UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v. Case No. 2:23-cr-88-SPC-KCD

DIOP MCKENZIE

UNITED STATES' MOTION
FOR AN ORDER OF FORFEITURE

The United States moves this Court, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)(A), 28 U.S.C. § 2461(c), Fed. R. Crim. P. 32.2(b)(2), and the defendant's plea agreement, to enter an order of forfeiture against the defendant in the amount of $117,832, representing the amount of proceeds he personally obtained as the result the bank and wire fraud offenses charged in Counts One and Four of the Indictment. In support, the United States submits the following memorandum of law.

MEMORANDUM OF LAW

I. Statement of Facts

A. Allegations Against the Defendant

1. In pertinent part, the defendant was charged with bank fraud and wire fraud, in violation of 18 U.S.C. §§ 1343 and 1344 (Counts One and Four), and aggravated identity theft, in violation of 18 U.S.C. 1028A(a)(1) (Count Five).[1] Doc. 1.

[1] 18 U.S.C. § 1028A - There is no forfeiture provision for aggravated identity theft.

2. The forfeiture allegations notified the defendant that, under 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)(A), and 28 U.S.C. § 2461(c), the United States intended to forfeit any property constituting, or derived from proceeds the defendant obtained, directly or indirectly, as a result of such violation, including, but not limited to, an order of forfeiture in the amount. *Id.* at 11.

B. Findings of Guilt and Admissions Related to Forfeiture

3. The defendant pleaded guilty to Counts One, Four, and Five of the Indictment. Docs. 70, 71. The Court accepted his plea and adjudicated him guilty. Doc. 73.

4. The defendant admitted in his plea agreement (Doc. 67 at 19-28), that he personally obtained $117,832 in fraud proceeds from the bank and wire fraud offenses charged in Counts One and Four of the Indictment.

5. Pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)(A), and 28 U.S.C. § 2461(c), the defendant admitted that the United States was entitled to an order of forfeiture in the amount of $117,832, representing the amount of proceeds he personally obtained as a result of the bank and wire fraud offenses charged in Counts One and Four.[2] Doc. 67 at 7. Moreover, the defendant agreed that the order of forfeiture would be final upon entry. *Id.* at 10.

[2] The United States will not seek criminal forfeiture of the funds seized from the accounts listed in the plea agreement, because the U.S. Secret Service administratively forfeited the assets on November 21, 2022. Doc. 5. The proceeds from the forfeited assets will be credited towards the defendant's order of forfeiture.

II. Applicable Law

A. Forfeiture Statute

Forfeiture in this case is governed by 18 U.S.C. § 981(a)(1)(C), which provides for the civil forfeiture of any property, real or personal, that constitutes or is derived from proceeds traceable to a violation of any offenses constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title). A violation of 18 U.S.C. § 1343 is a "specified unlawful activity" under 18 U.S.C. § 1956(c)(7). *See* 18 U.S.C. § 981(a)(1)(C) and 18 U.S.C. § 1956(c)(7)(D). Pursuant to 28 U.S.C. § 2461(c), the United States is authorized to forfeit this property criminally utilizing the procedures set forth in 21 U.S.C. § 853.

Criminal forfeiture of property for bank fraud, in violation of 18 U.S.C. § 1344, is governed by 18 U.S.C. § 982(a)(2) which provides for the forfeiture of any property constituting, or derived from, proceeds the defendant obtained, directly or indirectly, as a result of such violations. *See* 18 U.S.C. § 982(a)(2).

B. Court's Determination of Forfeiture

Rule 32.2, Federal Rules of Criminal Procedure, governs the criminal forfeiture of property based on a defendant's conviction for the offense giving rise to the forfeiture. Rule 32.2(b)(1) requires that as soon as practical after a verdict or finding of guilty, or after a plea of guilty is accepted, the Court must determine what property is subject to forfeiture under the applicable statute. Fed. R. Crim. P. 32.2(b)(1)(A). The Court's determination may be based on evidence already in the record, or any additional evidence submitted by the parties and accepted by the Court as relevant and reliable. Fed. R. Crim. P. 32.2(b)(1)(B).

Because the United States could not locate all the specific property traceable to the defendant's bank and wire fraud offenses, the United States seeks an order of forfeiture against the defendant in the amount of $117,832, pursuant to Federal Rule of Criminal Procedure 32.2(b)(2). As the defendant has agreed, he personally obtained $117,832 in proceeds as a result of the bank and wire fraud offenses. If the Court finds that the defendant obtained $117,832 as a result of his participation in the offenses and that the defendant has dissipated those proceeds, then it is appropriate for the Court to enter an order of forfeiture against the defendant in that amount pursuant to Rule 32.2(b)(2).

III. <u>Conclusion</u>

For the reasons stated above, the United States requests that the Court, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2)(A), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b)(2), enter an Order of Forfeiture against the defendant in the amount of $117,832.

As required by Federal Rule of Criminal Procedure 32.2(b)(4)(B), the United States requests that the Court include the forfeiture when orally pronouncing the sentence and include the forfeiture order, directly or by reference, in the judgment. *See* Fed. R. Crim. P. 32.2(b)(4)(A) and (B).

In accordance with Rule 32.2(b)(4) and the defendant's plea agreement (Doc. 67 at 10), the United States asks that the order of forfeiture be made final as to the defendant at the time it is entered.

Finally, the United States further requests that the Court retain jurisdiction to address any third-party claim that may be asserted in these proceedings, to enter any further order necessary for the forfeiture and disposition of such property, and to order any substitute assets forfeited to the United States up to the amount of the order of forfeiture.

Finally, the United States requests that the Court retain jurisdiction to order any substitute assets forfeited to the United States up to the amount of the order of forfeiture.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

s/James A. Muench
JAMES A. MUENCH
Assistant United States Attorney