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OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT (AUGUST 22, 2019)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

VAHAN KELERCHIAN,

Defendant-Appellant.

No. 18-1320

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.
No. 2:13-CR-66–Joseph S. Van Bokkelen, Judge.

Before: HAMILTON, BARRETT, and SCUDDER, Circuit Judges.

HAMILTON, Circuit Judge.

Federal law imposes tight restrictions on private possession of machineguns and laser gunsights but allows law enforcement agencies to purchase and use both machineguns and laser sights. This appeal concerns criminal conspiracies among a firearms dealer and law enforcement officers to fool manufacturers into thinking they were selling to local police forces

when the machineguns and laser sights were instead going into private hands.

Defendant-appellant Vahan Kelerchian was a licensed firearms dealer. His co-conspirators were Joseph Kumstar, the Deputy Chief of the Lake County Sheriff's Department in Indiana, and Ronald Slusser, a patrolman who was the armorer for the department's SWAT team. The trio defrauded firearms manufacturer Heckler & Koch and the laser sight producer Insight Technologies into selling them machineguns and laser sights restricted by law for law enforcement and military use. After many fraudulent transactions, the three were indicted on several charges. Kumstar and Slusser pleaded guilty. Kelerchian went to trial and was convicted on four counts of conspiracy and four counts of making false writings. On appeal, Kelerchian raises numerous issues, but we affirm his convictions on all counts. In Parts I and II, we provide the factual and procedural background for Kelerchian's arguments. In Part III, we analyze his numerous challenges to his convictions.

I. Factual Background

A. Machineguns and Laser Sights

Since enactment of the National Firearms Act of 1934, codified in the Internal Revenue Code as 26 U.S.C. § 5801 et seq. ("the 1934 Act"), federal law has forbidden the importation of machineguns, but with several exceptions. Two are relevant here. First, machineguns may be imported for use by state or federal departments or agencies, and second, machineguns may be imported "solely for use as a sample by a registered importer or registered dealer." 26 U.S.C. § 5844; *see also* 27 C.F.R. § 479.112. The conspirators

here submitted fake documents to Heckler & Koch to take advantage of these two exceptions.

The Gun Control Act of 1968, as amended and codified as part of the criminal code in 18 U.S.C. § 921 et seq. ("the 1968 Act"), imposed additional restrictions on a much broader category of firearms, as well as new recordkeeping laws. The 1968 Act, as amended, prohibits the transfer or possession of machineguns made after 1986, except by a federal, state, or local agency. 18 U.S.C. § 922(o). Both the 1968 and 1934 Acts require importers and dealers of firearms to keep records related to their transactions. 18 U.S.C. § 923(g); 26 U.S.C. § 5843. Both Acts make it a crime to make false statements with respect to these records. 18 U.S.C. § 924(a)(1)(A); 26 U.S.C. § 5861(l). The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") administers the recordkeeping requirements and the exceptions.

Laser sights, on the other hand, are regulated by the Food and Drug Administration ("FDA") as part of its regulation of radiation-emitting devices. *See* 21 U.S.C. § 360ii. The powerful lasers on gunsights can cause eye damage, so federal law ordinarily requires them to be equipped with visible or audible warnings before and during use, as well as protective covers and key controls. 21 C.F.R. § 1040.10(f). They also must have labels warning of the risk of eye damage. 21 C.F.R. § 1040.10(g)(2)(iii).

The FDA may, however, grant exemptions or variances from these requirements, such as for police departments that might need to be able to use silent laser sights. 21 U.S.C. § 360oo(b); 21 C.F.R. § 1010.4(a). The FDA also requires accurate records for laser sales. Laser manufacturers must collect and preserve

information that will enable the tracing of lasers sold to distributors or to dealers. 21 C.F.R. § 1002.30(b)(1); *see also* 21 U.S.C. § 360nn(f). Dealers and distributors must "obtain such information as is necessary to identify and locate first purchasers" of lasers and forward this information "immediately to the appropriate manufacturer." 21 C.F.R. § 1002.40(a), (c).

B. The Conspiracies

Vahan Kelerchian was a licensed firearms dealer who ran a business in Pennsylvania called Armament Services International, Inc., known as ASI. He met Lake County Sheriff patrolman Ronald Slusser at a Kentucky machinegun show some time in the early 2000s. A few years later at the same show, Slusser introduced Kelerchian to his supervisor, Joseph Kumstar, the Deputy Chief of the Lake County Sheriff's Department. According to Slusser, he and Kelerchian stayed in touch and did business together for the next several years.

At some point, Slusser told Kelerchian about an illegal arms deal in 2008 that Kumstar had instructed him to help with. Kumstar had acquired machineguns by claiming that they were for the Sheriff's Department, but then instructed Slusser to remove certain parts of these guns and to sell them over the internet for Kumstar's personal gain. Slusser testified that Kelerchian expressed interest in doing a similar deal with Kumstar and Slusser. The three then plotted the conspiracies that led to their convictions.

1. Machinegun Purchases

The first part of the conspirators' plan was to purchase machineguns from international gun import-

er Heckler & Koch ("H&K") under the pretense that the weapons were for the Lake County Sheriff's Department. Kelerchian, Slusser, and Kumstar orchestrated three fraudulent machinegun purchases from H&K.

In the first transaction, in December 2008, Kelerchian, Kumstar, Slusser, and Slusser's cousin, Ed Kabella, ordered 50 machineguns for $83,026. Kumstar prepared paperwork saying falsely that the Sheriff's Department was purchasing all 50 machineguns. Kelerchian sent this paperwork to H&K, including statements on Sheriff's Department letterhead attesting that the weapons were for the exclusive use of Lake County law enforcement. H&K then filed ATF Form 6, asserting that it was importing 50 machineguns for the Lake County Sheriff's Department. ATF approved the transaction, and H&K sent the 50 machineguns to the Sheriff's Department.

Slusser then took the machineguns apart, separating the guns' lower receivers, which are the regulated portions of the weapons containing traceable serial numbers. The unregulated upper barrels of the guns were distributed among the conspirators according to how much money each had contributed to the purchase. The plan was to refurbish 15 of the regulated lower receivers into new guns using cheaper parts, and then to add these new weapons into the Sheriff's Department's armory. The 35 remaining lower receivers were to be destroyed. No machineguns ever made it to the Sheriff's Department, though. The conspirators sold the unregulated machinegun parts for a substantial profit. Slusser sold his unregulated machinegun barrels to a dealer named Adam Webber, who runs a website selling hard-to-acquire H&K machinegun parts.

Webber was involved in the next two machinegun purchases. He told Kumstar and Kelerchian that he was interested in buying additional machinegun parts. In February 2009, using the same procedure as before, Kumstar and Kelerchian bought nine H&K machineguns, again telling H&K falsely that the guns were for the Sheriff's Department. Once the machineguns were delivered, Slusser again disassembled them and sent the unregulated parts to Webber. In exchange, and relevant to the money-laundering conspiracy charge, Webber sent Slusser a cashier's check for $18,900. At Kum-star's direction, Slusser deposited that check into his own account and then sent cashier's checks to both Kumstar and Kelerchian. Nine months later, Kelerchian mailed H&K a check for the machineguns.

In October 2009, Kelerchian and Kumstar bought twelve more machineguns from H&K, again telling H&K falsely that they were for the Sheriff's Department. Slusser again disassembled the guns and sent the unregulated parts to Webber. Webber mailed Slusser a $31,200 check, which he cashed. Slusser wrote Kelerchian a check for $28,200, and Kelerchian wrote H&K a check for the guns' $16,800 purchase price.

2. Demonstration Letters

In the meantime, the conspirators also used the exception for importing machineguns as demonstration samples for a dealer. Kumstar testified that Kelerchian asked him for help in buying machineguns for his personal collection. Between October 2007 and March 2010, Kumstar sent five letters to the ATF stating falsely that the Lake County Sheriff's Department was interested in demonstrations of the weapons Kelerchian wanted for himself. The letters said that Kelerchian

had "offered to conduct such demonstration[s]" and "intend[ed] to demonstrate the operation, identification and safe handling of the guns" to provide "department personnel a better understanding of the capabilities, limitations and differences of these guns." Kumstar testified that neither he nor the Sheriff's Department was actually interested in demonstrations of the requested machineguns and that he never had discussed a plan for conducting an actual demonstration with Kelerchian. Kumstar also testified that the weapons were not guns the Department would use.

Through this arrangement, Kelerchian was able to buy nine machineguns. He became the registered owner of these weapons, and federal law allowed him to sell them at his own discretion. No demonstrations ever occurred.

Kelerchian's testimony disputed Kumstar's account. He said that Kumstar had offered on his own to write the first dealer sales sample letter for Kelerchian and genuinely was interested in a demonstration. Kelerchian also testified that he offered to conduct demonstrations for Kumstar and the Department many times between October 2008 and April 2011. He said that he offered a variety of settings and dates but that Kumstar never took him up on his offers. The most Kumstar did, according to Kelerchian, was to come to Kelerchian's place of business, take photographs with guns, and pick up a gun, saying "We did our demo."

3. Laser Sight Purchases

Kelerchian, Kumstar, and Slusser also devised a plan to buy restricted laser sights from a company called Insight Technology. Slusser testified that he

and Kelerchian wanted to buy laser sights for their personal collections. The devices Kelerchian and Slusser wanted did not comply with FDA safety rules requiring a visible or audible warning. However, the FDA had granted Insight Technology a variance allowing it to sell its laser sights (technically, Class IIIb devices) to federal, state, and local enforcement agencies on the theory that safety features like a visible or audible warning could compromise stealth operations in which officers need to remain unheard and unseen.

Slusser and Kelerchian used the variance to buy laser sights on the pretext that they were for the Sheriff's Department. Kelerchian and Slusser told Kumstar which sights they wanted, and Kumstar then put together a purchase order with paperwork saying falsely that the Sheriff's Department was buying the lasers. In December 2008, Kelerchian sent Insight Technology this purchase order for 25 sights for $27,103.52. Using a nearly identical method, in March 2010, the three bought an additional 22 lasers sights for $30,249.92. According to Slusser, he and Kelerchian placed two more orders for Insight Technology laser sights by using a friend of Slusser's in the Lowell, Indiana Police Department in December 2009 and August 2010. The Lowell orders were for more than 28 Class IIIb laser products costing more than $32,000.

Kelerchian testified that he was unaware of the FDA's regulation of lasers and the variance. He told the jury that an Insight Technology employee named Linda Harms told him that the lasers could be sold to individuals if they went through a law enforcement department first. Harms testified at trial that she never would have told a customer that laser sights were available for individual purchase.

II. Procedural Background

A federal grand jury returned a nine-count indictment. Count I alleged that, in buying the machineguns, Kelerchian, Kumstar, and Slusser violated 18 U.S.C. § 371 by conspiring to make false statements in records required by the 1968 Act. *See* 18 U.S.C. § 924(a)(1)(A). Count II alleged that, in buying the laser sights, Kelerchian and the others violated 18 U.S.C. § 371 by conspiring to defraud the FDA by interfering with its lawful government functions of limiting the sale of various restricted laser sights to military and law enforcement agencies and correctly identifying the buyers of restricted laser sights.

Counts III through VII focused on the demonstration letters. Count III charged Kelerchian under 18 U.S.C. § 371 with conspiring with Kumstar and others to violate 18 U.S.C. § 1001 by making false statements to the ATF in the phony demonstration letters. Counts IV through VII charged Kelerchian with actual violations of § 1001 in four separate letters.

Count VIII alleged that Kelerchian committed bribery by offering Kumstar a shotgun in exchange for his help with several of the fraudulent transactions. Count IX alleged that Kelerchian, Kumstar, and Slusser conspired to launder money in violation of both 18 U.S.C. § 1956 and § 1957. The § 1956 allegation concerned the second machinegun purchase and the § 1957 allegation concerned the third. The premise of Count IX is that the conspirators engaged in wire fraud in obtaining the machineguns and then laundered the proceeds of that fraud.

Slusser, Kumstar, and Kabella pleaded guilty and agreed to testify for the prosecution. Kelerchian took

his case to trial. After the government rested and again after the close of all the evidence, Kelerchian moved under Federal Rule of Criminal Procedure 29 for a judgment of acquittal on all counts. At both stages, the district court denied the motion on Counts I through VII and took the motion under advisement on Counts VIII and IX.

The jury found Kelerchian guilty on all counts except the bribery charge in Count VIII. Through a special verdict form, regarding Count II, the jury specifically found Kelerchian guilty of conspiring to interfere with both of the two regulatory functions of the FDA identified in the indictment. Through another special verdict form on Count IX, the jury found Kelerchian guilty of conspiring to launder money in violation of both 18 U.S.C. § 1956 and § 1957. Kelerchian was sentenced to 100 months in prison, plus a fine and term of supervised release.

III. Legal Analysis

Kelerchian challenges all of his convictions on a variety of grounds. First, he argues that Counts I and II failed to allege federal crimes. Second, he argues the government failed to prove the demonstration-letter charges in Counts III through VII and the money-laundering conspiracy in Count IX. Third, he contends the district court erred in its jury instructions. Finally, he claims the prosecution engaged in misconduct in its closing argument. We find no errors.

A. Legal Sufficiency of Counts I and II

1. Count I—Conspiracy to Violate Gun Control Act Recording Requirements

Kelerchian argues that Counts I and II of the indictment fail to allege federal offenses. We start with Count I, which charged Kelerchian under 18 U.S.C. § 371 with conspiring to violate 18 U.S.C. § 924(a)(1)-(A), which makes it a crime to knowingly make "any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter," including federally licensed firearms importers, manufacturers, and dealers, including H&K. *See Abramski v. United States*, 573 U.S. 169, 174–75 (2014). "This chapter" is chapter 44 of Title 18, and it provides in relevant part that licensees may not sell "any firearm . . . to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person . . . or the identity . . . of such . . .corporation or other business entity." 18 U.S.C. § 922(b)(5). "Person" in this case means the real buyer or intended recipient of the firearm, not a nominal or straw purchaser. *Abramski*, 573 U.S. at 179–82. Regulations implementing the 1968 Act also require licensees like H&K to "maintain permanent records of the importation . . . of firearms, including ATF Forms 6 and 6A." 27 C.F.R. § 478.129(d). Count I thus alleged a conspiracy to violate § 924(a)(1) by leading H&K to create false records for the machinegun purchases—falsely identifying the Lake County Sheriff's Department as the buyer. On this logic, Count I alleged a federal offense.

To avoid this conclusion, Kelerchian argues that 18 U.S.C. § 924(a)(1)(A) and the 1968 Act's regulations in 27 C.F.R. § 478 do not apply generally to machineguns. He argues that the 1934 Act regulates purchase, possession, importation, registration, and record-keeping for machineguns, and that the only provision of the 1968 Act that applies to machineguns is 18 U.S.C. § 922(o), which criminalizes the transfer and possession of machineguns, but which was not charged in Count I.

Kelerchian bases his statutory argument on the two Acts' different definitions of the term "firearm." The 1934 Act provides: "The term 'firearm' means" a number of categories of especially dangerous weapons, including short-barreled shotguns and rifles, and specifically including "a machinegun." 26 U.S.C. § 5845(a). By contrast, the 1968 Act defines a "firearm" in relevant part much more broadly as "any weapon . . . which will or is designed to or may readily be converted to expel a projectile by the action of an explosive." 18 U.S.C. § 921(a)(3). Comparing these definitions, Kelerchian argues that because the 1968 Act's definition does not expressly include machineguns, unlike the 1934 Act's definition, Congress meant to distinguish between machineguns and firearms in the 1968 Act, leaving machinegun regulation largely to the 1934 Act.

