No. 11-2459

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

v.

STEVEN FENZL,
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
NO. 09-CR-376
THE HONORABLE RUBEN CASTILLO

BRIEF FOR THE UNITED STATES

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STATEMENT OF JURISDICTION

The jurisdictional statement in Steven Fenzl's brief is complete and correct.

STATEMENT OF ISSUE PRESENTED

1. Whether the indictment was defective for failing to allege contemplated or actual loss to the victim.

2. Whether the district court abused its discretion in admitting certain evidence.

3. Whether the jury's guilty verdict lacks evidentiary support.

4. Whether the district court erred in instructing the jury.

STATEMENT OF THE CASE

On April 21, 2009, a grand jury sitting in the Northern District of Illinois returned a four-count indictment that charged Steven Fenzl and Douglas Ritter with conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349 (Count 1), two counts of mail fraud in violation of 18 U.S.C. § 1341 (Counts 2 and 4), and one count of wire fraud in violation of 18 U.S.C. § 1343 (Count 3). R.1.[1]

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[1] On June 3, 2010, pursuant to a plea agreement, Douglas Ritter pleaded guilty to Count 1 of the Indictment. R.60.

On July 13, 2010, Fenzl moved to dismiss the indictment, arguing that the Supreme Court's decision in *Skilling v. United States*, 130 S. Ct. 2896 (2010), made "actual or intended economic loss to the victim" an element of mail and wire fraud. R.66 at 3. The district court denied that motion because the mail and wire fraud statutes "do not require the government to prove either contemplated harm to the victim or any loss," and *Skilling*, which concerned honest services fraud, did not add such a requirement. R.71 at 4 (quoting *United States v. Leahy*, 464 F.3d 773, 786-87 (7th Cir. 2006)).

On September 28, 2010, after a four-day trial, the jury convicted Fenzl on all charges. R.108. On May 24, 2011, the district court denied Fenzl's Motion for Judgment of Acquittal, or Alternatively for a New Trial. R.142. On June 15, 2011, the court sentenced Fenzl to sixteen months imprisonment, followed by three years of supervised release, and to pay a $40,000 fine, $35,302.18 in restitution, and a $400 special assessment. R.146, 147. Fenzl timely noticed this appeal on June 28, 2011. R.148.

STATEMENT OF THE FACTS

This is a case about two business partners who conspired to obtain a lucrative contract from the City of Chicago through fraud. Steven Fenzl and his business partner Douglas Ritter owned and operated Urban Services of America, a business engaged in the refurbishment of residential plastic garbage carts. In an effort to win a City contract, Fenzl, Ritter, and Urban employee Mona Fakhoury orchestrated sham bids and lied about it on their own bid documents. They also fraudulently represented that they would subcontract with a minority-owned business and a woman-owned business, as required by the City, even though they had no intention of doing so.

A. City of Chicago Refurbishment Contract

In December 2004, the City of Chicago solicited bids for a contract to refurbish the City's garbage carts, known as the "refurb contract." The City required that 16.9% of the contract work be performed by a minority-owned business enterprise (MBE) and 4.5% by a women-owned business enterprise (WBE). GX City of Chicago 3 at p. COC-00427. MBE and WBE subcontractors were to be identified in the bid

on a Schedule C-1 form, signed by the subcontractor. *Id.* at p. COC-00431-32. The City also required all bidders to certify the following:

> [T]he undersigned has not entered into any agreement with any bidder (proposer) or prospective bidder (proposer) or with any other person, firm or corporation relating to the price named in this proposal or any other proposal, nor any agreement or arrangement under which any act or omission in restraining [sic] of free competition among bidders (proposers) and has not disclosed to any person, firm or corporation the terms of this bid (proposal) or the price named herein.

Id. at p. COC-00531. This certification was designed to ensure that the City received independent bids. Tr. 297 (Brown); Tr. 187 (Fakhoury); Tr. 576 (Rangel). Failure to sign it resulted in immediate rejection of the bid. Tr. 186-87, 245 (Fakhoury: certification "must be signed for the bid to be even looked at"); Tr. 294 (Brown); GX City of Chicago 5 at p. COC-00811.

B. Bid by Urban Services of America

Ritter and Fenzl agreed to submit a bid for the refurb contract through their company, Urban, at a price of $2,034,000. GX Fenzl Email 8; GX City of Chicago 3 at p. COC-00470. Urban employee Mona Fakhoury prepared the bid documents. Tr. 177-78 (Fakhoury). In the bid, Urban certified that it would subcontract to Veronica Contracting, Inc., a WBE, for truck transportation at a cost of $91,530, or 4.5% of the

total contract price. Urban also certified it would subcontract with Chicago Contract Cleaning (CCC), an MBE, for janitorial supplies at a cost of $343,746, or 16.9% of the total contract price. GX City of Chicago 3 at p. COC-00446, 448-50. Finally, Doug Ritter, as Urban's President, signed the certification that he had no agreements with any other bidder relating to price or any arrangement in restraint of free competition. *Id.* at p. COC-00531.

C. Bids by Roto Industries, Veronica Contracting, and Uniqued

In reality, Ritter, Fenzl, and Fakhoury had orchestrated bids by three other companies and entered into an agreement relating to price in violation of the certification. In November 2005, Fenzl contacted Kerry Holmes of Roto Industries about the refurbishment contract. Tr. 93-95 (Holmes). Fenzl persuaded Holmes to bid on the contract, telling him that Urban was not planning to bid and offering that Roto could use Urban's facilities to perform the contract. Tr. 95-96 (Holmes). Fenzl gave Holmes the cost information that Holmes used to price Roto's bid. Tr. 99 (Holmes: "I believe [Fenzl] gave me information about the cost of the facility and the cost of servicing containers and doing repairs and things of that nature."); Tr. 585, 588 (Rangel). And when

Roto needed MBE and WBE subcontractors to comply with the bid requirements, Urban provided them. Tr. 99-100 (Holmes). Fakhoury made a copy of the WBE C-1 form used in Urban's bid and included it in Roto's bid package. Tr. 193-94 (Fakhoury). Ritter hand-wrote the bid price on Roto's bid before Fakhoury submitted it to the City. Tr. 196-97, 201. Roto's bid of $2,256,000 for the contract was $222,000 higher than Urban's bid. Tr. 99 (Holmes); Tr. 584-85, 596-97 (Rangel); GX City of Chicago 6 at p. COC-001132.

The conspirators also submitted bids on behalf of two other companies. After Veronica Contracting agreed to serve as a WBE subcontractor on Urban's bid, Veronica's owner, Suzanne (Lucarelli) Caruso was told that there were additional forms to be signed for Urban's bid. Tr. 461-62, 465, 506-07 (Caruso). Fenzl faxed those forms to Caruso who whited-out the fax header containing Fenzl's name, signed them, and sent them back to Urban. Tr. 461-65 (Caruso). The conspirators used those signed forms to submit a separate bid in the name of Veronica Contracting. Tr. 460-62 (Caruso). Caruso testified that she did not submit a bid on behalf of Veronica, nor did she authorize anyone else to submit such a bid. Tr. 455 (Caruso). Ritter

told Fakhoury the price to include on the Veronica Contracting bid. Tr. 181 (Fakhoury). That price was $2,181,000, $147,000 higher than Urban's. GX City of Chicago 4 at p. COC-00562-63; GX City of Chicago 7 at p. COC-01563.

Ritter and Fenzl also agreed to submit a bid in the name of another company they owned, Uniqued. GX Fenzl Email 5, 7. At Ritter's instruction, Fakhoury prepared Uniqued's bid and entered a bid price of $2,098,800, $64,800 higher than Urban's bid price. Tr. 180-81, 186, 191 (Fakhoury). Also at Ritter's instruction, Fakhoury included in Uniqued's bid a copy of the same Schedule C-1 form, which Veronica owner Suzanne Caruso had signed in connection with Urban's bid. Tr. 188 (Fakhoury).

Neither Ritter nor Fenzl told Caruso that her company was being listed as a WBE subcontractor on three different bids. Tr. 452-53 (Caruso). Instead, they copied the C-1 form that Caruso signed for Urban's bid, whited out the dollar amounts, and wrote in the prices for the bids by Roto and Uniqued. Tr. 188, 193-94 (Fakhoury); Tr. 290-92 (Brown).

The conspirators tried to do the same with MBE Chicago Contract Cleaning. On December 28, 2004, Fakhoury faxed CCC owner Lucia Chavez de Hollister a C-1 form with the line for prime contractor left blank. Tr. 427 (Hollister); GX Chicago Contract Cleaning 1. Hollister refused to sign the blank form, so Fakhoury sent her four C-1 forms with the names of Urban, Roto, Uniqued, and Veronica. Tr. 426-28 (Hollister). Hollister again refused to sign forms for companies she had never heard of and returned only the C-1 form for the Urban bid. *Id.* In the end, the conspirators submitted the Roto, Uniqued, and Veronica bids without an identified MBE. Tr. 292-95 (Brown).

D. Urban's Contract Performance

In July 2005, Urban was awarded the refurbishment contract. Tr. 298 (Brown). The contract required Urban to notify its MBE and WBE subcontractors that it had won the bid and to enter into formal purchase agreements within 30 days. GX City of Chicago 3 at p. COC-00421. A few months after the contract was awarded, Urban was required to begin submitting quarterly utilization reports showing purchases from the MBE and WBE. *Id.* at p. COC-00421-22; Tr. 298 (Brown).

Notwithstanding the certification in Urban's bid that it would subcontract with Chicago Contract Cleaning, Urban never asked CCC to do any work on the refurbishment contract. In fact, no one from Urban even informed CCC that Urban had won the contract. Tr. 420, 430-31 (Hollister). CCC first learned that Urban had won the contract in October 2006 when the City asked CCC to verify that it was performing work on the refurb contract. Tr. 301 (Brown); Tr. 430-31 (Hollister). Hollister reported that CCC had done no work for the refurb contract. Tr. 431-32 (Hollister); GX Chicago Contract Cleaning 2.

Veronica did approximately $15,000 worth of work on the contract before Ritter informed Veronica's president that its services were no longer needed. Tr. 454-55 (Caruso). Instead of subcontracting the trucking work to Veronica as represented in the bid documents, Urban rented trucks to do the trucking work itself. Tr. 303 (Brown); GX Fenzl Email 15, 16.

Urban did not file any quarterly utilization reports in 2005 or 2006. The first report was filed in April 2007 after the City specifically requested it. Tr. 298-99 (Brown). At that time, Urban's employees

were reluctant to sign the utilization report for fear the numbers were inaccurate. Tr. 202-03 (Fakhoury). In the report, Ritter represented that Urban had paid CCC over $76,000, when in fact CCC never did any work on the contract. GX City of Chicago 14; Tr. 432 (Hollister).

Once the City began investigating this fraudulent scheme, the conspirators attempted to cover their tracks with belated efforts to purchase goods and services from their MBE and WBE subcontractors. Ritter emailed Veronica owner Suzanne Caruso asking her to perform work using a type of truck he knew she did not own. GX Veronica Contracting 5. Another Urban employee sought to purchase supplies from CCC "to be in compliance with the City contract," but CCC did not sell the requested supplies. Tr. 442 (Hollister). In all, Urban purchased only $15,000 of the $91,530 in required services from Veronica Contracting and none of the $343,746 in required goods and services from CCC. *See supra* p. 4-5.

SUMMARY OF ARGUMENT

Fenzl and Ritter believed they deserved the City of Chicago refurbishment contract and they were willing to do "[a]nything" to get it. GX Fenzl Email 5. As the jury correctly concluded, "anything" in

this case included fraud. None of appellant's arguments, either individually or collectively, warrants disturbing that guilty verdict.

1. The mail and wire fraud statutes, 18 U.S.C. §§ 1341, 1343, do not require proof that the victim suffered pecuniary harm. The statues require only that the object of the fraudulent scheme be money or property. *United States v. Leahy*, 464 F.3d 773, 788 (7th Cir. 2006). Here, the object of Fenzl's fraudulent scheme was the refurbishment contract—specifically, money obtained through false pretenses from the City in its role as purchaser of refurbishment services. The Supreme Court's recent decision concerning honest services fraud, *Skilling v. United States*, 130 S. Ct. 2896 (2010), did not impose additional elements to the crime of money and property fraud.

2. The district court did not abuse its discretion by admitting testimony by City of Chicago Investigator Kristopher Brown regarding the purpose and importance of the bid packet's certification. Brown's testimony was based on his seven years of experience investigating fraud in City contracts. Moreover, extensive cross-examination of Brown enabled the jury to evaluate that testimony and determine the proper weight to give Brown's opinions. Even if Brown's testimony

were admitted in error, there is no "reasonable possibility that [the] error had a prejudicial effect on the jury's verdict" because there was ample other evidence of the purpose and importance of the certification from which the jury could conclude that the false certification was material. *United States v. Van Eyl*, 468 F.3d 428, 436 (7th Cir. 2006).

3. The jury's guilty verdict is supported by ample evidence that Fenzl and his co-conspirators schemed to secure the refurb contract by orchestrating bids by four different companies, falsely certifying that they did not have any agreements relating to price or arrangements in restraint of free competition, and falsely certifying that they intended to subcontract with minority- and women-owned businesses. While sufficient evidence as to any one of these alleged means is adequate to support the jury's verdict, *Turner v. United States*, 396 U.S. 398, 420 (1970), the evidence established that Fenzl and his co-conspirators defrauded the City through all three means.

Fenzl and his co-schemers duped the City into believing there was more competition for the refurb contract than there actually was by orchestrating bids by Roto Industries, Veronica Contracting, and Uniqued, all at prices higher than Urban's. Fenzl lied to Roto's vice

president to induce him to bid on the refurb contract and provided the cost information that Roto used to calculate its bid price. The conspirators also lied to Veronica's owner, Suzanne Caruso, to get the signature pages they needed to prepare a bid on behalf of Veronica without Caruso's knowledge. Ritter and Fakhoury wrote the bid price on the Roto, Veronica, and Uniqued bids—in each case ensuring the bid price was higher than Urban's.

Notwithstanding their involvement in four different bids, the co-schemers certified that they had no agreements with any bidder related to price or other arrangements in restraint of free competition. Several witnesses testified about the importance of this certification and at least one bid was rejected because the certification was not signed. This evidence was sufficient to allow the jury to conclude that the certification was false and material to the City's decision-making.

Finally, although the conspirators had certified that they would subcontract with minority- and women-owned businesses, their deceitful conduct during the bid preparation, their failure to comply with the subcontracting obligations, and their willingness to lie about their compliance demonstrated that they never intended to comply with

these obligations. Taken together this evidence was sufficient to allow a rational jury to find guilt beyond a reasonable doubt, and, therefore, the jury's guilty verdict should not be disturbed.

4. Finally, the district court did not err in refusing to instruct the jury that information sharing agreements are not *per se* unlawful under the Sherman Act because such an instruction was irrelevant. Fenzl was not charged with violating the Sherman Act. He was charged with mail and wire fraud, and he does not dispute that the jury was properly instructed on the elements of mail and wire fraud.

ARGUMENT

I. The Indictment Alleged, and the Government Proved, Each Element of a Mail and Wire Fraud Scheme.

Fenzl renews on appeal his challenge to the sufficiency of the indictment, claiming that the indictment should have been dismissed because the government failed to allege that the City of Chicago suffered any "pecuniary harm." Br. at 17. This Court reviews a district court's denial of a motion to dismiss *de novo*. *United States v. Alhalabi*, 443 F.3d 605, 611 (7th Cir. 2006). An indictment is sufficient if it "sets forth the elements of the offense charged and sufficiently apprises the

defendant of the charges to enable him to prepare for trial." *Id.* (internal quotation omitted).

A. Contemplated Loss to the Victim is Not An Element of Mail or Wire Fraud.

To convict a defendant of mail or wire fraud, the government must plead and prove: (1) that the defendant knowingly devised or participated in a scheme to defraud or obtain money or property by means of materially false pretenses, representations, promises, or omissions; (2) that the defendant did so knowingly and with the intent to defraud; and (3) that the defendant used the mail or wires in furtherance of the scheme. *United States v. Thyfault*, 579 F.3d 748, 751 (7th Cir. 2009). The Indictment alleges, and the government proved, that Fenzl conspired to obtain the refurbishment contract by orchestrating sham bids, falsely certifying that Urban had no agreements with any other bidder relating to price or arrangements in restraint of free competition, and falsely representing that Urban intended to subcontract with an MBE and a WBE. Urban received a contract it would not have received absent its false representations. That is fraud.

As this Court held, on facts similar to those proven here, a plan to obtain contracts by lying on documents used in the procurement process constitutes mail and wire fraud. *United States v. Leahy*, 464 F.3d 773 (7th Cir. 2006). In *Leahy*, the indictment alleged that defendants had lied about their corporations' ownership structure to obtain certifications as a WBE and MBE. The defendants then used those certifications to obtain lucrative contracts from the City of Chicago. *Id.* at 787. This Court held those allegations were sufficient to support a conviction for mail and wire fraud. *Id.* at 788-89. The statutes require that the object of defendants' scheme be money or property, and the object of the scheme in *Leahy* "was money, plain and simple, taken under false pretenses from the city in its role as a purchaser of services." *Id.* As in *Leahy*, the object of Fenzl's fraudulent scheme was the refurbishment contract—that is, money taken under false pretenses from the City in its role as a purchaser of garbage cart refurbishment services.

Fenzl claims that these allegations are insufficient and the government must plead and prove "actual or intended economic loss to the victim." Br. at 17. To support this argument, Fenzl first tries to

deny *Leahy*'s holding. He contends that *Leahy* does not stand for the proposition that "no contemplated or actual economic or pecuniary harm to the victim is necessary." Br. at 21. But *Leahy* says exactly that: "These [mail and wire fraud] statutes do not require the government to prove either contemplated harm to the victim or any loss." 464 F.3d at 786-87.

Second, Fenzl argues that *Leahy*'s holding cannot survive the Supreme Court's decision in *Skilling v. United States*. Contrary to Fenzl's claim, the Supreme Court in *Skilling v. United States* did not make "actual or intended economic loss to the victim" an element of mail and wire fraud. Br. at 17. In *Skilling*, the Court addressed the honest services fraud provision of 18 U.S.C. § 1346. 130 S. Ct. 2896 (2010). The Court confined the reach of that statute to bribery and kickback schemes, which it characterized as the "solid core" of the statute, in order to avoid finding the honest services fraud statute unconstitutionally vague. *Id.* at 2930-31. *Skilling* does not concern money and property fraud, nor does it impose additional elements for conviction under 18 U.S.C. §§ 1341 and 1343.

Fenzl quotes selectively from *Skilling*'s description of the evolution of honest services fraud, in which the Court contrasted certain honest services fraud theories with more common fraud cases where the victim's loss of money or property supplied the defendant's gain. 130 S. Ct. at 2926 (quoted in Br. at 17-18). But nothing in this discussion suggests the Supreme Court intended to amend the elements of mail and wire fraud or impose an additional element of economic loss.

Third, Fenzl contends that *Leahy* is inconsistent with the Supreme Court's decision in *McNally v. United States*, 483 U.S. 350 (1987), and this Court decisions in *United States v. Ashman*, 979 F.2d 469 (7th Cir. 1992), and *United States v. Walters*, 997 F.2d 1219 (7th Cir. 1993). These cases all pre-date *Leahy* and were addressed by this Court in *Leahy*.

In *McNally*, the Supreme Court reversed the mail fraud conviction of a state official charged with defrauding the state by soliciting kickbacks from an insurance agent who provided insurance to the state. 483 U.S. at 360-61. The Supreme Court held that the mail fraud statute prohibited schemes where the object is money or property and not an intangible right. *Id.* at 360. Because the jury was not instructed to find

that the state was deprived of a money or property right, such as "control over how its money was spent," the conviction could not stand. *Id.* This is not inconsistent with *Leahy*, which held that a scheme to defraud that targets a City contract—that is, money taken from the City's coffers—constitutes mail and wire fraud. 464 F.3d at 787; *see also United States v. Shyres*, 898 F.2d 647, 652 (8th Cir. 1990) ("the right to control spending constitutes a property right" for purposes of mail and wire fraud).

The earlier decisions by this Court cited by Fenzl are also distinguishable. In *Ashman*, the Court found that one aspect of a fraudulent trading scheme could not constitute mail or wire fraud because, given the trading rules, there was no possibility of loss. 979 F.2d at 479. As this Court explained in *Leahy*, "no money or property was possibly at issue" in *Ashman*. 464 F.3d at 788. In contrast here, the City granted Urban a lucrative contract based on fraud. In *Walters*, the defendant signed secret contracts to become the agent for a variety of college athletes, and, as a result, universities paid scholarship money to ineligible students. 997 F.2d at 1221. This Court reversed defendant's fraud conviction because, although the universities suffered

monetary loss, they were not out of pocket to the defendant. *Id.* at 1224. In contrast, here, the conspirators' fraud caused the City to grant the contract directly to Fenzl's company. *See Leahy*, 464 F.3d at 788. Moreover, as this Court explained in *United States v. Sorich*, the defect in Walters' conviction was that the "scholarship money that the university sent the athletes was incidental, rather than the target of the scheme." 523 F.3d 702, 713 (7th Cir. 2008). Here, obtaining the refurbishment contract was the object of the fraudulent scheme.

Fenzl's citation to authority from other circuits is unavailing because out-of-circuit precedent cannot overrule *Leahy*, and, in any event, the cases are distinguishable. For example, in *United States v. Regent Office Supply Co.*, the defendant had solicited purchases by a false representation not directed to the quality, adequacy, or price of the goods sold. 421 F.2d 1174, 1179 (2d Cir. 1970). The Second Circuit reversed the fraud conviction because the deceit "did not go to the nature of the bargain itself" and "was not shown to be capable of affecting the customer's understanding of the bargain nor of influencing his assessment of the value of the bargain." *Id.* at 1182. Here, the government pleaded and proved that the false representations were

material to the City's decision to grant Urban the refurbishment contract. Thus, *Regent* is inapposite. Similarly, in *United States v. Starr*, the Second Circuit found there could be no fraudulent intent where defendants "in no way misrepresented to their customers the nature or quality of the service they were providing." 816 F.2d 94, 99 (2d Cir. 1987). But here, the conspirators falsely claimed the City would receive services performed by an MBE and a WBE.

Fenzl also argues that *Leahy* was wrongly decided because "the City's interest in promoting and regulating its MBE/WBE program is purely regulatory, and therefore does not constitute 'money or property.'" Br. at 21.[2] This argument misunderstands *Leahy* and is, in any event, unsuccessful here. In *Leahy*, this Court held that, although defendants' fraudulent acts were directed at the MBE/WBE certification process, the object of the fraudulent scheme was the City contracts, which those certifications enabled defendants to obtain. 464 F.3d at 787-88. Thus, this Court distinguished *Leahy* from *Cleveland v. United States*, 531 U.S. 12 (2000), in which defendant's fraud impacted only the state's intangible interest in choosing to whom it issued video poker

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[2] Fenzl seeks to have this Court overrule *Leahy*, but such a decision requires the full court of appeals. *See* Circuit Rule 40(e).

licenses. *Id.* at 13. Here, the false statements of Fenzl and his co-conspirators were made as part of the contract bidding process itself. Thus, there can be no doubt that it was the City contracts—and not some abstract regulatory interest—that was the object of Fenzl's fraud.

Finally, Fenzl argues that, because Urban performed the refurbishment contract, the City got what it paid for and there can be no fraud. This argument has already been considered and rejected by this Court. In *Sorich*, the defendants set up a false hiring process to give City jobs to political workers and cronies. 523 F.3d at 705. The defendant argued that, because the City would have filled those jobs and paid the associated salaries regardless, it had not suffered a loss and, thus, the indictment failed to allege mail fraud. *Id.* at 712-13. This Court rejected the argument, holding that salaries fraudulently obtained represent property for purposes of mail fraud and a scheme to secure those salaries through fraud violates the law. *Id.* at 713; *see also Leahy*, 464 F.3d at 788 (rejecting defendants' argument that because

the City would have paid for the provided services regardless, there was no fraud).[3]

B. The Mail and Wire Fraud Statutes Are Not Unconstitutionally Vague As Applied to This Case.

Fenzl's argument that the mail and wire fraud statutes are unconstitutionally vague as applied to this case is also meritless. "The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness such that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *United States v. Schultz*, 586 F.3d 526, 531 (7th Cir. 2009) (quoting *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)).

Fenzl's constitutional argument rests on the wrong-headed claim that the indictment failed to allege money and property fraud. Contrary to his argument, Fenzl's conviction does not reflect a sweeping expansion of the fraud statutes to encompass "conduct which causes . . . any other imaginable type of non-economic, or intangibile,

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[3] Moreover, here, as in *Leahy*, the City received the contract services but not the other service it was paying for—"services performed by an MBE or an WBE precisely because the company is a qualified MBE or WBE." *Leahy*, 464 F.3d at 788.

harm." Br. 22-23. As explained above, Fenzl's fraudulent scheme was designed to ensure that the City of Chicago would award the refurb contract to Fenzl's company and that his company would receive the money that contract represented. Thus, the indictment and the trial evidence are consistent with this Court's holding that the "mail and wire fraud statutes require that the object of the fraud is money or property, rather than an intangible right." *Leahy*, 464 F.3d at 787. Because the object of the fraudulent scheme was money and property, Fenzl's argument that the statute is unconstitutionally vague fails.

II. Investigator Brown's Testimony Was Properly Admitted.

Fenzl argues that the district court erred in admitting the testimony of City of Chicago Investigator Kristopher Brown. District courts have "considerable discretion" in making evidentiary rulings, and this Court reviews a decision to admit testimony only for "clear abuse of discretion." *United States v. Marshall*, 75 F.3d 1097, 1112 (7th Cir. 1996).

Fenzl points to two portions of Investigator Brown's testimony regarding the meaning and purpose of the certification that he claims were improperly admitted:

Q: What is the purpose of this page [containing the certification]?

A: The purpose of this page is for—

Mr. Campbell: Objection, Judge.

The Court: Okay. Overruled. You can answer.

A: The purpose of this page is for the bidder who's submitting a bid to the City for a contract opportunity to let the City know that they are not engaged in any sort of cooperation or conspiracy with any other companies, that they were submitting a bid of their own volition, and they did nothing to restrain the competition on this particular bid, that they filled this out by themselves and that they didn't work with anyone else.

Tr. 296-97.

Q: If the City had known that Steven Fenzl and Doug Ritter had communicated with other companies that submitted bids for the refurb contract, would the City have awarded the contract to Urban?

Mr. Campbell: Objection, Judge.

A: No.

The Court: The objection is overruled. The answer can stand.

Tr. 402-03. The district court did not abuse its discretion in admitting this testimony because it is based on the witness' personal knowledge and proper lay opinion. Even if the court did abuse its discretion in admitting this testimony, any error was harmless.

A. Investigator Brown's Testimony Was Based on Personal Knowledge and Proper Lay Opinion.

Contrary to Fenzl's claim, Investigator Brown's testimony about the purpose of the certification and the consequences of a false certification was based on his personal knowledge. Investigator Brown worked for the City of Chicago's Office of the Inspector General for seven years. Tr. 283-84. His duties were to investigate allegations of fraud by City employees and vendors, including fraud related to City contracts. *Id.* at 284. Through this training and experience, he learned the rules and regulations governing bidding for City contracts, as well as the relevance and meaning of various bid documents. Thus, he had personal knowledge of the purpose of the certification and the consequences of not signing it.

Fenzl contends that, because Investigator Brown was not involved in evaluating the bids for the refurbishment contract at the procurement stage, he lacks personal knowledge about the materiality of the certification here. In fact, Fenzl misunderstands both the materiality element and Investigator Brown's testimony. A false statement is material if it has "a natural tendency to influence or was capable of influencing" the decision-making to which it was addressed. *Neder v.*

United States, 527 U.S. 1, 16 (1999) (internal quotations omitted). The government need not prove that the City actually relied on the misrepresentations in the bid documents when it awarded this contract. *United States v. Rosby*, 454 F.3d 670, 674 (7th Cir. 2006) ("Reliance is not, however, an ordinary element of federal criminal statutes dealing with fraud."). And Investigator Brown did not testify that the City actually relied on the conspirators' misrepresentations. Instead, he described the purpose and importance of the various documents submitted in a bid package to the City. On this topic, Investigator Brown had ample personal knowledge.

Brown's testimony was also properly admitted as lay opinion testimony. Rule 701 of the Federal Rules of Evidence permits a lay witness to testify "in the form of opinions or inferences" if the testimony is "(a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Fed. R. Evid. 701. As explained above, Investigator Brown's testimony about the purpose and importance of the certification was based on his experience as a

fraud investigator, including interviews with contract decisionmakers and review of bid documents. Indeed, prior to the testimony about which Fenzl complains, Investigator Brown testified (without defense objection) that the Uniqued bid was thrown out for failure to sign the certification. Tr. 294, 296. Based on his experience and observations, Brown offered his opinion on the purpose and importance of the certification. This testimony was far from "rank speculation" as Fenzl charges (Br. at 29), but rather reasonable inferences from Brown's personal knowledge.[4]

Accordingly, Fenzl's reliance on *United States v. Santos*, 201 F.3d 953 (7th Cir. 2000), is misplaced. *See* Br. at 32. In *Santos*, witnesses testified that the defendant had a dictatorial management style and, thus, they had "no doubt" or a "personal feeling" that Santos had ordered a subordinate to cut off contractors who refused to contribute to her political campaign. 201 F.3d at 963. This Court found that it was an impermissible leap to infer the existence of an express order from the defendant's management style. *Id.* No such leap is present in

[4] In fact, during cross-examination defense counsel asked Investigator Brown numerous questions about the bid process and the significance of various bid documents. *See, e.g.*, Tr. 328-31.

Investigator Brown's testimony. Brown had reviewed bid documents, spoken to decisionmakers, and seen bids rejected for failure to sign the certification. His opinion on the meaning and importance of the certification was closely tethered to these experiences, and therefore properly admitted.

Fenzl also argues that Brown's lay opinion testimony was not helpful to the jury because it was "direct testimony that a hotly-contested legal element of the offense—materiality—existed." Br. at 29. Under Federal Rule of Evidence 704(a), testimony is not inadmissible solely "because it embraces an ultimate issue to be decided by the trier of fact." To the contrary, such lay opinion testimony can be helpful to the jury provided it does not merely offer a legal conclusion. *United States v. Wantuch*, 525 F.3d 505, 513 (7th Cir. 2008). Fenzl relies on *United States v. Noel*, 581 F.3d 490 (7th Cir. 2009), to argue that Brown's testimony contained an improper legal conclusion, Br. at 29, but *Noel* is easily distinguished. In *Noel*, a detective opined that various photographs on the defendant's computer fit the statutory definition of child pornography. 581 F.3d at 494. This Court held that such testimony was not helpful to the jury—and thus, not proper lay

opinion—because it "amounted to nothing more than a statement that the photos were illegal." *Id.* at 496-97.

In contrast, Investigator Brown did not testify about the elements of fraud or opine on whether the elements were satisfied. While relevant to the issue of materiality, Brown' testimony did not offer a legal conclusion as to that element, but provided his opinion of the meaning of the certification. The jury was left to draw whatever inferences it wished about the materiality of the certification to the City's decision-making based on Brown's testimony and the other evidence presented. Moreover, unlike the witness in *Noel*, who provided "no explanation for [her] testimony," *id.* at 496, Investigator Brown testified at length about his knowledge of the bid process and the basis of his opinion.

Finally, Fenzl had ample opportunity to reveal any deficits in Brown's perceptions through defense counsel's extensive cross-examination of Investigator Brown. It was clear from this examination that Brown was not personally involved in the procurement process for the refurb contract. Tr. 392-93, 407 (Brown). Thus, the jury was able to evaluate Brown's testimony and determine the proper weight to give his opinion.

B. Any Error in Admitting Investigator Brown's Testimony Was Harmless in Light of the Other Evidence of Materiality.

Even if Investigator Brown's testimony were admitted in error, there is no "reasonable possibility that [the] error had a prejudicial effect upon the jury's verdict" because there was ample other evidence of the materiality of the certification. *United States v. Van Eyl*, 468 F.3d 428, 436 (7th Cir. 2006).

The language of the certification itself, which requires the company president, "being duly sworn," to certify "on oath" that there is no agreement relating to price, and its inclusion in the bid documents is evidence that the certification was material to the City's decision-making. *See* GX City of Chicago 3 at p. COC-00531.

Moreover, Roto President Mark Rangel testified that the certification "means that I have not spoken with anyone else bidding on this particular contract." Tr. 576. Urban employee Mona Fakhoury testified that the certification indicates "that we did everything by the book and—and this is a legit bid" and that it "must be signed in order for the bid to be even looked at." Tr. 186-87. The government also presented evidence that Uniqued's bid, which did not include a signed certification, was rejected. Tr. 248 (Fakhoury); Tr. 294 (Brown); GX

City of Chicago 5. Taken together, this evidence is sufficient to support the jury's verdict even absent Investigator Brown's testimony. Thus, any error in admitting that testimony was harmless.

Lastly, Investigator Brown's testimony pertains only to one of the means of fraud described in the indictment—that is, the false certification. Because there was sufficient evidence of the other means, including the conspirators' orchestration of sham bids and false MBE/WBE certification, there is no reasonable possibility that Investigator Brown's testimony had a prejudicial effect on the verdict.

III. The Trial Evidence Was Sufficient to Allow a Reasonable Jury to Convict Defendant Fenzl on All Charges.

In reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in the light most favorable to the government and reverses "only when there is no evidence, no matter how it is weighed, from which a rational jury could find guilt beyond a reasonable doubt." *United States v. Bek*, 493 F.3d 790, 798 (7th Cir. 2007). This Court has described this appellate hurdle as "nearly insurmountable." *Id.*

Here, Fenzl was charged with conspiracy to commit mail and wire fraud, two counts of mail fraud, and one count of wire fraud. All four of

these counts are based on a single scheme to defraud through multiple means. More specifically, the indictment alleges that the co-conspirators combined and conspired to:

> (1) deceive the City of Chicago officials about the number of legitimate, competitive bids submitted and cause other companies to submit bids at prices determined by the conspirators and higher than Urban's bid;
>
> (2) deceive the City of Chicago by knowingly falsely and fraudulently certifying that they had not entered an agreement with any other bidder relating to price; and
>
> (3) deceive the City of Chicago by knowingly falsely and fraudulently certifying that they intended to purchase goods and services from a WBE and MBE.

R.1 at ¶¶ 25-27. While sufficient evidence as to any of these alleged means is adequate to support the jury's verdict, *Turner v. United States*, 396 U.S. 398, 420 (1970), the government presented ample evidence of each of these means at trial.

A. The Evidence Established that Fenzl and His Co-Conspirators Orchestrated Bids by Four Different Companies and This Fact Was Material to the City's Decision-making.

Fenzl and his co-conspirators orchestrated bids by Roto Industries, Veronica Contracting, and Uniqued for the refurb contract. Fenzl himself solicited the bid by Roto, lying to Roto's vice president to convince Roto to bid. *See supra* p. 5-6. The conspirators also lied to the

owner of Veronica Contracting to obtain her signature on forms they used to prepare a bid in the name of Veronica Contracting without the owner's knowledge. *See supra* p. 6-7. And, Fenzl and Ritter both agreed to prepare a third bid in the name of Uniqued. *See supra* p. 7. The co-schemers ensured that the bids by Roto, Veronica, and Uniqued were higher than Urban's. These bids deceived the City into believing that there was more competition for the refurb contract than there actually was.

Fenzl contends that Roto's bid was not a sham because Roto witnesses testified that they bid with the hope of winning the city contract. Br. at 37-38. But the Roto employees only had that hope because Fenzl lied to them about Urban's intent not to bid on the contract. Tr. 95-96. In fact, Fenzl and his co-conspirators were submitting a bid on behalf of Urban and making sure that Urban's bid price was lower than Roto's. Tr. 99, 585. That Roto was also deceived by Fenzl and his co-conspirators does not absolve the defendant for his fraud on the City.

Fenzl also suggests that he cannot be convicted based upon the bids submitted on behalf of Veronica and Uniqued because he did not cause

those bids to be submitted. Br. at 37. To the contrary, the evidence showed Fenzl was deeply involved in every step of this scheme. Fenzl and Ritter agreed via email to submit a bid in the name of Uniqued. *See* GX Fenzl Email 5, 7. Fenzl faxed to Suzanne Caruso the forms that were later used to prepare a bid in the name of Veronica Contracting without Caruso's knowledge. Tr. 461-65 (Caruso). And before the bids were due, Ritter emailed Fenzl a spreadsheet showing the bid prices for all four bids prepared by the co-conspirators. GX Fenzl Email 8.

Even if Fenzl had not been directly involved in the Veronica and Uniqued bids, he is jointly responsible for his co-schemers' acts in furtherance of the scheme. *See Pinkerton v. United States*, 328 U.S. 640, 646-47 (1946) (participant in conspiracy is liable for foreseeable acts of his co-conspirators in furtherance of the conspiracy); *United States v. Macey*, 8 F.3d 462, 468 (7th Cir. 1993) ("In a mail fraud case, a defendant is liable for the acts of his co-conspirator even if the indictment did not charge conspiracy.").

The jury could also reasonably conclude that the conspirators' involvement in the four different bids was material to the City's decision-making. This was a sealed bid process in which the lowest

qualified bidder was awarded the contract. Tr. 221-22, 247 (Fakhoury). That all of these bids were prepared and submitted by the conspirators had a "natural tendency to influence" the City as it evaluated these bids and awarded the refurb contract. *Neder v. United States*, 527 U.S. 1, 16 (1999) (internal quotations omitted).

Fenzl's claim that the submission of multiple bids is not material because the City did not require a minimum number of bids misses the mark. Regardless of the number of bids the City expected or required, Fenzl and his co-schemers' fraudulent acts were calculated to deceive the City into thinking it had more legitimate and competitive bids than it actually received. That deceit was material to the City's decision to award the refurb contract to Urban.

B. The Evidence Established that the Certification Was False and Material to the City's Decision-making.

The City required all bidders to certify that they had no agreement with any other bidder relating to price, nor any arrangement in restraint of free competition. There is no dispute that Ritter signed that certification on behalf of Urban. GX City of Chicago 3 at p. COC-00531. And the evidence established that the certification was false

because the conspirators had an agreement relating to price with Roto Industries and an arrangement in restraint of free competition.

Fenzl provided Roto with cost information that Roto "used to establish the pricing for the bid." Tr. 99 (Holmes); *see also* Tr. 585, 588 (Rangel). Roto then provided its bid price to Urban, and Ritter hand-wrote the bid price on Roto's bid before Fakhoury submitted it to the city. GX City of Chicago 6 at p. COC-01132; Tr. 196-97, 201 (Fakhoury).

Fenzl argues that this conduct does not reflect an agreement as to the bid price because "Roto's bid price was independently calculated by Roto." Br. at 40. But the certification not only prohibits agreements as to the total bid price, but any agreement "relating to price." GX City of Chicago 3 at p. COC-00531. As the district court concluded, "it is thus irrelevant that Roto 'independently determined what profit it wanted to add on to' the costs if those base costs were agreed to by Fenzl and Roto." R.142 at 7-8. The evidence was sufficient to allow a reasonable jury to conclude that Fenzl and his co-conspirators had an agreement with Roto relating to price in violation of the certification.

This same evidence was also sufficient for a reasonable jury to conclude that the conspirators had an "agreement or

arrangement . . . in restraining [sic] of free competition." GX City of Chicago 3 at p. COC-00531. Ritter hand-wrote the bid price on Roto's bid before it was submitted to the City. Tr. 196-97, 201 (Fakhoury). With knowledge of Roto's bid price, Ritter and Fenzl were able to ensure that Urban's bid was slightly lower. Tr. 99 (Holmes); Tr. 584-85, 596-97 (Rangel); GX City of Chicago 6 at p. COC-01132. The conspirators also prepared a bid, including determining the bid price, and submitted it in the name of Veronica Contracting. Tr. 455-56 (Caruso). Free competition cannot exist where bidders know other bid prices. Based on all of this evidence, viewed in the light most favorable to the government, a jury could reasonably conclude that Fenzl and his co-conspirators had an arrangement in restraint of free competition, and, thus, the certification was false.

The government also proved that the false certification was material to the City's decision-making. As set forth above, the language of the certification and its inclusion in the bid documents is evidence that it was material. Three different witnesses testified about the purpose of the certification and the importance of signing it. Tr. 186-87 (Fakhoury); Tr. 576 (Rangel); Tr. 297 (Brown). And the jury heard

testimony that the Uniqued bid was rejected immediately because the certification was not signed. Tr. 248 (Fakhoury); Tr. 294 (Brown); *see also* GX City of Chicago 5. Taken together, this evidence easily establishes that the false certification had "a natural tendency to influence or was capable of influencing" the City's decision-making. *Neder*, 527 U.S. at 16.[5]

C. The Evidence Established that Fenzl and His Co-Conspirators Never Intended to Purchase Goods and Services from a WBE and MBE.

Urban represented in its bid that it would purchase $343,746 of goods and services from Chicago Contract Cleaning (CCC), an MBE, and $91,530 in trucking services from Veronica Contracting, a WBE. GX City of Chicago 3 at p. COC-00446, 448-50. Fenzl does not dispute that Urban failed to comply with its obligations, but he claims that this is merely a breach of contract and does not reflect fraudulent intent. To the contrary, the conspirators' conduct during the bid preparation,

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[5] Fenzl also argues that, because a close examination of the four bids would have revealed that they were not wholly independent (e.g., the bids were written in the same handwriting and contained copies of the same pages, some with white-out on them), the independence of the bids must not be material. Br. at 42. But the "negligence of the victim in failing to discover a fraudulent scheme is not a defense to criminal conduct." *United States v. Coyle*, 63 F.3d 1239, 1244 (3d Cir. 1995).

immediately after winning the contract, and throughout the contract performance demonstrates that they never intended to comply with these obligations.

From the beginning, Fenzl and his co-conspirators set out to deceive their MBE and WBE subcontractors. Fakhoury sent Veronica's owner Suzanne Caruso a blank C-1 form and used the signed form in multiple bids. Tr. 188, 193-94 (Fakhoury). This was without Caruso's knowledge. Tr. 451, 453 (Caruso). Fenzl faxed Caruso additional forms to sign, which Ritter and Fakhoury used to submit a bid in the name of Veronica Contracting, again without Caruso's knowledge. Tr. 460-65 (Caruso).

Fakhoury also faxed a blank C-1 form to CCC owner Lucia Chavez de Hollister, but Hollister refused to sign a blank form. Tr. 426-28 (Hollister). Fakhoury sent Hollister four C-1 forms with the names of Urban, Roto, Uniqued, and Veronica, but Hollister refused to participate as MBE on bids for companies she was not familiar with and returned only the C-1 form for Urban. *Id.* The conspirators then had to scramble to find MBEs for the other three bids. This conduct is circumstantial evidence that the conspirators were more concerned with

filling out the bid documents than actually subcontracting to these firms.

The jury also heard evidence that, after being awarded the refurbishment contract, Urban failed even to notify CCC that it had won the bid or to enter into formal purchase agreements, as required by the bid terms. Tr. 430-31 (Hollister); GX City of Chicago 3 at p. COC-00421. The failure even to notify CCC that Urban had won the contract is powerful evidence that the conspirators never intended to purchase goods or services from CCC.

During the contract performance, Urban purchased only $15,000 in services from Veronica and nothing from CCC.[6] Only after the City began investigating did the conspirators make a belated and weak effort to comply—requesting goods and services that the MBE and WBE

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[6] Fenzl points to evidence that Urban had subcontracted to CCC on other City contracts to show that Urban did intend to use its MBE and WBE subcontractors on the refurb contract. Br. at 45. To the contrary, such evidence demonstrates that the conspirators knew how to comply with their MBE and WBE obligations. Thus, the jury could reasonably conclude that their failure to do so in this case was not merely a mistake, but evidence of fraudulent intent. Fenzl also claims in his statement of facts that Urban could have applied this excess MBE work from prior contracts toward its obligations on the refurb contract. Br. at 12. That was not possible here, where Urban had indicated in its bid documents that the MBE participation would be direct, rather than indirect. *See* GX City of Chicago 3 at p. COC-00449-55.

could not provide. *See supra* p. 10. That Urban suddenly attempted to purchase from the MBE and WBE after the City launched its investigation is additional circumstantial evidence that the conspirators did not intend to comply with their obligations at the time the bid was submitted.

Throughout the trial, the jury heard evidence of Fenzl and Ritter's willingness to lie to secure the refurb contract. Viewing the evidence related to the MBE and WBE certification in that context, a reasonable jury could conclude that the MBE/WBE certification was false.[7]

In sum, the jury's conclusion that Fenzl and his co-schemers were conspiring to defraud the City of Chicago is reasonable and should not be disturbed on appeal.

IV. The District Court Rightly Refused to Give Fenzl's Proposed Instruction Because It Was Irrelevant.

This Court reviews district court decisions regarding jury instructions for an abuse of discretion and the decision not to instruct on a theory of defense *de novo*. *United States v. Hendricks*, 319 F.3d 993, 1004 (7th Cir. 2003). A defendant seeking a theory of defense

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[7] Fenzl does not dispute on appeal that the representations regarding intent to purchase goods and services from a WBE and MBE were material.

instruction must show that (1) the instruction is a correct statement of the law, (2) the evidence supports the theory of defense, (3) the theory is not already part of the charge, and (4) failure to provide the instruction would deny the defendant a fair trial. *United States v. Mutuc*, 349 F.3d 930, 935 (7th Cir. 2003).

Here, Fenzl sought to have the jury instructed that:

> There is nothing *per se* illegal or fraudulent about various bidders on a particular contract sharing with each other what their bids are, nor is there anything inherently illegal about one bidder knowing what price another bidder is submitting on a particular contract.

R.88 at 35. In crafting this instruction, Fenzl relied on *United States v. United States Gypsum Co.*, which states that the “exchange of price data and other information among competitors does not invariably have anticompetitive effects” and, thus, “such exchanges of information do not constitute a *per se* violation of the Sherman Act.” 438 U.S. 422, 441 n.16 (1978).

The district court properly refused to give the proposed instruction because whether Fenzl’s price agreements would constitute a *per se* violation of the Sherman Act was not relevant to the issues before the jury. Fenzl was not charged with violating the Sherman Act, but with

mail and wire fraud. And the jury was properly instructed on the elements of mail and wire fraud. Tr. 906-11.

In particular, the indictment charged Fenzl with a scheme to defraud the City of Chicago by, among other things, falsely certifying that Urban and its employees had no agreements with other bidders relating to price. Thus, the jury was tasked with determining whether the certification was false and whether that false representation was material to the City's decision-making. The City's certification could (and did) impose a higher burden on bidders to avoid anticompetitive conduct than is necessary to avoid a criminal conviction under the Sherman Act. And it is the conspirators' false certification that is the basis for Fenzl's fraud conviction. It is irrelevant that the same conduct might be lawful under the Sherman Act.

Fenzl contends that the prosecutors put Sherman Act law at issue by referencing "anti-competitive collusion and restraint of trade" in closing argument. Br. at 50. But the quoted passages do nothing more than describe the certification and its purpose. That the purpose of the

certification was to ensure a competitive bidding process does not render criminal antitrust law relevant to the fraud charges here.[8]

CONCLUSION

For the reasons set forth above, the judgment of the district court should be affirmed.

Respectfully submitted.

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[8] Moreover, Fenzl's proposed instruction, which stated that there is nothing fraudulent about information sharing agreements, was likely to confuse and mislead the jury by suggesting wrongly that such an agreement could not be evidence of the fraudulent scheme.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 8,964 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 with 14-point Century font.

Date: October 24, 2011

/s/ Kristen C. Limarzi
Attorney

CERTIFICATE OF SERVICE

I, Kristen C. Limarzi, hereby certify that on the 24th day of October, 2011, I electronically filed the foregoing Brief for the United States with the Clerk of the Court of the United States Court of Appeals for the Seventh Circuit by using the CM/ECF System. Once the brief is accepted for filing by the Clerk's Office, I will send 15 copies to the Clerk of the Court by FedEx.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Date: October 24, 2011 /s/ Kristen C. Limarzi

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