

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA)
)
 v.) **2:12-cr-00175-PPS**
)
 ADRIAN TARTAREANU and)
 DANIELA TARTAREANU)

JURY INSTRUCTIONS

Dated: October 23, 2013.

/ s/ Philip P. Simon _____
PHILIP P. SIMON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

INSTRUCTION NO. 1

Members of the jury, I will now instruct you on the law that you must follow in deciding this case. I will also give you two copies of these instructions to use in the jury room. 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.

Count 1 of the Indictment charges the defendants with conspiracy to commit wire fraud between September 2007 and March 2009.

Counts 2 through 17 of the Indictment charge the defendants with wire fraud on or about the dates listed in the Indictment.

The defendants have pled not guilty to the charges.

The Indictment is simply the formal way of telling the defendant what crimes he or she is accused of committing. It is not evidence that the defendant is 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 defendant 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 or her innocence. He or she 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, and the exhibits that I allowed into evidence.

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

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

INSTRUCTION NO. 6

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. 7

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. 8

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

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

INSTRUCTION NO. 9

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

INSTRUCTION NO. 10

Part of your job as jurors is to decide how believable each witness was, and how much weight to give each witness' testimony. 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' ability and opportunity to see, hear, or know the things

the witness testified about;

- the witness' memory;
- the witness' demeanor;
- whether the witness had any bias, prejudice, or other reason to lie

or slant the testimony;

- the truthfulness and accuracy of the witness' testimony in light of

the other evidence presented; and

- inconsistent statements or conduct by the witness.

INSTRUCTION NO. 11

It is proper for a lawyer to interview any witness in preparation for trial.

INSTRUCTION NO. 12

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. 13

You have heard testimony from Minos Litos who was promised and expected benefits in return for his testimony and cooperation with the government; and who has pled guilty to the same crimes the defendants are charged with committing.

You have also heard testimony from Sarah Harris who received benefits in return for her testimony and cooperation with the government and who has pled guilty to some of the same crimes the defendants are charged with committing.

You may not consider Litos's and Harris's guilty pleas as evidence against the defendants.

You have also heard testimony from Joseph Aguirre who may have received benefits in return for his testimony and cooperation with the government.

You may give the testimony of each of Litos, Harris and Aguirre 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 a witness was convicted of a crime only in deciding the believability of his testimony. You may not consider it for any other purpose.

INSTRUCTION NO. 15

You have heard a witness, namely Carrie Vavul, who gave opinions and testimony about the real estate business. You do not have to accept this witness's opinions or 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. 16

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. 17

Count One of the Indictment charges the defendants with conspiracy to commit wire fraud. In order for you to find a defendant guilty of this charge, the government must prove both of the following elements beyond a reasonable doubt:

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

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 defendant 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 defendant not guilty.

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. 18

To be a member of a conspiracy, a defendant does not need to join it at the beginning, and he 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 defendant you are considering was aware of the illegal goals of the conspiracy and knowingly joined the conspiracy.

A defendant is not a member of a conspiracy just because he knew and/or associated with people who were involved in a conspiracy, knew there was a conspiracy, and/or was present during conspiratorial discussions.

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. 19

A defendant's presence at the scene of a crime and knowledge that a crime is being committed is not sufficient by itself to establish the defendant's guilt.

If a defendant performed acts that advanced the crime but had no knowledge that the crime was being committed or was about to be committed, those acts are not sufficient by themselves to establish the defendant's guilt.

A defendant's association with persons involved in a crime or criminal scheme is not sufficient by itself to prove his or her participation in the crime or membership in the criminal scheme.

INSTRUCTION NO. 20

Counts 2 through 17 of the Indictment charge the defendants with wire fraud. In order for you to find a defendant guilty of wire fraud, the government must prove each of the following elements beyond a reasonable doubt:

1. That the defendant knowingly devised or participated in a scheme to defraud, as described in Counts through 2 through 17; and
2. That the defendant did so with the intent to defraud; and
3. 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 caused interstate wire communications to take place in the manner charged in the particular count.

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. 21

A scheme is a plan or course of action formed with the intent to accomplish some purpose.

A scheme to defraud is a scheme that is intended to deceive or cheat another and to obtain money or property or cause the potential loss of money or property to another by means of materially false or fraudulent pretenses, representations or promises.

A materially false or fraudulent pretense, representation, or promise may be accomplished by an omission or the concealment of material information.

INSTRUCTION NO. 22

In considering whether the government has proven a scheme to defraud, the government must prove that one or more of the false or fraudulent pretenses, representations or promise charged in the portion of the indictment describing the scheme be proved beyond a reasonable doubt. The government, however, is not required to prove all of them.

INSTRUCTION NO. 23

Counts 2 through 17 charge the defendants with making more than one false statement. The government is not required to prove that the defendant made every one of the false statements alleged in each of Counts 2 through 17. However, the government is required to prove that each defendant made at least one of the false statements, or aided in their making, that is alleged in each of Counts 2 through 17. To find that the government has proven this, you must agree unanimously on which particular false statement the defendants made, or aided in making, as well as all of the other elements of the crime charged.

For example, on a given Count, if some of you were to find that the government has proved beyond a reasonable doubt that the defendants made a false statement to the buyer that the rental income would cover the cost associated with owning rental property, and the rest of you were to find that the government has proved beyond a reasonable doubt that the defendant made a false statement to a bank about a buyer's income, then there would be no unanimous agreement on which false statement 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 defendant made a false statement about a buyer's income, then there would be a unanimous agreement on which false statement the government proved.

INSTRUCTION NO. 24

A false or fraudulent pretense, representation, promise, omission, or concealment is “material” if it is capable of influencing the decision of the persons to whom it was addressed.

It is not necessary that the false or fraudulent pretense, representation, promise, omission, or concealment actually have that influence or be relied on by the alleged victim, as long as it is capable of doing so.

INSTRUCTION NO. 25

A person acts with intent to defraud if he acts knowingly with the intent to deceive or cheat the victim 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. 26

If the defendants acted in good faith, then he or she lacked the intent to defraud required to prove the offenses of wire fraud charged in Counts 2 through 17, and conspiracy to commit wire fraud charged in Count 1. The defendant acted in good faith if, at the time, he or she honestly believed that his or her actions were lawful and not fraudulent as the government has charged.

The defendants do not have to prove their good faith. Rather, the government must prove beyond a reasonable doubt that each defendant acted with intent to defraud as charged in Counts 2 through 17.

A defendant's honest and genuine belief that he or she will be able to perform what he or she promised is not a defense to fraud if the defendant also knowingly made false and fraudulent representations.

INSTRUCTION NO. 27

The wire fraud statute can be violated whether or not there is any loss or damage to the victim of the crime or gain to the defendant.

The government need not prove that the scheme to defraud actually succeeded.

INSTRUCTION NO. 28

If money or property is obtained through knowingly false representations, the scheme to defraud is established regardless of whether the defendant hoped, intended, or even expected that the victims would eventually be satisfied.

INSTRUCTION NO. 29

The wire transfer of funds and facsimiles constitute transmission by means of wire communication.

INSTRUCTION NO. 30

The government must prove that interstate communication facilities were used to carry out the scheme, or were incidental to an essential part of the scheme.

In order to cause interstate wire communications to take place, a defendant need not actually intend that use to take place. You must find that the defendant knew this use would actually occur, or that the defendant knew that it would occur in the ordinary course of business, or that the defendant knew facts from which that use could reasonably have been foreseen. However, the government does not have to prove that the defendant knew that the wire communication was of an interstate nature.

The defendant need not actually or personally use interstate communication facilities.

Although an item communicated interstate need not itself contain a fraudulent representation or promise or a request for money, it must carry out or attempt to carry out the scheme.

In connection with whether a wire transmission was made, you may consider evidence of the habit or the routine practice of a person or an organization.

Each separate use of interstate communication facilities in furtherance of the scheme to defraud constitutes a separate offense.

INSTRUCTION NO. 31

As to each of the wire fraud Counts 2 through 17 of the Indictment, there is an alternate basis that you may use to find a defendant guilty of committing the crime of wire fraud. You can find a defendant guilty of any of these charges if you find the government proved each of the following four elements beyond a reasonable doubt:

1. The defendant is guilty of the charge of conspiracy as alleged in Count 1;
2. One or more other members of the same conspiracy committed the crime charged in the count you are considering during the time that the defendant was also a member of the conspiracy;
3. The other conspirator(s) committed the crime charged in the count you are considering to advance the goals of the conspiracy; and
4. It was reasonably foreseeable to the defendant that other conspirator(s) would commit the crime charged in the count you are considering in order to advance the goals of the conspiracy. The government is not required to prove that the defendant actually knew about each crime charged in Counts 2 through 17 or that the defendant actually realized that this type of crime would be committed as part of the conspiracy.

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 as to that charge.

INSTRUCTION NO. 32

A person acts knowingly if he realizes what he 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.

You may find that the defendant acted knowingly if you find beyond a reasonable doubt that he had a strong suspicion that the statements made to the buyers and to the banks were false, and that he or she deliberately avoided the truth. You may not find that the defendant acted knowingly if he or she was merely mistaken or careless in not discovering the truth, or if he or she failed to make an effort to discover the truth.

INSTRUCTION NO. 33

Count 1 of the Indictment charges defendants with conspiring to commit wire fraud between on or about September 2007 and March 2009. Counts 2 through 17 charge defendants with committing wire fraud on or about the dates listed in the Indictment. The government must prove that the crimes happened reasonably close to the dates. The government is not required to prove that the crimes happened on those exact dates.

INSTRUCTION NO. 34

The defendants have 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.

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. 35

In deciding your verdict, you should not consider the possible punishment for the defendants who are on trial. If you decide that the government has proved a defendant guilty beyond a reasonable doubt, then it will be my job to decide on the appropriate punishment.

INSTRUCTION NO. 36

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. 37

Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that offense if he 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 personally committed them.

INSTRUCTION NO. 38

Some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted.

INSTRUCTION NO. 39

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 except other members of your jury. 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 cell phones, smart phones, iPhones, Blackberrys, text messaging, instant messaging, the Internet, including 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. 40

Verdict forms have been prepared for you. You will take these forms with you to the jury room.

When you have reached unanimous agreement, your foreperson will fill in, date, and sign the appropriate verdict forms, and then each of you will sign and date them.

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

INSTRUCTION NO. 41

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.