

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1556

United States of America

Plaintiff - Appellee

v.

Michael Adefemi Adeyemo, also known as Adekunle Olufemi Adetiloye

Defendant - Appellant

Appeal from U.S. District Court for the District of North Dakota - Fargo
(3:15-cr-00090-LRR-1)

JUDGMENT

Before SMITH, Chief Judge, MELLOY, and SHEPHERD, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

September 02, 2020

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals
For the Eighth Circuit

No. 19-1556

United States of America

Plaintiff - Appellee

v.

Michael Adefemi Adeyemo, also known as Adekunle Olufemi Adetiloye

Defendant - Appellant

Appeal from United States District Court
for the District of North Dakota - Fargo

Submitted: May 12, 2020
Filed: September 2, 2020
[Unpublished]

Before SMITH, Chief Judge, MELLOY and SHEPHERD, Circuit Judges.

PER CURIAM.

Defendant Michael Adefemi Adeyemo operated a multi-million dollar fraud scheme that involved opening credit cards in the names of other individuals. In 2001, Defendant and two others were charged in California with operating a fraud scheme. United States v. Adeyemo, No. 8:01-cr-75 (C.D. Cal. filed May 9, 2001). Defendant left the country before he could be arrested. By late 2003, Defendant lived in Canada

under the false name and identity of Adekunle Olufemi Adetiloye. He applied for refugee status in Canada using the new name and false biographical information. In 2008, a grand jury in the District of North Dakota returned an indictment bringing fraud-scheme charges against Defendant under his false name. United States v. Adetiloye, No. 3:08-cr-28 (D.N.D. filed Mar. 19, 2008). In 2010, Canada extradited Defendant to the United States, where he later pleaded guilty and was sentenced in North Dakota as Adetiloye. In 2014, the government realized Adetiloye and Adeyemo were one in the same, leading to the instant charges. In 2018, a jury found Defendant guilty on four counts of obstruction of justice, in violation of 18 U.S.C. § 1503, for providing or affirming false identifying information to the District of North Dakota with the intent to mislead the court (Counts 1 and 2) and to prevent the Central District of California from discovering his location (Counts 3 and 4).

On appeal, Defendant argues he had a Fifth Amendment right to not volunteer his given name because it would have exposed him to the pending California charges. The district court¹ rejected this argument under Hiibel v. Sixth Judicial District Court of Nevada, 542 U.S. 177, 191 (2004), and so do we. Defendant did not assert his right to remain silent in fear of self-incrimination. Instead, Defendant repeatedly provided false identification and information to the court and its officers during the prosecution of his own criminal case. Cf. United States v. Pereira-Munoz, 59 F.3d 788, 793 (8th Cir. 1995) (as applied to the obstruction-of-justice sentencing enhancement). Defendant also argues that the jury's verdict was not supported by sufficient evidence and that the district court abused its discretion instructing the jury. Based on our thorough review of the record, we affirm. See 8th Cir. R. 47B.

¹The Honorable Linda R. Reade, United States District Judge for the Northern District of Iowa, sitting by designation.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-1556

United States of America

Appellee

v.

Michael Adefemi Adeyemo, also known as Adekunle Olufemi Adetiloye

Appellant

Appeal from U.S. District Court for the District of North Dakota - Fargo
(3:15-cr-00090-LRR-1)

MANDATE

In accordance with the opinion and judgment of 09/02/2020, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

November 25, 2020

Clerk, U.S. Court of Appeals, Eighth Circuit

"APPENDIX A"

Page-5

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL ADEFEMI ADEYEMO
a/k/a ADEKUNLE OLUFEMI
ADETILOYE,

Defendant.

No. 15-CR-90-LRR

ORDER

The matter before the court is the government’s “Objections to Proposed Jury Instructions” (“Government’s Objections”) (docket no. 124), which the government filed on November 8, 2018, and Defendant Michael Adefemi Adeyemo’s “Objections to Jury Instructions” (“Defendant’s Objections”) (docket no. 125), which Defendant also filed on November 8, 2018. After considering the Government’s Objections, the court has incorporated the revisions suggested in paragraphs 1 through 6 of the Government’s Objections. After considering Defendant’s Objections, the court notes that it does not intend to provide the jury with a copy of the Superseding Indictment. *See* Defendant’s Objections ¶ 1. The court overrules paragraphs 2 through 4 of Defendant’s Objections. The court also overrules Defendant’s proposed instruction regarding Defendant’s right to Fifth Amendment Protection. *See* Defendant’s Objections at 3.

As stated in the court’s November 8, 2018 Order (docket no. 123), the court intends to read the first section of instructions (Instruction Nos. 1-21) to the jury prior to opening statements and the second section of instructions (Instruction Nos. 22-24) after closing arguments. The Verdict Forms will be read to the jury after closing arguments as well. If the evidence supports giving additional instructions, they may be inserted as appropriate.

Any prior objections made in writing do not need to be reasserted at this time to

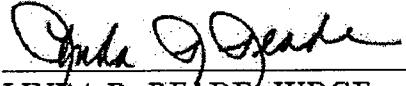
“APPENDIX A”

ADD.1(a)

preserve any error.

IT IS SO ORDERED.

DATED this 9th day of November, 2018.


LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

INSTRUCTION NO. 12

The crime of obstruction of justice, as charged in Count 1 of the Indictment, has the following essential elements:

One, on or about February 9, 2011, in connection with a criminal case filed against him in the United States District Court for the District of North Dakota, styled United States of America v. Adekunle Olufemi Adetiloye, Case No. 3:08-cr-28, defendant provided or affirmed false information to the United States District Court for the District of North Dakota, and others. Specifically, defendant provided false information regarding his name and date of birth that affirmed a false identity previously created.

Two, at the time he provided or affirmed the false information, defendant knew that criminal charges were pending against him in the United States District Court for the District of North Dakota, Case No. 3:08-cr-28; and

Three, by providing or affirming false information to the United States District Court for the District of North Dakota, and others, the defendant corruptly endeavored to influence, obstruct or impede the due administration of justice in United States of America v. Adekunle Olufemi Adetiloye, Case No. 3:08-cr-28.

For you to find the defendant guilty of this crime charged in Count 1, the government must prove each and every element beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the crime charged in Count 1.

INSTRUCTION NO. 13

The crime of obstruction of justice, as charged in Count 2 of the Indictment, has the following essential elements:

One, on or about March 3, 2011, in connection with a criminal case filed against him in the United States District Court for the District of North Dakota, styled United States of America v. Adekunle Olufemi Adetiloye, Case No. 3:08-cr-28, defendant provided or affirmed false information to the United States District Court for the District of North Dakota, and others. Specifically, defendant falsely stated:

- a. His name;
- b. His date of birth;
- c. He had never lived in the United States;
- d. His address history, work history, and reasons for his refugee status on his refugee application in Canada; and/or
- e. His arrival date in Canada as January 2005;

Two, at the time he provided or affirmed the false information, defendant knew that criminal charges were pending against him in the United States District Court for the District of North Dakota, Case No. 3:08-cr-28; and

Three, by providing or affirming false information to the United States District Court for the District of North Dakota, and others, the defendant corruptly endeavored to influence, obstruct or impede the due administration of justice in United States of America v. Adekunle Olufemi Adetiloye, Case No. 3:08-cr-28.

For you to find the defendant guilty of the crime charged in Count 2, the government need not prove each type of information listed in element one; any one is sufficient. However, the jury must unanimously agree on which type or types of information were falsely provided by the defendant.

For you to find the defendant guilty of this crime charged in Count 2, the government must prove each and every element beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the crime charged in Count 2.

INSTRUCTION NO. 14

The crime of obstruction of justice, as charged in Count 3 of the Indictment, has the following essential elements:

One, on or about February 9, 2011, in connection with a criminal case filed against him in the United States District Court for the District of North Dakota, styled United States of America v. Adekunle Olufemi Adetiloye, Case No. 3:08-cr-28, defendant provided or affirmed false information to the United States District Court for the District of North Dakota, and others. Specifically, defendant provided false information regarding his name and date of birth that affirmed a false identity previously created.

Two, at the time he provided or affirmed the false information, defendant knew that criminal charges were pending against him in the United States District Court for the Central District of California, styled United States of America v. Michael Adeyemo, et al., Case Number SACR01-75, and that there was an outstanding federal arrest warrant for him issued by the United States District Court for the Central District of California; and

Three, by providing or affirming false information to the United States District Court for the District of North Dakota, and others, the defendant corruptly endeavored to influence, obstruct or impede the due administration of justice in United States of America v. Michael Adeyemo, et al., Case Number SACR01-75.

For you to find the defendant guilty of this crime charged in Count 3, the government must prove each and every element beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the crime charged in Count 3.

INSTRUCTION NO. 15

The crime of obstruction of justice, as charged in Count 4 of the Indictment, has the following essential elements:

One, on or about March 3, 2011, in connection with a criminal case filed against him in the United States District Court for the District of North Dakota, styled United States of America v. Adekunle Olufemi Adetiloye, Case No. 3:08-cr-28, defendant provided or affirmed false information to the United States District Court for the District of North Dakota, and others. Specifically, defendant falsely stated:

- a. His name;
- b. His date of birth;
- c. He had never lived in the United States;
- d. His address history, work history, and reasons for his refugee status on his refugee application in Canada; and/or
- e. His arrival date in Canada as January 2005;

Two, at the time he provided or affirmed the false information, defendant knew that criminal charges were pending against him in the United States District Court for the Central District of California, styled United States of America v. Michael Adeyemo, et al., Case Number SACR01-75, and that there was an outstanding federal arrest warrant for him issued by the United States District Court for the Central District of California; and

Three, by providing or affirming false information to the United States District Court for the District of North Dakota, and others, the defendant corruptly endeavored to influence, obstruct or impede the due administration of justice in United States of America v. Michael Adeyemo, et al., Case Number SACR01-75.

For you to find the defendant guilty of the crime charged in Count 4, the government need not prove each type of information listed in element one; any one is sufficient. However, the jury must unanimously agree on which type or types of information were falsely provided by the defendant.

(CONTINUED)

INSTRUCTION NO. 15 (Cont'd)

For you to find the defendant guilty of this crime charged in Count 4, the government must prove each and every element beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the crime charged in Count 4.

INSTRUCTION NO. 16

The term "corruptly endeavor" means that the defendant voluntarily and intentionally provided false information, and, in doing so, the defendant acted with the intent to influence a judicial proceeding so as to benefit himself or another or subvert or undermine the due administration of justice and with the knowledge that his actions were likely to affect a judicial proceeding. The endeavor need not have been successful, but it must have had at least a reasonable tendency to influence, obstruct or impede the due administration of justice.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL ADEFEMI ADEYEMO
a/k/a ADEKUNLE OLUFEMI
ADETILOYE,

Defendant.

No. 15-CR-90-LRR

ORDER

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	RELEVANT PROCEDURAL HISTORY	2
III.	RELEVANT TRIAL EVIDENCE	3
IV.	MOTION FOR JUDGMENT OF ACQUITTAL	5
A.	Legal Standard	5
B.	Counts 1 and 2.	6
C.	Counts 3 and 4.	8
V.	MOTION FOR NEW TRIAL	8
A.	Legal Standard	9
B.	Constitutional Argument	9
C.	Jury Instructions	10
VI.	CONCLUSION	11

I. INTRODUCTION

The matter before the court is Defendant Michael Adefemi Adeyemo's Motion for Judgment of Acquittal; or, in the alternative, Motion for New Trial ("Motion") (docket no. 139).



II. RELEVANT PROCEDURAL HISTORY

On October 19, 2016, a grand jury returned a Superseding Indictment (docket no. 36) charging Defendant with four counts of obstruction of justice, in violation of 18 U.S.C. §§ 1503 and 2. *See* Superseding Indictment at 6-11. On November 13, 2018, a jury trial commenced.¹ *See* November 16, 2018 Minute Entry (docket no. 134) at 1. On November 15, 2018, the jury returned a verdict finding Defendant guilty on Counts 1-4 of the Superseding Indictment. *See* Jury Verdict (docket no. 135) at 1-2, 5-6. The jury also found that Defendant falsely stated or affirmed his name, his date of birth, that he lived in the United States, his address history, work history, and reasons for his refugee status on his refugee application in Canada and his arrival date in Canada as January 2005. *See id.* at 3-4, 7-8. On November 29, 2018, Defendant filed the Motion. On December 11, 2018, the government filed a Resistance (docket no. 141).

On November 30, 2018, Defendant filed a pro se Motion for New Trial (docket no. 140). On January 18, 2019, Defendant filed a pro se “Response to the Government’s [Resistance] Brief” (docket no. 142). The court declines to consider Defendant’s pro se motion and pro se response. “A district court is not required ‘to entertain pro se motions filed by a represented party.’” *United States v. Tollefson*, 853 F.3d 481, 485 (8th Cir. 2017) (quoting *Abdullah v. United States*, 240 F.3d 683, 686 (8th Cir. 2001)). Defendant is currently represented by counsel. *See* April 26, 2018 Order Regarding Appointment of Counsel (docket no. 91). Accordingly, Defendant’s pro se Motion for New Trial shall be denied.

The matter is fully submitted and ready for decision.

¹ The delays in this case resulted from Defendant’s dissatisfaction with his lawyers. The court appointed four different lawyers for Defendant from his arrest on January 13, 2016 to trial.

III. RELEVANT TRIAL EVIDENCE

Viewed in the light most favorable to the verdict, the relevant trial evidence is as follows:

In 1989, Defendant entered the United States at JFK airport in New York City, New York. Defendant had a Nigerian passport identifying him as Michael Adefemi Adeyemo, with a birth date of February 16, 1957. In the early 1990s, Defendant lived in California. During this period of time, Defendant applied to work at the United States Postal Service and applied for admission to law schools located in the United States. In these applications, Defendant identified himself as Michael Adeyemo, with February 16, 1957, being his date of birth.

In 1995, Defendant applied for permanent residence status and work authorization in the United States. In these applications, Defendant identified himself as Michael 'Deyemo, with a date of birth of March 2, 1964. Defendant claimed that the Nigerian government made a mistake with regard to his birth date on the passport he used to enter the United States in 1989. The applications also asked Defendant to provide any aliases or other names he had gone by in the past. Defendant wrote the word "Emmanuel." In 1999, Defendant, while living in California, met a woman named Alicia Whitman.

In 2001, a grand jury in the United States District Court for the Central District of California, returned an indictment charging Defendant and two others with operating a fraud scheme. The case was styled United States of America v. Michael Adeyemo, et al., Case Number SACR01-75. Before he could be arrested on the outstanding warrant, and thereafter booked and fingerprinted in the Central District of California, Defendant left the country and returned to Nigeria. At the time he left the country, Whitman was pregnant with Defendant's children. She gave birth to triplets in 2001.

In January 2003, Whitman and the three children visited Defendant in London, England, where he was living at that time. Later in 2003 and in 2005, Whitman visited

Defendant in Toronto, Ontario, Canada. In November 2005, Defendant applied for refugee status in Canada, claiming to have first arrived in Toronto in January 2005. In the application, Defendant identified himself as Adekunle Olufemi Adetiloye, with a date of birth of February 16, 1971. Defendant claimed to have only ever lived in Nigeria. Defendant also stated that he had never obtained permanent resident status in any other country, had never been charged with a crime in any other country, and had no other names or aliases.

In 2008, while Defendant continued to reside in Toronto, a grand jury in the United States District Court for the District of North Dakota, returned an indictment charging Defendant for his involvement in a fraud scheme. The case was styled United States of America v. Adekunle Olufemi Adetiloye, Case No. 3:08-cr-28. The fraud scheme, which began in 2004, involved opening up credit cards in the names of unsuspecting individuals, and having the new credit cards delivered to commercial mailboxes around the United States and then filtered to Toronto. The United States Department of Justice sought Defendant's extradition from Canada. In 2010, Canada extradited Defendant to the United States.

In 2011, Defendant pled guilty to an Information in North Dakota to fraud charges under the name Adekunle Olufemi Adetiloye. Defendant stated that his date of birth was February 16, 1971. After pleading guilty, Defendant was interviewed by a court officer who was preparing a Presentence Investigation Report to be used by the judge at sentencing. During the interview, Defendant provided the court officer with same information he provided to Canadian officials regarding his name, birth date, resident history, criminal history and having no other names or aliases.

The sentencing court held an evidentiary hearing. The government presented evidence and argument that Defendant initiated the fraud scheme from Canada in 2004. The government argued that Defendant should be held responsible under the advisory

guidelines for losses and victims going back to the initiation of the scheme in 2004. Defendant's counsel argued that anything involving the fraud scheme prior to 2005 should not be considered for sentencing purposes because Defendant, who identified himself to Canadian officials as Adekunle Olufemi Adetiloye, did not arrive in Canada until 2005. The sentencing court accepted the information provided by Defendant to the presentence writer and accepted some of defense counsel's arguments and sentenced Defendant as Adekunle Olufemi Adetiloye accordingly. Part of the sentencing court's reasoning was that Defendant could not have initiated the scheme in 2004 because he did not arrive in Canada until 2005, as shown on his Canadian immigration documents.

IV. MOTION FOR JUDGMENT OF ACQUITTAL

At the close of the government's case, Defendant timely moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29(a). Defendant now renews his motion as to Counts 1-4. With respect to Counts 1 and 2, Defendant argues that "[t]here was insufficient evidence presented at trial to establish that Defendant corruptly endeavored to influence the due administration of justice in North Dakota" and "the government failed in meeting its burden of proof." Motion at 2, 5. With respect to Counts 3 and 4, Defendant argues that "[t]he government failed to establish beyond a reasonable [doubt] that Defendant's conduct influenced or impeded the due administration of justice in California or that his conduct had a tendency to do that." *Id.* at 6. The court shall address each argument in turn.

A. Legal Standard

Federal Rule of Criminal Procedure 29 provides that "the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). Such a motion is permitted after trial, in which case the court may set aside the verdict and enter a judgment of acquittal. *See* Fed. R. Crim. P. 29(c). Jury verdicts are not lightly overturned. *See, e.g.*,

United States v. Peneaux, 432 F.3d 882, 890 (8th Cir. 2005); *United States v. Stroh*, 176 F.3d 439, 440 (8th Cir. 1999). The court must view the evidence in the light most favorable to the government and draw all reasonable inferences in the government's favor. *See United States v. Peters*, 462 F.3d 953, 957 (8th Cir. 2006). The court must uphold the jury's verdict so long as a reasonable-minded jury could have found the defendant guilty beyond a reasonable doubt. *See id.* Moreover, the court "must uphold the jury's verdict even where the evidence 'rationally supports two conflicting hypotheses' of guilt and innocence." *Id.* (quoting *United States v. Serrano-Lopez*, 366 F.3d 628, 634 (8th Cir. 2004)). It is not the province of the court to evaluate the credibility of witnesses that task is for the jury. *See United States v. Hayes*, 391 F.3d 958, 961 (8th Cir. 2004).

B. Counts 1 and 2

In the Motion, Defendant argues that "[t]he government . . . failed to prove that either Adekunle Adetiloye or Michael Adeyemo was a false identity." Motion at 2. Defendant asserts that "[t]he government failed to prove that either Adekunle Adetiloye or Michael Adeyemo was not a name given to him as part of his Nigerian culture." *Id.* Defendant maintains that evidence offered at trial showed that he "had in fact used both names throughout his life." *Id.* at 2-3. Defendant contends that he has "never made a false statement or affirmed a false statement regarding his name" because he has "used both names throughout his lifetime." *Id.* at 3. Further, Defendant argues that "nothing would have changed whether [he] was convicted in the District of North Dakota as Adekunle Adetiloye or Michael Adeyemo or under both names." *Id.* Defendant contends that his conduct did not have "a tendency to influence or impact the [judicial] proceedings [in the District for North Dakota]" because the evidence presented at trial did not show that he was involved in the fraud scheme prior to 2006. *Id.* at 4. Defendant asserts that "[t]he government failed to establish beyond a reasonable doubt that [he] knew his actions were likely to affect the judicial proceedings in North Dakota." *Id.* at 5.

In this case, the government presented sufficient evidence for the jury to find beyond a reasonable doubt that Defendant obstructed justice in the fraud case brought in the United States District Court for North Dakota. The evidence did not prove that Defendant acquired the name Michael Adeyemo in a Nigerian naming ceremony. There was no evidence that Defendant used the two names interchangeably. Not even his former girlfriend, Alicia Whitman, had ever heard the name Michael Adeyemo prior to seeing it attached to his image on-line after he was charged. Even if Defendant had acquired the name in such a ceremony, the evidence was overwhelming that he used the name fraudulently.

In 2005, while seeking refugee status in Canada, Defendant created a false identity, Adekunle Olufemi Adetiloye. Defendant provided Canadian authorities with a different name, different date of birth, denied having obtained permanent resident status in the United States in the past, denied ever being charged with a crime, denied ever being known by a different name or having aliases, denied ever living anywhere other than Nigeria and claimed to have fled Nigeria due to persecution. After being extradited from Canada to the United States to face fraud charges in the District for North Dakota, Defendant used the false identity to demonstrate to the court that he was less culpable in the fraud scheme because he was not in Canada at the time the fraud scheme started. In addition to creating an alibi for the start of the fraud scheme, Defendant's false statements and identity were also advantageous to Defendant because they hid the fact that he had previously been charged with a similar scheme in California. The falsehoods also made him appear younger and less sophisticated and made him more sympathetic based on his claim of fleeing Nigeria due to oppression. In the sentencing phase for the North Dakota fraud case, defense counsel used Defendant's falsehoods to argue for a more lenient sentence. At sentencing, the district court made statements reflecting acceptance of Defendant's falsehoods and sentenced him accordingly. Viewed in the light most favorable to the verdict, this evidence is sufficient to sustain a conviction as to Counts 1 and 2.

Therefore, the court shall deny the Motion as to Counts 1 and 2.

C. Counts 3 and 4

Defendant argues that “[t]here was insufficient evidence that [his] actions impeded or influenced or had a tendency to impede or influence the [United States District Court for the Central District of] California case” because “despite the years that have passed since investigators have learned that Adetiloye and Adeyemo are the same person, the Central District of California has done nothing.” Motion at 5-6. Defendant maintains that he “lacked the requisite knowledge that his conduct was likely to affect the California case.” *Id.* at 6.

In this case, the government presented sufficient evidence that Defendant obstructed justice in the pending case brought in the United States District Court for the Central District of California. By providing a false identity and false information to the United States District Court for North Dakota, Defendant was able to avoid the outstanding warrant and indictment in the fraud case brought in the Central District of California. Defendant abandoned his home, abandoned his girlfriend who was pregnant with his children (triplets), gave up ten years of living in the United States and gave up the possibility of United States citizenship to avoid the criminal charges in California. Following resolution of the instant case, the Central District of California may proceed with their case. Viewed in the light most favorable to the verdict, this evidence is sufficient to sustain a conviction as to Counts 3 and 4. Accordingly, the court shall deny the Motion as to Counts 3 and 4.

V. MOTION FOR NEW TRIAL

In the Motion, Defendant alleges that two grounds warrant the court granting him a new trial. First, Defendant argues that he is entitled to a new trial because his “constitutional argument was never addressed.” Motion at 7. Second, Defendant argues that he is entitled to a new trial because there were “errors in the jury instructions.” *Id.* at 8. The court shall address each argument in turn.

A. Legal Standard

Federal Rule of Criminal Procedure 33 provides that, “[u]pon the defendant’s motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires.” Fed. R. Crim. P. 33(a). “The decision to grant a Rule 33 motion is within the sound discretion of the [d]istrict [c]ourt” *United States v. Amaya*, 731 F.3d 761, 764 (8th Cir. 2013) (quoting *United States v. Dodd*, 391 F.3d 930, 934 (8th Cir. 2004)). “When considering a motion for a new trial, a district court may ‘weigh the evidence, disbelieve witnesses, and grant a new trial even where there is substantial evidence to sustain the verdict.’” *Id.* (quoting *United States v. Campos*, 306 F.3d 577, 579 (8th Cir. 2002)). However, “[m]otions for new trials are generally disfavored and will be granted only where a serious miscarriage of justice may have occurred.” *United States v. Morris*, 817 F.3d 1116, 1121 (8th Cir. 2016) (quoting *United States v. Fetters*, 698 F.3d 653, 656 (8th Cir. 2012)). “Trial courts should ‘exercise the Rule 33 authority sparingly and with caution.’” *United States v. Knight*, 800 F.3d 491, 504 (8th Cir. 2015) (quoting *Campos*, 306 F.3d at 579).

B. Constitutional Argument

Defendant argues that the court should grant him a new trial because “[n]o crime can lie where the defendant would be forced to give up his [c]onstitutional right.” Motion at 7. Relying on *Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County*, 542 U.S. 177 (2006), Defendant asserts that he was protected under the Constitution “from having to disclose as part of the North Dakota proceedings his identity as Michael Adeyemo.” Motion at 7-8. Defendant concludes that, “[b]ecause there was a pending criminal matter in California, the United States Constitution protects [his] conduct involving the alleged false statements relied upon by the government to obtain the convictions.” *Id.* at 8.

Defendant’s reliance on *Hiibel* is misplaced. In *Hiibel*, the defendant was arrested and convicted for refusing to identify himself during a lawful *Terry* stop pursuant to a

“stop and identify” statute. 542 U.S. at 180-82. The Court determined that the Fifth Amendment was inapplicable to the facts of the case because the defendant’s “refusal to disclose his name was not based on any articulated real an appreciable fear that his name would be used to incriminate him.” *Id.* at 190. The Court noted, however, that “a case may arise where there is a substantial allegation that furnishing identity at the time of a stop would have given the police a link in the chain of evidence needed to convict the individual of a separate offense.” *Id.* at 191. The Court concluded that in such a case, “the court can then consider whether the privilege applies, and, if the Fifth Amendment has been violated, what remedy must follow.” *Id.*

Here, Defendant was not involved in a *Terry* stop and did not refuse to identify himself to law enforcement for fear that identifying himself would lead to conviction of a separate offense. Instead, Defendant volunteered a great deal of identification information to the district court in North Dakota. However, the information was false and designed to mislead the district court in North Dakota as to Defendant’s true identity and to prevent the district court in Central District of California from discovering Defendant’s location. Defendant’s constitutional rights were not violated. Therefore, the court shall deny the Motion as to this issue.

C. Jury Instructions

Defendant argues that Jury Instructions 12 and 14 include a “disputed fact that is, the existence of a ‘false identity.’” Motion at 8. Defendant argues that the Verdict Form was also misleading. *Id.* at 9. Specifically, Defendant asserts that the Verdict Form “erroneously focused the jury’s attention on only one aspect of the elements by including the special interrogatory for only two out of the four counts[.]” *Id.* Finally, Defendant argues that “the course of conduct charged in the indictment was narrower than the government’s proof at trial and the jury instructions.” *Id.* at 10.

Here, in both Jury Instructions 12 and 14, the jury was instructed that, in order to find Defendant guilty, “the government must prove each and every element beyond a

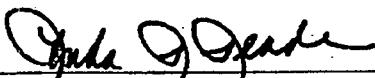
reasonable doubt.” Jury Instructions (docket no. 131) at 14, 16. Instructions 12 and 14 do not provide any factual findings. Instead, Instructions 12 and 14 required the government to prove everything identified in the instruction. The jury is presumed to have followed the instructions. *See United States v. Thomas*, 877 F.3d 1077, 1079 (8th Cir. 2017) (“A jury is presumed to follow its instructions”) (quoting *United States v. Myers*, 503 F.3d 676, 683 (8th Cir. 2007))). Similarly, Defendant’s argument that the Verdict Form and special interrogatories confused the jury is misplaced. The pertinent Verdict Forms clearly stated that the jury was not to consider the Interrogatory Form unless it found Defendant guilty of the charge. *See* Jury Verdict (docket no. 135) at 2, 6. Finally, the court is not persuaded by Defendant’s argument that “the course of conduct charged in the indictment was narrower than the government’s proof at trial and the jury instructions.” Motion at 10. The court finds that the evidence presented at trial was directed at the charges in the Indictment, namely that Defendant obstructed justice by providing a false identity and false information to the District Court for North Dakota and others for the purpose of masking his involvement in the underlying fraud scheme charged in North Dakota, and to hide the fact that he was subject to charges pending against him in the Central District of California. Accordingly, the court shall deny the Motion as to this issue.

VI. CONCLUSION

In light of the foregoing, the Motion (docket no. 139) is **DENIED**. Defendant’s pro se Motion for New Trial (docket no. 140) is also **DENIED**.

IT IS SO ORDERED.

DATED this 23rd day of January, 2019.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

UNITED STATES DISTRICT COURT

District of North Dakota

UNITED STATES OF AMERICA

v.

Michael Adefemi Adeyemo
aka Adekunle Olufemi Adetilo耶

) JUDGMENT IN A CRIMINAL CASE

) Case Number: 3:15-cr-90

) USM Number: 10621-059

) Ronald K. Hettich

) Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) **ONE(1), TWO(2), THREE(3) and FOUR(4) of the Superseding Indictment.** after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §§ 1503	Obstruction of Justice	2/9/2011	1 and 3
and 2			

continued on page 2

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

March 4, 2019

Date of Imposition of Judgment

Signature of Judge

Linda R. Reade

U.S. Senior Judge

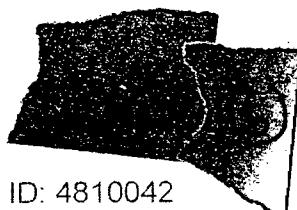
Name and Title of Judge

March 4, 2019

Date

"APPENDIX A"

ADD. (1B)



DEFENDANT: Michael Adefemi Adeyemo aka Adekunle Olufemi A.
CASE NUMBER: 3:15-cr-90

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §§ 1503 and 2	Obstruction of Justice	3/3/2011	2 and 4

DEFENDANT: Michael Adefemi Adeyemo aka Adekunle Olufemi At
CASE NUMBER: 3:15-cr-90

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

See page 4

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Michael Adefemi Adeyemo aka Adekunle Olufemi A

CASE NUMBER: 3:15-cr-90

ADDITIONAL IMPRISONMENT TERMS

120 months on each of the counts 1 through 4 to run concurrently. The term of imprisonment for this offense be served consecutively to the undischarged term of imprisonment imposed in USA v. Adekunle Olufemi Adetiloye in the United States District Court for the District of North Dakota, Case Number: 3:08-cr-28. The term of imprisonment for this offense be served consecutively to any term of imprisonment that may be imposed in the future in the United States District Court for the Central District of California in the case USA v. Michael Adefemi Adeyemo, Case Number: 801-cr-0075 pursuant to 18 U.S.C. § 3584.

DEFENDANT: Michael Adefemi Adeyemo aka Adekunle Olufemi A.
CASE NUMBER: 3:15-cr-90

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: THREE (3) years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 2091, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Michael Adefemi Adeyemo aka Adekunle Olufemi A.
CASE NUMBER: 3:15-cr-90

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Michael Adefemi Adeyemo aka Adekunle Olufemi A.
CASE NUMBER: 3:15-cr-90

SPECIAL CONDITIONS OF SUPERVISION

1. You must disclose your financial situation at the request of the supervising probation officer.
2. You must submit your person, residence, workplace, vehicle, computer (including any passwords), and/or possessions to a search conducted by a United States Probation Officer based upon evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation, additional criminal charges, and arrest. The defendant shall notify any other residents that the premises may be subject to searches pursuant to this condition.
3. If the defendant is removed or deported from the United States, the defendant must not reenter unless the defendant obtains permission from the Secretary of Homeland Security. If the defendant is removed or deported from the United States, the defendant will not be on active supervision. If the defendant reenters the United States during the term of supervised release the defendant must report to the nearest U.S. Probation Office within 72 hours of the date the defendant reenters the United States. If the defendant remains in the United States during the term of supervised release defendant must report to the U.S. Probation Office in the district to which the defendant is released within 72 hours of release from custody.

DEFENDANT: Michael Adefemi Adeyemo aka Adekunle Olufemi A
CASE NUMBER: 3:15-cr-90**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<u>TOTALS</u>	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
	\$ 400.00	\$	\$	\$

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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<u>TOTALS</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
---------------	----------------	----------------

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- the interest requirement is waived for the fine restitution.
- the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Michael Adeferni Adeyemo aka Adekunle Olufemi At

CASE NUMBER: 3:15-cr-90

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 400.00 due immediately, balance due

not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, US District Court, 655 1st Avenue North, Suite 130, Fargo, ND 58102.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1556

United States of America

Appellee

v.

Michael Adefemi Adeyemo, also known as Adekunle Olufemi Adetiloye

Appellant

Appeal from U.S. District Court for the District of North Dakota - Fargo
(3:15-cr-00090-LRR-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Erickson did not participate in the consideration or decision of this matter.

November 18, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans