U.S. Department of Justice

United States Attorney
District of Maryland

Paul Riley
Assistant United States Attorney
Paul.Riley@usdoj.gov

Suite 400
36 S. Charles Street
Baltimore, MD 21201-3119

DIRECT: 410-209-4959
MAIN: 410-209-4800
FAX: 410-962-3091

VIA ECF

March 24, 2025

The Honorable Richard D. Bennett
United States District Judge
United States District Court
for the District of Maryland
101 West Lombard Street
Baltimore, MD 21201

Re: *United States of America v. David Epstein*, Crim. No. RDB-23-0210

Dear Judge Bennett:

The Government writes this letter in advance of the sentencing of Defendant David Epstein, which is currently scheduled for March 26, 2025 at 2:30 p.m. to respond briefly to a few of the contentions in Defendant's sentencing submission filed March 20, 2025. ECF No. 31 (Def. Mem.).

First, Defendant contends that the sophisticated means enhancement does not apply. Def. Mem. at 10. He is wrong. As the Probation Officer concluded, the offense involved sophisticated means pursuant to U.S.S.G. § 2B1.1(b)(10)(C), so the offense level is properly increased by two levels. PSR ¶ 39.

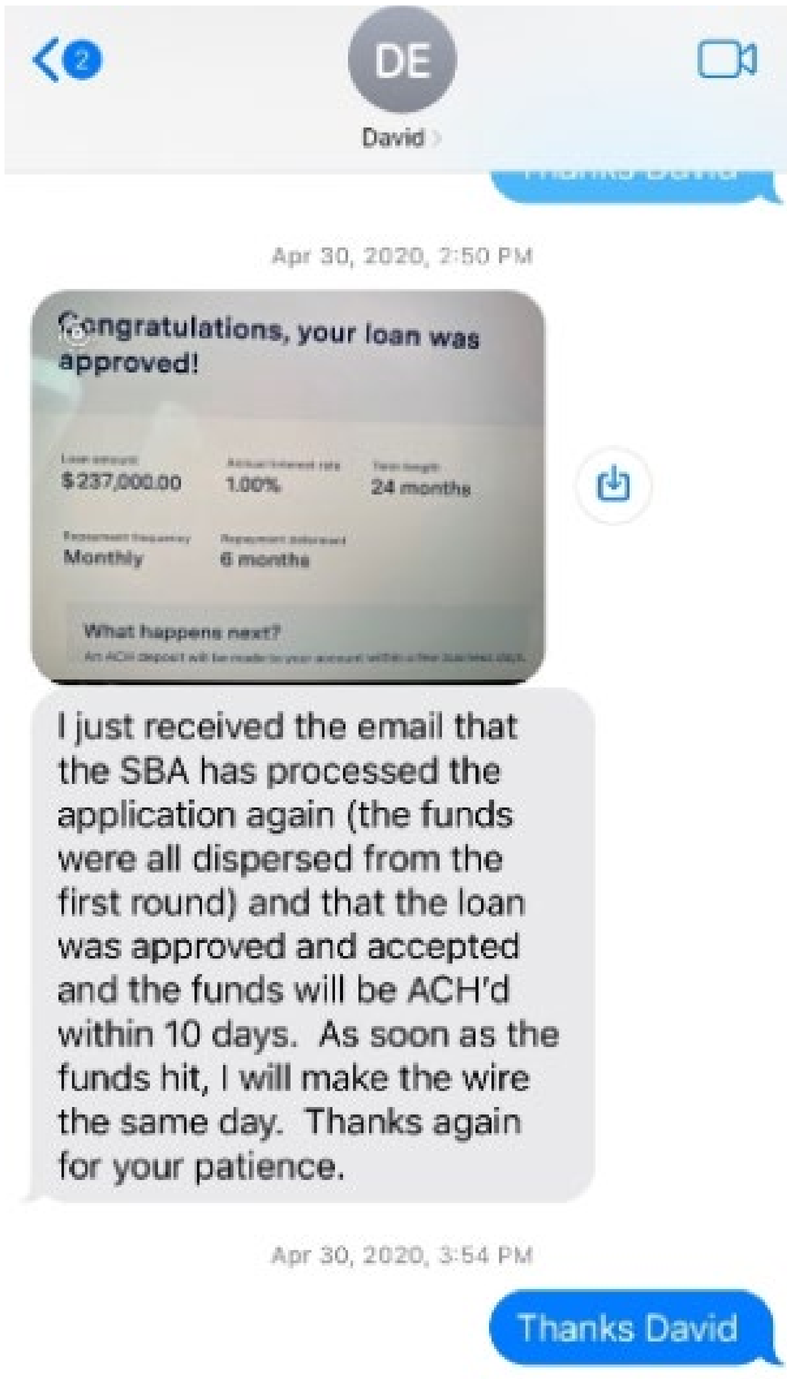
The Guidelines clarify that "sophisticated means" as used in this section "means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense." U.S.S.G. § 2B1.1 (b)(10) cmt. n.9(C). While the enhancement requires more than "the concealment or complexities inherent in fraud," *United States v. Adepoju*, 756 F.3d 250, 257 (4th Cir. 2014), a defendant need "not utilize the most complex means possible to conceal his [criminal] activit[y]." *United States v. Jinwright*, 683 F.3d 471, 486 (4th Cir. 2012). "The court need only find the presence of efforts at concealment that go beyond (not necessarily far beyond ...) the concealment inherent in ... fraud." *Id.* (internal quotation marks omitted).

Ultimately, the enhancement is to be applied "when there is proof of complexity beyond the 'minimum conduct required to establish a violation of [the applicable statute] in its simplest form.'" *United States v. Savage*, 885 F.3d 212, 228 (4th Cir. 2018) (quoting *Adepoju*, 756 F.3d at 257 (alterations in Savage) (emphasis added)).

Here, there is no question that the offense—when considered in its entirety—was sophisticated for purposes of application of this enhancement. The Defendant submitted a fake and fabricated document he created—a fictitious bank statement—in support of the PPP application. After the loan was funded, Defendant immediately created two *personal* bank accounts (not business accounts in the name of PEI,[1] the business that had received the loan) and

[1] At the time of the PPP application, there was no business bank account for PEI. PEI previously had bank accounts with M&T Bank, but all of the accounts were charged off by M&T in December 2019 due to overdrawn balances.

then routinely transferred the PPP funds to these newly established accounts and among the accounts for the purpose of concealing their source as PPP funds. And, as Defendant admitted in the parties' plea agreement, he attempted to further conceal the scheme by "repeatedly add[ing] individuals whom he owed money to PEI's payroll to make it appear as though they were employees when they were not" and by "hiding the size of the PPP loan he received, concealing it from his family members, other employees of PEI, and various business partners whom he owed money." For example, he lied to Advance Partners (Lender 2)—from whom he misappropriated nearly $350,000—and told them that PEI had received a loan for only $237,000 (and not $1.3 million)—as set forth in the below message sent from Defendant:



Defendant also attempted to conceal the scheme by writing "Rent payments May 2020/June 2020" on a check to Lender 1 that constituted PPP funds but that was in fact a loan repayment unrelated to PEI to obscure the purpose of the check.

These facts are more than sufficient to support application of the sophisticated means enhancement here. Indeed, where, as here, fictitious documents are involved and where there are multiple attempts to conceal a scheme to defraud, courts have routinely applied the enhancement. *See United States v. Duell*, 463 F. App'x 214, 215 (4th Cir. 2012) (affirming application of two-level sentencing enhancement for sophisticated means in securities and wire fraud case in part because defendant created false financial statements and forged signatures); *see also United States v. Davis*, 753 F. App'x 154, 156–57 (4th Cir. 2018) (affirming application of two-level sentencing enhancement for sophisticated means in mail fraud case in part because defendant "used numerous means to conceal the fraud, including forgery [and] altering documentation"); *United States v. White*, 850 F.3d 667, 675–76 (4th Cir. 2017) (affirming application of two-level sentencing enhancement for sophisticated means in false tax preparer case in part because defendant created a fictitious entity, created fraudulent IRS notices, and forged signatures); *United States v. Adejumo*, 772 F.3d 513, 531 (8th Cir. 2014) (affirming the district court's application of the sophisticated means enhancement where the defendant had identification documents, specifically created with his picture on them, and benefitted from his co-conspirator's activities in creating fake identification documents to assist him in the scheme).

Accordingly, the Court should apply the sophisticated means enhancement under U.S.S.G. § 2B1.1(b)(10)(C) here.

Second, Defendant repeatedly minimizes his criminal conduct and makes various assertions that are belied by the statements he agreed to in the parties' plea agreement. Much of Defendant's sentencing submission smacks of a lack of acceptance of responsibility. The Court should consider this apparent lack of acceptance of responsibility at sentencing.

As an initial matter, Defendant appears to suggest that the bogus bank statement he created and submitted with the PPP application had no impact on Celtic Bank's decision whether to fund the loan. Not so. No PPP lender would approve a loan application that included a fake and fabricated document in support of it. Indeed, one of the certifications in the application required Defendant to certify as follows:

> I further certify that the information provided in this application and the information provided in a*ll supporting documents and forms is true and accurate in all material respects.* I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to $250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than $5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than $1,000,000.

Def. Mem. Ex. 2 (ECF No. 30-2) at 2 (emphasis added). Defendant certified as much in good faith. Had he not done so, the loan would not have closed. Simply put, Defendant created a fabricated bank statement, submitted it with his PPP application, and then lied about it. Defendant's suggestion that the fabricated bank statement essentially did not matter because the "loan had already been approved at this point," Def. Mem. at 1, is meritless, unsupported, and wrong.

Defendant also appears to suggest that he used the PPP funds the way he was required to under the PPP. This too is wrong. Defendant agreed in the plea agreement's statement of facts that:

> Defendant spent the fraudulently obtained PPP funds in multiple ways that were impermissible under the PPP. One day after receiving the PPP funds, on May 5, 2020, Defendant made an ACH transfer in the amount of $110,356.48 from the SunTrust account ending in x2386 to Mercedes-Benz Financial in connection with a payment for a 2019 Mercedes-Benz GT43C4 automobile previously purchased by Defendant.

Plea Agreement at 11. The notion that Defendant's $100,000 plus Mercedes—his personal vehicle—is a "company car," Def. Mem. at 7 n.5, beggars belief. Defendant does not even try to explain how or why the vehicle is a "company car." Nor do Defendant's tax records provide any insight. Indeed, as of tax year 2020, Defendant did not file *any tax returns*; his last return was for tax year 2016. As of tax year 2020, the last return for PEI was for tax year 2017; it had no vehicles listed as expenses. Nor were there any records of Stafquik filing tax returns at all.[2]

Defendant also claims that the PPP funds he used to extensively renovate his house were "advance monies [he] was already owed by insurers due to a flood in his home and a fire in his office." Def. Mem. at 7 n.5. But Defendant agreed in the plea agreement's statement of facts that:

> Beginning on May 20, 2020, and continuing through in or about August 2020, Defendant transferred approximately $138,522.22 in PPP funds to a contractor in connection with extensive renovations to Defendant's home and installation of a pool there.

Plea Agreement at 11. Further, it's obvious that the installation of a pool at Defendant's home (or the renovation the home's kitchen) has no relationship to water damage from a flood. And Defendant does not even try to explain away his other impermissible spending of PPP funds as set forth in the statement of facts:

> Defendant also used the PPP funds to pay $100,000 in connection a settlement agreement pertaining to a 2013 litigation involving unpaid insurance premiums and to pay off a $344,341.05 debt related to funds Defendant misappropriated from a business partner (Lender 2) and used for personal expenses. None of these were permissible uses of the PPP funds.
>
> Defendant likewise used the PPP funds to pay various personal expenses (including a trip to a luxury golf resort) and provided PPP funds to various family members and associates for purposes unrelated to employment with PEI (including his family's nanny), making withdrawals for himself, and paying off various personal debts.

Plea Agreement at 11. He cannot. What's more, Defendant glosses over the fact that PPP loan application expressly required him to certify that the PPP "funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule" and his further certification that "I understand that if the funds are knowingly used for unauthorized purposes, the federal government

[2] Defendant claims, without support, that "Stafquik is a wholly-owned subsidiary of PEI." Def. Mem. at 4. But this not reflected in the entities' tax filings with the IRS—or lack thereof. Indeed, PEI could have elected using an IRS Form 8869 to treat Stafquik as a subsidiary of PEI in the eyes of the IRS. It did not. To be sure, Stafquik did exist on paper; however, the application—the very purpose of the business—never launched.

may hold me legally liable, such as for charges of fraud." Def. Ex. 2 at 2. There can be no question that Defendant violated this provision here.

Finally, Defendant appears to claim that the number of employees he listed in the PPP application doesn't matter and that the information as to the number of employees in the PPP application was in fact accurate. Def. Mem. at 4. But this contention cannot be squared with the following statement in the plea agreement's statement of facts:

> The PPP loan application contained multiple material misrepresentations, including that PEI had 382 employees and an average monthly payroll of $522,868. In fact, IRS Forms 941 for PEI Staffing show that in the first quarter of 2020, the business had 134 employees and in the second quarter that it had just 79 employees. Further, Forms 941 for PEI Staffing from 2019 show a steady decline in the number of PEI Staffing's employees in 2019, as follows: First Quarter – 493 employees; Second Quarter – 454 employees; Third Quarter; 154 employees; Fourth Quarter – 128 employees. And in an EIDL application Defendant submitted for PEI on April 2, 2020—one month before he submitted the PPP loan application—Defendant claimed that PEI had 220 employees.

Plea Agreement at 10-11. Moreover, Defendant's statement that "the number of employees is not material to a PPP loan application," Def. Mem. at 4 n.2, is unsupported and wrong. Indeed, *any lie or misrepresentation* in a PPP loan application is sufficient to render the application invalid, and Defendant certified to the accuracy of all of the information in the application. Celtic Bank—the PPP lender—was relying on Defendant to tell the truth in the PPP application. But he did not. He lied about the number of employees of the business at the time of the application,[3] and he lied about how much they were being paid.

For all of these reasons, the Court should sentence Defendant to a guidelines term of imprisonment.

Respectfully submitted,

Kelly O. Hayes
United States Attorney

/s/
By: Paul A. Riley
Assistant United States Attorney

cc: Rich Bardos, Esq. (by ECF)
Nicole Wonneman, U.S. Probation Officer (by electronic mail)

[3] Indeed, at the time of the application, PEI had lost one of its major clients (and sources of employees): Trader Joes. Defendant of course was aware of this.