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
COUNTS ONE AND TWO 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 with "Bank Fraud" in violation of Title 18 U.S.C. §1344(1) and (2), and Count Two charging "Money Laudering" as the Government cannot establish Venue in the Southern District of West Virginia. In support thereof, the Defendant states as follows:

Count I

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 Second Superseding Indictment the Government has alleged that Ms. Sutton, on April 19, 2021, "caused the submission of a PPP loan application and a Schedule C to Financial Institution 1 on behalf of defendant Shamiese Wright." *See Sup. Indictment, para. 10.* The application falsely stated that Ms. Wright was a sole proprietor, that her business was established prior to January of 2017, and had an income of more than $75,000.00 which made her fictitiously eligible for PPP loan relief during the Covid pandemic. *Id. at para 11.* Based on the false information provided, Financial Institution 1 funded the loan to Ms. Wright for $15,625 on or about May 7, 2021. *Id. at. Para 13.* In exchange for Ms. Sutton's efforts, the Government alleges that Ms. Wright, while in the Southern District of West Virginia, remitted $3,000 of the fraudulent PPP proceeds to Ms. Sutton. *Id. at para. 14.* Based on these accusations, Ms. Sutton is charged with "bank fraud" in violation of 18 U.S.C. § 1344(1)&(2). Assuming for the purposes of this Motion that the allegations of the above-captioned facts (and Indictment) are true, the Government cannot establish Venue in the Southern District of West Virginia.

Facts

According to the Government, Ms. Sutton caused a fraudulent PPP loan application and Schedule C tax forms to be submitted electronically from a residence in New Jersey City, New Jersey. This allegation is supported by evidence that an IP address linked to Mrs. Sutton's name was captured when the application was submitted and received by a third-party vendor website called "Womply". Womply is not a bank or a financial institution as defined by federal law, but instead was a financial technology company that acted as a facilitator to match PPP applicants to lenders. Based on information and belief, Womply had no servers in the Southern District of West Virginia.

With this particular PPP loan application, Womply electronically matched a willing lender, Benworth Capitol Partners, LLC ("Benworth"), out of Coral Gables, Florida, to fund

Ms. Wright's fictitious PPP loan. Based on information provided by the Government, Benworth's servers are located in Miami, Florida. However, it is believed that Benworth's servers never actually received the electronic application because Benworth was relying exclusively on Womply to underwrite and approve the loan applications at that time. Regardless, none of this information was transmitted through the Southern District of West Virginia.

Upon funding the PPP Loan on May 7, 2021, Benworth electronically deposited, via ACH, the $15,625 PPP proceeds into Ms. Wright's Bancorp Bank account - aka Chime. Bancorp Bank is registered as a Delaware Corporation, but is not a certified business in West Virginia. There is no reason to believe that Bancorp has servers that process electronic ACH money transfers in the Southern District of West Virginia.

Finally, all of the funding for PPP loans was federally backed by the Small Business Administration. Based on information received from the Government, no servers processing PPP loans, which were electronically received, reside in the Southern District of West Virginia.

Law

Federal Rule of Criminal Procedure 18 prescribes that "the government must prosecute an offense in the district where the offense was committed" unless a statute permits otherwise. *Fed. R. Crim. P. 18*. "Bank Fraud" as defined by 18 U.S.C. 1344(1)&(2) is subject to the general federal venue statute, which states that a federal criminal offense which"beg[ins] in one district and completed in another, or committed in more than one district," may be "prosecuted in any district in which such offense begun, continued, or completed." *18 U.S.C. 3237(a).* Venue is "determined from the nature of the crime alleged and the location of the act or acts constituting it." *United States v. Ebersole,* 411 F.3d 517, 524 (4th Cir. 2005). This means that there may be more than one appropriate venue, including "a venue in which the defendant has never set foot." *United States v. Bowens*, 224 F.3d 302, 309 (4th Cir. 2000). However, venue is generally limited to the place in which the "essential conduct" elements of the offense occurred. *Id.* "In order to determine the propriety of venue, we must first identify the conduct constituting the offense and the location of the criminal acts." *United States v. Bankole,* 39 F. App'x 839, 841–43 (4th Cir. 2002) *citing United States v. Barnette,* 211 F.3d 803, 813 (4th Cir. 2000).

The inquiry into venue has two parts. First, the Courts must "identify the conduct constituting the offense, *United States v. Smith,* 452 F.3d 323, 334 (4th Cir. 2006) (quoting *United States v. Rodriguez-Moreno,* 526 U.S. 275, 279 (1999)), because venue is limited "to the place of the essential conduct of the offense." *United States v. Bowens*, 224 F.3d 302, 309 (4th Cir. 2000). Second, the Court determines where the criminal conduct took place. *Smith,* 452 F.2d at 334.

In determining the essential conduct elements courts may "analyze the key 'verbs' or actions sanctioned by the statute[.]" *United States v. Sterling,* 860 F.3d 233, 241 (4th Cir. 2017) (quoting *United States v. Rodriguez-Moreno,* 526 U.S. 275, 279 (1999). "Acts which are merely 'preparatory' to the underlying offense and its essential conduct, however, cannot provide a basis for venue." *Id.* at 241. Similarly, acts which occur only in furtherance of the crime or after a crime is complete cannot provide a basis for venue because they are not essential to the underlying offense." *United States v. Jefferson*, 674 F.3d 332, 367 (4th Cir. 2012) (finding venue improper for a wire fraud case because although acts in furtherance of the crime occurred in the relevant district, "the physical act of transmitting the wire communication for the purpose of executing the fraud scheme," did not); *United States v. Harris,* No. 3:12-cr-170, 2013 WL 1790140, at *2 (E.D. Va. Apr. 26, 2013) (action taken after a crime is complete "does not qualify as essential conduct of the offense for the simple reason that the crime has already been completed").

Argument

The essential ***conduct*** element of "Bank Fraud" is the execution of a scheme to defraud a financial institution. As it relates to this case, Ms. Sutton's mouse click submitting the PPP loan application and Schedule C with knowingly false information in New Jersey City, New Jersey to the Womply platform and Benworth's funding of the $15,625 in Miami or Coral Gables Florida to an account with Bancorp was the essential conduct making up the bank fraud allegation. In other words, this was all that was necessary to complete the crime and none of that touches the Southern District of West Virginia. The fact that it is alleged that Ms. Sutton and Ms. Wright devised a scheme to defraud is irrelevant. You cannot commit bank fraud by devising a scheme to defraud, it is the execution that matters. Likewise, it is irrelevant that Ms. Wright may have sent Ms. Sutton $3,000 in as a kickback, because the crime of bank fraud had already been completed at the point where she submitted the false application. The execution of a Bank Fraud scheme does not require the receiving of funds. At best, the execution began in New Jersey and at worst ended when Benworth received the application in Florida. There are multiple cases that support this analysis.

In *United States v. Bankole,* 39 F.App'x 839 (4th Cir. 2002)(per curiam), the Defendant was Indicted on Bank Fraud charges for initiating a debit transaction from Maryland (in our case New Jersey) which resulted in a transfer of funds to a vendor in

New Hampshire (in our case Bancorp - wherever its servers are) that was effected when the electronic request was received and processed by the bank in Virginia (in our case wherever Womply servers are or Bensworth Servers in Miami). The Court held that that venue was proper in the Eastern District of Virginia, because "the bank fraud offense was begun in Maryland, continued into New Hampshire, and was completed in the Eastern District of Virginia." *Id.* This makes sense because the money being moved processed through these jurisdictions. Unlike *Bankole*, the Government in this case is attempting to hitch venue to Ms. Wright's transaction in the Southern District of West Virginia after her Bank, Bancorp, received the money outside of West Virginia.

United States v. Verclas, No. GJH-18-160, 2019 WL 95148 (D. Md. Jan. 3, 2019), is a good example of what the Government is trying to do in this case - which is, base venue off of Ms. Wright's act of transferring portions of the PPP loan proceeds in the Southern District of West Virginia back to Ms. Sutton after the essential conduct of Bank Fraud had been completed. The Court would not allow it.

The Defendant in *Verclas* submitted a grant application that falsely represented that her Delaware based corporation was a New York non-profit organization with the legal authority to apply for the grant. Based on the application, the State Department awarded Verclas' corporation the grant money. She later withdrew it and used it on personal expenses. This is exactly the conduct in the case before this court. To distribute the grant funds, the State Department used a Payment Management System located in Maryland. Verclas used the Payment Management System to withdraw the funds for her personal use. The Government charged her with a violation of the Major Fraud Act 18 U.S.C. §1031. Verclas moved to dismiss the Indictment challenging venue and arguing that the

Indictment fails to allege facts showing that she committed the charged offense in the District of Maryland. The Government argued that her accessing the Payment Management System to withdraw the funds, which were processed in Maryland, after they were received gave Maryland jurisdiction.

The Court first determined what the conduct element to Major Fraud was and determined it was not the scheme to defraud, but the knowing execution of the scheme. The Court held that Verclas executed her scheme to defraud and obtain money from the Government when she submitted her fraudulent grant application from her offices in New York. There was no allegation that this submission occurred or involved Maryland. The scheme to defraud was to obtain the grant money by submitting a fraudulent application. The Court further, and more importantly, held that once the Defendant submitted the application, the scheme had been executed and she did not need to engage in any additional conduct to commit the crime. Because actually obtaining the money is not an element of Major Fraud, much less an essential conduct element, it is not relevant to the venue inquiry that the State Department awarded the funds through a Maryland based Payment System. The Court held that action did not contribute to any element of the crime and was not an essential conduct element.

The Indictment fails to specify any essential conduct of Bank Fraud that occurred in the Southern District of West Virginia. In fact, the Second Superseding Indictment states that Ms. Sutton was a resident of New Jersey at the time. Maybe the easiest way to breakdown this Indictment is to consider the allegations in three parts:

First, the co-defendants in the Southern District of West Virginia devised a scheme whereby they would agree to commit bank fraud and to do so shared their personal information to Ms. Sutton in New Jersey so that she could type it into the loan application. This is what is called a preparatory act. "Acts which are merely 'preparatory' to the underlying offense and its essential conduct, however, cannot provide a basis for venue." *United States v. Sterling,* 860 F.3d 233, 241 (4th Cir. 2017) (quoting *United States v. Rodriguez-Moreno,* 526 U.S. 275, 279 (1999). "Acts which are merely 'preparatory' to the underlying offense and its essential conduct, however, cannot provide a basis for venue." *Id.* at 241.

Second, Ms. Sutton took the personal information of her co-defendant and submitted an application. This act is the "essential conduct element" of bank fraud as it is the execution of the previously devised scheme. "[V]enue is generally limited to the place in which the "essential conduct" elements of the offense occurred. *Id.* "In order to determine the propriety of venue, we must first identify the conduct constituting the offense and the location of the criminal acts." *United States v. Bankole,* 39 F. App'x 839, 841–43 (4th Cir. 2002) *citing United States v. Barnette,* 211 F.3d 803, 813 (4th Cir. 2000).

Third, after the PPP Funds were deposited into the co-defendant's accounts, the co-defendants provided "kickback" payments. The act of providing "kickback" payments are acts in furtherance of the bank fraud crime and cannot be used to analyze venue. "Similarly, acts which occur only in furtherance of the crime or after a crime is complete cannot provide a basis for venue because they are not essential to the underlying offense." *United States v. Jefferson*, 674 F.3d 332, 367 (4th Cir. 2012) (finding venue improper for a wire fraud case because although acts in furtherance of the crime occurred in the relevant district, "the physical act of transmitting the wire communication for the purpose of executing the fraud scheme," did not); *United States v. Harris,* No. 3:12-cr-170, 2013 WL

1790140, at *2 (E.D. Va. Apr. 26, 2013) (action taken after a crime is complete "does not qualify as essential conduct of the offense for the simple reason that the crime has already been completed").

Conclusion

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

Respectfully submitted,
By Counsel

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CERTIFICATE OF SERVICE

I, Connor Robertson, certify that on the 23rd day of June, 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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