

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

PATRICIA MERZ

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Case No. 5:14-cr-32-1

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States against the defendant PATRICIA MERZ. The superseding indictment charges PATRICIA MERZ in four counts.

COUNT ONE

Commencing in or about December 2009 and continuing until approximately July 2011, in the District of Vermont and elsewhere, the defendants PATRICIA MERZ and CHRISTOPHER MCGUIGAN knowingly and willfully conspired and agreed with each to commit the crime of interstate transportation of stolen money, in violation of 18 U.S.C. § 2314.

It was the object of the conspiracy that the defendants would unjustly enrich themselves by diverting to themselves all proceeds from the Estate of Annelise McGuigan, without properly administering claims against the Estate made by creditors of the Estate.

In furtherance of the conspiracy, the defendants committed, or caused to be committed, the following overt acts in the District of Vermont:

- (1) In or about December 2009, the defendants applied to the Bennington County probate court to be appointed coadministrators of the Estate of Annelise McGuigan.
- (2) On or about June 23, 2010, the defendants opened a checking account for the Estate at TD Bank.
- (3) On or about June 23, 2010, the defendants deposited \$10,000 into the Estate checking account.
- (4) On or about August 18, 2010 the defendants deposited a \$149,930.96 check into the Estate checking account.
- (5) On or about February 8, 2011 each defendant received a \$9975 check from the attorney for the Estate.
- (6) Between June 24, 2010 and June 29, 2011 the defendants wrote more than \$113,000 in checks against the Estate checking account. Most of these checks benefitted the defendants.

COUNT TWO

On or about the dates listed below, in the District of Vermont and elsewhere, the defendants PATRICIA MERZ and CHRISTOPHER MCGUIGAN transmitted and transferred in interstate commerce, between Vermont and New York, the following sums of money having an aggregate value of \$5000 or more, which had been removed from the Estate of Annelise McGuigan and which the defendants knew had been stolen, converted and taken by fraud:

APPROXIMATE DATE	AMOUNT
June 24, 2010	\$3000
August 18, 2010	\$5000
September 7, 2010	\$1000
September 13, 2010	\$6000
September 29, 2010	\$1500
October 16, 2010	\$500

October 22, 2010	\$500
December 8, 2010	\$3000
January 5, 2011	\$3088
January 24, 2011	\$3000
February 8, 2011	\$9975
March 29, 2011	\$3000
May 17, 2011	\$4000

COUNT THREE

On numerous dates between June 2010 and July 2011, in the District of Vermont and elsewhere, the defendant PATRICIA MERZ, having devised the aforementioned scheme and artifice to defraud the Estate of Annelise McGuigan and creditors of the Estate, and for obtaining money from the Estate of Annelise McGuigan by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme, caused sums of money to be transmitted by wire in interstate commerce, from MERZ'S personal bank account in New York to vendors in Vermont.

COUNT FOUR

Beginning in approximately June 2010 and continuing until approximately July 2011, in the District of Vermont and elsewhere, the defendant PATRICIA MERZ, with intent to deceive another person and organization, made and uttered forged securities of an organization, to wit, withdrawal and intrabank transfer slips of the Estate of Annelise McGuigan.

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime before trial. An indictment is not evidence. An indictment does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the charges against the defendant. The defendant has pleaded not guilty to

the counts in the indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact that have been raised by the allegations in the indictment and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

The government must prove the defendant guilty beyond a reasonable doubt. The question is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a whim, speculation, or suspicion. However, a reasonable doubt may arise from a lack of evidence. It is not an excuse to avoid the performance of an unpleasant duty and it is not sympathy.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require the government to prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to a defendant, which means that it is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

If, after a fair and impartial consideration of all the evidence against the defendant, you have a reasonable doubt, then it is your duty to find the defendant not guilty. On the other hand, if, after fair and impartial consideration of all the evidence, you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict.

The law presumes the defendant is innocent of the charges against her. The presumption of innocence lasts throughout the trial and during your deliberations. The

presumption of innocence ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

EVIDENCE

You have seen and heard the evidence produced in this trial, and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been admitted into evidence, and all the facts that have been admitted or stipulated. I would now like to call to your attention to certain guidelines by which you are to evaluate the evidence.

There are two types of evidence that you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something she or he knows by virtue of her or his own senses—something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit.

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. You infer on the basis of reason, experience, and common sense from one established fact, the existence or non-existence of some other fact. For example, if you were to see cow tracks in a pasture, that would be circumstantial evidence that there are or were cows in the pasture.

Circumstantial evidence is of no less value than direct evidence. Circumstantial evidence alone may be sufficient evidence of guilt.

You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the defendant's guilt beyond a reasonable doubt, then you must find her not guilty. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof.

STIPULATIONS OF FACT

When the attorneys on both sides stipulate or agree to the existence of a fact, you may accept the stipulation as evidence and may regard that fact as proved. You are not required to do so, however, because you are the sole judge of the facts.

CHARTS AND SUMMARIES (ADMITTED AS EVIDENCE)

The government has presented exhibits in the form of charts and summaries. I decided to admit these charts and summaries in place of the underlying documents that they represent in order to save time and avoid unnecessary inconvenience. You should consider these charts and summaries as you would any other evidence.

CHARTS AND SUMMARIES (NOT ADMITTED AS EVIDENCE)

The government has presented exhibits in the form of charts and summaries. *used in closing*
These charts and summaries were shown to you in order to make the other evidence more meaningful and to aid you in considering the evidence. They are no better than the testimony or the documents upon which they are based, and are not themselves independent evidence. Therefore, you are to give no greater consideration to these schedules or summaries than you would give to the evidence upon which they are based.

It is for you to decide whether the charts, schedules or summaries correctly present the information contained in the testimony and in the exhibits on which they were based. You are entitled to consider the charts, schedules and summaries if you find that they are of assistance to you in analyzing and understanding the evidence.

STRICKEN TESTIMONY/ATTORNEYS' STATEMENTS/COURT'S RULINGS

I caution you that you should entirely disregard any testimony or exhibit that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. By the rulings the court made in the course of the trial, I did not intend to indicate to you any of my own preferences, or to influence you in any manner regarding how you should decide the case. The attorneys have a duty to object to evidence they believe is not admissible. You must not hold it against either side if an attorney made an objection.

STATEMENTS BY THE DEFENDANT

There has been evidence that the defendant made certain statements in which the government claims she admitted certain facts.

In deciding what weight to give the defendant's statements, you should first examine with great care whether each statement was actually made and whether, in fact, it was voluntarily and understandingly made. If you find that the statement was made, I instruct you that you are to give the statements such weight as you feel they deserve in light of all the evidence.

CREDIBILITY OF WITNESSES

You, as jurors, are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness, because you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider: their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger, if any, toward the defendant; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper. You may accept all of it, some of it, or reject it altogether.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses or the most evidence. Remember, a defendant in a criminal prosecution has no obligation to present any evidence or call any witnesses. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may hear or see things differently, or may have a different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in

testimony, considering whether they pertain to matters of importance, or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

INTEREST IN OUTCOME

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome may create a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering has an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that any witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

EXPERT WITNESS

You have heard evidence from a witness who is known as an expert witness. An expert witness is a person who has special knowledge, experience, training, or education in his or her profession or area of study. Because of this expertise, an expert witness may offer an opinion about one or more of the issues in the case. In evaluating an expert witness's testimony, you should evaluate his or her credibility and statements just as you would with any other witness. You should also evaluate whether the expert witness's opinion is supported by the facts that have been proved, and whether the opinion is supported by the witness's knowledge, experience, training, or education. You are not required to give the testimony of an expert witness any greater weight than you believe it deserves just because the witness has been referred to as an expert.

LAW ENFORCEMENT WITNESSES

You have heard the testimony of law enforcement officials in this case. The fact that a witness may be employed by the federal, state, or local government as a law

enforcement official does not mean that his or her testimony is deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is proper for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of a law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

WITNESS'S PLEA AGREEMENTS

There has been evidence that one of the government's witnesses pled guilty after entering into an agreement with the government to testify. There is also evidence that the government agreed to dismiss some of the charges against this witness, or agreed not to prosecute the witness on other charges in exchange for an agreement to plead guilty and testify at trial. The government also promised to bring the witness's cooperation to the attention of the sentencing court.

The government is permitted to enter into this kind of plea agreement. You, in turn, may accept the testimony of such a witness and convict the defendant on the basis of this testimony alone, if the testimony convinces you, the jury, of the defendant's guilt for the crimes charged beyond a reasonable doubt.

You should bear in mind that a witness who has entered into such an agreement has an interest in this case different from an ordinary witness. A witness who realizes that he or she may be able to obtain his or her own freedom, or receive a lighter sentence by giving testimony favorable to the government, may have a motive to testify falsely. Conversely, a witness who realizes that he or she may benefit by providing truthful testimony may have a motive to be honest. Therefore, you must examine his or her testimony with caution and weigh it with great care. After scrutinizing his or her testimony, you may decide to accept it, reject it, accept it in part, or reject it in part, and you may give it whatever weight, if any, you find it deserves.

WITNESS'S GUILTY PLEA

You have heard the testimony of a government witness who pled guilty to a criminal charge. You are not to draw any conclusions or inferences of any kind about the guilt of the defendant from the fact that a prosecution witness pled guilty to a similar charge. A witness's decision to plead guilty is a personal decision. It may not be used by you in any way as evidence against the defendant.

JURORS' EXPERIENCE/SPECIALIZED KNOWLEDGE

Anything you have seen or heard outside the courtroom is not evidence, and must be disregarded entirely. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of the evidence. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

IMPERMISSIBLE INFERENCES WITH REGARD TO DEFENDANT

You may not infer that a defendant was guilty of participating in criminal conduct merely from the fact that she associated with other people who were guilty of wrong doing.

You also may not infer that a defendant is guilty of participating in criminal conduct merely from the fact that she was present at the time the crime was being committed and had knowledge that it was being committed.

RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

You may not consider the race, religion, national origin, sex, or age of the defendant or any of the witnesses in your deliberations over the verdict or in the weight given to any evidence.

BIAS, PREJUDICE, AND EQUALITY BEFORE THE COURT

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality. You must not allow any of your personal feelings about the nature of the crimes charged to interfere with your deliberations, or influence the weight given to any of the evidence.

This case is important to the parties and the court. You must give it the fair and serious consideration that it deserves.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals before the court.

ACTS AND DECLARATIONS OF CO-CONSPIRATORS

You will recall that I have admitted into evidence against the defendant the acts and statements of others because these acts and statements were committed by persons who, the government charges, were also confederates or co-conspirators of the defendant on trial.

The reason for allowing this evidence to be received against the defendant has to do with the nature of the crime of conspiracy. A conspiracy is often referred to as a partnership in crime. Thus, as in other types of partnerships, when people enter into a conspiracy to accomplish an unlawful end, each and every member becomes an agent for the other conspirators in carrying out the conspiracy.

Accordingly, the reasonably foreseeable acts, declarations, statements and omissions of any member of the conspiracy and in furtherance of the common purpose of the conspiracy, are deemed, under the law, to be the acts of all of the members, and all of the members are responsible for such acts, declarations, statements and omissions.

If you find, beyond a reasonable doubt, that the defendant was a member of the conspiracy charged in the superseding indictment, then, any acts done or statements made in furtherance of the conspiracy by persons also found by you to have been members of that conspiracy, may be considered against the defendant. This is so even if such acts

were done and statements were made in the defendant's absence and without her knowledge.

However, before you may consider the statements or acts of a co-conspirator in deciding the issue of a defendant's guilt, you must first determine that the acts and statements were made during the existence, and in furtherance, of the unlawful scheme. If the acts were done or the statements made by someone whom you do not find to have been a member of the conspiracy or if they were not done or said in furtherance of the conspiracy, they may be considered by you as evidence only against the member who did or said them.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to the law that is applicable to your determinations in this case.

It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts that you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law that I give to you.

However, it is the sole province of the jury to determine the facts in this case. I do not, by any instructions given to you, intend to persuade you in any way as to any question of fact.

The parties in this case have a right to expect that you will carefully and impartially consider all the evidence in the case, that you will follow the law as I state it to you, and that you will reach a just verdict.

THE ESSENTIAL ELEMENTS OF THE OFFENSES

"IN OR ABOUT" EXPLAINED

The superseding indictment charges that the offenses were committed "in or about" certain dates. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates

alleged in the superseding indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

COUNT ONE: CONSPIRACY
THE INDICTMENT AND THE STATUTE

The first count of the superseding indictment charges the defendant with conspiracy to ~~vio~~late commit the crime of interstate transportation of stolen money. ✓

The relevant statute on this subject is 18 U.S.C. § 371. It provides: "If two or more persons conspire ... to commit any offense against the United States... , and one or more of such persons do any act to effect the object of the conspiracy, each [is guilty of an offense against the United States].

COUNT ONE: ELEMENTS OF CONSPIRACY

In order to satisfy its burden of proof, the government must establish each of the following four essential elements beyond a reasonable doubt:

First, that two or more persons entered into the unlawful agreement charged in the superseding indictment starting in or about December 2009;

Second, that the defendant knowingly and willfully became a member of the conspiracy;

Third, that one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the indictment; and

Fourth, that the overt act(s) which you find to have been committed was (were) committed to further some objective of the conspiracy.

If you find that the government has failed to prove any one of these elements beyond a reasonable doubt, then you should find the defendant not guilty of Count One. If, however, you find that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty of Count One. I will now explain these elements in more detail.

COUNT ONE: EXISTENCE OF AGREEMENT

The first element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that two or more persons entered into the unlawful

agreement charged in the indictment. In this case the government alleges that it was the object of the conspiracy that the defendants would unjustly enrich themselves by diverting to themselves all proceeds from the Estate of Annelise McGuigan, without properly administering claims against the Estate made by creditors of the Estate.

In order for the government to satisfy this element, you need not find that the alleged members of the conspiracy met together and entered into any express or formal agreement. Similarly, you need not find that the alleged conspirators stated, in words or writing, what the scheme was, its object or purpose, or every precise detail of the scheme or the means by which its object or purpose was to be accomplished. What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people to cooperate with each other to accomplish an unlawful act.

You may, of course, find that the existence of an agreement to disobey or disregard the law has been established by direct proof. However, since conspiracy is, by its very nature, characterized by secrecy, you may also infer its existence from the circumstances of this case and the conduct of the parties involved.

In determining whether an agreement existed here, consider the actions and statements of all of those you find to be participants as proof that a common design existed on the part of the persons charged to act together to accomplish an unlawful purpose.

COUNT ONE: MEMBERSHIP IN THE CONSPIRACY

The second element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that the defendant knowingly and willfully became a member of the conspiracy.

If you are satisfied that the conspiracy charged in the superseding indictment existed, you must next ask yourselves who the members of that conspiracy were. In deciding whether the defendant was, in fact, a member of the conspiracy, you should consider whether the defendant knowingly and willfully joined the conspiracy. Did she

participate in it with knowledge of its unlawful purpose and with the specific intention of furthering its business or objective as an associate or worker?

In that regard, it has been said that in order for a defendant to be deemed a participant in a conspiracy, she must have had a stake in the venture or its outcome. You are instructed that, while proof of a financial interest in the outcome of a scheme is not essential, if you find that the defendant had such an interest, that is a factor which you may properly consider in determining whether or not the defendant was a member of the conspiracy charged in the indictment.

Before the defendant can be found to have been a conspirator, you must first find that she knowingly joined in the unlawful agreement or plan. The key question, therefore, is whether the defendant joined the conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement.

The defendant's participation in the conspiracy must be established by independent evidence of her own acts or statements, as well as those of the other alleged co-conspirators, and the reasonable inferences which may be drawn from them.

The defendant's knowledge is a matter of inference from the facts proved. In that connection, I instruct you that to become a member of the conspiracy, the defendant need not have known the identities of each and every other member, nor need she have known of all of their activities. Moreover, the defendant need not have been fully informed as to all of the details, or the scope, of the conspiracy in order to justify an inference of knowledge on her part. Furthermore, the defendant need not have joined in all of the conspiracy's unlawful objectives.

The extent of a defendant's participation has no bearing on the issue of a defendant's guilt. A conspirator's liability is not measured by the extent or duration of her participation. Indeed, each member may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. In fact, even a single act may be sufficient to make the defendant a member of the conspiracy.

I want to caution you, however, that the defendant's mere presence at the scene of the alleged crime does not, by itself, make her a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy does not automatically make the defendant a member. A person may know, or be friendly with, a criminal, without being a criminal herself. Mere similarity of conduct or the fact that they may have assembled together and discussed common aims and interests does not necessarily establish membership in the conspiracy.

I also want to caution you that mere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. Moreover, the fact that the acts of a defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the defendant a member. More is required under the law. What is necessary is that the defendant must have participated with knowledge of at least some of the purposes or objectives of the conspiracy and with the specific intention of aiding in the accomplishment of those unlawful ends.

In sum, the defendant, with an understanding of the unlawful character of the conspiracy, must have intentionally engaged, advised or assisted in it for the purpose of furthering the illegal undertaking. She thereby becomes a knowing and willing participant in the unlawful agreement—that is to say, a conspirator.

COUNT ONE: COMMISSION OF OVERT ACT

The third element which the government must prove beyond a reasonable doubt, to establish the offense of conspiracy, is that at least one of the overt acts charged in the indictment was knowingly committed by at least one of the conspirators, at or about the time and place alleged.

The indictment charges that the following overt acts were committed in the District of Vermont.

- (1) In or about December 2009, the defendants applied to the Bennington County probate court to be appointed coadministrators of the Estate of Annelise McGuigan.

(2) On or about June 23, 2010, the defendants opened a checking account for the Estate at TD Bank.

(3) On or about June 23, 2010, the defendants deposited \$10,000 into the Estate checking account.

(4) On or about August 18, 2010 the defendants deposited a \$149,930.96 check into the Estate checking account.

(5) On or about February 8, 2011 each defendant received a \$9975 check from the attorney for the Estate.

(6) Between June 24, 2010 and June 29, 2011 the defendants wrote more than \$113,000 in checks against the Estate checking account. Most of these checks benefitted the defendants.

In order for the government to satisfy this element, it is not required that all of the overt acts alleged in the indictment be proven.

Similarly, you need not find that the defendant herself committed the overt act. It is sufficient for the government to show that one of the conspirators knowingly and willfully committed an overt act in furtherance of the conspiracy, since such an act becomes, in the eyes of the law, the act of all of the members of the conspiracy.

You are further instructed that the overt act need not have been committed at precisely the time alleged in the indictment. It is sufficient if you are convinced beyond a reasonable doubt, that it occurred at or about the time and place stated.

Finally, you must find that either the agreement was formed or that an overt act was committed in the District of Vermont, which includes the entire State of Vermont.

COUNT ONE: PURPOSE OF OVERT ACT

The fourth, and final, element which the government must prove beyond a reasonable doubt is that the overt act you have concluded was established beyond a reasonable doubt was committed for the purpose of carrying out the unlawful agreement.

In order for the government to satisfy this element, it must prove, beyond a reasonable doubt, that at least one overt act was knowingly and willfully done, by at least one conspirator, in furtherance of some object or purpose of the conspiracy, as charged in

the indictment. In this regard, you should bear in mind that the overt act, standing alone, may be an innocent, lawful act. Frequently, however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding or assisting the conspiratorial scheme. You are therefore instructed that the overt act does not have to be an act which, in and of itself is criminal or constitutes an objective of the conspiracy.

COUNT TWO: THE INDICTMENT AND THE STATUTE

Count Two of the superseding indictment charges the defendant with interstate transfer of stolen property, in violation of section 2314 of Title 18 of the United States Code. That section, in pertinent part, provides:

Whoever transports, transmits or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud, [shall be guilty of a crime].

COUNT TWO: ELEMENTS OF THE OFFENSE

In order to meet its burden of proof on this stolen property count, the government must establish beyond a reasonable doubt each of the following elements:

First, that the goods, wares, merchandise, securities or money, were stolen, converted, or taken by fraud;

Second, that the defendant transmitted or transferred the property in interstate or foreign commerce;

Third, that at the time of the transportation or transmission, the defendant knew the property was stolen, converted or taken by fraud; and

Fourth, that the value of the property was at least \$5,000.

If you find that the government has failed to prove any one of these elements beyond a reasonable doubt, then you should find the defendant not guilty of Count Two. If, however, you find that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty of Count Two. I will now explain these elements in more detail.

**COUNT TWO: FIRST ELEMENT—PROPERTY WAS STOLEN, CONVERTED
OR TAKEN BY FRAUD**

The first element the government must prove beyond a reasonable doubt is that the property described in the indictment was stolen, converted, or taken by fraud.

The first thing you must determine is whether the property described in the indictment constitutes goods, wares, or merchandise (or whether it is a security or money).

Next, you must determine whether the property described in the indictment was stolen, converted or taken by fraud.

The term "stolen" refers to the taking of any goods, wares, merchandise, securities or money with the intent to deprive the owner of the use or benefits of ownership.

The phrase "converted" means to take goods, wares, merchandise, securities or money for one's own use by any dishonest or illegal means. For example, if a person has received money in exchange for specific services, and he does not perform those services and instead retains the money for his own use, he has converted the money.

The term "taken by fraud" refers to goods, wares, merchandise, securities or money taken from its owner, through misrepresentations or deceit, with the intent to deprive the owner of the use or benefits of ownership.

For the purposes of this case, it is not necessary that you know, or are able to determine, who stole, converted, or fraudulently obtained, the property. While you must decide beyond a reasonable doubt that the particular property was stolen, you do not have to determine who stole it, or that the defendant knew who stole it. The government need not prove that the defendant personally stole the property from the owner. However, you must determine whether the defendant intentionally deprived the owner of this property of the rights and benefits of ownership, without the owner's consent. In considering whether the defendant acted "intentionally," you should give the word its ordinary meaning of acting deliberately, or purposely, as opposed to acting by mistake or carelessness.

Any illegal or dishonest misrepresentation or taking of property which deprives the owner of his property without his consent is considered "stealing, conversion, or taking by fraud." The property does not have to be taken permanently; and the

misrepresentation or taking does not have to result in monetary loss to the owner. What you must decide, and what the government must prove beyond a reasonable doubt is whether, at the time the defendant acquired possession of the property, she intended to take it for her own use, and if so, whether she did so without the permission of the owner.

It follows then that the property must have been taken from someone who owns the property or who has the attributes of an owner; that is, someone who has property interests that are tantamount to ownership. I instruct you that, as a matter of law, creditors do not own property from which they seek to recover debts.

COUNT TWO: WITHOUT OWNER'S CONSENT

You must determine whether the defendant intentionally deprived the owner of the property of the rights of ownership without the owner's consent. The government satisfies its burden of proving the property was stolen, converted or taken by fraud if it proves beyond a reasonable doubt that the defendant converted the property to her own use, against the owner's wishes, even if the defendant initially got the property lawfully.

In considering whether the defendant's acquisition of the property was against the owner's wishes, you may take into account any friendship or business relationship between the defendant and the owners.

**COUNT TWO: SECOND ELEMENT—TRANSPORTATION IN INTERSTATE
COMMERCE**

The second element the government must prove beyond a reasonable doubt is that the property was transported or transmitted or transferred in interstate commerce.

Simply stated, the phrase "transported in interstate commerce" means that the stolen goods, wares, merchandise, securities or money moved from one state to another.

The defendant need not have intended or known of the property's transport in interstate commerce. Nor is it required that the defendant actually have physically transported the property across state lines. The government satisfies its burden of proving transportation in interstate commerce if it proves beyond a reasonable doubt that the defendant caused the property's transport across state lines, or performed a substantial step in furtherance of its journey.

**COUNT TWO: THIRD ELEMENT— KNOWLEDGE THAT THE PROPERTY
WAS STOLEN, CONVERTED OR TAKEN BY FRAUD AT TIME OF
TRANSPORT**

The third element the government must prove beyond a reasonable doubt is that the defendant knew at the time of its interstate transport that the property was stolen, converted, or taken by fraud.

In deciding whether the defendant knew that the property was stolen, converted, or taken by fraud at the time it was transported between states, you must focus on her actual knowledge at that time.

Your decision whether the defendant acted knowingly at the time the stolen property was transported involves a decision about the defendant's state of mind at the time the journey through interstate commerce occurred. It is obviously impossible to ascertain or prove directly the operation of the defendant's mind. You cannot look into a person's mind to see what her state of mind is or was. You must consider all of the facts and circumstances shown by the evidence ^p_K define the extent of the defendant's knowledge.

COUNT TWO: FOURTH ELEMENT—VALUE OF THE PROPERTY

The fourth element the government must prove beyond a reasonable doubt is that the property had a value of at least \$5,000.

In determining the value of the property, you may look at the face or value of the property, or its market value—that is, the amount of money the property could be sold for in the open market—whichever is greatest. You should consider the total value of all the property referred to in each count of the indictment, but you must consider each count separately. If you find that the value of the property referred to in any count of the indictment is less than \$5,000, then you must find the defendant not guilty of that count.

It does not matter if you find the defendant actually received less than \$5,000 for the goods, wares, or merchandise, or if the securities or other financial instruments were non-negotiable—that is, they could not be redeemed or traded. If the evidence shows, and you find beyond a reasonable doubt that the property's total face or market value was \$5,000, then this element of the offense is satisfied.

COUNT THREE: THE SUPERSEDING INDICTMENT AND THE STATUTE

Count Three of the superseding indictment charges the defendant with devising a scheme to defraud and in furtherance of that scheme knowingly caused the interstate wires to be used to transmit money from the defendant's personal bank account in New York to vendors in Vermont.

The relevant statute on this subject is section 1343 of Title 18 of the United States Code. It provides:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire radio or television communication in inter-state or foreign commerce, any writings, signs, signals, pictures or sounds for the purpose of executing such scheme or artifice shall be [guilty of a crime].

COUNT THREE: ELEMENTS OF THE OFFENSE

In order to sustain this charge, the government must prove each of the following elements beyond a reasonable doubt:

First, that there was a scheme or artifice to defraud or to obtain money or property by materially false and fraudulent pretenses, representations or promises, as alleged in the indictment;

Second, that the defendant knowingly and willfully participated in the scheme or artifice to defraud, with knowledge of its fraudulent nature and with specific intent to defraud; and

Third, that in execution of that scheme, the defendant used or caused the use of the interstate wires as specified to transmit money from the defendant's personal bank account in New York to vendors in Vermont.

If you find that the government has failed to prove any one of these elements beyond a reasonable doubt, then you should find the defendant not guilty of Count Three. If, however, you find that the government has proved each of these elements beyond a

reasonable doubt, then you should find the defendant guilty of Count Three. I will now explain these elements in more detail.

**COUNT THREE: FIRST ELEMENT—EXISTENCE OF A SCHEME OR
ARTIFICE TO DEFRAUD**

The first element that the government must prove beyond a reasonable doubt is that there was a scheme or artifice to defraud the Estate of Annelise McGuigan and creditors of the Estate of money.

This first element is almost self-explanatory.

A "scheme or artifice" is merely a plan for the accomplishment of an object.

A scheme to defraud is any plan, device, or course of action to obtain money or property by means of materially false or fraudulent pretenses, representations or promises reasonably calculated to deceive persons of average prudence.

"Fraud" is a general term which embraces all the various means which human ingenuity can devise and which are resorted to by an individual to gain an advantage over another by false representations, suggestions or suppression of the truth, or deliberate disregard for the truth.

Thus, a "scheme to defraud" is merely a plan to deprive another of money or property by trick, deceit, deception or swindle.

The scheme to defraud is alleged to have been carried out, in part, by making false and fraudulent statements, representations and documents.

A statement, representation, claim or document is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made.

A representation or statement is fraudulent if it was falsely made with the intention to deceive.

Deceitful statements of half truths or the concealment of material facts, and the expression of an opinion not honestly entertained may also constitute false or fraudulent statements under the statute.

The deception need not be premised upon spoken or written words alone. The arrangement of the words, or the circumstances in which they are used may convey the

false and deceptive appearance. If there is deception, the manner in which it is accomplished is immaterial.

The false or fraudulent representation must relate to a material fact or matter. A material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision (e.g., with respect to a proposed investment).

In addition to proving that a statement was false or fraudulent and related to a material fact, in order to establish a scheme to defraud, the government must prove that the alleged scheme contemplated depriving another of money or property.

However, the government is not required to prove that the defendant personally originated the scheme to defraud. Furthermore, it is not necessary that the government prove that the defendant actually realized any gain from the scheme or that the intended victim actually suffered any loss. In this case, it so happens that the government does contend that the proof establishes that persons were defrauded and that the defendant profited. Although whether or not the scheme actually succeeded is really not the question, you may consider whether it succeeded in determining whether the scheme existed.

If you find that the government has sustained its burden of proving beyond a reasonable doubt that a scheme to defraud, as charged, did exist, you next should consider the second element.

**COUNT THREE: SECOND ELEMENT—PARTICIPATION IN SCHEME WITH
INTENT**

The second element that the government must prove beyond a reasonable doubt is that the defendant participated in the scheme to defraud knowingly, willfully and with specific intent to defraud.

"Knowingly" means to act voluntarily and deliberately, rather than mistakenly or inadvertently.

"Willfully" means to act knowingly and purposely, with an intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

"Intent to defraud" means to act knowingly and with the specific intent to deceive, for the purpose of causing some financial or property loss to another.

The question of whether a person acted knowingly, willfully and with intent to defraud is a question of fact for you to determine, like any other fact question. This question involves one's state of mind.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past she committed an act with fraudulent intent. Such direct proof is not required.

Since an essential element of the crime charged is intent to defraud, it follows that good faith on the part of the defendant is a complete defense to a charge of wire fraud. The defendant, however, ~~have~~^{has} no burden to establish a defense of good faith. The burden is on the government to prove fraudulent intent and the consequent lack of good faith beyond a reasonable doubt.

Under the wire fraud statute, even false representations or statements, or omissions of material facts, do not amount to a fraud unless done with fraudulent intent. However misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. An honest belief in the truth of the representations made by the defendant is a good defense, however inaccurate the statements may turn out to be.

There is another consideration to bear in mind in deciding whether or not defendant acted in good faith. You are instructed that if the defendant participated in the scheme to defraud, then a belief by the defendant, if such belief existed, that ultimately everything would work out so that no one would lose any money does not require a finding by you that the defendant acted in good faith. If the defendant participated in the scheme for the purpose of causing some financial or property loss to another, then no amount of honest belief on the part of the defendant that the scheme would not cause harm will excuse fraudulent actions or false representations by her.

As a practical matter, then, in order to sustain this charge against the defendant, the government must establish beyond a reasonable doubt that she knew that her conduct

as a participant in the scheme was calculated to deceive and, nonetheless, she associated herself with the alleged fraudulent scheme for the purpose of causing some loss to another.

To conclude on this element, if you find that the defendant was not a knowing participant in the scheme or that she lacked the specific intent to defraud, you should find the defendant not guilty. On the other hand, if you find that the government has established beyond a reasonable doubt not only the first element, namely the existence of the scheme to defraud, but also this second element, that the defendant was a knowing participant and acted with specific intent to defraud, and if the government also establishes the third element, as to which I am about to instruct you, then you have a sufficient basis upon which to convict the defendant.

COUNT THREE: THIRD ELEMENT—USE OF THE WIRES

The third and final element that the government must establish beyond a reasonable doubt is the use of an interstate wire communication in furtherance of the scheme to defraud.

The wire communication must pass between two or more states as, for example, a telephone call between New York and New Jersey. A wire communication also includes a wire transfer of funds between banks in different states.

The use of the wires need not itself be a fraudulent representation. It must, however, further or assist in the carrying out of the scheme to defraud.

It is not necessary for the defendant to be directly or personally involved in the wire communication, as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating.

In this regard, it is sufficient to establish this element of the crime if the evidence justifies a finding that the defendant caused the wires to be used by others. This does not mean that the defendant must specifically have authorized others to make the call or transfer the funds. When one does an act with knowledge that the use of the wires will follow in the ordinary course of business or where such use of the wires can reasonably

be foreseen, even though not actually intended, then they caused the wires to be used. In this case, the government contends that it was reasonably foreseeable that the wires would be used in the ordinary course of business (e.g., to transfer the funds between banks,) and therefore that the defendant caused the use of the wires.

With respect to the use of the wires, the government must establish beyond a reasonable doubt the particular use charged in the indictment. However, the government does not have to prove that the wires were used on the exact date charged in the indictment. It is sufficient if the evidence establishes beyond a reasonable doubt that the wires were used on a date substantially similar to the dates charged in the indictment.

COUNT FOUR: THE SUPERSEDING INDICTMENT AND THE STATUTE

Count Four of the superseding indictment charges the defendant with uttering a forged bank withdrawal and transfer slips with intent to deceive another person or organization.

The relevant statute on this subject is Title 18, United States Code, section 513(a), which provides:

Whoever makes, utters or possesses a counterfeited security of a State or a political subdivision thereof or of an organization, or whoever makes, utters or possesses a forged security of a State or a political subdivision thereof or of an organization, with intent to deceive another person, organization, or government [shall be guilty of a crime].

COUNT FOUR: ELEMENTS OF THE OFFENSE

In order to prove the defendants guilty of making, uttering a forged bank withdrawal and transfer slips, the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant uttered bank withdrawal and transfer slips;

Second, that the slips were forged;

Third, that the slips were securities of a private organization in interstate commerce as I will define that term for you; and

Fourth, that the defendant acted with intent to deceive.

If you find that the government has failed to prove any one of these elements beyond a reasonable doubt, then you should find the defendant not guilty of Count Four. If, however, you find that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty of Count Four. I will now explain these elements in more detail.

COUNT FOUR: FIRST ELEMENT—MAKING, UTTERING OR POSSESSING
CHECK

The first element the government must prove beyond a reasonable doubt is that the defendant uttered a bank withdrawal and transfer slips.

To utter a financial instrument means to put it in circulation by means of a fraudulent representation that it is genuine. To merely show an instrument to someone without an offer to pass it is not to utter it. An instrument is uttered when it is delivered to another person or entity for the purpose of being passed.

COUNT FOUR: SECOND ELEMENT—INSTRUMENT WAS FORGED

The second element the government must prove beyond a reasonable doubt is that the bank withdrawal and transfer slips were forged.

The term "forged" means a document that purports to be genuine but is not because it has been falsely altered, completed, signed or endorsed.

COUNT FOUR: THIRD ELEMENT—ORGANIZATION IN INTERSTATE
COMMERCE

The third element the government must prove beyond a reasonable doubt is that the bank withdrawal and transfer slips were securities of an organization in interstate commerce.

The term a "security" is defined to mean "a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest coupon, bill, check, draft, warrant, debit instrument as defined in section 916(c) of the Electronic Fund Transfer Act, money order, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest in or participation in any profit-sharing agreement, collateral-trust certificate, pre-reorganization certificate of

subscription, transferable share, investment contract, voting trust certificate, or certificate of interest in tangible or intangible property."

An "organization" is a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, foundation, institution, society, union, or any other association of persons. In order to satisfy this element, the government must prove that the organization operates in, or its activities affect, interstate or foreign commerce. "Interstate commerce" means the movement of goods and services between two or more states. "Foreign commerce" means the movement of goods and services between the United States and other countries.

COUNT FOUR: FOURTH ELEMENT—INTENT TO DECEIVE

The fourth element the government must prove beyond a reasonable doubt is that the defendant acted with intent to deceive.

To act with intent to deceive means to act with the intent to defraud another for the purpose of causing financial loss to that other person, organization or government. It is not necessary that the defendant have had any particular person or organization in mind who would be deceived or to whom the security would be passed as genuine. This element merely requires an intent to pass the security as authentic such that the defendant intended that other persons would be misled into believing that the security was genuine. Further, the defendant must have intended to obtain some benefit, for herself or for others, from that deception, although the government does not have to prove that the defendant or anyone else actually obtained that intended benefit.

MULTIPLE COUNTS

The superseding indictment contains a total of four counts. A separate crime or offense is charged in each count of the superseding indictment. Each charge and the evidence pertaining to each charge should be considered separately. You must return separate verdicts on each count. The fact that you may find the defendant not guilty or guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

UNANIMOUS VERDICT REQUIRED

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous regarding each essential element of each count.

JUROR NOTE TAKING

During this trial, you have been provided with pencil and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes.

RECOLLECTION OF EVIDENCE

Let me remind you that in deliberating upon your verdict, you are to rely solely and entirely upon your own memory of the testimony.

If, during your deliberations, you are unable to recall with any degree of accuracy, a particular part of the testimony, or a part of these instructions, you may do the following:

- (1) Write out your question, and have the foreperson sign it;
- (2) Knock on the door of the jury room; and
- (3) Deliver your note to the Court Officer to give to me.

After the attorneys have been consulted, and the record has been reviewed, I will decide what action to take, and I will tell you my ruling.

CONCLUSION

I caution you, members of the jury, that you are here to determine whether the defendant before you today is not guilty or guilty solely from the evidence in this case. I remind you that the mere fact that a defendant has been indicted is not evidence against her. Also, a defendant is not on trial for any act or conduct or offense not alleged in the

superseding indictment. Nor are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should not consider the consequences of a guilty or not guilty determination. The punishment provided by law for the offenses charged in the superseding indictment is a matter exclusively within the responsibility of the judge, and should never be considered by the jury in any way in arriving at an impartial verdict.

It is your duty as jurors to consult with one another and to deliberate. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. Do not hesitate to re-examine your own views and change your opinion if you think that you were wrong. Do not, however, surrender your honest convictions about the case solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. If a vote is to be taken, your foreperson will ensure that it is done. A verdict form has been prepared for your conclusions. If the verdict form varies in any way from the instructions provided within this jury charge, I instruct you that you are to follow the instructions provided within this jury charge.

After you have reached an agreement, the foreperson will record a verdict of guilty or not guilty as to the defendant on each count. Your foreperson will then sign and date the verdict form and you will return to the courtroom. In all other respects, a foreperson is the same as any other juror. His or her vote does not count more than any other member of the jury.

If, during your deliberations you should desire to communicate with the court, please put your message or question in writing signed by the foreperson, and pass the note to the Court Officer who will bring it to my attention. I will then confer with the attorneys and I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your

numerical division at the time. You should also never communicate the subject matter of your note or your deliberations to any member of the court's staff.

I appoint [REDACTED] as your foreperson.

Dated at Burlington, in the District of Vermont, this 10th day of October, 2014.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Christina Reiss, Chief Judge
United States District Court