[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 24-10561

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KATRINA LAWSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 3:21-cr-00006-TCB-RGV-1

"Appendix A"

Before BRANCH, LAGOA, and KIDD, Circuit Judges.

PER CURIAM:

Katrina Lawson appeals her convictions for wire fraud, bank fraud, mail fraud, and money laundering stemming from a fraudulent loan application scheme involving COVID-19 pandemic-related relief programs for businesses. She argues on appeal that (1) the district court erred in denying her motion to suppress the evidence seized from her cellphone based on the government's unreasonable delay in obtaining a search warrant, and (2) the evidence was insufficient to sustain her convictions for wire fraud (Counts 2–8), mail fraud (Count 12), bank fraud (Counts 10 and 11), and money laundering (Count 13).[1] After careful review, we affirm.

I. Background

In 2021, a grand jury indicted Lawson, and several others, on one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. §§ 1343, 1349 (Count One); eight counts of wire fraud, in violation of 18 U.S.C. §§ 2 and 1343 (Counts Two through Nine); two counts of bank fraud, in violation of 18 U.S.C. §§ 2 and 1344 (Counts Ten and Eleven); one count of mail fraud, in violation of 18 U.S.C. §§ 2 and 1341 (Count Twelve); and one count of money

[1] Lawson was also convicted of conspiracy to commit wire fraud (Count 1) and wire fraud (Count 9), but she does not challenge those convictions in this appeal.

laundering, in violation of 18 U.S.C. § 1957 (Count Thirteen). The indictment generally alleged that Lawson and others conspired and engaged in a fraudulent loan application scheme involving COVID-19 pandemic-related relief loan programs for businesses offered by the Small Business Administration ("SBA"). The scheme involved Lawson and others recruiting applicants and completing loan applications knowingly using false information. And, in exchange for completing the fraudulent loan applications, Lawson collected a fee, which she had deposited in several different bank accounts. According to the indictment, Lawson also used proceeds from the scheme to purchase a Mercedes.

A. Facts related to the motion to suppress

Law enforcement arrested Lawson on March 18, 2021, and seized a cell phone in her possession. Lawson subsequently moved to suppress all evidence from the cell phone, arguing that there was an unreasonable delay of almost two weeks between the March 18, 2021, seizure of her phone and law enforcement securing a search warrant for the phone on March 31, 2021. She argued that this delay violated her right to be free from unreasonable searches and seizures because the government had no compelling justification for the delay.

Prior to the government filing a response, the district court held an evidentiary hearing on the motion. United States Postal Inspector Agent Daryl Greenberg testified to the following. Greenberg was the sole agent assigned to the case. On March 18, 2021, he "orchestrated a ten-person arrest operation

simultaneously in five different states" in relation to this case.[2] That same day, Greenberg secured four bank seizure warrants and three vehicle seizure warrants. Greenberg explained that this was not a simple investigation because of the number of people involved in the alleged fraudulent scheme.

As part of the nationwide arrest operation, law enforcement arrested Lawson at her home in Houston, Texas, and officers seized a cell phone from her closet, which she claimed, "was dead." She declined to provide the password to unlock the phone. An agent brought the phone from Houston to Atlanta the next day (which was a Friday) and logged it into evidence. That day, Greenberg successfully located the two remaining individuals for arrest, aided in their processing, attempted an interview of one of those persons, and attempted to serve the bank seizure warrants. Over the weekend, he began the process of "documenting and entering all this information from all the arrests in . . . [the] case management system." On March 22, Greenberg took custody of Lawson's phone. However, at that same time, he learned that Alicia Quarterman,[3] one of the co-conspirators, was trying to transfer funds out of some of the subject bank accounts, so he drove to the facility where she was being held in Lovejoy, Georgia to pick up copies of the jail call transcripts, and began reviewing

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[2] Only eight of the ten targets were arrested that day as two could not be located.

[3] Because several members of the conspiracy have the last name Quarterman, we refer to these individuals by their first names as necessary.

those calls. Greenberg explained that his primary focus was on securing subpoenas and seizure warrants for the bank accounts because "the money was not secured," while Lawson's cell phone was secured in evidence.

The next day, March 23—three business days after Lawson's arrest—Greenberg began working on the search warrant application for Lawson's phone, testified at Alicia's detention hearing, worked on additional bank and vehicle seizure warrants, and completed other case management tasks. He was the only case agent working on any of the seizure warrants. He also learned that Lawson was trying to move funds in her approximately 12 to 14 bank accounts, so he shifted tasks and began focusing on her bank accounts and made a "funds movement chart." On March 25, Greenberg catalogued evidence, reviewed interviews with other co-conspirators for information that should be included in the search warrant application for Lawson's phone, and he sent a draft of the application to the United States Attorney's Office. At that same time, Greenberg's work computer crashed and had to be replaced and his information transferred to the new computer, which delayed his work.

On Friday, March 26, Greenberg continued working on the search warrant application for Lawson's phone by incorporating notes and edits from the U.S. Attorney's Office, as well as new information obtained from post-arrest interviews of other members of the conspiracy, and he worked on updating the case files. On the next business day, March 29, Greenberg sent a revised

draft of the search warrant application for Lawson's phone to the prosecutor and they "continued to go back and forth on" clarifying edits. On March 30, Greenberg sent the finalized version of the 20-page search warrant application to the prosecutor, and it was submitted to a judge. The judge granted the search warrant application for the phone the following day (along with several other seizure warrants for other bank accounts and property). Greenberg confirmed that, at no point between the seizure of Lawson's cell phone and obtaining the search warrant did Lawson request the return of her phone.

Lawson emphasized through her lengthy cross-examination of Greenberg at the hearing and in her post-hearing supplemental motion to suppress that the "bulk" of the search warrant application was copied from other sources, such as the indictment; used boilerplate language; or was based on information that Greenberg would have had prior to Lawson's arrest. Lawson maintained that the 20-page application contained "less than three double-spaced pages of original content." Thus, she argued that it should not have taken Greenberg as long as it did to prepare the application, and the delay was unreasonable and warranted suppression of the evidence.[4]

A magistrate judge entered a report and recommendation ("R&R"), recommending that the motion to suppress be denied after concluding that Greenberg did not unreasonably delay in

[4] She also argued that the information contained in the search warrant affidavit was stale, but she does not advance that argument in this appeal.

obtaining the search warrant. In reaching this conclusion, the magistrate judge identified several factors this Court considers in determining whether a delay is reasonable including: (1) "the significance of the interference with the person's possessory interest"; (2) the duration of the delay; (3) whether it was a consensual seizure; and (4) "the government's legitimate interest in holding the property as evidence." As for the first factor, the magistrate judge noted that Lawson's phone was not operational at the time of its seizure and she never requested the return of the phone, which diminished any contention that there was significant interference with her possessory interest. Second, the magistrate judge concluded that the 12-day delay between the seizure and submission of the search warrant application was "relatively short" and justified particularly in light of the fact that Greenberg was the sole case agent in this highly complex case and had many competing tasks that also required his attention. Finally, the fourth factor weighed heavily in the government's favor because cell phones were integral to the fraud scheme, and Lawson was considered a ringleader of the scheme.

Lawson objected to the R&R, arguing that the delayed search of her phone was unconstitutional because: (1) cell phones store a vast amount of personal and private information, regardless of whether they are operational, which strengthens her possessory interest in the phone; (2) the search warrant affidavit contained largely duplicative information to that found in the indictment, establishing that there was no compelling justification for the delay; (3) she did not consent to the seizure of her phone, so her

failure to request its return should not be interpreted as weighing in the government's favor; and (4) while the government had an interest in searching Lawson's phone, that interest did not overcome Lawson's possessory interest or the fact that the government already had potentially incriminating text messages from a codefendant's phone, lessening the relative importance of Lawson's phone.

The district court adopted the R&R and overruled Lawson's objections. The case ultimately proceeded to trial.

B. The Trial

At trial, the government presented evidence that, in 2020 in the face of the COVID-19 pandemic, Congress, via the CARES Act, authorized the SBA to provide Economic Injury Disaster Loans ("EIDL") related to the pandemic. An EIDL loan is "a working capital loan intended to assist small businesses meet operating expenses that they[] [were] unable to meet because of a particular disaster."[5] Because of the need to provide financial assistance quickly during the pandemic and the need to process as many applications as possible in an efficient time frame, Congress relaxed some of the typical requirements to qualify for an EIDL loan—including that borrowers did not have to provide a tax transcript or supporting documents to verify their business operations—and authorized SBA to advance EIDL applicants up to $10,000 regardless of whether the loan was ultimately approved. To

[5] SBA has had an EIDL program since 1953.

qualify for an EIDL loan, a business had to be operational as of February 1, 2020. Businesses could use EIDL loans and advances only as "working capital" to meet operating expenses, such as payroll, rent, utility payments, and servicing existing debt, and the advances could not be used for personal expenses.

Applicants submitted EIDL applications electronically directly to SBA. The applications contained certain information about the business, including, the business's legal name, the type of organization, location of the business, gross revenues, the number of employees, contact information, the date on which the business was established, the business's purported activity, and bank account information. SBA determined the amount of the EIDL advance based on the number of reported employees—$1,000 per employee—up to $10,000. The SBA representative who testified did not know whether it was public knowledge that the amount of the EIDL advance was tied to the number or reported employees.

The EIDL advance was not automatic. Rather, if an applicant wanted the EIDL advance, the applicant had to check a box. The advances did not have to be paid back even if SBA ultimately denied the loan application. SBA ran a credit check on applicants, but otherwise did not obtain supporting documentation for these pandemic-related EIDL loans; therefore, it relied heavily on the accuracy of the information in the application to determine whether to disburse any funds. Any misrepresentations in the

application as to the business itself, the operational date, or the number of employees would have been material to SBA.

Finally, the EIDL application contained a section for the applicant to disclose that the application was prepared by a third party and any fee charged. However, the third-party preparer's fee could not be paid from the EIDL advance or loan and instead had to be paid separately. The application also contained "certifications" in which an applicant attested under penalty of perjury that the information provided was truthful and accurate.

Congress also established a second loan program to assist small businesses during the pandemic—the Paycheck Protection Program ("PPP")—which were 100 percent guaranteed by SBA. Recipients of PPP loans had to use at least 60 percent of the loan on payroll, while the rest could be used to cover other business-related expenses. The funds could not be used for personal expenses. The rules and requirements for the PPP program were published in the Federal Register and posted on SBA's and the Department of Treasury's websites.

To be eligible for a PPP loan, a business had to be operational as of February 15, 2020, and have fewer than 500 employees. To obtain a PPP loan, a business submitted an electronic application to an approved financial institution (such as a bank), and the financial institution then made the decision as to whether to approve the loan, and, if approved, the institution

requested a guarantee from SBA.[6] The application included information about the business's structure, location, contact information, and average monthly payroll. The applicant certified that the information provided was true and accurate.

Notably, applicants seeking a PPP loan had to provide some supporting documentation, such as tax documents that demonstrated that the business was operational as of February 15, 2020; the number of employees; and the payroll for the last 12 months, which was used to calculate the maximum loan eligibility amount. Because the PPP program "was designed . . . to get the relief out the door as quickly as possible," lenders were not required to independently verify the veracity of the information in the application or supporting documents. Thus, any representations made in a PPP application were important to both the lender and SBA, as the guarantor of the loan. Applicants could have a third-party assist them with filling out the application for a fee, but the fee could not come out of the loan proceeds.

With this background in mind, we turn to the testimony related to the specific scheme in this case. In August 2020, Postal Inspector Agent Jonathon Banks executed a search warrant at Alicia Quarterman's home in connection with a separate narcotics

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[6] Under the program, if the business "used the proceeds for only authorized purposes and used a minimum of 60 percent on payroll costs, the loan could be forgiven in full."

investigation.[7] During the execution of the search warrant, Banks seized a notebook from Alicia's home that contained names of various individuals, personal identifying information such as social security numbers and dates of birth, bank account information, and notations next to the names of "PPP" and "EIDL," which led Banks to believe there was potential financial fraud occurring. Accordingly, Banks turned the notebook over to Inspector Greenberg, who was a fraud investigator.

Law enforcement obtained numerous texts from Alicia's cell phone between Alicia, Lawson, and other codefendants that discussed PPP and EIDL loans, exchanged personal identifying information for various individuals, and included screenshots of completed applications. The search of Lawson's cell phone revealed similar messages. For instance, on July 1, 2020, Lawson texted Alicia the following:

> [Lawson]: I got another money maker for us and I'll do your[s] for free[,] but get some people together and I'm charging $1000 per application. I'll call you once I get off
>
> [Alicia]: Is this a loan or a grant? Do they have to pay it bk?
>
> [Lawson]: You don't have to pay it back

[7] Banks testified that postal inspectors "investigat[e] crimes involving the U.S. mail" where individuals use the mail to facilitate certain crimes.

> ...
>
> [Alicia]: Ok, text me exactly what to say to it's no misunderstanding. I'm out with my friend Bug now. He said, let's run it. He's ready now. I'll have more people when you get off
>
> [Lawson]: Ok bet[8]
>
> ...
>
> So we are going to charge $2000 for me to do the application, they will get 10,000 deposited in there [sic] account and they got to send me $2,000 and I'll split it with you for every person you get. So we each can get $1000 a piece off each person
>
> ...
>
> So the wording to everyone will be we going to get you $8,000 for COVID disaster relief money for a homeowner, renter or sole proprietor, but the cost will be $2000.
>
> ...
>
> [Alicia]: What all do you need from them? Name, account # and social?

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[8] Following this text, Lawson sent Alicia a screenshot of the EIDL application from SBA's website.

> [Lawson]: Also need Address, birthday, email and place of birth. Can't have no felony within past year
>
> [Lawson]: Oh and bank name
>
> [Alicia]: Ok
>
> [Lawson]: What name you want to use for your business
>
> [Lawson]: Send me all your info I'm doing yours now

Lawson then sent Alicia a picture of a completed EIDL loan application.

There were many other texts about the EIDL and PPP loan scheme discussed at trial between Lawson and Alicia and Lawson and other individuals. For instance, in a text between Lawson and a woman named Latrell Solomon, Lawson asked Solomon whether she had "ever received a 1099 at all in 2019" for "side hustle money." Solomon stated she had not and just had her "regular wages." Lawson responded, "You know this is what this grant is for, independent contractors who have a side hustle, lol." And when Solomon asked whether that fact meant that she would not get the grant, Lawson stated "No, it doesn't mean that. I just want you to know what you are applying for, ma'am." Lawson then told Solomon that she had listed that Solomon did "hair" on the application.

In another text regarding the EIDL applications an individual asked Lawson what she listed as the business for a

particular applicant, and Lawson replied "Everyone is the same, independent contractor. Had ten employees. No one has nothing different outside of that, except the type of job they performed."

Inspector Greenberg obtained records for the bank accounts referenced in the text messages between Lawson and Alicia and retrieved the related EIDL and PPP applications from SBA, many of which were submitted from the same IP address. Greenberg determined that Lawson filed at least 200 EIDL applications, but she did not disclose that she was the third-party preparer. Greenberg reached out to the secretary of state "for the state that the [applicants] lived" to determine if the applicants had registered businesses. He also checked with the Georgia Secretary of State for all of the businesses. But numerous applicants for whom Lawson submitted applications did not have any registered businesses in Georgia, including Lawson, Tranesha Quarterman, Nikia Wakefield, Daryl Washington, Adarin Jones, Katie Quarterman, India Middleton, Victor Montgomery, Arielle Dozier, and Jeffrey Moffett.

The wire fraud charges in Counts 2 through 8 were based on fraudulent EIDL applications for specific applicants. The government presented the following evidence related to those counts.

- Wire-Fraud—Count Two (Tranesha Quarterman): Alicia texted Lawson Tranesha's information for the EIDL application. Lawson subsequently sent Alicia a screenshot of Tranesha's completed EIDL application. Tranesha's

EIDL application identified her as an independent contractor operating a hair and nail salon in Georgia with ten employees. Tranesha did not have a registered business with the Georgia Secretary of State.

- Wire Fraud—Count Three (Nikia Wakefield): Alicia texted Lawson Wakefield's information. Lawson submitted Wakefield's application stating that Wakefield was an independent contractor with an event planning business with ten employees in Maryland. Wakefield did not have a registered business with the Georgia Secretary of State.[9] Co-conspirator Victor Montgomery, who was Wakefield's boyfriend at the time of the scheme testified that Wakefield did not have a business at all. Wakefield received the $10,000 EIDL advance, and she sent $2,030 to Alicia via CashApp.

- Wire Fraud—Count Four (Darryl Washington): Alicia sent a message to Lawson with Darryl Washington's information for an EIDL application. Washington's EIDL application identified him as an independent contractor operating a "lawn and garden" business with ten employees in Georgia. Lawson sent Alicia a screenshot of the confirmation number for Washington's application, which Alicia then sent to Washington. Washington received a $10,000 EIDL advance

[9] Greenberg testified that he performed a search for the Maryland businesses with the Maryland Secretary of State as well, but those records were not in evidence.

from SBA. Washington then sent $2,000 to Alicia via CashApp. Washington did not have a registered business with the Georgia Secretary of State.

- Wire Fraud—Count Five (Adarian Jones): Alicia sent a message to Lawson with Jones's information for an EIDL application. Jones's EIDL application indicated that he was an independent contractor with a car wash business in his name in Georgia that had 10 employees. Jones testified that he did not have a business or any employees.[10] The Georgia Secretary of State confirmed that Jones did not have a business registered in Georgia.[11] SBA paid Jones an EIDL advance, and Jones paid Alicia $2,000.

- Wire Fraud—Count Six (James McFarland): Alicia texted Lawson McFarland's information for an EIDL application. Lawson sent Alicia confirmation of the completed application. The application indicated that McFarland was an independent contractor with a "personal services" business in Georgia with 10 employees. McFarland did not have an active registered business in Georgia. Instead, he had a former business registration in Georgia, but it was revoked by the Georgia Secretary of State in 2010, well

[10] Jones testified that he pleaded guilty to an unspecified felony charge in connection with this case, and as part of his plea agreement, he agreed to cooperate with the government.

[11] Adarin Jones also went by the name "Adrian," so Greenberg conducted a search for business registrations using both names.

before the 2020 operational dates for the two loan programs. McFarland received the $10,000 EIDL advance and paid Alicia a fee.

- Wire Fraud—Count Seven (Katie Quarterman): Alicia reached out to Katie and told her about the EIDL program and that she would get "$10,000 bk" the fee was $2,000, and Katie would "keep $8,000." Katie provided the relevant identifying information for the application. Alicia told Katie "I'll just make up a name for your business. Do you have one in mind? They have no way of checking it. A lot of people have small businesses like lawn care, hair businesses, etc." Alicia sent the information to Lawson, and Lawson told Alicia "next to Katie['s] name put [she] do hair, so if we ever have to say what business, we can go back to verify. And she established her business 7/28/15." Lawson submitted an application stating that Katie was an independent contractor with a hair and nail salon business in Georgia with ten employees. Katie did not have a registered business in Georgia. Katie received a $10,000 EIDL advance and electronically transferred $2,000 to Alicia via Zelle.

- Wire Fraud—Count Eight (India Middleton): Middleton was Alicia's cousin.[12] Alicia reached out to her about the

[12] Middleton testified that she pleaded guilty to a misdemeanor in relation to this case and as part of her plea agreement, she agreed to testify at Lawson's trial.

> EIDL program and told her that it did not have to be a registered business, that it was for the average person who's doing babysitting or lawn service for a living." Middleton agreed and provided her information. Alicia texted Lawson Middleton's information, noting that Middleton was a sheriff. Lawson asked Alicia what type of business she should put on the application, and Alicia said "hair." Lawson filed an EIDL application for Middleton, listing her as an independent contractor who operated a hair and nail salon in Maryland with ten employees. Middleton did not receive the EIDL advance, but she did receive an EIDL loan for $5,500. Middleton testified that she did not have a hair and nail salon (although she did hair occasionally for friends and family), she was not an independent contractor, and she did not have any employees.

After receiving the fee from the applicants, Alicia would electronically transfer money to Lawson. Lawson also had various other applicants depositing money into her accounts during this time. Lawson charged anywhere from $1,000 to $3,000 for the EIDL applications.

Turning to the PPP program, the government introduced evidence that, on July 27, 2020, Lawson texted Alicia, about the PPP program stating as follows:

> You can get up to 20,000 with Paycheck [P]rotection Program. The [l]oans are 100% forgivable if you follow the PPP loan forgiveness requirements issued by the Small Business Administration (SBA). I will

> take care of the loan forgiveness document as well so you don't have to worry about that. The fee to do the loan is $6000, so you end up with $14000. The timeframe use to be 3-4 business days, but right now it's no set time for funds to be deposited into your account, but you will get it give or take 7-10 days. I will need to [sic] your February bank statement in order to proceed.

The government then presented the following evidence in support of the charges in Counts 9 through 12, which were based on fraudulent PPP applications.

- Wire Fraud—Count Nine (Middleton): After the EIDL application process, Alicia reached out to Middleton about applying for a PPP loan. Middleton agreed and provided Alicia with her bank statement and picture of her driver's license. Alicia sent this information to Lawson. Lawson submitted a PPP application for Middleton for an event planning business. Middleton never filled out the Schedule C form that was included with the application and did not have an event planning business. The application was denied. Middleton testified that the business information in the application was false.

- Bank Fraud and Mail Fraud—Counts Ten (Bank Fraud) and Twelve (Mail Fraud) (Victor Montgomery): Montgomery testified that, at the time in question, co-conspirator Nikia Wakefield was his girlfriend, and she

told him that her cousin Alicia could get him a $20,000 small business loan for a $10,000 fee.[13] Montgomery did not have a business, but he provided the requested personal identifying information for an application. Alicia provided Montgomery's information to Lawson, and Lawson submitted a PPP loan application to FDIC-Insured Cross River Bank on Montgomery's behalf. Montgomery never saw the application or completed a Schedule C form, and he testified that the information contained therein was false. Montgomery received a PPP loan, and he mailed Alicia a check to cover the fee (in the "for" line of the check, he wrote "family" at Alicia's request).[14]

- Bank Fraud—Count Eleven (Arielle Dozier): Alicia texted Dozier's information to Lawson, and Lawson submitted a PPP application on her behalf to Cross River Bank. When Alicia asked about Dozier's PPP application, Lawson stated: "I do the Schedule C's first, then I go in and complete the application." Greenberg testified that this exchange indicated that Lawson was falsifying the Schedule C tax documentation that she submitted with the applications.

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[13] Montgomery testified that he pleaded guilty to conspiracy to commit theft of government money, and as part of his plea agreement, he agreed to cooperate with the government.

[14] The mailed check was the basis of Lawson's mail fraud charge in Count 12.

Lawson charged anywhere from $6,000 to $10,000 per person for the PPP applications. The government also presented evidence that Lawson personally applied for an EIDL and PPP loan with false information.

In addition to the evidence recounted above, the government presented evidence of conversations between Lawson and other individuals concerning EIDL and PPP applications that contained false information as well as evidence of fee payment to Lawson. For instance, Jeffrey Moffett, a former coworker of Lawson's, testified that Lawson contacted him about an EIDL advance, stating that she knew "a way to get $10,000 in a couple of days." He sent her his information, even though he did not have a business or employees, and Lawson submitted an application for him. He received the $10,000 advance, and he paid $1,000 to Lawson. Lawson later contacted him about a PPP application, indicating that he could make $20,000, and he again sent his information. He never saw the PPP application or the attachments (such as the Schedule C form), and he did not have a business. He did not receive a PPP loan.[15]

Similarly, Stephanie Robinson-Cooper, a former coworker of Lawson's, testified that Lawson reached out to her asking if she "want[ed] to make [$]10,000." At that time, Cooper worked at Home Depot as a salaried employee, and she did not work

[15] Moffett testified that he pleaded guilty to a misdemeanor in relation to this case and as part of his plea agreement, he agreed to cooperate with the government.

anywhere else. When Cooper asked Lawson "what's the catch," Lawson responded "It's no catch. Free money you don't have to pay back." "It's a COVID relief disaster grant, and I'm charging $2,000 to complete the grant. There are no qualifications. Everything has been waived due to Corona. Do you want this money or what, woman?" Lawson submitted an EIDL application on Cooper's behalf. Cooper testified that the application contained false information—she did not have a business or employees and was not an independent contractor. Cooper did not supply any of the business-related information in the application to Lawson, and Lawson never told her that "she was putting that information into the application." Cooper received the EIDL advance, and paid Lawson $2,000 in split payments through Zelle and Cashapp. Lawson later contacted her about the PPP program, describing it as a $20,000 "grant" that Cooper would not have to pay back. Cooper agreed to apply and sent Lawson the additional information needed. Cooper did not receive the PPP loan.[16]

Regarding the business registrations with Georgia's Secretary of State, Inspector Greenberg testified that he did not know what the requirements were for business registrations in Georgia and admitted that he could not "speak to" whether a business's lack of registration with the Secretary of State meant that it did not exist. However, Dawn Boring with the Georgia

[16] Cooper testified that she pleaded guilty to a misdemeanor in relation to this case and as part of her plea agreement, she agreed to cooperate with the government.

Department of Labor testified that any business with employees (including independent contractors with employees) legally had to register an account with the Georgia Department of Labor because of unemployment insurance tax requirements. She performed three different types of searches for businesses associated with Lawson, Jones, Wakefield, Alicia, Washington, Tranesha, McFarland, Katie, Montgomery, Middleton, Cooper, Moffett, and Dozier, but there were no Department of Labor accounts established.

Finally, with regard to the money laundering charge in Count 13, the government presented the testimony of Linda Downing, a forensic auditor. Downing reviewed Lawson's bank accounts, focusing on the accounts that "encompassed the whole time period of the EIDL and the PPP loans, as well as monies that were received from the [EIDL and PPP loan] applicants" and used this information to trace funds Lawson used to purchase a Mercedes-Benz and other vehicles. Specifically, Lawson's accounts received approximately $180,000 in "fees" tied back to individuals receiving the EIDL advances and/or PPP loans, as well as approximately $133,000 in cash deposits. Lawson purchased the Mercedes for $74,492 by pooling together funds from five different accounts. Downing determined that a $35,000 JPMorgan Chase check used to pay in part for the Mercedes had been funded entirely by the fees Lawson received from filing the fraudulent EIDL and PPP loans. Downing also found that at least $10,000 of a $16,000 Wells Fargo cashier's check used to pay for the Mercedes had been funded by fraudulent EIDL and PPP application fees because on

July 29, 2020, the account in question had less than $1,000 in it, and by the time Lawson wrote the check, the account contained roughly $17,000, less than $4,000 of which was traceable to a source aside from application fees. However, Downing also acknowledged that it was not possible to say that a particular amount of money used by Lawson to pay for the Mercedes came from a particular source, and she also testified that it was not possible to say that none of the money that paid for the Mercedes came from non-fraudulent monetary deposits like Lawson's payroll.

Following the government's case-in-chief, Lawson moved for a judgment of acquittal on Counts 2, 3, 4, 5, 6, 7, 8, 11, 12, and 13. First, with regard to the EIDL applications, she argued that the government had failed to present any evidence from which the jury could conclude that she knew that the amount of the EIDL advance was based on the number of employees listed in the EIDL application (*i.e.*, $1,000 per employee up to $10,000).[17] Second, with regard to Counts 2, 3, 4, 6, 7, and 11, she argued that there was no evidence that the information submitted in those applications was false. Finally, with regard to the money laundering count, she argued that the government had failed to

[17] Lawson maintains this argument on appeal, but as we explain later in this opinion, neither the amount of the EIDL advances nor the number of employees listed in the applications are elements of wire fraud or mail fraud. Accordingly, the government was not required to prove that Lawson knew that the amount of the EIDL advance was tied to the number of employees listed in the EIDL applications.

show that more than $10,000 of the money used to pay for the Mercedes was specifically tied to money from any of the people who testified in court or the applications presented to the jury. The district court denied the motion. The defense rested, and the jury found Lawson guilty as charged on all 13 counts. The district court sentenced Lawson to a total of 135 months' imprisonment and five years' supervised release. This appeal followed.

II. Discussion

Lawson argues that (1) the district court erred in denying her motion to suppress; (2) the evidence was insufficient to support her convictions for wire fraud and mail fraud in Counts 2–8 and 12; (3) the evidence was insufficient to support her conviction for bank fraud in Counts 10 and 11; and (4) the evidence was insufficient to support her conviction for money laundering in Count 13. We address each argument in turn.

A. The Motion to Suppress

Lawson argues that the district court erred in denying her motion to suppress because the government's delay in obtaining the search warrant for her phone was unreasonable considering the relevant factors. She maintains that she had a heightened possessory and privacy interest in her cell phone because a cell phone is a highly personal device, much like a computer, that "stores a vast amount of personal and private information," and the government failed to provide a legitimate reason for why it "waited almost two weeks to take any action regarding [her] phone." She maintains that our decision in *United States v. Mitchell*, 565 F.3d 1347

(11th Cir. 2009), establishes that the delay in her case was unreasonable.

The denial of a motion to suppress presents a mixed question of law and fact, and "[w]e review a district court's findings of fact for clear error, considering all the evidence in the light most favorable to the prevailing party—in this case, the Government." *United States v. Campbell*, 26 F.4th 860, 870 (11th Cir. 2022) (en banc). "[W]e review *de novo* a district court's application of the law to those facts." *Id.*

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "As the text makes clear, the ultimate touchstone of the Fourth Amendment is reasonableness." *Riley v. California*, 573 U.S. 373, 381 (2014).

Lawson does not dispute that the initial seizure of her cell phone was lawful. However, a seizure lawful at its inception may still violate the Fourth Amendment if "its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment[]." *United States v. Jacobsen*, 466 U.S. 109, 113, 124 (1984). "Thus, even a seizure based on probable cause is unconstitutional if the police act with unreasonable delay in securing a warrant." *See Mitchell*, 565 F.3d at 1350–51 (quotations omitted). "The reasonableness of the delay is determined in light

of all the facts and circumstances, and on a case-by-case basis." *Id.* at 1351.

Factors relevant to the reasonableness of the delay include (1) "the significance of the interference with the person's possessory interest"; (2) "the duration of the delay"; (3) "whether or not the person consented to the seizure"; and (4) "the government's legitimate interest in holding the property as evidence." *See United States v. Laist*, 702 F.3d 608, 613–14 (11th Cir. 2012). Thus, applying the rule of reasonableness requires "a careful balancing of governmental and private interests." *Mitchell*, 565 F.3d at 1351 (quotations and citations omitted). "When balancing these interests, we are also obliged to take into account whether the police diligently pursued their investigation." *Laist*, 702 F.3d at 614 (alteration adopted) (quotations omitted). Accordingly,

> among other factors, we consider the nature and complexity of the investigation and whether overriding circumstances arose, necessitating the diversion of law enforcement personnel to another case; the quality of the warrant application and the amount of time we expect such a warrant would take to prepare; and any other evidence proving or disproving law enforcement's diligence in obtaining the warrant. These factors are by no means exhaustive, but they are the most relevant when we seek to balance the privacy-related and law enforcement-related concerns at stake in cases of this kind.

Id. (quotations and citations omitted). In other words, "this balancing calculus is fact-intensive" and, as a result, there is no bright line rule concerning how long of a delay is presumptively reasonable or unreasonable. *Id.*

Here, the district court did not err in denying Lawson's motion to suppress because the 12-day delay between the seizure of Lawson's phone and the completion of the search warrant application was not unreasonable under the totality of the circumstances. We agree that Lawson had a heightened possessory interest in her cell phone and that the government significantly interfered with that interest when it seized the phone. *See Riley*, 573 U.S. at 403 (emphasizing that the seizing of modern-day cell phones raises significant Fourth Amendment concerns due to the amount of personal and private information that are typically stored on the phones). However, the weight of this factor in the balancing calculus is diminished by the fact that Lawson never requested the phone's return during that 12-day period. *See United States v. Johns*, 469 U.S. 478, 487 (1985) (reasoning that the defendants failed to demonstrate that the government's conduct relating to the search of their property adversely affected their possessory interests protected by the Fourth Amendment where they "never sought return of the property"); *United States v. Stabile*, 633 F.3d 219, 235 (3d Cir. 2011) (concluding three-month delay in obtaining a warrant, caused by the lead agent's assignment on a protective Secret Service detail, was reasonable where the defendant did not request return of his hard drive until 18 months after the initial seizure).

Additionally, we agree with the district court that Inspector Greenberg acted diligently in obtaining the warrant. For instance, he testified that: (1) he was the sole agent working on a complex fraud investigation involving the arrest of ten people across multiple states; (2) he worked on numerous other warrants and case documentation issues during the alleged period of delay, including handling the subpoenas and warrants for Lawson's bank accounts upon learning that Lawson was moving money following her arrest; and (3) he sent a draft of the search warrant application to the U.S. Attorney's Office within a week of the seizure. *Laist*, 702 F.3d at 614. All of those factors weigh heavily in favor of the conclusion that Inspector Greenberg acted diligently.

Lawson contends that her case is similar to that of *Mitchell*, but her argument is unpersuasive. In *Mitchell*, we held that law enforcement's 21-day delay in obtaining a search warrant after seizing the defendant's computer was unreasonable because the government failed to offer a "compelling justification for the delay." 565 F.3d at 1351–53. Rather, the only reason offered for the delay was that the lead agent attended a two-week training program shortly after the seizure and was unavailable to draft the warrant, and the agent felt that there was no rush to get the warrant. *Id.* at 1351. We deemed this justification insufficient, noting that the agent had "two and one-half days" after seizing the computer and before his departure for the training program to draft something. *Id.* Moreover, there was a second agent on the case that could have secured a warrant in the lead agent's absence, but he failed to do so. *Id.* Thus, given the totality of the

circumstances, we concluded that the three-week delay was unreasonable.

