

2012 WL 1966275 (C.A.10) (Appellate Brief)
United States Court of Appeals, Tenth Circuit.

UNITED STATES OF AMERICA, Plaintiff-Appellee,
v.
Amanda ADDISON, Defendant-Appellant.

No. 11-8105.
May 25, 2012.

On Appeal from the United States District Court for the District of Wyoming, The
Honorable William F. Downes District Court Judge, D.C. No. 11-CR-00018-AB3J

Amanda Addison's Opening Brief

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**ORAL ARGUMENT IS REQUESTED NATIVE AND
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*VI PRIOR OR RELATED APPEALS

There are no prior or related appeals.

*1 Attorney Thomas A. Fleener, on behalf of the Defendant-Appellant Amanda Addison, for his opening brief states:

STATEMENT OF JURISDICTION

The U.S. District Court for the District of Wyoming had jurisdiction over this matter pursuant to [18 U.S.C. § 3231](#). This Court's jurisdiction for the appeal of this case derives from [28 U.S.C. § 1291](#). This is an appeal of a final judgment the District Court entered against Amanda Addison on November 23, 2011.

Ms. Addison was found guilty by a jury of her peers of one count of embezzlement or conversion of monies from an organization receiving general funds, and aiding and abetting in violation of [18 U.S.C. § 666\(a\)\(1\)\(A\)](#) and 2. (RoA, Vol. 3, Trial Trans., pg. 1170). Ms. Addison was sentenced to twelve (12) months and one (1) day incarceration; three (3) years supervised release with special conditions; and, \$100 special assessment. (RoA, Vol. 1, Doc. 146, pg. 244).

Ms. Addison filed a timely Notice of Appeal in accordance with [Federal Rule of Appellate Procedure 4\(b\)\(1\)](#) on November 30, 2011. (RoA, Vol 1, Doc. 150, p. 251). Criminal convictions are final decisions. Therefore, pursuant to [28 U.S.C. § 1291](#), the Tenth Circuit Court of Appeals has jurisdiction.

*2 STATEMENT OF ISSUES

I MS. ADDISON'S SIXTH AMENDMENT RIGHT TO A PUBLIC TRIAL WAS VIOLATED AS A RESULT OF THE DISTRICT COURT'S ERRONEOUS ORDER PRECLUDING A MEMBER OF THE PUBLIC FROM VIEWING THE TRIAL.

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A. The District Court Erroneously Granted the Government's Request to Have a Member of the Public Excluded from the Court Proceedings without Engaging in a Sixth Amendment Constitutional Analysis.

B. The Closure of the Trial to a Member of the Public Gives Rise to a Structural Error in the Trial Proceedings.

II. THE GOVERNMENT'S EVIDENCE WAS INSUFFICIENT TO SUPPORT MS. ADDISON'S CONVICTION BEYOND A REASONABLE DOUBT.

A. The Government's Witnesses' Testimonies Were Inadequate to Support Ms. Addison's Requisite Specific Intent on the Embezzlement Count.

STATEMENT OF THE CASE

Following a trial by a jury of her peers, Ms. Addison was found guilty of Count Three (3) of the Indictment alleging embezzlement or conversion of monies from an organization receiving federal funds, and aiding and abetting in violation of *3 18 U.S.C § 666(a)(1)(A) and 2. (RoA, Vol. 3, Trial Trans., p. 1170) The jury found her not guilty of Count One of the Indictment alleging conspiracy to embezzle or convert monies from an organization receiving federal funds in violation of 18 U.S.C. § 371. *Id.* Ms. Addison was not under indictment for Count Two in the Indictment. *Id.*

The trial by jury for co-defendants Amanda Addison and Melody St. Clair began on July 5, 2011. Co-defendant George Moss had arranged a plea agreement before trial and was not tried with Ms. Addison and Ms. St. Clair. (RoA, Vol. 3, Trial Trans., pp. 604-605) During the trial. Ms. St. Clair's attorney, Mr. Jim Barrett, informed the court about a conflict of interest in that he could not cross-examine one of the Government's witnesses because he had represented her earlier. (RoA, Vol. 3, Trial Trans., p. 397) Due to the unwaivable conflict of interest, a mistrial was declared for co-defendant Ms. St. Clair and she was to be tried at a later date by a different judge and jury. (RoA, Vol. 3, Trial Trans., p. 404). Ms. St. Clair asked whether or not she could remain and watch the proceedings and the Court told her "no." (RoA, Vol. 3, Trial Trans., p. 413).

After the ruling declaring that Ms. St. Clair was not permitted to stay, Ms. Addison objected that Ms. St. Clair, as a member of the public, should not be excluded from observing the trial because Ms. Addison had a Sixth Amendment Right to an open public trial. *Id.* The Court offered the justification that this member *4 of the public was being excluded from Ms. Addison's trial due to the fact that Ms. St. Clair was an "indictable co-defendant." *id.* pp. 414, 553. The Court stated that "Ms. St. Clair sitting in the audience could be seen by the jury as a comment on her guilt or innocence." *Id.* at 415. The District Court also stated that "she faces a trial on a different day before a different judge with a different lawyer; but for her to be in this courtroom could cause prejudice either to the United States or to the defense of your own client, and my judgment is that she should not be present." *Id.* at 416. Ms. St. Clair was therefore not permitted to watch the proceedings and Ms. Addison was not afforded a right to a public trial.

Throughout the proceedings the specific intent or the *mens rea* of Ms. Addison was not proven beyond a reasonable doubt. The Government failed in their attempt to prove that Ms. Addison knowingly embezzled funds from the Federal Government. As it will be shown, the Government, through their witnesses, failed to show that Ms. Addison had any knowledge that in taking loans she was violating the tribal policy or the federal statute.

STATEMENT OF THE FACTS

The Northern Arapaho Tribe, located on the Wind River Indian Reservation in Wyoming, is a federally recognized Indian Tribe. (RoA, Vol. 3, Trial Trans., p. 130) *5 The Northern Arapaho Business Council is the governing body duly elected to conduct business on behalf on the Northern Arapaho Tribe. *Id.* at 300. The Northern Arapaho Tribe receives funding pursuant

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to federal programs and other forms of federal assistance, including [Public Law 93-638](#) contract funding from the United States Department of the Interior's Bureau of Indian Affairs. *Id.* at 303. [Public Law 93-638](#), or the Indian Self-Determination and Education Assistance Act of 1975, authorizes the U.S. Department of the Interior, among other departments, to enter into contracts with federally-recognized Indian tribes. *Id.* at 354-372.

Contract No. CTC58T28104 was entered into between the Secretary of the Interior and the Northern Arapaho Business Council in July 1998. (RoA, Vol. 3 Trial Trans., pp. 228-230). The Northern Arapaho Nation Department of Social Services (NANDSS) contracts annually through the Bureau of Indian Affairs for the purpose of funding NANDSS's programs and operations. *Id.* at pp. 354-364. The NANDSS received federal assistance in excess of \$10,000 annually during the period beginning April 2004 through September 2007. *Id.* at pp. 615, 625.

Defendant George Moss (Moss) was the Executive Director of the NANDSS during the time period relevant to this case. *Id.* at 597. He was the supervisor of Defendant Melody St. Clair (Ms. St. Clair), Finance Administrator, and of Defendant Amanda Addison, a.k.a. Amanda Ortiz (Ms. Addison). *Id.* at 661. At all relevant times, Ms. St. Clair was the finance administrator and served as Ms. *6 Addison's direct supervisor. At all relevant times, Ms. Addison was a payroll clerk for NANDSS. (*See generally*, RoA, Vol. 3, Trial Trans.). Ms. Addison's duties included inputting NANDSS employees' time card information, processing their payroll, payroll advances, deductions, taxes and annual and sick leave. (RoA, Vol. 3 Trial Trans., p. 815).

Programs federally funded through [PL 93-638](#) contracts are required to follow federal guidelines set out in the 638 contract with regard to the funds. (RoA, Vol. 3 Trial Trans., p. 1107) No payroll advances may be paid out using federal funds. *Id.* at p. 234. The Northern Arapaho Tribe's Finance component, the Northern Arapaho Tribal Finance Office, had an internal policy allowing tribal employees to obtain employee loans and payroll advances. *Id.* at p. 345. The payroll advance policy was implemented on June 4, 2003, and limited advances to one (1) per calendar quarter, and to a maximum amount of \$300, *Id.* at 345-46. The advances were to be re-paid by the next bi-weekly pay period. *Id.* Such policy was entirely proper for tribal monies. *Id.* However, Moss allowed NANDSS employees to take payroll advances and loans from the federal funds provided to NANDSS through the [PL 93-638](#) contracts. *Id.* At p. 615. Moss also disregarded the Tribe's internal policy governing the frequency and amount of payroll advances and employee loans and permitted NANDSS employees to take advances and loans far in excess of the amounts allowed by the Northern Arapaho Tribe. *Id.*

*7 On December 23, 2006, the Joseph Eve accounting firm, hired by the Northern Arapaho Tribe to conduct necessary account recovery work, sent a letter to the Chairman of the Northern Arapaho Business Council (NABC) outlining preliminary findings. (RoA, Vol. 3 Trial Trans., p. 112). Preliminary indications were that the bulk of outstanding loans and advances out of federal funds had gone to three (3) employees of the NANDSS finance department: Ms. Addison, Ms. St. Clair, and April Red Cloud. *Id.* at 138. The NABC transferred tribal monies to repay the federal funds that had been loaned out to prevent an unfavorable audit and the potential loss of federal funding for the affected programs. *Id.* at 157-58. Ms. Addison received a total of \$82,902.30 in payroll advances and loans, which was the figure used to determine her relevant conduct. *Id.* at p. 1186.

Trial

At trial, the Government called seven witnesses to prove the charges against Ms. Addison. The first Government witness, Mr. Peter Magee, forensic accountant for Magee CPA & Associates, testified to Ms. Addison's balance owed from taking payday loans and advances. (RoA, Vol. 2 Trial Trans., p. 130). On cross-examination he admitted that hundreds of others in the Northern Arapaho Nation received loans and advances (*Id.* at 183); that Ms. Addison made no attempt to hide or conceal the fact that she was receiving loans and advances (*Id.* at 184); that *8 interest was accruing on said loans; and, that Ms. Addison had payments taken out of her paychecks as an attempt to pay back the loans. (*Id.* at 189). His testimony also indicated that George Moss was the one with signatory authority (*Id.* at 221). He also admitted that he had no knowledge of whether Ms. Addison had training on the [PL 93-638](#) indicated (*Id.* at 242), or whether Ms. Addison was told that taking loans was not permissible.

(*Id.* at 243). Therefore, this witness was unable to prove that Ms. Addison realized that she was taking federal funds and that she knowingly embezzled funds earmarked as federal funds. Rather, she was making payments towards the loans and interest was accruing, and she indicated that George Moss as her supervisor was permitting this to occur.

The next witness put on by the Government, Mr. James Loran, a former certified public account with Joseph Eve & Company, testified that it was his recommendation to terminate Ms. Addison for taling loan payments but that this recommendation was not followed by NANDSS. (RoA, Vol. 3, Trial Trans., pg. 316). He further testified that oniy Ms. St. Clair, not Ms. Addison was trained properly to realize this was not permissible (*Id.* at 317) and that George Moss had the authority to sign the checks. (*Id.* at 334). He also testified that Ms. Addison did not handle the register or ledger associated with the accounts (*Id.* at 343); that there was an actual tribal policy in place that did permit employee loans and advances, though that policy was not followed properly (*Id.* at 346); and, also furthered Mr. *9 Magee's testimony in that Ms. Addison was making repayments to the tribe for the loans and advances. (*Id.* at 352).

Ms. Rosella Morin, finance administrator for the Northern Arapaho tribe, then testified that Ms. St. Clair oversaw the finance department (*Id.* at 372), which was further overseen by George Moss (*Id.* at 373). Ms. April Spang, former secretary at NANDSS, testified that loans of these type were common among the tribe (*Id.* at 480); that employees had not been turned down for loans when requested (*Id.*); that Ms. Addison was not the person who approved the loans (*Id.* at 481); that Ms. Addison did incur interest charges and was making payments toward her balance (*Id.* at 482); and, that Ms. St. Clair gave the approval for these types of employee loans. (*Id.* at 492).

The Government subpoenaed Ms. Marliss Quiver, loan manager for the Northern Arapaho Tribe, to testify. Her testimony indicated that the tribal loan policy in place was not always followed (RoA, Vol. 3, Trial Trans., p. 569); that checks were received by NANDSS payroll to pay down the balances of Ms. Addison's loans(A/. at 575); and, further verified that indeed payroll deductions for these loans were being taken out of Ms. Addison's check. (*Id.* at 576).

Mr. George Moss, former director for NANDSS, also testified for the Government Mr. Moss admitted under oath that he did indeed sign all the checks (*Id.* at 607) and that he held a position of trust. (*Id.* at 613). He also indicated that *10 he relied on his finance administrator, Ms. St. Clair, to ensure checks were in order (*Id.* at 628); and that he did understand many of the checks written were for personal use for the employees requesting them. (*Id.* at 637). While Mr. Moss stated that he realized this was an illegal use of funds and at no time did he ever fail to approve a loan request from his subordinate, Ms. Addison. (*Id.* at 701).

Mr. Timothy Reed, special agent with the United States Department of the Interior, Office of Inspector General, testified that taking payday loans and advances was a violation of federal statute but was unable to indicate whether Ms. Addison knew these were federal funds or that she was violating a federal statute. (*Id.* at 730). Mr. Peter Brand, another agent with the Department of Interior, testified primarily based on a conversation he had with Ms. Addison where he indicated that she was unaware her loans came from federal dollars (*Id.* at p. 817); that there was no prohibition against her preparing checks - even for herself (*Id.* at 819); and, that all the checks were approved by Ms. Addison's supervisor. (*Id.* at 820).

SUMMARY OF THE ARGUMENT

Ms. Addison raises two issues in this appeal. First, Ms. Addison's Sixth Amendment right to a public trial was violated as a result of the District Court's *11 erroneous order precluding a member of the public from viewing the trial. The Court granted the Government's request to close the trial and exclude Ms. St. Clair from the proceedings without engaging in any Sixth Amendment analysis. Second, the Government's evidence was insufficient to convict her of Count 3 of the Indictment, embezzlement.

ARGUMENT

1. MS. ADDISON'S SIXTH AMENDMENT RIGHT TO A PUBLIC TRIAL WAS VIOLATED AS A RESULT OF THE DISTRICT COURT'S ERRONEOUS ORDER EXCLUDING A MEMBER OF THE PUBLIC FROM VIEWING THE TRIAL.

Standard of Review

The question of whether a constitutional violation has occurred is reviewed *de novo*. [United States v. Dowlin](#), 408 F.3d 647 (10th Cir. 2005 j,

A. The District Court Erroneously Granted the Government's Request to have a Member of the Public Excluded from the Court Proceedings without Engaging in a Sixth Amendment Constitutional Analysis.

The Sixth Amendment guarantees that “the accused shall enjoy the right to a speedy and public trial...”; [U.S. Const, amend. VI](#). Consequently, Ms. Addison is guaranteed by the Sixth Amendment a right to a public trial and by closing the trial to a member of the public, Ms. St. Clair, her constitutional rights were violated. The explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and public. [Waller v. Georgia](#), 467 U.S. 39, 46 (1984), Ms. Addison, as the accused, was entitled to have Ms. St. Clair in the courtroom as a member of the public.

In making a determination whether there was an infringement of the public trial right, we consider the interests identified by the Supreme Court which are protected by the Sixth Amendment right to a public trial. *See Waller*, 467 U.S. at 46; [GannettCo. v. DePasquale](#), 443 U.S. 368, 383 (1979). These include the opportunity of interested spectators to observe the judicial system, the improvement of quality of testimony, the inducing of unknown witnesses to come forward with relevant testimony, insuring that the trial judge and prosecutor perform their duties responsibly, and discouraging perjury. *Id.* Ms. St. Clair was simply an interested spectator that met the criteria set forth above. More importantly, the District Court failed to consider any of the above interests when it decided to close the hearing.

The United States and the District Court attempted to label Ms. St. Clair in many different ways in order to somehow justify her exclusion from the courtroom. The District Court first called her “an indicted co-defendant,” as if there were some exception in the Sixth Amendment for indicted co-defendants to be excluded from the courtroom. (RoA, Vol 3, Trial Trans., pg 414). The United States believed it was proper to exclude Ms. St. Clair because “she certainly could be a witness in her own case, and so she's going to be a witness in the same course of conduct and transaction in the exact same trial down the road.” *Id.* lines 18-21. Regardless of *13 the District Court's and the United States' attempts to couch Ms. St. Clair's status as something other than a member of the public, she was nothing more than an interested spectator. Consequently, she had a right to observe the trial proceedings and, most importantly, Ms. Addison had a constitutional right to her presence.

The settled rule of the federal courts is that a showing of prejudice is not necessary for reversal of a conviction not held in public. [Levine v. United States](#), 362 U.S. 610, 627 n. 1, 80 S.Ct. 1038 n. 1, 4 L.Ed.2d 989 (1960). Requiring a defendant to prove actual prejudice would deprive most defendants of the right to a public trial. [Nieto v. Sullivan](#), 879 F.2d 743, 753 n. 15 (10th Cir. 1989)(“We are persuaded that once a violation is found of a defendant's right to a public trial, the defendant should not be required to prove prejudice...”), Improper denial of a criminal defendant's Sixth Amendment right to a public trial ordinarily constitutes reversible error; the Defendant need not show any resulting prejudice from the closure. [Waller](#), 467 U.S. at 49 n. 9. Therefore, Ms. Addison need not show prejudice. Her rights were violated in the closure of her trial to a member of the public and her conviction must be reversed.

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The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure *14 order was properly entered. *Nieto v. Sullivan*, 879 F.2d at 752. Here, the entire open trial issue takes up only four pages of transcripts. (RoA, Vol. 3, Trial Trans., pp. 413-16). Nowhere in those four pages does the District Court make any findings that are specific enough for this Court to review its decision to close the trial as to Ms. St. Clair. In fact, even a cursory review of the record shows that the District Court and the United States were not at all concerned about Ms. Addison's constitutional rights to an open trial. Rather, they focused on whether Ms. St. Clair would somehow gain some advantage in her future case. *Id.*

Four criteria must be satisfied to overcome the presumption of openness in a public trial guarantee: (1) “the party seeking to close the proceeding must advance an overriding interest that is likely to be prejudiced”; (2) “the closure must be no broader than necessary to protect that interest”; (3) “the trial court must consider reasonable alternatives to closing the proceeding”; and (4) the trial court “must make findings adequate to support the closure.” *United States v. Gupta*, 650 F.3d 863 (2nd Cir. 2011)(quoting *Waller*, 467 U.S. at 48). In the case at hand, the Government did not articulate an overriding interest likely to be prejudiced, only merely that it wasn't right that Ms. St. Clair would have an unfair advantage in her future case. Of course, even the District Court recognized that Ms. St. Clair would have access to the transcripts of Ms. Addison's case, so it is unclear what additional “advantage” would be gained by allowing Ms. St. Clair to sit in the gallery during *15 Ms. Addison's trial. (RoA, Vol. 3, Trial Trans., pg. 421).

Further, reasonable alternatives were not made before closing the proceedings to Ms. St. Clair in violation of Ms. Addison's rights, nor did the judge make any narrow, specific findings to support this closure. The District Court's failure to make adequate findings is telling. Not only does it indicate that there were truly no lawful reasons for closing Ms. Addison's trial, but it also makes it impossible for this Court to determine what, if any, balancing test took place and whether the other three prongs of *Waller* were met. In sum, whatever findings may have been made were certainly not specific enough to ensure that the trial's closure did not violate Ms. Addison's Sixth Amendment Right to a public trial.

B. The Closure of the Trial to a Member of the Public Gives Rise to a Structural Error in the Trial Proceedings

When the District Court closed Ms. Addison's trial, she properly objected, and correctly stated the constitutional basis for her objection. The District Court's deprivation of Ms. Addison's right to a public trial constitutes structural error requiring automatic reversal.

The Supreme Court has only deemed errors structural in a “very limited class of cases.” *United States v. Solon*, 596 F.3d 1206, 1211 (10th Cir. 2010) (quoting *Rose v. Clark*, 478 U.S. 570, 577-78 (1986); *Johnson v. United States*, 520 U.S. 461, 468-69 (1997)). These include: a total deprivation of the right to counsel; the lack of *16 an impartial trial judge; the unlawful exclusion of grand jurors of defendant's race; a deprivation of the right to self-representation at trial; the denial of the right to a public trial; and an erroneous reasonable-doubt jury instruction. *See Id.* For Ms. Addison, the District Court committed structural error by violating her Sixth Amendment right to a public trial.

Although most constitutional errors can be harmless, some are so offensive to our judicial system that they require automatic reversal. *Arizona v. Fulminate*, 499 U.S. 279, 306-309 (1991). “These violations, termed ‘structural errors,’ involve defects in the ‘trial mechanism’ and affect ‘the framework within which the trial proceeds’ ‘from beginning to end.’ ” *United States v. Lott*, 433 F.3d 718, 722 (10th Cir. 2006)(quoting *Fulminate*, 400 U.S. at 309-10). “Structural errors deprive defendants of ‘basic protections’ without which ‘a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair.’ ” *Solon*, 596 F.3d. at 1211. “A defining feature of structural error is that the resulting unfairness or prejudice is necessarily unquantifiable and indeterminate, such that any

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inquiry into its effect on the outcome of the case would be purely speculative.” *Id.* The District Court's error here was structural, thereby obviating any need to quantify its effect on the outcome of Ms. Addison's case.

ARGUMENT

***17 III. THE GOVERNMENT'S EVIDENCE WAS INSUFFICIENT TO SUPPORT MS. ADDISON'S CONVICTION BEYOND A REASONABLE DOUBT.**

Standard of Review

To sustain a criminal conviction, this Court reviews sufficiency of the evidence *de novo*. *United States v. Stiger*, 413 F.3d 1185, 1194 (10th Cir. 2005); *United States v. Hanzlicek*, 187 F.3d 1228, 1239 (10th Cir.1999). The evidence supporting the conviction must be substantial and do more than raise a suspicion of guilt. *United States v. McKissick*, 204 F.3d 1282 (10th Cir. 2000) (citing *United States v. Taylor*, 113 F.3d 1136, 1144 (10th Cir. 1997)). In conducting this review this Court “may neither weigh conflicting evidence nor consider the credibility of witnesses.” *United States v. Pappert*, 112 F.3d 1073, 1077 (10th Cir.1997) (quotation marks and citations omitted). In weighing sufficiency of the evidence in support of a conviction, this Court must determine whether the evidence, if believed, would be sufficient to prove the defendant's guilt beyond a reasonable doubt. *United States v. Delgado-Urbe*, 363 F.3d 1077, 1081 (10th Cir. 2004).

A. The Government's Witnesses' Testimonies Were Inadequate to Support Ms. Addison's Requisite Specific Intent on the Embezzlement Count.

Ms. Addison's conviction must be overturned because the United States relied wholly on the testimony of witnesses who was unable to prove the requisite *18 specific intent on the part of Ms. Addison needed to sustain the count of embezzlement. The instructions given to the jury stated that it must be proved beyond a reasonable doubt that the Defendant did *knowingly and intentionally* steal, embezzle or otherwise without authority knowingly convert or intentionally misapply property (emphasis added)(RoA, Vol. 3, Trial Trans., p. 1106), The Government's evidence was not sufficient to sustain a conviction of embezzlement based on the required *mens rea*.

For example, none of the testimony indicated that Ms. Addison had been told until after the fact that taking the payday loans was not permissible nor that federal dollars were being used to pay these loans. (RoA, Vol. 3, Trial Trans., p. 242) The testimony also indicated that Ms. Addison was paying the loans back by having payments deducted from her pay. (RoA, Vol. 3, Trial Trans., p.189, 352, 482, 575)

In *United States v. Oldbear*, the Defendant argued, unsuccessfully, that the evidence was insufficient to prove she had the requisite intent to commit embezzlement. 568 F.3d 814, 823 (10th Cir. 2009). The Court in that case found that the fact that the Defendant testified that she used deception in taking funds to avoid the suspicion of her fellow tribe members resulted in the evidence presented at trial being sufficient to sustain a conviction for embezzlement. *Id.* at 824.

The facts in the case at hand are substantially different because Ms. Addison never engaged in deception in taking payday loans and never attempted to hide the *19 fact that she did indeed take payday loans from her employer. *See generally* *kl.* at 825. (RoA, Vol. 3, Trial Trans., p. 184). Furthermore, in *Oldbear*, the evidence was insufficient to establish that it was a habit of the tribe to pay for personal expenses. *See generally* *Id.* at 824. In contrast, the witnesses in Ms. Addison's trial did indicate that this taking of payday loans was habit of tribal employees. (RoA, Vol. 3, Trial Trans, pp. 183, 346, 480, 481, 569).

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Analyzing the facts presented in *Oldbear* compared to the facts presented here, demonstrate that the Government failed to offer sufficient evidence to sustain a conviction for embezzlement and that no reasonable jury could have found Ms. Addison guilty of the crime.

CONCLUSION

Ms. Addison's Sixth Amendment guarantee of a public trial was violated. The District Court closed her trial and did so without making sufficient Findings for this Court to review whether its closure was justified. Even a cursory review of the record demonstrates that both the District Court and the United States were more concerned for Ms. St. Clair's future trial than Ms. Addison's constitutional rights. This constitutional violation was structural - consequently, the conviction must be reversed.

Even if this Court determines that the District Court did not commit structural error, her conviction still cannot stand. No reasonable jury could have found *20 beyond a reasonable doubt that Ms. Addison possessed the requisite *mens rea* to sustain a conviction of embezzlement. The United States presented no evidence that could even be construed as proving Ms. Addison knowingly and intentionally embezzled.

For the foregoing reasons, Ms. Addison's conviction must be reversed.

Respectfully submitted this 25th day of May 2012.

*21 STATEMENT OF COUNSEL AS TO ORAL ARGUMENT

Based on the nature of the issues, counsel believes oral argument may assist this Court with its decision.

Appendix not available.

End of Document

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