UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4943

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANKLIN DANNY ROEMER,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CR-50053-01)

(September 2, 1994)

Before REAVLEY and JONES, Circuit Judges, and JUSTICE, District Judge.*

EDITH H. JONES, Circuit Judge:**

Franklin Danny Roemer appeals his conviction and sentence for bank fraud complaining that (1) there was insufficient evidence to support his conviction, (2) the district court erred by limiting time at trial for opening and closing statements, and (3) the

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* District judge for the Eastern District of Texas, sitting by designation.

** 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court erred in sentencing Roemer to restitution. Finding no error below, we affirm.

BACKGROUND[1]

The evidence presented at trial indicated that the Charles L. Mayer family owned a 92-acre tract of land located adjacent to the Red River in Shreveport, Louisiana. The Mayer family was interested in selling the land, and Roemer was to act as a broker and find a buyer in exchange for a 5% commission.

Duncan Ragsdale, one of Roemer's old college friends, entered into a sales agreement with the Mayer family for $3.015 million. However, Ragsdale had difficulty obtaining financing and, despite several extensions, did not close the deal within the time limits set forth in the sales agreement. Accordingly, the Mayer family cancelled the agreement with Ragsdale.

Six days later, the Mayer family granted Roemer an option to purchase the land for $3.2 million, with an understanding that the Mayer family members would receive $3 million, leaving $200,000 as Roemer's commission. On March 28, 1985, the Mayer family executed a deed transferring the property to Scoggins Island Development Company ("SIDC"), a Louisiana corporation, 95% of which was owned by Roemer's father with the remaining 5% equally divided between trusts for each of Roemer's two children. On the same day that SIDC acquired the land from the Mayer family for $3.2 million, SIDC re-sold the land for $5.4 million to Diversified Investment

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[1] The facts are presented here in the light most favorable to the jury's verdict. See United States v. Gonzales, 866 F.2d 781, 783 (5th Cir.), cert. denied, 790 U.S. 1093 (1989).

Real Estate Venture One ("DIREVO"), a partnership consisting of SIDC and Diversified Investment Company.

DIREVO purchased the land in order to develop upscale townhouses, a hotel, and an accompanying shopping center. To finance the project, DIREVO obtained a $9.6 million acquisition and development loan from Liberty Federal Savings & Loan ("Liberty Federal"). The loan agreement included a Net Profits Participation Agreement whereby Liberty Federal would share in 50% of the net profits realized from the project.

DIREVO used $5 million of the loan proceeds to purchase the land, paying SIDC the remaining $400,000 with a promissory note from DIREVO. DIREVO distributed the $1.8 million profit pursuant to SIDC's instructions; among other things, $250,000 repaid a bank loan of Roemer's father; $125,000 repaid a Roemer bank loan; $200,000 went to partners of Diversified Investment Company; $150,000 to Duncan Ragsdale; $225,000 to Scopena Plantation, a Roemer family partnership; and $600,000 to purchase certificates of deposit in the name of SIDC.

The difference in price between the two sales was concealed from Liberty Federal. Although all parties understood that there would be two transfers of the property, Roemer and Ragsdale told Liberty Federal that this was necessary because of a title problem with the land.[2] Roemer specifically told Liberty

[2] At one time, the Red River traversed the property. Since the State of Louisiana claims ownership of the beds of all navigable waterways, the river bed clouded the title to the property. Roemer and Ragsdale told Liberty Federal that this problem would be cured by a boundary agreement between SIDC and the State. The story told to Liberty Federal was that SIDC, an intermediary corporation used because of the number of Mayer family relatives, was to deed four acres to the State

Federal that there would be no difference in price between the two transfers. Additionally, the loan package submitted to Liberty Federal contained an appraisal -- relied upon by Liberty Federal -- that valued the undeveloped property at $5.4 million. While holding an option to purchase the land for $3.2 million, Roemer told the appraiser that there were no offers or contracts on the property.

After DIREVO acquired the property, Roemer contacted Bruce Logan, Roemer's old friend and the manager of Logan & Logan Construction Company. Roemer asked Logan if he would be interested in serving as the general contractor for streets, drainage, water, and sewer lines and in having a partner. Roemer explained to Logan that he could not take out any money directly, but was interested in getting money indirectly through someone else. DIREVO and Logan & Logan negotiated construction contracts for about $1.6 million. Logan secretly agreed with Roemer that he would take a $200,000 profit and the remaining profit would be paid to Roemer through Joshua Investment Corporation ("Joshua Investment"). This agreement was later memorialized just before the final accounting in an undated letter between Logan and Joshua Investment. The agreement stated that Logan would pay Joshua Investment a finder's fee for the contract consisting of all profits over $200,000.

Roemer subsequently purchased a lot to build a home and asked Logan to build the house using his share of the construction

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in exchange for the State relinquishing any claim to the property. SIDC would then deed clear title to DIREVO.

contract profits. On paper, Logan was building the house for Joshua Investment, which took title to the home. Roemer and his wife designed the house and moved in when it was completed.

During the construction phase, Roemer told Logan that he was having family financial problems and needed $20,000 immediately. Roemer instructed Logan to make a check payable to Innovative Data Systems ("IDS"), a company run by Roemer's sister and brother-in-law. The check was cashed by IDS, and IDS immediately sent a check for $30,000 to R.O.I. Educational Services, a company owned by Roemer's father.

At the final accounting on the construction contract, Logan & Logan realized its profit of $200,000. After deducting the $40,000 paid to IDS and $224,985 for the house, a check made payable to Joshua Investment for $142,606 representing the remaining profit was given to Roemer and deposited into a Joshua Investment account. The next day Joshua Investment transferred $100,000 to Statewide Teaching Aids as funding for a loan in connection with an option to purchase in favor of Roemer's father. The remaining money was used by Joshua Investment to pay corporate bills.

In 1986, the Federal Home Loan Bank Board Examiners criticized the DIREVO loan and ordered a test appraisal on the property. The appraisal valued the property at $2.6 million and also disclosed the difference in consideration between the two transfers on the day of the loan closing. Liberty Federal was closed in April 1987 at which time the DIREVO loan was in default, the last payment having been made in July 1986. Foreclosure proceedings followed, seeking recovery of the indebtedness of $10.2 million, which resulted from a sheriff's sale of the property. The total loss to Liberty Federal (and the Federal Deposit Insurance Corporation) on the DIREVO loan as of Roemer's sentencing date was $13,749,744.86.

Roemer and two co-defendants were charged with conspiracy and bank fraud. Roemer was convicted of bank fraud; his two co-defendants were acquitted of all charges. The district court sentenced Roemer to two years of imprisonment, a $20,000 fine, and restitution of $2,421,591 plus interest.

DISCUSSION

A. Sufficiency of the Evidence

Roemer appeals his conviction on sufficiency grounds claiming that (1) there was no testimony that he intended to deceive the bank regarding the difference in price between the two sales and (2) there was no scheme to defraud Liberty Federal. We find Roemer's claims to be without merit.

We review claims of insufficiency of evidence by determining whether, when viewed in the light most favorable to the jury's verdict, any rational jury could have found the evidence to establish all essential elements of the offense beyond a reasonable doubt. See United States v. Gonzales, 866 F.2d 781, 783 (5th Cir.), cert. denied, 790 U.S. 1093 (1989). Roemer was convicted for bank fraud pursuant to 18 U.S.C. § 1344, which makes it illegal for a person knowingly to execute a scheme or artifice to defraud a federally insured financial institution or "to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. § 1344. When viewed in the light most favorable to the jury's verdict, more than sufficient evidence was presented to indicate that Roemer intended to deceive Liberty Federal regarding the difference in price between the two sales of the property and that he schemed to defraud Liberty Federal.

First, the prosecution presented evidence indicating that Roemer intended to deceive Liberty Federal regarding the differences in price. James Hague, the owner of Liberty Federal, questioned Roemer about the two transactions. Roemer falsely assured him that there was no difference in consideration between the two. There was also testimony that Roemer misled the author of the appraisal of the property by telling him that there were no offers or contracts on the property. At that time, however, Roemer was holding an option to purchase the property for $3.2 million. Liberty Federal later relied upon this appraisal. Additionally, Duncan Ragsdale testified that Roemer's original plan was that Ragsdale act as an intermediary for Roemer rather than SIDC. (R. 8:94-98; 125-26) That plan was abandoned when Ragsdale was unable to obtain financing. Roemer emphasized to Ragsdale the importance of Ragsdale's not mentioning the option contract price to any prospective lending institution or to Charles Mayer. (R. 8:110-11) As a result, Liberty Federal never knew of the difference in prices. There was ample evidence that Roemer intentionally deceived Liberty Federal in this regard.

Further, Roemer negotiated a Net Profits Participation Agreement with Liberty Federal apportioning to the institution 50% of the profits upon development of the Mayer property. Roemer then manipulated friends, family, and their various companies in order to suck his profits from the front end of the transaction, diluting Liberty Federal's interest. As one example of the scheme, Roemer entered into a construction agreement with Logan whereby Logan would receive $200,000 and Roemer would receive the rest of the profit, which was paid to Joshua Investment rather than directly to Roemer. (R. 14:797) The evidence overwhelmingly demonstrated that Roemer schemed to defraud Liberty Federal.

B. Limitations on Opening and Closing Statements

The district court limited opening statements by the three defendants to a total of 15 minutes, allowing Roemer only five minutes to present his opening argument; the court gave Roemer thirty minutes for closing argument. This court reviews a district court's imposition of time limits for abuse of discretion. See United States v. Moye, 951 F.2d 59, 63 (5th Cir. 1992). The government asserts that Roemer did not object to these limits at trial, therefore implicating this court's review under the plain error standard. Regardless of which standard of review is used, the district court did not abuse its discretion by setting time limits for opening and closing statements. The time allotted to counsels' statements is within the discretion of the trial court.

See id. It is noteworthy that Roemer's two co-defendants operated at the same trial under the same time constraints and both were acquitted. Their defenses were not harmed by the court's imposition of time limits for opening and closing statements. We find no error.

C. Restitution

This court reviews particular awards of restitution for abuse of discretion. See United States v. Chaney, 964 F.2d 437, 451-52 (5th Cir. 1992). Roemer argues that the district court failed to consider properly the factors set out in 18 U.S.C. § 3664, which requires that the district court "shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate." See 18 U.S.C. § 3664. Roemer presented evidence at his sentencing hearing that his net worth was -$173,000 to -$200,000. The district judge nevertheless ordered over $2 million in restitution, apparently based primarily upon Roemer's exceptional educational and business background. Roemer has an undergraduate degree and an MBA from Harvard University and a history of successful political and business activity. His business accomplishments include experience with numerous family business enterprises and consulting work with various outside companies, some of them involving international expertise. Roemer also testified to having business or escrow accounts in various foreign countries, including two in

Switzerland. The district court found Roemer to be "a bright, able, competent individual" with a very good future.

A defendant's indigence at the time of sentencing is generally not considered a bar to the requirement of restitution. See United States v. Ryan, 874 F.2d 1052, 1054 (5th Cir. 1989). Although the district court's imposition of over $2 million in restitution may be onerous, the judge conscientiously considered the pertinent statutory factors in 18 U.S.C. § 3664. The district court did not abuse its discretion in requiring Roemer to pay a large sum in restitution for his crime.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the judgment of the district court.