IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**CRIMINAL NO. 15-398**
	:	
WAYDE MCKELVY	:	

GOVERNMENT'S RESPONSE TO DEFENDANT WAYDE MCKELVY'S MOTION FOR A JUDGMENT OF ACQUITTAL PURSUANT TO FED. R. CRIM. P. 29

The United States of America, by its attorneys, William M. McSwain, United States Attorney for the Eastern District of Pennsylvania, and Robert J. Livermore and Sarah M. Wolfe, Assistant United States Attorneys, hereby responds to defendant Wayde McKelvy's motion for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure. For the following reasons, the defendant's motion should be denied.

I. Introduction

On September 2, 2015, a federal grand jury in the Eastern District of Pennsylvania returned a ten-count indictment charging Troy Wragg, Amanda Knorr, and Wayde McKelvy with one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 371, seven counts of wire fraud, in violation of 18 U.S.C. § 1343, one count of conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and one count of securities fraud, in violation of 15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R. § 240.10b-5. The charges in the indictment stemmed from the defendants' participation in the Mantria Ponzi scheme that collapsed in November 2009 when the SEC filed a motion for a temporary restraining order with the United States District Court in Colorado. Both defendants Wragg and Knorr entered guilty pleas to all ten counts of the indictment. In October 2018, defendant Wayde McKelvy was convicted on all counts at trial.

II. Standard of Review

Under Rule 29, a defendant who asserts that there was insufficient evidence to sustain a conviction shoulders "a very heavy burden." United States v. Anderson, 108 F.3d 478, 481 (3d Cir. 1997) (quoting United States v. Coyle, 63 F.3d 1239, 1243 (3d Cir. 1995)). The court cannot substitute its judgment for that of the jury. Hence it must view the evidence, and all reasonable inferences therefrom, in the light most favorable to the prosecution, resolving all credibility issues in the prosecution's favor. United States v. Hart, 273 F.3d 363, 371 (3d Cir. 2001); United States v. Scanzello, 832 F.2d 18, 21 (3d Cir. 1987). Having done so, the court must uphold the conviction if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979); accord United States v. Caraballo–Rodriguez, 726 F.3d 418, 430–31 (3d Cir. 2013) (en banc); United States v. Silveus, 542 F.3d 993, 1002 (3d Cir. 2008) (issue for trial or appellate court is "whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the available evidence"); United States v. Smith, 294 F.3d 473, 476 (3d Cir. 2002).

III. Discussion

In his motion, the defendant raises the following categories of arguments: (A) the government failed to trigger the ten-year statute of limitations for wire fraud because the government failed to prove that Mantria Financial was a financial institution affected by the Mantria fraud and the government failed to prove that any other financial institution was affected by the Mantria fraud; (B) the government failed to prove that McKelvy had a duty to disclose his commissions to investors and, thus, failed to prove any overt act in furtherance of the fraud within the six-year statute of limitations for securities fraud; and (C) the government failed to prove that McKelvy participated in an overall conspiracy to commit wire fraud or securities fraud because there was no evidence that the victims' investments in Mantria were securities, there was no evidence of McKelvy's criminal intent, and Wragg and Knorr lied to McKelvy. For the reasons set forth below, the defendant's arguments on each point are without merit.

A. The Evidence Proved that the Extended 10-Year Statute of Limitations for Wire Fraud Applies In This Case

The statute of limitations for wire fraud (Counts One through Eight) is ordinarily five years. 18 U.S.C. § 3282. However, pursuant to 18 U.S.C. § 3293(2), the statute of limitations for wire fraud and conspiracy to commit wire fraud is extended to ten years "if the offense affects a financial institution." United States v. Heinz, 790 F.3d 365, 367 (2d Cir. 2015). "[T]he verb 'to affect' expresses a broad and open-ended range of influences." Id. (citing United States v. SKW Metals & Alloys, Inc., 195 F.3d 83, 90 (2d Cir. 1999). The plain language of Section 3293(2) makes clear that Congress chose to extend the statute of limitations for a broad class of crimes, including crimes in which the financial institution was not a victim of the fraud. United States v. Pellulo, 964 F.2d 193, 214-16 (3d Cir. 1992); see also United States v. Bouyea, 152 F.3d 192, 195 (2d Cir. 1998). Whether the indictment was filed within the applicable statute of limitations time period is a finding of fact for the jury to decide. See Pelullo, 964 F.2d at 214-16; United States v. Bouyea, 152 F.3d 192, 195 (2nd Cir. 1998); United States v. Lowell, 649 F.2d 950 (3rd Cir. 1981).

The terms "financial institution" and "mortgage lending business" are defined by statute. 18 U.S.C. §§ 20(10) and 27. Under 18 U.S.C. § 20, all "mortgage lending businesses" qualify as financial institutions. Under 18 U.S.C. § 27, a mortgage lending business is defined as any "organization which finances or refinances any debt secured by an interest in real estate . . . and whose activities affect interstate or foreign commerce." See United States v. Fattah, 16-4397, 2018 WL 3764543, at *51 (3d Cir. Aug. 9, 2018).

1. Mantria Financial Was a "Financial Institution" that Was "Affected" By the Mantria Fraud

At trial, the government presented substantial evidence that Mantria Financial was a "mortgage lending business" and, thus, a "financial institution" as those terms are statutorily defined in 18 U.S.C. §§ 27 and 20, respectively. First, the government proved that Mantria Financial in fact functioned as a mortgage lending business, issuing mortgages to buyers of the real estate in Tennessee. The evidence showed that all the real estate sales in Tennessee were conducted through a title company and mortgages were placed on the property through Mantria Financial. See GX TD-12, TD-13, and TD-14. The defendant's argument that these mortgages were not profitable to Mantria is beside the point, as profitability is not a requirement under the statute. The fact remains that Mantria Financial issued mortgages and, therefore, it was a mortgage lending business.

Second, Mantria Financial proclaimed itself as a mortgage lending business. See GX DR-1 at 18 (Mantria Financial PPM) ("The Company [Mantria Financial] was formed by Mantria for the purpose of making loans collateralized by deeds of trust to purchasers of Home Sites in residential communities developed by Mantria in the Middle Eastern region of TN."). Indeed, Mantria's lawyer, Christopher Flannery, testified that Mantria Financial was created for this precise reason – to function as a mortgage lending business. Tr. 10/4/18 at 25. He further testified that Mantria Financial was created as a financial institution under the laws of Tennessee. Tr. 10/4/18 at 25-26. Moreover, McKelvy himself admitted this, stating during his SEC deposition, "Mantria 17 is a Tennessee financial institution, a commercial bank." GX KG-32 at p. 21 (McKelvy SEC Dep.).

Furthermore, the government presented the testimony of Carl Scott who worked for the Tennessee Department of Financial Institutions. Scott testified that Mantria Financial was registered as a financial institution to issue mortgages under the laws of Tennessee, namely, the Tennessee Industrial Loan and Thrift Act. Tr. 9/27/18 at 9. The government further introduced a number of records from the Tennessee Department of Financial Institutions into evidence to substantiate Mr. Scott's testimony. See GX CS-2. These records showed that Mantria Financial was registered in February 2008 and that the registration was terminated in January 2010 after the SEC shut down Mantria. Id.

In his motion, the defendant argues several points in an attempt to refute the government's evidence. First, the defendant argues that Mantria Financial should not be considered a financial institution because it was part of the fraud scheme, selling land at inflated prices, and not making money. As this Court previously ruled in denying his motion to dismiss, under United States v. Serpico, 320 F.3d 691, 694 (7th Cir. 2003), a financial institution engaged in fraud does not cease to be a financial institution. In other words, even if Mantria Financial was itself part of the fraud scheme, Mantria Financial was still a financial institution. Id. Notably, the defendant does not cite any legal precedent in support of his arguments on these points. None of the defendant's proposed exceptions exists in either the statutory definition or any cited case law. Therefore, the defendant's arguments fail.

Next, the defendant argues that Mantria Financial was not a financial institution because it's registration under Tennessee law was allegedly premised on false information submitted to the state licensing agency – namely, Mantria Financial falsely claimed to meet the capital requirements under Tennessee law and falsely indicated that Amanda Knorr owned 51% of Mantria Financial. Again, the defendant offered no legal precedent for these arguments. Even if Mantria Financial did submit false information to the regulator, that does not mean that it is suddenly not a financial institution. Virtually every major bank in the United States has come under regulatory scrutiny over the past 20 years for providing false information to one regulator or another – that does not mean that they are not financial institutions under the law. The law is clear under Serpico that engaging in fraudulent conduct does mean those banks are no longer financial institutions. Moreover, even if the registration were found to be issued under false premises, the government is not required to show that Mantria Financial was registered or licensed under state law. Possessing a registration or a license is strong evidence that a company is in fact a financial institution, but it is not a requirement under the federal statute. Indeed, while other types of financial institutions defined under 18 U.S.C. § 20 are required to be insured or governed by a regulator, the statute specifically does not require a "mortgage lending business" to be insured, regulated, or licensed in any fashion. See 18 U.S.C. § 20(10).[1] Consequently, the defendant's arguments regarding Mantria Financial's false statements to the regulator are irrelevant as a matter of law.

The defendant also argues that the government failed to prove that Mantria Financial was affected by the fraud. There is no question that Mantria as a whole had significant financial problems leading up the SEC action because Mantria operated as a Ponzi scheme. Nonetheless, when the SEC did take action, Mantria and all of its subsidiaries, including Mantria Financial,

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[1] In fact, many states do not require companies like Mantria Financial to be registered or licensed.

were put into receivership, liquidated, and ultimately dissolved. All of the assets of Mantria Financial, including all of the mortgages it held, were wiped out. While the land in Tennessee was not worth the $100 million that Mantria claimed it was worth, the land did have *some* value. For the defendant to suggest that the receivership, liquidation, and ultimate demise did not affect Mantria Financial is patently absurd.

When viewing the evidence in the light most favorable to the government, as the Court is required to do under Rule 29, or even weighing the evidence on its own, as the Court must do under Rule 33, the government clearly proved that Mantria Financial was a financial institution under federal law and that the fraud scheme affected Mantria Financial. Accordingly, the ten-year extended statute of limitations for wire fraud applies.

2. Other Financial Institutions

Setting Mantria Financial aside, the government also proved that other financial institutions were affected by the Mantria fraud. At trial, several victims testified that defendant McKelvy had coached them to take out credit card debt, home equity loans, and other kinds of loans from federally insured financial institutions in order to invest the loan proceeds into Mantria. Specifically, one of the victims, Charles Carty, testified that he took out a $25,000 home equity loan from his credit union to invest in Mantria based on McKelvy's advice. Tr. 9/28/18 at 157; GX CC-6 (Minnequa Works Home Equity Advance Voucher). Similarly, another victim, Phil Wahl, testified that he took out cash advances on credit cards from various banks to invest in Mantria based on McKelvy's advice. Tr. 09/26/18 at 167-71; GX PW-2 (photographs of Phil Wahl's four credit cards). The government presented certifications showing that Mr. Carty's credit union and all of the banks that issued Mr. Wahl's credit cards were FDIC insured. GX CC-12, FD-2 through FD-6. To prove that a financial institution was "affected" by the offense, the law is clear that the government does not have to prove actual loss to a financial institution, but merely the new or increased risk of loss. United States v. Mullins, 613 F.3d 1273, 1278–79 (10th Cir. 2010) (holding that a new or increased risk of loss is sufficient to establish that wire fraud affects a financial institution); United States v. Serpico, 320 F.3d 691, 694 (7th Cir. 2003) (holding that fraud affects a bank if the bank is exposed to an increased risk of loss, even if the bank never suffers an actual loss). Accordingly, all of these new loans and credit cards issued in connection with the fraud satisfy the requirement that a financial institution was affected by the offense.

The defendant argues in his motion that the issuance of these loans and credit cards presented no greater risk of loss to the banks than any other home equity line of credit or credit card. On the contrary, the fact that defendant Wayde McKelvy coached these victims to take out loans, loans which they could not afford, and invest them in a Ponzi scheme which ultimately collapsed certainly exposed the bank to a greater risk of loss. In so doing, the government met its burden of proof to establish that the fraud affected other financial institutions.

In sum, the evidence at trial proved each of the government's theories for invoking the extended 10-year statute of limitation. The jury so found, and the record supports that conclusion.

B. The Government Proved Numerous Overt Acts in Furtherance of the Securities Fraud Conspiracy

Defendant next argues that the government failed to prove any overt act in furtherance of the securities fraud conspiracy within the six-year statute of limitations for securities fraud. He claims that of the 55 overt acts set forth in the indictment, only four may even be considered, as those four fell within the six-year period leading up to the indictment. He further claims that three of those four overt acts do not suffice because they involve "undisclosed fees" paid to McKelvy and the government failed to prove that McKelvy had a duty to disclose his commissions to investors. As to the fourth overt act, defendant claims that it, too, must be discounted because McKelvy himself did not participate in sending the particular form described in the act.

As an initial matter, the defendant has misstated the clear law regarding overt acts. As set forth in the jury instructions, the government is only required to prove that "during the existence of the conspiracy at least one member of the conspiracy performed at least one of the overt acts described in the indictment, for the purpose of furthering or helping to achieve the objective(s) of the conspiracy." This instruction is consistent with fundamental conspiracy law: a single overt act by any member of the conspiracy is sufficient to satisfy this element as long as the act was committed to further the conspiracy and tended towards that end. See United States v. Nelson, 852 F.2d 706, 713 (3d Cir. 1988); United States v. Kapp, 781 F.2d 1008, 1012 (3d Cir. 1986); United States v. Small, 472 F.2d 818, 819 (3d Cir. 1972). The Pinkerton rule of co-conspirator responsibility applies to overt acts, as it does to substantive offenses. The securities fraud conspiracy charged in this case began in March 2005 and extended through April 2010. See Indictment at Count Nine, ¶ 2 and Count Ten, ¶ 2. Thus, any overt act committed by any coconspirator between March 2005 to April 2010 suffices to prove McKelvy guilty. Defendant's bizarre assertion that the overt acts predating September 2, 2009 and the overt acts in which McKelvy himself did not personally participate should be excluded from consideration simply contradicts fundamental conspiracy law.

Moreover, as also explained in the jury instructions, the overt act itself need not be illegal. Thus, regardless of whether the government proved that McKelvy had a legal duty to disclose his commissions to investors, his receipt of those funds constitutes an overt act in furtherance of the conspiracy.

In sum, the government proved beyond a reasonable doubt numerous overt acts committed by McKelvy personally and in conjunction with Wragg and Knorr within the applicable time period. Thus, all of the defendant's arguments within this category must be rejected.

C. The Government Proved Beyond a Reasonable Doubt that McKelvy Participated in a Conspiracy to Commit Wire Fraud and Securities Fraud and that McKelvy Had the Requisite Criminal Intent

In his third category of arguments, the defendant asserts that the government failed to prove that McKelvy participated in an overall conspiracy to commit wire fraud or securities fraud because, as he alleges, there was no evidence that the victims' investments in Mantria were securities, there was no evidence of McKelvy's criminal intent, and Wragg and Knorr lied to McKelvy. As set forth below, all of these arguments are without merit.

1. The Evidence Showed that the Mantria Investments Were Securities

At trial, the government presented plenty of evidence showing that the Mantria investments were securities as defined by law. The term "security" means any note, stock, treasury stock, security future, bond, debenture, certificate of interest or participation in any profit-sharing agreement. 15 U.S.C. § 78c(a)(10). In determining whether or not an instrument is a security, Courts frequently apply the Supreme Court's Howey "investment contract" analysis (from SEC v. W.J. Howey, 328 U.S. 293, 301 (1946)). There are three elements of the Howey test. First, there must be an investment of money. Steinhardt Group v. Citicorp, 126 F.3d 144, 151 (3d Cir. 1997). Second, the investment must be made into a common enterprise. This element requires a pooling of investors' contributions and distribution of profits and losses on a pro-rata basis among investors. Steinhardt, 126 F.3d at 151. Third, the profits from the investment must come solely from the efforts of others. Steinhardt, 126 F.3d at 153, quoting Lino v. City Investing, 487 F.2d 689, 692-93 (3d Cir. 1973).

In this case, there is no question that the evidence at trial showed that the Mantria investments met the Howey standard. First, all of the victims testified that they invested their money into Mantria, a common enterprise, and that they expected to be paid a return on their investments based on Mantria's efforts in green energy, real estate, or other ventures. Thus, the victims' testimony alone proved that their Mantria investments were securities under the requirements of the Howey test.

Second, both the SEC attorney, Kurt Gottschall, and Mantria's attorney, Christopher Flannery, testified that the Mantria investments were securities. For example, during his testimony, Gottschall clearly defined a security as "an interest usually, a partial ownership interest in a company or … debt." Tr. 9/27/18 at 174. Flannery testified that "there's several different types of securities in this case. There were notes, there were interests in future earnings…" Tr. 10/4/18 at 154.

In his motion, the defendant myopically examines one excerpt of Gottschall's testimony and claims that it conflicted with Flannery's testimony. Specifically, he seizes upon Gottschall's affirmative response to what was clearly a misspoken question by the government, mistakenly referring to the PPM as securities, rather than the investments summarized within those PPMs as securities. Tr. 9/27/18 at 193. Yet the defendant conspicuously omits other portions of Gottschall's testimony, including Gottschall's clear definition of a "security" (cited above) and Gottschall's definition of a PPM: "a private placement memorandum is a common written document. It's a type of offering material that summarizes an investment." Id. at 192. This testimony is consistent with Flannery's testimony that the securities in this case were "notes, … interests in future earnings" and that the PPM was a "disclosure document." Tr. 10/4/18 at 154-55. Thus, in reality, Gottschall's testimony was not contradicted by Flannery; they both testified that the investments in Mantria were securities. The defendant's attempt to capitalize on a misspoken question is nothing more than a disingenuous effort to create the appearance of an evidentiary problem without any analysis of the Howey test, when in fact the evidence clearly established, through the testimony of the victims, Gottschall and Flannery, that the Mantria investments were indeed securities as defined under the law.

In the same disingenuous vein, the defendant also makes a series of convoluted arguments that the government failed to prove that McKelvy knew the Mantria investments were securities or that McKelvy was a securities "broker." First of all, there is no legal requirement that the defendant knew he was selling securities; rather, as set forth explicitly in the jury instructions, all the government had to prove was that McKelvy knowingly made false statements "in connection with the sale of securities." Second, even if such specific knowledge were required by law, the government presented substantial evidence regarding McKelvy's interactions with and discussions about the SEC – the Securities and Exchange Commission. He knew full well that the Mantria investments were securities; otherwise, there would be no reason for the SEC to be involved. Third, McKelvy's argument that the government failed to prove that McKelvy was acting as a securities broker is irrelevant, as he was not charged with selling securities without a license, but rather with committing securities fraud. The government proved beyond a reasonable doubt that McKelvy lied to investors in connection with the sale of Mantria securities, which constitutes securities fraud. The jury agreed and found him guilty as charged. Notwithstanding the ultimate irrelevance of McKelvy's status as a broker in terms of the charged offense, the government did present significant evidence showing that McKelvy did in fact act as a broker because he sold securities and was paid to do so. The evidence further showed that McKelvy deliberately avoided getting a securities license in order to stay off the SEC's radar, because he knew "[t]hey really put the squeeze on what you can and cannot say. …they will take out the most compelling pieces of my marketing material." GX. KG-11 (email from McKelvy to Wragg, dated June 12, 2008). This evidence was relevant in that it showed McKelvy's criminal intent.

2. The Government Presented Substantial Evidence of McKelvy's Criminal Intent

In a final attempt to set aside the jury's well-founded guilty verdict, McKelvy argues that the government failed to prove his criminal intent to participate in the "overarching scheme." Def. Motion at 36. He points to portions of Amanda Knorr's testimony to show that she and Wragg provided false information to McKelvy and, thus, he argues, McKelvy did not conspire with them to defraud investors. However, when put in context with all the other evidence presented during the trial, the jury rejected this argument and found that McKelvy did have the requisite criminal intent. A brief examination of the evidence shows that the jury came to the right conclusion.

(1) The defendant claims that the government failed to prove that McKelvy knew Mantria's true financial status. However, during McKelvy's October 22, 2009 testimony before the SEC, weeks *before* the SEC shutdown, McKelvy testified under oath during his SEC deposition about his knowledge of Mantria's financial status. Contrary to his representations to investors that Mantria was a profitable company with substantial assets backing their investments, McKelvy stated under oath that the value of his ownership was "squat at this point." GX KG-32 at p. 10 (McKelvy SEC Dep). McKelvy explained that Mantria's biochar program was only in the "test stages" and opined that Mantria Industries was not worth anything "until it comes to fruition." Id. McKelvy acknowledged that other Mantria investments, such as Mantria Records, also were not producing revenue. McKelvy commented, "Until they start making real revenue, I don't think it is worth anything." Id.

(2) The defendant claims that the government failed to prove that he intentionally lied to the investors. To the contrary, during McKelvy's October 2009 testimony before the SEC, when McKelvy was confronted with his false statement to prospective investors that Mantria's technology was patented, McKelvy responded, "Yes, it was a blatant lie." See GX KG-32 at p. 38. More generally, a simple comparison of his statements to the investors at the conferences and his statements to the SEC under oath reveals that McKelvy routinely lied to investors about Mantria's financial status. Although the defendant spends a considerable number of pages in his motion delineating what witnesses *told* McKelvy about the financial status of Mantria and its green energy technology, his own statements under oath to the SEC prior to the collapse of Mantria show what he actually *knew* about Mantria – that it was not profitable, the technology was still in the testing phase, and that the value of his ownership in Mantria was worthless. This

stands in stark contrast to the lies he told the investors – for example, that Mantria was turning trash into cash (GX JL-2A at 27:2-13), that Mantria investors made 17% returns safely and consistently based on revenues (GX JL-3 at p. 53; GX JL-2 at 24:6-8), and that Mantria was a safe investment with a "guaranteed payout" (GX GA-6). Thus, McKelvy's own statements under oath prove that he lied to investors.

(3) The defendant argues that the appraisals of the land in Tennessee looked "professional" and "legitimate" and that McKelvy therefore reasonably relied upon them. However, during McKelvy's October 2009 SEC testimony, when asked the value of the real estate in Tennessee which Mantria allegedly owned, McKelvy responded, "in my opinion, zero." GX KG-32 at 88. McKelvy stated that the land had been appraised at $100 million, "but until it sells, I think it is worth nothing." Id. at p. 11. Again contrary to his representations to investors that Mantria made substantial money selling real estate, when asked how much real estate Mantria had sold, McKelvy replied, "I have no idea." Id. at 12. Thus, there was more than ample evidence to support the jury's conclusion that McKelvy lied to the victims about the value of the land in Tennessee.

These basic contradictions between what McKelvy told investors versus what he told the SEC demonstrate that he knowingly and willfully lied to investors to induce them to invest in the Mantria Ponzi scheme. The jury's verdict was well supported by the evidence of McKelvy's criminal intent shown at trial.

3. Evidence that Wragg and Knorr Lied to McKelvy Does Not Negate the Jury's Finding that McKelvy Had the Requisite Criminal Intent

Lastly, the defendant moves for a judgment of acquittal based upon Troy Wragg and Amanda Knorr's "consistent pattern of lying" to McKelvy. The defendant argues that this showed that Wragg, Knorr, and McKelvy did not have a unity of purpose to be convicted of the charged conspiracy. The government's evidence proved to the contrary.

To prove a conspiracy, the government must establish a unity of purpose between the alleged conspirators, an intent to achieve a common goal, and an agreement to work together toward that goal. See United States v. Robinson, 167 F.3d 824, 829 (3d Cir.1999). The government may prove these elements entirely by circumstantial evidence. United States v. Kapp, 781 F.2d 1008, 1010 (3d Cir.1986). The existence of a conspiracy "can be inferred from evidence of related facts and circumstances from which it appears as a reasonable and logical inference, that the activities of the participants ... could not have been carried on except as the result of a preconceived scheme or common understanding." Kapp, 781 F.2d at 1010. The government need not prove that each defendant knew all of the conspiracy's details, goals, or other participants. See United States v. Theodoropoulos, 866 F.2d 587, 593 (3d Cir.1989).

In this case, the government charged and proved a unity of purpose. The unity of purpose between Wragg, Knorr, and McKelvy was to defraud the victims out of as much money as possible. Wragg, Knorr, and McKelvy jointly gave presentations to the victims to induce them into investing in Mantria. Wragg, Knorr, and McKelvy discussed and planned the presentations in advance. Wragg, Knorr, and McKelvy were co-owners of various Mantria ventures. They shared in the proceeds of the fraud, as each received a certain percentage of the victims' funds. This was their unity of purpose.

The fact that Wragg, Knorr, and McKelvy also lied to each other did not negate that unity of purpose. They lied to each other because they were crooks and con artists and, as the saying goes, "there is no honor among thieves." If lies between co-conspirators negated the unity of purpose in criminal conspiracies, then very few criminal conspiracies would exist, especially in the fraud context.

Moreover, defense counsel argued this very point in closing, emphasizing that Wragg, Knorr, and other Mantria employees routinely gave McKelvy false glowing reports about Mantria's profitability. The jury was free to accept his argument and find McKelvy not guilty. After thoroughly reviewing the evidence and the arguments of counsel, the jury rejected this argument and found McKelvy guilty. In the instant motion, McKelvy now asks this Court to substitute its judgment for that of the jury, which is outside the province of the Court on a Rule 29 motion. As there was more than ample evidence to convict McKelvy on the conspiracy counts, the verdict must stand.

IV. Conclusion

In conclusion, what the defendant failed to discuss in his 50-page motion for a judgment of acquittal were the elements of the offenses. The government proved each and every element of each offense beyond any reasonable doubt, as it was required to do. The jury agreed and found the defendant guilty on all counts. For these reasons, the defendant's motion under Rule 29 must be denied.

Respectfully submitted,

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/s/

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Government's Response has been served filing upon:

Walter Batty, Esq.
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/s/
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