

INSTRUCTION NO. 1

Members of the jury, I will now instruct you on the law that you must follow in deciding this case. You must follow all of my instructions about the law, even if you disagree with them. This includes the instructions I gave you before the trial, any instructions I gave you during the trial, and the instructions I am giving you now.

As jurors, you have two duties. Your first duty is to decide the facts from the evidence that you saw and heard here in court. This is your job, not my job or anyone else's job.

Your second duty is to take the law as I give it to you, apply it to the facts, and decide if the government has proved the defendants guilty beyond a reasonable doubt.

You must perform these duties fairly and impartially. Do not let sympathy, prejudice, fear, or public opinion influence you. In addition, do not let any person's race, color, religion, national ancestry, or gender influence you.

You must not take anything I said or did during the trial as indicating that I have an opinion about the evidence or about what I think your verdict should be.

INSTRUCTION NO. 2

The charges against the defendants are in a document called an indictment. You will have a copy of the indictment during your deliberations.

The indictment in this case charges that the defendants committed the crimes of conspiracy, identity theft, account takeover/credit card fraud, and aggravated identity theft. The defendants have pled not guilty to the charges.

The indictment is simply the formal way of telling the defendants what crimes they are accused of committing. It is not evidence that the defendants are guilty. It does not even raise a suspicion of guilt.

INSTRUCTION NO. 3

Each defendant is presumed innocent of each and every one of the charges. This presumption continues throughout the case, including during your deliberations. It is not overcome unless, from all the evidence in the case, you are convinced beyond a reasonable doubt that the particular defendant you are considering is guilty as charged.

The government has the burden of proving each defendant's guilt beyond a reasonable doubt. This burden of proof stays with the government throughout the case.

A defendant is never required to prove his innocence. He is not required to produce any evidence at all.

INSTRUCTION NO. 4

You must make your decision based only on the evidence that you saw and heard here in court. Do not consider anything you may have seen or heard outside of court, including anything from the newspaper, television, radio, the Internet, or any other source.

The evidence includes only what the witnesses said when they were testifying under oath, the exhibits that I allowed into evidence, and the stipulations that the lawyers agreed to. A stipulation is an agreement that certain facts are true or that a witness would have given certain testimony.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer said is different from the evidence as you remember it, the evidence is what counts. The lawyers' questions and objections likewise are not evidence.

A lawyer has a duty to object if he thinks a question is improper. If I sustained objections to questions the lawyers asked, you must not speculate on what the answers might have been.

If, during the trial, I struck testimony or exhibits from the record, or told you to disregard something, you must not consider it.

INSTRUCTION NO. 5

Give the evidence whatever weight you decide it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own everyday experience.

People sometimes look at one fact and conclude from it that another fact exists. This is called an inference. You are allowed to make reasonable inferences, so long as they are based on the evidence.

INSTRUCTION NO. 6

You may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

INSTRUCTION NO. 7

Do not make any decisions simply by counting the number of witnesses who testified about a certain point.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

What is important is how truthful and accurate the witnesses were and how much weight you think their testimony deserves.

INSTRUCTION NO. 8

A defendant has an absolute right not to testify or present evidence. You may not consider in any way the fact that a defendant did not testify or present evidence. You should not even discuss it in your deliberations.

INSTRUCTION NO. 9

Part of your job as jurors is to decide how believable each witness was, and how much weight to give each witness' testimony, including that of the Defendant Willie Harris. You may accept all of what a witness says, or part of it, or none of it.

Some factors you may consider include:

- the intelligence of the witness;
- the witness's ability and opportunity to see, hear, or know the things the witness testified about;
- the witness's memory;
- the witness's demeanor;
- whether the witness had any bias, prejudice, or other reason to lie or slant the testimony;
- the truthfulness and accuracy of the witness's testimony in light of the other evidence presented; and
- inconsistent or consistent statements or conduct by the witness.

INSTRUCTION NO. 10

It is proper for an attorney to interview any witness in preparation for trial.

INSTRUCTION NO. 11

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with their testimony here in court. You may consider an inconsistent statement made before the trial only to help you decide how believable a witness's testimony was here in court.

INSTRUCTION NO. 12

You have heard evidence that before the trial, a defendant made a statement that may be inconsistent with his testimony here in court. You may consider an inconsistent statement by a defendant made before the trial to help you decide how believable the defendant's testimony was here in court, and also as evidence of the truth of whatever the defendant said in the earlier statement.

INSTRUCTION NO. 13

You have heard testimony from witnesses who:

- Were promised and expected benefits in return for their testimony and/or cooperation with the government; and
- Has pled guilty to or otherwise stated that they were involved in the crimes that the defendants are charged with committing. You may not consider their guilty pleas or admissions of guilt as evidence against the defendants.

You may give these witnesses' testimony whatever weight you believe is appropriate, keeping in mind that you must consider that testimony with caution and great care.

INSTRUCTION NO. 14

You may consider evidence that the Defendant Willie Harris was convicted of a crime only in deciding the believability of his testimony. You may not consider it for any other purpose. The other conviction is not evidence of whether the Defendant Harris is guilty of the crime he is charged with in this case.

You may consider evidence that a witness was convicted of a crime only in deciding the believability of his or her testimony. You may not consider it for any other purpose.

INSTRUCTION NO. 15

You have heard testimony that Defendant Robert Sanders made statements to the Speedway, Indiana Police Department. You must decide whether the Defendant Sanders actually made the statement and, if so, how much weight to give to the statement. In making these decisions, you should consider all of the evidence, including the defendant's personal characteristics and circumstances under which the statement may have been made.

You may not consider the statement of Defendant Sanders as evidence against Defendant Harris.

INSTRUCTION NO. 16

You have heard testimony that the Defendant Willie Harris committed acts other than the ones charged in the indictment. Before using this evidence, you must decide whether it is more likely than not that the defendant did the acts that are not charged in the indictment. If you decide that he did, then you may consider this evidence to help you decide the question of intent. You may not consider it for any other purpose. Keep in mind that the defendant Harris is on trial here for crimes of conspiracy, identity theft, account takeover/credit card fraud, and aggravated identity theft, not for the other acts.

INSTRUCTION NO. 17

Certain spreadsheet summaries were admitted in evidence. You may use those summaries as evidence.

Portions of one spreadsheet summary specifically offered by witness William McNally were objected to and withdrawn, and a redacted version of the spreadsheet was admitted. You are not to consider that witness's testimony concerning the withdrawn information when reaching your decision.

It is up to you to decide how much weight to give to the summaries.

INSTRUCTION NO. 18

You have heard a witness, namely, Stephanie Toth, who gave opinions and testimony about fingerprint evidence. You do not have to accept this witness's opinion and testimony. You should judge this witness's opinions and testimony the same way you judge the testimony of any other witness. In deciding how much weight to give to these opinions and testimony, you should consider the witness's qualifications, how she reached her opinions, and the factors I have described for determining the believability of testimony.

INSTRUCTION NO. 19

You have heard recorded conversations and seen a video recording. This is proper evidence that you should consider together with and in the same way you consider the other evidence.

You were also given transcripts of the conversations to help you follow the recordings as you listened to them. The recordings are the evidence of what was said and who said it. The transcripts are not evidence. If you noticed any differences between what you heard in a conversation and what you read in the transcripts, your understanding of the recording is what matters. In other words, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of a recording, you must ignore the transcripts as far as those parts are concerned. You may consider a person's actions, facial expressions, and lip movements that you are able to observe on a video recording to help you determine what was said and who said it.

INSTRUCTION NO. 20

If you have taken notes during the trial, you may use them during deliberations to help you remember what happened during the trial. You should use your notes only as aids to your memory. The notes are not evidence. All of you should rely on your independent recollection of the evidence, and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impressions of each juror.

INSTRUCTION NO. 21

The indictment charges that the crimes of conspiracy, identity theft, account takeover/credit card fraud, and aggravated identity theft happened “on or about” various dates from March 2007 through January 2010. The government must prove that the crimes happened reasonably close to the dates specified in the indictment. The government is not required to prove that the crimes happened on the exact dates.

INSTRUCTION NO. 22

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

Any offense involving the use of the mails is a continuing offense and may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

INSTRUCTION NO. 23

Defendant Willie Harris has been accused of more than one crime. The number of charges is not evidence of guilt and should not influence your decision.

You must consider each charge and the evidence concerning each charge separately. Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any other charge.

INSTRUCTION NO. 24

Even though the defendants are being tried together, you must consider each defendant and the evidence concerning that defendant separately. Your decision concerning one defendant, whether it is guilty or not guilty, should not influence your decision concerning any other defendant.

INSTRUCTION NO. 25

An offense may be committed by more than one person. A defendant's guilt may be established without proof that the defendant personally performed every act constituting the crime charged.

INSTRUCTION NO. 26

Count 1 of the indictment charges the defendants with conspiracy to commit identity theft, account takeover/credit card fraud, and bank fraud. In order for you to find the defendants guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

For all three types of alleged conspiracy, the government must prove:

1. The conspiracy as charged in Count 1 existed; and
2. The defendants knowingly became a member of the conspiracy with an intent to advance the conspiracy.

In addition, for the charge of conspiracy to commit account takeover/credit card fraud, the government also must prove:

3. One of the conspirators committed an overt act in an effort to advance the goals of the conspiracy on or before January 2010.

An overt act is any act done to carry out the goals of the conspiracy. The government is not required to prove all of the overt acts charged in the indictment. The overt act may itself be a lawful act.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendants guilty.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt, then you should find the defendants not guilty.

INSTRUCTION NO. 27

A person acts knowingly if he realizes what he or she is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did or said.

INSTRUCTION NO. 28

A conspiracy is an express or implied agreement between two or more persons to commit a crime. A conspiracy may be proven even if its goals were not accomplished.

In deciding whether the charged conspiracy existed, you may consider all of the circumstances, including the words and acts of each of the alleged participants.

INSTRUCTION NO. 29

To be a member of a conspiracy, a defendant does not need to join it at the beginning, and he or she does not need to know all of the other members or all of the means by which the illegal goals of the conspiracy were to be accomplished. The government must prove beyond a reasonable doubt that the defendants you are considering were aware of the illegal goals of the conspiracy and knowingly joined the conspiracy.

In deciding whether a particular defendant joined the charged conspiracy, you must base your decision only on what that defendant did or said. To determine what that defendant did or said, you may consider that defendant's own words or acts. You may also use the words or acts of other persons to help you decide what the defendant did or said.

INSTRUCTION NO. 30

Count 1 charges that there was a single conspiracy. The defendants contend that there was more than one conspiracy.

If you find that there was more than one conspiracy and that the defendants were members of one or more of those conspiracies, then you may find the defendants guilty on Count 1 only if the conspiracies of which they were members were a part of the conspiracy charged in Count 1.

The government is not required to prove the exact conspiracy charged in the indictment, so long as it proves that the defendants were members of a smaller conspiracy contained within the charged conspiracy.

INSTRUCTION NO. 31

Count 1 charges the defendants with conspiracy to commit three offenses: identity theft; account takeover/credit card fraud; and bank fraud.

The government is not required to prove that the defendant conspired to commit each of these crimes. However, the government is required to prove that the defendants conspired to commit at least one of them. To find that the government has proven this, you must agree unanimously on which particular unlawful activities (*i.e.*, identity theft, account takeover/credit card fraud or bank fraud) the defendants conspired to commit, as well as all of the other elements of the crime charged.

For example, on Count 1, if some of you were to find that the government has proved beyond a reasonable doubt that the defendants conspired to commit identity theft, and the rest of you were to find that the government has proved beyond a reasonable doubt that the defendants conspired to commit bank fraud, then there would be no unanimous agreement on which underlying crime the government has proved. On the other hand, if all of you were to find that the government has proved beyond a reasonable doubt that the defendants conspired to commit credit card fraud, then there would be a unanimous agreement on which crime the defendants conspired to commit.

INSTRUCTION NO. 32

Counts 4 and 5 of the indictment charge Defendant Willie Harris with fraud in connection with the transfer, possession or use of a means of identification. In order for you to find the defendant guilty of this charge, the government must prove each of the five elements beyond a reasonable doubt:

1. The defendant knowingly transferred, possessed or used a means of identification of another person; and
2. The defendant knew that the means of identification belonged to another person; and
3. The defendant acted with the intent to commit or aid and abet credit card fraud, mail fraud or bank fraud; and
4. The defendant acted without lawful authority; and
5. The transfer, possession or use of the means of identification occurred in or affected interstate or foreign commerce or the means of identification was transported in the mail in the course of the possession or use.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charge you are considering, then you should find Defendant Harris guilty of that charge.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant not guilty of that charge.

INSTRUCTION NO. 33

As I just mentioned, in order to find Defendant Willie Harris guilty of identity theft, the government must show that he acted with the intent to commit or aid and abet the crimes of credit card fraud, mail fraud or bank fraud. The defendant has been independently charged with credit card fraud, and I will tell you the elements of that offense in some detail in a few minutes. However, he has not been independently charged with mail fraud or bank fraud, so I need to briefly explain the elements of those offenses.

In order to prove that a defendant committed mail fraud, the government must prove beyond a reasonable doubt: (1) That the defendant knowingly devised or participated in a scheme to defraud; (2) that he did so with the intent to defraud; (3) that the scheme to defraud involved a materially false or fraudulent pretense, representation, or promise; and (4) that for the purpose of carrying out the scheme or attempting to do so, the defendant used or caused the use of the United States Mails or a private or commercial interstate carrier.

In order to prove that a defendant committed bank fraud, the government must prove beyond a reasonable doubt: (1) That there was a scheme to defraud a bank; (2) that the defendant knowingly executed the scheme; (3) that the defendant acted with the intent to defraud; (4) that the scheme involved a materially false or fraudulent pretense or representation; and (5) that at the time of the charged offense the deposits of the bank were insured by the Federal Deposit Insurance Corporation.

INSTRUCTION NO. 34

A person possesses an object if he has the ability and intention to exercise direction or control over the object, either directly or through others. A person may possess an object even if he or she is not in physical contact with it and even if he or she does not own it.

INSTRUCTION NO. 35

“Means of identification” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual. A means of identification includes any:

name; social security number; date of birth; official State or government issued driver’s license or identification number; card; code; account number; electronic serial number; mobile identification number; personal identification number; or other telecommunications service, equipment, or instrument identifier; or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value; used to initiate a transfer of funds (other than a transfer originated solely by paper instrument).

INSTRUCTION NO. 36

“Lawful authority” means authorization recognized by statute or regulation. Thus, “without lawful authority” means without authorization recognized by statute or regulation.

To prove the “without lawful authority” element, the government need not prove that the identification document, authentication feature, false identification documents, or means of identification were stolen. However, proof that such documents, features or means of identification were stolen would satisfy the “without lawful authority” element.

INSTRUCTION NO. 37

“Interstate or foreign commerce” involves business, trade, travel, transportation or communication between any place in a state and any place outside that state, or any two places within a state but through any place outside that state. A defendant's conduct affects commerce if the natural consequences of the defendant's actions had some effect on commerce, however minimal.

INSTRUCTION NO. 38

Count 10 of the indictment charges Defendant Willie Harris with aggravated identity theft. In order for you to find the Defendant Harris guilty of this charge, the government must prove each of the five following elements beyond a reasonable doubt:

1. The defendant committed the underlying felony offenses of credit card fraud, mail fraud or bank fraud;
2. During and in relation to that offense, the defendant knowingly transferred, possessed and used a means of identification; and
3. The defendant did so without lawful authority; and
4. The means of identification belonged to another person; and
5. The defendant knew that the means of identification belonged to another person.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant guilty of that charge.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendants not guilty of that charge.

INSTRUCTION NO. 39

A person transfers, possesses or uses a means of identification “in relation to” a crime if it had a purpose, role or effect with respect to the felony offense. It also means that the possession or use of the means of identification had a connection to or relationship with the felony offense.

INSTRUCTION NO. 40

Counts 6, 8 and 9 of the indictment charge Defendant Willie Harris with the use of access devices (also called account takeover/credit card fraud). In order for you to find the defendant guilty of this charge, the government must prove each of the four following elements beyond a reasonable doubt:

1. The defendant knowingly used or trafficked in one or more specified unauthorized access devices; and
2. By such conduct the defendant obtained money with a total value of at least \$1,000 during any one year period; and
3. The defendant did so with the intent to defraud; and
4. The defendant's conduct affected interstate commerce.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant guilty of that charge.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant not guilty of that charge.

INSTRUCTION NO. 41

The term “Access device” includes a credit card, debit card or a personal identification number such as that used to obtain cash at an ATM. It also means a card, plate, code, account number, electronic serial number, mobile identification number, personal identification number or other telecommunications service, equipment, instrument identifier or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds.

INSTRUCTION NO. 42

“Unauthorized access device” means any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud.

INSTRUCTION NO. 43

“Traffic” or “trafficking” means to transfer something to another, or otherwise dispose of something. It also means to obtain control of something with intent to transfer or dispose of it.

INSTRUCTION NO. 44

A person acts with intent to defraud if he or she acts knowingly with the intent to deceive or cheat the victims in order to cause a gain of money or property to the defendant or another or the potential loss of money or property to another.

INSTRUCTION NO. 45

Any person who knowingly aids, counsels, commands, induces, or procures the commission of an offense may be found guilty of that offense if he or she knowingly participated in the criminal activity and tried to make it succeed.

If a defendant knowingly causes the acts of another, then the defendant is responsible for those acts as though he or she personally committed them.

INSTRUCTION NO. 46

Once you are all in the jury room, the first thing you should do is choose a foreperson. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. You may discuss the case only when all jurors are present.

Once you start deliberating, do not communicate about the case or your deliberations with anyone. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as telephone, cell phone, smart phone, iPhone, Blackberry, computer, text messaging, instant messaging, the Internet, chat rooms, blogs, websites, or services like Facebook, MySpace, LinkedIn, YouTube, Twitter, or any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the court security officer. The note should be signed by the foreperson, or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer. Please be advised that transcripts of trial testimony are not available to you. You must rely on your collective memory of the testimony.

If you send me a message, do not include the breakdown of any votes you may have conducted. In other words, do not tell me that you are split 6–6, or 8–4, or whatever your vote happens to be.

INSTRUCTION NO. 47

A verdict form has been prepared for you. You will take this form with you to the jury room.

Read the verdict form.

When you have reached unanimous agreement, your foreperson will fill in, date, and sign the verdict form. Each of you will sign it.

Advise the court security officer once you have reached a verdict. When you come back to the courtroom, I will read the verdict aloud.

INSTRUCTION NO. 48

The verdict must represent the considered judgment of each juror. Your verdict, whether it is guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with each other, express your own views, and listen to your fellow jurors' opinions. Discuss your differences with an open mind. Do not hesitate to re-examine your own view and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence just because of the opinions of your fellow jurors or just so that there can be a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence. You should deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.