this trial. You should examine and evaluate the defendant's testimony just as you would the testimony of any witness.

L. Uncalled Witnesses -- Available to Each Side¹¹

There are people whom you heard about during the trial but who did not appear to testify. I instruct you that each party had an opportunity or lack of opportunity to obtain the testimony of

¹⁰ Jt. Req. at 19. Page numbers in the Joint Charge refer to the PDF page number in the header of the document and not the page number at the bottom of each page.

¹¹ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

any of these witnesses. Therefore, you should not draw any inferences or reach any conclusions about why neither party called a witness or what that witness would have testified had they been called. Their absence should not affect your judgment in any way. You should remember my instruction, however, that the law does not impose on the defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

M. Preparation of Witnesses¹²

You have heard evidence during the trial that witnesses have discussed the facts of the case and their testimony with the government lawyers, law enforcement agents, defense lawyers, or their own lawyers before the witnesses appeared in court.

Although you may consider that fact when you are evaluating a witness's credibility, there is nothing unusual or improper about a witness meeting with lawyers before testifying, so that the witness can be aware of the subjects he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. There is also nothing unusual or improper for a witness to have a lawyer before, during or after meeting with law enforcement.

Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

¹² Adapted from the charge delivered in *United States v. Calk*, 19 Crim. 366 (S.D.N.Y. July 12, 2021) (LGS).

N. Sympathy: Oath as Juror¹³

Under your oath as jurors, you are not to be swayed by sympathy. You are to be guided solely by the evidence or lack of evidence in this case in determining whether or not the prosecution has proved Mr. Whitehead's guilt beyond a reasonable doubt.

It is for you and you alone to decide whether or not the prosecution has proved beyond a reasonable doubt that Mr. Whitehead is guilty of the crimes charged, solely on the basis of the evidence, and subject to the law as I have instructed you. It must be clear to you that if you let fear, prejudice, bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

If you have a reasonable doubt as to Mr. Whitehead's guilt on any of the charges, then you must render a verdict of not guilty on that charge. On the other hand, if you find that the prosecution has met its burden of proving the guilt of Mr. Whitehead beyond a reasonable doubt on each charge, then you must not hesitate because of sympathy or any other reason to render a verdict of guilty on that charge.

II. SUBSTANTIVE INSTRUCTIONS

A. Summary of the Charges¹⁴

This is a criminal case. It is brought in the name of the United States against Lamor Whitehead, the defendant. The fact that the case is brought in the name of the United States does not entitle the Government to any greater consideration than that accorded to the defendant. All parties stand as equals here in court.

¹³ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

¹⁴ Adapted from Jt. Req. at 25-27.

The defendant is charged with five crimes or counts, which I will review with you. Each is a separate offense or crime that the Government must prove beyond a reasonable doubt. You must, therefore, consider each charge separately and you will be asked to return a separate verdict on each charge.

The defendant has pleaded not guilty to these five charges. You must remember that the defendant is presumed innocent unless the Government has met its burden of proving that he is guilty beyond a reasonable doubt.

B. Counts One and Five: Wire Fraud (18 U.S.C. §§ 1343 and 2), Overview¹⁵

Counts One and Five charge the defendant with wire fraud. For Count One, the Government alleges that, from at least in or about April 2020 through in or about June 2021, the defendant made material and false representations to Pauline Anderson and her son, Rasheed Anderson to fraudulently obtain money from Ms. Anderson as a purported real estate investment, when the defendant in fact intended to use her money in whole or in part for his own personal purposes.¹⁶

For Count Five, the Government alleges that in or about June 2018, the defendant made material false representations about the finances of a business entity, Anointing Management Services LLC, in efforts to fraudulently obtain a \$250,000 business loan, and electronically transmitted those misrepresentations, as part of a loan application, through interstate wires.

To prove these charges of wire fraud, the Government must establish beyond a reasonable doubt the following three elements:

¹⁵ Adapted from Jt. Req. at 28.

¹⁶ Defendant's request to change the language to "when the defendant did not intend to do so" is denied because the sentence describes what is alleged, and Government's proposed language is consistent with the Indictment while Defendant's is not. Jt. Req. at 25; Dkt. 2 at 4.

First, that there was a scheme or artifice to defraud others, or to obtain money or property, by means of false or fraudulent pretenses, representations, or promises;

Second, that the defendant participated in the scheme to defraud knowingly and with intent to defraud and

Third, that in execution of the scheme or artifice, the defendant used—or caused one or more other people to use -- interstate wires.

1. Counts One and Five: Element #1, A Scheme to Defraud¹⁷

I will now describe the three elements of wire fraud in greater detail. The first element is the existence of a scheme to defraud or obtain money or property by materially false and fraudulent pretenses, representations, or promises. A “scheme to defraud” is a plan to deprive another of money or property by trick, deceit, deception, or swindle.

A pretense, representation, statement, or promise is fraudulent if it was made falsely and with intent to deceive. A representation, statement, claim, or promise may also be fraudulent if it contains half-truths or if it conceals material facts in a manner that makes what is said or represented deliberately misleading or deceptive. The deception need not be premised on spoken or written words alone. The arrangement of words, or the circumstances in which they are used may convey the false and deceptive appearance. If there is deception, the manner in which it is accomplished does not matter.

The “fraudulent pretenses, fraudulent representations, or fraudulent promises” must be “material.” A “material fact” is one that a reasonable person would have considered important in making his or her decision. The same principle applies to fraudulent half-truths or omissions, that is, failures to disclose facts.

¹⁷ Adapted from Jt. Req. at 29-30.

Actual reliance by the person or entity that is the intended victim of the fraud is not required. It is also not necessary that the Government prove that the defendant profited from the scheme. Nor is it required that the intended victim was actually harmed or in fact suffered any loss as a consequence of any fraudulent representation or concealment of facts. It is enough that a material false statement, or a statement omitting material facts that made what was said deliberately misleading, was made as part of a fraudulent scheme in the expectation that it would be relied on. You must concentrate on whether there was such a scheme, not on the consequences of the scheme. Of course, proof concerning the accomplishment of the goals of the scheme may be the most persuasive evidence of the existence of the scheme itself.

A scheme to defraud need not be shown by direct evidence, but may be established by all of the circumstances and facts in the case.

2. Counts One and Five: Element #2, Intent to Defraud¹⁸

The second element of Counts One and Five that the Government must establish beyond a reasonable doubt is that the defendant devised or participated in the fraudulent scheme knowingly and with specific intent to defraud.

“Knowingly” means to act voluntarily and deliberately, rather than mistakenly or inadvertently.

To act with “intent to defraud” means to act willfully and with the specific intent to deceive for the purpose of causing some financial loss to another.

“Willfully” means to act knowingly and with a wrongful purpose.

Knowledge is a matter of inference from the proven facts. Direct proof of knowledge and fraudulent intent is rare and not required. Knowledge and criminal intent may be established by

¹⁸ Adapted from Jt. Req. at 31.

circumstantial evidence, including a person's outward manifestations, his words, conduct, and acts, and all the surrounding circumstances, as well as the rational or logical inferences that may be drawn from that evidence. Circumstantial evidence, if believed, is no less valuable than direct evidence. You must be satisfied beyond a reasonable doubt that the defendant knew what he was doing and that he took the actions in question deliberately and voluntarily, rather than by mistake, accident, mere negligence or some other innocent reason.

Because an essential element of the crime charged is intent to defraud, it follows that good faith on the part of the defendant is a complete defense to a charge of wire fraud. The burden is on the government to prove fraudulent intent and the consequent lack of good faith beyond a reasonable doubt.

3. Counts One and Five: Element #3, Interstate Wires¹⁹

The third element of wire fraud is that interstate wires (for example, phone calls, email communications, text messages, social media or website posts, and bank wires) were used in furtherance of the scheme to defraud.

“Interstate” just means that a wire communication passes between two or more states for example, a telephone call between New York and New Jersey. A wire communication also includes a wire transfer of funds between banks in a different state.

The use of the wires need not itself be a fraudulent representation. Stated another way, the wire communication need not contain any fraudulent representation, or any request for money. It is sufficient if any interstate wire is used to further or assist in carrying out the scheme to defraud.

¹⁹ Adapted from Jt. Req. at 33.

It is not necessary for the defendant to be directly or personally involved in the wire communication, as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating. A defendant need not have specifically authorized others to make the call (or transfer the funds). If the defendant acts with knowledge that the use of the wires will follow in the ordinary course of business or where the use of the wires is reasonably foreseen, even though not actually intended, then he causes the wires to be used. This requirement is satisfied even if the wire communication was done by a person with no knowledge of the fraudulent scheme, including a victim of the alleged fraud.

Finally, only the wire communication must be reasonably foreseeable, not its interstate component. Thus, if you find that the wire communication was reasonably foreseeable, and the interstate wire communications actually took place, then this element is satisfied even if it was not foreseeable that the wire communication would cross state lines.

