FILED by _____ D.C.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

Case No. 98-6204-CR-ROETTGER

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH GARRAHAN,

Defendant.
_____/

GOVERNMENT'S BRIEF ON MONEY LAUNDERING

During the government's case in this trial, this Court requested an explanation regarding the appropriate application of the money-laundering counts of the Indictment to the facts adduced at trial. Accordingly, the United States responds and states as follows:

1. Counts I through V of the Indictment charge the defendant with engaging in wire fraud, in violation of 18 U.S.C. §§1343 and 2. Counts VI, VII, and VIII of the Indictment allege that the defendant engaged in money-laundering, in violation of 18 U.S.C. §1956(a)(1)(B)(i), and Counts IX and X charge the defendant with engaging in money-laundering, in violation of 18 U.S.C. §1957. While the wire fraud statute punishes the crime of engaging in wire fraud, the money-laundering statutes punish the separate crime of **attempting to conceal** the proceeds derived from the crime of wire fraud. See United States v. Christo, 129 F.3d 578, 579-80 (11th Cir. 1997) (citing United States v. Edgmon, 952 F.2d 1206, 1213 (10th Cir. 1991) (finding that Congress intended money-laundering and other specified unlawful activity to be distinct offenses punished separately)). As will be demonstrated at trial and below, this case ceased to be merely a

wire fraud case and became a money-laundering case when the defendant undertook the separate crime of **concealing** the fact that he was spending the proceeds derived from the wire fraud in which he engaged.

2. Section 1956(a)(1)(B)(i) makes it unlawful for a person, "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, [to] conduct[] or attempt[] to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity – (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).

3. Thus, to support a conviction for money-laundering under §1956(a)(1)(B)(i), the United States must demonstrate the presence of the following four facts:

(1) That the defendant knowingly conducted, or attempted to conduct, a "financial transaction;"

(2) That the defendant knew that the funds or property involved in the financial transaction represented the proceeds of some form of unlawful activity;

(3) That the funds or property involved in the financial transaction did in fact represent the proceeds of "specified unlawful activity;" and

(4) That the Defendant engaged in the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or the control of the proceeds of such specified unlawful activity.

Offense Instruction 60.2, Eleventh Circuit Pattern Jury Instructions (1997). In this case the United States has met its burden of establishing each of the four requirements.

4. First, the United States will demonstrate that the defendant knowingly conducted a "financial transaction," as that term is defined by the statute. Specifically, 18 U.S.C. §1956(c)(4)

defines the term "financial transaction," in relevant part, as follows: " . . . (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree." The statute defines a "transaction," in turn, and in pertinent part, as "with respect to a financial institution, . . . a deposit . . . ." 18 U.S.C. §1956(c)(3). The United States shall provide evidence by way of bank records and testimony showing that the defendant deposited the three checks charged in the indictment into Security Bank, Account Number 020301149606. Thus, the three checks meet the "transaction" requirement, and the fact that Security Bank was a federally insured financial institution engaged in interstate commerce, satisfies the "financial transaction" requirement.

5. With regard to the second requirement – that the defendant knew that the funds or property involved in the financial transaction represented the proceeds of some form of unlawful activity – again, the United States shall provide abundant evidence in this respect. In particular, the United States will show that the funds used to make the three bank deposits specified in the Indictment came at least in part[1] from money that the defendant's company received as a result of the School Board contracts, which the defendant, in turn, received as a result of knowingly and willfully permitting the interstate faxing of false statements in order fraudulently to secure bonds, which were necessary to obtain the School Board contracts.

6. Third, the United States will also present evidence showing that the funds or property

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[1]Under 18 U.S.C. §1956, the United States need only show that some part of the money deposited into Security Bank Account Number 020301149606 derived from "specified unlawful activities" – in this case, wire fraud. "[T]he law in this circuit is clear that 'where funds involved in the transaction are derived from a commingled account of which only a part comes from "specified unlawful activities,"' money laundering convictions can be upheld." United States v. Suba, 132 F.3d 662, 674 n.23 (quoting United States v. Cancelliere, 69 F.3d 1116, 1120 (11th Cir. 1995)). This differs from the requirement under 18 U.S.C. §1957, which demands a showing that at least $10,000.00 used in a transaction derived from "specified unlawful activities." See United States v. Adams, 74 F.3d 1093, 1100-01 (11th Cir. 1996).

involved in the financial transaction did in fact represent the proceeds of "specified unlawful activity." While section 1956 does not define the term "proceeds," we are not without guidance. Indeed, Judge Marcus considered in depth the term "proceeds" as it is employed in section 1956, in United States v. Ortiz, 738 F. Supp. 1394, 1400 (S.D. Fla. 1990). In so doing, he noted that the Supreme Court has held that "'proceeds are not necessarily money. [Proceeds] is also a word of great generality '" Id. quoting Phelps v. Harris, 101 U.S. 370, 380 (1879). Among the common definitions Judge Marcus cited in his opinion comes the following, from Black's Law Dictionary, at 1084 (5th ed. 1979): " Proceeds does not necessarily mean only cash or money[, but also includes t]hat which results, proceeds, or accrues from some possession or transaction. . . ." Id.; see also United States v. Estacio, 64 F.3d 477, 480 (9th Cir. 1995) ("A fraudulently obtained line of credit, which results in an artificially inflated bank balance, is within the scope of the term 'proceeds' as used in §1956."). Moreover, "proceeds" may morph from one form to another. See United States v. Rounsavall, 115 F.3d 561 (8th Cir. 1997) (real property purchased with drug money is "proceeds"); see also United States v. Werber, 787 F. Supp. 353, 357 (S.D.N.Y. 1992) (automobiles purchased with counterfeit securities were "proceeds" of securities offense). In the instant case, the funds that the defendant deposited into the Security Bank account constituted the proceeds of his wire fraud. Indeed, but for the defendant's material misstatements which were faxed to the bonding companies, he would not have received the School Board contracts. Consequently, the money that the defendant garnered from those School Board contracts was "proceeds" of his illegal wire fraud activity.

7 Finally, in what distinguishes this case from the run-of-the-mill fraud case and makes it a money-laundering case, the defendant deposited the money derived from his wire fraud in the

Security Bank account knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or the control of the proceeds of the wire fraud in which he engaged. As the United States has already proven at trial, the defendant used his brother Vincent's identification to impersonate his brother and open the bank account in question in his brother's name, without his brother's knowledge or consent. Thus, the defendant's name appears nowhere in the transactions involving the deposit of the School Board contract "proceeds" into the account in Vincent Garrahan's name, even though only the defendant knew about the account and had access to it. Plainly, these facts provide abundant evidence of the defendant's attempt to conceal his involvement with the proceeds of the wire fraud.

8. For the foregoing reasons, the United States respectfully submits that it has satisfied its burden, and the Court should deny defendant's Rule 29, Fed. R. Crim. P., motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing Government's Brief on Money Laundering was hand-delivered, this 25th day of October, 1999 to Fred Haddad, Esq., 1 Financial Plaza, Fort Lauderdale, Florida 33394-0002, attorney for defendant Joseph Garrahan.

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