

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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UNITED STATES OF AMERICA	:	CRIMINAL
	:	
v.	:	
	:	
DOMENICK TERLINGO,	:	NO. 99-525-06
TARA TERLINGO, and	:	99-525-07
DOMENICK L. TERLINGO	:	99-525-08
_____	:	

DUBOIS, J.

April 30, 2001

MEMORANDUM

I. INTRODUCTION

Defendants Domenick Terlingo, Sr., Tara Terlingo, and Domenick L. Terlingo, Jr. (collectively, “Terlingos” or “defendants”) were charged in Count One of an Indictment (“Indictment”), filed August 31, 2001, with conspiracy to receive, sell and transport in interstate commerce stolen motor vehicles, knowing such vehicles to have been stolen, in violation of 18 U.S.C. §§ 371, 2312 and/or 2313 from in or about March 1995 to in or about May 1997. The government described the manner and means of the conspiracy in the Indictment as follows: members of the conspiracy stole automobiles in the Philadelphia area and transported the cars to New York where Donald Truesdale, a co-defendant, removed the original vehicle identification number and replaced it with fraudulent a number and number plate, a process known as

‘replating.’ Co-conspirators of the Terlingos would then transport the replated vehicles back to Philadelphia so that co-conspirators Todd Jasper (“Jasper”), Dominic Sforza, and others could sell them. In order to sell them, Jasper and others would prepare fraudulent titles for the vehicles and then acquire registration and/or transportation paperwork for the stolen vehicles, often at Terlingo’s Auto Tag Agency (“Terlingo’s”),¹ the Terlingo defendants’ family business. The Indictment further charged that the Terlingos provided Todd Jasper and others with the registration paperwork necessary to obtain valid Pennsylvania titles for stolen vehicles and/or the registration paperwork needed to transport the stolen vehicles from Philadelphia, Pennsylvania to Atlanta, Georgia in furtherance of the conspiracy. Indictment ¶¶ 11, 12.

On December 14, 2000, after a jury trial, the defendants were found guilty of the conspiracy charge. Presently before the Court are the Terlingos’ motions for judgment of acquittal, or in the alternative, for a new trial, pursuant to Federal Rules of Criminal Procedure 29 and 33.² For the reasons set forth below, the Court will deny the motions for judgment of acquittal, or in the alternative, for a new trial.

¹ As explained by government witness Tammy Kohr of the Pennsylvania Department of Transportation, a “tag agency is an agency that is bonded with the [Department of Transportation] to issue license plates and temporary registrations for vehicles.” Tr. Transcript at 112–13 (testimony of Tammy Kohr, Dec. 5, 2000). According to her testimony, there are a number of reasons people might visit a tag agency, including, *inter alia*, that “they have to renew their registration . . ., they could have just purchased a car from somebody and they need to get the title in their name and they would like a license plate and a temporary registration. . . . [or] [t]hey could need a new license because they lost one of their old ones” *Id.* at 113–14.

² The Terlingos do not cite Federal Rule of Criminal Procedure 33 as a ground for relief in their motions or briefs, but in all three motions and their joint memorandum of law they seek a judgment of acquittal or, in the alternative, a new trial. Accordingly, the Court will treat the motions as if they were filed pursuant to both Rule 29 and Rule 33.

II. STANDARD OF REVIEW

In ruling on a motion for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure,³ the trial court must view the evidence in the light most favorable to the government and draw all reasonable inferences in favor of the prosecution. The trial court is obliged to uphold the verdict of the jury unless, viewing the evidence in this fashion, no rational jury could have found the defendant guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); United States v. Ashfield, 735 F.2d 101, 106 (3d Cir. 1984); United States v. Martorano, 596 F. Supp. 621, 624 (E.D. Pa. 1984).

In deciding whether to enter judgment of acquittal, the district court may not weigh the evidence, nor is it permitted to make credibility determinations, which are within the domain of the jury. Rather, the court is confined solely to its judgment of the sufficiency of the government's evidence and it "must presume that the jury has properly carried out its functions of evaluating credibility of witnesses, finding the facts, and drawing justifiable inferences." United States v. Coleman, 811 F.2d 804, 807 (3d Cir. 1987) (quoting United States v. Campbell, 702 F.2d 262, 264 (D.C. Cir. 1983)); accord United States v. McNeill, 887 F.2d 448, 450 (3d Cir. 1989). Viewing the evidence in its entirety, the court "must determine whether a reasonable jury believing the government's evidence could find beyond a reasonable doubt that the government proved all the elements of the offenses [charged]." United States v. Salmon, 944 F.2d 1106, 1113 (3d Cir. 1991); United States v. Ashfield, 735 F.2d 101, 106 (3d Cir. 1984).

³ Federal Rule of Criminal Procedure 29(a) provides, in pertinent part: "The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal . . . if the evidence is insufficient to sustain a conviction of such offense or offenses."

Under Rule 33 of the Federal Rules of Criminal Procedure,⁴ the Court may grant a defendant's motion for a new trial if required in the interest of justice. "Whether to grant a Rule 33 motion lies within the district court's sound discretion." United States v. Polidoro, 1998 WL 634921, at *4 (E.D. Pa. Sept. 16, 1998) (citing United States v. Mastro, 570 F. Supp. 1388, 1390 (E.D. Pa. 1983)). In exercising its discretion, the court may grant a motion for a new trial on one of two grounds. First, the court may grant the motion "if, after weighing the evidence, it determines that there has been a miscarriage of justice." Government of the Virgin Islands v. Commissiong, 706 F. Supp. 1172, 1184 (D. V.I. 1989). Second, the court "must grant a new trial if trial error had a substantial influence on the verdict." Id. at 1184; see also Government of the Virgin Islands v. Bedford, 671 F.2d 758, 762 (3d Cir. 1982) ("The reviewing court must decide whether the error itself had substantial influence [on the minds of the jury.]" (alteration in original) (internal quotation omitted)).

III. ANALYSIS

The Terlingos' motions for judgment of acquittal or, in the alternative, for a new trial, raise four grounds. First, defendants contend that the Court erred in denying defendants' pretrial motions in limine regarding certain tape-recorded statements and by allowing the government to introduce certain statements.⁵ Defendants' second contention is that there was insufficient

⁴ Federal Rule of Criminal Procedure 33 provides, in pertinent part: "On a defendant's motion, the court may grant a new trial to that defendant if the interests of justice so require."

⁵ Defendants argue that evidence of specific statements regarding the proposed theft of certain vehicles was improperly received at trial. Defendant Domenick Terlingo, Sr. contends that the Court should not have permitted the government to introduce evidence "regarding the Jeep Cherokee and the Toyota Rav4." Def.'s Mot. for J. of Acquittal Under Rule 29 ¶ 1

evidence presented at trial to sustain the “knowledge” and “agreement” elements required for a conspiracy conviction. Third, defendants argue that the Court erred at trial when it denied defendants’ requests for specific jury instructions regarding (a) state violations of procedure and (b) character. Finally, defendants aver that the Court erred at trial by allowing the government to admit evidence of a quid pro quo arrangement, a theory they say was not specified in the Indictment or discussed in the government’s trial memorandum.⁶ For the following reasons, the Court will deny defendants’ motions for judgment of acquittal and, in the alternative, new trial.

As an initial matter, the Court notes that Federal Rule of Criminal Procedure 29 provides that the trial court “shall order the entry of judgment of acquittal . . . if the evidence is insufficient to sustain conviction” Fed. R. Crim. P. 29(a). Accordingly, the “sole foundation upon which a judgment of acquittal should be based is a successful challenge to the sufficiency of the government’s evidence.” United States v. Frumento, 426 F. Supp. 797, 802 n.5 (E.D. Pa. 1976) quoted in United States v. Carter, 966 F. Supp. 336 (E.D. Pa. 1997). See, e.g., United States v. Rivers, 406 F. Supp. 709, 711 n.1 (E.D. Pa. 1975) (concluding that defendant’s due process arguments were not proper grounds for a judgment of acquittal); United

(Document No. 346). Defendant Tara Terlingo argues that the Court should have precluded evidence regarding “the Toyota Rav4 and the replating and retitling of a vehicle for her father.” Def.’s Mot. for J. of Acquittal Under Rule 29 ¶ 1 (Document No. 347). Defendant Domenick L. Terlingo, Jr., contends that the Court should have precluded evidence regarding “the Acura Legend, the Jeep Cherokee, the Toyota Rav4, and the Mazda 626 Sedan.” Def.’s Mot. for J. of Acquittal Under Rule 29 ¶ 1 (Document No. 348).

⁶ The Court notes that the government’s trial memorandum states that Domenick Terlingo, Sr., agreed to provide Jasper with paperwork “in return for slightly elevated fees and future ‘favors.’ . . . [Domenick] Terlingo [Sr.] instructed his children, Tara and Domenick, Jr., to provide Jasper with whatever paperwork he needed. . . .” Government’s Trial Memo. at 3 (Document No. 223, filed June 1, 2000).

States v. Ellis, 493 F. Supp. 1092, 1098 (M.D. Tenn. 1979) (holding that a challenge to a jury verdict based on objections to the court’s jury instructions is not a proper ground for a motion for judgment of acquittal); see generally Wright & Miller, Federal Practice and Procedure: Criminal 3d, § 466 (West 2000) (“There is only one ground for a motion for a judgment of acquittal. This is that the evidence is insufficient to sustain a conviction of one or more of the offenses charged in the indictment or information.” (internal quotation omitted)).

Pursuant to the foregoing authority, the Court will analyze the Terlingos’ contention that there was insufficient evidence of the “knowledge” and “agreement” elements of the conspiracy charge under the motion for judgment of acquittal standard of Federal Rule of Criminal Procedure 29. The remaining three issues raised in defendants’ motions will be addressed under the motion for new trial rule—Federal Rule of Criminal Procedure 33.

A. Defendants’ Motions in Limine

The defendants’ first asserted ground for a new trial is the Court’s denial of their pre-trial motions in limine, filed September 7, 2000, in which the Terlingos sought to preclude certain evidence. Defendant Domenick Terlingo, Sr.’s motion in limine (Document No. 272) asked the court to preclude evidence of statements made by Mr. Terlingo, Sr. in which he allegedly asked Todd Jasper (“Jasper”), a government cooperating witness, to steal Tara Terlingo’s Rav-4 in order to report it stolen and statements in which Mr. Terlingo, Sr. allegedly asked Jasper to get rid of a black Jeep Cherokee, again so it could be reported stolen.

Defendant Tara Terlingo’s motion in limine (Document No. 273) sought to exclude the government from introducing evidence of statements Ms. Terlingo had allegedly made concerning the theft of her Rav-4 so that she could report it stolen and get a new car, and the

replating and retitling of a vehicle for her father. Defendant Domenick L. Terlingo, Jr.'s motion in limine (Document No. 274) sought preclusion of evidence of statements Mr. Terlingo, Jr. had allegedly made regarding the theft of an Acura Legend, a Jeep Cherokee, Tara Terlingo's Toyota Rav-4, and a Mazda 626 sedan. The government argued that Mr. Terlingo, Jr. wanted to have these vehicles stolen so that the thefts could be reported for insurance purposes.

In their motions in limine, the Terlingos sought to have the evidence excluded on four grounds. First, relying on the fact that only one of the vehicles allegedly discussed by Jasper and the Terlingos was actually stolen—the Mazda 626—defendants argued that there was no corroboration of their statements and that they should be excluded. See United States v. Bryce, 208 F.3d 346, 354 (2d Cir. 1999) (stating that a person may not be convicted exclusively on the basis of his or her own uncorroborated inculpatory statements) (quoting Smith v. United States, 348 U.S. 147, 152, 75 S. Ct. 194, 197, 99 L. Ed. 192 (1954)).

Next, defendants argued that the statements were irrelevant and thus inadmissible. Specifically, they contended that any discussion of stealing vehicles in order to report them stolen for insurance purposes was irrelevant to the charges in the Indictment—conspiracy to sell, receive and transport stolen vehicles in interstate commerce. The Terlingos also argued that the evidence was highly prejudicial with little probative value and thus sought its exclusion under Federal Rule of Evidence 403.⁷ Finally, the Terlingos took the position that the evidence was, essentially, evidence of prior bad acts, offered to promote the argument that a person who

⁷ Federal Rule of Evidence 403 provides that otherwise relevant “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury”

discusses committing insurance fraud is more likely to conspire to sell, receive, and transport stolen vehicles—an impermissible inference under Federal Rule of Evidence 404(b).⁸

In response to defendants’ motions in limine, the government took the position that the evidence was both relevant and admissible. The government characterized the statements as intrinsic to the charged conspiracy and thus relevant, highly probative, and not subject to Rule 404(b) analysis. According to the government, the Terlingos were compensated for their work in the conspiracy by the receipt of favors—a quid pro quo arrangement. As an example, the government argued that the Terlingos were requesting such a favor from Jasper when they asked him to steal the cars. Finally, the government contended that, even if the statements are evidence of prior bad acts, they would be admissible under Rule 404(b) as the requests are evidence of the Terlingos’ knowledge—the Terlingos made these requests because they knew Jasper was a car thief and that he could make cars disappear.

The Court denied defendants’ motions in limine by Order dated November 2, 2000, but required the government to present its evidence linking the defendants to the conspiracy prior to offering any of the evidence to which reference is made in the motions. At trial, the Court determined that the government presented sufficient evidence of the conspiracy involving the Terlingos independent of the evidence challenged in the motions to warrant receipt of the latter

⁸ Federal Rule of Evidence 404(b) provides, in pertinent part, as follows: “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident” Fed. R. Evid. 404(b).

evidence. The Court also concluded that the challenged evidence was intrinsic to the conspiracy and thus not subject to a Rule 404(b) analysis.⁹

As the Third Circuit has explained, “[w]hen the evidence of another crime is necessary to establish an element of the offense being tried, there is no ‘other crime.’” United States v. Sriyuth, 98 F.3d 739, 747 (3d Cir. 1996) (internal quotation omitted); see also United States v. Ortiz, 2000 WL 1689720, at *3 (E.D. Pa. Oct. 26, 2000) (concluding that evidence of prior drug transactions was not ‘other crimes’ evidence as the drug transactions at issue constituted evidence of the conspiracy to distribute drugs charged in the indictment); United States v.

⁹ At trial, the Court made the following determination:

I think there is some evidence, and I’m not going to quantify it, there’s enough evidence at this juncture to warrant my permitting the Government to introduce this evidence

I’m not ruling everything in. I’m saying that the argument that there was no evidence of a conspiracy involving the Terlingos, absent these tapes, that argument I reject. I think there was, there is evidence linking the Terlingos, all three of them, to the conspiracy. Stronger with respect to Domenick because he apparently was the only person to whom . . . there is direct evidence, specific evidence that Jasper said the car was not hot, it was warm.

There was evidence in several places in the transcript in the testimony of Todd Jasper that he was dealing with all of the Terlingos and all of the Terlingos were participating in what he did.

So I’m going to permit the Government to use the tapes. I conclude that the evidence is intrinsic to the conspiracy. It’s further evidence of the conspiracy, it’s not extrinsic. In part I make that ruling on the basis of the quid pro quo argument advanced by the Government. . . .

With respect to Rule 403, I will make a ruling . . . and I rule that the evidence is not—I’m not going to rule the evidence inadmissible under Rule 403. I do not find that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

Tr. Transcript at 201–03 (Dec. 6, 2001).

Ramos, 971 F. Supp. 186, 191–92 (E.D. Pa. 1997) (finding Rule 404(b) inapplicable to evidence of acts in furtherance of the charged conspiracy).

Essentially, “an act is intrinsic to the charged act or crime if it is inextricably intertwined with the charged act or crime, . . . or is necessary to complete a coherent story of the crime charged.” Id. at 192. In this case, prior to allowing the evidence that defendants sought to exclude in their motions in limine, the government presented evidence of the existence of a conspiracy and the compensatory arrangement on which the conspiracy was based—Jasper would provide favors to the defendants and they would process the registration and other vehicle paperwork. At trial, Jasper testified about discussions with Mr. Terlingo, Sr. regarding the provision of a variety of favors in exchange for the Terlingos’ help with processing automobile paperwork. See Tr. Transcript at 131–32 (testimony of Todd Jasper, Dec. 6, 2000) (testifying that Mr. Terlingo, Sr. had, inter alia, asked Jasper to keep his eyes open for computers; to supply VIP admission passes for clubs for Ms. Terlingo and Mr. Terlingo, Jr.; to rehire a friend who had been fired from Wizzard’s nightclub; to send girls to a party that Mr. Terlingo, Sr. was having for a friend; and to supply blank birth certificates for Mr. Terlingo, Sr.’s cousin).

With respect to the actual provision of favors, Jasper testified that he thought he had produced admission passes for one club, but was not sure; he had arranged to rehire Mr. Terlingo, Sr.’s friend at Wizzard’s; he sent girls to a party; and he supplied blank birth certificates for Mr. Terlingo, Sr.’s cousin. Tr. Transcript 132–34 (testimony of Todd Jasper, Dec. 6, 2000). Concluding that the statements regarding the arranged thefts of certain cars were requests for favors and thus further evidence of the conspiratorial arrangement between Jasper

and the Terlingos, the Court determined at trial that the statements were not subject to analysis under Rule 404(b) as the evidence was intrinsic to the conspiracy.

Even if the evidence is not considered intrinsic, the Court concludes that it is admissible. Rule 404(b) expressly provides that evidence of other crimes, wrongs or acts may be admissible for certain purposes, such as “for proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake” In this case, the requests that Jasper take certain cars so the cars could be reported stolen is highly probative of the Terlingos’ knowledge of the fact that Jasper was a car thief and that he had the resources to dispose of stolen cars. The Court further determines, with respect to Rule 403, that the probative value of the statements outweighs the danger of unfair prejudice.

Upon consideration of the evidence presented at trial linking the defendants to the conspiracy and the highly probative nature of the statements regarding the theft of various vehicles, the Court concludes that the evidence was admissible and that no trial error was committed.

B. Evidence of “Knowledge” and “Agreement”—Conspiracy Charge

Defendants’ next contention is that there was insufficient evidence of the “knowledge” and “agreement” elements of the conspiracy charge to sustain a conviction for conspiracy. As explained by the Third Circuit, “[i]n reviewing a jury verdict for insufficiency of the evidence, this court must consider the evidence in the light most favorable to the government and affirm the judgment if there is substantial evidence from which any rational trier of fact could find guilt beyond a reasonable doubt.” United States v. Frorup, 963 F.2d 41, 42 (3d Cir. 1992) (citing

Glasser v. United States, 315 U.S. 60, 80, 62 S. Ct. 457, 469, 86 L. Ed. 680 (1942)); United States v. Aguilar, 843 F.2d 155, 157 (3d Cir. 1988). See Fed. R. Crim. P. 29.

To establish the essential elements of the conspiracy with which the Terlingos were charged, the government must prove (1) that two or more people agreed to violate 18 U.S.C. § 2312, which prohibits the transportation of stolen motor vehicles in interstate commerce, and/or 18 U.S.C. § 2313, which prohibits the sale or receipt of stolen vehicles in interstate commerce; (2) that the defendant knew the purpose of the conspiracy and willfully participated in it; and (3) that one or more people committed an overt act in furtherance of the conspiracy. Based on the evidence presented at trial, the Court concludes that there was substantial evidence of knowledge and agreement on the part of each defendant from which a reasonable jury could conclude that the defendants knew the purpose of the conspiracy and agreed to participate in it.¹⁰

With respect to defendant Domenick Terlingo, Sr., the government presented evidence of the first time that Jasper and Mr. Terlingo, Sr. discussed vehicle paperwork. Jasper testified that he had a conversation with Mr. Terlingo, Sr. in 1995 at Club Wizzard's, a nightclub at which Jasper worked as a bouncer at that time, regarding some difficulties Jasper was having with the paperwork for his Toyota 4runner. See Tr. Transcript at 34–36 (testimony of Todd Jasper, Dec. 6, 2000). Jasper testified that Mr. Terlingo, Sr. inquired as to whether the car was “hot,” to

¹⁰ The evidence at trial included a substantial number of insurance cards allegedly issued by the Terlingos for insurance policies that did not exist. Specifically, Jasper and the other co-conspirators testified that they received insurance cards from the Terlingos on numerous occasions despite having not applied for insurance nor paid any insurance premiums. For the sake of convenience, the Court will refer to these cards as “fraudulent insurance cards.” See, e.g., Tr. Transcript at 45–48 (testimony of Todd Jasper, Dec. 6, 2000) (testifying that all three Terlingos provided him with fraudulent insurance cards and vehicle transit tags); Tr. Transcript at 87–88, 93–96 (testimony of Derek Cunningham, Dec. 12, 2000) (testifying as to having received fraudulent insurance cards from all three Terlingos).

which Jasper replied that “the cars were—were hot but they’re really warm because all the numbers and things had been changed so they’re not really hot anymore.” Id. at 34. According to Jasper, Mr. Terlingo, Sr. then examined Jasper’s paperwork for the car and informed him that there was some type of document he needed and then told Jasper: “Don’t worry about it, I’ll take care of it, I’ve got the best forgers in town.” Id. at 35. Jasper testified that he later went to Terlingo’s Auto Tag Agency, where he was provided with a fraudulent insurance card for the Toyota 4runner from Terlingo’s. Id. at 36.

Jasper also testified about a telephone call Mr. Terlingo, Sr. had received from the Georgia Bureau of Investigation in 1996, prior to Jasper’s cooperation with the government, in which Mr. Terlingo, Sr. was informed that the cars Jasper had taken to Georgia were stolen. Tr. Transcript at 30–31 (testimony of Todd Jasper, Dec. 8, 2000). In light of this evidence, a rational jury could have concluded that Mr. Terlingo, Sr. had knowledge of the purpose of the conspiracy and willfully participated in it by continuing to process paperwork for Jasper after learning that they were dealing in stolen vehicles.

In addition, Detective John Campbell (“Detective Campbell”), working undercover, testified to an incident that occurred on May 16, 1997 that could reasonably be construed to establish knowledge of the purpose of the conspiracy on the part of both Mr. Terlingo, Sr. and Tara Terlingo. See Tr. Transcript at 174–76 (testimony of John R. Campbell, Dec. 12, 2000). According to Detective Campbell’s testimony, he and Jasper went to Terlingo’s Auto Tag Agency on May 16, 1997 to register a vehicle. Upon their arrival at the tag agency, Detective Campbell noticed what he believed to be an unmarked Philadelphia police car parked in front. When they entered the tag agency, Mr. Terlingo, Sr. and Jasper began talking and Ms. Terlingo

asked Detective Campbell whether he had his paperwork. Mr. Terlingo, Sr. then began waving his hands and pointed to a person in the agency, in an apparent effort to indicate that they should not conduct any business and keep quiet. In Detective Campbell's words, he understood Mr. Terlingo, Sr. to mean that they should "not transact any business and for Tara not to do anything until, you know, he pointed, actually pointed to the back of the man and indicated wait till this guy leaves." Id. at 176.

In addition to this incident, Jasper testified that Ms. Terlingo would regularly forge documents for him, for example, by signing the name of the seller of a car, and then watch Jasper sign the names of various buyers. Tr. Transcript at 94 (testimony of Todd Jasper, Dec. 6, 2000). With respect to the provision of insurance cards, according to Jasper, Ms. Terlingo provided him with fraudulent insurance cards "[p]robably more than ten times" prior to Jasper's cooperation with the government. Id. at 101. Detective Campbell also testified that, on the occasion that he went to Terlingo's with Jasper, upon asking Ms. Terlingo for insurance, she initially called the insurance agent who worked at the tag agency. When Jasper made clear to Ms. Terlingo that he and Detective Campbell wanted "a card," she informed the insurance agent that he would not be needed.¹¹ According to Detective Campbell's testimony, Ms. Terlingo then proceeded to type up

¹¹ At trial, Detective Campbell testified that, while working undercover, he went to Terlingo's with Jasper, at that time a cooperating witness, in order to process paperwork for a Toyota Landcruiser; he testified regarding that experience as follows:

. . . Todd went into the back room with [Mr. Terlingo, Sr.] and I was left at the counter by myself. The processing of the paperwork continued by Tara Terlingo. At one point she came over and asked if I needed insurance.

I knew we were supposed to get an insurance, a counterfeit insurance card so I tried to stall her. I told her, I said, you know, I needed something, you know, to register the vehicle. She eventually called Jim. I think his name is Ford, one of the insurance agents that are usually at the

an insurance card for the vehicle (see Ex. G-52), and she supplied an MV1 for the vehicle (see Ex. G-51) and a receipt (see Ex. G-51), on which she had written “Todd” across the top. See Tr. Transcript at 170–72 (testimony of John R. Campbell, Dec. 12, 2000).

With respect to Mr. Domenick L. Terlingo, Jr., the government presented evidence that he, too, provided fraudulent insurance cards on numerous occasions. See Tr. Transcript at 66 (testimony of Lionel Shaw, Dec. 5, 2000) (testifying as to having dealt with Mr. Terlingo, Jr. in 1995–96 about five times and to having obtained fraudulent insurance cards from him); Tr. Transcript at 99–101 (testimony of Todd Jasper, Dec. 6, 2000) (testifying that Mr. Terlingo, Jr. had provided him with fraudulent insurance cards “[m]ore than ten times”); Exs. G-13 to G-22 (documents issued by Mr. Terlingo, Jr., many of which reference American International insurance policies for which Jasper had neither applied nor paid); Tr. Transcript at 87–96 (testimony of Derrick Cunningham, Dec. 12, 2000) (testifying as to having received fraudulent insurance cards from all three Terlingos); Tr. Transcript at 143 (testimony of Johnnie Lampkins, Dec. 12, 2000) (testifying as to a fraudulent insurance card received from Mr. Terlingo, Jr.); see also Ex. G-45b (fraudulent insurance card in Johnnie Lampkins’ name).

The government presented tape-recorded evidence of conversations between each defendant and Jasper and others regarding the theft of various cars in order to report them stolen

agency, and he started to come up to the counter and about this time Mr. Terlingo[, Sr.] and Todd came from the back room.

...

I went over to Todd and I, you know, I told him, you know, we have to check on insurance, you know, because the insurance guy was on his way up. Todd indicated to Tara that we wanted a card and at that point both Todd and Tara told Mr. Ford never mind and you know, he turned around and went to the back of the agency and sat down.

Tr. Transcript at 168–69 (testimony of John R. Campbell, Dec. 12, 2000).

to the insurers. The audio-tapes also included, inter alia, (1) a conversation between Mr. Terlingo, Sr. and Jasper on February 17, 1999 regarding the provision of blank birth certificates for Mr. Terlingo, Sr.'s cousin, John Cagliani (see Ex. G-32, Tr. Transcript at 49–53 (testimony of Todd Jasper, Dec. 8, 2000)); (2) a conversation between Mr. Terlingo, Sr. and Jasper on March 26, 1997 regarding getting rid of Ms. Terlingo's Rav-4 in order to replace it with a Ford Explorer (see Ex. G-40 & G-44, Tr. Transcript at 95–101 (testimony of Todd Jasper, Dec. 8, 2000)); (3) a conversation between Tara Terlingo and Jasper on March 26, 1997 in which Jasper told Tara that her father had told him "about the Rav" and that he would "hook [her] up," (see Ex. 40), meaning that he would get her something nice, "as far as the Ford Explorer went" (Tr. Transcript at 102–03 (testimony of Todd Jasper, Dec. 8, 2000)); (4) a discussion between Jasper and a friend of Mr. Terlingo, Sr. on April 28, 1997 regarding Jasper's method of stealing and replating cars in the presence of Mr. Terlingo, Sr. (see Ex. G- 43, Tr. Transcript at 118–19 (testimony of Todd Jasper, Dec. 8, 2000)); (5) a conversation between Mr. Terlingo, Sr. and Jasper on April 23, 1997 in which they referred to "newspapers" or "those things," identified by Jasper as vehicle titles (see Ex. G-41, Tr. Transcript at 112 (testimony of Todd Jasper, Dec. 8, 2000)); (6) a conversation in which Mr. Terlingo, Sr. introduced Jasper to Sam Nocille, an alleged car thief, on May 15, 1997 (see Ex. G-44, Tr. Transcript at 119–22 (testimony of Todd Jasper, Dec. 8, 2000)); (7) a conversation between Domenick L. Terlingo, Jr. and Jasper on April 28, 1997 regarding the theft of a friend's Mazda 626 (see Ex G-42; Tr. Transcript at 108–11 (testimony of Todd Jasper, Dec. 8, 2000)); and (8) further discussions of the Mazda on April 28, 1997 in which Domenick L. Terlingo and Jasper referred to "stuff," meaning the key for the Mazda 626 that Domenick L.

Terlingo was to provide Jasper so that he could take the car (see Ex. G-42, Tr. Transcript at 112–14 (testimony of Todd Jasper, Dec. 8, 2000)).

Although all of the elements of a conspiracy must of course be established beyond a reasonable doubt, it is well-settled that the existence of a conspiracy may be proved entirely by circumstantial evidence. United States v. Gibbs, 190 F.3d 188, 197 (3d Cir. 1999) (citing United States v. McGlory, 968 F.2d 309, 321 (3d Cir. 1992) (internal citation omitted)). As the Third Circuit has explained, “[t]he existence of a conspiracy ‘can be inferred from evidence of related facts and circumstances from which it appears as a reasonable and logical inference, that the activities of the participants . . . could not have been carried on except as the result of a preconceived scheme or common understanding.’” Id. at 197 (quoting United States v. Kapp, 781 F.2d 1008, 1010 (3d Cir. 1986)) (modification in original); see also United States v. McNeill, 887 F.2d 448, 450 (3d Cir. 1989) (“Inferences from established facts are accepted methods of proof when no direct evidence is available so long as there exists a logical and convincing connection between the facts established and the conclusion inferred.”).

As an initial matter, the Court notes that mere evidence of a relationship between Jasper and the Terlingos—that of tag agency customer and tag agent—would not establish a conspiracy to sell, receive or transport stolen vehicles, even if the Terlingos knew that the vehicles were stolen. As explained by the Third Circuit in United States v. Kapp, a case examining the sufficiency of evidence of a conspiracy in violation of 18 U.S.C. §§ 2313 and 2313:

the relationship of a buyer and seller, standing alone, without any prior or contemporaneous understanding beyond the mere sales agreement, does not establish conspiracy to transport stolen goods even though the parties know of the stolen nature of the goods. Under these circumstances, there

is no joint objective to commit the underlying offense charged here, for the buyer's purpose is to buy and the seller's is to sell.

United States v. Kapp, 781 F.2d 1008, 1010 (3d Cir. 1986). In Kapp, defendant Paul Briggs challenged the sufficiency of the evidence against him on the ground that he was a mere purchaser of a stolen vehicle, not a member of a conspiracy to transport stolen vehicles in interstate commerce. Kapp, 781 F.2d at 1010. The Kapp court concluded that there was more than a mere sales agreement involved in the case—the trial evidence established that Briggs provided fraudulent documents for the stolen vehicle and, as the Third Circuit concluded, “[t]hat Briggs is the buyer is immaterial; that he supplied essential paperwork is critical.” Id. at 1011.

Like the conspirators in Kapp, the Terlingos could have transacted business with Jasper and other conspirators without becoming members of the conspiracy—Jasper's purpose could have been to sell and transport vehicles while the Terlingos' purpose could have been to transact ordinary tag agency business. However, the government offered evidence of more than a mere business relationship between Jasper and the other conspirators and the Terlingos.

Like Briggs, the Terlingos supplied Jasper and his co-conspirators with critical paperwork in furtherance of the conspiracy to transport cars in interstate commerce. The evidence at trial established that the Terlingos regularly supplied Jasper and other co-conspirators with fraudulent insurance cards, assisted in acquiring registration and transit paperwork, and forged signatures. A reasonable jury could thus have inferred from the trial evidence that the activities of the participants in the conspiracy “could not have been carried on except as the result of a preconceived scheme or common understanding.” Gibbs, 190 F.3d at 197 (quoting United States v. Kapp, 781 F.2d 1008, 1010 (3d Cir. 1986)) (modification in original). As observed in

United States v. Klein, when a person acts “in furtherance of the co-conspirators’ goals with knowledge of the improper purpose, the jury can reasonably infer that the new member has achieved a tacit agreement with members of the ongoing conspiracy.” United States v. Klein, 515 F.2d 751, 753 (3d Cir. 1975).

The incidents Detective John Campbell observed are particularly telling. Had Mr. Terlingo, Sr. and Ms. Terlingo not had a prior understanding with Jasper as to his purpose in coming to the tag agency, Mr. Terlingo would have had no reason to indicate to Ms. Terlingo that she should not conduct business while a Philadelphia police officer was present. Similarly, Ms. Terlingo would not have told Jim Ford, the insurance agent who worked out of Terlingo’s, that his services were not required after Jasper stated that he and Detective Campbell only wanted “a card” without a prior understanding with Jasper. In addition, a jury could infer that it was unlikely all three Terlingos would ask Jasper about taking cars so they could report them stolen unless they knew that Jasper regularly dealt in stolen cars.

In light of all of the evidence presented at trial, a reasonable jury could have concluded that the Terlingos’ requests that Jasper ‘take’ particular cars indicate that they each had knowledge that Jasper was a car thief, that the business he conducted at Terlingo’s involved stolen cars and that each defendant willingly agreed to, and participated in, the conspiracy. Accordingly, the Court concludes that the government presented sufficient evidence of the knowledge and agreement elements of a conspiracy from which a reasonable jury could have found the defendants guilty beyond a reasonable doubt.

C. Jury Instructions Regarding State Violations of Procedure and Character

Next, defendants contend that the Court erred in refusing to instruct the jury on (a) state violations of procedure and (b) character. “Which instructions are given to the jury are within the sound discretion of the [c]ourt.” United States v. Carter, 966 F. Supp. 336, 349 (E.D. Pa. 1997); see United States v. Ellis, 156 F.3d 493, 498 n.7 (3d Cir. 1998) (“When charging the jury, the district court must provide it with ‘a clear articulation of the relevant legal criteria.’ . . . [D]etermining the specific language used is within the sound discretion of the district court.”); accord United States v. Simon, 995 F.2d 1236, 1243 n.11 (3d Cir. 1993). See also United States v. Sriyuth, 98 F.3d 739, 750 (3d Cir. 1996) (“We have held that if the jury charge ‘fairly and adequately submits the issues in the case to the jury [without confusing or misleading the jurors]’, then when viewed as a whole and in the light of the evidence, the court’s instruction will not constitute reversible error.” (modification in original) (internal quotation omitted)).

In this case, the Terlingos requested the following jury instruction regarding state violations of procedure:

You have heard evidence throughout this trial that some or all of these defendants at various times may have committed violations of state regulations or state statutes. You have heard testimony about supplying a notary seal, supplying insurance cards and planning to dispose of certain vehicles. If you find that any or all of the defendants at various times committed any of these offences, I must instruct you that that evidence, in and of itself, is not sufficient to convict them of the conspiracy charged in this indictment. In addition to whatever findings you may make regarding these incidents, you must still find beyond a reasonable doubt that these defendants, individually, knew that these automobiles were stolen and deliberately agreed to enter into a conspiracy to transport them or dispose of them in interstate commerce.

Request for Supplemental Jury Instructions (Document No. 333, filed Dec. 12, 2000). The Court denied defendants' request for this instruction at trial, concluding that the requested charge was covered in the Court's instructions regarding the essential elements of the charged offense and that the defendants' proposed charge, as drafted, was inappropriate. Tr. Transcript at 12–13 (Dec. 13, 2000). The Court further concluded that "it's correct that [the defendants] can't be found guilty of the various charges against them just because they gave insurance cards out improperly. But the government is correct when it says that this is evidence together with all of the other evidence of knowledge that the cars were stolen" *Id.* at 13. The Court concludes that its ruling at trial was correct and that it acted within its discretion in refusing to give the defendants' requested charge regarding violations of state procedure.

Defendants also requested that the Court include the following jury instruction in its character evidence charge: "Evidence of a defendant's reputation, inconsistent with those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt since the jury may think it improbable or unlikely that a person of good character for being a law-abiding citizen would commit such a crime or crimes." *See* O'Malley, Grenig & Lee, *Federal Jury Practice and Instructions* § 15.15 (5th ed. 2000). At trial, the Court denied defendant's request for this instruction, noting that a 'standing alone' instruction regarding character is not required in the Third Circuit.¹² *See United States v. Spangler*, 838 F.2d

¹² At one of the charging conferences during trial, in response to defendants' character charge request, the Court stated: "I have one problem with that, and that is that I'm not sure what every circuit has done, but the Third Circuit has adopted the rule that character evidence, together with all of the other evidence, may give a reason—may establish a reasonable doubt as to guilt. . . . And that character evidence, standing alone, is not sufficient." Tr. Transcript at 221–22 (Dec. 11, 2000).

85 (3d Cir. 1988) (“We hold that so long as an instruction . . . which calls the jury’s attention to its duty to take character evidence into account with all of the other evidence in deciding whether the government has proved its charge beyond a reasonable doubt, the omission of the express ‘standing alone’ language which was requested here is not an abuse of the discretion vested in the trial court to choose the wording of the character evidence charge . . .”).

At trial, the Court gave the following instruction:

The defendants presented witnesses who gave opinions of their good reputation for being a law abiding citizen. This testimony is not to be taken by you as the witness’s opinion as to whether a defendant is guilty or not guilty. That question is for you alone to determine. You should however consider this evidence together with all of the other evidence in the case in determining whether a defendant is guilty or not guilty of the charges against him or her accordingly. If after considering all of the evidence, including testimony about a defendant’s good character, you find a reasonable doubt has been created in your mind as to his or her guilt, you must acquit that defendant.

Tr. Transcript at 108–09 (Dec. 14, 2000). This instruction is a correct statement of the law and informs the jury of its duty to take character evidence into consideration when weighing all of the evidence presented at trial.

Accordingly, the Court concludes that its denial of defendants’ requested jury instructions with respect to violations of state procedure and character evidence was entirely proper and does not constitute a ground for judgment of acquittal or the grant of a new trial.

D. Evidence of a “Quid Pro Quo” Arrangement

The final ground presented in support of defendants’ motions is that the Court improperly allowed the government to present evidence of a quid pro quo arrangement between Jasper and other co-conspirators and the Terlingos. Defendants contend that the Court erred in receiving

this evidence as it was neither set forth in the Indictment nor discussed in the government's trial memorandum. The Terlingos, however, do not cite any authority in support of their argument nor do they discuss it in their memorandum in support of their motions for judgment of acquittal or, in the alternative, new trial.

The Court concludes that the conspiracy as set forth in the Indictment was sufficient to give the Terlingos' notice of the charges against them and that the government's plans to use evidence of a quid pro quo arrangement was explained in the government's replies to defendants' pre-trial motions in limine and mentioned in the government's Trial Memorandum (see Document Nos. 272, 273, and 274, filed Sept. 7, 2000; Document No. 223, filed June 1, 2000; supra note 6)). The defendants had notice of the government's quid pro quo theory and suffered no prejudice by the admission of evidence in support of this theory of the case.

The quid pro quo arrangement (see discussion, supra Part III(A)) was evidence of the existence of a conspiracy. The admission of this evidence was not trial error and it does not provide grounds for a new trial.

E. Harmless Error Analysis

As set forth in Government of the Virgin Islands v. Bedford, "[u]nless there is a reasonable possibility that [the error] contributed to the conviction, reversal is not required." 671 F.2d 758, 762 (3d Cir. 1982) (internal quotation omitted). Error is "harmless if it is highly probable that the error did not contribute to the judgment." United States v. Saada, 212 F.3d 210, 222 (3d Cir. 2000) (internal quotation omitted). This standard is met "when the court possesses a 'sure conviction' that the error did not prejudice the defendant." Id. (internal quotation omitted).

In its case against each Terlingo defendant, the government offered substantial evidence of the existence of a conspiracy, and the Terlingos' membership in it, including physical evidence and a number of witnesses who offered testimony linking each Terlingo to the conspiracy. See Part III(B), supra. In light of all the evidence presented at trial, the Court concludes that even if there was some trial error, that error was harmless, and there was no miscarriage of justice.

V. CONCLUSION

The government presented sufficient evidence of the knowledge and agreement elements required for a conspiracy conviction, and there was no trial error or miscarriage of justice in the case. Accordingly, defendants' motions for judgment of acquittal, or, in the alternative, new trial, will be denied. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

_____	:	
UNITED STATES OF AMERICA	:	CRIMINAL
	:	
v.	:	
	:	
DOMENICK TERLINGO,	:	NO. 99-525-06
TARA TERLINGO, and	:	99-525-07
DOMENICK L. TERLINGO	:	99-525-08
_____	:	

ORDER

AND NOW, this 30th day of April, 2001, upon consideration of Defendants' Motions for Judgment of Acquittal Under Rule 29 (Document Nos. 346, 347, and 348, filed December 19, 2000), Defendants' Joint Memorandum in Support of Motions for Judgments of Acquittal Under Rule 29 (Document No. 350, filed December 28, 2000), the Government's Response and Memorandum of Law in Opposition to the Defendants' Motions for Judgments of Acquittal Under Rule 29 (Document No. 356, filed January 16, 2001), and Defendants' Joint Reply to the Government's Response and Memorandum of Law in Opposition to the Defendants' Motion for Judgments of Acquittal Under Rule 29 (Document No. 359, filed January 23, 2001), **IT IS ORDERED** that Defendants' Motions for Judgment of Acquittal Under Rule 29 (Document Nos. 346, 347 and 348), treated by the Court as motions for judgment of acquittal under Rule 29 and, in the alternative, for a new trial under Rule 33, are **DENIED**.

BY THE COURT:

JAN E. DUBOIS, J.