U.S. Department of Justice

United States Attorney
Eastern District of New York

FTB:CWE/AA/JB
F. #2020R00955

271 Cadman Plaza East
Brooklyn, New York 11201

June 16, 2024

By E-mail and ECF

The Honorable Frederic Block
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Anuli Okeke
Docket No. 22-CR-20 (FB)

Dear Judge Block:

The government writes to highlight a dispute likely to arise during the next government witness. The government intends to introduce the defendant's own Economic Injury Disaster Loan ("EIDL") application and evidence of its falsity. See Gov. Exs. 344-345, 308B. The defense has indicated that it intends to object—notwithstanding the fact that defendant's EIDL application is already in evidence by stipulation. Because the indictment charges the defendant with defrauding the U.S. Small Business Administration ("SBA"), and because the trial evidence showed that the defendant and others sought to defraud the SBA's pandemic assistance programs, evidence of the defendant's own fraudulent SBA pandemic application is probative and should be admitted.

"[E]vidence of criminal behavior may be admissible as direct evidence of the crime charged 'if it arose out of the same transaction or series of transactions as the charged offense, if it is inextricably intertwined with the evidence regarding the charged offense, or if it is necessary to complete the story of the crime on trial.'" United States v. Hsu, 669 F.3d 112, 118 (2d Cir. 2012) (quoting United States v. Carboni, 204 F.3d 39, 44 (2d Cir. 2000)). Evidence of other acts "may be admitted to provide the jury with the complete story of the crimes charged by demonstrating the context of certain events relevant to the charged offense." United States v. Inserra, 34 F.3d 83, 89 (2d Cir. 1994) (citations omitted); see also United States v. Gonzalez, 110 F.3d 936, 941 (2d Cir. 1997) ("To be relevant, evidence need only tend to prove the government's case, and evidence that adds context and dimension to the government's proof of the charges can have that tendency. Relevant evidence is not confined to that which directly establishes an element of the crime.").

Here, the defendant's EIDL application and evidence of its falsity are admissible because they are "inextricably intertwined with the evidence regarding the charged offense." Hsu, 669 F.3d at 118. In this case, the defendant is charged with scheming to defraud the U.S. Small Business Administration between March and August 2020. See generally Indictment, ECF No. 12. The government should be permitted to admit the defendant's EIDL application to the U.S. Small Administration. The EIDL application is dated May 29, 2024 (i.e., within the charged time period) and makes false representations about the defendant's company in order to fraudulently obtain an EIDL advance of $1,000. Accordingly, the defendant's EIDL application and evidence of its falsity is inseparable from the charged offense, since it involves the same type of fraud (pandemic loan), against the same victim (the SBA), during the same time period (summer of 2020). See United States v. Nektalov, 325 F. Supp. 2d 367, 370 (S.D.N.Y. 2004) ("Because the proffered testimony relates to similar transactions with the same CW prior to the charged conspiracy, there is a strong argument that the evidence arises from the same series of transactions as, and is necessary to complete the story of, the charged conduct.").

The EIDL application and its falsity are also admissible because the defendant has disputed her knowledge of fraud occurring at the 125th Street branch of Popular Bank. Thus, the defendant's own knowing submission of false applications for SBA money is highly probative. United States v. Garnes, 102 F.4th 628, 639 (2d Cir. 2024) (reversing district court exclusion of charged threats because, inter alia, of the "light they shed on [the defendant's] intent"); United States v. Inserra, 34 F.3d 83, 89 (2d Cir. 1994) (admitting prior misrepresentations of the defendant where defendant put in issue his state of mind in his opening statement).[1]

For the reasons given above, the government respectfully moves to admit the defendant's fraudulent EIDL loan and evidence of its falsity. See Gov. Exs. 344-345, 308B.

Respectfully submitted,

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By: /s/ Adam Amir
Chand Edwards-Balfour

[1] To the extent, however, that the Court concludes that the above-referenced evidence is not inextricably intertwined with or arises out of the same transaction as the charged crimes, the government moves in the alternative to admit such evidence pursuant to Rule 404(b). The government previously gave the defense a Rule 404(b) notice, and the defense never moved in limine to exclude such evidence. The defendant's own fraudulent EIDL application is relevant for non-propensity reasons, namely her motive, intent, knowledge, and absence of mistake. See Fed. R. Evid. 404(b).

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GLENN S. LEON
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By: /s/ ______________________
Jennifer Bilinkas
Trial Attorney

cc: Clerk of the Court (FB) (by ECF)
Defense counsel (by Email)