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"Representing Those Who Cannot Represent Themselves"

Thursday, 21 July 2022

SUSPO Jodi Petersen

United States Probation Office – Fort Myers Division

BY PDF ATTACHMENT TO E-MAIL ONLY

Re: *United States v. Edrica Watson*, No. 2:21-cr-107-SPC-MRM
Amended Final Presentence Report filed July 15, 2022

Dear Officer Petersen:

Futility attends this letter as I do not anticipate you will file a Second Amended Final Presentence Report. Along that line, I note the unusual posture of the government's motion to continue the business day before sentencing followed by the government's meeting with the Office of Probation, and the extraordinary time constraints you faced in revising a final PSR more than a month after the time for any party to object to that document had elapsed.

With the above acknowledged, this is obviously my first opportunity to advise you that while the government's "new discovery" is really not new, as it is now accentuated in your Amended PSR, it does fortify Ms. Watson's argument for variance (PSR ¶ 98 and Doc. 44) and it compels mention that all proceeds Ms. Watson could have converted from two, uncharged PPP loans were re-captured by federal agents after her arrest and before her initial appearance. Because the amended Paragraphs 24 and 28 contain no mention of these matters and appear in Part A of the Amended PSR,¹ I am obligated to respond to the Amended PSR. *West v. United States*, 994 F.2d 510, 512, 513 (8th Cir. 1993); *see also United States v. Stevens*, 851 F.2d 140, 145 (6th Cir. 1988) (*relying on United States v. Rone*, 743 F.2d 1169, 1173 n. 2(7th Cir. 1984)).

¹ As Part A of the presentence report is the Offense Conduct section, it is vital for Ms. Watson to present her version of events to the Office of Probation. *See Publication 107, Office of Probation and Pretrial Services*, pg. III-10 (March 2006). *See generally United States v. Casas*, 425 F.3d 23, 58-59 (1st Cir. 2005) *cert. denied* 547 U.S. 1061 (2006) (time for parties to object to initial disclosure is "integral to the fair and orderly process of imposing sentence").

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I. Background

In the Addendum to the Amended PSR you confirm that the PSR was filed in this matter on June 7, 2022. The PSR followed the government's May 16, 2022, objection letter and Ms. Watson's May 24, 2022, objection letter. *See* Addendum to Amended PSR at pages 29-32. After the June 7 release of the PSR, Ms. Watson filed a sentencing memorandum as Doc. 44. The government did not file a sentencing memorandum. The original sentencing date was June 21.

In the Addendum to the Amended PSR, you confirm that on the business day before the June 21 sentencing hearing, the government filed a motion to continue that hearing and correctly report the government premised its motion on "recently received additional information responsive to a grand jury subpoena that had previously not been provided" and that "[t]he information related to the defendant's two additional PPP applications, only one of which was mentioned in the presentence report." Following disclosure of the new documentation, "the government met with the probation office on June 29, 2002, and the final presentence report was amended to reflect the additional information in paragraphs 24 and 28." *See* Addendum to the Amended PSR.

Finally, in the opening paragraph to the Addendum to the Amended PSR, you write that the Addendum "fairly states any objections made by counsel[.]" While I realize this is standardized language appearing in every Addendum, I stress that it was not possible for defense counsel to interpose any objection to the Amended PSR as the Amended PSR was presented to defense counsel in final form as Doc. 50 on July 15.

II. Discussion

Had defense counsel had an opportunity to object to the revisions to Paragraphs 24 and 28, or had the government included defense counsel in the June 29, 2002, meeting concerning the new documents/old information, please be advised defense counsel would have stated as follows:

- A. No later than December 21, 2021, the government knew Ms. Watson received two PPP loans in the amount of \$20,832 because the government tendered discovery on December 21, 2021, confirming there were two PPP loans for \$20,832. Although your initial PSR of May 10, 2022 (Doc. 40) did not mention there were two PPP loans for \$20,832, the government elected not to object to the non-appearance of the second loan in the initial disclosure.²

Returning to your final PSR (Doc. 42), you established:

- "Watson was not aware if L.P. had partaken in PPP fraud prior to their conversations, but she admitted that a deposit of \$20,832 into her personal Chase Bank account was a result of a PPP loan L.P. had previously obtained on her behalf." (¶ 24 of final PSR).
- A footnote to the above entry reads: "Chase Bank records reflect on April 14, 2021, a \$20,832 deposition was made into Watson personal Chase Bank account ending in 6297 from Itria Ventures. (Footnote 1 of final PSR).

² *See* Fed. R. Crim. Pro. 32(f)(1).

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- Agents from the United States Secret Services arrested Ms. Watson at her home on December 15, 2021. (¶ 23 of final PSR).
- Also on December 15, 2021, Ms. Watson tendered a \$45,000 cashier's check from her checking account to the United States Secret Service. (¶ 11 of final PSR).

According to Doc. 19 in the matter at bar, the arrest warrant for Ms. Watson was issued on December 1, 2021.

According to the government's discovery, agents arrived at Ms. Watson's house before business hours on December 15, 2021.

According to Ms. Watson, after placing her under arrest and removing her from her residence, agents drove Ms. Watson from her residence to a Chase Bank. While at that bank, agents secured the \$45,000 debit from Ms. Watson's account. After federal agents secured \$45,000 from Ms. Watson, agents transported her to federal court for her initial appearance.

According to the minutes from the initial appearance in this matter filed as Doc. 11, Ms. Watson's initial appearance began just before 4 p.m. on December 15, 2021.

According to an audio recording included in the government's discovery, the following conversation occurs among Ms. Watson and two Secret Service agents at her residence sometime before 9 a.m. on December 15, 2021. As demonstrated in the recording, after agents established that L.P. had coached and reassured Ms. Watson, and before agents began to question her about the offense involving Unity Home Health Care, the following is a transcription beginning at 6:38 of the government's recording and ending at 9:40 of that recording:

Agent #1: The money went into your account, correct? And how much was that, just, estimate?

Agent #2: How much was your loan for?

Ms. Watson: There was two PPP loans. For twenty.³ That was still in my account.⁴

Agent #1: That you independently – I mean I know it was \$20,833 – did you, without Lester⁵ – do – was that kind of like your self-entry into the game to see what the process was?

Ms. Watson: I guess.

³ Here is the first mention of two loans for twenty thousand dollars.

⁴ Here is the first mention that the money from the two PPP loans is still in Ms. Watson's account.

⁵ Lester, as in Lester Parker – referred to as "L.P." in the final PSR and in Ms. Watson's sentencing memorandum.

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Agent #1: Did he? All right. Rephrase. Did he ask you “just try it” -- like kind of thing -- you go out and you do your own -- for how ever much money you think you can get, which was \$20,833.

Ms. Watson: I never did my own. I never did any paperwork. He did all the paperwork.⁶

Agent #1: He did, on your behalf, your paperwork to get you \$20,000?

Ms. Watson: Yes.⁷

Agent #1: And he did that, or you knew about that occurring, twice.

Ms. Watson: Mm-mm (affirmative).⁸

Agent #2: So what happened with that, did you go to his house to sign the documents, get forms, what, we need the story.

Ms. Watson: We’d meet up, or he’d come here and sign the papers, or –

Agent #2: And then what was the cut? What was --like you were saying – like, for him to –

Ms. Watson: No – that was – nothing ‘cause it was still in the account.⁹ It was the other one – the Unity –

Agent #2: All right, so he didn’t get any cuts of the 20 Gs that was –

Ms. Watson: That was frozen already.

Agent #2: Oh.

Ms. Watson: That was still in my account.

Agent #1: You say it was frozen. I don’t – I mean I’ve seen your personal banking and I know you got the money. Your personal banking was never frozen, suspended, not ‘til we kind of got involved and we didn’t ask for it to be it was just the bank assuming they were going to be at a loss and a risk. They do their own assessment when it comes to that. But that initial funding of those smaller amounts – significantly smaller than the larger one -- I think those funds were freely spent by yourself.

⁶ Here is the first acknowledgement that L.P did the paperwork.

⁷ Here is the second acknowledgement that L.P. did the paperwork.

⁸ Here is the third acknowledgment that L.P. did the paperwork and the second mention of two loans for twenty thousand dollars.

⁹ Here is the second mention that the money from the two PPP loans is still in Ms. Watson’s account.

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Ms. Watson: But, I didn't -- I don't know, I didn't spend it all because I was trying to hold on to -- like, I was trying to hold on to try to get a house, I was trying to hold on to --

Agent #1 I get it. That's a lot of money at one time. Again, you work a midnight shift and that is not easy. I get it. And then having an opportunity present itself like that, however the salesmen presented it, it worked. And you saw the benefit of receiving what I guess could be perceived as almost free money. It was sold that way. Gosh, after (indecipherable) it was kind of like free money. *[changing subjects]* When it gets to Unity, there had to be some work done.

In light of the above -- all of which was known before the initial PSR was released on May 10, 2022 -- (i) Secret Service agents knew about each of these \$20,832 loans before December 15, 2021, (ii) Ms. Watson acknowledged each of these loans on December 15, 2021 and, (iii) under arrest and in transport to federal Court for her initial appearance, agents stopped at a Chase branch to have Ms. Watson surrender \$3,336 more than the aggregate total of these two \$20,832 loans. Put differently, while in custody but before being presented to a federal judge, the United States sought and secured compensation for \$3,336 more than the \$41,664 aggregate of both loans that Ms. Watson admitted she had received.

None of the information contained in the preceding paragraph appears in the Amended PSR.

B. Turning to Paragraph 28 of your Amended PSR, assume for the sake of argument the assemblage of numbers appearing in this revised Paragraph actually indicated that Ms. Watson consumed some or all of the combined \$41,664 of PPP loans, or assume for the same purpose that there was a tracing of the expenditures attributed to Ms. Watson to fraudulent revenue.

Federal agents extracted \$3,336 more than \$41,664 from Ms. Watson's bank account in between the time they arrested her and the time they brought her to Court.

Isn't it necessarily true that all of the \$41,664 was still in her account on December 15, 2021 -- and then some? If not, then whose money did federal agents re-capture on December 15, 2021?

Had I had an opportunity to pose questions, one would have been: If Edrica Watson told agents all of the money from the two PPP loans -- \$41,464 -- was in her account and agents then discovered that all of that money was indeed in her account, what is the purpose of the fusillade of numbers in Paragraph 28?

C. Turning to Paragraph 24 of your Amended PSR, you provide detail not included in your final PSR: (i) Ms. Watson initialed the false documents; (ii) Ms. Watson signed the false documents; (iii) the documents falsely reported that Ms. Watson was not only a cosmetologist but also had a cosmetology business and that (iv) Ms. Watson applied for loan forgiveness for each of these loans.

While your final PSR did not provide the above detail as to one of the PPP loans, I agree that all you report in Paragraph 24 is correct.

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Insofar as Paragraph 98 in all versions of the PSR states that “the defendant had a relationship with L.P. and he was influential to her[,]” and Paragraph 23 of all versions of the PSR states that Ms. Watson “advised that L.P. provided the documentation on her behalf[,]” and Paragraph 25 of all versions of the PSR states that L.P. had Ms. Watson’s personal information and that he “used her information to fill out the PPP loan application, and then he provided her with the application to digitally initial sign and submit[.]” had I had an opportunity to contribute prior to the release of the Amended PSR, I would have asked you to include mention in Paragraph 24 that Ms. Watson (i) told agents there were two PPP loans, (ii) told agents that all of the money was still in her account, (iii) stated “I never did my own. I never did any paperwork. He [L.P.] did all the paperwork[.]” and, (iv) told agents she would sign the documents L.P. created when they would meet up or he would come to her house.

The above is not only consistent with the mitigation presented in Ms. Watson’s sentencing memorandum, but it is also consistent with Paragraph 98 of every version of the PSR. Because you did not benefit from the transcription of the December 15, 2021, interview of Ms. Watson that appears on pages 2 through 4 of this letter, I understand why the information material to sentencing gleaned from it does not appear in your Amended PSR. But because Part A is the critical section of the PSR where a premium is placed not only on the accuracy of the information contained in Part A, but on the style in which it is presented,¹⁰ if I have been provided an opportunity to provide you this transcription, I would have. Sadly, I was not¹¹ and, as such, none of this information could be included in your Amended PSR.

- D. In Part 1(B) of Ms. Watson’s sentencing memorandum at Doc. 44, I highlight Ms. Watson’s immediate cooperation with authorities, the government’s overture for Ms. Watson to cooperate further, her willingness to do so and the government’s decision not to debrief.

The highlighting of new documents/old information in the amended PSR further supports Ms. Watson’s non-5K argument: she told agents there were two PPP loans, she told agents that L.P. created the paperwork for those loans, she told them all proceeds from those loan would still be in her account and she then provided the agents with \$3,336 more than the aggregate value of

¹⁰ *Publication 107, Office of Probation and Pretrial Services*, pg. III-10 (March 2006).

¹¹ “The primary purpose of Rule 32 is to provide for resolution of disputed material facts and guideline applications *before* the sentencing hearing.” *Publication 107, Office of Probation and Pretrial Services*, IV-1 (March 2006). (emphasis added). According to the Advisory Committee Note to the 1994 Amendments to Rule 32, the rationale for an objection period following initial disclosure not provided to the sentencing judge is “to provide some additional time to the parties and the probation officer to attempt to resolve objections to the report.” Indeed, that which remains in the final PSR will not only be seen by the sentencing judge but will also be deemed undisputed unless a party renews his objection at sentencing. See Rule 32(i)(3)(A); see also *United States v. Davis*, 587 F.3d 1300, 1304 (11th Cir. 2009). Necessarily then, only an interposed objection can be noted in the Addendum, responded to by the Office of Probation, and renewed at the sentencing hearing.

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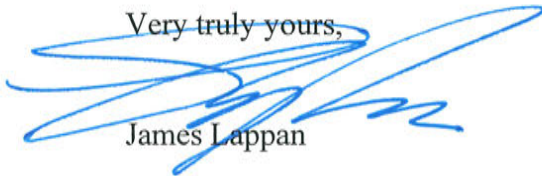
both loans. And so, notwithstanding an agent's acknowledgment that the \$41,664 was "kind of like free money," all of that free money was nonetheless immediately re-captured by that same agent.

Obviously, none of this information could be included in the Amended PSR.

III. Remedy?

Returning to the second paragraph of this letter, I am duty-bound to present the information contained herein to you even though I understand the extraordinary posture of this presentence investigation constrains a Second Amended Final Presentence Report. While no sentencing memorandum carries the weight of a presentence report,¹² I shall file a second sentencing memorandum in this matter apprising the Court of the additional and corroborative mitigating factors that further support Ms. Watson's original sentencing memorandum filed as Doc. 44 that are supported by the Amended PSR at Doc. 50 but are not contained in that crucial document.

Very truly yours,



James Lappan

cc: CAUSA Jesus Casas

¹² Whereas the presentence report likely becomes the Court's findings of fact at sentencing, *see* Fed. R. Crim. Pro. 32(i)(3)(A), sentencing memoranda is never more than advocacy. *See, e.g., United States v. Kravetz*, 706 F.3d 47, 56 (1st Cir. 2013). Consequently, no sentencing memorandum shall ever bear the imprimatur of a presentence report nor shall it be transmitted to -- nor relied upon by -- prison officials or probation officers supervising the defendant. *See Monograph 107* at §§ 220(a)(1), 220(a)(3), 430(b) & 430(d); *Probation & Pretrial Services, Part E: Post-Conviction Supervision* at § 340(b).