

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRACY D. WADE,

CASE NO. 23-CR-60173 (2)

Defendant.

**MOTION TO STAY JAIL SENTENCE PENDING APPEAL AND NOTICE
THAT DEFENDANT HAS NOT BEEN DESIGNATED TO A PRISON.**

Tracy Wade was convicted at trial of conspiracy, wire fraud, and false statements counts related to a Paycheck Protection Program (PPP) loan disbursed to him post-Covid. The loan was for \$20,833 and there was no dispute that another person, Haydee Rivero, created false documents in a successful effort to have the funds disbursed when Mr. Wade would not have qualified for the loan with accurate documents. Ms. Rivero “assisted” many Broward Sheriff’s Office deputies in submitting such loans, resulting in media coverage and multiple criminal cases. The government alleged that Mr. Wade himself electronically signed the false loan paperwork, ultimately receiving \$20,833 in government funds which he was not entitled to. They also alleged he was involved in his wife and co-defendant Carolyn Wade’s PPP application, which also resulted in the disbursement of \$20,833, for a total loss of \$41,666. Ms. Rivero received a probationary

sentence without jail time for her role in orchestrating this fraud involving the Wades and multiple other people, some charged and some not. (SDFL case 23-cr-60124).

At sentencing, the Government requested a sentence of 14 months in prison and the defense requested a probationary sentence. The Court sentenced Mr. Wade to 90 days in jail followed by three years of probation, and ordered him to surrender to begin serving the jail sentence on Monday, April 14, 2025. Although Mr. Wade is very grateful to the Court for exercising its judgment and not following the Government's far harsher sentencing recommendation, he respectfully moves for a stay of the jail portion of the sentence until the conclusion of his appeal, which has already been initiated.

Mr. Wade was a Broward Sheriff's Office deputy, working in BSO's detention facilities. He is 52 years old and has no criminal history whatsoever. He and his wife Carolyn have an 11-year old daughter who lives with them. He also has two adult children from a previous marriage. Mr. Wade is from and grew up in Miami, graduating from Carol City High School and Miami Dade College with an associate's degree. He is also a veteran of the US Marine Corps. Mr. Wade served the community as a Broward Sheriff's Deputy, working in BSO's detention facilities from 1997-2022 (25 years). He also owns and operates a local small business, Wade Funeral Home in Hallandale Beach, and has since 2011.

During the pendency of this case (since July 1, 2024), Mr. Wade was out on bond/pretrial release and fully complied with the terms and conditions.

The defense has filed a Notice of Appeal (D.E. 245). The Eleventh Circuit has opened the appellate case, 25-11132. The defense has submitted their transcript order form and will prosecute the appeal diligently once the transcripts of the trial and pretrial hearings have been prepared.

18 U.S.C. § 3143(b) provides that defendants pending appeal shall be detained unless the Court finds “by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any person or the community if released” and “that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in” reversal, a new trial, or a reduced sentence. “If the judicial officer makes such findings, such judicial officer shall order the release of the person” pending the resolution of the appeal.

Mr. Wade respectfully submits that he meets both criteria and thus requests that this Court stay his jail sentence and surrender until after the resolution of his pending appeal. The appeal will not be resolved in 90 days, so regardless of the outcome of the appeal if the jail sentence is not stayed Mr. Wade will have to serve it in its entirety. If the jail sentence is stayed, whether or not Mr. Wade will have to serve it will depend on whether or not his conviction is affirmed on appeal—which the defense

submits is as it should be and is the only way to avoid the potential outcome of him spending three months in jail, separated from his family and livelihood, based on a criminal conviction that is subsequently reversed. The harm to Mr. Wade of serving the jail sentence will not be able to be ameliorated after the fact. There is no comparable harm to the Government that would be avoided by not staying the jail sentence—Mr. Wade does not seek to vacate the jail sentence, only to postpone it until there is an appellate resolution. If his case is affirmed on appeal, he will have to serve the sentence. Because Mr. Wade is clearly not a flight risk or danger, and because he has valid appellate issues, this Court should stay the jail sentence.

Flight Risk/Danger

It is evident that Mr. Wade poses no flight risk or danger to the community. He lives in South Florida and always has. He served this community as a law enforcement officer. He has no prior convictions whatsoever. He has a wife and three children here. He has a funeral home business here. He was out on bond/pretrial release pending trial with no issues. The Court already gave him a surrender date, which it surely would not have done if it had any concern that Mr. Wade was a flight risk or danger to the community. The victim in this financial crimes case is the US Government, and their loss was repaid in full, before sentencing. There is

no realistic possibility that Mr. Wade would engage in financial, or any other crimes, in the 90 days he would be in jail. There is also no realistic possibility he would flee and give up his family and home and everything he has in his life to avoid a 90-day jail sentence—and if he was going to, he would have already done so as he has been living in the community both before and after the sentence was pronounced. He has also surrendered his passport per Court order, and thus does not have the ability to leave the country. The flight/risk danger factor clearly favors Mr. Wade.

Appeal Not For Purposes of Delay.

The appeal which has been filed is not for purposes of delay. There would be nothing to delay, the appeal was filed while the jail sentence had already been pronounced and surrender date of Monday was pending. Furthermore, Mr. Wade's wife and co-defendant, Carolyn Wade, who was not sentenced to jail time, is also appealing. Mr. Wade has a Constitutional right to appeal and he is exercising that right. He hired undersigned appellate counsel before the sentence was even pronounced, and undersigned counsel was present at the sentencing, demonstrating this appeal was not filed with the purpose of delaying the jail sentence, since the decision to appeal was made before sentence was pronounced. Whether or not this motion is granted, the appeal will proceed.

Substantial Question of Law or Fact.

Undersigned counsel is at somewhat of a disadvantage as to this factor since he was not trial counsel and the transcripts of the trial have yet to be prepared. There may be legal issues with the conduct of the trial which will be identified once undersigned counsel has reviewed the transcripts, exhibits, and other records related to this case.

However, one thing that will clearly be argued on appeal is that Mr. Wade did not have the necessary *mens rea* to support a conviction and sentence. There is no dispute that a third party, Haydee Rivero, prepared the loan documentation in this case and that Ms. Rivero held herself out as an expert in this field. Multiple law enforcement officers used her services, suggesting those services they were not obviously or apparently fraudulent. At the time these PPP applications were submitted many people all over the country were trying to navigate a completely new federal government program in the midst of a pandemic that was at the time of uncertain severity and duration. The entire point of the PPP program was to disburse money into American's hands quickly to avoid national economic collapse.

Mistakes are not fraud, and reasonably relying on purported experts is not fraud. Although the Government contended that Mr. Wade knowingly signed false documents, which is fraud, it is undersigned counsel's understanding that they did not have direct evidence of this and that there was countervailing evidence that Haydee Rivero, who orchestrated the

fraud, had Mr. Wade's login information and used it to access his account and upload and sign documents as him. Even if some of the logins were linked to Mr. Wade himself based on IP addresses, that does not prove that he read or understood everything that the purported expert had prepared on his behalf. This is not a case where the defendant himself created the fraudulent documents or application. The government had the burden to prove beyond a reasonable doubt that Mr. Wade was not himself defrauded by Ms. Rivero (in order to earn her \$1,000 fee for submitting each application, which became quite lucrative for her because she did this for multiple people). Two defense witnesses testified that they were defrauded by Ms. Rivero relative to their PPP applications and did not know she had submitted fraudulent information on their behalf. Mr. Wade also testified to the same thing on his own behalf. At a minimum, this could be sufficient to overturn the conspiracy counts. *See United States v. Wheeler*, 16 F.4th 805, 822 (11th Cir. 2021) ("to prove that a defendant was part of a conspiracy, there must be some evidence that the defendant knew the objective of the conspiracy charged in the indictment and decided to join it."). *See also United States v. Chandler*, 388 F.3d 796 (11th Cir. 2004) (reversing fraud conviction where government did not prove defendant knowingly participated in the fraud).

Based on the information currently available to it, the defense has a good faith belief that there is a valid argument regarding the lack of proof of *mens rea* as to the counts of conviction.

Again, there may be other appellate issues raised and undersigned counsel cannot responsibly identify all issues until he has received and read the transcripts and records. The purpose of 18 U.S.C. § 3143(b)(1)(B) is to avoid delaying incarcerative sentences for defendants who file frivolous appeals. There is no reason to believe that this appeal, of a lengthy trial that had to be tried twice because the first time (when only Carolyn, the defendant's wife, was charged) the jury hung, is frivolous. And again, if the appeal is unsuccessful, Mr. Wade will still have to serve the jail sentence.

Equitable Issues.

Mr. Wade has of course never been to jail (other than working in one as a detention deputy for 25 years). He has served his community both in the military and in law enforcement. He also supports his family with his income from his business, Wade Funeral Home. His wife Carolyn is marginally employed in part-time waitress work. She submitted an application to be declared indigent for purposes of appeal, which was denied on the grounds that Mr. Wade could pay for the costs of appeal, primarily the lengthy trial transcripts, which could then be used for both co-

defendant's appeals. (D.E. 243). Undersigned counsel has already received estimates for some of the transcripts and it appears they will cost at least \$10,000. Given that the Court relied on Mr. Wade's income in denying Ms. Wade's indigency motion, it would be equitable to delay the jail sentence to allow him to continue to earn that income and pay for the appellate costs.

Notice that Defendant Has Not Been Designated to a Prison/Jail.

When the Court set the surrender date in open court for this coming Monday, April 14, 2025, it said that Mr. Wade should surrender to his designated facility. It also said that if the facility had not been designated in time, he should bring that to the Court's attention prior to the surrender date. As of the filing of this motion, he has not been designated and thus does not know where to surrender. He therefore notifies the Court as to the above and requests that the Court at a minimum delay the surrender until he is designated to a facility.

Government's Position.

Undersigned counsel has spoken with Assistant United States Attorney David Snider, who states that the government objects to this motion.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all counsel of record in this cause, this 9th day of April, 2025, via CM/ECF.

Respectfully submitted,

/s/ Daniel Tibbitt
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