UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v. **CRIMINAL NO. 2:24-cr-00192**

KISHA SUTTON – 1
SHAMIESE WRIGHT - 2

PROPOSED JURY INSTRUCTIONS OF THE UNITED STATES

Comes now the United States of America, by Jonathan T. Storage, Assistant United States Attorney for the Southern District of West Virginia, and respectfully submits the following proposed jury instructions.

Respectfully submitted,

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/s/ Jonathan T. Storage

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UNITED STATES PROPOSED INSTRUCTION NO. 1

COUNT ONE: AIDING AND ABETTING BANK FRAUD
(18 U.S.C. §§ 1344 & 2)

NATURE OF THE OFFENSE CHARGED

Counts One of the Second Superseding Indictment charges defendants KISHA SUTTON and SHAMIESE WRIGHT with violating Title 18, United States Code, Sections 1344 and 2.

Count One of the Second Superseding Indictment charges that between no later than on or about April 19, 2021, and continuing until at least on or about May 21, 2021, at or near Charleston, Kanawha County, West Virginia, within the Southern District of West Virginia, defendants KISHA SUTTON and SHAMIESE WRIGHT, aided and abetted by each other, knowingly executed and attempted to execute a scheme or artifice to defraud a financial institution.

On or about April 19, 2021, defendant KISHA SUTTON caused the submission of a PPP loan application and a Schedule C to Financial Institution 1 on behalf of defendant SHAMIESE WRIGHT and with defendant SHAMIESE WRIGHT's authorization. The application and the Schedule C stated that defendant SHAMIESE WRIGHT was a sole proprietor of a business that was established January 1, 2017. The application stated that in 2020, the business had a gross income of $75,000. As part of the application, a 2020 Schedule C was submitted listing gross receipts of $75,000 and a net profit of

$48,750. In fact, defendant SHAMIESE WRIGHT did not have a business in 2020 with those gross receipts and profit. Defendant SHAMIESE WRIGHT's 2020 tax return listed $21,716 in wages and no business income or expenses.

Defendant SHAMIESE WRIGHT applied for unemployment compensation throughout 2020 and stated, several times, that she was not self-employed. Financial Institution 1 funded defendant SHAMIESE WRIGHT's PPP loan for $15,625 on or about May 7, 2021. Between on or about May 7, 2021, and on or about May 21, 2021, Defendant SHAMIESE WRIGHT, within the Southern District of West Virginia, remitted $3,000 of the fraudulent PPP loan proceeds to defendant KISHA SUTTON. Defendant SHAMIESE WRIGHT spent the remainder of the PPP loan proceeds on personal, ineligible expenses.

UNITED STATES PROPOSED INSTRUCTION NO. 2

COUNT ONE: AIDING AND ABETTING BANK FRAUD
(18 U.S.C. §§ 1344 & 2)

ELEMENTS OF THE OFFENSE

Aiding and abetting a crime possesses the same elements as the underlying offense.

First: A person aids and abets a crime when she intends to facilitate that offense's commission.

Second: A person commits bank fraud when he knowingly executes, or attempts to execute, a scheme or artifice -

a. to defraud a financial institution; or

b. to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises.

United States v. Draven, 77 F.4th 307, 318 (4th Cir. 2023); Rosemond v. United States, 572 U.S. 65, 76 (2014); 18 U.S.C. § 1344.

UNITED STATES PROPOSED INSTRUCTION NO. 3

ALTERNATIVE METHODS TO PROVING BANK FRAUD

Bank fraud may be established under two alternative methods: (1) defrauding a financial institution OR (2) obtaining property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises.

Where a statute defines two or more ways in which an offense may be committed, all may be alleged in the conjunctive in one count.

United States v. Saintvil, No. 22-10004, 2023 WL 3644976, at *4 (11th Cir. May 25, 2023), cert. denied, 144 S. Ct. 1067, (2024), reh'g denied, 144 S. Ct. 2555, (2024).

UNITED STATES PROPOSED INSTRUCTION NO. 4

DEFINITION OF FINANCIAL INSTITUTION

As used in the Superseding Indictment, the term "financial institution" means a mortgage lending business.

18 U.S.C. § 20(10).

UNITED STATES PROPOSED INSTRUCTION NO. 5

DEFINITION OF MORTGAGE LENDING BUSINESS

The term “mortgage lending business” means an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce.

18 U.S.C. § 27.

UNITED STATES PROPOSED INSTRUCTION NO. 6

DEFINITION OF SCHEME OR ARTIFICE

The words "scheme or artifice" include any plan or course of action intended to deceive or cheat others.

A "scheme or artifice to defraud" may be shown by deceptive acts or contrivances intended to hide information, mislead, avoid suspicion, or avert further inquiry into a material matter.

Pattern Jury Instructions for Federal Criminal Cases, Eric Wm. Ruschky, 2020 Online Edition (pg. 262); United States v. Colton, 231 F.3d 890, 901 (4th Cir. 2000).

UNITED STATES PROPOSED INSTRUCTION NO. 7

DEFINITION OF DEFRAUD

"To defraud" means wronging one in his property rights by dishonest methods or schemes and usually signifies the deprivation of something of value by trick, deceit, chicanery, or overreaching.

Pattern Jury Instructions for Federal Criminal Cases, Eric Wm. Ruschky, 2020 Online Edition (pg. 262).

UNITED STATES PROPOSED INSTRUCTION NO. 8

SHOWING OF ACTUAL FINANCIAL LOSS OR INTENT TO CAUSE FINANCIAL LOSS NOT REQUIRED

The bank fraud statute does not require the government to show any ultimate financial loss or a showing of intent to cause financial loss.

Shaw v. United States, 580 U.S. 63, 67 (2016).

UNITED STATES PROPOSED INSTRUCTION NO. 9

"KNOWINGLY"

An act is performed "knowingly" if it is done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

United States v. Jones, 735 F.2d 785, 789 (4th Cir. 1984).

UNITED STATES PROPOSED INSTRUCTION NO. 10

COUNT TWO: AIDING AND ABETTING CONCEALMENT MONEY LAUNDERING (18 U.S.C. §§ 1956 & 2)

ELEMENTS OF THE OFFENSE

Aiding and abetting a crime possesses the same elements as the underlying offense.

Title 18, United States Code, Section 1956(a)(1)(B)(i), makes it a crime to conduct financial transactions with the intent to conceal the proceeds of an unlawful activity. For you to find the defendants guilty, the government must prove each of the following beyond a reasonable doubt:

First, that the defendants conducted or attempted to conduct a financial transaction having at least a minimal effect on interstate commerce or involving the use of a financial institution which is engaged in, or the activities of which have at least a minimal effect on, interstate or foreign commerce;

Second, that the property that was the subject of the transaction involved the proceeds of specified unlawful activity;

Third, that the defendant knew that the property involved represented the proceeds of some form of unlawful activity; and

Fourth, that the defendant knew that the transaction was designed in whole or in part, to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the unlawful activity.

The government need not prove that all of the money involved in the transaction constituted the proceeds of the criminal activity; it is sufficient if the government proves that at least part of the money represented such proceeds.

The mere receipt of funds can constitute a transaction subject to criminal prosecution under § 1956.

Eric Wm. Ruschky, Pattern Jury Instructions for Federal Criminal Cases - District of South Carolina, 2020 Online Edition at page 349 (https://www.scd.uscourts.gov/pji/) (last visited June 30, 2025); United States v. Wilkinson, 137 F.3d 214, 222 (4th Cir. 1998) (en banc) ("[W]hen the funds used in a particular transaction originated from a single source of commingled, legally-and illegally-acquired funds, it may be presumed that the transacted funds, at least up to the full amount originally derived from crime, were the proceeds of the criminal activity."); United States v. Blair, 661 F.3d 755, 764 (4th Cir. 2011).

UNITED STATES PROPOSED INSTRUCTION NO. 11

MONEY LAUNDERING DEFINITIONS

The term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is "specified unlawful activity," as defined by the statute.

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 such activity.