Nevertheless, we cautioned in *Mitchell* that "there may be occasions where the resources of law enforcement are simply overwhelmed by the nature of a particular investigation, so that a delay that might otherwise be unduly long would be regarded as reasonable." *Id.* at 1353. We reasoned that Mitchell's case was not one of those situations, because the officers had seized "a single hard drive" and then made "[n]o effort . . . to obtain a warrant within a reasonable time because law enforcement officers simply believed that there was no rush." *Id.* In other words, while we found the three-week delay in *Mitchell* an unreasonable delay, we made clear that depending on the circumstances, such a delay could be reasonable. *Id.*

Unlike in *Mitchell*, we believe that Lawson's case presents a circumstance where "the resources of law enforcement [were] simply overwhelmed by the nature of [the] particular investigation," such that the 12-day delay in this case was reasonable. *Id.* at 1353. As discussed above, Inspector Greenberg was the sole agent working on this complex fraud scheme investigation involving ten defendants scattered throughout the country. And many things came up during that 12-day delay that necessitated the diversion of Inspector Greenberg's attention from preparing the search warrant for Lawson's phone, such as her and some of her co-conspirators' attempts to move money following their arrests.

Accordingly, we conclude that, under the totality of the circumstances, the delay in this case between the seizure of Lawson's cell phone and the application of the search warrant was reasonable, and the district court did not err in denying Lawson's motion to suppress.

B. Sufficiency of the Evidence for Wire Fraud (Counts 2–8) and Mail Fraud (Count 12)

Lawson argues that the evidence was insufficient to sustain her wire fraud convictions in Counts 2 through 8 and her mail fraud conviction in Count 12 because the government failed to present evidence from which the jury could conclude that she knew that the amount of the EIDL application advance was based on the number of employees, citing the SBA representative's testimony that she did not know whether this information was public knowledge. Additionally, Lawson argues that there was insufficient evidence to convict her of Counts 2, 3, 4, 6, and 7 because there was no evidence presented to show that those EIDL applications contained false information.

"We review the sufficiency of evidence to support a conviction *de novo*, viewing the evidence in the light most favorable to the government and drawing all reasonable inferences and credibility choices in favor of the jury's verdict." *United States v. Taylor*, 480 F.3d 1025, 1026 (11th Cir. 2007). The test for sufficiency of evidence is identical for direct and circumstantial evidence, "and no distinction is to be made between the weight given to either direct or circumstantial evidence." *United States v.*

Mieres-Borges, 919 F.2d 652, 656–57 (11th Cir. 1990). Proof of an element of a crime "may be established through circumstantial evidence or from inferences drawn from the conduct of an individual." *United States v. Utter*, 97 F.3d 509, 512 (11th Cir. 1996). "But where the government relies on circumstantial evidence, reasonable inferences, and not mere speculation, must support the jury's verdict." *United States v. Wenxia Man*, 891 F.3d 1253, 1265 (11th Cir. 2018) (alteration adopted) (quotations omitted).

"A conviction must be upheld unless the jury could not have found the defendant guilty under any reasonable construction of the evidence." *United States v. Frank*, 599 F.3d 1221, 1233 (11th Cir. 2010); *see also United States v. Thompson*, 473 F.3d 1137, 1142 (11th Cir. 2006) ("[T]he issue is not whether a jury reasonably could have acquitted but whether it reasonably could have found guilt beyond a reasonable doubt."), *abrogated on other grounds by United States v. Di-Falco*, 837 F.3d 1207, 1216 (11th Cir. 2016). "[T]he evidence need not be inconsistent with every reasonable hypothesis except guilt, and the jury is free to choose between or among the reasonable conclusions to be drawn from the evidence presented at trial." *United States v. Watts*, 896 F.3d 1245, 1251 (11th Cir. 2018) (quotations omitted).

To sustain a conviction for wire fraud, the government had to prove beyond a reasonable doubt that Lawson "(1) participated in a scheme or artifice to defraud; (2) with the intent to defraud; and (3) used, or caused the use of, interstate wire transmissions for

the purpose of executing the scheme or artifice to defraud."[18] *United States v. Machado*, 886 F.3d 1070, 1082–83 (11th Cir. 2018). With regard to mail fraud, "[a]side from the means by which a fraud is effectuated"—*i.e.*, meaning through the wires versus through the mail—"the elements of mail fraud, 18 U.S.C. § 1341, and wire fraud, 18 U.S.C. § 1343, are identical." *United States v. Ward*, 486 F.3d 1212, 1221 (11th Cir. 2007) (footnotes omitted).

> A scheme to defraud requires proof of a material misrepresentation, or the omission or concealment of a material fact calculated to deceive another out of money or property. A misrepresentation is material if it has a natural tendency to influence, or [is] capable of influencing, the decision maker to whom it is addressed.

United States v. Maxwell, 579 F.3d 1282, 1299 (11th Cir. 2009) (citations and quotations omitted).

"Intent to defraud" means an intent "to use deception to cause some injury"—*i.e.*, "to obtain, by deceptive means, something to which the defendant is not entitled." *United States v. Waters*, 937 F.3d 1344, 1352 (11th Cir. 2019). Additionally, "the government must prove that [the defendant] knew that [she was] making false statements or [was] acting with reckless indifference to the truth." *United States v. Bell*, 112 F.4th 1318, 1332 (11th Cir.

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[18] Lawson stipulated at trial that the text message communications alleged in Counts 2 through 8 "caused wire communications that were transmitted in interstate commerce."

2024), *petition for cert. filed* (No. 24-972) (U.S. Mar. 11, 2025). "[A] jury may infer the 'intent to defraud' from the defendant's conduct and circumstantial evidence. Evidence that the defendant profited from a fraud may also provide circumstantial evidence of the intent to participate in that fraud." *Machado*, 886 F.3d at 1083.

Lawson challenges only the sufficiency of the evidence as to the material misrepresentation element. Specifically, she contends that because there was no evidence that she was aware that the amount of the EIDL advance was tied to the number of employees ($1,000 per employee with a cap of $10,000), the government failed to show that she made a material misrepresentation in the EIDL applications that served as the basis for Counts 2 through 8. Relatedly, she argues that the government failed to show that the information in the EIDL applications that served as the basis for Counts 2, 3, 4, 6, and 7, was in fact false. We disagree.

Lawson cites no authority for the proposition that the government had to prove that she knew that the amount of the EIDL advance was tied to the number of employees in order to convict her of wire fraud or mail fraud. Indeed, neither the amount of the EIDL advance or the number of employees listed in the applications are elements of wire fraud or mail fraud. Rather, all that mattered for purposes of the scheme to defraud element was whether the government submitted sufficient evidence to show that Lawson intentionally submitted applications that contained material misrepresentations (and those material misrepresentations did not have to relate specifically to the number

of employees).[19] As we explain further, viewing the evidence in the light most favorable to the government and making all reasonable inferences and credibility choices in favor of the verdict, the jury could have reasonably concluded that Lawson intentionally filed EIDL applications containing material misrepresentations.

Numerous text messages demonstrated that the EIDL applications contained knowing material misrepresentations, such as: (1) Lawson's statement to Solomon that Lawson listed on Solomon's EIDL application that Solomon did hair, even after Solomon told Lawson that she did not have any "side hustle"; (2) Lawson's statement to an applicant who inquired as to what Lawson listed as the type of business, that "Everyone is the same, independent contractor. Had ten employees. No one has nothing different outside of that, except the type of job they performed."; and (4) text messages between Lawson and Alicia discussing what type of business to list for Katie and Middleton on their EIDL

[19] Regardless, even assuming arguendo that the government had to show that Lawson knew the amount of the EIDL advance was tied to the number of employees listed in the applications, the government met that burden. Specifically, the government submitted an exhibit at trial of hundreds of pages of texts between Alicia and Lawson. In one of those texts, Lawson sent Alicia a screenshot of a summary of the EIDL program, which included a paragraph stating that "[t]he SBA was offering advances of $10,000 per applicant in the form of a grant. But due to high demand, it reduced grant amounts to $1,000 per employee as of January 2020, up to $10,000." Thus, the government established that she knew that she was making a material misrepresentation related to the number of employees and that the number of employees were tied to the amount of the EIDL advance.

applications. The government also presented testimony from numerous witnesses, including Jones (Count 5), Middleton (Count 8), Moffett, and Cooper who confirmed that their EIDL applications contained false information. Similarly, Montgomery, who was Nikia Wakefield's boyfriend in 2020, testified that Wakefield (Count Three) did not have a business. And finally, Inspector Greenberg and Boring testified that they could not find business registrations with the Secretary of State or the Georgia Department of Labor for any of the individuals listed in the EIDL applications in Counts 2 through 8.

Although the government did not present testimony from Tranesha (Count 2), Washington (Count 4), McFarland (Count 6), or Katie (Count 7) that their EIDL applications contained false information, the jury could have reasonably inferred from the text messages, and the testimony of Jones, Middleton, Moffett, Cooper, Inspector Greenberg, and Boring that those applications also contained material false misrepresentations. *Utter*, 97 F.3d at 512 (explaining that an element of a crime "may be established through circumstantial evidence or from inferences drawn from the conduct of an individual"); *United States v. Henderson*, 693 F.2d 1028, 1031 (11th Cir. 1982) ("[C]ircumstantial evidence is not testimony to the specific fact being asserted, but testimony to other facts and circumstances from which the jury may infer that the fact being asserted does or does not exist."); *Watts*, 896 F.3d at 1251 ("[T]he evidence need not be inconsistent with every reasonable hypothesis except guilt, and the jury is free to choose between or

among the reasonable conclusions to be drawn from the evidence presented at trial.").

In sum, the evidence showed that Lawson intentionally participated in a scheme to defraud the government through fraudulent EIDL applications containing material misrepresentations—namely, that fake businesses existed—from which she gained profits. Accordingly, there was more than sufficient circumstantial evidence for the jury to find Lawson guilty beyond a reasonable doubt of the wire fraud charges in Count 2 through 8. *Machado*, 886 F.3d at 1082–83.

As for the mail fraud charge in Count 12, Montgomery testified that he did not have a business and that his PPP application contained false business information. He also testified that he mailed a check to Alicia for the fee and that in the "for" line of the check, he wrote "family," even though the check was not for family. And the government presented evidence that, after receiving money from applicants, Alicia sent Lawson money for her portion of the fees. Accordingly, there was more than sufficient evidence to convict Lawson of mail fraud. *See Ward*, 486 F.3d at 1221.

C. Sufficiency of the Evidence for Bank Fraud in Counts 10 and 11

Lawson argues that the government failed to prove that she had an intent to defraud a financial institution as required to sustain

her bank fraud convictions in Counts 10 and 11.[20] Additionally, she argues that the evidence was insufficient to show that the information in the PPP application for Count 11 was false because the applicant did not testify or state that the information was false.[21]

Lawson was charged with, and convicted of bank fraud, in violation of 18 U.S.C. § 1344 in Counts 10 and 11. That statute provides that:

> Whoever knowingly executes, or attempts to execute, a scheme or artifice—
>
> (1) to defraud a financial institution; or
>
> (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial

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[20] We note that Lawson failed to move for a judgment of acquittal on Count 10 in the district court or otherwise argue that the evidence was insufficient to convict her on that count. "Consequently, the conviction[] [on Count 10] will be upheld unless to do so would result in a manifest miscarriage of justice." *United States v. Thompson*, 610 F.3d 1335, 1338 (11th Cir. 2010).

[21] Lawson asserts that Count 11 "involved Tranesha Quarterman's EIDL application," but Lawson is mistaken. Count 11 involved Arielle Dozier's PPP application. We assume for purposes of this opinion that Lawson nevertheless intended to refer to Dozier. Lawson's argument, however, that the jury could not have concluded that the information in Dozier's PPP application was false because she did not testify is unpersuasive. The jury could have reasonably inferred that the application contained materially false information based on Inspector Greenberg's testimony and Boring's testimony that searches revealed no business registration or Department of Labor account linked to Dozier.

> institution, by means of false or fraudulent pretenses, representations, or promises;
>
> shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1344. Thus, a conviction under § 1344(1) required the government to "prove: (1) that the defendant intentionally participated in a scheme or artifice to deprive another of money or property; and (2) that the intended victim was a federally insured financial institution." *United States v. McCarrick*, 294 F.3d 1286, 1290 (11th Cir. 2002). "To convict under § 1344(2), the government [had to] prove (1) that a scheme existed to obtain moneys, funds, or credit in the custody of a federally-insured bank by fraud; (2) that the defendant participated in the scheme by means of material false pretenses, representations or promises; and (3) that the defendant acted knowingly."[22] *Id.* "A [bank fraud] conviction can be sustained under either section when the indictment and jury

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[22] In *Loughrin v. United States*, the Supreme Court held that convictions under § 1344(2) do not require proof of intent to defraud a bank. 573 U.S. 351, 359–62 (2014). However, during Lawson's trial, counsel for both parties generally argued that § 1344 required the intent to defraud a bank without differentiating between subsection (1) and (2), and the district court instructed the jury accordingly. Because no party objected below or on appeal to this error, we assume for the purposes of this appeal that the jury had to find an intent to defraud a bank in order to sustain Lawson's conviction under either § 1344(1) or § 1344(2). *See United States v. Martin*, 803 F.3d 581, 590 (11th Cir. 2015) (explaining that where the district court erroneously instructs the jury, without objection, that a certain element is required for an offense, that element becomes a necessary element that "the government [is] required to prove" (citing *United States v. Spletzer*, 535 F.2d 950, 954 (5th Cir. 1976))).

instructions, as in this case, charge both clauses." *United States v. Dennis*, 237 F.3d 1295, 1303 (11th Cir. 2001). "[C]ircumstantial evidence may prove knowledge and intent." *United States v. Williams*, 390 F.3d 1319, 1325 (11th Cir. 2004).

Viewing the evidence in the light most favorable to the government, we conclude that the government met its burden to prove bank fraud and Lawson's intent to defraud. The government presented evidence from which a jury could reasonably conclude that Lawson submitted PPP loan applications containing materially false information to Cross River Bank (a federally insured financial institution) on behalf of Montgomery (Count 10) and Dozier (Count 11), for businesses that did not exist. The government also presented evidence from which a jury could conclude that Lawson falsified the Schedule C documents attached to the applications based on her text exchange with Alicia and the testimony of Montgomery and Moffett that they never saw their respective PPP applications or the attached Schedule C documents. Taken together, this evidence is sufficient to establish that Lawson intentionally participated in a scheme to defraud Cross River Bank and obtain by deceptive means money to which neither she nor the loan applicants were entitled. *See United States v. Watkins*, 42 F.4th 1278, 1286–87 (11th Cir. 2022) (upholding a bank fraud conviction where the defendant misrepresented on a loan application the "true recipient of the loan" because a jury could have reasonably believed that, by concealing the true recipient, the defendant "sought to obtain, by deceptive means, something to which he was not entitled" (alterations adopted) (quotations omitted)).

D. Sufficiency of the Evidence for Money Laundering (Count 13)

Lawson argues that the evidence was insufficient to support her conviction for money laundering because the government failed to show that the money in question was "specifically tied to money" that came from the persons who testified at her trial or whose applications were presented to the jury. In support, she notes that Downing testified that she could not be certain that the money used by Lawson to purchase the Mercedes came from a particular source.

To convict Lawson of money laundering, the government had to prove: (1) she "knowingly engage[d] or attempt[ed] to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000"; and (2) the property was "derived from specified unlawful activity," namely, conspiracy to commit wire fraud as charged in Count 1. *See United States v. Silvestri*, 409 F.3d 1311, 1332–33 (11th Cir. 2005) (quotations omitted). "[C]riminally derived property means any property constituting, or derived from, proceeds obtained from a criminal offense." 18 U.S.C. § 1957(f)(2) (quotations omitted). "[T]he Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity." *See id.* § 1957(c). A defendant can be convicted of money laundering "where the funds involved in the transaction are derived from a commingled account of which only a part comes from specified unlawful activities." *United States*

v. Cancelliere, 69 F.3d 1116, 1120 (11th Cir. 1995) (quotations omitted).

When viewing the evidence in the light most favorable to the government, the jury could have reasonably concluded from Downing's testimony that Lawson purchased the Mercedes with more than $10,000 of criminal proceeds derived from the conspiracy to commit wire fraud. *See Silvestri*, 409 F.3d at 1332–33. Specifically, Downing testified that a $35,000 JPMorgan Chase cashier's check used to pay in part for the Mercedes had been funded entirely by the fees Lawson received from EIDL and PPP applications. She explained that there were no other sources of funds to Lawson's account during the relevant time period, and that the account did not otherwise have enough money to cover the check. And the jury was entitled to credit this testimony and reasonably conclude that Lawson engaged in money laundering by purchasing the Mercedes with the ill-gotten gains. *Watts*, 896 F.3d at 1251 ("[T]he evidence need not be inconsistent with every reasonable hypothesis except guilt, and the jury is free to choose between or among the reasonable conclusions to be drawn from the evidence presented at trial.").

