

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

**UNITED STATES**

**CRIMINAL ACTION**

v.

**JOSEPH VITO MASTRONARDO, JR.  
JOHN MASTRONARDO  
JOSEPH F. MASTRONARDO  
ERIC WOHLCKE  
HARRY MURRAY  
JOSEPH VITELLI  
ANNA ROSE VITELLI  
PATRICK TRONOSKI  
EDWARD FEIGHAN  
KENNETH COHEN  
SCHUYLER TWADDLE  
MICHAEL LOFTUS  
RONALD GENDRACHI  
JOANNA MASTRONARDO**

**NO. 12-388 -01  
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**DuBOIS, J.**

**December 13, 2013**

**MEMORANDUM**

**I. INTRODUCTION**

On August 1, 2012, a federal grand jury in the Eastern District of Pennsylvania charged defendants with a twenty-three count indictment. Presently before the Court is Government's Motion to Admit Evidence Intrinsic to the Charged Offenses or Pursuant to Fed. R. Evid. 404(b) [hereinafter Government's Motion to Admit Evidence]. In that motion, the government seeks to admit the following six pieces of evidence:

- (1) Testimony concerning the relationship between the defendants, witnesses, and cooperators relating to their betting and bookmaking histories that precedes the dates of the conspiracy charged in the indictment;
- (2) The guilty pleas of Joseph Vito Mastronardo, Jr., John Mastronardo, and Edward Feighan in Montgomery County, Pennsylvania, following their 2006 arrests where the defendants admitted to participating in a gambling conspiracy . . . ;

(3) The probation terms and conditions that bound Joseph Vito Mastronardo, Jr. and John Mastronardo subsequent to their guilty pleas . . . ;

(4) The payment of expenses associated with Schuyler Twaddles's drug rehabilitation by Joseph Vito Mastronardo, Jr. . . . ;

(5) Two conversations from the court-authorized wiretap on April 12, 2006, between Joseph Vito Mastronardo, Jr. and Patrick Higgins concerning the preparation of tax returns . . . ; and

(6) Copies of *United States v. Joseph Vito Mastronardo Jr., et al.*, 849 F.2d 799 (1988) and *Ratzlaf v. United States*, [510] U.S. 135 (1994), that were seized during execution of a search warrant on March 29, 2010, at 1671 Stockton Road.

Gov't's Mot. to Admit Evid. 1–2.

In their joint response to this motion, defendants Joseph Vito Mastronardo, Jr., Joseph F. Mastronardo, and Joanna Mastronardo challenge the admissibility of the evidence identified in paragraphs three, five, and six above on three grounds: the evidence is (i) inadmissible character evidence under Federal Rule of Evidence 404(b)(1); (ii) unfairly prejudicial under Federal Rule of Evidence 403; or (iii) the result of an illegal wiretap under 18 U.S.C. § 2518(5). Defendant Tronoski joined the response of defendants Joseph Vito Mastronardo, Jr., Joseph F. Mastronardo, and Joanna Mastronardo and separately challenges the relevance of all six categories of evidence. For the reasons that follow, Government's Motion to Admit Evidence is granted in part and denied in part.

## **II. BACKGROUND<sup>1</sup>**

Defendants have been indicted for crimes arising from their alleged participation in an illegal gambling business — the Mastronardo Bookmaking Organization (“MBO”).<sup>2</sup> The MBO was headquartered in Montgomery County, Pennsylvania with members and associates located across the United States and in Costa Rica. Defendants worked as bookmakers, agents, office

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<sup>1</sup> All facts in Part II are taken from the Indictment.

<sup>2</sup> The exception is Joanna Mastronardo, who has only been indicted for aggravated structuring in violation of 31 U.S.C. § 5324(a)(1) and (d)(2) in Count Twenty-Three.

employees, and technical-support staff. The MBO used password-protected websites, toll-free telephone numbers, and personal meetings to take bets on a variety of sports. Bettors received a line of credit through their accounts, and bettors could pay gambling debts on losing bets using cash, check, or wire transfer. The MBO paid winning bets in cash. At its peak, the MBO had over one thousand bettors and generated millions of dollars of betting activity a year.

Count One charges all defendants, except Joanna Mastronardo, with participation in a racketeering conspiracy in violation of 18 U.S.C. § 1962(c) and (d) of the Racketeer Influenced and Corrupt Organizations Act (RICO). Count Two charges all defendants, except Joanna Mastronardo, with conducting, financing, managing, supervising, directing, and owning all or part of an illegal gambling business in violation of 18 U.S.C. § 1955.

The remaining counts charge defendants with crimes related to particular facets of the MBO's operation. Counts Three through Six charge various defendants with laundering the proceeds of the MBO in violation of 18 U.S.C. § 1956(a)(1)(B)(i) by using a check-cashing business in Philadelphia,<sup>3</sup> wire transfers to foreign bank accounts,<sup>4</sup> the personal bank accounts of other individuals,<sup>5</sup> and a travel agency located in Pompano Beach, Florida.<sup>6</sup> Counts Seven through Fourteen charge Joseph V. Mastronardo, Jr. with engaging in the operation of an illegal gambling business in violation of 18 U.S.C. § 1955 and 18 Pa. Cons. Stat. § 5514 by aiding and abetting eight trips to New Jersey for the purpose of settling gambling debts. Counts Fifteen through Twenty-Two charge Joseph Vito Mastronardo, Jr., John Mastronardo, and Eric

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<sup>3</sup> Count Three names as defendants Joseph Vito Mastronardo, Jr., John Mastronardo, Joseph F. Mastronardo, Eric Woehlcke, Harry Murray, Joseph Vitelli, Anna Rose Vitelli, and Ronald Gendrachi.

<sup>4</sup> Count Four names as defendants Joseph Vito Mastronardo, Jr., John Mastronardo, Eric Woehlcke, Harry Murray, and Kenneth Cohen.

<sup>5</sup> Count Five names only defendant Joseph Vito Mastronardo, Jr. as a defendant.

<sup>6</sup> Count Six names as defendant Joseph Vito Mastronardo, Jr., John Mastronardo, Eric Woehlcke, and Harry Murray.

Woehlcke with mail and wire fraud in violation of 18 U.S.C. § 1084(a) for various phone calls to technical-support staff asking that betting accounts be adjusted, updated, or checked. Count Twenty-Three charges that Joseph Vito Mastronardo, Jr., Joseph F. Mastronardo, and Joanna Mastronardo knowingly structured bank deposits in values of less than \$10,000 to avoid statutory transaction-reporting requirements in violation of 31 U.S.C. § 5324(a)(1) and (d)(2).

### **III. LEGAL STANDARD**

Relevant evidence is admissible unless prohibited by the U.S. Constitution, federal statute, the Federal Rules of Evidence, or other rules prescribed by the Supreme Court. Fed. R. Evid. 402. Evidence is relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.” Fed. R. Evid. 401. “All that is needed is *some* showing of proper relevance,” so the burden is not onerous. *United States v. Sampson*, 980 F.2d 883, 888 (3d Cir. 1992).

Federal Rule of Evidence 404(b)(1) bars the admission of relevant evidence of a prior crime or bad act “to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Evidence of prior crimes and bad acts are divided into two categories: (1) those “extrinsic” to the charged offense, and (2) those “intrinsic” to the charged offense. *United States v. Green*, 617 F.3d 233, 245 (3d Cir. 2010).

Extrinsic evidence of prior crimes and bad acts must be analyzed under Rule 404(b)(2), *Green*, 617 F.3d at 245, which allows such evidence for a non-character related purpose, “such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Fed. R. Evid. 404(b)(2). Rule 404(b) is a rule of inclusion rather than exclusion. *United States v. Givan*, 320 F.3d 452, 460 (3d Cir. 2003). Evidence is admissible under Rule 404(b)(2) if it satisfies a four-part test: (1) the evidence has proper purpose; (2) the evidence is relevant; (3) the probative value outweighs the danger of unfair

prejudice; and (4) the court charges the jury to consider the evidence only for the limited purposes for which it is admitted. *Id.* (citing *Huddleston v. United States*, 485 U.S. 681, 691–92 (1988)).

Only two categories of evidence are intrinsic: (1) evidence directly proving the charged offense and (2) evidence of uncharged acts performed contemporaneously with the charged crimes that facilitate the commission of the charged crimes. *Id.* at 248–49. Intrinsic evidence must be relevant and admissible under Rule 403. *Id.* at 247. A decision on the admissibility of intrinsic evidence of prior crimes and bad acts does not require an analysis under Rule 404(b). *Green*, 617 F.3d at 245. Unlike evidence admitted under Rule 404(b), intrinsic evidence does not require that a district court give the jury a limiting instruction upon defendant’s request or that the prosecutor notify a defendant of the government’s intent to introduce evidence of prior bad acts in a criminal trial. *Id.* (citing *United States v. Bowie*, 232 F.3d 923, 927 (D.C. Cir. 2000)).

#### **IV. DISCUSSION**

The government seeks to introduce all the evidence identified in Government’s Motion to Admit Evidence as, *inter alia*, intrinsic evidence of the crime charged in Count One — engaging in a racketeering conspiracy in violation of 18 U.S.C. § 1962(d). Section 1962(d) states that it “shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.” Section 1962(c) states:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

The government’s evidence is relevant to prove two elements of RICO conspiracy: (1) enterprise and (2) a pattern of racketeering activity.

The Court addresses each piece of the evidence in turn.

### **1. Testimony Concerning Relationships and Bookmaking Before Conspiracy**

All defendants, except Patrick Tronoski, concede the relevance and admissibility of testimony concerning the relationships between defendants and others and bookmaking before the conspiracy. Defendant Tronoski challenges the relevance of this evidence. The government argues that testimony preceding the date of the conspiracy concerning the relationship between the defendants, witnesses, and cooperators relating to their betting and bookmaking histories is intrinsic evidence of the crime charged in Count One. The Court concludes that the testimony is relevant intrinsic evidence of RICO conspiracy because it directly proves (1) enterprise and (2) a pattern of racketeering activity. *See United States v. Irizarry*, 341 F.3d 273, 296 (3d Cir. 2003); *United States v. Ligambi*, 890 F. Supp. 2d 564, 576–77 (E.D. Pa. 2012); *United States v. Savage*, Crim. No. 07-550-03, 2013 WL 372949, at \*3 (E.D. Pa. Jan. 31, 2013).

“Enterprise” is defined in § 1961(4) to include “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” The government charges that the MBO is an association-in-fact enterprise. An association-in-fact enterprise must have three structural features: (1) common purpose, (2) relationships among the associates of the enterprise, and (3) longevity sufficient to permit these associates to pursue the enterprise’s purpose. *Boyle v. United States*, 556 U.S. 938, 946 (2009). Although not necessary to prove an association-in-fact enterprise, evidence of hierarchy, role differentiation, unique modus operandi, professionalism, and sophistication of the organization is persuasive evidence an association-in-fact enterprise exists. *See id.* at 948. In this case, testimony about the relationship of the defendants directly proves structural elements of the association-in-fact enterprise, and testimony about past bookmaking and betting activities is probative of the longevity and purpose of the enterprise.

“A pattern of racketeering activity” is defined in § 1961(5) to require at least two acts of racketeering activity — referred to as predicate acts — the last of which must have occurred within ten years after the commission of a prior act of racketeering activity. To prove a pattern of racketeering activity a “prosecutor must show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity.” *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989). “When the RICO enterprise exists solely for criminal purposes, the necessary nexus between the predicate acts and the enterprise will often be enough to satisfy the relatedness requirement.” *Banks v. Wolk*, 918 F.2d 418, 425 (3d Cir. 1990). In this case, testimony about the relationships of the defendants is probative of the purpose of the criminal conduct, the method of the commission of the crimes, and the participants in the crimes. Further, testimony of prior bookmaking activity is probative of the continuing nature of the conspiracy and the criminal purpose of the enterprise.

Finally, the Court concludes that the probative value of the testimony outweighs the danger of unfair prejudice under Rule 403. For that reason, and all of the foregoing reasons, the evidence is admissible intrinsic evidence of the crime charged in Count One.

## **2. Guilty Pleas Arising Out of 2006 Arrests**

In 2006, defendants Feighan, Joseph Vito Mastronardo, Jr., and John Mastronardo plead guilty to the crime of Pool Selling and Bookmaking and conspiracy to commit Pool Selling and Bookmaking in the Court of Common Pleas of Montgomery County. The government seeks to admit the guilty pleas as intrinsic evidence of the crimes charged in Counts One through Four. Feighan argues that evidence of his 2006 convictions must be excluded as improper character evidence under Rule 404(b)(1), or alternatively, because the probative value of the conviction is substantially outweighed by the danger of unfair prejudice under Rule 403. Defendant Tronoski

challenges the relevance of the 2006 convictions of all three defendants. No other defendant objects to evidence of the 2006 convictions.

The Court concludes that the guilty pleas are intrinsic evidence of the crimes charged in Counts One and Two. Alternatively, the evidence concerning the guilty pleas is admissible evidence of a prior crime or bad act for non-character related purposes under Rule 404(b)(2).

The Court concludes that the guilty pleas are admissible intrinsic evidence of the crime charged in Count One for the reasons stated above in Part IV.1. The Court sees no reason to treat prior uncharged bookmaking activity, which was ruled admissible, differently than activity for which defendants were convicted.

The Court also concludes that the guilty pleas are intrinsic evidence of the crime charged in Count Two. Section 1955 defines an illegal gambling business as a gambling business that (1) operates in violation of state law, (2) involves five or more people, and (3) is in continuous operation for longer than thirty days or earns more than \$2,000 in a single day. 18 U.S.C. § 1955(b)(1). Evidence of defendants' Pennsylvania convictions for pool selling and bookmaking directly proves that the defendants' gambling business violated state law.

Further, the Court concludes that the probative value of the evidence outweighs the danger of unfair prejudice under Rule 403. Evidence of defendants' convictions for pool selling and bookmaking directly proves elements of the crimes charged in Counts One and Two. A conviction under § 1962(d) requires at least two predicate acts of racketeering activity, and a conviction under § 1955 requires that defendants' gambling business, alleged to have been in continuous operation since 2006, violated state law. Any prejudice arising from evidence of the 2006 convictions of defendants Feighan, John Mastronardo, and Joseph Vito Mastronardo, Jr. is not unfair.

The government also seeks to admit the guilty pleas as intrinsic evidence of the money-laundering charges in Count Three and Four. The Court finds no authority for the proposition that evidence of the prior convictions is intrinsic evidence of money laundering under § 1956(a). Regardless, any evidence concerning the guilty pleas that is not considered intrinsic evidence of the crimes charged in Counts One and Two would be admissible under Rule 404(b) to show each defendant's knowledge and state of mind. *See United States v. Nektalov*, 325 F. Supp. 2d 367, 370–71 (S.D.N.Y. 2004) (admitting evidence of prior bad acts under Rule 404(b) but not as intrinsic evidence of a money-laundering charge). The Court concludes that the probative value of such evidence outweighs the danger of unfair prejudice.

### **3. Probation Terms of Joseph Vito Mastronardo, Jr. and John Mastronardo**

Defendants Joseph Vito Mastronardo, Jr., John Mastronardo, Joseph F. Mastronardo, and Joanna Mastronardo argue that evidence of the probation terms of Joseph Vito Mastronardo, Jr. and John Mastronardo should be excluded as improper character evidence under Rule 404(b) or because the probative value of the evidence is substantially outweighed by the danger of unfair prejudice under Rule 403. Defendant Tronoski challenges the relevance of the probation terms.

The government seeks to introduce the probation terms, particularly travel restrictions, to prove Joseph Vito Mastronardo, Jr. lied in a letter to his probation officer about the reasons he sought permission to travel to Costa Rica. The letter states in relevant part that “With regard to my travel to San Jose, Costa Rica, the weather there is perfect for my health, 82 degrees and HUMID every day.” Later Mastronardo writes that “Betting is an integral part of my income, and in order to maintain that, San Jose is a legal venue for all types of gambling.” By stipulation, the parties agree that the probation terms state, in relevant part, that “I must comply with all local, state, and federal laws. . . . Any . . . out of state, or overnight travel must be approved and a travel permit obtained from my probation/parole officer prior to my departure.”

The government argues that Joseph Vito Mastronardo, Jr. travelled to San Jose to further the illegal business of the MBO, and the probation terms are necessary to prove that Mastronardo had a motive to lie about his intentions in the letter to his probation officer. Defendants respond that the probation terms add nothing but the implication that Joseph Vito Mastronardo, Jr. lied because the letter plainly states what the government needs to prove — that Mastronardo visited Costa Rica.

The Court cannot determine the probative value of the probation terms of Joseph Vito Mastronardo, Jr., specifically those regarding travel, on the current state of the record and defers ruling until trial. Until the Court rules, the government is prohibited from mentioning the probation terms of Joseph Vito Mastronardo, Jr. in the presence of the jury.

Finally, the Court finds the probation terms of John Mastronardo are inadmissible under Rule 402 because the probation terms are not probative of any fact of consequence currently before the Court. The denial is without prejudice to the government's right to seek reconsideration of the ruling at trial if warranted by the circumstances.

#### **4. Payment of Defendant Twaddle's Drug Rehabilitation Expenses**

All defendants, except Patrick Tronoski, concede the relevance and admissibility of evidence of the payment of defendant Twaddle's drug rehabilitation expenses by Joseph Vito Mastronardo, Jr. Defendant Tronoski challenges the relevance of the evidence. The government seeks to introduce the evidence as either intrinsic evidence of the crime charged in Count One or under Rule 404(b). The Court concludes that the evidence is admissible under Rule 404(b) because it is admitted for two non-character related purposes: (1) to show the hierarchy within the MBO and (2) to show defendant Twaddle's participation in and value to the enterprise. The Court concludes that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice under Rule 403.

## 5. Conversations Between Joseph Vito Mastronardo, Jr. and Patrick Higgins

The government seeks to introduce evidence of two intercepted conversations between Joseph Vito Mastronardo, Jr. and Patrick Higgins — his accountant — regarding the filing of a fraudulent tax return as intrinsic evidence of the crime charged in Count One or under Rule 404(b). In the first intercepted call on April 12, 2006, Mastronardo states that “I can’t make you do [my tax returns] because it might jeopardize you, but we’re gonna pay you for it.” Later that day in a second phone call, Mastronardo says “I have . . . my last year tax forms . . . it’s not a big deal, it’s just a matter of how much I put in the bank . . . make sure we’re covered for x amount of dollars.” Gov’t’s Mot. to Admit 19–20.

Defendants Joseph Vito Mastronardo, Jr., John Mastronardo, Joseph F. Mastronardo, and Joanna Mastronardo argue that evidence of the conversations should be excluded for two reasons: (1) failure to take steps to “minimize the interception of communications not subject to interception” and (2) the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. Defendant Tronoski challenges the relevance of the conversations.

Defendants argue the conversations were recorded in violation of Montgomery County’s Minimization Directive, which directs police not to record privileged communications “such as . . . Accountant/Client.” Gov’t Ex. G-1 Tab E at 1. The Court agrees that failure to follow state-law minimization procedures is a relevant factor when determining the “reasonableness of the minimization efforts, under a totality of the circumstances.” *United States v. Hull*, 456 F.3d 133, 142 (3d Cir. 2006) (internal quotations omitted). The Court concludes that minimization in this case was reasonable and explains its reasoning in Memorandum and Order dated December 13, 2013, ruling on defendants’ Motion to Suppress Wiretap and Physical Evidence (Document No. 253). For the purposes of this Memorandum, it suffices to say that the failure to minimize these accountant-client conversations was not improper because the police concluded that the

conversations fell under the crime-fraud exception to the accountant-client privilege. Tr. Pretrial Mots. Hr'g Day 2 at 143.

To the extent defendants seek suppression of these particular conversations because they are privileged and were not minimized, the Court concludes that federal law does not require minimization of pertinent accountant-client conversations. Defendants are charged with federal crimes in federal court, and federal law governs the admissibility of wiretap evidence even when state law is more restrictive. *United States v. Shaffer*, 520 F.2d 1369, 1372 (3d Cir. 1975). The federal common law of privilege applies in federal court under Fed. R. Evid. 501, *accord Wm. T. Thompson Co. v. Gen. Nutrition Corp.*, 671 F.2d 100, 103–04 (3d Cir. 1982), and there is no federally recognized accountant-client privilege. *Id.* (citing *Couch v. United States*, 409 U.S. 322, 335 (1973)). Thus, federal law imposes no duty on state officers to minimize pertinent accountant-client communications on the ground that the communications were privileged.

Moreover, the conversations between Joseph V. Mastronardo, Jr. and Patrick Higgins are admissible under Rule 404(b). The evidence is relevant for a non-character related purpose: to prove the modus operandi of the RICO conspiracy and knowledge that the money came from the proceeds of illegal activity. Defendants argue that the conversations do not imply that the unclaimed income was from an illegal source; they claim that Mastronardo's declared legal income — over one million dollars — reduces any inference that the unclaimed money is meant to conceal the proceeds of illegal activity instead of, for example, evading taxes on his legal income. The Court disagrees. The conversations are evidence of the government's position that Mastronardo planned to declare only the money he deposited in a bank as income on his tax returns. Coupled with evidence of the currency found hidden at the residences of four members of the Mastronardo family during the 2006 investigation, the wiretapped conversations are probative of Mastronardo's knowledge that the proceeds of the MBO were illegal and that he

knowingly sought to conceal the source of his income. Further, the Court concludes that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

**6. Copies of *United States v. Mastronardo*, 849 F.2d 799 (1988) and *Ratzlaf v. United States*, 510 U.S. 135 (1994)**

The government seeks to introduce copies of two cases seized from the Mastronardo residence as intrinsic evidence of the crimes charged in Counts One and Twenty-Three. *Mastronardo*, the first case, is a decision by the Court of Appeals for the Third Circuit reversing Joseph Vito Mastronardo, Jr. and John Mastronardo's prior conviction for aggravated structuring because the statute "did not give a reasonable bank customer fair notice that 'structuring' cash transactions to avoid the reporting requirement is criminal." 849 F.2d at 804. To reduce the danger of unfair prejudice, the government offers to redact the names of the defendants from the opinion. The second case the government seeks to introduce, *Ratzlaf*, is a Supreme Court case holding that to willfully violate the anti-structuring statute, prosecutors must prove defendant had knowledge the conduct was illegal. 510 U.S. at 136–37.

Defendants Joseph Vito Mastronardo, Jr., John Mastronardo, Joseph F. Mastronardo, and Joanna Mastronardo argue that evidence of the opinions in both cases should be excluded because the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. Defendant Tronoski challenges the relevance of the conversations. The Court concludes that a redacted version of the opinion in *Ratzlaf v. United States*, 510 U.S. 135 (1994) is admissible, and that the opinion in *United States v. Mastronardo*, 849 F.2d 799 (1988) is inadmissible under Rule 403.

The opinion in *Ratzlaf* is evidence of defendants' knowledge of criminal structuring. On the other hand, the *Ratzlaf* opinion does not represent the current state of the law. See *United States v. Griffin*, 84 F.3d 912, 923 n.7 (7th Cir. 1996) (noting "Congress responded to the

Supreme Court's decision in *Ratzlaf* by deleting the statutory willfulness requirement"). The Court thus concludes that *Ratzlaf v. United States*, 510 U.S. 135 (1994) is admissible to show defendants' knowledge of the illegality of structuring, but the portions of the case related to out-of-date elements of aggravated structuring and the government's burden of proof on the issue of scienter must be redacted.

Next, the Court concludes that the probative value of the opinion in *United States v. Mastronardo*, 849 F.2d 799 (1988) is substantially outweighed by the danger of unfair prejudice. The probative value of the opinion in *Mastronardo* is slight: the government seeks to admit the *Ratzlaf* opinion for the same reason, making the opinion in *Mastronardo* redundant. Further, there is "substantial danger that the evidence would inflame the jury and lead to a decision on an improper basis." *United States v. Sriyuth*, 98 F.3d 739, 748 (3d Cir. 1996). Specifically, because the conviction overturned in *Mastronardo* involved conduct almost identical to that charged in Count Twenty-Three, admission of the opinion as evidence creates a substantial danger that the jury will use the prior, overturned conviction to improperly find defendants guilty in this case.

Moreover, the redaction of defendants' names in the *Mastronardo* opinion does little to alleviate the danger of unfair prejudice because of the danger that the jury might infer that one of the defendants was named in the redacted portions of the opinion. Thus, the opinion in *Mastronardo* is inadmissible.

## **7. Relevance of Evidence Against Each Defendant**

Defendant Tronoski argues that every piece of evidence the government seeks to introduce is irrelevant because it has no bearing on crimes he personally committed. The Court rejects this argument. RICO conspiracy does not require proof that a defendant committed a racketeering act; instead, the government must prove that each defendant entered an agreement to conduct an enterprise's affairs through a pattern of racketeering activity and that the

agreement would have violated RICO if the intended outcome had been achieved. *See Smith v. Berg*, 247 F.3d 532, 537–38 (3d Cir. 2001) (discussing *Salinas v. United States*, 522 U.S. 52 (1997)); *United States v. Ligambi*, Crim. No. 09-496, 2013 WL 5272806, at \*5 (E.D. Pa. Sept. 18, 2013). Evidence of crimes committed by other members of the MBO can establish that Tronoski’s agreement to join the enterprise, if completed, would have violated RICO.

Defendant Tronoski argues in the alternative that he should not be joined with the other defendants because their conduct is, presumably, more culpable. The Court rejects defendant’s argument. Tronoski is properly joined in the indictment. Federal Rule of Criminal Procedure 8(b) allows for the joinder of defendants “if they are alleged to have participated in the same . . . series of acts or transactions, constituting an offense or offenses.” Rule 8(b) gives prosecutors substantial leeway when joining RICO defendants in a single trial. *United States v. Eufrasio*, 935 F.2d 553, 567 (3d Cir. 1991) (upholding RICO conspiracy conviction in which district court denied lesser-involved defendants’ motion to be severed from trial of defendant charged with murder as a predicate act).

Any evidence relevant to an element of a crime with which a defendant is charged is admissible under Federal Rule of Evidence 402, regardless of whether the charged defendant personally engaged in the conduct. Thus, the Court rejects defendant Tronoski’s argument that the evidence the government seeks to admit in this motion, as limited in this Memorandum, is not relevant to the charges against him.

## **V. CONCLUSION**

For the foregoing reasons, the Court grants in part and denies in part Government’s Motion to Admit Evidence. An appropriate order follows.

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**ORDER**

**AND NOW**, this 13th day of December, 2013, upon consideration of Memorandum of Law in Support of Defendant, Edward Feighan's Motion in Limine, treated by the Court as a motion in limine (Document No. 238, filed June 12, 2013), the government's letter of June 27, 2013, stating that the government's response was contained in a separate motion, Government's Motion to Admit Evidence Intrinsic to the Charged Offenses or Pursuant to Fed. R. Evid. 404(b) (Document No. 241, filed June 14, 2013), Response of Defendants Joseph V. Mastronardo, Jr., John Mastronardo, Joseph F. Mastronardo, and Joanna Mastronardo to the Government's Motion to Admit Evidence Intrinsic to the Charged Offenses or Pursuant to Fed. R. Evid. 404(b) (Document No. 272, filed June 24, 2013), and Response of Defendant, Patrick Tronoski, to Government's Motion to Admit Evidence Extrinsic to the Charged Offenses or Pursuant to Fed. R. Evid. 404(b) (Document 241) (Document No. 282, filed June 27, 2013), **IT IS ORDERED**, for the reasons stated in the attached Memorandum dated December 13, 2013, as follows:

1. The part of the government's motion that seeks to admit testimony concerning the relationship between the defendants, witnesses, and cooperators relating to their betting and bookmaking histories that precedes the dates of the conspiracy charged in the indictment is **GRANTED**;
2. The part of the government's motion that seeks to admit the guilty pleas of Joseph Vito Mastronardo, Jr., John Mastronardo, and Edward Feighan in Montgomery County, Pennsylvania, following their 2006 arrests is **GRANTED**;
3. The relief sought in Memorandum of Law in Support of Defendant, Edward Feighan's Motion in Limine, treated by the Court as a motion in limine, is **DENIED**;
4. The Court **DEFERS** ruling on the part of the government's motion that seeks to admit the probation terms of Joseph Vito Mastronardo, Jr. imposed as a result of his 2006 guilty plea. The government is **PROHIBITED** from mentioning the probation terms of Joseph Vito Mastronardo, Jr. in the presence of the jury without leave of the Court;
5. The part of the government's motion that seeks to admit the probation terms of John Mastronardo imposed as a result of his 2006 guilty plea is **DENIED**;
6. The part of the government's motion that seeks to admit Joseph Vito Mastronardo, Jr.'s payment of Schuyler Twaddle's drug rehabilitation expenses is **GRANTED**;
7. The part of the government's motion that seeks to admit two conversations from wiretaps between Joseph Vito Mastronardo, Jr. and Patrick Higgins is **GRANTED**;
8. The part of the government's motion that seeks to admit a copy of the opinion in *Ratzlaf v. United States*, 510 U.S. 135 (1994) is **GRANTED** subject to the **CONDITION** that references to out-of-date elements of structuring and the government's burden of proof on the issue of scienter are redacted. This part of the government's motion is **DENIED** in all other respects;

9. The part of the government's motion that seeks to admit a copy of the opinion in *United States v. Mastronardo*, 849 F.2d 799 (1988) is **DENIED**.

**IT IS FURTHER ORDERED** that the rulings in this Order are **WITHOUT PREJUDICE** to the parties' right to seek reconsideration if warranted by the evidence at trial.

**BY THE COURT:**

/s/ Hon. Jan E. DuBois  
**DuBOIS, JAN E., J.**