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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10 United States of America,
11
12 Plaintiff,
13
14 v.
15 Janice Sue Taylor,
16
17 Defendant.

No. CR-10-0400-PHX-MHM
**GOVERNMENT’S RESPONSE TO
DEFENDANT’S MOTION FOR
JUDGMENT OF ACQUITTAL AND
MOTION FOR NEW TRIAL**

16 The United States, through undersigned counsel, opposes Defendant’s motion for
17 judgment of acquittal notwithstanding the jury’s guilty verdict, and her motion for a new trial.
18 As argued below, the evidence at trial was overwhelming, and Defendant fails to articulate any
19 errors that warrant a new trial.

20 **I. Law and Argument.**

21 **A. Defendant’s Motion For Acquittal Should Be Denied Because The Evidence
At Trial Was Overwhelming.**

22 Defendant moves for an order of acquittal, claiming that the evidence at trial was
23 insufficient. *See* Fed. R. Crim. Proc. 29(c)(1) (allowing motion for acquittal within 14 days of
24 guilty verdict). “There is sufficient evidence to support a conviction if, viewing the evidence in
25 the light most favorable to the prosecution, any rational trier of fact could have found the
26 essential elements of the crime beyond a reasonable doubt.” *United States v. Gonzalez*, 528 F.3d
27 1207, 1211 (9th Cir. 2008).
28

1 Here, the evidence at trial was overwhelming. The United States presented escrow files
2 to show that Defendant earned real estate commissions during the charged years, and it presented
3 IRS records to show that she failed to file timely income tax returns to report this income. In
4 addition, Revenue Agent Cheryl Bradley testified that, based on the evidence of income
5 introduced at trial, Defendant owed income taxes and was required to file returns. Other than
6 Defendant's legal arguments about the definition of income, these factual matters were largely
7 uncontested.

8 The jury also heard from numerous witnesses that Defendant's acts were willful. For
9 example, the jury heard about Defendant's past tax filings, which showed that she was aware of
10 her obligations; the lies she told to IRS Revenue Agent Cheryl Bradley and others to conceal her
11 income; and the layers of bogus trusts she used to hide her income and assets. Finally, the jury
12 saw ample evidence of Defendant's affirmative acts of evasion, including her use of the bogus
13 trusts, her diversion of commission income into alternate bank accounts, and her extensive use
14 of cash and cashier's checks.

15 Other than a generic motion for post-verdict acquittal, Defendant fails to make any
16 argument about why the evidence at trial was insufficient. Accordingly, her motion for acquittal
17 should be denied.

18 **B. Defendant's Motion For A New Trial Should Be Denied Because She Fails To**
19 **Articulate Any Errors.**

20 The Court may grant a motion for new trial "if the interest of justice so requires." *See*
21 *Fed. R. Crim. Proc. 33(a); see also United States v. Moses*, 496 F.3d 984, 987 (9th Cir. 2007).
22 Here, Defendant alleges no new evidence, and she fails to show any errors that warrant a new
23 trial.

24 **1. The Court Properly Granted Defendant's Request To Represent Herself.**

25 Defendant argues that she did not knowingly and intelligently choose to represent herself
26 at trial, and that the Court should have granted her last-minute request for a continuance. The
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28

1 Court already addressed these matters at length, and the United States agrees with the Court's
2 analysis in the April 18, 2011, order (CR 243) denying her motion to continue.

3 **2. Defendant Was Convicted By A Properly Empaneled Jury.**

4 Defendant contends that she was denied a jury of her peers because "[t]here was a
5 'systematic and intentional exclusion' of all Citizens of Arizona" and "free enterprise business
6 owners." Mot. 2-3 (citation omitted). Defendant moved to strike jurors for cause and exercised
7 her peremptory strikes, and she cites no evidence that Arizonans or small-business owners were
8 systematically excluded. On the contrary, all of the jurors were residents of Arizona, and at least
9 one of the jurors selected was a small-business owner.^{1/}

10 **3. Defendant Had Access To All Exculpatory Evidence.**

11 The United States exceeded its discovery obligations in this case, and Defendant provides
12 no evidence that any exculpatory material was withheld. Defendant also complains because her
13 exhibits were not admitted into evidence, but she does not articulate any particular error in the
14 Court's decisions excluding the material. The mere fact that Defendant considers certain
15 evidence exculpatory does not, of course, render it admissible. *See, e.g., United States v.*
16 *Salerno*, 505 U.S. 317, 321-24 (1992) (discussing admissibility under Fed. R. Crim. Proc.
17 804(b)(1) of former testimony of unavailable witness).

18 Defendant also asserts that the United States withheld exculpatory material from the
19 grand jury, and specifically mentions Government's Exhibit 151. It is the policy of the United
20 States to present substantial exculpatory material to the grand jury. *See* U.S. Attorney's Manual
21 § 9-11.233. Undersigned counsel cannot disclose matters occurring before the grand jury, *see*
22 Fed. R. Crim. Proc. 6(e)(2)(B)(vi), but Defendant provides no evidence that this material—or
23 any other exculpatory material—was withheld from the grand jury. Even if it was, this is not a
24 basis for a new trial. *See United States v. Mechanik*, 475 U.S. 66, 73 (1986) (holding that

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26 ^{1/} Undersigned counsel's notes reflect that Juror #8 owns and operates multiple
27 McDonald's restaurant franchises. Juror #8 was selected to serve, but she was later excused after
28 accidentally overhearing Defendant talking to someone else in the courthouse about taxes.

1 violation of Fed. R. Crim. Proc. 6(d) during grand jury presentation was harmless in light of
2 jury's guilty verdict); *United States v. Isgro*, 974 F.2d 1091, 1096 (9th Cir. 1992) (holding that
3 failure to present exculpatory material to grand jury is not a basis for dismissal of indictment).

4 **4. Defendant's Residency And Citizenship Are Not Jurisdictional Requirements.**

5 Defendant challenges this Court's jurisdiction, claiming that she is an Arizona citizen and
6 not a "federal citizen." This Court has already rejected Defendant's jurisdictional challenges (CR
7 119, 179, 185, 195), and the Ninth Circuit has rejected similar arguments from tax protestors in
8 the past. *See United States v. Hanson*, 2 F.3d 942, 945 (9th Cir. 1993) (affirming district court's
9 jurisdiction over tax protester claiming to be natural-born citizen of Montana). The Indictment
10 alleges violations of 26 U.S.C. §§ 7201 and 7206, which are tax offenses against the United
11 States, and this Court has jurisdiction over the case pursuant to 18 U.S.C. § 3231. The Court also
12 had personal jurisdiction over Defendant: she is named in the March 30, 2010, Indictment; she
13 was properly served with a summons on April 5, 2010; and she made her first appearance on
14 April 14, 2010. (CR 1, 4, 5.)

15 Defendant's residency and citizenship are irrelevant to this Court's jurisdiction. *Cf.*
16 *United States v. Alvarez-Machain*, 504 U.S. 655, 657 (1992) (affirming personal jurisdiction
17 over Mexican citizen and resident who was forcibly kidnaped from his office in Mexico); *United*
18 *States v. Anderson*, 472 F.3d 662, 666-67 (9th Cir. 2006) (affirming personal jurisdiction in tax-
19 related case over defendant extradited from Costa Rica). Furthermore, her arguments about
20 citizenship are frivolous and sanctionable. *See United States v. Masat*, 948 F.2d 923, 934 (5th
21 Cir. 1991) (rejecting as frivolous defendant's claim that the district court lacked personal
22 jurisdiction because he was a "non-citizen" "freeman"); *United States v. Gerards*, 999 F.2d
23 1255, 1256-57 (8th Cir. 1993) (imposing sanctions against appellants based, in part, on frivolous
24 claim "that they are not citizens of the United States, but rather 'Free Citizens of the Republic
25 of Minnesota'").

1 **5. Revenue Agent Cheryl Bradley’s Testimony Was Not Hearsay.**

2 Defendant contends that Agent Bradley’s testimony was hearsay because it was based on
3 information provided to her by someone else. Defendant cites no authority for this claim. The
4 United States notified Defendant well in advance of trial that it intended to present Agent
5 Bradley as its expert witness, and her testimony about the relevant tax consequences and tax
6 calculations was based on the testimony and exhibits admitted during trial. As explained on
7 pages four and five of the United States’ trial brief (CR 235), this type of testimony is wholly
8 appropriate. *See, e.g., United States v. Marchini*, 797 F.2d 759, 765-66 (9th Cir. 1986) (IRS
9 agent’s expert witness testimony properly admitted); *United States v. Schafer*, 580 F.2d 774, 778
10 (5th Cir. 1978) (same).

11 **6. Defendant Had An Opportunity To Cross-Examine All Government
12 Witnesses.**

13 Defendant complains generally that “[a]ll witnesses testified on personal opinion,” that
14 the Court admitted improper hearsay evidence, and that the government witnesses did not
15 understand the Internal Revenue Code. Defendant had a full opportunity to cross-examine the
16 witnesses, object to their testimony, and present her own evidence. She articulates no particular
17 error that warrants a new trial.

18 **7. Special Agent Dave Votaw’s Presence Throughout Trial Was Appropriate.**

19 On page five of its trial brief, the United States requested that the case agent, IRS Special
20 Agent Dave Votaw, remain in the courtroom throughout trial as a representative of the
21 government under Rule 615(2). Fed. R. Evid. 615(2); *In re United States*, 584 F.2d 666, 667 (5th
22 Cir. 1978) (granting petition for writ of mandamus to overturn district court’s ruling excluding
23 from the courtroom a federal agent who had been involved in preparation of the case). The
24 Court’s decision to permit this is not error.

25 **8. The Court Gave Appropriate Jury Instructions, And Did Not Mislead The
26 Jury In Its Income Instruction.**

27 Defendant complains generally about the jury instructions, but she points to no particular
28 instruction that the Court refused to give and provides no authority for support. Furthermore, the

1 Court's instruction on the definition of "income" was accurate and helpful to the jury, in light
2 of Defendant's attempts to argue the law. The parties have stated their positions on the jury
3 instructions, and Defendant can re-urge any of her objections on appeal. Her general complaints
4 are insufficient to warrant a new trial.

5 **9. The Court Properly Limited Defendant's Closing Statement.**

6 Defendant complains that she was given less time than the United States to make her
7 closing argument. The Court has the discretion to limit the time allotted for closing arguments.
8 *See Barnard v. United States*, 342 F.2d 309, 321 (9th Cir. 1965).

9 Undersigned counsel's notes indicate that the Court told Defendant she would have one
10 hour for her closing argument, and when she ran out of time the Court granted her an additional
11 ten minutes. Defendant used her time to violate nearly every rule of closing argument: 1)
12 encouraging the jury to consult the internet, 2) arguing about the applicable law, 3) referring to
13 facts not in evidence, 4) attempting to evoke the jury's sympathy, and 5) speaking about her
14 personal beliefs despite her decision to not testify. The Court did not err.

15 **II. Conclusion.**

16 The evidence at trial was overwhelming, and Defendant fails to articulate any errors that
17 warrant a new trial. Accordingly, Defendant's motions for acquittal and new trial should be
18 denied.

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20 Respectfully submitted this 26th day of May, 2011.

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23 District of Arizona

s/ James Knapp

24 FRANK T. GALATI
25 JAMES R. KNAPP
26 Assistant U.S. Attorneys

1 Certificate of Service

2 I hereby certify that on 5/26/2011, I electronically transmitted the attached document to the
3 Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic
Filing to the following CM/ECF registrants:

4 Susan Anderson

5 In addition, I mailed copies of the attached document to the following:

6 Janice Sue Taylor
3341 Arianna Ct.
7 Gilbert, AZ 85298

8 *s/ James Knapp*

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