



to render the Indictment timely. It must be remembered, however, that the defendant is charged with conspiracy to commit mail fraud. The issue, therefore, is whether any mailings in furtherance of the conspiracy to defraud occurred within the limitations period. The Superseding Indictment does charge that on or about August 7, 1999, the defendant mailed to her co-conspirators one or more checks representing their share of the proceeds of the fraudulent scheme. A jury could reasonably conclude that dividing up the proceeds was an integral part of the fraudulent scheme, and that the August 7 mailing was in furtherance of that scheme.

Defendant has cited the decision of the District of Columbia Court of Appeals in United States v. Hitt, 249 F.3d 1010 (2d Cir. 2001). In that case, the defendant had conspired to obtain an export license by falsely representing that it was to be used for shipment of commercial products to China, whereas actually the permits were used to illegally export military items to China. The Court held that the conspiracy ended when the license was obtained, and not when the later shipments were actually made. The Court reasoned that the agreement to commit fraud in obtaining the license did not contemplate the uses to which the license was later put. In our case, by contrast, there can be little doubt that the sharing of the proceeds was an integral part of the fraudulent scheme. Thus, while I agree with

the defense argument that the defendant's act of depositing the fraudulently obtained check in a bank account, and withdrawing from that account, would not suffice to extend the limitations period, the government has adequately alleged that, within the limitations period, the mails were used in carrying out the original fraudulent scheme. Enough has been alleged to give rise to jury issues on the limitations question. The motion to dismiss will therefore be denied.

