

APPENDIX

APPENDIX

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APPENDIX A

**United States District Court
Northern District of California**

CRIMINAL COVER SHEET

[Filed: August 25, 2016]

Instructions: Effective January 3, 2012, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.

Case Name:

USA v. GOYKO GUSTAV KUBUROVICH and
KRISTEL KUBUROVICH

Case Number:

CR 16 00373

Total Number of Defendants:

1 ☐ 2-7 ☒ 8 or more ☐

Is This Case Under Seal?

Yes ☐ No ☒

**Does this case involve ONLY charges under 8
U.S.C. § 1325 and/or 1326?**

Yes ☐ No ☒

App. 2

Venue (Per Crim. L.R 18-1):

SF ☐ OAK ☐ SJ ☒ EUR ☐ MON ☐

Is any defendant charged with a death-penalty-eligible crime?

Yes ☐ No ☒

Assigned AUSA (Lead Attorney):

Gary G. Fry

Is this a RICO Act gang case?

Yes ☐ No ☒

Date Submitted:

August 25, 2016

Comments:

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App. 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE UNITED STATES OF AMERICA

vs.

GOYKO GUSTAV KUBUROVICH
and
KRISTEL KUBUROVICH

INDICTMENT

(See Attachment)

A true bill.

/s/

Foreperson

*Filed in open court this 25 day of August
A.D. 2016*

/s/

United States Magistrate Judge

/s/

***Bail.** \$ No bail arrest warrant as to both
defendants.*

ATTACHMENT TO INDICTMENT COVER

U.S.

v.

**GOYKO GUSTAV KUBUROVICH and
KRISTEL KUBUROVICH**

Count One:

18 U.S.C. §§ 157(1) and 2 – Bankruptcy Fraud and
Aiding and Abetting

Defendants:

GOYKO GUSTAV KUBUROVICH
KRISTEL KUBUROVICH

Penalties:

Maximum Prison Sentence:	5 years
Maximum Fine:	\$250,000
Maximum Supervised Release:	3 years
Special Assessment:	\$100

Count Two:

18 U.S.C. §§ 152(1) and 2– Concealment of Assets
During Bankruptcy Proceeding and Aiding and
Abetting

Defendants:

GOYKO GUSTAV KUBUROVICH
KRISTEL KUBUROVICH

Penalties:

Maximum Prison Sentence:	5 years
Maximum Fine:	\$250,000
Maximum Supervised Release:	3 years
Special Assessment:	\$100

Count Three:

18 U.S.C. § 152(3) – False Statement During
Bankruptcy Proceeding

Defendants:

GOYKO GUSTAV KUBUROVICH

Penalties:

Maximum Prison Sentence: 5 years

Maximum Fine: \$250,000

Maximum Supervised Release: 3 years

Special Assessment: \$100

FORFEITURE ALLEGATION: 21 U.S.C. § 853 –
Drug Forfeiture

Defendants:

GOYKO GUSTAV KUBUROVICH

KRISTEL KUBUROVICH

Penalties:

Forfeiture

App. 6

BRIAN J. STRETCH (CABN 163973)
United States Attorney

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION
CR No.: CR 16 00373**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
GOYKO GUSTAV KUBUROVICH and)
KRISTEL KUBUROVICH,)
)
Defendants.)

VIOLATIONS: 18 U.S.C. §§ 157(1) and 2
– Bankruptcy Fraud and Aiding and
Abetting; 18 U.S.C. §§ 152(1) and 2–
Concealment of Assets During
Bankruptcy Proceeding and Aiding and
Abetting; 18 U.S.C. § 152(3) – False
Statement During Bankruptcy
Proceeding; 18 U.S.C. § 981(a)(1)(C) and
28 U.S.C. § 2461(c) – Criminal Forfeiture
(SAN JOSE VENUE)

INDICTMENT

App. 7

The Grand Jury Charges:

At all times relevant to this indictment, unless otherwise indicated:

INTRODUCTORY ALLEGATIONS

1. Goyko Gustav KUBUROVICH (“G. KUBUROVICH”) and his daughter Kristel KUBUROVICH (“K. KUBUROVICH”) resided in Morgan Hill, California, and Gilroy, California, in the Northern District of California. Between 2009 and 2012, G. KUBUROVICH and K. KUBUROVICH resided at 7170 Eagle Ridge Drive, Gilroy, California.

2. Prior to May 2010, G. KUBUROVICH had accumulated approximately \$2,133,053.00 in FDIC insured debts to various financial creditors, including American Express, Discovery International, JP Morgan Chase, Citibank, Bank of America, HSBC Bank, National Bank of Arizona, First National Bank of Central California, and Wachovia Bank, among others.

3. Nata, LP was a limited California Partnership established and controlled by G. KUBUROVICH and K. KUBUROVICH.

4. United Security Bank was an FDIC-insured Bank headquartered in Fresno, California.

5. Pinnacle Bank was an FDIC-insured Bank headquartered in Morgan Hill, California.

THE SCHEME TO DEFRAUD

6. Beginning on a date unknown to the Grand Jury, but no later than December 5, 2008, and continuing

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until at least May 25, 2010, defendants G. KUBUROVICH and K. KUBUROVICH, along with others known and unknown to the grand jury, knowingly devised, and intended to devise, a material scheme and artifice to defraud and for purpose of executing and concealing such a scheme and artifice, and attempting to do so, knowingly filed a petition under Title 11 of the United States Code.

7. The purpose of the scheme to defraud was for G. KUBUROVICH and K. KUBUROVICH to enrich themselves through the filing of a Chapter 7 bankruptcy petition in United States Bankruptcy Court by G. KUBUROVICH containing materially false representations and omissions, causing the Court to discharge approximately \$2,133,053.00 worth of FDIC insured debt that G. KUBUROVICH owed to his creditors. In furtherance of the scheme to defraud, G. KUBUROVICH, with the knowing assistance of his adult daughter, K. KUBUROVICH, submitted a bankruptcy petition which, among other false statements and omissions, concealed approximately \$868,000 in assets.

8. Prior to, and in preparation for, the filing of the bankruptcy petition, in December 2008, K. KUBUROVICH opened United Security Bank Account #xxxx0823 and Pinnacle Bank Account xxxx0569 in the name of K. KUBUROVICH. K. KUBUROVICH was the sole signatory on the signature cards for both of these bank accounts.

9. On December 18, 2008, G. KUBUROVICH transferred \$250,000 into K. KUBUROVICH'S United Security Bank Account #xxxx0823.

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10. On December 26, 2008, G. KUBUROVICH transferred \$250,000 into K. KUBUROVICH'S United Security Bank Account #xxxx0823.

11. On December 31, 2008, G. KUBUROVICH transferred \$250,000 into K. KUBUROVICH'S Pinnacle Bank Account #xxxx0569.

12. On January 5, 2009, G. KUBUROVICH and K. KUBUROVICH opened an account at Verwaltungs Und Private-Bank AG in Liechtenstein, account number xxxxx.104.

13. On January 25, 2009, K. KUBUROVICH transferred \$500,000 from her USB account to Verwaltungs Und Private-Bank AG account number xxxxx.104.

14. On February 20, 2009, K. KUBUROVICH opened Pinnacle Bank account number #xxxx1277 in the name of Nata, LP.

15. On April 6, 2009, K. KUBUROVICH transferred \$399,975 from her Verwaltungs Und Private-Bank account xxxx.104 to her USB account xxxx0823.

16. On March 30, 2009, K. KUBUROVICH purchased a cashier's check in the amount of \$50,000 from USB account #xxxx0823 made payable to Stewart Title Company.

17. On April 7, 2009, K. KUBUROVICH obtained a cashier's check from her USB account #xxxx0823 in the amount of \$597,000 and deposited it into the Nata, LP, account with Pinnacle Bank, account #xxxx1277.

18. On May 11, 2009, K. KUBUROVICH authorized the wire of \$597,311.71 from the Nata, LP account with Pinnacle Bank, account #xxxx1277, to Stewart Title to complete the purchase of 7170 Eagle Ridge Drive, Gilroy, California, real property which was subsequently used by G. KUBUROVICH and K. KUBUROVICH as a residence.

19. On May 25, 2010, G. KUBUROVICH filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Northern District of California. In the petition, G. KUBUROVICH knowingly failed to disclose the existence of the funds he had transferred into the new accounts of K. KUBUROVICH, to wit: United Security Bank account #xxxx0823, and Pinnacle Bank account #xxxx0569, as well as the existence of other funds in bank accounts under his and K. KUBUROVICH'S control. He further knowingly failed to disclose his ownership and control of his residence in Gilroy, California, which had been purchased with funds from United Security Bank account #xxxx0823 and Pinnacle Bank account #xxxx1277.

COUNT ONE: (18 U.S.C. § 157 – Bankruptcy Fraud; Aiding and Abetting)

20. Paragraphs One through Nineteen are realleged and incorporated by reference as though fully set forth herein.

21. On or about May 25, 2010, in the Northern District of California and elsewhere, the defendants,

GOYKO GUSTAV KUBUROVICH and
KRISTEL KUBUROVICH,

with the intent to devise a scheme and artifice to defraud the trustee charged with control of the debtor's property, his creditors, and the United States Trustee, and for the purpose of executing and concealing said scheme and artifice, filed a bankruptcy petition which, among other false statements and omissions, knowingly and fraudulently concealed material assets, specifically:

- A. In Schedule A of the petition, G. KUBUROVICH failed to disclose real property over which he maintained control, to wit: the residence located at 7170 Eagle Ridge Drive, Gilroy, California, which he and K. KUBUROVICH had purchased with a total cash payment of approximately \$647,311.71 on May 11, 2009; and
- B. In Schedule B of the petition, G. KUBUROVICH failed to disclose personal property over which he maintained control, to wit: approximately \$221,840.99 in cash which had been placed in bank accounts under the names of K. KUBUROVICH and Nata, L.P. at United Security Bank and Pinnacle Bank, as well as the existence of funds in other bank accounts under his and K. KUBUROVICH'S control;

thereby making false and fraudulent representations, claims, and promises concerning and in relation to a proceeding under Title 11, United States Code, *to wit: In re Goyko Gustav Kuburovich et al.*, United States

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Bankruptcy Court, Northern District of California,
Case 10-5547.

All in violation of Title 18, United States Code,
Sections 157(1) and 2.

COUNT TWO: (18 U.S.C. §§ 152(1) and 2–
Concealment of Assets in Bankruptcy Proceeding;
Aiding and Abetting)

22. Paragraphs One through Nineteen are realleged
and incorporated by reference as though fully set forth
herein.

23. On or about May 25, 2010, in the Northern
District of California and elsewhere, the defendants,

GOYKO GUSTAV KUBUROVICH and
KRISTEL KUBUROVICH,

did knowingly and fraudulently conceal from the
United States Trustee, in connection with a case under
Title 11 of the United States Code, *to wit: In re Goyko
Gustav Kuburovich et al.*, United States Bankruptcy
Court, Northern District of California, Case 10-55471,
property belonging to the estate of a debtor they were
required to disclose in the bankruptcy petition,
specifically:

- A. In Schedule A of the petition, G. KUBUROVICH
failed to disclose real property over which he
maintained control, to wit: the residence located
at 7170 Eagle Ridge Drive, Gilroy, California,
which he and K. KUBUROVICH had purchased
with a total cash payment of approximately
\$647,311.71 on May 11, 2009; and

B. In Schedule B of the petition, G. KUBUROVICH failed to disclose personal property over which he maintained control, to wit: approximately \$221,840.99 in cash which had been placed in bank accounts under the names of K. KUBUROVICH and Nata, L.P. at United Security Bank and Pinnacle Bank, as well as the existence of funds in other bank accounts under his and K. KUBUROVICH'S control;

All in violation of Title 18, United States Code, Sections 152(1), and 2.

COUNT THREE: (18 U.S.C. §152(3) --False Statement in Bankruptcy Proceeding)

24. Paragraphs One through Nineteen are realleged and incorporated by reference as though fully set forth herein.

25. On or about May 25, 2010, in the Northern District of California and elsewhere, the defendant,

GOYKO GUSTAV KUBUROVICH,

knowingly and fraudulently made a materially false declaration, certificate, and verification under the penalty of perjury, as permitted under Section 1746 of Title 28, in and in relation to a case under Title 11, *to wit: In re Goyko Gustav Kuburovich et al.*, United States Bankruptcy Court, Northern District of California, Case 10-55471, by submitting Schedules of Assets and Liabilities and a Statement of Financial Affairs, as follows:

- A. In Schedule A of the petition, G. KUBUROVICH failed to disclose real property over which he maintained control, to wit: the residence located at 7170 Eagle Ridge Drive, Gilroy, California, which he and K. KUBUROVICH had purchased with a total cash payment of approximately \$647,311.71 on May 11, 2009; and
- B. In Schedule B of the petition, G. KUBUROVICH failed to disclose personal property over which he maintained control, to wit: approximately \$221,840.99 in cash which had been placed in bank accounts under the names of K. KUBUROVICH and Nata, L.P. at United Security Bank and Pinnacle Bank, as well as the existence of funds in other bank accounts under his and K. KUBUROVICH'S control;

All in violation of Title 18, United States Code, Section 152(3).

FORFEITURE ALLEGATION: (18 U.S.C. §§ 981(a)(1)(C) and 28 U.S.C. § 2461(c))

26. Paragraphs One through Twenty-One are realleged and incorporated by reference as though fully set forth herein.

Upon conviction of the bankruptcy fraud offenses, in violation of Title 18, United States Code, Section 152, as set forth in Counts Two through Three, inclusive, of this Indictment, the defendants,

GOYKO GUSTAV KUBUROVICH, and
KRISTEL KUBUROVICH,

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shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes, or is derived from, proceeds which are traceable to a violation of Title 18, United States Code, Section 152, including but not limited to a sum of money equal to the total amount of proceeds defendants obtained or derived, directly or indirectly, from the violations.

12. If any of the property described above, as a result of any act or omission of the defendants, or either of them:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred, or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been comingled with other property which cannot be divided without difficulty;

any and all interest the defendants have in any other property (not to exceed the value of the above forfeited property) shall be forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

13. This forfeiture is authorized by Title 18, United States Code, Section 981(a)(1)(C); Title 18, United

App. 16

States Code, Section 982(a)(2); Title 28, United States Code, Section 2461(c); Title 21 United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1); and Federal Rule of Criminal Procedure 32.2.

DATED: 25 Aug 2016

A TRUE BILL.

/s/
FOREPERSON

BRIAN J. STRETCH
United States Attorney

/s/ Jeff Nedrow
JEFF NEDROW
Chief, San Jose Branch Office

(Approved as to form: /s/ Gary G. Fry
AUSA GARY G. FRY

App. 17

**DEFENDANT INFORMATION RELATIVE TO A
CRIMINAL ACTION - IN U.S. DISTRICT
COURT**

[See Fold-Out Exhibit]

AO 257 (Rev. 6/78)

**SEALED BY ORDER
OF COURT****DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING**OFFENSE CHARGED**

(SEE ATTACHMENT)

- ☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY: (SEE ATTACHMENT)

CR 16**00373**

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

DEFENDANT - U.S.

▶ GOYKO GUSTAV KUBUROVICH

DISTRICT COURT NUMBER

**ORIGINAL
FILED
AUG 25 2016**Clerk, U.S. District Court
Northern District of California
San Jose**EJD****NC****PROCEEDING**

Name of Complainant Agency, or Person (& Title, if any)

FBI Special Agent Mark Matulich

☐ person is awaiting trial in another Federal or State Court, give name of court☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:☐ U.S. ATTORNEY ☐ DEFENSESHOW
DOCKET NO.☐ this prosecution relates to a pending case involving this same defendantMAGISTRATE
CASE NO.☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form Brian J. Stretch

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned)

Gary G. Fry

IS NOT IN CUSTODY

Has not been arrested, pending outcome of this proceeding

1) ☒ If not detained give date any prior summons was served on above charges2) ☐ Is a Fugitive3) ☐ Is on Bail or Release from (show District)**IS IN CUSTODY**4) ☐ On this charge5) ☐ On another conviction☐ Federal ☐ State6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**☐ SUMMONS ☐ NO PROCESS* ☒ WARRANT

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

Bail Amount: NO BAIL

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

App. 18

ATTACHMENT TO PENALTY SHEET

U.S.

v.

GOYKO GUSTAV KUBUROVICH

OFFENSES CHARGED:

18 U.S.C. §§ 157(1) and 2 – Bankruptcy Fraud and Aiding and Abetting; 18 U.S.C. §§ 152(1) and 2– Concealment of Assets During Bankruptcy Proceeding and Aiding and Abetting; 18 U.S.C. § 152(3) – False Statement During Bankruptcy Proceeding; 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) – Criminal Forfeiture

Count One: 18 U.S.C. §§ 157(1) and 2 – Bankruptcy Fraud and Aiding and Abetting

Penalties:

Maximum Prison Sentence:	5 years
Maximum Fine:	\$250,000
Maximum Supervised Release:	3 years
Special Assessment:	\$100

Count Two: 18 U.S.C. §§ 152(1) and 2– Concealment of Assets During Bankruptcy Proceeding and Aiding and Abetting

Penalties:

Maximum Prison Sentence:	5 years
Maximum Fine:	\$250,000
Maximum Supervised Release:	3 years
Special Assessment:	\$100

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Count Three: 18 U.S.C. § 152(3) – False Statement
During Bankruptcy Proceeding

Penalties:

Maximum Prison Sentence:	5 years
Maximum Fine:	\$250,000
Maximum Supervised Release:	3 years
Special Assessment:	\$100

FORFEITURE ALLEGATION: 18 U.S.C.
§ 981(a)(1)(C) and 28
U.S.C. § 2461(c) –
Criminal Forfeiture

Penalties:

Forfeiture

App. 20

**DEFENDANT INFORMATION RELATIVE TO A
CRIMINAL ACTION - IN U.S. DISTRICT
COURT**

[See Fold-Out Exhibit]

**SEALED BY ORDER
OF COURT**

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☐ SUPERSEDING

OFFENSE CHARGED

(SEE ATTACHMENT)

- ☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY: (SEE ATTACHMENT)

CR 16

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

DEFENDANT - U.S.

▶ KRISTEL KUBUROVICH

DISTRICT COURT NUMBER

00373

**ORIGINAL
FILED**

AUG 25 2016

Susan Y. Soong
Clerk, U.S. District Court
Northern District of California
San Jose

EJD

DEFENDANT

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

- 1) ☒ If not detained give date any prior summons was served on above charges ▶
2) ☐ Is a Fugitive
3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☐ On this charge
5) ☐ On another conviction } ☐ Federal ☐ State
6) ☐ Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

**DATE OF
ARREST**

Month/Day/Year

Or... If Arresting Agency & Warrant were not

**DATE TRANSFERRED
TO U.S. CUSTODY**

Month/Day/Year

☐ This report amends AO 257 previously submitted

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FBI Special Agent Mark Matulich

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. ATTORNEY ☐ DEFENSE

SHOW
DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE
CASE NO.

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form Brian J. Stretch

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned)

Gary G. Fry

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

☐ SUMMONS ☐ NO PROCESS* ☒ WARRANT

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

Bail Amount: NO BAIL

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

ATTACHMENT TO PENALTY SHEET

U.S.

v.

KRISTEL KUBUROVICH

OFFENSES CHARGED:

18 U.S.C. §§ 157(1) and 2 – Bankruptcy Fraud and Aiding and Abetting; 18 U.S.C. §§ 152(1) and 2– Concealment of Assets During Bankruptcy Proceeding and Aiding and Abetting; 18 U.S.C. § 152(3) – False Statement During Bankruptcy Proceeding; 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) – Criminal Forfeiture

Count One: 18 U.S.C. §§ 157(1) and 2 – Bankruptcy Fraud and Aiding and Abetting

Penalties:

Maximum Prison Sentence:	5 years
Maximum Fine:	\$250,000
Maximum Supervised Release:	3 years
Special Assessment:	\$100

Count Two: 18 U.S.C. §§ 152(1) and 2– Concealment of Assets During Bankruptcy Proceeding and Aiding and Abetting

Penalties:

Maximum Prison Sentence:	5 years
Maximum Fine:	\$250,000
Maximum Supervised Release:	3 years
Special Assessment:	\$100

App. 22

FORFEITURE ALLEGATION: 18 U.S.C.
§ 981(a)(1)(C) and 28
U.S.C. § 2461(c) –
Criminal Forfeiture

Penalties:
Forfeiture

App. 23

APPENDIX B

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19-10215

D.C. No.
5:16-cr-00373-EJD-1

[Filed: July 8, 2021]

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
)
GOYKO GUSTAV KUBUROVICH,)
)
Defendant-Appellant.)

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted July 6, 2021**
San Francisco, California

Before: GRABER and LEE, Circuit Judges, and
VRATIL,** District Judge.

A jury convicted Defendant Goyko Gustav Kuburovich of bankruptcy fraud, 18 U.S.C. § 157, concealment of assets in a bankruptcy proceeding, id. § 152(1), and making a false statement in a bankruptcy proceeding, id. § 152(3). He timely appeals his convictions. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Defendant first argues that the district court erred by denying his motion to dismiss under the Speedy Trial Act, 18 U.S.C. § 3161(c)(1). We review for clear error the district court's findings of fact, including a finding that the ends of justice warrant a continuance, United States v. Henry, 984 F.3d 1343, 1349–50 (9th Cir. 2021), and we otherwise review de novo the denial of the motion, id.

With respect to the four-month delay beginning in May 2017, Defendant cannot argue that the district court clearly erred in finding that both his own lawyer and the prosecutor required more time to prepare for trial. That is because, first, Defendant and his codefendant daughter jointly asked for the continuance

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Kathryn H. Vratil, United States District Judge for the District of Kansas, sitting by designation.

that ran from May 8, 2017, until July 24, 2017. Second, Defendant fails to show how the court clearly erred in finding that the government needed another fifty days for continuity of counsel, which Defendant did not oppose. Defendant points to nothing but his own conjecture that the case's original prosecutor acted in bad faith. He then argues that such alleged bad faith, once revealed by Defendant in his motion to dismiss, retroactively tainted the district court's factual findings. That post hoc reasoning is insufficient to show clear error.

Nor did the district court clearly err in finding that the ends of justice supported the March 2018 continuance. Defendant agreed, in a signed stipulation, that he required more time for trial preparation and for continuity of counsel. Even if plea negotiations were one reason for the requested continuance, the court permissibly relied on the stated grounds of continuity and preparation. See United States v. Sutter, 340 F.3d 1022, 1033 (9th Cir. 2003) (holding that "where a defendant stipulates to facts underlying a district court's conclusion that time is excludable, the defendant cannot later challenge that finding"), as amended on denial of reh'g, 348 F.3d 789 (9th Cir. 2003).

2. Defendant next contends that the evidence was insufficient to support his convictions. We review de novo the denial of Defendant's motion for acquittal under Federal Rule of Criminal Procedure 29. United States v. Rocha, 598 F.3d 1144, 1153 (9th Cir. 2010). And we view the evidence in the light most favorable to

the prosecution. United States v. Nevils, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc).

On this record, a reasonable juror easily could find that Defendant's (a) repeated and redundant transfers of wealth to his daughter's empty bank accounts, (b) control over those accounts and of the house purchased with their funds, and (c) failure to list the accounts or the house on his bankruptcy petition and statement of financial affairs showed that he had concocted a scheme to commit bankruptcy fraud.

3. Next, Defendant asserts that the district court plainly erred, United States v. Klinger, 128 F.3d 705, 710 (9th Cir. 1997), by not giving sua sponte a specific unanimity instruction for Counts 2 and 3. But, as we have held in another context, "consensus by the jury on a particular false statement is not required." United States v. McCormick, 72 F.3d 1404, 1409 (9th Cir. 1995). Even if the government presented distinct violations of § 152(1) and § 152(3), sufficient evidence, as discussed above, supports a conviction for each violation. That makes any error harmless. See United States v. Lyons, 472 F.3d 1055, 1069 (9th Cir. 2007) (holding that the district court did not plainly err because sufficient evidence supported both theories of guilt).

4. Finally, Defendant claims that the district court erred by denying his motion for discovery to support a claim of vindictive prosecution. We review de novo the district court's legal conclusions, and for clear error its findings of fact. United States v. Brown, 875 F.3d 1235, 1240 (9th Cir. 2017).

The district court did not err. Defendant's theory is that the federal government belatedly pursued bankruptcy fraud charges because he won acquittal in an unrelated state prosecution on marijuana charges. The fact that the second prosecution was "based on a different set of facts from [the] previous prosecution[]" and "was brought by a different sovereign . . . weakens defendant's position." United States v. Robison, 644 F.2d 1270, 1273 (9th Cir. 1981). Nothing other than sheer speculation hints at vindictiveness.

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 19-10215

D.C. No.

5:16-cr-00373-EJD-1

Northern District of California, San Jose

[Filed: September 16, 2021]

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
)
GOYKO GUSTAV KUBUROVICH,)
)
Defendant-Appellant.)

ORDER

Before: GRABER and LEE, Circuit Judges, and
VRATIL,* District Judge.

* The Honorable Kathryn H. Vratil, United States District Judge
for the District of Kansas, sitting by designation.

The panel judges have voted to deny Appellant's petition for panel rehearing. Judges Graber and Lee have voted to deny the petition for rehearing en banc, and Judge Vratil has so recommended.

The full court has been advised of Appellant's petition for rehearing en banc, and no judge of the court has requested a vote on it.

Appellant's petition for panel rehearing and rehearing en banc, Docket No. 69, is DENIED.