

CR-10-00757-PHX-ROS, June 21, 2012

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

08:25:49

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5	United States of America,)			
6)			
7	Plaintiff,)			
8	vs.)			
9)	CR10-00757-PHX-ROS		
10	James R. Parker,)			
11)			
12	Defendant.)			
13)	June 21, 2012		
14)	8:43 a.m.		
15)			
16)			
17)			
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BEFORE: THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE
REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - Day 9

(Pages 1318 through 1369)

08:25:49

Official Court Reporter:
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08:25:49

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

08:25:49

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MISCELLANEOUS NOTATIONS

08:25:49

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A P P E A R A N C E S

08:25:49

1
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08:25:49

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P R O C E E D I N G S

08:25:49

(Court was called to order by the courtroom deputy.)

(Proceedings begin at 8:43.)

THE COURT: Okay. I received the government's memorandum regarding Rule 29, the defendant's response.

08:43:39

Let me hear from the government concerning the defendant's response.

MR. SEXTON: Given the nature of the response being one of argument and given the nature of this being a Rule 29 proceeding and that the evidence construed in the light most favorable to the government and the inferences are to be construed at this time in the light most favorable to the government, the balance of their reply and memorandum is one of argument that they think that different things should be interpreted a different way. And at this stage, that is for closing argument and ultimately for the jury to weigh and decide the evidence.

08:44:03

08:44:22

Other than that, Judge, I thought it was just arguments and our memorandum to you, more specifically, each element and the evidence that has come in and we would ask for you to deny the Rule 29.

08:44:39

THE COURT: And Mr. Minns?

MR. MINNS: Yes, thank you, Your Honor.

What we did was specifically obey the Court's order and I think what the government did was sort of ignore it.

08:44:57

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1 Their whole entire motion has no law in it. It is all
2 argument. So we received it at 2:30. We were ordered to
3 respond to it and most of the response is, in fact, responding
4 to argument. But we did cite -- we have law in ours. We cited
5 *Murdock*, the progeny comes from that is *Cheek*, *Powell* and
6 *Moran*. *Powell* and *Moran* are Ninth Circuit. On the issues of
7 willfulness which I -- I may have misunderstood. I thought the
8 Court ordered the government to address specifically the issue
9 of willfulness.

10 So I argued a few of the issues but it just -- they
11 just ignored the Court on that. There's not one iota interest.

12 What I will do now, with the Court's permission, is
13 make the balance of the Rule 29. I only responded to what they
14 filed because those were the instructions.

15 THE COURT: Okay. Go ahead.

16 MR. MINNS: Well, the first part of this entire case,
17 and the chief that I begin to focus on, is the issue of
18 willfulness. There is no evidence of Jim Parker's knowledge
19 that anything he did was illegal at any time, none. The
20 government has the duty to explain what the accused citizen is
21 supposed to do, then they have the duty to prove that he
22 understands that duty, and then they have the duty to prove a
23 deliberate intent to violate that duty. And they have just
24 ignored those responsibilities and they have ignored the
25 instructions to prove willfulness.

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08:45:03

08:45:19

08:45:36

08:45:59

08:46:25

08:46:48

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1 What happened and as it becomes clear, too, and I 08:46:52
2 confess that the government's case is murky for me, too, Your
3 Honor. I did not understand the theory of the case. And as it
4 evolved, I began to realize the basis of the case.

5 The basis of the case was this feud between the 08:47:07
6 Revenue agent, Wedepohl, who hated Robinson. It started off
7 with his accusations that Robinson was bad. And they threw us
8 a curve ball really and we took it. We start looking into the
9 ethics of Mr. Robinson, because the government filed an ethics
10 complaint and the government filed a criminal action, but 08:47:32
11 nothing happened and there's no evidence that anything
12 happened.

13 The government's case is primarily built around the
14 accusations that Wedepohl stated that Greg Robinson lied on
15 some of these letters and forms and things and did dishonest 08:47:48
16 things.

17 I suspect they never charged Mr. Robinson because
18 they don't have a case against Mr. Robinson. But I am not here
19 to defend Mr. Robinson. I think the Court should, if this were
20 the evidence in the case against Mr. Robinson, all of the 08:48:06
21 evidence is against Mr. Robinson. The Court should direct a
22 verdict of acquittal for Mr. Robinson because there's no
23 evidence that he knew anything that he said was wrong, that
24 anything that he said was wrong. There may have been
25 exaggerations as he's advocating a position. There doesn't 08:48:22

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1 appear to be any concealment. 08:48:29

2 The government knows about the Carefree home. They
3 just disagree legally and they disagree legally through the
4 improper solicitation of those opinions from two agents who
5 aren't trained in title work and who just say that Mr. Robinson 08:48:44
6 is wrong on the law.

7 So, then, the next question goes, can you impute the
8 wild, unfair allegations against Mr. Robinson to his client?
9 Well, when they were in the civil arena, yes. The client is
10 responsible for the mistakes of his attorney in civil court, in 08:49:06
11 the tax court. He has to pay penalties and interest if his
12 attorney makes mistakes.

13 But in the criminal court, no. You do not impute it
14 to the client. The client must be involved, must know, must
15 have personal knowledge of all of the willfulness and 08:49:28
16 everything else and he must adopt it for the criminal intent
17 and bad purposes, as *Murdock* says, to consciously disobey a law
18 which he clearly understands.

19 The government didn't even try to do that. There is
20 no evidence at all that Jim Parker understands any of these 08:49:44
21 forms. In fact, the one thing the government did prove beyond
22 a reasonable doubt was that their experts did not understand
23 these forms. That alone, these are extremely complicated forms
24 but they shouldn't produce experts who don't understand their
25 own forms in this courtroom. 08:50:06

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1 There's no possibility to get willfulness out of
2 this. They will create brand new case law. The Ninth Circuit
3 has been a pioneer in willfulness. The *Powell* case was the
4 very first to interpret it after *United States v. Cheek*.
5 There's no possibility of that.

08:50:09

08:50:24

6 I cannot imagine that that would be sustained unless
7 the Ninth Circuit wants to lower the standard and switch to the
8 opposite direction. I do not even believe this would be
9 sustained in the First Circuit, which is the hardest of the
10 circuits on the issue of willfulness in the proof. I just
11 don't see it happening.

08:50:38

12 So that's the first thing. They are just dead wrong
13 on the issue of willfulness and the law and the Court pointed
14 that out. And as I started briefing it for the Court and
15 reading it, I've readjusted my thinking for my -- if we're
16 unsuccessful in Rule 29, I readjusted the evidence we're going
17 to respond to. We will be far brief now because everybody on
18 my team realized if they had not brought it forward -- we're
19 not missing the boat here.

08:50:54

20 We didn't understand the case. If they hadn't
21 brought it forward for the Court to understand it, the jurors
22 aren't going to understand it. And if the jurors don't
23 understand it, as a matter of law, they didn't explain their
24 case and their position. That's the first reason for the Rule
25 29, Your Honor. They have shown no willfulness at all of Jim

08:51:19

08:51:32

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1 Parker. They have shown, typically, on a tax evasion case, of 08:51:37
2 course they would show someone tell somebody, "I left this off
3 because I'm going to beat the government," or he told somebody
4 else or they charged Mr. Robinson as co-conspirator and
5 Mr. Robinson would say, "Oh, he did this and that and the other 08:51:51
6 and, yes, we both knew it was wrong," or something like that.

7 But the way they have charged this case and the way
8 they presented this case, there's no direct statements of Jim
9 Parker whatsoever of any kind, no indicia of his interest. The
10 only thing is that he did what lawyers told him. The record is 08:52:14
11 filled with government exhibits showing legal advice and
12 accounting advice and reliance on counsel. That is what the
13 record shows. It shows no intervention whatsoever and no
14 deviation from legal advice whatsoever by Mr. Parker.

