

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:24-CR-00192

KISHA SUTTON - 1

GOVERNMENT'S RESPONSE TO DEFENDANT KISHA SUTTON'S MOTION TO
DISMISS COUNTS ONE AND TWO FOR LACK OF VENUE

Comes now the United States of America, by Jonathan T. Storage, Assistant United States Attorney for the Southern District of West Virginia, and files its response to defendant Kisha Sutton's motion to dismiss for lack of venue (ECF No. 264).

I. BACKGROUND

On May 8, 2025, the defendant filed ten separate motions to dismiss, collectively challenging venue for each of the then-pending counts in the first Superseding Indictment. See ECF Nos. 184-193. On May 15, 2025, the government filed its response to the ten motions to dismiss. ECF No. 201. On May 20, 2025, United States Magistrate Judge Omar J. Aboulhosn held a hearing on the defendant's motions. ECF No. 202. During that hearing, the defendant conceded that venue was properly alleged within the Southern District of West Virginia as to the former charge of conspiracy to commit bank fraud, but she maintained her venue

challenges as to aiding and abetting bank fraud.¹ On May 20, 2025, Judge Aboulhosn entered an Order denying the defendant's motions to dismiss.²

On May 23, 2025, the defendant objected to Judge Aboulhosn's Order denying her motions to dismiss, effectively appealing Judge Aboulhosn's ruling. ECF No. 204. On May 28, 2025, the government responded to the defendant's objections. ECF No. 216. On June 16, 2025, the Court "terminated as moot" the defendant's objections to Judge Aboulhosn's order. ECF No. 257 at 2 ("Due to the substantive changes in the charges set forth in the Second Superseding Indictment, the Court finds that the Defendant's pending motions to dismiss and objections are moot.").

On June 23, 2025, the defendant filed a new motion to dismiss, challenging venue as to both counts of the Second Superseding Indictment: (1) aiding and abetting bank fraud and (2) money laundering. ECF No. 264.

II. LEGAL STANDARD

"When deciding a pretrial motion to dismiss an indictment for improper venue, the district court assesses only whether the

¹ The previous conspiracy charge was Count One of the Superseding Indictment; Counts Two through Ten charged the defendant with aiding and abetting bank fraud. ECF No. 68.

² The defendant's motion as to Count One of the Superseding Indictment was deemed moot because of the defendant's concession. ECF No. 203 at n.1.

allegations of the indictment, if true, would suffice to establish venue. The court may not, at this stage, consider evidence beyond the indictment.” United States v. Powers, 40 F.4th 129, 134 (4th Cir. 2022) (internal citation omitted). Likewise, in an appeal from the denial of a pretrial motion to dismiss the indictment, the Fourth Circuit will not consider the evidence that was presented at trial. Id. at 134.

“[T]he selection of venue in a bank fraud prosecution is governed by the general venue statute for federal criminal offenses, set forth in 18 U.S.C. § 3237.” United States v. Bankole, 39 F. App’x 839, 842 (4th Cir. 2002). “Venue for a federal criminal prosecution is to be determined ‘from the nature of the crime alleged and the location of the act or acts constituting it.’” Id. at 842.

“Venue must be determined from the nature of the crime alleged, determined by analyzing the conduct constituting the offense, and the location (or, if the crime is a continuing one, locations) of the commission of the criminal acts. If the crime consists of distinct parts, taking place in different localities, then venue is proper wherever any part can be proved to have taken place.” United States v. Scott, 270 F.3d 30, 35 (1st Cir. 2001). “One of the elements of bank fraud is proof of a scheme to defraud.” Id. at 36 (emphasis added).

Bank fraud is a continuing offense under 18 U.S.C. § 3237(a), and venue is proper wherever the offense was “begun, continued, or completed.” Scott, 270 F.3d at 36; see also Bankole, 39 F. App’x at 843 (“[The verdict] supports a finding that the bank fraud offense was begun in Maryland, continued into New Hampshire, and was completed in the Eastern District of Virginia.” (emphasis in original)); see also United States v. Dupre, 117 F.3d 810, 822 (5th Cir. 1997) (“Bank fraud, false statement, and money laundering offenses are ‘continuing’ offenses for purposes of § 3237.”).

“A continuing offense is a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy. Where such an act or series of acts runs through several jurisdictions, the offense is committed and cognizable in each.” United States v. Midstate Horticultural Co., 306 U.S. 161, 166 (1939) (quoting with approval Armour Packing Co. v. United States, 153 F. 1 (8th Cir. 1907), aff’d, 209 U.S. 56 (1908)).

The Fourth Circuit has noted that “it was not always possible by the use of one analytical tool to discern the location of where a crime has been committed.” United States v. Cofield, 11 F.3d 413, 417 (4th Cir. 1993), as amended (Jan. 5, 1994). “A review of relevant authorities demonstrates that there is no single defined policy or mechanical test to determine constitutional venue.

Rather, the test is best described as a substantial contacts rule that takes into account a number of factors—the site of the defendant’s acts, the elements and nature of the crime, the locus of the effect of the criminal conduct, and the suitability of each district for accurate factfinding.” Id. at 417 (quoting with approval United States v. Reed, 773 F.2d 477, 481 (2d Cir. 1985)).

The Fourth Circuit has noted that an “examination of verbs employed in the statute is not an exclusive method [for determining venue] and ‘there are crimes where the situs is not so simple of definition.’” Cofield, 11 F.3d at 417. “[A]lthough the ‘verb test’ as an interpretative tool enjoys both the support of precedent from this circuit and the force of logic, its use to the exclusion of other interpretative guides would violate the overriding principle of United States v. Anderson, 328 U.S. 699 (1946), that we must consider ‘the nature of the crime alleged and the location of the act or acts constituting it.’” Id. at 417 (superfluous citations omitted).

“The Constitution does not limit venue for a crime to one exclusive district – it requires only that venue be determined from the nature of the crime and the location of the acts constituting it.” Cofield, 11 F.3d at 419.

“[T]he submission of a venue question to a jury is a proper procedure when the facts underlying venue are disputed.” Bankole,

39 F. App'x 841; see also Green v. United States, 309 F.2d 852, 857 (5th Cir. 1962) (holding that "the trial court erred in failing to submit the question of venue to the jury."). At trial, "[t]he burden is on the Government to prove venue by a preponderance of the evidence." United States v. Robinson, 275 F.3d 371, 378 (4th Cir. 2001).

"For some offenses, there may be 'more than one appropriate venue, or even a venue in which the defendant has never set foot.'" United States v. Ebersole, 411 F.3d 517, 524 (4th Cir. 2005).

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal." 18 U.S.C. § 2. To convict a defendant of being an aider and abettor, the government must show that the defendant's conduct amounted to counseling, assisting, or facilitating the commission of a federal crime. See United States v. Honeycutt, 311 F.2d 660, 662 (4th Cir. 1962).

"An aider and abettor may be prosecuted in the district in which the principal acted in furtherance of the substantive crime." United States v. Kibler, 667 F.2d 452, 455 (4th Cir. 1982); see also United States v. Kilpatrick, 458 F.2d 864, 868 (7th Cir. 1972) (recognizing that 18 U.S.C. § 2 "has been construed to permit the prosecution of an aider and abettor not only in the district in

which he committed the accessorial acts but also in the district where the substantive crime was committed.”).

A prosecution under 18 U.S.C. § 1956 may be brought in “any district in which the financial or monetary transaction is conducted.” 18 U.S.C. § 1956(i)(A). “For purposes of [§ 1956], a transfer of funds from [one] place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.” 18 U.S.C. § 1956(i)(3). “[T]he term ‘conducts’ includes initiating, concluding, or participating in initiating, or concluding a transaction.” 18 U.S.C. § 1956(c)(2).

A person directing others to move money “conducts” a financial transaction. See, e.g., United States v. Butler, 211 F.3d 826, 830 (4th Cir. 2000) (defendant aided and abetted § 1957 offense when he directed third party to purchase cashier’s checks); United States v. Smith, 824 F. App’x. 508, 511 (9th Cir. 2020) (“sufficient evidence to support the jury’s finding that [defendant] was the source of money” sent in wire transfer; while defendant did not make transfer himself, he called co-conspirator “with the information needed to retrieve the money from Wells Fargo, told [co-conspirator] that the transfer was to reimburse

[co-conspirator] for drugs he smuggled to [defendant] in prison, and gave [co-conspirator] the identity of person transferring the money"); United States v. Delgado, 256 F.3d 264, 276-77 (5th Cir. 2001) (defendant who never handled money, but was one of several who planned sale of drugs and delivery of proceeds to original source, was guilty of conducting transaction); United States v. Prince, 214 F.3d 740, 748 (6th Cir. 2000) (defendant conducts transaction when he directs third party to withdraw cash from a bank, or to send him a check); United States v. Sneed, 63 F.3d 381, 389 (5th Cir. 1995) (defendant conducted transaction where he asked associate to open bank account and associate deposited checks from victims and wired proceeds to defendant's personal account).

A receiver of wired funds "conducts" a transaction for the purposes of the money laundering venue provision. See United States v. Elder, 90 F.3d 1110, 1125 (6th Cir. 1996) (upholding a money laundering conviction where the defendant was the recipient of money transfers from Tennessee to Florida.).

An aider and abettor of money laundering is not "required to be in possession of the money as it was being laundered." United States v. Smith, 44 F.3d 1259, 1266 (4th Cir. 1995).

III. DISCUSSION

The defendant's legal arguments regarding venue as applied to the charges now pending in this case are wrong. The government has

sufficiently pleaded venue for both charges contained within the Second Superseding Indictment, and dismissing the charges against the defendant on venue grounds pre-trial would be premature.

A. Venue Allegations

Dismissal of the charges at this stage of the proceedings is premature, as the government has sufficiently alleged venue in this district. "When deciding a pretrial motion to dismiss an indictment for improper venue, the district court assesses only whether the allegations of the indictment, if true, would suffice to establish venue." Powers, 40 F.4th at 134 (internal citation omitted).

Count One of the Second Superseding Indictment alleges:

From no later than on or about April 19, 2021, and continuing until at least on or about May 21, 2021, at or near Charleston, Kanawha County, West Virginia, within the Southern District of West Virginia and elsewhere, defendants KISHA SUTTON and SHAMIESE WRIGHT, aided and abet[ed] by each other, did knowingly execute and attempt to execute a scheme to defraud Financial Institution 1 and obtain money owned by and under the custody and control of Financial Institution 1 by means of materially false and fraudulent pretenses, representations, and promises.

This language, on its face, sufficiently alleges venue in the Southern District of West Virginia. The Court should not look to evidence and argument beyond the charging document when considering challenges to venue at the pre-trial stage. Powers, 40

F.4th at 134 ("The court may not, at this stage, consider evidence beyond the indictment.").

The same is true for Count Two: the government has sufficiently alleged venue, and the Court should not dismiss the charges for lack of venue at the pre-trial stage. Count Two alleges that the financial transaction at issue was conducted at or near Charleston, Kanawha County, West Virginia, within the Southern District of West Virginia and elsewhere. No plainer allegation of venue can be made here.

It is the government's task of proving venue at trial by a preponderance of the evidence. Robinson, 275 F.3d at 378. And "the submission of a venue question to a jury is a proper procedure when the facts underlying venue are disputed." Bankole, 39 F. App'x 841; see also Green v. United States, 309 F.2d 852, 857 (5th Cir. 1962) (holding that "the trial court erred in failing to submit the question of venue to the jury.").

