UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL NO. 2:24-cr-192

KISHA SUTTON

COURT'S CHARGE TO THE JURY

Members of the jury:

At the outset, I want to thank you for your undivided attention throughout the trial, your care in the consideration of the testimony and exhibits, your patience and understanding when delays were necessary, and your promptness in attending Court.

You have now heard and seen all of the evidence which you may properly consider in determining the facts of the case, and the guilt or innocence of the Defendants as determined by those facts and the law. At this stage in a trial, I am required to state and explain to the jury the law which applies to the case. This statement as to the law of the case is known as a charge, and is presented in the form of instructions. You will have a copy of this charge during your deliberations.

Each instruction is as important as any other. You should draw no inference from the order, language or manner in which these instructions are read. Do not pick out any one statement or instruction and ignore other instructions or parts of instructions. Consider and apply these instructions together as a whole.

FIRST: THE DUTY OF THE JUDGE, THE JURY AND THE ATTORNEYS

The functions of the judge, the jury and the attorneys in a case are quite different. It is the duty of the judge to determine and state the law of the case, preside over the trial, and conform each portion to the law.

As jurors, you have two jobs. First, you must impartially determine from all of the evidence what the facts of this case are. Second, you must apply the rules of law that I give you to those facts in order to determine the innocence or guilt of the defendant with respect to the crime(s) charged in the indictment. Your oath as a juror requires you to accept and apply the law as stated in these instructions to the facts determined by you from all of the evidence. You must not change the law or apply your own idea of what you think the law should be.

It is the duty of the attorneys to present their client's case, the law to the judge, and the facts to the jury; and, in argument, to relate the law to the facts, and thus assist the jury in determining the guilt or innocence of the defendant.

SECOND: THE INDICTMENT

Count One of the Second Superseding Indictment charges that 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 and elsewhere, defendants KISHA SUTTON and SHAMIESE WRIGHT, aided and abetted by each other, did knowingly execute and attempt to execute a scheme to defraud Financial Institution 1 and obtain money owned by and under the custody and control of Financial Institution 1 by means of materially false and fraudulent pretenses, representations, and promises.

Defendant KISHA SUTTON caused the creation and submission of a PPP loan application on behalf of defendant SHAMIESE WRIGHT and with defendant SHAMIESE WRIGHT's authorization in exchange for payment from the fraudulent PPP loan proceeds. In the application, defendant KISHA SUTTON falsely stated the existence of a sole proprietorship that generated $75,000 in gross income. Defendant KISHA SUTTON also caused the creation of a fictitious IRS Form 1040 Schedule C to support the fraudulent PPP loan application that would be submitted to Financial Institution 1. The Schedule C falsely stated that defendant SHAMIESE WRIGHT had operated a sole proprietorship in 2020 that had $75,000 in gross receipts or sales. Financial Institution 1 received the application and Schedule C, and Financial Institution 1 funded the PPP loan. Once the PPP loan was funded, defendant SHAMIESE WRIGHT paid defendant KISHA SUTTON a portion of the loan proceeds as compensation for her assistance. Defendant SHAMIESE WRIGHT kept the remainder of the funds and spent the money on ineligible expenses.

In violation of Title 18, United States Code, Sections 1344 and 2.

Count Two of the Second Superseding Indictment charges that on or about May 14, 2021, at or near Charleston, Kanawha County, West Virginia, within the Southern District of West Virginia and elsewhere, defendants SHAMIESE WRIGHT and KISHA SUTTON, aided and abetted by each other, did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, defendant SHAMIESE WRIGHT transferred $1,000 in United States currency from her CashApp account to defendant KISHA SUTTON's CashApp account, which involved the proceeds of a specified unlawful activity, that is bank fraud, in violation of 18 U.S.C. § 1344, knowing that the transaction was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of said specified unlawful activity and that while conducting and attempting to conduct such financial transaction, defendants

SHAMIESE WRIGHT and KISHA SUTTON knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity. In violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.

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.

You will find oftentimes that an indictment is charged in the conjunctive, meaning that it uses the word "and" between two elements of the offense. However, the law may not require proof of both elements. Therefore, you should be guided by this Court's instructions as to the actual elements that must be proven.

A separate crime or offense is charged in each count of the indictment. Each charge, and the evidence pertaining to it, should be considered separately. You should return a separate verdict as to each count.

You will also 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.

You need not concern yourself with venue or the Court's jurisdiction. Those are legal issues for the Court to decide.

THIRD: WHAT IS EVIDENCE?

You are to determine the facts of this case from the evidence alone. The "evidence" always consists of the sworn testimony of all the witnesses, all exhibits received in evidence, all stipulations and all matters of which I took judicial notice. A stipulation is an agreement among the parties that a certain fact is true. If the attorneys on both sides stipulate or agree as to the existence of a fact, you may accept the stipulation as evidence and regard that fact as proven. However, you are not required to do so, since you are the sole judge of the facts.

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 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, and since you are the sole judges of the facts, 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.

You must carefully and impartially consider the testimony of every witness and all exhibits, and not disregard or overlook any testimony, witness, exhibit or evidence; you must not permit yourself to be influenced by sympathy, bias, passion, prejudice or public sentiment for or against the Defendant or the United States. Both the Defendant and the United States 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.

Generally speaking, there are two kinds of evidence from which you may find the truth as to the facts of a case -- direct and circumstantial evidence. Direct evidence of a fact to be proved is usually the testimony of the witness who saw, heard or otherwise experienced the fact. In other words, it is the testimony of a witness who claims actual knowledge of the fact(s). 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 that 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 a defendant intended or what her 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.

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.

You are to consider only the evidence presented, and you may not guess or speculate as to the existence of any facts. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proven, such reasonable inferences as you feel are justified in the light of your own experience, reason and common sense.

The indictment in this case is only an accusation or charge against the defendant, and is not any evidence of guilt whatsoever. The Defendant, Kisha Sutton, is on trial only for the acts or conduct alleged in the indictment. Your focus must be on the charges contained in the indictment, and not on anything else.

Nothing said or done by the attorneys who have tried this case is to be considered by you as evidence of any fact. The questions of counsel, the opening statements and the final arguments of counsel are intended to help you in understanding the evidence and applying the law to the evidence, but they are not themselves evidence. Accordingly, if any argument, statement or remark of counsel is not based upon the evidence or the law as stated in these instructions, then you should disregard that argument, statement or remark.

Any proposed testimony or proposed exhibit to which an objection was sustained by the Court and any testimony or exhibits ordered stricken by the Court must be entirely disregarded. You should not speculate as to the answer of any question to which an objection was sustained.

Nothing that I have said or done at any time during the trial is to be considered by you as evidence of any fact or as indicating any opinion concerning any fact, the "credibility of any witness," the "weight of any evidence," or the guilt or innocence of the defendant. Neither by these instructions, nor by any ruling or remark which I have made or will make, have I meant, or do I mean to indicate any opinion as to the facts of this case. The facts are for you, the jury, to decide.

Anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

FOURTH: WHAT YOU CONSIDER IN DETERMINING THE "CREDIBILITY OF THE WITNESSES" AND THE "WEIGHT OF THE EVIDENCE"

During your deliberations, you should carefully consider the testimony of each and every witness, and not disregard or overlook any testimony, witness or evidence. Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You, as jurors, are the sole judges of the "credibility of a witness" and the "weight of the evidence." The "credibility of a witness" means the truthfulness of the witness and the "weight of the evidence" means the extent to which you are or are not convinced by the evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

The number of witnesses testifying on one side or the other of an issue is not alone the test of the "credibility of the witnesses" and the "weight of the evidence." If warranted by the evidence, you may believe one witness against a number of witnesses testifying differently. The tests are: How truthful is the witness, and how convincing is his or her evidence, and which witnesses and which evidence appeals to your minds as being most accurate, and otherwise trustworthy, in the light of all the evidence and circumstances shown.

In determining the "credit" and "weight" you will give to the testimony of any witness who has testified, you may consider, among other things, if found by you from the evidence:

1) his or her good memory, or lack of memory;

2) the interest or lack of interest of the witness in the outcome of the trial;

3) the relationship of any witness to any of the parties or other witnesses;

4) his or her demeanor and manner of testifying;

5) his or her opportunity and means or lack of opportunity and means of having knowledge of the matters concerning which he or she testified;

6) the reasonableness or unreasonableness of his or her testimony;

7) his or her apparent fairness or lack of fairness;

8) the intelligence or lack of intelligence of the witness;

9) the bias, prejudice, hostility, friendliness or unfriendliness of the witness for or against any of the parties;

10) contradictory statements of any witness, if you believe from the evidence that such were made by the witness (either during trial or before trial) and that the same are contradictory of his or her

testimony; however, contradictory statements, if any, may not be considered by the jury to establish the truth of such statements;

11) contradictory acts of any witness, if you believe that such were committed by the witness, and that they were contradictory of his or her testimony.

From these considerations and all other circumstances appearing from the evidence, you may give to the testimony of the witness such "credit" and "weight" as you believe it deserves. Further, the Court instructs you that you are not required to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness bearing and demeanor, or because of the inherent improbability of his or her testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief. During this trial, you have heard the testimony of a law enforcement officer. The testimony of a law enforcement officer or agent should be considered in the same way and judged as to credibility and weight as the testimony of any other witness. Such witnesses do not stand in any higher station in the community than any other person, and their testimony is not entitled to any greater weight than other witnesses, simply because they are law enforcement officers.

The testimony of a witness may be discredited or impeached by showing that he or she previously made statements that are inconsistent with his or her present testimony. The earlier contradictory statements are admissible only to impeach – to challenge – the credibility, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached. If you believe that any witness in this case has knowingly testified falsely as to any material or important fact, you may, after considering and weighing the testimony of such witness, disregard all of the testimony of such witness, or give it or any part thereof, such "credit" and "weight" as you believe it deserves.

The Defendant, Kisha Sutton, has exercised her right to remain silent. The Constitution of the United States gives a defendant an absolute and inalienable right to remain silent, and the exercise of this right cannot be held against the defendant or in any way affect the outcome of his trial. Thus, in your deliberations, you may not draw any inferences from the defendant's decision not to testify, you cannot conclude that her decision is even remotely indicative of guilt, and you must not speculate what her testimony might have been or why she chose not to be a witness or give evidence.

FIFTH: THE BURDEN OF PROOF

The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a "clean slate" with no evidence against her. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So, the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

You do not have to believe that a defendant is innocent of the charges against her in order to find a verdict of not guilty. Your verdict of not guilty only means that the United States has failed to prove to you the guilt of the defendant beyond a reasonable doubt.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

The burden is always upon the United States to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

So, if you are not convinced beyond a reasonable doubt as to any one or more elements of the charge, you must find the Defendant not guilty. However, if you are satisfied beyond a reasonable doubt that all elements of the charge have been proven, then you must find the Defendant guilty.

SIXTH: THE ISSUES YOU ARE TO DECIDE IN THIS CASE

As you have been instructed, the Defendant, Kisha Sutton, is charged in the Second Superseding Indictment with aiding and abetting bank fraud and aiding and abetting money laundering.

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 United States must show that the defendant's conduct amounted to counseling, assisting, or facilitating the commission of a federal crime.

With respect to Count One, aiding and abetting bank fraud, you may return one of two verdicts. 1) Guilty or 2) Not guilty.

Title 18, United States Code, Section 1344, provides, in pertinent part, that:

Any person who 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 . . .

shall be guilty of a crime against the United States.

In order to satisfy its burden of proof for the offense charged in Count One, the United States must establish each of the following elements beyond a reasonable doubt.

FIRST: That the Defendant, Kisha Sutton, knowingly executed or attempted to execute a scheme or artifice

SECOND: to defraud a financial institution OR

THIRD: 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.

If done by false representations or promises, the United States must prove that the false or fraudulent representations or promises were material.

A promise or representation is material if it has a natural tendency to influence, or is capable of influencing, the decision-making body to which it was addressed. It is irrelevant whether the false statement actually influenced or affected the decision-making process of the fact finding body. A false promise or representation's capacity to influence must be measured at the point in time that it was made.

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

The United States need not prove that the financial institution was the immediate victim, or that the institution suffered an actual loss, because it is sufficient if the United States shows that the financial institution was exposed to an actual or potential risk of loss.

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.

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 addressed. It is irrelevant whether the false statement actually influenced or affected the decision-making process of the fact finding body. A false promise or representation's capacity to influence must be measured at the point in time that it was made.

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

The United States need not prove that the financial institution was the immediate victim, or that the institution suffered an actual loss, because it is sufficient if the United States shows that the financial institution was exposed to an actual or potential risk of loss.

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.

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.

"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.

It is not necessary, however, to prove that anyone was, in fact, defrauded, as long as it is established that the defendant acted with the intent to defraud or mislead.

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

The term "knowingly" as used in these instructions to describe the alleged state of mind of the Defendant, means that she was conscious and aware of her actions.

The Defendant, Kisha Sutton, is charged in Count Two of the Second Superseding Indictment with aiding and abetting money laundering.

You may return one of two verdicts with respect to Count Two. 1) Guilty or 2) Not guilty.

Title 18, United States Code, Section 1956 provides, in pertinent part, that:

Whoever, knowing that the property involved in a financial transaction

> represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity . . . knowing that the transaction is 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 specified unlawful activity . . .

shall be guilty of a crime against the United States.

In order to satisfy its burden of proof for the offense charged in Count Two, the United States must establish each of the following elements beyond a reasonable doubt.

FIRST: That the Defendant, Kisha Sutton, 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 United States need not prove that all of the money involved in the transaction constituted the proceeds of the criminal activity; it is sufficient if the United States proves that at least part of the money represented such proceeds.

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

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. Commerce includes travel, trade, transportation and communication.

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.

SEVENTH: THE JURY'S DUTY DURING DELIBERATIONS

You have now heard all of the evidence in the case. I cannot repeat the evidence for you nor allow anyone else to do so. The Clerk will bring to you all exhibits admitted into evidence. These are the only exhibits that you can have during your deliberations. In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions, and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict -- whether guilty or not guilty -- must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussions persuade you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans – you are not in allegiance with the United States nor are you in allegiance with the Defendant. You are the judges of the facts.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by your foreperson. I will respond as soon as possible either in writing or verbally in open court. Remember that you should not tell anyone -- including me -- how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. NOTHING I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

During your deliberations, you must not communicate with, obtain, or provide any information to anyone by any means about this case. You may not use any electronic device, including a phone or computer, or communicate to anyone or obtain any information about this case or conduct any research about this case until after I accept your verdict.

You will decide how we work from here. It is unlikely that I will interrupt you during your deliberations. So, if you want a break, luncheon recess or to retire for the evening, you will need to send me a note, signed by your foreperson advising me of that.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the Court Security Officer that you are ready to return to the courtroom and report your verdict.