UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 93-2319

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCIS NWANZE a/k/a Peter Suleman,
JOHN BERRY and CEOLA HAYNES,

Defendants-Appellants.

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Appeal from the United States District Court
for the Southern District of Texas
(CR-H-91-206-4)

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(October 20, 1994)

Before JONES and DeMOSS, Circuit Judges, and TRIMBLE*, District Judge.

PER CURIAM:**

Appellants Berry, Haynes and Nwanze were convicted of participating in a large-scale conspiracy to defraud the United States by obtaining and assisting others to obtain false and fraudulent tax refunds. They were also convicted of several counts

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* District Judge of the Western District of Louisiana, 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

of filing false claims. Among other penalties, Berry and Haynes were each sentenced to 33 month prison terms, and Nwanze was sentenced to a 52 month prison term. On appeal, they raise three issues, none of which has merit. We affirm.

Appellants first assert that the district court erred in refusing to give their proposed jury instruction consisting of an excerpt of government regulations concerning tax preparers. Appellants contend that as electronic return originators, they were not tax preparers and accordingly could not be assessed most preparer penalties. This instruction was properly refused by the trial court. The particular regulation does not constitute a defense to criminal liability for participating in the filing of false claims. Consequently, the regulation did not set forth a legal defense for the defendants. The court's charge sufficiently covered appellants' defense because it instructed the jury to convict them only if defendants "understood the unlawful nature of the plan or scheme and knowingly and intentionally joined in the plan"; the jury instructions further permitted conviction for separate false claims only if the defendants knowingly presented them to an agency of the United States. If the jury believed the defendants' evidence that they merely transmitted electronic returns without knowledge of their falsity, the jury could not have convicted them.

Appellant Nwanze argues that the trial court erred in admitting certain exhibits at trial, but he did not object to their

admission. The court did not commit plain error in this action. United States v. Olano, 113 S.Ct. 1770, 1779 (1993).

Finally, it is objected that Nwanze, as a "minor player," should not be held accountable for the full losses, estimated at over $620,000, resulting from the conspiracy. Nwanze raised this argument as an objection to the PSR at the sentencing hearing. The court overruled Nwanze's objections. Nwanze contends that the district court's finding on the loss is not supported by credible evidence and that it overruled his objections without offering the proper factual findings as required by Fed.R.Crim.P. 32(c)(3)(D). We disagree. Appellant offered no factual evidence to rebut the conclusions of the PSR, but instead made mere conclusory allegations that as a minor player he should not be held accountable for his coconspirators' conduct in furtherance of the scheme. Since he alleged no factual inaccuracy, the court's duty to make findings pursuant to Rule 32(c)(3)(D) did not arise. In any event, we find that the court's ruling denying the objection included sufficient findings as required by the Rule. United States v. Whitlow, 979 F.2d 1008, 1011-12 (5th Cir. 1992).

The judgments of conviction and sentences of the appellants are AFFIRMED.