

1 I'm saying here is on their chart there are three  
2 columns that are quite clearly dump columns, which is  
3 property, cash, and unidentified. And there are  
4 transactions on here where no money went to him but  
5 it's still being attributed wrongly to his 022 ledger  
6 account, and I walked through with detect -- Deputy  
7 Chief Fredrick two examples. \$15,000 for someone named  
8 Nahama Lasry (phonetic), obviously not -- Rabbi  
9 Eisemann was still attributed to his account wrongful.  
10 Another one for 20,000 that was an international wire.  
11 He's right here in Lakewood.

12 THE COURT: But here -- but the point is he's  
13 -- he's -- he may not be obligated on it, right, but --  
14 but I guess that's an example of him exercising his  
15 responsibilities as the executive director issuing  
16 checks to other people, just like he did with GZYD.  
17 Right.

18 MR. VARTAN: Correct. Not knowing how any of  
19 it's booked.

20 THE COURT: And -- and it's -- so it's --  
21 it's not inconsistent with the way this business was  
22 run.

23 MR. VARTAN: That's the whole -- that's the  
24 whole point. And -- and that's why the jury has to be  
25 like hopelessly confused. Right? Think about if

1 you're the jury in this case. There's a chart that  
2 Deputy Chief Fredrick is trying to say here's my  
3 analysis, here's a crime.

4 THE COURT: Right.

5 MR. VARTAN: Meanwhile, everything on this  
6 chart is lawful, lawful, lawful, except one. It  
7 doesn't make any sense.

8 THE COURT: All right.

9 MR. MANIS: So, what you don't have evidence  
10 of is other transactions like to -- even if you got  
11 transactions coming out and going to somebody else and  
12 then coming back, this is a transaction in which it  
13 goes to GZYD. Right? I mean, we don't have to remind  
14 the Court. Right? But you got multiple layered what  
15 we allege are money laundering transactions in order to  
16 bring that money back.

17 THE COURT: All right.

18 MR. MANIS: And his intent matters.

19 THE COURT: Okay, thank you.

20 MR. VARTAN: Thanks, Judge.

21 THE COURT: Defendant moves for a directed  
22 verdict of not guilty. Under State versus Reyes a  
23 Court must determine whether viewing the evidence in  
24 its entirety, be that direct or circumstantial, and  
25 giving the State the benefit of all its favorable

1 testimony as well as all favorable inferences which  
2 reasonably could be drawn therefrom, a reasonable jury  
3 could find defendant guilty beyond a reasonable doubt.

4 During the trial here we learned that the  
5 State learned of irregularities connected to funds  
6 related to the foundation and began an investigation in  
7 2015. They learned that \$200,000 was transferred from  
8 the school account and transmitted to an entity GZYD  
9 and then transmitted to another entity TAZ Apparel,  
10 then to defendant and back to the school.

11 When the money returned to the school the  
12 Osher, dot, Eise 022 account was credited. This is on  
13 the foundation. The Osher 022 -- Eise 022 account was  
14 credited \$200,000 by a bookkeeper Rochele Janowski to  
15 reduce the balance on that account, which was a loan  
16 payable account to defendant and had the last three  
17 digits of his personal bank account as a name on that  
18 ledger account. The State contends that this  
19 transaction was entered in this way to reduce a loan  
20 owed by defendant.

21 The testimony revealed that on March 13,  
22 2015, \$230,000 was paid by the school: \$30,000 in a  
23 cashier's check that was payable to Osher and Yael,  
24 Yael Eisemann, and \$200,000 in a cashier check payable  
25 to GZYD. GZYD then wrote a check to TAZ Apparel for

1 \$200,000 on March 19, two thousand and nine -- 2015.  
2 On that very same day TAZ wrote a check to Osher  
3 Eisemann for \$200,000, who then transferred the funds  
4 directly to the school bank account on March 25th,  
5 2015.

6 When the money went to GZYD the transaction  
7 was booked as a loan to the foundation from the school.  
8 In the foundation general ledger it was booked as a  
9 loan to GZYD. When the money was returned by defendant  
10 to the school on March 25th, 2015, the school credited  
11 the loan owed by the foundation to the school, but the  
12 founda -- but in the -- on the foundation books the  
13 GZYD account was never credited. Instead, \$200,000 was  
14 booked against the 022 account. This entry was made on  
15 May 18, 2015, two months after the money was returned  
16 to the school, reducing the balance purportedly owed by  
17 defendant to the foundation.

18 Apparently, there were some 346 Osher  
19 accounts in the general ledger. The State contends  
20 that this transaction was contrived in this way so that  
21 defendant could reduce the balance of money he owed to  
22 the foundation by \$200,000.

23 They argue that when defendant sent the money  
24 back to the school from his personal checking account,  
25 he must have expected and believed that a bookkeeper

1 would invariably credit the \$200,000 against his loan  
2 payable account that had the same last three digits on  
3 his personal checking account. In reducing defendant's  
4 loan payable with that entry, the State alleges a crime  
5 was completed.

6 Jonathan Ruben testified that he ran a  
7 company called GZYD and that he made his living by  
8 lending money. He explained that he was approached by  
9 defendant who wanted him to act as a nominee on money  
10 that he had loaned to Aaron Gottlieb, who operated TAZ  
11 Apparel, a company in which defendant had invested in,  
12 from what I recall, 2011.

13 Because defendant was worried about Gottlieb,  
14 he was concerned about his narcotics addiction, his  
15 financial difficulties, and his struggles with his  
16 faith, he feared that he might have to sue Gottlieb for  
17 the return of money he had earlier provided to him.

18 Defendant wanted Ruben to step into his shoes  
19 so that if he had to sue Gottlieb he wouldn't sully his  
20 name and reputation, being an esteemed member of the  
21 Orthodox Jewish community and held in high regard. So  
22 defendant directed a check from the school to GZYD.  
23 Gottlieb deposited that check into his account and then  
24 wrote a check to TAZ.

25 Gottlieb apparently had a -- had agreed to

1 this arrangement. Not Gottlieb but -- yes, Gott --  
2 Ruben, rather.

3 UNIDENTIFIED SPEAKER: Gottlieb.

4 THE COURT: I'm sorry, I misspoke. All  
5 right, I meant to say so defendant directed a check  
6 from the school to GZYD. Ruben, who op -- operated  
7 GZYD, deposited the check he got from the school into  
8 his account and then wrote a check to TAZ. Gottlieb,  
9 who operated TAZ, testified that the defendant directed  
10 him to accept the money on behalf of TAZ and after  
11 depositing the check into his account write a check to  
12 defendant. As a consequence, if defendant now were  
13 forced to sue Gottlieb, he could then rely on his  
14 nominee Ruben to do it on his behalf.

15 The State concedes that the school writing a  
16 check and booking it as a loan to the foundation was  
17 not in and of itself illegal, but the State disputes  
18 that the check written to GZYD was for the purpose as  
19 articulated by the witness.

20 It contends that the only purpose that could  
21 be inferred in sending this \$200,000 on this circuitous  
22 path from the school to GZYD to TAZ to defendant and  
23 back to the school was to write down a loan by  
24 defendant, notwithstanding that if that were the intent  
25 there would be no reason necessarily to send the

1 \$200,000 to TAZ. Rubin could have merely returned the  
2 money back to the defendant without ever involving TAZ.

3 Moreover, if defendant was so particular and  
4 meticulous about making sure that his \$200,000 was  
5 recorded properly in the foundation's books as he  
6 intended and as the State's argument suggests, why  
7 would defendant then ignore the consequences of fail --  
8 failing to properly book the GZVD loan in the  
9 foundation's book and the credit to that loan? The  
10 logic escapes me.

11 In making the inference that by sending his  
12 personal 022 check to the foundation in order for it to  
13 be entered as a credit to his purported loan balance in  
14 the Osher 022 -- 2 account, the State discounts the  
15 testimony of Ahuva Gruen, who testified that the  
16 account originally was a loan account but evolved into  
17 a dumping account when the foundation books needed to  
18 be balanced.

19 It became a place, she explained, where they  
20 would sometimes place numbers because the books needed  
21 to be balanced. She testified that she was only  
22 employed by the school and those accounting records  
23 were fastidious, in large measure because they were  
24 audited by the Department of Education.

25 She said that she would also perform

1 bookkeeping for the foundation out of the goodness of  
2 her heart but she was not as diligent because her time  
3 was occupied mostly by her obligation as the accountant  
4 to the school and the fact that the foundation account  
5 was not subject to audit. So, she conceded that the  
6 foundation's books were in somewhat disarray, that they  
7 were sloppy.

8 Mr. Biegeleisen, who was the certified public  
9 accountant who prepared the 990s for the school, his  
10 testimony corroborated Gruen's testimony that these  
11 records were sloppy. He indicated through his  
12 testimony and -- and through the various emails and  
13 conversations that he discussed that the QuickBooks  
14 were essentially useless and couldn't be relied upon.

15 Now, the entries here were -- in the  
16 foundation books were not made -- entries into the  
17 general ledger were not made quickly. They were made  
18 when, according to Ms. Gruen, she had the time. Which  
19 explains why this particular transaction was not booked  
20 in the foundation's general ledger for two months after  
21 the money was received by the school. Either she would  
22 -- she would do it or she would direct one of her  
23 assistant bookkeepers to.

24 She testified that in this matter she  
25 directed Rochele Janowski, who she explained was not

1 well trained in bookkeeping, not well experienced in  
2 bookkeeping, and she directed her to make the entry.

3 She also said that she did not check her --  
4 her work in this matter as she sometimes does in order  
5 to make necessary corrections. As a consequence, Gruen  
6 testified that Janowski incorrectly booked this  
7 transaction. Gruen also explained that it was not  
8 unusual that Janowski made this error because the Osher  
9 22 account would often be used as a dumping account  
10 when one didn't know where to place a transaction.

11 She emphatically testified that the defendant  
12 had nothing to do with the entry and that it was merely  
13 a bookkeeping mistake. She also testified the  
14 defendant had no involvement with the accounting  
15 department, had no access to the QuickBooks, did not  
16 even know how to use a computer.

17 Other than the inference that the State wants  
18 one to draw from the circumstances of the entry landing  
19 in defendant's loan payable account, defendant's  
20 fingerprints can be found nowhere near this transaction  
21 or this -- this entry, this bookkeeping entry. And  
22 that inference that the State wants us to draw is in  
23 fact directly refuted by Gruen, who was at the time the  
24 school and the foundation's accountant.

25 As a result of an investigation conducted by

1 the Division of Community Affairs, a department within  
2 the Attorney General's Office, the foundation's books  
3 were audited. Phillip Stern, a certified public  
4 accountant, conducted an audit requested by the  
5 Department of Community Affairs, and submitted the  
6 audited financial statements for 2014, 2015, and 2016,  
7 which was requested and which were -- were apparently  
8 accepted without question by the Division of Community  
9 Affairs.

10 Now, that audit revealed that instead of  
11 defendant owing money to the foundation in 2015, the  
12 foundation owed in 2015 defendant \$351,750. It was  
13 based on these restated financial statements that the  
14 four 990s were amended and submitted to the Internal  
15 Revenue Service.

16 The State discounts this evidence because  
17 they assert that Stern relied on a compilation of the  
18 accounts in 2013 that hadn't been subject to audit.  
19 And therefore, the restated financial statements can't  
20 be relied upon, even though the -- except the  
21 statements were filed and accepted by another division  
22 in the Attorney General's Office.

23 The State argues that the factfinder must  
24 rely on Deputy Chief Fredrick's reliance on the  
25 accounts as they had existed at the time of the entry,

1 even though there were many examples of mistaken  
2 entries highlight by the defense on cross-examination.

3 In order for the jury to find defendant  
4 guilty of financial facilitation of criminal activity,  
5 the jury must find that defendant knowingly engaged in  
6 a transaction involving property derived from criminal  
7 activity, but where is the evidence to support the  
8 inference that Janowski booked the transaction to the  
9 Osher 022 ledger account at defendant's direction? The  
10 State's assertion here is mere speculation.

11 While there is evidence that the entry was a  
12 bookkeeping error, there is no evidence in this record  
13 that defendant ever directed Janowski or anyone else to  
14 book the transaction as she did. There is no evidence,  
15 in fact, that the defendant was ever involved in any  
16 accounting functions at the school or foundation.

17 And what is the underlying criminal activity?  
18 It can't be theft because the money was returned to the  
19 school 12 days after it was removed, and there is no  
20 indication that defendant was unauthorized to direct  
21 this transaction.

22 Then can the underlying transaction be  
23 misapplication of entrusted property? Yes, defendant  
24 applied or disposed of property entrusted to him. And  
25 I'll agree with the State that it was entrusted to him

1 as a fiduciary. But where is the evidence that what he  
2 did was unlawful? His conduct may not have been  
3 absolutely responsible or appropriate.

4 This transaction in some measure appears  
5 unseemly, but the State hasn't identified any  
6 regulation or law that prohibited this transaction.  
7 The State never even addressed defendant's ethical or  
8 professional responsibilities that might have in some  
9 way informed defendant's state of mind. Frankly, there  
10 is no evidence that the transaction from the school and  
11 back was in itself unlawful.

12 And where is the evidence that the property  
13 was ever subst -- subject to substantial risk of loss?  
14 The evidence does not necessarily support the notion  
15 that it was, as the model jury charge requires, very  
16 likely that how defendant handled the transaction with  
17 Gottlieb would create a list -- a risk of loss of the  
18 money.

19 And as the defense points out, any risk of  
20 loss would not -- would inure to the foundation and not  
21 to the school, which has -- which is the victim or  
22 which needs to be the victim of the misapplication of  
23 entrusted funds. The State's argument that by  
24 exchanging a check with Gottlieb on March 19th, 2015,  
25 presented such a risk is again mere speculation. The

1 corporate misconduct charge relies on the financial  
2 facilitation as a predicate. Should a judgment of  
3 acquittal be entered on financial facilitation, then  
4 the corporate misconduct charge cannot stand.

5 Not only does doubt permeate this case that  
6 defendant engineered a financial transaction involving  
7 the school and the foundation in order to write down  
8 the debt he owed to the foundation, but the evidence  
9 suggested the defendant engaged in quite possibly a  
10 question -- questionable but not unlawful behavior to  
11 protect his reputation, that he had no loan obligation  
12 to the foundation, and that the ledger entries appeared  
13 to write down a loan obligation was nothing more than a  
14 bookkeeping error.

15 The easiest course of action for me today  
16 would be to just let this case go to the jury. I'm  
17 sure they would come to the same conclusion, but I have  
18 a professional and ethical obligation to rule when  
19 called upon. The evidence presented in the State's  
20 case in chief is insufficient to warrant a conviction.  
21 Accordingly, I hereby enter a judgment of acquittal on  
22 both counts.

23 I guess I got to bring the jury up. Right?

24 MR. VALDINOTO: Your Honor, the State  
25 requests a stay of the Court's order so that we may

1 take leave -- may -- for an opportunity to take leave  
2 for --

3 THE COURT: Did you ever hear of the Sixth  
4 Amendment?

5 MR. VALDINOTO: I -- yeah.

6 THE COURT: Double jeopardy.

7 MR. VALDINOTO: Yeah.

8 THE COURT: The case is over.

9 (Counsel conferring)

10 THE COURT: All right, let me -- I got to  
11 bring the jury up. I guess we'll -- I'll just tell the  
12 jury that I entered a verdict of --

13 MR. VARTAN: Yes, Judge.

14 THE COURT: An acquittal in this case and  
15 that you're not going to present a case.

16 MR. VARTAN: We're not.

17 THE COURT: All right.

18 MR. VARTAN: Thank you, Judge.

19 THE COURT: And you can remain here with the  
20 jury and I guess we can thank them for their ...

21 (Counsel conferring)

22 THE COURT: Do you know what, let's get this  
23 -- I want to be able to see the jury. Can we get this  
24 out of here?

25 MR. MANIS: (Inaudible).

1 THE COURT: Who -- who put that -- is that --  
2 MR. MANIS: We were told not to touch it,  
3 Judge.

4 THE COURT: Whose is that?  
5 (Off the record from 11:43:44 a.m. to 11:55:53 a.m.)  
6 (Counsel conferring)

7 COURT CLERK: Jury entering.  
8 (Jury entering)

9 THE COURT: Okay, good morning.  
10 JURORS: Good morning.

11 THE COURT: I'm sorry for the delay this  
12 morning. So, everyone please have a seat.

13 At the start of this case I explained to you  
14 that in a criminal case the State has the burden of  
15 proving the case beyond a reasonable doubt and that a  
16 defendant has no obligation and that if the State fails  
17 to prove every element of a crime beyond a reasonable  
18 doubt, then you have a duty to acquit the defendant, to  
19 find him not guilty.

20 At the end of the State's case a judge may  
21 review the evidence and the law and make an assessment.  
22 At the end of this case after the State rested, I  
23 reviewed the evidence in this case and I -- I made a  
24 determination that there was insufficient evidence to  
25 convict the defendant, and I entered an acquittal on

1 both counts. So, the case is not going to come to you  
2 for your deliberation and decision in this case. So  
3 the case is over.

4 But, you serve -- you serve a very important  
5 purpose because without your participation in this  
6 process our system of justice could not function as it  
7 does, and you responded to the responsibility of  
8 decision-making that is -- that is jury service in this  
9 case. You participated in this process. You were  
10 patient. You listened. You came here every day. And  
11 -- and -- and you -- you served a very important  
12 responsibility in the function of our criminal justice  
13 process.

14 Thomas Jefferson identified the jury as the  
15 only anchor ever yet imagined by man by which a  
16 government can be held to the principles of its  
17 Constitution. And John Adams called trial by jury,  
18 along with elections, the heart and lungs of liberty.

19 We can't get to where we did today in this  
20 case but for your participation to serve as a juror in  
21 this case, so I want to express on behalf of the  
22 judiciary my sincere thanks for your participation as  
23 jurors in this case, and I want to extend thanks on  
24 behalf of the lawyers in this case for your -- for your  
25 attention and -- and participate -- participation.



1 So with that, I bid you a farewell. Thank  
2 you again.

3 (Jury exits)

4 THE COURT: All right, thank you.

5 ATTORNEYS: Thank you, Your Honor.

6 UNIDENTIFIED SPEAKER: Thank you for your  
7 time, Judge.

8 THE COURT: Yeah, thank you. Can I talk to  
9 the lawyers? Do you know what, if you want to talk --

10 MR. VARTAN: Of course.

11 THE COURT: -- talk up in chambers?

12 MR. VARTAN: Sure.

13 MR. VALDINOTO: Absolutely.

14 THE COURT: All right. I'll see up and if  
15 I'm -- just go up, and I'll have my officer bring you  
16 in.

17 MR. VARTAN: Thank you, Judge.

18 (Proceedings concluded at 12:00:48)

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1 CERTIFICATION

2  
3 We, HOLLI J. MCGHEE and SANDRA HICKS, the assigned  
4 transcribers, do hereby certify the foregoing  
5 transcript of proceedings on CourtSmart, Index No. from  
6 10:20:29 to 11:43:44 and 11:55:53 to 12:00:48 is  
7 prepared to the best of our ability and in full  
8 compliance with the current Transcript Format for  
9 Judicial Proceedings and is a true and accurate  
10 compressed transcript of the proceedings, as recorded.

11  
12  
13 /s/ Holli J. McGhee, Sandra Hicks  
14 Holli J. McGhee, Sandra Hicks

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