

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. NATHAN PEACHEY and JOHN RICK WINER, Defendants.	4:19-CR-40097-KES FINAL INSTRUCTIONS TO THE JURY
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TABLE OF CONTENTS

FINAL INSTRUCTIONS

NO. 1 – INTRODUCTION	1
NO. 2 – CONSPIRACY TO COMMIT WIRE FRAUD	2
NO. 3 – CONSPIRACY TO LAUNDER MONETARY INSTRUMENTS.....	6
NO. 4 – WIRE FRAUD.....	8
NO. 5 – GOOD FAITH.....	12
NO. 6 – LAUNDERING OF MONETARY INSTRUMENTS.....	13
NO. 7 – AIDING AND ABETTING.....	17
NO. 8 – CONSPIRACY TO OBSTRUCT, INFLUENCE, OR IMPEDE AN OFFICIAL PROCEEDING	18
NO. 9 – DELIBERATE IGNORANCE/WILLFUL BLINDNESS	21
NO. 10 – SUMMARIES.....	22
NO. 11 – IMPEACHMENT	23
NO. 12 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF	25
NO. 13 – REASONABLE DOUBT.....	26
NO. 14 – DUTY TO DELIBERATE	27
NO. 15 – DUTY DURING DELIBERATIONS	28

VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – CONSPIRACY TO COMMIT WIRE FRAUD

For you to find Nathan Peachey or John Rick Winer guilty of the offense of conspiracy to commit wire fraud, as charged in Count 1 of the Second Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, that beginning at a time unknown, but no later than on or about 2015, and continuing through October 6, 2020, two or more persons reached an agreement or came to an understanding to commit wire fraud;

A conspiracy is an agreement of two or more persons to commit one or more crimes. It makes no difference whether any co-conspirators are defendants or named in the Second Superseding Indictment. For this element to be proved,

- Peachey or Winer may have been, but did not have to be, one of the original conspirators
- The crime that the conspirators agreed to commit did not actually have to be committed
- The agreement did not have to be written or formal
- The agreement did not have to involve every detail of how the conspiracy was to be carried out
- The conspirators did not have to personally benefit from the conspiracy

To help you decide whether a defendant agreed to commit the crime of wire fraud, you should consider the elements of that crime. The elements of wire fraud are listed in Final Instruction No. 4.

It does not matter whether the crime of wire fraud was actually committed or whether the alleged participants in the agreement actually succeeded in accomplishing their unlawful plan.

If you find that Peachey or Winer acted in “good faith” as described in Final Instruction No. 5, this is a complete defense to the crime of conspiracy to commit wire fraud.

Two, that Peachey or Winer voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

Peachey or Winer must have joined in the agreement, but they may have done so at any time during its existence. Peachey or Winer may have joined the agreement even if he agreed to play only a minor role in it.

Peachey or Winer did not have to do any of the following to join the agreement:

- join the agreement at the same time as all the other conspirators,
- know all of the details of the conspiracy, such as the names, identities, or locations of all the other members,
- conspire with every other member of the conspiracy, or
- agree to play any particular part in carrying out the agreement.

On the other hand, each of the following, alone, is not enough to show that Peachey or Winer joined the agreement:

- evidence that a person was merely present at the scene of an event
- evidence that a person merely acted in the same way as others
- evidence that a person merely associated with others
- evidence that a person was friends with or met socially with individuals involved in the conspiracy
- evidence that a person who had no knowledge of a conspiracy happened to act in a way that advanced some purpose of the conspiracy
- evidence that a person merely knew of the existence of a conspiracy
- evidence that a person merely knew that an objective of the conspiracy was being considered or attempted, or

- evidence that a person merely approved of the objectives of the conspiracy

Rather, the prosecution must prove that Peachey or Winer had some degree of knowing involvement in the agreement.

In deciding whether an alleged conspiracy existed, you may consider the acts and statements of each person alleged to be part of the agreement.

In deciding whether Peachey or Winer voluntarily and intentionally joined the agreement, you must consider only the evidence of Peachey's or Winer's own acts and statements. You may not consider actions and statements of others, except to the extent any statement of another describes something that was said or done by Peachey or Winer.

Intent or knowledge may be proved like anything else. You may consider any statements made by a defendant, in connection with the offense charged, and all the facts and circumstances in evidence, which may aid in a determination of a defendant's knowledge or intent. You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Three, that at the time Peachey or Winer joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

A person knows the purpose of the agreement if he is aware of the agreement and does not participate in it through ignorance, mistake, carelessness, negligence, or accident. It is seldom, if ever, possible to determine directly what was in a defendant's mind. Thus, a defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

It is not enough that a defendant and other alleged participants in the agreement to commit the crime of wire fraud simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. A defendant must have known of the existence and purpose of the agreement. Without such knowledge, a defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

If you determine that an agreement existed and Peachey or Winer joined the agreement, then acts and statements knowingly done or made by a member of the agreement during the existence of the agreement and in furtherance of it, may be considered by you as evidence pertaining to Peachey or Winer, even though the acts and statements were done or made in the absence of and without the knowledge of Peachey or Winer. This includes acts done or statements made before Peachey or Winer joined the agreement, because a person who knowingly, voluntarily, and intentionally joins an existing conspiracy becomes responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy. Acts and statements which are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

For you to find Peachey or Winer guilty of the offense charged in Count 1 of the Second Superseding Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Peachey or Winer not guilty of the offense charged in Count 1 of the Second Superseding Indictment.

FINAL INSTRUCTION NO. 3 – CONSPIRACY TO LAUNDER MONETARY
INSTRUMENTS

For you to find Nathan Peachey or John Rick Winer guilty of the offense of conspiracy to launder monetary instruments, as charged in Count 2 of the Second Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, that beginning at a time unknown, but no later than on or about 2015, and continuing through October 6, 2020, two or more persons reached an agreement to knowingly launder monetary instruments;

To help you decide whether a defendant agreed to commit the crime of laundering monetary instruments, you should consider the elements of that crime. The elements of laundering of monetary instruments are listed in Final Instruction No. 6.

The other instructions provided to you under Element One of Conspiracy to Commit Wire Fraud (Final Instruction No. 2) also apply to this element of Conspiracy to Launder Monetary Instruments.

Two, that Peachey or Winer voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

The same instructions provided to you under Element Two of Conspiracy to Commit Wire Fraud (Final Instruction No. 2) also apply to this element of Conspiracy to Launder Monetary Instruments.

Three, that at the time Peachey or Winer joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

The same instructions provided to you under Element Three of Conspiracy to Commit Wire Fraud (Final Instruction No. 2) also apply to this element of Conspiracy to Launder Monetary Instruments.

If you determine that an agreement existed and Peachey or Winer joined the agreement, then acts and statements knowingly done or made by a member of the agreement during the existence of the agreement and in furtherance of it, may be considered by you as evidence pertaining to Peachey or Winer, even though the acts and statements were done or made in the absence of and

without the knowledge of Peachey or Winer. This includes acts done or statements made before Peachey or Winer joined the agreement, because a person who knowingly, voluntarily, and intentionally joins an existing conspiracy becomes responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy. Acts and statements which are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

For you to find Peachey or Winer guilty of the offense charged in Count 2 of the Second Superseding Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Peachey or Winer not guilty of the offense charged in Count 2 of the Second Superseding Indictment.

FINAL INSTRUCTION NO. 4 – WIRE FRAUD

For you to find John Rick Winer guilty of the offense of wire fraud, as charged in Counts 3-6 of the Second Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, Winer voluntarily and intentionally devised, made up, or participated in a scheme to defraud, or to obtain money from another by means of material false representations or promises, which scheme is described as follows: investors were advised that their investment funds would be used for charitable or humanitarian projects or that there would be a return on investments, but investor money was not used for such charitable or humanitarian projects and was instead used on various personal expenses;

The phrase “scheme to defraud” includes any plan or course of action intended to deceive or cheat another out money or property by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A statement or representation is “false” when it is untrue when made or effectively conceals or omits a material fact.

A fact, falsehood, representation, or promise is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage in a particular transaction. However, whether a fact, falsehood, representation, or promise is “material” does not depend on whether the person was actually deceived.

The wire fraud counts of the Second Superseding Indictment charge that Winer, along with others, devised or participated in a scheme. The government need not prove, however, that Winer met with the others to formulate the scheme charged, or that there was a formal agreement among them, in order for Winer to be held jointly responsible for the operation of the scheme and the use of interstate wire communications for the purpose of accomplishing the scheme. It is sufficient if only one person conceives the scheme and the others knowingly, voluntarily, and intentionally join in and participate in some way in the operation of the scheme in order for such others to be held jointly responsible.

Two, that Winer did so with the intent to defraud; and

To act with "intent to defraud" means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property to another or bringing about some financial gain to oneself or another to the detriment of a third party. With respect to false statements, Winer must have known the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

Intent may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the defendant's intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

If you find that Winer acted in "good faith" as described in Final Instruction No. 5, this is a complete defense to the crime of wire fraud.

Three, that Winer used, or caused to be used, an interstate wire communication, that is the wire transfer of funds, in furtherance of, or in an attempt to carry out, some essential step in the scheme.

Materials sent by interstate wire communication which are designed to lull victims into a false sense of security, postpone inquiries or complaints, or make the transaction less suspect are in furtherance of the scheme.

It is not necessary that the government prove that the wire communication was an essential part of the scheme. A wire communication may be routine or sent for a legitimate purpose so long as it assists in carrying out the fraud.

It is not necessary that the use of an interstate wire communication by the participants themselves be contemplated or that Winer do any actual sending of material by an interstate wire communication or specifically intend that an interstate wire communication be used or sent. It is sufficient if an interstate wire communication was in fact used to carry out the scheme and the use of the interstate wire communication by someone was reasonably foreseeable.

Each separate use of an interstate wire communication in furtherance of the scheme to defraud constitutes a separate offense. The actions charged are set forth as follows:

<u>Count</u>	<u>Date</u>	<u>Description and Receiver</u>
3	5/20/2016	Wire transmission in the amount of \$119,414.46 between Great Western Bank in the State and District of South Dakota and Wells Fargo in the State and District of New Mexico.
4	5/23/2016	Wire transmission in the amount of \$293,000.00 between First Premier Bank in the State and District of South Dakota and Bank of America in the State and District of New Mexico.
5	6/7/2016	Wire transmission in the amount of \$150,000.00 between First Premier Bank in the State and District of South Dakota and Bank of America in the State and District of New Mexico.
6	10/7/2016	Wire transmission in the amount of \$108,000.00 between First Premier Bank in the State and District of South Dakota and Bank of America in the State and District of New Mexico.

It is not necessary that the government prove all of the details alleged in the Second Superseding Indictment concerning the precise nature and purpose of the scheme, that the material sent by an interstate wire communication was itself false or fraudulent, that the alleged scheme actually succeeded in defrauding anyone, or that the use of an interstate wire communication was intended as the specific or exclusive means of accomplishing the alleged fraud.

If the government has proved all three of these elements beyond a reasonable doubt for a count, then you must find Winer guilty of that count as charged in the Second Superseding Indictment. If the government has not proved all three of these elements beyond a reasonable doubt for a count, then you must find Winer not guilty of that count as charged in the Second Superseding Indictment. Keep in mind that each count in Counts 3 through 6

of the Second Superseding Indictment charges a separate crime. You must consider each count separately and return a separate verdict for each count.

FINAL INSTRUCTION NO. 5 – GOOD FAITH

One of the issues in this case is whether Peachey or Winer acted in good faith. Good faith is a complete defense to the crime of conspiracy to commit wire fraud and the crime of wire fraud if Peachey or Winer did not act with the intent to defraud or with the intent to obtain money or property by means of false or fraudulent pretenses, representations, or promises, which is an element of the charges. The essence of the good faith defense is that one who acts with honest intentions cannot be convicted of a crime requiring fraudulent intent.

Good faith includes, among other things, an opinion or belief that is honestly held, even if the opinion is in error or the belief is mistaken. However, even though a defendant honestly held a certain opinion or belief (such as a belief that a business venture would ultimately succeed, that investors would make a profit, or that investors would not lose money), a defendant does not act in good faith if he also knowingly made false or fraudulent representations or promises, or otherwise acted with the intent to defraud or deceive another. Proof of fraudulent intent requires more than proof that a defendant only made a mistake in judgment or management, or was careless.

The government has the burden of proving beyond a reasonable doubt that Peachey or Winer acted with the intent to defraud. Evidence that Peachey or Winer acted in good faith may be considered by you, together with all the other evidence, in determining whether or not Peachey or Winer acted with the intent to defraud or the intent to obtain money or property by means of false or fraudulent pretenses, representations, or promises.

FINAL INSTRUCTION NO. 6 – LAUNDERING OF MONETARY INSTRUMENTS

For you to find Nathan Peachey or John Rick Winer guilty of laundering of monetary instruments, as charged in Counts 7-16 of the Second Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, that on or about the dates set forth in the chart below, Peachey or Winer conducted or attempted to conduct a financial transaction, that is, a deposit, transfer, wire, or withdrawal of funds, which in any way or degree affected interstate or foreign commerce;

A defendant may be found to have attempted to conduct a financial transaction if he intended to conduct a financial transaction and voluntarily and intentionally carried out some act which was a substantial step toward conducting that financial transaction, even if the transaction was never completed.

