# Petitioner's Appendix

23-7211-cr
*United States v. Ramsey*

# UNITED STATES COURT OF APPEALS
# FOR THE SECOND CIRCUIT

## SUMMARY ORDER

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of December, two thousand twenty-four.

Present:

DEBRA ANN LIVINGSTON,
*Chief Judge*,
DENNIS JACOBS,
STEVEN J. MENASHI,
*Circuit Judges.*

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UNITED STATES OF AMERICA,

*Appellee*,

v. 23-7211-cr

GERMAINE RAMSEY,

*Defendant-Appellant*,[*]

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For Appellee: Meredith A. Arfa (David C. James, *on the brief*), Assistant United States Attorneys *for* Breon Peace, United States Attorney for the Eastern District of New York, Brooklyn, NY.

[*] The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

For Defendant-Appellant: MATTHEW B. LARSEN, Assistant Federal Defender, Federal Defenders of New York, New York, NY.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Ross, *J.*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is **AFFIRMED**.

Germaine Ramsey appeals from a September 27, 2023 judgment of the United States District Court for the Eastern District of New York (Ross, *J.*) convicting her, following a jury trial, of (1) conspiring to steal United States property in violation of 18 U.S.C. § 371; (2) aiding and abetting the theft of such property in violation of § 2 and § 641; and (3) making a false statement in violation of § 1001. At trial, the government presented evidence that Ramsey and her co-conspirator Robert Gaines conspired to steal, and did steal, remittance funds totaling $7,781 from a safe in a vault at the Metro Station post office in Brooklyn, New York. This evidence included testimony regarding Ramsey's admissions to agents of the United States Postal Service Office of the Inspector General ("USPS-OIG") that she provided her then-fiancé Gaines information necessary to gain access to the remittance safe and commit the theft. The government also submitted video evidence that Ramsey entered the Metro Station vault prior to the theft and appeared to check the contents of the remittance safe. According to cell site location data, Ramsey then left and joined Gaines at their shared residence before they both traveled to Metro Station. Video evidence showed that Gaines accessed Metro Station using the employee entrance and thereafter twice entered the vault. A few hours later, Ramsey purchased money orders totaling $4,000, and the remittance funds were discovered missing the following day.

USPS-OIG agents interviewed Ramsey regarding the missing funds on January 2, 2020, at which point Ramsey denied involvement in the theft. In a subsequent interview on January 28,

2020, she again initially denied involvement. Interviewing Agent Strasser testified that, when asked why she had entered the vault, Ramsey claimed she did so to return a set of Metro Station keys. But after further questioning, Ramsey admitted she had lied during both interviews. Ramsey also stated during this interview that Gaines was abusive and that he had demanded information from her regarding the layout of Metro Station, which she then provided to him. Agent Strasser addressed these reports of abuse at the end of the interview, asking if she felt safe returning to her shared residence with Gaines. Ramsey responded that she was fine to go home.

Ramsey first argues that her convictions under Counts One and Two must be vacated because the district court abused its discretion by excluding statements she made to law enforcement alleging that Gaines was abusive and threatening. Ramsey argues that the rule of completeness required admitting these hearsay statements to provide necessary context for other admitted statements, made in the same interview, that she gave Gaines information critical to committing the theft. In addition, Ramsey argues that her conviction under Count Three should be set aside because the government did not provide sufficient evidence that she "falsely stated she entered the vault at the Post Office . . . only to return a key," when in fact "she entered the vault . . . to check on the contents of a safe drawer inside the vault at the Post Office."

We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

## I. Rule of Completeness

"We review the district court's evidentiary rulings 'under a deferential abuse of discretion standard, and we will disturb an evidentiary ruling only where the decision to admit or exclude evidence was manifestly erroneous.'" *United States v. Williams*, 930 F.3d 44, 58 (2d Cir. 2019) (quoting *United States v. McGinn*, 787 F.3d 116, 127 (2d Cir. 2015)).

While Ramsey's out-of-court statements may be admitted as opposing party statements when offered against her, they are considered inadmissible hearsay when offered by Ramsey for their truth. *See* Fed. R. Evid. 801(d)(2). The district court is required to place otherwise inadmissible hearsay statements into evidence, however, if their exclusion would violate the rule of completeness.[1] *United States v. Johnson*, 507 F.3d 793, 796 (2d Cir. 2007). The rule of completeness requires that "an 'omitted portion of a statement must be placed in evidence if necessary to explain the admitted portion, to place the admitted portion in context, to avoid misleading the jury, or to ensure fair and impartial understanding of the admitted portion.'" *United States v. Thiam*, 934 F.3d 89, 96 (2d Cir. 2019) (quoting *United States v. Castro*, 813 F.2d 571, 575–76 (2d Cir. 1987)). This Court has held that "the rule of completeness 'is violated only where admission of the statement in redacted form distorts its meaning or excludes information substantially exculpatory of the declarant.'" *Id.* (quoting *United States v. Benitez*, 920 F.2d 1080, 1086–87 (2d Cir. 1990)). Moreover, we have been careful to note that "the rule of completeness does not require the admission of self-serving exculpatory statements in all circumstances." *Williams*, 930 F.3d at 61 (emphasis omitted); *see also United States v. Herman*, 997 F.3d 251, 264 (5th Cir. 2021) (explaining that the rule "permits a party to correct an incomplete and misleading impression" but

[1] At the time of Ramsey's trial, Federal Rule of Evidence 106 partially codified the common law rule of completeness, allowing a party against whom "all or part of a writing or recorded statement" is introduced to "require the introduction . . . of any other part . . . that in fairness ought to be considered at the same time." Fed. R. Evid. 106. That rule was amended, effective December 2023, to apply to oral testimony as well as recorded statements. Fed. R. Evid. 106 Advisory Committee Note to 2023 Amendments. But because we have previously held that Federal Rule of Evidence 611(a) renders the rule of completeness "substantially applicable to oral testimony, as well," the rule nevertheless applies here. *United States v. Johnson*, 507 F.3d 793, 796 n.2 (2d Cir. 2007) (quoting *United States v. Mussaleen*, 35 F.3d 692, 695 (2d Cir. 1994)).

"does not permit a party to introduce . . . statements to affirmatively advance their own, alternative theory of the case").

The exclusion of Ramsey's hearsay statements at trial below raises none of the concerns addressed by the rule of completeness. The government introduced Ramsey's admission from the January 28, 2020 interview that she provided Gaines information on accessing the Metro Station remittance safe. Ramsey's allegations of Gaines's threatening behavior, while made during the same interview, were not necessary to explain or understand the meaning of Ramsey's straightforward admission that she passed along information crucial to carrying out the theft. Nor were the excluded hearsay statements necessary to place the admitted portions into context. Statements alleging that Gaines's threatening behavior prompted Ramsey to share information might have helped place Ramsey's confession in context if she had made the necessary factual showing to present a duress defense. *See United States v. Paul*, 110 F.3d 869, 871 (2d Cir. 1997) (explaining a defendant is not entitled to present a duress defense if the "evidence is insufficient as a matter of law to establish the defense"). But Ramsey did not argue to the district court that she intended to present such a defense. As the district court observed, Ramsey had "not clarified whether she intends to introduce a duress defense or otherwise argue that she was pressured by [Gaines] into committing criminal acts," and in fact there was "no evidence that Ms. Ramsey acted under duress." *United States v. Ramsey*, No. 21-CR-495, 2023 WL 2523193, at *5 (E.D.N.Y. Mar. 15, 2023). Because Ramsey did not attempt to establish, and likely could not have established, the elements of a duress defense, the district court did not abuse its discretion in excluding Ramsey's allegations as context for the admitted statements.

