

JUDGE TORRES

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- v. -

TOVA NOEL and
MICHAEL THOMAS,

Defendants.

- - - - - X

INDICTMENT

^{19 Cr}
19 CRIM 830

INTRODUCTION

1. On or about August 10, 2019, TOVA NOEL and MICHAEL THOMAS, the defendants, in dereliction of their duties as correctional officers at the Metropolitan Correctional Center ("MCC"), repeatedly failed to perform mandated counts of prisoners under their watch in the MCC's Special Housing Unit ("SHU"). Instead, for substantial portions of their shifts, NOEL and THOMAS sat at their desk, browsed the internet, and moved around the common area of the SHU. To conceal their failure to perform their duties, NOEL and THOMAS repeatedly signed false certifications attesting to having conducted multiple counts of inmates when, in truth and in fact, they never conducted such counts. As a result of those false statements, the MCC believed prisoners in the SHU were being regularly monitored and accounted for when, in fact, as a result of the defendants' conduct, no correctional officer conducted any count or round of the SHU from approximately 10:30

p.m. on August 9 until approximately 6:30 a.m. on August 10, at which time, as alleged herein, NOEL and THOMAS discovered the body of an MCC inmate, Jeffrey Epstein, who had committed suicide overnight while unobserved.

RELEVANT INDIVIDUALS AND ENTITIES

2. The MCC is a federal administrative detention facility located in Manhattan that is run by the Federal Bureau of Prisons ("BOP"). The MCC is one of several facilities used to house inmates who have been charged with federal crimes in the Southern District of New York and are awaiting trial. The MCC employs correctional officers, whose primary duty is to ensure the care, custody, and control of the inmate population of the MCC.

3. TOVA NOEL, the defendant, has been employed as a correctional officer at the MCC since approximately 2016. As of August 2019, NOEL's primary assignment was the SHU. On August 9, 2019, NOEL worked a regular shift from 4 p.m. to 12 a.m. in the SHU, and then worked an overtime shift from 12 a.m. to 8 a.m. on August 10, 2019, also in the SHU. NOEL had also worked a regular shift in the SHU the day before, August 8, 2019, from 12 p.m. to 8 p.m.

4. MICHAEL THOMAS, the defendant, has been employed as a correctional officer at the MCC since approximately 2007. Beginning in approximately 2013, THOMAS was assigned to work as a

materials handler supervisor, although THOMAS regularly worked overtime shifts as a correctional officer, including in the SHU. THOMAS worked an overtime shift in the SHU on August 10, 2019, from 12 a.m. to 8 a.m. THOMAS did not work his regular shift on August 8 or August 9, 2019, but did work an overtime shift in the SHU on August 9, 2019 from 12 a.m. to 8 a.m.

5. As detailed herein, Jeffrey Epstein was incarcerated at the MCC between his arrest on July 6, 2019, and his suicide on August 10, 2019. Epstein was detained pending trial in the Southern District of New York on sex trafficking charges.

THE MCC AND INSTITUTIONAL COUNTS

6. The MCC, which houses approximately 750 inmates at any given time, assigns inmates to various housing units within the MCC. The SHU is a housing unit within the MCC where inmates are securely separated from the general inmate population to ensure their own safety as well as the safety of staff and other inmates. The SHU is located on the ninth floor of the MCC, and access to that floor is controlled by a locked door that can be opened remotely only by an officer in the MCC's centralized control center (the "Control Center"), which is located on the first floor of the MCC. Access into the SHU is also controlled by a second locked door to which only correctional officers assigned to the SHU have

keys while on duty. Within the SHU, inmates are assigned to six separate tiers, each of which can be accessed only via a single locked door to which the correctional officers assigned to the SHU have keys while on duty. Each tier has eight cells, each of which can house either one or two prisoners, and each individual cell - which is made of cement and metal - is accessed only through a single locked door, to which only correctional officers assigned to the SHU have keys while on duty.

7. The BOP requires correctional officers assigned to guard inmates at the MCC to conduct institution-wide counts of inmates at regular, scheduled intervals to ensure that each inmate is alive and accounted for within the MCC (the "institutional count"). On weekdays, the MCC conducts five institutional counts at 4 p.m., 10 p.m., 12 a.m., 3 a.m., and 5 a.m. Performing an institutional count is one of the most basic and essential aspects of a correctional officer's job, and the count is one of the most basic and essential functions of daily operation of the MCC. Two officers are required to perform the institutional count for each housing unit, including the SHU, and are further required to document their performance of the count on an official MCC form called a count slip. To perform the institutional count in the SHU, two officers must walk from tier to tier to observe and count each individual inmate.

8. On the count slip, both correctional officers are required to fill in the date and time the count was performed, write the total number of inmates physically present in the unit counted, and then sign the count slip. Once the correctional officers have completed and signed the count slips, the count slips are then collected and delivered to the Control Center, where officers within the Control Center are responsible for comparing the count slips from each housing unit to the institution's inmate roster to ensure that each inmate is accounted for. Only after all the count slips are collected from each housing unit, and the numbers on the slips are matched to the institution's inmate roster, can the institutional count be deemed "cleared" or completed. If a housing unit's count slip is incorrect or incomplete, then the institution cannot "clear" the count. Instead, the count must be completely redone in that housing unit via a more-intensive version of the institutional count called a "bed book count," in which officers must compare every individual inmate to the institution's inmate roster. Records of each institutional count, including the count slips, are provided to a supervising official and retained by the MCC.

9. In addition to the institutional count, the BOP requires correctional officers assigned to the SHU to walk each of the tiers of the SHU - which is called a "round" - every thirty

minutes ("30-minute rounds"). Like the institutional counts, correctional officers conduct 30-minute rounds to ensure that each inmate is alive and accounted for within his cell. Correctional officers working in the SHU are required to complete a form, which is reviewed and signed by their supervisor, documenting the date and time of each 30-minute round in each tier of the SHU.

EPSTEIN'S PRIOR APPARENT SUICIDE ATTEMPT

10. On July 6, 2019, inmate Jeffrey Epstein was arrested and detained at the MCC on sex trafficking charges. On July 10, 2019, Epstein was assigned to the SHU due to, among other things, risk factors for suicidality and safety concerns relating to housing him with the MCC's general population.

11. On July 23, 2019, while Epstein was housed in the SHU, MCC officers responded to an emergency call, and found Epstein on the floor of his cell with a strip of bedsheet around his neck. MICHAEL THOMAS, the defendant, was one of the MCC officers who responded to the incident. Epstein was subsequently transferred out of the SHU and was placed on suicide watch. Inmates placed on suicide watch are housed in a cell on the hospital wing floor of the MCC, and are watched twenty-four hours a day by a staff member or a specially trained inmate companion.

12. Epstein remained on suicide watch for approximately twenty-four hours, and then was transferred to psychological

observation, until July 30, 2019. Psychological observation is less restrictive than suicide watch, but inmates are still housed in the hospital wing of the MCC and watched twenty-four hours a day.

13. On July 30, 2019, Epstein was transferred back to the SHU, and, at the direction of the MCC's psychological staff, was required to have an assigned cellmate. Epstein was also assigned to the cell closest to the correctional officers' desk in the common area of the SHU, which was approximately fifteen feet from the cell. Conducting the required institutional counts and thirty-minute rounds in the SHU were also part of the MCC's procedures for ensuring the safety of inmates, including Epstein.

EVENTS OF AUGUST 9-10, 2019

14. On August 9, 2019, Epstein's cellmate was transferred out of the MCC in a routine, pre-arranged transfer at approximately 8 a.m. Despite the MCC's psychological staff's direction that Epstein have a cellmate, no new cellmate was assigned to Epstein's cell.

15. TOVA NOEL, the defendant, was one of the assigned officers on duty in the SHU from 4 p.m. on August 9, 2019 to 8 a.m. on August 10. From 4 p.m. to 12 a.m., two other officers were on duty with NOEL in the SHU: one officer was assigned to work from 2 p.m. to 10 p.m. ("Officer-1"), and one officer was

assigned to work from 4 p.m. to 12 a.m. ("Officer-2"). MICHAEL THOMAS, the defendant, started his shift in the SHU at 12 a.m. on August 10. From 12 a.m. until 8 a.m. on August 10, NOEL and THOMAS were the only two officers on duty in the SHU.

16. During the time period from 4 p.m. on August 9 to 8 a.m. on August 10, the officers on duty in the SHU, including TOVA NOEL and MICHAEL THOMAS, the defendants, were responsible for conducting five institutional counts: 4 p.m. and 10 p.m. on August 9; and 12 a.m., 3 a.m., and 5 a.m. on August 10. NOEL, THOMAS and the other officers on duty were also responsible for completing paperwork attesting to each of those counts. While, as detailed herein, count slips were completed for each institutional count, in fact, not a single one of those institutional counts was done.

17. TOVA NOEL, the defendant, and Officer-1 were responsible for conducting the 4 p.m. institutional count in the SHU. As video from the MCC's internal video surveillance system makes clear, NOEL and Officer-1 did not perform the 4 p.m. count. Nonetheless, NOEL and Officer-1 completed and signed a count slip that falsely stated that the 4 p.m. institutional count had been performed. In reliance on that falsified count slip, at approximately 5:03 p.m., the Control Center cleared the 4 p.m. count.

18. That evening, Epstein returned to the SHU from his attorney visit and was escorted into his cell by TOVA NOEL, the defendant, and another officer at approximately 7:49 p.m. NOEL and the other officer left the tier in which Epstein was housed immediately thereafter.

19. By or before 10 p.m., all inmates in the MCC were locked in their cells for the night. At or around that time, TOVA NOEL, the defendant, and Officer-2 were responsible for conducting the 10 p.m. institutional count in the SHU. However, video from the MCC's internal video surveillance system shows that NOEL and Officer-2 did not perform the 10 p.m. count. Nonetheless, NOEL and Officer-2 completed and signed a count slip falsely stating that the 10 p.m. institutional count had been performed. In reliance on that falsified count slip, at approximately 10:36 p.m., the Control Center cleared the 10 p.m. count.

20. As reflected on video obtained from the MCC's internal video surveillance system, at approximately 10:30 p.m. on August 9, 2019 - after TOVA NOEL, the defendant, had signed and submitted the 10 p.m. count slip and the institutional count had been completed - NOEL briefly walked up to, and then walked back from, the door to the tier in which Epstein was housed. As confirmed by the video obtained from the MCC's internal video surveillance system, this was the last time anyone, including any

correctional officer, walked up to, let alone entered, the only entrance to the tier in which Epstein was housed until approximately 6:30 a.m. on August 10.

21. Officer-1's shift ended at approximately 10 p.m., and at approximately 12 a.m., MICHAEL THOMAS, the defendant, replaced Officer-2, joining TOVA NOEL, the defendant, as the only two correctional officers on duty in the SHU. NOEL and THOMAS were responsible for conducting the 12 a.m. institutional count in the SHU. As confirmed by video from the MCC's internal video surveillance system, NOEL and THOMAS did not perform the 12 a.m. count. Nonetheless, NOEL and THOMAS completed and signed a count slip for the 12 a.m. count that falsely stated that the institutional count had been performed. In reliance on that falsified count slip, at approximately 12:49 a.m., the Control Center cleared the 12 a.m. count.

22. TOVA NOEL and MICHAEL THOMAS, the defendants, were additionally responsible for conducting the 3 a.m. and 5 a.m. institutional counts in the SHU. As confirmed by video from the MCC's internal video surveillance system, NOEL and THOMAS did not perform either the 3 a.m. or the 5 a.m. counts. NOEL and THOMAS nonetheless completed and signed count slips for both counts that falsely stated that they had performed the 3 a.m. and 5 a.m. institutional counts. In reliance on those falsified count slips,

at approximately 3:24 a.m. and 5:30 a.m., the Control Center cleared the 3 a.m. and 5 a.m. counts, respectively.

23. Moreover, despite the requirement that officers on duty in the SHU conduct and document regular, 30-minute rounds, TOVA NOEL and MICHAEL THOMAS, the defendants, did not perform any of the required 30-minute rounds during their shift between approximately 12 a.m. and 6:30 a.m. Nonetheless, NOEL completed and signed more than 75 separate 30-minute round entries falsely affirming that they had, in fact, conducted such rounds.

24. During the night, instead of completing the required counts and rounds, TOVA NOEL and MICHAEL THOMAS, the defendants, were seated at the correctional officers' desk in the SHU common area (as noted above, approximately 15 feet from Epstein's cell), used the computers, and moved around the SHU common area. For a period of approximately two hours, NOEL and THOMAS sat at their desk without moving, and appeared to have been asleep. NOEL used the computer periodically throughout the night, including to search the internet for furniture sales and benefit websites. THOMAS used the computer briefly around 1 a.m., 4 a.m., and 6 a.m. to search for motorcycle sales and sports news.

25. At approximately 4 a.m., the overnight supervisor briefly visited NOEL and THOMAS in the SHU, and conferred with NOEL and THOMAS, who were seated at and around the officers' desk,

before leaving. At approximately 5:30 a.m., another correctional officer briefly walked through the SHU common area. Aside from those two officers, as confirmed by video surveillance, no one else entered the SHU, no one conducted any counts or rounds throughout the night, and no one entered the tier in which Epstein was housed.

26. Shortly after 6 a.m. on August 10, 2019, MICHAEL THOMAS and TOVA NOEL, the defendants, received a delivery of breakfast carts into the SHU, after which time they were again the only officers in the SHU. Shortly after 6:30 a.m., NOEL and THOMAS walked up to and entered the tier in which Epstein was housed to serve breakfast. At approximately 6:33 a.m., an alarm was activated in the SHU. Epstein was alone in his cell and not responsive, with a noose around his neck. A supervisor who had just started his shift ("Supervisor-1") responded to the alarm almost immediately thereafter, and as NOEL approached the door to the SHU to open the door for Supervisor-1, NOEL told Supervisor-1 that "Epstein hung himself." After arriving in the SHU, Supervisor-1 spoke with THOMAS and NOEL. NOEL told Supervisor-1 "we did not complete the 3 a.m. nor 5 a.m. rounds." THOMAS stated, "we messed up," and "I messed up, she's not to blame, we didn't do any rounds."

27. Epstein was transferred to a local hospital where he was declared dead shortly thereafter. The Office of the Chief Medical Examiner of the City of New York conducted an autopsy and determined that Epstein had committed suicide by hanging himself.

STATUTORY ALLEGATIONS

COUNT ONE
(Conspiracy)

The Grand Jury charges:

28. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

29. In or about August 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, knowingly conspired with each other to:

a. Knowingly defraud the United States by impairing, obstructing, and defeating the lawful functions of a department or agency of the United States, to wit, the MCC's function to ensure the care, custody, and control of its inmate population.

b. Knowingly make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any

department or agency of the United States, in violation of Title 18, United States Code, Section 1001 (a)(3).

30. In furtherance of the conspiracy and to effect the illegal objects thereof, TOVA NOEL and MICHAEL THOMAS, the defendants, committed the following overt acts, among others, in the Southern District of New York:

a. On August 10, 2019, NOEL and THOMAS falsely certified, on an MCC count slip, that they had performed the 12 a.m. institutional count of the SHU, when they had not in fact done so.

b. On August 10, 2019, NOEL and THOMAS falsely certified, on an MCC count slip, that they had performed the 3 a.m. institutional count of the SHU, when they had not in fact done so.

c. On August 10, 2019, NOEL and THOMAS falsely certified, on an MCC count slip, that they had performed the 5 a.m. institutional count of the SHU at MCC, when they had not in fact done so.

d. On August 10, 2019, NOEL falsely certified that she and THOMAS had performed a series of 30-minute rounds of the SHU between 12 a.m. and 6:30 a.m., when they had not in fact done so.

(Title 18, United States Code, Section 371)

COUNT TWO

(False Records - 4 p.m. Count)

The Grand Jury further charges:

31. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

32. On or about August 9, 2019, in the Southern District of New York, TOVA NOEL, the defendant, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL created, signed, and submitted to the MCC a materially false count slip indicating that she had performed the 4 p.m. institutional count of the SHU, when she had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT THREE

(False Records - 10 p.m. Count)

The Grand Jury further charges:

33. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

34. On or about August 9, 2019, in the Southern District of New York, TOVA NOEL, the defendant, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL created, signed, and submitted to the MCC a materially false count slip indicating that she had performed the 10 p.m. institutional count of the SHU, when she had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT FOUR
(False Records - 12 a.m. Count)

The Grand Jury further charges:

35. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

36. On or about August 10, 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper

administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL and THOMAS created, signed, and submitted to the MCC a materially false count slip indicating that they had performed the 12 a.m. institutional count of the SHU, when they had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT FIVE

(False Records - 3 a.m. Count)

The Grand Jury further charges:

37. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

38. On or about August 10, 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL and THOMAS created, signed, and submitted to the MCC a materially false count slip indicating that they had

performed the 3 a.m. institutional count of the SHU, when they had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT SIX
(False Records - 5 a.m. Count)

The Grand Jury further charges:

39. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

40. On or about August 10, 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL and THOMAS created, signed, and submitted to the MCC a materially false count slip indicating that they had

performed the 5 a.m. institutional count of the SHU, when they had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)


FOREPERSON


GEOFFREY S. BERMAN
United States Attorney

UNITED STATES DISTRICT COURT
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Title 18, United States Code,
Sections 371, 1001(a)(3), and 2.

GEOFFREY S. BERMAN

United States Attorney

A TRUE BILL



Foreperson.

2 Arrest warrants
Indictment Filed
Assigned to Judge Torres
Hon. Sarah Netburn, USMJ
(R) 11/19/19