

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: MISREPRESENTATION OF MATERIAL FACTS, EVIDENCE &
DATE: 11/21/2020 11:00:33 AM

x

Raheem J. Brennerman
Reg. No. 54001-048
LSCI-Allenwood
SPECIAL MAIL - OPEN IN

PRESENCE OF INMATE

P. O. Box 1000
White Deer, Pa. 17887-1000

Honorable Debra Ann Livingston
Chief Judge
United States Court of Appeals
for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

with copy to:

Clerk of Court
United States Court of Appeals
for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

November 23, 2020

BY CERTIFIED FIRST CLASS MAIL
URGENT CORRESPONDENCE

Regarding: United States v. Brennerman, Appeal Docket No. 18-3546(L); 19-0497(Con)
United States v. The Blacksands Pacific Group, Inc., et. al., Appeal Docket No. 18-1033(L); 18-1618(Con)

Dear Judge Livingston:

I, Defendant - Appellant Raheem J. Brennerman ("Brennerman") respectfully submit this correspondence in respect of the erroneous disposition at the above referenced appeals particularly the misrepresentations of material facts, evidence and record. I am currently incarcerated at LSCI-Allenwood arising from the criminal cases from which the above referenced appeals arose.

I have also taken the liberty to underline the relevant sections within the appended copy of Summary Order Mandate as well as included copies of the record (trial testimony from the various Government witnesses) which contradicts the representation presented by panel Court in the disposition ("Summary Order") to the above referenced appeals.

I am writing to you in the first instance, out of an abundance of respect for the Court, to bring your attention to the misrepresentation of material facts, evidence and record to allow panel Court to correct the misrepresentation of material facts, evidence and record.

1.) Within I. Sufficiency of the Evidence:

The panel Court stated in relevant part ".....Contrary to Brennerman's assertions, however, the record did establish that he defrauded Morgan Stanley, an FDIC-insured institution, as part of his broader scheme by, among other things, inducing it to issue him a credit card based....."

The record at 1:17-cr-337 (RJS), Trial Tr. 384-385; 409; 387-388 and at 1:17-cr-337 (RJS), Dkt. No. 167 (which Judge Sullivan

ignored) clearly demonstrate that Morgan Stanley & Company, LLC, the parent company for all Morgan Stanley subsidiaries and divisions is not FDIC-insured. The record also demonstrates that Brennerman opened his wealth management account at Morgan Stanley Smith Barney, LLC which is not FDIC-insured and that a non-Morgan Stanley subsidiary/division issued him a credit card which was closed with zero balance. The record also demonstrates that Kevin Bonebrake whom Brennerman had a single telephone call with to discuss financing about oil asset worked at the Institutional Securities division of Morgan Stanley which is not FDIC-insured. The record demonstrates that Morgan Stanley operates through various subsidiaries and divisions.

The record at 1:17-cr-337 (RJS), Trial Tr. 1057-1061 demonstrates that the FDIC certificates presented by Government at trial, GX530 - FDIC certificate for Morgan Stanley Private Bank; GX531 - FDIC certificate for Citibank; GX532 - FDIC certificate for Morgan Stanley National Bank NA; and GX533 - FDIC certificate for JP Morgan Chase do not cover the subsidiaries/division at Morgan Stanley that Brennerman interacted with. The record demonstrates that Brennerman interacted with Morgan Stanley Smith Barney, LLC (see 1:17-cr-337 (RJS), Dkt. No. 167) where he opened his wealth management account and Brennerman had a single telephone call about oil field financing with Kevin Bonebrake who worked at the Institutional Securities division of Morgan Stanley (see 1:17-cr-337 (RJS), Trial Tr. 384-385; 387-388; 409). The record also demonstrates testimony from Barry Gonzalez, FDIC commissioner that the FDIC certificate for one subsidiary does not cover another subsidiary or the parent company because each subsidiary/division will require its own FDIC certificate. Barry Gonzalez testimony demonstrated that Government failed to prove that either Morgan Stanley Smith Barney, LLC or Morgan Stanley Institutional Securities division are FDIC-insured.

The disposition by the panel Court made material misrepresentation with the facts because it generalized Morgan Stanley as a single entity while ignoring the record and testimony of Government witnesses which demonstrate that Morgan Stanley & Company, LLC, the parent company is not FDIC-insured; That Morgan Stanley operates through various subsidiaries / divisions which are separate entities; That the FDIC certificate of one subsidiary / division does not cover another subsidiary / division or the parent company as each entity (subsidiary / division) will require its own FDIC certificate; finally, that Brennerman did not interact with any FDIC-insured Morgan Stanley entity (subsidiary/division).

2.) Within IV. Testimony of Julian Madgett:

The panel Court stated in relevant part ".....Brennerman's argument claiming constitutional violations as a result of Madgett's testimony is without merit. The government's discovery and disclosure obligations extend only to information and documents in the government's possession. United States v. Avellino, 136 F.3d 249, 255 (2d Cir. 1998) (explaining that the Brady obligation applies only to evidence "that is known to the prosecutor"). The government insists that every document it received from ICBC was turned over to Brennerman and that it is not aware of the personal notes referenced by Brennerman. Therefore, the government has not violated its disclosure obligation....."

The record at 1:17-cr-337 (RJS), Trial Tr. 551-554 clearly demonstrate that Government sole witness from ICBC (London) plc, Julian Madgett testified on behalf of the Government in open Court that evidence exists that document the basis for the bank approving the bridge loan transaction including representation or alleged misrepresentation which the bank relied upon in approving the bridge loan finance. Further that the Government never requested, obtained or reviewed the evidence and thus never provided it to the defense. The record demonstrates that Government were presented in Court when Julian Madgett testified thus became aware of the evidence because A.U.S.A. Roos objected to a question asked by defense counsel.

The record demonstrates that Brennerman made request to the Court at 1:17-cr-337 (RJS), Dkt. No. 71 for the evidence, which the Government never obtained or reviewed, for his defense given the importance and pertinence of the evidence to the theory of the defense, however the Government failed to learn of the evidence thus violated its Brady obligations.

The disposition by panel Court made material misrepresentation that Government was unaware of the evidence which Brennerman required to present a complete defense because panel Court ignored the record which clearly demonstrates that Government was present in Court when their witness testified that evidence which document the basis for the bank approving the bridge loan exists with the bank and that the Government never requested or obtained the evidence and thus never provided it to the defendant for his defense.

3.) Within IV. Testimony of Julian Madgett:

The panel Court stated in relevant part ".....The only indication that such documents are extant comes from Brennerman's bare assertions....."

The record at 1:17-cr-337 (RJS), Trial Tr. 551-554 demonstrate that Government sole witness, Julian Madgett testified as to the existence of the evidence (documents) which the Government never requested or obtained. The record at 1:17-cr-337 (RJS),

Trial Tr. 617 demonstrates that trial judge (Judge Richard J. Sullivan) acknowledged that the witness had testified to the existence of the evidence (documents) with the bank's file in London, United Kingdom. The record demonstrates that upon Brennerman learning of the existence of evidence (ICBC underwriting file) which documents the basis for the bank approving the bridge loan finance including the representation of alleged misrepresentation which the bank relied upon to approve the bridge loan finance, further that the Government never requested, obtained or reviewed the evidence, Brennerman immediately made request to the Court at 1:17-cr-337 (RJS), Dkt. No. 71 for the evidence so he may use it to present a complete defense and confront witnesses (Julian Madgett) against him but was denied by the Court (Judge Richard J. Sullivan)

The disposition by the panel Court made material misrepresentation as to the existence of the evidence (documents) which Brennerman required to present a complete defense. The panel Court ignored the argument that Brennerman was deprived of the ability to present a complete defense and the ability to confront witnesses against him. Madgett was allowed to testify as to the content of the evidence (documents) to satisfy the issue of "materiality" (an essential element of the charged crime) while Brennerman was deprived of the ability to use the evidence (documents) to confront him in violation of his Sixth Amendment rights.

