

Walter S. Batty, Jr., Esq.
101 Columbia Ave.
Swarthmore, PA 19081
telephone: (610) 544-6791
email: tbatty4@verizon.net

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Hon. Joel H. Slomsky
Judge, U.S. District Court
5614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: Defendant's Objection to the Court's Draft Instructions,
United States v. McKelvy, 15-cr-398-3

Dear Judge Slomsky:

The only objection McKelvy has to the Court's Draft Instructions is to the instruction at 57, "Securities Fraud - Knowledge, Intent and Willingness." As argued in the defendant's Proposed Supplemental Instructions, Doc. No. 184 at 6, the instructions should encompass, as to the substantive securities fraud count (Count 10), just as the Court has drafted as to the two conspiracy counts (Counts 1 and 9) and the substantive wire fraud counts (Counts 2-7), the requirement of the jury's finding, before returning a verdict of guilty on Count 10, that McKelvy participated in one or both of the overall schemes described in paragraphs 10 and 11 of Count 1 of the indictment.

As stated in Doc. No. 184:

McKelvy requests that the following language be added at the end of the government's proposed instruction quoted below, which applies to Counts 2-8 (the wire fraud counts): "Before you reach the question of whether any of McKelvy's statements were "materially false or fraudulent pretenses, representations or promises," you must first find, unanimously, that he willfully and knowingly participated in one or both of the overall schemes set out in paragraphs 10 and 11 of Count 1, as I instructed you earlier."

The first element that the government must prove beyond a reasonable doubt is that Wayde McKelvy knowingly devised or willfully participated in a scheme to defraud the victims

of money or property by materially false or fraudulent pretenses, representations or promises.

Argument. McKelvy adopts the argument made above at 2-3 regarding page 31 -- 6.18.371C Conspiracy - Existence of an Agreement.

Doc. No. 184 at 6.

Thank you for your consideration of this matter.

Respectfully,

Walter S. Batty, Jr.

cc: William J. Murray, Jr., Esq.
AUSA Robert Livermore
AUSA Sarah Wolfe