

APPENDIX TABLE OF CONTENTS

Memorandum Opinion of the Ninth Circuit Court of Appeals (March 9, 2017)	1a
Order of the Ninth Circuit Court of Appeals Granting Motion for Stay Mandate (October 13, 2017)	9a
Order Denying Defendant's Motion for Judgment of Acquittal (November 19, 2013)	11a
Order of the Ninth Circuit Denying Petition for Rehearing En Banc (October 5, 2017)	21a

**MEMORANDUM* OPINION
OF THE NINTH CIRCUIT COURT OF APPEALS
(MARCH 9, 2017)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM HUGH WEYGANDT,

Defendant-Appellant.

No. 14-10356

D.C. No. 2:11-cr-00429-JAM-7

Appeal from the United States District Court for the
Eastern District of California John A. Mendez,
District Judge, Presiding

Before: W. FLETCHER, FUENTES,** and
RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Julio M. Fuentes, United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.

Defendant William Weygandt appeals from the jury's verdict finding him guilty of conspiracy to commit fraud involving aircraft parts in violation of 18 U.S.C. § 38(a) and from the district court's denial of his motion for a judgment of acquittal. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Sufficiency of the Evidence

Weygandt argues that the government failed to present sufficient evidence to prove Weygandt's knowledge of the conspiracy to commit fraud and his intent to defraud. We review *de novo* challenges to the sufficiency of the evidence supporting a conviction. *United States v. Bennett*, 621 F.3d 1131, 1135 (9th Cir. 2010). We “view[] the evidence produced at trial in the light most favorable to the prosecution” and consider whether the evidence “is sufficient to allow any rational juror to conclude that the government has carried its burden of proof.” *United States v. Nevils*, 598 F.3d 1158, 1169 (9th Cir. 2010) (en banc).

A rational juror could find beyond a reasonable doubt that Weygandt knew of and participated in the conspiracy to commit fraud with intent to defraud. In the light most favorable to the government, the evidence shows that Weygandt was a hands-on manager who frequently participated in production meetings and was knowledgeable about the technical aspects of the business. Various employees testified that they notified Weygandt of their need for different equipment but never received the machinery they requested. In addition, the government elicited testimony that only Weygandt was authorized to make major purchases. Based on this and other evidence, a jury could rationally conclude that Weygandt knew WECO's

equipment was inadequate to comply with the component maintenance manuals (“CMMs”) and his employees were falsely certifying 8130-3s, and that he intended to further the conspiracy by failing to acquire equipment and deflecting his employees’ requests.

2. Trial Errors

In addition to his sufficiency of the evidence challenge, Weygandt raises a variety of alleged trial errors. First, Weygandt argues that the jury instruction defining “accountable manager” was improper because it permitted the jury to convict on a theory of vicarious liability. We review *de novo* whether jury instructions “misstated or omitted an element of the charged offense” but review for abuse of discretion “the district court’s formulation of jury instructions.” *United States v. Chi Mak*, 683 F.3d 1126, 1133 (9th Cir. 2012). Here, the jury was properly instructed regarding the elements of conspiracy to commit fraud involving aircraft parts, including the need to find knowledge and intent beyond a reasonable doubt. The accountable manager instruction did not misstate any element of the charged offense, and the formulation was not an abuse of discretion.

Second, Weygandt argues that the prosecution effected a constructive amendment or fatal variance by advancing a theory of inaction at trial. When a defendant fails to object to such an error at trial, we review for plain error. *United States v. Hugs*, 384 F.3d 762, 766 (9th Cir. 2004). Under the plain error standard, “we may reverse a conviction if there exists (1) an error, (2) that is plain and (3) that affects substantial rights.” *Id.* at 767 (internal quotation marks and alterations omitted). When these elements are

present, we may correct an error “if the error seriously affects the fairness, integrity or public reputation of the judicial proceedings.” *Id.* (internal quotation marks omitted).

There was no constructive amendment or fatal variance. An impermissible amendment occurs when “the charging terms of the indictment are altered, either literally or in effect, by the prosecutor or a court after the grand jury has last passed on them,” and a variance occurs when “the evidence offered at trial proves facts materially different from those alleged in the indictment.” *United States v. Adamson*, 291 F.3d 606, 614 (9th Cir. 2002) (internal quotation marks omitted). The evidence offered at Weygandt’s trial was consistent with the indictment. The indictment charged that Weygandt “directed and caused” his employees to complete repairs, sign 8130-3s, and return parts to customers “with knowledge” that the repairs had not been conducted in accordance with the CMMs. At trial, the government presented evidence from which a rational jury could infer that Weygandt directed his employees to continue completing repairs “with knowledge” that the repairs were not being conducted in compliance with the CMMs.

Third, Weygandt argues that the government improperly misstated evidence during closing argument. Because Weygandt did not object at trial, we review for plain error. *United States v. Weatherspoon*, 410 F.3d 1142, 1150-51 (9th Cir. 2005). Weygandt is likely correct that the government misused Government Exhibit 504, a memorandum from Weygandt to Honeywell, in closing argument by advancing its own interpretation of the memorandum and presenting this

interpretation as fact. *See United States v. Kojayan*, 8 F.3d 1315, 1321 (9th Cir. 1993) (explaining that it is improper for a prosecutor to make “unsupported factual claims” because “[w]hen a lawyer asserts that something not in the record is true, he is, in effect, testifying”). However, these statements were not sufficiently prejudicial to warrant reversal under plain error review. The improper statements were limited to two assertions about the meaning of certain language from a memorandum that had been properly admitted into evidence. Thus, the jury had the opportunity to independently examine the document during deliberations and to assess the plausibility of the government’s interpretation.

Fourth, Weygandt argues that the government’s references to Weygandt’s wealth denied him due process. Because Weygandt did not raise this objection at trial, we review for plain error. *United States v. Reyes*, 660 F.3d 454, 461 (9th Cir. 2011). The government may not introduce evidence simply to show that a defendant is wealthy or poor, because financial condition alone has little probative value and risks unfair prejudice. *Id.* at 464. However, such evidence may be admissible if it proves motive, knowledge, or intent. *Id.* At Weygandt’s trial, the government introduced evidence of Weygandt’s salary and the purchase price of WECO and made various references to Weygandt’s wealth and greed. According to the government, this evidence was introduced to show that Weygandt could have purchased the necessary equipment but decided not to in order to increase his personal earnings. In light of the government’s potentially valid uses for the wealth-related evidence, any error here was not “clear” or “obvious.” *United States*

v. Olano, 507 U.S. 725, 734 (1993) (internal quotation marks omitted).

Fifth, Weygandt argues that the government engaged in a pattern of misconduct warranting dismissal or a new trial. He alleges that the government committed discovery violations, rendered defense witnesses unavailable, and knowingly elicited false testimony. “We review the district court’s rulings on alleged prosecutorial misconduct for an abuse of discretion.” *Reyes*, 660 F.3d at 461. Here, the district court explicitly stated that it had observed no prosecutorial misconduct over the course of the trial. With regard to the alleged discovery violations, the district court took remedial steps where necessary and noted on the record that it did not believe the government’s late disclosures were the result of misconduct. There is no reason for dismissal on this basis.

Weygandt’s allegation that the government purposefully prevented witnesses from testifying for the defense is similarly unconvincing. The district court properly denied Weygandt’s motion to compel immunity for a potential defense witness, because there was nothing in the record indicating that the government “took affirmative steps to prevent [the witness] from testifying.” *See United States v. Whitehead*, 200 F.3d 634, 640 (9th Cir. 2000) (explaining that in order to compel immunity, the defendant must show that the government “distorted the judicial fact-finding process” and “took affirmative steps to prevent” witnesses from testifying (internal quotation marks omitted)).

In his final claim of prosecutorial misconduct, Weygandt alleges that the government elicited false testimony from Anthony Zito. This allegation is not

supported by the record. Zito testified that he told Weygandt that Odom's Aircraft was "doing the same thing" as WECO—that is, continuing repairs without the proper equipment. The government had earlier interviewed the owner of Odom's Aircraft, who stated that Odom had never had problems with the Federal Aviation Administration. While these statements undercut Zito's credibility and were valid impeachment evidence, they were not proof that Zito was lying. To avoid any prejudice, the district court permitted the defense to call the agent who had interviewed the owner to testify. The district court did not abuse its discretion in declining to dismiss the indictment based on these allegations of prosecutorial misconduct.

Sixth, Weygandt argues that the government's use of guilt-assuming hypotheticals was improper. The government may not ask character witnesses hypothetical questions that "assume the defendant's guilt of the precise acts for which he is on trial." *United States v. Shwayder*, 312 F.3d 1109, 1120 (9th Cir. 2002). When a defendant fails to object to such questions at trial, we review for plain error. *Id.* Here, the government concedes that the prosecutor asked one series of guilt-assuming hypotheticals but contends that the error was harmless. We agree. A single series of improper questions, asked to only one of various character witnesses, is unlikely to have any meaningful effect on the verdict. The other questions identified by Weygandt are not guilt-assuming hypotheticals. They ask about specific instances of the defendant's misconduct and are permissible under Federal Rule of Evidence 405(a).

Seventh, Weygandt argues that the district court erred in limiting the testimony from Weygandt's character witnesses. We review evidentiary rulings for abuse of discretion. *United States v. Hankey*, 203 F.3d 1160, 1166-67 (9th Cir. 2000). A criminal defendant may present evidence of his own character in the form of opinion testimony or reputation testimony. Fed. R. Evid. 404(a)(2)(A), 405(a). However, specific instances of conduct are admissible only when the character trait is "an essential element of a charge, claim, or defense." Fed. R. Evid. 405(b). Weygandt does not attempt to argue that character is an essential element of any charge, claim, or defense involved in this case, and his reliance on *United States v. Whitman*, 771 F.2d 1348 (9th Cir. 1985), is misplaced. Nothing in *Whitman* exempts the defense from complying with the Federal Rules of Evidence.

Finally, Weygandt argues that cumulative error justifies reversal. Because only the government's use of Exhibit 504 and its use of a series of guilt-assuming hypotheticals were improper, the errors here did not produce significant prejudice.

AFFIRMED.

**ORDER OF THE NINTH CIRCUIT COURT
OF APPEALS GRANTING MOTION
FOR STAY MANDATE
(OCTOBER 13, 2017)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM HUGH WEYGANDT,

Defendant-Appellant.

No. 14-10356

D.C. No. 2:11-cr-00429-JAM-7
Eastern District of California, Sacramento

Before: W. FLETCHER, FUENTES,* and
RAWLINSON, Circuit Judges.

Upon due consideration of Defendant-Appellant's motion to stay the mandate of this Court pending the filing of a petition for writ of certiorari (Dkt. 93), such petition to be filed within 90 days of this Order,

* The Honorable Julio M. Fuentes, United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.

IT IS ORDERED that the motion for stay of mandate be GRANTED. In the event that the petition for writ of certiorari is timely filed, “the stay shall continue until final disposition by the Supreme Court.” Fed. R. App. P. 41(d)(2)(B).

**ORDER DENYING DEFENDANT'S MOTION
FOR JUDGMENT OF ACQUITTAL
(NOVEMBER 19, 2013)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM HUGH WEYGANDT,

Defendant.

No. No. 2:11-CR-00429 JAM

Before: John A. MENDEZ,
United States District Judge

Presently before the Court is Defendant William Hugh Weygandt's ("Defendant") Renewed Rule 29 Motion for Judgment of Acquittal (Doc. # 247). The Government opposes the motion (Doc. # 257) and Defendant replied (Doc. # 270). For the reasons set forth below, Defendant's Motion for Judgment of Acquittal is denied.¹

¹ This matter was determined to be suitable for decision without oral argument. *See United States v. Green*, 89 F.3d 657, 660 (9th Cir. 1996).

I. Factual and Procedural Background

On October 10, 2012, Defendant was indicted on a single count for Conspiracy to Commit Fraud Involving Aircraft Parts in Interstate and Foreign Commerce in violation of 18 U.S.C. § 38 (Doc. # 64). This crime arises out of Defendant's role as President and owner of WECO Aerospace Systems, Inc. ("WECO"), an aviation repair station. The Superseding Indictment alleges that Defendant conspired with various WECO employees to defraud the Federal Aviation Administration ("FAA") and WECO customers through improper repairs and overhauls on parts contrary to the representations made on the FAA Form 8130s ("8130s"). Following a three week jury trial, a guilty verdict was returned on Count I on November 4, 2013 (Doc. # 260).

II. Opinion

A. Legal Standard

Federal Rule of Criminal Procedure 29(a) ("Rule 29(a)") "requires the trial court to grant a motion for judgment of acquittal 'if the evidence is insufficient to sustain a conviction.'" *United States v. Hazeem*, 679 F.2d 770, 772 (9th Cir. 1982). Specifically, the court determines if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. VonWillie*, 59 F.3d 922, 928 (9th Cir. 1995). "The district court's function in reviewing a defendant's motion for acquittal is quite narrow. The court, after viewing the evidence in the light most favorably to the government, must determine whether the jury could reasonably find the defendant guilty beyond a reasonable doubt." *United States*

v. Bernhardt, 840 F.2d 1441, 1448 (9th Cir. 1988). “[I]t is the jury’s exclusive function to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts.” *Id.* (citations omitted). Furthermore, pursuant to Rule 29(b), “If the Court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.” Fed. R. Crim. P. 29(b). In this case, the Court reserved ruling on the motion after the close of all the evidence in this case.

B. Discussion

Defendant moves for acquittal on Count I, arguing that the evidence was insufficient for a rational juror to conclude beyond a reasonable doubt that Defendant is guilty of conspiracy under 18 U.S.C. § 38. The Government counters that there was ample evidence to support Defendant’s conviction.

To sustain a conviction in this case, the Government must prove the following: (1) that beginning no later than on or about October 26, 2006, and ending on or about February 15, 2008, there was an agreement between two or more persons to commit fraud involving aircraft parts in interstate or foreign commerce, and (2) that the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it. 18 U.S.C. § 38(a) (1)(A).

1. Agreement to Commit Fraud

The Government does not have to prove that an explicit agreement existed. *United States v. Cloud*, 872 F.2d 846, 852 (9th Cir. 1989). The agreement “may be inferred from the defendant’s acts pursuant to a

fraudulent scheme or from other circumstantial evidence.” *Id.* (citations omitted). “An inference of the existence of a conspiratorial agreement may also be drawn if there be concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose.” *Id.* (citations and internal quotations omitted); *see also United States v. Hubbard*, 96 F.3d 1223, 1226 (9th Cir. 1996) (same). Therefore, “[t]he agreement need not be explicit; it is sufficient if the conspirators knew or had reason to know of the scope of the conspiracy and that their own benefits depended on the success of the venture.” *United States v. Sullivan*, 522 F.3d 967, 976 (9th Cir. 2008) (citations omitted).

Defendant does not dispute the existence of fraudulent behavior on the part of some WECO employees. Instead, he argues that there is no evidence of an agreement to commit fraud, relying on the testimony of several witnesses who testified that they neither expressly agreed to defraud customers or the FAA nor were ordered to do so. Mot. at 7-8. However, as the Government argues, conspiratorial agreements may be implicitly evidenced by a “concert of action.” Defendant argues that the “concert of action” line of cases do not apply in this case because the parties did not work together with a shared understanding and because an inference of an agreement is permissible only when the nature of the acts would logically require coordination and planning. Reply at 23 (citing *United States v. Iriarte-Ortega*, 113 F.3d 1022, 1024 *opinion amended on denial of reh’g*, 127 F.3d 1200 (9th Cir. 1997)). However, evidence of coordination and a shared understanding exists here.

The Ninth Circuit has held, “Coordination between conspirators is strong circumstantial proof of agreement; as the degree of coordination between conspirators rises, the likelihood that their actions were driven by an agreement increases.” *Iriarte-Ortega*, 113 F.3d at 1024. In this case, a jury could reasonably have inferred a conspiratorial agreement from all the coordinated actions. Sufficient evidence was presented at trial to show that Defendant knew WECO did not have the equipment to do the tests called for in the component maintenance manuals (“CMMs”). *See e.g.* Testimony of Howell at 20-24. Nevertheless, WECO employees continued to certify in 8130s that aircraft parts were overhauled in accordance with the CMMs. *See id.* at 23-24. In addition, there was evidence establishing that Defendant had a repeated pattern of ignoring requests for proper testing equipment even though he was the only person at WECO authorized to purchase equipment. *See* Testimony of Tony Zito, Doc. # 250, at 20-24; Testimony of Michael Maupin, Doc. # 253, 107-08. For example, Tony Zito testified that he stopped requesting equipment because Defendant routinely denied the requests; Matthew Mortimer testified that after Defendant declined to buy equipment, he understood that he was to do his job without the equipment; and Jerry Kuwata testified he presented Defendant with a quote on a varidrive, which was never purchased. Testimony of Tony Zito at 23-24; Testimony of Matthew Mortimer, Doc. # 241, at 66; Testimony of Jerry Kuwata, Doc. # 266, at 69-70. Defendant argues that this disagreement over the equipment shows that Defendant and the coconspirators opposed each other and consequently, there was no shared understanding. However, this argument is unpersuasive because the common purpose was

not whether or not to purchase equipment; it was to defraud the FAA and WECC customers by skipping required tests due to the lack of equipment. Therefore, the “concert of action” consisted of Defendant refusing to buy the required equipment, allowing his employees to perform tests without the equipment, and the fraudulent representations that the required tests were properly performed. This scheme required coordination and participation of several people. Moreover, by refusing to buy the required testing equipment, Defendant acted pursuant to the fraudulent scheme and he benefitted from the scheme by saving money, which is enough to show an agreement. *See Cloud*, 872 F.2d at 852; *Sullivan*, 522 F.3d at 976.

Accordingly, there was sufficient evidence to show an implicit agreement to commit fraud between Defendant and the coconspirators.

2. Knowledge of at Least One of Its Objects and Intent to Help Accomplish It

Defendant argues that the Government failed to present sufficient evidence to show that he became a member of the conspiracy with the requisite knowledge and intent to defraud. Mot. at 11-12. Defendant relies on three cases: *United States v. Hernandez*, 301 F.3d 886 (8th Cir. 2002); *United States v. Esparza*, 876 F.2d 1390 (9th Cir. 1989); and *United States v. Estrada-Macias*, 218 F.3d 1064 (9th Cir. 2000). Reply at 6-7.

In *Hernandez*, the Eighth Circuit upheld the district court’s decision to set aside a verdict for insufficient evidence where the defendant was arrested in a sting against her boyfriend, but there was no evidence to suggest she was aware of the drugs and drug paraphernalia found hidden in her home nor was

there any other evidence linking her with drug use or drug dealing. *Hernandez*, 301 F.3d at 890-91. The court held that the evidence led only to conjecture of guilt and “conjecture is something less than an inference reasonably drawn from the evidence.” *Id.* In *Esparza*, the court held that there was insufficient evidence to support a conviction for conspiracy where the defendant was present in the passenger seat of a moving van but there was no evidence that the defendant knew that aliens were hidden in the van. *Esparza*, 876 F.2d at 1392-93 (“Considered in its factual context, *Esparza*’s presence as a passenger in the Dodge is not a sufficient basis to infer that he knew of the conspiracy or participated in it.”) Finally, in *Estrada-Macias*, the Ninth Circuit held that there was insufficient evidence to support the defendant’s conviction for conspiracy to manufacture methamphetamine because the evidence showed that the defendant was near the manufacturing site and knew about the manufacturing but not that he actually participated in the conspiracy. 218 F.3d at 1066-68. The court clarified that “[m]ere casual association with conspiring people is not enough.” *Id.* at 1066 (citation omitted).

These three cases establish that mere presence or mere association is not enough to show that a person is a member of a conspiracy. Here, however, Defendant’s assertion that he was merely present at WECO or merely associated with the coconspirators is without merit. There was strong circumstantial evidence that Defendant was intimately familiar with the aircraft parts repair business and WECO in particular: He inherited WECO from his father, worked his way up, and as the President and owner of WECO, he was involved in the day-to-day operations, often providing

input on work orders and regularly attending the daily production meetings. *See* Testimony of Michael Maupin, Doc. # 251, at 38, and Doc. # 253, at 91-92, 113-14; Testimony of Jerry Kuwata, Doc. # 265, at 20-23; Testimony of William Howell, Doc. # 258, at 29-30; Testimony of Scott Durham, Doc. # 249, at 34-35, 45-47. There was also evidence that Defendant knew about 8130s and their importance in the aviation industry. *See* Gov't Ex. 603 (email from Defendant discussing the need to include 8130s); Testimony of Howell, Doc. # 258, at 11 (acknowledging that Defendant was authorized to sign 8130s). In addition, as mentioned above, the evidence showed that Defendant was aware that WECO was missing the equipment necessary to conduct tests pursuant to the CMMs. Therefore, there was sufficient evidence for a rational jury to infer that Defendant, who was a sophisticated businessman with extensive experience, knew that the required tests were not being performed and the 8130s were being falsely certified. Moreover, this evidence shows that Defendant was sophisticated enough to distance himself from the criminal activity that was occurring, even though he permitted and encouraged it. Therefore, unlike the defendants in *Hernandez*, *Esparza*, and *Estrada-Macias*, Defendant in this case was neither merely present at WECO nor merely associated with the coconspirators. Rather, Defendant was at the center of this conspiracy.

Defendant also argues that there is no evidence that he intended to defraud the FAA or WECO customers. However, as mentioned above, there was sufficient evidence to establish that Defendant knew the 8130s were being falsely certified but he nonetheless did nothing to remedy the situation, such as buying the

required equipment or shutting down the facilities, even though he was the only one in the position to do so. Defendant knowingly continued on this course of action until he sold WECO to Gulfstream and he stated that they could finally get the testing equipment now that they had deeper pockets, referring to Gulfstream. Testimony of Michael Maupin, Doc. # 253, 81, 126-127. Therefore, the jury reasonably inferred from Defendant's conscious and calculated decision not to buy the necessary equipment that he acted with the intent to defraud. *United States v. Pelisamen*, 641 F.3d 399, 409 (9th Cir. 2011) ("It is settled law that intent to defraud may be established by circumstantial evidence.") (quoting *United States v. Rogers*, 321 F.3d 1226, 1230 (9th Cir. 2003)). Defendant points to the evidence that he purchased equipment and invested in WECO to show that he did not have the requisite intent; however this evidence is insufficient to overcome the Government's proof. Indeed evidence that Defendant spent money on such items as a trash compactor, the move to a new facility and improvements to that facility carries little weight on the intent issue and does not address the central issue raised by the Government, *i.e.*, why didn't Defendant purchase the equipment he knew that WECO needed to insure that airplane parts were being repaired and overhauled as required by law. Thus, despite Defendant's assertions, there was ample circumstantial evidence of Defendant's knowledge of and intent to defraud the FAA and WECO customers.²

² In his Reply, Defendant raises for the first time what appears to be a statute of limitations argument. Reply at 24-25. The Court may not consider new arguments raised in a Reply brief. Even if the Court were to consider this argument, it is without merit. The evidence in this case clearly demonstrates that the conspiracy

Accordingly, taking all of this evidence together and viewing it in the light most favorable to the Government, the Court finds that there was relevant and substantial evidence from which the jury could reasonably have found and did find Defendant guilty beyond a reasonable doubt.

III. Order

For the reasons discussed above, Defendant's Motion for Judgment of Acquittal is denied.

IT IS SO ORDERED.

/s/ John A. Mendez
United States District Judge

Dated: November 19, 2013

to defraud continued up through the date of Defendant's termination by Gulfstream in February 2008. *See* Government's Opposition at pp. 8-11.

**ORDER OF THE NINTH CIRCUIT
DENYING PETITION FOR REHEARING EN BANC
(OCTOBER 5, 2017)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM HUGH WEYGANDT,

Defendant-Appellant.

No. 14-10356

D.C. No. 2:11-cr-00429-JAM-7
Eastern District of California, Sacramento

Before: W. FLETCHER, FUENTES,* and
RAWLINSON, Circuit Judges.

Defendant-Appellant's Request for Leave to File a Reply to the Government's Brief (Dkt. 88) is GRANTED. The panel accepts Defendant-Appellant's brief filed on September 27, 2017 (Dkt. 91).

* The Honorable Julio M. Fuentes, United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.

The petition for panel rehearing and rehearing en banc (Dkt. 64) is DENIED. The panel unanimously voted to deny the petition for panel rehearing. Judges W. Fletcher and Rawlinson also voted to deny the petition for rehearing en banc and Judge Fuentes so recommended.

The full court has been advised of the petition for en banc rehearing, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(b).