

In the  
United States Court of Appeals  
For the Seventh Circuit

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No. 21-2948

UNITED STATES OF AMERICA,

*Plaintiff-Appellant,*

*v.*

EDWARD L. FILER,

*Defendant-Appellee.*

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Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division.  
No. 1:19-cr-00565-1 — **Harry D. Leinenweber**, *Judge.*

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ARGUED SEPTEMBER 20, 2022 — DECIDED DECEMBER 20, 2022

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Before EASTERBROOK, HAMILTON, and BRENNAN, *Circuit Judges.*

HAMILTON, *Circuit Judge.* Defendant-appellee Edward Filer, an attorney, was charged with two counts of wire fraud under 18 U.S.C. § 1343 alleging a scheme to defraud creditors of his client, Barsanti Woodwork, a Chicago business that was in financial trouble. After a jury convicted Filer, the district court granted his motions for a judgment of acquittal and, in the alternative, a new trial. On appeal, the government seeks

reversal of the judgment of acquittal, arguing that the evidence was sufficient to support the jury's verdicts. As explained below, we agree with the government. We reverse the judgment of acquittal and remand the case for a new trial.

### I. *Standard of Review*

We review a judgment of acquittal de novo. *United States v. Presbitero*, 569 F.3d 691, 704 (7th Cir. 2009). A judgment of acquittal must be granted when the “evidence is insufficient to sustain a conviction.” *United States v. Jones*, 713 F.3d 336, 339–40 (7th Cir. 2013), quoting Fed. R. Crim. P. 29(a) & (c). When applying Rule 29, we ask whether, viewing the evidence in the light most favorable to the prosecution, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* at 340, quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We have sometimes said that this is a high, “nearly insurmountable hurdle.” *United States v. Armbruster*, 48 F.4th 527, 531 (7th Cir. 2022), quoting *United States v. Johnson*, 874 F.3d 990, 998 (7th Cir. 2017). But we have also observed that “the height of the hurdle depends directly on the strength of the government’s evidence.” *United States v. Moreno*, 922 F.3d 787, 793 (7th Cir. 2019), quoting *United States v. Garcia*, 919 F.3d 489, 496–97 (7th Cir. 2019). We turn to that evidence next.

### II. *The Government’s Theory and the Trial Evidence*

At trial, the government argued that the scheme to defraud Barsanti Woodwork’s creditors occurred in two steps. First, Filer helped the owner of Barsanti Woodwork, Paul Kelly, obtain effective control of Harris Bank’s senior lien against his company’s assets through the use of a nominee purchaser. Second, Filer, Kelly, and others then used that lien to obtain a

state court judgment that allowed them to transfer Barsanti Woodwork's assets—but not its liabilities—to a new company effectively but secretly controlled by Kelly before putting Barsanti Woodwork into bankruptcy.

*A. The Purchase of Barsanti Woodwork's Debt from Harris Bank*

In the first step of the scheme, Filer helped Kelly gain control of the senior lien against Barsanti Woodwork. In February 2013, Barsanti Woodwork was delinquent on \$1.1 million of senior secured debt it owed to BMO Harris Bank. The debt was secured by all of Barsanti Woodwork's assets. Hoping to avoid liquidation and save his company, Kelly hired Filer and Robert Gereg, a financing consultant. After Kelly's initial attempts to negotiate directly with Harris Bank failed, Filer introduced Gereg to the bank as a person interested in purchasing Barsanti Woodwork's debt. At trial, Filer acknowledged that he knew Harris Bank would not deal with Kelly directly because banks typically have policies forbidding negotiating discounts with their debtors. Consequently, Filer testified, the plan was to have Gereg be the "face" or the "front man" in negotiations with Harris Bank.

Harris Bank agreed to sell the loans to Gereg. Filer then created a new company, BWC Holdings, to purchase the loans. Harris Bank's counsel testified at trial that he believed, based on Gereg's representations, that Gereg owned BWC Holdings. In fact, however, Kelly was its sole owner. Before finalizing the planned sale of the loans to BWC Holdings, Harris Bank requested proof that Gereg had the authority to sign on behalf of BWC Holdings. Filer, knowing that the requested documents would reveal Kelly's ownership and control of BWC Holdings, instead created another new entity,

BWC Capital, to purchase the loans in place of BWC Holdings.

After concluding that there was “no way” to complete the deal with Harris Bank if it knew that Kelly owned BWC Capital, Filer and Kelly reluctantly made Gereg the sole owner of BWC Capital. But Kelly worried that Gereg might “go rogue” and foreclose on the loans, just as Harris Bank had threatened to do. Filer, too, testified that he “didn’t trust” Gereg, so he developed a plan to “protect” Kelly. On April 5, 2013, one day after BWC Capital was formed, Filer directed Gereg to assign his interest in BWC Capital to Kelly via the “K Family Trust.” At trial, Filer testified that the assignment agreements were created to remind Gereg of his “long-term plan agreement” with Kelly. (Complicating the story a bit, Filer never actually created the K Family Trust, so the assignment documents were legally ineffective. But Filer never disclosed that fact to Gereg.)

BWC Capital eventually purchased the loans from Harris Bank for about fifty cents on the dollar. The purchase price of \$575,000 was paid primarily with Barsanti Woodwork’s accounts receivable. Kelly contributed about \$2,000 via a personal check.

*B. The State Court Judgment and Transfer of Barsanti Woodwork’s Assets*

During this time, Barsanti Woodwork also owed roughly \$370,000 in delinquent benefit payments to the Carpenters’ Union Trust Fund (“the Union Fund”). The Union Fund had filed suit to collect on its unsecured debt. The government’s theory at trial was that, in the second step of the scheme, Filer, Kelly, and Gereg used BWC Capital’s senior lien to obtain a

state court judgment against Barsanti Woodwork that allowed them to transfer Barsanti Woodwork's assets beyond the reach of the Union Fund.

After BWC Capital purchased the loans from Harris Bank, Filer discovered that the governing loan documents did not contain confession-of-judgment clauses, which Filer had hoped to find. A colleague at Filer's law firm explained at trial that a confession-of-judgment clause would have allowed BWC Capital to walk into court and quickly obtain a judgment against Barsanti Woodwork without filing a "regular lawsuit." Around May 29, 2013, Filer instructed his colleague to draft Change in Terms Agreements that provided BWC Capital with confession-of-judgment clauses in return for extending maturity of the loans to May 20, 2013, a date that had already passed. At Filer's direction, the documents were also falsely backdated to April 5, 2013.

Filer then directed his colleague to draft a complaint for BWC Capital to file against Barsanti Woodwork in state court. In the draft complaint, alleging that Barsanti Woodwork had defaulted on its debt, BWC Capital invoked the new confession-of-judgment clauses and sought to collect the entire amount owed on the loans now held by BWC Capital. The complaint alleged incorrectly that Barsanti Woodwork owed \$1.58 million to BWC Capital when in fact the outstanding amount was just one third of that, about \$517,600. At trial, Filer's colleague who prepared the complaint testified that he calculated the debt using figures provided by Filer as well as instructions from Filer as to how interest should be calculated.

Filer's colleague then sent the complaint to an attorney from another law firm whom Filer had recruited to represent

BWC Capital. That attorney filed the complaint against Barsanti Woodwork in an Illinois trial court on June 18, 2013. Just two weeks later, on July 3, 2013, BWC Capital obtained a judgment for \$1.58 million against Barsanti Woodwork. Filer then obtained a court order transferring the assets of Barsanti Woodwork to BWC Capital in partial satisfaction of the judgment.

BWC Capital, in turn, then transferred the assets to Barsanti Millwork, another new entity created by Filer to carry on Barsanti Woodwork's business after the Illinois Secretary of State dissolved Barsanti Woodwork due to unpaid taxes. Filer initially tried to make BWC Holdings, which Kelly owned, the owner of Barsanti Millwork. That plan was abandoned when Filer realized it would require using Kelly's social security number, which might "open [Kelly] up to the union and other creditors if it's unraveled and believed that [Kelly is] ultimately behind Barsanti Millwork." Filer therefore made Gereg the nominal owner of Barsanti Millwork. In public filings with the Indiana Secretary of State, Filer also named his own elderly father-in-law, who had no involvement in the company, as its supposed manager. Again, because of Kelly's and Filer's concerns that Gereg might "go rogue," Filer instructed Gereg to assign his interest in Barsanti Millwork to the non-existent K Family Trust. At trial, Kelly testified that the transfer of Barsanti Woodwork's assets was merely a "paper" transfer and that the assets continued to be used to carry on Barsanti Woodwork's business through Barsanti Millwork.

The government presented evidence showing that, by May 2013, Filer's plan was to strip Barsanti Woodwork of assets and then to put the company into bankruptcy. In August

2013, Barsanti Woodwork in fact filed for bankruptcy. At trial, Filer's colleague testified that Filer directed him to withhold documents from the bankruptcy trustee. Specifically, Filer instructed his colleague not to produce the assignment documents and related correspondence. Disclosure of these documents, in which Gereg assigned his interests in BWC Capital and Barsanti Millwork to the K Family Trust, would have revealed to the trustee and other unsecured creditors that Kelly had effective control over both BWC Capital and Barsanti Millwork.

### III. *Analysis*

The wire fraud statute “prohibits schemes to defraud or to obtain money or property by means of ‘false or fraudulent pretenses, representations, or promises’” if interstate wires are used to execute the scheme. *United States v. Weimert*, 819 F.3d 351, 355 (7th Cir. 2016), quoting 18 U.S.C. § 1343. To convict Filer of wire fraud, the government needed to prove beyond a reasonable doubt that (1) Filer participated in a scheme to defraud, (2) Filer had the intent to defraud, and (3) interstate wires were used in furtherance of the scheme. *United States v. Domnenko*, 763 F.3d 768, 772 (7th Cir. 2014). Viewing the evidence in the light most favorable to the prosecution, we conclude that the government presented sufficient evidence at trial from which a rational jury could find those essential elements of the crime beyond a reasonable doubt. *Jones*, 713 F.3d at 340, citing *Jackson*, 443 U.S. at 319. We address each element in turn.

#### A. *Participation in a Scheme to Defraud*

Under the mail and wire fraud statutes, to “defraud” means to wrong another “in his property rights by dishonest

methods or schemes,” and the term “usually signif[ies] the deprivation of something of value by trick, deceit, chicane or overreaching.” *United States v. Stephens*, 421 F.3d 503, 507 (7th Cir. 2005), quoting *McNally v. United States*, 483 U.S. 350, 358 (1987). To prove a scheme to defraud, the government must show that the defendant made or was responsible for a “material false statement, misrepresentation, or promise, or concealed a material fact.” *Weimert*, 819 F.3d at 355.

1. *The Government’s Evidence of a Scheme*

The government presented ample evidence that Filer participated in a scheme to defraud and that the scheme involved materially false statements or misrepresentations. To prove that fraud was used in step one of the scheme, the government presented a letter from Gereg to Filer that Filer forwarded to Harris Bank. In the letter, Gereg said that he would like to assist Barsanti Woodwork in restarting its operating business by purchasing the Harris Bank debt at a discounted price in return for all collateral and security interests in Barsanti Woodwork held by the bank.

A jury could reasonably conclude that this letter misrepresented material facts. It presented Gereg as an outside “angel” investor rather than as Kelly’s agent under Kelly’s control. If the schemers had not concealed the true relationship between Gereg and Kelly, Kelly could not have obtained control of the senior lien. Harris Bank’s counsel testified at trial that the bank had a policy that generally forbade it from negotiating discounts with its own debtors. In the rare cases where the bank accepts less than the amount due from a borrower, it releases or extinguishes the remaining debt. It does not, as happened here, in effect transfer its lien to the defaulting borrower himself.



The government also presented evidence that Filer caused material misrepresentations to be made to the state court in the second step of the scheme. The Change in Terms Agreements provided BWC Capital with the ability to obtain a confession of judgment. Filer directed his colleague to create the purported agreements around May 29, 2013 but to date them falsely for April 5, 2013. Adding to the deception, the agreements provided that the confession-of-judgment clauses were granted in exchange for extending the maturity of the loans to May 20, 2013, a date that had already passed. Taken together, these statements falsely represented to the outside world—and most directly to the state court—that BWC Capital had provided consideration in exchange for the confession-of-judgment clauses when it had in fact provided nothing of value.

Carrying the deception further, Filer also directed his colleague to prepare the complaint filed by BWC Capital against Barsanti Woodwork. The complaint alleged falsely that Barsanti Woodwork owed \$1.58 million when the actual amount was about \$517,600. Filer's colleague testified that he had calculated the debt amount using figures provided by Filer and that he followed Filer's instructions for calculating interest on the loans. After his colleague drafted the complaint, Filer arranged for an outside attorney to file the lawsuit on BWC Capital's behalf. These arrangements seemed designed to deceive the state court and unsecured creditors into thinking that the lawsuit by BWC Capital against Barsanti Woodwork was adversarial when in fact Kelly controlled

both entities and Filer was orchestrating both sides of the lawsuit.<sup>1</sup>

More generally, through filings with the state court, Filer perpetuated the pretense that Barsanti Woodwork was losing all its assets to BWC Capital while concealing Kelly's control of BWC Capital. The government's evidence could allow the jury to conclude that both BWC Capital and Barsanti Millwork were effectively controlled by Kelly and that Gereg was simply the nominee owner of both companies.

The government's strongest evidence that Kelly controlled BWC Capital and Barsanti Millwork was that both Kelly and Gereg believed that Kelly controlled both companies through the nonexistent K Family Trust. At Filer's direction, Gereg signed over his interests in both BWC Capital and Barsanti Millwork to the K Family Trust. In compensation for his assignment of BWC Capital, Gereg was promised only a consulting fee, and for Barsanti Millwork, he was promised \$10,000. The agreements were never executed; the entities remained in Gereg's name and under his control, at least nominally. But the agreements were signed by Gereg and, as far as he knew, all that was required for the assignments' execution was that Kelly pay him his fee. For his part, Kelly also believed that if "Gereg went out of control," Kelly could "countersign" the agreements and take control of BWC Capital and Barsanti Millwork.

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<sup>1</sup> Wire fraud does not require that a false statement be made directly to, let alone only to, the intended victim of the scheme. *Weimert*, 819 F.3d at 355, citing *United States v. Seidling*, 737 F.3d 1155, 1160–61 (7th Cir. 2013); see also *United States v. Powell*, 576 F.3d 482, 492 (7th Cir. 2009) (affirming conviction based in part on deception of state court).

As noted above, though, because Filer never created the K Family Trust, the assignments were not legally effective. Filer informed Kelly of this fact at some point, but neither Filer nor Kelly ever told Gereg. Filer kept Gereg in the dark because the assignment documents were created primarily to gain leverage over Gereg, who Filer feared might go beyond his nominee role. Indeed, Filer testified that the assignment documents were created to provide some “protection” for Kelly and to ensure that Gereg remembered his “long-term plan agreement” with Kelly. But Kelly would have needed no such protection if Gereg were the rightful owner of BWC Capital and Barsanti Millwork. Filer’s own testimony shows that he considered Gereg merely a front.

The government presented additional evidence supporting a finding that Kelly effectively controlled BWC Capital and Barsanti Millwork. Kelly testified that he, not Gereg, gave approval for BWC Capital to file its lawsuit against Barsanti Woodwork. Evidence at trial also indicated that Gereg invested no money in Barsanti Woodwork. BWC Capital purchased the debt from Harris Bank using Barsanti Woodwork’s own accounts receivable, plus a small personal check from Kelly.

Trial evidence also supported the government’s theory that, notwithstanding the supposed transfer of Barsanti Woodwork’s assets to BWC Capital and then to Barsanti Millwork, Kelly always retained effective control over those assets. Filer, for example, asked Kelly to pay his legal fees from a Barsanti Woodwork account after its assets supposedly had been transferred to BWC Capital. As another example, part of Barsanti Woodwork’s tax debt, for which Kelly remained personally liable, was paid using Barsanti Millwork’s post-

transfer revenues even though Gereg supposedly owned Barsanti Millwork. This evidence, viewed in the light most favorable to the government, was sufficient to support the jury's finding that Filer participated in a scheme to defraud and that he made false statements or misrepresentations in the course of the scheme.

2. *The District Court's Reasoning and Filer's Arguments*

In its order granting Filer a judgment of acquittal, the district court found that the government failed to prove that he engaged in a scheme to defraud. On step one of the scheme, the court concluded that Harris Bank was not a victim of fraud. In its view, Kelly's involvement in the purchase of Barsanti Woodwork's debt would have been apparent to Harris Bank, and by not explicitly disclosing Kelly's role, the schemers merely concealed their negotiating position. With respect to the second step of the scheme, the district court found that Barsanti Woodwork's creditors were not defrauded because BWC Capital held a valid lien against Barsanti Woodwork's assets. The government failed to prove that the lien was legally invalid, and, in the court's view, because the lien was valid, "there was nothing illegal" about amending the loan agreements to obtain confession-of-judgment clauses or seeking a judgment in state court. The district court acknowledged that some actions by the schemers, such as transferring Barsanti Woodwork's assets to BWC Capital and then to Barsanti Millwork to evade Barsanti Woodwork's unsecured creditors, were "of questionable

legality,” but it concluded that such acts were addressable through civil penalties.<sup>2</sup>

Filer urges us to adopt the district court’s reasoning, and he presents several additional arguments as to why his conduct did not amount to a criminal scheme to defraud. He argues (a) that Harris Bank was not defrauded because it knew Kelly was involved in purchasing Barsanti Woodwork’s debt, (b) that BWC Capital held a valid, enforceable lien and that Gereg owned and controlled BWC Capital and Barsanti Millwork, (c) that fraud was impossible because Barsanti Woodwork’s debt to Harris Bank exceeded its assets, and (d) that any misrepresentations attributable to him were not material. Filer’s arguments might persuade a jury, or they might not. But none entitle him to judgment of acquittal as a matter of law.

a. *Was Harris Bank Defrauded?*

The district court concluded that the Harris Bank transaction was not fraudulent because, in its view, Filer merely concealed a negotiating position when he failed to disclose the true nature of Gereg’s relationship with Kelly. Citing this court’s decision in *Weimert*, the district court reasoned that such behavior cannot serve as the basis for a criminal fraud conviction.

This argument reads too much into *Weimert*’s narrow holding. In that case, the defendant arranged the sale of commercial property owned by the bank that employed him as an

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<sup>2</sup> Harris Bank had been a secured creditor of Barsanti Woodwork. We use phrases like “Barsanti Woodwork’s unsecured creditors” or “other creditors” in this opinion to refer to the creditors affected in step two of the scheme: the Union Fund and taxing authorities.

officer. He falsely told both the bank and the buyer that the other party demanded that Weimert himself buy a minority interest in the property being sold. *Weimert*, 819 F.3d at 353–54. That is, Weimert in effect told each side that the other would walk if he were not given a piece of the deal. Though Weimert misled each party about the other’s negotiating position, what was crucial was that all material facts and terms of the actual deal were disclosed. *Id.* at 354 (“There is no evidence that Weimert misled anyone about any material facts or about promises of future actions.”). *Weimert* applied the controlling standard of materiality in *Neder v. United States*, 527 U.S. 1, 16 (1999), that a false statement is material if it has a natural tendency to influence, or is capable of influencing, the decision of the persons or decision-making body to whom it was addressed. Acknowledging that sophisticated businesspeople are expected to hide their “true goals, values, priorities, or reserve prices” from their negotiating partners, however, we concluded in *Weimert* that such concealment was not material and could not serve as the basis for criminal fraud. *Id.* at 354, 358.

This case is different. Filer, Gereg, and Kelly did not conceal from Harris Bank a mere negotiating position, such as their reserve price. Rather, the bank was kept in the dark about a key fact—that Gereg was acting as Kelly’s agent. The government also presented sufficient evidence for the jury to find that this information was material to Harris Bank, whose policies forbade it from negotiating a discount with or transferring its lien to Kelly.

The district court also concluded that Harris Bank was not defrauded because it knew or should have known that Kelly was involved in the purchase of Barsanti Woodwork’s debt.

Harris Bank was aware that BWC Capital was purchasing the debt using Barsanti Woodwork's receivables, and it knew that Gereg was seeking to restart Barsanti Woodwork's business, which, the court reasoned, means it ought to have known Kelly would be involved. Filer likewise argues that the record does not support a finding that Harris Bank was "tricked" into selling Barsanti Woodwork's debt to BWC Capital.

This, however, is an argument for the jury. A rational jury could have concluded that Harris Bank was deceived. Filer presented Gereg as an "angel" investor who wanted to help Barsanti Woodwork turn its business around. It is not surprising that Kelly would play a part in his business's recovery, and we fail to see how Kelly's involvement in Barsanti Woodwork's business would alert Harris Bank to his—carefully concealed—involvement in the purchase of his own debt.

We acknowledge that the use of Barsanti Woodwork's receivables to purchase its debt lends support to Filer's argument that Harris Bank knew or should have known Gereg was merely a front. But we cannot conclude that the jury was required to accept that argument, given other evidence showing that Filer and the others worked hard to lead the bank to believe that Gereg was a genuine third-party purchaser by concealing Gereg's relationship with Kelly. Harris Bank's counsel testified that he believed Gereg was a third-party purchaser, and the bank's final approval of the sale was subject to confirmation that Gereg controlled the buyer and that Kelly did not.

Further, when Harris Bank requested proof that Gereg had authority to sign on behalf of BWC Holdings, Filer created a new company to buy the debt rather than provide the documentation. Filer knew that providing the requested

proof would reveal that Kelly owned BWC Holdings, and he testified that he knew there was “no way” to get the deal done with Kelly as the owner. This evidence was sufficient to support Filer’s conviction.

In any case, the government did not argue at trial and does not argue on appeal that Harris Bank was the only, or even the primary, victim of Filer’s fraud. It also argued that Barsanti Woodwork’s unsecured creditors were defrauded after Kelly obtained control of the lien. Thus, even if Harris Bank had been aware of the relationship between Kelly and Gereg and chose to look the other way, that would not entitle Filer to a judgment of acquittal because the evidence also supported a finding that he engaged in a scheme to defraud Barsanti Woodwork’s unsecured creditors.

b. *Was the Lien Valid, and Did Gereg Control BWC Capital and Barsanti Millwork?*

The district court also held that Barsanti Woodwork’s unsecured creditors were not defrauded in step two of the scheme. The court reasoned that, because the government failed to prove that Harris Bank’s lien was extinguished or otherwise invalidated in the deal with BWC Capital, BWC Capital held a valid, enforceable lien against all of Barsanti Woodwork’s assets after it obtained the loans from Harris Bank on May 2, 2013. The court concluded that there was nothing illegal about BWC Capital then using state court procedures to enforce its valid lien.

Filer echoes the district court’s reasoning and contends that Gereg, not Kelly, owned and controlled BWC Capital and Barsanti Millwork. In response, the government insists that its case does not turn on the actual validity of the lien. Its theory



is that Gereg was a front for Kelly in a scheme to defraud Barsanti Woodwork's unsecured creditors (the Union Fund and taxing authorities) by having BWC Capital—which Kelly in fact controlled, regardless of the false paper trail used to conceal that control—obtain a state court judgment against Kelly's original company for an inflated amount, seemingly putting its remaining assets out of reach of those other creditors.

The legal validity or invalidity of the lien does not control this case, and the government presented sufficient evidence that Kelly actually controlled BWC Capital and Barsanti Millwork. As an initial matter, we are not convinced that the lien here was in fact valid. Filer's strategy—to obtain a speedy state court judgment using a confession of judgment obtained through deception—effectively permitted BWC Capital to evade legal challenges to its lien. But the technical legal validity of the lien does not matter in the end. The government did not argue before the jury that the lien was invalid, and the district court did not instruct the jury on the issue. Instead, the government argued that Kelly always controlled the lien as a matter of fact and that Filer used Gereg as a front in order to mislead the outside world, and particularly Barsanti Woodwork's unsecured creditors, into believing that Barsanti Woodwork had lost all of its assets when Kelly continued to have effective control of those assets.

As discussed above, sufficient evidence showed that, while Gereg might have owned BWC Capital and Barsanti Millwork on paper, Kelly actually controlled both companies. It was Kelly, not Gereg, who gave approval for BWC Capital to file its lawsuit against Barsanti Woodwork. Kelly continued to use Barsanti Woodwork's and Barsanti Millwork's assets to

pay his legal expenses and personal tax debt, even after the assets were supposedly transferred to Gereg. And Gereg, whom Filer described to his colleague as the “front guy,” contributed nothing to the purchase of Barsanti Woodwork’s debt and believed that he had assigned his purported ownership in BWC Capital and Barsanti Millwork over to Kelly through the K Family Trust.

We reject Filer’s insistence that paper should trump reality. Holding otherwise would turn the wire fraud statute on its head, making deceit a defense to wire fraud rather than grounds for conviction. The fraud here was somewhat elaborate, but at its core it was little different from other frauds in which schemers misrepresent reality on paper. See, e.g., *United States v. Sheneman*, 682 F.3d 623, 627, 629 (7th Cir. 2012) (sufficient evidence to establish wire fraud where defendant in mortgage fraud scheme falsified key portions of loan documents and temporarily deposited thousands of dollars into buyers’ bank accounts to make it appear as though buyers had sufficient funds to take on loans).

c. *Was Fraud Impossible?*

Next, Filer argues that defrauding Barsanti Woodwork’s unsecured creditors was impossible because the alleged scheme could not have caused them to lose property they would otherwise have recovered. Filer insists that if the alleged scheme had not occurred, Harris Bank would have foreclosed on Barsanti Woodwork. Because Barsanti Woodwork’s original debt to Harris Bank far exceeded its assets, Filer argues, Barsanti Woodwork’s other creditors would have been left with nothing.

We are not persuaded. It is true that if Harris Bank had foreclosed on the loans, the bank would have been able to claim all of Barsanti Woodwork's assets, leaving nothing for the Union Fund. That might have been a perfectly legal outcome, if a regrettable one for the fund. But that is not what happened. Instead, the schemers purchased the Harris Bank debt at a steep discount through BWC Capital. Evidence at trial showed that after the loans were purchased at that discount, Barsanti Woodwork had assets with which it could have paid its unsecured creditors, including six figures in receivables and equipment worth at least \$200,000.

The record does not reflect how much those receivables were or whether the unsecured creditors might have been able to win full payment of their claims, but that is not the issue. Rather than pay those unsecured creditors, the schemers used BWC Capital's senior lien—and the inflated state court judgment—to transfer all of Barsanti Woodwork's assets out of its other creditors' reach in step two of the scheme.

Even if the Union Fund might not have been paid in full, Barsanti Woodwork's assets could have been used to satisfy at least part of its debt to the fund. Instead, Filer helped Kelly retain control over the assets to which the Union Fund should have had a stronger claim. At the very least, the scheme was designed to deceive the unsecured creditors and thus discourage them from even trying to recover on their claims. A fraudulent scheme can be criminal even if it did not succeed or was not guaranteed to succeed.<sup>3</sup>

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<sup>3</sup> The Supreme Court is considering possible limits on mail and wire fraud statutes in *Ciminelli v. United States*, No. 21-1170, and *Percoco v. United States*, No. 21-1158, both argued on November 28, 2022. The

d. *Materiality*

Finally, Filer insists that any false statements made to the state court could not have been material given BWC Capital's valid lien. Specifically, Filer argues that any misstatements he made concerning the backdated Change in Terms Agreements that provided the confession-of-judgment clauses were not material because, although those clauses allowed for quicker proceedings, BWC Capital could have obtained a judgment against Barsanti Woodwork without them. Similarly, Filer argues that because the amount Barsanti Woodwork actually owed BWC Capital (around \$517,600) exceeded Barsanti Woodwork's assets, the inflated debt figure in the complaint filed in state court (\$1.58 million) was immaterial. Even if the true debt amount was listed, Filer insists, the result would have been the same: BWC Capital would have been granted a judgment and Barsanti Woodwork would have transferred all of its assets to BWC Capital in partial satisfaction of that judgment.

Again, we are not persuaded by this defense theory. A false statement is material "if it has a natural tendency to influence, or [is] capable of influencing, the decision of the decisionmaking body to which it was addressed." *United States v. Chanu*, 40 F.4th 528, 542 (7th Cir. 2022), quoting *Neder*, 527 U.S. at 16.

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fraudulent scheme in this case attempted to put some assets of Barsanti Woodwork—assets that obviously were forms of property—beyond the reach of its other creditors. The Court's decisions on the issues presented in *Percoco* and *Ciminelli* thus appear unlikely to affect the validity of the verdict against defendant Filer.

The government presented sufficient evidence that Filer made materially false statements. The confession-of-judgment clauses, added by deception, induced the state court to grant a judgment it might not have granted at all, and certainly not so quickly. While BWC Capital could have enforced its lien and eventually obtained a judgment without the confession-of-judgment clauses, evidence at trial indicated that without them, the state court would not have provided the speedy relief BWC Capital sought. At trial, the government also presented evidence that obtaining a speedy judgment was essential to the scheme: the complaint was filed in state court on June 18, 2013, five days after the Union Fund sought summary judgment in its suit to collect \$352,000 that Barsanti Woodwork owed. The confession-of-judgment clauses, applied in the collusive lawsuit, allowed the schemers to transfer the assets away from the Union Fund's grasp in the nick of time, just as the Union Fund was closing in.

The false statement inflating Barsanti Woodwork's debt was also material. Although the debt amount likely did not influence the state court's decision to grant the judgment, the inflated number—which exceeded the amount Barsanti Woodwork actually owed by more than \$1 million—was “capable of influencing” the decision of Barsanti Woodwork's other creditors not to attack the lien. See *Chanu*, 40 F.4th at 542, quoting *Neder*, 527 U.S. at 16. The inflated debt signaled to the outside world that Barsanti Woodwork owed so much that any attempts to collect would probably be fruitless. If the debt had been accurately recorded, it is possible that Barsanti Woodwork's unsecured creditors would have taken steps to collect at least part of what they were owed. The evidence of

a scheme to defraud was sufficient to support the guilty verdicts.

B. *Intent to Defraud*

To prove a defendant intended to defraud, the government must show a “willful act by the defendant with the specific intent to deceive or cheat, usually for the purpose of getting financial gain for one’s self or causing financial loss to another.” *United States v. Sloan*, 492 F.3d 884, 891 (7th Cir. 2007), quoting *United States v. Leahy*, 464 F.3d 773, 786 (7th Cir. 2006). The government need not show that the defendant personally benefitted from the fraud. *United States v. Ross*, 77 F.3d 1525, 1543 (7th Cir. 1996). The government may establish intent to defraud by showing that the “defendant intended to cause actual or potential loss to the victims of the fraud, whether to enrich himself, another, or no one.” *Id.*

“Direct evidence of an intent to defraud is rare.” *Sloan*, 492 F.3d at 891. Specific intent to defraud is typically shown by “circumstantial evidence and inferences drawn from the scheme itself” showing that the scheme was “reasonably calculated to deceive individuals of ordinary prudence and comprehension.” *Id.*

1. *Evidence of Intent*

The government presented evidence that would allow a reasonable jury to find that Filer acted with an intent to defraud. Filer took steps to conceal Kelly’s true relationships with Gereg, BWC Capital, and Barsanti Millwork. As noted, when Harris Bank requested proof that Gereg was authorized to sign on behalf of BWC Holdings, Filer realized that the proof would reveal Kelly’s ownership of BWC Holdings, so he created a new company, BWC Capital, to purchase the

loans. Filer made Gereg the sole nominal owner of BWC Capital, as well as Barsanti Millwork, even though Kelly effectively controlled both companies. Finally, the government presented evidence showing that after Barsanti Woodwork filed for bankruptcy and the bankruptcy trustee subpoenaed documents related to Filer's representation of Barsanti Woodwork, Filer instructed his colleague to withhold the assignment documents and related correspondence from the trustee.<sup>4</sup>

The jury also heard evidence showing that Filer was responsible for the false statements made to the state court. Filer's colleague testified that he created the backdated Change in Terms Agreements at Filer's direction. The associate also testified that he drafted the complaint that falsely

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<sup>4</sup> Before the case was submitted to the jury, the district court acquitted Filer of bankruptcy fraud and the charge of withholding documents from the bankruptcy trustee. Citing *United States v. Yeager*, 521 F.3d 367 (5th Cir. 2008), rev'd and remanded on other grounds, 557 U.S. 110 (2009), Filer argues that the Double Jeopardy Clause prohibits the government from arguing that a rational jury could conclude that Filer acted with an intent to defraud based on misrepresentations he made in connection to Barsanti Woodwork's bankruptcy. His argument is unpersuasive. In *Yeager*, the Fifth Circuit observed that "Rule 29 acquittals collaterally estop the government from relitigating only the factual issues that were necessarily decided to reach the verdict," and it stressed that collateral estoppel applies only to the "factual determinations the court ... made to acquit." 521 F.3d at 374. The district court acquitted Filer of withholding documents from the bankruptcy trustee because it reasoned that all of the documents were eventually produced. Whether that is a sufficient basis for acquittal is not before us. What matters is that the district court did not find that Filer did not instruct his colleague to withhold the documents, so our consideration of that evidence here does not offend the Double Jeopardy Clause.

inflated the amount Barsanti Woodwork owed BWC Capital using figures and instructions provided by Filer.

2. *The District Court's Reasoning and Filer's Arguments on Intent*

The district court found that the government did not prove that Filer acted with an intent to defraud Barsanti Woodwork's unsecured creditors. The court instead characterized Filer's actions as those of a zealous, perhaps misguided, attorney desperately trying to salvage Barsanti Woodwork's business. In support of that conclusion, the court noted that many of Filer's actions had the consequence of revealing, not concealing, the scheme. The court reasoned that by enlisting the help of his law firm colleagues, repeatedly discussing his plans with Kelly and Gereg over email, and putting Barsanti Woodwork into bankruptcy (which Filer knew could lead to the discovery of documents typically shielded by attorney-client privilege), Filer acted in a manner inconsistent with a cover-up. Before this court, Filer insists that these affirmative acts of transparency are inconsistent with an intent to defraud.

Where, as here, the evidence is in conflict, we leave the matter to the jury. The jury might have found otherwise, but a rational jury could find that Filer intended to defraud Barsanti Woodwork's creditors. Considering evidence that Filer directed his colleague to withhold documents from the bankruptcy trustee, the jury could have reasonably rejected Filer's argument that filing for bankruptcy was an act of transparency. The jury was also not required to conclude that the email discussions between Filer, Kelly, and Gereg were inconsistent with a hidden scheme. The government produced one email exchange in which, in response to an email from Gereg



advising that the schemers take action to prevent the bankruptcy trustee from laying claim to outstanding accounts receivable owed to Barsanti Woodwork, Filer asked his law firm colleague whether they should “tell [Gereg] to stop communicating with us like this? I.E. all verbal?” More generally, Filer would have expected his communications with Kelly and Gereg to be protected by attorney-client privilege. If the schemers had not put Barsanti Woodwork into bankruptcy, their emails likely would have never been revealed.

Finally, Filer emphasizes that he did not personally gain from the scheme, aside from a small fee paid to his law firm. We have repeatedly held that personal gain is not an element of wire fraud. *Ross*, 77 F.3d at 1543 (“[T]his circuit has held that a showing of personal benefit is not required to demonstrate intent to defraud.”); see also *United States v. Stockheimer*, 157 F.3d 1082, 1087 (7th Cir. 1998) (same). To be sure, the jury could weigh the fact that Filer did not personally profit from the scheme in assessing whether he acted with an intent to defraud, but the government was not required to prove that he personally benefitted. The evidence of Filer’s intent to defraud was sufficient to support the guilty verdicts.

### C. *Use of Interstate Wires*

We can deal briefly with the final element of wire fraud, the use of interstate wires in furtherance of the scheme to defraud. Filer does not challenge this element on appeal, and the government’s evidence was sufficient. The government identified two specific uses of interstate wires that furthered the scheme: an August 21, 2013 email from Kelly to Filer and others transmitting Kelly’s executed Assignment and Conveyance of Title document, which transferred Barsanti Woodwork’s assets to BWC Capital, and an August 22, 2013 email

from Gereg to Filer and others suggesting that, in light of Barsanti Woodwork's plans to file bankruptcy, Kelly should endorse customer payments to Barsanti Woodwork over to BWC Capital. Both communications could reasonably be deemed in furtherance of the scheme to defraud.

*Conclusion*

Filer no doubt has several potentially persuasive arguments in his defense. Some evidence suggested that Gereg, not Kelly, actually controlled BWC Capital and Barsanti Millwork. Filer did not personally profit from the scheme, and some of his actions can arguably be characterized as transparent and inconsistent with an intent to defraud. But substantial other evidence supported the guilty verdicts. It is the province of the jury, not the court, to weigh the conflicting evidence. Sufficient evidence supported the verdicts of guilty beyond a reasonable doubt.

The district court's judgment of acquittal is REVERSED and the case is REMANDED for a new trial. Pursuant to Circuit Rule 36, the case shall be reassigned for trial on remand.