UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	)	
v.	)	No. 19-065-JJM-PAS
BABAWALE JENYO	)	

JURY INSTRUCTIONS

I. GENERAL INSTRUCTIONS

Now that you have heard all the evidence and the arguments of counsel, it is my job to instruct you on the law that is applicable to this case.

I will send a written copy of my instructions into the jury room.

PROVINCE OF THE COURT AND JURY

It is your duty as jurors to follow the law as I shall state it to you and to apply that law to the facts of the case, as you determine those facts to be from the evidence in this case. You are not to be concerned with the wisdom of any rule of law stated by me. You are not to single out one instruction alone as stating the law but must consider the instructions as a whole.

Further, nothing I say in these instructions and nothing that I have said or done during the trial is to be taken as an indication that I have any opinion about the facts of the case. I do not. It is not my role to determine the facts; that is your role.

You must perform your duties as jurors without bias or prejudice to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties — and the law — expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

PRESUMPTION OF EVIDENCE

As I told you at the start of this trial, Mr. Jenyo is presumed to be innocent of the accusations against him. This presumption of innocence remains with Mr. Jenyo unless and until the government presents evidence satisfying you beyond a reasonable doubt that he is guilty.

The presumption of innocence requires a not guilty verdict unless you find that such evidence has been presented.

If you find that the government has proven Mr. Jenyo guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to him. However, unless and until that time, the presumption of innocence remains with Mr. Jenyo.

REASONABLE DOUBT

As I have said, the burden is upon the government to prove beyond a reasonable doubt that Mr. Jenyo is guilty of the charges made against him. It is a strict and heavy burden, but it does not mean that Mr. Jenyo's guilt must be proved beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning Mr. Jenyo's guilt.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge.

Of course, Mr. Jenyo is never to be convicted on suspicion or conjecture. If, for example, you view the evidence in the case as reasonably permitting either of two conclusions — one, that Mr. Jenyo is guilty, or two, that Mr. Jenyo is not guilty — then you must find Mr. Jenyo not guilty.

It is not sufficient for the government to establish a probability, even a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond reasonable doubt. On the other hand, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt; proof beyond a reasonable doubt is sufficient to convict.

So, I instruct you that what the government must do to meet its heavy burden is to establish the truth of each part of each offense charged by proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to any of the charges against Mr. Jenyo, then you will return a verdict of guilty as to that charge. If, on the other hand, you think there is a reasonable doubt about whether Mr. Jenyo is guilty of any of the charges, then you must give him the benefit of the doubt and find Mr. Jenyo not guilty as to that charge.

GOVERNMENT AS A PARTY

The mere fact that this case is brought in the name of the United States does not entitle the prosecution to any greater consideration than that accorded to Mr. Jenyo. By the same token, it does not mean that the prosecution is entitled to any less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

TESTIMONY OF MR. JENYO

The Defendant is under no obligation to prove or disprove anything or to give testimony or to go forward with a defense. The Defendant never has to prove his innocence. He does not have to present any witnesses nor does he have to take the stand and testify. In this case, Mr. Jenyo has decided not to take the stand and testify. I have instructed you that he has no obligation to testify and his failure to testify cannot in any way be held against him. It is his constitutional right not to testify and no inference of guilt, or of anything else, may be drawn from the fact that he did not testify.

EVIDENCE IN THE CASE

In determining the facts of this case, you are to consider only the evidence that has been properly put before you. That evidence consists of the sworn testimony of witnesses and the exhibits that have been received into evidence. Evidence that the Court admits in full is properly before you for your consideration; evidence that this Court has refused to admit is not a proper subject for your deliberations and you should not consider it when reaching a verdict. Admitted evidence will be available to you in the jury room for your consideration during your deliberations.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if the evidence was admitted.

Certain things are not evidence, and you may not consider them in deciding what the facts are.

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements and closing arguments, and at other times, may help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it.

