

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 09-cr-00266-CMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. DAVID A. BANKS;
2. DEMETRIUS K. HARPER, a/k/a KEN HARPER;
3. GARY L. WALKER;
4. CLINTON A. STEWART, a/k/a C. ALFRED STEWART;
5. DAVID A. ZIRPOLO; and
6. KENDRICK BARNES,

Defendants.

REPORTER'S TRANSCRIPT
(Jury Trial Day 17)

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 9:55 a.m. on the 20th day of October 2011, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

FOR THE PLAINTIFF:

MATTHEW T. KIRSCH and SUNEETA HAZRA, U.S. Attorney's Office - Denver, 1225 17th St., Suite 700, Denver, CO 80202

FOR THE DEFENDANTS:

Pro Se

DARLENE M. MARTINEZ, RMR, CRR
United States District Court
For the District of Colorado

1 a mail fraud count, and they should strike "wire" in
2 parentheses in the Jury Verdict Form.

3 MR. KIRSCH: The Government agrees with that, Your
4 Honor, and we should have caught that, as well. We just
5 missed that, as well.

6 THE COURT: Defendants?

7 MR. BANKS: No objection, Your Honor.

8 THE COURT: All right. What I have said is, "Count
9 24 is a mail fraud charge, and you should consider it
10 under the mail fraud instruction. Strike the word 'wire'
11 on the Verdict Form and replace it with 'mail'" Is that
12 fine?

13 MR. KIRSCH: That's fine, Your Honor.

14 MR. BANKS: That's fine.

15 THE COURT: All right. Ms. Barnes, would you
16 please take this back to the Court Security Officer.

17 Court will be in recess.

18 MR. KIRSCH: Your Honor, I am sorry, could we just
19 raise one other issue while we have all of the parties
20 here. I don't know -- I assume the Court has seen this,
21 but there was an e-mail that we got a copy of from the
22 defendants after the last question that we had yesterday,
23 and we just wanted to make that request from the
24 defendants a part of record, as well as the Government's
25 response to that.

1 THE COURT: Actually, I apologize. Yes, we
2 received on -- what's today, Thursday? On Tuesday, I
3 believe it was, after -- because we didn't have any
4 indication until today. My chambers received an e-mail
5 from Mr. Banks indicating that he believed the jury should
6 be instructed that they could request a copy of the
7 transcript. That is directly contradictory to what the
8 jury instruction was that I gave them; that they would not
9 be able to see any transcripts. And that is normal
10 procedure in my courtroom. And, as far as I know, that is
11 normal procedure in every courtroom in this Court. The
12 jury is not allowed to see the transcripts of one witness'
13 testimony, because that would give it precedence over any
14 other witness' testimony, and that is the reason for that.

15 MR. KIRSCH: Your Honor, the Government agrees that
16 that request from the defendants for that additional
17 instruction should be denied.

18 THE COURT: All right. And so what we will do is
19 we will print out the e-mail, and then this transcript
20 will address that.

21 MR. KIRSCH: Thank you, Your Honor.

22 THE COURT: Mr. Banks, anything further?

23 MR. KIRSCH: Nothing further.

24 THE COURT: All right. Ms. Barnes, if you could
25 take this to the CSO, and we will be in recess.

1 (Jury deliberations continue.)

2 (Court is reconvened at 11:23 a.m.)

3 THE COURT: You may be seated.

4 I have been informed by a note from the jury
5 foreperson that the jury has reached a verdict in this
6 case. So at this point, if there is nothing to be brought
7 to my attention, we'll bring in the jury.

8 MR. BANKS: Nothing.

9 THE COURT: All right. Ms. Barnes, would you
10 please bring in the jury.

11 (The following is had in open court, in the hearing
12 and presence of the jury.)

13 THE COURT: You may be seated.

14 Good morning, ladies and gentlemen. I have been
15 informed by a note from the jury's foreperson that the
16 jury has reached a verdict in this case.

17 Would the jury foreperson please rise. Has the
18 jury reached a unanimous verdict concerning all charges
19 against all defendants in this case?

20 JURY FOREPERSON: Yes, we have.

21 THE COURT: Have you signed the jury verdict form?

22 JURY FOREPERSON: Yes.

23 THE COURT: All right. Would you please hand the
24 Verdict Form to the Court Security Officer, who will hand
25 it to me.

1 All right. Would the defendants please rise. I
2 will now read the Verdict Form.

3 Count 1. A. We, the jury, unanimously find the
4 defendant, David A. Banks, in Count 1 of the Indictment
5 (Conspiracy to commit wire fraud and mail fraud): Guilty.

6 B. We, the jury, unanimously find the defendant,
7 Demetrius K. Harper, in Count 1 of the Indictment
8 (Conspiracy to commit wire fraud and mail fraud): Guilty.

9 C. We, the jury, unanimously find the defendant,
10 Gary L. Walker, in Count 1 of the Indictment, (Conspiracy
11 to commit wire fraud and mail fraud): Guilty.

12 D. We, the jury, unanimously find the defendant,
13 Clinton A. Stewart, in Count 1 of the Indictment
14 (Conspiracy to commit wire fraud and mail fraud): Guilty.

15 E. We, the jury, unanimously find the defendant,
16 David A. Zirpolo, in Count 1 of the Indictment (Conspiracy
17 to commit wire fraud and mail fraud): Guilty.

18 F. We, the jury, unanimously find the defendant,
19 Kendrick Barnes, in Count 1 of the Indictment (Conspiracy
20 to commit wire fraud and mail fraud): Guilty.

21 Count 2. We, the jury, unanimously find the
22 defendant, David A. Banks, in Count 2 of the Indictment
23 (Mail fraud): Not guilty.

24 Count 3. A. We, the jury, unanimously find the
25 defendant, Demetrius K. Harper, in Count 3 of the

1 Indictment (Mail fraud): Guilty.

2 B. We, the jury, unanimously find the defendant,
3 David A. Zirpolo, in Count 3 of the Indictment (Mail
4 fraud): Guilty.

5 Count 4. A. We, the jury, unanimously find the
6 defendant, David A. Banks, in Count 4 of the Indictment
7 (Mail fraud): Guilty.

8 B. We, the jury, unanimously find the defendant,
9 Demetrius K. Harper, in Count 4 of the Indictment (Mail
10 fraud): Guilty.

11 C. We, the jury, unanimously find the defendant,
12 Clinton A. Stewart, in Count 4 of the Indictment (Mail
13 fraud): Guilty.

14 D. We, the jury, unanimously find the defendant,
15 Kendrick Barnes, in Count 4 of the Indictment (Mail
16 fraud): Guilty.

17 Count 5. A. We, the jury, unanimously find the
18 defendant, David A. Banks, in Count 5 of the Indictment
19 (Mail fraud): Guilty.

20 B. We, the jury, unanimously find the defendant,
21 David A. Zirpolo, in Count 5 of the Indictment (Mail
22 fraud): Guilty.

23 C. We, the jury, unanimously find the defendant,
24 Kendrick Barnes, in Count 5 of the Indictment (Mail
25 fraud): Guilty.

1 Count 6. We, the jury, unanimously find the
2 defendant, David A. Banks, in Count 6 of the Indictment
3 (Mail fraud): Guilty.

4 Count 7. A. We, the jury, unanimously find the
5 defendant, David A. Banks, in Count 7 of the Indictment
6 (Mail fraud): Guilty.

7 B. We, the jury, unanimously find the defendant,
8 David A. Zirpolo, in Count 7 of the Indictment (Mail
9 fraud): Guilty.

10 C. We, the jury, unanimously find the defendant,
11 Kendrick Barnes, in Count 7 of the Indictment (Mail
12 fraud): Guilty.

13 Count 8. A. We, the jury, unanimously find the
14 defendant, David A. Banks, in Count 8 of the Indictment
15 (Mail fraud): Guilty.

16 B. We, the jury, unanimously find the defendant,
17 Demetrius K. Harper, in Count 8 of the Indictment (Mail
18 fraud): Guilty.

19 C. We, the jury, unanimously find the defendant,
20 Clinton A. Stewart, in Count 8 of the Indictment (Mail
21 fraud): Guilty.

22 D. We, the jury, unanimously find the defendant,
23 Kendrick Barnes, in Count 8 of the Indictment (Mail
24 fraud): Guilty.

25 Count 9. We, the jury, unanimously find the

1 defendant, Demetrius K. Harper, in Count 9 of the
2 Indictment (Wire fraud): Guilty.

3 Count 10. We, the jury, unanimously find the
4 defendant, David A. Banks, in Count 10 of the Indictment
5 (Wire fraud): Guilty.

6 Count 11. A. We, the jury, unanimously find the
7 defendant, Demetrius K. Harper, in Count 11 of the
8 Indictment (Wire fraud): Guilty.

9 B. We, the jury, unanimously find the defendant,
10 David A. Zirpolo, in Count 11 of the Indictment (Mail
11 fraud): Guilty.

12 Count 12. A. We, the jury, unanimously find the
13 defendant, Demetrius K. Harper, in Count 12 of the
14 Indictment (Mail fraud): Guilty.

15 B. We, the jury, unanimously find the defendant,
16 Clinton A. Stewart, in Count 12 of the Indictment (Mail
17 fraud): Guilty.

18 C. We, the jury, unanimously find the defendant,
19 David A. Zirpolo, in Count 12 of the Indictment (Mail
20 fraud): Guilty.

21 Count 13. A. We, the jury, unanimously find the
22 defendant, David A. Banks, in Count 13 of the Indictment
23 (Mail fraud): Guilty.

24 B. We, the jury, unanimously find the defendant,
25 Demetrius K. Harper, in Count 13 of the Indictment (Mail

1 fraud): Guilty.

2 C. We, the jury, unanimously find the defendant,
3 David A. Zirpolo, in Count 13 of the Indictment (Mail
4 fraud): Guilty.

5 Count 14. We, the jury, unanimously find the
6 defendant, David A. Banks, in Count 14 of the Indictment
7 (Wire fraud): Guilty.

8 Count 15. We, the jury, unanimously find the
9 defendant, Demetrius K. Harper, in Count 15 of the
10 Indictment (Mail fraud): Guilty.

11 Count 16. A. We, the jury, unanimously find the
12 defendant, David A. Banks, in Count 16 of the Indictment
13 (Wire fraud): Guilty.

14 B. We, the jury, unanimously find the defendant,
15 Demetrius K. Harper, in Count 16 of the Indictment (Wire
16 fraud): Guilty.

17 Count 17. A. We, the jury, unanimously find the
18 defendant, David A. Banks, in Count 17 of the Indictment
19 (Wire fraud): Guilty.

20 B. We, the jury, unanimously find the defendant,
21 Demetrius K. Harper, in Count 17 of the Indictment (Wire
22 fraud): Guilty.

23 C. We, the jury, unanimously find the defendant,
24 David A. Zirpolo, in Count 17 of the Indictment (Wire
25 fraud): Guilty.

1 Count 18. A. We, the jury, unanimously find the
2 defendant, David A. Banks, in Count 18 of the Indictment
3 (Wire fraud): Guilty.

4 B. We, the jury, unanimously find the defendant,
5 Demetrius K. Harper, in Count 18 of the Indictment (Wire
6 fraud): Guilty.

7 C. We, the jury, unanimously find the defendant,
8 Clinton A. Stewart, in Count 18 of the Indictment (Wire
9 fraud): Guilty.

10 D. We, the jury, unanimously find the defendant,
11 David A. Zirpolo, in Count 18 of the Indictment (Wire
12 fraud): Guilty.

13 Count 19. A. We, the jury, unanimously find the
14 defendant, David A. Banks, in Count 19 of the Indictment
15 (Mail fraud): Guilty.

16 B. We, the jury, unanimously find the defendant,
17 Demetrius K. Harper, in Count 19 of the Indictment (Mail
18 fraud): Guilty.

19 C. We, the jury, unanimously find the defendant,
20 David A. Zirpolo, in Count 19 of the Indictment (Mail
21 fraud): Guilty.

22 Count 20. A. We, the jury, unanimously find the
23 defendant, David A. Banks, in Count 20 of the Indictment
24 (Mail fraud): Guilty.

25 B. We, the jury, unanimously find the defendant,

1 Clinton A. Stewart, in Count 20 of the Indictment (Mail
2 fraud): Guilty.

3 C. We, the jury, unanimously find the defendant,
4 David A. Zirpolo, in Count 20 of the Indictment (Mail
5 fraud): Guilty.

6 D. We, the jury, unanimously find the defendant,
7 Kendrick Barnes, in Count 20 of the Indictment (Mail
8 fraud): Guilty.

9 Count 21. A. We, the jury, unanimously find the
10 defendant, Demetrius K. Harper, in Count 21 of the
11 Indictment (Mail fraud): Guilty.

12 B. We, the jury, unanimously find the defendant,
13 Clinton A. Stewart, in Count 21 of the Indictment (Mail
14 fraud): Guilty.

15 C. We, the jury, unanimously find the defendant,
16 David A. Zirpolo, in Count 21 of the Indictment (Mail
17 fraud): Guilty.

18 Count 22. We, the jury, unanimously find the
19 defendant, David A. Zirpolo, in Count 22 of the Indictment
20 (Mail fraud): Guilty.

21 Count 23. A. We, the jury, unanimously find the
22 defendant, David A. Banks, in Count 23 of the Indictment
23 (Mail fraud): Guilty.

24 B. We, the jury, unanimously find the defendant,
25 David A. Zirpolo, in Count 23 of the Indictment (Mail

1 fraud): Guilty.

2 C. We, the jury, unanimously find the defendant,
3 Kendrick Banks, in Count 23 of the Indictment (Mail
4 fraud): Guilty.

5 Count 24. We, the jury, unanimously find the
6 defendant, Demetrius K. Harper, in Count 24 of the
7 Indictment (Mail fraud): Guilty.

8 Do the defendants wish, or the Government wish for
9 the Court to poll the jurors individually?

10 MR. WALKER: Yes, Your Honor, we do.

11 THE COURT: All right. I will ask each of you if
12 this is your true vote on each of these verdicts, and if
13 you could tell me yes or no.

14 Juror No. 1, is this your vote?

15 JUROR NO. 1: Yes.

16 THE COURT: Is this your verdict?

17 JUROR NO. 1: Yes.

18 THE COURT: All right. Juror No. 2, is this your
19 verdict?

20 JUROR NO. 2: Yes.

21 THE COURT: Juror No. 4, is this your verdict?

22 JUROR NO. 4: Yes.

23 THE COURT: Juror No. 5, is this your verdict?

24 JUROR NO. 5: Yes.

25 THE COURT: Juror No. 6, is this your verdict?

1 JUROR NO. 6: Yes.

2 THE COURT: Juror No. 7, is this your verdict?

3 JUROR NO. 7: Yes.

4 THE COURT: Juror No. 8, is this your verdict?

5 JUROR NO. 8: Yes.

6 THE COURT: Juror No. 9, is this your verdict?

7 JUROR NO. 9: Yes.

8 THE COURT: Juror No. 10, is this your verdict?

9 JUROR NO. 10: Yes.

10 THE COURT: Juror No. 11, is this your verdict?

11 JUROR NO. 11: Yes.

12 THE COURT: Juror No. 12, is this your verdict?

13 JUROR NO. 12: Yes.

14 THE COURT: Juror No. 14, is this your verdict?

15 JUROR NO. 14: Yes.

16 THE COURT: All right. Thank you very much.

17 The defendants may be seated.

18 All right. Ladies and gentlemen, thank you very
19 much for your service as jurors in this case. You are now
20 discharged with the thanks of the Court. And the question
21 usually arises regarding whether or not you may now
22 discuss this case. Whether you talk to anyone about this
23 case is entirely up to you.

24 I will instruct the Government lawyers and the
25 defendants and anybody who is related to either the

1 Government or the defendants, that they are directed that
2 they cannot contact you to speak with you. However, you
3 are free to talk with whomever you wish, as much or as
4 little as you like, about your deliberations or the facts
5 that influenced your decisions.

6 If any person persists in discussing the case over
7 your objection, or becomes critical of your service,
8 either before or after any discussion has begun, please
9 report it to Ms. Barnes, who will report it, and I will
10 take that from there.

11 I do thank you very much for your service in this
12 case. I generally like to talk to the jurors after the
13 case. And, in this case, you put in a substantial amount
14 of time. So, you are free to go home if you wish, but I
15 would request that, if you want, if you wait for me in the
16 jury room until I take care of legal matters here, I would
17 like to come back and thank you personally, and answer any
18 questions that you may have that I am able to answer.

19 So, at this time, if you would follow the Court
20 Security Officer back to the jury deliberation room, I
21 would appreciate it.

22 (The following is had in open court, outside the
23 hearing and presence of the jury.)

24 THE COURT: You may be seated.

25 And I do want to make sure that everyone

1 understands that federal court is very different from
2 state court. In federal court, the parties are not
3 allowed to contact the jurors. And anyone related to the
4 parties is not allowed to contact the jurors. So they're
5 totally off limits, and you can get in a lot of trouble if
6 you persist in contacting them. All right.

7 At this time, I'm going to refer the defendants to
8 the probation department for a Presentence Investigation
9 Report.

10 Would the probation officer please enter her
11 appearance for the record?

12 PROBATION OFFICER: Susan Heckman.

13 THE COURT: Good morning, Ms. Heckman.

14 PROBATION OFFICER: Good morning, Your Honor.

15 THE COURT: And you will be the probation officer
16 actually conducting the investigation on this case?

17 PROBATION OFFICER: I will be one of two probation
18 officers dealing with this case. Robert Ford will be the
19 other officer.

20 THE COURT: All right. So, Mr. Ford or Ms. Heckman
21 will be in touch with the defendants. She will need to
22 gather some information that will be contained in a report
23 that will be submitted to me that I will then use for
24 purposes of determining the sentence that I should impose
25 in this case.

1 I won't see that report until it has been submitted
2 to the Government and to the defendants. So, if you have
3 any objections to that report, either as to the factual
4 contents or to the guideline calculations, you can file
5 those objections on your behalf.

6 The probation officer will submit those objections,
7 along with your report, and any corrections that you may
8 make as a result of any objections, to me. And it is that
9 report and those objections that I will then review.

10 In addition, your sentencing hearing is going to be
11 scheduled -- Ms. Barnes, when will we have that scheduled?

12 COURTROOM DEPUTY: Yes, Your Honor. Mr. Stewart,
13 February 17, 2012, at 9:00 a.m. Mr. Barnes, February 17,
14 2012, at 10:00 a.m. Mr. Zirpolo, February 17, 2012, at
15 11:00 a.m. Mr. Walker, February 17, 2012, at 1:30 p.m.
16 Mr. Harper, February 17, 2012, at 2:30 p.m. Mr Banks,
17 February 17, 2012, at 3:30 p.m.

18 THE COURT: All right. So did you all get those
19 dates?

20 MR. WALKER: One more time, please.

21 COURTROOM DEPUTY: Mr. Stewart at 9 o'clock.
22 Mr. Barnes at 10 o'clock. Mr. Zirpolo at 11 o'clock.
23 Mr. Walker at 1:30. Mr. Harper at 2:30. And Mr. Banks at
24 3:30.

25 THE COURT: All right. The defendants are ordered

1 to appear on that date and time without further notice or
2 order of this Court. And if you have any sentencing
3 positions, including motions for departure or variant
4 sentencings, then those motions need to be filed with the
5 Court at least 14 days before that date. If there are any
6 objections or responses to any motions that are filed,
7 those need to be filed with this Court at least 7 days
8 before that sentencing date. And any post-trial motions
9 are to be submitted in accordance with the Federal Rules
10 of Criminal Procedure.

11 Now, in this particular case, each of the
12 defendants has been allowed to remain free pending trial
13 on personal recognizance bonds. Title 18, United States
14 Code, Section 3143 states that "The Court shall order that
15 a person who has been found guilty of an offense and who
16 is awaiting imposition or execution of a sentence be
17 detained, unless the Court finds by clear and convincing
18 evidence that the person is not likely to flee or pose a
19 danger to the safety of any other person or to the
20 community if released."

21 Considering that the estimated guideline range in
22 this case for these defendants could be anywhere between
23 63 and 121 months, depending on the role each defendant
24 played in this conspiracy, the Court does not believe that
25 a personal recognizance bond reasonably assures that the

1 defendants will not flee.

2 The Court believes that new detention hearings by
3 the Magistrate Judge should be conducted in order to
4 comply with the requirements of 18 United States Code,
5 Section 3142. And, in this regard, I have contacted the
6 duty Magistrate Judge to make him aware of the fact that
7 if a verdict came back guilty, that I would be asking him
8 to hold those bond hearings today.

9 As such, I am going to remand the defendants to the
10 custody of the United States Marshals, and request that
11 the Marshals deliver the defendants to the duty Magistrate
12 Judge for such detention hearings.

13 If there is nothing further.

14 MR. KIRSCH: Your Honor, I would move for a brief
15 extension of time to file the Government's sentencing
16 statement as required by the local rules. We would ask
17 that we be allowed to file that by November 4th.

18 THE COURT: All right. That is granted.

19 MR. KIRSCH: Thank you, Your Honor.

20 THE COURT: All right. Is there anything from the
21 defendants?

22 MR. BANKS: Nothing from us, Your Honor.

23 MR. WALKER: No, Your Honor.

24 THE COURT: All right. Then court will be in
25 recess.

1 (Court is in recess at 11:43 a.m.)

2

3 **R E P O R T E R ' S C E R T I F I C A T E**

4

5 I, Darlene M. Martinez, Official Certified
6 shorthand Reporter for the United States District Court,
7 District of Colorado, do hereby certify that the foregoing
8 is a true and accurate transcript of the proceedings had
9 as taken stenographically by me at the time and place
10 aforementioned.

11

12

13

14 Dated this 5th day of December, 2011.

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19 _____
s/Darlene M. Martinez

20 RMR, CRR

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