

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-1180  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

BENNETT O. ODU,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(3:92-CR-192-D)

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(November 12, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

ODU appeals his conviction and sentence for aiding and abetting the unauthorized use of credit cards and for mail fraud. We find no error and affirm.

I.

Bennett O. Odu was indicted and later convicted by a jury of three counts of aiding and abetting the unauthorized use of an access device (credit cards) in violation of 18 U.S.C. §§ 2, 1029(a)(2) (counts one through three), one count of using a false

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<sup>1</sup> Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

social security number in violation of 42 U.S.C. § 408(g)(2) (count four), and one count of aiding and abetting a mail fraud scheme in violation of 18 U.S.C. §§ 2, 1341 (count five).

Odu was sentenced to serve twenty-four months in prison, followed by three years of supervised release. He was also assessed a \$250 special assessment. This appeal followed.

## II.

### A.

Odu first challenges the sufficiency of the evidence used to convict him of aiding and abetting the unauthorized use of an access device, and aiding and abetting a mail fraud scheme. Although Odu moved for a judgment of acquittal at the close of the Government's evidence, he did not renew this motion following the presentation of all of the evidence. Therefore, this Court reviews the evidence to determine only if there was a "manifest miscarriage of justice." **United States v. Ruiz**, 860 F.2d 615, 617 (5th Cir. 1988). A manifest miscarriage of justice exists only if the record is "devoid of evidence pointing to guilt." **Id.** (citations omitted). The evidence must also be viewed in the light most favorable to the verdict, including all reasonable inferences and credibility choices. **Id.** at 1310-11.

To sustain a conviction for aiding and abetting under 18 U.S.C. § 2, the Government must show that Odu associated with the criminal venture, participated in the venture, and sought by his actions to make the venture succeed. **United States v. Menesses**, 962 F.2d 420, 427 (5th Cir. 1992). The criminal venture in the instant case was the unlawful use of an access device, which is

prohibited by 18 U.S.C. § 1029(a)(2). Anyone who "knowingly and with intent to defraud traffics in or uses one or more unauthorized access devices such as credit cards during any one-year period, and by such conduct obtains anything of value aggregating \$1,000 or more during that period," *id.*, may be prosecuted under the statute. The Government need not show that Odu committed each element of the substantive underlying offense, but only that he aided and abetted each element. **United States v. Vasquez**, 953 F.2d 176, 183 (5th Cir.), **cert. denied**, 112 S.Ct. 2288 (1992) (citation omitted).

Testimony from Secret Service Agent David Clark established that the Secret Service had been investigating a group of individuals who had been engaging in a credit card fraud scheme in the Dallas area. Agent Clark testified that it was the group's modus operandi to steal pre-approved credit card applications from the U.S. mail and submit the applications to the credit card company using a false social security number. The application would also request that the credit card be sent to a new address -- one of the apartments rented by the group under false names and social security numbers. The cards would arrive at the new address and the members of the group could then charge products and cash advances to the cards, with the credit card companies suffering the loss when the bills were not paid.

Odu's fingerprints on the falsified rental agreement established that it was Odu who had used the false name and social security number to rent apartment #635 at 13450 Maham street in Dallas. The same name, David Stauch, was used to order utilities

and telephone service for the apartment. Odu admitted when arrested that he had rented the apartment under the name of David Stauch. Additional listings for the telephone number at apartment #635 were requested in the names of George Martin, David Knickle, Karen Dickson, and Eileen Smith. These names matched the names of stolen pre-approved credit card applications later sent to apartment #635.

Discover cards in the names of Mike Newhouse, Pamela Bethke, and David Knickle were sent to apartment #635 pursuant to falsified pre-approved applications, and were later used to charge cash advances and purchases from Best Buy and Bizmart, with losses totalling \$15,283.11.<sup>2</sup> Citicorp credit cards in the names of Eileen Smith, Karen Dickson, and Darcy Bayouth were also sent to apartment #635, after pre-approved applications had been submitted using false social security numbers and listing the 13450 Maham Road address as the new address. The cards were used to purchase fax machines at Best Buy and Bizmart, for cash advances, and for purchases at Delta Postal Center, Odu's place of employment. The losses from these cards totalled \$9,627.86.

The evidence established that Odu rented the apartment under a false name. The evidence also established that the credit card applications sent to that apartment were falsified and later used to charge goods and cash in excess of \$1,000 that were never paid for. Therefore, under the plain error standard, the record in the

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<sup>2</sup> These three cards were the cards specifically mentioned in counts one through three of the indictment, respectively.

instant case is not "devoid of evidence" of Odu's association with, participation in, and attempted furtherance of the scheme to obtain falsified credit cards and use them to charge goods and cash without paying for them.

B.

Odu also challenges the sufficiency of the Government's evidence used to convict him of aiding and abetting a mail fraud scheme. A conviction for mail fraud requires that the Government prove that the defendant used the mails "for the purpose" of executing a scheme to defraud. The Government need not show that the defendant used the mails himself. **United States v. McClelland**, 868 F.2d 704, 706-07 (5th Cir. 1989) (citations omitted). Again, as Odu's conviction was for aiding and abetting, the Government needed to prove only that he aided and abetted each element of the underlying offense. **Vasquez**, 953 F.2d at 183.

From the evidence outlined above, it is clear that Odu's participation in the scheme was violative of 18 U.S.C. § 1341. The indictment charged that Odu aided and abetted the mail fraud scheme involving a Bank of America Mastercard in the name of William Waters. A falsified pre-approved credit card application listing apartment #635 as the new address was sent to Bank of America in the name of William Waters. The credit card mailed to that address was then used to fraudulently charge goods and cash advances resulting in losses to Bank of America.

The card was discovered when Agent Clark searched a private storage facility rented to Chidi Worgu, whose activities had

originally led law enforcement officials to Odu. Odu had been observed several times in Worgu's company and driving Worgu's car. The search of the storage facility also revealed sixty-eight fax machines, eight lap-top computers, and several telephones and typewriters -- all new and still in their boxes from Best Buy and Bizmart.

Agent Clark also discovered an envelope containing the Waters credit card and, in that same envelope, an electrical bill for apartment #635 in the name of David Stauch. Further, when Odu was arrested, the search of his person revealed two receipts for an attorney's retainer to represent Worgu, paid by Odu. In light of the evidence establishing the fraudulent procurement and use of the Waters credit card, the evidence linking Odu to Worgu, and the plain error standard of review, the evidence was sufficient to sustain Odu's conviction for aiding and abetting a mail fraud scheme.

C.

Odu argues finally that the district court improperly calculated his base offense level by considering all of the monetary losses attributable to the misuse of all of the access devices listed in counts one, two, three, and five of the indictment. Odu's argument is a legal one: he does not challenge the district court's factual findings regarding the amount of losses incurred as a result of the scheme. Rather, he argues that the Government failed to introduce any evidence regarding the value of the falsified lease, or losses flowing from that lease. As a

result, he contends, the district court improperly attributed the total losses flowing from the use of the illegally-obtained credit cards to him.

Although Odu correctly points out that the district court did not consider the value of the lease in calculating his base offense level, the guidelines clearly direct the sentencing court to consider the losses incurred as a result of all of the transactions which are part of the same course of conduct or common scheme or plan as the offense of conviction. U.S.S.G. §§ 1B1.3(a)(1)(A); **see also United States v. Lghodaro**, 967 F.2d 1028, 1030 (5th Cir. 1992). The credit card transactions were part of the same illegal scheme as the apartment rental. Thus, under the relevant conduct provisions of the guidelines, the actual and attempted losses calculated by the PSR were attributable to Odu and, therefore, his sentence based upon those losses was not improper.

AFFIRMED.