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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. STEVEN ZINNEL AND DERIAN EIDSON Defendants.	CASE NO. 2:11-CR-234 UNITED STATES' MEMORANDUM IN OPPOSITION TO DEFENDANT EIDSON'S MOTION IN LIMINE TO EXCLUDE SPECIFIC EVIDENCE IDENTIFIED BY THE GOVERNMENT (#4).

I. INTRODUCTION

The Government's theory of this case is that Defendant Zinnel wanted to commit bankruptcy fraud and money laundering for reasons of greed and spite. Zinnel loved money and hated his ex-wife. Eidson, for love of money, Zinnel, or both, joined Zinnel as his criminal partner in secretly receiving well over a million dollars in funds owed to Zinnel. "Even though each defendant plays a different role and may have had dissimilar motives for participating in the transaction, this does not mean that a single conspiracy did not exist." *United States v. Camacho*, 528 F.2d 464, 470 (9th Cir. 1976). When Eidson joined Zinnel, his acts became admissible against her, "at least as they tended to show the nature and objectives of the conspiracy." *United States v. Santos*, 385 F.2d 43, 46 (7th Cir. 1963).

II. ZACHARIAS

The Government does not intend to offer this evidence in its case-in-chief. If the evidence is

offered in rebuttal and there is no connection to Eidson, it will be appropriate for the Court to give a limited purpose jury instruction. Fed. R. Evid. 105.

III. EACH DEFENDANT'S FILINGS IN FAMILY COURT ARE ADMISSIBLE FOR ALL PURPOSES

Eidson misapprehends the nature of proof in a conspiracy case and the role of "other acts" in a fraud case. Eidson has not cited even one case holding it error to admit evidence of uncharged acts that show the relationship between co-conspirators. She cannot. The Ninth Circuit teaches that uncharged acts showing the relationship between co-conspirators is "admissible to explain the nature of the relationship between [them] and to put their [charged] transaction in context for the jury." *United States v. McKoy*, 771 F.2d 1207, 1214 (9th Cir. 1985), *see also United States v. Smith*, 282 F.3d 758, 768-769 (9th Cir. 2002).

Eidson similarly misapprehends the function of Rule 404(b) in a fraud case. The issue in these cases is almost never whether the transactions happened, but, rather, the accused's state of mind in conducting them. It is quite well settled that if a defendant lies over and over on the same subject, that evidence is properly admissible to prove that he did so knowingly, as part of a plan, and not by mistake. *See, e.g.*, *United States v. Hinostroza*, 297 F.3d 924, 927-928 (9th Cir. 2002). And Zinnel's statements in family court were on the exact same subjects as in bankruptcy court: income and expenses. Zinnel even incorporated his bankruptcy into his family court filings. "It is precisely the similarity of subsequent Rule 404(b) acts that increases, not decreases, their probative nature and their relevance in showing knowledge, intent or modus operandi." *Id.* Evidence should be excluded '*only* when it provides nothing but the defendant's criminal propensities.'" *United States v. Tsinnijinnie, 91 F.3d 1285, 1288* (9th Cir. 1996). This principle of broad admissibility of uncharged frauds offered to prove state of mind is quite well settled. *See United States v. Ayers*, 924 F.2d 1468, 1473 (9th Cir. 1991) (citing cases).

Zinnel's identical, contemporaneous lies on his family court income and expense declarations are not offered to prove *action* in conformity therewith, but rather *state of mind* in conformity therewith. The difference is crucial and well settled law. "Since a state of mind is difficult to prove precisely, evidence of surrounding circumstances may be admitted to prove intent." *McCoy v. United States*, 169

F.2d 776, 783 (9th Cir. 1948). One such circumstance is a similar fraud transaction. *Id.*

Evidence that Eidson supported Zinnel in family court, along with her financial transactions and recorded statement about finishing things with System 3 in a way that "shines as little light as possible," tends to show that she knew that the various transactions were designed in whole or in part to conceal the nature, source, ownership, or control of funds. Concealment is an element of both the bankruptcy fraud and money laundering charges.

There need not be direct evidence that Eidson agreed to hold Zinnel's money to hide it from the family court or bankruptcy. Conspiracy charges are by their nature circumstantial, and "[r]elevance is established by any showing, however slight, which makes it more likely than it was before the evidence that the defendant committed the crime in question." *United States v. Federico*, 658 F.2d 1337, 1342 n.5 (9th Cir. 1981) (district court properly admitted as intrinsic evidence the defendant's binoculars and a notebook with drug courier's name even though there was no showing that either was used in the charged drug conspiracy). Eidson's argument that "her involvement is tangential, at best," goes to weight, not admissibility. (Def. Mem. at 4.)

As set forth in the Trial Brief of the United States, the agreement that forms the basis for the conspiracy need not be explicit, but may be inferred from acts or from other circumstantial evidence that the conspirators acted together for a common illegal goal. *United States v. Hayes*, 231 F.3d 663 (9th Cir. 1999); *United States v. Cloud*, 872 F.2d 846 (9th Cir. 1989). The Ninth Circuit has held that "[i]nferences of the existence of such an agreement may be drawn 'if there be concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose." *United States v. Hubbard*, 96 F.3d 1223, 1226 (9th Cir. 1996), *quoting United States v. Monroe*, 552 F.2d 860, 862 (9th Cir. 1977). An implicit agreement may be inferred from circumstantial evidence if "the nature of the acts would logically require coordination and planning." *United States v. Tidwell*, 191 F.3d 976, 981 (9th Cir. 1999). The suspiciously convoluted financial transactions, Done Deal invoices, and recorded conversations described in the Trial Brief easily demonstrate a concert of action between Eidson and Zinnel sufficient to establish a conspiracy. Eidson's assistance of Zinnel in the family court proceedings is admissible to show their agreement. It shows their bond of loyalty extended to the struggle against the ex-wife and it shows what each was getting out of the relationship.

See United States v. Serang, 156 F.3d 910, 915 (9th Cir. 1998) (Evidence of co-conspirator's participation in marriage fraud with defendant admissible to prove context included "longstanding relationship and deep loyalty.") It helps prove the conspiracy to show that Defendants' relationship involved each being helped out in different ways. *See United States v. Brown*, 912 F.2d 1040, 1042 (9th Cir. 1990).

Zinnel's family law struggle is charged in the indictment as the background for the bankruptcy concealment and money laundering. Two of the substantive money laundering counts refer to System 3 money that Eidson put through her client trust account, then to her personal account, and then to the Superior Court of California in a $75,158 check with the *Zinnel v. Zinnel* case number in the memo field. (Exh. 1.) The jury needs to hear any available evidence that the meaning of this case number was no mystery to Eidson. Her brief supplies a list of instances in which she personally participated in *Zinnel v. Zinnel*. By the time that Zinnel was filing the various income and expense declarations, the Zinnel-Eidson relationship had long since become one of intimacy, a shared bank account, and involvement in Done Deal. After this evidence of the formation of the conspiracy, all of Zinnel's statements are admissible against Eidson. "Motive or intent may be proved by the acts or declarations of some of the conspirators in furtherance of the common objective." *Pinkerton v. United States*, 328 U.S. 640, 647 (1946). This isn't "other acts" evidence. Rather, the contemporaneous events in family court are "admissible to show context in which the charged crime occurred." *United States v. Serang*, 156 F.3d 910, 915 (9th Cir. 1998).

IV. LACK OF TAX RETURNS FOR 4RESULTS AND AUTO AND BOAT STORE

4Results and Auto and Boat Store were the titular owners of the Luyung Property. The Government's theory is that 4Results and Auto and Boat Store were nothing more than Zinnel's corporate shells and their failure to file returns tends to show that they were not real business with real revenue. Evidence that neither filed a return will corroborate the testimony of Michael Gravely, Chris Garrison, and Tom Cologna that these companies were just instruments for Steven Zinnel. Zinnel told Garrison that Zinnel would have his "attorney" pay any expenses for the Luyung Property and indemnify Garrison. That's what happened. Bank records link Auto and Boat Store to Derian Eidson because her company Done Deal paid the property taxes on the Luyung Property.

This evidence should be accompanied by a proper limiting instruction that Defendants are not on trial for non-filing of taxes.

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