

## [Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—N.D. Ill.: Judge denies convicted spoofers' bid for acquittal or new trial, \(Mar. 23, 2021\)](#)

Securities Regulation Daily Wrap Up

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By [Brad Rosen, J.D.](#)

The defendants' challenges to their guilty jury verdicts included claims of Covid-19 related jury coercion and an unconstitutional application of the wire fraud statute; these issues may well be revisited on appeal.

The Honorable John J. Tharp upheld the guilty verdicts for wire fraud against the defendants, former precious metals traders, James Vorley and Cedric Chanu. The court's ruling followed a two-week jury trial held in a Chicago courtroom in September 2020 as COVID-19 hung over the proceedings. Vorley was found guilty on three counts of wire fraud, not guilty on six counts, while Chanu was found guilty on seven and not guilty on four. Both were acquitted on a charge of conspiracy to commit wire fraud affecting a financial institution. In [denying](#) the defendants' motion for a judgment of acquittal or, in the alternative, a new trial, the court rejected a variety of challenges which ranged from juror coercion, to insufficiency of the evidence, to the wire fraud statute's unconstitutionality application in this case ([U.S. v. Vorley](#), March 18, 2021, Tharp, J.).

**The scheme.** Defendants James Vorley and Cedric Chanu were former Deutsche Bank precious metals traders who worked in bank's London offices between May 2007 and March 2015. They were charged with knowingly and intentionally devising a scheme to defraud other precious metals futures traders on the Chicago Mercantile Exchange (CME's) Commodity Exchange, Inc. (COMEX). The alleged scheme involved placing so-called "spoof" orders in the COMEX order book via the Globex electronic trading system. These orders were wire communications for the purpose of the wire fraud statute.

In its indictment, the government alleged that the defendants variously executed this scheme individually, together, and, at times, in coordination with other Deutsche Bank precious metals traders, including David Liew, a trader that worked for the bank in Singapore, and who pled guilty to participating in the scheme. Liew testified at trial for the government.

**DOJ asserts a novel theory.** The government alleged these orders were fraudulent because the entry of an order on the exchange carries with it an implicit representation that the party placing the order intended for the order to be executed, a novel theory which incorporates the practice of spoofing into the wire fraud statute. The prosecution claimed that Vorley and Chanu intended to cancel the trades before they were executed and, in doing so, aimed to create a false impression of supply and demand in the market and induce other traders to execute on the defendants' opposite-side primary orders at prices, quantities, or times that they otherwise would not have.

In challenging their convictions on the substantive wire fraud counts, the defendants argued that the prosecution failed to present sufficient evidence to prove any of the elements of wire fraud as to any of the counts of conviction. They asserted that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that they knowingly misrepresented their intent to trade. In rejecting this assertion, the court gave credence to countervailing evidence demonstrating that markets, in general, work the way they do because orders implicitly convey a trader's genuine interest in participating in the market. In particular, the court noted that bids and offers on COMEX, specifically, were required to represent a bona fide intent to trade by the CME's rules.

**Trial in the time of COVID-19.** The trial took place in a courtroom modified to permit the observance of strict COVID-19 protocols. However, on the morning of September 22, the last day of evidence presentation, a juror

was hospitalized with symptoms consistent with COVID-19. He was excused from jury service, and, with the agreement of the parties, the Court anonymously polled the remaining jurors to determine whether they would like an opportunity to consult that day with a medical professional about potential COVID-19 exposure. Two jurors indicated that they would like the opportunity to do so, while the remaining eleven responded that they did not need to consult with a medical professional and would like to proceed with the trial. The parties then stipulated to proceed with an eleven-member jury, and the two jurors who wanted to see a medical professional were excused.

In their motion, the defendants argued that the Court's instructions to the jury to keep deliberating after juror notes indicated that deliberations were deadlocked were unduly coercive given that the trial took place during the COVID-19 pandemic. The court rejected this assertion noting that nothing in the content of the Court's two instructions to continue deliberations, nor the context in which those instructions were delivered, suggests jurors were coerced into returning a verdict. The court further observed that the jurors received standard written and verbal instructions to continue their deliberations that the Seventh Circuit has repeatedly held to be "neutral and not coercive."

**An appeal in the offing?** It is likely that Vorley and Chanu will appeal and ask the Seventh Circuit to revisit the scope of the wire fraud statute according to Cliff Histed, a partner in K&L Gates' Chicago office. Histed observed, "The issue is novel, and important—does a trader who enters an order to buy or sell a future contract in an anonymous electronic marketplace implicitly represent to the market that the trader intends for that order to be filled? And if so, is it criminal fraud for a trader to enter such an order knowing that she intends to cancel the order before execution? There is a crime for that—spoofing—but is it criminal fraud? In the Vorley case, the judge and jury have answered yes to both questions."

Regarding Judge Sharps direction to the jury to continue deliberation, Histed noted, "the law guarantees a criminal defendant a "fair" trial but not a "perfect" one." He continued, "The appellate briefs and arguments to the Seventh Circuit will further frame the issues, but it remains to be seen how the Seventh Circuit will view the judge's handling of this issue. Different appellate judges may well have very different views of the issue, and the decision may depend, as it sometimes does, on the composition of the three-judge panel assigned to the case."

Next up, the defendants' sentencing memoranda are due May 14, 2021. The government's responses are due June 11, 2021. The sentencing hearing is scheduled for June 21, 2021.

The case is [No. 18-CR-00035](#).

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