

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) 05 CR 691-4
) Hon. Amy J. St. Eve
ANTOIN REZKO)

**GOVERNMENT’S RESPONSE TO DEFENDANT’S
MOTION FOR JUDGMENT OF ACQUITTAL,
OR IN THE ALTERNATIVE, FOR A NEW TRIAL**

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, responds to Defendant Antoin Rezko’s Motion For Judgment of Acquittal, Or In the Alternative, For a New Trial, stating as follows:

I. INTRODUCTION

After a 3-month jury trial, defendant Antoin Rezko was convicted on 16 counts of mail/wire fraud, bribery and money laundering. Rezko now moves to vacate certain of those convictions, arguing that this is one of the exceptional cases where the jury’s verdict should be overturned because there is insufficient evidence of his guilt. Rezko’s arguments require that the Court take a very circumscribed view of the evidence elicited at trial. Viewed in its entirety, the evidence is more than sufficient to affirm the jury’s findings here. Accordingly, Rezko’s motions should be denied.

II. LEGAL STANDARDS

A. Standard For Motion of Acquittal

Under Federal Rule of Criminal Procedure (“Rule”) 29, a court must enter a judgment of acquittal if, after considering all the evidence in the light most favorable to the Government, it concludes that “the record contains no evidence, regardless of how it is weighed, upon which a rational trier of fact could find guilt beyond a reasonable doubt.” *United States v. Cummings*, 395 F.3d 392, 397 (7th Cir.2005) (internal citation and quotation omitted). Where the defendant challenges the sufficiency of the evidence presented at trial, the court must “consider the evidence in the light most favorable to the prosecution, drawing all reasonable inferences in the government's favor,” and a “[r]eversal is appropriate only when, after viewing the evidence in such a manner, no rational jury could have found the defendant to have committed the essential elements of the crime.” *United States v. Macari*, 453 F.3d 926, 936 (7th Cir. 2006) (internal quotation omitted); *see United States v. Emerson*, 501 F.3d 804, 811 (7th Cir. 2007) (“[w]e must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”) (internal quotation omitted); *United States v. Reed*, 875 F.2d 107, 113 (7th Cir. 1989) (“Motions for a new trial based on the weight of the evidence are not favored” and a court should grant such motions “sparingly and with caution, doing so only in those really exceptional cases.”).

B. Standard For Motion For New Trial

Rule 33 provides that “[o]n a defendant’s motion, the court may grant a new trial to that defendant if the interests of justice so require.” “Motions for a new trial based on the weight of

the evidence are not favored.” *United States v. Reed*, 875 F.2d 107, 113 (7th Cir. 1989) (quotation omitted). A court should grant such motions “sparingly and with caution, doing so only in those really exceptional cases.” *Id.* “The evidence must preponderate heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand.” *Id.*; *accord United States v. Washington*, 184 F.3d 653, 657 (7th Cir. 1999)(court should grant motion only when “the verdict is so contrary to the weight of the evidence that a new trial is required in the interests of justice.”). A court may also grant a new trial “in a variety of situations in which the substantial rights of the defendant have been jeopardized by errors or omissions during trial.” *United States v. Eberhart*, 388 F.3d 1043, 1048 (7th Cir.2004) (quoting *United States v. Kuzniar*, 881 F.2d 466, 470 (7th Cir.1989)), *overruled on other grounds by Eberhart v. United States*, 546 U.S. 12, 126 S.Ct. 403, 163 L.Ed.2d 14 (2005).

III. ARGUMENT

A. Evidence In Support Of Money Laundering Counts

Rezko first moves to vacate his money laundering convictions on Counts 23 and 24. In short, Rezko, citing two recent Supreme Court cases, argues (a) that the charged money laundering transactions did not involve the movement of the “proceeds” of the mail fraud and (b) there was insufficient evidence of concealment to sustain the convictions. For the reasons set forth below, Rezko’s motion to vacate Counts 23 and 24 should be denied.

1. Factual Background

Counts 23 and 24 charged Rezko with money laundering in violation of Title 18, United States Code, Section 1956(a)(1)(B)(I). Each money laundering count charged Rezko with causing a financial transaction, specifically the movement of two \$125,000 checks, that involved

the proceeds of the mail fraud scheme charged in Counts 1 and 2 of the indictment. Counts 1 and 2 of the indictment involved mailings in furtherance of the Glencoe Capital (“Glencoe”) aspect of the charged fraud scheme. As the evidence demonstrated at trial, Glencoe hired Shelly Pekin to act as a finder in Glencoe’s attempt to obtain money from TRS. In exchange for Levine’s assistance in obtaining money for Glencoe from TRS, Pekin agreed to share a portion of his finder’s fee with Levine. Levine’s acceptance of this kickback, which was not disclosed to the TRS Board despite Levine’s position on the Board, was an honest services fraud scheme.

In approximately the summer of 2003, Levine, at Rezko’s request, agreed to share a portion of the potential finder’s fee from Glencoe with Dick Mell. Rezko, however, later informed Levine the fraud money was not to go to Mell. Rather, according to Rezko, he would later provide another name to Levine to obtain the money.

In August 2003, the TRS Board voted to allocate \$50 million to Glencoe. Levine did not disclose his financial interest in the Glencoe allocation at the time of the Glencoe vote. Once TRS voted to allocate money to Glencoe, the fraud scheme was effectively complete as Levine had violated his honest services in exchange for money.

Once Glencoe obtained an allocation from TRS, Pekin was in line to obtain \$375,000 from the fraud scheme through his finder’s fee agreement with Glencoe. Pekin obtained the first of the fraud funds in September 2003 and later received more of the fraud funds in January 2004 and March 2004. In approximately January 2004, Rezko informed Levine that Joseph Aramanda was to receive \$250,000 of the fraud funds. Levine passed Aramanda’s name to Pekin so Pekin could meet Aramanda and arrange to get Aramanda the money. Pekin and Aramanda met.

To conceal the movement of the fraud money, a sham consulting contract between Pekin

and Aramanda was produced. Levine, Pekin, and Steve Loren testified about the sham consulting contract. In particular, Levine asked Loren to produce the sham consulting contract. Loren, after repeatedly rebuffing Levine, ultimately agreed to produce the sham consulting contract. Loren was so concerned about the sham consulting contract that he had it erased from his law firm's computers. Pekin and Aramanda met and signed the sham consulting contract. The sham consulting contract envisioned a forward-looking relationship between Pekin and Aramanda and was meant to hide the fact that Aramanda was getting money for doing absolutely nothing in relation to the Glencoe/TRS deal which, in fact, had occurred months earlier. Pekin testified he did not expect Aramanda to provide any services under the sham consulting contract and could not see how Aramanda, who had no contacts in the financial world, would be able to help Pekin with consulting.

By March 2004, Pekin had over \$250,000 in money from Glencoe based on the fraud scheme. Shortly after signing the sham consulting contract, in March 2004 Pekin provided Aramanda with a \$125,000 check from the fraud money (Count 23). The next payment of the fraud money was not due until July 2004. Aramanda requested the money earlier than Pekin expected and Pekin refused to provide the money to Aramanda. Ultimately, Rezko pressured Levine to have Pekin get another \$125,000 to Aramanda immediately. Thereafter, in April 2004, Pekin wrote Aramanda another \$125,000 check and provided the check to Aramanda (Count 24). Pekin never again heard from Aramanda after providing the second \$125,000 check to Aramanda.

