

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

UNITED STATES OF AMERICA	:	CRIMINAL
	:	
v.	:	NO. 05-193-2, 11
	:	
AKHIL BANSAL,	:	
FRED MULLINIX aka "TOM PETERS"	:	

Diamond, J.

August 1, 2006

MEMORANDUM

On April 18, 2006, after a seven-week trial, a jury convicted Defendants Akhil Bansal and Fred Mullinix of Conspiracy to Distribute Controlled Substances (Count One of the Superseding Indictment), Conspiracy to Import Controlled Substances (Count Two), Conspiracy to Introduce Misbranded Drugs into Interstate Commerce (Counts Four and Five), Conspiracy to Commit Money Laundering (Count Six), and Promotional Money Laundering (Counts Fourteen, Twenty-Three, and Twenty-Seven). The jury also convicted Bansal of Continuing Criminal Enterprise (Count Three), Transactional Money Laundering (Counts Thirty, Thirty-One, Thirty-Eight, Forty-Two, and Forty-Three), and International Money Laundering (Counts Seven, Nineteen, Seventeen, Twenty, and Twenty-Nine). See 18 U.S.C. §§ 371, 1956, 1957; 21 U.S.C. §§ 846, 848, 963.

The Government presented overwhelming trial evidence that Defendants made millions of dollars — which they funneled into multiple foreign bank accounts — by selling controlled and non-controlled prescription drugs over the Internet to many thousands of customers. The trial evidence further established that Defendants sold these drugs — including morphine,

codeine, ketamine, and steroids — without requiring a prescription and without providing proper labelling, use, or dosage information. Akhil Bansal and his father, Brij Bansal, headed the conspiracy; Fred Mullinix ran several illegal pharmaceutical Web sites.

Although Defendants are represented by counsel, they have, acting *pro se*, jointly moved for acquittal under Fed. R. Crim. P. 29 and for a new trial under Rule 34. Typically, I would not consider *pro se* motions filed by defendants who are represented by counsel. See McKaskle v. Wiggins, 465 U.S. 168, 183 (1984) (no Sixth Amendment right to “hybrid representation”); United States v. Schwyhart, 123 Fed. Appx. 62, 68 (3d Cir. 2005) (same). This case presents unusual circumstances, however.

Bansal has hired and fired a variety of lawyers. Allan Sagot represented Bansal from the time of his April 22, 2005 arraignment. See *Notice of Appearance of Allan Sagot (Doc. No. 33)*; *Notice of Appearance of Hope Lefeber (Doc. No. 91)*. Approximately one month later, Bansal fired Mr. Sagot and hired Hope Lefeber, who represented Bansal until he fired her in September 2005. See *Withdrawal of Appearance (Doc. No. 195)*. Bansal next hired Richard Harris, but almost immediately filed several Motions *pro se*. See *Mot. to Grant Supp. Br. (Doc. No. 214)*; *Mot. to Suppress Evid. (Doc. No. 215)*; *Mot. to Suppress Electronic Evid. (Doc. No. 232)*; *Mot. to Grant Supp. Br. (Doc. No. 233)*; *Mot. to Amend/Supp. Def. Mot. to Suppress (Doc. No. 241)*. I denied these Motions and ordered Bansal to stop filing motions *pro se* while counsel represented him. See *Order (Doc. No. 242)*; McKaskle, 465 U.S. at 183; Schwyhart, 123 Fed. Appx. at 68. Apparently frustrated by his inability to proceed in a hybrid fashion, Bansal sought to represent himself. See *Hearing 12/22/2005 (Doc. No. 274)*. I held a hearing in December 2005 at which Bansal withdrew this request. *Id.* Bansal again sought to represent himself in January 2006.

See Letter Motion (Doc. No. 282). I held another hearing at which I advised Bansal of his rights and responsibilities and allowed him to proceed *pro se*. See Hearing 1/3/2006 (Doc. No. 284); United States v. Peppers, 302 F.3d 120 (3d Cir. 2002). Less than one month later, Bansal withdrew his request to proceed *pro se* and once again retained Mr. Harris as his lead counsel. See Hearing 1/25/2006 (Doc. No. 377).

Having previously obtained Court Orders freezing all Bansal's bank accounts, the Government agreed to the release of approximately \$420,340 to be used by Mr. Harris in Bansal's defense. See Order (Doc. No. 378). Bansal hired a second lawyer with a background in medicine — Paula Brown — to assist Mr. Harris at trial.

Since Defendants' conviction, Bansal (who is still represented by Mr. Harris) and Mullinix (who has been represented by counsel throughout) have filed a new spate of *pro se* Motions. Counsel for both Bansal and Mullinix have "adopted" the Motions and asked me to treat them as though they had been prepared and submitted by counsel. See Def. Counsel's Supplement (Doc. No. 597); Letter from Steven Laver (Doc. No. 623). Mr. Harris has also filed a supplement to one of Bansal's *pro se* Motions. See Def. Counsel's Supplement. In addition, Bansal has recently made yet another request to represent himself in all future proceedings. See Mot. to Assert Right of Self-Representation (Doc. No. 675). I have not yet held a hearing on this Motion. Accordingly, in an abundance of caution, I have considered all Defendants' *pro se* Motions on the merits. See also Doc. No. 624 (denying Def. Mot. for Arresting J.); Doc. No. 625 (denying Def. Mot. for J. of Acquittal at Parts III, IV, and VI); Def. Counsel's Supplement at Parts I and III); Doc. No. 626 (denying Def. Mot. for New Trial at Part VII); Doc. No. 629 (denying Def. Mot. to Supplement Mot. for New Trial); Doc. No. 633 (denying Def. Supplement

Mot. for Arrested J.); Doc. No. 634 (denying Def. Mot. to Compel); Doc. No. 635 (denying Def. Mot. to Req. Place of Confinement); Doc. No. 636 (denying Def. Mot. to Req. Release); Doc. No. 648 (denying Def. Mot. to Compel Disc.).

In the Motions I address here, Defendants contend that the Government did not prove their guilt beyond a reasonable doubt, and that they did not receive a fair trial. The Government's trial evidence comprised thousands of e-mails written by the coconspirators to each other and to their customers, voluminous bank records, testimony of the coconspirators themselves, statements made by Defendants, testimony of Internet customers and an undercover FBI agent who were able to buy controlled substances from Defendants without a prescription, and testimony and physical evidence regarding the nature of the drugs Defendants sold and the vast quantities of drugs the authorities recovered from Defendants. That evidence is certainly sufficient to sustain Defendants' convictions. In addition, Defendants have not shown that their trial was unfair. Accordingly, I deny Defendants' Motions.

