

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

INDICTMENT

UNITED STATES OF AMERICA :

19 Cr.

- v. - :

TOVA NOEL, and :

MICHAEL THOMAS, :

Defendants.

- - - - - X

The Grand Jury charges:

INTRODUCTION

1. On or about August 10, 2019, TOVA NOEL and MICHAEL THOMAS, the defendants, while on duty as correctional officers at the Manhattan Correctional Center ("MCC"), repeatedly chose not to do 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, slept, and browsed the internet. To conceal the deliberate dereliction of their responsibilities, NOEL and THOMAS repeatedly signed false certifications attesting to counts of inmates they never did. 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 while unobserved earlier that morning.

RELEVANT INDIVIDUALS AND ENTITIES

2. The MCC is federal administrative detention facility located in Manhattan that is run by the 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, but who are awaiting trial. The MCC employs correctional officers, and their 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 federal 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 6 a.m. on August 10, 2019, also in the SHU.

4. MICHAEL THOMAS, the defendant, has been employed as a correctional officer at the MCC by the BOP since approximately 2007. Beginning in approximately 2013, THOMAS was assigned to work as a materials handler supervisor, which is a non-custodial position, although THOMAS regularly worked overtime shifts as a

correctional officer. THOMAS worked an overtime shift in the SHU on August 10, 2019, from 12 a.m. to 6 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 time, assigns inmates to various housing units within the MCC, including general population and the SHU. The SHU is located on the ninth floor of the MCC and access to the SHU is controlled by a single locked door, which can only be opened remotely by an officer in the MCC's centralized control center (the "Control Center"). 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. 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 correctional officers assigned to the SHU have keys.

7. Correctional officers assigned to guard inmates at the MCC are required 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 complete 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.

8. Specifically, 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 each sign the form. The forms are then collected and delivered to the Control Center, where they are compared 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. 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, correctional officers assigned to the SHU are required to complete rounds every thirty minutes ("30-minute rounds"). Like the institutional counts, the 30-minute rounds are conducted to ensure that each inmate is alive and accounted for within their 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.

11. On July 23, 2019, while 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. Although Epstein claimed that he did not recall how the sheet ended up around his neck, Epstein was subsequently transferred out of SHU to suicide watch. Inmates assigned to suicide watch are housed in a cell on the hospital wing floor, 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 and watched twenty-four hours a day.

13. On July 30, 2019, Epstein was transferred back to the SHU, and, at the direction of MCC's psychological staff, was assigned a cellmate, in order to ensure Epstein remained under the observation of another inmate at all times. 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. Correctional officers assigned to the SHU were also told to keep a close watch of Epstein in light of his prior apparent suicide attempt.

EVENTS OF AUGUST 9-10, 2019

14. On August 9, 2019, Epstein's cellmate was transferred out of the MCC at approximately 8:00 a.m. Despite the directions described above 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 duty in the SHU from 4:00 p.m. on August 9, 2019 to 8

a.m. on August 10. From 4:00 p.m. to 12:00 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 4:00 p.m. to 12 a.m. ("Officer-2"). MICHAEL THOMAS, the defendant, started his shift in the SHU at 12:00 a.m. on August 10. From 12:00 a.m. until 8:00 a.m. 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, 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 guards 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 complete the 4 p.m. count. NOEL and Officer-1 did, however, complete and sign a count slip that falsely stated that the 4 p.m. institutional count had been completed. In reliance on that falsified count slip, at

approximately 5:03 p.m., the Control Center cleared the 4 p.m. count.

18. 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 complete 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 completed. In reliance on that falsified count slip, at approximately 10:36 p.m., the Control Center cleared the 10 p.m. count.

19. 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, TOVA NOEL, the defendant, briefly walked up to, and then walked back from, the door to the tier in which Epstein was housed. According to 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 tier in which Epstein was housed until approximately 6:30 a.m. on August 10.

20. Officer-1's shift ended at approximately 10 p.m., and at approximately 12 a.m., MICHAEL THOMAS, the defendant, replaced Officer-2. TOVA NOEL, the defendant, 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 complete 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 completed. In reliance on that falsified count slip, at approximately 12:49 a.m., the Control Center cleared the 12 a.m. count.

21. 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 complete either the 3 a.m. or the 5 a.m. count. NOEL and THOMAS nonetheless completed and signed count slips for both counts that falsely stated that they had completed the 3 a.m. and 5 a.m. institutional counts. In reliance on that falsified count slip, 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.

22. Moreover, despite the requirement that guards 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, the defendants completed, and NOEL signed, numerous 30-minute round reports falsely affirming that they had, in fact, conducted such rounds.

23. 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, using the computers, and moving around the SHU common area. 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. Throughout much of the night, NOEL and THOMAS sat in their chairs and, at various points, appeared to be asleep.

24. At approximately 4 a.m., the overnight supervisor briefly visited NOEL and THOMAS in the SHU, conferring 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 visited the SHU, conferring with NOEL and THOMAS in the common area of the SHU before leaving. Aside from those two officers, no one else entered the SHU - and no one conducted any counts or rounds - the entire night.

25. Shortly after 6:30 a.m., MICHAEL THOMAS and TOVA NOEL, the defendants, walked up to the tier in which Epstein was housed to serve breakfast. Epstein was alone in his cell and not responsive. A noose was around Epstein's neck. At approximately 6:33 a.m., an alarm was activated in the SHU. A supervising correctional officer who had just started his shift ("Supervisor-1") responded to the alarm, and as NOEL approached the door to the SHU to meet Supervisor-1, NOEL told Supervisor-1 that "Epstein hung himself." Epstein was transferred to a local hospital where he was declared dead shortly thereafter. A subsequent autopsy determined that Epstein had committed suicide by hanging himself.

26. After arriving in the SHU, Supervisor-1 spoke with MICHAEL THOMAS and TOVA NOEL, the defendants. NOEL told Supervisor-1 "we did not complete the 3am nor 5 am rounds." THOMAS stated, "we messed up," "I messed up, she's not to blame, we didn't do any rounds."

COUNT ONE
(Conspiracy)

27. In or about August 2019, in the Southern District of New York and elsewhere, TOVA NOEL and MICHAEL THOMAS, the defendants, knowingly conspired with each other and with others known and unknown 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 the inmate population of the MCC.

28. 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).

29. 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 and elsewhere:

a. On August 10, 2019, NOEL and THOMAS falsely certified, on an MCC count slip, that they had completed 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 completed 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 that they had completed 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 and THOMAS falsely certified that they had completed 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:

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

31. 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 completed 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:

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

33. 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 completed 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:

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

35. 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 MCCC a materially false count slip indicating that they had completed 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:

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

37. 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 BOP a materially false count slip indicating that they had completed 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:

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

39. 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 BOP a materially false count slip that that reflected that they had completed 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
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

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MICHAEL THOMAS,

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SEALED INDICTMENT

19 Cr.

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

GEOFFREY S. BERMAN
United States Attorney

A TRUE BILL

Foreperson.
