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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,
15 Plaintiff,

17 v.

18 AMR MOHSEN,
19 Defendant.

) No. CR 034-0095-WBS

) DEFENDANT AMR MOHSEN'S
) PROPOSED SUPPLEMENTAL JURY
) INSTRUCTIONS (PHASE TWO)

) Hon. William B. Shubb

20
21 Defendant Amr Mohsen, by and through his attorneys, Bruce Locke and John Balazs,
22 submit the following additional proposed jury instructions to supplement the Court's
23 standard instructions and those defining the elements of the charged offenses. The
24 defense's requested version of Ninth Circuit Model Instr. 4.9 should be modified further to
25 include reference to George Harmon should he also testify pursuant to a grant of immunity.
26 In the event the Court allows the evidence, Model Instr. 2.10 should be given before the
27 government presents any evidence concerning Dr. Mohsen's alleged attempt to stage
28 vandalism of Tom Huang and his wife's vehicles in order to try to explain the theft of the

1 notebook from Dr. Mohsen's own vehicle. A short summary of the relevant law of
2 entrapment is also set forth below before the proposed jury instructions.

3 Dr. Mohsen reserves the right to propose additional instructions after review of the
4 government's and court's proposed general instructions and the conclusion of the evidence.

5 Dated: March 5, 2006

6 Respectfully submitted,

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8 /s/ JOHN BALAZS

9 Bruce Locke
10 John Balazs

11 Attorneys for Defendant
12 Amr Mohsen
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LAW ON ENTRAPMENT

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2 "The elements of an entrapment defense are that (1) a government agent induced the
3 defendant to commit a crime (2) he was not predisposed to commit." *United States v.*
4 *Thomas*, 134 F.3d 975, 978 (9th Cir. 1998). Inducement can be any government conduct
5 creating a substantial risk that one not otherwise predisposed would commit the offense,
6 "including persuasion, fraudulent representations, threats, coercive tactics, harassment,
7 promises of reward, or pleas based on need sympathy or friends." *United States v.*
8 *Poehlman*, 217 F.3d 692, 698 (9th Cir. 2000) (quoting *United States v. Davis*, 36 F.3d
9 1424, 1430 (9th Cir. 1994)). Predisposition must be assessed at the time before
10 defendant's first contact with government agents. *Id.* at 703.

11 "[O]nly 'slight evidence is needed to create a factual issue and get the defense to the
12 jury.'" *United States v. Kessie*, 992 F.2d 1001, 1003 (9th Cir. 1993) (quoting *United States*
13 *v. Sotelo-Murillo*, 887 F.2d 176, 179 (9th Cir. 1989)). An entrapment instruction
14 supported by slight evidence is appropriate even if an entrapment defense is inconsistent
15 with a defendant's theory of the case. *United States v. Marbella*, 73 F.3d 1508, 1512 (9th
16 Cir.), *cert. denied*, 518 U.S. 1020 (1996). Even where the evidence is "weak, insufficient,
17 inconsistent, or of doubtful credibility," the defendant is entitled to an entrapment
18 instruction unless "no rational juror could entertain a reasonable doubt as to either
19 element." *Kessie*, 992 F.2d at 1003 (quoting *Sotelo-Murillo*, 887 F.2d at 178 and *United*
20 *States v. Hoyt*, 879 F.2d 505, 509, *amended on other grounds*, 888 F.3d 1257 (9th Cir.
21 1989)). A defendant is not required to testify or admit the crime in order to raise an
22 entrapment defense. *United States v. Barry*, 814 F.2d 1400, 1402 (9th Cir. 1987).

23 When the defense of entrapment is properly raised, the burden shifts to the
24 government to prove beyond a reasonable doubt that the defendant was either predisposed
25 to commit the crime or was not induced by government agents to commit the crime.
26 *Jacobson v. United States*, 503 U.S. 540, 548 (1992); *Barry*, 814 F.2d at 1402; *see also*
27 Ninth Circuit Model Criminal Jury Instructions 6.2. The jury must unanimously reject the
28 affirmative defense of entrapment before it can return a guilty verdict. *United States v.*

1 *Southwell*, 2005 U.S. App. Lexis 29012 (9th Cir. Dec. 30, 2005) (affirmative defense of
2 insanity).

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2.10 OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT

You will hear evidence that the defendant made efforts to stage vandalism to Tom Huang's and his wife's vehicles to try to explain the theft of the notebook from defendant's own vehicle. These acts are not charged here. I instruct you that the evidence is being admitted only for the limited purpose of being considered by you on the question of defendant's **[insert here]** and for no other purpose.

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1 **4.3 OTHER CRIMES, WRONGS OR ACTS OF DEFENDANT**

2 You have heard evidence that the defendant engaged in crimes in the first phase of
3 the trial. You may consider this evidence only as it bears on the defendant's motive and
4 intent on the crimes charged in counts 21 through 23 and for no other purpose.

5 You have also heard evidence in the second phase that the defendant engaged in
6 efforts to stage the vandalism of Tom Huang's and his wife's vehicles in order to try to
7 explain the theft of the notebook from his own vehicle. You may consider this evidence
8 only as it bears on the defendant's **[insert here]** on the crimes charged in counts 21 through
9 23 and for no other purpose.

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1 **4.9 TESTIMONY OF WITNESSES INVOLVING SPECIAL CIRCUMSTANCES–**
2 **IMMUNITY, BENEFITS, ACCOMPLICE, PLEA**

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4 You have heard testimony from Manual Primas, a witness who received immunity in
5 exchange for a promise by the government that the witness will not be prosecuted.

6 The witness also received benefits from the government in the form of a reduced
7 sentence in his pending charges in connection with this case.

8 For these reasons, in evaluating the witness's testimony, you should consider the
9 extent to which or whether witness's testimony may have been influenced by any of these
10 factors. In addition, you should examine the witness's testimony with greater caution than
11 that of other witnesses.

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26 Ninth Circuit Model Instr. 4.9 (new June 2005).
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1 **6.2 ENTRAPMENT**

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3 With respect to each of the charges in counts 21-23, the government has the burden
4 of proving beyond a reasonable doubt that the defendant was not entrapped.

5 To do so, the government must prove the following:

- 6 1. the defendant was predisposed to commit the crime before being contacted by
7 government agents, or
8 2. the defendant was not induced by the government agents to commit the crime.
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10 Where a person, independent of and before government contact, is predisposed to
11 commit the crime, it is not entrapment if government agents merely provide an opportunity
12 to commit the crime.

13 Inducement is conduct by a government agent that creates a substantial risk that a
14 person who was not otherwise predisposed would commit the charged crime, including
15 persuasion, fraudulent representations, threats, coercive tactics, harassment, promises or
16 rewards, or pleas based on need, sympathy or friendship.
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26 Ninth Circuit Model Instr. 6.2 (as modified); *United States v. Manarite*, 44 F.3d 1407,
27 1418 (9th Cir. 1995); *United States v. Garza-Juarez*, 992 F.2d 896, 909 (9th Cir. 1993).
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