SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS, **Plaintiff,** **vs.** **PETER R. NAJAWICZ, AMOS W. CARTY, JR., and RODNEY E. MILLER, SR.,** **Defendants.**	**CASE NO. ST-08-CR-425** **CASE NO. ST-08-CR-426** **CASE NO. ST-08-CR-427**

MEMORANDUM OPINION

Pending before the Court is Defendant Peter Najawicz's July 7, 2011, Motion for Judgment of Acquittal. For the following reasons, Defendant's motion will be denied.

STANDARD

Pursuant to Fed. R. Crim. P. 29, a court reviews a motion for judgment of acquittal in the "light most favorable to the [g]overnment" and considers whether, as a matter of law, the evidence presented by the government is sufficient to sustain a conviction.[1] A motion for judgment of acquittal may be denied if a rational jury could find a defendant guilty beyond a reasonable doubt based on the admitted evidence, testimony of the government's witnesses, and the jury instructions.[2] A verdict can be overturned only where there the record contains "no evidence … from which the jury could find guilt beyond a reasonable doubt."[3] The Court must decide the motion for

[1] *People v. Brewley*, 49 V.I. 137, 140 (V.I. Sup. Ct. 2007).
[2] *Id.*
[3] *Id.* (*quoting U.S. v. Anderson*, 108 F.3d 478, 480 (3d Cir. 1997)). *See also Gov't of the V.I. v. Adams-Tutein*, 47, V.I. 514, 520 (D.V.I., 2005) (*citing U.S. v. Casper*, 956 F.2d 416, 412, 421 (3d Cir. 1992).

judgment of acquittal on the basis of the evidence at the time the court reserved its decision on the motion.[4]

ANALYSIS

Defendant challenges counts 22, 23, and 34 charging violations of 14 V.I.C. § 834(2);[5] counts 21, 26, 28, 29, and 35 charging violations of 14 V.I.C. §§ 1091 and 1094(2);[6] count 32 charging a violation of 14 V.I.C. § 1662;[7] counts 24, 25, 27, 30, 31, and 33 charging violations of 33 V.I.C. § 3204;[8] count 2 charging violations of 14 V.I.C. §§ 551 and 552;[9] and counts 1 and 20 charging violations of 14 V.I.C. § 605.

In general, Defendant asserts that he was never provided access to the employment contracts of Defendants Miller and Carty and therefore lacked the specific intent to obtain money by false pretenses, to embezzle, and to commit conspiracy.

Counts 31 and 32

Counts 31 and 32 charge Defendant with unlawfully appropriating money to Defendant Miller in the form of housing payments. The record reflects that Defendant signed at least four invoice approval forms for housing allowances in favor of Defendant Miller.[10] Notwithstanding, Defendant relies on the testimony of Mr. Hannibal Ware who stated that Defendant "did not have a copy of any of the employment agreements (between the SRMC Board and Mr. Miller) to determine whether payment amounts

---

[4] FED. R. CRIM. P. 29(b).
[5] 14 V.I.C. § 834(2) concerns obtaining money by false pretenses.
[6] 14 V.I.C. § 1091 concerns embezzlement by fiduciaries and 14 V.I.C. § 1094 concerns the punishment for embezzlement.
[7] 14 V.I.C. § 1662 concerns the embezzlement or falsification of public accounts.
[8] 33 V.I.C. §3204 concerns the accountability of certifying officers.
[9] 14 V.I.C. §§ 551 and 552 concern the crime of conspiracy.
[10] *See* Government's Exhibits 49-5, 49-6, 49-7, and 49-9.

requested by the CEO were justified."[11] A rational jury could conclude that Defendant's approval of the housing expenses without knowing whether these payments were justified constitutes willful ignorance of fraud. It is reasonable to infer, under these circumstances, that Defendant also acted with fraudulent intent.[12]

Counts 30 and 33

Count 33 charges Defendant with the fraudulent certification of education vouchers and Count 30 charges Defendant with certifying vouchers for payments that were not due in general. The record contains at least four vouchers that Defendant certified in favor of Defendant Miller for tuition reimbursements.[13] Defendant argues that he lacked fraudulent intent because he had no actual knowledge that the payments were not due. A rational jury could conclude that Defendant's approval of the vouchers without knowing whether these payments were justified under Miller's contract constitutes willful ignorance of fraud. It is reasonable to infer, under these circumstances, that Defendant also acted with fraudulent intent.

Counts 22 and 28

Counts 22 and 28 charge Defendant with fraudulently obtaining lump sum payments apart from his authorized NOPA salary under the guise of bonuses. On April 26, 2004, Defendant signed an acceptance of appointment with a salary of $80,000.00.[14] The record reflects that Defendant Miller approved annual bonuses to Defendant

---

[11] Defendant's Memorandum in Support of Najawicz's Motion for Judgment of Acquittal, at 11, July 7, 2011 (*citing* Defendant's Exhibit N-70).
[12] *See, e.g., Chorost v. Grand Rapids Factory Showrooms*, 77 F.Supp. 276, 281 (D.N.J. 1948).
[13] Government Exhibits 57-2, 57-3, 57-5, 57-6.
[14] Government's Exhibit 50-77.

Najawicz in the amount of $10,000.00 and $26,070.00,[15] and that Najawicz attempted to get disability insurance based on his $26,070.00 bonus.[16] A rational jury could conclude that Defendant's acceptance of the bonuses in excess of the contractual salary demonstrates fraud and fraudulent intent.

Counts 23 and 26

On April 19, 2004, and June 9, 2004, Defendant signed stipend agreements that entitled him to $20,000.00 in funds under each agreement.[17] A rational jury could conclude that Defendant's acceptance of stipends without knowing whether these payments were justified demonstrates willful ignorance of fraud.

Count 34

Count 34 charges Defendant with "fraudulently arranging [a] . . . 'write-off' of a $10,000 debt owed by" Defendant Carty.[18] Defendant argues that no "taking" occurred because the "write-off" was an accounting entry rather than a forgiveness of debt.[19] However, unlike in *Gov't of the V.I. v. Adams-Tutein* where no evidence was presented to show the defendant had obtained "some benefit as a result of [her] fraudulent representation,"[20] here Defendant does not deny an "accounting change" was made which, under the totality of the circumstances of this case,[21] a rational jury could find conferred a

[15] Government's Exhibits 39 and 40.
[16] Government's Exhibit 44.
[17] Government's Exhibit 56.
[18] Fifth Amended Information, at 25, June 15, 2011.
[19] Defendant's Memorandum in Support of Najawicz's Motion for Judgment of Acquittal, at 6, July 7, 2011.
[20] *Adams-Tutein,* 47 V.I. at 520, 522-23 (finding that where the government failed to provide the pay stubs as evidence that the defendant was actually paid by the government, a reasonable jury could not find that she received a "benefit" as a result of her misrepresentations of the hours defendant worked.)
[21] *Anderson*, 108 F.3d at 485 (noting that a rational juror will consider the "totality of all the surrounding facts and circumstances" of Defendant's conduct).

benefit onto himself and Defendant Carty.[22] Thus, as the Court does not "second-guess the jury's credibility determinations,[23] under the circumstances presented here, a rational jury could conclude that Defendant's conduct by changing the accounting entry demonstrates fraud and fraudulent intent.[24]

Counts 25 and 27

Counts 25 and 27 charge Defendant with acquiring hospital funds under the guise of stipends and bonuses, respectively. Defendant asserts that "the cases and authorities previously cited concerning the requested judgment of acquittal on counts 22, 23, and 34 and the supporting arguments apply equally to counts 25 and 27."[25] As the Government has presented sufficient evidence to sustain a conviction on counts 22 and 23, Defendant's motion concerning counts 25 and 27 will be denied on the same grounds.

Count 24

Count 24 charges Defendant with certifying vouchers that caused the release of over $400,000.00 in payments to Defendant Miller. As indicated in the discussion of counts 30, 31, 32, and 33, there is evidence that Defendant certified vouchers in favor of Defendant Miller. A rational jury could conclude that Defendant's certification of these vouchers with fraudulent intent.

---

[22] Defendant's Memorandum in Support of Najawicz's Motion for Judgment of Acquittal, at 6, July 7, 2011.
[23] *Adams-Tutein*, 47 V.I. at 520 (*citing Lewis v.Gov't of the V.I.*, 77 F.Supp 2d 681, 684, 42 V.I. 175 (D.V.I. App. Div. 1999)(noting that when deciding a motion of acquittal and evaluating whether there is substantial evidence for a rational juror to find that all the essential elements of a crime are met beyond a reasonable doubt, the Court is not to "weigh evidence or second-guess the jury's credibility determinations").
[24] A rational jury could also conclude based on the totality of the evidence presented that the "write-off" was a forgiveness of Carty's $10,000 debt, rather than, as defendant argues, constitute a mere "setoff."
[25] Defendant's Memorandum in Support of Najawicz's Motion for Judgment of Acquittal, at 15, July 7, 2011.

Count 29

Count 29 charges Defendant with fraudulently appropriating over $100.00 in the form of automobile allowances. The record reflects that Defendant Miller approved of auto allowances to Defendant.[26] A rational jury could conclude that there is circumstantial evidence in the record that Defendant acquired automobile payments without knowing whether these payments were justified, which is indicative of willful blindness to fraud.

Counts 35 and 21

Count 35 charges Defendant with fraudulently transferring over $1,500,000.00 to Defendant Miller, and count 21 charges Defendant with making transfers of over $400,000.00 to Miller. On December 7, 2007, Defendant sent Defendant Carty an email listing a schedule of payments for Defendant Miller for a total amount of $3,815,917.42.[27] A rational jury could conclude that Defendant's preparation of these payment schedules, without knowing whether these payments were justified, is indicative of willful blindness to fraud and circumstantial evidence of the intent to commit fraud.

Counts 1 and 2

Defendant asserts that he lacked the requisite intent to commit conspiracy[28] because he was unaware of the terms and conditions contained in Defendant Miller's employment agreement. A defendant's "participation in a conspiracy may be demonstrated by showing that [the] defendant . . . deliberately closed his eyes to what

---

[26] Government's Exhibit 38.
[27] Government's Exhibit 65.
[28] *See Francis v. People of V.I.*, 52 V.I. 381, 388 (Sup. Ct. 2009) ("[T]he essential elements for a section 551 conspiracy are an agreement and an overt act done in furtherance of the conspiracy . . . . The elements of a conspiracy may be proven entirely by circumstantial evidence.").

otherwise would have been obvious to him." [29] A rational jury could conclude that Defendant's approval of payments or transfer of funds to Defendant Miller, Defendant Carty, and to himself without knowing whether these payments were justified constitutes willful ignorance of fraud. It is reasonable to infer, under these circumstances, that Defendant is also guilty of conspiracy to commit fraud.

Count 20

Count 20 charges Defendant with engaging in a criminally influenced and corrupt organization. Defendant contends that the previously expressed arguments regarding counts 1, 2, and 33 support a judgment of acquittal on count 20. Considering that a rational jury could find defendant guilty beyond a reasonable doubt on the charges described in counts 1, 2, and 33, a jury could find Defendant guilty of the offense in count 20 for the same reasons.

Accordingly, Defendant's motion will be denied. An Order consistent with this Opinion shall follow.

Dated: October 4, 2012

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court

by:
Lori B. Tyson
Court Clerk Supervisor 10/4/12

[29] *United States v. Flores*, 454 F.3d 149, 155 (3d Cir. 2006).

SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,	)
	)
Plaintiff,	)
	)
vs.	) **CASE NO. ST-08-CR-425**
	) **CASE NO. ST-08-CR-426**
PETER R. NAJAWICZ, AMOS W. CARTY, JR., and RODNEY E. MILLER, SR.,	) **CASE NO. ST-08-CR-427**
	)
	)
Defendants.	)
	)

ORDER

Upon consideration of the premises, it is hereby

ORDERED that Defendant Peter R. Najawicz's Motion for Judgment of Acquittal is DENIED; and it is

ORDERED that a copy of this Order shall be served on the Defendants Miller and Carty and copies shall be directed to counsel of record.

Dated: October 4, 2012

HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

ATTEST: Venetia H. Velazquez, Esq.
Clerk of Court __/__/__

by: Lori B. Tyson
Lori B. Tyson
Court Clerk Supervisor 10/4/12