

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk of the Court

For rules and forms visit
www.ca11.uscourts.gov

October 05, 2010

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 08-13740-CC
Case Style: USA v. Theresa L. Kottwitz
District Court Number: 07-00107 CR-TCB-3-1 ()

The following action has been taken in the referenced case:

See enclosed court directive.

Sincerely,

John Ley, Clerk of Court

Reply To: Eleanor Dixon (404) 335-6172

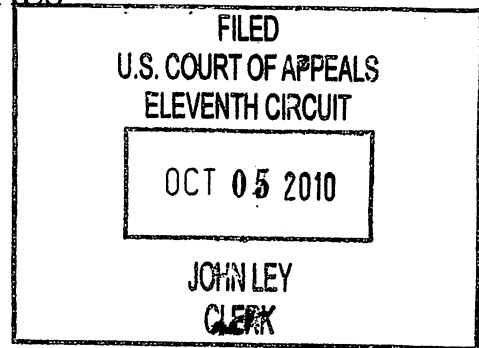
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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 08-13740

D. C. Docket No. 07-00107-CR-TCB-3-1



UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

THERESA L. KOTTWITZ,
GERARD MARCHELLETTA, JR.,
GERARD MARCHELLETTA, SR.,

Defendants-Appellants.

Appeals from the United States District Court
for the Northern District of Georgia

ON PETITION FOR REHEARING

Before EDMONDSON, Circuit Judge, and HODGES,* District Judge.¹

* Wm. Terrell Hodges, United States District Judge for the Middle District of Florida,
sitting by designation.

¹ This order is being entered by quorum pursuant to 28 U.S.C. § 46(d).

PER CURIAM:

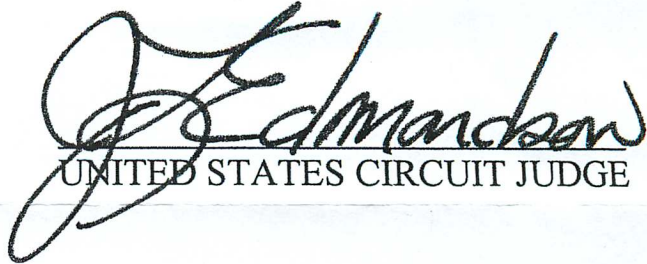
This matter is before us on Petitions for Rehearing filed by Defendants/Appellants.

The Government of the United States is directed to reply to the petitions. The Court draws the Government's attention particularly to the contentions set out in Senior's Petition (pages 9-12) and Junior's Petition (pages 5-8). The one issue which the Court wishes to have addressed is whether the jury was adequately instructed on Count I. Given the evidence in the case, were the Defendants entitled to an accountant-reliance instruction on Count I? Given the evidence in the case, did an evidentiary basis exist for conviction of Count I that could have involved Defendants', in fact, relying on the advice of the accountant? That there was also sufficient evidence to convict under Count I for conduct independent of the accountant might not answer the question we are trying to pose to the Government.

The Government's response is due within thirty (30) days and shall not exceed ten pages.

The Defendants may reply to the Government's response within twenty (20) days of the Government's date of filing. The reply shall not exceed five pages for each Defendant.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

Robert Gerald Bernhoft
The Law Office of Robert G. Bernhoft, S.C.
207 E BUFFALO ST STE 600
MILWAUKEE WI 53202-5775

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CC: Jerome J. Froelich
CC: Wilmer Parker, III
CC: James K. Jenkins
CC: Robert P. Marcovitch
CC: Robert Gerald Bernhoft
CC: W. Bruce Maloy
CC: Agne A. Krutules
CC: Justin S. Anand
CC: Lawrence R. Sommerfeld
CC: Administrative File

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