[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13629
Non-Argument Calendar

D.C. Docket No. 2:17-cr-00134-JES-MRM-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

AARON EYERMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(December 15, 2020)

Before JORDAN, JILL PRYOR and LAGOA, Circuit Judges.

PER CURIAM:

A jury convicted Aaron Eyerman of wire fraud, making a false oath in relation to a bankruptcy proceeding, and money laundering. The district court

imposed a sentence of 70 months' imprisonment. Eyerman appeals his convictions and sentence. After careful review, we affirm.

I. BACKGROUND

A grand jury returned a 12-count superseding indictment charging Eyerman with three counts of wire fraud, in violation of 18 U.S.C. §§ 2 and 1343 (Counts 1–3); one count of making a false oath in relation to a bankruptcy proceeding, in violation of 18 U.S.C. § 152(2) (Count 4); and eight counts of money laundering, in violation of 18 U.S.C. §§ 2 and 1957 (Counts 5–12). The indictment charged that Eyerman, a real estate agent, convinced a colleague, Andrea Wolak, that he had ideas for lucrative businesses. He also convinced her to invest $561,000 in those ventures. But Eyerman never launched either of the businesses in earnest; instead, he immediately spent the money Wolak entrusted to him on gambling and other personal expenditures and extravagances. The wire fraud counts arose from three wire transfers Wolak made to Eyerman, and the money laundering counts arose from transfers and payments Eyerman made using Wolak's funds. When Wolak sued to recover her investment, Eyerman filed for bankruptcy protection. At a meeting of creditors, Eyerman made false statements under oath, including that he had not used any of Wolak's money for gambling or for a down payment on personal property. The false oath count arose from these statements. Eyerman pled not guilty and proceeded to a jury trial.

A. Trial

The government introduced the following evidence at trial.[1] Wolak and Eyerman, both real estate agents, met when they worked at the same firm. When Eyerman left that firm and took over a Better Homes and Gardens Real Estate ("BHGRE") franchise, Wolak followed him there, thinking him successful based on his representations that he was a business owner and millionaire. During their time at BHGRE, Eyerman approached Wolak about a business opportunity, promising "good" and "fast[] money" by purchasing and flipping short sale properties. Doc. 254 at 103–04.[2] Eyerman specified the properties he was eyeing, telling Wolak that she could make $200,000. Wolak agreed to invest $300,000, depositing the funds directly into Eyerman's account.

Eyerman, however, did not buy any of the properties he identified for the business venture he fabricated. He did buy one of the properties—which he used as a personal residence. The short sale business never actually did any business, and none of Wolak's investment was used as Eyerman said it would be. In the months following her investment, Wolak asked Eyerman "many times" what was

[1] Because the district court denied Eyerman's motion for judgment of acquittal, we recount the facts in the light most favorable to the government and draw all reasonable inferences in favor of the jury's verdict. *See United States v. Hernandez*, 743 F.3d 812, 814 (11th Cir. 2014).

[2] "Doc." numbers are the district court's docket entries.

"going on with those short sales," and Eyerman said, "[w]ell, you know, short sales take—you know, they take a while to get done." *Id.* at 123.

Instead of putting money toward the business he had pitched to Wolak, Eyerman spent her investment on personal expenses. The same day Wolak wired him the funds, Eyerman used nearly $50,000 of the money to pay off personal credit card debt. The following month, Eyerman used another $50,000 of Wolak's money to place to down payment on a home for himself. Weeks later, he used $15,000 of her money to make a partial down payment on a custom Porsche. And in the six weeks that followed Wolak's $300,000 investment, Eyerman spent nearly $50,000 of her money on withdrawals and charges at a casino. Within seven weeks, Eyerman had spent the entirety of Wolak's investment.

Eyerman eventually approached Wolak about a second purported business opportunity. Eyerman told Wolak that they "could have an opportunity to buy a Better Homes and Gardens franchise construction company." *Id.* at 129. He told her that "the franchise would cost $150,000" and involved an 11-year, renewable contract. *Id.* Eyerman also told her that they "would have a full-page ad in the Better Homes and Gardens magazine advertising [their] company for free." *Id.* And he told her that they would get 3.5% of "every home that was built under Better Homes and Gardens' name" and that they would purchase a sales center with the Better Homes and Gardens logo. *Id.* at 131–32. In fact, BHGRE never

gave Eyerman permission to operate an additional business. In fact, Eyerman had asked about operating a construction company under the BHGRE name, and BHGRE's senior vice president of franchise sales told him that BHGRE would not permit Eyerman to use the Better Homes and Gardens trademarks. BHGRE does not franchise construction businesses.

Eyerman told Wolak that the business would start with two model homes. To get the models and the sales center up and running, he told her, they would both need to invest $561,000. Eyerman told Wolak to "forget about the short sales, this is going to be better," and that he would put her initial $300,000 investment—which he said still existed—toward the business if she would give him $261,000 more. *Id.* at 133. She did.

Wolak and Eyerman put their agreement in writing, "the operating agreement of A Better Home, LLC." *Id.* at 135–36. The agreement stipulated that Wolak and Eyerman were forming a limited liability company under Florida law to purchase and develop real estate and build new construction. The agreement further stipulated that both Eyerman and Wolak would make capital contributions of $561,000, with Wolak's contribution consisting only of cash, and that profits were to be distributed equally between the two partners. Under the agreement, an "individual capital account" would be maintained for each member and initial capital contributions would be credited to each account. *Id.* at 142. The agreement

provided that no member would "withdraw any portion of their capital contribution without the unanimous consent of the other members." *Id.* at 141 (internal quotation marks omitted).

Eyerman had lied to Wolak again. To Wolak's knowledge, no capital account was ever created for her, and none of her money ever went into any capital account. Eyerman, for his part, never contributed "any money whatsoever" to the company. *Id.* at 143. Soon after she deposited it, but unbeknownst to her, Eyerman had already spent her investment on personal expenditures, including gambling, credit card payments, and real property for his personal use. In the months that followed their agreement and her investment, Wolak asked Eyerman numerous times when they "were going to get started"; Eyerman replied that he was busy and that they would get started eventually. *Id.* at 167.

A little more than six months after she invested the additional $261,000, Wolak told Eyerman she needed to withdraw $60,000 from A Better Home. About two weeks later, she demanded that he return all of her money. Eyerman responded that he could not do anything for her: they "didn't even have an LLC set up when [she] deposited" the $300,000, and that money was a loan. *Id.* at 202–03. Wolak testified that the deposited money was "never a loan," and that Eyerman never suggested that he understood it as such. *Id.* at 207.

Wolak soon realized that all her money was gone. She sued Eyerman and obtained a judgment, but not before Eyerman filed for bankruptcy. During the bankruptcy proceedings, Eyerman disclosed a $561,000 obligation to Andrea Wolak incurred in 2015. Benjamin Lambers, a trial attorney with the United States Trustee's Office, testified that Eyerman stated under oath at a meeting of creditors that he did not use any of Wolak's money to place a down payment or invest in his own personal property or to gamble. Eyerman's statements were recorded and played before the jury.

At the close of the government's case, Eyerman moved for a judgment of acquittal on all counts. He argued, as to the wire fraud counts, that the government failed to prove Wolak's contribution was not a loan or that he intended to defraud her. He argued that the money laundering counts fell with the government's failure to prove the wire fraud counts. As to the count for making a false oath in relation to a bankruptcy proceeding, he argued that the government did not substantiate that he intended to make a fraudulent or false statement to the bankruptcy court. The district court denied the motion, and when Eyerman renewed the motion at the close of all the evidence,[3] the court denied the motion again. The jury found Eyerman guilty of all counts.

[3] Eyerman called only one witness in his defense, a government witness whom he attempted to further impeach. That witness's testimony is not relevant to this appeal.

B. Sentencing

In anticipation of sentencing, a probation officer prepared a presentence investigation report ("PSR"). As relevant to this appeal, the PSR applied a two-level enhancement to Eyerman's offense level under U.S.S.G. § 2B1.1(b)(10)(C) because the offense involved sophisticated means. Specifically, the PSR noted that Eyerman's scheme involved two fraudulent businesses and the concealment of assets and transactions. And Eyerman registered the second fraudulent business with the Florida Department of State and entered into a written agreement with Wolak that fraudulently and without authorization used trademarks from Better Homes and Gardens. After applying other enhancements not relevant to this appeal, the PSR arrived at a total offense level of 28. With a criminal history category of I, this yielded a guidelines range of 78 to 97 months' imprisonment.

Eyerman objected to the sophisticated-means enhancement, arguing that the fraud charges accounted for the sophistication of his offense. He further argued that operating an LLC was not a deceitful act because the company was a matter of public record and was co-owned by Wolak. A Better Home, he argued, was merely a "spinoff" and part of "an ongoing business endeavor" he legitimately shared with BHGRE. Doc. 259 at 30. Moreover, Eyerman asserted, Wolak was sophisticated as well: she was more seasoned as a realtor than he was, was well educated, and understood the concepts of Eyerman's business proposals. The

district court overruled Eyerman's objection and sentenced Eyerman to 70 months' imprisonment for Counts 1–3 and 5–12, running concurrently with 60 months' imprisonment—the statutory maximum—for Count 4.

This is Eyerman's appeal.

II. STANDARDS OF REVIEW

We review *de novo* whether the evidence was sufficient to sustain a criminal conviction. *United States v. Davis*, 854 F.3d 1276, 1292 (11th Cir. 2017). In doing so, we view the facts and draw all reasonable inferences in the light most favorable to the government. *United States v. Hansen*, 262 F.3d 1217, 1236 (11th Cir. 2001). The district court's denial of a motion for judgment of acquittal "will be upheld if a reasonable trier of fact could conclude that the evidence establishes the defendant's guilt beyond a reasonable doubt." *United States v. Rodriguez*, 218 F.3d 1243, 1244 (11th Cir. 2000). We therefore must sustain a verdict "where there is a reasonable basis in the record for it." *United States v. Farley*, 607 F.3d 1294, 1333 (11th Cir. 2010) (internal quotation marks omitted).

We review for clear error the district court's decision to apply an enhancement for sophisticated means. *United States v. Robertson*, 493 F.3d 1322, 1329–30 (11th Cir. 2007). A factual finding is clearly erroneous when, after reviewing all the evidence, we are left with the definite and firm conviction that a mistake has been committed. *Id.* at 1330.

III. DISCUSSION

Eyerman challenges the sufficiency of the evidence supporting his conviction on all counts and the district court's imposition of the sophisticated-means enhancement to his sentence. We address these arguments in turn.

A. Sufficiency of the Evidence

Eyerman argues that the district court erred in denying his motion for a judgment of acquittal as to all counts because the government's evidence was circumstantial and speculative. Specifically, he argues that the government failed to prove he had the requisite intent to defraud Wolak, or that he knowingly falsely stated in his bankruptcy proceeding that he did not use any of Wolak's money to gamble or make payments on personal property. He also asserts that his money laundering convictions must fall with his wire fraud convictions. We disagree with Eyerman's sufficiency arguments.

A person who uses a wire communication affecting interstate commerce to execute any scheme or artifice to defraud, or to obtain money or property by means of false or fraudulent pretenses, representations, or promises, commits a federal offense. 18 U.S.C. § 1343. A wire fraud conviction requires, in relevant part, proof that the defendant: (1) participated in a scheme or artifice to defraud (2) with the intent to defraud. *United States v. Machado*, 886 F.3d 1070, 1082–83 (11th Cir. 2018). A scheme to defraud requires proof of a material misrepresentation or

the omission or concealment of a material fact calculated to deceive another person. *United States v. Maxwell*, 579 F.3d 1282, 1299 (11th Cir. 2009). Intent to defraud "may be found when the defendant believed that he could deceive the person to whom he made the material misrepresentation out of money or property of some value." *Id.* at 1301 (internal quotation marks omitted). A jury may infer intent from the defendant's conduct. *Id.*; *see United States v. Hawkins*, 905 F.2d 1489, 1496 (11th Cir. 1990) (explaining that the government need not produce direct proof of criminal intent; circumstantial evidence may suffice).

Any person who "knowingly and fraudulently makes a false oath or account in or in relation to" a bankruptcy case commits a federal offense. 18 U.S.C. § 152(2). It is also a federal offense to "knowingly engage[] or attempt[] to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity," that is, to launder money. *Id.* § 1957(a).

Here, the evidence the government presented was sufficient for the jury to infer that Eyerman intended to defraud Wolak. Eyerman did not use any of the money Wolak gave him for any purpose he had represented to her. *See Maxwell*, 579 F.3d at 1299, 1301. Instead, he immediately spent the money exclusively on personal expenditures like down payments on personal property and gambling. Evidence of these expenditures supported the jury's finding that Eyerman intended

to defraud Wolak when he persuaded her to part with her money. *See United States v. Ellisor*, 522 F.3d 1255, 1271–72 (11th Cir. 2008) (explaining that "ample evidence" supported intent to defraud when the government showed that the defendant "collected money from schools and businesses in the name of [a] Christmas show" but actually "spent the money on purchases for himself, including a suite at the Doubletree Hotel, a luxury car rental, and expensive clothing").

Although Eyerman argues that his convictions were supported only by speculative evidence that required the jury to make unreasonable inferences, he does not identify any such evidence. *See* Fed. R. App. P. 28(a)(8)(A) (stating that an appellant's argument must contain his contentions and the reasons for them, with citations to the parts of the record on which he relies). Additionally, Eyerman's argument that the government established his intent to defraud only through circumstantial evidence is not a basis to disturb the jury's verdict because an intent to defraud may be inferred from such evidence. *See Hawkins*, 905 F.2d at 1496.

Viewing the facts and drawing all reasonable inferences in the light most favorable to the government, we conclude that the jury could reasonably conclude that Eyerman made misrepresentations to Wolak with the intent to defraud her. *See Hansen*, 262 F.3d at 1236; *Machado*, 886 F.3d at 1082–83. And because

Eyerman's only argument as to his money laundering convictions is that they should fall with his wire fraud convictions, his challenge to them also fails.

Finally, the jury could reasonably infer that Eyerman knowingly made a false oath in relation to his bankruptcy proceeding. When viewed in the light most favorable to the government, evidence showing the immediacy with which Eyerman used the victim's money to gamble and place a down payment on personal property belies his argument that he did not knowingly lie by stating otherwise under oath. *See Hansen*, 262 F.3d at 1236.

The district court did not err in denying Eyerman's motion for a judgment of acquittal. *See Rodriguez*, 218 F.3d at 1244. We affirm Eyerman's convictions.[4]

B. Sophisticated-Means Enhancement

Eyerman also argues that the district court erred in applying a two-level sentence enhancement for sophisticated means under U.S.S.G. § 2B1.1(b)(10)(C). He contends that there was nothing sophisticated about the way Wolak transferred her money or how he spent it. He further contends that, despite drafting an operating agreement stipulating that Wolak's contributions would go into an

[4] Eyerman also argues, relying on *United States v. Takhalov*, 827 F.3d 1307 (11th Cir. 2016), *opinion modified on denial of reh'g*, 838 F.3d 1168 (11th Cir. 2016), that there is a difference between intent to deceive and intent to defraud and that his actions amounted only to a breach of contract, which is not a crime even if it was intentional. We did say in *Takhalov* that there is a difference between intent to deceive and intent to defraud: we explained that one does not intend to defraud if he does not intend to harm the victim. 827 F.3d at 1313. Eyerman's argument fails because, for reasons discussed above, there was ample evidence from which the jury could conclude that Eyerman *did* intend to harm Wolak with his deceit.

account he could not touch and establishing an LLC using a trademark he knew he could not use, he did not conceal his use of Wolak's funds with any sophistication because she knew she deposited the money into his personal account. Again, we disagree.

The Sentencing Guidelines provide for a two-level enhancement if a defendant commits a theft offense involving sophisticated means. U.S.S.G. § 2B1.1(b)(10)(C). Sophisticated means entail "especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense." U.S.S.G. § 2B1.1, cmt. (n.9(B)). Each action by the defendant need not be sophisticated so long as "the totality of the scheme was sophisticated." *United States v. Barrington*, 648 F.3d 1178, 1199 (11th Cir. 2011).

The district court did not clearly err in applying the enhancement for sophisticated means. In addition to forming a corporate entity as part of his scheme and using a trademark he knew he had no right to use in the process, Eyerman presented Wolak with an operating agreement stipulating how her money would be invested and the rules under which it could be withdrawn, including an explanation for how her capital contribution would be separated from his. Those actions indicated planning in concealing offense conduct. *See* U.S.S.G. § 2B1.1, cmt. (n.9(B)).

Eyerman's argument that there was nothing especially complex in how Wolak transferred her money or how he spent does not convince us that the district court clearly erred because not every action in his scheme needed to be sophisticated to support the enhancement, so long as the totality of it was. *See Barrington*, 648 F.3d at 1199. And although Wolak knowingly transferred money to his personal account, that does not support Eyerman's assertion that there was nothing intricate about his concealment because the transfer was predicated on a provision in the operating agreement he presented her that said her money was being placed in an individual account he could not touch. Eyerman's arguments have not left us with a definite and firm conviction that the district court made a mistake in applying the enhancement. *Robertson*, 493 F.3d at 1330. We affirm his sentence.

IV. CONCLUSION

For the foregoing reasons, we affirm Eyerman's convictions and sentence.

AFFIRMED.