4.) The above is in addition to the panel Court ignoring the Circuit Court holding about non-parties in "OSRecovery, Inc., v. One Groupe Int'l, Inc., 462 F.3d 87, 90 (2d Cir. 2006)" where the Circuit Court stated directly to Judge Lewis A. Kaplan that the Court abused its discretion and could not hold non-party in contempt solely for the purpose of discovery. In 2016, Judge Kaplan ignored the law to hold Brennerman, a non-party in the underlying civil case at 15-cv-0070 (LAK) in contempt then persuaded the Government to pursue him criminally. The Government ignored the law in "OSRecovery" to pursue Brennerman for criminal contempt of court and during trial at 17-cr-155 (LAK), Judge Kaplan permitted the Government to present the civil contempt erroneously adjudged against Brennerman to the jury causing significant prejudice to him. During appeal at 18-1033(L), the panel Court in its disposition ignored prior Circuit Court law with respect to holding non-party in contempt.

The above is respectfully submitted in an endeavor to allow panel Court correct its erroneous disposition and misrepresentation of material facts, evidence and record, particularly given that the formal request for panel rehearing / rehearing en banc was denied. I am writing to you Pro Se as one of the panel Court judges recently granted permission for my counsel to withdraw from continuing to represent me.

Dated: November 23, 2020
White Deer, PA 17887-1000

RESPECTFULLY SUBMITTED

/s/ Raheem J. Brennerman

RAHEEM JEFFERSON BRENNERMAN
Defendant-Appellant

Cc: REDACTED

Below is a summary of the various excerpts from the criminal case record referenced above and appended to this correspondence.

Mandate including Summary Order by panel Court is appended as "Exhibit 1"

Criminal case, 17-cr-337 (RJS), Trial Transcript 384-385; 387-388; 409 are appended as "Exhibit 2"

Criminal case, 17-cr-337 (RJS), Docket No. 167 is appended as "Exhibit 3"

Criminal case, 17-cr-337 (RJS), Trial Transcript 1057-1061 are appended as "Exhibit 4"

Criminal case, 17-cr-337 (RJS), Trial Transcript 551-554; 617 are appended as "Exhibit 5"

Criminal case, 17-cr-337 (RJS), Docket No. 71 is appended as "Exhibit 6"

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 1
DATE: 11/08/2020 03:35:05 PM

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EXHIBIT 1

xxxxxxxxxx

MANDATE

18-3546(L)
United States v. Raheem Brennerman

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT.
CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS
PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE
PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A
SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST
CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH
THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER
MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the 9th day of June, two thousand twenty.

Present: ROSEMARY S. POOLER,
REENA RAGGI,
WILLIAM J. NARDINI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

18-3546, 19-497

RAHEEM BRENNERMAN,
AKA JEFERSON R. BRENNERMAN,
AKA AYODEJI SOETAN,

Defendant-Appellant.

Appearing for Appellant: John C. Meringolo, Meringolo & Associates, P.C., Brooklyn, N.Y.

Appearing for Appellee: Danielle R. Sassoon, Assistant United States Attorney (Nicholas Roos, Robert B. Sobelman, Matthew Podolsky, Assistant United States Attorneys, *on the brief*), for Geoffrey S. Berman, United

States Attorney for the Southern District of New York, New York,
N.Y.

Appeal from the United States District Court for the Southern District of New York (Sullivan, J.).

**ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED,
AND DECREED that the judgment be and it hereby is AFFIRMED.**

Defendant-Appellant Raheem Brennerman appeals from the February 12, 2019, amended judgment of conviction entered in the United States District Court for the Southern District of New York (Sullivan, J.), sentencing him principally to 144 months' imprisonment, 3 years' supervised release, forfeiture in the amount of \$4,400,000, and restitution in the amount of \$5,264,176.19. Following a jury trial, Brennerman was convicted of one count of conspiracy to commit bank and wire fraud, in violation of 18 U.S.C. § 1349; one count of bank fraud, in violation of 18 U.S.C. §§ 1344 and 2; one count of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2; and one count of visa fraud, in violation of 18 U.S.C. § 1546(a). We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

On appeal, Brennerman argues: (1) there was insufficient evidence to convict him on the conspiracy count, the substantive bank fraud count, and the substantive wire fraud count; (2) the government made an impermissible constructive amendment to the indictment; (3) the search warrant for Brennerman's Las Vegas apartment was unlawful; (4) the admission of the testimony of Julian Madgett violated Brennerman's constitutional rights; (5) the district court erred by applying a two-offense level enhancement for obstruction of justice, pursuant to U.S.S.G. § 3C1.1; and (6) the district court incorrectly determined the restitution amount.

I. Sufficiency of the Evidence

A defendant challenging the sufficiency of the evidence bears a "heavy burden," *United States v. Gaskin*, 364 F.3d 438, 459 (2d Cir. 2004), as the standard of review is "exceedingly deferential," *United States v. Hassan*, 578 F.3d 108, 126 (2d Cir. 2008). Ultimately, "the task of choosing among competing, permissible inferences is for the [jury], not for the reviewing court." *United States v. McDermott*, 245 F.3d 133, 137 (2d Cir. 2001).

Brennerman argues there was insufficient evidence to convict him of a conspiracy. He argues the jury could not have adduced the existence of an agreement because the record does not contain a single response from Peter Aderinwale, the purported co-conspirator with whom Brennerman corresponded over email. His argument is both factually and legally flawed. First, the record did contain two responsive emails from Aderinwale concerning draft emails to be sent to ICBC as part of the scheme. Second, a response from an alleged co-conspirator following conspiratorial communication is not legally necessary to establish the existence of a conspiracy. We agree with the government that a reasonable jury could infer the requisite intent from emails in which Brennerman solicited Aderinwale's input on aspects of the fraud scheme and from Brennerman's transfer of substantial scheme proceeds to Aderinwale. These facts would have supported the inference that Aderinwale was a co-conspirator, even in the absence of any email

response from Aderinwale. The jury would have been entitled to infer that Aderinwale's responses had been conveyed over the phone or in person. "This is so because a conspiracy by its very nature is a secretive operation, and it is a rare case where all aspects of a conspiracy can be laid bare in court with the precision of a surgeon's scalpel." *United States v. Pitre*, 960 F.2d 1112, 1121 (2d Cir. 1992) (internal quotation marks and citation omitted). Thus, viewing the evidence in the light most favorable to the government, we find there was sufficient evidence from which the jury could have reasonably inferred the existence of a conspiracy.

Brennerman also argues that there was insufficient evidence that he intended to defraud an institution insured by the Federal Deposit Insurance Corporation ("FDIC") as required for bank fraud, because most of the evidence offered at trial showed that he targeted the Industrial and Commercial Bank of China's London branch ("ICBC"), which is not FDIC-insured.

Contrary to Brennerman's assertions, however, the record did establish that he defrauded Morgan Stanley, an FDIC-insured institution, as part of his broader scheme by, among other things, inducing it to issue him a credit card based on false representations about his citizenship, assets, and the nature and worth of his company. Indeed, the government argued just this theory on summation, asserting that Brennerman was guilty of bank fraud because "he engaged in a scheme to defraud Morgan Stanley" through lies told to a Morgan Stanley employee, which were "all part of an attempt to defraud an FDIC-insured institution." App'x at 1709-10. Defense counsel in summation also emphasized that Morgan Stanley was the sole FDIC-insured institution involved. And the district court instructed the jury on the proper elements of bank fraud, including the FDIC-insured institution element. Brennerman's challenge, therefore, is foreclosed by "the law's general assumption that juries follow the instructions they are given," which applied here would indicate that the jury properly accounted for the evidence related to Morgan Stanley when convicting Brennerman of the bank fraud count. *United States v. Agrawal*, 726 F.3d 235, 258 (2d Cir. 2013).

As to the wire fraud count, Brennerman argues there was insufficient evidence to establish a domestic violation of the statute. "[W]ire fraud involves sufficient domestic conduct when (1) the defendant used domestic mail or wires in furtherance of a scheme to defraud, and (2) the use of the mail or wires was a core component of the scheme to defraud." *Bascuñán v. Elsaca*, 927 F.3d 108, 122 (2d Cir. 2019). We conclude that the evidence here was sufficient. The record at trial established that Brennerman used domestic wires to carry out the fraudulent scheme. Indeed, he concedes that he used telephone lines and email in the United States to make fraudulent representations in furtherance of the scheme. In addition, the account to which ICBC wired the loan money was a Citibank account within the United States, and Brennerman subsequently moved that money to domestic accounts. This is precisely the kind of use of domestic wires that we have held sufficient under the wire fraud statute. See, e.g., *United States v. Kim*, 246 F.3d 186, 190 (2d Cir. 2001).

II. Constructive Amendment

An impermissible constructive amendment occurs only when the government's proof and the trial court's jury instructions "modify essential elements of the offense charged to the point that there is a substantial likelihood that the defendant may have been convicted of an offense

other than the one charged by the grand jury.” *United States v. Vebeliunas*, 76 F.3d 1283, 1290 (2d Cir. 1996) (internal quotation marks and citation omitted).

Brennerman contends that the government constructively amended counts one and two of the indictment by proving a fraud against Morgan Stanley at trial—while the indictment, especially the speaking part, focuses on the fraud against ICBC. We disagree. It is clear from the indictment that the scheme against ICBC was merely one target of Brennerman’s alleged fraud. The indictment alleged that Brennerman’s scheme in fact targeted “several financial institutions around the world, including in the United States.” App’x at 39. It also specifically alleged that Brennerman defrauded an FDIC-insured financial institution. The indictment did not limit the proof only to Brennerman’s scheme against ICBC. While the indictment discusses ICBC activity at length, it makes clear that those allegations are illustrations, asserting that “[b]eginning in or about January 2013, [Brennerman] made similar [false] representations to other financial institutions in an effort to induce those institutions to provide financing to Blacksands Pacific and Blacksands Alpha.” App’x at 42. At trial, the government offered evidence that Morgan Stanley was one of those “other financial institutions.” See App’x at 608-09 (testimony of Morgan Stanley’s Kevin Bonebrake about a January 2013 telephone call with Brennerman discussing financing to develop oil asset). Thus, there was not a “a substantial likelihood that the defendant may have been convicted of an offense other than the one charged by the grand jury.” *Vebeliunas*, 76 F.3d at 1290.

III. Search Warrant

Brennerman challenges the lawfulness of the search warrant of his Las Vegas apartment. Even assuming, for the sake of argument only, that the search warrant was unlawful, we conclude that the good faith exception to the Fourth Amendment’s exclusionary rule would apply. We therefore need not address the propriety of the search warrant. The district court found that the law enforcement agents who executed the warrant reasonably relied on its terms in good faith, and Brennerman has not challenged this finding. Where, as here, evidence is obtained by police officers executing the search “in objectively reasonable reliance” on a warrant, the good faith exception to the exclusionary rule applies. *United States v. Falso*, 544 F.3d 110, 125 (2d Cir. 2008) (internal quotation marks and citation omitted).

IV. Testimony of Julian Madgett

Brennerman argues that Julian Madgett’s testimony at trial violated due process and his Sixth Amendment rights to confrontation and compulsory process because he was unable to obtain certain exculpatory personal notes from Madgett, and the government would not turn the notes over or otherwise retrieve them from ICBC.

The government has an obligation under the Due Process Clause to make a timely disclosure of any exculpatory or impeaching evidence that is material and in its possession. *See Brady v. Maryland*, 373 U.S. 83 (1963); *see also Giglio v. United States*, 405 U.S. 150 (1972). Additionally, the Jencks Act provides that, “[a]fter a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement . . . of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified.” 18 U.S.C. § 3500(b).

Brennerman's argument claiming constitutional violations as a result of Madgett's testimony is without merit. The government's discovery and disclosure obligations extend only to information and documents in the government's possession. *United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998) (explaining that the *Brady* obligation applies only to evidence "that is known to the prosecutor"). The government insists that every document it received from ICBC was turned over to Brennerman and that it is not aware of the personal notes referenced by Brennerman. Therefore, the government has not violated its disclosure obligation. Nor was the government under any obligation under the Jencks Act to collect materials about Madgett that were not in the government's possession. See *United States v. Bermudez*, 526 F.2d 89, 100 n.9 (2d Cir. 1975).

Even if the documents exist and are material and favorable, Brennerman never sought a subpoena pursuant to Federal Rule of Criminal Procedure 17, never made a timely request for a deposition under Federal Rule of Criminal Procedure 15, and never asked the district court to issue letters rogatory pursuant to 28 U.S.C. § 1781 to obtain documentary evidence or secure testimony from the United Kingdom where ICBC maintains its records. The only indication that such documents are extant comes from Brennerman's bare assertions.

V. Sentence

At sentencing, the court applied a two-offense level enhancement for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, a finding that relied on, as an alternative basis, Brennerman's false representations in his bail applications to the court. Brennerman argues that those misrepresentations cannot support an obstruction of justice enhancement because the misstatements "were at most minimally connected to the offense conduct in this case and did not obstruct the prosecution in any meaningful way." Appellant's Br. at 54. However, this argument has already been rejected by our Court in *United States v. Mafanya*, 24 F.3d 412, 415 (2d Cir. 1994) ("Appellant's false statement to a judicial officer (the magistrate judge) was an attempt to obstruct justice. Therefore, the district court properly Applied the [Section 3C1.1] enhancement . . ."). Accordingly, the district court did not err in applying the enhancement.

VI. Restitution

The Mandatory Victims Restitution Act of 1996 ("MVRA") provides that "[i]n each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant." 18 U.S.C. § 3664(f)(1)(A). "[A]t sentencing, the government bears the preponderance burden of proving actual loss supporting a restitution order." *United States v. Rutigliano*, 887 F.3d 98, 109 (2d Cir. 2018). "[W]e review a district court's order of restitution under the MVRA for abuse of discretion." *United States v. Zangari*, 677 F.3d 86, 91 (2d Cir. 2012).

Brennerman argues that the district court improperly imposed restitution in the full amount of the \$5 million ICBC loan even though Brennerman had already made a payment of \$446,466.13. But the testimony at trial established that ICBC released approximately \$4.4 million to Brennerman and the rest was used to finance loan servicing fees. The \$446,466.13

paid to ICBC by Brennerman was an interest-only payment that did not reduce the \$5 million principal owed. Therefore, ICBC's loss of \$5 million as a result of the fraud was supported, and Brennerman points to nothing that undermines the district court's finding.

We have considered the remainder of Brennerman's arguments and find them to be without merit. Accordingly, the judgment of the district court hereby is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe



A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


Catherine O'Hagan Wolfe



TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 2
DATE: 11/08/2020 03:35:23 PM

XXXXXXXXXX

EXHIBIT 2

XXXXXXXXXX

1 Q. Is that the same title you had or position you had while
2 you were at Morgan Stanley?

3 A. My title -- my specific job title at Morgan Stanley varied
4 as I was promoted from vice president, to director, to managing
5 director, and I worked within what they called the
6 institutional securities division. My current title is
7 managing director at Lazard within what they call the financial
8 advisory division, but I'm doing substantially the same job,
9 except I'm more solely focused on mergers and acquisitions now
10 and not so much on financings, if that makes sense.

