**15.13 Device-Making Equipment—Illegal Possession or Production**

**(18 U.S.C. § 1029(a)(4))**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [production] [trafficking in] [having control or custody of] [possessing] device-making equipment in violation of Section 1029(a)(4) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

 First, the defendant knowingly [produced] [trafficked in] [had control or custody of] [possessed] device-making equipment;

 Second, the defendant acted with intent to defraud; and

 Third, the defendant’s conduct in some way affected commerce between one state and [an]other state[s], or between a state of the United States and a foreign country.

 “Device-making equipment” is any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device.

 [A “counterfeit access device” is any device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device.]

 [To “traffic” in device-making equipment means to transfer or otherwise dispose of it to another, or to obtain control of it with intent to transfer or dispose of it to another.]

 [To “produce” device-making equipment means to design, alter, authenticate, duplicate, or assemble it.]

A defendant acts with the intent to defraud if [he] [she] had the intent to deprive [*victim*] of money or property by deception.

**Comment**

 Use this instruction in conjunction with Instruction 15.16 (Access Device—Defined).

 *See* Comment to Instruction 15.10 (Counterfeit Access Devices—Producing, Using, or Trafficking) and Comment to Instruction 15.11 (Unauthorized Access Devices—Using or Trafficking).

 18 U.S.C. § 10 defines interstate and foreign commerce.

 18 U.S.C. § 1029(e) defines “access device,” “counterfeit access device,” “trafficking,” “produce,” and “unauthorized access device.”

“Intent to defraud” for purposes of § 1029(a)(4) requires the intent to “deceive *and* cheat,” which means “the government must prove that the defendant had the intent to deprive a victim of money or property by deception.” *United States v. Saini*, 23 F.4th 1155, 1160 (9th Cir. 2022).

*Revised Mar. 2022*