The term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction.

The term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

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

"Interstate commerce" includes commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia.

The term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery.

For the purposes of this criminal case, the "specified unlawful activity" alleged is aiding and abetting bank fraud.

18 U.S.C. § 1956; 18 U.S.C. § 1961(1); 18 U.S.C. § 10.

UNITED STATES PROPOSED INSTRUCTION NO. 12

AIDING AND ABETTING

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

To convict a defendant of being an aider and abettor, the government must show that the defendant's conduct amounted to counseling, assisting, or facilitating the commission of a federal crime.

18 U.S.C. § 2; United States v. Honeycutt, 311 F.2d 660, 662 (4th Cir. 1962).

UNITED STATES PROPOSED INSTRUCTION NO. 13

"WILLFUL BLINDNESS"

The United States may prove that the defendant acted "knowingly" by proving, beyond a reasonable doubt, that the defendant deliberately closed his eyes to what would otherwise have been obvious to him. No one can avoid responsibility for a crime by deliberately ignoring what is obvious. A finding beyond reasonable doubt of the intent of the defendant to avoid knowledge or enlightenment would permit the jury to infer knowledge. Stated another way, a defendant's knowledge of a particular fact may be inferred from a deliberate or intentional ignorance or deliberate or intentional blindness to the existence of that fact.

One may not willfully or intentionally remain ignorant of a fact material or important to his conduct to escape the consequences of criminal law. If you find beyond a reasonable doubt that the defendant was aware of a certain fact but he deliberately and consciously avoided confirming this fact so he could deny knowledge if apprehended, then you may treat this deliberate avoidance as the equivalent of knowledge, unless you find the defendant actually believed this fact not to be true. A showing of negligence, mistake or even foolishness on the part of the defendant is not enough to support an inference of knowledge.

It is, of course, entirely up to you as to whether you find any deliberate ignorance or deliberate closing of the eyes and the inferences to be drawn from any such evidence.

You may not infer that the defendant had knowledge, however, from proof of a mistake, negligence, carelessness, or a belief in an inaccurate proposition.

1A O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, ' 17.09 (6th ed. 2008); United States v. Guay, 108 F.3d 545, 551 (4th Cir. 1997); United States v. Hopkins, 53 F.3d 533 (2d Cir. 1995), cert. denied, 516 U.S. 1072 (1996); United States v. Gordon, 754 F. App'x. 171 (4th Cir. 2018) (jury could infer defendant willfully avoided learning that funds came from illegal activity by failing to ask questions of person who supplied the funds, or notice obvious red flags raised by the odd nature of transactions) (evidence at trial supported both actual knowledge and willful blindness; if jury concluded defendant lacked actual knowledge as to the nature of the funds, they could conclude he willfully avoided learning this fact); United States v. Campbell, 977 F.2d 854, 859 (4th Cir. 1992) (real estate agent willfully blind to client's use of drug proceeds to purchase house); United States v. Campbell, 977 F.2d 854, 859 (4th Cir. 1992) (real estate agent willfully blind to client's use of drug proceeds to purchase house); United States v. Vinson, 852 F.3d 333, 357 (4th Cir. 2017) (where evidence suggested, "at a minimum," defendant failed to ask questions that might have incriminated him, trial court acted well within its discretion in giving willful blindness instruction); United States v. Hoffler-Riddick, No. 4:05cr9, 2006 WL 2381859, *5 (E.D. Va. Aug. 16, 2006) (person who has a "strong suspicion" that the money a drug dealer is using to conduct a financial transaction is drug proceeds is willfully blind if she deliberately avoids learning the truth) ("a willful blindness instruction is appropriate even when there is evidence of both actual knowledge and deliberate ignorance"); aff'd in part, rev'd in part, & remanded by 253 F. App'x. 249 (4th Cir. 2007); United States v. Sterling, 701 F. App'x. 196 (4th Cir. 2017) (willful blindness instruction appropriate where defendant in lottery scam received large sums of cash and wire transfers from persons she did not know and subsequently transferred most of those funds to co-conspirators in Jamaica; evidence also showed defendant's fax machine was used in the middle of the night to send documents furthering the lottery scam); United States v. Nicholson, 176 F.

App'x. 386, 400 (4th Cir. 2006) (willful blindness instruction as to defendant's knowledge of the source of the money she used to buy a house was appropriate where the money came from defendant's son, who dealt drugs from defendant's home and had no other visible source of income); United States v. Hatcher, 132 F. App'x. 468, 475 (4th Cir. 2005) ("a willful blindness instruction is appropriate even when there is evidence of both actual knowledge and deliberate ignorance"); United States v. Hatcher, 132 F. App'x. 468, 475 (4th Cir. 2005) ("a willful blindness instruction is appropriate even when there is evidence of both actual knowledge and deliberate ignorance"); United States v. Matai, 173 F.3d 426 (4th Cir. 1999) (Table) (willful blindness instruction appropriate where there is evidence of deliberate ignorance even though there is also evidence of actual knowledge).

UNITED STATES PROPOSED INSTRUCTION NO. 14

EVIDENCE INFERENCES -- DIRECT AND CIRCUMSTANTIAL

There are two types of evidence from which you may find the truth as to the facts of a case -- direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness.

Circumstantial evidence is where one fact or a chain of facts gives rise to a reasonable inference of another fact. If one fact or group of facts on the basis of common sense and common experience leads you logically and reasonably to infer other facts, then this is circumstantial evidence. Circumstantial evidence is no less valid and no less weighty than direct evidence provided the inferences drawn are logical and reasonable. In a criminal case where a defendant's state of mind is at issue, where there are questions of what the defendant intended or what his purpose was, circumstantial evidence is often an important means of proving what the state of mind was at the time of the events in question. Sometimes it is the only means of proving state of mind.

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. Do not be concerned about whether evidence is "direct evidence" or "circumstantial evidence." You should consider and weigh all of the evidence that was presented to you.

Pattern Jury Instructions of the District Judges Association of the Fifth Circuit, Criminal Cases, Instruction No. 1.08 (1990); 1A O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, ' 12.04 (6th ed. 2008); United States v. Dizdar, 581 F.2d 1031, 1036-37 (2d Cir. 1978).

UNITED STATES PROPOSED INSTRUCTION NO. 15

STATEMENTS OF COUNSEL AND STIPULATIONS

Statements and arguments of counsel are not evidence in the case. When the attorneys on both sides stipulate or agree as to the existence of a fact, you may, however, accept the stipulation as evidence, and regard that fact as being proven. You are not bound by stipulations, however, because the jury alone decides the facts and their importance to the case.

United States v. Muse, 83 F.3d 672, 678 (4th Cir. 1996).

UNITED STATES PROPOSED INSTRUCTION NO. 16

"ON OR ABOUT" -- PROOF OF

You will note the Indictment charges that the offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on a date reasonably near the date alleged.

UNITED STATES PROPOSED INSTRUCTION NO. 17

"AT OR NEAR" -- PROOF OF

You will note the Indictment charges that the offenses were committed "at or near" a certain location. The proof need not establish with certainty the exact location of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed at a location reasonably near the location alleged.

UNITED STATES PROPOSED INSTRUCTION NO. 18

"SYMPATHY"

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the Indictment and the denial made by the not guilty plea of the defendant. This must be decided on the evidence that is presented in this case and not from anything else.

You are to perform this duty without bias or prejudice as to any party. You are not permitted to be governed by sympathy or public opinion. Both the defendant and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

UNITED STATES PROPOSED INSTRUCTION NO. 19

JUDICIAL NOTICE

During the course of this trial, the Court took judicial notice of the fact that the municipalities of Charleston, Kanawha County, West Virginia; South Charleston, Kanawha County, West Virginia; and Huntington, Cabell County, West Virginia, are located in Kanawha County, within the Southern District of West Virginia. Additionally, the Court took judicial notice of provisions contained in the Federal Register relating to the rules and regulations of the Paycheck Protection Program.

Since this is a criminal case, you may, but are not required to, accept as conclusive any facts of which the Court has taken judicial notice. If you choose to accept, as conclusive, any facts which the Court has judicially noted, then such facts may be regarded as evidence in the case without further proof and are to be weighed by you along with other evidence in the case.

1A O’Malley, Grenig & Lee, Federal Jury Practice and Instructions, ‘ 12.03 (6th ed. 2008) (modified).

UNITED STATES PROPOSED INSTRUCTION NO. 20

TAPES AND TRANSCRIPTS

Recordings of various events and conversations have been admitted into evidence. Transcripts of these recordings have been prepared. The recording – not the transcript – is the evidence. Therefore, the transcript is not in evidence. The transcript is only to be used as a guide in following the recording. Your understanding of the recording, rather than the transcript, is to govern your deliberations.

If you detect any discrepancy between the recording and the transcript, you are to consider as evidence only what you observe in the recording.

1A O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, ' 11.10 (6th ed. 2008); United States v. Meredith, 824 F.2d 1418, 1428 (4th Cir. 1987); United States v. Collazo, 732 F.2d 1200, 1203 (4th Cir. 1984); United States v. Long, 651 F.2d 239, 243 (4th Cir. 1981); United States v. Bryant, 480 F.2d 785, 791 (2d Cir. 1973).

UNITED STATES PROPOSED INSTRUCTION NO. 21

VENUE – BANK FRAUD

Pursuant to the Constitution of the United States, a defendant must be tried where the alleged crime was committed.

The Constitution does not limit venue for a crime to one exclusive district - it requires only that venue be determined from the nature of the crime and the location of the acts constituting it.

The selection of venue in a bank fraud prosecution is governed by the general venue statute for federal criminal offenses.

The general venue statute provides that any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Venue for a federal criminal prosecution is to be determined from the nature of the crime alleged and the location of the act or acts constituting it.

There may be more than one appropriate venue for such a federal criminal charge, and a particular venue is not improper simply because the defendant was never physically present there.

Unlike the elements of a charged crime, which must be proven beyond a reasonable doubt, the government must prove venue by a preponderance of the evidence.

United States v. Bankole, 39 F. App'x 839 (4th Cir. 2002);
United States v. Cofield, 11 F.3d 413, 419 (4th Cir. 1993), as amended (Jan. 5, 1994)

UNITED STATES PROPOSED INSTRUCTION NO. 22

VENUE - CONCEALMENT MONEY LAUNDERING

A prosecution under 18 U.S.C. § 1956 may be brought in any district in which the financial or monetary transaction is conducted.

For purposes of § 1956, a transfer of funds from one place to another, by wire or any other means, constitutes a single, continuing transaction.

Any person who conducts any portion of the transaction may be charged in any district in which the transaction takes place.

The term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction.

A person directing others to move money "conducts" a financial transaction.

A receiver of wired funds "conducts" a transaction for the purposes of the money laundering venue provision.

18 U.S.C. § 1956(i)(A); 18 U.S.C. § 1956(i)(3); 18 U.S.C. § 1956(c)(2); United States v. Butler, 211 F.3d 826, 830 (4th Cir. 2000) (defendant aided and abetted § 1957 offense when he directed third party to purchase cashier's checks); United States v. Elder, 90 F.3d 1110, 1125 (6th Cir. 1996).

UNITED STATES PROPOSED INSTRUCTION NO. 23

VENUE – AIDING AND ABETTING

An aider and abettor may be prosecuted in the district in which the principal acted in furtherance of the substantive crime.

United States v. Kibler, 667 F.2d 452, 455 (4th Cir. 1982)

UNITED STATES PROPOSED INSTRUCTION NO. 24

PREPONDERANCE OF THE EVIDENCE

The burden of showing something by a preponderance of the evidence simply requires the jury to believe that the existence of a fact is more probable than its nonexistence.

United States v. Manigan, 592 F.3d 621, 631 (4th Cir. 2010).

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "PROPOSED JURY INSTRUCTIONS OF THE UNITED STATES" has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing this 30th day of June, 2025.

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