

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA )  
 ) No. 5:20CR50070-TLB-001  
v. )  
 )  
VALARIE WATSON )

**UNITED STATES’ SENTENCING MEMORANDUM**

The United States of America, by and through David Clay Fowlkes, Acting United States Attorney for the Western District of Arkansas, and the undersigned Assistant United States Attorney, states its position on the forthcoming sentencing and outstanding objections to the Pre-Sentence Report, *Doc. No. 17* (“PSR”).

**BACKGROUND**

After pleading guilty to an Information alleging a single count of False Statement in a Writing, in violation of 18 U.S.C. § 1001(a)(3), Watson is set for sentencing before this Court on April 1, 2021. The PSR holds Watson accountable for an intended loss of \$86,233.33, resulting in a six-point increase to her base offense level. *See* U.S.S.G. § 2B1.1 (b)(1)(D). The PSR places her in Criminal History Category IV, yielding a Guidelines Range of 15 – 21 months. Watson has objected to the PSR, primarily contesting the loss amount. The United States files this sentencing memorandum to address the defendant’s objections and addresses the 18 U.S.C. § 3553(a) factors for the Court’s consideration.

**ARGUMENT**

**1. Defendant’s Objection to EIDL Application.**

During the investigation of this case and the related ones, the United States became aware that Watson, her brother Melvin Stout, and Stout’s wife Tiffany Acuff, had applied not only for

Paycheck Protection Program (PPP) loans, but also for Economic Injury Disaster Loans (EIDLs)--loans administered by the SBA as detailed in the PSR at 15-17. When agents interviewed Watson on September 3, 2020, she admitted to falsifying the PPP loan application, but also to obtaining an SBA disaster loan (an EIDL) for “Valarie Cleaning Service.” *PSR at 41*. Stout and Acuff made similar admissions regarding the SBA/EIDL loans during interviews on that date. *PSR at 37 & 38*. During the interview, Watson claimed the SBA disaster loan was legitimate. *PSR at 41*. She said that she was the sole employee of Valarie Cleaning Service, and that the business had earned \$6,000 in the previous year. *Id.*

Undersigned counsel obtained the EIDL application data for all three defendants after their guilty pleas and has since provided the application data for these loans to defense counsel. As to Stout and Acuff, the application data confirmed their interview statements. As to Watson, it undercut it. In the application, Watson claims that Valarie Cleaning Service has ten employees and had grossed \$54,000 in 2019. *PSR at 41*. The United States asserts that this information, given under penalty of prosecution, is false, and relevant for the Court’s consideration.

The EIDL information is relevant conduct because it is an “act . . . willfully caused by the defendant” involving the same victim, accomplice, purpose, and modus operandi as her crime of conviction, and occurred near in time to it. U.S.S.G. § 1B1.3(a)(1). “Relevant conduct under the guidelines need not be charged to be considered in sentencing, and it includes all acts and omissions ‘that were part of the same course of conduct or common scheme or plan as the offense of conviction.’” *United States v. Radtke*, 415 F.3d 826, 841 (8th Cir. 2005) quoting U.S.S.G. § 1B1.3(a)(2). In determining what is relevant conduct, the Court enjoys wide discretion in the documents and evidence it may consider at sentencing. *See* U.S.S.G. § 6A1.3, Commentary (citing *United States v. Watts*, 519 U.S. 148, 154 (1997) (noting that sentencing courts have traditionally

considered a wide range of information without the procedural protections of a criminal trial, including information concerning criminal conduct that may be the subject of a subsequent prosecution.))

The EIDL documents, in conjunction with Watson's, Stout's, and Acuff's admissions that they applied for the EIDLs, chins the bar of the preponderance burden the Government bears in showing that each made additional false statements under oath. *United States v. Mustafa*, 695 F.3d 860 (8th Cir. 2012); *United States v. Tyndall*, 521 F.3d 877 (8th Cir. 2008). Inclusion of this information does not increase any statutory maximum penalties for Watson. *United States v. Villareal-Amarillas*, 562 F.3d 892 (8th Cir. 2009) ("In the preset advisory Guidelines regime, facts found at sentencing merely inform the judge's discretion; they do not increase the maximum sentence to which a defendant is otherwise exposed."). The EIDL information is appropriate relevant conduct, and the United States is prepared to present that evidence to the Court at the time of sentencing if necessary.

## **2. Defendant's Objection to Loss Amount.**

From the outset, the United States viewed this case as one where Stout helped his wife and sister file loan applications with false information, not as an open conspiracy amongst the three defendants. The available evidence points to Stout as an opportunist driving the conduct, not some thoughtfully conceived operation. He is responsible for the loss incurred by himself, his sister, and his wife. What Watson and Acuff are accountable for is less clear. As set forth in the PSR, the following seven transactions are at issue in the Stout/Watson/Acuff cases (including two, Transactions 1 and 2 below, which are not found in Watson's PSR for reasons explained below):

Transaction Number	Date of Loan Application	Loan Type	Applicant Name	Intended Loss	Actual Loss
1	04/17/2020	PPP	Stout	\$9,458.90	\$9,400.00
2	04/29/2020	PPP	Acuff	\$20,833.33	\$20,800.00
3	05/11/2020	PPP	Watson	\$20,833.33	\$0
4	05/22/2020	EIDL	Stout/Acuff	\$27,000.00	\$6,000.00
5	06/16/2020	EIDL	Acuff	\$28,400.00	\$28,400.00
6	06/19/2020	EIDL	Stout	\$0	\$0
7	06/22/2020	EIDL	Watson	\$10,000.00	\$10,000.00

The United States agrees (with Watson and the PSR) that criminal conduct occurring prior to May 11, 2020 should not count toward Watson’s loss amount. (Transactions 1 & 2 in the above chart). (“[A] defendant’s relevant conduct does not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, even if the defendant knows of that conduct...]). U.S.S.G. § 1B1.3 Application Note 3(B). The United States cannot show that Watson played any role in the PPP loan applications that preceded hers.

The United States further agrees with Watson that she should not shoulder any loss resulting from Acuff’s subsequent participation in the scheme, specifically the \$28,400 EIDL for which Acuff applied on June 16, 2020 (Transaction 5 in the above chart). Whether this loan is relevant conduct turns on whether Watson and Acuff were involved in “jointly undertaken criminal activity,” and whether the June 16, 2020 loan was a) within the scope of that activity, b) was in furtherance of that activity, and c) reasonably foreseeable in connection with that activity. U.S.S.G. § 1B1.3(a)(1)(B).

A “jointly undertaken criminal activity” is a plan or scheme undertaken by the defendant in concert with others. *Id.* There was undoubtedly *some* jointly undertaken criminal activity here--an agreement by Stout and Watson (and by Stout and Acuff) to file a loan application with false information. The scope of those agreements is unclear, but determinative. (“The Court must first determine the scope of the criminal activity the particular defendant agreed to jointly undertake

(i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement.))  
(U.S.S.G. § 1B.3 Application Note 3(B)).

Undersigned counsel can find no analogous test under this Circuit's caselaw, but the Seventh Circuit's scope-of-activity rubric is instructive. There, the court considers 1) whether there existed a single scheme; 2) similarities in modus operandi; 3) coordination of activities among schemers; 4) pooling of resources or profits; and 5) knowledge of the scope of the scheme. *United States v. Salem*, 657 F.3d 560, 564 (7th Cir. 2011). The difficulty in defining the scope in this case is the paucity of reviewable transactions and lack of any captured communications. There are no text messages or intercepted phone calls providing insight into the relationships between Stout, Acuff, and Watson. Unlike those crimes involving dozens of transactions that imply coordination, here we have only seven transactions spread over two months. Those transactions are not overly complex, such that they would require a great deal of organization.

With the available facts, the United States concedes it is unlikely that it can show that Acuff and Watson knew of each other's submission of false loan applications, participated in the other's submissions, or that the conduct was foreseeable to either. On one hand, Watson and Acuff share a common relative and residence, which is damning. The loan documents each submitted are very similar. Past that, though, there are no statements to support a joint undertaking, nor do the documents nod toward any agreement between them. Stout asserted that there was no profit-sharing agreement. *PSR at 37*. The money does not appear to have been mingled, Watson's and Acuff's (and Stout's) loans were each deposited into their respective bank accounts and spent in the normal course. Acuff, who was otherwise honest with law enforcement, says she did not know anyone else was applying for the loans, implying she did not discuss it with Watson. *PSR at 39*. And, the United States has no additional evidence to refute that assertion. Watson instead

approached Stout and asked for guidance in completing the applications. *PSR at 37*. It was Stout's handwriting on the falsified documents associated with both Acuff's and Watson's loan applications, again placing him as the nexus of the activity. *PSR at 37*. Excluding Acuff's \$28,400 EIDL, Watson is responsible for \$57,833.33 of intended loss.

Whether Watson is accountable for the May 22, 2020 EIDL filed by Stout is also disputed (Transaction 4 in the above chart). Watson certainly conspired with Stout to complete a PPP loan after learning Stout had successfully filed his own fraudulent application. *PSR at 37*. But was it in the scope of Stout's and Watson's agreement and foreseeable to Watson that her brother would later find and apply for additional pandemic-related financial aid? The question turns on the scope of the original Watson/Stout agreement. If construed broadly, as the Government encourages, as a loose agreement to seek out available pandemic-related funds, then Stout's EIDL application was part of the agreement, in furtherance of it, and foreseeable to Watson. With the available evidence, the Court can reasonably conclude that on May 22, 2020, it is more likely than not that Watson was still on the lookout for easy money, knew her brother was still on the lookout too, and was ready to take advantage of any opportunities he uncovered. Not only can the Court draw this reasonable inference from their familial relationship, common residence, conspiracy on the previous loan, and Watson's criminal experience, *PSR at 71 & 72*, but also based on the timing and similarity of the various applications. The EIDL process, though slightly different, involves a common victim, and was done in a near-identical manner, i.e., presenting false statements in loan applications. In addition, Stout's EIDL is close in time to both Watson's PPP and EIDL application.

Accordingly, the United States submits that Stout's May 22, 2020 EIDL is relevant conduct to Watson, and that Watson's intended loss amount in this case is \$57,833.33 (Transactions 3, 4, & 7 in the above chart).

However, if the Court instead construes the EIDL applications as an enterprise separate from the PPP loan applications, then the United States concedes that Watson is not responsible for that loss amount, having joined that enterprise around June 22, 2020---after Stout and Acuff. U.S.S.G. § 1B1.3 Application Note 3(B). In this circumstance, the United States asserts that Watson's intended loss amount is \$30,833.33, resulting in only a four-level increase to her offense level. U.S.S.G. § 2B1.1(b)(1)(C).

### **3. Sentencing Factors.**

To arrive at a just sentence, the statute directs the Court to consider the familiar factors at 18 U.S.C. § 3553(a). When the facts of Watson's offense and personal history are applied to those criteria, a substantial sentence is merited.

#### *a. Nature and Circumstances of the Offense and the History and Characteristics of the Defendant. (18 U.S.C. § 3553(a)(1)).*

The Coronavirus pandemic has claimed more than half a million American lives, affected the mental and physical health of millions more, and led to widespread unemployment and financial hardship. For others, it presented a prime opportunity to steal money the U.S. Government earmarked for those most in need. While the loss amounts here are less than the typical federal case, it's the source and intention of these funds that renders this crime a heinous one.

Watson is no stranger to this sort of crime. This is Watson's third felony conviction and third financial fraud offense. *PSR at 71 & 72*. And like the instant offense, her prior convictions demonstrate that Watson is an opportunist in the unkindest form. Watson stole from her employer

Bradford House Health and Rehab until being fired for theft. *PSR at 100*. She then gained new employment with Prairie Grove Health and Rehab, just a few months later, until she was again fired for stealing her employer's money. *PSR at 99*. Here, she appears to have recognized her brother's success in submitting a false loan application, and quickly followed suit, both with the PPP loan and the EIDL.

- b. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, To Promote Respect for the Law, and to Provide Just Punishment for the Offense. (18 U.S.C. § 3553(a)(2)(A)).*

Watson's previous sentences were insufficient to impress upon her a respect for the law or the seriousness of the underlying offenses. A 24-month federal sentence (*PSR at 71*) and a 216-month suspended sentence (*PSR at 72*) have not deterred her. Nor has she taken her restitution obligations seriously: she still owes approximately \$250,000 to her various victims. The United States respectfully requests that the Court impose a sentence that impresses upon Watson the seriousness of what she's done, adequately punishes her serial thievery, and promotes respect for the law.

- c. The Need for the Sentence Imposed to Afford Adequate Deterrence To Criminal Conduct and Protect the Public from Further Crimes. (18 U.S.C. § 3553(a)(2)(B-C)).*

Watson has proven that left to her devices, she will commit crime. Deterrence, both aimed at Watson and others looking to take advantage of pandemic-related assistance, weigh heavily in favor of a substantial sentence in this case.

### **CONCLUSION**

Considering the factors set forth at 18 U.S.C. § 3553(a), the United States respectfully requests the Court impose a substantial sentence on Watson, one that reflects the concerns outlined above.

Respectfully submitted,

DAVID CLAY FOWLKES  
ACTING UNITED STATES ATTORNEY

/s/ Hunter Bridges  
HUNTER BRIDGES  
Assistant U.S. Attorney  
Arkansas Bar No. 2012282  
414 Parker Avenue  
Fort Smith, Arkansas 72901  
479-783-5125  
[Hunter.Bridges@usdoj.gov](mailto:Hunter.Bridges@usdoj.gov)

**CERTIFICATE OF SERVICE**

I, Hunter Bridges, hereby certify that on March 2, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice to the following:

Stephen Parker  
WESTARK LAW  
4403 S. Thompson St., Suite 1  
Springdale, AR 72764

/s/ Hunter Bridges  
Hunter Bridges  
Assistant U.S. Attorney