3. Testimony that has been excluded is not evidence and must not be considered.

4. Anything you may have seen or heard when the Court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

EVIDENCE – DIRECT AND CIRCUMSTANTIAL

There are two types of evidence from which you may properly find the facts of this case. One is direct evidence – such as the testimony of an eyewitness. The other is indirect or circumstantial evidence – that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence.

In your consideration of the evidence in this case, you can make reasonable inferences from witnesses' testimony and the admitted exhibits. Inferences are deductions that reason and common sense lead you to draw from facts that have been established by the evidence in this case. Inferences, however, may not be based on pure speculation or conjecture.

EXPERT WITNESSES

During this trial, you heard from witnesses who have come in to testify based on some art, science, profession or calling through experience, learning or education. You are not bound by their opinion. Rather, his or her opinion, whether based on personal observations or a hypothetical question, is to be considered by you in the same manner as any other witness. In passing on a disputed question of fact, it is the duty of the jury to determine that issue according to its own judgment upon all of the evidence enlightened, though not controlled, by the opinion or opinions of those witnesses.

You should not arbitrarily disregard such testimony if it is uncontradicted or unimpeached. However, if you should decide that the opinion of that witness is not based upon sufficient education and/or experience, or if you conclude that the reasons given in support of the opinion is not sound, or if you believe that there is other credible evidence which contradicts the opinion, you may disregard that witness' opinion entirely. In sum, you should look to the totality of the circumstances surrounding the subject matter of the witness' testimony in determining what weight you give his or her opinion.

TRANSCRIPT OF AUDIO RECORDING

When you return to the jury room, you will have a copy of the audio recording that was played by the government. You will also have a copy of the transcript accompanying this recording. While the parties have agreed that this is an accurate reflection of the audio recording, you must note that the transcript is not evidence: it is merely a tool to assist your understanding of the audio recording. As a result, you must disregard any portion of the transcript that you think differs from what you hear on the audio recording.

INDICTMENT – EFFECT

You will have the indictment with you in the jury room to help you remember the precise nature of the charges against Mr. Jenyo.

I remind you that the indictment is nothing more than an accusation. It should not be considered as evidence of guilt. It may not even be the basis of an inference of guilt.

CREDIBILITY OF WITNESSES

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. In deciding the facts of this case, you may have to decide which testimony to believe and which testimony not to believe. In considering the testimony of any witness, you may consider:

1. the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
2. the witness' memory;
3. the witness' manner while testifying;

4. the witness' interest in the outcome of the case and any bias or prejudice the witness may have;

5. whether other evidence contradicted the witness' testimony; and

6. the reasonableness of the witness' testimony considering all the evidence.

A witness may be impeached, that is, his or her credibility may be brought into question by showing that on some prior occasion he or she made a statement about a material issue that contradicts the testimony he or she gives at trial. If you find, from all the evidence, that a witness did at some prior time make a statement that contradicts his or her trial testimony, then you may consider that contradiction when determining the credibility of the witness, or the weight that you will give to his or her testimony. You should also consider, though, any explanation the witness gives for the contradiction, whether the contradiction was a significant one, and in what context the witness gave the earlier statement.

After making your own judgment, you may believe everything a witness says, or part of it, or none of it at all. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

The testimony of a law enforcement officer should be considered by you just as any other evidence in this case, and in evaluating the officer's credibility you should use the same guidelines that you apply to the testimony of any witness.

BIAS AND PREJUDICE

Neither bias <u>in favor</u> of any person or cause, prejudice <u>against</u> any person or cause, nor sympathy of any kind should be permitted to influence you in the course of your deliberations.

All that any party here is entitled to, or, for that matter expects, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence before you and your application of the law as I have explained it to you.

II. <u>CASE-SPECIFIC COUNTS</u>

SUMMARY OF THE OFFENSES

In this case, Mr. Jenyo is charged with 12 counts.

Count 1 charges conspiracy to launder the proceeds of fraudulent activity. The indictment charges that Mr. Jenyo conspired and committed two substantive offenses: concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i), and engaging in a monetary transaction involving more than $10,000 of criminally derived property, in violation of 18 U.S.C. § 1957.

Count 2 charges wire fraud on or about July 1, 2016.

Count 4 charges bank fraud on or about July 28, 2016.

Count 5 charges aggravated identity theft on or about July 28, 2016.

Counts 6–9 charge money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i).

Counts 12–14 charge money laundering in violation of 18 U.S.C. § 1957.

Count 19 charges "prohibition of unlicensed money transmitting businesses" beginning in or about March 2016, through at least and until May 2019, in violation of 18 U.S.C. § 1960.

I will describe each those crimes in more detail later in these instructions. Defendant Jenyo is the only defendant on trial before you. You have heard the name Abiodun Shobaloju and others throughout this trial. You do not need to concern yourself with counts in which Defendant Jenyo is not named. You should not speculate or concern yourself with anything other than the evidence in this trial.

CONSPIRACY – COUNT 1

Mr. Jenyo is accused of conspiring, from January through November of 2016, with persons known and unknown to the Grand Jury to violate 18 U.S.C. § 1956(a)(1)(B)(i), concealment money laundering, and 18 U.S.C. § 1957, engaging in a monetary transaction involving more than $10,000 of criminally derived property. I will describe the elements of these underlying crimes later in these instructions. For now, simply note that it is against federal law to conspire with someone to commit these crimes.

For you to find Mr. Jenyo guilty of conspiracy, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, That there was an unlawful agreement between at least two people to violate 18 U.S.C. § 1956 or § 1957;

Second, That the defendant willfully joined in that agreement; and,

Third, That the defendant joined with the intent that the conspiracy succeed.

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details. But the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy, but you may consider such factors.

To act "willfully" means to act voluntarily and intelligently and with the specific intent that the underlying crime be committed—that is to say, with bad purpose, either to disobey or disregard the law—not to act by ignorance, accident or mistake. The government must prove two types of intent beyond a reasonable doubt before Mr. Jenyo can be said to have willfully joined the conspiracy: an intent to agree and an intent, whether reasonable or not, that the underlying crime be committed. Mere presence at the scene of a crime is not alone enough, but you may consider it among other factors. Intent may be inferred from the surrounding circumstances.

Proof that Mr. Jenyo willfully joined in the agreement must be based upon evidence of his own words and/or actions. You need not find that Mr. Jenyo agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that he participated in each act of the agreement or played a major role, but the government must prove beyond a reasonable doubt that he knew the essential features and general aims of the venture.

Even if Mr. Jenyo was not part of the agreement at the very start, he can be found guilty of conspiracy if the government proves that he willfully joined the agreement later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

The government does not have to prove that the conspiracy succeeded or was achieved. The crime of conspiracy is complete upon the agreement to commit the underlying crime.

In this case, regarding the alleged conspiracy, the indictment charges that the Defendant conspired to commit the offenses of concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i), and engaging in a monetary transaction involving more than $10,000 of criminally derived property, in violation of 18 U.S.C. § 1957. In other words, the Defendants are charged with conspiring to commit two separate substantive crimes.

The Government does not have to prove that the Defendant willfully conspired to commit both crimes. It is sufficient if the Government proves beyond a reasonable doubt that the Defendant willfully conspired to commit one of those crimes. But to return a verdict of guilty, you must all agree on which of the crimes the Defendant conspired to commit.

WIRE FRAUD – COUNT 2

Mr. Jenyo is charged, in Count 2, with wire fraud. This offense is alleged to have involved a scheme that was executed on or about July 1, 2016 with the interstate wire transfer of funds in the amount of $95,500. It is against federal law to engage in such conduct. For you to find Mr. Jenyo guilty of wire fraud, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that there was a scheme, substantially as charged in the indictment, to defraud or to obtain money or property by means of false or fraudulent pretenses;

Second, that the scheme to defraud involved the misrepresentation or concealment of a material fact or matter or the scheme to obtain money or property by means of false or fraudulent pretenses involved a false statement, assertion, half-truth or knowing concealment concerning a material fact or matter;

Third, that the defendant knowingly and willfully participated in this scheme with the intent to defraud; and,

Fourth, that for the purpose of executing the scheme or in furtherance of the scheme, the defendant caused an interstate wire communication to be used, or it was reasonably foreseeable that for the purpose of executing the scheme or in furtherance of the scheme, an interstate or foreign wire communication would be used, on or about the date alleged.

A scheme includes any plan, pattern or course of action. It is not necessary that the government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme or that the alleged scheme actually succeeded in defrauding anyone. But the government must prove beyond a reasonable doubt that the scheme was substantially as charged in the indictment.

The term "defraud" means to deceive another in order to obtain money or property.

The term "false or fraudulent pretenses" means any false statements or assertions that were either known to be untrue when made or were made with reckless indifference to their truth and that were made with the intent to defraud. The term includes actual, direct false statements as well as half-truths and the knowing concealment of facts.

A "material" fact or matter is one that has a natural tendency to influence or be capable of influencing the decision of the decisionmaker to whom it was addressed.

Mr. Jenyo acted "knowingly" if he was conscious and aware of his actions, realized what he was doing or what was happening around him and did not act because of ignorance, mistake or accident.

An act or failure to act is "willful" if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. Thus, if Mr. Jenyo acted in good faith, he cannot be guilty of the crime. The burden to prove intent, as with all other elements of the crime, rests with the government.

Intent or knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what Mr. Jenyo knew or intended at a particular time, you may consider any statements made or acts done or omitted by him, and all other facts and circumstances received in evidence that may aid in your determination of his knowledge or intent. You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.

An "interstate or foreign wire communication" includes a telephone communication from one state to another, or between the United States and a foreign country. The term also includes a wire transfer of funds between financial institutions as well an e-mail transmission or other internet communication. The wire communication does not itself have to be essential to the scheme, but it must have been made for the purpose of carrying it out. There is no requirement that Mr. Jenyo himself was responsible for the wire communication, that the wire communication itself was fraudulent or that the use of wire communications facilities in interstate commerce was intended as the specific or exclusive means of accomplishing the alleged fraud. But the government must prove beyond a reasonable doubt that Mr. Jenyo knew, or could reasonably have foreseen, that use of a wire communication would follow in the course of the scheme.

Phone calls or emails designed to lull a victim into a false sense of security, postpone injuries or complaints or make the transaction less suspect are phone calls or emails in furtherance of a scheme to defraud.

BANK FRAUD – COUNT 4

Mr. Jenyo is charged in Count 4 with bank fraud. In an effort to gain access to the funds, Mr. Jenyo is alleged to have made false statements to TD Bank personnel and caused a false letter to be delivered on or about July 28, 2016. It is against federal law to engage in such conduct against TD Bank. For you to find Mr. Jenyo guilty of this crime, you must be convinced that the government has proven each of these things beyond a reasonable doubt:

First, a scheme, substantially as charged in the indictment, to obtain a financial institution's money by means of false or fraudulent pretenses;

Second, the defendant's knowing and willful participation in this scheme with the intent to obtain money by means of false or fraudulent pretenses; and,

Third, TD Bank was federally insured or was a federal reserve bank or a member of the federal reserve system.

A scheme includes any plan, pattern or course of action.

The term "false or fraudulent pretenses" means any false statements or assertions that concern a material aspect of the matter in question, that were either known to be untrue when made or made with reckless indifference to their truth and that were made with the intent to deceive another. They include actual, direct false statements as well as half- truths and the knowing concealment of facts.

A "material" fact or matter is one that has a natural tendency to influence or be capable of influencing the decision of the decision-maker to whom it was addressed.

Mr. Jenyo acted “knowingly” if he was conscious and aware of his actions, realized what he was doing or what was happening around him, and did not act because of ignorance, mistake or accident.

An act or failure to act is “willful” if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

Intent or knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what Mr. Jenyo knew or intended at a particular time, you may consider any statements made or acts done or omitted by him, and all other facts and circumstances received in evidence that may aid in your determination of his knowledge or intent. You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.

The government need not prove that the scheme was successful, that the financial institutions suffered a financial loss, that Mr. Jenyo knew that the victim of the scheme was a federally insured financial institution or that Mr. Jenyo secured a financial gain.

AGGRAVATED IDENTITY THEFT – COUNT 5

Mr. Jenyo is charged with aggravated identity theft in Count 5. It is against federal law to steal someone's identity, and here that of Jon and Claudia Batesole as well as Marlayna Beer, occurring on or about July 28, 2016. For you to find Mr. Jenyo guilty of this crime, you must be convinced that the government has proven each of these four things beyond a reasonable doubt:

First, that the defendant committed a felony violation of bank fraud or wire fraud;

Second, that during and in relation to a felony violation of bank fraud or wire fraud, the defendant knowingly transferred, possessed, or used a means of identification, one of the names described in the indictment, without lawful authority;

Third, that the name actually belonged to another person; and,

Fourth, that the defendant knew that the name belonged to another person.

Someone knows a fact if he has actual knowledge of it. Knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what Mr. Jenyo knew at a particular time, you may consider any statements made or acts done or omitted by him, and all other facts and circumstances received in evidence that may aid in your determination of his knowledge.

MONEY LAUNDERING – COUNTS 6–9

Mr. Jenyo is charged with violating that portion of the federal money laundering statute that prohibits concealment of the proceeds of certain unlawful activities. Count 6 refers to a cash withdrawal from TD Bank Acct. #5965 in the amount of $4,000 on July 8, 2016. Count 7 refers to a transfer of check made payable to Oluwaseyi Omoniyi with memo "Payment for Services," drawn on TD Bank Acct. #5965 in the amount of $8,500 on July 8, 2016. Count 8 refers to a cash withdrawal from TD Bank Acct. #5965 in the amount of $8,580 on July 10, 2016. Count 9 refers to a cash withdrawal from TD Bank Acct. #5965 in the amount of $7,500 on July 13, 2016. It is against federal law to engage in such concealment. For Mr. Jenyo to be convicted of money laundering, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

First, that the defendant entered into a financial transaction or transactions, on or about the dates alleged in the Indictment, with a financial institution engaged in interstate commerce;

Second, that the transaction involved the use of proceeds of unlawful activities, specifically, proceeds of the wire fraud or bank fraud;

Third, that the defendant knew that these were the proceeds of some kind of criminal activity; and,

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

A withdrawal, deposit, or transfer of funds from a bank is a financial transaction.

"Proceeds" means any gross receipts that someone acquires or retains as a result of the commission of the unlawful activity.

Knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what Mr. Jenyo knew or intended at a particular time, you may consider any statements made or acts done or omitted by him, and all other facts and circumstances received in evidence that may aid in your determination of his knowledge or intent. You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.

MONEY LAUNDERING – COUNTS 12–14

Mr. Jenyo is charged with knowingly engaging in a monetary transaction involving more than $10,000 of criminally derived property. Count 12 refers to a wire transfer to Adelola Obisanya with memo "Settlement" in the amount of $14,500 on July 11, 2016. Count 13 refers to a wire transfer to Adelola Obisanya with memo "2nd Payment" in the amount of $14,000 on July 12, 2016. Count 14 refers to a wire transfer to Adelola Obisanya in the amount of $13,000 on July 18, 2016. It is against federal law to engage in such activity. For you to find Mr. Jenyo guilty of this crime, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

First, that the defendant engaged or attempted to engage in a monetary transaction on or about the dates alleged in the Indictment;

Second, that the transaction involved property derived from wire or bank fraud;

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

Fourth, that the defendant knew that the property was criminally derived.

The term "monetary transaction" means the deposit, withdrawal, transfer or exchange, in or affecting interstate commerce, of funds or a monetary instrument, by, through, or to a financial institution, including any transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree. A "monetary instrument" means coin or currency of the United States, travelers' checks, personal checks, bank checks, and money orders.

"Affecting interstate commerce" means that the transaction affected commerce in any way or degree; a minimal effect is sufficient. "Interstate commerce" means trade, transactions, transportation or communication between any point in a state and any place outside that state or between two points within a state through a place outside the state.

The term "financial institution" includes commercial banks and credit unions. The alleged monetary transaction need not involve "all" criminally derived property, only over $10,000 in criminally derived property.

The government does not have to prove that Mr. Jenyo knew that the money was derived from wire or bank fraud or that he committed the wire or bank fraud. It is enough that he had general knowledge that the property came from some kind of criminal offense.

UNLICENSED MONEY TRANSMITTING BUSINESS – COUNT 19

Mr. Jenyo is charged in Count 19 with operating an unlicensed money transmitting business, from roughly March 2016 until May 2019, in violation of federal law. For you to find Mr. Jenyo guilty of this crime, you must be convinced that the government has proven each of the following beyond a reasonable doubt:

First, that the defendant conducted, controlled, managed, supervised, directed, or owned all or part of a money transmitting business;

Second, that the money transmitting business affected interstate or foreign commerce; and,

Third, that the business was not licensed and that it operated in a state where the business was required to be licensed, or that the defendant knew that the money transmitting business involved the transportation or transmission of funds that were derived from a criminal offense or were intended to be used to promote or support unlawful activity.

"Money transmitting" includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier.

The term "money transmitting business" includes any business that provides check cashing, currency exchange, or money transmitting or remittance services, or any person who engages as a business in any informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

"Affected interstate or foreign commerce" includes commerce between any combination of states, territories or possessions of the United States, or between the United States and any foreign country. In determining whether someone would be engaged in, or whether activities would affect, interstate or foreign commerce, the involvement in interstate or foreign commerce could be minimal. Any involvement at all will satisfy this element. All that is necessary is that the natural and probable consequences of certain acts would affect interstate or foreign commerce. A transaction involving an interstate or foreign transfer of funds, by wire, check, courier or other means, affects interstate or foreign commerce.

The term "unlicensed," in the third element, refers to a money transmitting business that operated without an appropriate money transmitting license in a state where such operation is punishable as a misdemeanor or felony under state law.

The laws of Rhode Island, specifically section 19-14-2, require that a money transmitter engaged in electronic money transfers for a fee or other consideration must be licensed by the state, and that section makes unlicensed money transmitting punishable as misdemeanor.

In order to satisfy the third element, the government does not need to prove that Mr. Jenyo knew a license was required by state law to conduct a money transmitting business. Instead, with respect to the state licensing requirements, the government only needs to show that Mr. Jenyo knowingly conducted a money transmitting business and that the business was not licensed in the state in which it was conducted, which is Rhode Island in this case.

AID AND ABET

You may find Mr. Jenyo guilty of the substantive crimes, in this case wire fraud, bank fraud, aggravated identity theft, and money laundering, if you find that he aided and abetted the commission of those crimes. To "aid and abet" means intentionally to help someone else commit the charged crimes.

To establish aiding and abetting, the government must prove beyond a reasonable doubt:

First, That someone else committed the charged crime;

Second, That the defendant took an affirmative act to help or cause the wire fraud, bank fraud, aggravated identity theft, or money laundering; and

Third, That the defendant willfully associated himself in some way with the crime and willfully participated in it as he would in something he wished to bring about. Or in other words that Mr. Jenyo intended to help or cause the commission of these offenses.

To establish an affirmative act, the government does not need to prove beyond a reasonable doubt that Mr. Jenyo participated in each and every aspect of the wire fraud, bank fraud, aggravated identity theft, or money laundering. In terms of the affirmative act element, it may be enough if you find beyond a reasonable doubt that he assisted in the commission of the wire fraud, bank fraud, aggravated identity theft, or money laundering, or caused those crimes to be committed.

However, the government must still prove that these affirmative acts were done with the required intent. A general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of the wire fraud, bank fraud, aggravated identity theft, or money laundering, and knowledge that those crimes are being committed are also not sufficient to constitute aiding or abetting. But you may consider these things among other factors in determining whether the government has met its burden.

"WILLFUL BLINDNESS" AS A WAY OF SATISFYING "KNOWINGLY"

In deciding whether Mr. Jenyo acted knowingly, you may infer that he had knowledge of a fact if you find that he deliberately closed his eyes to a fact that otherwise would have been obvious to him.

In order to infer knowledge, you must find that two things have been established. First, that Mr. Jenyo was aware of a high probability of the fact in question. Second, that he consciously and deliberately avoided learning of that fact. That is to say, Mr. Jenyo willfully made himself blind to that fact.

It is entirely up to you to determine whether he deliberately closed his eyes to the fact and, if so, what inference, if any, should be drawn. However, it is important to bear in mind that mere negligence, recklessness or mistake in failing to learn the fact is not sufficient. There must be a deliberate effort to remain ignorant of the fact.

III. FINAL PROCEDURAL INSTRUCTIONS

Ladies and gentlemen, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that, I need to give you some instructions about the procedures you must use during your deliberations.

As I said at the beginning of my instructions, you must not allow prejudice, sympathy, or compassion to influence you during your deliberations. That does not mean that you should approach this case in an intellectual vacuum. You are not required to put aside your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; and it is your right and duty to consider the evidence in light of such experience and observations. But you must not allow prejudice, sympathy, or compassion to cloud your examination of the evidence or influence your determination of the facts.

During your deliberations, you must not communicate with or provide any information to anyone outside of the jury room by any means about this case. You may not use any electronic device or media, such as a cell phone, a tablet, or a computer. You may not communicate to anyone any information about this case or conduct any research about this case until I accept your verdict. You can only discuss the case in the jury room with your fellow jurors during deliberations.

Now, for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict unless and until all of you agree as to the verdict.

Therefore, in the course of your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your convictions simply because a majority holds to the contrary view, but in pursuing your deliberations you should keep your minds reasonably open with respect to the point in dispute so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. It is your right to maintain your convictions. Each vote of each juror is as important as the vote of any other juror, and you need not give up your sincerely held convictions simply because a majority holds to the contrary.

I am designating Juror # 8, Nicole Rawnsley, as the Foreperson of this jury. It will be your responsibility to organize the group and facilitate organized and healthy deliberations. The Foreperson's opinion, voice, or vote, however, is no more meaningful than any other juror.

When you are in the jury room, you will be provided with the evidence that has been admitted in this case. It may take us a few minutes to gather it up, but as soon as we do, it will be brought to the jury room.

You will also be given a verdict form. When you have reached a verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

COMMUNICATIONS WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the Court Security Officer, signed by the Foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and

I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

OTHER COMMUNICATIONS PROHIBITED

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, or computer, the internet, any internet service, any text or instant messaging service, any internet chat room, blog, or website such as Facebook, LinkedIn, YouTube, or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case.

RETURN OF VERDICT

A verdict form has been prepared for you by the Court. After you have reached unanimous agreement on a verdict, the Foreperson will fill in the form that has been given to you, sign it and date it, and let the Court Security Officer know that you are ready to return to the courtroom.

[REVIEW OF VERDICT FORM]

If, in the course of your deliberations, you deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such request or question to writing, sign it, and give it to the Court Security Officer in whose charge you will now be placed. The Court Security Officer will then bring such written request to me, and I, in consultation with the attorneys, will determine an appropriate response. Other than this method, please do not attempt to communicate privately or in any other way with the Court or with anyone outside the jury room.