**UNITED STATES COURT OF APPEALS**
**For the Fifth Circuit**

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No. 93-5257
Summary Calendar

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UNITED STATES OF AMERICAN,

Plaintiff-Appellee,

VERSUS

NOLIN W. RAGSDALE,

Defendant-Appellant.

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

(93-CR-19-1)

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(March 29, 1994)

Before GARWOOD, SMITH, and DEMOSS, Circuit Judges.

PER CURIAM:*

Nolin W. Ragsdale, the former Chairman of the Board and President of the Northwest Bank, a federally insured bank located in Roanoke, Texas, appeals his four-count conviction: (1) conspiracy to misapply bank funds and make false statements to a

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*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

federally insured bank;[1] (2) aiding and abetting the misapplication of bank funds;[2] (3) aiding and abetting the making of a false statement to a federally insured bank;[3] and (4) making a false statement on a Federal Deposit Insurance Corporation (FDIC) questionnaire.[4] Because we find no error, we affirm.

I.

A.

The government originally sought an indictment against Ragsdale and his co-defendant, Carl J. Hardeman,[5] because of a $300,000 loan Ragsdale allegedly issued to Hardeman through a "nominee borrower." The government describes a nominee borrower in the indictment as "an individual who acts as a borrower on behalf of another, in order to disguise and conceal the interests of the other individual in that lending transaction."

In presenting its evidence at trial, the government began with the alleged nominee, a local businessman named Coke Gage. At trial, Gage, who was testifying under a grant of immunity, stated that Hardeman approached him about "stabiliz[ing]" a loan from Northwest. Gage responded that he had insufficient funds to help

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[1]18 U.S.C. § 371; 18 U.S.C. § 656; 18 U.S.C. 1005.

[2]18 U.S.C. § 656; 18 U.S.C. § 2.

[3]18 U.S.C. § 1005; 18 U.S.C. § 2.

[4]18 U.S.C. § 1005.

[5]On the eve of trial, Hardeman pled guilty to the conspiracy count in return for a dismissal of the two substantive counts. Hardeman was never indicted for the fourth count because Ragsdale alone falsely answered the FDIC questionnaire.

Hardeman. Gage further testified that Ragsdale also called Gage and encouraged him to help Hardeman because Gage would not be liable for the loan, even though Gage would sign the note. Gage acquiesced, and in June 1985, a $300,000 loan, payable in 30 days, to Coke Gage was executed.

Gage testified, however, that he was not involved in the execution or the satisfaction of the loan. Specifically, when the loan was approved, a cashier's check for $300,000, payable to C.J. Hardeman, Inc., was purchased using the proceeds of the loan. Gage denied purchasing the cashier's check. In addition, between September 1985 and October 1987, the bank extended Gage's loan six times; Gage denied ever requesting these extensions. Ragsdale never spoke with Gage about satisfying the loan, which was consistent with Gage's belief that he was not liable for the loan.

The government also offered Edward Touraine, a Northwest Bank employee, as a witness. He testified that Ragsdale was responsible for executing and administering the Gage loan. In particular, Ragsdale purchased the cashier's check and deposited it into Hardeman's account, personally granted the six loan extensions, and debited Hardeman's account to partially satisfy the Gage loan. Touraine also testified that, at the time of the Gage loan, Hardeman had an outstanding note for $220,000. Because Northwest limited borrower's debts to $300,000, Touraine noted that an additional $300,000 loan to Hardeman would have exceeded the limit and, therefore, violated state and federal regulations.

Ella Huffman, an FDIC examiner who investigated Northwest Bank, testified for the government that she probed the validity of the Gage loan because it was not collateralized. Huffman testified that Ragsdale said the proceeds of the loan were to be used by Gage in a joint venture with Hardeman. To uncover the possibility of any nominee loans, Huffman questioned Ragsdale in writing as to whether any loan extensions recently had been granted for the accommodation of third persons. Ragsdale responded in the negative.

Ragsdale's successor at Northwest, David Wood, testified that he reviewed the bank's nonperforming loans and asked Ragsdale about the Gage loan. Ragsdale told Wood that Gage was liable but that he also was capable of repaying the loan. Ragsdale never mentioned Hardeman in connection with the loan. The bank later sued Gage to enforce the note. Gage denied that he was liable because he had received none of the proceeds of the loan.

The government's final witness was Hardeman. He testified that he originally asked Ragsdale if he could borrow $300,000 to finance a land purchase, but Ragsdale pointed out that Hardeman's debts with Northwest approached the $300,000 limit. Hardeman therefore asked Ragsdale to loan Gage $300,000 but hold Hardeman liable for the loan, whereupon Hardeman would use the proceeds to buy the land. Hardeman conceded at trial that the loan was actually made to him, that it was placed in the name of Gage, and that both he and Ragsdale knew that Gage was never expected to repay the loan. Ragsdale requested Hardeman on several occasions

to pay off the Gage loan. Hardeman eventually authorized Ragsdale to satisfy the Gage loan by debiting Hardeman's account. Hardeman and Ragsdale, according to Hardeman, never discussed whether Gage would become a partner with Hardeman in the land purchase.

B.

In his defense, Ragsdale denied that the loan to Gage was a nominee loan for Hardeman and insisted that Gage initially told him the loan was for a joint land venture with Hardeman. Ragsdale stated that he never told Gage, or anyone else, that Gage was not liable. Ragsdale further testified that, after the execution of the loan, Gage informed Ragsdale that he had abandoned the joint venture and that Ragsdale should seek payment on the loan from Hardeman. While Gage officially was never released from liability, according to Ragsdale, Hardeman nonetheless assumed sole responsibility for the loan. By accepting payment from Hardeman, Ragsdale claims he was ensuring that the Gage loan, which was not collateralized, was satisfied.

C.

Pursuant to FED. R. CRIM. P. 29(a), Ragsdale moved for acquittal at the conclusion of the government's evidence and again at the conclusion of all the evidence. The district court denied Ragsdale's motions. The jury then convicted Ragsdale on all four counts of the indictment. Ragsdale now appeals.

II.

A.

Ragsdale first appeals the district court's denials of his Rule 29 motions, arguing that he was convicted of conspiracy with insufficient evidence. Evidence is sufficient to uphold a jury verdict if a reasonable jury could have found all the necessary elements of the crime beyond a reasonable doubt. United States v. Lechuga, 888 F.2d 1472, 1476 (5th Cir. 1989). We "view the evidence, whether direct or circumstantial, and all inferences reasonably drawn from it, in the light most favorable to the verdict." United States v. Chaney, 964 F.2d 437, 448 (5th Cir. 1992). The evidence supporting a jury verdict need not exclude every reasonable hypothesis of innocence or even be inconsistent with every conclusion except that of guilt. Id. Juries are permitted to make reasonable inferences and to use their common sense in weighing evidence. Lechuga, 888 F.2d at 1476.

To establish a violation of 18 U.S.C. § 371, "the government must prove beyond a reasonable doubt that the defendant entered into an agreement with at least one other person to commit a crime against the United States and that any one of these conspirators committed an overt act in furtherance of that agreement." Chaney, 964 F.2d at 449. The government also must prove that Ragsdale knew of the conspiracy and voluntarily became part of it. Id.

To establish a violation of 18 U.S.C. § 656[6], the government must prove that Ragsdale: (1) was an officer of a federally insured bank; (2) willfully misapplied bank funds; and (3) acted with the intent to injure or defraud the bank. United States v. Kington, 875 F.2d 1091, 1096 (5th Cir. 1989). The mens rea for a § 656 violation (i.e., the second and third prongs) has been restated to mean that the government must prove that the defendant knowingly participated in a deceptive or fraudulent transaction. Id. at 1097.

We find sufficient evidence existed for a rational jury to conclude that Ragsdale conspired to misapply bank funds. Ragsdale was the head of Northwest Bank, a federally insured bank. Further, Gage testified that Ragsdale never expected Gage to satisfy the loan in his name. Hardeman testified that the Gage loan was actually made to him, that it was placed in the name of Gage, and that both he and Ragsdale knew that Gage was never expected to be liable for the loan.

Taken together, the witnesses' testimony demonstrated that Ragsdale concealed the loan intended for Hardeman by using Gage's name in bank documents and records, that he granted extensions on

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[6]Ragsdale does not specify which count the government failed to prove. The amended indictment charged Ragsdale with conspiracy to misapply bank funds and to make a false statement in violation of 18 U.S.C. § 656 and § 1005. We note that "[w]hen a conspiracy to violate two statutes is alleged, the jury may find the defendant guilty if they believe beyond reasonable doubt that he or she conspired to violate either one of those statutes." United States v. Holley, 826 F.2d 331, 334 (5th Cir. 1987). Therefore, we will address whether sufficient evidence existed to convict Ragsdale for misapplication of bank funds.

the loan, that he deducted money from Hardeman's account to pay part of the principal and interest on the Gage loan, and that he deceived bank examiners and representatives about the loan. Because a rational jury could conclude that the government proved beyond a reasonable doubt that Ragsdale conspired to misapply bank funds, we will not disturb the jury's conspiracy conviction.

B.

Prior to trial, the government moved in limine to exclude, pursuant to FED. R. EVID. 408, evidence of the settlement of Northwest Bank's civil suit against Gage. The district court granted the motion, concluding that "the jury would have confused its purpose for that precluded by Rule 408." Ragsdale appeals the district court's ruling.

We review a district court's evidentiary ruling for abuse of discretion. Williams v. Chevron, U.S.A., Inc., 875 F.2d 501, 504 (5th Cir. 1989). We initially note that, in granting the government's motion to exclude evidence of the settlement, the district court applied Rule 408 but used Rule 403-type language.[7] The court appears to have relied on Williams. In that case, we applied both Rule 408 and Rule 403 and affirmed a district court's

[7]Rule 408 states in part: "Evidence of . . . accepting . . . a valuable consideration in compromising . . . a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount." FED. R. EVID. 408.

Rule 403 states in part that, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of . . . confusion of the issues, or misleading the jury." FED. R. EVID. 403.

refusal to admit evidence of a settlement agreement. The district court here, however, failed to distinguish between the two rules.

Notwithstanding this imprecision, we find the district court did not abuse its discretion because the evidence was properly excluded under Rule 408.[8] Ragsdale alleged at trial that he intended to offer evidence of the settlement to impeach Gage, which is an exception under Rule 408.[9] But Ragsdale never demonstrated that Gage made any statements during the settlement that were inconsistent with his testimony at Ragsdale's trial. In addition, he never showed that Gage had settled to avoid criminal prosecution or that Gage had made a deal relating to his civil case in exchange for the grant of immunity he received during Ragsdale's trial. In fact, just prior to asserting that the evidence was intended to impeach Gage, Ragsdale's counsel conceded at trial that he would "seek to ask [Gage] questions about his liability on the note." Rule 408 precludes admission of settlement evidence for this reason. The district court did not abuse its discretion.[10]

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[8]The government's motion in limine argues only that the evidence should be excluded under Rule 408.

[9]Rule 408 "does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness." FED. R. EVID. 408.

[10]In a related argument, Ragsdale also contends that the district court erred when it sua sponte interrupted Ragsdale during cross-examination just as he began to discuss Gage's settlement. The court interrupted Ragsdale because his remarks were non-responsive. We note that the court had already ruled on the admissibility of Gage's settlement and was not required to make a second ruling. Further, under Rule 611, the court has broad powers to ensure that a witness's testimony is responsive. See FED. R. EVID. 611(a)(1) & advisory committee's note, subdivision (a). The court's action was not an abuse of its discretion.

C.

Finally, Ragsdale argues that the district erred when it refused to issue to the jury Ragsdale's requested "good faith" instruction for the third and fourth counts (i.e., the false statement counts).[11] We review a district court's decision to reject proposed jury instructions for abuse of discretion. Chaney, 964 F.2d at 444. Specifically, we examine the district court's instructions in their entirety to decide whether the instructions fairly and accurately reflect the law and address the issues presented in the case. United States v. Marcello, 876 F.2d 1147, 1151 (5th Cir. 1989).

We reject Ragsdale's claim. In defining the elements of a false statement offense, the court's charge to the jury parallels our own definition of the elements. See Chaney, 964 F.2d at 448

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[11]Ragsdale requested, in part, the following "good faith" instruction:

> Good faith is an absolute defense to the charges in this case. A statement made with good faith belief in its accuracy does not amount to a false statement and is not a crime. This is so even if the statement is, in fact, erroneous. If the defendant believed in good faith that he was acting properly, even if he was mistaken in that belief and even if others were injured by his conduct, there would be no crime.

The court issued, in part, the following instruction as to both counts:

> For you to find the defendant guilty of this crime, you must be convinced that the government has proved . . . beyond a reasonable doubt . . . [t]hat the defendant [made a false statement] knowing it was false . . . and . . . [t]hat the defendant did so intending to cheat or deceive Northwest Bank . . . and the examiners of the Federal Deposit Insurance Corporation. . . . The word "knowingly" . . . means that an act was done voluntarily and intentionally, and not because of mistake or accident.

(citing 18 U.S.C. § 1005). The court also explicitly instructed the jury that "knowingly" meant "an act was done voluntarily and intentionally, and not because of mistake or accident." We find that this instruction substantially amounts to a good faith instruction.

Furthermore, we have noted on several occasions that a failure to issue an elaborate good faith instruction is not fatal, provided the jury was instructed on specific intent and the defense had an opportunity to argue its good faith defense to the jury. See e.g., United States v. Rochester, 898 F.2d 971, 978 (5th Cir. 1990); United States v. Chenault, 844 F.2d 1124, 1130 (5th Cir. 1988). Thus, to the extent that the district court failed to provide a good faith instruction, Ragsdale's appeal still comes up short because the jury was instructed on specific intent and he presented a good faith defense. We find no abuse of discretion in the court's instructions to the jury.

III.

For the forgoing reasons, we AFFIRM Ragsdale's convictions.