U.S. v. VERCLAS

Case No. GJH-18-160.

UNITED STATES, Plaintiff, v. KATRIN VERCLAS, Defendant.

United States District Court, D. Maryland, Southern Division.https://leagle.com/images/logo.png

January 3, 2019.

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Attorney(s) appearing for the Case

Katrin Verclas, Defendant, represented by Stuart A. Berman , Lerch Early & Brewer LLC.

USA, Plaintiff, represented by Bryan Edwin Foreman , Office of the US Attorney & Dominique J. Park , US Attorney's Office.

MEMORANDUM OPINION

GEORGE J. HAZEL, *District Judge*.

Defendant Katrin Verclas has been charged by grand jury indictment with one count of Major Fraud under 18 U.S.C. § 1031 ("Major Fraud Act" or "the Act"). Presently pending before the Court is Defendant's Motion to Dismiss the Indictment. ECF No. 29. A hearing was held on July 23, 2018. ECF No. 38. Because the Indictment does not allege that Verclas committed an essential conduct element of Major Fraud in the District of Maryland, venue is improper, and Defendant's Motion to Dismiss is granted in part.

I. BACKGROUND1

In December 2009, a Bureau within the State Department issued a Request for Proposal ("RFP") inviting applicants to submit grant proposals to "support and promote global internet freedom." ECF No. 1 ¶ 3. The RFP specified that only U.S. non-profit organizations with status under 26 U.S.C. § 501(c)(3), comparable international organizations, and universities were eligible to apply. *Id.* ¶ 4.

The Indictment asserts that Verclas defrauded the United States by submitting a grant application that falsely represented that her Delaware-based corporation MobileActive Corp ("MobileActive") was a New York non-profit organization with the legal authority to apply for the grant. *Id.* ¶ 5-6, 11. Verclas also claimed falsely that MobileActive "had the financial capability to ensure proper planning, management, and completion of the proposed project." *Id.* ¶ 12. When she submitted the grant application on January 22, 2010, she falsely certified to the "truth and accuracy of the [application's] information." *Id.* ¶ 6. Verclas operated MobileActive from offices in New York. *Id.* ¶ 5.

Based on Verclas's fraudulent application, the State Department awarded MobileActive a grant of $1,411,000 on September 20, 2010. ECF No. 1 ¶ 7. After the State Department awarded the grant, Verclas falsely certified that MobileActive would perform work under the grant and "adhere to certain terms, conditions, and regulations." *Id.* ¶ 14. These terms required Verclas to submit quarterly financial and progress reports as well as final financial and progress reports. *Id.* ¶ 9. After withdrawing $560,000 of the awarded funds, Verclas sought an extension to complete work under the grant, which the State Department approved. *Id.* ¶ 16. Ultimately, Verclas failed to perform work under the grant: she did not use the services of companies to which the grant allocated money, transferred grant funds to her personal account, "fil[ed] false and misleading quarterly reports," and did not submit a required audit. *Id.* ¶¶ 18-21.

To distribute the awarded funds to MobileActive, the State Department used a Payment Management System located in Rockville, Maryland. *Id.* ¶ 8. Despite failing to perform work under the grant, Verclas withdrew a total of $1,222,000 using the Payment Management System between October 2010 and August 2012. *Id.* ¶ 17. Defendant used much of the withdrawn funds for "personal expenses and expenses unrelated" to the grant. *Id.* ¶ 19.

On March 26, 2018, over seven years after Verclas submitted the grant application, the United States obtained a grand jury indictment charging Defendant with a violation of 18 U.S.C. § 1031, the Major Fraud Act. The Act criminalizes: "knowingly execut[ing], or attempt[ing] to execute, any scheme or artifice with the intent — (1) to defraud the United States; or (2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises" related to a federal grant or contract with a value of $1 million or more. 18 U.S.C. § 1031(a).

The Government alleges that Defendant "knowingly execut[ed] a scheme and artifice with the intent to

defraud the United States and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, in connection with a grant, contract, subcontract, and other form of Federal assistance valued at $1,000,000 or more." ECF No. 1 ¶ 10. The Defendant committed the alleged crime during the pendency of the non-declared Afghanistan war, and the Government returned its indictment before the formal termination of those hostilities. ECF No. 36 at 5, n. 2; Authorization for Use of Military Force resolution, Pub. L. 107-40 (Sept. 18, 2001).

II. DISCUSSION

Defendant filed a Motion to Dismiss the Indictment, ECF No. 29, arguing that the Indictment does not properly allege that Defendant committed Major Fraud in the District of Maryland and venue is therefore improper; that the Government failed to return its Indictment within the Major Fraud Act's seven-year statute of limitations; and that the Indictment fails to state an offense. Each of these arguments will be addressed in turn.

A. Venue

Defendant argues that the Indictment should be dismissed for improper venue because it does not allege facts showing that Verclas committed the charged offense in the District of Maryland. The Constitution requires that "[t]he trial of all crimes . . . shall be held in the state where the said crimes shall have been committed." U.S. Const. art. III, § 2, cl. 3. The Sixth Amendment similarly requires that with "all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. amend. VI. The Federal Rules of Criminal Procedure likewise prescribe that "[u]nless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed." Fed. R. Crim. P. 18.

Where, as here, Congress has not prescribed specific venue requirements for the offense charged, venue is "determined from the nature of the crime alleged and the location of the act or acts constituting it." *United States v. Ebersole,* 411 F.3d 517, 524 (4th Cir. 2005) (quoting *United States v. Cabrales,* 524 U.S. 1, 6-7 (1998)). The inquiry into the place of the crime may yield more than one appropriate venue, including a venue in which the defendant has never set foot. *United States v. Bowens,* 224 F.3d 302, 309 (4th Cir. 2000). "[A]ny offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237(a).

The inquiry into venue has two parts. First, the Court must "identify the conduct constituting the offense," *United States v. Smith,* 452 F.3d 323, 334 (4th Cir. 2006) (quoting *United States v. Rodriguez-Moreno,* 526 U.S. 275, 279 (1999), because venue is limited "to the place of the essential *conduct* elements of the offense." *Bowens,* 224 F.3d at 309 (emphasis in original). Second, the Court determines where the criminal conduct took place. *Smith,* 452 F.2d at 334.

In determining the essential conduct elements courts may "analyz[e] the key `verbs' or actions sanctioned by the statute[.]" *United States v. Sterling,* 860 F.3d 233, 241 (4th Cir. 2017) (quoting *Rodriguez-Moreno,* 526 U.S. at 279-80 (1999)). "Acts which are merely `preparatory' to the underlying offense and its essential conduct, however, cannot provide a basis for venue." *Id.* at 241. Similarly, acts which occur only in furtherance of the crime or after a crime is complete cannot provide a basis for venue because they are not essential to the underlying offense. *United States v. Jefferson,* 674 F.3d 332,

367 (4th Cir. 2012) (finding venue improper for a wire fraud case because although acts in furtherance of the crime occurred in the relevant district, "the physical act of transmitting the wire communication for the purposes of executing the fraud scheme," did not); *United States v. Harris,* No. 3:12-CR-170, 2013 WL 1790140, at *2 (E.D. Va. Apr. 26, 2013) (action taken after a crime is complete "does not qualify as essential conduct of the offense for the simple reason that the crime has been completed").

Jefferson is instructive. There, the defendant contended that venue over his honest services wired fraud offense was not proper in the Eastern District of Virginia because the wire transmission underlying that count involved a call made from Ghana to Louisville, Kentucky. *Jefferson,* 674 F.3d at 364. The Government argued that the underlying fraudulent scheme devised by the defendant involved the deprivation of honest services in the Eastern District of Virginia, thus making venue there appropriate. *Id*. at 365. However, in deciding the issue, the Fourth Circuit analyzed the essential conduct elements of the wire fraud statute and determined that the "scheme to defraud is clearly an essential element, but not an essential *conduct* element, of wire (or mail) fraud." *Id*. at 366 (emphasis in original). Indeed, the court determined that devising a scheme is not conduct at all but is "`simply a plan, intention, or state of mind, insufficient in itself to give rise to any kind of criminal sanctions.'" *Id*. (quoting *United States v. Ramirez,* 420 F.3d 134, 145 (2d Cir. 2005)). "Rather, `the essential conduct prohibited by [the wire fraud statute] is the misuse of wires as well as any acts that cause such misuse.'" *Id*. at 366 (quoting *United States v. Pace,* 314 F.3d 344, 349 (9th Cir. 2002)). Thus, because the essential conduct, the actual wire transmission, did not involve the Eastern District of Virginia, venue was improper there. *Id*.

Here, under the Major Fraud Act, it is a crime to "knowingly execute[], or attempt[] to execute any scheme or artifice with the intent — (1) to defraud the United States; or (2) to obtain money by means of false or fraudulent pretenses, representations, or promises" related to a federal grant or contract with a value of $1 million or more. 18 U.S.C. § 1031(a). Similar to the element of wire fraud requiring a scheme to defraud analyzed in *Jefferson,* the intent clause of the Major Fraud Act does not address a conduct element; rather, the only essential conduct is the knowing execution or attempt to execute the scheme. Here, Verclas executed her alleged scheme to defraud and obtain money from the Government when she submitted her fraudulent grant application from her offices in New York. There is no allegation that this submission involved the District of Maryland. The alleged scheme was to fraudulently seek over $1 million from the United States by submitting an application for a $1,411,000 grant, which falsely represented that the applicant was a New York non-profit with the legal authority to apply for the grant and the financial capability to complete the proposed project. Once the Defendant submitted the application, the scheme had been executed and she did not need to engage in any additional conduct to commit the crime of Major Fraud. *See United States v. Reitmeyer,* 356 F.3d 1313, 1318 (10th Cir. 2004) (holding that scheme had been executed once defendant filed claim for equitable adjustment).

Because actually obtaining money from the United States is not an element of Major Fraud, much less an essential conduct element, it is not relevant to the venue inquiry that the State Department awarded funds to MobileActive through a Maryland-based Payment Management System. This action did not contribute to any element of the crime and was not an essential conduct element. Because the Indictment does not allege that the Defendant committed any conduct element of the crime in the District of Maryland, venue is improper.

B. Statute of Limitations

Although the Indictment must be dismissed for lack of venue, the Court will still consider the parties dispute over the applicable statute of limitations to determine whether the Indictment should be

dismissed *with* or *without* prejudice. If the Indictment was returned more than seven years after the charged offense was committed and no exception to the applicable statute of limitations applies, then the Indictment should be dismissed with prejudice. But if the statute of limitations has not run or an exception to it applies, the Indictment may still be brought in a different district where venue is proper.

Generally, "[s]tatutes of limitations should not be extended `except as otherwise expressly provided by law.'" *Smith,* 373 F.3d at 563 (quoting *Toussie v. United States,* 397 U.S. 112, 115 (1970)). "Normally, `the statute of limitations will begin to run when a single criminal act is complete.'" *Id*. The statute of limitations for the Major Fraud Act states that a prosecution "may be commenced any time not later than 7 years after the offense is committed." 18 U.S.C. § 1031. The Government returned the Indictment on March 26, 2018 and Defendant claims that the crime was completed when she allegedly submitted a fraudulent grant application on January 22, 2010, more than seven years prior to the return of the indictment. However, crimes that are committed not upon initial act, but perpetuated overtime may be treated as "continuing offenses." For "continuing offense" crimes, the statute of limitations will not bar the claim if at least one act in furtherance of the crime occurred during the relevant time period. *See United States v. Burfoot,* 899 F.3d 326, 338 (4th Cir. 2018). A crime is only deemed a continuing offense if (1) "the explicit language of the substantive criminal statute compels such a conclusion"; or (2) "the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one." *Toussie,* 397 U.S. at 115. Based on the *Toussie* test, the conclusion of the only circuit court to decide the issue, and the Fourth Circuit's analogous consideration of the conduct criminalized by the Bank Fraud Act, this Court holds that executing a scheme to defraud under the Major Fraud Act is not a continuing offense.

First, nothing in the Major Fraud Act's explicit language compels the conclusion that the offense is continuing. The Act criminalizes knowingly executing or attempting to execute a scheme or artifice to defraud the United States. The Act makes no mention of "continuing offenses." In contrast, Congress has explicitly labeled other crimes continuing offenses, *see, e.g.,* 18 U.S.C. § 3237(a) ("[a]ny offense involving the use of the mails . . . is a continuing offense" for venue purposes); 50 U.S.C. § 856 ("Failure to file a registration statement . . . is a continuing offense for as long as such failure exists"); thus, if Congress intended the "execution" of a scheme to be a "continuing offense," it could have said so. Additionally, the relevant key action sanctioned by the statute is "executing"—a verb that suggests the crime is complete after a discrete act. *Execute,* Black's Law Dictionary (6th Ed. 1990) (defining "execute" as "[t]o complete; to make; to sign; to perform; to do; to follow out; to fulfill the command or purpose of.").

Further, the nature of the Act does not assuredly suggest that Congress intended its prohibited conduct be treated as continuing. As the only federal court of appeals to decide the issue put it: "each discrete `execution' of a scheme rather than the scheme in its entirety" is criminalized by the Act. *United States v. Reitmeyer,* 356 F.3d 1313, 1316 (10th Cir. 2004). And "[t]he discrete nature of a Major Fraud Act violation makes it unlikely Congress intended it to be a continuing offense for statute of limitations purposes." *Id*.

In *Reitmeyer,* the government brought § 1031 charges against defendants responsible for performing an Army Corps of Engineers contract. The defendants filed a fraudulent claim for equitable adjustment for over $1 million. After this initial act, which put the government at risk of loss, the defendants later met with the Corps "`to promote and support' their claim." *Id*. at 1316. The Tenth Circuit found that the defendants "`executed' their alleged scheme to defraud and obtain money from the government when they filed their claim for equitable adjustment." *Id*. at 1318. According to the Court, defendants took their later action—meeting with the Corps to promote and support their scheme—after the fraud offense

was already completed. *Id*. at 1325. The Tenth Circuit also concluded that defendants did not need "to actually obtain any money in order to `execute' their scheme to defraud the United States or obtain money by false pretenses." *Id*. 1320.

The Government's attempt to dissuade the Court from relying on *Reitmeyer* is unpersuasive. The Government argues that the facts in *Reitmeyer* are "vastly different" from the facts here because the defendants there made only one request for money, but Verclas took additional steps in furtherance of her scheme. *Id*. This argument fails. First, the Government ignores that the defendants in *Reitmeyer* did take an additional step to further their scheme by meeting with the Corps to promote and support their fraudulent claim. Further, even if the facts in *Reitmeyer* were "vastly different" than the facts here (they are not), vastly different facts would not change the Court's analysis under the *Toussie* test. That test asks whether "the explicit language of the substantive criminal statute compels" a finding that the crime is a continuing offense; or (2) "the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one." 397 U.S. at 115. Thus, the test requires the Court to interpret a criminal statute, consider the nature of the crime, and Congress's intent; it does not ask courts to look to particular facts of an alleged offense.

For this same reason, the Government's reliance on *United States v. Smith* is flawed. 373 F.3d 561 (4th Cir. 2004). In that case, the Fourth Circuit found that embezzlement of public funds is a continuing offense. Although the Government draws a successful comparison between the *Smith* facts and the facts here, that comparison does not account for the differences between 18 U.S.C. § 641, the criminal statute analyzed in *Smith,* and § 1031. While the relevant key action sanctioned by 18 U.S.C. § 641 is embezzlement, a "crime that, to avoid detections, often occurs over some time and in relatively small, but recurring, amounts," 373 F.3d at 564, an execution of a scheme to defraud is discrete and complete after an initial act. Further, in contrast to § 1031, which does not require that a defendant actually obtain money from the United States, an element of the crime prohibited by 18 U.S.C. § 641 is that a defendant actually embezzled "any record, voucher, money or thing of value of the United States."

Like the Act's plain language and the Tenth Circuit's analysis in *Reitmeyer,* the Fourth Circuit's interpretation of the Bank Fraud Act—a nearly identical statute—supports the finding that executing a scheme to defraud is not a continuing offense. The Bank Fraud Act uses identical language to § 1031 to prohibit individuals from "execut[ing], or attempt[ing] to execute, a scheme or artifice . . . to defraud" financial institutions 18 U.S.C. § 1344(a) (1984).

