

DEC 31 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHONTOVIA D. DEBOSE,

Defendant - Appellant.

No. 12-50102

D.C. No. 2:09-cr-01005-TJH-27

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ME ARLENE SETTLE, AKA Me Arlene
Leavasa, AKA Me Arlene Logovii,

Defendant - Appellant.

No. 12-50191

D.C. No. 2:09-cr-01005-TJH-44

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

No. 12-50231

D.C. No. 2:09-cr-01005-TJH-2

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

v.

NICHOLE MICHELLE MERZI, AKA
Nichole Mahmoud Merzi,

Defendant - Appellant.

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY DONNEL FULLER,

Defendant - Appellant.

No. 12-50323

D.C. No. 2:09-cr-01005-VBF-30

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, Senior District Judge, Presiding

Argued and Submitted December 10, 2014
Pasadena, California

Before: SILVERMAN, BEA, and CHRISTEN, Circuit Judges.

In this consolidated criminal appeal, four co-defendants (Merzi, Debose, Settle, and Fuller) appeal their convictions for their participation in a bank and wire fraud conspiracy. The conspiracy involved unindicted co-conspirators in Egypt who

fraudulently transferred money from victims to American accounts set up by the defendants, among others.

Merzi claims her participation in the conspiracy was coerced by her then-boyfriend Kenneth Lucas, the ringleader of the conspiracy. Merzi also argues that the district court improperly precluded evidence of Lucas's domestic violence in support of her duress defense. The district court did not err when it precluded Merzi from presenting an affirmative defense of duress because Merzi did not make a prima facie showing of duress. *United States v. Ibarra-Pino*, 657 F.3d 1000, 1005 (9th Cir. 2011). The district court also did not abuse its discretion when it denied Merzi's motion for continuance to substitute counsel because the district court's ruling was not illogical, implausible, or without support in the record. *United States v. Hinkson*, 585 F.3d 1247, 1261–63 (9th Cir. 2009) (en banc) (abuse of discretion test); *United States v. Flynt*, 756 F.2d 1352, 1358 (9th Cir. 1985) (factors a court considers for motions for continuances). Therefore as to Merzi, the district court's judgment is AFFIRMED.

Debose, Fuller, and Settle each claim that there was insufficient evidence to support their convictions.¹ There indeed was insufficient evidence to convict Debose, Fuller, and Settle of the conspiracy count because the government did not prove

¹ All three fraudulently created bank accounts. Debose was convicted only of the conspiracy to commit bank and wire fraud. Fuller and Settle, however, were convicted of the conspiracy and of substantive bank fraud.

beyond a reasonable doubt that any of the three “embraced the common purpose of the conspiracy.” *United States v. Umagat*, 998 F.2d 770, 773–74 (9th Cir. 1993) (quoting *United States v. Bibbero*, 749 F.2d 581, 587 (9th Cir. 1984)). We therefore VACATE the conspiracy convictions for Debose, Fuller, and Settle. There was, however, sufficient evidence to convict Fuller and Settle of substantive bank fraud, and their convictions on those counts are therefore AFFIRMED. We REMAND to the district court with instructions to vacate Debose’s sentence and to resentence Fuller and Settle.