11 Q. Staying with Morgan Stanley, you mentioned that Morgan
12 Stanley has two business lines?

13 A. Broadly, if you look at their financials, that's how they
14 characterize it, yes.

15 Q. And can you just explain, to the extent you understand,
16 what you mean by "business lines"?

17 A. Certainly. So, Morgan Stanley has a private wealth
18 management business, which is one of the aforementioned two
19 business lines. That business is composed of individuals who
20 somewhat confusingly are also called financial advisors, who
21 work with high net worth individuals to help them manage their
22 money.

23 And then the other business line that I was referring
24 to, which I was a part of, is called the institutional
25 securities division. And within that division is housed what

1 is the traditional investment banking activities, which is
2 capital markets, underwriting, so think about initial public
3 offerings, helping companies with that. Mergers and
4 acquisitions, when two companies merge, and then aside from
5 that, there's sales and trading, which is basically making
6 markets in various securities around the world, and also asset
7 management.

8 Q. You said business lines, but they're really separate
9 entities; is that correct?

10 A. They're all a part of the Morgan Stanley & Company LLC,
11 which is listed on the New York Stock Exchange, but we report
12 up through different superiors.

13 Q. You say "part of." Are they the same company? Are they a
14 separate entity?

15 A. They're wholly-owned subsidiaries of Morgan Stanley &
16 Company LLC.

17 Q. And you called it, I believe, wealth management. Is it
18 also referred to as the private bank?

19 A. I don't believe I have the expertise to answer that.

20 Q. I understand.

21 A. I could speculate, but...

22 Q. So you're not really familiar with anything that's handled
23 on the wealth management side, other than sometimes you have
24 clients referred?

25 A. I've never worked on the wealth management side, so I don't

HBTKBRE2

Bonebrake - Cross

1 BY MR. STEINWASCHER:

2 Q. Did you have specific recollection as to your
3 conversations -- specific details of your conversations with
4 Mr. Brennerman prior to looking at the documents when meeting
5 with the government?

6 A. I had recollections of conversations with Mr. Brennerman
7 that were enhanced by looking at the documents. I did recall
8 the conversations before seeing the documents, but the
9 documents were very helpful.

10 Q. So, it's safe to say that for some specific details, your
11 memory was refreshed by the documents and not something that
12 you just remembered independently prior?

13 A. That's a broad statement. I'm not sure I could agree or
14 disagree with that, but...

15 Q. That's fine. That's fine.

16 On the topic of financing, you said that for these
17 types of deals, the ones that you have handled primarily, and
18 specifically the one involving Mr. Brennerman, Morgan Stanley
19 would not provide the money that it would seek financing from
20 outside investors; is that correct?

21 A. They would not typically provide the money. There are some
22 cases where Morgan Stanley -- let me rephrase that. I can only
23 speak for my particular division. So, Morgan Stanley is a
24 \$700 billion company operating across the globe with over
25 50,000 employees. So my particular division would typically

1 not be providing the financing directly, but we might backstop
2 an offering where we commit that if we can't find third-party
3 investors to purchase these securities, then we would provide
4 the money'. But that was not the majority of the cases.

5 Q. And in the particular case of the proposal from
6 Mr. Brennerman, I believe you said that it was something that
7 you understood he was looking for Morgan Stanley to find
8 financing from investors for?

9 A. My recollection was that it was unclear. We didn't get
10 very far in our discussions. And then, after reviewing the
11 emails, I think it's still unclear.

12 Q. You mentioned several times, I believe, a distinction
13 between dealing with public companies and private companies?

14 A. Yes.

15 Q. At one point I believe you said your knowledge of the
16 number of private companies that are involved in this type of
17 business that you do, the oil and gas business, you're a little
18 less certain of the specific number because the information is
19 not publicly available; is that correct?

20 A. Correct.

21 Q. So, for a private company like Blacksands Pacific, it
22 wouldn't be unusual that you hadn't heard of them, given that
23 they're a private company, and you're not familiar with every
24 single private company out there?

25 A. It would be unusual that a company -- that I had not heard

1 BY MS. SASSOON:

2 Q. Just to clarify, turning back to Exhibit 1-61, page 6, is
3 it clear to you one way or the other from looking at this
4 e-mail whether this is an asset-based lending proposal?

5 A. It's not clear to me, it would be speculation.

6 Q. Looking at page 7, going back to the part in blue with the
7 asterisk, can you read that, please?

8 A. 50 percent working interest owned by Black Sands Pacific
9 Alpha Blue, LLC.

10 MS. SASSOON: No further questions.

11 THE COURT: Okay. Any recross?

12 MR. STEINWASCHER: Very briefly, your Honor.

13 RECROSS EXAMINATION

14 BY MR. STEINWASCHER:

15 Q. Can we go back to that same exhibit, same page?

16 Very briefly, Mr. Bonebrake. Did this proposal
17 provide you -- I say proposal, overview summary proposal, did
18 it provide you with really any information on which Morgan
19 Stanley could make a decision about financing?

20 A. To get to the point of actually, quote, making a decision
21 on financing, there would have been a lot more work and
22 information needed than this. Again, this was very preliminary
23 stage of our conversation.

24 MR. STEINWASCHER: Thank you.

25 THE COURT: Okay. You can step down. Thanks very

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 3
DATE: 11/08/2020 03:35:44 PM

XXXXXXXXXX

EXHIBIT 3

XXXXXXXXXX

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: BRO-I-B

FROM: 54001048
TO:
SUBJECT: Re: LEGAL CORRESPONDENCE -06.20.18
DATE: 06/20/2018 02:25:49 PM

x

Raheem J. Brennerman (54001-048)
Metropolitan Detention Center
P O Box 329002
Brooklyn, New York 11232

Honorable Judge Richard J. Sullivan
United States District Judge
United States District Court
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

June 20, 2018

Re: United States v. Raheem J. Brennerman
Case No: 1:17-cr-337 (RJS)

Dear Judge Sullivan

Defendant Pro Se, Raheem Brennerman ("Brennerman") submits additional evidence to bolster his arguments, which are succinctly highlighted in correspondences dated June 10, 2018 (see 17-cr-337 (RJS), dkt. no. 164), the June 11, 2018 and June 17, 2018 correspondences.

Brennerman submits, Government Exhibit 1-57, e-mail correspondence between Mr. Scott Stout and Brennerman, which highlights the e-mail signature of Scott Stout and the Beverly Hills, California address of Morgan Stanley Smith Barney LLC (not Morgan Stanley Private Bank); Government Exhibit 1-57A, the account opening form, which highlights "Morgan Stanley Smith Barney (not Morgan Stanley Private Bank)" at the top right corner of the form; Government Exhibit 1-73, e-mail between Scott Stout and Brennerman, which highlights Brennerman's alleged fraud - the perks which he became entitled to, however more important, page two of the e-mail correspondence highlights within the "Important Notice to Recipient" in relevant parts that "The sender of this e-mail is an employee of Morgan Stanley Smith Barney LLC ("Morgan Stanley"); Government Exhibit 529, the Morgan Stanley account statement, which highlights Morgan Stanley Smith Barney LLC (not Morgan Stanley Private Bank) at the bottom left corner of the bank statement cover page. Additionally Brennerman submits the profile of Mr. Scott Stout which highlights that Mr. Scott Stout worked at Morgan Stanley Wealth Management between May 2011 and November 2014, as well the announcement on September 25, 2012 by Morgan Stanley Smith Barney LLC stating in relevant parts that "Morgan Stanley Smith Barney is now Morgan Stanley Wealth Management.

These evidence are important to highlight that Brennerman interacted with Morgan Stanley Smith Barney LLC which is indisputably not FDIC insured and thus the essential element necessary to convict for bank fraud in violation of 18 United States Code Section 1344(1) and its related conspiracy - conspiracy to commit bank fraud in violation of 18 United States Code Section 1349 cannot be satisfied and Brennerman's relief for judgment of acquittal, pursuant to Rule 29 of the Federal Rules of Criminal Procedure should be granted, and that Government failed to conduct the necessary diligence or investigation prior to indicting and prosecuting Brennerman.

Brennerman highlights the following as to the wire fraud charge and its related conspiracy. Brennerman was charged in two criminal cases - criminal contempt of court in case no. 17-cr-155 (LAK), before Hon. Judge Lewis A. Kaplan and the related fraud case in case no. 17-cr-337 (RJS), before Hon. Richard J. Sullivan, both stemming from the underlying civil case, case no. 15 cv 70 (LAK) captioned - ICBC (London) PLC v. The Blacksands Pacific Group, Inc before Hon. Judge Lewis A. Kaplan. Because the trial in the case before Judge Kaplan was scheduled ahead of that before this court, Brennerman sought to obtain the relevant ICBC London lending and underwriting file which is probative as to materiality an essential element of the charged crime of wire fraud and its related conspiracy. Because Brennerman's request to both the government and directly to ICBC (London) PLC had been denied, Brennerman sought to compel for the relevant files through U.S District Court (S.D.N.Y), since the criminal cases stemming from the ICBC (London) PLC transaction were being prosecuted at the U.S District Court (S.D.N.Y), however Brennerman's request to U.S District Court (S.D.N.Y) was denied (see 17-cr-155 (LAK), dkt. no. 76). Deprived of the relevant files necessary to cross-examine any government witness as to substance or credibility, Brennerman moved in his motion-in-limine and reply to Government's motion-in-limine, prior to trial of the related fraud charge, for U.S District Court (S.D.N.Y) to exclude the testimony of any witness from ICBC (London), because such testimony will be highly

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: BRO-I-B

prejudicial and unfair to Brennerman as government will simply be allowed to present any witness, who will be able to say anything without corroboration and without Brennerman having the opportunity to cross-examine him as to substance or credibility, as Brennerman would not have been able to review the relevant lending and underwriting files. Moreover, he will be unable to assert his good faith defense, thus violating Brennerman's constitutional rights to a fair trial.

Even after trial, Brennerman has presented evidence to highlight that Mr. Robert Clarke (not Mr. Julian Madgett) was responsible for the relevant transaction at ICBC (London) PLC as evidenced through his affidavit in the underlying civil case at 15 cv 70 (LAK). (See copy of Robert Clarke affidavit at, (17-cr-337 (RJS), dkt. no. 164, exhibit 2). Additionally Brennerman submitted evidence - Government Exhibit 1-19 and 1-22 which highlights that Blacksands had already incurred and disbursed \$6.45 million in satisfying the finance conditions of ICBC (London) PLC and that the bridge finance was agreed to replace part of those funds which Blacksands already disbursed, further that Brennerman informed both Mr. Bo Jiang and Mr. Julian Madgett at ICBC (London) PLC and ICBC (London) PLC agreed to the use of the bridge finance. (See 17-cr-337 (RJS), dkt. no. 164, exhibit 2). Among others, Brennerman submitted newly discovered evidence (see 17-cr-337 (RJS), dkt. no. 164, exhibit 3) - the 2017 ICBC (London) PLC financial and company disclosure which was made publicly available on June 6, 2018, after trial. The disclosure highlights that there was no fraud. Because ICBC (London) PLC, the alleged victim of the wire fraud and related conspiracy has made no disclosure, representation or announcement that the transaction involving Blacksands Pacific was fraudulent or that it became a victim of fraud due to the transaction with Blacksands. Notwithstanding, that ICBC (London) PLC, a financial institution and publicly traded company in United Kingdom (England and Wales) is mandated by regulations to disclose publicly, if it became a victim of fraud or became involved with fraudulent transaction. This is particularly significant, where Government never reviewed, adduced or presented the relevant ICBC London lending and underwriting files, and because Brennerman was deprived from engaging in any meaningful cross-examination of the sole witness presented by Government from ICBC (London) PLC as to credibility and substance. In addition to the fact that, the sole witness - Mr. Julian Madgett, is not a member of the credit committee responsible for approving the transaction at ICBC (London) PLC.

Thus, Brennerman submits, arguing that since Government ostensibly argued (although erroneously) that Scott Stout worked at Morgan Stanley Private Bank (instead of Morgan Stanley Smith Barney) in their opposition to his Rule 29 and 33 motion. (See 17-cr-337 (RJS), dkt. no. 149), now highlighted as an erroneous proffer by Government given the overwhelming evidence which were all available to Government. Government's credibility is questionable; further that, because Brennerman was deprived of the relevant ICBC London lending and underwriting file prior to trial and even Government concedes that it had not reviewed the files; additionally, because Robert Clarke and not Julian Madgett is/was responsible for the relevant transaction at ICBC (London) PLC as highlighted through his affidavit; additionally, because Brennerman suffered for ineffective assistance of counsel due to the conflict of interest issue, with his trial counsel; additionally, because Brennerman submitted and highlighted newly discovered evidence - the 2017 financial and company disclosure, by ICBC (London) PLC, which was filed and made public on June 6, 2018. Brennerman respectfully requests and pleads for the Court to resolve the factual dispute as to the relevant ICBC London transaction with Blacksands Pacific, as it pertains to this case, by reviewing the relevant ICBC London lending and underwriting files, especially in light of the newly discovered evidence which demonstrates that, ICBC (London) PLC, the alleged victim has not disclosed or represented that the transaction with Blacksands was fraudulent or that it became a victim of fraud through the transaction with Blacksands, which it would have had to disclose by regulation if any fraud occurred.

The above presents significant issues, because Brennerman suffered prejudicial spillover on other counts of the charged crime, due to Government's erroneous argument and presentation to the court and jury at trial. In addition, Brennerman suffered prejudice due to the conflict of interest issue with his trial counsel. Evidence submitted to date, supports, Brennerman's pleading for a new trial, pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

Brennerman submits the above and the appended evidence in addition to his submissions at (dkt. no. 164), his June 11, 2018 and June 17, 2018 correspondences, and awaits the Court's decision

Dated: June 20, 2018
New York City, New York

RESPECTFULLY SUBMITTED

/s/ Raheem J. Brennerman
Defendant Pro Se

From: BRENNERMAN, R. J @The Executive Office
To: Stout, Scott
Cc: BRENNERMAN R. J@Executive Office
Subject: Re: Morgan Stanley (Wealth Management)
Date: Tuesday, January 8, 2013 9:09:49 AM
Attachments: Morgan Stanley (Client Profile).pdf
Importance: High

Dear Scott,

As discussed, attached is the completed forms, as advised the account will be in the corporate name however you wanted me to also complete a form with personal information. As discussed, I will require Debit Card and AMEX card with the account.

Please let know what are the next steps.

Best Regards

From: Stout, Scott
Sent: Monday, December 10, 2012 1:10 PM
To: mailto:rbrennerman@blacksandspacific.com
Subject: RE: 2013 Preparation

Hi RJ,

Just a reminder to get those forms to me so I can get everything in order prior to our lunch on Friday.

Thanks,
Scott

Scott Stout
F.A. - Wealth Management
MorganStanley
Direct: 310 205 4912
9665 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

<http://www.morganstanley.com/f/a/scott.stout>
scott.stout@morganstanley.com

GOVERNMENT
EXHIBIT
1-57
17 Cr. 337 (RJS)

9665 Wilshire Boulevard
Suite 600 Beverly Hills, CA 90212

Morgan Stanley
Smith Barney

*Kindly provide all personal information.
For additional owners, please complete a 2nd profile.*

Full Name JEFFERSON III HOLDINGS LLC

Address 3960 FLORIDA HEIGHTS PARKWAY, SUITE 500

City LAS VEGAS State NEVADA Zip Code 89169

Home Phone _____ Business _____

Cell 917619 6430 Fax _____

SS# or Tax ID [REDACTED] US Citizen Y N

Marital Status W #of Dependents _____ Date of Birth _____

E-mail Address _____

Telephone access Prompts _____ Mother's Maiden Name _____

City of Birth _____ or 1st School Attended DWIGHT

Employer _____

Nature of Business INVESTMENTS Occupation _____

Est. Annual Compensation \$ _____ Employed Since _____

Primary Source of Income-Check all that apply

Annual Salary _____ Investments _____ Retirement Assets _____ Amount \$ _____

Est. Total Annual Income (all sources) _____

Est. Liquid Net Worth \$ _____ Est. Total Net Worth \$ _____

Tax Bracket (percentile) _____

Investment Objectives: (Please rank 1 through 4, in order of priority)

Growth 1 Current Income 2 Tax Deferral 3 Liquidity 4

Investing Since (year) Stocks 99 Bonds 99 Commodities 01 Options 02

Risk Tolerance (check one) Aggressive _____ Moderate X Conservative _____

Speculation Yes _____ No _____

Primary Financial Need: (circle one)

Wealth Accumulation	Major Purchase	Healthcare	Education
<u>Estate Planning</u>	Retirement	Charity	Income

Outside Investments: Firms Used: _____

Equities \$ _____ Fixed Income \$ _____ Cash\$ _____ Alt Investments _____

Time Horizon _____ Liquidity Needs _____

Are you or anyone in your household a major share holder in a publicly traded company? Y N

Are you an executive of a publicly traded company? Y N

Do you or anyone in your immediate family work for a brokerage house? Y N

Is anyone in your immediate family employed by CitiGroup? Y N

DRB 1/5/13

Please sign and date above

In order to open your account we are required to obtain this information. Thank you for assisting us.

THIS INFORMATION WILL REMAIN CONFIDENTIAL 02/2012

From: BRENNERMAN, R. J @The Executive Office
To: Stout, Scott
Cc: Gevarter, Mona
Subject: Re: Platinum AMEX
Date: Wednesday, January 9, 2013 7:24:39 PM
Importance: High

Dear Mona,

Are you able to call me on my cellphone 917 699 6430 regarding the email below

Best Regards

From: Stout, Scott
Sent: Wednesday, January 09, 2013 4:45 PM
To: <mailto:r.brennerman@blacksandspacific.com>
Cc: Gevarter, Mona
Subject: Platinum AMEX

RJ,

Please give Mona a call to set up your Platinum AMEX card. 310 205 4751.

As a Morgan Stanley perk, if you spend \$100k annually we deposit \$500 into your account to cover your annual fee (\$450).

Other MS/Platinum Perks Include:

- First Class Lounge Access
- \$200 annually in airline fee credits (checking bags, etc)
- No foreign transaction fees
- Premium upgrades for car rentals
- Concierge
- 20% Travel Bonus

Scott Stout
F.A. - Wealth Management
MorganStanley
Direct: 310 205 4912
9665 Wilshire Blvd., 6th Floor
Beverly Hills, CA 90212

<http://www.morganstanley.com/fa/scott.stout>
scott.stout@morganstanley.com

Important Notice to Recipients:



Please do not use e-mail to request, authorize or effect the purchase or sale of any security or commodity. Unfortunately, we cannot execute such instructions provided in e-mail. Thank you.

The sender of this e-mail is an employee of Morgan Stanley Smith Barney LLC ("Morgan Stanley"). If you have received this communication in error, please destroy all electronic and paper copies and notify the

sender immediately. Erroneous transmission is not intended to waive confidentiality or privilege. Morgan Stanley reserves the right, to the extent permitted under applicable law, to monitor electronic communications. This message is subject to terms available at the following link: <http://www.morganstanley.com/disclaimers/msshemail.html>. If you cannot access this link, please notify us by reply message and we will send the contents to you. By messaging with Morgan Stanley you consent to the foregoing.

Morgan Stanley Smith Barney is Now Morgan Stanley Wealth Management

Sep 25, 2012

Morgan Stanley's U.S. Wealth Management Business Has a New Name Following Largest-Ever Integration in the Wealth Management Industry

New York —

Morgan Stanley (NYSE: MS) today announced that its U.S. wealth management business, Morgan Stanley Smith Barney, has been renamed Morgan Stanley Wealth Management (MSWM).

Morgan Stanley Wealth Management is an industry leader, managing \$1.7 trillion in client assets through a network of 17,000 representatives in 740 locations. Morgan Stanley on September 11 announced an agreement with Citigroup to increase its majority ownership of MSWM such that Morgan Stanley will assume full control by June of 2015, subject to regulatory approval. The business was formed in 2009 as a joint venture between Morgan Stanley and Citi's Smith Barney.

"Today, as we move under one name, we are culminating a three-year effort to integrate two outstanding franchises," said James Gorman, Chairman and Chief Executive Officer of Morgan Stanley. "The Smith Barney name stood for investment excellence for three-quarters of a century, and Morgan Stanley Wealth Management will provide the first-class service that has distinguished Morgan Stanley as a firm for more than 75 years. Going forward, we remain focused on being the world's premier wealth management group."

Said Greg Fleming, President of Morgan Stanley Wealth Management, "Today, we are one integrated business, with one overarching mission: to earn the trust of our clients every day

through superior advice and execution. Our name has changed to reflect our integration, but our mission remains the same: We are committed to helping our clients reach their financial goals."

The broker-dealer designation for Morgan Stanley Wealth Management will remain "Morgan Stanley Smith Barney LLC."

Morgan Stanley Wealth Management, a global leader in wealth management, provides access to a wide range of products and services to individuals, businesses and institutions, including brokerage and investment advisory services, financial and wealth planning, credit and lending, cash management, annuities and insurance, retirement and trust services.

Morgan Stanley (NYSE: MS) is a leading global financial services firm providing a wide range of investment banking, securities, investment management and wealth management services. The Firm's employees serve clients worldwide including corporations, governments, institutions and individuals from more than 1,200 offices in 43 countries. For further information about Morgan Stanley, please visit www.morganstanley.com.

Media Relations Contact:

Jeanmarie McFadden, 212.761.2433

Jim Wiggins, 914.225.6161

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 4
DATE: 11/08/2020 03:36:05 PM

xxxxxxxxxx

EXHIBIT 4

xxxxxxxxxx

1 don't.

2 Q. If it had no depository accounts, would there be any reason
3 for it to need FDIC insurance?

4 A. I'm not certain.

5 Q. Does FDIC insurance cover anything else other than
6 depository accounts?

7 A. No.

8 Q. So if there is a company that has many different
9 sub-entities, some of those that hold depository accounts and
10 some of those that don't, a financial institution I should say,
11 it's safe to say the FDIC would only offer insurance to those
12 portions of the company that handle depository accounts?

13 A. You kind of lost me. Can you repeat that?

14 Q. If there is a financial institution that has one division
15 that covers investments and another division that covers
16 depository accounts, would the FDIC insure the division that
17 covers investment banking?

18 A. If it does not have a certificate of deposit insurance it
19 would not.

20 Q. If it had no depository accounts, there was no reason for
21 that institution to seek a certificate of insurance?

22 A. I can't opine on what someone would want to do, in terms of
23 seeking insurance or not seeking insurance.

24 Q. Well, there would be nothing for the FDIC to insure in that
25 instance, is that correct?

1 MR. SOBELMAN: Objection.

2 THE COURT: Sustained.

3 Move on.

4 MR. STEINWASCHER: Can we go to Exhibit 529.

5 Can I ask the government's indulgence. I don't think
6 we have an electronic version of this. The same page that Mr.
7 Sobelman showed the witness, page 4.

8 Thank you. I appreciate that.

9 Q. Mr. Gonzalez, you looked at this with Mr. Sobelman a few
10 minutes ago, correct?

11 A. Yes.

12 Q. I think he directed you to the kind of italicized text,
13 almost toward the bottom of the page under "cash deposits and
14 money market funds," correct?

15 A. Yes.

16 Q. Then he put up on the screen next to this statement the two
17 certificates of insurance from the FDIC that pertain to Morgan
18 Stanley Bank NA and Morgan Stanley Private Bank National
19 Association, correct?

20 A. Yes.

21 Q. Morgan Stanley Bank NA and Morgan Stanley Private Bank
22 National Association, are those the same entity?

23 A. The same entity as what?

24 Q. As each other.

25 A. No. They have distinct certificate numbers.

1 A. Not without a certificate of deposit insurance.

2 Q. I just want to clear this up. Your answer to my previous
3 question was the FDIC does not insure banks outside of the
4 [REDACTED] United States.
5

6 The question was the FDIC does not insure banks outside of the
7

8 Q. I just want to clear this up. Your answer to my previous
9 question was not without a certificate of deposit insurance.

HC48BRE4

GONZALEZ - CROSS

Case 1:17-cr-00337-RJS Document 98 Filed 12/13/17 Page 132 of 285

1060

HC48BRE4 Gonzalez - Cross

1 A. Not without a certificate of deposit insurance.

2 Q. I just want to clear this up. Your answer to my previous
3 question was the FDIC does not insure banks outside of the
4 United States.

5 A. A foreign bank?

6 Q. Correct.

7 A. No.

8 Q. So if there is a foreign bank located in London, even if it
9 held depository accounts, the FDIC could not insure it, is that
10 correct?

11 A. That is correct.

12 Q. I apologize for this. I want to go back to one point.

1 A. Yes.

2 Q. The same thing for an affiliate within a company or
3 affiliates between companies, each entity would require a
4 separate certificate of insurance in order to be FDIC insured?

5 A. That is correct.

6 MR. STEINWASCHER: We are just about approaching lunch
7 and I am done with this witness.

8 THE COURT: Any redirect?

9 MR. SOBELMAN: No, your Honor.

10 THE COURT: Why don't we break then. We will pick up
11 at 2.

12 Don't discuss the case and bring your books with you
13 into the jury room, but don't take them outside of the jury
14 room. Have a good lunch.

15 All rise for the jury, please.

16 (Jury exits courtroom)

17 THE COURT: You can step down. Thank you very much,
18 Mr. Gonzalez.

19 Have a seat. Let's talk about what we have left and
20 an ETA.

21 MR. ROOS: We have six witnesses remaining, two of
22 them are on the longer side and the other ones are about the
23 length that some of these shorter witnesses have been today.
24 And we also have three stipulations to read into the record at
25 some point. We can do it right after lunch.

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 5
DATE: 11/08/2020 03:36:24 PM

XXXXXXXXXX

EXHIBIT 5

XXXXXXXXXX

1 (Jury present)

2 THE COURT: Okay. Have a seat. We will now begin the
3 cross-examination of Mr. Madgett by Mr. Waller.

4 CROSS EXAMINATION

5 BY MR. WALLER:

6 Q. Good afternoon, Mr. Madgett.

7 A. Good afternoon.

8 Q. When did you say you started working for ICBC?

9 A. 2009.

10 Q. And you work for ICBC in London, correct?

11 A. Correct.

12 Q. And it is a subsidiary of a Chinese bank?

13 A. It is a subsidiary and a branch of a Chinese bank.

14 Q. ICBC London is not FDIC insured; is that correct?

15 A. You are referring to the U.S. arrangement?

16 Q. That's correct.

17 A. No, it would not be because it's an operation in the U.K.

18 Q. When your credit committee makes a decision, a credit
19 decision whether or not to give a loan or not to give a loan,
20 what sort of documentation does it produce? Does it produce a
21 memo that explains its reasons or analysis for giving a loan?

22 A. The credit committee will have a series of minutes which
23 reflects a discussion of the case in credit committee and
24 records the decision of the credit committee.

25 Q. Did you ever produce the documents from that credit

1 committee, the ones you just described, to the government?

2 MR. ROOS: Objection.

3 THE COURT: You can answer.

4 A. To my knowledge, no. But I need to state perhaps it's
5 appropriate to say this: After the loan was defaulted, the
6 internal process of the bank means that the direct relationship
7 managers who were responsible for that dialogue step away and
8 the defaulted loan is then passed to a different department.

9 So, I'm not fully aware of all aspects of what has happened to
10 the management of the loan after around April 2014.

11 Q. And when I say produced to the government, I meant to the
12 prosecutors here in this case. You understood that?

13 A. I understood that and to my knowledge, no, that has not
14 been the case.

15 Q. But ICBC did produce a lot of documents to the government,
16 correct?

17 A. All I can state is that the documents were provided to our
18 legal advisors and then our legal advisors have interacted with
19 the U.S. Attorney's office.

20 Q. Would it be fair to say that some documents that are in the
21 underwriting file for ICBC were produced to the document and
22 others were not?

23 A. Some documents will have been passed across. I do not know
24 whether or not all or some. I'm not in -- I don't have that
25 knowledge.

1 Q. Is there an underwriting file for a loan application such
2 as the one we are dealing with in this case?

3 A. There would be a credit application document which is where
4 the case for making the loan has been summarized, and that is
5 the credit application document which then goes to credit
6 committee for approval or decline.

7 Q. Do you know if that -- well who would have prepared that
8 document?

9 A. I would have been one of the main authors of that document.

10 Q. Do you know if that document was produced to the
11 government?

12 A. I do not and I wouldn't see great relevance in it, but I do
13 not know if it has gone to the government.

14 Q. Well, relevance is not really your determination, correct?

15 A. Correct, correct. Yes.

16 Q. So you don't know if it was produced to the government and
17 it certainly wasn't produced to the defense, correct, by ICBC?

18 THE COURT: Well, do you know?

19 THE WITNESS: I don't know, but I'm assuming from your
20 question that it wasn't.

21 THE COURT: Well, don't assume.

22 THE WITNESS: Okay, sorry. My apologies.

23 THE COURT: The jury knows not to assume anything from
24 a question. So, you just answer as to what you know.

25 THE WITNESS: All right.

1 BY MR. WALLER:

2 Q. Was there an answer?

3 A. Could you repeat the question, please?

4 Q. Yes.

5 Do you know if that document that we were talking
6 about was ever produced?

7 THE COURT: He answered. He said I don't know.

8 THE WITNESS: I don't know.

9 THE COURT: And then he started assuming things and
10 that's when I jumped in.

11 BY MR. WALLER:

12 Q. So the answer is you don't know?

13 A. I don't know.

14 Q. Now, you first met Mr. Brennerman in 2011, correct?

15 A. Yes.

16 Q. Did you meet him in person for a meeting?

17 A. Yes.

18 Q. Jumeirah Carlton Tower Hotel, does that sound right?

19 A. On one occasion I met him in a hotel, yes.

20 Q. At that point when you met him I think you testified that
21 there were no firm deals that he was bringing to you at that
22 point? There were no deals that he was bringing to you, he was
23 just making an introduction?

24 A. When the initial interaction between us started, yes.

25 Q. And, do you recall when the first deal was that he brought

1 MS. FRITZ: Your Honor, your Honor, no. We have it
2 here, but --

3 THE COURT: You haven't served it yet?

4 MS. FRITZ: We wanted to hear what your Honor said.

5 THE COURT: In any event, the witness has indicated he
6 doesn't possess the documents, so the documents are not with
7 him. He doesn't have them. According to his testimony,
8 they're in London with the bank's files that he turned over
9 once the deal went south. He certainly said he didn't review
10 them in preparation for his testimony. He doesn't possess them
11 now.

12 So, to the extent the bank is subpoenaed with a Rule
13 17 subpoena, then that would be a different issue, but I don't
14 think serving Mr. -- who is the lawyer, Mr.?

15 MR. HESSLER: Hessler, your Honor.

16 THE COURT: Yes, Mr. Hessler. I'm sorry.

17 I don't think serving Mr. Hessler is adequate service
18 for purposes of the bank.

19 MS. FRITZ: Let me explain why we did it that way,
20 because initially last night, we had an ICBC subpoena drafted,
21 and the reason that we did it this way is, again, I don't
22 necessarily agree with your Honor's definition of possession.
23 I do think that Julian Madgett, I think quite plainly, has
24 access to these documents. People very rarely walk around with
25 the documents that you're asking for from them, but they do

TRULINCS 54001048 - BRENNERMAN, RAHEEM J - Unit: ALF-G-A

FROM: 54001048
TO:
SUBJECT: EXHIBIT 6
DATE: 11/08/2020 10:19:13 PM

XXXXXXXXXXXX

EXHIBIT 6

XXXXXXXXXXXX



ATLANTA	CLEVELAND	DAYTON	WASHINGTON, D.C.
CINCINNATI	COLUMBUS	NEW YORK	

November 29, 2017

Via ECF and Email

Hon. Richard J. Sullivan
 Thurgood Marshall
 United States Courthouse, Room 905
 40 Foley Square
 New York, NY 10007

Re: *United States v. Raheem J. Bremnerman*; No. 17 Cr. 337 (RJS)

Dear Judge Sullivan,

We write to address the issue raised today with respect to the production of certain documents. Specifically, we learned today that the notes of the Government's witness, Julian Madgett, pertaining to matters to which he testified, were not obtained by the Government, or provided to the defense. For the reasons detailed below, it is our position that the materials should have been produced pursuant to Fed. Rule Crim. P. 16 and the Jencks Act, 18 U.S.C. § 3500; in addition, the defendant is serving a subpoena on counsel for this witness, Paul Hessler, for their production and the production of other documents.

The Government has asserted that Mr. Madgett's notes – made by the alleged victim and pertaining to the precise subject matter at issue in this trial – are not in its actual "possession," and therefore it has no obligation to produce them. But possession is not so narrowly defined. Courts have required the Government to disclose evidence material to the defense where the Government "actually or constructively" possesses it. *E.g., United States v. Joseph*, 996 F.2d 36, 39 (3d Cir. 1993) ("The prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it." (internal quotation marks omitted)); *cf. Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (holding that, to satisfy *Brady* and *Giglio*, prosecutors have "a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case"). In particular, in *United States v. Paternina-Vergara*, the Second Circuit held that the Government had an obligation to make good faith efforts to obtain Jencks Act statements possessed by a third party that had cooperated extensively, and had a close relationship with, the Government. 749 F.2d 993 (2d Cir. 1984). And in *United States v. Stein*, the court directed the Government to produce documents in the actual possession of a third party, KPMG, because KPMG had voluntarily agreed to do so in an deferred prosecution agreement. 488 F. Supp. 2d 350, 361 (S.D.N.Y. 2007) (noting that the term "control" has been "broadly construed"); *see also United States v. Kilroy*, 488 F. Supp. 2d 350, 362 (E.D. Wis. 1981) ("Since Standard Oil is cooperating with the Government in the preparation of the case and is making available to the Government for retention in the Government's files any records which Standard Oil has and

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which the Government wants, however, it is not unreasonable to treat the records as being within the Government's control *at least to the extent of requiring the Government to request the records on the defendant's behalf and to include them in its files for the defendant's review if Standard Oil agrees to make them available to the Government.*" (emphasis added)).¹

Here, there can be no question that Mr. Madgett and his employer, ICBC (London) plc ("ICBC"), are in a cooperative relationship with the Government. ICBC is the complainant and alleged victim in this case. Moreover, counsel for ICBC confirmed in the recent criminal contempt trial before Judge Kaplan that ICBC had voluntarily produced more than 5000 pages of documents at the mere request of the Government. And Mr. Madgett is voluntarily appearing as a Government witness. Given this close relationship, and one demonstrating extensive cooperation between Mr. Madgett, ICBC, and the Government, the Government had (and has) an obligation to obtain and produce to Mr. Brennerman materials required by Rule 16 and the Jencks Act. Yet, Mr. Madgett testified today that the Government never asked him for any notes.

Mr. Brennerman therefore moves this Court to direct the Government to request, at a minimum, Mr. Madgett's notes that pertain to the subject matter of this case and his testimony. This is especially necessary given the critical importance of such materials to this case and Mr. Brennerman's defense, as *no* documents have been produced to date that pertain to the critical issue of ICBC's decision-making process with respect to the loan it provided to Mr. Brennerman – i.e., the transaction at the very core of the Government's case.

Additionally, since Mr. Brennerman has been unable to obtain any such materials, and in light of Mr. Madgett's testimony, we are issuing a subpoena directly to ICBC, through its counsel Mr. Hessler, for these records and others.

We are prepared to address these issues at any time convenient to the Court.

¹ Courts have granted motions to dismiss an indictment where the Government fails to satisfy its discovery and disclosure obligations, either on the basis of a due process violation or under the court's inherent supervisory powers, including where the Government belatedly disclosed Jencks Act materials. E.g., *United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008).

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Respectfully,

s/ Maranda E. Fritz

Maranda E. Fritz

Enclosures

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AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case

UNITED STATES DISTRICT COURT
for the

Southern District of New York

United States of America)
v.)
Raheem J. Brennerman) Case No. 1:17-cr-0377-RJS
Defendant)

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To: Julian Madgett

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance:	Southern District of New York 500 Pearl Street New York, New York	Courtroom No.:	15C
		Date and Time:	12/06/2017 9:30 am

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

Please see attached rider.

(SEAL)

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (*name of party*) Raheem J. Brennerman, who requests this subpoena, are:

Maranda E. Fritz, Esq.

Brian D. Waller, Esq.

Brian K. Steinwascher, Esq.

Thompson Hine LLP

335 Madison Avenue, 12th Floor

New York, New York 10017-4611

(212) 908-3966

Maranda.Fritz@ThompsonHine.com, Brian.Waller@ThompsonHine.com & Brian.Steinwascher@ThompsonHine.com

12/09/2019

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AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case (Page 2)

Case No. 1:17-cr-0377-RJS

PROOF OF SERVICE

This subpoena for (*name of individual and title, if any*) _____
was received by me on (*date*) _____.

I served the subpoena by delivering a copy to the named person as follows: _____

on (*date*) _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

RIDER

(Subpoena to Julian Madgett)

Definitions and Instructions:

1. Please produce any documents responsive to this Subpoena by 12/6/2017 at 9:30 am.
2. Please produce requested records in electronic form (native format where necessary to view the material in its full scope) in a manner that is OCR-searchable, and with all available electronic metadata.
3. The term "documents" includes writings, emails, text messages, drawings, graphs, charts, calendar entries, photographs, audio or visual recordings, images, and other data or data compilations, and includes materials in both paper and electronic form.
4. The term "ICBC" refers to the Plaintiff in the civil litigation in the Southern District of New York captioned *ICBC (London) plc v. The Blacksands Pacific Group, Inc.*, 15 Cv. 70 (LAK) and includes its agents, representatives and counsel.
5. The term "Blacksands Pacific" includes The Blacksands Pacific Group Inc. and the Blacksands Pacific Alpha Blue, LLC or any Blacksands Pacific entity and any of its subsidiaries and affiliates, and any officer, employee, volunteer, representative, or agent of those entities.
6. The Subpoena calls for the production of documents from the period January 1, 2013 to March 3, 2017.
7. Any documents withheld on grounds of privilege must be identified on a privilege log with descriptions sufficient to identify their dates, authors, recipients, and general subject matter.

Materials to be Produced:

1. All notes relating to meetings and communications with representatives of Blacksands Pacific.
2. All documents relating to or reflecting the decision by the credit committee at ICBC to issue a bridge loan to Blacksands Pacific including but not limited to the "credit paper" and memorialization of the committee's decision.