

No. 25-_____

**IN THE
SUPREME COURT OF THE UNITED STATES**

BART W. REAGOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under 18 U.S.C. § 1014, a person is guilty of a crime if they “knowingly make[] any false statement or report” to, inter alia, obtain a loan from a bank insured by the Federal Deposit Insurance Corporation.

In the decision below, the Fifth Circuit affirmed Reagor’s conviction for a violation of 18 U.S.C. § 1014 based on its finding that Reagor “represented to the bank that the loan would be used for working capital.” It was not disputed that the loan was used for working capital, though some of the loan was also used to make owner distributions. Reagor’s conviction was thus premised on the idea that his promise to use the loan for working capital, though not overtly false, was partially misleading because Reagor also intended to use some of the loan for owner distributions, while purportedly aware that working capital is entirely distinct from owner distributions. In sum, the Fifth Circuit allowed Reagor’s conviction to stand even though the record below allows only for a finding that he made a materially misleading but not a false statement.

Accordingly, the question presented is:

Whether the decision of the Court of Appeals for the Fifth Circuit is in direct conflict with this Court’s recent holding in *Thompson v. United States*, 145 S. Ct. 821 (2025), which held that misleading but not false statements cannot support a conviction under 18 U.S.C. § 1014.

PARTIES TO THE PROCEEDING

Petitioner, Bart W. Reagor, was the defendant in the Northern District of Texas and the appellant in the Fifth Circuit Court of Appeals.

Respondent, United States of America, was the plaintiff in the Northern District of Texas and the appellee in the Fifth Circuit Court of Appeals.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to the case in this Court within the meaning of Rule 14.1(b)(iii): United States District Court for the Northern District of Texas, No. 2:21-cr-00025, *United States v. Bart W. Reagor* (March 10, 2022); U.S. Court of Appeals for the Fifth Circuit, No. 22-10271, *United States v. Bart W. Reagor* (February 27, 2025).

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PETITION FOR A WRIT OF CERTIORARI

Bart W. Reagor respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fifth Circuit.

OPINION BELOW

The opinion of the Court of Appeals is reproduced in Appendix A, 1a, it is unpublished but can be found at *United States v. Reagor*, No. 22-10271, 2025 WL 636311 (5th Cir. Feb. 27, 2025). The opinion of the District Court is reproduced in Appendix B, 9a.

JURISDICTION

The Court of Appeals entered its judgment on February 27, 2025. On March 18, 2025, Reagor moved the Court of Appeals for an extension of time to file a petition for panel rehearing. Reagor's motion for extension was granted on March 27, 2025. On March 27, 2025, Reagor petitioned the Court of Appeals for rehearing. On April 11, 2025, the Court of Appeals denied Reagor's petition for rehearing. *See* Appendix C, 16a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statute is 18 U.S.C. § 1014, the full text of which is reproduced in Appendix D, 17a.

INTRODUCTION

Bart W. Reagor was convicted after trial of making a false statement under 18 U.S.C. § 1014. His conviction rested on a loan obtained by his company, Reagor-Dykes Auto Group (“RDAG”), from the International Bank of Commerce (“IBC”). The stated purpose of the loan was for “working capital,” but that term was left undefined in the loan agreement. During the course of negotiations concerning the loan agreement, a section was revised to allow distributions except where a distribution would result in a default—or if there had already been an event of default.

After RDAG received the loan, a portion of it was used to make owner distributions. Following the discovery of an unrelated check kiting and floorplan fraud scheme, not involving Reagor and orchestrated by other RDAG employees, RDAG defaulted on the loan to IBC and criminal proceedings ensued. Reagor was not charged in the check kiting or floorplan fraud scheme. He was charged solely with bank fraud and making a false statement to a bank in connection with representations he made to IBC regarding the working capital loan.

Reagor pled not guilty. His defense at trial was that he did not know that a portion of a loan made to provide working capital could not be used to make distributions to owners and thus, when Reagor agreed that the loan to RDAG would be used for working capital, he did not knowingly make any false or misleading statements. Following a jury trial, Reagor was *acquitted* of the bank fraud charges and convicted

solely on one count of making a false statement under 18 U.S.C. § 1014.

STATEMENT OF THE CASE

18 U.S.C. § 1014 penalizes the knowing making of “false” statements to certain banks, or other financial institutions, including those insured by the FDIC. Unlike other criminal statutes, the statute uses only the term “false” to describe the statements that fall within its purview and does not include similar terms such as “misleading.” *See Thompson v. United States*, 145 S. Ct. 821, 827 (2025).

After the Fifth Circuit affirmed the decision of the District Court but before the Fifth Circuit denied Reagor’s petition for rehearing, this Court issued its opinion in *Thompson v. United States*, resolving the previous circuit split over whether 18 U.S.C. § 1014 criminalizes statements that are misleading but not false. Prior to *Thompson*, the Fifth Circuit had joined the Eighth, Tenth, and Seventh Circuits in interpreting Section 1014 broadly, to prohibit not only false statements, but also misleading statements. *See, e.g. United States v. Trice*, 823 F.2d 80, 86 (5th Cir. 1987) (“We have also held that a false statement or report for purposes of section 1014 can include the failure to disclose material information needed to avoid deception in connection with a loan transaction.”).

Even before this Court issued the clarifying *Thompson* opinion, there was insufficient evidence for the jury to have found, beyond a reasonable doubt, that Reagor knowingly made a false statement to a

bank. After *Thompson*, limiting § 1014 to false and not merely misleading statements, any remaining doubt as to the sufficiency of the evidence to support that narrowed scope of the charge was erased.

The Fifth Circuit's affirmation of the District Court's decision below is in direct conflict with this Court's decision in *Thompson*. The Court should grant certiorari and reverse.

1. In 2017, Bart W. Reagor, CEO and co-owner of a Texas car dealership, sought financing to support the rapid growth of his business. After months of negotiations and due diligence, Reagor's company, RDAG, obtained a loan for \$10,000,000 from IBC. The stated purpose of the loan was to provide RDAG with "working capital." Before obtaining the loan, RDAG negotiated the terms of the loan with IBC, which terms were documented in a loan agreement. That agreement, stating that the loan was intended for "working capital," did not define the term. During negotiations, RDAG requested, and IBC agreed, to modify a provision of the draft agreement governing distributions. RDAG's CFO sent an email to IBC stating that Section 7.12 of the draft agreement, which discussed distributions, should be removed. RDAG specifically asked that the Section be removed because while the "[o]wners have cancelled disbursements as of March 2017," the CFO did not "recall this being a requirement for the future."

In response to RDAG's request, Section 7.12 was revised to prohibit distributions only "if a Default or Event of Default exists or would result therefrom."

Distributions were not included as examples of either a default or event of default in the agreement.

After RDAG received the loan from IBC, a portion of the loan was used to make owner distributions to Reagor and his co-owner as reimbursement to them for previous equity infusions made by each owner. Nearly one year later, a massive floorplan fraud orchestrated by RDAG's CFO precipitated the financial collapse of RDAG and consequent default on the IBC loan.

On April 22, 2021, a grand jury indicted Reagor on two counts of bank fraud, in violation of 18 U.S.C. § 1344, and one count of making a false statement to a bank, in violation of 18 U.S.C. § 1014. All of the charges related to the \$10,000,000 loan RDAG received from IBC.

The jury acquitted Reagor of both counts of bank fraud and convicted him of making a false statement to a bank in violation of 18 U.S.C. § 1014. At trial, the government's case was predicated on omissions in the representations that Reagor made to IBC. Specifically, the government argued that a loan for working capital could not be used to pay owner distributions, that Reagor misled IBC by omitting his intent to use a portion of the loan proceeds to pay owner distributions, and that this omission was material in causing IBC to make the loan. The § 1014 charge was thus based entirely on the notion that Reagor's failure to disclose that he might use a portion of the loan for owner distributions had rendered misleading his representation to IBC that the loan would be used for working capital.

At trial, there was no evidence that Reagor ever promised IBC that the loan would not be used for owner distributions. As the stated purpose of the loan was for working capital, the question at the heart of the case was whether working capital was a category of assets from which owner distributions were entirely and unequivocally disallowed—and whether Reagor knew this. In support of his defense, Reagor presented the testimony of two expert witnesses that distributions to owners come from working capital and that therefore a working capital loan would not definitionally preclude its use to make some owner distributions.

2. The District Court denied Reagor's motion for acquittal. App. B, 9a. The court rejected Reagor's argument that there was insufficient evidence for a jury to find beyond a reasonable doubt that Reagor knew his statement was false or that his statement was indeed false. *Id.* at 12a-15a.

3. The Court of Appeals affirmed the District Court's decision on February 27, 2025, over two years after oral argument. App. A, 8a. The reasoning of both the District Court and the Court of Appeals focused almost exclusively on whether there was sufficient evidence for a jury to conclude that Reagor knew that working capital excluded owner distributions when he represented to the bank that the loan would be used for working capital. Neither court gave much attention to Reagor's argument that the statement at issue was not in fact false.

The Court of Appeals found that:

Although conflicting evidence existed, the jury could weigh the testimony from prosecution and defense witnesses as to the meaning of terms in the loan agreement to conclude both that the agreement prohibited distributions made without permission and that Reagor knew that working capital excluded owner distributions when he represented to the bank that the loan would be used for working capital. [...]

As is its prerogative, the jury in this case found that [Reagor's] actions evinced a knowing and willful state of mind. We will not disturb that finding.

Id. at 7a-8a.

REASONS FOR GRANTING THE WRIT

Bart W. Reagor was convicted under 18 U.S.C. § 1014 for telling a bank that he would use a loan for “working capital.” This was not a false statement. The proceeds of the loan *were* used for working capital. This statement was, at most, misleading because Reagor and his co-owner also used a portion of the loan for owner distributions and Reagor did not tell the bank that he planned to use some of the working capital RDAG would obtain from the loan to make an owner distribution.

At the time that the Court of Appeals issued its decision affirming the District Court, this Court had not yet decided *Thompson v. United States*, 145 S. Ct. 821 (2025). Prior to *Thompson*, the circuit courts were split as to whether § 1014 should be interpreted to

encompass misleading statements as well as overtly false statements. The Fifth Circuit had long interpreted § 1014 as encompassing the making of merely misleading, and not just false statements. *See e.g., U.S. v. Matthews*, 31 Fed. Appx. 838 (5th Cir. 2002) (under § 1014, “an intentional omission of material fact can constitute a false statement if made for the purpose of influencing a federally-insured bank’s lending activities”); *United States v. Trice*, 823 F.2d 80, 86 (5th Cir. 1987) (“[A] false statement or report for purposes of section 1014 can include the failure to disclose material information needed to avoid deception in connection with a loan transaction.”).

Following *Thompson*, it is now clear that the Fifth Circuit employed an impermissibly broad interpretation of the statute, which when properly applied exclusively criminalizes only those statements that are overtly false. The Court of Appeals’ decision in this case is therefore in direct conflict with this Court’s holding in *Thompson*.

According to *Thompson*, “the only relevant question under the text of § 1014 is whether the statement—even if misleading, deceitful, or some other adjective—is also ‘false.’” *Id.* at 822. Much like the Petitioner in *Thompson*, Reagor made a statement that might have been clearer had it included additional details. But just because a statement might have been clearer or was missing certain details, does not mean that it is “false” and thus actionable under § 1014.

Even accepting the jury's verdict based on the instructions it received, Reagor's statement exhibited a misunderstanding of the term "working capital"—the same misunderstanding shared by multiple expert witnesses at trial—and was at worst, inaccurate. Such misunderstandings between lenders and loan holders highlight the importance of clarity and caution when negotiating and drafting loan agreements. But that is distinct from a Congressional mandate to speak in literal, all-encompassing truth whenever communicating with a potential lender, lest one face criminal consequences. Here, although Reagor might have been clearer, he was not accused of making a statement promising to refrain from making owner distributions, for example, or even explicitly stating that he would not use any of the loan to make owner distributions. Instead, he simply stated that the loan would be used for working capital, and it was. As was the case in *Thompson*, a misleading or partially true statement was conflated with a false statement, an injustice that was only exacerbated by the very long sentence of 14 years imposed on Mr. Reagor. Given this Court's holding in *Thompson*, such a misleading omission is insufficient to constitute falsity, the requirement for a conviction under § 1014.

The evidence at trial and considered by the Court of Appeals in rendering its decision was insufficient to prove beyond a reasonable doubt that Reagor made a false, and not just misleading, statement to IBC. The Court of Appeals' decision can no longer stand after *Thompson*: it is not a criminal act to omit material information needed to avoid misleading a bank in connection with a loan transaction.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant his petition for a writ of certiorari.

Dated: New York, New York
August 11, 2025

Respectfully submitted,

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APPENDIX

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT,
FILED FEBRUARY 27, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22-10271

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BART WADE REAGOR,

Defendant—Appellant.

Filed February 27, 2025

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:21-CR-25-1

Before STEWART, RICHMAN, and HAYNES, *Circuit Judges*.

PRISCILLA RICHMAN, *Circuit Judge*.*

A jury found Bart Wade Reagor made a false statement to a bank in violation of 18 U.S.C. § 1014. He contends, as he did at trial by motions for a judgment of acquittal, that the Government did not present sufficient

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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evidence to prove that Reagor knowingly made a false statement. Because there was sufficient evidence to support the jury's verdict, we affirm.

I

Reagor founded and was the CEO of Reagor-Dykes Auto Group (RDAG), a group of automotive entities with approximately twenty service and sales locations. After an audit revealed that RDAG was in a weak cash position, RDAG sought a working capital loan from the International Bank of Commerce (IBC). IBC employees met with Reagor and other RDAG employees to discuss the loan. Shortly after the meeting, IBC drafted a loan memorandum, which stated that “[t]he entirety of the proposed \$10,000,000 equity term loan will be used to inject equity . . . into the various entities underneath the [RDAG] umbrella” that were operating with insufficient capital due to extreme growth. The memorandum also stated that the “[o]wners have eliminated all withdrawals as of March 2017,” saving the company \$90,000 per month.

Four witnesses, including IBC and RDAG employees who attended the meeting, testified at trial that the loan memorandum was based on representations Reagor made at the meeting, that the memorandum was used by the bank's approval committees to approve the loan and by its attorneys to draft the loan, and that if at any time anyone had known Reagor intended to use the loan for owner distributions, the loan would have been denied.¹

1. ROA.650, 666-68 (testimony of William Patrick Schonacher, president and CEO of IBC Bank Oklahoma); ROA.701-02 (testimony of Thomas Hutchison, attorney who does legal work

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The final agreement reflected a loan of \$10 million for working capital and a \$25 million refinancing loan secured by a mortgage. Following negotiations between Smith and IBC, a term in the loan agreement that prohibited distributions except for tax purposes was altered in June 2017 to prohibit only distributions made without prior consent “if a Default or Event of Default exists or would result therefrom.”

for IBC); ROA.809-10, 831-32 (testimony of Shane Smith, then-Chief Financial Officer of RDAG) (“Q. Did yourself, the defendant, and other representatives of Reagor-Dykes tell IBC Bank that the working capital loan would be used for working capital? A. Yes. Q. Was there any other purpose stated for that loan other than working capital? A. No, sir. Q. During that meeting, did the defendant, or anyone else, ever tell IBC Bank that the working capital loan proceeds will be used for the defendant’s personal use or benefit? A. No, sir. Q. Was that ever discussed at all? A. No, sir, not with them.”); ROA.919 (testimony of Shane Smith) (“Q. At the time [Reagor] gave you those instructions, did you know it was wrong to distribute the working capital loan proceeds that way? A. I didn’t know it was illegal. Q. Did you know it was wrong? A. Yes.”); ROA.749, 760 (testimony of William Woodring, former vice president of commercial banking and commercial lending at IBC) (“Q. Did the defendant make representations to you at the April 2017 meeting? A. Yes. Q. And were those representations included in this commercial loan memorandum? A. Yes. Q. And where was it included in this commercial loan memorandum? A. They are summarized throughout the package, including the use of funds.”); ROA.761-62 (testimony of William Woodring) (“Q. Before this criminal case, did you have any idea that the defendant intended to take a personal distribution from the working capital loan proceeds? A. No. Q. And if the defendant had told you at the initial meeting in April 2017 that he planned to take a personal distribution of the working capital loan proceeds, would you have approved this loan? A. No.”).

