

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
2007 NOV 28 A 11: 29  
LORETTA G. WHITE  
CLERK

UNITED STATES OF AMERICA

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CRIMINAL NO: 07-354

v.

\*

SECTION: "R"

REBECCA ZITZMANN

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FACTUAL BASIS

Should this matter proceed to trial, the United States would prove beyond a reasonable doubt, through credible testimony and reliable evidence, the following facts:

In August, 2004, Hermann Eicke, III ("Eicke") was employed by Elliot's Small Arms, a federal firearm's business located at 3008 Jefferson Highway, Jefferson Parish, Louisiana. Timothy Harris, Sr. ("Harris"), who held a Federal Firearm's License ("FFL"), owned Elliot's Small Arms and the property from which it operated. On or about August 19, 2004, due to repeated record-keeping violations, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") notified Harris that his FFL was revoked. Elliot's Small Arms continued to operate as Harris appealed the revocation of his FFL, which was ultimately denied.

In or near early February, 2005, Eicke was approached by Harris. Harris asked Eicke to acquire a FFL so the gun store could continue to operate. However, Harris made it explicitly clear

to Eicke that Harris would continue to own, and exercise authority and control over the business. In exchange, Harris agreed to increase Eicke's salary from \$500 to \$1,000, per week. Eicke accepted Harris's offer.

On February 25, 2005, Eicke executed an application to obtain a FFL. In the application, Eicke represented that he would be the sole owner and solely responsible for the business named Elliot's Gun Shop, located at 3008 Jefferson Highway, Jefferson Parish, Louisiana. Additionally, Eicke represented that he intended to lease the premises from which Elliot's Gun Shop would operate from Harris. Despite knowing that these representations were false, Eicke made such representations at the direction of Harris, to legitimize the federal firearms application.

An agreement to "Buy and Sell," accompanied the application, that memorialized the pending sale and transfer of Elliot's Small Arms' firearms inventory by Harris, to Eicke. The terms of the contract memorialized that Eicke would purchase Elliot's Small Arms' inventory from Harris for \$165,000 in the form of a promissory note. Attached to the application was a commercial lease where Eicke agreed to lease the premises owned by Harris located at 3008 Jefferson Highway, Jefferson Parish, Louisiana, from May 1, 2005 through April 30, 2010, for a monthly rental payment of \$900.

Neither Eicke nor Harris ever contemplated that any of the terms of the contract or the commercial lease would be satisfied. Eicke, at the direction of Harris, simply attached the contract and the commercial lease to the application in an effort to further substantiate its legitimacy. Further, Eicke never made a legitimate lease payment or a payment on the contract to Harris.

On March 4, 2005, ATF received Eicke's application to acquire a FFL. On April 26, 2005, ATF approved the application and authorized Eicke, to become a FFL holder. Under Eicke's ostensible authority, on May 1, 2005, Elliot's Gun Shop opened and continued to operate until May 16, 2007. From May 1, 2005, through May 16, 2007, Harris exercised ultimate authority and control over Elliott's Gun Shop. **REBECCA ZITZMANN** ("ZITZMANN"), Harris's girlfriend, worked at Elliot's Gun Shop throughout the approximate two-year period. ZITZMANN'S work mostly consisted of selling firearms to customers and assisting in completing paperwork which memorialized the sales of firearms to customers. From May 1, 2005, through May 16, 2007, Elliot's Gun Shop sold approximately 13,200 firearms.

At times, employees of Elliot's Gun Shop such as an informant, who assisted the ATF, and another store employee ("Employee #1"), and ZITZMANN, would fail to have customers sign the re-certification line on the Form 4473, when customers returned to Elliot's Gun Shop to consummate the transaction and take receipt of the firearm. After a customer executes a Form 4473, employees of Elliot's Gun Shop, as a matter of law, were required to contact the National Instant Background Check System (NICS) to determine if Elliot's Gun Shop was authorized to transfer a firearm to the customer. The NICS provided one of three responses: (1) "Proceed"; (2) "Denied"; or, (3) "Delayed." In those instances when the response was "Delayed," Elliot's Gun Shop, as a matter of law, was permitted to transfer the firearm to the customer if it did not receive a follow up response from the NICS within three business days.

When a customer returned to consummate the transaction after three business days passed, or when the NICS subsequently approved the transfer of the firearm, employees of Elliot's Gun

Shop would frequently fail to have the customer affix his/her signature on the re-certification line on the Form 4473. The customer's signature on the re-certification line confirms that each of the answers the customer provided when he/she originally executed the Form 4473 was still correct. When Eicke reviewed the executed Form 4473's, which memorialized the transfer of a firearm, but failed to include the purchaser's signature on the re-certification line, he often directed the employee who consummated the transaction to arrange for the purchaser to return to the store and affix his/her signature on the re-certification line. However, in those instances when the employee could not arrange for the customer to return to the store, the customer's signature would be forged on the re-certification line to pacify Eicke.

On several occasions during the conspiratorial period, the informant, both before and after he began assisting ATF, provided ZITZMANN with Form 4473's to forge the customer's signature on the re-certification line. On each occasion, after the informant saw ZITZMANN forge the customer's signature on the re-certification line, the informant would return the forms to Eicke. On at least two occasions, Employee #1 provided ZITZMANN with Form 4473's to forge a customer's signature on the re-certification line. On each occasion after Employee #1 saw ZITZMANN forge the customer's signature on the re-certification line, Employee #1 would either return the form to Eicke or put it on or near Eicke's desk. Employee #1 also saw other employees provide ZITZMANN 4473 forms to forge the signature of customers on the re-certification line. Employee #1 would subsequently see those Form 4473's that had been provided to ZITZMANN for her to forge a customer's signature, and noticed that the customer's signature was affixed to the re-certification line. ZITZMANN would further forge customers' signatures on the re-certification

of the Form 4473 which memorialized transactions with customers in which she, herself, consummated, but failed to have them affix their signatures on the re-certification line.

ZITZMANN was considered the best forger in the store. Both the informant and Employee #1, on several occasions, heard ZITZMANN boast that she was very good at replicating a customer's signature on the re-certification line which closely resembled the customer's actual signature which the customer affixed when he/she initially executed the Form 4473. Because of ZITZMANN'S aptitude as a forger, other employees of Elliot's Gun Shop sought out ZITZMANN to secure a customer's signature on the re-certification line after the transaction had been completed.

On or about September 7, 2006, K.W. executed a Form 4473 to purchase a Taurus Model M45 Rifle from Elliot's Gun Shop. However, the NICS check responded with a "Delayed." Therefore, the transaction could not be consummated on that day. Elliot's Gun Shop did not receive any additional instruction from the NICS regarding the transaction. On September 16, 2006, K.W. returned to the store. Employee #1 consummated the transaction with K.W., and sold him the rifle. However, Employee #1 failed to have K.W. sign the re-certification line to confirm that K.W.'s original responses on the Form 4473 remained correct.

On September 16, 2006, Eicke reviewed the Form 4473 after the firearm was transferred to K.W. and he became upset because K.W.'s signature was not affixed to the re-certification line. Later that day, Employee #1, Harris, another store employee ("Employee #2), and the informant engaged in a conversation regarding the incident. The conversation was captured on audio and video tape by the informant. The following is the relevant part of the aforementioned conversation, which was transcribed from a digital recorder worn by the informant:

Informant: "Who did the paperwork on K.W.?"

Employee #1: "Me."

Informant: "That's what Hermann was b\*\*\*\*\*' about, 'why can't people pay a f\*\*\*\*\* attention,' or whatever."

Employee #1: "What?"

Informant: "Cause when he was b\*\*\*\*\*,' that's what it was, he was doing [K.W.'s] paperwork."

Employee #1: "Yeah, K.W. left before, left before, left without it [signing the re-certification line]."

Harris: "Oh, you should have signed that son of a b\*\*\*\*\*."

Employee #1: "Oh, I was going to get Becky (ZITZMANN) to."

Harris: "Too late."

Employee #1: "Yeah, I know."

Employee #1: "I was going to hang on to it for K.W., but now Hermann f\*\*\*\*\* saw it."

Harris: "Sign it."

Employee #1: "He already f\*\*\*\*\* saw that."

Harris: "Yeah, we'll tell him he came in."

Informant: "Tell him he (K.W.) came by after . . ."

Harris: "Tell him (Eicke) he (K.W.) came after he (Eicke) left."

Informant: ". . . after Hermann [Eicke] left."

Harris: "Yeah, that's all you gotta do."

Employee #1: "I already told Hermann K.W. didn't take it [the firearm] because he was getting on a train."

Informant: "Tell him you lied. Tell him he came back"

Employee #1: "Becky (ZITZMANN) will sign it. I can't forge worth a s\*\*\*. Becky's pretty good."

Employee #2: "Becky's (ZITZMANN) real good."  
Another store employee ("Employee #2")

When reviewing the Form 4473's that included the customer's forged signature on the re-certification line, Eicke would be heard, in a declarative tone, complaining (words to the effect), "These two signatures don't match up." On two or more occasions, the informant returned a fully completed Form 4473 to Eicke within minutes after Eicke provided the informant the form and directed the informant to arrange for the customer to return to the store and sign the re-certification line. After receiving the form from Eicke, the informant took it to ZITZMANN who forged the customer's signature. The informant, both before and after he began assisting ATF, then promptly returned the form to Eicke, who reviewed the form, and accepted it without complaint. The informant engaged in this practice before and after he began assisting ATF in this investigation.

On October 4, 2006, the informant waited on a customer in Elliot's Gun Shop named B.D. On October 4, 2006, B.D. executed a Form 4473 in order to purchase a Ruger Model P90 pistol. B.D. answered "YES" on Form 4473 to the question regarding whether he was "Under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year?" The informant, as a result of not reviewing B.D.'s response on the Form

4473 that prohibited B.D. from possessing a firearm, contacted the NICS to determine if he was authorized to transfer the firearm to B.D. The NICS provided a "Delayed" response.

B.D. returned to Elliot's Gun Shop on October 7, 2006. B.D. paid for and received the Ruger Model P90 pistol from another store employee, ("Employee #4"). On October 7, 2006, prior to taking receipt of the firearm, B.D. affixed his signature on the re-certification line on the Form 4473 that he originally completed, which confirmed that all of the information that he originally provided on the form was still correct. On or about October 8, 2006, Eicke reviewed the Form 4473 that B.D. executed, and noticed that the form indicated that B.D. was prohibited from possessing a firearm, based on B.D.'s response regarding whether he was currently under indictment. Eicke then directed the informant, who had originally waited on B.D., to arrange for him to return to the store and execute a new Form 4473. Eicke further instructed the informant to ensure that B.D. changed his answer from "YES" to "NO," with respect to the question regarding whether he was currently under indictment.

On or about October 10, 2006, personnel from the NICS contacted EICKE and stated that because B.D. was prohibited from possessing a firearm, his request to purchase a firearm was Denied. As of October 12, 2006, the informant had been unable to arrange for B.D. to return to Elliot's Gun Shop. When the informant arrived to work that day, he was equipped with an electronic audio and video recorder. The informant engaged in a conversation with ZITZMANN, regarding whether B.D. had returned to the store the preceding day, when the informant had not worked. ZITZMANN told the informant that although B.D. had not returned to the store, Eicke had changed the Form 4473 that B.D. had executed by crossing through the "Yes" response and



beside it inserting a "No" response, to indicate on the form that B.D. was not currently under indictment. ZITZMANN proceeded to tell the informant about the conversation that she had with EICKE as he was in the process of changing the "Yes" answer to a "No" answer. The following is the relevant part of the aforementioned conversation between ZITZMANN and the informant, which was transcribed from the digital recorder worn by the informant:

Informant: Did a guy [B.D.] come in yesterday to change a 4473; a black guy?

ZITZMANN: "I don't know."

Informant: "Alright, cause he [B.D.] answered 'yes'."

ZITZMANN: "Oh, the one they [the FBI] called on?"

Informant: "Denied?"

ZITZMANN: "Yeah."

Informant: "OK."

ZITZMANN: "Oh, no, Hermann was hollering, "Oh, I'm gonna lose the license [his FFL] because I'm changing this and then they take him [B.D. for unlawfully possessing the gun] to court, they're going to know I did it [sold him the gun], that it wasn't him."

Informant: "All they're gonna do is f\*\*\*\*\* take the gun."

ZITZMANN: "I said [to Eicke] 'All it's going to be is your word against his [B.D.'s] - he's the criminal'."

Informant: "Right."

ZITZMANN: "We always did it."

Informant: "What, he [Eicke] fixed it?"

ZITZMANN: "I said [to Eicke] 'We've been doing it for f\*\*\*\*\* years. You know it.' You know."

Informant: "Right, because he [Eicke] made me call the guy [B.D]."

ZITZMANN: "Yeah he [Eicke] did [change the response on the form]." He [Eicke] says, 'I'm going to lose the f\*\*\*\*\* license."

Informant: "So he took care of it; the guy B.D.?"

ZITZMANN: "Oh, the guy didn't come in, Hermann [Eicke] did it."

Informant: "Oh. OK. Alright."

ZITZMANN: "I was going to say [to Eicke], I'll change it [B.D.'s Form 4473] myself. All you need to do, is when you're here, say, 'Hermann [Eicke], the guy's here,' when it's busy, and then just bring it [an executed Form 4473 that needs to be changed] up front and f\*\*\*\*\* change it yourself. Jeez, ya know."


ZITZMANN: "He [Eicke] was hollering at me. I had like three of them [Form 4473's] in the stack and I fixed them. Just stupid s\*\*\*, even the signature. Even though it didn't match."

It should be noted, the Form 4473 only requires the customer's signature when he/she originally executes the form and, again, if the customer is required to re-certify the accuracy of previous responses.

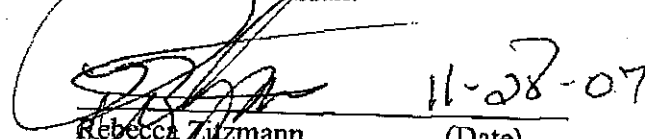
On May 16, 2007, the ATF recovered the aforementioned Form 4473 that memorialized the transfer from Elliot's Gun Shop of a Ruger Model P90 pistol to B.D. The form indicated that Employee #3 consummated the transaction with B.D. on October 7, 2006. When ATF recovered the

form a "Yes" response to the question regarding whether B.D. was currently under indictment or information was marked out, and a "No" response was inserted in its place. The initials "BD" were affixed beside the "No" response. Upon further investigation, it was determined that B.D. was under indictment for a felony offense in October, 2006.

On May 16, 2007, ZITZMANN was arrested on a federal warrant and was verbally read her Miranda rights. ZITZMANN waived her rights and agreed to be interviewed by law enforcement. During the course of the oral interview, ZITZMANN stated that she had "cleaned up" ATF 4473's on numerous occasions while working in Elliot's Gun Shop. ZITZMANN also stated that she had changed answers on the 4473's from "Yes" to "No," and "vice-versa," and that she had forged other things on the ATF Form 4473, while working in Elliot's Gun Shop.

  
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