

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10072
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GODWIN ENOMA ISIBOR,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:93-CR-27-K-2

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(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Godwin Enoma Isibor contends that the district erred in denying his motion to suppress and that the district court improperly calculated the amount of loss under U.S.S.G.

§ 2F1.1(b)(1). Finding no error, we AFFIRM.

Isibor pleaded guilty after filing a motion to suppress. He did not condition his guilty plea upon the right to appeal the district court's denial of his motion to suppress. Thus, he is precluded from raising the suppression issue on appeal. United States v. Smallwood, 920 F.2d 1231, 1240 (5th Cir.), cert.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

denied, 111 S. Ct. 2870 (1991).

Isibor also contends that the loss amount attributed to him improperly included a potential loss component instead of actual or intended loss only, and that the actual loss component contained amounts which should not have been attributed to him.

Potential versus Actual

The presentence investigation report (PSR) calculated an actual loss of \$40,594.99. The additional potential loss was calculated at \$54,733.88. The underlying facts, which Isibor does not contest, are that: 1) police officers conducted a consensual search of a bag belonging to Lonnie Michael Jones; 2) they discovered eight credit cards in their original mailers in names other than Jones'; and 3) Jones admitted that he was traveling with Isibor, Isibor placed the credit cards in the bag, and he was carrying the credit cards for Isibor.

Isibor was arrested and searched. The search yielded a piece of paper containing five names with corresponding credit card numbers and credit limits written underneath each name. The account numbers corresponded to credit cards which were never received by their intended recipients. Further, there were a number of unauthorized charges on each account listed on the paper.

The district court's calculation of the amount of loss pursuant to § 2F1.1 is a factual finding reviewed for clear error. United States v. Brown, 7 F.3d 1155, 1159 (5th Cir. 1993). A factual finding is not clearly erroneous if it is plausible in light of the entire record. Id. The district court

may rely on information contained in the PSR when making factual sentencing determinations as long as the information bears the minimum indicia of reliability. United States v. Shipley, 963 F.2d 56, 59 (5th Cir.), cert. denied, 113 S. Ct. 348 (1992). A defendant is responsible for proving that the information on which the district court relies is materially untrue. Id.

This Court has expressly approved the use of the combined credit limits of stolen credit cards when determining the amount of loss for sentencing purposes. United States v. Sowels, 998 F.2d 249, 250-51 (5th Cir. 1993) (applying the loss concepts of § 2B1.1), cert. denied, 114 S. Ct. 1076 (1994).

Isibor does not challenge the calculation of potential loss; i.e., he does not dispute the various credit limits which he implicitly admits. He has not shouldered his burden of proving that the district court relied on unreliable PSR information when making factual sentencing determinations. Thus, he has not shown clear error.

Actual Loss Attributable to Isibor

Isibor also contends that the district court erred in attributing the entire amount of actual loss to him. He cites no jurisprudential support for his argument. The crux of his argument is that, although the accounts listed on the paper incurred unauthorized charges totaling \$40,594.99 (actual loss), there was insufficient evidence to support attributing that loss to him. His argument is disingenuous.

A defendant who objects to consideration of information by the sentencing court bears the burden of proving that the

information is "materially untrue, inaccurate or unreliable."
United States v. Angulo, 927 F.2d 202, 205 (5th Cir. 1991).

The PSR established that the five accounts listed on the paper sustained over \$40,000 in actual loss. Isibor signed the factual resume which stated that he and Jones were travelling to North Carolina where they intended to obtain cash advances on the stolen credit cards fraudulently.

At sentencing and on appeal, Isibor did not and has not offered an explanation for his possession of the five account numbers and thus has not shouldered his burden of demonstrating that the PSR was unreliable regarding its conclusion that the actual loss was attributable to him. See Shipley, 963 F.2d at 59.

AFFIRMED.