IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* CARL DELANO TORJAGBO	CRIMINAL ACTION NUMBER 1:22-CR-171-MLB-RDC

PROPOSED JURY INSTRUCTIONS

Pursuant to this Court's Order Setting Trial [Doc. 176], the parties hereby submit their proposed jury instructions. The instructions agreed upon by the parties appear first and are highlighted in green. The instructions where one party objects are highlighted in red and provide the basis for objection. Where an instruction depends on the trial evidence, it is so noted.

The parties reserve their right to object to the applicability of an instruction based on the evidence submitted at trial.

Respectfully submitted,

UNITED STATES OF AMERICA

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Request to Charge No. 1
Preliminary Instructions—Criminal Cases

Members of the Jury:

Now that you have been sworn, I need to explain some basic principles about a criminal trial and your duty as jurors. These are preliminary instructions. At the end of the trial, I will give you more detailed instructions.

Duty of jury:

It will be your duty to decide what happened so you can determine whether the defendant is guilty or not guilty of the crime charged in the indictment. At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you even if you do not agree with the law.

What is evidence:

You must decide the case solely on the evidence presented here in the courtroom. Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion. Some evidence proves a fact indirectly, such as a witness who saw wet grass outside and people walking into the courthouse carrying wet umbrellas. Indirect evidence, sometimes called circumstantial evidence, is simply a chain of circumstances that proves a fact. As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind and should give every piece of evidence whatever weight you think it deserves.

What is not evidence:

Certain things are not evidence and must not be considered. I will list them for you now:

- Statements and arguments of the lawyers. In their opening statements and closing arguments, the lawyers will discuss the case, but their remarks are not evidence.

- Questions and objections of the lawyers. The lawyers' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because a lawyer's question suggests that it is. For instance, if a lawyer asks a witness, "you saw the defendant hit his sister, didn't you?"—that question is no evidence whatsoever of what the witness saw or what the defendant did, unless the witness agrees with it.

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, then the question may be answered or the exhibit received. If I sustain the objection, then the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and not try to guess what the answer would have been.

Sometimes I may order that evidence be stricken and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider that evidence.

Some evidence is admitted only for a limited purpose. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and no other.

Credibility of witnesses:

In reaching your verdict, you may have to decide what testimony to believe and what testimony not to believe. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things testified to;
- the witness's memory;
- the witness's manner while testifying;
- the witness's interest in the outcome of the case and any bias or prejudice;
- whether other evidence contradicted the witness's testimony;

- the reasonableness of the witness's testimony in light of all the evidence; and
- any other factors that bear on believability. i will give you additional guidelines for determining credibility of witnesses at the end of the case.

Rules for criminal cases:

As you know, this is a criminal case. There are three basic rules about a criminal case that you must keep in mind.

First, the defendant is presumed innocent until proven guilty. The indictment against the defendant brought by the Government is only an accusation, nothing more. It is not proof of guilt or anything else. The defendant therefore starts out with a clean slate.

Second, the burden of proof is on the Government until the very end of the case. The defendant has no burden to prove his innocence or to present any evidence, or to testify. Since the defendant has the right to remain silent and may choose whether to testify, you cannot legally put any weight on a defendant's choice not to testify. It is not evidence.

Third, the Government must prove the defendant's guilt beyond a reasonable doubt. I will give you further instructions on this point later, but bear in mind that the level of proof required is high.

Conduct of the jury:

Our law requires jurors to follow certain instructions regarding their personal conduct in order to help assure a just and fair trial. I will now give you those instructions:

1. Do not talk, either among yourselves or with anyone else, about anything related to the case. You may tell the people with whom you live and your employer that you are a juror and give them information about when you will be required to be in court, but you may not discuss with them or anyone else anything related to the case.

2. Do not, at any time during the trial, request, accept, agree to accept, or discuss with any person, any type of payment or benefit in return for supplying any information about the trial.

3. You must promptly tell me about any incident you know of involving an attempt by any person to improperly influence you or any member of the jury.

4. Do not visit or view the premises or place where the charged crime was allegedly committed, or any other premises or place involved in the case. And you must not use Internet maps or Google Earth or any other program or device to search for a view of any location discussed in the testimony.

5. Do not read, watch, or listen to any accounts or discussions related to the case which may be reported by newspapers, television, radio, the Internet, or any other news media.

