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Recent Developments: Ratzlaf v. United States: To Establish That a Defendant "Willfully Violated" the Antistructuring Law, 31 U.S.C. § 5322(a) and § 5324(3) (1993), the Government Must Prove That the Defendant Acted with Knowledge That His or Her Conduct Was Unlawful

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Ratzlaf v. United States:

TO ESTABLISH THAT A DEFENDANT "WILLFULLY VIOLATED" THE ANTISTRUCTURING LAW, 31 U.S.C. § 5322(A) AND § 5324(3) (1993), THE GOVERNMENT MUST PROVE THAT THE DEFENDANT ACTED WITH KNOWLEDGE THAT HIS OR HER CONDUCT WAS UNLAWFUL.

It was held in *Ratzlaf v. United States*, 114 S.Ct. 655 (1994), that the government must prove that the defendant acted with knowledge of the illegality of his conduct, when engaged in the structuring of a currency transaction for the purposes of evading the reporting requirement of domestic banks as prohibited by 31 U.S.C. §§ 5322(a) and 5324(3)(1993). In so holding, Justice Ginsburg, writing for the majority, found that the antistructuring statute, § 5324(3), required (1) knowledge of a domestic bank's obligation to file a written report with the Secretary of the Treasury for any cash transaction exceeding $10,000.00; (2) "structuring" a transaction, i.e. the dividing of a single transaction which exceeds the $10,000.00 reporting threshold into two or more separate transactions, for the purpose of evading the reporting requirement; and that § 5322(a), which establishes criminal penalties, required (3) actual knowledge that said structuring is illegal. *Id.* at 656.

On October 20, 1988, the defendant, Waldemar Ratzlaf, incurred a $160,000.00 gambling debt while playing blackjack at the High Sierra Casino in Reno, Nevada. On October 27, 1988, Ratzlaf returned to the casino with $100,000.00 cash in a shopping bag in order to pay off his debt. He informed casino personnel that he did not want any written reports made reflecting his payment. The casino vice president then told Ratzlaf of his statutory requirement to report to state and federal authorities any cash transaction exceeding $10,000.00, but that a cashier's check for the entire amount could be accepted without triggering the statute. The casino furnished Ratzlaf with a limousine to take him to the bank in order to obtain a cashier's check. Bank officials, however, informed Ratzlaf that domestic banks were under a similar obligation to report any cash transactions exceeding $10,000.00 to state and federal authorities. As a result, Ratzlaf proceeded to purchase cashier's checks in denominations less than $10,000.00 at different banks in and around Stateline, Nevada, and South Lake Tahoe, California. Ratzlaf returned to the casino and paid off $76,000.00 of his debt and paid the balance off a few weeks later with additional cashier's checks in denominations of less than $10,000.00.

At trial, a jury convicted Ratzlaf of having knowledge of a bank's reporting obligation and of structuring currency transactions for the purpose of circumventing the reporting obligation of financial institutions in violation of 31 U.S.C. §§ 5322(a) and 5324(3)(1993). Ratzlaf was fined and sentenced to prison. On appeal to the Ninth Circuit, the court affirmed the trial judge's instructions to the jury, which stated that the government need only prove the defendant's knowledge of the bank's duty to report cash transactions in excess of $10,000.00 and that the defendant attempted to evade the reporting requirement. The court of appeals ruled that the government did not have to establish that the defendant knew that the structuring in which he was engaged was unlawful in order to give effect to the "willfulness" requirement in § 5322(a). The United States Supreme Court granted certiorari in order to resolve the conflict surrounding the meaning of the "willfulness" requirement in § 5322(a).

The Court began its analysis by examining the congressional pur-

pose for enacting the Currency and Foreign Transactions Reporting Act (Bank Secrecy Act) in 1970. *Id.* at 658 (citations omitted). Noting that the statute contained a variety of reporting requirements applicable to foreign and domestic financial institutions, the Court found that Congress passed the Bank Secrecy Act in response to increasing criminal activity, such as money laundering and tax evasion, and the use of financial institutions as a means to further such criminal activity. *Id.* The Court continued by stating that Congress adopted an antistructuring provision, 31 U.S.C. § 5324, as part of the Money Laundering Control Act of 1986, in order to prevent circumvention of reporting requirements of the Bank Secrecy Act. *Id.* Section 5324 states in pertinent part: "No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction- (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions."
Id. Section 5322(a) provides for criminal penalties in the form of a fine, not to exceed $250,000.00, or imprisonment for not more than five years, or both, to be imposed upon "[a] person willfully violating" the antistructuring statute. *Id.* at 658-659.

The Court next interpreted the meaning of the "willfulness" requirement found in § 5322(a). The Court rejected the trial court's conclusion that the "willfulness" requirement of § 5322(a) was satisfied by a finding that the defendant structured cash transactions with the knowledge of and a purpose to evade the bank's reporting obligation. *Id.* at 659. The Court stated that "[t]he trial judge in Ratzlaf's case, with the Ninth Circuit's approbation, treated § 5322(a)'s "willfulness" requirement essentially as surplusage--as words of no consequence." *Id.*

The Court noted that to ascertain the correct meaning of "willful," it must be understood within its statutory context. The Court stated that the court of appeals previously interpreted the "willfulness" requirement as mandating *both* "knowledge of the reporting requirement and a specific intent to commit the crime, i.e., a purpose to disobey the law." *Id.* (citations omitted). The Court concluded that to apply a different meaning for each code section to a term which appears throughout a statutory text "would open Pandora's jar." *Id.* at 660 (quoting *United States v. Aversa*, 948

F.2d 493, 498 (1st Cir. 1993)(en banc)).

The Court further rejected the government's contention that the "willfulness" requirement of § 5322(a) was satisfied by the demonstration that the defendant performed the prohibited conduct of § 5324. *Id.* The government argued that specific intent to do wrong can be inferred from the commission of the prohibited activity due to its illicit purpose as stated in the statute. The government concluded that an individual structures currency transactions for the unlawful purpose of evading the statutory reporting obligations. In response, the Court stated that "currency structuring is not inevitably nefarious[,]" and therefore, an additional showing of "willfulness" to engage in the prohibited activity for the illicit purpose is necessary. *Id.* at 661. Moreover, the Court noted examples of innocent circumstances in which an individual would violate the reporting statute under the government's definition, such as when a small business entrepreneur makes cash deposits twice a week in the amounts of $9,500.00, rather than once a week in the amount of $19,000.00, which would trigger the reporting statute. *Id.* According to the Court, the activity of such an individual was not the evil intended to be prevented by the statute. The small businessperson may have made small cash deposits for the sole purpose of minimizing the risk of burglary, or for some other benign purpose. *Id.* As a result, the Court found that the "willfulness" requirement imposed upon the government the burden of showing that the defendant acted with knowledge of his unlawful conduct. *Id.* at 662. The Court declined to consider the legislative history of the statute, since it found the statutory language to be unambiguous. *Id.* at 662-663.

The Court concluded by stating that it upheld the principle that ignorance of the law is no defense to a criminal charge, unless otherwise legislated by Congress. *Id.* at 663. The Court found that Congress legislated to that effect in 31 U.S.C. § 5322(a). As a result, Ratzlaf's conviction was overturned, because the jury was not instructed to determine whether or not Ratzlaf knew that the structuring in which he was engaged was illegal. *Id.*

In his dissenting opinion, Justice Blackmun, with whom the Chief Justice, Justice O'Connor, and Justice Thomas joined, rejected the majority's construction of §§ 5322(a) and 5324(3). Rejecting the majority's interpretation of "willful," Justice Blackmun stated that in a criminal law context, "willfully" is generally understood to refer to "'consciousness of the act but not to consciousness that the act is unlawful.'" *Id.* at 664 (quoting *Cheek v. United States*, 498 U.S. 192, 209 (1991)). Justice Blackmun, therefore, concluded that in order for a willful violation of § 5324 to occur, the government must only prove the defendant's knowledge of the financial institution's reporting obligation and that the defendant structured currency transactions for the purpose of avoiding those requirements. *Id.* at 665. Justice Blackmun found no basis in § 5324 to impose an "artificially heightened scienter requirement" and that the majority's imposition of one "as a practical matter largely nullifies the effect of that provision." *Id.* at 665, 669.

The *Ratzlaf* decision is significant in that the Supreme Court resolved the confusion surrounding the statutory interpretation of the "willfulness" requirement in the Bank Secrecy Act. The Court required the government to independently establish the defendant's knowledge of his criminal actions as separate and distinct from the criminal act itself. The Court breathed new life into the criminal defense of ignorance of the law. By giving effect to the words "willfully violating" in § 5322(a), the Court insured that only those defendants who had the specific intent to circumvent the reporting duty of financial institutions and who acted with the knowledge that structuring currency transactions was unlawful will be convicted.

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