

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

UNITED STATES OF AMERICA

v.

BART WADE REAGOR

NO. 2:21-CR-025-Z

**GOVERNMENT’S RESPONSE TO DEFENDANT’S
MOTION FOR JUDGMENT OF ACQUITTAL**

The United States of America (government) opposes Reagor’s Motion for Judgment of Acquittal because he misapprehends the standards this Court applies to such motions and fails to afford the proper deference and weight to the jury verdict. Because the evidence supported the verdict beyond a reasonable doubt, this Court should deny Reagor’s motion.

A. Reagor’s motion

Reagor seeks a judgment of acquittal because he claims that the evidence presented at trial failed to prove his intent—*i.e.*, that he made a *knowing* false statement to International Bank of Commerce (IBC). This Court should deny Reagor’s motion because the evidence showed beyond a reasonable doubt that Reagor had the requisite intent to support his conviction for False Statement to a Bank, in violation of 18 U.S.C. § 1014.

B. Standards of Review

1. Rule 29

A motion for judgment of acquittal under Federal Rule of Criminal Procedure 29 challenges the sufficiency of the evidence to sustain a conviction. The issue is “whether, viewing the evidence in the light most favorable to the verdict, a rational jury could have found the essential elements of the offense charged beyond a reasonable doubt.” *United States v. Boyd*, 773 F.3d 637, 644 (5th Cir. 2014) (citations omitted). “The standard does not require that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt, provided a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt.” *United States v. Loe*, 262 F.3d 427, 432 (5th Cir. 2001). The factfinder is “free to choose among reasonable constructions of the evidence,” and “it retains the sole authority to weigh any conflicting evidence and to evaluate the credibility of the witnesses.” *Id.* (quotations and citations omitted).

A defendant bears a heavy burden in meeting this high standard. *See United States v. Achobe*, 560 F.3d 259, 263 (5th Cir. 2008). Courts are “highly deferential to jury verdicts.” *United States v. McNealy*, 625 F.3d 858, 870 (5th Cir. 2010). That deference is underscored by the Fifth Circuit’s frequent refrain: “We stress that all reasonable inferences and credibility choices must be made in favor of the jury verdict.” *United States v. Deville*, 278 F.3d 500, 505 (5th Cir. 2002) (internal citations omitted);

see *United States v. Vargas-Ocampo*, 747 F.3d 299 (5th Cir. 2014) (en banc) (abandoning “equipoise rule” in evaluating sufficiency of the evidence).

2. Rule 33

Under Rule 33 of the Federal Rules of Criminal Procedure, a district court may grant a new trial if the “interest of justice so requires.” FED. R. CRIM. P. 33(a).

“[M]otions for new trial are not favored, and are granted only with great caution. The remedy of a new trial is rarely used; it is warranted only where there would be a miscarriage of justice or where the evidence preponderates heavily against the verdict.” *United States v. O’Keefe*, 128 F.3d 885, 898 (5th Cir. 1997) (internal quotations marks and citations omitted).

C. **Analysis: The jury had ample evidence to support its conclusion that the government proved beyond a reasonable doubt that Reagor knowingly made a false statement to IBC.**

Reagor challenges the sufficiency of the evidence as to the second element of False Statement to a Bank, which requires that the accused know that his statement was false at the time he made it. In support of his argument, Reagor discusses various witnesses’ understanding of the term “working capital” and then argues that the alleged lack of agreement proves Reagor did not know taking loan proceeds for his personal use was inconsistent with what he told IBC about the purpose of the loan.

Reagor’s argument fails because it blatantly disregards the proper approach to a Rule 29 motion. Rather than canvassing the record for agreement on the meaning of “working capital” to determine whether an owner’s use of the loan for personal expenses

was permitted, this Court must credit the evidence supporting the jury's verdict, which includes crediting the testimony of the government witnesses who understood that using the loan proceeds for the owners' personal expenses, whether in the form of an owner distribution or not, was inconsistent with "working capital." (R2, 363, 369 (testimony of Reagor Dykes Auto Group (RDAG) Legal Compliance Director Steven Reinhart that "working capital" was the money needed for day-to-day operations and that, had he been consulted, he would have told Reagor that he could not divert the loan proceeds to personal accounts), 443 (testimony of Certified Public Accountant and Certified Fraud Examiner Steve Dawson, who testified that an owner distribution would be inconsistent with working capital).)

Furthermore, rather than accepting as accurate the testimony of Reagor's experts, and reweighing their credibility against the government's witnesses, this Court draws all reasonable inferences and credibility choices in favor of the jury verdict. Evaluating the evidence through the correct lens, there was overwhelming evidence to show that Reagor knew when he represented to IBC that the loan was for working capital and when he did not divulge that he planned to use a portion of the loan proceeds personally and not for business purposes, that his statement was intentionally false. Three exhibits prove Reagor's knowledge beyond all doubt.

1. Exhibit 41 leads to the reasonable inference that Reagor knew his statement was false and his conduct unlawful.

The strongest evidence of Reagor's knowledge was introduced in Government's Exhibit 41.¹ The jury rationally deduced three key points from this exhibit.

First, Reagor deliberately addressed his instructions to divert loan proceeds for his personal use to only two people, CFO Shane Smith and business partner Rick Dykes:

From: Bart Reagor <breagor@aol.com>
To: ssmith@reagordykes.com <:ssmith@reagordykes.com>; dykesrick@yahoo.com <dykesrick@yahoo.com>; breagor@reagordykes.com <breagor@reagordykes.com>
Sent: 5/31/2017 8:11:19 PM
Subject: HANDLING CAPITAL

Reagor purposely did so because he knew that Smith would dutifully follow his instructions and would not question the propriety of diverting a business loan for personal use. Reagor also knew that Dykes, who stood to gain \$1.76 million from Reagor's deception, would not question Reagor's instructions. Accordingly, Reagor included in his cabal only those who would not challenge his underhanded instructions.

Second, the testimony and exhibits support the inference that Reagor intentionally excluded from the instructions anyone who *would* raise objections to his duplicity. He omitted Reinhart, the Legal Compliance Director for RDAG and part of the "RDAG Deal Team." (R2, p. 357, 362.) He omitted Troy Nicholson and Rachel Reagor, both of whom were attorneys for RDAG. (R2, p. 358.) He omitted IBC representatives who

¹ Reagor attempts to downplay the importance of this exhibit by inferring that there could be "many reasons for keeping such a loan and its uses confidential from Reagor's many bankers." (Def.'s Mot. at p. 15.) As he does throughout his motion, Reagor applies the wrong analysis. All inferences must be drawn in favor of the jury's verdict. Accordingly, this response will discuss the only permissible inference from Reagor's concealment of his plan: He knew what he was doing was wrong.

could have approved (or disapproved) of an owner distribution. (See GX 41.) Reinhart even testified that if he had been included on Government’s Exhibit 41 then he “would have told [Reagor] that [Reagor] can’t move the proceeds of that loan into personal or private accounts” because that would not be consistent with working capital. (R2, p. 363.) The reasonable inference is that Reagor purposely omitted these individuals because he knew that diverting business loan proceeds for his own personal use and benefit was wrong.

Third, Reagor ordered Smith and Dykes not to discuss his plan with anyone else because he knew it was illicit. Reagor made it unmistakably clear that his plan was not to be disclosed to anyone, including “bankers”:

How we are going to manage this capital is 100000000% confidential between us and is not ANYONE ELSE'S BUSINESS!!!!!! NOBODY'S!!!!!!!!!!!!!! NO BANKERS OR ANYONE ELSE! OUR BUSINESS! GAME ON!!!!!!!!!!!!!!

The Court must presume that the jury used this evidence to logically surmise that Reagor instructed Smith and Dykes to keep his plan a secret because Reagor knew that his intention to use the IBC business loan for personal expenses—on things like his mansion, investments, and disbursements to family members—was dishonest and wrong. Such evidence would undergird the conclusion that Reagor knew his statement to IBC was false at the time he made it.

2. Exhibit 48 demonstrates Reagor’s intent to enrich himself with “other people’s money.”

The jury also relied on the substantial evidence of Reagor’s motive and intent, as reflected by his own statements, captured in Government’s Exhibit 48. In that video exhibit, Reagor described his method for building wealth: “you talk other people into giving you their money so you can use their money to increase your net worth. That’s what I did. [Reagor laughs] OPM. How else? But I’m a hell of a salesman! I’m just telling you. Y’all . . . most of y’all have no comprehension of the shit I’ve pulled off in this lifetime.” (GX 48.) Reagor made these statements after the distribution of the first tranche of the IBC working capital loan and before the distribution of the second tranche. (R1, p. 253.)

On this evidence, the jury rationally concluded that Reagor’s strategy for increasing his own net worth was to convince—by any means necessary—other people to give him their money. It also concluded that when Reagor bragged about the “shit [he’s] pulled off” to get that money, he was referring to his lies, deception, and deceit. And based on the timing of the statement—between the distribution of the two tranches of working capital loan proceeds—the jury logically inferred that Reagor used this deceptive strategy in obtaining the IBC working capital loan.

3. Exhibit 51 established the intent behind Reagor’s false statement by establishing his motive.

The jury heard compelling evidence of Reagor’s motive—relevant to a jury’s determination of intent—in Government’s Exhibit 51. In that audio exhibit, Reagor

boasted of his two airplanes and his “fucking mansion right there on 19th Street.” (GX 51.) Reagor blustered that these displays of wealth made him “a bad motherfucker.” The jury rationally deduced that Reagor had an irresistible motive to make a false statement to obtain the RDAG business loan and then to illegally convert the loan proceeds for his personal use. Reagor’s self-image and self-worth were inextricably intertwined with his personal wealth and that led him to maintain his personal wealth by any means necessary, including deception.

This Court should also consider the instruction it gave to the jury at the close of the evidence. Specifically, this Court instructed the jury that, “[i]n considering the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the evidence.” (R4, 621.) The three exhibits the government has highlighted, taken together with this instruction, readily prove Reagor’s knowledge beyond a reasonable doubt.

Indeed, the Fifth Circuit has found sufficient evidence to support a conviction for False Statement to a Bank with much less than the Government presented here. In *United States v. Sandlin*, 589 F.3d 749, 752-53 (5th Cir. 2009), the defendant was convicted of making false statements to a bank by failing to disclose a \$996,000 loan on his personal financial statement. The Fifth Circuit held that the following evidence was sufficient to support the jury’s finding that the defendant knowingly and willfully omitted that loan

from his personal financial statement: (1) the defendant's business savvy; (2) his desire to obtain the extensions of credit in question, (3) the size of the loan and continued monthly payments; and (4) he omitted the loan twice in the space of ten months. *See id.* at 754.

Here, by contrast, the jury had much stronger evidence of Reagor's knowledge and intent than the conjectural evidence in *Sandlin*. As discussed above, the jury had compelling evidence that Reagor knew his statement was false because, prior to making it, he had already formed the intent to divert a portion of the proceeds, and he knew the diversion was wrong because he actively concealed it from IBC and from his own legal and compliance officers. *Cf. United States v. Mallen*, 843 F.2d 1096, 1100 (8th Cir. 1988) (holding that evidence supported jury's finding that defendant's failure to disclose was willful and knowing because, in part, defendant told several individuals that he did not want that information known to the FDIC, and he attempted to conceal the information from the FDIC). The jury also had compelling evidence of Reagor's knowledge and intent because he openly bragged about the lengths to which he had gone to get "other people's money" to increase his own net worth. And finally, the jury was aware of Reagor's powerful motive to wrongfully take the loan proceeds—unmitigated greed. *Cf. Mallen*, 843 F.2d at 1100 (holding that evidence supported jury's finding that defendant's failure to disclose was willful and knowing because, in part, testimony established a motive for defendant's failure to disclose the loans).

Accordingly, this Court should find that there was ample evidence to support the jury's decision that Reagor knowingly made a false statement to IBC and deny Reagor's

motion for judgment of acquittal. For the same reason, the Court should deny Reagor's alternative request for a new trial.

D. Conclusion.

Giving due deference to the jury's verdict, the evidence overwhelmingly supports its conclusion that Reagor knowingly made a false statement to IBC. Accordingly, the Court should deny Reagor's motion.

Respectfully submitted,

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