I. Defendants' Rule 29 Motion for a Judgment of Acquittal

Defendants argue that: (1) the Government failed to establish the requisite intent with respect to Counts One, Two, Four, and Five; (2) a variance existed between the single conspiracies alleged in Counts One and Two and the "multiple" conspiracies established at trial; and (3) Bansal's Continuing Criminal Enterprise conviction cannot stand because the Government did not prove that he committed three or more related federal drug felonies.

A defendant challenging the sufficiency of the evidence bears a heavy burden. Granting relief under Rule 29 is "confined to cases where the prosecution's failure is clear." United States

v. Leon, 739 F.2d 885, 891 (3d Cir. 1984)). I must view the evidence in the light most favorable to the Government; I may not re-weigh the evidence or make credibility determinations. United States v. Giampa, 758 F.2d 928, 934-935 (3d Cir. 1985). Relief is warranted only “if no reasonable juror could accept the evidence as sufficient to support the conclusion of the Defendant's guilt beyond a reasonable doubt.” United States v. Coleman, 811 F.2d 804, 807 (3d Cir. 1986) (citing United States v. Castro, 776 F.2d 1118, 1125 (3d Cir. 1981)); see also 2A Charles Alan Wright, Federal Practice and Procedure § 466 (3d ed. 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)). So long as “a reasonable jury believing the Government’s evidence could find beyond a reasonable doubt that the Government proved all the elements of the offenses,” I must uphold the verdict. United States v. Salmon, 944 F.2d 1106, 1113 (3d Cir. 1991); Coleman, 811 F.2d at 807.

A. Defendants’ Intent to Distribute and Import Controlled Substances

To establish intent to commit the crimes of conspiracy to distribute and import controlled substances, the Government must prove that at the time of the distribution or importation, the defendant knew that the substances were controlled. See United States v. Barbosa, 271 F.3d 438, 458 (3d Cir. 2001). The Government often proves guilty knowledge with circumstantial evidence, which the Third Circuit has held is as probative of intent as direct evidence. United States v. Bycer, 593 F.2d 549, 551 (3d Cir. 1979). Accordingly, I must determine whether the proved facts logically support an inference of guilty knowledge. Id.

The trial evidence established that the conspirators knowingly imported millions of doses of morphine, codeine, ketamine, ritalin, alprazolam, and a host of other controlled substances from India and sold them throughout the United States. *N.T. of Mar. 13, 2006 at 165; N.T. of Mar. 15, 2006 at 89; N.T. of Mar. 16, 2006 at 104, 146–56, 170–73; N.T. of Mar. 20, 2006 at 15–23*. Mullinix’s site included descriptions of the drugs he sold; he identified some as narcotics. *N.T. of Mar. 20, 2006 at 58–68*. Defendants acknowledged that they knew the specific identities of the drugs they were selling. *Def. Mot. for J. of Acquittal at 1*. From this evidence alone the jury could permissibly infer that Defendants were also aware that the drugs were controlled. See, e.g., United States v. Turcotte, 405 F.3d 515, 529 (7th Cir. 2005) (“As with other known controlled substances . . . knowledge of the substance's specific identity implies knowledge of the substance's legal status.”). The Government, nonetheless, presented abundant additional evidence of Defendants’ guilty knowledge.

Bansal and Mullinix discussed via e-mail legal restrictions on the drugs they supplied, and that their business was possible “only because of some helpful corrupt people in India.” *Gov’t Ex. 3.9; N.T. of Mar. 30, 2006 at 125*. Bansal noted that “[t]here are huge penalties and even imprisonment as a punishment if someone is found selling them without a prescription.” *Gov’t Ex. 3.9; N.T. of Mar. 30, 2006 at 125*. As part of another e-mail exchange, Bansal acknowledged “all the risk” inherent in supplying these drugs illegally. *N.T. of Mar. 28, 2006 at 17–18*. Bansal created a Powerpoint presentation for potential clients that included the frequently asked question, “What if anything bad happens?” *N.T. of Mar. 29, 2006 at 202*. Mullinix, who had been selling drugs over the Internet since 2001, took steps to avoid connecting his name with his illegal enterprise: the business’s bank accounts were in his wife’s name; he

used at least two aliases to communicate with customers. *N.T. of Mar. 30, 2006 at 149–52, 167–69*. As early as 2001, Mullinix e-mailed a friend expressing his desire to avoid scrutiny by U.S. Customs. *See Gov't Ex. 966.3*. He also received information in 2004 that several of his packages may have been seized by Customs. *Gov't Ex. 409.1; N.T. of Mar. 30, 2006 at 192–93*. This evidence supports an inference that Defendants understood the illegal nature of their business. *United States v. Hussein*, 351 F.3d 9, 19–20 (1st Cir. 2003) (efforts to avoid detection may support inference of guilty knowledge).

Further, Bansal has a medical degree from India (although he is not licensed to practice medicine in the United States). *N.T. of Apr. 10, 2006 at 47*. He admitted in his trial testimony that he knew that the substances he distributed and imported were dangerous, that some were controlled in India, and that one needed a license to distribute them in India. *N.T. of Apr. 11, 2006 at 15*. Bansal frequented the locations where his employees labeled, packaged, and shipped the drugs. *N.T. of Mar. 20, 2006 at 68–69, 71–75, 86–98*. As early as April 2004, Bansal expressed concern about the illegal nature of his operation, indicating he was aware that authorities had arrested one of his employees for shipping prescription drugs. *Id. at 76, 83–84*. He directed coconspirators to open bank accounts in their names; he then deposited proceeds from his business into those accounts. *Id. at 116–30*. He did not discuss the nature of his business with his uninvolved roommate. *Id. at 73*.

Finally, both Defendants made admissions at the time of their arrests. *See N.T. of Mar. 13, 2006 at 95–108, 190–201; N.T. of Mar. 14, 2006 at 145–153*. Bansal explained that he had learned of the arrests of some of his coconspirators, had discovered that his bank accounts had been frozen, and had attempted to flee the country to evade prosecution. *N.T. of Mar. 13, 2006*

at 105; see also *N.T. of Apr. 11, 2006 at 165–69* (Bansal testifying about the multiple plane tickets he purchased just before he was arrested). Mullinix told the arresting Agents that he did not think he was a drug dealer because he was not “actually touching the drugs.” *N.T. of Mar. 14, 2006 at 149*. Neither Defendant suggested that he was unaware that the great majority of their wares were controlled substances.

Viewed in the light most favorable to the Government, this wealth of evidence certainly could convince a reasonable jury beyond a reasonable doubt that Defendants knew that their products were controlled.

Defendants also argue that it was error to instruct the jury that it could infer knowledge if the “Government proved, beyond a reasonable doubt, that [a particular] defendant deliberately closed his eyes to what would otherwise have been obvious to him.” See *Def. Mot. for Acquittal, N.T. of Apr. 11, 2006 at 127–28*. This instruction was proper because it was supported by the trial evidence. See *United States v. Leahy*, 445 F.3d 634, 652 (3d Cir. 2006).

Along with the evidence of Defendants’ knowledge that I have already discussed, the Government showed that Mullinix’s Web site stated that it required no prescription; rather, the site operators “assumed” the customer had a prescription for the drugs ordered. *N.T. of Mar. 14, 2006 at 122–24; Gov’t Ex. 800-F-4*. Similarly, Bansal expressed concern that he had no prescriptions for the drugs he distributed. *N.T. of Mar. 20, 2006 at 106*. In these circumstances, the challenged instruction was proper. See *Leahy*, 445 F.3d at 652. Moreover, the instruction could not have been prejudicial because I also instructed the jury that it could not conclude that a Defendant had knowledge merely from proof that he had made a mistake, was negligent or careless, or believed in an inaccurate proposition. *N.T. of Apr. 11, 2006 at 127–28*.

B. Defendant Bansal's Intent to Defraud and Mislead

Bansal next argues that the Government did not prove that in introducing misbranded drugs into interstate commerce he acted with the intent to defraud or mislead. Bansal suggests that because “[t]he medicines supplied by defendant’s father were always claimed to be generic medicines and manufactured in India,” he is entitled to acquittal as a matter of law on Counts Four and Five. Bansal ignores both the law and the trial evidence.

A jury can infer that a defendant intends to defraud or mislead if he acts in a way that was intended to avoid the scrutiny of or regulation by a government agency, such as the FDA, or if he intended to defraud or mislead his customers. United States v. Ellis, 356 F.3d 550, 556–57 (4th Cir. 2003); United States v. Arlen, 947 F.2d 139, 143 (5th Cir. 1991); United States v. Micheltree, 940 F.2d 1329, 1350–51 (5th Cir. 1991). Viewing the evidence in the light most favorable to the Government, a reasonable jury could have found beyond a reasonable doubt that Bansal acted with the requisite intent.

First, the abundant evidence of Bansal’s criminal intent discussed above established quite clearly that he knew he was selling controlled substances and was seeking to avoid government regulation or scrutiny. *E.g.*, *N.T. of Mar. 28, 2006 at 17–18*; *N.T. of Mar. 29, 2006 at 202*; *N.T. of Mar. 30, 2006 at 125*. Bansal’s actions with respect to particular drugs he sold further established this point. For instance, the Government proved that Bansal shipped many kilos of ketamine (a “club” or “date rape” drug) in plain packages labeled as “books.” *N.T. of Apr. 11, 2006 at 48–54*; *Gov’t Ex. 1.17*. Bansal also acknowledged sending one customer 16,650 doses of pure codeine in a seven-month period. *Id. at 34–35*; *Gov’t Ex. 842*. Bansal testified that it would not be good medical practice — and, in fact, that it would be dangerous — for any doctor to

write a prescription for such a quantity of drugs. *Id.* at 28–29.

Bansal sent e-mails in which he discussed bribing customs inspectors in India and the United States. *N.T. of Apr. 11, 2006 at 20*. Moreover, Web sites through which Bansal distributed the drugs informed their customers that they could purchase the drugs without a prescription. *N.T. of Mar. 14, 2006 at 26, 122; N.T. of Mar. 28, 2006 at 177*.

The jury could reasonably infer from this evidence that Bansal was seeking to avoid both government scrutiny of his business and governmental regulations requiring the issuance of a valid prescription before certain medicines could be dispensed.

In addition, the Government presented considerable evidence that the conspirators sought to defraud and mislead their customers to believe that their drugs were FDA-approved — exactly the same medicines they could obtain only at a much higher price in their local pharmacies. *N.T. of Mar. 14, 2006 at 26, 122; N.T. of Mar. 28, 2006 at 177*. In fact, none of the drugs the conspirators offered were FDA-approved. *N.T. of Mar. 15, 2006 at 141–55*. The Government also showed that in many instances, the conspirators' prices were higher than what the customers would have paid had they obtained them legally. *N.T. of Mar. 28, 2006 at 173–77*. In these circumstances, the Government again proved that Bansal acted with the requisite criminal intent.

C. Proof of Single Conspiracies

The Government charged Defendants with Conspiracy to Distribute Controlled Substances (Count One) and Conspiracy to Import Controlled Substances (Count Two). Defendants contend that a variance existed between the single conspiracy charged in each Count and the evidence at trial, which they say showed, at most, multiple conspiracies as to each Count. I disagree. The trial evidence supported the jury's verdict as to Counts One and Two, and I

properly instructed the jury on this issue.

I am obligated to vacate a conviction when: (1) there is a variance between the indictment and the proof presented at trial; and (2) the variance prejudices a substantial right of the defendant. United States v. Schurr, 775 F.2d 549, 553 (3d Cir. 1985). Where an indictment alleges a single conspiracy, a variance exists if the evidence shows that there were multiple conspiracies. United States v. Kelly, 892 F.2d 255, 258 (3d Cir. 1989). The variance doctrine protects the defendant's right "not to be tried en masse for the conglomeration of distinct and separate offenses committed by others." Kotteakos, 328 U.S. at 775. Nonetheless, even "a finding of a master conspiracy with sub-schemes does not constitute a finding of multiple, unrelated conspiracies and, therefore, would not create an impermissible variance." United States v. Smith, 789 F.2d 196, 200 (3d Cir. 1986).

In determining whether a reasonable jury could have found the single conspiracies charged in Counts One and Two, I must consider the following factors as to each conspiracy: (1) whether the conspirators had a common goal; (2) whether the agreement contemplated a need for the continuous cooperation of the conspirators; and (3) the extent to which the participants overlap. Kelly, 892 F.2d at 259 (citing United States v. DeVarona, 872 F.2d 114, 118–19 (5th Cir. 1989)). The absence of one factor does not necessarily defeat an inference that a single conspiracy existed. United States v. Padilla, 982 F.2d 110, 115 (3d Cir. 1992).

Here, all three factors support the jury's verdict that Defendants participated in a conspiracy to import controlled substances and a conspiracy to distribute controlled substances. First, three coconspirators testified that all the participants in each conspiracy had the common goal of making money by illegally importing from India and distributing in the United States a

variety of controlled and non-controlled prescription drugs supplied by the Bansals. *N.T. of Mar. 22, 2006 at 117–23* (Victor Devore); *N.T. of Mar. 27, 2006 at 162–67, 180–86, 203–08* (Christopher Laine); *N.T. of Mar. 28, 2006 at 208–11* (Jitendra Arora). E-mail correspondence showed that the Bansals sought to address a common concern among the Web site operators — confiscation by U.S. Customs officials — and that this effort made the drugs more expensive. *N.T. of Mar. 29, 2006 at 193–98*. When Akhil Bansal threatened to cut off supplies to certain Web site operators because they owed him money, these operators, including Mullinix, made considerable efforts to maintain their relationships with the Bansal organization, thus exhibiting their commitment to the conspiracy’s common goal. *N.T. of Mar. 14, 2006 at 32–34; Mar. 28, 2006 at 14–19* (describing e-mails in which Mullinix pleads with Brij Bansal to continue working with Mullinix and explains delays in payment); see also Padilla, 982 F.2d at 115 (Government’s evidence established “common goal to obtain and sell cocaine for profit . . .”); United States v. Salmon, 944 F.2d 1106, 1117 (3d Cir. 1991) (“[T]he record supports a finding of ‘a common goal’ . . . [of] the sale of cocaine for profit”); United States v. Adams, 759 F.2d 1099, 1110 (3d Cir. 1985) (“The common goal of the conspiracy was the sale of drugs for profit; each separate drug transaction was a step in achieving their common goal.”).

Second, each conspiracy contemplated the continued participation and cooperation of all the participants. The Web site operators depended on the Bansals for the continued availability of Indian drugs in the U.S. The Bansals, in turn, relied on all the Web site operators to order the drugs on credit, sell them (without a prescription) to their consumers, and then promptly pay the Bansals for those illegal wares. *N.T. of Mar. 28, 2006 at 14–19; N.T. of Apr. 11, 2006 at 21–24*. The Bansals even shipped the drugs directly to these consumers from a central depot in the

United States. *N.T. of Mar. 16, 2006 at 144–74; N.T. of Mar. 20, 2006 at 76–130, 176–89; Gov’t Ex. 10.50* (Powerpoint presentation prepared by Akhil Bansal demonstrating logistics of shipping process). Akhil Bansal wrote an e-mail to the Web site operators explaining their interdependence:

I write this to inform you . . . we take all the risk, right from buying of medicine from India, sending it to U.S.A., storage in U.S.A. and then shipping to your customers’ doors. On the other hand, you guys sit in an unknown country with Web servers in a different country and a merchant account in yet another different country. . . . [W]e take all the risk for money. If we are not paid on time or not paid in full, we have no incentive to take all the risk and work with a client. . . . If you are unhappy with us, you are welcome to choose any supplier you want, but one thing I can assure you that you will not find people who can provide you services on credit, especially in this trade.

N.T. of Mar. 28, 2006 at 17–19. That some Web site operators may have had suppliers in addition to the Bansals does not alter their relationship. See Padilla, 982 F.2d at 115 (defendant’s “willingness to buy a distributable amount of cocaine” furthered common goal of larger conspiracy by “maintaining a continuous demand for the drug”); United States v. Salmon, 944 F.2d 1106, 1117–18 (3d Cir. 1991) (although coconspirator had several sources, defendant supplier was still advantageous to the overall success of the venture and finding of single conspiracy was warranted).

Further, the continuous participation of some of the coconspirators, including Brij and Akhil Bansal, Julie and Yatindra Agarwal, and Himanshu Kulshrestha, provides sufficient overlap among defendants. *Tr. Mar. 30, 2006 at 27–55*; see Salmon, 944 F.2d at 1117–18 (finding overlap of one participant in two transactions sufficient). In addition, several Web site operators used the same off-shore credit card processor, in part, because domestic processors

refused to do business with “Internet pharmacies.” *N.T. of Mar. 22, 2006 at 94–102; N.T. of Mar. 27, 2006 at 199–208; N.T. of Mar. 28, 2006 at 26–40*. The evidence also showed that when the Bansals stopped filling orders on credit for Christopher Laine (one of the Web site operators), Laine obtained the drugs from another site — one that was operated by co-Defendant Jitendra Arora, who obtained the drugs on credit directly from the Bansals. *N.T. of Mar. 27, 2006 at 187–89, 205–11; N.T. of Mar. 28, 2006 at 13–25, 213–20; N.T. of Mar. 29, 2006 at 25–41, 45–47, 52–54*.

To establish a single conspiracy, the Government need not prove that each defendant knew all the details, goals, or other participants. See Padilla, 982 F.2d at 114. The Third Circuit has consistently held that when a defendant participates in drug transactions with a member of a larger conspiracy, the jury may find the defendant was a member of the larger conspiracy if the defendant knew that the participant was part of a larger drug operation. See United States v. Quintero, 38 F.3d 1317, 1337 (3d Cir. 1994); United States v. Theodoropoulos, 866 F.2d 587, 594 (3d Cir. 1989); United States v. Castro, 776 F.2d 1118, 1124 n.4 (3d Cir. 1985).

The Bansals repeatedly made clear to Mullinix that he was part of a larger organization and that there were other Web site operators who purchased drugs from the Bansals. *N.T. of Mar. 30, 2006 at 123–26, 199–204*. For instance, the Bansal organization informed all the Web site operators that it had created a Web site to facilitate the transmission and tracking of orders from the multiple Web site operators who purchased their drugs from the Bansals. *N.T. of Mar. 28, 2006 at 212–13; N.T. of Mar. 29, 2006 at 18–48; N.T. of Mar. 30, 2006 at 124–25*.

Additionally, Akhil Bansal sent an e-mail to several Web site operators informing them that he was planning on reducing the number of operators he would supply from twenty-four to six. *N.T.*

of Mar. 29, 2006 at 227–28; N.T. of Mar. 30, 2006 at 123–25; Gov’t Ex. 305.4. Mullinix responded that Bansal was wise to do business only with a smaller group of individuals that he trusted. *N.T. of Mar. 30, 2006 at 125–26.* In light of this explicit acknowledgment that he was part of a larger organization, Mullinix cannot credibly contend that there was inadequate trial evidence to support the jury’s determination that he was part of a larger, single conspiracy. *N.T. of Mar. 30, 2006 at 113–18, 203–21; see United States v. Gibbs*, 190 F.3d 188, 199–200 (3d Cir. 1999) (factors that support inference buyer knew he was part of larger operation include length of affiliation with conspiracy, whether transactions involved significant quantities of drugs, extent to which transactions are standardized, and whether there is demonstrated level of mutual trust, as illustrated by allowing purchases on credit).

Finally, I properly instructed the jury that it could not find the existence of a single conspiracy if the evidence showed, instead, the existence of multiple conspiracies. *N.T. of Apr. 11, 2006 at 153–55.*

In sum, viewing the evidence in the light most favorable to the Government, a jury could reasonably find the existence of the single conspiracies to distribute and import controlled substances charged in Counts One and Two of the Superseding Indictment. *Cf. Blumenthal v. United States*, 332 U.S. 539, 558 (1947) (single conspiracy can consist of separate agreements made in furtherance of a larger common plan). Moreover, because Defendants have failed even to allege that the “variance” they raise has prejudiced them in any way, they are not entitled to the relief they seek. *Kelly*, 892 F.2d at 259.

D. Bansal's Continuing Criminal Enterprise Conviction

Bansal argues that the Government never proved the three related narcotics offenses necessary to sustain his conviction for CCE. See 21 U.S.C. § 848(c)(2); United States v. Edmonds, 80 F.3d 810, 814 (3d Cir. 1996). The record shows exactly the opposite. First, Bansal has conceded that Count Three incorporates the conspiracies alleged in Counts One and Two as two of the predicate offenses. See Def. Mot. for Acquittal (Doc. No. 540). The Government additionally proved that Bansal committed a multitude of predicate drug crimes.

The trial evidence established that Bansal committed many crimes in furtherance of the conspiracies to distribute and import drugs. For instance, the Government proved that Bansal repeatedly delivered controlled substances to his coconspirators who, in turn, shipped them to the Web site operators' customers. *N. T. of Mar. 20, 2006 at 73–123*. In January 2004, Bansal offered to pay coconspirator Richard Dabney to ship packages of drugs. *Id. at 78–84; N.T. of Mar. 21, 2006 at 172–74*. On another occasion, Bansal directed coconspirator Atul Patil to ship ketamine to Bansal's customer. *N.T. of Mar. 20, 2006 at 108–09*. Indeed, Bansal himself admitted at trial to shipping kilos of ketamine. *N.T. of Apr. 11, 2006 at 48–54*. Finally, Bansal signed the lease for the house where narcotics were packaged, and frequented that location. *N.T. of Mar. 20, 2006 at 107–09; N.T. of Mar. 28, 2006 at 93–94*. Each of these acts (combined with knowledge of the controlled nature of the substances he was distributing and possessing) constitutes an offense under the narcotics laws and is sufficiently related for the purposes of the CCE statute. 21 U.S.C. §§ 841(a)(1), 848; United States v. Lacy, 446 F.3d 448, 458 (3d Cir. 2006); United States v. Cruz, 785 F.2d 399, 407 (2d Cir. 1986).

In these circumstances, the Government certainly proved that Bansal committed the three predicate acts necessary to sustain his CCE conviction.

II. Defendants' Joint Motion for a New Trial

Defendants allege the existence of: (1) newly-discovered evidence, (2) discovery and Brady violations by the Government, (3) errors in the admission of evidence, (4) prosecutorial misconduct, and (5) errors in the Superseding Indictment. I note that although the Motion purports to be from both Defendants, it makes no arguments on Mullinix's behalf, and only Bansal filed a reply brief as to these issues. *See Def. Mot. to Request New Trial; Def. Bansal's Consolidated Reply to Gov't Resp. to the Post-Trial Mot.*

I may, in my discretion, grant a defendant a new trial if the interests of justice so require. See Fed. R. Crim. P. 33(a). Such motions should be granted sparingly and only where the failure to do so would result in a miscarriage of justice. See United States v. Copple, 24 F.3d 535, 547 n.17 (3d Cir. 1994). In considering a motion under Rule 33, I "may weigh the evidence, but may set aside the verdict and grant a new trial only if" I determine that: (1) the verdict constitutes a miscarriage of justice; or (2) an error at trial had a substantial influence on the verdict. United States v. Stewart, 325 F. Supp. 2d 474, 485 (D. Del. 2004); United States v. Enigwe, 1992 U.S. Dist. LEXIS 19611, No. 92-00257, at *4 (E.D. Pa. Dec. 9, 1992) (citation omitted). In contrast to motions for judgment of acquittal under Rule 29, a motion for a new trial does not require me to view the evidence in the light most favorable to the Government. Rather, I must weigh the evidence and evaluate the credibility of witnesses. See United States v. Rennert, 1997 U.S. Dist.

LEXIS 14437, No. 96-51, at *17 (E.D. Pa. Sept. 17, 1997) (citing United States v. Martinez, 763 F.2d 1297, 1312 (11th Cir. 1985)).

A. “Newly Discovered” Evidence and Alleged Discovery Violations

Defendants first contend that they were unable to discover until after trial exculpatory evidence that would have corroborated Bansal’s trial testimony: (1) “sample prescriptions”; and (2) exact duplicates of CDs containing Bansal’s e-mail account as it existed before his arrest. Defendants have not remotely demonstrated their entitlement to relief.

The Third Circuit has held that after-discovered evidence warrants a new trial only if: (1) the evidence is, in fact, newly discovered; (2) a defendant alleges facts from which I may infer diligence on his part; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is of such a nature that it would probably produce an acquittal at a new trial. United States v. Iannelli, 528 F.2d 1290, 1292 (3d Cir. 1976); see also United States v. Saada, 212 F.3d 210, 216 (3d Cir. 2000) (applying the Iannelli test). Defendants have a “heavy burden” in meeting this test. Saada, 212 F.3d at 216.

1. “Sample Prescriptions”

Defendants first contend that they have recently discovered “sample prescriptions” — apparently attached to e-mails written by the conspirators — that corroborate Bansal’s trial testimony. Defendants acknowledge that the sample prescriptions were included in the CD-ROM of discovery documents the Government provided to them before trial. They nonetheless complain that they were unable to open the Government’s CD-ROM because of “ongoing problems in the computer installed in the [Federal Detention Center].” See Def. Mot. at 1. This

does not meet any of the Iannelli criteria.

First, Defendants have not shown that the evidence is “newly discovered” or that they were diligent despite their failure to find the evidence before or during trial. The Government provided the sample prescriptions to defense counsel during pre-trial discovery. There is no suggestion that counsel were somehow unable to review that evidence. In any event, Bansal’s complaint about the FDC computers does not entitle him to a new trial. Before trial, Bansal frequently complained about the FDC computers; I addressed his concern on numerous occasions. *See, e.g., Doc. No. 456* (ordering that FDC allow access to Defendants to use computer provided by United States Attorney’s office). He repeatedly refused my offer to give him more time to prepare for trial. *N.T. of Jan. 3, 2006 at 17; N.T. of Jan. 24, 2006 at 4–7; N.T. of Jan. 25, 2006 at 5–6; N.T. of Feb. 7, 2006 at 6*. In these circumstances, Defendants cannot meet the first or second prongs of the Iannelli test.

In addition, the “sample prescriptions” at issue do not create a likelihood of acquittal. Defendants provided me with only one such sample, and it remains unauthenticated. *See Def. Consolidated Reply Ex. A*. Even if authenticated, however, this evidence does not meet the Iannelli standard. The Government’s case included: (1) testimony from an undercover FBI agent who purchased drugs from Defendants without having or receiving a prescription; (2) testimony from two customers who purchased drugs repeatedly without having or receiving prescriptions; (3) screen captures from the Web sites through which Defendants sold the drugs informing purchasers that no prescriptions were required; (4) searches of the Web site operators’ businesses which turned up no prescriptions, medical records, or medical information about the drug customers; (5) the seizure of thousands of drug parcels that contained no prescriptions or

directions for use; (6) lists of tens of thousands of American drug customers who bought from Defendants without any prescriptions; and (7) Bansal's admissions to law enforcement officers that no prescriptions were issued to or required of the drug customers. *See N.T. of Mar. 13, 2006 at 161, 173; N.T. of Mar. 16, 2006 at 85, 87, 103–04, 111, 120, 141; N.T. of Mar. 27, 2006 at 95, 99, 113, 152, 164; N.T. of Mar. 14, 2006 at 112; N.T. of Mar. 20, 2006 at 9; N.T. of Mar. 30, 2006 at 22; N.T. of Mar. 13, 2006 at 108, 197–98.* On this record, there was sufficient independent evidence to support a conviction; the introduction of an unspecified number of “sample prescriptions” would not have changed the result. *See Saada*, 212 F.3d at 216.

2. CDs Containing Bansal's E-mails

Defendants also complain that only recently did they receive exact duplicates of the CDs provided by MSN Hotmail in response to search warrants on Bansal's e-mail account. These “newly discovered” discs, they allege, “clearly demonstrate that almost 80% of the e-mails in the inbox of Akhil Bansal's e-mail account are unopened.” *Def. Mot. to Request New Trial at 2.* In Defendants' view, this casts into doubt whether Bansal actually read the inculpatory e-mails the Government introduced at his trial. I disagree.

First, the Government twice made this evidence available to Defendants before trial. Defendants do not dispute that the Government provided them with the duplicate CDs on January 26, 2006, two months before trial. Moreover, the Government had previously produced similar CDs with the e-mails converted to a format that allowed them to be searched, organized, and opened in commonly available programs. *See Gov't Am. Resp. at 10.* Indeed, Bansal's counsel argued in his jury closing — undoubtedly because he knew that most of Bansal's e-mails were

unopened — that the Government had not proven that his client had opened them. *N.T. of Apr. 12, 2006 at 139*. Plainly, Defendants cannot meet the “newly discovered” or “diligence” prongs of the Iannelli test.

Moreover, the Government established at trial that Bansal read the great bulk of the inculpatory e-mails. For instance, many of the inculpatory e-mails were those written by Bansal himself or found downloaded onto his computers and jump drives. *See, e.g., N.T. of Apr. 11, 2006 at 21–22, 25–26, 28–33*. Bansal admitted to sending many of the e-mails during his trial testimony. *Id.* He had hard copies of other e-mails with him when he was arrested. *Id.* Bansal obviously read the e-mails he sent, wrote, printed, or downloaded. In sum, Defendants have also failed to meet the “materiality” or “probable acquittal” prongs of the Iannelli test.

B. Alleged Discovery and Brady Violations

Defendants claim that: (1) the Government impeached him at trial with an e-mail it had never disclosed to the defense; (2) CDs received from the Indian Government are unreadable; and (3) the Government failed to provide written statements memorializing every meeting it had with cooperating co-Defendants. The first allegation is false and the others do not warrant a new trial.

The Government must disclose to the defense “evidence that is both favorable to the accused and material either to guilt or punishment.” United States v. Bagley, 473 U.S. 667, 674 (1985) (citing Brady v. Maryland, 373 U.S. 83 (1963)). The Government must also disclose any evidence that could be used to impeach a prosecution witness. *Id.* at 677. A Brady violation occurs when: (1) the prosecution suppresses evidence; (2) the evidence is favorable to the

defendant because of its impeachment or exculpatory value; and (3) the nondisclosure prejudiced the defendant because the evidence was material. Strickler v. Green, 527 U.S. 263, 281–82 (1999). Evidence is material “if there is a reasonable probability that, had it been disclosed, the result of the proceeding would have been different.” United States v. Perez, 280 F.3d 318, 348 (3d Cir. 2002). “The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” Strickler, 527 U.S. at 289–90.

The e-mail Defendants allege was not disclosed is dated February 20, 2005, and was sent by Bansal to Mullinix. *Gov’t Exh. 3.9*. Bansal discussed bribing Customs officials and acknowledged the illegality of his drug operation. *Id.* The Government obtained the e-mail through a search warrant served on MSN Hotmail; the Government provided the e-mail to the defense before trial. *See Gov’t Am. Resp. at 9*. Although Defendants allege that they first learned of the e-mail’s existence when the Government cross-examined Bansal with it at trial, the e-mail had actually been read into evidence during the Government’s case-in-chief (as Exhibit 3.9). *N.T. of Mar. 30, 2006 at 113–26*. Only after he denied during his direct testimony that he had written the e-mail did the Government reintroduce the e-mail (as Exhibit X-20). *N.T. of Apr. 11, 2006 at 59–61, 76*. In these circumstances, there was no Brady or other discovery violation.

Defendants next allege that CDs the prosecutors obtained from the Indian Government are unreadable. There appears to be no dispute that the Government provided Defendants with these CDs long before trial, explicitly noting that one of the five CDs included 1648 files that could not be read because they were corrupted. *See Gov’t Am. Resp. at 12 & n.5*. Defendants do not explain what “exculpatory” information might be in these files or why they failed to raise this

issue earlier. Once again, there was no Brady violation.

Finally, Defendants complain that the Government did not provide them with written statements from every meeting it held with each cooperating co-Defendant. First, it appeared to me during trial that the prosecutors, in fact, had provided the Defendants with the notes — commonly referred to as “302s” — that FBI and DEA agents had taken during their meetings with co-Defendants. *E.g., N.T. of Mar. 13, 2006 at 116*. Evidently, Defendants believe the Government was obligated to create and disclose such written summaries of each meeting. The law does not obligate the Government to create such documents, however. *See* 18 U.S.C. § 3500; Giglio v. United States, 405 U.S. 150 (1972) (outlining Government’s obligation to disclose evidence that would impeach government witnesses); Brady v. Maryland, 373 U.S. 83 (1963) (outlining Government’s obligation to disclose exculpatory evidence); United States v. Fisher, 126 Fed. Appx. 71, 74 (3d Cir. 2005) (citing United States v. Bernard, 625 F.2d 854, 859–60 (9th Cir. 1980)) (Government is under no obligation to provide information that does not exist and is not required to record everything a potential witness says). Moreover, the Government was not obligated to provide 302’s to the Defendants (although it apparently chose to do so here). Giglio, 405 U.S. at 150; Brady, 373 U.S. at 83; Fisher, 126 Fed. Appx. at 74. In these circumstances, the Defendants have not made out a discovery violation.

C. Alleged Errors in the Admission of Evidence

Without identifying any particular e-mail, Defendants contend that: (1) the Government failed to prove authorship of several e-mails it introduced at trial; and (2) many e-mails were “not in furtherance of [the] [c]onspiracy,” and thus were inadmissible hearsay. *See Def. Mot. at 3*,

5–6. They further contend that the Government introduced an e-mail message from Bansal solely “to demonstrate that defendant Akhil Bansal is probably a violent and hot-tempered person.”

It appears that Defendants seek to challenge the authenticity of e-mails authored by Bansal himself. *See id. at 3* (claiming the Government failed to demonstrate “who was the original author of the e-mails,” and claiming that these messages “were never sent by him”). Defendants ignore the evidence that authenticated the e-mails and demonstrated Bansal’s authorship. For instance, the Government presented evidence that Bansal opened and owned the accounts from which the e-mails were sent: drakhil@hotmail.com, drakhil@gmail.com, akhilbansal@hotmail.com. *N.T. of Mar. 29, 2006 at 167–69*. In several of the e-mails, Bansal described his relationship to other parties. *Gov’t Ex. 3.9* (“This is Akhil, son of [co-Defendant] Brij [Bansal] . . .”). Many of the e-mails were copied and downloaded onto a laptop computer that Bansal does not dispute was his. *N.T. of Mar. 29, 2006 at 229–30*. Bansal was carrying drafts of other e-mails when he was arrested. *Id.* Significantly, Bansal himself testified that he had authored many of the inculpatory e-mails, although he disputed the Government’s interpretation of them. *N.T. of Apr. 11, 2006 at 21–33*. Plainly, Defendants have not shown that the e-mails were improperly admitted.

I am unable to determine precisely which e-mails Defendants contend were “not in furtherance of [the] [c]onspiracy.” They apparently refer to several e-mails Bansal authored limiting the number of Web sites he would supply with drugs. *See Def. Mot. at 5* (contending that the e-mails “were NOT in furtherance of conspiracy, but were to end conspiracy (business relationship) with the clients”). This contention is absurd. These e-mails were certainly in furtherance of the conspiracy: as Bansal himself explained, reducing his “clients” to a more

select group would benefit the conspirators by increasing their “market share.” *N.T. of Apr. 11, 2006 at 21–33*. Moreover, the e-mails were admissible as admissions by Bansal. See Fed. R. Evid. 801.

Finally, Defendants complain about the admission of a purportedly inflammatory e-mail in which Bansal apparently argues with a manufacturer about the marketing of a particular drug. See Gov’t Ex. X-5. In seeking to persuade the manufacturer not to use the “PWC” brand name in advertisements, Bansal wrote the following:

Please note that the brand PWC was invented by us and you cannot market it as your product. This step of yours may create confusion in the online market about the product and is bad for the business. Also please note that this action of yours is not at all welcomed by us and may lead to serious consequences. It works against my business, and if that happens I would make sure that this results in premature closure of YOUR delivery services. . . . If you have already decided to go against business ethics, we would be forced to take necessary actions to ensure safety and growth of OUR business. AND WE WILL GO TO ANY EXTENT TO INSURE THIS. Thanks and kind regards. Akhil.

Id. Although Defendants now claim this e-mail is inflammatory, they did not raise this objection at trial. *See N.T. of Apr. 11, 2006 at 21–25, 94*. In any event, the Government introduced the e-mail to establish Bansal’s ownership of the drug business and rebut Bansal’s claim that the business was controlled solely by his father. See Gov’t Ex. X-5 (using “my” and “OUR” to describe the drug-supplying business); *N.T. of, 2006 at 21–25* (Bansal’s testimony minimizing his role). Accordingly, the e-mail was properly admitted.

D. Alleged Prosecutorial Misconduct

Defendants take issue with the following portion of the Government’s opening statement:

And you're going to hear from some of these Web site operators and other participants in the scheme, who were charged and pled guilty.

N.T. of Mar. 13, 2006 at 32. During the trial, the Government called several of Bansal's coconspirators who in fact had pled guilty. These included Akhil Bansal's roommate Atul Patil, several Web site operators who sold the drugs supplied by the Bansals, and customer William Randall Reed, who made several purchases of bulk quantities of ketamine from Bansal. *N.T. of Mar. 20, 2006 at 150–52* (Patil); *N.T. of Mar. 27, 2006 at 177–78* (Christopher Laine); *N.T. of Mar. 22, 2006 at 166–70* (Victor Devore); *N.T. of Mar. 29, 2006 at 21–22* (Jitendra Arora); *N.T. of Mar. 27, 2006 at 79–81* (Reed). The Third Circuit has held that the Government may seek to introduce a witness's guilty plea and plea agreement, even in the absence of a challenge to the witness's credibility. See *United States v. Universal Rehabilitation Servs.*, 205 F.3d 657, 666–67 (3d Cir. 2000) (noting that a guilty plea is admissible to allay jurors' concerns about whether a coconspirator has been prosecuted and to explain his first-hand knowledge of events about which he testifies). I also twice gave a cautionary instruction — the adequacy of which Defendants do not challenge — respecting how the jury should treat evidence of the coconspirators' guilty pleas:

I caution you that although you may consider this evidence, that is the evidence that [a coconspirator] has entered a plea of guilty, in assessing the credibility and testimony of [the coconspirator], you should give it such weight as you feel it deserves. You may not consider the evidence that he has entered a plea of guilty against any defendant nor may any inference be drawn against any defendant on trial by reason of [the coconspirator]'s plea of guilty.

N.T. of Mar. 20, 2006 at 56; N.T. of Apr. 11, 2006 at 122–23. In these circumstances, the Government's opening statement was proper.

Defendants next contend that the Government’s rebuttal witness, Seth Shestack, provided “false” testimony that the Government deliberately elicited “in Bad-faith.” *See Def. Mot. at 4.* Shestack, the Associate Director of Information Security at Temple University, used the Internet Protocol address to determine that the February 20, 2005 e-mail signed by Bansal and addressed to Mullinix was sent from a computer at Temple, where Bansal was then a student. *N.T. of Apr. 11, 2006 at 90–91.* Bansal had previously denied under oath that he was the author of the e-mail. *Id. at 64.* Although Defendants claim to have unidentified experts “who know about computers” and could contradict Shestack, they make no claim that these individuals were unavailable to them before and during trial. On the contrary, Bansal called a computer expert, Michael Michalowicz, as a defense witness; Michalowicz simply never addressed the authorship of the February 20th e-mail. *N.T. of Apr. 5, 2006 at 3–49.* Plainly, Shestack’s testimony was admissible.

Finally, Defendants object to the following statement made in the Government’s closing argument:

Let me address myself really quickly to an intent question that’s been batted around by both defense lawyers. Mr. Laver [Mullinix’s counsel] slipped it in every time he said the phrase, not only intentionally, willfully. And this is a legal point, but I’m just going to talk about it for one second. You heard the Judge’s instruction, the Government does not have to prove that these guys intended to violate the law. We don’t have to prove that they knew it was illegal; we did prove that. The evidence has been, I submit, overwhelming. They have to know that the substances are controlled and that that is what they’re selling

N.T. of Apr. 12, 2006 at 164–65. Defendants claim that this was a misstatement of the law and that it may have led the jury to believe that the Government did not have to prove any “intent.” Because Defendants failed to object to this statement at trial, I may review it only for plain error.

Fed. R. Crim. P. 52(b); see United States v. Young, 470 U.S. 1, 15 (1985) (noting that Rule 52 authorizes courts to correct only “particularly egregious errors” (internal quotation marks omitted)).

Here, the prosecutor’s remarks were proper. As I have already explained, Counts One and Two required proof that Defendants had knowledge that the substances they imported and distributed were controlled; neither Count required proof that they knew they were breaking the law. 21 U.S.C. § 841(a)(1). I so instructed the jury. *N.T. of Apr. 11, 2006 at 127*. The prosecutor’s argument was simply a restatement of that instruction.

E. The Overt Acts Charged in Conspiracy to Introduce Misbranded Drugs into Interstate Commerce

Finally, Bansal argues that Count Four of the Superseding Indictment, which charged Defendants with misbranding of non-controlled prescription drugs, improperly incorporated the overt acts charged in Count One — which described both controlled and non-controlled substances. Likewise, he argues that Count Five of the Superseding Indictment, which charged Defendants with misbranding of controlled drugs, improperly incorporated these overt acts. Bansal is correct that Count One includes overt acts involving both controlled and non-controlled substances. See Superseding Indictment at 1. As the record shows, however, I properly instructed the jury that it must find at least one overt act was carried out in furtherance of each of the agreements charged in Counts Four and Five. *N.T. of Apr. 11, 2006 at 148–49*. I further instructed the jury that Count Four charged an agreement to introduce non-controlled prescription drugs that were misbranded into interstate commerce, and that Count Five charged an agreement to introduce controlled drugs that were misbranded into interstate commerce. *Id. at 147–53*. I

did not omit any essential element of the charges in my descriptions of Counts Four and Five, thus ensuring that the jury could distinguish between the two Counts. *Id.* Because both Defendants were involved in the distribution of both controlled and non-controlled drugs, many of the overt acts charged in Counts Four and Five (and incorporated from Count One) overlapped between the two Counts. I nonetheless properly instructed the jury and thus eliminated any potential confusion.

III. Conclusion

As I have observed, the Government's evidence in this case was overwhelming. In addition to the e-mail evidence and bank records, the prosecution introduced testimony of cooperating drug sellers and buyers, testimony of agents who made undercover purchases and seized drug evidence, and the statements from Defendants themselves. *N.T. of Mar. 22, 2006 at 78–183* (testimony of Web site operator Victor Devore); *N.T. of Mar. 27, 2006 at 161–224* (testimony of Web site operator Christopher Laine); *N.T. of Mar. 28, 2006 at 208–221* and *N.T. of Mar. 29, 2006 at 15–83* (testimony of Web site operator Jitendra Arora); *N.T. of Mar. 16, 2006 at 79–142* (testimony of customer Jane O'Donnell); *N.T. of Mar. 27, 2006 at 89–161* (testimony of customer Douglas Calobrisi); *N.T. of Mar. 27, 2006 at 31–88* (testimony of customer William Randall Reed); *N.T. of Mar. 13, 2006 at 131–226* (testimony of Agent Huff); *N.T. of Mar. 16, 2006 at 142–74* and *N.T. of Mar. 20, 2006 at 9–56* (testimony of Agent Mendez); *N.T. of Mar. 13, 2006 at 87–125* (testimony of Agent Bole); *N.T. of Mar. 13, 2006 at 131–226* (testimony of Agent Huff). On this record, Defendants cannot credibly claim that they

are entitled to acquittal or that they did not receive a fair trial. Accordingly, I deny both Motions.

An appropriate Order follows.

BY THE COURT.

/s Paul S. Diamond, J.

Paul S. Diamond, J.

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

UNITED STATES OF AMERICA	:	CRIMINAL
	:	
v.	:	NO. 05-193-2, 11
	:	
AKHIL BANSAL, FRED MULLINIX	:	

ORDER

AND NOW, this 1st day of August, 2006, upon consideration of Defendants' *Pro Se* Motion for a Judgment of Acquittal Parts I, II, III, IV, and V (Doc. No. 571 pp. 1–5), Defendants' *Pro Se* Motion to Request New Trial Parts I, II, III, IV, V, VI, and VII (Doc. No. 572 pp. 1–7), Defendant Bansal's Counseled Supplement Part II (Doc. No. 597 pp. 5–6), the Government's Responses (Doc. Nos. 606, 611, 628, and 632), Defendant Bansal's Reply (Doc. No. 622), and any related submissions, it is ORDERED that the Motions are **DENIED**.

BY THE COURT.

/s Paul S. Diamond, J.

Paul S. Diamond, J.