The term “conducted” includes initiating, concluding, or participating in initiating or concluding a transaction.

The phrase “interstate commerce” means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia. The phrase “foreign commerce” means commerce between any state, territory, or possession of the United States and a foreign country. Commerce includes, among other things, travel, trade, transportation, and communication.

It is not necessary for the government to show that Peachey’s or Winer’s transaction with a financial institution, that is with the institution listed for each count in the chart below, itself affected interstate or foreign commerce. All that is necessary is that at the time of the alleged offense, the specified institution was engaged in or had other activities which affected interstate or foreign commerce in any way or degree.

You may find that the transaction involved the use of a financial institution which engaged in or the activities of which affected interstate or foreign commerce in any way or degree if you find from the evidence beyond a reasonable doubt that the process by which a financial institution completed the financial transaction involved crossing state lines or international borders.

Two, that Peachey or Winer conducted the financial transaction with funds that involved the proceeds of unlawful wire fraud;

The term “proceeds” means any property, or interest in property, that someone derives from, or obtains or retains, either directly or indirectly, as a result of the commission of unlawful wire fraud. It includes the gross receipts of unlawful wire fraud. Proceeds can be any kind of property, not just money. It can include personal property, like a car or a piece of jewelry, or real property, like an interest in land.

It does not matter whether or not the person who committed the underlying crime, and thereby acquired or retained the proceeds, was Peachey or Winer. It is a crime to conduct a financial transaction involving property that is the proceeds of a crime, even if that crime was committed by another person, as long as all of the elements of the offense are satisfied.

The government is not required to trace the property it alleges to be proceeds of unlawful wire fraud to a particular underlying offense. It is sufficient if the government proves that the property was the proceeds of unlawful wire fraud generally.

The government need not prove that all of the property involved in the transaction was the proceeds of unlawful wire fraud. It is sufficient if the government proves that at least part of the property represents such proceeds.

Three, that at the time Peachey or Winer conducted the financial transaction, he knew the funds represented the proceeds of some form of unlawful activity; and

The phrase “knew the funds represented the proceeds of some form of unlawful activity” means that Peachey or Winer knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony offense under federal law. Thus, the government need not prove that Peachey or Winer specifically knew that the funds involved in the financial transaction represented the proceeds of wire fraud or any other specific offense; it need only prove that Peachey or Winer knew it represented the proceeds of some form, though not necessarily which form, of felony under federal law. I instruct you as a matter of law that wire fraud is a felony under federal law.

Four, that Peachey or Winer conducted the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of unlawful wire fraud.

Each separate transaction constitutes a separate offense. The transactions charged are set forth as follows:

<u>Count</u>	<u>Date</u>	<u>Defendant(s)</u>	<u>Transaction</u>
7	6/15/2016	Winer	Transfer of \$170,000.00 between Wells Fargo account belonging to Winer and AG Enterprises, L.L.C. to Bank of America account belonging to House of Winer.
8	7/1/2016	Peachey & Winer	Transfer of \$433,000.00 between Bank of America account belonging to House of Winer to Bank of America account belonging to Jacobs Provision Trust.
9	7/6/2016	Peachey & Winer	Transfer of \$99,000.00 between Bank of America account belonging to Jacobs Provision Trust to Bank of America account belonging to Jericho Outreach.
10	7/6/2016	Peachey	Transfer of \$150,000.00 between Bank of America account belonging to Jericho Outreach to DNB Bank account in Norway belonging to Jericho Outreach-Norway.
11	8/31/2016	Peachey & Winer	Transfer of \$400,000.00 between Bank of America account belonging to Jacobs Provision Trust to Bank of America account belonging to Jericho Outreach.
12	9/1/2016	Peachey	Transfer of \$300,000.00 between Bank of America account belonging to Jericho Outreach to DNB Bank account in Norway belonging to Jericho Outreach-Norway.
13	10/4/2016	Peachey & Winer	Transfer of \$50,000.00 between Bank of America account

			belonging to Jacobs Provision Trust to Bank of America account belonging to Jericho Outreach.
14	10/7/2016	Peachey	Transfer of \$155,000.00 between Bank of America account belonging to Jericho Outreach to DNB Bank account in Norway belonging to Jericho Outreach-Norway
15	12/13/2016	Peachey	Transfer payment of approximately \$83,000.00 from DNB Bank in Norway to purchase Mercedes vehicle in Norway.
16	5/15/2017	Peachey	Transfer payment of approximately \$1,330,000.00 from DNB Bank in Norway to purchase residence in Norway.

If the government has proved all four of these elements beyond a reasonable doubt for a count, then you must find Peachey or Winer guilty of that count as charged in the Second Superseding Indictment. If the government has not proved all four of these elements beyond a reasonable doubt for a count, then you must find Peachey or Winer not guilty of that count as charged in the Second Superseding Indictment. Keep in mind that each count in Counts 7 through 16 of the Second Superseding Indictment charges a separate crime. You must consider each count separately and return a separate verdict for each count.

FINAL INSTRUCTION NO. 7 – AIDING AND ABETTING

Peachey or Winer may be guilty of the laundering of monetary instruments even if he personally did not do every act constituting the offense charged, if he aided and abetted the laundering of monetary instruments.

In order to have aided and abetted the commission of a crime, a person must, before or at the time the crime was committed:

One, have known the crime of laundering of monetary instruments was being committed or going to be committed;

Two, have had enough advance knowledge of the extent and character of the laundering of monetary instruments that he was able to make the relevant choice to walk away from the crime before all the elements of the laundering of monetary instruments were complete;

Three, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of the crime of laundering of monetary instruments; and

Four, have acted knowingly and intentionally.

For you to find Peachey or Winer guilty of the crime of laundering of monetary instruments by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all the essential elements of the crime of laundering of monetary instruments were committed by some person or persons and that Peachey or Winer aided and abetted the commission of that crime.

You should understand that merely acting in the same way as others or merely associating with others does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or is about to be committed, but who happens to act in a way that advances some offense, does not thereby become an aider and abettor.

FINAL INSTRUCTION NO. 8 – CONSPIRACY TO OBSTRUCT, INFLUENCE, OR
IMPEDE AN OFFICIAL PROCEEDING

For you to find Nathan Peachey or John Rick Winer guilty of conspiracy to obstruct, influence, or impede an official proceeding, as charged in Count 17 of the Second Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, that beginning at a time unknown, but no later than on or about 2015, and continuing through October 6, 2020, two or more persons reached an agreement or came to an understanding to corruptly obstruct, influence, or impede an official proceeding, to wit: an investigation being conducted by government investigating agencies, grand jury proceedings, and a proceeding before a court.

To help you decide whether a defendant agreed to commit the crime of corruptly obstructing, influencing, or impeding an official proceeding, you should consider the elements of this crime. The elements of corruptly obstructing, influencing, or impeding an official proceeding are the following:

- *One*, that a person obstructed, influenced, or impeded any official proceeding; and
- *Two*, that person acted corruptly.

There are three official proceedings identified in Count 17. The government need not prove beyond a reasonable doubt that there was an agreement to obstruct all of these proceedings. Instead, the government must prove beyond a reasonable doubt that there was an agreement to obstruct at least one of these official proceedings. You must unanimously agree as to which official proceeding there was an agreement to obstruct.

An official proceeding need not be pending or about to be instituted at the time of the agreement. However, the government must prove beyond a reasonable doubt that the participants foresaw the particular official proceeding.

A person acts corruptly if he acts with the purpose of wrongfully impeding the due administration of justice.

The remaining instructions provided to you under Element One of Conspiracy to Commit Wire Fraud (Final Instruction No. 2) also apply to

this element of Conspiracy to Obstruct, Influence, or Impede an Official Proceeding.

Two, that Peachey or Winer voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

The same instructions provided to you under Element Two of Conspiracy to Commit Wire Fraud (Final Instruction No. 2) also apply to this element of Conspiracy to Obstruct, Influence, or Impede an Official Proceeding.

Three, that at the time Peachey or Winer joined in the agreement or understanding, he knew the purpose of the agreement or understanding; and

The same instructions provided to you under Element Three of Conspiracy to Commit Wire Fraud (Final Instruction No. 2) also apply to this element of Conspiracy to Obstruct, Influence, or Impede an Official Proceeding.

Four, that while the agreement was in effect, a person or persons who had joined the agreement knowingly did one or more acts for the purpose of carrying out or carrying forward the agreement.

It is not necessary that Peachey or Winer personally committed an act in furtherance of the agreement, know about it, or witnessed it. It makes no difference which of the participants in the agreement did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member, and each member is bound by or responsible for the acts of every other member done to further their scheme.

The act done in furtherance of the agreement does not have to be an unlawful act. The act may be perfectly innocent in itself.

It is not necessary that the government prove that more than one act was done in furtherance of the agreement. It is sufficient if the government proves one such act; but in that event, in order to return a verdict of guilty, you must all agree which act was done.

If you determine that an agreement existed and Peachey or Winer joined the agreement, then acts and statements knowingly done or made by a member of the agreement during the existence of the agreement and in furtherance of it, may be considered by you as evidence pertaining to Peachey or Winer, even though the acts and statements were done or made in the absence of and

without the knowledge of Peachey or Winer. This includes acts done or statements made before Peachey or Winer joined the agreement, because a person who knowingly, voluntarily, and intentionally joins an existing conspiracy becomes responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy. Acts and statements which are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

For you to find Peachey or Winer guilty of the offense charged in Count 17 of the Second Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Peachey or Winer not guilty of the offense charged in Count 17 of the Second Superseding Indictment.

FINAL INSTRUCTION NO. 9 – DELIBERATE IGNORANCE/WILLFUL
BLINDNESS

For the counts of wire fraud (Final Instruction No. 4), you may find that Winer acted knowingly if you find beyond a reasonable doubt that Winer believed there was a high probability that investor funds were not being used for charitable or humanitarian projects and that he took deliberate actions to avoid learning of that fact. For the counts of laundering of monetary instruments (Final Instruction No. 6) you may find that Peachey or Winer knew the purpose of the financial transaction was to conceal or disguise the nature, location, source, ownership, or control of the proceeds of unlawful wire fraud if you find beyond a reasonable doubt that Peachey or Winer believed there was a high probability that this was the purpose of the financial transaction and that Peachey or Winer deliberately closed his eyes to what would otherwise have been obvious to him. A willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts.

For the counts of wire fraud, you may not find that Winer acted “knowingly” if you find he was merely negligent, careless, or mistaken as to whether investor funds were being used for charitable or humanitarian projects. For the counts of laundering of monetary instruments, you may not find that Peachey or Winer acted “knowingly” if you find he was merely negligent, careless, or mistaken as to the purpose of the financial transaction being to conceal or disguise the nature, location, source, ownership, or control of the proceeds of unlawful wire fraud.

FINAL INSTRUCTION NO. 10 – SUMMARIES

You will remember that certain summaries and charts were admitted in evidence. You may use those summaries and charts as evidence. It is for you to decide how much weight, if any, you will give to them. In making that decision, you should consider all of the testimony you heard about the way in which they were prepared.

The charts and summaries that were received for demonstrative purposes only are not in and of themselves evidence or proof of any facts. If such summaries or charts do not correctly reflect facts or figures shown by the evidence in the case, you should disregard them.

FINAL INSTRUCTION NO. 11 – IMPEACHMENT

In Preliminary Instruction No. 6, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

You have heard evidence that one or more witnesses has been convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give the witness’s testimony.

You have heard testimony from one or more witnesses who stated that they participated in the crime charged against the defendants. That testimony was received in evidence and may be considered by you. You may give that testimony such weight as you think it deserves. Whether or not that testimony may have been influenced by that witness’s desire to please the prosecution or to strike a good bargain with the prosecution about that witness’s own situation is for you to determine.

You have heard that one or more witnesses pleaded guilty to a crime which arose out of the same events for which the defendants are on trial here. You must not consider that guilty plea as any evidence of either defendant’s guilt. You may consider a witness’s guilty plea only for the purpose of determining how much, if at all, to rely upon that witness’s testimony.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight, if any, you think it deserves.

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

FINAL INSTRUCTION NO. 12 – PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

The presumption of innocence means that a defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from a defendant's arrest, the charge, or the fact that he is here in court.
- This presumption remains with a defendant throughout the trial.
- This presumption is enough, alone, for you to find a defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to a defendant to prove his innocence.
- This burden means that a defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.

This burden means that you must find a defendant not guilty of an offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 13 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or a defendant, keeping in mind that a defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove a defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 14 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that a defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that a defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 15 – DUTY DURING DELIBERATIONS

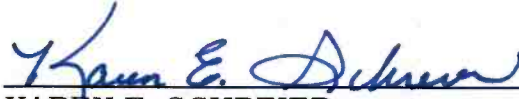
You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether a defendant is guilty or not guilty. If a defendant is guilty, I will decide what the sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider a defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against a defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated November 23, 2021.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE