

FEB 21 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SAMUEL L. RADOBENKO, AKA
Samuel Lawrence Radobenko,

Defendant - Appellant.

No. 12-50057

D.C. No. 8:07-cr-00273-DOC-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Argued and Submitted February 12, 2013
Pasadena, California

Before: BERZON and WATFORD, Circuit Judges, and CARR, Senior District
Judge.**

The district court did not err when it found the amount of intended loss
under a preponderance of the evidence standard because the loss amount was

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable James G. Carr, Senior United States District Judge for
the Northern District of Ohio, sitting by designation.

“based on the extent of the fraud conspiracy” for which Radobenko was convicted. *United States v. Berger*, 587 F.3d 1038, 1048 (9th Cir. 2009). Nor did the court clearly err in finding an intended loss of \$1.5 million. As Radobenko concedes, whether Radobenko was actually capable of causing the amount of loss he intended is irrelevant. *United States v. Robinson*, 94 F.3d 1325, 1328 (9th Cir. 1999); U.S.S.G. § 2B1.1 app. n. 3(A)(ii) (2011).

The district court did not commit plain error by imposing a three-level enhancement for Radobenko’s role as a manager or supervisor. The wiretap transcripts show that Radobenko referred to himself as the “top dog” in the fake investment operation and that he played the role of supervisor of at least one of his co-conspirators. Other evidence in the record shows that Radobenko played a key role in negotiating and drafting the \$500 million fraudulent investment contract, that he emailed this contract to the undercover agents for their signatures before he decided to terminate the scheme, and that he founded and owned Southwest Trust & Trade Company, the entity that was integral to the fraudulent scheme. The district court could infer from all this evidence, taken together, that Radobenko had a managerial or supervisory role in the criminal scheme.

AFFIRMED.