UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 22-20290-CR-BLOOM

UNITED STATES OF AMERICA

vs.

ERIC DEAN SHEPPARD,

Defendant.
_______________________________________/

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, 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 each Defendant guilty beyond a reasonable doubt.

The Duty to Follow Instructions and the Presumption of Innocence

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 if the Defendant chose not to testify, you cannot consider that in any way while making your decision The Government

must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

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.

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.

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?

Impeachment of Witnesses Because of Inconsistent Statements

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 your decision may depend on whether the misstatement is 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.

Expert Witnesses

When scientific, technical, or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that doesn't mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

Introduction to Offense Instructions

The Superseding Indictment charges 14 separate crimes, called "Counts," against the Defendant Eric Dean Sheppard. Each Count has a number. You'll be given a copy of the

Superseding Indictment to refer to during your deliberations.

Counts 1 through 14 charge that the Defendant committed what are called "substantive offenses." Specifically, in Counts 1 through 9, the Defendant is charged with wire fraud. In Counts 10 through 14, the Defendant is charged with aggravated identity theft.

I will explain the law governing those substantive offenses in a moment.

Conjunctively Charged Counts

Where a statute specifies multiple alternative ways in which an offense may be committed, the Superseding 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, so long as you agree unanimously as to that alternative.

Wire Fraud
18 U.S.C. § 1343

It is 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, or to obtain money or property by using false 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 some wire 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 do something with the specific intent to deceive or cheat someone, usually for personal financial gain or to cause financial loss to someone else. 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 Superseding 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 use of the wires 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.

Aggravated Identity Theft
18 U.S.C. § 1028A(a)(1)

The law provides for an enhanced penalty when anyone commits aggravated identity theft during and in relation to other certain specified felony offenses.

The Defendant can be found guilty of that offense 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;

(3) during and in relation to wire fraud, as charged in Counts 2, 3, 6, 8 and 9 of the Superseding Indictment.

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 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, only that there was no legal authority for the Defendant to transfer, possess, or "use" them.

The Government must prove that the Defendant knew that the identification, in fact, belonged to another actual person, not a fictitious person.

The Government also must prove that the means of identification was transferred, possessed, or used "during and in relation to" the alleged predicate offense, wire fraud. A Defendant transfers, possesses, or "uses" another person's means of identification "during and in relation to" the predicate offense wire fraud when the transfer, possession, or use is "at the crux of" what makes the conduct criminal. That requires that there be a "genuine nexus" between the transfer, possession, or use of a means of identification and the predicate offense.

For a crime involving fraud or deceit, the Defendant's use of the means of identification of another person must have been used not merely as an ancillary feature of the wire fraud. Rather, the means of identification specifically must be a "key mover in the criminality," meaning that it must be used in a manner that is fraudulent or deceptive.

Aiding and Abetting; Agency
18 U.S.C. § 2

It's possible to prove the Defendant(s) guilty of a crime even without evidence that the Defendant(s) 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.

Lack of Knowledge Defense

The Defendant contends that he was unaware of any misrepresentations and false statements in the government loan applications and supporting materials submitted on behalf of his companies and, therefore, he did not have the intent to defraud any lending institution or governmental agency. The Defendant contends that he did not knowingly participate in any scheme to defraud the lenders or the SBA of money and therefore he is not criminally responsible for any misstatements in the applications or false information in supporting documents. If you find that the Defendant acted without knowledge of misrepresentations and false statements or without the intent to defraud a lender as to any particular count(s), you must find Mr. Sheppard "Not Guilty" on such count(s).

Specifically with respect to the forged 1065 tax returns, the Defendant is charged with the crime of Wire Fraud for their submission in connection with PPP loan applications. The Defendant contends he was unaware of any forgery or the submission of any forged or falsified tax returns submitted constituting the Wire Fraud charges involving the PPP program. If you find that the Defendant did not knowingly submit forged tax returns, you must find the Defendant "Not Guilty" of such counts.

Good-Faith Defense

"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.

Similar Acts Evidence
Rule 404(b)

During the trial, you heard evidence of acts allegedly done by the Defendant on other occasions that may be similar to acts with which the Defendant is currently charged. You must not consider any of this evidence to decide whether the Defendant engaged in the activity alleged in the indictment. This evidence is admitted and may be considered by you for the limited purpose of assisting you in determining 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.

On or About; Knowingly - Generally

You'll see that the Superseding Indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the crime 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.

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

Summaries and Summary Testimony

There has been summary testimony from witnesses at this trial and the Court permitted this testimony in order to aid you in considering the evidence. Therefore, you are to give no greater consideration to summary testimony than you would give to the evidence upon which that testimony is based.

It is for you to decide whether the summary testimony or chart offered by a witness correctly presented the information contained in the documents on which they were based, and what weight to give such evidence.

Caution: Punishment
(Multiple Counts)

Each Count in the Superseding Indictment charges a separate crime against the Defendant. You must consider each crime and the evidence relating to it separately. If you find a Defendant guilty of one crime, that must not affect your verdict for any other crime charged.

I caution you that the Defendant is on trial only for the specific crimes charged in the Superseding 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 a Defendant s guilty. If you find a Defendant guilty, the punishment is for the Judge alone to decide later.

Note-Taking

You have 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.

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.

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.

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______________________________________/

VERDICT FORM

We, the Jury, unanimously find the Defendant, ERIC DEAN SHEPPARD:

As to Count 1 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 2 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 3 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 4 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 5 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 6 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 7 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 8 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 9 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 10 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count11 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 12 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 13 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

As to Count 14 of the Superseding Indictment:

GUILTY __________ NOT GUILTY ______

SO SAY WE ALL

____
FOREPERSON please sign)

Date: __________________