

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA

v.

WAYNE STEPHENS

)
)
)
)
)

Case No. 02 CR 661

INSTRUCTIONS GIVEN TO THE JURY

Date: February 21, 2003

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 these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

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

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 or that a person would have given certain testimony.

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 intelligence; the ability and opportunity the witness had to see, hear, or know the things that 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 and consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from it that some other fact exists. In law we call this an inference. A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

You may 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 which tend to prove another fact in issue. 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, should be considered by you in reaching your verdict.

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

First, testimony that I struck from the record, or that I told you to disregard, is 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.

Third, questions and objections by the lawyers are not evidence. Attorneys 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 memory is what counts.

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.

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 does not create any inference of guilt.

The defendant is charged with three counts of wire fraud. The defendant has pleaded not guilty to the charges.

The defendant is presumed to be innocent of each 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.

Certain summaries, including Exhibit TER Summary, Exhibit Credit Card and Bank Account Summary, and Exhibit Fleet Bank Summary #1, 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.

Another summary, Exhibit Fleet Bank Summary #2, is also in evidence. Its accuracy has been challenged by the defendant. Thus, the original materials upon which the exhibit is based have also been admitted into evidence so that you may determine whether the summary is accurate.

The defendant is charged with three counts of wire fraud. To sustain a particular charge of wire fraud, the government must prove the following propositions:

First, that the defendant knowingly devised or participated in a scheme to defraud or to obtain money by means of materially false pretenses, representations or promises, as described in Counts One, Two, and Three of the indictment;

Second, that the defendant did so knowingly and with the intent to defraud;

Third, that for the purpose of carrying out the scheme or attempting to do so, the defendant caused interstate wire communications to take place in the manner charged in the particular count.

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

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

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

In considering whether the government has proven a scheme to defraud or obtain money or property by means of materially false pretenses, representations or promises, it is essential that one or more of the false pretenses, representations, promises and acts charged in the portion of the indictment describing the scheme be proved establishing the existence of the scheme beyond a reasonable doubt. However, the government is not required to prove all of them.

A scheme to defraud is a scheme that is intended to deceive or cheat another and to obtain money or property or cause the loss of money or property to another.

A false pretense, representation, or promise is “material” if it had the effect of influencing the action of a person or body, or was capable of or had the potential to do so. It is not necessary that the pretense, representation, or promise actually have the influence or be relied on by the person or body, so long as it had the potential or capability to do so.

The phrase “intent to defraud” means that the acts charged were done knowingly with the intent to deceive or cheat Accenture, formerly known as Andersen Consulting, in order to cause a gain of money or property to the defendant, or the loss of money or property to another.

Good faith on the part of the defendant is inconsistent with intent to defraud, which is an essential part of the wire fraud charges. The burden of proof is not on the defendant to prove his good faith, of course, since the defendant has no burden to prove anything. Rather, the government must establish beyond a reasonable doubt that the defendant acted with the intent to defraud.

A person who acts based on an honestly formed belief does not act with intent to defraud, even though that belief may be mistaken or erroneous. On the other hand, an intention on the part of the defendant to ultimately repay the cash advances he received does not by itself constitute good faith.

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

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

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

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

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

A wire transfer between states constitutes a transmission by means of wire communication in interstate commerce within the meaning of the wire fraud statute.

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

The indictment charges that various offenses were committed “on or about” certain dates. The government must prove that the respective offense happened reasonably close to the date charged, but is not required to prove that the alleged offense happened on that exact date charged.

When the word “knowingly” is used in these instructions, it 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. Knowledge may be proved by the 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, you may conclude that he acted knowingly, as I have used that word.

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

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

Each count of the indictment charges the defendant with having committed a separate offense.

Each count and the evidence relating to it should be considered separately, and a separate verdict should be returned 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 any other count.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, 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 you should 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 which is consistent with the individual judgment of each juror.

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA

v.

WAYNE STEPHENS

)
)
)
)
)

**No. 02 CR 661
Judge Matthew F. Kennelly**

VERDICT

We, the jury, find the defendant, WAYNE STEPHENS, NOT GUILTY as charged in the
Indictment.

FOREPERSON

(Date)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	No. 02 CR 661
)	
WAYNE STEPHENS)	

VERDICT

We, the jury, find the defendant, WAYNE STEPHENS, GUILTY as charged in the
Indictment.

FOREPERSON

(Date)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA

v.

WAYNE STEPHENS

)
)
)
)
)

**No. 02 CR 661
Judge Matthew F. Kennelly**

VERDICT

We, the jury, find the defendant, WAYNE STEPHENS, GUILTY as charged in

Count(s) _____ of the Indictment and NOT GUILTY as charged in

Count(s) _____ of the Indictment.

FOREPERSON

(Date)