

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7631
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HARRY JACK HART,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Mississippi
(3:93-CR-43-WN)

(May 13, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Harry Jack Hart was charged in a two-count indictment with (1) knowingly executing a scheme to defraud Republic Bank for Savings ("Republic") and to obtain funds from Republic by means of false and fraudulent pretenses, representations, and promises and (2) knowingly making a false statement on an application for a \$3.4 million loan by Republic for a general partnership known as "Circle

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

4 Theaters" (Circle 4). A jury found Hart not guilty of count I but guilty of count II. The district court sentenced Hart to custody of the Attorney General for two years. Hart was also ordered to pay restitution in the amount of \$1,932,222 to the Resolution Trust Corporation. Hart filed a timely notice of appeal.

Hart moved for a "directed verdict" of acquittal at the close of the government's case and at the close of all the evidence. The district court denied both motions. Hart now urges that the district court erred in not granting his motions because, he argues, his conviction for making a false statement on a loan application is not supported by sufficient evidence.

On appeal, we evaluate the sufficiency of the evidence by viewing the evidence in the light most favorable to the prosecution, making all reasonable inferences and credibility choices in favor of the verdict. U.S. v. Vasquez, 953 F.2d 176, 181 (5th Cir.), cert. denied, 112 S.Ct. 2288 (1992). The evidence is sufficient if a reasonable trier of fact could have found that it established guilt beyond a reasonable doubt. Id.

The jury--not the court of appeals--is responsible for determining the weight and credibility of the evidence. U.S. v. Martinez, 975 F.2d 159, 161 (5th Cir. 1992), cert. denied, 113 S.Ct. 1346 (1993). We therefore will not substitute our own determination of credibility for that of the jury. Id.

Hart was convicted under 18 U.S.C. § 1014, which requires the government to prove beyond a reasonable doubt that: (1) the defendant made a false statement to a federally insured financial institution; (2) the defendant made the false statement knowingly; (3) he did so for the purpose of influencing the financial institution's action; and (4) the statement was false as to a material fact. U.S. v. Williams, 12 F.3d 452, 456 (5th Cir. 1994). "A false statement is material if it is shown to be capable of influencing a decision of the institution to which it was made." Id. Materiality is a legal determination that this Court reviews de novo. Id.

Hart specifically contends that the government did not prove that he knowingly made a false statement to Republic. As support for his contention, Hart asserts that he revealed his true financial situation to Phillip Shunk, Republic's president, "who chose, because of his belief in the profitability of the participation agreement, to go ahead and make the loan despite this knowledge."

The evidence reflects that Hart wanted to borrow \$3,460,000 from Republic to develop a movie-theater complex near the Grand Canyon National Park in Arizona. Hart submitted a loan application to Republic on February 18, 1986. The loan application explained, among other things, what the money was to be used for, the interest rate, the repayment terms, and the bank's responsibility.

Hart also submitted a financial statement dated October 31, 1985. Because the financial statement was just one page long, Shunk and Hart went through it. In the statement, Hart asserted that he had no liabilities. When asked about this status, Hart responded that "there weren't any materials that were significant -- any liabilities that were significant." Hart also provided in the statement that he owned a \$1.3 million interest in a ranch known as "Deer Run Partnership" (Deer Run).

Although the financial statement was several months old, Shunk had reviewed it in 1985, and Hart assured Shunk that his financial situation had not changed. After talking with one of Hart's lawyers, Shunk felt comfortable that Hart was telling the truth.

The record further indicates, however, that Hart had in fact sold his interest in Deer Run on January 31, 1985, and that at the time of the loan application, Hart owned only a two-year leasehold interest in the ranch. Evidence was also presented that on October 17, 1985, Hart had been mailed a legal notice of a \$4 million judgment against him and in favor of the State of Louisiana Retirement Systems. Still further, at the time of the financial statement in question, Hart owed Dr. Michael Ellis \$50,000 and Dr. Clayton Davie \$130,000; in fact, Hart had signed notes acknowledging those debts. During his testimony, Hart conceded signing the financial statement. Hart asserted, however, that he had told Shunk about some of his liabilities. He further testified

that he believed that his interest in Deer Run was worth about \$3,000,000.

It is clear to us that a reasonable trier of fact could determine that the false statements were material because they were capable of influencing a decision of the institution to which they were made. See Williams, 12 F.3d at 456. Furthermore, Hart successfully obtained the \$3.4 million loan. Hart's only argument is that Republic's president knew that the claims in the financial statement were inaccurate. Although there was some conflict regarding Hart's criminal intent, a bank officer's awareness of a fraud does not control. See U.S. v. Johnson, 585 F.2d 119, 124-25 (5th Cir. 1978); see U.S. v. Bush, 599 F.2d 72, 75 (5th Cir. 1979) ("all material false statements violate § 1014 even when the false statements are given with the knowledge, consent or duplicity of a bank officer").

We thus conclude that, based on the evidence presented at trial, a rational jury could have concluded beyond a reasonable doubt that Hart made the false statements knowingly for the purpose of influencing the institution's action. See Williams, 12 F.3d at 456. The judgment therefore is

A F F I R M E D.