

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,

v.

MASHAMA FERDINAND,

Defendant.

CASE NO. 2021-CR-00016

UNITED STATES' SENTENCING MEMORANDUM

COMES NOW, the United States of America, by and through Gretchen C.F. Shappert, United States Attorney for the District of the Virgin Islands, and Delia L. Smith, Assistant United States Attorney, and respectfully files its sentencing memorandum in the above captioned matter.

I. PROCEDURAL BACKGROUND

On August 31, 2021, defendant Mashama Ferdinand was charged in a one count Information with knowingly and with intent to defraud, execute, and cause the execution of a scheme and artifice to defraud a financial institution, which scheme and artifice employed a material falsehood, and did knowingly and with intent to defraud, execute, and attempt to execute and cause the execution of a scheme and artifice to obtain moneys and funds owned by and under the custody and control of a financial institution by means of false and fraudulent pretenses, representations, and promises relating to a material fact, in violation of 18 U.S.C. § 1343.

On the same date, Ferdinand appeared before Magistrate Judge Ruth Miller for her Initial Appearance and Change of Plea hearings. Ferdinand pleaded guilty to the single count

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charged in the Information and was released after executing a \$25,000 unsecured appearance bond. Sentencing in this matter is set for January 27, 2022. The defendant remains on pretrial release pending sentencing.

Below is the United States' recommendation for a proper and just sentence based on the United States Sentencing Guidelines ("USSG"), and the 18 U.S.C. §Section 3553(a) factors.

II. FACTUAL BACKGROUND

On or about July 30, 2020, FERDINAND fraudulently filed a Paycheck Protection Program (hereinafter referred to as "PPP") loan application on behalf of her company Shama's Specialties wherein she falsely claimed employment of fifteen (15) individuals with a quarterly payroll of \$460,079.82. According to the Virgin Islands Division of Corporations and Trademarks' website, Shama's Specialties was established as a Virgin Islands domestic limited liability company on January 9, 2014. Ferdinand is listed as the company's registered agent.

The "PPP" was a source of relief provided through the CARES Act that authorized loans and loan forgiveness to individuals who operated under a sole proprietorship or independent contractor business structure. For the period from February 15, 2020 through June 30, 2020, such individuals were eligible to receive PPP loans to cover lost compensation or income from sole proprietorship and other business structures. In order to be eligible to receive such PPP loans, individuals had to report and document their income and expenses from their businesses, as typically reported to the Internal Revenue Service on Form 1040, Schedule C,

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for a given tax year. These financial reports were used to determine the amount of money the individual was entitled to receive under the PPP.

Once awarded, PPP loan proceeds were to be used by the business on certain permissible expenses, including payroll costs, interest on mortgages, rent, and utilities. The PPP allowed the interest and principal on the loan to be entirely forgiven if the business used the loan proceeds to cover those expense items within a designated period of time after receiving the proceeds, and a certain amount of the PPP loan proceeds could also be used for payroll expenses. Ferdinand's PPP loan application package filed on behalf of Shama's Specialties was electronically submitted to Bluevine, Inc. The IP session records from Bluevine, Inc. revealed that a computer with an IP address of 184.90.145.85 submitted Shama's Specialties application package on July 30, 2020, at 3:26 p.m. Records further revealed that IP address 184.90.145.85 is registered to an unnamed co-conspirator in Apopka, FL.

On or about July 30, 2020, Ferdinand's PPP loan application was approved in the amount of \$383,397.00. On August 3, 2020, Bluevine, Inc. deposited the PPP loan proceeds in the amount of \$383,397.00 in First Bank of the Virgin Islands checking account number 22-xxxxxxxxx, bearing the name Shama's Specialties. Thereafter, on August 5, 2020, Ferdinand wired three (3) separate payments in the amounts of \$9,999.00, totaling \$29,997.00, to three (3) co-conspirators involved in the processing of Shama's Specialties' PPP loan application. Said remittances represented payment to Ferdinand's co-conspirators for their roles in the wire fraud affecting the financial institution. Records obtained from the Virgin Islands Bureau of

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Internal Revenue (“VIBIR”) confirmed that during 2019 and 2020, no 501-VI nor 941-VI payroll records were filed on behalf of Shama Specialties.

III. LEGAL STANDARD

In sentencing Ferdinand, this Court must follow a three-step process: (1) calculate the guideline sentence; (2) formally rule on any departure motions and state how any departure affects the sentencing guideline calculation; and (3) exercise discretion by separately considering the relevant factors outlined in 18 U.S.C. § 3553(a) when setting the sentence. *United States v. Gunter*, 462 F.3d 237, 247 (3d Cir. 2006).

At the third step of the sentencing process, this Court must also consider the advisory guideline range along with all the pertinent § 3553(a) factors in determining the final sentence. “The record must demonstrate the trial court gave meaningful consideration to the § 3553(a) factors. . . . [A] rote statement of the § 3553(a) factors should not suffice if at sentencing either the defendant or the prosecution properly raises ‘a ground of recognized legal merit (provided it has a factual basis)’ and the court fails to address it.” *United States v. Cooper*, 437 F.3d 324, 329-30 (3d Cir. 2006) (citations omitted).

IV. SENTENCING CALCULATION

A. Statutory Maximum Sentence

Title 18, United States Code, Section 1343, carries a maximum term of not more than 30 years of imprisonment, a minimum of two-year, but not more than three years of supervised release, a maximum fine of \$1,000,000, and a special assessment of \$100.

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B. Sentencing Guidelines Calculation

The Presentence Report calculates a base offense level of 7, pursuant to 18 U.S.C. § 1343 and USSG § 2B1.1(a)(1). The base offense level was increased by 12 levels, pursuant to USSG § 2B1.1(b)(1) and USSG § 2B1.1(b)(1)(G), if the loss exceeded \$6,500. In the instant offense, the loss is approximately \$383,397.00. Further, pursuant to USSG § 2B1.1(b)(17)(B)(i), *comment. (n.14)*, Specific Offense Characteristics, the offense level was increased by 4 levels.¹ Finally, the offense level was increase by 1 level², pursuant to USSG § 2B1.1(b)(17)(D), and reduced by 3 levels for Acceptance of Responsibility, pursuant to USSG §3E1.1(a), for an adjusted offense level of 21.

The Based upon a total offense level of 21 and a criminal history category of I, the guideline imprisonment range is 37 months to 46 months. The United States therefore recommends a low-end guideline range sentence of 37 months incarceration.

V. SENTENCING RECOMMENATION

A. Sentencing Factors

A thorough consideration of all of the sentencing factors set forth in 18 U.S.C. § 3553(a) suggests that the United States' recommended sentence is appropriate in this case. Moreover,

¹ If the offense substantially jeopardized the safety and soundness of a financial institution increase by 4 levels.

² Pursuant to USSG § 2B1.1(b)(17)(D), if the resulting offense level determined under subdivision (A) or (B) is less than level 24, increase to level 24.

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the Court must consider all of the sentencing considerations set forth in § 3553(a). Those factors include:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) 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;
- (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant;
- (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (5) the guidelines and policy statements issued by the Sentencing Commission;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).

B. Application

The relevant § 3553(a) factors will be discussed in turn.

1. The Nature and Circumstances of the Offense

The defendant was involved in complex wire fraud conspiracy which resulted in the loss of approximately \$383,397.00 after applying for and receiving proceeds from the Paycheck Protection Program (“PPP”). The PPP was a source of relief provided through the CARES Act that authorized loans and loan forgiveness to individuals who operate under a sole

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proprietorship or independent contractor business structure. Ms. Ferdinand and her co-conspirators applied for PPP loans on three occasions, the first of which Ferdinand received approximately \$85.00 based on her actual eligibility under the program's guidelines. Thereafter, Ferdinand was denied after applying for a second PPP loan. Finally, on her third attempt, Ferdinand and her co-conspirators fraudulently claimed that Shama's Specialties, a business owned and operated by Ferdinand and Jahmal Donovan, employed 15 employees with a quarterly payroll of \$460,079.82. Based on these fraudulent representations, Ferdinand and her co-conspirators received approximately \$383,397.00 from the PPP.

2. The History and Characteristics of the Defendant

The defendant is a 39 year old, married mother of one. She was born on St. Croix and lived most of her life in the Virgin Islands. She maintains a good relationship with her parents and her two siblings. Prior to the instant offense, the defendant has no criminal history. The defendant is a 2002 graduate of the Charlotte Amalie High School in St. Thomas, VI. Thereafter, the defendant pursued an online college degree from Penn Foster University, but did not complete the program.

3. The Need for Sentence Imposed to Reflect Seriousness of the Offense, Promote Respect for Law, and Provide Just Punishment

There is a need to impose a sentence that reflects the seriousness of the offense, promotes respect for U.S. laws, and provides just punishment. This case is of particular importance because the PPP was established to address the financial hardship suffered by business owners as a result of the COVID-19 pandemic, and given the urgency of the

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pandemic, the program relied on the honesty and trust of its applicants. Further, Ferdinand's repeated attempts to obtain funding from the PPP led her to submit fraudulent information to secure funding that she was not legally entitled to. It is therefore imperative that Ferdinand receives a sentence that reflects the seriousness of her offense.

4. The Need for Adequate Deterrence and Protection of Public

The need for adequate deterrence of this type of crime is important. Specifically, the PPP relied substantially on the honest and factual representations of persons applying for assistance given the severity of the pandemic and the crippling financial effects suffered from business owners and their employees. Here, Ferdinand and her co-conspirators abused and exploited the trust of the PPP for their personal enrichment. Hence, the recommended guideline sentence will protect the public from further financial crimes by the defendant.

5. The Need to Provide the Defendant with Training, Medical Care or Correctional Treatment

The defendant is in good physical health and has not experienced any suicidal thoughts or other psychological disorders.

6. The Need to Avoid Unwarranted Sentence Disparities Among Similarly Situated Defendants

Adherence to the recommended guideline range is the only course for assuring that the defendant's sentence is consistent with those imposed nationwide on similarly situated offenders. The United States' recommendation of a sentence within the advisory guideline range is based in part on the fact that such a sentence serves the vital goal of uniformity and fairness. Reference to the sentencing guidelines, while carefully considering the 3553(a)

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factors particularly relevant to an individual defendant, is the best available means to meet this goal of uniformity and fairness.

7. Restitution

Pursuant to a plea agreement entered with the United States, Ferdinand agrees to forfeit \$383,397.00 to the United States. A Motion for Entry of Order of Forfeiture and Final Consent Order of Forfeiture will be filed prior to sentencing.

VI. CONCLUSION

For these reasons, the United States respectfully requests the Court impose a sentence of 37 months imprisonment.

Respectfully submitted,

GRETCHEN C.F. SHAPPERT
UNITED STATES ATTORNEY

Dated: January 20, 2022

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