

Money Laundering (*18 U.S.C. §1956*)

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6.18.1956A Money Laundering - Elements of the Offense (18 U.S.C. §1956(a)(1))

Count *(No.)* **of the indictment charges defendant, *(name)*, with money laundering, which is a federal crime.**

In order to find *(name)* guilty of this offense, you must find that the government proved each of the following four elements beyond a reasonable doubt:

First: That on or about the dates alleged in the indictment, *(name)* conducted *(or attempted to conduct)* a financial transaction, which affected interstate commerce;

Second: That *(name)* conducted the financial transaction with the proceeds of a specified unlawful activity, that is, *(describe unlawful activity alleged in the indictment)*;

Third: That *(name)* knew the transaction involved the proceeds of some form of unlawful activity; and

Fourth: That *(name)* *[include appropriate language to describe charges: intended to promote the carrying on of the specified unlawful activity, that is *(describe unlawful activity alleged in the indictment)*;*
conducted the financial transaction with knowledge 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 *(describe unlawful activity alleged in the indictment)*;

conducted the financial transaction with knowledge that the transaction was designed in whole or in part to avoid a transaction reporting requirement under (State)(Federal) law.]

Comment

Fifth Circuit § 2.76.

18 U.S.C. § 1956(a)(1) provides that:

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A)(I) with the intent to promote the carrying on of specified unlawful activity;* *
*; or

(B) knowing that the transaction is designed in whole or in part--

(I) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law commits a crime.

The court should also give Instruction 5.02 (Knowingly).

In *United States v. Morelli*, 169 F.3d 798, 804 (3d Cir. 1999), the Third Circuit enumerated the elements of money laundering under section 1956(a)(1):

(1) an actual or attempted financial transaction (2) involving the proceeds of specified unlawful activity; (3) knowledge that the transaction involves the proceeds of some unlawful activity; and (4) either (a) an intent to promote the carrying on of specified unlawful activity, or (b) knowledge that the transaction is designed to promote the underlying specified unlawful activity or “to conceal or disguise the nature [or] the source . . . of the proceeds of specified unlawful activity.”

In *Morelli*, the court noted that the government may properly charge both promotion and concealment in the same count. 169 F.3d at 804.

In *United States v. Grasso*, 381 F.3d 160, 168 (3d Cir. 2004), the Third Circuit explained the breadth of the money laundering statute:

To be sure, 18 U.S.C. § 1956 criminalizes financial transactions that satisfy the conventional understanding of money laundering—namely, transactions intended "to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity." 18 U.S.C. § 1956(a)(1)(B)(I). But it is equally unlawful under the statute to engage in a financial transaction, knowing that the property involved represents the proceeds of unlawful activity, "with the intent to promote the carrying on of specified unlawful activity." 18 U.S.C. § 1956(a)(1)(A)(I). In other words, the money laundering statute prohibits not only the concealment of proceeds, but also the promotion of illegal activity.

In *United States v. Paramo*, 998 F.2d 1212, 1218 (3d Cir. 1993), the court held that the law does not require that the defendant “plow back” the proceeds into the unlawful activity. The court concluded that “a defendant can engage in financial transactions that promote not only ongoing or future unlawful activity, but also prior unlawful activity” and rejected the defendant’s “claim that the district court erred by instructing the jury that they could convict [the defendant] if he promoted the carrying on of a ‘past mail fraud.’”

6.18.1956-1 Money Laundering - Conducting a Financial Transaction Defined

The first element the government must prove beyond a reasonable doubt is that *(name)* conducted *(or attempted to conduct)* a financial transaction.

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

The term “transaction” means *(a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of property)(with respect to a financial institution, the deposit, withdrawal, transfer between accounts, or any other payment, transfer, or delivery by, through, or to a financial institution by whatever means effected).*

The term “financial transaction” means any “transaction,” as I just explained that term *[include language that applies:*

which in any way or degree affects interstate (or foreign) commerce and (involves the movement of funds by wire or other means) (involves one or more monetary instruments)

(involves the transfer of title to any real property, vehicle, vessel or aircraft),

or

involves the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree].

Comment

Sand et al., supra, 50A-3.

18 U.S.C. § 1956(c) provides that, as used in this section:

(2) the term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(6) the term "financial institution" includes--

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. § 3101);

31 U.S.C. § 5312(a)(2) and 31 C.F.R. § 103.11 define the term "financial institution."

6.18.1956-2 Money Laundering - Interstate Commerce Defined

The term “interstate commerce,” as used in these instructions, means commerce between any combination of states, territories or possessions of the United States (including the District of Columbia).

[The government is not required to prove that (name)’s transactions with a financial institution, that is, with (specify financial institution), themselves affected interstate (or foreign) commerce. The government is required to prove only that the financial institutions or banks through which the financial transactions were conducted were engaged in or had other activities which affected interstate (or foreign) commerce in any way or degree.]

[Further, the government is not required to prove that the defendant knew of or intended the effect on interstate commerce, merely that such an effect occurred.]

Comment

Sand et al., supra, 50A-3.

The money laundering statute requires that the government plead and prove effect on interstate commerce. In *United States v. Goodwin*, 141 F.3d 394, 401 (2d Cir. 1997), the Second Circuit explained the nature of the interstate commerce requirement:

[T]he government must allege in the indictment that the financial transactions in question had some de minimis effect on interstate commerce. Such a conclusion is required by the plain language of the money laundering statute. Section 1956(a)(1) prohibits persons from conducting certain “financial transactions.” The statute provides that “the term ‘financial transaction’ means (A) a transaction which in any way or degree affects interstate or foreign commerce . . . or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.” 18 U.S.C. § 1956(c)(4). Thus, proof of a nexus with interstate commerce is

necessary to establish the existence of a financial transaction, and proof of a financial transaction is needed to establish a violation of the statute.

See also United States v. Ables, 167 F.3d 1021, 1029-31 (6th Cir. 1999) (holding government need only establish de minimis effect on interstate commerce).

The court may include the second paragraph of the instruction if the alleged money laundering transaction involves a financial institution.

6.18.1956-3 Money Laundering - Proceeds of a Specified Unlawful Activity Defined

The term “proceeds,” as used in these instructions, means any property, or any interest in property, that someone acquires or retains as a result of criminal activity. Proceeds may be derived from an already completed offense or from a completed phase of an ongoing offense (*include appropriate example; e.g., such as a mail fraud scheme*).

The government is not required to prove that all of the funds involved in the charged transactions were the proceeds of the specified unlawful activity. (*A financial transaction involves “proceeds” of a specified unlawful activity even when proceeds of a specified unlawful activity are commingled in an account with funds obtained from legitimate sources.*) It is sufficient if the government proves beyond a reasonable doubt that at least part of the funds involved in a transaction represents such proceeds of specified unlawful activity.

I instruct you, as a matter of law, that the term “specified unlawful activity” includes a violation of (*specify relevant statute; e.g., the mail fraud statute*) as charged in this case. I have explained (*will explain*) the elements of (*specify alleged unlawful activity*).

Comment

18 U.S.C. § 1956(c)(7) provides a list of specified unlawful activities.

Proceeds “means gross receipts rather than profits.” *See United States v. Grasso*, 381 F.3d 160, 167 (3d Cir. 2004). In *United States v. Morelli*, 169 F.3d 798 (3d Cir. 1999), the Third Circuit stated that “[p]roceeds are ‘[t]hat which results, proceeds, or accrues from some

possession or transaction.” 169 F.3d at 805 (citing Black's Law Dictionary). *See also United States v. Omoruyi*, 260 F.3d 291, 294-96 (3d Cir. 2001) (holding that money became proceeds once it was credited to an account over which defendant had control). The government does not need to trace the proceeds to a particular criminal transaction provided the evidence establishes that the proceeds derived from the alleged unlawful activity. *See United States v. Carr*, 25 F.3d 1194, 1205 (3d Cir. 1994).

In *Morelli*, the court concluded that money is not the proceeds of wire fraud if it comes into the defendant's hands before the wiring takes place. 169 F.3d at 805-06. The court expressly disagreed with the Seventh Circuit's view that a defendant could accrue proceeds from a mail or wire fraud before the mailing or wiring occurred. 169 F.3d at 806 n.9. *See also United States v. Conley*, 37 F.3d 970, 980 (3d Cir. 1994) (“[P]roceeds are derived from an already completed offense, or a completed phase of an ongoing offense, before they can be laundered.”). However, the court went on to conclude that “the money was the proceeds of the entire ongoing fraudulent venture” and that “this venture was a wire fraud scheme.” The court explained that “[a]lthough each series [of transactions] may have included discrete acts of wire fraud that followed the creation of the proceeds related to that series, the fact is that the entire program, encompassing all of the acts charged in the indictment, constituted one large, ongoing wire fraud scheme. Each wiring in each series furthered the execution of each and every individual act of tax fraud, and helped to create the proceeds involved in each succeeding series of transactions. This is primarily because each wiring, whether it occurred before or after a given act of tax fraud, served to promote and conceal each individual embezzlement of taxes, either ex ante or ex post. More precisely, each wiring, including those that occurred before a particular transaction, made it more difficult for the government to detect the entire fraudulent scheme or any particular fraudulent transaction or series of transactions. In sum, the money gained in each series of transactions (save the initial one) was the proceeds of wire fraud because the money was the proceeds of a fraud that was furthered by the prior wirings.” *Morelli*, 169 F.3d at 806-07.

The government does not have to trace all of the property involved in the money laundering transactions charged to a specified unlawful activity. It is sufficient if the government proves that some of the funds in a commingled account derived from the unlawful activity. *See United States v. Sokolow*, 91 F.3d 396, 409 (3d Cir. 1996) (discussing conviction under § 1957 and concluding that government is not required to “trace the funds constituting criminal proceeds when they are commingled with funds obtained from legitimate sources”); *see also United States v. Jackson*, 935 F.2d 832 (7th Cir. 1991) (transactions drawn on account containing commingled funds “involve” proceeds of specified unlawful activity).

6.18.1956-4 Money Laundering - Knowledge that Property Represents Proceeds of Some Form of Unlawful Activity Defined

The third element that the government must prove beyond a reasonable doubt is that in conducting a financial transaction (*name*) knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity. To satisfy this element, the government must prove that (*name*) knew the property involved in the transaction represented proceeds from some form of unlawful activity that is a felony offense under state, federal, or foreign law. The government is not required to prove that (*name*) knew what the unlawful activity was.

In this case, the government claims that (*name*) knew that the proceeds were derived from unlawful activity which constitutes (*describe criminal activity alleged; e.g., mail fraud*) which is a felony under (*federal*)(*state*)(*foreign*) law.

Comment

Sand et al., *supra*, 50A-18.

18 U.S.C. § 1956(c)(1) provides that, as used in this section

the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7).

In *United States v. Wert-Ruiz*, 228 F.3d 250, 253 n.2 (3d Cir. 2000), the Third Circuit noted that "[t]hough knowledge that the funds have been obtained illegally is required, knowledge of what the specified unlawful activity is not." *See also United States v. Carr*, 25

F.3d 1194, 1205 (3d Cir. 1994) (holding government could establish defendant's knowledge of the criminal nature of the proceeds through circumstantial evidence).

In *Wert-Ruiz*, 228 F.3d at 254-55, the trial court gave the following “willful blindness” instruction:

When knowledge of the existence of a particular fact is an essential part of an offense, such knowledge may be established if a defendant is aware of a high probability of its existence, unless she actually believes that it does not exist.

So with respect to the issue of a defendant's knowledge in this case, if you find from all the evidence beyond a reasonable doubt that the defendant deliberately and consciously tried to avoid learning that certain currency was the proceeds of some form of illegal activity, and that the defendants deliberately and consciously tried to avoid learning 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 the unlawful activity, you may treat such deliberate avoidance of positive knowledge as the equivalent of knowledge.

I must emphasize, however, that the requisite proof of knowledge on the part of a defendant cannot be established by demonstrating she was negligent, careless or foolish.

The Third Circuit concluded that the instruction was proper even though the government also contended that the defendant had actual knowledge. 228 F.3d at 256-57. *See also* 5.06 (Willful Blindness).

6.18.1956-5 Money Laundering - Intent to Promote, Intent to Conceal or Disguise, Intent to Avoid Reporting Requirement Defined

The final element that the government must prove beyond a reasonable doubt is that *(name)*, **in conducting the financial transactions,** *[insert appropriate language: intended to promote the carrying on of the specified unlawful activity, that is (describe unlawful activity alleged in the indictment; e.g., mail fraud); intended to conceal or disguise the nature, the source, the ownership, or the control of the proceeds of the specified unlawful activity, that is, (describe criminal activity alleged; e.g., mail fraud); conducted the financial transaction with knowledge that the transaction was designed in whole or in part to avoid a transaction reporting requirement under (state)(federal) law.]*

Whether *(name)* *[insert appropriate language: intended to promote the carrying on of (describe specified unlawful activity alleged in the indictment); knew that the purpose of the financial transaction (attempted financial transaction) was to conceal or disguise the nature, location, source, ownership or control of the proceeds of (the specified criminal activity); knew that the transaction was designed in whole or in part to avoid a transaction reporting requirement under (State)(Federal) law]*

may be established by proof of *(name)*'s actual knowledge; by circumstantial evidence; or by the defendant's willful blindness *(or purposeful ignorance)*. In other words, you are entitled to find from the circumstances surrounding the financial transactions or attempted financial transactions the purpose of that activity and *(name)*'s knowledge.

Comment

Sand et al., supra, 50A-5.

The court should also give Instruction 5.03 (Intentionally). In appropriate cases, the court should also give Instruction 5.06 (Willful Blindness).

In *United States v. Navarro*, 145 F.3d 580, 585 (3d Cir. 1998), the Third Circuit explained:

to constitute a violation of [1956(a)(1)] the defendant must undertake a financial transaction involving proceeds known to be from a specified unlawful activity:

- 1) With the intent to promote the carrying on of a specified unlawful activity (the promotion prong); or
- 2) Knowing that the transaction was designed in whole or in part to conceal the nature, location, ownership, etc. of the proceeds (the conceal or disguise prong); or
- 3) Knowing that the transaction was designed to avoid a transaction reporting requirement under state or federal law (the reporting requirement prong).

In *United States v. Paramo*, 998 F.2d 1212 (3d Cir. 1993), the court concluded that the evidence established the defendant's intent. The court summarized the evidence as follows:

In the present case, Paramo understood that the embezzled checks would have been worthless unless cashed at a bank or otherwise exchanged for negotiable currency. Given this fact, the jury rationally could have found that the cashing of each check contributed to the growth and prosperity of each preceding mail fraud by creating value out of an otherwise unremunerative enterprise. Accordingly, the jury rationally could have concluded that cashing the checks promoted each antecedent fraud, and was specifically intended by Paramo to do so.

998 F.2d at 1218. *See also United States v. Omoruyi*, 260 F.3d 291, 295-96 (3d Cir. 2001) (holding that evidence established defendant's intent to conceal nature, source, location, ownership, and control of proceeds of mail fraud where he deposited the money in bank accounts under false names and used false identification to withdraw it); *United States v. Carr*, 25 F.3d 1194, 1202-03 (3d Cir. 1994) (concluding evidence including trips to travel agency and large amount of currency in small bills was sufficient to establish money laundering through intent to conceal nature, source, location, ownership, and control of proceeds of unlawful activity).

6.18.1956-6 Money Laundering - Unanimity Required

Count (No.) of the indictment, charging (name) with money laundering, alleges more than one purpose for the money laundering offense(s), that is, that the transaction(s) (was)(were) [include appropriate language: intended to promote the carrying on of (specify the unlawful activity), or (was)(were) designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of (specify the unlawful activity) or (was)(were) designed in whole or in part to avoid a transaction reporting requirement].

The government is not required to prove each of the purposes alleged. It is sufficient for the government to prove, beyond a reasonable doubt, that (name) committed each transaction for one of those purposes.

However, each of you must agree with each of the other jurors as to which purpose or purposes (name) intended to serve by engaging in the transaction. In other words, if you unanimously agree that (name) committed the alleged transaction to promote the carrying on of (specify unlawful activity alleged) or if you unanimously agree that (name) committed the alleged transaction to conceal or disguise the nature, location, source, ownership or control of the proceeds of that unlawful activity, or both, you may find the defendant guilty. You need not unanimously agree on each purpose, but, in order to convict, must unanimously agree upon at least one such purpose.

Unless each of you agrees that the government has proven the same purpose for an alleged transaction beyond a reasonable doubt, you must find the defendant not guilty of that money laundering transaction.

Comment

If the indictment charges multiple purposes for a money laundering transaction, the jurors should be instructed that they cannot convict unless they unanimously agree on the particular purpose for the money laundering transaction. *See United States v. Navarro*, 145 F.3d 580 (3d Cir. 1998).