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Money Laundering and Drug Trafficking: A Question of Understanding the Elements of The Crime and The Use of Circumstantial Evidence

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ARTICLES

MONEY LAUNDERING AND DRUG TRAFFICKING: A QUESTION OF UNDERSTANDING THE ELEMENTS OF THE CRIME AND THE USE OF CIRCUMSTANTIAL EVIDENCE

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I. INTRODUCTION

Drug trafficking in the United States generates millions of dollars in cash profits daily.[1] The cash generated from narcotics trafficking usually follows one of two distinct paths. Domestically, the profits are converted into usable currency by disguising the association between the cash and the narcotics enterprise. Monies not spent domestically are transferred back to the narcotics source or drug cartel to be enjoyed by the drug traffickers and to provide operating capital for the enterprise.[2] This con-

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1. For example, on May 8, 1993, *The New York Times* reported that several suspects linked to Columbian drug traffickers were arrested in New York. Agents involved in the investigation estimated that the drug conspiracy took in more than one million dollars a week. Craig Wolff, *Authorities Arrest Five In Drug Raid*, N.Y. TIMES, May 8, 1993, at A23.

2. This system was described by Ian Fisher, in his article, *A Window on Immigrant Crime*, N.Y. TIMES, June 17, 1993, at B1. In discussing the drug trafficking activity of Columbian immigrants in the Jackson Heights section of New York City, the article included a detailed discussion of the appendage money laundering

version and transfer process has become known commonly as money laundering.

As part of the overall law enforcement crackdown against narcotics trafficking, federal agents inveterately have pursued money laundering investigations and prosecutions against drug traffickers by following the audit trails left by transactions and transfers involving drug profits.[3] The federal money laundering statute has been the primary tool used to prosecute money laundering activities arising out of drug trafficking.

There are two principal tasks involved in any federal money laundering prosecution arising from drug trafficking. The first task is to understand the complex elements of the statute. This complexity imposes a significant evidentiary burden on the prosecution. First, the prosecution must prove that the funds involved in the transaction were drug proceeds. Second, it must be shown that the defendant knew the funds were drug proceeds. Third, the prosecution must show that the defendant had knowledge of or intended to carry out the illicit transaction. In

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enterprises:

> Jackson Heights is also the home to Little Columbia—where high level drug dealers operate and where much of their cash is laundered through travel agencies and wire transfer services that line Roosevelt Avenue . . . . Officials believe that the amount of illegal cash that washes through Jackson Heights could reach into the billions each year . . . law-enforcement officials realized that the travel agencies, wire transfer centers and change houses were actually the most visible sign of the drug trade. Officials say the stores launder hundreds of millions of dollars each year, mostly sending cash electronically to South America . . . .

Id.

Recently, narcotics officers in New York City moved against an international heroin ring. The drug enterprise was estimated to have been selling $30 million worth of heroin annually in the United States. These drug profits were laundered back to Europe by shipping the cash in false bottomed shipping containers. Selwyn Raab, *Police Arrest 60 in Raids To Break a Heroin Ring*, N.Y. TIMES, Dec. 8, 1993, at B3.

3. Stephen Labaton, *Auto Dealerships Seized In Capital: 19 Arrested and Assets Held on Charges of Laundering Cash From Narcotics*, N.Y. TIMES, Jan. 15, 1993, at A18 (money laundering charges brought against car dealership after federal agents posing as Columbian cocaine traffickers bought dozens of cars on the pretext that the transaction was intended to conceal narcotics profits); Robert Pear, *3 Nations Stage Anti-Drug Sweep*, N.Y. TIMES, Sept. 24, 1992, at A1 (reporting millions of dollars in drug proceeds seized in international narcotics and money laundering crackdown); Tod Robberson, *DEA Money Laundry Pressing on in Panama, Drug Cartels Get Along Without Noriega*, WASH. POST, Feb. 13, 1993, at A20 (stating that Columbian drug traffickers continue to launder billions of "narcodollars" through Panamanian banks).

light of this burden, circuit courts have recently held that circumstantial evidence is sufficient to sustain the critical elements of the charge. Consequently, the second task involves understanding the extent to which circumstantial evidence can be used to prove the three central elements of the offense.

II. 18 U.S.C. § 1956

The federal money laundering statute is set forth in 18 U.S.C. § 1956.[4] This section is divided into three main provisions or subparagraphs. Generally these provisions prohibit the knowing involvement in a financial transaction or transfer involving proceeds of a "specified unlawful activity." The statute either expressly includes or incorporates by reference virtually every major federal criminal offense as a specified unlawful activity. Included among these specified unlawful activities is drug trafficking.[5] The central concern of the money laundering statute, as applied to drug trafficking, is to reach those core financial transactions and transfers in which an attempt is made to use drug proceeds to facilitate a drug trafficking enterprise; or in which an attempt is made to conceal or disguise the source of the funds; or to evade state or federal currency transaction reporting requirements.

A. *18 U.S.C. § 1956(a)(1)*

Generally, 18 U.S.C. § 1956(a)(1) prohibits a broad array of domestic financial transactions involving drug proceeds. There are three elements which make up a subsection (a)(1) charge:

4. 18 U.S.C. § 1956 (1988 & Supp. IV 1992).

5. 18 U.S.C. § 1956(c)(7)(B)(i) (Supp. IV 1992). The definition of "specified unlawful activity" set forth in § 1956(c)(7) also includes: murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, counterfeiting, theft, embezzlement, fraud, and obstruction of justice. The 1992 Amendments deleted wire and mail fraud from the definition. *Id.* § 1956(C)(7)(D).

(1) knowing involvement; (2) in a financial transaction;[6] (3) involving drug proceeds.[7]

The requirement that the defendant engage in a financial transaction is not a perfunctory element, and a conviction will be reversed if this element is not satisfied. Mere possession of drug money does not support an inference that the defendant intended to conduct a transaction.[8] However, an attempt to conduct a transaction or to transfer funds is enough to prove a transaction under the statute.[9]

In *United States v. Fuller*,[10] the defendant was convicted of money laundering under the evasion provision of § 1956(a)(1)(B)(ii) and the sting provision of § 1956(a)(3)(B)(ii). At trial, the government introduced evidence that the defendant boasted of his ability to set up a money laundering scheme.[11] The defendant was subsequently introduced to an undercover agent.[12] The agent told the defendant that he was "seeking assistance from [the defendant] in getting [drug proceeds] in and out of a banking system in such a way that cash would be sanitized, i.e. any illegal taint would be removed and the currency reporting forms would not have to be completed."[13]

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6. A "financial transaction" is defined as a transaction which either: (1) involves the movement of funds in interstate or foreign commerce; or (2) involves the use of a financial institution which is engaged in interstate or foreign commerce. § 1956(O)(4) (Supp. IV 1992). The 1992 Amendments expanded the definition of financial transactions to include transactions in which title to real property, a vehicle, a vessel, or an airplane changes hands without the payment of money. *Id.*

The term "transaction" is defined in § 1956(c)(3) and includes virtually any purchase, sale, gift, or transfer of property. *Id.* § 1956(C)(3) (Supp. II 1992). With respect to a financial institution, the term includes any disposition of funds involving a financial institution. A "financial institution" is defined in § 1956 (c)(6). This definition adopts the broad definition set forth in 31 U.S.C. § 5312(a)(2) (1988) and includes any individual, securities broker or dealer, bank, or any institution dealing in or exchanging currency. *Id.* § 1956(C)(6) (Supp. IV 1992).

7. 18 U.S.C. § 1956(a)(1) (Supp. IV 1992). The actual language of the statute prohibits financial transactions involving "property" representing the "proceeds of some form of unlawful activity." *Id.*

8. *See* United States v. Ramirez, 954 F.2d 1035, 1040 (5th Cir.), *cert. denied*, 112 S. Ct. 3010 (1992).

9. *See* United States v. McLamb, 985 F.2d 1284 (4th Cir. 1993).

10. 974 F.2d 1474 (5th Cir. 1992).

11. *Id.* at 1476.

12. *Id.*

13. *Id.*

The defendant indicated that he would be willing to set up the following money laundering scheme: the money would be loaned to a Bahamian based insurance company in exchange for debentures; the transaction would be secured by a mortgage on a Texas property owned by the insurance company; and in exchange for the loan, the insurance company would assist in setting up an offshore corporation into which funds could be deposited and withdrawn without the filing of any currency transaction report.[14] The defendant advised that he would describe the funds to be camouflaged as monies obtained from a Brazilian land transaction.[15] The defendant also stated that his fee would be twenty percent of the funds laundered, but offered the agent a declining sliding scale rate tied to the volume of funds delivered.[16]

The agent met with the defendant on two subsequent occasions. The last meeting was held in a hotel room.[17] During this meeting the agent gave the defendant $97,500 in cash with the instructions that it be laundered. The defendant was arrested as he attempted to leave the room.[18] At trial, the defendant took the stand and admitted that, although he knew the money was drug money, he intended to steal it, not to launder it.[19] The jury rejected the defendant's argument and convicted him of money laundering.[20]

The defendant appealed his conviction. On appeal the defendant did not dispute his knowledge that the money was drug proceeds or that the money laundering scheme was intended to conceal or disguise the source of the funds.[21] The defendant asserted that he merely held the funds and that he did not attempt to conduct a financial transaction.[22] The Fifth Circuit rejected the defendant's narrow reading of the statute. The court looked beyond his receipt and possession of the funds and considered the defendant's three meetings with the undercover

14. *Id.*
15. *Id.*
16. *Id* at 1477.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* at 1475.
21. *Id.* at 1478.
22. *Id.*

agent, his detailed description of the money laundering scheme, and the numerous steps taken by the defendant to set up the convoluted transaction in his attempt to avoid a currency transaction report.[23] The court held that the defendant's conduct went well beyond mere possession and clearly showed an attempt to conduct a transaction.[24]

The definition of financial transaction under § 1956(c)(4) requires that the transaction affect interstate commerce. The link between the transaction and interstate commerce may be remote, collateral or incidental. In *United States v. Koller*,[25] the defendant was convicted of money laundering based on two transactions.[26] The first transaction involved the purchase of a $2,000 money order with drug proceeds. The second transaction occurred when the defendant used the money order to pay his girlfriend's restitution obligation.[27] In connection with the payment of this obligation, the defendant gave a false first name.[28] The defendant was convicted under the concealment provision of § 1956(a)(1)(B)(i) and subsequently appealed on the ground that the government failed to prove a financial transaction under the statute.[29] The court first ruled that the purchase of the money order involved a financial transaction under the statute, but that it did not satisfy any of the specific intent provisions.[30] However, the court found that the payment of the restitution obligation was a financial transaction under § 1956(a)(1). The court also found that the interstate commerce element was satisfied because the bank that issued the money order was involved in interstate commerce.[31] The incidental involvement of the bank was sufficient to establish the prerequisite interstate nexus.[32] Finally, the court found that by giving a false first name the defendant intended to conceal the true ownership of the funds.[33]

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23. *Id.*
24. *Id.* at 1478-79.
25. 956 F.2d 1408 (7th Cir. 1992).
26. *Id.* at 1411.
27. *Id.*
28. *Id.* at 1410.
29. *Id.*
30. *Id.* at 1411.
31. *Id.*
32. *Id.* at 1412.
33. *Id.*

In addition to proving "knowing involvement in a financial transaction involving drug proceeds,"[34] the prosecution is required to prove that the defendant intended either to: (1) facilitate the drug trafficking enterprise; (2) violate I.R.S. § 7201 or § 7206;[35] (3) conceal or disguise the source or ownership of the funds; or (4) avoid a state or federal currency transaction reporting requirement.[36]

B. *18 U.S.C. § 1956(a)(2)(A) and (a)(2)(B)*

Section 1956(a)(2)(A) prohibits the international transportation or transfer of funds with the intent to promote a narcotics enterprise.[37] The three elements which make up a § 1956(a)(2)(A) violation are: (1) the international transportation or transfer; (2) of a monetary instrument or funds;[38] (3) with the intent to promote a narcotics enterprise. Thus, under subsection (a)(2)(A), the government must prove that the defendant intended to promote the drug trafficking enterprise by transferring or transporting the funds. The express language of § 1956(a)(2)(A) does not, however, require that the government prove the funds were drug proceeds. The government need only prove that funds, illicit or legitimate, were transported or transferred to promote or contribute to the growth and capitalization of the drug trafficking activity.[39]

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34. *Id.*

35. I.R.C. §§ 7201, 7206 (1988). The tax return evasion, failure to file, and false statement provisions are set forth in I.R.C. §§ 7201-06. Because this specific intent provision is rarely relied on in a money laundering prosecution arising out of drug trafficking, this provision will not be included in the detailed discussion to follow.

36. 18 U.S.C. § 1956(a)(1)(B)(ii).

37. 18 U.S.C. § 1956(a)(2)(A) (1988 & Supp. IV 1992).

38. The term "monetary instrument" as defined in 18 U.S.C. § 1956(c)(5) includes cash, checks, money orders, securities, or negotiable instruments. *Id.* § 1956(c)(5) (Supp. IV 1992).

39. 18 U.S.C. § 1956(a)(2)(A) only addresses international transfers of funds. A domestic transfer would fall within the purview of § 1956(a)(1). However, because the prosecution does not need to prove that a § 1956(a)(2)(A) transfer involves drug proceeds, an anomaly emerges relating to the burden of proof. For example, a wire transfer of $100,000 in legitimate funds from New York to Nigeria to buy heroin would violate § 1956(a)(2)(A). In contrast, the wire transfer of the same funds from New York to Miami for the same purpose would not violate § 1956, because this domestic transfer would not involve drug proceeds.

Unlike § 1956(a)(2)(A), a transfer under § 1956(a)(2)(B) must involve drug proceeds. There are three elements to a § 1956(a)(2)(B) charge: (1) the international transportation or transfer; (2) of a monetary instrument or funds; (3) with the knowledge that the monetary instrument or funds represent the proceeds of drug trafficking. In addition, the government is required to prove that the defendant intended to either: (a) conceal or disguise the source or ownership of the funds;[40] or (b) evade a state or federal currency transaction reporting requirement.[41]

Thus, § 1956(a)(2)(A) and § 1956(a)(2)(B) violations are distinguishable on two points. First, a transfer under § 1956(a)(2)(A) need not involve drug proceeds whereas the transfer under § 1956(a)(2)(B) must involve drug proceeds. Second, each provision has a different specific intent provision. A transfer under § 1956(a)(2)(A) must be intended to facilitate the narcotics enterprise. For example, the wire transfer of legitimate funds to a bank account overseas to purchase narcotics would violate § 1956(a)(2)(A).[42] In contrast, under § 1956(a)(2)(B) the transfer must be designed to conceal the source of the funds or intended to avoid a cash transaction report. An example of a transfer under § 1956(a)(2)(B) would be the wire transfer of drug proceeds overseas under a false name or by a nominee/third-party.

C. *18 U.S.C. § 1956(a)(3)*

Section 1956(a)(3)[43] is commonly known as the "sting" provision of the money laundering statute. A conviction under this

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40. *Id.* § 1956(a)(2)(B)(i).

41. *Id.* § 1956(a)(2)(B)(ii).

42. *See* United States v. Monroe, 943 F.2d 1007, 1015 (9th Cir. 1991), *cert. denied*, 112 S. Ct. 1585 (1992) (involving wire transfer of funds to Hong Kong to purchase marijuana); United States v. Hamilton, 931 F.2d 1046, 1052 (5th Cir. 1991) (holding that transfer of legitimate funds by foreign drug cartel into bank account in United States intended to provide capital necessary for expanding drug enterprise would violate § 1956(a)(2)). A § 1956(a)(2)(A) violation appears to have been involved in the February 1993 bombing of the World Trade Center. As part of the conspiracy, $100,000 was wired from Germany and Iran to the individuals in the United States involved in the bombing. Ralph Blumenthal, *$100,000 Is Linked to Trade Center Suspects*, N.Y. TIMES, April 25, 1993, at A41.

43. 18 U.S.C. § 1956(a)(3) (1988 & Supp. IV 1992).

subsection requires that the defendant (1) conduct a financial transaction; (2) with property represented by an undercover agent or confidential informant to be drug proceeds or with property used to conduct or facilitate a drug transaction.[44] This subsection also adopts three of the four specific intent provisions of § 1956(a)(1). Therefore, the government must prove that the defendant conducted the financial transaction with the intent to: (1) facilitate the drug enterprise; (2) conceal or disguise the nature or ownership of the funds; or (3) evade a state or federal currency transaction reporting requirement.[45]

D. *Specific Intent*

The money laundering statute is not a money spending statute. The mere purchase of an asset with drug proceeds without an intent to facilitate, conceal, or evade would be a transaction scrutinized under forfeiture laws, not the money laundering statute.[46] To be a violation of § 1956,[47] the government must prove that the transaction or transfer was intended to fulfill one of the specific intent provisions set forth in the particular charging provision.

1. Facilitation

To prove an intent to facilitate, the defendant must be shown to have engaged in the transaction with the intent to promote the drug trafficking enterprise.[48] Typically, this subsection is aimed at prosecuting the defendant based on his intent to "reinvest" the drug profits back into the criminal enterprise. An example of a transaction intended to facilitate a drug trafficking enterprise would be the purchase of vehicles, firearms, houses, pagers, mobile telephones, boats, or other items to be

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44. *Id.*; *see also* United States v. Fuller, 974 F.2d 1474 (5th Cir. 1992); United States v. Breque, 964 F.2d 381 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1253 (1993).

45. *See* United States v. McLamb, 985 F.2d 1284 (4th Cir. 1993).

46. The federal forfeiture laws, 18 U.S.C. § 981 and 21 U.S.C. § 881, are effective compliments to a money laundering prosecution and punitive on their own, when the evidence cannot sufficiently establish the requisite intent to establish a § 1956 prosecution.

47. 18 U.S.C. § 1956 (1988 & Supp. IV 1992).

48. 18 U.S.C. § 1956(a)(1) (1988 & Supp. IV 1992).

used by the defendant in connection with his narcotics trafficking.[49] However, an intent to facilitate can be found in a broad array of transactions involving drug proceeds. What must be shown is that the transaction itself or the fruit of the transaction, in whole or in part, was intended to facilitate the narcotics enterprise.[50] If at the time of the transaction the defendant was not involved in drug trafficking, but later used the residence, boat, truck, or car to facilitate his drug dealing, he would most likely not be subject to a § 1956 charge.[51] However, his property would be subject to seizure under the civil[52] or criminal forfeiture statutes.[53]

In *United States v. Munoz-Rumo,*[54] the defendant was convicted of money laundering under the facilitation provision of § 1956(a)(1) based on his purchases of a residence, truck, and automobile with drug proceeds. At trial, the government first addressed its burden of proving that the purchases were made with drug proceeds by demonstrating that: (1) the defendant had limited income; and (2) the defendant was engaged in drug trafficking during the period of time the transactions at issue were conducted.[55] Next, the prosecution showed that the defendant used these items in furtherance of his drug trafficking activity by evidencing that: (1) drug proceeds were stored at the residence; (2) trips to purchase drugs were taken in the truck; and (3) the defendant dealt drugs out of the car.[56] On appeal, the court found that the government had presented sufficient evidence to sustain its burden on both points.[57]

In facilitation cases, the drug proceeds are often commingled with legitimate funds. The money laundering statute does not require the prosecution to prove that the funds used in the

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49. *See* United States v. Cruz, 993 F.2d 164 (8th Cir. 1993) (involving a vehicle purchased with drug proceeds which was subsequently used to distribute narcotics).

50. *See* United States v. Skinner, 946 F.2d 176, 177-78 (2d Cir. 1991) (purchase of postal money orders with drug proceeds and subsequent use of these monetary instruments to pay for cocaine was held to be financial transaction intended to facilitate drug dealing).

51. 18 U.S.C. § 1956 (1988 & Supp. IV 1992).

52. 18 U.S.C. § 981 (1988 & Supp. IV 1992).

53. 21 U.S.C. § 881 (1988 & Supp. IV 1992).

54. 947 F.2d 170 (5th Cir. 1991), *vacated on other grounds*, 113 S. Ct. 30 (1992).

55. *Id.* at 177-79.

56. *Id.*

57. *Id.*

transaction charged came exclusively from drug activities.[58] Thus, the government need only prove that a portion of the cash was drug proceeds. In *United States v. Jackson*,[59] the defendant used addicts to sell crack cocaine from two houses he had "repaired" and "revitalized" in a run-down section of East St. Louis. During the course of the defendant's drug trafficking, he deposited drug proceeds, together with funds obtained from other non-drug activities, into two separate bank accounts. The accounts were in the name of a development corporation and a church.[60] The defendant used and withdrew funds from these accounts (specifically, checks were drawn on the account) to obtain and maintain pagers and a cellular telephone.[61]

At trial, the prosecution established that these pagers were used in connection with the defendant's drug trafficking. The defendant was subsequently convicted of conspiracy to distribute crack cocaine and laundering drug proceeds pursuant to § 1956(a)(1).[62] The money laundering charge was based on the series of checks drawn on the accounts used for cellular telephone and paging services, rental payments, and cash.[63]

On appeal, the defendant argued that the government failed to establish that the monies used in the pertinent transactions were derived exclusively from drug trafficking.[64] The Seventh Circuit rejected the defendant's contention and held that the statute did not require the prosecution to prove that the funds used in the transactions came exclusively from drug proceeds.[65] The court held that the government need only prove that the transaction "involved," in whole or in part, drug proceeds.[66] The appellate court explained that to hold otherwise would permit drug traffickers to prevent their own conviction simply by commingling drug proceeds with legitimately derived funds:

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58. 18 U.S.C. § 1956 (1988 & Supp. IV 1992).
59. 935 F.2d 832 (7th Cir. 1991).
60. *Id.* at 836.
61. *Id.* at 836-37.
62. *Id.* at 837.
63. *Id.* at 836-37.
64. *Id.* at 839.
65. *Id.* at 839-40.
66. *Id.* at 840.