Because the government has sufficiently alleged venue and because venue challenges raise factual questions to be decided by the jury, the Court should deny the defendant's motion on these grounds, alone.

B. Venue for Bank Fraud

As discussed above, diving into the anticipated trial evidence is inappropriate at this phase of the proceedings.

Nevertheless, the government submits that the evidence in this case will sufficiently prove venue in the Southern District of West Virginia.

Bank fraud is a continuing offense under 18 U.S.C. § 3237(a), and venue is proper wherever the offense was "begun, continued, or completed." Scott, 270 F.3d at 36; see also Bankole, 39 F. App'x at 843 ("[The verdict] supports a finding that the bank fraud offense was begun in Maryland, continued into New Hampshire, and was completed in the Eastern District of Virginia." (emphasis in original)); see also United States v. Dupre, 117 F.3d 810, 822 (5th Cir. 1997) ("Bank fraud, false statement, and money laundering offenses are 'continuing' offenses for purposes of § 3237.").

"A continuing offense is a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy. Where such an act or series of acts runs through several jurisdictions, the offense is committed and cognizable in each." United States v. Midstate Horticultural Co., 306 U.S. 161, 166 (1939) (quoting with approval Armour Packing Co. v. United States, 153 F. 1 (8th Cir. 1907), aff'd, 209 U.S. 56 (1908)).

Accoridngly, a bank fraud scheme can occur over a period of time and in more than one place or jurisdiction.

The defendant, on the other hand, argues that the commission of bank fraud is a discrete, singular event. In fact, during the hearing before Judge Aboulhosn on the previous motions to dismiss, counsel for the defendant asserted that it was the "clicking of the mouse" in New Jersey (the submission of the fraudulent PPP loan) that was the beginning, middle, and end of the bank fraud scheme. In fact, the defendant claims, "The fact that it is alleged that Ms. Sutton and Ms. Wright devised a scheme to defraud is irrelevant." ECF No. 264 at 5. Further, the defendant states, "[I]t is irrelevant that Ms. Wright may have sent Ms. Sutton \$3,000 [] as a kickback, because the crime of bank fraud had already been completed at the point where she submitted the false application." ECF No. 264 at 5. The case law addressing bank fraud simply does not support such a conclusion.

"One of the elements of bank fraud is proof of a scheme to defraud." Scott, 270 F.3d at 36 (emphasis added). In a bank fraud prosecution, the "scheme to defraud" is the offense conduct, and the United States Supreme Court has said as much. In examining the ways in which Congress changed the common law application of the certain fraud offenses (to include mail fraud, wire fraud, and bank fraud), the Supreme Court observed that by enacting the fraud statutes, Congress prohibited "the scheme to defraud, rather than the completed fraud." Neder v. United States, 527 U.S. 1, 25 (1999)

(internal quotations omitted) (emphasis added). This makes sense because Congress punishes bank fraud, attempted bank fraud, and conspiracy to commit bank fraud exactly the same. See 18 U.S.C. §§ 1344 & 1349 (demonstrating that the same penalties apply, whether the scheme is executed, attempted, or agreed be executed or attempted by two or more people (conspiracy)).

Of course, one cannot execute a scheme without first having devised a scheme. It follows, then, that the defendant is wrong when she argues that any bank fraud scheming that occurred between herself and defendant Shamiese Wright is irrelevant to issues of venue.

The defendant dogmatically recites case law discussing “essential conduct” elements of an offense in the context of venue determination. Yes, the case law supports such an inquiry when the nature of the offense charged calls for it, but the defendant ignores caselaw in this circuit that discredits a uniform approach to evaluating venue. The Fourth Circuit has noted that “it was not always possible by the use of one analytical tool to discern the location of where a crime has been committed.” Cofield, 11 F.3d at 417.

For example, the Fourth Circuit has recognized, “For some offenses, there may be **‘more than one appropriate venue,** or even a venue in which the defendant has never set foot.’” Ebersole, 411

F.3d at 524 (emphasis added). "The Constitution does not limit venue for a crime to one exclusive district - it requires only that venue be determined from the nature of the crime and the location of the acts constituting it." Cofield, 11 F.3d at 419.

"A review of relevant authorities demonstrates that there is no single defined policy or mechanical test to determine constitutional venue. Rather, the test is best described as a substantial contacts rule that takes into account a number of factors—the site of the defendant's acts, the elements and nature of the crime, the locus of the effect of the criminal conduct, and the suitability of each district for accurate factfinding." Id. at 417 (quoting with approval United States v. Reed, 773 F.2d 477, 481 (2d Cir. 1985)).

Simply put, venue is evaluated circumstantially. "Venue must be determined from the nature of the crime alleged, **determined by analyzing the conduct constituting the offense, and the location (or, if the crime is a continuing one, locations) of the commission of the criminal acts.** If the crime consists of distinct parts, taking place in different localities, then venue is proper wherever any part can be proved to have taken place." Scott, 270 F.3d at 35 (emphasis added).

As discussed, bank fraud is a continuing offense, and one of the elements of the offense is devising a scheme to defraud. The

offense may be stretched over a period of time and may implicate multiple judicial districts. The defendant's alleged scheme to defraud devised with defendant Shamiese Wright is absolutely relevant and binds the defendant to the Southern District of West Virginia.

The fact that the defendant was charged with aiding and abetting bank fraud more concretely connects the defendant to this district. "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal." 18 U.S.C. § 2. To convict a defendant of being an aider and abettor, the government must show that the defendant's conduct amounted to counseling, assisting, or facilitating the commission of a federal crime. See United States v. Honeycutt, 311 F.2d 660, 662 (4th Cir. 1962). "An aider and abettor may be prosecuted in the district in which the principal acted in furtherance of the substantive crime." United States v. Kibler, 667 F.2d 452, 455 (4th Cir. 1982); see also United States v. Kilpatrick, 458 F.2d 864, 868 (7th Cir. 1972) (recognizing that 18 U.S.C. § 2 "has been construed to permit the prosecution of an aider and abettor not only in the district in which he committed the accessorial acts but also in the district where the substantive crime was committed.").

The defendant would have the Court rule that, no matter how much a bank fraud scheme is developed in or connected to a particular district, the "execution" of the scheme may only occur in one place.³ As the defendant's argument goes, every act taken in furtherance of the scheme is mere preparation. This position is simply not the law.

As charged in this case, defendants Sutton and Wright aided and abetted one another to execute the fraud scheme. The defendant could not have submitted a PPP loan on defendant Wright's behalf without her personal information, including her Social Security Number, date of birth, and bank account information. Likewise, defendant Wright would not have received the fraudulent loan proceeds in Charleston, West Virginia, without the defendant's submission of the loan documents. And without defendant Wright's participation, the defendant would not have received her kickback payment from Charleston, West Virginia, to the defendant in New

³ The defendant bends over backwards to maneuver around the fact that bank fraud is a continuing offense by citing Bankole, 39 F. App'x at 843, for the proposition that the wire/server transactions from one district to another is what matters for venue, as that is a part of the "execution" of the offense. See ECF No. 264 at 6. But the defendant is mistaken. The defendant cannot shoehorn a bank fraud case into a wire fraud case. While wire transactions can be relevant in a bank fraud case, bank fraud is not limited to the use of an interstate wire, as wire fraud obviously is. Bank fraud can be committed in a multitude of ways, including transactions involving no electronic communication whatsoever. The fact that bank and third-party processor servers do not exist in this district is of no moment.

Jersey. The point being, the execution of the bank fraud scheme was, in part, executed in the Southern District of West Virginia.

Venue exists in this district for both defendants for the aiding and abetting bank fraud charge: (1) the scheme to defraud was conceived and developed in this district, (2) the person whose name is on the loan resided in this district at the time the loan was submitted & approved, (3) the proceeds from the fraudulent loan were received and used by defendant Wright in this district, and defendant Wright transmitted kickback payments to the defendant from this district.

In short, the scheme was partially executed in this district, and the nature of the offense permits venue to exist in more than one place. Bankole, 39 F. App'x at 842 ("Venue for a federal criminal prosecution is to be determined 'from the nature of the crime alleged and the location of the act or acts constituting it.'"); see also, Scott, 270 F.3d at 35 ("Venue must be determined from the nature of the crime alleged, determined by analyzing the conduct constituting the offense, and the location (or, if the crime is a continuing one, locations) of the commission of the criminal acts. If the crime consists of distinct parts, taking place in different localities, then venue is proper wherever any part can be proved to have taken place.").

Accordingly, the defendant's motion to dismiss for lack of venue as to Count One should be denied.

C. Venue for Money Laundering

At the outset, the government notes that in her motion, the defendant did not make any legal arguments against venue as to Count Two, despite moving to dismiss that count. Nevertheless, venue is properly alleged and supported by the law.

As discussed above, for the purpose of assessing a pre-trial venue challenge, the Court should take as true the allegations contained within the charging document. Powers, 40 F.4th at 134. Here, the government has sufficiently alleged that defendants Sutton and Wright, within the Southern District of West Virginia and elsewhere, aided and abetting each other in conducting a financial transaction that (1) involved proceeds of a specified unlawful activity and (2) was made to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the specified unlawful activity.

The fact that the defendant may have been residing in New Jersey when the kickback payment was made does not shield her. A receiver of wired funds "conducts" a transaction for the purposes of the money laundering venue provision. See Elder, 90 F.3d at 1125 (upholding a money laundering conviction where the defendant was the recipient of money transfers from Tennessee to Florida.).

Moreover, while anticipated evidence at trial should not be a consideration for a venue challenge at this stage of the proceedings, the government proffers that it anticipates introducing at trial evidence showing that the defendant provided specific instructions on how she wanted to receive her kickback payments. Such evidence, alone, would establish venue in this district because a person directing others to move money "conducts" a financial transaction. See, e.g., Butler, 211 F.3d at 830 (defendant aided and abetted § 1957 offense when he directed third party to purchase cashier's checks); Smith, 824 F. App'x. at 511 ("sufficient evidence to support the jury's finding that [defendant] was the source of money" sent in wire transfer; while defendant did not make transfer himself, he called co-conspirator "with the information needed to retrieve the money from Wells Fargo, told [co-conspirator] that the transfer was to reimburse [co-conspirator] for drugs he smuggled to [defendant] in prison, and gave [co-conspirator] the identity of person transferring the money"); Delgado, 256 F.3d at 276-77 (defendant who never handled money, but was one of several who planned sale of drugs and delivery of proceeds to original source, was guilty of conducting transaction); Prince, 214 F.3d at 748 (defendant conducts transaction when he directs third party to withdraw cash from a bank, or to send him a check); Sneed, 63 F.3d at 389 (defendant

conducted transaction where he asked associate to open bank account and associate deposited checks from victims and wired proceeds to defendant's personal account).

Accordingly, the government requests that the defendant's venue challenge as to Count Two be denied.

IV. CONCLUSION

Because the government has sufficiently alleged venue in the charging document as to both Count One and Count Two, the defendant's motion to dismiss (ECF No. 264) should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "GOVERNMENT'S RESPONSE TO DEFENDANT KISHA SUTTON'S MOTION TO DISMISS COUNTS ONE AND TWO FOR LACK OF VENUE" has been electronically filed and service has been made on opposing counsel by virtue of electronic mail this the 27th day of June, 2025, to:

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