

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES : CRIMINAL ACTION  
 : No. 98-642  
 v. :  
 :  
 WADE FRIDAY :

**MEMORANDUM**

Ludwig, J.

October 25, 2000

On February 25, 1999, defendant Wade Friday pleaded guilty to offenses arising from a multi-million dollar food stamp fraud over a four-year period.<sup>1</sup> On September 18, 2000, defendant was sentenced to 90 months custody, followed by three years of supervised release, with a special assessment of \$8,800. His appeal followed. At a hearing on October 3, 2000, restitution was fixed at \$4.3

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<sup>1</sup> Specifically, one count of conspiracy, 18 U.S.C. § 371; 10 counts of unauthorized acquisition or transfer of food coupons, 7 U.S.C. § 2024(b); four counts of money laundering over \$10,000 and aiding and abetting, 18 U.S.C. §§ 1957, 18 U.S.C. § 2; and 73 counts of money laundering and aiding and abetting, 18 U.S.C. § 1956 (a)(1)(B)(I), 18 U.S.C. § 2. The remaining counts were dismissed. Defendant's motion to withdraw his guilty plea, filed July 7, 2000, was denied. Order, August 28, 2000.

million.<sup>2</sup> This memorandum amplifies findings made at sentencing on which a denial of downward departure and restitution rulings were based.

In 1993, the United States Department of Agriculture banned defendant and his store, Syreeta's Lounge, from participating in the food stamp redemption program because of their purchases of food coupons for less than face value. PSR ¶ 9. In January 1994, however, defendant commenced another food stamp fraud by using a grocery store, S&W Variety, to cover for his operations. Id.<sup>3</sup> In early 1995, concerned by the large quantity of stamps redeemed by S&W, the USDA began an investigation, which continued through 1998. It revealed that between 1994 and 1998, defendant redeemed about \$4.3 million of food stamps. Id. ¶ 9. Food stamp bearers would exchange their coupons for cash, instead of items of food, at a substantial discount from the coupons' face value. Id.

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<sup>2</sup> Having filed a notice of appeal on September 19, 2000, defendant maintained that no jurisdiction existed to assess restitution at the October 3 hearing. Def.'s supp. mem. at 1; United States v. Prendergast, 979 F.2d 1289, 1293 (8<sup>th</sup> Cir. 1992) (finding an abuse of discretion where the district court left open the question of restitution until an uncertain future date). However, jurisdiction continued for 90 days past initial sentencing to order restitution. 18 U.S.C. § 3664(d)(5); see United States v. Vandenberg, 201 F.3d 805, 813 (7<sup>th</sup> Cir. 2000) (“[W]hen a victim’s losses have not been ascertained by the time of the sentencing hearing . . . the court is statutorily obligated to resolve the restitution issue within 90 days of the . . . hearing.”).

<sup>3</sup> According to the application to participate in the food stamp redemption program, defendant's stepson was the owner of S&W Variety. PSR ¶ 11. Defendant approached his stepson with the idea to open the store, told him what information to put on the food stamp application, and thereafter took complete control of the business. Id. At some time in mid-1994, defendant's sister took over operation of the store and called it Sin-Jam Market. Id. ¶ 12. In February 1995, following defendant's direction, she also applied to participate in the program. Id. As of June 1996, the store was closed. Id. ¶ 8.

Defendant falsely certified that the exchanges were for an equivalent amount of food. Id. In an attempt to hide receipts, he maintained at least 10 bank accounts and numerous credit cards, continually commingling illegal proceeds with legitimate money. Id. ¶¶ 19-37. From March 1995 to June 1998, the redemption history disclosed that defendant deposited over \$3 million into Sin-Jam Market's account, although the store was closed in June 1996. Id. ¶ 12. He also opened bank accounts in the names of his children, but used them to pay his personal and business expenses. Id. ¶¶ 38-40. On December 18, 1998, defendant was charged in a 208-count indictment with conspiracy, fraud and money laundering.

At sentencing, the total offense level for the money laundering offenses was fixed at 28, which, taken with a Criminal History Category of II, produced a Guidelines range of 87 to 108 months. Defendant moved for downward departure on three grounds: 1) the case was outside the heartland of the money laundering guidelines; 2) the amount of loss overstated the seriousness of the offense; and 3) the combination of 1) and 2) created a separate basis to depart. Def.'s mem. at 3. He asserted that the applicable base offense was general fraud, under § 2F1.1, not money laundering, § 2S1.1, in which event the total offense level would have been 18, with a guideline range of 30 to 37 months.

Defendant cited United States v. Smith, 186 F.3d 290, 300 (3d Cir. 1999) for the position that money laundering primarily involves extensive drug trafficking or organized crime. Under Smith, the money laundering guidelines "should not be used in cases where the money laundering activity is minimal or

incidental to the underlying crime.” Id. at 299. However, Smith did not confine itself to any particular type of crime. It “clearly contemplate[d] applying § 2S1.1 to typical money laundering” in which a defendant “knowingly conducted a financial transaction to conceal tainted funds or funnel them into additional criminal conduct.” United States v. Bockius, 2000 WL 1372824, at \*3, \*5 (3d Cir. Sept. 25, 2000) (citing Smith, 168 F.3d at 298); see also United States v. Cefaratti, 221 F.3d 502, 513 (3d Cir. 2000) (declining to limit the scope of money laundering guideline § 2S1.1 to drug trafficking and organized crime).

Defendant’s money laundering was separate and apart from the underlying food stamp fraud. With multiple bank accounts and credit cards, commingling proceeds, and maintaining sham accounts, defendant deliberately attempted to camouflage the illegality of the funds. To do so, he frequently transferred substantial amounts and made almost daily deposits and withdrawals. PSR ¶ 19. It cannot be said that this activity was merely an “incidental by-product” of the food stamp fraud, Smith, 168 F.3d at 300, and therefore, outside the heartland of the money laundering statute.

As to the amount of loss, defendant in his guilty plea agreement had stipulated that it was in excess of \$3.5 million but less than \$6 million, resulting in a seven level enhancement, § 2S1.1(b)(2)(I). The total dollar loss attributable to an offense may overstate its seriousness “when a misrepresentation is of limited materiality or is not the sole cause of the loss.” United States v. Monaco, 23 F.3d 793, 798 (3d Cir. 1994) (downward departure appropriate where defendant did not

intend to steal money outright and events beyond defendant's control led to the total amount of loss). Here, defendant argued that 1) his scheme did not victimize low income families, but helped them make non-food legitimate purchases, and 2) because he paid as much as 70 per cent of the stamps' face value, a calculation based on the face amount would be an overstatement. Tr. Sept. 18, 2000 at 15. Those contentions must be rejected.

Defendant's fraud thwarted the goal of the government's food stamp program – to feed needy individuals and families. Payments of cash to the recipients did not alleviate the loss to the government of the intended value of the program. Instead of benefitting the recipients, it took advantage of them. Given these considerations, the face amount of the food stamps did not overstate the loss on either ground urged by defendant, or in combination.

The Mandatory Victims Restitution Act required an order for the total amount of the fraud without regard to defendant's ability to pay. 18 U.S.C. §§ 3663A(c)(1)(A)(ii), 3664(f)(1)(A). Defendant disputed that the USDA sustained any loss as a result of his conduct.<sup>4</sup> Def.'s supp. mem. at 2. “[T]he agency lost

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<sup>4</sup> Defendant's reliance on United States v. Cottman, 142 F.3d 160 (3d Cir. 1998) was misplaced. Cottman dealt with investigative costs expended by the FBI in a sting operation to procure evidence. Id. at 169. Here, the government did not make voluntary expenditures. Defendant also maintained that the victims were the food stamp bearers and that they were barred from restitution because of their illegal activity. Tr. Oct. 3, 2000. Even if this were a cogent point, there may be more than one victim under the Mandatory Victim Restitution Act. See 18 U.S.C. § 3663(a)(1).

nothing because it provided food stamps at face value to qualified people and it received the food stamps back at face value.” Id. This argument is also rejected.

For reasons previously discussed, in a food stamp fraud, the government is the ultimate victim. This determination has been reached by other Courts of Appeals, albeit not in a case reported in our Circuit. United States v. Hassan, 211 F.3d 380, 381 (7th Cir. 2000) (restitution equaled amount of loss to the government – the aggregate food stamp redemptions less actual food sales); United States v. Lewis, 104 F.3d 690, 693 (5th Cir. 1996) (profit from an illegal food stamp scheme irrelevant in calculating restitution, amount owed to government was full face amount of coupons); United States v. Cheng, 96 F.3d 654, 657 (2nd Cir. 1996) (calculation of restitution based on total face value of food stamps). Accordingly, restitution must be ordered in the full face amount of the illegally redeemed coupons.

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Edmund V. Ludwig, J.

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**ORDER OF RESTITUTION**

Ludwig, J.

AND NOW, this day of October, 2000, the following is ordered:

1. Defendant is liable to the United States Department of Agriculture for full restitution of \$4.3 million. 18 U.S.C. § 3664(f).
2. Equity in real estate of \$80,000 is to be paid on account of restitution from properties located at 7914 Ronaele Drive, Elkins Park, Pennsylvania, 19027, and 2445 West Allegheny Avenue, Philadelphia, Pennsylvania, 19132.
3. A forfeiture of approximately \$200,000 made to the government is credited, Order, March 19, 1999.
4. Ten percent of defendant's earning capacity of minimum wage is to be paid each month upon his release from custody and during the period of supervised release.
5. While in prison, defendant is to pay 10 percent of his custodial wages each month under the Federal Bureau of Prisons Inmate Financial Responsibility Plan towards restitution.

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Edmund V. Ludwig, J.