IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA,

PLAINTIFF,

V. CASE NO.: 2:24-cr-00192

KISHA SUTTON,

DEFENDANT.

DEFENDANT'S MOTION TO DISMISS COUNT ONE FOR LACK OF VENUE

Now comes the Defendant, Kisha Sutton, by and through counsel, Connor Robertson, and respectfully moves this Honorable Court to Dismiss Count One of the Defendant's Superseding Indictment, charging the Defendant Conspiracy to commit "Bank Fraud" in violation of Title 18 U.S.C. §1349 as the Government cannot establish Venue in the Southern District of West Virginia. In support thereof, the Defendant states as follows:

Count One

This is a fraudulent scheme prosecution with a very simple theory: Kisha Sutton prepared and submitted PPP Loan applications containing false information of her acquaintances in order to receive money from a bank or other entities which qualify as financial institutions under federal law. In Count One of the Superseding Indictment the Government has alleged that Ms. Sutton, from April, 2021 and continuing until July, 2021, conspired with SHAMISE WRIGHT, CYLENA SUTTON, RAHMEL MEEKS, WILLIAM POWELL, DAMISHA BROWN, JASMINE SPENCER, AND LYDIA SPENCER to knowingly and intentionally commit bank fraud. *See Sup. Indictment, para. 20.* The acts of the conspiracy are set forth in paragraphs 22 - 28 as summarized as follows:

1. Kisha Sutton caused the creation and submission of PPP Loan Applications on the others behalf with their authorizations in exchange for payment from the fraudulent PPP loan proceeds. *Id. at 22.*
2. After the PPP loans were funded, the others paid Kisha Sutton up to 25 percent of the total funded amount of the PPP loans for her assistance. The co-conspirators kept the remaining payments. *Id. at 26.*

Importantly, the Indictment fails to indicate where these acts occurred within those paragraphs. In paragraphs 8 through 18, the Superceding Indictment identifies each co-conspirator, their residence, and how each individual participated in the alleged conspiracy; however, none of these paragraphs set forth where each individual act took place. These paragraphs fail to identify where each party was when they allegedly either authorized Ms. Sutton to file fraudulent PPP loans with their individual information or ultimately received funding. Paragraph 16-17 simply identifies the Financial Institution locations.

Paragraph 20 simply outlines the formality of the charge, but does nothing to speak of what acts were taken by the parties. Because of this, the Indictment is Constitutionally deficient.

Law

18 U.S.C. §1349 is a general conspiracy statute. This means that to prove the conspiracy, the Government does not have to show an “overt act” was taken; however, for venue purposes, the Indictment must allege sufficient information to ascertain the venue

in the Southern District of West Virginia. "To establish venue for wire fraud conspiracy, the government must show that "the defendant committed an overt act in furtherance of the charged conspiracy inside the appropriate judicial district." *United States v. Day,* 700 F.3d 713, 727 (4th Cir. 2012). "When determining venue, a coconspirator's acts may be attributed to all other coconspirators." *United States v. Al-Talib,* 55 F.3d 923, 928-29 (4th Cir. 1995).

Argument

There is simply no allegation within the Indictment that indicates where any specific overt act took place that would give the Southern District of West Virginia venue to prosecute this matter. At best, the Indictment states that some of the co-conspirators were residents of West Virginia; however, the Indictment (and for that matter, the discovery) does not provide any indication that any of Ms. Sutton's alleged co-conspirators shared their personal information with Ms. Sutton while they were in West Virginia. For that matter, the Indictment simply says that the co-defendant's authorized Ms. Sutton to use their information. The question remains: where were they when they authorized this information to be used. The Indictment certainly does not state this. The Indictment does not indicate where the kickback payments were initiated, authorized or the servers from which they processed. Without this information, Ms. Sutton cannot determine whether the venue is appropriate, and for those reasons, the indictment is constitutionally defective. At best, the evidence shows that Ms. Sutton, via a New Jersey IP address, caused the submission of fraudulent PPP Loan applications. However, again, there is no evidence suggesting where the co-conspirators participated in the scheme to defraud.

Conclusion

WHEREFORE, the Defendant respectfully requests the Court enter and Order dismissing Count One for lack of venue and for other such relief as is necessary and proper.

Respectfully submitted,
By Counsel

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CHARLESTON

UNITED STATES OF AMERICA,

PLAINTIFF,

V. CASE NO.: 2:24-CR-000192-01

KISHA SUTTON,

DEFENDANT.

CERTIFICATE OF SERVICE

I, Connor Robertson, certify that on the 8th day of May, 2025, a copy of the foregoing motion was served on the United States by ECF, to Jonathan Storage, Assistant United States Attorney to the following:

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