

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRYAN J. SEVERSON,

Defendant.

ORDER

07-CR-074-C

Attached for the parties' consideration are draft voir dire questions, jury instructions and a verdict form. Because we are dealing with charges of aiding and abetting specific intent crimes, the attorneys must review the court's draft jury instructions carefully so that at the final pretrial conference we can be sure accurately to state the elements of the offenses and the attendant levels of mens rea.

Entered this 12th day of September, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

Voir Dire: United States v. Bryan Severson, 07-CR-74-C

Statement of the case: This is a criminal case, in which the defendant, Bryan Severson, is charged with aiding and abetting bank fraud at the First National Bank of Blanchardville, filing false documents to obtain loans, and unlawfully obstructing an administrative investigation and making a false statement at a bankruptcy proceeding. The defendant has entered a plea of not guilty to these charges.

1. Have any of you heard of this case before today in newspaper, radio or television reports? [Sidebar if necessary] Would this affect your ability to serve impartially as a juror in this case?

2. Were any of you, your relatives or close friends affected in any way by the collapse of the First National Bank of Blanchardville? [Sidebar if necessary]

3. Scheduling: this case will begin today and will last all week, finishing this Friday, October 5. Are any of you actually unable to sit as jurors because of this schedule?

4. Is there anything else about the nature of the charges in this case that might affect your ability to be impartial in this case?

5. The court reads Federal Criminal Jury Instructions of the Seventh Circuit:

Presumption of Innocence. The defendant is presumed to be innocent of the charges. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

Burden of Proof. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is not required to prove his innocence or to produce any evidence.

The defendant has an absolute right not to testify. The fact that the defendant does not testify cannot be considered by you in any way in arriving at your verdict.

Would any of you be unable or unwilling to follow these instructions?

6. Ask counsel to introduce themselves, the defendant, and the case agent. Ask whether jurors know them.

7. Invite each juror, in turn, to stand and provide the following information; *and* to look at the separate list of banks and businesses that may be mentioned during the trial and tell us whether you or your relatives or close friends ever have worked for or had business relations with any of these banks or other businesses.

Jurors' Personal Information

Name, age, your city or town of residence, and how long you've lived there.

Marital status and number of children, if any.

Current occupation (former if retired), and any other employment in the past ten years.

Current (or former) occupation of your spouse and any adult children.

Any military service, including branch, rank and approximate date of discharge.
Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you regularly listen to talk radio, and if so, to which stations.

Banks and Businesses Involved in this case

Please look at each business listed below and tell us whether you or your relatives ever have worked for any of these banks or businesses, or whether you ever had held accounts with them or had any other business relationship with them.

First National Bank of Blanchardville

State Bank fo Cazenovia

Highland State Bank

Wisconsin River Title Company

Option One Mortgage Company, Irvine, CA

First Equity Lending, Madison, WI

Auto Wares, Inc.

Dane County Towing, Inc.

Five County Towing & Repair, Inc.

Five County Motorsports, Inc.

Five County Transport, Inc.

Five County, Inc.

Five County Auto Supply, Inc.

Dells Motor Speedway, Inc.

Wisconsin Dells Motor Speedway, Inc.

8. Do any of you in the jury box know each other from before today?
9. Apart from what you have already told us, how many of you, your relatives, or close friends ever have worked for any bank, credit union, or other financial institution that deals in any manner with personal loans or business loans?
10. How many of you, your relatives, or close friends ever have defaulted on any loan, or had any other bad experience with any bank, credit union or other lender? [*Sidebar for followup*]. Would this affect your ability to be impartial in this case?
11. How many of you, your relatives, or close friends ever have been a debtor or a creditor in any bankruptcy proceeding? [*Sidebar for followup*]. Would this affect your ability to be impartial in this case?
12. Do any of you have any moral, religious or ethical beliefs that would make it difficult for you to serve as a juror in this case?
13. Do any of you, by virtue of past dealings with the United States government, or for any reason, have any bias for or against the government in a criminal case?
14. Have any of you, your relatives, or close friends ever worked for the local, county, state, or federal government? Would this affect your ability to be impartial in this case?
15. Have any of you, your relatives, or close friends ever worked for, or had other professional contact with any law enforcement, investigative or security company or agency, or any prison? Would this affect your ability to be impartial in this case?
16. Do any of you know any prosecutors, criminal defense attorneys, police officers, other investigative agents, or anyone who works in such an office or agency? Would this affect your ability to be impartial in this case?
17. Would any of you judge the credibility of a witness who was a law enforcement officer or government employee differently from other witnesses solely because of his or her official position?
18. If the defendant were to choose to testify, would any of you judge the defendant's credibility differently from other witnesses solely because it was the defendant who was testifying?

19. Have any of you, your relatives, or close friends ever been accused of, or convicted of any criminal offense? [Sidebar if necessary]. Would this affect your ability to be impartial in this case?

20. Have any of you, your relatives, or close friends ever been the victim of any crime? Would this affect your ability to be impartial in this case?

21. Have any of you, your relatives, or close friends ever been a witness in a trial? Is there anything about this experience that might affect your ability to be impartial in this case?

22. Have any of you, your relatives, or close friends ever had any negative experience with any lawyer, any court, or any legal proceeding that would affect your ability to be impartial in this case?

23. How many of you have served previously as a juror in another case? Please tell us in which court you served, approximately when, the type of cases you heard, whether you were foreperson, and the verdicts.

24. If at the conclusion of the trial you were to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty?

25. If at the conclusion of the trial you were not to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of not guilty?

26. The court will instruct you on the law to be applied in this case. You are required to accept and follow the court's instructions in that regard, even though you may disagree with the law. Is there any one of you who cannot accept this requirement?

27. Do you know of any reason whatever, either suggested by these questions or otherwise, why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

JUROR BACKGROUND INFORMATION

When asked to do so by the court, please stand and provide the following information about yourself:

Name, age, your city or town of residence, and how long you've lived there.

Marital status and number of children, if any.

Current occupation (former if retired), and any other employment in the past ten years.

Current (or former) occupation of your spouse and any adult children.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you regularly listen to talk radio, and if so, to which stations.

Banks and Businesses Involved in this case

Please look at each bank and business listed below and tell us whether you or your relatives ever have worked for any of them and whether you ever have held accounts with them or had any other business relationship with them.

First National Bank of Blanchardville

State Bank fo Cazenovia

Highland State Bank

Wisconsin River Title Company

Option One Mortgage Company, Irvine, CA

First Equity Lending, Madison, WI

Auto Wares, Inc.

Dane County Towing, Inc.

Five County Towing & Repair, Inc.

Five County Motorsports, Inc.

Five County Transport, Inc.

Five County, Inc.

Five County Auto Supply, Inc.

Dells Motor Speedway, Inc.

Wisconsin Dells Motor Speedway, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

JURY INSTRUCTIONS

v.

07-CR-74-C

BRYAN J. SEVERSON,

Defendant.

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow my instructions on the law, even if you disagree with them. Each of the instructions is important. You must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear or public opinion to influence you. Do not allow any person's race, color, religion, national ancestry or sex to influence you.

Nothing I say now and nothing I said or did during the trial is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness. In evaluating the testimony of any witness, you may consider among other things: the witness's age; the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things the witness testified about; the witness's memory; any interest, bias, or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

You should judge the defendant's testimony in the same way that you judge the testimony of any other witness.

You should use common sense in weighing the evidence. Consider the evidence in light of your own observations in life. You are allowed to draw reasonable inferences from facts. In other words, you may look at one fact and conclude from it that another fact exists. Any inferences you make must be reasonable and must be based on the evidence in the case.

Some of you have heard the phrases "circumstantial evidence" and "direct evidence." Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts that tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. You

should consider all the evidence in the case, including the circumstantial evidence, in reaching your verdict.

Certain things are not evidence. I will list them for you:

First, testimony and exhibits that I struck from the record or that I told you to disregard are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and must not influence your verdict.

Third, questions and objections by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your collective memory is what counts.

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

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.

You have received evidence of statements said to be made by the defendant to _____. You must decide whether the defendant made any of the statements attributed to him. If you find that a defendant did make the statement, then you must decide what weight, if any, you believe the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning the defendant himself, and the circumstances under which the statement was made.

The defendant has an absolute right not to testify. In arriving at your verdict, you must not consider the fact that the defendant did not testify.

You have heard evidence of acts of defendant other than those charged in the indictment. Specifically, you've heard evidence that the defendant _____. You may consider this evidence only on the question _____. You should consider this evidence only for these limited purposes.

You have heard evidence that _____ have been convicted of crimes. You may consider this evidence only in deciding whether the testimony of any of these witnesses is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

You have heard evidence about the character trait of _____ for untruthfulness. You should consider this evidence in deciding the weight that you will give to their testimony.

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with their testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of that witness's testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement. If that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

You have heard evidence about a number of the witnesses that may affect your evaluation of their testimony:

_____ have admitted lying under oath.

You have heard testimony that _____ have received benefits from the government in connection with this case. Specifically, they

received reduced charges or were not charged with all the crimes they could have been charged with or both and they have the possibility of reduced sentences.

You have heard testimony from _____, who each stated that he or she was involved in the commission of the alleged crimes charged against the defendant.

The witnesses _____ have pleaded guilty to crimes arising out of the same allegations for which the defendants are now on trial.

The witness _____, has received immunity; that is, a promise from the government that any testimony or other information she provided would not be used against her in a criminal case.

You may give the testimony of these witnesses such weight as you believe it deserves, keeping in mind that it must be considered with caution and great care. Moreover, the guilty pleas of witnesses _____ cannot be considered as evidence against the defendants on trial now.

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

Certain summaries are in evidence. They truly and accurately summarize the contents of voluminous books, records or documents, and should be considered together with and in the same way as all other evidence in the case.

Certain summaries are in evidence. Their accuracy has been challenged by [the government] [the defendant]. Thus, the original materials upon which the exhibits are based

have also been admitted into evidence so that you may determine whether the summaries are accurate.

THE INDICTMENT

The defendant is charged in the indictment as follows:

[court reads the indictment].

The indictment in this case is the formal method of accusing the defendant of crimes and placing the defendant on trial. It is not evidence against the defendant and does not create any implication of guilt.

The defendant is not on trial for any act or any conduct not charged in the indictment.

The defendant is presumed to be innocent of the charges. This presumption continues during every stage of the trial and your deliberations on the verdict. 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 the guilt of the defendant beyond a reasonable doubt. This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

The indictment charges that the offenses were committed "on or about" certain dates. The government must prove that the offenses happened reasonably close to those dates but it is not required to prove that the alleged offenses happened on those exact dates.

AIDING AND ABETTING

Many of the counts charged against defendant allege that he aided and abetted offenses committed by Mark Hardyman. Any person who knowingly aids, counsels, commands, induces or procures the commission of an offense may be found guilty of that

offense. However, that person must knowingly associate himself with the criminal activity, participate in the activity, and try to make it succeed.

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.

If the defendant knowingly caused the acts of another, the defendant is responsible for those acts as though he personally committed them.

As used throughout these instructions, all forms of the verb “to know” and the adverb “knowingly” mean that a defendant realized what he was doing and was aware of the nature of his conduct and did not act through ignorance, mistake or accident. Knowledge may be proved by a defendant's conduct and by all the facts and circumstances surrounding the case.

You may infer knowledge from a combination of suspicion and indifference to the truth. If you find that a person had a strong suspicion that things were not what they seemed or that someone had withheld some important facts, yet shut his eyes for fear of what he would learn, then you may conclude that he acted knowingly as I have used that word. You may not conclude that the defendant had knowledge if he was merely negligent in not discovering the truth.

THE ELEMENTS OF COUNTS 1 - 11: AIDING AND ABETTING BANK FRAUD

The defendant is charged in Counts 1 through 11 with aiding and abetting a bank fraud. To sustain any of these charges, the government must establish the following elements:

- (1) There was a scheme to defraud First National Bank of Blanchardville, by means of false representations or statements as charged in the count that you are considering;
- (2) The defendant aided and abetted Mark Hardyman execute this scheme in the manner stated in the count that you are considering;
- (3) The defendant did so knowingly and with the intent to defraud; and

(4) At the time of the charged offense the deposits of First National Bank of Blanchardville were insured by the Federal Deposit Insurance Corporation.

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

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt as to the count that you are considering, then you must find the defendant not guilty of that count.

A scheme is a plan or course of action formed with the intent to accomplish some purpose. For the purposes of Counts 1 through 11, a scheme to defraud is a scheme that is intended to deceive or cheat another in order to deprive First National Bank of Blanchardville of its right to receive honest services from its president, Mark R. Hardyman.

In proving the first element of Counts 1 through 11, the government must prove beyond a reasonable doubt that there was a scheme to defraud. Before you may find that the charged scheme existed, you must find that one or more of the specified material false pretenses, representations, promises and acts charged has been proved beyond a reasonable doubt.

Although it is not necessary that the government prove all of the material false pretenses, representations, and promises charged in paragraphs 1-10 of Counts 1 through 11, it must prove at least one of them beyond a reasonable doubt to establish the existence of the scheme to defraud. Before you may find that the government has met this burden, you must unanimously agree on at least one of the specified material false pretenses, representations or promises. It is not enough for some of you to agree that the defendant made one particular material false representation and the rest of you agree that the defendant made another.

A representation or promise can be false in several ways. First, a representation or promise is false if the defendant knew that it was untrue at the time he made it. Second, a representation or promise is false if the defendant made it with reckless indifference as to

whether it was true or false, provided that the defendant made it with intent to defraud. Third, a representation or promise is false when it constitutes a half-truth or effectively omits or conceals a material fact, provided that the defendant made or used the half-truth, omission, or concealment with intent to defraud.

A false representation or promise is “material” if it has the natural tendency to influence, or is capable of influencing, the decision of the person to whom it is addressed.

For the purposes of Counts 1 through 11, the phrase "intent to defraud" means that the acts charged were done knowingly with the intent to deceive or cheat First National Bank of Blanchardville in a manner that deprived this bank of the honest and loyal services of its president. Not every breach of fiduciary duty by a bank employee constitutes a criminal fraud. To establish the charged fraud, the government must prove that the president of First National Bank of Blanchardville intentionally misused his position with the bank for personal gain. The bank president did not have to intend to achieve financial gain for himself, but he must have intended that his acts taken in his capacity as bank president to advance his personal interests in a manner contrary to the interests of the bank, thereby depriving the bank of his honest and loyal services.

To prove that the defendant aided and abetted this scheme, the government must prove that the defendant knew that the president of First National Bank of Blanchardville was misusing his position at the bank for personal gain, and defendant knowingly and intentionally associated himself with this activity, participated in it, and tried to make it succeed.

[See *United States v. Bloom*, 149 F.3d 649, 654-56 (7th Cir. 1998), cited in *United States v. Thompson*, 484 F.3d 877, 882 (7th Cir. 2007)]

Good faith, or the absence of an intent to defraud, constitutes a complete defense to the charge of bank fraud or wire fraud. The good faith defense requires a genuine belief by the defendant that the representations or promises alleged to be fraudulent were true at the time he made them.

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

The burden of proving good faith does not rest with the defendant because the defendant does not have any obligation to prove anything in this case. It is the government's burden to prove to you, beyond a reasonable doubt, that the defendant acted with the specific intent to defraud as alleged in Counts One through Eleven of the indictment.

The government is not required to produce direct evidence to establish the defendant's intent. The government may prove the defendant's intent by means of circumstantial evidence alone. In determining the defendant's intent, you may consider all of his statements, acts and omissions, as well as all other facts and circumstances in evidence that indicate the defendant's state of mind.

The statute against bank fraud and wire fraud (Count 28, below) can be violated whether or not there is any loss or damage to the victim of the crime or gain to the defendant.

THE ELEMENTS OF COUNTS 12 and 17-21:
AIDING AND ABETTING MISAPPLICATION OF BANK FUNDS

The defendant is charged in Counts 12 and 17 through 21 with aiding and abetting the misapplication of bank funds. To sustain any of these charges, the government must establish the following elements:

- (1) At the time of the offense charged in the count you are considering, Mark R. Hardyman was an officer of First National Bank of Blanchardville;
- (2) The deposits of First National Bank of Blanchardville were insured by the Federal Deposit Insurance Company;
- (3) Hardyman used his position as an officer willfully misapplied money belonging to the bank or entrusted to its care;
- (4) Hardyman did so with the intent to defraud the bank;

(5) The amount of the money willfully misapplied exceeded \$1000;

(6) Defendant knowingly aided and abetted this willful misapplication of bank money.

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

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt as to the count that you are considering, then you must find the defendant not guilty of that count.

A bank officer employee acts with the intent to defraud a bank when he uses his position in the bank for his own or another's personal advantage, or when he acts with the intent to injure the bank's interests or with reckless disregard for the interests of the bank.

THE ELEMENTS OF COUNTS 13 and 14: FALSE STATEMENTS TO A BANK

The defendant is charged in Counts 13 and 14 with making false statements to a bank. To sustain either of these charges, the government must establish the following elements:

(1) The defendant made a false written or oral statement to a bank as specified in the count you are considering;

(2) The defendant knew the statement was false when he made it;

(3) The defendant made this statement with the intent to influence the action of the bank with respect to a loan; and

(4) The accounts of the Highland State Bank were insured by the Federal Deposit Insurance Corporation.

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

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt as to the count that you are considering, then you must find the defendant not guilty of that count.

THE ELEMENTS OF COUNT 15: AIDING AND ABETTING
OBSTRUCTING AN INVESTIGATION

The defendant is charged in Count 15 with aiding and abetting obstruction of the investigation of a financial institution. To sustain this charge, the government must establish the following elements:

(1) On or about the date set forth in Count 15, Mark R. Hardyman corruptly attempted to obstruct an examination of First National Bank of Blanchardville by the Office of the Comptroller of the Currency;

(2) The Office of the Comptroller of the Currency was an agency of the United States with authority to conduct this investigation;

(3) On or about the date set forth in Count 15, the defendant knowingly aided and abetted Hardyman's corrupt attempt to obstruct this investigation.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count 15.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty of Count 15.

As used in Count 15, the word "corruptly" means that the act or acts were done with the purpose to secure an unlawful benefit for oneself or another by obstructing or impeding the investigation of the Office of the Comptroller of the Currency. [*See* 26 U.S.C. § 7212]

THE ELEMENTS OF COUNT 16:
FALSE STATEMENTS DURING BANKRUPTCY PROCEEDING

The defendant is charged in Count 15 with making a false declaration in a bankruptcy proceeding. To sustain this charge, the government must prove these elements:

- (1) A proceeding in bankruptcy existed under Title 11 as specified in Count 16;
- (2) The defendant made a statement under penalty of perjury in relation to the bankruptcy proceeding;
- (3) This statement under penalty of perjury related to some material matter;
- (4) The statement under penalty of perjury was false; and,
- (5) The defendant made such statement under penalty of perjury knowingly and fraudulently.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty of Count 16.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of Count 16.

A statement is material if it had the effect of influencing the court, the trustee, or the creditors, or was capable of or had the potential to do so. It is not necessary that the statement actually have that influence or be relied on by the court, the trustee, or the creditors, so long as it had the potential or capability to do so. Materiality does not require a showing that creditors were harmed by the false statement.

As used in Count 16, the term “fraudulently” means with intent to deceive any creditor, trustee or bankruptcy judge.

THE ELEMENTS OF COUNTS 22-27: AIDING AND ABETTING
UNLAWFUL MONETARY TRANSACTIONS

The defendant is charged in Counts 22 through 27 with engaging in unlawful monetary transactions. To sustain any of these charges, the government must prove these elements:

- (1) Mark R. Hardyman engaged in a monetary transaction;
- (2) The defendant knew that this transaction involved criminally derived property;
- (3) The property had a value greater than \$10,000;
- (4) The property was derived from bank fraud or misappropriation of bank funds;
- (5) The transaction occurred in the United States; and
- (6) Defendant knowingly aided and abetted this unlawful monetary transaction.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt as to a particular count, then you should find the defendant guilty of that count.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not proved beyond a reasonable doubt as to a particular count, then you must find the defendant not guilty of that count.

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.

The term "criminally derived property" means any property constituting, or derived from, proceeds obtained from a criminal offense, namely misappropriation of bank funds or bank fraud.

To meet its burden of proof on the second element of Counts 22 through 27, the government must prove that the defendant knew that the property represented the proceeds of some form of activity that constitutes a felony under State or Federal law. The government is not required to prove that the defendant knew that the property involved in the transaction represented the proceeds of bank fraud or wire fraud.

The term “proceeds” includes any money or property, or any interest in money or property, that someone acquires or retains as the result of mail fraud or wire fraud.

The government is required to prove beyond a reasonable doubt that the defendant knew that property involved in the financial transactions charged in Counts 22 through 27 represented the proceeds of bank fraud or misapplication of bank funds. However, the government is not required to trace the origin of all the funds deposited into the defendant’s bank account to determine exactly which funds were used for the money laundering transactions. It is sufficient if the government proves at least part of the funds deposited in the defendant’s bank account represented proceeds of mail fraud or wire fraud.

THE ELEMENTS OF COUNT 28: WIRE FRAUD

The defendant is charged with wire fraud in Count 28 of the indictment. To sustain this charge against the defendant, the government must establish the following elements beyond a reasonable doubt:

(1) The defendant knowingly devised or participated in the scheme to defraud or to obtain money or property by means of false pretenses, representations or promises, as described Count 28;

(2) The false representations or promises made by the defendant as part of the scheme were material;

(3) The defendant acted knowingly and with the intent to defraud; 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 Count 28.

If you find from your consideration of all the evidence that each of these elements has been proved beyond a reasonable doubt as to Count 28, then you should find the defendant guilty of that count.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt as to Count 28, then you must find the defendant not guilty of that count.

In Count 28, the phrase "intent to defraud" means that the acts charged were done knowingly with the intent to deceive or cheat the victim in order to cause a gain of money to the defendant.

Wire transfers between banks located in different states constitute a transmission by means of wire communication in interstate commerce within the meaning of the third element of Count 28.

"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 government must prove that the foreseeable consequences of the defendant's acts would be to affect interstate commerce. It is not necessary for you to find that the defendant knew or intended that his actions would affect interstate commerce.

Upon retiring to the jury room, select one of your number as your presiding juror. This person will preside over your deliberations and will be your representative here in court.

A verdict form has been prepared for you. [*Court reads the verdict form.*]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date and sign the form.

Each count of the indictment charges the defendant with having committed a separate offense. You must consider each count and the evidence relating to it separate and apart

from every other count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to any other count.

The verdict must represent the considered judgment of each juror. Whether your verdict is guilty or not guilty, it must be unanimous. You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But do not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement consistent with the individual judgment of each juror. You are impartial judges of the facts. Your only interest is to determine whether the government has proved its case beyond a reasonable doubt.

If it becomes necessary during your deliberations to communicate with the court, you may send a note by a bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oath about to be taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

You must not reveal to any person, including the court, your numerical split on the charge until you have reached a unanimous verdict.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

—
UNITED STATES OF AMERICA,

Plaintiff,

VERDICT

v.

07-CR-74-C

BRYAN J. SEVERSON,

Defendant.

—
COUNT 1

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

COUNT 2

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 2 of the indictment.

COUNT 3

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 3 of the indictment.

COUNT 4

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 4 of the indictment.

COUNT 5

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 5 of the indictment.

COUNT 6

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 6 of the indictment.

COUNT 7

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 7 of the indictment.

COUNT 8

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 8 of the indictment.

COUNT 9

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 9 of the indictment.

COUNT 10

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 10 of the indictment.

COUNT 11

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 11 of the indictment.

COUNT 12

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 12 of the indictment.

COUNT 13

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 13 of the indictment.

COUNT 14

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 14 of the indictment.

COUNT 15

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 15 of the indictment.

COUNT 16

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 16 of the indictment.

COUNT 17

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 17 of the indictment.

COUNT 18

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 18 of the indictment.

COUNT 19

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 19 of the indictment.

COUNT 20

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 20 of the indictment.

COUNT 21

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 21 of the indictment.

COUNT 22

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 22 of the indictment.

COUNT 23

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 23 of the indictment.

COUNT 24

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 24 of the indictment.

COUNT 25

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 25 of the indictment.

COUNT 26

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 26 of the indictment.

COUNT 27

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 27 of the indictment.

COUNT 28

We, the Jury in the above-entitled cause, find the defendant, Bryan J. Severson,

("Guilty" or "Not Guilty")

of the offense charged in Count 28 of the indictment.

Presiding Juror

Madison, Wisconsin

Date: _____