FOR PUBLICATION

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, **Plaintiff,** **vs.** **MD. SAIFUL ISLAM, MUNNAF MIAH, MINTO MINTO, and MARIA AURELIA RAY** **Defendants.**	**Criminal Action No. 07-0088E** **ORDER:** **DENYING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL** **DENYING DEFENDANT'S MOTION FOR A NEW TRIAL**

THIS MATTER CAME FOR HEARING on December 2, 2008, in courtroom 223A. Counsel Joseph Horey appeared on behalf of Defendant Maria Aurelia Ray. Assistant Attorney General Kathleen Busenkell appeared on behalf of the Commonwealth. The hearing was conducted pursuant to Defendant's recent supplemental motion (Supplemental Motion), dated October 15, 2008, moving for a new trial on the grounds of newly discovered evidence. Defendant's previous motion, filed June 4, 2008 (June 4th Motion), moved for a judgment of acquittal, or in the alternative, a new trial. The hearing regarding Defendant Ray's June 4th motion was heard on July 24, 2008, in courtroom 223A. In that hearing, Counsel Joseph Horey appeared on behalf of Defendant. Assistant Attorney General Melissa Sims appeared on behalf of the Commonwealth.

The Commonwealth has opposed each motion in writing and at hearing. The court will address each motion herein.

II. SYNOPSIS

On May 23, 2008, a jury convicted Defendant on Counts I and II of the information; to wit, Conspiracy to Commit Marriage Fraud and acquitted Defendant on the Counts III and IV; to wit, Criminal Solicitation. On June, 4, 2008, Defendant filed a motion for judgment of acquittal pursuant to Commonwealth Rule of Criminal Procedure 29 or alternatively, a new trial pursuant to Commonwealth Rule of Criminal Procedure 33. The government opposed the motion. Defendant argues that the court should set aside the verdict and enter a judgment of acquittal as to Counts I and II of the Information on the grounds that the evidence is insufficient to sustain a conviction of the offense. Specifically, Defendant's June 4th Motion argues there was no evidence that Defendant actually knew it was against the law for co-defendants Saiful Islam and Munnaf Miah to enter into the marriage. Therefore, the conviction cannot be sustained because knowledge that the agreed upon act is illegal is an element of conspiracy. The government argues there was substantial evidence of Defendant's knowledge presented during trial upon which a jury could reasonably find Defendant guilty.

In the alternative, Defendant's June 4th Motion argues that if the court does not set aside the verdict on the grounds of insufficient evidence, a new trial should be granted on the basis that the court refused to allow Defendant to impeach defense witness Hilario Angui with his own prior inconsistent statement. This denial, according to Defendant, was prejudicial and infringed on Defendant's rights to due process, to present a defense, and to confrontation of adverse witnesses. The government argues that preclusion of the witness statement was the proper remedy for Defendant's failure to disclose the statement to the Commonwealth.

In October, 2008, Defendant filed a Supplemental Motion for a new trial on the basis of newly discovered evidence. According to the Supplemental Motion, sometime after the conclusion of trial, defense witness Mr. Angui approached defense counsel and admitted to lying during his testimony about multiple matters. Defendant argues that there is a possibility and a reasonable

probability that a different verdict would have resulted because the government's case rested heavily on the credibility of witnesses whose truthfulness would have been severely undermined had Mr. Angui testified truthfully. The government argues that the newly discovered evidence is not material to the issue, is merely cumulative or impeachment evidence, and will not produce a different result at a retrial. The government also argues an evidentiary hearing is warranted.

There was sufficient evidence proving that Defendant knew the agreed upon act was illegal, therefore, Defendant's June 4th Motion to set aside the verdict on the basis of insufficient evidence is DENIED. Further, if precluding the introduction of Defendant's impeachment evidence was error, the error was harmless beyond a reasonable doubt. Therefore, Defendant's June 4th Motion for a new trial is DENIED. Lastly, the admission of defense witness Mr. Angui that he provided false testimony during trial does not establish a basis for granting a new trial as set forth in the authorities discussed below, therefore, Defendant's Supplemental Motion is DENIED.

III. DISCUSSION: THE JUNE 4TH MOTION

Defendant's first motion, filed June 4, 2008, asked this court to set aside the verdict and enter a judgment of acquittal or in the alternative, order a new trial. Each argument will be addressed in turn.

A. Motion to Set Aside the Verdict for Insufficient Evidence

1. Law Governing Judgment of Acquittal

"The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. " Com. R. Crim. P. 29(a). The proper test is whether any rational trier of fact could have found the essential elements of the crime in question beyond a reasonable doubt. *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 237 (1995); *United States v. Sharif*, 817 F.2d 1375, 1377 (9th Cir. 1987). The trial court should deny the motion unless the government's evidence is insufficient to sustain the conviction. *Ramangmau,* 4 N.M.I. at 237-38.

"In making this assessment, the court may not weigh or draw inferences from the evidence, or assess witness credibility; these are functions of the jury". *Id.* at 238 citing *Curley v. United States*, 160 F.2d 229, 232-33 (D.C. Cir. 1947). Further, "the existence of conflicting testimony does not, in itself, merit a judgment of acquittal." *Id.* There is nothing subjective in the trial court's review; rather, the court's determination is whether a "reasonable juror"could have found the defendant guilty beyond a "reasonable" doubt and the court must do so without weighing the evidence. *Jackson v. Virginia*, 443 U.S. 307, 319 n. 13 (1979).

2. Sufficient Evidence of Defendant's Knowledge of Illegality Exists

Defendant argues that "no evidence whatsoever" was introduced at trial upon which a reasonable jury could find that Defendant *knew* it was against the law for co-defendants Saiful Islam and Munnaf Miah to enter into their respective marriages.

The jury was plainly instructed of the knowledge requirements. The following excerpts were provided in Court's Jury Instruction number 18: regarding Count I "that Maria Ray knew that it was against the law for Saiful Islam to enter into the marriage"; regarding Count II "that Maria Ray knew that it was against the law for Munnaf Miah to enter into the marriage". The jury was aware that in order to find Defendant guilty of Count I and II they had to conclude that Defendant *knew* of the illegality of the marriages. Further, both counsel thoroughly discussed the necessity of Defendant's knowledge in their arguments.

Taking the evidence in the light most favorable to the government, the following is undisputed.[1] By Defendant's own admissions, she introduced the couples. Defendant discussed payment in exchange for her acquaintances to marry her husband's friends from Bangladesh. The circumstances of the agreement showed that the offer of money in return for marriage was not part of Bangladeshi custom. Defendant knew additional money may be paid in exchange for the

[1] In passing, the government argues that "[c]learly, the jury found that Defendant had knowledge of the illegality of the marriages at issue by finding Defendant guilty. . ." However, the jury verdict is not evidence. This court must find that sufficient evidence exists which *supports* the jury's verdict, certainly, the jury verdict itself is not evidence of Defendant's knowledge.

securement of green cards. Defendant was involved in multiples steps of arranging the two marriages. Defendant was not only involved in multiple steps of arranging the sham marriages, she was the driver who drove various people involved in the conspiracy to differing meeting places to fill out paperwork and confer. Defendant refused to sign the marriage application as a witness even though she was present. Defendant attempted to recover money when a previous arranged marriage was not seen through to completion. Defendant used the term "fixed marriage." Defendant knew that the couples getting married had no intention of living together. Furthermore, there was a lack of sound evidence that Defendant was merely a matchmaker between her husband's Bangladeshi friends and her acquaintances.

From this evidence alone, which is a fraction of the evidence presented at trial, a jury could reasonably conclude that Defendant was fully knowledgeable of the illegality of the marriage she was arranging. Usually, proving what is *inside* the mind of the accused requires the jury to make reasonable inferences from the presented evidence. There was scant evidence that the marriages had any legitimate purpose. To the contrary, all the evidence tended to show that the marriages were shams, arranged solely for the purposes of gaining immigration benefits for Defendant's husband's friends in exchange for payment to Defendant's friends. A reasonably jury could certainly infer that Defendant knew that her actions were illegal.

Therefore, sufficient evidence exists to sustain the jury's verdict and Defendant's motion to aside the verdict pursuant to Rule 29 is denied.

B. Motion for a New Trial Based on Preclusion of Impeachment Evidence

1. Law Governing Granting a New Trial

Commonwealth Rule of Criminal Procedure 33 provides that "[t]he court on motion of a defendant may grant a new trial to him/her if required in the interest of justice." Com. R. Crim. Proc. 33. The Commonwealth's Rules of Criminal Procedure are patterned after the Federal Rules of Criminal Procedure so interpretations of the federal rules are instructive. *Commonwealth v. Ramangmau*, 4 N.M.I. 227 (1995).

The decision to grant or deny a motion for new trial is within the sound discretion of the trial court. *Commonwealth v. Saimon*, 3 N.M.I. 365, 398 (1992). A court may grant a new trial if the interests of justice so requires. *United States v. Campos*, 306 F.3d 577, 580 (8th Cir. 2002). In making its decision, the trial court has the discretion to disbelieve witnesses and to weigh the evidence. *Id*. However, the court's power to correct a miscarriage of justice should be used sparingly and with caution. *Id*.

Even when there has been errors during trial, courts are reluctant to grant a new trial without a showing of prejudice. *United States v. Romero*, 54 F.3d 56 (2nd Cir. 1995) (defense not entitled to new trial even though government didn't disclose impeachment materials); *United States v. Cunningham*, 54 F.3d 295 (7th Cir. 1995) (prosecutor making improper statements did not rise to level of prejudice required to warrant a new trial). To show prejudice, defense must demonstrate how the lack of error would probably have changed the result of the case. If errors were harmless, it is an abuse of discretion for the trial court to grant a motion for a new trial. *United States v. Wilkerson,* 251 F.3d 273 (1st Cir. 2001). An error is harmless if it is highly probable that the error did not contribute to the verdict. *Id*. However, when the error implicates constitutional rights, it must be shown beyond a reasonable doubt that the error did not contribute to the verdict. *Chapman v. California,* 386 U.S. 824, 828 (1967).

2. Any Error Precluding Impeachment Evidence was Harmless Beyond a Reasonable Doubt

Defense witness Mr. Angui was expected to testify in accordance with a declaration he had previously made to defense counsel. In that declaration, Mr. Angui stated that prosecution witnesses Connie Santiago (Santiago) and Severene Kosam (Kosam) reported the arranged marriages to police in retaliation for alleged family disputes. When Mr. Angui took the stand, he denied that he made that statement to defense counsel. Further, Mr. Angui stated that defense counsel told him what to say and fabricated the contents of the declaration. Defense counsel was precluded from introducing the prior inconsistent statement because defense counsel failed to properly disclose the statement to the government.

This court deems it's previous decision which precluded the impeachment evidence as the proper remedy in light of the circumstances. However, the decision does not additional discussion here because regardless, the error was harmless beyond a reasonable doubt.

Defendant argues that the prosecution relied heavily on the testimony of Mr. Angui. However, this is an overstatement of the prosecution's reliance on Mr. Angui. The prosecutions' closing remarks lasted longer than 30 minutes. In their entire argument, less than 40 seconds was dedicated to the testimony of Mr. Angui. The prosecution case did not rely on Mr. Angui nor did the verdict hinge on his testimony.

Defendant also argues that this case hinged on the credibility of the witnesses and Mr. Angui's testimony was key to proving that Kosam and Santiago were not credible. However, the jury heard a plethora of evidence that tended to show that Kosam did indeed have her own motive and bias. Defense counsel argued extensively that a family dispute was at the heart of Kosam's testimony, that government witnesses had "lashed out" at Defendant and others because they were angry, and that Kosam was "making up her own stories". Defense counsel vehemently attacked Kosam's credibility highlighting that she was cooperating in return for not being prosecuted, reminding the jury to treat her testimony carefully, and reminding the jury of the hostility Kosam had towards Defendant's husband.

Further, impeaching Mr. Angui with his own statement would prove he was either lying on the stand or had previously lied. At that point, how much credibility would the jury have given his statements regarding Kosam and Santiago? In fact, Mr. Angui had his own obvious bias**.** The jury knew that Mr. Angui was the boyfriend of Kosam and would harbor his own bias. Above all, the jury could have believed that Kosam reported Defendant because she was angry at her and still believed that Defendant committed the alleged crime.

The cumulative evidence that Mr. Angui's declaration was going to provide tending to show that Mr. Angui had, *at one time*, said Kosam had ill motive for reporting Defendant would not have altered the outcome of the trial. Defense counsel had ample opportunity to present evidence showing government witnesses' motive and bias.

Further, the accusations Mr. Angui made about defense counsel did not contribute to Defendant's conviction. The jury's faith in defense counsel, or lack thereof, could not undermine the evidence the government presented proving Defendant's involvement in arranging the marriages. Additionally, Mr. Angui's credibility was also considered by the jury. His own bias was known to the jury and certainly weighed on his testimony. In light of the evidence against Defendant, this court is confident beyond a reasonable doubt that precluding the impeachment evidence did not contribute to the verdict.

IV. DISCUSSION: THE SUPPLEMENTAL MOTION

After the conclusion of trial, Mr. Angui approached defense counsel and admitted that he lied at trial when he testified that defense counsel fabricated the contents of his prior statement and lied when he testified that he did not sign the declaration. Further, Mr. Angui acknowledged that defense counsel never instructed him on what to say on the stand. Mr. Angui admitted to defense counsel that he signed the declaration and that its contents were true.

According to Mr. Angui's most recent affidavit, filed with the Supplemental Motion, Kosam and Santiago were extremely angry at Defendant and reported the sham marriages in retaliation. Mr. Angui stated that he lied in court because he was angry at defense counsel for having a bench warrant issued when Mr. Angui failed to appear. According to Mr. Angui, Attorney General Investigators arrested him on the bench warrant and on the way to the Department of Corrections, they told him that defense counsel was responsible for issuing the bench warrant. In fact, defense counsel did ask the court to issue a bench warrant for Mr. Angui. According to Mr. Angui's recent affidavit, Attorney General Investigators told him defense counsel was responsible for his arrest and then asked, "What are you going to do about it?" Mr. Angui replied, "make him lose." Investigators never told Mr. Angui to lie nor did they know he was going to lie.

Mr. Angui's own motive for admitting to committing perjury was also discussed during his interview with defense counsel. Days before Mr. Angui visited defense counsel to apologize for his perjury and his accusations, he had been in court with Kosam because Kosam had sought a temporary restraining order against him. Mr. Angui stated that Kosam had lied at the TRO hearing

"too much". When asked if he was coming forward just because he wanted to get back at Kosam, Mr. Angui stated that he was now coming forward because "what [Severene] did to me is just way too much. . . she played me behind my back." According to Mr. Angui, Kosam lied too much and was herself, in a sham marriage. Prior to trial, Mr. Angui was concerned about Kosam because they share a child. Now, however, Mr. Angui says he no longer has concern about Kosam going to jail because their child is with him.

A. Law Governing New Trial on the Basis of Newly Discovered Evidence

This case presents a unique issue. Existing authority that discusses new trials on the basis of recanted or perjured testimony is riddled with analysis of government witnesses who lied at trial or witnesses which were never called to testify because they threatened to lie under oath, and then after trial, agreed to testify truthfully. However, this court has been unable to find any cases where a defense witness lied during his testimony and accused defense counsel of untruthful improprieties.

The CNMI Supreme Court, and the majority of all other jurisdictions, have articulated and applied a five part test in determining whether or not a new trial is warranted on the grounds of newly discovered evidence. *Commonwealth v. Saimon*, 3 N.M.I. 365, 397 (1992); *see e.g. United States v. Fulcher,* 250 F.3d 244 (4th Cir. 2001)*; United States v. Womack,* 496 F.3d 791 (7th Cir. 2007); *United States v. Harrington*, 410 F.3d 59, 8 (9th Cir. 2005); *United States v. Williams*, 233 F.3d 592 (D.C. Cir. 2000); *United States v. Reed*, 887 F.2d 1398 (11th Cir. 1989). Often called the *Berry* or *Harrington* Test, Defendant must show: (1) the evidence is newly discovered; (2) failure to discover it at time of trial was not due to lack of diligence on defendant's part; (3) the evidence is material to the issues at trial; (4) it is not cumulative or merely impeaching[2]; and (5) the evidence must indicate that a new trial would probably result in a different outcome (hereinafter *Harrington*

[2] In *Commonwealth v. Saimon*, 3 N.M.I. 365, 397 (1992), the Court states factor number four simply as "cumulative" without the "merely impeaching" portion. Every other jurisdiction articulating the five factor test states the fourth factor as "cumulative *or* merely impeaching". While the CNMI Supreme Court did not state the fourth requirement this way, this court doubts it was an active departure from a well established five part test. Rather, the latter portion of requirement number four simply did not have any bearing on the case the Court was facing. In line with all other jurisdictions, this court will treat factor number four as reading "cumulative or merely impeaching".

Test). Motions for a new trial based upon newly discovered evidence are disfavored and should be granted with caution. *See e.g. United States v. Seago*, 930 F.2d 482, 488 (6th Cir. 1991).

However, when the new evidence is evidence of false trial testimony, courts adopted a more lenient test termed the *Larrison* Test. *See e.g. United States v. Fruth*, 36 F.3d 649 (7th Cir. 1994). Under *Larrison*, a new trial is appropriate when: (a) the court is reasonably well satisfied that the testimony given by a material witness is false; (b) the jury *might have* reached a different conclusion absent the false testimony or if it had known that testimony by a material witness was false; (c) the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial. *United States v. Fruth*, 36 F.3d 649 (7th Cir. 1994). The most significant difference between the *Harrington* Test and the *Larrison* Test is the requirement that the outcome 'might have' been different under *Larrison* rather than 'probably' different as under *Harrington*.

Today, most circuits have gone away from the test in *Larrison* and have reverted back to the five prongs of the *Harrington* Test. *See e.g. United States v. Williams*, 233 F.3d 592 (D.C. Cir. 2000); *United States v. Huddleston,* 194 F.3d 214 (1st Cir. 1999); *United States v. Provost,* 969 F.2d 617 (8th Cir. 1992); *United States v. Petrillo,* 237 F.3d 119 (2nd Cir. 2000); *United States v. Mitrione,* 357 F.3d 712 (7th Cir. 2004) *United States v. Krasny,* 607 F.2d 840 (9th Cir. 1979); *United States v. Sinclair,* 109 F.3d 1527 (10th Cir. 1997). *But see United States v. Lofton,* 233 F.3d 313 (4th Cir. 2000); *Gordon v. United States,* 178 F.2d 896 (6th Cir. 1949).

Many courts that employ the more liberal standard do so when it is the prosecution who knew or should have known of the perjury. *See e.g. Evenstad v. Carlson*, 470 F.3d 777, 783 (8th Cir. 2006) ("the majority of circuits, including ours, absent a finding the prosecutor knew of perjured testimony, require the petitioner to show the false testimony would be likely to result in an acquittal). Here, however, it is not a government witness who has recanted or been found to have lied. Nor did the prosecutor know or sponsor false testimony. Rather, this is a defense witness who provided false testimony. Further, the expected testimony was not exculpatory. This is a crucial distinction. This court would be more apt to apply the more liberal standard, as were other courts, where a key government witness who supplied necessary evidence of the elements of the offense later recanted or

where the prosecutor knew of the false testimony. Here, however, it is not a government witness who has recanted or been found to have lied. Rather, this is a defense witness who lied about his knowledge of the possible motive of the government witnesses for coming forward and who now recants his testimony regarding defense counsel improprieties.

In light of the nature of the new evidence, the CNMI Supreme Court's acknowledgment of the *Harrington* Test in *Saimon,* and because the majority of jurisdictions have reverted back to the *Harrington* Test, this court will apply the standard espoused therein. Therefore, in addition to the first four prongs of the *Harrington* Test, defendant must show that the newly discovered evidence probably would have resulted in an acquittal.

1. *Newly Discovered Evidence vs. Newly Available Evidence*

"The key to deciding whether evidence is 'newly discovered' or only 'newly available' is to ascertain when the defendant found out about the information at issue. A witness's shifting desire to testify truthfully does not make that witness's testimony 'newly discovered' evidence. *United States v. Turns*, 198 F.3d 584, 587 (6th Cir. 2000). Courts are very reluctant to grant a new trial simply because a witness is now prepared to testify truthfully after the defendant is convicted. *Id.*

In *Turns*, the defendant was convicted of illegally possessing and transferring a firearm. The defendant's sister submitted two affidavits that tended to exonerate the defendant, both of which were prepared within a few days after his conviction. In the affidavits, the defendant's sister admitted that the machine gun actually belonged to her boyfriend and that she had actually asked the defendant to pawn it on her boyfriend's behalf. Prior to trial, the sister refused to testify and told defense counsel she would perjure herself if she took the stand. Defense counsel did not call the sister to testify. However, at trial, defense counsel had complete knowledge of the information that the sister later admitted to in her affidavit. Therefore, the *Turns* court determined that the evidence was merely newly available and did not justify a new trial in spite of its exculpatory nature.

Admittedly, the policy concerns addressed in *Turns* are inapplicable here. The court in *Turns* was concerned that granting a new trial after a defendant makes an informed decision not to call a particular witness because that witness later agrees to testify truthfully permits 'sandbagging' of the judicial process. *See also Baumann v. United States,* 692 F.2d 565 (9th Cir. 1982). Here, defense

counsel *did* put Mr. Angui on the stand negating the 'sandbagging' the courts were concerned with. This, too, was an informed decision to put Kosam's boyfriend on the stand with the expectation that he would testify against Kosam. The testimony did not go as planned, but this does not form a legal basis for a new trial. Recanted testimony cannot form the basis for a new trial when counsel was aware of the perjury during trial and a new trial cannot be granted simply because a witness is prepared to testify truthfully after the conviction. Evidence is not 'newly discovered' when it is necessarily known by the defendant at the time of trial. *See e.g. United States v. Seago,* 930 F.2d 482, 489 (6th Cir. 1991); *United States v. Ellison,* 557 F.2d 128 (7th Cir. 1977).

The problem Defendant faces is that none of Defendant's "newly discovered" evidence was unknown to him at the time of trial. Defense counsel certainly had knowledge of Mr. Angui's proposed testimony regarding motive of government witnesses. As to Mr. Angui's false testimony that counsel had coached him and fabricated the contents of the declaration, counsel obviously knew that particular testimony was false. Unfortunately, none of the evidence Defendant presents in his Supplemental Motion was unknown to him at trial. At trial, counsel was fully aware of the truth; no new information has come to light, rather, a witness who testified untruthfully is now prepared to testify truthfully. This does not amount to newly discovered evidence as defined by the courts.

The inability of Defendant to show that the evidence is "newly discovered" becomes even more apparent when attempting to analyze the second requirement of the *Harrington* Test – that the failure to discover the evidence at time of trial was not due to lack of diligence on defendant's part. First, the evidence concerning possible motive of the government's witnesses *was known* to counsel. Secondly, defense counsel also knew that he had not coached the witness or fabricated the declaration. Defense counsel knows nothing more today than he did during trial.

This court would be more likely to overlook this requirement in the interests of justice, as provided by the statute and urged by Defendant, if there was any inclination that Defendant was convicted as a result of Mr. Angui's testimony. However, as discussed below, the results would not have been any different if Mr. Angui had testified truthfully.

Although unnecessary for this court's determination, the court will briefly address the remaining requirements of the *Harrington* Test.

2. The Evidence Must be Material and Not Cumulative nor Merely Impeaching

Mr. Angui's most recent affidavit, where he admits he lied about defense counsel's actions in this case, is impeachment evidence. Further, that particular testimony is not material to any issue at case. Defense counsel's credibility was not at issue.

Mr. Angui's initial testimony was expected to impeach Kosam and Santiago. Now, the new proffered evidence is an affidavit which seeks to impeach Mr. Angui's testimony. In essence, this is two layers of impeachment evidence. No other jurisdictions have granted a new trial on such basis and no compelling reason has been presented to do so here.

While the motive of key witnesses is an important consideration for juries, in this case, the motive simply went to a reason for reporting the crime. Moreover, the recent affidavit which shows Mr. Angui did, at one time, state that Kosam and Santiago were seeking revenge is cumulative. Evidence persisted throughout trial, and defense counsel argued extensively during closing arguments, that Kosam and other government witnesses were angry, lashing out, and seeking revenge. As discussed above, there has been no indication that anything factual has been fabricated by government witnesses which constituted the foundation of Defendant's conviction. Moreover, the audio recorded tapes provide strong evidence that supported what the witnesses testified too. Even if the only reason Kosam and Santiago reported the crime was to seek revenge, the strong evidence the government presented which proved the elements of the convicted offenses cannot be negated.

3. The Evidence Would Not Result in an Acquittal

The analysis here is similar to the discussion above. For the same reasons precluding the impeachment evidence did not contribute to the verdict, having a new trial based on two layers of impeachment evidence would not result in an acquittal. Moreover, the "new evidence" is based on the testimony of Mr. Angui, a person who has lied at least once under oath and who came to defense counsel only after he and Kosam were in court regarding a restraining order. Mr. Angui felt "played" by Kosam and was obviously angry at her.

The evidence against Defendant was strong. There were tape recorded conversations which implicated her in the crimes. She testified on her own behalf and admitted to introducing the

couples. Further, the jury heard ample evidence of the possible bias that government witnesses potentially harbored. Defense counsel had ample opportunity to directly question Kosam regarding her motives and bias. Further, while motive testimony regarding witnesses is a consideration the jury must make, no evidence exists that shows any potential retaliation went beyond reporting Defendant to the authorities. There have been no allegations that government witnesses actually fabricated something in retaliation against Defendant.

Rather, Mr. Angui was simply explaining why the witnesses 'snitched' on Defendant. This testimony does not diminish the excessive evidence which satisfied all the elements of the conviction. This is not the case where the new evidence, whether impeachment evidence or not, would negate an element of the offense. The jury failed to believe that Defendant was an unknowing, innocent bystander in this crime. Regardless of the credibility of particular witnesses, Defendant never argued that the events did not take place. Defendant maintained that she did not have the requisite mens rea for the crime and that she was merely a matchmaker, the jury did not believe that argument and the newly available evidence Defendant basis her motion on does not change this conclusion.

V. CONCLUSION

After a full and close analysis and consideration of all that Defendant has offered, the court is of the opinion that Defendant has failed to establish a record of evidence that satisfies the basic requirements set forth in the authorities cited above. This court cannot grant a new trial because Mr. Angui is now prepared to testify truthfully. The granting of new trials should be used sparingly and with caution by the courts. Therefore, consistent with the foregoing opinion, Defendant Ray's motions are DENIED.

So ORDERED this 15th day of December 2008,

/S/

David A. Wiseman, Associate Judge