

COURT'S EXHIBIT 3

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

JURY INSTRUCTIONS

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, the parties will have an opportunity to make their closing arguments. After that, I will have one or two additional instructions and you will then 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.

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.

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.

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.

I'll remind you that sometimes the parties have agreed that certain facts are true. These are the stipulations that we've already discussed. You must treat these facts as proved for this case.

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.

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?

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.

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.

The indictment charges ten 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. Counts 2 and 3 charge the Defendant with wire fraud. Counts 4 through 6 charge the Defendant with concealment money laundering, and Counts 7 through 10 charge the Defendant with transactional money laundering. I will explain the law governing those substantive offenses in a moment.

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.

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.

Count 1 charges the Defendant with bank fraud. 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 the victim’s money or property. Proving intent to defraud does not require proof that the Defendant acted with the intent to leave the victim economically worse off.

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.

Counts 2 and 3 charge the Defendant with wire fraud. 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.

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

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 the victim’s money or property. Proving intent to defraud does not require proof that the Defendant acted with the intent to leave the victim economically worse off.

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.

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

As I said before, Counts 4 through 6 charge the Defendant with concealment money laundering. 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.

Again, Counts 7 through 10 charge the Defendant with transactional money laundering. 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 \$10,000 worth of the property was obtained or derived from committing a crime.

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.

You heard evidence concerning two Social Security numbers allegedly acquired by the Defendant prior to the offenses charged in the indictment. As I mentioned before, you must not consider this evidence to decide if the Defendant engaged in the activity alleged in the indictment. But you may consider this evidence to decide whether:

- the Defendant had the state of mind or intent necessary to commit the crime charged in the indictment;
- the Defendant had a motive or the opportunity to commit the acts charged in the indictment;
- the Defendant acted according to a plan or in preparation to commit a crime; or
- the Defendant committed the acts charged in the indictment by accident or mistake

“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.

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.

You've been permitted to take notes during the trial. Some 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.

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.

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.