Contrary to Lawson's argument, the government was not required to show that the money used to purchase the Mercedes was specifically tied to any of the individuals who testified at Lawson's trial or to any of the specific EIDL and PPP applications that were presented to the jury. Rather, all the government had to show was that the funds were derived from the overall conspiracy

to commit wire fraud as charged in the indictment, which it did through Downing's testimony. *Silvestri*, 409 F.3d at 1332–33; 18 U.S.C. § 1957(f)(2).

Additionally, contrary to Lawson's claim, the government is not required to "trace the origins of all funds" in an account, like Lawson's, that contains commingled funds to "ascertain exactly which funds were used for what transaction." *See United States v. Ward*, 197 F.3d 1076, 1083 (11th Cir. 1999). Lawson argues, as she did to the jury, that she could have used legitimate funds to purchase the Mercedes. Our job, however, is to review the sufficiency of the evidence, not choose between competing interpretations of that evidence. The jury was free to choose between reasonable constructions of the evidence, and Lawson has failed to show that the jury could not have found her guilty of money laundering based on the evidence presented. *Watts*, 896 F.3d at 1251; *Frank*, 599 F.3d at 1233 ("A conviction must be upheld unless the jury could not have found the defendant guilty under any reasonable construction of the evidence."). Accordingly, she is not entitled to relief on this claim.

III. Conclusion

For the above reasons, we affirm Lawson's convictions.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

UNITED STATES OF AMERICA	:	
	:	
	:	CRIMINAL ACTION FILE NO.
v.	:	3:21-cr-00006-TCB-RGV
	:	
KATRINA LAWSON, NIKIA WAKEFIELD, JAMES MCFARLAND, and INDIA MIDDLETON, *et al.*	:	

MAGISTRATE JUDGE'S REPORT, RECOMMENDATION, AND ORDER

Defendants Katrina Lawson ("Lawson"), India Middleton ("Middleton"), Nikia Wakefield ("Wakefield"), and James McFarland ("McFarland"), collectively referred to as "defendants," are named along with six other co-defendants in a fourteen-count superseding indictment that charges conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349; wire fraud, in violation of 18 U.S.C. § 1343; bank fraud, in violation of 18 U.S.C. § 1344; mail fraud, in violation of 18 U.S.C. § 1341; and money laundering, in violation of 18 U.S.C. §1957. [Doc. 126].[1] Middleton and Wakefield have filed motions for a bill of particulars, [Docs. 229 & 234], to which the government has filed a consolidated response in opposition,

[1] The listed document and page numbers in citations to the record refer to the document and page numbers shown on the Adobe file reader linked to the Court's electronic filing database, CM/ECF.

"Appendix B"

[Doc. 255]; Middleton, Wakefield, and McFarland have filed motions to sever, [Docs. 230, 232, & 239], to which the government has filed a consolidated response in opposition, [Doc. 254]; and Lawson has filed a motion to suppress cell phone evidence, [Doc. 221], and following an evidentiary hearing on her motion held on October 6, 2021,[2] Lawson filed a supplemental motion to suppress cell phone evidence, [Doc. 272], the government filed a response in opposition, [Doc. 281], and Lawson filed a reply in support of her motions, [Doc. 288].[3] For the reasons that follow, Middleton and Wakefield's motions for a bill of particulars, [Docs. 229

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[2] See [Doc. 275] for a transcript of the evidentiary hearing held on Lawson's motion to suppress, [Doc. 221], which will be referred to as "(Tr. at __)." In addition, the government submitted an exhibit at the evidentiary hearing, which will be referred to as "(Gov't Ex. 1)."

[3] Wakefield, Middleton, and McFarland also filed motions to suppress statements. [Docs. 231, 235, & 238]. The Court conducted a pretrial conference in this case on September 9, 2021, see [Doc. 243], and granted defendants Wakefield and Middleton until September 16, 2021, "to perfect or withdraw their motions to suppress statements," and McFarland until September 23, 2021, "to perfect or withdraw his motion to suppress statements," [id. at 2 (citations omitted)]. Neither Wakefield, Middleton, nor McFarland have perfected their motions, [Docs. 231, 235, & 238], and they are deemed to have been abandoned, and the Clerk is **DIRECTED** to terminate these motions. See United States v. Rodriguez-Alejandro, 664 F. Supp.2d 1320, 1327 n.3 (N.D. Ga. 2009) ("Defendant has not perfected the motion [to suppress], and it is deemed abandoned and withdrawn."); see also [Doc. 86 at 18 ("When a party fails to supplement or perfect a motion within the time afforded after having requested or been given an opportunity to supplement or perfect said motion, the Court may deem the original motion abandoned or withdrawn."); Doc. 165 at 18 (same)].

& 234], are **DENIED**, and it is **RECOMMENDED** that Middleton, Wakefield, and McFarland's motions to sever, [Docs. 230, 232, & 239], and Lawson's motion to suppress and supplemental motion to suppress cell phone evidence, [Docs. 221 & 272], be **DENIED**.

I. INTRODUCTION

On March 16, 2021, a grand jury in the Northern District of Georgia returned an indictment against ten defendants that included charges of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349; wire fraud, in violation of 18 U.S.C. § 1343; bank fraud, in violation of 18 U.S.C. § 1344; mail fraud, in violation of 18 U.S.C. § 1341; and money laundering, in violation of 18 U.S.C. §1957, in connection with applications for funds made available through the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, including Economic Injury Disaster Loan ("EIDL") grants and loans under the Paycheck Protection Program ("PPP"). See [Doc. 1]. The grand jury subsequently returned a superseding indictment against the same ten defendants on April 20, 2021. [Doc. 126].

The superseding indictment charges that on July 1, 2020, Lawson "sent a series of text messages from her cell phone number to defendant Alicia Quarterman [('Quarterman')] outlining a scheme to fraudulently obtain the EIDL Advance (*i.e.*, the $10,000 grant)." [Id. at 5 ¶ 15 (all caps omitted)]. Lawson specifically told Quarterman that she had "another money maker for us and I'll do

your [sic] for free but get some people together and I'm charging $1000 per application." [Id. (internal marks omitted)]. Lawson explained to Quarterman through additional text messages "that EIDL Advance is a 'grant' that did not have to be paid back" and further told her that they were "going to charge $2000 for [her] to do the application, they will get 10,000 deposited in there [sic] account and they got to send [her] $2000 and [she would] split it with [Quarterman] for every person [Quarterman] g[o]t." [Id. at 5-6 ¶ 16 (internal marks omitted)]. Quarterman agreed and Lawson then advised her of "the type of information needed from each person for the EIDL application," and that same day, Quarterman provided Lawson with her information so that Lawson could submit a "fraudulent EIDL application" on her behalf. [Id. at 6 ¶¶ 16-17].

According to the superseding indictment, Quarterman then "contacted multiple people," including co-defendants Tranesha Quarterman ("T. Quarterman"); Wakefield; Adarin Jones, also known as Adrian Jones ("Jones"); Darryl Washington ("Washington"); McFarland; Katie Quarterman ("K. Quarterman"); and Middleton, "mostly via text message from her cell phone, and told them about the EIDL scheme, her 'fee,' and the needed personal information for the loan." [Id. at 6 ¶ 18]. Quarterman "also told several of these individuals that they could recruit their friends or family to participate in the scheme," and thereafter, T. Quarterman "recruited at least four individuals, Wakefield recruited

at least three individuals, Washington recruited at least two individuals, and Jones, McFarland, and K. Quarterman each recruited at least one individual." [Id. at 6 ¶ 19 (all caps omitted)]. T. Quarterman, Wakefield, Jones, Washington, McFarland, K. Quarterman, Middleton, and others would send their personal information via text message to Quarterman, who would then forward the information to Lawson to complete the online EIDL applications "by inputting false information for each applicant," which she then submitted to the Small Business Administration ("SBA"). [Id. at 7 ¶¶ 20-21]. Once she submitted the applications, Lawson then "took a screenshot of the EIDL application number and sent it via text message to Quarterman," who "then in turn sent the screenshot via text message to the co-conspirators, including but not limited to T. Quarterman, Wakefield, Jones, Washington, McFarland, K. Quarterman, and Middleton." [Id. at 7 ¶ 22 (all caps omitted)]. Once the individuals received the $10,000 EIDL Advance funds, they would pay Quarterman her "fee" from the proceeds "by cash, bank cashier's check, or mobile banking applications" and Quarterman would then split the money with Lawson "mostly by electronic banking means." [Id. at 7 ¶ 23 (internal marks omitted)].

The superseding indictment charges that "[o]verall, between July 1, 2020 and August 1, 2020, Quarterman sent Lawson the information for at least 48 different individuals for the purpose of submitting the fraudulent EIDL

applications"; that Lawson "completed approximately 58 fraudulent EIDL applications (because some applications were denied and Lawson re-submitted an additional application for the same person)"; that "[a]ll of these applications contained false information in order to qualify for the funds"; and that the SBA "accepted and paid out at least $185,500 on 19 EIDL applications submitted by Lawson on information given to her by Quarterman," with the "total amount sought through EIDL [being] at least $560,000." [Id. at 8 ¶ 24 (all caps omitted)].

The superseding indictment also charges that on July 14, 2020, Lawson and Quarterman considered expanding "their scheme to include the PPP loans" and that Lawson sent Quarterman a text message on July 27, 2020, explaining how the program worked, including that "You can get up to 20,000 with the [PPP loans]" and that the "Loans are 100% forgivable if you follow the PPP loan forgiveness requirements issued by the [SBA]," and she then stated that the "fee to do the loan [would be] $6000, so you end up with $14000." [Id. at 8 ¶ 25 (internal marks omitted)]. Subsequently, Quarterman "contacted many of the same individuals that she originally contacted for the EIDL scheme and told them about the PPP loan and the new information needed to apply" and the "new fee structure, including charging up to $10,000 for her share of the PPP loan because of the additional paperwork that had to be created," including "fraudulent Internal Revenue Service Forms 1040 Schedule C to show that the 'businesses' of the co-

conspirators made certain amounts." [Id. at 8-9 ¶ 26]. Thereafter, Quarterman "sent the information for 15 individuals to Lawson via text message, including but not limited to the information for herself, Wakefield, Middleton, and Montgomery, for the purposes of submitting fraudulent PPP loans to the SBA." [Id. at 9 ¶ 27 (all caps omitted)]. Lawson completed the online applications and submitted them and then notified Quarterman via text message that the PPP loan applications "were complete and tracked them to determine if and when they were approved," and once the PPP loan proceeds were received, the individuals, including Wakefield and Montgomery, then paid Quarterman her "fee" from the PPP proceeds "in cash, bank cashier's check, or mobile banking applications."[4] [Id. at 9 ¶¶ 27-28 (internal marks omitted)]. Once Quarterman "received the 'fee' for the fraudulent PPP loans, she and Lawson divided up the money using electronic banking methods." [Id. at 10 ¶ 29 (all caps omitted)]. Overall, "the SBA partner banks initially approved 11 of the fraudulent PPP loans submitted by Lawson using information sent to her by Quarterman" and these "financial institutions paid out at least $124,276 on six of the loans, as the additional five PPP loan applications were ultimately denied," with the "total amount sought for all of the

[4] Montgomery, who was recruited by Wakefield, "paid Quarterman by mailing a $10,000 check to her through the United States Postal Service on or about August 3, 2020." [Doc. 126 at 9 ¶ 28 (all caps omitted)].

PPP applications submitted by Lawson [being] at least $224,172." [Id. at 10 ¶ 30 (all caps omitted)].

The superseding indictment charges in Count One that beginning on July 1, 2020, and continuing through August 30, 2020, the ten named defendants conspired to commit wire fraud, in violation of 18 U.S.C. § 1349. [Id. at 1-10 ¶¶ 1-30]. Count Two charges that on or about July 7, 2020, Lawson, Quarterman, and T. Quarterman, aided and abetted by one another, knowingly and unlawfully committed wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, [id. at 10-11 ¶¶ 31-32]; Count Three charges that on or about July 1, 2020, Lawson, Quarterman, and Wakefield, aided and abetted by one another, knowingly and unlawfully committed wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, [id. at 11 ¶¶ 33-34]; Count Four charges that on or about July 1, 2020, Lawson, Quarterman, and Washington, aided and abetted by one another, knowingly and unlawfully committed wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, [id. at 11-12 ¶¶ 35-36]; Count Five charges that on or about July 1, 2020, Lawson, Quarterman, and Jones, aided and abetted by one another, knowingly and unlawfully committed wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, [id. at 12-13 ¶¶ 37-38]; Count Six charges that on or about July 7, 2020, Lawson, Quarterman, and McFarland, aided and abetted by one another, knowingly and unlawfully committed wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, [id. at 13 ¶¶ 39-40]; Count Seven

charges that on or about July 1, 2020, Lawson, Quarterman, and K. Quarterman, aided and abetted by one another, knowingly and unlawfully committed wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, [id. at 13-14 ¶¶ 41-42]; Count Eight charges that on or about July 2, 2020, Lawson, Quarterman, and Middleton, aided and abetted by one another, knowingly and unlawfully committed wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, [id. at 14-15 ¶¶ 43-44]; and Count Nine charges that on or about July 27, 2020, Lawson, Quarterman, and Middleton, aided and abetted by one another, knowingly and unlawfully committed wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, [id. at 15 ¶¶ 45-46].

Count Ten of the superseding indictment charges that on or about July 30, 2020, Lawson, Quarterman, Wakefield, and Montgomery, aided and abetted by one another, knowingly and unlawfully committed bank fraud, in violation of 18 U.S.C. §§ 1344 and 2, [id. at 15-16 ¶¶ 47-48], while Count Eleven charges that on or about the same day, Lawson, Quarterman, and T. Quarterman, aided and abetted by one another, knowingly and unlawfully committed bank fraud, in violation of 18 U.S.C. §§ 1344 and 2, [id. at 16-17 ¶¶ 49-50]. Count Twelve charges that on or about August 3, 2020, Lawson, Quarterman, Wakefield, and Montgomery, aided and abetted by one another, knowingly and unlawfully committed mail fraud, in violation of 18 U.S.C. §§ 1341 and 2. [Id. at 17-18 ¶¶ 51-52]. Finally, Count Thirteen charges that on or about August 3, 2020, Lawson

knowingly engaged and attempted to engage in money laundering, in violation of 18 U.S.C. § 1957, [id. at 18 ¶¶ 53-54], while Count Fourteen charges that on or about September 23, 2020, Quarterman knowingly engaged and attempted to engage in money laundering, in violation of 18 U.S.C. § 1957, [id. at 19 ¶¶ 55-56]. Defendants have filed several pretrial motions, [Docs. 221, 229, 230, 232, 234, 239, & 272], which are now fully briefed and ripe for ruling.

II. DISCUSSION

A. Motions for a Bill of Particulars, [Docs. 229 & 234]

In their nearly identical motions for a bill of particulars, [Docs. 229 & 234], Middleton and Wakefield contend that the superseding indictment "alleges one large conspiracy among all defendants to commit wire fraud," but "then alleges 13 substantive counts outlining conduct specific to 1-4 individual defendants," while alleging that Quarterman and Lawson completed the fraudulent applications on behalf of the individuals who sent their information to Quarterman and that the other named co-defendants are only "alleged to have provided information to [] Quarterman to have received their own personal EIDL or PPP loan" and that because the "majority of the co-defendants communicated only with Quarterman," the superseding indictment "does not explain how each of the ten named defendants worked together to accomplish the single conspiracy charged in the [superseding] indictment," [Doc. 229 at 3 (citations omitted); Doc.

234 at 3]. Middleton and Wakefield therefore request the Court to "instruct the government to file a bill of particulars" that outlines the "object of the single conspiracy joined by all ten defendants" and the "means and manner by which each co-defendant conspired with the other named co-defendants to accomplish the object of the charged conspiracy." [Doc. 229 at 4; Doc. 234 at 3].

In its consolidated response opposing the motions, [Doc. 255], the government argues that the motions should be denied because "the information sought is already found within the superseding indictment," [id. at 3]. In particular, the government points out that the superseding indictment "clearly states the object of the conspiracy: that all of the defendants did conspire 'with each other and with others known and unknown to the Grand Jury, to devise and intend to devise a scheme and artifice to defraud, and to obtain money and property, by means of materially false and fraudulent pretenses[.]'" [Id. at 3 (emphasis omitted) (quoting [Doc. 126 at 2 ¶ 1])]. It further points out that "there are 16 additional paragraphs that describe in detail the fraudulent scheme," and that the "manner and means . . . is sufficiently described within those same 16 paragraphs." [Id. (citation omitted)]. Finally, the government contends that the "law does not require that each co-conspirator actually know and directly 'work' with every other co-conspirator (as is implied by Wakefield and Middleton's manner and means request)" and that their request therefore "misstates the law

and seeks information that is not required for a jury to convict[.]" [Id. at 4]. Accordingly, the government maintains that Middleton and Wakefield "have ample information in order to properly prepare their defenses" and that "because their request is legally flawed," the Court should deny their motions. [Id. at 4-5].

Rule 7(f) of the Federal Rules of Criminal Procedure provides that the Court "may direct the government to file a bill of particulars." Fed. R. Crim. P. 7(f). "The purpose of a true bill of particulars is threefold: 'to inform the defendant[s] of the charge against [them] with sufficient precision to allow [them] to prepare [their] defense, to minimize surprise at trial, and to enable [them] to plead double jeopardy in the event of a later prosecution for the same offense.'" United States v. Reddy, Criminal Action File No. 1:09-CR-0483-ODE/AJB, 2010 WL 3210842, at *5 (N.D. Ga. Apr. 5, 2010) (quoting United States v. Cole, 755 F.2d 748, 760 (11th Cir. 1985)), adopted as modified by 2010 WL 3211029, at *7 (N.D. Ga. Aug. 11, 2010); see also United States v. Colson, 662 F.2d 1389, 1391 (11th Cir. 1981) (citations omitted); United States v. Zellner, Criminal Indictment No. 1:09-CR-320-TCB-GGB, 2011 WL 530718, at *9 (N.D. Ga. Jan. 14, 2011) (citation omitted), adopted sub nom. United States v. Chester, Criminal Action File No. 1:09-cr-320-TCB-GGB, 2011 WL 529952, at *1 (N.D. Ga. Feb. 4, 2011). Generalized discovery is not a valid reason for seeking a bill of particulars, Colson, 662 F.2d at 1391 (citation

omitted); United States v. Davis, 582 F.2d 947, 951 (5th Cir. 1978),[5] and "[a] bill of particulars may not be used for the purpose of obtaining detailed disclosure of the government's case or evidence in advance of trial," Zellner, 2011 WL 530718, at *9 (citation omitted). Moreover, defendants are not entitled to a bill of particulars describing information which is already evident from other sources, such as elsewhere in the indictment or in discovery. United States v. Rosenthal, 793 F.2d 1214, 1227 (11th Cir. 1986) (citation omitted), modified on other grounds by, 801 F.2d 378 (11th Cir. 1986); see also Reddy, 2010 WL 3210842, at *5 (citation omitted). Further, "[w]hen a court analyzes the sufficiency of an indictment, it reviews the indictment as a whole and give[s] it a common sense construction." United States v. Mitchell, CRIMINAL CASE NO. 1:17-CR-122-LMM-LTW, 2019 WL 6462838, at *22 (N.D. Ga. June 25, 2019) (last alteration in original) (citation and internal marks omitted), adopted by 2019 WL 3854307, at *3 (N.D. Ga. Aug. 16, 2019).

The superseding indictment in this case provides the names of the alleged co-conspirators, the time frame of the conspiracy, and it sufficiently informs each co-conspirator of his or her specific offense conduct, as well as the overall object of the conspiracy, see generally [Doc. 126], which was "to obtain money and

[5] Decisions of the Fifth Circuit rendered before October 1, 1981, are binding precedent in the Eleventh Circuit. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

property, by means of materially false and fraudulent pretenses, representations, and promises, and by omission of material facts," [id. at 2]. The superseding indictment also tracks the statutory language of the offenses charged, informing Middleton and Wakefield of the essential elements of the offense. See [Doc. 126]. "The Eleventh Circuit has previously found that an indictment alleging such facts is sufficient," Mitchell, 2019 WL 6462838, at *23 (citing United States v. Williams, 181 F. App'x 945, 948-49 (11th Cir. 2006) (per curiam) (unpublished); United States v. Ramos, 666 F.2d 469, 474-75 (11th Cir. 1982)), and the government "need not prove that each defendant had knowledge of all details and phases of the conspiracy when the defendant knows the essential nature of the conspiracy," id. (citation omitted). Indeed, an "individual cannot escape guilt [of conspiracy] merely because . . . he [or she] played a minor role in the total scheme," and the government "does not have to prove that the defendant agreed to commit or facilitate each and every part of the substantive offense." Id. (first alteration in original) (citations and internal marks omitted). That is, "[a] defendant can be a co-conspirator even if he [or she] did not know all aspects or details of the conspiracy or all of the individuals involved, came into the conspiracy after it began and played only a minor role in the conspiracy," and "[i]t is irrelevant that particular conspirators may not have known other conspirators or may not have participated in every state of the conspiracy," since "all that the government must

allege is an agreement or common purpose to violate the law and intentional joining in this goal by conspirators." Id. (citations and internal marks omitted).

Middleton and Wakefield request that the Court order the government to file a bill of particulars outlining the "object of the single conspiracy joined by all ten defendants," [Doc. 229 at 4; Doc. 234 at 3], however; they are "not entitled to a bill of particulars with respect to information which is already available through other sources such as the [superseding] indictment and discovery," Mitchell, 2019 WL 6462838, at *19 (citations omitted); see also United States v. Jackson, CRIMINAL ACTION FILE NO. 1:16-CR-427-AT-JKL-8, 2019 WL 7842416, at *3 (N.D. Ga. Aug. 29, 2019) (citation omitted), adopted by 2019 WL 6769233, at *2 (N.D. Ga. Dec. 12, 2019). Their request for the "means and manner by which each co-defendant conspired with the other named co-defendants to accomplish the object of the charged conspiracy," [Doc. 229 at 4; Doc. 234 at 3], is likewise not a proper purpose of a bill of particulars, United States v. Baitcher, Criminal Action File No. 1:11-CR-536-SCJ-AJB, 2013 WL 1501462, at *2 (N.D. Ga. Mar. 22, 2013) (footnote and citations omitted) ("A bill of particulars may be obtained to clarify an indictment, as long as it does not seek to determine in advance the government's proof."), adopted by 2013 WL 1501454, at *1 (N.D. Ga. Apr. 11, 2013); United States v. Wimbley, Criminal No. 11-0019-WS, 2011 WL 3204539, at *2 (S.D. Ala. July 27, 2011) (citations omitted) ("Defendants are not entitled to a bill of

particulars as a . . . comprehensive preview of the [g]overnment's trial proof or theories."); United States v. Perez, No. CR 106-029, 2006 WL 1737449, at *3 (S.D. Ga. June 19, 2006) (citation omitted) ("Nor is [a bill of particulars] intended to secure for the defense the government's explanation of its theory of the case."), adopted at *1, especially since here, the superseding indictment is "very exhaustive and legally sufficient," United States v. Bickers, CRIMINAL INDICTMENT. NO. 1:18-CR-98-SCJ-LTW, 2019 WL 7559292, at *8 (N.D. Ga. Sept. 17, 2019), adopted by 2019 WL 5587050, at *7 (N.D. Ga. Oct. 30, 2019), and described in detail the object and manner and means of the alleged fraudulent scheme, as well as the role of each co-conspirator in the scheme, see [Doc. 126].

The superseding indictment provides "sufficient information about the nature of the charges to enable [Middleton and Wakefield] to prepare for trial, to avoid unfair surprise, and to enable [them] to plead double jeopardy in the event of a later prosecution for the same offense." Bickers, 2019 WL 7559292, at *8 (citations omitted). In short, Middleton and Wakefield "bear[] the burden of showing that the information requested is necessary and that [they] will be prejudiced without it so as to justify granting a bill of particulars," Jackson, 2019 WL 7842416, at *3 (citations and internal marks omitted), and they have failed to meet their burden with respect to the particulars sought by their motions.

Accordingly, Middleton and Wakefield's motions for a bill of particulars, [Docs. 229 & 234], are **DENIED**.

B. Motions to Sever, [Docs. 230, 232, & 239]

Middleton, Wakefield, and McFarland have filed nearly identical motions to sever, with each seeking a separate trial from their co-defendants. [Docs. 230, 232, & 239]. In particular, they argue that severance is warranted because "[a]dmission of otherwise inadmissible hearsay would violate [their] [d]ue [p]rocess [r]ights"; that admission of co-conspirator Quarterman's drug crimes would violate their due process rights; and that a joint trial in this case would be unfair due to the danger of the "spill over" effect. [Doc. 230 at 4-10 (emphasis omitted); Doc. 232 at 3-9 (emphasis omitted); Doc. 239 at 3-8 (emphasis omitted)]. They each also argue that their trials should be severed from any co-defendant who has made statements that directly or indirectly inculpate them, pursuant to Bruton v. United States, 391 U.S. 123 (1968). [Doc. 230 at 10; Doc. 232 at 9; Doc. 239 at 8-9].

"When multiple defendants are indicted, joined offenses must be reviewed initially under the standard set forth under Fed.R.Crim.P. 8(b)." United States v. Jones, No. CR 109-073, 2009 WL 2920894, at *1 (S.D. Ga. Sept. 11, 2009) (footnote and citation omitted). "Once Rule 8(b) has been satisfied by the allegations in the indictment, severance is governed entirely by Fed.R.Crim.P. 14, which recognizes

that even proper joinder under Rule 8(b) may prejudice a defendant or the government." Id. at *2 (citing United States v. Lane, 474 U.S. 438, 447 (1986)); see also United States v. Hersh, 297 F.3d 1233, 1241 (11th Cir. 2002). After consideration of the pleadings, the Court finds that joinder of the ten defendants in the superseding indictment was proper under Rule 8, and severance is not merited under Rule 14 on the present record.

1. ***Joinder is proper under Rule 8***

"Joinder of parties and defendants under Rule 8 is designed to promote judicial economy and efficiency." United States v. Weaver, 905 F.2d 1466, 1476 (11th Cir. 1990). "Rule 8 'is broadly construed in favor of the initial joinder.'" Id. (citation omitted); see also Zafiro v. United States, 506 U.S. 534, 537 (1993) ("There is a preference in the federal system for joint trials of defendants who are indicted together."); Hersh, 297 F.3d at 1241; United States v. Touchet, No. 3:07-cr-90-J-33HTS, 2008 WL 2025322, at *7 (M.D. Fla. May 9, 2008); United States v. Cameron, No. 06-20753-CR, 2007 WL 1696022, at *3 (S.D. Fla. June 12, 2007) (quoting United States v. Dominguez, 226 F.3d 1235, 1238 (11th Cir. 2000)), adopted at *1, aff'd in part sub nom. United States v. King, 285 F. App'x 649 (11th Cir. 2008) (per curiam) (unpublished). Indeed, Rule 8(b) "permits the joinder of [d]efendants in the same indictment if they are alleged to have participated in the same act or transaction, and the general rule is that [d]efendants indicted together should be tried together,

especially in conspiracy cases." United States v. Chavez, 584 F.3d 1354, 1359-60 (11th Cir. 2009) (citations and internal marks omitted).

Neither Wakefield, Middleton, nor McFarland have specifically argued that joinder under Rule 8(b) is improper in this case, see generally [Docs. 230, 232, & 239], and the Court finds that they were properly joined because the offenses charged in the superseding indictment involve the same series of acts or transactions pursuant to a common scheme, they share common co-conspirators alleged to have jointly committed the acts or transactions, and proof of the offenses will include testimony from some of the same witnesses, see United States v. Brooks, 270 F. App'x 847, 849 (11th Cir. 2008) (per curiam) (unpublished) (finding district court properly denied defendants' motions to sever where they were jointly indicted for the same conspiracy); Jones, 2009 WL 2920894, at *1 (joinder of defendants proper where defendants alleged to have participated in the same series of acts or transactions); United States v. Bujduveanu, No. 08-20612-CR, 2008 WL 4558696, at *1 (S.D. Fla. Oct. 10, 2008) (finding joinder under Rule 8(b) proper where defendants were jointly charged in the indictment of a single conspiracy).

2. ***Severance is not warranted under Rule 14***

Although joinder is appropriate under Rule 8, the Court still has discretion under Rule 14(a) of the Federal Rules of Criminal Procedure to sever these defendants and order separate trials if it appears that consolidation of the charges

would be prejudicial. Fed. R. Crim. P. 14(a); United States v. Kopituk, 690 F.2d 1289, 1314-15 (11th Cir. 1982). "In deciding a motion for severance, the Court must balance the right of a defendant to a fair trial against the public's interest in efficient and economic administration of justice." United States v. Denmark, No. 205CR71FTM33DNF, 2005 WL 2755987, at *2 (M.D. Fla. Oct. 25, 2005) (citation and internal marks omitted). "More specifically, the Eleventh Circuit has interpreted Rule 14 to require a [d]efendant seeking severance to demonstrate specific and compelling prejudice arising from a joint trial." Id. (citing United States v. Leavitt, 878 F.2d 1329, 1340 (11th Cir. 1989)). That is, the "prejudice standard envisioned by [R]ule 14 [] requires a showing of actual prejudice, not merely a showing that a defendant may have a better chance of acquittal in separate trials." United States v. DeLeon, No. CR 15-4268 JB, 2017 WL 3054511, at *83 (D.N.M. June 30, 2017) (citation and internal marks omitted). Middleton, Wakefield, and McFarland have not satisfied the standard to obtain severance under Rule 14.

Middleton, Wakefield, and McFarland first contend that severance is warranted because statements made by other co-conspirators, such as text messages between Quarterman and Lawson "related to [] loan applications" not involving them may be admitted during a joint trial, thereby violating their due process rights, whereas "much of this co-conspirator hearsay . . . would not be admissible" in a "separate trial from [] Quarterman and [] Lawson[.]" [Doc. 230 at

4-5; Doc. 232 at 3-5; Doc. 239 at 3-4]. The government responds that while "[n]o specific statements were identified as a part of the motions," Middleton, Wakefield, and McFarland's characterization of "these co-conspirator statements as 'inadmissible hearsay'" is simply incorrect, since "a statement is not hearsay if offered against an opposing party and 'was made by the party's coconspirator and in furtherance of the conspiracy'" and the "text messages made by the various co-conspirators to each other in furtherance of the conspiracy are strong evidence that the various defendants willingly joined in and participated in the conspiracy" and therefore, the government's "intent [] to offer them against each defendant because they are probative of guilt" render the statements "not hearsay, . . . admissible, and . . . not a basis to sever the trial." [Doc. 254 at 3 (citations omitted)].

"[S]everance is not required if some evidence is admissible against some defendants and not others and a defendant is not entitled to severance because the proof is greater against a co-defendant." United States v. Jones, No. 1:06-CR-140, 2007 WL 712420, at *4 (E.D. Tenn. Mar. 6, 2007) (citations and internal marks omitted); see also United States v. Locascio, 6 F.3d 924, 947 (2d Cir. 1993) (citations omitted) ("[J]oint trials involving defendants who are only marginally involved alongside those heavily involved are constitutionally permissible."). Pursuant to Rule 801 of the Federal Rules of Evidence, "hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence

to prove the truth of the matter asserted," however, "[a] statement that is otherwise hearsay . . . may be offered for a permissible purpose other than to prove the truth of the matter asserted," and "[a] party opponent's statement is excluded from the definition of hearsay where[t]he statement is offered against an opposing party and . . . was made by the party's coconspirator during and in furtherance of the conspiracy." DeLeon, 2017 WL 3054511, at *92-93 (citations and internal marks omitted) (citing Fed. R. Evid. 801(d)(2)).

Other than referencing text messages between Quarterman and Lawson, Middleton, Wakefield, and McFarland have not identified any specific statements they contend constitute inadmissible hearsay, see [Doc. 230 at 4; Doc. 232 at 4; Doc. 239 at 3], and "[i]t is not clear that [any] statement[s are] inadmissible," and "[w]hile [the Court] reach[es] no final decision on this record, as the issue is more properly resolved in the context of an *in limine* motion, the statement[s] appear[] to be one[s] that [amount to statements in furtherance of a conspiracy], which [are] admissible," United States v. Bennett, 485 F. Supp. 2d 508, 514 (S.D.N.Y. 2007) (citation omitted). Thus, "there is no risk of prejudice where . . . the evidence pointed to by [Middleton, Wakefield, and McFarland] would be admissible in separate trials against each defendant," since "evidence of the full nature and scope of a conspiracy is admissible even at the trial of lesser participants." United States v. Kahale, 789 F. Supp. 2d 359, 393 (E.D.N.Y. 2009) (citations and internal

marks omitted), aff'd sub nom. United States v. Graham, 477 F. App'x 818 (2d Cir. 2012) (unpublished). And, "to the extent that there exists some greater quantum of proof implicating one defendant compared to another, this fact does not alone justify severance, for differing levels of culpability and proof are inevitable in any multi-defendant trial and, . . . are insufficient grounds for separate trials." Id. (citations and internal marks omitted).

Pursuant to Rule 801(d)(2)(E), "for co-conspirator hearsay statements to be admissible, the government must show by a preponderance of the evidence that: (1) a conspiracy existed, (2) the defendant against whom the hearsay is offered was a member of the conspiracy, and (3) that the statements were made during the course and in furtherance of the conspiracy." United States v. Mays, Case No. 1:14-cr-120-3, 2015 WL 4624196, at *6 (S.D. Ohio Aug. 3, 2015) (citation and internal marks omitted). "As for the requirement that a co-conspirator statement be made 'in furtherance' of a conspiracy, [t]he touchstone of the 'in furtherance' requirement is that the statement be designed to promote the accomplishment of the conspiracy's goals." United States v. Johnson, 469 F. Supp. 3d 193, 212 (S.D.N.Y. 2019) (alteration in original) (citations and internal marks omitted). Here, each defendant is charged in Count One of the superseding indictment with conspiracy, see [Doc. 126], and "[i]n a trial involving a conspiracy, statements by a coconspirator made in furtherance of a conspiracy are not hearsay and are

admissible against all coconspirators," United States v. Borish, 452 F. Supp. 518, 525 (E.D. Pa. 1978) (citations omitted); see also Bennett, 485 F. Supp. 2d at 514 (defendant acknowledging that "acts and statements by one coconspirator in furtherance of the conspiracy are properly admissible against all the members of the conspiracy"). Therefore, the arguments for severance based on alleged inadmissible hearsay are without merit. United States v. Dowtin, No. 10 CR 657(SJ)(RML), 2012 WL 7679552, at *3 (E.D.N.Y. Nov. 20, 2012) (citation omitted) (finding that the "possibility of the introduction of evidence not directly related to [defendant] but admissible as an act of a co-conspirator in furtherance of the conspiracy does not warrant severance").

Middleton, Wakefield, and McFarland next contend that evidence that Quarterman "was arrested in connection with a drug investigation" in August 2020, which the "government may intend to admit . . . against Quarterman at a joint trial in this case, but [] would not be admissible against [them] at a separate trial," would "unduly prejudice [them]" and "would permit the jury to think that [they are] somehow involved in [] Quarterman's drug related activities." [Doc. 230 at 5-6; Doc. 232 at 5; Doc. 239 at 4-5]. In response, the government agrees that "[t]here is not currently any evidence to suggest that Wakefield, McFarland, or Middleton are involved in Quarterman's drug activities" and that if "the fact that Quarterman's phone was searched as part of a drug investigation is admitted at

trial, it would be purely for contextual [purposes] to explain why law enforcement was looking in her cell phone," since the search of her cell phone is what led to the discovery of the activities brought forth in the superseding indictment. [Doc. 254 at 3-4]. The government also asserts that it "would not argue or imply that any of the other nine defendants were connected with Quarterman's drug trafficking and would support a special instruction to this effect." [Id. at 4]. It further asserts that it may be "possible to present to the jury the fact that Quarterman's cell phone was searched without ever referencing that the search was done incident to a drug investigation" and that "[i]n all likelihood, this would be the course of action that the United States would likely take." [Id.]. Thus, the government maintains that the "drug investigation into Quarterman is not a basis to sever the trial of Wakefield, McFarland, or Middleton." [Id.]. The Court agrees.

"The Eleventh Circuit has explained that [s]everance . . . is warranted only when a defendant demonstrates that a joint trial will result in 'specific and compelling prejudice' to his [or her] defense," and "[c]ompelling prejudice occurs when the jury is unable to separately appraise the evidence as to each defendant and render a fair and impartial verdict." United States v. Pasby, CRIMINAL ACTION FILE NO. 1:16-CR-145-TWT-JKL-22, 2017 WL 10402560, at *9 (N.D. Ga. Oct. 4, 2017) (first and second alterations in original) (citations and internal marks omitted), adopted by 2018 WL 4953235, at *1 (N.D. Ga. Oct. 12, 2018). "Cautionary

instructions to the jury are presumed to adequately safeguard against prejudice." Id. (citation omitted). "Even assuming the admissibility at trial of evidence of [Quarterman's drug trafficking activities], [neither Middleton, Wakefield, nor McFarland] have . . . demonstrate[d] that the jury will not be able to compartmentalize the evidence against the various [d]efendants or apply that evidence in accordance with the jury charge, in which the court anticipates that the jury will be instructed to consider only the evidence offered against the [d]efendant in question." United States v. USPlabs, LLC, Criminal No. 3:15-CR-496-L, 2018 WL 5831478, at *15 (N.D. Tex. Nov. 7, 2018). Additionally, Middleton, Wakefield, and McFarland "have not persuaded the court that the potential prejudice they reference outweighs the [g]overnment's interest in judicial economy" or that it "should vary from the normal rule that defendants indicted together should be tried together." Id. (citation omitted).

Middleton, Wakefield, and McFarland further argue that severance is warranted because "[a]lmost all of the evidence at trial will be about the actions of Quarterman and Lawson and their decisions to recruit loan recipients, complete loan applications on their behalf, and collect 'fees' for their services," the evidence as to each of them "will largely consist of [their individual] text messages with Quarterman," but the "volume of evidence against the two lead defendants will inevitably spill over into the cases against [each of them], preventing [them] from

receiving a fair trial," and that, at least as to Middleton and Wakefield, "the familial relationship" further complicates the issue and would make it "difficult for the jury to separate the familial relationships from the charged conspiratorial relationship." [Doc. 230 at 7-9 (citation omitted); Doc. 232 at 7-8; Doc. 239 at 6-7]. However, they are "charged together with several co-[d]efendants" and the "extent of [their] actual involvement, if any, with the[] conspirac[y] is . . . a factual matter for the jury, not a basis for severance." United States v. Pavlenko, No. 11-20279-CR, 2012 WL 222928, at *2 (S.D. Fla. Jan. 25, 2012) (citation omitted). In short, the Court simply "disagrees that the risk of spill-over is too great" and "to the extent that any evidence is not pertinent to th[ese] particular [d]efendant[s], an appropriate limiting instruction to the jury can ameliorate any potential prejudice." Id. (citation omitted); see also United States v. Greenhill, CRIMINAL CASE NO. 1:18-CR-00108-MHC-JFK, 2018 WL 5659933, at *7 (N.D. Ga. Sept. 20, 2018), adopted by 2018 WL 5649898, at * 1(N.D. Ga. Oct. 31, 2018).[6]

[6] Middleton, Wakefield, and McFarland "also attach much significance to . . . the Eastern District of New York's decision in *United States v. Gallo*, 668 F. Supp. 736 (E.D.N.Y. 1987), *aff'd*, 863 F.2d 185 (2d Cir. 1998)," United States v. Abbell, 926 F. Supp. 1545, 1551-52 (S.D. Fla. 1996); see also [Doc. 230 at 8-10; Doc. 232 at 7-9; Doc. 239 at 7-8], but "[t]he facts of *Gallo* are very different from those in the instant case," since in "*Gallo*, the court was faced with a conspiracy to participate in a multi-faceted enterprise," involving "at least nine areas of illegal activity, including murder, loansharking, and extortion," whereas here, "all of the defendants were

Finally, Middleton, Wakefield, and McFarland argue that their Sixth Amendment right to cross-examine adverse witnesses would be violated if they are tried with their co-defendants because "some defendants may have made statements to the government regarding this case," though they acknowledge that "[i]t is unknown at this time if any of those statements present an issue for severance under *Bruton*[.]" [Doc. 230 at 10; Doc. 232 at 9; Doc. 239 at 8-9]. They therefore assert that "should the government produce statements by a co-defendant that inculpates [them], [their] trial should be severed from such defendant so that they have ample opportunity to cross-examine that defendant regarding the statement." [Doc. 230 at 10 (citation omitted); Doc. 232 at 9; Doc. 239 at 8-9]. The government responds that it "is not currently aware of any statements made by co-conspirators that might qualify under *Bruton*," but "if any arise (or currently exist), it is possible that at the time of trial, other defendants will have pled guilty and will be called as witnesses, mooting any possible *Bruton* issues" and that "[a]s such, the United States requests that the motion to sever pursuant to *Bruton* be denied without prejudice as moot," leaving open the "ability to re-file later should a true *Bruton* issue arise as trial approaches." [Doc. 254 at 6-7].

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allegedly working with the same purpose," Abbell, 926 F. Supp. at 1552 (citation and internal marks omitted).

"In *Bruton v. United States*, the Supreme Court held that a defendant's Confrontation Clause rights might be violated if, in a joint trial, a codefendant's statement or confession is admitted into evidence against the co-defendant, but the codefendant does not take the stand to permit the defendant's cross-examination." Jones, 2007 WL 712420, at *3 (citing Bruton, 391 U.S. at 123). Severance, therefore, "might be appropriate if the [g]overnment intends to introduce into evidence a codefendant . . . statement, if such statement expressly implicates [d]efendant and if such co-defendant does not take the stand to permit cross-examination." Id. Because neither Middleton, Wakefield, nor McFarland have "identified any specific statement or testimony that might be offered at trial that would create a problem under *Bruton*, nor ha[ve they] identified any co-defendant who made a statement or whether such defendant is going to trial," at this time, "the Court is unable to evaluate the motion and the appropriateness of any remedial efforts that could be taken at trial to avoid a *Bruton* problem," and their motions to sever based on Bruton are due to be denied at this time. Pasby, 2017 WL 10402560, at *9; see also United States v. Wilson, No. 10-60102-CR, 2010 WL 2609429, at *8 (S.D. Fla. June 5, 2010), adopted by 2010 WL 2612341, at *1 (S.D. Fla. June 25, 2010). Middleton, Wakefield, and McFarland have failed to establish compelling prejudice such that the Court should exercise its discretion and grant a severance. Accordingly, it is **RECOMMENDED** that Middleton, Wakefield, and

McFarland's motions to sever, [Docs. 230, 232, & 239], be **DENIED**, without prejudice to renew should any actual Bruton issue arise.

C. **Motions to Suppress Cell Phone Evidence, [Docs. 221 & 272]**

Lawson has filed a motion to suppress evidence, [Doc. 221], arguing that the Court should "suppress[] all evidence found on or derived from her cell phone" because of the "unnecessary delay between the warrantless seizure of her phone, the search warrant application, and the search itself," [id. at 1].[7] In her post-hearing supplemental motion to suppress, [Doc. 272], Lawson also alternatively argues that the evidence "found on or derived from the search of her cell phone" should be suppressed because the "information contained in the warrant itself was too stale to justify the issuance of a search warrant," [id. at 1]. The government opposes Lawson's motions, [Doc. 281], and maintains that it "diligently obtained a warrant for the search of [her] cell phone" and that the "probable cause in the search warrant affidavit was not stale and was sufficient for issuance of the

[7] Lawson attached to her original motion to suppress the search warrant application and the warrant that was issued on March 31, 2021, authorizing the search of the subject cell phone. See [Doc. 221-1]. Thereafter, Lawson filed a "Notice of Filing," [Doc. 244 (all caps omitted)], in which she asserted that her motion to suppress "referenced an 'Exhibit A,'" but that "the exhibit was unintentionally omitted from the filing," so she provided notice of the filing of "the same [m]otion to [s]uppress and Exhibit A," [id. at 1]. However, the exhibit was attached to her original motion, see [Doc. 221-1], so the Court will cite the original exhibit.

warrant," [id. at 7-13 (emphasis omitted)]. Lawson has filed a reply in support of her motions, [Doc. 288], and for the reasons that follow, Lawson's motions, [Docs. 221 & 272], are due to be denied.

1. Statement of Facts

On March 16, 2021, Lawson was indicted, along with nine other individuals, in the Northern District of Georgia on charges of conspiracy to commit wire fraud, wire fraud, bank fraud, mail fraud, and money laundering. See [Doc. 1]; see also (Tr. at 6, 8). Inspector Daryl Greenberg ("Insp. Greenberg") of the United States Postal Inspection Service ("USPIS"), who was the sole case agent assigned to lead the investigation of this case, testified at the evidentiary hearing regarding the relevant events of the investigation surrounding the seizure of Lawson's cell phone and subsequent application for a warrant to search it. See (Tr. at 4-64).

Insp. Greenberg testified that, following the issuance of the original indictment, he "orchestrated a ten-person arrest operation simultaneously in five different states," (Tr. at 8-9); see also (Gov't Ex. 1),[8] and on March 18, 2021, Lawson, Quarterman, Wakefield, Montgomery, Middleton, Washington, Jones, and McFarland were arrested, (Tr. at 8, 11-12, 38). Insp. Greenberg explained that

[8] Insp. Greenberg testified that he created Gov't Ex. 1, which is a chronological timeline of events, "so that [he] could accurately reflect the . . . amount of time and the activities in all the days that were in question[.]" (Tr. at 9-11, 34).

leading up to the March 18, 2021, arrests, he learned that "there were some new PPP loans in 2021," which was significant to him because up to that point, he had believed "that the activity had stopped in[] August of 2020," but since it appeared that the activity was continuing into 2021, he advised the arresting agents in the five different states "to be on [the] lookout for evidence that would show the ongoing criminal activity since it did not stop when [he] originally thought it had stopped." (Tr. at 7-8, 11); see also (Gov't Ex. 1). On the day of the arrests, Insp. Greenberg was running the command center and documenting information as it came in, as well as trying to locate two of the indicted individuals whom the agents were unable to arrest that day and taking additional steps to secure seizure warrants for four bank accounts and three vehicles. (Tr. at 12-13, 38-39); see also (Gov't Ex. 1).

Lawson was located and arrested at her residence in Houston, Texas, on the morning of March 18, 2021. (Tr. at 13; Gov't Ex. 1). During the arrest, the agents asked Lawson for her cell phone, which she provided and indicated that it was "dead," and in fact, had not been operational since around February 3, 2021, and she was then transported to a USPIS office in Houston to be interviewed. (Tr. at 13, 63).[9] On the following day, USPIS Inspector Matt Rintoul flew from Houston

[9] Law enforcement agents also asked Lawson for the password to unlock her cell phone, but she declined to provide that information. (Tr. at 36). Insp. Greenberg

to Atlanta with Lawson's cell phone and placed it into evidence, while Insp. Greenberg was still attempting to locate T. Quarterman and K. Quarterman, both of whom were eventually arrested that day, as well as serving the four bank account seizure warrants. (Tr. at 14, 36; Gov't Ex. 1). Thereafter, on March 21, 2021, Insp. Greenberg started documenting and entering information into the case management system from all of the arrests, and on the following day, he had Lawson's phone transferred into his custody, and he was "made aware that [] Quarterman was currently trying to move funds out of certain bank accounts," so he then "had to go down to Lovejoy . . . and pick up her jail phone calls from the weekend" because he wanted to know who she "was talking to trying to have [her] money moved while she was still currently in custody." (Tr. at 14-16); see also (Gov't Ex. 1). He also became aware that "money [was] actively trying to be moved out of . . . several [of] Lawson's accounts" and "trying to locate and lock

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testified that because he had already seen text messages to Lawson that were on Quarterman's cell phone, he was interested in seizing Lawson's phone because he believed it to be "an integral part of the scheme" and that once he discovered that there were additional fraudulent PPP loan applications in 2021, he instructed the agents effectuating Lawson's arrest to seize her cell phone, but that he would not have told them to do so if he had not discovered that there were additional fraudulent loan applications in 2021 because he believed that "all the information from 2020 would have been stale" and possibly not even on that phone since, in his experience, "criminals tend to go through cell phones fairly quickly." (Tr. at 54-57).

down th[e] money became a primary concern . . . during [this] time." (Tr. at 15, 20-23, 32-33).

On March 23, 2021, Insp. Greenberg began working on the search warrant application for Lawson's cell phone, and he continued to work on the affidavit in support of the application, including making multiple revisions based on input he received from the prosecutors assigned to the case, until it was sent to a magistrate judge for review on March 30, 2021. (Tr. at 17-19, 24-28; Gov't Ex. 1); see also (Tr. at 29, 32-33, 58-60). During this same time, Insp. Greenberg also was working on various case-related issues, including completing case management documentation; coordinating with multiple banks to seize funds; preparing for and testifying at Quarterman's detention hearing; reviewing grand jury subpoena responses from certain banks, which led to the discovery that Lawson was withdrawing funds from accounts; and working on additional seizure warrants. (Tr. at 17-21, 23-29, 32-33, 61-62; Gov't Ex. 1). Insp. Greenberg's computer also crashed during this time, and he had to image his old laptop and reinstall all of the information onto his new laptop. (Tr. at 25; Gov't Ex. 1). He also testified that during this time, he had approximately eight to ten other cases and "items [came] up that [he] had to deal with and take time away from this case to deal with . . . on the other cases." (Tr. at 27).

On March 30, 2021, the application for a search warrant for Lawson's phone was submitted to the Honorable Christopher C. Bly ("Judge Bly"), United States Magistrate Judge for the Northern District of Georgia, for review, and on March 31, 2021, Judge Bly signed the search warrant. (Tr. at 27-28, 39; Gov't Ex. 1); see also [Doc. 221-1].[10] In the affidavit submitted with the search warrant application, Insp. Greenberg first described the cell phone to be searched and his qualifications, [Doc. 221-1 at 2-3 ¶¶ 1-6], and then he summarized the alleged fraudulent scheme, including the activities that had taken place between July and August of 2020, and explained that an "[e]xamination of Quarterman's cell phone revealed hundreds of pages of texts between Lawson and Quarterman during this time frame as they both sent and received information needed to apply for the EIDL and PPP loans and discuss[ed] other aspects of the scheme," [id. at 6-11 ¶¶ 20-36 (all caps omitted)]. Additionally, Insp. Greenberg reported, in relevant part:

> 37. On March 16, 2021, Lawson, Quarterman, T. Quarterman, Wakefield, Washington, Jones, McFarland, K. Quarterman, Middleton, and Montgomery were indicted . . . . On March 18 and 19, 2021, Postal Inspectors conducted arrest operations on all 10 [d]efendants.
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> 38. Montgomery was arrested . . . and consented to a post-*Miranda* video recorded interview. . . . [He] also provided written consent to search his phone. Montgomery confirmed exchanging text messages with Quarterman as recently as February 23, 2021 in which

[10] Insp. Greenberg also submitted additional applications for seizure warrants for Judge Bly's review, which were issued on March 31, 2021. (Tr. at 50-51).

Quarterman and Montgomery were discussing a second PPP loan. The most recent text string includes Quarterman stating ". . . yours is still pending but I'll let you know when it goes through." Montgomery replied, "Thanks for the update."

39. Additionally, recorded post-*Miranda* interviews of Middleton and Wakefield revealed that Quarterman had recently approached both of them about submitting a second PPP loan application in the same manner as the PPP loans submitted in July/August 2020. Thus, it appears that Quarterman was still engaged in PPP loan fraud as recent as February or March 2021.

40. On March 18, 2021, Lawson was arrested at her Houston, TX residence. When Lawson was arrested, her cell phone was seized pending law enforcement obtaining a search warrant for it. Lawson and the subject phone were transported to the USPIS office in Houston where Lawson consented to a post-*Miranda* video recorded interview.

41. Upon completion of the interview, the subject phone was bagged into evidence . . . . The evidence bag was then secured and transported to the USPIS office in Atlanta, GA. . . .

44. Starting on February 8 through February 19, 2021, the [American Airlines Credit Union ("AACU")] account[, of which Lawson is the sole owner,] received four wire/branch deposits from multiple states totaling $25,000. One such wire deposit was made on February 19, 2021 from "Gwendolyn Scott" in the amount of $7000. This deposit amount is consistent with the amount that Lawson and Quarterman were charging for PPP loans. A search of the federal database that contains the names of all businesses/individuals that have received PPP loans reveals that an individual named Gwendolyn Scott applied for and received a PPP loan on February 14, 2021 in the amount of $20,757. PPP loan records also show Gwendolyn Scott received approval for a PPP loan in the same amount on August 6, 2020.

. . . .

47. On February 1, 2021, [Lawson's JP Morgan Chase Bank account xxx9283 ("JPMC 9283")] began receiving nine CashAPP and Zelle

> wire deposits from multiple people mostly totaling $25,000. These unexplained deposits were consistent in amounts and quantity as the "fees" split with Quarterman as part of the EIDL and PPP scheme. One such wire deposit was made to the JPMC 9283 acc[ount] on February 17, 2021 from "Clarence Singleton" in the amount of $3500 and another on February 18, 2021 for $500. A search of the federal database that contains the names of all businesses/individuals that have received PPP loans reveals that an individual named Clarence Singleton received a PPP loan on February 13, 2021 in the amount of $20,660.
>
> 48. PPP loan records also show Clarence Singleton received a PPP loan in the same amount on July 29, 2020. Two days after receiving a PPP loan, according to bank records, Clarence Singleton deposited $3500 in the JPMC 9283 account of Lawson and deposited another $500 on July 31.

[Id. at 12-15 ¶¶ 37-41, 44, 47-48 (all caps omitted)]; see also (Tr. at 40, 43-49). Insp. Greenberg explained that, based "upon the July to August 2020 modus operandi of Lawson and Quarterman, given the same or similar activity shown in Lawson's February 2021 bank records by people who ha[d] recently received PPP loans," he believed Lawson "was still obtaining fraudulent PPP loans in February 2021 for some of the same co-conspirators from July/August 2020 and other[s]." [Doc. 221-1 at 15 ¶ 49 (all caps omitted)]. He further stated that, upon reviewing bank records, he had seen "multiple people send Lawson money directly" and that "[g]iven that it appear[ed] that Lawson continued to engage in fraudulent PPP loans through, at least, late February 2021 (and given that text messaging was the primary communication medium for recruiting co-conspirators and passing along information in July/August 2020), there [was] probable cause to believe Lawson

used the subject phone to further the fraudulent loan scheme right up until the day of her arrest." [Id. at 15-16 ¶ 51 (all caps omitted)]. Finally, Insp. Greenberg averred that cell phones have the capability to store text messages, emails, photographs, videos, and contacts, among other information, and that electronic devices such as cell phones can store this type of information "for long periods of time." [Id. at 16 ¶ 53, 19 ¶ 55].

Between the time agents seized Lawson's cell phone on March 18, 2021, until Judge Bly issued the warrant on March 31, 2021, no request was made for the return of Lawson's cell phone. (Tr. at 28). Insp. Greenberg testified that, "based upon the prior activity of July through August of 2020," as well as the information that "the exact same activity was occurring on new loans in January, February, and into March of 2021," and "the cell phones were integral in the first phase back in 2020 of how coconspirators not only talked about the scheme back and forth but how pictures and personal identifying information and pictures of driver's license[s] and bank statements were sent," he "believed that the same method of operation that was occurring in 2020 was occurring again in 2021 utilizing the same means." (Tr. at 29). He testified that a search of Lawson's cell phone pursuant to the warrant resulted in the discovery of incriminating evidence. (Tr. at 31).

Lawson moves to suppress the evidence obtained from the search of her cell phone, [Docs. 221 & 272], which the government opposes, [Doc. 281], and Lawson has filed a reply in support of her motions, [Doc. 288]. For the reasons that follow, Lawson's motions to suppress, [Docs. 221 & 272], are due to be denied.

2. Analysis

a. *Delay in Seeking the Search Warrant*

Lawson, relying on United States v. Mitchell, 565 F.3d 1347 (11th Cir. 2009) (per curiam), argues that the delay between the seizure of her cell phone on March 18, 2021, and the issuance of the search warrant on March 31, 2021, was unreasonable and that the "evidence obtained as a result of the search warrant was [therefore] in violation of [] [her] Fourth Amendment rights and must be suppressed." [Doc. 221 at 2-5; Doc. 272 at 4-8]. In response, the government maintains that "[t]here are several factors that a reviewing court should use to determine the reasonableness of the delay," and that based on these factors, including that the "duration of the delay in obtaining the search warrant attributable to the [g]overnment was only 12 days, and Insp[.] Greenberg, the sole agent assigned to the case, diligently pursued the investigation," Lawson's "motion[s] to suppress should be denied" because Insp. Greenberg "did not unreasonably delay in obtaining the search warrant." [Doc. 281 at 7-8, 10].

"The Fourth Amendment provides that [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." United States v. Brantley, 1:17-cr-77-WSD, 2017 WL 5988833, at *2 (N.D. Ga. Dec. 4, 2017) (alteration in original) (citation and internal marks omitted). "The Fourth Amendment generally requires that a warrant be issued upon probable cause before a search is conducted," but "[t]here are circumstances . . . that justify a search without a warrant, including searches incident to arrest." Id. (citations omitted). However, "[a] warrant is generally required before . . . a search [of a cell phone], even when a cell phone is seized incident to arrest," and "[a] seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment's prohibition on unreasonable searches." Id. (second and third alterations in original) (citations and internal marks omitted). "Thus, an initially lawful seizure may become 'unconstitutional if the police act with unreasonable delay in securing a warrant.'" Id. (quoting Mitchell, 565 F.3d at 1350).

Lawson has not challenged the initial seizure of her cell phone, see [Docs. 221 & 272]; rather, she contends that the delay between the seizure of the phone on March 18, 2021, and the issuance of the warrant on March 31, 2021, was too long, rendering the search pursuant to the warrant unconstitutional, [Doc. 221 at

2-5; Doc. 272 at 4-8]. "In determining whether a delay is unreasonable, the [C]ourt considers, on a case-by-case basis, all the facts and circumstances presented," and the Eleventh Circuit "has identified several factors highly relevant to this inquiry: first, the significance of the interference with the person's possessory interest, . . . second, the duration of the delay, . . . third, whether or not the person consented to the seizure, . . . and fourth, the government's legitimate interest in holding the property as evidence," and "[a]pplying these criteria here, the Court concludes the delay was not unreasonable." Brantley, 2017 WL 5988833, at *2 (second, third, and fourth alterations in original) (citation and internal marks omitted) (quoting United States v. Laist, 702 F.3d 608, 613-14 (11th Cir. 2012)); see also United States v. Shaw, 531 F. App'x 946, 949-50 (11th Cir. 2013) (per curiam) (unpublished) (citations omitted).

The subject cell phone was seized from Lawson during her arrest on federal charges of conspiracy to commit wire fraud, wire fraud, bank fraud, mail fraud, and money laundering, [Doc. 1]; (Tr. at 13, 63).[11] At the time of her arrest, Lawson indicated that the phone was dead and not operational, (Tr. at 13, 63), so she "was not deprived of access to and use of the seized cellular telephone[]," and she also

[11] Although Lawson did not consent to the seizure of her cell phone, she has not challenged the seizure, and "the seizure was lawful," which "favors the [g]overnment." Brantley, 2017 WL 5988833, at *3.

never requested the return of the cell phone "during the period of delay," which "undermines [her] claim that [her] Fourth Amendment rights were impacted," Brantley, 2017 WL 5988833, at *2-3 (citations omitted); (Tr. at 28); see also Thomas v. United States, 775 F. App'x 477, 490 (11th Cir. 2019) (per curiam) (unpublished) (citations omitted) (considering fact that defendant never requested return of seized desktop during the 33 days it took to secure a search warrant as a factor in diminishing defendant's possessory interest in the desktop); United States v. Morgan, 713 F. App'x 829, 831 (11th Cir. 2017) (per curiam) (unpublished) (citing United States v. Johns, 469 U.S. 478, 487 (1985)) (explaining that because there was no evidence that defendant ever asked for his cell phone to be returned, his interest in the cell phone was diminished). Thus, Lawson's "possessory interest in the cellphone was significantly diminished." United States v. Turner, Case No. 8:18-cr-80-T-02JSS, 2019 WL 2287967, at *4 (M.D. Fla. May 29, 2019). "Of course, even when a defendant's possessory interest in a [cell phone] is diminished, the government still must act diligently to obtain a search warrant," and "[s]everal facts bear on the government's diligence here." Thomas, 775 F. App'x at 490 (citation omitted).

First, the twelve-day duration of the delay was "relatively short." Brantley, 2017 WL 5988833, at *3.[12] "Though the Eleventh Circuit noted in [Mitchell, 565 F.3d at 1352-53,] that three weeks could be too long, the court also recognized justifiable delay where some overriding circumstances arose, necessitating the diversion of law enforcement personnel to another case, or where the resources of law enforcement are simply overwhelmed by the nature of a particular investigation, so that a delay that might otherwise be unduly long would be regarded as reasonable." Turner, 2019 WL 2287967, at *3 (internal marks omitted). Indeed, "[t]he same court, for example, upheld a twenty-five day delay where the defendant's possessory interest in the seized property was diminished and the agents involved were 'extremely busy.'" Id. (quoting Laist, 702 F.3d at 616-17). "The same considerations compel a finding of reasonableness here." Id.

In particular, Insp. Greenberg, the sole case agent assigned to lead the subject investigation, testified at the evidentiary hearing that following the seizure of the phone on Thursday, March 18, 2021, another agent flew back to Atlanta from Houston with the phone on Friday, March 19, but Insp. Greenberg was busy at the

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[12] The proper period in determining whether the delay was reasonable is from March 18, 2021, the date of the seizure of the subject cell phone, to March 30, 2021, the date the warrant application was submitted. See Thomas, 775 F. App'x at 488 (citation omitted); see also United States v. Fernandez, CASE NO. 19-10022-CR-MARTINEZ/SNOW, 2020 WL 6470295, at *4 n.2 (S.D. Fla. Oct. 12, 2020), adopted by 2020 WL 6449190, at *1 (S.D. Fla. Nov. 2, 2020).

time still trying to locate and coordinate the arrest of two co-conspirators while also serving four bank seizure warrants related to the case, among other things. (Tr. at 6, 8-9, 14; Gov't Ex. 1). He also explained that on that Sunday, he was busy entering all of the information from the ten-person arrests in five different states into the case management system, and that Lawson's cell phone was not transferred into his custody until that following Monday, March 22, at which time he also began listening to Quarterman's jail recordings and preparing to testify at her detention hearing. (Tr. at 8, 14-16; Gov't Ex. 1). Insp. Greenberg began working on the search warrant for Lawson's cell phone on Tuesday, March 23, 2021; however, he was also still coordinating with multiple banks regarding the seizure of funds and executing seizure warrants for bank accounts and vehicles, which had become particularly pressing after he learned that both Quarterman and Lawson allegedly were actively attempting to move funds from their accounts. (Tr. at 15-17, 20-23, 32-33; Gov't Ex. 1). Insp. Greenberg continued to work on the affidavit for the search warrant for Lawson's cell phone while also working on other matters related to this case, as well as putting out "small fires" in some of his other cases, and he sent the first draft of the affidavit to the Assistant United States Attorney ("AUSA") for review on March 25; he made revisions to it based on input from the AUSA on March 26 and added additional information learned from interviews and recently obtained bank records and sent the draft

back to the AUSA for review on March 29; he made further revisions and finalized the draft and sent it back to the AUSA on March 30, at which time the application was presented to Judge Bly, who signed the search warrant on March 31. (Tr. at 24-28; Gov't Ex. 1).

"[T]he government has demonstrated compelling justification for the delay in seeking and obtaining the search warrant." United States v. Todd, CR 416-305, 2017 WL 1197849, at *12 (S.D. Ga. Feb. 10, 2017), adopted by 2017 WL 1172113, at *1 (S.D. Ga. Mar. 29, 2017). Indeed, Insp. Greenberg "testified to diligently working . . . on preparing the search warrant affidavit," despite having to deal with other urgent matters related to this case, and in his other cases, and "[i]n light of these circumstances, the delay in presenting the warrant application is reasonable." Id. Despite Lawson's reliance on Mitchell to support her contention that the delay in this case was unreasonable, see [Doc. 221 at 3-4; Doc. 272 at 6-8; Doc. 288 at 1-3], this "case is distinguishable from Mitchell, in which the Eleventh Circuit held a twenty-one day delay in obtaining a warrant to search a hard drive seized from a home computer was unreasonable under the circumstances," Todd, 2017 WL 1197849, at *13 (citation omitted).

In Mitchell, "law enforcement executed a 'knock and talk' warrant at the residence of the defendant, who at that time was a 'possible target' in a child pornography investigation," and while at the residence, "agents seized a hard

drive from the defendant's computer acting on probable cause that the drive contained evidence of child pornography." United States v. Covington, CRIMINAL ACTION FILE NO. 1:16-CR-145-TWT-JKL-15, 2017 WL 10410076, at *7 (N.D. Ga. Oct. 5, 2017) (citation omitted), adopted by 2018 WL 5016499, at *1 (N.D. Ga. Oct. 16, 2018). Subsequently, the "agent in Mitchell attended a two-week training program which he could have delayed, and postponed applying for a warrant because he felt there was no need to get a search warrant until he returned" and he therefore "did nothing to prepare the warrant during the two and one-half days between the seizure of the hard drive and his departure for the training program." Todd, 2017 WL 1197849, at *13 (alterations, citation, and internal marks omitted). "In sum, the Eleventh Circuit found [n]o effort was made to obtain a warrant within a reasonable time because law enforcement officers simply believed that there was no rush." Id. (alteration in original) (citation and internal marks omitted).

"The circumstances in Mitchell simply led to a different consideration of facts under circumstances different from those in this case." Brantley, 2017 WL 5988833, at *3. In fact, "the Eleventh Circuit emphasized that the test requires applying a rule of reasonableness that is dependent on all of the circumstances" and "[l]ooking at all of the circumstances surrounding the [p]hone [w]arrant, it does not run afoul of Mitchell." United States v. Boyzo-Mondragon, CASE NO.

1:19-CR-00115-TWT-LTW, 2021 WL 1381155, at *10 (N.D. Ga. Feb. 5, 2021) (citation and internal marks omitted), adopted by 2021 WL 1379238, at *1 (N.D. Ga. Apr. 9, 2021), and adopted sub nom. United States v. Mateo, CRIMINAL FILE NO. 1:19-CR-115-2-TWT, 2021 WL 1379369, at *1 (N.D. Ga. Apr. 9, 2021). In contrast to the circumstances present in Mitchell, Lawson "was not merely a 'possible target' in a government investigation" as she "had been indicted on [federal] charges of [] conspiracy," among other charges, Covington, 2017 WL 10410076, at *7, and Insp. Greenberg "did not just sit on his hands," and "it is clear that the delay in this case was not the result of complete abdication of his work or failure to see any urgency," Thomas, 775 F. App'x at 491 (citation and internal marks omitted). "The standard is within a reasonable time," and "[u]nder all the circumstances, [Insp. Greenberg] met that standard here." United States v. Hill, Case No. 5:18cr8-RH, 2018 WL 3352658, at *4 (N.D. Fla. July 9, 2018).

Furthermore, the "fourth factor strongly weighs in the [g]overnment's favor, because it had a legitimate interest in holding the properly as evidence." Brantley, 2017 WL 5988833, at *3 (citation and internal marks omitted). Lawson was charged with conspiracy to commit wire fraud, wire fraud, bank fraud, mail fraud, and money laundering, see [Doc. 1]; see also [Doc. 126], and Insp. Greenberg testified that cell phones "were integral in the first phase back in 2020 of how coconspirators not only talked about the scheme back and forth but how pictures

and personal identifying information and pictures of driver's license[s] and bank statements were sent back and forth via text messaging and e-mails on cell phones, as well as [he] saw that money was being transferred through mobile applications on cell phones" and that he "saw and had every reason to believe the exact same activity was occurring on new loans in January, February, and into March of 2021" and that the coconspirators were "utilizing the same means," (Tr. at 29). He also testified that Lawson was considered "the head of the snake" in what was a "complex" scheme "showing almost 250 individuals involved" and that law enforcement agents therefore had a "legitimate interest in holding [Lawson's] cell phone as evidence[.]" (Tr. at 29-31). Thus, the "government [] had a strong interest in retaining the phone[], given the nature of the charges in this case[.]" Covington, 2017 WL 10410076, at *8. In sum, "[a]pplying the *Laist* factors to the record before the Court, the Court concludes that the time period between law enforcement's seizure of [Lawson's cell phone] and its obtaining a search warrant was not so unreasonable to justify suppression." Id.; see also Fernandez, 2020 WL 6470295, at *5 (finding that, after "[e]valuation of the[Laist] factors [], . . . the [d]efendant's possessory interest in the [device] was minimal, the delay was only moderate and [the a]gent['s] efforts to prepare and present the warrant application were diligent" and that "[d]efendant's Fourth Amendment rights were not violated by the 17-day delay . . . in obtaining the [s]earch [w]arrant"). Accordingly, Lawson's

motions to suppress cell phone evidence, [Docs. 221 & 272], are due to be denied on this basis.

b. *Staleness*

In her post-hearing supplemental motion to suppress, Lawson argues for the first time that "the information in the search warrant affidavit was too stale to justify the search of [her] phone." [Doc. 272 at 8]. In particular, Lawson argues that because the affidavit "contains information about text messages allegedly sent by [] Quarterman to others in February, 2021," but "no further allegations about any phone calls or text messages sent to or from [] Lawson" and only "contains allegations about deposits received into [] Lawson's bank accounts that the government alleges are consistent with the 'fees' [] Lawson and [] Quarterman charged to others for helping with the PPP and EIDL loans," the "affidavit does not contain any information to support a finding that it is likely that [] Lawson's phone will still have evidence of the specified crime on it," since "[t]here's no reference to phone records, or text messages that were more current than August of 2020." [Id. at 10]. The government responds that Lawson presents "a new argument that was not in [her] original motion at the time that the evidentiary hearing was held" and that her "motion supplement with regard to staleness should be denied as untimely" for this reason. [Doc. 281 at 11 & n.3]. The government also responds that even if the Court considers this argument, the

"affidavit presented historical facts along with current facts to demonstrate probable cause that evidence relevant to the investigation would be found in [Lawson's] cell phone" and that the "probable cause outlined in [Insp.] Greenberg's application was not stale and was sufficient for issuing of the search warrant." [Id. at 12-13]. In her reply brief, Lawson maintains that while "[i]t is true that this issue was not raised in [her] initial motion to suppress," this Court "has the inherent authority to allow [her] to raise [the] issue . . . at this time," especially since the "issue of staleness is one that is decided from reviewing the four corners of the search warrant affidavit and does not require an evidentiary hearing." [Doc. 288 at 5-6 (footnote omitted)]. While the Court "agrees that [Lawson] has not properly raised [this issue] . . . as a basis for suppression," it will put "aside the untimeliness of [Lawson's] challenge to the warrant," as it finds her argument that information contained in the search warrant affidavit was stale "is without merit." Covington, 2017 WL 10410076, at *7.

The Eleventh Circuit has explained judicial review of the sufficiency of a search warrant as follows:

> When called upon by law enforcement officials to determine the legitimacy of search warrants and their supporting affidavits, issuing magistrates and reviewing courts alike must strike a delicate balance between constitutional guarantees against excessive intrusions into areas of individual freedom and the [g]overnment's need to access and to secure relevant evidence in criminal prosecutions. In particular, issuing magistrates are given the unenviable task of making "firing line" decisions that attempt to encourage availment of

> the warrant process while simultaneously striving to protect citizens from unwarranted governmental interference. In recognition of the difficulty inherent in discharging this responsibility, reviewing courts lend substantial deference to an issuing magistrate's probable cause determinations.

United States v. Miller, 24 F.3d 1357, 1363 (11th Cir. 1994). "The Fourth Amendment requires that a search warrant be issued only when there is probable cause to believe that an offense has been committed and that evidence exists at the place for which the warrant is requested." United States v. Betancourt, 734 F.2d 750, 754 (11th Cir. 1984) (citing Zurcher v. The Stanford Daily, 436 U.S. 547, 558 (1978)); see also United States v. Cadet, Criminal Action Nos. 1:11-CR-00522-WBH-LTW, 1:11-CR-00113-WBH-LTW, 2013 WL 504892, at *4 (N.D. Ga. Jan. 16, 2013) (citation omitted), adopted by 2013 WL 504815, at *1 (N.D. Ga. Feb. 8, 2013). That is, "[p]robable cause to search a residence requires some nexus between the premises and the alleged crime." United States v. Joseph, 709 F.3d 1082, 1100 (11th Cir. 2013) (citation and internal marks omitted). "The same reasoning applies to the instant search warrant in determining whether the affidavit establishes a nexus between the contents of the cellular telephone and the [crimes] for which [Lawson] was arrested." United States v. Coleman, CRIMINAL CASE NO. 1:18-CR-00484-ELR-JFK, 2020 WL 5229042, at *12 (N.D. Ga. Jan. 14, 2020), adopted by 2020 WL 2538931, at *1-2 (N.D. Ga. May 18, 2020). "The affidavit need not establish direct observation of use of the cellular telephone to facilitate the criminal conduct;

instead, the 'fair probability' that the contents of the cellular telephone may contain evidence of the crime may be established from the affiant's expectation, based on prior experience and the specific circumstances of the alleged crime[.]" Id. (alteration in original) (citations and internal marks omitted).

"Courts reviewing the legitimacy of search warrants should not interpret supporting affidavits in a hypertechnical manner[.]" Miller, 24 F.3d at 1361 (citation omitted). Instead, "a realistic and commonsense approach should be employed so as to encourage recourse to the warrant process and to promote the high level of deference traditionally given to magistrates in their probable cause determinations." Id. (citation omitted); see also United States v. McCullough, Criminal Indictment No. 1:11-CR-136-JEC/AJB-01, 2012 WL 11799871, at *13 (N.D. Ga. Oct. 9, 2012), adopted by 2014 WL 3955556, at *2 (N.D. Ga. Aug. 13, 2014). "Furthermore, '[t]he fact than an innocent explanation may be consistent with the facts alleged . . . does not negate probable cause.'" United States v. Sharp, Civil Action File No. 1:14-cr-229-TCB, 2015 WL 4641537, at *14 (N.D. Ga. Aug. 4, 2015) (alterations in original) (quoting United States v. Fama, 758 F.2d 834, 838 (2d Cir. 1985)), adopted at *5; see also Adams v. Williams, 407 U.S. 143, 149 (1972) (citation omitted).

The Supreme Court has recognized that "[c]ell phones have become important tools in facilitating coordination and communication among members

of criminal enterprises, and can provide valuable incriminating information about [] criminals." Riley v. California, 573 U.S. 373, 401 (2014). "Indeed, it takes no special expertise for a judge to infer that information related to an active criminal enterprise may be contained on a cell phone." United States v. Kendricks, CRIMINAL ACTION FILE NO. 1:15-CR-400-MHC-AJB, 2016 WL 5952743, at *7 (N.D. Ga. Oct. 13, 2016) (citations omitted), aff'd, 723 F. App'x 950 (11th Cir. 2018) (per curiam) (unpublished). Considering the totality of these circumstances, the Court finds that there was a fair probability that evidence of the crime would be found in Lawson's cell phone. United States v. Lopez, 649 F.3d 1222, 1245 (11th Cir. 2011) (citation omitted).

Contrary to Lawson's contention, [Doc. 272 at 8-11], the information provided in Insp. Greenberg's affidavit was not stale, see [Doc. 221-1]. "For probable cause to exist . . ., the information supporting [] the government's application for a search warrant must be timely, for probable cause must exist when the magistrate judge issues the search warrant." United States v. Harris, 20 F.3d 445, 450 (11th Cir. 1994) (citations omitted); see also United States v. Sanders, No. 1:12-cr-373-WSD-ECS, 2013 WL 3938518, at *2 (N.D. Ga. July 30, 2013) (citations omitted); United States v. Bushay, 859 F. Supp. 2d 1335, 1378 (N.D. Ga. 2012), adopted at 1355 (citations omitted). "There is no particular rule or time limit for when information becomes stale." United States v. Bervaldi, 226 F.3d 1256,

1265 (11th Cir. 2000) (citations omitted). Instead, "[t]o evaluate staleness claims, [the Court] look[s] at the unique facts of each case and may consider the maturity of the information, the nature of the suspected crime (discrete crimes or ongoing conspiracy), habits of the accused, character of the items sought, and nature and function of the premises to be searched." United States v. Deering, 296 F. App'x 894, 898 (11th Cir. 2008) (per curiam) (unpublished) (citation and internal marks omitted); see also United States v. Rojas-Coyotl, Criminal Action No. 1:13-cr-0128-AT-AJB, 2014 WL 1908674, at *5 (N.D. Ga. May 13, 2014) (citation omitted), adopted at *1. "[W]here an affidavit recites a mere isolated violation then it is not unreasonable to believe that probable cause quickly dwindles with the passage of time"; on the other hand, "if an affidavit recites activity indicating protracted or continuous conduct, time is of less significance." United States v. Bemka Corp., 368 F. App'x 941, 943 (11th Cir. 2010) (per curiam) (unpublished) (alteration in original) (citations and internal marks omitted).

In his affidavit, Insp. Greenberg detailed the alleged conspiracy, the participants, and how the scheme operated, including that the scheme largely operated via the exchange of text messages and photos over cellular telephones, as well as the exchange of funds via mobile payment applications from July through August 2020, including that "[e]xamination of Quarterman's cell phone revealed hundreds of pages of texts between Lawson and Quarterman during this

time frame as they both sent and received information needed to apply for the EIDL and PPP loans and discuss[ed] other aspects of the scheme." [Doc. 221-1 at 6-11 ¶¶ 20-36 (all caps omitted)]. Insp. Greenberg then detailed additional information learned through post-indictment interviews, as well as from an analysis of Lawson's bank records, including that Quarterman continued to exchange text messages with other co-conspirators regarding submitting additional PPP loan applications in February and March 2021 and that Lawson received wired funds into accounts solely owned by her in February 2021 in amounts that were consistent with the amounts she and Quarterman were charging for PPP loans and consistent with activity that took place in 2020. [Id. at 12 ¶¶ 37-39, 13-15 ¶¶ 42-48]. Insp. Greenberg also explained that cell phones stored text messages, e-mails, photos, videos, and other information, and that this information could be stored for "long periods of time." [Id. at 16 ¶ 53a., 19 ¶ 55]. He therefore concluded that, "[b]ased upon the July to August modus operandi of Lawson and Quarterman, given the same or similar activity shown in Lawson's February 2021 bank records by people who ha[d] recently received PPP loans," Lawson "was still obtaining fraudulent PPP loans in February 2021 for some of the same co-conspirators from July/August 2020 and other[s]," and that through bank records, he had seen "multiple people send Lawson money directly" and "[g]iven that it appear[ed] that Lawson continued to engage in fraudulent PPP loans

through, at least, late February 2021 (and given that text messaging was the primary communication medium for recruiting co-conspirators and passing along information in July/August 2020), there [was] probable cause to believe Lawson used the subject phone to further the fraudulent loan scheme right up until the day of her arrest." [Id. at 15-16 ¶¶ 49, 51 (all caps omitted)].

The Court is persuaded that the ongoing nature of the alleged fraud, facilitated through electronic communications, together with the nature of the property being searched, "overcomes any alleged staleness in the information in the affidavit." United States v. Acosta, 807 F. Supp. 2d 1154, 1228 (N.D. Ga. 2011); see also United States v. Soviravong, CRIMINAL ACTION NO. 1:19-cr-146-AT-CMS, 2019 WL 7906186, at *5 (N.D. Ga. Dec. 2, 2019) (citations omitted) ("In cases involving digital media, courts have found that much longer periods of time than the affidavits at issue in this case did not render information stale."), adopted by 2020 WL 709284, at *1 (N.D. Ga. Feb. 12, 2020); United States v. Sadiki-Yisrael, CRIMINAL ACTION FILE NO. 1:16-CR-145-TWT-JKL-3, 2018 WL 5091914, at *6 (N.D. Ga. May 24, 2018) (citation omitted) (finding "the nature of the evidence sought in th[e] warrant—including computer and digital evidence—weigh[ed] against a finding of staleness"), adopted by 2018 WL 5085687, at *1 (N.D. Ga. Oct. 18, 2018); Sanders, 2013 WL 3938518, at *8 (alterations in original) (citation omitted) ("'Although most of the information contained in the affidavit referred

to events which took place over two years before [the federal agent] applied for the warrant, the affidavit nonetheless alleged a longstanding and protracted criminal conspiracy . . . . Because the affidavit alleged ongoing activity and a continuing relationship between the coconspirators, the information was not fatally stale.'"); United States v. Miller, Criminal Action No. 4:11-CR-0044-RLV-WEJ, 2012 WL 1606043, at *5 (N.D. Ga. Mar. 26, 2012) (rejecting defendant's argument that because the most recent event cited in agent's affidavit occurred five months prior to the date the warrant was issued, the affidavit contained stale information, given the ongoing nature of the crime), adopted by 2012 WL 1610129, at *1 (N.D. Ga. May 7, 2012); United States v. Coon, No. 10-CR-110A, 2011 WL 1871165, at *3 (W.D.N.Y. May 16, 2011) (citations omitted) (explaining that "many courts have suggested that the staleness issue in the context of digital evidence is somewhat unique, and the passage of time does not necessarily render the evidence stale"). In short, "the nature of the criminal activity being investigated supported a finding of timeliness" as "[t]his was not a search for ephemeral evidence of a single discrete criminal act," but rather, this "was an ongoing financial conspiracy" and "[c]ommon sense suggests that these things are not so easily dissipated especially given the continual nature of the conspiracy." United States v. Kellogg, Criminal Action No. 1:12-CR-383-1-CAP, 2013 WL 3991956, at *16 (N.D. Ga. Aug. 1, 2013). "The events in the affidavit did not require a finding

of staleness," id., and therefore, Lawson's staleness argument is without merit. Accordingly, it is **RECOMMENDED** that Lawson's motions to suppress, [Docs. 221 & 272], be **DENIED** as to the search of her cell phone.

III. CONCLUSION

For the foregoing reasons, Middleton and Wakefield's motions for a bill of particulars, [Docs. 229 & 234], are **DENIED**; it is **RECOMMENDED** that Middleton, Wakefield, and McFarland's motions to sever, [Docs. 230, 232, & 239], and Lawson's motion to suppress and supplemental motion to suppress cell phone evidence, [Docs. 221 & 272], be **DENIED**; and Wakefield, Middleton, and McFarland's motions to suppress statements, [Docs. 231, 235, & 238], are deemed to have been abandoned, and the Clerk is therefore **DIRECTED** to terminate these motions.[13]

IT IS SO ORDERED, RECOMMENDED, and **DIRECTED** this 2nd day of February, 2022.

Russell G. Vineyard
RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE

[13] The motion to dismiss the indictment due to selective prosecution, [Doc. 228], if perfected, will be addressed in a separate Report and Recommendation after rulings on the pending objection, [Doc. 291], to the order denying the motion to compel discovery, [Doc. 278], and supplemental motion to compel discovery, [Doc. 294].