**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**
Case No. 23-60173-CR-WILLIAMS/GRAHAM

UNITED STATES OF AMERICA

vs.

CAROLYN DENISE WADE and
TRACY D. WADE

Defendants.
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**ORDER**

**THIS CAUSE** comes before the Court on Defendants Carolyn Denise Wade and Tracy D. Wade's Motion for Judgment of Acquittal After Jury Verdict. (ECF No. 204). The Court also considers the Government's Response in Opposition to Defendants' Post-Trial Motion for Judgment of Acquittal. (ECF No. 207).

**THE COURT** has reviewed the pleadings and is otherwise fully advised in the premises. Based thereon, for the reasons explained below, the Defendants' motion is denied.

## I. BACKGROUND

On June 27, 2024, the Grand Jury returned the Superseding Indictment (ECF No. 188), which charged Defendants with conspiracy to commit wire fraud, in violation of Tile 18, United States Code, Section 1349; wire fraud, in violation of Tile 18, United States Code, Section 1343; conspiracy to make false statements to the SBA, in violation of Tile 18, United States Code, Section 371; and false statements to the SBA, in violation of Title 15, United States Code, Section 645(a).

With respect to conspiracy to commit wire fraud (Count 1), the Superseding Indictment alleged that, from May 2021 through August 2021, Defendants agreed with each other, with Haydee

Rivero, f/k/a Haydee Granados ("Rivero"), and with others, to obtain loans through the Paycheck Protection Program ("PPP") based upon materially false and fraudulent information, including fictitious tax documents. The substantive wire fraud counts alleged that, from May 2021 through August 2021, Defendants participated in a scheme to defraud in which they obtained PPP loans based upon materially false and fraudulent information, including fictitious tax documents. Count 2 charged Tracy Wade with causing the execution of a wire communication in interstate commerce that disbursed the proceeds of a fraudulently obtained PPP loan for the purported business "Tracy Wade," and Count 3 charged both Defendants with causing the execution of a wire communication in interstate commerce that disbursed the proceeds of a fraudulently obtained PPP loan for the purported business "Carolyn Wade."

As to conspiracy to make false statements to the Small Business Administration (SBA) (Count 4), the Superseding Indictment alleged that, from May 2021 through August 2021, Defendants agreed with each other, with Rivero, and with others, to make false statements to the SBA in PPP loan applications (using SBA Form 2483-C) and SBA PPP loan forgiveness applications (using SBA Form 3508S). Additionally, Carolyn Wade and Tracy Wade were each charged individually with three counts of making false statements to the SBA in their respective PPP loan applications and forgiveness applications (Counts 5, 8, and 9 as to Carolyn Wade and Counts 6, 7, and 10 as to Tracy Wade).

On October 23, 2024, after a jury trial, Defendants were found guilty on all counts with which they were charged, respectively. (ECF Nos. 183 and 184).

Now, Defendants move, pursuant to Fed. R. Crim. P 29(c)(1), for a judgment of acquittal after jury verdict asserting that the evidence presented at trial was insufficient to persuade any rational factfinder of their guilt beyond a reasonable doubt. (ECF No. 204). Specifically, Defendants contend that with respect to the conspiracy counts, there was insufficient evidence to prove that the Defendants willfully joined in either conspiracy. As to the wire fraud counts, the Defendants contend that the evidence was insufficient to prove that they knowing devised and participated in a scheme to defraud or acted with intent to defraud. As to the false statements to the SBA, the Defendants assert that the evidence was insufficient to prove that they knowingly made any false statement. *Id.*

The Government filed its response in opposition to Defendants' motion. (ECF No. 207). Defendants filed no reply to the government's response. This matter being ripe, the Court addresses the arguments raised in Defendants' motion below.

## II. LEGAL STANDARD

### A. Rule 29 Motion for Judgment of Acquittal

Rule 29 provides the Court with authority, where appropriate, to enter a judgment of acquittal following a guilty verdict. See Rule 29(c)(2). A motion for judgment of acquittal under Rule 29 "is a direct challenge to the sufficiency of the evidence presented against the defendant." *United States v. Aibejeris*, 28 F.3d 97, 98 (11th Cir. 1994); *see also United States v. Ward*, 197 F.3d 1076, 1079 (11th Cir. 1999) ("In considering a motion for the entry of judgment of acquittal under [Rule 29(c)], a district court should apply the same standard used in reviewing the sufficiency of the evidence to sustain a conviction."). In ruling on such a motion, "a district court must 'determine whether, viewing all the evidence in the light most favorable to the jury's verdict, a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt.'" *United States v. Grigsby*, 111 F.3d 806, 833 (11th Cir. 1997) (quoting *United States v. O'Keefe*, 825 F.2d 314, 319 (11th Cir. 1987)). Applying this test, "[a]ll credibility choices must be made in support of the jury's verdict."

Williams, 611 F.2d at 1323 (citing *United States v. Gianni*, 678 F.2d 956, 958-59 (11th Cir. 1982) and *United States v. Burns*, 597 F.2d 939, 941 (5th Cir. 1979)). Because a jury may choose among reasonable constructions of the evidence, "[i]t is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt, provided a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt." *Id.* at 1324 (quoting *United States v. Young*, 906 F.2d 615, 618 (11th Cir. 1990); United States v. Vera, 701 F.2d 1349, 1357 (11th Cir. 1983)). "A conviction must be affirmed unless there is no reasonable construction of the evidence from which the jury could have found the defendant guilty beyond a reasonable doubt." *United States v. Ignasiak*, 667 F.3d 1217, 1227 (11th Cir. 2012) (citation omitted).

## III. DISCUSSION

Defendants renew their Motion for Judgement of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure asserting that the evidence was insufficient for a conviction. Accordant with the Court's prior rulings on Defendants' *ore tenus* Rule 29 motions made during trial, the record evidence, when viewed in the light most favorable to the government with all reasonable inferences and credibility choices made in its favor, was sufficient to permit a rational jury to find Defendants guilty beyond a reasonable doubt as to each count.

In its case in chief, the Government presented testimony of witnesses affiliated with the SBA (Althea Harris), Womply (Amandeep Thakral), Persona (Lindsey Bergh), Verizon (Dion Morrow), AT&T (Philip Fanara), IRS (Renee McClain), and the Broward Sheriff's Office (Alexander Rodriguez). The government also presented testimony of Rivero, who testified pursuant to a plea agreement. Lastly, the government presented testimony of FBI Special Agent Kelly DiPietrantonio, who testified as a summary witness.

Viewing the evidence in the light most favorable to the verdict, there is sufficient evidence to allow a rational trier of fact to find beyond a reasonable doubt that Defendants participated in the conspiracy that resulted in Defendants obtaining, and receiving forgiveness of, PPP loans based upon materially false information. Specifically, the evidence showed that, on multiple occasions throughout the period of the conspiracy, Defendants logged into their PPP applications on the Womply website using cell phone models that Defendants had and actively used, and/or using an IP address then accessible to Defendants, made changes; uploaded bank documents and linked bank accounts; verified their identity; and viewed, initialed, and signed the critical documents via DocuSign, including multiple SBA application forms in which they certified that false information was true. Thereafter, Defendants received the proceeds of their fraudulent PPP loans in their personal bank accounts, immediately paid Rivero $2,000 in total for her preparation of the fraudulent Schedule C submitted with each PPP application. Defendants thereafter wrote checks to themselves with memo lines that suggested that they spent the PPP loan proceeds on payroll when they had not. Defendants subsequently applied to the SBA to have their fraudulently obtained PPP loans forgiven, which required them to again sign and initial SBA forms that contained materially false information.

At the start of her testimony, Rivero acknowledged that she had pleaded guilty to conspiracy to commit wire fraud and make false statements to the SBA, and that she was testifying for the government pursuant to a plea agreement. She then testified about her role in the PPP applications for the Defendants, and other individuals with whom she was involved in the PPP application process. She also testified about her own receipt of fraudulent PPP loans and her knowledge that her PPP loan applications contained false income information.

Regarding the PPP applications for Defendants, Rivero testified that the scope of her involvement included: (a) creating a fictitious Schedule C form for the Defendants; (b) uploading the fictitious Schedule C forms she created for Defendants to the respective PPP applications on Womply's website; and (c) inputting the false income information from the fictitious Schedule C forms into each Defendant's application on Womply's website. The scope of Rivero's activity for Defendants was consistent with the undisputed Womply data in evidence. Rivero also testified about the understanding she had with Defendants regarding her creation of fictitious Schedule C forms for their PPP loan applications. Specifically, Rivero testified that, during a phone call with Defendant Tracy Wade, she told him that to receive a PPP loan of $20,000, she would need to create a Schedule C that reflected $100,000 in gross income for a business in Defendant Tracy Wade's own name, and not for his business, Wade Funeral Home. Rivero testified she told Defendant Tracy Wade that the process would be same for Defendant Carolyn Wade. Rivero's testimony about her phone calls with Defendant Tracy Wade was corroborated by records showing 28 phone calls between them during the conspiracy, and no calls between them either before or after the period of the conspiracy (i.e., before May 2021 or after August 2021). Rivero testified that she received a $1,000 payment from Tracy Wade and a $1,000 payment from Carolyn Wade for the false Schedule C she created that allowed them to obtain the PPP loans.

Rivero further testified that she did not know how to assist with any PPP loan application other than one for a sole proprietorship (i.e., she did not know how to apply for a PPP loan for a corporation or limited liability company). When asked during cross examination about images of blank checks for businesses "Wade Funeral Home" and "1 Step A-Head," which were emailed to her in or around March 2021, Rivero testified that those were not related to the sole proprietorship PPP loans she was involved with for the Defendants and other individuals.

Rivero testified that she completed or attempted to complete PPP loan applications for other individuals. Rivero also testified to obtaining loans for several of her friends and relatives. Rivero claimed that everyone for whom she applied for a loan knew that she was preparing a fictitious Schedule C form. The gross income listed on the fictitious schedule C was used in the PPP loan applications she prepared for other individuals. When asked by the government and defense, Rivero did not remember every person whom she assisted with a PPP loan application. Rivero recalled that some individuals did not receive PPP loans because they could not successfully verify their identity. For those individuals who could not verify their identity, Rivero testified that she did not create a Schedule C for their PPP loan application.

The defense called three witnesses to attempt to rebut Rivero's testimony concerning the creation of fictitious Schedule C forms. Two of the witnesses testified that they had no knowledge that Rivero had included a fictitious Schedule C form in their PPP applications. Additionally, Defendant Tracy Wade testified that he and Carolyn Wade had no knowledge of any of the false information contained in their PPP loan applications and PPP forgiveness applications, including the fictitious schedule C, and that he did not see the application when prompted to electronically sign his PPP loan application.

Two witnesses, Clemente Perez and Edison Rogers, testified on direct examination that they did not receive a PPP loan. With respect to Mr. Perez, he admitted during cross examination that he had difficulty verifying his identity despite several attempts, and that his PPP application ultimately failed. Mr. Perez's testimony was consistent with Rivero's testimony that Mr. Perez did not receive a loan because his identify verification failed. With respect to Edison Rogers, he testified that he was not familiar with Rivero and did not recall Rivero assisting him with a PPP loan application. Mr. Rogers' testimony was consistent with Rivero's testimony that she did not recall a person named Edison Rogers or helping that person with a PPP loan application. The third defense witness, Walter Wright, testified that he received a PPP loan with Rivero's assistance. However, on cross examination, Mr. Wright admitted that it took several attempts for him to verify his identity before his application was accepted. That testimony was consistent with Rivero's testimony that Mr. Wright had trouble verifying his identity. Furthermore, the fact that Mr. Wright's identify verification failed several times is consistent with Rivero not remembering that Wright had received a PPP loan or that she had created a false Schedule C for him.

The three defense witnesses did not rebut any of the Womply data, that established activity by Defendants in their PPP loan applications. To the contrary, when the government asked the defense witnesses if they had done any of the type of activity that Defendants had done (e.g., received one-time codes, logged into their accounts, made modifications to their PPP loan applications, or uploaded bank statements), all the defense witnesses testified that they had not.

When Defendant Tracy Wade testified on cross examination, he accepted the data as true, thereby admitting to his and Carolyn Wade's activity established by the data. Defendant Tracy Wade also admitted to paying Rivero.

Guilty knowledge can rarely be established directly, and therefore a jury may infer knowledge and criminal intent from circumstantial evidence alone. *United States v. Clay*, 832 F.3d 1259, 1309 (11th Cir. 2016). Thus, the government can establish knowledge "through proof of surrounding circumstances such as acts committed by the defendant which furthered the purpose of the conspiracy." *United States v. Gonzalez*, 834 F.3d 1206, 1215 (11th Cir. 2016) (quotation omitted). A conviction may be supported by reasonable inferences, not by mere speculation. *United States v. Knowles*, 66 F.3d 1146, 1155 (11th Cir. 1995).

The record evidence, including the testimony, in this case was sufficient for a jury to find the elements of each conspiracy (Counts 1 and 4) proven beyond a reasonable doubt, that is, Defendants agreed with each other, and with Rivero, to try to accomplish a common and unlawful plan to commit wire fraud (Count 1) and make false statements to the SBA (Count 4), and Defendants knew the unlawful purpose of each plan and willfully joined in it. Defendants' conduct, as demonstrated through the undisputed Womply and DocuSign records, Rivero's testimony, and other admitted evidence, was also sufficient for a jury to find the elements of wire fraud (Count 2 as to Tracy Wade and Count 3 as to both Defendants) proven beyond a reasonable doubt.

Finally, the evidence was sufficient to find Defendants guilty of the substantive counts of making false statements to the SBA. Among other things, the evidence established that Defendants viewed, modified, and signed their own PPP loan applications and forgiveness multiple times. Therefore, a rational jury could conclude that Defendants knowingly submitted false information to the SBA in connection with their PPP loans and loan forgiveness.

Viewed in the light most favorable to the government and the jury's verdict, the evidence sufficiently established that Defendants knowingly participated in a scheme to fraudulently obtain PPP loans and acted with intent to defraud. Based, thereon, Defendant's motion is denied.

## IV. CONCLUSION

**ORDERED AND ADJUDGED** that Defendants' Motion for Judgment of Acquittal After Jury Verdict. (ECF No. 204) is **DENIED**.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 10th day of January 2025.

DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record