

INSTRUCTION NO. 15

You are further instructed that, regarding the crimes charged in Counts 32 through 36 of the Indictment, the following definitions apply:

The term “proceeds” means any property, or any interest in property, that someone acquires or retains as a result of the commission of a specified unlawful activity, in this case, wire fraud. “Proceeds” can be any kind of property, not just money. The government is not required to trace the property it alleges to be proceeds of the wire fraud to a particular underlying offense. It is sufficient if the government proves that the property was the proceeds of wire fraud generally. The government need not prove that all of the property involved in the transaction was the proceeds of wire fraud. It is sufficient if the government proves that at least part of the property represents such proceeds.

The phrase “knew the money represented proceeds of some form of unlawful activity” means that the defendant knew the property involved in the transactions represented the proceeds from some form, though not necessarily which form, of activity that constitutes a felony offense under state or federal law. Thus, the government need not prove that the defendant specifically knew that the funds involved in the monetary transactions represented the proceeds of wire fraud or any other specific offense; rather, the government need only prove that the defendant knew that the funds represented the proceeds of some form, though not necessarily which form, of felony under state or federal law. I instruct you as a matter of law that wire fraud is a felony under federal law.

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INSTRUCTION NO. 15 (Cont'd)

The phrase "interstate commerce" means commerce between any combination of states, territories and possessions of the United States. "Foreign commerce" means commerce between any state, territory or possession of the United States and a foreign country. The term "commerce" includes, among other things, travel, trade, transportation and communication. It is not necessary for the government to show that the defendant actually intended or anticipated an effect on interstate or foreign commerce. All that is necessary is that interstate or foreign commerce was affected as a natural and probable consequence of the defendant's actions. You may find an effect on interstate or foreign commerce if you find beyond a reasonable doubt from the evidence that the transaction involved a withdrawal or transfer of funds from or through a federally-insured bank or credit union.

The phrase "monetary transaction" means the deposit, withdrawal, transfer or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument by, through or to a financial institution, including any "financial transaction," as that term is defined below.

"Financial transaction" means:

- (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means, (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel or aircraft; or
- (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.

INSTRUCTION NO. 16

The crime of making a false statement to the United States Probation Office, as charged in Counts 37 through 49 of the Indictment, has three elements, which are:

One, the defendant knowingly, voluntarily and intentionally made a false statement or representation in a Monthly Supervision Report submitted to the United States Probation Office, specifically:

- Count 37: On or about August 7, 2008, the defendant failed to disclose under "all expenditures over \$500" that he wired \$800 to MB on or about July 10, 2008;
- Count 38: On or about September 10, 2008, the defendant failed to disclose under "all expenditures over \$500" that he wired \$550 to MB on or about August 29, 2008;
- Count 39: On or about October 4, 2008, the defendant:
- (1) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received a \$75,000 wire transfer from MB on September 12, 2008;
 - (2) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received a \$5,000 check from Dibocca Corp dated September 13, 2008; and/or
 - (3) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received a \$3,000 check from Dibocca Corp dated September 26, 2008, and annotated as "Loan";

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INSTRUCTION NO. 16 (Cont'd)

Count 40: On or about November 4, 2008, the defendant failed to disclose under "all expenditures over \$500" that he wired \$580 to MB on or about October 29, 2008;

Count 41: On or about February 28, 2009, the defendant:

(1) failed to disclose under "other cash inflows" and "total monthly cash inflows" that his spouse, on the defendant's behalf, received a \$20,000 wire transfer on February 17, 2009, from SH;

(2) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received two \$5,000 cashier's checks made payable to Donald K. Washburn on February 18, 2009; and/or

(3) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received a \$4,000 cashier's check made payable to Donald Washburn on February 18, 2009;

Count 42: On or about June 2, 2009, the defendant:

(1) falsely claimed he did not have a checking/savings account when, in fact, on May 12, 2009, he opened a Veridian Credit Union Member Equity Savings and Share Draft Account and had a balance of \$20.00 on June 31, 2009;

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INSTRUCTION NO. 16 (Cont'd)

