

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERNARD C. SEIDLING,

Defendant.

ORDER

11-cr-126-bbc

In a report and recommendation entered on July 10, 2012, United States Magistrate Judge Stephen L. Crocker recommended denial of defendant Bernard C. Seidling's motion to dismiss the indictment against him. Defendant objects to the recommendation, arguing that the magistrate judge did not give sufficient consideration to the flaw in the indictment, which is that it does not allege facts sufficient to show materiality.

Defendant is charged with a violation of the mail fraud statute, 18 U.S.C. § 1341. The grand jury charged him with devising a scheme to obtain money by means of false and fraudulent pretenses, specifically, that he "made false representations in Wisconsin small claims court actions, and used the court system to obtain small claims judgments against individuals and corporations based on the false and fraudulent representations made in the lawsuits he filed." Indictment, dkt. #2. According to the indictment, defendant did this by filing small claims suits claiming the \$5000 maximum, hiding the filing of the suits from the

defendants named in the suits, obtaining default judgments and then proceeding to collect on the fraudulent judgments.

Defendant has seized on the allegation that his allegedly false and fraudulent mailings went to the small claims courts, not to the persons who were the actual victims of his scheme, arguing that the government has not alleged enough facts to establish the materiality of the allegedly false statements. He cites a number of cases in which courts have made statements he believes are supportive of his position. For example, in United States v. Coffman, 94 F.3d 330, 335 (7th Cir. 1996), the court said that the term “fraud” “embodies the concept of materiality; fraud is a *material* misrepresentation or omission, in the sense of one relevant to the decision that the perpetrator of the fraud wants his intended victim to make.” In United States v. Ali, 640 F.3d 1062, 1071 (9th Cir. 2010), the court said that in a scheme to defraud Microsoft, “Microsoft must be the victim from whom property was taken.”

From this and other cases, defendant argues that he cannot be prosecuted because the government has not alleged that the recipients of his allegedly false mailings were the actual victims of his scheme, that is, the ones “from whom property was taken.” Instead, they were the small claims courts. Apparently, defendant believes that a statement cannot be material if it is not capable of influencing the intended victim.

The magistrate judge addressed this argument in his report, concluding that it is “illogically narrow,” Rep. & Rec., dkt. #30, at 4, and not one that has been accepted by the Supreme Court or the Court of Appeals for the Seventh Circuit. As he explained, just

because the courts have said that the defendant's deception must be capable of influencing the intended victim does not mean that this is the only way in which the statement can be material. Id.

Defendant has not rebutted this point in his objection, or shown any other reason to reject the magistrate judge's recommendation. I agree with the conclusion the magistrate judge reached: if the government proves that defendant lied intentionally to state courts to cause them to enter money judgments against unknowing third parties and defendant acted on these false judgments, it will have shown that defendant's "alleged lies actually influenced the audience to which those lies were addressed: the decision-making courts." This is sufficient to prove the required element of materiality.

ORDER

IT IS ORDERED that the report and recommendation entered by the United States Magistrate Judge on July 10, 2012 is ADOPTED as the court's own. FURTHER, IT IS ORDERED that defendant Bernard C. Seidling's motion to dismiss the indictment against him is DENIED.

Entered this 25th day of July, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge