

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
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 Plaintiff, :
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 v. :
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TAYO FUNSHO OMOWUNMI, :
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 Defendant. :
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Beth Moskow-Schnoll, Esquire, Assistant United States Attorney,
Colm F. Connolly, Esquire, United States Attorney of the UNITED
STATES DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Plaintiff.

Tayo Funsho Omowunmi, Pro Se Defendant.

MEMORANDUM OPINION

June 17, 2002

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is a Motion For Return Of Seized Property Under Fed. R. Crim. P. 41(e) (D.I. 64) filed by Defendant, Tayo Funsho Omowunmi. For the reasons discussed, Defendant's Motion will be denied with leave to renew upon the final decision of the Court of Appeals for the Third Circuit as to the legality of the restitution ordered in this case.

BACKGROUND

On May 26, 1999, Defendant was arrested in Wilmington, Delaware and subsequently charged with bank fraud in violation of 18 U.S.C. § 1344. According to the Government, Defendant was the leader in a bank fraud conspiracy. In furtherance of this conspiracy, Defendant paid numerous bank employees for account and personal identifying information, which Defendant then used to take over existing credit card accounts or open new credit card accounts.

Between December 23, 1998 and the date of his arrest, Defendant purchased this account information from a cooperating witness. The cooperating witness turned over \$400 of the monies he received from Defendant to the FBI. On the date of his arrest, Defendant arranged to purchase additional account information from the cooperating witness for a sum of \$4,000.

Defendant met with the cooperating witness and was arrested before he paid for the information he was going to receive. In a

search incident to his arrest, the FBI found \$3,000 in cash on Defendant. At that time, the FBI seized the money they found on Defendant's person. The Government has represented that the FBI has retained custody of this money since Defendant's arrest.

By his Motion Defendant requests a return of the \$3,000 that was seized from him.¹ The Government objects to the relief Defendant seeks and requests the Court to direct the FBI to turn the money over to the Clerk's Office for the United States District Court and to have the Clerk's Office credit that money toward the amount of restitution Defendant owes.

DISCUSSION

In relevant part, Federal Rule of Criminal Procedure 41(e) provides:

A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property.

Fed. Crim. R. 41(e). Once seized property is no longer needed as evidence, a criminal defendant is presumed to have a right to the return of the property. United States v. Mills, 991 F.2d 609,

¹ In Defendant's Motion he requests the return of \$3,000. In his correspondence with the FBI attached to his Motion, Defendant states that he seeks \$4,000. A letter from the FBI to Defendant indicates that the sum the FBI has in its custody is \$3,000. The Government, however, represents that the FBI is holding \$3,400. (D.I. 69 at 2, n.1). Thus, it is unclear to the Court whether the FBI is holding \$3,000 or \$3,400.

612 (9th Cir. 1993); United States v. Mohammad, 95 F. Supp. 2d 236, 240 (D.N.J. 2000). To overcome this presumption, the Government bears the burden of proving that it has a legitimate reason to retain the property. Mills, 991 F.2d at 612; Mohammad, 95 F. Supp. 2d at 240. The Government can satisfy this burden by showing that it has a claim of ownership or right to possession that is adverse to the defendant. Mills, 991 F.2d at 612; Mohammad, 95 F. Supp. 2d at 240.

Restitution orders are specifically authorized under the Victim and Witness Protection Act of 1982 ("VWPA"), 18 U.S.C. §§ 3663-3664. Mills, 991 F.2d at 611. Courts have recognized "that a valid restitution order under the VWPA gives the government a sufficient cognizable claim of ownership to defeat a defendant's Rule 41(e) motion for return of property, if that property is needed to satisfy the terms of the restitution order." Id. at 612 ("[A] restitution order is enforceable as a lien upon *all* of the defendant's property at the time judgment is entered.") (emphasis in original); see also United States v. Duncan, 918 F.2d 647, 654 (6th Cir. 1990), cert. denied, 500 U.S. 933 (1991) (affirming district court's order that seized property be used to pay off monetary penalties imposed as part of defendant's sentence and concluding that such allocation was for defendant's benefit, rather than depriving him of his property altogether).

In this case, the Court sentenced Defendant to twenty-seven

months imprisonment and ordered Defendant to pay restitution in the amount of \$896,720.81. Defendant appealed this order, and the Third Circuit remanded the appeal due to a conflict in the record regarding the timing of Defendant's receipt of the order. The Court has since addressed the issue remanded by the Third Circuit and transmitted its findings and conclusions to the Third Circuit.

Defendant has not yet satisfied the Court's restitution order. Further, it is the Court's understanding that the Third Circuit will be resuming its consideration of Defendant's appeal of that order upon its receipt of the Court's decision regarding the remanded issue. Accordingly, the Court will deny Defendant's Motion with leave to renew upon the final decision of the Third Circuit regarding the legality of the Court's restitution order.

CONCLUSION

For the reasons discussed, Defendant's Motion For Return Of Seized Property Under Fed. R. Crim. P. 41(e) will be denied with leave to renew upon the final decision of the Court of Appeals for the Third Circuit regarding the legality of the Court's restitution order.

An appropriate Order will be entered.

