

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

Case No. 1:21-cr-00069

v.

Hon. Jane M. Beckering
United States District Judge

DAVID KURBANOV,
Defendant.

_____ /

DEFENDANT’S SENTENCING MEMORANDUM

On March 3, 2022, this Court will sentence David Kurbanov on his convictions for conspiracy to commit wire fraud and conspiracy to commit money laundering. The sentencing guidelines as calculated by the United States Probation Department call for an offense level of 23, and criminal history category II, for a range of 51 to 63 months. Mr. Kurbanov lodges one legal objection to the two-level enhancement for an offense involving laundering money by sophisticated means under USSG §2S1.1(b)(3). The probation officer bases this enhancement on Mr. Kurbanov’s creation of “fictitious entities” to complete and conceal the offense, and on his attempt to wire the illegal funds overseas. Those facts do not support the enhancement for sophisticated means, however, because (1) the businesses that received funds were legitimate, not “fictitious” entities even though they were used to facilitate this crime, and (2) Mr. Kurbanov did attempt to move funds overseas, but did so to invest the money, not to conceal it.

BACKGROUND

Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020 as a result of the COVID-19 pandemic, in order to provide financial assistance to individual citizens and businesses affected by the pandemic. (PSR ¶ 28). The Paycheck Protection Program (PPP) was part of the CARES Act, and provided forgivable loans to small businesses to cover expenses and to keep their employees employed and paid. (PSR ¶ 28). To obtain a PPP loan, a business had to submit an application, and verify that the business met certain criteria for eligibility, which included submitting the business's average monthly payroll expenses and the number of employees. Those figures determined the amount of funds the business could receive from a PPP loan. (PSR ¶ 29).

Mr. Kurbanov established Kurbanov Communications, LLC and In A Minute Entertainment, LLC in 2015. Kurbanov Communications distributed cellular devices, and In A Minute Entertainment's hosted musical events, or at least attempted to do so. (PSR ¶¶ 61, 63). Both businesses operated before the establishment of the PPP program, and were not created for the purpose of defrauding the program. (PSR ¶¶ 41, 42). In June 2020, Mr. Kurbanov applied for a PPP loan for In A Minute Entertainment, stating on the application that the company had 52 employees, with a monthly payroll of \$317,877. (PSR ¶ 46). This was untrue, as Mr. Kurbanov had no more than three employees at the time. As a result of Mr. Kurbanov's false statement, Mr. Kurbanov received a PPP loan for \$794,692 to cover the company's expenses. (PSR ¶ 46). Mr. Kurbanov also applied for a PPP loan for Kurbanov Communications, stating that the company had 37 employees, with a monthly payroll of \$281,150. (PSR ¶ 47). This was also untrue, and Mr. Kurbanov received a PPP loan for \$700,375. (PSR ¶ 47).

Once in receipt of the funds, Mr. Kurbanov and his accomplices distributed the funds to family members and friends, using checks falsely labeled “payroll,” in addition to spending a portion of the funds on legal fees (unrelated to his defense), jewelry, and travel expenses. (PSR ¶ 48). Mr. Kurbanov also attempted to wire \$500,000 to a bank account in England in order to invest the funds in what appears from the undersigned perspective to be a Ponzi scheme, but the transfer was unsuccessful because Mr. Kurbanov sent the money to the wrong account. (PSR ¶ 64). Mr. Kurbanov was unaware of the nefarious nature of the investment and was fortunate that he attempted to wire the funds to the wrong account, leading it to be rejected. He did not make any further attempts at transferring the funds overseas.

ARGUMENT

The Probation Officer recommends that Mr. Kurbanov receive a two-level enhancement for sophisticated laundering under USSG §2S1.1(b)(3) because he “created fictitious entities and attempted to transfer some of the laundered funds to an offshore account.” (PSR ¶ 82). USSG §2S1.1 provides that “sophisticated laundering” is “complex or intricate offense conduct pertaining to the execution or concealment of the 18 U.S.C. § 1956 offense” and “typically involves the use of fictitious entities; shell corporations, two or more levels (i.e. layering) of transactions, transportation, transfers, or transmissions, involving criminally derived funds that were intended to appear legitimate; or offshore financial accounts.” USSG §2S1.1(b)(3), cmt. 5. Although those activities (fictitious entities and offshore accounts) could be considered sophisticated laundering in some cases, here, they are not because (1) Mr. Kurbanov did not “create fictitious entities” for the purpose of concealing and disguising the proceeds of the PPP loan and (2) the attempted use of an offshore account in this case was not “sophisticated laundering.”

I. Mr. Kurbanov Did Not Create Fictitious Entities.

The presentence report states that the sophisticated laundering enhancement applies because Mr. Kurbanov “created fictitious entities and attempted to transfer some of the laundered funds to an offshore account.” (PSR ¶ 82.) As an initial matter, Mr. Kurbanov’s money laundering conviction is based on concealing the proceeds of the fraud as “payroll,” not using fictitious entities or overseas accounts. (PSR ¶ 48.) Mr. Kurbanov established Kurbanov Communications and In A Minute Entertainment in 2015 for legitimate purposes, and those companies had been in business long before PPP loans existed. (PSR ¶ 65.) While those companies were not entitled to disaster relief in 2020, because they either were no longer active, or had no employees, or both, they were still registered and had previously been ongoing concerns before they were used to commit fraud. Mr. Kurbanov created “fictitious” employees and revenue within his entities – not the entities themselves – and did so to commit the fraud, not money laundering. (PSR ¶¶ 42-43.) It was only after he committed the fraud through his entities, that Mr. Kurbanov and others committed money laundering by concealing the proceeds as “payroll,” which does not rise to “sophisticated money laundering.”

In *United States v. Maddux*, the district court held that the sophisticated laundering enhancement did not apply where the defendant sold untaxed cigarettes directly to consumers through several companies, but disguised the nature of the companies to credit card merchant vendors as part of a scheme to avoid the attention of government officials and law enforcement, and operated overseas in order to circumvent the United States’ rules on selling and shipping untaxed cigarettes. No. 14-20-DLB-EBA, 2016 U.S. Dist. LEXIS 111926, at *14 (E.D. Ky. Aug. 23, 2016). The district court held that the enhancement did not apply because, although the defendant disguised the nature of the cigarette-selling businesses by telling vendors that the

company sold glass and auto parts, the businesses were operational, and in the defendant's name or his wife's name, who was also his business partner. The district court further held that the defendant "never attempted to hide money or to 'clean' otherwise dirty money, and that:

"[a]lthough he sent some money overseas, it was for purchasing cigarettes and not to disguise or otherwise make the money difficult to trace; moreover, there was no evidence that Maddux held any money overseas himself. There was only one level of transfer that was intended to make the money seem like something it was not, and that was so the companies could permit their customers to use credit cards. If what he did amounted to sophisticated money laundering nearly all money laundering would be sophisticated, rendering the enhancement meaningless." *Id.* at *14.

Here, the facts are similar to those in *Maddux*. Mr. Kurbanov provided false information about real entities that were in operation at one time, but did not satisfy the eligibility requirements for receiving PPP loans at the time of application. He disguised the nature of his businesses, which were registered in his name. Further, there was "only one level of transfer that was intended to make the money seem like something it was not," which was Mr. Kurbanov's labeling the funds as "payroll" to make it appear legitimate.

Further, even if Mr. Kurbanov had created entities to commit the fraud, that same conduct likely could not be the basis for money laundering charges, much less sophisticated laundering. See, e.g., *United States v. Santos*, 553 U.S. 507 (2008), superseded by statute in part (explaining merger issues arise in any case in which the conduct to be charged as "specified unlawful activity" under § 1956 consists primarily of one or more financial or fraud offenses, and in which the financial and money laundering offenses are so closely connected with each other that there is no clear delineation between the underlying financial crime and the money laundering offense).

II. Mr. Kurbanov's Failed Attempt to Wire Funds Overseas Does Not Constitute Sophisticated Money Laundering.

Mr. Kurbanov attempted to wire funds overseas to a European bank account in order to invest the money, but the transfer was unsuccessful because Mr. Kurbanov sent the money to the “Euro” account, instead of the “Dollar” account, and the money was returned. (PSR ¶ 64). He did not make any additional attempts to transfer the money overseas. The nature of Mr. Kurbanov’s attempted investment was to invest funds in a Standby Letter of Credit (SBLC) program run by one of Mr. Kurbanov’s co-defendants. The SBLC program attempted to gain investors, and promised to return the funds to the investors with a profit within 90 days. (PSR ¶ 39). It is unclear how the funds would be invested, or how they would create a profit. Mr. Kurbanov attempted to transfer \$500,000 overseas in order to invest in the program. (PSR ¶ 64). His naive attempt to invest into a likely Ponzi scheme, which continuously recruited investors so that it could create the appearance of profit, through an offshore account does not constitute sophisticated money laundering, because he did not do so to conceal the funds. (PSR ¶ 51.) Indeed, nothing about Mr. Kurbanov’s attempted investment could be called sophisticated as there was intent to conceal or disguise or layer the transactions. See, e.g., *United States v. Vela-Salinas*, 677 F. App’x 224, 231 (6th Cir. 2017) (enhancement applied where scheme involved three or four layers of laundering, and cash from drug sales was converted into used vehicles, which were converted back into cash, which was deposited into bank accounts, to create the appearance of legitimate used-car sales transactions).

CONCLUSION

Mr. Kurbanov respectfully requests that this Court grant his objection and decline to apply the two-level enhancement for sophisticated laundering.

Respectfully submitted,

Dated: February 24, 2022

s/Matthew G. Borgula
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