6. Do not attempt to research any fact, issue, or law related to this case, whether by discussions with others, by library or Internet research, or by any other means or source.

In this age of instant electronic communication and research, I want to emphasize that in addition to not talking face to face with anyone about the case, you must not communicate with anyone about the case by any other means, including by telephone, text messages, email, Internet chat, chat rooms, blogs, or social-networking websites and apps such as Facebook, Instagram, Snapchat, YouTube, or Twitter. You may not use any similar technology of social media, even if I have not specifically mentioned it here.

You must not provide any information about the case to anyone by any means whatsoever, and that includes posting information about the case, or what you are doing in the case, on any device or Internet site, including blogs, chat rooms, social websites, or any other means.

You also must not use Google or otherwise search for any information about the case, or the law that applies to the case, or the people involved in the case, including the defendant, the witnesses, the lawyers, or the judge. It is important that you understand why these rules exist and why they are so important:

Our law does not permit jurors to talk with anyone else about the case, or to permit anyone to talk to them about the case, because only jurors are authorized to render a verdict. Only you have been found to be fair and only you have promised to be fair—no one else is so qualified.

Our law also does not permit jurors to talk among themselves about the case until the court tells them to begin deliberations, because premature discussions can lead to a premature final decision. Our law also does not permit you to visit a place discussed in the testimony. First, you can't be sure that the place is in the same condition as it was on the day in question. Second, even if it were in the same condition, once you go to a place discussed in the testimony to evaluate the evidence in light of what you see, you become a witness, not a juror. As a witness, you may now have a mistaken view of the scene that neither party may have a chance to correct. That is not fair.

Finally, our law requires that you not read or listen to any news accounts of the case, and that you not attempt to research any fact, issue, or law related to the case. Your decision must be based solely on the testimony and other evidence presented in this courtroom. Also, the law often uses words and phrases in special ways, so it's important that any definitions you hear come only from me, and not from any other source. It wouldn't be fair to the parties for you to base your decision on some reporter's view or opinion, or upon other information you acquire outside the courtroom.

These rules are designed to help guarantee a fair trial, and our law accordingly sets forth serious consequences if the rules are not followed. I trust that you understand and appreciate the importance of following these rules, and in accord with your oath and promise, I know you will do so.

Taking notes:

Moving on now, if you wish, you may take notes 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. Do not let note-taking distract you so that you do not hear other answers by witnesses. When you leave the courtroom, your notes should be left in the jury room. Whether or not you take notes, you should rely on your own memory of what was said. Notes are to assist your memory only. They are not entitled to any greater weight than your memory or impression about the testimony.

Course of the trial:

The trial will now begin. First, the Government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in. Next, the defendant's attorney may, but does not have to, make an opening statement. Opening statements are neither evidence nor argument. The Government will then present its witnesses, and counsel for the defendant may cross-examine them. Following the Government's case, the defendant may, if he wishes, present witnesses whom the Government may cross-examine. After all the evidence is in, the attorneys will present their closing arguments to summarize and interpret the evidence for you, and I will instruct you on the law. After that, you will go to the jury room to decide your verdict.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases P1 (Apr. 2024 rev.) (as modified).

Request to Charge No. 2

Introduction

Court's Instructions to the Jury

Members of the Jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. After I've completed these instructions, you will go to the jury room and begin your discussions—what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find the Defendant guilty beyond a reasonable doubt.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B1 (Apr. 2024 rev.).

Request to Charge No. 3

The Duty to Follow Instructions and the Presumption of Innocence[1]

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it—even if you do not agree with the law—and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against a defendant isn't evidence of guilt. The law presumes every defendant is innocent. The Defendant does not have to prove his innocence or produce any evidence at all. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B2.1 (Apr. 2024 rev.).

[1] This instruction is dependent upon the evidence presented at trial.

Request to Charge No. 4

The Duty to Follow Instructions and the Presumption of Innocence When a Defendant Does Not Testify[2]

Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it—even if you do not agree with the law—and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against a Defendant isn't evidence of guilt. The law presumes every Defendant is innocent. The Defendant does not have to prove his innocence or produce any evidence at all. A Defendant does not have to testify, and you cannot consider in any way the fact that the Defendant did not testify. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B2.2 (Apr. 2024 rev.).

[2] This instruction is dependent upon the evidence presented at trial.

