IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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| UNITED STATES OF AMERICA | ) | |
| | ) | |
| v. | ) | CASE NO. |
| | ) | 4:22-CR-00084-LGW-BWC-1 |
| BERNARD OKOJIE, | ) | |
| | ) | |
| Defendant. | ) | |

EVIDENTIARY HEARING
BEFORE THE HONORABLE BENJAMIN W. CHEESBRO
February 28, 2023; 10:20 a.m.
Brunswick, Georgia

APPEARANCES:

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P R O C E E D I N G S

(Call to order at 10:20 a.m.)

THE COURT: Ms. Mixon, please call the next case.

THE CLERK: Case Number 4:22-CR-84, United States of America versus Bernard Okojie, Matthew Josephson for the Government and John Ossick for this defendant.

MR. JOSEPHSON: Your Honor, the Government is ready to proceed.

MR. OSSICK: We're ready, Your Honor.

THE COURT: We are scheduled here today to take up an evidentiary issue in this case. The Government filed its 404(b) notice in which it identified three categories of potential evidence that it would seek to introduce at trial in this case.

Mr. Okojie's counsel filed a response and objection to that notice and then the Government filed a reply to that response. As a result of that briefing, as I understand it, only one category of evidence is at issue at this point and that is evidence related to undeclared cash on a flight to Nigeria. I do want to be clear about the posture of this.

There is not a filing in the form of a motion at this point but I'm going to construe defendant's response as a motion in limine seeking to exclude that evidence and treat the reply brief as a response to that motion. Any objection to that?

MR. JOSEPHSON: No, Your Honor.

THE COURT: Mr. Ossick, any objection?

MR. OSSICK: No.

THE COURT: So this does focus on the undeclared cash on the flight to Nigeria. Given that the Government seeks to introduce this evidence, it would be the Government's burden to establish the admissibility of this evidence, so, Mr. Josephson, I would ask you to present any evidence or argument that you have in association with that request.

MR. JOSEPHSON: Yes, Your Honor. I do have one witness and several exhibits to present to The Court.

THE COURT: All right.

MR. JOSEPHSON: We have Agent Randy Dye with the FBI.

Would Your Honor like him to --

THE COURT: That will be fine. Agent Dye, if you will please step up to the witness box.

DOUGLAS RANDOLPH DYE,

having been first duly sworn, was examined and testified as follows:

THE CLERK: Thank you. You may be seated.

THE WITNESS: Thank you.

THE CLERK: Please state your full name, spell your last name for the record and state your occupation.

THE WITNESS: Douglas Randolph Dye, FBI, Special Agent. The address?

THE CLERK: Spell your last name.

THE WITNESS: Oh, D-y-e.

MR. JOSEPHSON: Your Honor, before I begin the examination, I do have four exhibits. They were e-mailed yesterday evening to The Court and the defense counsel. I've also provided a paper copy to the defense counsel this morning.

For expediency, I would propose me handing them all to the witness rather than me handing each one at the time if The Court would allow that.

THE COURT: Any objection, Mr. Ossick?

MR. OSSICK: I didn't see them yesterday was the reason I was just taking a minute.

MR. JOSEPHSON: Just to clarify, all I'm asking, can I hand them all at once.

MR. OSSICK: No objection, I wanted to look and see exactly what I had.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. JOSEPHSON:

Q. Agent Dye, could you introduce yourself to The Court, your name, your occupation and your role in this particular case regarding the defendant, Mr. Bernard Okojie?

A. Yes, I'm Douglas R. Dye. I am a special agent with the FBI and I'm case agent on this -- this case.

Q. Agent Dye, I'm going to ask you a few questions. They are going to be limited to the purpose of this hearing which is to determine the admissibility of evidence obtained from Mr. Okojie at an airport, specifically some cash that was not declared to customs and border patrol as well as some evidence surrounding that cash in the form of statements and other documents.

I want to begin by asking you about the defendant's EIDL loans that he personally received. Did the defendant receive -- let me first ask you, what is an EIDL loan?

A. EIDL loan is a Small Business Administration program, Economic Impact Disaster Loan, that is administered by the SBA to beneficiaries that request advances and loans to help them with an incident such as the COVID-19 disaster.

Q. And did the defendant in this case receive multiple EIDL loans for himself or his purported businesses?

A. Yes.

Q. And were some of those loans funded while others were not funded by the SBA?

A. Yes.

Q. I want to focus specifically today on the loans that were actually funded. Could you pull up what I've handed you previously marked for identification as Government Exhibit 1?

A. Yes.

Q. Could you describe generally what you're looking at with respect to Government Exhibit 1?

A. Yes, it is a synopsis of loan applications, three of them, A, B and C. They are EIDL loans and advances and they show the account number, the routing number, the date disbursed and

whether it was an advance or a loan.
Q. Does the summary also include the amounts of each of the three loans that were funded?
A. Yes.
Q. Could you describe for The Court what was the time period in which these loans were funded and the funds were provided to Mr. Okojie?
A. Yes. They -- they started around June 17th, 2020, 18th, 20th and 23rd of 2020.
Q. So June 17, 18, 20 and 23 of 2020; is that correct?
A. Yes, sir.
Q. In terms of the total amounts -- I know the specific amounts of each of the three loans are on this summary sheet you're referring to. Were you able to determine an approximate total amount of money that Mr. Okojie received directly from the SBA through the EIDL program?
A. Yes, sir, it was approximately $76,300.00.
Q. In addition to the $76,000.00 that made its way -- actually before we move on, were you able to analyze the loans themselves that Mr. Okojie submitted to the SBA?
A. Yes.
Q. And did those loans include materially false statements?
A. Yes.
Q. Was one of those materially false statements the gross revenues that a purported entity generated the year prior to

when the application was submitted?
A. Yes.
Q. In addition to the $76,300.00 that you have talked about, did Mr. Okojie also receive money for submitting EIDL applications for other people?
A. Yes.
Q. Let me ask that a little bit better. Did Mr. Okojie submit EIDL applications on behalf of other people?
A. Yes.
Q. And did your investigation show that there were payments that those people made to Mr. Okojie for submitting those applications?
A. Yes.
Q. And like the applications that Mr. Okojie submitted directly for himself, were you able to determine whether these applications contained materially false statements?
A. Yes.
Q. And like the applications submitted directly for the benefit of Mr. Okojie, did these applications for other people include false statements regarding gross revenues?
A. Yes.
Q. I'd like for you to turn now to Government Exhibit 2. Do you recognize Government Exhibit 2?
A. Yes.
Q. And just for the record, Government Exhibit 2 is eight

pages and includes a list of information for eight individuals.

Agent Dye, could you describe in summary form what Government Exhibit 2, what information it summarizes?

A. Yes, it summarizes the individuals from the indictment, and it provides the name of the individual, the SBA EIDL application number, the amount that was funded and the payments from the individual beneficiary of the loan to entities associated with Bernard Okojie.

Q. Does Government Exhibit 2 include copies of the checks that individuals sent to Mr. Okojie for filing false EIDL applications?

A. Yes.

Q. Were you able to -- first, how many people sent payments as reflected in Government Exhibit 2?

A. Eight.

Q. Eight people. Were you able to determine an amount of money, total amount of money that Mr. Okojie received from these eight people for submitting false EIDL applications?

A. Approximately $145,000.00.

Q. So am I right in summary that the defendant received money directly from the SBA in June in the approximate amount of $76,000.00 and then in July and August received approximately $145,000.00 from people for submitting EIDL applications?

A. Yes.

Q. After the defendant received all of this money, did he make cash withdrawals?

A. Yes.

Q. I'd like for you to turn to Government Exhibit 3A and 3B. Could you describe for The Court what information is included in Government Exhibit 3A and 3B?

A. Yes. They are check images from Regions Bank accounts, two accounts, two separate accounts, one ending in 4728 and one ending in 4752, showing the date, the dollar amount withdrawn, the account name, Bernard Okojie and the account number.

Q. In terms of the amount of money -- let me ask you in general: Is this simply a sampling of the checks that you and others have looked at with respect to Mr. Okojie?

A. Yes.

Q. This is not a comprehensive list of checks that were -- check withdrawals, cash withdrawals of Mr. Okojie; is that correct?

A. Correct.

Q. In terms of the timeframe of just these sample checks, did they occur in approximately in July, August, September and October of 2020?

A. Yes. There are two, one from June and one from March, but other than those two --

Q. So there were two that were included that would have predated the receipt of the money but all of the others in Government Exhibit 3A and 3B would postdate the receipt of money

either directly from the SBA or from an individual who provided funds for Mr. Okojie's services; is that correct --
A. Yes.
Q. -- for those two examples, but everything would postdate the receipt of money other than those two?
A. Yes, sir.
Q. With respect to the amount of cash withdrawn, did you notice anything suspicious regarding the amounts and the federal financial reporting requirements?
A. Yes.
Q. And could you describe what you noticed to The Court?
A. In many of them, they are just under the $10,000.00 threshold.
Q. And under federal law, are financial institutions required to report transactions that are $10,000.00 or greater?
A. Yes.
Q. And is that a well-known requirement particularly?
MR. OSSICK: Objection. I don't know that he knows what is well known.
MR. JOSEPHSON: Withdrawn.
Q. (By Mr. Josephson) Okay, so is it correct that Mr. Okojie, given Government Exhibit 3A and 3B and the other exhibits you've described today, is it correct that Mr. Okojie withdrew a significant amount of cash after he received money from the SBA or from people for performing his EIDL services?

A. Yes.

Q. And were a significant amount of those transactions structured below the $10,000.00 reporting requirement?

A. Yes.

Q. All right, after Mr. Okojie withdrew cash largely through structured transactions, did he encounter law enforcement at an airport on December the 28th, 2020?

A. Yes.

Q. Could you describe just generally what happened in that encounter on December the 28th?

MR. OSSICK: Objection. Is this his personal knowledge?

MR. JOSEPHSON: I can establish the foundation. It is not his personal knowledge. He's not the actual agent who was there but he's familiar with the event and the report.

MR. OSSICK: So you're asking him just to testify from what he's learned through a report; am I correct in that?

MR. JOSEPHSON: That's correct.

MR. OSSICK: I don't have a problem with that for these limited purposes, Judge, but beyond that, I would object if it's --

MR. JOSEPHSON: A trial situation.

MR. OSSICK: I'm not waiving anything.

THE COURT: Understood. Understood. You may proceed.

Q. (By Mr. Josephson) Agent Dye, have you reviewed reports regarding Mr. Okojie's encounter with law enforcement on

December the 28th, 2020?
A. Yes.
Q. And was this encounter with agents from customs and border patrol?
A. Yes.
Q. Could you describe for The Court what transpired with that encounter?
A. Yes. He was -- had a conversation with, according to the report, with CBP, where they asked him about whether he had cash, he had money that he was departing with from the United States to an outbound flight to Nigeria.
Q. And was that money declared to law enforcement in any way?
A. It was not until they asked him.
Q. The prior -- prior to the request from law enforcement, there was no -- Mr. Okojie made no effort to declare any bulk cash to law enforcement?
A. Correct.
Q. After the incident on December the 28th, 2020, was there another incident with law enforcement when the defendant came back into the United States?
A. Yes.
Q. And let me ask you just to clarify: The incident on December the 28th, could you describe the nature of that flight, where Mr. Okojie was coming from and going to?
A. On December 28th, 2020, he was departing Atlanta, the US,

to Nigeria.
Q. And was there an encounter after that incident in which the defendant was coming back into the United States and encountered law enforcement for a second time?
A. Yes. I believe this was a -- not a return flight but it was a year later on November 19th, approximately November 19th, 2021, inbound flight from Nigeria to Atlanta airport US.
Q. Okay, so different trip?
A. I believe so.
Q. And in that return into the United States, did law enforcement interview the defendant?
A. Yes.
Q. And did the defendant make statements regarding the source of his income during that encounter?
A. Yes, according to the reports from CBP, they did make -- the report did have narrative that talked about his sources of his income.
Q. And just as a summary matter -- actually let me back up. Were there also statements that the defendant made in the first encounter as well regarding his wealth or his income?
A. Yes, there was a -- there was an additional document in that report that had a petition to I believe reclaim the money.
Q. Okay, on the second encounter, was there a notebook that was taken from the defendant's person?
A. Yes.

Q. And I want to direct you to Government Exhibit 4. Did this notebook contain -- actually, let me have you just flip if you could to Page 3.
A. Does that begin with a prayer request?
Q. Yes. And just in summary could you describe what this notebook appears to contain?
A. It appears to contain a list of things that Bernard Okojie would want to do or would want to remedy in the future.
Q. And are they -- pardon me. Are they styled as prayers or requests?
A. Yes.
Q. I don't want to go through all of them but I do want to ask you about a couple examples. Could you read Number 14?
A. "Lord, make me a millionaire in dollars in 2021."
Q. Could you also read Number 11?
A. "Lord, give me victory on this matter with customs and DHS and let all my money and phones be returned."
Q. And a matter of clarification, was this notebook taken after the initial encounter with law enforcement when they seized the $39,000.00?
A. Yes, according to the report, this is from the November -- approximately November 19th, 2021.
Q. Could you read as another example Number 17?
A. "Lord, help me to own a fast food chain."
Q. And if you could read Number 20?

A. From what I -- "Lord, help me to acquire more ad properties in America and Nigeria."
Q. There is a difficult word there before "properties" to decipher?
A. Yes.
Q. Does it appear to say "Lord, help me acquire more properties in America and Nigeria" given that we're not quite sure what that adjective is?
A. Correct.
Q. I asked you to read just a couple of those statements, but in general, does the notebook go on from there to include more statements regarding the defendant's desire to obtain money or property?
A. Yes.
Q. And this was a notebook written after the money was seized at the airport?
A. Yes.
MR. JOSEPHSON: Your Honor, I have no more questions for Agent Dye.
THE COURT: Do you want to tender these exhibits?
MR. JOSEPHSON: Yes, I would like to tender Government Exhibit 1 through 4 at this time.
MR. OSSICK: No objection.
THE COURT: They are admitted.
Mr. Ossick, cross-examination.

CROSS-EXAMINATION

BY MR. OSSICK:

Q. Couple of questions, Agent Dye. I believe, let's start with the fact that you indicated that -- I think you used the term that there were false statements made in connection with these loans?

A. Yes, sir.

Q. Now, that's your opinion; right? That's what this trial is about, isn't it?

A. Yes, sir.

Q. So that's your view at this point, or is it not?

A. It's not an opinion. We have -- we have testimony and supporting documents from people.

Q. That have convinced you but not necessarily me; is that correct? Is that fair?

A. Yes, I --

Q. Okay, I can move on. I don't think that's too important. Now you indicated that essentially there's paperwork that reflects whatever proceeds came from any of these applications, whether we are talking about the first group or the second group; is that correct?

A. Yes.

Q. So the Government, when they fund these things to the extent they are funded, it's with a paper trail; correct?

A. Yes.

Q. So any need for documentation about what if anything was received as a consequence of any application, that's provable through these documents; right?

A. Yes.

Q. So there's no need for anything, records, otherwise to prove whether or not these loans were funded; correct?

A. Would you please say that one more time, sir?

Q. In other words, there's a paper trail that we can rely on to show whether or not a particular loan is funded and what the amount of the funding was?

A. Yes.

Q. Now, you indicated that then there's also a series of documents which will reflect whether or not cash withdrawals are ever made; is that true also?

A. Yes.

Q. And those are from accounts evidently that in some way you believe Mr. Okojie had access to make withdrawals from; is that correct?

A. Yes.

Q. Now, the extent to which you indicated there's loans which you also believe that some fee or compensation was paid to Mr. Okojie from that were directed to others --

A. Yes.

Q. -- or in the name of others, that also has this same sort of paper trail; is that correct?

A. Yes.
Q. So everything about the loans, any monies he's received, how much they were, when they occurred, all of that, that's on paper; right?
A. Yes.
Q. Now you also indicated on the cash withdrawals that cash withdrawals of what you think are suspicious amounts also occurred before any of these loans ever occurred; isn't that right?
A. Yes, there are -- yes, there are some.
Q. So there's conduct that would reflect substantial withdrawals before anything alleged in this indictment; isn't that, in fact, true?
A. Yes, there are.
Q. That sort of in your view suspicious activity continues because that -- even after the loans?
A. Yes.
Q. Now, there's nothing about the loans, the payments, the proceeds or how any compensation is paid that has anything to do with making an international flight, is there?
A. Say that one more time.
Q. There is nothing that an international flight has to do with any of these loan programs in terms of any offense or making applications or receiving the monies; isn't that right?
A. No.

Q. No, it's not true?

A. No, the money that was received from loan beneficiaries' payments was cash withdrawn and the money was with him when he departed the country.

Q. Well, you know that there was money with him in currency. You don't know -- money is fungible, isn't it?

A. Yes, sir.

Q. So you don't know that it's the same dollar he got out of a cash withdrawal, do you?

A. Correct.

Q. You have no idea whether that's true; you have no idea whether that's the same monies from the March withdrawal; correct?

A. Correct.

Q. So you can't say it's the same money, can you?

A. No.

Q. Okay, but let's talk about the offense. Is there anything about the offense of making what you believe to be a false application that has anything to do with making an international flight?

A. No.

Q. In other words, a person could stay in America a hundred percent of the time in connection with any of these offenses; isn't that true?

A. Yes.

Q. And whether or not there was a false statement to get the loans or to get it approved or how the monies and proceeds were handled have nothing to do with going on a trip, does it?
A. No.
Q. Now, you say that it's -- currency transaction requirements on international flights, I believe you said, were well known or did I stop you before you got to say that?
A. I believe the AUSA said that and you stopped him.
Q. So, in other words, you would agree, though, that transactions of having currency in an international flight people are aware of with a negative connotation in the general public, aren't they?
A. I don't know what the public has a negative connotation of.
Q. You don't think so?
A. I don't -- I don't know.
Q. Did you ever see like television, movies, books where they talk about currency, large sums of currency being transported out of the country?
A. Yes.
Q. Have you ever seen that portrayed in a favorable light?
A. No.
Q. But yet you don't associate the two together as a way to just cast an inappropriate aspersion on someone for having currency?

A. No.
Q. Now, you indicated there's some sort of notebook you say was seized. Do you know when that notebook was seized or do you know when it was copied?
A. I know that it was seized and copied according to the report date.
Q. When you -- okay.
A. The date of the arrival into the United States.
Q. You know that it was kept or not kept?
A. It was -- I would have to look at the report and see whether it was in evidence or not in evidence, but it was contained --
Q. Tell me what it was.
A. It was contained in the report if I could refer to the report.
Q. Sure. Do you have the report?
May I approach the witness?
THE COURT: You may.
THE WITNESS: Thank you. I've got to follow up. It does say on the last page, 3 of 3, that all devices were returned to Mr. Okojie on inspection. I would have to pull up to see if that also included paperwork.
Q. (By Mr. Ossick) Does it say that it was kept or is that just your conclusion?
A. It says, "At this time copies of pocket trash and

documents were obtained and uploaded to the event. All copies were since shredded and disposed."

Q. Did you hear my question? Does it say if it was kept?

A. I think where it says that they were uploaded was that they were kept but I would have --

Q. Explain "uploading" to me. Isn't that putting something onto a computer into a database?

A. If you're uploading, you can upload documents; you can upload images, videos, music.

Q. If I upload this, is it gone from here and kept or not?

A. No, it would be a copy.

Q. So it doesn't say "kept"?

A. No. I would have to follow up with --

Q. So that's your conclusion?

A. -- CBP.

Q. When you have previously testified it was kept, that was your conclusion without it saying that in the report; is that correct?

A. I was referring to kept as an image, that they made a copy of it, that we have received it.

Q. Okay. Now, you referenced some statements that Mr. -- and I realize you testified that you weren't present during these prior transactions, these prior meetings and at the time of these intercepts by law enforcement; is that correct, sir?

A. Correct, sir.

Q. And you were relying just on again the report of someone else?

A. Yes.

Q. Do you know if Mr. Okojie was free to go during the time he was questioned about those two matters?

A. On those events?

Q. Well, either one. Let's take individual. Let's go to December 2020.

MR. JOSEPHSON: I am going to object to this. I think the testimony was he wasn't there so to ask him what Mr. Okojie was free to do or not do, he, by your own questioning, is not in a position to answer that.

MR. OSSICK: Well, he was able to answer your questions based on a report. Perhaps he can apply that same expertise to mine.

THE COURT: I will overrule the objection. The question, as I heard it, was: Does he know if he was free to leave.

THE WITNESS: I do not know.

MR. OSSICK: Okay, thank you. That's all I have.

THE WITNESS: Thank you, sir.

THE COURT: Any redirect?

MR. JOSEPHSON: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. JOSEPHSON:

Q. Agent Dye, counsel asked you some questions about cash withdrawals that predated the loan disbursement money. Is it true that those cash withdrawals continued throughout the disbursement period?

A. Yes.

Q. And were there significant amounts of cash withdrawals that occurred after the defendant received loan money either directly from the SBA or from individuals as a result of his filling out EIDL applications?

A. Yes.

Q. With respect to the notebook, I believe counsel asked you a question about whether the notebook was directly tied to a loan application, if I recall, but regardless of whether that was the question, I want to ask you: Was there information in the notebook that did, in fact, relate to some of the applications that were submitted?

A. Yes.

Q. And could you just summarize what information you saw in the notebook with respect to a specific EIDL application?

A. A password.

Q. And was this a password that was used to submit an EIDL application for an individual who is named in the indictment?

A. Yes.

MR. JOSEPHSON: Your Honor, I have no further questions for Agent Dye. I have some argument for The Court but no further questions.

THE COURT: Agent Dye, you can step down.

THE WITNESS: Thank you, Your Honor. Do I leave the exhibits?

THE COURT: You can take those back to counsel table. I have hard copies here is fine.

THE WITNESS: Thank you, Your Honor.

THE COURT: Mr. Ossick, do you have any witnesses or evidence you wanted to present today?

MR. OSSICK: No, Your Honor.

THE COURT: Only argument.

Mr. Josephson, you can present your argument at this time.

MR. JOSEPHSON: Yes, Your Honor. The evidence in this case regarding the cash seizure at the airport in the encounter with law enforcement on that day is admissible.

Our first argument for admissibility is that it's not actually 404(b), that the money that was taken was the proceeds of the fraud in this case, both the fraudulent loan that was obtained directly by Mr. Okojie that took place in June of 2020, we also think that there's a factual basis we've established that there was significant kickbacks that continued in July and August of 2020.

In terms of the amounts we've got -- I want to say these are in the exhibits, but it was over $70,000.00 funded in loan money in June and we have kickbacks in July and August in the range of $145,000.00. So we have a significant amount of money that we are contending was fraudulently obtained.

Now, of course, it will be our burden at trial to prove that. But I think we've established from a financial standpoint that there was a significant amount of money that made its way to the defendant in June, July and August of 2020.

We also have established that the money didn't just sit there and nothing happened to it. There was significant cash withdrawals that took place after that time period. Specifically in July, August, September, October, there were withdrawals of cash that the defendant made and they were not just -- the cash was not just withdrawn. It was actually withdrawn in a structured manner, in a manner that was intended to avoid a federal reporting requirement.

One of the charges -- again our argument is this is evidence of the crimes charged, not extrinsic evidence of intent -- I think we will get to that in a second -- but actually evidence of the crime charged which wouldn't require any 404(b) admissibility.

THE COURT: I want to be very precise about your argument here as a preface. I view the two evidentiary theories as mutually exclusive, not cumulative arguments. It is either 404 evidence or is intrinsic inextricably intertwined. It can't be both. They have to be mutually exclusive. Your first argument is that this is not 404 evidence. It is part of the crime that's charged here. So let me drill down a little bit. Which count does this relate to?

MR. JOSEPHSON: It relates to the fraud, so conspiracy to commit wire fraud and bank fraud as well as Count 2, so Counts 1 and 2, conspiracy to commit wire fraud and bank fraud as well as the substantive wire fraud count in Count 2.

It also would relate to the money-laundering charges in Count 3, and I can go count by count and explain how that is the case.

We've established that the money is traceable to the fraudulent loans through the testimony and the exhibits in this case. Significant loan proceeds and kickbacks are coming to the defendant and then they are withdrawn by the defendant, significant amounts of cash, and then he's found with a significant amount of cash in December of 2020.

Our argument -- and I understand counsel is free to raise defenses as a factual matter and present to the jury his contention that the money came from another source, that there was some other way that he got $40,000.00 apart from the fraud, and that would be a question of fact for the jury and a question of credibility to determine the relevance of that, but if our theory is it is tied to the fraud, both bank fraud and wire fraud that was committed through the fraudulent loans, it wouldn't be extrinsic to those charges.

With respect to the money laundering, it's also relevant because we're alleging that the withdrawals were structured, that they were withdrawn in a manner to hide the money from the Government from a reporting standpoint.

THE COURT: Let's keep those separate for now. The fraud charge, I'm struggling a little bit to understand how disposition of the fraud proceeds would be integral to the offenses charged there, understanding that the argument is he obtained these proceeds illegally and then he did something with the proceeds, but for the Government to admit this on the theory that it is intrinsically intertwined or inextricably intertwined with the charged offenses, it's -- I anticipate, based on the questioning, that Mr. Ossick is going to argue that that separate disposition of the proceeds, which is identified by the airport seizure, is not necessary to prove the fraud transaction at all, that there is ample evidence otherwise, separate and apart from the issue of what he did with the money once he obtained it.

MR. JOSEPHSON: Well, Your Honor, we have to prove that he intended to defraud the loan program in this case, and the disposition of the funds is relevant to the intent to defraud because we -- like in any fraud case, if somebody submits false statements in order to get the money and then spends the money in a particular manner that's inconsistent with the program -- and in this case, you know, Your Honor, it's a little bit difficult procedural posture because we're not in a position to try the entire case about how the fraud worked, what the application said, how it's fraudulent.

That will certainly be an issue at trial, but I think for purposes of determining admissibility of the cash, the disposition of the funds, we're alleging it was structured out, so specifically withdrawn not in a $40,000.00 amount that would have been reported to the Government, but it was structured out specifically below the $10,000.00, and we just submitted some summaries here, but our trial evidence is going to include all of those and we would have to include those for the money-laundering count anyway.

THE COURT: Doesn't the previous withdrawals undermine that, though, the fact that there are ones that predate any of the fraud allegations here? There seems to be a continuity of conduct.

MR. JOSEPHSON: Well, Your Honor, quite candidly, there's more fraud than we've alleged, and so -- and the defendant -- you know, this is an issue of fact. The defendant is free to argue that and free to argue that, well, it's actually not tied to this scheme. It's tied to another scheme and can open that door, but it's not a 404(b) question. It's a relevance question of how close is it tied to the counts that we've charged.

THE COURT: Let me ask you a purely legal question, and

I don't know the answer to this, but at this point it's your burden to establish admissibility. That presumably means you have to establish that this piece of evidence is inextricably intertwined with the charged offense. I presume that you would have to establish by a preponderance of the evidence the connection between the airport seizure and the charged fraud at this point.

As you said at trial the defendant can make an argument that that connection is not sufficient, but at least to get the evidence in at the outset, would you disagree that it's your burden to overcome that hurdle at the beginning?

MR. JOSEPHSON: Your Honor, so I think this is a question of admissibility under 103, Rule 103, and I think what I would propose to The Court, I think we have proven -- we've got four exhibits of significant financial transactions that show the defendant is obtaining significant amounts of money, withdrawing that money and then is found close in time with money that's unreported.

I think we've met our burden but I would propose if The Court has concerns factually about any part of that, The Court can conditionally admit certain evidence on the -- you know, and put us to our burden of showing certain things that The Court thinks would trigger the admissibility.

I think that is a way to do it rather than completely keep it out because I do think there are parts of this evidence -- and the witness talked about this. For example, the notebook, well, the notebook has some evidence directly related to applications, I mean, directly, like passwords that were used to submit fraudulent applications. I mean, that is, I mean, foundational evidence to the charge. It wouldn't be this separate incident. It took place in the context of that incident.

So my concern would be if The Court issues a ruling and says, well, this evidence is not admissible, well, part of it could be. Part of the notebook could be or part of the cash could be, cash withdrawals, maybe not the cash withdrawals that predate the fraud but the cash withdrawals that are after it.

And so I think The Court could craft a ruling if it has concerns factually about admissibility that would put us to our proof, like let us prove the relevance of it, and Mr. Ossick can cross-examine and submit his own theories about the airport incident, but I think it is -- there's a lot of factual questions, not necessarily legal questions, under 404(b).

THE COURT: I want to clarify one point for the record and make sure I'm not under any misapprehension. As I understood it, the only notice concerned the seizure of the cash in the December event, not the admissibility of the notebook itself, that that wasn't raised or challenged. So I did not understand us to be taking up that admissibility challenge or if there is an admissibility challenge to the notebook -- is that correct -- at least from the Government's point of view?

MR. JOSEPHSON: I guess I just want to be clear, I think that is clear in terms of the notice and in terms of how the paper and the pleadings were made in this case. From our perspective, we have two encounters of law enforcement and they do relate to each other because he's being questioned about -- the notebook itself references the cash, and you have the defendant who leaves the country. He has bulk cash on him. We think it's tied to the fraudulent loan scheme for which he's indicted and the money-laundering scheme for which he's indicted, and then he's, a year later, questioned about it, has the notebook on him and there are statements in it relating to the scheme and relating to the prior cash incident.

THE COURT: To be clear, I'm not saying that I can't consider the notebook in the context of determining the admissibility of the seized cash, only that I'm not rendering any decision on the admissibility of the notebook at trial for any other purposes.

Let's go back, though. As I understood your argument, the seized cash from the Government's point of view is admissible as inextricably intertwined to Counts 1 and 2 because it shows the intent to defraud. Is there another theory of how it's either relevant to or tied in with those charges?

MR. JOSEPHSON: Well, to commit fraud, you either have to attempt to obtain money or obtain money. The obtainment of the money is part of the offense. Fraud in the air, so to speak, is not a crime. There has to be money changing hands or at least an attempt to make that so.

We're putting the money in his hands, literally in his hands.

THE COURT: I understand that and that's shown by the withdrawals, but then there's one more step after that as to what he does once he's withdrawn the money, so that last step, what is that inextricably intertwined with?

MR. JOSEPHSON: Like in many fraud cases, the disposition of money that's not earned legally is relevant to the intent. I mean, the spending, like in many fraud cases, when people spend money and they buy expensive cars or clothes, the disposition of the funds is always admissible because it goes to the state of mind and the intent to commit the fraud itself. It's not cut off, the misrepresentations and the lies, the crime isn't just cut off then and there because the money is obtained and something is done with it and it's always considered to be part of the offense that's committed, and that evidence hasn't been challenged.

We're going to submit evidence of spending in this case. I don't think there's a distinction between that and, you know, cash withdrawals kept in an airport, you know, on the basis that it already happened after the fraud.

THE COURT: I worry that we're mixing concepts here because when you indicate that the disposition of the fraudulently obtained proceeds are relevant to intent, that sounds much more like a 404 argument, that this is another act that is not inextricably intertwined but is relevant to show intent, so I want to be precise because under the inextricably intertwined, it's not a question of whether it's a relevant to intent for the underlying charge. It's a question of whether it's integral and part of the natural part of the witness' account I think is the standard for inextricably intertwined, that it's so tied together in time and circumstances that it is just part of the whole story of the crime, and so here the question, the inquiry on inextricably intertwined, is whether the seizure at the airport is so integrated with the offenses itself that it has to be admitted separate from a 404 analysis. Disagree with that?

MR. JOSEPHSON: Just to clarify, when I say intent, it's intent to commit the crimes charged in the indictment, so not intent in a 404(b) sense. We're alleging that the -- because he is charged with money laundering, structuring of the cash. He's specifically charged, and, you know, Mr. Ossick I believe is going to discuss an Eleventh Circuit case that I think illustrates why evidence should be admissible here but it wasn't -- of the airport seizure was admissible, should be admissible here but not in this case.

We're not alleging that the defendant, the evidence comes in because he lied to the Government at the airport. He lied to the Government at the SBA. That would be improper. We would need to show specific, something more specific to allow the evidence to come in. I think we've shown that because what we're arguing is that we should be able to present to a jury that the defendant got these loans. The defendant got these payments just like we lay out in the exhibit, and the money wasn't used to operate a business. It wasn't used to keep people on the payroll. It wasn't used for the purposes of the loan.

And, Your Honor, again, this is somewhat of a limited posture. We didn't get into the SBA requirements and how the money can be used and can't be, but I can say, as an argument, we would like and plan to show that the disposition of the funds is inconsistent with the program itself, and I think that we can do that not just with buying things but also with keeping cash at an airport hidden not in a bank account, not in a business account, not in a payroll account. It's evidence that the money was never intended to be used for the purposes of the loan that was applied for.

THE COURT: I understand the sort of factual theory. I have two questions. You made a remark, and I'm not sure I followed it. You said this is relevant to proving intent to commit the crimes charged in the indictment; it is not intent in the 404(b) sense. I'm not sure I understand what the difference is.

MR. JOSEPHSON: Evidence can be intrinsic to the crimes charged, so applicable to the elements of the offense so we can submit and nobody notices that evidence ever because that is the evidence. That's the discovery. Here's the discovery. It's relevant to the offense that's charged.

The 404(b) notice was filed really in an abundance of caution, and we're arguing in the alternative because I do agree, Your Honor, it's either evidence intrinsically to those crimes or you have to have some 404(b) purpose to get it in.

If we're right that, well, it comes in if you guys connect it to the crime that's charged in the indictment, either money laundering, wire fraud, bank fraud, I think that The Court can rule that, and I mean, it sounds like there is concerns with the second theory if we don't meet those threshold requirements, yet the intent, motive, intent, opportunity, plan, those more limited purposes would be a different analysis and an alternative basis to get it in, but our first argument is it's no different than the other evidence of cash that we're going to present at trial.

THE COURT: Let me ask you a factual question. The $39,000.00, is it the Government's position that it was money received as kickbacks or proceeds from the EIDL loans that Mr. Okojie obtained for his own affiliated businesses?

MR. JOSEPHSON: What I would say, Your Honor, and I hesitate because, as I indicated earlier, we just submitted a summary of these transactions, but what I can say is some of these transactions are related, the withdrawals are related to, timewise, to the kickbacks, so there's money coming in from a check and then the money is structured out and withdrawn.

Now, I can't say for certain it's one or always one. There's a series of transactions. We're talking about months and months of structuring, not just one transaction. It's a period of time, and so we would, at trial, submit evidence that would show all of them as well as show how money came in and then it would be a question I think for the jury to determine, you know, whether it's related and to what transaction.

THE COURT: I believe that you also argue separate from the fraud allegations that it's relevant, intertwined with Count 3 and the money laundering. Can you elaborate on that connectivity between the charged offense and the seizure?

MR. JOSEPHSON: Yes, Your Honor. So the money-laundering count, Count 3, one, it's conspiracy to commit money laundering in different ways: Concealment of the money, spending of the money and to avoid a federal financial transaction reporting requirement.

So we've got three different ways that that crime was committed starting with the federal reporting requirement. Our evidence that we would like to submit at the trial would be that the money was structured out. It was received and then -- it was fraudulently obtained. It's received and then the defendant has to do something with it. And he can't just withdraw all of it at once because that would trigger notice to law enforcement.

So he structured it out over a multiple-month period and we touched on some of the transactions here and the exhibit has some of them. Again, that is not all of them. There's a significant more, but those structured transactions would relate to the money-laundering charge to avoid that federal financial requirement and the fact that he has the money -- you know, the defense has got to be, well, that money is not tied to the fraud, which is a factual defense, but it's not saying that we're wrong legally. It's not saying it's not admissible at all.

And to finish the other two, Your Honor, we allege concealment money laundering, so we're alleging that the money was taken and it was hidden in a way -- and we didn't get into this a lot -- but the loans in this case were often in shell companies, fake names, that type of thing.

There's going to be concealment evidence at this trial. The fact that money is concealed from law enforcement at the airport we would say is evidence of the crime charged. We're not saying just propensity. We're actually saying you got the money from the fraud. You hid it through the bank transactions and you also hid it at an airport. It's evidence that we would say is admissible for the concealment reason, and the spending, we also allege that there were transactions greater than $10,000.00 as a part of the money-laundering conspiracy.

THE COURT: Taking those three theories, I don't intend to pick them apart, but the first one, the avoidance of the reporting requirements seems to be established through the nature of the withdrawals. As far as what happens afterwards with those withdrawals, I'm having difficulty seeing exactly how it proves it.

Taking the third one, just let me walk through this because maybe I'm misunderstanding your position. As to the third one, the spending, that also seems to be documented, proven and associated with completely separate conduct allegations or proof that you intend to submit.

The middle or second one, concealment, generally, I understand more there the connection, if it's an effort to hide proceeds and that means withdrawal and then concealment and travel outside of the United States, but to really drill down to that, does that mean that the Government intends to go to trial and say that Mr. Okojie committed money laundering by trying to fly through the airport with these funds and not declaring it, that that constitutes money laundering itself?

MR. JOSEPHSON: We intend to prove the elements through all of the evidence, which would include the bank statements, but, yes, I would argue that hiding money in a duffle bag on an international flight, if that's not concealing the cash, then

I'm not sure what is.

THE COURT: Well, is there other evidence that you intend to present that does relate to concealment, domestic concealment?

MR. JOSEPHSON: Evidence of the crime charged?

THE COURT: Yes.

MR. JOSEPHSON: You know, Your Honor, we're not in a position really today -- we want to give The Court the information that it needs but it's also difficult because we're getting ready for trial but we're not there yet and we've got to pull together all of the documents and there are different steps of concealment along the way.

What I can say is that the applications were submitted in companies that we intend to prove did not exist, that were not real companies, that did not -- and there were false statements that were made not only on one application but on dozens, and as a result, significant amounts of money was obtained and it wasn't obtained and announced to law enforcement and announced "Hey, look, here's what I got." It was obtained and then structured out over a multiple-month period and we think a bulk of it, not all of it, but a bulk of it was kept by the defendant and further concealed through an international flight. That's our showing, Your Honor. That's our showing. That's our argument.

THE COURT: I understand, and Mr. Josephson, I expect from the briefing that Mr. Ossick may also argue 403. I will give you a opportunity to respond to that after I hear his argument.

Mr. Ossick.

MR. JOSEPHSON: Yes, Your Honor.

MR. OSSICK: Your Honor, if I might, I'm going to refer to a case, and I have made copies to the Government. Could I give one to The Court?

THE COURT: That will be fine.

MR. OSSICK: Your Honor, let me sort of start off I guess by saying I got kind of a whole different idea what we were going to be doing here today. The notice on the 404(b) says that -- and again, we're down to just the one. We've resolved all the others.

The United States intends to introduce evidence relating to Mr. Okojie on December 28th, 2020 attempting to take $39,700.00 in cash aboard a flight from Atlanta and to Nigeria, and he failed to declare that cash, and it was seized. Okay.

My understanding is that if something is intrinsic, it's not 404(b), so that's a whole different question that would be dealt with at the trial just like a 103 relevancy or anything else would be dealt with.

In other words, so I'm kind of addressing myself, if I can, and I certainly will go further, but addressing myself first, is under this notice, is this admissible under 404(b) or should it be and what should we look at to determine that, and that would be the failure to declare the cash. It's got nothing to do with this notebook or statements.

I mean, I just don't see that as being part of what would otherwise be admissible, that would be admissible if The Court said, "Ordinarily, this wouldn't be but you've satisfied me that you've met the test of 404(b) and I'm allowing it in because it goes to help the jury in a specific way as to one of the identified elements of 404(b)."

There's some question about identity, there's some question about plan, motive, intent, whatever, but a legitimate one that makes it more likely than not by allowing the jury to see this evidence that element can be established, and I think that what we've seen here today shows that that's just not the case whatsoever, and I will go to some 403, but let me just start by saying first, I think it's pretty clear that in a lot of people who might serve as jurors' minds, international travel alone has got some sort of nefarious aspect, and certainly with $39,000.00, it does.

So I believe it's basically a way to back-door bad evidence about character, but let's look at what would be here that would relate to one of the elements that's here. Okay.

The Government has argued today, of course, mainly -- well, significantly, about whether it's not 404(b), which I'm not addressing unless -- do you feel I have to address that today, Judge?

THE COURT: Let me share my view at this point.

MR. OSSICK: Okay.

THE COURT: The Government's initial notice took one position, and in that position stated that this was not 404 evidence because the evidence described in the notice was inextricably intertwined with -- pardon me, I misstated that.

Initial notice took the position that this was not intrinsic evidence but rather was 404 evidence. It states specifically in that notice that it's outside the scope of the money-laundering and conspiracy charge in Count 3 and is not inextricably intertwined with the charged conduct but is admissible under 404, so the notice took the position this was other acts, not intrinsic evidence, but rather extrinsic evidence that would be introduced under 404(b) of other acts. It identified the undeclared cash on the flight.

However, you objected to that in your response that I've construed as a motion in limine, and then in the Government's reply, they took alternative positions, first, that it is inextricably intertwined, in other words, intrinsic evidence of the offenses charged, and, second, that it is also admissible 404(b) evidence.

Any disagreement with that, Mr. Josephson?

MR. JOSEPHSON: That's accurate procedure, Your Honor.

THE COURT: So for the purposes of your argument, Mr.

Ossick, I am accepting the Government's alternative argument that it is either inextricably intertwined and the arguments that it presented here today is that it's intertwined with all three counts, Count 1, 2 and 3, and if it is not, then it is other-acts evidence under 404(b) that would be relevant to one of those permissible purposes like intent.

And then using that understanding, I'll let you structure your argument how you see fit.

MR. OSSICK: I guess -- and I'm trying to understand. I'm not sure.

For instance, let's just say is evidence of wealth admissible in this case because it's a fraud case?

THE COURT: I'm not going to take up that issue.

MR. OSSICK: Okay, what does the Government want to put in here? They want to put in that he had currency in his pocket leaving the country. I would contend that's not intrinsic whatsoever because the fraud is the false statement to get something and then the structuring can either be because -- it can either be money laundering because it's proceeds of illegal activity or you can have the other type of money laundering which has to be evading certain reporting requirements and structuring of transactions.

Every bit of that, Your Honor, I suggest will be able to be determined appropriately under documentary-type evidence and things that relate to that without any mention of ever being in

Nigeria or traveling or ever having any currency.

Now, everything about -- this is not where you have here are operations that produce cash and we're failing to disclose those and then we're handling amounts of money that fall under the structuring and concealment of that activity that produces it, which is the offense.

Every dime paid out in connection with any alleged fraud here is done on a paper-trail basis or machine based, you know, a record type of thing. There is no allegation in this indictment in any part where, you know, there's some sort of, which, by the way -- let me digress for just a minute. We've heard "kickback" a lot here.

My understanding of kickback is when you give back to somebody something who had control over the program for the benefit you received, which is not at all what this case is about, but that aside --

THE COURT: Let me comment on that because I used the term "kickback" but I used it in reference to the Government's position. They have described the payments that Mr. Okojie is alleged to have received from these other individuals and their entities as kickbacks. I used that as a shorthand.

It's not meant to be a characterization. That may be central to the issue at trial as to whether it qualifies or not. But I understand your point.

MR. OSSICK: I think there will be an issue as to whether or not he received funds for helping people make an application, a fee or something, but not that he had any authority over the program such -- nor the person he was dealing with, that that was a compensation as a consequence of exercise of discretion, which constitutes a kickback.

But there's no transactions that are involved, Your Honor, in my view, expect to be involved, that don't start with a paper basis, so we're not looking at I have, you know, a drug operation that generates cash sales and now we're talking about, you know, things significantly related to cash are important because that whole transaction occurred that way. This is where every bit of it comes from some sort of program and it's on paper.

Now, they may and can and I expect they will attempt to make some inferences from the introduction of the paperwork that supports the generation of the currency as a consequence of a withdrawal from an institution that is recorded on paper that may or may not relate to proceeds of any other activity, but that's a separate type of thing than is it proceeds, and again, what does any of that have to do with the fact of having currency anymore than it would have to do with -- otherwise, to say, you know, in any kind of fraud case, wealth is going to be admissible because, look, it could have been some of that money.

Even the testimony today showed some of what they are saying here couldn't have been that money just by the timing as it relates to the structuring. So I go back to -- I think the analysis is, you know, to go back to the testing of is it relevant to an issue other than character?

I don't think that test is ever met here as far as 404(b) having anything to do with the currency.

THE COURT: Mr. Ossick, let me characterize one of the Government's arguments and ask you to respond to it, so focused specifically on the theory that the airport funds are inextricably intertwined with the offense conduct related to Count 3, money laundering and the allegations that Mr. Okojie engaged in transactions designed to conceal the nature of the proceeds, the Government's theory is that Mr. Okojie obtained funds unlawfully, either through the EIDL loans for him and his businesses or others, that he withdrew those proceeds from his bank account and then transported the proceeds that he withdrew internationally without declaring those funds, and that is an act of concealment.

Their argument is that is all intrinsic evidence that is part of the offense charged. What is the argument that that's not proof of concealment?

MR. OSSICK: That's actually not a bit different than showing he went to Winn-Dixie and bought groceries at some point after he received proceeds from some of these loans, and whether he paid his credit card bill with a check from something or not, the same concealment exists there to any dime that would come.

Otherwise, you open the door to -- I mean, how does any of that help prove some additional concealment? You're already showing, you know, to be successful, they are going to have to show these are, in fact, proceeds to start with so --

THE COURT: But the argument there is there is a regulatory disclosure requirement that is meant to avoid concealment and that Mr. Okojie didn't satisfy that regulatory requirement and that's proof of concealment.

MR. OSSICK: Well, I don't agree with that analysis, Your Honor, because that's just to say any other offense you did could kind of be similar and therefore we get to put it in. I mean, that's just showing the propensity to lie or to fail to comply with the law. That's exactly what is prohibited in the case I'm talking about.

I mean, otherwise, you can just say, well, you know, whatever he did, he did it because he's a criminal kind of guy. I mean, I really don't see the -- I don't see that relationship whatsoever, Your Honor. Maybe I'm not very good at looking at this but --

THE COURT: I think I know your answer on this but let me give you a hypothetical. Instead of transporting the funds internationally, he was being accused of burying $40,000.00 in a coffee can in the back yard. Would that be evidence of concealment?

MR. OSSICK: I don't think it would at all that's admissible in this case. I mean, I don't see where that goes to any issue other than being something that looks inflammatory and prejudicial to a jury.

THE COURT: Well, that's the next point. And, I understand you are additionally invoking 403, and do you have any additional argument you want to present on the 403 issue? I think you've already addressed it pretty fully but I'm going to --

MR. OSSICK: I don't think so. I'm sure The Court is as familiar with that as I would be so I don't think I could help you any there, but I do think it's real important in this matter.

And let's just go back to the indictment in this thing, Judge. Talking about, you know, I contend it's been kind of vague all along. We're here close to trial and it's not changed in my view, and I understand, but now we're getting to where issues that in my view are just completely unrelated are attempting to be, but because of their prejudicial basis, are trying to be presented to a jury without having the assistance on answering questions that 404(b) type things require to be admissible.

THE COURT: Mr. Ossick, I've also received a copy of the *Mills* case that you provided. Is there any additional point you want to make about this case? I will certainly review it after the hearing today before making a ruling.

MR. OSSICK: No, Your Honor. I think it is kind of the basis that I'm arguing from because I think it sets out a pretty clear test of how it is and how it gets misapplied, and I think that's what is being asked to be done here.

THE COURT: Thank you, Mr. Ossick.

Mr. Josephson, any additional argument you want to present?

MR. JOSEPHSON: Yes, Your Honor. On the *Mills* case, just the case is distinguishable because that case concerned false statements under 1005, did not concern wire fraud, did not concern bank fraud, did not concern money laundering, either the concealment money laundering, money laundering intended to avoid federal transaction requirement or money laundering involving transactions over $10,000.00, so the nature of the crimes charged are completely different in that case, and, of course, our argument is that's what you should look at.

We're going to submit evidence for those crimes, not for extrinsic purposes, so I do think the case is distinguishable. It didn't involve the same charges here or the same theories in terms of how the money at the airport would be introduced.

Your Honor did ask a question about the concealment evidence. I would point out that the exhibits in evidence do have the checks that Mr. Okojie received from eight individuals for performing EIDL loan application services, and on the checks themselves, there are notations that I think are misleading, including that the purpose of the check was for a trucking business. The Court can review those checks, but there are statements on the memo lines that suggest that the money was for a particular purpose when, in fact, we intend to prove it was not, so the money itself, the transfer of the money itself has a concealment purpose based on the check.

I think The Court can consider that and we will have more concealment evidence at the trial in this case. I would agree with counsel, defense counsel, on this point.

I think The Court can conditionally admit the evidence of the cash at the airport on the condition that we show the cash is connected to the crimes charged, specifically the wire fraud, the bank fraud and the money laundering, and if we do that, I think that the jury can consider it.

We're not saying just any cash, any bucket of cash that the defendant had is admissible. We are not talking about just any show of wealth is admissible. We are tying it to what we're alleging was a crime, so if we didn't show that, then we would have to have another purpose to admit it.

THE COURT: I'm hesitant about conditional admission because it seems that that's the purpose of this hearing, is to see if the Government has connected that cash at the airport to the proceeds from the offense here.

Is it your suggestion that there's going to be additional evidence that's presented that's going to make that connection stronger that will meet a burden that might not be able to be met today?

MR. JOSEPHSON: Your Honor, I should say I think we've met our burden to show the cash is at least relevant to the crimes charged under the Federal Rules of Evidence, and so we wouldn't have to fit it into a 404 purpose.

At the trial, we will have other witnesses who actually encountered Mr. Okojie and actually obtained the cash who talked to him when he obtained the cash.

The record will show that there were statements that he made regarding the cash, how he got it, which would be admissible to his intent in this case, not just the cash but his intent with respect to how he makes money, how he has an income.

That's going to be an issue in the case, and the other thing I would say is that the problem with, you know, the defense in the case, I don't know what the defense is necessarily going to be. We prepared for everything.

We make our case and then we respond to the arguments the defendants makes. I don't know if the defendant is going to deny a particular transaction, deny receiving certain money, deny having control over a bank account, deny -- whatever the issue could be with respect to the cash. Well, the fact that he has $40,000.00 that we connect would certainly be admissible to respond to some of those contentions about receipt of cash.

Now the defendant today here has said, oh, the crime is basically complete on the paper; you don't need to look at all about what happens to the money. Well, I don't know what is going to be said at trial, and so we may need to respond to certain arguments regarding the receipt of cash on different days.

THE COURT: To be clear, that would be a totally different theory of admissibility at that point, sort of rebuttal evidence to a claim of --

MR. JOSEPHSON: It would be, Your Honor. I bring it up because that's not a fanciful idea, that he would decline or deny certain transactions or certain -- how money moves in a certain way, and I think that goes to show we're talking about the offense here. We're not talking about a separate incident. We're talking about did you defraud the United States Government with these applications and obtain money and what did you do with that money, that money, not just any money, but that money, and we think that it's admissible for Counts 1, 2 and 3.

On the 403 analysis, I have to acknowledge that an international trip with cash in a suitcase, yes, there will be some prejudice there to the jury, but as The Court is well aware, the probative value has to be substantially outweighed, and so The Court has got to look at the probative value here, and I think we've shown that the value, the evidence is probative of several of the crimes charged, all of the crimes charged in the indictment, and I don't think -- the fact this defendant made the decision to withdraw a bunch of cash, do it in a specific way, put it in a suitcase and leave the country, it's a decision he made, but it's a decision that I think a federal jury should hear.

THE COURT: All right, thank you, Mr. Josephson.

Well, I will take the matter under advisement and I will issue a written ruling on it sufficiently far in advance of trial so y'all have an adequate time to prepare relative to the trial.

Mr. Josephson, any other issues you would like to raise during the hearing today?

MR. JOSEPHSON: No, Your Honor.

THE COURT: Mr. Ossick?

MR. OSSICK: No, Your Honor.

THE COURT: If anyone is requesting a transcript, I will direct you to coordinate with Ms. Gilbert following the hearing today.

We will be adjourned.

(Proceeding concluded at 11:49 a.m.)

CERTIFICATION

I certify that the foregoing is a true and correct transcript of the stenographic record of the above-mentioned matter.

__________________________________ 03/04/2023

Debra Gilbert, Court Reporter Date