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APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

OPINION and ORDER

v.

22-cr-124-wmc

ROBERT E. CARTER,

Defendant.

A jury convicted defendant Robert E. Carter, who represented himself at trial, of two counts of wire fraud. On October 17, 2024, this court sentenced Mr. Carter to concurrent terms of 36-months imprisonment on each count, followed by concurrent 3-year terms of supervised release, and ordered that he pay restitution in the amount of \$29,056.84. (Dkt. #426). Carter, who continues to represent himself, has filed a notice of appeal, a motion for leave to proceed in forma pauperis on appeal, and a CJA Form 24 requesting transcripts at government expense, which is construed as a motion under 28 U.S.C. § 753(f). (Dkt. #419, #422, #424.) Subsequently, Carter filed a motion under Federal Rule of Criminal Procedure 35(a) to “correct” the sentence and order of restitution. (Dkt. #425.) Specifically, Carter argues that the court incorrectly determined the amount of loss at issue for purposes of both the calculation of his sentence and the amount of restitution. Carter has also filed a motion for reconsideration of its order denying bail pending appeal. (Dkt. #429.) The motions are denied for the reasons set forth below.

OPINION

**1. Motion to Correct Sentence Under Rule 35(a)
(dkt. #425)**

Rule 35(a) states that, “[w]ithin 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.” Carter’s motion does not raise the type of error or mistake that falls

within the scope of Rule 35(a). Rather, he attempts to challenge findings made by the court based on the evidence presented during trial and in anticipation of sentencing. As the Seventh Circuit has explained, the scope of Rule 35(a) is “narrow” and does not allow parties to raise, after sentencing, arguments that should have been made at the sentencing hearing. *United States v. Clark*, 538 F.3d 803, 811 (7th Cir. 2008).

Accordingly, Carter’s belated objections, which do not demonstrate clear error with respect to the court’s calculations, are improper and fall outside the scope of Rule 35(a).¹ *United States v. Porretta*, 116 F.3d 296, 300 (7th Cir. 1997) (“The motion plainly does not ask the court to cure an obvious arithmetical, technical or other clear error, and flies in the face of the advisory committee’s admonition that it ‘did not intend that the rule relax any requirement that the parties state all objections to a sentence at or before the sentencing hearing.’”); *United States v. Venson*, 366 F. App’x 662, 665 (7th Cir. 2010) (“Rule 35(a) motions are very narrow and allow the court to correct a sentence only for ‘arithmetical, technical, or other clear error’; reconsideration of the discretionary application of the guidelines is inappropriate.”).

Importantly, Carter has also filed a notice of appeal from the conviction and sentence that he now seeks to challenge under Rule 35(a). (Dkt. #419.) The filing of a notice of appeal largely divests a district court of jurisdiction. *United States v. Turchen*, 187 F.3d 735, 743 (7th Cir. 1999) (“The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”). There are exceptions for ancillary matters and clerical errors, but neither of these exceptions apply to the arguments raised by Carter in his pending motion to correct sentence now on appeal. See *id.*; *United States v. McCoy*, 770 F.2d 647, 650 n.3 (7th Cir. 1985) (“A district court is without jurisdiction to entertain a motion to correct or reduce a sentence after a notice of appeal has been filed”).

Although a notice of appeal does not divest a district court of jurisdiction to decide a Rule 35(a) motion, Fed. R. App. P. 4(b)(5), and the court retains authority to correct clear, obvious error, see *United States v. Shenian*, 847 F.3d 422,

424 (7th Cir. 2017), Carter has not made that showing. Because Carter has not identified a valid basis for relief under Rule 35(a), apart from arguments already rejected at sentencing, his motion to correct sentence (dkt. #425) is DENIED.

2. Motion to Reconsider Denial of Bail on Appeal (dkt. #429)

Carter also seeks reconsideration of the court's decision to deny him bail pending an appeal, arguing that the United States Supreme Court recently granted certiorari review in *Kousisis v. United States*, 82 F.4th 230 (3rd Cir. 2023), which he believes is relevant to his defense. In *Kousisis*, the defendants were charged with fraud for exploiting the United States Department of Transportation's disadvantaged business enterprise ("DBE") program in order to obtain lucrative contracts for government projects. *Id.* at 233-34. The defendants argued that the fraudulent misrepresentations they made to obtain the contract by falsely claiming compliance with DBE requirements did not deprive the government of a property interest that would support a wire fraud conviction because the government received the benefit of the work it paid for. *Id.* at 236.

The Third Circuit rejected that argument, noting that the objective of the fraudulent misrepresentations about meeting the DBE requirements was to obtain millions of dollars that it would not otherwise have been entitled to had it not been for their false statements. *Id.* at 240-42. The Seventh Circuit has also rejected similar arguments. See *United States v. Leahy*, 464 F.3d 773, 786-89 (7th Cir. 2007) (affirming a conviction stemming from a fraudulent scheme to cheat the City of Chicago out of funds slotted for minority and women-owned businesses).

Carter speculates that the Supreme Court will reverse *Kousisis* and hold that fraudulent inducement of a contract in which the victim's financial loss was not the objective of the scheme does not qualify as fraud. (Dkt. #429, at 7-9.) Reasoning further that he performed on the lease agreement with Ryder Transportation Services ("RTS") by making payments under that contract, at least in part, Carter argues the fraudulent misrepresentations that he admittedly made to obtain the contract similarly do not constitute fraud. (Dkt. #429, at 3.) Carter contends,

therefore, that he should be allowed to remain on bail until after the Supreme Court decides the Kousisis case. (Id. at 9.)

To begin, the Kousisis case concerns a question of honest services to a government entity, not loss caused by fraud on a private entity. Regardless, based on the jury's factual findings after a full trial, Carter's convictions, including the one on count two for making false statements in an attempt to lease trucks from Nuss Truck and Equipment ("NTE"), remain consistent with Seventh Circuit precedent. See *United States v. Weimert*, 819 F.3d 351, 357 (7th Cir. 2016) (the fraud statutes "reach a seller's or buyer's deliberate misrepresentation of facts or false promises that are likely to affect the decisions of a party on the other side of the deal").

The convictions are also consistent with existing Supreme Court precedent holding that the wire fraud statute "demands neither a showing of ultimate financial loss nor a showing of intent to cause financial loss." *Shaw v. United States*, 580 U.S. 63, 67 (2016); see also *Schmuck v. United States*, 489 U.S. 705, 715 (1989) ("The relevant question is whether the mailing [or wire] is part of the execution of the scheme as conceived by the perpetrator at the time, regardless of whether the mailing [or wire] later, through hindsight, may prove to have been counterproductive and return to haunt the perpetrator of the fraud.").

Finally, even if the lack of a monetized loss to NTE because it ultimately chose not to lease trucks to Carter were later determined to require a reversal of his conviction on count two, his material, fraudulent misrepresentations to RTS caused an actual, monetary loss, further distancing Carter's conviction on count one from the facts and legal issues in Kousisis.

For all these reasons, the court remains unpersuaded that the issues raised by defendant present a substantial question justifying bail pending appeal. Accordingly, Carter's motion for reconsideration (dkt. #429) is DENIED.

3. Motions to Proceed IFP and for Free Transcripts (dkt. #422, #424)

Mr. Carter moves to proceed in forma pauperis on appeal,

and he has provided an affidavit in support, which indicates that he expects to spend only \$500.00 on expenses related to his appeal. (Dkt. ##422-423, ¶ 29.) He has also filed a CJA Form 24 requesting transcripts at government expense, which is construed as a motion under 28 U.S.C. § 753(f). (Dkt. #424.) Under that provision, a party proceeding in forma pauperis is entitled to a free transcript only if the “trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.” Carter has represented himself capably in this case and has shown no inclination for utilizing stand-by counsel that was appointed to assist him.

Although Carter was allowed to proceed in forma pauperis previously in this case, his supporting affidavit discloses substantial assets that preclude extending that status any further under the criteria found in the Criminal Justice Act, 18 U.S.C. § 3006A(a)(1). (Dkt. #423.) See *United States v. Durham*, 922 F.3d 845, 847 (7th Cir. 2019); *Charles Allen Wright, et al.*, 16AA Federal Practice and Procedure § 3970.1 (5th ed. 2020). Accordingly, both his motion for leave to proceed in forma pauperis (dkt. #422) and the request for transcripts at government expense (dkt. #424) are DENIED.

ORDER

IT IS ORDERED that defendant Robert Carter’s motions (dkt. #422, #424, #425, #429) are DENIED as set forth in this Opinion and Order.

Entered this 25th day of October, 2024.
BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge

APPENDIX B

United States District Court
Western District of Wisconsin

**UNITED STATES OF AMERICA JUDGMENT IN A
CRIMINAL CASE (for offenses committed on or after
November 1, 1987)**

UNITED STATES

v.

Robert E. Carter

Case Number: 0758 3:22CR00124-001

Defendant's Attorney: Pro Se
(Peter R. Moyers as Standby Counsel)

Defendant, Robert E. Carter, was found guilty on Counts 1 and 2 of the superseding indictment. Defendant has been advised of his right to appeal.

ACCORDINGLY, defendant is adjudicated guilty of the following offenses:

Date Offense Concluded
January 8, 2021

Count Numbers
1 & 2

Title & Section
18 U.S.C. §§ 1343 and
1349

Nature of Offense
Attempt to Commit Wire Fraud, Class C felony

Defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that defendant shall notify the

United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, defendant shall notify the Court and United States Attorney of any material change in defendant's economic circumstances.

Defendant's Date of Birth: 1979
Defendant's USM No.: 57560-054

Defendant's Residence Address:
Eau Claire, Wisconsin

Defendant's Mailing Address:
Same as above

District Judge
William M. Conley

Date Signed
October 17, 2024

IMPRISONMENT

As to Counts 1 and 2 of the superseding indictment, it is adjudged that defendant is committed to the custody of the Bureau of Prisons for a term of 36 months on each count, to run concurrently. I recommend that defendant be afforded the opportunity to participate in educational and vocational programming and that he be afforded prerelease placement in a residential reentry center with work release privileges.

Defendant is neither a flight risk nor at least a physical danger to the community. Accordingly, execution of the sentence of imprisonment is stayed until December 18, 2024, between the hours of noon and 2:00 p.m., when defendant is to report to an institution to be designated by further court order. The present release conditions are continued until that date. Although I find no basis to delay defendant's reporting to serve his sentence beyond that date for reasons addressed in my earlier opinion and order, this should give defendant sufficient time to seek an emergency stay from the Seventh Circuit.

The U.S. Probation Office is to notify local law enforcement

agencies, and the state attorney general, of defendant's release to the community.

RETURN

I have executed this judgment as follows:

Defendant delivered on to _ at , with a certified copy of this judgment.

United States Marshal

By
Deputy Marshal

SUPERVISED RELEASE

Defendant's terms of imprisonment are to be followed by 3-year terms of supervised release on each count, to run concurrently. In light of the nature of the offense and defendant's personal history, along with the statutory mandatory conditions of supervision, I adopt condition numbers 1 through 20 as proposed and justified in the revised presentence report.

The requirement for drug testing set forth at 18 U.S.C. § 3583(d) is waived

If, when defendant is released from confinement to begin his term of supervised release, either defendant or the supervising probation officer believes that any of the conditions imposed today are no longer appropriate, either one may petition the Court for review.

Defendant is to abide by the statutory mandatory conditions.

Statutory Mandatory Conditions

Defendant shall not commit another federal, state, or local crime. [Note: Any defendant that has been convicted of a felony offense, or is a prohibited person, shall not possess a firearm, ammunition, or destructive device pursuant to 18 U.S.C. §§ 921 and 922.]

Defendant shall not illegally possess a controlled substance.

Defendant is subject to drug testing according to 18 U.S.C. §§ 3563(a)(5) or 3583(d), unless waived by the Court.

Defendant shall cooperate with the collection of DNA by the U.S. Justice Department and/or the U.S. Probation and Pretrial Services Office as required by Public Law 108-405.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Financial Penalties sheet of this judgment.

Defendant shall comply with the standard and special conditions that have been adopted by this Court.

Standard Conditions of Supervision

- 1) Defendant shall not knowingly leave the judicial district in which defendant is being supervised without the permission of the Court or probation officer;
- 2) Defendant is to report to the probation office as directed by the Court or probation officer and shall submit a complete written report within the first five days of each month, answer inquiries by the probation officer, and follow the officer's instructions. The monthly report and the answer to inquiries shall be truthful in all respects unless a fully truthful statement would tend to incriminate defendant, in violation of defendant's constitutional rights, in which case defendant has the right to remain silent;
- 3) Defendant shall maintain lawful employment, seek lawful employment, or enroll and participate in a course of study or vocational training that will equip defendant for suitable employment, unless excused by the probation officer or the Court;
- 4) Defendant shall notify the probation officer within seventy-two hours of any change in residence, employer, or any change in job classification;
- 5) Defendant shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances,

except as prescribed by a physician. Defendant shall not use any product containing cannabidiol (CBD) or tetrahydrocannabinol (THC), except as prescribed by a physician;

6) Defendant shall not visit places where defendant knows or has reason to believe controlled substances are illegally sold, used, distributed, or administered;

7) Defendant shall not meet, communicate, or spend time with any persons defendant knows to be engaged in criminal activity or planning to engage in criminal activity;

8) Defendant shall permit a probation officer to visit defendant at home, work, or at some other mutually convenient location designated by the probation officer at any reasonable time and shall permit confiscation of any contraband observed in plain view by the probation officer;

9) Defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

10) Defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court;

11) Defendant shall report to the probation office in the district to which defendant is released within 72 hours of release from the custody of the Bureau of Prisons, unless instructed by a U.S. Probation Officer to report within a different time frame; and

12) Defendant shall not possess a firearm, ammunition, destructive device, or dangerous weapon.

Special Conditions of Release

13) Provide the supervising U.S. Probation Officer any and all requested financial information, including copies of state and federal tax returns.

14) Refrain from incurring new credit charges, opening additional lines of credit or opening other financial accounts without the prior approval of the supervising U.S. Probation Officer.

15) Not transfer, give away, sell or otherwise convey any asset worth more than \$200 without the prior approval of the supervising U.S. Probation Officer.

16) Refrain from seeking or maintaining any employment that includes unsupervised financial or fiduciary-related duties, without the prior approval of the supervising U.S. Probation Officer.

17) Submit person, property, residence, papers, vehicle, computers [as defined in 18 U.S.C. § 1030(e)(1), or other electronic communications, data storage device,,or media], or office to a search conducted by a U.S. Probation Officer at a reasonable time and manner, whenever the probation officer has reasonable suspicion of contraband or of the violation of a condition of release relating to substance abuse or illegal activities; failure to submit to a search may be a ground for revocation; defendant shall warn any other residents that the premises defendant is occupying may be subject to searches pursuant to this condition.

18) Have no contact with any representatives of the victims (Russ Transportation Services, Nuss Truck and Equipment, and Osborn and Son Trucking) in person, through written or electronic communication, or through a third party, unless authorized by the supervising U.S. Probation Officer. Defendant shall not enter the premises or loiter within 1,000 feet of the victims' residences or places of employment.

19) File all tax returns in a timely manner and provide copies of all federal and state income returns to the supervising U.S. Probation Officer. Defendant will apply 100 percent of defendant's yearly federal and state tax refunds toward payment of restitution.

20) Defendant shall provide the supervising U.S. Probation Officer advance notification of any devices associated with or falling within the general category of information technology (IT) that produce, manipulate, store, communicate or disseminate information used by defendant. This includes external and portable hard drives. The probation office is authorized to install applications to monitor any such devices owned or operated by defendant. Defendant is required to comply with the monitoring

agreement and may not disable or circumvent any applications. Defendant shall consent to and cooperate with unannounced examinations of any technological equipment owned or used by defendant, including but not limited to retrieval and copying of all data from all information technology devices and any internal or external peripherals based on reasonable suspicion of contraband or illegal activity. The examinations may involve removal of such equipment for the purpose of conducting examination.

ACKNOWLEDGMENT OF CONDITIONS

I have read or have had read to me the conditions of supervision set forth in this judgment, and I fully understand them. I have been provided a copy of them. I understand that upon finding a violation of probation or supervised release, the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

Defendant Date

U.S. Probation Officer Date

CRIMINAL MONETARY PENALTIES

Defendant shall pay the following total financial penalties in accordance with the schedule of payments set forth below.

	Assessment	Restitution
1	\$100.00	\$0.00 \$29,056.84
2	\$100.00	\$0.00 \$0.00
Total	\$200.00	\$0.00 \$29,056.84

It is adjudged that defendant is to pay a \$200 criminal assessment penalty to the Clerk of Court for the Western District of Wisconsin immediately following sentencing. Defendant is encouraged to pay the assessment as agreed upon in the plea agreement to ensure he is not precluded from participating in programming for non-payment while in the federal prison system.

Defendant does not have the means to pay a fine under §5E1.2(c) without impairing his ability to support himself, his family, and pay restitution upon release from custody, so I will impose no fine.

RESTITUTION

As to Count 1 of the superseding indictment, defendant is to pay mandatory restitution in the amount of \$29,056.84 to the U.S. Clerk of Court for the Western District of Wisconsin to be disbursed to the victim, Ryder Transportation Services. The U.S. Attorney's Office is to provide the victim's address to the Clerk of Court following sentencing.

Notwithstanding defendant's likely inflated net worth claims, he does not have the economic resources to allow himself to make full payment of restitution in the foreseeable future under any reasonable schedule of payments. Pursuant to 18 U.S.C. § 3664(f)(3)(B), therefore, he is to begin making nominal payments of a minimum of \$500 each month, beginning within 30 days of defendant's release from custody. Defendant shall notify the Court and the United States Attorney General of any material change in his economic circumstances that might affect defendant's ability to pay restitution. No interest is to accrue on the unpaid portion of the restitution.

DEFENDANT: ROBERT E. CARTER
CASE NUMBER: 0758 3:22CR00124-001

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order:

- (1) assessment;
- (2) restitution;
- (3) fine principal;
- (4) cost of prosecution;
- (5) interest;
- (6) penalties.

The total fine and other monetary penalties shall be due in full immediately unless otherwise stated elsewhere.

Unless the Court has expressly ordered otherwise in the special instructions above, if the judgment imposes a period of imprisonment, payment of monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of Court,

unless otherwise directed by the Court, the supervising U.S. probation officer, or the United States Attorney.

Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

In the event of a civil settlement between victim and defendant, defendant must provide evidence of such payments or settlement to the Court, U.S. Probation Office, and U.S. Attorney's Office so that defendant's account can be credited.

APPENDIX C

Activity in Case 3:22-cr-00124-wmc USA v. Carter, Robert
Order on Motion for Miscellaneous Relief

From wiwd_ecf@wiwd.uscourts.gov
<wiwd_ecf@wiwd.uscourts.gov> Date Thu 10/17/2024 4:21
PM

To wiwd_nef@wiwd.uscourts.gov
<wiwd_nef@wiwd.uscourts.gov>

This is an automatic e-mail message generated by the
CM/ECF system. Please DO NOT RESPOND to this e-mail
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first viewing. However, if the referenced document is a
transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Western District of Wisconsin

Notice of Electronic Filing

The following transaction was entered on 10/17/2024 at 4:20
PM CDT and filed on 10/17/2024

Case Name: Case Number: Filer:

USA v. Carter, Robert 3:22-cr-00124-wmc

Document Number:417(No document attached)

Docket Text:

**** TEXT ONLY ORDER****

**For reasons mentioned in its order dated October 16,
2024 (dkt. #[4141]), as well as those stated on the**

record at the sentencing proceeding held today, the defendant's motion for bail pending an appeal and, alternatively, to stay the judgment (dkt. #[401]) is DENIED. In particular, the court finds a substantial likelihood that defendant's conviction on at least one if not both counts of fraud will be upheld; and, as explained at sentencing, even if the concurrent sentences were not upheld and the case were remanded for further proceedings, the court would likely impose the same sentence under the relevant factors found in 18 U.S.C. § 3553(a). Finally, by virtue of giving defendant until December 18, 2024, to voluntarily surrender, he should have ample time to request an emergency stay order from the Court of Appeals for the Seventh Circuit. Signed by District Judge William M. Conley on 10/17/2024. (nlm)

3:22-cr-00124-wmc-1 Notice has been electronically mailed to:

Tomislav Z. Kuzmanovic tkuzmanovic@hinshawlaw.com,
twellstein@hinshawlaw.com

Megan Renee Stelljes megan.stelljes@usdoj.gov,
CaseView.ECF@usdoj.gov, USAWIW.EFILE@usdoj.gov,
andrea.erickson@usdoj.gov, bridget.fitzgerald@usdoj.gov,
gwen.mcgillivray@usdoj.gov, sharolyn.heiser@usdoj.gov

Peter R. Moyers peter@moyerslawfirm.com

Catherine Elizabeth White cwhite@hurleyburish.com,
mbaisden@hurleyburish.com

Chadwick Michael Elgersma chadwick.elgersma@usdoj.gov,
CaseView.ECF@usdoj.gov, USAWIW.EFILE@usdoj.gov,
jennifer.frank@usdoj.gov

Robert E. Carter robert.e.carter@outlook.com

3:22-cr-00124-wmc-1 Notice will be delivered by other means to::

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

OPINION and ORDER

v.

22-cr-124-wmc

ROBERT E. CARTER,

Defendant.

Defendant Robert E. Carter was charged in a superseding indictment with two counts of wire fraud by sending false financial statements and fake wire transfer documents to two truck-leasing companies, Ryder Transportation Services (“Ryder”) and Nuss Truck & Equipment (“Nuss”), while attempting to obtain trucks. (Dkt. #213.) After a two and-a-half-day trial, during which defendant represented himself with standby counsel, a jury found defendant guilty as charged on both counts. Mr. Carter continues to represent himself and has filed a motion for new trial, challenging several rulings and evidentiary issues at trial. (Dkt. #382.) He also requests a bond allowing him to remain out of custody pending an appeal. (Dkt. #401.) For the reasons set forth below, defendant’s motion for new trial will be denied, while the court will reserve a ruling as to his motion to remain on release pending an appeal until he appears for sentencing on Thursday, October 17, 2024.

OPINION

A district court may, upon a defendant’s motion, “grant a new trial if the interest of justice so requires.” Fed. R. Crim. P. 33(a). The decision whether to grant a new trial is within the district court’s discretion and is generally “reserved for only the most extreme Case: 3:22-cr-00124-wmc Document #: 414 Filed: 10/16/24 Page 1 of 5 cases.” United States v. Coscia, 4 F.4th 454, 465 (7th Cir. 2021) (citation omitted). A new trial is appropriate “only if there is a reasonable possibility that the trial error had a prejudicial effect on the jury’s verdict.” United States v. Maclin, 915 F.3d 440, 444 (7th Cir. 2019) (citation omitted); United States v. O’Brien, 953 F.3d 449, 456 (7th Cir. 2020) (a new trial should be granted “only

if the evidence preponderates heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand”) (citation omitted). “The ultimate inquiry is whether the defendant was deprived of a fair trial.” *United States v. Friedman*, 971 F.3d 700, 713 (7th Cir. 2020). Defendant raises the following arguments in support of his motion for new trial: (1) the court erred by allowing the government to introduce evidence of his financial condition as proof that he falsified his financial status; (2) the court erred by allowing the owner of another trucking company, Sandy Osborn, to testify about a meeting with defendant in 2017, while preventing him from attacking Osborn’s credibility on cross examination; (3) the weight of the evidence was against the jury’s verdict because defendant intended to make lease payments for the trucks once he obtained them; (4) the court denied subpoenas for three additional witnesses; and (5) the court made incorrect evidentiary rulings related to defendant’s bank account statements and emails sent to defendant, which would have shown that he was making payments under his lease with Ryder. (Dkt. #382.)

The court held multiple pretrial conferences to address the defendant’s motions and submissions regarding his theory of defense, which was that the financial statements and wire transfer documents that he submitted by electronic mail to the trucking companies – while false – were not fraudulent because he had a good-faith intent to honor the leases once approved. (Dkt. #321.) As the court advised defendant during pretrial hearings and in two separate, written rulings before trial, good faith is a defense to fraud only if the defendant harbored a genuine belief that his statements were true when made. (Dkt. #331, at 11; Dkt. #351, at 5). This limitation is consistent with Seventh Circuit case law and the pattern jury instructions on good faith in the context of fraudulent statements and misrepresentations. See William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit (2023 ed.) 6.10 at 143, 623; *United States v. Dunn*, 961 F.2d 648, 650 (7th Cir. 1992) (“[g]ood faith, or the absence of intent to defraud, constitutes a complete defense to a charge of mail fraud,” but only if the defendant had “a genuine belief that the information . . . is true” when being sent or given) (citation omitted).

The government presented ample evidence showing that defendant sent false financial information to Ryder and Nuss as part of a scheme to obtain trucks from them through fraudulent means. Moreover, defendant admitted in both his opening and closing statements that he knowingly sent the trucking companies

false financial information to obtain lease agreements for trucks, asserting that this dishonest business practice was merely “unethical” but not illegal. (Tr. 1 (dkt. #387) at 117:4-12; Tr. 2 (dkt. #385) at 150:24-25–151:1-4, 153:2-7.) The jury rejected this argument and found defendant guilty of both counts of fraud.

Defendant does not demonstrate that any of the court’s rulings as to the crimes charged were erroneous. See *United States v. Coffman*, 94 F.3d 330, 333 (7th Cir. 1996) (explaining that the wire fraud statute punishes the scheme, “rather than the completed fraud”). Nor does he otherwise establish that he was denied the opportunity to present relevant evidence. Even assuming that an impropriety occurred and that defendant did not waive objection, there is no reasonable probability that the errors he references affected the verdict, which in light of his own, admitted fraudulent statements to two truck leasing companies regarding his capacity to pay, the jury reached after deliberating for just 45 minutes. While defendant also complains about the length of time the jury took to reach a verdict, interpreting the swiftness of their decision as a sign that they did not adequately weigh the evidence, the far more reasonable inference is that “they found the evidence strong and did not require much time to reach unanimity.” *United States v. Garcia*, No. 18-cr-688, 2021 WL 3033534, at *4 (N.D. Ill. July 19, 2021); see also *United States v. Cunningham*, 108 F.3d 120, 123-24 (7th Cir. 1997) (“The time it takes the jury to decide is not the relevant factor. The weight of the evidence is.”). Because defendant does not establish that he was deprived of a fair trial, his motion for new trial under Rule 33(a) is denied.

Turning to the motion for release on bond pending an appeal, defendant argues that he is not a flight risk, and there were errors of such an egregious nature that he is likely to win reversal. (Dkt. ##401-402.) Bond pending appeal is governed by the Bail Reform Act of 1984, which states that release requires “clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community,” and a demonstration that the appeal “raises a substantial question of law or fact likely to result” in reversal, a new trial, or a sentence of no imprisonment. 18 U.S.C. § 3143(b)(1). A substantial question is “a ‘close’ question or one that very well could be decided the other way.” *United States v. Bilanzich*, 771 F.2d 292, 299 (7th Cir. 1985). While the court is not persuaded that defendant has identified any question of a substantial nature that would support a likelihood of reversal, his motion for bond pending appeal will await further hearing at sentencing.

ORDER

IT IS ORDERED that defendant Robert Carter's motion for new trial (dkt. #382) is **DENIED**. Defendant's motion for bond pending appeal (dkt. #401) is **RESERVED**.

Entered this 16th day of October, 2024.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**