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Before any of the loan proceeds were disbursed, Reagor emailed his Chief Financial Officer, Shane Smith, instructing him that Reagor and Rick Dykes “have decided to pay ourselves the first 33.3% of every dollar we borrow,” and instructing Smith to take care of those disbursements but cautioning, “**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!!!!!!!!!!!!**”² The first disbursement of \$5 million occurred in July 2017, and on that same day, Smith wired \$2 million into the account of an RDAG entity and wrote Reagor a check for \$766,277.77 out of those funds. Before the second disbursement, Reagor said to his sales team on video:

OPM. Other people’s money. That’s how I did it. When you don’t have money, you talk other people into giving you their money so you can use their money to increase your net worth. That’s how I did it. [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 sh*t I’ve pulled off in this lifetime.³

Another disbursement of \$5 million occurred in February 2018, and Smith again moved \$2 million into an RDAG entity account and cut Reagor a check for \$1 million out

2. ROA.1862-63 (Exhibit 41) (all bolding and emphasis in original).

3. ROA.537, 859-60 (Exhibit 48); United States Br. at 8.

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of those funds. The combined \$1.7 million out of both disbursements was deposited into Reagor’s personal checking account and used to pay off personal credit cards, to make payments to family, and for improvements to his “mansion on 19th Street.”

After fraud schemes unrelated to bank fraud rendered RDAG insolvent, Reagor was indicted based on the allegations at issue in this case. There was testimony at trial that the distributions to Reagor, made in contravention of the loan’s purpose section, were an event of default and violated the agreement.⁴ The jury found Reagor not guilty on two counts of bank fraud and guilty on one count of making a false statement to the bank in violation of 18 U.S.C. § 1014.

II

Reagor’s preserved challenge to the sufficiency of the evidence is reviewed de novo.⁵ Our court must affirm a criminal conviction “if, after viewing the evidence and

4. ROA.710, 708 (testimony of Thomas Hutchison) (“Q. . . . If there was a distribution for a purpose other than what’s in Section 2.01(b), would that be an event of default? A. Yes. It would be under this section because 2.01(b) states the borrower shall use the advancing term loan for working capital only, which is a covenant for an agreement of the borrower or the borrower group member, and so if those working capital—if the loan is used for any other purpose, it would constitute a default or event of default under this subsection (e).”); *see also* ROA.1881 (defining “Borrower Group” by pointing to Schedule 5.01, a list of entities that does not include Reagor); ROA.1922 (Schedule 5.01).

5. *United States v. Grant*, 683 F.3d 639, 642 (5th Cir. 2012).

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all reasonable inferences in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”⁶ “We do not delve into the evidentiary weeds: The jury ‘retains the sole authority to weigh any conflicting evidence and to evaluate the credibility of witnesses.’”⁷

The elements of the § 1014 false statement offense are “(1) the defendant knowingly and willfully made a false statement to the bank, (2) the defendant knew that the statement was false when he made it, (3) the defendant made the false statement for the purpose of influencing the bank to extend credit, and (4) the bank . . . was federally insured.”⁸ “We have held that if a person makes a false statement that has the capacity to influence the bank, ‘then the specific intent necessary to violate [Section] 1014 may be inferred and the offense is complete.’”⁹

The jury was free to believe the Government’s expert over the defense experts that the definition of working capital was clear and did not include owner distributions. “We will not second guess the jury in its choice of which

6. *United States v. Vargas-Ocampo*, 747 F.3d 299, 301 (5th Cir. 2014) (en banc) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979))

7. *United States v. Scott*, 892 F.3d 791, 796-97 (5th Cir. 2018) (quoting *Grant*, 683 F.3d at 642).

8. *United States v. Sandlin*, 589 F.3d 749, 753 (5th Cir. 2009).

9. *Id.* at 754 (alteration in original) (quoting *United States v. Johnson*, 585 F.2d 119, 124 (5th Cir. 1978)).

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witnesses to believe.”¹⁰ The jury was also free to credit the circumstantial evidence of Reagor’s state of mind—the email he sent requiring the distribution plan to be kept confidential from the bankers, the statements he made to his staff at the meeting on video about using other people’s money, and the testimony that the loan memorandum reflected what Reagor said at the meeting he had with bank representatives prior to obtaining the loan. The Government may prove its case by direct or circumstantial evidence,¹¹ and, “[a]bsent a confession, intent will almost always have to be established by circumstantial evidence.”¹²

Although conflicting evidence existed, the jury could weigh the testimony from prosecution and defense witnesses as to the meaning of terms in the loan agreement to conclude both that the agreement prohibited distributions made without permission and that Reagor knew that working capital excluded owner distributions when he represented to the bank that the loan would be used for working capital. “The evidence need not exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt.”¹³

10. *United States v. Zuniga*, 18 F.3d 1254, 1260 (5th Cir. 1994) (citing *United States v. Jones*, 839 F.2d 1041, 1047 (5th Cir. 1988)).

11. *See United States v. Mitchell*, 484 F.3d 762, 768 (5th Cir. 2007).

12. *Sandlin*, 589 F.3d at 755.

13. *United States v. Grant*, 683 F.3d 639, 642 (5th Cir. 2012) (quoting *United States v. Moreno*, 185 F.3d 465, 471 (5th Cir. 1999)).

Appendix A

“As is its prerogative, the jury in this case found that [Reagor’s] actions evinced a knowing and willful state of mind. We will not disturb that finding.”¹⁴

* * *

For the reasons stated, the judgment of the district court is AFFIRMED.

14. *Sandlin*, 589 F.3d at 754.

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**APPENDIX B — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF TEXAS, AMARILLO DIVISION,
FILED DECEMBER 30, 2021**

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

2:21-CR-25-Z-BR-(01)

UNITED STATES OF AMERICA,

Plaintiff,

v.

BART WADE REAGOR,

Defendant.

Filed December 30, 2021

ORDER

Before the Court are Defendant's Motion for Judgment of Acquittal ("Motion") (ECF No. 114), the Government's Response to Defendant's Motion for Judgment of Acquittal ("Response") (ECF No. 115), and Defendant's Reply (ECF No 118). Having considered the parties' briefings and arguments, the Court determines that Defendant's Motion should be and hereby is **DENIED**.

*Appendix B***BACKGROUND**

On April 22, 2021, a grand jury indicted Defendant on two counts of bank fraud in violation of 18 U.S.C. § 1344, and one count of false statement to a bank in violation of 18 U.S.C. § 1014. ECF No. 1. Following a jury trial, the jury returned a verdict, finding Defendant “not guilty” on both bank fraud counts but “guilty” of the false statement count. ECF No. 97. Defendant subsequently filed a Motion for Extension of Time to File Post-Verdict Motions, which the Court granted. ECF Nos. 104, 105. Subsequently, Defendant filed the instant motion now pending before the Court. Defendant moves for judgment of acquittal pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure or, in the alternative, for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

LEGAL STANDARD

Under Federal Rule of Criminal Procedure 29, a defendant may move for judgment of acquittal challenging the sufficiency of the evidence to sustain a conviction. FED. R. CRIM. P. 29(a). This motion may be filed before the case is submitted to the jury or after the jury returns a guilty verdict or the court discharges the jury. FED. R. CRIM. P. 29(c).

Here, the Court must decide “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

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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.* (citations omitted).

The Defendant’s burden to meet this standard is high. *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). The Fifth Circuit has frequently stressed “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 marks omitted).

Pursuant to 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). The Fifth Circuit has stated that “motions for new trial are not favored, and are granted only with great caution.” *United States v. O’Keefe*, 128 F.3d 885, 898 (5th Cir. 1997) (internal marks omitted). Such a remedy is “warranted only where there would be a miscarriage of justice or where the evidence preponderates heavily against the verdict.” *Id.*

*Appendix B***ANALYSIS**

Defendant's primary argument for judgment of acquittal is that there was insufficient evidence for a jury to find that Defendant knew his statement to International Bank of Commerce ("IBC") was false when he made it. Defendant's argument fails because there was sufficient evidence for a rational jury to find that the Government met its burden of proving the elements of false statement to a bank beyond reasonable doubt.

Drawing all reasonable inferences and credibility choices in favor of the jury verdict, and having presided over all trial proceedings, the Court concludes that sufficient evidence existed for a rational jury to determine that: (1) Defendant made a false statement to IBC, as charged; (2) Defendant *knew* the statement was false when Defendant made the statement; (3) Defendant did so for the purpose of influencing a lending action of IBC, convincing IBC to give Defendant a loan for working capital; and (4) IBC was federally insured. Specifically, a rational jury could determine that the Government met its burden based on, but not limited to, the following evidence:

1. Government's Exhibit 41

Email from Defendant to Shane Smith and Rick Dykes expressly stating "confidential" instructions for the diversion of the loan proceeds:

"[H]ow we are going to manage this capital is 100000000% confidential between us and

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is not ANYONE ELSE’S BUSINESS!!!!!!
NOBODY’S!!!!!!!!!! NO BANKERS OR
ANYONE ELSE!”

**2. Trial Testimony of Bill Schonacher, IBC
President and CEO**

GOVERNMENT: “If the defendant had told you in April 2017 that he intended to take a portion of the working capital loan for his own personal use and benefit, would you have approved the loan?”

SCHONACHER: “I would not have.” Trial Tr. Vol. 1, 50, ll. 1-5.

3. Government’s Exhibit 48

Recording of Defendant explaining *how* he used OPM to increase net worth:

VIDEO: “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. OPM (“Other People’s Money”) . . . most of y’all have no comprehension of the shit I’ve pulled off in this lifetime.”

At trial, Shane Smith testified that Defendant’s OPM statements postdated the first distribution of the IBC loan. Trial Tr. Vol. 1, 252, ll. 17-21.

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4. Government's Exhibit 51

Recording of Defendant describing "mansion" *following* the first IBC loan disbursement:

AUDIO: "Do you have what I have . . . a fucking mansion right there on 19th Street . . . I'm a bad motherfucker." Ex. 51, 0:09-0:20; Trial Tr. Vol. 1, 251 ll. 23-25.

At trial, FBI Special Agent John Whitworth testified that \$1.7 million of the IBC loan was diverted into Defendant's personal accounts and subsequently used to pay for renovations to Defendant's "mansion . . . on 19th Street." Trial Tr. Vol. 2, 383, ll. 3-8; Trial Tr. Vol. 2, 401 ll. 9-17.

The above-cited exhibits and testimony are sufficient evidence for a rational jury to conclude that Defendant was guilty of making a false statement to a federally-insured bank beyond a reasonable doubt. Therefore, the Court FINDS that there was sufficient evidence to support the jury's determination that Defendant knowingly made a false statement to IBC.

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CONCLUSION

For the above reasons, Defendant's Motion is **DENIED**. Defendant's alternate motion for grant of new trial pursuant to Rule 33 is also **DENIED** for the same reasons and the reasons stated in the Government's Response. ECF No. 115.

SO ORDERED.

December 30, 2021.

/s/ Matthew J. Kacsmarik
MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

**APPENDIX C — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT,
FILED APRIL 11, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22-10271

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BART WADE REAGOR,

Defendant—Appellant.

Filed April 11, 2025

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:21-CR-25-1

ON PETITION FOR REHEARING

Before STEWART, RICHMAN, and HAYNES, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is
DENIED.

**APPENDIX D — RELEVANT STATUTORY
PROVISIONS****18 U.S.C.A. § 1014.**

Loan and credit applications generally; renewals and discounts; crop insurance

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Federal Housing Administration, the Farm Credit Administration, Federal Crop Insurance Corporation or a company the Corporation reinsures, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof, or of any regional agricultural credit corporation established pursuant to law, or a Federal land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or the Small Business Administration in connection with any provision of that Act, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, any Federal home loan bank, the Federal Housing Finance Agency, the Federal Deposit Insurance Corporation, the Farm Credit System Insurance Corporation, or the National Credit Union Administration Board, a branch or agency of a foreign

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bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), an organization operating under section 25 or section 25(a) of the Federal Reserve Act, or a mortgage lending business, or any person or entity that makes in whole or in part a federally related mortgage loan as defined in section 3 of the Real Estate Settlement Procedures Act of 1974, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, or insurance agreement or application for insurance or a guarantee, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both. The term “State-chartered credit union” includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.