

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

NGOZI NNAJI,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States does not believe oral argument is necessary to resolve this matter.

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IN THE UNITED STATES COURT OF APPEALS
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No. 10-10598

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

NGOZI NNAJI,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT OF JURISDICTION

The district court had jurisdiction pursuant to 18 U.S.C. 3231. The defendant filed a timely notice of appeal. S.R. 1 at 395.¹ This Court has jurisdiction pursuant to 28 U.S.C. 1291 and 18 U.S.C. 3742.

¹ “S.R. 1 at ___” and “S.R. 2 at ___” refer to the page number following the Bates stamp “USCA5” in the first and second supplemental records on appeal.

STATEMENT OF THE ISSUE

Whether the evidence was sufficient to support the defendant's conviction for forced labor and conspiracy to commit forced labor; harboring an illegal alien for the purpose of financial gain and conspiracy to harbor an illegal alien for the purpose of financial gain; and document servitude.

STATEMENT OF THE CASE

On December 9, 2009, a federal grand jury returned a seven-count indictment against the defendant, Ngozi Nnaji, and her husband, Emmanuel Nnaji (Nnaji), charging them with: (1) conspiracy to commit forced labor, in violation of 18 U.S.C. 371 and 18 U.S.C. 1589; (2) forced labor and attempted forced labor, in violation of 18 U.S.C. 1589 and 18 U.S.C. 1594, and aiding and abetting forced labor, in violation of 18 U.S.C. 2; (3) harboring an illegal alien for the purpose of financial gain, in violation of 8 U.S.C. 1324(a)(1)(A)(iii) and 8 U.S.C. 1324(a)(1)(B)(i); (4) conspiracy to harbor and conceal an illegal alien for the purpose of private financial gain, in violation of 8 U.S.C. 1324(a)(1)(A)(v)(I) and 8 U.S.C. 1324 (a)(1)(B)(i); (5) document servitude in violation of 18 U.S.C. 1592; (6) making false statements to FBI agents, in violation of 18 U.S.C. 1001(a)(2) (pertaining only to the defendant); and (7) making false statements to FBI agents, in violation of 18 U.S.C. 1001(a)(2) (pertaining only to Nnaji). S.R. 1 at 12-24, 57-72. The defendant pled not guilty to all counts. See S.R. 1 at 389. After a two-

day trial, on February 2, 2010, she was convicted on counts 1, 2, 3, 4, 5 and 6.² S.R. 1 at 365-367. On June 4, 2010, she was sentenced to 108 months imprisonment, and \$305,957.60 in restitution. S.R. 1 at 390-391. She subsequently filed a timely notice of appeal. S.R. 1 at 395.

STATEMENT OF FACTS

The evidence presented at trial showed that the defendant conspired with her husband, Emmanuel Nnaji, to fraudulently procure a visa for Cecilia Nwokonkwo, a then-42-year-old, illiterate Nigerian national, and to force Nwokonkwo to work as their domestic servant and nanny from December 1997 through February 2006. After Nwokonkwo escaped from their home, and a federal investigation into the circumstances of her presence in the United States began, the Nnajis then lied to investigating federal agents about their role in bringing her to the United States.

1. Nwokonkwo's Arrival In The United States

At the time she left Nigeria for the United States, Cecilia Nwokonkwo was a 42-year-old widow and the mother of six children, including a daughter, Gladys, who had sickle cell anemia.³ S.R. 2 at 203-209. She did not speak English, and

² Emmanuel Nnaji was convicted on counts 1, 2, 3, 4, 5 and 7. S.R. 1 at 365-367.

³ Nwokonkwo testified that the disease caused fevers and necessitated blood transfusions. S.R. 2 at 208.

could read neither in English nor in her native language, Ibo. S.R. 2 at 204, 211. After her husband died when her youngest child was just one month old, Nwokonkwo went to work doing various jobs to support her children. S.R. 2 at 205-207. She eventually began working as a babysitter and farmhand for Francis Ihechere, the defendant's brother, remaining in that job for four years. S.R. 2 at 206-208. Her first contact with the Nnaji family was through co-defendant Emmanuel Nnaji, who Nwokonkwo met when he came to Ihechere's home. S.R. 2 at 208-209. Nnaji told her that she should come to the United States to take care of the Nnajis' child. S.R. 2 at 208-209. Nwokonkwo testified that she decided to leave her children because things had been tough for her in Nigeria, and because she never had enough money to take care of her children and attend to Gladys' medical needs. S.R. 2 at 209.

Ihechere prepared a passport and visa application in the name of co-defendant Nnaji's mother for Nwokonkwo to travel to the United States. S.R. 2 at 182-196, 211. Nwokonkwo did not provide Ihechere with either a birth certificate or any other forms, and did not fill out any of the visa or passport forms because she was unable to read in either Ibo or English. S.R. 2 at 211. Indeed, when Ihechere asked her to sign one of the forms, she did not even know what a signature was, and ultimately just drew a line. S.R. 2 at 211. When Ihechere took her to the United States Embassy he did all of the talking for her, and provided

Embassy personnel with her application; Ihechere's driver took the visa and passport once they were issued.⁴ S.R. 2 at 212. When it came time for Nwokonkwo's trip to the United States, Ihechere took her to the airport, placed an envelope with her travel documents inside a handbag, and told her that she should not open it. S.R. 2 at 213.

When Nwokonkwo arrived in Texas in December 1997, the defendant and Nnaji met her at the airport, and took her to their home. S.R. 2 at 209, 214. As Ihechere had instructed, and with the defendant present, Nwokonkwo gave Nnaji her travel documents; the victim testified that she never saw the papers again.⁵

⁴ Laura Said, an intelligence research specialist with the U.S. Department of State, testified at trial that on November 26, 1997, the United States Embassy in Lagos, Nigeria, issued a non-immigrant visa in the name of Comfort Nnaji, with the expiration date of February 23, 1998. S.R. 2 at 182. The visa application stated that the applicant sought the visa in order to visit her son in Texas. S.R. 2 at 183. Special Agent Anthony Hughie of the Department of Homeland Security testified that their database showed that on December 11, 1997, someone named Comfort Nnaji entered the United States. S.R. 2 at 189. No application for extension of the visa was located on file, and there was also no record of Comfort Nnaji ever leaving the United States. S.R. 2 at 190-191. Hughie further testified that the Department keeps alien registration files for aliens seeking to live in the United States permanently, and that a signed biographical information form for Emmanuel Nnaji located in his registration file indicated that his mother's name was "Comfort." S.R. 2 at 192, 195-196.⁴

⁵ The only contrary evidence on this point came from a friend of the defendant, Boniface Anulam, who testified at trial that in February 2006 he received a call from the defendant asking him if he knew where the victim was. S.R. 2 at 308. Anulam testified that he asked the defendant if the victim had a passport, because, in his assessment, "the only way she could leave the place and

(continued...)

S.R. 2 at 214-215. After her arrival, Nwokonkwo showed the couple photographs of her children; they asked her if anything was wrong with them, and she told them that one of them had sickle cell, which the defendant said was very dangerous.

S.R. 2 at 215-216.

2. *Nwokonkwo's Duties*

For the next eight years and two months, Nwokonkwo lived with the Nnaji family, caring for their children, cooking, cleaning the house, washing the children's clothes, and tending to the yard and garden. S.R. 2 at 216. When Nwokonkwo initially came to the United States, the Nnajis had only one child, Joy, who was then six months old. S.R. 2 at 216-217. Nwokonkwo provided constant care for the child, sleeping in the same bedroom with her, and sometimes the same bed. S.R. 2 at 217. Neither the defendant nor co-defendant Nnaji would look after the child at night. S.R. 2 at 217. When the Nnajis' daughter, Precious, was born two years later, and their son Michael three years after that, Nwokonkwo also took those two children into her bedroom. S.R. 2 at 223-224. Nwokonkwo testified that after the birth of those children, her work for the Nnaji family became round-the-clock. S.R. 2 at 223. Describing a typical day, she stated that she would rise at

(...continued)

find a way to go home" was if she had a passport. S.R. 2 at 308. Anulam testified that at that point the defendant replied that the victim had taken her passport. S.R. 2 at 308.

4:00 a.m. to wash the dishes from the previous night and clean the kitchen. S.R. 2 at 220. She would then bathe the children, wash their clothes, and prepare breakfast for them before they went to school. S.R. 2 at 220. Nwokonkwo would then turn to cooking meals. S.R. 2 at 223. When the children returned home from school, she would cook, wash their clothes, and tend to them. S.R. 2 at 223.

For all of her work, the Nnajis told Nwokonkwo that they would provide her a salary of \$100 per month. S.R. 2 at 218. The first month she was there, Nnaji came to her with some money and asked if she knew what a dollar was, to which she replied that she did not. S.R. 2 at 218. Nwokonkwo said that Nnaji should send the money to her children so that they could use it for food. S.R. 2 at 218. The next month, the defendant told Nwokonkwo that they would be holding her pay for her by putting it in the bank. S.R. 2 at 218. However, the Nnajis never took her to the bank to set up an account. S.R. 2 at 218-219. At times, the defendant told Nwokonkwo that she had sent money to Nigeria, but never took Nwokonkwo with her to wire money. S.R. 2 at 219. Nwokonkwo testified that she felt she had no choice but to believe the Nnajis had done what they said. S.R. 2 at 220.

Nwokonkwo's daughter, Gladys, later testified that during the time her mother was in the United States, she received money from the defendant's

relatives, the Ihechere family, on a total of just eight occasions, and in a total amount of 39,400 Naira, or \$394. S.R. 2 at 277-279, 399.

3. *The Defendant And Nnaji Exercised Complete Control Over Nwokonkwo*

The defendant and her husband, Nnaji, took advantage of Nwokonkwo's lack of education, inability to speak English, vulnerable financial status, and concern for her children to force her to labor in their home. After taking her passport and travel documents upon her arrival, the couple abused and intimidated Nwokonkwo and kept her isolated from others in their attempt to gain the benefits of her service.

a. *Isolation*

Nwokonkwo testified that the defendant rarely took her out of the house, except to care for the children. The defendant took her to the grocery store only once in the entire time she was with the family. S.R. 2 at 227-228. Although Nwokonkwo had initially taken Joy out in her stroller as a baby, both the defendant and Nnaji told her to stop doing so. S.R. 2 at 228-229. She did not ever go for walks in the neighborhood, nor did she make any friends. S.R. 2 at 229. In Nigeria, Nwokonkwo had attended Roman Catholic Church every Saturday and Sunday, but the Nnaji family took her to Catholic Church only once a year. S.R. 2 at 229-230. The defendant would occasionally have Nwokonkwo accompany her to her own church, the Zoe church, for the express purpose of having Nwokonkwo

look after the children. S.R. 2 at 230-231. The defendant told Nwokonkwo that she would not be taken out of the house if not to look after the kids. S.R. 2 at 230-231.

Nwokonkwo did not know how to use the phone, and once overheard co-defendant Nnaji telling the defendant that they should not teach her how to use it so that she could not call people and tell them what was happening. S.R. 2 at 234. Nnaji also instructed her never to tell anyone how much she was paid, the way she lived, or how many children she took care of. S.R. 2 at 234. On one occasion, when Nwokonkwo wanted to speak to her children, the defendant told her that she would take \$20 out of her pay to buy a phone card; after buying a card, the defendant dialed the phone for her, and Nwokonkwo spoke to her brother for two minutes. S.R. 2 at 235. The next time Nwokonkwo wanted to make a call, the defendant said that the \$20 card was finished, and that it would be another \$20 for another card. S.R. 2 at 235. On another occasion, after Nwokonkwo's niece repeatedly tried to phone the house, the defendant yelled at Nwokonkwo and told her that she could ban Nwokonkwo's children from calling her. S.R. 2 at 236. Nwokonkwo was finally taught how to dial the phone for emergency purposes after Michael was born, but was not taught how to make long distance calls or given a phone card. S.R. 2 at 236-237.

On the one occasion where Nwokonkwo made social contact with another adult, the Nnajis quickly put a stop to it. Defendant had asked Nwokonkwo to go with her to a children's graduation party at a friend's home in order to take care of the Nnaji children during the event. S.R. 2 at 232. While there, Nwokonkwo happened to meet the brother of her brother-in-law, a man named Charles Okwandu. S.R. 2 at 231-233. Okwandu gave Nwokonkwo his phone number on a piece of paper, and said that she could give it to the defendant, so that the defendant could call and arrange for her to visit. S.R. 2 at 233. The defendant witnessed this interaction and reported it to Nnaji. S.R. 2 at 233. After the party, the defendant asked Nwokonkwo where the piece of paper was with Okwandu's phone number on it, and Nwokonkwo gave it to her; when Nwokonkwo later asked the defendant if she had called Okwandu, the defendant replied that her husband, Nnaji, had torn the number up and thrown it in the trash. S.R. 2 at 234.

Although Nwokonkwo testified that Nnaji took her to the doctor on two occasions, once for pain in her finger and once for stomach pain (S.R. 2 at 265), the Nnajis otherwise denied her necessary professional medical treatment while she was in their home. After she developed high blood pressure, they would provide her with some of their own medication. S.R. 2 at 248-249; see also S.R. 2 at 291 (FBI Agent Jennifer Baker testifying that Nnaji told her that while he knew the victim had high blood pressure, "at no point did they go to the doctors or the

hospital”). Although Nwokonkwo had a hernia that required medical treatment, the defendant and her husband intimidated her to prevent her from seeking the treatment while she was with them. S.R. 2 at 255. Nnaji had told Nwokonkwo that if she had the surgery she would die, and so the only way she could have it was if she would both call her children on the phone and sign a written document to say that if she had an operation and died it was her own fault. S.R. 2 at 255.

b. Sexual Assaults

Nwokonkwo was raped, groped, and sexually assaulted by co-defendant Nnaji on multiple occasions, beginning about two months after she arrived in the United States. S.R. 2 at 240-251. On the first occasion, Nnaji raped Nwokonkwo while they were in the process of baking Nigerian cakes. S.R. 2 at 241. When Nwokonkwo tried to leave the room to check on baby Joy after the cakes had been prepared, Nnaji grabbed her hand, chased her around the room and around furniture, blocked the door, and ultimately picked her up, dropped her to the ground, and raped her. S.R. 2 at 241. When she tried to scream, he told her that it was against the law to disturb the neighbors, and if she made noise they would call the police. S.R. 2 at 242. On another occasion, the defendant instructed Nwokonkwo to accompany Nnaji to a goat farm, where they were going to purchase a goat to be slaughtered. S.R. 2 at 242-243. As they were driving, Nnaji pulled the car off to the side of a small road, locked the doors, and opened his

pants. S.R. 2 at 243. As Nwokonkwo tried to resist and hold her clothing together, he pulled on her blouse, cut open the buttons, and started painfully pressing her breasts. S.R. 2 at 244. He then tried to tear off her pants. S.R. 2 at 244. After 20 minutes of attempting to assault her, Nnaji became annoyed, and said that they should go back home because they had been there for too long; on the way home, Nwokonkwo asked him to pull the car over so that she could vomit. S.R. 2 at 244-245. The defendant was present when they returned home; Nnaji told her that they had gotten lost. S.R. 2 at 246. On yet a third occasion, after Nwokonkwo went to the kitchen at night to get some water, Nnaji jumped up from where he was lying on the couch, dragged her to a chair, and raped her for an hour. S.R. 2 at 250. He pushed her to the ground, tried to put his penis into her mouth, and said that if she could “bring juice out of [it]” he would give her \$10. S.R. 2 at 250. He also raped her with his fingers, causing her to bleed. S.R. 2 at 250.

Although Nnaji had put locks on all of the bedroom doors, he did not put a lock on Nwokonkwo’s, and would come into the bedroom every night to sexually grope and assault her. S.R. 2 at 247-248. On some of these occasions, the children were in bed with her. S.R. 2 at 248. The defendant was aware of at least one of these nighttime assaults. S.R. 2 at 248. Nwokonkwo testified that on one occasion, while the defendant was in the house, Nnaji came into her room and began groping her breasts and buttocks. S.R. 2 at 248. On this occasion, the

defendant came to the room and “caught him.” S.R. 2 at 248. Nwokonkwo testified that when Nnaji tried to lie and tell his wife that Nwokonkwo had been “sleeping heavy on Michael’s hands,” Nwokonkwo began shouting at them. S.R. 2 at 248. When the defendant asked Nwokonkwo why she was shouting, Nwokonkwo replied that “[t]he reason I am shouting is because I don’t like the way Emmanuel comes and disturbs me.” S.R. 2 at 248. Nwokonkwo testified that she was afraid to even use the bathroom at night because Nnaji would be there watching for her to come out of the bedroom. S.R. 2 at 249-250.

c. Verbal Abuse

Nwokonkwo testified that both the defendant and her husband, Nnaji, belittled her by calling her “tata,” which she testified was a Nigerian insult, a word you would use to describe a one-month old baby. S.R. 2 at 257-258, 271. Indeed, another Nigerian witness testified that it would be an insult to call a woman over 40 years of age “tata,” because it was a way to call someone stupid, or a word used to describe an adult who was acting like a child. S.R. 2 at 310-311.

d. Intimidation

On multiple occasions, Nwokonkwo asked Nnaji to let her go home. S.R. 2 at 252. On one occasion, he told her that if she went back to Nigeria she would die of hunger, because neither she nor her children had any money. S.R. 2 at 251. Nnaji told her that he and his wife had planned it all out that Nwokonkwo would

stay with the family and grow old, and that they would then put her in a nursing home; he told that she should not think about her children. S.R. 2 at 252.

Nwokonkwo testified that after Nnaji said this, she went into her bedroom, and could not stop crying. S.R. 2 at 252. She said that she was “afraid,” and that “everything scare[d] [her] because of [her] age.” S.R. 2 at 251.

4. *Nwokonkwo’s Escape From The Nnaji Home*

Nwokonkwo finally escaped with the help of her niece in Nigeria, Edna. She asked the defendant to call Edna, and, after the defendant placed the call, Nwokonkwo went into the closet in the bedroom, closed the door, and told Edna about her situation. S.R. 2 at 252. Edna gave her a phone number for a priest from Nigeria who was in the United States, Father Gabriel Uzundu. S.R. 2 at 253. On a day when both the defendant and Nnaji were out of the house, Nwokonkwo called the priest. S.R. 2 at 253. Nwokonkwo asked the priest if he could come get her out of the house, and he agreed to help her. S.R. 2 at 172, 253. In February 2006, she left the house with a trash bag of her clothes and met Father Uzundu by the side of the road. S.R. 2 at 173, 254. Father Uzundu testified that Nwokonkwo looked scared when she met him, and that, as he drove away, he had to stop the car so that she could vomit. S.R. 2 at 173-174.

SUMMARY OF THE ARGUMENT

The evidence presented to the jury was more than sufficient to support the verdict on all counts. That evidence showed that the defendant and Nnaji worked together to control the victim and to force her to labor in their home. Taking advantage of the victim's vulnerable status, inability to speak English, and lack of friends or family in America, they exercised complete control over her, evidenced by Nnaji's repeatedly raping her without consequence; their keeping her travel documents, and taking steps to isolate her from her family and community; denying her necessary medical treatment; and subjecting her to verbal abuse and intimidation, including making her believe that she and her children would die of hunger if she returned to Nigeria. As a result of the actions they took, the defendant and her husband obtained eight years of the victim's round-the-clock, forced labor in their home, in exchange for the sum of \$394. The defendant's conviction should be affirmed in all respects.

ARGUMENT

I

THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE DEFENDANT'S CONVICTION FOR FORCED LABOR AND CONSPIRACY TO COMMIT FORCED LABOR

A. *Standard Of Review*

“To preserve review of a jury verdict based on sufficiency of the evidence, a party must move for judgment as a matter of law after the close of all evidence.”

Merriman v. Potter, 251 F. App'x 960, 963 (5th Cir. 2007) (citing Fed. R. Civ. P.

50; *United States ex rel. Wallace v. Flintco Inc.*, 143 F.3d 955, 960 (5th Cir.

1998)). “This rule is designed to (1) enable the trial court to re-examine the

sufficiency of the evidence as a matter of law after the verdict, and (2) alert the

opposing party to the insufficiency of his case before being submitted to the jury.”

Ibid. (internal quotation marks and citation omitted).

At the conclusion of trial, Nnaji's attorney moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29. See S.R. 2 at 335 (“On behalf of Emmanuel Nnaji * * * we move for a Rule 29 directed verdict on all elements, all counts, to preserve error.”). Nnaji's attorney also lodged a specific objection to Count 5 of the indictment, the document servitude charge, alleging that there was insufficient evidence to support conviction on that count, because the testimony was that Nwokonkwo gave Nnaji her passport in December 1997, but the effective

date of the statute was not until October 2000. S.R. 2 at 335. The court, Nnaji's attorney, and the government then engaged in a discussion regarding the document servitude charge, with the court concluding that the jury could infer possession of the passport past October 2000. S.R. 2 at 336-340.

The defendant's attorney then stated, "On behalf of Ngozi Nnaji, I would make the same objection, and also point out to the Court that the evidence in this case does not show any knowledge on my client's part as to what item was taken from [Nwokonkwo]." S.R. 2 at 340. The "same objection" referred only to the appropriateness of the document servitude charge. At no time did the defendant move for a judgment of acquittal or make a more general objection to the sufficiency of the evidence, and co-defendant Nnaji's attorney did not purport to be speaking for both of the defendants. See S.R. 2 at 335 ("*On behalf of Emmanuel Nnaji * * * we move for a Rule 29 directed verdict on all elements, all counts, to preserve error.*") (emphasis added).

When a defendant fails to move for a judgment of acquittal, this Court will "review only whether 'there was *any* evidence to support the jury's verdict, irrespective of its sufficiency, or whether plain error was committed which, if not noticed, would result in manifest miscarriage of justice.'" *Merriman*, 251 F. App'x at 963 (quoting *Stewart v. Thigpen*, 730 F.2d 1002, 1007 (5th Cir. 1984)).

However, even under the *de novo* review that defendant seeks, the evidence presented at trial was more than sufficient to support conviction.⁶

B. Forced Labor

The forced labor statute, in relevant part, punishes anyone who “knowingly * * * obtains the labor or services of a person by * * * means of serious harm or threat of serious harm to that person or another person”; “abuse or threatened abuse of law or legal process”; or “by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.” 18 U.S.C. 1589(a). In passing this statute, Congress made clear that “‘serious harm’ was intended to encompass not only physical violence, but also more subtle psychological methods of coercion – ‘such as where traffickers threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence.’” *United States v. Bradley*, 390 F.3d 145, 150 (1st Cir. 2004) (quoting H.R. Rep. No. 939,

⁶ See *United States v. Ollison*, 555 F.3d 152, 158 (5th Cir. 2009) (“In assessing a challenge to the sufficiency of the evidence [under a *de novo* standard of review], we must determine whether, viewing all the evidence *in the light most favorable to the verdict*, a rational jury could have found that the evidence established the elements of the offense beyond a reasonable doubt. *All reasonable inferences must be drawn, and all credibility determinations made, in the light most favorable to the verdict.*”) (internal quotation marks and citation omitted; emphasis added).

106th Cong., 2d Sess. 101 (2000) (Conf. Rep.)), judgment vacated and remanded for resentencing on *Booker* grounds by *Bradley v. United States*, 545 U.S. 1101 (2005). Congress further made clear that “known objective conditions that make the victim especially vulnerable to pressure (such as youth or immigrant status) bear on whether the employee’s labor was ‘obtained’ by forbidden means.” *Id.* at 153 (citing H.R. Rep. No. 939, 106th Cong., 2d Sess. 101 (2000) (Conf. Rep.)).

The evidence in this case was more than sufficient to show that the defendant and her husband kept the victim in a condition of forced labor by exercising complete control over her; verbally and physically abusing her and taking advantage of her lack of education, illiteracy, and inability to speak English; isolating her from the outside world; and intimidating her for the purpose of forcing her to work for them under conditions they controlled.

The evidence showed that Nwokonkwo was a widowed mother of six children, who, before coming to the United States, worked for the defendant’s brother, Francis Ihechere, in Nigeria. S.R. 2 at 203-209. The Nnajis came into contact with the victim by virtue of this family relationship; co-defendant Nnaji’s initial contact with the victim was at the defendant’s brother’s home in Nigeria, and the defendant later told the victim that she herself would “tell her brother to bring someone else” to assist in the household work. See S.R. 2 at 208-209, 225. The defendant was present at the airport when the victim arrived in the United

States and, along with her husband, took the victim from the airport to her house. S.R. 2 at 209, 214. She was also present when the victim handed over her travel documents to Nnaji, as she had been instructed to do by the defendant's brother. S.R. 2 at 214-215.

Once Nwokonkwo was in her home, and Nwokonkwo's documents had been seized, the defendant took advantage of her illiteracy, inability to speak English, lack of education, and vulnerable circumstances to force her to labor in the Nnajis' home and prevent her from fleeing.⁷ See H.R. Rep. No. 939, 106th Cong., 2d Sess. 101 (2000) (Conf. Rep.) (“[S]ection 1589’s terms and provisions are intended to be construed with respect to the individual circumstances of victims that are relevant in determining whether a particular type or certain degree of harm or coercion is sufficient to maintain or obtain a victim’s labor or services, including the age and background of the victims.”).

Nwokonkwo had no friends or family in this country and the defendant kept her isolated from others, prohibiting her from taking the baby out in her stroller

⁷ The evidence was more than sufficient to show the defendant's awareness of this vulnerability. Nwokonkwo was not familiar with the value of American money and the defendant was overheard joking with a friend on the phone that the amount of money she paid the victim did not even equal the amount that she paid to have her hair done. S.R. 2 at 218, 226. The defendant also knew – because the victim told her – that the victim had six children, one of whom had sickle cell anemia, and that the victim was desperate for money to take care of those children. See S.R. 2 at 215-216, 225.

(S.R. 2 at 228-229), taking her to the grocery store only once in eight years (S.R. 2 at 227-228), and taking her to Catholic church only once a year (S.R. 2 at 230).

The defendant also took steps to prevent Nwokonkwo from contacting others. For instance, on the one occasion where Nwokonkwo made social contact with another adult, a family relation named Charles Okwandu, the defendant forced

Nwokonkwo to give her the piece of paper on which Okwandu had written his phone number, and later told the victim that Nnaji had torn the phone number up and thrown it in the trash. See S.R. 2 at 231-234. The defendant and her husband, Nnaji, did not initially teach Nwokonkwo how to use the phone so that she could not call people and tell them her circumstances. S.R. 2 at 234. And after Nwokonkwo's niece repeatedly tried to call the house to speak to her, the defendant yelled at her and threatened to ban her children from calling her. S.R. 2 at 236. The defendant and her husband even deprived Nwokonkwo of necessary medical treatment during her time in the home, providing her with their own blood pressure medication, and denying her the opportunity to have surgery for a hernia. S.R. 2 at 248-249, 255. As the First Circuit recognized in *Bradley*, "isolation from medical care" and "efforts to * * * minimize [the victim's] outside contact" are both relevant to the question whether a defendant had a "deliberate scheme to hold laborers by intimidation." 390 F.3d at 155.

The evidence also showed that Nwokonkwo was repeatedly raped, groped, and sexually assaulted by co-defendant Nnaji during her years in the family's home, and that the defendant was aware of at least one of these assaults. S.R. 2 at 240-251. Nnaji threatened that if Nwokonkwo made noise when he was assaulting her, the police would be called. S.R. 2 at 242.

There was also evidence of the defendant's direct involvement in her husband's refusal to allow Nwokonkwo to return home. When Nwokonkwo asked Nnaji to let her go home to her children, he told her that *he and his wife* had planned it all out, that she was to stay with the family and grow old, and then be put into a nursing home. S.R. 2 at 252. Nnaji also told her that she would "die of hunger" if she went back to Nigeria, because neither she nor her children had any money. S.R. 2 at 251.

That the victim did not seize upon every opportunity to escape does not invalidate the defendant's conviction. See *United States v. Bibbs*, 564 F.2d 1165, 1168 (5th Cir. 1977) (recognizing that a victim can be placed in such fear that she is "afraid to leave, regardless of * * * opportunities for escape"), cert. denied, 435 U.S. 1007 (1978); *Bradley*, 390 F.3d at 153 (Affirming jury instructions in a Section 1589 case which read that, "the government . . . need not prove physical restraint; such as the use of chains, barbed wire, or locked doors, in order to establish offense of forced labor"). The evidence showed that Nwokonkwo was

isolated in the Nnajis' home except for contacts with friends of the defendant and her husband; without her travel documents; and unable to speak English. Under such circumstances, it is understandable that the victim only tried to escape when she could get help from a priest who spoke her own language, and with whom her niece, Edna, had already made contact. In sum, because the evidence was more than sufficient to support the jury's finding the defendant guilty of forced labor, her conviction must be sustained.⁸

C. *Conspiracy To Commit Forced Labor*

“A defendant’s voluntary participation in a conspiracy,” including a conspiracy to commit forced labor, need not be shown explicitly, but “may be

⁸ The defendant’s cooperation and conspiracy with her husband to commit these acts, discussed further on pages 23-25, *infra*, only reinforces the appropriateness of the forced labor conviction. “[U]nder the *Pinkerton* doctrine, a defendant can be found liable for the substantive crime of a coconspirator provided the crime was reasonably foreseeable *and* committed in furtherance of the conspiracy.” *United States v. Armstrong*, 619 F.3d 380, 387 (5th Cir. 2010) (quoting *United States v. Gonzalez*, 570 F.3d 16, 26 n.8 (5th Cir. 2009)). The jury in this case was given a *Pinkerton* instruction. See S.R. 2 at 412 (“[I]f you have found the defendant under consideration guilty of the conspiracy charged in Count 1 and if you find beyond a reasonable doubt during the time such defendant was a member of that conspiracy, another conspirator committed the offense in Count 2 in furtherance of or as a foreseeable consequence of that conspiracy, then you will find such defendant guilty of Count 2, even though such defendant may not have participated in any of the acts which constitute the offenses described in Count 2.”). Therefore, given the clear evidence that the defendant conspired with her husband to obtain the forced labor of the victim, the evidence of her husband’s actions in furtherance of that conspiracy was sufficient to convict the defendant of violating the forced labor statute as well.

inferred from the development * * * of circumstances.” *United States v. Diaz*, 637 F.3d 592, 602 (5th Cir. 2011) (quoting *United States v. Maltos*, 985 F.2d 743, 746 (5th Cir. 1992)). It is sufficient for the government to show that the defendant “either positively or tacitly agreed with another person to accomplish a common and unlawful plan, and that during the existence of the conspiracy, one of the conspirators knowingly committed an overt act in furtherance of the conspiracy.” *United States v. Bourgeois*, 950 F.2d 980, 983 (5th Cir. 1992); see also *Iannelli v. United States*, 420 U.S. 770, 777 (1975) (“The essence of [conspiracy] is an agreement to commit an unlawful act.”).

As discussed on pages 19-23, *supra*, the evidence was more than sufficient to show that the defendant both cooperated with her husband and engaged in her own acts in furtherance of this forced labor conspiracy. That evidence was sufficient to show that she worked with her husband and brother to bring the victim to the United States (see S.R. 2 at 208-225); that she kept the victim isolated from others (see S.R. 2 at 227-230); told the victim that she could ban her children from calling her at the house (S.R. 2 at 236); took away the phone number of the victim’s relative, Charles Okwandu, and gave it to her husband, Nnaji, who threw it in the trash (S.R. 2 at 231-234); had a conversation with Nnaji in which they discussed not teaching the victim how to use the phone so that the victim could not tell people what was happening (S.R. 2 at 234); and deprived the victim of

necessary medical care for a hernia and high blood pressure (S.R. 2 at 248-249, 255). The evidence also was sufficient to allow the jury to find that the defendant was aware of at least one of her husband's sexual assaults against the victim. S.R. 2 at 248.

Because the evidence supported the jury's finding the defendant guilty of forced labor, her conviction for conspiracy to commit forced labor must be sustained.

II

THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE DEFENDANT'S CONVICTION FOR CONSPIRACY TO HARBOR AN ILLEGAL ALIEN FOR FINANCIAL GAIN AND HARBORING AN ILLEGAL ALIEN FOR FINANCIAL GAIN

A. Standard Of Review

Because the defendant failed to move for a judgment of acquittal at the close of the government's case, after the presentation of all evidence, or after sentencing, this Court "review[s] only whether 'there was *any* evidence to support the jury's verdict, irrespective of its sufficiency, or whether plain error was committed which, if not noticed, would result in manifest miscarriage of justice.'" *Merriman v. Potter*, 251 F. App'x 960, 963 (5th Cir. 2007) (quoting *Stewart v. Thigpen*, 730 F.2d 1002, 1007 (5th Cir. 1984)).

B. Conspiracy To Harbor An Illegal Alien For Financial Gain And Harboring An Illegal Alien For Financial Gain

The evidence presented at trial overwhelmingly supports the defendant's conviction for both conspiracy to harbor an illegal alien for financial gain, and harboring an illegal alien for financial gain in violation of 8 U.S.C.

1324(a)(1)(A)(iii), 8 U.S.C. 1324(a)(1)(A)(v)(I), and 8 U.S.C. 1324(a)(1)(B)(i). In order to sustain the defendant's conviction for harboring an illegal alien for financial gain, the government must show that "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law," the defendant "conceal[ed], harbor[ed], or shield[ed] from detection * * * such alien in any place," for the purpose of private financial gain. See 8 U.S.C. 1324(a)(1)(A)(iii), 8 U.S.C. 1324(a)(1)(B)(i). In order to sustain the conspiracy conviction, the government must have presented sufficient evidence to show that the defendant agreed with one or more persons to commit the above violation. See 8 U.S.C. 1324(a)(1)(A)(v)(I).

In this case, there was sufficient evidence to allow the jury to find that the defendant was well aware of the Nwokonkwo's immigration status, and that she conspired with her husband, Nnaji, to bring the victim to the United States despite that status. The evidence showed that Nnaji traveled to the home of the defendant's brother, Francis Ihechere, to request that Nwokonkwo come to the United States to take care of the Nnajis' child. S.R. 2 at 208-209. After the

defendant's brother arranged for false travel documents, and Nwokonkwo traveled to the United States, the defendant joined her husband to pick Nwokonkwo up at the airport, and take her to their home. S.R. 2 at 209, 214. As she had been instructed by the defendant's brother, and with the defendant present, Nwokonkwo handed over her travel documents to co-defendant Nnaji when she arrived at the Nnajis' home. S.R. 2 at 214-215.

Although the defendant claims that there is "no evidence that [she] had any involvement with" her husband, Nnaji, and Ihechere's actions in bringing the victim to the United States (see Appellant's Br. 32), the evidence shows that the defendant herself told Nwokonkwo that she would "tell her brother to bring someone else" to assist in the household work. S.R. 2 at 225. The jury could certainly infer from this testimony that the defendant had been involved in the scheme to bring the victim to the United States, and that she was aware of the falsified documents on which the victim traveled.

As detailed above, there is no question that the defendant concealed Nwokonkwo by ensuring that she would be isolated from detection, including confiscating the phone number that Charles Okwandu gave the victim and allowing her husband to tear it up (S.R. 2 at 231-234); telling the victim that she could prevent her family from being able to call and speak to her (S.R. 2 at 236); prohibiting the victim from taking their child, Joy, out of the house (S.R. 2 at 229);

and not taking the victim to Catholic church or the grocery store (S.R. 2 at 227-230). In addition to these acts, the defendant and her husband, Nnaji, agreed not to teach Nwokonkwo how to use the phone so that she could not tell others about her circumstances and Nnaji instructed Nwokonkwo never to discuss how much she was paid, the way she lived, or how many children she took care of. S.R. 2 at 234. And, indeed, when Nwokonkwo asked to be sent home, Nnaji told her that *he and his wife* had decided that she would stay with the family and grow old, and then be put into a nursing home. S.R. 2 at 252 (emphasis added).

The jury was entitled to infer from the defendant's own actions in isolating the victim that she had both cooperated with her husband and acted on her own volition to keep Nwokonkwo from being detected or from leaving the country so that they could continue to benefit from her labor. Cf. *United States v. Sabhnani*, 599 F.3d 215, 245 (2d Cir. 2010) (“[The defendant] suggests that his conviction for harboring illegal aliens should be vacated because the harboring statute, 8 U.S.C. § 1324(a)(1)(A), was not ‘designed’ to cover a situation in which a defendant forces an alien who wishes to leave the country to remain here. * * * Suffice it to say that the text of the statute cannot support such limitations.”), cert. denied, 131 S. Ct. 1000 (2011). The defendant's conviction must be affirmed.⁹

⁹ The defendant does not challenge the sufficiency of the evidence as it concerns the financial gain aspect of the statute, nor could she: the evidence shows (continued...)

III

THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE DEFENDANT'S CONVICTION FOR DOCUMENT SERVITUDE

A. *Standard Of Review*

Because the defendant objected after the close of evidence that the evidence presented did not show any knowledge on her part as to what items were taken from the victim, the motion for a judgment of acquittal on the document servitude count was preserved for review.

This court reviews a district court's denial of a motion for a judgment of acquittal *de novo*. See *United States v. Myers*, 104 F.3d 76, 78 (5th Cir.), cert. denied, 520 U.S. 1218 (1997). In evaluating the sufficiency of the evidence, this Court determines whether, viewing the evidence in the light most favorable to the verdict and drawing all reasonable inferences from the evidence in support of the verdict, a rational trier of fact could have found that the evidence established the essential elements of the offense beyond a reasonable doubt. *Ibid*. The jury is free to choose among reasonable constructions of the evidence, and the evidence need not exclude every reasonable hypothesis of innocence or be wholly inconsistent

(...continued)

that for over eight years of labor, Nwokonkwo was paid a total of 39,400 Naira, or \$394. S.R. 2 at 277-279, 399.

with every conclusion except that of guilt. See *United States v. Resio-Trejo*, 45 F.3d 907, 910-911 (5th Cir. 1995).

B. Document Servitude

Section 1592 of Title 18 provides that “[w]hoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person * * * in the course of” or “with intent to violate” Section 1589 or “to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person’s liberty to move or travel, in order to maintain the labor or services of that person” is guilty of a crime. 18 U.S.C. 1592.

Here, the evidence was sufficient to allow the jury to find that the defendant knowingly possessed the victim’s travel documents with the intent to prevent her from leaving their home. The victim testified that, as she had been instructed by the defendant’s brother, she gave co-defendant Nnaji the bag with her travel documents when she arrived at their home. S.R. 2 at 214-215. The defendant was present when this occurred. S.R. 2 at 214-215. The victim further testified that, rather than just taking the entire bag, “[t]hey took the papers and they gave the bag back to me, that they do not need the bag.” S.R. 2 at 215. The victim never again saw her documents after the Nnajis took them from her. S.R. 2 at 215.

Given the evidence the jury heard about the defendant's role in committing forced labor, the jury could well have concluded that the defendant participated with her husband in preventing the victim from accessing her documents so that she would be unable to leave the house. See S.R. 2 at 251. Indeed, *United States v. Sabhnani*, 599 F.3d 215 (2d Cir. 2010), cert. denied, 131 S. Ct. 1000 (2011), which the defendant cites for support, only affirms the sufficiency of the evidence presented here. In *Sabhnani*, the Second Circuit upheld a forced labor and document servitude conviction where the evidence showed that the victims' "passports and other immigration documents were kept in a locked cupboard in the closet adjacent to the [defendants'] master bedroom." The court held that the "jury could infer [one defendant's] knowing possession of [the] passports and other immigration documents from the fact that his own passport was kept in the same cupboard, and from the closet's position in the house." *Id.* at 245.

Here, the jury need not have inferred the defendant's knowing possession of the passport based upon circumstantial evidence, but could have concluded that she possessed it based upon the fact that she was *present* when the documents were taken from the victim. S.R. 2 at 215. The defendant's conviction must stand.

CONCLUSION

For the reasons stated above, the defendant's conviction must be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2011, I electronically filed the foregoing Brief for the United States as Appellee with the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Holly A. Thomas
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**CERTIFICATE REGARDING PRIVACY REDACTIONS
AND VIRUS SCANNING**

I hereby certify (1) that all required privacy redactions have been made in this brief, in compliance with 5th Cir. Rule 25.2.13; (2) that the electronic submission is an exact copy of the paper document, in compliance with 5th Cir. Rule 25.2.1; and (3) that the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

s/ Holly A. Thomas
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Date: July 6, 2011

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief does not exceed the type-volume limitation imposed by Federal Rule of Appellate Procedure 32(a)(7)(B). The brief was prepared using Microsoft Office Word 2007 and contains 7,858 words of proportionally spaced text. The typeface is Times New Roman, 14-point font.

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Date: July 6, 2011