C. Count Two: Attempted Wire Fraud (18 U.S.C. § 1343, 1349, and 2), Overview²⁰

Count Two charges the defendant with attempted wire fraud. For this charge, the Government alleges that in or about April and May 2022, the defendant made material false representations to Brandon Belmonte, about the defendant's supposed influence with New York City Mayor Eric Adams, in an attempt to fraudulently convince Mr. Belmonte to transfer money and other property to the defendant.

I have already instructed you as to the meaning of wire fraud in connection with Counts One and Five, and you should apply those instructions here.

²⁰ Adapted from Jt. Req. at 35.

In order to prove a defendant guilty of attempted wire fraud, the Government must prove the following two elements beyond a reasonable doubt.

First, that the defendant intended to commit a crime—here, the crime of wire fraud; and

Second, that the defendant willfully took some action that was a substantial step in an effort to bring about or accomplish the crime.

Mere intention to commit a specific crime does not amount to an attempt. In order to convict the defendant of an attempt, you must find beyond a reasonable doubt that the defendant intended to commit the crime charged, and that he took some action which was a substantial step toward the commission of that crime.

In determining whether the defendant's actions amounted to a substantial step toward the commission of the crime, it is necessary to distinguish between mere preparation on the one hand, and the actual doing of the criminal deed on the other. Mere preparation, which may consist of planning the offense, or of devising, obtaining, or arranging a means for its commission, is not an attempt, although some preparations may amount to an attempt. The acts of a person who intends to commit a crime will constitute an attempt when the acts themselves clearly indicate an intent to commit the crime, and the acts are a substantial step in a course of conduct planned to culminate in the commission of the crime.

There is no requirement that the attempt be successful or that the defendant actually have carried out the crime he was trying to commit.

D. Alleged Negligence Of A Victim Is Not A Defense²¹

For Counts One, Two and Five, it is not important whether a victim might have discovered the fraudulent schemes charged in these counts if the victim had probed further. If

²¹ Adapted from Jt. Req. at 38.

you find that a scheme or artifice to defraud existed, it is irrelevant whether you believe that a victim was gullible, careless, or even negligent. Negligence, carelessness, or gullibility on the part of a victim is no defense to a charge of fraud.

E. Count Three: Attempted Extortion (18 U.S.C. 1951), Overview²²

Count Three charges the defendant with attempted extortion. For this charge the Government alleges that from in or about February 2022 through in or about April 2022, the defendant used threats of force to attempt to obtain \$5,000 from a business owned by Brandon Belmonte.

I have already instructed you on the elements of an attempt: first, that the defendant intended to commit a crime, here, extortion; and second, that the defendant willfully took some action that was a substantial step in an effort to bring about or accomplish the crime. These elements apply here to Count Three.

Let me tell you about extortion, which is the attempted crime for this charge. Extortion is the obtaining of or attempt to obtain another person's or entity's property or money, with his or its consent when this consent is induced or brought about through the use or threatened use of fear. The word "fear" here can include an apprehension, concern, or anxiety about possible economic loss or harm. "Fear" or "harm" can also involve a concern about violence or physical harm.

To meet its burden of proving that the defendant committed attempted extortion, the Government must establish beyond a reasonable doubt each of the following three elements:

First, the defendant wrongfully obtained or attempted to obtain the property of another;

²² Adapted from Jt. Req. at 40.

Second, the defendant obtained or attempted to obtain this property with the victim's consent, but compelled this consent by the wrongful use or threat of force, violence, or fear, including fear of injury, or fear of economic loss or harm and

Third, as a result of the defendant's actions, interstate commerce, or an item moving in interstate commerce, was or would have been delayed, obstructed, or affected in any way or degree.

It is not necessary that force, violence and fear all were used or threatened. It is enough if any of them were used or threatened.

It is equally a crime to attempt to obtain or take money through fear as it is to actually obtain or take the money or property. Therefore, it is not necessary that any payment actually take place or be promised to take place. That is, even if no property was taken from the victim, and even if there was only an attempt to instill fear in the victim, and the victim experienced no actual subjective fear, the defendant has still committed a crime.

If you decide that force or violence was used or threatened to obtain or attempt to obtain the property, then that is wrong, even if the person who took or tried to take the property believed that it was rightfully his.²³

As to the interstate commerce requirement, it is not necessary for the Government to prove that commerce actually was affected by the defendant's conduct or that the defendant intended or anticipated that his actions would affect interstate commerce. It is sufficient for you to find that the defendant's conduct possibly could have affected interstate commerce. The

²³ Adapted from Jt. Req. at 43.

Government needs to prove only a very slight or subtle actual or potential effect on interstate commerce.²⁴

F. Count Four: False Statements (18 U.S.C. § 1001), Overview²⁵

Count Four charges defendant with knowingly and willfully making materially false, fictitious, and fraudulent statements to the FBI.²⁶ For this charge, the Government alleges that on or about June 8, 2022, during the execution of a search warrant, Mr. Whitehead falsely told special agents of the FBI that he owned only the cellphone that was then on his person, when Mr. Whitehead knew that he in fact owned and used at least one other cellphone.²⁷

The relevant portion of the statute covering this charge prohibits, in relevant part, “knowingly and willfully . . . mak[ing] any materially false, fictitious, or fraudulent statement or representation” “in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.”²⁸

In order to prove the defendant guilty of this charge, the Government must establish beyond a reasonable doubt the following five elements:

First, that on or about a particular date, the defendant made a statement or representation;

Second, that the statement or representation was material, meaning capable of influencing the Government’s decisions or activities;

²⁴ Adapted from Jt. Req. at 45.

²⁵ Adapted from Jt. Req. at 46-47.

²⁶ The parties competing requests to characterize the Defendant’s statement are denied, as the characterization is a matter of evidence and argument and not for the Court.

²⁷ Defendant’s request to change the language to “he did not have a second cell phone that belonged to him that FBI agents could call him on, when Mr. Whitehead knew that he in fact owned and used at least one other cell phone that FBI agents could contact him on” is denied because the sentence purports to describe what is alleged; the Government’s language is consistent with the Indictment while the Defendant’s is not. Jt. Req. at 26-27, 46; Dkt. 2 at 6.

²⁸ 18 U.S.C. § 1001(a)(1)-(2).

Third, that the statement or representation was false, fictitious, or fraudulent;

Fourth, that the defendant made the false, fictitious, or fraudulent statement or representation knowingly and willfully; and

Fifth, that the statement or representation pertained to a matter within the jurisdiction of the executive, legislative, or judicial branch of the United States Government.

G. Motive²⁹

Proof of motive is not a necessary element of any of the crimes with which the defendant is charged. Proof of motive does not establish guilt, nor does the lack of proof of motive establish that the defendant is not guilty. If the guilt of the defendant is shown beyond a reasonable doubt, it is immaterial what the defendant's motive for the crime or crimes may be, or whether the defendant's motive was shown at all. The presence or absence of motive is, however, a circumstance which you may consider as bearing on the intent of the defendant.

H. Venue³⁰

In addition to the elements of each of the five charges that I have just described for you, for each charge, you must consider the issue of venue, namely, whether any act in furtherance of the unlawful activity occurred within the Southern District of New York, which includes the Bronx and Manhattan. Venue must be examined separately for each count. The Government must prove venue by a preponderance of the evidence, which means more likely than not. This is unlike all the elements I have just described, which must be proved beyond a reasonable doubt.

With respect to Counts One, Two, and Five, which charge wire fraud and attempted wire fraud, it is sufficient to establish venue if the Government has proven that any of the wire

²⁹ Jt. Req. at 53.

³⁰ Adapted from Jt. Req. at 54-55.

communications you found to satisfy the third element of the offense—use of interstate wires—were transmitted to, from, or through the Southern District of New York.

With respect to Count Three, which charges attempted extortion, it is sufficient to establish venue if you find that the Government has proven that any act in furtherance of the offense was committed in the Southern District of New York.

With respect to Count Four, which charges false statements, venue is appropriate in the jurisdiction to which those statements were conveyed, where the statements had an effect, or where the statement was acted or relied upon by the federal government. It is sufficient to establish venue if you find that a false statement was made in one jurisdiction and that false statement was conveyed to, had an effect in, or was relied upon by a federal agency located in the Southern District of New York

III. FINAL GENERAL INSTRUCTIONS

A. Similar Acts³¹

There has been evidence during the trial that the defendant previously engaged in conduct that is similar in nature to the conduct he is charged with in this case. Let me remind you that the defendant is on trial only for committing the acts with which he is charged. Accordingly, you may not consider this evidence of the similar acts as a substitute for proof that the defendant committed the crimes charged. You also may not consider this evidence as proof that the defendant has a criminal personality or bad character. This evidence was admitted for a more limited purpose, namely, as potential evidence of the defendant's identity, motive, opportunity, intent, knowledge, plan, and/or absence of mistake, and to provide background for the alleged offenses. You may consider it for those purposes only. During trial, I gave you a similar

³¹ Adapted from Dkt. 164 and Jt. Req. at 58.

instruction. As a reminder, the instructions I am giving you now control, meaning that these instructions are the ones you must follow in your deliberations.

If you determine that the defendant committed the acts charged and the similar acts as well, then you may, but you need not, draw an inference that in doing the acts charged, the defendant acted knowingly and intentionally and not because of some mistake, accident, or other reasons.

B. Particular Investigative Techniques³²

You have heard reference to the fact that certain investigative techniques were or were not used by the Government. There is no legal requirement that the Government prove its case through any particular means. While you are to consider carefully the evidence presented, you are not to speculate as to why law enforcement used the techniques they did, or why they did not use other techniques. The Government is not on trial and law enforcement techniques are not your concern. Your sole concern is to determine whether or not, based on the evidence or lack of evidence, the guilt of the defendant has been proved beyond a reasonable doubt.

C. Stipulations³³

You have heard evidence in the form of what are called “stipulations.” A stipulation of fact is an agreement among the parties that a certain fact is true. You should regard such agreed facts as true. However, it is for you to determine the effect or weight to give those facts.

³² Adapted from Jt. Req. at 59.

³³ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).

D. Excerpts and Redactions³⁴

Some of the exhibits admitted into evidence consist of excerpts of longer documents that were not admitted into evidence in their entirety. These excerpts are simply the portions of the underlying documents considered to be most relevant to the case by the party introducing them. There is nothing unusual or improper about the use of such excerpts, and you are not to speculate from the use of such excerpts that any relevant portion of a document has been omitted.

Similarly, some of the exhibits admitted into evidence include redactions of certain information. Again, there is nothing unusual or improper about such redactions, and you are not to speculate what has been removed.

E. Summaries and Transcripts³⁵

You have seen summaries of exhibits. Most of these were admitted into evidence. One -- the table of audio recordings -- was shown to you as a demonstrative aid to help you understand the underlying evidence. None of these summaries direct evidence. They summarize more voluminous information that was reflected in documents or recordings admitted into evidence. It is often more convenient or helpful to use summaries rather than placing all of the underlying documents and recordings in front of you. But it is up to you to decide whether the summary exhibits fairly and correctly reflect the evidence they purport to summarize. To the extent that the summary exhibits conform to your understanding of the underlying evidence, you may accept them. To the extent they do not, you should set them aside and rely on the underlying evidence instead. They are intended to serve as aids in a party's presentation of the evidence.

³⁴ Adapted from the charge delivered in *United States v. Calk*, 19 Crim. 366 (S.D.N.Y. July 12, 2021) (LGS).

³⁵ Adapted from the charge delivered in *United States v. Calk*, 19 Crim. 366 (S.D.N.Y. July 12, 2021) (LGS) and Jt. Req. at 67.

You have also seen transcripts of recordings to assist you in listening to the recordings. The transcripts are not evidence themselves. It is the underlying recordings that are evidence. To the extent the transcripts conform to what you heard on the recordings, you may accept them. To the extent that the transcripts differ from what you heard, you may reject them. These recordings were made in a lawful manner and no one's rights were violated.

F. Brandon Belmonte's Statements³⁶

Recordings of conversations between Brandon Belmonte and the defendant, and text messages exchanged between Belmonte and the defendant were admitted as evidence. The statements made by Belmonte on the recordings and in the text messages are not to be considered for their truth. Instead, they are being admitted to provide context for statements made by the defendant; for their effect on the defendant as the listener to or recipient of Belmonte's statements; or as statements the defendant adopted based on his responses or lack of objection or response. You should consider Belmonte's statements only for those purposes, and should not consider Belmonte's statements for the truth of the matters asserted therein.

G. Use of Evidence Obtained Pursuant to Searches³⁷

You have heard testimony about evidence seized in various searches, including the search of certain electronic devices, such as electronic communications.

Evidence obtained from those searches was properly admitted in this case, and may be properly considered by you. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations, because I instruct you that the Government's use of the evidence is lawful.

³⁶ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS) and from the charge proposed by the parties at Dkt. No. 159.

³⁷ Adapted from the charge delivered in *United States v. Sir Murray*, 22 Crim. 76 (S.D.N.Y. May 17, 2023) (LGS).