



which provided specific references to the trial transcript.<sup>1</sup> I denied defendant's motion to the extent that it attempted to reserve the right to file a more specific motion raising new arguments after transcription of the notes of testimony.

On April 26, 2012 the Brief of the Defendant, Kenneth G. Reidenbach, in Support of His Motion for a New Trial and Arrest of Judgment Pursuant to Federal Rules of Criminal Procedure Rule 29 ("Defendant's Brief") was filed. The Government's Response to Defendant's Motion for Acquittal, New Trial and Arrest of Judgment was filed on May 21, 2012.

For the following reasons, I deny defendant's motion for a new trial and arrest of judgment.

#### PROCEDURAL HISTORY

On December 9, 2010 co-defendants Kenneth G. Reidenbach and Herbert P. Henderson were charged in a four-count Indictment.<sup>2</sup> On May 5, 2011 the First Superseding Indictment was filed, which added four additional counts against defendant Reidenbach.<sup>3</sup> On September 15, 2011 a Second Superseding

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<sup>1</sup> There are eleven volumes of trial transcript, numbered Day 1 through Day 11, one for each day of the trial. Each volume is titled "Jury Trial Day [#] Before the Honorable James Knoll Gardner[,] United States District Court Judge". ("N.T. November \_\_, 2011").

<sup>2</sup> Document 1.

<sup>3</sup> Document 44.

Indictment was filed, which added a ninth count against defendant Reidenbach.<sup>4</sup>

In the Second Superseding Indictment, co-defendants Reidenbach and Henderson were each charged with Conspiracy to conceal property in bankruptcy and to commit bankruptcy fraud in violation of 18 U.S.C. § 371 (Count One); Concealing property in bankruptcy in violation of 18 U.S.C. § 152(1) (Count Two); Agent concealing property in bankruptcy in violation of 18 U.S.C § 152(7) (Count Three); and Embezzlement against bankruptcy estate in violation of 18 U.S.C § 153 (Count Four).

Defendant Reidenbach only was charged with Bankruptcy fraud in violation of 18 U.S.C § 157 (Count Five); and with additional violations of Concealing property in bankruptcy (Count Six), Embezzlement against bankruptcy estate (Count Seven), and Agent concealing property in bankruptcy (Count Eight). In Count Nine defendant Reidenbach was charged with False declaration, certification, or verification in bankruptcy in violation of 18 U.S.C. § 152(3).<sup>5</sup>

The charges stem from defendant Attorney Reidenbach's representation of three clients in bankruptcy proceedings.

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<sup>4</sup> Document 76.

<sup>5</sup> In addition, co-defendants Reidenbach and Henderson were each charged with Aiding and abetting commission of the respective offenses in Counts Two, Three and Four, and defendant Reidenbach was charged with Aiding and abetting commission of the respective offenses in Counts Six, Seven and Eight of the Second Superseding Indictment in violation of 18 U.S.C. § 2.

Counts One through Four arose from Attorney Reidenbach's and his associate, Attorney Henderson's representation of a husband and wife, John and Maria Medina. Counts Five through Eight arose from Attorney Reidenbach's representation of Barbara Ann Grunow. Count Nine arose from his representation of Michele L. Clark

On October 12, 2011 defendant Henderson pled guilty to the charges against him (Counts One through Four). An eleven-day jury trial was held before me on November 14, 15, 16, 17, 18, 21, 22, 23, 28, 29, and 30, 2011 concerning the charges against defendant Reidenbach. On November 30, 2011 the jury found defendant Reidenbach guilty on all counts (Counts One through Nine).

On December 13, 2011 defendant Reidenbach filed the within motion. His motion purports to move for a new trial and for arrest of judgment pursuant to Rule 29 of the Federal Rules of Criminal Procedure. However, Rule 29 applies to a motion for judgment of acquittal. A motion for a new trial is made pursuant to Rule 33, and a motion for arrest of judgment is made pursuant to Rule 34.

Defendant Reidenbach does not refer to Rule 33 or Rule 34 in his motion or his supporting brief. However, because defendant Reidenbach's motion appears to seek relief pursuant to Rule 29, Rule 33 and Rule 34, I will discuss the standard of

review for a motion for judgment of acquittal, a motion for a new trial and a motion for arrest of judgment.

#### STANDARD OF REVIEW

##### Motion for a Judgment of Acquittal

Federal Rule of Criminal Procedure 29 provides that the district court, upon the motion of a defendant or upon its own motion, shall enter a judgment of acquittal if "the evidence is insufficient to sustain a conviction." Fed.R.Crim.P. 29(a). In ruling on a Rule 29 motion, the district court must determine whether any rational trier of fact could have found proof of the defendant's guilt beyond a reasonable doubt based upon the available evidence presented at trial. United States v. Smith, 294 F.3d 473, 478 (3d Cir. 2002), citing Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, 573 (1979).

The United States Court of Appeals for the Third Circuit has cautioned, however, that the district court "be ever vigilant in the context of...[a Rule 29 motion] not to usurp the role of the jury by weighing credibility and assigning weight to the evidence, or by substituting its judgment for that of the jury." United States v. Flores, 454 F.3d 149, 154 (3d Cir. 2006).

The trial court must view the evidence as a whole, and in the light most favorable to the government. United States v.

Hoffecker, 530 F.3d 137, 146 (3d Cir. 2008). The government is further entitled to “the benefit of inferences that may be drawn from the evidence[,] and the evidence may be considered probative even if it is circumstantial.” United States v. Patrick, 985 F.Supp. 543, 548 (E.D.Pa. 1997), citing United States v. Pecora, 798 F.2d 614, 618 (3d Cir. 1986); see also United States v. Griffith, 17 F.3d 865, 872 (3d Cir. 1994).

The proponent of a Rule 29 motion, therefore, bears a heavy burden to prove that the evidence presented by the government during trial was insufficient to support the verdict. See United States v. Gonzalez, 918 F.2d 1129, 1132 (3d Cir. 1990). In fact, the Third Circuit has held that acquittal should “be confined to cases where the prosecution’s failure is clear.” Smith, 294 F.3d at 477 quoting United States v. Leon, 739 F.2d 885, 891 (3d Cir. 1984).

“The evidence need not unequivocally point to the defendant’s guilt as long as it permits the jury to find the defendant guilty beyond a reasonable doubt.” United States v. Pungitore, 910 F.2d 1084, 1129 (3d Cir. 1990). Accordingly, “[a] verdict will be overruled only if no reasonable juror could accept the evidence as sufficient to support the conclusion of the defendant’s guilt beyond a reasonable doubt.” United States v. Salmon, 944 F.2d 1106, 1113 (3d Cir. 1991); United States v. Coleman, 811 F.2d 804, 807 (3d Cir. 1987).

Motion for a New Trial

Rule 33 of the Federal Rules of Criminal Procedure provides that “[u]pon the defendant’s motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires.” Fed.R.Crim.P. 33(a). A verdict against the weight of the evidence is a permissible ground to grant a new trial under Rule 33. United States v. Brennan, 326 F.3d 176, 189 (3d Cir. 2003).

A district court is only empowered to grant a new trial based upon the verdict being contrary to the weight of the evidence when it believes that there is a serious danger that a miscarriage of justice has occurred, that is, that an innocent person has been convicted. Brennan, 326 F.3d at 188-189; United States v. Avery, 2005 U.S. Dist LEXIS 15979 at \*12 (E.D.Pa. Aug. 3, 2005) (Padova, J.).

Unlike a motion for insufficiency of the evidence under Rule 29, in which the court views the evidence in the light most favorable to the government, a Rule 33 motion permits the court to exercise its own judgment in assessing the government’s case. Brennan, 326 F.3d at 189.

Although the court exercises its own judgment in a Rule 33 motion, including the right to weigh the evidence and determine credibility, the court “may not reweigh the evidence and set aside the verdict simply because it feels some other

result would be more reasonable.” United States v. Nissenbaum, 2001 U.S. Dist. LEXIS 6039 at \*2-\*3 (E.D. Pa. May 8, 2001) (Waldman, J.).

The United States Court of Appeals for the Third Circuit has emphasized that motions for a new trial based upon weight of the evidence are not favored and should be granted sparingly, and only in exceptional cases. Government of the Virgin Islands v. Derricks, 810 F.2d 50, 55 (3d Cir. 1987).

#### Motion to Arrest Judgment

Under Rule 34, “[u]pon the defendant’s motion or on its own, the court must arrest judgment if: (1) the indictment or information does not charge an offense; or (2) the court does not have jurisdiction of the charged offense.”

A motion to arrest judgment must be based on a defect on the face of the indictment, and not upon the evidence or its sufficiency. United States v. Casile, 2011 U.S. Dist. LEXIS 49437 at \*10 (E.D. Pa. May 9, 2011) (Baylson, J.).

#### CONTENTIONS OF THE PARTIES

##### Defendant’s Contentions

Defendant Kenneth G. Reidenbach (“defendant”) raises seven issues which he contends warrant granting the relief requested in his motion. Specifically, defendant contends that I committed the following errors which warrant granting him a new trial:

- (a) improperly instructing the jury concerning defendant's testimony during my charge to the jury;
- (b) providing an unbalanced summary of evidence to the jury and improperly emphasizing evidence admitted under Rule 404(b) of the Federal Rules of Evidence ("Rule 404(b)");
- (c) admitting the testimony of Susan Beck and Martin Cornelius, which defendant contends was inadmissible under Rule 404(b); and
- (d) admitting evidence of other prior bad acts of defendant where the government had not provided notice to defendant prior to trial as required by Rule 404(b).

Additionally, defendant contends that (e) the government erred by presenting improper character testimony and that I erred by denying defendant's motion for a mistrial after this character testimony was presented.<sup>6</sup>

Moreover, defendant contends that the charges against him should be dismissed on the basis of collateral estoppel and res judicata.<sup>7</sup>

Finally, defendant contends that, for each count, the verdict was against the weight of the evidence, and the evidence

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<sup>6</sup> Defendant does not appear to contend that these purported errors, listed above as (a) through (e) serve as a basis for a judgment of acquittal or arrest of judgment. Therefore, I consider these errors in conjunction with defendant's motion for a new trial.

<sup>7</sup> Although defendant's brief is not clear, it appears that his request to dismiss the charges on the basis of collateral estoppel and res judicata constitute the portion of defendant's motion seeking relief pursuant to Federal Rule of Criminal Procedure 34, a motion to arrest judgment.

was insufficient to support the verdict.<sup>8</sup>

Government Contentions

The government disputes each of the contentions raised by defendant. Specifically the government contends that (a) my instructions to the jury concerning defendant's testimony were proper; (b) my summary of the evidence to the jury was not improper; (c) the testimony of Susan Beck and Martin Cornelius was properly admitted under Rule 404(b); (d) evidence of other prior bad acts of the defendant was properly admitted under Rule 608(b) as part of the government cross-examination of defendant's character witnesses; (e) the government did not present improper character evidence; and, therefore, I did not err by denying defendant's motion for a mistrial; (f) defendant waived the affirmative defenses of collateral estoppel and res judicata by failing to raise them at trial, and regardless of whether they were waived, such defenses are without merit; and (g) the verdict was consistent with the weight of the evidence, and the evidence was sufficient to sustain a verdict of guilty.

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<sup>8</sup> As indicated in the standard of review section, above, a motion for a new trial may be granted if the verdict is against the weight of the evidence. A motion for a judgment of acquittal may be granted if the evidence is insufficient to support the verdict. Therefore, I consider defendant's contention here to be a request for both a judgment of acquittal and a new trial.

Additionally, in defendant's motion, he contends that I erred during my charge to the jury by suggesting that there was a conspiracy in Counts I through IV, when in fact only Count I charged defendant with conspiracy.

However, defendant does not refer to this argument, or otherwise support it, in his brief, and therefore I will not consider it.

For the following reasons, I agree with the government's contentions.

DISCUSSION

Instructions Concerning Defendant's Testimony

Defendant contends that my instructions to the jury concerning the testimony of defendant were improper. Specifically, defendant contends that I erroneously instructed the jury that defendant's testimony should be accepted with "great care" based on defendant having an interest in the outcome of the case.<sup>9</sup>

It is well settled that a federal judge is not required to refrain from expressions of opinion during his charge to the jury. United States v. Gaines, 450 F.2d 186, 189 (3d Cir. 1971). Accordingly, the court "may call the attention of the jury" to any matters which "legitimately affect" a defendant's testimony and credibility. Binding United States Supreme Court precedent

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<sup>9</sup> My charge to the jury concerning defendant's testimony stated, in pertinent part that:

An interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his own interests. Therefore, you should bear that factor in mind when evaluating the credibility of his testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. Simply because the defendant is one of those persons who has an interest in the outcome of his trial, does not mean that he has testified falsely. That is an issue for you to decide.

has specifically approved jury instructions that refer to a defendant's "deep personal interest" in a criminal case against him and noted that the jury may consider that interest in determining whether the defendant's testimony is credible. Reagan v. United States, 157 U.S. 301, 304-305, 15 S.Ct. 610, 611, 39 L.Ed. 709, 710-711 (1895).

Therefore, a court may properly suggest to the jury that a defendant has an "interest" in the case, which "affects the question of credibility". Id.

However, "emphatic or overbearing remarks" may deprive a defendant of his right to have questions of fact and credibility determined by the jury." Gaines, 450 F.2d at 189. Therefore, when commenting to the jury, a judge should make clear in the charge that the "jury remains the sole determiner of credibility and fact". Id.

Here, my charge properly indicated that defendant has an interest in the outcome of his case and that the jury should consider such an interest evaluating defendant's credibility. But my charge also indicated to the jury that whether the testimony of defendant was credible "is an issue for you to decide."<sup>10</sup>

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<sup>10</sup> N.T. November 29, 2011, page 132. Therefore, my charge to the jury does not resemble the charge given in United States v. Anton, cited by defendant, in which the court stated that the defendant was "'devoid of credibility' and that it did not believe him 'absolutely and in all respects'". 597 F.2d 371, 373 (3d Cir. 1979).

Additionally, after defendant objected to the portion of my charge that advised the jury to accept defendant's testimony "with great care", and upon agreement of the government, I informed the jury that "I am eliminating the words 'and accept it with great care'" and further instructed the jury to "[d]isregard that part of the instruction."<sup>11</sup>

Therefore, even if advising the jury to accept defendant's testimony "with great care" was improper, which I do not believe it was, I conclude that my subsequent instruction cured any possible prejudice suffered by defendant. See United States v. Liburd, 607 F.3d 339, 344 (3d Cir. 2010) ("[W]hile curative instructions cannot repair every error, we do generally presume that juries follow their instructions.").

Accordingly, defendant's motion is denied to the extent it contends that my charge to the jury was improper.<sup>12</sup>

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<sup>11</sup> N.T. November 29, 2011, page 132.

<sup>12</sup> In a Not Precedential Opinion in another unrelated case filed subsequent to my November 29, 2011 jury charge in the within matter, a three-judge panel of the United States Court of Appeals for the Third Circuit affirmed a somewhat similar jury instruction given by me, but noted that giving Third Circuit Model Criminal Jury Instruction 4.28 would have been "the better course". United States v. King, 2012 U.S.App. LEXIS 11959 at \*5 (3d Cir. June 13, 2012). That instruction provides:

In a criminal case, the defendant has a constitutional right not to testify. However, if he chooses to testify, he is, of course, permitted to take the witness stand on his own behalf. In this case, (*name of defendant*) testified. You should examine and evaluate his testimony just as you would the testimony of any witness.

### Summary of Evidence

Defendant contends that I erred in my charge to the jury by summarizing the evidence presented in the case. Specifically, defendant contends that I erred by summarizing prior bad acts of defendant, which were admitted during trial pursuant to Federal Rule of Evidence 404(b).

In charging the jury, a judge may "assist the jury in arriving at a just conclusion by explaining and commenting upon evidence...provided he makes it clear to the jury that all matters of fact are submitted to their determination." Gaines, 450 F.2d at 189 quoting Quercia v. United States, 289 U.S. 466, 469, 53 S.Ct. 698, 699, 77 L.Ed. 1321, 1325 (1933).

Accordingly, a judge may review the evidence, provided he does so in a fair and impartial manner. United States v. Cahalane, 560 F.2d 601, 607 (3d Cir. 1977).

There is no "bright line" separating remarks during a charge that are appropriate from remarks that may unduly influence a jury. United States v. Olgin, 745 F.2d 263, 268 (3d Cir. 1984). However, the United States Court of Appeals for the Third Circuit considers four factors to "assess the propriety of a trial judge's comments during a charge to the jury": (1) the materiality of the comment; (2) its emphatic or overbearing nature; (3) the efficacy of any curative instruction; and (4) the

prejudicial effect of the comment in light of the jury instruction as a whole. Id. at 268-69.

Here, defendant does not point out a specific comment within the charge that he contends was erroneous. Rather, he appears to object to my summary of evidence in general and its reference to evidence admitted under Federal Rule of Evidence 404(b) in particular.

For the reasons I expressed on the record at sidebar when I overruled defendant's objection to my summary of evidence, which I incorporate here<sup>13</sup>, my summary of the evidence was fair to both parties, balanced, and impartial. In fact, at side-bar following the charge, counsel for government opined that the summary might have been favorable to the defendant.<sup>14</sup> Moreover, my summary was not overbearing or emphatic. Rather, I indicated that the jury was the sole arbiter of facts.

Additionally, while my summary of evidence referred to the testimony of Susan Beck and Martin Cornelius, which was admitted under Federal Rule of Evidence 404(b), I instructed the jury to consider the testimony of Susan Beck and Martin Cornelius "only for the purpose of deciding whether defendant had the state of mind, knowledge, or intent necessary to commit the crime charged in the superceding indictment, acted with a method of

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<sup>13</sup> My reasons for overruling defendant's objection to my summary of the record are found at N.T. November 29, 2011, pages 136-142.

<sup>14</sup> See N.T. November 29, 2011, page 136.

operation as evidenced by a unique pattern of conduct, or did not commit the acts for which the defendant is on trial by accident or mistake.”<sup>15</sup>

Therefore, my summary of evidence, including the summary of evidence concerning the testimony of Susan Beck and Martin Cornelius was proper. Accordingly, defendant’s motion is denied to the extent it contends that he is entitled to a new trial based on my summary of the evidence during my charge to the jury.

Testimony of Martin Cornelius and Susan Beck

On November 10, 2011, four days before commencement of trial, defendant filed a Motion of the Defendant, Kenneth Reidenbach, to Preclude 404(b) Evidence (Document 111). The Government’s Response to Defendant’s Motion to Preclude 404(b) Evidence was filed November 14, 2011 (Document 113). In his motion, defendant sought to preclude the government from offering the testimony of defendant’s former clients Martin Cornelius and Susan Beck.

At the beginning of the second day of the jury trial, November 15, 2011, out of the presence of the jury and on the record, I heard oral argument by counsel on defendant’s motion. Upon completion of the argument, in the presence of counsel and the parties and on the record, I entered a verbal Order denying

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<sup>15</sup> N.T. November 29, 2011, page 141.

defendant's motion to preclude, and a verbal Bench Opinion articulating my reasons, analysis and authority for my decision. I incorporate that Order and Bench Opinion here.<sup>16</sup>

Susan Beck testified as a government witness on November 17, 2011, and Martin Cornelius testified for the government on November 18, 2011.

Defendant contends that admitting the testimony of Martin Cornelius and Susan Beck was erroneous. Specifically, defendant contends that the admission of testimony of both witnesses was prohibited by Federal Rule of Evidence 404(b).

Martin Cornelius testified that he and defendant became close friends beginning in 1993. Later Mr. Cornelius approached defendant for legal advice about separating from a business partnership. Although, prior to seeking defendant's advice Mr. Cornelius was initially offered \$60,000.00 to be bought out by his partners, defendant advised him that he could obtain more.<sup>17</sup>

After obtaining legal services from defendant, the matter eventually settled for \$60,000.00. Nevertheless, defendant billed Mr. Cornelius for \$39,000.00 which reduced Mr.

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<sup>16</sup> See N.T. November 15, 2011, pages 17-33.

<sup>17</sup> N.T. November 18, 2011, pages 5-6.

Cornelius' net recovery to \$21,000.00 after deduction of the fee which defendant retained.<sup>18</sup>

Mr. Cornelius further testified that when he questioned defendant about the fee and told him that he was having financial problems, Mr. Reidenbach advised Mr. Cornelius to file for bankruptcy and hide his settlement money under his pillow.<sup>19</sup>

Susan Beck testified that beginning in 2003, she and her husband, Douglas Beck, retained Mr. Reidenbach to represent them concerning criminal charges which had been brought against Mr. Beck. Defendant told her that the representation would cost \$20,000.00, which she paid for with credit cards.<sup>20</sup>

Additionally, Mrs. Beck testified that she consulted defendant about financial difficulties which she was having and that defendant advised her to file for bankruptcy. Mrs. Beck indicated that, upon the advice of defendant, she rolled over approximately \$20,000.00 from her 401K retirement fund into an escrow account held by defendant. Defendant indicated that Mrs. Beck would get back whatever portion of the funds that were not used up in legal fees.<sup>21</sup>

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<sup>18</sup> N.T. November 18, 2011, pages 7-8.

<sup>19</sup> Id. at page 9.

<sup>20</sup> N.T. November 17, 2011, pages 178-179.

<sup>21</sup> Id. at pages 182-185.

On June 23, 2004 Mrs. Beck filed a petition for bankruptcy, which was handled by Herbert Henderson, who worked as an associate attorney at defendant's firm. When the bankruptcy petition was ultimately discharged, defendant told Mrs. Beck that all of the funds that she had submitted to him were used up on legal fees.<sup>22</sup>

Defendant contends that the testimony of Martin Cornelius was not probative because defendant did not represent Mr. Cornelius in a bankruptcy petition and because defendant's representation of Mr. Cornelius occurred more than 7 years before the first charged offense. Additionally, defendant contends that the testimony of Susan Beck was not probative because Mr. Henderson, not defendant, handled the bankruptcy proceeding, and because Mrs. Beck was represented on a variety of matters, and the fees she paid to defendant encompassed her entire representation. Defendant contends that the testimony of both Mr. Cornelius and Ms. Beck was highly prejudicial.

Federal Rule of Evidence 404(b) provides that "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." However, such evidence "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan,

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<sup>22</sup> N.T. November 17, 2011, pages 183-185.

knowledge, identity, absence of mistake, or lack of accident."  
Fed.R.Evid. 404(b).

Accordingly, evidence of prior bad acts is admissible if (1) it has a proper evidentiary purpose; (2) it is relevant under Federal Rule of Evidence 402<sup>23</sup>; (3) it satisfies a weighing of the probative value of the evidence against its prejudicial effect under Federal Rule of Evidence 403<sup>24</sup>; and (4) the court provides a limiting instruction concerning the purpose for which the evidence may be used. United States v. Console, 13 F.3d 641, 659 (3d Cir. 1993).

Here, the testimony of Mr. Cornelius and Mrs. Beck was admitted for a proper purpose. Specifically, the testimony of Mr. Cornelius and Mrs. Beck was probative to show defendant's knowledge and intent to defraud in the charged offenses.

Defendant argued that he was not generally familiar, or involved with bankruptcy proceedings. Instead, defendant argued that he hired associates, including Attorney Herbert Henderson, to handle bankruptcy matters. Accordingly, defendant argued that he did not handle the bankruptcy proceedings which led to the

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<sup>23</sup> Federal Rule of Evidence 402 provides that evidence is admissible unless its use is prohibited by the Constitution of the United States, a federal statute, the Federal Rules of Evidence or other rules proscribed by the United States Supreme Court.

<sup>24</sup> Federal Rule of Evidence 403 provides that the "court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

charged offenses.<sup>25</sup> Essentially, defendant contended that he did not have the requisite intent to defraud.

The testimony of Mr. Cornelius and Mrs. Beck was relevant and probative to refute defendant's contention that he did not have the requisite intent to defraud or personal knowledge of bankruptcy proceedings.

Specifically, the testimony of Mr. Cornelius, which indicated that Mr. Reidenbach told him to file for bankruptcy and hide money, refutes the proposition that defendant's conduct leading to the charged offenses was inadvertent and unintentional.

Likewise the testimony of Mrs. Beck, which indicated that defendant was significantly involved in the finances of the firm, refutes defendant's contention that he was not involved in bankruptcy matters. Additionally, Mrs. Beck's testimony is probative to show the modus operandi of defendant, which consisted of placing clients' funds in an escrow account to conceal assets from the bankruptcy court.

Therefore the testimony of Martin Cornelius and Susan Beck was relevant and had a proper purpose under Federal Rule of Evidence 404(b). Additionally, as part of my November 15, 2011 Bench Opinion, I conducted the balancing test required by Federal Rule of Evidence 403 and concluded that the probative value of

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<sup>25</sup> N.T. November 15, 2011, pages 96 and 99.

the testimony was not substantially outweighed by a danger of unfair prejudice to the defendant.<sup>26</sup>

Upon completion of the testimony of Susan Beck on November 17, 2011, at sidebar and on the record, both counsel agreed that a limiting instruction should be given to the jury and further agreed on the specific wording of that instruction.<sup>27</sup> I gave that limiting instruction to the jury immediately following the testimony of Susan Beck on November 17, 2011<sup>28</sup>, immediately following the testimony of Martin Cornelius on November 18, 2011<sup>29</sup>, and during the charge to the jury at the conclusion of trial.<sup>30</sup>

The wording of the limiting instruction was nearly identical each time it was given. Specifically, during the charge to the jury<sup>31</sup>, I instructed them as follows:

All right. Ladies and gentlemen, I'm going to give you an additional instruction at this time, which I did not give you as part of my

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<sup>26</sup> See N.T. November 15, 2011, pages 30-33 for my discussion of the Rule 403 balancing test.

<sup>27</sup> N.T. November 17, 2011, pages 202-203.

<sup>28</sup> Id. at pages 203-204.

<sup>29</sup> N.T. November 18, 2011, pages 29-30.

<sup>30</sup> N.T. November 29, 2011, pages 140-141.

<sup>31</sup> Before excusing the jury at the conclusion of my jury charge, counsel was invited to sidebar to express any objections or requests for amendments and additions to the charge. During that discussion, I recalled that earlier during the charge conference, counsel had jointly requested that during the charge I read the limiting instruction (Government's Request No. 37 entitled "Defendant's Prior Bad Acts or Crimes (Federal Rule of Evidence 404(b))". At that point, I read the limiting instruction to the jury.

initial charge to the jury.

This instruction, which I'm about to read, concerns the testimony during the trial of Susan Beck as a Government witness, and the testimony during the trial of Martin Cornelius as a Government witness, and also concerns and amplifies my summary of the contentions of both the Government and the defense concerning the Susan Beck and Martin Cornelius testimony.

You have heard testimony that the defendant allegedly committed similar acts concerning his representation of Susan Beck and Martin Cornelius. Those acts were not charged in the superseding indictment, but this evidence of other acts concerning those two former clients of the defendant was admitted only for a limited purpose.

You may consider this evidence only for the purpose of deciding whether the defendant had the state of mind, knowledge, or intent necessary to commit the crime charged in the superseding indictment, acted with a method of operation as evidenced by a unique pattern of conduct, or did not commit the acts for which the defendant is on trial by accident or mistake.

Do not consider this evidence for any other purpose.

Following the examination of both witnesses, I gave a limiting instruction to the jury which indicated that they could consider the evidence "only for the purpose of deciding whether the defendant had the knowledge or intent to commit the crimes charged in the indictment, acted with a method of operation as evidenced by a unique pattern of conduct, or did not commit the acts for which the defendant is on trial by accident or

mistake.”<sup>32</sup> Therefore, any danger of unfair prejudice to defendant was minimal.

Accordingly, the admission of the testimony of Martin Cornelius and Susan Beck was proper. Therefore, defendant’s motion for a new trial is denied to the extent that it is based upon the admission of the testimony of Mr. Cornelius and Mrs. Beck.

#### Prior Bad Acts

Next, defendant contends that I erred by admitting other 404(b) evidence during the testimony of Cynthia Reed and Herbert Henderson.

It is not clear from defendant’s motion what part of Ms. Reed’s testimony defendant contends was admitted in error. Defendant contends that during Ms. Reed’s testimony he objected to “unrelated bad acts that weren’t included in the 404(b) notice.”<sup>33</sup> However, the “unrelated bad acts” cited by defendant concern testimony that was never admitted at trial. In fact, Ms. Reed never referred to the alleged “bad acts”, that served as the basis for defendant’s objection because the government withdrew the question to which defendant objected.<sup>34</sup>

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<sup>32</sup> N.T. November 17, 2011, page 204; N.T. November 18, 2011, pages 29 and 30.

<sup>33</sup> Defendant’s Brief, page 16.

<sup>34</sup> Cynthia Reed was an attorney employed by defendant’s law firm from 2001 to 2006. During the government’s examination of Ms. Reed, defendant

(Footnote 34 continued):

Because defendant does not specify what portion of Ms. Reed's testimony was admitted in error, and because the government withdrew the question that appeared to serve as the basis for defendant's objection under Federal Rule of Evidence 404(b)<sup>35</sup>, I deny defendant's motion for a new trial to the extent that it requests a new trial based on the admission of the testimony of Cynthia Reed.

Defendant also contends that during its examination of Herbert Henderson, the government elicited testimony concerning prior bad acts, which were inadmissible under Federal Rule of Evidence 404(b). Specifically, defendant objected to the

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(Continuation of footnote 34):

objected to her being asked about the billing practices of defendant's firm.

Prior to defendant's objection, Ms. Reed testified that, pursuant to the billing practices of defendant's firm, before she worked on behalf of a client, she would analyze whether the client had a positive or negative balance with the firm. Defendant objected to the government inquiring whether Mr. Reidenbach ever told Ms. Reed whether a client's positive or negative balance made a difference to the firm.

Following defendant's objection, a lengthy discussion at side-bar, outside the presence of the jury, was held to consider defendant's objection. Counsel for defendant indicated that he anticipated that Ms. Reed would testify that defendant told her that "it's all about the money", and that such a statement about defendant's billing practices was inadmissible under Rule 404(b). (N.T. November 15, 2012, page 129).

However, following the discussion at side-bar, counsel for the government, with agreement from defense counsel, withdrew the question. Instead, Ms. Reed testified about a conversation she had with Mr. Reidenbach and Mr. Henderson about how a client that had filed for bankruptcy could not be billed unless the bankruptcy court approved the attorney fees. However, Ms. Reed did not testify that defendant made the allegedly objectionable statement, "it's all about the money". (N.T. November 15, 2011, pages 126-144)

<sup>35</sup> During the government's examination of Ms. Reed, defendant made numerous other objections. However, none of those objections serve as the basis for the within motion.

government questioning Mr. Henderson concerning the firm's representation of Ann Moore, a former client of the firm.<sup>36</sup> More specifically, defendant contends that he did not receive proper notice pursuant to Federal Rule of Evidence 404(b).<sup>37</sup>

By Order dictated in open court during the trial on November 16, 2011, and subsequently transcribed and filed on December 7, 2011, I overruled defendant's objection concerning the admission of Mr. Henderson's anticipated testimony concerning Ann Moore. I incorporate my reasons for the ruling, which were articulated extensively on the record.<sup>38</sup>

Mr. Henderson testified as anticipated by defense counsel and government counsel. Therefore, I incorporate into this Opinion my November 16, 2011 Order and analysis placed on the record at that time, and only briefly address why Mr. Henderson's testimony concerning Ann Moore was properly admitted.

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<sup>36</sup> Mr. Henderson testified that pursuant to Mr. Reidenbach's policy, Mr. Henderson and Mr. Reidenbach only disclosed the firm's initial retainer fee on a bankruptcy petition, regardless of what the client had actually been charged. Pursuant to defendant's policy, the firm would disclose what was considered the "high end of what the [bankruptcy] trustee would allow without raising a brow". (N.T. November 16, 2011, pages 175-178 and 189).

Mr. Henderson further testified that, during the course of representing Ann Moore, he and defendant were required to disgorge a portion of the fee that they charged to Ms. Moore. (N.T. November 16, 2011, pages 178 and 182).

<sup>37</sup> Rule 404(b) provides in that in order to use evidence of a "crime, wrong, or other act" for a permissible purpose, on "request by a defendant in a criminal case, the prosecutor must: (A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and (B) do so before trial--or during trial if the court, for good cause, excuses lack of pretrial notice."

<sup>38</sup> N.T. November 16, 2011, pages 125-140.

Mr. Henderson's testimony was admissible under Rule 404(b) to show defendant's knowledge, intent and absence of mistake in committing the charged offenses. Specifically, the testimony concerning the required to disgorgement of fees charged to Ms. Moore was probative to show defendant's intent, knowledge and absence of mistake.

Additionally, because Mr. Henderson testified that Mr. Reidenbach's policy concerning fee disclosure at the time he represented Ms. Moore was the same policy in place during the representation of Ms. Medina, the testimony was admissible to enable the jury to understand the circumstances surrounding the charged offenses. See United States v. Green, 617 F.3d 233, 247 (3d Cir. 2010) ("allowing the jury to understand the circumstances surrounding the charged crime--completing the story--is a proper non-propensity purpose under Rule 404(b)").

Moreover, defendant received proper notice under Rule 404(b). On November 4, 2011 counsel for the government gave general notice to defendant that Mr. Henderson would testify that there were several instances in which the bankruptcy trustee challenged the listed fees by defendant. However, Mr. Henderson had not identified, and therefore the government did not provide, specific notice to defendant, that the representation of Ann Moore resulted in a required disgorgement of fees.<sup>39</sup>

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<sup>39</sup> N.T. November 16, 2011, pages 110, 116.

On November 10, 2011, as part of its continued investigation, the government interviewed Mr. Henderson, in which he disclosed that Ann Moore was one of the clients for which Mr. Henderson and Mr. Reidenbach were required to disgorge a portion of the fees listed on a bankruptcy petition. On November 11, 2011 Special Agent Kurt L. Kuechler of the Federal Bureau of Investigation drafted a report memorializing his interview with Mr. Henderson. On November 14, 2011, the next business day<sup>40</sup>, and before the beginning of jury selection, counsel for government provided this report to defendant.<sup>41</sup>

Rule 404(b) requires that the government, upon request of a defendant, provide "reasonable notice" in advance of trial of the "general nature of any such evidence it intends to introduce at trial." It does not provide a specific time line for disclosure of 404(b) evidence. United States v. Moyer, 726 F.Supp.2d 498, 512 (W.D.Pa. 2010).

Here, the government provided reasonable notice to defendant of the 404(b) evidence it intended to introduce at trial. On November 4, 2011, ten days before commencement of trial, the government provided defendant with general notice that it intended to introduce testimony that defendant had to disgorge bankruptcy fees.

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<sup>40</sup> November 11, 2011 was Veteran's Day, a federal holiday, and fell on a Friday. Monday, November 14, 2011 was the next business day.

<sup>41</sup> N.T. November 16, 2011, pages 116-117.

Moreover, on Monday, November 14, 2011, prior to trial, the government provided defendant with more specific notice that Mr. Henderson would testify about the firm's representation of Ann Moore.

Although this notice came moments before commencement of jury selection, such notice was reasonable because it came the next business day after the government obtained the report from Agent Kuechler. Additionally, defendant was not prejudiced by receiving notice in the morning before jury selection because defendant had adequate opportunity to challenge the admissibility of such evidence through oral argument, held on November 16, 2012, before Mr. Henderson testified. See United States v. Francisco, 36 F.3d 1552, 1560 (11th Cir. 1994) which concluded that notice of 404(b) evidence immediately before jury selection was reasonable because the prosecution did not obtain the evidence until the previous business day and because defendant did not suffer any prejudice.

Defendant also contends that the government impermissibly referred to prior bad acts of defendant during the government's cross-examination of defendant as a witness on his own behalf, without providing defendant with notice pursuant to Rule 404(b). Specifically, defendant contends that Rule 404(b) prohibited the government from questioning him during cross-

examination about his representation of Larry Ciarrocca, Ann Moore, John Rice, Marilyn Deskins, Kay Hess, and Rodney Diggs.

The government concedes, with the exception of Ann Moore, that it did not provide notice to defendant that it intended to question defendant about his representation of those clients. However, the government contends that because it did not introduce extrinsic evidence of any prior bad acts, and because the specific acts were probative of defendant's truthfulness, the government's cross-examination of defendant was permissible pursuant to Federal Rule of Evidence 608(b).

Federal Rule of Evidence 608(b) provides, in pertinent part, that extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of the witness. Fed.R.Evid. 608(b).

Unlike Rule 404(b) evidence, in which the government generally must provide notice to defendant in order to introduce at trial, the defendant is not entitled to advance notice of evidence admitted pursuant Rule 608(b). United States v. Hartmann, 958 F.2d 774, 789 n.5 (7th Cir. 1992).

Here, the government questioned defendant about his representation of each of the above-listed witnesses during

defendant's cross-examination.<sup>42</sup> The government's reference to each of the clients was probative of defendant's truthfulness because it related to defendant's testimony on direct examination concerning his lack of knowledge and lack of involvement in various bankruptcy proceedings.<sup>43</sup>

Although, with the exception of Ms. Moore, discussed above, the government did not provide notice to defendant that it would refer to these former clients, no notice was required because, pursuant to Rule 608, the government may refer to specific instances of conduct on cross-examination if they are probative of a witness' truthfulness. See Hartmann,

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<sup>42</sup> Specifically, the government questioned defendant about a fee dispute he had with Larry Ciarrocca. The government also questioned defendant about being ordered to disgorge a portion of the fees he charged Mr. Ciarrocca by the bankruptcy trustee. (N.T. November 22, 2011, pages 255-256).

Similarly, the government questioned defendant concerning his representation of Ann Moore and whether he recalled that the bankruptcy trustee challenged the fee he and Mr. Henderson charged Ms. Moore in connection with representing her in bankruptcy proceedings. (N.T. November 23, 2011, pages 9-12).

The government also questioned defendant concerning his representation of John Rice and Marilyn Deskins and whether defendant accurately reported the fees he earned to the bankruptcy court. (N.T. November 23, 2011, pages 22 and 26-27).

Additionally, the government questioned defendant about his representation of Brian Good and whether he impermissibly sent Mr. Good a bill after Mr. Good had filed for bankruptcy. (N.T. November 23, 2011, pages 40-42).

The government questioned defendant about his representation of Kay Hess and whether defendant collected fees in excess of what he reported to the bankruptcy court. (N.T. November 23, 2011, pages 31-34).

Finally, the government questioned defendant about whether he represented Rodney Diggs before the Veterans Affairs Bureau ("V.A."), without being properly accredited by the V.A. (N.T. November 23, 2011, pages 70-73).

<sup>43</sup> See e.g. N.T. November 22, 2011, pages 44, 65, 99 and 138.

958 F.2d at 789, n.5. Moreover, the government did not introduce extrinsic evidence to prove the specific instances of conduct.

Accordingly, the government was permitted to cross-examine defendant about his representation of each of the clients listed above pursuant to Federal Rule of Evidence 608(b). Therefore, defendant's motion is denied to the extent it seeks a new trial based on the scope of the government's cross-examination of defendant.

#### Mistrial Motions

Defendant contends that the testimony elicited during the government's examination of Nevenka Nina Gruzinov Milovanovich was inflammatory and warranted granting defendant's motion for a mistrial. Defendant's objection was based on the testimony that followed the government's question to Ms. Milovanovich about defendant's reputation within the legal community for truthfulness. Ms. Milovanovich stated that "truthfulness and Mr. Reidenbach can't be used in the same sentence."<sup>44</sup>

Following Ms. Milovanovich's statement, defendant objected and moved for a mistrial. I granted defendant's objection to the extent it sought to strike Ms. Milovanovich's answer, but denied defendant's motion for a mistrial. Following defendant's objection, I instructed the jury to disregard

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<sup>44</sup> N.T. November 22, 2011, page 154.

Ms. Milovanovich's answer. However, defendant contends that the statement was highly prejudicial and that my denial of his motion for a mistrial was erroneous.

Federal Rule of Evidence 404(a) provides that "[e]vidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." However, in a criminal case, "a defendant may offer evidence of the defendant's pertinent trait." Rule 404(a) further provides that if defendant introduces character evidence of a pertinent trait, "the prosecutor may offer evidence to rebut it". However, the government must limit its rebuttal testimony to reputation, rather than specific instances of conduct. United States v. Davenport, 449 F.2d 696, 699 (5th Cir. 1971).

Federal Rule of Evidence 403 provides that a court may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice. However, Rule 403 does not require the government to "deflate its witnesses' testimony or to tell its story in a monotone." United States v. Cross, 308 F.3d 308, 325 (3d Cir. 2002).

Here, defendant introduced the testimony of Jim Fogarty, Noreen Rineer and Terry Longmore, who each testified that defendant had a good reputation for truthfulness.<sup>45</sup> In

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<sup>45</sup> See N.T. November 22, 2011, pages 5-30.

rebuttal, the government offered the testimony of Ms. Milovanovich.

By offering evidence of his own reputation for truthfulness, defendant opened the door for rebuttal testimony from the government. Although Ms. Milovanovich's statement about defendant was presented in a colorful way, she did not refer to specific instances of conduct. Essentially, Ms. Milovanovich's testified that defendant had a poor reputation for truthfulness in the community.

Moreover, Mr. Rineer, as a character witness for defendant, presented a colorful response to emphasize that defendant had a good reputation. Specifically, Mr. Rineer testified that on "a scale of 0 to 10, [defendant's reputation for truthfulness] would be a 10." Mr. Rineer further testified that, in his personal opinion, Mr. Reidenbach would be rated 20 on a scale of 1 to 10 as an honest person.<sup>46</sup>

Lastly, following defendant's objection, I instructed the jury to disregard Ms. Milovanovich's answer and permitted the government to ask a leading question to elicit a permissible answer. Accordingly, any unfair prejudice defendant may have suffered was eliminated by my instruction to the jury.

Specifically, the following occurred during the testimony of Ms. Milovanovich:

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<sup>46</sup> N.T. Nov. 22, 2011, pages 24-25.

Q [by government counsel, Mr. Ignall:] And based on your dealings with other lawyers in Lancaster, are you aware of Mr. Reidenbach's reputation within the legal community?

A Yes, I am, sir.

Q Are you aware of his reputation for truthfulness within the legal community?

A Yes, I am.

Q And what is his reputation within the legal community for truthfulness?

A The truthfulness and Mr. Reidenbach can't be used in the same sentence?

Q I'm sorry. That can't be?

A Cannot be used in the same sentence.

MR. STRETTON: Objection. Move for a mistrial.

THE COURT: The objection to the form of the answer is sustained, and the jury will disregard the answer.

The motion for a mistrial is denied.

You may ask a leading question to elicit the permissible answer.

MR. IGNALL: Okay.

BY MR. IGNALL:

Q Is the reputation of Mr. Reidenbach within the legal community in Lancaster that he is not truthful.

A. Correct.

MR. IGNALL: No further questions, you Honor.

Therefore, the denial of defendant's motion for a mistrial was not erroneous.<sup>47</sup> Accordingly, defendant's motion is denied to the extent it seeks a new trial on this basis.

Collateral Estoppel and Res Judicata

Defendant contends that the charges against him should be dismissed on the basis of collateral estoppel and res judicata. Specifically, defendant contends that because the bankruptcy petitions of Mrs. Medina, Ms. Clark, and Ms. Grunow were discharged, defendant could not be criminally prosecuted based on these bankruptcy petitions.

The doctrines of collateral estoppel and res judicata are incorporated into the Fifth Amendment to the United States Constitution, which provides that no person may subject to double jeopardy.<sup>48</sup> Helvering v. Mitchell, 303 U.S. 391, 398, 58 S.Ct. 630, 632, 82 L.Ed. 917, 921 (1938) applies the doctrine of res judicata to the Double Jeopardy Clause. Ashe v. Swenson, 397 U.S. 436, 443, 90 S.Ct. 1189, 1194, 25 L.Ed.2d 469, 475 (1970) applies the doctrine of collateral estoppel to the Double Jeopardy Clause.

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<sup>47</sup> I articulated my reasons on the record for denying defendant's motion for a mistrial, which I incorporate here. See N.T. November 22, 2011, pages 156-167.

<sup>48</sup> The Fifth Amendment to the United States Constitution provides in pertinent part that "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb".

However, a claim of double jeopardy is an affirmative defense which must be raised properly or may be deemed waived. United States v. Young, 503 F.2d 1072, 1074 (3d Cir. 1974). The proper time to raise a defense of double jeopardy is at the time of trial. United States v. Scott, 464 F.2d 832, 833 (D.C. Cir. 1972).

Additionally, Federal Rule of Criminal Procedure 12(b)(3) provides that a motion alleging a defect in instituting the prosecution must be made before trial.

Here, defendant did not object on the basis of collateral estoppel and res judicata before, or during, trial. Therefore defendant has waived this defense. Accordingly, defendant's motion is denied to the extent that it seeks dismissal of the charges based on the doctrines of collateral estoppel and res judicata.<sup>49</sup>

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<sup>49</sup> Even if defendant had not waived this defense, the doctrines of collateral estoppel and res judicata would not bar the government from bringing the charges against defendant in this case.

This is because a "bankruptcy proceeding and a criminal prosecution are fundamentally different proceedings, both in purpose and procedure, and the 'causes of action' resolved by each are totally different." Accordingly, the "litigation of one will not preclude the other under the doctrine of res judicata." United States v. Tatum, 943 F.2d 370, 381-82 (4th Cir. 1991).

Similarly, collateral estoppel does not serve as a basis for dismissal in this case because "a discharge order does not resolve whether fraud occurred". Tatum, 943 F.2d at 382. Indeed, in this case, the evidence at trial established that the bankruptcy petitions were discharged because of defendant's fraudulent representations to the bankruptcy court. (See N.T. November 17, 2011, pages 29-34; N.T. November 18, 2011, pages 54-63; N.T. November 21, 2011, page 133).

Therefore, the discharge of the bankruptcy petitions did not resolve the issue of whether defendant engaged in fraud.

### Weight of Evidence

Defendant contends that the verdict was against the weight of the evidence and that the evidence was insufficient to support the verdict. Specifically defendant contends that Mr. Henderson handled Mrs. Medina's bankruptcy petition and Michael McHale, an associate attorney who worked for Mr. Reidenbach, handled the bankruptcy petitions of Mrs. Clark and Mrs. Grunow. Accordingly, defendant contends that the government failed to prove that defendant knowingly committed fraudulent acts.

Additionally, defendant contends that the government failed to show that the fees charged by defendant were excessive because the government did not present any expert witness, and because defendant's representation of each client was more extensive than portrayed by the government.<sup>50</sup>

Here, whether viewing the evidence in the light most favorable to the government (the standard for a Rule 29 motion for a judgment of acquittal) or exercising my own judgment in assessing the government's case (standard for a Rule 33 motion

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<sup>50</sup> Although defendant contends that the government failed to prove that defendant charged excessive fees, as explained in footnotes 51 through 54 and 72, below, the government was not required to prove that defendant charged excessive fees. Charging excessive fees is not an element of any of the offenses with which defendant was charged. Accordingly, I conclude that the government's purported failure to demonstrate that defendant charged excessive fees does not serve as a basis for granting the relief requested by defendant.

for a new trial), the government has presented sufficient evidence to support the verdict.

Counts One Through Four

Counts One through Four each concerned defendant's representation of John and Maria Medina.

Count One charged defendant with Conspiracy to conceal property in bankruptcy and to commit bankruptcy fraud in

violation of 18 U.S.C. § 371.<sup>51</sup> Count Two charged defendant with Concealing property in bankruptcy in violation of 18 U.S.C.

§ 152(1).<sup>52</sup> Count Three charged defendant with Agent concealing property in bankruptcy in violation of 18 U.S.C. § 152(7).<sup>53</sup>

Count Four charged defendant with Embezzlement against bankruptcy

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<sup>51</sup> In order to sustain a conviction for Conspiracy to conceal property in bankruptcy and to commit bankruptcy fraud the government must prove that (1) there was an agreement between two or more persons to commit bankruptcy fraud or to conceal assets in bankruptcy; (2) defendant joined the agreement knowing its objective; and (3) one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy. See United States v. Conley, 37 F.3d 970, 977 (3d Cir. 1994).

<sup>52</sup> The elements of Concealing property in bankruptcy are that (1) a bankruptcy case was pending; (2) the funds in defendant's bank account were part of the bankruptcy estate of the debtor; (3) defendant concealed the funds from the trustee charged with the custody and control of that property; and (4) defendant acted knowingly and with the intent to defraud. Third Circuit Model Criminal Jury Instruction 6.18.152(1).

<sup>53</sup> The elements of Agent concealing property in bankruptcy require the government to prove (1) a proceeding in bankruptcy existed under Title 11 or a bankruptcy proceeding was contemplated by the debtor; (2) the transfer or concealment of certain property with the intent to defeat the provisions of the bankruptcy law; and (3) the concealment or transfer of such property was done knowingly and fraudulently. Seventh Circuit Model Jury Instruction 18 U.S.C. § 152(7).

estate in violation of 18 U.S.C. § 153.<sup>54</sup>

The government presented sufficient evidence to sustain a conviction for Counts One through Four.

Mrs. Medina testified that she and her husband met with defendant, who told her that filing for bankruptcy would cost \$2,200.00. Defendant also advised Mrs. Medina that she and her husband should sell rental properties that they owned and place the proceeds into defendant's escrow account.<sup>55</sup>

Herbert Henderson told Mrs. Medina that she would get the proceeds in the escrow account back after the bankruptcy petition was discharged. However, after the discharge, Mr. Henderson showed Mrs. Medina a bill showing that all of the proceeds from Mrs. Medina's account were spent on legal fees and expenses.<sup>56</sup>

Mr. Henderson testified that defendant instructed him to file a bankruptcy petition without listing any of the proceeds from the real estate sales. Mr. Henderson further testified that, pursuant to defendant's policy, in which the firm would only disclose the initial fee charged to the bankruptcy court, he

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<sup>54</sup> The elements of Embezzlement against bankruptcy estate are that (1) a bankruptcy case was pending; (2) the property or interest was part of the bankruptcy estate of the debtor; (3) defendant had access to the property as an attorney or officer of the court; and (4) defendant knowingly and fraudulently embezzled, spent, transferred or appropriated for defendant's own use property belonging to the bankruptcy estate. Eleventh Circuit Pattern Criminal Jury Instruction C.1.4 (2010).

<sup>55</sup> N.T. November 16, 2011, pages 9 and 19.

<sup>56</sup> Id. at pages 36, 45 and 48

listed a \$1,500.00 fee on Mrs. Medina's bankruptcy petition, even though he and defendant had charged Mrs. Medina more.<sup>57</sup>

At the meeting of creditors, which Mr. Henderson attended with the Medinas, the bankruptcy trustee asked Mrs. Medina whether she and her husband had sold any real estate in the previous two years. Mrs. Medina did not disclose to the trustee that they had sold four rental properties.<sup>58</sup>

Mr. Henderson further testified that after the meeting of creditors, defendant instructed Mr. Henderson not to disclose the fees that defendant had charged to the Medinas or to disclose the proceeds from the real estate sales.<sup>59</sup>

Although Mr. Henderson handled the majority of the work concerning the Medinas' bankruptcy petition, evidence presented also showed that defendant spent approximately seventy hours working on the bankruptcy of Mrs. Medina and that he controlled the firm accounts and was aware of all of the firm's finances.<sup>60</sup>

The testimony of Mr. Henderson and Mrs. Medina is sufficient to prove that defendant conspired with Mr. Henderson to conceal assets and commit bankruptcy fraud. Specifically, the testimony of Mr. Henderson and Mrs. Medina established that

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<sup>57</sup> N.T. November 16, 2011, pages 218, 222.

<sup>58</sup> N.T. November 17, 2011, pages 15 and 28.

<sup>59</sup> Id. at pages 30-31.

<sup>60</sup> See Exhibit 4, 15 and 16.

defendant, together with Mr. Henderson, filed a bankruptcy petition on behalf of the Medinas and that defendant directed the Medinas to place assets in his escrow account, thereby concealing the assets from the bankruptcy court. The evidence is also sufficient to establish that defendant concealed the funds placed in his escrow account from the bankruptcy court knowingly and fraudulently. Therefore, the evidence is sufficient to sustain the verdict and a guilty verdict on Counts One through Four is not against the weight of the evidence.

#### Counts Five Through Eight

Counts Five through Eight each concerned defendant's representation of Barbara Ann Grunow.

Count Five charged defendant with Bankruptcy fraud in violation of 18 U.S.C. § 157.<sup>61</sup> Count Six charged defendant with Concealing property in bankruptcy in violation of 18 U.S.C. § 152(1).<sup>62</sup> Count Seven charged defendant with Embezzlement against bankruptcy estate in violation of 18 U.S.C. § 153.<sup>63</sup>

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<sup>61</sup> The elements of Bankruptcy fraud are that (1) defendant devised or intended a scheme or plan to defraud; (2) defendant acted with the intent to defraud; (3) the defendant's act was material; and (4) defendant filed a petition under a Title 11 bankruptcy proceeding to carry out or attempt to carry out an essential part of the scheme. Model Criminal Jury Instruction Ninth Circuit 8.11 (2011).

<sup>62</sup> The elements of Concealing property in bankruptcy are listed in footnote 52, above.

<sup>63</sup> The elements of Embezzlement against bankruptcy estate are listed in footnote 54, above.

Count Eight charged defendant with Agent concealing property in bankruptcy in violation of 18 U.S.C. § 152(7).<sup>64</sup>

The government presented sufficient evidence to sustain a guilty verdict on Counts Five through Eight.

Barbara Grunow testified that she hired defendant in 2007 to represent her in a divorce. Using multiple credit cards, Ms. Grunow paid defendant a \$4,000.00 retainer and then an additional \$10,000.00 to represent her. Defendant told Ms. Grunow that she would get back any money that was not used up.<sup>65</sup>

In October 2008, as part of a divorce settlement, Ms. Grunow received \$39,900.98, which represented 60% of the proceeds from the sale of the house she owned with her husband. However, Ms. Grunow owed approximately \$35,000.00 in credit card debt.<sup>66</sup>

Defendant suggested to Ms. Grunow that she file for bankruptcy. He further suggested that she put the proceeds from the sale of her home in his firm's escrow account. Defendant told Ms. Grunow that she would get a substantial amount of her money back after bankruptcy because his fees for the bankruptcy

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<sup>64</sup> The elements of Agent concealing property in bankruptcy are listed in footnote 53, above.

<sup>65</sup> N.T. November 18, 2011, pages 30-37.

<sup>66</sup> Id. at pages 39-42.

would only be \$900.00 to \$1,200.00 and he would make it look like the funds were absorbed by his legal fees.<sup>67</sup>

Ms. Grunow filed for bankruptcy. The bankruptcy petition, which contained defendant's electronic signature verification did not list the sale of Ms. Grunow's house even though it contained a question regarding whether any real estate had been sold in the previous two years.<sup>68</sup>

Defendant's associate attorney, Michael McHale, accompanied Ms. Grunow to the first meeting of creditors. The trustee asked Ms. Grunow if she had sold real estate in the previous two years. Ms. Grunow indicated that she had, but, as instructed by defendant, stated that all of the proceeds had been exhausted on defendant's legal fees.<sup>69</sup>

The trustee requested Attorney McHale to provide further documentation of the legal fees. After speaking with defendant and Shirley Wertz, the office manager of defendant's firm, Attorney McHale sent a letter to the trustee which outlined the fees.

The letter indicated that Ms. Grunow authorized the use of the proceeds to pay for legal fees. However Attorney McHale

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<sup>67</sup> N.T. November 18, 2011, pages 42-43. Ms. Grunow's testimony was corroborated by Deborah Heisey. Ms. Heisey testified that Ms. Grunow had told her about defendant's advice to put the proceeds from the real estate sale in defendant's escrow account. (Id. at pages 18-19).

<sup>68</sup> Exhibit 32.

<sup>69</sup> N.T. November 18, 2011, pages 54-56; N.T. November 21, 2011, pages 56-57.

testified that Ms. Grunow never provided written authorization to defendant. Further, Attorney McHale testified that he did not have any personal knowledge of the information included in the letter. Instead he obtained the information from defendant and Ms. Wertz.<sup>70</sup>

Ms. Grunow testified that she was never informed that the funds she provided to defendant were depleted on legal fees. Further, Ms. Grunow never authorized the use of the proceeds from the sale to pay any legal fees to defendant.<sup>71</sup>

The testimony of Barbara Grunow, which was corroborated by Deborah Heisey and Michael McHale, coupled with the bankruptcy petition submitted with defendant's signature and the letter provided by Attorney McHale to the bankruptcy trustee, is sufficient evidence to sustain a guilty verdict on Counts Five through Eight.

Specifically, the evidence established that defendant filed a bankruptcy petition on behalf of Barbara Grunow, which contained materially false information and that defendant submitted the petition with the intent to defraud the bankruptcy court. Moreover, the evidence showed that defendant directed Ms. Grunow to place assets in his escrow account, which he knowingly and fraudulently concealed from the bankruptcy court.

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<sup>70</sup> N.T. November 21, 2011, pages 57-61; Exhibit 35.

<sup>71</sup> N.T. November 18, 2011, page 60.

Therefore, a guilty verdict on Counts Five through Eight is not against the weight of the evidence.

Count Nine

Count Nine concerned defendant's representation of Michele Clark and charged defendant with False declaration, certification, or verification in bankruptcy in violation of 18 U.S.C. § 152(3)<sup>72</sup>.

The government presented sufficient evidence to sustain a guilty verdict on Count Nine.

Michele Clark testified that in 2009 she retained defendant to represent her in connection with her daughter's car accident and in a potential bankruptcy. Ms. Clark signed two separate fee agreements with defendant, providing for a \$2,500.00 retainer for representation concerning the car accident and for a \$1,500.00 retainer in connection with her bankruptcy proceedings.<sup>73</sup>

In March 2010 defendant requested that Ms. Clark provide an additional \$3,000.00 in fees in connection with his representation of her, which she provided to defendant. However,

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<sup>72</sup> The elements of False declaration, certification, or verification in bankruptcy are (1) a proceeding in bankruptcy existed under Title 11; (2) defendant made a declaration, certification, or verification in relation to the bankruptcy proceeding; (3) the declaration, certification, or verification related to some material matter; (4) the declaration, certification, or verification was false; and (5) the declaration, certification, or verification was made knowingly and fraudulently. Seventh Circuit Model Jury Instruction.

<sup>73</sup> N.T. November 21, 2011, pages 122-125; Exhibit 50.

the litigation concerning her daughter's car accident was handled by the attorney provided by the insurance company and the claim settled within policy limits. Ms. Clark was not aware of any court proceedings concerning the accident that either defendant, or his associate, Attorney McHale, had to attend.<sup>74</sup>

On November 5, 2010 Ms. Clark filed for bankruptcy. Despite having provided an additional \$3,000.00 to defendant in fees, the bankruptcy petition disclosed \$1,500.00 in attorney fees and was electronically signed by defendant.<sup>75</sup>

After the bankruptcy was discharged, Ms. Clark requested a final bill from defendant. Defendant sent Ms. Clark a bill, which showed \$5,365.91 in services rendered in connection with Ms. Clark's bankruptcy.<sup>76</sup>

The testimony of Michele Clark, as well as the bankruptcy petition and bill she received from defendant are sufficient evidence to sustain a verdict of guilty on Count Nine. Specifically, the evidence shows that defendant represented Ms. Clark in a bankruptcy proceeding and that defendant knowingly and fraudulently made a false declaration, certification, or verification to the bankruptcy court.

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<sup>74</sup> N.T. November 21, 2011, pages 130-131.

<sup>75</sup> Id. at page 133; Exhibit 57.

<sup>76</sup> Id. at pages 137-138; Exhibit 56.

Therefore defendant's motion is denied to the extent that it contends that the evidence was insufficient to support the verdict and to the extent that it contends that the verdict was against the weight of the evidence.

CONCLUSION

For all of the foregoing reasons, defendant's motions for a judgment of acquittal, a new trial, and to arrest judgment are denied.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	Criminal Action
	)	No. 10-cr-00797
vs.	)	
	)	
KENNETH G. REIDENBACH,	)	
	)	
Defendant	)	

O R D E R

NOW, this 23<sup>rd</sup> day of August, 2012, upon consideration of the following documents:

- (1) Motion of the Defendant, Kenneth G. Reidenbach, for a New Trial and Arrest of Judgment Pursuant to Federal Rule of Criminal Procedure, Rule 29, and Defendant's Request to Amend this Motion Once the Notes of Testimony are Transcribed, which motion was filed December 13, 2011 (Document 133);
- (2) Brief of the Defendant, Kenneth G. Reidenbach, in Support of his Motion for a New Trial and Arrest of Judgment Pursuant to Federal Rule of Criminal Procedure Rule 29, which brief was filed April 26, 2012 (Document 161);
- (3) Government's Response to Defendant's Motion for Acquittal, New Trial and Arrest of Judgment, which response was filed May 21, 2012 (Document 164);

and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that defendant's motion is denied.

BY THE COURT:

/s/ James Knoll Gardner  
James Knoll Gardner  
United States District Judge