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UNITED STATES GRAND JURY  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :  
-V- :  
TOVA NEAL and MICHAEL THOMAS :  
(2019R01059) :  
-----x

: November 8, 2018 Additional

United States Courthouse  
Foley Square  
New York, New York

November 19, 2019  
10:07 a.m.

A P P E A R A N C E S:

[REDACTED]  
Assistant United States Attorney

[REDACTED]  
Assistant United States Attorney

[REDACTED]  
Acting Grand Jury Reporter

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P R O C E E D I N G

1  
2 [REDACTED] Good morning, everyone. Thank you  
3 for being on time. My name is [REDACTED]. I'm here  
4 to continue our presentation that we began last Thursday,  
5 November 14, 2019. I'm here with my colleague, AUSA [REDACTED]  
6 [REDACTED] who is sitting behind me. Again, do any of you believe  
7 you know either myself or AUSA [REDACTED] in anything other than  
8 our -- capacities. No? Okay.

9 As those who were here on Thursday know we are  
10 here to present a proposed six-count indictment this  
11 morning, which I've marked as Grand Jury Exhibit 2. It  
12 charges Tova Noel and Michael Thomas in six counts. Noel  
13 and Thomas are charged together in Count One, which is the  
14 conspiracy count. Noel is charged by herself in Counts Two  
15 and Three, which are the substantive counts related to the  
16 4 p.m. count and the 10 p.m. count. And then Noel and  
17 Thomas are charged together in Counts Three -- excuse me in  
18 Counts Four, Five and Six which relate to the 12 a.m. count,  
19 the 3 a.m. count and the 5 a.m. count.

20 So just because a few days have elapsed I'm going  
21 to just briefly go over the law again and then summarize  
22 with the evidence and the testimony showed. But before I do  
23 that, does anyone who was not here on Thursday believe that  
24 they know Tova Noel or Michael Thomas? No? Okay.

25 One other question. This case has received a

1 considerable amount of press attention. I don't know if any  
2 of you have read any press articles about it, but I will  
3 instruct you, as you know, that your duty is to consider  
4 only the evidence before you. The press reporting, a news  
5 article, that's not evidence. That's not something that you  
6 can consider or it's nothing you should consider. You're  
7 only allowed to consider the testimony of the witness that  
8 you heard last week and the evidence that she described.

9 Does anyone believe that they would not be able to  
10 put aside any press or media that they've read about this  
11 case? No? Okay.

12 Before I proceed with summarizing the indictment,  
13 I mentioned it's marked as Grand Jury Exhibit 2. And then I  
14 know there are a couple of you who were not here on  
15 Thursday. To save the rest of the grand jury the pain of  
16 rereading the hour of testimony I'm just going to mark Grand  
17 Jury Exhibit 3, which is the transcript. And to the extent  
18 that you'd like to vote I would suggest that you reread the  
19 transcript if you'd like to do that. Otherwise, you're free  
20 to abstain from voting if you don't feel that you could.  
21 But I will note that we did have a quorum on Thursday and  
22 there are at least 16 people who were present on Thursday  
23 here today.

24 So let me just briefly summarize what I told you  
25 last week relating to the law and the facts. So the

1 defendants are charged in Count One with a conspiracy, so  
2 under 18 USC 371 and there are two objects. First object is  
3 defrauding the government, so I'll speak about that first.  
4 First, the defendants entered into an agreement; second, to  
5 obstruct a lawful function of the government; third, by  
6 deceitful or dishonest means; and fourth, at least one overt  
7 act occurred in furtherance of the conspiracy.

8 So here you heard that the defendants jointly  
9 agreed not to perform the counts. And how do you know that  
10 they agreed not to perform the counts? Well number one,  
11 they admitted that they didn't perform the counts. Number  
12 two, you heard the agent testified about what the video  
13 showed. The video showed they didn't perform any of the  
14 counts. They were sitting at the desk, they were on their  
15 computers. Third, you heard that two officers are required  
16 to perform the counts, so thereby they agreed by neither of  
17 them doing it both of them agreed we're not going to do the  
18 count, which both of us are required to do.

19 You also heard that both officers signed into the  
20 false count slips. So they both printed their names and  
21 they both signed it. All of that evidence, their admission,  
22 the video, the fact that both of them had to agree not to do  
23 the count, all of that shows that they entered into an  
24 agreement.

25 Second element is to obstruct a lawful function of

1 the government. You heard the agent explain that the count  
2 is one of the most basic and essential functions of the MCC.  
3 So that they know that of the inmates in their care are  
4 alive, that no one has escaped and that everyone is  
5 accounted for. You know that they have five institutional  
6 counts a day and it's one of the most important functions of  
7 the prison staff is to ensure that everyone there is alive  
8 and accounted for.

9 You heard that the institutional count can't be  
10 cleared, can't be completed, unless each housing unit  
11 submits a true and accurate count slip reflecting how many  
12 inmates are there and that's signed by the officers. So you  
13 heard that by submitting false count slips the officers were  
14 obstructing the MCC's ability to ensure that each of the  
15 inmates in their care was alive and accounted for.

16 Third element is by deceit or dishonest means.  
17 Here you heard that Noel and Thomas didn't do the counts;  
18 the video confirmed that. And they admitted that they  
19 didn't do the counts, yet they signed numerous false count  
20 slips saying that they had in fact completed the counts.  
21 That deceit and dishonest means.

22 And fourth is at least one overt act in  
23 furtherance of the conspiracy. So in the indictment we  
24 charged a number of overt acts, one for each of the false  
25 counts and then one overt act was the 30-minute round forms.

1 So as you heard the officers were not only required to do  
2 the count, they were required to do the 30-minute rounds and  
3 none of those were done. You heard that Noel falsified over  
4 75 different 30-minute round entries saying that each 30-  
5 minute round had been done when she had not in fact done any  
6 of them.

7 So that's Count One, that's the first object of  
8 the conspiracy.

9 The second object of the conspiracy in Count One  
10 is the false documents charge, which is 18 USC 1001. That's  
11 also, if you'll remember, the charge that's charged in  
12 Counts Two through Six. So I'm going to describe the  
13 elements for that and you should keep in mind that these  
14 elements apply to each of Counts Two through Six and then  
15 the second object of the conspiracy charged in Count One.

16 So there are three elements that we must prove.  
17 First, that the defendant made or used a false writing or  
18 document that contained a statement or entry that was false.  
19 Second, the defendant acted knowingly or willfully. And  
20 third, the statement or entry was material to a matter  
21 within the jurisdiction of the governmental agency.

22 So the first element, the defendant made or used a  
23 false writing or document that contained a statement or  
24 entry that was false. So here this is the count slips. You  
25 know, based on the evidence that I just summarized, the

1 video shows that the counts weren't done. The defendants  
2 admitted that they didn't do the counts, yet they created  
3 and signed count slips saying that the counts were done.  
4 That is the first element; that the defendant made or used a  
5 false writing.

6 Second, the defendant acted knowingly or  
7 willfully. Here you heard the defendants knowingly failed  
8 to do the count and then they actually created and signed  
9 the count slips were false. That qualifies as knowingly and  
10 willfully creating a false document.

11 Third element is the statement or entry was  
12 material to a matter within the jurisdiction of the  
13 governmental agency. Here you heard that the MCC is a  
14 federal prison that's run by the BOP which is a federal  
15 agency. And you heard that the count slips were material to  
16 the BOP's functioning. It's one of the most essential  
17 aspects of the BOP's function is to ensure that their  
18 inmates are alive and accounted for. And so by creating a  
19 false count slip they were making a material statement to  
20 the governmental agency and they were frustrating their  
21 ability to ensure that all of their inmates were alive and  
22 accounted for.

23 So that's it. Those are the elements that are  
24 applicable to Counts Two through Six and then the second  
25 object of the conspiracy in Count One. Would anyone like

1 the indictment read aloud? No? As I mentioned, I've marked  
2 it as Grand Jury Exhibit 2. Does anyone have any questions  
3 about the law as I just explained it or any of the facts  
4 that we discussed on Thursday? No? Okay.

5 So I will ask you -- I'm sitting right outside.  
6 If you have any questions or any doubts or if there's  
7 anything more we can do, please let me know before you vote.  
8 Thank you.

9 (Time noted: 10:16 a.m.)

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I hereby certify that the foregoing is a true and accurate transcription, to the best of my skill and ability, from my electronic notes of this proceeding.

November 20, 2019  
Date



Acting Grand Jury Reporter  
Free State Reporting, Inc.