UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Case No.: 17-CR-107 (16) DWF/TNL

United States of America,

Plaintiff,

v.

Thoucharin Ruttanamongkongul (16),

Defendant.

MEMORANDUM IN SUPPORT OF DEFENDANT RUTTANAMONGKONGUL'S MOTION FOR JUDGMENT OF ACQUITTAL

INTRODUCTION

On December 13, 2018, following fourteen full days of testimony, the jury returned guilty verdicts against all five defendants on every single count. The jury reached the verdicts in less than one day of deliberations. From a bird's eye view, one would surmise the government's case was overwhelmingly strong and unimpeachable, and equally so against each individual defendant. From the view of someone who sat through the trial and listened to the witness' testimony, heard their answers, observed their demeanor, and reviewed the documentary evidence admitted at trial, a bird's eye view is highly misleading. This is especially true as to Ms. Ruttanamongkongul. There was simply no way to interpret the facts, or to justify an inference from the facts that Ms. Ruttanamongkongul voluntarily and intentionally joined an agreement to use force, threats of force, fraud or coercion to compel a person to engage in a commercial sex act. There was a real disconnect between the evidence the jury heard and the conclusion it reached. Because the trial evidence was insufficient to convict her of conspiracy to commit sex trafficking, this court must vacate the jury's verdict on Count I and enter an acquittal.

ARGUMENT

Rule 29(a) of the Federal Rules of Criminal Procedure provides that the court "*must* enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." (emphasis added). This standard applies whether a timely motion is made before or after a jury verdict. *See* Rule 29(c); *United States v. Espinoza*, 885 F.3d 516, 520 (8th Cir. 2018). "The court reviewing the sufficiency of the evidence, whether it be the trial or appellate court," applies a standard of review deferential to the jury's verdict. *United States v. Lincoln*, 630 F.2d 1313, 1316 (8th Cir. 1980). The verdict will be upheld "if there is any interpretation of the evidence that could lead a reasonable-minded jury to find the defendant guilty beyond a reasonable doubt." *Espinoza*, 885 F.3d at 520. Although the court's review may include those reasonable inferences that may be drawn from the evidence, the court (or the jury) is not free to engage in conjecture or speculation. *United States v. Hernandez*, 301 F.3d 886, 889 ("mere conjecture is not enough to overcome the burden of reasonable doubt.").

To prove a conspiracy to commit a sex trafficking crime under 18 U.S.C. § 1591(a), the government must prove beyond a reasonable doubt: 1) an agreement to commit sex trafficking by force, threats of force, fraud or coercion; 2) that Ms. Ruttanamongkongul intentionally joined the agreement; 3) that she knew the purpose of the agreement at the time she joined; and 4) that a co-conspirator took some act for the purpose of carrying out the agreement.[1]

Reviewing the evidence in the light most favorable to the verdict, the evidence at trial concerning Ms. Ruttanamongkongul disclosed the following: Agent Tschida testified that as part of the investigation into the alleged conspiracy the government secured the cell phone Ms. Ruttanamongkongul was using at the time of her arrest in May 2017. Agent Tschida testified that by the time of her arrest the government knew Ms. Ruttanamongkongul had been "out of the

[1] These elements are taken from the Instructions given to the jury at trial.

business" for quite a while. An extraction from her phone revealed an old email address: cutiekate94@hotmail.com. Through the email address, the government was able to connect Ms. Ruttanamongkongul to Wilaiwan Phimkhalee (a/k/a Pim), who the government alleged to be "house boss" in Chicago. The government introduced approximately 21 emails exchanged over the course of a two year period, the vast majority of which were escort photos Ms. Phimkhalee *sent* to Ms. Ruttanamongkongul.[2] Unlike the electronic devices examined from some of the other defendants, Ms. Ruttanamongkongul's phone had not a single piece of evidence revealing interactions with sex buyers, communications with sex workers, information about travel arrangements, hotel reservations, money transfers, or websites associated with commercial sex. There was similarly no evidence Ms. Ruttanamongkongul had communicated with or even knew her co-defendants, or critically, that she ever contacted or communicated or coordinated for any reason with anyone in Thailand who the government identified as "Ma Tac".

The government also called Manuel Guzman to testify that Ms. Ruttanamongkongul asked him to sign leases for two apartments at two separate buildings in Chicago, which he believed were used for prostitution. She paid him $200 a month for the service. Mr. Guzman testified he had little knowledge about the women who stayed in the apartments or what was happening at the apartments day-to-day. He testified he had little interaction with Ms. Ruttanamongkongul other than to discuss rent payment. He testified the lease on the Dearborn Street apartment, the last lease he signed, ended early in July 2015. He testified he last saw Ms. Ruttanamongkongul at a train station near Wrigley Field. The last he heard of her was that she had opened a restaurant in the Chicago area.

[2] There was also one email that cooperating defendant Pantila Rodphokha sent to Ms. Ruttanamongkongul. The email had no written content or attachments.

The government also called Pantila Rodphokha (a/k/a Noon). Noon lived and worked in Chicago. She testified she leased apartments which she used for prostitution. She testified she also held debt of some of the women who worked in her apartments. In October 2016, she was arrested. She thereafter pleaded guilty to conspiracy to commit sex trafficking and money laundering and agreed to cooperate in the hopes of a reduced sentence.

Noon testified she got involved in the business after meeting a woman named "O" who offered her $10 per call to answer calls from potential sex buyers. She testified she met Ms. Ruttanamongkongul "before I came in this business."[3] She specifically testified that she never partnered with Ms. Ruttanamongkongul, and that after O returned to Thailand, Ms. Ruttanamongkongul "opened her own house." (Tr. pp. 38-39, 133). Noon said that after she came into the business she barely spoke to Ms. Ruttanamongkongul. She testified, "[i]t was like we hardly talked. We didn't talk at all." (Tr. p. 39). When asked to describe her relationship to other so-called house bosses in Chicago, Noon testified "[m]ost of the time I didn't talk to anyone." (Tr. p. 40).

Noon said she thought Ms. Ruttanamongkongul and Pim were friends and that "[a]s far as I know, [Ms. Ruttanamongkongul] picked up the phone for Pim for some period while Pim went to beauty school." (Tr. p. 43). This testimony appears consistent with the escort photos Pim sent to Ms. Ruttanamongkongul, and further consistent with Investigator Baker's testimony that escort photos like these would often be used to advertise on-line for commercial sex buyers. The exchange of escort photos reflect activity associated with prostitution but says nothing about whether Ms. Ruttanamongkongul intentionally joined an agreement with the knowledge that force, threats of force, fraud or coercion would be used to compel anyone to engage in commercial sex work.

[3] Transcript of Noon's testimony, p. 38, hereinafter "Tr. p__".

Noon also testified a working girl under debt named Karn went to Ms. Ruttanamongkongul's apartment to work but she "didn't sen[d] Karn" to her house, and that "I'm not sure how she contacted her..." (Tr. p. 74). She assumed Karn booked her own schedule with Ms. Ruttanamongkongul. (*Id.*) Noon further testified "as far as I heard" a woman named Soysuda worked at one of Ms. Ruttanamongkongul's apartments while under debt. (Tr. p. 173). She also named several other women who went to Ms. Ruttanamongkongul's apartments but she didn't say if they had debt or were independent "working girls". (*Id.*) The jury did not hear from Karn or Soysuda, or any of the other women Noon referenced. Importantly, there was **no** testimony from Noon that Ms. Ruttanamongkongul was aware or knew that the women who worked at her house had debt or what the terms of the debt may have been. Unlike the other defendants, there was no evidence Ms. Ruttanamongkongul had actual knowledge of the debt, nor was there evidence reasonable inferable of that fact. Indeed, no cooperating defendant or other fact witness testified that Ms. Ruttanamongkongul had actual knowledge of the debt or that she was aware others held debt. The jury could only speculate about that.

Additionally, the government presented absolutely no evidence that Ms. Ruttanamongkongul knew or was aware what people in Thailand were telling women who contracted to come to the United States about the debt or anything else. The jury similarly did not hear from any of the women who may have worked at Ms. Ruttanamongkongul's apartments. There was no evidence to suggest what they knew, or what they were told in Thailand, or what their expectations were. There was no evidence to show what their financial arrangements were, if any. There was no evidence to demonstrate their freedom of movement (or lack thereof) or their ability to choose their customers or to decide what they did or didn't do with their customers within the apartment.

Similarly there was no evidence presented that Ms. Ruttanamongkongul sought to isolate women, or that she knew of any attempts of others to isolate anyone. There was no evidence that she held debt herself or that she held anybody's passport. There was no evidence that she threatened or manipulated anyone or was aware that anyone else threatened or manipulated anyone in the United States or in Thailand. There was no evidence that she engaged in, or was aware of others who engaged in visa fraud. There was no evidence that Ms. Ruttanamongkongul used force, threats of force, fraud or coercion in any way whatsoever, or that she was aware anyone else did. Again, the jury was left to speculate.

When viewed in its entirety, the government's evidence "has not transcended the realm of speculation to the realm of certainty beyond a reasonable doubt." *United States v.* H*ernandez*, 301 F.3d at 893. *See also United States v. Zitlalpopoca-Hernandez*, 495 Fed. Appx. 833, 835 (9th Cir. 2012) (reversing conviction because there was insufficient evidence for the jury to find beyond a reasonable doubt that defendant committed sex trafficking by force, fraud or coercion in violation of 18 U.S.C. § 1591(a)) (attached). At most, there was evidence that Ms. Ruttanamongkongul was engaged in prostitution but any inference she was part of a conspiracy to engage in sex trafficking by force, threats of force, fraud or coercion does not rise above mere speculation and conjecture. The government did not, and cannot show more.

CONCLUSION

For the reasons set forth above, Ms. Ruttanamongkongul respectfully urges this court to vacate the jury's verdict on Count I and enter a judgment of acquittal.

MESHBESHER & SPENCE, LTD.

Dated: December 26, 2018

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495 Fed.Appx. 833
This case was not selected for publication in the Federal Reporter.
Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)
United States Court of Appeals,
Ninth Circuit.

UNITED STATES of America, Plaintiff–Appellee,
v.
Adrian ZITLALPOPOCA–HERNANDEZ, Defendant–Appellant.

No. 10–50370.
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Argued and Submitted Oct. 9, 2012.
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Filed Nov. 7, 2012.

Synopsis

Background: Defendant was convicted by jury in the United States District Court for the Southern District of California, Roger T. Benitez, J., of sex trafficking by force, fraud, or coercion, persuasion or coercion to travel in foreign commerce for prostitution, harboring aliens for purposes of prostitution, bringing illegal aliens into the United States for financial gain, and harboring illegal aliens. Defendant appealed.

Holdings: The Court of Appeals held that:

there was insufficient evidence to convict defendant of sex trafficking by force, fraud, or coercion;

evidence was insufficient to convict defendant of persuasion or coercion to travel in foreign commerce for prostitution; and

remand for resentencing was warranted.

Reversed and remanded.

Attorneys and Law Firms

*834 Mark R. Rehe, Office of the U.S. Attorney, San Diego, CA, for Plaintiff–Appellee.

Janet Tung, Federal Defenders of San Diego, Inc., San Diego, CA, for Defendant–Appellant.

Appeal from the United States District Court for the Southern District of California, Roger T. Benitez, District Judge, Presiding. D.C. No. 3:08–cr–04304–BEN–1.

Before: PREGERSON and W. FLETCHER, Circuit Judges, and BENNETT, District Judge.*

MEMORANDUM**

**1 Adrian Zitlalpopoca–Hernandez ("Zitlalpopoca"), a Mexican citizen, was charged and convicted of ten crimes relating to the sex trafficking of two Mexican women, Anabel and Florencia: sex trafficking by force, fraud, or coercion in violation of 18 U.S.C. § 1591(a) (Counts 1 and 2); persuasion or coercion to travel in foreign commerce for prostitution in violation of 18 U.S.C. § 2422(a) (Counts 3 and 4); harboring aliens for purposes of prostitution in violation of 8 U.S.C. § 1328 (Counts 5 and 6); bringing illegal aliens into the United States for financial gain in violation of 8 U.S.C. § 1324(a)(2)(B)(ii) (Counts 7 and 8); and harboring illegal aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(iii) (Counts 9 and 10).

Zitlalpopoca appeals his convictions under § 1591 relating to Anabel and Florencia (Counts 1 and 2), and his conviction under § 2422 relating to Florencia (Count 4). He also appeals the district court's restitution award under § 1591. As well as the district court's application of a vulnerable victim enhancement in determining ***835** Zitlalpopoca's concurrent sentences of 292 months under Counts 1 and 2 for violating § 1591.

We have jurisdiction under 28 U.S.C. § 1291. The parties are familiar with the facts of this case, which we repeat here only to the extent necessary to explain our decision. We reverse Zitlalpopoca's convictions under Counts 1, 2, and 4 (the only counts on appeal). We remand to the district court for resentencing of the remaining counts of convictions (Counts 3, 5, 6, 7, 8, 9, and 10).

Zitlalpopoca correctly argues that there is insufficient evidence to support his convictions under Counts 1, 2, and 4. We review de novo the sufficiency of the evidence to support the convictions. *United States v. Sullivan,* 522 F.3d 967, 974 (9th Cir.2008). Sufficient evidence supports a conviction if, "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." *Id.* (quoting *Jackson v. Virginia,* 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)).

With respect to Counts 1 and 2, § 1591(a)(1) imposes punishment on, *inter alia,* anyone who "knowingly in or affecting interstate or foreign commerce ... recruits, entices, harbors, transports, provides, or obtains by any means a person ... knowing that force, fraud, or coercion ... will be used to cause the person to engage in a commercial sex act." 18 U.S.C. § 1591(a) (2006) (amended Dec. 2008).

Count 1 charged Zitlalpopoca with sex trafficking in interstate commerce by force, fraud, or coercion from April 1, 2008 to November 20, 2008 (Anabel). Count 2 charged Zitlalpopoca with sex trafficking in interstate commerce by force, fraud, or coercion from July 1, 2008 to November 20, 2008 (Florencia). These dates in the indictment encompassed Zitlalpopoca's conduct in the United States from Anabel's and Florencia's respective arrivals through his arrest.

**2 The government argues that the requisite knowledge under § 1591 may apply to acts of force, fraud, or coercion that took place before the time period alleged in the indictment. The government is mistaken.

We have interpreted the knowledge required under § 1591 to mean that "the defendant know[s] in the sense of being aware of an established modus operandi that *will in the future cause* a person to engage in prostitution." *United States v. Todd,* 627 F.3d 329, 334 (9th Cir.2010) (emphasis added). Specifically, "if things go as [the defendant] has planned, force, fraud or coercion will be employed to cause his victim to engage in a commercial sex transaction." *Id.* at 334. The

knowledge requirement encompasses a finding that the offense was subsequently "effected by force, fraud, or coercion." 18 U.S.C. § 1591(b)(1); *Todd,* 627 F.3d at 334–35.

There was insufficient evidence for the jury to find beyond a reasonable doubt that during the time periods alleged in the indictment, Zitlalpopoca knowingly recruited, enticed, harbored, transported, provided or obtained Anabel and Florencia, knowing that force, fraud, or coercion would be used to cause Anabel and Florencia to engage in prostitution. 18 U.S.C. § 1591(a). The government conceded as much in its brief by arguing that sufficient evidence to support Counts 1 and 2 may be found by looking at Zitlalpopoca's pre-indictment conduct in Mexico, rather than Zitlalpopoca's conduct in the United States. In Mexico, Zitlalpopoca physically assaulted the women on numerous occasions. There was no evidence Zitlalpopoca assaulted the women in the United States. Furthermore, the government conceded at oral argument that there was no evidence ***836** that Zitlalpopoca coerced Florencia in the United States to support Count 2.

We therefore reverse Zitlalpopoca's convictions for Counts 1 and 2 under § 1591. Because we reverse Zitlalpopoca's convictions under § 1591, Zitlalpopoca's challenge to the restitution award under § 1591 is moot.

The evidence was also insufficient to support Zitlalpopoca's conviction under Count 4. Under 18 U.S.C § 2422(a) (2006), a defendant is guilty if he "knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce ... to engage in prostitution." The evidence at trial demonstrated that it was Florencia who persuaded Zitlalpopoca to bring her to the United States, not the other way around. *Contra United States v. Rashkovski,* 301 F.3d 1133, 1135 (9th Cir.2002) (sufficient evidence supported § 2422(a) conviction where defendant traveled to Russia, held recruiting meetings to promote prostitution in the United States, and arranged and paid for Russian women to travel to the United States to work as prostitutes). Thus, we reverse Count 4.

Where, as here, "a defendant is sentenced on multiple counts and one of them is later vacated on appeal, the sentencing package comes 'unbundled.' " *United States v. Ruiz–Alvarez,* 211 F.3d 1181, 1184 (9th Cir.2000). "The district court then has the authority 'to put together a new [sentencing] package' " for the remaining convictions. *Id.* (citation omitted). Given that we have reversed Counts 1, 2, and 4, we remand Counts 3, 5, 6, 7, 8, 9, and 10 for resentencing.

****3** We do not reach Zitlalpopoca's argument that the district court erred by applying a vulnerable victim enhancement at sentencing because the evidence failed to show that Zitlalpopoca was more blameworthy than other § 1591 offenders. Because we have reversed the § 1591 convictions and have remanded for resentencing, Zitlalpopoca's challenge to his sentence is moot.

We REVERSE Zitlalpopoca's convictions under Counts 1, 2, and 4 of his indictment and REMAND Counts 3, 5, 6, 7, 8, 9, and 10 for resentencing accordingly.

All Citations

495 Fed.Appx. 833, 2012 WL 5420857

Footnotes

* The Honorable Mark W. Bennett, District Judge for the U.S. District Court for Northern Iowa, sitting by designation.

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36–3.

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