> We do not read Congress's use of the word "involve" as imposing the requirement that the government trace the origin of all funds deposited into a bank account to determine exactly which funds were used for what transaction. Moreover, we cannot believe that Congress intended that participants in unlawful activities could prevent their own convictions under the money laundering statute simply by commingling funds derived from both "specified unlawful activities" and other activities. Indeed, the commingling in this case is itself suggestive of a design to hide the source of ill-gotten gains that the government must prove . . . .[67]

The court next found that at least some of the funds in the account were drug proceeds from the defendant's narcotics enterprise, because a substantial portion of the balance was generated from large cash deposits "equal to approximately twice the amount that could be accounted for out of legitimate sources of income."[68] As for the checks made out for beeper services, the court found that because these beepers were used in connection with the defendant's drug trafficking, the government had established its facilitation case under § 1956(a)(1).[69] Finally, the court rejected the facilitation theory as to the mobile phones, rent payments, and checks for cash, because the government failed to prove that these activities played any role in the drug operation beyond maintaining the defendant's lifestyle.[70] The court did, however, find that the evidence was sufficient to prove a concealment charge under § 1956(a)(1)(B)(i).[71]

2. Concealment

As an alternative to proving that the defendant intended the transaction to facilitate the drug enterprise, under 18 U.S.C. § 1956(a)(1)(B)(i),[72] the government may prove that the transaction was designed to conceal the nature, location, source, ownership, or control of drug proceeds. An example of a transaction intended to conceal or disguise the source or ownership of the

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67. *Id.*
68. *Id.* at 840-41.
69. *Id.* at 841.
70. *Id.*
71. *Id.* at 841-42.
72. 18 U.S.C. § 1956(a)(1)(B)(i) (1988 & Supp. IV 1992).

funds would be the purchase of money orders under a false name or in the name of a nominee/third-party.[73]

Placing assets in a false name or in the name of a nominee/third-party or "front man" such as a girlfriend, mother, father, or other relative is a common method used by drug traffickers to conceal or disguise the source of their illicit funds. In *United States v. Beddow*,[74] the defendant was convicted of laundering drug proceeds pursuant to § 1956(a)(1)(B)(i) based on his purchase of a charter boat and emeralds with drug proceeds and under § 1956(a)(2)(B)(i) for his transportation of drug proceeds to Brazil.[75] At trial, the government showed that the defendant was involved in drug trafficking by introducing tape recorded conversations in which the defendant admitted that drug proceeds were used in connection with the charter boat and emerald transactions.[76] The government also showed that the defendant's investing activity involved a large amount of unexplained wealth.[77] The government introduced evidence that the defendant had invested in three unsuccessful business ventures: a restaurant, a charter boat business, and the purchase of $50,000 in uncut emeralds from Brazil.[78] These business ventures cost the defendant a total of $100,000 in documented losses. However, the defendant's tax returns for the pertinent period revealed little income and virtually no assets.[79] In the charter boat and emerald ventures, the defendant used "front men" to obscure and disguise his ownership.

On appeal, the defendant argued that the evidence was insufficient to support any finding that he carried out any of the transactions with the requisite intent to conceal the source or ownership of the funds involved in the transactions.[80] The

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73. *See* United States v. Saget, 991 F.2d 702, 713 (11th Cir. 1993), *cert. denied sub nom.*, Johnson v. United States, 114 S. Ct. 396 (1993) (renovating nightclub with drug proceeds); United States v. Turner, 975 F.2d 490, 496 (8th Cir. 1992), *cert. denied sub. nom.* Dowdy v. United States, 113 S. Ct. 1053 (1993) (purchase of building by nominee corporation); United States v. Isabel, 945 F.2d 1193 (1st Cir. 1991) (payroll check scheme).

74. 957 F.2d 1330 (6th Cir. 1992).

75. *Id.* at 1332.

76. *Id.* at 1334-35.

77. *Id.* at 1333.

78. *Id.*

79. *Id.*

80. *Id.* at 1334.

Sixth Circuit rejected the defendant's argument. As for the emerald transaction, the court found that the defendant was the true owner of the stones and that he used a "front man" to disguise his ownership interest.[81] As for the charter boat transaction, the court found that the evidence of the defendant's "convoluted financial dealings"[82] with his bank and the charter boat business supported the jury's finding that the defendant intended to disguise the source of the funds.[83]

In concealment cases based on the purchases of assets, the government is required to show that the property was used to conceal the source of the funds. In *United States v. Baker*,[84] one defendant was convicted of money laundering under the concealment provision of § 1956(a)(1)(B)(i). The conviction was based on the theory that he concealed his drug proceeds by having a friend use the defendant's cash to purchase a boat for him while keeping title to the boat in his friend's name.[85] At trial, the government first showed that the defendant was involved in drug trafficking, and introduced evidence that the defendant's friend purchased a boat for $30,000 in cash.[86] The government, however, was unable to establish that the defendant participated in the transaction. Moreover, although the purchase was shown to have taken place, the boat was never found or otherwise identified. The government did produce some evidence that the defendant referred to owning or possessing a boat during two monitored telephone calls and that the defendant was seen pulling a boat on a trailer on one occasion.[87]

On appeal, the Fourth Circuit reversed the conviction. First, the court found that because the government had failed to identify the particular boat involved in the transaction, there could be no showing that property or a "vehicle" had been used by

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81. *Id.* at 1335.
82. *Id.*
83. *Id.*
84. 985 F.2d 1248 (4th Cir. 1993), *cert. denied sub nom.*, Blackwell v. United States, 62 U.S.L.W. 3451 (1994).
85. *Id.* at 1251-52. The court's decision also mentions a conviction under § 1956(a)(1)(B)(ii). *Id.* at 1250. However, this subsection is not discussed or referred to again.
86. *Id.* at 1252.
87. *Id.* at 1252-53.

the defendant to convert the proceeds.[88] Second, the court held that the government failed to identify the source of the money as drug proceeds.[89] The court refused to find that all funds associated with him were automatically presumed to be illicit funds just because the defendant was involved in drug trafficking. Even when the court assumed the funds were drug proceeds, it held that the government's failure to establish any relationship between the defendant and the money used in the transaction was fatal to any conviction.[90]

Even in cases where the funds involved in the transaction are admittedly drug proceeds, whether there has been an attempt to conceal the source of the funds centers on whether the defendant attempted to divorce himself from either the source of the funds used in the transaction and/or the property used as a vehicle to convert the drug money. For example, in *United States v. Sanders*,[91] the defendant was convicted on two counts of money laundering under § 1956(a)(1)(B)(i) based upon two separate automobile purchases.[92] The defendant made two car purchases approximately five months apart. It was undisputed that a portion of the purchase price of each vehicle was paid for with drug trafficking proceeds.[93] The first car was purchased with a loan, $3535 in cash (the drug proceeds), and a trade-in.[94] The defendant personally handled the transaction with her husband, and they both used the vehicle after its purchase. Again, it was undisputed that the second car was purchased, in part, with $11,400 in drug proceeds.[95] In connection with making the second purchase, the defendant and her husband appeared at the dealership to negotiate the sale, made the purchase, and placed the title to the car in the name of the husband's daughter.[96] At trial, the defendant was convicted of

88. *Id.* at 1254.
89. *Id.*
90. *Id.*
91. 929 F.2d 1466 (10th Cir.), *cert. denied*, 112 S. Ct. 143 (1991).
92. *Id.* at 1468.
93. *See id.* at 1472.
94. *Id.* at 1471.
95. *See id.* at 1472.
96. *Id.* at 1471.

money laundering under the concealment provision of § 1956(a)(1)(B)(i).[97]

The Tenth Circuit reversed the defendant's conviction and held that these facts were not sufficient to sustain a concealment charge. The court specifically found that because both the defendant and her husband had openly participated in purchases that were readily identifiable, there was no intention to conceal the source of the proceeds.[98] In reaching the decision to nullify the money laundering conviction the *Sanders* court held:

> [B]y the express terms of the statute, a design to conceal or disguise the source or nature of the proceeds is a necessary element for a money laundering conviction. In other words, the purpose of the money laundering statute is to reach commercial transactions intended (at least in part) to disguise the relationship of the item purchased with the person providing the proceeds used to make the purchase were obtained from illegal activities.[99]

3. Evasion of State or Federal Reporting Requirement

18 U.S.C. § 1956(a)(1)(B)(ii) and (a)(2)(B)(ii) prohibit transactions or transfers designed to evade a state or federal currency reporting requirement.[100] The detection of the movement of large amounts of cash has always been considered a natural byproduct of drug trafficking as well as other cash intensive criminal enterprises. With this in mind, Congress established reporting requirements for domestic[101] and international[102] cash transactions in amounts of $10,000 or more. In 31 U.S.C. § 5313, a financial institution is required to file a report with the Internal Revenue Service for virtually all cash transactions involving more than $10,000. Section 5324 prohibits any individual from structuring cash transactions with the intent to

97. *Id.*
98. *Id.* at 1472.
99. *Id.*
100. 18 U.S.C. § 1956(a)(1)(B)(ii) (1988 & Supp. IV 1992).
101. 31 U.S.C. §§ 5324(a), 5313(a) (1988 & Supp. IV 1992).
102. 31 U.S.C. §§ 5324(b), 5316 (1988 & Supp. IV 1992).

evade or cause a financial institution not to file the currency transaction report.[103] In addition, § 5324(a)(2) prohibits anyone from causing a financial institution to file a currency transaction report with material omissions or misstatements of fact. Furthermore, federal law requires that an individual or institution file a report with the Customs Service for all international transactions or transfers of cash in excess of $10,000.[104] Section 5324(a) prohibits anyone from causing the failure to file such a report.

In *United States v. Jackson*,[105] the defendant was convicted of money laundering under the evasion provision of § 1956(a)(1)(B)(ii) based on his purchase of a car. The defendant paid in seven installments of cash and cashier's checks, varying in amounts from $25 to $6,772.25.[106] At trial, the government presented six witnesses who testified that the defendant was involved in drug trafficking and that he possessed a substantial amount of unexplained wealth.[107] The defendant was convicted and appealed. On appeal, the defendant argued that the evidence was insufficient to prove that he intended to avoid a state or federal reporting requirement.[108] The Seventh Circuit rejected the defendant's argument, holding that the defendant's payments in cash and cashier's checks, each less than $10,000, adequately supported his conviction under the avoidance provision of § 1956(a)(1)(B)(ii).[109]

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103. *See* United States v. Rogers, 962 F.2d 342, 345 (4th Cir. 1992); United States v. Wollman, 945 F.2d 79, 81 (4th Cir. 1991). Recently, the United States Supreme Court settled the conflict among circuits as to whether the government must prove that the evading defendant had knowledge of the illegality of his transaction structuring. In *Ratzlaf v. United States*, 114 S. Ct. 655 (1994), the Court held that the prosecution must prove the defendant acted with the knowledge his conduct was unlawful in order to establish a willful violation of the anti-structuring law. *Id.* at 662. The Court, however, recognized that this burden of proof could be met by using circumstantial evidence. *Id.* at 663 n.19.

104. 31 U.S.C. § 5316.

105. 983 F.2d 757 (7th Cir. 1992).

106. *Id.* at 760, 764.

107. *Id.* at 766.

108. *Id.*

109. *Id.* at 767. In *United States v. Ortiz*, 738 F. Supp. 1394 (S.D. Fla. 1990), the defendant attempted to ship a water heater filled with $497,170 in cash to Colombia. *Id.* at 1396. Law enforcement agents intercepted the shipment in Miami, Florida. After his arrest, the defendant acknowledged that the money contained in the water heater was drug proceeds. *Id.* at 1396-97. On motion to dismiss, the district court upheld the indictment under § 1956(a)(2)(B)(ii) for attempting to transport drug pro-

III. CIRCUMSTANTIAL EVIDENCE

A. *Introduction*

There are three central elements under a § 1956(a)(1), (a)(2)(B) or (a)(3) charge.[110] First, the government must prove that the funds involved in the transaction were drug proceeds. Second, the government must prove that the defendant knew that the funds were drug proceeds. Finally, the prosecution must prove that the defendant knew that the transaction was intended to fulfill one of the illicit purposes mentioned in the statute.[111] Evidence relating to the drug proceeds element and the two knowledge elements will make up the core of the government's case.

Typically, a money laundering charge is brought against a defendant based on one of the following four fact patterns. First, the defendant is involved in drug trafficking and the money laundering charge arises from his participation in a transaction involving funds specifically and directly linked to a particular drug deal. Second, the defendant is involved in drug trafficking and the money laundering charge arises out of his participation in a transaction involving funds not traced to any particular drug distribution. Third, the defendant is not directly involved in the purchase or sale of narcotics, but is involved in a transaction involving funds specifically and directly linked to drug trafficking. Fourth, the defendant is not directly involved in the purchase or sale of narcotics, but participates in a transaction involving funds that are circumstantially traced or linked to a narcotics enterprise.

Although a money laundering charge may be based on these four distinct fact patterns, whether the funds were drug proceeds, whether the defendant knew the funds were drug proceeds, and whether the defendant knew of the intended illicit design of the transaction often collapse into one analysis. This analysis concentrates on the particular circumstances indicating

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ceeds with the intent to avoid the transaction reporting requirement 31 U.S.C. §§ 5316 and 5322. *Id.* at 1404.

110. 18 U.S.C. §§ 1956(a)(1), (a)(2)(B), (a)(3) (1988 & Supp. IV 1992).

111. *See* United States v. Jackson, 983 F.2d 757, 766 (7th Cir. 1993); United States v. Campbell, 977 F.2d 854, 857 (4th Cir. 1992).

the source of the funds and the characteristics of the individuals involved in the handling of the funds.[112]

When the defendant is involved in both the underlying drug transaction and the money laundering transaction, the relationship between the defendant and the unlawful activity is intimate. As a consequence, the drug proceeds and knowledge elements are obvious.[113] For example, evidence that the defendant engaged in a large cocaine transaction generating $200,000 in cash revenue and, a week later, purchased $150,000 in real estate in his mother's name and paid for the property in cash would easily establish the drug proceeds and knowledge element. Rarely, however, is the government's evidence so precise. More likely, the government's evidence would be more remote; for example, during the time the son was engaged in drug trafficking, his mother purchased $150,000 in real estate and paid cash.

Under the other three scenarios, the link between the funds involved in the transaction and the underlying unlawful activity generating the funds is more estranged. As a consequence, although the prosecution need not trace the funds to a specific drug transaction,[114] the government is still required to show that the transaction involved drug proceeds and that the defendant knew both that the transaction involved drug proceeds and that the transaction was designed to fulfill one of the illicit purposes under the statute. The prosection can meet this burden of proof with circumstantial evidence. This circumstantial evidence should be tantamount to a complete dissection of the transaction and the individuals involved in the suspected money laundering scheme. In addition, this circumstantial evidence should be supplemented with expert witness testimony explaining a drug dealer's typical method of laundering his cash profits or the usual meanings of terms used by money launderers.[115] For example, an expert witness could testify that drug dealers

112. *See, e.g.*, United States v. Isabel, 945 F.2d 1193, 1202 (1st Cir. 1991) (examining source of funds, statements made during the transactions, statements characterizing source of the funds, and knowledge of prior narcotics arrests in finding that the funds involved in the transaction were drug proceeds).

113. United States v. Jackson, 935 F.2d 832, 839 (7th Cir. 1991).

114. *Jackson*, 935 F.2d at 840.

115. United States v. Fuller, 974 F.2d 1474, 1482-83 (5th Cir. 1992).

typically use wire services in furtherance of their drug activities.[116] By combining circumstantial evidence and expert testimony to establish the existence of criminal activity with the defendant's deliberate avoidance of learning of this activity, the prosecution should be entitled to a willful blindness, deliberate ignorance, or conscious avoidance instruction on the three core issues of the prosecution.[117]

B. *Drug Proceeds*

Proof that the funds were drug proceeds may be established with circumstantial evidence. In *United States v. Blackman,*[118] the defendant asserted that the government failed to meet its burden of proof because neither his wire transfers nor his payment to an auto dealership were traceable to any particular drug sale.[119] The Eighth Circuit refused to infer such a precise burden on the prosecution. The court held that the government's proof that the defendant was involved in drug trafficking and his inability to demonstrate a legitimate source of income, combined with the particular nature of the transactions was sufficient to prove that the funds were drug proceeds.[120] The court explained that:

> The government relied on evidence of [the defendant's] involvement in drug trafficking and his lack of any legitimate source of income to raise the inference that the money wired to Los Angeles and paid to [the auto dealership] represented proceeds from drug distribution. While the government can point to no specific drug sale that produced the money, we do not believe that the government's evidence fails to make out a claim of money laundering under 18 U.S.C. § 1956. We do not read the statute to require that the government trace the proceeds to a particular sale.

116. United States v. Blackman, 904 F.2d 1250, 1257 (8th Cir. 1990).

117. United States v. Breque, 964 F.2d 381, 387-88 (5th Cir. 1992) ("The term 'deliberate ignorance' 'denotes a conscious effort to avoid positive knowledge of a fact which is an element of an offense charged, the defendant choosing to remain, ignorant so he can plead lack of positive knowledge in the event he should be caught.'") (quoting U.S. v. Restrepo-Granda, 575 F.2d 524, 528 (5th Cir. 1978), *cert. denied*, 439 U.S. 935 (1978)).

118. 904 F.2d 1250 (8th Cir. 1990).

119. *Id.* at 1256.

120. *Id.* at 1257.

> We do agree with [the defendant] that the government cannot rely exclusively on proof that a defendant charged with using proceeds from an unlawful activity has no legitimate source of income. However, as the Third Circuit noted in *United States v. Massac*, 867 F.2d 174 (3d Cir. 1989) evidence of a defendant's use of wire service to transfer cash to Haiti, combined with evidence of defendant's drug trafficking, is sufficient to sustain a conviction of money laundering under 18 U.S.C. § 1956(a)(1)(B)(i).[121]

C. *Knowledge/Drug Proceeds*

In addition to using circumstantial evidence to prove that the funds were drug proceeds, this type of evidence can also be used to prove that the defendant knew the funds were drug proceeds. In *United States v. Gallo*,[122] the defendant was charged with money laundering under the facilitation provision of § 1956(a)(1)[123] based on his transportation of $299,985 in cash in his car on an interstate highway.[124] The prosecution successfully established that the defendant knew the money in his car was narcotics proceeds by introducing evidence of a concert of action between the defendant and two suspected drug dealers.[125] More specifically, the government introduced evi-

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121. *Id.* (footnotes omitted). In *United States v. McDougald*, 990 F.2d 259 (6th Cir. 1993), the Sixth Circuit rejected the inference relied on in *Blackman*. In *McDougald*, the defendant was convicted of money laundering based on his purchase of a car for a drug dealer. *Id.* at 260. In connection with the sale, the defendant had the car titled in his name, thereby concealing the identity of the true owner. *Id.* On appeal, the court held that although the government showed that the funds used to purchase the car were attributable to a drug dealer, this evidence was insufficient to prove that the funds were drug proceeds because there was no evidence that drug trafficking was the defendant's sole source of income. *Id.* at 261-62. The court rejected the inference relied on in *Blackman* and held that the mere fact that the funds were traceable to a drug dealer does not give rise to an inference that the monies are drug proceeds. *Id.* at 261-62. Moreover, the court found that, although the defendant's concealment of the identity of the vehicle's true owner veneered the transaction with suspicion, it was not sufficient to prove an intent to conceal. *Id.* at 262. The court found that the defendant's reasons for misrepresenting the true ownership of the car could be attributable to several motivations and not just an intent to launder drug proceeds. *Id.*

122. 927 F.2d 815 (5th Cir. 1991).

123. 18 U.S.C. § 1956(a)(1)(1988).

124. 927 F.2d at 822.

125. *Id.*

dence that the defendant received the money from a known drug dealer, that the money was wrapped in aluminum-foil packets, that fingerprints of another suspected drug dealer were found on the money, and that after he was arrested the defendant made two false exculpatory statements about the car and the cash.[126]

In *United States v. Martin*,[127] the defendant was convicted of money laundering based on his purchase of stock with proceeds from marijuana sales.[128] The defendant appealed his conviction on the ground that the government failed to introduce sufficient evidence to prove that he knew that drug proceeds were used to purchase stock and that the transaction was designed to conceal ownership of the proceeds.[129] The Eighth Circuit upheld the defendant's conviction and found that the circumstantial evidence was sufficient to prove that the defendant knew the funds were drug proceeds.[130] The court held that evidence of the stock purchases with cash, together with the defendant's admissions during several conversations that the funds used to purchase the stock were generated from marijuana sales, were sufficient to support the jury's finding that the funds were drug proceeds.[131] In addition, the issuance of the stock certificates in the name of a nominee/third-party was sufficient to prove that the defendant intended to conceal the source of the funds.[132]

Discussions between individuals involved in laundering drug proceeds is usually cryptic and typically the conversations do not explicitly refer to the funds as "drug money." Consequently, in sting cases under § 1956(a)(3), the undercover agent must walk a thin line between representing that the funds are drug money and using the typically obscure language of a drug dealer. As a result, the central issue regarding knowledge involves the question of whether the agent or confidential informant sufficiently disclosed or represented that the funds were drug

126. *Id.*
127. 933 F.2d 609 (8th Cir. 1991).
128. *Id.* at 610.
129. *Id.*
130. *Id.* at 611.
131. *Id.* at 610.
132. *Id.*

proceeds. Again, circumstantial evidence plays an essential role. In *United States v. Breque*,[133] the defendant was convicted under the sting provision of § 1956(a)(3). The conviction arose out of the defendant's operation of a money exchange service in Texas.[134] In particular, the defendant's conviction was based on seven transactions in which he exchanged dollars given to him by an undercover agent for Mexican pesos. The transactions occurred over an eight-month period and involved a total of over $200,000.[135]

During several of the transactions the undercover agent made veiled references to drug dealing and there were discussions between the agent and the defendant about money laundering.[136] In addition, the defendant never asked the agent for any information necessary to complete a currency transaction report, and a report was never filed relating to any of the seven money exchanges.[137] Finally, the agent was charged a service fee or commission for each of the exchanges, and early on this fee was increased, according to the defendant, as a result of the "dangers involved" in handling the agent's money.[138]

The defendant appealed his conviction on the ground that the evidence was insufficient to show that he knew that the funds were drug proceeds; or stated another way, that the undercover agent represented the funds as drug proceeds.[139] The court scrutinized the conversations between the agent and the defendant and found that the allusions to drug dealing were strong enough to support the conviction.[140] In particular, the court found that the agent's identification of the source of the money as "people in Florida" and the agent's reference to large sums of cash which needed to be put in "useable form," combined with the discussions about "Miami Vice" problems and the seizure of assets by drug agents, were distinctive to drug trafficking so that the defendant must have known or understood that the

133. 964 F.2d 381 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1253 (1993).
134. *Id.* at 382.
135. *Id.* at 383-85.
136. *Id.* at 383.
137. *Id.* at 383-84.
138. *Id.* at 384.
139. *Id.* at 386.
140. *Id.*

money involved in the currency exchanges was drug proceeds.[141]

D. *Knowledge/Illicit Intent*

The defendant's knowledge of the illicit intent of the transaction, likewise, can be established by way of circumstantial evidence.[142] The circuit courts have moved resolutely not incrementally on this evidentiary point. In *United States v. Campbell*,[143] the Fourth Circuit was presented a case where the defendant was not involved in drug trafficking and the funds involved in the transaction, although linked to a drug dealer, were not directly linked to a particular drug deal. In *Campbell*, a real estate agent was convicted of money laundering under the concealment provision set forth in § 1956(a)(1)(B)(i)[144] based on her sale of real estate to a drug dealer.[145] The defendant was hired by an individual involved in drug trafficking. This client represented himself to be the owner of an automobile customizing service.[146] Over the course of five weeks, the defendant met with her client approximately once a week. During these meetings the defendant showed a total of ten to twelve houses.[147] The client would arrive at these meetings driving a Porsche, and always had a cellular phone with him.[148] At one point, he brought a briefcase containing $20,000 in cash to demonstrate his ability to afford a house.[149]

The client eventually decided to buy a $191,000 house. The price was subsequently negotiated down to $182,500.[150] After the client was unable to secure a conventional mortgage, he proposed to the defendant that the sellers drop their price to $122,500 and accept a $60,000 cash payment "under the

141. *Id.* at 387.
142. United States v. Isabel, 945 F.2d 1193, 1202-03 (1st Cir. 1991).
143. 977 F.2d 854 (4th Cir. 1992), *cert. denied*, 113 S. Ct. 1331 (1993).
144. 18 U.S.C. § 1956(9)(1)(B)(i) (1988 & Supp. IV 1992).
145. 977 F.2d at 855.
146. *Id.*
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.* at 855-56.

table."[151] The sellers accepted this proposition and the client dealer, thereafter, met the defendant and the sellers and gave them $60,000 in cash. The money was wrapped in small bundles and carried in a brown paper grocery bag.[152] Following delivery of the cash to the sellers, the sale went forward and the property was titled in the client's parents' name.[153]

The defendant was subsequently convicted of § 1956(a)(1)(B)(i) and § 1957[154] charges. However, the district court granted the defendant's motion for judgment of acquittal.[155] The court held that the government's evidence that the client had been seen by the defendant driving expensive cars, had shown the defendant $20,000 in cash to demonstrate his ability to purchase the property, had paid for the property in cash, and had titled the property, with the assistance of the defendant, in his parents' name, was insufficient to establish a concealment case.[156] The district court found that the defendant was merely the salesperson who partially oversaw the transaction.[157] In addition, the court found that the evidence was insufficient to prove that the defendant intended to conceal the source of the funds. The court held that her motive was simply to close the real estate transaction and collect the resulting commissions, without regard to the source of the funds involved in the transaction or the effect of the transaction in concealing the source of the funds.[158] Moreover, the district court found that the evidence that her client demonstrated of extensive, unexplained wealth was insufficient to support a finding that the defendant knew that the funds involved in the real estate sale were drug proceeds.[159]

The Fourth Circuit reversed the judgment of acquittal. The appellate court first held, and the defendant did not dispute, that there was adequate circumstantial evidence for the jury to find that the defendant conducted a financial transaction which

151. *Id.* at 856.
152. *Id.*
153. *Id.*
154. 18 U.S.C. § 1957 (1988 & Supp. IV 1992).
155. United States v. Campbell, 777 F. Supp. 1259 (W.D.N.C. 1991).
156. *Id.* at 1265.
157. *Id.*
158. 977 F.2d at 857.
159. 777 F. Supp. at 1266.

involved drug proceeds.[160] The court then recognized that the central issue was whether there was sufficient evidence for the jury to find that the defendant knew that: (1) the funds were drug proceeds; and (2) the transaction was intended or designed to conceal the source of the funds.[161]

The appellate court first held that the district court erred in its interpretation of the government's burden of proof on the question of whether the defendant knew that the transaction was intended to conceal the source of the funds.[162] The district court held that the government was required to prove the defendant intended the transaction to conceal or disguise the source of the funds. The Fourth Circuit rejected this interpretation and held that the government was required to prove only that her client intended the transaction to conceal or disguise the source and ownership of the funds and that the defendant knew of this design or intent.[163] The defendant's own motivation or intent was not deemed relevant. The critical factor was not her intent, but rather her knowledge of her client's intent.[164] Moreover, this burden of proof was "softened" by the doctrine of willful blindness. Thus, the government was only required to prove that the defendant purposefully and deliberately avoided learning of her client's intentions.[165]

The court then held that if the defendant knew the funds were drug proceeds, "then the under the table transfer of $60,000 in cash" was sufficient "by itself" to support the finding that the defendant "knew, or was willfully blind" to the fraudulent or illicit purpose of the transaction.[166] Thus, whether the evidence was sufficient to support the finding that the defendant knew that her client's purpose in undertaking the transaction was to conceal or disguise the source and ownership of drug proceeds pivoted on whether the defendant was aware that the funds were drug proceeds.[167] The court found that in

160. 977 F.2d at 856.
161. *Id.* at 857.
162. *Id.*
163. *Id.*
164. *Id.* at 857-58.
165. *Id.*
166. *Id.* at 858.
167. *Id.*

this particular case, the knowledge component of the money laundering statute collapses into a single inquiry: did the defendant know that the funds involved in the transaction "were derived from an illegal source?"[168] If yes, this fact combined with the fraudulent nature of the transaction would be sufficient to support a finding that: (1) the defendant knew that the transaction involved illicit proceeds; and (2) the transaction was designed to conceal or disguise the source and ownership of the funds.[169]

On the question of whether the defendant knew that the funds were drug proceeds, the district court was, again, found to have misstated the government's burden. The district court held that the prosecution was required to show the defendant's particular "knowledge of the drug dealer's activities."[170] The appellate court rejected this narrow interpretation. The court held that the government need only show that the funds represented "proceeds of some form of unlawful activity" and was not required to prove a particular or specific violation under the statute.[171] At trial, the government's evidence showed the particular characteristics of the individual providing the funds.[172] By tainting the individual, the government attempted to taint the funds and "negate the defendant's credibility."[173] The Fourth Circuit found the evidence persuasive. The court viewed the government's "life-style" evidence (expensive car, large amounts of cash, cellular phone, absence from represented legitimate business for long periods of time during normal working hours), combined with a statement by the defendant that her client's money might be "drug money" and the fraudulent nature of the transaction, was sufficient to support the jury's finding that the funds were drug proceeds and that the defendant "deliberately closed her eyes to what would otherwise

168. *Id.*

169. *Id.*

170. United States v. Campbell, 777 F. Supp. 1259, 1265 (M.D.N.C. 1991).

171. 977 F.2d at 857 (citing 18 U.S.C. § 1956(9)(1)). It should be noted, however, that the appellate court found the distinction of little consequence in this case, as the entirety of the government's evidence was intended to prove the defendant knew her client was a drug dealer. *Id.*

172. *Id.* at 859.

173. *Id.* The defendant maintained throughout the trial that she mistakenly believed the drug dealer was a legitimate businessman.

have been obvious to her."[174] Thus, the court concluded that the evidence supported the jury's finding that the defendant knew of or was willfully blind to the fact that her client was a drug dealer, that the funds were drug proceeds, and that her client intended the transaction to conceal the source of the funds.[175]

The theory that a defendant may be willfully blind to the truth was relied on by the Eighth Circuit to sustain a money laundering conviction in *United States v. Long*.[176] In *Long*, the defendants were charged with money laundering under the concealment provision set forth in § 1956(a)(1)(B)(i).[177] The defendants were owners and operators of three automobile dealerships in the metropolitan St. Paul area and were charged based on the sale of numerous vehicles to drug dealers.[178] At trial, the government introduced evidence that during a three-year period certain defendants structured numerous sales for the drug dealers by accepting cash payments of under $10,000 and

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174. *Id.*

175. *Id.* Recently the Fourth Circuit affirmed that circumstantial evidence is sufficient to sustain a money laundering conviction in *United States v. Winfield*, 997 F.2d 1076 (4th Cir. 1993). In *Winfield*, the defendant was convicted of laundering drug proceeds in connection with the purchase of two houses in Petersburg, Virginia. *Id.* at 1076. The defendant appealed her conviction on the ground that the evidence did not directly connect her to the transactions. Thus, the defendant argued that she did not "conduct" a financial transaction as required in § 1956(a)(1). *Id.* at 1079.

The Fourth Circuit rejected the defendant's contention and held that the circumstantial evidence was sufficient to show the defendant's link to the purchases. *Id.* at 1079-80. As for the first property, the defendant's son dealt with the real estate agent, tendered the deposit, and titled the property in his name. However, the court found that the defendant's statement that she desired to purchase the property and later, after the house was purchased, that she intended to evict a tenant combined with the defendant living in the house and conducting her drug dealing from the house sufficiently showed the defendant's link such as to find that she conducted the transaction. *Id.*

As for the second house, the court found the defendant's purchase of the house next door, contact with the previous owner to buy the house, and the use of the defendant's daughter's name for the title was, again, sufficient to prove that the defendant conducted a financial transaction. *Id.* at 1080.

176. 977 F.2d 1264, 1271 (8th Cir. 1992).

177. 18 U.S.C. § 1956(a)(1)(B)(i) states that a person will be guilty of money laundering when they know the transaction in question is designed "to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity." *Id.*

178. 977 F.2d at 1267-68.

arranging conventional financing.[179] Typically, when the drug dealer advised the defendants that he had no legitimate source of income to support a loan application, the drug dealer would, nevertheless, be assured by the defendants that financing could be arranged.[180] The defendants would then secure financing for the purchases by filing false loan applications on behalf of the drug dealers. Once the financing was approved, the defendants would receive an under the table payment.[181] The government also presented evidence that the defendants made comments during the course of these transactions indicating that they suspected that the purchasers were involved in drug trafficking.[182]

The defendants appealed their conviction principally on the ground that the evidence was insufficient to establish that: (1) they knew that the funds involved in the transaction were drug proceeds; (2) the transactions were designed to conceal the source of the funds; and, (3) they knew that the purchases were designed to conceal the source of the funds.[183] The court rejected the defendants' arguments on each point. First, the court found that the structuring of the cash payment, references to the purchasers as drug dealers, and use of false loan applications combined with the under the table payments was sufficient to find that the defendants knew the cars were being purchased with drug proceeds.[184] As for the intent to conceal the source of the funds, the court held that because the transactions were designed to permit the "drug dealers to make drug money appear to be money earned through work in a legitimate job," the transactions fell plainly within the purview of the concealment provision of the statute.[185] Finally, the court held that because the defendants knew the funds involved in the transactions were drug proceeds and that the purchases were designed to conceal the source of the funds, the evidence supported an inference that the defendants were deliberately ignorant to the intended design of the transactions.[186] Thus, the

179. *Id.* at 1267.
180. *Id.*
181. *Id.*
182. *Id.* at 1268.
183. *Id.* at 1269.
184. *Id.*
185. *Id.* at 1270.
186. *Id.* at 1271. The evidence also established that one defendant took steps to

jury was also "warranted in finding that [the defendants] knew [the] transactions were designed to conceal or disguise the source of the drug proceeds."[187]

The *Campbell* and *Long* decisions establish that in cases where the defendant has either by design or circumstance distanced himself from the underlying drug enterprise and is charged with money laundering based on his participation in a transaction involving drug proceeds, the government may meet its burden of proving knowledge by proving that the defendant knew or was willfully blind to the source of the money and the intent to conceal. This burden can be met with the introduction of circumstantial evidence showing deliberate ignorance to the obvious truth. For example, evidence regarding the particular manner and method in which the defendant handled the transaction may be sufficient to show that it was obvious that the funds were drug proceeds and that the transaction was designed to fulfill one of the illicit purposes under the statute.

IV. CONCLUSION

Because of the cash-intensive nature of drug trafficking, the huge profits, and the appendage needed to remove the taint and association with the narcotics enterprise, the federal money laundering statute has come to be primarily about drugs and drug money. Beyond understanding the complexity of the statutory elements themselves, the evidence necessary to sustain a § 1956 prosecution is formidable. In particular, the case typically centers on three significant evidentiary issues: (1) whether the evidence sufficiently shows that the funds were drug proceeds; (2) whether the defendant knew the funds were drug proceeds; and, (3) whether the defendant knew of the illicit purpose of the transaction or transfer. Recently, the federal circuit courts have held that circumstantial evidence, detailing the characteristics of the individuals involved in the transaction, and the particular manner and method in which the transaction was carried out, often combined with expert testimony, may be suffi-

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remain ignorant of the details of the illegal transactions. *Id.* This was a proper foundation for the trial court to include a jury instruction on willful blindness. *Id.*

187. *Id.* at 1270.

cient to satisfy these evidentiary burdens. Thus, the government may meet its burden of proving the critical elements of the money laundering offense by introducing circumstantial evidence that the defendant was deliberately ignorant or willfully blind to the obvious truth regarding the source of the funds and the illicit intent of the transaction. If the defendant fails to demure to indications that he is involved in a transaction involving drug proceeds, the consequences are not trivial.