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Manafort money laundering charge in Russia probe may face challenges

By Karen Freifeld

(Reuters) - When the lawyer for the former campaign manager of President Donald Trump attacked the money laundering charge brought against his client as flimsy, some legal experts say he may have pinpointed a potential weakness in the indictment by U.S. special counsel Robert Mueller.

Paul Manafort and his associate Rick Gates both pleaded not guilty on Monday to charges that they failed to disclose they were lobbying for pro-Russia former Ukrainian President Viktor Yanukovich between 2006 and 2015 and laundered tens of millions of dollars by funneling the money through dozens of companies, partnerships and bank accounts.

In a court filing on Thursday, Manafort defense lawyer Kevin Downing said the money laundering count, the most serious facing his client with a 20-year maximum sentence, was based on a "tenuous legal theory" tying it to his failure to register as a foreign agent of the former Ukrainian leader.

Downing did not respond to a request for comment. Mueller spokesman Peter Carr declined to comment.

The language of the filing and defiant statements Downing made outside the courthouse following Manafort's arraignment on Monday suggest the lawyer is planning an aggressive defense of the charges, the first to be made public from Mueller's probe into Russian interference in the 2016 presidential election.

The Kremlin has denied meddling and Trump has said there was no collusion. Neither Trump nor his campaign was mentioned in the indictments issued on Monday.

Downing will also be seeking to suppress evidence he said was improperly obtained by search warrant, according to an additional filing on Friday. Manafort's Virginia home was raided by Federal Bureau of Investigation agents over the summer.

The money laundering statute targets financial transactions involving the proceeds of "specified unlawful activity." According to the Manafort indictment, the unlawful activity was his violation of the U.S. Foreign Agent Registration Act (FARA).

Though the money laundering statute includes FARA violations, Seattle tax lawyer John Colvin said the charge against Manafort was not as straightforward as most other cases.

"It doesn't fit the normal paradigm" of money-laundering cases involving criminal activity like drug trafficking, Colvin said. "It seems like a stretch to me."

FEW FARA PROSECUTIONS

Downing said in his Thursday filing that only six prosecutions have been brought for violating FARA in the last 50 years, producing only one conviction.

By pointing out the lack of previous FARA prosecutions, former federal prosecutor Mark Lee, now a white-collar defense lawyer in Philadelphia, said Downing was likely trying to suggest Manafort may not even have known he was violating the law. The section cited by Mueller requires the FARA violation to be “knowing and willful.”

Successfully casting doubt on whether Manafort intentionally violated FARA could knock out the money laundering charge, Lee said.

“If you don’t have a (specific unlawful activity), you can’t by definition have a laundering,” said Lee.

Former federal prosecutor Michael Padula, now a Miami defense lawyer, said parts of the money laundering statute also require funds to “promote” an ongoing criminal enterprise. That may be hard to show in the Manafort case, where the proceeds went to purchase real estate, expensive suits and Range Rovers for the conspirator’s personal use.

But other lawyers said they doubted defense arguments regarding FARA would gain much traction.

“The idea that somebody of Mr. Manafort’s background and sophistication would not understand that, if he did what he is alleged to have done, he would be required to file as an agent of a foreign government, is, I think, laughable,” said Chicago lawyer and former federal prosecutor Patrick Cotter.

Several lawyers noted that, even without the money laundering counts, Mueller had strong charges based on the failure of Manafort and Gates to report their overseas accounts to the Internal Revenue Service and that the entirety of the case appeared to be backed by strong documentary evidence. They also pointed out that Mueller could add more charges at a later date.

“It’s an argument, not a get out of jail free card,” said Padula of Downing’s money laundering defense. “He’s still got a tough road ahead of him.”