

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

UNITED STATES OF AMERICA,	:	CRIMINAL ACTION
	:	
v.	:	
	:	No. 17-197
RICHARD BOYLE,	:	

MEMORANDUM

PRATTER, J.

SEPTEMBER 3, 2019

After a two-week trial, a jury convicted Richard Boyle of eleven counts of bank robbery, ten counts of using a firearm in commission of those robberies, and ten counts of money laundering. Mr. Boyle filed two post-trial motions: (1) a motion to dismiss the indictment and (2) a motion for judgment of acquittal or a new trial pursuant to Federal Rules of Criminal Procedure 29 and 33. For the reasons outlined in this Memorandum, Mr. Boyle’s motions are denied.

BACKGROUND

Mr. Boyle was charged by indictment on April 12, 2017 with bank robbery in violation of 18 U.S.C. § 2113(a), using a firearm in commission of bank robbery in violation of 18 U.S.C. § 924(c)(1), and money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i). In total, 31 counts were brought against Mr. Boyle. The charges stemmed from a string of 11 bank robberies that were committed by the “Straw Hat Bandit” between 2012 and 2016. The trial lasted two weeks and the jury convicted Mr. Boyle of all 31 counts on March 15, 2019.

In very large part, the Government’s case relied on circumstantial evidence. In total, the Government presented 70 witnesses and offered hundreds of pages of documents into evidence over the course of the two-week trial. The Government presented several types of evidence,

including: (1) the Straw Hat Bandit's pattern of conduct, (2) Mr. Boyle's pattern during a previous string of bank robberies, (3) Mr. Boyle's finances, (4) his communications with family members, (5) documentary evidence, and (6) evidence regarding Mr. Boyle's telephone cell site location information as compared with various locations relevant to this prosecution.

I. The Straw Hat Bandit's Pattern

The Government presented evidence at trial that demonstrated that many of the 2012 to 2016 robberies followed a signature pattern. The Government presented testimony of bank employees and accompanying video of the bank robber at various locations. This evidence demonstrated that the robber: (1) took precautions to cover himself to hide his physical features fully and protect against any potential forensic evidence;¹ (2) placed diversionary calls shortly before the robberies to distract police;² (3) conducted "takeover robberies" and forced bank employees to open vaults and ATM machines;³ (4) robbed banks on holidays or at the end of the business week when the bank had additional cash on hand;⁴ (5) layered his clothing so that he could quickly discard the outer layer after the robbery;⁵ (6) parked a distance away so a getaway car would not be visible on security cameras,⁶ and; (7) was familiar with bank protocols and procedures.⁷

¹ See e.g., March 6, 2019 Tr. 37:23–38:5; 115:25–116:6; March 7, 2019 Tr. 119:7–120:6; March 12, 2019 Tr. 37:4–38:4.

² See e.g., March 6, 2019 Tr. 221:2–225:3; March 8, 2019 Tr. 119:3–122:15; March 12, 2019 Tr. 16:21–17:16.

³ March 11, 2019 Tr. 52:10–22.

⁴ See e.g., March 6, 2019 Tr. 80:2–24; March 12, 2019 Tr. 16:21–25; 36:9–14.

⁵ See e.g., March 5, 2019 Tr. 172:17–173:10; March 7, 2019 Tr. 194:13–195:2; March 11, 2019 Tr. 116:14–117:9;

⁶ See e.g., March 5, 2019 Tr. 147:25–148:13; March 7, 2019 Tr. 9:22–11:8.

⁷ See e.g., March 4, 2019 Tr. 54:18–55:1; March 5, 2019 Tr. 80:14–81:6; March 6, 2019 Tr. 110:1–111:6.

II. Mr. Boyle's 2008 Conviction for Bank Robbery

In 2008, Mr. Boyle pleaded guilty in Bucks County to eight counts of bank robbery and related charges. March 4, 2019 Tr. 187:8–10. He was sentenced to 3.5 to 10 years in prison. Mr. Boyle stole approximately \$100,000 from the banks during those previous robberies. Mr. Boyle admitted that he committed the robberies because he was unemployed, needed money, and was about to be evicted. *Id.* at 191:4–192:8. Mr. Boyle further admitted that he used the proceeds from those bank robberies to pay medical bills, make car payments, pay tuition, and buy photography equipment. *Id.* During those robberies, Mr. Boyle often wore a hat, jacket, and tie and he always covered his face. *Id.* at 189:15–190:9. Mr. Boyle wore multiple layers of clothing so he could remove the outer layer after the robbery. *Id.* at 186:1–7. He also left his phone at home. *Id.* at 180:24–181:20. In 2008, Mr. Boyle was caught because he parked too close to the bank and witnesses saw him running from the bank and getting into his car. *Id.* at 180:9–15.