15 The government then goes on to say, highly improperly 08:52:36
16 and if it continues -- well, it's highly improper. They
17 suggest that the resolution of the tax court issue means that
18 he was false. There was no findings of falsity at all. It was
19 a settlement, a compromise. There were no penalties for false
20 statement. There were no penalties issued for fraudulent 08:52:59
21 return or anything else. It was resolved amicably. Maybe not
22 very well. Maybe not even competently, but it was resolved and
23 the government's issue there is since he signed that, that
24 means he's a liar. He's a liar and lied on his tax returns.

25 If that were the basis of knowledge or willfulness, 08:53:22

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1 then that means that every single person in the United States
2 who signs a stipulation in tax court has committed willful
3 violation of the tax code. It's absolutely astounding and
4 would not hold up anywhere. It would make us all laughing
5 stock to suggest that.

08:53:26

08:53:42

6 And when the government suggests that over and over
7 again throughout their evidence and testimony, this man is a
8 liar. His state of mind, the stipulation saying he was wrong.
9 He's calling every citizen that makes a civil agreement with
10 the government a liar.

08:53:57

11 Of course the standard of proof is entirely
12 different. It's not beyond a reasonable doubt in tax court and
13 the burdens are very different, too. To try to use an honest
14 settlement agreement which the taxpayer entered into at the
15 advice of counsel as type of willfulness, that's the closest
16 anything. It's just a misconstruction of the law.

08:54:18

17 As a matter of law, it shows no culpableness unless
18 the tax court judgment made a finding of fraud or false
19 statement which it did not.

20 So the government's premise is just false. We go to
21 some troubling things, the question of whether or not they have
22 proven that assets under his control or influence were
23 sufficient to pay off the entire amount of the tax debt, which
24 the figures show, with penalties and interest, approaching \$4
25 million. The only possible way that that could be construed is

08:54:37

08:54:58

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1 if the government were to have proven, which they could not do, 08:55:04
2 that the \$6 million belongs to Jim Moran (sic), the whole
3 thing, not the profit, which is less than a million dollars,
4 but the whole \$6 million purchase. They can't do that.

5 So they can't even show the ability to pay. The only 08:55:19
6 thing where he had the ability to pay were the two smaller
7 years which he has paid and hasn't paid the penalties and
8 interest on them.

9 The government's argument here, and it's a horrible
10 argument, it's an argument I hope the government would never 08:55:37
11 make. The government's argument here is to begin with, he did
12 not pay those years because his lawyer is lumping them all
13 together and trying to have a global settlement, which is
14 commonly practiced. Tax lawyers write law journal articles
15 that when you're under the microscope, you should stop filing. 08:55:52
16 You should do this. I don't particularly agree with that legal
17 position and I've had arguments at seminars over that because
18 some of them don't go to court and have to argue it.

19 But still, it is established theory that when you're
20 under the microscope, you stop and you try to have a global 08:56:10
21 settlement and get everything in.

22 In this case, while they are trying to settle, he's
23 indicted for two of those years for trying to get a global
24 settlement. It's pretty obvious that the taxes were paid
25 before this trial and it doesn't take a rocket scientist to 08:56:27

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1 figure out that they were paid on my call while I was his
2 attorney. So one can surmise that someone said, "If we can pay
3 those two smaller years, let's get them paid before we have to
4 go to trial." That's, essentially, the dilemma. And there's
5 two theories on that. Don't pay it. That admits that you owe
6 it or pay it. You're going to face a judge and a jury. Do the
7 best you can on the day that you face the judge and the jury to
8 be as compliant as you have the ability to be.

08:56:32

08:56:53

9 And I can inform the Court the client had to receive
10 loans to pay those two tax years.

08:57:10

11 So we have the offers in compromise which were drawn
12 up, drafted by attorneys and CPAs that aren't perfect and they
13 aren't perfect. Did they leave out most significant assets?
14 The only assets that would have made a strong dip in this and
15 the answer is unequivocally no. They did not leave out assets
16 that Mr. Parker owned. You can't put assets that you own --
17 don't own on that sheet any more than you can leave assets off.
18 But you do this and it's a complicated situation.

08:57:42

19 There are people who work on it, as Ms. Prather does,
20 counseling clients on offers in compromise and how to do them,
21 and it is a difficult process and they reject three-fourths of
22 them. The 50 percent offer, which is 200 percent of what his
23 lawyer said he owed but 50 percent is astoundingly high, and I
24 would suggest to the Court the only reason that was rejected is
25 because Mr. Wedepohl intervened and didn't want to accept it.

08:58:02

08:58:25

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1 This case should never have been taken out of civil. 08:58:28
2 It should have been settled under civil. The children were
3 willing to mortgage the property. It's a travesty that this
4 case went this far and that it was taken out of civil or that
5 they didn't allow the civil to carry through its customary 08:58:45
6 benefits.

7 It would be awful, I would hate to see in the paper
8 that someone was convicted on income tax evasion for two years
9 where the taxes had been paid. It would be awful -- that would
10 be a mockery and it would be bad for the justice system. The 08:59:06
11 two years that he does not have the money, the government
12 hasn't proved that he has. They basically suggested that he
13 should steal the money from the Belize company and use that
14 money or use those investors' money to pay for these taxes and
15 it's ludicrous. That is the theory of their case. The theory 08:59:24
16 of the case is we believe. It's like a religious thing for
17 them. We believe that he owns this stuff and we demand that
18 everybody else believes that he owns this stuff and we believe
19 that he set this up in 1994 and 1998, six years before the date
20 when the Court kept asking him. They finally agreed this is 08:59:48
21 the date that he should start doing it. First I think they
22 said 2002 or 2003 or switch their dates.

23 And that's the time that they claim began his willful
24 conduct. This first trust was set up in 1994.

25 The theory is ludicrous. There's no believe -- and 09:00:09

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1 maybe this foolish but I'm going to represent to the Court that
2 my client did sign the offers in compromise, so I'm yielding
3 that right now. He did sign them. There's no proof that he
4 understood them, because he didn't. There's no proof that he
5 prepared them, because he didn't. There's no proof that he
6 relied on his own mechanizations or understanding of this
7 complex law to prepare them, because he didn't.

8 And even conceding that point to the government,
9 because there is no evidence, absolutely no evidence of the
10 things that they must prove to find him criminally responsible
11 for false offers in compromise. Layman don't know what is
12 supposed to be put on them. They sign them when their lawyer
13 has put them on them. The travesty is even worse against
14 Mrs. Parker, but I'm not going to go into that. The Court has
15 correctly and wisely severed it. It hurt us, though, because
16 we can't put Mrs. Parker on the stand for background
17 information. But we'll make do. Everybody has their
18 constitutional rights and I respect that and the Court has
19 wisely done that.

20 They have not proven willfulness on any of this.
21 They haven't even proven that Mr. Robinson was wrong, frankly.
22 They have to prove Mr. Robinson is this bad person that they
23 have been trying to prove and that he conspired with Jim to do
24 these bad things and that Jim knowingly and willfully, as it is
25 in the statute, consciously understood the law and intended to

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1 violate it. They haven't even tried to do that. 09:01:53

2 They have done that through the interventions where
3 they twist words out, where they tell the witness, "You sold
4 this to Jim Parker, didn't you," and the witness says, "Well,
5 actually, we sold it to Cimarron River Ranch." 09:02:09

6 "You liened this for Jim Parker, didn't you?"

7 "Well, actually, no, that was the children's trust."
8 I remember specifically being told that. Well, Jim Parker
9 owned that furniture. Well, actually, no. No. He refused to
10 lien it. He said he can't, it's not his. 09:02:26

11 So that's the thing that I contrasted with the
12 government trying to impeach their own witnesses, because their
13 own witnesses won't say what they want them to say to make
14 their case. The only witnesses who would say what they wanted
15 them to say to make their case were the vendetta witnesses, the 09:02:43
16 two revenue agents who did not get their way on this.

17 For those reasons, Your Honor, we leave it to the
18 Court to dismiss all eight counts. There's no willfulness
19 proven. There hasn't even been an attempt to. The theory is
20 to impute the willfulness of Greg Robinson to Jim Parker. 09:03:07
21 There's no law that allows them to do that.

22 And when the government argues that my response to
23 their pure argument -- they didn't have a single case in their
24 brief -- brief without a case, that is almost a joke -- is
25 lacking in legal precedent. Well, I just supplied it. And we 09:03:24

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1 have in our earlier briefings too, Your Honor. 09:03:30

2 Thank you very much.

3 MR. SEXTON: Judge, prior to trial, on May 21 of 2012
4 we filed a 50-page trial memorandum. The first 35 pages deal
5 with the tax and the law regarding the eight counts. So to the 09:03:59
6 extent that we had submitted that, we did not repeat that in
7 the memorandum. We dealt with the facts and the exhibits that
8 the Court requested. So to the extent that it's Exhibit --
9 it's document number 141 and so the first 35 pages deal with
10 the law regarding tax evasion and the false statement counts. 09:04:15

11 So much of what was just said, there's nothing in the
12 record, and so at this point, from the standpoint, there is no
13 evidence other than the way he wants to argue about it, is that
14 there's some feud between Paul Wedepohl that somehow led to
15 this massive of the case that we're here today about. There's 09:04:48
16 no evidence of that. He may wish to argue that but there's no
17 evidence of that.

18 And this isn't about Greg Robinson. This is about as
19 to the four offers in compromise, a rather straightforward
20 financial statement, not unlike what people fill out for banks 09:05:08
21 or anything else and they sign under penalty of perjury. And
22 so right above -- for example, Exhibit 104, right above the
23 signature for what his sources of income, he puts zero income.
24 Four inches below that is his signature under penalty of
25 perjury that he has absolutely no income with the first offer 09:05:29

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1 in compromise. 09:05:31

2 This is not a complicated document.

3 From the standpoint of the tax court judgments -- we
4 set forth in our recent filing at the Court's request and,
5 again, Judge, I was not the most articulate yesterday -- 09:05:46

6 THE COURT: Let me ask you a question.

7 MR. SEXTON: Sure.

8 THE COURT: When you said in this document you just
9 referred to --

10 MR. SEXTON: Yes. 09:05:56

11 THE COURT: -- where he says he has zero income --

12 MR. SEXTON: Yes.

13 THE COURT: -- is he basically, you're saying, under
14 oath refuting what he said before? In other words, he
15 stipulated that he had income in 1997, 1998? 09:06:08

16 MR. SEXTON: No. The 2004 is when the offers in
17 compromise started coming in and he's having to respond as to
18 what his income in 2004 is, what are his assets in 2004.

19 THE COURT: Okay. So it has nothing to do with the
20 stipulation that undermines what he said previously? 09:06:27

21 MR. SEXTON: That is correct.

22 THE COURT: So you're talking about in the future he
23 says he has no income.

24 MR. SEXTON: Right. When he's trying to settle his
25 tax liabilities, he's misrepresenting his assets and 09:06:37

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1 liabilities. 09:06:39

2 THE COURT: As of that time?

3 MR. SEXTON: As of that time.

4 THE COURT: That's 2004, not 1997, 1998?

5 MR. SEXTON: That is correct. 09:06:45

6 THE COURT: Okay.

7 MR. SEXTON: And, Judge, in the tax evasion case, the

8 tax judgments, the notices of deficiency and the audit, that

9 goes to the first two elements in the sense that there has to

10 be a tax liability established and that is done through three 09:06:56

11 ways in this. There are the audits for the '97, '98 that give

12 him notice because they send out notice that you're deficient

13 on your '97, '98. They send those out starting on May 29 of

14 2002.

15 He's now put on notice that the IRS says, "You're 09:07:20

16 going to owe more taxes for those years." Those same amounts

17 that are in the notice of deficiency that are out for the 1997

18 and 1998 within about three months of each other as the audits

19 are completed. The very next year, the amount of taxes and

20 penalties put in those notices are exactly the same numbers 09:07:38

21 that, in May of 2003, agrees in tax court are the correct

22 numbers. So that establishes that the liabilities exist and

23 that he knows about it.

24 Now, from a willfulness, it's the mens rea really

25 addresses the willfulness affirmative acts to evade now the 09:08:00

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1 payment of that money, the payment of those taxes. 09:08:03

2 THE COURT: But the payment of those taxes is based
3 upon the income he has to pay those taxes.

4 MR. SEXTON: That's correct.

5 THE COURT: So, in other words, he admits he owes the 09:08:15
6 taxes for that particular time.

7 MR. SEXTON: Correct.

8 THE COURT: But your case is based upon whether or
9 not he can pay that because he says he has no income.

10 MR. SEXTON: No income and that he starts shifting 09:08:33
11 his assets to the straw people or the alter egos of him in the
12 Sunlight, Cimarron River Ranch, RSJ Investments that he starts
13 leaning up and pulling out the equity in the Carefree home and
14 moving it into the Texas home which are out -- in the control
15 of his kids. But as the Court heard, every single thing that 09:08:53
16 we're talking about, whether it be the 1.5 million loan, the
17 principals who were loaning this are dealing with James Parker
18 only. There is no involvement of the kids.

19 The purchase of the Texas home is James Parker
20 dealing with the realtor who picks it out. It's he and his 09:09:08
21 wife that are going around buying the \$72,000 of furniture.

22 Cimarron River Ranch, when it comes to the land
23 leases in which they are going obligate Cimarron River Ranch
24 for \$1.2 million --

25 THE COURT: Tell me what evidence there is to 09:09:31

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1 establish his investment, in other words, he owned 100 percent 09:09:34
2 other than being a president or an officer or director in those
3 corporations.

4 MR. SEXTON: Well, for Cimarron River Ranch, the
5 funding of it, the Court saw in the summary exhibits yesterday, 09:09:52
6 \$2.7 million flows in from his Belizean operation.

7 THE COURT: Right. But let me ask you again, as the
8 defendant has said, there were investors. How much was his
9 investment and how much money would he have taken out?

10 MR. SEXTON: There is no evidence of any investors 09:10:16
11 other than him. There is no evidence in the record --

12 THE COURT: I'm sorry. As I understand --

13 MR. SEXTON: That's his argument.

14 THE COURT: No. No. No. I'm sorry. We had
15 evidence. As they have indicated, Mr. Goguen said there are 09:10:28
16 investors in that company and I don't know what his investment
17 was, so that of that \$6 million, he was entitled to \$6 million
18 because he was the -- or he was entitled to \$5 million because
19 he was a substantial investor. Where is that evidence?

20 MR. SEXTON: We have the -- 09:11:01

21 THE COURT: And plus --

22 MR. SEXTON: Okay.

23 THE COURT: Plus, of that \$6 million, they were --
24 there's evidence of expenses. How much did he pull out of
25 that? We have a bank account that shows that of that amount, 09:11:13

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1 he was entitled to -- it went into Cimarron Ranch but you have 09:11:16
2 to be able to show that he was entitled to that amount.

3 MR. SEXTON: We believe we're entitled to the
4 inference that after the sale --

5 THE COURT: Wait a minute. There can't be inference. 09:11:39
6 This is beyond a reasonable doubt.

7 Tell me what evidence you have to show from one place
8 to another, starting with that \$6 million.

9 MR. SEXTON: The \$6 million sale is consummated on
10 June 6 of 2004. Immediately after that is when the flow of 09:11:56
11 money starts coming in to the United States from the same bank
12 account that the \$6 million is ultimately being paid into.
13 That money is controlled by James Parker.

14 THE COURT: How is that?

15 MR. SEXTON: Because it's transferred to the entities 09:12:12
16 that are in the name of his sons.

17 THE COURT: But that is the point, it's in the names
18 of his sons.

19 MR. SEXTON: And that is the circumstantial evidence
20 that we're entitled to have -- 09:12:23

21 THE COURT: What circumstantial evidence are you
22 entitled to, whether they are in the names of his sons?

23 MR. SEXTON: Because it's a 21-year-old son. We see
24 no promissory notes. The money is being transferred into these
25 accounts up to \$3 million, buying a Rolls Royce, buying -- 09:12:35

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1 THE COURT: So you have evidence that he purchased a 09:12:40
2 Rolls Royce which is suspicious, perhaps troubling, but what
3 else?

4 MR. SEXTON: The \$2.7 million that goes into the two
5 bank accounts associated with Cimarron River Ranch. 09:12:53

6 THE COURT: Well, Cimarron River Ranch, I don't know
7 what evidence you have to show that he had ownership in those
8 companies that would require the jury to find beyond a
9 reasonable doubt that he owned those companies.

10 Now, your definition of nominees that you've chosen 09:13:15
11 that you've stipulated to does not help you. Now, we heard the
12 word "nominee" from Mr. Wedepohl. We didn't get a definition
13 of a nominee. He shouted out in the courtroom that Mr. Parker
14 was merely a nominee. We didn't get a definition after that.
15 I looked for a definition, the one you stipulated to from 09:13:41
16 Black's Law Dictionary, which doesn't bring you any closer.

17 MR. SEXTON: We believe the evidence establishes that
18 the corporations and the other entities were set up by
19 Mr. Parker to shield his assets and shield his income.

20 THE COURT: Now you're talking about -- Mr. Sexton, 09:14:03
21 you are now doing what you accused Mr. Minns of doing, you're
22 arguing. Give me the evidence. I mean, that's what I've asked
23 for yesterday, that you completely struggled with. You've
24 given me something to work with. But now you're going back to
25 when I ask you specific questions, talking about "we believe." 09:14:23

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1 MR. SEXTON: No. I'm trying to say that the 09:14:28
2 transfers from Belize, the \$2.7 million over a course of two
3 years, we have documented that into evidence, those transfers
4 coming into bank accounts for Cimarron River Ranch. We believe
5 that the circumstances of it being a 21-year-old having \$2.7 09:14:44
6 million with -- there's no promissory notes. There's no
7 documentation whatsoever other than that Mr. Parker is the
8 president and chairman of MacKinnon Belize and the sale
9 occurred on June 7 of \$6 million, thereafter a flow of \$3
10 million comes into the United States. 09:15:06

11 There are no -- there is no other inference, no other
12 circumstantial interpretation other than this is Mr. Parker's
13 money coming into the United States.

14 And besides that, this is where you get into the
15 evasion. Instead of taking that \$3 million and applying it to 09:15:28
16 the known tax liability that he's receiving notices of, he
17 can't be taking that and putting it into an entity when he owes
18 those tax liabilities. So he is diverting.

19 The same is true of the Carefree home. Right after
20 the notice of deficiency comes out on May 29 of 2002, that is 09:15:58
21 when he creates Sunlight Financial. Interestingly, about
22 Sunlight Financial, Judge, is that the two partners in Sunlight
23 Financial, one is the children's -- Parker Children Irrevocable
24 Trust, which wasn't even created for three more years until
25 2005. 09:16:22

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1 So he's creating a vehicle now that he knows the IRS
2 is coming after him. He's creating a vehicle by which to now
3 say I've got to get the equity out of this home and that's when
4 he does a \$1.5 million hard money loan against that property.

09:16:29

5 And as the Court knows, \$1.1 million of that comes
6 out and is heading towards the Texas home for \$1 million. And
7 he begins the negotiation of that Texas home as James Parker.
8 He's dealing -- he's dealing individually and it's not until
9 about a week before the close that he creates this RSJ

09:16:47

10 Investments to then take title of that, which is the name of
11 the three children, and he moves a million -- he takes this
12 million dollars, puts it into a Texas home, pays cash, pay
13 about another \$75,000 in the furniture and he puts it into,
14 again, another nominee entity that is in the name of his
15 children at that point because he's taken -- he's liquidated
16 \$1.5 million out of the Carefree home and he knows.

09:17:09

17 This is all being done at the same time --

18 THE COURT: It's a loan; right?

19 MR. SEXTON: It's a loan. It's a hard money loan.
20 It's \$150,000 of interest only every year. Sunlight's only
21 asset is this home. It has no revenue-producing sources. The
22 source of the payments for this comes from Belize, again, to
23 pay this hard money loan, that is where it comes in. Sometimes
24 it comes in to Cimarron River Ranch and they pay the mortgage
25 quarterly. Sometimes it goes into this other entity, RSJ, and

09:17:31

09:17:48

09:18:13

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1 they pay the mortgage. 09:18:17

2 THE COURT: But they are paying it.

3 MR. SEXTON: He's paying it with his Belizean money.

4 THE COURT: Okay. So we're back to Belize.

5 MR. SEXTON: Right. That is the great source of his 09:18:27

6 wealth as far as an income source.

7 THE COURT: But we don't have established anywhere

8 that I saw, particularly in the summary, as to what he -- what

9 his ownership was in Belize.

10 MR. SEXTON: And that's why I think circumstantially 09:18:42

11 we can construe that the sale and the subsequent transfers,

12 that he was entitled to a fair share of that or a large share

13 because it went to buy such --

14 THE COURT: But fair share is not enough, is it?

15 MR. SEXTON: It's enough to buy a Rolls Royce for 09:18:58

16 \$306,000. It's enough to buy --

17 THE COURT: So we have a --

18 MR. SEXTON: You have \$2.7 million cattle operation

19 and structures being built --

20 THE COURT: Let me ask you. The Rolls Royce is in 09:19:11

21 his name?

22 MR. SEXTON: No. It's in the name of his son, Samuel

23 Parker, for Cimarron River Ranch, the Rolls Royce.

24 THE COURT: Anything else in his name, any purchase?

25 MR. SEXTON: No. He does not purchase anything in 09:19:24

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1 his name. That's the whole point of this is that he's avoiding
2 putting any assets in his name or he's transferring assets that
3 he's about to acquire into a new entity that's not in his name;
4 that the income stream that he's getting out of Belize is going
5 into one of his children's companies that he's established. He
6 is trying to be off the radar as to his income and his assets.

09:19:24

09:19:38

7 Now, one of the interesting things, I hope the Court
8 was able to pick this up, one of the interesting pieces of
9 evidence is that in 2005 there were three promissory notes to
10 Mr. and Mrs. Parker individually. They did not use any of
11 these entities. There is something that is in their name.

09:20:06

12 So in April of 2005, there's a promissory note from
13 James and Jacqueline Parker for \$450,000 directly to Samuel
14 Parker and Cimarron River Ranch. That's an individual loan,
15 \$450,000. On those same offers in compromise, you won't see
16 any bank account money, you wouldn't see any note receivable
17 that he now individually has a right to. Two months later, in
18 June of 2005, another \$450,000 of personal assets goes directly
19 to Samuel Parker. Again, there's no indication of any -- in
20 fact, his offers in compromise say he has no bank accounts
21 whatsoever, yet he's given his son \$900,000 --

09:20:28

09:20:53

22 THE COURT: And he does and you have shown that that
23 money was transferred to the son's account other than a
24 promissory note.

25 MR. SEXTON: All we have is the promissory note.

09:21:09

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1 THE COURT: Okay. So that we don't have the transfer 09:21:11
2 of funds to his account.

3 MR. SEXTON: We don't know where he got those
4 because, as I say, on his own --

5 THE COURT: No. What I'm asking is, do we have Sam's 09:21:18
6 account where the money was transferred into his account?

7 MR. SEXTON: We have not seen where the money was
8 transferred to. We just have the promissory note.

9 THE COURT: So you just have the promissory note.
10 You don't know whether or not or you don't have the evidence to 09:21:36
11 establish that he actually transferred the \$450,000?

12 So, for example --

13 MR. SEXTON: We don't have the --

14 THE COURT: Let me ask it here.

15 So, for example, if that money was transferred, then 09:21:50
16 that would have had to come from somewhere and perhaps that
17 could be income. And I don't recall. And you're telling me
18 that you don't have evidence to show that he actually gave him
19 that money other than perhaps, "I'm going to pay you this in
20 the future. I'm going to give you the \$450,000 as a promissory 09:22:19
21 note."

22 MR. SEXTON: It's not written that way, Judge. The
23 promissory note is that you owe us \$450,000. So it's a past
24 event. The money has been given to you. It's not a
25 contractual obligation to agree to give you \$450,000 down the 09:22:34

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1 road. It's a you owe me \$450,000 and then --

09:22:38

2 THE COURT: Okay. But they never -- you don't have
3 evidence that they got the money? And you owe me \$450,000,
4 isn't that really -- doesn't that really undermine your
5 argument that the money -- that he received before that he
6 received money before? It's almost as if to say, look, I've
7 done all of this work for you. So now you owe me this money.

09:22:59

8 Let me see. Was the promissory note from the Parkers
9 to his son?

10 MR. SEXTON: Yes, individually.

09:23:22

11 THE COURT: So if it was to his son, then -- a
12 promissory note doesn't mean anything other than I have an
13 obligation to pay you; right?

14 MR. SEXTON: To me --

15 THE COURT: I have an obligation, the Parkers have an
16 obligation to pay Sam.

09:23:38

17 MR. SEXTON: To pay back \$450,000.

18 THE COURT: Pay back. That's the point. Okay. To
19 pay back to you \$450,000 that you gave me.

20 MR. SEXTON: Right. That's what we're saying.

09:23:55

21 And I just wanted to remind the Court, there were
22 three in a row. There was the April, June, and August of 2005,
23 all of it adding up to about \$1.15 million.

24 THE COURT: But the point that I'm making is that is

25 a -- that would mean, okay, you gave me \$450,000 over a certain

09:24:14

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1 period of time but we don't know when that \$450,000 occurred.
2 Or if it had anything to do with, say, with income he earned.
3 We don't know the source of the -- your argument is he must
4 have given Sam \$450,000 at some time in some place; right?

09:24:23

5 MR. SEXTON: Right.

09:24:46

6 THE COURT: And where did that come from?

7 MR. SEXTON: We don't know because he doesn't list
8 his bank accounts on his -- he doesn't list any bank accounts
9 on his offers in compromise. He doesn't list this note
10 receivable.

09:24:57

11 To recall, Judge, these note receivables --

12 THE COURT: And we also don't know if he's saying you
13 gave me \$450,000; therefore, I owe you \$450,000. I mean, we
14 don't know the basis of the promissory note. The argument made
15 by counsel is that -- which came through your own witnesses,
16 that this was -- that the Parkers, throughout their lives, had
17 attempted to take care of the children. So we're going to give
18 you some money. And perhaps also a promissory note can be used
19 by the children as collateral for them to buy something else.

09:25:24

20 So without knowing, without your having evidence
21 other than inference upon inference to get to the jury is
22 taking all reasonable inferences in your favor. You have to
23 take them in your favor based upon the burden you have.

09:25:48

24 So if you're going to say inference upon inference
25 upon inference, ladies and gentlemen, which you couldn't even

09:26:09

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1 explain to me yesterday and you can't seem to explain to me 09:26:14
2 today, is going to have to persuade the jury beyond a
3 reasonable doubt, not by a preponderance of the evidence,
4 certainly not by probable cause. You had enough for probable
5 cause when the grand jury returned. But maybe by a 09:26:31
6 preponderance, which is 51 percent, which would be a civil
7 case. But I don't even think you get to, based upon the
8 inference upon inference that you're proposing to me, that you
9 get clear and convincing evidence.

10 MR. SEXTON: Judge, the promissory note is an 09:26:54
11 obligation that was created in 2005, to use that as one
12 example. It's an obligation that indicates that \$450,000 was
13 loaned to Samuel --

14 THE COURT: Where does it say a loan? Does it say a
15 loan on the promissory note? Does it say, "Sam, you loaned me 09:27:11
16 \$450,000 and I'm paying you \$450,000 back"?

17 MR. SEXTON: Yes. I think there's a fair
18 interpretation --

19 THE COURT: Does it say that expressly?

20 MR. SEXTON: It does because it says you owe me 09:27:33
21 \$450,000.

22 THE COURT: Wait. No. No. No. The promissory note
23 was given by the Parkers; right?

24 MR. SEXTON: It says Samuel Parker is signing a
25 promissory note that he owes his mother and father -- 09:27:45

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1 THE COURT: Now you're going back and forth on this. 09:27:49
2 I thought the promissory note was given by the Parkers to the
3 son.
4 MR. SEXTON: No. The son is the one who owes
5 \$450,000 to -- 09:27:58
6 THE COURT: Okay. Well, that doesn't help you at
7 all. How does that help you?
8 MR. SEXTON: Because it shows in April of 2005 that
9 Mr. and Mrs. Parker individually had \$450,000 to loan to their
10 son. 09:28:11
11 THE COURT: Wait, wait, wait. The son says I owe you
12 money. Where are we going with this?
13 MR. SEXTON: Based on the fact that he borrowed
14 \$450,000 from his mother and father.
15 THE COURT: Does it say that? 09:28:23
16 MR. SEXTON: It shows the promissory note, you owe me
17 \$450,000.
18 THE COURT: Let me see the note. I am not --
19 MR. SEXTON: Exhibit 78.
20 THE COURT: I'm not following you because what I 09:28:33
21 understand you're saying is --
22 COURTROOM DEPUTY: You said 78?
23 MR. MINNS: Yes, 78.
24 MR. PERKEL: Can we put it on the screen?
25 THE COURT: Yes. Okay. This is the \$239,000. Where 09:28:54

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1	is the \$450,000?	09:29:14
2	MR. SEXTON: I'm sorry. Make it 003.	
3	THE COURT: They are the same.	
4	MR. SEXTON: No. There are three promissory notes.	
5	The first one is dated April 13, 2005.	09:29:21
6	THE COURT: So we have a \$450,000.	
7	MR. SEXTON: On April 13 of 2005. It's on the	
8	screen. Page three of your document there Bates stamped. It	
9	lists \$450,000 in the upper left-hand corner from	
10	Mr. Mrs. Parker individually. It has an interest rate and a	09:29:47
11	due date when the amount has to be repaid.	
12	THE COURT: It says the undersigned promises; right?	
13	So that is Sam Parker promises to make this payment to his	
14	parents.	
15	MR. SEXTON: Pay back \$450,000.	09:30:02
16	THE COURT: It doesn't say pay back. It says	
17	promises to pay.	
18	MR. SEXTON: I'm sorry. I consider those the same	
19	thing.	
20	THE COURT: Thank you.	09:30:19
21	Anything else? You don't have a loan, do you, the	
22	loan that was given by the Parkers in advance of this promise	
23	to pay?	
24	MR. SEXTON: The loan. You mean -- we just have this	
25	promissory note.	09:30:36

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1 THE COURT: Well, you just said that promise to pay 09:30:36
2 means the same thing as pay back. So you're implying that the
3 Parkers gave Sam \$450,000 and that Sam is now paying them back.

4 MR. SEXTON: Yes. That is a fair reading of that
5 document. 09:30:54

6 THE COURT: Okay.

7 Anything else?

8 MR. SEXTON: No. That's it, Judge.

9 THE COURT: All right. Any comments about what has
10 been said before I rule? 09:31:10

11 Do you have any evidence or -- in fairness to the
12 government and to your client, is there any evidence that the
13 \$450,000 was a pay-back loan that the Parkers gave to Sam?

14 MR. MINNS: No.

15 THE COURT: All right. 09:31:32

16 Okay. Certainly I have taken all reasonable
17 inferences in favor of the government. But as I said and you
18 know, all of those reasonable inferences and everything I've
19 heard has been since yesterday and today, only inferences. And
20 the government, as they did yesterday, has struggled to 09:31:56
21 establish the burden from those inferences which is that the
22 jury could find beyond a reasonable doubt tax evasion and also
23 the false statements.

24 And the defense has been criticized for making
25 argument and that is precisely what I've asked for. I asked 09:32:19

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1 for the evidence and then the defense has to make argument with
2 respect to that evidence as to whether or not, which is what I
3 asked yesterday, whether or not the evidence establishes
4 willfulness and what, in particular, were the affirmative acts.
5 What I see is argument which was the criticism made by the
6 government.

09:32:23

09:32:47

7 His willfulness, which is on page nine, his
8 willfulness is demonstrated repeatedly in his many affirmative
9 acts to hide or shield the assets in nominee entities. And as
10 I said, there's no evidence of what a nominee entity is other
11 than the reference to nominee perhaps three times, and I think
12 I'm being generous, but no definition.

09:33:07

13 And the definition that the government chose from
14 Black's Law Dictionary doesn't do anything to indicate that a
15 nominee is -- establishes someone who is acting illegally and
16 certainly not even improperly. It's a very neutral definition.

09:33:30

17 And we didn't see anything else. Mr. Wedepohl
18 certainly was angry when he referenced whether or not the
19 defendant was acting as a nominee, but he didn't explain what
20 he meant by what he said and then you say, again, argument and
21 his lies to the IRS in the offers in compromise and how he
22 spent money lavishly knowing that he had enormous unpaid tax
23 liabilities.

09:33:59

24 And then I went back to look through line by line,
25 word for word, what these inferences were and I just saw and

09:34:24

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1 did look at some of the exhibits to see if these inferences 09:34:33
2 could be established.

3 I, in particular, was concerned about what the United
4 States government has primarily focused on and that was, and
5 continues to be, the stipulations that the defendant owed money 09:34:56
6 and that those are Exhibits 34 and 35. But in those
7 stipulations, there's no source of the funds that he owed.

8 If the source of the funds that he owed came from
9 these corporations that were created and that he owned or he
10 had an obligation to pay those -- that income that owed or that 09:35:30
11 established the source of the income as being connected to
12 these companies that you now claim are nominee companies, and
13 I'm taking that in the most generous definition for the
14 government, then I think you would have enough to get to the
15 jury. But what you have in Exhibit Number 3 and number 4 are 09:36:01
16 nothing but orders and stipulations that he owes the money.

17 After that, all you have is evidence and I'm not sure
18 it's even -- I guess it would be circumstantial evidence, but
19 then again, I think that's generous. I prefer the argument
20 that is made by the government, which is inference, that the 09:36:27
21 children were not capable of running these companies, owning
22 these companies, because they -- and as established by some of
23 the testimony, that they got themselves in trouble here and
24 there. They filed for bankruptcy. Well, bankruptcy doesn't
25 establish that somebody is not capable of holding a job or 09:36:52

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1 acting appropriately or running a company.

09:37:03

2 So I give you the evidence that established that
3 Mr. Parker was making purchases that were lavish and, in
4 particular, the Rolls Royce. It doesn't appear that that was
5 anything other than an automobile that he was driving and then
6 there's the Ford and then there's the Hummer. So that's
7 troubling but that's not going to meet the mark. That is not
8 going to establish, beyond a reasonable doubt, that he had
9 owned the -- he owned those companies and that the income came
10 to him and that he lied about it.

09:37:30

09:37:52

11 The evidence concerning his lawyer, that's a typical
12 argument that's made in these evasion cases and it's a defense
13 that was raised by the defendant, which is typical of these
14 types of cases, through the government's evidence and that
15 might have been enough to get to the jury that Mr. Robinson,
16 who acted inappropriately according to a couple of the
17 witnesses and had gotten himself in trouble professionally,
18 although there was no determination that he, in fact, acted
19 unprofessional. There was no determination by the IRS.

09:38:20

20 Certainly was no determination by the State of Arizona that he
21 acted unprofessionally or that he was charged
22 unprofessionally -- with unprofessional conduct and that he was
23 found to be acting unethically by the State of Arizona.

09:38:46

24 But more importantly than that, if I assume,
25 inferentially again, that the jury could find that he acted

09:39:10

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1 unprofessionally and that I think one of the strongest pieces 09:39:14
2 of evidence that the government has was the confession that was
3 made by Greg Robinson that his client owed this money or he
4 owed the taxes.

5 Well, from that, generally in these cases, what you 09:39:37
6 have is that you have documents or you have communication
7 between the lawyer and the client to show so the jury could
8 find, beyond a reasonable doubt, that the defendant willfully
9 engaged in this conduct. And that's the obligation of the
10 United States government. 09:39:59

11 The defendant doesn't have an obligation to establish
12 his defense. But if the defense is raised as it was, first of
13 all, by the United States government, anticipating this defense
14 and then you don't follow up to show that there is a clear
15 connection that when defense counsel confessed that the taxes 09:40:22
16 were owed, that the money -- that the defendant had the money,
17 inferred that his client had the money to pay it, and that is a
18 second inference you have to make in order to find the false
19 statements, then the jury can't find, beyond a reasonable
20 doubt, that the defendant acted willfully. 09:40:47

21 And that's a point in all of these evasion cases.
22 The focus has to be on willful.

23 Now, I thought perhaps yesterday, as I mentioned,
24 until you reminded me, Mr. Sexton, and I did look at the
25 instructions, that the false statements have to be willful 09:41:07

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1 also. So perhaps you could have gotten to the jury on that. 09:41:11

2 But once again, inference upon inference doesn't establish
3 beyond a reasonable doubt or allow the jury to establish beyond
4 a reasonable doubt.

5 And sometimes in these cases I reserve my decision on 09:41:25
6 a Rule 29 until I've had an opportunity to reconsider all of
7 the evidence. But I have reconsidered it and reconsidered it
8 giving the United States government an obligation or an
9 opportunity to lay out their evidence as clearly and concisely
10 as they could instead of yesterday, which is what I heard, 09:41:51
11 which was not sufficient.

12 But asking the government to go to closing argument
13 because the defense wasn't going to offer any evidence, I
14 wonder if you would have -- as you did yesterday -- struggled
15 to try to go through each of the elements to establish the 09:42:17
16 evidence that in particular showed willfulness.

17 So I am granting the Rule 29 motion. The government,
18 taking all reasonable inferences in favor of the government,
19 has not established that the jury could find beyond a
20 reasonable doubt, based upon the evidence that you have 09:42:45
21 provided to me which establishes the evidence in this case,
22 that the defendant is guilty of any of the counts that have
23 been charged.

24 All right. And I want to talk to counsel at the
25 sidebar. 09:43:04

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1 (At sidebar.) 09:43:18

2 THE COURT: I appreciate that, and these cases having
3 been exactly where all of you were, how difficult they are
4 because they are competitive and I respect aggressive
5 litigation on behalf of your clients and I have done the same. 09:43:41
6 But what I don't appreciate, and no judge will appreciate, is
7 unprofessional conduct.

8 And, Mr. Sexton, it is unprofessional to engage in
9 personal comments about defense counsel, which you readily
10 admitted yesterday, and, frankly, I heard from my own staff 09:44:07
11 that you were very, very unprofessional when I wasn't here to
12 Mr. Minns and that won't happen again in my court.

13 Now, Mr. Minns, with respect to your conduct, I hope
14 you learned that you cannot, when you ask questions, make
15 statements to the jury and it was unprofessional for you to 09:44:36
16 continue when you asked questions to make statements to the
17 jury and not heeding the sustainable objections even after --
18 and I brought you to the sidebar and told you you are not to do
19 that again.

20 So I hope that you will not do it again in any court. 09:45:05
21 Questions are questions.

22 Mr. Perkel, you took a lot of heat from me during the
23 trial because it seemed to me that you were, from my point of
24 view, and probably from the jury's point of view, engaging in
25 infinite detail to meet the mark, but I don't fault you for 09:45:30

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1 that. I know that -- and, frankly, you're a young lawyer, a 09:45:34
2 new lawyer. I would prefer that the lawyer engage in infinite
3 detail rather than understate what the evidence is.

4 But hopefully from this point forward, you'll get a
5 better sense of how you can present evidence. And you did. 09:45:51

6 And you were even apologetic so you didn't act
7 unprofessionally.

8 MR. PERKEL: Thank you, Judge. A couple of quick
9 things. I know you made your ruling on the Rule 29. Can I ask
10 you for a moment to see if I can convince you otherwise, with 09:46:08
11 all due respect?

12 THE COURT: No. You can ask for a motion for
13 reconsideration.

14 MR. PERKEL: Can I do that now?

15 THE COURT: Yes, you can. 09:46:17

16 MR. PERKEL: And the other thing is, at the end, if
17 there's a chance to talk about the unprofessionalism of my
18 colleague, I would like to put some things on the record. We
19 don't have to do that now. We can wait until after the
20 decision, because I think some things were taken out of context 09:46:26
21 and I would just like to make sure it's clear what I saw.

22 THE COURT: Okay. Go ahead.

23 MR. PERKEL: Should I do it in front the Court or
24 here?

25 THE COURT: Here. 09:46:36

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1 MR. PERKEL: One of the things that I think you were 09:46:37
2 concerned about was how we show that the money from Belize --
3 what was his ownership interest in the money in Belize? I
4 think that's what you were asking; right?

5 Without the documentation from the company in Belize, 09:46:47
6 we obviously don't know the specifics. Was it 51 percent, 52,
7 53. It's hard. We don't know that unless the defendant gave
8 it to us. This is what we do know. We do know that money
9 coming from Belize went into these accounts from Cimarron River
10 Ranch and it also went into -- and the money -- and the money 09:47:07
11 in those accounts went to pay personal expenses, American
12 Express, Bank of America and Capital One credit cards.

13 So money from Belize was used to pay personal
14 expenses for the family, tuition for James Parker, furniture
15 for Jacqueline Parker, rent for Samuel Parker, a whole range of 09:47:27
16 things. And we went through some of that and, in fact, it's in
17 the exhibits as well that Mark Klamrzynski presented.

18 We also know that money from Belize went to pay the
19 interest payments on the \$1.5 million loan. So the \$1.5
20 million loan, if that's a trust, if that's a hard money loan 09:47:46
21 well above the market interest rate, are Belizean investors
22 going to be paying the \$1.5 million personal trust that was set
23 up for the children? We have that as well.

24 We also --

25 THE COURT: Okay. Let me stop you for a second. For 09:47:58

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1 each of those you had him going to Belize, you had him coming
2 from Belize, back and forth, and I don't understand how that
3 establishes what his ownership was.

4 Plus you had Mr. Goguen, as the defense has pointed
5 out, said there are investors. So all you have is you have him
6 purchasing a place, you have him paying for furniture, but none
7 of those were in the name of anyone else. You have him -- I
8 don't even know if you have him living there. You have him
9 living there occasionally. But what else do you have?

10 So if he had an investment in those -- and the money
11 was placed in those accounts, those are still corporations and
12 we don't know what his ownership is. Is he the CEO? He's the
13 president.

14 MR. PERKEL: But the argument is, Your Honor, is that
15 only the person who owns that money, who has a right --

16 THE COURT: Who owns?

17 MR. PERKEL: Because he's using it for his other than
18 personal expenses.

19 THE COURT: How do we know it's personal?

20 MR. PERKEL: We looked at the American Express cards
21 and Capital One and we see --

22 THE COURT: We see expenses there.

23 MR. PERKEL: Expenses that are personal.

24 THE COURT: How do we know that they weren't
25 purchases for children? How do we know that they weren't

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1 purchases for -- I mean -- 09:49:27

2 MR. PERKEL: We know they were --

3 THE COURT: Hold on a second. They bought furniture.

4 They went to clothing stores. Who were those purchased for?

5 MR. PERKEL: We know they definitely weren't for the 09:49:39

6 businesses, because they are personal credit cards in the name

7 of the people and they are not in the names of Cimarron River

8 Ranch.

9 THE COURT: How much money do we have that

10 constitutes income that then he lied about the income that he 09:49:50

11 had to pay for -- so your argument is that at some point he

12 made -- when he made offers in compromise, he had income. So

13 where is the connection? Where is the connection between those

14 purchases and the income and the false statement you made?

15 MR. PERKEL: Because the false statements, you 09:50:17

16 doesn't include any of those purchases. He doesn't include the

17 fact that he had --

18 THE COURT: So the false statements, the false

19 statement was made when and the purchases were made when? You

20 have to be able to stand up and show the connection. 09:50:33

21 Okay. Ladies and gentlemen, he's got \$5,000 here,

22 \$1,000 there and they look personal on their face. But -- so

23 that was income he had. I think one of the Capital One

24 accounts and then the American Express account totaled 5,000

25 here and then 5,000 there. So you have to assume those were 09:50:54

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1 purchases that he made for himself. 09:50:58

2 Now, it was in Mrs. Parker's account, those were her
3 accounts?

4 MR. PERKEL: The American Express was her. The Bank
5 of America and Capital One were his. 09:51:07

6 THE COURT: So you can argue those were personal.
7 Okay. So you get a total amount of personal expenses there
8 that he had, the money must have come from somewhere; right?

9 MR. PERKEL: Yes.

10 THE COURT: So what else do you have that accounts 09:51:21
11 that were in his personal name?

12 MR. PERKEL: Just to follow up on what you were
13 saying, Your Honor, is that those --

14 THE COURT: I'm trying to figure this out. So those
15 were personal accounts. What other personal accounts did you 09:51:32
16 have?

17 MR. PERKEL: Well, those three credit cards were the
18 personal accounts and the Belizean money was used to pay off
19 those accounts.

20 THE COURT: I'm asking personal. You have to show, 09:51:46
21 because you can only show income in the personal accounts
22 unless you can show in Cimarron and Sunlight and all of those
23 precisely what his income was.

24 I agree with you that personal accounts, where he's
25 paying, establish that he had income from somewhere. So he had 09:52:04

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1 \$10,000 that he could have used to pay off or the offer in 09:52:11
2 compromise instead of a thousand dollars a month. He could
3 have paid that thousand dollars that he used to pay something
4 to pay off the offer in compromise. But we don't have anything
5 else that shows his personal accounts. 09:52:36

6 MR. PERKEL: Well, here's what he does. The money
7 from Belize comes into these accounts that are associated with
8 these companies and nominee, doesn't really matter if you use
9 nominee. It could be the name of the company, the name of a
10 kid. But the money in those accounts is so mixed that he uses 09:52:52
11 it for personal expenses. He takes cash withdrawals other
12 times.

13 THE COURT: Where are the cash withdrawals?

14 MR. PERKEL: They are in the bank records. You look
15 through them. It says James Parker, thousand dollars. James 09:53:02
16 Parker 5,000. James Parker 6,000.

17 THE COURT: But how do you connect that? How do you
18 connect that to the false statements in the offer in
19 compromise?

20 MR. PERKEL: Well, you connect it because he's 09:53:14
21 saying --

22 THE COURT: He got a thousand dollars here. What is
23 the total amount out of those personal accounts?

24 MR. PERKEL: Well, I have to --

25 THE COURT: See. That's the point. You're not ready 09:53:25

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1 to argue that to the jury. You're not ready to argue that to 09:53:27
2 me. It's inference upon inference. That's what I asked you
3 guys for. I asked to give me the trail and all you have over
4 and over is inference.

5 Okay. 09:53:40

6 MR. ARNETT: Actually, I think the 2008 purchases
7 that he's talking about are 2008 purchases. The offer in
8 compromises were in 2005.

9 THE COURT: Oh. Okay. Is that right?

10 MR. PERKEL: I think that the records span 2004 all 09:53:51
11 the way up to 2008 and also --

12 THE COURT: It doesn't get it.

13 MR. PERKEL: I'll say that it does. The other thing
14 is in 2004, three months after the offer in compromise, we have
15 proof that he took two cruises two months after the offer in 09:54:04
16 compromise, he took two cruises, one with the Disney Princess
17 and one with some other Disney cruise. Where is the money
18 coming from for those cruises?

19 THE COURT: How much do they cost? How much did they
20 cost? How much did they cost? 09:54:16

21 MR. PERKEL: I think the burden --

22 THE COURT: No. No. No. Don't talk about the
23 burden being on the defense.

24 MR. PERKEL: No. I'm not saying it is. All I'm
25 saying is, we've shown he's taken these cruises. 09:54:24

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1 THE COURT: Is that all you have to offer -- 09:54:27
2 MR. PERKEL: There's a whole slew --
3 THE COURT: -- for your motion for reconsideration?
4 Denied.
5 Okay. Now, tell me about the professional conduct. 09:54:33
6 MR. PERKEL: I disagree with the characterization by
7 Mr. Minns because I was there.
8 And during the course of the trial, Mr. Minns would
9 approach our table repeatedly, ask us questions about the case.
10 I don't think he was doing it in bad faith, by the way. He was 09:54:45
11 just coming over saying, "What's the next witness? What are
12 you guys doing now?"
13 And at some point he came over and said to -- we were
14 doing that and jokingly, Pete said to him, "You're a nervous
15 little guy." And everybody started laughing. 09:54:58
16 And then he said to Pete, "Well, I don't take it
17 offensively."
18 And Pete says, "You shouldn't because I have no
19 hair," or something like that and then we all started giggling
20 and laughing. 09:55:09
21 THE COURT: Did Mr. Minns laugh?
22 MR. PERKEL: I remember him laughing and Ms. Arnett
23 laughing, too. And none of the jury was here. And none of the
24 jury was here.
25 THE COURT: That's unprofessional conduct. You don't 09:55:18

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1 make personal statements to characterize somebody as a nervous
2 little guy. As a matter of fact, that is exactly what I asked
3 for is for counsel to ask questions so that the case runs
4 smoothly; and, as I said, my staff mentioned to me that you
5 were inappropriately treating Mr. Minns. I'll take my staff as
6 being accurate.

09:55:20

09:55:43

7 MR. PERKEL: I just feel like I had to say it because
8 before this trial even started, Mr. Minns consulted me and he
9 apologized and I didn't come -- I didn't take it out of context
10 and come running.

09:56:00

11 THE COURT: What did he do, call you a name?

12 MR. PERKEL: I don't even want to tell you what he
13 said but he called.

14 THE COURT: Put it on the record. If it was
15 unprofessional --

09:56:09

16 MR. PERKEL: He apologized so I take his apology for
17 word.

18 THE COURT: What did you call him?

19 MR. MINNS: I didn't call him a name. I said it was
20 ridiculous to say that in a tax case you refused to give
21 credits for deductions. And I asked to speak to his
22 supervising attorney because I thought that he --

09:56:18

23 MR. PERKEL: You can finish. I mean, that's not all
24 you.

25 MR. MINNS: Go ahead. If you want to add to that.

09:56:30

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1 I was very angry and I left the room. I refused 09:56:31
2 to --

3 MR. PERKEL: It didn't hurt my feelings because I
4 was -- sort of separated myself professionally from the case.
5 I'm just saying that I think taking the statement he made in 09:56:42
6 the court is completely --

7 THE COURT: What did he say?

8 MR. PERKEL: He said that I had a fifth grade
9 education. He said that repeatedly, and even a fifth grader
10 can understand this. 09:56:53

11 MR. ARNETT: Okay. I'm sorry. I was on the call.
12 We were trying to agree to exhibits and I was on the phone
13 call. It was Mr. Perkel. Mr. Sexton wasn't there. And
14 Michael was in and out of my office.

15 We had a whole list of exhibits. I wanted to agree 09:57:06
16 to them. I wanted to admit them so that we didn't have to go
17 through the foundation of the ones that we didn't have
18 objections to. He asked a question, "Well, I don't understand
19 why you want this exhibit." Michael told him, "It's for a
20 deduction. It's a tax case. You're talking about a 09:57:20
21 stipulation. The government hasn't agreed to any deductions
22 for business expenses."

23 And he says, "I think somebody with a fifth grade
24 education could understand a deduction in a tax case." I think
25 that everybody knows that Mr. Perkel doesn't have a fifth grade 09:57:30

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1 education.

09:57:33

2 MR. PERKEL: That's why I sort of let it go but he
3 came up an -- he did apologize. He said, "I'm sorry for the
4 way I chewed you on the phone," and he did say that to me on
5 the first day of trial.

09:57:43

6 THE COURT: Okay. Well, all right. That is -- a
7 phone conversation. It is not in the courtroom and
8 particularly if he apologized, then I don't consider that -- it
9 may have been unprofessional at the time but in the courtroom,
10 to call somebody a nervous little guy when he's coming up to
11 you and trying to work out what's happening in this trial,
12 coming back and forth and asking you questions is
13 inappropriate. It's unprofessional.

09:58:01

14 And as I said, my own staff saw Mr. Sexton acting
15 unprofessional to Mr. Minns. That's all I have to say. I
16 don't intend to do anything about it other than to tell you
17 about it.

09:58:22

18 As I mentioned, I understand as much as any judge
19 here, and maybe better than others, just how difficult it is to
20 try a case, particularly one like this. It's a very
21 complicated case and we have good counsel on both sides,
22 aggressive counsel, but their professionalism, treating
23 everybody in a manner which is not special is what's required.

09:58:41

24 MR. ARNETT: Thank you, Your Honor.

25 MR. MINNS: Thank you, Your Honor.

09:59:06

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09:59:07

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(End sidebar.)

THE COURT: We're adjourned.

(Whereupon, these proceedings recessed at 10:00 a.m.)

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C E R T I F I C A T E

10:04:03

I, ELAINE M. CROPPER, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter
for the United States District Court for the District of
Arizona.

10:04:03

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control, and to the best of
my ability.

10:04:03

DATED at Phoenix, Arizona, this 9th day of July,
2012.

10:04:03

s/Elaine M. Cropper

10:04:03

Elaine M. Cropper, RDR, CRR, CCP

10:04:03

United States District Court