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United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 10-00384 LEK-01
	)	
Plaintiff,	)	MOTION IN LIMINE
	)	TO PROHIBIT DEFENDANT ROGER
vs.	)	CUSICK CHRISTIE FROM
	)	PRESENTING THE DEFENSE OF
ROGER CUSICK CHRISTIE,	(01))	ENTRAPMENT BY ESTOPPEL;
SHERRYANNE L. CHRISTIE,	(02))	CERTIFICATE OF SERVICE
formerly known as	)	
"Sherryanne L. St. Cyr",	)	
SUSANNE LENORE FRIEND,	(03))	
TIMOTHY M. MANN,	(04))	
RICHARD BRUCE TURPEN,	(05))	
WESLEY MARK SUDBURY,	(06))	
DONALD JAMES GIBSON,	(07))	
ROLAND GREGORY IGNACIO,	(08))	
PERRY EMILIO POLICICCHIO,	(09))	
JOHN DEBAPTIST BOUEY, III,	(10))	
MICHAEL B. SHAPIRO,	(11))	
also known as "Dewey",	)	
AARON GEORGE ZEEMAN,	(12))	
VICTORIA C. FIORE,	(13))	
JESSICA R. WALSH, also	(14))	
known as "Jessica Hackman",	)	
	)	
Defendants.	)	
	)	

MOTION FOR IN LIMINE TO PROHIBIT DEFENDANT
ROGER CUSICK CHRISTIE FROM PRESENTING
DEFENSE OF ENTRAPMENT BY ESTOPPEL

The United States of America, by and through its undersigned counsel, hereby asks this Honorable Court to prohibit defendant from relying upon entrapment by estoppel herein, because he has failed to demonstrate his entitlement thereto at this time.

By sealed Notice filed July 29, 2013, defendant Christie has given formal notice of his intent to rely upon this defense, identifying two Federal officials who he claimed provided misleading statements to him.

As described in United States v. Batterjee, 361 F.3d 1210, 1216 (9th Cir. 2004):

‘[e]ntrapment by estoppel is the unintentional entrapment by an official who mistakenly misleads a person into violating the law’. It derives from the Due Process Clause of the Constitution, which prohibits convictions based on misleading actions by government officials. [citations omitted].

In order to establish entrapment by estoppel, a defendant must show that

(1) ‘an authorized government official’, ‘empowered to render the claimed erroneous advice’,

(2) ‘who has been made aware of all the relevant historical facts’,

(3) ‘affirmatively told him the proscribed conduct was permissible’,

(4) ‘that he relied on the false information’, and

(5) 'that his reliance was reasonable'. [citations omitted].

Accord, United States v. Brebner, 951 F.2d 1017, 1024-7 (9th Cir. 1991), United States v. Weitzenhoff, 35 F.3d 1275, 1290 (9th Cir. 1290).

Defendant bears the burden of establishing entrapment by estoppel. Id., 361 F.3d at 1216.

In the instant case, defendant has been charged with conspiracy to manufacture, distribute and to possess with intent to distribute marijuana, along with the same substantive offenses. These charged offenses primarily occurred in the 2008 - 2010 time frame, which, according to his notice, were several years after defendant allegedly had heard the misleading statements. The appropriate inquiry for defendant's ability to present this defense at trial is whether:

(a) in accordance with element (2) above, defendant made the requisite full disclosure of all of his marijuana manufacturing/distribution activities to said Federal officials,

(b) as required with element (3) above, whether the officials "affirmatively" told defendant that his manufacturing and distribution activities were permissible; and

(c) in accordance with elements (4) and (5), how he could have reasonably relied upon such alleged misleading advice several years later;

The inquiry into these matters is particularly important herein,

because as this Court is aware from the RFRA motions practice, it appeared that Christie substantially changed their marijuana trafficking activities at the Ministry by institution of "express" service in early 2009.

In view of the very stringent requirements posed by Federal law in order for a defendant to establish entrapment by estoppel, we submit that he must make at least a prima facie showing before he may even refer to it in opening statement or otherwise elicit testimony from prosecution and other witnesses to this effect.

In addition, though she herself has not yet filed any similar notice, it would also appear that co-defendant Sherryanne L. Christie may be seeking to join her husband in espousing this defense. In addition to what we have tendered thus far, there is another independent reason why any effort on her part must fail. Ms. Christie had no dealings with the alleged Federal officials and consequently, there hardly could be any reliance of her part on what they said (see element (4) above). Ms. Christie, in essence, would be relying upon a theory of third-party, derivative entrapment by estoppel through her husband, and no court to our knowledge has ever accepted

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such a doctrine.

DATED: Honolulu, Hawaii, August 6, 2013

FLORENCE T. NAKAKUNI
United States Attorney

/s/ Michael K. Kawahara
By _____
MICHAEL K. KAWAHARA
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served Electronically through CM/ECF:

THOMAS M. OTAKE, ESQ. thomas@otakelaw.com
Attorney for Defendant
ROGER CUSICK CHRISTIE

DATED: August 6, 2013, at Honolulu, Hawaii

/s/ Valerie Domingo

U.S. Attorney's Office
District of Hawaii