- (2) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received a \$31,000 wire transfer on May 4, 2009, from MB;
- (3) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received a \$59,000 wire transfer on May 4, 2009, from MB;
- (4) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received a \$7,330 wire transfer on May 5, 2009, from MB;
- (5) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received an \$80,000 check dated May 5, 2009, from his spouse;
- (6) failed to disclose under "other cash inflows" and "total monthly cash inflows" a \$75,000 Wells Fargo cashier's check payable to him which he caused to be deposited into a Farmers State Bank account on May 5, 2009;
- (7) failed to disclose under "other cash inflows" and "total monthly cash inflows" a May 12, 2009, Farmers State Bank cashier's check for \$9,500 which he caused to be cashed;
- (8) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received a \$15,000 check from Dibocca Corp dated May 13, 2009; and/or

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INSTRUCTION NO. 16 (Cont'd)

- (9) failed to disclose under "all expenditures over \$500" that he wired \$1,000 to MB on or about May 4, 2009;

Count 43: On or about June 30, 2009, the defendant:

- (1) falsely claimed he did not have a checking/savings account when, in fact, he did have a Veridian Credit Union Member Equity Savings and Share Draft Account;
- (2) failed to disclose under "all expenditures over \$500" that he purchased a \$750 Visa gift card through his undisclosed Veridian Credit Union member account; and/or
- (3) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received a \$6,133.11 check from Dibocca Corp dated June 20, 2009, and annotated "Loan";

Count 44: On or about August 5, 2009, the defendant:

- (1) falsely claimed he did not have a checking/savings account when, in fact, he did have a Veridian Credit Union member account with a balance of \$20.00 on July 31, 2009; and/or
- (2) failed to disclose under "other cash inflows" and "total monthly cash inflows" that he received a \$5,666.89 check from Dibocca Corp dated July 16, 2009, and annotated "Loan";

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INSTRUCTION NO. 16 (Cont'd)

Count 45: On or about September 2, 2009, the defendant falsely claimed he did not have a checking/savings account when, in fact, he did have a Veridian Credit Union member account with a balance of \$20.00 on August 31, 2009;

Count 46: On or about October 5, 2009, the defendant:

- (1) falsely claimed he did not have a checking/savings account when, in fact, he did have a Veridian Credit Union Member Equity Savings and Share Draft Account with a balance of \$6,024 on September 30, 2009;
- (2) failed to disclose his receipt on September 11, 2009, of a \$60,000 wire transfer from RL into his Veridian Credit Union account as an "amount received from any other source of income";
- (3) falsely claimed he had not opened any "new checking, saving, or line of credit accounts" when, in fact, on or about September 12, 2009, he opened an Equity Savings credit card account secured by \$20,000 at Veridian in order to obtain a Visa credit card;
- (4) failed to disclose an expenditure over \$500 when, in fact, on or about September 12, 2009, he made a \$15,000 payment to Investment Enterprises for an option to purchase real property at Feather Ridge Road in Toddville, Iowa, until October 12, 2009;

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INSTRUCTION NO. 16 (Cont'd)

- (5) failed to disclose an expenditure over \$500 when, in fact, on or about September 12, 2009, he made a payment in the amount of \$8,021 payable to his son and an attorney;
- (6) failed to disclose an expenditure over \$500 when, in fact, on or about September 12, 2009, he purchased four Visa gift cards for \$3,000;
- (7) failed to disclose an expenditure over \$500 when, in fact, on or about September 12, 2009, he wired \$700 to MB;
- (8) failed to disclose an expenditure over \$500 when, in fact, on or about September 12, 2009, he used his credit card to spend \$1,028.01 at Legends Westernwear and Tack;
- (9) failed to disclose an expenditure over \$500 when, in fact, on or about September 14, 2009, he made a \$2,500 payment by check to his spouse on which he denoted "taxes";
- (10) failed to disclose an expenditure over \$500 when, in fact, on or about September 22, 2009, he made a \$750 payment by check to Linn County Planning on which he denoted "Dad Hoose";

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INSTRUCTION NO. 16 (Cont'd)

- (11) failed to disclose an expenditure over \$500 when, in fact, on or about September 23, 2009, he made a \$650 payment by check to BH;
- (12) failed to disclose an expenditure over \$500 when, in fact, on or about September 23, 2009, he made a \$10,000 wire transfer from his account to his son's business account; and/or
- (13) failed to disclose an expenditure over \$500 when, in fact, on or about September 26, 2009, he used his credit card to spend \$627.20 at Howard Johnson in Cedar Rapids;

Count 47: On or about November 3, 2009, the defendant:

- (1) failed to disclose his receipt on October 7, 2009, of a \$35,000 wire transfer into his Veridian Credit Union account as an "amount received from any other source of income";
- (2) failed to disclose an expenditure over \$500 when, in fact, on or about October 4, 2009, he used his credit card to spend \$592.89 at Lowes;
- (3) failed to disclose an expenditure over \$500 when, in fact, on or about October 6, 2009, he used his credit card to spend \$1,019.15 at Truck Country of Cedar Rapids;

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INSTRUCTION NO. 16 (Cont'd)

- (4) failed to disclose an expenditure over \$500 when, in fact, on or about October 9, 2009, he transferred \$20,000 from his Veridian Credit Union account to his son's business account;
- (5) failed to disclose an expenditure over \$500 when, in fact, on or about October 9, 2009, he made a \$1,500 payment by check to BP on which he denoted "Ford";
- (6) failed to disclose an expenditure over \$500 when, in fact, on or about October 12, 2009, he made a \$1,952 payment by check to Linn County Planning on which he denoted "Dad Blue Print"; and/or
- (7) failed to disclose an expenditure over \$500 when, in fact, on or about October 19, 2009, he used his credit card to spend \$940.80 at Howard Johnson in Cedar Rapids;

Count 48: On or about January 4, 2010, the defendant:

- (1) reported his employment only as Polar Insulation and failed to disclose his employment with Iron Ore International, LLC when, in fact, he did business as and was the registered agent for Iron Ore International, LLC; and/or
- (2) failed to disclose an expenditure over \$500 when, in fact, on or about December 31, 2009, he spent \$754.00 on a Visa gift card;

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INSTRUCTION NO. 16 (Cont'd)

Count 49: On or about February 4, 2010, the defendant:

- (1) reported his employment only as Polar Insulation and failed to disclose his employment with Iron Ore International, LLC when, in fact, he did business as and was the registered agent for Iron Ore International, LLC;
- (2) failed to disclose an expenditure over \$500 when, in fact, on or about January 2, 2010, he spent \$750.00 on a Visa gift card; and/or
- (3) failed to disclose amounts received from any other source of income when, in fact, on or about January 22, 2010, he received \$10,000 in cash deposited into his account by LS;

Two, the statement or representation was material to the United States Probation Office; and

Three, each Monthly Supervision Report was a matter within the jurisdiction of the United States Probation Office. You may find that this element has been satisfied if you find that the United States Probation Office's function includes receiving reports containing financial and employment data from individuals on supervised release after a federal conviction.

For each count, you may only find the defendant guilty if you find unanimously and beyond a reasonable doubt that the defendant made at least one of the allegedly false statements in that count. You must be unanimous in your finding about which, if any, of the false statements at issue was made.

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INSTRUCTION NO. 16 (Cont'd)

If the government proves all of these elements beyond a reasonable doubt as to the count under consideration by you, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of the count under consideration by you.

INSTRUCTION NO. 17

You are further instructed that, regarding the crimes charged in Counts 37 through 49 of the Indictment, the following definitions apply:

A statement is “false” if untrue when made, and then known to be untrue by the person making it or causing it to be made. A statement may be untrue in various ways. It may state as a fact something which does not exist, or it may be inaccurate in its representation of a fact. Similarly, the omission of a material fact is equivalent to a false statement.

A statement or representation is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of the agency. However, whether a statement or representation is “material” does not depend on whether the agency was actually deceived.

INSTRUCTION NO. 18

You will note that the Indictment charges that the offense was committed “on or about” certain dates. The government need not prove with certainty the exact date or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 19

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 20

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NO. 21

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 22

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because each of your verdicts—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

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INSTRUCTION NO. 22 (Cont'd)

Fifth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each of your verdicts, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts might be—that is entirely for you to decide.

INSTRUCTION NO. 23

Attached to these instructions you will find the Verdict Forms and Interrogatory Forms. These are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms and Interrogatory Forms must be the unanimous decisions of the Jury.

You will take the Verdict Forms and Interrogatory Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and Interrogatory Forms, your foreperson will fill out the Verdict Forms and Interrogatory Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the Jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms and Interrogatory Forms in accord with the evidence and these instructions.

February 21, 2012
Date

Linda R. Reade
Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa