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1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

23 Cr. 118 (AT)

5 MILES GUO,

6 Defendant.

7 -----x

8 May 14, 2024  
9 2:10 p.m.

10 Before:

11 HON. ANALISA TORRES,

12 U.S. District Judge

13  
14 APPEARANCES

15 DAMIAN WILLIAMS

United States Attorney for the  
Southern District of New York

16 BY: RYAN B. FINKEL

17 JULIANA MURRAY

MICAH FERGENSON

18 JUSTIN HORTON

Assistant United States Attorneys

19 PRYOR CASHMAN, LLP

Attorneys for Defendant

20 BY: SIDHARDHA KAMARAJU

21 BY: MATTHEW S. BARKAN

-and-

22 ALSTON & BIRD, LLP

23 BY: E. SCOTT SCHIRICK

-and-

24 SABRINA P. SHROFF

25 ALSO PRESENT: VICTOR CHANG, Mandarin Interpreter  
SHI FENG, Mandarin interpreter

O5E5guoC

1 (Case called)

2 THE COURT: Would you make your appearances, please.

3 MR. FINKEL: Good afternoon, your Honor. Ryan Finkel,  
4 Juliana Murray, Micah Fergenson, Justin Horton for the  
5 government, joined by Isabel Loftus, a paralegal in our office.

6 MR. KAMARAJU: Good afternoon, your Honor. Sid  
7 Kamaraju, Sabrina Shroff, Scott Schirick and Matthew Barkan on  
8 behalf of Mr. Guo, who is seated at the back table, and we are  
9 joined by our paralegal Ruben Montilla.

10 THE COURT: Please be seated. I understand that I  
11 must first arraign the defendant on the S 3 superseding  
12 indictment; is that correct?

13 MR. FINKEL: Yes, your Honor.

14 THE COURT: So, Mr. Guo, do you have a copy of the  
15 superseding indictment?

16 THE DEFENDANT: Yes.

17 THE COURT: Was that document translated for you?

18 THE DEFENDANT: Yeah.

19 MR. KAMARAJU: Your Honor, we went over the document  
20 with a translator with Mr. Guo as well.

21 THE COURT: Do you want me to read it to you here in  
22 public or do you waive its public reading?

23 THE DEFENDANT: Not needed, your Honor.

24 THE COURT: How do you plead; guilty or not guilty?

25 THE DEFENDANT: Not guilty.

O5E5guoC

1 THE COURT: You may be seated.

2 Would the interpreters please identify themselves?

3 INTERPRETER: Victor Chang, your Honor.

4 INTERPRETER: Good afternoon, your Honor. My name is  
5 Shi Feng.

6 THE COURT: And Mr. Guo, you understand what the  
7 interpreters are saying; is that correct?

8 THE DEFENDANT: Yes. I hear all right.

9 THE COURT: Yesterday the defendant submitted a letter  
10 raising three issues. First, he argues that the testimony of  
11 one of the government's witnesses, whom I will call Witness-A,  
12 is inadmissible. Witness-A intends to testify that after  
13 Mr. Guo was arrested, one of his attorneys asked Witness-A to  
14 execute a "false affidavit" in the bankruptcy court. Witness-A  
15 believes that the attorney is "acting as the underground  
16 messenger" between Mr. Guo and his associates.

17 In my May 2nd motion *in limine* order I denied the  
18 government's motion to admit evidence of Mr. Guo using an  
19 attorney to "ferry messages" to others, finding that the  
20 evidence was not sufficiently probative to overcome the  
21 prejudicial effect of revealing Mr. Guo's detention. I also  
22 noted that the communications between Mr. Guo and his lawyer  
23 might be privileged.

24 The government states that it will not elicit that  
25 Mr. Guo was detained at the time, nor that the attorney

O5E5guoC

1 was"ferrying messages to and from" MDC.

2 I reject defendant's argument that this testimony  
3 would necessarily require the revelation of Mr. Guo's detention  
4 and I do not find that the conversation between the attorney  
5 and Witness-A, a third-party, implicates the attorney-client  
6 privilege.

7 The defendant also objects to Witness-A's proposed  
8 testimony that "the business ventures at issue in the  
9 indictment are scams," which he argues goes to the ultimate  
10 legal issue at trial. But, under Federal Rules of Evidence 701  
11 and 704, a lay witness, like Witness-A "may testify in the form  
12 of an opinion, even one that goes to an ultimate issue to be  
13 decided by the trier of fact, if the testimony is helpful to  
14 clear understanding of the witness' testimony of the  
15 determination of a fact in issue." *Cameron v. City of New*  
16 *York*, 598 F.3d 50, 62 (2d Cir. 2010). Moreover, this testimony  
17 is admissible as proof of Witness-A's impressions which were  
18 derived from their direct participation in the conspiracy.  
19 *United States v. Hill*, 644 F. Supp. 3d 751 (S.D.N.Y. 2022).

20 The defendant's motion to preclude Witness-A's  
21 testimony in its entirety is, therefore, denied.

22 Second, the defendant asks to adjourn trial on Fridays  
23 so that he can have more time to review discovery with his  
24 counsel. The defendant will have the opportunity to confer  
25 with his attorneys after we adjourn each day at 2:45 p.m.

O5E5guoC

1 Court will be in session on Fridays and the defendant's request  
2 is denied. The defendant also asks that the government provide  
3 the defense notice, by 9:00 a.m. each Wednesday, of the  
4 witnesses the government intends to call the following week,  
5 and in what order. The government has offered to disclose its  
6 witnesses by the Saturday morning before they will be called,  
7 which is acceptable to the Court, therefore the defendant's  
8 request is denied.

9 Finally, the defendant asks that his counsel be  
10 permitted to bring him lunch during the trial. The application  
11 is denied.

12 I have received a letter from the government dated  
13 yesterday, seeking to preclude Mr. Guo from invoking a  
14 "presence of counsel" defense. Mr. Guo has stated that he does  
15 not intend formally to seek an advice of counsel defense but  
16 "reserves the right to present evidence of testimony regarding  
17 his awareness that legal counsel is involved in certain  
18 transactions."

19 I agree with the government that this evidence may be  
20 irrelevant and risks confusing the jury. If Mr. Guo had  
21 asserted the advice of counsel defense he would have been  
22 required to disclose his communications with his attorney to  
23 determine if he fully and honestly laid out all the facts and  
24 if he followed his attorney's advice. *United States v. Scully*,  
25 877 F.3d 464, 476 (2d Cir. 2017). Having chosen to not assert

O5E5guoC

1 such a defense, Mr. Guo cannot now use the presence of  
2 attorneys as both a shield and a sword. Accordingly, I will  
3 follow the approach utilized by Judge Katherine Forrest in  
4 *S.E.C. v. Tourre*, 950 F.Supp.2d 666, 684-85 (S.D.N.Y. 2013).  
5 That is, counsel for the defense "will not be precluded  
6 altogether from saying the words 'counsel,' 'lawyer,' or  
7 'attorney,'" but will also not "be permitted to zero in on the  
8 presence or involvement of lawyers for the sake of highlighting  
9 their presence or involvement" Id. at 685. In their opening  
10 statements, defense counsel will not be permitted to refer to  
11 the involvement of lawyers in any transactions. The Court will  
12 preclude evidence that solely shows that lawyers attended or  
13 set up meetings which is irrelevant and the Court will give a  
14 limiting instruction if Mr. Guo refers to the presence or  
15 involvement of lawyers.

16 I am now going to discuss how voir dire is going to  
17 work. As the parties are aware, the jury in this case will be  
18 anonymous to the public, their identities will only be known to  
19 the Court and the parties. I take the privacy and security of  
20 the jury extremely seriously and expect the parties to do the  
21 same. You are to carefully safeguard their information from  
22 anyone who is not a member of the attorney team including after  
23 the close of the case. I will now go over how voir dire will  
24 operate with an anonymous jury.

25 My law clerk will now provide you with the seating

O5E5guoC

1 charts.

2 The jury department will generate a list which  
3 includes the names of each of the jurors with numbers indicated  
4 in the left-most column, placing the potential jurors in a  
5 randomized order numbered from 1 to 200.

6 One moment.

7 (Court and law clerk confer)

8 THE COURT: My law clerk is going to give you an  
9 example of what this list will look like, will show it to you.

10 Each juror will have a card with their number which  
11 corresponds to their place in the randomized list. The first  
12 100 potential jurors, meaning those who, after randomization,  
13 are the first 100 names on the jury list, will be brought up to  
14 the courtroom to start the voir dire. After my law clerk  
15 swears them in, they will be ushered, one by one, to their  
16 seats in accordance with their number. Juror no. 1 will sit in  
17 seat no. 1; juror no. 2 will sit in seat no. 2; and so on. My  
18 law clerks will privately confirm that the potential juror's  
19 name, seat number, and jury card number all match up.

20 Any questions about that?

21 MR. FINKEL: Not from the government.

22 MR. KAMARAJU: No, your Honor.

23 THE COURT: The parties are reminded that they are  
24 forbidden from sharing the jury list containing the potential  
25 jurors' identities. Likewise, you are forbidden from sharing

O5E5guoC

1 the ultimate list of jurors and alternates. Side bars will be  
2 on the record. The parties are instructed to refer to jurors  
3 by their juror number. For example, "Juror no. 1," in side  
4 bars and at all times in open court. I am now going to go over  
5 the seating chart.

6 To start with the first sheet of the seating chart,  
7 the 18 boxes represent the 18 seats in the jury box. Seat  
8 no. 1, where juror no. 1 will be sitting, is the left most seat  
9 in the front row. The middle row contains, from left to right,  
10 seats 7 through 12. No. 13 is the back left seat, and 18 is  
11 the back right seat.

12 Any questions?

13 MR. FINKEL: No, your Honor.

14 MR. KAMARAJU: No, your Honor.

15 THE COURT: Turning to the second sheet. This chart  
16 represents the first two rows of the gallery and includes the  
17 benches on both sides of the aisle. From my vantage point from  
18 my music stand, seat 19 is the left-most seat in the first row.  
19 The first row is the row closest to the jury box and counsel  
20 tables. Six people will sit on that bench. Then, after the  
21 aisle, are seats 25 through 32. Eight people will sit on that  
22 bench. The right-most seat in the first row of the gallery  
23 from my vantage point from my music stand, is seat 32. The  
24 second row contains seats 33 through 46. The next page  
25 contains the third and fourth rows in which jurors 47 through



O5E5guoC

1 74 will be seated. Finally, the last page contains the fifth  
2 and sixth row, the rows closest to the door, jurors 75 through  
3 100 will be seated in these rows.

4 Any questions?

5 MR. FINKEL: No, your Honor.

6 MR. KAMARAJU: No, your Honor.

7 THE COURT: I will first do general voir dire  
8 questions with all 100 seated jurors and then shift to asking  
9 individual questions to the first 50 jurors. For this case we  
10 will sit 12 jurors and six alternates.

11 For the 12 jurors the government has six peremptory  
12 challenges and the defendant has 10. For the alternates, each  
13 side will have three additional peremptory challenges.

14 So, I am going to describe the peremptory strikes  
15 process that we will be utilizing in this trial which is likely  
16 different from any that you have used before. We will start  
17 first with the defense, and the defense can strike as many in  
18 that first group of 12 that they wish to strike, and so they  
19 could use all of their strikes or just a few or none. Then we  
20 would go to the prosecution and the same applies. You can use  
21 any number of strikes that you want. You will be going back  
22 and forth until all of the defendant's strikes are used up, and  
23 the same process we will use for the alternates.

24 Are there any questions?

25 MR. FINKEL: No, your Honor.

O5E5guoC

1 MR. KAMARAJU: No, your Honor.

2 THE COURT: So just to be clear, neither party may go  
3 backwards, you can only go forwards in terms of using the  
4 peremptory strikes. I am going to issue written orders on the  
5 remaining motions *in limine*, mainly the *Daubert* and Witness 1  
6 issues. I plan to do that shortly.

7 By tomorrow, May 15, each side should provide the  
8 Court with a list of attorneys and paralegals who will be  
9 involved in the trial, a list of potential witnesses and other  
10 individuals whose names may be mentioned, a list of businesses  
11 or entities that may be mentioned during the trial, and a list  
12 of locations involved in the trial. I will read those lists to  
13 the venire during voir dire. Also, by tomorrow, please e-mail  
14 my chambers to set up a time for an AV walk-through and  
15 technology test so that when we start the trial there are no  
16 open tech issues, we hope.

17 The marshals have asked me to ask Mr. Guo to submit  
18 his clothing request as soon as possible.

19 Please also submit your wi-fi and electronic device  
20 requests by Friday, May 17. I have arranged for defense  
21 counsel to use the jury room in my usual courtroom, courtroom  
22 15D, as a war room over the course of the trial. Defense  
23 counsel should coordinate access to the room with my chambers  
24 and keep it tidy. My law clerks will not stay late into the  
25 evening so that counsel can keep working in the war room.

O5E5guoC

1 Counsel should generally expect to return to their offices to  
2 work following proceedings for the day.

3 Are there any applications?

4 MR. FINKEL: Not from the government.

5 MR. KAMARAJU: No, your Honor.

6 THE COURT: All right, then. So that brings our  
7 conference to a close and we are adjourned until trial.

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