Based on both the text and the structure of the 1968 Act, we reject this argument. First, a machinegun clearly fits into the 1968 Act's broad definition of a "firearm" as a weapon that "will or is designed to or may readily be converted to expel a projectile by the action of an explosive." 18 U.S.C. § 921(a)(3). Machine-

guns are a subset of "firearms" as defined in the 1968 Act.[1]

Second, other provisions of the 1968 Act show that machineguns are properly treated as a subset of firearms under that Act. For example, § 924(c)(1) punishes the possession of a firearm during the commission of a crime of violence or a drug trafficking offense, but § 924(c)(1)(B)(ii) enhances the punishment "if the firearm possessed . . . is a machinegun." Similarly, § 924(c)(1)(C)(ii) imposes a more severe penalty for a second § 924(c) conviction "if the firearm involved is a machinegun." Section 925(d) provides the Attorney General with authority over importation of firearms into the United States and possession of "unserviceable firearm[s], other than . . . machinegun[s]." 18 U.S.C. § 925(d) (emphasis added). The 1968 Act also grants qualified law enforcement officers with the proper identification the ability to carry concealed firearms, but specifically excludes machineguns from the definition of firearm for purposes of just that section. 18 U.S.C. § 926B(e). The clear implication is that all other provisions of the Act without such a limit apply to machineguns as a subset of firearms.

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[1] In the 1934 Act, the term "'machinegun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person." 26 U.S.C. § 5845(b). The 1968 Act borrows the same definition for the term where it is used in the 1968 Act. 18 U.S.C. § 921(a)(23).

Accordingly, a machinegun counts as a firearm for purposes of 18 U.S.C. § 924, so Count I properly charged Kelerchian with conspiracy to violate the 1968 Act by submitting documents falsely telling H&K that the buyer of all the machineguns would be the Lake County Sheriff's Department.

2. Count II—Conspiracy to Defraud the FDA

Section 371 of Title 18 of the United States Code makes it a crime not only to conspire to commit "any offense against the United States," but also to conspire "to defraud the United States, or any agency thereof in any manner or for any purpose." The Supreme Court has "stated repeatedly that the fraud covered by the statute reaches any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government." *Tanner v. United States*, 483 U.S. 107, 128 (1987) (internal quotation marks omitted) (collecting cases). Count II charged Kelerchian with violating § 371 by conspiring to defraud the FDA in carrying out its regulatory responsibilities. Kelerchian argues that Count II charged him with violating only FDA policy as opposed to any statute or regulation with the force of law. He emphasizes the text of the indictment charging him with conspiring to defraud the FDA by interfering with and obstructing the lawful functions of the FDA to:

a. Limit the sale of various restricted laser aiming sight devices to the military and law enforcement agencies only;

b. Correctly identify first line purchasers of various laser aiming sight devices which

> were restricted to military or law enforcement agency purchasers only.

As Kelerchian sees the case, no law or regulation restricts laser device sales to law enforcement, so he was charged with conspiring to violate only the variance the FDA granted Insight Technology to sell otherwise-illegal laser sights to law enforcement. Because this variance, Kelerchian continues, was not adopted in accordance with the Administrative Procedure Act, it has no force of law and cannot be used to bind third parties or to support criminal charges against them.

The argument misreads the indictment. Count II did not charge Kelerchian with conspiring to violate the variance but with conspiring to defraud the FDA, rendering his Administrative Procedure Act argument irrelevant. Section 371 makes it a crime to defraud an agency of the United States "in any manner or for any purpose." The indictment alleged that Kelerchian, Kumstar, and Slusser conspired to defraud the FDA by obstructing the agency's ability to perform the two listed regulatory functions. Federal law provides the FDA with the authority to regulate the sale of laser devices. *See* 21 U.S.C. § 360ii. In carrying out its regulatory function, the FDA promulgated safety and performance standards for laser sights. 21 C.F.R. § 1040.10. Manufacturers are barred from selling products that do not comply with the standards the agency sets. 21 U.S.C. § 360oo(a). That prohibition is in place unless a valid variance applies to a sale. § 360oo(b).

The variance is not a regulation, but as the indictment recognizes, granting these variances is an exercise of the FDA's regulatory function over laser products.

By deceiving Insight Technology into selling them non-compliant laser sights, Kelerchian and the other conspirators defrauded the FDA into allowing them to possess devices that federal law prohibits. They also led Insight to create a false paper trail for these devices that would make it impossible for the FDA to keep track of the true owners of these dangerous products, which the FDA is supposed to do. Such fraud impairs the ability of the FDA to regulate laser devices to prevent harm to the public.

In *United States v. F.J. Vollmer & Co.*, 1 F.3d 1511 (7th Cir. 1993), we rejected an argument similar to Kelerchian's. At issue in *F.J. Vollmer* was a settlement agreement reached between the ATF and Gun South, Inc., a firearms importer. The settlement agreement allowed Gun South to sell an otherwise-banned semi-automatic rifle only to law enforcement officers or agencies. *Id.* at 1514. Kenneth Nevius, a captain on active duty in the Illinois National Guard, took advantage of this exception and bought two restricted rifles using his National Guard stationery. He said he was buying the weapons "in connection with his official duties and not for the purpose of resale." *Id.* He lied. He actually bought the guns to sell them to F.J. Vollmer & Company, a firearms dealer. Nevius orchestrated several such deals. Nevius and F.J. Vollmer were indicted. The company was convicted of mail fraud and conspiracy to defraud the United States government.

On appeal, the company argued that it was charged with conspiring to violate only the settlement agreement between the ATF and Gun South, which was being treated as if it were a "*de facto* substantive agency rule." *Id.* at 1516. We rejected the argument,

explaining that "F.J. Vollmer and Nevius were not convicted of violating a settlement agreement." *Id.* at 1515. "The indictment . . . specifically stated the elements" of a § 371 conspiracy, making it evident to the court that this was the federal crime the defendants were charged with committing. *Id.* at 1515-16. "Further," we continued, "because the convictions are not based on the violation of the settlement agreement, the defendants' [APA] argument . . . is irrelevant." *Id.* at 1516. We apply the same reasoning here. Count II properly charged Kelerchian with a violation of 18 U.S.C. § 371.

B. Sufficiency of Evidence

Kelerchian next argues that the government failed to prove the charges involving the so-called demonstration letters that enabled Kelerchian to buy machineguns for his personal collection (Counts III through VII) and failed to prove the money-laundering conspiracy charge (Count IX). On its own initiative or upon a defendant's motion, a trial court "must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29 (a).

We review *de novo* the denial of a defendant's motion for acquittal, considering the evidence in the light most favorable to the prosecution. *United States v. Mohamed*, 759 F.3d 798, 803 (7th Cir. 2014). We "ask whether any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt," *United States v. Foley*, 740 F.3d 1079, 1083 (7th Cir. 2014) (internal quotation marks omitted), and "overturn a verdict only when the record contains no evidence, regardless of how it is weighed,

from which the jury could find guilt beyond a reasonable doubt." *United States v. Blassingame,* 197 F.3d 271, 284 (7th Cir. 1999) (internal quotation marks omitted). This is usually a high hurdle for a defendant to clear, but "the height of the hurdle depends directly on the strength of the government's evidence." *United States v. Garcia*, 919 F.3d 489, 496–97 (7th Cir. 2019) (reversing denial of Rule 29 motion), quoting *United States v. Jones*, 713 F.3d 336, 339 (7th Cir. 2013) (affirming grant of Rule 29 motion).

1. Demonstration Letters

Kelerchian argues that the evidence does not support his convictions for conspiring to make false statements and making false statements in the demonstration letters submitted to ATF. To recap, Count III alleged that Kelerchian violated 18 U.S.C. § 371 by conspiring with Kumstar and Slusser to make false statements to the ATF by submitting letters falsely claiming that the Sheriff's Department wanted demonstrations of otherwise-prohibited weapons that Kelerchian wanted for his personal collection. Counts IV through VII alleged that the phony demonstration letters were false statements to the ATF in violation of 18 U.S.C. § 1001.

Kelerchian bases his argument on narrow readings of the text of the demonstration letters as compared to the indictment. He reads the indictment narrowly to charge him with conspiring to make and making specific false statements—requests for demonstrations of machineguns. Nowhere in the essentially identical demonstration letters, Kelerchian contends, however, is there specific language, false or otherwise, actually requesting a demonstration. Because the indictment

charged Kelerchian not with conspiring to make and making any false statement to the ATF but with conspiring to make and making specific false statements to the ATF, the government was required to produce evidence showing that the specific false statements were in fact made and failed to do so. We disagree.

The letters said the Sheriff's Department was "interested in a demonstration" of several listed guns and had found a dealer, Kelerchian, who had "offered to conduct such a demonstration." The letters explained that the "demonstration[s] will give [the] department personnel a better understanding of the capabilities, limitations, and differences of these [requested] guns." From the content of these letters, a reasonable jury could find that these were false requests for demonstrations. The letters could have had no other purpose. In addition, Kelerchian's own testimony characterized the letters as a "request to demonstrate" machineguns. Kumstar also testified that each of the letters was "a demonstration request," that Kelerchian had not offered demonstrations, and that the Sheriff's Department was not really interested in any. In short, there was sufficient evidence to support Kelerchian's convictions for conspiring to make and actually making false statements in the demonstration letters that he and his co-conspirators drafted.

2. Money-Laundering Conspiracy

Kelerchian's challenge to his conviction for conspiring to commit money laundering poses the closest question in this appeal. The money-laundering conspiracy charge stems from the conspirators' second and third fraudulent machinegun purchases. The indictment charged Kelerchian with conspiring to launder

money in violation of 18 U.S.C. § 1956(h), which makes it a crime to conspire to commit any of the money-laundering offenses defined in § 1956 or § 1957.

The indictment specified that Kelerchian conspired to violate this statute in two ways. First was a conspiracy to engage in a financial transaction using the known proceeds of an unlawful activity (wire fraud to obtain the machineguns) to conceal the ownership and control of the proceeds from the specified unlawful activity in violation of § 1956(a)(1)(B)(i). Second was a conspiracy to use the proceeds of the wire fraud to engage in a monetary transaction exceeding $10,000 in violation of § 1957. The jury found Kelerchian guilty of both alleged conspiracies. We focus on the conspiracy to violate § 1957, which we find was proven, so we need not address the theory under § 1956(a)(1)(B)(i). *See United States v. Joshua*, 648 F.3d 547, 553 (7th Cir. 2011).

A money-laundering violation under either § 1956 or § 1957 requires proof of two distinct acts: the unlawful activity that generated "proceeds" and then the monetary transaction conducted with the criminal proceeds. *United States v. Seward*, 272 F.3d 831, 836 (7th Cir. 2001), quoting *United States v. Mankarious*, 151 F.3d 694, 705 (7th Cir. 1998). The underlying unlawful activity here was wire fraud. "To establish wire fraud under 18 U.S.C. § 1343, the government must prove the defendant (1) participated in a scheme to defraud, (2) intended to defraud, and (3) used interstate wires in furtherance of the fraud." *United States v. Buncich*, 926 F.3d 361, 366 (7th Cir. 2019). The wire fraud offense was completed during the second and third machinegun transactions when Kelerchian and the others sent materially false statements to

H&K asserting that the machineguns were being purchased by the Lake County Sheriff. *See United States v. Aslan*, 644 F.3d 526, 545–46 (7th Cir. 2011) (wire fraud statute "punishes the scheme, not its success") (collecting cases); accord, *e.g.*, *United States v. Kennedy*, 707 F.3d 558, 566–67 (5th Cir. 2013) (wire fraud distinct from money laundering of proceeds); *United States v. Halstead*, 634 F.3d 270, 280–81 (4th Cir. 2011) (health care fraud distinct from money laundering of proceeds). The machineguns were the proceeds of that wire fraud. According to the government, the way in which Kelerchian and Kumstar sold these weapons to dealer Adam Webber constituted money laundering.

The government's theories for the money-laundering conspiracy are that, after completing the fraud in the second purchase of machineguns, Kelerchian and Kumstar conspired to conceal the fact that machinegun parts were intended for dealer Adam Webber in violation of § 1956(a)(1)(B)(i) and conspired to engage in one or more transactions in criminally derived proceeds worth more than $10,000 in violation of § 1957. Kelerchian and Kumstar used Slusser as a middleman in their dealings with Webber to obscure the true ownership of the guns. In particular, Slusser sold the parts to Webber for $18,900 and received a check in his name as payment. He was instructed to deposit that check in his own account and then to issue cashier's checks to Kelerchian and Kumstar for $9,450 each. Kelerchian then waited nine months before paying H&K for the weapons. The intention, the government argued, was to make it appear as though the Sheriff's Department bought and retained control over the weapons. Further, Kelerchian waited

months to pay H&K to distance himself from the Webber sale, making it look as though he was unaware of the connection between the money sent to H&K and the check he received from Slusser. The wire fraud theory thus holds together.

But the government's explanation of its theory raised a new issue in the law of wire fraud. The government must show that the scheme to defraud was aimed at some form of money or property. *Cleveland v. United States*, 531 U.S. 12, 19 (2000).[2] In his opening appellate brief, Kelerchian argued that the wire fraud the government alleged was not a transaction distinct from the sale of the fraudulently obtained machinegun parts to Webber. The government responded that the wire fraud was complete as soon as the defendants sent the purchase packets with fraudulent statements to H&K, so that the later sale of the parts was a distinct offense. We agree with that point, but Kelerchian argued in his reply brief that the government's solution to the distinct-transaction problem posed a different fatal problem for the money-laundering conspiracy charge. Submitting the fraudulent statements to H&K to obtain the machineguns, Kelerchian argued, did not amount to wire fraud because Kelerchian and his co-conspirators did not deprive anyone of a "property interest" as required under *Cleveland*.

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[2] Although *Cleveland* and other Supreme Court cases establishing this rule involve the mail fraud statute, 18 U.S.C. § 1341, as opposed to the wire fraud statute, we have explained that "the elements of wire fraud under 18 U.S.C. § 1343 directly parallel those of the mail fraud statute" so that "cases construing one are equally applicable to the other." *United States v. Leahy*, 464 F.3d 773, 786 (7th Cir. 2006).

This property interest issue takes us to the edges of federal mail and wire fraud law and poses Kelerchian's strongest challenge to any of his convictions. In *McNally v. United States,* the Supreme Court explained that the federal mail fraud statute is "limited in scope to the protection of property rights." 483 U.S. 350, 360 (1987), *superseded by statute on other grounds*, 18 U.S.C. § 1346. To establish mail fraud, the government thus must "prove as an element of the offense . . . that the defendant deprived the victim of a property right." *United States v. F.J. Vollmer & Co.*, 1 F.3d 1511, 1520 (7th Cir. 1993), citing *McNally*, 483 U.S. at 359–61. Kelerchian argues that the government failed to identify a victim whom the defendants intended to deprive of a recognized property interest. He argues that neither the ATF's regulatory interest in the transfer of firearms nor H&K's interest in the legal disposition of its guns qualifies. The government's interest will not suffice, but H&K's interests will support the wire fraud theory.

As discussed above, *F.J. Vollmer & Co.* involved a scam in which an Illinois National Guard captain, Kenneth Nevius, defrauded a weapons manufacturer into selling him restricted guns under the pretense that he was purchasing the weapons "in connection with" his official duties. 1 F.3d at 1514. Nevius then resold the weapons to F.J. Vollmer & Company, a business dealing in the sale of firearms. *Id.* at 1513-14. Nevius and F.J. Vollmer were convicted of mail fraud in violation of § 1341. F.J. Vollmer argued that the mail fraud charge was insufficient because it "did not allege that the government had a property interest in the guns as is required by *McNally*." *Id.* at 1520. As in this case, at F.J. Vollmer's trial "the government

did not allege in the indictment, present evidence at trial, nor was the jury instructed on the deprivation of a property right." *Id.*

We agreed with F.J. Vollmer, concluding that the government was not deprived of a qualifying property interest. *Vollmer*, 1 F.3d at 1521. The government argued that its "right to control the disposition of . . . firearms is a property interest" of which Nevius and F.J. Vollmer deprived it through mail fraud. We rejected this argument, holding that "the government's *regulatory interests* are not protected by the mail fraud statute." *Id.* (emphasis added), citing, among other cases, *United States v. Bruchhausen*, 977 F.2d 464 (9th Cir. 1992).

We conclude here, however, that the government proved that Kelerchian and his co-conspirators committed wire fraud against H&K, which had a sufficient property interest of which they schemed to deprive it. Kelerchian finds support for his position, though, in the Ninth Circuit's *Bruchhausen* decision. We consider first that case and then decisions of this court and the Second Circuit that adopt a broader view of property interests when parties are induced to enter into illegal sales, especially of weapons.

In *Bruchhausen*, the defendant was charged with a scheme to defraud American manufacturers by buying sophisticated technology, promising falsely that the purchased equipment would be used only in the United States, and then smuggling the goods to countries in the Soviet Bloc. "Representatives from these companies testified that they would never have sold to Bruchhausen had they known the truth." 977 F.2d at 466. On appeal the Ninth Circuit held that Bruchhausen had not defrauded the manufacturers

of "property interests" within the meaning of the wire fraud statute. The court reasoned: "The manufacturers received the full sale price for their products," and "While they may have been deceived into entering sales that they had the right to refuse, their actual loss was in control over the destination of their products after sale." *Id.* at 467. The Ninth Circuit wrote that while "the manufacturer may have an interest in assuring that its products are not ultimately shipped in violation of law . . . that interest in the disposition of goods it no longer owns is not easily characterized as property." *Id.* at 468. Accordingly, the court held "that the interest of the manufacturers in seeing that the products they sold were not shipped to the Soviet Bloc in violation of federal law is not 'property' of the kind Congress intended to reach in the wire fraud statute." *Id.*

If that view were correct, then it would be difficult to affirm Kelerchian's money-laundering conspiracy conviction. *Bruchhausen* is not the final word on the issue, however. The government's Rule 28(j) letter cited cases from this circuit and the Second Circuit that support its view that Kelerchian and the others defrauded H&K of a property interest sufficient to allow use of wire fraud as "unlawful activity" to support Kelerchian's money-laundering conspiracy conviction, and that view is consistent with the way the jury instructions and the government's closing argument framed Count IX for the jury at trial.

We start with *United States v. Leahy*, 464 F.3d 773 (7th Cir. 2006), in which defendant Duff was convicted of defrauding the City of Chicago. A Chicago ordinance required the city to establish a goal of awarding not less than 25% of the annual dollar value of all city

contracts to qualified minority-owned businesses and 5% of the annual dollar value to qualified women-owned businesses, and set aside certain contracts for such businesses. *Id.* at 778. To take fraudulent advantage of the ordinance, Duff, a white man, obscured the ownership and control of two of his businesses to give the city the false impression that his mother and a black man were running them. *Id.* at 779-81. Through this fraud, Duff was able to win lucrative contacts with the city. Duff and others were eventually convicted of wire fraud, in addition to other offenses. The defendants appealed, arguing that the indictment could not support a conviction under the applicable mail and wire fraud statutes because "the only loss Chicago suffered was to its regulatory interests—an intangible right unprotected by these statutes." *Id.* at 786.

We rejected that argument. We noted that the object of the wire fraud was in fact property—money paid under contracts. *Id.* at 787-88. We distinguished *Cleveland*, where the Supreme Court held that for mail-fraud purposes, Louisiana did not have a property interest in state permits or licenses it issued for video poker machines. *See* 531 U.S. at 21–23. Unlike the fraud to obtain the licenses in *Cleveland*, in *Leahy* "the fraud was committed both against Chicago as a regulator and also against the city as a property holder." 464 F.3d at 788. This "scheme precisely and directly targeted Chicago's coffers and its position as a contracting party." *Id.* We concluded that Chicago suffered a property loss "in that it paid for a service provided by [a minority-owned business] or [women-owned business] that it did not receive." *Id.* We affirmed the mail and wire fraud convictions.

Leahy is not precisely on point—the fraud there was aimed at the buyer, not the seller, of products and services—but it is instructive. First, in both cases, the object of the fraud was property—money in *Leahy* and here machineguns. Second, in both cases one party to a contract deceived the other to induce it to enter into the contract. In *Leahy* the city was deceived into contracting with businesses controlled by Duff rather than by minorities or women, as the ordinance called for. Here, H&K was induced to sell machineguns to a buyer it thought was lawful (the Sheriff's Department) when the real buyers were the defendants, who could not lawfully buy the machineguns. Kelerchian's fraud deprived H&K of the ability to ensure that its products were sold in compliance with federal law. As Kelerchian points out, H&K was paid the full price for the machineguns. In *Leahy*, too, however, the city received the services it paid for, yet not from the sorts of businesses it thought it was paying for them. 464 F.3d at 788. We treated that sort of loss as sufficient, noting that the object of the fraud "was money, plain and simple, taken under false pretenses from the city its role as a purchaser of services." *Id.*

The government also finds support from Second Circuit cases. In *United States v. Schwartz*, the defendants purchased night-vision equipment from Litton Industries. 924 F.2d 410 (2d Cir. 1991). The Arms Export Control Act restricted the sale of this equipment to certain countries (including Argentina, then fighting the United Kingdom in the Falklands War), so Litton sought assurances that the defendants would not export purchased equipment to restricted countries. *Id.* at 414. The sales contracts required the buyers to

assure that they would comply "with all laws and regulations pertaining to the export of night vision goggles." *Id.* As the defendants placed additional orders, Litton sought further assurances and documentation that the equipment was not destined for restricted countries. The defendants signed the contracts and promised to abide by applicable laws but then exported regulated night-vision goggles to Argentina, where they were used against British forces. *Id.* The defendants were convicted of wire fraud, among other crimes. *Id.* at 420.

In challenging their wire fraud convictions for the Argentine sales, the defendants argued that Litton did not suffer any economic harm and thus could identify no qualifying property interest. *Id.* The Second Circuit upheld the convictions because the defendants' "misrepresentations went to an essential element of the bargain between the parties and were not simply fraudulent inducements to gain access to Litton equipment." *Id.* at 421. The court explained that "the fact that Litton was paid for its night vision goggles does not mean that Litton received all it bargained for. In fact, it did not." *Id.* The "defendants' conduct deprived Litton of the right to define the terms for the sale of its property . . . and cost it, as well, good will because equipment Litton . . . sold was exported illegally." *Id.*

In later cases, the Second Circuit has clarified the test it applied in *Schwartz*. The court has acknowledged that "[t]he 'right to control one's assets' does not render every transaction induced by deceit actionable under the mail and wire fraud statutes." *United States v. Binday*, 804 F.3d 558, 570 (2d Cir. 2015), quoting *United States v. Wallach*, 935 F.2d 445, 463 (2d Cir.

1991). Its "cases have drawn a fine line between schemes that do no more than cause their victims to enter into transactions they would otherwise avoid—which do not violate the mail or wire fraud statutes—and schemes that depend for their completion on a misrepresentation of an essential element of the bargain—which do violate the mail and wire fraud statutes." *Id.*, quoting *United States v. Shellef*, 507 F.3d 82, 108 (2d Cir. 2007). This is a fine distinction, but Kelerchian and his co-conspirators fell on the wrong side of it, as the defendants in *Schwartz* did with their fraud to obtain arms for illegal export.

In *Shellef*, for example, the defendants persuaded a company to sell them hundreds of thousands of pounds of a highly regulated chemical by falsely representing that they would not resell the solvent within the United States. 507 F.3d at 89-90. The court distinguished *Schwartz* by focusing on the different misrepresentations made in the cases. In *Shellef*, the misrepresentations induced the seller only "to enter into a transaction it would otherwise have avoided," whereas in *Schwartz*, the defendants had misrepresented "an essential element of the bargain." *Id.* at 109, quoting *Schwartz*, 924 F.2d at 421. In explaining this distinction further, the Second Circuit later said that it "reject[s] application of the mail and wire fraud statute where the purported victim received the full economic benefit of its bargain," and upholds "convictions . . . where the deceit affected or the victim's economic calculus or the benefits and burdens of the agreement." *Binday*, 804 F.3d at 570.

The Second Circuit opinions and our opinion in *Leahy* show that schemes to defraud a party into entering a contract it would not enter if it had been

told the truth, but where the fraudsters deliver the agreed money, goods, or services are close to the edge of the reach of the wire and mail fraud statutes. We do not attempt here, in this money-laundering conspiracy case, to establish a comprehensive guide on the scope of the mail and wire fraud statutes. We concentrate on the case before us, focused on illegal imports of highly regulated and dangerous machineguns. On the strength of our decision in *Leahy* and the Second Circuit's in *Schwartz*, which is remarkably close to our facts and persuasive, we conclude that the government proved that the scheme to defraud H&K involved a sufficient property interest to support using wire fraud as the underlying unlawful activity for a money-laundering conspiracy charge.

As in *Leahy*, the scheme to defraud induced one party here to contract with others who were not legally entitled to enter into the contract. And as in *Schwartz*, this case involves much more than the seller's preferences about the terms of the deals. As in *Schwartz*, an arms manufacturer was defrauded into making a sale to buyers who were legally prohibited from buying the goods. We agree with the Second Circuit's explanation in *Schwartz* that, in such a deal, the fact that the seller was paid full price does not mean it received all it bargained for and is not decisive. The *Bruchhausen* view fails to take into account the damage to goodwill from the illegal sale and, we add, the legal and regulatory risk that the seller faces in such deals. If Litton (in *Schwartz*) and H&K (here) had known the true facts of the sales, those companies would have faced criminal liability. Even the investigation of the criminal transactions posed costs and legal risks for the sellers.

In the language of the Second Circuit, the destination of the machineguns—a law enforcement agency—was an "essential element of the bargain" between H&K and the supposed buyer. Without the Sheriff's Department stationery, Kelerchian and the others could not even have approached H&K about buying these machineguns. The sale *required* submitting the ATF forms and an application certifying that the purchaser of the guns was a law enforcement agency. Although H&K did not lose any money in the machinegun transaction itself, by illegally selling firearms it opened itself up to risks it did not bargain for: risks of liability, of increased government scrutiny, and negative publicity, all of which in turn could jeopardize future sales. These are serious repercussions central to H&K's calculus of the "benefits and burdens" of this transaction.

Comparing the Ninth Circuit's decision in *Bruchhausen* with the Second Circuit's decisions in *Schwartz* and its progeny, we think the Second Circuit has the better reading of the mail and wire fraud statutes. Although "property" in these statutes is not broad enough to encompass intangible interests like government regulatory interests, "property" is not so narrow as to exclude any tangible good or service for which fair market value is paid. In *Bruchhausen*, the Ninth Circuit rejected the idea that a seller could have a cognizable property interest "in assuring that its products are not ultimately shipped in violation of law" because that would mean the manufacturer's interest is "in the disposition of goods it no longer owns." 977 F.2d at 468. We respectfully disagree. The seller's interest is not only in shipping goods legally, but also in not selling products in violation of federal

law. That interest exists before the seller relinquishes ownership. As the concurrence in *Bruchhausen* explained: "The strictures an owner puts on his willingness to sell an item are not mere ephemera. When a prospective buyer lies in order to evade those strictures, a fraud has been committed upon the owner of the item just as surely as if the buyer had issued a rubber check." *Id.* at 469 (Fernandez, J., concurring).

H&K sold the machineguns to Kelerchian and his coconspirators only because of their deceit. Because this fraud deprived H&K of a cognizable property interest in avoiding illegal sales of its products, the government established a violation of § 1343. This is as far as we need to go to affirm Kelerchian's conviction on conspiracy to launder money in violation of § 1957.

Kelerchian also argues that the government failed to prove that he conspired "to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of" the wire fraud in the second machinegun purchase. *See* 18 U.S.C. § 1956(a)(1)(B)(i). Although such evidence is needed to sustain a § 1956 conviction, we need not decide whether the government proved this allegation. As discussed above, the jury expressly found Kelerchian guilty of conspiring to violate both § 1956 and § 1957. That means that Kelerchian must show that the evidence was insufficient under either theory to overturn his conviction on Count IX. Because a rational jury could find Kelerchian guilty of conspiracy to violate § 1957, we affirm his conviction on Count IX.

C. Jury Instructions

1. Standard of Review

Kelerchian raises several objections to the jury instructions. "We review *de novo* whether jury instructions accurately summarize the law, but give the district court substantial discretion to formulate the instructions provided that the instructions represent a complete and correct statement of the law." *United States v. Edwards*, 869 F.3d 490, 496 (7th Cir. 2017), quoting *United States v. Daniel*, 749 F.3d 608, 613 (7th Cir. 2014). We review jury instructions as a whole and in context. *United States v. al-Awadi*, 873 F.3d 592, 598 (7th Cir. 2017).

2. Conspiracy Instructions

Kelerchian challenges the jury instructions on three distinct conspiracy charges. Count I alleged that he conspired to make false statements regarding the records required to be kept by a licensed firearms dealer. Making the false statements violated 18 U.S.C. § 924(a)(1)(A), which is the substantive crime. Similarly, making false statements to the ATF in violation of 18 U.S.C. § 1001 was the substantive crime of Count III's conspiracy charge, and money laundering in violation of § 1956 and § 1957 was the substantive offense in Count IX's conspiracy charge.

To establish a conspiracy to commit an offense against the United States in violation of § 371, the government must prove "(1) an agreement to commit an offense against the United States; (2) an overt act in furtherance of the conspiracy; and (3) knowledge of the conspiratorial purpose." *United States v. Soy*, 454 F.3d 766, 768 (7th Cir. 2006). The government

must show only "that the conspirators agreed that the underlying crime be committed. . . . In other words, each conspirator must have specifically intended that some conspirator commit each element of the substantive offense." *Ocasio v. United States*, 136 S. Ct. 1423, 1432 (2016). "[T]he fundamental characteristic of a conspiracy is a joint commitment to an 'endeavor which, if completed, would satisfy all the elements of [the underlying substantive] criminal offense.'" *Id.* at 1429, quoting *Salinas v. United States*, 522 U.S. 52, 65 (1997) (alteration in original).

Kelerchian asked the district court to instruct the jury that the government had to prove every element of the substantive offenses underlying the § 371 charges. The court declined to give that instruction and instead, for each of the three relevant conspiracy counts, gave the Seventh Circuit's Pattern Jury Instruction, telling the jurors that that government had to "prove each of the following elements beyond a reasonable doubt:"(1) that the conspiracy charged in the indictment existed; (2) that the defendant knowingly joined the conspiracy with the intent to advance it; and (3) that one of the conspirators committed an overt act to advance the charged conspiracy. *See* 7th Cir. Pattern Criminal Jury Instr. § 5.08(A) (2018). For each conspiracy count, the court also gave the jurors an Eighth Circuit Pattern Instruction at the Government's request: "To help you decide whether the defendant conspired to commit" the relevant substantive offense, the jury "should consider the elements of the [substantive offense]." The court then listed the elements of each of the substantive offenses and instructed the jurors that they "should consider these elements in

determining whether the defendant conspired to commit" the underlying offense at issue.

Kelerchian argues that these instructions misled the jurors into thinking that they were not obliged to consider the elements of the substantive offenses to convict Kelerchian on the conspiracy charges against him. In particular, he asserts that the use of "should" as opposed to "must" was problematic. He argues that the word "should" suggested that the jury could disregard entirely the elements of the substantive crimes in the conspiracy charges and convict on a finding that a generic conspiracy existed, rather than a conspiracy to commit a specific, defined crime. The problem was exacerbated, Kelerchian contends, by instructions saying that the government must prove the elements of conspiracy beyond a reasonable doubt.

These instructions were not erroneous. We have said before that "should" and "must" are interchangeable in this context: "[B]oth words are imperative when used to instruct a jury," and "it is hardly plausible that a jury would reach a different verdict based on the use of 'should' or 'must.'" *United States v. Davis*, 724 F.3d 949, 955 (7th Cir. 2013). That is how the district court used the terms throughout its instructions here. The jurors were instructed that, in deliberations, they "should" or "should not" do a variety of things that are mandatory or prohibited. For example, the jurors were told that they "should not consider the possible punishment for the defendant who is on trial," "should rely on your independent recollection of the evidence," "should not be unduly influenced by the notes of other jurors," and "should find the defendant not guilty" if the government failed to prove all elements of an alleged offense beyond a reasonable doubt. We

see no meaningful difference between the framing of these instructions and the instructions to which Kelerchian objects.

The instructions communicated correctly that to convict on the conspiracy counts, the jury needed to find that Kelerchian "agree[d] with [the] others to commit the acts which constitute the substantive offense[s]" defined by § 924(a)(1)(A), § 1001, and §§ 1956 and 1957. *United States v. Craig*, 573 F.2d 455, 486 (7th Cir. 1977). There was no error.

3. Demonstration Letter Instruction

Kelerchian also argues that the district court erroneously instructed the jury regarding ATF's requirements for demonstration letters. His issue is with Instruction 27, which said in relevant part:

> Machine guns may also be imported as dealer samples if a dealer can establish to the Bureau of Alcohol, Tobacco, Firearms and Explosives by specific information:
>
> - that there is a governmental customer requiring a demonstration of the weapons; and
> - the weapons are available to fill subsequent orders.
>
> In addition, the governmental entity must provide a letter expressing a need for a particular model or interest in seeing a demonstration of a particular weapon.
>
> If a dealer requests more than one machine gun of a particular model, he must also establish his need for the quantity of samples sought to be imported.

Kelerchian contends that this instruction selectively pulled a phrase from 27 C.F.R. § 479.112(c), which governs the registration of imported firearms, including those acquired pursuant to demonstration letters, to create the erroneous impression that "dealer sales samples required a demonstration of the weapons" to take place. The government responds that Kelerchian is focusing on the wrong regulation. Instruction 27 addressed 27 C.F.R § 479.105, which applies to the transfer, rather than the importation, of machineguns, and subsection (d) specifically deals with demonstration letters. In short, § 479.112(c) applies to importation of firearms for demonstrations and § 479.105(d) applies to domestic transfers of machineguns for the same purpose. Kelerchian was alleged to have conducted dealer sample purchases involving the importation of machine guns only in Count IV. The remaining counts involved domestic transfers.

Regardless of which regulation Instruction 27 is based on, Kelerchian's challenge fails because the instruction did not say that the dealer must actually perform a demonstration. It said that a dealer must show "that there is a governmental customer requiring a demonstration." Another instruction told the jury: "The law does not require a dealer who receives a machine gun for use as a sale sample to do a demonstration of the machine gun." The instructions as a whole correctly stated the law.

D. Closing Argument Issues

Kelerchian also argues that the government committed prosecutorial misconduct and improperly amended the indictment. Neither argument is persuasive.

1. Prosecutorial Misconduct

We review claims of prosecutorial misconduct in two steps. "First, we determine whether the prosecutor's comments were improper standing alone. Second, we ask whether the remarks in the context of the whole record denied the defendants the right to a fair trial." *United States v. Durham*, 766 F.3d 672, 684 (7th Cir. 2014), citing *United States v. Bell*, 624 F.3d 803, 811 (7th Cir. 2010). To evaluate the relevant statements in context to determine whether they deprived a defendant of a fair trial, we consider "1) the nature and seriousness of the misconduct; 2) the extent to which the comments were invited by the defense; 3) the extent to which the prejudice was ameliorated by the court's instruction to the jury; 4) the defense's opportunity to counter any prejudice; and 5) the weight of the evidence supporting the conviction." *United States v. Common*, 818 F.3d 323, 333 (7th Cir. 2016).

At trial, Kelerchian did not object to the prosecution's arguments in closing that he now argues are improper. We therefore review only for plain error. "On plain-error review, we may reverse if: (1) an error occurred, (2) the error was plain, (3) it affected the defendant's substantial rights, and (4) it seriously affected the fairness, integrity, or public reputation of the proceedings." *United States v. Pierson*, 925 F.3d 913, 919 (7th Cir. 2019), citing *United States v. Olano*, 507 U.S. 725, 732-38 (1993). Together, these inquiries mean that Kelerchian "must demonstrate that the comments at issue were 'obviously' or 'clearly' improper . . . [such] that not only was [he] deprived of a fair trial, but also that the outcome of the trial probably would have been different absent the prosecution's remarks." *United States v. Hills*, 618 F.3d

619, 640 (7th Cir. 2010) (internal citation omitted). In essence, the question is whether the argument was so egregious that the trial judge was required to intervene without a defense objection.

Kelerchian argues that the government's rebuttal improperly appealed to the jurors' emotions and invited them to consider the societal consequences of their verdict. Some background is needed on relevant testimony solicited during trial. There was testimony throughout trial that the machineguns Kelerchian and his co-conspirators requested for dealer sales samples were not appropriate for use by the Sheriff's Department. They included a "multipurpose belt-fed machine gun . . . typically used on top of a Humvee or maybe on the door of a helicopter" and a "light-weight, belt-fed machinegun," "designed for the Navy SEAL teams for warfare." Testimony of this nature helped show that the dealer sales sample letters were fraudulent because the Sheriff's Department had no use for the sample firearms.

In closing, defense counsel responded by pointing out that the ATF agreed to allow H&K to provide these weapons to Kelerchian to demonstrate to the Sheriff's Department:

> I want to talk now about the demonstration letters. Count 3 is charged as a conspiracy. Counts 4 through 7 are charged as making the actual statement, the false statement. Every letter at issue in this case says, well, basically the same thing . . . approximately seven letters on the Lake County Sheriff's Department letterhead requesting firearms demonstrations of machine guns from Kelerchian knowing the same to contain a materially false, fictitious, and fraudulent statement because Vahan Kelerchian very well knew in fact, no demonstration was going to occur.
>
> First of all, ladies and gentlemen, every single one of those letters was accepted by the ATF, was signed off by numerous people from the ATF as justifying the transfer of those guns. This whole discussion about these guns not being appropriate for the Lake County Sheriff's Department is completely undercut by ATF signing off and indicating that, in fact, these are the kinds of weapons that are justifiable in a demonstration letter.

Defense counsel emphasized the point a second time in closing: "ATF found [these] letter[s] acceptable."

> In rebuttal, the government responded:
>
> There is no way on earth that these types of guns, any department would require a demonstration because they're belt-fed machine guns . . . [T]hese guns are so far outside the bounds of what regular law enforcement uses that there is no legitimate reason to have them demonstrated. They're belt-fed machine

> guns with ammunition that is three inches long. There's no reason on earth why any law enforcement agency would want them to be demonstrated. Mr. Kelerchian wants those. He told you that, but there's no reason an agency would want them demonstrated. . . . That's why the demonstration letters are utter nonsense because the weapon is so far out of bounds it doesn't make any sense. Under their rationale, the Lake County Sheriff's Department, Mr. Kelerchian, could demonstrate a tank, and he would get to keep it. How absurd is that? The law isn't meant to function in absurdities. It's meant to be applied by rational people such as you to determine what's acceptable.

Kelerchian argues that the prosecution's use of the word "acceptable" invited the jury to decide what is socially acceptable as opposed to what is legal. According to the government, its use of the term "acceptable" in context was meant only to remind the jury that its job was to determine whether the letters requesting demonstrations were legitimate. In rejecting a similar claim of plain error in closing argument, we have noted that "[l]awyers sometimes are not as precise as they should be when giving extemporaneous closing arguments." *United States v. Thomas*, F.3d ___, ___, 2019 WL 3490675, at *6 (7th Cir. Aug. 1, 2019). This jury was instructed to focus on the instructions and to remember that lawyers' arguments are not evidence. The government's use of the ambiguous term "acceptable," which did not even draw an objection, did not deny Kelerchian a fair trial or rise to the level of plain error.

2. Constructive Amendment

A constructive amendment of an indictment occurs in violation of the Fifth Amendment when the jury is allowed "to convict for an offense outside the scope of the indictment." *Pierson*, 925 F.3d at 919-20. Kelerchian argues that the government's closing attempted to change its theory of liability as to the demonstration letter charges in Counts III through VII. The government argued in rebuttal:

> In Instruction Number 27, it tells you how you get these guns into the country for purposes of a demonstration. You know, it's sales samples. That's what it's called, dealer samples. There's a couple requirements. It's pretty loose. I'll grant you that. And there certainly doesn't have to be any demonstration—and I mentioned that to you in the first part of my closing—but whether or not one occurs is sort of helpful to know whether or not they intended one. And it says that you have to have a document with specific information that there was a governmental customer requiring a demonstration of the weapon.

Again, there was no objection to this argument. On appeal, Kelerchian argues that the reference to "'a document with specific information' . . . led the jury to underst[and] that the 'document' the government referred to in relation to Instruction No. 27, [was], in fact the [demonstration] letters referenced in Counts 3–7." Although Kelerchian does not spell this out clearly, he implies that the government changed its theory for Counts III through VII, arguing now that the "false statements" were in an unspecified document

submitted to H&K as opposed to in the demonstration letters as alleged in the indictment.

We see no error, let alone a plain error. The government was always clear that the demonstration letters were the basis for Counts III through VII. They were the documents that contained the "specific information" asserting "that there is a governmental customer requiring a demonstration of the weapons." The government's closing did not indicate otherwise simply because in this excerpt it uses the term "document" as opposed to "demonstration letter."

The judgment of the district court is

AFFIRMED.

AMENDED JUDGMENT IN A CRIMINAL CASE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA (FEBRUARY 12, 2018)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

VAHAN KELERCHIAN,

Defendant.

Case Number: 2:13CR66-001

USM Number: 12810-027

Kerry C. Connor, P. Jeffrey Schlesinger
Defendant's Attorneys

Date of Original Judgment Order: 2/7/2018.

Amended on 2/12/2018 to correct administrative error on page 3, under C.R. 35(a): 2-7 is replaced by 3-7.

THE DEFENDANT was found guilty by Jury on counts 1, 2, 3, 4, 5, 6, 7, and 9 of the Indictment on October 15, 2015.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

Title, Section & Nature of Offense	Date Offense Ended	Counts Number(s)
18:371 Conspiracy to Provide False Information to a Federal Firearms Licensee	January 2010	1
18:371 Conspiracy To Defraud Food and Drug Administration	September 2010	2
18:371 Conspiracy to Make False Statements-Demonstration Letters	March 28, 2010	3
18:1001 Making False Statements to a Federal Agency	March 28, 2010	4-7
18:1956(h) Conspiracy to Launder Monetary Instruments and Forfeiture	January 2010	9

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. The defendant has been found not guilty on count 8.

IT IS ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of any material change in economic circumstances.

February 5, 2018
Date of Imposition of Judgment

/s/ Joseph S. Van Bokkelen
Signature of Judge

Joseph S. Van Bokkelen
United States District Judge
Name and Title of Judge

Date: February 12, 2018

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 100 months.

- 60-month term as to each of the following counts: Count 1, Count 3, Count 4, Count 5, Count 6, and Count 7. Each 60-month term for this group of counts is to be served concurrently with the other counts in this group.
- A 60-month term as to Count 2: 40 of those months are to be served consecutively as to Count 1 and Counts 3-7, and 20 of those months are to be served concurrently with Count 1 and Counts 3-7.
- A 40-month sentence as to Count 9, to be served consecutively as to Count 1 and Counts 3-7, but concurrently with Count 2.

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be designated to serve his sentence at Fort Dix, NJ.

That the defendant be given credit for time served while awaiting sentencing.

The defendant is placed into the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered _____ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

By: _____
Deputy United States Marshal

SUPERVISED RELEASE

After Mr. Kelerchian's incarceration is over, Mr. Kelerchian will be placed on supervised release for a period of 1 year. His supervised release will have conditions of supervision as stated below, except that conditions 19, 20, 21 and 22 will cease to be in effect once all of Mr. Kelerchian's financial obligations as related to this case are fulfilled.

1. Mr. Kelerchian may not commit another federal, state, or local crime.

2. Mr. Kelerchian may not unlawfully use, possess, or distribute a controlled substance.

3. There's no evidence that Mr. Kelerchian is in danger of drug abuse. Accordingly, the mandatory drug testing condition is suspended.

4. Mr. Kelerchian must cooperate in the collection of his DNA sample as directed by the probation officer if the collection of such a sample is authorized pursuant

to section 3 of the DNA Analysis Backlog Elimination Act of 2000.

5. Within 72 hours of release from the custody of the Bureau of Prisons, Mr. Kelerchian must report between the hours of 8:00 a.m. and 4:30 p.m. to the probation office in the district to which he is released.

6. Mr. Kelerchian may not knowingly be outside the judicial district between the hours of 10:00 p.m. and 6:00 a.m. without the Court's or probation officer's permission. In any case, Mr. Kelerchian may not knowingly travel more than 50 miles outside the judicial district without the Court's or probation officer's permission. The probation office will provide Mr. Kelerchian a map describing the boundaries of the judicial district at the start of supervision. After 12 months of Mr. Kelerchian being placed on supervision, the probation office must submit a report to the Court indicating whether the travel restrictions should be lifted or modified.

7. Mr. Kelerchian must report to the probation officer in the manner and frequency as reasonably directed by the probation officer. However, he may be required to report in person at the probation office only between 8:00 a.m. and 4:30 p.m. on the days the probation office is open for business.

8. In all matters relating to his conditions of supervision, Mr. Kelerchian must truthfully answer the probation officer's questions. This condition does not prevent Mr. Kelerchian from invoking his Fifth Amendment privilege against self-incrimination.

9. Mr. Kelerchian must follow the instructions of the probation officer as they relate to the conditions of supervision. Mr. Kelerchian may petition the Court

for relief or clarification regarding a condition he believes has become unreasonable.

10. Mr. Kelerchian must live at a location approved by the probation officer.

11. If Mr. Kelerchian plans to change where he lives or anything about his living arrangements (for example, the people he lives with), he must inform the probation officer at least 14 days before the change. If informing the probation officer in advance is not possible due to unexpected circumstances, Mr. Kelerchian must inform the probation officer as soon as possible, and no later than 72 hours after the change.

12. If Mr. Kelerchian plans to change where he works or anything about his work (for example, his position or his job responsibilities), Mr. Kelerchian must inform the probation officer at least 14 days before the change. If informing the probation officer in advance is not possible due to unexpected circumstances, Mr. Kelerchian must inform the probation officer within 72 hours after the change.

13. Mr. Kelerchian must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.

14. Mr. Kelerchian may not own or possess a firearm, ammunition, destructive device, or any other dangerous weapon. A dangerous weapon is an instrument that is specially designed as a weapon.

15. Mr. Kelerchian may not knowingly meet, communicate, or otherwise interact with a person whom he knows to be engaged, or planning to be engaged, in criminal activity.

16. Between the hours of 8:00 a.m. and 9:00 p.m., Mr. Kelerchian must permit a probation officer to visit him at home or any other reasonable location and must permit confiscation of any contraband observed in plain view by the probation officer. A visit between the hours of 9:00 p.m. and 8:00 a.m. may be conducted only when the probation officer has a reasonable belief that Mr. Kelerchian has violated a condition of supervision and that a visit during those hours would reveal information or contraband that would not be revealed by a visit at any other time.

17. If any portion of the special assessment remains unpaid when Mr. Kelerchian is released from prison, he must pay it within 12 weeks of his release, or, if financially unable to fulfill this requirement, he must arrange a payment schedule with the probation office.

18. If a fine is imposed, and if any portion of the fine remains unpaid when Mr. Kelerchian is released from prison, he must pay the fine in monthly installments of $1,000 until it is paid in full.

19. Mr. Kelerchian may not incur new credit charges or open additional lines of credit without the approval of the probation officer.

20. Upon the probation officer's request, Mr. Kelerchian must provide the officer with any financial information regarding Mr. Kelerchian's ability to pay a fine, and must authorize the release of any financial information. The request must be in writing and prompted by Mr. Kelerchian's failure to comply with a payment schedule ordered for a period of 60 consecutive days, and the request must describe the specific financial information needed for determining Mr. Keler-

chian's current ability to pay. The probation office will share Mr. Kelerchian's financial information with the U.S. Attorney's Office.

21. Mr. Kelerchian must notify the probation officer within 72 hours of any material change in his economic circumstances that might affect his ability to pay any Court-ordered financial obligation.

22. Mr. Kelerchian may not transfer, give away, sell, or otherwise convey any asset $500 without the approval of the probation officer.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in this judgment.

Total Assessment	Total Fine	Total Restitution
$800	$100,000	NONE

The defendant shall make the special assessment payment payable to Clerk, U.S. District Court, 5400 Federal Plaza, Suite 2300, Hammond, IN 46320. The special assessment payment shall be due immediately.

FINE

A fine in the amount of $100,000 is imposed.

RESTITUTION

No restitution imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

FORFEITURE

The defendant shall forfeit $28,200.00 in United States Currency.

ACKNOWLEDGMENT OF SUPERVISION CONDITIONS

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I have reviewed the Judgment and Commitment Order in my case and the supervision conditions therein. These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

_____
Defendant

_____
Date

_____
U.S. Probation Officer/
Designated Witness

_____
Date

OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT OF INDIANA, HAMMOND DIVISION DENYING MOTION TO DISMISS (APRIL 28, 2017)

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA HAMMOND DIVISION

UNITED STATES OF AMERICA

v.

VAHAN KELERCHIAN

Case No.: 2:13-CR-66 JVB

Before: Joseph S. VAN BOK.KELEN, United States District Judge

I.

Defendant Vahan Kelerchian was tried before a Jury on criminal allegations set out in a nine-count indictment. The charges were as follows:

- Count 1: Conspiracy to make false statements to a federal firearms licensee;
- Count 2: Conspiracy to defraud the FDA of its regulatory function regarding restricted laser sights;
- Count 3: Conspiracy to make false statements in demonstration letters;

- Counts 4-7: Making of the false statements in demonstration letters
- Count 8: Bribery; and
- Count 9: Conspiracy to commit money laundering.

The Jury found Kelerchian guilty of all counts except Count 8. As to Count 9, the Court took under advisement Kelerchian's motion for acquittal. Following the trial, and after some extensions of deadlines, the parties submitted briefs regarding their positions.

Kelerchian claims three grounds for acquittal: (1) the government did not present evidence of concealment or disguise as required by 18 U.S.C. § 1956; (2) there was no evidence that Kelerchian received any proceeds of unlawful activity as required by *United States v. Santos*, 553 U.S. 507 (2008); and (3) the facts regarding the underlying wire fraud charge and the facts regarding the money laundering allegations have been merged into one offense. Kelerchian also submits that Count 9 is confusing and vague, compounding the legal problems identified in his brief.

"A motion for judgment of acquittal should be granted only if there is insufficient evidence to sustain the jury's finding." *United States v. O'Hara*, 301 F.3d 563, 569 (7th Cir. 2002). Of course, the evidence has to be viewed in the light most favorable to the government and the conviction may be overturned only "if the record contains no evidence on which a rational jury could have returned a guilty verdict." *Id.* at 569-570.

II.

Kelerchian stresses that Count 9 is "written in a convoluted and vexing manner." The plain-English advocates would have no problem agreeing but convoluted and vexing verbiage in an indictment does not by itself nullify a criminal charge. If a count states the elements of the crime, informs the defendant of the nature of the charge, and enables him to plead the judgment as a bar against future prosecutions for the same offense, the charge is legally sufficient. *United States v. Agostino*, 132 F.3d 1183, 1189 (7th Cir. 1997). Here, Count 9 falls within these parameters, even though one may have to draw a diagram to figure it out. But then again, the convoluted language of the statutes upon which the count is based may be the wellspring of the problem.

Moreover, insofar as Kelerchian may now be challenging the phrasing of Count 9, the challenge is belated. Under Federal Rule of Criminal Procedure 12(b)(3)(B), motions challenging an indictment must come before trial. In any case, the government's filing of a bill of particulars has mooted any objections to the sufficiency of Count 9.

III.

Kelerchian argues that the government did not present evidence of concealment or disguise as required by 18 U.S.C. § 1956 to sustain a charge for money laundering. Kelerchian's argument boils down to this: since it was rather easy to trace the funds that were moved around to their original source, the government failed to prove that there was any attempt to conceal or disguise the illegal money.

Count 9 charged a single conspiracy with two objects: to violate 18 U.S.C. § 1956(a)(1)(B)(1) (laundering of monetary instruments) and to violate § 1957 (engaging in monetary transactions in property derived from specified unlawful activity). In particular, Count 9 alleged that Kelerchian conspired with others to violate § 1956 by engaging in a financial transaction with the intent to promote the commission of wire fraud and knowing that the transaction was designed to conceal and disguise the proceeds of the wire fraud. Count 9 also alleges that the second object of the conspiracy was to violate § 1957 by conducting money transactions with illegally derived money. As the verdict shows, the jury found that the government proved both objects of the conspiracy. (DE 183, Jury's Verdict at 9.)

The court agrees with the government that it presented sufficient evidence for a reasonable jury to find that Kelerchian was guilty of Count 9 as charged. The firearms transactions were structured in such a way that Ronald Slusser would be a middle man between Adam Webber and Kelerchian and the payments from Slusser to Kelerchian would appear as routine business transactions. In fact, the scheme worked because the seller of the machine guns, H&K, was in the dark about the real purchaser of the machine guns. Had it known that the guns weren't slated for the Lake County Sheriff's department, it would not have sold the guns. The fact that subsequently an investigator was able to retrace the path of the money changes nothing. As the government rightly observes, the statute requires only that proceeds be concealed, not that they be concealed well. *See United States v. Naranjo*, 634 F.3d 1198, 1210 (11th Cir. 2011). The Jury

believed the transactions were structured to cover up their real nature and there's nothing in the record to compel the Court to nullify their finding as to the conspiracy to violate § 1956.

Similarly, the evidence is sufficient as to the conspiracy to violate § 1957. Congress enacted § 1957 in hopes of keeping dirty money out of commerce so it has no value. It is true, as argued by Kelerchian that *United States v. Santos*, 553 U.S. 507 (2008), with a 4-4-1 vote, relying on the rule of lenity, held that "proceeds" must be interpreted to mean the profits from an underlying offense, not gross receipts. But following that decision, the Congress clarified that "proceeds" means "gross receipts" for offenses committed after May 20, 2009. 18 U.S.C. § 1956(c)(9). As a result, *Santos's* "net profits" definition of the proceeds applies only to money laundering transactions before May 20, 2009. Yet the conspiracy here spanned from February 2009 until January 2010. As the government points out in its brief, it proposed to include in the jury instructions a bifurcated definition of the term "proceeds," but Kelerchian ultimately settled for only the post May 20, 2009, definition. (*See* DE 178, Jury Instructions, No. 53, at 55 ("As to Count 9, the term "proceeds" means—any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.").) Hence, Kelerchian's argument that the Court misapplied the law is without basis as is his argument that there was no evidence of proceeds as a result of the transactions presented at trial.

IV.

Lastly, Kelerchian argues that a merger exists between the criminal activity that produced the proceeds in this case and subsequent transactions that give rise to the money laundering count. Both Kelerchian and the government agree that the acts that produce the proceeds being laundered must be distinct from the conduct that constitutes money laundering. However, they characterize the evidence on opposite sides of the spectrum.

Kelerchian maintains that the government advanced the theory that payment to Armament Services (Kelerchian's business) for the nine MP5s and the twelve MP3s were both wire fraud and money laundering, a merger, so to say, that the Supreme Court warned against in *Santos*, 553 U.S. at 516.

The government sees it differently: the wire fraud was accomplished once the machine guns arrived at the Lake County Sheriffs Department. At that point, the co-conspirators had total control over the firearms, and any subsequent financial transaction related to the machine guns involved proceeds derived from the completed wire fraud. That is, the subsequent sale of the machine guns to Weber and transfers of funds between Slusser and Kelerchian and between Kelerchian and H&K constituted money laundering.

The Court agrees with the government's characterization of the evidence, and, as a result, finds no basis for acquittal.

For these reasons and for the reasons laid out in the government's response brief, the Court denies Kelerchian's motion for acquittal (DE 208).

SO ORDERED on April 28, 2017.

/s/ Joseph S. Van Bokkelen
United States District Judge

OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT OF INDIANA, HAMMOND DIVISION (JUNE 22, 2015)

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA HAMMOND DIVISION

UNITED STATES OF AMERICA

v.

VAHAN KELERCHIAN

Case No.: 2:13-CR-66 JVB

Before: Joseph S. VAN BOK.KELEN, United States District Judge

A. Background

Defendant, Vahan Kelerchian, is the principle owner and operator of Armament Services International, Inc. Armament Services sells firearms and related items. Mr. Kelerchian holds a class 3 federal firearms license allowing him to deal in fully automatic weapons under the restrictions of the Gun Control Act. Mr. Kelerchian is accused of having conspired to violate various federal laws concerning the sale of firearms and related equipment. He is also accused of bribery, money laundering, and making false statements.

While the Indictment charges him with nine counts, only the first two are the subject of this order.

According to the government, Mr. Kelerchian and his co-conspirators, two former Lake County (Indiana) Sheriff's Department police officers, illegally acquired laser sights (Count 2) and H&K machine guns (Count 1). They resold the laser sights for profit; as for the machine guns, the defendants were interested only in the resale of their barrels, which are rare because only the military and law enforcement agencies may buy the machine guns.

The Indictment alleges that Mr. Kelerchian and his co-conspirators fraudulently represented to ATF and other federal firearms licensees that the machine guns were for the Lake County Sheriff's Department. To back up these claims, they used the Lake County Sheriff's Department letterhead, fabricated Lake County Sheriff's Department purchase orders, and issued false letters in the name of the Sheriffs Department. The machine guns were shipped to the Sheriffs department but taken by the co-conspirators to their homes. There they removed the barrels and sold them. Some of the barrels were sent to Mr. Kelerchian. On the basis of these allegations, the Grand Jury charged Mr. Kelerchian with conspiracy to provide false information to other federal firearms licensees in violation of 18 USC §§ 371 and 924(a)(1)(A).

Mr. Kelerchian is also accused of conspiring to buy for resale restricted laser sights, under the guise that the sights were being purchased for a law enforcement agency. Once the sights were shipped to the purported purchasers, they would be intercepted and the accomplices would divide the spoils. On the basis of these allegations, Mr. Kelerchian is charged in Count 2 with conspiring to defraud the Food and Drug Administration (FDA), an agency of the United States, by inter-

fering with and obstructing the lawful government function of the FDA. Mr. Kelerchian has moved to dismiss Counts 1 and 2 of the Indictment, arguing that they fail to state federal offenses. Also, as to Count 1, Mr. Kelerchian contends that, at worst, it should only be a misdemeanor charge.

B. Count 1

In urging the Court to dismiss Count 1, Mr. Kelerchian argues that there is no reporting requirement under § 924(a)(1)(A) for the transfer of individual unregulated firearm parts (presumably machine gun barrels). This argument overlooks the fact that Mr. Kelerchian's conspiracy did not merely entail the barrels; rather, the barrels came attached to the machine guns, and there was no other way to get them but through misrepresentation that the machine guns were being purchased by the Sheriff's department. Insofar as Mr. Kelerchian is alleged to have conspired to make false statements to a federally licensed firearms dealer, statements that were likely to deceive the dealer as to the lawfulness of the sale, when acquiring these machine guns, Count 1 states a valid charge. Count 1 is not so much about the dissemination of the machine guns as about making a false statement to mislead the dealer that the guns were intended for the Sheriff's department. While Mr. Kelerchian presents Grand Jury testimony from one of the co-conspirators that the machine gun receivers were to stay in the Sheriff's department and that Mr. Kelerchian was interested only in the barrels, this changes nothing. First, the Grand Jury was not required to believe such testimony, and, second, this is not what was ultimately charged in Count 1. Regardless, even if the conspiracy had been only about the barrels, because

they were imported into the country, as opposed to having been manufactured here, their sales were still restricted only to military or law enforcement agencies, and any attempt to deceive the federally licensed importer about the identity of the buyer violated § 924(a)(1)(A).

As the government suggests, Mr. Kelerchian's conduct is analogous to a straw purchaser of firearms, except that the roles of the characters are reversed. Whereas the straw purchaser claims to be buying firearms for himself, the conspiracy here was to claim that the firearms were bought for someone else, that is, the Sheriff's Department. If the facts prove to be otherwise, the jury will exonerate Mr. Kelerchian, but for the purposes of this order the ultimate facts are not material; rather, the Court only determines whether, as stated, Count 1 alleges a chargeable offense.

In the alternative, Mr. Kelerchian argues that, even if his conduct was controlled by the Gun Control Act, as a licensed dealer, he is subject only to misdemeanor punishment, as prescribed by 18 U.S.C. § 924 (a)(3).[1] However, that is not the law in this Circuit:

> The Supreme Court has made clear that when multiple criminal statutes apply to the same conduct, the prosecutor has the discretion to choose under which statute to proceed. Neither is a defendant entitled to choose

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[1] Under this section, "[a]ny licensed dealer . . . who knowingly . . . makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter . . . shall be fined under this title, imprisoned not more than one year, or both." 18 U.S.C. § 924(a)(3).

> the penalty scheme under which he will be sentenced. In this case, the prosecutor in the exercise of her prosecutorial discretion chose to charge [the defendant] under the felony provision of the statute and not the misdemeanor provision, and it was within her discretion to do so.

United States v. Rietzke, 279 F.3d 541, 545-46 (7th Cir. 2002) (dismissing defendant's argument that, since he was a firearms dealer, the government had to charge him under the misdemeanor provision of § 924(a)(3)) (citations and quotation marks omitted).

C. Count 2

Mr. Kelerchian argues that Count 2 does not state an offense pursuant to the "defraud" clause of 18 U.S.C. § 371 and must be dismissed. He notes that no statute restricts the sale of laser aiming devices to military or law enforcement agencies, and insists that applying § 371 in this case will open the doors for the government to prosecute just about anyone who interferes with a federal agency, no matter how slightly, no matter how remotely. Mr. Kelerchian recalls "Learned Hand [who] referred to the general conspiracy statute as the 'darling of the modern prosecutor's nursery,'" *Harrison v. United States,* 7 F.2d 259, 263 (2nd Cir. 1925), and questions how far the government's reach will be allowed.

Section 371 is far reaching indeed:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any

> purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

And as the number of agencies increases and their scope widens, so does the grasp of § 371.

Yet, political considerations aside, the question in this case is whether the government has sufficiently alleged that Mr. Kelerchian conspired with others to defraud an agency of the United States—the FDA—in any manner or for any purpose, and whether Mr. Kelerchian or his confederates did any act to effect the object of the conspiracy.

Mr. Kelerchian submits that the government's case is based upon the FDA's variance letter to Insight Technology, Inc., the manufacturer from whom Mr. Kelerchian and his cohorts purchased the laser sights. He argues that the government, not being able to rely upon any statute directly prohibiting the sales, is using the letter as if it were the criminal statute in force. In addition, Mr. Kelerchian maintains that the FDA's statutory and regulatory authority does not extend to purchasers, or at best, its authority is limited to civil enforcement.

But the government does not argue that the variance letter supplants the statute. Instead, it recognizes that the FDA has the authority and an interest in regulating radiation emitting products, such as laser sights. Its regulations have the force of law. For example, the FDA sets performance standards for laser products, 21 C.F.R. § 1040.10, and for specific purpose laser products, § 1040.11. Congress has backed up FDA's authority by making it unlawful—

> (1) for any manufacturer to introduce, or to deliver for introduction, into commerce, or to import into the United States, any electronic product which does not comply with an applicable standard prescribed pursuant to section 360kk of this title; [or]
>
> . . .
>
> (3) for any person to fail or to refuse to establish or maintain records required by this part or to permit access by the Secretary or any of his duly authorized representatives to, or the copying of, such records, or to permit entry or inspection, as required by or pursuant to section 360nn of this title.

21 U.S.C. § 360oo.

The FDA also has rules for variances from its general standards. 21 C.F.R. §§ 1040.4, 1002. As relevant here, the FDA granted a variance to Insight to sell Class IIIb lasers without various safety precautions to military and law enforcement agencies (the sound, light, and coloring meant to warn about high radiation levels is generally incompatible with combat or law enforcement use). In turn, Insight had to agree that it would restrict the sales of the laser aiming sights to law enforcement agencies and that each sale and promotional literature would include a statement about such restrictions. Moreover, Insight agreed to keep a record of laser sight buyers.

This scheme allows the FDA to oversee the safe application of radio emitting devices among civilians, while monitoring the sales of devices without standard safety features. That is a legitimate function of the FDA. When, as alleged, Mr. Kelerchian agreed with

others to lie to Insight about who the real purchaser of the laser sights was, they obstructed the FDA. Such deceit, craft, or trickery, if true, exposed Mr. Kelerchian to criminal liability under § 371.[2] Mr. Kelerchian's argument that the FDA's statutory and regulatory authority is limited to civil enforcement is unavailing.

D. Order

For these reasons, the Court denies Mr. Kelerchian's motions to dismiss Counts 1 and 2 of the Indictment (DEs 62 & 63).

SO ORDERED on June 22, 2015.

/s/ Joseph S. Van Bokkelen
United States District Judge

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[2] One of the co-conspirators attested at the time of the sale that the following statement was true:

> We/I hereby acknowledge that the sale of the IR LAM, (Laser Aiming Module), MR6-IR, M6X-IR, AN/PAQ-4C, AN/PEQ-2A, MTM-IR, ISM-IR, and CIL is regulated by the FDA (Food and Drug Administration) and all terms of sale must be complied with. Sale of these laser aiming lights is restricted to government, military, and law enforcement agencies under a direct purchase order from the agency and shall not be sold or transferred to individual law enforcement or civilian personnel. Use of this product is restricted to approved agencies. It is understood that it is the purchasing agency's responsibility to monitor possession of this equipment and that it will be disabled, destroyed, or returned to the manufacturer in the event that the agency's need for the equipment expires.

ORDER OF THE UNITED STATES DISTRICT COURT OF INDIANA, HAMMOND DIVISION ON MOTIONS IN LIMINE (SEPTEMBER 30, 2015)

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA HAMMOND DIVISION

UNITED STATES OF AMERICA

v.

VAHAN KELERCHIAN

Case No.: 2:13-CR-66 JVB

Before: Joseph S. VAN BOK.KELEN, United States District Judge

Before the Court are several pretrial motions. The following constitutes the Court's preliminary rulings.[1]

[1] All rulings are preliminary and the parties may ask the Court to reconsider them as the evidence develops at trial. *See United States v. Connelly,* 874 F.2d 412, 416 (7th Cir. 1989) ("[A] ruling [in limine] is subject to change when the case unfolds, particularly if the actual testimony differs from what was contained in the proffer. Indeed even if nothing unexpected happens at trial, the district judge is free, in the exercise of sound judicial discretion, to alter a previous in limine ruling.") (quoting *Luce v. United States,* 469 U.S. 38, 41 (1984)).

A. Government's Motions in Limine

The government makes eleven requests concerning the anticipated evidence to be introduced by Defendant. The Court will address them in the order set out in the government's brief

1. Request to preclude evidence of Defendant's good character or non-corrupt behavior.

a. This is a Rule 405 issue. This rule is well-known and all evidence will be subject to this rule.

2. Request to preclude Insight's challenge of the FDA variance requirement regarding laser sights.

a. The Court grants this request. There's no legitimate purpose in introducing Insight's quarrel with the FDA into this case, especially since this it started after the events in question.

3. Request to preclude argument or questioning regarding penalties faced by Defendant.

a. The Court grants this request.

4. Request to prevent Defendant's counsel from inquiry to elicit jury nullification [sic].

a. This request is granted, but only in the strictest sense of the word "to nullify."

5. Request to not allow argument or questioning of Defendant regarding his age, health, and family needs.

a. The request is too broad. So long as the evidence is relevant, it will be allowed.

6. The Sixth request will be granted because Defendant's counsel have represented that they will not be suggesting that the government's prosecution was selective.

7. Same with the Seventh request.

8. Request to forbid presentation of evidence and argument regarding the lack of Defendant's criminal history.

a. Again, if such evidence will be presented by Defendant, the Court will employ Rule 405 to determine its admissibility.

9. As for the ninth request, Defendant's counsel agreed not to argue about discovery in the presence of the jury.

10. Request to disallow evidence of the postponement of the co-conspirators sentences.

a. The Court denies this request. Such information is the classic example for possible bias in a witness, which Defendant has a right to bring before the jury.

11. The last request relates to civil and criminal penalties faced by Defendant, which is the same as the third request, which the Court granted above.

B. Defendant's Motions in Limine

As for Defendant, he makes six requests concerning the evidence he expects from the government.

(1) Request to disallow the government from using summary exhibits.

(a) So long as the summary exhibits are accurate, they will be allowed as provided by Rule 1006.

(2) Request to prevent the government from fear mongering.

(a) The government assures that it won't fear monger anyone.

(3) Request to prevent the government from arguing that a sear is a machinegun.

(a) In its response, the government concedes that such argument would be inappropriate.

(4) Request to prevent the government from eliciting testimony that the co-conspirators have been convicted of the same charges as Defendant.

(a) The Court will take this motion under advisement.[2] However, the Court is likely to allow such evidence with a limiting instruction not to consider such evidence in determining Defendant's guilt or innocence. The government should propose a limiting instruction to be used at the time such evidence may be elicited.

(5) Request to prevent the government from introducing episodes from the TV show *Sons of Guns* featuring Defendant.

(a) The government has agreed not to introduce any recordings from this show.

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[2] The parties may not refer in front of jury to any matter that has been taken under advisement. The party seeking the admission of evidence that is pending the Court's ruling may ask for such ruling outside the presence of the jury.

C. Defendant's Motion to Reconsider Its Ruling Denying His Motion to Dismiss Count 1 of the Indictment

Defendant once again submits that the grand jury had no authority to charge Defendant under 18 U.S.C. § 924. The government submitted a well-reasoned response which the Court accepts in its entirety. For this reason, Defendant's motion to reconsider is denied.

D. Defendant's Objection to Government's Experts

The Court takes Defendant's objections under advisement because it wants to see how the evidence develops and in what context the expert testimony will be offered.

SO ORDERD [sic] on September 30, 2015.

/s/ Joseph S. Van Bokkelen
United States District Judge

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. CONST., AMEND. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. § 371

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 1343

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 interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1346

For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

18 U.S.C. § 1956

(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—

(A)

(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(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

(ii) to avoid a transaction reporting requirement under State or Federal law, 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.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the

United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer 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

(ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law, conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.—

(1) In general.—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) $10,000.

(2) Jurisdiction over foreign persons.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.—

A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.—

(A) In general.—A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take

custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.—A Federal Receiver described in subparagraph (A)—

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant—

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section—

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) 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;

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" includes—

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term "specified unlawful activity" means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730–774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 555 (relating to border tunnels), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce),

section 875 (relating to interstate communications), section 922(l) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 [2] (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence

against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 [3] (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than $5,000, any viola-

tion of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons), or section 104(a) of the North Korea Sanctions Enforcement Act of 2016 (relating to prohibited activities with respect to North Korea);

ENVIRONMENTAL CRIMES

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.);

(F) any act or activity constituting an offense involving a Federal health care offense; or

(G) any act that is a criminal violation of subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1) of section 9(a) of the Endangered Species Act of 1973 (16 U.S.C. 1538(a)(1)), section 2203 of the African Elephant Conservation Act (16 U.S.C. 4223), or section 7(a) of the Rhinoceros and Tiger Conservation Act of 1994 (16 U.S.C. 5305a(a)), if the endangered or threatened species of fish or wildlife, products, items, or substances involved in the violation and relevant conduct, as applicable, have a total value of more than $10,000;

(8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

(g) Notice of Conviction of Financial Institutions.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) 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.

(i) Venue.—

(1) Except as provided in paragraph (2), a prosecution for an offense under this section or section 1957 may be brought in—

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful

activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or section 1957 may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

18 U.S.C. § 1957

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)

(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both. If the offense involves a pre-retail medical product (as defined in section 670) the punishment for the offense shall be the same as the punishment for an offense

under section 670 unless the punishment under this subsection is greater.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are—

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Secu-

rity has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General.

(f) As used in this section—

(1) the term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term "criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the terms "specified unlawful activity" and "proceeds" shall have the meaning given those terms in section 1956 of this title.

INDICTMENT
(MAY 17, 2013)

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA HAMMOND DIVISION

UNITED STATES OF AMERICA

v.

VAHAN KELERCHIAN

Cause NO:

18 U.S.C. § 2
18 U.S.C. § 371
18 U.S.C. § 666(a)(2)
18 U.S.C. § 924(a)(1)(A)
18 U.S.C. § 924(d)
18 U.S.C. § 1001
18 U.S.C. § 1956(h)

INDICTMENT

THE GRAND JURY CHARGES:

COUNT 1
(Conspiring to Provide False Information to a Federal Firearms Licensee)

At all times material to this indictment:

BACKGROUND

1. VAHAN KELERCHIAN (KELERCHIAN) was the principal owner and operator Armament Services International Inc., (ASI). ASI is engaged in the sale of firearms and related items primarily through Internet sales.

2. ASI principal place of business is located in Warminster, Pennsylvania.

3. KELERCHIAN holds a Class 3 Federal Firearms License (FFL) allowing him to deal in fully automatic weapons. KELERCHIAN also holds licenses to manufacture firearms and sell destructive devices, (*i.e.* grenade launchers).

4. The Lake County Sheriff's Department was a law enforcement agency operating in Lake County, Indiana.

5. JOSEPH R. KUMSTAR was employed for approximately 17 years as a sworn law enforcement officer with the Lake County Sheriff's Department, and served as the Deputy Chief for the Lake County Sheriff's Department.

6. RONALD D. SLUSSER was employed for approximately ten (10) years as a sworn law enforcement officer with the Lake County Sheriff's Department, was a member of the Lake County Sheriff's Department Special Weapons and Tactics (SWAT) unit and a firearms instructor.

7. E & R Law Enforcement Sales was a Federal Firearms Licensee (FFL) based in Crown Point, Indiana, owned and operated in part by RONALD D. SLUSSER. RONALD D. SLUSSER previously held a

Federal Firearms License while operating individually as "Ron's Gun Sales."

8. R & D Law Enforcement Sales was another Federal Firearms Licensee (FFL), based in Merrillville, Indiana, and owned and operated in part by RONALD D. SLUSSER.

9. PF Custom Guns was a Federal Firearms Licensee (FFL).

10. Heckler and Koch (hereinafter H&K) was a well know German based firearms manufacturer producing a wide assortment of handguns, rifles, machineguns, and submachineguns for both military and civilian use. H&K had numerous subsidiaries operating within the United States in Virginia, New Hampshire, and Georgia. H&K had served as a United States government contractor for the both the United States Military and United States civilian law enforcement agencies, H&K was a Federal Firearms Licensee (FFL).

10. Insight Technology Inc., (hereinafter Insight) located in Londonderry, New Hampshire, was a manufacturer of highly sophisticated laser aiming and illumination devices, night vision devices, laser range finding systems, computerized fire control systems, thermal imaging systems, and sensor fusion systems. Insight's products were, and are still are, used by the United States military, Federal law enforcement agencies, and allied nations. In addition, Insight Technology Inc. developed and maintained a line of tactical illuminators (laser aiming devices) restricted for use only by the military and Law Enforcement agencies, as well as products for sale to the general public.

11. Federal law restricted to law enforcement agencies or the military the sale and ownership of fully automatic machineguns manufactured after 1986. No individual law enforcement officer could purchase a post-1986 fully automatic machinegun. Possession of post-1986 fully automatic machineguns by a law enforcement officer could only be authorized by the officer's law enforcement agency and only for the law enforcement duties of that officer.

OBJECT OF THE CONSPIRACY

12. Between on or about November 2008, and continuing through on or about January of 2010. in the Northern District of Indiana and elsewhere:

VAHAN KELERCHIAN

defendant herein, together with Joseph Kumstar, and Ronald Slusser, did knowingly combine, conspire, confederate, and agree with each other, and with others known and unknown to the grand jury, to commit an offense against the United. States, that is, to knowingly make false statements and representations with respect to information under Chapter 44, of Title 18 of the United States Code, required to be kept in the records of individuals licensed under Chapter 44, relating to the acquisition of firearms, in violation of Title 18 United States Code, Section 924(a)(1)(A).

HOW THE CONSPIRACY OPERATED

13. It was part of the conspiracy that JOSEPH R. KUMSTAR, and RONALD D. SLUSSER used their position as sworn law enforcement officers, and VAHAN KELERCHIAN used his position as a Class 3

firearms dealer to acquire approximately 71 (Seventy-One) fully automatic H&K machineguns in the name of the Lake County Sheriff's Department knowing that the Lake County Sheriff's Department was not the true owner of these machineguns.

14. It was further part of the conspiracy that when acquiring these machineguns, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR. and RONALD D. SLUSSER knew these H&K machineguns were manufactured after 1986, and therefore could only be acquired by law enforcement agencies and not individual law enforcement officers.

15. It was further part of the conspiracy that when acquiring the H&K machineguns, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER caused false entries listing the Lake County Sheriff's Department as the owner of these machineguns, to be made by individuals and companies required to keep such records under Chapter 44, of Title 18 of the United States Code.

16. It was further part of the conspiracy that when acquiring these machineguns, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER, used Lake County Sheriff's Department letterhead to create letters which falsely represented that the H&K machineguns were being purchased by and were going to be used by, the Lake County Sheriff's Department in carrying out its law enforcement responsibilities.

17. It was further part of the conspiracy that when acquiring these machineguns, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER used the Lake County Sheriff's Depart-

ment letterhead to create documents which falsely represented the H&K machineguns were to be used by the Lake County Sheriff's Department.

18. It was further part of the conspiracy that when acquiring these machineguns, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER created false and fictitious Lake County Sheriff's Department purchase orders to convince the suppliers of the H&K machineguns that the Lake County Sheriff's Department was the true purchaser of the H&K machineguns even though the defendants themselves provided the funds for the purchase of these H&K machineguns.

19. It was further part of the conspiracy that VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER acquired these H&K machineguns for a cost of between approximately $1200 and $1600 each.

20. It was further part of the conspiracy that when acquiring these machineguns, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER had all of the H&K machineguns shipped to the Lake County Sheriff's Department.

21. It was further part of the conspiracy that after acquiring these machineguns, all of the H&K machineguns were removed from the Lake County Sheriff's Department to the personal residence of RONALD D. SLUSSER.

22. It was further part of the conspiracy that after the H&K machineguns were at the personal residence of RONALD D. SLUSSER, he would remove the upper receivers (the barrel) and any other additional parts that could be removed from the lower

receiver (the firing mechanism of the H&K machinegun).

23. It was further part of the conspiracy that after removing the upper receivers and any other additional parts that could be removed from the lower receiver, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER would sell on the internet to any willing purchaser, all of these upper receivers and additional parts. The sale of these upper receivers and parts would range from approximately $2,500 to $3800 each.

24. It was further part of the conspiracy that after removing the upper receivers, RONALD D. SLUSSER would return some of the upper receivers to VAHAN KELERCHIAN.

25. At no time did VAHAN KELERCHIAN, JOSEPH R. KUMSTAR. and RONALD D. SLUSSER have proper authority from the Lake County Sheriff's Department to engage in any of the above mentioned purchases or sales of the H&K machineguns or their parts.

26. At no time were any of the H&K machineguns obtained by VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER listed in the property inventory of the Lake County Sheriff's Department.

27. In furtherance of the conspiracy and to effect its objects:

VAHAN KELERCHIAN,

Defendant herein, together with JOSEPH R. KUMSTAR, and RONALD D. SLUSSER, and others

known and unknown to the grand jury performed the following:

OVERT ACTS

First Machinegun Purchase

a. On or about December 22, 2008, JOSEPH R. KUMSTAR issued a "Letter of Intent" on Lake County Sheriff's Department letterhead to H&K for (50) additional H&K model 416 fully automatic machineguns. This letter of intent stated these machineguns were for the "exclusive law enforcement use of the Lake County Sheriff's Department" and that the "point of contact for all inquiries in this matter will be Warrant Officer Ron Slusser. The letter then listed RONALD D. SLUSSER'S home phone number. This letter was signed "Joseph Kumstar, Chief of Police."

b. VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER used their personal funds to obtain these machineguns and did not have proper authorization of the Lake County Sheriff's Department to purchase these machineguns. These (50) machineguns were purchased for approximately $1650 each.

c. For this purchase, VAHAN KELERCHIAN provided payment to a third party gun dealer in the amount of approximately $83,026.

d. Shortly after obtaining these (50) H&K fully automatic machineguns, RONALD D. SLUSSER did cut up and remove the upper receiver barrels from these (50) H&K fully

automatic machineguns. Some of these upper barrels were sold on the internet to any willing buyer with VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER retaining the proceeds from this sale. Some of the upper barrels were returned to KELERCHIAN

e. In or about May of 2011, during the execution of an organized crime search warrant by Montreal, Canada, gun and gang law enforcement officials, recovered four upper barrels from this (50) H&K fully automatic machinegun purchase by VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER. The serial numbers on these upper receivers (barrels) listed the Lake County Sheriff's Department as the registered owner.

Second Machinegun Purchase

f. In or about February of 2009. JOSEPH R. KUMSTAR issued another "Letter of Intent" on Lake County Sheriff's Department letterhead to H&K for (9) H&K model MP5KN fully automatic machineguns. This letter of intent stated these machineguns were for the exclusive use of the Lake County Police Department.

g. In or about February of 2009, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR and RONALD D. SLUSSER did cause a false and fictitious Lake County Sheriff's Department purchase order to be mailed or faxed, which represented the Lake County Sheriff's

Department to be the purchaser of these machineguns even though it was not the true purchaser as required by law.

h. For this purchase, VAHAN KELERCHIAN provided payment to H&K, the gun manufacturer/distributer in the amount of approximately $11,664.

i. Shortly after obtaining these (9) H&K fully automatic machineguns, RONALD D. SLUSSER did cut up and remove the upper receiver barrels from these fully automatic machineguns. These upper barrels were sold to Person A in Utah, Person A paid Slusser $18,900 for these H&K parts. Slusser then paid $9450 to Kumstar and $9450 to Kelerchian. These payments to Kelerchian and Kumstar were paid because KELERCHIAN and Kumstar had fronted money for this purchase.

Third Machinegun Purchase

j. In or about October 2009, JOSEPH R. KUMSTAR issued another "Letter of Intent" on Lake County Sheriff's Department letterhead for (12) H&K model 53A3 fully automatic sub-machineguns. This letter of intent stated these sub-machineguns would be the property of the Lake County Sheriff's Department and would not be resold or transferred, and would be used to carry out the official duties of the Lake County Sheriff's Department.

k. In or about October of 2009, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR and

RONALD D. SLUSSER did cause another false and fictitious Lake County Sheriff's Department purchase order to be mailed or faxed, which represented the Lake County Sheriff's Department to be the purchaser of these sub-machineguns even though it was not the true purchaser as required by law.

l. Shortly after obtaining these (12) H&K fully automatic sub-machineguns, RONALD D. SLUSSER did cut up and remove the upper receiver barrels from these fully automatic machineguns. These upper barrels were sold to Person A in Utah. Person A paid Slusser $31,200 for these H&K parts. Slusser then paid Kelerchian $28,200. This payment to KELERCHIAN was made because Kelerchian had fronted the money for this purchase.

m. For this purchase, VAHAN KELERCHIAN provided payment to the H&K, the gun manufacturer/distributer, in the amount of approximately $16,800.

n. At no time did VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER have the proper permission of the Lake County Sheriff's Department to engage in any of the above three purchases or subsequent sales of these H&K sub-machineguns.

28. In the purchasing each of these (71) machineguns and sub-machineguns, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER knowingly caused false entries to be made in the

books and records of the companies supplying these firearms, in that these records reflected the Lake County Sheriff's Department as the registered owner of these (71) firearms when in fact, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER knew that to be false.

All in violation of Title 18, United States Code 371 and 924(a)(1)(A).

THE GRAND JURY FURTHER CHARGES:

COUNT 2
(Conspiring to Defraud the
Food and Drug Administration)

1. The Grand Jury realleges and reincorporates by reference paragraphs 1-11, of Count 1 as though fully set forth herein;

OBJECT OF THE CONSPIRACY

2. Between on or about December 2008, and continuing through on or about September 2010, in the Northern District of Indiana and elsewhere:

VAHAN KELERCHIAN,

defendants herein, did knowingly combine, conspire, confederate, and agree with JOSEPH KUMSTAR, RONALD D. SLUSSER, and with others known and unknown to the grand jury, to defraud the Food and Drug Administration (FDA), an agency of the United States, by interfering with and obstructing the lawful government functions of the FDA to:

a. Limit the sale of various restricted laser aiming sight devices to the military and law enforcement agencies only;

b. Correctly identify first line purchasers of various laser aiming sight devices which were restricted to military or law enforcement agency purchasers only.

All in violation of Title 18 United States Code, Section 371.

HOW THE CONSPIRACY OPERATED

3. It was part of the conspiracy that JOSEPH R. KUMSTAR, and RONALD D. SLUSSER used their position as sworn law enforcement officers, along with VAHAN KELERCHIAN, to acquire approximately 74 (Seventy-Four) restricted laser aiming sight devices by fraudulently using the name of the Lake County Sheriff's Department and The Lowell, Indiana, Police Department, knowing that the Lake County Sheriff's Department and the Lowell Police Department were not the true owners of these restricted laser aiming devices.

4. It was further part of the conspiracy that when acquiring these restricted laser aiming sights, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER knew they could only be acquired by law enforcement agencies and not individual law enforcement officers.

5. It was further part of the conspiracy that when acquiring these (74) restricted laser aiming sight devices, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER caused false information to be recorded in the books and records of the

Insight Technology, Inc., regarding who was the true first purchaser of these laser aiming sight devices. Furthermore, by causing false information to be recorded in the books records of the Insight Technology, Inc., VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER interfered with and obstructed the lawful government functions of the FDA to (a) limit the sale of various restricted laser aiming sight devices to only the military and law enforcement agencies and (b) correctly identify first line purchasers of these (74) various laser aiming sight devices, the sale of which was restricted to military or law enforcement agency purchases only.

6. It was further part of the conspiracy that when acquiring these restricted laser sights VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER caused to be submitted to Insight Technology, Inc., a false and fictitious Lake County Sheriff's Department purchase order for the purpose of inducing Insight Technology, Inc., to believe that these restricted laser sights were being purchased by the Lake County Sheriff's Department, when in fact the defendants were acquiring these restricted laser sights with their own personal funds and for their personal use and resale.

7. It was further part of the conspiracy that when acquiring these restricted laser sights VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER caused to be submitted to Insight Technology, Inc., a false and fictitious Lowell Police Department documents for the purpose of inducing Insight Technology, Inc., to believe that these restricted laser sights were being purchased by the Lowell Police Department, when in fact the defendants were acquir-

ing these restricted laser sights with their own personal funds and for their personal use and resale.

8. It was further part of the conspiracy that when acquiring these restricted laser sights VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER would submit to Insight Technology, Inc., a "IR, Product Disclosure Agreement" signed by JOSEPH R. KUMSTAR which falsely represented that the restricted laser sights being purchased would "not be sold or transferred to individual law enforcement or civilian personnel."'

9. It was further part of the conspiracy that when acquiring these restricted laser sights VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER would submit to Insight Technology, Inc., a "IR Product Disclosure Agreement" which purported to be signed by the proper authorities at the Lowell Police Department but in fact, falsely represented that the restricted laser sights being purchased would "not be sold or transferred to individual law enforcement or civilian personnel."

10. It was further part of the conspiracy that when acquiring these restricted laser sights VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER caused false and fictitious Lake County Sheriff's Department purchase orders to be created which falsely represented that the restricted laser sights were being purchased by the Lake County Sheriff's Department.

11. It was further part of the conspiracy that when acquiring these restricted laser sights VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER would cause these restricted laser

sights to be delivered to the Lake County Sheriff's Department or the Lowell Police Department rather than to their personal residences.

12. It was further part of the conspiracy that after acquiring these restricted laser sights, all of them were removed from the Lake County Sheriff s Department and the Lowell Police Department to the personal residence of either KUMSTAR or SLUSSER.

13. It was further part of the conspiracy that after these restricted laser sights were at the either KUMSTAR or SLUSSER's residence, RONALD D. SLUSSER would sell some these restricted laser sights on the internet to any willing purchaser. The sale of these restricted laser sights ranged from approximately $2,800 to $3000 each. Some of the restricted lasers aiming sights were retained by each of the defendants.

14. At no time did VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER have proper authority from the Lake County Sheriff's Department or the Lowell Police Department to engage in any of the above mentioned purchases or sales of the restricted laser sights.

15, At no time were any of the restricted laser sights obtained by VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER listed in the property inventory of the Lake County Sheriff's Department or the Lowell Police Department.

16. In furtherance of the conspiracy and to effect its objects:

VAHAN KELERCHIAN,

Defendant herein, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER, and other conspirators, known and unknown to the grand jury performed the following:

OVERT ACTS

First Laser Sight Purchase

a. In or about December 6, 2008, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER ordered from Insight Technology Inc., approximately 25 various restricted laser sights having a value of approximately $27,000,

b. On or about December 6, 2008, JOSEPH R. KUMSTAR, submitted to Insight Technology, Inc., a "IR Product Disclosure Agreement" signed by JOSEPH R. KUMSTAR which represented that the restricted laser sights being purchased would not be sold or transferred to individual law enforcement or civilian personnel."

c. In or about December of 2008, JOSEPH R. KUMSTAR signed a false and fictitious Lake County Sheriff's Department purchase order inducing Insight Technology, Inc., to believe that the Lake County Sheriff's Department was the true purchaser of these restricted laser sights even though the defendants themselves provided the funds for the purchase of these restricted laser sights.

d. In or about January of 2009, Insight Technology, Inc. shipped these restricted laser sights to the Lake County Sheriff's Department.

e. For this purchase, VAHAN KELERCHIAN provided payment to Insight Technologies Inc., in excess of $17,000.

f. After obtaining these restricted laser sights, RONALD D. SLUSSER sent back to VAHAN KELERCHIAN approximately 12 of these restricted laser sights,

g. After obtaining these restricted laser sights. VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER sold via the internet some these restricted laser sights to any and all willing purchasers, including Keith Mitts.

h. On or about August 21, 2009, the Department of Defense Criminal Investigative Service (DCIS) engaged in a successful undercover purchase of a restricted laser sight being offered for sale on E-Bay by a Keith Mitts. DCIS undercover agents paid $4,200 for a restricted laser aiming sight which was traced back to the December 6, 2008, laser sight order from Insight Technology, Inc., which was sent to the Lake County Sheriff's Department. Subsequent to this undercover purchase, two additional restricted laser sights of the same model and type that were part of the December 6, 2008, laser sight order from Insight Technology, Inc., which was sent to the Lake County Sheriff's Depart-

ment, were recovered from Mitt's Mississippi residence during Mitt's shooting and standoff with local police officers.

Second Laser Sight Purchase

i. In or about December 2009, the defendants ordered from Insight Technology Inc., approximately 12 restricted laser sights having a value of approximately $15,000.

j. On or about December 2009, RONALD R. SLUSSER submitted to Insight Technology Inc., an "IR Product Disclosure Agreement" which represented that the restricted laser sights being purchased would "not be sold or transferred to individual law enforcement or civilian personnel."

k. In or about January of 2010, Insight Technology, Inc. shipped these restricted laser sights and RONALD D. SLUSSER obtained these restricted laser sights.

l. For this purchase, VAHAN KELERCHIAN provided several payments to Insight Technologies Inc., totaling more than $15,000.

m. After obtaining these restricted laser sights, RONALD D. SLUSSER sold via the internet these restricted laser sights to any willing purchaser.

Third Laser Sight Purchase

n. In or about February 2010, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR, and RONALD D. SLUSSER ordered from Insight Technology Inc., approximately 22 various

restricted laser sights having value of approximately $30,000.

o. On or about February 23, 2010, JOSEPH R. KUMSTAR submitted to Insight Technology Inc., an "IR Product Disclosure Agreement" signed by JOSEPH R. KUMSTAR which represented that the restricted laser sights being purchased would not be sold or transferred to individual law enforcement or civilian personnel."

p. In or about February 2010, VAHAN KELERCHIAN, JOSEPH R. KUMSTAR and RONALD SLUSSER created a false and fictitious Lake County Sheriff's Department purchase order inducing Insight Technology, Inc., to believe that the Lake County Sheriff's Department was the true purchaser of these restricted laser sights even though the defendants themselves provided the funds for the purchase of these the restricted laser sights.

q. In or about March 2010, Insight Technology, Inc. shipped these restricted laser sights to the Lake County Sheriff's Department,

r. For this purchase, VAHAN KELERCHIAN provided several payments to Insight Technologies Inc., totaling more than $25,000.

s. After obtaining these restricted laser sights, RONALD D. SLUSSER sold via the internet some of these restricted laser sights to any willing purchaser.

t. Approximately 20 of these restricted laser sights were returned to VAHAN KELERCHIAN by RONALD D. SLUSSER.

Fourth Laser Sight Purchase

u. In or about July 2010, RONALD D. SLUSSER ordered from insight Technology, Inc., approximately 15 restricted laser sights from Insight Technology Inc., having a value of approximately $18,000.

v. On or about July 6, 2010, RONALD R. SLUSSER submitted to Insight Technology, Inc., an "IR Product Disclosure Agreement" which represented that the restricted laser sights being purchased would "not be sold or transferred to individual law enforcement or civilian personnel."

w. In or about August 2010, Insight Technology, Inc. shipped these restricted laser sights and RONALD D. SLUSSER subsequently retrieved them.

x. For this purchase, VAHAN KELERCHIAN provided payment to Insight Technologies Inc., in excess of $16,000.

y. After obtaining these restricted laser sights, RONALD D. SLUSSER sold via the internet these restricted laser sights to any willing purchaser and sent two of the sights back to VAHAN KELERCHIAN.

z. On August of 2010, a Special Agent of the FDA engaged in an undercover purchase of a restricted laser sight from RONALD D. SLUSSER. This restricted laser sight was

purchased by RONALD D. SLUSSER from Insight Technology, Inc., for approximately $1250.00 and sold to the FDA undercover agent for approximately $2900.00. An examination of the serial number for this sight revealed that it was part of the July 2010 order of 15 restricted laser sights that had been ordered by RONALD D. SLUSSER and paid for by VAHAN KELERCHIAN.

All in violation of Title 18 United States Code, Section 371.

THE GRAND JURY FURTHER CHARGES:

COUNT 3
(Conspiracy to Make False Statements-
Demonstration Letters)

From on or about October 2007, and continuing to in or about March 28, 2010, both dates being approximate and inclusive, in the Northern District of Indiana and elsewhere,

VAHAN KELERCHIAN

defendant herein, and Joseph Kumstar, knowingly combined, conspired, confederated and agreed together and with each other, and with other persons known and unknown to the Grand Jury, to commit the following offenses against the United States: to willfully and knowingly make and cause to be made, and use and cause to be used, in a matter within the jurisdiction of a department or agency of the United States, to wit: the Bureau of Alcohol, Tobacco, Firearms, and Explosives, false writings and documents to wit: approximately (7) letters on Lake County Sheriff's

Department letterhead requesting firearm demonstrations of machine guns (demonstration letters) from VAHAN KELERCHIAN, knowing the same to contain a materially false, fictitious, and fraudulent statement because VAHAN KELERCHIAN very well knew that in fact no demonstration was going to occur.

In furtherance of this scheme, false demonstration letters were sent from Lake County Indiana, VAHAN KELERCHIAN and to the National Firearms Branch of the Bureau of Alcohol, Tobacco, and Firearms located in Martinsburg, WV, on the following approximate days: October 4, 2007, February 13, 2009, February 16, 2009, June 29, 2009, March 28, 2010.

All in violation of Title 18, United States Code Section 1001, and 371.

THE GRAND JURY FURTHER CHARGES:

COUNTS 4-7
(False Statements-Demonstration Letters)

On or about the following dates in the Northern District of Indiana and elsewhere,

VAHAN KELERCHIAN

defendant herein, and Joseph Kumstar did willfully and knowingly make and cause to be made, and use and cause to be used, in a matter within the jurisdiction of a department or agency of the United States, to wit: the Bureau of Alcohol, Tobacco, Firearms, and Explosives, false writings and documents to wit: approximately (4) letters on Lake County Sheriff's Department letterhead requesting firearm demonstrations of various machine guns (demonstration

letters) from VAHAN KELERCHIAN, knowing the same to contain a materially false, fictitious, and fraudulent statement because VAHAN KELERCHIAN very well knew that in fact no demonstration was going to occur, said letters being mailed from Lake County Indiana, to VAHAN KELERCHIAN in Pennsylvania and the National Firearms Branch of the Bureau of Alcohol, Tobacco, and Firearms located in Martinsburg, WV., on the following approximate days:

COUNT	DATE
4	February 13, 2009
5	February 16, 2009
6	June 29, 2009
7	March 28, 2010

All in violation of Title 18, United States Code, Section 1001 and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT 8
(Bribery)

1. At all times material to this indictment, the Lake County Sheriff's Department was an agency of a local government entity to wit: Lake County, Indiana, that received federal assistance in excess of $10,000 during the one-year period beginning January 2, 2008 and ending December 31, 2008.

2. Joseph Kumstar was an agent of Lake County Sheriff's Department acting as its Deputy Chief, in charge of operations, whose duties included overseeing

and managing the Lake County Sheriff's Department.

3. On or about July 31, 2008, in the District of Indiana, and elsewhere,

VAHAN KELERCHIAN

defendant herein, did corruptly give, offer, and agree to give a thing of value to wit: a Remington .12 Gauge short-barrel shotgun, to Joseph Kumstar, intending to influence and reward Joseph Kumstar in connection with a transaction and series of transactions of the Lake County Sheriff's Department involving $5,000 or more.

All in violation of Title 18, United States Code, Section 666(a)(2) and 2.

THE GRAND JURY FURTHER CHARGES:

COUNT 9
(Conspiracy to Launder Monetary Instruments: 1956 AND 1957)

Beginning in or about February 2009 and continuing through in or about January 2010, both dates being approximate and inclusive, in the District of Indiana and elsewhere,

VAHAN KELERCHIAN

Defendant herein, Joseph Kumstar, and Ronald Slusser, willfully and knowingly conspired and agreed together and with each other, and with others known and unknown to the Grand Jury, to commit certain offenses:

1) Under Title 18, United States Code § 1956, to conduct and attempt to conduct financial transactions affecting interstate commerce, which transactions involved proceeds of specified unlawful activity, that is mail and wire fraud, in violation of title 18 United States Code § 1341 and 1343: (1) with the intent to promote the carrying on of such specified unlawful activity and (2) knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of said specified unlawful activity, and while conducting or attempting to conduct such financial transactions knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, and

2). Under Title 18, United States Code § 1957, to conduct and attempt to conduct monetary transactions affecting interstate commerce, in criminally derived property of a value greater than $10,000, such property having been derived from a specified unlawful activity, that is, mail and wire fraud, in violation of Title 18 United States Code § 1341 and 1343.

All in violation of Title 18 United States Code 1956(h), 1956(a)(1)(B)(i), 1957, and 2.

FIRST FORFEITURE ALLEGATION

1. The allegations of Count One of the Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18 United States Code, Section 924(d), and Title 28 United States Code, Section 2461(c).

2. Upon conviction of Count One of the Indictment, Vahan Kelerchian, defendant herein, shall forfeit to the United States of America pursuant to Title 18, United States Code, Section 924(d), and Title 28, United States Code, Section 2461(c), any and all firearms involved in the commission of such offenses:

SECOND FORFEITURE ALLEGATION

1. The allegations contained in Count 9 of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Sections 982(a)(1).

2. Pursuant to Title 18, United States Code, Section 982(a)(1), upon conviction of an offense in violation of Title 18, United States Code, Sections 1956 and 1957, the defendant, VAHAN KELERCHIAN, shall forfeit to the United States of America any property, real or personal, involved in such offense, and any property traceable to such property.

3. If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

A TRUE BILL:

S/Foreperson

FOREPERSON

DAVID CAPP
UNITED STATES ATTORNEY

By: S/Philip C. Benson
Philip C. Benson
Assistant United States Attorney

TRIAL TRANSCRIPT–RELEVANT EXCERPTS (OCTOBER 15, 2015)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,

v.

VAHAN KELERCHIAN,

Defendant.

No. 2:13-CR-66

Volume 10 of 10
Transcript of Trial

Before: The Honorable Joseph VAN BOKKELEN,
United States District Judge.

Hammond, Indiana
October 15, 2015

[Transcript p. 2328-2331]

[. . .]

. . . this happens. And you had Mr. Kelerchian on the stand, I submit to you, lying about it. "Oh, that was for Lake County." There's certainly no paperwork to document that. There's none, and there's no reason why there shouldn't have been.

We've gone through this already. There's never a transfer to Lake County, and there's no money paid. None whatsoever. Lastly, the conspiracy to commit money laundering. Let's talk about this. There's two ways the Government alleges that the defendant laundered money. One was to conceal the source of some illegal proceeds. That's the 1956 conspiracy. Money laundering appears that you engage in a financial transaction knowing that the money you got was illegally obtained, and you try and hide the source, the nature, or the location of those funds. That's really all it is for all the Court read you. In this case, we're alleging that the sale of the parts to Adam Webber —okay—that those machine guns were fraudulently acquired; that they lied to H & K to get that property of H & K, those machine guns. They had to lie, otherwise, H & K never would've given them up. If Mr. Kelerchian or Mr. Slusser or Mr. Kumstar would've called H & K and said, "Hey, we want to buy some guns and strip them," H & K wasn't going to sell them. They couldn't have. So they lied to H & K saying they were for the department; so they got that property of H & K. And once they got the property, they stripped it off and sold the parts to Adam Webber. The $18,900, that is the profit that Adam Webber paid them for the guns. Actually, it's what he paid for the parts for the guns. Well, what happens? That money goes to Mr. Slusser, and he splits it up into two checks—one to Mr. Kelerchian, one to Mr. Kumstar. And the records show clearly that Mr. Kelerchian cashed this check from Ronald Slusser. Well, you may say, "Why is that money laundering?" Well, if the elements

here said that Mr. Kelerchian engaged in the financial transaction with the proceeds of wire fraud, the acquisition of these false machine guns and the sale of them, what were the proceeds of that machine gun transaction? It was the 18,9 from Webber. The $18,900.

"This transaction designed in whole or part to conceal and disguise the nature and location or source or ownership or control of the wire fraud proceeds." Well, when Mr. Slusser writes this check for $9,450 to Mr. Kelerchian, and he deposits it, that hides the source of the proceeds. What was the original source of the proceeds from the wire fraud? It was Webber's check. They funneled the money through Mr. Slusser. Why didn't Webber write a check directly to Mr. Kelerchian? Mr. Slusser was used to conceal the source of the proceeds. This way, when the check that Mr. Kelerchian cashed from Mr. Slusser had no mention, no reference, no idea that that money came from Adam Webber, the person who bought the parts from the fraudulently acquired machine guns. That's a money laundering allegation, and that's the elements, and that's the proof that we submitted on that.

Now, the other way you can launder money is simply to get money from an illegal transaction, some illegal activity and if you engage in a financial transaction in excess of $10,000. In this case, there's the elements that the Court told you. And what happened here? Well, what you have here is the same thing. You got these machine guns being fraudulently acquired. They're torn up. They're sent to Adam Webber. What does Adam Webber

do? He writes a check for $31,200. Mr. Slusser forwards that on, actually recuts the check for $28,200 and gives it to Mr. Kelerchian. Well, obviously $28,200 is more than $10,000, and the cashing of the check is a financial transaction. The Government's position is that in this check here are the proceeds of the wire fraud, the sale of the parts to Adam Webber, and then the transaction occurred in the United States. It's a little bit different from the first money laundering allegation because you have to prove they concealed the money.

I submit to you, this could've been charged as a concealment, too, because they ran it through Slusser, but you have an amount here in excess of $10,000, and that's all you need for an 18 U.S.C. § 1957 money laundering charge.

Ladies and gentlemen, my time is limited. I ask you to consider the evidence carefully, to be smart in your deliberations as the defendant was when he was committing this crime.

Thank you.

THE COURT: Thank you, Mr. Benson.

We will take about a 15-minute break, and then Ms. Connor will give her closing arguments to be followed by rebuttal closing by the Government.

Remember the admonitions I've given you all along. They're important all the time, probably more important now. Don't talk about this case yet among yourselves until I instruct you can talk to each other about the case when it's submitted to you for your deliberations.

About a 15-minute break. If you need more time, just let Clarence know, and we'll give you that.

(Jury not present.)

THE COURT: Court will be in recess about 15 minutes.

(Break.)

(Jury not present.)

THE COURT: You ready?

MS. CONNOR: I'm ready.

THE COURT: Okay. Bring the jury in.

(Jury present.)

THE COURT: You can be seated.

Ms. Connor, you can proceed.

MS. CONNOR: Thank you, Your Honor.

Good morning, ladies and gentlemen of the jury. First, I . . . .

[. . .]

TRIAL TRANSCRIPT–RELEVANT EXCERPTS (OCTOBER 9, 2015)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,

v.

VAHAN KELERCHIAN,

Defendant.

No. 2:13-CR-66

Volume 7 of 10

Before: The Hon. Joseph VAN BOKKELEN,
United States District Judge.

[Transcript p. 1613]

. . . now were admitted only conditionally under Santiago.

As to the motions, with regards—at this point, under Federal Rule of Criminal Procedure 29A, as Mr. Benson correctly points out, the Government is entitled to certain inferences at this point, and the Court, in taking those inferences at this point, the Court denies the motion as to Counts 1, 2, 3, 4, 5, 6, and 7.

As to Counts 8 and 9, the Court, pursuant to Rule 29B, takes those counts under advisement at this point.

Do you have your witnesses ready to go?

MS. CONNOR: We do, Your Honor.

THE COURT: We'll start, at the earliest, 11:30, and we'll break sometime probably between 12:30 and 12:45 for lunch.

MR. BENSON: I would ask a list of the witnesses from counsel as well as the list of the exhibits she intends to use today, if I can have copies, please.

THE COURT: Okay. And I'll explain to the jury when they come in the matters we took up, which is not unusual, they take an amount of time.

MS. CONNOR: If the Government wants to know, I'm going to call Mr. Kelerchian. At this stage, I don't intend to do anything more than what we have in terms of exhibits.

THE COURT: Okay. Let's start gathering up around and get back in here—look at 11:30 as sort of a target. If . . . .

[. . .]

[Transcript p. 2248]

. . . evidence that we've put in.

But I do agree that this one instruction should be changed to reflect only as money or property described in Count 1, because counsel is correct, the defrauding the FDA would be defrauding sort

of an intangible right. That is an appropriate subject for money laundering.

Thank you, Judge.

THE COURT: The Court is going to stand by its previous rulings, including taking the two counts under advisement for the simple reason is I want to get ahold of that transcript and look because my recollection of the evidence is not necessarily the same as your recollection of the evidence, and I want to see the transcript.

I mean, it's just the way it's going to be. I'm going to take it under advisement. We'll see what the jury does. If they think the case is as bad as you think it is, you'll get acquittals on those two counts; if not, then I get another look at it.

Anyway.

MS. CONNOR: So the Court is removing Count 2, though, from the money laundering discussion? That's what the Government is asking.

THE COURT: The one thing the Government asks, we're doing that.

MR. BENSON: Yes. I believe that would be . . . .

[. . .]