

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
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KAREN NICHOLAS : NO. 15-346-4

MEMORANDUM

Bartle J.

March 29, 2016

Defendant Karen Nicholas ("Nicholas") is charged in eight counts of a multicount indictment naming four additional defendants and two unindicted coconspirators. Before the court is her motion to dismiss Count Twenty-Seven which charges her with money laundering in violation of 18 U.S.C. § 1957. This section provides in relevant part:

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).¹

Section 1957(f)(1) defines "monetary transaction" as "the deposit, withdrawal, transfer, or exchange . . . of funds or a monetary instrument [including a check] by, through, or to a financial institution" Under § 1957(f)(2), "criminally

1. Subsection (d)(1) provides that "the circumstances referred to in subsection (a)" include "that the offense under this section takes place in the United States" There is no dispute that any offense charged here occurred in the United States.

derived property" means "any property constituting, or derived from, proceeds obtained from a criminal offense."

Count Twenty-Seven recites that Nicholas was the Chief Executive Officer of Educational Advancement Alliance ("EAA"), a nonprofit organization founded by codefendant Congressman Chaka Fattah, Sr. ("Fattah"). Nicholas, at one time, had served on Fattah's staff.

EAA for years organized an annual Fattah Conference on Higher Education. Financial support was obtained from charitable grants and federal funds. In December 2011, Nicholas contacted the National Oceanic and Atmospheric Administration ("NOAA") for a grant for a conference to be held in Philadelphia in February 2012. Because she had missed a deadline and after further wire communications with NOAA, Nicholas emailed NOAA that the 2012 conference would now take place from October 19 through October 21, 2012. She further stated that any grant would be used for that purpose. According to Count Twenty-Seven, that those statements were false. No such conference was being planned or was ever held. Nonetheless, NOAA approved a \$50,000 grant for the conference and on or about March 14, 2013, EAA received the requested funds.

Count Twenty-Seven alleges that on or about March 13, 2013, the day before EAA received the money from NOAA, but "in anticipation of the NOAA funds," Nicholas wrote a check to

Gregory Naylor's political consulting firm, Sydney Lei & Associates ("SLA") for \$20,000. Naylor, an unindicted coconspirator, was a longtime personal friend of Fattah, a former Fattah staffer, and founder of SLA.

According to the indictment, Nicholas "knowingly engaged in and attempted to engage in and wilfully caused a monetary transaction affecting interstate commerce in criminally derived property of a value greater than \$10,000. . ." and such property was derived from "a specified unlawful activity, that is a scheme to commit wire fraud, in violation of Title 18, United States Code, Section 1343." The monetary transaction was the \$20,000 check issued by Nicholas on March 13, 2013 payable to Naylor's SLA and drawn on EAA funds.

Nicholas argues, as one of the grounds to dismiss Count Twenty-Seven, that no money laundering crime occurred because Count Twenty-Seven alleges that the monetary transaction in issue took place on or about March 13, 2013, before the anticipated NOAA funds were received on or about March 14, 2013. Thus the question presented is whether a monetary transaction, here the issuance of the \$20,000 check to SLA from EAA, can be a violation of § 1957 when no NOAA money, the criminally derived property, was in the possession of Nicholas or EAA at the time of the monetary transaction.

We must first look at the words of the statute and give them their plain meaning. See Landreth Timber Co. v. Landreth, 471 U.S. 681, 685, 687 (1985). If the language is clear and unambiguous, our inquiry ends. Wilson v. U.S. Parole Comm'n, 193 F.3d 195, 198 (3d Cir. 1998). Section 1957(f)(2), as noted above, defines the term "criminally derived property" as "any property constituting, or derived from, proceeds obtained from a criminal offense." The operative word is obtained, a verb used in the past tense. Consequently, the proceeds, as a result of the wire fraud offense, must already have been received or in the possession of Nicholas or EAA at the time the check to SLA was issued. The statute simply does not say that "criminally derived property," that is proceeds, includes funds to be obtained sometime in the future or anticipated as a result of unlawful activity.

The decision of the Tenth Circuit in United States v. Johnson, 971 F.2d 562 (10th Cir. 1992), is in accord. The Court explained, "both the plain language of § 1957 and the legislative history suggest that Congress targeted only those transactions occurring after proceeds have been obtained from the underlying unlawful activity." Id. at 569. It reiterated, "Section 1957 appears to be drafted to proscribe certain transactions in proceeds that have already been obtained by an individual from an underlying criminal offense." Id. at 570.

Our Court of Appeals has not directly ruled on this issue. Nonetheless, in United States v. Conley, 37 F.3d 970, 980 (3d Cir. 1994), an action charging money laundering under § 1957 in connection with a gambling conspiracy, the Court commented, “[w]e find that the money, once collected from the poker machines, became ‘proceeds of specified unlawful activity’ within the meaning of the money laundering statute.” (Emphasis added).

The Government does not directly challenge our reading of § 1957. Instead, it argues simply that Count Twenty-Seven stands because it alleges that the unlawful activity, that is the wire fraud, was completed or a phase of the wire fraud was completed prior to the monetary transaction in issue. While we do not quarrel with the Government’s view concerning the need for the prior completion of the unlawful activity or a phase of it, that is only a part of what § 1957 requires.

The indictment states that the underlying wire fraud offense was completed in 2012. The indictment further states that the monetary transaction occurred on or about March 13, 2013 but that the proceeds derived from the wire fraud were not obtained by Nicholas or EAA until on or about March 14, 2013. The Government cannot and does not now dispute this chronology of events. An essential element of the crime of money laundering is the occurrence of the monetary transaction not only after the completion of the wire fraud or a phase of it but also after the

proceeds as a result of the wire fraud have been obtained. See 18 U.S.C. § 1957. Here the indictment contains "a plain, concise, and definite written statement" that the monetary transaction occurred before the proceeds were in the possession of Nicholas and EAA. See Fed. R. Crim. P. 7(c)(1).

Section 1957 is clear and unambiguous. It does not criminalize the conduct alleged since the plain meaning of the statute requires that the monetary transaction must occur after the proceeds have been obtained. Since the Government charges that the monetary transaction, that is the issuance of the \$20,000 check to SLA, took place before the NOAA grant, that is the criminally derived property, was obtained, Count Twenty-Seven charging Karen Nicholas with money laundering must be dismissed.²

2. Since the court is dismissing Count Twenty-Seven for the reasons stated above, we do not consider the alternative argument of Nicholas that the Count fails because the alleged monetary transaction is part of the predicate wire fraud scheme.

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ORDER

AND NOW, this 29th day of March, 2016, for the reasons set forth in the foregoing Memorandum, it is hereby ORDERED that the motion of defendant Karen Nicholas to dismiss Count Twenty-Seven of the Indictment is GRANTED.

BY THE COURT:

/s/ Harvey Bartle III _____
J.