

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD K. WASHBURN,

Defendant.

No. 11-CR-100-LRR

**FINAL JURY INSTRUCTIONS**

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Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

**INSTRUCTION NO. 1**

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

**INSTRUCTION NO. 2**

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

**INSTRUCTION NO. 3**

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

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.

#### INSTRUCTION NO. 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the documents and other things received as exhibits and the facts that have been stipulated—that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

**INSTRUCTION NO. 5**

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. 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.

**INSTRUCTION NO. 6**

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. 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 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 any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

**INSTRUCTION NO. 7**

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached.”

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

**INSTRUCTION NO. 8**

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and exhibits should be returned into open court, along with your verdicts, in the same condition as they were received by you.

**INSTRUCTION NO. 9**

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert witness testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

### INSTRUCTION NO. 10

The Indictment in this case charges the defendant with three different types of crimes:

Under each of Counts 1 through 30, the Indictment charges that the defendant committed the crime of wire fraud.

Under each of Counts 32 through 36, the Indictment charges that the defendant committed the crime of money laundering.

Under each of Counts 37 through 49, the Indictment charges that the defendant committed the crime of making false statements to the United States Probation Office.

The defendant has pleaded not guilty to each of these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crime charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

**INSTRUCTION NO. 11**

The crime of wire fraud, as charged in Counts 1 through 8 of the Indictment, has three elements, which are:

*One*, the defendant voluntarily and intentionally participated in a scheme to defraud with knowledge of its fraudulent nature or devised or participated in a scheme to obtain money or property by means of material false representations or promises, which scheme is described as follows: the defendant fraudulently obtained investments or loans for a dice game he was purportedly selling to casinos, promising large sums of money with a specified time frame; the defendant used email communications to lull his investors or lenders into believing the investment was developing as planned; and the defendant knew the alleged victims' investments would not yield the high rates of return he claimed and the defendant intended to use the invested funds for his own benefit and the benefit of his family;

*Two*, the defendant did so with the intent to defraud; and

*Three*, the defendant used, or caused to be used, interstate wire facilities in furtherance of, or in an attempt to carry out, some essential step in the scheme, specifically:

Count 1: A \$324,000 wire transfer from MB's National Exchange Bank and Trust account in Wisconsin to the defendant's son's Dibocca Farmers State Bank account in Marion, Iowa, on or about May 22, 2008;

Count 2: A \$75,000 wire transfer from MB's National Exchange Bank and Trust account in Wisconsin to the defendant's son's Dibocca Corp Farmers State Bank account in Marion, Iowa, on or about September 12, 2008;

**(CONTINUED)**

**INSTRUCTION NO. 11 (Cont'd)**

- Count 3: An email sent from the defendant in Cedar Rapids, Iowa, to MB in Wisconsin on or about October 19, 2008;
- Count 4: A \$59,000 wire transfer from MB's MidAmerican Bank account in Wisconsin to the defendant's spouse's Wells Fargo Bank account in Cedar Rapids, Iowa, on or about May 4, 2009;
- Count 5: A \$31,000 wire transfer from MB's National Exchange Bank and Trust account in Wisconsin to the defendant's spouse's personal Wells Fargo Bank account in Cedar Rapids, Iowa, on or about May 4, 2009;
- Count 6: A \$7,330 wire transfer from MB's National Exchange Bank and Trust account in Wisconsin to the defendant's spouse's Wells Fargo Bank account in Cedar Rapids, Iowa, on or about May 5, 2009;
- Count 7: An email sent from the defendant in Cedar Rapids, Iowa, to MB in Wisconsin on or about July 23, 2009; and
- Count 8: An email sent from the defendant in Cedar Rapids, Iowa, to MB in Wisconsin on or about September 2, 2009.

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. 12**

The crime of wire fraud, as charged in Counts 9 through 30 of the Indictment, has three elements, which are:

*One*, the defendant voluntarily and intentionally participated in a scheme to defraud with knowledge of its fraudulent nature or devised or participated in a scheme to obtain money or property by means of material false representations or promises, which scheme is described as follows: the defendant fraudulently presented himself to investors or lenders as a businessperson legitimately involved in the mining industry in order to secure investments or loans; the defendant falsely told investors or lenders that their funds would go toward mining investments and result in high rates of returns; the defendant used email communications to lull his investors or lenders into believing their investments were developing as planned; and the defendant knew the alleged victims' investments would not yield the high rates of return he claimed and the defendant intended to use the invested funds for his own benefit and the benefit of his family;

*Two*, the defendant did so with the intent to defraud; and

*Three*, the defendant used, or caused to be used, interstate wire facilities in furtherance of, or in an attempt to carry out, some essential step in the scheme, specifically:

- Count 9: An email sent from the defendant in Cedar Rapids, Iowa, to SH in Nevada on or about February 11, 2009;
- Count 10: A \$20,000 wire transfer from SH's Sun West Bank in Nevada to the defendant's spouse's Wells Fargo Bank account in Cedar Rapids, Iowa, on or about February 17, 2009;
- Count 11: An email sent from the defendant in Cedar Rapids, Iowa, to SH in Nevada on or about August 19, 2009;

**(CONTINUED)**

**INSTRUCTION NO. 12 (Cont'd)**

- Count 12: An email sent from the defendant in Cedar Rapids, Iowa, to RL in Alaska on or about September 10, 2009;
- Count 13: A \$60,000 wire transfer from RL's Wells Fargo Bank account in Alaska to the defendant's Veridian Credit Union account in Cedar Rapids, Iowa, on or about September 11, 2009;
- Count 14: An email sent from the defendant in Cedar Rapids, Iowa, to RL in Alaska on or about October 3, 2009;
- Count 15: An email sent from the defendant in Cedar Rapids, Iowa, to RL in Alaska on or about October 13, 2009;
- Count 16: An email sent from the defendant in Cedar Rapids, Iowa, to RL in Alaska on or about October 15, 2009;
- Count 17: An email sent from the defendant in Cedar Rapids, Iowa, to RL in Alaska on or about October 29, 2009;
- Count 18: A \$74,000 wire transfer from JL's Wells Fargo Bank account in Alaska to the defendant's Veridian Credit Union account in Cedar Rapids, Iowa, on or about November 4, 2009;
- Count 19: An email sent from the defendant in Cedar Rapids, Iowa, to RL in Alaska on or about December 10, 2009;
- Count 20: An email sent from the defendant in Cedar Rapids, Iowa, to RL in Alaska on or about December 25, 2009;
- Count 21: An email sent from the defendant in Cedar Rapids, Iowa, to RL in Alaska on or about January 7, 2010;

**(CONTINUED)**

**INSTRUCTION NO. 12 (Cont'd)**

- Count 22: A \$1,375 Western Union wire transfer from KM in Ohio to the defendant in Cedar Rapids, Iowa, on or about May 27, 2010;
- Count 23: A \$5,000 wire transfer from KM's business through a Huntington National Bank account in Ohio to a Wells Fargo Bank account in Cedar Rapids, Iowa, in the name of the defendant's spouse d/b/a Iron Ore International on or about June 10, 2010;
- Count 24: A \$5,000 wire transfer from FH through HSBC Bank USA in New York into a Wells Fargo Bank account in Cedar Rapids, Iowa, in the name of the defendant's spouse d/b/a Iron Ore International on or about June 11, 2010;
- Count 25: A \$10,000 wire transfer from KM's business through a Huntington National Bank account in Ohio to a Wells Fargo Bank account in Cedar Rapids, Iowa, in the name of the defendant's spouse d/b/a Iron Ore International on or about June 24, 2010;
- Count 26: A \$5,000 wire transfer from RM's Huntington National Bank account in Ohio to the defendant's Veridian Credit Union account in Cedar Rapids, Iowa, on or about June 29, 2010;
- Count 27: A \$25,000 wire transfer from KM's business through a Huntington National Bank account in Ohio to the defendant's Veridian Credit Union account in Cedar Rapids, Iowa, on or about July 1, 2010;

**(CONTINUED)**

**INSTRUCTION NO. 12 (Cont'd)**

- Count 28: A \$10,000 wire transfer from KM's business through a Huntington National Bank account in Ohio to the defendant's Veridian Credit Union member account in Cedar Rapids, Iowa, on or about July 2, 2010;
- Count 29: An email sent from the defendant in Cedar Rapids, Iowa, to SH in Nevada on or about July 31, 2010;
- Count 30: An email sent from the defendant in Cedar Rapids, Iowa, to RL in Alaska on or about July 31, 2010.

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. 13**

You are further instructed that, regarding the crimes charged in Counts 1 through 30 of the Indictment, the following definitions apply:

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money or property by employing material falsehoods, concealing material facts or omitting material facts. It also means the obtaining of money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A statement or representation is "false" when it is untrue when made or effectively conceals or omits a material fact.

A representation or promise is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not to engage in a particular transaction. However, whether a representation or promise is "material" does not depend on whether the person was actually deceived.

To act with "intent to defraud" means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property to another or bringing about some financial gain to oneself or another to the detriment of a third party. With respect to false statements, the defendant must have known the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

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**INSTRUCTION NO. 13 (Cont'd)**

It is not necessary that the use of interstate wire facilities by the participants themselves be contemplated or that the defendant do any actual sending of material by interstate wire facility or specifically intend that an interstate wire facility be used. It is sufficient if an interstate wire facility was in fact used to carry out the scheme and the use of an interstate wire facility by someone was reasonably foreseeable.

Each separate use of an interstate wire facility in furtherance of the scheme to defraud constitutes a separate offense.

The wire fraud counts of the Indictment charge that the defendant devised or participated in a scheme. The government need not prove, however, that the participants in the scheme met together to formulate the scheme charged, or that there was a formal agreement among them, in order for them to be held jointly responsible for the operation of the scheme and the use of an interstate wire facility for the purpose of accomplishing the scheme. It is sufficient if only one person conceives the scheme and the others knowingly, voluntarily and intentionally join in and participate in some way in the operation of the scheme in order for such others to be held jointly responsible.

It is not necessary that the government prove all of the details alleged in the Indictment concerning the precise nature and purpose of the scheme, that the material sent by interstate wire facility was itself false or fraudulent, that the alleged scheme actually succeeded in defrauding anyone or that the use of an interstate wire facility was intended as the specific or exclusive means of accomplishing the alleged fraud.

Interstate wire communications which are designed to lull victims into a false sense of security, postpone inquiries or complaints or make the transaction less suspect are communications in furtherance of the scheme.

**INSTRUCTION NO. 14**

The crime of engaging in a monetary transaction in property derived from wire fraud, or money laundering, as charged in Counts 32 through 36 of the Indictment, has five elements, which are:

*One*, on or about:

- Count 32: May 4, 2009, the defendant knowingly engaged, caused or attempted to engage in a monetary transaction, that is, receiving and cashing an \$80,000 check (check 2157) from the defendant's spouse's Wells Fargo Bank account;
- Count 33: May 5, 2009, the defendant knowingly engaged, caused or attempted to engage in a monetary transaction, that is, obtaining a \$75,000 Wells Fargo cashier's check which was deposited in a Farmers State Bank account in the name of Dibocca Corp;
- Count 34: September 12, 2009, the defendant knowingly engaged, caused or attempted to engage in a monetary transaction, that is, transferring \$20,000 from one Veridian Credit Union member account (the defendant's Share Draft Account #2) to another Veridian Credit Union member account (the defendant's Equity Savings Account #6);
- Count 35: September 12, 2009, the defendant knowingly engaged, caused or attempted to engage in a monetary transaction, that is, making a \$15,000 payment to Investment Enterprises, Inc. by check drawn on the defendant's Veridian Credit Union member account (Share Draft Account #2); and

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**INSTRUCTION NO. 14 (Cont'd)**

Count 36: November 4, 2009, the defendant knowingly engaged, caused or attempted to engage in a monetary transaction, that is, causing a \$71,730.24 payment to the United States Clerk of Court by check drawn on the defendant's Veridian Credit Union member account (Share Draft Account #2);

*Two*, each monetary transaction described above was of property of a value greater than \$10,000 derived from wire fraud, as wire fraud is defined in Instruction Numbers 11, 12 and 13;

*Three*, at the time the defendant conducted each monetary transaction described above, the defendant knew the money involved proceeds of a criminal offense;

*Four*, each monetary transaction described above took place in the Northern District of Iowa; and

*Five*, each monetary transaction described above in some way or degree affected interstate commerce.

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.