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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CASE NO. CR-18-227-SLP

JOSEPH MALDONADO-PASSAGE,

Defendant.

* * * * *

TRANSCRIPT OF JURY TRIAL

VOLUME V OF VII

BEFORE THE HONORABLE SCOTT L. PALK

UNITED STATES DISTRICT JUDGE

MARCH 29, 2019

* * * * *

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

Emily Eakle, RMR, CRR

United States Court Reporter
U.S. Courthouse, 200 N.W. 4th St.
Oklahoma City, OK 73102 * 405.609.5403

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APPEARANCES

Ms. Amanda Maxfield-Green and Mr. Charles Brown, Assistant United States Attorneys, U.S. Attorney's Office, 210 West Park Avenue, Suite 400, Oklahoma City, Oklahoma 73102, appearing for the United States of America.

Mr. William Earley and Mr. Kyle Wackenheim, Assistant United States Public Defenders, 215 Dean A. McGee, Suite 124, Oklahoma City, Oklahoma 73102, appearing for the defendant.

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1 (The following record was made in open court on March 29,
2 2019, in the presence of all parties, counsel, and out of the
3 presence and hearing of the jury.)

4 THE COURT: Counsel, I think kind of what the plan is,
5 my understanding, based on the representations that counsel's
6 made to Marcia, it's my understanding the government, is it still
7 your intent to rest this morning?

8 MS. MAXFIELD-GREEN: Yes, Your Honor.

9 THE COURT: I'll bring the jury back in, you can
10 announce rest, we'll do a quick bench conference.

11 Mr. Earley, if you can make the appropriate motion -- you
12 can make the appropriate motion and then the Court will reserve
13 ruling pursuant to 29(b). And at that point in time is it still
14 your intent to put on a witness this morning?

15 MR. EARLEY: Yes.

16 THE COURT: Then I'll -- we'll begin, and I believe you
17 just have the one witness this morning?

18 MR. EARLEY: Yes, Your Honor.

19 THE COURT: My plan is to at least -- I'll let the jury
20 know that we're going to have a short day due to some travel
21 issues and then they'll be released until Monday morning. Where
22 -- your out-of-state witness will be here Monday morning?

23 MR. EARLEY: Yes.

24 THE COURT: And are we expecting that we will probably
25 instruct and close on Monday?

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1 MR. EARLEY: We could be close, yes.

2 THE COURT: Okay. Okay.

3 All right. That's how we'll proceed then. Go ahead.

4 (Jury entered.)

5 THE COURT: Good morning, ladies and gentlemen. Happy
6 Friday. We are here on the verge of a weekend.

7 Parties present and ready to proceed?

8 MS. MAXFIELD-GREEN: Your Honor, the United States
9 rests its case.

10 THE COURT: Thank you.

11 Mr. Earley?

12 MR. EARLEY: We're ready to proceed.

13 THE COURT: Parties approach.

14 (The following bench conference was held outside the hearing
15 of the jury.)

16 THE COURT: Mr. Earley?

17 MR. EARLEY: Your Honor, pursuant to Rule 29(a) of the
18 Federal Rules of Criminal Procedure, we movement for a judgment
19 of acquittal on all counts. We believe the evidence is
20 insufficient to support any of those counts to the jury for
21 consideration.

22 In the interest of judicial economy, I would ask the Court
23 to reserve ruling on that per 29(b). And I hope this is very
24 clear for the Circuit, that I'm making the motion and then we're
25 going to present a witness, so -- just for purposes of

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1 scheduling. But we'll get into argument later, is my
2 understanding.

3 THE COURT: Okay. And the record will reflect that you
4 have reserved. The Court will defer -- reserve ruling until --
5 pursuant to 29(b) until at a later time. Likely, I would say,
6 we'll do that after we have adjourned the jury, we actually do it
7 today. But, yes, I think the record is clear you have, in fact,
8 reserved.

9 Anything from the Government?

10 MS. MAXFIELD-GREEN: Yes, Your Honor. And the
11 government accepts that the defense has made their Rule 29 motion
12 and reserved their argument for later.

13 And just to advise the Court, the Government does intend to
14 dismiss two counts, and we can address that at the time of the
15 Rule 29 motion so that the defense doesn't have to address those
16 counts in their motion.

17 THE COURT: Thank you.

18 (The following record was made in open court, in the
19 presence of all parties, counsel, and in the presence and hearing
20 of the jury.)

21 THE COURT: Mr. Earley, the Government having rested,
22 does the defendant intend to present evidence?

23 MR. EARLEY: Yes, Your Honor.

24 THE COURT: Please proceed with defendant's first.

25 MR. EARLEY: We'll call Brittany Peet.

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BRITTANY PEET - Direct by Mr. Earley

1 (WITNESS SWORN.)

2 THE COURT: Ms. Peet, if you could, please, you can
3 adjust that chair, pull that microphone, whichever, or a
4 combination of the two, just to be sure --

5 THE WITNESS: I think this is okay.

6 THE COURT: Yes. Thank you.

7 BRITTANY PEET,

8 DIRECT EXAMINATION

9 BY MR. EARLEY:

10 Q. State your name, please.

11 A. Brittany Peet.

12 Q. And go ahead and spell it for the court reporter.

13 A. Sure. B-R-I-T-T-A-N-Y, P-E-E-T.

14 Q. And, Ms. Peet, how are you employed?

15 A. I am employed by the PETA Foundation.

16 Q. And PETA stands for what?

17 A. People for the Ethical Treatment of Animals.

18 Q. All right. Now, during your course -- or during the -- your
19 work with PETA, have you met a man named Joseph
20 Maldonado-Passage, or Joseph Passage?

21 A. Yes.

22 Q. And do you see him in the courtroom?

23 A. Yes.

24 Q. Could you point him out for us?

25 A. Yes, this gentleman. (Indicating.)

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BRITTANY PEET - Direct by Mr. Earley

1 Q. All right. Thank you.

2 Now, when did you meet Mr. Passage?

3 A. I first met Mr. Passage, I believe it was toward the end of
4 2017.

5 Q. Okay. And under what circumstances?

6 A. PETA was involved in litigation against a big cat exhibitor
7 in Florida, suing them for violating the Federal Endangered
8 Species Act. In the course of that litigation, the defendant in
9 that lawsuit had sent a number of tigers who were evidence in the
10 case to Mr. Passage's facility in Oklahoma. And PETA made a
11 motion for contempt alleging that Mr. Passage and his business
12 partner, Mr. Lowe, engaged in a conspiracy with those defendants
13 to violate the Endangered Species Act by moving those tigers to
14 his facility.

15 PETA was able to arrange a settlement of that allegation
16 against Mr. Passage and Mr. Lowe by allowing PETA to transfer
17 those 19 tigers to a reputable sanctuary. And I met Mr. Passage
18 on the day that those tigers were transferred.

19 Q. So PETA, and at least Mr. Passage, subsequently settled
20 whatever issue was going on in the Florida case and allowed you
21 to come take those animals and place them at another location,
22 correct?

23 A. Correct.

24 Q. All right. And did you go to the location when those
25 animals were taken from the park?

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BRITTANY PEET - Direct by Mr. Earley

1 A. I -- I was both in Oklahoma when the tigers were picked up,
2 and then was also in -- at the facility where they were -- to
3 which they were ultimately transferred to oversee their release.

4 Q. Okay. Now, during your time here at the park, did you have
5 any discussions with Mr. Passage?

6 A. Yes.

7 Q. And what were you discussing?

8 A. Well, we -- we discussed a number of things, you know,
9 including -- I mean, one of the reasons that I'm familiar with
10 Mr. Passage in the first place is one of the main campaigns that
11 my department focuses on is the activity of prematurely
12 separating tigers and other big cats from their mothers for the
13 purposes of public encounters, which PETA alleges violates the
14 Endangered Species Act and is highly cruel. And Mr. Passage, his
15 former business partner Mr. Lowe, and his facility were one of
16 the primary breeders and suppliers of big cats for this industry
17 and also engaged in that activity. And so that was one of the
18 reasons that I was so familiar with Mr. Passage and the facility
19 in the first place.

20 So we discussed those activities, we discussed the recent
21 passing of Mr. Passage's husband. And Mr. Passage indicated that
22 he potentially had evidence against others in the industry that
23 he would like to share with PETA, and we discussed things of that
24 nature.

25 Q. Okay. So you had a discussion about, perhaps, your views on

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BRITTANY PEET - Direct by Mr. Earley

1 what he did, and did he discuss his views on what he did at the
2 park?

3 A. I can't remember if he discussed those that day or not.

4 Q. Okay. Well, that's fine.

5 Now, when you left the park after those animals were
6 removed, did you engage in further conversations with
7 Mr. Passage?

8 A. Yes.

9 Q. And initially you were a little hesitant to communicate with
10 him directly; is that correct?

11 A. I'm not sure about that.

12 Q. Well, was there some issue, perhaps, of him being
13 represented and -- and you having representation that you were
14 kind of afraid to maybe talk directly to him? Do you remember
15 that?

16 A. Well, I'm an attorney. And so as an attorney, I -- there
17 are ethical obligations, and one of those ethical obligations is
18 that if you're -- if you intend to communicate with a person who
19 is represented, you need the consent of their attorney in order
20 to do so.

21 Q. And you received consent and were able to communicate
22 directly with Mr. Passage; is that correct?

23 A. That's correct.

24 Q. Thank you.

25 Now, were some of your discussions with Mr. Passage about

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BRITTANY PEET - Direct by Mr. Earley

1 his future with -- with the park there in Wynnewood?

2 A. Yes.

3 Q. And what were those discussions?

4 A. Joe -- Mr. Passage indicated that -- that he wanted to get
5 out of the business.

6 Q. Do you remember about when those discussions were taking
7 place?

8 A. I don't recall. It would have been shortly after that first
9 meeting.

10 Q. Okay. And when was that, if you best -- to the best of your
11 recollection?

12 A. It was, I believe, late 2017.

13 Q. Do you know which month it was?

14 A. I don't.

15 Q. All right. So as a result of your discussions with
16 Mr. Passage, did you reach an agreement to remove additional
17 animals from his park?

18 A. We removed an additional 20 tigers, three bears and two
19 baboons, and ultimately helped him place two chimpanzees as well.

20 Q. Now, your frequency of communication with Mr. Passage during
21 the late 2017 period, would you describe it as somewhat frequent,
22 at least given your respective positions?

23 A. Not necessarily.

24 Q. I mean, did he discuss personal matters with you?

25 A. He did.

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BRITTANY PEET - Direct by Mr. Earley

1 Q. All right. And also other matters having to do with the
2 taking of animals from the park, correct?

3 A. Yes.

4 Q. All right. Did you have any communication with him by
5 telephone?

6 A. Yes.

7 Q. So there would be text messages and telephone conversations
8 between the two of you, correct?

9 A. Yes.

10 Q. All right. As far as the removal of this second group of
11 animals that you just testified about, do you remember what date
12 that may have been?

13 A. I don't.

14 Q. Okay. So if you'll -- look at Defendant's Exhibit 22 in
15 that book. Go ahead and just look through those for a moment.
16 Do you recognize them?

17 A. Yes.

18 Q. Now, those are text messages, correct?

19 A. Yes.

20 Q. And do you see the date on them? I think it should be on
21 the first page.

22 A. Yes.

23 Q. And what's that date?

24 A. Tuesday, November 14th, 2017.

25 Q. All right. So is that essentially a text exchange with

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BRITTANY PEET - Direct by Mr. Earley

1 respect to the agreement that would eventually take place to
2 remove those animals that you talked about just a few minutes
3 ago?

4 A. Yes, it relates to the removal of those -- of those animals.

5 Q. All right. And that occurred later, correct?

6 A. Correct.

7 Q. All right. So that was on November 14th. And you mentioned
8 that there were, what, how many animals that were taken on
9 December 4th, I believe is the date?

10 A. So the second transport of animals included -- on that date
11 included 20 tigers, three bears and two baboons.

12 Q. And that was on December 4th, do you recall that, or at
13 least right around that time frame?

14 A. I believe it was in -- it would have been in December
15 of 2017.

16 Q. Okay. Now, he wasn't selling these animals to PETA, was he?

17 A. No.

18 Q. So what were you going to do with these animals?

19 A. So PETA -- PETA wasn't going to do anything with the
20 animals. We contacted reputable sanctuaries that we're familiar
21 with that were capable of both transporting and providing
22 appropriate lifetime care of those animals, and representatives
23 from those facilities came and took possession of those animals
24 on that day and transported them to their facilities.

25 Q. Now, you came back for that, correct?

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BRITTANY PEET - Direct by Mr. Earley

1 A. Yes.

2 Q. All right. So you were -- you were actually there
3 December 4th when these other entities came and took the animals,
4 correct?

5 A. Yes. I was there on the day that the animals were
6 transferred.

7 Q. Now, was it necessary for paperwork to be completed for the
8 transfer of the animals?

9 A. Yes.

10 Q. And you asked for Mr. Passage's cooperation in doing that?

11 A. Yes.

12 Q. And did he cooperate with you and these other facilities in
13 making sure that all the paperwork was done so that they could be
14 removed?

15 A. Yes.

16 Q. Now, do you recall having any discussions with Mr. Passage
17 about what he intended to do with certain cages at his animal
18 park?

19 A. He indicated to me that some of the cages that the -- that
20 some of the animals -- the 20 tigers, the three bears and the --
21 I believe it was just the tigers, but he indicated that some of
22 them would be taken down so that additional cats couldn't be put
23 in them, or that walls would be taken out to make the cages
24 slightly larger.

25 Q. Now, after those animals were removed December the 4th, were

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BRITTANY PEET - Direct by Mr. Earley

1 there plans for future cooperation by Mr. Passage that would be
2 beneficial to your interests?

3 A. I wouldn't call them plans, but there were discussions.

4 Q. And what were those discussions?

5 A. We discussed the possibility of the facility closing down
6 and all of the animals being transferred to -- to reputable
7 facilities, the facility being closed down permanently.

8 Q. All right. Did those plans or discussions or thoughts for
9 what may happen in the future, did they include communications
10 with Carole Baskin?

11 A. Yes.

12 Q. And what were -- what were those communications supposed to
13 accomplish, if anything?

14 A. Well, Joe indicated on numerous occasions that there was no
15 way that he could get out of the business without -- unless the
16 million-dollar judgment that Big Cat Rescue had went away.

17 Q. Now, as far as when these discussions began with respect to
18 perhaps closing the park and him moving on, do you remember the
19 date of those discussions?

20 A. No.

21 Q. If you would, look at Defendant's Exhibit 29.

22 A. Okay.

23 Q. And looking at the date of that exchange, does that refresh
24 your recollection on when those discussions started at least?

25 A. The date on Defendant's Exhibit 29, above the first text

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BRITTANY PEET - Direct by Mr. Earley

1 message that's listed there, is Tuesday, December 5th, 2017.

2 Q. Now, in addition to potential discussions of him leaving the
3 park and including Carole Baskin in that, was there also
4 discussions to perhaps have an additional number of tigers
5 removed from the park?

6 A. I don't recall.

7 Q. If you would, look at Defendant's Exhibit 31.

8 A. Okay.

9 Q. And was there some discussion about additional animals being
10 removed from the park?

11 A. Yes, it appears that there was.

12 Q. What day was that?

13 A. The date above the first text message on Defendant's
14 Exhibit 31 is Friday, December 15th, 2017.

15 Q. Now, did you, in fact, try to come up with an agreement that
16 included Carole Baskin with respect to taking care of
17 Mr. Passage's legal issues and him getting out of the business?

18 A. I don't believe the agreement actually included Carole
19 Baskin. I don't recall. But there was a draft agreement that
20 was put together.

21 Q. All right. And did you communicate with Mr. Passage about
22 that?

23 A. Yes.

24 Q. Do you remember when?

25 A. No.

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BRITTANY PEET - Direct by Mr. Earley

- 1 Q. So if you would, look at Defendant's Exhibit 33.
- 2 A. Okay.
- 3 Q. And is that a communication about potential agreement?
- 4 A. Yes.
- 5 Q. And what date is on that?
- 6 A. January 16th, 2018.
- 7 Q. If you would, look at Defendant's Exhibit 34.
- 8 A. Okay.
- 9 Q. And does that assist you in recalling when you actually sent
10 a draft agreement?
- 11 A. It does.
- 12 Q. And what date was that?
- 13 A. January 24th, 2018.
- 14 Q. So on that day something had been written up, correct, some
15 agreement?
- 16 A. It had been -- it was written up prior to -- it was -- yes.
- 17 Q. Okay. But you sent it to Mr. Passage for him to review,
18 correct?
- 19 A. I don't see that from these text messages. These text
20 messages indicate that I -- I would like to send the agreement
21 later that day. So it -- yeah.
- 22 Q. Any reason to think you didn't send it?
- 23 A. No.
- 24 Q. Okay. But you also sent it to Mr. Lowe, correct?
- 25 A. Correct.

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BRITTANY PEET - Direct by Mr. Earley

1 Q. Now, why was Mr. Lowe included in this?

2 A. So in my discussions with Joe about him potentially leaving
3 the business, there were two -- two things that potentially
4 prevented him from doing so, according to him. One of those was
5 the judgment from Big Cat Rescue and the other was the fact
6 that -- that Jeff Lowe owned the property and owned the zoo, so
7 Joe couldn't unilaterally close the business.

8 Q. Now, was an agreement ever reached?

9 A. No.

10 Q. And do you know why?

11 A. Yes. After I sent the agreement to Mr. Passage and
12 Mr. Lowe, I received correspondence back from both of them
13 indicating that because the agreement didn't include substantial
14 payouts to them that they would not be -- that they were not
15 willing to move forward with the agreement.

16 Q. Now, is that what both parties said or was that just what
17 one party said?

18 A. That was what both parties said.

19 MR. EARLEY: All right. Your Honor, may I approach?

20 THE COURT: You may.

21 Q. (By Mr. Earley) Now, is that an email exchange, or a text
22 exchange, or at least some form of communication between you,
23 Mr. Passage and Mr. Lowe?

24 A. It's an email exchange.

25 Q. All right. And in -- based upon your review of that email,

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BRITTANY PEET - Direct by Mr. Earley

1 was it your understanding that Mr. Passage --

2 MS. MAXFIELD-GREEN: Your Honor, may I interject?

3 THE COURT: Hold on. Let him finish his question.

4 MS. MAXFIELD-GREEN: Certainly.

5 Q. (By Mr. Earley) Based upon your understanding of that email
6 exchange, did it appear to you that Mr. Passage was not sure
7 about entering into the agreement?

8 THE COURT: Hold on just a second, Ms. Peet, before you
9 answer.

10 MS. MAXFIELD-GREEN: I'm sorry. I didn't hear an
11 exhibit number or anything and I'm unsure what --

12 MR. EARLEY: I'm just using it to refresh her
13 recollection.

14 THE COURT: Well, did --

15 MS. MAXFIELD-GREEN: We have not been provided with
16 anything.

17 MR. EARLEY: I just got that, Your Honor, but I'll let
18 them look at it.

19 THE COURT: If you could, please, let counsel for the
20 government review it before you -- and, Mr. Earley, if there's
21 anything additional that you're going to show the witness, I
22 would ask that you show the government counsel first.

23 MR. EARLEY: I believe that was the only thing that
24 they have not had in their discovery, Your Honor.

25 THE COURT: Counsel, I'll give you a minute to review.

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BRITTANY PEET - Direct by Mr. Earley

1 MS. MAXFIELD-GREEN: Thank you, Your Honor.

2 Your Honor, this is going to take a moment. This is an
3 extensive, single-spaced email of about three and a half pages.

4 MR. EARLEY: Your Honor, I'll just drop the line of
5 questioning. It's not that important.

6 THE COURT: Okay. Thank you, Counsel.

7 MR. EARLEY: Sure.

8 Q. (By Mr. Earley) There was no -- no agreement reached,
9 correct?

10 A. Correct.

11 Q. All right. And did you have additional communications with
12 Mr. Passage in 2018?

13 A. Yes.

14 Q. And do you remember approximately when those were?

15 A. No.

16 Q. But what was the -- the nature of those discussions?

17 A. I don't recall.

18 Q. Don't recall?

19 MR. EARLEY: May I approach the witness?

20 THE COURT: You may.

21 Q. (By Mr. Earley) Okay. And with respect to any additional
22 communications with Mr. Passage and the park and animals, does
23 that refresh your recollection as to the date of those
24 discussions, generally?

25 A. Yes, generally.

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BRITTANY PEET - Cross by Ms. Maxfield-Green

1 Q. All right. And what date does that indicate?

2 A. Tuesday -- Tuesday, June 12th, 2018.

3 Q. So somewhere in that time frame you had had discussions
4 about Mr. Passage and his future at the park and animals,
5 correct?

6 A. Yes.

7 MR. EARLEY: No further questions.

8 THE COURT: Cross-examination?

9 **CROSS-EXAMINATION**

10 **BY MS. MAXFIELD-GREEN:**

11 Q. Good morning, Ms. Peet.

12 A. Good morning.

13 Q. Okay. You testified on direct that at some point in --
14 let's see, it would have been late 2017, December of 2017 that
15 PETA assisted in removing animals from the zoo, correct?

16 A. So initially -- we initially removed animals from the zoo in
17 November of 2017, thereabouts, and then additional animals in
18 December.

19 Q. Okay. And the animals that you removed in November, were
20 those supposed to be the same animals that came from Florida,
21 from Dade City Wild Things?

22 A. Yes.

23 Q. And that would -- if the exact same animals that came from
24 Dade City Wild Things were not provided to PETA at that time,
25 would that have been cooperation with the agreement you had with

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BRITTANY PEET - Cross by Ms. Maxfield-Green

1 Mr. Passage?

2 A. No.

3 Q. Now, the animals that left in December -- the animals that
4 left in December, did he -- did Mr. Passage release any cubs or
5 were they adults?

6 A. They were -- there were juveniles and adults. There were no
7 cubs.

8 Q. Do you recall the -- the gender breakdown of those animals?
9 Were they males, females, or what proportion?

10 A. I don't recall.

11 Q. Do you recall the colors of those animals? Were they all
12 orange or -- anything about the colors of the animals?

13 A. Most of them -- most of them were orange. I can't recall if
14 there were any whites or not.

15 Q. Based on that you said there were some juvenile animals,
16 were there any animals that released to you that would have still
17 been eligible for public handling?

18 A. No.

19 Q. Do you recall, those animals that were released to you, were
20 they spayed or neutered, to your recollection?

21 A. To my recollection, they were not.

22 Q. Did he release any lions to you?

23 A. No.

24 Q. How about any hybrids; ligers, liligers?

25 A. I'm not sure.

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BRITTANY PEET - Cross by Ms. Maxfield-Green

1 Q. Now, I believe you testified on direct, and I'm just trying
2 to clarify what I heard, the agreement -- or the draft proposal
3 that you were circulating in January of 2018, did you testify
4 that that agreement did not include the Baskins?

5 A. That's correct. The Baskins were not parties to that
6 agreement -- or wouldn't have been parties to that draft
7 agreement. It was -- it was conditioned on -- the agreement
8 would have been conditioned on the judgment being settled between
9 Mr. Passage and Big Cat Rescue.

10 Q. And there was never any settlement between Mr. Passage and
11 Big Cat Rescue; is that correct?

12 A. Correct.

13 Q. So the draft proposal that you circulated also never
14 approached an agreement, correct?

15 A. Correct.

16 Q. And Mr. Earley asked you about emails between you and
17 Mr. Passage on January 24th of 2018, and I think I have got the
18 only copy of that. And I'm --

19 MS. MAXFIELD-GREEN: Can I approach so that she can
20 review it again?

21 THE COURT: You may.

22 Q. (By Ms. Maxfield-Green) And so you recall the email
23 exchange between you and Mr. Passage on January 24th, 2018?

24 A. Yes.

25 MS. MAXFIELD-GREEN: Government moves to admit

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BRITTANY PEET - Cross by Ms. Maxfield-Green

1 Government's Exhibit 160.

2 THE COURT: Is that the document Mr. Earley had
3 earlier?

4 MS. MAXFIELD-GREEN: It is, Your Honor, just the -- a
5 single email.

6 THE COURT: Mr. Earley, do you have any objection?

7 MR. EARLEY: Well, in part I do. There is an email
8 from Mr. Passage at the end --

9 THE COURT: Parties approach.

10 (The following bench conference was held outside the hearing
11 of the jury.)

12 MS. MAXFIELD-GREEN: This one.

13 MR. EARLEY: Okay. That wasn't clear to me.

14 MS. MAXFIELD-GREEN: Yeah, I just want this one. It's
15 between her and Mr. Passage. It's a party admission that we're
16 offering against him. The rest we don't intend to introduce,
17 just the --

18 THE COURT: So this is an entire exchange, and the --
19 government, you only want to introduce this portion or this page?

20 MS. MAXFIELD-GREEN: No, that portion below the line,
21 and then the remaining lines of the email.

22 THE COURT: So everything from there down?

23 MS. MAXFIELD-GREEN: Yeah.

24 THE COURT: Mr. Earley, any objection?

25 MS. MAXFIELD-GREEN: Your Honor, I would just like to

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BRITTANY PEET - Cross by Ms. Maxfield-Green

1 put on the record that the government made formal requests under
2 Rule 16 for reciprocal discovery and this is the first time we
3 have ever seen this document.

4 MR. EARLEY: I don't have any objection to this portion
5 as long as --

6 THE COURT: When you say "this portion," you mean all
7 the way through to the second page?

8 MS. MAXFIELD-GREEN: I will complete the email.

9 MR. EARLEY: Yeah, just that email exchange, I have no
10 objection.

11 MR. WACKENHEIM: Do you want to get a clean version
12 that is not written on? We can manufacture a clean version.

13 THE COURT: Okay. Government's Exhibit 160 will be
14 admitted.

15 MS. MAXFIELD-GREEN: Thank you. Your Honor.

16 (The following record was made in open court, in the
17 presence of all parties, counsel, and in the presence and hearing
18 of the jury.)

19 Q. (By Ms. Maxfield-Green) Okay. So this is an email exchange
20 between Mr. Passage, who goes by Joe Exotic, to you on Wednesday,
21 January 24th, 2018, correct?

22 A. Yes.

23 Q. And does it reflect that he had reviewed the draft
24 contingent agreement that you had provided to him?

25 A. Yes.

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BRITTANY PEET - Cross by Ms. Maxfield-Green

1 Q. And he says to you, "Brittany, unless I'm blind or stupid,
2 this does not get rid of the judgment."

3 What is he talking about, based on the context of your
4 conversations with him?

5 A. The judgment against him from Big Cat Rescue.

6 Q. And he says, "It does not get rid of the judgment, nor help
7 in any way to pay off our legal bills and to make any money to
8 move on to a new career."

9 Is that the substantial legal -- the substantial monetary
10 payments you were referring to on direct?

11 A. Yes.

12 Q. Then he goes on to say, "You-all just gave 60K for two bears
13 and some equipment and you want us never to have animals."

14 So those animals that you helped remove from the park, PETA
15 paid for those animals?

16 A. No.

17 Q. What does this refer to?

18 A. That refers to a separate agreement with an entirely
19 different facility.

20 Q. Oh, he's referring to another transaction that PETA had?

21 A. Correct.

22 Q. Did PETA give any consideration for the animals that were
23 removed from his park?

24 A. From Mr. Passage's park?

25 Q. Right.

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BRITTANY PEET - Redirect by Mr. Earley

1 A. No.

2 Q. Okay. He goes on to say, "And you want us never to have
3 animals, show our faces," et cetera. And goes on to say, "Allow
4 you to take cages down. Maybe I'm reading this wrong, but what
5 really does this do for us that working to pay lawyers don't do
6 now?"

7 So what did you understand Mr. Passage's reaction to your
8 draft proposal was?

9 A. That he was rejecting it unless we could provide a
10 significant financial payout.

11 Q. To your knowledge, Ms. Peet, after these discussions in
12 January, did Mr. Passage's zoo continue to offer cub petting?

13 A. Yes.

14 Q. And did he continue to breed animals after this?

15 A. To my knowledge, yes.

16 MS. MAXFIELD-GREEN: That's all for the Government,
17 Your Honor.

18 THE COURT: Redirect?

19 **REDIRECT EXAMINATION**

20 **BY MR. EARLEY:**

21 Q. The proposed agreement was essentially for Mr. Passage to
22 give up his business, correct?

23 A. Correct.

24 Q. All the animals would be removed, correct?

25 A. Correct.

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BRITTANY PEET - Redirect by Mr. Earley

1 Q. So his entire livelihood that he had had for two or three
2 decades was going to be gone as a result of entering into this
3 particular agreement, correct?

4 A. Sorry. And I should -- sorry. I need to dial back my
5 previous testimony. At that time it was no longer his business.
6 It was Jeff Lowe's business.

7 Q. Sure. But to get completely out of the business, correct?

8 A. That's correct. Joe -- Mr. Passage indicated to me that he
9 wanted to leave the country and be a bartender in Belize and no
10 longer wanted to be part of the business.

11 Q. Didn't want to have any part of that animal business as it
12 was generically referred to, correct?

13 A. Correct.

14 Q. And so his request for compensation was to do that,
15 compensate him for giving up his livelihood, correct?

16 A. I'm -- I'm not -- all I know is what was in the email.

17 Q. All right. But he was to never be in this line of business
18 again, right?

19 A. Correct, no longer in the business of exhibiting, owning,
20 possessing wild or exotic animals again.

21 Q. Well, and had he entered into that agreement, would that
22 have been beneficial, in your view, to your organization?