Request to Charge No. 5
Definition of "Reasonable Doubt"

The Government's burden of proof is heavy, but it doesn't have to prove a Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning the Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you've carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B3 (Apr. 2024 rev.).

Request to Charge No. 6

Consideration of Direct and Circumstantial Evidence; Argument of Counsel; Comments by the Court

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B4 (Apr. 2024 rev.).

Request to Charge No. 7
Credibility of Witnesses

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B5 (Apr. 2024 rev.).

Request to Charge No. 8

Impeachment of Witnesses Because of Inconsistent Statements[3]

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of the misstatement may depend on whether the misstatement was about an important fact or about an unimportant detail.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B6.1 (Apr. 2024 rev.).

[3] This instruction is dependent upon the evidence presented at trial.

Request to Charge No. 9
Impeachment of Witnesses Because of Inconsistent Statements (Defendant with No Felony Conviction Testifies)[4]

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of the misstatement may depend on whether the misstatement was about an important fact or about an unimportant detail. A defendant has a right not to testify.

But since the Defendant did testify, you should decide whether you believe the Defendant's testimony in the same way as that of any other witness.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B6.3 (Apr. 2024 rev.).

[4] This instruction is dependent upon the evidence presented at trial.

Request to Charge No. 10
Introduction to Offense Instructions

The indictment charges eleven separate crimes, called "counts," against the Defendant. Each count has a number. You'll be given a copy of the indictment to refer to during your deliberations.

Count 1 charges the Defendant with bank fraud. Count 2 charges the Defendant with aggravated identity theft. Counts 3 and 4 charge the Defendant with wire fraud. Counts 5 through 7 charge the Defendant with concealment money laundering, and Counts 8 through 11 charge the Defendant with transactional money laundering. I will explain the law governing those substantive offenses in a moment.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B8 (Apr. 2024 rev.) (as modified).

Request to Charge No. 11
Conjunctively Charged Counts

Where a statute specifies multiple alternative ways in which an offense may be committed, the indictment may allege the multiple ways in the conjunctive, that is, by using the word "and." If only one of the alternatives is proved beyond a reasonable doubt, that is sufficient for conviction, so long as you agree unanimously as to that alternative.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B8.1 (Apr. 2024 rev.).

Request to Charge No. 12
Concealment Money Laundering
18 U.S.C. § 1956

It's a Federal crime to knowingly engage in certain kinds of financial transactions commonly known as money laundering.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

(1) the Defendant knowingly conducted or tried to conduct financial transactions;

(2) the Defendant knew that the money or property involved in the transaction were the proceeds of some kind of unlawful activity;

(3) money or property did come from an unlawful activity, specifically bank fraud or wire fraud; and

(4) the Defendant knew that the transaction was designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or the control of the proceeds.

To "conduct a transaction" means to start or finish a transaction, or to participate in a transaction at any point.

A "transaction" means a purchase, sale, loan, promise, gift, transfer, delivery, or other disposition of money or property. A transaction with a financial institution also includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, use of a safe deposit box, or purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument.

A "financial transaction" means –

- a transaction that in any way or to any degree affects interstate or foreign commerce by sending or moving money by wire or other means; or
- a transaction that in any way or to any degree affects interstate or foreign commerce by involving one or more "monetary instruments." The phrase "monetary instruments" includes coins or currency of any country, travelers or personal checks, bank checks or money orders, or investment securities or negotiable instruments in a form that allows ownership to transfer on delivery; or
- a transaction that in any way or to any degree affects interstate or foreign commerce by involving the transfer of title to any real property, vehicle, vessel or aircraft; or
- a transaction involving the use of a financial institution that is involved in interstate or foreign commerce, or whose activities affect, interstate or foreign commerce in any way or degree. The phrase "financial institution" includes a bank insured by the Federal Deposit Insurance Corporation (FDIC).

"Interstate or foreign commerce" means trade and other business activity between people or businesses in at least two states or between people or businesses in the United States and people or businesses outside the United States.

To know "that the money or property involved in the transaction came from some kind of unlawful activity" is to know that the money or property came from an activity that's a felony under state, Federal, or foreign law.

The term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of the activity.

The phrase "specified unlawful activity" means bank fraud or wire fraud, which I have already explained to you.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases O74.2 (Apr. 2024 rev.) (as modified).

Request to Charge No. 13
Transactional Money Laundering
18 U.S.C. § 1957

It's a Federal crime for anyone to engage in certain kinds of financial transactions commonly known as money laundering.

The Defendant can be found guilty of this offense only if all the following are proved beyond a reasonable doubt;

(1) the Defendant knowingly engaged or attempted to engage in a monetary transaction;

(2) the Defendant knew the transaction involved property or funds that were the proceeds of some criminal activity;

(3) the property had a value of more than $10,000;

(4) the property was in fact proceeds of bank fraud or wire fraud; and

(5) the transaction took place in the United States.

The term "monetary transaction" means the deposit, withdrawal, transfer, exchange of funds or a monetary instrument by, through, or to a financial institution in a way that affects interstate commerce.

A "financial institution" means a bank insured by the Federal Deposit Insurance Corporation (FDIC).

The term "proceeds" means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of the activity.

It doesn't matter whether the Defendant knew the precise nature of the crime or that the property came from committing bank fraud or wire fraud. But the Government must prove that the Defendant knew that the property involved in the monetary transaction was obtained or derived from committing some crime.

Also it doesn't matter whether all the property involved was derived from a crime. The Government only has to prove that more than[5] $10,000 worth of the property was obtained or derived from committing a crime.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases O74.6 (Apr. 2024 rev.) (as modified).

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[5] Language added for consistency with statute, which requires that the property have a value of *more than* $10,000. *See* 18 U.S.C. § 1957.

Request to Charge No. 14
Aiding and Abetting; Agency
18 U.S.C. § 2

It's possible to prove the Defendant guilty of a crime even without evidence that the Defendant personally performed every act charged.

Ordinarily, any act a person can do may be done by directing another person, or "agent." Or it may be done by acting with or under the direction of others.

A Defendant "aids and abets" a person if the Defendant intentionally joins with the person to commit a crime.

A Defendant is criminally responsible for the acts of another person if the Defendant aids and abets the other person. A Defendant is also responsible if the Defendant willfully directs or authorizes the acts of an agent, employee, or other associate.

But finding that a Defendant is criminally responsible for the acts of another person requires proof that the Defendant intentionally associated with or participated in the crime—not just proof that the Defendant was simply present at the scene of a crime or knew about it.

In other words, you must find beyond a reasonable doubt that the Defendant was a willful participant and not merely a knowing spectator.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases S7 (Apr. 2024 rev.).

Request to Charge No. 15
On or About a Particular Date

You'll see that the indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the offense occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B9.2 (Apr. 2024 rev.).

Request to Charge No. 16
Good-Faith Defense[6]

"Good faith" is a complete defense to a charge that requires intent to defraud. A defendant isn't required to prove good faith. The Government must prove intent to defraud beyond a reasonable doubt.

An honestly held opinion or an honestly formed belief cannot be fraudulent intent – even if the opinion or belief is mistaken. Similarly, evidence of a mistake in judgment, an error in management, or carelessness can't establish fraudulent intent.

But an honest belief that a business venture would ultimately succeed doesn't constitute good faith if the Defendant intended to deceive others by making representations the Defendant knew to be false or fraudulent.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases S17 (Apr. 2024 rev.).

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[6] The Defendant proposes this instruction. The government notes that this instruction should only be given if there is an evidentiary basis for the request. As noted in the cover page, the government reserves objection if there is no support for the charge at the close of all evidence.

Request to Charge No. 17
Caution: Punishment
Single Defendant, Multiple Counts

Each count of the indictment charges a separate crime. You must consider each crime and the evidence relating to it separately. If you find the Defendant guilty or not guilty of one crime, that must not affect your verdict for any other crime.

I caution you that the Defendant is on trial only for the specific crimes charged in the indictment. You're here to determine from the evidence in this case whether the Defendant is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether the Defendant is guilty. If you find the Defendant guilty, the punishment is for the Judge alone to decide later.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B10.2 (Apr. 2024 rev.).

Request to Charge No. 18

Note-taking

You've been permitted to take notes during the trial. Most of you—perhaps all of you—have taken advantage of that opportunity. You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases S5 (Apr. 2024 rev.).

Request to Charge No. 19
Duty to Deliberate

Your verdict, whether guilty or not guilty, must be unanimous—in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges—judges of the facts. Your only interest is to seek the truth from the evidence in the case.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B11 (Apr. 2024 rev.).

Request to Charge No. 20
Verdict

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the marshal. The marshal will bring it to me and I'll respond as promptly as possible—either in writing or by talking to you in the courtroom. But I caution you not to tell me how many jurors have voted one way or the other at that time.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B12 (Apr. 2024 rev.).

<u>Request to Charge No. 21</u>

Confession or Statement of a Single Defendant

If the Government offers evidence that a Defendant made a statement or admission to someone after being arrested or detained, you must consider that evidence with caution and great care.

You must decide for yourself (1) whether the Defendant made the statement, and (2) if so, how much weight to give to it. To make these decisions, you must consider all the evidence about the statement – including the circumstances under which it was made.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases S2.1 (Apr. 2024 rev.).

Request to Charge No. 22
Explanatory Instruction
Transcript of Tape Recorded Conversation

Members of the Jury: Exhibit _____ has been identified as a typewritten transcript of the oral conversation heard on the tape recording received in evidence as Exhibit _____. The transcript also purports to identify the speakers engaged in the conversation.

I've admitted the transcript for the limited and secondary purpose of helping you follow the content of the conversation as you listen to the tape recording and also to help you identify the speakers.

But you are specifically instructed that whether the transcript correctly reflects the content of the conversation or the identity of the speakers is entirely for you to decide based on your own evaluation of the testimony you have heard about the preparation of the transcript, and from your own examination of the transcript in relation to hearing the tape recording itself as the primary evidence of its own contents.

If you determine that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases T3 (Apr. 2024 rev.).

Request to Charge No. 23
Knowingly

The word "knowingly" means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

~~The word "willfully" means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something the law forbids before you can find that the person acted "willfully," the person need not be aware of the specific law or rule that his conduct may be violating.~~[7]

Eleventh Circuit Pattern Jury Instructions, Criminal Cases B9.1A (Apr. 2024 rev.).

[7] The Defendant proposes this instruction, which includes explanations of both "knowingly" and "willfully." The government objects to inclusion of the explanation regarding "willfully." None of the charged offenses require that the Defendant acted "willfully," as that term is defined in B9.1A. The Court should not instruct the jury on this term because it is irrelevant to the charges and instructing the jury on an irrelevant term is likely to mislead and confuse the jury. The parties agree that the Court should instruct the jury concerning "knowingly."

Request to Charge No. 24
Bank Fraud
18 U.S.C. § 1344

It's a Federal crime to carry out or attempt to carry out a scheme to defraud a financial institution, or to get money or property owned or controlled by a financial institution by using false pretenses, representations, or promises.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

(1) the Defendant knowingly carried out or attempted to carry out a scheme to defraud a financial institution, or to get money, assets, or other property from a financial institution, by using false or fraudulent pretenses, representations, or promises about a material fact;
(2) the false or fraudulent pretenses, representations, or promises were material;
(3) the Defendant intended to defraud the financial institution; and
(4) the financial institution was federally insured.

A "scheme to defraud" includes any plan or course of action intended to deceive or cheat someone out of money or property by using false or fraudulent pretenses, representations, or promises relating to a material fact.

A statement or representation is "false" or "fraudulent" if it is about a material fact that the speaker knows is untrue or makes with reckless indifference as to the truth and makes with intent to defraud. A statement or representation may be "false" or "fraudulent" when it's a half truth or effectively conceals a material fact and is made with the intent to defraud.

A "material fact" is an important fact that a reasonable person would use to decide whether to do or not do something. A fact is "material" if it has the capacity or natural tendency to influence a person's decision. It doesn't matter whether the decision-maker actually relied on the statement or knew or should have known that the statement was false.

To act with "intent to defraud" means to act knowingly and with the specific intent to use false or fraudulent pretenses, representations, or promises to obtain money or property. Proving intent to defraud does not require proof that the Defendant acted with the intent to cause the victim economic loss.[8]

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[8] The government proposes this instruction, which amends the explanation of "intent to defraud" that appears in the current Pattern Instruction, in response to the Supreme Court's recent holding in *Kousisis*.

The Pattern Instructions for bank fraud (O52) and wire fraud (O51) both state:

> To act with "intent to defraud" means to act knowingly and with the specific intent to use false or fraudulent pretenses, representations, or promises to cause loss of injury. Proving intent to deceive alone, without the intent to cause loss or injury, is not sufficient to prove intent to defraud.

This explanation of "intent to defraud" was added in response to the Eleventh

The Government doesn't have to prove all the details alleged in the indictment about the precise nature and purpose of the scheme. It also doesn't have to prove that the alleged scheme actually succeeded in defrauding anyone. What must be proved beyond a reasonable doubt is that the Defendant knowingly attempted or carried out a scheme substantially similar to the one alleged in the indictment.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases O52 (Apr. 2024 rev.) (as modified).

Circuit's decision in *United States v. Takhalov*, 827 F.3d 1307 (11th Cir. 2016), but that decision was abrogated by the Supreme Court's recent decision in *Kousisis* and is no longer a correct statement of law. The Supreme Court held that a defendant commits wire fraud "by scheming to obtain the victim's money or property, regardless of whether he seeks to leave the victim economically worse off." *Kousisis v. United States*, 605 U.S. _____ (2025). In other words, the government does not have to prove that the defendant acted with the intent to cause the victim economic loss. *Id.* Accordingly, both the bank fraud and wire fraud instructions must be amended to remove and replace language inconsistent with *Kousisis*.

The Defendant objects to the amended instruction on *ex post facto* grounds.

Request to Charge No. 25
Aggravated Identity Theft
18 U.S.C. § 1028A(a)(1)

It's a Federal crime to commit aggravated identity theft.

The Defendant can be found guilty of aggravated identity theft only if all the following facts are proved beyond a reasonable doubt:

(1) the Defendant knowingly transferred, possessed, or used another person's means of identification;

(2) without lawful authority; and

(3) during and in relation to the bank fraud scheme alleged in Count 1.

A "means of identification" is any name or number used, alone or together with any other information, to identify a specific person, including a name, social security number, date of birth, officially issued driver's license or identification number, alien registration number, passport number, employer or taxpayer identification number, or electronic identification number or routing code. It can also include a fingerprint, voice print or other biometric data.

The Government must prove that the Defendant knew that the means of identification, in fact, belonged to another actual person, living or dead, and not a fictitious person.

The Government must prove that the Defendant knowingly transferred, possessed, or used another person's identity "without lawful authority." The Government does not have to prove that the Defendant stole the means of identification. The Government is required to prove the Defendant transferred, possessed, or used the other person's means of identification for an unlawful or illegitimate purpose.

The Government also must prove that the means of identification was possessed "during and in relation to" the crime alleged in the indictment. The phrase "during and in relation to" means that there must be a firm connection between the Defendant, the means of identification, and the crime alleged in the indictment. The means of identification must have helped with some important function or purpose of the crime, and not simply have been there accidentally or coincidentally. <u>The misuse of another person's means of identification must be at the crux of the bank fraud scheme alleged in Count 1 and not merely an ancillary feature</u>.[9]

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[9] The government proposes this instruction, which removes and replaces language in the Pattern Instruction that is inconsistent with the Supreme Court's holding in *Dubin v. United States*, 599 U.S. 110 (2023).

Eleventh Circuit Pattern Jury Instructions, Criminal Cases O40.3 (Apr. 2024 rev.) (as modified).

The Pattern Instruction for aggravated identity theft (O40.3) includes the statement, "The means of identification at least must facilitate, or have the potential of facilitating, the crime alleged in the indictment." This sentence is an incorrect statement of law. In *Dubin*, the Supreme Court held that evidence that the means of identification facilitated the predicate offense was insufficient to prove a conviction for aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1). *Dubin v. United States*, 599 U.S. 110, 122 (2023). Instead, misuse of the means of identification must "be at the crux of the criminality" and not an ancillary feature. *Id.* at 114, 127-32.

While the Defendant agrees that the revised and underlined language is appropriate, he proposes also including, "Being 'at the crux of the criminality' requires more than a causal relationship, such as 'facilitation' of the offense or being a but-for cause of its 'success.'" The government objects to including this additional language. First, the proposed amendment removes any reference to "facilitation" and introduction of this term is unnecessary and confusing. Second, this additional sentence provides little guidance to the jury about how to evaluate whether the misuse of the means of identification is the crux of the bank fraud scheme. If the Court determines that further instruction is needed, then the government may propose additional language consistent with *Dubin*, such as: "[W]ith fraud or deceit crimes . . . the means of identification must be used in a manner that is fraudulent or deceptive." *Dubin*, 599 U.S. at 131-32.

Request to Charge No. 26
Wire Fraud
18 U.S.C. § 1343

It's a Federal crime to use interstate wire communications to carry out a scheme to defraud someone else.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

(1) the Defendant knowingly devised or participated in a scheme to defraud someone by using false or fraudulent pretenses, representations, or promises;

(2) the false pretenses, representations, or promises were about a material fact;

(3) the Defendant acted with the intent to defraud; and

(4) the Defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

A "scheme to defraud" means any plan or course of action intended to deceive or cheat someone out of money or property by using false or fraudulent pretenses, representations, or promises.

A statement or representation is "false" or "fraudulent" if it is about a material fact that the speaker knows is untrue or makes with reckless indifference to the truth, and makes with the intent to defraud.

A statement or representation may be "false" or "fraudulent" when it is a half-truth, or effectively conceals a material fact, and is made with the intent to defraud.

A "material fact" is an important fact that a reasonable person would use to decide whether to do or not do something.

A fact is "material" if it has the capacity or natural tendency to influence a person's decision. It doesn't matter whether the decision-maker actually relied on the statement or knew or should have known that the statement was false.

To act with "intent to defraud" means to act knowingly and with the specific intent to use false or fraudulent pretenses, representations, or promises to obtain money or property. Proving intent to defraud does not require proof that the Defendant acted with the intent to cause the victim economic loss.[10]

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[10] The government proposes this instruction, which amends the explanation of "intent to defraud" that appears in the current Pattern Instruction, in response to the Supreme Court's recent holding in *Kousisis*.

The Pattern Instructions for bank fraud (O52) and wire fraud (O51) both state:

> To act with "intent to defraud" means to act knowingly and with the specific intent to use false or fraudulent pretenses, representations, or promises to cause loss of injury. Proving intent to deceive alone, without the intent to cause loss or injury, is not sufficient to prove intent to defraud.

The Government does not have to prove all the details alleged in the indictment about the precise nature and purpose of the scheme. It also doesn't have to prove that the material transmitted by interstate wire was itself false or fraudulent; or that using the wire was intended as the specific or exclusive means of carrying out the alleged fraud; or that the Defendant personally made the transmission over the wire. And it doesn't have to prove that the alleged scheme actually succeeded in defrauding anyone.

To "use" interstate wire communications is to act so that something would normally be sent through wire communications in the normal course of business.

This explanation of "intent to defraud" was added in response to the Eleventh Circuit's decision in *United States v. Takhalov*, 827 F.3d 1307, but that decision was abrogated by the Supreme Court's decision in *Kousisis* and is no longer a correct statement of law. The Supreme Court held that a defendant commits wire fraud "by scheming to obtain the victim's money or property, regardless of whether he seeks to leave the victim economically worse off." *Kousisis v. United States*, 605 U.S. _____ (2025). In other words, the government does not have to prove that the defendant acted with the intent to cause the victim economic loss. *Id.* Accordingly, both the bank fraud and wire fraud instructions must be amended to remove and replace language inconsistent with *Kousisis*.

The Defendant objects to the amended instruction on *ex post facto* grounds.

Each separate use of the interstate wire communications as part of the scheme to defraud is a separate crime.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases O51 (Apr. 2024 rev.) (as modified).

Request to Charge No. 27

Testimony of Accomplice, Informer, or Witness with Immunity[11]

You must consider some witnesses' testimony with more caution than others.

For example, paid informants, witnesses who have been promised immunity from prosecution, or witnesses who hope to gain more favorable treatment in their own cases, may have a reason to make a false statement in order to strike a good bargain with the Government.

So while a witness of that kind may be entirely truthful when testifying, you should consider that testimony with more caution than the testimony of other witnesses.

Eleventh Circuit Pattern Jury Instructions, Criminal Cases S1.1 (Apr. 2024 rev.).

[11] The Defendant proposes this instruction. The government objects because at this time, it has not identified an "accomplice, informer, or witness with immunity" who would testify during its case-in-chief. Should that circumstance change, or if the Defendant provides sufficient justification for including the instruction, the government does not object to the language in the Pattern Instruction being given.