

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA)	
)	Case No. 4-02-CR-40
Plaintiff,)	
)	
vs.)	
)	
MARLA ANN CHAK)	ORDER
)	
Defendant.)	

Defendant, Marla Ann Chak, is charged with conspiring to possess with the intent to distribute methamphetamine in violation of 21 U.S.C. §§ 846 and 841(b)(1), and attempt to possess with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). On October 4, 2002, defendant filed a motion to dismiss. On October 18, 2002, the government filed a resistance. The matter is now fully submitted.

In plaintiff's Response to Defendant's Motion for a Bill of Particulars, the government sets forth facts connecting defendant to a drug conspiracy. The government contends that defendant Chak had a telephone conversation with alleged co-conspirators, Brandi Martinez and Diana Reyes, in which the parties discussed the need to obtain access to a motel room where Martinez had hidden money derived from illegal drug sales. According to the government, after defendant and Reyes discussed the manner and means by which they would attempt to surreptitiously obtain access to the motel room, they executed their plan. At trial the government plans to introduce evidence establishing that defendant

intended to recover the four ounces of methamphetamine from the motel room, not just the cash proceeds from the sale of drugs. *See* Plaintiff's Resistance to Defendant's Motion to Dismiss.

Defendant argues that even if the facts alleged in the government's Response to the Defendant's Motion for Bill of Particulars are true, defendant cannot be convicted of the instant offenses. The Court disagrees.

In order to establish that a defendant committed the offense of conspiracy to distribute a controlled substance, the government must show that the defendant entered an agreement with at least one other person with the objective to violate the law. *United States v. Brown*, 956 F.2d 782, 785 (8th Cir. 1992). "To be a conspirator, one 'does not have to be aware of the existence of all other conspirators or all the details of the conspiracy.'" *United States v. Hernandez*, 986 F.2d 234, 236 (8th Cir. 1993) (quoting *United States v. Watts*, 950 F.2d 508, 512 (8th Cir. 1991), *cert. denied*, 503 U.S. 911 (1992)). "An individual becomes a member of a conspiracy when he knowingly contributes his efforts to the conspiracy's objectives." *Id.* (citing *United States v. Duckworth*, 945 F.2d 1052, 1053 (8th Cir. 1991)).

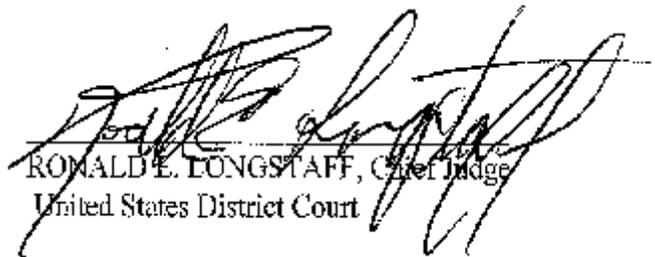
The Government intends to introduce evidence establishing that defendant knowingly conspired with others to obtain possession of the four ounces of methamphetamine. However, even if the jury were to conclude that defendant was attempting only to obtain the money hidden in the motel room, as long as there is evidence that defendant knew the money represented proceeds from the sale of methamphetamine, the evidence will support a conviction on the charges in issue. If proven, her affirmative action in seeking to recover the drug proceeds and thereby prevent their possible discovery and confiscation is a direct act in furtherance of the drug distribution conspiracy. *See, e.g., United*

States v. Otis, 127 F.3d 829, 834 (9th Cir. 1997) (quoting *United States v. Cuevas*, 847 F.2d 1417, 1422 (9th Cir. 1988)) (“[I]f a defendant ‘knowingly facilitates movement of money derived from narcotics out of the United States for narcotics traffickers, he can be found guilty of a conspiracy to aid and abet narcotics trafficking.’”)

Defendant’s motion to dismiss is therefore denied.

IT IS SO ORDERED.

This 23rd day of October, 2002.



RONALD E. LONGSTAFF, Chief Judge
United States District Court