While Ramsey argues that her statements regarding Gaines's threatening behavior provide necessary context to understand her "intent" in providing information crucial to accessing the

remittance safe, her argument conflates intent with motive. *See generally Havens v. James*, 76 F.4th 103, 114 n.12 (2d Cir. 2023) ("It is well established that the 'motives' that prompt one's conduct are not the same as the mental state associated with that conduct."). The Supreme Court has explained that the "intent to undertake some act is . . . perfectly consistent with the motive of avoiding adverse consequences which would otherwise occur." *Rosemond v. United States*, 572 U.S. 65, 81 n.10 (2014). We have therefore held that a defendant's "conscious participation" in a crime, "with full knowledge that [the] conduct was illegal, would not be any less intentional or willful for purposes of criminal law if his conduct was motivated by threats as opposed to a desire for profit." *United States v. Pitterson*, No. 20-2994, 2022 WL 779256, at *2 (2d Cir. Mar. 15, 2022) (summary order).

The evidence presented to the jury created a strong inference that Ramsey intended for Gaines to commit the theft. Ramsey provided Gaines with information to access the remittance safe, traveled with him to Metro Station, waited nearby while he committed the theft, and purchased money orders with the stolen funds. That Ramsey might have been motivated by Gaines's threatening behavior does not negate her intent to bring about the theft of the remittance funds. This is consistent with the Court's holding that threats sufficient to establish a duress defense "do[] not negate a defendant's criminal state of mind" but rather allow a defendant to avoid criminal liability "because the coercive conditions . . . negate[] a conclusion of guilt." *Dixon v. United States*, 548 U.S. 1, 7 (2006). Thus, Ramsey's hearsay statements cannot be construed as necessary to contextualize her intent in committing acts that aided in the theft of the remittance funds, and the rule of completeness does not require their admission.

## II. Sufficiency of the Evidence

"We review preserved claims of insufficiency of the evidence *de novo*." *United States v. Capers*, 20 F.4th 105, 113 (2d. Cir. 2021) (quoting *United States v. Atilla*, 966 F.3d 118, 128 (2d Cir. 2020)).[2] "Even on de novo review, however, . . . we must sustain the jury's verdict if, 'credit[ing] every inference that could have been drawn in the government's favor' and 'viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id*. (quoting *United States v. Ho*, 984 F.3d 191, 199 (2d Cir. 2020)) (alteration in original). This Court "may enter a judgment of acquittal only if the evidence that the defendant committed the crime alleged is nonexistent or so meager that no reasonable jury could find guilt beyond a reasonable doubt." *United States v. Raniere*, 55 F.4th 354, 364 (2d Cir. 2022) (quoting *Capers*, 20 F.4th at 113).

Here, the government presented sufficient evidence for a reasonable jury to find that Ramsey "falsely stated she entered the vault at the Post Office . . . only to return a key" when she "knew and believed she entered the vault . . . to check on the contents of a safe drawer inside the vault at the Post Office." This finding is supported by Agent Strasser's testimony that when he asked Ramsey why she had been in the vault, she initially told him that she had to return the keys. But upon further questioning, she changed her story several times before admitting she had lied in two interviews with multiple postal inspectors. Agent McInerney also testified that after questioning regarding Ramsey's reasons for entering the vault during the earlier interview, Ramsey admitted she had no reason to be in there. Taken together, this testimony provides sufficient evidence for

[2] Ramsey moved for acquittal as to all elements of all three counts on the basis that the evidence was insufficient to sustain a conviction, pursuant to Federal Rule of Criminal Procedure 29. The district court denied this motion. Thus, Ramsey has preserved this claim for review on appeal.

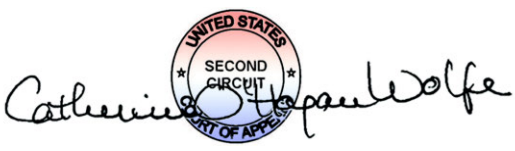
a reasonable jury to infer that when Ramsey stated that she entered the vault to return the keys, without providing any other reasons for doing so, she lied and concealed her true reason for entering the vault. *See United States v. Sampson*, 898 F.3d 287, 306 (2d Cir. 2018) (explaining that the completeness and accuracy of "a responsive statement must be judged according to common sense standards").

Ramsey argues that the government adduced no evidence that she specifically stated that she entered the vault "*only* to return the key." But while the defense puts this statement in quotation marks, the indictment does not, and the government was not required to prove that Ramsey made this statement verbatim. The government provided testimony that when initially asked why she entered the vault, Ramsey gave only the explanation of returning the key. And further, the government offered evidence that by providing only this reason, Ramsey concealed her true reason for entering the vault. This is not a case in which a defendant was "convicted on a charge the grand jury never made against him." *Stirone v. United States*, 361 U.S. 212, 219 (1960). Rather, Ramsey is advocating one narrow reading of the indictment, while the jury permissibly adopted another. Thus, we sustain the jury's verdict on appeal.

* * *

We have considered Ramsey's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



# UNITED STATES COURT OF APPEALS
## FOR THE
# SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 26th day of February, two thousand twenty-five.

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United States of America,

Appellee,

v.

Germaine Ramsey,

Defendant - Appellant.

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**ORDER**

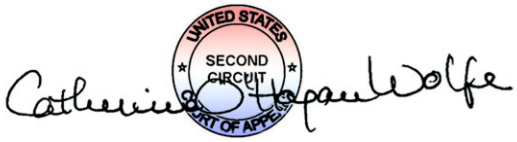
Docket No: 23-7211

Appellant, Germaine Ramsey, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc.*

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk



# 23-7211

To be argued by:
**MATTHEW B. LARSEN**

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**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

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UNITED STATES OF AMERICA,

Appellee,

-against-

GERMAINE RAMSEY, AKA Elder Ramsey,

Defendant-Appellant.

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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**PETITION FOR REHEARING OR REHEARING EN BANC**

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## INTRODUCTION

Sarah Palin will get a new trial because her first jury was denied "facts . . . that a reasonable juror could plausibly have found to support Palin's case." *Palin v. New York Times Co.*, 113 F.4th 245, 254 (2d Cir. 2024). "The jury is sacrosanct in our legal system," the Court professed, "and we have a duty to . . . mak[e] certain that juries are provided with relevant proffered evidence." *Id.* at 255.

Unfortunately for Germaine Ramsey, she's not Sarah Palin. Her Panel found nothing wrong with the government's giving her jurors a misleading half-account of a statement she made to law enforcement. They heard that Ramsey told her lover, Robert Gaines, what he needed to know to steal from the Postal Service, her employer of over 30 years. Flagging this disclosure as the "most important[]" piece of evidence against Ramsey, A. 117, the government told her jury it proved she "intended to help Gaines [steal]. Why else would she tell Gaines everything he needed to know to steal the money?" A. 102.[1]

Kept from the jury was the "why else": Gaines is an "abusive person, prone to 'rages,'" Ramsey had explained, who "put his hands on

[1] "A." means the Appendix for Germaine Ramsey, Docket Entry 27.

her in the past" and became "angry and demanded information from her." A. 20. This was evidence "a reasonable juror could plausibly have found to support [Ramsey's] case," *Palin*, 113 F.4th at 254, as it indicated she acted not with the intent to steal but to avoid a beating.

Would the jury have been compelled to reach that conclusion? No. Could it have disbelieved her— or believed her yet found she intended to both avoid harm and steal? Sure. But was her explanation "relevant proffered evidence," *id.* at 255, the jury needed to hear? You bet.

The "'rule of completeness' . . . was designed to prevent exactly the type of prejudice of which [Ramsey] complains." *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 171 (1988). It says if one party "puts in evidence part of a . . . conversation," the other "may introduce the balance . . . to explain or rebut the adverse inferences which might arise from the fragmentary or incomplete character of the evidence introduced." *United States v. Corrigan*, 168 F.2d 641, 645 (2d Cir. 1948).

The admitted part of Ramsey's statement implied she intended to steal – "Why else would she tell Gaines everything he needed to know to steal the money?" – while her withheld explanation, of acting out of fear of a violent man, arguably called that into reasonable doubt. But the

defense never got to make that argument, as the government was allowed to withhold the basis for it by hiding from Ramsey's jury facts crucial to making an informed decision on the intent question.

Sadly, the Panel found nothing wrong with this unfair trial, for reasons (discussed below) that flout at least two Supreme Court rulings.

One more thing. The government alleged, and the jury found, that Ramsey violated 18 U.S.C. § 1001 when she "stated," falsely, she entered a postal vault "only to return a key." A. 15 (indictment), A. 148 (verdict). Yet there's no evidence she ever said that. Citing none, the Panel affirmed on the view that, "when Ramsey stated that she entered the vault to return the keys, *without providing any other reasons for doing so*, she lied." Exhibit A at 8 (emphasis added). But no such lie of omission was charged, and Ramsey may not be "convicted of an offense other than that charged." *United States v. Wallace*, 59 F.3d 333, 337 (2d Cir. 1995) (Jacobs, J.). Anyway, the "lie" the Panel found was literally true – Ramsey did enter to return the keys – and a "literally truthful statement cannot be the basis for a § 1001 charge." *United States v. Sampson*, 898 F.3d 287, 306 (2d Cir. 2018) (Livingston, J.).

Rehearing is warranted.

## BACKGROUND

### A. The Unfair Trial

Ramsey, then a 63-year-old who had worked for the Postal Service for over 30 years, was accused of stealing from her post office. She denied guilt and went to trial, where Postal Inspector Russell Strasser testified Ramsey admitted giving Gaines the information he needed to steal $7,781: "she told him where the [money] was located in the vault"; "that the vault would be open"; "where the vault was located"; and where the "key [to the safe] was located." A. 58-59. This proved, the government told the jury, Ramsey "orchestrated the theft." A. 127.

But the jury didn't hear her full statement. In his report, Strasser noted Ramsey's explaining that she divulged the details above because Gaines "became angry and demanded information from her." A. 20. He "is an abusive person, prone to 'rages,'" who'd "put his hands on her in the past." *Id*. And when she learned he'd stolen the money, she "wanted to tell him to return [it]" but "was too terrified to confront him." *Id*. The jury never heard this, however, as the judge denied Ramsey's request to admit it under the rule of completeness. The government then took that ruling and ran with it (as detailed below). PS: Gaines

wasn't charged with anything.

During deliberations, the jurors asked for "Strasser's testimony . . . regarding defendant's statements" and also "Strasser's report." A. 142. But the report, which had the evidence of Gaines's violence and demand for information, wasn't shared: "It's not in evidence," the judge said, "so they can't have it." *Id.* The next day, the jury requested the "[f]ull testimony of Mr. Strasser." A. 144. That afternoon, it found Ramsey guilty of conspiring to steal and aiding the money's theft. A. 145-46.

It also convicted her of falsely saying she "entered the vault at the Post Office on the morning of December 22, 2019 only to return a key." A. 148. The proof of that, the prosecutor told the jury, was on "transcript Page 295." A. 107. But here's all the agent said:

> Q. Now, before you showed the defendant video, did you discuss with her whether she returned to the vault a second time on December 22nd?
>
> A. Yes.
>
> Q. What did she tell you?
>
> A. She said that she returned the keys, but we had – she went into the vault, I asked – when I asked her, she initially said she didn't recall closing the vault door when she was in there.

A. 48.

Ramsey's saying she "returned the keys" was a true statement. And the government offered no evidence of her ever saying she entered the vault "only to return a key." A. 148. Before the verdict, moreover, Ramsey moved "under Rule 29 for acquittal as to all elements of all three counts." A. 80. "Motion denied," the judge said. *Id*.

**B. The Panel's Ruling**

Per the Panel, the evidence of Gaines's physical abusiveness and angry demand for information was "not necessary to explain or understand the meaning of Ramsey's straight-forward admission that she passed along information crucial to carrying out the theft." Exhibit A at 5. Nor was this evidence "necessary to place the admitted portions [of her statement] into context." *Id*.

Calling that statement a "confession," the Panel said the evidence of Gaines's abusiveness and demand "might have helped place Ramsey's confession in context if she had made the necessary factual showing to present a duress defense," but she did not "present such a defense." *Id.*

Unable to cite any law requiring Ramsey to raise a duress defense in order to stop the government from giving her jury a misleading half-account of her statement, the Panel cited *United States v. Pitterson*,

2022 WL 779256 (2d Cir. 2022). But at the trial there, unlike here, the jury was told that evidence of "threats [the defendant] received may be relevant to . . . the jury's 'evaluation of the elements that the government has to prove,'" which included "*mens rea*." *Id*. at *2.

The Panel also upheld Ramsey's conviction for falsely stating she entered the vault "only to return a key," A. 148, despite there being no evidence she said that. According to the Panel, there was nonetheless "sufficient evidence for a reasonable jury to infer that when Ramsey stated that she entered the vault to return the keys, *without providing any other reasons for doing so*, she lied and *concealed her true reason* for entering the vault." Exhibit A at 7-8 (emphasis added).

But no such lie of omission was charged by the grand jury (or found by the trial jury). Rather, Count Three accused Ramsey of affirmatively "Making a False Statement" when she "stated . . . she entered the vault at the Post Office on the morning of December 22, 2019 only to return a key." A. 15. "Count Three," the government told the jury, "charges the defendant will lying to Agent McInerney and Agent Pastrana." A. 107. Yet that alleged lie – Ramsey's saying she entered the vault "only to return a key," A. 15 – was never proven.

## REASONS FOR GRANTING REHEARING

### I. The Panel's Ruling Flouts Those of the Supreme Court

When a "jury [i]s given a distorted and prejudicial impression of" a statement, the rule of completeness entitles the opposing party to "counteract th[e] prejudicial impression by presenting additional information about" the statement. *Rainey*, 488 U.S. at 170-71. This rule "was stated succinctly by Wigmore: '[T]he opponent, against whom a part of an utterance has been put in, may in his turn complement it by putting in the remainder, in order to secure for the tribunal a complete understanding of the total tenor and effect of the utterance.'" *Id.* at 171 (citation omitted). And Federal Rule of Evidence 106, which "codifie[s] the doctrine of completeness," is a "reaffirmation of the obvious: that when one party has made use of a portion of a document, such that misunderstanding or distortion can be averted only through presentation of another portion, the material required for completeness is *ipso facto* relevant and therefore admissible." *Id.* at 172.

The Panel's ruling ignores *Rainey*. It asserts, citing nothing, that Ramsey's saying she helped Gaines because he's a violent man who angrily demanded it was "not necessary to explain or understand the

meaning of Ramsey's straight-forward admission that she passed along information crucial to carrying out the theft." Exhibit A at 5.

The record belies that. Hearing Ramsey's reason for helping Gaines was essential to correcting the misimpression the government gave the jury. The theft, one prosecutor claimed in her opening, was "orchestrated by . . . Germaine Ramsey." A. 31. "You will hear that the defendant told Gaines everything he needed to know to steal the money from the vault." A. 32. "You'll see how [Gaines] knows exactly where to go because the defendant had told him. You'll see that he knows exactly what to do because the defendant explained it to him." A. 34.

"It was Germaine Ramsey who made it happen," another prosecutor asserted in summation. A. 82. She "gave Gaines all of the information he needed to steal the money. She told him where the remittance was located in the vault, that the vault would be open, that the vault was in the finance office, that the finance office was in the back of the facility through the door with the clock above it," and she said "Gaines could have gotten the code to the [entry] gate from her phone." A. 94. "It was Gaines in the vault. And it was Ramsey the insider directing this." A. 100. "Ramsey gave Gaines all of the

information he needed to steal the remittance." *Id.* "Of course, she intended for him to steal the money." A. 101. "The evidence that Ramsey intended to help Gaines is clear. Why else would she tell Gaines everything he needed to know to steal the money?" A. 102.

"Why else?" Perhaps because Gaines is an "abusive person, prone to 'rages,'" who had "put his hands on [Ramsey] in the past" and became "angry and demanded information from her." A. 20. But the jurors never heard this.

So the government was able to grotesquely mislead them by using part of Ramsey's statement to brand her the architect of the theft when, in reality, her full statement indicated she had no intent to steal and helped Gaines purely out of fear. No matter: the government posed its rhetorical "why else" question knowing full well there was an answer it was hiding that, if credited, could torpedo its case.

Because the theft charges required proof that stealing was Ramsey's "specific intent," *United States v. Monaco*, 194 F.3d 381, 386 (2d Cir. 1999), and what she "wishe[d] to bring about," *United States v. Tyler*, 758 F.2d 66, 70 (2d Cir. 1985), the judge instructed the jury there had to be proof Ramsey's "conscious objective" was to steal. A. 128. The

government told the jury that Ramsey's giving Gaines information proved such intent. But that's flat-out wrong.

Indeed, the Panel's calling the admitted portion of Ramsey's statement a "confession," Exhibit A at 5, reveals an unfortunate misunderstanding of the facts and law.

At no point did Ramsey confess to sharing Gaines's intent to steal. And in one of the Supreme Court's key rulings on theft, where the defendant admitted entering what he knew was government property and removing spent bomb casings, the Court explained: "That the removal of them was a conscious and intentional act was admitted. But that isolated fact is not an adequate basis on which the jury should find the criminal intent to steal or knowingly convert, that is, wrongfully to deprive another of possession of property. Whether that intent existed, the jury must determine, no[t] only from the act of taking, but from that together with defendant's testimony and all of the surrounding circumstances." *Morissette v. United States*, 342 U.S. 246, 276 (1952).

Just as Morissette didn't confess to theft by admitting he took property he knew wasn't his, Ramsey's admitting that she told Gaines what he demanded to know was not a "confession," Exhibit A at 5, that

she shared his "criminal intent to steal." *Morissette*, 342 U.S. at 276. Kept from the jury was evidence her "conscious objective," A. 128, was not theft but avoiding injury. The jurors "might have disbelieved [t]his profession of innocent intent." *Morissette*, 342 U.S. at 276. Or not: "juries are not bound by what seems inescapable logic to judges." *Id.* Ramsey's jury needed to hear the evidence that, if credited, called the government's claim of criminal intent into reasonable doubt.

As with *Rainey*, the Panel's ruling ignores *Morissette*. Rather than acknowledge these controlling precedents or explain why Ramsey was wrong to invoke them, it says: "Because Ramsey did not attempt to establish . . . a duress defense, the district court did not abuse its discretion in excluding" the rest of her statement. Exhibit A at 5.

Yet a duress defense "allows the defendant to 'avoid liability . . . even though the necessary *mens rea* was present.'" *Dixon v. United States*, 548 U.S. 1, 7 (2006) (citation omitted). Ramsey therefore didn't argue duress, as her defense was that she did *not* intend to steal.

Further, and tellingly, the Panel cited no authority for its view that Ramsey had to raise a duress defense to stop the government from giving the jury a misleadingly incomplete account of her statement.

The Panel pointed to the summary order in *Pitterson*, yet the Court ruled the judge there "accurately explained that Smith Pitterson was not pursuing a defense of duress but that his testimony regarding threats he received may be relevant to . . . the jury's 'evaluation of the elements that the government has to prove,'" which included a criminal "*mens rea*." 2022 WL 779256, at *2. Likewise, Ramsey also didn't pursue a duress defense and chose not to testify, as was her right. And the evidence "regarding threats" was both relevant to "the jury's evaluation of . . . *mens rea*" and, if credited, called into reasonable doubt whether Ramsey's "conscious objective," A. 128, was indeed to steal.

The "government at all times bears the burden of proving beyond a reasonable doubt that the defendant had the state of mind required for conviction." *United States v. Scully*, 877 F.3d 464, 476 (2d Cir. 2017). And the government doesn't (or shouldn't) get to prove intent by violating the rule of completeness and misleading the jury.

The Panel said Ramsey "conflates intent with motive." Exhibit A at 6. While not synonyms, however, "motive" often "bears on [] intent." *United States v. Puff*, 211 F.2d 171, 176 (2d Cir. 1954). Thus, Ramsey's judge instructed her jury that, while "motive is not a necessary element

of any of the crimes" charged, "motive is, however, a circumstance which you may consider as bearing on the intent of the defendant." E.D.N.Y. 21-cr-495, Docket Entry 93 at 128 (Trial Tr. 707).

Ramsey's motive for giving Gaines the information he demanded was to avoid harm from "an abusive person, prone to 'rages,'" who had "put his hands on her in the past." A. 20. And when she discovered he'd used the information to steal from her employer of over 30 years, she "wanted to tell him to return the money" but "was too terrified to confront him." *Id.* Had the jury credited this account of her motive, it could have found that her intent in doing what Gaines demanded – her "conscious objective," A. 128 – was simply to avoid injury.

"That Ramsey might have been motivated by Gaines's threatening behavior," the Panel said, "does not negate her intent to bring about the theft of the remittance funds." Exhibit A at 6. But this remark, like the "confession" one above, is further reason to rehear this case.

There was no doubt Ramsey assisted Gaines; whether she did so with the "intent to bring about the theft" is why there was a trial— and that question was for the jury. It found such intent, but only after being misled about Ramsey's statement. That statement wasn't a

"confession" to intending to steal, Exhibit A at 5, as in it Ramsey made plain that her intent was simply to avoid harm from a violent man. "Determining whether [her claims] were credible and weighing [that] evidence against [the government's] was the jury's responsibility. It was not for the [Panel] to believe [the allegation of criminal intent], much less rely upon it." *Palin*, 113 F.4th at 273.

The Panel's view that Ramsey's explanation "does not negate her intent to bring about the theft," Exhibit A at 6, presumes the truth of the very accusation that occasioned a trial.

Whether Ramsey's "conscious objective," A. 128, was to steal was for the jurors to decide, but they never heard the evidence suggesting the answer was no. The government was allowed to hide it and, worse, falsely imply no non-criminal objective existed: "that Ramsey intended to help Gaines is clear. Why else would she tell Gaines everything he needed to know to steal the money?" A. 102. The government knew there was a "why else." But it kept that from the jury to win its case.

This was no fair trial. And the violation of the rule of completeness clearly wasn't harmless. Besides the government's harping on its misleading account of Ramsey's statement to Agent Strasser, and its

calling that the "most important[]" evidence against her, A. 117, the jury undisputedly focused on it, requesting "Strasser's testimony from yesterday regarding defendant's statements," A. 142, and then his "[f]ull testimony," A. 144, just before convicting Ramsey. A. 145-46. The half-account of her statement was the opposite of "'unimportant,'" and it plainly "influence[d] the jury." *United States v. Zhong*, 26 F.4th 536, 558 (2d Cir. 2022) (citation omitted).

* * *

Are fair trials in the Second Circuit only for the Sarah Palins of the world? She's getting a new trial because her first jury was denied "facts . . . that a reasonable juror could plausibly have found to support [her] case." *Palin*, 113 F.4th at 254. "The jury is sacrosanct in our legal system," this Court claimed, "and we have a duty to . . . mak[e] certain that juries are provided with relevant proffered evidence." *Id.* at 255. That decidedly didn't happen here.

Convicted on the basis of a misleadingly incomplete account of her statement, Ramsey merits a new trial before a jury fairly informed of all the facts – not only those plucked to serve the government's narrative – bearing on what her "conscious objective," A. 128, truly was.

## II. The Panel Found Ramsey Told a Lie That Was Not Charged And Is Not Criminal

Count Three charged Ramsey with "Making a False Statemesnt" in violation of "Title 18, United States Code, Section[] 100l(a)(2)." A. 15. Specifically, the charge was that she falsely "stated . . . she entered the vault at the Post Office on the morning of December 22, 2019 only to return a key." *Id*. And that's what the jury found: "The defendant falsely stated she entered the vault at the Post Office on the morning of December 22, 2019 only to return a key." A. 148. Yet, undisputedly, there's no evidence Ramsey ever said she entered only to return a key.

Undeterred, the Panel affirmed the conviction anyway: "when Ramsey stated that she entered the vault to return the keys, *without providing any other reasons for doing so*, she lied and *concealed her true reason* for entering the vault." Exhibit A at 8 (emphasis added). But no such lie of omission was ever charged. And Ramsey may not be "'convicted of an offense other than that charged.'" *Wallace*, 59 F.3d at 337 (Jacobs, J., for the Court; citation omitted).

"The Supreme Court has made it clear" that an "indictment drawn in more general terms may support a conviction on alternative bases," but "an indictment with specific charging terms will not." *United States*

*v. Zingaro*, 858 F.2d 94, 99 (2d Cir. 1988) (citing *Stirone v. United States*, 361 U.S. 212, 218 (1960)). The § 1001 charge was very specific, and there's no evidence Ramsey ever told the lie alleged.

Moreover, the "lie" the Panel found was literally true: Ramsey did "enter[] the vault to return the keys," Exhibit A at 8, even if she had a second reason she didn't volunteer. And she "may not be convicted under § 1001 on the basis of a statement that is, although misleading, literally true." *United States v. Mandanici*, 729 F.2d 914, 921 (2d Cir. 1984) (citing *Bronston v. United States*, 409 U.S. 352, 359-62 (1973)). *See also, e.g., Sampson*, 898 F.3d at 306 (Livingston, J., for the Court).

Thus, even (mis)reading Count Three to charge the lie of omission the Panel found, § 1001 does not reach a lie of omission that is nonetheless literally true. And that's all the Panel found here.

From any angle, this conviction has got to go.

## CONCLUSION

The Court should grant rehearing.

Respectfully submitted,

FEDERAL DEFENDERS OF NEW YORK
APPEALS BUREAU

February 6, 2025

*s/ Matthew B. Larsen*
MATTHEW B. LARSEN
Assistant Federal Defender
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New York, NY 10007
Tel.: (212) 417-8725
Email: Matthew_Larsen@fd.org

## CERTIFICATE OF COMPLIANCE

I certify that this petition complies with Federal Rule of Appellate Procedure 35(b)(2)(A) in that it consists of 3,818 words set in Century Schoolbook 14-point type.

February 6, 2025 *s/ Matthew B. Larsen*
MATTHEW B. LARSEN

# EXHIBIT A

23-7211-cr
*United States v. Ramsey*

# UNITED STATES COURT OF APPEALS
# FOR THE SECOND CIRCUIT

## SUMMARY ORDER

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of December, two thousand twenty-four.

Present:

DEBRA ANN LIVINGSTON,
*Chief Judge*,
DENNIS JACOBS,
STEVEN J. MENASHI,
*Circuit Judges.*

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UNITED STATES OF AMERICA,

*Appellee*,

v. 23-7211-cr

GERMAINE RAMSEY,

*Defendant-Appellant*,*

---

For Appellee: Meredith A. Arfa (David C. James, *on the brief*), Assistant United States Attorneys *for* Breon Peace, United States Attorney for the Eastern District of New York, Brooklyn, NY.

* The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

For Defendant-Appellant: MATTHEW B. LARSEN, Assistant Federal Defender, Federal Defenders of New York, New York, NY.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Ross, *J.*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is **AFFIRMED**.

Germaine Ramsey appeals from a September 27, 2023 judgment of the United States District Court for the Eastern District of New York (Ross, *J.*) convicting her, following a jury trial, of (1) conspiring to steal United States property in violation of 18 U.S.C. § 371; (2) aiding and abetting the theft of such property in violation of § 2 and § 641; and (3) making a false statement in violation of § 1001. At trial, the government presented evidence that Ramsey and her co-conspirator Robert Gaines conspired to steal, and did steal, remittance funds totaling $7,781 from a safe in a vault at the Metro Station post office in Brooklyn, New York. This evidence included testimony regarding Ramsey's admissions to agents of the United States Postal Service Office of the Inspector General ("USPS-OIG") that she provided her then-fiancé Gaines information necessary to gain access to the remittance safe and commit the theft. The government also submitted video evidence that Ramsey entered the Metro Station vault prior to the theft and appeared to check the contents of the remittance safe. According to cell site location data, Ramsey then left and joined Gaines at their shared residence before they both traveled to Metro Station. Video evidence showed that Gaines accessed Metro Station using the employee entrance and thereafter twice entered the vault. A few hours later, Ramsey purchased money orders totaling $4,000, and the remittance funds were discovered missing the following day.

USPS-OIG agents interviewed Ramsey regarding the missing funds on January 2, 2020, at which point Ramsey denied involvement in the theft. In a subsequent interview on January 28,

2020, she again initially denied involvement. Interviewing Agent Strasser testified that, when asked why she had entered the vault, Ramsey claimed she did so to return a set of Metro Station keys. But after further questioning, Ramsey admitted she had lied during both interviews. Ramsey also stated during this interview that Gaines was abusive and that he had demanded information from her regarding the layout of Metro Station, which she then provided to him. Agent Strasser addressed these reports of abuse at the end of the interview, asking if she felt safe returning to her shared residence with Gaines. Ramsey responded that she was fine to go home.

Ramsey first argues that her convictions under Counts One and Two must be vacated because the district court abused its discretion by excluding statements she made to law enforcement alleging that Gaines was abusive and threatening. Ramsey argues that the rule of completeness required admitting these hearsay statements to provide necessary context for other admitted statements, made in the same interview, that she gave Gaines information critical to committing the theft. In addition, Ramsey argues that her conviction under Count Three should be set aside because the government did not provide sufficient evidence that she "falsely stated she entered the vault at the Post Office . . . only to return a key," when in fact "she entered the vault . . . to check on the contents of a safe drawer inside the vault at the Post Office."

We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

## I. Rule of Completeness

"We review the district court's evidentiary rulings 'under a deferential abuse of discretion standard, and we will disturb an evidentiary ruling only where the decision to admit or exclude evidence was manifestly erroneous.'" *United States v. Williams*, 930 F.3d 44, 58 (2d Cir. 2019) (quoting *United States v. McGinn*, 787 F.3d 116, 127 (2d Cir. 2015)).

While Ramsey's out-of-court statements may be admitted as opposing party statements when offered against her, they are considered inadmissible hearsay when offered by Ramsey for their truth. *See* Fed. R. Evid. 801(d)(2). The district court is required to place otherwise inadmissible hearsay statements into evidence, however, if their exclusion would violate the rule of completeness.[1] *United States v. Johnson*, 507 F.3d 793, 796 (2d Cir. 2007). The rule of completeness requires that "an 'omitted portion of a statement must be placed in evidence if necessary to explain the admitted portion, to place the admitted portion in context, to avoid misleading the jury, or to ensure fair and impartial understanding of the admitted portion.'" *United States v. Thiam*, 934 F.3d 89, 96 (2d Cir. 2019) (quoting *United States v. Castro*, 813 F.2d 571, 575–76 (2d Cir. 1987)). This Court has held that "the rule of completeness 'is violated only where admission of the statement in redacted form distorts its meaning or excludes information substantially exculpatory of the declarant.'" *Id.* (quoting *United States v. Benitez*, 920 F.2d 1080, 1086–87 (2d Cir. 1990)). Moreover, we have been careful to note that "the rule of completeness does not require the admission of self-serving exculpatory statements in all circumstances." *Williams*, 930 F.3d at 61 (emphasis omitted); *see also United States v. Herman*, 997 F.3d 251, 264 (5th Cir. 2021) (explaining that the rule "permits a party to correct an incomplete and misleading impression" but

[1] At the time of Ramsey's trial, Federal Rule of Evidence 106 partially codified the common law rule of completeness, allowing a party against whom "all or part of a writing or recorded statement" is introduced to "require the introduction . . . of any other part . . . that in fairness ought to be considered at the same time." Fed. R. Evid. 106. That rule was amended, effective December 2023, to apply to oral testimony as well as recorded statements. Fed. R. Evid. 106 Advisory Committee Note to 2023 Amendments. But because we have previously held that Federal Rule of Evidence 611(a) renders the rule of completeness "substantially applicable to oral testimony, as well," the rule nevertheless applies here. *United States v. Johnson*, 507 F.3d 793, 796 n.2 (2d Cir. 2007) (quoting *United States v. Mussaleen*, 35 F.3d 692, 695 (2d Cir. 1994)).

"does not permit a party to introduce . . . statements to affirmatively advance their own, alternative theory of the case").

The exclusion of Ramsey's hearsay statements at trial below raises none of the concerns addressed by the rule of completeness. The government introduced Ramsey's admission from the January 28, 2020 interview that she provided Gaines information on accessing the Metro Station remittance safe. Ramsey's allegations of Gaines's threatening behavior, while made during the same interview, were not necessary to explain or understand the meaning of Ramsey's straightforward admission that she passed along information crucial to carrying out the theft. Nor were the excluded hearsay statements necessary to place the admitted portions into context. Statements alleging that Gaines's threatening behavior prompted Ramsey to share information might have helped place Ramsey's confession in context if she had made the necessary factual showing to present a duress defense. *See United States v. Paul*, 110 F.3d 869, 871 (2d Cir. 1997) (explaining a defendant is not entitled to present a duress defense if the "evidence is insufficient as a matter of law to establish the defense"). But Ramsey did not argue to the district court that she intended to present such a defense. As the district court observed, Ramsey had "not clarified whether she intends to introduce a duress defense or otherwise argue that she was pressured by [Gaines] into committing criminal acts," and in fact there was "no evidence that Ms. Ramsey acted under duress." *United States v. Ramsey*, No. 21-CR-495, 2023 WL 2523193, at *5 (E.D.N.Y. Mar. 15, 2023). Because Ramsey did not attempt to establish, and likely could not have established, the elements of a duress defense, the district court did not abuse its discretion in excluding Ramsey's allegations as context for the admitted statements.

While Ramsey argues that her statements regarding Gaines's threatening behavior provide necessary context to understand her "intent" in providing information crucial to accessing the

remittance safe, her argument conflates intent with motive. *See generally Havens v. James*, 76 F.4th 103, 114 n.12 (2d Cir. 2023) ("It is well established that the 'motives' that prompt one's conduct are not the same as the mental state associated with that conduct."). The Supreme Court has explained that the "intent to undertake some act is . . . perfectly consistent with the motive of avoiding adverse consequences which would otherwise occur." *Rosemond v. United States*, 572 U.S. 65, 81 n.10 (2014). We have therefore held that a defendant's "conscious participation" in a crime, "with full knowledge that [the] conduct was illegal, would not be any less intentional or willful for purposes of criminal law if his conduct was motivated by threats as opposed to a desire for profit." *United States v. Pitterson*, No. 20-2994, 2022 WL 779256, at *2 (2d Cir. Mar. 15, 2022) (summary order).

The evidence presented to the jury created a strong inference that Ramsey intended for Gaines to commit the theft. Ramsey provided Gaines with information to access the remittance safe, traveled with him to Metro Station, waited nearby while he committed the theft, and purchased money orders with the stolen funds. That Ramsey might have been motivated by Gaines's threatening behavior does not negate her intent to bring about the theft of the remittance funds. This is consistent with the Court's holding that threats sufficient to establish a duress defense "do[] not negate a defendant's criminal state of mind" but rather allow a defendant to avoid criminal liability "because the coercive conditions . . . negate[] a conclusion of guilt." *Dixon v. United States*, 548 U.S. 1, 7 (2006). Thus, Ramsey's hearsay statements cannot be construed as necessary to contextualize her intent in committing acts that aided in the theft of the remittance funds, and the rule of completeness does not require their admission.

## II. Sufficiency of the Evidence

"We review preserved claims of insufficiency of the evidence *de novo*." *United States v. Capers*, 20 F.4th 105, 113 (2d. Cir. 2021) (quoting *United States v. Atilla*, 966 F.3d 118, 128 (2d Cir. 2020)).[2] "Even on de novo review, however, . . . we must sustain the jury's verdict if, 'credit[ing] every inference that could have been drawn in the government's favor' and 'viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id*. (quoting *United States v. Ho*, 984 F.3d 191, 199 (2d Cir. 2020)) (alteration in original). This Court "may enter a judgment of acquittal only if the evidence that the defendant committed the crime alleged is nonexistent or so meager that no reasonable jury could find guilt beyond a reasonable doubt." *United States v. Raniere*, 55 F.4th 354, 364 (2d Cir. 2022) (quoting *Capers*, 20 F.4th at 113).

Here, the government presented sufficient evidence for a reasonable jury to find that Ramsey "falsely stated she entered the vault at the Post Office . . . only to return a key" when she "knew and believed she entered the vault . . . to check on the contents of a safe drawer inside the vault at the Post Office." This finding is supported by Agent Strasser's testimony that when he asked Ramsey why she had been in the vault, she initially told him that she had to return the keys. But upon further questioning, she changed her story several times before admitting she had lied in two interviews with multiple postal inspectors. Agent McInerney also testified that after questioning regarding Ramsey's reasons for entering the vault during the earlier interview, Ramsey admitted she had no reason to be in there. Taken together, this testimony provides sufficient evidence for

[2] Ramsey moved for acquittal as to all elements of all three counts on the basis that the evidence was insufficient to sustain a conviction, pursuant to Federal Rule of Criminal Procedure 29. The district court denied this motion. Thus, Ramsey has preserved this claim for review on appeal.

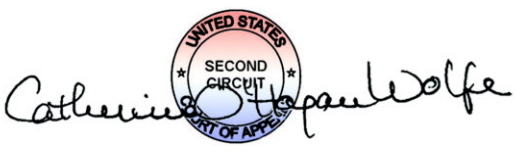
a reasonable jury to infer that when Ramsey stated that she entered the vault to return the keys, without providing any other reasons for doing so, she lied and concealed her true reason for entering the vault. *See United States v. Sampson*, 898 F.3d 287, 306 (2d Cir. 2018) (explaining that the completeness and accuracy of "a responsive statement must be judged according to common sense standards").

Ramsey argues that the government adduced no evidence that she specifically stated that she entered the vault "*only* to return the key." But while the defense puts this statement in quotation marks, the indictment does not, and the government was not required to prove that Ramsey made this statement verbatim. The government provided testimony that when initially asked why she entered the vault, Ramsey gave only the explanation of returning the key. And further, the government offered evidence that by providing only this reason, Ramsey concealed her true reason for entering the vault. This is not a case in which a defendant was "convicted on a charge the grand jury never made against him." *Stirone v. United States*, 361 U.S. 212, 219 (1960). Rather, Ramsey is advocating one narrow reading of the indictment, while the jury permissibly adopted another. Thus, we sustain the jury's verdict on appeal.

* * *

We have considered Ramsey's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



**CERTIFICATE OF SERVICE**

I certify that on February 6, 2025, I filed the foregoing petition with the Clerk of the United States Court of Appeals for the Second Circuit by means of the CM/ACMS system. I further certify that counsel for appellee, Assistant United States Attorney Meredith A. Arfa, is a registered user of the CM/ACMS system and that service was accomplished through that system.

February 6, 2025 *s/ Matthew B. Larsen*
MATTHEW B. LARSEN

DMP:NMA
F. #2020R00739

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

**Filed: September 19, 2022**

UNITED STATES OF AMERICA

- against -

GERMAINE RAMSEY,
also known as "Elder Ramsey,"

Defendant.

----------X

SUPERSEDING
INDICTMENT

Cr. No. 21-495 (S–1) (ARR)
(T. 18, U.S.C., §§ 371, 641, 981(a)(1)(C), 1001(a)(2), 2 and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

THE GRAND JURY CHARGES:

COUNT ONE
(Conspiracy to Convert Property of the United States)

1. In or about December 2019, within the Eastern District of New York, the defendant GERMAINE RAMSEY, also known as "Elder Ramsey," together with others, did knowingly and willfully conspire to steal, purloin and convert to her own use and the use of others money and things of value of the United States and a department and agency thereof, to wit: United States currency, money orders and personal checks belonging to the United States Postal Service, the aggregate value of which exceeded $1,000, contrary to Title 18, United States Code, Section 641.

2. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York, the defendant GERMAINE RAMSEY, together with others, did commit and cause the commission of, among others, the following:

OVERT ACTS

(a) In or about December 2019, RAMSEY orally described to a co-conspirator ("Co-Conspirator 1"), an individual whose identity is known to the Grand Jury, the physical layout of the United States Post Office located at 47 Debevoise Street, Brooklyn, New York 11206 (the "Post Office"), including where a vault was located in the Post Office, that said vault was unlocked, that money was kept in a locked safe drawer inside the vault and that the key to the locked safe drawer was hanging in the vault in the Post Office.

(b) In or about December 2019, RAMSEY orally provided Co-Conspirator 1 the access code to the employee entrance to the Post Office premises.

(c) On or about December 22, 2019, RAMSEY checked the contents of the safe drawer inside the vault in the Post Office.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO
(Conversion of Property of the United States)

3. On or about December 22, 2019, within the Eastern District of New York, the defendant GERMAINE RAMSEY, also known as "Elder Ramsey," together with others, did knowingly and intentionally steal, purloin and convert to her own use and the use of others money and things of value of the United States and a department and agency thereof, to wit: United States currency, money orders and personal checks belonging to the United States Postal Service, the aggregate value of which exceeded $1,000.

(Title 18, United States Code, Sections 641, 2 and 3551 et seq.)

COUNT THREE
(Making a False Statement)

4. On or about January 2, 2020, within the Eastern District of New York, the defendant GERMAINE RAMSEY, also known as "Elder Ramsey," did knowingly and willfully make one or more materially false, fictitious and fraudulent statements and representations, in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the United States Postal Service, in that RAMSEY stated and represented that (a) she did not help anyone take money and other property from the vault at the Post Office, when, as she then and there well knew and believed, she helped Co-Conspirator 1 take money and other property from the vault at the Post Office, and (b) she entered the vault at the Post Office on the morning of December 22, 2019 only to return a key to the Post Office, when, as she then and there well knew and believed, she entered the vault at the Post Office on the morning on December 22, 2019 to check on the contents of a safe drawer inside the vault at the Post Office.

(Title 18, United States Code, Sections 1001(a)(2) and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION
AS TO COUNTS ONE AND TWO

5. The United States hereby gives notice to the defendant that, upon her conviction of either of the offenses charged in Counts One and Two, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offenses to forfeit any property, real or personal, constituting or derived from proceeds obtained directly or indirectly as a result of such offenses.

6. If any of the above-described forfeitable property, 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;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL

Deighton Reid
FOREPERSON

BREON PEACE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

By: Carolyn Pokorny
Assistant U.S. Attorney

F.#: 2020R00739
FORM DBD-34
JUN. 85

No.

# UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

*vs.*

*GERMAINE RAMSEY, also known as "Elder Ramsey,"*

Defendant.

## SUPERSEDING INDICTMENT

(T. 18, U.S.C., §§ 371, 641, 981(a)(1)(C), 1001(a)(2), 2 and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

*A true bill.*

Deighton Reid
*Foreperson*

*Filed in open court this* _____ *day,*

*of* _____ *A.D. 20* _____

_____
*Clerk*

*Bail, $* _____

_____

***Nick M. Axelrod, Assistant U.S. Attorney (718) 254-6883***

Now, Count Three, charges the defendant will lying to Agent McInerney and Agent Pastrana. The defendant lied to McInerney and Agent Pastrana when she told them she didn't help anyone take the money from the vault and when she told them that she only went into the vault to return the keys.

I expect that Judge Ross will instruct you that this crime has five elements. I'm going to walk through each of those elements to show you how they're satisfied.

The first two elements are that the defendant made a statement and that the statement was false, fictitious, or fraudulent.

What does false or fictitious mean? It means that the statement was a lie. Alternatively, the statement can be fraudulent which means it was intended to deceive the agents.

The defendant told Agent McInerney and Agent Pastrana that she did not help anyone take the money. Agent McInerney told you that, it's in the transcript at 296. The defendant told them that repeatedly.

The defendant also told Agent McInerney that she had only gone into the vault to return the keys to the post office. That's at transcript Page 295.

You already know these statements were false. They were lies. The defendant admitted they were lies to

Agent Strasser. She told him that she gave Gaines all of the information that he needed to steal the money. She told him that she was in the vault checking on the remittance and then she apologized to Agent McInerney and Agent Pastrana for lying.

You also know that these were lies because you've seen of video of Ramsey in the vault. Clearly, she was not just returning the keys, she didn't need to be anywhere near the safe to return the keys and it doesn't take 40 seconds to return the keys.

I expect that Judge Ross will also instruct you that the false statements have to be knowing and willful.

As Judge Ross will explain, for something to be knowing means it wasn't an accident or a mistake. And for something to be willful, means that it was done with a bad purpose to disobey the law.

The defendant's statements weren't an accident and she knew that what she was doing was wrong. It wasn't an accident when she repeatedly told the agents that she didn't help anyone take the money. It also wasn't an accident when she told them that she was just returning the keys. She was not confused. You know that this was her cover story. She picked the one day for the crime when she would have an excuse to be in the vault when the remittance was there.

How else do you know she knew it was wrong?

it is capable of or has the natural tendency to influence the Government's decision or activities. The requirement that a false statement be made -- be material, doesn't require that the defendant's statement in the case actually influenced the Government's decisions or activities in this particular investigation. It's possible for a false statement to be material, even if the Government knew at the time that the statement was made that the statement was false, so long as the statement was capable of influencing the Government's decision or activities.

The third element that the Government has to prove beyond a reasonable doubt is that the statement or representation was false, fictitious, or fraudulent. A statement is false or fictitious if it was untrue when made and known at the time to be untrue by the person making it or causing it to be made. A statement or representation is fraudulent if it was untrue when made and was made or caused to be made with the intent to deceive the Government agency to which it was submitted. The falsity of the defendant's statement has to be evaluated at the moment the defendant uttered it. The Government is not required to prove all of the false statements that are alleged. But in order to convict on count three, you must unanimously agree that at least one of the false statements in that count was knowingly and willfully made. In order to convict, you must

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

GERMAINE RAMSEY,

Defendant.

----------X

Docket No. 21-CR-495 (ARR)

**VERDICT SHEET**

ROSS, United States District Judge:

**COUNT ONE**
**Conspiracy to Steal Property of the United States**

How do you find defendant Germaine Ramsey as to Count One?

Not Guilty _____ Guilty X

**COUNT TWO**
**Theft of Property of the United States**

How do you find defendant Germaine Ramsey as to Count Two?

Not Guilty _____ Guilty X

Court Exhibit Eight

**COUNT THREE**
**Making a False Statement**

How do you find defendant Germaine Ramsey as to Count Three?

Not Guilty _____ Guilty X

If you found the defendant not guilty of Count Three, please leave the following questions blank. If you have found the defendant guilty of Count Three, please answer the applicable questions below.

Only if you have found the defendant guilty, please indicate, by checking on the appropriate line(s), which statement you unanimously find formed the basis of guilt.

1. The defendant falsely stated that she did not help anyone take money and other property from the vault at the Post Office, when, as she then and there well knew and believed, she helped Robert Gaines take money and other property from the vault at the Post Office. _____

2. The defendant falsely stated she entered the vault at the Post Office on the morning of December 22, 2019 only to return a key to the Post Office, when, as she then and there well knew and believed, she entered the vault at the Post Office on the morning of December 22, 2019 to check on the contents of a safe drawer inside the vault at the Post Office. X