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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 13CR420

Plaintiff,

vs.

Monday, June 30, 2014
2:05 p.m.

BENJAMIN SUAREZ,
SUAREZ CORPORATION INDUSTRIES,
INC.,

Defendants.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE PATRICIA A. GAUGHAN
UNITED STATES DISTRICT JUDGE
AND A JURY

APPEARANCES:

For the Government:

Rebecca C. Lutzko,
Carole S. Rendon,
Matthew J. Cronin,
Assistant United States Attorney
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Cleveland, Ohio 44113
(216) 622-3600

For Defendant Suarez:

Brian M. Pierce, Esq.
Mark E. Schamel, Esq.
Joshua D. Greenberg, Esq.

For Defendant Suarez
Corporation Industries:

Ian N. Friedman, Esq.
Robert T. Glickman, Esq.
Kristina Walter Supler, Esq.

Court Reporter:

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Cleveland, Ohio 44113
(216) 357-7087

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

1 THE COURT: Please be seated.

2 My question is addressed to the foreperson.

3 Sir, it's my understanding that you of, in
4 fact, reached a verdict, is that correct?

14:07:06 5 A JUROR: We have.

6 THE COURT: If you would please hand the
7 verdict forms to my courtroom deputy.

8 A JUROR: (Handing).

9 THE COURT: Mr. Suarez, if you would please
14:07:52 10 stand with counsel.

11 "We, the jury, in this case having been duly
12 impaneled and sworn find the defendant Benjamin Suarez not
13 guilty of conspiracy to violate the campaign finance laws as
14 charged in Count 1 of the superseding indictment.

14:08:09 15 "Count 2, we, the jury, find the defendant not
16 guilty of violating campaign finance laws, making campaign
17 contributions in the name of another.

18 "Count 3, not guilty of violating campaign
19 finance laws, corporate campaign contributions.

14:08:27 20 "Count 4, not guilty of causing false
21 statements.

22 "Count 5, not guilty of causing false
23 statements.

24 "Count 6, not guilty of causing false
14:08:41 25 statements.

1 "Count 7, not guilty of conspiracy to obstruct
2 justice.

3 "Count 8, guilty of obstruction of justice by
4 witness tampering."

14:08:54 5 There are twelve signatures on each and every
6 verdict form.

7 You may be seated.

8 And if the representative of SCI would stand.

9 MR. FRIEDMAN: Your Honor, we're here with
14:09:09 10 representative Matt Johnson who was formerly accepted by
11 this Court as a representative. Diane Williams was taken to
12 the hospital last night and cannot be here. She still is at
13 the hospital.

14 THE COURT: Thank you, Mr. Friedman.

14:09:21 15 MR. FRIEDMAN: Thank you.

16 THE COURT: "We, the jury, in this case having
17 been duly impaneled and sworn find the defendant Suarez
18 Corporation Industries, Incorporated not guilty of
19 conspiracy to violate the campaign finance laws as charged
14:09:34 20 in Count 1 of the superseding indictment."

21 As to Count 2, "Not guilty of violating
22 campaign finance laws, making campaign contributions in the
23 name of another.

24 "Count 3, not guilty of violating campaign
14:09:51 25 finance laws, corporate campaign contributions.

1 "Count 4, not guilty of causing false
2 statements.

3 "Count 5, not guilty of causing false
4 statements.

14:10:03 5 "Count 6, not guilty of causing false
6 statements.

7 "Count 7, not guilty of conspiracy to obstruct
8 justice.

9 "Count 10, not guilty of obstruction of
14:10:19 10 justice by corruptly obstructing, influencing or impeding an
11 official proceeding."

12 There are twelve signatures on each and every
13 page.

14 You may be seated.

14:10:28 15 Ladies and gentlemen, I'm going to ask you
16 this one question and please answer it yes or no.

17 Are these, in fact, your verdicts?

18 Juror number one?

19 JUROR NUMBER 1: Yes.

14:10:39 20 THE COURT: Number two?

21 JUROR NUMBER 2: Yes.

22 THE COURT: Number three?

23 JUROR NUMBER 3: Yes.

24 THE COURT: Number four?

14:10:41 25 JUROR NUMBER 4: Yes.

1 THE COURT: Number five?

2 JUROR NUMBER 5: Yes.

3 THE COURT: Number six?

4 JUROR NUMBER 6: Yes.

14:10:46 5 THE COURT: Number seven?

6 JUROR NUMBER 7: Yes.

7 THE COURT: Number eight?

8 JUROR NUMBER 8: Yes.

9 THE COURT: Number nine?

14:10:50 10 JUROR NUMBER 9: Yes.

11 THE COURT: Number ten?

12 JUROR NUMBER 10: Yes.

13 THE COURT: Number eleven?

14 JUROR NUMBER 11: Yes.

14:10:55 15 THE COURT: And number twelve?

16 JUROR NUMBER 12: Yes.

17 THE COURT: Ladies and gentlemen, I sincerely
18 thank you for your time and all of your hard work.

19 As you've heard me say --

14:11:10 20 MR. SCHAMEL: I didn't know if Your Honor was
21 about to release the jury. We have one issue we need to
22 raise before Your Honor does that.

23 THE COURT: As I heard -- as I know you've
24 heard me say before, without you we would not have the best
14:11:28 25 system of justice known to the world.

1 I will now call counsel to side-bar.

2 (Proceedings at side-bar:)

3 THE COURT: Is there anything on behalf of the
4 government?

14:11:57 5 MS. RENDON: No, Your Honor.

6 THE COURT: On behalf of defendant Benjamin
7 Suarez?

8 MR. SCHAMEL: Yes, Your Honor, and I
9 apologize, I didn't mean to interrupt Your Honor when you
10 were thanking the jury. I thought you were dismissing them.

11 As to Count 8, we would ask that Your Honor
12 specifically poll the jury as to which of the three acts,
13 the A, the B, or the C of Count 8 that they found on. If
14 they, in fact, they found unanimity as to one of those
15 three, we think we need to preserve that for appeal.

16 MS. RENDON: Your Honor, the government would
17 object. We believe that Your Honor properly instructed the
18 jury at the time that the jury was instructed, properly
19 answered their question that was posed to the Court on
14:12:38 20 Friday, did so after consultation with the parties, and that
21 the request that was filed after midnight last night was not
22 only untimely but not appropriate and that your instructions
23 were effective.

24 At a minimum, if the Court is going to poll
14:12:53 25 the jury, it should not be as to which one, but simply did

1 you unanimously find that the defendant was guilty on
2 Count 8 with respect to one or more of the subsections.

3 THE COURT: I completely agree with
4 Ms. Rendon. To go down the line and ask each juror which
14:13:14 5 act it was is just completely inappropriate, and I won't do
6 that.

7 MR. SCHAMEL: That's fair, Judge. I'm not
8 asking -- they have to have been unanimous as to one of
9 them, and that's why when we had the note --

14:13:26 10 THE COURT: Of at least one.

11 MR. SCHAMEL: Correct.

12 THE COURT: At least one.

13 MR. SCHAMEL: Correct. That's why I asked for
14 unanimity, the instruction, for the note.

14:13:34 15 MS. RENDON: And, Your Honor, I'm actually not
16 sure that that's legally correct that they had to be
17 unanimous as to one of the three the way that the count was
18 charged.

19 We didn't object to Your Honor saying "Any
14:13:45 20 one" and I think that that is more than sufficient.

21 THE COURT: And yet if it's not the law, then
22 there's no -- no harm, no foul.

23 MR. SCHAMEL: Right.

24 THE COURT: And I am not making a statement
14:13:55 25 one way or the other on that, and I completely understand

1 where you're coming from.

2 MS. RENDON: Because we think that you don't
3 have to be unanimous on any one of them.

4 THE COURT: I completely understand that, and
14:14:06 5 I don't want you to read anything into my saying yes, I will
6 poll them.

7 Do not read anything into that.

8 I will -- the poll will simply be did you
9 unanimously -- regarding Count 8 as to defendant Benjamin
14:14:23 10 Suarez, did you unanimously agree on one -- on at least one
11 of the three acts.

12 MR. SCHAMEL: Thank you, Your Honor.

13 (End of side-bar conference).

14 THE COURT: Ladies and gentlemen, as to
14:14:48 15 defendant Benjamin Suarez and as to Count 8, did you
16 unanimously agree on at least one of the three acts?

17 Juror number one, yes or no?

18 JUROR NUMBER 1: Yes.

19 THE COURT: Juror number two?

14:15:15 20 JUROR NUMBER 2: Yes.

21 THE COURT: Number three? And you are the
22 foreperson, sir?

23 JUROR NUMBER 3: Yes.

24 THE COURT: Did the jury unanimously agree on
14:15:22 25 one -- on at least one of the three acts in Count 8?

1 JUROR NUMBER 3: Yes, we did.

2 JUROR NUMBER 4: Yes.

3 THE COURT: Number four?

4 JUROR NUMBER 4: Yes.

14:15:30 5 THE COURT: Number five?

6 JUROR NUMBER 5: Yes.

7 THE COURT: Number six?

8 JUROR NUMBER 6: Yes.

9 THE COURT: Number seven?

14:15:33 10 JUROR NUMBER 7: Yes.

11 THE COURT: Number eight?

12 JUROR NUMBER 8: Yes.

13 THE COURT: Number nine?

14 JUROR NUMBER 9: Yes.

14:15:36 15 THE COURT: Number ten?

16 JUROR NUMBER 10: Yes.

17 THE COURT: Number eleven?

18 JUROR NUMBER 11: Yes.

19 THE COURT: Number twelve?

14:15:41 20 JUROR NUMBER 12: Yes.

21 THE COURT: Juror number one, I'm going to go

22 back to you.

23 Is there any doubt in your mind --

24 JUROR NUMBER 1: No.

14:15:48 25 THE COURT: -- that there was unanimous

1 agreement on at least one of the three acts in Count 8?

2 JUROR NUMBER 1: No, no doubt.

3 THE COURT: Thank you.

4 And my question is addressed to the

14:16:01 5 foreperson.

6 Sir, do you have the question that you had

7 asked, the paper that I wrote on?

8 JUROR NUMBER 3: It's on the desk in the jury

9 room.

14:16:09 10 THE COURT: It's in the jury room?

11 JUROR NUMBER 3: Yes.

12 THE COURT: All right. When my courtroom
13 deputy takes you back in there, I'm going to instruct her to
14 retrieve it and to come back into court.

14:16:17 15 Ladies and gentlemen, I am going to impose
16 upon you for just a couple of more moments. I'm going to
17 ask you to go back into the jury room, and I will be in
18 there shortly.

19 All rise for the jury.

14:16:28 20 (Jury out).

21 THE COURT: Please be seated.

22 Mr. Suarez and counsel, you may remain
23 standing.

24 I am going to refer this matter to the
14:16:59 25 Probation Department for a pre-sentence investigation

1 report.

2 Sentencing is September 26th at 11:00

3 o'clock a.m.

4 Let me start with you, Mr. Schamel, is that a

14:17:14 5 convenient date and time?

6 MR. SCHAMEL: I'm sorry, Your Honor, I may
7 have mentioned earlier my wife is expecting our first child
8 the 14th of September.

9 Could we just have at least one more week?

14:17:25 10 THE COURT: Certainly.

11 MR. SCHAMEL: I really don't want her to be
12 there without me.

13 THE COURT: Certainly. No problem.

14 MR. SCHAMEL: Thank you, Your Honor.

14:18:37 15 THE CLERK: How about October 7th at 11:00,
16 11:00 o'clock in the morning?

17 THE COURT: Mr. Schamel.

18 MR. SCHAMEL: That's fine, Your Honor. I
19 appreciate that.

14:18:45 20 THE COURT: Mr. Pierce.

21 MR. PIERCE: It woks for me, thank you, Judge.

22 THE COURT: Mr. Greenberg.

23 MR. GREENBERG: Yes, Your Honor.

24 MS. RENDON: That's fine for the United
14:18:55 25 States.

1 THE COURT: You are speaking on behalf of --

2 MS. LUTZKO: Yes.

3 THE COURT: If it's not a convenient date, I'm
4 happy to give you another one.

14:19:02 5 MS. LUTZKO: No, it works. My only conflict
6 would be a trial in this room.

7 THE COURT: Oh, I know which one you're
8 speaking of.

9 MS. LUTZKO: Yes.

14:19:09 10 THE COURT: Right. So I think you're going to
11 be okay.

12 MS. LUTZKO: Yes.

13 THE COURT: For the record, I informed counsel
14 at the beginning of deliberations that my procedure, when I
14:19:23 15 did, in fact, get a question is to get counsel on the phone
16 or in person, we agree upon an answer, and if there is an
17 agreement I will make the decision, I will write the answer
18 down, sign it, date it and put the time, and instruct the
19 jury that they have to keep the paper.

14:19:43 20 Everyone said they were in agreement with that
21 procedure. So we did, in fact, receive two questions at the
22 same time on one form.

23 The first question was: "In order to find as
24 it pertains to superseding indictment Page 34, Paragraph 99,
14:20:01 25 does the burden have to be met on A, B and C, or any one?"

1 We agreed the answer being "Any one."

2 Defense counsel asked that I add "Unanimously
3 beyond a reasonable doubt."

4 The government said it wasn't necessary.

14:20:23 5 I said I would give "Any one beyond a
6 reasonable doubt."

7 The second: "What are the differences between
8 letter of immunity and statutory immunity."

9 We all agreed to the following answer:

14:20:37 10 "Letter immunity is given by the government. Statutory
11 immunity is given by the Court."

12 I signed it, I dated it June 27th, 2014, I put
13 the time down as 11:46 a.m.

14 On behalf of the government, did I state all
14:20:50 15 of that accurately?

16 MS. RENDON: Yes, you did, Your Honor.

17 THE COURT: On behalf of Mr. Suarez?

18 MR. SCHAMEL: You did, Your Honor.

19 THE COURT: And on behalf of SCI?

14:20:57 20 MR. FRIEDMAN: Yes, you did, Your Honor.

21 THE COURT: All right. On behalf of the
22 government, is there anything further for today?

23 MS. RENDON: No, there isn't. Thank you.

24 THE COURT: On behalf of defendant Benjamin
14:21:06 25 Suarez.

1 MR. SCHAMEL: Your Honor, we intend to file a
2 final motion with the Court notwithstanding a jury verdict
3 as to Count 8.

4 Does Your Honor have a deadline in mind?
5 Could we have a week for that?

14:21:16

6 THE COURT: Follow -- just follow the rules.

7 MR. SCHAMEL: Thank you, Your Honor.

8 Then that's all we have, thank you.

9 THE COURT: Mr. Friedman.

14:21:25

10 MR. FRIEDMAN: Nothing further. Thank the
11 Court for the last month. Thank you.

12 THE COURT: All right. We are in adjournment.

13 Counsel, just an informal conversation up here
14 off the record.

14:21:34

15 (Discussion had off the record).

16 (Proceedings concluded).

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Susan Trischan

/S/ Susan Trischan, Official Court Reporter

Certified Realtime Reporter

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