In *United States v. Colton,* 231 F.3d 890 (4th Cir. 2000), the Fourth Circuit concluded that a defendant executed bank fraud after only the first of several acts taken in furtherance of a scheme to defraud. There, the defendant obtained a land-development loan. *Id*. at 905. The loan agreement included a clause requiring the defendant to use a percentage of any proceeds received through a sale of a parcel of the property towards the balance of the loan. *Id*. But the defendant entered a land-swap deal with Prince George's County for $2.1 million and misled the lender into believing that he would not be compensated by the County for the conveyance. *Id*. The lender agreed to release its lien on the land based on defendant's misrepresentation that the land would be conveyed to the County without compensation. *Id*. at 906.

The government charged the defendant with four counts of bank fraud because it viewed "four acts in furtherance of the same scheme" to be separate chargeable "executions." *Id*. at 909. Specifically, the government sought to charge as separate executions the defendant's entering into the land-swap agreement with the County, the representation to the bank that the parcel would be conveyed without compensation, recording the relevant deeds, and causing the lender to release its lien. *Id*. The Fourth

Circuit disagreed. *Id*. It found that "[e]ach of the charged `executions' was in fact part of but `one performance, one completion, one execution' which were all `integrally related." *Id*. (citations omitted). And the execution was complete upon the initial act of entering the misleading land swap deal. *Id*. The court also reiterated what the Fourth Circuit has concluded in the past: that "the `scheme to defraud' clause of the bank fraud statute requires only that a financial institution be exposed to `an actual or potential risk of loss,'" meaning actually obtaining money from a financial institution is not essential to committing bank fraud. *Id*.2 The Supreme Court similarly has "found no case from this Court interpreting the bank fraud statute as requiring that the victim bank ultimately suffer financial harm[.]" *Shaw v. United States,* 137 S.Ct. 462, 467 (2016).3

To be sure, the Major Fraud Act and the Bank Fraud Act share their "scheme or artifice" language with the Healthcare Fraud Act, and a sister district court and out-of-circuit authorities have treated healthcare fraud as a continuing offense. *United States v. Gallop,* No. 2:08-CR-217, 2009 WL 10702245, (E.D. Va. Mar. 19, 2009); *United States v. Holden,* 806 F.3d 1227, 1231 (9th Cir. 2015); *United States v. Hickman,* 331 F.3d 439, 447 n.8 (5th Cir. 2003). But these cases, whether interpreting or simply citing to the Healthcare Fraud Act, are inconsistent with the Fourth Circuit's approach in *Colton,* which provides insight into how the Fourth Circuit is likely to approach the Major Fraud Act. For example, rather than wrestle with the lessons from *Colton,* the unpublished *Gallop* opinion cites out-of-circuit authority for its assertion that bank fraud is "widely regarded as a continuing offense." *Gallop,* 2009 WL 10702245 at *2.

While this Court finds that Major Fraud is not a continuing offense, meaning the Indictment was not returned within the seven-year statute of limitations, the Government alleges that the applicable statute of limitations is tolled by the Wartime Suspension of Limitations Act ("WSLA"), 18 U.S.C. § 3287 (2008). The WSLA suspends the statute of limitations period of:

[o]ffenses (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not, or (2) committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States, or (3) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancelation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war or directly connected with or related to the authorized use of the Armed Forces, or with any disposition of termination inventory by any war contractor or Government agency involving fraud or attempted fraud against the United States or any agency thereof.

18 U.S.C. § 3287. The suspension applies to offenses committed after the United States has declared war or after Congress has authorized use of the Armed Forces and before the hostilities terminate. *United States v. Chamberlain,* No. 5:14-CR-128-2-H, 2018 WL 2994280, *3 (E.D.N.C. June 14, 2018). An end of hostilities comes by proclamation of the President or by a Congressional Resolution. 18 U.S.C. § 3287. It is undisputed that "the non-declared Afghanistan and Iraq wars fall within the scope of the WSLA and that the tolling period has not been terminated. . . ." ECF No. 37 at 19 (citing *United States ex rel. Carter v. Halliburton Co.,* 710 F.3d 171, 178-79 (4th Cir. 2013)).

The parties dispute whether the WSLA applies to civilian-fraud cases, like this one, or whether the WSLA applies solely to "war-related frauds." ECF No. 37 at 20. The plain language of the WSLA indicates that the WSLA applies to civilian-fraud, including Major Fraud. Although it is true, as Defendant points out, ECF No. 37 at 20 (quoting *Kellogg Brown & Root Services, Inc. v. United States,* 135 S.Ct. 1970, 1975 (2015), that § 3287(3) only applies to an offense "connected with or related

to the prosecution of the war . . .," the rest of the statute's language cannot be ignored. And § 3287's first clause provides that the statute of limitations is tolled for a much broader category of offense—any offense "involving fraud or attempted fraud against the United States or any agency thereof in any manner." 18 U.S.C. § 3287(1). This first clause does not distinguish between military- and civilian-fraud; given that Congress included a distinction between military- and civilian-fraud in the third clause, Congress must have intended that the first clause apply to all types of fraud. Indeed, in 1948, Congress amended the WSLA to cover "any offense . . . involving fraud or attempted fraud against the United States or any agency thereof *in any manner.*" *Kellogg Brown & Root Services, Inc.,* 135 S. Ct. at 1975 (emphasis added).

Courts have consistently applied the WSLA to all frauds against the United States of a pecuniary nature or concerning property. *United States v. Dennis* 384 U.S. 855, 863 (1966) (quoting *Bridges,* 346 U.S. at 215) (noting that the WSLA applies "`where the fraud is of a pecuniary nature or at least of a nature concerning property.'"); *see also United States ex rel. Carter v. Halliburton Co.,* 710 F.3d 171, 179 (4th Cir. 2013) ("The purpose of the WSLA—to combat fraud at times when the United States may not be able to act as quickly because it is engaged in `war'"). *United States v. Wells Fargo Bank, N.A.* 972 F.Supp.2d 593, 613 (S.D.N.Y 2013) (collecting cases showing courts have "routinely applied the WSLA to fraud having nothing to do directly with the prosecution of war or the military.").

Defendant's reliance on *Bridges,* 246 U.S. 209, does not change the foregoing analysis. In *Bridges,* the Court found that the WSLA was not applicable to a defendant who was charged with making false statements in a naturalization proceeding where the charged offense did not "involve the defrauding of the United States in any pecuniary manner or in a manner concerning property." *Id.* at 221. Here, of course, the Defendant is being charged with defrauding the United States.

Taking the Indictment as true, Defendant committed fraud of a pecuniary nature against the United States by lying to defraud the United States in relation to an over $1 million grant; and this violation falls squarely within the WSLA's umbrella. Therefore, the statute of limitations is tolled by WSLA, and the Government's Indictment is timely. In light of this finding, the Court will grant Defendant's Motion to Dismiss only as to the venue issue, and the dismissal will be without prejudice.

C. Sufficiency of Indictment

Because the Indictment will be dismissed on the basis of improper venue, the Court will not address the sufficiency of the Indictment under Fed. R. Crim. P. 7(c)(1).

III. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss, ECF No. 29, is granted, in part, and denied, in part. A separate Order shall issue.

FootNotes

1. Unless noted otherwise, these facts are taken from the Indictment, ECF No. 1, and assumed to be true for the purpose of deciding this Motion.

2. In this way, bank fraud and major fraud, which is based on identical statutory language, are distinct

from wire fraud, the purpose of which "is to obtain money." *Ebersole*, 411 F.3d at 525. Wire fraud in contrast to bank and major fraud is not complete "until the perpetrator has been paid." *Compare United States v. Williams*, 81 F.3d 1321 (4th Cir. 1996) (finding that the defendant committed bank fraud "as soon as he fraudulently obtained credit from Wachovia in the form of a balance in a bank account" and citing cases holding bank fraud schemes complete after the creation of fraudulent accounts regardless of subsequent withdrawals) *with Ebersole*, 411 F.3d 517 at 525 (finding that the purpose of wire fraud is to obtain money and the crime is not complete until a defendant has been paid).

3. *See e.g., Loughrin v. United States*, 134 S.Ct. 2384, 2395 n.9 (2014) (bank fraud convictions do not require actual loss because "the gravamen of § 1344 is the" execution of the "scheme, rather than the completed fraud") (internal quotation marks and citation omitted)).

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