

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 92-7495  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

RONALD COOTS,

Defendant-Appellant.

---

Appeal from the United States District Court  
for the Southern District of Texas  
(CR-G-91-13)

---

April 16, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:<sup>1</sup>

Ronald Coots appeals his conviction for four counts of mail fraud, in violation of 18 U.S.C. § 1341. We **AFFIRM**.

I.

In early 1986, Coots, his sister, Patricia Davidson, and his brother-in-law, Ronald Davidson, concocted a scheme to defraud several insurance companies by staging Ronald Davidson's death.<sup>2</sup>

---

<sup>1</sup> Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

<sup>2</sup> Ronald Davidson dreamed of using the money to purchase a luxury yacht to "sail the South Pacific for the rest of his life",

In March 1986, Coots staged the death by exploding Davidson's sailboat in Galveston Bay, swimming to a nearby oil rig, and reporting that Davidson had been on board but disappeared in the explosion. Patricia Davidson and Coots filed affidavits of death with the county court, and she submitted benefits claims with her husband's life insurers. She subsequently received four checks from those companies by mail, totalling over \$700,000.

The scheme was not uncovered until 1989, when a woman with whom Ronald Davidson became involved reported him to the authorities. Coots was charged with mail fraud in a four-count indictment in December 1991.<sup>3</sup> During a hearing, at which Coots purportedly was prepared to plead guilty, he objected to the indictment, contending that it failed to notify him properly that he was being charged with four counts of mail fraud, that it was multiplicitious, and that it was barred by the statute of limitations. In light of these objections, the district court

---

with Coots as his first mate.

<sup>3</sup> The indictment contained fourteen paragraphs describing the fraudulent scheme. The fifteenth stated:

On or about the dates listed below ... RONALD COOTS, for the purpose of executing the aforesaid scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises did knowingly and willfully cause to be delivered by the United States Postal Service according to the directions thereon the following funds in payment of false insurance claims payable to PATRICIA DAVIDSON:

<u>Count</u>	<u>Check #</u>	<u>Date Issued</u>	<u>Amount</u>	<u>Insurance Co.</u>
1	030639	5/19/87	\$500,000.00	AIG
2	030648	5/28/87	\$ 75,000.00	AIG
3	3503369	3/09/88	\$119,309.00	John Hancock
4	3503372	3/09/88	\$ 10,690.08	John Hancock

refused to accept the guilty plea. Treating the contentions as a motion to dismiss the indictment, the district court denied it in March 1992, then held a bench trial, and convicted Coots of all four counts.

## II.

Coots presents several contentions, discussed below, none of which have merit.

### 1.

First, Coots contends that the Government's proof varied from the indictment in that the proof showed "use of the mails", rather than "causing the mails to be used", which he contends constituted a constructive amendment to the indictment. He discusses the difference between the two, and correctly notes that the latter was alleged in the indictment. He further correctly states that one causes the mails to be used when his conduct is such that the use of the mail to carry out his scheme is reasonably foreseeable. ***R.A.G.S. Couture, Inc. v. Hyatt***, 774 F.2d 1350, 1354 (5th Cir. 1985)

The proof did not vary from the indictment. The Government presented more than sufficient evidence that Coots caused the mails to be used with respect to each count; among other things, Patricia Davidson testified that Coots participated in conversations that centered specifically around the insurance policies with AIG and John Hancock and the ways in which the money obtained from them would be used, and that the use of the mails in receiving those funds was reasonably foreseeable to Coots. Moreover, in a

different section of his argument, Coots states that "[o]nce [Coots] informed the ... County Authorities of the fake death he did an act with knowledge that the use of the mails [would] follow in the ordinary course of business, or [that] such use [could] reasonably be foreseen, even though not actually intended" (internal quotation omitted).

2.

Second, Coots contends that indictment did not adequately notify him of all four counts of mail fraud. "An indictment is sufficient if it (1) contains the elements of the offense charged, (2) fairly informs the defendant of the charge, and (3) enables the defendant to plead acquittal or conviction in bar of future prosecutions for the same offense". **United States v. Wiley**, 979 F.2d 365, 367 (5th Cir. 1992). The test of its validity "is not whether the indictment could have been framed in a more satisfactory manner, but whether it conforms to minimal constitutional standards". **Id.** We review the sufficiency of the indictment *de novo*. **Id.**

To prove mail fraud, the government must show that the accused engaged in a scheme to defraud and used the mails to further that scheme. **United States v. Green**, 964 F.2d 365, 369 (5th Cir. 1992), *cert. denied*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 984 (1993). As shown *supra*, note 3, Coots's indictment alleged that he, "for the purpose of executing the aforesaid scheme ... to defraud", "did knowingly and willfully cause to be delivered by [mail]" the "following funds", and listed the four counts as they corresponded to the four checks

mailed. All elements of the offenses were thus stated, and we agree with the district court that the indictment was clear and unambiguous and sufficient to satisfy constitutional standards. Coots's reliance on **United States v. Serino**, 835 F.2d 924 (1st Cir. 1987), is unpersuasive; in any event, that case is not binding in this circuit. Likewise, contrary to his assertion, there is no constitutional requirement that the words "incorporated by reference" appear in an indictment framed like Coots's. See **United States v. Arlen**, 947 F.2d 139, 145-46 (5th Cir. 1991), cert. denied, \_\_\_ U.S. \_\_\_, 112 S. Ct. 1480 (1992) (upholding similar indictment).

3.

Third, Coots contends that three of the four counts were multiplicitous because they were based on a single offense. He contends that if an indictment alleges that the accused caused the mails to be used, the Government has to prove "different conducts" leading to the mailings, not simply different mailings.

Again, the contention is meritless. Coots's actions caused four different mailings. It is well settled that each mailing constitutes a separate offense, even if the mailings arose from a single scheme to defraud. **United States v. Blankenship**, 746 F.2d 233, 236 (5th Cir. 1984); **United States v. Shaid**, 730 F.2d 225, 230 (5th Cir.), cert. denied, 469 U.S. 844 (1984). It makes no difference that Coots was accused of causing the mails to be used, rather than of using the mails. See **Shaid**, 730 F.2d at 230.

4.

Finally, Coots contends that the indictment is barred by the statute of limitations. Under 18 U.S.C. § 1382, which applies to mail fraud violations, an indictment must be returned within five years of the offense. Contrary to Coots's contention, the statute begins to run from the date the act of mailing in furtherance of the scheme occurs, not when the fraud scheme is completed. **United States v. Ashdown**, 509 F.2d 793, 798 (5th Cir.), *cert. denied*, 423 U.S. 829 (1975). The mailings occurred between May 19, 1987, and March 9, 1988. The indictment was returned on December 4, 1991 -- well within five years. This contention, therefore, is also without merit.

III.

For the foregoing reasons, the conviction is

**AFFIRMED.**