Docket No. 12-2359

United States Court of Appeals
For the Seventh Circuit

United States of America,

Plaintiff-Appellee,

v.

Keith Reiter,

Defendant-Appellant.

Appeal from a judgment of conviction entered in the United States District Court for the Eastern District of Wisconsin, the Hon. J.P. Stadtmueller, presiding
District Court No. 11-CR-183

Brief and Short Appendix of the Appellant, Keith Reiter

Law Offices of Jeffrey W. Jensen
735 W. Wisconsin Ave., Suite 1200
Milwaukee, WI 53233

414.671.9484

Attorneys for the Appellant
By: Jeffrey W. Jensen

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No. **12-2359**
Short Caption: **United States v. Keith Reiter**

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Keith Reiter

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedingsin the district court or before an administrative agency) or are expected to appear for the party in this court:

Law Offices of Jeffrey W. Jensen

(3) If the party or amicus is a corporation:
i) Identify all its parent corporations, if any; and
ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: /s/ **Jeffrey W. Jensen** Date: **September 6, 2012**

Attorney's Printed Name: **Jeffrey W. Jensen**

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **X** Yes
No

Address: **735 W. Wisconsin Avenue, Suite 1200**
Milwaukee, WI 53233

Phone Number: **414-671-9484** Fax Number: **414-224-1411**
E-Mail Address: jwjensen1960@gmail.com

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Jurisdictional Statement

A. The Court of Appeals has jurisdiction of this matter because it is an appeal from a criminal conviction in the United States District Court (ED-Wis). *See,* 28 USCS § 1291. The District Court has jurisdiction because an indictment was returned alleging a violation of 21 U.S.C. §843(b), and others, and the defendant was convicted following a jury trial.

B. The judgment of conviction was entered on June 7, 2012. Reiter filed a notice of appeal on June 7, 2012; and, therefore, the appeal is timely.

C. There have been no motions that have tolled the time limits

D. The appeal is from a final judgment of conviction in a criminal case and, therefore, the appeal is from a final judgment that disposes of all parties' claims.

Statement of the Issues Presented for Review

I. Whether the evidence was sufficient as a matter of law to sustain the jury's verdict finding Reiter guilty of social security fraud.

Answered by the district court: Yes

Statement of the Case

The defendant-appellant, Keith Reiter (hereinafter "Reiter"), was named in an indictment (Doc. 1) filed in the Eastern District of Wisconsin on August 23, 2011, with one count of social security fraud, contrary to 42 U.S.C. Sec. 1383a(a)(3)(B). Reiter entered a not guilty plea.

The case was tried to a jury on November 7th and 8th, 2011. The jury returned a verdict finding Reiter guilty.

Reiter filed a motion pursuant to Rule 29 F.R.Crim.P. challenging the sufficiency of the evidence, and requesting that the court enter a judgment of acquittal. (Doc. 26) Reiter also filed a motion for a new trial, arguing that the closing argument of the government diverted the jury's attention from the issue in the case. (Doc. 27) The district court found that the evidence was sufficient, and it denied Reiter's motion for acquittal . (Doc. 31)

On June 6, 2012, the district court sentenced Reiter to six months incarceration followed by three years of extended supervision. The court ordered that the first 180 days of extended supervision be under home detention.

Reiter timely filed a notice of appeal. He also filed a motion for release pending appeal (Doc. 52). The district court denied Reiter's motion for release. (Doc. 56)

Statement of the Facts

Reiter, who had been living in California, had been receiving Social Security Disability benefits for some time. Reiter's mother, Joyce Reiter, passed away on October 14, 2003 (11-7-2011 Trial Trans. p. 31) Joyce lived in Wisconsin. The probate inventory showed $162,414 in assets, with Reiter's share being $39,340. (11-7-2011 Trial Trans. p.321) Reiter claimed that he had reported the receipt of these assets to the California SSA office with which he had been working. (11-7-2011 Trial Trans. p. 100)

Reiter testified that at about the time his mother passed away, he may have also written the SSA in California about the assets. (11-8-2011 Trial Trans. p. 199) Reiter also believed that he may have called the SSA toll-free number. (11-8-2011 Trial Trans. p.199) To bolster his testimony, Reiter produced a calendar on which he had made a notation of the SSA toll-free number on January 4, 2004. (11-8-2011 Trial Trans. p. 202)

The government's Trial Exhibit 17 is a letter from the SSA to Reiter, dated September 21, 2004, which states in part that, "[Y]ou have never answered our questions about the settlement of your mother's estate. We need to know how much you received and when you received it."

Reiter continued to receive benefits for approximately five years after that letter was sent to him.

Reiter further explained that he was not concerned about the continued receipt of SSA funds because he had applied for the PASS program, which-- according to his understanding-- would permit him to continue to receive benefits while he was attempting to become self-sufficient. (11-8-2011 Trial Trans. p. 203, 269)

At trial, the government produced bank records in Reiter's name indicating that on March 31, 2004, Reiter had a balance of $191,208 in a Wells Fargo account. (11-7-2011 Trial Trans. p. 112)

The Social Security Administration did a re-evalution of Reiter's eligibility on April 17th, 2004 because, by that time, Reiter had moved to Wisconsin. (11-7-2011 Trial Trans. p. 39) The evaluation was conducted by James King. During this process, Reiter did not tell King that he (Reiter) had $150,000 or more in his name in a bank account. (11-7-2011 Trial Trans. p. 43) The agent conducted a second meeting with Reiter in September, 2005 and, again, according to King, Reiter did not mention the assets. (11-7-2011 Trial Trans. p. 50) King testified at trial that Reiter made numerous requests that the SSA obtain his file from California. (11-7-2011 Trial Trans. p. 69-70, 78)

According to King, the SSA does have a PASS program that permits individuals whose assets otherwise make them ineligible to continue to receive benefits while they are making attempts to become self-sufficient. (11-7-2011 Trial Trans. p. 53) King denied, though, that he ever discussed the PASS program with Reiter. Nonetheless, the SSA file from California does contain a letter from August, 2004, in which Reiter asked the SSA to locate his PASS and food stamp application. (11-7-2011 Trial Trans. p.69)

The SSA again requested that Reiter appear for a re-evaluation in September, 2009. This time, the evaluation was conducted by Choua Yang. According to Yang, the re-evaluation was prompted by information from the Internal Revenue Service that Reiter was the owner of stocks. (11-7-2011 Trial Trans. p. 93) Yang agreed that it appeared that Reiter had reported the stock income to the IRS on his tax return. (11-7-2011 Trial Trans. p. 95)

Reiter's benefits were suspended in September, 2009. (11-7-2011 Trial Trans. p. 141)

In February, 2010, a SSA agent, Michael Clemens, went to Reiter's home to speak to him. *Ibid*. According to Clemens, he believed that Reiter was inside, but that Reiter initially refused to come to the door when Clemens knocked. (11-7-2011 Trial Trans. p. 142) Eventually, Reiter came out of the house and spoke to Clemens. (11-7-2011 Trial Trans. p.146) Clemens informed Reiter that he (Clemens) knew that Reiter had assets. Reiter admitted it, but said that he had been trying to send the money back to the SSA (11-7-2011 Trial Trans. p.146) Reiter's recollection of the conversation was that he told Clemens that he had "more than $2000 in assets." (11-8-2011 Trial Trans. p. 225)

Summary of the Argument

Reiter was charged with failing to disclose an event that affected his eligibility for Social Security benefits. The event in question here was the death of Reiter's mother in 2003, and the inheritance that Reiter received thereafter. The government's own trial Exhibit 17, which was a 2004 letter from the SSA to Reiter, established that Reiter had, in fact, notified the SSA of the inheritance. The letter merely requests additional information as to the amount of the inheritance.

The statute requires only that the recipient of benefits notify the SSA of the "event". It does not require the recipient of the benefits to provide all the details of the event so that the SSA may make an independent determination as to whether the event, in fact, affects eligibility. Plainly, the purpose of the statute is to require the recipient to put the SSA on notice of "any event" so that an investigation may be started. The failure to cooperate with the investigation may be grounds to terminate benefits, but it is not a crime.

Therefore, the evidence was insufficient as a matter to law to support the jury's verdict finding Reiter guilty.

Argument

I. The evidence was insufficient as a matter of law to sustain the jury's verdict finding Reiter guilty of social security fraud.

A. Standard of Appellate Review

On appeal from a trial court's denial of a motion for judgment of acquittal, the appellate court must review the evidence in the light most favorable to the government to determine "whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Hill*, 187 F.3d 698, 700 (7th Cir. 1999) Under this standard, a guilty verdict may be overturned only if there is "no evidence from which a jury could convict." *Id.* This standard of review is reserved for cases where the defendant renews his motion for judgment of acquittal at the close of all the evidence or within seven days after the jury is discharged. *See United States v. Hickok*, 77 F.3d 992, 1002 (7th Cir. 1996); Fed. R. Crim. Proc. 29(c).

Reiter did file a motion for acquittal under Fed. R. Crim. Proc. and, therefore, this is the standard that applies.

B. Elements of Social Security Fraud

42 USC § 1383a makes it a crime for any person who is receiving Social Security benefits:

> (3) having knowledge of the occurrence ***of any event*** affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized,

(emphasis provided).

Exhibit 17 is a letter from the SSA to Reiter, dated September 21, 2004, which states in part that, "[Y]ou have never answered our questions about the settlement of your mother's estate. We need to know how much you received and when you received it." This letter unequivocally establishes that by at least 2004 Reiter had notified the SSA of his mother's death and his inheritance.

The district court denied Reiter's motion for acquittal reasoning that:

> Here, Reiter argues that Exhibit 17 is "conclusive" evidence that Reiter had disclosed that he would be receiving assets from his mother's estate. As such, he argues, a rational jury could not have concluded that Reiter concealed an event affecting his eligibility. However, Reiter overlooks an important distinction. The passing of his mother and the receipt of monies from her estate is not itself an event that necessarily made him ineligible.
>
> Instead, the amount actually received would determine whether Reiter remained eligible.

(Doc. 31, p. 2; Appedix C). The reasoning of the district court, though, goes beyond merely viewing the evidence in the light most favorable to the verdict. It *changes* the wording of the statute in order salvage the guilty verdict.

The words of a criminal statute must be given their ordinary meaning. *See., e.g.*, *United States v. Costello*, 666 F.3d 1040, 1050 (7th Cir. Ill. 2012) In *Costello*, the Seventh Circuit reversed the conviction of a woman who had been convicted of "harboring" an illegal alien. The evidence showed that the defendant had merely been *living with* her boyfriend (an illegal alien). In reversing the conviction, the court wrote, "To call this harboring would carry section 1324 far beyond smuggling, and a considerable distance as well from concealing and from shielding from detection." *Costello*, 666 F.3d at 1046.

Here, Reiter was accused of failing to disclose "an event" that would affect his eligibility. Again, the statute required Reiter to merely disclose the existence of the event. It does not require Reiter to provide the details of the event (i.e. the amount of the inheritance) so that the SSA may independently determine whether or not it affects eligibility.[1] It does not require Reiter to provide the SSA with a complete itemization of all information surrounding the event.

Again, quoting from *Costello,* "[I]t is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." 666 F.3d at 1043

Here, the purpose of the statute is plainly to compel recipients to notify the SSA of the occurrence of *any event* that affects eligibility. This

[1] The failure to disclose the details of the event may, in fact, affect Reiter's eligibility. However, in this appeal we are concerned with whether or not a crime was committed. A crime is committed under the statute only when the *event* is not disclosed.

is so that the SSA may investigate the details of the event. The failure of the recipient to cooperate in the SSA's investigation of the event might be grounds to deny benefits; but it is not a crime so long as the event itself was disclosed.

Here, Reiter disclosed the event. He disclosed the fact that he received an inheritance from his mother. This notice permitted the SSA to begin an investigation into the details. When, in 2009, Reiter continued to refuse to provide the details of the event (i.e. the amount of the inheritance), the SSA correctly terminated his benefits. The fact that it took the SSA five years to terminate Reiter's benefits for failing to cooperate in the investigation does not transform what happened here into a crime.

Conclusion

For these reasons, it is respectfully requested that the Court of Appeals reverse Reiter's conviction, and order that a judgment of acquittal be entered.

Dated at Milwaukee, Wisconsin, this 6th day of September, 2012:

LAW OFFICES OF JEFFREY W. JENSEN
Attorneys for Appellant
/s/ Jeffrey W. Jensen

Certification as to Form and Length

The undersigned hereby certifies that this brief meets the length and format requirements of Fed. R. App. P. 32(a)(7). A fourteen point "Georgia" font was used with justification and automatic hyphenation. The length of the brief is 2,074 words not counting the table of authority and table of contents. The word court was determined using the word count function of the word processing software *Google Docs*.

Dated at Milwaukee, Wisconsin, this 12th day of June, 2012:

LAW OFFICES OF JEFFREY W. JENSEN
Attorneys for Appellant
/s/ Jeffrey W. Jensen

Circuit Rule 31(e) Statement

An electronic copy of this brief consisting of digital media has been uploaded to the Seventh Circuit Court of Appeals Legal Brief System. I certify that the file does not contain a computer virus. I additionally certify that, pursuant to Circuit Rule 31(e)(4), a digital copy of the brief has been served upon each party individually represented by counsel.

Dated at Milwaukee, Wisconsin, this 6th day of September, 2012:

LAW OFFICES OF JEFFREY W. JENSEN

Attorneys for Appellant
/s/ Jeffrey W. Jensen

Circuit Rule 30(d) Statement

All materials required by Circuit Rule 30(a) and (b) are included in the attached appendix.

Dated at Milwaukee, Wisconsin, this 6th day of September, 2012:

LAW OFFICES OF JEFFREY W. JENSEN
Attorneys for Appellant
/s/ Jeffrey W. Jensen

Certificate of Service

I hereby certify that on September 6, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

(For paper copy of the brief only) Fifteen copies of this brief are being served and filed at the Clerk of Court Office, United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn Street, Chicago, Illinois on ___________ by placing the same in the United States Mail. Two copies of this brief are being served on Elizabeth Blackwood, Asst. United States Attorney, by placing the same in the United States Mail.

Dated at Milwaukee, Wisconsin, this 6th day of September, 2012:

LAW OFFICES OF JEFFREY W. JENSEN
Attorneys for Appellant

/s/ **Jeffrey W. Jensen**

735 W. Wisconsin Ave.
Suite 1200
Milwaukee, WI 53233

414.671.9484

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Short Appendix of the Appellant, Keith Reiter

A. Relevant docket entries

B. Indictment

C. Trial Exhibit 17

D. Judgment of Conviction

E. District Court's memorandum decision on Rule 29 motion