

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-2267
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

VERA R. WARFORD,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas

(CR-H-92-0042-01)

(April 25, 1994)

Before THORNBERRY, DAVIS and SMITH, Circuit Judges.

THORNBERRY, Circuit Judge:*

Facts and Prior Proceedings

Vera R. Warford, an employee of Cornerstone Savings Association (CSA), was indicted and charged with one count of bank fraud and two counts of misapplication of bank funds pursuant to 18

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

U.S.C. §§ 2, 657 and 1344.¹ Warford pleaded not guilty and was subsequently convicted by a jury. The district court sentenced Warford to serve two concurrent 15 month sentences, followed by concurrent three-year terms of supervised release, and ordered her to pay a \$150 special assessment. Warford timely appeals her conviction.

Discussion

Warford contends that the evidence was insufficient to support her conviction. Warford does not challenge the fact that as an employee of Cornerstone Savings Association, she ordered 12 wire transfers of money from CSA to accounts within her control at Rosenberg Bank & Trust (RB&T) and made no deposits to cover the wire transfers; rather, she contends that she made the deposits but something went "awry somehow", and she has no idea why there is no evidence of any deposits to cover these transfers of money. Warford claims that the failure to locate Warford's transfer deposits is consistent with the bad bookkeeping practices of CSA.

In viewing the sufficiency of the evidence, this court must examine the evidence presented in the light most favorable to the

¹ Specifically, Warford was convicted of knowingly executing and attempting to execute a scheme to defraud Cornerstone Savings Association, a federally insured financial institution, and to obtaining a total of approximately \$21,000 by false pretenses in violation of 18 U.S.C. §§ 2 and 1344 (count one); knowingly misapplying and causing to be misapplied approximately \$1,000 by wire transfer to her personal checking account at Rosenberg Bank & Trust-First Colony (RB&T) on August 30, 1989 in violation of 18 U.S.C. §§ 2 and 657 (count 2); and knowingly misapplying and causing to be misapplied approximately \$1,200 by wire transfer to her personal checking account at RB&T on September 6, 1989, in violation of 18 U.S.C. §§ 2 and 657 (count three).

verdict and affirm if a rational trier of fact could have found the essential elements beyond a reasonable doubt. **United States v. Restivo**, 8 F.3d 274, 280 (5th Cir. 1993). The evidence need not exclude every reasonable hypothesis of innocence. **Id.** All inferences and credibility determinations must be resolved in favor of the jury's verdict. **United States v. Barakett**, 994 F.2d 1107, 1110 (5th Cir. 1993), **cert. denied**, 1993 WL 384987 (Jan. 10, 1994).

To support a conviction for bank fraud, the Government had to prove that Warford knowingly executed a scheme to defraud a federally chartered or insured financial institution. **United States v. Saks**, 964 F.2d 1514, 1518 (5th Cir. 1992). The term "scheme to defraud" includes representations intended to deceive others to obtain something of value. **Id.** "A defendant acts with the requisite intent to defraud if he acted knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to himself." **Restivo**, 8 F.3d at 280.

To establish misapplication of funds, "the Government must prove that 1) the defendant was an officer, agent or employee of, or connected in some way with, a savings and loan association whose accounts were insured by FSLIC, 2) that he willfully misapplied funds of the association, and 3) that he acted with intent to injure or defraud the association." **United States v. Hopkins**, 916 F.2d 207, 215 (5th Cir. 1990). "[I]ntent is proven by showing a knowing, voluntary act by the defendant, the natural tendency of which may have been to injure the bank even though such may not

have been [the] motive." **United States v. Parekh**, 926 F.2d 402, 408 (5th Cir. 1991)(internal quotation and citation omitted).

Warford claims that she never intended to take the money from the wire transfers without making the corresponding deposits to cover the wire transfers. She claims that the absence of corresponding deposits resulted from bank errors, and asserts that her 31 legitimate wire transfers between June and November 1989 evidences her lack of criminal intent.

Warford's argument has no merit. Proof of intent to defraud may arise by inference from all of the facts and circumstances surrounding a transaction. **Restivo**, 8 F.3d at 280-81. A summary of the 12 illegal transactions follows.

The first five wire transfers at issue were dated July 12th, August 30th, September 6th, September 15th, and October 17th. After thorough investigation by CSA, no documentation regarding any corresponding deposits made by Warford to cover these wire transfers could be found. All of the money from the transfers, however, were received by Warford in her personal accounts.

A rational trier of fact could readily believe that five wire transfers of money to the same accounts within a short period of time for which no corresponding documentation could be found anywhere was too excessive to be a bookkeeping error. It is a reasonable inference that if the documentation had simply been misfiled it would have appeared somewhere during the intensive investigation launched after the discrepancies were discovered. Therefore, examining the evidence presented in the light most

favorable to the verdict and resolving all inferences and credibility determinations in favor of the jury's verdict, we cannot say that a trier of fact could not have believed Warford guilty based on the five wire transactions described above.

The sixth illegal transaction occurred on November 2, 1989. Warford had her assistant wire \$550.00 to her RB&T account. Warford prepared the wire transfer form, and her assistant made the wire transfer.² The transfer of the funds was purportedly covered by a copy of check number 3638 from Warford's joint CSA account and a deposit slip for the CSA wire transfer account. However, check number 3638 never cleared Warford's CSA account, nor did Warford ever make another deposit to reimburse the money to the CSA wire account, the account from which all wire transfers were made. Warford received the \$550 in her RB&T account, however.

On November 21, 1989, Warford made the seventh wire request. She prepared the outgoing wire information sheet, and her assistant completed the wire transfer. Warford requested that \$3,850³ be

² CSA Vice-President and branch manager, Patricia Shockley, testified that the proper procedure for wire transfers required an approval of the journal voucher initiating the transfer by someone other than the one who prepared the journal entry. The standard procedure required cash payment for a wire transfer or a check drawn on a CSA account (because a check drawn on another bank would take several days to clear). In each of the first five instances, Warford prepared the wire transfer order form and the journal voucher without any independent approval.

³ \$2,350 was wired to her minor son's account and \$1,500 to her joint checking account.

wired to two of Warford's accounts at RB&T⁴. The wire transfer was purportedly covered by a copy of a check made to CSA in the amount of \$3,850, drawn on Warford's checking account at RB&T, and a deposit slip to the CSA wire account for the same amount. This deposit, however, was not made to CSA's wire account or any other CSA account, and the check written by Warford never cleared Warford's RB&T account. Warford and her son, of course, received the \$3,850.

On November 28, 1989, the eighth and ninth wire requests were made. A wire-out in the amount of \$1,300 was requested for Warford's joint account at RB&T and another in the amount of \$800 for Warford's minor son's account. A check in the amount of \$2,100 from Warford's account at RB&T and a deposit ticket to the CSA wire account were purportedly used to cover the transfer. CSA was never credited with the deposits, however, and Warford's personal check never cleared her checking account. Warford and her son, of course, received the \$2,100 in their accounts.

In the tenth instance, Warford requested a wire transfer on November 29, 1989 for \$2,900 to be deposited in her minor son's account at RB&T. Warford presented a check to cover the transfer. The check was drawn on her account at the First National Bank of Pearland, and a corresponding deposit slip for the CSA wire account was attached to the wire request. The Pearland account had been closed in 1988, and no credit was ever made to the CSA wire

⁴ Warford had access to and control of RB&T account # 2702223, Warford's minor son's account, and a her own joint RB&T checking account.

account.⁵ Warford's son's account, however, was credited with \$2,900.

On December 4, 1989, Warford made the eleventh wire request for a transfer of \$2,500 to be deposited in her joint account at RB&T. The request was accompanied by a check from her mother's RB&T account⁶ and a corresponding deposit slip for the CSA wire account. Warford's check never cleared her RB&T account and no deposit was ever made to reimburse CSA's wire transfer account. Warford, however, received the \$2,500 in her account.

The twelfth wire transaction took place on December 6, 1989, in the amount of \$3,500. The funds were transferred to Warford's minor son's account at RB&T. CSA was unable to find any deposit to cover the wire transfer.

The reconciliation of the CSA wire account and corresponding journal and general ledger entries revealed that Warford's wire transfers were the only wire transactions with missing documentation and deposits. In addition, in order to accept Warford's defense that the documentation went "awry somehow", the jury would have to believe that, not only did CSA lose deposit documentation on the first five wire transfers, but that it neglected to process for payment the corresponding checks supporting the next six transactions. A reasonable juror could

⁵ Testimony revealed that if Warford's check had ever been presented for payment at the Pearland Bank, the check would have been returned stamped, "Account Closed". The check had no such stamp on it.

⁶ Warford had the authority to sign on her mother's account.

conclude that so many bank errors on only Warford's wire transfers was not plausible.

In addition, Warford's intent to defraud CSA and misapply funds was supported by falsified checks used to cover the wire transfers on November 21st, November 28th and December 4th. Warford purportedly covered the November 21st wire transfer with check number 2511 for \$3,850, a xeroxed copy of which was attached to the wire transfer order. The original of check number 2511, however, was written by Warford on November 24 and processed for \$39.60 on November 27th. The original check number 2513 used to cover the November 28th \$2,100 wire transfer was signed by Warford, but was actually written on December 19th and processed for \$53.20 on December 22nd. Still another xeroxed copy of check number 2513 was the accompanying deposit documentation for Warford's December 4th wire transfer order for \$2,500. This means that check number 2513 was used to support a \$2,100, \$53.20 and a \$2,500 transaction, all at the same time.

Viewing the evidence in the light most favorable to the verdict, a rational jury could easily have found that Warford executed a scheme to defraud CSA and misapplied funds belong to or entrusted to CSA. Warford's other arguments surrounding the sufficiency issue are likewise without merit.

Warford also contends that the district court abused its discretion in admitting evidence prohibited under Fed. R. Evid. 404(b). Warford objected to the Government using evidence of

"forced checks"⁷ and insufficiently funded checks in three RB&T accounts that she held jointly with her husband, her mother, or her son. Specifically, the notations of "forced checks" and insufficiently funded checks appeared on the joint account bank statements. Warford argues that 1) there was no showing that she wrote any of the "bad" checks; 2) the evidence was irrelevant to the issue whether she had tendered payment for the 12 outstanding wire transfers and; 3) the evidence was more prejudicial than probative because it inferred bad character, allowed the jury to conclude that she had not tendered payment for the 12 wire transfers of money because she had paid for items with bad checks, and the "voluminous" notations on the statements dominated the jury's consideration of the evidence. The Government contends that these bank statements are not extrinsic evidence, but intrinsic evidence which is admissible without Fed. R. Evid. 404(b) analysis.

A reviewing court will reverse a district court's determination on the admissibility of evidence only on finding an abuse of discretion. **United States v. Eakes**, 783 F.2d 499, 506-07 (5th Cir.), **cert. denied**, 477 U.S. 906 (1986). Although Warford challenged the bank statements from all of her accounts in her motion in limine, at trial, Warford objected only to the admission of her joint bank statement showing "forced checks" and insufficient funds because the case was "not about checks paid against insufficient funds or returned...." These statements

⁷ Forced Checks were defined at trial as those that are paid by the officer on the account even though there are insufficient funds in the account.

relate to Government Exhibit 76. To the extent that Warford challenges the admission of statements other than Government Exhibit 76, review is for plain error. **See United States v. Graves**, 5 F.3d 1546, 1551 (5th Cir. 1993), **petition for cert filed**, (No. 93-1212) 60 U.S.L.W. 3522 (U.S. Jan 18, 1994).

"Evidence that is inextricably intertwined with the evidence used to prove a crime charged is not extrinsic evidence under Rule 404(b). Such evidence is considered intrinsic and is admissible so that the jury may evaluate all the circumstances under which the defendant acted." **United States v. Royal**, 972 F.2d 643, 647 (5th Cir. 1992), **cert. denied**, 113 S.Ct. 1258 (1993)(internal quotations and citations omitted). The district court was correct in judging that the bank statements were intrinsic evidence which should be used to evaluate all the circumstances surrounding Warford's actions.

In this case, Warford was charged with "executing a scheme", specifically of intentionally transferring money from the CSA wire account to her accounts at RB&T, by preparing (or causing to be prepared) journal vouchers in the books and records at CSA to make it appear the wire transfers had been covered by attaching altered checks to the wire transfer documents that looked like an off-setting deposit had been made to the CSA wire account. The Government was, therefore, required to prove that Warford actually wired the money into her personal accounts without off-setting the transfer with deposits to the wire account.

Warford's bank statements, were not only relevant, but necessary to prove she received the wired monies as alleged. In connection with each of the 12 wire transfers, Warford's bank statements reflected that the money was received in her accounts. With regard to the attached copies of purported corresponding checks for deposit, it was equally necessary to prove that the checks were never processed for payment through the accounts upon which the checks were allegedly drawn. Her bank statements proved either that a debit was never made from her account as she presented by her false check or, in the case of checks number 2511 and 2513, that the checks were actually processed for a completely different amount than the checks she presented to CSA.

The district court did not abuse its discretion and to the extent that Warford challenges the unobjected-to evidence, there is no plain error.

Conclusion

Based on the foregoing, Warford's conviction is AFFIRMED.