3. The Government Proved the Money Laundering Transactions Involved "Net Proceeds."

Rezko argues that the two \$125,000 checks to Aramanda were not Rezko's "profits"

from the fraud scheme and, therefore, could not have been the necessary “proceeds” required to convict Rezko of money laundering. As explained below, the two \$125,000 checks were profits from the fraud scheme and Rezko was properly convicted of money laundering.

The jury was instructed that to find Rezko guilty of money laundering it needed to find beyond a reasonable doubt that, among other things; (a) the property involved in the financial transactions at issue involved the net proceeds of the mail fraud charged in Counts 1 and 2; (b) Rezko knew the property involved in the financial transactions represented the net proceeds of some form of unlawful activity; and (c) that Rezko knew the transaction was designed in whole or in part to conceal or disguise the nature, the source, the ownership, or the control of the net proceeds of the mail fraud charged in Counts 1 and 2. Jury Inst. at 59. The jury was further instructed that the term “net proceeds” is “defined as the proceeds remaining after deducting the direct business costs, if any, incurred in acquiring the proceeds.” *Id.* at 62. The jury was also instructed that the “government must prove that the defendant knew that the property represented the net proceeds of some form of activity that constitutes a felony under State or Federal law.” *Id.* at 63.

Based on a recent Supreme Court case, *United States v. Santos*, 128 S.Ct. 2020 (2008), Rezko argues that the money laundering convictions must be vacated because the mail fraud and money laundering convictions “merge” and there were no “net proceeds” involved in the charged laundering transactions. In *Santos*, the transaction alleged as money laundering was an illegal lottery operator’s payments to his winners and runners using the receipts from his lottery operation. *Id.* at 2028-2030. The specified unlawful activity (“SUA”) that generated the receipts was the operation of an illegal gambling business in violation of Title 18 U.S.C. § 1955.

Relying on the rule of lenity, a four-Justice plurality in *Santos* concluded that the word “proceeds” in the money laundering statute means profits rather than gross receipts. *Id.* The plurality reasoned that, even when the term “proceeds” was viewed in its context throughout the money laundering statute, ambiguity remained, and thus the rule of lenity applied in favor of the narrower “profits” definition. The plurality further supported its view by noting that, absent a “profits” definition, the government could charge the “promotion” prong of the money laundering statute in cases, like *Santos*, in which the alleged money laundering transaction was a “normal part” of the underlying SUA. *Id.* In such cases, the money laundering charge may be said to “merge” with the proceeds-generating crime, so that a separate conviction for money laundering would be tantamount to a second conviction for the same offense. *Id.* In the plurality’s view, a “profits” definition of “proceeds” eliminated this problem, because by definition profits consist of what remains after expenses are paid. *Id.* at 9.^{1/}

In short, in *Santos*, the Supreme Court’s concern was that the money involved in the charged money laundering was simply the payment of expenses of the criminal activity and not the movement of the net proceeds of the criminal activity. The plurality was concerned that any

^{1/} The *Santos* opinion was a plurality opinion that involved the meaning of “proceeds” in a money laundering case brought under the “promotion” prong of the money laundering statute where the SUA was the operation of an illegal gambling business in violation of Title 18, United States Code, Section 1955. It is the government’s position that since *Santos* was a plurality opinion, and pursuant to *Marks v. United States*, 430 U.S. 188, 193 (1977), the only binding aspect of *Santos* is that “proceeds,” as used in Section 1956(a)(1), means “profits” when the SUA charged as the predicate offense is the operation of an illegal gambling business, in violation of Section 1955. The government concedes, however, that because *Santos* has a limited holding, it does not abrogate the law of this Circuit which existed prior to *Santos* and which had applied the “profits” definition to SUAs beyond just the operation of an illegal gambling business. *See, e.g., United States v. Malone*, 484 F.3d 916, 921 (7th Cir. 2007) (drug offense). Those cases remain the governing law in this Circuit.

time a payment of expenses of a scheme was made the government could charge money laundering under the promotion prong of the money laundering statute.

While Rezko argues in a footnote that the term “proceeds” appears in both the “promotion” prong and “concealment” prong of the money laundering statute and therefore *Santos* must apply with equal force to both, the mere fact the term is present in both prongs does not mean the plurality’s reasoning applies with equal force to both prongs. Again, the primary concern of the plurality in *Santos* was the government’s overreaching to use money laundering to punish the payment of expenses of the criminal activity as a promotion of the underlying illegal activity. That concern is not equally present in the concealment prong of the money laundering statute. As the jury instructions in the instant case made clear, the concealment prong requires the government to prove Rezko knew the financial transaction at issue was designed in whole or in part to conceal or disguise the nature, the source, the ownership, or the control of the proceeds of the SUA. Jury Inst. at 59. The evidence necessary to meet this requirement has been developed in Seventh Circuit cases, *see e.g. United States v. Esterman*, 324 F.3d 565, 570 (7th Cir. 2003) (discussed in more detail in the next section, but requiring proof that the financial transaction must, at least in part, be designed to conceal or disguise the nature, source, ownership or control of the funds). Under the case law dealing with the concealment prong, the mere payment of money for expenses of the criminal activity will fail to meet the evidentiary requirements necessary to convict under a concealment theory of money laundering. Accordingly, it is not at all clear that the Supreme Court would, as defendant blithely assumes, take a similar position on the definition of “proceeds” as it did in *Santos* were it to solely consider a concealment prong case.

Regardless of how the Supreme Court might some day interpret the definition of “proceeds” in the concealment prong of the money laundering statute, as the plurality noted in *Santos*, “[interpreting] ‘proceeds’ to mean ‘profits’ eliminates the merger problem” and the issue of concern to the plurality. *Id.* at 2027. At issue, then, is whether any rational juror, having clearly been properly instructed in the instant case, could find that the movement of the two \$125,000 checks from Pekin to Aramanda was movement of profits, that is, net proceeds and not the movement of money to pay expenses. In short, Rezko’s argument is simply a sufficiency of the evidence argument as to whether the government proved the two \$125,000 checks were the profits of the fraud scheme.

The evidence was overwhelming that the two \$125,000 checks were the profits from the fraud scheme. As instructed, net proceeds or profit is simply proceeds remaining after deducting “direct business expenses, *if any*, incurred in acquiring the proceeds.” Jury Inst. at 62 (emphasis added). In the instant case, there were no expenses to Levine, Pekin, or Rezko from the fraud scheme. The \$375,000 to Pekin was the profit from the fraud scheme. Again, the fraud was complete when Levine breached his honest services and TRS allocated money to Glencoe. The schemers obtained their profit from the scheme in the form of the payments from Glencoe to Pekin. *See United States v. Segal*, 495 F.3d 826, 838-839 (7th Cir. 2007) (finding that defendant’s obtaining of approximately \$30 million through fraud was “net, not gross, proceeds to [the defendant]” and that defendant incurred no expenses in obtaining the fraud money and thus “[t]o him, it was all net proceeds, figuratively, all gravy.”). Thus, any movement of the \$375,000 by Pekin, assuming the other elements were met, was a financial transaction laundering the profits of the fraud scheme. *Accord United States v. Lee*, 232 F.3d 556, 558-560

(7th Cir. 2000) (finding defendant obtained funds fraudulently by lying on documents in order to secure a loan and thereafter committed money laundering by using the funds (that is, profits) to pay off another loan; and rejecting the defendant's argument that his obtaining the fraudulent funds and paying off the loan were all part of one fraudulent transaction).

As to Rezko specifically, his personal profit (putting aside the profit of the whole fraud scheme) was the \$250,000 he obtained through the scheme. At a minimum, even if one considers that Pekin took his "expenses" of \$125,000 out of the fraud, that left a profit of \$250,000 for Rezko and Levine. There were no other expenses to be deducted from Rezko's profit of \$250,000. Thus, regardless of whether one focuses on the full \$375,000 or merely Rezko's \$250,000, Rezko's movement of the \$250,000 was the movement of profits from Pekin to Aramanda through a sham consulting contract that constituted a financial transaction in net proceeds and, therefore, supported the money laundering convictions.

As the court noted in *Santos*, the money laundering statutes are to be imposed "only for the removal of profits from criminal activity." 128 S.Ct. at 2028. In the instant case, Rezko's movement of the money from Pekin to Aramanda was the removal of his profits of the fraud scheme.

Rezko, while suggesting there were no profits in the instant case and, therefore, no money laundering, never indicates exactly when it would be appropriate for the government to charge a money laundering crime. Under Rezko's theory that the \$250,000 was not profit, even the movement of the \$250,000 from Aramanda to an offshore company and then to a bank account in Rezko's wife's name would not be money laundering because it would simply be the movement of the gross proceeds of the fraud scheme and not actually profits. This surely was

not the intent of the *Santos* opinion and is certainly the type of activity meant to be criminalized by the money laundering statutes. Yet, if Rezko is correct and the \$250,000 is not profit, its movement anywhere in any form of disguise or through any form of concealment would not be money laundering. When taken to its logical conclusion Rezko's argument fails and demonstrates that the \$375,000 was the scheme's profits from the beginning.

Although there have not been numerous cases post-*Santos*, *United States v. Poulsen*, 2008 WL 2944680 (S.D. Ohio Aug. 1, 2008), is instructive. In *Poulsen*, the defendants were convicted of, among other things, money laundering under Section 1956(a)(1)(B)(I). The defendants in *Poulsen* moved to vacate their money laundering convictions based on *Santos*. The underlying unlawful activity in *Poulsen* was securities fraud and wire fraud that arose from the defendants obtaining investor money through fraudulent representations. The *Poulsen* court determined that the money obtained through the fraudulent representations was the proceeds or "gross receipts." *Id.* at *25. After obtaining the fraudulent proceeds, the defendants in *Poulsen* then wired the money to companies in which they had a business interest. The wiring of the fraud money was charged as money laundering. *Id.* at *25-26. The *Poulsen* court found that, unlike in *Santos*, the transactions that formed the basis of the defendants's money laundering convictions "had nothing to do with paying their expenses." *Id.* at *25. The court noted that the government did not charge the paying of marketing materials or outside professional services as the laundering, but rather the movement of money to organizations in which the defendant's had an interest. *Id.* at *25-26. Since the charged financial transactions with the money from the fraud was not the payment of the scheme's expenses, the *Poulsen* court refused to vacate the defendants's money laundering convictions.

Much like the situation in *Poulsen*, in the instant case the \$375,000 was the profits of Rezko's fraud of which he was entitled to \$250,000. The movement of money from Pekin to Aramanda was not an expense, but rather a movement of Rezko's profits to a third party to conceal Rezko's interest in the profits of his criminal activity. There is no theory in which Rezko was ever going to deduct expenses from his take of the fraud. Rezko had no expenses. Accordingly, the movement of the money to Aramanda was a financial transaction that violated the money laundering statute. As *Poulsen* makes clear, the intent of *Santos* is to combat the government from charging the payment of expenses as money laundering, not, as here, charging financial transactions in the profits from the fraud as money laundering. *Accord United States v. Everett*, 2008 WL 3843831, at *7-8 (D. Ariz. Aug. 14, 2008) (upholding money laundering conviction against a *Santos* challenge where defendant took money he obtained from a bankruptcy fraud and used it to purchase a home; court noted that the defendant essentially had no expenses and the use of the money to purchase an asset did not convert the money into an expense).

In sum, viewing the evidence in the light most favorable to the government, a rational juror could have found that the movement of money from Pekin to Aramanda were transactions in net proceeds sufficient to convict Rezko of money laundering.

3. The Government Presented Sufficient Evidence for a Jury to Find the Financial Transactions Charged in Counts 23 and 24 were Intended to Conceal or Disguise the Control, Ownership, and Source of the Net Proceeds.

Rezko also argues that Counts 23 and 24 should be vacated because no rational juror could have concluded that the movement of the money from Pekin to Aramanda was meant to disguise or conceal the nature, location, source, ownership or control of the \$250,000. The

evidence, however, was overwhelming that Rezko's movement of his profits of the fraud scheme from Pekin to Aramanda was meant to disguise or conceal the nature, source, ownership, or control of the \$250,000.

As noted above, the jury was instructed that to convict Rezko of Counts 23 or 24, they needed to find beyond a reasonable doubt that "the defendant knew that the transaction was designed in whole or in part to conceal or disguise the nature, the source, the ownership, or the control of the net proceeds of mail fraud as charged in Counts 1 and 2." Jury Inst. at 59. As Rezko notes, the Seventh Circuit has articulated two general principles when considering whether a financial transaction was designed in whole or in part to conceal or disguise the nature, source, ownership or control of the laundered funds. *See United States v. Esterman*, 324 F.3d 565, 570 (7th Cir. 2003). First, the financial transaction at issue should have some separation from the initial transaction that produced the fraudulent proceeds. *Id.* Second, the financial transaction must, at least in part, be designed to conceal or disguise the nature, source, ownership or control of the funds. *Id.* As the Seventh Circuit noted, intent to disguise or conceal may be proven by "circumstantial evidence like unusual secrecy surrounding the transactions, careful structuring of transactions to avoid attention, folding or otherwise depositing illegal profits into the bank account or receipts of a legitimate business, use of third parties to conceal the real owner, or engaging in unusual financial moves culminating in a transaction." *Id.* at 573.

As for the first principle articulated in *Esterman*, and as noted above, the mail fraud scheme led to Pekin obtaining \$375,000 in fraudulently derived funds. Pekin's obtaining of the fraudulently obtained funds (through several payments from Glencoe) was the initial transaction

in which the co-schemers obtained their ill-gotten gains. While Rezko suggests that the first transactions that rendered the money an ill-gotten gain were the two transfers from Pekin to Aramanda, this completely ignores the sequence of events that occurred before those two financial transactions and how the schemers fraudulently obtained the money in the first instance. Although Rezko argues that Pekin was “entitled” to the \$375,000, Pekin only obtained the \$375,000 through the fraud scheme in which he, Levine, and Rezko participated. While Pekin was entitled to the money based on his agreement with Glencoe, he obtained the money (and his entitlement to it from Glencoe) through fraud. Indeed, it is unclear why the money would suddenly become ill-gotten gains when it was moved from Pekin to Aramanda if it was not already ill-gotten gains when it initially arrived with Pekin.

In addition, as to the second general principle articulated in *Esterman*, the evidence was overwhelming that the transfer of money from Pekin to Aramanda was designed, at least in part, to disguise or conceal the nature, source, ownership or control of the funds. As to the control of the funds, the testimony was clear that the \$250,000 was controlled by Rezko. Levine testified that he agreed to provide the \$250,000 to Rezko. Levine further testified that Rezko provided the name of Aramanda as the person who Rezko wanted to obtain the \$250,000. Levine then passed Aramanda’s name to Pekin. In addition, Levine and Pekin both testified about Rezko’s forceful request that the second \$125,000 payment to Aramanda be accelerated. Recorded conversations played at trial confirmed Rezko’s role in controlling the movement of the money and his demand that the second \$125,000 payment be moved from July 2004 to April 2004.

The evidence was equally overwhelming that Rezko engineered the transactions with Aramanda to conceal the nature of the \$250,000 (fraud money) and Rezko’s ownership and

control of the fraud money. Again, it was Rezko who provided Aramanda's name as the person to take control of Rezko's \$250,000. In order to conceal the fact that Pekin was simply transferring Rezko's fraud profits to Aramanda, Rezko, Levine, Pekin and Aramanda participated in obtaining and executing a sham consulting contract that made it appear that Aramanda and Pekin had a legitimate business relationship when, in fact, no such business relationship existed. The sham consulting contract, introduced into evidence at trial, made it appear that Pekin and Aramanda were working together as consultants and that Pekin would pay Aramanda for his help with consulting. In fact, there was no business relationship and the contract was simply executed to give Pekin cover to transfer Rezko's \$250,000 to Aramanda. In fact, the transfer of the money under the consulting contract made little sense since Aramanda, as Rezko well knew, had done absolutely nothing to earn the \$250,000. Indeed, there was testimony at trial that the consulting contract was to be specifically composed to pass muster should the government ever look into the legitimacy of the transactions.

In the face of the facts, Rezko simply argues that "[n]ot only was there no evidence that Rezko had any interest in the proceeds, which the payment to Aramanda had the effect of concealing, but there was also no evidence presented that the purpose of the payment from Pekin to Aramanda was to conceal or disguise any attribute [sic] of the funds." Def. Mot. at 11. Rezko conveniently ignores the sham consulting contract and its formation as well as all of the testimony about Rezko's ownership of the \$250,000 and his ability to move the money from Pekin to Aramanda on a time frame of his choosing.^{2/}

^{2/} Rezko's citation to *Cuellar v. United States*, 128 S.Ct. 1994 (2008), does not assist his argument. The *Cuellar* opinion stands for the unremarkable proposition that merely hiding money during its transportation is insufficient to violate the money laundering statute. Rather,

In short, the evidence was more than sufficient, when viewed in the light most favorable to the government, for the jury to find that the payments from Pekin to Aramanda, executed at Rezko's request, were meant to conceal and disguise the fact that the \$250,000 was fraud money that belonged to Rezko. Accordingly, the Court should not vacate Rezko's conviction on Counts 23 and 24.

B. Sufficiency of Evidence of Rezko's Criminal Intent and Knowledge

Rezko next challenges whether there was sufficient evidence of Rezko's intent and knowledge to sustain his convictions on the mail/wire fraud counts (Counts 1-2, 4-8, and 11-15).^{3/} As at trial, Rezko argues that 1) the only evidence of Rezko's intent and knowing participation in the charged scheme comes from Levine, and that 2) Levine's testimony was so incredible that it cannot be the basis of a conviction. That argument is wrong on both counts. The government proved the elements of the offense both through Levine's testimony *and* through additional witnesses, tape recordings, and documents. Further, that additional evidence

conviction requires evidence that demonstrate the defendant *intended* to conceal or disguise the money. *Id.* at 2002-2005. Even assuming *Cuellar* applied to the concealment prong of the money laundering statute, as noted above, the evidence was overwhelming, both through testimony and the actual admission of a sham consulting contract, that Rezko intended to conceal the nature, source, control, and ownership of the \$250,000.

^{3/} Rezko brings this argument under both Rule 29 and Rule 33. However, even Rezko acknowledges that Levine's testimony provided direct evidence that Rezko had the requisite criminal intent and knowledge in the charged scheme. *See* Def. Mot. at 12. That admission dooms his Rule 29 motion in this regard, as courts cannot reassess the credibility of witnesses for purposes of considering a motion for judgment of acquittal. *See United States v. Griffin*, 194 F.3d 808, 816 (7th Cir.1999) (stating that for purposes of Rule 29 motions, courts are not to "reweigh evidence or reassess the credibility of witnesses; these are jury determinations to which we defer."). In any event, for the reasons detailed below, Rezko's Rule 29 motion on this ground fails for the same reasons as his Rule 33 motion – there was more than sufficient evidence of Rezko's intent and knowledge to sustain the convictions.

confirms and corroborates Levine's testimony in many significant respects. As a result, this is not one of those exceptional instances where it would be a miscarriage of justice for the jury verdict to stand.

The TIII recordings are a particular problem for Rezko, both at trial and now. Much of Rezko's attack on Levine's credibility stems from his alleged willingness to lie to the government to get a better cooperation deal and from his alleged inability to remember what had happened years earlier. On the TIII, however, Levine is making statements about events that had just transpired and without a clue that he would be charged with a crime in the future. Tellingly, Rezko's instant motion spends no time addressing the many incriminating statements that Levine made about Rezko on the TIII, or, even more significantly, Rezko's own statements captured on tape.

Similarly, Rezko's motion also fails to address the many ways in which Levine's testimony was corroborated by witnesses who testified about their own direct conversations with Rezko. Rezko's statements to witnesses like Joseph Cari, Chuck Hannon, Michael Winter, and Thomas Beck, demonstrated his intent and knowing participation in the scheme independently of Levine's testimony. Rezko has not attacked the credibility of those witnesses in this motion, and was unable to do so successfully at trial.

The TIII recordings and the testimony of other witnesses confirms that Rezko played an active role in the charged scheme. In particular, that evidence confirms that Rezko was told about the scheme by Levine and that he took steps to help the plan succeed, such as by inserting people to receive finder's fees who had no relationship to the underlying TRS investment and by directing Thomas Beck to approve the Mercy Hospital CON at the April 2004 Planning Board

meeting.

Thus, Rezko's multiple convictions are the result of both Levine's testimony and completely independent evidence about Rezko's knowledge and intent. Review of the evidence on key aspects of the scheme confirms that Levine was credible when he testified about Rezko's participation in the scheme.

1. Standard Club

Rezko learned about many aspects of the scheme from Levine at the April 14, 2004, Standard Club meeting (the "Standard Club meeting"). There, as Levine explained at trial, Levine told Rezko about all the potential finder's fees from companies seeking investments from TRS and the Illinois State Board of Investment ("ISBI") that Levine had arranged and proposed to share with Rezko in exchange for Rezko's use of his influence. Levine prepared a rough summary with the names of funds and how much money Rezko, Levine, and the finder (if applicable) would get from the investment fund. Levine's list included potential TRS investments involving LLR, Stockwell, JER, Investment Mortgage Holdings (IMH), and Capri Capital, a potential ISBI investment in Healthpoint, and the Mercy Hospital kickback from Jacob Kiferbaum.^{4/} Levine calculated that Levine and Rezko would each receive \$3.9 million from the fees that Levine expected would be paid by the various investment firms and Mercy.

Levine's testimony about that meeting was extensively corroborated from the rest of the evidence at trial. In part, it was corroborated by all the actions that Rezko took that furthered the scheme with respect to those payments. Levine's testimony was also corroborated by the

^{4/} Levine and Rezko had already agreed that Rezko would direct the finder's fees stemming from Glencoe Capital and Sterling, so those two companies were not discussed at the meeting.

recordings of his phone calls at the time. In those calls, Levine described the Standard Club meeting, the agreement between Rezko and Levine, and the specifics of the companies involved in the scheme. Levine went into the most detail about the scheme when he talked with Robert Weinstein, as Weinstein was a long-time friend and associate who was going to play a critical role in the scheme by receiving Levine's share of the finder's fees and bribes.

Thus, on April 15 (Call #25), Levine told Weinstein that he had a "great meeting last night [with Rezko]"^{5/} where "I got everything all, ah, laid out and um, full steam ahead, and we're . . . a fair and equitable where everybody participates [Levine and Rezko would share the finder's fees] and ah, full steam ahead and whatever I want."

On April 17 (Call #196), Levine told Weinstein how much money Levine expected to make from his corrupt deals with Rezko (\$3.9 million), that the fees would be routed to Weinstein first, and that Weinstein would then share the fees with Levine:

LEVINE: Ah, and um, ah, (chuckles) I've got ah, assuming that everything falls into place and that this, and I'd, I'd say that it's a pretty good ah, ah, a shot of that ah, of that, that it will because ah, Tony's fine with all of it and it's just a question of, of ah, and I will have control. I, I think, I think it's all doable [Weinstein]. I think that um, ah, taking a, a 2 year payment plan for a variety of deals and this includes ah, Jacob [the kickback Levine expected to receive from Kiferbaum relating to the Mercy Hospital project].

WEINSTEIN: Mm hm.

LEVINE: Um, ah, \$3,900,000 your end.

WEINSTEIN: I don't want that much.

LEVINE: Yeah, well good. Because, because I have high hopes (laughs) that you're of generous nature. (laughs)

^{5/} Levine's understanding of the conversation in the calls is provided in brackets.

WEINSTEIN: Well, here's the thing, Jacob [Kiferbaum] is a side that, that's, that's unrel-, well it is related to Tony.

* * * * *

LEVINE: The only, the only thing that's in, in this 3 million 9 ah, ah, is \$330,000 ah, for ah, the [Stockwell] deal ah, the rest is all ah, non ah, teachers.

WEINSTEIN: Mm hm. That's perfect.

LEVINE: Yeah. Um, a big piece of it is this, is the mortgage company deal [a large portion of the \$3.9 million comes from fees associated with IMH]. Ah,...

WEINSTEIN: It's like they, they can come to [Weinstein's company] and every month they can just distribute half to you [Levine would get half of the fees that Levine arranged to send to Weinstein's company].

LEVINE: Oh, oh yeah this, this is a, this is...

WEINSTEIN: No it's fine, but you, you, 'cause you know where this stuff is.

LEVINE: Well what I've done is um, ah, um, you know first of all of course this is, this is all very important to Steve [Loren] because I guarantee his interests ah, you know and all that and it can expand them ah, ah, too. I made um, ah, I told Tony about ah, ah, the fact that I told him about stuff that he knew nothing about and that I could of succeeded without him, but of course only for a limited period of time. Ah, you know it was, I think probably impressed the hell out of him and ah, and he t-, it's, it's like find us whatever you can, ah, and just, and just do it, make it happen Stuart. These are all things, of course, that were all put together already. Tony said to me on the ah, on the mortgage thing [IMH], he said, he said well what do you, what do you, what do you need to do to proceed. I said um, your permission. Fuckin' loved that.

WEINSTEIN: Mm hm. But you know what? It's much better to be...

LEVINE: Yeah.

WEINSTEIN: ...up front with him because he, he doesn't appear to be somebody that you have to be...

LEVINE: No.

WEINSTEIN: ...duplicitous with.

LEVINE: No, that, that's, that's exactly right...but you know what [Weinstein], there's things that he's asked for [funds that Rezko asked Levine to help even though Levine would not directly profit from them]...

WEINSTEIN: Mm hm.

LEVINE: ...here and I said to him, you know I know there's a lot of people that you have to take care of.

WEINSTEIN: Mm hm.

LEVINE: So I said ah, ah, I'm only uh, um interested in um, ah, in ah, uh, my pursuing, ah, things that will be for both of our mutual interests.

WEINSTEIN: Mm hm.

LEVINE: What you bring in here and ask me to do for you I, is, is, is not my business.

WEINSTEIN: Mm hm.

LEVINE: And I thought that that was an important point to make.

Later, in the context of talking about how Rezko agreed that Capri Capital would have to pay \$2 million fee to get \$220 million in TRS money, Levine said that:

LEVINE: I told him [Rezko] that [Thomas Rosenberg] then called ah, ah, and I said the fact of the matter is that ah, there's \$220 million there that should be worth over \$2 million in fees. And I said . . . I want you to be aware of this and ah, and he said, well he said you know do whatever you want here. Of course then I, I said that, that 220 I would include him [Rezko would share in the \$2 million in fees].

On April 21 (Call #328), Levine talked further with Weinstein about his relationship with Rezko and TRS, and how they were making money together. After discussing how some of the

money from “closing” deals would go to Weinstein, the pair talked about Rezko:

LEVINE: This stuff [the finder’s fees being paid to Levine nominees] is just to start because ah, he want, ah, he ah, he [Rezko] got no problem making money with me. Nobody knows that we’re makin’ money and they wanna do it.

WEINSTEIN: He, he, he, you know just from what you described in the thing. He’s smart and understands to have you as a player he has, he has to share in a fair and meaningful way.

LEVINE: Well yeah but, but look at it this way [Weinstein]. He, he, he could knock me out [Rezko could ensure that Levine was not re-appointed to the TRS Board] and I need his, us, and I need his people to get the stuff done. But I brought him stuff that he didn’t know existed and he’s makin’ money.

WEINSTEIN: No, it’s even more than that is if he, if he were to knock you out and he put someone in there...

LEVINE: He’d have no money, no ability to do it.

WEINSTEIN: Right, I mean you, you, you, you, you paid for your education you got your degree already so, you know, and he doesn’t know if he’s there for 3 more years or 8 more, you know he doesn’t know what his time frame is. So, right now for him to do something like that even he’s gotta say, you know I could, I could be stumbling around for the next 2 years.

* * * * *

WEINSTEIN: He [Rezko] doesn’t know how long he’s gonna be there.

LEVINE: No abs-, of, of course not and he wants to make as much as he can while he can.

Those conversations confirm that Rezko was told about the scheme, the companies involved, and his opportunity to make money in the scheme. Rezko’s subsequent agreement to participate in the scheme comes not just from Levine’s testimony, but from all the evidence of the acts that Rezko took to further the scheme, both before and after the Standard Club meeting.

2. Glencoe Capital

Rezko's actions in furtherance of the Glencoe Capital aspect of the scheme provide some of the strongest evidence of his criminal intent and knowledge. As demonstrated by the testimony of Levine, Sheldon Pekin, Elie Maloof, and the TIII recordings, Rezko directed that two-thirds of the finder's fee that Pekin received from Glencoe Capital be given to Joseph Aramanda, Rezko's long-time friend and business associate. Rezko, however, did not give Levine Aramanda's name until well after Glencoe Capital had received its allocation from TRS. Thus, Aramanda had nothing to do with helping Glencoe Capital receive its investments, a fact obvious to everyone involved in the transaction. Levine provided the only rationale for why Rezko was able to do this – Levine had promised that Rezko could direct the fee the prior summer, and Levine was willing to keep his promise to Rezko in the interest of developing their ongoing criminal relationship.

Levine and Pekin both testified that Levine gave Pekin Aramanda's name in about February 2004, which was over 6 months after Glencoe Capital had received its \$50 million investment from TRS. Aramanda had nothing to do with that investment – Pekin wanted to meet him to make sure that Aramanda actually existed. Pekin eventually arranged to meet Aramanda and made two separate payments of \$125,000 to Aramanda. Aramanda never did work to justify any payment from Pekin to Aramanda. To conceal the nature of the transaction, Levine arranged for Loren to draw up a sham contract to make it appear like Pekin and Aramanda had a legitimate business relationship that would justify the payment of the \$250,000 to Aramanda. Pekin gave the sham contract to Aramanda, who signed it. Pekin did not discuss or negotiate any of the terms of the contract with Aramanda, and Aramanda did not try to negotiate any of the

terms with Pekin.

At trial, Pekin explained that an issue arose with the second \$125,000 payment to Aramanda. In approximately late April of 2004, Aramanda called Pekin and said that another payment was due. Pekin knew that he had discussed with Aramanda that the second payment was not due until July 1, but Aramanda said that he had been told that the money would be paid shortly. Aramanda seemed apologetic about making the request for the money. In response, Pekin said words to the effect, "Is Christmas coming early." Pekin said that the next payment was not due until July 1st and refused to make the payment early.

Shortly after that call, Pekin spoke with Levine. Levine asked why Pekin was not paying Aramanda and pressured Pekin to make the payment (Levine explained at trial that he was responding to Rezko's direction to do this). On April 26, 2004 (Call #411), Levine and Pekin spoke again by phone. In the call, Levine asked Pekin if he had talked to David Evans, a principal at Glencoe Capital, about getting Glencoe Capital to pay Pekin some of his money early. Levine said it was critical that Pekin talk to Evans that day, and if Pekin did not talk to Evans, that "we won't be able to do business with them [Rezko and Aramanda] anymore" and that "if we don't get it finished today [the payment of the remaining \$125,000] ... Tony's not gonna do business anymore like that." Pekin then agreed that he would pay Aramanda that day without waiting for Glencoe Capital to pay Pekin any additional money.

After Pekin spoke with Levine, Pekin called Aramanda and indicated that he would have a check for Aramanda that day. Aramanda agreed to come to Pekin's office that day to pick up the check. Pekin then called Levine (Call #43). Pekin told Levine that he had spoken with Aramanda, and that Aramanda was getting the payment that day. Pekin and Levine then

discussed how Pekin thought that the original due date for the second payment was in July. Pekin said that Aramanda knew that the payment was now being made early because Aramanda “called me [Pekin] sheepishly because he [Aramanda] said, I don’t think money was due, but Tony asked me to call.” In response, Levine indicated that the earlier request might be his fault, saying that “I did tell Tony it was April ’cause I thought it was April [when the second payment was due].” Within minutes of the end of Call #43, Levine called Rezko’s office two times (Calls #45 and #412) and left a message for Rezko to call him. Later on April 26, Aramanda came to Pekin’s office and Pekin gave Aramanda a second check for \$125,000.

Thus, the evidence at trial revealed that Rezko controlled \$250,000 in profits of the scheme, which was delivered at his direction to Aramanda. The only logical explanation for Rezko’s ability to control that money was that Levine was working with him.

3. Sterling Financial

The evidence involving Sterling Financial also demonstrates Rezko’s criminal knowledge and intent. Originally, Rezko was going to keep a share of the finder’s fee that Sterling Financial would pay. Ultimately, Rezko decided to conceal his interest in the fee and let his business associate, Michael Winter, receive the fee (albeit through another party). In any event, the evidence from Winter and TIII demonstrates again that Rezko was acting in concert with Levine to help Sterling Financial for Rezko’s indirect benefit.

Much of the evidence relating to Rezko’s involvement with respect to Sterling Financial came from Winter. Winter originally brought Sterling to Levine’s attention after Rezko introduced Winter to Levine. Rezko had previously given Winter a detailed explanation of TRS and ISBI, including the makeup of the various Boards and a description of who Rezko’s friends

on the Boards were. Rezko wanted Winter to act as a finder of funds to invest with TRS and ISBI. Winter met with Rezko and Daniel Mahru, who was Rezko's business partner, to discuss the finder's fees for Sterling. They talked about splitting the fees 1/3 apiece, but Rezko said that he should get more because he had to take care of other people, including Kelly.

Winter also testified that he told Rezko in the spring of 2003 that Sterling's personnel wanted help with TRS staff. In turn, Levine said that Rezko asked him to push Sterling along, and a TIII recording of Levine with Jon Bauman demonstrated that Levine was pushing Sterling to get through TRS. As a result, Sterling's application was supposed to be presented to the TRS Board at the May 2004 TRS Board meeting.

Shortly before that meeting, Winter had a conversation with Rezko and Chris Kelly. There, Kelly said that Winter could not be named as the consultant for Sterling Financial because he shared an office with Rezko and because of Rezko's relationship with Governor Blagojevich. Winter suggested that he disclose the name of Michael Cherry to TRS as the recipient of the fee, and Kelly and Rezko agreed to this arrangement. As a result, Sterling did not disclose Winter's name as the recipient of the finder's fee in its application to TRS.

Again, the evidence demonstrates that Rezko controlled the Sterling fee, planned at one point to keep a share of it, and later wanted to hide his involvement with the deal. In contrast, Levine was never going to receive a portion of that fee. His willingness to assist Sterling Financial anyway is further proof that Levine was working with Rezko in this scheme, and thus further proof of Rezko's intent and knowledge.

4. JER

The JER aspect of the scheme provides another example of where Rezko's actions

proved his intent and knowledge. There, Rezko selected an individual (Chuck Hannon) to receive a portion of the finder's fee even though Hannon had nothing to do with the underlying TRS investment. Again, the explanation for Rezko's ability to insert Hannon into the deal is because he was working with Levine. As with the other aspects of the scheme, Levine's testimony about Rezko's involvement with JER is highly corroborated by other witnesses, documents, and the TIII recordings.

Levine testified that he discussed JER with Rezko for the first time at the Standard Club meeting and that they agreed that they would split the finder's fee that JER would pay. Rezko also agreed with Levine to provide the name of the consultant who would accept the fee from JER. As JER was slated to get its investment at the May 2004 TRS Board meeting, Levine explained to Rezko that there was some urgency to Rezko naming the consultant.

On April 26, 2004 (Call #42), Levine told Cari that Levine had still not received the name of the consultant that JER would have to use, but confirmed with Cari that JER knew that they would have to hire a consultant. After that April 26 call, Rezko told Levine that Hannon would be the person who would receive the fee from JER.

Again, Levine's testimony about the fee-splitting agreement was echoed on the TIII recordings. On May 1, 2004, Levine spoke with Weinstein (Call #557) about the JER fee that Levine expected to share. Levine told Weinstein, "Let me tell you what, and what else I got. You know there's a commingled fund that is closing in, in, in May [JER] that there's a \$750,000 fee that's going to one of Tony's guys [Hannon] and then ah, ah, and then half of it to a contract with you." Later in the call, Levine talked about how he expected to get \$700,000 from Cari for helping Healthpoint with ISBI, which money was also to go directly to Weinstein. Levine then

discussed the possibility with Weinstein that “we won’t even have to mix the two contracts. I’m gonna tell Tony he keeps that one [the \$750,000 JER money] and you take the \$700,000 on Healthpoint.”

Hannon provided further corroboration by describing his own interaction with Rezko. Hannon confirmed that Rezko directed him to talk with Levine about the finder’s fee. At that time, Rezko owed Hannon’s wife, Fortunee Massuda, millions of dollars, which Hannon and Massuda were trying to collect from Rezko. Hannon and Rezko had previously had several discussions related to finder’s fees and consulting work for the State of Illinois. Hannon told Rezko he was interested in such work and Rezko had indicated that he would have Levine contact Hannon about such an opportunity. Levine and Hannon then discussed the potential finder’s fee and Hannon said that he wanted to be involved. Hannon knew he would be doing nothing to earn the money from JER.

Hannon testified that he gave updates to Rezko about what was happening with him being a finder and his conversations with Levine. At one point, Rezko told Hannon that Hannon would be entitled to keep \$80,000 of the finder’s fee for himself. Later, Hannon asked Rezko if Hannon could have a larger share of the finder’s fee, but Rezko refused. Hannon understood that Levine was going to get half the fee, and that Rezko would decide on what happened to remainder that was left after Hannon took his \$80,000.

Again, Rezko’s control over the money demonstrates his active participation in the crime. It would be inexplicable for Levine to allow Rezko to control what happened to the JER finder’s fee if Levine did not believe that Rezko was a full participant in the scheme. Further, as Rezko knew that Hannon had nothing to do with the actual transaction, Rezko knew that Hannon had

no legitimate claim to any portion of the fee. Rezko's refusal to give Hannon any more than \$80,000 when he was asked demonstrates that Rezko understood that Hannon was not in position to ask for anything more.

5. Mercy Health System

Rezko's actions with respect to Mercy Health System's ("Mercy" or "Mercy Hospital") application for a CON also confirm his knowledge and intent. Rezko gave the critical order to Thomas Beck that ensured that Mercy Hospital would receive its CON, and consequently, that Jacob Kiferbaum would pay the bribe for the mutual benefit of Rezko and Levine. Rezko's own words on the TIII demonstrate why he issued the order – so that he and Levine could continue to “do what we need to do” (e.g., make money through Rezko's control over the Planning Board).

Rezko does not appear to dispute that he was the one who stacked the Planning Board with five of his candidates and that he gave orders to the Planning Board via Beck as to how they would vote. Recognizing Rezko's control, Levine testified that he approached Rezko to get his support with the Mercy Hospital CON, offering a share of the kickback that Jacob Kiferbaum would pay. Levine and Rezko periodically discussed the status of Mercy's CON application after that agreement, including at the Standard Club meeting. There, Levine included the Mercy kickback from Kiferbaum among the projects that he expected would produce money for Levine and Rezko. Rezko assured Levine at the meeting that Rezko would use his influence to ensure that Mercy received its CON. Levine said that he learned from both Rezko and Beck that Rezko in fact did instruct Beck that the Mercy Hospital CON should be approved at the April 21, 2004 Planning Board meeting.

Again, the TIII and the testimony of other witnesses bear out Levine's account. On April

19, 2004, Levine and Beck had a series of calls about the Mercy application (Call ## 257, 261, and 277). In the first call, Beck said, among other things, that “I’ve got the marching orders [from Rezko],” that “I think you may be able to help us, ah, on [Mercy] [meaning that Mercy would get its CON],” and “our boy [Rezko] wants us to help.”^{6/}

Beck also testified that Rezko had, in fact, indicated to him that Mercy should be approved. Beck confirmed that on the morning of the April 21, 2004 Planning Board meeting, Rezko pressured Beck into approving the Mercy Hospital CON, suggesting that he could quit the Planning Board if he did not want to approve the CON. Beck confirmed that after the meeting, he went with Levine to Rezko’s offices to discuss the vote, and that Rezko indicated that he would make it up to Beck.

On the evening of April 21, Levine discussed the events of the day with Weinstein and Loren. With Weinstein (Call#328), Levine recounted the details of the Mercy vote and talked

^{6/} Rezko suggests that Levine’s actions on the days leading up to April 21 Planning Board meeting are inconsistent with Rezko being aware of the Kiferbaum kickback. Def. Mot. at 17. This argument is misplaced for several reasons. First, there can be no question that Rezko actually issued the order that Mercy Hospital’s CON be approved at that meeting. Rezko actually did so more than once. Rezko had done so prior to April 21, which is evident from the fact in Levine and Beck’s call on April 20 (Call #84) where Beck suggests that Mercy would be approved at the next meeting. *See* Transcript Binder Tab 17, page 1, lines 14-15. Rezko then issued the order again when Beck hesitated on the morning of the meeting itself. Further, Levine’s other efforts to convince Beck to move forward with the approval on April 21 (as opposed to a later date) and to educate himself about the merits of Mercy Hospital’s CON application are hardly mutually exclusive with his belief that Rezko was going to help. Ultimately, Rezko did not leave the vote “to chance;” he directly intervened with Beck to make sure that his directive was followed. Rezko’s directives to “the Five” on the Planning Board had always been followed in the past; there was no reason for Rezko to believe anything more was necessary. And, in fact, Rezko did not have to do anything further to ensure that Mercy Hospital received its CON.

about “Tony” and the five votes that he controlled.^{7/} Levine also described how Beck threatened to resign and that “none of them know that it’s Tony and me. They know that Tony’s giving the orders.” Later, Levine said that “Beck had one of his relatives that had been hired to prevent from this happening. Tony had him do it.” Levine also recounted that he told Imad Almanaseer at the critical moment that “Tony wants this today.”

In Call #329, Levine talked to Loren about the Mercy vote as well. Again, Levine discussed how Beck wanted to resign, that “nobody knows that it’s Tony [that orchestrated the Mercy vote],” that Levine took Beck over to Rezko’s, and that Rezko was grateful that the Mercy vote got done.^{8/}

^{7/} Weinstein was an interested party because Kiferbaum was going to send the kickback payment to Weinstein in the guise of a phony consulting contract. Rezko argues that the absence of any indication in the sham consulting contract that Rezko was going to receive money is significant. Def. Mot. at 18. On the contrary, it would be more surprising if the sham consulting contract *did* spell out all the parties to the bribe.

^{8/} Rezko relies on Levine’s statement to Loren in this call that Rezko “don’t give a shit” to suggest that Rezko did not care about the result of the Mercy Hospital CON vote. Def. Mot. at 18. Rezko’s interpretation of that quote is flawed. The actual exchange was as follows:

LOREN So what did Tony think of the whole thing today?

LEVINE He don't give a shit. He wanted to make sure that it got done. He was grateful...

LOREN He should be royally upset that these 2 union people are, are causing problems.

LEVINE He, he needs 5 votes. He has 5 votes.

LOREN So he doesn't care.

Transcript Binder Tab 22, page 16, lines 11-17. In context, Levine is indicating that Rezko did not care *how* Mercy Hospital was approved; Rezko just wanted to make sure that it was done.

Finally, Rezko was recorded talking with Levine talking about how they were running the Planning Board. On May 18 (Call #1011), Rezko and Levine talked about a sixth Planning Board member, Dana Lynn Rice, who they wanted to vote with the rest of Rezko's voting bloc. Levine told Rezko that Levine had spoken with Kelly and that Levine was willing to talk to Rice. Rezko, however, indicated that "I rather keep it through Beck" [Rezko wanted Beck to talk with Rice, not Levine] and that "it should be [Beck] communicating with the others [Beck should talk with the Rezko voting bloc, not Levine]." Rezko said that he wanted the focus of the Planning Board to be on Beck, not Levine, although "you and I will still do what we need to do [Rezko and Levine would continue to make money through kickbacks at the Planning Board]." Rezko explained that Rice had been told to "take directions" from Levine, but Rezko wanted Levine to call Rice to tell her to take direction from Beck. Levine agreed to tell Rice to follow Beck's lead, saying that "we'll do it the way we have been handling it in the last couple of months."

If Rezko was merely a conduit of information about what the government wanted from the Planning Board, there was simply no reason why anything needed to be hidden from Beck. Rezko and Levine would "still do what [they] needed to do" with respect to their efforts to profit personally from the Planning Board. Thus, Rezko's criminal role in the scheme is confirmed by his own words.

* * * * *

Ultimately, the evidence of Rezko's intent and knowledge came from many sources in addition to Stuart Levine. In light of all the evidence at trial, the government provided more than enough evidence to justify the jury's verdict. This is not one of the "exceptional" cases where a motion for new trial should be granted. As a result, this aspect of Rezko's motions should be

denied.

C. Sufficiency Of the Evidence on Count 11

Rezko moves to vacate his mail fraud conviction on Count 11 on the theory that there was insufficient evidence from which any rational juror could find beyond a reasonable doubt that the charged letter at issue in Count 11 was sent through the United States mails. Def. Mot. at 21–23. In fact, the trial testimony amply supported the jury’s finding that the letter at issue in Count 11 was mailed.

Count 11 charged the mailing of a letter from Jacob Kiferbaum’s construction company (“Kiferbaum Construction”) to Mercy soliciting the construction contract to build a hospital for Mercy. In order to convict Rezko of the mail fraud scheme charged in Count 11, the jury needed to find beyond a reasonable doubt that the letter from Kiferbaum Construction to Mercy was sent through the United States mails. The jury was instructed that:

In connection with whether a mailing was made, evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. You should consider this evidence in the same manner that you consider all circumstantial evidence.

Jury Inst. at 44. The instruction was supported by several Seventh Circuit cases, including *United States v. Keplinger*, 776 F.2d 678, 690-691 (7th Cir. 1985), and *United States v. Ledsma*, 632 F.2d 670, 674 (7th Cir. 1980). In particular in *Keplinger*, the Seventh Circuit noted that the use of the mails may be proven by “circumstantial evidence” and that “[c]ircumstantial proof often consists of evidence of office practice, and such *testimony as to office practice is sufficient proof of mailing.*” 776 F.2d at 690 (emphasis added). The *Keplinger* Court rejected the defendant’s argument that the government had to prove that the office procedure was

“invariable” and reiterated “that proof of regular or usual business practice is sufficient” and that “it is sufficient to prove that mailing is the sender’s regular business practice.” *Id.* at 691.

At trial, the government presented the testimony of Rhonda Howard, Kiferbaum’s executive assistant at the time the Kiferbaum Construction letter was provided to Mercy. Howard testified it was the routine practice of Kiferbaum Construction to mail letters through the United States Postal Service. According to Howard, Kiferbaum used private couriers, but only for the delivery of larger items, such as brochures or blueprints. While on the stand, Howard was shown the Kiferbaum Construction letter at issue in Count 11. Howard testified that, although she did not personally type the letter, the letter was a standard follow-up letter that was often produced by Kiferbaum Construction. Howard testified that such letters were sent through the mail to prospective clients. Given the standard articulated in *Keplinger*, Howard’s testimony was more than sufficient for the jury to find beyond a reasonable doubt that the Kiferbaum Construction letter in Count 11 was mailed to Mercy.

Rezko’s motion suggests Howard’s testimony was insufficient because she did not personally type the letter and the letter allegedly “departed from routine practice in a number of ways.” Def. Mot. at 21. Both facts are immaterial. The point of “routine practice” testimony is to prove circumstantially that the letter was mailed. Howard testified that, while she did not type the letter, the letter was one that was routinely sent through the mails and it was Kiferbaum Construction’s practice to send such letters through the mail. While the letter had certain aspects to it that allowed Howard to know she did not personally write the letter (such as a lack of initials on the letter and a different way of designating “carbon copy”), Howard was clear that the letter was a standard follow-up letter that was routinely sent through the mail. Thus, while

defendant repeatedly suggests the letter “deviated from normal practice,” Howard’s testimony was clear that there was nothing about the letter that suggested a deviation from the normal and routine business of mailing such letters.^{9/}

In sum, viewing the evidence in the light most favorable to the government, there was sufficient evidence for a rational juror to find beyond a reasonable doubt that the Kiferbaum Construction letter at issue in Count 11 was sent through the United States mail. Accordingly, the Court should not vacate Rezko’s conviction on Count 11.

^{9/} Rezko’s reliance on *United States v. Brooks*, 748 F.2d 1199 (7th Cir. 1984) is misplaced. The *Brooks* Court reversed two mail fraud convictions. As to the first count of conviction, the government attempted to prove a mailing had occurred because the mailed item had been date-stamped. *Id.* at 1203. On cross-examination, however, the government witness testifying about normal business practice admitted that items received from private couriers were also date-stamped so that merely reviewing the date-stamp could not confirm the item had been received in the mail. As to the second conviction, the government only called a witness at the company that had received the item at issue. The witness could only testify that such items were normally received through the mail, but could not testify as to the practices of the sender of the item. *Id.* In the instant case, Howard’s testimony was that of the sending business and she was clear that it was the routine practice to mail the letter at issue in Count 11.

IV. CONCLUSION

For the reasons stated above, Rezko's Motion For Judgment of Acquittal, Or In the Alternative, For a New Trial, should be denied.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: s/ Christopher S. Niewoehner
Christopher S. Niewoehner
Reid J. Schar
Carrie E. Hamilton
Assistant United States Attorneys
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5300

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that in accordance with FED. R. CRIM. P. 49, FED. R. CIV. P. 5, LR5.5, and the General Order on Electronic Case Filing (ECF), the following document:

**GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR JUDGMENT OF
ACQUITTAL, OR IN THE ALTERNATIVE, FOR A NEW TRIAL**

was served on September 29, 2008, pursuant to the district court's ECF system as to ECF filers.

By: s/ Christopher S. Niewoehner
Christopher S. Niewoehner
Reid J. Schar
Carrie E. Hamilton
Assistant United States Attorneys
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5300