UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No.: 13-20371
Honorable Victoria A. Roberts

DOREEN M. HENDRICKSON,

Defendant.

_____/

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO VACATE OR FOR NEW TRIAL ON MULTIPLE GROUNDS

The United States of America, by and through undersigned counsel, submits the following memorandum in opposition to the Defendant's Motion to Vacate or for New Trial on Multiple Grounds (Doc. # 103). For the reasons set forth below, the Court should not disturb the jury's finding that the defendant is guilty of the crime of contempt.

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ISSUE

Whether the Court should vacate the jury's verdict and either enter a judgment of acquittal or order a new trial for the reasons set forth in the defendant's motion.

STATEMENT OF MOST APPROPRIATE AUTHORITY

Federal Rules of Criminal Procedure 29 and 33 are the most appropriate authorities for this issue.

LEGAL STANDARD

Federal Rule of Criminal Procedure 29(c) permits a defendant to move for a judgment of acquittal after the jury has returned a guilty verdict. The trial court should only set aside the jury's verdict "when 'after viewing the evidence in the

light most favorable to the prosecution,' the trial court finds that no rational trier of fact 'could have found the essential elements of the crime beyond a reasonable doubt.'" United States v. Donaldson, 52 Fed. Appx. 700, 706 (6th Cir. 2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). The Court must draw every reasonable inference in favor of the government. United States v. Cecil, 615 F.3d 678, 691 (6th Cir. 2010). A motion for judgment of acquittal should only be granted where the prosecution's failure to meet its burden of proof is clear. United States v. Connery, 867 F.2d 929, 930 (6th Cir. 1989) (quoting Burks v. United States, 437 U.S. 1, 17 (1978)); see also United States v. Abboud, 438 F.3d 554, 589 (6th Cir. 2006) ("A defendant claiming insufficiency of the evidence bears a very heavy burden.").

Federal Rule of Criminal Procedure 33(a) permits the court to "vacate any judgment and grant a new trial if the interest of justice so requires." The "'interest of justice' standard allows the grant of a new trial where substantial legal error has occurred." United States v. Munoz, 605 F.3d 359, 373 (6th Cir. 2010). Motions for new trial under Rule 33 "are not favored and are granted only with great caution." United States v. Garner, 529 F.2d 962, 969 (6th Cir. 1976). The burden is on the defendant to demonstrate that a new trial is warranted. United States v. Davis, 15 F.3d 526, 531 (6th Cir. 1994).

A motion for new trial "may be premised upon the argument that the jury's verdict was against the manifest weight of the evidence." United States v. Hughes, 505 F.3d 578, 592 (6th Cir. 2007). However, "such motions are granted only 'in the extraordinary circumstance where the evidence preponderates heavily against the verdict.'" Id. (quoting United States v. Turner, 490 F.Supp. 583, 593 (E.D. Mich. 1979)). In considering the weight of the evidence for purposes of ruling on a motion for new trial, the court "may act as a thirteenth juror, assessing the credibility of witnesses and the weight of the evidence." Hughes, 505 F.3d at 593.

Motions for new trial under Rule 33 may also be based on other alleged errors at trial, such as statements made by prosecutors or violations of the defendant's constitutional rights. However, courts have long held that the defendant must object to the alleged errors at trial in order to preserve them for a motion for new trial. Crumpton v. United States, 138 U.S. 361, 364 (1891) ("It is the duty of the defendant's counsel at once to call the attention of the court to the objectionable remarks, and request his interposition, and, in case of refusal, to note an exception."); Pugliano v. United States, 348 F.2d 902, 903 n. 4 (1st Cir. 1965) ("A motion for new trial is too late to save an objection that could have been taken earlier.").

DISCUSSION

The defendant moves for a judgment of acquittal or, in the alternative, a new trial, based on the sufficiency of the government's proof at trial as well as alleged misconduct by the government attorneys and by her court-appointed standby counsel. The government will address each of her arguments in turn.

Prosecutor's Statements Regarding Defense Exhibit 562

First, the defendant suggests that government counsel made "false and misleading statements" during her cross-examination of the defendant. Def.'s Mot. at 1 (Doc. # 103, Pg ID 1181). Specifically, the defendant alleges that government counsel improperly stated that various summons enforcement actions arose from the IRS's efforts to audit the defendant's husband. This line of questioning related to Defendant's Exhibit 562, which the Court admitted into evidence during the defendant's direct examination testimony. Exhibit 562 contained documents filed in three civil actions involving Peter Hendrickson. On direct examination, the defendant testified that these civil actions were brought by the government to enjoin Peter Hendrickson from publishing Cracking the Code. Exh. A (Trial Tr. 7/24/14) at 78-81.

In fact, none of the three civil actions referenced in Exhibit 562 were injunction suits. Instead, two of the cases were attempts by the government to enforce civil summonses that an IRS revenue agent had served on Peter

Hendrickson and his company, Lost Horizons, and the third case was brought by Peter Hendrickson to quash a summons that the IRS had issued to PayPal for records of his financial transactions. Government counsel referred to these cases as summons enforcement actions at various points during the trial. For example, when objecting to the admissibility of Exhibit 562 during the defendant's direct examination testimony, government counsel stated at sidebar that the document in that exhibit "actually relate to summons enforcement actions" and not, as the defendant represented, to an injunction suit regarding the book. Id. at 80.

To impeach the defendant's credibility, government counsel, on cross-examination, questioned the defendant about the true nature of these cases. Specifically, the government confronted the defendant with documents marked Government Exhibits 47, 48, and 49, which were documents filed in the summons enforcement actions. The government also provided copies of these proposed exhibits to the Court. Although the Court did not admit these documents into evidence, the Court permitted government counsel to question the defendant about the true nature of these cases. Ultimately, the defendant acknowledged that she "made a mistake" when she testified on direct examination that these cases were injunction suits. Exh. B (Trial Tr. 7/25/14) at 17-18, 21.

Notwithstanding the defendant's admission on cross-examination that the court cases referenced in Defendant's Exhibit 562 related to summons enforcement

actions, and not, as she testified on direct examination, injunction suits, the defendant now argues that government counsel was the one who misled the jury about the nature of these cases. The defendant particularly objects to government counsel's use of the word "audit" to describe the IRS action that gave rise to the summons enforcement actions. However, as described in the documents marked for identification as Government Exhibits 47, 48, and 49, the summonses were served by an IRS revenue agent who was investigating Peter Hendrickson. Because revenue agents are responsible for conducting civil tax audits, it was entirely proper for government counsel to refer to the revenue agent's activities in that manner. See United States v. Peters, 153 F.3d 445, 447 (7th Cir. 1998) (explaining that IRS "Examination Division investigators are known as 'revenue agents'" and that "the Examination Division of the IRS is responsible for conducting civil tax audits").

Confronted with Exhibits 47, 48, and 49, the defendant was forced to acknowledge on cross-examination that the lawsuits referenced in Exhibit 572 were not brought to enjoin publication of Cracking the Code. Exh. B (Trial Tr. 7/25/14) at 15 (Q: "Isn't it true that these three cases you included in Exhibit 562 and talked about yesterday have nothing to do with the IRS trying to stop the IRS from publishing his book?" A: "I just found that out this morning."). And yet,

incredibly, the defendant continues to maintain in the instant motion that these were "government injunction actions." Def.'s Mot. at 2 (Doc. # 103, Pg ID 1182). It is the defendant, not government counsel, who, to this day, continues to deliberately misconstrue the nature of these cases in order to advance her cause. This first ground on which the defendant seeks a judgment of acquittal or a new trial is without merit.

Alleged Omission of Questions by Stand-By Counsel During Direct Examination of Defendant

Prior to the first trial in this matter, the government filed a trial brief in which it proposed that, if the defendant testified at trial, she should be questioned by her stand-by counsel using a predetermined list of questions that she would furnish to her stand-by counsel. Tr. Brief (Doc. # 42). The government submitted that this method was preferable to allowing the defendant to testify in the form of a narrative because a question-and-answer format would permit the government to interpose objections. Id. After the close of the government's case, the defendant indicated that she intended to testify, and the Court confirmed that she would be questioned by her stand-by counsel. Exh. C (Trial Tr. 7/23/14) at 108.

The defendant now alleges that her stand-by counsel failed to ask certain questions that the defendant had provided to him. As a threshold matter, the Court should reject this alleged error as a basis for granting relief under Rules 29 and 33 because the defendant failed to object to her stand-by counsel's actions at trial.

See Pugliano v. United States, 348 F.2d at 903 n. 4 ("A motion for new trial is too late to save an objection that could have been taken earlier."). There is also no indication in the trial record that the defendant made any effort to cure this alleged error during the trial. Notably, the defendant's direct examination concluded on Thursday afternoon, July 24, and her cross-examination did not begin until Friday morning. If the defendant believed there were additional questions that should have been included, she could have brought those questions to her stand-by counsel's attention on Thursday night so that he could ask them on Friday morning.[1] Instead, after being convicted, the defendant raises this issue for the first time.

Even if the Court can properly consider this claim in a Rule 33 motion, a new trial is not warranted "in the interest of justice" on the basis of these allegedly omitted questions because they would have been cumulative of other evidence that the defendant presented at trial. According to the defendant's motion, she intended to have her stand-by counsel ask her about cases from the United States Supreme Court and the Sixth Circuit Court of Appeals on the issue of compelled

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[1] Ordinarily, it would not be appropriate for a defendant to discuss her testimony with her attorney during a break in her testimony. However, the defendant played the role of both lawyer and client during this trial. Recognizing this fact, the Court specifically permitted discussions between the defendant and her stand-by counsel during her direct examination. See Exh. A (Trial. Tr. 7/24/14) at 65.

speech. Def.'s Mot. at 8-10 (Doc. # 103, Pg ID 1188-90). However, the defendant's claim that Judge Edmunds order violated her First Amendment rights because it was tantamount to compelled speech was a centerpiece of her defense at trial. For example, the defendant elicited testimony from several of her witnesses regarding her view that the order was compelling her to swear to something she did not believe. See e.g., Exh. A (Trial Tr. 7/24/14) at 30 (Test. of Tony Wright), 40 (Test. of Kathryn Hendrickson). The defendant herself testified that she was aware of court cases that supported her position. The following exchange occurred at the end of her direct examination:

> Q: Mrs. Hendrickson, do you believe the Government has authority to control or dictate your speech even through an Order by the Court?
>
> A: No, I do not.
>
> Q: Why do you believe that?
>
> A: Because we have a First Amendment in this country.
>
> Q: And do you believe that that position is supported by cases from the Supreme Court and other Courts of the United States?
>
> A: I know that it is.

Id. at 103-04. The defendant also presented her First Amendment argument to the jury during her closing argument, see e.g., Exh. B (Trial Tr. 7/25/14) at 65, and stated that her beliefs were based on Supreme Court rulings, id. at 78.

The defendant had ample opportunity to present her First Amendment argument to the jury, and any additional questioning or documents in support of that defense would have been cumulative. See Fed. R. Evid. 403 (evidence may be excluded if its probative value is substantially outweighed by the needless presentation of cumulative evidence). In light of this fact, and the overwhelming evidence of the defendant's willfulness, the defendant cannot demonstrate that she was prejudiced by her stand-by counsel's alleged failure to ask her additional questions that may have related to her beliefs. The Court should deny her request for a new trial on this basis.

Evidence of Willfulness

The defendant next challenges the sufficiency of the government's evidence of willfulness, one of the elements of the charged offense. Specifically, she argues that the government failed to present evidence to rebut her claim that she acted in good faith when she failed to comply with Judge Edmunds' order. Indeed, as the jury was instructed: "the good faith of the Defendant is a complete defense to the charge of criminal Contempt because good faith is simply inconsistent with willfulness." Exh. B (Trial Tr. 7/25/14) at 95. However, the government presented overwhelming evidence at trial to permit the jury to conclude that the defendant acted willfully, and not in good faith.

First, the defendant testified that her views about the tax laws are based on, among other things, her husband's book, Cracking the Code. However, at trial, the government demonstrated that various courts and government agencies denounced the theories in this book as frivolous and improper. The Department of Justice, Tax Division, in its Motion for Summary Judgment in the civil action, stated that the book contains "a fallacious interpretation" of the internal revenue code and that the types of "stale, tax-protester argument[s]" advanced by the Hendricksons have "been rejected numerous times over the years." Gov. Exh. 13 at p. 14. Judge Edmunds, in granting an injunction against the Henricksons, similarly found that the Hendricksons' returns were based on "frivolous and false" theories about the tax laws. Gov. Exh. 15 at p. 6. The Sixth Circuit, in issuing an order upholding the injunction, stated that Cracking the Code "advocates improper schemes." Gov. Exh. 17 at p. 1.

Next, the defendant testified that she believed that Judge Edmunds' order violated her First Amendment rights because it was tantamount to compelled speech. In response, the government demonstrated that the defendant's First Amendment claim had been explicitly rejected by the Sixth Circuit. During the cross-examination of the defendant, the government introduced an order of the Sixth Circuit Court of Appeals upholding Judge Edmunds' decision to hold the Hendricksons in civil contempt. To challenge the civil contempt order, the

Hendricksons argued that compliance with the injunction would violate their First Amendment rights. In its opinion dated November 22, 2011, which was served on the defendant, the Sixth Circuit responded to this claim:

> The Hendricksons also contend that their constitutional rights would be violated by compliance with the order, because they would be forced to swear to a fact they did not believe was true, and that it would infringe upon their First Amendment right to petition the government for redress of their grievance regarding their tax obligation. However, we have rejected similar tax-protestor arguments and find no merit to them in this case.

Gov. Exh. 45 at p. 5. This evidence supplied an ample basis for the jury to conclude that the defendant did not have a good faith belief that the injunction violated her First Amendment rights.

The strength of the government's willfulness evidence, and the weakness of the defendant's good faith defense, is summarized in the following exchange between government counsel and the defendant during her cross-examination:

> Q: Do you believe that [the IRS's] reading of the tax laws which shows that you owe money for those years [2002 and 2003] is erroneous?
>
> A: I believe that's erroneous and yes, they did the proper thing by sending the Notice of Deficiency so that we can go and litigate it in Tax court.
>
> Q: So the individuals at the IRS responsible for issuing you that Notice are wrong in their conclusion that you owe taxes for those years?
>
> A: I believe they're wrong, but we're going to get a chance to figure it out actually in a Tax court where it belongs.

Q: And when the Department of Justice filed a civil Complaint against you in which they set forth their conclusion that you owed taxes for 2002 and 2003, were they wrong in their interpretation of the tax laws?

A: When you said the Department of Justice?

Q: Yes. When the Department of Justice, Mr. Metcalfe and the Tax Division brought suit against you in front of Judge Edmunds and in that Complaint said that you and your husband had taxable income for 2002 and 2003, do you believe that Mr. Metcalfe and the Tax Division were using a wrong interpretation of the law?

A: Yes I do, in the same fashion that Catholics and Lutherans don't have the same beliefs. Both of them would say the other is wrong, so you're not going to convince one person that they're wrong just by saying it.

Q: Do you think Judge Edmunds' Order reflects the fact that she misunderstands the tax laws?

A: I'm not sure that she ever read them, but maybe she did.

* * *

Q: And when the 6th Circuit Court of Appeals upheld Judge Edmunds' Order, do you think they got the law wrong too?

A: I'm not sure they ever read our appeal or at least not thoroughly.

THE COURT: That's not the question. Do you think the 6th Circuit got it wrong?

THE WITNESS: Yes.

Q: (By Ms. Siskind continuing) So you believe that the Internal Revenue Service, the Department of Justice, Judge Edmunds and then the three-judge panel of the 6th Circuit Court of Appeals, they all don't understand the law, but you do?

A: You're deploying a [logical] fallacy here appeal to authority. Just because people in black robes or nice suits --

THE COURT: (Interjecting) That's not the question, Mrs. Hendrickson. That's not the question. The question was did they all get it wrong and did you get it right? That's all.

THE WITNESS: They all disagree with me, yes.

Q: (By Ms. Siskind continuing) You think they're all wrong in their reading of the tax laws?

A: Yes, I do.

Q: But you are correct?

A: Yes, I do believe that unequivocally.

Exh. B (Trial Tr. 7/25/14) at 35-37. Clearly, nothing the defendant was ever told by a court or a government agency was going to cause her to change her mind. As the government argued in closing: that is not good faith. That is willfulness.

Viewing the evidence in the light most favorable to the government, a reasonable jury could readily have concluded that the defendant willfully violated Judge Edmunds' order. Accordingly, a motion for judgment of acquittal pursuant to Rule 29 is not warranted. Further, the jury's verdict was not against the manifest weight of the evidence. Instead, the record is replete with examples of occasions on which the defendant was told she was wrong. Accordingly, the Court should deny the defendant's request for relief under Rule 33 on this basis as well.

Evidence of Violation of Order

Filing of 2008 Tax Return

The defendant claims there was insufficient evidence at trial to permit the jury to conclude that the defendant violated the injunction by filing her 2008 tax return. Def. Mot. at 17 (Doc. # 103, Pg ID 1197). As a preliminary matter, the government points out that the indictment charged the defendant with violating the injunction in two ways: (1) by filing a false 2008 tax return, and (2) by failing to file amended tax returns for 2002 and 2003. Consistent with Sixth Circuit Pattern Criminal Jury Instruction 8.03B, the Court instructed the jury:

> The Indictment accuses the Defendant of committing the crime of Contempt in more than one possible way. The first is that she filed a 2008 U.S. Individual Income Tax Return for single and joint filers with no dependents, Form 1040-EZ which falsely reported that she earned zero wages in 2008.
>
> The second is that she failed to file with the IRS amended U.S. Individual Tax Returns for 2002 and 2003.
>
> The Government does not have to prove both of these for you to return a guilty verdict on this charge. Proof beyond a reasonable doubt of any one these ways is enough. In order to return a guilty verdict, all 12 of you must agree that at least one of these has been proved. However, all of you need not agree that the same one has been proved.

Exh. B (Trial Tr. 7/25/14) at 99. Accordingly, the jury could have convicted the defendant of the crime of contempt even if none of them found that the defendant's 2008 tax return was a violation of the injunction. However, as set forth below,

there was ample evidence to permit the jury to conclude that the defendant violated the injunction in both of the ways charged in the indictment.

Judge Edmunds found that the Hendricksons' 2002 and 2003 income tax returns, on which they "zeroed out" the income they had received from their employers, were based on a false and frivolous theory set forth in Cracking the Code. Gov. Exh. 15 at pp. 5-6. Not only did Judge Edmunds order the defendant and her husband to amend these returns and accurately report their wages, but Judge Edmunds also prohibited the Hendricksons from filing any tax returns or other documents with the IRS in the future that were based on that same theory. Id. at 7-8.

The evidence at trial demonstrated that the defendant's 2008 tax return was false in the same manner as her 2002 and 2003 returns. For 2002 and 2003, the defendant's husband submitted a document called a Form 4852, on which he purported to "correct" the Form W-2 issued to him by his employer, Personnel Management, Inc. Gov. Exhs. 1 (2002 Form 1040) & 4 (2003 Form 1040). Although Personnel Management, Inc. submitted Forms W-2 to the government for 2002 and 2003 reporting that it had paid Peter Hendrickson wages in the amounts of $58,965 and $60,608, respectively, Hendrickson filled out Forms 4852 on which he reported that he received $0 in wages for each year. Gov Exhs 1, 2, & 13 at pp. 27-28 (Forms W-2). On the 2002 and 2003 returns, the Hendricksons

requested a refund of all taxes withheld from Peter Hendrickson's wages. Gov. Exhs. 1 & 4.

The defendant's 2008 tax return follows the same scheme that the Hendricksons used when they filed their 2002 and 2003 returns. In 2008, the defendant received $59.20 in wages from Monarch Consulting for her work as a movie extra. Nonetheless, she filled out a Form 4852 on which she "corrected" her wages to $0, and submitted that form along with her 2008 tax return. Gov. Exh. 8 (2008 Form 1040EZ) & 33 (Form W-2 from Monarch Consulting, Inc.). On that return, the defendant requested a refund of all taxes withheld from her wages. Gov. Exh. 8.

Viewing these facts in the light most favorable to the government, a reasonable jury could conclude that the defendant's 2008 tax return was a violation of the injunction. Accordingly, relief is not warranted under Rule 29. Similarly, the Court should not grant a new trial because the evidence does not preponderate heavily against the verdict.

Failure to File Amended Returns

The defendant also argues that there was insufficient evidence presented at trial to permit the jury to find that she violated Judge Edmunds' order by failing to file amended 2002 and 2003 tax returns because her compliance with that order was precluded by impossibility. However, the evidence established that it was

possible for the defendant to file amended returns for those years, but she intentionally chose not to do so.

The Court instructed the jury as follows regarding the defendant's impossibility defense: "An inability to comply with an Order of the court is a complete defense to the charge, a charge of Contempt." Exh. B (Trial Tr. 7/25/14) at 96. This instruction was based on United States v. Bryan, 339 U.S. 323 (1950), in which a defendant was charged with failing to produce documents to a Congressional committee in response to a subpoena. The Court stated:

> Ordinarily, one charged with contempt of court for failure to comply with a court order makes a complete defense by proving that he is unable to comply. A court will not imprison a witness for failure to produce documents which he does not have unless he is responsible for their unavailability, or is impeding justice by not explaining what happened to them.

Id. (citations omitted). The Third Circuit has clarified that "[t]he Bryan defense of inability to comply . . . refers to physical impossibility beyond the control of the alleged contemnor." Inmates of Allegheny County Jail v. Wecht, 874 F.2d 147, 152 (3d Cir. 1989) (vacated on other grounds). Clearly, the type of "impossibility" defense approved by the Supreme Court in Bryan is reserved for circumstances under which a defendant is actually unable to comply with an order despite her best intentions to do so, such as when she does not have the documents sought by subpoena. This is not remotely such a case.

The jury in this case heard evidence and saw documents that demonstrate the defendant has been aware of Judge Edmunds' order since May 2007. The government established that the defendant participated in hearings at which the injunction was discussed, see e.g. Gov. Exhs. 20 (Tr. of 6/10/10 Hr'g) & 25 (Tr. of 12/15/10 Hr'g), and received an order from the Sixth Circuit Court of Appeals upholding the injunction, Gov. Exh. 17. Department of Justice, Tax Division Trial Attorney Daniel Applegate testified that the defendant submitted documents that she claimed to be amended returns, but that these documents could not be processed by the IRS because she altered the jurat on one set of returns (Government Exhibits 22 and 23) and disavowed the contents of the other (Government Exhibits 27 and 28). Exh. C (Trial Tr. 7/23/14) at 75, 83.

There was no evidence that the defendant was precluded from complying with the injunction and filing amended returns by virtue of some mental or physical incapacitation. Instead, she simply did not want to comply with the order because it would have required her to contradict her husband's perverse interpretation of the tax laws, under which she was not required to pay taxes. The cross-examination of the defendant's ex-husband, Dale Anthony Wright, established that the defendant could have complied with the order if she wanted to, but instead chose to express her disagreement with it by failing to file amended returns:

Q. You just testified that Mrs. Hendrickson expressed she wasn't sure whether she could comply with Judge Edmunds' Order, is that correct?

A. Yes.

Q. Was there -- was Mrs. Hendrickson incapacitated at that time that she couldn't sign her name on a tax return to your knowledge?

A. Not to my knowledge.

Q. And you testified that she was extremely upset about the Order.

A. Yes.

Q. She was extremely upset that a Federal Judge was ordering her to file amended tax returns?

A. No; compelling her to sign a document that she didn't agree with.

Q. So Mrs. Hendrickson did not agree with what Judge Edmunds was ordering her to do?

A. She was being ordered to sign something against her will, that's correct.

Q. Which she did not agree with Judge Edmunds' Order?

A. She couldn't sign something under the law of Perjury, and that was the issue. She was going to perjure herself if she signed something that she didn't believe.

Q. My question, Mr. Wright, is did Mrs. Hendrickson express to you that she disagreed with what Judge Edmunds was ordering her to do?

A. Yes.

Exh. A (Trial Tr. 7/24/14) at 31-32.

Real impossibility is a defense to the crime of contempt, but mere disagreement with a court order is not. Viewed in light most favorable to the government, the evidence at trial established the defendant failed to file amended returns because she disagreed with what Judge Edmunds required her to do, and not because some factor outside of her control precluded compliance. Accordingly, a reasonable juror could conclude that the defendant violated the injunction by failing to file amended returns. Additionally, the verdict was not against the weight of the evidence, and therefore a motion for new trial is not warranted.

Lawfulness of Judge Edmunds Order

Finally, the defendant submits that the government failed to establish that Judge Edmunds' order was lawful. However, as the Court ruled in rejecting the defendant's proposed jury instructions, the legality of the court order is not an element of the crime of contempt. See e.g., United States v. Allen, 73 F.3d 64, 68 (6th Cir. 1995) (holding that knowledge of a court order and intentional disobedience of that order established the crime of contempt). In fact, the jury was properly instructed: "It is not a defense to the crime of Contempt that the Court Order that the Defendant is accused of violating was unlawful or unconstitutional." Exh. B (Trial Tr. 7/25/14) at 96. This instruction was based on United States v. United Mine Workers of America, 330 U.S. 258, 294 (1947), in which the

Supreme Court held that a court order must be obeyed unless and until that order is declared unlawful either by the court that issued it or by a higher court.

Despite appeals to the Sixth Circuit and the Supreme Court, no judge has ever declared the injunction to be unlawful. See, e.g., Exh. C (Trial Tr. 7/23/14) at 85. This contempt prosecution was not a proper outlet for the defendant to challenge the lawfulness of that order. Therefore, the government was not obliged to present evidence as to the legality of the order, and the jury was not required to find that the order was lawful in order to convict the defendant.

CONCLUSION

Viewed in the light most favorable to the government, the evidence presented at trial permitted a reasonable jury to conclude, beyond a reasonable doubt that the defendant was aware of Judge Edmunds' May 2, 2007 Amended Judgment and Order of Permanent Injunction and willfully violated it by failing to file valid amended tax returns for 2002 and 2003 and by filing a false tax return for 2008. Additionally, the defendant has not pointed to any errors in the record that warrant a new trial in the interest of justice, and has failed to establish that the verdict was against the weight of the evidence. Accordingly, the Court should deny the defendant's requests for a judgment of acquittal under Rule 29 and a new trial under Rule 33.

Respectfully submitted,
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