UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. Case No. 6:21-cr-141-RBD-EJK

EMMET BOWENS

UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNT TWO OF THE INDICTMENT DUE TO IMPROPER VENUE

The United States of America hereby files its response in opposition to the defendant's motion to dismiss Count Two of the Indictment due to improper venue, Doc. 46. In his motion the defendant argues that venue is improper in this District because the wire transmissions in Count Two of the Indictment, Doc. 1, were processed on servers located outside of the District. Venue, however, is proper in the Middle District of Florida because the acts that caused the wire to be transferred took place within the Middle District of Florida.

BACKGROUND

In March 2020, the Coronavirus Aid, Relief, and Economic Security Act, or the "CARES Act," was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID-19 emergency. Among its various provisions, the CARES Act authorized the Small Business Administration (SBA) to guarantee loans under the Paycheck Protection

Program ("PPP"), and the full principal amount of the loans could qualify for forgiveness.

Borrowers were required to use PPP loan proceeds only for enumerated purposes, including payroll costs, rent and utilities, and mortgage interest payments. Knowing misuse of PPP funds subjects borrowers to additional liability, such as charges for fraud.

The evidence indicates that the defendant submitted a fraudulent PPP loan application on or about May 5, 2020, from his residential address in Apopka, FL, within the Middle District of Florida. The PPP funds were deposited into the defendant's Trustco bank account ending in 4982 on May 20, 2020. The bank records for this account demonstrate that other debits were made to this account in the Middle District of Florida on that same date, indicating that the defendant was located in the Middle of District of Florida when his account received the fraudulently obtained PPP loan funds. These records were previously made available to the defendant at bates nos. 00703-00757.

Thereafter the evidence indicates that the defendant initiated online transfers of the fraud proceeds while located in the Middle District of Florida. The evidence also indicates that the defendant spent some of fraudulently obtained funds in the Middle District of Florida and that none of the funds were utilized for any of the authorized expenses under the PPP.

On November 10, 2021, a federal grand jury returned an Indictment charging the defendant with Wire Fraud, in violation of 18 U.S.C. § 1343 (Counts One and Two) and Money Laundering, in violation on 18 U.S.C. § 1957 (Count Three through Six). Doc. 1. The language for Counts One and Two of the Indictment read, in relevant part,

> …for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly, and with intent to defraud, **transmit and cause to be transmitted** by means of wire communication in interstate and foreign commerce, the following writings, signs, signals, pictures, and sounds…

(emphasis added) Doc. 1. The two counts listed beneath this language comprise the charged wire transmissions and include the transmission of the defendant's fraudulent PPP application (Count 1) and the wire transfer of the PPP loan funds caused by the defendant's submission of the fraudulent PPP loan application in Count One (Count Two).

On May 5, 2022 the defendant filed the instant motion arguing that Count Two of the indictment should be dismissed due to improper venue. Doc. 46. The United States urges the Court to deny this motion because the Middle District of Florida is a proper venue for Count Two of the Indictment.

MEMORANDUM OF LAW

The Middle District of Florida is the proper venue for Count Two of the Indictment because wire fraud is a "continuing offense" and the fraud scheme that caused the wire transmission in Count Two began and continued within

the Middle District of Florida.

Defendants have a right to be tried in the State and District in which their crime was committed. Fed. R. Crim. Pro. 18; *United States v. White*, 590 F.3d 1210, 1213 (11th Cir. 2009). The applicable standard for a challenge to venue is whether, viewing the evidence in the light most favorable to the Government, the Government proved by a preponderance of the evidence that the crimes occurred in the district in the which the defendant is prosecuted. *United States v. Stickle*, 454 F.3d 1265, 1272 (11th Cir. 2006).

Circuit Courts in other districts have held in persuasive case law that wire fraud in a continuing offense under 18 U.S.C. §3237(a). *United States v. Ebersole*, 411 F.3d 517, 527 (4th Cir. 2005); *United States v. Kim*, 246 F.3d 186, 192 (2d Cir. 2001). As such, venue is proper where the offense was begun, continued, or completed. 18 U.S.C. § 3237.

Here, the Middle District of Florida is the proper venue for Count Two of the Indictment because the fraud scheme was both begun and continued within this District. As stated, the evidence here shows that, on May 5, 2022, the defendant submitted his fraudulent PPP loan application from his residential address in Apopka, FL, which is within the Middle District of Florida. This conduct makes up the basis of Count One of the Indictment. In so doing, the defendant caused the wire transmission detailed in Count Two of the Indictment on May 20, 2020. Thereafter, the defendant used the fraud

proceeds for improper and unauthorized expenditures under the PPP within the Middle District of Florida. As such, the Middle District of Florida is a proper venue for Count Two of the Indictment because wire fraud is a continuing offense for the purposes of venue and the offense was both begun and continued in the Middle District of Florida.

CONCLUSION

For the foregoing reasons, this Court should deny defendant's motion to dismiss Count Two of the Indictment due to improper venue, Doc. 46.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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