

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

UNITED STATES OF AMERICA

v.

ABDUL KARIM ALHALABI

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)
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No. 03 CR 971

INSTRUCTIONS GIVEN TO THE JURY

Date: February 4, 2005

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, or sex.

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 witness 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' age;
- the witness' intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness' memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

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 often look at one fact and conclude from it that another fact exists. In law we call this “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.

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 which tend to show another fact that is at 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. 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 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.

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.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections of each juror about the testimony.

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

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

Defendant Abdul Karim Alhalabi is charged with three counts of wire fraud and three counts of food stamp fraud. He 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.

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

You have received evidence of a statement said to be made by defendant Abdul Karim Alhalabi to USDA Special Agent Mireille Swain. You must decide whether the defendant did in fact make the statement. If you find that the defendant did make the statement, then you must decide what weight, if any, you feel 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.

You have heard testimony of an identification of a person. Identification testimony is an expression of belief or impression by the witness. You should consider whether, or to what extent, the witness had the ability and the opportunity to observe the person at the time of the offense and to make a reliable identification later. You should also consider the circumstances under which the witness later made the identification.

The government has the burden of proving beyond a reasonable doubt that the defendant was the person who committed the crime charged.

You have heard evidence that before the trial witnesses made statements that may be inconsistent with the witnesses' 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' testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement.

You have heard testimony from Basel Ghani, Cassandra Tyree, and Elissa Day, who have received immunity, that is, a promise from the government that any testimony or other information they provided would not be used against him or her in a criminal case.

You may give the testimony of these witnesses such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

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.

To sustain the charge of wire fraud as charged in Counts One, Two, and Three of the indictment, the government must prove the following propositions:

First, that the defendant knowingly devised or participated in a scheme to defraud or to obtain money or property 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; and

Third, that for the purpose of carrying out the scheme or attempting to do so, the defendant caused the use of 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, it is essential that one or more of the 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.

The indictment alleges that the defendant participated in a both scheme to defraud and a scheme to obtain money by materially false pretenses, representations or promises. With regard to this element of the offense, you must find the government has proven beyond a reasonable doubt that the defendant participated in either a scheme to defraud, or a scheme to obtain money by materially false pretenses, representations, or promises, or both. Should you so decide, you must unanimously agree whether there was a scheme to defraud, or whether there was a scheme to obtain money by materially false pretenses, representations or promises.

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 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. The burden is not on the defendant to prove his good faith; rather, the government must prove beyond a reasonable doubt that the defendant acted with intent to defraud.

For each of the charges of wire fraud, the government must prove that an interstate wire communication as charged in the indictment was used to carry out the scheme, or was incidental to an essential part of the scheme.

An interstate wire communication is a wire communication between any place in a state and any place outside that state. The government does not have to prove that the defendant knew the wire communication was of an interstate nature.

In order to cause an interstate wire communication to take place, a defendant need not actually or personally make an interstate wire communication, and need not actually intend the use to take place. You must, however, find that the defendant knew the 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 reasonably could have been foreseen.

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 a scheme to defraud constitutes a separate offense.

A message sent by one computer system to another across state lines by telephone is an interstate wire communication.

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

The defendant may not be found guilty of wire fraud under Counts One, Two, or Three unless he was a participant in the scheme to defraud as of October 8, 1998.

To sustain the charge of food stamp fraud as charged in Counts Four, Five, and Six of the indictment, the government must prove the following propositions:

First, that the defendant knowingly acquired Link card benefits in a manner contrary to law; and

Second, that the amount acquired exceeded \$100.

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 particular count.

If, on the other hand, you find from your consideration of all of 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 of that particular count.

Under the law, Link card benefits may only be exchanged for eligible food and may not be exchanged for cash.

If you find the defendant not guilty of food stamp fraud as charged as Counts Four, Five,

or Six, or if you cannot unanimously agree as to one or more of those charges, then you must go on to consider, as to the particular Count, whether the government has proved the lesser offense of knowingly acquiring Link card benefits having a value of less than \$100. In that event, you will use the verdict form entitled “Verdict Form - Part 2.”

To sustain this lesser charge as to a particular Count, the government must prove the following propositions:

First, that the defendant knowingly acquired Link card benefits in a manner contrary to law; and

Second, that the amount acquired had a value of less than \$100.

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 this lesser offense as to that particular count.

If, on the other hand, you find from your consideration of all of 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 of this lesser offense as to that particular count.

The indictment charges that the offenses were committed “on or about” various dates.

The government must prove that the offense happened reasonably close to these dates but is not required to prove that the alleged offense happened on those exact dates.

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. You may not conclude that the defendant had knowledge if he was merely negligent in not discovering the truth.

You have heard evidence about the possible participation of certain persons who are not on trial before you in this case. You should consider the evidence as it relates to the defendants on trial in this case, and you should not speculate as to why any other persons are not currently on trial before you.

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.

Any person who knowingly aids, commands, induces or procures the commission of an offense may be found guilty of that offense. That person must knowingly participate in the activity, and try to make it succeed.

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

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

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.

[Read the verdict forms.]

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(s), and each of you will sign them.

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.

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VERDICT FORM - PART 1

We, the jury, find as follows with regard to the defendant, ABDUL KARIM ALHALABI:

	<u>GUILTY</u>	<u>NOT GUILTY</u>
COUNT ONE	_____	_____
COUNT TWO	_____	_____
COUNT THREE	_____	_____
COUNT FOUR	_____	_____
COUNT FIVE	_____	_____
COUNT SIX	_____	_____

_____	_____
Foreperson	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date: _____

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VERDICT FORM - PART 2

We, the jury, find as follows with regard to the defendant, ABDUL KARIM ALHALABI:

	<u>GUILTY</u>	<u>NOT GUILTY</u>
COUNT FOUR-lesser offense	_____	_____
COUNT FIVE-lesser offense	_____	_____
COUNT SIX-lesser offense	_____	_____

Foreperson

Date: _____