The Straw Hat Bandit used a very similar pattern during the course of his robberies, as discussed *supra*. However, the Straw Hat Bandit had a practice of parking his vehicle outside the view of security cameras.

III. Mr. Boyle's Finances

In large part, the Government focused on Mr. Boyle's finances and demonstrated that Mr. Boyle spent large sums of money shortly after each robbery. The Government went through Mr. Boyle's known sources of income and demonstrated that he spent \$300,000 more than what was available from those known sources. March 12, 2019 Tr. 157:15–176:13. The Government's summary financial witness, Eric Hiser, testified that there was a "spike" in Mr. Boyle's spending after each robbery. *Id.* at 161:13–176:13. For example, Mr. Hiser testified that \$44,000 was stolen from First Priority Bank on January 2, 2014. *Id.* at 168:23–25. Following the robbery,

Mr. Boyle paid for his daughter's tuition, made purchases at a Guitar Center, made cash deposits, bought drone photography equipment, paid rent, and bought fine jewelry. *Id.* at 169:1–170:23. In total, Mr. Boyle spent over \$80,000 in the months after the robbery. *Id.* at 171:2–3. The Government also demonstrated that Mr. Boyle did not have any other sources of income during that time period that could explain the sudden influx of cash.

IV. Mr. Boyle's Communications with Family Members

The Government also presented evidence of communications between Mr. Boyle and his family members. For example, Mr. Boyle texted with his daughter Abigail regarding the financial hold on her account at Temple University. *Id.* at 34:18–22. The First Priority Bank was robbed on January 2, 2014. That morning, Mr. Boyle asked to borrow his daughter's car. *Id.* at 35:12–19. After the time of the robbery, Mr. Boyle texted his wife that he had the money for their daughter's tuition. *Id.* at 33:5–34:5. The following Monday, Mr. Boyle paid his daughter's tuition with \$5,000 in cash, March 7, 2019 Tr. 150:16–151:20, and then texted his daughter to tell her that her tuition was paid in full. March 12, 2019 Tr. 35:20–36:2.

Mr. Boyle also texted family members on a number of occasions claiming to have won large sums of money at area casinos. *Id.* at 24:8–35:6; 47:5–48:5. The Government presented witnesses from those casinos who testified that it would be virtually impossible for a person to win large sums of money without the casino's knowledge. March 6, 2019 Tr. 173:8–21. Mr. Boyle, who testified on his own behalf, testified that he won between \$7,000 to \$10,000 in total at the casinos he frequented, March 13, 2019 Tr. 63:9–21, which is far less than the casino records show. March 6, 2019 Tr. 11:4–16:9. Mr. Boyle also admitted that he sometimes lied to his family members about where he was getting large sums of money. March 13, 2019 Tr. 86:10–23.

The Government also introduced a text message that Mr. Boyle sent to his daughter Haley. The text message included an image and the caption “The Straw Hat Bandit.” *Id.* at 45:5–8.

V. Documentary Evidence

The Government presented additional documentary evidence tying Mr. Boyle to the robberies. This evidence included purchases on Amazon internet accounts of an earpiece with a clip-on attachment and green latex gloves, both of which types of items were later seen on the bank robber. March 11, 2019 Tr. 110:23–112:22; 114:4–115:5; 117:14–19. The Government demonstrated that Mr. Boyle ran his own credit card through his business’ Square credit card processing account. March 12, 2019 Tr. 156:17–157:14. The Government posited that Mr. Boyle wanted to launder the proceeds of the bank robberies through his legitimate business and conceal the actual source of the money.

VI. Cell Site Location Information⁸

Lastly, the Government presented testimony from Detective Anthony Vega, who is an expert in cell site analysis. March 8, 2019 Tr. 156:1–17; 159:25–160:6. The records indicated that Mr. Boyle’s phone was off or not in use during most of the robberies. *Id.* at 168:15–169:24. However, Mr. Boyle’s phone was used a short distance away from the Colonial American Bank approximately 15 minutes after the robbery. *Id.* at 170:2–172:3. Mr. Boyle’s phone was also

⁸ In September 2018, the Court ruled that Mr. Boyle’s cell site location information was admissible even though it was gathered without a warrant. *See United States v. Boyle*, No. 17-197, 2018 WL 4635783 (E.D. Pa. Sept. 27, 2018). The Supreme Court of the United States ruled in *Carpenter v. U.S.*, 138 S. Ct. 2206 (2018), that law enforcement must obtain a warrant before compelling a wireless carrier to turn over a subscriber’s cell site location information. *Id.* at 2221. Although a warrant was not obtained in this case, the Court concluded that the agents’ actions were in good faith and the exclusionary rule should not apply. *Boyle*, 2018 WL 4635783, at *3.

used in the vicinity of the Target where a TracFone⁹ was purchased. *Id.* at 182:24–185:2. That TracFone was later used to place diversionary calls before the PNC Bank robbery in Upper Dublin. *Id.* at 183:5–10; 190:25–191:20. This same TracFone was activated at the Warminster Branch of the Bucks County Free Library during the time when Mr. Boyle was at the library. *Id.* at 185:5–14. A witness testified that at the library Mr. Boyle asked whether there was a way to use library computers without using a library card. *Id.* at 85:2–12. A “guest” user was logged into the public computer at the time the TracFone was activated, and that computer was off camera. *Id.* at Tr. 106:4–108:13; 185:5–14. Nothing about Mr. Boyle’s cell site location information was exculpatory because the records indicate that the phone was either off, not in use, or, on one occasion, was actually located near the bank that was robbed.

DISCUSSION

Mr. Boyle filed two post-trial motions. The Court will first consider Mr. Boyle’s motion to dismiss the indictment, which the Court denies because it fails as a matter of law. The Court will then turn to the motion for judgment of acquittal or a new trial, which the Court denies because the Court concludes that the Rule 404(b) evidence was admissible, and, additionally, there was sufficient evidence to sustain the jury’s verdict.

I. Motion to Dismiss the Indictment

After the jury found him guilty on all counts, Mr. Boyle filed a motion to dismiss the indictment. He alleges that the prosecutor knowingly elicited false testimony before the grand jury and improperly offered evidence of Mr. Boyle’s prior convictions. Mr. Boyle contends that this resulted in an indictment and ultimate conviction that violated his Fifth Amendment right to due process. According to Mr. Boyle, the evidence that proves this prosecutorial misconduct

⁹ A TracFone is a prepaid phone where the purchaser buys the phone and the minutes separately. March 8, 2019 Tr. 66:14–23. Assuming the purchaser pays in cash, the TracFone cannot be tied back to the purchaser.

was only discovered during the trial, thus making it impossible to raise these allegations earlier. Mr. Boyle's motion fails as a matter of law.

In *United States v. Mechanik*, 475 U.S. 66 (1986), the Supreme Court of the United States considered a motion to dismiss the grand jury indictment after the defendants had been convicted at trial. The Court concluded that any error was harmless considering the subsequent finding of guilt by the petit jury. *Id.* at 70 (holding "that the supervening jury verdict made reversal of the conviction and dismissal of the indictment inappropriate"). Indeed, "the petit jury's subsequent guilty verdict [meant] not only that there was probable cause to believe that the defendants were guilty as charged, but also that they [were] in fact guilty as charged beyond a reasonable doubt." *Id.* The guilty verdict further meant that "any error in the grand jury proceeding connected with the charging decision was harmless beyond a reasonable doubt." *Id.*

In this case, Mr. Boyle contends that Detective Jeffrey McGee testified falsely that (1) Mr. Boyle activated the TracFone at the Bucks County library, (2) Mr. Boyle purchased the TracFone, (3) no witness could identify Mr. Boyle as the robber, (4) there was no eyewitness who saw the robber, and (5) banks do not typically have outside cameras. Mr. Boyle also argues that the Government erred when it presented evidence of Mr. Boyle's past convictions for bank robbery to the grand jury, which the Court also admitted during the trial. First, there is no evidence that Detective McGee lied to the grand jury. The discrepancies Mr. Boyle highlights are merely differences in how to interpret the evidence. Second, all of this testimony and evidence was admissible and was presented during trial. Mr. Boyle cross-examined Detective McGee on each of these points thoroughly. The jury carefully considered both Detective McGee's testimony and the counterarguments posed by Mr. Boyle and concluded that Mr. Boyle was guilty.

Even if Mr. Boyle is correct as to any alleged error during the grand jury proceedings, that error was rendered harmless by Mr. Boyle's subsequent conviction. *See United States v. Console*, 13 F.3d 641, 672 (3d Cir. 1993) (citing *Mechanik*, 475 U.S. at 70–72) (“Even assuming [prosecutorial misconduct] occurred, however, the petit jury’s guilty verdict rendered any prosecutorial misconduct before the indicting grand jury harmless.”). For these reasons, Mr. Boyle’s motion to dismiss the indictment is denied.

II. Motion for Judgment of Acquittal or for New Trial

Mr. Boyle also seeks relief in the form of a judgment of acquittal or a new trial. Mr. Boyle argues that he is entitled to a new trial because the Court allowed the Government to admit evidence of Mr. Boyle’s prior bank robbery convictions. Mr. Boyle also argues that the Court should grant a judgment of acquittal on the grounds that there was insufficient evidence to sustain the jury’s verdict. The Court denies both arguments.

A. Motion for New Trial

Under Federal Rule of Criminal Procedure 33, “the court may vacate any judgment and grant a new trial if the interest of justice so requires.” On May 1, 2018, this Court granted the Government’s motion *in limine* to introduce evidence of other acts pursuant to Federal Rule of Evidence 404(b). *See* May 1, 2018 Order (Doc. No. 39).¹⁰ Mr. Boyle argues that the Court erred when it allowed the Government to introduce evidence of his prior bank robberies pursuant to Rule 404(b). The Court concludes that the 404(b) evidence was admissible and the motion for a new trial is denied.

Federal Rule of Evidence 404(b) states that “[e]vidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the

¹⁰ The Court amended this Order on March 4, 2019, but the substance of the Order and the ruling remained the same. *See* March 4, 2019 Order (Doc. No. 83).

person acted in accordance with the character.” Fed. R. Evid. 404(b)(1). However, this “evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” *Id.* at 404(b)(2). In order to be admissible under Rule 404(b), the evidence must satisfy four requirements: “(1) the other-acts evidence must be proffered for a non-propensity purpose; (2) that evidence must be relevant to the identified non-propensity purpose; (3) its probative value must not be substantially outweighed by its potential for causing unfair prejudice to the defendant; and (4) if requested, the other-acts evidence must be accompanied by a limiting instruction.” *United States v. Repak*, 852 F.3d 230, 241 (3d Cir. 2017) (citing *Huddleston v. United States*, 485 U.S. 681, 691 (1988); *United States v. Caldwell*, 760 F.3d 267, 277–78 (3d Cir. 2014)). The party seeking to admit the evidence bears the burden of demonstrating its admissibility. *Repak*, 852 F.3d at 241.

The Court of Appeals for the Third Circuit has stated that Rule 404(b) is both inclusionary, *see United States v. Green*, 617 F.3d 233, 244 (3d Cir. 2010), and exclusionary. *See Caldwell*, 617 F.3d at 276. The court has recently clarified that “Rule 404(b) is a rule of exclusion, meaning that it excludes evidence unless the proponent can demonstrate its admissibility, but it is also ‘inclusive’ in that it does not limit the non-propensity purposes for which evidence can be admitted.” *Repak*, 852 F.3d at 241. “Regardless of whether Rule 404(b) is one of ‘inclusion’ or ‘exclusion,’ it is clear . . . that it is a rule of *precision*, requiring a proponent to articulate a specific, non-prohibited purpose for the evidence, which in practical terms, means a purpose other than propensity.” *United States v. York*, 165 F. Supp. 3d 267, 269 (E.D. Pa. 2015) (emphasis in original).

1. *Non-Propensity Purpose for Evidence*

At the first step of the analysis, the Government and the district court must identify a “non-propensity purpose for introducing” Mr. Boyle’s prior convictions. *Repak*, 852 F.3d at 242. The Court of Appeals for the Third Circuit has “repeatedly emphasized that Rule 404(b) must be applied with careful precision, and that evidence of a defendant’s prior bad acts is not to be admitted unless both the proponent and the District Court plainly identify a proper, non-propensity purpose for its admission.” *Caldwell*, 760 F.3d at 274. “When evaluating whether a non-propensity purpose is at issue, we ‘consider the material issues and facts the government must prove to obtain a conviction.’” *United States v. Brown*, 765 F.3d 278, 291 (3d Cir. 2014) (quoting *Caldwell*, 760 F.3d at 276) (other quotations omitted). There were distinct, non-propensity purposes to admit Mr. Boyle’s prior convictions for bank robbery in this case because the 404(b) evidence demonstrated motive, preparation, and identity.¹¹

2. *Relevance*

The Court must next consider whether the evidence was relevant. “To be relevant, proffered evidence must fit into ‘a chain of inferences—a chain that connects the evidence to a proper purpose, no link of which is a forbidden propensity inference.’” *Repak*, 852 F.3d at 243 (quoting *United States v. Davis*, 726 F.3d 434, 442 (3d Cir. 2013)). The Court of Appeals for the Third Circuit requires “that this chain be articulated with careful precision because, even when a non-propensity purpose is ‘at issue’ in a case, the evidence offered may be completely irrelevant to that purpose, or relevant only in an impermissible way.” *Caldwell*, 760 F.3d at 281. The 404(b) evidence was relevant for its proper purpose in this case.

¹¹ The Government also argues that the 404(b) evidence is admissible because it demonstrates Mr. Boyle’s intent and plan to use the proceeds from the bank robberies to pay bills, make car payments, pay tuition, and buy photography equipment. The Court does not believe that these stated purposes are so unique in the context of this case to have warranted admission of Mr. Boyle’s prior crimes on these bases alone.

First, the prior convictions demonstrate a motive to avoid eviction from the Boyle family home. At the sentencing hearing for the 2008 bank robberies, Mr. Boyle stated that he committed those robberies because he was at risk of being evicted from his home. March 4, 2019 Tr. 191:4–192:8. In this case, Mr. Boyle was again threatened with eviction shortly before the first robbery. Stanislas Falkowski, Mr. Boyle’s landlord, began eviction proceedings because Mr. Boyle fell behind on the rent. *Id.* at 137:15–139:7. As of April 13, 2012, Mr. Boyle owed \$8,413.52 in unpaid back rent. *Id.* at 139:8–10. On June 1 of that year, Mr. Boyle was served with a notice that he and his family had ten days to vacate the property. *Id.* at 142:16–22. On June 8, the robbery occurred at the Colonial American Bank in Horsham, Pennsylvania. The next day, Mr. Boyle paid his landlord \$9,000 in back rent. *Id.* 143:15–25. The Government argued at length that Mr. Boyle had the same motive (i.e., was under the exact same set of back rent/eviction pressures) as he was when he robbed banks in 2007 and 2008.

Second, the prior acts demonstrate Mr. Boyle’s preparation. Mr. Boyle learned a significant lesson from his earlier robberies—he was identified as the bank robber in 2008 because he had parked his car too close to the bank. This evidence was relevant, argued the Government, because Mr. Boyle took precautions this time around not to repeat the same mistake. During this series of robberies, Mr. Boyle parked well outside the view of security cameras. On the security videos, the bank robber can be seen making his way quickly through the parking lots, hedges, and off camera before the police could arrive.

Third, the Rule 404(b) evidence was relevant to reveal Mr. Boyle’s identity. Mr. Boyle used a similar set of tactics to disguise himself in the latest string of robberies as the tactics he used in 2007 and 2008. Indeed, determining the identity of the robber was no small issue in this case because Mr. Boyle kept his face covered, avoided leaving any physical evidence, and

generally disguised himself thoroughly and well. As he did during the previous robberies, Mr. Boyle left his phone at home or turned off to avoid being placed via electronic means at the banks. Furthermore, Mr. Boyle wore multiple layers of clothing during both sets of robberies. This was a unique way to both make himself look larger and also quickly change his appearance after the robbery by shedding clothes.

3. *Unfair Prejudice*

The “third step requires that other-acts evidence must not give rise to a danger of unfair prejudice that substantially outweighs the probative value of the evidence under Rule 403 of the Federal Rules of Evidence.” *Repak*, 852 F.3d at 246. Under Rule 403, the Court “may exclude relevant evidence if its probative value is substantially outweighed by a danger of” unfair prejudice. Fed. R. Evid. 403. “However, the prejudice against which the law guards is *unfair* prejudice—prejudice of the sort which clouds impartial scrutiny and reasoned evaluation of the facts, which inhibits neutral application of principles of law to the facts as found.” *Goodman v. Pennsylvania Turnpink Comm’n*, 293 F.3d 655, 670 (3d Cir. 2002) (cleaned up) (emphasis in original). A district court must do more than merely restate a “bare conclusion,” it must “provide ‘meaningful balancing’ when applying Rule 403 to determine the admissibility of Rule 404(b) evidence.” *Repak*, 852 F.3d at 246–47 (citing *Caldwell*, 760 F.3d at 283).

Undoubtedly, the evidence of Mr. Boyle’s prior convictions for bank robbery was prejudicial, that is, it was not helpful to Mr. Boyle; however, it was not unfairly so. As noted above, the testimony was highly relevant when considering the identical motive to the previous robberies and some of the unusual tactics the robber took to conceal his identity. Indeed, the robber excelled at covering his identity and covering his tracks. This forced the Government to make its case based entirely from circumstantial evidence. And the Government used a wide

array of circumstantial evidence, including the 404(b) evidence, to demonstrate that Mr. Boyle was the Straw Hat Bandit.

The Court took care to limit the prejudicial effect of this testimony. The Court kept the presentation of this evidence to a minimum and forbade duplicative testimony on this point. *See e.g.*, March 4, 2019 Tr. 184:1–185:14; March 5, 2019 Tr. 14:1–6 and 60:3–61:6. Furthermore, the Court did not allow the evidence to go in to the jury room during deliberations. March 5, 2019 Tr. 59:5–17. And, for whatever value it had, during the Government’s closing argument, the prosecutor was also careful to explain the very limited purpose for which this evidence could be used, March 13, 2019 Tr. 120:24–122:19, as did Mr. Boyle’s counsel. *Id.* at 144:18–145:15.

4. *Limiting Instructions*

The last step of the 404(b) analysis is to provide a limiting instruction to the jury, if the defendant requests it. The instruction should advise “the jury that the evidence is admissible for a limited purpose and may not be considered in another manner.” *Caldwell*, 760 F.3d at 277. The Court gave such a limiting instruction at multiple points during the trial. March 4, 2019 Tr. 176:24–178:4 and 195:9–20; March 5, 2019 Tr. 5:1–20.

Two witnesses testified as to the 404(b) evidence. Before the first witness testified the Court stated:

Ladies and gentlemen, my understanding is that this witness may be addressing and be asked about an incident or incidents that happened that are not strictly speaking on part of the trial here. So you’re going to hear some testimony that the defendant committed some other event, other bank robbery in the past.

Those are not robberies that this case concerns. The evidence of such other acts is permissible for only limited purposes, and you’ll remember I told you when we talked about what’s evidence and what’s not evidence. Sometimes things are admitted for a limited purpose, and you have to follow my instructions.

Well, you can consider the evidence that you're about to hear reference to only for the purpose of deciding whether the defendant, Mr. Boyle, had a state of mind or knowledge or intent necessary to commit the crimes, or a crime charged in the Indictment or acted with a method of operating that demonstrates some sort of unique pattern, or did he commit these events on trial here by accident.

You may not use this testimony, the reference to these other prior so-called bad acts, for purposes of deciding whether the acts in question in this Indictment were actually committed, nor can you use this evidence to show that somebody has a propensity or a character trait to commit crime.

So it's the limited purpose to see if there is some permissible purposes at all. So he's not on trial for committing these other acts that you may hear this witness talk about. And you'll hear me give this instruction again perhaps at the end of the trial as well.

March 4, 2019 Tr. 176:24–178:4.

The Court reiterated these limiting instructions again during the final jury instructions.

The Court stated:

You've heard testimony that Mr. Boyle was previously convicted for the commission of other prior bank robberies. This evidence of other prior acts was admitted only for a very specific and very limited purpose.

You may consider that evidence only for the purpose of deciding whether Richard Boyle had a state of mind, knowledge, or intent necessary to commit the crime or crimes alleged here in this Indictment in this case. You may consider the evidence of the prior acts for purposes of deciding whether Mr. Boyle acted with a method of operation as evidencing a unique pattern and did not commit the acts for which he's on trial here by accident or mistake. Do not consider that evidence of prior acts for any other purpose.

Of course, it's for you to determine whether you believe the evidence, and if you do believe it, whether you accept it for that limited purpose. You may give it whatever weight you feel it deserves within the context of that limited purpose.

Mr. Boyle is not on trial for committing these other prior acts. You certainly may not consider the evidence of those prior acts as a substitute for proof that he committed the crimes charged here in this case.

So you may not consider that evidence as proof that Mr. Boyle had a bad character or had some propensity or personal

character inclination as part of his nature to commit a crime. Specifically, you may not use that evidence to conclude that because Mr. Boyle may have committed the other acts in the past that he must have committed these charged in this Indictment.

Remember, he's on trial in this case only for the offenses charged in the Indictment, not for those prior acts. Do not return a guilty verdict here unless the Government proved the crimes charged in this Indictment and proved them beyond a reasonable doubt.

March 14, 2019 Tr. 18:7–19:16.

Courts presume that the jury followed the instructions they were given. *See United States v. Newby*, 11 F.3d 1143, 1147 (3d Cir. 1993). There is nothing to lead this Court to believe that the jury in this case failed to follow the Court's directive.

For these reasons, Mr. Boyle's motion for a new trial is denied.

B. Motion for Judgment of Acquittal

Mr. Boyle also filed a motion for judgment of acquittal under Federal Rule of Criminal Procedure 29. Pursuant to Federal Rule of Criminal Procedure 29(c), a “defendant may move for a judgment of acquittal” within 14 days after the jury enters a guilty verdict or after the court discharges the jury, whichever is later. “A judgment of acquittal is appropriate under [Rule 29] if, after reviewing the record in a light most favorable to the prosecution, we determine that no rational jury could have found proof of guilt beyond a reasonable doubt.” *United States v. Willis*, 844 F.3d 155, 164 n.21 (3d Cir. 2016). “Thus, a finding of insufficiency should ‘be confined to cases where the prosecution’s failure is clear.’” *United States v. Smith*, 294 F.3d 473, 477 (3d Cir. 2002) (quoting *United States v. Leon*, 739 F.2d 885, 891 (3d Cir. 1984)).

A district court considering the motion must be “ever vigilant” that it does not “usurp the role of the jury by weighing credibility and assigning weight to the evidence, or by substituting its judgment for that of the jury.” *United States v. Brodie*, 403 F.3d 123, 133 (3d Cir. 2005). Therefore, the court can only order the entry of a judgment of acquittal if no evidence in the

record, regardless of how it is weighed, supports a finding of guilt beyond a reasonable doubt. *United States v. McNeill*, 887 F.2d 448, 450 (3d Cir. 1989) (quoting *Brandom v. United States*, 431 F.2d 1391, 1400 (7th Cir. 1970)).

Mr. Boyle contends that there was insufficient evidence to sustain the jury's verdict against him. In particular, Mr. Boyle argues that the Government failed to introduce any direct evidence that he was the bank robber, that the eyewitnesses gave varied descriptions of the bank robber, that the two witnesses who saw the bank robber without a mask failed to identify him, and that the Government lacked sufficient evidence for the money laundering charges. Mr. Boyle is incorrect on all accounts.

1. Circumstantial Evidence

To be sure, the Government's case was based entirely on circumstantial evidence. However, there was an overwhelming amount of circumstantial evidence that pointed to Mr. Boyle being the Straw Hat Bandit.

Mr. Boyle regularly came into large sums of money shortly after the robberies and was unable to explain—or, more importantly, to convince the jury—where or how he obtained the money. He spent lavishly on photography equipment, dental work, and fine jewelry, in addition to paying off overdue rent and other expenses. Mr. Boyle used large amounts of cash and money orders to pay for college tuition and home rent. He contended that he won the money gambling, but casino records demonstrated that, like many people at casinos, Mr. Boyle often lost. To the extent he had any winnings, the records showed them to be, at best, quite modest. He also argued that the money came from his drone photography business, but the evidence only demonstrated that he had a couple of clients, neither of which were particularly active.

The Government also presented evidence beyond Mr. Boyle's finances. Mr. Boyle's Amazon purchases matched somewhat unique items seen on the bank robber, such as green latex

gloves and an earpiece. Furthermore, Mr. Boyle's cell phone put him in the vicinity of the Target store where someone purchased a TracFone that was later used to make a diversionary call. Mr. Boyle was in that area at around the time when the TracFone was purchased. He was also at the library when that TracFone was activated on a public computer.

The Court recognizes that all of this evidence is circumstantial but certainly cannot conclude that "no rational jury could have found proof of guilt beyond a reasonable doubt." *Willis*, 844 F.3d at 164 n.21.

2. *Eyewitness Testimony*

Mr. Boyle next argues that there were issues with the eyewitness testimony in this case. Namely, he contends that certain of the eyewitnesses provided significantly different physical descriptions of the person who committed the robberies and no witness from the robberies was able to identify Mr. Boyle as the robber.

Mr. Boyle is correct that, of the numerous witnesses the Government called to testify, those witnesses provided a range of descriptions of the bank robber. One witness recalled that she had described the robber as "about 5'8" and about 215 pounds[.]" March 4, 2019 Tr. 75:2–11. Another said he was around 6'2". March 5, 2019 Tr. 166:9–16. Although one witness said the robber had brown eyes, *Id.* at 104:3–8, another said the robber appeared to have blue or green eyes. March 6, 2019 Tr. 111:7–13. Witnesses also provided varied descriptions of the way the perpetrator walked. March 4, 2019 Tr. 62:3–6 ("I want to say it was a distinctive walk, sort of from side to side."); March 5, 2019 Tr. 148:4–7 ("I just saw him running toward Bethlehem Pike[.]"); March 7, 2019 Tr. 11:6–8 ("I saw him limp a little bit."); *Id.* at 179:1–14 ("He was on foot, but he was – I would say he was skipping, but he wasn't speed – I would say he was speed walking. He wasn't running.").

Mr. Boyle further points out that the only two witnesses to see the robber without a mask failed to identify him. Eric Wharton identified a person other than Mr. Boyle when he was shown a photo array. March 7, 2019 Tr. 14:2–15:3. He said he was about 70% sure of his identification at the time. *Id.* At trial, which took place five and a half years after the robbery at the bank where Mr. Wharton worked, Mr. Wharton believed that Mr. Boyle and the robber shared similar features but could not say for sure that Mr. Boyle was the robber. *Id.* at 17:23–18:11. The second witness to see the bank robber without a mask, Kyeong Lee, did not testify at trial. Instead, Detective Jeffrey McGee testified that Ms. Lee did not get a good look at the robber and he was not confident in a sketch developed from her description. March 11, 2019 Tr. 72:17–21.

Defense counsel pointed out these discrepancies throughout the trial. The jury heard and carefully considered this evidence and counsel’s arguments, and after all that the jury rendered a guilty verdict. The Court will not overstep its authority at this juncture and “usurp the role of the jury” by disturbing the jury’s verdict on these grounds. *Brodie*, 403 F.3d at 133.

3. *Money Laundering*

Lastly, Mr. Boyle challenges his convictions for ten counts of money laundering under 18 U.S.C. § 1956(a)(1)(B)(i). The statute states in relevant part:

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or . . .

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity[.]

18 U.S.C. § 1956(a)(1)(B)(i).

The Government's case for money laundering against Mr. Boyle primarily rested on the testimony of Megan Brady and Eric Hiser. Ms. Brady is a fraud investigator for Square, Inc. March 6, 2019 Tr. 92:25–93:4. She reviewed Mr. Boyle's Square account for his drone photography business and generally explained how companies can use Square to process credit card payments. *Id.* at 92:25–104:2. Ms. Brady did not testify as to any fraudulent activity on Mr. Boyle's Square account. However, Mr. Hiser, a forensic accountant for the FBI, testified that Mr. Boyle ran his own credit card through his business' Square credit card processing account. March 12, 2019 Tr. 156:17–157:14. Mr. Hiser showed each transaction on a summary exhibit. He testified that Mr. Boyle charged \$17,000 to Square on his credit cards, which he then received back from Square, less Square's fees, in the amount of \$16,532.50. *Id.* at 157:9–11. Mr. Boyle argues that "Mr. Hiser did not expound upon the raw data, which he presented with respect to the Square transactions." Def.'s Supp. Br. at 8 (Doc. No. 128).

The Court does not conclude that Mr. Hiser needed to "expound" on the raw data. Indeed, a reasonable jury could have concluded that Mr. Boyle robbed the banks and, in an attempt to conceal the source of that money, ran ten credit card transactions on his Square account.

CONCLUSION

For the reasons set out in this memorandum, the Court denies Mr. Boyle's post-trial motions.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	No. 17-197
RICHARD BOYLE	:	

ORDER

AND NOW, this 3rd day of September, 2019, upon consideration of Defendant’s Motion for Judgment of Acquittal and for a New Trial (Doc. No. 100), the responses and replies thereto (Doc. Nos. 102, 123, 124, & 128), Defendant’s Motion to Dismiss the Indictment (Doc. No. 108), the Government’s Response (Doc. No. 121), and following oral argument on July 15, 2019, **IT IS ORDERED** that Defendant’s Motions (Doc. Nos. 100 & 108) are **DENIED**.

BY THE COURT:

/s/ Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE