UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-60170-CR-SCOLA

UNITED STATES OF AMERICA

vs.

ALEXANDRA ACOSTA,

Defendant.
______________________________________/

UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTIONS FOR JUDGMENT OF ACQUITTAL AND NEW TRIAL

Introduction

This Court should deny Defendant Alexandra Acosta's ("Acosta") Motion for Judgment of Acquittal ("JOA") and Motion for New Trial, ECF Nos. 99–100, because the jury's verdict is supported by the evidence and this Court's rulings *in limine* and during trial regarding the admissibility of the IRS Audit Evidence (GX 203–203h), BSO Policy Evidence (GXs 301–306), and the nature of Acosta's employment as a law enforcement officer were correct. *See* ECF No. 58 (Omnibus Order).

Summary of Facts Proved at Trial

Following a three-day trial, the jury returned a verdict finding Acosta guilty of four counts in connection with the $20,180 Paycheck Protection Program ("PPP") loan she received in her name. ECF No. 70. Contrary to defense counsel's argument in the Motion for JOA, Count 1 (18 U.S.C. § 371 general conspiracy), related to the entire conspiracy to make false statements to the Small Business

Administration ("SBA"), including the loan application and forgiveness, ECF No. 23 at ¶¶ 18–26 (Superseding Indictment), Counts 2 and 3 (15 U.S.C. § 645(a) false statement to SBA), applied to the loan application and forgiveness application (respectively), and Count 4 (18 U.S.C. § 1343 wire fraud) applied to the loan application. The Government's admitted Exhibits are filed with the Court. ECF No. 81. The Court's instructions to the jury are not at issue. ECF No. 68.

As summarized below, substantial evidence presented during the government's case-in-chief proved beyond a reasonable doubt that Acosta had knowingly, and with the intent to defraud *as to the wire fraud count*, submitted *or caused* to be submitted the PPP loan application and forgiveness application that contained false information about her 2019 gross income for real estate side-work and her use of the loan proceeds. The defense's case did not change this. Indeed, the defense's case consisted of Acosta's self-serving testimony that she had "no idea" what her coconspirator, Vilsaint St Louis, had done regarding the loan and loan forgiveness. ECF No. 107 at 24 (Acosta). Twelve jurors did not believe her—and for good reason.

The evidence admitted during the United States' case-in-chief showed that Acosta was a full-time Broward County Deputy Sheriff (GX 300) during the relevant period with $13,904 income as a real estate broker in 2019 (GXs 201, 400–01), $0 as a real estate broker in 2020 (GX 202; ECF No. 108 at 14 (Crevier)), and no income as a real estate broker prior in 2021 prior to applying for the loan in February 2021 and its forgiveness in April 2021 (ECF No. 108 at 15–16; GX 402). Her wife and mother both worked under the same real estate firm, Valordog LLC. ECF No. 108 at 8–9, 14–15. This Court admitted the BSO Off-Duty Employment Policy that required all BSO employees to seek and receive BSO's approval for any off-duty employment, including self-employment. GX 301–03. The off-duty employment approval "sunset" every year and employees had to seek reapproval. *Id.* Acosta completed the forms for 2016, 2017, and 2018, but not for 2019, 2020, or 2021. GX 304–306; ECF No. 109 at 20–21 (Hely).

This Court also admitted Acosta's Form 1040 U.S. Individual Income Tax Returns for the years 2018, 2019, 2020, and the IRS Audit Evidence. (GXs 200-203h). And a witness from the IRS provided testimony about these records. Acosta objects to the IRS Audit Evidence.

The IRS audit of Acosta's 2018 and 2019 tax returns showed that the IRS contacted Acosta in December 2020 about the issues with her 2018 and 2019 tax returns. Acosta was interviewed on December 17, 2020, via telephone. GX 203b. The IRS records reflect that Acosta said she makes an appointment with St Louis as her tax preparer and that she takes him her tax forms and some receipts for purchases, credit card statements, gas receipts, supplies for her home office, etc. for the Schedule C expenses. *Id.* Acosta stated that she and St Louis figured out the expenses together. *Id.* Acosta stated that St Louis analyzed it pretty well because she is there for a while. *Id.* Acosta added that the figure she puts on the Schedule C is "pretty close to what she has in her head" and that she sat with St Louis for 2018 and 2019 returns. *Id.* She also said that St Louis went over the returns with her each year. *Id.* After Acosta explained some expenses on her 2018 Schedule C, she reiterated that all figures and expenses on the Schedule C were information that she and St Louis came up with together—Acosta did not leave it all to him. *Id.*

On January 21, 2021—about 11 days before the PPP loan application was started—the IRS mailed a letter to Acosta and St Louis with an Examination Change Report that reflected $12,675.55 and $5,816.00 in taxes and penalties ($18,491.55 total) owed by Acosta for overreporting business expenses in 2018 and 2019 respectively. GX 203c–d. During the audit, the IRS interacted with both Acosta and St Louis as Acosta's limited power of attorney to discuss those tax years. GX 203a.

On February 1, 2021, Acosta and St Louis jointly spoke to the examiner about the issues with Acosta's 2018 and 2019 tax returns. GX 203a. That same day, around 12 pm, Acosta and St Louis created the online application for a PPP loan. The application was created electronically using Acosta's Gmail account and signed through a DocuSign link sent to Acosta's Gmail account (GX 601, 603–05). IP records confirm that the application was created on February 1, 2021, at Victory Taxes (GXs 100, 601, 602, 603).

On February 3, 2021, Acosta and St Louis finalized the application for the $20,180 loan amount for a sole-proprietor under the PPP using materially[1] false information about Acosta's average monthly payroll for real estate in 2019, i.e., $8072 per month, and fraudulent representations about the purpose of the loan, i.e., payroll costs, rent/mortgage interest, utilities, covered operations expenditures, covered property damage, covered supplier costs, and covered worker protection expenditures (GXs 100, 604–05). They also submitted a false 2019 Form 1099-MISC, Miscellaneous Income listing $103,255 in nonemployee compensation from payer Valordog, LLC, and a false 2019 IRS Form Schedule C-Profit or Loss From Business (Sole Proprietorship) listing a business name of Valordog, LLC with purported gross income of $103,255. GX 101.

Copies of the loan application and promissory note, containing the false statements, i.e., evidence of fraud, were contemporaneously provided to **Acosta's** Gmail account (GX 604). As a result of the fraudulent representations in the application, the SBA and its approved lender approved and funded the $20,180 forgivable loan under the PPP program.

The *same day* that the money hit her bank account, Acosta tried to execute a $19,000 transfer of the loan proceeds into her Robinhood Markets Inc. trading account (GX 504–508)—a round number that is coincidentally just above her outstanding liability to the IRS at time of $18,491.55. Ultimately, $10,000

[1] Materiality was only required to prove only Count 4—wire fraud. Counts 1–3 did not require materiality of the false statement.

cleared on February 10 (GXs 506, 508) and it was immediately used to purchase $8,000 in shares of one publicly traded stock. (GX 506, 508). The rest of the funds were used on general personal expenses, including paying off credit card debt. (GX 500a).

The evidence also showed that Acosta herself linked the audit with the PPP loan in an email to St Louis on February 16, 2021, wherein she stated: "St Louis, Please do not bring up anything about **my IRS case or the loan** to my wife. She does not know about it and I don't want to stress her out. Thanks!" GX 608a. That was the same day that Acosta's wife signed her income tax return for the year 2020 using Victory Taxes—i.e., her wife planned to have her taxes done by the same person who purportedly screwed up on Acosta's tax returns *for two years*, but Acosta did not want to warn her wife of this potential pitfall. ECF No. 107 at 42–44.

The evidence showed that following the Acosta and St Louis's joint call with the IRS on February 1, 2021, the same day they began the application for the PPP loan, the IRS kept the case open and Acosta continued to try to lower her liability even up until March 29, 2021, when she sent a letter to the IRS switching her story and pushing the blame on Defendant St Louis. GX 203g. This led to a corrected report, signed by Defendant Acosta on April 13, 2021, that removed the penalties and finalized the amount owed to $14,038.69. GX 203h. Of course, Acosta had spent most of the PPP funds by this time.

In continuation of the conspiracy, on April 21, 2021, one month after her March 29, 2021 letter to the IRS stating that St Louis effectively went rogue on her prior tax returns and included misinformation without her knowledge (GX 203g), Acosta freely provided St Louis with her personal Gmail login credentials to access the loan servicer's online portal to apply for her PPP loan forgiveness (GX 611). The forgiveness application included a false affirmation that Acosta used the loan on the eligible expenses under the PPP (GX 150)—of course they were not because (1) you can't spend something on qualified expenses that you weren't entitled to have in the first place; and (2) the funds were invested in the stock market or used to pay off personal credit debt. On June 11, 2021, the SBA forgave the loan totaling $20,180 plus interest. GX 154.

Acosta's Testimony

Acosta testified that she did not know her PPP loan application, and the accompanying documents, contained false information. Acosta's credibility was impeached by, among other things, that (1) she withheld the existence of the tax audit during her post-charging proffer with the United States and testified that it was not relevant information; (2) she maintained that she did not have any reason not to trust St Louis—despite the ongoing audit that was front and center in her life at the time of the PPP loan application; (3) she compared withholding information about the audit and the PPP loan from her wife to not telling her about her energy drink purchases; and (4) she could not explain why her tax preparer would commit a felony for her without any financial or other benefit, and have the evidence of that crime sent directly to Acosta (a sworn law enforcement officer).

Argument

I. Motion for JOA

Acosta accurately represents the standard of review for a Rule 29 motion as stated in *United States v. Maxwell*, 579 F.3d 1282, 1299 (11th Cir. 2009)—i.e., reviewing the evidence *de novo* in a light most favorable to the United States, resolving all conflicts for the United States, drawing all reasonable inferences that tend to support the prosecutions case, and assuming that the jury's credibility determinations support the verdict. *Id.* Pursuant to Rule 29, if a court reserves ruling on a motion for JOA, "it must decide the motion on the basis of the evidence at the time the ruling was reserved." Fed. R. Crim. P. 29(b). Here, that is after the defense's case.

A. Counts 1 through 3—Conspiracy to Violate 15 U.S.C. § 645(a) (Loan Application and Forgiveness Application)

Acosta argues, incorrectly, that Count 1 omits the false statement to the SBA in the loan application. However, the general conspiracy allegations are for violating 15 U.S.C. § 645(a)—**false statements to the SBA**—as clearly described in the Superseding Indictment, ECF No. 23 at ¶¶ 18–26, and the allegations contained therein are expressly related to both the loan application and the forgiveness application. Both applications were submitted using SBA forms, under an SBA program that had to utilize third party lenders to facilitate the relief. GXs 100, 150; ECF No. 104 at 7, 24–25 (Harris). And to the extent there were third parties involved in the lending and processing, the PPP loan was fully guaranteed by the SBA to the approved lenders. ECF No. 104 at 8. Acosta also ignores the substance of the jury instructions, including “General Conspiracy Charge” and “False Statements to the SBA.” ECF No. 68 at 10–12. Accordingly, Acosta’s first premise for JOA is flawed and this Court should reject her interpretation of Counts 1–3.

As to Count 1, the jury was provided the standard instruction for conspiracy—an agreement of two or more people to commit an unlawful act. The Government did not have to prove that the members of the conspiracy planned together **all** of the details of the plan or the “overt acts.” The question is whether the evidence was sufficient for the jury to determine that Acosta knew the unlawful purpose of the plan and that she willfully joined in it.

The jury had evidence of an established relationship between Acosta and St Louis, including dealings that resulted in not one, but two years of tax returns that had to be audited for substantial overreporting of expenses. They saw evidence of how quickly St Louis acquiesced to not telling Acosta’s wife about the tax case and the PPP loan. GX 608a. No hesitation in his response at all. This was evidence of two people that have an agreement—a conspiracy—and they had no issue hiding their secret even from the one person Acosta should trust the most. Furthermore, Acosta and St Louis were together on the day they spoke to the IRS about the tax lien and began the fraudulent PPP loan application.

The jury was instructed that the element for false statements to the SBA were: "(1) the defendant knowingly made any false statement; and (2) the false statement was for the purpose of obtaining for herself or for any applicant any loan or for the purpose of influencing in any way the action of the SBA."

The jury was also instructed that for "knowledge," it is enough that the defendant was aware of a high probability that the fact existed, that is, she had every reason to know but deliberately closed her eyes. They were also instructed that negligence, carelessness, or foolishness is not enough to prove that Acosta knew about the scheme to defraud or the false statements. ECF No. 68 at 16.

The jury was also instructed on aiding and abetting, i.e., any act a person can do may be done by directing another person to do it. ECF No. 68 at 17.

The evidence at trial was more than sufficient to support the jury's verdict that Acosta knew that she wasn't entitled to a $20,180, forgivable, *Paycheck* Protection Program loan and she used St Louis to do the dirty work. The jury also understood that when Acosta provided her Gmail login credentials to St Louis for the forgiveness application, it was all a continuation of the same plan to get the loan she was not entitled to and get it forgiven so she didn't have to pay it back. Acosta was an employed, well-educated, law enforcement officer at the time she applied for the fraudulent **Paycheck** Protection Program loan. The jury did not believe her story that she thought it was a stimulus or that she had no idea what St Louis was doing for her. And this Court should weigh all credibility determinations in favor of the verdict.

B. Count 4—Wire Fraud (Loan Application)

The jury was instructed on the following elements of wire fraud:

(1) The Defendant knowingly devised or participated in a scheme to defraud someone by using false or fraudulent pretenses, representations, or promises;
(2) The false pretenses, representations, or promises were about a material fact;
(3) The Defendant acted with intent to defraud; and
(4) The Defendant transmitted or cause to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

Acosta does not dispute that a scheme to defraud existed as to the fraudulent PPP loan, that the false representations about earnings in the PPP loan were material, or that there was an interstate wire with the funds transfer to Acosta's bank account (GX 001 Stipulation). She contends, instead, that St Louis had a scheme to defraud *for her*, without her knowledge, and for only her benefit—felony pure *gratis*. However, the circumstances of the loan application make it clear what took place, and the jury understood the evidence as argued during closing. Acosta's theory of defense is nonsensical.

As Acosta also argued to the jury, Acosta continues to cite the IP address as a basis for acquittal. But it was the Government that introduced the Docusign evidence with IP address information into evidence during its case-in-chief (GX 602). This is because it is consistent with the conspiracy and the Government's theory of the case. The IP address used for the loan application was linked to Victory Taxes, the place where Acosta was on the same day she was speaking with the IRS with St Louis about her tax liability; the same day on which they applied for the loan. Acosta testified that she gave St Louis her personal email login credentials so he could do it all. The jury either did not believe this at all or determined that such behavior is indicative of Acosta's criminal intent and knowledge that the application was illegal—that she was not entitled to a business loan to protect her paycheck. As argued during closing, Acosta's theory is that St Louis made felony false representations in a loan application for Acosta, a sworn law enforcement officer, and have evidence of that crime sent directly to Acosta's Gmail account. And he was doing this without her knowledge and with no financial or personal benefit. The jury correctly dismissed this defense and determined that Acosta perjured herself on the witness stand. This Court should weigh all credibility determinations in favor of the Verdict and this Court should deny the Motion for JOA because all the evidence, taken in a light most favorable to the Government, supports the Verdict.

II. <u>Motion for New Trial</u>

Rule 33 of the Federal Rules of Criminal Procedure empowers a district court to vacate a judgment and grant a new trial if the interest of justice requires. Fed. R. Crim. P. 33(a). The decision whether to grant or deny such a motion rests in the sound discretion of the trial court. *United States v. Cox*, 995 F.2d 1041, 1043 (11th Cir. 1993). "While the district court's discretion is quite broad, there are limits to it. The court may not reweigh the evidence and set aside the verdict simply because it feels some other result would be more reasonable. The evidence must preponderate heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand." *Id.* (quoting *United States v. Martinez*, 763 F.2d 1297, 1312–13).

A. The IRS Audit Evidence was properly admitted as probative of Acosta's knowledge, intent, motive, and opportunity, and its probative value was not outweighed by any unfair prejudice.

The IRS Audit Evidence was properly admitted. The 2018–2019 tax returns at issue were relevant to the false statements about earnings in the loan application. These returns were prepared with the help of St Louis, the coconspirator, and person who also helped with the fraudulent PPP loan at issue. The audit was for the 2018 and 2019 tax years and resulted in a January 21, 2021 Report of Income Tax Examination Changes reflecting that Acosta owed the IRS $18,491.55—just two weeks before Acosta fraudulently applied for the $20,180 PPP loan. Moreover, the audit records showed that Acosta and St Louis spoke with the auditor together about the $18,491.55 on the same day they started the application for the fraudulent loan.

The timing of the IRS audit of Acosta's 2018 and 2019 tax returns, which were prepared with her co-conspirator St Louis, is such that it established a clear motive for the defendants to seek a fraudulent loan. Indeed, the amount Acosta was told she owed was incredibly close to the amount Acosta would now get through the PPP program. Acosta herself linked the two actions together in an email to St Louis on February 16, 2021, wherein she stated: "St Louis, Please do not bring up anything about **my IRS case or the loan** to my wife. She does not know about it and I don't want to stress her out. Thanks!" GX 608a. That was the same day that Acosta's wife signed her income tax return for the year 2020 using Victory Taxes—i.e., her wife planned to have her taxes done by the same person who purportedly screwed up on Acosta's tax returns *for two years*, but Acosta did not want to warn her wife of this potential pitfall. ECF No. 107 at 42–44. Twelve jurors knew why. The jury knew that Acosta was complicit in everything and did not want her law enforcement wife to know.

Furthermore, the IRS Audit Evidence cut against any potential good faith defense as to willfulness or intent to defraud of Counts 1 and 4 (respectively) because it strained credulity that during a period where Acosta was being audited for tax returns done with the help of St Louis, she would then blindly rely on St Louis on two more formal submissions to the United States regarding a $20,180 forgivable business loan with a promissory note.

And though the existence of an IRS audit could be cast as prejudicial, here, the timing, impact, and parties involved in that audit were so probative of the motive, knowledge, opportunity, and intent that any prejudice does not substantially outweigh the probative value. Accordingly, this Court's rulings as to admissibility of the evidence was correct and this Court should deny the Motion for New Trial.

B. The BSO Policy Evidence was properly admitted as probative of Acosta's knowledge and intent and its probative value was not outweighed by any unfair prejudice.

The BSO Policy Evidence was not unduly prejudicial. Evidence of Acosta's prior compliance and then cessation of reporting the employment was not offered to show that she violated a policy in 2019, 2020, or 2021, rather, it was relevant evidence that the Court admitted at trial because it is probative of whether Acosta could have believed that she was entitled to the $20,180 PPP loan for a sole proprietor when she did not consider her outside employment significant enough to report as she had previously done, i.e., knowledge and intent.

The United States never argued that Acosta violated the BSO Off-Duty Employment Policy by not reporting off-duty employment for the year 2019, 2020, or 2021; rather, the United States argued that Acosta did not report any off-duty employment to BSO for those years because Acosta knew that real estate side hustle was *de minimis*, i.e., not worth reporting as off-duty employment, and thus Acosta knew she was not entitled to a $20,180, forgivable PPP loan. *See* ECF No. 111 at 9 (Closings).

Accordingly, this Court should deny the Motion for New Trial on this ground.

C. Evidence of Acosta's employment as a deputy sheriff was properly admitted because it was relevant to the false statement in the loan application, the context of the conspiracy, Acosta's mens rea, and refutes Acosta's defense that St Louis did it all without her knowledge.

The Court should deny the motion as to evidence of Acosta's employment as a law enforcement officer. The argument is spurious and remains unsupported by any case law. Acosta's status as a deputy sheriff during the relevant period is probative of her knowledge and intent—i.e., it establishes her state of mind at the time of the alleged crimes and throughout the conspiracy and provides context to her decisions. The evidence is only prejudicial because any evidence of guilt is prejudicial to a defendant. Her position as a deputy sheriff is simply who she is and who she was at the time of the crime. Circumstances matter, especially in fraud cases where the elements involve getting into the defendant's mind at the time of the crime. And parsing out Acosta's employment from the presentation of the case, including the BSO Policy Evidence, income, and full-time employment, would have been incredibly confusing to a jury. This Court did not err.

Conclusion

This Court should deny Acosta's Motions for JOA, ECF No. 99, and New Trial, ECF No. 100, because the evidence taken in a light most favorable to the United States supports the verdict and this Court's evidentiary rulings were legally correct. Even if the Court's prior rulings were legally incorrect (and they are not for all the reasons addressed above), they did not cumulatively inject unfair prejudice as to deprive Acosta a fair trial. In short, this is not a case where the evidence "preponderates heavily against the verdict" such that it would be a miscarriage of justice to let the verdict stand. *Cox*, 995 F.2d at 1043.

Respectfully submitted,

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