

BENCH MEMO: United States of America v. Sandra Jones, CR 87-62-R
Non-jury Trial set for 10:00 a.m., Thursday, Dec. 10

ATTORNEYS

Govt: George Metcalf
Deft: Cary B. Bowen

Judge, this is another in the series of Bland wire fraud cases. Ms. Jones is charged with eight counts arising out of the fraudulent transactions. Count 1 charges her with conspiracy to commit wire fraud, a violation of 18 U.S.C. §371. Counts 2 - 6 charge her with wire fraud, and aiding and abetting wire fraud, in violation of 18 U.S.C. §§ 2, 1343. These counts differ only by the dates of the alleged transmissions or communications. And Counts 7 and 8 charge her with bank fraud, or submission of false and fraudulent credit information to federally insured banks, in violation of 18 U.S.C. §1344. In Count 7 she allegedly defrauded Sovran Bank in obtaining a Sovran Visa and Mastercard credit card. In Count 8, she allegedly defrauded Investors Bank in obtaining one of its Mastercards.

This memo will summarize the essential elements of each crime alleged in the eight counts. These elements are mainly taken from your criminal jury instructions, Judge.

I. Conspiracy to Commit Wire Fraud (Count 1)

Under the law, a conspiracy is a combination or agreement of two or more persons to join together to attempt to accomplish some unlawful purpose. The gist or essence of the offense is the

mutual agreement by two or more persons to disobey or disregard the law.

There are four essential elements of the crime, which the evidence must show beyond a reasonable doubt:

(1) That two or more persons in some way or manner, positively or tacitly, came to a mutual understanding to try to accomplish a common and unlawful plan (wire fraud), as charged in the indictment;

(2) That the Defendant willfully became a member of such a conspiracy;

(3) That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the "overt acts" (or the "means or methods"), described in the indictment;

(4) That such "overt act" was knowingly committed at or about the time alleged, in an effort to further or accomplish some objective of the conspiracy.

II. Wire Fraud (Counts 2 - 6)

The indictment in counts two through six alleges that Jones committed wire fraud, in violation of 18 U.S.C. §1343. She is charged with having devised a scheme to defraud, by means of false representations, and in furtherance of that scheme, having knowingly caused interstate wires to be used. Each count is based on a different alleged use of the interstate wires, on differing dates, ranging from December 3 to December 18, 1986.

In order to prove these charges of wire fraud, the government must prove each of the following elements beyond a reasonable doubt:

(1) That the Defendant willfully and knowingly devised a scheme or artifice to defraud, or to obtain money or property by false and fraudulent pretenses, representations or promises, as alleged in the indictment;

(2) That the Defendant caused the transmission by wire, radio or television communications in interstate commerce, some matter or thing for the purpose of executing the scheme to defraud. Specifically, as alleged in the indictment, that the Defendant caused certain signs, signals and sounds to be transmitted by means of wire and telephone communications, between Richmond, Va., and Atlanta, Ga.

III. Aiding and Abetting Wire Fraud (Counts 2 - 6)

In counts 2 through 6, the indictment also charges the deft. with aiding and abetting others in the crime of wire fraud, as a violation of 18 U.S.C. § 2. The aiding and abetting statute provides that:

Whoever commits an offense against the United States or aids or abets or counsels, commands or induces or procures its commission, is punishable as a principal.

18 U.S.C. § 2.

Under the aiding and abetting statute, it is not necessary for the government to show that the Defendant herself physically

committed the crime with which she is charged, in order for this Court to find the Defendant guilty.

A person who aids or abets another to commit an offense is just as guilty of that offense, as if he committed it himself.

The Defendant is guilty of the offense charged if the govt. proves beyond a reasonable doubt that another person actually committed the substantive offense, and that the Defendant aided or abetted that person in the commission of the offense.

A person "aids or abets" the committing of a crime, when the person willfully and knowingly associates him or herself in some way with the crime, and he or she willfully and knowingly seeks by some act to help the crime succeed.

IV. Bank Fraud (Counts 7 and 8)

The indictment in counts 7 and 8 charges the Defendant with having knowingly submitted false and fraudulent credit information to two federally insured banks in Richmond. The statute, in 18 U.S.C. § 1344, provides that:

(a) Whoever knowingly executes, or attempts to execute, a scheme or artifice--(1) to defraud a federally chartered or insured financial institution; or (2) to obtain any of the moneys, funds, credits, assets, securities or other property owned by or under the custody or control of a federally chartered or insured financial institution, by means of false or fraudulent pretenses, representations, or promises, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

As used in the statute, the term "federally chartered or insured financial institution" means, inter alia, "a bank with deposits insured by the Federal Deposit Insurance Corporation."

The Indictment charges that the Defendant submitted false and fraudulent credit information to two different federally insured banks, in her applications for their credit cards. She allegedly did this knowingly in applying for Sovran Bank's Visa and Mastercard credit cards, and in applying for Investors Bank's Mastercard credit card.

The fundamental elements are: (1) that she submitted false and fraudulent credit information; (2) to a federally insured bank; (3) in order to obtain credit or funds from the bank; and (4) that she did this knowingly.

These are the specific elements necessary for each offense charged, Judge. The more specific facts and dates are specified fairly clearly and briefly in the Indictment.

DRW, 12/10/87