

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

HAROUN OMAR,

Defendant.

ORDER

14-cr-99-jdp

Attached for the parties' consideration are draft voir dire questions, jury instructions and a verdict form.

Entered this 29th day of May, 2015.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

Voir Dire: United States v. Haroun Omar, 14-cr-52-bbc

Statement of the case: This is a criminal case in which the defendant, Haroun Omar, is charged with being a member of a conspiracy that fraudulently obtained over \$349,000 in tax refunds by filing false tax returns that used stolen personal identification information. The defendant also is charged with stealing government money by redeeming fraudulent tax refunds, and with engaging in fraudulent financial transactions involving prepaid debit cards issued to other people. The defendant has entered a plea of not guilty to each of these charges.

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

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

3. Scheduling: this case will begin today and will conclude by this Thursday. Are any of you actually unable to sit as jurors because of this schedule?

4. 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?

5. Ask the parties and counsel to introduce themselves and the case agent. Ask whether jurors know them.

6. The defendant in this case is a citizen of Nigeria who has lawfully lived in Dane County since 2001 as a legal permanent resident alien. Is there anything about defendant's nationality or his status as a permanent resident alien that would affect your ability to be an impartial juror in this case? [*Does this question sufficiently address the issue of race? Does it share information the jury doesn't need to know?*]

7. Invite each juror, in turn, to rise, and provide the following information:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse.

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 programs.

Whether you have bumper stickers on your car, and if so, what they say.

Whether you regularly use the internet to visit sites other than e-mail or personal business, and if so, what types of sites you visit most often.

8. Do any of you in the jury box know each other from before today?

9. Other than what you have already told us, do any of you have any special training or experience in accounting, bookkeeping or tax preparation? Do any of you prepare taxes for anyone besides yourself or your family members?

10. Have any of you, your family or your close friends ever been the victim of identity fraud, or had personal identification information (such as a credit card number or social security number) compromised? Would this affect your ability to be impartial in this case?

11. Have any of you, your family, your close friends, or any company for which you work ever been the victim or the intended victim of any other type of fraud scheme? Would this affect your ability to be impartial in this case?

12. Do any of you have any strong feelings or opinions about the IRS, the Wisconsin Department of Revenue, or any other governmental tax agency? Would these feelings or opinions affect your ability to serve impartially in a tax case?

13. This is a case in which the investigation was conducted by criminal agents from the Internal Revenue Service. Do any of you have strong feelings or opinions about the IRS pursuing criminal charges against people that the IRS claims did not file lawful tax returns?

14. Do any of you belong to any groups or organizations that concern themselves in any way with the Internal Revenue Service, the Department of the Treasury, or about the tax laws of the United States or about any other governmental entity? Would this affect your ability to be impartial in this case?

15. Have any of you, your family, your close friends, or any company for which you work ever been audited by any governmental tax agency, or had any other non-routine interaction with a governmental tax agency? Would this affect your ability to be impartial in this case?

16. Do any of you have any strong feelings or opinions about people who don't pay taxes that they actually owe? Would these feelings or opinions affect your ability to serve impartially in a tax case like this one?

17. Do any of you have any moral, religious or ethical beliefs that would make it difficult for you to sit as a juror in this case?

18. 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?

19. 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?

20. 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?

21. Would any of you judge the credibility of a witness who was African, African American, Asian or Hispanic differently from other witnesses solely because of his or her race or ethnic background?

22. 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?

23. 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?

24. 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?

25. 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?

26. 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?

27. 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?

28. 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.

29. 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?

30. 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?

31. 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?

32. 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, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse.

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 have bumper stickers on your car, and if so, what they say.

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

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JURY INSTRUCTIONS

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I. INTRODUCTORY INSTRUCTIONS

Members of the jury, we are about to begin the trial of the case. Before it begins, I want to tell you how the trial will proceed and how you should conduct yourselves during the trial.

Your Duties as Jurors

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

Your second duty will be to take the law that I will give you at the end of the case and apply it to the facts to decide if the government has proved the defendant guilty beyond a reasonable doubt.

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

Nothing that I say or do during the trial is meant to indicate any opinion by me about what the facts are or about what your verdict should be.

The Criminal Charges

The charges against the defendant 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 defendant with being a member of a conspiracy that fraudulently obtained over \$349,000 in tax refunds by filing false tax returns that used stolen personal identification information. The defendant also is charged with stealing government money by redeeming fraudulent tax refunds, and with engaging in fraudulent financial transactions involving prepaid debit cards issued to other people. The indictment is simply the formal way of stating what crimes the defendant is accused of committing. It is not evidence that the defendant is guilty and it should not raise even a suspicion of guilt.

The Defendant is Presumed Innocent

The defendant is presumed innocent of each of the charges. This presumption continues throughout this 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 the defendant's guilt beyond a reasonable doubt. This burden stays with the government throughout the case. The defendant is never required to prove his innocence. He is not required to produce any evidence at all.

How the Trial Will Proceed

First, the Assistant United States Attorney will make an opening statement outlining the government's case. Immediately after, defendant's attorney will make an opening statement outlining defendant's case. Keep in mind that what is said in opening statements is not evidence; it is simply a guide to help you understand what each party expects the evidence to show.

Second, after the opening statements, the government will introduce evidence in support of the charges. At the conclusion of the government's case, the defendant may introduce evidence. The defendant is not required to introduce any evidence or to call any witnesses. If the defendant introduces evidence, the government may then introduce rebuttal evidence.

Third, after the evidence is presented, the lawyers will make closing arguments explaining what they believe the evidence has shown and what inferences you should draw from the evidence. What is said in closing argument is not evidence. Because the government has the burden of proof, the Assistant United States Attorney has the right to give the first closing argument and to make a short rebuttal argument after the defendant's closing argument.

Fourth, I will instruct you on the law that you are to apply in reaching your verdict.

Fifth, you will retire to the jury room and begin your deliberations.

The trial day will run from 9:00 a.m. until 5:30 p.m. You will have at least an hour for lunch and two additional short breaks, one in the morning and one in the afternoon.

Notetaking

The clerk will give each of you a notepad and pencil for taking notes. This does not mean you have to take notes; take them only if you want to and if you think that they will help you remember the evidence when you are deliberating. Do not let notetaking interfere with your important duties of listening carefully to all of the evidence and of evaluating the credibility of the witnesses. Just because someone has written something down, this does not mean that the written note is more accurate than another juror's mental recollection of the same thing. No one of you is the "secretary" for the jury, responsible for recording evidence. Each of you is responsible for recalling the testimony and the other evidence.

Although you can see that this trial is being recorded by a court reporter, you should not expect to be able to use trial transcripts in your deliberations. You will have to rely on your own memories.

No Communication During the Trial

During recesses you should keep in mind the following instructions:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. The parties have a right to expect that you will keep an open mind throughout the trial. You should not reach any conclusions about this case until you have heard all of the evidence, you have heard the lawyers' closing arguments, you have received my instructions on the law, and you have retired to deliberate with the other members of the jury about your verdict.

I must warn you, in particular, against commenting about the trial in an e-mail or a blog or Twitter. There have been news accounts recently about cases that have had to be re-tried because a member of the jury communicated electronically about the case during the trial. You can imagine what this would mean in the cost of a re-trial, the

inconvenience to your fellow jurors whose work would have gone for nothing and the stress experienced by the defendant.

Second, do not permit any third person to discuss the case in your presence. If anyone tries to talk to you despite your telling him not to, report that fact to the court as soon as you are able. Do not discuss the event with your fellow jurors or discuss with them any other fact that you believe you should bring to the attention of the court.

Third, although it is a normal human tendency to talk with people with whom one is thrown in contact, please do not talk to any of the parties or their attorneys or the witnesses. By this I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. This is the only way the parties can be sure of the absolute fairness and impartiality they are entitled to expect from you as jurors.

Fourth, do not read about the case on the Internet, in newspapers, or listen to radio or television broadcasts about the trial. If a headline catches your eye, do not examine the article further. Media accounts may be inaccurate and may contain matters that are not proper for your consideration. You must base your verdict solely on the evidence produced in court.

Fifth, no matter how interested you may become in the facts of the case, you must not do any independent research, investigation or experimentation. Don't look up materials on the Internet or in other sources.

How To Consider the Evidence

You must make your decision in this case based only on the evidence that you see and hear in this court. Do not consider anything you may see or hear outside of court.

The evidence consists 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.

Sometimes during a trial I take 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.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer says is different from the evidence, 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 sustain an objection to a question asked by a lawyer, then you must not speculate on what the answer might have been.

If during the trial I strike a witness's answer to a question or strike an exhibit from the record, or If I tell you to disregard something, then these things are not evidence and you may not consider them.

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

Part of your job as jurors is to decide how believable each witness is, and how much weight to give each witness's testimony. Some factors you may consider are: the witness's age, intelligence, and memory; the witness's ability and opportunity to see, hear or know the things that the witness testified about; the witness's demeanor while

testifying; whether the witness had any bias, prejudice or other reason to lie or to slant his or her testimony; inconsistent statements or conduct by the witness; and the believability of the witness's testimony in light of the other evidence presented. You may also consider any other factors that shed light on the believability of each witness's testimony.

The defendant has an absolute right not to testify during this trial. You must not consider in any way the fact that he may choose not to testify. You should not even discuss it in your deliberations.

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

You may have heard the terms "direct evidence" and "circumstantial evidence." Direct evidence is evidence that, if you believe it, directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact.

For example, direct evidence that it rained last Friday would be testimony from a witness who tells you that she walked through the rainstorm. Circumstantial evidence that it rained last Friday would be testimony from a witness who saw other people's wet umbrellas drying in the foyer that day.

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.

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II. POST TRIAL JURY INSTRUCTIONS

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.

CONSIDERATION OF THE EVIDENCE

All of the introductory instructions that I gave you at the beginning of this trial still are in effect. I will give you copies of those instructions to take back to the jury room with you.

You have received evidence of a statement said to be made by the defendant to _____. You must decide whether the defendant did make the statement. If you find that the 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.

In deciding the believability of witnesses, you should judge defendant's testimony in the same way as you judge the testimony of any other witness.

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 that the defendant committed acts other than the ones charged in the indictment. Specifically, _____. 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 _____. You may not consider this evidence for any other purpose. Keep in mind that the defendant in all trial here for wire fraud, not for these other acts.

You may not use this evidence to infer that the accused has a certain character trait and that the accused acted in conformity with that trait with respect to the offenses charged in this case. The issue is not whether the accused is of good or bad character but whether the government has proven the charges beyond a reasonable doubt.

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 that the defendant has been convicted of crimes. You may consider this evidence only in deciding whether the defendant's testimony is truthful in whole, in part, or not at all. You may not consider it for any other purpose. A conviction of another crime is not evidence of the defendant's guilt of the crime for which the defendant now is charged.

You have heard [reputation/opinion] evidence about the character trait of _____ for truthfulness [or untruthfulness]. You should consider this evidence in deciding the weight that you will give to _____'s testimony.

You have heard [reputation and/or opinion] evidence about the defendant's character trait for [truthfulness, peacefulness, etc]. You should consider character evidence together with all the other evidence in the case and in the same way.

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.

A statement made by the defendant before trial that is inconsistent with the defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of the defendant's testimony in this trial.

_____ has admitted lying under oath. You may give his testimony such weight as you believe it deserves, keeping in mind that it must be considered with caution and great care.

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

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

The witnesses _____ have pleaded guilty to a crime arising out of the same allegations for which the defendant is now on trial. 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 these defendants cannot to be considered as evidence against the defendant[s] on trial now.

The witnesses _____ have received immunity; that is, a promise from the government that any testimony or other information he or she provided would not be used against him 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.

You must consider with caution and great care the testimony of any witness who is currently addicted to drugs. It is up to you to determine whether the testimony of a drug addict has been affect by drug use or the need for drugs.

You have heard [a witness / witnesses], namely _____, who gave opinions and testimony about [_____]. You do not have to accept [this witness's /these witnesses'] opinions or testimony. You should judge [this witness's /these witnesses'] 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 / witnesses'] qualifications, how [s/he /they] reached these [opinions / conclusions] and the factors I have described for determining the believability of testimony.

You have been presented with transcripts of the sworn testimony of the defendant. This is proper evidence that you should consider together with and in the same way you consider the other evidence.

Certain summaries/charges were admitted in evidence. [You may use these summaries/charges as evidence {even though the underlying documents are not/evidence is not here.}]

[The accuracy of the summaries/charges has been challenged . [The underlying documents have /evidence has been admitted so that you may determine whether the summaries are accurate.] [It is up to you to decide how much weight to give to the summaries.]

Certain summaries/charges were shown to you to help explain other evidence that was admitted, specifically, _____. These summaries/charts are not themselves evidence or proof of any facts [so you will not have these particular summaries/charts during your deliberations.] If these summaries/charges

do not correctly reflect the facts shown by the evidence, then you should disregard the summaries/charts and determine the facts from the underlying evidence.

THE INDICTMENT

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

The defendant is charged in the indictment as follows:

[Court reads the indictment]

The defendant has entered a plea of not guilty to these charges.

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 against him. 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 defendant's guilt 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.

ELEMENTS OF COUNT 1: CONSPIRACY

Count 1 charges the defendant with being a member of a conspiracy. A conspiracy is an agreement between two or more persons to accomplish an unlawful purpose. To sustain the charge against the defendant in Count 1 the government must prove these elements:

- 1) The conspiracy charged in Count 1 existed;
- 2) The defendant knowingly became a member of this conspiracy with an intention to further the conspiracy;
- 3) A member of this conspiracy committed an overt act in furtherance 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 Count 1, then you should find the defendant guilty of Count 1.

If, on the other hand, you find from your consideration of all of the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to Count 1, then you must find the defendant not guilty of Count 1.

A conspiracy may be established even if its purpose was not accomplished.

To be a member of a conspiracy, the defendant need not join at the beginning or know all the other members or the means by which its purpose was to be accomplished. The government must prove beyond a reasonable doubt that the defendant was aware of the common purpose of the conspiracy and was a willing participant.

As to the first element of Count 1 in deciding whether the charged conspiracy existed, you may consider the actions and statements of every one of the alleged participants. An agreement may be proved from all the circumstances and the words and conduct of all of the alleged participants which are shown by the evidence.

As to the second element of Count 1, in deciding whether the defendant joined the charged conspiracy, you must base your decision solely on what the defendant personally did or said. In determining what the defendant personally did or said, you may consider the defendant's own words and acts. You also may consider the words and acts of other people to help you determine what the defendant personally did or said, and you may use the words and acts of other people to help you understand and interpret the defendant's own words and acts. Keep in mind, however, that the defendant's membership in a conspiracy can only be proved by his own words or acts.

As to the third element of Count 1, it is not necessary for the government to prove all of the overt acts charged in Count 1, and the overt act proved may itself be a lawful act.

A defendant's association with conspirators is not by itself sufficient to prove his participation or membership in a conspiracy.

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

The government must prove that a defendant knowingly and intentionally joined the charged conspiracy, knowing the conspiracy's aim and intending to achieve it.

SINGLE OR MULTIPLE CONSPIRACIES

Although Count 1 charges a separate, single conspiracy, it might be possible to find additional, separate conspiracies regarding distinct parts of this case.

Whether there was one conspiracy, two conspiracies, multiple conspiracies or no conspiracy at all is a fact for you to determine in accordance with these instructions.

If you do not find beyond a reasonable doubt that the defendant was a member of any conspiracy, then you must find the defendant not guilty of Count 1.

If you find beyond a reasonable doubt that there was one overall conspiracy as alleged in Count 1 and that the defendant was a member of that conspiracy, then you should find the defendant guilty of Count 1.

If you find that there was more than one conspiracy and also find that the defendant was a member of one or more of these additional conspiracies, then you may find the defendant guilty Count 1 only if you further find beyond a reasonable doubt that the proven conspiracy of which that defendant was a member is included within the conspiracy charged in Count 1.

On the other hand, if you find that the proven conspiracy of which the defendant whom you are considering was a member is not included within the conspiracy charged in Count 1, then you must find the defendant not guilty of this count.

ELEMENTS OF COUNTS 2 – 12: THEFT OF GOVERNMENT MONEY

The defendant is charged in each of Counts 1 through 12 with theft of money belonging to the United States. In order for you to find the defendant guilty of any of these charges, the government must prove each of the following elements beyond a reasonable doubt:

(1) The money specified in the count that you are considering belonged to the United States;

(2) The defendant knowingly stole this money;

(3) The defendant did this knowingly with the intent to deprive the owner of the use or benefit of this money.

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 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 the government has failed to prove any one of these elements beyond a reasonable doubt as to a particular count, then you must find the defendant not guilty of that count.

[if necessary:] **SPECIAL VERDICT QUESTION FOR COUNTS 2 THROUGH 12**

If you find the defendant guilty of at least two counts in Counts 2 through 12, then you must add the amounts of money in each count (from 2 through 12) of which you have found the defendant guilty to determine whether the total amount of money in these counts is greater than \$1000 when added together. There is a special verdict question that asks you to answer to this question.

*[See Seventh Cir. Pattern Criminal Jury Instructions (2012) at 242, Committee Comment to § 641 elements: when there is a dispute whether the aggregate value of the property stolen exceeds \$1000, then Apprendi requires the jury to determine the aggregate value. That being so, is there even the possibility of a genuine dispute here? Do the parties agree that the **court** (and the parties) can determine the aggregate value of the money taken in Counts 2 -12 simply by adding the dollar amount asserted in each count on which the jury finds Omar guilty? If so, then it seems unnecessary to ask the jury to confirm in its verdict a dollar amount.]*

ELEMENTS OF COUNT 13: FRAUDULENT USE OF DEBIT CARDS

To sustain the charge against the defendant in Count 13 the government must prove these elements:

- 1) The defendant knowingly [engaged in / effected] transactions with access devices that had been issued to other people;
- 2) The defendant did so in order to obtain money with a total value of at least one thousand dollars (\$1000) within a one-year period;
- 3) The defendant did so with 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 Count 13, then you should find the defendant guilty of Count 13.

If, on the other hand, you find from your consideration of all of the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to Count 13, then you must find the defendant not guilty of Count 13.

ELEMENTS OF COUNT 14: AGGRAVATED IDENTITY THEFT

To sustain the charge against the defendant in Count 14 the government must prove these elements:

- 1) The defendant committed the offense of fraudulent use of debit cards charged in Count 13;
- 2) During and in relation to that offense, the defendant knowingly used a means of identification as specified in Count 14;
- 3) The defendant did this without lawful authority;
- 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 Count 14, then you should find the defendant guilty of Count 14.

If, on the other hand, you find from your consideration of all of the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to Count 14, then you must find the defendant not guilty of Count 14.

DEFINITIONS

The word **knowingly** means that the defendant realized what he was doing and was aware of the nature of his conduct and did 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 _____ and that he deliberately avoided the truth. You may not find that the defendant acted knowingly if he was merely mistaken or careless in not discovering the truth, or if he failed to make an effort to discover the truth.]

The term **access device** includes debit cards [and personal identification numbers such as those used to obtain cash at an ATM].

Interstate commerce involves trade, travel, transportation or communication between any place in a state and any place outside that state. A defendant's conduct

affects commerce if the natural consequences of the defendant's actions has some effect on commerce, however minimal. [*Pattern JI at 411*]

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. [*Pattern JI at 500, mail & wire fraud*]

The term **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. [*More needed? See 18 U.S.C. §1028(d)(7)*]

A person uses a means of identification **in relation to** a crime if the means of identification had a purpose, role or effect with respect to the criminal offense. It also means that the use of the means of identification had a connection to or relationship with the criminal offense.

INSTRUCTIONS ON RESPONSIBILITY

By themselves, the defendant's presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish the defendant's guilt.

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

An offense may be committed by more than one person. The 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, then the defendant is responsible for those acts as though he personally committed them.

The defendant need not personally perform every act constituting the crime charged. Every person who willfully participates in the commission of a crime may be found guilty.

Whatever a person is legally capable of doing he can do through another person by causing that person to perform the act. If the defendant willfully ordered, directed or authorized the acts of another, then he is responsible for such acts as though he personally committed them.

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

DELIBERATIONS

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 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.

Although you have seen that the trial is being recorded by a court reporter, you should not expect to be able to use trial transcripts in your deliberations. You will have to rely on your own memories.

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 the other counts. You should return a separate verdict as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to the defendant 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 any verdict question until you have reached a unanimous verdict on every count.

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

VERDICT

14-cr-99-jdp

HAROUN B. OMAR,

Defendant.

COUNT 1

We, the Jury in the above-entitled cause, find the defendant, Haroun B. Omar,

("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, Haroun B. Omar,

("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, Haroun B. Omar,

("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, Haroun B. Omar,

("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, Haroun B. Omar,

("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, Haroun B. Omar,

("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, Haroun B. Omar,

("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, Haroun B. Omar,

("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, Haroun B. Omar,

("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, Haroun B. Omar,

("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, Haroun B. Omar,

("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, Haroun B. Omar,

("Guilty" or "Not Guilty")

of the offense charged in Count 12 of the indictment.

[if necessary in this case:] Special Verdict Question for Counts 2 through 12

*Answer this first special verdict question only if you found the
defendant guilty of at least two of Counts 2 through 12:*

Looking *only* at those counts of which you have found defendant guilty from Count 2 through Count 12, when you add together the amounts of money stolen in each of these counts from the counts, is the total amount stolen greater than \$1000?

("Yes" or "No")

COUNT 13

We, the Jury in the above-entitled cause, find the defendant, Haroun B. Omar,

("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, Haroun B. Omar,

("Guilty" or "Not Guilty")

of the offense charged in Count 14 of the indictment.

Presiding Juror

Madison, Wisconsin

Date: _____