

NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-2474

UNITED STATES OF AMERICA

v.

SCOTT L. MYER,

Appellant

Appeal from the United States District Court
For the Middle District of Pennsylvania
D.C. No.: 01-cr-00115
District Judge: Honorable Yvette Kane

Submitted Under Third Circuit LAR 34.1(a) April 10, 2003

Before: BARRY and ROSENN, Circuit Judges, and POLLAK,* District Judge.

(Filed: April 17, 2003)

OPINION OF THE COURT

ROSENN, Circuit Judge.

The defendant, Scott L. Myer, pled guilty to two counts of a three-count

*Honorable Louis H. Pollak, United States District Court for the Eastern District of Pennsylvania, Sitting by Designation

indictment returned by a grand jury in the United States District Court for the Middle District of Pennsylvania. Count I charged him with making, uttering, and possessing forged securities from about January 1997 to about September 1998 in violation of 18 U.S.C. § 513(a). Count III charged the defendant with making false statements in a bankruptcy proceeding in violation of 18 U.S.C. § 152(3). The District Court dismissed Count II of the indictment. Defendant entered his guilty plea to Counts I and III pursuant to a written plea agreement wherein he agreed to make restitution in an amount to be determined by the Court. The sentencing court ordered the defendant to pay the sum of \$100,066.55 to the Annville Auto Center, in addition to the special assessment of \$100 on each count. The defendant timely appealed.

On appeal, the defendant raises the solitary issue of whether the Government met its burden of proving a restitution obligation of over \$100,000 when Government investigators calculated a loss of less than \$75,000. We affirm the judgment of the District Court, including the Order of restitution.

The Court of Appeals exercises plenary review over the determination of the District Court that restitution was lawful and it reviews the amount awarded for clear error. Because this appeal concerns only the amount of restitution awarded by the District Court, the clearly erroneous standard of review applies.

The defendant claims that the Government investigators initially calculated that the victim suffered losses in the sum of \$73,205 and that the Government has failed to meet

its burden of proving the higher sum imposed by the District Court. The victim, Thomas C. Risser, asserted that the losses he sustained amounted to \$100,066. At the hearing, Risser submitted handwritten sheets which stated losses for the sum he claimed, to wit \$100,066.55. Risser testified that he arrived at this figure after he and an associate, the controller for a related auto dealership, reviewed the checks cashed by the defendant during 1997 and 1998. On cross-examination, the defendant claims that Risser never articulated the standard he used to distinguish legitimate payments from those that were improper, and that Risser was unable to articulate any objective criteria to support his calculation of the amount of restitution.

Although the victim's calculations of the amount of his losses were not done in a sophisticated, scientific manner, they were methodical and logical. The District Court found him to be a credible witness and found the defendant not to be credible. The District Court's determination of the amount of restitution is supported by the record. The testimony of the victim's bookkeeper corroborated that of the victim and contradicted the defendant. Moreover, the amount of restitution need not be calculated with precision. See United States v. Hand, 863 F.2d 1100 (3d Cir. 1988).

Accordingly, the Order of restitution by the District Court in the sum of \$100,066 is affirmed.

TO THE CLERK:

Please file the foregoing opinion.

/s/Max Rosenn

Circuit Judge