

4.9 Deliberate Ignorance

You may find that the defendant acted knowingly if you find beyond a reasonable doubt that:

First, the defendant was aware of a high probability that [*e.g.*, drugs were in the defendant's automobile], and

Second, the defendant deliberately avoided learning the truth.

You may not find such knowledge, however, if you find that the defendant actually believed that [*e.g.* no drugs were in the defendant's automobile], or if you find that the defendant was simply negligent, careless, or foolish.

Comment

In *United States v. Heredia*, 483 F.3d 913 (9th Cir. 2007) (en banc), the Ninth Circuit revived its decision in *United States v. Jewell*, 532 F.2d 697 (9th Cir. 1976) (en banc), on which the language of this instruction is based. In so doing, the en banc court reiterated that in deciding whether to give a deliberate ignorance instruction along with an instruction on actual knowledge, “the district court must determine whether the jury could rationally find willful blindness even though it has rejected the government’s evidence of actual knowledge. If so, the court may also give a *Jewell* instruction.” *Heredia*, 483 F.3d at 922; *see also United States v. Ramos-Atondo*, 732 F.3d 1113, 1120, (9th Cir. 2013) (deliberate ignorance instruction may be given in conspiracy case); *United States v. Yi*, 704 F.3d 800, 805 (9th Cir. 2013) (approving modified version of Instruction 5.8 (now Instruction 4.9) when defendant knew of high probability of asbestos in condominium ceilings and deliberately avoided learning truth) ; *United States v. Galecki*, 89 F.4th 713, 729 (9th Cir. 2023) (holding no abuse of discretion in giving deliberate ignorance instruction in the context of the Analogue Act).

In the event the court determines to give a *Jewell* instruction, “it must, at a minimum contain the two prongs of suspicion and deliberate avoidance.” *Heredia* at 483 F.3d at 924. As the Ninth Circuit explained:

We conclude, therefore, that the two-pronged instruction given at defendant’s trial met the requirements of *Jewell* and, to the extent some of our cases have suggested more is required, *see* page 920 *supra*, they are overruled. A district judge, in the exercise of his discretion, may say more to tailor the instruction to the particular facts of the case. Here, for example, the judge might have instructed the jury that it could find Heredia did not act deliberately if it believed that her failure to investigate was motivated by safety concerns. Heredia did not ask for such an instruction and the district judge had no obligation to give it *sua sponte*. Even when defendant asks for such a supplemental instruction, it is within the district court’s broad discretion whether to comply.

Id. at 920-21. Accordingly, the government need not prove that the reason for the defendant's

deliberate avoidance was to obtain a defense against prosecution. *Id.*

In *United States v. Hong*, 938 F.3d 1040 (9th Cir. 2019), the Ninth Circuit applied *Heredia*

and discussed when a deliberate ignorance (or willful blindness) instruction should be given in the context of a charge of health care fraud. The Ninth Circuit explained:

A deliberate ignorance—or “willful blindness”—instruction is only relevant if the jury rejects the government’s evidence of actual knowledge. *United States v. Heredia*, 483 F.3d 913, 922 (9th Cir. 2007) (en banc). “In deciding whether to give a willful blindness instruction, in addition to an actual knowledge instruction, the district court must determine whether the jury could rationally find willful blindness even though it has rejected the government’s evidence of actual knowledge.” *Id.* A jury can believe some, but not all, evidence presented by a party. *Id.* at 923. As we have said before, “[t]he government has no way of knowing which version of the facts the jury will believe, and it is entitled (like any other litigant) to have the jury instructed in conformity with [different] rational possibilities. That these possibilities are mutually exclusive is of no consequence.” *Id.* Still, “the district judge has discretion to refuse” the instruction even where its factual predicates are present. *Id.* at 924.

Hong, 938 F.3d at 1046-47.

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