

*UNITED STATES V. GLADDEN*: ELEVENTH CIRCUIT APPLIES  
NEWLY DECIDED SUPREME COURT STANDARD TO  
IDENTITY THEFT CONVICTIONS IN THE CONTEXT OF  
HEALTHCARE FRAUD

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In *United States v. Gladden*, ten employees of Global Compounding Pharmacy were tried and convicted in the Northern District of Alabama on charges relating to a company-wide scheme to commit insurance fraud.<sup>1</sup> A jury found Jessica Linton, manager of one of the company's billing departments, and John Gladden, a district manager, guilty of: healthcare fraud; mail fraud; aggravated identity theft; conspiracy to commit healthcare fraud; and conspiracy to commit mail fraud.<sup>2</sup> They both received prison sentences and were ordered to pay restitution and forfeiture.<sup>3</sup>

Both Linton and Gladden appealed their convictions of fraud on the grounds that the evidence did not establish the requisite mens rea.<sup>4</sup> Linton also appealed her identity theft conviction, relying on the Supreme Court's recent decision in *Dubin v. United States* that the means of using one's identity must be central to the fraud in order for it to constitute identity theft under 18 U.S.C. § 1028A.<sup>5</sup> Gladden appealed his restitution and forfeiture orders as well.<sup>6</sup>

Global Compounding Pharmacy received reimbursements from insurance companies when they delivered prescriptions to pharmacies for patients.<sup>7</sup> Employees were fraudulently obtaining more of these high reimbursement payments by:

adding non-prescribed items to prescription forms; incentivizing or paying prescribers to write medically unnecessary prescriptions; directing employees to obtain high-reimbursement, medically unnecessary prescriptions; billing for unauthorized or forged prescriptions;

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<sup>1</sup> 78 F.4th 1232, 1238–41 (11th Cir. 2023).

<sup>2</sup> *Id.* at 1238.

<sup>3</sup> *Id.* at 1240–42.

<sup>4</sup> *Id.* at 1242, 1247.

<sup>5</sup> *Id.* at 1244; *see also* *Dubin v. United States*, 143 S. Ct. 1557, 1573 (2023). *Dubin* was decided only two months before *Gladden*.

<sup>6</sup> *Gladden*, 78 F.4th at 1249.

<sup>7</sup> *Id.* at 1238.

altering prescriptions to increase revenue; automatically refilling medications; inflating the average wholesale price of ingredients for compounded drugs; hiring sales representatives who were close to prescribers; adding or removing ingredients from compounded drugs to increase profits; reducing co-pays to induce beneficiaries to obtain medically unnecessary prescriptions; and providing false information to PBMs during audits.<sup>8</sup>

The appellate court noted that Linton made specific efforts to conceal her fraudulent activities and Gladden encouraged his subordinates to get unnecessary prescriptions, and therefore, any reasonable jury could infer that they knew they were committing fraud.<sup>9</sup> Accordingly, the court affirmed both defendants' convictions for healthcare fraud and mail fraud as well as their convictions for conspiracy.<sup>10</sup>

The court also reviewed the defendants' aggravated identity theft convictions under a new interpretation of 18 U.S.C. § 1028A, which, at the time of the defendants' trials, had not yet been set out by the Supreme Court.<sup>11</sup> In *Dubin*, the Supreme Court focused on the words "use" and "in relation to" in the statute defining aggravated identity theft.<sup>12</sup> More specifically, the Court determined that "[a] defendant 'uses' another person's means of identification 'in relation to' a predicate offense when this use is at the crux of what makes the conduct criminal."<sup>13</sup> Linton specifically cited to *Dubin* in her appeal as grounds for her aggravated identity theft conviction to be overturned.<sup>14</sup> However, the court held that since she was having patient prescriptions sent under their own names but to her boss's address, this misuse of the patients' identities was central to the fraud.<sup>15</sup> The court said that because of the complaints the company had been receiving, Linton would not have been able to continue committing the fraud if she had not sent the prescriptions to a wrong address.<sup>16</sup>

Gladden, on the other hand, did not raise *Dubin* in his appeal, but the court found that the new standard did require his aggravated identity

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1242–44, 1247–48.

<sup>10</sup> *Id.* at 1251–52.

<sup>11</sup> *Id.* at 1245–46, 1248–49; see *Dubin v. United States*, 143 S. Ct. 1557, 1573 (2023).

<sup>12</sup> *Dubin*, 143 S. Ct. at 1573.

<sup>13</sup> *Id.*

<sup>14</sup> *Gladden*, 78 F.4th at 1244–45.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1238–40, 1245. Derrick Wester, a patient, testified that he called Global Compounding Pharmacy to ask them to stop sending him refills, so the company continued to refill the prescriptions but sent them to the home of Jeremy Adams, the company's owner. *Id.* at 1239–40.

theft conviction to be vacated.<sup>17</sup> At trial, the jury was instructed regarding this specific charge that “[t]he means of identification at least must facilitate, or have the potential of facilitating, the crime alleged in the indictment.”<sup>18</sup> The appellate court determined that because this statement clearly contradicts the Supreme Court’s interpretation of the aggravated identity theft statute in *Dubin*, “the jury instruction was erroneous.”<sup>19</sup> Therefore, the court had to decide if a correct jury instruction would have changed the outcome of the case at trial.<sup>20</sup> The only basis for Gladden’s conviction of aggravated identity theft was the fact that he encouraged his subordinates to fill unnecessary prescriptions for their family members, and one of these employees, Whitten, testified that she followed Gladden’s instructions and had prescriptions filled for her minor daughter.<sup>21</sup> The appellate court held that “[t]he use of Whitten’s daughter’s identifying information was merely ancillary to the deception; indeed, at no point did Whitten and Gladden misrepresent who received the prescriptions.”<sup>22</sup> Therefore, if the jury had received a correct instruction adhering to the *Dubin* standard, they would not have been able to reasonably find Gladden guilty of aggravated identity theft.<sup>23</sup> The appellate court overturned only this conviction.<sup>24</sup>

Gladden also appealed his restitution and forfeiture orders on the grounds that they “exceed[ed] the amount of loss his actions caused,” but the court found this argument unpersuasive.<sup>25</sup> Gladden was ordered to pay restitution in the amount of \$134,772.86 and forfeiture in the amount of \$157,587.33.<sup>26</sup> In healthcare fraud cases, restitution need not be paid for prescribed drugs that are medically necessary.<sup>27</sup> Gladden argued that “a prescription is medically necessary so long as the intended recipient used some of the drug.”<sup>28</sup> The court rejected Gladden’s argument.<sup>29</sup> Furthermore, with regard to forfeiture, the court

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<sup>17</sup> *Id.* at 1248–49.

<sup>18</sup> *Id.* at 1248.

<sup>19</sup> *Gladden*, 78 F.4th at 1248; *see Dubin v. United States*, 143 S. Ct. 1557, 1573 (2023).

<sup>20</sup> *Gladden*, 78 F.4th at 1245, 1248.

<sup>21</sup> *Id.* at 1247–48.

<sup>22</sup> *Id.* at 1248.

<sup>23</sup> *See id.* at 1248–49; *Dubin*, 143 S. Ct. at 1573.

<sup>24</sup> *Gladden*, 78 F.4th at 1251–52.

<sup>25</sup> *Id.* at 1249–51.

<sup>26</sup> *Id.* at 1241. Linton’s orders were much more burdensome, as she was required to pay restitution in the amount of \$39,370,481.41 and forfeiture in the amount of \$335,775.93. *Id.*

<sup>27</sup> *Id.* at 1242, 1249–50.

<sup>28</sup> *Id.* at 1250.

<sup>29</sup> *Gladden*, 78 F.4th at 1250.

found that since forfeiture in cases of healthcare fraud is calculated using “the total amount of money brought in through the fraudulent activity, with no costs deducted or set-offs applied,” using Gladden’s net proceeds during the time he worked at Global Compounding Pharmacy was a reasonable way to calculate forfeiture.<sup>30</sup>

In conclusion, while the appellate court used long-standing legal standards in upholding Linton and Gladden’s convictions for mail fraud and healthcare fraud and Gladden’s restitution and forfeiture orders, the court was required to reconsider the defendants’ aggravated identity theft convictions under the Supreme Court’s brand-new interpretation of the statute.<sup>31</sup> Given that *Dubin* was only recently decided in June 2023, federal courts reviewing appeals for aggravated identity theft will now have to take this interpretation into consideration.<sup>32</sup> This means not only examining the weight of the evidence itself, but also the jury instructions. Like Gladden’s conviction, many convictions of aggravated identity theft stand to be overturned based on this new reading of 18 U.S.C. § 1028A.<sup>33</sup>

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<sup>30</sup> *Id.* at 1251.

<sup>31</sup> *Id.* at 1242–51; *see also* *Dubin v. United States*, 143 S. Ct. 1557, 1573 (2023) (holding that a conviction for aggravated identity theft could only be sustained if the defendant’s use of another’s identity was “at the crux of what [made] the conduct criminal”).

<sup>32</sup> *See Dubin*, 143 S. Ct. at 1573.

<sup>33</sup> *See Gladden*, 78 F.4th at 1248–49.