IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

NO. _____

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Beth Galloway,

Petitioner,

-vs.-

United States of America,

Respondent.

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Petition for Writ of Certiorari to
the United States Court of Appeals
for the Eighth Circuit
(8th Cir. Case No. 18-1894)

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## QUESTIONS PRESENTED

I. WHETHER A JUDGMENT OF ACQUITTAL SHOULD HAVE BEEN GRANTED ON COUNTS 1 AND 2 BECAUSE THERE WAS NO EVIDENCE THAT MS. GALLOWAY KNEW THAT THE MARTELLE HOUSE WAS INSURED OR THAT MR. PLOWER INTENDED TO MAKE A FRAUDULENT INSURANCE CLAIM?

II. WHETHER A JUDGMENT OF ACQUITTAL SHOULD HAVE BEEN GRANTE DON COUNT 3 BECAUSE THERE WAS NO EVIDENCE THAT MS. GALLOWAY PARTICIPATED IN THE FINANCIAL TRANSACTION, i.e., MR. PLOWER'S WITHDRAWAL OF $10,000 FROM HIS WELLS FARGO ACCOUNT?

III. WHETHER THE EIGHTH CIRCUIT SHOULD HAVE FOUND THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING MS. GALLOWAY'S MOTION FOR NEW TRIAL?

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## PETITION FOR WRIT OF CERTIORARI

The Petitioner, Beth Galloway, respectfully prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Eighth Circuit in this matter.

## OPINION BELOW

On February 26, 2019, the United States Court of Appeals for the Eighth Circuit entered its Opinion and Judgment, App. 1, affirming the April 13, 2018, Judgment and sentence of the United States District Court for the Northern District of Iowa.

## JURISDICTION

The Eighth Circuit s jurisdiction was based on 28 U.S.C. § 1291. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The Eighth Circuit filed its Opinion and Judgment on February 26, 2019. App. 1. No Petition for Rehearing/Rehearing En Banc was filed. This Petition for Writ of Certiorari is timely filed within ninety (90) days of the filing of the Eighth Circuit s Opinion and Judgment.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

> 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, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. . . .

18 U.S.C. § 1341.

> Whoever□
>
> > (1) uses fire or an explosive to commit any felony which may be prosecuted in a court of the United States, . . .
>
> including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for 10 years. . . .

18 U.S.C. § 844(h)

> (a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity□
>
> . . .
>
> (B) knowing that the transaction is designed in whole or in part□
>
> (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
>
> . . . .
>
> shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

18 U.S.C. § 1956(a)(1)(B)(i).

> Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S.C. § 1956(h).

## STATEMENT OF THE CASE

Petitioner Beth Galloway was convicted of various offenses relating to a fire that damaged a house owned by her boyfriend, James Plower, and Mr. Plower's subsequent mail fraud in claiming insurance proceeds relating to the house. However, there was no evidence that Beth Galloway was aware that the house was insured or that Mr. Plower intended to make any insurance claim. As such, her Motion for Judgment of Acquittal or, alternatively, her Motion for a New Trial should have been granted.

## REASONS FOR GRANTING THE WRIT

Certiorari is properly granted as the Eighth Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Supreme Court Rule 10(c).

## I. BACKGROUND OF THE CASE

Course of proceedings:

Ms. Galloway was convicted, after jury trial, of Mail Fraud, in violation of 18 U.S.C. § 1341 (Count 1), Use of Fire and Aid and Abet Use of Fire to Commit a Felony, in violation of 18 U.S.C. §§ 844(h) and 2 (Count 2), and Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. §§ 1956(h) and 1956(a)(1)(B)(i) (Count 3) (DCD 88 □ Judgment).1

The specific facts are discussed below in detail, in the context of the elements of the charged offenses. Generally, the Government alleged that Ms. Galloway and her then boyfriend, James Plower, had committed arson and attempted arson to burn down Mr. Plower's house in Martelle, Iowa, and then made an insurance claim asserting that the fire had been accidental. Count 1 alleged that Ms. Galloway had used the mails to defraud the insurance company. Count 2 alleged the use of fire (attempted arson on Ms. Galloway's part) as part of the commission of the mail fraud. Count 3 related to alleged efforts to hide some of the insurance proceeds from investigators.

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[1]"DCD" refers to the District Court's Docket. "Tr. Tr." refers to the transcript of trial, held on March 14-15, 2017.

The central issue at trial on Counts 1 and 2 was Ms. Galloway's knowledge and intent, particularly with respect to whether she knew that the Martelle house was insured, knew that Mr. Plower intended to make any insurance claim, or intended that any insurance claim be made. With regard to Count 3, the issue was whether Ms. Galloway had any knowledge of the financial transaction at issue (withdrawal by Mr. Plower of $10,000 of the insurance proceeds from his bank account and placement with a friend) and whether the circumstances met the legal definition of financial transaction.

Disposition in the District Court:

Sentencing was held on April 11, 2018 (DCD 87 - Minutes). Ms. Galloway was sentenced to 144 months of imprisonment, a term of supervised release of two years with various conditions, and a special assessment of $300. (DCD 88 Judgment).

Ms. Galloway, in addition to making Motions at trial, filed a Motion for Judgment of Acquittal and Motion for New Trial (DCD 69), which were ruled upon and denied by the District Court in a written opinion. (App. 8, DCD 75).

Eighth Circuit's Opinion

Ms. Galloway appealed to the Court of Appeals for the Eighth Circuit, arguing that the District Court should have granted Ms. Galloway's Motions for Judgment of Acquittal and for New Trial. The Eighth Circuit affirmed the denial of Ms. Galloway's Motions, reasoning that the evidence viewed in the light most favorable to the verdict supported the verdict. App. 1.

## II. MS. GALLOWAY'S MOTION FOR JUDGMENT OF ACQUITTAL AND/OR MOTION FOR NEW TRIAL SHOULD HAVE BEEN GRANTED, PRIMARILY BECAUSE THERE WAS NO EVIDENCE THAT MS. GALLOWAY KNEW THAT THE MARTELLE HOUSE WAS INSURED OR THAT MR. PLOWER INTENDED TO MAKE ANY FRAUDULENT INSURANCE CLAIM

### A. Standard of Review and Preservation of Error

The Eighth Circuit reviews the denial of a motion for judgment of acquittal de novo, "evaluating the evidence in the light most favorable to the verdict and drawing all reasonable inferences in its favor." United States v. Almeida-Olivas, 865 F.3d 1060, 1062 (8th Cir. 2017) (citation omitted). The Eighth Circuit reviews the denial of a motion for new trial for abuse of discretion. See United States v. Davis, 534 F.3d 903, 912 (8th Cir. 2008).

Ms. Galloway moved for a Judgment of Acquittal at the close of the Government's case and at the close of the evidence. (Tr. Tr. 208-213, 218-19). The District Court reserved ruling. (Tr. Tr. 216, 219). Ms. Galloway filed a Motion for Judgment of Acquittal and Motion for New Trial (DCD 69), which was ruled upon by the District Court in a written opinion. (App. 8, DCD 75). Error was preserved.

### B. Ms. Galloway's Motion for Judgment of Acquittal With Respect to Count 1 Should Have Been Granted Because There Was No Evidence that Beth Galloway Was Involved In or Knew Of the Insurance Claim

Count 1 charged Ms. Galloway with Mail Fraud in violation of 18 U.S.C. § 1341. The elements of this offense, as set forth in Jury Instruction No. 5 (DCD 48) (portions omitted), are:

> One, the defendant voluntarily and intentionally devised or participated in a scheme to obtain money, property or property rights by means of material false representations or promises;
>
> The alleged scheme in the case is described as:
>
> > A scheme to defraud Nationwide Insurance and to obtain money from Nationwide Insurance by means of materially false and fraudulent pretenses and representations. In particular, defendant and James Plower fraudulently obtained money from Nationwide Insurance by deliberately setting a house in Martelle, Iowa, on

> fire, submitting a false insurance claim to Nationwide claiming the fire had been accidental, and actively concealing the full extent of the criminal scheme.
>
> Two, the defendant did so with the intent to defraud;
>
> . . .
>
> Three, the defendant used, or caused to be used, the mail in furtherance of, or in an attempt to carry out, some essential step in the scheme. Specifically, on or about August 12, 2013, an insurance proceeds check from Nationwide Insurance to James Plower in the amount of $66,497.46 was delivered by United States mail.
>
> . . . .

With respect to the first and second elements, there was no evidence that Beth Galloway voluntarily and intentionally devised or participated in a scheme to obtain money, property or property rights by means of material false representations or promises. In particular, there was no evidence that Beth Galloway knew that the Martelle house was insured or that James Plower intended to submit any insurance claim, including presenting any insurance claim representing that the fire had been accidental.

James Plower testified that he obtained insurance on the Martelle house through Nationwide Insurance (Tr. Tr. 25). The policy was obtained

before he moved into Ms. Galloway's house in Olin. (Tr. Tr. 27). Mr. Plower did not discuss his efforts to set the Martelle house on fire with Ms. Galloway. (Tr. Tr. 38, 60). Mr. Plower initially testified that he told Ms. Galloway that he was going to the Martelle house before he left on the trip where he set the fire, but did not recall what he had told Ms. Galloway. (Tr. Tr. 40). On cross-examination, Mr. Plower clarified that he couldn't say if he told Ms. Galloway that he was going to the house. (Tr. Tr. 60-61). Mr. Plower never had any conversations with Ms. Galloway about any efforts of Isaac Williams to set fire to the house. (Tr. Tr. 55-56). Isaac Williams, in his Grand Jury testimony, testified that he never talked to Mr. Plower about burning the house down. (Tr. Tr. 130-31). Isaac Williams testified that Beth Galloway told him to not tell Mr. Plower. (Tr. Tr. 136).

All of Mr. Plower's mail went to his P.O. Box in Martelle. (Tr. Tr. 62-63). Ms. Galloway did not have a key to the P.O. Box. (Tr. Tr. 63). There was no evidence that Ms. Galloway even knew of the existence of Mr. Plower's P.O. Box.

Mr. Plower was the one that called the insurance agent to make the claim. (Tr. Tr. 41). See also Tr. Tr. 174 (testimony of Chad Cichosz of Nationwide that Mr. Plower made the claim). Mr. Plower's name was on

the insurance policy and the Nationwide documents. (Tr. Tr. 42, 61-62; Gov't Ex. 10; Tr. Tr. 179). Ms. Galloway's name are not on those documents. In making the insurance claim, Mr. Plower was the one representing that the fire had been accidental. (Tr. Tr. 43). See also Tr. Tr. 174 (testimony of Chad Cichosz that Mr. Plower represented that the fire was accidental). There was no evidence that Ms. Galloway made any representations to Nationwide Insurance or that she had any contact whatsoever with Nationwide Insurance. The insurance checks were made payable to Mr. Plower and went to his P.O. Box. (Tr. Tr. 44, 63-64; Tr. Tr. 179). There was no evidence that Mr. Plower discussed the insurance claim documents with Ms. Galloway, that Ms. Galloway had any role in making the insurance claim, or that Ms. Galloway even knew that Mr. Plower was making an insurance claim. Isaac Williams and Ms. Galloway did not discuss insurance. (Tr. Tr. 136).

The record was completely devoid of any evidence that Beth Galloway knew that the house was insured, knew that Mr. Plower intended to make any insurance claim, or participated in any way in making an insurance claim. Further, based on Mr. Plower's testimony, Ms. Galloway did not have any advance knowledge of his trip to set the house on fire, which ultimately led to Mr. Plower's insurance claim.

At most, the evidence demonstrated that Ms. Galloway participated with Isaac Williams in two prior attempts to set the Martelle house on fire. However, there was no evidence that those attempts were for the purpose of making an insurance claim. Based on Isaac Williams' Grand Jury testimony, there was no evidence that Mr. Plower knew about Isaac Williams' attempts to set the Martelle house on fire.

With respect to the third element, there is no evidence that Beth Galloway "used, or caused to be used, the mail in furtherance of, or in an attempt to carry out, some essential step in the scheme." The specific act alleged is that "on or about August 12, 2013, an insurance proceeds check from Nationwide Insurance to James Plower in the amount of $66,497.46 was delivered by United States mail." Submission of the insurance claim is what caused the mailing of the insurance proceeds check to Mr. Plower. There is no evidence that Ms. Galloway had any involvement in submitting the insurance claim or even any knowledge that Mr. Plower was submitting the claim. As noted above, all of Mr. Plower's mail went to a P.O. Box that Ms. Galloway did not have access to. All of the insurance related documents were in Mr. Plower's name. The check was payable to Mr. Plower and received by him. Ms. Galloway did not receive the insurance check.

Also, it was not reasonably foreseeable to Ms. Galloway that the mail would be used. Even if it is assumed that Ms. Galloway knew about the insurance claim, there was no evidence that Ms. Galloway knew that the insurance proceeds check would be mailed, as opposed to being delivered in another manner.

In denying Ms. Galloway's Motion, the District Court gave several reasons. The Eighth Circuit affirmed that reasoning on appeal. None of those reasons stand up to scrutiny.

Most significantly, the lower Courts concluded that the jury could have inferred Beth Galloway's alleged knowledge that the Martelle house was insured and that James Plower intended to make an insurance claim misrepresenting the cause of the fire. A jury may "adopt any reasonable inference supported by the evidence." United States v. Mack, 343 F.3d 929, 934 (8th Cir. 2003), cert. denied, 540 U.S. 1226 (2004) (emphasis added). But unless the inference drawn is sufficiently strong to support a guilty verdict beyond a reasonable doubt, a guilty verdict based on that inference must be reversed. See United States v. Dale, 614 F.3d 942, 964 (8th Cir. 2010) (Arnold, J., concurring and dissenting in part) (citation omitted). "A reasonable inference is one which may be drawn from the evidence without resort to speculation." Tussey v. Abb, Inc., 746 F.3d 327,

339 (8th Cir. 2014) (citations and internal quotations omitted). "When the record contains no proof beyond speculation to support the verdict, judgment as a matter of law is appropriate." Fought v. Hayes Wheels Intern., Inc., 101 F.3d 1275, 1277 (8th Cir. 1996) (citation omitted).

The lower Courts misconstrued the evidence and drew inferences that are not supported by proof beyond a reasonable doubt. First, the lower Courts looked to evidence that Ms. Galloway and Mr. Plower discussed setting the house on fire and that Ms. Galloway made efforts to set the house on fire. (App. 6 (Eighth Circuit); DCD 75 at 13 (District Court)). However, even if true, that evidence does not show that Ms. Galloway did so with the intent to commit insurance fraud, as opposed with the intent of simply getting rid of the house. The evidentiary connection of proof that Ms. Galloway knew of the insurance is still lacking. Whether Ms. Galloway and Mr. Plower discussed the possibility of setting the house on fire does not answer the question of whether Ms. Galloway had any knowledge of or participation in the insurance fraud by Mr. Plower. In other words, even if the jury could have found that Ms. Galloway agreed to or participated in setting any fire at the Martelle house, there was no evidence supporting the required element that she did so for the purpose of committing

insurance fraud.

Further, the fact that Ms. Galloway may have aided and abetted Isaac Williams' two attempts to set fires does not support a conclusion that Ms. Galloway was aware of Mr. Plower's insurance on the Martelle house. No insurance claims were made with respect to those attempts. There is no authority for the proposition that any aiding and abetting by Ms. Galloway of Mr. Williams setting those fires is sufficient to prove Count 2. In fact, the jury was specifically instructed in Jury Instruction No. 6 that merely acting in the same way as others . . . does not prove that a person has become an aider and abettor.

Second, the lower Courts point to evidence that Ms. Galloway's and Mr. Plower's efforts to set the house on fire were surreptitious. (App. 6 (Eighth Circuit); DCD 75 at 13, 14-15 (District Court)). However, evidence that efforts to set the house on fire were done secretly does not lead to the conclusion that it was done secretly for the purpose of making a fraudulent insurance claim. It is still arson, a criminal offense. The natural inclination would be to hide efforts to commit arson, whether or not there was also a purpose of committing insurance fraud. Further, any evidence that Ms. Galloway knew of the insurance policy or of Mr. Plower's intent to submit an insurance claim

is still lacking.

Third, the lower Courts concluded that Mr. Plower and Ms. Galloway shared their finances and because Mr. Plower and Ms. Galloway were experiencing financial problems, it can be inferred that they expected to reap a financial benefit  insurance money  from burning the house down. (App. 6 (Eighth Circuit); DCD 75 at 14 (District Court)). However, the testimony from Mr. Plower was that he and Ms. Galloway discussed either selling the Martelle house or fixing it up because of the financial burden of having two houses. (Tr. Tr. 30). All that can be inferred from Mr. Plower's testimony was a desire to not have two houses. There was absolutely no evidence that Mr. Plower and Ms. Galloway ever discussed insurance money or that Ms. Galloway even knew the Martelle house was insured. In fact, there was no evidence that Ms. Galloway had any general knowledge at all about insurance, including no evidence that Ms. Galloway's house in Olin was insured.

Further, any evidence that Ms. Galloway and Mr. Plower were paying bills on the house did not include any evidence that any bills that Ms. Galloway paid or was aware of included insurance. Thus, any inference that Ms. Galloway must necessarily have known of the

insurance policy is unwarranted. All that Mr. Plower said was

> Q: Did you ever talk about the Martelle house with Ms. Galloway?
>
> A: Yes, we talked about the house.
>
> Q: Could you describe those conversations to the jury?
>
> A: Well, with having two houses and paying bills at two houses, it was a financial burden to both of us and we talked about either trying to sell the house or trying to fix the house up and move back into one house and let the house we had in Olin go back to the realtor.

Tr. Tr. 30. He did not testify that Ms. Galloway was paying any bills or had actual knowledge of any bills relating to the Martelle house.

The evidence was that Mr. Plower had a Post Office box for his financial communications and Ms. Galloway did not have access to that box. (Tr. Tr. 62-63). The evidence that Mr. Plower was paying some of Ms. Galloway's bills does not prove that Ms. Galloway was paying some of Mr. Plower's bills. In fact, it suggests that Mr. Plower, as the employed person with the financial resources, was handling payment of any bills. There was no evidence that Ms. Galloway had any involvement in paying or knowledge of any "bills," including insurance, relating to the Martelle house.[2]

[2] It should also be noted that Mr. Plower and Ms. Galloway were not

Additionally, there was no evidence that Beth Galloway and James Plower ever discussed whether the Martelle house was insured, discussed burning down the house for the purpose of making an insurance claim, or discussed any intent on the part of Mr. Plower to make an insurance claim. The evidence as a whole contains almost no evidence of specific discussions between Ms. Galloway and Mr. Plower about setting fire to the house.

Circumstantial evidence is not always sufficient to prove guilty knowledge. Circumstantial evidence and any reasonable inferences to be drawn from it must still establish guilt by proof beyond a reasonable doubt. In a case involving a prosecution of an attorney for assisting in a client's fraud, the Fifth Circuit stated:

> Although Beckner must defeat each of the four separate allegations in the indictment, one factual issue dominates this appeal: whether Beckner had knowledge of Recile's fraud. In charging Beckner with aiding and abetting Recile's crimes, the prosecution had to show that Beckner acted with criminal intent. See United States v. Murray, 988 F.2d 518, 522 (5th Cir. 1993) ("The essence of aiding and abetting is a 'community of unlawful intent' between the aided and abettor and the principal. Although the aider and abettor need not know the means by which the crime will be carried out, he must share in the requisite intent.") (citations omitted). Whether Beckner

married. There was no evidence that Mr. Plower and Ms. Galloway had combined their financial lives.

> possessed such intent depends upon whether he had knowledge of ongoing criminal activity engaged in by Recile while Beckner represented him. If he possessed such knowledge, then Beckner's legal efforts on behalf of his client can reasonably be interpreted as an attempt to aid and abet Recile's fraud. On the other hand, if Beckner lacked knowledge of Recile's criminal activities, then Beckner did nothing more than discharge properly his duties as an attorney, even if his legal services may have unwittingly assisted Recile in his misconduct.
>
> We find that the government offered insufficient evidence to demonstrate Beckner's knowledge of Recile's fraud. The government presented no direct proof of Beckner's knowledge. Instead, it relied on circumstantial evidence. Of course, the government may prove a guilty mind circumstantially; oftentimes it is impossible to demonstrate knowledge in any other way. "But the use of circumstantial evidence does not relieve the government of its burden of establishing [elements of an offense] 'beyond a mere likelihood or probability,' or by more than mere speculation." United States v. Massey, 827 F.2d 995, 999 (5th Cir. 1987) (citations omitted). We conclude that the circumstantial evidence here did not permit the jury to draw a reasonable inference of guilty knowledge; rather, the government's evidence invited only speculation and conjecture.

United States v. Beckner, 134 F.3d 714, 719 (5th Cir. 1998). See also United States v. Campa, 529 F.3d 980, 1023 (11th Cir. 2008) (Kravitch, J., concurring in part and dissenting in part) (With respect to a charge of conspiracy: "Such an agreement may be proven with circumstantial evidence, but inferences are only permitted when "human experience

indicates a probability that certain consequences can and do follow from basic circumstantial facts." United States v. Villegas, 911 F.2d 623, 628 (11th Cir. 1990). "[C]harges of conspiracy are not to be made out by piling inference upon inference." Ingram v. United States, 360 U.S. 672, 680, 79 S.Ct. 1314, 3 L.Ed.2d 1503 (1959). "[T]he ultimate burden on the government is the ability to draw a reasonable inference, and not a speculation, of guilt." Villegas, 911 F.2d at 628. Knowledge of the criminal act "must be clear, not equivocal." See Ingram, 360 U.S. at 678-80, 79 S.Ct. 1314.).

Likewise, the minimal circumstantial evidence proffered by the Government in this case did not meet the Government's burden of proving, by proof beyond a reasonable doubt, that Ms. Galloway had knowledge that the Martelle house was insured or that James Plower intended to make a fraudulent insurance claim.

Ms. Galloway also challenged the third element of Count 1 in that there was no evidence that Ms. Galloway was aware that the mails would be used to commit the insurance fraud offense. Simply put, if Ms. Galloway did not know of the insurance policy or Mr. Plower's intent to make a fraudulent insurance claim, it was not reasonably foreseeable to her that the mails would be used in furtherance of the

insurance fraud. There was absolutely no evidence that Ms. Galloway used the mails for any relevant purpose.

Overall, there was no evidence from which the jury could have inferred by proof beyond a reasonable doubt that Beth Galloway had knowledge that the Martelle house was insured, knowledge that Mr. Plower intended to make an insurance claim, knowledge that Mr. Plower would make any misrepresentation in making an insurance claim, or knowledge that the mails would be used. The Eighth Circuit's opposite conclusion is contrary to the evidence and the law.

### C. Ms. Galloway's Motion for Judgment of Acquittal With Respect to Count 2 Should Have Been Granted Because There Was No Evidence that Ms. Galloway Used, or Aided and Abetted, the Use of, Fire For the Purpose of Committing Mail Fraud

Count 2 charged Ms. Galloway with Use of Fire and Aiding and Abetting the Use of Fire to Commit a Felony in violation of 18 U.S.C. §§ 844(h) and 2. The elements of this offense, as set forth in Jury Instruction No. 6 (DCD 48) (portions omitted), are:

First Alternative

One, defendant knowingly used fire; and

Two, to commit a felony which may be prosecuted in a court of the United States.

> The defendant is charged in Count 1 of the indictment with committing the crime of mail fraud. I instruct you that the crime of mail fraud is a felony for which a defendant might be prosecuted in a court of the United States. However, it is for you to determine whether the Government has proven beyond a reasonable doubt that defendant committed the crime of mail fraud as charged in Count 1.

Second Alternative

A person may also be found guilty of use of fire to commit mail fraud even if she personally did not do every act constituting the offense charged, if she aided and abetted the commission of use of fire to commit mail fraud.

In order to have aided and abetted the commission of a crime the defendant must:

One, know that the use of fire to commit mail fraud ("the offense") was being committed or going to be committed;

Two, have had enough advance knowledge of the extent and character of the offense that she was able to make the relevant choice to walk away from the offense before all elements of the offense were complete;

Three, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of the offense; and

> Four, have intended that fire be knowingly used to commit a felony which may be prosecuted in the court of the United States.
>
> . . . .

The District Court denied the Motion for Judgment of Acquittal on Count 2, and the Eighth Circuit affirmed, for the same reasons the denied the Motion with respect to Count 1. (App. 6 (Eighth Circuit); DCD 75 at 18 (District Court)). For much the same reasons that a Judgment of Acquittal should have been entered with respect to Count 1 (Mail Fraud), there was no evidence supporting the first alternative of Count 2. Further, it was James Plower's use of fire which led to the insurance claim. No insurance claim was submitted after any alleged use of fire by Isaac Williams, with Beth Galloway providing transportation. There was no evidence that Beth Galloway personally set or attempt to set any fires. There was no evidence that Beth Galloway knew that the Martelle house was insured, knew that any insurance claim would be submitted, or knew that Mr. Plower was submitting any insurance claim.

With regard to the second alternative, there is no evidence that Beth Galloway was aware that James Plower intended to set the fire

that ultimately resulted in the insurance claim. Mr. Plower testified that he did not discuss his efforts to set the Martelle house on fire with Ms. Galloway. (Tr. Tr. 38, 60). Mr. Plower initially testified that he told Ms. Galloway that he was going to the Martelle house before he left on the trip where he set the fire, but did not recall what he had told Ms. Galloway. (Tr. Tr. 40). On cross-examination, Mr. Plower clarified that he couldn't say if he told Ms. Galloway that he was going to the house. (Tr. Tr. 60-61).

Thus, there was no evidence that Ms. Galloway used fire, under alternative one, and no evidence that Ms. Galloway aided and abetted the use of fire, under alternative two. Further, for the same reasons that Ms. Galloway did not participate in the mail fraud charged in Count 1, she cannot be found guilty with respect to the use of fire to commit the alleged mail fraud.

### D. Ms. Galloway's Motion for Judgment of Acquittal With Respect to Count 3 Should Have Been Granted Because Ms. Galloway Did Not Engage in a Financial Transaction

Count 3 charged Ms. Galloway with Conspiracy to Commit Money Laundering in violation of 18 U.S.C. § 1956(h). The elements of this

offense, as set forth in Jury Instruction No. 7 (DCD 48) (portions omitted), are:

> Count 3 alleges that the defendant engaged in a "money laundering conspiracy" with others in on or about the spring of 2014.
>
> First, during the alleged period of the conspiracy, the defendant agreed to conduct a financial transaction;
>
> Two, the financial transaction involved the proceeds of a specified unlawful activity, namely, mail fraud, as charged in Count 1 of the Indictment;
>
> Three, the defendant knew that the money involved in the financial transaction represented the proceeds of mail fraud; and
>
> Four, the defendant knew that the financial transaction was designed in whole or in part to conceal or disguise the nature, source, location, ownership, or control of those proceeds.
>
> > The phrase "financial transaction" as used in this Instruction means a transaction which in any way or degree affects interstate or foreign commerce involving the movement of funds by wire or other means, involving one or more monetary instruments, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree
> >
> > . . . .

The Government's theory on Count 3 was that the "financial transaction" at issue was the $10,000 withdrawn from the Wells Fargo

account and placed with Jean McPherson. However, it is the withdrawal of the $10,000 that fits within the definition of "financial transaction." There was no evidence that Ms. Galloway was involved in that withdrawal. Mr. Plower testified that he withdrew the $10,000 (Tr. Tr. 51). See also Gov't Ex. 12 at p. 5 (withdrawal slip with James Plower's signature). Placement of the $10,000 with Ms. McPherson does not fall within the definition of "financial transaction," as that did not involve "a transaction which in any way or degree affects interstate or foreign commerce involving the movement of funds by wire or other means, involving one or more monetary instruments, or a transaction involving the use of a financial institution." The District Court acknowledged that Mr. Plower's withdrawal of the $10,000 from Wells Fargo, not the placement of the $10,000 with Jean McPherson, is the qualifying "financial transaction." (App. 28; DCD 75 at 21, n. 2).

The District Court, as affirmed by the Eighth Circuit, reasoned that, since Count 3 charged a "conspiracy to commit money laundering," then it was not necessary for the Government to prove that Ms. Galloway committed the financial transaction (i.e., withdrawing the money from Wells Fargo). The Eighth Circuit gave short shrift to this

issue in its opinion. However, it is still necessary for the Government to prove that Ms. Galloway agreed to commit the qualifying financial transaction. See United States v. Musick, 291 F. App'x 706, 715 (6th Cir. 2008); United States v. Jarrett, 684 F.3d 800, 802 (8th Cir. 2012)). The District Court stated, without citing any specific testimony, that "reasonable jurors could conclude that although Plower withdrew the money from Wells Fargo, he did so based on an agreement with Galloway, which Galloway knowingly and voluntarily joined with the intent of preserving their money pending the criminal investigation." (DCD 75 at 22). While there was some evidence from Mr. Plower that he discussed withdrawing the money with Ms. Galloway (Tr. Tr. 50-51), there was no evidence that she agreed to each of the required elements set forth in Jury Instruction No. 7.

### E. The Eighth Circuit Should Have Found That the District Court Abused its Discretion in Denying Ms. Galloway's Motion for New Trial on All Three Counts

For the same reasons that a Judgment of Acquittal should be granted, a new trial should be granted on all three counts. The difference is that, in considering the grant of a new trial, the Court need not view the evidence in the light most favorable to the Government

and is primarily concerned with whether a miscarriage of justice occurred. The Eighth Circuit did not separately discuss this issue and the differing standard, merely devoting a footnote to this question. App. 7 at n.2.

In this case, while there was evidence that Beth Galloway assisted Isaac Williams in attempting to set the Martelle house on fire on two occasions, there was no specific evidence that Ms. Galloway had any knowledge that the house was insured or that James Plower would submit an insurance claim relating to the house. The Government must, of necessity, rely on an inference that houses are normally insured and that insurance claims are normally submitted after a fire. The Courts should not draw any such inferences or engage in such speculation in determining whether a new trial is warranted. The convictions of Ms. Galloway resulted in a miscarriage of justice. The District Court abused its discretion in denying Ms. Galloway's Motion for new trial.

## CONCLUSION

For the above stated reasons, Petitioner Beth Galloway respectfully requests the Court to grant certiorari, reverse the Eighth

Circuit and hold that her Motion for Judgment of Acquittal should be granted with respect to each Count and to remand for dismissal of each Count. Alternatively, Ms. Galloway requests this Court to reverse the Eighth Circuit and hold that her Motion for New Trial should be granted with respect to each Count and to remand for a new trial.

Respectfully Submitted,

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ATTORNEY FOR PETITIONER
BETH GALLOWAY

## CERTIFICATE OF FILING

I hereby certify that on the 24th day of May, 2019, I did file this Petition for Writ of Certiorari by causing an original and ten (10) copies thereof to be delivered, via first class United States mail, postage paid, to Clerk, Supreme Court of the United States, 1 First Street N.E., Washington, D.C. 20543.

Michael K. Lahammer

## CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May, 2019, I served this Petition for Writ of Certiorari by causing one copy thereof to be delivered via first class United States mail, postage paid to Anthony Morfitt, Assistant United States Attorney, Northern District of Iowa, 111 Seventh Avenue SE, Box 1, Cedar Rapids, IA 52401, and by causing one copy thereof to be delivered via first class United States mail, postage paid to Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001.

I further certify that on the 24th day of May, 2019, a copy of this Petition for Writ of Certiorari was forwarded to Petitioner Beth Galloway via first class United States mail, postage paid, to Beth Galloway, Register No. 16759-029 FCI Pekin, Satellite Camp, P.O. Box 5000 Pekin, IL 61555 .

Michael K. Lahammer