IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

OPINION AND ORDER

Plaintiff,

12-cr-87-bbc

v.

CHRISTIAN PETERSON,

Defendant.

- -

Defendant Christian Peterson was charged in this court with an array of financial crimes, including bank fraud and knowingly making false statements for the purpose of influencing a bank. After extended pretrial proceedings that included the filing of three superseding indictments, trial began on May 2014. The jury found defendant guilty of eight of 13 counts. Sentencing is scheduled for September 23, 2014.

The case is now before the court on defendant's post trial motions for arrest of judgment on counts 6 and 9 under Fed. R. Crim. P. 34, for acquittal on all counts under Fed. R. Crim. P. 29(c) and for a new trial on all counts under Fed. R. Crim. P. 33.

Before defendant Christian Peterson's business enterprises collapsed in 2008, he was a business owner and property developer, with a love of gambling. He operated businesses in both Wisconsin and Nevada that brokered sales of polyurethane scrap foam to companies that manufactured carpet cushion and he had a number of development projects, two of

which were at issue in his criminal trial: a County Inn & Suites motel and a commercial property he was developing near a new Target store.

To finance his scrap foam brokerage business known as Maverick, Inc., and his real estate projects, defendant borrowed money from several banks. He had a business line of credit from Marshall & Ilsley Bank (now BMO Harris) that began with a loan of less than $1,800,000 that grew to $6,500,000 as of September 2006; he took out a $1 million loan from Park Bank, ostensibly for expanding and upgrading the swimming pool at the Country Inn & Suites; and he had a $1,100,000 loan from Greenwoods State Bank to be used to fund improvements at a commercial land site. Instead of using all of the loan proceeds for their intended purposes, defendant used most of them for other ventures and for gambling. Unfortunately for him and for his lenders, Maverick lost its largest customers for scrap foam and defendant proved to be a seriously unlucky gambler, so the banks lost the money they had lent to defendant for Maverick, Inc., for the Country Inn project and for his commercial land development.

The government charged defendant in the third superseding indictment with four counts (1-4) of engaging in a scheme to defraud the banks and to obtain money from them by means of materially false and fraudulent pretenses and misrepresentations, specifically, misrepresenting to the banks the purposes for which the funds were to be used. It charged defendant with four counts (5-8) of knowingly making false statements to the banks for the purpose of influencing their actions; four counts (9-12) of knowingly engaging in monetary transaction from financial institutions, affecting interstate commerce, in criminally derived

property of more than $10,000; and one count (13) of converting to his own use money from a pension benefit plan set up for his employees. After the jury found him guilty of eight counts (2-4, 6, 8, 9, 11 and 13), defendant filed the motions for arrest of judgment, for acquittal and for a new trial that are before the court.

I conclude that defendant's motion to arrest judgment must be denied because he has not shown that the indictment fails to charge an offense with respect to the two counts at issue in that motion (3 and 9). Defendant's motion for a judgment of acquittal must be granted as to counts 3 because the government failed to prove that he misrepresented his finances by disguising $460,000 he had used for gambling, as charged in count 3. Because count 9 rests on count 3, defendant's motion for acquittal must be granted as to that count as well. His motion for judgment of acquittal will be denied as to the remaining six counts (2, 4, 6, 8, 11 and 13).

OPINION

A. Motion to Arrest Judgment

Defendant contends that the court should arrest judgment on counts 6 and 9 of the indictment under Fed. R. Crim. P. 34, a rarely used criminal rule that requires a court to arrest judgment if the indictment does not charge an offense or the court lacks jurisdiction over the charged offense. With respect to count 6, which alleges a knowing false statement made for the purpose of influencing a particular bank, defendant says that the indictment omits the element that the false statement was made in connection with a specific banking

activity, as required by 18 U.S.C. § 1014. With respect to count 9, defendant asserts that the crime was charged outside the five-year statute of limitations.

1. Count 6

Defendant challenges count 6 of the indictment as inadequate because it merely alleges a false statement in connection with a wire transfer, without alleging that the wire transfer was connected to an application, loan, advance or any other transaction specified in § 1014. The charge in count 6 reads as follows:

> On or about April 5, 2006, in the Western District of Wisconsin, the defendant,
>
> CHRISTIAN PETERSON,
>
> knowingly made a false statement for the purpose of influencing the action of Marshal[l] & Ilsley Bank, whose deposits were then insured by the Federal Deposit Insurance Corporation, in connection with a $300,000 wire transfer to a casino in Las Vegas, Nevada, in that the defendant sent an email to Marshal[l] & Ilsley Bank stating that he would not use the money for personal use, when in fact, the $300,000 wire transfer was for gambling.

The general rule is that indictments are not to be read in a hypertechnical way. Frank v. United States, 914 F.2d 828, 830 (7th Cir. 1990). They are sufficient if they state the elements of the crime charged and inform the defendant of the nature of the charge to enable him to prepare a defense and allow him to plead a judgment as a bar against a future prosecution for the same offense. United States v. Smith, 230 F.3d 300, 305 (7th Cir. 2000).

The opening section of the indictment alleges the general nature of defendant's scheme

to misrepresent to certain banks, including M&I, "the purpose of [the loans extended to him by the banks] and how he was using the business line of credit." Third Superseding Indictment, counts 1-4. Dkt. #104, at 2. When the indictment is read in a common sense way, "it is clear that the wire transfer referenced in Count 6 was 'in connection' with a line of credit and thus falls within Section 1014," particularly because the M&I Bank is the only entity named in the indictment linked to the line of credit. Plt.'s Br., dkt. #177, at 3.

Moreover, § 1014 is a broad statute that is not limited to false statements made with regard to loans. The Court of Appeals for the Seventh Circuit made this clear in United States v. Krilich, 159 F.3d 1020, 1028 (7th Cir. 1998), another case brought under § 1014. In Krilich, the defendant had instructed others to file false invoices for the release of money he had deposited in trust with banks on the understanding that it was to be released only in connection with specific construction projects for which Krilich was responsible. Like defendant Peterson, Krilich argued that the statute's language did not extend to a scheme not involving a statement made to obtain a loan or other extensions of credit and thus would not apply to the withdrawals of the trust funds because these were not lending transactions. The court of appeals gave the argument short shrift. It pointed out that "[t]he text of the statute is straightforward and broad: it applies to 'any' statement made for the purpose of influencing in 'any' way the action of 'any' of the covered institutions in 'any' application." Id. See also United States v. Wells, 519 U.S. 482, 489-90 (1997) (§ 1014 does not require materiality; it "criminalizes 'knowingly mak[ing] any false statement or report . . . for the purpose of influencing in any way the action' of a Federal Deposit Insurance Corporation

(FDIC) insured bank 'upon any application, advance . . . commitment, or loan").

When defendant asked the M&I Bank to wire transfer money to him in Las Vegas that he would not use for personal use, he was knowingly making a false statement for the purpose of influencing the bank to take the action of sending him the money from his business line of credit. Defendant maintains that the statement was not false because he treated the money as a distribution from his company, Maverick, Inc., but this is an argument in defense of the charge, not one directed to its sufficiency under Rule 34. His Rule 34 challenge to count 6 will be denied.

2. Count 9

The question raised in connection with count 9 is whether the statute of limitations bars the government from proceeding on this count after changing the wording and the nature of the count more than five years after the date of the offense charged in the count. In count 9 of the original indictment, defendant was charged with "knowingly engaging in a monetary transaction . . . that is [,] a wire transfer of $350,000 from the Maverick, Inc. business line of credit at Marshal[l] Ilsley Bank in Wisconsin to the Rio Casino, with said money having been derived from specified unlawful activity, namely making a false statement to a financial institution as alleged in Count Seven of this indictment." In the third superseding indictment, the type of the account from which the money was wired and the exact amount of money were deleted and the specified unlawful activity was changed to "bank fraud, as alleged in Count Three of this indictment." Dkt. #104 at 6. Defendant contends that the

changes in the last version of the indictment amended the substance and not just the form of the charge, taking it outside the statute of limitations.

Ordinarily, questions about whether a person has been indicted within the statute of limitations would not be brought under Rule 34. The purpose of Rule 34 is to give the trial judge a chance to invalidate a judgment when there is a fundamental error appearing on the face of the record, with "the record" referring only to the indictment, the plea, the verdict and the sentence. 3 Charles Alan Wright & Sarah H. Welling, Federal Practice and Procedure, § 601 at 576 (2011). In the run of the mill case, deciding whether a charge has been brought outside the statute of limitations would require looking outside the record. E.g., United States v. Zisblatt, 172 F.2d 740, 741 (2d Cir. 1949) (holding that challenge to judgment based on statute of limitations was not properly brought under Rule 34 because court could not determine from face of record when limitations period had begun to run).

However, in this case, the issue can be resolved by looking at court documents (the different versions of the indictment) to determine whether the crime charged in count 9 is so different from the crime charged in count 9 of the second amended indictment that it amounts to a new charge against defendant. The test is whether the superseding indictment materially broadens or substantially amends the charges brought initially against the defendant, United States v. Daniels, 387 F.3d 636, 642 (7th Cir. 2004), which in this case it did not. Defendant was on notice of the charges pending against him from the time the initial indictment was filed against him and knew he would have to account for essentially the same conduct with which he was charged in the last indictment (the third superseding

indictment.) United States v. Pearson, 340 F.3d 459, 464 (7th Cir. 2003). The deletion of the amount of money wired and the account from which it was wired would not have handicapped defendant in defending against the charge. Neither would the change in the specified unlawful activity to "bank fraud" from "making a false statement to a bank." Under either version, defendant would have known that he had to prepare a defense to a charge of having made a criminal misrepresentation to M&I Bank, whether the representation was charged as bank fraud or as making a false statement to a bank.

Defendant fares no better with his claim that in the third superseding indictment, count 9 charges a crime barred by the statute of limitations because it refers to count 3 of the indictment rather than to count 7, as it did in earlier versions of the indictment. Count 7 charged defendant with knowingly making a false statement to M&I Bank, saying that of the accounts shown as receivables on the books of Maverick, Inc., $460,000 were not loans made by Maverick but were defendant's losses on gambling. Count 3 of the third superseding indictment charged defendant with causing M&I Bank to continue funding his business line of credit by submitting financial statements misrepresenting his finances by disguising $460,000 he had lost gambling. Again, the change would not have prevented defendant from preparing his defense to count 9 because he knew about the charge in count 3 from the time the initial indictment was filed. Although the wording of the charge in count 3 was changed somewhat, the change was insignificant in effect and did not broaden the charges against him.

B. Motion for Judgment of Acquittal under Rule 29(c)

Defendant has moved for judgment of acquittal on all of the counts on which he was convicted, arguing that the evidence was insufficient to support the jury's verdicts. To prevail on the motion he must show that the record contains no evidence from which the jury could have found him guilty beyond a reasonable doubt. United States v. Torres-Chavez, 744 F.3d 988, 993 (7th Cir. 2014) (citing United States v. Blassingame, 197 F.3d 271, 284 (7th Cir. 1999)).

1. Background

Evidence presented at trial showed that defendant entered into a revolving loan agreement or business line of credit for Maverick, Inc. with M&I Bank in March 2003 that increased over the years from $1,800,000 at the outset to $6,250,000 in 2008. In 2005, Dr. Michael Shapiro acquired an interest in Maverick and became a cosigner and guarantor on the working capital line of credit. The line of credit specified that "all revolving loans are and will be used solely for business purposes and are not and will not be used for personal, family, household or agricultural purposes." Tr. Exh. W2-30, at 10165. Maverick, Inc. also had a business checking account linked to the line of credit; if the checking account lacked sufficient funds, the business line of credit would cover the shortfall.

Despite his promise to use the loan funds exclusively for Maverick's business purposes, defendant used them for starting other companies, such as Pancake Cafes, and for meeting expenses in other business with which he was involved. He distributed large sums of money to himself, showing them on the balance sheets as stockholder distributions or as loans he

owed to Maverick.

In March 2006, defendant's banker, Randy Paulson, an M&I employee, met with defendant to question him about the debts owed to Maverick by other companies and about his personal use of the business line of credit. By this time, Paulson considered defendant's practice of using the money for intercompany projects a risk management problem for M&I because the bank had no relationship with the other companies. He told defendant to stop using the business line of credit for personal expenditures. Defendant said he understood and was taking steps to pay off his loans from Maverick.

On April 5, 2006, while defendant was in Las Vegas, he asked his office assistant to ask Paulson to wire $300,000 to the MGM Grand casino. When Paulson raised questions about why the money was to be sent to a casino, defendant forwarded an email to Paulson from a commercial real estate broker setting out the properties that he and the broker would be visiting the next day. Tr. Exh. W2-19, at 1669. Three minutes later, he emailed Paulson, saying "This is my itinerary . . I would not use Maverick funds for personal use and I certainly wouldn't spend $300k!!!" Id. at 1671. The bank sent the money by wire transfer and defendant used it to pay off his personal gambling expenses at the casino. He also sought and obtained more money from the M&I line of credit to pay off additional gambling debts, without involving Paulson. Dkt. #156 at 2-A-18.

As of 2007, the Maverick line of credit had risen to $6,250,000. In the 60 days between January 31 and March 31, 2007, money owed Maverick by Nesbitt Grove Hospitality (a company defendant had started when he obtained a franchise from the Carlson

Companies to build and operate a Country Inn Suites hotel) had grown by more than $700,000. Money taken out of Maverick funds by defendant and categorized as accounts receivable had grown from $603,552.91 to $1,644,971.35.

On May 15, 2007, Paulson met with defendant to discuss the renewal of his line of credit. Paulson continued to view intercompany debt and defendant's use of funds owed to the company as a risk to repayment of Maverick's debt to M&I.

On May 21, 2007, Paulson raised questions about the amount of money ($1,644,000) owed to Maverick, Inc. by defendant, by Shapiro and by Nesbitt Grove Hospitality. The amount owed was about $2,000,000 more than what had been owed to Maverick the year before. Paulson was concerned because defendant had used money allocated for Maverick, Inc. for personal reasons and for businesses owned by defendant that had no business relationship with the bank.

Defendant told Paulson that he and Shapiro would pay Maverick back in full by the end of the year for all the accounts receivable and would use the line of credit only for scrap. Paulson relied on defendant's representations in recommending to the bank's loan committee a continuation of Maverick's line of credit.

The financial reports that defendant supplied Paulson were typical of those Paulson received from other businesses with whom he had a loan relationship. They were prepared by a certified public accountant; they showed liabilities (including the line of credit with M&I Bank), profits and losses; and they showed that Maverick had made short-term loans for shareholders. (These loans were also shown on the statements as related-party receivables.)

Paulson did not know that defendant was paying out money from the business line of credit to himself for gambling. That knowledge would have been important to him in determining whether to continue the line of credit. He relied on defendant's statement that he would be using the line of credit only for Maverick's business activities. He did not know, because defendant did not tell him, that one of Maverick's major clients had stopped all ordering of scrap foam from the company and that another had reduced its orders from Maverick by 87% between 2006 and 2007. He believed from what defendant told him that defendant was the sole owner of Nesbitt Grove Hospitality, that he had bought out his partner for $500,000, that he owed approximately $1,500,000 on the hotel and that he had been offered a $1,500,000 line of credit from Oak Bank. Paulson did not know that the funds for the buyout of the partner had come from Maverick's line of credit.

Sometime around October 16, 2007, defendant met with bankers from Greenwoods State Bank in Lake Mills, Wisconsin, in an effort to secure a large loan for refinancing his debt on a commercial development in Fitchburg, Wisconsin, and for the costs of completing the project. He submitted a personal financial statement that understated his Maverick liabilities by more than $5,000,000 and did not disclose his personal debt to Maverick of $3,200,000. The bank agreed to fund the loan. The bank's chief executive officer, Mike Weber, filled out the loan in December 2007, using information supplied by defendant and noting that the purpose of the loan was for site development and land improvement, including sewer and water, curbs and gutters, excavating, etc. Defendant signed the $1,100,000 loan note on December 5, 2007 on behalf of Peterson Properties of Chicago, the

entity that was to develop the Fitchburg property. Above his signature was the statement, "By signing under seal, I agree to the terms of this note (including those on page 2.)"

James Spahr, the contractor for the project, and Dr. Michael Shapiro were the other two members of the Peterson Properties of Chicago entity. Spahr signed the note on the understanding that the funds would be used for the project. The loan was funded on December 7, 2007. The same day, defendant made a draw of $871,168.57, which included $155,000 that was paid to Spahr for his starting costs. Spahr never received any other funds from the loan. Defendant used the draw money for Peterson Properties, for past due loans, for Maverick, Inc. and to pay himself a $250,000 developer fee for the project. He deposited $577,768 from the draw at Johnson Bank and then drew a $300,000 cashier's check to pay off his remaining debt to the Rio Casino. A week later, he drew money out from the Greenwoods Bank loan for $100,000, which he represented was to be paid to Peterson Properties for debt service to Maverick, Inc. He deposited the $100,000 into Maverick's account at M&I Bank. Another week later, he directed that the proceeds remaining on the Greenwoods loan be paid to a law firm. The next month, when Spahr made his second draw request for his contracting work, he learned that the loan proceeds had been totally depleted.

Defendant also terminated the Maverick, Inc. 401(k) plan retroactively to December 1, 2008, without notifying the three employees who remained plan members. He received the proceeds and used them for personal expenses, although he later reimbursed the plan for the money he had taken.

2. Motions for acquittal

a. Counts 2 and 6

In both count 2 and count 6, defendant was charged with causing M&I Bank to send a $300,000 wire transfer to the MGM Grand Casino in Las Vegas, after representing to the bank in an email that the money would not be used for personal expenditures, when in fact he planned to use the money to pay off personal gambling debts. Count 2 is charged as bank fraud, in violation of 18 U.S.C. § 1344; count 6 is alleged to have been a violation of 18 U.S.C. § 1014. In both counts, defendant was charged with knowingly making a false statement for the purpose of influencing the actions of the bank in connection with the same $300,000 wire transfer. He has two contentions, neither of which is persuasive: (1) the evidence was insufficient to support the jury's finding of guilt on either count because the statement was not false in either count: he did not use Maverick's funds for personal use, but rather used his own funds after they had been paid to him by Maverick as a shareholder distribution; and (2) when he made the request to the bank, he had no way of knowing whether the payment would be made from the line of credit or from Maverick's checking account, both of which were at M&I Bank.

As I understand his contention, defendant is saying that because he believed the money was coming from the checking account, the jury had no basis on which to find that he intended to violate 18 U.S.C. § 1014; he would have violated that section only if he knew the money was coming from the line of credit and intended that it do so.

Before turning to defendant's arguments, I note that the false statement he is alleged

to have made in each count is not that he would not use the funds for personal expenditures but that he would not use the money for gambling. This was a false statement, not just a promise that he did not keep. The money had already been spent and, as the evidence at trial showed, the wire transfer to the casino could not be used for any purpose but to pay defendant's gambling debt.

Despite this, defendant argues that the Maverick funds wire transferred to him at the casino were paid to him as a stockholder distribution to him, which was a legitimate use of Maverick funds. What he did with the funds thereafter with what was now his own money does not bear on the legitimacy of the distribution. He compares the distribution from M&I to any stockholder distribution; neither companies nor their creditors monitor the purposes to which dividends are put by stockholders. This argument is too clever by half; if defendant believed that he was asking only for a stockholder distribution in the normal course of Maverick's relationship with M&I, why did he not say that? Why did he think it was necessary to send Paulson a list of potential properties he was thinking of acquiring in the Las Vegas area to make it appear that the money was going to be used on behalf of the company?

Finally, the jury had an additional reason to disbelieve defendant's claim that he was asking only for a stockholder distribution to which he was entitled by his ownership interest in the company. Defendant told Paulson in a September 27, 2007 email that "Maverick never made a profit distribution in 2006." Tr. Trans., 2-A-79; Tr. Exh. W2-36 at 14422.

Defendant fares no better with his second argument about thinking the money would come out of the business checking account. It makes no difference whether he knew how the

payment would be made (out of the business line of credit or out of the business checking account). That decision was out of his hands because, as he knew from the terms of his loan, that the bank had a "sweep agreement" under the loan allowing it to take money from either source.

Third, as previously noted, defendant is wrong about the coverage of § 1014; it extends to false statements made to influence an action of a bank. An action may be something other than a loan, as at least seven circuit courts of appeals have held. United States v. Boren, 278 F.3d 911, 915 (9th Cir. 2002) (listing circuits). It "punishes false statements made to influence a bank's action 'upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan.'" United States v. Tucker, 773 F.2d 136, 139 (7th Cir. 1985) (quoting 18 U.S.C. § 1014). In both Tucker and in United States v. Yung Soo Yoo, 833 F.2d 488 (3d Cir. 1987), an "action" was held to include inducing a bank to honor a forged or inaccurate letter of credit because banks have a "commitment" to honor letters of credit. In this case, M& I Bank had a commitment to honor the line of credit it had extended to defendant so long as the money was used for approved purposes. Defendant's false statement that he was not going to use the money for gambling was intended to induce M&I to honor its commitment.

b. Count 3

In count 3, defendant was charged with causing M&I Bank to continue funding a business line of credit by providing financial statements to the bank that misrepresented his

finances by disguising $460,000 that he used for gambling. He contends that no rational jury could have found beyond a reasonable doubt that he executed a scheme to defraud in the manner charged by the government because he made no misrepresentations in his financial statements and the government never proved that he did. Rather, the financial statements of Maverick, Inc., that he provided were typical of statements that persons in his position submitted to their lenders: they showed shareholder loans but did not identify how the shareholders used their loans from the company. Relying on M&I Bank's admission that it was Maverick Inc.'s general practice to make loans to shareholders, defendant argues that the statements were not false representations, disguising his gambling debts as shareholder loans; they accurately recorded defendant's debts to the company as accounts receivable.

On this count, I agree with defendant. No evidence at trial showed that the financial statements that defendant submitted were illegal or even improper. As Paulson testified, the first quarter 2007 records showed clearly that Maverick, Inc. was in trouble: its accounts receivable had jumped from $258,820.66 at the end of January 2007 to $974,935.51 at the end of March 2007; the statements showed that the Maverick line of credit had been used for loans to other companies and it showed that the company had made sizeable loans to both defendant and his partner, Michael Shapiro. The statements did not show how defendant had spent his loan money, but neither Paulson nor any other witness testified that this was information that should have been included in the financial statements.

In the absence of any showing that defendant took any steps to misrepresent his finances in the statements his accountants prepared for him, I will grant defendant's motion

for a judgment of acquittal on count 3. I will grant the motion as to count 9 as well, becasue it is predicated on count 3. (Count 9 charges defendant with engaging in a monetary transaction from a financial institution in criminally derived property, with the specific unlawful activity being bank fraud as alleged in count 3 of the indictment.)

c. Counts 4, 8 and 11

Count 4 charges that defendant obtained a loan for commercial land site improvements from Greenwoods State Bank by misrepresenting the purpose of the loan. Defendant argues that the jury should not have found him guilty on this count because he never made any statement at all in a loan application to Greenwoods. In fact, he denies having ever asked for the loan or signed any loan agreement.

Defendant made this argument at trial as well, but it is implicit in the jury's finding of guilt on this count that it did not believe defendant. Despite the absence from the Greenwoods file of a loan application signed by defendant, it was reasonable for the jury to believe from the evidence it heard from Greenwoods' president, Michael Weber, that defendant provided the information Weber used to complete the application form on defendant's behalf. This information included the names of the three partners of Peterson Properties of Chicago, LLC, the purpose of the loan (site and land improvement) and the purported collateral (a second mortgage on seven commercial lots). In addition, the jury heard testimony that defendant signed the closing statement *and* the note for the Greenwoods loan one day after Weber filled out the loan application on defendant's behalf, that the loan

file included defendant's personal financial statement, Exh. W7-3; Tr. Trans. 4-P-130-31, and that defendant was the person who took the money from the loan, deposited it in various bank accounts and directed the spending of the funds. The jury heard no evidence that any other representative of Peterson Properties of Chicago applied for a loan from the Greenwoods State Bank. Finally, the jury could have taken into consideration defendant's admission to his partner's lawyer, Jeffrey Younger, that he had planned to take the loan funds from Greenwoods for purposes other than the development of the commercial lots. Tr.Trans., 3-P-111; 4-A-66.

Defendant contends that the evidence was insufficient to support a finding that his statement about "commercial land site improvements" was knowingly false, but the jury was entitled to find to the contrary. He characterizes his use of the loan funds as justified because he used the money to pay the "soft costs" associated with the development of the land, such as engineering fees, architect fees, attorney fees, ongoing interest expenses and developer fees, forgetting that even if the use of the money for these purposes would have been permissible under the terms of the loan, that is not what he used the money for. Instead, he used it to pay $250,000 to himself, $100,000 to Maverick and $327,768 to creditors. From the evidence of what defendant did with the loan proceeds (including his own admission to that effect), the speed with which he withdrew the funds from the loan and disbursed them for his own purposes, rather than for those of the partnership, and his instruction in his October 23, 2007 email to his lawyers, accountants and a banker at Johnson Bank not to release any information about Peterson Partners to anyone including his partners, the jury had more than

enough evidence to find defendant guilty of counts 4, 8 and 11. (Although count 11 charges a crime against Johnson Bank, it is predicated upon the withdrawal from the bank of funds derived from the specified unlawful activity of making a false statement to Greenwoods State Bank to obtain funds; a portion of the funds was deposited at Johnson Bank, to allow defendant to pay his casino debt.)

In short, the jury had ample evidence from which to find that defendant never intended to use the proceeds of the Greenwoods loan for the purposes approved by the bank but that he engaged in a scheme to defraud, that he executed that scheme by misrepresenting the purpose of the loan in the manner charged in the indictment, that he acted with the intent to defraud the bank and not in good faith, that he made a false representation and that the false information was material. Defendant's motion for a judgment of acquittal on counts 4, 8 and 11 will be denied.

d. Count 13

As with counts 4, 8 and 11, defendant challenges the jury's findings on issues of fact on this count. In order to find him guilty of this count, the jury had to find that he unlawfully and willfully abstracted and converted to his own use money held by the Marverick 401(k) Plan & Trust or that he acted knowingly and willfully and with fraudulent intent in keeping the money. Defendant says that the government offered no proof that he did not honestly believe a statement he made to one of the plan participants, Monica Buhler, that the money belonged to Maverick and that his prompt return of the money to the plan

participants showed that he believed the statement, apparently because he returned it once he was told it was not Maverick's money. In fact, the government adduced ample evidence to prove defendant's guilt: his signature on the plan documents showing that he understood his duties as a trustee and his responsibility upon termination of the plan not to use any of the money for any purpose other than the benefit of the participants and administrative expenses of the plan; his use of the participants' retirement funds to pay his own bills, including money he owed his ex-wife; and his failure to notify the plan trustee of the termination of the plan.

C. Motion for a New Trial

Arguing that the court has the authority to vacate a verdict if it is "so contrary to the weight of the evidence that a new trial is required in the interest of justice," defendant asks for a new trial. The motion will be denied. Defendant is entitled to a judgment of acquittal on counts 3 and 9, but he has failed to show that his conviction on any of the remaining counts is dubious in any respect.

Defendant makes a special plea to the court based on the denial of his motion to sever count 13 (relating to the theft of the employee retirement accounts), arguing that this count was included only to inflame the passions of the jury. Defendant raised this issue before trial. It was rejected then both by the magistrate judge, Order, dkt. #70, and by this court, Order, dkt. #102, and will be rejected again. Although the source of the funds was different from the counts involving bank fraud, the nature of the act was similar to defendant's other acts

of obtaining money illegally from any possible source to fund his gambling and the economic fallout from that gambling.

ORDER

IT IS ORDERED that defendant Christian Peterson's motion for arrest of judgment on counts 6 and 9 under Fed. R. Crim. P. 34 is DENIED; his motion for acquittal on all counts under Fed. R. Crim. P. 29(c) is GRANTED as to counts 3 and 9 and DENIED as to all other counts; his motion for a new trial on all counts under Fed. R. Crim. P. 33 is DENIED in all respects; and his renewed motion for severance of count 13 from the indictment and for a new trial on that count is DENIED as well.

Entered this 28th day of August, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge