

Appendix B

1 defendant is guilty of Money Laundering.

2 Under the sting provision for all five counts and for
3 each transaction, undercover agents represented to the
4 defendant that the proceeds were from drug trafficking and that
5 they did not want their money seized by the government.

6 And all the transactions they indicated in some way or
7 form that they didn't want the money linked back to them and
8 the defendant completed the transactions, never got
9 identifications from either of the undercover agents.

10 THE COURT: I do think that there is sufficient
11 evidence from which, viewed in the light most favorable to the
12 government, a jury might find that the defendant had committed
13 18, 1956(3)(B).

14 Do you want to address (C)?

15 MS. ESCALANTE: Yes, Your Honor.

16 In all of the transactions, the defendant never sought
17 the requisite information to even file a transaction reporting
18 requirement.

19 In order to do so, whether it was an amount of \$10,000
20 or more, or Suspicious Activity Report, some sort of PI would
21 need to be gathered initially to do such filings. None of that
22 was evident here, which also leads to believe that because he
23 didn't even get that information, there's no way that he was
24 going to be able to do such.

25 THE COURT: Well, we haven't had any testimony. I

1 In other words, do you have any authority that
2 suggests that merely intending -- merely intending to avoid the
3 transactions that apply -- or merely intending to avoid the
4 reporting requirements that apply to institutions is sufficient
5 to criminalize activity that is not otherwise unlawful is not a
6 crime?

7 Did you understand my question?

8 MS. WEIDNER: Yes, Your Honor.

9 I have researched these issues. I have not seen a
10 case where there has been an attempt to prosecute someone
11 simply for not conducting their financial transactions through
12 a bank.

13 THE COURT: And are you aware of any authority that
14 says that if you do so in a legal way --

15 Well, I've already asked the question.

16 MS. WEIDNER: Yes, sir.

17 THE COURT: I am going -- I'm going to defer -- I am
18 going to deny the Defendant's Rule 29 Motion as it pertains to
19 the count relating to (3) (B).

20 I do believe that there is sufficient evidence that a
21 reasonable jury could determine that the defendant acted with
22 the intent to conceal or disguise the nature, the location, the
23 source, the ownership, or the control of the property believed
24 to be the proceeds of specified unlawful activity; and that he
25 conducted or intended to conduct a financial transaction

1 involving property represented to be the proceeds of specified
2 unlawful activity in a way that violates the statute.

3 So as it pertains to the count for 29(b), the motion
4 is denied.

5 I am deferring ruling on 29(c). And I suggest that
6 the parties -- I'm going to defer it until tomorrow morning.

7 I suggest that the parties provide me any legal
8 authority they have that suggests that engaging in a lawful
9 transaction, doing so because it avoids -- because it avoids
10 reporting requirements that might apply to another lawful
11 transaction -- can constitute a federal crime that violates
12 this statute.

13 MS. ESCALANTE: Your Honor, if I may just ask.

14 So you're taking out the fact that it's drug proceeds
15 out of that analysis?

16 Because by virtue of it being drug proceeds, it's
17 already an unlawful transaction.

18 THE COURT: Well, you didn't charge that, did you? Or
19 have I misunderstood what you're trying to tell me?

20 MS. ESCALANTE: Well, that because it's drug proceeds,
21 that's why they went to Mr. Costanzo to exchange that to avoid
22 banks. Period.

23 THE COURT: Well, I'll look at that. I'll look at the
24 statute carefully tonight and see if I think that it could
25 support that kind of a ruling. But I would still suggest that

1 THE COURT: All right. So you're going to rest. And
2 then there is no right to rebuttal since the defense is
3 resting. So what we're really talking about is settling the
4 final jury instructions and the jury verdict form.

5 I do appreciate the parties briefing the issues I
6 wanted briefed last night. They have clarified some things, I
7 think, for me, but I didn't want to make my determinations
8 without consulting with the parties.

9 My concern, as you know, on the Rule 29 motion is
10 1956(a)(3)(C). I do believe and have reviewed the evidence in
11 my mind, and I believe that I did deny and continue to think
12 it's appropriate to deny the Rule 29 motion as it contains --
13 pertains to 1956(a)(3)(B), but (a)(3)(C) is more problematic
14 for me.

15 Accepting for a moment -- and because I'm not sure
16 we'll have to go further, but maybe we will -- accepting for a
17 moment the prosecution's theory of the case is viable and they
18 have provided some support, at least in theory, from some other
19 cases from other circuits.

20 I really am more concerned about the adequacy of the
21 evidence under the counts to even support the government's
22 case, accepting its theory as liable. And I would like to
23 review those with the government and with the defense.

24 You have conceded on Counts 1 and 5 -- and I'm not
25 really sure that those are the counts you want to concede on,