**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF VIRGINIA**
**Alexandria Division**

| | | |
|---|---|---|
| **UNITED STATES OF AMERICA,** | ) | |
| | ) | |
| **v.** | ) | |
| | ) | **Case No. 1:12-CR-434** |
| **SOOKYEONG KIM SEBOLD,** | ) | **Trial date: Dec. 11, 2012** |
| **a/k/a Sophia Kim** | ) | **Hon. Leonie M. Brinkema** |
| | ) | |
| **Defendant.** | ) | |
| | ) | |

**DEFENDANT'S TRIAL MEMORANDUM**

Defendant, Ms. Sookyeong Kim Sebold a/k/a Ms Sophia Kim (hereinafter "Ms. Kim")[1], by and though counsel, hereby submits this trial memorandum in support of any motion for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure and in support of her proposed jury instructions.

**INTRODUCTION**

In order to carry its burden of proof in this case, the government must overcome two significant hurdles. First, the government must prove Ms. Kim embezzled money from her former employer. The government has not charged Ms. Kim with embezzlement, but alleges in Count 1 of the superseding indictment that she failed to declare "income" gained from embezzling funds from her employer. Similarly, Count 2 of the indictment alleges Ms. Kim attempted to evade tax obligations resulting from "income" she received by embezzling funds from her employer. Therefore, whether Ms. Kim embezzled funds from her employer is a threshold offense the government must prove before it can establish the charged tax offenses.

[1] Ms. Kim was indicted under her married name. She is now divorced and no longer goes by that name. As such, she will be referred to herein and at trial using the name she now goes by, Sophia Kim.

Second, even if the government proves Ms. Kim embezzled money from her employer, it must still prove she knew the tax laws required her to report the embezzled funds as income and that she willfully failed to do so.

The government's case will fail on both issues. It will not be able to show Ms. Kim embezzled any money from her employer, because the evidence will show she had broad authorization to invest her employer's funds in any manner she deemed appropriate. At a minimum, the evidence that Ms. Kim had authorization over her employer's funds (and her employer let her exercise that authorization) will at least create reasonable doubt as to whether any embezzlement occurred. Without adequate proof of embezzlement, the government's case will fail.

Second, the government's case will fail because it will not be able to show she wilfully violated the tax laws. The government has charged Ms. Kim with two tax offenses, both of which require it to prove a heightened mens rea. Specifically, with respect to Count 1 of the indictment, which alleges that Ms. Kim filed a false income tax return, in violation of 26 U.S.C. § 7206(1), the government must show that she willfully filed a false income tax return by failing to report income that she "then and there knew and believed" had to be reported. *See* Superseding Indictment ¶ 9 (docket no. 22); *see also Cheek v. United States*, 498 U.S. 192, 201 (1991) (holding that, in order to establish a violation of § 7206(1), the government must prove the defendant knew the requirements of the law at the time of the alleged offense and voluntarily and intentionally violated that duty); *United States v. Grahm*, 2006 WL 2527613 at *4 (S.D.W.Va. 2006) (finding defendants not guilty because "the government failed to establish that defendant knew any tax return involved in this case contained false information").

Similarly, with respect to Count 2 of the indictment, which alleges that Ms. Kim committed tax evasion, in violation of 26 U.S.C. § 7201, the government must provide Ms. Kim "took some willful, affirmative step" with the specific intent to "evade or defeat" a tax obligation that she knew existed. *United States v. Collins*, 685 F.3d 651, 656 (7th Cir. 2012) (emphasis added).

The government will present evidence that Ms. Kim used her employer's funds to engage in transactions known as "day trading" and playing blackjack at casinos. Ms. Kim did, in fact, use her employer's funds to engage in day trading and legal gambling. She engaged in these activities because her employer authorized her to invest company funds in any manner she deemed proper. She has only a high school education and made very poor investment choices. The fact that she attempted to make money for her employer in non-traditional ways, however, is not a criminal offense. Even more significantly, the evidence of gambling and day trading will do nothing to show that Ms. Kim knew the requirements of the tax code and willfully violated those requirements.

## ARGUMENT

### I. THE GOVERNMENT'S CASE WILL FAIL BECAUSE IT WILL NOT BE ABLE TO PROVE THAT MS. KIM EMBEZZLED KCFF FUNDS.

In order to establish both offenses in the indictment, the government must first prove that Ms. Kim embezzled certain funds from her employer, the Korean Cultural & Freedom Foundation ("KCFF"). KCFF, which was founded in the 1960s and ceased operation in 2005, was a non-profit organization based in the Northern Virginia area. The superseding indictment alleges that the "income" at issue was embezzled from KCFF – an act which the government asserts triggered Ms. Kim's income tax obligations. For example, the superseding indictment alleges that, "[b]eginning in or about 2002 through in or about 2005, Sebold did commit a scheme to *embezzle, steal, obtain*

*by fraud and otherwise without authority*, convert to the use of Sebold, a person other than the rightful owner, money valued in excess of approximately $800,000 owned and under the care, custody, and control of KCFF." *See* Superseding Indictment ¶ 4 (docket no. 22) (emphasis added). The superseding indictment also repeatedly refers to Ms. Kim's conduct as an "embezzlement scheme." *See, e.g., id.* ¶¶ 5, 6.

Thus, to prove its case, the government must first prove beyond a reasonable doubt that Ms. Kim embezzled funds from her employer – and that she did not believe in good faith she had full authorization to invest KCFF funds in any manner she deemed appropriate. "A defendant who exercises dominion over property in the good-faith belief that the property is his own, or that the appropriation is otherwise authorized, is not guilty of embezzlement." *United States v. Stockton*, 788 F.2d 210, 217 (4th Cir. 1986). To prove embezzlement, the government must also show that Ms. Kim took the KCFF funds "with the intent to deprive [KCFF] of its use or benefit." *United States v. Smith*, 373 F.3d 561, 564 (4th Cir. 2004) (quoting Kevin F. O'Malley et al., Federal Jury Practice and Instructions §§ 16.01, 16.03 (2000 & Supp. 2003)).

The defense anticipates that government will not be able to prove that Ms. Kim (a) lacked a good-faith belief that she had authorization to invest the funds in any manner she saw fit and (b) that Ms. Kim intended to use the funds for her own benefit. The evidence presented at trial will show that, during the relevant time period, KCFF was a very small organization. It was controlled entirely by its founder, Dr. Bo Hi Pak. Dr. Pak founded KCFF in the 1960s in order to promote Korean culture and dance overseas. At that time, he was a top official in the Unification Church and a close associate of the late Reverend Sun Myung Moon. Dr. Pak later hired Ms. Kim to serve as KCFF's bookkeeper. The evidence at trial will show she does not have any specialized training in

accounting or tax law. She was hired a bookkeeper for KCFF not because of any specialized education or knowledge, but because of her loyalty to Dr. Pak, the Church, and KCFF's mission.

The defense also anticipates that the evidence – including documents signed by Dr. Pak – will show that Dr. Pak gave Ms. Kim broad authorization to invest KCFF funds. The defense also expects that there will be no evidence showing that Dr. Pak or anyone else limited how those funds should be invested. During the relevant time period, KCFF was comprised only of Dr. Pak and Ms. Kim. It did not have any other regular employees or officers. KCFF obtained most of its funding from the Unification Church and operated as a very small non-profit organization. It is believed that the government is not calling Dr. Pak as a witness, thus he will not be present to refute the defense's contention that he did not place restrictions on how Ms. Kim was to invest KCFF funds.

## II. THE GOVERNMENT'S CASE WILL FAIL BECAUSE IT WILL NOT BE ABLE TO SHOW MS. KIM UNDERSTOOD THE REQUIREMENTS OF THE TAX CODE AND WILLFULLY VIOLATED THOSE REQUIREMENTS.

Even if the Court determines that the government provided sufficient evidence to prove Ms. Kim embezzled funds from her employer, the government's case will still fail because it will not be able to prove that Ms. Kim willfully violated any tax law.

The government's entire case rests on its assumption that Ms. Kim knew she had to report embezzled funds to the government as taxable income and that she willfully evaded that requirement. The tax offenses at issue, 26 U.S.C. §§ 7206(1) & 7201, place a heavy burden on the government. The government must prove that Ms. Kim acted willfully, which "in this context means a 'voluntary, intentional violation of a known legal duty.'" *United States v. Witasick*, 443 Fed. Appx. 838, 840 (4th Cir. 2011) (quoting *Cheek*, 498 U.S. at 201). For example, in order to satisfy its burden with respect to § 7206(1), the government must prove Ms. Kim "signed his tax return under penalty of

perjury, and to have known that, at the time of signing, the return was materially incorrect or in violation of existing tax laws." *United States v. Morris*, 20 F.3d 1111, 1115 (11th Cir. 1994); *see also* Superseding Indictment ¶ 9 (docket no. 22) (alleging Ms. Kim filed a false tax return that "she then and there knew and believed" to be false).

Moreover, to satisfy its burden, the government must also "negat[e] a defendant's claim of ignorance of the law or a claim that because of a misunderstanding of the law, he had a good-faith belief that he was not violating any of the provisions of the tax laws." *Cheek*, 498 U.S. at 202. The test of a defendant's good faith belief is a subjective one. A defendant who had a good-faith belief she was complying with tax laws is entitled to a judgment of acquittal, even if that belief was objectively unreasonable. *Id.* at 203 ("it is not contrary to common sense, let alone impossible, for a defendant to be ignorant of his duty based on an irrational belief that he has no duty"). As the Supreme Court observed in *Cheek*, "[t]his special treatment of criminal tax offenses is largely due to the complexity of the tax law." 498 U.S. at 609.

In this case, the heightened standard is particularly appropriate. Ms. Kim has a high school education and was hired as a KCFF bookkeeper because of her devotion to the Unification Church and her loyalty to Dr. Pak – not because of any specialized accounting or tax knowledge. Her lack of sophistication is evidence that she lacked knowledge of the requirements of the tax laws. The *See United States v. Guidry*, 199 F.3d 1150, 1158 (10th Cir. 1999) (defendant's training in accounting and her degree in business administration provided evidence she willfully violated tax laws). Her lack of sophistication is also reflected in her unorthodox and risky investing decisions. While the government will likely focus on Ms. Kim's gambling activities in presenting its case to

the jury, this evidence will do nothing to show that Ms. Kim had knowledge of the requirements of the tax code.

Perhaps most significantly, the defense anticipates that there will be no evidence that any IRS agent, accountant, or any other person with specialized tax knowledge advised Ms. Kim that embezzled funds had to be reported as income. For example, the evidence will likely show that IRS agents met with Ms. Kim in 2006 – years before she filed the allegedly false return at issue in Count One – but did not advise her that embezzled funds had to be reported as income. The evidence will also likely show that neither Dr. Pak nor anyone else affiliated with KCFF or the Unification Church educated Ms. Kim regarding the requirements of the tax code. And, the government will not be able to show that Ms. Kim lacked a subjective, good faith belief that she was not required to report as personal income funds she invested on KCFF. Accordingly, the government will fail to prove Ms. Kim willfully violated the offenses alleged in the indictment.

## CONCLUSION

For the foregoing reasons, the defense anticipates that a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure will be appropriate in this case.

Respectfully submitted,
SOOKYEONG KIM SEBOLD
a/k/a SOPHIA KIM

Michael S. Nachmanoff
Federal Public Defender

By: /s/
Jeffrey C. Corey
Assistant Federal Public Defender
Office of the Federal Public Defender

1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800 (phone)
(703) 600-0880 (fax)
Jeff_Corey@fd.org

**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2012, I will electronically file the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Mark Lytle, AUSA
Caryn Deborah Finley, AUSA
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314

Pursuant to the Electronic Case Filing Policies and Procedures, a courtesy copy of the foregoing pleading will be delivered to Chambers within one business day of the electronic filing.

By: /s/
Jeffrey C. Corey
Counsel for the Defendant
Office of the Federal Public Defender
1650 King Street, Suite 500
Alexandria, VA 22314
(703) 600-0800 (phone)
(703) 600-0880 (fax)
Jeff_Corey@fd.org