Honorable John Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

UNITED STATES OF AMERICA,	)	
	)	No. CR20-174 JCC
Plaintiff,	)	
	)	DEFENDANT'S PROPOSED
	)	JURY INSTRUCTIONS
v.	)	
	)	(with citations)
ERIC SHIBLEY,	)	
	)	
Defendant.	)	
________________________________	)	

Submitted this 5th day of November, 2021.

/s/ Michael Nance
Defense Attorney

Instruction No. ____

Defense Instruction No. 1

This is a criminal case brought by the United States government. The government has charged the defendant Eric Shibley with several counts each of wire fraud, bank fraud, and money laundering.

The charges against the defendant are contained in the indictment. The indictment is simply the description of the charges made by the government against the defendant; it is not evidence of anything.

The defendant has pleaded not guilty to the charges and is presumed innocent unless and until proved guilty beyond a reasonable doubt. A defendant has the right to remain silent and never has to prove innocence or present any evidence.

Authority: 9th Cir. Crim. Jury Instr. 1.2

Instruction No. ____

Defense Instruction No. 2

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, you should find the defendant guilty.

Authority: 9th Cir. Crim. Jury Instr. 3.5 (modified)

Instruction No. ____

Defense Instruction No. 3

You are here only to determine whether the defendant is guilty or not guilty of the charges in the indictment. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the indictment. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant, only as they relate to this charge against this defendant.

Authority: 9th Cir. Crim. Jury Instr. 3.10

Instruction No. ____

Defense Instruction No. 4

A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

Authority: 9th Cir. Crim. Jury Instr. 3.11

Instruction No. ____

Defense Instruction No. 5

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness's testimony;
6. the reasonableness of the witness's testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

You should consider the testimony of the defendant just as you would the testimony of any other witness.

Authority: 9th Cir. Crim. Jury Instr. 3.9

Instruction No. ____

Defense Instruction No. 6

The defendant is charged in Counts 1-7 of the indictment with wire fraud in violation of Section 1343 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove, for each count, each of the following elements beyond a reasonable doubt:

First, the defendant knowingly devised a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;

Second, the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property;

Third, the defendant acted with the intent to defraud, that is, the intent to deceive and cheat; and

Fourth, the defendant used, or caused to be used, an interstate wire communication to carry out or attempt to carry out an essential part of the scheme.

In determining whether a scheme to defraud exists, you may consider not only the defendant's words and statements, but also the circumstances in which they are used as a whole.

A wiring is caused when one knows that a wire will be used in the ordinary course of business or when one can reasonably foresee such use.

It need not have been reasonably foreseeable to the defendant that the wire communication would be interstate in nature. Rather, it must have been reasonably foreseeable to the defendant that some wire communication would occur in furtherance of the scheme, and an interstate wire communication must have actually occurred in furtherance of the scheme.

Authority: 9th Cir. Crim. Jury Instr. 8.124

United States v. Miller, 953 F.3d 1095, 1101-03 (9th Cir. 2020)

Instruction No. ____

Defense Instruction No. 7

The defendant is charged in Counts 8-10 the indictment with bank fraud in violation of Section 1344(2) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove, for each count, each of the following elements beyond a reasonable doubt:

First, the defendant knowingly carried out a scheme or plan to obtain money or property from the financial by making false statements or promises;

Second, the defendant knew that the statements or promises were false;

Third, the statements or promises were material; that is, they had a natural tendency to influence, or were capable of influencing, a financial institution to part with money or property;

Fourth, the defendant acted with the intent to defraud; and

Fifth, the financial institution was federally insured.

Authority: 9th Cir. Crim. Jury Instr. 8.127

Instruction No. ____

Defense Instruction No. 8

In order to prove wire fraud or bank fraud, beyond a reasonable doubt, the government must prove that the defendant knew and intended that action be taken with the intent to defraud, that is, the intent to deceive and cheat. But one who acts on an honest and good faith misunderstanding as to the requirements of the law does not act with an intent to defraud simply because their understanding of the law is wrong or even irrational. Nevertheless, merely disagreeing with the law does not constitute a good faith misunderstanding of the law because all persons have a duty to obey the law whether or not they agree with it.

Authority: 9th Cir. Jury Inst. 8.21 (comment, modified to reflect the language of the indictment);
United States v. Miller, 953 F.3d 1095, 1101-03 (9th Cir. 2020)

Instruction No. ____

Defense Instruction No. 9

The defendant is charged in Count 11-15 of the indictment with money laundering in violation of Section 1957 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove, for each count, each of the following elements beyond a reasonable doubt:

First, the defendant knowingly and willfully engaged or attempted to engage in a monetary transaction;

Second, the defendant knew the transaction involved criminally derived property;

Third, the property had a value greater than $10,000;

Fourth, the property was, in fact, derived from wire fraud and/or bank fraud, as charged in counts 1-10; and

Fifth, the transaction occurred in the United States.

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

The term "financial institution" means a federally insured bank or any credit union.

The term "criminally derived property" means any property constituting, or derived from, the proceeds of a criminal offense. The government must prove that the defendant knew that the property involved in the monetary transaction constituted, or was derived from, proceeds obtained by some criminal offense. The government does not have to prove that the defendant knew the precise nature of that criminal offense, or knew the property involved in the transaction represented the proceeds of wire fraud and bank fraud, as charged in counts1-10.

Although the government must prove that, of the property at issue more than $10,000 was criminally derived, the government does not have to prove that all the property at issue was criminally derived.

Authority: 9th Cir. Crim. Jury Instr. 8.150

Instruction No. ____

Defense Instruction No. 10

An act is done knowingly if the defendant is aware of the act and does not act or fail to act through ignorance, mistake, or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

Authority: 9th Cir. Crim. Jury Instr. 5.6

Instruction No. ____

Defense Instruction No. 11

An act is done willfully if is undertaken with bad purpose and with knowledge that the conduct is unlawful.

Authority: *United States v. Awad*, 551 F.3d 930 (9th Cir. 2009)

Instruction No. ___

Defense Instruction No. 12

For each wire fraud and bank fraud count, one element that the government must prove beyond a reasonable doubt is that the defendant had the unlawful intent to defraud, i.e., to deceive and cheat. Evidence that the defendant in good faith followed the advice of an attorney or accountant would be inconsistent with such an unlawful intent. Unlawful intent has not been proved if the defendant, before acting, made full disclosure of all material facts to an attorney or accountant, received that professional's advice as to the specific course of conduct that was followed, and reasonably followed the recommended course of conduct or advice in good faith.

Authority: 9th Cir. Crim. Jury Instr. 5.10 (modified)

Instruction No. ____

Defense Instruction No. 13

With respect to each of the counts charged in the indictment, the defendant is alleged to have engaged in particular conduct. If you find that the evidence presents more than one instance or pattern of conduct by the defendant which supports the charge(s), you must be unanimous in determining that a particular instance or pattern of conduct by that defendant occurred before you can convict that defendant of the related charge(s).

Authority: 9th Cir. Crim. Jury Instr. 7.9;
United States v. Lyons, 472 F.3d 1055 (9th Cir. 2007);
United States v. Anguiano, 873 F.2d 1314, 1319 (9th Cir. 1989)

Instruction No. ____

Defense Instruction No. 14

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

Authority: 9th Cir. Crim. Jury Instr. 4.14

Instruction No. ____

Defense Instruction No. 15

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement and (2) if so, how much weight to give to it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the defendant may have made it.

Authority: 9th Cir. Crim. Jury Instr. 4.1

Instruction No. ____

Defense Instruction No. 16

You have heard evidence that Mario Davis, government witness, has been convicted of a felony. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe this witness and how much weight to give to his testimony.

Authority: 9th Cir. Crim. Jury Instr. 4.8

Instruction No. ____

Defense Instruction No. 17

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

Authority: 9th Cir. Crim. Jury Instr. 3.4

Instruction No. ____

Defense Instruction No. 18

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

Authority: 9th Cir. Crim. Jury Instr. 3.3

Instruction No. ____

Defense Instruction No. 19

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Authority: 9th Cir. Crim. Jury Instr. 7.1

Certificate of Service

I hereby certify that on the 5th day of November, 2021, I electronically filed the foregoing with the clerk of the court using the CM/ECF system. Notice and copies of this filing will be sent electronically to counsel of other parties who are parties to the ECF system.

/s/ Michael Nance,WSBA # 13933
Defense Attorney