

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

3
4 UNITED STATES OF AMERICA,)
5 Plaintiff,) CR20-00174
6 v.) SEATTLE, WASHINGTON
7 ERIC SHIBLEY,) November 18, 2021 -
8 Defendant.) 9:00 A.M.
9) TRIAL - DAY 4
10)

11 VERBATIM REPORT OF PROCEEDINGS
12 BEFORE THE HONORABLE JOHN C. COUGHENOUR
13 UNITED STATES DISTRICT JUDGE

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25

EXAMINATION INDEX

EXAMINATION OF		PAGE
ERIC SHIBLEY	CROSS-EXAMINATION	560
	BY MR. WERNER	
	REDIRECT EXAMINATION	618
	BY MR. NANCE	
	RECROSS-EXAMINATION	620
	BY MR. WERNER	

EXHIBIT INDEX

EXHIBITS ADMITTED	PAGE
98	590

1 THE COURT: Ready for the jury?

2 MR. WERNER: Your Honor, the government would like to
3 renew its request to admit evidence of Mr. Shibley's license
4 being revoked by the State of Washington, based on his testimony
5 at the end of the day yesterday.

6 THE COURT: I'm going to deny the motion. I think it's
7 of very marginal probative value, and the prejudice under 403
8 outweighs what marginal probative value exists.

9 I understand from Mr. Gabe, Mr. Nance, that you're agreeable
10 to the forfeiture issue, depending upon the verdict?

11 MR. NANCE: Be decided by the court?

12 THE COURT: Yeah.

13 MR. NANCE: If there's a verdict the wrong way.

14 THE COURT: All right. Thank you. So bring in the
15 jury.

16 (The following occurred in the presence of the jury.)

17 THE COURT: Please be seated.

18 ERIC SHIBLEY,
19 previously sworn, resumed and testified as follows:

20 CROSS-EXAMINATION

21 BY MR. WERNER:

22 Q Hello.

23 A Hello.

24 Q Mr. Shibley, yesterday we talked about how you moved to the
25 United States from Bangladesh. Do you recall that?

1 A Yes.

2 Q And you became licensed as a doctor in the United States,
3 correct?

4 A Yes.

5 Q You also became a citizen of the United States, correct?

6 A Yes.

7 Q Today, I'm going to ask you some questions about your PPP and
8 EIDL applications. Okay?

9 A Yes.

10 Q I want to show you what's been admitted as Government's
11 Exhibit 205.

12 Mr. Shibley, this is the first page of Government's 205 on
13 the screen. Do you see that?

14 A Yes.

15 Q I'm going to ask Mr. Arnold to go to the second page.

16 Do you see the second page?

17 A Yes.

18 Q Mr. Shibley, you sent in all of the applications that are on
19 this exhibit, correct?

20 A I believe so.

21 Q You filled out the applications online, correct?

22 A I believe so.

23 Q And you hit "send" to the bank, correct?

24 A Yes.

25 Q Okay. And on each of one of these applications, you

1 certified that the information was true and accurate, correct?

2 A Yes.

3 Q Okay. And your testimony yesterday was that the information
4 on these applications was true and accurate?

5 A Yes.

6 Q And the reason you know, or the reason you testified that
7 everything is correct on these applications, is because you
8 filled it out, right?

9 A Yes.

10 Q Could we look at page 3 of this exhibit, please?

11 Do you see page 3 of the exhibit, with the EIDL applications?

12 A Yes.

13 Q And, Mr. Shibley, you completed all 13 of these EIDL
14 applications, correct?

15 A Yes.

16 Q And you submitted them to the SBA, correct?

17 A Correct.

18 Q And it's your testimony that everything on these EIDL
19 applications was true and correct?

20 A Yes.

21 Q And the reason you're saying that is because you filled them
22 out, correct?

23 A Correct.

24 Q Let's go to Exhibit 3, please, page 1. Could we do the top
25 half, please?

1 Mr. Shibley, this is a PPP application for a business called
2 Dituri Construction, correct?

3 A Correct.

4 Q And this is a PPP application that you filled out, correct?

5 A Correct.

6 Q That you signed as true and accurate?

7 A Yes.

8 Q And the average monthly payroll that you put on this form is
9 \$392,000, correct?

10 A Yes.

11 Q Was that the average -- is it your testimony that the average
12 monthly payroll for a business called Dituri Construction was
13 \$392,000?

14 A Yes.

15 Q Let's look at Exhibit 4. Mr. Shibley, do you see Exhibit 4?

16 A Yes.

17 Q This is a PPP application for the same business, Dituri
18 Construction, right?

19 A Right.

20 Q And you filled out this application?

21 A Yes.

22 Q You certified that it was true and accurate?

23 A Yes.

24 Q And you listed monthly payroll of Dituri Construction, on
25 this application, as \$225,400, correct?

1 A Correct.

2 Q Was that true and accurate?

3 A Yes.

4 Q Let's look at the date of this application, the \$225,400
5 application. Could we go to the second page, please? Third
6 page, please.

7 Mr. Shibley, you said that the monthly payroll of Dituri
8 Construction was \$225,400 on April 30th, 2020, correct?

9 A Correct.

10 Q Let's go back to Exhibit 3, page 1.

11 And, again, this is another PPP application for Dituri
12 Construction, with an average monthly payroll of \$392,000. Could
13 we go to the signature page on this one, Mr. Arnold?

14 And you signed this on May 2nd, 2020, correct?

15 A Correct.

16 Q And it's your testimony that both of these applications are
17 true and correct?

18 A Correct.

19 Q It's the same business, right?

20 A Yes.

21 Q The same number of employees on both applications?

22 A It seems like.

23 Q And you didn't only fill out two different application forms,
24 you also put in two different Form 941s, correct?

25 A Correct.

1 Q Those also had the two different monthly payrolls, correct?

2 A Correct.

3 Q And, again, is it your testimony that both were true and
4 accurate?

5 A Yes.

6 Q This is the PPP -- let's go to Exhibit 1, please, Mr. Arnold,
7 page 5. Start with -- I'm sorry, start with Exhibit 1, page 1.

8 It's a PPP application for the A Team Holdings, do you
9 remember this?

10 A Yes.

11 Q You signed this application indicating that everything was
12 true and correct?

13 A Yes.

14 Q And you indicated that the A Team Holdings had 48 employees?

15 A Yes.

16 Q And you signed on page 6 of this application?

17 A Yes.

18 Q April 15th, 2020. Correct?

19 A Correct.

20 Q And you filled out an EIDL application for the same business,
21 A Team Holdings, right?

22 A Yes.

23 Q Let's go to -- let's go to Exhibit 39. We should do the
24 top -- there. Could we get a little more, please, Mr. Arnold, so
25 we can see the date? There we go.

1 And this is Exhibit 39. Correct, Mr. Shibley?

2 A Correct.

3 Q A Team Holdings. The same business, right?

4 A Yes.

5 Q And this application was filled out on March 31st, 2020?

6 A Correct.

7 Q And if we go to the bottom quarter of the page, please, how
8 many employees did you say it had, on line 33?

9 A Four.

10 Q And that's different than how many employees you said on the
11 PPP application, right?

12 A Yes.

13 Q But is it your testimony that this statement you made to the
14 SBA on March 31st, 2020, is true and correct?

15 A Correct.

16 Q You were served with a subpoena on June 10th, 2020. Do you
17 recall that?

18 A Yes.

19 Q And you testified yesterday that you remember that day.

20 A I remember that day, yes.

21 Q The subpoenas asked for information about your businesses,
22 correct?

23 A Correct.

24 Q They asked for payroll records, right?

25 A Right.

1 Q They asked for lists of employees, right?

2 A Right.

3 Q And you responded to that subpoena, correct?

4 A Correct.

5 Q And you gave the documents that have been admitted in this
6 court as Exhibit 225, right?

7 A Right.

8 Q But this response didn't contain any employee names, did it?

9 A It did not.

10 Q Didn't contain any payroll records, did it?

11 A It did not.

12 Q It didn't contain any time sheets?

13 A It did not.

14 Q And the subpoenas also asked for receipts, to see how much
15 your businesses were making, right?

16 A Yes.

17 Q And you didn't provide any receipts?

18 A I did not.

19 Q You didn't provide any invoices for your company?

20 A I did not.

21 Q Because those documents didn't exist, right?

22 A No.

23 Q The documents -- again, you did not provide invoices?

24 Correct?

25 A Yes.

1 Q Because you didn't create invoices for these companies.

2 A I am not the person who does that.

3 Q Right. You don't create invoices for the company, Dituri
4 Construction?

5 A Are you asking personally?

6 Q I'm asking -- yes. I'm asking, did Dituri Construction
7 produce invoices?

8 A Yes. It does.

9 Q It does produce invoices?

10 A Yeah.

11 Q And SS1 LLC creates invoices?

12 A Yes.

13 Q And you did not -- but you did not turn them over, in
14 response to the subpoena?

15 A I did not.

16 Q You did not?

17 A Yes.

18 Q You responded to the subpoena, correct?

19 A Yeah. I had to.

20 Q You had to. And you were required to produce invoices.

21 A It's -- certain laws apply on that. Like, I had to research
22 the United States Code behind it.

23 Q You responded to the subpoena through your attorney, correct?

24 A Yes.

25 Q Your attorney actually responded on your behalf, right?

1 A Right.

2 Q So the attorney would be in charge of -- if there was any
3 laws that prevented responding?

4 A Of course.

5 Q So you didn't -- again, you didn't produce any employee names
6 for the business Dituri Construction, right?

7 A Right.

8 Q Because you didn't -- because you didn't keep those employee
9 names, right?

10 A Me, or my business? I mean --

11 Q Your business. I'm asking about the business. The business
12 didn't keep those names?

13 A No. They did keep those names.

14 Q But didn't turn them over as part of the subpoena response?

15 A Didn't turn them over, because -- okay. Didn't turn them
16 over, yes.

17 Q Didn't turn them over -- because, again, you failed to turn
18 them over.

19 A I chose not to.

20 Q You chose not to turn them over.

21 So is it now your testimony, Mr. Shibley, that you had
22 payroll records for Dituri Construction and SS1 LLC?

23 A Yes.

24 Q You had payroll records?

25 A I'm trying to understand. Are you asking me, as a person?

1 Q Yes. I'm asking you, yes. I'm asking you as a person,
2 Mr. Shibley.

3 A Personally?

4 Q Yes.

5 A I, personally, do not keep these records.

6 Q Your business keeps the records?

7 A My business does.

8 Q And you -- but you are who's in charge of your business.

9 A I'm the business owner. So it has to be me, in charge.

10 Q Right. Did you testify yesterday that there's a military
11 hierarchy in your business?

12 A Yes.

13 Q Who's at the top of that hierarchy?

14 A Me.

15 Q Who got served with these subpoenas?

16 A Me.

17 Q And who responded to these subpoenas?

18 A Me.

19 Q Who failed to produce these so-called payroll records?

20 A I don't think I failed to produce anything that I was
21 required to produce, according to your subpoena.

22 Q Your testimony is that you had about 150 different employees,
23 prior to the pandemic; is that right?

24 A Yes.

25 Q And you didn't turn in those -- you didn't turn in payroll

1 records for those employees?

2 A I did not. And there's good reason behind it.

3 Q Did you contact the site managers after you received these
4 subpoenas, and -- did you contact the site managers?

5 A I was in contact with them, yes.

6 Q Did they turn in -- did they give you the records of the
7 names?

8 A They don't -- it doesn't go through me. If I have the
9 opportunity to explain how it happens.

10 Q Is there someone -- I would like to ask the questions. But
11 are you testifying that there is someone between the site manager
12 and you in this hierarchy; is that your testimony?

13 A Yes.

14 Q Is that a supervisor? What's the name of that position?

15 A No. It's the professional who deals with that, the
16 bookkeepers, CPAs, accountants. They handle this.

17 Q And you contacted your bookkeepers to get their response to
18 this subpoena?

19 A Of course I did.

20 Q This is what they provided?

21 A They -- I contacted my attorney as well.

22 Q Tell me -- don't say what you said to your attorney.

23 A Okay.

24 Q That would be improper. But what I'm asking about is the
25 bookkeepers. You're in charge of the bookkeepers, correct?

1 A Yes. I contacted them, yes.

2 Q This is what you got back; is that right?

3 A No. That's not what I got back. No.

4 Q So why did you -- is it your testimony that you withheld
5 payroll records in response to the subpoena?

6 A I did not withheld. I was of the understanding, according to
7 the advice that I got, that that paper that you served me did not
8 call for what was existing at the time in my possession. What I
9 mean by that is, I'm only required to produce things that I
10 possess at the time available, existing documents that I possess.
11 If I'm not the record custodian of something, I believe that
12 you're essentially barking up the wrong tree, you have to
13 subpoena the accountant, which I don't think that happened.

14 Q So another thing that was in there that was requested in
15 these subpoenas was a list of accountants. Do you remember that?

16 A Yes.

17 Q You turned over a correspondence with Mario Davis. Do you
18 remember that?

19 A I think so.

20 Q But you didn't turn over the list of these accountants.
21 That's not in this Exhibit 225, is it? No one other than Mario
22 Davis is in this subpoena return, Exhibit 225.

23 A Yeah, Mario was in the process of filing all the taxes at the
24 time.

25 Q Not on June 10th, but afterwards, you contacted Mr. Davis,

1 right?

2 A I believe so, yeah.

3 Q So again, the subpoenas were addressed to your businesses?

4 A Yes.

5 Q You are in charge of your businesses?

6 A Yes.

7 Q The bookkeepers work for you?

8 A Yes.

9 Q And if they had records, it was your responsibility to get
10 them?

11 A If I'm legally required to do so.

12 Q So your testimony has been that you had 150 employees,
13 correct, before the pandemic?

14 A It's give and take. I think the accurate number would be 52
15 or 56. I'm not sure what the correct number was there.

16 Q You mean 152 or 156?

17 A Yes.

18 Q Okay. But, again, we agree that there are no payroll records
19 in this subpoena response?

20 A Nothing was provided in response to the subpoena that was
21 drafted.

22 Q Okay. And, again, these 152 to 156 employees had \$1 million
23 in payroll a month, prior to the pandemic. That's your
24 testimony, correct?

25 A Prior to the pandemic, yes.

1 Q You talked a little bit yesterday about how you got there,
2 about how you arrived at that million-dollar number. You said
3 that your workers are paid \$40 an hour, correct?

4 A I did a very, very gross calculation. That number is just an
5 average, and for the purpose of kind of giving an idea. It's
6 not -- I'm not saying that everybody got \$40 an hour. That's not
7 how it works. People have different skills, different rates.
8 There is some people are -- there is differences. It's not like
9 everybody \$40 an hour.

10 Q So your testimony is that some people made more and some
11 people made less?

12 A Yes.

13 Q But you said most of your workers made \$40 an hour; is that
14 fair?

15 A I'm speaking average amount. I just picked up a number
16 yesterday. That's how I was explaining. I was asked to ask -- I
17 was asked to explain a number. So I was doing my best to explain
18 it.

19 Q And you explained it by saying that \$40 an hour, times 160
20 hours a month --

21 A Yes.

22 Q -- comes up with about \$6,400 for a month?

23 A Times 156, is a million.

24 Q Right.

25 A Yes.

1 Q So that's -- that's how you came up with the payroll in this
2 case. That's how you support the million dollars, right?

3 A That's not how the number came.

4 Q That's not how the number came?

5 A That was the explanation yesterday, while I'm sitting here,
6 without the background documents, the payroll journals and actual
7 tables. That's all -- that's the extremely simplified
8 explanation. I cannot be saying that that's, like, pinpoint.

9 Q Well, those applications are pinpoint, that's your testimony,
10 right? Those applications are accurate, those PPP applications?

11 A Yeah. Those are accurate.

12 Q Forty-nine employees for Dituri Construction?

13 A There is 49.

14 Q Absolutely accurate?

15 A Absolutely.

16 Q \$225,000 in payroll a month on April 30th, right? Yes or no?
17 Yes?

18 A Yes.

19 Q \$392,000 in payroll on May 2nd, right?

20 A Yes.

21 Q Okay. But, again, none of those employee names, none of
22 those 49 employees names are in this subpoena response, right?

23 A Yes.

24 Q The number is 48 employees for A Team Holdings, correct?

25 A Yes.

1 Q A monthly payroll, again, of almost \$400,000 a month?

2 A Yes.

3 Q No payroll records in this -- in Exhibit 225, correct?

4 A No payroll records were provided to you at the time, yes.

5 Q These PPP applications contained tax forms, right?

6 A Yes.

7 Q And you filled out those tax forms, right?

8 A I filled out those tax forms?

9 Q Yeah.

10 Well, let's show you one. Exhibit 5, page 7. Can we get the
11 whole thing in, please, Mr. Arnold?

12 This is a form W-3 provided to Harvest Finance for SS1 LLC.

13 Do you see that, Mr. Shibley?

14 A Yes.

15 Q You filled out this document, correct?

16 A Not personally.

17 Q Whose signature is there?

18 A My signature.

19 Q Let's -- but your testimony is someone else filled out this
20 document?

21 A Yes.

22 Q How many total -- can you look at this? How many number of
23 forms W-2?

24 A Forty-one.

25 Q Who put that number there?

1 A Bookkeeper.

2 Q Bookkeeper?

3 A Yes.

4 Q Who turned over the forms W-2 to the IRS?

5 A The tax professional is supposed to do that. I don't know if
6 it happened or not.

7 Q But you do, because the IRS has no records of any W-2s.

8 A Yes, it got reviewed. Yes.

9 Q So your testimony, Mr. Shibley, is that somebody else filled
10 out this form?

11 A Yes.

12 Q And somebody else was responsible for sending 41 forms W-2 to
13 the IRS?

14 A Yes.

15 Q And somebody else reported that SS1 LLC paid out \$538,000 in
16 wages in 2019?

17 A Yes.

18 Q Somebody else said that social security tax and Medicare
19 taxes was withheld from those wages?

20 A Yes.

21 Q Why would someone say, that when you told us yesterday that
22 you pay your employees in cash? I'm sorry, strike that.

23 You pay your employees in cash, correct?

24 A Yes.

25 Q And you don't withhold Medicare tax, right?

1 A I -- I don't withheld Medicare? That's not right.

2 Q When you pay an employee, you hold back the taxes that belong
3 to the government; is that right?

4 A Yes.

5 Q And you submit those taxes to the IRS?

6 A That's the way it works.

7 Q But the IRS did not receive money from these businesses, did
8 not receive Medicare, social security tax?

9 A Various reasons behind it.

10 Q So, again, your testimony is that this money was, in fact,
11 withheld?

12 A Yes.

13 Q But the money was not paid to the IRS?

14 A Yes.

15 Q And your testimony is that it's true that SS1 LLC paid out
16 \$538,000 in 2019?

17 A Yes.

18 Q On the dot?

19 A On the dot means, like -- I have to rely on what's in the
20 paper. I mean, I don't crunch those numbers. I don't plug those
21 numbers in the form. I do not calculate these. The calculations
22 are done by bookkeepers, and a CPA firm.

23 Q Who signed this? You signed this?

24 A I signed it.

25 Q Let's go to Exhibit 8, page 7, please.

1 Mr. Shibley, this is another form W-3 for one of your
2 businesses, right?

3 A Right.

4 Q And you signed this form?

5 A Yes.

6 Q And this form indicates that six W-2s were sent?

7 A Yes.

8 Q And this form indicates that social security tax and Medicare
9 tax were withheld?

10 A Yes.

11 Q This form is filled out April 24th. That's 2020, right?

12 A I believe so, yes, it should be.

13 Q And you completed this form; isn't that right?

14 A I signed it. I didn't do this form.

15 Q Someone else made this -- put the numbers in this form; is
16 that your testimony?

17 A Yes.

18 Q Someone else put the date 202020 in there?

19 A I believe so.

20 Q And this isn't filed with the IRS, is it?

21 A That is what I know now, yes.

22 Q Let's look at Exhibit 5, page 5. If we can just do the top
23 half, please, Mr. Arnold.

24 Now, this is a Form 941 for 2020, for SS1 LLC. Do you see
25 this, Mr. Shibley?

1 A Yes.

2 Q And this claims that SS1 LLC has 41 employees, right?

3 A Right.

4 Q \$656,000 in wages, correct?

5 A Correct.

6 Q And this form was completed by you?

7 A No.

8 Q Well, let's look at the second page. Let's blow out the
9 bottom.

10 Who signed this form?

11 A Me. I signed.

12 Q And who dated this form?

13 A I dated it.

14 Q That's your phone number?

15 A Yes.

16 Q And the paid preparer section down here, do you see that?

17 A Yes.

18 Q That's blank, right?

19 A Yes.

20 Q But, again, I'm going to ask you one more time. Did you
21 prepare this Form 941?

22 A No.

23 Q Are the numbers in the Form 941, 41 employees, \$656,000 in
24 payroll, are those numbers true and accurate?

25 A To the best of my knowledge, yes.

1 Q And the money due to the IRS, you never paid that money over
2 to the IRS, right?

3 A I believe it's not paid.

4 Q You didn't even file this form with the IRS, right?

5 A I don't file. I have no way to file those, personally.

6 Q You told the banks that you had filed these forms, didn't
7 you?

8 A No. Never.

9 Q Well, you are trying to make the banks think that you filed
10 these forms.

11 A Never. I told the bank, every time -- and you have recorded
12 statement from undercover agents -- I told them very clearly,
13 these are not filed.

14 Q Let's look at Exhibit 53, please. Let's look at that top
15 e-mail, please.

16 This is an e-mail that you sent. Right, Mr. Shibley?

17 A Yes.

18 Q And you sent it to BECU, correct?

19 A Correct.

20 Q And you wrote, "I corrected the PPP application to change the
21 loan amount, based on the actual numbers in tax filings, which is
22 attached." Do you see that?

23 A Yeah.

24 Q You're telling the bank that the tax filing that is attached
25 to this e-mail as part of Exhibit 53, you are telling them that

1 that's filed?

2 A I'm not telling them that it's filed, it's a vocabulary
3 issue.

4 THE COURT REPORTER: I'm sorry?

5 THE WITNESS: Vocabulary issue.

6 Q Vocabulary issue. Are you saying it's a "vocabulary issue"?

7 A Sorry for my accent.

8 I'm not saying that those are filed in this statement.

9 Q You are calling it a tax filing.

10 A I'm calling it something -- I could have called it five other
11 things.

12 Q But you chose to call it a tax filing, correct?

13 A Correct. Yes. But I did not mean that I filed those forms
14 by saying that.

15 Q You didn't write in this e-mail that you did not file those
16 forms, those forms weren't filed, correct? That's not in this
17 e-mail.

18 A Of course not. I don't say it, yes.

19 MR. NANCE: Objection, Your Honor. The e-mail says what
20 it says.

21 THE COURT: Overruled.

22 Q You did not write in this e-mail that that Form 941 was not
23 filed?

24 A I --

25 Q Correct?

1 A Yes. Correct.

2 Q Because you were trying to deceive BECU, weren't you?

3 A Absolutely not.

4 Q You told them a half-truth, wouldn't you say?

5 A No.

6 Q The whole point of these tax forms being sent to the bank was
7 to make it look like your companies were filing taxes -- taxes
8 with the IRS, right?

9 A I never tried to make it look like anything. I called them.
10 I was in contact with them. They called me. I made it clear,
11 every time they asked me about filings, I told them these are not
12 filed.

13 Q You told BECU they weren't filed, in this e-mail?

14 A I never -- I don't recall ever talking with a live person,
15 because this application didn't go anywhere, obviously. There
16 was no -- the way it works is that you --

17 Q Is it -- Mr. Shibley, is it your testimony that you were
18 truthful and honest in all your dealings with the banks and
19 lenders in this case?

20 A Absolutely.

21 Q Do you recall sending an e-mail to Harvest, with ten employee
22 names for SS1 LLC?

23 A Yes.

24 Q And Harvest Finance is the SS1 loan for \$820,000, right?

25 A Right.

1 Q Let's look at Exhibit 48, page 3.

2 And this is the e-mail, Exhibit 48, page 3, this is the
3 e-mail that you sent to Harvest, correct?

4 A Yes.

5 Q So is it your testimony that these ten people worked for SS1
6 LLC?

7 A Yes.

8 Q That's your SS1 LLC crew?

9 A They worked on the ground, yes, at the time.

10 Q Let's look at Exhibit 50, page 1. You also sent in a list of
11 employee names to Celtic Bank. Do you remember?

12 A Yes.

13 Q And these are the names you sent in to Celtic Bank, correct?

14 A Correct.

15 Q And for Celtic Bank, that was a loan for Dituri Construction,
16 right?

17 A Right.

18 Q \$563,500, right?

19 A Right.

20 Q You sent in the same names, didn't you?

21 A I did.

22 Q Is it your testimony that these names that are in Exhibit 50,
23 that they worked for the Dituri Construction?

24 A Yes.

25 Q They're a part of that crew?

1 A They're interchangeable.

2 Q Mr. Shibley, you told us yesterday that your crews are
3 separate, didn't you?

4 A Yes. They're separate. However, the bookkeeper decides who
5 is belonging to which company. And I, at that time -- this
6 happened in the same day. These two e-mails, if you look at the
7 time, is the same day, probably in the same hour. And --

8 Q But it's -- so your testimony is that these are employees of
9 Dituri Construction and employees of SS1 LLC?

10 A See, I'm trying to clarify. I'm not double counting the
11 employees here.

12 Q Mr. Shibley, you don't have employees, do you?

13 A That's not true. I have employees. I had -- you keep saying
14 nothing exists.

15 Q Mr. Shibley, again, it's your testimony that you did not
16 deceive Celtic Bank by this e-mail; is that correct?

17 A Absolutely did not deceive Celtic, or any other bank.

18 Q So this loan, this \$563,500 loan, Mr. Shibley, that's the
19 same money that you went into the Tukwila branch to try to
20 withdraw from BECU, correct?

21 A Yes.

22 Q That's when you told Mr. Mondala -- or later you told Mr.
23 Mondala that the reason you needed to withdraw it in cash was
24 because your employees don't have social security numbers, right?
25 Yes or no, that's what you told him?

1 A It's a mischaracterization -- mischaracterization of what I
2 told him.

3 Q Did you talk to Mr. Mondala?

4 A Yes.

5 Q And did you tell Mr. Mondala you wanted to withdraw it in
6 cash?

7 A Yes.

8 Q And did you tell Mr. Mondala you wanted to withdraw it in
9 cash to pay your employees?

10 A Yes.

11 Q And did you say that the reason you needed to withdraw it in
12 cash is because your employees don't have social security
13 numbers?

14 A That is not the primary reason.

15 Q Did you say that the reason -- did you say that a reason you
16 wanted to withdraw the money in cash, is because your employees
17 don't have social security numbers?

18 A I don't think that's how it came out, no. That's not how it
19 came out.

20 Q So there's a different reason -- you are testifying now
21 there's a different reason -- or, I'm sorry, you are testifying
22 now that you didn't say that to Mr. Mondala?

23 A I say that in a different conversation, not in the
24 perspective of what -- how you are presenting it.

25 Q Okay. Because you are here -- because you see what I'm

1 driving at. You see here that you are offering social security
2 numbers for supposed Dituri Construction employees?

3 A Yeah.

4 Q You see how that's inconsistent with what you told Mr.
5 Mondala, right?

6 A It is not inconsistent. Mr. Mondala and I spoke, had a brief
7 conversation. And in the conversation, at some point, during the
8 conversation, there was a question about social security numbers.
9 And I say that it's hard to track those things, and --

10 Q But it wasn't hard to track here, because when you thought
11 you were going to get the money, you came up with social security
12 numbers, right?

13 A I came up with -- I was asked to provide a couple of names.

14 Q Right. And the reason you did it is because you thought you
15 were going to get this \$563,000, right?

16 A I was already told that the money would be there tomorrow.

17 Q Once you gave these names, right?

18 A I was under the impression that they're sending the money the
19 next day, anyway.

20 Q Once you gave the names?

21 A I'm not sure whether it was contingent on that. I talked to
22 them around 12 -- noon that day.

23 Q Well, the money -- you didn't have the money at this point in
24 time, right? They wouldn't give it to you.

25 A No. That was not the situation.

1 Q They wouldn't let -- BECU wouldn't let you withdraw that
2 money in cash, right?

3 A Would not let me withdraw that money in cash?

4 Q Mr. Shibley, you'll say different things about your
5 businesses at different times, won't you?

6 A I do not say different things. I'm saying that BECU --

7 Q Mr. Shibley, did you apply for unemployment with the State of
8 Washington?

9 A There was a CARES Act payment for businesses at the time.

10 Q You initially applied for state -- with the state, though,
11 correct?

12 A There was a funding approved for non-employees,
13 self-employed, and business owners at the time, for under CARES
14 Act. I believe that that was a short funding. And that
15 Washington State Employment Security Department was in charge of
16 disbursing it. It was not their money, as far as I know.

17 Q Right. Right. You listened to the testimony earlier --

18 A Yes.

19 Q -- during this trial.

20 But initially your application was processed to see whether
21 or not the state would give you money. Do you recall that?

22 A I do not try to take state money, it is federal money.

23 Q You did take federal money, correct? You got pandemic
24 unemployment assistance, right?

25 A Yes. That was part of the CARES Act, yes.

1 Q You told -- in connection with that application, you said you
2 were laid off from your job at the doctor's office, right?

3 A The question, the way it was asked, are you working or not?
4 At that time I could not run anything, I was under the order to
5 stop working, by the Governor.

6 Q Call up the bottom of page -- actually, let's look at the
7 whole page here. It has been admitted as Government's
8 Exhibit 87.

9 These are the business records of Employment Security. And
10 in these records, Mr. Shibley, you listed that you were laid off
11 from Eric Shibley MD, and you are on a leave of absence from ES1
12 LLC. Do you see that?

13 A The answer to the question depends on the question itself.
14 If you ask me if I'm working or not, what it really means, at
15 that time my office was closed.

16 Q Mr. Shibley, I'm going to show you what's been marked, but
17 not admitted, as Exhibit 98. Do you see that there, Mr. Shibley?

18 A Yes.

19 Q Look at the second page, please.

20 Did you sign this document, Mr. Shibley?

21 A I believe so.

22 Q Did you send it in to the Employment Security Department?

23 A Yes.

24 MR. WERNER: Offer Exhibit 98.

25 MR. NANCE: No objection.

1 THE COURT: Admitted.

2 (Exhibit No. 98 admitted.)

3 Q Can we go to page 1, please?

4 Mr. Shibley, this is a document that you sent in to the
5 Employment Security Department, correct?

6 A Correct.

7 Q And your signature is on the second page?

8 A Correct.

9 Q And you -- thank you.

10 And you're reporting here, to the Employment Security
11 Department, that you worked 680 hours the first quarter of 2020,
12 right?

13 A I believe that's what was reported here.

14 Q And that was a magic number with Employment Security, right,
15 that's what you made you qualify for benefits?

16 A 680 was the cutoff, yes.

17 Q Right. You are reporting \$20,500 in wages, correct?

18 A That's what I see reported, yes.

19 Q You filled that out, right?

20 A Oh, yeah. This one is mine.

21 Q And you said that the wages will be reported to the State of
22 Washington? Right here.

23 A Yeah. That's what I said, yes.

24 Q But you didn't do that, did you?

25 A The people who does this reporting is not me.

1 Q So the answer is, no?

2 A I personally didn't do it.

3 Q You didn't do it?

4 A No.

5 Q So, Mr. Shibley, you didn't report any employee -- you didn't
6 turn over any employee names, in response to the subpoena. But
7 you have shown us Exhibit A-1 with some driver's licenses,
8 identification cards. Do you remember looking at that yesterday?

9 A Yes.

10 Q And let's call up Exhibit A-1, maybe page 2 in our system.
11 Let's go to page 2, please. And let's go to page 3. I'm sorry,
12 I should publish this. So this is what's been admitted as
13 Exhibit A-1. Let's go up to page 2, in our system. I think it's
14 on the first page of the exhibit. Go down to page 3, please.
15 Page 4.

16 Is it your testimony that every person with a driver's
17 license in Exhibit A-1, that they were your employee?

18 A I believe so.

19 Q I understood your testimony to be that you took pictures of
20 these licenses. You took these pictures, right?

21 A These licenses -- these pictures were found in one of my cell
22 phones.

23 Q And you took these pictures?

24 A It has to be me, yes.

25 Q Is it your testimony that you collect a driver's license from

1 every employee?

2 A Yes, I do.

3 Q And there are about how many driver's licenses in Exhibit
4 A-1?

5 A I believe I gave you 40 names out of that driver's licenses
6 that could be --

7 Q No, Mr. Shibley, you didn't provide any of this in
8 response --

9 A I'm still replying.

10 The driver's license was provided -- I didn't count, I mean,
11 if you count --

12 Q Well, that's fair, Mr. Shibley. This isn't a math test.

13 These pictures -- some of these pictures were actually taken
14 after the charges in this case; isn't that right?

15 A Could be. I don't recall.

16 Q Let's look at the next page, please, Mr. Arnold.

17 This picture, in particular, this picture was actually taken
18 in August, correct? August 2020.

19 A I do not have a way to verify when.

20 Q Is there anything that would refresh your recollection? If I
21 showed you the picture in native format, would that help you
22 refresh your recollection, this was taken August 21st, 2020?

23 A I know the person. But I have no way to remember exactly
24 which date I took the pictures.

25 Q But do you agree that some of these pictures were taken after

1 the charges in this case?

2 A It could be, yes.

3 Q Are you saying some of these pictures were taken before the
4 charges in this case?

5 A I really have no idea of the date and time of the pictures.

6 Q Let's go to the next page, please. And the next page. It
7 should stop there.

8 Is the reason you took these -- the reason you took these
9 pictures, is because these people were tenants, right? Isn't
10 that the reason you took these pictures?

11 A No.

12 Q Are any of these people your tenants?

13 A The person in front, he's not.

14 Q Were any of the people in the pictures, tenants?

15 A I'm trying to recall whose picture was there.

16 Q Did you take pictures of the driver's licenses of your
17 tenants?

18 A Yes. Sometimes I did, yes. These are not tenants' pictures.
19 I have to look at all of this and go one-by-one and make sure.

20 Q Let's -- actually, let's take it back up. Let's go to
21 page 9.

22 A This one is not a tenant.

23 Q Okay.

24 A This is not.

25 Q Let's go to the second-to-last page in the exhibit. Let's go

1 up -- I'm sorry, up two more. Let's try page 20, please. The
2 page right up there. Yes. That one.

3 Do you see that picture?

4 A Yes.

5 Q Mr. Shibley, this is not a picture of a driver's license,
6 correct?

7 A Of course not.

8 Q These are pictures -- it's a picture that you took?

9 A It's -- yeah. I believe I'm taking the picture.

10 Q And, again, is this part of your process of taking pictures
11 of your employees?

12 A No. It's just a funny selfie.

13 Q Right. Because these gentlemen in the picture are not your
14 employees, correct?

15 A They did work for me, and my company.

16 Q They did some rehab work. You hired them to do rehab work on
17 your property?

18 A They did a lot of work.

19 Q You hired them to do rehab work on your property, correct?

20 A They did. They did. They worked in properties that was not
21 my property as well.

22 Q And that's true, right, because they work for a company
23 called Exact Electric, right? Do you see that on their shirts?

24 A Yeah. Sure.

25 Q That's who they worked for?

1 A That's the shirt that he's wearing. I believe he used to
2 work for them. He probably still does.

3 Q This gentlemen over here on our left as well, correct?

4 A I don't know that if he's an Exact.

5 Q Do you see the hat he's hearing?

6 A What I know is that he's related to this guy. But I don't
7 know that if -- the first guy, I know that he worked at some
8 point for Exact. The other two guys, I was never aware that they
9 worked for Exact.

10 Q You can take it down now.

11 Your testimony is, again, that your average employee made
12 \$6,400 a month?

13 A It was a very average number picked up yesterday to explain a
14 number.

15 Q \$6,400 a month would be more than \$70,000 a year, correct?

16 A Yes.

17 Q But that's not -- you didn't tell your accountant, Mr. Davis,
18 that you're paying your employees \$70,000 a year, did you?

19 A I did.

20 Q You told him that you were paying your employees \$8,000 a
21 year?

22 A I talked with him many times. I texted him day after day.

23 Q Well, let's look at the e-mail. You sent an e-mail, right?

24 A Yeah. I saw that e-mail yesterday. Yes.

25 Q Let's look at that. It's Exhibit 225, page 273. If we could

1 blow up the "from" "to" and the first paragraph, please.

2 This is an e-mail from you, correct?

3 A Correct.

4 Q To Mario Davis, your accountant, correct?

5 A Correct.

6 Q And this is after you were served with a subpoena, correct?

7 A Correct.

8 Q You knew about the federal investigation at this time,
9 correct?

10 A Of course.

11 Q And in the bottom four sentences, if you can call out that
12 where it says, "Due to their transient nature..." Can you call
13 out that a little bit more, please?

14 You told him that most of your employees received between
15 \$8,000 to \$12,000 in salary, correct?

16 A The way it was worded.

17 Q First -- first, you did say that, correct?

18 A That's what it says on its face, yes.

19 Q And that's different than what you said yesterday. You said
20 your employees were making \$6,000 a month.

21 A There's variation among -- it doesn't match -- one person
22 doesn't match another person.

23 Q But you are telling Mr. Davis, "Most of my employees," that's
24 what you are saying in this e-mail, correct?

25 A Yeah. Many of them work in one quarter, do not work other

1 quarters. Some of them probably just work seven days and never
2 showed up in their life. Some of them worked for two years.
3 Some of them worked for one year. They all vary.

4 Q Right. But your testimony has been that these businesses
5 had -- at the time you applied for these applications -- you had
6 150 employees on salary, correct?

7 A Yes.

8 Q And you were paying a payroll of a million dollars, right?

9 A Yes.

10 Q And these -- these employees, there were no payroll records
11 for these employees, in the response?

12 A There is payroll records, but I didn't give it to you.

13 Q The reason you're telling -- you complete the sentence and
14 you say, "... my understanding is no income tax withholding was
15 necessary." Do you see that?

16 A My understanding, based on the legislation at the time, was
17 in process. There's multiple.

18 Q You don't mention legislation. You say, "Because they are
19 all below 13K a year, my understanding is no income tax
20 withholding was necessary," right?

21 A My understanding, what I knew --

22 Q Sorry, just answer my question first, please. Did you write
23 this?

24 A I did.

25 Q Was your understanding -- I'm sorry, this e-mail is from you,

1 right, Mr. Shibley?

2 A Yes.

3 Q Not any bookkeeper?

4 A No.

5 Q That's you that's saying that.

6 A I'm talking, yes.

7 Q And you are explaining to your accountant, who you just
8 started a relationship with -- this is a new accountant, correct?

9 A Very new.

10 Q You're explaining to him, here is why I don't have any taxes
11 filed, right? You are giving -- you are explaining that to him,
12 right?

13 A This is a really small part of my communication with him.

14 Q And, again, that's different than what you are telling the
15 banks. You are telling the banks, 48 employees, \$400,000 in
16 payroll a month.

17 A That is not different at all.

18 Q All right.

19 A I had a conversation with him multiple times.

20 Q All right.

21 A Text messages. There's many other e-mails. There is other
22 people involved in between us.

23 Q This is the e-mail that you provided, on Exhibit 225?

24 A Okay.

25 Q Correct?

1 A Yeah.

2 Q Your testimony yesterday, Mr. Shibley, was that prior to the
3 pandemic, you were paying your employees \$1 million a month in
4 payroll, correct?

5 A Yes.

6 Q Let's look -- and you were paying that payroll in cash,
7 correct?

8 A Yes.

9 Q Let's look at Exhibit 208, page 20.

10 I understood -- you testified that you agree with this chart,
11 correct? This chart, 208, 20 compares payroll to the money
12 that's in your bank account, right?

13 A I testified this whole thing, I don't agree with one word of
14 it.

15 Q Well, you agree that there's \$151,000 in your bank account,
16 right, in this timeframe?

17 A If he was given all the bank statements, and he's a CPA, he
18 did the --

19 Q You agree that the payroll, that you said on your PPP
20 applications, in this six-month timeframe, was more than
21 \$4 million, right?

22 A That number really came out of his hat.

23 Q Well, he cites on the bottom here what the payroll numbers
24 are from. And you told -- you told the banks that you were
25 paying in SS1 LLC, almost \$400,000 a month in payroll, right?

1 A I think it was less than that.

2 Q You told the banks that you were, that you had paid them --
3 300 -- \$328,000; is that right?

4 A I think something like 328 --

5 Q I think that's right. And that payroll was for the first
6 quarter of 2020, right?

7 A Yes.

8 Q And the third quarter -- I'm sorry, the fourth quarter of
9 2019?

10 A Yes.

11 Q And that adds up. You also said that you paid Dituri
12 Construction \$392,000 for the first quarter of 2020, right?

13 A Yes.

14 Q And you also said you were paying the A Team Holdings about
15 \$384,000 for the first quarter of 2020, right?

16 A Right.

17 Q And the third quarter -- and the fourth quarter of 2019,
18 right?

19 A Right.

20 Q Right. So, again, that's how we get -- and there's other
21 businesses too, right?

22 A Yes. There's --

23 Q That's how we got to \$4 million, right, Mr. Shibley?

24 A I --

25 Q You don't think so?

1 A The \$4 million is blown out of -- it's not a real number.

2 Q Well, that's my question. You are anticipating my question.
3 Is this a real number? Did you really pay this much money in
4 cash to your employees?

5 A This number, the way he calculated it, is not what really my
6 filings show.

7 Q Well, let's talk, then, about your testimony. Your testimony
8 is that you paid -- you were paying -- let's take January 2020,
9 for example. Okay?

10 A Yes.

11 Q That month before the pandemic, you were paying a million
12 dollars across your businesses; is that right?

13 A Yes.

14 Q And that was in cash?

15 A Yes.

16 Q And you would agree that you did not have that kind of money
17 going through your bank accounts at that time?

18 A Correct.

19 Q It's your testimony that not only were you paying out your
20 employees in cash, you were receiving income in cash as well,
21 right?

22 A Exactly, yes.

23 Q You were receiving enough income to make a 10 percent profit
24 each month, right?

25 A Average.

1 Q So that means you weren't just receiving a million dollars a
2 month, you were receiving about \$1.1 million a month, right?

3 A That would be a true estimate, yes.

4 Q And that extra \$100,000, that's your money, that's your
5 profit, right?

6 A That's what I'm taking home, yes.

7 Q But that money didn't go to your bank account. That money
8 doesn't show up in your bank accounts?

9 A No.

10 Q You have bank accounts, right, Mr. Shibley?

11 A Of course I do. I have expenses, too.

12 Q Your testimony is that your businesses were receiving
13 \$1.1 million a month for construction jobs, right?

14 A Yes.

15 Q Again, in cash?

16 A Yes.

17 Q And you didn't provide any receipts or ledgers that show how
18 much of this cash was coming in, correct?

19 A I did not give it to you, yes.

20 Q But you are going to tell us -- but you testified that you
21 were doing a lot of jobs, right, to make that much money?

22 A A lot, yes.

23 Q You told us yesterday that you could do a furnace job for
24 about \$2,000. Do you remember that?

25 A Yes.

1 Q And so to make \$1.1 million a month, you would have to do 550
2 furnace jobs, right?

3 A That is completely unrealistic.

4 Q It's unrealistic to do 550 jobs a month, isn't it? You agree
5 with that, right?

6 A That's not how it happened.

7 Q So you would do a furnace job -- you testified yesterday that
8 you would do a furnace job for \$2,000, right?

9 A I can.

10 Q And is that an average job for you, \$2,000?

11 A For a furnace replacement?

12 Q No. Just an average job for these construction companies.

13 Is your testimony that's \$2,000?

14 A No.

15 Q Does it average \$5,000?

16 A It varies widely.

17 Q Does it average \$10,000?

18 A How could I give you a number on that. It can be a couple of
19 hundred thousand, one job.

20 Q You could give me -- you could have given me a number on
21 this. Your testimony is that you -- is that you have -- you must
22 have at least -- you must have at least hundreds of jobs a month.
23 To make \$1.1 million in cash, you hundreds --

24 A I have jobs -- more jobs than I can do. And I have jobs
25 lined up in the pipeline.

1 Q Hundreds, right?

2 A If I really look into my network, I can pick 100 jobs, yes.
3 Easy.

4 Q I mean, you can't be charging -- you told us yesterday that
5 you provide cheap labor, right?

6 A I do.

7 Q So these aren't expensive jobs, are they?

8 A These are expensive, depending on who you go to. If you are
9 going to Evergreen Concrete and ask them to cut concrete, they're
10 going to charge you \$2,600 just to cut it, without any garbage
11 cleanup.

12 If you call me, I'm going to give you an estimate. I'm going
13 to install the window. I will cut the concrete. I will clean
14 out the garbage.

15 Q Sorry for interrupting. Is that your job, Mr. Shibley? Are
16 you the one who gives estimates?

17 A No, not personally. I'm talking about my business.

18 Q Your business.

19 Mr. Shibley, so however many -- so all of these jobs that
20 were cash, you are getting hundreds of jobs a month with
21 cash-paying customers, right?

22 A Yes.

23 Q Yesterday we looked at Exhibit A-3, correct? Put that up,
24 please.

25 Do you remember Exhibit A-3?

1 A I do.

2 Q It's about 45 pages, right?

3 A Yes.

4 Q And you're not -- you didn't testify that each picture
5 represents a different job, right? That's not your testimony.

6 A No, that's not what I said.

7 Q Because some of these pictures are the same job, right?

8 A Yeah. Definitely, yes.

9 Q Let's look at page 36, please. And then let's look at
10 page 37.

11 Those are the same job, right?

12 A It appears to be, yes.

13 Q Let's look at 41, and then 42.

14 Again, that's the same job, right?

15 A It appears to be the same location.

16 Q And let's go to 43, and 44, and 45.

17 Those are -- all those three pictures were all the same job?

18 A Yeah. It appears to be the same place, yes.

19 Q Right.

20 And let's look at A-4. These are exterior pictures of jobs.

21 Right, Mr. Shibley?

22 A Yes.

23 Q And there are 22 pictures in this exhibit, right?

24 A Right.

25 Q But most of these pictures are the houses you own, right?

1 A Yes.

2 Q The houses that David Madrid had visited? Right?

3 A I do not know how many times he visited these places.

4 Q Okay. But this first house, that's the property on Donovan
5 Street, right?

6 A Yes.

7 Q And the second picture, that's your medical -- that was your
8 medical building, right?

9 A Yes.

10 Q And the third picture, that's the Des Moines Way South -- Des
11 Moines Way South property?

12 A Correct.

13 Q And let's go to five, please. This is also the Des Moines
14 Way South?

15 A Correct.

16 Q Six. Des Moines Way South?

17 A Yes.

18 Q Seven. Des Moines Way South?

19 A I believe so.

20 Q Eight. Donovan?

21 A I believe so.

22 Q And more -- how about we go to 15, please.

23 It's the backyard of the Des Moines Way?

24 A Yes.

25 Q When you talked about levelling it, you were talking about

1 your own house, right?

2 A Yeah. Yeah.

3 Q And let's go to page 18. This is your Fifth Avenue South
4 property, right?

5 A Yes.

6 Q Nineteen is also that property?

7 A Yes.

8 Q And 20?

9 A Yes.

10 Q So these aren't pictures of contractor jobs, these are
11 pictures of you working on your own properties, right?

12 A Right.

13 Q These pictures aren't part of the 550 jobs a month, right?

14 A No. That's not -- can you rephrase it? Say again.

15 Q When you --

16 MR. NANCE: You know, I think that question
17 mischaracterizes his earlier testimony.

18 THE COURT: Sustained.

19 Q Mr. Shibley, when you testified about the contractor jobs
20 that your companies have, you aren't including the jobs at your
21 own property, right?

22 A I'm not including my properties there, no.

23 Q All right. Because you own these properties, right?

24 A Yes.

25 Q And you didn't pay yourself?

1 A I didn't pay myself, yes.

2 Q All right.

3 So, again, it's your testimony that your crews are doing
4 hundreds of jobs a month, correct?

5 A Correct.

6 Q For cash?

7 A Correct.

8 Q Without a contractor license?

9 A That's not correct.

10 Q You testified yesterday that you never had a contractor
11 license?

12 A I'm not a contractor.

13 Q Your businesses don't have contractor licenses, right?

14 A My businesses are not contractors. They're businesses.

15 Q And you testified yesterday that you won't accept checks from
16 homeowners. Do you remember that testimony?

17 A It's not the way it works with the homeowners. The whole
18 situation is different. The setting is cash.

19 Q You said yesterday you can't ever remember accepting a check
20 for a construction job?

21 A That is true.

22 Q And that's why there's no -- according to you -- that's why
23 there's no checks for construction jobs in your bank accounts?

24 A Exactly.

25 Q Exactly.

1 Isn't the real reason you don't have checks from homeowners
2 in your bank accounts, is because you don't have a construction
3 business?

4 A That's not true.

5 Q You are testifying, again, you had hundreds of jobs a month,
6 but you hid all of that from David Madrid?

7 A I hid something? David Madrid is not my friend. I mean, why
8 would I --

9 Q David Madrid didn't know about your construction business?

10 A Of course not.

11 Q David Madrid is a real estate agent, right? He could have
12 referred your business --

13 A He's the shadiest character that I know of.

14 Q So back to you, Mr. Shibley, and your \$1 million in payroll,
15 in cash. Let's go back to Exhibit 208, page 20.

16 So we talked about how you didn't produce any ledgers, in
17 your response to the subpoena. But there are two pages in
18 Exhibit A-1, the last two pages of Exhibit A-1 -- if we could
19 look at those.

20 Do you see these on the screen, Mr. Shibley?

21 A Yes.

22 Q These are records that you testified yesterday that you kept,
23 right?

24 A Came out of my cell phone.

25 Q These are records that you kept for paying people for working

1 on your house, right?

2 A At some time I took these pictures. And I didn't delete it
3 for some reason, I don't know. It ended up staying there. And
4 one of my cell phones was -- I was able to save, out of all my
5 belongings. And it got shipped to my attorney.

6 Q These are the -- again, I can't -- I don't want you to talk
7 about what you discussed with your attorney. But these are
8 records that reflect payments to employees, correct? Page 20 and
9 page 21?

10 A It does reflect that --

11 Q Payment -- I'm sorry, I misspoke. Payment to individuals who
12 did work on your houses, right?

13 A They definitely worked, and they got paid. And they're just
14 saying that they are paid for their work, yes.

15 Q Right. And, again -- but you didn't keep these types of
16 records for Ditur Construction, did you?

17 A I have detailed payment history for each of the workers, for
18 Ditur.

19 Q But, again, served with a subpoena, remember?

20 A Yes.

21 Q Memorable day?

22 A Yes.

23 Q No payroll records, right?

24 A I didn't give it to you.

25 Q Let's go to your testimony, then. Let's talk about your

1 testimony.

2 Your testimony is that you paid \$1 million in cash a month to
3 these workers, correct?

4 A Correct.

5 Q And you handed it to them; is that right? That's how it has
6 to go, someone handed them the money?

7 A Someone. It's not personally me all the time.

8 Q It was personally you who tried to personally withdraw the
9 \$560,000 from Celtic Bank in cash, right?

10 A Who else would do that --

11 Q I'm sorry?

12 A -- besides me, from the bank.

13 Q And you testified yesterday that you moved that money from
14 your checking account to your savings account. Do you remember
15 that?

16 A So that the money doesn't get mishandled, yes.

17 Q You didn't want that money to stay in your checking account,
18 because you were worried that your wallet could fall out, right?

19 A That's one of the scenarios. There's many other ways.

20 Q Well, the one you talked about yesterday was you were worried
21 about your wallet falling out and someone getting your debit
22 card, right?

23 A If someone gets my debit card, they can access my checking
24 account, and a large amount of money can be stolen.

25 Q Right. And you testified yesterday, when you were talking

1 about this, you said, "Just imagine the population that I'm
2 dealing with."

3 A Yes.

4 Q Isn't that what you said?

5 A Yes. Yes.

6 Q And you are talking about your workers, right?

7 A I know thousands and thousands of people.

8 Q And you said that your business had millions of dollars in
9 cash that was being handed out at these job sites?

10 A Yes.

11 Q But you're testifying that you were afraid to bring your
12 wallet, you couldn't lose your wallet at one of these sites; is
13 that your testimony?

14 A I would prefer not to have my wallet stolen, because it's
15 inconvenient to go to all of these locations. I guess you got 53
16 accounts yesterday. If my wallet is stolen, it has my driver's
17 license, bank cards, and who knows what.

18 Q You were afraid of losing -- you testified you couldn't even
19 leave your wallet at one of these sites, that's how scared you
20 were to be there?

21 A I would not leave my wallet anywhere, unattended. I mean, it
22 doesn't matter if it's a worksite, or a bus station, or wherever.

23 Q You were talking about your properties, right?

24 A It could be my bedroom. And I would not be just leaving it
25 like that. I'm more careful than that.

1 Q Besides paying employees in cash, you also paid expenses in
2 cash, correct?

3 A Correct.

4 Q Let's look at A-2. Do you remember testifying about A-2
5 yesterday?

6 A Yes.

7 Q There are more than 300 pages in this exhibit, correct?

8 A Correct.

9 Q And is your testimony that A-2 shows that you paid expenses
10 in cash?

11 A That's not cash. This is -- this goes through a bank card.

12 Q Well, the first one is a cash -- is a picture of a cash
13 purchase, correct?

14 A Let me see. I don't have my eyeglasses, so I may have missed
15 it.

16 Q Could you blow that up there?

17 A It says, "Cash, \$20."

18 Q Okay. And let's look at page 90, please, Mr. Arnold.

19 This is cash also. Right, Mr. Shibley?

20 A Yes.

21 THE COURT: Let me see counsel at sidebar.

22 (Off-the-record sidebar.)

23 THE COURT: You folks can stand up and stretch if you
24 would like.

25 Q Mr. Shibley, I believe you did confirm earlier that most of

1 these purchases are made with a Visa card, correct?

2 A I believe so.

3 Q Okay.

4 A If you want to know how it came, I can explain.

5 Q There are a lot of duplicates in this exhibit, aren't there?

6 A I really -- I'm sitting in federal prison right now. I have
7 no way to confirm this.

8 Q Let's look at page 102, that's 4.97. And page 104. Those
9 are the same, the ones -- the two we just looked at; is that
10 right?

11 A It appears to be, yes. You are correct.

12 Q And there are lots of these duplicates in this packet, aren't
13 there?

14 A There could be -- I only had 30 seconds to go through it, two
15 days ago.

16 Q Just one -- just two more small points about this. Page 8.
17 Page 8 is a customer invoice, and the total is \$114.53, correct?

18 A Correct.

19 Q Invoice ending in 975, right?

20 A Right.

21 Q And these invoices are then duplicated later in the exhibit
22 as well, right? I will show you page 130. This is a \$114.53
23 purchase, correct?

24 A Correct.

25 Q ID ending in 975, right?

1 A Right.

2 Q We can take that -- go back to the first page, please,
3 Mr. Arnold.

4 All of A-2 -- all of these pages here, the name Dituri
5 Construction is not on any of these receipts, right?

6 A Yeah, you're right. Why would there be the Dituri name here?

7 Q SS1 isn't on any of these receipts, right?

8 A I don't think the receipt has a provision for that.

9 Q A Team Holdings is not on these receipts?

10 A There is no business's name in this receipt.

11 Q You didn't have a contractor license on file with Home Depot,
12 did you?

13 A I do not carry a contractor license.

14 Q These receipts for A-2, these are purchases you made when you
15 were working on rehabbing your own properties, right?

16 A I do not know the time -- the timing of this receipt shows
17 what time? Let me see.

18 Q Let's look at page 104. I think that might draw us right
19 to --

20 A That is not -- no. This is not when I was rehabbing any of
21 my houses.

22 Q The job says "515." That's the address of your Donovan
23 property; isn't it?

24 A That is not -- that is code name.

25 Q Is that coincidence that 515 is on this receipt?

1 A It's not a -- it is a code that I use.

2 Q Let's go to page 105. That also has 515 for your Donovan
3 property.

4 A It is a code.

5 Q Let's go to page 106.

6 It says 10080. That's the address of your Des Moines
7 property, right?

8 A That is not the address.

9 Q That is not the address?

10 A That is not. That's the code number that I use.

11 Q So let's go back to the front page, please. These receipts
12 are things you bought to rehab your properties?

13 A No.

14 Q No. Some of these receipts are things that you bought to
15 rehab your property?

16 A Doesn't appear to be. The timing is last quarter of, I think
17 November 2019. That's not when I rehabbed any of these houses.

18 Q The -- there are \$40,000 worth of expenses covered in here;
19 is that right?

20 A Could be. Yes.

21 Q Your testimony is these are for something other than your
22 properties?

23 A The timing says that, yes.

24 Q So, again, 515 doesn't relate to Donovan?

25 A No.

1 Q 108 doesn't relate to Des Moines Way South?

2 A No.

3 Q You were rehabbing properties, right? You were rehabbing
4 those three properties, right?

5 A 2018.

6 Q In 2019?

7 A No.

8 Q And in 2020?

9 A No.

10 Q And when you rehab a property, you don't make money until you
11 sell the property, right?

12 A The selling depends on when I decide to sell.

13 Q And you never sold those three properties, did you,
14 Mr. Shibley?

15 A As of today -- I have an offer today. I didn't like the
16 offer. I said that I'm not going to do it.

17 Q All these pictures, all these receipts, they're evidence that
18 you were flipping houses, right?

19 A This receipts are -- has nothing to do with me flipping
20 houses.

21 Q You were trying to rehab those houses, right?

22 A Not now.

23 Q Before, prior to this case, you were trying to rehab those
24 houses, right?

25 A Four years ago.

1 Q You were trying to -- and you had people working on those
2 houses?

3 A Four years ago.

4 Q And David Madrid went to those houses and saw people working
5 on those houses in 2018?

6 A I really do not have a date.

7 Q And in 2019, David Madrid went to those houses, right?

8 A I had a big --

9 Q Yes or no. Did David Madrid go to those houses in 2019?

10 A I don't know where he goes.

11 Q You are trying to flip houses and use that evidence to back
12 up a million dollars in payroll?

13 A Absolutely not. Your timing is off.

14 Q That's exactly what you were trying to do.

15 MR. WERNER: No further questions.

16 THE COURT: Redirect?

17 MR. NANCE: Is the court contemplating a --

18 THE COURT: At 10:45.

19 REDIRECT EXAMINATION

20 BY MR. NANCE:

21 Q So, Mr. Shibley, can you just touch on the degree to which
22 your businesses fluctuated?

23 A Greatly fluctuated, yes.

24 Q Well, tell us how that happened.

25 A Well, the way it happens is -- so, some quarters I'm picking

1 up big jobs. Some quarters I'm doing something small or maybe
2 some quarters I did nothing. There are four quarters every year.
3 They never are the same. Things never are permanent. Everything
4 changes. Time-to-time, week-to-week, sometimes day-to-day.

5 Q Okay.

6 A And also it depends on what I choose to do, what's going on
7 with my workers, what's going on with the country, society.
8 Everything comes into play.

9 Q Let me ask you just briefly about -- you were asked about
10 records that you produced or failed to produce. Do you recall
11 those questions?

12 A Yes.

13 Q Was there a distinction, in your mind, about existing records
14 and records that had not yet been created?

15 A Exactly. So the way it works, and the way I understood at
16 the time when I was given the paper, that I personally looked at
17 the -- you know, I was concerned about it. I consulted my
18 attorney. The keyword there was "existent" or "nonexistent."
19 And whether I possessed that personally or not. I'm -- if a
20 document is -- who is the record custodian of the document? If a
21 record custodian of a document is an accountant, and he didn't
22 get served with the subpoena, that paper doesn't come out.

23 Q All right. Let me ask you this, Mr. Shibley: The
24 receipts -- you were asked several questions about the Home Depot
25 receipts, or the receipts in Exhibit A-2.

1 A Yes.

2 Q The big stack of exhibits.

3 A I believe that --

4 Q I'm just giving you the reference, I'm about to ask you the
5 question.

6 A Yes.

7 Q Okay. You know that A-2 was that large stack of exhibits --

8 A More than --

9 Q -- of expenses?

10 A More than 400 receipts there that you retrieved from one of
11 my e-mails.

12 Q Okay. Were there other expenses for which you do not have
13 receipts?

14 A Definitely, yes. This is a drop in the bucket. Basically
15 doesn't present the whole picture at all.

16 MR. NANCE: Thank you very much. That's all.

17 THE COURT: All right. Any recross?

18 RECROSS-EXAMINATION

19 BY MR. WERNER:

20 Q Can you call up Exhibit A-2, page 52, please?

21 This is a receipt with your name on it, correct?

22 A It appears to be, yes.

23 Q The job description is "Donovan," right?

24 A It appears to be.

25 Q And, again, you owned a property on Donovan Street, correct?

1 Yes or no?

2 A Yes, I do.

3 Q Okay. And this is a receipt from January of 2020 for
4 merchandise that you bought to flip the Donovan house, correct?

5 A I don't believe the Donovan house was getting any work done
6 at that time, no.

7 MR. WERNER: Nothing further.

8 THE COURT: All right. You may step down.

9 You may step down.

10 THE WITNESS: Oh.

11 MR. NANCE: Your Honor, the only -- we have no further
12 witnesses. And there's one open matter that maybe we should
13 address at sidebar.

14 THE COURT: All right. Well, no. I'm going to let the
15 jury go out for a morning recess. We have some legal matters we
16 have to discuss also, so it may be more than 15 minutes.

17 (The following occurred outside the presence of the jury.)

18 MR. NANCE: I filed this a day or two ago. It was a
19 request for judicial notice on the issue of lender fees.

20 THE COURT: I haven't seen that.

21 MR. NANCE: Okay. It was -- I believe it should have
22 made the ECF yesterday. I mean, I can --

23 THE COURT: Do you have a copy of it?

24 MR. NANCE: Electronically only. But I could probably
25 pull it up.

1 THE COURT: We can print it out. Mr. Nance, we can
2 print it out.

3 MR. NANCE: Okay. Did you get it?

4 THE COURT: Yes.

5 MR. NANCE: You do have it. All right.

6 MS. CONNELLY: Your Honor, may the government be heard
7 on the judicial --

8 THE COURT: Yes.

9 MS. CONNELLY: The government would object to the court
10 taking judicial notice of this fact. The fact was established
11 through the witness. It's already in evidence. It's through --
12 Adam Seery testified to this on his cross-examination with
13 Mr. Nance.

14 Beyond that, I think it's entirely irrelevant what the
15 lenders were paid, which is based on the court's ruling on that
16 issue pretrial, on our motion in limine.

17 MR. NANCE: A couple of things. It is true that
18 Mr. Seery testified to it. And it's also true that --

19 THE COURT: Was his testimony different than what you
20 are asking?

21 MR. NANCE: His testimony was very similar. However,
22 there was a slight conflict in testimony. The SBA
23 representative, Ms. Zelaya, testified it was simply 1 percent,
24 which is -- it's true for large loans, but it's not true for the
25 bulk of the loans. So there's a bit of a conflict. And there's

1 really no dispute about what the actual law is. It's right in
2 the CFR, the administrative code.

3 MS. CONNELLY: Your Honor, I just think that if the
4 defense is going to be arguing about lender fees in closing, and
5 that that somehow is a defense to this case, we would object to
6 that. And that seems to be where we're headed with this judicial
7 notice. I think it gives it more weight than it should have.

8 THE COURT: The objection is overruled. It will be
9 permitted.

10 MR. NANCE: Thank you.

11 THE COURT: Does the government have any problems with
12 the proposed instructions?

13 MS. CONNELLY: No, we do not, Your Honor.

14 MR. WERNER: Your Honor, can I just -- real briefly. I
15 want to make -- there's a bracketed section.

16 THE COURT: Oh, yes. What number is that?

17 MR. WERNER: And I don't think any evidence was admitted
18 for a limited purpose.

19 THE COURT: I think that's true.

20 What number is that?

21 MR. WERNER: That is, I think -- I'm sorry.

22 THE COURT: Yeah. That's No. 7.

23 MR. WERNER: Seven.

24 THE COURT: We will change that to strike the bracketed
25 portion.

1 MR. WERNER: I also believe that Instruction No. 15 is
2 not appropriate here. That's charts and summaries not admitted
3 into evidence. I don't believe that anything was used for
4 demonstrative purposes.

5 THE COURT: I think that's true.

6 Mr. Nance, do you agree with that?

7 MR. NANCE: I agree with that. Yes, Your Honor.

8 THE COURT: All right. We will strike No. 15.

9 MR. WERNER: I think -- sorry, Your Honor.

10 Nothing further.

11 THE COURT: Okay. Mr. Nance, do you have any
12 exceptions?

13 MR. NANCE: I'm kind of whipping through this. I have a
14 standard exception to the reasonable doubt instruction. I
15 realize what you have given is the model instruction.

16 THE COURT: And I understand your exception.

17 MR. NANCE: Well, you have seen the difference; "should
18 convict" rather than it "has a duty to convict."

19 THE COURT: I'm not going to change that.

20 MR. NANCE: Okay.

21 None others jump to mind. Let me see. One moment, here.
22 We had asked for a good-faith instruction.

23 THE COURT: I understand the exception. I'm not going
24 to give it.

25 MR. NANCE: All right. I think that sums it up.

1 THE COURT: Okay. All right. Then let's take
2 15 minutes. Then I will instruct. And then we will go right
3 into argument.

4 MR. NANCE: Your Honor, I would like to just make a
5 record, a Rule 29 record --

6 THE COURT: Sure --

7 MR. NANCE: -- just to say we want to object to the lack
8 of a prima facie showing.

9 THE COURT: All right. And the motion is denied.

10 MR. NANCE: And we're going immediately into argument
11 afterwards?

12 THE COURT: Yes.

13 How much time are you going to need?

14 MS. CONNELLY: One hour, please.

15 THE COURT: And you?

16 MR. NANCE: Not that long.

17 THE COURT: All right.

18 MR. NANCE: Maybe half an hour.

19 THE COURT: All right. I'm not going to limit you, but
20 an hour seems a little excessive.

21 MS. CONNELLY: I will try and cut it down.

22 THE COURT: All right. We will be in recess for
23 15 minutes.

24 THE CLERK: All rise. Court is in recess.

25 (Recess.)

1 THE COURT: Are you ready for the jury?

2 MS. CONNELLY: Yes, Your Honor.

3 THE COURT: All right. Bring them in.

4 (The following occurred in the presence of the jury.)

5 THE COURT: Please be seated.

6 So, folks, in just a moment I'm going to deliver the court's
7 instructions on the law. Copies of these instructions will be
8 given to each of you, so you don't have to take notes on the
9 instructions. But do listen carefully to what I have to say.

10 Members of the jury, now that you have heard all the
11 evidence, it is my duty to instruct you on the law that applies
12 to this case. Copies of these instructions will be available for
13 each of you in the jury room for you to consult.

14 It is your duty to weigh and to evaluate all the evidence
15 received in the case, and in that process to decide the facts.
16 It is also your duty to apply the law as I give it to you, to the
17 facts as you find them, whether you agree with the law or not.
18 You must decide the case solely on the evidence and the law. Do
19 not allow personal likes or dislikes, sympathy, prejudice, fear,
20 or public opinion to influence you.

21 You should also not be influenced by any person's race,
22 color, religious beliefs, national ancestry, sexual orientation,
23 gender identity, gender, or economic circumstances.

24 Also, do not allow yourself to be influenced by personal
25 likes or dislikes, sympathy, prejudice, fear, public opinion, or

1 biases, including unconscious biases. Unconscious biases are
2 stereotypes, attitudes or preferences that people may consciously
3 reject, but may be expressed without conscious awareness, control
4 or intention. You will recall that you took an oath promising to
5 do so at the beginning of the case.

6 You must follow all these instructions and not single out
7 some and ignore others. They are all important. Please do not
8 read into these instructions, or into anything I may have said or
9 done, any suggestion as to what verdict you should return. That
10 is a matter entirely up to you.

11 The indictment is not evidence. The defendant has pled not
12 guilty to the charges. The defendant is presumed to be innocent,
13 unless and until the government proves the defendant guilty
14 beyond a reasonable doubt. In addition, the defendant does not
15 have to testify or present any evidence. The defendant does not
16 have to prove innocence. The government has the burden of proof
17 of proving every element of the charges, beyond a reasonable
18 doubt. The defendant has testified. You should treat his
19 testimony just as you would the testimony of any other witness.

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

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

1 from lack of evidence. If, after a careful and impartial
2 consideration of all the evidence, you are not convinced beyond a
3 reasonable doubt that the defendant is guilty, it is your duty to
4 find the defendant not guilty.

5 On the other hand, if, after a careful and impartial
6 consideration of all the evidence, you are convinced beyond a
7 reasonable doubt that the defendant is guilty, it is your duty to
8 find the defendant guilty.

9 The evidence you are to consider in deciding what the facts
10 are, consists of the sworn testimony of any witness, the exhibits
11 received into evidence, and any facts to which the parties have
12 agreed. The parties have agreed to certain facts that have been
13 stated to you. Those facts are now conclusively established.

14 In reaching your verdict, you may consider only the testimony
15 and exhibits received in evidence. The following things are not
16 evidence, and you may not consider them in deciding what the
17 facts are.

18 First, questions, statements, objections and arguments by the
19 lawyers are not evidence. The lawyers are not witnesses.

20 Although you must consider a lawyer's questions to understand the
21 answers of a witness, the lawyer's questions are not evidence.

22 Similarly, what the lawyers have said in their opening
23 statements, closing arguments, and at other times, is intended to
24 help you interpret the evidence, but it is not evidence. If the
25 facts as you remember them differ from the way the lawyers state

1 them, your memory of them controls.

2 Second, any testimony that I have excluded, stricken, or
3 instructed you to disregard is not evidence.

4 And third, anything you may have seen or heard when the court
5 was not in session is not evidence. You are to decide the case
6 solely on the evidence received at the trial.

7 Evidence may be direct or circumstantial evidence. Direct
8 evidence is direct proof of a fact, such as testimony by a
9 witness about what that witness personally saw or heard or did.
10 Circumstantial evidence is indirect evidence. That is, it is
11 proof of one or more facts from which you can find another fact.
12 You are to consider both direct and circumstantial evidence.
13 Either can be used to prove any fact. The law makes no
14 distinction between the weight to be given to either direct or
15 circumstantial evidence. It is for you to decide how much weight
16 to give to any evidence.

17 In deciding the facts in this case, you may have to decide
18 which testimony to believe and which testimony not to believe.
19 You may believe everything a witness says, or part of it, or none
20 of it. In considering the testimony of any witness, you may take
21 into account the opportunity and ability of the witness to see,
22 or hear, or know the things testified to; the witness's memory;
23 the witness's manner while testifying; the witness's interest in
24 the outcome of the case, if any; the witness's biases or
25 prejudice, if any; whether other evidence contradicted the

1 witness's testimony; the reasonableness of the witness's
2 testimony, in light of all the evidence, and any other factors
3 that bear on believability.

4 Sometimes a witness may say something that is not consistent
5 with something else he or she said. Sometimes different
6 witnesses will give different versions of what happened. People
7 often forget things or make mistakes in what they remember.
8 Also, two people may see the same event but remember it
9 differently. You may consider these differences, but do not
10 decide the testimony is untrue, just because it differs from
11 other testimony.

12 However, if you decide that a witness has deliberately
13 testified untruthfully about something important, you may choose
14 not to believe anything that witness said.

15 On the other hand, if you think the witness testified
16 untruthfully about some things, but told the truth about others,
17 you may accept the part that you think is true and ignore the
18 rest.

19 The weight of the evidence as to a fact does not necessarily
20 depend on the number of witnesses who testify. What is important
21 is how believable the witnesses were and how much weight you
22 think their testimony deserves.

23 You are here only to determine whether the defendant is
24 guilty or not guilty of the charges in the indictment. The
25 defendant is not on trial for any conduct or offense not charged

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

5 You have heard testimony that the defendant made a statement.
6 It is for you to decide whether the defendant made the statement,
7 and if so, how much weight to give to it. In making those
8 decisions, you should consider all the evidence about the
9 statement, including the circumstances under which the defendant
10 may have made it.

11 You have heard testimony about an uncover agent who was
12 involved in the government's investigation in this case. Law
13 enforcement officials may engage in stealth and deception, such
14 as the use of undercover agents, in order to investigate criminal
15 activities. Undercover agents may use false names and
16 appearances.

17 Certain charts and summaries have been admitted into
18 evidence. Charts and summaries are only as good as the
19 underlying supporting material. You should, therefore, give them
20 only such weight as you think the underlying material deserves.

21 The defendant is charged in Counts 1 through 7 of the
22 indictment with wire fraud, in violation of Section 1343 of Title
23 18 of the United States Code. For the defendant to be found
24 guilty of that charge, the government must prove each of the
25 following elements beyond a reasonable doubt:

1 First, the defendant knowingly devised a scheme or plan to
2 defraud, or a scheme or plan for obtaining money or property by
3 means of false or fraudulent pretenses, representations, or
4 promises. Deceitful statements or half-truths may constitute
5 false or fraudulent representations.

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

10 Third, the defendant acted with the intent to defraud, that
11 is, the intent to deceive and cheat.

12 And fourth, the defendant used or caused to be used an
13 interstate wire communication to carry out or attempt to carry
14 out an essential part of the scheme.

15 In determining whether a scheme to defraud exists, you may
16 consider not only the defendant's words and statements, but also
17 the circumstances in which they are used as a whole. A wiring is
18 caused when one knows that a wire will be used in the ordinary
19 course of business, or when one can reasonably foresee such use.
20 It need not have been reasonably foreseeable to the defendant
21 that the wire communication would be interstate in nature.
22 Rather, it must have been reasonably foreseeable to the defendant
23 that some wire communication would occur in furtherance of the
24 scheme; and an interstate wire communication must have actually
25 occurred in furtherance of the scheme.

1 The defendant is charged in Counts 8 through 10 of the
2 indictment with bank fraud, in violation of Section 1344(2) of
3 Title 18 of the United States Code.

4 For the defendant to be found guilty of that charge, the
5 government must prove each of the following elements beyond a
6 reasonable doubt:

7 First, the defendant knowingly carried out a scheme or plan
8 to obtain money or property from the financial institution, by
9 making false statements or promises.

10 Second, the defendant knew that the statements or promises
11 were false.

12 Third, the statements or promises were material; that is,
13 they had a natural tendency to influence, or were capable of
14 influencing a financial institution to depart with money or
15 property.

16 Fourth, the defendant acted with the intent to defraud.

17 And fifth, the financial institution was federally insured.

18 The defendant is charged in Counts 11 through 15 of the
19 indictment with money laundering, in violation of Section 1957,
20 Title 18 of the United States Code.

21 For the defendant to be found guilty of that charge, the
22 government must prove each of the following elements beyond a
23 reasonable doubt:

24 First, the defendant knowingly engaged or attempted to engage
25 in a monetary transaction.

1 Second, the defendant knew the transaction involved
2 criminally derived property.

3 Third, the property had a value greater than \$10,000.

4 Fourth, the property was, in fact, derived from wire fraud or
5 bank fraud, as alleged in Counts 1 through 10 of the indictment.

6 And fifth, the transaction occurred in the United States.

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

11 The term "financial institution" means a federally insured
12 bank or any credit union, as alleged in the indictment.

13 The term "criminally derived property" means any property
14 constituting or derived from the proceeds of a criminal offense.

15 The government must prove that the defendant knew that the
16 property involved in the monetary transaction constituted or was
17 derived from proceeds obtained by some criminal offense.

18 The government does not have to prove that the defendant knew
19 the precise nature of that criminal offense, or knew the property
20 involved in a transaction represented the proceeds of wire fraud
21 or a bank fraud, as alleged in Counts 1 through 10 of the
22 indictment.

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

1 criminally derived.

2 An act is done knowingly if the defendant is aware of the act
3 and does not act through ignorance, mistake or accident. The
4 government is not required to prove that the defendant knew that
5 his acts or omissions were unlawful.

6 You may consider evidence of the defendant's words, acts or
7 omissions, along with all the other evidence, in deciding whether
8 the defendant acted knowingly.

9 An intent to defraud is an intent to deceive and cheat.

10 A defendant may be found guilty of the crimes charged, even
11 if the defendant did not personally commit the acts constituted
12 in the crime, if the defendant willfully caused an act to be
13 done, that if directly performed by him would be an offense
14 against the United States.

15 A defendant who puts in motion or causes the commission of an
16 indispensable element of an offense, may be found guilty as if he
17 had committed this offense himself.

18 With regard to Instruction No. 20, an act is done willfully
19 if it was undertaken with bad purpose and with knowledge that the
20 conduct is unlawful.

21 The indictment charges that the offenses alleged in Counts
22 1 through 15 were committed on or about a certain date. Although
23 it is necessary that the government prove beyond a reasonable
24 doubt that the offense was committed on a date reasonably near
25 the date alleged in Counts 1 through 15 of the indictment, it is

1 not necessary for the government to prove that the offense was
2 committed precisely on the date charged.

3 When you begin your deliberations, elect one member of the
4 jury as your foreperson, who will preside over the deliberations
5 and speak for you here in court. You will then discuss the case
6 with your fellow jurors, to reach agreement, if you can do so.
7 Your verdict, whether guilty or not guilty, must be unanimous.
8 Each of you must decide the case for yourself. But you should do
9 so only after you have considered all the evidence, discussed it
10 fully with the other jurors, and listened to the views of your
11 fellow jurors.

12 Do not be afraid to change your opinion, if the discussion
13 persuades you that you should. But do not come to a decision,
14 simply because other jurors think it is right. It is important
15 that you attempt to reach a unanimous verdict, but, of course,
16 only if each of you can do so, after having made your own
17 conscientious decision. Do not change an honest belief about the
18 weight and effect of the evidence, simply to reach a verdict.

19 Perform these duties fairly and impartially. Do not allow
20 personal likes or dislikes, sympathy, prejudice, fear, or public
21 opinion to influence you.

22 You should also not be influenced by any person's race,
23 color, religious beliefs, national ancestry, sexual orientation,
24 gender identity, gender, or economic circumstances.

25 Also, do not allow yourself to be influenced by personal

1 likes or dislikes, sympathy, prejudice, fear, public opinion, or
2 biases, including unconscious biases.

3 Unconscious biases are stereotypes, attitudes or preferences
4 that people may consciously reject, but may be expressed without
5 conscious awareness, control or intention.

6 It is your duty, as jurors, to consult with one another, and
7 to deliberate with one another with a view towards reaching an
8 agreement if you can do so. During your deliberations, you
9 should not hesitate to examine your own views -- or re-examine
10 your own views, and change your opinion, if you become persuaded
11 that it is wrong.

12 Some of you have taken notes during the trial. Whether or
13 not you took notes, you should rely on your own memory of what
14 was said. Notes are only to assist your memory. You should not
15 be overly influenced by your notes or those of your fellow
16 jurors.

17 The punishment provided by law for this crime is for the
18 Court to decide. You may not consider punishment in deciding
19 whether the government has proved its case against the defendant,
20 beyond a reasonable doubt.

21 A verdict form has been prepared for you. After you have
22 reached a unanimous agreement on a verdict, your foreperson
23 should complete the verdict form, according to your
24 deliberations, sign and date it, and advise the court that you're
25 ready to return to the courtroom.

1 If it becomes necessary, during your deliberations, to
2 communicate with me, you may send a note, through the clerk,
3 signed by any one or more of you. No member of the jury should
4 ever attempt to communicate with me, except by a signed writing.
5 And I will respond to the jury concerning the case, only in
6 writing or here in open court.

7 If you send out a question, I will consult with the lawyers
8 before answering it, which may take some time. You may continue
9 your deliberations while waiting for the answer to any question.
10 Remember, that you are not to tell anyone, including me, how the
11 jury stands, numerically or otherwise, on any question submitted
12 to you, including the question of the guilt of the defendant,
13 until after you have reached a unanimous verdict or been
14 discharged.

15 All right. Ms. Connelly.

16 MS. CONNELLY: May it please the court. This case is
17 about the defendant's decision to perpetuate a massive fraud at a
18 time of national crisis.

19 Just over 18 months ago, the COVID-19 pandemic shut down our
20 country. Businesses were told to close their doors. People were
21 told to stay home. And workers were laid off. In the face of
22 this, the government moved quickly to establish pandemic relief
23 programs for suffering people and businesses.

24 The PPP and EIDL programs were designed to get money out
25 quickly, in the face of this disaster. The funds were meant to be

1 a lifeline to small businesses and their employees. They were
2 meant to keep small businesses open and employees on the payroll.
3 In sum, they were meant to help small business owners and their
4 employees survive.

5 And in order to do so quickly, in order to get money to the
6 people who needed it most, these programs relied on people to
7 tell the truth. The defendant, Eric Shibley, chose not to tell
8 the truth.

9 Instead, he decided to lie, and to line his pockets with
10 COVID relief money. Eric Shibley submitted 26 fraudulent PPP
11 applications, and 13 fraudulent EIDL applications. He received
12 over \$2.8 million in taxpayer money. He then tried to hide his
13 ill-gotten proceeds, by taking them out in cash. And he was
14 successful in getting over \$200,000 in cash.

15 We're not here today because Eric Shibley made a one-time
16 mistake, or made a small misstatement on loan paperwork, or is
17 bad at recordkeeping. We're here today because Eric Shibley
18 chose to submit application, after application, after
19 application, containing lie, after lie, after lie. He lied about
20 having employees. He lied about the salaries that he paid those
21 employees. And he lied about having paid payroll taxes on those
22 employees.

23 He submitted fake tax forms, with every application that he
24 submitted to the PPP lenders. And he did all of this for one
25 purpose: To steal money from pandemic relief programs that were

1 meant to help legitimate small businesses and legitimate
2 employees.

3 Over the last few days, you have seen the evidence. And it
4 shows that the defendant is guilty. And now time for Eric
5 Shibley to be held accountable for his actions. It is Eric
6 Shibley's actions and choices that bring us to this courtroom
7 today.

8 Eric Shibley is here today, having been charged with seven
9 counts of wire fraud, three counts of bank fraud, and five counts
10 of money laundering. Judge Coughenour has instructed you as to
11 the elements of those charges. He's instructed you what the
12 government needs to do to prove its case.

13 And now I'm going to walk you through all 15 of those counts,
14 and you will see how the evidence that we've presented to you
15 over the last few days at trial, proves beyond a reasonable doubt
16 each and every one of those elements.

17 But as we go through the evidence, I ask that you keep two
18 important things in mind: First, when you consider a piece of
19 evidence, don't do it in isolation. And what I mean by that is,
20 please consider each piece of evidence in the context of all the
21 other evidence that you have seen and heard in this case. We
22 haven't shown you every loan document or every bank record, but
23 it's all in evidence. You will be able to see it when you go
24 back to the jury room. We're just highlighting certain loan
25 applications and certain bank records to help tell the story.

1 But when you start deliberating, step back and look at the
2 big picture here. None of this was about one bad loan, or one
3 small mistake. None of this was done by accident. And none of
4 this was a mistake.

5 Second, and most importantly, use your common sense when you
6 are evaluating the evidence and the testimony in this case.
7 Members of the jury, when you walk into a federal courthouse, you
8 don't have to check your common sense at the door. You don't
9 have to leave your experiences and your intuition and your
10 instincts, when you walk through security. So if you do those
11 two things, you will know that beyond a reasonable doubt, that
12 Eric Shibley is guilty for every count for which he's been
13 charged.

14 My presentation today has three parts. First, we're going to
15 go through the scheme, which shows that Eric Shibley was engaged
16 in a scheme to defraud, and the material lies that he told SBA
17 and the lenders to take their money.

18 Second, we're going to review the evidence that shows that
19 Eric Shibley knew he was lying, that he had what Judge Coughenour
20 has told you, is the intent to defraud.

21 And, finally, I'm going to go through the elements of each of
22 the counts in the indictment, and show how the evidence ties into
23 all of them.

24 I'm going to use a slide deck as I speak with you, which is
25 simply meant to summarize the evidence. These slides I show you

1 are not going to be going back with you, but the exhibits and the
2 evidence will.

3 My slides are going to have exhibit numbers on them. So you
4 should write them down, and take them back with you into the jury
5 room to help you deliberate.

6 So let's turn to first topic that I'm going to cover with
7 you, which is Mr. Shibley's scheme to defraud. As Judge
8 Coughenour has explained to you, both the wire fraud and the bank
9 fraud counts require that the defendant has engaged in a scheme
10 to defraud.

11 Having a scheme simply means that there was a plan or a
12 course of action, that was designed to -- that was intended to
13 deceive and cheat people.

14 You're now well aware of Mr. Shibley's scheme. The scheme
15 was to lie to lenders, and lie to the SBA, in order to receive
16 pandemic relief money. How can you tell it's one big scheme?
17 Because the lies are all similar, across the lies to the SBA and
18 the PPP lenders.

19 You have heard the evidence of the three main lies that
20 Mr. Shibley told the PPP lenders, and that they all mattered.
21 Because if he had told the truth, he would not have received
22 nearly \$3 million in COVID relief money.

23 He made up the numbers that he paid in payroll. He made up
24 the number of employees that he had. And he lied about having
25 paid payroll taxes on those employees.

1 And then you saw similar lies on Mr. Shibley's EIDL
2 applications, where he made up his gross revenue figures, for the
3 twelve months prior to January 31, 2020. And then he continued
4 to lie about his number of employees on all of those
5 applications.

6 The numbers on Mr. Shibley's PPP and EIDL applications are,
7 quite simply, made up. They are pulled from thin air. And how
8 do you know this? Because businesses, real businesses, with real
9 employees, leave a paper trail. A real business has federal tax
10 records. A real business has state tax records. A real business
11 has bank records showing activity, paying employees. And if all
12 else fails, at the very least, the business itself has records.

13 And you have seen that there's no paper trail for any of
14 Mr. Shibley's businesses, because they were not really businesses
15 with real employees. And they were definitely not the businesses
16 that he told the SBA and the lenders that they were.

17 The first place we looked in our search for Mr. Shibley's
18 businesses, was with the IRS. And, remember, you heard from Mr.
19 Hernandez, that the IRS had no records of any of the businesses
20 that Mr. Shibley claimed to have. And Mr. Hernandez walked you
21 through some of the W-3s and the 941s that were filed with these
22 applications. And he told you that not one of them had been
23 filed with the IRS. And that means that all of the tax forms
24 that Mr. Shibley submitted with his applications, they were
25 fakes. Mr. Shibley never paid payroll taxes on his entities,

1 despite his representations to the SBA and the lenders otherwise.

2 You also heard from witnesses from the Washington State
3 Department of Revenue and the Washington Employment Security
4 Department. Jeff Hillers told you, of the Washington Department
5 of Revenue, told you that most of the Shibley entities never
6 reported any revenue. Only Mr. Shibley's medical practice had
7 reported some revenue. But it was so little, that he rarely had
8 to pay any sort of state tax.

9 And Mr. Hillers also told you that DOR had no records for
10 Dituri Construction, SS1, or A Team Holdings. And also, that
11 there were no contractor's licenses for any of those companies
12 with the state.

13 Then Cynthia Cole, of the Washington Employment Security
14 Department, told you that not one of the Shibley entities had
15 paid state payroll or unemployment taxes in 2019 and 2020. Not
16 Dituri Construction. Not SS1. Not the A Team Holdings. Not
17 Seattle's Finest Cannabis. And not ES1 or Shibley Medical.

18 In fact, the only records that the Employment Security
19 Department found in its search of Eric Shibley and the Shibley
20 entities, showed that Mr. Shibley, himself, was receiving
21 pandemic unemployment assistance, or PUA, another CARES Act
22 program at the time.

23 And, again, this tells you that Mr. Shibley was well aware of
24 how to file paperwork and file his taxes, when he, himself, could
25 get money.

1 We then looked for evidence of these businesses in
2 Mr. Shibley's 59 bank accounts. The bank records for these
3 entities did not show anything supporting the numbers in these
4 loan applications.

5 You heard testimony from Michael Petron, the accountant who
6 reviewed all of the bank records in this case, for the time
7 period right before Mr. Shibley applied for these loans. And he
8 told you that for the period between October 2019 and March 2020,
9 only -- or, I'm sorry, between January 2019 and March 2020, only
10 \$570,000 of new money came into those accounts. And he showed
11 you how that compared to Mr. Shibley's statements on his loan
12 applications, claiming over \$4 million of revenue -- or of
13 payroll, for that same period.

14 It simply doesn't square that a person can pay \$1 million of
15 payroll a month, yet there is no record of it in the bank
16 accounts, at all. You can't pay salaries without revenue or
17 money coming in. You don't have to be an accountant, like Mr.
18 Petron, to understand that concept. There's no payroll without
19 revenue. It's common sense.

20 And remember what Mr. Petron told you about the accounts
21 individually? You had Dituri Construction, which didn't even
22 have a bank account until it applied for a PPP loan. You had
23 SS1, which, again, did not have a bank account until after
24 applying for PPP loans. You had the A Team Holdings, which only
25 had a minimal amount of new money flowing through the accounts,

1 prior to the time of these loan applications. You had Seattle's
2 Finest Cannabis, with no bank account, yet again. And then you
3 had ES1 and the medical practice, which did have some money
4 flowing through it. But, again, not enough to cover the payroll
5 obligations that Mr. Shibley was claiming.

6 And remember also, Mr. Shibley -- or, Mr. Petron did the math
7 on what the annual salary would be for each employee, if
8 Mr. Shibley's loan numbers were actually correct. And at its
9 lowest, each of his employees would be making \$73,000 a year. At
10 its highest, they would be making over \$95,000 a year. And Mr.
11 Petron concluded, by showing you all of the accounts combined,
12 and he came to a very simple conclusion. There is nothing in
13 these accounts supporting the payroll numbers that Mr. Shibley
14 stated on his applications.

15 Finally, you saw the stipulation in this case. In response
16 to a grand jury subpoena for records, all of these entities, all
17 of these alleged small businesses, produced certain records. And
18 you are going to have the records back there in the jury room
19 with you. And you should look through them. You are going to
20 see that there's not a single thing in those records that shows a
21 list of employees, not a single thing in those records that shows
22 payroll being paid, not a single thing to support the ludicrous
23 numbers that Mr. Shibley came up with on these loan applications.
24 That's because those numbers just aren't true.

25 All that Mr. Shibley was able to produce was an e-mail to his

1 accountant, to one of his bookkeepers, Mario Davis, where he
2 tells Mr. Davis that his employees are actually only paid between
3 \$8,000 and \$12,000 a year. And even that has nothing supporting
4 it, except Mr. Shibley's own words.

5 And even taking it as true, it's a far cry from the \$73,000
6 or \$95,000 annually, that Mr. Shibley was claiming to pay his
7 employees on these loan applications.

8 Use your common sense, members of the jury. A business that
9 is paying \$1 million a month in payroll, \$12 million a year,
10 annually, in payroll, does not operate without leaving any
11 evidence of it. It's just not possible. And that's what we have
12 in this case. Not a shred of evidence that the businesses are
13 operating as Mr. Shibley claimed they were.

14 And then we can look at the loan applications themselves to
15 see more of the lies. Remember, the loan applications are
16 littered with inconsistencies. There were so many lies, that
17 Mr. Shibley couldn't keep up with them. It's hard to keep track
18 of your lies, when you tell as many as Mr. Shibley did.

19 Just to highlight some of the more egregious examples. We
20 had Dituri Construction, which had not one, not two, but three
21 different loan applications, with three different numbers. Look
22 at these when you are back in the jury room. Take them in.

23 And to top it off, the applications were supported by two
24 different 941s. They're both signed by Mr. Shibley. And you are
25 going to see this, with his changing applications, the supporting

1 documentation changed too.

2 For the A Team Holdings, you had an EIDL application and a
3 PPP application that were wildly inconsistent with each other.
4 On March 31st, he applied for an EIDL, claiming to have \$180,000
5 in gross revenue and four employees. And in the two weeks
6 between when he applied for his EIDL and his PPP, somehow his
7 businesses expanded to 48 employees.

8 Mr. Shibley went so far as to change the name of Seattle's
9 Finest Cannabis, after he was denied the PPP and EIDL loans. But
10 not only that, in his PPP applications, like in Government's
11 Exhibit 2, he has -- claims to have six employees. And then, by
12 April, and then June, he has between four and six new employees
13 on his EIDL applications.

14 And to top it off, in his EIDL applications, Mr. Shibley's
15 gross revenues more than doubled. The ES1 applications,
16 Mr. Shibley changed his business type, after being denied as a
17 real estate developer, in Government's Exhibit 33. But not to be
18 deterred, you see in Government's Exhibit 32, he reapplies and
19 just calls himself a construction contractor now. Because his
20 business is not actually established. His business is whatever
21 it needs to be to get him COVID relief money.

22 Special Agent Moran testified extensively, walking you
23 through these loan applications. You are going to have the
24 summary charts that she showed you, back in the jury room with
25 you, and you are going to be able to see all of these

1 inconsistencies for yourself.

2 And when you look at these inconsistencies, again, take a
3 step back, look at the big picture. We don't sit here today
4 because of a mistake or a typo. We sit here today because of the
5 concerted scheme to steal COVID relief money. Mr. Shibley just
6 didn't lie once, he didn't lie twice, he lied over and over and
7 over again.

8 And then when Mr. Shibley learned that his scheme was about
9 to be uncovered, that the lenders had questions about the loans
10 that had been funded, Mr. Shibley made another desperate attempt
11 to conceal the fact that his businesses had no real employees,
12 that he had lied. After his loans with Celtic and Harvest were
13 recalled, he provided both lenders with fake and fraudulent
14 employee lists. And those lists contain more lies, in an attempt
15 to get the PPP money back in his accounts.

16 First, the lists were nearly identical. By the time he
17 provided names to Harvest, you see three names being added. But
18 the first seven are the same for both. And just think about
19 that. Mr. Shibley is claiming to have two separate businesses
20 with two separate crews. And they each have over 40 salaried
21 employees. But in response to our request for employee names and
22 identification, he supplied the two banks, for two different
23 loans, with the exact same names. This is the best he could come
24 up with, even when pressed for specifics about his employees.
25 This is the best he could come up with, even when motivated to

1 get the money back.

2 But the problems with these lists don't stop at -- or don't
3 stop at the fact that they match. You saw the records from the
4 Washington State Employment Security Department. And none of the
5 employees listed by Mr. Shibley worked for him, according to
6 Washington State ESD.

7 Mr. Shibley did not pay state unemployment taxes on any one
8 of these employees. He did not pay them a salary. He did not
9 pay payroll taxes on them. He did not withhold taxes from them.
10 They, quite simply, were not his employees.

11 And you heard even more about two of the names on both of
12 these lists, that do not and could not have ever been employed by
13 Mr. Shibley. You heard from Ms. Velotta, who told you that she
14 had never heard of and certainly never worked for Mr. Shibley.
15 She also told you how, after she was approached by the FBI, she
16 looked up Mr. Shibley's phone number and gave him a call. After
17 saying hello and identifying himself, Mr. Shibley quickly hung up
18 on her, after she told him who she was. He told her to stop
19 bothering him.

20 Think about that. Mr. Shibley has just used Ms. Velotta 's
21 name in order to get PPP money. Ms. Velotta spoke to Mr. Shibley
22 and identified herself as one of his supposed employees, and an
23 employee name that he used to apply for loans; and he immediately
24 hung up on her. That shows you he knew he used a fake name when
25 he sent this e-mail.

1 You also saw the death certificate for Sam Morgan. Sam
2 Morgan died in 1987. And you heard from Special Agent Moran that
3 the investigative team only found one Sam Morgan, with the last
4 four digits 3218 of his social security number. And that Sam
5 Morgan died in Pennsylvania, 30 years ago.

6 Mr. Shibley used Lisa Velotta and Sam Morgan to further his
7 scheme. He didn't care if they were his employees. He didn't
8 even care if they were alive. The submission of these names to
9 Celtic and Harvest was yet another lie in Mr. Shibley's web,
10 another way that he used lies to defraud and to make money for
11 himself.

12 Let's talk a little bit about materiality. And in Judge
13 Coughenour's instructions, you heard him say "material" a few
14 times. As Judge Coughenour said, "material" just means that it
15 influenced or was capable of influencing someone's decision. Did
16 it matter? Could it have mattered? That's what you need to ask
17 yourself, when thinking about Mr. Shibley's lies.

18 There's a lot of evidence that Mr. Shibley's lies mattered to
19 the SBA and the lenders. Starting with the SBA loan application
20 form itself, which is Government's Exhibit 40, the loan
21 application tells you that these statements were material. And
22 that's also true of the EIDL applications. We see this
23 certification at the end of every single EIDL application. And
24 when Mr. Shibley signed the PPP and EIDL applications, he
25 certified that all of the information contained therein was true

1 and correct. This was so important to the SBA in the PPP and
2 EIDL programs, that these certifications appeared over and over
3 and over again. And the they also appeared on the loan notes
4 themselves. You saw these certifications appear. If we remember
5 the Celtic Bank loan, as an example, in Government's Exhibit 4.
6 And on one of the EIDL loans, in Government's Exhibit 27.

7 And there was a reason that the truthfulness of the
8 applicants was so important in these programs. Kandace Zelaya
9 and Kathleen Littwin told you about it. These programs didn't
10 ask for the normal level of documentation. And that was because
11 the country was in a crisis. The government was trying to get
12 money out as quickly as possible.

13 And every single lender witness who came in here and
14 testified, told you that the truthfulness of applicants matters.
15 They all told you the same thing. They would not have loaned PPP
16 money to a business that lied about their payroll. They would
17 not have loaned PPP money to a business that lied about their
18 number of employees. They would not have loaned PPP money to
19 businesses that submitted inaccurate or fake supporting
20 documentation. And they would not have loaned forgivable PPP
21 money to someone who lied about their probation status.

22 All of the lender witnesses told you that this was material.
23 Remember, John Mosier, Adam Seery, Nissen Liddiard, David
24 Haagsma, and then finally Kandace Zelaya, told you that from the
25 SBA's perspective, the truthfulness of the applicants mattered.

1 Everyone is in agreement. These schemes, these lies, they
2 mattered a lot.

3 And, of course, they did. It's common sense. The point of
4 these programs was to help real businesses, real employees, real
5 people suffering from what COVID was doing to small business. It
6 wasn't to help fake companies, shell entities, or people like
7 Mr. Shibley, who stole names and submitted false documents.

8 Finally, when you consider materiality, look at Mr. Shibley's
9 own actions. They clearly tell you that this mattered. If these
10 lies were not material, why did Mr. Shibley lie over and over and
11 over again? Why not tell the lenders that he didn't have a 155
12 salaried employees? Why not tell the lenders that the tax forms
13 weren't filed? Why not tell the lenders that he had an all-cash
14 business, with no records? Why not tell the lenders that he
15 hadn't paid his taxes?

16 Mr. Shibley didn't tell the lenders any of these things,
17 because if he had, he knew he wouldn't get the money. He knew it
18 mattered. He knew he had to submit fake tax forms to get the
19 loan, so he created some. He knew he had to have employees to
20 get the loan, so he made them up. He knew he could get more
21 money with the more payroll he claimed, so he came up with
22 preposterous figures. You know it was material, because of
23 Mr. Shibley's own actions.

24 Let's turn to part two of my presentation, which focuses on
25 the evidence that shows that Eric Shibley knew he was lying to

1 the lenders or that he had fraudulent intent.

2 THE COURT: Let's take a moment and let the jury stand
3 up and stretch.

4 (Stretch break.)

5 THE COURT: Okay.

6 MS. CONNELLY: Okay.

7 So intent. Judge Coughenour has instructed you about
8 knowledge, about intent to defraud. So how do you figure out
9 Eric Shibley's intent? Well, we can't get inside Eric Shibley's
10 head. We can look at his words and actions to figure out what
11 his intention was, what his goals were for the scheme.

12 One way to figure out Eric Shibley's intent would be to look
13 at the evidence, and keep an important point in mind. Guilty
14 people lie. They cover things up. And the most compelling
15 evidence of Mr. Shibley's intent are the lies. And in this case,
16 the lies that Eric Shibley told the lenders and to the SBA were
17 to defraud them of their and taxpayer money.

18 We have already been through so many of the lies, I won't
19 harp on them here. But when thinking about Mr. Shibley's intent,
20 an important thing to look at is his conduct after he realized
21 that some of the PPP funds had been recalled by the lenders and
22 seized by the government.

23 On May 27th, 2020 -- as of May 27th, 2020, Mr. Shibley knows
24 that people are onto him. He may not know everything, or
25 understand all the facts, but he knows that his lies are going to

1 be exposed. And at that point, he decided to push forward. He
2 chose to double down on his scheme. He chose to continue lying.

3 And his first move was to provide fake lists of employee
4 names to Celtic and Harvest, which we have already gone through.
5 But he had an insurance policy, if that didn't work out for him.
6 He simultaneously decided to grab as much cash as he could,
7 before the other PPP and EIDL funds were seized. You saw he
8 heard about the federal case in Government's Exhibit 47. And
9 then you heard that he ran to Navy Federal Credit Union, the next
10 day, to take out \$50,000 in PPP proceeds, in cash. Why did he do
11 that? You know, members of the jury. He did that because he
12 knew the jig was up.

13 You also saw that he applied for two EIDL loans in the name
14 of Dituri and SS1, on June 7th of 2020. And then they were
15 funded on June 19th of 2020. And he immediately moved the money
16 to different accounts. And then on June 22nd, he goes to Verity
17 Credit Union, and tries to take out a good portion of that money
18 in cashier's checks. Not just one cashier's check. He got seven
19 different cashier's check, each for \$20,000. You saw this in Mr.
20 Petron's summary charts, in Government's Exhibit 209.

21 This was an effort to move the money and keep it away from
22 law enforcement, who he knew was onto him. He was not going to
23 make the same mistake twice. He was not going to let the federal
24 government seize his money again.

25 And you know that at least one of those cashier's checks made

1 its way into a Navy Federal Credit Union account in the name of
2 ES1 LLC. And you also know that the plan didn't really work out
3 for him. The government was able to seize most of the money,
4 despite his best efforts. But think about that behavior, when
5 you start thinking about Mr. Shibley's intent. As I said before,
6 guilty people lie. They try to cover up.

7 And someone who legitimately needed and got these loans to
8 keep their employees employed, would be trying to correct the
9 issue at this point. They would be concerned about their
10 employees. They wouldn't be engaged in a cash-grab, running from
11 bank to bank in an attempt to hide proceeds from the government.

12 You saw the e-mail to Harvest, noting that the federal
13 government had seized his money. You saw the bank records
14 showing the cash withdrawals, after this point. And you heard
15 from Special Agent Moran about how she and other agents were
16 following Mr. Shibley at this point, where he went from bank to
17 bank to bank.

18 That's why it's so important that you use your common sense
19 when you evaluate the evidence in this case. It's your common
20 sense that will help you determine whether Eric Shibley's
21 conduct, during the course of this scheme, is consistent with
22 someone who is running six legitimate businesses, with a million
23 dollars of payroll a month, to over 150 employees, but was just
24 behind on his taxes, or bad at his paperwork. Or whether it's
25 consistent with someone who was engaged in a fraudulent

1 cash-grab, and was trying to cover it up.

2 And what your common sense tells you is that Eric Shibley
3 didn't have anywhere close to 150 employees. He actually had
4 zero employees that he was paying salaries to. And he had zero
5 employees that he was paying payroll taxes for. And in order to
6 qualify for one of these forgivable loans, he had to have real
7 employees. It said it on the form, over and over and over again.
8 It's the reason he was required to submit a 941 with each of the
9 applications. Your common sense tells you, if he really believed
10 he was entitled to this money, he would have provided real
11 documentation to the SBA and to the lenders. He would have
12 provided real employee names, when asked.

13 I want to take a few moments and just address Mr. Shibley's
14 testimony. Mr. Shibley said a lot of things during his testimony
15 yesterday, and today. Just because Mr. Shibley says something,
16 doesn't make it so. Evaluate his testimony critically. The
17 government has presented you with ample evidence of the
18 inconsistencies in the loan documents, the fact that there is no
19 evidence of federal payroll taxes, or state payroll taxes, the
20 fact that there's nothing in the bank accounts to support the
21 numbers that Mr. Shibley provided on these loan applications.
22 And the fact that none of Mr. Shibley's claimed employees
23 actually worked for him, according to the state.

24 Mr. Shibley claims he has 155 employees and over \$1 million
25 in payroll, and \$1 million in revenue each month. But there's

1 just no documentary evidence of that. Mr. Shibley has opened 59
2 different bank accounts, yet he apparently cannot be bothered to
3 use them. Why, then, does he not have any books or records of
4 these businesses? You know why. Because he had these businesses
5 in name only. He had three properties he was flipping "for
6 cheap," as he said over and over in his testimony. He was not a
7 real estate mogul paying \$1 million a month to 155 employees.

8 And you heard from Mr. Shibley that his workers were
9 primarily homeless and down on their luck. The term he used for
10 where they lived was "shanties" or "under the bridge." But
11 remember this chart from Mike Petron. If we accept Mr. Shibley's
12 loan application numbers as true, he would be paying each
13 employee a minimum of \$73,000 a year, or a maximum of \$95,000 a
14 year. How does this square together? It doesn't. 155 people
15 who are making an average of \$95,000 a year, are not all going to
16 be living in shanties.

17 The government presented you evidence of what Mr. Shibley's
18 business really was. Mr. Shibley had some rental properties and
19 workers at those properties. David Madrid told you about those
20 properties. David Madrid told you that he never saw Mr. Shibley
21 give anyone any cash, and Mr. Shibley told David Madrid that he
22 paid his workers in rent and some food to eat. The fact that
23 Mr. Shibley had some sort of house-flipping business using cheap
24 labor doesn't excuse the fact that he lied to the SBA or the
25 lenders in this case. He lied to them repeatedly about having

1 real employees, making real salaries and receiving real benefits
2 to obtain forgivable government loans. Mr. Shibley represented
3 on each loan that he had -- every time he submitted an
4 application saying this, he lied. Mr. Shibley had some workers
5 for his own properties. He did not have employees.

6 Turning to the third and final part of my presentation, I'm
7 just going to go through the elements of each count of the
8 indictment and show you how the evidence matches those elements.
9 I'm going to go through one by one and explain how the evidence
10 I've just summarized fits in the elements of the counts. There's
11 overlap because we have already been through the scheme and
12 intent and materiality in great detail. The evidence that shows
13 the existence of the scheme and the materiality of the scheme and
14 the defendant's intent is going to be similar from count to
15 count. But as the judge has instructed you, consider each count
16 separately when you are deliberating.

17 Eric Shibley is charged with wire fraud, bank fraud, and
18 money laundering. Counts 1 through 7 charge the defendant with
19 wire fraud, which requires four elements. First, that the
20 defendant knowingly devised a scheme or plan to defraud by means
21 of false or fraudulent pretenses; second, that the statements
22 made or facts omitted as part of the scheme were material; third,
23 that the defendant acted with the intent to defraud; and, fourth,
24 that the defendant used or caused to be used an interstate wire
25 communication to carry out an essential part of the scheme.

1 So turning to Count 1, this relates to the documents we have
2 seen time and time again in Government's Exhibit 1. It's the
3 electronic transmission of the loan note with false certification
4 to Ready Capital on April 23rd, 2020, in the name of the A Team
5 Holdings.

6 First, the scheme to defraud. We have already discussed this
7 in great detail, the scheme and the lies involved. Second, that
8 the lies were material. Again, we've already discussed this in
9 great detail. There's plenty of evidence of false statements and
10 concealment in the scheme. Think about how many false statements
11 we saw in the loan applications about the defendant's employees
12 and payroll and payroll taxes. Third, that the defendant acted
13 with the intent to defraud. Again, we have covered it, so I'm
14 not going to cover it again. And, finally, that the wire
15 traveled in interstate commerce. You know that Mr. Shibley sent
16 this from his house in Washington State because of the DocuSign
17 certificate that is attached with IP address information. And,
18 then, John Moshier, the Ready Capital witness, told you that
19 Ready Capital servers were based in New Jersey and that PPP notes
20 would be received in those servers. And you also know that Eric
21 Shibley was in Washington State for the entirety of the scheme
22 because of the IP address information and the bank records that
23 Special Agent Moran testified to.

24 Turning to Count 2, this relates to the documents that we
25 have looked at in Government's Exhibit 2. It's the electronic

1 transmission of the fraudulent PPP application to TCF Bank in the
2 name of Seattle's Finest Cannabis. Again, the scheme to defraud
3 we have covered, as we have also covered the materiality of the
4 lies. Intent to defraud, we also have covered. So we're left
5 with that the wire traveled in interstate commerce. This is,
6 again, easy. You know that Mr. Shibley was in Washington State
7 for the entirety of his scheme. And Dave Haagsma of TCF Bank,
8 now Huntington Bank, told you that loan applications would have
9 been received and reviewed by employees in Minnesota, Michigan,
10 or Ohio. So, again, you have an interstate wire.

11 Moving on to Counts 3 and 4, which I would like to discuss
12 together because they are both Dituri Construction applications
13 that we have looked at in Government's Exhibits 3 and 4, and
14 they're illuminating because of the inconsistencies between the
15 two, which I know that we have discussed at length at this point.
16 Count 3 relates to the documents that we looked at in
17 Government's Exhibit 3, and Count 4 relates to Government's
18 Exhibit 4. And looking at them, you see that the two loans seek
19 very different amounts and are supported by two entirely
20 different tax forms. And for both of those counts, we have
21 covered the scheme to defraud, the material lies, and that
22 Mr. Shibley had the intent to defraud when he engaged in the
23 scheme.

24 But for Dituri, also remember that you saw that purchase
25 agreement from May 2020 that Mr. Shibley provided in response to

1 the grand jury subpoena. Mr. Shibley purchased an ownership
2 interest in Dituri Construction in May of 2020 for \$10. Think
3 about that. This is a business that was supposedly paying out
4 payroll of over \$400,000 a month, yet it was only worth \$10? It
5 just doesn't add up.

6 The last element for both of these counts is, again, that the
7 wires traveled in interstate commerce. And this is, again, easy
8 because Mr. Shibley was based in Washington State for the
9 entirety of his scheme. For Count 3, John Mosier told you that
10 Ready Capital didn't have servers in Washington and it would have
11 been received in New Jersey, just as in Count 1. And for
12 Count 4, Nissen Liddiard told you that Celtic Bank servers were
13 in Utah and that they didn't have servers in Washington. So for
14 both of these, you again have an interstate wire.

15 Turning to Count 5, which relates to the documents we looked
16 at in Government's Exhibit 5 -- or 5 and 46, it's the electronic
17 transmission of the loan note to Harvest for SS1 on May 5th. And
18 as with the other counts, we have covered the scheme, we have
19 covered materiality, and we've covered that he had the intent to
20 defraud. The last element of Count 5 is that the wire traveled
21 in interstate commerce, which is again easy, because Mr. Shibley
22 sent the loan note in an e-mail from Washington State where he
23 was based, and Adam Seery told you that Harvest received e-mails
24 in California where it is based. So, again, you have the
25 interstate wire.

1 Moving to Count 6, which is related to Government's
2 Exhibit 27, this is the fraudulent EIDL application on June 7th,
3 2020, in the name of Dituri Construction LLC. And, again, we
4 have covered all the elements here, but on this wire in
5 particular, remember -- actually, I apologize. But turning to
6 the last element of Count 6, you know that the wire traveled in
7 interstate commerce because Kathleen Littwin told you that this
8 loan application was sent to a server in West Des Moines Iowa.
9 She knew that because of the date of the loan application and the
10 application number.

11 Turning to Count 7, which relates to government's Exhibit 28,
12 this is the fraudulent EIDL application on June 7th, 2020, in the
13 name of SS1. On the SS1 EIDL application remember that
14 Mr. Shibley submits a second EIDL application, just a week later
15 claiming \$200,000 less in gross revenues for the year before.
16 And remember that on this application, which was submitted on the
17 same day as the Dituri application submitted in Count 6, they
18 have the same exact gross revenues and cost of goods.

19 The last element, again, for Count 7 is easy. You know that
20 the wire traveled in interstate commerce because Kathleen Littwin
21 told you that this would have been received in West Des Moines,
22 Iowa.

23 All of the wires that we have walked through in Counts 1
24 through 7 were used to carry out a part of the scheme. They were
25 all essential parts of the scheme because the false application

1 or the loan notes that Mr. Shibley submitted were to get money
2 out of the lenders and the SBA.

3 Moving to the bank fraud counts that Mr. Shibley is charged
4 with in Counts 8 through 10, bank fraud requires five elements.
5 First, that the defendant, again, knowingly carried out a scheme
6 or plan to obtain money or property from a financial institution
7 by making false statements or promises; second, that the
8 defendant knew that the false statements or promises were
9 false -- that the statements or promises were false; third, that
10 the statements or promises were material; fourth, that the
11 defendant acted with the intent to defraud; and, fifth, that the
12 financial institution was federally insured.

13 Count 8 is the exact same submission we just looked at in
14 Count 2. It is the electronic transmission of the fraudulent PPP
15 application to TCF Bank in the name of Seattle's Finest Cannabis.
16 And you know that TCF Bank was federally insured because you saw
17 the FDIC certificate in Government's Exhibit 213 and you heard
18 Mr. Haagsma testify to that.

19 Count 9 is the electronic transmission of the loan note with
20 the false certification to Customers Bank in the name of the A
21 Team Holdings.

22 THE COURT: Counsel, let's deal with that after lunch.

23 MS. CONNELLY: Okay.

24 THE COURT: We will take the noon recess until one
25 o'clock. Your lunches should be delivered to you shortly, if

1 they're not already in there. We will be in recess.

2 (Recessed.)

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1 AFTERNOON SESSION

2 THE COURT: Are you ready for the jury?

3 MS. CONNELLY: Yes, Your Honor.

4 THE COURT: All right. Bring them in.

5 Please be seated.

6 (The following occurred in the presence of the jury.)

7 THE COURT: All right.

8 MS. CONNELLY: So just to orient us to where we were
9 before we had to head to lunch, we have been reviewing the counts
10 of the indictment that you are going to be reviewing when you get
11 back to the jury room. And we have gone through the wire fraud
12 counts, which is Counts 1 through 7, and we're now at the bank
13 fraud counts, which are Counts 8 through 10.

14 And we left on Count 9, which is the electronic transmission
15 of a loan note with false certifications to Customers Bank, in
16 the name of the A Team Holdings on April 30th of 2020. And
17 remember that this is the same loan application that was sent to
18 Ready Capital that is the basis of Count 1.

19 John Moshier told that you Ready Capital and Customers Bank
20 had an agreement, namely that Ready Capital would receive and
21 approve the loans, and then Customers Bank would fund the loans.
22 And after Ready Capital approved the loan, it would send the loan
23 note in the name of Customers Bank to the borrowers. And, again,
24 Customers Bank, as you see on the screen, is FDIC insured. You
25 saw the FDIC insured certificate in Government's Exhibit 212.

1 Count 10 is the exact same submission, again, that we went
2 through in Count 4. It, again, related to the documents we
3 looked at in Government's Exhibit 4. It's the electronic
4 transmission of the PPP application to Celtic Bank in the name of
5 Dituri Construction. There's no doubt here that Celtic Bank was
6 federally insured. You saw Nissen Liddiard testify to that fact.
7 Then you also saw the FDIC certificate in Government's 211.

8 As to the final five counts of the indictment, Eric Shibley
9 has been charged with money laundering. Which you heard from
10 Judge Coughenour to mean that, one, the defendant knowingly
11 engaged or attempted to engage in a monetary transaction; two,
12 the defendant knew the transaction involved criminally derived
13 property; three, that the property had a value of greater than
14 \$10,000; four, that the property was, in fact, derived from the
15 wire fraud or bank fraud, that we went through in Counts 1
16 through 10; and five, that the transaction occurred in the United
17 States.

18 The five transactions that Eric Shibley was charged for, for
19 money laundering, are as follows:

20 You have Count 11, which is the transfer of \$960,000
21 Customers Bank PPP loan, that was provided to the A Team Holdings
22 from one Wells Fargo account on 5/4, to another Wells Fargo
23 account on 5/4.

24 You have Count 12, which is the transfer of the Celtic Bank
25 loan of \$563,500, on May 6th, 2020, between two BECU accounts.

1 Count 13 is the transfer of the \$820,000 Harvest PPP loan
2 that was provided to SS1. Again, from one BECU account to
3 another, on May 19th, of 2020.

4 Count 14 is actually just an extension was Count 11. It
5 again relates to the \$960,000 Customers Bank loan that went into
6 the Wells Fargo accounts. And then when Mr. Shibley removed the
7 \$150,000 in cash on May 26th of 2020. That is the basis of
8 Count 14.

9 And finally, Count 15 is the deposit of a \$20,000 cashier's
10 check, made up of EIDL proceeds, to a Navy Federal Credit Union
11 account in the name of ES1 LLC.

12 The evidence you have seen throughout this trial supports all
13 five of those money laundering charges. You know that Eric
14 Shibley engaged in these transactions, because you have seen the
15 bank records. And you can go back and look at the bank records
16 in the jury room. You have seen he took money out in cash, he
17 moved money between accounts, and he obtained cashier's checks.

18 Furthermore, you know, and Eric Shibley knew, that the money
19 that he was moving was derived from wire and bank fraud proceeds,
20 because you can see it in the bank records. And you heard from
21 Mr. Petron and Special Agent Moran that these did, in fact, come
22 from PPP and EIDL funds. And you know that all of these
23 transactions occurred in the United States, because Mr. Shibley
24 was in Washington State for the entirety of his scheme.

25 Thus, each and every element of the money laundering charges

1 has been satisfied.

2 Members of the jury, I'm nearly done, but I wanted to leave
3 you with some parting thoughts before I sit down. I know there's
4 a lot of evidence and there are a lot of details to go through in
5 this case. And when I sit down, Mr. Nance is going to have the
6 opportunity to speak to you, and then I'm going to speak to you
7 one last time. And I ask that you -- as you listen to Mr. Nance
8 with the same attention that you have given me, that you ask
9 yourself, are the things he tells you in evidence? Do they make
10 sense? Do they fit in with what the witnesses have told you in
11 this case?

12 Make sure you continue to focus on the evidence. Because
13 nothing that I say, or nothing that Mr. Nance says, whether in
14 opening statement, or closing arguments, or in the questions to
15 the witnesses, is actually evidence. The documents, the
16 testimony that you have heard in this case, that's the evidence,
17 and that's what you should be focusing on.

18 But really when it comes down to it, this case is very
19 simple. If it walks like a duck, if it quacks like a duck, then
20 it's a duck. And so when you see Eric Shibley submitting loan
21 after loan after loan, containing lie after lie after lie, each
22 with new and different numbers, trust your instinct, trust your
23 judgment, and trust what you see. Because if it looks like a
24 fraud, and it acts like a fraud, then, members of the jury, it's
25 a fraud.

1 And in this case Eric Shibley, he lied to get money that was
2 not meant for him. He lied to get money that he was not entitled
3 to. He took advantage of an unprecedented crisis to line his own
4 pockets. And he wound up getting \$2.8 million in taxpayer money.
5 So find him guilty. Thank you.

6 THE COURT: All right. Mr. Nance.

7 MR. NANCE: May it please the court, counsel, ladies and
8 gentlemen of the jury.

9 In the opening I told you that this case was about a sloppy,
10 chaotic business with missing payrolls and missing documentation,
11 that the government has mistaken for bank fraud, wire fraud. I
12 would suggest and submit that the evidence has borne that out.

13 Eric Shibley made a lot of mistakes in how he conducted his
14 business and how he attended to his tax reporting and his
15 obligations and how he applied for loans. But the evidence has
16 not shown that he intended to defraud anybody. And you should
17 acquit him of those charges.

18 What it has shown is a proud, ambitious man trying to fit, in
19 his own way, into American culture. First, as simply a new
20 immigrant to America, struggling to learn English. Then as a
21 doctor in a very demanding profession. Finally, as a player, in
22 the hot Seattle housing market.

23 Eric Shibley is an intelligent man on many levels, but not
24 wise to the many ways of the business world. When the PPP
25 program came along, he jumped at the opportunity without fully

1 appreciating the importance of the paperwork he filed in support
2 of the applications and without a real understanding that the
3 business activities were heavily under-documented.

4 Now, you've seen some of the exhibits that we offered into
5 the case, everything from IDs of folks that worked for him as
6 employees, a number of exhibits pertaining to expenses, and
7 actually some photographs of actual work activity, interior and
8 exterior construction. And as Mr. Shibley himself told you, this
9 was a tiny, tiny fraction of the total activity. These were just
10 simply items that we were able to put together to show you.

11 Yes, there is a large underground economy out there, there's
12 no question about that, involving mostly all-cash transactions.
13 It's convenient, oftentimes. It's economic. And it affords some
14 privacy. But there's real drawbacks to it, too. It's harder,
15 much harder to get credit. Without a paper trail, it's much
16 harder to prove that you actually paid for something. And this
17 case has been a big illustration of that point.

18 The government wants to make this case open-and-shut by
19 saying that Mr. Shibley's bank records don't support his claims
20 of dozens of employees and a large payroll. And, largely, we
21 agree that the bank records don't support that, that proposition.
22 That was the whole thesis of the testimony of Mr. Petron, Michael
23 Petron, the expensive financial consultant who testified on the
24 subject.

25 The bank records do not support his claim of a large payroll.

1 But if he's dealing largely in cash, being paid in cash, paying
2 people in cash, people for expenses in cash, you wouldn't expect
3 the bank records to verify that much.

4 Mr. Petron, actually I asked him directly about some of this,
5 is a very much by-the-book kind of guy; everything is in its
6 place, his forms are filed, probably on time. He's got heavy
7 documentation. And he's probably current on his taxes.

8 Eric Shibley is the polar opposite. He is not a play-
9 by-the-book kind of guy. Things are out of place. All the forms
10 aren't filed. He's behind on his taxes. It's just the way it
11 is.

12 Now, the elements of the case, of the thing -- Ms. Connelly
13 has been through this, but they're set forth -- the primary
14 charges are wire fraud and bank fraud. And, of course, the money
15 laundering is based on that. So if you go back to the elemental
16 charges, the fraud charges, the instructions and elements of
17 those are found in Instructions 15 and 16 in your packet. Both
18 require a scheme or plan to take money by false statements. The
19 statements have to be material, in that they have to have a
20 natural tendency to influence someone to part with money. And
21 the person has to act with the intent to defraud, to deceive and
22 to cheat.

23 The government has not proven all of these elements beyond a
24 reasonable doubt. Their job has been made more difficult by the
25 circumstances in the way that the PPP program was designed. It

1 was rushed out the door, in late March 2020, in the wake of the
2 pandemic crisis. It was widely promoted. Almost overnight, the
3 business community was hard hit, was flattened by the pandemic.
4 The same community was inundated with offers of seemingly free
5 government money.

6 Almost any business, anywhere in the country, with employees,
7 smaller businesses, less than 500 employees, were eligible. Most
8 were impacted by the COVID problem, and so virtually any
9 business, every business with employees, was eligible. They
10 could apply, they could use the money to pay workers. There were
11 other expenses they could use it for, interest and utilities, and
12 have the loan, under certain conditions, forgiven outright, over
13 time.

14 But for the lenders, it was a gold mine. The government
15 would pay them a handsome fee, of as much as 5 percent on the
16 face value, face amount of the loan, and guaranteed it. If the
17 borrower repaid the loan on time, the lender made interest on the
18 loan and kept the fee. If the borrower defaulted on the loan,
19 the lender was reimbursed by the SBA, and kept the funding fee.
20 If the loan was forgiven, which was the goal by many of the
21 borrowers, the lender was repaid the amount of the loan by the
22 SBA, and guess what, they kept the funding fee.

23 This was a tails-I-win-heads-you-lose sort of situation. No
24 lose, risk-free opportunity for the lenders.

25 Ms. Zelaya, Kandace Zelaya told us -- of the SBA, told us

1 that the SBA did not participate in the screening of the PPP
2 borrowers, nor did it monitor what the borrowers did with the
3 money, and did not require what the lenders monitor what was done
4 with the money. Is it any wonder that there was a feeding frenzy
5 by the banks and the lenders to get on this gravy train.

6 John Moshier of Ready Capital acknowledged that, within weeks
7 of the passage of the CARES Act, his lending service had far too
8 many approved PPP loans to even fund them, and he had to farm
9 them out. Mr. Seery, Adam Seery said his bank, Harvest Bank, had
10 to shut down all other lending at the time to deal with the glut
11 of PPP loans. He called it a high-volume program.

12 There was another 38 -- let's see if I have this right --
13 there were 5,200 loans, I believe they funded, and 3,800 did not
14 get funded, not because the program ran out of money, not because
15 the applicants were rejected, but because they ran out of time.
16 They couldn't get to them fast enough. They couldn't process the
17 loans fast enough.

18 Meanwhile, over at Celtic Banking, over half their business
19 was PPP lending, according to Nissen Liddiard, one of the
20 witnesses here. Mr. Seery, of Harvard Bank -- Harvest Bank, gave
21 us the real reason. The real reason for the bank stampede was to
22 do this lending. There was a 5 percent upfront lending fee, paid
23 by the SBA to the lender, on loans up to \$350,000; 3 percent on
24 larger loans, up to \$2 million; and 1 percent on loans above \$2
25 million.

1 From this testimony, the testimony alone from this trial, we
2 know that Harvard -- I keep saying Harvard -- Harvest, Harvest
3 loaned \$1.2 billion under the PPP program. Its average loan size
4 was \$200,000, according to the testimony, meaning it fell into
5 the 5 percent fee category. If you do the math, that's about
6 \$60 million in fees that Harvest made, just on this one program,
7 the 5,200 PPP applications. Celtic Bank loaned over a billion
8 dollars last year. It would have earned a similar amount.
9 TCF Bank, according to Dave Haagsma, its representative, did
10 twice that business, about \$2 billion. And then the only other
11 figure we got really was from Mr. Moshier, Ready Capital, who
12 said they processed 100,000 -- 100,000 PPP applications.

13 There was no meaningful verification process. Mr. Moshier
14 told us what is already obvious. It was far easier to qualify
15 for a PPP loan than it was a traditional loan, a conventional
16 loan; it was self-verifying, subject to less scrutiny, and it was
17 guaranteed.

18 He went further and said that his bank did not verify whether
19 borrowers were delinquent on taxes; it didn't matter to him. In
20 reality, nothing much mattered to these lenders except processing
21 applications and taking the loan fees.

22 And, of course, all of these bankers were put on the spot.
23 They bring them in and they ask them if it mattered, if it
24 mattered what the applicants put on the applications. What were
25 they supposed to say? If they said it really didn't matter, they

1 might be kicked out of the program.

2 Why does it matter in this case? Well, it matters because it
3 goes to a critical element of a fraud prosecution. The
4 government has to show that representations in PPP applications
5 were materially false. They had to have a natural tendency to
6 influence or be capable of influencing a person to part with the
7 money.

8 The materiality and element is for you, the jury, to decide
9 that it has to be proven beyond a reasonable doubt. But consider
10 that these bankers were motivated not so much by civic concern
11 and wanting do the right thing, as they were to join this gravy
12 train of a funding frenzy. And in the environment of spring
13 2020, they may not have really cared about the fine print on the
14 funding applications they received.

15 The same is true for the odd language in the SBA form used in
16 the applications that appeared to restrict persons who were on
17 misdemeanor probation. You will recall some of the early
18 testimony about that. Even the SBA doesn't think that's material
19 now. In the face of a lawsuit last year, accusing it of
20 overreaching its authority, it reconsidered its position and
21 agreed to revise the standard form that now allows misdemeanor
22 probationers, people like Mr. Shibley, who apparently was in that
23 position, to apply for loans.

24 The SBA may still say the original question on the form he
25 used concerning his misdemeanor status, probation status, was

1 important; but its actions belie that. You can bet that none of
2 the bankers gave it a second thought. In the real-world, in the
3 business world, it wasn't material to them. You could acquit
4 Mr. Shibley on that basis alone.

5 The other major point, the major element that is in question,
6 is the intent to defraud. The instructions tell you that intent
7 to defraud is shown if one moves or acts to deceive and cheat.
8 And the evidence is, at best, ambiguous on that. Mr. Shibley
9 denied it vehemently, of course. You heard him directly. He
10 told you his story. He didn't have to testify, by the way. He
11 had the right to remain silent. He had a constitutional right to
12 remain silent. And he chose to waive that right, subject himself
13 to a full cross-examination, and tell you his story.

14 And he told you about the highs, and some of the lows. He
15 told you what he did, and he told you why he did it. You know,
16 there was some chaos in his life, in his business. I think
17 that's not any big secret. But that doesn't make it criminal.
18 There's other things he did that cast doubt on any fraudulent
19 intent.

20 You know, a number of times I called up that Form 941 that
21 the government has repeatedly referred to as a part of the
22 applications. The 941 is just the employer's quarterly report of
23 payroll. And it was on that that many of these loans, maybe all
24 of them, were based. But the 941 form itself, in fact all of
25 them that were submitted with his name on it, had a number of

1 employees, a payroll amount, and a tax obligation that was
2 immediately due, or even past due, that was apparently unpaid.
3 Because the deposit area was a big fat zero.

4 So if he's going to -- if he's going to run a fraud, why
5 wouldn't he just say he paid the taxes. I mean, why openly
6 acknowledge that you owe all of this money? That's a deterrent
7 to being lent to.

8 The other -- one of the other things that he did, and this
9 was presented through the government's -- one of their witnesses,
10 Mr. Mondala, who talked about the phone call. There were two
11 phone calls that he had with Mr. Shibley. And Mr. Shibley, in
12 the phone calls, openly acknowledges: Yeah, I'm calling about
13 getting this money. I want to make this cash withdrawal. And
14 he's asked: Why do you need all of this cash? Well, first of
15 all, it's in his name, he's applied for it, it's been granted.
16 So it's his money.

17 And he's quite candid about what he needs it for. When he's
18 asked about it from Mr. Mondala, he needs the cash, he needs it
19 to pay employees. Why does he need it to pay the employees?
20 That's what the employees expect. That's what they want. Some
21 of them, maybe a lot of them, don't have social security numbers.

22 I asked Mr. Mondala: Well, what problems would that present?
23 Would a person with no social security number, and not any ID,
24 would that be a problem with cashing a check? Yeah, of course it
25 would.

1 It's also -- you know, if you're down and out with nothing,
2 no ID, no -- no means of really establishing your identity, and
3 you have to resort to a payday check cashing outfit, they're
4 going to take a big percentage of the money. So that was what
5 was behind that.

6 The other thing that would have been unusual for a fraudster
7 to talk about was to sort of voluntarily talk about these
8 additional funds coming in. There's another large PPP loan
9 proceed, \$800,000, that's due within days at the same bank.
10 Mr. Shibley tells him: Yeah, I'm planning to take that out, too,
11 in cash. Yeah.

12 So I just think if he were -- if he were planning -- if you
13 are really planning a fraud, you don't -- you are not that open,
14 that candid, with a bank security person.

15 Also, Mr. Shibley never hid who he was. He was always really
16 in the same place. His phone number is on all of these
17 applications. He could be found. Mr. Mondala found him by
18 calling the number on the application. He's at one location.
19 He's easily found. He was available. Nothing prevented folks
20 from coming out to meet him in person, or to going to the work
21 sites.

22 This is -- there's another way to look at this. Isn't this
23 full set of circumstances also consistent with a man who is maybe
24 trying to find his way? Maybe he's lost at sea. You can think
25 of your own metaphor. But if you flash back on his background,

1 he's a proud individual. He grew up in a really poor country.
2 And he achieved what, for a lot of folks there, would be an
3 impossible dream. He made it to medical school. I mean, that's
4 enormously prestigious. He gets to medical school. And then he
5 gets to go to America. He gets -- that's one in 10,000 over
6 there. That's very unusual. He's the pride of his family.

7 And he's probably used to succeeding, at every level. We
8 heard he was a good student. I don't doubt it for a second.

9 He comes to America, and suddenly he's at ground zero, again.
10 He doesn't even speak the language. And so he's got to start
11 there. He does learn the language. He apparently becomes a
12 naturalized USA citizen. Gets back on his feet. Wants to take a
13 run at doing medicine here. Gets the credentials. I'm sure it
14 wasn't easy. He did it.

15 But then he's into it for a while, and darn if he's not
16 knocked back off his feet again. He doesn't -- this isn't
17 working for him. He is -- he's got issues within the profession.
18 You heard some of the problems. It's bureaucratic, it's
19 overbearing. He doesn't agree with the philosophy of a lot that
20 he sees in American medicine. Some of us may agree with that or
21 disagree with that. But that's the way he perceived it. He
22 thinks it's too expensive, he thinks it's too directed toward,
23 you know, making money, rather than actually helping people,
24 which is what he thought he was getting into it to do.

25 And so he's withdrawing or trying to kind of put some

1 distance there. And he, on the side, begins lurching into this
2 other field that he, frankly, doesn't know that much about. Real
3 estate. He knows something. He's smart, but this is a field
4 that he's not really that versed in, and he's using what he has.
5 I mean, the other major supports in his life have kind of fallen
6 away. He's lurching into real estate. He's using what he has at
7 his disposal. He's got an old client base. He's got lots of
8 contacts. He knows, obviously the people, the life, the world,
9 that these former patients come from, as a down-and-out world.
10 That's where he goes to, because that's where he feels
11 comfortable working. And he uses the network. And he starts
12 doing what he's doing.

13 Now, he may not know the -- know the business, fully. He
14 probably didn't understand tax issues, tax ramifications, tax
15 obligations. Probably didn't understand formal payroll
16 operations. Still probably trying to adjust to the culture,
17 probably doing a somewhat passable job at covering over. But
18 there's stuff there that is still at issue, I'm sure.

19 Somewhere along the way he starts paying someone, probably to
20 help him get his bookkeeping together. Frankly, it sounds like a
21 little half baked, like maybe it wasn't fully up to full
22 standards. He's getting something done, but yet he doesn't
23 really have stuff that he can produce in the moment. He doesn't
24 have anything that he can actually give to the government. He
25 doesn't have anything really that he can bring in here and show

1 you.

2 This was a -- yeah, this is simply a chaotic situation. I
3 mean, he's trying to make it what it -- the best it can be. But
4 there's no getting around this. There are no written payroll
5 records that are available. And there was not a smooth flow of
6 money into and out of accounts that can document the various
7 things that we have been talking about.

8 And then the pandemic hits. The pandemic hits. And there's
9 more chaos. Mr. Shibley is a strong, creative individual, but
10 he's flattened by this as well. A lot of businesses are. He
11 sees the PPP as a lifeline. This is a way that -- this may be
12 something here. It was an opportunity. And he acted because he
13 thought he was eligible to act. He did what he did. This might
14 be a way to save himself, to save his businesses, and keep the
15 ragtag operation alive and maybe give it new life. It was not
16 perfect by any means, it's not pretty, but it's not criminal.

17 Eric Shibley is presumed innocent. All defendants are
18 presumed innocent. This is a criminal case, and there are very
19 high stakes for him. The government has charged him with these
20 crimes, these fraud crimes. Obviously, guilt by accusation,
21 guilt by indictment, is not evidence, it's not the test. The
22 government easily believes everybody it charges is guilty, but
23 that's not the test. It doesn't matter what the government
24 thinks; what matters in the end is what you think.

25 The test is whether, at the end of the day, it's proven its

1 case beyond a reasonable doubt and overcome his presumption of
2 innocence. The presumption of innocence, it's like a shield that
3 protects us all from arbitrary government action and having all
4 the forces of the government array against you. It's how you
5 might feel if you or a member of your family were accused of a
6 crime. You would probably greet that with some degree of
7 skepticism and say that you have got to show me, you have got to
8 prove this. The presumption of innocence remains in full force
9 and effect until it's overcome by proof beyond a reasonable
10 doubt. And even then, it's only overcome when you say it's over.
11 You have got the power to acquit. Mr. Shibley can never be
12 guilty unless and until you say so.

13 The burden of proof in this case is on the government because
14 of its vast power, its money, its resources. It's chosen to
15 unleash the full federal law enforcement apparatus in this case.
16 In fact, I'm not sure I can remember another case where so many
17 different federal law enforcement agencies have all come down on
18 one man in one case. In this case, I mean, you could just tick
19 them off. There's the FBI, the nation's premier law enforcement
20 agency; there's the IRS; there's the Department of Homeland
21 Security; there's the Office of Inspector General. And they have
22 got different divisions, as I understand it. One works with the
23 Federal Deposit Insurance Corporation that's involved here; of
24 course, the SBA, Small Business Administration, has an Office of
25 Inspector General; and then the Department of HHS, I think that's

1 Health and Human Services, if I'm not mistaken, but it has an
2 investigative wing of that as well. They have all been involved
3 in this and working on this. And then, of course, there's two
4 talented AUSAs here, Assistant U.S. Attorneys, Ms. Connelly and
5 Mr. Werner. So they have really thrown the book at Mr. Shibley.

6 The government has enormous power. They have summoned law
7 enforcement, they have summoned private citizens -- we have seen
8 it here; Mr. Madrid, David Madrid, was brought in, Lisa Velotta
9 was brought in -- the government's combed through bank records
10 with a fine-tooth comb, and at least, in one instance, it used an
11 undercover police officer to make a deceptive phone call to
12 Mr. Shibley. Instruction 13 says the law allows that, but we,
13 the defense, can't do that. We can't do that. That would be
14 probably a crime for us to do that, to record. We can be
15 deceptive, I suppose, on the phone, but if we recorded something
16 unbeknownst to the person we're calling, that's criminal in this
17 state. The defense can't make deceptive phone calls. We do have
18 subpoena power, but the government not only has that; they have
19 the power to haul people before a grand jury, interrogate them at
20 length under oath, in secrecy, and on threat of contempt if they
21 don't talk. People usually just agree and talk to them. The
22 defense can't make people talk to them. We can't obtain search
23 warrants; the government can. We can't seize accounts; the
24 government can. In fact, they did in this case. We don't have a
25 badge to flash. We can't haul people -- I think I have said

1 that. We can't do it.

2 We simply, the defense, can't investigate this case the way
3 the government can and has done, and it impacts the way that we
4 prepare for trial and actually conduct a trial. If we can't talk
5 to witnesses in advance, it's more difficult for us to anticipate
6 how they might -- how things might play out. Of course, the
7 government, on the other hand, has the resources, they have got
8 the tools, the police, the labs, the technicians, the forensic
9 experts. They have got a lot of things that the defense simply
10 does not have. Eric Shibley has a court-appointed lawyer and a
11 paralegal. He lacks the resources to investigate and prepare the
12 way the government can and has.

13 So the burden of proof, a very long-winded way of talking
14 about it, but the burden of proof is placed fully on the
15 government because it helps level the playing field just a little
16 bit.

17 Now, the seriousness of the charges are all the more reason
18 that the burden of proof remain with the government because the
19 consequences of Eric Shibley being convicted, they're very
20 serious for him. The burden of proof is properly on the
21 government's shoulders here. So if something is missing in the
22 case, ask yourself: Whose burden has it been to produce it?

23 Then there's reasonable doubt. Instruction No. 4 talks about
24 reasonable doubt. Basically, it's based on reason and common
25 sense. Our own life experiences, though, and common sense, tell

1 us that most things in life are not black and white; there's a
2 gray area in there. The same is true in criminal law. It's not
3 all innocence/all guilt. There's a gray area in between, and
4 it's reasonable doubt.

5 Eric Shibley may well be fully innocent for the reasons I
6 have outlined, but you don't have to make that finding, you don't
7 have to give him a certificate of innocence to fully acquit him.
8 Because in between guilt and innocence, there's reasonable doubt.
9 And because of what's at stake here, Eric Shibley's ability to
10 walk out of this courtroom a free man unless the government
11 extinguishes every single reason to doubt, the gray area is
12 enough to acquit. And you should acquit for ambiguity, for
13 uncertainty. Reasonable doubt is any reason to doubt. It's any
14 doubt with a reason.

15 Mr. Shibley, Eric Shibley, is not guilty of fraud or money
16 laundering because the evidence does not support those charges.
17 He did not intend to cheat anyone of anything; he's not guilty
18 and should be acquitted.

19 Now, you've invested a lot of time hearing this case, but
20 remember that you sit in a very privileged position. As a
21 criminal juror, you are part of a justice system that is the
22 marvel of the free world. The criminal jury is one of the
23 greatest protectors of personal liberty ever contrived and it's
24 one of the great cornerstones of our democracy. It's enshrined
25 in the Bill of Rights, in our Constitution.

1 As the jury, you twelve people represent all the people from
2 whom all legitimate government is derived. You are the last line
3 of protection against ill-considered and overbearing actions by
4 the government. And you, the jury, serve as the final check on
5 excessive government power. You have both an awesome
6 responsibility and a magnificent opportunity to do justice -- to
7 do justice, to do right. As the jury in your case, you're all
8 that stands between the government with its vast resources and
9 this man on trial for his liberty. Our system wisely invests
10 you, the jury, with virtually absolute and final authority as the
11 fact finder. No authority anywhere, not this court, not any
12 appellate court, can ever alter your decision to acquit Eric
13 Shibley and set him forever free. You, and you alone, hold the
14 key to his liberty and you should use it.

15 THE COURT: All right. Rebuttal.

16 MS. CONNELLY: May it please the court. The defendant's
17 entire case rests on a fantasy world where he really does have
18 150 employees, he really does have to pay regular wages, he
19 really is a real estate mogul who's developing properties and
20 flipping house after house after house. And he's just behind on
21 his paperwork, he's just not the most organized, his bookkeepers
22 and site managers couldn't get his records together, they
23 couldn't get the names of the employees together. And, members
24 of the jury, this is just a fantasy because, if it were true,
25 someone would have found some evidence of the six companies

1 paying a million dollars a month in payroll to over 150
2 employees. But no one did, not the IRS, not the Washington State
3 agencies, not Mr. Petron, who reviewed bank accounts, and, most
4 importantly, in response to the grand jury subpoenas, not even
5 the businesses themselves could find any records. They couldn't
6 produce a shred of evidence that they had paid a million dollars
7 a month in payroll to over 150 employees. They couldn't even
8 produce the names of the bookkeepers that are allegedly running
9 these fantasy books that Mr. Shibley testified actually do exist.
10 They couldn't find the names of the site managers who collect the
11 names of the imaginary employees on these multiple sites that
12 Mr. Shibley is running. No one saw these fantasy businesses and
13 the businesses didn't produce any records because they are just
14 that, they are a fantasy, and they didn't exist.

15 I want to talk briefly about Mr. Nance's statements about the
16 PPP and EIDL programs and the PPP lenders in particular. The PPP
17 and EIDL programs may have been imperfect, but remember what they
18 were in response to. They were in response to a crisis, they
19 were in response to an emergency. And so maybe, with the benefit
20 of hindsight, we could come up with a better program, we could
21 figure out how to do this differently. But the CARES Act is not
22 on trial, the SBA is not on trial, the PPP lenders are not on
23 trial, and the marketing department of the PPP lenders are
24 certainly not on trial. Mr. Shibley is on trial. He's the one
25 who submitted 39 fraudulent applications, and the fact that the

1 loan process may have been condensed or there wasn't as much
2 documentation required is not a defense to Mr. Shibley's repeated
3 lies to the SBA and to the lenders.

4 The fact that the lenders made a processing fee is not a
5 defense to the fact that Mr. Shibley provided fake tax forms and
6 lied repeatedly when asked about the state of his businesses.
7 Whatever motivation the lenders may have had does not change
8 Mr. Shibley's lies in this case.

9 Mr. Nance also talked to you about reasonable doubt. And
10 that's an instruction that you can look at, as Mr. Nance noted,
11 and it's Instruction No. 4. Member of the jury, proof beyond a
12 reasonable doubt is not proof beyond all doubt; it's not complete
13 certainty. The government embraces its burden in this case, and
14 we submit to you that we have proved beyond a reasonable doubt
15 all of the elements of this case. We have done that through the
16 testimony of all of the witnesses you have heard and all of the
17 documents that you are going to take back to the jury room with
18 you and review on your own. But keep in mind that proof beyond a
19 reasonable doubt is not proof beyond all doubt.

20 And also, as you think about this, think about whether the
21 story that Mr. Shibley told you is reasonable. Let's just
22 explore the scenario that Mr. Shibley has presented us with
23 through his testimony. He told us that he's running multiple
24 successful construction and real estate businesses where he's
25 taking in both a million dollars a month in revenue and also

1 paying out a million dollars a month in payroll. And on top of
2 that, he has a 10 percent profit margin, which means he is
3 pocketing \$100,000 a month. By my math, that means he's taking
4 in \$1.2 million in profit every year on these companies. And all
5 of that is apparently operating outside of his 59 bank accounts.
6 None of it can be seen in the bank accounts. He has 59 bank
7 accounts that have some activity, 59 bank accounts in the names
8 of some of these businesses, or in all of these businesses, but,
9 apparently, the bank accounts aren't actually for his actual
10 businesses. And they're also not for his profits, because
11 Mr. Petron told you he doesn't see \$1.2 million coming into those
12 bank accounts. So all of this money is flowing through
13 Mr. Shibley's hands in cash.

14 And yet, remember when he testified, he talked about how,
15 when the PPP money came into his checking account, he had to
16 immediately move it over to a saving account, and that was
17 apparently because he testified that the checking account would
18 be too easy to access if he dropped his wallet at one of his
19 construction sites. And he told you to just imagine the
20 population that he was dealing with to explain why he couldn't
21 have this PPP money in his checking accounts. But think about
22 that: Mr. Shibley is apparently walking around all these
23 construction sites, handling a million dollars in cash a month,
24 taking it in, paying it back out with no problem, but a checking
25 account is apparently not secure enough for Mr. Shibley.

1 But even if you believe all of that, that there is this
2 fantasy business operating outside of Mr. Shibley's 59 bank
3 accounts, and in the world where a checking account is not secure
4 but having a million dollars a month in cash is, outside of the
5 bank accounts, it doesn't change the fact that Mr. Shibley
6 repeatedly lied to the SBA. It doesn't change the fact that
7 every 941 he filed on these applications was not filed with the
8 IRS; it doesn't change the fact that he had never paid payroll
9 taxes; it doesn't change the fact that his applications don't
10 even match; and it doesn't change the fact that he was on
11 probation.

12 Even living in the world that Mr. Shibley has concocted, he
13 has still lied repeatedly to the SBA in order to get forgivable
14 COVID relief loans. And those lies mattered. There are no
15 innocent explanations for a scheme involving the submission of 39
16 PPP and EIDL applications containing false statements,
17 misrepresentations, and inconsistencies. Mr. Shibley made up the
18 numbers for these businesses and he submitted fake 941s, and he
19 did this to engage in a cash-grab at a time of emergency. There
20 is no evidence that Eric Shibley actually ran six legitimate
21 businesses that were paying over 150 employees over a million
22 dollars a month.

23 What you see is Eric Shibley telling lie after lie. What you
24 see is Eric Shibley intentionally bilking pandemic relief
25 programs out of millions of dollars. This is not a simple

1 mistake or a simple misunderstanding. This is not a case about
2 one or two bad loans. This is a case about 39 fraudulent loan
3 applications and an attempt to circumvent law enforcement and
4 take the loans out in cash. There is no mistake.

5 Hold him accountable, members of the jury. Mr. Shibley is
6 not above the law. Review the evidence, follow Judge
7 Coughenour's instructions, and find Eric Shibley guilty.

8 Thank you.

9 THE COURT: All right. Ladies and gentlemen, I'm going
10 to ask all of you, except Ms. Marek, to retire to the jury room.
11 You can commence your deliberations by selecting your jury
12 foreperson. The exhibits and jury instructions will be delivered
13 to you shortly. So you can go on back to the jury room.

14 (The following occurred outside the presence of the jury.)

15 THE COURT: Ms. Marek, one of the reasons I don't like
16 to use alternate jurors is what I have to do with you right now,
17 and that is to deprive you of the opportunity to do the most
18 interesting part of service as a juror. I still can't excuse
19 you because if we lose one or more jurors, we may have to call
20 upon you. So that means that until we call you and tell you that
21 there has been a verdict, you still must not talk about the case
22 or do any research about it, don't let anybody talk to you about
23 it, don't read, listen, or watch anything about it.

24 As soon as there's a verdict, we will call you and let you
25 know, and at that point you will be released. Thank you so much

1 for your willingness to serve.

2 Counsel, remain available and on short notice, and we will
3 see what happens. We will be in recess.

4 THE CLERK: Please rise. Court is in recess.

5 (Recessed.)

6 (The following occurred outside the presence of the jury.)

7 THE COURT: Please be seated.

8 We have a question from the jury that reads as follows, "Your
9 Honor, we would like clarification on the law regarding money
10 laundering. Is the definition in the packet complete, or may we
11 have a greater definition?" signed Tim or Erin O'Brien.

12 Your thoughts?

13 MR. WERNER: Your Honor, I believe the jury should be
14 referred to the instructions as they exist.

15 THE COURT: Mr. Nance?

16 MR. NANCE: That's my inclination. Let me just take a
17 look.

18 I mean, this is the standard Ninth Circuit instruction.

19 THE COURT: Yeah. I think I have to tell them that they
20 have to rely upon the instruction.

21 MR. NANCE: I think so too.

22 THE COURT: Okay.

23 I also propose to tell them, without disclosing how they
24 stand, do they think they are going to need to return tomorrow.
25 Any problem with that?

1 MR. NANCE: I think that's okay.

2 (The following occurred in the presence of the jury.)

3 THE COURT: Please be seated, folks.

4 So I received your question which reads, "Your Honor, we
5 would like clarification on the law regarding money laundering.
6 Is the definition in the packet complete, or may we have a
7 greater definition?"

8 I'm sorry. I couldn't read it. Is it Erin, or Tim O'Brien?

9 JUROR NO. 9: Erin, yes.

10 THE COURT: Erin O'Brien.

11 The answer to your question is: You must rely upon the
12 instructions as delivered to you.

13 I need to ask you another question. Without disclosing how
14 you stand, do you think you're going to need to return tomorrow?

15 JUROR NO. 9: I don't believe so, if we have a little
16 leeway for staying past 4:00.

17 THE COURT: All right. Go ahead. You can return to the
18 jury room.

19 (The following occurred outside the presence of the jury.)

20 THE COURT: We will be in recess.

21 (Recessed.)

22 THE COURT: Counsel, the jury has indicated they have a
23 verdict.

24 Let's bring them out.

25 (The following occurred in the presence of the jury.)

1 THE COURT: Please be seated, folks.

2 Will the foreperson of the jury please rise?

3 Has the jury reached a verdict?

4 JUROR NO. 9: We have.

5 THE COURT: Will you hand it to the clerk?

6 PROSPECTIVE JUROR NO. 9: (Complied with the court's
7 request.)

8 THE COURT: The verdict is proper in form.

9 Will the defendant rise and face the jury?

10 The clerk will read the verdict.

11 THE CLERK: The United States District Court, Western
12 District of Washington at Seattle, the United States of America,
13 Plaintiff, versus Eric Shibley, Defendant, Case No. CR20-174-JCC,
14 Verdict Form.

15 We, the jury, unanimously find the following:

16 Count 1, wire fraud: Electronic transmission of A Team
17 Holdings LCC loan note to Ready Capital on or about April 23,
18 2020.

19 As to Count 1, we find the defendant, Eric Shibley, guilty.

20 Count 2, wire fraud: Electronic transmission of Seattle's
21 Finest Cannabis LLC PPP application to TCF Bank on or about
22 April 25th, 2020.

23 As to Count 2, we find the defendant, Eric Shibley, guilty.

24 Count 3, wire fraud: Electronic transmission of Dituri
25 Construction LLC PPP application to Ready Capital on or about May

1 2nd, 2020.

2 As to Count 3, we find the defendant, Eric Shibley, guilty.

3 Count 4, wire fraud: Electronic transmission of Dituri
4 Construction LLC PPP application to Celtic Bank on or about
5 May 4th, 2020.

6 As to Count 4, we find the defendant, Eric Shibley, guilty.

7 Count 5, wire fraud: Electronic transmission of SS1 LLC loan
8 note to Harvest Small Business Finance on or about May 5, 2020.

9 As to Count 5, we find the defendant, Eric Shibley, guilty.

10 Count 6, wire fraud: Electronic transmission of Dituri
11 Construction LLC EIDL application to SBA on or about June 7th,
12 2020.

13 As to Count 6, we find the defendant, Eric Shibley, guilty.

14 Count 7, wire fraud: Electronic transmission of SS1 LLC EIDL
15 application to SBA on or about June 7, 2020.

16 As to Count 7, we find the defendant, Eric Shibley, guilty.

17 Count 8, bank fraud: Submission of Seattle's Finest Cannabis
18 LLC PPP application to TCF Bank on or about April 25, 2020.

19 As to Count 8, we find the defendant, Eric Shibley, guilty.

20 Count 9, bank fraud: Submission of A Team Holdings LLC loan
21 note to Customers Bank on or about April 30, 2020.

22 As to Count 9, we find the defendant, Eric Shibley, guilty.

23 Count 10, bank fraud: Submission of Dituri Construction LLC
24 PPP application to Celtic Bank on or about May 4, 2020.

25 As to Count 10, we find the defendant, Eric Shibley, guilty.

1 Count 11, money laundering: Transfer of \$960,000 from Wells
2 Fargo account ending in 9116 to the name of A Team Holdings
3 LLC -- in the name of A Team Holdings LLC to Wells Fargo account
4 ending in 3536 in the name of A Team Holdings LLC on or about
5 May 4, 2020.

6 As to Count 11, we find the defendant, Eric Shibley, guilty.

7 Count 12, money laundering: Transfer of \$563,500 from BECU
8 account ending in 7277 in the name of Dituri Construction LLC to
9 BECU account ending in 7219 in the name of Dituri Construction
10 LLC on or about May 6th, 2020.

11 As to Count 12, we find the defendant, Eric Shibley, guilty.

12 Count 13, money laundering: Transfer of \$820,000 from BECU
13 account ending in 9724 in the name of SS1 LLC to BECU account
14 ending in 9683 in the name of SS1 LLC on or about May 19, 2020.

15 As to Count 13, we find the defendant, Eric Shibley, guilty.

16 Count 14, money laundering: Withdrawal of \$150,000 from
17 Wells Fargo account ending in 3536 in the name of A Team Holdings
18 LLC on or about May 26th, 2020.

19 As to Count 14, we find the defendant, Eric Shibley, guilty.

20 Count 15, money laundering: Deposit of \$20,000 cashier's
21 check from Verity Credit Union into Navy Federal Credit Union
22 account ending in 4507 in the name of ES1 LLC on or about
23 June 22nd, 2020.

24 As to Count 15, we find the defendant, Eric Shibley, guilty.

25 Dated this 18th day of November 2021, signed "Foreperson of

1 the Jury."

2 THE COURT: Counsel, do either of you wish to have the
3 jury polled?

4 MR. WERNER: Not from the government, Your Honor.

5 MR. NANCE: We request it, please.

6 THE COURT: All right.

7 Ladies and gentlemen, I'm going to ask each of you two
8 questions. The first question will be: Is this your individual
9 verdict? And the answer to that question will be "Yes," if you
10 voted for it in all respects as read by the clerk, and "No," if
11 not.

12 The second question will be: Is this the verdict of the
13 jury? The answer to that question will be "Yes," if all twelve
14 of you voted in favor of the verdict as read by the clerk in all
15 respects; "No," if not.

16 JURY POLLING

17 BY THE COURT:

18 Q Juror No. 1, is this your individual verdict?

19 A Yes.

20 Q Is it the verdict of the jury?

21 A Yes.

22 Q Juror No. 2, is this your individual verdict?

23 A Yes, Your Honor.

24 Q Is it the verdict of the jury?

25 A Yes.

1 Q Juror No. 3, is this your individual verdict?

2 A Yes, Your Honor.

3 Q Is it the verdict of the jury?

4 A Yes.

5 Q Juror No. 4, is this your individual verdict?

6 A Yes.

7 Q Is it the verdict of the jury?

8 A Yes.

9 Q Juror No. 5, is this your individual verdict?

10 A Yes.

11 Q Is it the verdict of the jury?

12 A Yes.

13 Q Juror No. 6, is this your individual verdict?

14 A Yes.

15 Q Is it the verdict of the jury?

16 A Yes.

17 Q Juror No. 7, is this your individual verdict?

18 A Yes.

19 Q Is it the verdict of the jury?

20 A Yes.

21 Q Juror No. 8, is this your individual verdict?

22 A Yes.

23 Q Is it the verdict of the jury?

24 A Yes.

25 Q Juror No. 9, is this your individual verdict?

1 A Yes.

2 Q Is it the verdict of the jury?

3 A Yes.

4 Q Juror No. 10, is this your individual verdict?

5 A Yes.

6 Q Is it the verdict of the jury?

7 A Yes.

8 Q Juror No. 11, is this your individual verdict?

9 A Yes.

10 Q Is it the verdict of the jury?

11 A Yes.

12 Q And, Juror No. 12, is this your individual verdict?

13 A Yes.

14 Q Is it the verdict of the jury?

15 A Yes.

16 THE COURT: Is there any reason I should not discharge
17 the jury?

18 MR. WERNER: No, Your Honor.

19 MR. NANCE: No reason.

20 THE COURT: All right. Give me a sentencing date and
21 time.

22 THE CLERK: February the 22nd, 2022, at 9:00 a.m.

23 THE COURT: All right. Ladies and gentlemen, you are
24 excused to report to the jury clerk on the first floor. If you
25 want, you are invited to come back into chambers for a few

1 minutes. You don't have to if you don't want to. If you want to
2 get on and get home, I will understand, but if you want to come
3 back, I would be happy to chat with you, all right?

4 We will be in recess.

5 THE CLERK: All rise. Court is in recess.

6 (Adjourned.)

7
8 C E R T I F I C A T E

9
10 I, Nickoline M. Drury, RMR, CRR, Court Reporter for the
11 United States District Court in the Western District of
12 Washington at Seattle, do certify that the foregoing is a correct
13 transcript, to the best of my ability, from the record of
14 proceedings in the above-entitled matter.

15
16
17 /s/ Nickoline Drury

18 Nickoline Drury
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