IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA GAINESVILLE DIVISION

UNITED STATES OF AMERICA

v. **Case No. 1:21-cr-13-AW-GRJ**

JEREMIE SAINTVIL,

Defendant.

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ORDER DENYING DEFENDANT'S MOTION TO DISMISS OR STRIKE

Defendant Jeremie SaintVil has moved to dismiss Count One or, alternatively, to strike surplusage. ECF No. 35. The government has responded in opposition. ECF No. 36. This order denies the motion.

Count One is Not Duplicitous

SaintVil first argues duplicity. He contends the statute at issue covers two separate offenses, and that Count One alleges violations of both. Motion at 3.

"[S]ection 1344 covers two distinct types of bank fraud: subsection (a)(1) outlaws schemes to defraud federally insured financial institutions and subsection (a)(2) prohibits schemes to obtain funds from such institutions by means of false or fraudulent pretenses, representations, or promises." *United States v. Mueller*, 74 F.3d 1152, 1159 (11th Cir. 1996). Count One does allege SaintVil committed both types of bank fraud. ECF No. 1 at 10. But this does not mean it is duplicitous.

> Where a penal statute . . . prescribes several alternative ways in which the statute may be violated and each is subject to the same punishment, . . . the indictment may charge any or all of the acts

> conjunctively, in a single count, as constituting the same offense, and the government may satisfy its burden by proving that the defendant, by committing any one of the acts alleged, violated the statute.

United States v. Burton, 871 F.2d 1566, 1573 (11th Cir. 1989); *see also United States v. Crisci*, 273 F.3d 235, 239 (2d Cir. 2001) (rejecting argument "that the bank fraud counts are duplicitous because they charge violations of both Section 1344(1), which prohibits a scheme to defraud a financial institution, and Section 1344(2), which prohibits a scheme to obtain a financial institution's money 'by means of false or fraudulent pretenses, representations, or promises'"); *United States v. Goldsmith*, 109 F.3d 714, 716 (11th Cir. 1997) ("The indictment charged Goldsmith under both provisions of section 1334(a), so we must determine if his conduct amounts to a violation under either subsection. If evidence presented at trial is sufficient to prove either theory of bank fraud, the case may be submitted to the jury. Where the indictment and instructions to the jury charge both clauses of the statute, as was done in this case, the defendant's conviction may be sustained under either clause." (citations omitted)) (abrogated on other grounds).

SaintVil cites the standard jury instruction, which says "there are two separate offenses" under the statute. Motion at 3 (quoting instruction). But the instruction is just saying there are two different ways to violate the statute. The instruction cites cases that say essentially that. *See United States v. Dennis*, 237 F.3d 1295, 1303 (11th Cir. 2001) ("Bank fraud is established under two alternative methods.");

Mueller, 74 F.3d at 1159 ("1344 covers two distinct types of bank fraud."). And at any rate, even if they are truly two separate and distinct offenses, dismissal would not be appropriate. *See United States v. Hammond*, 125 F.3d 845 (2d Cir. 1997) (unpublished table decision) ("This Court has not yet decided whether subsections (1) and (2) of § 1344 set forth distinct offenses or merely alternate means of committing the same offense. That question need not be determined in the present case, however, for even if those subsections set forth distinct offenses, the district court properly instructed the jury, and there was no uncertainty as to what the jury found. . . . We see no unfairness.").

SaintVil has not shown that Count One should be dismissed as duplicitous.

Count One States an Offense and Alleges Sufficient Facts

SaintVil next argues that Count One does not allege an offense and is vague. Motion at 6. This is not a good argument. Count One refers to the statute at issue, and it sets out the basic facts of the scheme. *Cf. United States v. Fern*, 155 F.3d 1318, 1325 (11th Cir. 1998); *United States v. Bobo*, 344 F.3d 1076, 1083 (11th Cir. 2003). That SaintVil may have wished for more specifics does not mean dismissal is appropriate.

Count One alleges enough. It is not vague. And to the extent SaintVil takes issue with the fact that Count One charges he "execute[d] *and* attempt[ed] to execute [the fraudulent] scheme," Motion at 10 (alterations in Motion), it is settled that an

indictment can allege alternatives in the conjunctive. *See United States v. Simpson*, 228 F.3d 1294, 1300 (11th Cir. 2000). Thus, even if SaintVil is correct that "the charged offense could only be either completed or inchoate, not both," Motion at 10, that would not be a basis to dismiss.

SaintVil Has Shown No Basis to Strike "Surplusage"

SaintVil also asks the court to strike certain information that he says is surplusage. "A motion to strike surplusage from an indictment should not be granted unless it is clear that the allegations are not relevant to the charge and are inflammatory and prejudicial. This is a most exacting standard." *United States v. Awan*, 966 F.2d 1415, 1426 (11th Cir. 1992) (quoting *United States v. Huppert*, 917 F.2d 507, 511 (11th Cir. 1990)) (cleaned up). SaintVil has not met this "exacting standard." I cannot say at this point that the challenged statements are immaterial, and SaintVil certainly has not shown them to be inflammatory or prejudicial. Moreover, "it is proper to reserve ruling on a motion to strike surplusage until the trial court has heard evidence that will establish the relevance of the allegedly surplus language." *Id.* Therefore, the request is denied without prejudice to raising the issue at trial.

The motion (ECF No. 35) is DENIED.

SO ORDERED on July 6, 2021.

s/ *Allen Winsor*
United States District Judge