

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHOLOM RUBASHKIN,

Defendant.

No. 08-CR-1324-LRR

**PRELIMINARY JURY
INSTRUCTIONS**

Members of the Jury: In the next few moments, I am going to give you some initial instructions about this case and about your duties as jurors. At the end of the trial, I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions—both those I give you now and those I give you later—are equally binding on you and must be followed.

PRELIMINARY INSTRUCTION NO. 1

This is a criminal case brought by the United States government against the defendant, Sholom Rubashkin. Those charges are set forth in what is called an indictment, which I will summarize as follows:

On July 16, 2009, a grand jury in the Northern District of Iowa returned an indictment against the defendant. The defendant is a former vice president of Agriprocessors, Inc. Agriprocessors, located in Postville, Iowa, was a kosher meatpacking plant. In May of 2008, the United States Immigration and Customs Enforcement (“ICE”) conducted a workplace enforcement action at Agriprocessors during which several hundred Agriprocessors employees were arrested on immigration-related crimes, charged and convicted.

In the indictment, the government alleges that Agriprocessors had a revolving loan agreement with First Bank Business Capital, Inc. (“FBBC”), a subsidiary of First Bank. The loan agreement allowed Agriprocessors to borrow up to \$35,000,000 with the actual amount of available credit being dependent upon the value of Agriprocessors’ qualifying accounts receivable and inventory on hand. Under the loan agreement, customer accounts receivable payments were collateral for the loan and were to be immediately transferred to FBBC.

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PRELIMINARY INSTRUCTION NO. 1 (cont'd)

In the indictment, the government alleges that the defendant committed ninety-one separate crimes within the Northern District of Iowa. Specifically, the government charges the defendant with: (1) fourteen counts of Bank Fraud; (2) twenty-four counts of Making False Statements and Reports to a Bank; (3) fourteen counts of Wire Fraud; (4) nine counts of Mail Fraud; (5) ten counts of Money Laundering and aiding and abetting money laundering; and (6) twenty counts of Willfully Violating an Order of the Secretary of Agriculture and aiding and abetting the Willful Violation of an Order of the Secretary of Agriculture.

The counts alleging Bank Fraud, Making False Statements and Reports to a Bank, Wire Fraud and Mail Fraud concern the defendant's actions in relation to the revolving loan with FBBC. The allegations within those counts include: (1) the defendant caused false statements to be made to the bank regarding Agriprocessors' compliance with certain laws; (2) the defendant caused the bank's collateral, that is, customer accounts receivable payments, to be concealed from the bank and diverted; and (3) the defendant caused false sales and accounts receivable to be created on Agriprocessors' books, which resulted in false reports being sent to the bank regarding collateral for the revolving loan.

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PRELIMINARY INSTRUCTION NO. 1 (cont'd)

With respect to the Bank Fraud charges (Counts 1-14), the government alleges that, beginning on an unknown date and continuing on various dates through about October of 2008, the defendant and others known and unknown to the grand jury knowingly executed and attempted to execute a scheme to defraud First Bank and FBBC, and to obtain funds under the control of First Bank and FBBC by means of false and fraudulent pretenses, representations and promises. The government alleges the defendant did so with intent to defraud and that First Bank was a financial institution whose deposits were insured by the Federal Deposit Insurance Corporation. The government alleges that these actions violated federal law.

With respect to the charges of Making False Statements and Reports to a Bank (Counts 15-38), the government alleges that, beginning in September of 2007 and continuing on various dates through October of 2008, the defendant knowingly made false statements to First Bank and FBBC for the purpose of influencing the actions of those banks. The government also alleges that First Bank was a financial institution whose deposits were insured by the Federal Deposit Insurance Corporation. The government alleges that these actions violated federal law.

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PRELIMINARY INSTRUCTION NO. 1 (cont'd)

With respect to the Wire Fraud charges (Counts 39-52), the government alleges that, beginning in September of 2007 and continuing on various dates through October of 2008, the defendant knowingly devised and intended to devise a scheme to defraud FBBC and to obtain money from FBBC by means of false and fraudulent pretenses, representations and promises with intent to defraud. The government also alleges that, in furtherance of, or in an attempt to carry out some essential step in his scheme, the defendant transmitted or caused to be transmitted in interstate commerce, by means of a wire communication (a facsimile machine), certain signals and sounds. The government alleges that these actions violated federal law.

With respect to the Mail Fraud charges (Counts 53-61), the government alleges that, beginning in February of 2008 and continuing on various dates through October of 2008, the defendant knowingly devised and intended to devise a scheme and attempted to defraud FBBC and to obtain money from FBBC by means of false and fraudulent pretenses, representations and promises with intent to defraud. The government also alleges that, in furtherance of, or in an attempt to carry out some essential step in his scheme, the defendant deposited and caused to be deposited matters to be sent or delivered by a commercial interstate carrier, the United Parcel Service of America, Inc., monthly financial reports that contained fraudulent representations. The government alleges that these actions violated federal law.

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PRELIMINARY INSTRUCTION NO. 1 (Cont'd)

With respect to the Money Laundering charges (Counts 62-71), the government alleges that, beginning no later than August of 2007 and continuing on various dates through May of 2008, the defendant knowingly conducted and aided and abetted others in conducting financial transactions that involved the proceeds of a specified unlawful activity with the intent to promote the carrying on of that unlawful activity. The government also alleges that the defendant knew that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of the specified unlawful activity, and knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity. The government alleges that these actions violated federal law.

With respect to the charges of Willfully Violating an Order of the Secretary of Agriculture (Counts 72-91), the government alleges that, at various points beginning in February of 2008 and continuing through April of 2008, the defendant willfully failed to obey, or aided and abetted a failure to obey, an Order of the United States Secretary of Agriculture by failing to pay when due, the full price of livestock as required by law; and failing to deposit checks issued in payment for livestock in the mail before the close of the next business day after the purchase of such livestock as required by law. The government alleges that these actions violated federal law.

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PRELIMINARY INSTRUCTION NO. 1 (Cont'd)

You should understand that the summary I have just given you is only a preliminary outline of the indictment. At the end of the trial, I shall give you final instructions on the elements of the crimes charged in the indictment. If there is any difference between what I just told you, and what I tell you in the instructions I give you at the end of the trial, the instructions given at the end of the trial must govern.

You are instructed that an indictment is simply an accusation. It is not evidence of anything. The defendant has pleaded not guilty, and is presumed to be innocent unless and until proven guilty beyond a reasonable doubt.

PRELIMINARY INSTRUCTION NO. 2

It will be your duty as jurors to decide from the evidence whether the defendant is guilty or not guilty of the crimes charged. From the evidence, you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdicts. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdicts should be.

Finally, please remember that only this defendant, not anyone else, is on trial here, and that this defendant is on trial only for the crimes charged, not for anything else.

PRELIMINARY INSTRUCTION NO. 3

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits and any facts that have been stipulated, that is, formally agreed to by the parties.

Certain things are not evidence. The following are not evidence:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case.

2. Objections by lawyers. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony I strike from the record, or tell you to disregard, is not evidence and must not be considered.

4. Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

5. Anything that might have been said by jurors, the attorneys or the court during the jury selection process is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

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PRELIMINARY INSTRUCTION NO. 3 (Cont'd)

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

PRELIMINARY INSTRUCTION NO. 4

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony of any witness to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with other evidence that you believe.

PRELIMINARY INSTRUCTION NO. 5

At the end of the trial, you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult. Therefore, you must pay close attention to the testimony as it is given.

If you wish, you may take notes during the presentation of evidence to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let note-taking distract you so that you do not hear other answers by the witness.

Before we begin the evidence, we will give each juror an envelope with a pad and pen in it. The envelopes are numbered according to your seat in the jury box. When you leave for breaks or at night please put your pad and pen in the envelope and leave the envelope on your chair. Your notes will be secured, and they will not be read by anyone.

PRELIMINARY INSTRUCTION NO. 6

During the trial, it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference while the jury is present in the courtroom or by calling a recess. If the bench conference is held in the courtroom, we will switch on what we refer to as “white noise” so that the jurors cannot hear what is being said by the lawyers and me. While the bench conferences are being conducted, you should feel free to stand and stretch and visit among yourselves about anything except the case.

PRELIMINARY INSTRUCTION NO. 7

Finally, to ensure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdicts.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, do not use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube or Twitter, to communicate to anyone any information about this case until the trial has ended and you have been discharged as a juror.

Fourth, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it, until the trial has ended and your verdicts have been accepted by me. If someone should try to talk with you about the case during the trial, please report it to me through the Court Security Officer.

Fifth, during the trial, you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case—you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, use the elevators, or the like, it is because they are not supposed to talk or visit with you.

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PRELIMINARY INSTRUCTION NO. 7 (Cont'd)

Sixth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case, or about anyone involved with it. In fact, until the trial is over, I suggest that you avoid reading any newspapers or news journals at all, avoid reading the news on the Internet and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but, if there are, you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Seventh, do not do any research or make any investigation about the case on your own. Do not consult any reference materials such as the Internet, books, magazines, dictionaries or encyclopedias. Do not contact anyone to ask them questions about issues that may arise in this case. Remember you are not permitted to talk to anyone (except your fellow jurors) about this case or anyone involved with it until the trial has ended and I have discharged you as jurors.

Eighth, do not make up your mind during the trial about what the verdicts should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

PRELIMINARY INSTRUCTION NO. 8

The trial will proceed in the following manner:

First, the attorney for the government will make an opening statement. Next, the attorney for the defendant may, but does not have to, make an opening statement. An opening statement is not evidence, but is simply a summary of what the attorney expects the evidence to be.

The government will then present its evidence, and the attorney for the defendant may cross-examine. Following the government's case, the defendant may, but does not have to, present evidence, testify or call other witnesses. If the defendant calls witnesses, the attorney for the government may cross-examine them.

After presentation of evidence is completed, the court will instruct you further on the law. Then, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. After that, you will retire to deliberate on your verdicts.

DATE

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA