

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

UNITED STATES OF AMERICA

v.

MARLIN GROFF

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CRIMINAL NO. 00-310

MEMORANDUM

BUCKWALTER, J.

February 10, 2005

Defendant's post-trial motion raises six issues:

1. The Court erred in denying defense counsel's request for dismissal under the Speedy Trial Act.
2. The Court erred in failing to grant a mistrial as requested by defense counsel resulting from overwhelming prejudice in allowing government exhibit #58 to be read to the jury. The Court's curative instruction in its final charge to the jury could not cure the prejudice that had occurred.
3. The verdict was against the weight of the evidence.
4. The evidence was insufficient to sustain a conviction on each count.
5. The evidence was insufficient to sustain the government's burden of proof regarding the issue of agency between Mr. Groff and his counsel Mark Haltzman, Esquire.

6. Counsel recognizes that the Court has taken Mr. Groff's Motion for Judgment of Acquittal pursuant to Rule 29 under advisement. Should the Court not grant Mr. Groff's request, it is respectfully submitted that the Court will have erred.

With regard to the first issue, the Court made specific findings of fact (N.T. 1/5/04 at 80-87). Based on those facts, which are not in dispute, every continuance was either unopposed by counsel or granted with a finding that the ends of justice required the case to be continued.

The issue with regard to Government Exhibit 58 concerns a letter which was sent by an SBA official to defendant's legal counsel regarding his dispute with SBA. The exhibit (N.T. 1/8/04 at 16-20) should not have been read but when viewed in connection with all the evidence in this case, it was clearly unprejudicial. Moreover, the exhibit was not sent out with the jury and a cautionary instruction was given by the Court with regard to it. (N.T. 1/9/04 at 76).

Issues 3, 4, 5 and 6 raise essentially the same point; namely, that the evidence presented by the government was insufficient to meet its burden of proof.

Based upon my review of the legally admissible evidence as set forth in the record of this case in a light most favorable to the verdict winner, the verdict was neither based upon insufficient evidence nor against the weight of the evidence.

First, evidence was presented that defendant and his wife applied for a Small Business Administration (SBA) loan in the total amount of \$315,000 in April of 1990 and defaulted on the loan so that the SBA had to reimburse the lending institution for 85% of the loan amount and accrued interest totaling approximately \$437,000.

Thereafter, the SBA sought to recover the money and contracted defendant who “wanted to try to do something at that time so he could get rid of his obligation.” (N.T. 2/6/04 at 44). To this end, the SBA provided defendant with a compromise form and defendant provided a financial statement to SBA (*supra*, p. 45). This statement was signed by defendant and his wife and among other things, stated that their Mac-It Corporation stock had no value and was pledged to his (Marlin Groff’s) attorney (N.T. at 50, *supra*). Along with this financial statement, defendant made an offer to settle his liability for \$60,000.

The SBA replied by saying it needed more information on the Mac-It stock to try to ascertain its value. At that time (7/20/92) the SBA received confirmation of the pledge defendant made to his attorney (N.T. at 55).

Nevertheless, SBA still wished to verify the value of the Mac-It stock. Sometime later in the year as evidenced by an SBA note dated 11/2/92 (N.T. at 57), the Harrisburg branch of SBA received a tip that defendant was getting some money; supposedly \$500,000.

The SBA then wrote to defendant’s attorney saying in essence that the sale of the assets in question (for approximately \$500,000) will impact on the SBA’s decision regarding defendant’s compromise proposal (N.T. at 61).

The defendant did receive \$551,481 at a settlement in November of 1992 but directed that \$100,000 be paid to his attorney, over \$160,000 to each of his two children, \$20,000 to the Bible Church, \$10,000 to Kraybill Mennonite Church, leaving approximately \$98,000 (N.T. 1/5/04 at 42-44).

The SBA heard nothing from defendant or his counsel about the \$500,000, so on January 12, 1993, it demanded immediate payment.

On February 19, 1993, the SBA gave notice of intent to foreclose on defendant's residence unless he paid in full by March 15, 1993.

Apparently realizing that the SBA was going to foreclose, defendant's counsel called SBA on March 2, 1993 and said that some of the stock (Mac-It) was placed in the children's name in June of 1992. Then in May of 1993, defendant's attorney sends a lengthy letter (N.T. 1/6/04 at 67-73), essentially saying that the \$500,000 was mostly gone and that defendant will have to reconsider his decision to pay out \$60,000 to the SBA.

The government introduced other evidence tending to show that the money in the children's account was controlled by defendant. The government also introduced financial statements provided by defendant's attorney which were not an accurate picture of defendant's financial status. In brief, the record clearly supports the charges brought in this case, and defendant has failed to demonstrate otherwise.

An order follows.

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ORDER

AND NOW, this 10th day of February, 2005, it is hereby ORDERED that defendant's motion for post trial relief pursuant to Federal Rule of Criminal Procedure 33 (Docket No. 27) is DENIED.

SENTENCING is set for Thursday, February 17, 2005 at 9:30 a.m. in Courtroom 14A, as previously scheduled by notice dated December 20, 2004.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.