23 A. Yes.

24 MR. EARLEY: Nothing further.

25 THE COURT: Anything further?

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BRITTANY PEET - Recross by Ms. Maxfield-Green

1 RECROSS EXAMINATION

2 BY MS. MAXFIELD-GREEN:

3 Q. I just want to clarify one more time, Ms. Peet, that
4 agreement was never signed, correct?

5 A. Correct.

6 MS. MAXFIELD-GREEN: That's all, Your Honor.

7 THE COURT: Thank you, Ms. Peet. You may step down.

8 Ladies and gentlemen of the jury, as -- in spite of the
9 best-laid plans, sometimes these things happen. We're going to
10 have a really short day today. We have travel issues with a
11 witness, through no fault of the lawyers, and it will be Monday
12 morning before that witness is able to be here.

13 The good news is is that from the original estimate of the
14 trial taking two weeks or more, I do anticipate that this case --
15 that we will instruct and close and it will be submitted for your
16 deliberation very early next week. It could be as early as
17 Monday or Tuesday. We'll see as we go. But in any event, the
18 good news for you is that you get out of here early on Friday.

19 It was -- it was important for you to be here this morning,
20 again with the, you know, accommodating some witnesses, but -- so
21 my apologies that we weren't able to work through the day. I can
22 assure you after you have adjourned the parties and the lawyers
23 and I will continue to work. We'll actually take care of some
24 legal matters that have to be addressed outside of your presence.
25 So that should also prevent any extended recesses for -- or

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1 delays while we take care of some of those necessary things.

2 That being said, you will be adjourned now for the weekend.
3 Again, I remind you of the admonition about discussing the case
4 with each other or anyone else. Don't let anybody discuss the
5 case with you. Be very wary of outside information. Don't watch
6 any news about it, read any news, anything like that, social
7 media. It's very important. We have come a long way, we don't
8 want to have the wheels fall off now.

9 So anyway, enjoy your weekend. We will see you back first
10 thing Monday morning.

11 Please remain seated while the jury exits the courtroom.

12 (Jury exited.)

13 (The following record was made in open court, in the
14 presence of all parties, counsel, and out of the presence and
15 hearing of the jury.)

16 THE COURT: The record will reflect the jury has left
17 the courtroom.

18 As we move forward, Mr. Earley, why wasn't the Government's
19 Exhibit 160 provided earlier?

20 MR. EARLEY: Well, to be perfectly honest, Your Honor,
21 I thought it was from the discovery, but I was wrong. And
22 that's -- there's just bazillions of pages of this stuff, so I
23 apologize.

24 THE COURT: Understand.

25 MS. MAXFIELD-GREEN: Your Honor, I would also just like

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1 to point out, we were provided by the defense, in their exhibits,
2 text messages between Mr. Passage and Ms. Peet, but we are --
3 were provided cherry-picked conversations that clearly continued
4 on, and we weren't even given the complete version of that. And,
5 again, we made a formal request under Rule 16 for reciprocal
6 discovery. The document that was used by the defense just now
7 had no Bates label at the bottom. It clearly did not come from
8 us. All of our discovery has been Bates labeled. And we'd just
9 like to put that on the record, that we did request that.

10 THE COURT: Mr. Earley?

11 MR. EARLEY: And I did not attempt to introduce as
12 evidence those text exchanges. I intended to use those merely to
13 refresh the witness's recollection, if that was necessary, and
14 that was the only purpose for them. They were not substantively
15 referred to in the testimony, just for dates.

16 THE COURT: Well, I do -- I think it's in chamber's
17 rules, but if not, it will be. I do ask that if there is
18 anything that either party intends to show a witness, I want to
19 be sure that the other side has the opportunity to review it,
20 whether they have a copy or -- be presented with the opportunity
21 to review it prior to the witness seeing it and listening to any
22 testimony about it, or even for refreshing recollection, and I
23 would ask that both parties please do that.

24 MR. EARLEY: And I would just point out, those have
25 been in our exhibit book since it was turned over to the

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1 government before trial started.

2 THE COURT: But not 160, correct?

3 MR. EARLEY: That is correct, that --

4 THE COURT: That series?

5 MR. EARLEY: Yes.

6 THE COURT: Ms. Green, anything else?

7 MS. MAXFIELD-GREEN: And, Your Honor, just for the
8 record, I would like to point out that the purpose of reciprocal
9 discovery is not just to advise the government of what's going to
10 actually be introduced as an exhibit at trial. It's -- at any
11 rate, we would make a formal request on the record now under Rule
12 16 for reciprocal discovery for any remaining witnesses that the
13 defense intends to put on, that they provide us with any
14 discovery to which we're entitled under Rule 16 prior to Monday.

15 THE COURT: Mr. Earley, do you -- is there any such
16 information?

17 MR. EARLEY: No. Everything else is in that book.

18 THE COURT: Okay. Thank you.

19 Mr. Earley, do you want to proceed at this point with your
20 Rule 29 argument?

21 Ms. Green, go ahead.

22 MS. MAXFIELD-GREEN: I'm sorry, Your Honor. I hate to
23 interrupt you.

24 THE COURT: That's fine.

25 MS. MAXFIELD-GREEN: I just want to -- before

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1 Mr. Earley proceeds with his Rule 29, I think this will
2 streamline it a tiny bit. We would announce that the government
3 is dismissing Count 13 and 14 of the indictment.

4 THE COURT: I have the superseding in front of me,
5 Ms. Green.

6 MS. MAXFIELD-GREEN: Yes. Count 13 is a Lacey Act
7 count that relates to the delivery of a lion to Monterey Zoo, and
8 Count 14 -- and it charges the falsification of a delivery form;
9 and Count 14 relates to the same delivery to the Monterey Zoo and
10 counts -- and describes that falsification of a CVI, or
11 certificate of veterinary inspection, and we are dismissing those
12 two counts at this time.

13 THE COURT: Okay. Any response in that regard,
14 Mr. Earley?

15 MR. EARLEY: No, Your Honor.

16 THE COURT: You can proceed with your Rule 29 motion
17 with respect to the remaining counts. We'll cover the -- we'll
18 have to make some amendment in the jury instructions, but we'll
19 take care of that at the jury instruction conference.

20 MR. EARLEY: Your Honor, with respect to Counts 1 and
21 2, I'll address those first. And the Court is aware of the
22 essential elements of those offenses, obviously. I don't think
23 there's a lot of disagreement between the two parties on what
24 those elements are. But the requirements for both of those
25 counts are that the defendant traveled or caused someone to

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1 travel in interstate or foreign commerce, or use a facility in
2 interstate commerce. And I think Count 1, as I understand it
3 from the government's theory of defense -- or theory of the
4 offense, is that Mr. Passage caused Mr. Glover to travel in
5 interstate commerce when he left Oklahoma to South Carolina. The
6 second element of the offense with respect to Count 1 would be
7 that the travel was done with the intent that a murder be
8 committed; and, third, that the murder was intended to be as
9 consideration for the receipt of something of value.

10 My argument is that the government's evidence has failed on
11 each of those elements for Count 1. While Mr. Glover may have
12 traveled in interstate commerce, there certainly was insufficient
13 evidence to suggest that his travel was with the intent to the --
14 that a murder be committed.

15 I think that the evidence is lacking on showing that at that
16 particular time, on November the 25th, which I believe is the
17 date of travel, that there's insufficient evidence to show
18 Mr. Passage had the intent that a murder be committed at that
19 time. And I would submit that the evidence is insufficient and
20 should not -- this count should not be submitted to the jury.

21 With respect to Count 2, it's more along the lines of, I
22 guess, the use of a facility -- or interstate facility. That
23 would be -- as I understand it from the evidence and from the
24 discovery material, that that use would be of telephones or cell
25 phone communications.

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1 I made a motion on this earlier in the case, a motion to
2 dismiss about, you know, what's appropriate for purposes of this
3 prosecution, and I'm not going to bring all that up again. I
4 would just say that based on the evidence that was introduced
5 that it fails to show that an interstate facility was used at the
6 same time that there was an intent that a murder be committed.

7 I think on Count 2, I don't even think there was an
8 agreement between the parties that anything happen, and certainly
9 there wasn't sufficient evidence to show that this use of the
10 interstate facility was done with the intent that a murder be
11 committed.

12 So I think in Count 2, it lacks on that element, but also on
13 the third element in that it was intended to be committed as
14 consideration for the receipt of anything of value. And I think
15 from what we heard yesterday from the undercover agent, there
16 were some discussions between the undercover agent and
17 Mr. Passage, but there was no agreement whatsoever entered into.
18 There were preliminary discussions, I think at best. And I
19 believe, as the agent testified, the things that would have
20 essentially solidified the agreement that were discussed as far
21 as the money itself, getting a -- a firearm, and perhaps even
22 getting burner phones, none of those things that you might
23 consider preparatory to the actual agreement itself were ever
24 undertaken. So I think the evidence on Count 2 is insufficient
25 as a matter of law and the Court should dismiss those violations.

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1 With respect to Counts 3 through 7, those are the taking of
2 endangered species, of wildlife, by shooting and killing them.
3 My argument essentially is that the facts of this case do not fit
4 the violation.

5 In the definitions that are provided with respect to this
6 offense in the regulations, the term "take" is specifically
7 defined as meaning to harass, harm, pursue, hunt, shoot, wound,
8 kill, capture or collect. I think if you look at the definition
9 of a take, these examples of take that are listed in the
10 regulations and statute indicate that these particular violations
11 are meant for animals that are in the wild. They have nothing to
12 do with captive animals. And I would submit that as a matter of
13 law the facts of this case do not fit within this particular
14 statute.

15 Count 8 is the offer to sell. That was, I think,
16 Ms. Cervantes. And the government contends that this preliminary
17 discussion through text exchange with Ms. Cervantes was an offer
18 to sell. I submit that that evidence that was presented from her
19 is not sufficient to show that these animals were actually
20 offered for sale in interstate commerce.

21 With respect to Counts 9 through 11, these are the actual
22 sales. I would just state that with respect to 9 and 11, I
23 believe that the government's theory is that the money that was
24 exchanged for purposes of the animals being moved from one
25 location to another was actually provided as compensation for the

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1 animal itself.

2 The individuals who received these animals and who provided
3 the money to the transporter, if you will, were not called as
4 witnesses in this case and their intent on what the money was
5 being provided for, I think, would be critical for a
6 determination whether there was actually a sale. So I would
7 submit that without that evidence the facts underlying Counts 9
8 through 11 are insufficient as a matter of law and those should
9 as well be dismissed.

10 Counts 12 through -- I'll just call it 12 through 21, but
11 Counts 12 through 20, as listed in the indictment, minus 13 and
12 14 now, these are based upon the alleged false identification or
13 false labeling that we saw with respect to these transfer forms.
14 I would submit that the evidence shows that, first of all, with
15 respect to the disposition forms themselves, there's really no
16 requirement under the rules or regulations that there be
17 specified why they're being exchanged.

18 We went through this with Dr. Boone on the stand. The
19 regulations that apply to this particular scenario do not require
20 an individual to say whether these were being sold, exchanged or
21 donated at all. So the fact that there may have been a notation
22 on one of these forms, or all of these forms, that may have said
23 "donated" is really irrelevant. It is not a requirement under
24 the regulation that that be noted on those forms. And as a
25 result it's -- it's hard to say that there was false information

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1 that was passed on. So I think they all fail as a matter of law
2 on that particular basis.

3 In addition, it seems to me that if you are charging someone
4 for submitting a false record or false identification under this
5 particular statute -- and most of the cases that deal with this
6 concern where someone falsely labels or misidentifies a product,
7 involving you know, fish or perhaps even wildlife of some sort,
8 but it's falsely labeled in -- with respect to what it actually
9 is.

10 These forms all contain what was supposedly being
11 transferred from one person to another. There was nothing false
12 about the -- the person who was transferring the item. There was
13 nothing false about the receiver of the item. There was nothing
14 false about the identification of the actual animals that were
15 the subject of these particular forms, the number of animals that
16 were the subject of these forms; or with respect to their
17 condition, if it was noted, nothing false about that, at least no
18 evidence to support that. And there's just nothing on these
19 forms that you could say represents a false labeling under these
20 circumstances.

21 In addition, it is our contention that it -- whatever false
22 information may be on a form, it must be material. And with
23 respect to materiality, I would go back again to Dr. Boone's
24 testimony about the regulations that govern this particular
25 situation, and none of them require there be a specification of

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1 whether this was a sale, an exchange or a donation, or any other
2 type of transfer. So I think as a matter of law those particular
3 counts fail as well.

4 The CVIs, I think those make up Counts -- well, just Count
5 18 now, I believe. And I would just submit that Dr. Green's
6 testimony was that, number one, she wasn't sure who wrote all
7 that on that form, whether it was provided by Mr. Passage or
8 someone else at the -- at the park. We just don't know where
9 that information came from. So to say that Mr. Passage is guilty
10 of providing false information without more is simply
11 insufficient.

12 But I would submit, in addition, Dr. Green's testimony was
13 that, you know, as far as she was concerned, she didn't really
14 even need to fill that out on that form. It really wasn't a
15 requirement. The requirements for that form are for her to
16 identify the parties involved. But particularly, the importance
17 of that document is to advise that the animal is in good health
18 so that it may cross state lines and not cause a problem in the
19 place of destination.

20 So I think given the -- the evidence on each of those
21 counts, and I think the intent of the law on each of those
22 counts, that the government's evidence fails to support a finding
23 that they should be submitted to the jury.

24 THE COURT: Mr. Earley, relating back to the
25 materiality requirement, the statute doesn't require materiality,

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1 does it?

2 MR. EARLEY: It does not specifically state.

3 THE COURT: Are you aware of any controlling authority,
4 the Tenth Circuit, the Supreme Court, that includes materiality
5 as a requirement?

6 MR. EARLEY: Well, the only case -- and I think we --
7 we had this cited in our proposed jury instruction, but there is
8 a -- a district court case -- United States vs. Kokesh, it is a
9 district court case, Northern District of Florida, the Westlaw
10 cite is 2013 WL6001052. And district -- Senior District Judge
11 Roger Vincent wrote that order in response to a motion for
12 judgment of acquittal in a case. And based upon his reasoning,
13 he concluded that materiality is a required element for the
14 offense and took the appropriate action, but that's the only
15 authority that I have to support that.

16 THE COURT: Okay. Thank you.
17 Government, response?

18 MR. EARLEY: Whoops, I did forget Count 21. Thank you,
19 Ms. Green.

20 And I kind of lumped them all together, but I think I will
21 just argue that with respect to Count 21 that the evidence is
22 insufficient as a matter of law. The -- this, if the Court will
23 recall, is the testimony from Mr. Garretson with respect to the
24 lemur form that was the subject of a recorded conversation. And
25 I would submit that Mr. Passage's intent with respect to that

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1 particular item was to provide Mr. Garretson a form so that he
2 would have it available for the USDA. And I don't believe that
3 he knowingly made and submitted, or caused to be made or
4 submitted a false record.

5 It was a record that was going to Mr. Garretson for whatever
6 his purpose was. That was never explained, although there was
7 some reference to Mr. Garretson needing something for the USDA.
8 But I believe that the evidence is insufficient as a matter of
9 law with respect to the knowing element of that offense as well.

10 THE COURT: Thank you.

11 Government?

12 MS. MAXFIELD-GREEN: Your Honor, the government submits
13 that the evidence that the government has submitted in its case
14 in chief has been fully sufficient to meet the standards of Rule
15 29, and we'll go count by count.

16 As for Count 1, Mr. Earley argues that the travel element is
17 not satisfied because he -- and he refers only to the travel by
18 Mr. Glover to South Carolina. The government submits that the --
19 there was sufficient evidence of Mr. Passage's intent of sending
20 Mr. Glover to South Carolina to satisfy the element -- that
21 element.

22 However, the Government also submits that the travel element
23 is satisfied as alleged in the indictment, in Paragraph 20, that
24 the travel that Mr. Passage caused Mr. Glover to do, and
25 Mr. Finlay to do, in going to Dallas, Texas, to obtain a fake ID

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1 in order to commit the murder for hire satisfies the travel
2 element as well.

3 Where there was testimony from both Mr. Finlay and
4 Mr. Glover, as well as Mr. Garretson about that trip,
5 Mr. Finlay -- Mr. Glover certainly testified that he knew the
6 purpose of the fake ID was to allow him to travel surreptitiously
7 to Florida to kill Carole Baskin. Mr. Finlay testified that on
8 the way down to Dallas he had a conversation with Mr. Passage
9 that revealed that to be the purpose and the intent behind the
10 travel. And so the Government submits that the travel element is
11 fully satisfied.

12 Mr. Earley also overlooks the allegations in the indictment
13 of the use of the mail, which satisfies Section 1958's elements
14 as well. It's alleged in Paragraph 21 of the indictment that
15 Mr. Passage used the U.S. Postal Service to mail Mr. Glover's
16 cell phone from Oklahoma to Nevada to conceal his involvement in
17 the plot and that the -- his intent at the time that he mailed
18 the phone and used the U.S. mail was to -- that the murder be
19 committed. And so the government submits that that element of
20 Section 1958 is satisfied by the government's proof as well.

21 The government would also assert that the evidence that came
22 in during trial establishes use of interstate facilities -- use
23 of facilities of interstate commerce, namely cell phones, in
24 relation to Count 1. Mr. Finlay testified that Mr. Passage
25 called him on a cell phone to convey to him the purpose of the

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1 trip to Dallas. There was communication back and forth with him
2 during that trip.

3 Also, there was evidence that Mr. Passage used a cell phone,
4 which is itself a facility of interstate commerce, to put images
5 on a cell phone for Mr. Glover to take with him to South
6 Carolina, and ultimately to Florida, and that the purpose of
7 placing those images on the cell phone was -- the intent was that
8 the murder of Carole Baskin be committed. So the use of cell
9 phones in that regard satisfies the elements of Section 1958.

10 As for Count 2, again, the interstate -- the facilities of
11 interstate commerce at issue in that count are the use of the
12 cell phones between Mr. Passage and Mr. Garretson to arrange the
13 meeting with the purported hit man. And the -- there was
14 certainly evidence, included recorded cell phone calls, namely
15 the one on December 5th of 2018 between Mr. Passage and
16 Mr. Garretson agreeing that Mr. Passage would meet the
17 purported -- the proposed hit man a few days later.

18 Mr. Earley also asserts that the Government's proof has
19 failed as to establishing an agreement between the purported hit
20 man and Mr. Passage sufficient for Section 1958. And as --
21 importantly to the analysis of all of that, the -- the statute
22 states that the murder for hire is the -- the proof of that
23 requires that there be consideration for the receipt of or
24 consideration for a promise and agreement to pay anything of
25 pecuniary value.

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1 Now, the undercover agent testified that he -- it was his
2 understanding that, at certain points in the conversation, that
3 he had been hired, that there was an agreement between he and
4 Mr. Passage for him to go commit the murder. And he pointed to
5 specific moments in the conversation when he believed that
6 agreement had been reached. And, in fact, the -- there was a
7 discussion of a specific amount of money, there was an agreement
8 to a specific amount of money, there was a discussion at the end
9 of the conversation of a specific date to hand off that money.
10 And, therefore, the -- it was the undercover agent's testimony
11 that that conversation ended with a promise or an agreement to
12 pay something of pecuniary value for a murder.

13 Moving on to Counts 3 through 7, the shooting of the tigers
14 as a violation of the Endangered Species Act, Mr. Earley's
15 argument is a legal argument. He is arguing that the Endangered
16 Species Act does not somehow apply to Mr. Passage's situation of
17 captive-bred animals. That is a legal argument that should have
18 been raised at the motion to dismiss stage. That is simply not
19 an argument about whether the government's proof has been
20 sufficient in this matter. We would submit the government's
21 proof has been fully sufficient in this matter. There was
22 extensive testimony about the shooting of the tigers and their
23 cause of death.

24 And also, Your Honor -- I'm sorry -- moving back up to Count
25 2, to the extent -- ultimately, whether there was an agreement

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1 reached between the undercover and Mr. Passage during that
2 conversation is a matter for the jury to decide.

3 As for Count 8 that relates to the offer to sell tiger cubs
4 to Ms. Cervantes. Mr. Earley characterizes that as preliminary
5 discussions. The jury was able to see the entire text message
6 exchange between Mr. Passage and Ms. Cervantes about the price of
7 tiger cubs and the possible delivery of tiger cubs. And we would
8 submit that the government's proof on that point is fully
9 sufficient and should be a matter for the jury to decide whether
10 it constituted an offer to sell.

11 Counts 9 through 11, the sales of various tiger cubs in
12 violation of the Endangered Species Act. The government produced
13 the forms that documented the transfer of those animals to
14 someone else. Mr. Finlay testified that he transported those
15 animals that were specifically listed in those forms. He
16 testified that he received money for the animals that he then
17 conveyed directly back to Mr. Passage.

18 We -- the government submits that that evidence fully
19 satisfies the requirements of Rule 29. And the fact that the
20 buyers were not called as witnesses does not defeat the
21 Government's proof on that point.

22 Counts 12 through 20, minus Counts 13 and 14, which are all
23 false labeling. And I -- this is something to be clarified, the
24 crime is referred to sort of generically as "false labeling of
25 wildlife." Now, the actual statute as it's quoted in the

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1 indictment enumerates several types of falsification of wildlife,
2 one of which is what Mr. Earley is referring to, the classic case
3 of misidentification of the actual wildlife, when you are, you
4 know, shipping an animal and you label it as shoes or something,
5 or you say that this is, you know, a -- you label it as a
6 domestic cat and it's really a tiger. The actual
7 misidentification of the wildlife itself is a type of
8 falsification under the Lacey Act, false recordkeeping violation.

9 However, the statute lists various types of falsifications.
10 It lists a false record, a false account, a false label for, and
11 a false identification of wildlife as being crimes. And in this
12 case, the government is alleging that these documents, these
13 transfer forms are false records of -- of wildlife -- and "of"
14 meaning essentially relating to or concerning -- and that meaning
15 is consistent in the case law that interprets the Lacey Act.

16 Mr. Earley argues that there is no specific -- there's no
17 requirement to specify the reason for an exchange of animals.
18 First of all, the government disagrees with that characterization
19 as to whether that is required or not. The -- the forms that
20 Mr. Earley pointed out during testimony, I believe that's for the
21 jury to decide as to whether check boxes on a form should be a --
22 are required to be checked or not.

23 Regardless of any of that, regardless of whether it would
24 have been permissible under the regulations to leave that
25 information blank, the fact of the matter is there was false

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1 information written on a form that is to be maintained for
2 purposes of the government, namely USDA inspections. Writing
3 information on a form that is false makes it a false record
4 regardless of whether it was required to be provided or not. And
5 indicating donation -- the testimony has shown that indicating
6 "donation" on a form, one of the particular forms at issue, was a
7 false statement because of the testimony that shows that those
8 were actually sales.

9 And really what Mr. Earley's argument is about whether
10 there's a requirement to -- to indicate a sale versus a donation
11 is the materiality argument he's trying to make. As the Court
12 noted, materiality is not an element of this Lacey Act violation.
13 The -- the Tenth Circuit has no case law on this point. However,
14 the Fifth Circuit has specifically rejected the materiality --
15 attempt to impose a materiality requirement onto the Lacey Act.

16 The Kokesh decision is an unpublished decision from the -- a
17 district court in Florida that has not been adopted by any other
18 Court. And even if this Court were to run -- decide to run
19 counter to the Fifth Circuit on this point and impose a
20 materiality requirement into the Lacey Act, the materiality would
21 be for the jury to decide.

22 Okay. Count 18, which is the falsification of a CVI, the
23 government submitted evidence that the information that was
24 placed on that form came from someone at the zoo, and to
25 Dr. Green's office, and there was sufficient evidence that

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1 Mr. Passage controlled all aspects of the zoo, especially to
2 include the transfers and sales of animals. And so it's for the
3 jury to decide whether there is -- whether that information came
4 directly from Mr. Passage or from someone acting at his behest.

5 As for Count 21, we have -- that relates to the
6 falsification of the form relating to the lemur. We have
7 Mr. Garretson's testimony about the lemur and that he needed a
8 form, that Mr. Passage offered to make him a form to reflect that
9 he did not, in fact, buy the animal from someone in Texas, that
10 he would make him a form that reflected the animal was born at
11 Mr. Passage's zoo, thereby making it a legal transfer because it
12 was an intrastate transfer. There's video of Mr. Passage writing
13 the form, falsifying it, asking questions like, "Do you want me
14 to back date it about a month?"

15 The knowingly element of the falsification crime is not --
16 does not relate to whether Mr. Passage knew what the form was
17 going to be used for or how the form was going to be used, it was
18 whether at the time he was making it he knew he was making a
19 false statement. And we would submit there was more than
20 sufficient evidence to reflect that.

21 THE COURT: Thank you, Counsel.

22 Anything further from the defendant?

23 MR. EARLEY: Just briefly.

24 As it concerns Count 1, Your Honor, with respect to the --
25 the trip to Dallas, that is the allegation that was -- that

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1 occurred on November the 6th. I would just simply remind the
2 Court that the requirements under the law are that there be the
3 intent that the murder be committed at the very same time or
4 simultaneous to the actual either travel or use of the interstate
5 facility. So I think based on that, the evidence is
6 insufficient.

7 And particularly with respect to Count 21, the same thing,
8 we heard evidence that a phone was sent from Wynnewood, Oklahoma,
9 to Las Vegas, Nevada. The testimony basically did not establish
10 how it got mailed or how it ended up in the mail, but there's
11 certainly nothing connecting evidentiary-wise Mr. Passage with
12 the actual mailing of that phone. It was received, according to
13 Lauren Lowe, by her and was never turned on. It was put in a
14 drawer or a box, never to be heard from again until they moved
15 and came down here and found it.

16 So with respect to the use of the mails as an interstate
17 facility to further a murder-for-hire plot, I certainly think
18 that the phone issue has absolutely no -- doesn't provide any
19 evidentiary support for that particular charge.

20 THE COURT: Thank you.

21 MS. MAXFIELD-GREEN: May I respond, Your Honor?

22 THE COURT: Briefly, yes.

23 MS. MAXFIELD-GREEN: Your Honor, with regard to
24 Mr. Earley's argument that the intent to commit the murder must
25 be simultaneous with the travel alleged, we would submit that

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1 there was more than sufficient evidence of that. Mr. Glover
2 testified that that was the plan between he and Mr. Passage, that
3 he was sending him to Dallas to obtain a fake ID so that the
4 murder could be committed. And so Mr. -- there was no evidence
5 of any other intent for this trip to Dallas other than the murder
6 be committed.

7 Mr. Finlay testified substantially the same, that he
8 understood from Mr. Passage that's why they were going.
9 Mr. Garretson also testified that that was his understanding of
10 the purpose of the trip. So I think it's fair to say there was
11 sufficient evidence of Mr. Passage's intent at the time of the
12 travel.

13 As for how the cell phone got mailed, there was evidence,
14 including a recorded call with Mr. Passage in which he described
15 his plan to mail a cell phone to Las Vegas in order to conceal
16 the crime and in order to conceal the murder of Carole Baskin,
17 and there was sufficient circumstantial evidence for the jury to
18 link the mailings together.

19 We -- the government provided evidence that a package was,
20 in fact, mailed on November 25th of 2017 to the Lowe's address.
21 Mrs. Lowe testified that they received a package on or about that
22 time that contained a cell phone. The government provided the
23 evidence of the check that was used to pay for that mailing, that
24 was a check drawn on the account of Greater Wynnewood Exotic
25 Animal Park and it was signed with a stamp of Jeff Lowe's

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1 signature that was left in the custody of Mr. Passage. And,
2 therefore, we submit there's sufficient evidence under Rule 29 to
3 support those counts.

4 THE COURT: Thank you.

5 I think that the -- the government has accurately described
6 ample cites in the record and in the evidence that for purposes
7 of Rule 29 the defendant's motion for judgment of acquittal will
8 be overruled as to each count. I think the record will bear out
9 that it's clear that there's more than ample evidence for each of
10 these to be submitted to -- for consideration to the jury.

11 Let's talk about instructions -- jury instruction
12 conference. Do you-all need a little time? Do you want to meet
13 immediately after we adjourn? I know that they're going to have
14 to have a little bit of work, at least based on the dismissals of
15 Counts 13 and 14. Would you prefer after lunch?

16 MS. MAXFIELD-GREEN: That would be good for the
17 government, Your Honor.

18 THE COURT: Mr. Earley?

19 MR. EARLEY: That's fine, Your Honor.

20 THE COURT: Okay. Why don't we say -- why don't we say
21 1:30 -- I'm getting a signal -- 2 o'clock in my conference room,
22 if you-all will meet with Mr. Morris.

23 Anything else from either party?

24 MS. MAXFIELD-GREEN: No, Your Honor.

25 MR. EARLEY: No, Your Honor.

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THE COURT: Court will be in recess.

(Court adjourned.)

REPORTER'S CERTIFICATION

I, Emily Eakle, Federal Official Realtime Court Reporter, in and for the United States District Court for the Western District of Oklahoma, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 6th day of March 2020.

/S/ Emily Eakle
EMILY EAKLE, RMR, CRR
Federal Official Court Reporter

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